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MULTNOMAH COUNTY GRAND JURY
DEATH INVESTIGATION

Deceased: MERLE MIKAL HATCH)
Date of Incident: February 17, 2013) DA Case No. 2264700
Location: 10100 SE Main Street) PPB Case No. 13 13674
Portland Adventist Medical Center,)
Portland, Oregon)

VOLUME 1
TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled
transcript of Grand Jury proceedings was heard, commencing
at the hour of 10:05 a.m. on Monday, March 4, 2013 in Grand
Jury No. 3, Multnomah County Courthouse, Portland, Oregon.

APPEARANCES

Mr. Donald Rees and Mr. Christopher Ramras,
Deputy District Attorneys,
Appearing on behalf of the State.

JULIE L. BOURGEOIS
Court Reporter
Multnomah County Courthouse
1021 SW 4th Avenue Rm. 311
Portland, Oregon 97204

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TRANSCRIPT OF PROCEEDINGS 3/4/13 10:05

CAROL GRAFF,

called as a witness in behalf of the

State, being first

duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. REES:

Q Have a seat, please. Start, Ms. Graff, by stating and spelling your name.

A My name is Carol Graff, C-A-R-O-L G-R-A-F-F, as in Frank.

Q What's your occupation?

A I'm a security officer at Adventist Medical Center.

Q Where is that located at?

A 10300 Southeast Main Street, that's Portland emergency department, that's where I spend the majority of my time.

Q How long have you worked as a hospital security officer?

A Six years.

Q Did you receive any special training or education for that position?

A Yes.

1 Q Could you briefly describe that?

2 A It occurs over a two week time frame, I walk along
3 with another veteran security officer. I have to have three
4 days on day shift, three days on swing shift, three days on
5 evening shift, and then an orientation day that acquaints me
6 with hospital policy and protocols.

7 Q You also receive training at the Department of
8 Public Safety Standards and Training?

9 A That's correct.

10 Q What did that consist of?

11 A That consisted of a six to eight hour class with a
12 test, fingerprinting, and I'm not remembering anything else.
13 And then a four hour refresher class with a test every two
14 years.

15 Q In addition to the six years at the hospital, have
16 you had other security assignments?

17 A Yes. I also volunteer as a security officer in a
18 supervisor position at Gladstone convention grounds in
19 Gladstone, that is affiliated with the Seventh Day Adventist
20 Church.

21 Q Could you briefly describe for the grand jury your
22 responsibilities at Portland Adventist?

23 A There are three officers per shift. We each
24 rotate every hour. There's also one person that's on
25 interior patrol, that's either in the office answering

1 phones, monitoring cameras, or doing -- just walking around
2 the hospital complex. Another officer is in one of our two
3 vehicles driving on exterior patrol, uhm, hopefully looking
4 for anyone who is not supposed to be there, and just doing --
5 helping guests and patients maybe who lost their car and
6 need a ride to their car, anything like that. Then there's
7 one officer that is in the emergency department, the
8 majority of the time we're usually sitting with what we call
9 sitting on holds. These are psych patients that have come
10 in either on a police officer hold, a director's hold or an
11 ED hold, so we spend an hour there. And we each rotate
12 every hour.

13 Q Do you carry a firearm?

14 A No, sir.

15 Q Have you received any training regarding what your
16 appropriate response would be when confronted by someone
17 with a firearm?

18 A Yes. My lead officer over the past couple of
19 years has done some verbal training, talking scenarios with
20 me and things like that.

21 Q And what is your understanding of what the
22 appropriate response would be?

23 A If you are presented with a gun, and it is being
24 used as a weapon towards you, my training is, is to back
25 off, do not try to engage. Get yourself into a safe place

1 and call 911.

2 Q Does the hospital have in place a protocol
3 established to deal with a situation where a gun man or a
4 shooter is inside of the hospital?

5 A Yes, sir, they do.

6 Q Can you briefly describe what that is?

7 A It's called a Code Silver. And that is whoever is
8 the person that is initiating seeing the Code Silver, which
9 is a weapon, could be any type of a weapon, knife, gun,
10 anything that could be used as a weapon towards you, you are
11 to back off, immediately lock down that area for patient
12 safety, and to immediately call 911.

13 Q Let me direct your attention to February 17th,
14 2013, which was a Sunday evening.

15 A Correct.

16 Q Were you on duty that evening?

17 A Yes, I was.

18 Q And did you have a particular assignment that
19 evening within the hospital?

20 A Uhm, just as a normal security officer doing my
21 hourly rounds.

22 Q All right. Uhm, did you have contact with a
23 patient that you knew as Daniel Fox?

24 A Yes, sir, I did.

25 Q Where did you first have that contact?

1 A My first contact with him was in the triage area.
2 One of the CNA's, her name was Faith, she asked me just to
3 kind of stand as a quiet visual presence, because this
4 individual made her very nervous.

5 Q Did you have the opportunity to see or hear at
6 that time what this patient, Mr. Fox, was doing?

7 A Yes, I did.

8 Q Can you describe that to the grand jury?

9 A He was very nervous. He would kind of pace back
10 and forth a little bit. He would not sit down in the chair,
11 which then they sit in a chair so they can do blood
12 pressure, pulse ops, which is oxygen level, and other
13 triaging things before being seen by the doctor, he just
14 would kind of turn, and was just very, very antsy and very
15 nervous.

16 Q And what further contact did you have with this
17 patient?

18 A I stayed with him. When we had a room ready, I
19 was one of the officers that walked him back to the room
20 that he was going to be assigned to, waiting for the doctor
21 to see him.

22 Q Was that in the part of the hospital that is
23 nicknamed security lane?

24 A Yes. Yes. Some of us call it security lane.
25 Some call it happy valley, some call it just the back

1 hallway, some just say the lane.

2 Q All right. And this consists of a group of four
3 rooms in a secured area of the hospital; is that correct?

4 A That's correct.

5 Q Did you have an understanding of why Mr. Fox was
6 at the hospital?

7 A All I know is, is that he was there possibly as a
8 voluntary psych, uhm, had nothing known at that time for me.
9 Whenever a patient is put back into our, what I call
10 security lane area, they are always considered possible
11 psychs, possible drug induced psychosis, things like that.
12 So the security officers will assume some of this, and wait
13 for, yes, they are psych, they are going to go on a hold, or
14 they are going to stay voluntary, or this is drug induced,
15 we are going to let them sleep it off and get them out.

16 Q Once inside this part of the hospital, is a
17 patient able to walk out on their own?

18 A If we have patients in that area that are on ED
19 holds or director holds or POH's, there is a door at one end
20 of the lane that can be shut, and that secures that hallway
21 of the four rooms.

22 Q Well, in this case, with this patient known to you
23 as Mr. Fox, was he subject to that level of security? Was
24 he locked into that area?

25 A Yes. He was locked into that area, because we had

1 three other patients there that were on full holds.

2 Q I see. How much time did you spend in that area
3 with the patient known to you as Mr. Fox that evening?

4 A About 20 minutes.

5 Q Could you describe what happened generally during
6 those twenty minutes?

7 A When I first went back I contacted him, introduced
8 myself, "Hi, I'm Carol, I'm going to be spending the next
9 hour back here with you. Are you warm enough? Can I get
10 you anything, ice-water," just kind of doing my -- what my
11 co-workers call my mom routine. And he said, no, he was
12 fine, thank you for offering. And we left it at that.

13 I then sat down in my chair to fill out what is
14 called a constant observer paper, and to notate my initials
15 for that hour that I was back there, that I was sitting and
16 watching him, uhm, notated -- did something about, I did not
17 know if he was on a hold. Uhm, I just stayed back there so
18 that the nurse that was with those rooms felt a little more
19 comfortable. And I signed my paperwork, and about 9:20 he
20 approaches me.

21 Q 9:20 in the evening?

22 A In the evening, yes.

23 Q And so he approached you, does that mean he left
24 his room?

25 A Yes. He stood up, he walked out of his room, and

1 proceeded to ask or make statements to me. I don't remember
2 exactly what he said as he came out of the room. I thought
3 he just needed to use the bathroom. So, I stayed sitting in
4 my chair.

5 Q What did he say to you?

6 A This is where my memory -- I cannot remember the
7 exact words, but I can give you the gist of the next contact
8 that he did have with me. He basically told me that he was
9 leaving, and that I was going to be going with him. And
10 that if I didn't do what he wanted me to do, he would shoot
11 me.

12 Because I hear statements similar to that on a
13 routine basis, day in, day out, I did not believe him right
14 at first. So I believe I stood up and said, "Can I get you
15 a nurse? Would you like to speak to the doctor? I know you
16 have waited a long time, I apologize for that. Uhm, but
17 what can I do to help you feel better, you know? I'll be
18 happy to get you a nurse or a doctor for you." And he just
19 kept repeating, and somewhere in this course of time frame,
20 he did -- I don't remember, but from what I watched on the
21 video afterwards, he did grab my arm, and kind of guided me
22 or turned me towards the door.

23 And he kept saying, "I have a gun, and I will
24 shoot you if you don't do what I tell you to do." About
25 three or four times, he did lift his shirt (indicating), and

1 his right hand was on his hip. His left hand was on his
2 raised T-shirt. And at that time when he did raise the
3 T-shirt, I did see a black object in his waistband. And he
4 led me to believe that he did have a gun.

5 Q When you saw the black object in his waistband,
6 did that change things for you mentally in terms of what
7 you're now perceiving or believing about the situation?

8 A Yes, it did.

9 Q How did that change?

10 A That I had a Code Silver on my hands, and that I
11 needed to listen to what he was saying so that I could keep
12 myself safe and others safe.

13 Q What did you think was happening at that point?
14 What did you think was going to happen?

15 A That he basically wanted me, so he could get out
16 of the emergency department. Because he knew he could not
17 walk out on his own, because the door at the end of the lane
18 was closed. And he knew that that closed door meant locked.
19 And he knew that he had to have somebody that had a
20 proximity ID badge, this is the one I used, to be able to
21 get out of the secured area.

22 Q So you were essentially being taken hostage by him
23 in order for him to escape from security lane?

24 A That's correct.

25 Q Did you have any thought of physically fighting

1 with this individual?

2 A For a fleeting split second, yes. But it
3 instantly went out of my mind and said no. And at the next
4 second, just impulsively, I reached up for my -- because I
5 had my radio mic clipped to my shoulder lapel there, and I
6 instantly started to reach up, didn't even realize I was
7 doing it, and he then voiced to me, he said, "If you call or
8 contact anyone, I will shoot you, and I will shoot you
9 dead."

10 So I instantly put my hand back down. I said,
11 "You know what, no problem, sir. You know, the door is this
12 way." And I just kept kind of verbally trying to
13 de-escalate him. When he -- he basically told me where to
14 go.

15 Q Were you frightened or calm?

16 A For a split second I was very, very scared. I
17 thought I was going to be shot before I exited security
18 lane. And in the very next second, I just -- my brain just
19 kind of clicked, and I went into just my autopilot training.
20 And at that point, I just was very calm, I was not scared of
21 him. Uhm, I just knew that I just needed to do what he told
22 me to do.

23 Q Do you remember whether you were thinking ahead in
24 terms of what was going to happen, or were you just taking
25 this second by second?

1 A I was doing both. I tried to get the attention of
2 a patient registration person to mouth "Help" to her, she
3 did not understand. I also was keeping track of Mr. Fox,
4 who I thought was Mr. Fox. Uhm, I kept track of him,
5 because I did not want him to see me try and contact for
6 help. Uhm, he was on my right side. And I was also
7 listening to him to tell me what he wanted and where he
8 wanted me to go.

9 Q What was his demeanor like in talking to you? In
10 other words, was he hyper and amped up, or was he cool and
11 calm?

12 A He was cool and calm, just the opposite of what I
13 had seen in triage, and when I first came into the lane for
14 my hour back there.

15 Q Did you -- at the time, did you make anything of
16 that apparent change in his demeanor?

17 A No. I didn't recognize that until after a couple
18 of days later. Uhm, although, I did make note that he was
19 very calm when he came out of his room, to the detectives,
20 when I gave my statement. But the full impact of how calm
21 he really was, did not get me until a couple of days later.

22 Q Because when you talked to the detectives, I
23 believe, right after this happened, you described him as
24 being like Cool Hand Luke?

25 A Yeah. He knew what he wanted.

1 Q So he had really changed over the course of an
2 hour or less, I guess?

3 A (Nods head).

4 Q And so did you then release him from this secured
5 area?

6 A Yes, I did.

7 Q How did you do that?

8 A I badged on the proximity pad, and we exited the
9 door and began to very methodically, I chose to kind of keep
10 the pace a little bit to be very methodical in leaving
11 pod -- walking through Pod A. And we normally go left on
12 the other side of where the nurses' station is, to go to the
13 lobby. He said, "No, we're going to continue going
14 straight," which is kind of a back hallway into Pod B of the
15 emergency department.

16 And when we arrived in Pod B, I thought he was
17 going to continue going straight through Pod B, which then
18 exits in the main hallway of the hospital. But at the last
19 second, he said no, he wanted me to turn left. So we did
20 not go all the way through Pod B, we just went through on an
21 upper part of it. And he noticed double doors that said
22 "Lobby" on the doors, and so he then turned to me to go
23 through those double doors into the hallway, that then leads
24 into the emergency room waiting area.

25 Q As you're moving through the hospital, did you

1 have any concern for the safety of other people?

2 A Yes.

3 Q In the hospital or only yourself?

4 A No, I was scared that if I did not keep him calm,
5 I was very concerned that if I upset him in any way, that he
6 would pull a gun, and there would be a blood bath. I was
7 very concerned about that.

8 Q Were you able to alert anyone else in the hospital
9 as to what was happening?

10 A Yes. There were two nurses at the nurses desk in
11 Pod B, that I had a quick, quick moment where he was looking
12 towards the main hospital hallway, and I was able to
13 literally catch the eye of those nurses and I mouthed,
14 "Help, Code Gray," but I meant Code Silver. Gray came out
15 which is a violent patient. Both of those nurses have
16 worked closely with me, and know me that I don't normally
17 ask for help in that manner. Uhm, if I do need help, I'll
18 radio or call, you know, can somebody come on back.

19 But the way I asked for help, they knew something
20 was wrong, they couldn't figure out why I was asking for
21 Code Gray, because he was, for all intents and purposes, I
22 was walking the patient out the door that needed to know how
23 to get out. So they then were able to know that I was --
24 something was wrong.

25 Q Did they figure out that you actually meant Code

1 Silver instead of Code Gray?

2 A I think it was all kind of -- that all came out a
3 day or so later.

4 Q Why do you think that you said Code Gray meaning
5 violent patient, rather than Code Silver, meaning armed
6 patient?

7 A Because Code Silver is very rare. Code Gray is
8 very, very common. We have, probably, depending on where it
9 is in the hospital, we have Code Grays in the ER, on 2100 in
10 our three different psych units. And we have probably one
11 Code Gray on an average about every two days. So that was
12 just click, click, instant in my brain.

13 Q Have you ever called out a Code Silver before?

14 A No, my first time.

15 Q Where do you and this patient known to you as Mr.
16 Fox, end up then?

17 A We ended up in the hallway, and turned the corner
18 into the ER waiting area. I vaguely remember him start to
19 go scurry a little bit quicker. I think he turned and
20 looked at me, and we were fully in the center of the waiting
21 area at this time. He turned back and saw the doors, and he
22 just started to at a fast pace, then run out through both of
23 the auto-doors outside.

24 As soon as he was outside, because I was just
25 waiting for him to get out of hearing range, I then got on

1 my radio and called "Code Silver, Code Silver, call 911.
2 Code Silver, call 911." And then I followed at a safe pace,
3 I followed where he went, saw him going past the windows at
4 the far end of the emergency waiting room. And I hurried
5 outside so I could keep a visual on him, because the
6 hospital operator who answers all of our radio calls, was on
7 the line with emergency -- with 911. And so I was able to
8 keep a visual on where he was, to be able to then let the
9 police know where he was at.

10 Q What did you see him doing?

11 A He was running. He was running through our
12 courtyard, which is the shipping and receiving area for the
13 hospital, the loading docks. And he was hurrying pretty
14 quickly running, and running up the driveway out of the
15 courtyard area. And that's when I lost sight of him.

16 Q How was he dressed throughout that contact with
17 you?

18 A Light colored tennis shoes, blue jeans, T-shirt.
19 When he came into triage, the shirt was all tucked in very
20 nice. And a zippered hoodie sweatshirt.

21 Q So he was in his street clothing, he had not
22 changed into a hospital gown?

23 A That's correct.

24 Q What was the emotional impact on you in the hours
25 or days after the contact with this person?

1 A Well, my adrenalin did not stop running through my
2 body until Thursday night to Friday.

3 Q After this Sunday evening contact?

4 A Correct. And I started emotionally cracking, my
5 facade armor, "I'm doing okay, I'm doing okay, no problem,
6 I'm doing okay," started to crack Wednesday. I was doing my
7 normal locking of my buildings that are assigned to me, and
8 I happened to pass a newspaper, and something to the effect
9 of, "Suspect shot at hospital had no gun." And even though
10 I knew it's not true, first thought that came into my head
11 was, "Oh, crap, I got somebody shot." That was the first
12 thing that came into my head.

13 And then I had took a deep breath, and I said,
14 okay, he had no gun. What position is that going to put me
15 in? What did I see then in his waistband? So that kind of
16 shook my psychy a little bit.

17 Q Was that the first time you were aware this person
18 did not have a gun?

19 A Yes. Yes.

20 Q Okay.

21 A Then about an hour later, I had a one of the CNA's
22 that I'm good friends with, she said, "Oh, Carol, we saw you
23 on T.V. just a little bit ago." This was around 7:30,
24 quarter to 8:00 Wednesday night. One of my concerns Sunday
25 night after all this happened was, I didn't want to have any

1 touching with the media. I didn't want to -- I didn't want
2 them to know me. I didn't want them to know my name. I
3 didn't want any touching at all, no connection, no
4 communication with the media. And when I found out
5 Wednesday night, I was scared then, great, I was on T.V.,
6 uhm, now the media is going to hammer me, might follow me
7 home. I didn't want any of that touching. And it threw me
8 for a loop. I went home two hours early that night.

9 Q Have you been able to return to work?

10 A I did Thursday for four hours, and then I couldn't
11 work any more. I saw my counselor, saw the hospital
12 occupational medicine doctor, they put me on modified duty.

13 Q I take it that patients are not screened and
14 searched for weapons at times before they are placed in
15 security lane?

16 A That's correct, because we consider them
17 voluntary. Any patient that goes back to the wing is
18 considered voluntary for whatever reason and purpose, until
19 a doctor or -- and/or the CareMark social worker then sees
20 them. Then we are then told, yes, they are on a hold; no,
21 they are going to stay voluntarily. At that point, if they
22 are placed on a hold, we do safety search them and put them
23 into green hospital scrubs, take their belongings, lock them
24 in a metal locker.

25 Q In this case, then, this patient known to you as

1 Mr. Fox, would not have been subject to a weapons search;
2 correct?

3 A No, because we were considering him voluntary. He
4 had been given, to the best of my knowledge, he had been
5 asked by a nurse and another officer, "Do you have anything
6 on your person that could hurt you or me?" Uhm, that is
7 routine with nurses. So, I assumed that that had been done.
8 And just waiting for the doctor to come back to say, let's
9 get him into scrubs and let's safety search him.

10 Q It sounds as if he was very convincing and very
11 goal directed in his effort to make you believe that he was
12 armed with a handgun, yes or no?

13 A Yes. And he made a funny statement in passing to
14 me, almost like he was chiding me in a very joking manner.
15 He made some statement about -- I didn't hear all of the
16 statement, because he was talking very softly at that time.
17 He was kind of laughing at me for not doing a hands-on
18 physical safety search of him.

19 Q This was while he was essentially escaping from
20 security lane?

21 A Yes. Yes.

22 Q What did you think when he said that?

23 A He really does have a gun, and I'm going to be
24 shot.

25

1 EXAMINATION

2 BY MR. RAMRAS:

3 Q Just real quickly, have you had a chance to see a
4 surveillance video taken inside of the hospital?

5 A I have seen a part of the security lane video,
6 yes.

7 Q And you were able to indicate to police which
8 person in the video is you?

9 A Uhm, I have not seen it with anyone, you know,
10 from the DA's office or the police. I did not view it with
11 any law enforcement.

12 Q You saw yourself on the video?

13 A On T.V., yes, at my parents' house.

14 Q Okay. Okay. Thank you.

15 A I did play it back for a co-worker, I think about
16 three, four days -- I remember towards the end of the week
17 before I went home, I did play it for a co-worker, he was
18 wanting to see it.

19 Q Did you also see the person who identified himself
20 as Mr. Fox?

21 A Yes.

22 Q All right.

23 A Yes.

24 MR. REES: Any questions for this witness
25 from the grand jury?

1 GRAND JUROR: Did the hospital offer you any
2 assistance Sunday or Monday in terms of how to deal
3 with media or emotional support for yourself? It
4 sounds like it was a timing that not until Wednesday
5 or Thursday?

6 THE WITNESS: I had a day off that was my
7 normal Monday off. When I was being debriefed by our
8 administration, uhm, they asked how I was doing, did I
9 want -- did I want the next day off? I said that it's
10 my normal day off, so, yeah I'm fine, I'm going to be
11 taking it off.

12 GRAND JUROR: That was Sunday night?

13 THE WITNESS: Yes. My normal day off was
14 Monday, so they were happy with that. Uhm, they also
15 called me on Monday, and said that at 6:00 that
16 evening, there was about a dozen of us that were
17 directly, closely involved in the whole incident, that
18 they wanted us to come in for an emotional debriefing.

19 GRAND JUROR: Okay.

20 THE WITNESS: And we were able to talk about
21 how we felt, talk about what could have happened, and
22 how that was affecting us, uhm, because all of this
23 was very new to me. I didn't say too much in that
24 meeting, because I wasn't sure what I could say and
25 what I couldn't say. Because I knew this was going to

1 go further in the legal system. So we did have a
2 debriefing that was probably about an hour. And one
3 of the administrators did give a name of a counselor
4 to me that Sunday night in the debriefing, which I did
5 make an appointment and did see the counselor, and I'm
6 still seeing her.

7 GRAND JUROR: Understandable.

8 MR. REES: Anything else? All right, Ms.
9 Graff, thank you, very much.

10 THE WITNESS: You're welcome.

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1 MARY WHEAT,
2 called as a witness in behalf of the
3 State, being first
4 duly sworn, was examined and testified as follows:

5 EXAMINATION

6 BY MR. RAMRAS:

7 Q Tell them who you are.

8 A Mary Wheat, W-H-E-A-T. I'm a detective with the
9 Portland Police Bureau. I assisted on this officer involved
10 shooting in the investigation.

11 Q As part of assisting with it, did you obtain a
12 video taken within the Portland Adventist Hospital?

13 A I did. I worked with the security personnel that
14 pulled the video from their video throughout the hospital,
15 uhm, and dealt with them on the programming of it.

16 Q In the video, are we going to be able to see Carol
17 Graff?

18 A You will see Ms. Graff, and also see Mr. Hatch.
19 He was originally placed in one of the hospital rooms, and
20 you're going to see him come out of the room and go down a
21 hallway with Ms. Graff.

22 MR. REES: If I could just clarify, Detective
23 Wheat, Ms. Graff had just been testifying about a
24 patient known to her as Daniel Fox. Was that
25 individual subsequently identified as actually being

1 Mr. Hatch?

2 THE WITNESS: Yes.

3 MR. REES: That you referred to?

4 THE WITNESS: Yes. When he was admitted to
5 the hospital, he gave the name of Daniel Fox. He was
6 later identified as Hatch -- with the last name of
7 Hatch.

8 BY MR. RAMRAS:

9 Q Okay. Why don't we have you take the mouse and
10 show the two different angles of the clip. And I guess we
11 should point out to the grand jury, it's somewhat small,
12 it's going to be up in the upper left corner. So if anyone
13 needs to come closer, then, to be able to see --

14 A I'm going to have to go in and to the time.

15 GRAND JUROR: Is there sound?

16 THE WITNESS: There's no sound, sir.

17 Now, the video starts as you can see at 7:12 p.m., but
18 most of that is just, you know, different patients
19 going in and out, different security guards. It would
20 take a couple of hours to take a look at all of the
21 video. We're going up to the time, approximately 9:21
22 or 9:22 p.m.

23 (Video was played for the Grand Jurors)

24 BY MR. RAMRAS:

25 Q If you can show us where Ms. Graff is?

1 A Well, it's not jumping. I don't know if it's
2 because we delayed -- we're going to have to go back to the
3 start.

4 Q Is the person seated in the chair Carol Graff?

5 A Yes, it is.

6 MR. REES: If anyone needs a better view,
7 feel free to walk up to the screen

8 THE WITNESS: We will show a different angle
9 as well. I apologize, you have to wait. But, that's
10 him, he approached her.

11 BY MR. REES:

12 Q In this video, we're seeing Mr. Hatch confronting
13 Carol Graff in the hallway outside of the room. And is this
14 where Ms. Graff releases him from the security area?

15 A She actually, yes, takes him out of the secure
16 area, and she will go through the ER. He begins to walk
17 with her, and then a little ahead of her they go through the
18 ER. And eventually he goes out the front doors of the
19 waiting room, of the main waiting room where you come in the
20 emergency room, where the general public is prior to being
21 admitted, and he goes out the doors and she does her thing
22 from there. Then we can do the other angle, unless you have
23 another question on this.

24 MR. REES: Did any of the grand jurors have a
25 question?

1 THE WITNESS: This is from the other angle
2 you saw before, it's the exact same thing, but you're
3 going to see him come out of that far room. You'll be
4 able to see more of his mannerisms from this angle.

5 GRAND JUROR: Did he show her the item at
6 this time?

7 THE WITNESS: Based on the video, you can see
8 him down here with his hand at his waist there. Uhm,
9 so I don't know exactly what she saw or didn't see.

10 GRAND JUROR: Are you able to magnify?

11 THE WITNESS: I can't get it any bigger than
12 that, I apologize at this point. If you decide you
13 need it, we can. That's as good as their programming
14 was.

15 MR RAMRAS: Any questions on that? Okay.

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1 GRAND JUROR: Thanks. She testified, I
2 believe, specifically, that she saw a black object in
3 his waistband.

4 HOLLY LUCE,
5 called as a witness in behalf of the
6 State, being first
7 duly sworn, was examined and testified as follows:

8 EXAMINATION

9 BY MR. RAMRAS:

10 Q Okay. Start just by telling them your name and
11 how you spell it?

12 A My name is Holly Luce, H-O-L-L-Y L-U-C-E.

13 Q And, Ms. Luce, what is your connection with
14 Portland Adventist Hospital?

15 A I am a nursing student from Walla Walla
16 University, and the Adventist Hospital hosts us. We have
17 our dorm on their compound, their property.

18 Q So as a -- what year into your nursing program are
19 you?

20 A I'm a junior.

21 Q It's a four year program?

22 A Yes.

23 Q How many of those years have you actually been at
24 Portland Adventist?

25 A Just this first year.

1 Q Does the housing that you're in, does it face a
2 parking lot?

3 A Yes, the main staff parking lot.

4 Q What is your -- how do you know someone named
5 Matthew Roberts?

6 A He's my boyfriend.

7 Q Is he also a nursing student?

8 A Yes.

9 Q Same year as you?

10 A Yes.

11 Q On or about February 17th of this year, were you
12 with Mr. Roberts when you noticed something unusual in the
13 parking lot?

14 A Yes. We were in my Suburban in the parking lot.

15 Q What color is your Suburban?

16 A Charcoal black.

17 Q Charcoal black? Roughly what time of day is this?

18 A It was in the evening, I guess, I can't really say
19 what time, later evening.

20 Q Were you in the process of going somewhere or
21 coming back from somewhere?

22 A No. We were just sitting in my car talking,
23 because it was more private than the dorm with everybody in
24 it.

25 Q I guess I should ask, how many people are there in

1 the dorms with you guys?

2 A There's about 50 living in the dorm.

3 Q Who was in the driver's seat and who was in the
4 passenger seat?

5 A Matt was in driver's seat, I was in the passenger
6 seat.

7 Q As you sat there talking, did something unusual in
8 the parking lot get your attention?

9 A Yes. We were facing the church, and I heard
10 somebody yelling. So then we turned around to face the
11 entrance of the parking lot, and there was a man like
12 wandering around in the parking lot yelling. And so we just
13 decided to watch him for a little bit to see what he was up
14 to.

15 Q When you say yelling, you're in a vehicle, did
16 you -- February, I would assume it's fairly cold. Do you
17 remember if the windows were down or up?

18 A They were down -- they were up, sorry. They were
19 not open.

20 Q And so, can you give us an approximate distance of
21 how far away this person was from you when you heard the
22 yelling?

23 A Uhm, he was like two of the car like parking lanes
24 away from us. Uhm, I'm not a good judge of feet-wise, but
25 probably like, uhm, eight car lengths away, if you lined

1 cars up.

2 Q Okay. There is a white board back up here, and I
3 don't know if you think it would be helpful or not. But for
4 people who have never seen the parking lot, would you maybe
5 be able to give us a rough idea --

6 A Sure.

7 Q -- of where you were parked?

8 A Our school is here, and the church is here, and
9 the entrance to like the ER would be here, and then the
10 entrance to the street was here (indicating).

11 Q That pen is barely working. Put ER where you said
12 ER was.

13 A ER is here, and then you enter through here or go
14 back to the ER through here. And this opens to the parking
15 lot (indicating).

16 Q And you put the school. I want to make sure we
17 get everything labeled, put the nursing school or the dorm.

18 A The dorm is here. And then the SDA, Seventh Day
19 Adventist Church is here (indicating).

20 Q Where roughly were you parked?

21 A We were here (indicating).

22 Q Okay. And roughly where was he when you first
23 heard the yelling?

24 A Here is the lanes, I think there's more lanes than
25 that actually. Uhm, so he was -- I should draw a smaller

1 lane. He was probably here (indicating).

2 Q Okay. Let me have you go ahead and have a seat.
3 I wanted to get a rough idea. This is at night. Could you
4 make out the types of things he was yelling?

5 A Uhm, not while we were at least -- we were not
6 paying attention. We were parked, but we did drive around.
7 We did not know we were surrounded by cops.

8 Q When you heard him yelling, then did you look over
9 in his direction?

10 A Yeah.

11 Q And did he seem to be with anyone or by himself?

12 A He was by himself. He was just yelling and kind
13 of yelling up into the sky, and just like around and just
14 kind of walking in circles. And then at one point, he laid
15 on the ground, and that is what really triggered us to text
16 our Dean to call security. And then we started up my
17 Suburban, because we wanted to keep an eye on him, because
18 after he got back up, he started walking away from us.

19 Q Let me -- sorry. I want to slow you down a
20 little. At the point where he laid down, you have drawn an
21 X in the middle of the parking lot. Was he still there?

22 A Yeah.

23 Q Or was he near any kind of greenery?

24 A Yeah, he was next to the greenery. The greenery
25 is on two sides of the parking strips, so there's some

1 closer to our dorm, and then some on the other side. And
2 there's still parking on the other side of the strips, but
3 where he was, was about where the greenery was.

4 Q Could you maybe draw in the greenery real quickly?

5 A Sure. So there's one about here and then one here
6 (indicating). And then there's like a gas station area
7 right there, I think for the service vehicles.

8 Q Are these just sort of planter boxes?

9 A Yes. And I think there's lights coming out of the
10 top of them, too.

11 Q What was it about his laying down in that area
12 that made you think you should let the Dean know what is
13 going on?

14 A We thought he was hiding from, I don't know, we
15 thought he was kind of being strange. And so, uhm, we
16 thought maybe he would crawl into those bushes or something
17 and try and hide.

18 Q Okay. You mentioned you were texting your Dean.
19 And then what did you do next?

20 A We started up my Suburban, and, uhm, we drove to
21 the left and past the gas station. And so by the time we
22 had gotten to the gas station, he was over by the second
23 planter, he was walking away from us.

24 Q Were you guys trying to follow him to keep track
25 of him?

1 A Yeah, so he couldn't hide somewhere, because we
2 have a lot of young women on the campus. There's only like
3 four or five men, so --

4 Q Okay. And so what happened as you started to
5 drive towards where he was?

6 A He noticed us, and so then he started to yell at
7 us, uhm, and walked towards us. And he was lifting up his
8 shirt, and that's when I said, "Matt, he has a gun. We need
9 to get out of here." So then we drove around by the
10 entrance, and saw all of the cops there with their guns
11 drawn and everything.

12 Q Okay. So let's break that down a little. As he
13 was starting to walk towards you, what types of things was
14 he yelling at this point?

15 A We still had the windows rolled up, so we didn't
16 hear what he was saying. And we were not really listening,
17 because I was dialing the phone to my Dean, just to tell her
18 that we think he has a gun.

19 Q Okay. What happened, was it -- I know you said --
20 you mentioned him lifting up his shirt. What was it that
21 made you think he had a gun?

22 A Because he was like lifting up his shirt and
23 pointing at his belt and yelling at us. Like I couldn't see
24 that it was a definite gun. I just saw that he had
25 something like inside his belt, and it could have just been

1 his belt buckle, but I was frazzled and I was not sure.

2 Q Sure. Did you say that you communicated to
3 someone, to a security officer or the Dean that you thought
4 he had a gun?

5 A Uhm, I said it to Matt, but I don't -- I'm not
6 sure if I said it to my Dean or not.

7 Q Okay. So where did you -- you said you drove past
8 the police. Maybe you can show us, you don't have to draw
9 anything, where were the police when you drove past them?

10 A They were here, like with a barricade with their
11 car, and there was quite a few of them. What we did not
12 know was lining this fence were police as well. And then,
13 uhm, when we came running around the corner, there were
14 police here too, and we didn't realize that either.

15 Q So let's -- it looks like we may have skipped a
16 step. When you drove past them, where did you guys actually
17 park the car?

18 A We parked here in front of our dorm or -- yeah, it
19 was probably like here. And so then you want me to draw
20 this?

21 Q Sure.

22 A So we drove, we parked my car here and Matt's car
23 was right here. And so we got out of our car, and he
24 noticed us get out of the car. And then he was yelling at
25 us, that's when we heard what he was saying to us.

1 Q Okay. What was he saying to you at that point?

2 A He was saying that smoke was coming off the
3 ground. Smoke was coming off the ground. He asked us if we
4 had a light. It was really hard to understand what he was
5 saying, he wasn't really making sense. But he was talking
6 about smoke coming off the ground and all of the smoke, and
7 then he asked if we have a light.

8 Q Okay. Was this done in a yelling fashion or
9 friendly fashion?

10 A No, he was yelling, and I was worried.

11 Q Okay. So did you stop to engage with him
12 verbally, or where did you go?

13 A No. We started to run towards the area between
14 the dorm and the church, which is like where we would enter
15 our school.

16 Q Okay.

17 A And that is when we were met by two officers, uhm,
18 coming around the corner. Well, actually we stopped, I
19 heard Matt stop running, so I stopped running, because I was
20 worried. And then an officer from the church yelled at us
21 to keep running, so we kept running.

22 Q Now, when you got into the dorm building itself,
23 where did you go?

24 A Uhm, our Dean met us there. She had the door open
25 for us to run in. And, uhm, we went upstairs to a window,

1 because we were not aware of how far this was escalating.
2 So we wanted to kind of get a look at the action. And the
3 boys went down to their rooms because they are on the first
4 floor, and --

5 Q When you say the boys, who are you referring to?

6 A Matt, and then a couple of the boys that were in
7 the dorm.

8 Q Okay.

9 A All of the boys live on the first floor.

10 Q You live on the second floor?

11 A Yeah. All of the girls live on second floor.

12 Q Matt has gone to the first floor, you're on the
13 second floor. Are you able to see anything from that point?

14 A We still heard him yelling. I was not sure what
15 he was saying. I couldn't make it out from the upstairs.
16 And then when we changed rooms, was when he was actually
17 shot. So it was kind of a God thing nobody saw him get
18 shot, at least for us.

19 Q Did you actually hear gun fire?

20 A I did not, my Dean did. She was right behind me,
21 but I think I was just -- my adrenalin was spiked, so I
22 didn't hear anything.

23 Q Okay.

24 MR. RAMRAS: Anything else, any questions?

25 GRAND JUROR: When you first had the contact

1 with him, when he was yelling at you that smoke was
2 coming off the ground and so forth, how close was he
3 to you at this point?

4 THE WITNESS: He was still -- he was at the
5 second pot, the one closer to the police. And just
6 kind of maybe a little closer than his X was at the
7 first pot, he was still pretty far away from us. We
8 maintained a pretty good distance from him the whole
9 time.

