

MULTNOMAH COUNTY GRAND JURY
DEATH INVESTIGATION

Deceased: Nicholas Glendon Davis

Date of Incident: June 12, 2014

ORIGINAL

DA Case No. 22995150-1

Location: Foster Road and Springwater Corridor
Portland, Oregon

PPB Case No. 14-47574

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED That the above-entitled
transcript of GRAND JURY proceedings was heard,
commencing at the hour of 9:20 a.m., on Tuesday,
July 1, 2014, at the Multnomah County Courthouse,
Portland, Oregon.

APPEARANCES:

Mr. Don Rees

Deputy District Attorney

On Behalf of the State of Oregon

* * * * *

CHARLOTTE A. POWERS, RMR, CSR, CRR
Portland, Oregon

INDEX TO WITNESSES

	Page
1 Jeffrey Shearer.....	3
2 Michele Michaels.....	22
3 Laura Mitar.....	39
4 Yasuko Garratt.....	48
5 Steven Garratt.....	54
6 Zakkary Dow.....	70
7 Peter Taylor.....	83
8 Brandon Cox.....	87
9 Matthew Nilsen.....	112
10 Robert Brown.....	153

13

14

15

16

17

18

19

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P R O C E E D I N G S

MR. REES: All right. We're ready.
Please swear in the witness.

JEFFREY SHEARER,

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

EXAMINATION

BY MR. REES:

Q For the record, if would you please state
and slowly spell your first and last name.

A It's Jeffrey Shearer, J-E-F-F-R-E-Y, and
the last name is Shearer, S-H-E-A-R-E-R.

Q What's your occupation?

A I am a criminalist with the Portland
Police Bureau.

Q How long have you been a criminalist?

A I've been a criminalist, this August will
be 13 years.

Q And prior to that, what was your
occupation?

1 A I was a police officer with the Portland
2 Police Bureau.

3 Q For how long?

4 A That was from '94 to 2001, so seven --
5 roughly seven years as an officer, and then I -- I
6 promoted and became a criminalist.

7 Q Would you explain to the Grand Jury
8 briefly what the duties of a criminalist are with
9 the Portland Police Bureau.

10 A Certainly. The -- the short answer is
11 that's what a crime scene investigator -- the title
12 of a crime scene investigator. So my job is to go
13 to crime scenes and look for physical evidence. So
14 I am a photographer, I'm a videographer, and then I
15 search for fingerprints and other physical evidence
16 at crime scenes.

17 Q All right. On Thursday, June 12th, 2014,
18 did you respond to the scene of an officer-involved
19 shooting in Southeast Portland?

20 A Yes, I did.

21 Q All right. And have you brought with you
22 some photographs to show the Grand Jury for purposes
23 of orientation to the scene?

24 A Yes.

25 Q I'll let you then begin, if you would,

1 and --

2 A Okay.

3 Q -- show us --

4 A So what I --

5 Q -- what you brought.

6 A What I brought -- we now, in addition to
7 the -- to photographs and video, we also have a
8 Leica C10 laser scanner. So on that morning, I was
9 tasked with making laser scans to record all of the
10 data that -- that a laser could see from, in this
11 case, five different stations, to try to record all
12 of the crime scene. So it records -- so the laser
13 spins. And everything that it hits, it bounces back
14 and it records it as a, you know, as data.

15 So this right here is just an overhead
16 view of Foster and Springwater Corridor.

17 So this was -- this is a combination of
18 the laser scan data and photographs put together in
19 a computer from the first station. At that time,
20 all of those cars were inside the scene.

21 So I'm just going to jump from station to
22 station.

23 So this is the second station, and
24 detectives and investigating officers, they -- they
25 moved out cars that were not there when the shooting

1 happened, which is why you see a difference in the
2 number of cars on the south side of Foster.

3 A GRAND JUROR: When you say a "station,"
4 you mean location?

5 THE WITNESS: Location where the scanner
6 was and recorded all the data. So it's just --
7 the -- the nomenclature that -- that Leica puts
8 there is station --

9 A GRAND JUROR: Thank you.

10 THE WITNESS: -- 1 through 5, but it's
11 literally, it's just a spot where, you know,
12 when I got there, I looked over the scene and
13 said: How can I do this in the fewest scans
14 possible that record all of the data necessary
15 so that -- because literally if there's
16 something in between the laser --

17 A GRAND JUROR: Uh-huh.

18 THE WITNESS: -- what is on the other side
19 is not recorded at all.

20 A GRAND JUROR: Right.

21 THE WITNESS: Some places I have to go
22 this side and that side, and try to triangulate
23 my locations.

24 BY MR. REES:

25 Q Now, is this correct? With a scanner

1 you're reading a 360-degree, a full circle picture,
2 both with laser measurements that are then
3 reconstructed into a picture with a software
4 program, but also with digital photography and
5 thousands of digital photographs that are taken
6 during the scan?

7 A Correct. It's -- it's -- what it does --
8 so the -- the machine, we go in and set it up, and
9 we level it. And then the machine performs the
10 laser scan in a 360, and then it does the
11 photographs. And then later the computer puts -- we
12 put that together --

13 A GRAND JUROR: Put it together.

14 THE WITNESS: -- in the computer to make
15 sure that everything is aligned. And so each
16 one of the -- there's, in this case, five
17 stations. Each one of those has to be matched
18 up in the computer as well to make sure that
19 it's absolutely accurate, because you don't
20 want, you know, a road coming out the wrong way
21 or, you know, something being done.

22 Yes?

23 A GRAND JUROR: Do -- does the computer
24 match it up, or is that human input that
25 matches it up?

1 THE WITNESS: Right now it's human input.
2 We -- we look at it, and -- and so we find key
3 points in the scans that are in common from 1
4 to 2, and we tell the computer, you know, focus
5 on these, and bring these two into line. And
6 then we collect it and make sure that it's
7 accurate, and then we proceed to the next and
8 put them together 1 plus 2, then 1 and 2 plus 3
9 and so on.

10 Yes?

11 A GRAND JUROR: How do you decide how many
12 stations to establish or install; is that
13 standardized practice?

14 THE WITNESS: It's -- it's -- basically
15 you just look at it and try to determine if I
16 do three scans, will it record every piece of
17 evidence that I need to record? And if it
18 won't, then I need to add one more. And -- and
19 so if you go to a scene and you can do it in
20 two scans, then that's fine.

21 So in addition, you'll see right here,
22 this is a twin target pole. And so we make
23 sure that that's a NIST pole. So it's
24 pre-measured to be -- it has two dots on it
25 that are 1.7 meters apart. And so you make

1 sure that every time we use the scanner, it's
2 in at least one of the scans. And in this
3 case, it was in three. So, make sure that it's
4 accurate, that the machine is as accurate as
5 it's calibrated to be, and then you go back and
6 you double-check, is it 1.7 meters between the
7 lower dot and the upper dot to verify that what
8 you did is accurate.

9 MR. REES: Did you want the spelling on
10 that pole? What kind of pole is it?

11 THE WITNESS: It's -- well, it's a twin
12 target pole, and it's NIST, N-I-S-T. It's an
13 acronym.

14 A GRAND JUROR: NIST.

15 THE WITNESS: NIST.

16 BY MR. REES:

17 Q So we can go to the image we're looking
18 at. Are we looking -- is that eastbound or
19 westbound on Foster Road?

20 A That is -- we're now looking westbound in
21 the south lanes of Southeast Foster, almost --
22 I'm -- I'm standing in the crosswalk of the
23 Springwater Corridor.

24 A GRAND JUROR: Okay.

25 BY MR. REES:

1 Q Where it crosses Foster Road?

2 A Where it crosses Foster.

3 Q All right. And that's about 131st; is
4 that right?

5 A 104.

6 Q 104?

7 A 104.

8 Q Right.

9 A So this is the -- this is the diagram. So
10 I used the same data, and I used a software program
11 to convert that data into a two-dimensional diagram
12 so you can get a bird's-eye view of the evidence and
13 pertinent, you know, where the two police cars were.

14 A GRAND JUROR: Okay.

15 THE WITNESS: And so on.

16 So this is just off of the path. Station
17 3 is just off the path and down a little bit,
18 down a little bit lower.

19 Sorry. Trying to go slow so that it
20 doesn't give you motion sickness.

21 So placard 1 is -- and there's a
22 photograph of the crowbar. So I can -- after I
23 put all the data together, you can go in and
24 you can link in photos or diagrams so that you
25 have an explanation.

1 So the only piece that the scanner does
2 not see is directly below, and it's basically
3 about a 70-degree cone that it can't see. So
4 it can't see the tripod that it's standing on,
5 but it sees all around it.

6 Number 2 is a backpack.

7 So this was not numbered. That's the
8 body.

9 A GRAND JUROR: How long after the event
10 were you collecting this data; an hour, two
11 hours?

12 THE WITNESS: I got out there -- it was
13 probably, when I began, it was probably an
14 hour.

15 A GRAND JUROR: Okay.

16 THE WITNESS: Roughly. We were out there
17 by 7:00 and started collecting at 7:30. So --
18 but we were there until, I believe, 2:00 in the
19 afternoon.

20 A GRAND JUROR: Okay. Thanks.

21 THE WITNESS: Uh-huh.

22 A GRAND JUROR: Excuse me.

23 THE WITNESS: Yes.

24 A GRAND JUROR: Did you say you were
25 there -- you began at roughly an hour after the

1 call that you received?

2 THE WITNESS: Yes. So if I remember what
3 I have on my report as far as times was we were
4 notified at about 6:20, and we got out there
5 about 7:00, and I began recording data at about
6 7:30.

7 So now I'm going to move to station 4,
8 which was in -- in the trail. From here you
9 can -- the body is now, by the time we scan
10 this station, the body had been removed.

11 A GRAND JUROR: Okay.

12 THE WITNESS: But that's from the trail.
13 That's about what it looked like.

14 So the -- the letter placards indicate
15 something that we didn't collect but we marked
16 as a point of reference or it's, you know, it
17 was important, and we wanted to photograph it
18 and document it. But in this case, it's a
19 divot. So we didn't collect it. So that's at
20 the base of the guide wires. There's a spot
21 there where the dirt was disturbed.

22 And then --

23 A GRAND JUROR: Can I ask a quick
24 question?

25 THE WITNESS: Yes.

1 A GRAND JUROR: Why was that important to
2 record a divot?

3 THE WITNESS: Well, the indication was is
4 that the -- the officer was -- the -- the
5 officers had -- were confronting the subject,
6 and they were triangulated. So the one officer
7 is off to the side, and the other officer is in
8 front of the subject. And as the subject
9 advanced with the crowbar, the officer that was
10 in front of him started backing up right away
11 and tripped over a guide wire, and fell down to
12 the ground.