10 GRAND JUROR: Thank you.

11 MR. RAMRAS: Thank you.

12 MATTHEW ROBERTS,
13 called as a witness in behalf of the
14 State, being first
15 duly sworn, was examined and testified as follows:

16 EXAMINATION

17 BY MR. RAMRAS:

18 Q We have a court reporter here who is typing away.
19 We're trying to keep our voices up. Can you tell everyone
20 what your name is and how you spell it?

21 A Full name?

22 Q Yeah.

23 A Matthew Roberts -- Matthew William Roberts,

24 M-A-T-T-H-E-W W-I-L-L-I-A-M R-O-B-E-R-T-S.

25 Q And, Mr. Roberts, are you a nursing student at

1 Portland Adventist?

2 A At Walla Walla University, which is connected to
3 Portland Adventist.

4 Q Explain how that works. You're actually a nursing
5 student in Walla Walla, but you're currently going through
6 your program at Portland Adventist?

7 A It's Walla Walla University, based in Walla Walla,
8 Washington. They have a Portland campus, which is on the
9 campus of Portland Adventist.

10 Q Okay. And what year are you in your program?

11 A Junior.

12 Q How long have you actually been going to school at
13 Portland Adventist, the physical location?

14 A Since July of last summer.

15 Q All right. And what is your relationship to Holly
16 Luce?

17 A She's my girlfriend.

18 Q Where do the two of you live?

19 A I live in the dorm there, in the dorm.

20 Q It's unnatural, since I'm talking you have a
21 tendency to look at me. It makes it harder for her to hear,
22 maybe, sort of.

23 So on February 17th, 2013, did there come a point
24 when you and Ms. Luce were in the -- in a parking lot at the
25 hospital?

1 A Yes.

2 Q What were you doing in the parking lot?

3 A We were sitting in her Suburban talking and
4 watching YouTube videos on her cell phone, just hanging out
5 there.

6 Q Why had you chose to hang out in a parking lot?

7 A Since we live in the dorm, it's the only place we
8 can be away by ourselves.

9 Q And do you know roughly what time of day it was?

10 A Uhm, it was around 9:00 or 9:30 I think.

11 Q Okay. You're talking in the evening?

12 A Yes.

13 Q It was dark out?

14 A Yes.

15 Q So I asked, as you were talking and watching
16 YouTube videos, did you notice something unusual in the
17 parking lot?

18 A Yes.

19 Q What did you notice?

20 A We noticed a man walking across the parking lot,
21 uhm, he was waving his arms around and yelling.

22 Q Okay. Are you able -- I know you sort of briefly
23 moved your arms. If you were to stand up for those of us
24 that didn't see it, what do you mean by waving his arms?

25 A He was out like this while he was yelling,

1 (indicating) sometimes gesturing.

2 Q Okay. Could you hear what he was yelling?

3 A No.

4 Q Was that because of the distance between him and
5 you?

6 A Uhm, probably that, and that I don't think it
7 really would have made much sense either, it was just kind
8 of blabbery stuff.

9 Q Okay.

10 A I couldn't recall it if I tried.

11 Q Okay. So when you heard this, what did you do?

12 A Uhm, we decided to try to get a hold of security.
13 Uhm, so Holly texted our Dean to get the number of security
14 or have the Dean call security, just because we were not
15 sure who he was or if he was supposed to be there. You
16 know, just why he was there pretty much. So, that's what we
17 decided to do first.

18 Q Did there come a point where you saw him near some
19 bushes or doing something near bushes?

20 A Yeah. He got to one of the little planters in the
21 parking lot, and he got down on the ground and kind of laid
22 there for a second, and then he got back up and kept
23 walking.

24 Q And what, if anything, did you make of that?

25 A I thought it was just weird at first. Uhm, yeah,

1 at the time I just thought it was weird. And then after
2 everything happened, I kind of thought maybe he could have
3 tried to hide something there, or, I don't know. But at
4 that moment, I didn't really think too much of it. I
5 thought he was just getting down trying to hide from police,
6 because sirens were going on around at the time. But I
7 thought it could have been ambulances, because around there,
8 there's constantly sirens going off.

9 Q Okay. So when you started to -- Holly started to
10 text the Dean, what happened next after that?

11 A Well, she started to text the Dean, and then by
12 this time, he was kind of across the parking lot. So we
13 decided that we were going to like go around and kind of
14 keep an eye on him, to see what he was doing in case
15 security wanted to ask us questions, something like that.

16 He was by this point close to the other side of
17 the parking lot, so we were driving around the perimeter of
18 parking lot watching him. She was texting the Dean, Dean
19 was texting her back. We came around kind of the drive --
20 like the perimeter of the parking lot to where -- to the
21 entrance kind of, we got like pretty close to him, we were
22 just making a circle. He saw us and was yelling at us.

23 At about that same time, we got to the entrance
24 where the police were parked, and we saw them, and that's
25 when we decided we were just going to quickly get back and

1 park the car and get back to the dorm.

2 Q While you were following him, did you make any
3 other observations about what he was doing during this time?

4 A He was still yelling. And I couldn't make out
5 what he was yelling. The whole time he had his hand like on
6 his front of his belt.

7 Q Okay.

8 A I couldn't tell if he was holding anything there
9 or trying to hold his pants up or anything. But that's
10 where one of his hands was, I forget which one.

11 Q There are lights in the parking lot itself; right?

12 A Uh-huh.

13 Q But, I would imagine, correct me if I'm wrong,
14 that at this time of night it's not lit up like a sports
15 stadium or anything?

16 A No. No.

17 Q So, I guess, I'm wondering as far as having
18 difficulty seeing what exactly he was doing with his pants,
19 did you think that was more the distance between you or the
20 lack of illumination or a combination?

21 A It was probably that, and I was trying to keep an
22 eye on where we were driving too. I was going from him to
23 the -- in the front of the car, back and forth.

24 Q Sure. Where did you wind up driving to?

25 A We drove around to park on the sidewalk, which is

1 right in front of the back of the dorm, I guess you could
2 say.

3 Q Okay. And what happened next?

4 A Uhm, so from then, he saw us when we were driving
5 around him, and he was yelling at us. Then he kind of
6 changed direction and started walking towards us after we
7 parked it. We got out of the car. Holly got out, she
8 started running. I was a little slower, I was trying to
9 fumble with the keys to lock the car, and I was kind of
10 watching him also. He was yelling at us, didn't make much
11 sense, something about smokes or did we have smoke or smoke
12 on the ground, something about smoke. I don't know if it
13 was about cigarettes or not, it didn't make sense at all.

14 Q And did you stop to talk with him then?

15 A No. I got out, I walked a few steps away from the
16 car, finally got it locked. And I glanced up at him, he was
17 still walking towards us. He was still holding the front of
18 his pants. And then he was yelling and then I turned and
19 ran with Holly back to the dorm.

20 Q Okay. And just so we understand, not having been
21 there, what was it about his behavior that caused you to
22 run, you know, or feel threatened by him?

23 A Just because he seemed pretty crazy. Uhm, he had
24 his arms, he was obviously agitated at something. Uhm, and
25 then the way he was moving his arms, how he was yelling at

1 us, uhm, and the fact that he was holding his pants, kind of --
2 it just seemed kind of like he could have something in his
3 pants, like a gun or something.

4 Q So, when you ran, then, from that point did you go
5 straight into the dorm building?

6 A Yeah. We went around, kind of have to go through
7 a fence, or a gate from a fence into the dorm from there.

8 Q Okay. And where did you go when you got into the
9 dorm building?

10 A From there, we went straight into the lobby. I
11 went back to my dorm room, and then from there that's like
12 pretty much the window, and from there you can see straight
13 into the parking lot. From there I went to my dorm window
14 and I watched him. He was, by the time I got back there, he
15 was standing on top of my red 4Runner, parked in front of
16 where we parked the Suburban.

17 Q Standing on the hood, on the trunk?

18 A Standing on the very stop of it.

19 Q Okay. I think we have a picture of that. While
20 we're looking at the other one, this is a picture of your
21 4Runner?

22 A Yep.

23 Q Hand it over there.

24 GRAND JUROR: How far away was the car from
25 the school?

1 THE WITNESS: Probably 30 or 40 feet.

2 BY MR. RAMRAS:

3 Q So this here, is that also a picture of your
4 4Runner?

5 A Yes.

6 Q In the picture, there's a ladder by your 4Runner.
7 Was there a ladder at that time?

8 A No. I remember watching the police set this up
9 and take pictures of the car after everything happened.

10 Q That was set up after the fact, they took pictures
11 of the vehicle?

12 A Yes.

13 Q Let's pass that around too. As you're looking out
14 your window, and he's on the roof of your vehicle, what did
15 you see him do next?

16 A He was still yelling, and he seemed a lot more
17 agitated. He was yelling about like the cops coming to get
18 him or kind of egging the cops on to come after him pretty
19 much. He mentioned hostage, uhm, he kept saying like how he
20 could see the cops, yelling at them to come at him. Uhm --

21 Q You're saying he seemed more agitated now than he
22 had?

23 A Yes.

24 Q And to the extent you can, if you can't, that's
25 fine, if you remember anything sort of specific that he

1 said, and it is okay to use curse words in here if that's
2 what he used.

3 A I know he said -- like I can't remember exactly,
4 but, like taking a fucking hostage or something along those
5 lines. Uhm, I think he called the cops pigs maybe, I can't
6 remember. It's in that video.

7 Q Okay.

8 A I was in the dorm room directly to the left of
9 where the video was shot. I saw basically exactly that.

10 Q And we're going to get to that in a minute. But
11 the dorm where this person took a video, who is that person?

12 A Spenser, I don't know his last name. He's coming
13 tomorrow, though.

14 Q And this is someone you know; right?

15 A Yes.

16 Q So you actually -- did he show you the video at
17 some point?

18 A Yeah. A few minutes after everything happened.
19 Yeah. Everybody -- there was a big commotion in the lobby.
20 Everybody in the dorm kind of got together with the Dean,
21 and he showed myself and Holly and the Dean and maybe one or
22 two other people the video, and also the police later when
23 they showed up.

24 Q Sure. Does your window that faces the parking
25 lot, does it open or is it one of those windows that you

1 cannot open?

2 A It was opened.

3 Q Okay. So best as you can remember, you heard him
4 yelling these types of things, and then what else, if
5 anything, did you see?

6 A Uhm, well, he was on top on the very top of the
7 car. And then while he was yelling, he made his way onto
8 the hood of the car. He held there for a little bit more,
9 and then he said something along the lines of like, "If you
10 won't come get me, I'll come to you," or something like
11 that. And then he got off the hood of the car and started
12 running across the parking lot towards the entrance of the
13 parking lot.

14 Q Okay.

15 A And he was counting down from 3, I think, while he
16 ran across the parking lot.

17 Q Okay. And did you hear the actual gun fire?

18 A Yes.

19 Q Did you actually see it?

20 A No. He was behind a car and bushes by the time he
21 got there.

22 Q And then after the gun fire, what did you do or
23 where did you go?

24 A After that, I went back into the lobby. I was
25 looking for Holly, because I think I remember the Dean took

1 her upstairs. So I was looking for Holly and texting her to
2 try to figure out where she was.

3 Q Okay. Let's see if anyone else has any questions
4 for you?

5 MR. RAMRAS: Okay. That's it.

6 THE WITNESS: That's it?

7 GRAND JUROR: Thank you.

8 BRYAN STEED,

9 called as a witness in behalf of the

10 State, being first

11 duly sworn, was examined and testified as follows:

12 EXAMINATION

13 BY MR. REES:

14 Q Please state your name and spell your name for the
15 record.

16 A My name is Bryan, B-R-Y-A-N, last name Steed,
17 S-T-E-E-D.

18 Q Please state your occupation.

19 A I am a detective with the Portland Police Bureau,
20 assigned to the homicide detail, where I have been for the
21 last ten years.

22 Q All right. And prior to serving ten years as a
23 homicide detective specifically --

24 A Specifically, yes.

25 Q -- what did you do before that?

1 A Just prior to that, I was in drug and vice
2 division. Before that, I was on uniform patrol. I have
3 been a police officer in the state of Oregon for 25 years.

4 Q In your ten most recent years as a homicide
5 detective, how many cases have you worked on either as lead
6 detective or as one of the detectives assigned to assist the
7 lead homicide investigation?

8 A Conservatively over 150 cases.

9 Q Have you also been assigned in the past to
10 investigate the use of deadly force by the police officers?

11 A I have.

12 Q On February 17th, 2013, were you called on to
13 respond to the scene of an officer involved shooting in the
14 city of Portland?

15 A I was. On that date, I got a page from Sergeant
16 Wattum at 9:55 p.m. The page stated there had been an
17 officer involved shooting inside the Portland Adventist
18 emergency department. I subsequently contacted, called
19 Sergeant Whattum, got an update that there was very little
20 information he had at the time. He was not sure if it was
21 actually inside the emergency department or somewhere
22 outside of the department. I then responded directly to the
23 scene, and arrived at approximately 10:15 p.m.

24 Q Were you assigned as the lead detective along with
25 Detective Mary Wheat?

1 A Yes, I was.

2 Q What was the location of the shooting in terms of
3 the address?

4 A The address that I used was 10100 Southeast Main
5 Street. When you turn into the driveway to the emergency
6 department off of Main, there is an address right there that
7 says 10100 Southeast Main, so that's the one I used.

8 Q If you could give the grand jury an idea of who
9 else is responding to the scene at the time that you and
10 Detective Wheat are arriving and assembling.

11 A Uhm, as we're arriving or I'm arriving, I was the
12 first detective there, we have multiple detectives from the
13 Portland police bureau arriving, being called in. We had
14 detectives from the East County Major Crime Team who were
15 coming out, and there was the detective division command
16 staff, lieutenant commander of the detectives, and there was
17 also multiple command staff from east precinct and our
18 chief's office, mayor's office, all those people started
19 arriving.

20 Q You mentioned the East County Major Crimes Team.
21 Are those officers from agencies outside of the city of
22 Portland.

23 A Yes, they are. East County Major Crimes Team is
24 made up of multiple jurisdictions within Multnomah County.
25 In this particular case, we had one detective, Detective

1 Kevin Odil from the Multnomah County Sheriff's Office, and
2 Detective James Seymour from the Gresham police department
3 responding.

4 Q And what is the purpose of the investigation that
5 followed that you were involved in?

6 A Uhm, our investigation is just to investigate the
7 facts of the shooting, find out what occurred, uhm, what led
8 up to the shooting. And then present all those facts to the
9 District Attorney's office.

10 Q And is there a particular protocol that is
11 followed in terms of the investigation, itself?

12 A There is, there is a specific general order in the
13 Portland Police Bureau that lists out all of the things that
14 need to be determined or done at the scene of an officer use
15 of deadly force.

16 Q All right. As part of that protocol, do you
17 identify and separate the involved officers?

18 A Correct. One, when I arrive at the scene, the
19 first thing I do, of course, is make sure the scene is
20 secure, which it almost always is. The second thing is to
21 make sure they have crime scene tape set up so that the
22 actual scene of the shooting is separated from an area where
23 officers can be separated.

24 Third thing I do is make sure all of the officers
25 that actually used deadly force have been ordered not to

1 discuss the incident amongst themselves. And they are
2 separated into different patrol cars or different areas.
3 And then any witness officers are also ordered not to
4 discuss the incident amongst themselves, and they are also
5 separated. And the only people they are allowed to talk to
6 would be our employee assistance or traumatic incident
7 people, or if they're member involved, their attorneys.

8 Q And when is that gag order or officially a
9 communication restriction order, when is that lifted?

10 A That's generally lifted after the grand jury
11 process has been completed.

12 Q Okay. In this case, a previous witness has
13 testified that a patient who identified himself as Daniel
14 Fox was involved. Ultimately, were you able to correctly
15 identify that person?

16 A Yes, ultimately. Uhm, earlier that morning, one
17 of our forensic people was able to identify a fingerprint
18 belonging to a Merle, M-E-R-L-E, Mikal, M-I-K-A-L, Hatch,
19 H-A-T-C-H.

20 Q And what was the birth date of that person?

21 A Birth date was 5/25 of '62.

22 Q Did this person have any identification in their
23 wallet or on their person?

24 A No, they had no identification on them.

25 Q Through the course of the investigation, did you

1 determine how many police officers used deadly force?

2 A We determined there were three officers involved
3 in the use -- actually used deadly force in this incident.

4 Q And how many other other officers actually saw the
5 use of deadly force?

6 A I think there were actually three witness officers
7 that actually saw the use of deadly force.

8 Q Were you able to determine whether any civilian
9 witnesses, non-police officers witnessed the actual
10 shooting?

11 A There were none that we were able to find that saw
12 the actual shooting take place.

13 Q Have you listened to the Bureau of Emergency
14 Communications and 911 calls and transmissions that were
15 made in this case?

16 A Yes, I have.

17 Q In a moment I'm going to ask you to play,
18 detective, a recording from the Bureau of Emergency
19 Communications. Uhm, just so that the grand jury has an
20 understanding of what we're listening to, briefly explain
21 what these transmissions are?

22 A Uhm, what you're going to hear is the
23 transmissions between the -- our Bureau of Emergency
24 Communications, or BOEC as we call it, the dispatcher who is
25 commonly referred to as the 911 dispatcher, talking to the

1 police officers on the radio as they are en route to the
2 call, giving information as to what the call is, giving them
3 updates about various things that are occurring as officers
4 are arriving. You will also hear various officers and
5 sergeants directing people over the radio.

6 Q Is it correct that the dispatcher is receiving
7 information from a 911 caller?

8 A Yes. The dispatcher you will be hearing is
9 receiving information from the 911 caller from Portland
10 Adventist Hospital.

11 Q Okay.

12

13 (Whereupon, the BOEC recording was played for
14 the grand jury. The following is a
15 transcription of the recording:)

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**PORTLAND POLICE BUREAU
DETECTIVE DIVISION
CONFIDENTIAL TAPED STATEMENT TRANSCRIPTION**

Case #13-13674

February 17, 2013

Page 1

BOEC: 966.

Officer: 966?

BOEC: For you 964, 965 I'm also putting you on it. It's gonna be at Portland Adventist, 10123 SE Market, they're gonna be in the courtyard. There's somebody with a handgun still getting further.

Officer: Okay, I copy - let's get a long gun there.

965: 965 I'm in route.

BOEC: And 964 did you copy that as well?

964: In route.

BOEC: And a sergeant to copy on that.

3913: 3913 copy in route.

BOEC: Copy.

935: Two cars.

BOEC: Copy 935.

3913: 3913 try to keep the caller on the line, get as much real time info as possible please.

BOEC: They, they will she's still on the line. It's gonna be a patient that's currently in the employee parking lot, has the gun pointed at a security vehicle.

Officer: _____

BOEC: 966.

985: 985, we can break this down if we can just keep uh, MELE and _____ where they are and LEONARD where he is that'll be fine.

BOEC: Copy. Can break down except for the officers that he named. And 966 subject is going to be in the employee parking lot that is by the gas pumps off of Main, he's on foot. We're still on the line with the complainant but he's pretty worked up. It's

probably only gonna be security dispatch and the again the lot is gonna be by the gas pumps next to the ER.

966: 966 I copy, is that the north, south, east or west side of the hospital?

Officer: I'll clarify. It's the eastside of the hospital as you enter into the uh, ER.

966: Okay I copy, we can make that driveway our staging point and then we'll walk in.

BOEC: Copy, the staging point is gonna be on the east side.

3913 3913 arriving.

BOEC: Copy 3913 on-scene. Subject is a white male in his 40's, he has short hair, he's wearing a grey zip up hoodie.

3913: Copy.

66: 66 I copy, we'll have to get one or two units to maybe do a loose, loose perimeter around the south end.

?: Turn your sirens off.

?: No sirens.

BOEC: All sirens off.

3913: 3913 we're at 106 and Clay right now.

BOEC: Copy, 106 and Clay.

3913: 3913, if you can call the hospital security, put the hospital on lockdown. Do we know _____ start the K-9 as well please.

BOEC: K-9 Seven or K-9 Four?

K-9 11: K-9 11, I'm already on it.

BOEC: Copy K-9 11.

?: We've got a guy, white shirt looks like he's walking westbound from where I'm standing to the officers that arriving.

BOEC: Copy, guy walking westbound wearing a white shirt.

3915: 3915, let AMR know they're not coming in ambulance entrance.

BOEC: Copy, let AM, AMR know.

K-9 11: K-9 11, if this guy is a patient, uh, I don't know if you already have, but does the hospital got any info on him?

BOEC: I'll check to see if we have anything further.

3913: 3913 all units, he sees us, he's been yelling. Just be advised. He's coming down south. So just get hard cover as you're coming in.

BOEC: Copy, he sees you guys. His name is gonna be DANIEL FOX born in '55, 04-15 of '55.

3913: 3913, he's still uh, he's walking towards the hospital, walking uh, kind of westbound now.

BOEC: Copy walking southbound.

?: Car is blocked -- need a car to block the Westside road so that we don't have cars coming down this way.

BOEC: Unit to do that?

35: 35, I can get that, I'm right there.

BOEC: Copy, blocking traffic on the Westside.

35: At 100 and Main.

BOEC: 100 and Main.

994: 994, I've got a rifle from the west, can I come in from the west, will it be clear?

BOEC: 7916?

3915: 3915 set up.

?: He's running back eastbound.

BOEC: Running eastbound. And we have non-emergency off the air.

?: Need a K-9 here.

BOEC: K-9 11 is in route. And information, security they hung up on the call taker.

Officer: _____ we need uh, have somebody in the parking lot at the hospit- uh, the church on Market, the Adventist Church, he's gonna come out that direction.

BOEC: Units that can go to the church on Market?

926: 926, I'm there my byself.

BOEC: Unit to cover 926.

925: 925, I'll be there in a second.

BOEC: Copy.

34: 34, he's walking eastbound towards the car that's driving right towards him.

BOEC: Walking eastbound towards the car that's driving by him.

26: 26 to Dispatch, he's coming what car, what road is east of the hospital?

BOEC: Market. Correction, east of the hospital is gonna be 96.

Officer: If we have any more units can we get them there?

926: 926 and 25 we are here.

BOEC: 926 and 9205 are there and it's gonna be actually 107, 107 and Market.

Officer: Is AR-15 at the entrance here with us.

BOEC: Anyone with an AR-15?

?? I'm coming back.

BOEC: Copy.

34: 34, he's moving south through the lot know.

BOEC: Moving south through the lot.

??: In case, could we get an AR here too, he's walking south through the lot, we have eyes on him, he's yelling, sounds like someone at a car.

BOEC: Anybody else with an AR-15?

905: 905 in route, uh, minute out, safe route in please.

Confidential Taped Statement Transcription
Case # 13-13674

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925: 925 he's walking after two males that just ran south.

BOEC: Chasing two males running south, can you give 10- 905 a safe way in to 107 and Market?

925: Just come in the church lot.

1084: 1084 we're at 10355 and Main, south of them.

BOEC: Copy 10355 on Main south of them.

926: 926 he is standing on a car now looking west, near a fence now he's looking towards us.

BOEC: Copy, looking west towards you guys.

3913: 3913 all units be advised he does have a gun. Think it's uh, probably in his right hand.

?: 989 come in to the uh, 10355 at the church lot.

BOEC: Copy, 10355 on the Main.

3913: 3913, stage project response please, they're gonna need to stage, can't come in, it's too hot and ETA K-9 please.

BOEC: K-9 what's your ETA?

K-9 11: Seconds out, where do you want me to come into?

Officer: To the ER entrance on uh, I think it's Cherry Blossom. It'd be the ER entrance.

K-9 11: Copy. The ER entrance.

BOEC: Copy your entrance on Cherry Blossom.

905: 905 there, do they want me on Main or on Market?

?: Main would be per- perfect, we're about 150 feet uh, southeast of him, towards _____.

905: I copied on Main, coming in from the west.

BOEC: I copy.

?: Whoever is on the east that have the parking lights on, kill your lights, uh, it's back on the southeast side, you have your parking lights on, you just arrived, turn your lights off. He should be directly in front you somewhere.

3913: 3913, is Air One by chance?

BOEC: Negative, they're not up, but we can see if we can get them up.

3913: Yeah, till this is resolved, uh, let's them going please, see if they can get up.

BOEC: Copy. 3913 -

?: Someone's gonna need to let Tri-Met know that Main is shut down at 100.

BOEC: Copy Tri-Met is shut down at 100 and... for the tactical.

3915: 3915 move everything else somewhere else; uh, he's on top of a red SUV in the southwest part of the, the hospital parking.

BOEC: On top of a red SUV and we're splitting regular traffic as soon as I have somebody to go to it.

905: 905 am I safe to come up to the ER driveway?

?: Yeah GARY.

905: Alright.

?: Do we have anybody on the south side like on Market Street?

?: He's starting to walk towards us.

66: 66 running northwest.

BOEC: Running northwest.

?: Get your hands up.

?: I think he's got the gun in his hand.

BOEC: Copy.

915: 915 shots fired, put Code-3 medical have them stage, he's still got the gun by his hands.

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BOEC: Shots fired, need Code-3 medical, gun still in his hand. Regular traffic go to southeast.

3915: 3915 Dispatch, quit talking right now, he's laying on his back prone out, the weapon is just to the, few inches from his right hand.

BOEC: Copy.

3916: 3916 we need beanbag up here.

BOEC: _____ beanbag.

3913: 3913 we're gonna get a shield if you don't have it already.

?: _____ less lethal, I'm on my way.

979: 979, got one, where would you like me?

?: Police cars on the south side, get out of there, you're in the field of fire. Police on the southeast side, get out of there.

3915: 3915, we're gonna approach with a K-9 to do some challenging. Make sure medical is staged.

BOEC: They're staging.

3915: 3915, we're gonna approach with the shield, uh, the gun is separated from him, we're not getting any movement now except for the rise and fall of the stomach. Have medical fucking come in here any second.


BOEC: Copy.

?: Tell 'em send medical in.

BOEC: Copy, sending medical in. Medical wants to know where to approach.

?: The ER entrance and we're 10-4, 10-61.

BOEC: Copy, you're at ER entrance and 10-4 in custody.

Transcribed Verbatim with Punctuation Added 030513 / 1428 T. Bradshaw 

1 MR. REES: Anyone have any questions about
2 any of the codes that you may have heard? If you do,
3 feel free to ask the detective.

4 GRAND JUROR: Uhm, it doesn't need to be now,
5 but the very first 911 that came in from the hospital,
6 I don't think I really heard that clearly. I didn't
7 hear -- I heard it, I don't -- I'm not sure I heard
8 the words. And then other witnesses mentioned that
9 they had asked the Dean at the nursing school to call,
10 and if I heard that, I didn't understand it.

11 THE WITNESS: No. What you heard is the
12 actual -- our police dispatcher. That particular
13 audio did not include the actual 911 callers to the
14 911 center. Uhm, the way our emergency communication
15 works, is when you pick up the phone and call 911, the
16 first person that answers the phone is going to be a
17 call taker. And they ask questions to ascertain, you
18 know, what kind of help you need, is it something that
19 needs fire, does it need police, what the situation
20 is. And then they relay that information to our
21 actual police dispatch or fire dispatch, whichever is
22 appropriate.

23 So, when the police dispatchers get the
24 information, it's coming like third hand from the call
25 taker from the 911 caller, and they relay that

1 information to the officers in the field. And that's
2 the part that you hear, is the dispatcher to the
3 police officers in the field.

4 GRAND JUROR: Is there on tape, I assume, the
5 calls into 911?

6 THE WITNESS: Yes.

7 MR. REES: Right. And so, just so you
8 understand, we're only playing for you what was
9 broadcast to the police officers. So you're only
10 hearing what those officers heard, because they would
11 not in this circumstance be able to hear what people
12 were saying to 911 call takers.

13 GRAND JUROR: But what they get told depends
14 on what the 911 heard.

15 MR. REES: That's correct. But, again, we
16 only want to expose you -- I think it would only be
17 admissible in court, what the officers were actually
18 aware of at the time this was unfolding. So on that
19 tape, you're hearing the voice of the BOEC dispatcher
20 broadcasting over the radio to the police officers
21 information that she's given. And you're hearing
22 police officers responding and talking to each other;
23 is that correct?

24 THE WITNESS: Yes.

25 MR. REES: Does that make sense?

1 GRAND JUROR: It does.

2 GRAND JUROR: Code 2?

3 THE WITNESS: Code 2 would be lights, but no
4 sirens. Code 3 is lights and sirens.

5 GRAND JUROR: Phrase used was bean bag?

6 THE WITNESS: Bean bag is a non-lethal shot
7 gun, that shoots pellets inside of --

8 GRAND JUROR: That's what I assumed.

9 THE WITNESS: -- of a fabric bag.

10 GRAND JUROR: Yes. But the bean bag they
11 mentioned came after they mentioned the suspect was
12 already down.

13 THE WITNESS: Correct.

14 MR. REES: I think in anticipation of the
15 question, I believe one of our witnesses will be the
16 sergeant who made that call. He can explain why he
17 did that.

18 GRAND JUROR: Was hospital security also
19 involved in this, because one -- were they at the
20 scene before the police -- regular police? Because I
21 think dispatch said something like, report that the
22 person pointed a gun at a security vehicle, if I heard
23 that correctly?

24 THE WITNESS: That was information being told
25 to the 911 BOEC call taker from Portland Adventist

1 security dispatch. And that was relayed to, of
2 course, the officers out in the field.

3 GRAND JUROR: Was that confirmed?

4 MR. REES: We will be calling another
5 witness, Richard Butler, who works hospital security,
6 and who was in a truck in the parking lot at the time
7 this happened.

8 GRAND JUROR: I guess one more question. K-9
9 officers were there with dogs, but they were not
10 deployed or not used? They were on the scene;
11 correct?

12 THE WITNESS: There was a K-9 officer on
13 scene, yes, and I don't know if you're going to call
14 that officer or not to talk about what their actions
15 were.

16 GRAND JUROR: Okay.

17 GRAND JUROR: It would be helpful to me to
18 hear the first place that the dispatcher identifies a
19 person with a weapon.

20 MR. REES: Sure. You want to hear the first
21 60 seconds or something?

22 GRAND JUROR: The first place where it's said
23 to them that there's a person with a weapon.

24 (Recording played again briefly.)

25 MR. REES: Okay.

1 GRAND JUROR: Get a what down there? I'm
2 sorry.

3 THE WITNESS: Get a long gun.

4 GRAND JUROR: Oh, a long gun.

5 THE WITNESS: A rifle, AR-15.

6 MR. REES: So, we're going to actually
7 interrupt the testimony of this witness, to call our
8 next witness, who is Sergeant Voeller or Voeller --

9 THE WITNESS: Voeller.

10 MR. REES: -- who was on scene. And we'll
11 have him testify between now and 1:00. And then we'll
12 pick back up with Detective Steed probably tomorrow.

13 THE WITNESS: Thank you.

14 GRAND JUROR: Thank you.

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1 NATHAN VOELLER,
2 called as a witness in behalf of the
3 State, being first
4 duly sworn, was examined and testified as follows:

5 EXAMINATION

6 BY MR. REES:

7 Q And if you would, sir, state your name and spell
8 it for the record.

9 A My name is Nathan, N-A-T-H-A-N, Voeller, V as in
10 Victor, O-E-L-L-E-R.

11 Q How are you employed?

12 A I'm a Portland Police Bureau member.

13 Q What's your current rank?

14 A My current rank is Sergeant.

15 Q How long have you been a police sergeant?

16 A About five months.

17 Q And how long have you been a police officer?

18 A Working on my 13th year, so I was hired in 2000.

19 Q During your thirteen or so years with the Portland
20 Police Bureau, what assignments have you had?

21 A Uhm, I worked patrol capacity, all the precincts.
22 I was a lead defensive tactics instructor for four years
23 through the Portland Police Bureau training division, from
24 2008 to 2012. I returned to central precinct day shift, and
25 then I was promoted September 27th in 2012.

1 Q You mentioned that you work in the training
2 division. Have you had any special training or experience
3 specifically related to dealing with subjects who are armed
4 and presenting kind of an active threat in a situation like
5 this at the hospital?

6 A Uhm, we teach a lot of generic situations. As a
7 defensive tactics instructor, I was involved in patrol
8 tactics. We essentially teach our defensive tactics
9 scenario based training that oftentimes deals with tense,
10 rapidly evolving scenarios. We did a lot of scenario based
11 training, so I was one of the instructors and evaluators for
12 that. I have been involved in that scenario based training.

13 Q Could you explain to the grand jury what your
14 duties and responsibilities are in your current position as
15 a patrol Sergeant with Portland Police Bureau?

16 A Certainly. I have a wide variety of
17 responsibilities, per se. Oftentimes, we're in charge of
18 leading our shift as far as talk about pertinent
19 information, officer safety information, assigning our
20 individuals to go to community meetings. We're also in
21 charge of scheduling, reviewing reports for accuracy, for
22 appropriate arrests, stuff of that nature. And then
23 essentially once we meet our roll calls and our police
24 officers go out in their patrol capacity, then we're
25 essentially in charge of monitoring their activity, what

1 they do. And on calls that have potential to escalate into
2 a bigger situation, the expectation is that we respond to
3 take control of that call.

4 Q All right. And so, we're in no rush. And I know
5 you're -- probably from normal conversational speech, you're
6 not talking that fast. But just for the court reporter,
7 slow down a little bit, her fingers will explode.

8 A Understood. Okay.

9 Q You want some more water?

10 A I'm fine, thank you.

11 Q Okay. Uhm, well, let me direct your attention,
12 then, to this incident on the evening of February 17th,
13 2013. Uhm, what time on that date did your shift begin?

14 A Uhm, my shift began at 4:00 in the afternoon.

15 Q And was there anything out of the ordinary that
16 particular afternoon -- it was a Sunday afternoon -- when
17 the shift began, or was it pretty routine?

18 A Very routine.

19 Q Just briefly describe, how does that shift begin
20 at 4:00? What did you do?

21 A At 4:00, that's when our afternoon shift roll call
22 begins. There's probably two or three supervisors assigned
23 to 40 or so officers. So we lead our 4:00 roll call. We
24 talk about officer safety related information. Uhm, just
25 kind of review, check in with everybody, see if there are

1 issues that need to be discussed. So we did that that day.
2 Uhm, we were done with roll call at probably 4:20 in the
3 afternoon. Those folks left, logged on to their police cars
4 to resume their patrol capacity for the night.

5 Typically, I will check my emails, make sure I'm
6 caught up to speed on emails, so I did that on that Sunday.
7 I logged onto my computer system in my supervisor car at
8 about 4:50 in the afternoon. And I then met two of the
9 other supervisors for a cup of coffee at Starbucks. We
10 discussed shift related issues. And then I returned at
11 approximately 6:00 back to the precinct to begin
12 administrative projects. That's where I was until this call
13 came out.

14 Q Okay. There at the precinct?

15 A Correct.

16 Q Which is physically very close to Portland
17 Adventist?

18 A Correct.

19 Q About how far away is it?

20 A I'm estimating, approximately a quarter mile to a
21 half mile.

22 Q What is the address of the precinct?

23 A 707 Southeast 106th -- I'm sorry, 737 Southeast
24 106th Avenue.

25 Q All right. And so was there anything as you

1 started your shift that day, any unusual calls or hot calls
2 or anything going on out of the ordinary?

3 A No. It seemed like initially it was a pretty
4 quiet day.

5 Q And you said you were at the precinct after
6 coffee, until the time this call came out at Portland
7 Adventist. You're doing your paperwork, you're monitoring
8 what the patrol officers are doing out at the precinct?

9 A Yes. I have the ability to pull up a master
10 computer list to essentially see what units are assigned to
11 what calls, what calls need to be perhaps dispatched, that
12 they have been holding for a long time. So we're
13 essentially always multi-tasking. I'm able to monitor that,
14 reviewing reports, I'm writing my own after action reports.
15 And then I have my police radio right to my ear so I can
16 listen to the real time information by our BOEC dispatchers.

17 Q All right. So, from what you said, sounds like
18 nothing really unusual going on during the time that you
19 were beginning that shift?

20 A Correct.

21 Q When did you first, then, become aware that there
22 was a situation requiring police presence at Portland
23 Adventist Hospital?

24 A Uhm, initially, uhm, the dispatcher called several
25 police cars to Portland Adventist. The initial report was

1 something similar to a man with a gun in the parking lot.
2 Uhm, it is their protocol, I believe, that they verify on
3 calls of that nature or similar, that they verify a
4 supervisor has acknowledged that call that the police
5 officers are en route to. And so my call sign is 3913. So
6 I said, "3913, I copy that call, please show me going that
7 way."

8 Q And what did you do after you broadcast that over
9 the radio?

10 A Immediately got up from my desk, started walking
11 towards the outside of the precinct where my police car was
12 parked at Southeast 106th Avenue. As I was walking out,
13 sometime between when I was walking out and when I was
14 getting in the police car, uhm, I believe I asked for,
15 "Could we get a K-9 started that way, until we figure out
16 what we have going on?" I also believe I requested a long
17 rifle to go, just until we figured out what is happening
18 there.

19 Sometime as I was walking out to the car, we then
20 received an additional update, something very similar to,
21 uhm, now the man is reported to be pointing a gun at a
22 security vehicle. I presume security vehicle, there's a
23 high probability there would be a security guard within a
24 vehicle. So I suggested, uhm, as a supervisor, if the
25 primary unit wanted to find an area to stage. A staging

1 area is simply a safe place where we can all meet and put
2 our plan together, and then go in safely as a group. So I
3 suggested that as we walked out to the police car.

4 Q Are you able to tell us what is going on in your
5 mind while you are receiving this initial information, and
6 while you're getting out to your police car and starting to
7 leave the precinct, what are you thinking about?

8 A Uhm, I'm thinking about how we can safely respond
9 to this situation. Safety is our foremost concern. I'm
10 thinking about why is there somebody pointing a gun at a
11 security vehicle. That -- those radio updates, that then
12 becomes an unusual call.

13 So I'm thinking -- there's a lot of things I'm
14 thinking. But, again, where is the safest place we can go
15 in as a group. And then, of course, I want to know why is
16 this happening, who this is individual, and why is this
17 happening right now? So those would be a few of the main
18 things that I'm thinking. As well as additionally, our
19 whole goal in the Portland Police Bureau is what can we do
20 to safely resolve situations, peacefully de-escalate the
21 situations whenever we can. So I'm making as many
22 strategies as I can in order to help do that.

23 Q You mentioned one of the first things that you did
24 was, you said you believed that you called for a long rifle?

25 A Correct.

1 Q Can you explain what the purpose of that is?

2 A The purpose of that is, it's essentially another
3 tool. It's a tool that we hope to never have to use, but it
4 is a precision based tool. Those individuals that are
5 assigned those -- to carry those rifles, have received
6 extensive training in marksmanship, decision making,
7 de-escalation techniques. Our goal, until we figure out
8 exactly what is going on, we want to be as safe as possible.
9 So it gives us another layer of protection. It would be
10 particularly beneficial if a situation like this perhaps
11 turned into a hostage situation. Then we have more of a
12 precision based tool at our -- at our exposure if we ever
13 needed it. Again, I'm -- hopefully, we will not need it.

14 GRAND JUROR: Is it standard operating
15 procedure?

16 THE WITNESS: It is fairly standard in a call
17 of this magnitude to get as many resources as
18 possible, including an AR-15 rifle, yes.

19 BY MR. REES:

20 Q And is the reason in part, because the rifle is
21 more accurate at a longer distance than a handgun that the
22 patrol officers carry?

23 A Correct.

24 Q Do you recall in particular any other information
25 that you received while you were on that very short drive to

1 the hospital?

2 A Uhm, I do believe one of the officers on the radio
3 asked, let's try to find a name of who this person is. I
4 know for a fact I did not ask that, but somebody did and I
5 was glad somebody asked that information. I thought that
6 was very heads up and important information. And my
7 thinking behind that is, establish a history of why the
8 person is doing what he's doing. I'm thinking, is he a
9 disgruntled employee? Is he somebody recently released from
10 the psych ward? These are all questions as far as what is
11 happening. Those are some of the thoughts going through my
12 head at that particular moment.

13 Q Are you by yourself or is someone with you?

14 A Sergeant Clinton also happened to be at the office
15 attending to administrative projects, so we got up at the
16 same time and walked out. Our cars happened to be literally
17 parked on the west side of Southeast 106th Avenue in front
18 of east precinct, pointing south towards the hospital. So
19 he got in his police car, I was right behind him. So we
20 drove out in separate cars, but right behind each other.

21 Q And are you driving with lights and sirens on?

22 A No. Uhm, again, our foremost concern was safety,
23 to make sure we're being safe. But also, we're so close in
24 proximity to the hospital, and it's approximately 9:30 at
25 night, so there's not a lot of traffic out. So we can

1 essentially get there quickly, without having to activate
2 lights and sirens.

3 Q All right. Behind you is the aerial view of the
4 parking lot, part of Adventist Hospital. Would that help
5 you to show the grand jury where some of these events took
6 place?

7 A Sure.

8 Q Okay. So, why don't you go ahead and walk up to
9 the board. And then if you could, point out for the grand
10 jury where you initially came in. Maybe you want to flip to
11 the other side. I mean, you -- your body to the left, there
12 you go.

13 A Okay. So, myself and Sergeant Clinton proceeded
14 southbound on Southeast 106th Avenue. Uhm, and I would say
15 approximately right about where my finger is, it does a 90
16 degree turn on this corner. And 106th Avenue turns into --
17 meets with Southeast Main Street at this intersection. Main
18 Street would parallel the sidewalk, that parallels the
19 Cyclone fence that would be just out of view here. So
20 initially, we parked, we turned off car lights, turned off
21 brake lights, Sergeant Clinton and myself parked.

22 As we came in, we turned off our car lights, we
23 turned off our brake lights to be as dark as possible as we
24 first came in. Uhm, I never heard a confirmation, when I
25 asked about the staging area where somebody wanted to meet

1 up. They were saying, we're trying to get confirmation of
2 what parking lot it is. There are multiple parking lots
3 within this medical facility.

4 So, when we came in, we parked at Southeast 106th
5 Avenue, Southeast Main Street. I felt that was actually
6 probably the safest place, to be as far back as possible and
7 still kind of start to get onto the property, the campus
8 facility to figure out where the individual was. So that's
9 where we parked was Southeast 106th Avenue, Southeast Main
10 Street.

11 Q And did you have an understanding then, or have
12 you come to an understanding that this large parking lot is
13 the employee staff parking lot for the hospital?

14 A It seemed apparent, as the call continued, most
15 likely that was the staff parking lot.

16 Q Okay. And were you able to see anything happening
17 inside of that large parking area when you first pulled up?

18 A Yes. Uhm, initially as we responded, I believe
19 the initial description of the man with the gun was a white
20 male, 40 to 45 years old, uhm, fairly generic description,
21 blue jeans and like a light colored shirt. So as we park at
22 106th Avenue and Main Street, uhm, again, it's 9:30 at
23 night, there is minimal lighting. There's just your parking
24 lot lighting, but it is fairly dark back in here. I would
25 say in proximity to the hospital, I would say over all this

1 parking lot was probably 90 percent -- about 96, 95 percent
2 vacant. Majority of the cars that were here were on the
3 west side of the parking lot.

4 So when we initially parked, this side of the
5 parking lot as we would have been looking southbound, was
6 fairly open. As a result of that, there was some -- the
7 parking lot lamp post -- there was enough light to see the
8 silhouette of a man that matched the initial description
9 that we were given, standing in the parking lot. What was
10 very unusual about this man, is he started making what I
11 referred to as a whooping sound. I apologize, it's the best
12 way to describe it, a whoop, whoop. My perception was he
13 was trying to get our attention, but I was not certain. It
14 was certainly unusual behavior, to say the least.

15 He started shouting. Uhm, I would say he's
16 approximately from where we were standing, probably 70 yards
17 south into this parking a lot. So far enough away, we
18 couldn't really understand what he was saying; yet, close
19 enough to know he was certainly making a ruckus or making a
20 sound. As he did that, it wasn't long after that, that it
21 looked like the best vicarious visual I can try to explain
22 to you, is almost like a gorilla in a cage pacing back and
23 forth, trying to make himself look kind of big.

24 At one point he takes a gun and he points it
25 straight at us as he's walking, in his right hand, and he's

1 making these noises. Thirteen years of police work, I have
2 never been in that situation before. It's not a good
3 position to, obviously, find yourself in.

4 Uhm, I believe some of the radio updates I gave to
5 responding units was, "3913, we're at 106th Avenue, Main
6 Street, let's get everybody to this location, since he knows
7 we're here now." And other officers or sergeants were
8 starting to try to set up a perimeter around the facility,
9 which is one of our principles as far as containing this
10 individual.

11 Q If I can interrupt, you said that you saw this man
12 with a gun, and you just demonstrated for the grand jury,
13 with his arm outstretched?

14 A Yes.

15 Q Uhm, when you saw that, did you think to yourself
16 that, uhm, it would be appropriate or necessary to use
17 deadly force at that moment?

18 A At that moment, I would suggest he still is an
19 immediate threat as far as how quickly bullets can travel.
20 However, for that particular moment, I felt because of the
21 increased distance, one of the concepts I would train at the
22 training division, is distance equals time equals options.
23 I felt comfortable with our distance, that at that
24 particular moment, I did not feel the need to deploy deadly,
25 physical force.

1 I felt that we were still trying to de-escalate
2 the situation and look for other reasonable means to end it
3 peacefully. So I do recall saying, "3913, he's pointing a
4 gun at us. For all units coming in, make sure you get to
5 hard cover." That's essentially behind your car or a tree
6 so if he starts shooting at us, it would stop bullets.

7 Q If you're about -- approximately, if you're able
8 to, tell the grand jury how far away he was at that point
9 from you.

10 A Again, I'm estimating approximately 70 yards to
11 the south of us. Uhm, this roofed structure here, I have
12 since learned is a gas pump or something of that nature, he
13 was in this area. Again, we would have been up in here
14 probably 70 yards to the north of him.

15 Q Something like three quarters the length of a
16 football field, that's 75 yards?

17 A Yes, something like that. Yes.

18 Q And were you inside or outside of your car when
19 that happened?

20 A Outside of our car, uhm, when we started hearing
21 the whooping and the pacing, and then what I referred to as
22 the targeting, where he's targeting us when we're walking.
23 And that's a scary place to be, so we pushed back from
24 behind our cars to get behind something if he did start
25 shooting, that would stop bullets. So we were out of our

1 car, trying to get behind trees or something to stop
2 bullets.

3 Q When you saw that, you mentioned you broadcast it
4 over the radio, what are you thinking in your mind as far as
5 what is happening with the situation?

6 A Uhm, I never had a gun pointed at me. That was
7 the first time, as I'm sure most police officers have not.
8 So, I'm responsible for the safety of my team. I take that
9 very serious. So, I still want to think about what can we
10 do to isolate this individual, to keep him away. We had
11 that information that he had at one time pointed a gun at a
12 security vehicle, and presumably with a driver. So this is
13 a very dynamic situation. It's very tense in nature. It's
14 evolving very, very quickly.

15 So, our whole goal is we have got to keep our eyes
16 on him. We certainly don't want to precipitate anything by
17 closing the distance on him, unless we absolutely had to.
18 At this point because he was isolated in the back of that
19 vacant lot, we felt good about that. We wanted that
20 containment to try to keep our eyes on him the best we
21 could.

22 Q Okay. So, I take it at some point you move into a
23 different location?

24 A That's correct.

25 Q And can you show us where that is and explain when

1 you did that?

2 A Yes. Uhm, so, I remember looking back over up
3 106th Avenue, more officers are starting to arrive. Some
4 are coming in with lights and sirens. I remember, "3913, he
5 knows we're here. Turn off your lights. Come in as dark as
6 possible." I remember giving that update. He's still in
7 the parking lot, posturing and tracking us like this. Uhm,
8 and then as more -- Sergeant Clinton and several other
9 officers started arriving, he all of a sudden starts walking
10 in a south -- pretty much a westerly direction from here, a
11 little bit of a southwesterly direction, essentially for the
12 purpose of the recording, towards the hospital or ER room.
13 As he does that, he's yelling something now, he's walking
14 where he has to look back over his right shoulder to look at
15 where we are at.

16 Uhm, so we, in the spirit of trying to follow him
17 and keep him isolated from other people, start paralleling,
18 again from approximately 70 yards to the north, along this
19 fence line, which would be the south side of Southeast Main
20 Street. In front of us, there is a patch of grass, probably
21 ten or fifteen feet. And then a standard Cyclone fence,
22 approximately six feet high, that would have physically
23 hindered us from moving in anyway, although we were not
24 intending to do that at that point.

25 So we were starting to parallel as our group is

1 walking and trying to keep a visual contact with him. We
2 start walking along the sidewalk here in a westerly
3 direction. Uhm, the situation becomes even more tense, as
4 he begins a slow jog. He's looking over his shoulder and
5 starts jogging in that westerly direction. The first thing
6 I'm thinking is, we don't know who this person is. Is he a
7 disgruntled employee or did he get released from the psych
8 ward, as I previously mentioned. And I started thinking
9 about all the recent active shooters we had at Lloyd Center
10 and stuff like that, and all of the publicity behind it. My
11 concern is for the folks at the hospital. I'm absolutely --
12 the way he's running, he's starting to jog, he's jogging
13 with intent or purpose. It's not a casual stroll, it's very
14 intentful in nature.

15 As he starts jogging, the first thing I think of
16 is, we have got to figure out a way to protect those folks
17 in the hospital. That is now becoming our primary
18 responsibility. So sometime as our group is walking along
19 Southeast Main Street here, in a westerly direction, I did
20 get on radio, said 3913, I said get a hold of the security
21 folks at the hospital, we need to get it locked down. Just
22 lock down that hospital right now.

23 Q Because this is -- it's apparent from the photo,
24 but for the record, this large parking lot is immediately
25 adjacent to the hospital emergency room?

1 A Correct. I have been to the emergency room
2 before, and clearly as you walk across here in the emergency
3 room, it's right back here. So my concern at that moment in
4 time, we have a potential active shooter situation that is
5 about ready to occur.

6 Our group continues to walk westbound, but we're
7 walking, we're making haste essentially. We have to keep up
8 with him, still trying to keep our distance, which gives us
9 those more options, or gives us more time. We get around to
10 approximately where my finger is. And this area in here
11 appeared to be like a drainage, where rain water goes into.
12 Significant amount more of concealment there, vegetation.
13 So as we're moving westbound, trying to parallel him, keep a
14 visual on him, he becomes significantly harder to see
15 because of the increased vegetation.

16 At some time, I believe it was Sergeant Clinton,
17 because I remember looking and seeing "Supervisor" on the
18 side of the police car. Typically supervisors are the only
19 ones who drive those cars. I believe Sergeant Clinton got
20 in a police car and was paralleling our group with us. Why
21 would he want to do that? Most likely if we have to react
22 quickly, need to drive somewhere quickly, we have a police
23 car as an option. If the individual starts shooting at us,
24 we at least have an engine block to hide behind. It gives
25 us more options. We're looking for options on how we can

1 resolve this situation.

2 Our group proceeds to turn south, right into the
3 property of the parking lot, which would be about where my
4 finger is now, so now we will be into view. The subject
5 comes out to about where I would suggest this crosswalk is --

6 Q Which is really the entrance to this fenced
7 parking area?

8 A Yes. But we didn't know that at the time. But as
9 we continued to move, it became apparent that it looked like
10 that was going to be the entrance into this employee parking
11 lot. Uhm, I felt good. I felt like dispatch did a great
12 job of getting that hospital locked down. So I felt a
13 little bit better, although, because of the natural lag it
14 takes to call people and to organize, I wasn't sure if that
15 had happened yet. Realistically, it probably had not,
16 because I had just put that in, and we were moving at a high
17 rate of speed. So as we come around and we turn here, I'm
18 thinking he can't get past us, and get to the ER room. We
19 have to protect these people.

20 He comes out, he stops and he starts looking in a
21 northwesterly direction towards us, and he's yelling. I
22 would suggest approximately 25 yards away from where our car
23 was to where he was standing, so he's significantly closer
24 to us. Yet, 25 yards still feels like a little bit of
25 distance there. Uhm, myself, and I'm not sure what Sergeant

1 Clinton was doing, and some other officers that I remember,
2 there was officers behind me. We get behind our car,
3 because now in his waistband, he has that gun sticking out.
4 I remember specifically, because it was black in color,
5 consistent with the size of a handgun. And it was
6 essentially silhouetted by a colored shirt.

7 Based on training and experience, I know when I
8 would teach defensive tactics that -- we refer to as the
9 60th percentile area. And that is the most common place
10 that individuals who don't have a holster for a gun, put a
11 gun, because the pants keep it in there. So they will put
12 it in front or put it in the back waistband, and it was very
13 clearly set up in his waistband.

14 He begins yelling at us. Uhm, I could not tell
15 you what he was saying specifically, but it was of a
16 challenge. It was some -- I believe at one time, the only
17 thing I would make out, he said something similar to, "Come
18 on, come on." And he's making what the police refer to as a
19 furtive movement, like he's going to reach down for this
20 gun. He's yelling and he's kind of swooping his hands down.
21 But he never actually does.

22 So we're behind the car, I remember Officer
23 Curtiss comes up behind me. I look back at him, I yell
24 something at him. And I noticed he has a bean bag. A bean
25 bag is a less lethal option, it is a great option. Again,

1 our goal is to de-escalate the situation, end it as peaceful
2 as possible. I was thinking, this may be a moment in time
3 where we have that opportunity to de-escalate it, if we use
4 a less lethal force option on him from 25 yards out.

5 So about the time I looked and I registered that
6 he had a bean bag, we turned back around and the subject had
7 started to go back into the parking lot. It happened like
8 that. Uhm, so that opportunity essentially never existed.

9 Uhm, he proceeds to walk back into the parking
10 lot, and kind of heads in, southerly, southeasterly
11 direction, but primarily southerly, to a point where now
12 he's very hard to continue to maintain that visual on. I
13 make the call to my team, and I believe I just yell it, I
14 don't think I put it out over the radio. I said, "Let's
15 push up and own this entrance."

16 What I meant by that, is if he does want to get to
17 that hospital, he now has to get through us. Because as we
18 started pushing up, as I mentioned, you can start -- I would
19 guess this parking lot is approximately four acres in size.
20 It's relatively large. And it looks like, although the
21 lighting is poor, that it looks fairly secure as far as that
22 Cyclone fence around the perimeter. Some of the concepts as
23 a supervisor that we look to besides de-escalating the
24 situation, what we look to do is containment, isolate and
25 evacuation. Those are three of our primary responsibilities

1 in a situation like this.

2 Uhm, I felt because we requested lock down on the
3 hospital, that it was almost a reverse evacuation. It was
4 far safer to leave these folks in a locked facility, than
5 try to facilitate bringing them out to an armed person. So
6 I felt really good that we had our evacuation or reverse
7 evacuation in play.

8 Uhm, with this fence and the fact that now he's
9 gone away from the hospital, it looks fairly open back here,
10 although we still don't know where the security vehicle is
11 or the security guard, per se, I felt like our containment
12 was getting a little better. So our goal would be to try to
13 isolate him within that containment. In addition to that,
14 we had a perimeter that was starting to get set, which would
15 have been perhaps Clay Street and kind of just around the
16 general area.

17 Q Are you able to see him in terms of what actions
18 he's taking as he moves in the parking lot?

19 A He's pretty hard to see. I know he's yelling,
20 he's walking now. I remember a walk, and he was walking
21 away from us with his back turned to us. Because of these
22 cars, presumably employee cars to the hospital, he was
23 becoming harder to see, even when we pushed up and
24 essentially guarded that exit point from the -- between the
25 ER room and the parking lot. Because of this vegetation,

1 minimal lighting and the cars that he's kind of walking
2 around, he becomes significantly harder to the point where
3 we decide to push up a little bit more, just to give us an
4 increased visual.

5 Uhm, still from here because you as a group, if
6 you're staying put, and somebody is walking, the angle is
7 always changing. So where at one point you could see him
8 clearly, now with a little bit of movement, you couldn't see
9 him so clearly.

10 So Officer Hearst, in these situations we try to
11 have a buddy system, we try to stick together and have that
12 team work in play. I felt we, for as dynamic as this call
13 was becoming, we were working well together as a team, as a
14 unit. I took Officer Hearst and we went over in this area,
15 just a little bit deeper, because now looking southerly, I
16 was able to get a better line of sight on him, without
17 having to decrease my position, as far as getting closer to
18 him. I was able to see him, but maintain my distance.

19 So, uhm, the subject walks back to the area that
20 looks like initially like a red SUV. He then starts
21 yelling, and he has the gun out again, he's walking. He's
22 pointing it. And we still have this information that
23 there's a security vehicle and security guard. So similar
24 to an active shooter situation, I'm listening for
25 indicators. Do I hear screaming? Do I hear a hostage? Do

1 I hear a car squealing away as he tries to drive away
2 quickly? I was not hearing that. So that -- I felt the
3 most reasonable option at that point was to continue to work
4 for our containment and our isolation and keep our distance.
5 So I felt glad that we weren't able to hear that.

6 At one point he starts climbing. Uhm, and I think
7 somebody reported that he was climbing a fence. I think
8 later it was clarified it was actually the SUV. But
9 initially, because now I'm guessing, approximately 70, 75
10 yards, maybe a little more, to the south of us, he's
11 starting to gain elevation on us. Uhm, I have several
12 concerns with that.

13 Q Could you see that?

14 A Yes. I could clearly see that he was moving up,
15 yes. I felt like from my vantage point, I almost had a
16 clear line of sight directly south to where he was. I could
17 see him climbing. So my two concerns is from a tactical
18 perspective, somebody potentially is trying to get the high
19 ground on you, which is always a superior position, so
20 that's concerning. We have an armed man who is now possibly
21 trying to get the high ground on us, he can see us easier.

22 The greater concern, however, is I'm thinking, if
23 you are climbing a fence, or you're so close to the fence,
24 why don't you try to escape? I certainly don't want a
25 person that we're deeming very dangerous, to get loose

1 within the public. There's apartment complexes and other
2 buildings, I believe, associated with the medical campus.
3 But essentially a person has two choices. They can stay, or
4 they can go. And the fact that he really had that
5 opportunity realistically to escape, and chose, made that
6 conscious effort not to, that was alarming. That was scary
7 to me. Why are you not escaping? Arguably, he could have
8 at least gone over that fence, and we would have found you.
9 But you had that opportunity, and you chose not to, that is
10 alarming.

11 Uhm, he then eventually -- it appears he's
12 starting to look closer, he starts seeing -- somebody says
13 it looks like he's on the SUV. He was doing what I would
14 refer to as a series of intermittent positions. It looked
15 like he -- I couldn't tell if he was on the roof or on the
16 hood. He would do like a kneeling, and he was yelling and
17 pointing. What he was saying, I could not tell you. I know
18 it was loud. He's yelling and he's pointing. And it looks
19 like at one point he's going to sit on the hood of this car.
20 I'm thinking great, this is perfect. Maybe you're starting
21 to lose steam.

22 As a supervisor, I'm assessing, reassessing, what
23 can I do to end this confrontation as peacefully as
24 possible? I'm thinking, if he sits, this will be perfect.
25 Then I'm prepared to call out our SERT team which is an

1 acronym for the SWAT team, because they will have additional
2 man power, additional officers, additional training. They
3 are going to bring a whole lot of experience to help us out
4 with this situation.

5 Uhm, I am also thinking, okay, if he's starting to
6 run out of steam and he's going to be content to sit there,
7 this would be a good time to call our Project Respond Team.
8 They are mental health workers that work for Multnomah
9 County. They are a great tool, it's a great partnership we
10 have established with them. I'm thinking this call in and
11 of itself, it's still too dangerous for them to come in and
12 try to initiate contact. But perhaps if he continues to
13 relax, run out of steam, at one point we can get those
14 mental health workers in there and see if we can facilitate
15 an open line of communication. I did request them. I was
16 behind one of these cars over here with Officer Hearst when
17 I did that.

18 Q Sorry to interrupt. You called for Project
19 Respond. Would mental health workers approach, as far as
20 your understanding, would they approach someone who was
21 actively armed like this or not?

22 A No, absolutely not. In fact, I said over the
23 radio, this call is far too dangerous for them to come in.
24 So they will have to find a safe place to wait. But it is a
25 potential option way down the road, if this person continued

1 to relax and de-escalate his behavior, so I'm all about
2 options and resources.

3 Q It sounds like you're thinking potentially this
4 situation is actually de-escalating?

5 A I was hoping. Like I said, at one point it looked
6 like he's about ready to sit. I was hoping for that brief
7 moment in time that maybe you're starting to run out of
8 steam. I know statistically, the longer these situations
9 go, the higher possibility for a peaceful resolution. So I
10 thought, that's great, we have got our containment, we have
11 got our isolation. And we discussed the hospital situation.
12 So we're doing pretty good on all that.

13 An then the idea came to me, if he does get mobile
14 or we still don't know where that security guard is. He had
15 a hostage or he does take a hostage and he gets mobile, how
16 will we be able to follow him? That may be difficult. So I
17 requested Air One, which is essentially our airplane.

18 Two schools of thought there. If he gets mobile,
19 they'll be able to track him from a safe distance. And/or
20 if this continues to get to a point where the SWAT team can
21 come and we can try to work to collectively de-escalate the
22 situation, the airplane would be a great resource as far as
23 just watching what he's doing and recording what he is
24 doing. I requested the Air One unit.

25 Uhm, shortly after that, I was thinking, okay, if

1 we can get that momentary lull in the action, I would like
2 to have a quick meeting of the minds with the supervisors.
3 There were two other sergeants there as well. I was going
4 to bounce an idea off, hey, I'm prepared to call the SWAT
5 team. I know they would have one hundred percent supported
6 that call. So I was about ready to do that collective
7 assessment -- reassessment with them and request our SERT
8 team, and he jumps down off the car. So that momentary lull
9 never essentially existed.

10 Q What happened then?

11 A He's yelling, uhm, still pointing the gun at us,
12 doing this (indicating). He's yelling again, 70, 75 yards
13 away, I could not tell you what he was saying. But it looks
14 like psychologically, he's preparing for a fight. He looks
15 like he's getting big, and it looks like there might be a
16 little pacing. But he's so far away, it's kind of dark, but
17 he's definitely yelling, he's pointing.

18 Seemed like in my perception, there was a
19 momentary pause, and then he starts walking towards us.
20 Uhm, quickly his walk turns into a jog, which as he's
21 walking initially, it looks like he's using cars as kind of
22 a physical barrier between us. He's kind of weaving in and
23 out of cars, looks like, as he's kind of -- again, I don't
24 think this is an accurate diagram as far as where the cars
25 were that night. It was primarily a lot more vacant than

1 this. But he's -- from back in this area, he's starting to
2 kind of cut towards us. Again, his walk turns into what I
3 perceived to be kind of a jog, which eventually I would
4 suggest from 30, 35 yards out, it looks like his jog turns
5 into a sprint. And he is now pointing that gun at us and
6 he's yelling. Again, I have never been in that situation
7 neither. And I hope to never be in that situation again.

8 Q Do you recall what you were thinking at that
9 point, or did you have time to really think?

10 A It happened so fast. But I remember as he starts
11 moving, at one time as I mentioned, I requested a K-9
12 officer. I'm thinking, where is that K-9? We need it. We
13 need it here. We're -- my guys are in a bad spot, we need
14 some help. I remember saying, "Where is the K-9?" I think
15 the response is, "We're just about there." I remember
16 thinking, I need you now. I need you right now. Why do I
17 need you right now? I don't want to see a police dog get
18 shot. But my thinking was, send that dog in there and
19 either the dog is going to get shot, or the dog will be able
20 to momentarily distract him to the point where perhaps we
21 can take him into custody without further incident. But it
22 happened so fast, that, again, unfortunately, almost there,
23 did not give us enough time.

24 So, he is now sprinting, gun up. He's yelling,
25 and I remember hearing what I would refer to as some kind of

1 ultimatum or numerical count down. In my mind it is telling
2 me, it's like a reverse numerical count down. But it was
3 clearly some kind of an ultimatum, 3, 2 , and he's sprinting
4 gun up as he is doing this. And I'm feeling, when he gets
5 to 1, he's going to kill us. This is my perception of his
6 ultimatum, when he gets to 1, he's going to kill us.

7 That's about the time he got to the end of what I
8 would suggest was his very blatant and deliberate ultimatum,
9 that's when I consciously used deadly physical force.

10 Q What was the approximate distance between yourself
11 and him when you made that decision?

12 A I am estimating approximately ten to twelve yards.
13 So he was -- he felt like he was right there, but I would
14 say probably ten to twelve yards.

15 Q And, uhm, when you did that, what was your
16 perception of the degree of danger that he presented?

17 A He was very, very clearly a significant
18 immediately threat of death or serious physical injury. He
19 was trying to kill us, when he got to the end of his
20 ultimatum. He was an immediate threat, as he was much
21 further back, bullets travel very, very quickly. We are
22 working collectively, trying to resolve the situation
23 peacefully. And about the time he sprints at us with that
24 numerical -- you have seconds at best. And he was such a
25 blatant and clear threat of -- to human life, that that's

1 when I used deadly force.

2 Q Did you perceive a threat towards yourself or to
3 other people or both?

4 A To both. Clearly both. It was my perception when
5 he took off running, he is doing this (indicating), and he
6 knows where both groups are. It was very apparent he knows
7 where both groups are, and he's running. So not only did I
8 perceive that to myself, but clearly to the other team, that
9 would have been to my right.

10 Q Meaning the other police officers?

11 A The other groups of officers, correct.

12 Q And do you know how many times you fired your
13 weapon?

14 A Uhm, I am estimating four to six times, could have
15 been a little bit more.

16 Q I don't think you necessarily said, what were you
17 armed with?

18 A I'm sorry, my nine millimeter handgun.

19 Q Do you remember, did you make a specific decision
20 to stop firing?

21 A Uhm, I stopped when it looked like he was no
22 longer a threat. By that, his momentum stopped. And then
23 it looked like he started to perhaps wither or fall a little
24 bit, so I would only shoot insofar as the person is no
25 longer a threat. So that's when I decided to stop.

1 Q Did you have an awareness whether any other
2 officers were also using deadly force?

3 A Officer Hearst, which would have been to my
4 immediate right, we were by that car, he used deadly
5 physical force. And then I learned shortly after the fact
6 that another -- Officer Curtiss used deadly force as well.

7 Q Sounds like you were not aware of that at the time
8 you were firing?

9 A Correct.

10 Q Did you or did anyone else give any commands to
11 him that you remember before the shooting incident?

12 A I do remember. I did not give commands. I do
13 remember hearing commands similar to, stop, stop, stop, drop
14 it, something very similar to that, I believe. I know based
15 on my previous teaching experience, that multiple officers
16 giving commands can only convolute a situation. It can lead
17 to miscommunication. So one officer is giving clear,
18 specific, simple commands, that officer needs to continue to
19 do it. So when I heard that, I did not.

20 Q Do you remember whether or not this person seemed
21 to have any kind of reaction to the commands?

22 A Uhm, it appeared he had no reaction to them.

23 Q Okay. Sergeant, this is a second diagram made
24 after the fact. Uhm, would you be able to show us
25 approximately where you were standing when the shooting

1 happened?

2 A Uhm I would have been right back in this area
3 (indicating), behind this car.

4 Q You are pointing behind the car marked Avalon,
5 that's not a police car.

6 A Correct.

7 Q That was in the parking lot?

8 A Yeah. It was silver in color. Yeah, it was
9 definitely a civilian car.

10 Q And were there any other police officers standing
11 with you behind the Avalon that you remember?

12 A Not that I remember, other than Officer Hearst who
13 was next to me. I believe it was just him and I.

14 Q Okay. Did you have an awareness of where other
15 police officers were at this time?

16 A Yes. I knew there was another group of officers.
17 We basically triangulated the situation. So there was a
18 group somewhere over in here. And I presume they were
19 behind a car. I was not watching what they were doing. I
20 do know they were to my right.

21 Q Okay. And at the time you made the decision to
22 fire your weapon, did you have a sense of whether the
23 subject seemed to be focused on you, or focused on another
24 officer, or could you tell if he had a particular focus?

25 A Seemed like he was focused on all of us, for lack

1 of a better way to describe it. When he takes off running
2 and he's -- bullets travel so quickly, he knows where both
3 groups are. When he takes off, my perception was, he's
4 focused on us. He's focused on them.

5 Q All right. You can have a seat if you want to.
6 Let me ask you about in the immediate aftermath then, what
7 did you do following the shooting?

8 A Uhm, I'm still trying to look out for my people
9 and try to run the scene until we get more help. And so I
10 was -- my perception was Officer Hearst fired, because he
11 was right next to me. I told him to make sure his gun was
12 secured, put the safety on. I also advised him he would be
13 under investigation, so he's not to be talking to other
14 officers involved in the situation, and he acknowledged all
15 that.

16 And I believe one of the other supervisors there
17 was trying to determine who, out of the group of officers
18 there, and I would say -- I don't remember how many there
19 were, I believe one of them said, "Who used deadly force?"
20 And that's when I became aware that Officer Curtiss did,
21 because he said that. And then eventually Lieutenant Roesch
22 responded, and I believe she took command of the scene. And
23 it's recommended that if a bureau member is involved in
24 deadly force, they are not part of the recovery team or
25 anything of that nature, they are essentially out of the

1 investigation at that point. So I consciously kind of
2 pulled myself back.

3 Q All right. At some point after that happened, did
4 you become aware that the subject was not armed with a real
5 firearm?

6 A I heard -- I couldn't tell you exactly when I
7 learned that, perhaps when the bureau put out some
8 additional information. But I did become aware that it was
9 not a firearm.

10 Q Through the media?

11 A Yes, through the media.

12 Q Okay. When I asked that question, were you able
13 to tell even after he was shot, whether he was armed with an
14 actual weapon or not?

15 Q As I was pulling myself out, I remember initially
16 as the recovery team was coming in, they were saying that
17 the gun was still a couple of inches from his head, and the
18 K-9 had moved him away a little bit. So as I was walking, I
19 looked over there, and what I saw was black in color and was
20 the size and shape of handgun. Then, again, it's dark and
21 whatnot, so I kind of looked, and it looked consistent with
22 a handgun. And then, I'm guessing several days later when
23 more media attention started coming out, that's when I
24 learned.

25 Q Okay. Ladies and gentlemen, any questions from

1 the grand jury?

2 MR. REES: Thank you, Sergeant.

3 GRAND JUROR: I thought of a follow up
4 question. So, earlier reports stated there was a
5 suspect that had pointed a gun at a security person
6 and/or vehicle. Did you ever get some sort of, yes,
7 that's accurate, or that's not accurate, during this
8 situation?

9 THE WITNESS: That was our initial
10 information that we received. And then when we got
11 there, this call become so dynamic the way it's going.
12 And based on my independent observations as well, the
13 subject is doing everything consistent with what one
14 would do that has a firearm, the way he was holding
15 it, the way he was pointing it at us, it's in his
16 waistband. Those are independent observations, that
17 unfortunately I don't have time to talk to a security
18 guard. He's now -- I see an immediate threat, he's
19 pointing guns at us. My perception of him, this is
20 behavior typical of somebody carrying a gun.

21 GRAND JUROR: Were you thinking the security
22 person was parked within the confines of the parking
23 lot? Was your mind saying, this person -- I don't
24 know where this security guy is, but I have not heard
25 that he's safe or she's safe; was that -- were you

1 thinking of that?

2 THE WITNESS: That is certainly a concern, is
3 our security person safe? Our information was that he
4 was pointing a gun at a security vehicle. So we
5 presume there could be a security guard in that
6 vehicle. When he disappears and goes back into the
7 lot, as I mentioned some of the concerns is where is
8 that security person? Is he looking to take somebody
9 hostage? Those are all considerations and concerns
10 we're listening to. Again, a car or somebody running
11 out of there. So something that is certainly a
12 concern, where is our security person? But it's just
13 as quickly as this is happening, the opportunity just
14 didn't exist.

15 GRAND JUROR: You had no idea, in essence,
16 you had no knowledge of where the security person was?

17 THE WITNESS: Correct.

18 GRAND JUROR: What amount of time elapsed
19 between the moment you arrived on the scene, and the
20 moment that you fired?

21 THE WITNESS: Great question. This is an
22 estimate, certainly. I suggest probably ten minutes
23 from the time we arrived to when it was over,
24 essentially.

25 GRAND JUROR: Your two instances of lesser

1 force just did not come into play? You mentioned a
2 bean bag sounded reasonable twenty yards away, the
3 person was there, but he turned and took off?

4 THE WITNESS: The opportunity did not exist.
5 By the time we realized he had a bean bag, we turned
6 around and he's gone away.

7 GRAND JUROR: And the K-9 officer did not
8 show up until after the shooting?

9 THE WITNESS: Right.

10 GRAND JUROR: And, uhm, it's hard to get a
11 sense of how many officers were really there or
12 officers that you could see. The dispatch made it
13 sound to me like the place was surrounded. But, in
14 hearing your description, it sounded like you were
15 conscious of some other officers over there, and that
16 was kind of all I got from your conversation?

17 THE WITNESS: Let me clarify. In a call of
18 this dynamic nature or magnitude, there will be a lot
19 of police officers going. Oftentimes, if you are
20 responding from a further distance, uhm, you're going
21 to take more of an outer perimeter position. So a lot
22 of the officers were assigned to outer perimeter
23 positions. When the subject runs at us at the end
24 doing this (indicating), there was myself and Officer
25 Hearst on one side, and a group of -- I'm estimating

1 six officers, maybe six or seven on this other side.
2 And it's hard to give you completely accurate
3 information, because soon afterwards there are more
4 officers. Everybody comes in to help, to see what
5 they can do. But that's my initial estimate, the
6 majority would be in the outer containment, the
7 perimeter, and then the core group of officers in the
8 parking lot, and multiple officers starting to arrive
9 after the fact.