13 A GRAND JUROR: Okay.

14 THE WITNESS: So the -- for example, the
15 scrape, which is marked B and the divot were
16 both on the guide wires, which is right where
17 the other officer indicated, you know, that
18 Officer Brown fell down. So they were
19 consistent. So the physical evidence is
20 consistent with the explanation of the officer,
21 what he had seen Officer Brown do. So we make
22 sure that we document it to corroborate that.

23 So that's item number 3, a piece of
24 luggage.

25 And then the station from station 5 what

1 you can see. So again, you can still see, you
2 know, the luggage and the area where the divot
3 and the scrape were. But you could also -- we
4 have here placard 4, which it's hard to see,
5 but that's a cartridge casing right there in
6 the grass.

7 And placard 5, which is the second
8 cartridge casing in the grass. And so they
9 were close together and consistent -- also
10 consistent with the explanation of, you know,
11 fell down, shots were fired from here and the
12 casings were together.

13 So I have one more. I did a closer-up
14 diagram just of that area. It doesn't have as
15 much of a -- of a legend and the measurements,
16 but I just --

17 BY MR. REES:

18 Q It would -- would you mind while we're
19 looking at that diagram, reviewing for us again what
20 the placard numbers indicate.

21 A Absolutely. So number 1 is the crowbar,
22 and then, of course, there's the body.

23 Number 2 is a backpack on the other side
24 of the body.

25 Number 3 was a piece of luggage that was

1 on the trail.

2 Number 4 is a cartridge casing.

3 Number 5 is a cartridge casing.

4 And then A is a divot at the base of the
5 guide wires; and B is a scrape, a black scrape, up
6 higher on the guide wire.

7 Q And while we're looking at that, let me
8 pass out to the grand jurors a copy of the diagram
9 for your future reference today.

10 And would this be an appropriate time for
11 you to talk to the Grand Jury about the spatial
12 relationships between these objects and how to read
13 the measurement legend on the diagram?

14 A Certainly. I'm going to go back to the
15 other diagram.

16 So in the measurements that are on the
17 diagram in this case, I kind of did the same way the
18 scene -- one of the scene detectives used tape
19 measurements just for quick reference, which was
20 basically from the -- there's a power pole here,
21 which is marked RP. So they -- they measured from
22 there, and then how many feet south of the south
23 curb line, which is why those measurements all refer
24 to those two places.

25 A GRAND JUROR: You get a radial -- a

1 radius effectively off the power line.

2 THE WITNESS: Exactly.

3 A GRAND JUROR: And then you have a direct
4 tangent off the curb.

5 THE WITNESS: To triangulate. But in the
6 laser data, I can measure from any two points
7 in the scene.

8 A GRAND JUROR: Right.

9 THE WITNESS: So I can measure -- in the
10 laser data, I can measure how far was it from A
11 to the crowbar, for example, or from the
12 crowbar to the body, and --

13 A GRAND JUROR: Any point to any other
14 point.

15 THE WITNESS: Any point to any point. And
16 that's why the laser scan data is so helpful
17 because after the fact, we can go back and make
18 any measurements. And it's accurate to, you
19 know, within a few millimeters. So, extremely
20 accurate.

21 BY MR. REES:

22 Q And this image represents the frozen
23 scene, of course --

24 A Yes.

25 Q -- not the dynamic events that occurred

1 beforehand, but as frozen afterwards?

2 A Exactly. So for example, we -- we were
3 told the body had -- the officers, after the
4 shooting, they had gone up to the body and
5 handcuffed and rolled over into a position, like on
6 the side, to try to wait for medical, to make sure
7 their -- you know, nothing else would happen as far
8 as no other -- well, that the threat was over and
9 that now they could treat it as a medical situation.
10 So, I mean, there's lots of different things that
11 happened. Matter of fact -- it's not shown there --
12 number 6 was later recovered after the body was
13 removed, which was a projectile that went through, I
14 think, one of the subject's arms, and then bounced
15 off of a wallet or something in the coat, and was
16 found under the body.

17 Q When you say "projectile," meaning a --

18 A Bullet.

19 Q -- a spent bullet?

20 A A spent bullet.

21 Q Before we leave this diagram then, are
22 there any questions from the Grand Jury about the
23 diagram?

24 No.

25 Okay. Go ahead.

1 A And I think those are all of the photos
2 and all of the --

3 Q Okay.

4 A I mean, that's all of the stations and all
5 of the photos.

6 Q Folks, that was really just for your
7 orientation purposes. There will be references to
8 these locations obviously throughout the testimony.
9 But if -- if you have any questions about what
10 you're seeing, this is the person to ask now.

11 A GRAND JUROR: Just a question about the
12 two cars. So Officer Brown was in the first
13 car that's turned into -- that -- the one
14 below -- crossing the curb into the walkway --

15 THE WITNESS: That --

16 A GRAND JUROR: -- that was the car he
17 was in?

18 THE WITNESS: That's what I was told.

19 A GRAND JUROR: And the other car was your
20 car, the car that you came in?

21 THE WITNESS: No, no. So, Officer Nilsen.
22 So Officer Brown and Officer Nilsen were there
23 when the --

24 A GRAND JUROR: In two different cars.

25 THE WITNESS: In two different cars.

1 A GRAND JUROR: Okay.

2 THE WITNESS: So Officer Brown took the
3 call, Officer Nilsen came to cuff him. Again,
4 and that's --

5 A GRAND JUROR: I'm sure we'll hear more
6 details today about that.

7 THE WITNESS: You'll hear more detail.
8 I'm just filling in blanks.

9 BY MR. REES:

10 Q That was the information you were given?

11 A That's what I was told, was that Officer
12 Brown and Officer Nilson's car. Officer Brown was
13 the primary, and Officer Nilsen was the cover.

14 A GRAND JUROR: So, just curious if there
15 was any physical evidence to show where the
16 body was when he was shot, or is that hard to
17 determine?

18 THE WITNESS: It's really hard, as far as
19 physical evidence. So -- because as you can
20 see, the crowbar is just off the trail. Right
21 about here, there's a stump and a log, and it
22 goes downhill. So if -- if you were up here
23 and you took two steps to retreat, you
24 literally could go 15 feet in a really short
25 time just by tripping over the log. And so the

1 short answer is no, other than the location of
2 the crowbar and the location of the -- the
3 divot, which gives us an idea of where Officer
4 Brown was.

5 BY MR. REES:

6 Q And the location of the bullet cartridges
7 that you found?

8 A Right. Right. And the casings. Yeah.

9 A GRAND JUROR: But I was referring, yeah,
10 to the individual --

11 THE WITNESS: No.

12 A GRAND JUROR: -- the --

13 THE WITNESS: Yeah. No. Not of where
14 the -- yeah, the subject was standing when the
15 shots were fired.

16 A GRAND JUROR: In your 13 years of
17 experience prior to this, is the location of
18 the body in any way unusual, given the location
19 of the casings?

20 THE WITNESS: No.

21 A GRAND JUROR: Okay.

22 THE WITNESS: No. And it's -- and it's
23 partly just -- just because you're shot doesn't
24 mean that you immediately collapse in that spot
25 and don't move again.

1 A GRAND JUROR: Okay.

2 A GRAND JUROR: Right.

3 MR. REES: You have one more question.

4 THE WITNESS: Yes?

5 A GRAND JUROR: What did you say that item
6 was?

7 THE WITNESS: Item 6 ended up being found
8 under the body and was a spent bullet or
9 projectile.

10 MR. REES: All right. If there's no
11 further questions.

12 Thank you very much.

13 A GRAND JUROR: Thank you.

14 THE WITNESS: Of course.

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1 MICHELE MICHAELS,
2 was thereupon produced as a witness on behalf
3 of the State and, after having been duly sworn on
4 oath, was examined and testified as follows:

6 EXAMINATION

7 BY MR. REES:

8 Q If you would, please, for the record,
9 state and spell your first and last name.

10 A Okay. My first name is Michele,
11 M-I-C-H-E-L-E, my last name is Michaels,
12 M-I-C-H-A-E-L-S.

13 Q Detective Michaels, what is your
14 occupation?

15 A I'm a detective with the Portland Police
16 Bureau.

17 Q How long have you been a detective?

18 A I've been a detective about seven years.
19 I've been with the police bureau around 13 years,
20 and in the homicide division of detectives for about
21 five years.

22 Q And in addition to your experience in
23 investigating homicides and assaults and other
24 serious crimes, have you received special training
25 in doing so?

1 A Yeah. So, you know, initially we had our
2 basic academy, advanced academies. And then ever
3 since then we've had yearly updates in trainings.
4 And then I've gone to specific seminars and
5 conferences that are directly related to homicide
6 investigations, both those put on by state agencies,
7 interstate agencies and the federal government.

8 Q Were you assigned as the lead detective in
9 the criminal investigation of a shooting death by a
10 Portland police officer reported on June 12th, 2014?

11 A I was.

12 Q And when were you assigned the case?

13 A I got the -- the call to go to that
14 incident at about 6:40 that morning, June 12th. I
15 think I arrived at the scene around 6:55 that
16 morning.

17 Q After arriving at the scene and gathering
18 some initial information, when did you learn the
19 shooting had actually taken place?

20 A So you're asking what time the shooting
21 occurred. Looking at the CAD, which is our printout
22 of the radio call itself, a shots fired was reported
23 around 6:22 that morning.

24 Q And who were some of the other people who
25 responded to the scene, in addition to yourself?

1 A So, there were other detectives. We even
2 had detectives from the major crime team, the task
3 force that works with Multnomah County and other
4 agencies; our criminalists from our forensic
5 evidence division; we had our IA, IPR, the TIPS
6 personnel, which is our trauma intervention
7 personnel were called; EAP for employee assistance;
8 command staff was there, including our commander,
9 the assistant chief of investigations; the chief
10 himself was there; DA Don Rees was there.

11 Q Some of the acronyms you just --

12 A Sorry.

13 Q -- I'll ask you to define. You said "IA,"
14 which would be internal affairs --

15 A Internal affairs, yes.

16 Q -- for the police bureau.

17 You mentioned IPR which is --

18 A I think that's --

19 Q -- independent police review?

20 A -- it's the peer review, yeah.

21 Q Right.

22 A So it's like an independent police review.
23 I don't know what it stands for. But they're sort
24 of outside of us and look at the actions that
25 happen.

1 Q Independent police review?

2 A Okay.

3 Q And you mentioned EAP, which is employee
4 assistance program?

5 A Employee assistance program.

6 Q Okay. And what -- what, in sum, is the
7 purpose of all of those people responding to this
8 scene after the use of deadly force by a police
9 officer?

10 A Well, so we respond in that manner to
11 ensure, you know, a full, complete, detailed
12 investigation. Our goal in every investigation,
13 homicide/officer-involved, is to find the truth, see
14 what happened. We wanted to do that to the best of
15 our abilities. This kind of situation is similar to
16 a homicide investigation. We have additional
17 resources that show up for this. Although we
18 actually will have some of those additional
19 resources -- say, if there's a school shooting or
20 something that's a little bit bigger where multiple
21 people are involved -- we'll have a similar response
22 to that as well.