10 GRAND JUROR: But on scene, yourself and six
11 others was kind of what you felt?

12 THE WITNESS: Yeah. Roughly, yes.

13 GRAND JUROR: Thank you.

14 GRAND JUROR: Another question, sorry. So,
15 you were the person in command along with two other
16 sergeants. Were you talking to each other all of the
17 time? How does that work?

18 THE WITNESS: Sergeant Clinton and myself
19 responded. When they said house supervisor when the
20 initial call comes out, does a supervisor acknowledge
21 the call, I stepped up, show me going to that call,
22 please. As we arrived, Sergeant Clinton and myself
23 are there, we come into the parking lot. We see him,
24 he disappears back into the parking lot.

25 Eventually, acting Lieutenant Anderson, who

1 was a sergeant, he's working out of class that night,
2 shows up. So in the core group of officers and when
3 he arrived exactly, I cannot tell you. But in this
4 core group of officers, there was myself and one other
5 sergeant, Sergeant Clinton. And, of course, because
6 of how fast it's going, we didn't have the luxury,
7 although we were trying hard to slow it down, get this
8 isolated. And we can call in additional resources to
9 de-escalate it.

10 We were looking for a lull in the action,
11 where we could -- if I understand the question
12 correctly, sir, have the opportunity to have a quick
13 meeting of the minds. My suggestion is we need the
14 SERT team here and the SWAT team here now. So it
15 would have been very quick. We were working quite
16 well together as a team. But it happened too fast.
17 We did not get the lull in the action to sit down and
18 kind of meet up and chat real quick.

19 GRAND JUROR: There was no face-to-face
20 meeting. I understand things were rapidly spiraling
21 at a fast pace. Do all of the police there,
22 lieutenants and two sergeants, can they hear each
23 other's comments on the radio?

24 THE WITNESS: Yes.

25 GRAND JUROR: If there was time, what I am

1 getting at, some people were not on channel 3, and
2 others were on channel 1?

3 THE WITNESS: Yes. It's east precinct
4 dispatch, every officer there is listening to east
5 precinct dispatch. Lieutenant Roesch is actually the
6 night shift lieutenant. We're getting close to the
7 night shift, and so she didn't respond to the scene
8 until she heard deadly physical force was used. She
9 had her shift and roll call to think about.

10 GRAND JUROR: That's a person who did get
11 there --

12 THE WITNESS: She did after the fact.

13 GRAND JUROR: Somewhere?

14 THE WITNESS: Yes, correct.

15 GRAND JUROR: Who was the person in command?

16 THE WITNESS: That would be me.

17 GRAND JUROR: That's what I thought.

18 MR. REES: Anything else?

19 GRAND JUROR: Thank you for coming back. It
20 helps. It's a very chaotic, stressful situation for
21 sure. And, uhm, I appreciate your sharing.

22 THE WITNESS: You're welcome. Glad I'm still
23 here.


24 MR. REES: Thank you.

25 (Grand jury adjourned at 1:25 p.m.)

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

3 I, JULIE L. BOURGEOIS, an Official Court Reporter
4 for the Multnomah County Circuit Court, hereby certify that
5 I reported in stenotype the foregoing testimony and
6 proceedings had in the aforementioned case; that thereafter
7 my notes were reduced to typewriting under my direction, and
8 that the foregoing transcript, consisting of 102 pages, is a
9 true and correct transcript of said oral proceedings.

10 Witness my hand in Portland, Oregon, this 5th day
11 of March, 2013.

12
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15 JULIE L. BOURGEOIS
16 Official Court Reporter
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1 TRANSCRIPT OF PROCEEDINGS 3/5/13 1:10

2

3

WILLIAM EARL,

4

called as a witness in behalf of the

5

State, being first

6

duly sworn, was examined and testified as follows:

7

MR. REES: Sir, if you can please state your

8

name and spell your name for the record?

9

THE WITNESS: William Jack Earl,

10

W-I-L-L-I-A-M, Jack, J-A-C-K E-A-R-L.

11

EXAMINATION

12

BY MR. REES:

13

Q What's your occupation?

14

A I'm a fire fighter, paramedic for Portland Fire

15

and Rescue.

16

Q How long have you done that type work?

17

A Just got to my four years with Portland. I was a

18

fire fighter, paramedic with Ashland Fire and Rescue down in

19

southern Oregon for about three years, and with a private

20

ambulance company for about two years prior to that.

21

Q And so, just real briefly, what do your duties

22

involve as a paramedic, fire fighter?

23

A Uhm, well, our main purpose as a fire department

24

is to provide fire protection for the city. On every truck

25

and engine we basically have a paramedic working on those,

1 and we're in charge of emergency medical calls. Uhm, and we
2 basically want to keep people's vital signs within normal
3 ranges on the way to the hospital. We don't really
4 diagnose, we don't do long term treatment. We just get
5 people's blood pressure up, we change their heart rates or
6 heart beats to the right ones, and get them to the hospital.

7 Q What's the training involved in order to become a
8 paramedic?

9 A For the state of Oregon, I believe it's one of
10 very few in the nation that require a two year degree,
11 associate's degree in paramedicine, and yearly
12 recertification in specialty areas, one being heart, kids,
13 traumatic injuries, so quite a bit of training.

14 Q Okay. And I imagine you have been out on hundreds
15 or thousands of emergency calls?

16 A Yeah, quite a few.

17 Q Were you working on duty on February 17th, 2013?

18 A I take it if that was the night of the incident, I
19 was.

20 Q Okay. We're talking about a shooting call at
21 Portland Adventist Hospital.

22 A Yes, I was there.

23 Q Okay. And what information did you receive about
24 that call going in?

25 A Uhm, it was a little bit of vague information

1 coming from the dispatch. It came in as an assault, I
2 believe. Meaning -- and if we had continued to an assault
3 call, we always go stage, meaning we go fast to a certain
4 area, sit there, and then wait for the police to tell us to
5 come in. But in this particular situation, the cops had
6 cleared us prior to us staging. So we left the fire house,
7 code three, lights and sirens all the way to the scene.
8 Never paused anywhere.

9 Q You didn't stop and wait?

10 A No, never needed to, because we were cleared by
11 dispatch and police to go in prior to doing that.

12 Q So, do you have an idea how long it took you from
13 the station to the location where the patient was?

14 A We have accurate numbers. I'm going to say under
15 five minutes.

16 Q What do you see when you roll up to the parking
17 lot outside of the hospital?

18 A Lots of cop cars all over the place, including one
19 ambulance, meaning that AMR arrived prior to our arrival.
20 How that works is, whoever arrives first on any call, they
21 take their gear in, all of their medical equipment. If we
22 arrive first, we take our medical equipment in.

23 In this case, they were there first. And we were
24 cleared by the cops, they pointed us in the direction of the
25 patient, and we walk directly to the patient and found AMR

1 starting to work or assess the patient.

2 Q What was your observation of the patient's
3 condition when you first had contact?

4 A Not good. Patient -- I believe his eyes were
5 open, he was laying supine, meaning on his back, on the
6 ground, with several gun shot wounds. He was very pale,
7 uhm, no obvious signs of movement. Without touching him, he
8 appeared unconscious, not breathing. And also pulseless and
9 apneic, meaning he probably most likely did not have a pulse
10 and was not breathing as well.

11 Q Were any steps taken by yourself or others to see
12 if it was possible to revive the patient?

13 A Yes. Uhm, in traumatic cardiac arrest issues,
14 meaning that if somebody's heart stops as a result of a
15 traumatic injury, we don't have to do anything. But in this
16 situation, we hooked up the monitor more to time stamp when
17 we confirmed death. Uhm, and there was a blip, basically,
18 on the monitor. What that is, is an agonal beat. If
19 somebody recently just dies, their heart will continue to
20 move, electrically move a little, and you can see that on
21 the monitor.

22 Because that was happening, we started CPR. We
23 did that for approximately two minutes. And CPR basically
24 consists of chest compressions and breathing for them.
25 After that was done, after the two minutes, we looked at the

1 monitor again, and this time those bleeps were even less
2 amount of bleeps. Basically, that means this person was
3 dead, and it was just an agonal beat. And real quick
4 everybody -- all six of us that were treating the patient,
5 we talked amongst ourselves, is everybody okay with calling
6 this, and we ceased efforts then.

7 Q By calling this, you mean to declaring this person
8 was deceased?

9 A Yes. And not continuing resuscitation efforts.

10 Q Thank you.

11 Any questions from the grand jury? All
12 right. Thank you, very much.

13 THE WITNESS: You bet.

14

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25

1 SPENSER ZAHARIE,
2 called as a witness in behalf of the
3 State, being first
4 duly sworn, was examined and testified as follows:

5 MR. REES: Be seated. When you're ready,
6 state your full name and spell your name for the
7 record.

8 THE WITNESS: Spenser Christian Zaharie,
9 S-P-E-N-S-E-R, C-H-R-I-S-T-I-A-N Z-A-H-A-R-I-E.

10 EXAMINATION

11 BY MR. REES:

12 Q Mr. Zaharie, are you currently a student?

13 A Yes.

14 Q And what are you studying?

15 A Nursing.

16 Q Where are you involved in your studies?

17 A You mean what year?

18 Q No, at what location.

19 A Walla Walla University, Portland campus.

20 Q And so is that immediately adjacent to Portland
21 Adventist Medical Center?

22 A Yes.

23 Q All right. I want to ask you about some
24 Smartphone video that we're going to watch in just a moment,
25 that shows an incident in the staff parking lot at the

1 medical center, which is located immediately adjacent to
2 dorms where I believe you and other nursing students live.

3 A Yes.

4 Q Are you the person who took that Smartphone video?

5 A Yes.

6 Q All right. Could you explain to the grand jury,
7 please, how you took the video, and why you took it?

8 A Uhm, I took it -- how I took it?

9 Q Uh-huh.

10 A I took it with my iPhone. Uhm, and why I took it?

11 Q As far as, first in terms of how you took it, if
12 you can explain physically how you positioned yourself in
13 order to take it. My understanding is, you were crouched
14 down in a position of safety, and holding the phone up out
15 of the window?

16 A Yes. I heard yelling outside, and I did not want
17 to be seen. So, I started videoing it, and I placed the
18 phone on my window sill as I was crouching next to the
19 window sill.

20 Q And in that crouched position, were you able to
21 see the screen of your Smartphone?

22 A Yes.

23 Q So you could determine that you were recording
24 whatever was happening out in the parking lot?

25 A Yes.

1 Q Okay.

2 A I didn't want my phone to be seen. So, there are
3 parts of the video where you can't actually see the person.
4 And so that's why you can't really see him.

5 Q Because you were not able to --

6 A I didn't want to place my phone any farther out to
7 be seen.

8 Q Yeah. Okay. And so the second part of my
9 question was, why did you take the video, meaning, uhm, to
10 put it another way, was there something about the event in
11 the parking lot that made you decide that you wanted to take
12 this video?

13 A Uhm, I heard yelling, uhm, I was not sure what it
14 was about. I saw a guy running up to a car, yelling. I
15 thought maybe he was getting picked up or something. I'm
16 not exactly sure where he was going. But, it seemed like
17 some kind of major issue.

18 Q So what was your thought in deciding to record the
19 events?

20 A Honestly, I don't really know. I never videoed
21 out of my window before. I thought, you know, something
22 interesting was going to happen, I would get it on video. I
23 did not believe that it was going to come to that point, but --

24 Q After you took this video, did you show it to some
25 other people in the dorm?

1 A I did.

2 Q And then did you have contact with detectives from
3 the Portland Police Bureau?

4 A I showed it to the Dean, and then she contacted
5 the police or the police came in, and I'm assuming that she
6 talked to them. So that's how I was involved or I got
7 involved with the police.

8 Q Did you then turn the video over to the police?

9 A Yeah.

10 EXAMINATION

11 BY MR. RAMRAS:

12 Q Just a few quick points. You said that you went
13 to the Portland campus of Walla Walla. So did you know
14 Matthew Roberts before this whole event?

15 A Yes.

16 Q How would you categorize your relationship with
17 him?

18 A Acquaintance, lives next door to me.

19 Q When you first saw this person in the parking lot
20 get up onto a vehicle, did you know whose vehicle it was?

21 A No, I did not.

22 Q And you said that you were sort of crouched down
23 because you didn't want to be seen. Do you mean by the
24 person that was out in the parking lot?

25 A Yes.

1 Q And this may -- I mean, I know this sounds like
2 sort of a silly question, but why was it you didn't want to
3 be seen by him?

4 A Uhm, if I ever showed it to other people, I
5 wouldn't want him to like come after me or I didn't want to --
6 I didn't want him to know I was videoing, so that he would
7 come back at me or something.

8 Q Okay.

9 A Throw a rock at my window.

10 Q Okay. That's all I have.

11 MR. REES: Any other questions? All right.

12 Thank you, very much.

13 THE WITNESS: That's it?

14 MR. REES: That's it.

15 Let's swear this witness in again.

16 BRYAN STEED,

17 called as a witness in behalf of the

18 State, being first

19 duly sworn, was examined and testified as follows:

20 EXAMINATION

21 BY MR. REES:

22 Q Detective, if you could for the record restate
23 your name.

24 A Bryan, B-R-Y-A-N, last name Steed, S-T-E-E-D.

25 Q Detective Steed, yesterday I think we finished

1 your testimony with the playing of the BOEC radio dispatch
2 traffic of the police officers involved in this situation.
3 I want to ask you now about a Smartphone video that was
4 taken by a nursing student named Spenser Zaharie. Are you
5 familiar with that Smartphone video?

6 A Yes.

7 Q And did you bring a copy of that to the grand
8 jury?

9 A Yes, I did.

10 Q All right. And, so, uhm, before we play it for
11 the grand jurors, maybe you can explain for us what was done
12 by the police bureau in order to make it a little easier to
13 view than the original format?

14 A Uhm, detectives that night of the shooting had
15 located the witness, uhm, and were able to obtain the raw
16 video from his iPhone. The video was -- some of the video
17 wasn't properly orientated, so we looked at it, things made
18 sense, some of it was kind of sideways from the way he was
19 taking it. We took that video to our support division, and
20 they looked at the video, and they reorientated the video so
21 it plays in a nice, linear pattern. And they also listened
22 to the sound on the video and put in subtitles.

23 Q Let's go ahead and we'll play that video. Feel
24 free to move around.

25 MR. RAMRAS: I'm not sure what the volume

1 will be like. I may have to turn it down if it's too
2 loud.

3 (Video was played at 1:30, concluded at
4 1:33.)

5 MR. REES: Was everyone able to see him
6 running in the parking lot there at the end?

7 GRAND JURORS: Yeah.

8 THE COURT: Anyone want to see that again?

9 GRAND JURORS: (Shakes heads no.)

10 BY MR. REES:

11 Q Okay. Detective, I would like to ask you now
12 about just the scene, itself, for purposes of orientation,
13 now that we have seen the video. If you would go ahead and
14 approach this aerial view of Portland Adventist Medical
15 Center or Hospital. If you would, just explain to the grand
16 jury what we're seeing on the diagram.

17 If you would maybe start with what's marked as the
18 red 4Runner. We have heard about this subject jumping on
19 top of a vehicle. And I believe in the video we just saw,
20 you can see the 4Runner immediately outside of the window;
21 is that correct?

22 A Yeah. I think that 4Runner is just -- the main
23 vehicle you see is not the 4Runner, but just to the right,
24 you see the back end of that 4Runner.

25 GRAND JUROR: Isn't the main one the Suburban

1 the other people were in?

2 THE WITNESS: Yes, the Suburban. I'm not
3 sure who was in that one.

4 BY MR. REES:

5 Q Okay. So the building on the chart, it appears to
6 have a giant letter "T" on top of it. Is that the building
7 where the nursing students live?

8 A Yes, that's the nursing students' building there.
9 And Spenser Zaharie is like the second window in, like his
10 view out the window is right here (indicating).

11 Q We're seeing a large parking lot for the staff.
12 What are noted as far as these pinpoints in the parking lot?

13 A This is a bird's eye view. This is where the red
14 4Runner was. It's just a little bit to the right of the
15 window you saw the video taken from. There is a chain link
16 fence that starts here, and runs around most of the
17 perimeter of the parking lot. There's an exit gate here for
18 pedestrian traffic. And then this is a set of gas pumps.
19 And this is the street where you turn in. Main Street runs
20 approximately this way (indicating). And then the ER
21 entrance is in here, and you drive up the ramps into the ER
22 entrance here. And there's a set of stairs that come down
23 here.

24 Uhm, there's a Dodge Durango that was here, uhm,
25 that we found multiple bullet strikes to. Number 17 is

1 approximately where Sergeant Voeller was. The other
2 sergeant's car, there was two patrol cars in this area here,
3 uhm, where the K-9 car came in just after the shooting,
4 pulled up next to them. Uhm, and then there was some pieces
5 of a cell phone found over here (indicating).

6 Q All right. Before I go to the next diagram, any
7 questions?

8 GRAND JUROR: Real quick, the suspect or the
9 person who was shot, he was shot between or right next
10 to the Durango, is that where --

11 THE WITNESS: No. He was approximately where
12 number 23 is here, there was a distance --

13 GRAND JUROR: It's between a couple of cars?
14 It wasn't a wide open space?

15 THE WITNESS: No. There was multiple parked
16 cars in the area. Not as many as what's in that
17 picture now, but there were multiple parked cars
18 there.

19 GRAND JUROR: Sure, I understand.

20 BY MR. REES:

21 Q Now, this is a crime scene diagram that was drawn
22 after the shooting with everything in place as it was at the
23 time of the shooting; correct?

24 A Correct.

25 Q All right. And if you -- do you need a legend to

1 it, because I want to ask you about the different placard
2 numbers.

3 A Yeah. Let me grab my notebook just in case. I
4 think I know most of them.

5 Q I have it right here.

6 A That's probably easier to hold on to.

7 Q So if you can stand to one side. Why don't you
8 just explain to the grand jury what we're seeing on the
9 diagram, both in terms of physical -- the main physical
10 objects and the placard items.

11 A All right. First thing, the Dodge Durango is over
12 here. This is where the suspect fell. These two cars, an
13 Avalon, and I believe this was a Ford pickup, Sergeant
14 Voeller was somewhere, and with Officer Hearst in this area.
15 This is Sergeant Anderson's car. And I'm not sure whose car
16 this was, but it was driven up by one of the other officers.
17 And this was the K-9 car that came in immediately after the
18 shooting.

19 Q So, just in terms of reference, those three police
20 cars on the left-hand side, that's at the entrance to this
21 staff parking area?

22 A Right. As you come up the driveway here, if you
23 turn to the right, that will take you up to the emergency
24 department. The left goes into that giant parking lot.

25 Q All right.

1 A Uhm, placards number 1, 2, 3 and 4 are 9
2 millimeter shell casings. And then these placards, 5
3 through 20 are a variety of either 9 millimeter shell
4 casings or 223 shell casings, which are from the AR-15
5 rifle. There were five AR-15 shell casings, and about
6 ten -- ten 9 millimeter shell casings at this location.

7 Then these numbers 21, 22, 23 are all items
8 associated with the suspect, either bullet fragments or
9 clothing or the actual body itself. Uhm, 23 is a piece of a
10 black handle belonging to a telephone handset. And then a
11 Dodge Durango, all these different letters are various
12 bullet strikes to this Dodge Durango. There's a bullet
13 strike in the light pole. There was a bullet strike on the
14 pavement in front of the Durango, two in the passenger side,
15 two through the license plate, one kind of underneath it,
16 would be like the air dam part. And then there was a round
17 that skipped across the top of the hood.

18 Q All right. Any questions about that diagram?
19 Thank you, detective. Based on the cartridge casings that
20 were collected from the parking lot, as well as the
21 examination of the weapons used by the three shooting
22 officers, uhm, were you able to determine how many rounds
23 were fired in total by the three shooting officers?

24 A Yes. There were 19 total rounds, 15 of those were
25 9 millimeter and five were 223 rounds.

1 Q Were you able to determine among the three
2 officers how many rounds each officer fired?

3 A Yes. Officer Royce Curtiss was the one that fired
4 four rounds back where the patrol cars are. Then Sergeant
5 Nate Voeller fired his primary pistol, a 9 millimeter, he
6 fired the ten rounds. And Officer Andrew Hearst had the
7 AR-15, and he fired five rounds.

8 Q Have those officers been at this time informed of
9 your findings in terms of how many rounds they fired?

10 A No. They were present when we did the count down.
11 At the beginning when we were processing the officers, we
12 count down all of the rounds in their duty weapons, their
13 magazines, any other weapons they might have on them. So
14 they were aware at that time how many rounds were or were
15 not fired out of the gun. But we have not told them
16 specifically how many rounds we believe they fired.

17 Q Let me ask you now about placard item number 23 on
18 the diagram, which you indicated is part of a telephone
19 receiver or handle, it's been called, part of a telephone.
20 Did you bring that item with you?

21 A I did.

22 Q And if you would, please, show that to the grand
23 jury.

24 A Uhm, because this item is labled a biohazard, it
25 may have some blood on it. So I'm just going to use gloves

1 and show it to you, and have you not handle it. I did not
2 see any visible blood on it, but just because of the way it
3 is, we are going to take that precaution.

4 GRAND JUROR: Were you able to determine
5 where this phone came from? Was it in the room or
6 some other part of the hospital?

7 THE WITNESS: Yes. We were able to determine
8 where it came from originally, yes.

9 GRAND JUROR: Where is that?

10 THE WITNESS: That was from the secure room
11 where Mr. Hatch was originally placed once he got
12 inside of the hospital.

13 This is a piece of plastic found at the
14 scene. It's just the outside part of a telephone
15 handset. If you want a closer look on that.

16 BY MR. REES:

17 Q All right. Thank you.

18 GRAND JUROR: I wanted to ask for
19 clarification, you indicated there were 19 rounds
20 total?

21 THE WITNESS: Yes.

22 GRAND JUROR: Fifteen 9 millimeter?

23 THE WITNESS: Fourteen 9 millimeter.

24 GRAND JUROR: Five of the 223?

25 THE WITNESS: Yes.

1 GRAND JUROR: Is that the AR-15?

2 THE WITNESS: That's the AR-15 rifle, yes.

3 BY MR. REES:

4 Q Uhm, are you aware of any instances where
5 individuals have used a phone or part of a phone to simulate
6 a weapon in connection with a crime such as a robbery?

7 A Yes. In talking to, uhm, two of our robbery
8 detectives, they informed me in the past -- over the years
9 they have been robbery detectives, where they had more than
10 one occasion someone has simulated a robbery, either using a --
11 usually, a cell phone they used to pretend it was a gun.
12 Usually it was in their pocket poking out. Or some sort of
13 phone in their waistband that they just kind of gave a brief
14 flash thing, something on the lines, "I have a gun, do what
15 I tell you," kind of thing.

16 Q All right. Going back to the question from the
17 alternate foreperson about whether you were able to
18 determine where that part of the phone came from, let me
19 show you this exhibit, and I will ask you to identify that.

20 A This exhibit, I will pass it around, this is
21 inside the secure rooms at Portland Ad, they have a set of
22 telephones. It's a double-handled phone, used for
23 translation purposes. If they have a non-English speaker,
24 they can talk on one end and have it immediately translated
25 on the other end. In this particular one -- in room number

1 12 where Mr. Hatch was, one of the handset receivers had
2 been unplugged from the telephone, was not in that telephone
3 console.

4 Q And was that discovered by detectives in the hours
5 following the shooting?

6 A Yes. Once we had a chance to go actually up to
7 the scene and look at the piece of plastic, uhm, we realized
8 what it likely would be. And we went back to the hospital
9 and went into the room looking around, and immediately saw
10 that telephone missing from the room.

11 Q Okay.

12 GRAND JUROR: Can I ask a quick question?
13 Nobody in the hospital staff indicated hearing noise
14 from that room. He must have made some noise breaking
15 the handset.

16 THE WITNESS: No. The handset was broken
17 outside, it's not on there.

18 MR. REES: Tha't our next exhibit.

19 THE WITNESS: Okay. That will take care of
20 it.

21 BY MR. REES:

22 Q All right. And so the next exhibit is what?

23 A This exhibit is the internal workings of that
24 handset. It was found in one of the planters near the gas
25 pumps, in that large diagram where I showed you where the

1 gas pumps were, one item back. So it would have been --
2 here's the gas pumps, this would have been on this island
3 right here, where the yellow dot is, the phone pieces were
4 in there.

5 Q That's placard number 30, the photograph?

6 A Right.

7 Q Which is not here on this diagram, because it's --

8 A It's some distance away.

9 Q Right.

10 GRAND JUROR: Well, that makes sense. I was
11 wondering -- I mean, the security guard seemed so on
12 top of things and in control of the situation. And
13 somebody whacks a phone, I was just wondering
14 yesterday, how come nobody heard that? You answered
15 that question. Obviously, it was out in the middle of
16 the parking lot.

17

18 BY MR. REES:

19 Q In viewing the phone, Detective Steed, it looks as
20 if it was simply removed by removing the wire clip?

21 A Right. He just unplugged the phone cord from the
22 phone handset.

23 Q Any other questions for Detective Steed?

24 GRAND JUROR: I have a question on the video.
25 Could we look at the other chart or map, please? So,

1 he was between the Durango and number 17, I think.

2 THE WITNESS: Yeah. He's right about where
3 23 is, yeah.

4 GRAND JUROR: In the video, we saw him leave
5 the 4Runner. He ran -- we could see him running
6 across.

7 THE WITNESS: Right. The 4Runner is here.
8 He's going across.

9 GRAND JUROR: I would have expected more time
10 to elapse between the 4Runner and his arriving where
11 you heard the shots, just because it sounded like the
12 parking lot was much larger?

13 THE WITNESS: Well, from where this 4Runner
14 is, uhm, to that placard there, is approximately 250
15 feet or not quite a football field. So however long
16 it takes somebody to run about 75, 80 yards, uhm, you
17 know, somewhere not very long, fifteen seconds total,
18 maybe.

19 GRAND JUROR: There was just one command -- I
20 only heard it one time, "Stop. Hands up. Stop."

21 THE WITNESS: I think there was more than one
22 command, I think there was at least two people yelling
23 "Stop," and then one, "Hands up."

24 GRAND JUROR: Okay.

25 MR. REES: We can watch that video again.

1 GRAND JUROR: That's all right. It's
2 clarification for me

3 MR. REES: If you want to watch it again, it
4 is easy to do. All right. Any more questions about
5 this, or should I put it down? Okay.

6 Thank you, Detective Steed.

7 THE WITNESS: Thank you.

8 ANDREW HEARST,
9 called as a witness in behalf of the
10 State, being first
11 duly sworn, was examined and testified as follows:

12 EXAMINATION

13 BY MR, REES:

14 Q Afternoon, officer. Please state your full name
15 and spell your name for the record.

16 A My name is Andrew Hearst, A-N-D-R-E-W H-E-A-R-S-T.

17 Q Are you a member of the Portland Police Bureau?

18 A I am.

19 Q How long have you been a Police officer?

20 A I have been serving since November of 2009.

21 Q And prior to becoming a police officer, what was
22 your occupational or educational background?

23 A I graduated from the Multnomah Bible College, and
24 then I went to work as an assistant apartment manager out in
25 Aloha.

1 Q Since you became a police officer, have you worked
2 in a particular precinct, or have you worked in various
3 precincts around the city?

4 A I've work in all of the different precincts. We
5 have the three different precincts. But primarily I've
6 worked in east precinct.

7 Q Is that your current assignment?

8 A It is.

9 Q What's your current shift?

10 A The afternoon shift, which goes from 4:00 p.m. to
11 2:00 a.m.

12 Q Were you working your regular patrol duties on
13 February 17th, 2013?

14 A I was.

15 Q What time did you arrive at the precinct to begin
16 your shift?

17 A I arrived around 3:30, just enough time to dress
18 down and get my equipment ready for the day.

19 Q All right. And after you changed into your
20 uniform and got your gear ready, where did you go after
21 that?

22 A After attending roll call and I left the precinct,
23 and I recall just being on regular patrol. I was working
24 994 district, which is the most southern district, it
25 borders Clackamas County. I remember just patrolling, just a

1 regular, routine day.

2 Q Was anything unusual going on in your personal
3 life at that time?

4 A No.

5 Q You said the shift was routine, so no unusual
6 calls or anything?

7 A No unusual calls. I think I arrested a person
8 that had a warrant, but nothing unusual at all.

9 Q All right. Do you work in a one man car just
10 yourself, or does another police officer ride in your car?

11 A No, I work alone usually. So I was working alone
12 February 17th.

13 Q Let me ask you now about the incident that
14 occurred in the parking lot at Portland Adventist Medical
15 Center. Uhm, when did you first become aware or what made
16 you aware that there was some sort of emergency occurring at
17 the medical center?

18 A I was on a perimeter position at 111th and
19 Schiller in southeast Portland. I was there because a
20 subject had run away from another police officer that was
21 trying to apprehend him. I was on a perimeter position,
22 just maintaining a presence, trying to keep this person
23 inside of our perimeter.

24 Q Sorry. If I can interrupt to be clear, that
25 situation you're describing is unrelated to the Portland

1 Adventist call?

2 A Yes, it is. I'm just painting a picture of where
3 I was at beforehand.

4 Q All right.

5 A So I was just standing outside of my car, trying
6 to stay warm that night. I recall hearing dispatch come
7 over the radio and say there was a person at the Portland
8 Adventist Hospital with a gun. And that was the initial
9 tidbit of information that I recall hearing. And, of
10 course, immediately hearing that, in light of recent events
11 in our country, I'm thinking, why in the world is a person
12 at a hospital with a gun? Is this potentially an active
13 shooter? Why is this person here with a gun?

14 So I hear dispatch call three cars to respond, and
15 a sergeant to respond. And I recall the primary officer
16 asking on the radio for a long gun, which is an AR-15 rifle.
17 And Officer Tommy Clark said that he was en route. And the
18 officers that were coming, were coming from the 960's
19 district, which borders Gresham. So I knew they would be a
20 little ways off. And I recall hearing Sergeant Voeller come
21 on the radio and say he was also en route to the scene.

22 And I was thinking that this type of call could
23 potentially take quite a few resources to handle this,
24 whatever this situation could become. So, with that in
25 mind, the primary officer on this perimeter call, this call

1 that I'm standing outside of my car about, he comes on the
2 radio and says, uhm, I only need a few officers to help me
3 here. Everyone else leave, go and assist the situation in
4 the emergency at Portland Adventist.

5 So that's when I jump in my car and I start
6 driving there. I drive Code 3, lights and sirens. And I
7 drive north up 111th, I turn left, jog down to 92nd on
8 Holgate. And at 92nd I go north up to Powell. And it's at
9 Powell and the freeway, you can continue north up to
10 Division Street. And I cross Division, still continuing
11 north, and I go on 96th up to the west side of the Portland
12 Adventist campus.

13 And as I'm driving there, I'm getting updates from
14 dispatch about where this person is and what is going on. I
15 recall an update of the description of the person, that he
16 was a white male, he was in his 40's, and he was wearing a
17 gray zip up hoodie or jacket. I remember clearly the gray
18 zip up.

19 Uhm, while driving there, also I remember hearing
20 that he was in the employee parking lot. And I didn't know
21 exactly where the employee parking lot was at, because
22 there's quite a few parking lots around Portland Adventist.
23 But another officer came on the radio and said that the
24 parking -- the employee parking lot is near the emergency
25 room entrance, which I'm very familiar with. I also recall

1 hearing that the guy with the gun had pointed the gun at a
2 security vehicle, which I assumed was most likely occupied.
3 So he's pointed a gun at a security vehicle and security
4 officers.

5 And I remember hearing another officer as I was
6 driving there, say on the radio that he was walking towards
7 or he was approaching another car in the parking lot that
8 was driving, it was moving. So, now I'm thinking, goodness,
9 why is this guy approaching a vehicle in this parking lot
10 that's occupied? So as I'm driving there, I'm hearing these
11 updates, and it's beginning to paint a picture of
12 escalation.

13 Uhm, the initial tidbit was there is a guy with a
14 gun at PA. Of all places, he's at a hospital. What is he
15 doing there? Why is he there with a gun? Then I hear the
16 updates that he's pointing this gun at a security vehicle.
17 Not just a random civilian or person walking down the
18 street, he's pointing it at a marked security vehicle. And
19 beyond that, now he's walking towards occupied vehicles. So
20 I'm greatly concerned. What is this person doing? Is he
21 planning on taking a hostage? Is he going to shoot someone?
22 What are his intentions?

23 I also recall hearing that a sergeant, I believe
24 it was Sergeant Voeller said on the radio, that "He sees us,
25 get hard cover." So there was no doubt in my mind as I

1 arrived on scene that this person knew that the police were
2 present, and he knew where we were.

3 As I come into the area, I hear Sergeant Clinton
4 say on the radio that there's a person walking westbound on
5 the street, and I was assuming it was Main Street, because
6 that borders Portland Ad. Walking west bound that matched
7 the description somewhat. I was concerned about that,
8 because I was coming in from the west. I didn't want to
9 have a confrontation alone with this person. So I asked on
10 the radio, is it safe for me to come in from the west. I
11 didn't hear a response, which is completely understandable
12 in these types of situations, because there are a million
13 and-a-half things going on. Sergeant Clinton may not have
14 heard the transmission. He could be doing something else.

15 But as I'm driving down Main Street, I've slowed
16 way down, and I'm looking out in front of me for the
17 individual, and I don't see anyone. As I'm slowly creeping
18 forward, I don't see anyone. I come up to the main
19 emergency room entrance and park my car there.

20 And it's there that I can look down the sidewalk,
21 and I see in front of me to the east, a group of officers.
22 And I would say there are about four officers there. One, I
23 clearly remember was Officer Tommy Clark. And I remember he
24 was there, because he had his AR-15. And I saw them running
25 to the east and along the -- at that location, there's a

1 chain link fence that runs the border of the north side of
2 the lot, and it runs east to west. So they were running
3 down this fence line, looking into the lot. So I get my
4 Kevlar helmet on, I'm certified in carrying an AR-15 rifle
5 as well, so I take it out of the rack --

6 Q If I can interrupt?

7 A Absolutely.

8 Q You said you put your Kevlar helmet on. Explain
9 what that is, why you did that?

10 A Absolutely. So we're all issued Kevlar helmets or
11 a ballistic helmet, similar to what you might see a person
12 in the Army, or the Air Force, military personnel wearing.
13 And we wear them to protect our heads, not only from -- not
14 just like a construction worker from falling material, but
15 from bullets that might be flying through the air at us, to
16 protect our head from that. So this is a high grade, highly
17 protective piece of equipment. I'm putting it on, because
18 there's a guy with a gun. He's at PA, and he's escalating
19 in this threatening, aggressive behavior. I don't know what
20 he's going to do. So, to keep myself safe, I will put this
21 helmet on.

22 Q Is it your understanding that that helmet affords
23 absolute protection against firearms, or rather does it
24 provide some potential protection?

25 A It provides some. At this point, I guess that's a

1 good point, because I don't know if this person has a
2 handgun or a rifle. If he has a rifle, my helmet is not
3 going to help me, my bullet proof vest is not going to help
4 me. So, no, to answer your question, no, it does not
5 provide absolute protection from firearms.

6 Q All right. The diagram behind you is an aerial
7 photograph of part of the scene. Uhm, would that help you
8 illustrate the testimony in terms of describing where you
9 went after you left your police car?

10 A Absolutely. Can I stand?

11 Q Please.

12 A So, I think you're all familiar with this
13 photograph. You know that Main Street runs along the north
14 side of the map here. So I park my car kind of out of the
15 shot here, about here, and I see these officers down on Main
16 Street running east, and looking to the south and to the
17 middle of the parking lot. So I get out of my car, put
18 helmet on. I unlock my rifle from the rack, and I charge
19 it, I load it. We don't carry our rifles in our cars
20 loaded. So I get out of the car and load the firearm.

21 And I begin to run down to where Officer Tommy
22 Clark is at. I'm doing that because we rifle operators, we
23 like to work in a team, a shooter, spotter team. We do that
24 so the shooter has his focus on operating the firearm. He's
25 worried about marksmanship, keeping us safe. My job as a

1 spotter is going to be to listen to the radio, to keep my
2 head on a swivel, and listen to all of the updates, all of
3 the relevant information, so I can give that information to
4 the shooter, so he can make the best decision he can.

5 So I'm running over to him. Uhm, and I hear on
6 the radio -- let me back up a moment. As I am running to
7 him, I'm looking south also through the chain link fence,
8 and I see out in the middle of this parking lot, what I
9 believed to be the subject, the guy with the gun. Uhm, I
10 believed that, because he matched the description. He was a
11 white guy, about in his 40's, and he was wearing a gray top,
12 long sleeved top.