23 Q Can you tell the Grand Jury briefly about
24 some of the protocols that are in place that are
25 specific to this type of investigation of officer

1 use of deadly force?

2 A So, yeah. We separate witnesses. We do
3 that in other investigations too. We're --
4 especially in particular here. We separate
5 witnesses, separate the involved officer, so that
6 they aren't talking to each other or anyone else
7 prior to the continuation of the investigation. We
8 issue a communication restriction order to the
9 witness and the involved officers that again states
10 you are not to talk about this, don't share
11 information, so that we can be sure to get clear,
12 concise information from each individual.

13 We do recorded interviews with anything
14 that is pertinent to the investigation, anyone
15 pertinent to the investigation. We do a video of
16 the scene, we do photographs of the scene, we do the
17 crime scene diagram, which in this includes the
18 Leica, which produced that really wonderful -- what
19 you saw on the screen here anyway.

20 Q In terms of this investigation then, who
21 was identified as the officer involved in the
22 shooting?

23 A The officer involved is Robert Brown.

24 Q And did he later agree to a voluntary
25 interview with detectives?

1 A Yes. He did. We interviewed him that
2 following Wednesday. I think it was June 18th.

3 Q All right. And that was a recorded
4 interview?

5 A That was a recorded interview, yes.

6 Q Were there any other officers that you
7 identified as being present at the time of the
8 shooting?

9 A We had one other officer present. His
10 name is Officer Matt Nilsen, N-I-L-S-E-N.

11 Q Did he also agree to a voluntary interview
12 with detectives?

13 A Yes. He did a voluntary recorded
14 interview with us that day.

15 Q And --

16 A GRAND JUROR: Was that the same day?

17 THE WITNESS: Yes, ma'am, the same day,
18 June 12th.

19 BY MR. REES:

20 Q And did he also go with the detectives to
21 the scene and point out relevant items of -- of
22 evidence?

23 A Yeah. We call that walk-through, so he
24 did a voluntary walk-through with us that same day,
25 as well. Actually, prior to his recorded interview.

1 Q Were you or the other detectives able to
2 identify any civilian witnesses to either the
3 shooting or the events that led up to the shooting?

4 A Yes. We were.

5 Q Can you tell the Grand Jury generally what
6 the nature of the call was that brought Officer
7 Brown and Officer Nilsen to this location on
8 Southeast Foster Road?

9 A Well, the call came out on the radio as a
10 robbery, and I believe it was something like the
11 caller's strongarmed off his bicycle a few minutes
12 ago. The caller, the victim, was waiting in the
13 nature area on the south side of Foster. They were
14 told the suspect was in the woods and had the
15 victim's bicycle. They were told that the suspect
16 was male, white, in his early 20s with a large build
17 who was possibly bald, maybe wearing a black hoody.
18 They were told there were no weapons that were known
19 to be there, and they were told the victim was
20 requesting contact.

21 Q And did you learn that these officers
22 Nilsen and Brown had contact then with both the man
23 who was complaining that his bicycle had been taken
24 and that he had been assaulted, as well as with the
25 suspect of that strongarm robbery?

1 A Yes. So the officers both indicated that
2 they saw the victim on the path when they arrived,
3 got a chance to talk to the victim.

4 Q And who was that?

5 A Victim's name is Loren Kurth. The first
6 name, L-O-R-E-N; last is K-U-R-T-H. And that after
7 contacting the victim, they then saw the suspect. I
8 can give you his name now too, if you'd like. The
9 suspect's name in that was Nicholas Davis.
10 Nicholas, N-I-C-H-O-L-A-S; and last of Davis,
11 D-A-V-I-S.

12 Q All right.

13 A So they got a chance to talk to both of
14 them.

15 Q And generally -- of course, these officers
16 are going to testify later -- but just generally,
17 what did the two officers say occurred while they
18 were talking with Mr. Kurth and Mr. Davis along the
19 Springwater Corridor?

20 A So when they initially talked to
21 Mr. Kurth, he indicates that he had gone down to do
22 some scrap metal; that the suspect had kind of
23 popped out from behind some concrete and yelled at
24 Mr. Kurth. And then they subsequently got in what
25 he called a scuffle, and that then the suspect

1 chased Mr. Kurth back up onto the path, and the
2 suspect still had Mr. Kurth's bicycle.

3 As the officers saw the suspect and talked
4 to the suspect, a couple of things occurred. They
5 ran him, Mr. Davis. Discovered he had a warrant.
6 They also talked to the victim while they had the
7 suspect up there, discovered the victim's bicycle
8 was still in the forest, and sent the victim to go
9 find his bicycle so they could ascertain that it was
10 still in the forest, as far as initial conversations
11 go.

12 Q Okay. And what did they -- what did they
13 indicate ultimately happened?

14 A So as the -- the two officers were talking
15 with the suspect, Mr. Davis, suddenly Mr. Davis
16 produced a three-foot crowbar, held it up over his
17 head in what was described as a baseball type
18 stance, and attacked the officers. Officer Brown
19 subsequently tried to back up, fell down and tripped
20 over some wires that were there. And Officer Nilsen
21 indicates seeing that happening, looking at him,
22 then looking up, and Officer Brown fired two shots,
23 stopping the suspect from attacking him further.
24 The suspect then fell off the pathway and down into
25 the woods a little bit, dropping the crowbar as he

1 did just off the path.

2 Q All right. So based on your investigation
3 and the statements that you received, as well as the
4 physical evidence, is it your conclusion that only
5 Officer Brown fired his weapon?

6 A Yes. What we learned was we did a weapons
7 count of both officers, guns and ammunition.
8 Officer Nilsen had not fired. All of his ammunition
9 was there. Officer Brown had fired two rounds,
10 according to the weapons count. We also found two
11 casings that would match Officer Brown's gun. They
12 were 9-millimeter cases, matched his 9-millimeter
13 gun. They were in the vicinity of where Officer
14 Brown would have been when he fired the shots, and
15 we found two rounds in correspondence with the
16 suspect Mr. Davis. We found one round inside him at
17 the autopsy, and one round sort of underneath him
18 there at the scene.

19 Q All right. And I think that second spent
20 bullet was described by the criminalist as a
21 projectile that was noticed when the body of the
22 deceased was moved --

23 A Yes.

24 Q -- is that right?

25 A Yes.

1 Q Do you have the -- the identifiers for
2 Nicholas Davis in terms of his age, height and
3 weight?

4 A I -- yeah. I do. So, Nicholas Davis --
5 his middle name is Glendon, G-L-E-N-D-O-N. He's a
6 male white. His birth date is 12-8 of '90, so he's
7 24 years old. Height/weight, he's listed here as
8 being 6-3 and 230 pounds. That's via one of the mug
9 shots we have.

10 Q All right. So he was a relatively large
11 individual.

12 And what did you learn about his
13 background during your investigation?

14 A Learned he was -- seemed to be mostly
15 transient. On PPS, which is the Portland police
16 data system -- holds a lot of our information as we
17 contact people -- it showed small things for him in
18 there. There was trespassing, there was a
19 shoplifting. But what there were several accounts
20 of was a mental care for. I spoke with his mother,
21 and she also indicated that he had some mental
22 health issues.

23 He'd used another name too. Alex
24 Kenetesoff, K-E-N-E-T-E-S-O-F-F.

25 Q At the time of his death, did he have an

1 open warrant in Multnomah County?

2 A He did. He had a Theft 3 warrant.

3 Q Did you personally look at the crime scene
4 that was documented by the criminalist who testified
5 just before you?

6 A I did.

7 Q And what did you note about the scene
8 itself?

9 A Well, so you have a diagram that you can
10 see up there. The scene that's directly sort of
11 with it would be that area right around the grassy
12 area.

13 Did they indicate the grassy area to you?

14 Okay. So I noted that. I noted the path
15 came in, splits. There's that grassy area that's
16 kind of an oval. I noted that there was a green
17 piece of luggage that had rollers, much as
18 corresponded to what the officers had told me about
19 that.

20 Q Do you know whose luggage that is?

21 A Well, we assume it's his. I mean, he had
22 some items in it.

23 Q "His" being Nicholas Davis?

24 A Nicholas Davis, yes.

25 Q Okay.

1 A I noted that there were some wires that
2 came right down into that area.

3 Did you see photos of that?

4 Q We did.

5 A Okay. So the wires that came from a pole
6 down into the grassy area that had yellow on them.
7 I saw that there was a fresh dirt mark right in
8 front of those wires, which would correspond if
9 Officer Brown was backing up from where the officers
10 told us he was and he tripped, it would be that kind
11 of a mark as he falls backwards right where those
12 wires are.

13 I noted two casings that were found near
14 the grassy area, again in the place that the
15 officers had indicated things that happened. So
16 those corresponded to what they had told us and what
17 witnesses had told us.

18 I noted a crowbar that was just off the
19 edge and kind of in line with where Mr. Davis fell
20 as he went down the embankment. I saw that that
21 crowbar was a large crowbar. It was a full size,
22 three-foot, kind of big-around crowbar. I saw
23 Mr. Davis lying down sort of down the hill a ways in
24 the area indicated that the officers had said he
25 would have gone.

1 I noted on Mr. Davis the injuries to him.
2 There was what looked to be a gunshot wound to his
3 chest. Later the autopsy confirmed it to be a
4 gunshot wound to his chest. There was what looked
5 to be a gunshot wound to his arm; so, like, his
6 forearm area here, and then sort of exit. So,
7 outside, inside. Again, autopsy also confirmed
8 that.

9 There were -- he had two shirts and two
10 jackets on. There were holes in each of those. The
11 holes, both in the jackets and in his arm, indicated
12 that he did have his arms in this position as he was
13 shot, and that also corresponded to what both the
14 officers and the witnesses were telling us about his
15 actions and how he was holding the crowbar or what
16 the witnesses saw as each one described -- there's
17 different ones that we'll hear about later -- but as
18 he was holding what he had. These wounds were
19 corresponding to what he told to us.

20 A GRAND JUROR: For clarity, entry wound
21 on the outer part of the forearm?

22 THE WITNESS: The entry wound on the outer
23 part, exit wound here. Then what you have is,
24 in the jacket you have, it goes through the
25 outer jacket, into the second jacket. There's

1 a pocket on the second jacket that had a
2 wallet. The wallet had a cell phone battery in
3 it. What looks like happened is as it went
4 through the second jacket into -- the first
5 jacket into the second jacket, it hits that
6 wallet, cell phone, stops, and falls. That's
7 the one from the arm.

8 The other one was directly through, so
9 there's another thing through the jacket and
10 the shirts for the center shot.