13 So he matched the physical description, but beyond
14 that his behavior was quite erratic. He was walking north,
15 then south, then east, then west. He was kind of meandering
16 about the middle of this parking lot. I recall not only was
17 he walking about, but his arms were moving, flailing about.
18 And he was yelling. I couldn't understand exactly what he
19 was saying, but he was very clear by his behavior that he
20 was very agitated, something was greatly bothering him.

21 So as I am running over to Tommy Clark observing
22 the guy with the gun, I hear on the radio Sergeant Clinton
23 asking for an AR-15 at the main entrance. Up on the map you
24 can kind of see a final location of the sergeant's car. But
25 this, by my words it's final, because before that it was

1 parked a little more on the main road of the main entrance
2 into the emergency room. So, I do an about face, and start
3 running back to the main entrance. And it's there that I
4 see Sergeant Clinton, Sergeant Voeller, a few other
5 officers, I don't recall what other officers were there.
6 Uhm, and they were all looking up into the middle of the
7 lot.

8 I ran up to them, and kind of my job as the rifle
9 operator is to stand at the front of the line to protect my
10 co-workers behind me as they formulate a plan and assess the
11 situation. So I come up to the front of the line of a team
12 of officers there, and I provide them cover. So I'm aiming
13 in the area of this -- of the guy with the gun, but I'm not
14 aiming at him. Both eyes are open, looking at him, does he
15 have a gun in his hand? What's he doing? What's he saying?

16 So, as we're there, uhm, I want to say this is a
17 constantly -- a dynamic situation. By that I mean, it's
18 constantly changing. There is never a moment where it is
19 static. There's no lull in this situation. He is
20 constantly moving, kind of to the south, southeast. He's
21 moving deeper into this lot. Again, he's not walking with a
22 clear intent or purpose. He's kind of just meandering about
23 the lot, yelling and screaming and flailing his arms.

24 And so as he's moving back into the lot, it's
25 getting harder to see him. This picture shows a pretty full

1 parking lot. But that night at about 9:30, it's only maybe
2 ten percent of its capacity. So there's large holes and
3 gaps where there are no cars. You can see on the map there
4 are also trees here and a few lights. So lighting is -- I
5 don't know if I would describe it as adequate. You can see
6 him, but not with great clarity. So as he is moving to the
7 southeast of the lot, we're having a hard time keeping an
8 eye on him. So, I'm telling the sergeant, "We've got to
9 move forward, I can't see him."

10 So Sergeant Clinton gets into the patrol car and
11 starts inching it forward slowly. We're walking as a team
12 now, just trying to keep an eye on this guy, seeing what is
13 he doing? What's he going to do? And as he continues to
14 move deeper into the lot, we continue just to move slightly
15 up into the east. And also at that location, the entrance
16 into the -- now the employee parking lot, it's a slight
17 depression. So the level around where the final marker of
18 the sergeant's car here, this is lower than the level of the
19 parking lot. So, as he's moving deeper into the lot, it's
20 getting harder and harder to see him.

21 So we finally come up to a point where we can't
22 really move the car forward any more, that's not going to
23 offer us any advantage. So, what Sergeant Voeller and I
24 decide to do is to move up to a car that is parked in the
25 first row of parking stalls. And we move up there, we walk

1 up to that, and I'm able, then, to see him again fully.

2 And, again, I want to say that there is no lull in
3 this. There's no time to make a great, perfect plan. We
4 are constantly moving and having to adjust where we are at
5 to compensate for his movement, because he's constantly
6 moving.

7 Q Is that your final position?

8 A Yes. My final position is once I have moved up to
9 this car.

10 Q Let me use the diagram, the other diagram. So if
11 you want to refer to the crime scene diagram, you can show
12 the grand jury the location you just described, where you
13 ended up with Sergeant Clinton.

14 A Absolutely. So this is where we began. And,
15 Sergeant Voeller and I decide to walk up to this --
16 described as an Avalon. I didn't know it was Avalon. I
17 knew it was kind of a blue-gray four-door sedan that we
18 walked up to. I kneeled down, I placed my rifle across the
19 hood of the car. And I start watching the guy with the gun
20 as he's continuing to move back, yelling and screaming,
21 meandering with what seemed like no direction or purpose.

22 Q So -- I'm sorry. Who is behind the Avalon then
23 with you?

24 A Sergeant Voeller and myself are behind the Avalon
25 together.

1 Q About how close are you to Sergeant Voeller?

2 A He's -- initially, he's right on my side, right on
3 the left side of me, kneeling down as well, initially.

4 Q Do you know whether any other officers are in the
5 area around you?

6 A I know that there are more officers back by the
7 sergeant's car. But I can't see them, of course, because of
8 the car, because my helmet is kind of now cockeyed on my
9 head, because I have been running. So I can hear them
10 working over there talking, and I know they are there, but I
11 can't see them.

12 Q Do you remember what your personal assessment was
13 of this situation in terms of your thought process, and in
14 terms of what you think is happening with this individual in
15 the parking lot?

16 A I preface that by saying, there is so little time.
17 It's -- from the time I have arrived, it's just the amount
18 of time it takes you to walk across the room. Now I've
19 walked to the Avalon and I've knelt down. That's the amount
20 of time I've had to assess this individual. But what I do
21 know is that he's very agitated, by how he's walking around
22 and flailing with his arms and screaming and yelling.

23 Uhm, and I know based on that he's brought a gun
24 of all places to a hospital, and he's pointed it at a
25 security vehicle, I see this elevation of threatening

1 behavior and dangerous behavior. Beyond that, as he's
2 walking to the southeast, he's getting closer and closer to
3 a residential area. There are apartment complexes all
4 around us, and homes all around us. And I'm greatly
5 concerned, if this guy escapes, what's he potentially going
6 to do?

7 Because at that time, I was unaware that we had a
8 complete containment of this person. That's kind of the
9 first thing we're trying to do, is contain the individual.
10 That's all we really have had time to do. We have not even
11 accomplished that yet. We have people, I recall, to the
12 east. And as I arrived, you know, I saw the people to the
13 north. But at that time, I didn't know we had anybody to
14 the south, and I thought we didn't.

15 Before I continue, does that answer your question?

16 Q Yes. So, the next question is, what do you see
17 and hear after you're in that position?

18 A Well, he continues to walk kind of to the
19 southeast, and he gets to this red SUV. And this red SUV
20 from my perspective, I would approximate it's about 75 yards
21 away. It was a long ways away. He climbs up on top of this
22 SUV, and he's standing on the very roof of the car. And he
23 starts -- well, he doesn't start, he continues to yell and
24 scream, in this agitated state.

25 And I thought, he's doing that because he wants to

1 jump the fence, because there was a large fence right behind
2 him. He's going to jump the fence, and he's going to
3 escape. Which, again, to reiterate, I'm concerned about,
4 because we're in this huge residential area, what are his
5 intentions? So I'm greatly concerned about that. But he
6 doesn't jump the fence, he just stands up there. And he
7 faces kind of the middle of the parking lot, somewhat in our
8 direction, and with his arms, you know, up in the air, I'll
9 describe for the record, up at a 45 degree angle, he starts
10 doing this, and shaking his arms up in the air, yelling and
11 screaming (indicating).

12 At that distance, I can't hear what he's saying,
13 but he's clearly very agitated. And I'm very worried, what
14 is this guy going to do? He's not escaping now. It doesn't
15 appear that he's escaping. But he's still acting very
16 dangerous, and in a very threatening way.

17 And it was after that, that everything changed.
18 I'm watching him now through my sites, because it appears
19 that there's a climax almost in the event. I remember
20 feeling some of the anxiety start to grow in me as he is
21 standing on top of the vehicle. Because, it was almost --
22 inside of me, it felt like he was making a final declaration
23 or something of that effect.

24 I tell Sergeant Voeller, I said, "I'm focused on
25 him. I'm focused on my sites," so he is blurry. And so I

1 tell Sergeant Voeller if he points the gun, if you can see
2 the gun, if he points it at officers on the perimeter, tell
3 me, because I can't see him with great clarity. He doesn't
4 do that. He stands up there for a few moments, and then he
5 starts to climb down.

6 And it's -- in my mind I thought, if you have made
7 the decision in your mind to jump down from a car that you
8 climbed on top of, you're just going to jump down, jump off.
9 But he doesn't do it. He slowly climbs down onto the hood
10 of the car, and then he waits there for a few moments. And
11 now he's stopped yelling and screaming, I can't hear him any
12 more. After he stays there for a few moments, then he
13 finishes climbing down to the front of the car, and he waits
14 there for a few minutes. And, again, the anxiety in me, the
15 concern in me began to grow, because of the way he was
16 coming down, it conveyed to me that he was now making a
17 decision. He was formulating a plan. And instead of before
18 he was meandering about this lot, very erratic,
19 unpredictable, he's now beginning to change. And he's now
20 more focused and, again, appearing to formulate a plan and
21 make a decision.

22 After he climbs down off the SUV, he immediately
23 begins walking towards us. And, uhm, he begins walking
24 straight towards where Sergeant Voeller and I were at,
25 directly towards us. And so instead of -- before he was

1 meandering, now he's walking quickly, he's not at a run, but
2 he's walking quickly, with what appeared to me to be with
3 great purpose and intent. He's walking right at us.

4 And what increased the alarm inside of me, was
5 that this map does not show it, but in the parking lot, I
6 don't know exactly where, around the Durango, but in the
7 parking lot, I'm going to say about here, is another car, a
8 smaller sedan, and the route that he has chosen to walk at
9 us, has put that car directly in between us. And that was
10 of great concern to me, because he has been able to cover
11 the distance, more than half the distance to get to us, but
12 he's been able to use this car as hard cover, which in my
13 mind is if he's going to start shooting at us, that was a
14 smart thing to do. So it raised my concern greatly as he
15 walks towards us, and he's using this car as hard cover.
16 That's what I perceived it to be.

17 Once he got to the car, uhm, the next events that
18 took place happened in just a few seconds. But I want to
19 spend a lot of time, not a lot of time, but I want to spend
20 a fair amount of time talking about the things that happened
21 right after that.

22 So as he walks up to this car, I'm thinking he's
23 using this car as hard cover. That's a smart thing for him,
24 really bad for us, like, I'm worried. He turns, and instead
25 of continuing right towards Sergeant Voeller and I, he turns

1 and starts walking right towards the group of sergeants and
2 officers over here. And when he makes that turn, then he
3 starts running. And just as soon as he begins to run, I
4 hear someone yell -- a police officer yell, "Stop" in a very
5 loud, clear, commanding voice. There was no doubt in my
6 mind that this guy heard the word, "Stop." And I heard it
7 once, it could have been said more. But I remember hearing
8 it once, "Stop."

9 And then right after that, I hear him say
10 something. I don't remember with great clarity what he
11 said. I remember the word, "Fuck" very clearly. And then
12 after that, I thought he said, "Fuck it all." At least
13 whatever he said, that was the meaning that I interpreted by
14 what he said, "Fuck it all."

15 And then right after that, someone yelled, "The
16 gun is in his hand." So, at that time, you know, these
17 events happened in the amount of time it takes a person to
18 run, you know, fifteen feet, "Stop, fuck it all," and then,
19 "The gun is in his hand." And it was at that time, that I
20 know this guy has a gun, he's running right at cops, he
21 knows we're here. There's no doubt in my mind, he knows
22 we're here, he's not trying to escape. He's had every
23 opportunity to escape, and he's not. He's not following
24 directions. He has been told to stop, he's not complying
25 with orders. He's running right at police. There was no

1 doubt in my mind he was going to start shooting.

2 And it was either going to be me that goes down,
3 Sergeant Voeller that gets hit, or one of the officers or
4 sergeants over here that gets shot. So I began to fire my
5 rifle. And I began to fire, and I continued to fire until
6 he fell down on the ground. After he -- after he fell down
7 on the ground, we began just to kind of asses him. Is he
8 still a threat? Is he still alive? What are his intentions
9 now? Does he still want to harm us? Where is the gun at?

10 So I'm watching him. Sergeant Voeller and I are
11 watching him, just waiting a moment to see what is he going
12 to do. And I can hear in the background that medical is
13 being called, uhm, the K-9 is being called, and a shield is
14 being asked to be brought up.

15 And Sergeant Voeller begins to yell at me
16 something. I can't hear him, though, because I have just
17 had a whole bunch of gunshots go right next to my head. I
18 still actually can't hear very well out of my right ear.
19 And I have a mic in this ear. He's yelling at me something,
20 I can't hear him. I finally hear, he's trying to tell me,
21 let's do a tactical reload. I said that's a good idea. A
22 tactical reload is a reload that we do in the lull of a
23 situation, to make sure we have the most amount of rounds in
24 our gun, just in case this situation goes awry.

25 So he does a tactical reload, I do a tactical

1 reload. And then he says, you know, he's a sergeant, so
2 there are many other things, responsibilities that he needs
3 to carry on with. So he steps away from me after he checks
4 and he says, "You're good? Yeah, I'm good." I asked him if
5 he's good, he's good, okay. We're safe.

6 He steps away, and then out of the corner of my
7 eye I can see a rescue team being brought up. And the
8 rescue team is comprised of the K-9, I saw the shield up
9 there, and I say a group of other officers. I'm watching
10 the guy with the gun, so I can just see this out of the
11 corner of my eye. And they send the dog up, and the dog
12 bites him. And we send the dog up to bite him, to check if
13 he's faking it, and if he's going to be responsive or
14 unresponsive. And the dog bit him, and he was unresponsive.
15 So, the K-9 handler called the dog back, the dog came back.
16 And then the rescue team approached, took him into custody
17 and immediately after that, medical personnel rushed in and
18 began CPR.

19 And then, of course, thus began all of the post-
20 officer involved shooting necessary steps. So I was pulled
21 away from the scene, and I sat down on the sidewalk.

22 One thing that I want to add that I didn't, is
23 that Sergeant Voeller and I were kneeling down behind this
24 car. Sergeant Voeller asked for Project Respond to come.
25 And he also asked for air support. And I remember dispatch

1 saying that, you know, air support was unavailable. So
2 Sergeant Voeller responded, you know, in essence, get them
3 available, they need to come here. But, of course, the
4 events unfolded too quickly after that to make any of those
5 steps work.

6 Q How did you make a decision to begin firing your
7 weapon at the moment in time that you did?

8 A I think we have heard the build up, guy with the
9 gun at PA, he's escalating behavior, he's pointed it at
10 security, he's on top of the car, he's not escaping. Now
11 he's running at us. Uhm, at that time I have the
12 information that he has a gun. I don't know if he's set it
13 down though, or if he's -- what's the word I'm looking for,
14 if he has it any more. So as he comes running towards us, I
15 have not seen this individual with a gun. He has not
16 pointed it at me and I can't see it. Uhm, but as he runs
17 from the car, and he doesn't stop when he's told to stop,
18 and he kind of makes, in my opinion, kind of a dying
19 declaration, "Fuck it all." And then I hear the
20 information, "The gun is in his hand," there was no other
21 possible explanation in my mind that would justify his
22 actions in that moment. The only thing I could think of is,
23 he's going to do us, he's going to shoot us. If I don't
24 shoot, somebody is going to get killed, sergeant, officer or
25 both.

1 Q At some point after the shooting, did you become
2 aware that this individual was not armed with a weapon, but
3 instead was displaying a simulated weapon?

4 A I have heard that, yes.

5 Q And do you remember when you became aware of that?

6 A I do not recall. I don't recall. It was several
7 days after the incident.

8 Q You're a young police officer. Is this the first
9 time you used deadly force in the line of duty?

10 A Yes, it is.

11 Q I'm sure you have thought a lot about this in the
12 days that followed; right?

13 A Yes.

14 Q This is a traumatic event?

15 A Yes, absolutely.

16 Q Would you have done anything differently, uhm, as
17 you think back on this, or would you do the same thing?

18 A If I had the -- just to clarify, if I had the
19 information that --

20 Q No. With the information you had at the time, of
21 course, because hindsight is 20/20. With the information
22 you had at the time, would you do anything differently than
23 you did?

24 A I have thought of that many times. And every time
25 I come to the same conclusion that, no, there was nothing I

1 could have done different. It was a tragic, terrible
2 situation, with a sad ending. But it was an ending that
3 kept us safe and was necessary. And I don't look back and
4 wish that I would have done anything different or things
5 should have gone different. The conclusion that I came to
6 is one that, again, is tragic, but I believe was necessary
7 in the moment.

8 Q Based on the information you had at that time.

9 A Yes. Based on the information I had at that time,
10 there were no other better options available.

11 MR. REES: Any questions from the grand jury?

12 GRAND JUROR: One real quick one. You
13 mentioned looking at the suspect through the sights.
14 Was that a scope or was it just open --

15 THE WITNESS: No, it's just iron sights, no
16 scope, no infrared, nothing.

17 GRAND JUROR: Do you ever use a scope on that
18 particular gun?

19 THE WITNESS: For Portland Police Bureau, no,
20 we are not given any kind of scopes or anything of
21 that nature. It's just iron sights for all of the
22 patrol rifles.

23 GRAND JUROR: I was going to ask on your
24 training for long rifle, AR-15, you have to judge
25 distances pretty good. But with iron sights that

1 negates it a bit.

2 THE WITNESS: (Nods head.)

3 GRAND JUROR: From the time that you got out
4 of your car to the conclusion, do you have a sense of
5 how long that was?

6 THE WITNESS: I perceived it to be less than
7 five minutes.

8 MR. REES: Anything else?

9 GRAND JUROR: Thank you, very much.

10 THE WITNESS: Thank you, very much.

11 GRAND JUROR: Good luck.

12 KAREN GUNSON,

13 called as a witness in behalf of the

14 State, being first

15 duly sworn, was examined and testified as follows:

16 EXAMINATION

17 BY MR. RAMRAS:

18 Q Can you tell the jury your full name and spell it
19 for them?

20 A Yes. My name is Dr. Karen Gunson. First name is
21 K-A-R-E-N, last name is G-U-N-S-O-N.

22 Q And, Dr. Gunson, what is your title?

23 A I'm the state medical examiner for Oregon.

24 Q What kind of education did you go through to get
25 to that position?

1 A Well, I graduated from Whitman College in Walla
2 Walla, Washington, with a BA in biology. And I also have a
3 bachelor of science degree in zoology from Oregon State
4 University. I graduated from Whitman in 1976, and from
5 Oregon State in 1977. 1977 I started medical school, and I
6 graduated with my M.D. or doctor's degree in 1981.

7 I was asked to stay on as a resident or trainee in
8 anatomic and clinical pathology at Oregon Health Sciences
9 University. I completed that training in 1985. And I went
10 to the Medical Examiner's Office in 1985. And I am board
11 certified by the American Board of Pathology in anatomic,
12 clinical and forensic pathology.

13 Q Just to be clear that everyone knows what that
14 means, what is pathology?

15 A Pathology is laboratory medicine. Anatomic
16 pathologist is somebody who looks at tissues that are
17 removed at the time of surgery, and also does autopsies on
18 people who die in the hospital. A clinical pathologist is
19 somebody who looks at blood and other body fluids in the lab
20 to help diagnose disease in people, in clinics and hospital.
21 And then a forensic pathologist is somebody who does autopsy
22 medicine.

23 So I do exclusively autopsies now. Uhm, my office
24 is four people. We only have six forensic pathologists here
25 in the state. I have four people in my office here,

1 including myself. We do about 1000 cases a year. So I do
2 about 200 or 250 post-mortem examinations every year. As
3 well as I do the administration work to oversee all of the
4 death investigation program here in the state.

5 Q So, what is the difference between your original
6 job when you first started at the medical examiner's office,
7 and your current position?

8 A When I first started, I was the deputy state
9 medical examiner. So I mostly just was doing service work,
10 which would include the autopsies and going to court and so
11 forth. Now I do that, but I also have to take care of all
12 of the budgetary responsibilities for my office. We're a
13 state office, we're a division of Oregon State Police. So,
14 right now we're getting ready, because the legislature is
15 around, to present budget, things like that.

16 Q When you mentioned that there were six forensic
17 pathologists in your area other than yourself, do they work
18 for you?

19 A Yes. Four of us are here, so I have three
20 forensic pathologists here in Portland, this is the state
21 office. One forensic pathologist is in Eugene and one is
22 down in the Medford area. So the six of us cover all of the
23 forensic pathology of the state.

24 Q And I know you said the year that you started
25 doing this, but just another way of stating it, how many

1 years have you worked for the Medical Examiner's Office?

2 A 27 years.

3 Q Can you give us a ball park idea of how many
4 post-mortem exams you have done in those years?

5 A Uhm, well, as I said, I do between 200 and 250
6 autopsies every year. So I have done about 5000, give or
7 take, probably give a few more than 5000.

8 Q When you do an autopsy, other than examining a
9 deceased body, do you consider any other sources in looking
10 at how the person came to die?

11 A Yes. Uhm, we don't ever operate in a vacuum. So
12 I get the hospital records. I have my own death
13 investigators who are sort of like my detectives, who have
14 interacted with police and family members and so forth. So
15 they write a report for me. I also prior to doing an
16 autopsy, if police are involved or detectives are present,
17 have a long talk with them about their information that they
18 have. Uhm, and so I have all that information before I
19 start an autopsy. But we continue to gather information if
20 necessary, even after the autopsy.

21 Q On February 19th of this year, did you perform an
22 autopsy on Merle Hatch?

23 A I did. I performed that autopsy at 9:00 in the
24 morning at the State Medical Examiner's Office which is
25 located in Clackamas Oregon.

1 Q And in this particular case, had you either talked
2 with other medical personnel or reviewed medical records of
3 Mr. Hatch prior to the autopsy?

4 A Yes. I reviewed the medical records prior to
5 autopsy.

6 Q Was there any indication in the medical records of
7 drug use?

8 A There was a suggestion of that, uhm, in the
9 medical records. The attending physician in the emergency
10 room had commented that he thought that there looked like
11 there were injection marks on his arms. And I also made the
12 comment that he was behaving in a bizarre manner.

13 Q Looking at the exterior of Mr. Hatch's body, did
14 you see or note anything that seemed consistent with
15 injection marks?

16 A I didn't see anything that looked like injection
17 sites. However, there were numerous round and scratch-like
18 contusions, and some with central small abrasions. A
19 contusion is a bruise, and an abrasion or skin scrape on the
20 arms, all the way from the wrist upward to the upper arms.

21 In my experience, that can represent either a
22 scratching or picking at the skin, uhm, which we have -- I
23 have seen in people who have been under the influence of
24 methamphetamine or possibly cocaine.

25 Q And to be clear, uhm, one of the things that is

1 currently still in the process of being tested, is his blood
2 for the presence of drugs?

3 A That's correct. Uhm, when we did the autopsy, I,
4 of course, got blood and urine. And I also got the blood
5 from the hospital. They had drawn blood while he was in the
6 emergency room, to test for drugs and alcohol. That testing
7 takes anywhere from six to twelve weeks.

8 Q Now, I want to talk to you a little bit about what
9 happens when a person dies because they have been shot. For
10 those of us who watch movies or television, it seems when
11 someone is shot, they may fly back five feet once they are
12 hit. As part of your training, have you viewed the actual
13 footage of people being shot?

14 A Yes, I have. Uhm, we have a national meeting and
15 at times we do view actual footage, particularly, when the
16 police have been filming a particular event like a stand off
17 or something like that.

18 Q And in your experience, you know, the sort of
19 movie version of someone flying back when shot, how accurate
20 is that?

21 A That's totally inaccurate. The bullet is very
22 small, as you might know. And really the energy imparted to
23 the bullet has very little to do with the mass of the
24 bullet, but has to do with how fast the bullet is traveling.
25 So the velocity matters more than the mass of the bullet, as

1 far as its wounding power. So it's just like the -- it
2 really is E , or energy, equals mass, times velocity squared.

3 So, the faster the bullet goes, the more energy it
4 has, and the more wounding power it has. So when the bullet
5 hits a body, it is imparting all of its energy as a wound,
6 not as it would push anybody back. It's never going to do
7 that. If a person is in motion at the time the bullet hits,
8 they might continue on in that motion. But it's not going
9 to change their motion when they are hit with the bullet.

10 Uhm, also, I think another misconception is that
11 when somebody is shot, that they immediately drop to the
12 ground. And, actually, even if you're shot through the
13 heart or the aorta, the largest blood vessel in the body,
14 you have the potential for activity for maybe 30 or 40
15 seconds, because it takes that long for you to bleed enough
16 to become unconscious and collapse. So, 30 or 40 seconds
17 would be enough for me to get down the hall here. So you
18 can do a lot of activity in that amount of time, there is
19 that potential. And there is certainly that potential if no
20 vital structure is hit with the bullet.

21 Q And you have sort of a built in to my next
22 question. Let me first ask, in this case, how many -- were
23 you able to identify the number of shots that actually
24 struck Mr. Hatch?

25 A Yes. Yes. He was shot six times.

1 Q And of those six, we'll go through where they were
2 in a minute. Of those six, how many of them -- well, let me
3 back up. Are you able to categorize shots that had the
4 potential to be lethal or were lethal, versus shots that
5 were not lethal?

6 A Yes.

7 Q And how many of the six strikes were lethal in
8 this case?

9 A I would say there are two shots that would have
10 been lethal in this case, either one of them could have
11 killed him.

12 Q All right. Let's first talk about the four that
13 would not be lethal. Where did they strike him?

14 A Uhm, there was one that struck him in the upper
15 left chest, and it actually just skimmed over the top of the
16 ribs. It did fracture the ribs, but it did not enter into
17 the chest cavity. And it exited on the side of his body, on
18 the left side.

19 He had another gun shot wound that struck his
20 right upper arm, and the passage of the bullet fractured his
21 humerus or his upper arm bone. That bullet actually exited
22 the inner surface of his right arm, and then fragments of it
23 struck his chest. But they were little bits of fragments,
24 so they didn't penetrate into the actual chest cavity.

25 Another bullet struck his thumb here at the base

1 of his thumb, and it was more of a guttering kind of bullet
2 wound. And that also hit his middle finger and actually
3 removed some of the bone and tissue that was from his middle
4 finger, that was recovered at the scene separate from the
5 body.

6 Q If I could interrupt for a minute, since we're
7 being recorded, you're holding up your right hand to
8 illustrate where the bullet hit. A bullet literally hit his
9 right hand?

10 A Yes.

11 Q Okay.

12 A And then the fourth non-lethal wound was present
13 in the left side of his left thigh, so the outer portion of
14 the left thigh. That bullet hit the skin of the thigh,
15 traveled in the soft tissue on the lateral or side of his
16 thigh, and exited just above his knee. So it was -- that
17 one was going sharply above to below, as far as its path of
18 the bullet through the body. It didn't hit the bone, it was
19 going sharply above to below, before it exited.

20 Q Now, the two that were lethal, I'm really just
21 looking for where on the body those struck him?

22 A Uhm, those struck, both of them on the right side
23 of his body. One of them went through the chest and very
24 severely injured the right lung, including all of the major
25 blood vessels that were there. And a considerable amount of

1 blood was present in his right chest cavity.

2 The second lethal wound hit his right side, and
3 went through his liver and gallbladder and left kidney, and
4 caused severe injury to his liver and his kidney, with blood
5 that was present in the area. It actually did not exit, and
6 I recovered that bullet from the left side of his body.

7 MR. RAMRAS: Let me see if any of the grand
8 jurors have questions.

9 JOHN ANDERSON,
10 called as a witness in behalf of the
11 State, being first
12 duly sworn, was examined and testified as follows:

13 EXAMINATION

14 BY MR. RAMRAS:

15 Q Start just by telling us your full name, and spell
16 it, please.

17 A John Anderson, J-O-H-N A-N-D-E-R-S-O-N.

18 Q You're with the Portland Police Bureau?

19 A Yes, sir.

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

21 A Twenty-three years this June, and then nine
22 and-a-half years with Orange County Sheriff's Office before
23 that. Thirty-two and-a-half years thereabouts all together.

24 Q And what is your current title or assignment?

25 A I'm a patrol sergeant, east precinct, afternoon

1 shift.

2 Q How long have you been a sergeant there?

3 A Sergeant there since 2007, but I was promoted in
4 December of 1994 to sergeant.

5 Q So what is the difference between the daily
6 activities of a patrol sergeant and a patrol officer?

7 A Uhm, I'm in charge of the supervision of the
8 officers on the shift. There's usually a minimum of three
9 sergeants on afternoons. And everybody divides up the
10 responsibilities from scheduling, doing roll call, and then
11 just listening to the calls on the street, answer calls from
12 citizens and dispatch, and from the officers. And you have
13 to have a high level of awareness of what calls require a
14 supervisor to respond and which ones don't.

15 Q Were you on duty on February 17th, 2013, when a
16 call came in concerning Portland Adventist?

17 A Yes, I was.

18 Q And where were you at the time that you first
19 heard about the incident?

20 A I was in the sergeants' office, just got done
21 eating dinner, talking to one of the night shift sergeants.

22 Q Do you know roughly what time of day it was?

23 A Around 9:00 at night.

24 Q And what did you hear or what was the information
25 that came in to you to act on?

1 A I was alerted by Sergeant Voeller, who was also in
2 the office, he goes, "Sarge, did you hear that call?"
3 Because at that particular time, I was the acting
4 lieutenant, so I was the shift commander as well, for the
5 last week, which is the shift commander. And he says, "Did
6 you hear that call?" I says, "No, what was it?" I turned
7 my radio up, and I heard dispatch saying that a guy is
8 pointing a gun at a security guard at Portland Adventist.

9 Q Now, did you decide to go up to Portland
10 Adventist?

11 A Yes. I got up and ran down the hall and went out
12 the door, and got in my car. It's only a block or so away
13 from the precinct.

14 Q Were you in your car with any other officers or by
15 yourself?

16 A I was by myself.

17 Q What were you anticipating your role would be?

18 A Uhm, to oversee the scene. I had two other
19 sergeants working that night. One was a fairly new
20 sergeant, one was just off probation. And so I was
21 preparing myself to be incident commander on what was going
22 on. I didn't know exactly at that point where this person
23 was, what was going on. Just getting resources there.

24 Q Okay. You said it's only a block or so away from
25 the precinct. So roughly how long did it take you to drive

1 up to Portland Adventist?

2 A Thirty seconds.

3 Q Okay.

4 A I was parked in front of the precinct, did a
5 U-turn. I remember passing an ambulance heading to Portland
6 Adventist coming down 106, they always come down 106 to get
7 there.

8 Once the radio died down, it prompted me make sure
9 I told dispatch to tell AMR to not respond to Portland Ad,
10 it was PA, until further notice.

11 Q Now, they have on the board here, an overhead
12 photograph of the area. Using that, can you sort of
13 describe for us where you first arrived on the scene?

14 A All right. North is this way, so the precinct is
15 up ahead. You come down 106th, to right about here, and it
16 curves into Main Street. When I first arrived, I arrived in
17 my car, turned off my lights, told other responding officers
18 to turn off their lights and sirens. We didn't want to
19 agitate the guy any further.

20 And I was told by a female officer that the guy is
21 right there in the lot. It was an officer and Sergeant
22 Voeller and some others that were out of their cars on the
23 grass, but on the north side of a chain linked fence. I go,
24 "Where is he at?" She goes, "Right there, Sarge." I said,
25 "Where is he at in the lot?" I move the car forward a bit,

1 and I could see a male with a gray, upper shirt walking
2 eastbound, sort of in this direction (indicating).

3 Q You used the phrase upper shirt. Were you able to
4 see below his waist?

5 A Not from my position. I wanted to stay in my car,
6 because I like to be mobile. Everybody was out starting to
7 deploy, but they are on the other side of the fence, I
8 wanted to stay mobile. Uhm, and then the officer says, "Now
9 he's heading back west on foot." And I remember, I thought
10 I said it on the radio, I know I yelled it out the window,
11 "I don't want him going back inside of the hospital,"
12 because he was purported to have a weapon at that time.

13 Q You mentioned at first you couldn't see him, that
14 someone had to point him out to you. What types of barriers
15 to visibility were there?

16 A There was cars parked on the street, there was
17 cars in the lot. Uhm, the officers were standing, so I had
18 to move my car, you know, a few feet to get a better angle
19 to see.

20 Q And how is the lighting in the parking lot,
21 itself?

22 A Overhead street lights in the lot, and then
23 there's street lights out on the street itself.

24 Q Okay. I guess what I'm getting at, is the entire
25 parking lot totally illuminated or are there still dark,

1 harder places to see within the lot?

2 A There's definitely a lot of shadow places, as you
3 can see there's trees, although they are not leafed out.
4 But the street lights are only on certain spots. So they
5 are bright in some spots and then darker in others, and then
6 there are shadows cast by vehicles.

7 Q You mentioned you had a concern that he might be
8 headed back towards the hospital. What specifically did you
9 see as far as the path of travel that made you worry about
10 that?

11 A Well, the initial call they said he had pointed a
12 gun at a security guard. I was not sure exactly where that
13 had taken place. But for some reason, we found him in the
14 lot, it was an employee lot. And in the back of my mind,
15 I'm wondering if he was looking for an employee, is that why
16 he was in the hospital. I didn't know why he was there.
17 And then when they said he was heading back west, which is
18 the direction of the hospital, I thought maybe he's going to
19 go back inside, this person may not be in the lot, maybe he
20 realizes there are fences and he needs to go back the way he
21 came. I had no idea.

22 Q Did you actually see him get close to that
23 entrance/exit of the parking lot?

24 A Yeah. Once they said he was moving back west, and
25 I yelled, he's not going to get back in the hospital, I

1 stayed in my car. In a tactical situation, you're supposed
2 to have a rapid response vehicle ready just in case the
3 suspect breaks out, runs or flees in a car. So I stayed in
4 my car, came up around to the entrance, into the driveway
5 off of Main, into the hospital entrance. And he was right
6 about this location at that point (indicating).

7 So he already made it back to the opening of the
8 parking lot, to where there's only four ways you can go,
9 back up the alleyway ramp to the emergency room, down the
10 road this way and the walkway towards us, or back into the
11 lot.

12 Q Okay. You can go ahead and sit back down if you
13 want to now, just to the extent it's helpful to stand up and
14 illustrate.

15 A I like to move around. It's easier.

16 Q So, when you saw him there at sort of the entrance
17 to the parking lot, what happened next?

18 A I was still in my car. I put my vehicle spotlight
19 on him at that time. He just kind of stood there, kind of
20 moving left to right. And I could see what appeared to me
21 as a semiautomatic pistol. At that point I thought it was
22 in his left hand. But I had officers on both sides of my
23 car doors and windows, because my car was the only cover at
24 that point. I remember rolling down the windows and
25 unlocking the doors and things like that, so they could open

1 the car doors if they needed extra cover. I could
2 communicate through the open windows.

3 Q And then where did he go?

4 A Well, it was mere seconds, because we were
5 expecting to get ready to start challenging him, and he
6 turns and goes back east into that same lot he came from.

7 Q When he got back into the lot, were you -- I
8 should ask, are you able to constantly see where he's going
9 visually, or do you lose sight of him at times?

10 A He didn't just meander away, he walked fast,
11 almost to a run, and went this direction. And I lost sight
12 temporarily. But I kept my car up, you know, sort of here
13 in the lot to see where he was going. But I didn't get too
14 far in, I think I was the first car in. This is probably
15 me, I guess, and stopped there, and I saw him then running
16 this direction (indicating).

17 Q Okay. And at that point, what concerns did you
18 have about where he might be going or what he might be
19 trying to do?

20 A I was concerned for the perimeter of the lot,
21 because there's a Seventh Day Adventist Church over on
22 Market, which is this building here. And I know there's
23 gates to it somewhere in here. I have been in here at
24 night, there's man gates on the fence. So, I didn't want an
25 armed guy getting through the lot over a fence, because now

1 all of us are here. We're at a disadvantage, because of our
2 geographic location. When I asked for an officer to go in
3 the church parking lot, one female answered up as being
4 there, she was all by herself at that point.

5 Q Now, you used the phrase man gates. Did you mean
6 just a separation in the chain link fence that allows people
7 to walk in and out?

8 A The man door or man gates are just for people to
9 walk through, not cars or anything else.

10 Q Okay.

11 GRAND JUROR: Excuse me, are there more than
12 one gate?

13 THE WITNESS: There's an entrance here. I
14 don't know about over here. There's a person who
15 walked through a spot here, I think there are gates
16 down here, either here or this spot back here.

17 BY MR. RAMRAS:

18 Q We can see in this picture of this building which
19 has a T-shaped discoloration on the roof, looks like there
20 is a pathway that leads to the parking lot. Do you know if
21 there's also a gate there?

22 A It's more possible, because this is where the
23 employees go and they walk in. They don't all have to walk
24 in over here (indicating). I don't go in that lot
25 routinely. I have been over here because of the over hang

1 at night when the church is closed, we park under it when it
2 rains, and we talk car to car. That's why I know that's
3 there.