11 A GRAND JUROR: Thank you.

12 THE WITNESS: You're welcome.

13 BY MR. REES:

14 Q And did you attend the -- the autopsy that
15 was performed the following day?

16 A I did. The autopsy was the following day,
17 June 13th. It was about 0900 hours. They did the
18 autopsy at the Oregon Medical Examiner's Office,
19 which is down in Clackamas. The attending doctor
20 was Clifford Nelson. And so there were several of
21 us there. I was there; my partner, Detective
22 Sponhauer was there; DA Don Rees was there. We had
23 two training officers who attended, training Officer
24 Myers and Hertzler. Also present were criminalists
25 Nebling and Greaves. And helping the Medical

1 Examiner was the attendant and an intern, whose
2 names I don't know. But they were there, as well.

3 Q During the autopsy, did Dr. Nelson show
4 you what he identified as the fatal gunshot wound to
5 the chest of Nicholas Davis?

6 A He did. He said that the fatal gunshot
7 wound was a shot right to the chest. It went to the
8 aorta. He said that it was -- would pretty much be
9 instantly fatal.

10 Q All right.

11 MR. REES: Ladies and gentlemen, I'm going
12 to provide you as -- or provide to you as
13 evidence the autopsy report of Clifford Nelson,
14 which you can review at your leisure. But it
15 indicates that, in summary, two injuries noted,
16 gunshot wound of the left forearm and gunshot
17 wound to the chest.

18 I'll pass this around.

19 Are there any questions for Detective
20 Michaels?

21 A GRAND JUROR: Yes. Is there any way to
22 determine which shot came first; one that hit
23 the arm or the one that hit the aorta?

24 THE WITNESS: I don't have that
25 information. And whether that can be

1 determined or not would be a question for
2 someone probably more inclined to know the
3 answer to that than I would. I'm sorry. I
4 don't know the answer to that. That's a good
5 question.

6 MR. REES: All right. Anything else?

7 A GRAND JUROR: Is it characteristic in
8 officer-involved shootings for the officer
9 directly involved to wait a few days before
10 interview or not?

11 THE WITNESS: I think each incident is
12 different.

13 A GRAND JUROR: Okay.

14 THE WITNESS: And they all -- they just
15 all are very different.

16 A GRAND JUROR: Okay.

17 Any other questions?

18 MR. REES: All right. Thank you.

19 A GRAND JUROR: Thank you.

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1 LAURA MITAR,
2 was thereupon produced as a witness on behalf
3 of the State and, after having been duly sworn on
4 oath, was examined and testified as follows:

6 EXAMINATION

7 BY MR. REES:

8 Q When you're ready, please tell us your
9 first and last name, and spell your first and last
10 name.

11 A First name Laura, last name Mitar. Laura
12 is spelled L-A-U-R-A, and Mitar, M-I-T-A-R.

13 Q All right. Ms. Mitar, as you can see,
14 there's a diagram on the flat panel, and there's
15 also one behind you, and you're welcome, if you'd
16 like, to stand up and refer to that when you answer
17 my first question --

18 A Okay.

19 Q -- which is generally where you were when
20 you saw the events you're about to describe.

21 A Well, I was in this lane, but probably
22 further back here, as I was driving towards I-205 to
23 go to work.

24 Q Okay. So you're indicating, I believe,
25 that would be the southbound lane of Southeast

1 Foster Road, headed westbound, just to the east of
2 the crosswalk. Is that right?

3 A Sure. A little hard with orientation,
4 but, yes.

5 Q Okay.

6 A GRAND JUROR: You're in the fast lane
7 going that way?

8 THE WITNESS: Right.

9 A GRAND JUROR: Yeah.

10 THE WITNESS: I was in the lane closest to
11 the center divide, middle lane.

12 BY MR. REES:

13 Q All right. And go ahead, if you would
14 then, and tell the Grand Jury what you noticed. And
15 this, of course, we're talking about Thursday,
16 June 12th, 2014, somewhere around, I guess, six
17 o'clock in the morning or so.

18 A It was probably 6:15-ish, maybe 6:20,
19 because I was on my way to work. And I -- that's
20 just the route I take every day. And it was kind of
21 slow as I was approaching the stoplight crosswalk.
22 And I noticed the two cars -- can I stand up and
23 talk?

24 Q Yes.

25 A So I noticed as I was driving this way,

1 when I noticed the two police cars. And then I
2 noticed two police officers standing here, and a man
3 in a black or dark-hooded sweatshirt standing here.
4 And I was, like, oh, that's nice. They're talking
5 to a citizen. They looked relaxed and having a
6 conversation. And I guess there were a lot of cars
7 because for some reason, we weren't going very fast
8 because Foster is, like, 40. And it was kind of
9 slowly progressing along. I'm just watching the
10 interaction, the cops talking. And then all of a
11 sudden, the person in the hooded shirt pulls out --
12 I thought it was a golf club because it was, like,
13 long and black. But it wasn't thick enough as a
14 baseball bat. And I thought, what is that black
15 thing? And I see him pull it up, and I thought, oh,
16 my goodness, he's going to attack the police
17 officers? And the police officers start backing up
18 slowly. And I think the one that was closest to the
19 road fell down as he was backing up because he just
20 kind of disappeared, and there was only one police
21 officer standing. And by this point, I'm probably
22 right around here because I see him in his little
23 stance with his gun out. And then I hear two
24 pop-pops as I'm, like, driving by, and I turn and I
25 see the man in the black hooded sweatshirt kind of

1 hunch over, but that's it. Traffic was going and I
2 was going right along with it. But I thought, oh,
3 my goodness, I think I just saw somebody get shot.
4 And that was --

5 Q All right.

6 A -- the event.

7 Q You were indicating with your hands, I
8 think, but when you saw the man in the hooded shirt
9 or sweatshirt take out this object that you said
10 looked like, perhaps, a golf club --

11 A Yeah, I --

12 Q -- could you see what, if anything, he was
13 doing with the object?

14 A He had it up in the air, and I -- I was
15 afraid that he was going to swing it directly into
16 one if not both of the police officers. He looked
17 like he was aggressive with it, or getting ready to
18 use it.

19 Q All right. So when you -- when you saw
20 that, what did you think you were seeing happen
21 right in front of your eyes?

22 A I thought he was going to struck the
23 police officers. I thought he was going to try to
24 hurt them.

25 Q And so do you have a sense of how near or

1 far the officers were from this person when you saw
2 that?

3 A I mean, at first I thought they were just
4 having a calm, normal conversation -- because I'm a
5 nurse, so in nursing school I took nonverbal
6 communication classes. And I could tell from the
7 stance of the police officers, their facial
8 expressions -- not that I could hear what they're
9 saying -- but they -- they looked just calm and
10 having just a regular, you know, probably within a
11 comfortable space to talk to somebody, some --

12 Q It was a conversational zone --

13 A Right --

14 Q -- in terms of the distance.

15 A -- like I would be talking to a police
16 officer.

17 Q Okay.

18 A And then when he pulled out that thing --
19 I guess later on I read online, I read it was a
20 crowbar -- that's when they started slowly backing
21 away.

22 Q Okay.

23 A GRAND JUROR: A couple of clarifying
24 questions for you.

25 THE WITNESS: Okay.

1 A GRAND JUROR: You mentioned that you --
2 as you were rolling along in traffic slowly --

3 THE WITNESS: Yeah.

4 A GRAND JUROR: -- you looked over and you
5 saw them -- can you indicate on the diagram
6 where you saw the three of them kind of
7 together?

8 THE WITNESS: Well, to me the way it
9 looked like -- I never walked down the
10 corridor.

11 A GRAND JUROR: That's okay.

12 THE WITNESS: So I know there's the
13 sidewalk and then there's, like, this paved
14 pathway. And I don't know exactly where along
15 the paved pathway, but to me it was closer to
16 the sidewalk than, like, further. So there's
17 tall grass, so I could see their bodies. But I
18 don't know in the general area where it was. I
19 thought it was somewhere around here.

20 A GRAND JUROR: Okay. That helps.

21 Okay. And when you said -- the way you
22 described the way the officers were standing
23 was just kind of casual, conversational stance.

24 THE WITNESS: Yeah.

25 A GRAND JUROR: I've been around a couple

1 of police officers. There are different ways
2 that they stand.

3 THE WITNESS: Uh-huh.

4 A GRAND JUROR: Can you --

5 THE WITNESS: They were standing like
6 this, I think.

7 A GRAND JUROR: Okay. Arms down.

8 THE WITNESS: Arms down.

9 A GRAND JUROR: No holding the vest or
10 anything like that?

11 THE WITNESS: I don't think so, no.
12 Because I really thought they were having a
13 nice, citizen conversation.

14 A GRAND JUROR: And the other guy, before
15 he pulled out the golf club --

16 THE WITNESS: He had his back towards me,
17 so I don't know exactly where his hands were.
18 They were talking to him like this way --

19 A GRAND JUROR: Interesting.

20 THE WITNESS: -- they were facing that
21 way. So I was coming this way. So I didn't
22 ever see his face, I don't think.

23 A GRAND JUROR: Golf club guy back to you,
24 police officers facing you.

25 THE WITNESS: Facing me.

1 A GRAND JUROR: I have a question.

2 THE WITNESS: Okay. Sure.

3 A GRAND JUROR: Was the car blocking the
4 view or was --

5 THE WITNESS: No.

6 A GRAND JUROR: So the car wasn't right
7 there?

8 THE WITNESS: I don't know exactly how
9 this car was. I mean, I do remember two cars,
10 but they -- the cars were not blocking my view
11 at all.

12 A GRAND JUROR: Okay.

13 THE WITNESS: They were not in the way at
14 all. I saw -- yeah. I saw every -- as much as
15 I could.

16 A GRAND JUROR: And you saw the tops --
17 from the police officer's viewpoint, could you
18 see them from their whole body?

19 THE WITNESS: I could see their whole body
20 when I was back here for sure, yeah.

21 A GRAND JUROR: Okay.

22 A GRAND JUROR: What kind of car do you
23 drive?

24 THE WITNESS: It's a Ford -- no, Toyota
25 4Runner.

1 A GRAND JUROR: So it's an SUV?

2 THE WITNESS: Yes, it's kind of high up,
3 which I like.

4 Yes?

5 A GRAND JUROR: So you can see that both
6 the officers were facing the guy?

7 THE WITNESS: Yes.

8 A GRAND JUROR: Thank you.

9 THE WITNESS: Uh-huh.

10 A GRAND JUROR: Any other questions?

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

13 THE WITNESS: That's it?

14 MR. REES: Thanks for coming in.

15 THE WITNESS: Oh, sure. Thank you.
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1 YASUKO GARRATT,
2 was thereupon produced as a witness on behalf
3 of the State and, after having been duly sworn on
4 oath, was examined and testified as follows:

6 EXAMINATION

7 BY MR. REES:

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

10 A Yasuko Garratt, Y-A-S-U-K-O,
11 G-A-R-R-A-T-T.

12 Q All right. Thank you, Ms. Garratt.

13 I'm going to ask you what you saw on
14 Thursday, June 12th, 2014, on Southeast Foster Road.

15 A Okay.

16 Q And before I ask you, can you show us on
17 the diagram behind you where you were, about, when
18 you saw these events.