4 Q As he started to go in the direction generally
5 towards the, I'll call it the back of the lot where the
6 church was, where did he wind up going?

7 A He went southbound, and I lost sight of him. I
8 got to my trunk, because I keep equipment in there, and I
9 got my binoculars out. I have -- it's called a Polaron
10 flashlight, that was donated to me, it's a high intensity,
11 4000 candle power flashlight.

12 And so, by time I came back to the front of my
13 car, I asked Officer Curtiss where is the guy at. And he
14 goes, "He's on top of that SUV right there." I'm looking at
15 a black -- I don't know if this is it, there were several
16 SUV's, but right here is a black SUV right about at the site
17 he was pointing. And I don't see anybody on this SUV. I
18 said, "Which one you talking about?" He said, "Go over here
19 further." So I got to the front of my car and looked, I
20 could see the subject on top of a -- either on top of a car
21 or what I thought may have been a dirt berm behind the car.
22 But he was now in an elevated position.

23 Q What concerns did he give you when he was in an
24 elevated position?

25 A It's a disadvantage for us, because an armed

1 person on an elevated position, has a great field of fire.
2 Once again, I was not sure, was he looking for somebody?
3 Now he is up on a car or a berm to see where this person may
4 be hiding in that lot. Or was he putting himself in
5 position to have a better view of what the police were
6 doing?

7 Q As all of this is going on, are you doing your
8 best to coordinate with other sergeants and other police on
9 scene to figure out a plan to deal with him?

10 A It was just starting to get that way. Once he
11 finally became stationary here, I had ten power binoculars
12 that I looked at him with. I was able to get the high
13 powered flashlight on him the best I could, and I kind of
14 sat it on the roof of my car. I remember hearing the other
15 sergeants ordering resources, airplanes and dogs and crisis
16 intervention teams. I knew the other sergeants were doing
17 the things that were required and necessary. But we were
18 just at that point where now he's stationary. Now we're
19 working on containment and resources.

20 And I told Sergeant Clinton, I said, "At this
21 point it's going to be a SERT call out," which is our SWAT
22 team, because we have an armed guy holed up in the parking
23 lot. I remember looking around to see where am I going to
24 put a command post, what's the safe routes in going to be?
25 What am I going to tell radio on the air? And I remember

1 looking back one more time with my binoculars, and that's
2 when he jumped off whatever he was on.

3 Q Before he jumped off, by using your binoculars,
4 were you able to see whether or not he appeared to have
5 anything in his hands?

6 A Yep. He still had the same semiautomatic five-
7 inch barrel looking gun in his hand, looked like to me, but
8 he was moving a lot. He was not ever still for you to get a
9 good solid look. Like I said, it's dark and it's darker
10 back over there. Even though I have the bright flashlight,
11 because it's filtering through poles and trees and trunks
12 and everything else, so it's not a solid beam at that point.
13 It's kind of filtered between parts of cars, parts of trees
14 and everything else.

15 GRAND JUROR: It's a high powered flashlight,
16 so you're only able to see a narrow view with that?

17 THE WITNESS: No, it floods pretty good. It
18 goes at least several hundred, probably five hundred
19 yards.

20 GRAND JUROR: Field of view?

21 THE WITNESS: Oh, you mean the beam of the
22 light?

23 GRAND JUROR: Yeah, closer to like laser, and
24 then goes out?

25 THE WITNESS: I would say where he would be,

1 it's going to be probably a twenty foot wide beam. It
2 is focused, it's not a flood. But it's focused at a
3 greater distance, if that makes sense. It's very
4 piercing into the dark

5 GRAND JUROR: I understand. Like a lens of a
6 camera has a focus lens, so you're able to see fairly
7 well with it.

8 THE WITNESS: Yeah. You can see fairly well.

9 GRAND JUROR: About twenty yards away.

10 BY MR. RAMRAS:

11 Q Even with that light, though, you're not able to
12 see entirely whether he's on a car or on a berm behind a
13 car?

14 A Correct. A lot of times there are berms for
15 decoration by fences. It surprised me, why is this guy on a
16 car? He has to be standing on a berm. Why would he be on a
17 roof of a car? Just seemed peculiar. But the fact he was
18 elevated and could see us, is what concerned me.

19 Q To be clear, even though you have the flashlight,
20 a fairly high powered flashlight shining on him, it still
21 appears to you he has a gun in his hand?

22 A Correct. It was not that he was standing like
23 this. It was very moving, looking, searching side to side,
24 which made me wonder why is he looking around so much,
25 either for somebody or an escape route. Like I said

1 earlier, I had a lot of resources officer-wise here, but not
2 as many as I wanted. I had one officer here, we asked for
3 more. I was very concerned he was either going to jump this
4 fence and be in the dark where the dorm is, get out this
5 way, and be armed and loose in the blocks.

6 Q Were you able to hear anything that he was saying,
7 from your distance?

8 A Not really. I thought I heard yelling. But at
9 that time my guys were on the radio with a lot of chatter.
10 It was not anything I could consciously hear.

11 Q You were just at the point where you said he had
12 gotten down off the SUV. What happened after that?

13 A He starts walking quickly our direction, and I
14 remember telling our officers, "He's coming our way." But
15 it's like, no, maybe he's going to run, I think he's going
16 to go this way. But he doesn't, he comes this angle, and
17 makes I guess it would be a left for him, and angles right
18 at our car.

19 Q And as you're watching him approach you, just --
20 did it still appear he has a gun in his hands?

21 A Yep. And you can start hearing him counting.

22 Q And what do you mean by that?

23 A Doing a count down like 3, 2, 1.

24 Q And what significance did you attribute to that?
25 What did you think he meant by that?

1 A He's coming at us and giving us a count down on
2 when he plans on being ready to start shooting at us. And
3 it changed the whole dynamic of contain and control, to now
4 we're going to have to take hard cover and defend ourselves
5 from an approaching assailant.

6 Q Where are you physically positioned as he
7 approaches?

8 A Still behind my car, behind the front windshield
9 or the driver's door.

10 Q And to be clear, although I realize it gives some
11 protection, is a door of a car necessarily going to fully
12 protect you from a bullet?

13 A No. And the windshields can angle up and hit you,
14 it can come through the glass fairly simply. All we had was
15 my car with the trunk up as cover, and other cars that were
16 in the lot for other officers.

17 Q Did you, yourself, have a firearm drawn?

18 A Nope. I knew there was plenty of rifles -- there
19 was one rifle and a few hand guns that officers had. I knew
20 people had guns out, I didn't need mine out at that
21 particular time. And like I said, once he started advancing
22 at us, it became, "What is going to happen?"

23 Q And your role is slightly different in this
24 scenario than the officers who had their guns drawn?

25 A Yeah. Like I said, as the on scene supervisor,

1 even with other sergeants, it's wise to have at least one
2 person that can hang as best they can. But the unique role
3 of patrol sergeant is, is you're a supervisor, and in
4 seconds you're on the front line, then you're back being a
5 supervisor. So you're in and out depending on the make up.

6 With him advancing on us, we're all of a sudden in
7 the midst of the front line, having to defend ourselves.
8 Not knowing -- he's coming towards us, but where is he going
9 once he gets closer. I remember someone yelling to take
10 cover, I'm backing up to the trunk of my car at this point.
11 And we're waiting to see is he going to stop? What's he
12 going to do? Or is he going to one run away? We don't know
13 what he's going to do at that point.

14 Q So what did wind up happening?

15 A Well, I remember backing up to my trunk, and as he
16 came around, the front of one of the cars he angles towards
17 us, still doing the count down. I could have sworn I saw a
18 right hand come up. I go, here we go. And I was getting
19 down behind my car for two reasons, someone is yelling,
20 "Take cover," so I kind of got back up, because I was at the
21 front of my car. And if he decided to come across the front
22 of my car, there was nothing but me and the wide open
23 spaces. So I kind of got back just to see, is he going to
24 keep coming around the front of my car? So he's coming this
25 way, I'm backing up to see if he comes this way or this way,

1 or runs to the east.

2 And when I got back to my car, I remember seeing a
3 hand come up. I kind of got down, I had my hand on my
4 pistol. And I heard what I thought was two shots. And the
5 first thing I said, "That son of a bitch is shooting my
6 car." And I thought -- my car didn't get hit. But I'm
7 expecting to hear glass or impact on it. Then I heard a
8 volley of shots. We're talking like this, I remember
9 hearing two shots, I thought, well, his hand come up, he's
10 shooting and my car is getting hit. We're all behind it.
11 And then I hear a volley of shots, I come back around to
12 where I can see, I see him spin and fall on the ground.

13 Q Okay. And when he fell down, were you part of the
14 discussion as to what you should do next?

15 A Yep. That's why I said, you go from supervisor,
16 to in the mix, and now I'm back again to being supervisor
17 again. He's laying there. I have binocular on him again,
18 watching for movement. They are starting to challenge him.
19 I had my shield already out of my trunk being assembled. I
20 had my Kevlar helmet on.

21 I remember looking, telling them on dispatch that
22 the weapon or the object is four inches from his right hand
23 still on the ground. He's laying there just on his back,
24 spread like this. I can see hot breath steam coming out of
25 his mouth. I remember saying, stage medical and I'll tell

1 them when to come in. I wanted medical people to be near
2 us. But once we rendered the scene safe, I would have them
3 come in.

4 Q And when did you make the decision that the
5 medical could enter?

6 A Well, we had to go through our choices of how do
7 we safely approach this guy. He's not moving, he's not
8 saying anything, but I can see breath coming out. I know at
9 that point he's still alive. Is he faking, you know? Is he
10 waiting for us again? Uhm, so we're going through the
11 considerations of hitting him with a less lethal shot gun
12 round to get a response.

13 Then one of the K-9 sergeants comes up and said,
14 "I can have my dog deploy on him." The dog went up there
15 and grabbed him by the shoulder, left shoulder, and drug him
16 physically, probably a good three feet from where the object
17 lay. And there was still no movement, or obvious movement.
18 So we got the shield -- put together shield team. I went up
19 with them, gloved -- had the officers put the gloves on.
20 You're on the left hand, you're on the right hand, you have
21 the shield, I will be the cover. We went in there, they
22 took him into custody.

23 And I went around the side and looked and saw that
24 it was not a hand gun at that point. And I remember telling
25 the officers and the sergeant, "Search that guy to find that

1 gun." And I looked around in some of the bushes, and it was
2 like, "What the hell." Because when I was looking with the
3 binoculars from my position of cover after he was down, I
4 didn't recognize it as a pistol at that time. But I
5 remember seeing blood I thought on his right palm right
6 here, and it looked like a slide of the handgun got shot
7 off. I thought maybe he shot his hand, because it's quite
8 common to shoot the threat, that they hit the gun and the
9 slide popped off, and it was laying on the ground, and
10 that's what was there. So up until I physically walked up
11 and saw what it was, he was armed up until I finally laid
12 eyes on what the object was.

13 Q Okay. Have a seat there.

14 A And I called medical and they came up, one of the
15 AMR attendants, and he was checking the guy for medical.

16 Q So your best estimate from the time that you got
17 to the parking lot to the time of where officers fire,
18 what's your rough estimate of how long that took?

19 A I remember saying eight minutes. But that was
20 from me arriving and to when the shooting happened. So,
21 somewhere five to eight minutes. It was very rapid and
22 constantly moving and dynamic. And we wanted to do our
23 thing of drop the gun, put your hands up, like we do every
24 day, and we couldn't.

25 Q Let's see if any of the grand jurors have any

1 questions? I don't think so. You can go. I'll go ahead
2 and have you step out.

3 GRAND JUROR: Thank you.

4 CURTISS ROYCE,
5 called as a witness in behalf of the
6 State, being first
7 duly sworn, was examined and testified as follows:

8 EXAMINATION

9 BY MR. RAMRAS:

10 Q Okay. Can you start just by telling them your
11 first and last name, and how you spell them?

12 A Royce Curtiss, R-O-Y-C-E C-U-R-T-I-S-S.

13 Q And you're a Portland police officer?

14 A I am.

15 Q How long have you been one?

16 A Seven years.

17 Q And prior to that, what were you doing?

18 A Uhm, college.

19 Q Okay. Where did you go to college?

20 A I went to a term at Portland State. Before that I
21 did an associate transfer degree from Lane Community
22 College. And then prior to that, I did four years in the
23 Marine Corps.

24 Q Now, what -- what is your current assignment
25 within Portland Police Bureau?

1 A I work east precinct, the afternoon shift, uniform
2 patrol.

3 Q Have you always been at east precinct for the
4 seven years you have been with them?

5 A I have been at east precinct post-probation, so
6 about 18 or 20 months. After being hired I transferred to
7 east, I have been there since.

8 Q Okay. Were you on duty on February 17th, 2013?

9 A I was, yes.

10 Q And what time did your shift begin that day?

11 A 16:00, 4:00 p.m.

12 Q And do you -- when you are in your patrol car, are
13 you with another officer, or are you by yourself?

14 A That night I was by myself. But lately I have
15 sometimes split week, maybe one or two shifts out of the
16 week I'm with a partner.

17 Q Had there been anything out of the ordinary,
18 anything particularly memorable prior to the incident that
19 happened at Portland Adventist?

20 A No.

21 Q Do you remember where you were when you first
22 received notification that something was happening at the
23 hospital?

24 A Yeah. I was just west of 148th on Stark, uhm, in
25 a parking lot. I can't remember the name of the business.

1 It's a -- used to be an old hip-hop club for the young kids.
2 Now it's a Mexican eatery/discount store.

3 Q And how did you first become alerted to the
4 situation that was developing at the hospital?

5 A Uhm, by dispatch via the radio.

6 Q And what is your recollection as to what you heard
7 or what information you got?

8 A Uhm, I was dispatched as a cover officer to go to
9 Portland Adventist Hospital. Uhm, they immediately
10 dispatched three of us, three cars. And all of us from
11 960's district, the neighboring district, and we were
12 dispatched on a subject that was armed with a gun.

13 Q Do you know roughly how long it took you to get to
14 the hospital after you had been dispatched?

15 A Uhm, it couldn't have been more than a couple of
16 minutes.

17 Q And we have got up here on the board, this
18 overhead view of the parking lot. So to the extent this
19 helps you in your explanation, please feel free to come up
20 to it and to show us with your hand where you were
21 positioned.

22 Let me first ask you, sort of what your approach
23 was to the hospital, and how you knew what parking lot this
24 person was in?

25 A Uhm, well, prior to arrival, I heard that --

1 Q Can I have you stand on this side so they can all
2 see?

3 A Prior to arrival, I heard that the subject was by
4 an employee lot, by the pumps. I was not familiar with what
5 the pumps meant. Initially, when we got the call, I assumed
6 it would be the ER, due to the time, Sunday night, about
7 9:20, 9:30, as I recall. Uhm, when I heard the employee
8 lot, I kind of assumed it would be the parking lot that's
9 adjacent to the east of the ER.

10 Q Okay. So where did you initially go when you got
11 up to the hospital?

12 A Well, I came down 106th, so probably back over
13 here, uhm, made my approach where the road starts to bend
14 and it becomes Main out here. Uhm, when I got to kind of
15 like the corner where the road starts to bend, there were a
16 couple of sergeants on the scene already, and had gotten out
17 of their vehicles.

18 Q At that point, were you just trying to make
19 observations as to where this person was?

20 A Yes. Uhm, I had thought about where I'm going to
21 park my vehicle, as well. Uhm, I saw they were kind of
22 focusing into this lot, the one that I thought possibly
23 would have been the employee lot. Uhm, I noticed that on
24 Main Street, you know, there are civilian cars that are
25 parked along Main. And thinking that the officers

1 potentially, you know, I couldn't see all the way down Main,
2 how big the gaps are, the spacing between the vehicles. So
3 I chose to stay in my vehicle and follow in case we needed
4 to use my vehicle as a position of hard cover, in case the
5 subject starts shooting at us.

6 Q You mentioned the initial information you had was
7 there was a person with a gun, and they might be by the
8 pumps. Had you received any updates on your way over?

9 A Yes. I got an update that he had pointed the gun
10 at Providence -- or Portland Adventist at their security.

11 Q Okay. So you were starting to mention how you
12 were prepared to use your car as hard cover. Where did you
13 ultimately go when your car --

14 A There was a lot of pausing. Uhm, I stopped at a
15 couple of the gaps along here on Main. At one point, I was
16 trying to coordinate with Sergeant Clinton, uhm, kind of if
17 he had already had eyes on the subject, I hadn't seen him.
18 And then I hear, you know, he sees us, he's coming towards
19 us. So I had started to exit my vehicle. So, uhm --

20 Q Where was it parked when were you exiting it?

21 A Closer back to -- I guess that's Clay. When I
22 first came down 106 where it starts to bend, just as you get
23 slightly to the west on Main. So I started exiting my
24 vehicle, I got behind a vehicle -- another vehicle that was
25 just right there, you know a couple feet to my left. As I'm

1 facing to the west. Uhm, and then we -- I see this subject
2 briefly, and he was over by the pumps. Uhm, and from this
3 diagram, I believe it's this building right here.

4 After briefly seeing him, he, you know, he started
5 making kind of his direction towards us, and then his
6 direction changed. And he started heading kind of south, in
7 a kind of southwesterly direction. So, immediately, uhm, my
8 concern was that, if this guy takes off running and goes to
9 the ER, you know, not knowing if the hospital has been
10 secured, that this might turn into, you know, an active
11 shooter situation.

12 So when he changed his focus from us, I had got
13 back into my car, and, uhm, headed west on Main. And this
14 photo does not quite show it, but back here where there's
15 the emergency entrance, I guess, where the emergency sign is
16 posted, that's where I pulled my car and parked my car the
17 first time

18 Q Okay.

19 A Uhm, I exited my patrol car. As I exited, a
20 security guard from PA, and I don't recall if it was male or
21 female, they had really short hair, came running out and
22 started pointing to the little bit of vegetation that's
23 right there to my left. And he started screaming, pointing
24 in there, that he's right there, he's in there, he's got the
25 gun. He's got the gun.

1 So I quickly ran around my vehicle and started to
2 take a position behind, I guess, the front of the vehicle,
3 but near the engine block. Shortly as I did that, Sergeant
4 Anderson had pulled his patrol car basically on the opposite
5 side right there at the entrance. So I left my position
6 there, ran over and created a little more distance. Uhm, in
7 these situations, if you have more distance, it does equal
8 more time. So I went to the opposite side of his vehicle.

9 And then I don't remember -- I don't recall who
10 first spotted him, but we picked up that his direction was
11 not coming towards the ER, and that he was more of a south --
12 southerly direction, I guess, from where he had been
13 running.

14 Q Let me pause you real quickly. You mentioned that
15 the security guard said, "He's right there, and he's got the
16 gun," did you actually see him yourself at this point?

17 A No, I did not see him at that point when they
18 first said that. And you know, my -- it surprised me a
19 little bit. I didn't think that he would be able to cover
20 that much ground. But, you know, nonetheless I was not
21 going to hang out and find out if he was right there.

22 Uhm, so, as we get over here, like I said, we
23 picked -- somebody picked up sight of him. And, uhm, we
24 slowly basically moved the car -- the officers -- other
25 officers and myself kind of used the car as cover, and we

1 just kind of shadowed the car as it moved up and stopped
2 right about in here (indicating).

3 Q Okay. And why don't you sort of take us through --
4 well, I should ask, did you see him at this point? Were you
5 able to make visual sight of him again or were you --

6 A Yeah. I was somewhere right about in here when I
7 picked up sight of him. Uhm, and it looked like, you know,
8 he had made more distance from us. He ran to the south,
9 southwest direction.

10 Q Which way would that be?

11 A Well, that would -- so he's -- instead of, you
12 know, running this way, kind of ran, I guess, kind of toward
13 this, toward this direction.

14 Q Okay.

15 A Uhm, at one point right before we brought the
16 vehicle up, I noticed that Sergeant Voeller ran up by the
17 fence here on the corner. Seeing that he was kind of alone,
18 I ran up with him. We stopped and waited. Uhm, and then I
19 think I believe it was Sergeant Anderson who brought his car
20 up. Once he met up, we just walked in with him and, uhm, he
21 positioned his vehicle in here (indicating).

22 Q Okay. I'm going to hold up this other diagram for
23 just a second. Actually, I will have to sort of stand
24 behind it. Where on this diagram were you positioned?

25 A Initially, I was right up in here, just basically

1 between the -- kind of the door and the front half.

2 Q You say initially, did you go somewhere else after
3 that?

4 A I did. Uhm, at one point, I believe this is my
5 patrol car, when I had left, Officer I believe it was Budry,
6 brought my patrol car up behind the sergeant's car. I
7 realized it was my car, uhm, I had left there and ran back
8 to the trunk and grabbed my helmet. I put my helmet on and
9 came up to this vehicle, seemed like there was a little bit
10 of a lull there.

11 Q What prompted you to get your helmet?

12 A Well, it's a little bit more protection. You
13 know, if this guy is going to start shooting at us, I wanted
14 as much protection for myself as I could get.

15 Q Sure. Okay. So you had started to show on the
16 diagram him going in a direction you called south-westerly,
17 and you traced on the diagram a path that is sort of in a
18 general direction of this building that's been identified as
19 the nurse's dorm. What happened next after you saw him go
20 in that direction?

21 A I heard, you know, he is on top of a car, on top
22 of a car. There's like a real brief point where I did lose
23 sight of him. And then I believe Sergeant Anderson had got
24 out his spotlight, he has a hand-held really bright
25 flashlight. And I was quickly able to see him on I would

1 say what looked to me -- perceived to be consistent of being
2 on a vehicle. I couldn't actually see him on a vehicle, but
3 I could see he was elevated

4 Q Okay. What else could you see about him? What
5 were his mannerisms? What was he doing?

6 A He had been pretty manicked. His movements were
7 real agitated, moving about, kind of all over the place.
8 Uhm, should I keep --

9 Q Yeah, go ahead.

10 A So, while -- after I gained sight of him, at one
11 point the spotlight got set down. Uhm, and I picked it up,
12 and I don't recall who it was, but someone that was with --
13 in our group couldn't -- still couldn't see him. And, you
14 know, the concern was we want everybody to know where this
15 guy is at. So I picked up the spotlight, I put it right on
16 him for awhile, until I was comfortable that everyone there
17 was able to identify where he was, in relation to where we
18 were at.

19 Q Now, were you able to see whether or not he seemed
20 to have something in his hand?

21 A Uhm, I don't recall when he was on top of the --
22 when he was in the elevated position, at that point if I saw
23 anything in his hand. Uhm, but basically when he started --
24 when he made that decision to run after us, you know, I see
25 the black object that at the time I thought was a gun.

1 Q Okay. Let's kind of step back a little bit and
2 take us through, you had been at the point where you picked
3 up the flashlight and helped illuminate him. Was he still
4 in an elevated position at that point?

5 A He was. He was still on top or in an elevated
6 position.

7 Q What concerns, if any, did you have that he was in
8 an elevated position?

9 A Well, I mean, there can be several concerns. Uhm,
10 you know, if he's in an elevated position, he might have a
11 better view of us, that's one concern. Obviously, we have a
12 concern for his safety. You know, if he's -- you know, he
13 can fall off the vehicle or something. He could get
14 injured, it poses more of a threat to himself being in an
15 elevated position.

16 Q Okay. What did you see him do next?

17 A He had been yelling and kind of just all kind of --
18 just like I said, manicked, he was moving around. He gets
19 down, uhm, I don't recall what he was saying. But I just
20 remember that he was -- he just was yelling at us. Uhm, and
21 then it was like he just made a decision that he was going
22 to attack us, and he just came running at us.

23 Q Okay. And was that the point in time where you
24 saw that he appeared to have a gun in his hand?

25 A Yeah. When he started closing the distance, I

1 can't recall if he was pointing, you know -- holding it out
2 pointing at us, or when he's running and it's coming up.
3 But I see this black object that I thought was a gun. And
4 with all of the information that we had at the time, it
5 seemed very consistent that it, in fact, was a gun.

6 Q So what then was your primary concern at this
7 point?

8 A That he's going to attack us, he's going to try
9 and kill us. You know, I worry about my safety, the other
10 officers that are on scene, all the people that are, you
11 know, inside of the hospital, potentially. Uhm, when I
12 fired, I also -- the other consideration I had was, he was
13 already within handgun range, where he could effectively
14 take shots at us. I also had a concern that if he gets too
15 close, at some point, too, that if we have to engage him,
16 you know, it kind of ups the -- due to where the officers
17 that were off to the flank, I was thinking also that there
18 could potentially be a crossfire situation.

19 Q Did you -- as he got closer, were you able to make
20 out anything he was saying?

21 A I can't recall what he said. Uhm, I just remember
22 it being like a war cry. And in my head I felt like he was
23 going to start shooting at any second.

24 Q What kind of a firearm did you have?

25 A A Glock 17, 9 millimeter.

1 Q How close to you was he when you started to fire?

2 A At that moment, my perception was it was somewhere
3 between 20 and 30 yards.

4 Q What happened after you fired at him?

5 A Well, at some point as I fired, I could hear other
6 gunshots coming off from my left. Uhm, he went to the
7 ground, and after I -- after he hit the ground, uhm, he was
8 kind of positioned in a way where the object was kind of in
9 my general direction. And I could still see that he was
10 moving, so I took another shot at him. And once I realized
11 that he was stopped, I just held on him, held -- I covered
12 him. Uhm, and then from that point, the sergeant started
13 giving out orders that we needed to give a shield. So I --
14 another -- it was Officer Budry I believe came to the trunk
15 where I was at -- can I hold this up?

16 Q Sure.

17 A When I fired, I was basically at this corner of
18 the vehicle.

19 Q Hold it up a little higher so that they can all
20 see.

21 A After the shooting had stopped, I kind of covered
22 the officer by stepping forward a little bit so he could
23 access his trunk, where he retrieved the shield. As soon as
24 he retrieved the shield, I sunk back in, kind of tactically,
25 just made my way back here to this side of the vehicle.

1 Uhm, and then we decided that we need to quickly put
2 together a team to go check on him, and get him EMS.

3 So the sergeant said, you know, we got on the
4 radio asking for somebody to bring a bean bag up, a less
5 lethal shotgun. I knew I had one in my vehicle. So I ran
6 back to my vehicle, grabbed my less lethal, ran back up.
7 They had the shield assembled, and we had the K-9 sergeant
8 and his dog moved up. And we formed up and approached the
9 subject.

10 Q Okay. Put that down. You can go ahead and have a
11 seat. At that point, did you know whether or not he was
12 still alive?

13 A No.

14 Q So what happened when you got up to him?

15 A When we got up to him, uhm, Sergeant Clinton,
16 Officer Budry, kind of went hands on and grabbed him and
17 quickly kind of patted him down to see if he had a weapon
18 still in his waistband or in this general area (indicating).
19 And, you know, he immediately asked for -- once we knew that
20 we had control of him, asked for the AMR folks to come in
21 and to assist him.

22 I quickly turned around, we said it over the
23 radio, send AMR. So I quickly -- I could see where they
24 were staged from where my position was. So I kind of
25 signaled my flashlight at the fire guys and the AMR, and

1 they came up.

2 Q When you got up there close to him, were you able
3 to see the object that had been near his hand?

4 A I was.

5 Q And was that the first time that you became aware
6 that it was not a gun?

7 A Yes.

8 Q After fire was signaled, you mentioned you
9 signaled to fire and AMR. What did you do next?

10 A Uhm, I briefly paused there until they came up and
11 were giving him aid. And then I went back to the -- where
12 the sergeant's vehicle was at. The sergeant was figuring
13 out who was involved. I identified myself as being one of
14 the shooters. Uhm, I down loaded my bean bag, made it ready
15 to go back, put it back in the rack of my car. And then I
16 stood off to the side and waited with another officer until
17 the investigation started on the shooting.

18 Q You just mentioned that you had a bean bag that
19 you had to put back into the rack. I don't know that we
20 heard about that yet. Can you explain to us what you're
21 referring to, and why it had been out of its rack?

22 A Sure. After -- following the shooting, uhm, you
23 know, one of the sergeants asked for a bean bag to go up
24 with the team that moved up to contact him. Instead of
25 waiting for somebody else to bring one up to the scene, I

1 was already there. I knew I had mine in my patrol car that
2 had been brought up. So I went to my patrol car and
3 retrieved my bean bag shotgun, my less lethal shotgun. I
4 made it ready by racking the action, went up, and then once
5 contact was made and AMR medical was able to see him, I
6 basically went back to my car, down loaded the shotgun put
7 it back in the rack inside of my patrol car.

8 Q Okay. This is something you had not had a chance
9 to take this out prior to the actual shooting?

10 A Right.

11 EXAMINATION

12 BY MR. REES:

13 Q Officer, did you give any commands to the subject,
14 or did you hear any other officers give any commands prior
15 to the shooting?

16 A I perceived other officers as giving commands. I
17 remember at one point, uhm, making a conscious effort kind
18 of not to shout out a bunch of commands, because it seemed
19 like there was already a bunch of commands going out. I
20 know at sometimes when a bunch of police are giving
21 commands, it can overwhelm somebody. So I don't remember if
22 at some point if I did yell commands at him. But I do
23 recall trying to refrain from giving commands.

24 Q Did you notice whether any of the commands had any
25 kind of effect on this person?

1 A They did not.

2 Q Are you able to explain to the grand jury your
3 decision to shoot in terms of whether in your mind it was
4 possible to wait for another second or another second after
5 that, or not?

6 A Yeah. I had already felt like when I engaged him,
7 that I had already waited too long. That's what was going
8 through my mind is, he's already well within the range of
9 engagement, you know. If he -- even with a handgun, and
10 handgun range is a lot shorter than somebody armed with a
11 rifle, and I knew that he was within that range. Uhm, so,
12 if anything, I kind of felt like I was playing catch up to
13 protect us.

14 Q And when you made the decision to shoot, was he
15 currently actively running directly towards you?

16 A Yes, he was.

17 Q Thank you. Any questions from the grand jury?

18 GRAND JUROR: Just a quick one. When you
19 mentioned controlling the subject and patting him
20 down, did that also involve turning him over and
21 handcuffing him?

22 THE WITNESS: No. We -- I mean sometimes
23 post shooting, it might be you put them on their side
24 and handcuff him. The officers pulled -- just grabbed
25 him, grabbed his wrists. And it definitely looked

1 like he was not doing well or was -- or had already
2 died. So I don't think that the threat was there as
3 much, so we just decided to hurry up and try to
4 expedite the medical attention as quickly as possible.

5 GRAND JUROR: Do you recall the K-9 dog being
6 deployed before you got there, before the officer
7 patted him down?

8 THE WITNESS: Yes.

9 GRAND JUROR: We heard testimony that the K-9
10 grabbed him by the shoulder and dragged him?

11 THE WITNESS: He did. We made that approach,
12 and I don't know how many feet, but it was a little
13 ways back. And at that point it still looked like he
14 had the gun in his hand. And so the K-9 handler made,
15 you know, the choice or decision to send the dog up,
16 and the dog kind of latched onto him. It looked like
17 it kind of moved him maybe about a foot, maybe two.

18 GRAND JUROR: Okay. Thank you.

19 GRAND JUROR: By the time you got out of the
20 car at the entrance there, to the time of the
21 shooting, about how much time was it -- do you
22 recollect how much time had passed?

23 THE WITNESS: I don't. It seemed really
24 quick. But my guess would be that it's a few minutes,
25 maybe a couple.

1 GRAND JUROR: As in two or three?

2 THE WITNESS: Yeah.

3 MR. RAMRAS: Someone else may have had a
4 question.

5 GRAND JUROR: That was it.

6 MR. RAMRAS: Okay. That's our last witness
7 for the day.

8

9 (Whereupon, Grand Jury adjourned at 4:32
10 p.m.)

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Witness my hand in Portland, Oregon, this 10th day
of March, 2013.

Julie L Bourgeois
 JULIE L. BOURGEOIS
 Official Court Reporter

MULTNOMAH COUNTY GRAND JURY

DEATH INVESTIGATION

Deceased: Merle Mikal Hatch)
Date of Incident: February 17, 2013)DA Case No. 2264700
Location: Portland Adventist)
Medical Center)PPB Case No. 13-13674
10100 SE Main Street)
Portland, Oregon)Volume III

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled transcript of
GRAND JURY proceedings was heard, commencing at the hour
of 1:00 p.m., on Wednesday, March 6, 2013, at the
Multnomah County Courthouse, Portland, Oregon.

APPEARANCES

Mr. Donald Rees
Mr. Christopher Ramras
Deputy District Attorneys
On Behalf of the State of Oregon;

*

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*

KAREN M. EICHHORN, CSR, CRR
Certified Shorthand Reporter
Multnomah County Courthouse
Portland, Oregon

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P R O C E E D I N G S

RICHARD JOSEPH BUDRY,

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

EXAMINATION

BY MR. RAMRAS:

Q Now, if you could, since we have a court
reporter, try to speak clearly and maybe a little slower
than you normally do.

A Okay.

Q Can you tell everyone your name and how you
spell it?

A Sure. My name is Richard Joseph Budry. The
last name is spelled B-U-D-R-Y.

Q And where do you work?

A I work for the Portland Police Bureau for the
last three and a half years in Multnomah County, Oregon.
Prior to that, nine years with the Silverton Police
Department.

Q Now, with Portland, what type of an officer
are you?

A I'm a patrol officer with Portland.

Q And is that the same kind of function you

1 performed with Silverton?

2 A In Silverton, I was a patrol officer, then a
3 field training officer and a detective and a sergeant.

4 Q On or about -- sorry, bear with me for just
5 one minute.

6 On February 17, 2013, were you on duty?

7 A I was.

8 Q And were you one of the several officers who
9 responded to Portland Adventist?

10 A Yes, sir. I was on a perimeter position in
11 an area south of the hospital, and some officers had
12 been chasing a person who had run from them. And we
13 were just about to clear from that when I heard the call
14 broadcast that there was a person, a man with a gun at
15 the hospital.

16 So myself and some of the other officers from
17 the perimeter positions began to drive in that direction.
18 And then I heard an update that the man had pointed a gun
19 at the security vehicle at the hospital. So we all
20 turned on our overhead lights and sirens and began to go
21 much quicker.

22 Q Okay. Let me pause you for just a minute
23 because I want to make sure we're understanding the
24 start of that.

25 When you said you were initially at a

1 perimeter position, are you talking about at the
2 hospital?

3 A No, sir. I'm talking about a perimeter
4 position at a completely separate location south of the
5 hospital on a completely different call.

6 Q Okay. And what is your work shift? When had
7 you come on to work that day?

8 A I work from 4:00 p.m. to 2:00 in the morning.

9 Q So after you got the call that this was
10 happening at the hospital, you already mentioned that
11 you were driving over there. And I'm sorry, you said
12 you received an update when you were en route?

13 A Yes, sir. I was driving toward the hospital.
14 I don't know if I had attached to the call yet or not,
15 but it is common for us to not bother to get on the
16 computer while we're driving and attach. We just all
17 go, and then when it is convenient, when you are not
18 driving or whenever, we'll attach then.

19 Q What does that mean, "attach to a call"?

20 A The dispatchers keep a record of which
21 officers are at a specific call to make sure that the
22 officers at the call have enough cover and that safety
23 is looked out for.

24 So when I say "attach," I mean that I will go
25 on the computer, pull up the call, and hit the button

1 that shows that I'm assisting the officer who's primary
2 on that call.

3 Q So that's something that you've done or
4 something that you did after you got to the location?

5 A I don't recall if I attached or when I
6 attached.

7 Q Okay. Now, we have up here on the board a
8 photograph. It shows an aerial view of the parking lot.
9 Can you give us an idea using that as an aid where you
10 approached from, where you wound up? You can stand, if
11 you would like, but stand if you could on the side.

12 A Honestly, the photo doesn't show where I
13 approached from. I can show you in relation to the
14 photo, outside of the photo.

15 I approached from this far side on a street,
16 112th. And then I approached from 112th onto Cherry
17 Blossom Avenue, which is way up here in the corner. And
18 Cherry Blossom comes down to where 106th meets Main
19 Street, and then Main Street goes this way toward the
20 west. I parked behind several other vehicles that were
21 already up on Main Street near the intersection at Cherry
22 Blossom.

23 Q Okay. And at that point were you able to see
24 anything?

25 A Not when I initially parked. I just saw a

1 bunch of patrol cars lined up on both sides of the
2 street. When I got out of the vehicle or -- actually, I
3 think -- no. It was after I had gotten out of the
4 vehicle, and I looked up toward the fence line, which
5 runs along this edge of the parking lot, I could see a
6 white -- a white man with a white hooded sweatshirt or a
7 white hoodie and jeans.

8 And he was walking, walking quickly, kind of
9 ranting, waving his arms, yelling. He was walking to the
10 east across the parking lot, just, I don't know, maybe
11 50 feet in the fence line.