19 A My husband, I, was driving from east to
20 west on Foster. So our car is about right here.
21 And then traffic light. Then the traffic light was
22 red, so we stopped. And -- should I going?

23 Q So you stopped --

24 A Yes.

25 Q -- for the record, you stopped --

1 A Yes.

2 Q -- just east of the crosswalk --

3 A Yes.

4 Q -- where the Springwater Trail crosses
5 Foster Road.

6 A Yes.

7 Q All right.

8 A And I noticed the two police car on the
9 other side of the Foster, and the two officer was
10 standing over there. Then the guy was standing over
11 here.

12 Q And when you say "the guy," who are you
13 talking about?

14 A It -- he looked like a homeless person.

15 Q Okay.

16 A Yes.

17 Q So you saw two police officers --

18 A Yes.

19 Q -- and then someone who looked like a
20 homeless person?

21 A Yes.

22 Q All right.

23 A Then the traffic light changed to green,
24 so we proceeded. And we were just curious, so we
25 were just looking, going like this. Then the guy

1 kind of lunged towards the officer, then I heard two
2 gunshots, like a pam-pam. I think I heard two. But
3 second one, it could be echo. I can't be sure. But
4 I heard two gunshot, pam-pam. Then the guy fell
5 down -- I mean, behind the bushes. He fell down.
6 And I never saw the guy again.

7 Q All right. And when you say "the guy,"
8 again, this is the person you thought looked like he
9 might be homeless?

10 A Yes.

11 Q And when you say that he lunged towards
12 the police officers --

13 A Yes, uh-huh.

14 Q -- what do you mean by that? What do you
15 mean by "lunge"?

16 A Going forward, try to maybe attack, more
17 like a lunge aggressively, yes.

18 Q All right. And could you see whether he
19 had anything in his hands when he did that?

20 A That part I did not see, no.

21 Q Okay. And did you see whether the police
22 officers had any reaction when this man lunged
23 towards them?

24 A When he lunged, then I heard the two
25 gunshot, pam-pam, yes.

1 Q Okay. Before you saw that, did it look as
2 if there was anything unusual going on between the
3 two police officers and this other man?

4 A No. I did not see, no.

5 Q In other words, did you see anyone waving
6 their arms or hear people yelling, or did it appear
7 to be a calm situation?

8 A No, I didn't hear anything, no.

9 MR. REES: All right.

10 A GRAND JUROR: Ms. Garratt, were your
11 windows down in the car?

12 THE WITNESS: No, up.

13 A GRAND JUROR: Okay.

14 THE WITNESS: So that's why I didn't hear
15 anything. Hear the gunshots.

16 A GRAND JUROR: Do you mind showing where
17 you saw the three gentlemen that was looking
18 down when you were pointing that out.

19 THE WITNESS: Oh, the police officer was,
20 I think, over here. Then the guy was over
21 here. So it's about at least 15 feet, maybe,
22 away --

23 A GRAND JUROR: Between the --

24 THE WITNESS: -- homeless --

25 A GRAND JUROR: -- homeless.

1 THE WITNESS: -- guy and the police
2 officer, yeah.

3 A GRAND JUROR: Okay.

4 THE WITNESS: Maybe from myself to the
5 corner of the -- this room.

6 A GRAND JUROR: And you saw that they were
7 both facing him?

8 THE WITNESS: Yes, yes. They were more
9 like -- kind of like a triangle: The guy, then
10 two police officers. Like a triangle, yes.

11 A GRAND JUROR: Any other questions?
12 Oh, go ahead.

13 A GRAND JUROR: Did you see one of the
14 officers fall, or when you turned around to
15 look, do you see only one officer standing at
16 some point?

17 THE WITNESS: I believe so, yes. But I
18 can't tell what point. But I think one time,
19 yeah, he -- one officer was up and the other, I
20 didn't see the other officer. It happened so
21 quickly, and the -- yes. So while we were
22 waiting for the red light to change -- the
23 green to change, and to this point is probably
24 less than not even 10 seconds. It just
25 happened everything quickly, yeah.

1 A GRAND JUROR: About 10 seconds.

2 THE WITNESS: Yes.

3 A GRAND JUROR: One more question. What
4 kind of car do you drive?

5 THE WITNESS: That's my husband car, 1980
6 Toyota Corona.

7 A GRAND JUROR: Corona.

8 THE WITNESS: I think I said Corolla
9 initially police detective asked me a question
10 that day. But it's Corona, not the Corolla.

11 A GRAND JUROR: It's a short car.

12 THE WITNESS: Yes. Four-door sedan wagon,
13 yes.

14 A GRAND JUROR: And you were the
15 passenger.

16 THE WITNESS: Yes, yes, I was passenger.
17 My husband was driver, yes.

18 A GRAND JUROR: Thank you.

19 MR. REES: All right.

20 If there's no other questions, we'll
21 excuse this witness.

22 Thank you very much.

23

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1 STEVEN GARRATT,
2 was thereupon produced as a witness on behalf
3 of the State and, after having been duly sworn on
4 oath, was examined and testified as follows:

6 EXAMINATION

7 BY MR. REES:

8 Q And please state your first and last name,
9 and spell your first and last name.

10 A My name is Steven Garratt.

11 Q All right. And can you spell that for us,
12 please.

13 A G-A-R-R-A-T-T.

14 Q And "Steven?"

15 A Steven with a V.

16 Q All right. Thank you, sir.

17 Sir, if you would first, using that
18 diagram behind you, tell the Grand Jury where you
19 made these observations you're going to testify
20 about on June 12th, 2014.

21 A Okay. I was the first car in line right
22 here, in a 1980 Toyota Corona. And I was taking my
23 wife to work. There was a giant truck over here
24 with a flatbed with brand-new trailers stacked up,
25 and I was trying to get away from -- around him

1 because I had to take my wife to work. She had to
2 open up Fred Meyer's at 6:45. She's worked there at
3 39th and Hawthorne for 19 years.

4 So I was a little bit late and I was
5 trying to get moving. And just as the light turned
6 green and I had a clear view, and I saw the cop car
7 sitting in there, and I saw this guy come out of the
8 woods. And I thought he was -- had a chunk of
9 hawthorn because the bike crews, the road crews had
10 been clearing all the brush there for weeks and
11 weeks and weeks. And it looked like he made some
12 sort of movement like this.

13 Q Did you say a chunk of hawthorn?

14 A I thought -- that's what I thought it was.
15 But it turned out to be a crowbar. But -- but --

16 Q Big stick?

17 A -- but flashing. I thought it was a
18 stick.

19 Q For clarification, you mean a hawthorn
20 tree or bush?

21 A Hawthorn.

22 Q So you thought it was a big piece of wood.

23 A There's thousands of them along there. We
24 even picked them off for firewood. We packed 600
25 pounds of cherry wood out there, and got permission

1 from the crews because they cut it all down. And
2 the latest thing they cut down was all the hawthorn,
3 which are all really bad, thorny bushes.

4 Q Could you see what it was really?

5 A I couldn't -- I did not know it was a
6 crowbar until I saw it in the newspaper later.

7 Q I see. Okay. And you can go ahead and
8 sit down, if you want.

9 A Okay.

10 Q But -- so you -- you saw the man with this
11 object in his hands that you thought was a big piece
12 of hawthorn wood. And what was he doing with it?

13 A He was attacking the cop with it. He --
14 the -- the -- the cop was big. He'd step back kind
15 of -- the light had just turned green, so I was
16 starting to move. And the guy just comes out of
17 there, angry look on his face. I thought he was
18 older than 23. And he struck at the cop. And the
19 cop went down. Either he fell down or he got hit
20 with it, whatever. And then he jumped back up, and
21 I thought I saw both policemen draw, but apparently
22 only one was fired, one gun was fired.

23 Q Well, just tell --

24 A I thought I saw both of them aiming at
25 him, so maybe one of them was just aiming and didn't

1 fire.

2 Q Oh, okay. Just -- for your clarification,
3 just tell us what you saw and what you remember
4 seeing.

5 A Well, they shot him.

6 Q So --

7 A So his body went flying back into the
8 woods right then. And -- you know, it just -- just
9 the way his whole body just lifted up and went back
10 into the woods. And I thought I heard more than one
11 shot. I -- I knew that guy was gone.

12 And so I looked at my wife, and I said:
13 I've got to stop. I just saw everything.

14 So I U-turned right then. Later the
15 policemen told me I should have pulled into Tommy's
16 Too. But I U-turned, and went right up behind the
17 policemen. I get out of the car and I'm walking up
18 behind two policemen that just shot somebody, and
19 I'm thinking, this isn't too smart. So I raised my
20 hands up like this, and I said: Officers, you're
21 going to want to talk to me. I just saw everything.
22 And the guy turned to me and he was still freaking
23 out, and he goes: Don't move. And I didn't move.

24 And I yelled at my wife: Turn the car
25 off. You're going to be late for work. And then

1 they separated us for four hours -- two or three
2 hours. So I didn't say anything else to her. I
3 still don't know what she saw. We never talked
4 about it.

5 Q Based on what you saw, just based on what
6 you saw, did you believe that this officer's life
7 was in danger?

8 A Absolutely. And -- and had I known it was
9 a crowbar, it would have even quadrupled, you know.
10 But even a chunk of hawthorn, this is hard wood.
11 I've burned it all the time. And I -- every --
12 everybody -- doesn't like about me, but I take all
13 those bases and I make yule logs out of those
14 things. It's just like oak. And a chunk of it
15 would be enough to kill you. So I turned right
16 then, I told my wife, I'm stopping because I saw
17 everything. And to myself I said, I'm just so sick
18 and tired of people saying cops use excessive force.
19 And if somebody hit me with a stick, I'd shoot him
20 too. You know. And then -- then I found out it was
21 a crowbar. That was even worse. So I think that
22 guy had every single right to defend himself. And
23 I'm so tired of these groups saying that they use
24 excessive force. They have the same God-given right
25 that you and I have to defend themselves, and they

1 did. And it's just tough luck. Don't take a
2 crowbar to a gunfight.

3 A GRAND JUROR: Steven, how fast was it
4 from when you saw the guy come lunging out of
5 the woods?

6 THE WITNESS: It was quick. The first
7 thing that caught my eye as I pulled up to the
8 light, I could see the cop car was, you know
9 just -- it wasn't where it was supposed to. It
10 wasn't -- I didn't think it was on the road.
11 It was, like, off. So we walk that all the
12 time because we've lived there for almost 20
13 years. And we're constantly on that little
14 section. And that's the new section that they
15 remodeled back in there. It's very beautiful.
16 So my wife and I are always walking that.

17 So as I started through the light, that
18 guy was just right on it. He was just on
19 there. And it looked like he'd hit the cop and
20 the cop fell. To me. And then they were back
21 up, and then they -- they -- I thought I saw
22 both policemen aiming, and then I heard the gun
23 fire, and I said I have to stop.