12 Q Okay. Was there anything about that behavior
13 that made you think that this was the person that you
14 had been called out to -- well, not you specifically,
15 but the police had been called out to interact with?

16 A Yes, sir. He was yelling. I couldn't tell
17 what he was yelling, but it was in an angry style. The
18 hand motions and gestures were all consistent with the
19 yelling. He seemed to be angry.

20 He was the only person in the parking lot that
21 I could see that was acting in that fashion. He was
22 stomping toward the vehicles as though trying to provoke
23 a fight.

24 There was one vehicle, an SUV of some sort, I
25 thought it was a Chevy Suburban or a similar type vehicle

1 that was driving across the parking lot to the west, and
2 he approached that vehicle, and I didn't get to see the
3 driver or anything, but they just continued past him and
4 out toward the exit. So that all seemed consistent with
5 the type of activity that was broadcasted, so I assumed
6 that was the person.

7 Q Okay. So where did you go next?

8 A After having parked my vehicle up around the
9 corner, I jogged up and saw him, then I walked up closer
10 to the officers that were along the fence line. There
11 were several officers behind vehicles along the fence
12 line, taking cover behind the vehicles and just
13 observing.

14 And so I thought, well, if I'm outside the
15 fence line, I'm not going to be of any service to a
16 custody team or of any service to make contact because
17 the fence will block us from entering.

18 So I looked for the first entrance that I
19 could, which was this entrance over here off of Main
20 Street, and I just began running toward that entrance.

21 When I got to the entrance back here, outside
22 of the photo, there was a patrol car parked there. And I
23 could see as I had run toward that there were officers
24 inside the fence line and there was one car. And I
25 thought, well, one car is good, but two cars for cover is

1 better if this guy really does have a gun.

2 Q And where roughly in this -- you say inside
3 the fence line. Where roughly was this other car,
4 police car?

5 A Maybe 15 feet into the entrance off of Main
6 Street, just outside of this photograph.

7 Q Okay. All right. So you thought two cars
8 would be better. What did you do?

9 A I got in that patrol car and I drove it
10 forward until I saw the other patrol car parked right
11 about here just inside of the parking lot entrance off
12 of the main driveway entrance. And I parked it within
13 three, four feet of the back of the other car that was
14 already parked in the entrance to the parking lot.

15 Q Okay. And I apologize. I think that we've
16 left the diagram outside of the room here. I'm going to
17 step out for one second to grab that.

18 So the area that you are talking about, is it
19 depicted in this diagram?

20 A Yes, sir. This is the vehicle that I
21 reparked behind the initial vehicle that had come in.

22 Q Okay. So after you parked behind the other
23 patrol car, what happened next?

24 A Um, the man that I had originally seen was no
25 longer in the area where I had originally seen him. He

1 was way to the south of us in the other end of the
2 parking lot, and he was up on something.

3 And I didn't know if there was a berm over
4 there or what was going on. I heard, I heard another
5 officer say that he was on top of a vehicle, but I
6 couldn't see the vehicle that he was on.

7 He was just up at a vantage point where he
8 could look across the whole parking lot and see us, so
9 Officer Curtiss -- there were two sergeants, Sergeant
10 Anderson and Sergeant Clinton that were to my left toward
11 the front hood of the sergeant's vehicle, the initial
12 vehicle that had parked in, and Officer Curtiss was to
13 the back of the vehicle, and I took cover behind the back
14 of the vehicle with him.

15 And Officer Curtiss asked me, "Can you see
16 him? Can you see him?" And he pointed in the direction.
17 I saw the man and told him that I did.

18 Then Officer Curtiss went back toward the
19 vehicle that I had brought up after asking me if it was
20 his, I guess it was his vehicle, and he got his helmet.
21 And then the man hopped down off of whatever he was on,
22 and I lost sight of him for several seconds. And when he
23 reemerged between the vehicles, he was jogging directly
24 toward us and yelling and swearing.

25 Q Okay. And do you know what types of things

1 he was saying?

2 A I couldn't -- I mean, one of the -- may I
3 swear?

4 Q Yeah.

5 A One of the things that I heard him say was,
6 "Fuck you." I thought it was Sergeant Anderson's voice
7 to my left. I couldn't see who was yelling, but I
8 thought it was Sergeant Anderson's voice to my left
9 yelling at him to stop, and I thought I heard him say,
10 "Fuck you," and a bunch of other yelling that I really
11 couldn't understand.

12 And then he sped up, running toward us, and
13 more orders came from my left to stop. And he said,
14 quote, "Shut the fuck up," and continued running toward
15 us.

16 I could see that he had a black object in his
17 right hand. And it was -- he was, you know, using his
18 arms, like a normal running person would in a
19 back-and-forth motion, and the object stayed in this
20 right hand the whole time.

21 And he was looking left and right at the right
22 side of the car -- to his right, so that would be the
23 forward portion of the car where the sergeants were and
24 to the left, to the aft side of the car where Officer
25 Curtiss and I were.

1 And then as he got within maybe 30, 35 feet of
2 us, which I guess would have been closer to the front of
3 the car, 30, 35 feet from where I was, his right hand
4 began to come up. It got about 30 percent raised when I
5 heard shots from the front of the patrol car, and I saw
6 the man fall.

7 The object fell from his hand, and I still
8 couldn't tell what it was, but it fell to his left
9 somehow. And I was focused on him, so I don't know how
10 it bounced, in front of him or behind, but when he fell,
11 he fell on to his back with his head facing us.

12 And almost immediately after his back hit the
13 ground, he began to roll to the right, which was the
14 direction where the object that had fallen had fallen to.
15 And Officer Curtiss who was shoulder to shoulder with me
16 on my right, fired one more time, and the man stopped
17 rolling toward the object.

18 Q Now, let me ask you real quickly. I know
19 you've referred to it as the "object." You didn't have
20 much of a chance to see it.

21 Based on what you had heard coming into this
22 situation and based on what you were seeing, what did you
23 think was happening as he came towards you?

24 A I thought he was running toward us with a
25 gun, but I couldn't identify it as far as the make or

1 model or anything like that. I didn't know if it was a
2 gun or not. I couldn't tell.

3 Q And so after that last shot by Officer
4 Curtiss, what happened next then?

5 A Well, the man stopped moving, and I heard one
6 of the sergeants radioing for medics and talking about a
7 shield, so I volunteered to grab a shield.

8 And Officer Curtiss covered me while I opened
9 the trunk of the sergeant's car, which was the car we
10 were all behind, and I grabbed the shield, and I threw it
11 to the left side -- to my left side, which is behind the
12 car, separating me from the person who had been shot.
13 And then I began to build the shield as quickly as I
14 could.

15 And when I looked up, there were several other
16 officers there. The only one that I really recognized
17 and looked directly at was Officer Martinson. And I told
18 him to grab the shield, 'cause I knew we were building a
19 custody team. And so I heard the K-9 arrive, and the
20 sergeants were yelling about how we were going to
21 coordinate the team, where everybody was going to stand,
22 and what we were going to do.

23 And then I got in behind Officer Martinson
24 with Sergeant Clinton on my left, and I was going to be
25 part of the two people that approached and secured the

1 man's arms to make sure that he was, you know, detained
2 or that he wasn't going to be able to harm us.

3 So then we approached with the K-9. The K-9
4 officer had the dog approach the man first, and he gave
5 him orders. The man didn't move. The dog approached,
6 and he grabbed on to the man and pulled him back a little
7 bit. The man didn't move.

8 So one of the sergeants said, "All right,
9 let's move forward," so we moved forward. Sergeant
10 Clinton and I moved forward and grabbed his arms. He
11 didn't move.

12 So -- well, after that, I checked for a pulse.
13 And to be honest, I don't know if I could feel one or
14 not, 'cause my blood was pumping pretty good, so I may
15 have been feeling my own pulse through my fingers. Then
16 we waited for medics to get there.

17 When medics arrived, they approached and began
18 to check on the man. And Sergeant Anderson specifically
19 told us, all of us that were involved that we needed to
20 step aside, and told us not to talk to each other, and
21 placed us in separate areas along the fence or curb line
22 to the north where the incident occurred.

23 Q Now, when you say those of you involved, you
24 didn't actually fire a weapon?

25 A No, I did not.

1 Q Okay. Then one question. You talked about
2 when you took out the shield, you started building the
3 shield. What does that mean?

4 A Well, the shields that we have are supposed
5 to be man-size or cover as much of an officer as they
6 can, but that would be difficult to carry around in the
7 trunk of a car, so we have these ballistics shields that
8 are made of ballistic materials that are in plates, and
9 the plates are all in a heavy-duty cloth bag, and the
10 bag folds into three.

11 And then so what you do is you pull it out of
12 what looks like a briefcase, and you fold the three
13 layers out so that it is a big, flat shield on a
14 rectangular flat shield again. And then it comes with
15 these aluminum bars, and you just snap the aluminum bars
16 together into two long bars and slide them in the cloth
17 bag on either side.

18 So that holds the three plates all together.
19 And then there's two smaller plates that cover the cracks
20 in front where the three plates meet. So I had to put
21 the aluminum bars together and slide them in and seal all
22 of the Velcro and flip it over and adjust those center
23 plates that cover the cracks.

24 MR. RAMRAS: Let me see if the Grand Jurors
25 have any questions.

1 A GRAND JUROR: I do.

2 So could you point out on there, please, where
3 you were again when the shots were fired?

4 MR. RAMRAS: Why don't you hold it up so
5 everybody can see.

6 THE WITNESS: Yes. Okay. I was right here
7 the whole time -- well, no, sir.

8 A GRAND JUROR: No. I mean when the shooting
9 started.

10 THE WITNESS: Yes, sir. I was parked right
11 there -- I was standing right there behind the trunk when
12 the shooting started and right through to its finish.

13 A GRAND JUROR: And shots were fired from
14 individuals close to you there?

15 THE WITNESS: Yes, ma'am. The last shot, the
16 one by Officer Curtiss was to my right. I was shoulder
17 to shoulder with him, and he was at this corner, and I
18 was just behind him.

19 A GRAND JUROR: And did you have your firearm
20 drawn during this?

21 THE WITNESS: Yes, ma'am, I did.

22 A GRAND JUROR: Is there a reason that -- I
23 guess, and you did not shoot, did you say?

24 THE WITNESS: That's correct.

25 A GRAND JUROR: Is there a reason you didn't

1 shoot?

2 THE WITNESS: No. I feel if I would have, I
3 would have been justified. I just -- the only thing that
4 I can surmise from that is that I just have a little
5 higher threshold than the other officers do.

6 As far as the officers that were at the front
7 of the vehicle, the man was closer to them than he was to
8 us back here, which in my mind explains the threshold.

9 But I just feel that if I had fired, then I
10 would feel that it was just based on the circumstances,
11 but my threshold must be just a slight bit higher than
12 the other officers. I just -- I don't know.

13 A GRAND JUROR: Did you hear other shots at
14 first? Maybe that's why you did not shoot. If you heard
15 the shots go off, you know, maybe that's why you didn't
16 because you heard the other people firing or --

17 THE WITNESS: Well, I mean, the shots affected
18 me. I heard them. I'm sure that they probably had an
19 effect on whether or not I chose to pull the trigger at
20 that time, but more so it was my actions.

21 I don't remember a lot about all the
22 surroundings. They teach us in the Academy, you know, to
23 pay attention to your backdrop and pay attention to it
24 all.

25 I just remember focusing on the look on this

1 guy's face and the manner in which he was running toward
2 us. And I was so focused on what he was doing, that I
3 heard the shots go off, but I wanted to make sure that he
4 wasn't running at me anymore.

5 When he stopped running at me, that was great.
6 I knew then I wasn't going to pull the trigger unless
7 something changed. Then when he started rolling right, I
8 thought, oh, here we go again, but then when Officer
9 Curtiss fired, that took care of the problem. He wasn't
10 rolling toward the object anymore. And so instantly, I
11 went right back down, I don't think I'm going to have to
12 shoot.

13 A GRAND JUROR: And the time you mentioned
14 that you parked behind the other car, the patrol cars, do
15 you have a sense of the timing from then to the time when
16 the shots were fired?

17 THE WITNESS: No, sir. I mean, if I did, it
18 would be a guess. Do you want me to guess?

19 A GRAND JUROR: Would it be an educated guess
20 or a guess-guess?

21 THE WITNESS: It would be an educated guess.
22 I would say it would be a few minutes.

23 A GRAND JUROR: Thank you.

24 MR. RAMRAS: Okay. Thank you.

25 THE WITNESS: You're welcome.

1 THOMAS M. CLARK,
2 a witness called on behalf of the State, having been
3 first duly sworn, was examined and testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. REES:

7 Q State and spell your name for the record.

8 A Thomas M. Clark, T-M-O-M-A-S, C-L-A-R-K.

9 Q Officer Clark, for the record, could you
10 please state your occupation?

11 A I am a Portland police officer, working for
12 the Portland Police Bureau.

13 Q How long have you been a police officer?

14 A It will be three and a half years this month.

15 Q And what is your current assignment?

16 A I'm currently working at East Precinct,
17 afternoon shift.

18 Q Were you on duty the afternoon and evening of
19 February 17, 2013?

20 A Yes, sir.

21 Q And were you working patrol by yourself or
22 were you working with another officer?

23 A I was working by myself.

24 Q Do you recall what you were doing when you
25 first heard on the radio a report related to an armed

1 subject at Portland Adventist Medical Center?

2 A Yes, I do recall.

3 Q What was that?

4 A I was actually called in a car with Officer
5 Royce Curtiss. We were sitting there talking about
6 stopping a vehicle that we had interest on for about two
7 days.

8 Q What information did you receive over the
9 radio?

10 A I heard on the radio that the dispatcher said
11 the security officer from Portland Adventist was dealing
12 with a male subject who pointed a gun towards him. That
13 was the information that was put out.

14 Q All right. And so what did you do when you
15 heard that information?

16 A They actually dispatched two cars. They
17 dispatched Royce Curtiss, the officer that I was talking
18 to, and another vehicle. And then the dispatcher also
19 said, well, since you are right there, we'll also
20 dispatch you also. And I think I was 966 that evening.

21 Q And did you receive further information over
22 the radio?

23 A Yes. Officer Silverman was the primary
24 officer that was dispatched, and he requested a long
25 rifle. And I am an AR-15 operator, so I got on the

1 radio and said, "I have an AR; I'm on my way."

2 Q And go ahead if you could just and tell the
3 Grand Jury where you went to and what other information
4 you received en route.

5 A Okay. So we -- Officer Royce Curtiss and I
6 responded code three, lights and sirens from 140th and
7 Stark going eastbound on Stark -- I'm sorry, westbound
8 on Stark.

9 And we -- Officer Silverman stated that we
10 were going to stage right on 106th just kind of south,
11 southwest of Cherry Blossom. I think 106 turns into
12 Main, so we were going to stage right there.

13 So we -- we continued westbound onto Stark,
14 and we went southbound from Stark to 106th and we passed
15 the Precinct.

16 Q All right. And did you receive any
17 additional information, or suspect description or other
18 information?

19 A I can't recall exactly, but I know the
20 description was he was wearing some kind of a white
21 shirt, and he was walking around the parking, parking
22 area.

23 Q All right. This is the third exhibit or a
24 photograph showing the employee parking lot at Portland
25 Adventist Medical Center. It includes the roadway

1 adjacent to the lot.

2 Does that show the area that you drove to?

3 A Yes, it does show.

4 Q If you wouldn't mind, Officer, why don't you
5 go on up to the diagram and show the Grand Jury.

6 A Okay. So we came through 106 right here,
7 and I think we passed Clay, somewhere right in here, and
8 we parked right around this -- parked on this side of
9 the road. And there were -- Sergeant Clinton was
10 already there and other officers parked right alongside
11 here and right alongside there.

12 Q All right. And from that vantage point,
13 which is I believe Main Street that runs along the side
14 of the lot, were you able to see anything going on
15 inside of the parking lot?

16 A Yes. As soon as I pulled up right here, I
17 got out of my car. I had my rifle. And Sergeant
18 Clinton said he's somewhere -- he's right there in the
19 parking lot. There's a chain link fence right through
20 here that you can see through it, and the parking lot
21 was lighted.

22 And I could see him standing somewhere kind of
23 in this area, walking around. And I noticed that as he
24 was walking, you know, you have the natural hand movement
25 of your arms. His hand went -- left hand was moving like

1 this (indicating), but his right hand, he was kind of,
2 kind of holding it like this, and his right arm wasn't
3 moving at all.

4 Q And for the record, you were indicating his
5 left arm was swinging naturally?

6 A Yes.

7 Q But you were indicating with his right hand,
8 you were holding it or cupping it?

9 A Yeah. He was cupping it like this, like he
10 was trying to hold onto something.

11 Q And you're indicating, for the record, next
12 to his waistband area?

13 A Yes.

14 Q When you saw that action or movement, did
15 that have any particular meaning to you based on your
16 training and experience?

17 A Yes. Based on my training and experience and
18 plus the information that was put out that the person
19 was armed with a handgun, and I thought that, you know,
20 he was trying to hold, you know, trying to hold a
21 handgun or trying to cover it up with his jacket, and I
22 heard someone actually say that he's got a handgun. I
23 wasn't exactly sure if that was said on the radio or if
24 that was said next to me.

25 Q Do you have an idea what the distance was

1 between yourself and the person in the parking lot?

2 A I would say it was approximately maybe 45 to
3 50 yards.

4 Q All right. And as he's moving through the
5 parking lot, what are you doing?

6 A As he was moving through the parking lot, I
7 think Sergeant Clinton was the one putting out all of
8 the information on the radio. And by that time there
9 was about probably 10 or 12 officers there.

10 And we were basically paralleling him because
11 he started to move down towards the entrance of the
12 parking lot. So we were outside the fence just kind of
13 watching him going down. And he was -- at the same time
14 he was yelling something. I couldn't exactly hear what
15 he was saying.

16 Q All right. So you were indicating his
17 movement in the parking lot towards the exit and then
18 your movement on Main Street paralleling him on the
19 other side of the fence?

20 A Yes. Yes.

21 Q All right. As that's happening, at some
22 point do you hear someone yelling about what they are
23 observing him do?

24 A Yes. I heard someone -- someone yelled on
25 the radio that he's got a handgun, he's got a gun. And

1 there's a lot of commotion going on, a lot of people
2 talking at the same time.

3 And my focus was just -- you know, I had my
4 rifle on the whole time as he was walking, and I'm on the
5 lethal cover, so I can't really talk on the radio, and I
6 had to focus basically on the person to make sure he
7 doesn't pull a gun on us.

8 Q So did you at that point have an impression
9 in your mind of what was happening in the situation?

10 A Yes. He seemed really -- just based on his,
11 the way he was walking back and forth, and at one point
12 he did look at us, looked through the fence, and
13 Sergeant Clinton said, "Hey, he's looking right at us."

14 He just seemed very agitated. He wasn't happy
15 that we were there. We did have a conversation, I guess,
16 with him when he finally came down here and we met him.

17 I was right about, right here when he finally
18 made it through the entrance of the parking lot, and he
19 was yelling something like, "F-U, fuck you, Officer,"
20 something like that.

21 And I stopped right there and kind of hid
22 behind a -- there's a sign here in the tree and then I
23 had my rifle basically pointing at him.

24 Q And for the record, you are indicating your
25 position at the driveway entrance and main entrance to

1 the hospital area, and he's at the --

2 A Yes.

3 Q -- sort of the exit point of the employee
4 parking lot?

5 A Yeah. He was right about here when I entered
6 here, and I remember Sergeant Clinton was right there.

7 Q All right. And so you said we had a
8 conversation, I guess.

9 So you mean to the extent there was any oral
10 conversation, it was him saying "fuck you," that was the
11 conversation?

12 A Yes. That was basically it. And the
13 officers were saying, "Get your hands up. Let me see
14 your hands."

15 Q Do you know who was giving those commands?

16 A I don't know exactly. I wasn't looking. All
17 I'm doing is looking at him, but hearing other officers
18 talking and giving commands.

19 Q When you heard the other officers yelling,
20 show your hands or let me see your hands, did this
21 subject have any response?

22 A No. He just said, "F-U guys," and he started
23 walking back.

24 Q "Walking back," what do you mean?

25 A Like back towards the chain link fence. And

1 he actually took -- this was all empty, so he was kind
2 of walking through the lot about like this.

3 And when he did that, I broke off and started
4 paralleling him against the fence because there was a lot
5 of cops right here and a few officers followed me. We
6 basically split into two teams. We were the containment
7 area to make sure he doesn't jump the fence towards Main
8 Street.

9 Q So you stayed on Main Street?

10 A Yes.

11 Q If you could, and feel free if you want to
12 sit back down unless you need the photograph to help
13 explain your testimony, why don't you just walk the
14 Grand Jury through then what you observed from your
15 vantage point on Main Street.

16 A So we returned to Main Street as he was
17 walking. I guess the direction would be northwest or
18 southwest to the parking lot, and he was yelling and
19 screaming the whole time as he was walking. So we kind
20 of followed him through -- paralleled him through the
21 fence -- or outside the fence.

22 Then at one point I saw him, I thought he was
23 climbing the fence, but he actually climbed the vehicle,
24 and I was yelling to somebody get on the radio, he's
25 climbed a vehicle. But he was actually -- he was

1 actually climbing on top of like a red vehicle or a red
2 truck. And he just sat there for probably one minute or
3 two minutes.

4 Q All right. And what happened after that?

5 A So I was, I was hiding behind a tree, and I
6 was kneeling, and I had my rifle pointed at him, and he
7 was saying something. He was too far away for me to
8 actually hear what he was saying.

9 And then abruptly he jumped off from the
10 vehicle, and he started walking towards the team that was
11 located in front of the parking structure. And then --
12 so as he was walking towards them, I basically removed
13 myself from behind the tree, and then my team and I
14 started paralleling him again as he was walking towards
15 the other team.

16 I couldn't really tell if he was walking or
17 running because at that point I started running. And
18 then I heard, I heard someone say, "Stop" on the radio
19 or -- I couldn't tell if someone said, "Stop."

20 And, all of a sudden, I heard gunshots, and
21 then I saw him fall down as I was running. I saw him --
22 as I was running towards the entrance.

23 Q All right. And why were you -- why were you
24 running at that point?

25 A Well, at that point I felt that he was

1 actually -- you know, he's walking towards the other
2 team, and I knew there was one rifle for that team, I
3 think it was Officer Hearst, and I wanted to get there
4 just in case they needed more help because the guy was
5 armed and he was walking towards them deliberately,
6 walking towards a team of officers, and they are telling
7 him to stop, and he wasn't stopping.

8 Q All right. And just to make sure we're
9 clear, you were in a fixed position up until a point
10 when you saw the subject running towards the other
11 officers; is that right?

12 A Yes, that's correct.

13 Q So that's what made you decide to begin
14 running towards him?

15 A Yes.

16 Q What was your intention at that time when you
17 started running? What was your plan when you got to
18 that area?

19 A My plan was to be available as a rifleman for
20 the officers. I know there was only one there. It was
21 Officer Hearst that I had heard respond, because I
22 remember Sergeant Clinton asking, "Hey, I need a rifle
23 guy here," and one officer responded.

24 At that point we weren't really sure if, you
25 know -- we knew he was, based on our information that we

1 were given, that he was armed, but we weren't exactly
2 sure, you know, what type of weapon that he had with him.

3 Q All right. When you began running in the
4 direction of the other officers, in your mind did you
5 have any apprehension of fear for the other officers?

6 A Oh, yes. Yes. I was, I was, I was worried
7 about them because I heard shots fired, but I wasn't --
8 I saw the guy go down, but I wasn't able to see if he
9 was -- if that other person actually fired on the
10 officers, 'cause I was running, and I was trying to
11 focus on -- 'cause it was dark on the sidewalk. I was
12 trying to focus on where I'm running and then at the
13 same time looking at the guy.

14 And I just wanted to be there for the officers
15 just in case somebody did get hurt, and they need more,
16 more officers to help with dealing with the situation.

17 MR. REES: All right. Any questions from the
18 Grand Jury?

19 A GRAND JUROR: Do you hear a gunshot before
20 you started running or after?

21 THE WITNESS: I was kind of in a, I guess a
22 semi-trot before the gunshot happened, and because
23 everybody else was basically kind of semi-running at that
24 point, but then after the gunshot, that's when we went
25 into a full sprint.

1 A GRAND JUROR: Thank you.

2 MR. REES: All right. Anything else?

3 All right. Thank you very much, Officer.

4 THE WITNESS: Thank you.

5
6
7 JAMES BRUCE LINKOUS,
8 a witness called on behalf of the State, having been
9 first duly sworn, was examined and testified as follows:

10
11 EXAMINATION

12 BY MR. RAMRAS:

13 Q Can you start just by telling them your full
14 name, and spelling your last name?

15 A James Bruce Linkous. It's L-I-N-K-O-U-S.

16 Q And, Mr. Linkous, what do you do for a
17 living?

18 A I'm a regional vice president and general
19 manager for ViaWest.

20 Q And what does ViaWest do?

21 A We're a high-tech company. We're a data
22 hosting, so colocation for computers.

23 Q Okay. Now, on February 17 of this year, did
24 you go for what's called a ride-along with Portland
25 Police?

1 A I did.

2 Q And, first of all, what is a ride-along?

3 A It is a citizen program where you can go out
4 and see what the police do and ride along with an
5 officer on their shift.

6 Q Just out of the curiosity, what prompted you
7 to do that?

8 A Well, about five years ago, my best friend
9 was a Portland police officer, got killed in an
10 accident, and we got involved in a -- put a foundation
11 together in his honor called the Z-Man Foundation. And
12 I spend time from time to time with some of the officers
13 that were involved with the Z-Man Foundation.

14 Q So who were you riding with on February 17?

15 A Sergeant John Clinton.

16 Q Did you know him prior to that evening?

17 A I had met John, yeah, probably about a year
18 earlier.

19 Q Okay. And do you recall roughly what time of
20 day the ride-along began?

21 A I got there about 4:30 in the afternoon.

22 Q And so had you already been doing this for
23 several hours when Sergeant Clinton responded to the
24 Portland Adventist Hospital?

25 A That's correct.

1 Q What is your memory of -- well, not based on
2 talking with Sergeant Clinton, but what you may have
3 heard over the radio, what was your memory of why you
4 were going to Portland Adventist?

5 A Well, we had gone back over to the precinct,
6 and I was there with a couple of the other sergeants.
7 And there was a call that came out about a person down
8 the street that had confronted -- not confronted, but I
9 guess confronted a female security guard with a gun.

10 So the whole precinct sort of headed down that
11 way. And we were probably about three blocks away, and I
12 was sitting in the front seat of the car. So they talked
13 on the radio as we were going down there about that they
14 didn't know where the person was, that he had a gun, that
15 he was armed, and that they were looking for him.

16 So Sergeant Clinton stopped in a safe area,
17 back away from where the hospital was, probably about a
18 block away, and then all of the cars started staging. He
19 told me to stay in the vehicle, stay with the car, and do
20 as instructed if another officer came along.

21 Q Now, we have a couple of photographic visual
22 aids here. Have you had a chance to look at these at
23 all?

24 A I have not.

25 Q Okay. Well, if you think they are helpful.

1 I'm pointing to Main Street. Are you able to tell us
2 using this diagram where roughly the car was parked?

3 A Is the hospital here?

4 Q Yes.

5 A So it would have been right on the corner
6 side of the picture right here, so we actually parked
7 right here. The vehicle was right on the corner.

8 Q Okay.

9 A I could see the parking lot. I did see the
10 gentleman. When I was sitting in the car, they talked
11 about the description. They were trying to determine
12 what parking lot he was in, because when I got there,
13 they didn't really know where he was. And then they
14 said he was in the, I think it was the east parking lot.
15 It was the employee parking lot, which is actually right
16 across from where I was at.

17 Q So were you -- you were able then to see into
18 the parking lot?

19 A Oh, yeah. I saw the individual. They
20 described what he was wearing. He was wearing a white
21 top, and he was probably about a hundred yards from
22 where I was at.

23 Q Okay. What did you see him do?

24 A I saw him -- so my first -- when I first saw
25 him, and they came on the radio, they were talking about

1 what he was wearing. And I noticed this person over
2 there wearing a white top. He was just acting extremely
3 agitated. He was yelling.

4 The police were -- you could hear the sirens
5 coming, and I heard someone on the radio say to turn the
6 sirens off. But he was just -- he was just very, very
7 angry and yelling a lot, and he was wandering around. He
8 went towards the hospital.

9 And there were a lot of officers running by
10 where I was at because I was in the vehicle there, and
11 they were heading down to the hospital because he was
12 going towards the hospital. It was almost like they were
13 trying to put themselves between the hospital and him
14 because of the report that he had a gun.

15 Q Okay. Now, did you ever get out of the car
16 during this whole incident?

17 A About probably ten seconds before the
18 shooting, yeah.

19 Q Well, why don't you just sort of take us
20 through -- and if it is helpful to use these diagrams,
21 please feel free to do so, but why don't you just take
22 us through what you were able to see and observe.

23 A So what I saw from watching back over here,
24 and I don't know the exact location, I don't know
25 exactly where the bend was, but when I was sitting on

1 the corner, I saw him in the parking lot wandering
2 around.

3 And what he did is he went towards the
4 hospital and then came back out and sort of walked up
5 this way and then came back. Then I saw a couple of the
6 people coming to get in a car, and he ran towards them,
7 and they ended up driving out of the lot. Then he jumped
8 up on a car and started yelling.

9 Q Okay.

10 A You know, I could just tell -- what
11 bothered -- he was -- it was almost like he was very
12 cagey and agitated and very angry.

13 Q Okay. And so even though you were parked in
14 a position which isn't quite visible on this diagram,
15 you were able to actually still hear that he was yelling
16 when he was up on this parked vehicle?

17 A Yes.

18 Q Were you able to hear what he was saying?

19 A No. I didn't hear what he was saying; I
20 could just hear him yelling.

21 Q So what about it -- I know sometimes it is
22 hard to articulate it -- but what about it that made you
23 think that he was angry?

24 A Just body language. He just -- I've gone on
25 a few ride-alongs, and I've seen typically people

1 don't -- you know, they run if the police come, and he
2 didn't run. It was more that he stood his ground and he
3 was looking for a fight. That's what it looked like
4 from my position.

5 Q Okay.

6 A And I think that -- like I say, the way he
7 moved around the lot, it was almost like he was waiting
8 for more police to come. It was sort of strange.

9 Q All right. And were you able to actually see
10 him while he was standing up on the vehicle?

11 A I did see him when he was up on the vehicle.

12 Q All right.

13 A And shortly after that, I saw a really bright
14 light that I think the police had probably used to, you
15 know, to sort of identify him or illuminate him,
16 whatever they are doing. And shortly after that, he
17 took off and then started running to the hospital. And
18 that's when I heard on the radio about officers to take
19 hard cover.

20 I got out of the car at that point and got
21 behind the vehicle because I was a little bit -- you
22 didn't know -- it was dark out there, and you can't
23 really see a lot. And I just -- I didn't know what was
24 going to happen. It was probably about, I don't know, it
25 wasn't very shortly after that, maybe 10 seconds, 15

1 seconds, that there was a volley of gunfire.

2 Q Okay. So you had actually seen him get off
3 the car and start running in the direction of where the
4 officers were?

5 A Right towards the hospital. We had been at
6 the ER earlier that night on another call, and so I knew
7 from the position we were at, I knew exactly where the
8 ER was, and that's the direction he took off running,
9 right straight to the ER.

10 Q Okay. After you heard the volley of gunfire,
11 what did you do?

12 A I stayed down for a bit because, you know,
13 I'm a citizen. It sort of caught me off guard
14 definitely. And I heard the radio, because the car
15 radio was still on about calling for medical, so I
16 figured it was probably okay, and I sat back down in the
17 car.

18 And a female officer ran up and opened up the
19 trunk and grabbed a shield box out of the vehicle and ran
20 back down to where all of the officers were. I couldn't
21 see the officers that did the shooting. There were cars
22 between me and where they actually -- the shots that come
23 from.

24 Q Did you then remain in the car until Sergeant
25 Clinton or someone came back to your location?

1 A I did. Yes. Sergeant Clinton called me and
2 said that they were going to be tied up for a while, and
3 that not to talk to anybody about what had happened. He
4 said I can't get into any detail, but we're going to be
5 contacting you.

6 MR. RAMRAS: Do any of the Grand Jurors have
7 any questions?

8 A GRAND JUROR: So from the time the car
9 was -- so the car was parked at that corner, and Clinton
10 who was the driver, officer in your car, ran along Main
11 Street and then into the lot?

12 THE WITNESS: Yeah. We were the first car
13 that actually pulled up, I believe. I don't think --
14 there were no police cars in front of us, so we were the
15 first ones, but then a whole lot of them came behind us.

16 A GRAND JUROR: Okay. From the moment you
17 parked there until you heard the volley of shots, do you
18 have a sense of how long that was?

19 THE WITNESS: Um, under ten minutes, but I'd
20 say probably seven or eight minutes by the time they
21 arrived. I think it was something like that.

22 A GRAND JUROR: Thank you.

23 MR. RAMRAS: Okay. Thank you.

24 THE WITNESS: Thank you.
25

1 JOHN CLINTON,
2 a witness called on behalf of the State, having been
3 first duly sworn, was examined and testified as follows:
4

5 EXAMINATION

6 BY MR. RAMRAS:

7 Q Okay. Can you start by telling them your
8 first and last name, and spelling the last?

9 A Sure. My name is John Clinton,
10 C-L-I-N-T-O-N.

11 Q Where do you work?

12 A I work for the Portland Police Bureau.

13 Q And your assignment with them?

14 A I'm a sergeant on East, afternoons.

15 Q So what hours are considered afternoons?

16 A Afternoons are from 4:00 p.m. to 2:00 a.m.

17 Q Were you working in that capacity back on
18 February 17 of this year?

19 A Yes, I was.

20 Q And I guess I should ask, how long have you
21 been with Portland Police?

22 A Fifteen years.

23 Q Did you have any kind of law enforcement
24 experience prior to that?

25 A I did. I worked for Newberg Police as a

1 police officer for two years and nine months.

2 Q How long have you been a sergeant?

3 A I've been a sergeant for a little over a year
4 and a half.

5 Q Normally when you operate a patrol car, are
6 you by yourself or with a partner?

7 A I'm usually by myself.

8 Q On this particular day, though, did you have
9 somebody else with you?

10 A I did.

11 Q Who did you have with you?

12 A I had Jim Linkous, the guy that was just in
13 here.

14 Q And why was Mr. Linkous with you?

15 A He was doing a ride-along.

16 Q Had you met him prior to that day?

17 A Yes, I had.

18 Q Do you recall where you had been just prior
19 to being notified that there was an incident up at Good
20 Sam Hospital (sic) that required a response?

21 A Yeah. I was at Portland Adventist Hospital.

22 Q Sorry.

23 A No. That's okay.

24 Yeah. I was inside the precinct, in the
25 sergeant's office. I was doing some sort of paperwork.

1 Q And what was the information that you
2 received that caused you to respond?

3 A It was essentially a call came out that
4 security -- or that there was a man confronting security
5 with a gun, or a man was pointing a gun at security at
6 Portland Adventist out in the parking lot.

7 Q So what did you do after hearing that?

8 A I told Jim, I said, "Hey, let's hop in the
9 car. We need to go to this." And went and got in the
10 car and drove right there. It is relatively close.

11 Q Now, we have up here sort of a photographic
12 diagram of the parking lot at Portland Adventist. Let
13 me first ask you, so to the extent that it's helpful to
14 come up and demonstrate anything on that, please feel
15 free to do so.

16 A Sure.

17 Q But where did you drive to initially?

18 A You are going to like this. After doing all
19 of the map stuff that you guys did, I actually did -- so
20 the Precinct is back up over here -- and I parked my
21 car. The road comes and turns here, and I parked my car
22 kind of on the corner right as it turns, so probably
23 right about here.

24 Q And why did you park in that particular
25 location?

1 A Well, initially, I didn't know exactly where
2 this guy was, and Jim was in the car, so I wanted to
3 make sure that we were far enough away so that he
4 wouldn't be interacting or have to deal with this guy,
5 to protect him.

6 Q I should ask, when you have someone who's a
7 ride-along, are they suited in a ballistic vest or any
8 protective equipment?

9 A Generally not, no.

10 Q And since Portland Adventist must have a
11 number of parking lots, what was it that led you to park
12 near this particular lot?

13 A Well, this was the closest parking lot to the
14 precinct, and I didn't want to drive too far in or in
15 where I would have passed the location where this guy
16 was with the gun, so I wanted to be far enough away
17 where I would always be in between the guy with the gun
18 and my car.

19 Q Had you received a description of what this
20 person looked like?

21 A At that point I don't think that we had. I
22 don't recall getting specific information at that point.

23 Q Did you notice anything in the parking lot
24 that made you think that might be the person there?

25 A Well, the call it continued as they were

1 giving information. They said he was in the employee
2 parking lot by the gas pumps. And I know that when you
3 look, I assumed it is in one of these.