24 A GRAND JUROR: Relative to where your car
25 was on the diagram.

1 THE WITNESS: That is my car.

2 A GRAND JUROR: After you turned around.

3 So before it --

4 THE WITNESS: Yeah. So --

5 A GRAND JUROR: Yeah. When you saw him
6 come lunging out.

7 THE WITNESS: I couldn't -- there's a post
8 right here.

9 A GRAND JUROR: Right.

10 THE WITNESS: See it, where it says
11 "post"? I couldn't see through it. And I
12 didn't know that until they did the
13 reenactment. So they walked me back through
14 the whole thing. And I realized that, sitting
15 here, I couldn't see anything. So it was right
16 when the light turned green and I started
17 through here, that I saw the guy attack the
18 cop. And then they jumped up and they shot
19 him. And that's when I said, I've got to
20 U-turn to tell them.

21 A GRAND JUROR: So you were looking out
22 the left side of your window when you saw the
23 whole thing transpire.

24 THE WITNESS: I saw the kid come out of
25 the woods, I saw him hit the cop, I saw the cop

1 go down, I saw him jump up and shoot it. And
2 then I -- I decided to stop.

3 A GRAND JUROR: You had a question?

4 A GRAND JUROR: Yeah.

5 How far away do you believe that the man
6 who was going to strike the cop was away from
7 the cop? I mean, how far was that distance?

8 THE WITNESS: Ten feet. He was right in
9 his face when he hit him. And if the cop
10 backed up and fell or got knocked over -- it
11 was one of those two. I mean --

12 A GRAND JUROR: So you didn't get --

13 THE WITNESS: They were right -- right
14 close. See, there's a depression right there
15 where the bike path separates like this, where
16 there's a little piece of grass. And then it
17 drops down there. And that's where all the
18 crews have been cutting all that hawthorn. And
19 there's just thousands of tons of it along that
20 bike path.

21 And so there's a depression there. And --
22 and a lot of camps. There's, like, 50 camps
23 along that bike path. And -- and people in
24 this city need to know that it's just a
25 nightmare for all of us that live on there

1 because they're stealing stuff from us all the
2 time. I have had my truck broken into, I've
3 had \$1,200 of DEWALTs taken --

4 A GRAND JUROR: You had a question?

5 A GRAND JUROR: Yes, I do.

6 THE WITNESS: Sorry.

7 A GRAND JUROR: So I just want to repeat
8 some of the sequence of events that you
9 described.

10 You saw the guy with an angry look struck
11 at the cop. The cop -- you saw one of the cops
12 fall down. Right?

13 THE WITNESS: The big cop.

14 A GRAND JUROR: Then you saw him jump up
15 again?

16 THE WITNESS: Yes, he jumped right back
17 up.

18 A GRAND JUROR: When did you hear the
19 shots afterwards? You don't remember?

20 THE WITNESS: No, immediately.

21 A GRAND JUROR: Immediately --

22 THE WITNESS: Immediately.

23 A GRAND JUROR: -- as he was jumping up?

24 THE WITNESS: Immediately they jumped up,
25 I thought I saw both cops aiming at him and I

1 heard more than one general shot.

2 A GRAND JUROR: You saw both cops aiming
3 at him, you heard more than one --

4 THE WITNESS: I thought they both shot
5 him.

6 A GRAND JUROR: So when you saw both cops
7 aiming at him, this was after one of the guys
8 jumped up.

9 THE WITNESS: Right.

10 A GRAND JUROR: So one cop fell.

11 THE WITNESS: He got knocked down, he got
12 up and aimed at him and shot.

13 A GRAND JUROR: He got up, they both aimed
14 at him.

15 THE WITNESS: I thought they both aimed at
16 him.

17 A GRAND JUROR: You thought.

18 THE WITNESS: I saw later that only one of
19 them shot. And that -- I watched the guy's
20 body just go like this, lift off the ground and
21 go back in there. They were close. They
22 were -- they were five, six feet away from him
23 when they shot him.

24 And this placement is correct. That's
25 exactly where they were. I'm not -- almost 20

1 years, I've gone by there a million times. I
2 live on that bike path. 122nd.

3 A GRAND JUROR: What did you say -- oh.
4 I'm sorry.

5 Where did you say all those hawthorn trees
6 were that they have were cutting down; were
7 they right in that area?

8 THE WITNESS: Yes. Right -- right where
9 this guy came out of the woods. There's
10 hawthorn there, there, there, there, and all
11 the way up to 122nd and all the way down to
12 111th.

13 A GRAND JUROR: They're cutting it down.

14 THE WITNESS: They cut it down. They
15 brought in crews with big booms on the back of
16 it and chippers, and they were there for a
17 month cutting. First they cut down all the
18 cherry wood, and then all the birch. And we
19 were right on that, asking them if we could
20 have that because we burn with a woodstove.
21 And then they came in and cut down all the
22 hawthorn. It's also just a nuisance bush to
23 everybody that doesn't know that's it's also
24 good firewood.

25 A GRAND JUROR: You've got a question?

1 A GRAND JUROR: I do.

2 I want to clarify the length of time
3 between when you saw the cops jump back up
4 again -- fall down, jump back up again and
5 shoot.

6 THE WITNESS: A millisecond. As fast as
7 he went down and got back up, they shot him.

8 A GRAND JUROR: So it all happened rapid,
9 rapid.

10 A GRAND JUROR: So I've got a question you
11 didn't clarify.

12 So you said the shooter was about -- or
13 was -- not the shooter, sorry -- the man with
14 the crowbar, with the piece of wood, was right
15 on the cop.

16 THE WITNESS: Yeah.

17 A GRAND JUROR: You thought maybe even
18 struck the cop.

19 THE WITNESS: Uh-huh.

20 A GRAND JUROR: The cop fell down --

21 THE WITNESS: I saw him make that overhand
22 movement.

23 A GRAND JUROR: The cop fell down, jumped
24 back up in milliseconds, and shot. But you
25 said he shot about from five, six feet away

1 when he shot. So did the guy retreat after
2 the --

3 THE WITNESS: No, no.

4 A GRAND JUROR: -- or did he keep on
5 approaching?

6 THE WITNESS: I think that he would have
7 kept attacking them. And -- and had he -- they
8 not had guns, I think he would have killed
9 them. People on meth, they're insane.

10 A GRAND JUROR: No, I'm just wanting to
11 get the facts straight here. So he was --
12 you're saying he was kind of right on him when
13 the cop fell.

14 THE WITNESS: Right.

15 A GRAND JUROR: Within milliseconds, the
16 cop jumped back up and had his gun out and
17 shot. But then at this time, the --

18 A GRAND JUROR: The guy with the stick.

19 A GRAND JUROR: The guy with the stick, or
20 crowbar, you're saying is about five to six
21 feet away. So --

22 THE WITNESS: They're very close. And
23 remember, the light had just turned green for
24 me, so I'm starting to move in traffic when I
25 saw all of that happen.

1 A GRAND JUROR: Okay. Yeah. I just
2 wanted to clarify.

3 A GRAND JUROR: So you're saying --

4 THE WITNESS: It had to be close because
5 it's just not that big of a space. The bike
6 path is about like that, and then there's that
7 green spot, then another spot. It's not a very
8 big area because I'm having to navigate that as
9 I'm trying to get across the road.

10 A GRAND JUROR: So you don't know if he
11 kept on approaching the officer, if he was
12 retreating --

13 THE WITNESS: He wasn't retreating. The
14 guy was -- he was whacked out.

15 MR. REES: What -- what are you asking?

16 A GRAND JUROR: So he's saying --

17 MR. REES: Don't ask me. I'm asking,
18 what's your question?

19 A GRAND JUROR: I think -- did you
20 understand my question?

21 THE WITNESS: I -- I did.

22 A GRAND JUROR: Yeah.

23 THE WITNESS: I think the guy --

24 A GRAND JUROR: Do you want --

25 THE WITNESS: -- would have kept attacking

1 them. And had they not defended themselves, he
2 would have bashed their head in with whatever
3 he had. And what I thought was a stick moving,
4 you know, if you do that flash, I couldn't tell
5 that it was a crowbar. A crowbar makes it 50
6 times worse.

7 A GRAND JUROR: Do you need the question?

8 THE WITNESS: He wouldn't have survived
9 with a crowbar to the head.

10 A GRAND JUROR: He understood. Do you
11 need clarification just for your benefit or --
12 of my question?

13 MR. REES: Sure. It was just not clear to
14 me what -- what exactly you're asking this
15 witness at this point.

16 A GRAND JUROR: So I'll try to --
17 hopefully this will be clearer. I apologize if
18 it's not.

19 So I was just trying to get an idea of the
20 event, the facts of the events. He had said
21 that he was approaching the man -- I don't know
22 whether to refer to him as the victim or
23 suspect -- suspect -- but the -- so the man
24 with the crowbar. He said he was approaching
25 the police officer, he was pretty much right on

1 him when the police officer fell. And then I
2 just wanted to clarify because then he's
3 stating that within milliseconds the police
4 officer was shooting. But then his statement
5 was that the man was about five, six feet away
6 when he shot him. So I was just trying to
7 clarify that discrepancy. That's all. I mean,
8 he understood it. Does that make it clearer
9 for you?

10 THE WITNESS: I got it.

11 A GRAND JUROR: No, but you. I'm asking
12 the DA.

13 MR. REES: Yeah. I think so. As long as
14 he's answered your question, that's fine.

15 A GRAND JUROR: Yeah. No, he said he did.
16 He understood.

17 MR. REES: Okay.

18 All right. Are there any other questions?

19 A GRAND JUROR: Mr. Garratt, thank you for
20 coming in today.

21 THE WITNESS: Okay. Happy to help you
22 out.

23 God bless you. Have a good day, you guys.
24
25

1 ZAKKARY DOW,
2 was thereupon produced as a witness on behalf
3 of the State and, after having been duly sworn on
4 oath, was examined and testified as follows:

5
6 EXAMINATION

7 BY MR. REES:

8 Q Mr. Dow, if you could state your first
9 name and your last name, and then spell both.

10 A My first name, Zakkary, last name, Dow.
11 Zakkary is Z-A-K-K-A-R-Y; last name D-O-W.

12 Q Thank you.

13 Okay. And Mr. Dow, what do you do for a
14 living?

15 A I work at LKQ Foster Auto Parts. I
16 dismantle cars.

17 Q And where is that located?

18 A On Foster, 103rd.

19 Q All right.

20 A Southeast Foster.

21 Q Behind you is a diagram of a portion of
22 Foster Road. Would you be able to point out to the
23 Grand Jurors where that auto part shop is located?

24 A It's --

25 Q You can stand up, if you want.

1 A Okay. So I'm assuming we're probably
2 about -- well, over here. No, actually, we're on
3 this side because we're going north. So we'd be on
4 that side.

5 Q On the north side of Foster Road --

6 A Yeah.

7 Q -- across from the Springwater Corridor.
8 You -- just -- is that shop just about directly
9 across the street from the Springwater Corridor?