4 Q Okay.

5 A I'm just trying to find them. There are gas
6 pumps that are somewhere, maybe here. Okay. So I just
7 know that from being familiar with the area. And
8 because of the time of the night, there aren't many
9 people that are out there.

10 And I looked through, as I got out of my car,
11 I looked through and saw this guy. He was wearing a
12 lighter-colored shirt or jacket, and he was walking, I
13 guess it would be westbound kind of in that area.

14 And so I was watching him and paralleling him,
15 and I was running in the street, but on the -- it would
16 be the south side of the street. So I was keeping the
17 cars in between -- there was, there was a row of cars
18 that were parked there. The cars were in between him and
19 I. I was fairly confident that it was him because I
20 could hear him yelling.

21 Q Okay. Could you hear what he was yelling?

22 A I wasn't hearing the specific things. He was
23 angry. I could hear that he was cussing, but I
24 couldn't -- the specific words, I don't recall them.

25 Q Okay. So you had now gotten out of your car.

1 What instruction, if any, did you give to Mr. Linkous?

2 A I just told him -- I left the keys in the car
3 and said, "Keep your head down, you know. If you need
4 to, drive the car out of here, but keep your head down.
5 Stay in the car, stay with the car, and I'll be back in
6 a couple minutes."

7 Q Okay. And where did you wind up going then?
8 You mentioned you were paralleling him. Where did you
9 wind up?

10 A Essentially -- so I was -- if this -- I don't
11 know if you guys can see that.

12 Q Maybe it would help if you stood on this
13 side.

14 A Okay. I'm sorry.

15 Yes. As I was -- so as I'm kind of running
16 down the street here, he's walking somewhere here, and
17 he's just agitated and yelling. And I make it down
18 around to this corner, and he's coming around this way,
19 and he's -- again, he's yelling. He's pretty angry.

20 And we kind of -- I see him through here and I
21 think he sees me, because from here, he continues walking
22 this way, and I'm going this way, because I'm concerned
23 that he's going to either be going into the hospital,
24 into the parking structure, or there's other people out
25 here, and I stop.

1 And I radio for someone with an AR-15 and a
2 car to come up to the entrance to the hospital so that
3 I'll have cover and that I'll have additional, you know,
4 fire power if I need it.

5 Q And by this point were you aware whether or
6 not other officers had made it to the hospital?

7 A Yeah. There was -- when I left the precinct,
8 there were three or four other folks, other officers.
9 You know, I think Sergeant Anderson was there. I don't
10 remember who else, but we all kind of left. I was the
11 first car out, but they were all leaving approximately
12 at the same time.

13 Q All right.

14 A So shortly thereafter, a car came up and
15 someone with an AR-15 came up. And we stopped here and
16 kind of, I don't want to say regrouped, but we -- we
17 were starting to develop a plan of what we were going to
18 do with this guy who was in this area now. The guy, he
19 was over here, he had started to run somewhere back this
20 way, and I lost sight of him.

21 Q Okay. All right. So what happened after
22 that and after you had regrouped and were somewhere in
23 the lot? Yes, if you would like to stand, it's up to
24 you.

25 A I'm more comfortable standing, if that's

1 okay.

2 Q Sure.

3 A So basically he runs back into here, and I
4 did not want him getting out of the parking lot. I
5 wanted to keep him contained. So the car -- whatever
6 car it was, I just jumped in it and I said, "Cover me."
7 And there were officers that were with me and the car,
8 and I drove the car up and parked it in the front here.

9 Q And let me just show you real quickly. We
10 have sort of a graphic diagram that shows the position
11 of various cars. So is the car that you drove up --

12 A It was the sergeant's car.

13 Q Okay.

14 A It wasn't my car, but it happened to be one
15 of the other sergeants that were there, their car.

16 Q Okay.

17 A So my intent there was we were blocking any
18 ingress or egress from both citizens coming into the lot
19 and then also blocking him from driving out or running
20 by us. He knew that we were there then. That was
21 really my intent with that, and that we also had cover.
22 He would know that we are the police because it is a
23 marked police car.

24 Q Okay. Why don't you take us through what
25 happened next.

1 A We were here, and he is over down in this
2 area, and I can tell he's pretty angry. I can hear his
3 voice. Occasionally, I'm hearing him curse. Somebody
4 says he's -- you know, I see the gun. I see -- he gets
5 up on top of something. I don't know what it is.
6 People were saying he's on a car, on a truck, on some
7 sort of vehicle.

8 My big concern was we didn't have this
9 contained, and I was starting to realize he wasn't trying
10 to flee from us. And generally, an armed person who's
11 just pointed a gun at a security officer is trying to get
12 away from us, so I knew that this was going to probably
13 be a confrontation.

14 Q Is it unusual in your experience for someone
15 when the police have arrived not to flee?

16 A Absolutely, yeah. It is very rare. Usually
17 people are trying to get away from us especially if they
18 have committed some crime.

19 Again, this guy had been reported to have been
20 pointing a gun at security, so I was concerned that he
21 was, you know, going to try and fight with us or trying
22 to engage us. And he's over on the south side.

23 And again, my concerns at this point is we had
24 officers -- this is I believe the only drivable way into
25 the parking lot. So I asked, I think it was on the air

1 -- again, there were probably five officers that were
2 right in that immediate area. So some of the things that
3 I was just talking with them about, but other things, I
4 got on the air and just said, "We need containment on the
5 south side."

6 So over here we need, you know, some officers
7 here if he came over there because there's -- there's
8 some sort of residential housing, old folk's home or
9 nursing thing. There's like two big buildings here that
10 are basically residential areas. I didn't want him
11 getting into there. I didn't want him getting into the
12 hospital.

13 And then so people were starting to -- again,
14 we were getting containment. And I saw a car that was
15 parked down on this side where the, like I said, there's
16 a large tower almost, a residential living place. That
17 officer had the parking lights on, and I could see them
18 clearly, and I say on the radio a couple of times, "Turn
19 your parking lights off."

20 The reason being is I was concerned that this
21 guy, since he was not fleeing us, and we were starting to
22 amass. You know, this was the largest contingent of
23 officers. He would go to that single officer and
24 confront them by themselves. And really I just didn't
25 want that happening.

1 Essentially this guy is on the side over here,
2 and we have these -- I guess, John Anderson has one, I
3 have one now, it is a light called the Polarion. I don't
4 know if I'm getting into too much detail.

5 Q No. That's fine.

6 A It is a really, really bright light. It is
7 like 3500 candlelight. It is actually brighter than our
8 spotlights on the car.

9 And John had it out -- Sergeant Anderson had
10 it out, and I grabbed it from him, and I was shining the
11 light on him because he was on top of, you know, a
12 vehicle -- he was on something that was raised. Again, I
13 couldn't see what it was.

14 Q Let me ask you that. Given how powerful this
15 light is, why, even when you've got it trained on him,
16 can you not tell what he's on?

17 A Because there's so many cars that are in
18 between us and different things, and the distance.
19 We're a -- I mean, I'm going to guess we're 50 yards
20 away or so, and so just the cars and the things that are
21 in between us. I can tell he's elevated, but I can't
22 see what he's on.

23 Q Okay.

24 A So I'm shining the light on him basically
25 because I want to see what he's doing and keep him kind

1 of encapsulated, and also if he's going to confront
2 someone, he knows that it is us, the police that are
3 there. I would just assume I want him to come to us
4 versus again going out to one of the perimeter spots
5 where we only have a single officer.

6 Q Okay.

7 A So at that point again, I hear him
8 occasionally cursing. And then we're trying to come up
9 with how we're going to deal with this. And Sergeant
10 Anderson says, you know, maybe we need to talk to SERT,
11 you know, our SWAT team. I just told him, you know,
12 take care of that if that's what you think we need to
13 do. I'm going to take care of this here.

14 The guy ends up -- again, we've already called
15 for a K-9, you know, I think a bean bag. Someone had
16 called for Project Respond, you know, all of the
17 different tools that we have. What I was really hoping
18 is if we had a K-9 -- or we call it a sage gun. I don't
19 know if --

20 Q I don't think they've heard that term.

21 A We're giving you guys something new then.
22 That's good. You guys are probably tired of this.

23 A sage gun is -- we have them. I think we --
24 we don't have many in the Bureau. And it shoots like a
25 large wooden dowel, that it is accurate to like 50 or

1 60 yards, I think, and it hurts. That is something that
2 we might have been able to reach out to him with at that
3 point.

4 The bean bag shotgun, I'm not sure if we had
5 one there at that point or not. I know from my
6 experience that those don't -- that kind of distance,
7 we're not going to be able to reach out to him with that.

8 My plan was as he was over here, we develop --
9 we have kind of amassed our folks here. We develop a
10 custody team. We have a K-9. We have a sage gun. And
11 then we can start calling to him to get him over to us.
12 Unfortunately, he didn't allow us really the time and the
13 ability to get all of our tools there set up.

14 So as he's over here, he starts to walk, and
15 he's pretty agitated, and I'm still shining the light at
16 him. And I lose him in the cars because there's cars in
17 between us, and he starts walking. I don't recall -- I
18 might steal one of these here.

19 Q Sure. Go ahead. Whatever you need to
20 explain it.

21 A Okay. So we're up here. He's over here.
22 He's walking somewhere over here, and then he gets here,
23 and I'm shining my light. I'm losing him, and then I
24 hear his voice, and I'm shining the light at him, and he
25 starts walking at us.

1 Again, I can hear him cursing, and then he
2 takes off sprinting at us. And really for me, my concern
3 is as he's started to, you know, walk towards us, it
4 dawned on me that we weren't going to have a choice. He
5 was forcing us at that point to engage him.

6 My biggest concern was we had enough officers
7 there, was that I did not want one of my officers getting
8 hit by gunfire with him shooting at us. So as he started
9 to walk, he was very aggressive in his walk towards us.
10 Like I said, he was cursing, and then he started to
11 sprint towards us.

12 And so I yelled -- there was somebody that was
13 on my left side, and I don't know who it was because I
14 was focused on him, and I yelled "Get back." And I
15 started moving back because the patrol car -- I was
16 standing kind of in this area here, so I started moving
17 back this way.

18 There was someone, like I said, I don't know
19 who it was, they were somewhere out in this area. I was
20 yelling at them, "Get back." We started moving back. As
21 we did so, I heard the shots ring out. And I didn't know
22 who was shooting, if it was him or if it was us, the
23 response. And then as I looked up, he was falling on the
24 ground.

25 Q Well, sorry, I didn't mean to interrupt. I

1 want to back up just a little bit.

2 A Sure.

3 Q When you saw him coming towards you, were you
4 able to make any observations of his hands?

5 A Um, oh, yeah, thank you, because -- he had
6 his hands -- he had his right hand and it was down the
7 front of his pants. And he was -- actually his hand was
8 in his pants, and he's, like, literally doing this as he
9 starts to walk. He's, like, jerking on something down
10 in front of his pants. It looks like he's trying to
11 pull out this gun but that it is stuck in his pants as
12 he's coming.

13 So he's, he's aggressively approaching us and
14 he's doing this, (indicating), and then he starts to run,
15 and his hand is still coming out. And that's when I'm
16 yelling, "Get back," and I'm turning. And, like I said,
17 there was somebody next to me, and I don't recall exactly
18 who, and then he ran at us. Officers shot.

19 Then I essentially took up a position by that
20 front car where I was covering him with my pistol. And I
21 said, "Get a shield. We need a shield up here now." And
22 I don't know if I said that on the radio and/or the K-9,
23 but I was pretty adamant, "We need a canine here now."

24 So we essentially got a shield, developed a
25 plan to get up to him to see -- to get him some medical

1 care and to make sure -- you know, to see if he was --
2 what his status was.

3 Q And let me ask you, not to interrupt you, but
4 just to go back a little bit.

5 When you saw him running towards you and you
6 were making this kind of motion, did you already have
7 your gun out by that point?

8 A At different times I had it out and had it
9 back in. I don't think I had it out at that point in
10 recollection. And my reasoning was that we had enough
11 guns that were out, I was more concerned about our
12 people getting hit than actually engaging him with my
13 pistol was kind of my thinking.

14 Q Okay. And at the point when you saw him, you
15 know, really start to pick up the speed at the end, what
16 did you think his intention was at that point?

17 A He was -- he was, you know, engaging in
18 suicide by cop. My feeling was he wanted to kill as
19 many of us before he got killed. That was really my
20 thought.

21 Q Okay. Sorry. You were starting to talk
22 about assembling the shield.

23 A Yeah, yeah. Okay.

24 So I just -- I stayed covered on him, and I
25 was kind of barking behind me. Just saying, you know, we

1 need a shield up here now. We need a K-9 here now. And
2 I just said, "Hey, I've got him covered. Get that
3 stuff." There were other people that were talking as
4 well.

5 I don't remember exactly what they were
6 saying. And, I'm sorry, as he -- I'm going to -- I'm
7 going to go backwards a little bit. As he ran at us, I
8 told him, you know, stop and get your hands up very
9 clearly and loudly, and he wasn't obeying those
10 instructions.

11 Q Did you hear him say anything in response?

12 A He was just cursing. I mean, that's all I
13 remember him doing. I don't remember -- it is kind of
14 crazy that way, but I don't remember him saying anything
15 else besides just curse words.

16 So to move back forward, the shield -- we get
17 a shield there, and I'm looking at him, and my memory as
18 time has went on -- I think initially in my detective
19 interview they asked, you know, was the gun -- where was
20 the gun at? When I looked at him, I think it was
21 touching his hand.

22 And in my interview I wasn't sure if it was a
23 foot or two away or if it was touching his hand. I
24 remember why now I felt that way is because he was laying
25 there. The gun was touching his hand, and then the K-9

1 came, and we decided to make sure -- let's get him away
2 from that gun.

3 So the canine went up, grabbed him and started
4 pulling him and pulled him away from the gun. And that's
5 just in my mind as far as whenever this had happened,
6 that was something that I kind of over -- it was
7 difficult for me to recall that. I just hadn't recalled
8 that exactly.

9 So we pulled the -- the dog pulled the guy
10 away from the gun. We got the shield up and called -- we
11 got the bean bag, a less-lethal bean bag there, and we
12 had an AR-15 there, and we went up and approached him.

13 My job -- essentially, I was going to go
14 hands-on, and I did, is to grab his left hand -- or left
15 wrist and arm. Officer Budry was on the right arm. And
16 I looked down and essentially panicked because there was
17 no gun. I saw that what I thought had been a gun was a
18 piece of plastic that I thought was like a piece broken
19 out of a dash of a car is what it looked like to me from
20 there.

21 And so I was, like -- you know, I was
22 concerned about the officers that were there that had
23 shot, that where did this gun go.

24 So I did a frisk basically of his entire front
25 side, and then I lifted him up and frisked the back side

1 of him, and I didn't find a gun, which at the time really
2 concerned me because of the perception that I thought
3 people would have of this and not understand exactly what
4 we had faced.

5 Q Now, after that, when did medical get
6 involved?

7 A Medical was there essentially immediately, I
8 want to say within a minute, within 30 seconds. It was
9 quick. As we were approaching, actually right after the
10 shots were fired, I think Sergeant Anderson got on the
11 air and said something to the effect of, you know, shots
12 fired, have medical staged, and be ready to come in.

13 Whenever we went up, grabbed a hold of his
14 hand -- no. I got a hold of his wrist and his arm, John
15 got on the air -- Sergeant Anderson got on the air right
16 away and said send medical in, so it was -- it was quick.

17 MR. RAMRAS: Do any of the Grand Jurors have
18 questions?

19 A GRAND JUROR: From the time you parked your
20 car to the time you heard the shots ring, what would you
21 guess the time was that elapsed?

22 THE WITNESS: I'm going to guess. Probably
23 six minutes, five minutes, somewhere around there.

24 A GRAND JUROR: Thank you.

25 A GRAND JUROR: Just trying to backfill some

1 of my information here.

2 When the big, high-powered light was shined,
3 you gave a couple of reasons why you couldn't see as
4 clearly. One was cars. What was the other one?

5 THE WITNESS: Just the distance.

6 A GRAND JUROR: Car and distance?

7 THE WITNESS: Yeah. There were cars parked in
8 there, the distance. There's little, like, parking strip
9 islands. I don't know if there was trees or shrubs or
10 something. I mean, I could see him when he was on top of
11 the car. I just couldn't see what it was that he was on
12 top of.

13 A GRAND JUROR: Thank you.

14 A GRAND JUROR: When you gave the command
15 loudly and clearly to stop, put your hands up, how many
16 more feet did the person continue before shots were
17 fired?

18 THE WITNESS: Gosh, to be honest, I really
19 don't know. He was walking at us. And it was just kind
20 of a -- it was a reaction more than -- I put it out there
21 as a command, but it was more of an, oh, crap, he's
22 coming at us. "Stop. Hands up."

23 I mean, I couldn't -- I just was trying to
24 give him instructions. It was, it was, you know, don't
25 do this essentially. And it caught me off guard that he

1 was actually coming at us.

2 A GRAND JUROR: Still moving forward?

3 THE WITNESS: Yeah. I really don't remember,
4 because he was -- from the time he was walking until he
5 was sprinting seemed like a very short distance. I mean,
6 he walked and then just took off. And again, it was more
7 of -- I just need to project out to him and let him know,
8 you know, stop.

9 A GRAND JUROR: So -- but he closed the
10 distance and obviously very quickly.

11 THE WITNESS: It was very fast.

12 A GRAND JUROR: And he was about 20 yards from
13 you, 25 yards when he was shot? I know it is hard to
14 estimate.

15 THE WITNESS: Yeah. I'm going to say he
16 was -- yards, he was -- whatever. I'm going to say he
17 was 40 to 60 feet, somewhere around there, so that's,
18 what?

19 A GRAND JUROR: 20, 25 yards?

20 THE WITNESS: 12, 15 yards to 20 yards,
21 somewhere around there is just my guess.

22 A GRAND JUROR: Thanks. Too close?

23 THE WITNESS: Yeah, it wasn't very
24 comfortable.

25 MR. RAMRAS: Okay.

1 THE WITNESS: Thanks for your time, folks.

2 MR. RAMRAS: Thank you.

3
4 RICHARD MATHEW BUTLER,
5 a witness called on behalf of the State, having been
6 first duly sworn, was examined and testified as follows:
7

8 EXAMINATION

9 BY MR. REES:

10 Q Mr. Butler, if you could please state your
11 full name and spell your name for the record.

12 A Richard Mathew Butler. First name is
13 R-I-C-H-A-R-D. Mathew is with one T, so M-A-T-H-E-W.
14 Butler is B-U-T-L-E-R for the last name.

15 Q What's your occupation?

16 A I'm a security officer at Portland Adventist,
17 and I've been doing that for the past six months-ish.

18 Q All right. And is Carol Graff one of your
19 coworkers?

20 A Veteran coworker, yeah.

21 Q All right. She's been there longer than you
22 have?

23 A Much longer, yes.

24 Q All right. Were you working at the hospital
25 on February 17, 2013?

1 A I was.

2 Q And did you have contact during your shift
3 with a patient known to you as Daniel Fox?

4 A I did.

5 Q And where did you first have contact with
6 him?

7 A It varies. Every hour we rotate. So at 1900
8 hours, I was responsible for sitting with the mental
9 health holds in the hospital, what they call our 269
10 hour. And I was sitting in Room 1.

11 And over my peripheral vision, I could see
12 that Carol and Shara, my two security officers, had been
13 talking to Mr. Fox out by our triage area. And I wasn't
14 sure what was going on at that point. I just know that
15 their presence was requested. I could see them in the
16 distance.

17 About 15 minutes later, Room 1 was moved to
18 Room 11, so I went with them and was now sitting outside
19 Room 11. Mr. Fox was roomed in Room 12 at about that
20 exact same time.

21 So from 1915 to 2000 hours, I was sitting
22 outside the room responsible for Room 11 technically, but
23 I had the door for Room 12 for Mr. Fox opened and was
24 able to observe, converse, listen to the other
25 conversations with other staff.

1 Q All right. And you spent about one hour with
2 him?

3 A Approximately, yeah.

4 Q And this was immediately before Carol Graff
5 moved in and began her time on security line with
6 Mr. Fox?

7 A Technically, there would be another hour
8 between those two.

9 Q Oh, okay.

10 A My other coworker Shara would have been
11 present from 20 to 21, and then Carol would be present
12 from 21 on.

13 Q And then Carol took over.

14 Okay. And the other -- that other individual
15 that you mentioned who had the one hour in between you
16 and Ms. Graff, she is currently out of state, I
17 understand. Are you aware of that?

18 A I'm not aware of that.

19 Q All right. During your one-hour with this
20 patient who was using the name of Daniel Fox, did you
21 get any indication from him that he'd been using any
22 controlled substances prior to his arrival at the
23 hospital?

24 A Yeah. So when I was working in security for
25 six months, but I've also been a scribe for the hospital

1 for three years. And so I've been -- I go follow
2 doctors around, see their interviews and type up their
3 notes for them.

4 So over the three and a half years, I would
5 say I've become fairly familiar with psychiatric patient
6 complaints and drug abuse-type issues.

7 And I would say that the degree of paranoia
8 that Mr. Fox displayed and the type of conversations he
9 was having, it was -- I was very confident that there was
10 substance abuse issues, mainly methamphetamine to be
11 specific.

12 Q Well, beyond your observations, did he tell
13 you that he'd been using methamphetamine?

14 A When Nurse Karen Simpson, I believe is her
15 last name, when she spoke to him for her interview, he
16 said, "The last time I had used meth was three days
17 prior."

18 Q Okay. Did this patient make any unusual
19 comments to you?

20 A Several. I mean, it appeared to me that the
21 whole reason he was there in the hospital in the first
22 place, so he really didn't have a complaint of any kind
23 that he wanted medical attention for, but he was evading
24 these two individuals that were allegedly chasing him.

25 He had very specific things to say about them.

1 And I can't recall all of those details, but he was -- he
2 had very specific details on these people. He mentioned
3 that one was Asian. He mentioned the clothing of another
4 to a tee. He said that they had -- they had followed him
5 with the intent of harming him or killing him all of the
6 way into the emergency department, and he continued to
7 talk about these people.

8 We also had some very normal, casual
9 conversations. We talked about the sports we played in
10 high school, but, you know, he seemed really focused that
11 these two individuals were after him.

12 Q Did he make any statements to you about death
13 or dying?

14 A In what I believed was in reference to these
15 two people chasing him with the intent of killing him,
16 he did say, "Tonight is not a bad night to die."

17 At the time I didn't put much stock into it
18 because it was something that I've heard other
19 psychiatric patients say. It is not that uncommon to
20 hear something like that, but then given the later
21 events, I guess it became relevant.

22 Q After spending about an hour then near this
23 patient, what did you do next?

24 A My next hour when I rotate through to where
25 I'm responsible for, sort of the interior of the

1 hospital, so lost and found, like phone calls, if there
2 were suspicious people, I think the majority of what I
3 did for that hour was lost and found type of issues.

4 Q Okay. And then after that, you moved to your
5 next rotation?

6 A Which is the exterior patrol.

7 Q And so that would have been -- when you began
8 your exterior patrol, that would have been when Carol
9 Graff began her rotation on security with Mr. Fox?

10 A Correct.

11 Q Okay. All right. Tell us, if you would,
12 about the security vehicle. Is this marked so as to
13 display the fact or announce the fact that this is
14 hospital security?

15 A Correct. It is a small pickup truck. It has
16 analogous to police lights on the roof and also a
17 spotlight. There's security written on each side of the
18 door. I mean, it is obviously labeled.

19 Q And what did you do in terms of patrolling in
20 the vehicle?

21 A At about 2105, I started my patrol, and
22 exited the employee lot and gone down Main Street and
23 was in another parking lot. And I want -- the exact
24 timing of events gets hazy for me just because of
25 adrenaline. I want to blame it on that. But within ten

1 minutes of my beginning my patrol, Carol called over a
2 code silver over the radio.

3 And for us, I'm sure you've already become
4 aware, that means violent, with a weapon-type of
5 situation. She was really vague with the details at
6 first. I just knew there was a code silver.

7 My last known location was for the ED, so I
8 flipped on our emergency lights on the roof of the car
9 and sped back to the ED as fast as I could on Main
10 Street.

11 Q "ED" meaning?

12 A Emergency department.

13 Q All right. And when you say this comes over
14 the radio, this is not the police bureau's Bureau of
15 Emergency Communication radio system?

16 A Correct.

17 Q This is a hospital radio system; is that
18 correct?

19 A Yes. It is like a closed-band type. I think
20 that is how they refer to it as. And we use it for
21 communication among plant services, security, our
22 telecommunications department, our operator. It is just
23 another way that we stay in contact with all of the
24 different departments.

25 Q All right. And was it Carol Graff herself

1 who was broadcasting on the hospital radio system?

2 A It was her initially, and then it became a
3 myriad of myself, other officers, the operator, et
4 cetera, but she was definitely the first person to call
5 the code silver.

6 Q All right. During your six months in the
7 hospital security, is that the first time there's been a
8 code silver?

9 A In security, correct. I have been there
10 present for, I would say probably two, I would estimate
11 two prior to that. But the majority of the time those
12 have been pocket knives or things that could be well
13 managed with, you know, one-on-one physical means, not
14 something that needed to be, you know, as dangerous as a
15 potential handgun may have been.

16 Q So when you heard this first broadcast from
17 Carol Graff and you start driving towards the emergency
18 department, what are you thinking?

19 A That most likely based on my impression of
20 this individual, he became agitated. He has a pocket
21 knife and he's threatening her with it.

22 Q What was about his behavior or appearance
23 that made you think, well, maybe he has a pocket knife?

24 A Disheveled. He was wearing very dirty
25 clothes. He was -- if he had money, he probably already

1 spent it on -- you know, that's obviously conjecture --
2 but he probably already spent it on substances to be
3 abused.

4 And then, you know, another note about his
5 overall appearance is that he had several big, they call
6 them excoriations, but scabs that are really typical from
7 methamphetamine or other drug use.

8 I just wouldn't have -- based on my experience
9 over that three and a half years, I wouldn't have
10 believed that this individual had the means of owning a
11 weapon.

12 A GRAND JUROR: Can I ask a quick question?

13 Do you know at this time that it was the same
14 person that you had looked at earlier?

15 THE WITNESS: I did not at this exact time.
16 But based on what had taken place over the previous hour,
17 it was my, the assumption I was operating under.

18 A GRAND JUROR: That it was the same person
19 you had kept an eye on?

20 THE WITNESS: Correct.

21 A GRAND JUROR: All right.

22 MR. REES: Do you want him to explain why that
23 was?

24 A GRAND JUROR: Well, it sounds like over the
25 radio, it said code silver.

1 THE WITNESS: At that point that's all I knew.

2 A GRAND JUROR: That's all you knew. But then
3 you talked about this person being agitated, disheveled,
4 wore dirty clothes, scabs. Those are all descriptors for
5 the Daniel Fox/Hatch?

6 THE WITNESS: Correct.

7 A GRAND JUROR: But at this time you didn't
8 know who?

9 THE WITNESS: I was not confident on that.
10 But that was my assumption that I was operating under
11 because when we -- if we go back, there was only one
12 other patient that security was responsible for, which
13 was Room 11 prior to that. The other rooms that we
14 normally are responsible for range from 10 to 13, and
15 those two rooms were empty.

16 A GRAND JUROR: Okay.

17 THE WITNESS: I knew they were planning to
18 transport Room 11. And so at the time where we were in
19 this timeline, I'm assuming that he's our only patient
20 that we were responsible for.

21 A GRAND JUROR: Were these descriptors -- I
22 guess what I'm getting at, were the descriptors over the
23 radio or were they just in your own head?

24 THE WITNESS: In my own head.

25 A GRAND JUROR: All right. Thank you. I

1 thought it was coming over the radio.

2 MR. REES: No, but I think he was just saying
3 it was a logical assumption on his part that it was the
4 same individual.

5 A GRAND JUROR: Yes.

6 BY MR. REES:

7 Q But, in fact, you soon did receive further
8 information?

9 A Yeah. It came over a little -- bit by bit.
10 So as I'm -- my intent is to get back to the emergency
11 department as fast as possible.

12 As I turn off of Main Street into basically
13 the driveway that would become a four-way intersection,
14 which I can demonstrate, I just pulled into this road
15 right here with the intent of heading that way, but by
16 the time I had done this, Carol had given further details
17 saying that the -- that the suspicious person, who she
18 still hasn't named at this point, is exiting through the
19 courtyard, which to us typically refers to this area of
20 the loading dock. We use the word "courtyard" to
21 describe that. There's an exit right here called the
22 employee exit.

23 So when she had said that, I'm assuming that
24 he had somehow gotten all of the way through our
25 emergency department, out of the locked doors and out

1 this door here and going this way, which didn't add up at
2 the time, but I wasn't responsible for questioning that.
3 I just had to react.

4 Q But that was unusual to you because that's
5 not an area ordinarily accessed by the public or by
6 patients in the hospital?

7 A Almost never. I mean, it is typically only
8 known about or used by employees. But it later became
9 apparent that that wasn't the route he took. It just --
10 when I was parked here and had that update, I saw
11 Mr. Fox walking through this trail right here into the
12 employee lot.

13 Q All right. And you're indicating on this
14 diagram the exit gate that leads to this employee
15 parking lot?

16 A Correct. There's a walking path, some stairs
17 and this exit gate.

18 Q All right. So when you saw this person, it
19 was then apparent to you that, in fact, it was Mr. Fox
20 that was being described?

21 A Correct. Based upon what Carol had said
22 describing who the person -- where the person had exited
23 matched where I had located him, it matched my prior,
24 you know, assumptions that I was making. And then from
25 that point forward, it was just sort of my role to keep

1 making visual contact.

2 At some point around this point we also got
3 the update that we had an alleged handgun, and that
4 police had already been dispatched.

5 Q All right. What are you doing in the truck
6 at this point when you see him?

7 A My goal was to just maintain visual contact,
8 make sure that I can accurately articulate where he's
9 located, his behavior, so that way police can respond
10 appropriately. That's my entire goal from this point
11 forward.

12 When he -- he first sees me here. It was
13 obvious to me he still had the lights on the roof of the
14 car going, the flashing red and yellow lights, so it was
15 obvious that he had saw me. He walked into this area,
16 and I just kind of slowly pulled into about here where
17 you would say pen number is, between 17 and 23.

18 Q So you are indicating that you pulled into
19 the employee parking lot?

20 A Correct, and Mr. Fox was somewhere maybe, you
21 know, somewhere around where the Durango is at this
22 time.

23 I had originally told the detectives that it
24 was 200 to 300 feet, but I would like to amend that and
25 say that it was maybe 150, somewhere in that range.

1 Q So a little closer than you thought.

2 A Than I initially thought, correct.

3 Q And why do you now think it was more like
4 150 feet rather than 200 feet?

5 A Just seeing aerial photography and being less
6 in the heat of the moment, it is becoming more clear
7 that I had overestimated the distance.

8 Q Okay. You are referring to your interview
9 that you did with Portland police detectives either the
10 night it happened or the early morning hours?

11 A It was technically the early morning hours of
12 the 18th.

13 Q And so were you a little bit rattled at that
14 time?

15 A Correct.

16 Q So 150 feet away, what does he do?

17 A He again sees me. He's kind of -- he's
18 walking with an agitated appearance, but then as soon as
19 he sees that I'm pursuing him from 150 feet away, he
20 turns his entire body at me to, you know, make -- he
21 sees me. He then draws a black object from his beltline
22 and holds it, pointing it at me and the car.

23 Q And what did you believe that object was?

24 A I believed it was a handgun.

25 Q And could you demonstrate for the members of

1 the Grand Jury what his hand position was with that
2 object or how he displayed that object?

3 A He was -- he had drawn it from his beltline
4 and he had held it sideways, sort of as the pop culture
5 gangster would hold it, like a handgun, and then was
6 thrusting it about in the air like this a few times.
7 Other times he was pointing it directly at me.

8 I was under the impression that he wanted me
9 to know it was there. It was also sort of either a
10 threatening or provocative type of gesture that he was
11 displaying it with.

12 Q What did you think when you saw that?

13 A That it was a handgun, and that, you know --
14 the situation had kind of changed now. I mean, this was
15 a person who was actively threatening the lives of
16 innocent people. And the adrenaline really picked up
17 from that point, you know.

18 It became kind of tough to, to remember
19 everything and deal with everything the best way
20 possible, but it was just sort of my responsibility to
21 the public and my job, my role there to just continue
22 doing my best, you know.

23 Q Okay. You don't carry a firearm?

24 A I do not. We are unarmed.

25 Q I assume you don't wear a ballistics vest?

1 A We do.

2 Q You do?

3 A We wear either an internal vest that's
4 underneath the uniform. A lot of the veterans wear that
5 or I wear one that's on the exterior.

6 Q Well, did you feel safe or not safe when you
7 saw that?

8 A At that distance, I assumed that he would be
9 unlikely to make a shot that would harm me -- would
10 intentionally make a shot that -- accidents happen,
11 obviously. And there was still a risk at that distance
12 that he could, so I felt unsafe.

13 Q When that happened, had any police officers
14 arrived that you were aware of?

15 A Not at that point.

16 Q All right. So did you broadcast that
17 information over the hospital radio system?

18 A Yes. I had said -- at that point where he
19 drew that and pointed it at me, I said, okay, this
20 suspect-- or this person is now pointing a handgun at
21 me. And I used the word "handgun" at the time.

22 Q All right. And so what happened after that?

23 A From that point, I knew that it wasn't really
24 doing anybody any good for me to just stay in harm's
25 way.

1 I just -- this was -- the employee lot is
2 fenced on all sides. He had two exits that he could have
3 conceivably left through. There are three total, but
4 there are two that he would be aware of or able to find.

5 And so I just stood where I could visualize
6 both of those -- excuse me, I stayed in the truck at a
7 place where I could visualize both of those exits. I had
8 pulled just to the inside edge of this four-way
9 intersection right here and just stayed there and was
10 able to maintain visual contact.

11 Q From your interview with detectives it sounds
12 as if at some point as the police arrive, then you leave
13 that position.

14 A Yeah. After -- I would -- again, my
15 perception of time during all this is not completely
16 confident, but I would estimate that about five minutes
17 go by with me observing from just outside the employee
18 lot and then police arrive at that point, they exit
19 vehicle, guns drawn, responding to the situation and, et
20 cetera.

21 We, Shara and myself, use our respective
22 vehicles to block the employee traffic into and out of
23 the employee lot. And then at that point Carol calls
24 over the radio to sort of recall us back into the
25 building to begin the lock-down.

1 And I would say that that all took place, five
2 minutes of me observing for police arrival and five
3 minutes on scene with police until I was recalled back
4 into the hospital.

5 Q All right. And so then you begin the
6 lock-down process at the hospital?

7 A Correct.

8 Q Just briefly, what does that involve?

9 A As a not veteran coworker, I'm not really
10 responsible for orchestrating the entire deal, but for
11 me personally, Carol had asked me to go to what we refer
12 as to the breezeway, which is an exit that is typically
13 used by employees.

14 And it is in our -- it would exit into our POB
15 1 parking lot, which is Physician's Office Building No.
16 1, a considerable distance from where all this is taking
17 place.

18 Q So ultimately, then because you were involved
19 in the hospital lock-down, you did not see or hear what
20 eventually occurred in the parking lot is my
21 understanding?

22 A I did not. We could go back to the point
23 where I left my vehicle with police. There was a moment
24 where I saw Mr. Fox walking along this nearest fence
25 line towards this school of nursing, and he had started

1 climbing a tree or climbing a fence or something like
2 that.

3 And I had seen it, so I took our spotlight on
4 our truck and pointed it on him. That was sort of my
5 last action on scene with police before being recalled.

6 MR. REES: All right. Well, thank you very
7 much.

8 Let me just check and see if any members of
9 the Grand Jury have a question for you.

10 All right. Mr. Butler, thank you.

11 THE WITNESS: Thank you.

12 (Testimony concluded.)
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1 State of Oregon)
)
2 County of Multnomah)

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4
5 I, KAREN M. EICHHORN, C.S.R., C.R.R., a
6 Certified Shorthand Reporter for the State of Oregon, do
7 hereby certify that I reported in stenotype the
8 proceedings had upon the hearing of this case, previously
9 captioned herein; that I thereafter had reduced my
10 stenotype notes by computer-aided transcription; and that
11 the foregoing transcript constitutes a full, true, and
12 accurate record of the proceedings had upon the hearing
13 of said cause to the best of my knowledge and ability.

14 Witness my hand and CSR seal, this
15 15th day of March 2013, Portland, Oregon.

16
17
18
19 /s/ Karen M. Eichhorn

20 Karen M. Eichhorn, C.S.R., C.R.R.,
21 Certified Shorthand Reporter
22 Certificate No. 05-0395
23
24
25