10 A Yes, sir.

11 Q All right. Thanks. You can resume your
12 seat.

13 Back on June 12th, Thursday morning, at
14 about six o'clock, 6:15, were you -- were you
15 driving to work?

16 A Yes, I was. I was coming from Vancouver.

17 Q Okay.

18 A And then I got off 205 and started driving
19 down Southeast Foster, and then I passed the -- I'm
20 not sure what's the name of the store -- but the
21 feed store, and I seen two police cars. And then
22 where our location is, it's right where the
23 crosswalk where civilians start walking by. So I
24 got in the middle lane to get ready to turn over,
25 and I seen the police officers speaking to two

1 different individuals.

2 Q All right. Do you remember how many
3 police officers you saw?

4 A Two different cop cars, and two police
5 officers.

6 Q All right. And maybe you said, but how
7 many different people were those two officers
8 talking with?

9 A Two different individuals.

10 Q Okay. And other than that, did anything
11 unusual seem to be happening when you drove by?

12 A No. When I pulled up -- because I kind of
13 just checked it out for a second, you know.
14 Everything seemed pretty relaxed. No one, you know,
15 going off the -- you know, crazy or anything. One
16 of the police officers was talking to an individual
17 farther away than the other individual. They
18 weren't next to each other. So they were definitely
19 either interrogating them or speaking to them away
20 from each other.

21 Q Okay. All right. And then -- so -- when
22 you saw that, you're coming, you said, from I-205.

23 A Yeah.

24 Q So you were headed eastbound on Southeast
25 Foster --

1 A Yeah.

2 Q -- is that right?

3 A Yes.

4 Q And after you saw that, did you then pull
5 into the parking lot at your work?

6 A Yes, I did.

7 Q All right. And tell the Grand Jury, if
8 you would, what -- what you saw or heard --

9 A Okay. So I pulled into our parking lot.
10 And the other individual -- my friend, JD, who is
11 with me today -- I pulled next to him. We parked
12 our cars and then we got outside to smoke a
13 cigarette because we were waiting for our boss to
14 open the doors, because he has the key. We don't
15 have the keys.

16 And -- and then all of a sudden -- I would
17 say maybe a minute, maybe 45 seconds after we
18 started smoking, talking, we heard screaming --
19 well, yelling. It sounded like the officer said
20 "get down." And then all of a sudden, two gunshots
21 went off. And then we proceed to walk over there to
22 see if everything is okay.

23 And the police officers were looking into
24 the -- off the trail, not on the paved trail. They
25 were looking into the bushes. And -- and then all

1 of a sudden helicopters and police cars started
2 showing up. So...

3 Q All right. Did you have any contact with
4 the officers?

5 A Not the -- the original officers, but
6 officers that came to the scene.

7 Q Later on.

8 A Yeah.

9 Q Okay. But -- yeah. And --

10 A And that was, like, in seconds.

11 Q Right after the shooting.

12 A Yeah.

13 Q You didn't have contact with the two
14 officers across the street?

15 A No.

16 Q Other than "get down," did you hear
17 anything else?

18 A No, besides the gunshots after that.

19 Q Okay.

20 A GRAND JUROR: Hey, Zakkary, for some
21 clarity, wind back a little bit.

22 You said you heard yelling or screaming.

23 THE WITNESS: Well, I meant --

24 A GRAND JUROR: Then the "get down." Was
25 there yelling before the "get down," or was it

1 just --

2 THE WITNESS: No --

3 A GRAND JUROR: -- "get down"?

4 THE WITNESS: -- that's -- that's
5 incorrect. I meant the officer. I'm assuming
6 the officer was yelling "get down."

7 A GRAND JUROR: Okay. That's good.

8 When you came out around the building, did
9 you come across the street or did you stop?

10 THE WITNESS: No, because our parking lot
11 is pretty big. It doesn't have a picture of
12 that.

13 A GRAND JUROR: Right.

14 THE WITNESS: It's humongous. So we
15 basically came out, not even on the Foster
16 Road, but still in our parking lot, and seen
17 everything. Because, I mean, it's literally
18 right across the street.

19 A GRAND JUROR: Okay. Were the officers
20 at that point -- you said they were looking
21 down in the bushes.

22 THE WITNESS: Yeah. They weren't standing
23 on the trail anymore.

24 A GRAND JUROR: Guns drawn?

25 THE WITNESS: No, they were just looking.

1 A GRAND JUROR: Okay.

2 THE WITNESS: Both of them. Both officers
3 just looking into the bushes. And then
4 actually a little bit after that, one of the
5 officers was pacing a lot off the trail.

6 BY MR. REES:

7 Q Did you mean one of the original two
8 officers?

9 A Yeah, one of the original two. It was a
10 little bit after the other officers came.

11 A GRAND JUROR: Okay.

12 MR. REES: All right.

13 A GRAND JUROR: The two -- early on you
14 said the two police officers were talking to
15 two different guys.

16 THE WITNESS: Yes.

17 A GRAND JUROR: Or two different
18 individuals.

19 THE WITNESS: Yes.

20 A GRAND JUROR: On the diagram, ballpark
21 where the two of them might have been.

22 THE WITNESS: So if this is the crosswalk
23 from my work -- we'll just say my work is right
24 here.

25 A GRAND JUROR: Right.

1 THE WITNESS: And this is a crosswalk.
2 One of the individuals was right here on this
3 side of the police car with the cop car. The
4 back door was open, already open.

5 A GRAND JUROR: Okay.

6 THE WITNESS: And they were just talking.
7 And then other, if we call this the trail right
8 here, this is where one of the police officers
9 was pretty -- probably about the same distance
10 from his car, talking to the individual.

11 A GRAND JUROR: Okay.

12 THE WITNESS: On the paved trail.

13 A GRAND JUROR: On the paved trail itself.
14 Okay. Thank you.

15 A GRAND JUROR: And the two officers that
16 you saw looking into the bushes were the two
17 officers that were present -- were doing the --

18 THE WITNESS: Yes, the original ones.

19 A GRAND JUROR: The original two.

20 And the one that was pacing was one of the
21 original ones?

22 THE WITNESS: Yes.

23 A GRAND JUROR: And that was right
24 afterwards?

25 THE WITNESS: Yes.

1 A GRAND JUROR: Had any --

2 THE WITNESS: Well --

3 A GRAND JUROR: Had any other --

4 THE WITNESS: -- it wasn't --

5 A GRAND JUROR: Had any other police --

6 I'm sorry.

7 THE WITNESS: Yes, other police showed up.

8 I'm sorry. Other police showed up, and then it

9 seemed like, you know, people were taking over

10 the scene. And so he, you know, was relaxing

11 or -- I mean, I don't know how to explain it.

12 But he was pacing after that.

13 A GRAND JUROR: Okay. After other people

14 showed up, he was pacing?

15 THE WITNESS: Yeah.

16 A GRAND JUROR: Sorry. I was looking down

17 when you were pointing on the map.

18 THE WITNESS: Okay. So you want me to --

19 A GRAND JUROR: So when you were talking

20 about the two individuals that the police

21 officers were talking to, one of them was

22 standing to --

23 A GRAND JUROR: So one of the individuals

24 and the police officer were -- were right here.

25 A GRAND JUROR: One police officer, one

1 individual --

2 THE WITNESS: Yes, ma'am.

3 A GRAND JUROR: -- standing there.

4 THE WITNESS: And then the other police
5 officer and the other individual were about
6 right here on the paved trail.

7 A GRAND JUROR: And that was as you pulled
8 in?

9 THE WITNESS: Yeah, as I was pulled in.

10 A GRAND JUROR: Okay.

11 A GRAND JUROR: Was your window down or up
12 in your car as you pulled up?

13 THE WITNESS: They were up because it was
14 a little cold that morning.

15 A GRAND JUROR: All right.

16 A GRAND JUROR: So when you heard
17 screaming "get down" --

18 THE WITNESS: Yeah.

19 A GRAND JUROR: -- and that was, you said,
20 a minute or 45 seconds --

21 THE WITNESS: Yeah, after we got out of
22 the car.

23 A GRAND JUROR: Right, after you got out
24 of the car.

25 When you heard that, did you turn right

1 away to look at where the sound was coming
2 from?

3 THE WITNESS: So our parking lot -- let's
4 say this is LKQ Foster, the store. And then
5 the trail actually runs around here, and it's
6 wooded and stuff. So we couldn't actually see
7 anything from the woods. So, our parking lot
8 is way over here. Then we came actually over
9 here in front of the store to see what was
10 going on.

11 A GRAND JUROR: And so when you came
12 running to see what was going on, what were --
13 what was the position of the people that you
14 saw?

15 THE WITNESS: Okay. So this is the paved
16 trail, and there's bushes, overgrown bushes.
17 And the police officers were actually in --
18 not, like, deep into the bushes -- you could
19 see them -- but they were in the bushes.

20 A GRAND JUROR: So --

21 THE WITNESS: Looking down.

22 A GRAND JUROR: Two of them, you just saw
23 them, two of them, looking down into the
24 bushes.

25 THE WITNESS: Yeah.

1 A GRAND JUROR: And that's what you saw.

2 THE WITNESS: Yeah.

3 A GRAND JUROR: Any more questions for
4 Zakkary?

5 A GRAND JUROR: And when -- when you saw
6 the two officers, you'd already seen the
7 shots -- I mean, you'd already heard the shots.

8 THE WITNESS: Heard them.

9 A GRAND JUROR: Heard them.

10 A GRAND JUROR: So how long was it between
11 the time you parked your car and you heard the
12 shots?

13 THE WITNESS: So, parked the car and got
14 out, or -- so if I was pulling in and took over
15 there, it's probably about a minute, and then
16 45 seconds when I got out of the car. So about
17 a minute and 45 seconds, two minutes.

18 A GRAND JUROR: And you had seen the --
19 the -- the officer -- the two officers talking
20 to the two individuals when you were on --
21 before you ever made your left turn into your
22 parking lot?

23 THE WITNESS: Yes.

24 A GRAND JUROR: Okay. Thank you.

25 A GRAND JUROR: All right.

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THE WITNESS: Good to go?

A GRAND JUROR: Thanks, Zakkary.

MR. REES: Thank you very much.

1 JEREMY DUENAS,
2 was thereupon produced as a witness on behalf
3 of the State and, after having been duly sworn on
4 oath, was examined and testified as follows:
5

6 EXAMINATION

7 BY MR. REES:

8 Q When you're ready, if you could tell us
9 your name, first and last.

10 A My first name is Jeremy, last name is
11 Duenas.

12 Q And how do you spell that?

13 A D-U-E-N-A-S, J-E-R-E-M-Y.

14 Q Do you work with Mr. Dow at the auto parts
15 store on Southeast Foster Road?

16 A Yes.

17 Q And were you working on June 12th, the
18 Thursday morning of the police shooting?

19 A Yes, I was at work -- we weren't working
20 yet. We were in the parking lot.

21 Q You were in the parking lot?

22 A Yeah.

23 Q Okay. And so this would have been around
24 6:15 in the morning or so?

25 A 6:15, 6:18, somewhere around there.

1 Q Okay. What time does the shop open?

2 A 6:30.

3 Q Okay. Why don't you go ahead, if you
4 would, please, and tell the Grand Jury what you saw
5 or heard that morning.

6 A So I got onto Foster Road. I was coming
7 down right before Foster Auto Parts. There's a
8 traffic light with a store on the left. I seen the
9 car -- two cop cars just, you know, driving back and
10 forth there. So I just kept going to where I went
11 to park. About 6:18, 6:15 my co-worker Zak pulls
12 up, so I get down. We're about to walk in, and I
13 hear -- we hear somebody scream. I'm not sure what
14 they said. It sounded like "get down" or "put it
15 down." I know "down" was in there. But it was a
16 loud scream where you couldn't really understand it.
17 And then two shots just right after that. Two
18 gunshots. We didn't know what was going on. He --
19 Zak knew that the cops were there, the police had --
20 you know, the cops were there. So we walked out to
21 go check. And I seen two cop cars -- two cop guys
22 standing over what appears to be something on the
23 ground, or just looking down over something in the
24 ground. And -- and, you know, what was happening --
25 what happened. And then the other cop kind of

1 walked away, like he was sort of surprised or like,
2 you know, like, oh, my God, I just shot -- you know,
3 I just shot somebody kind of thing. Just walking
4 away, pacing back and forth. And then an officer
5 came over and started asking us our information,
6 questions, what we saw.

7 Q This would be a different police officer?

8 A A different officer, yes, after -- after a
9 whole convoy of police officers showed up.

10 Q All right. I have a question just to
11 clarify something. Sounds as if you arrived at work
12 before --

13 A I did.

14 Q -- Zak Dow?

15 A I pull up at 6:08 into the parking plot.

16 Q Okay. About -- do you have an idea of
17 about how much time passed before Zak Dow pulled
18 into the parking lot?

19 A Probably five minutes, five, 10 minutes
20 maybe. It was 6:15 when he showed --

21 Q Okay.

22 A -- 6:18 when -- when we heard the shots
23 fired.

24 Q Okay. Great. Thank you very much.

25 So, any questions?

1 A GRAND JUROR: Anyone have any questions
2 for JD?

3 Think we're good.

4 MR. REES: Okay. Thank you very much.

5 THE WITNESS: All right. Thank you.
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1 PETER TAYLOR,
2 was thereupon produced as a witness on behalf
3 of the State and, after having been duly sworn on
4 oath, was examined and testified as follows:

5
6 EXAMINATION

7 BY MR. REES:

8 Q All right, sir, when you're ready, if you
9 could state your first and last name, and spell your
10 first and last name.

11 A Sure. My name is Peter Taylor, first name
12 is P-E-T-E-R, T-A-Y-L-O-R.

13 Q What's your current employment?

14 A I am a Portland police officer, and
15 specifically right now I work in our training
16 division. And I am one of the defensive tactics
17 instructors.

18 Q How long have you been a police officer?

19 A About 17 years.

20 Q And how long have you worked in this
21 training capacity?

22 A I've been in training division full time
23 for about three years, and I've been an assistant
24 instructor in a few different disciplines. I think
25 I started in about 2006.

1 Q When you say that you teach defensive
2 tactics, what does that mean?

3 A So, we say defensive tactics are the
4 physical communication and psychological skills that
5 we use when we're in close contact with somebody.
6 And that just means when we are relating to them,
7 things that we want to be aware of, and sometimes we
8 have to use physical control, sometimes we use
9 verbal skills, and it all works together.

10 Q And when you do this training with
11 Portland police officers, this would be in addition
12 to the training they receive when they first go
13 through what I would call the Police Academy, but
14 technically it's the, I guess, Department of Public
15 Safety Standards and Training where they also
16 receive this kind of instruction.

17 A Correct. So initially everybody goes
18 first to the State Police Academy. And then follow
19 following that they have additional instruction with
20 the police bureau. Some of that is field training,
21 supervised by coaches. And they also come to us for
22 another academy type experience of, on average,
23 about 12 to 14 weeks, depending on the curriculum.
24 And then annually we also provide training to all of
25 the members in topics that we think are relevant.

1 That annual training is about 30 to 40 hours, again
2 depending on the curriculum. Some officers will
3 have additional training above and beyond that,
4 depending on certain additional skills that they may
5 have.

6 Q And is this training in a classroom-type
7 instruction setting, or a hands-on physical-type
8 exercise?

9 A We do have a variety of training. We do
10 some training that would be classroom training.
11 Again, a lot of it is topic-driven. We do training
12 that may be a mix of some lectures and some
13 practical application, depending again on the skill.
14 And sometimes it does involve physical skills. We
15 may also do scenario training where we try to create
16 a reasonably realistic but also a safe-type
17 situation for the person to exercise these skills
18 and then receive feedback.

19 Q All right. Are you familiar with a
20 concept or a term which is action/reaction?

21 A I am. We define action/reaction that in a
22 contest of time, the initiator has an advantage.
23 And what we mean by that is if you have two people,
24 and they are going to be in some kind of contest --
25 maybe a physical struggle, maybe other things --

1 that very often the person that gets to go first
2 will have an advantage. There are a variety of
3 reasons for that. Some are just -- are
4 biomechanics, and some are related to psychology.
5 But because of how we work, there is a delay between
6 you perceiving something and then you can react to
7 that thing that you perceive. And the more complex
8 the environment, or the more complex the feedback,
9 generally the longer the delay is.

10 One example that's fairly common for
11 everyday experience is that you approach a traffic
12 signal. And, all right, this is a fairly
13 straightforward stimulus. You have red, yellow or
14 green lights. And the changing of the light, most
15 studies show that there's about a
16 one-and-a-half-second reaction delay. So you would
17 see that light shift maybe from green to yellow, and
18 then you don't begin your action, your actual
19 reaction to that until about a second-and-a-half
20 after that light changes. Because first you have to
21 see it, then you have to make some decision about
22 what you've seen, you have to decide what am I going
23 to do in response to that decision, and then you
24 take some kind of physical action. So fairly
25 simple, straightforward stimulus like that, about a

1 second-and-a-half.

2 Q All right. So that's something we --
3 we've all experienced that. What's the application
4 in terms of a police officer who is the subject of
5 some kind of physical attack?

6 A So we want our members to know that
7 they're going to experience this -- this delay,
8 essentially a processing delay. And that because of
9 the delay, there may be certain tactics that they
10 have to employ. And the more immediate a threat,
11 the more that they cannot let them fall behind this
12 processing delay. And so, you know, as an
13 example -- we would never suggest that they do,
14 like, the high noon stand in the street and see who
15 can draw their gun quicker, or more quickly, because
16 that person that moves first tends to always win
17 that. So in a gunfight situation, it may be
18 relevant that they don't have to see that the gun is
19 out. It may be that the gun is not directly yet
20 pointed at somebody, but we know how quickly
21 somebody can take that action and pull the trigger
22 and fire a shot before somebody observing this can
23 even perceive that this has happened and then make a
24 decision and react to it. So it's an inherent
25 delay. And we have to have people aware of it, and

1 try to set up circumstances, knowing that there's
2 going to be this delay. And sometimes trying to
3 work in advance of this experienced delay.

4 Q So given that delay in reaction to another
5 person's action, what do you teach officers about
6 the amount of distance that would be important to be
7 aware of between themselves and a potential threat?

8 A Sure. What we'll refer to is a
9 reactionary gap. And that's how we try to use
10 distance. Again, this is going to be
11 circumstantial. Depends on the environment and
12 perhaps what the other person is doing. But we tell
13 them -- we try to maintain a reactionary gap of some
14 distance that is appropriate for the situation, and
15 it's kind of my inner bubble, if you will. And we
16 would like to keep a threat outside of that bubble
17 while we're trying to take actions and observe and
18 maybe influence the situation.

19 But at some point once that person is in
20 that bubble, now because of knowing that we have
21 this inherent action/reaction delay, I may have lost
22 the opportunity to safely react. And we can run
23 drills like this where even if we're talking a
24 deadly force field, we have an officer looking and
25 pointing the gun at a subject, we can still have

1 that subject, if they're close enough, pull a knife
2 and slash the officer before they're able to pull
3 that trigger. And so distance generally works
4 better for us as an advantage. There's some
5 circumstances where that's not practical or we just
6 don't have that distance, and sometimes the time and
7 the options that come from distance.

8 Yes?

9 A GRAND JUROR: Two points. First one,
10 you said there was a -- someone takes a first
11 step, they're in -- more in -- in control. And
12 that was a physical step. Is that also true of
13 a verbal step? You said communication was also
14 verbal and physical.

15 THE WITNESS: Well, I don't know that the
16 person is more in control. But when it comes
17 to this contest of time, of who is going to get
18 to an action first, that person that moves
19 first or initiates generally is going to have
20 that advantage for the time there. "Control"
21 is kind of a -- a pretty broad term and doesn't
22 necessarily apply to the -- this -- what we're
23 talking, this action/reaction.

24 The second part of the question in terms
25 of verbalization, I don't know that -- somebody

1 that speaks first has an advantage, you mean?

2 A GRAND JUROR: Yes.

3 THE WITNESS: I'm not sure that it always
4 works like that. You know, we -- again, you
5 get pretty deep in psychology here.

6 A GRAND JUROR: I -- I don't mean to get
7 deep. I'll take that. That's a good enough
8 answer.

9 THE WITNESS: Okay.

10 A GRAND JUROR: The second part of my
11 question was concerning the bubble and what is
12 considered to be a typical -- I know everybody
13 is different -- but what tends to be a typical
14 safe bubble. So is it 5 feet, 7 feet, 10 feet
15 before there seems to be -- what is -- what is
16 the police officer trained for for a typical
17 safe bubble?

18 THE WITNESS: Well, that's why we tell
19 them it's reactionary gap. We don't give them
20 an actual number or a hard and fast, bright
21 line, this is always going to be the case. It
22 really does depend very much on the totality of
23 the circumstances. We do use that phrase quite
24 often, the totality of circumstances, because
25 you can set up similar fact patterns and then

1 change one element. It can be very
2 significant. It depends on who is -- who we're
3 talking about. Maybe the lunge reach of a
4 knife. It really does depend on who's standing
5 across from me. Somebody who is very
6 physically fit looking, you know, I would have
7 to believe that that person could get closer to
8 me much more quickly than somebody that's
9 clearly not very physically fit. It might
10 depend very much on the weapon that they have.
11 You know.

12 We talk about the difference between a gun
13 and a knife. Clearly, a gun can reach you and
14 cross that distance -- much more great distance
15 than a knife can. A knife actually has to make
16 physical contact. Again, you know, a baseball
17 bat or something like that can reach out a
18 little bit further than that knife because of
19 the -- the physical presence of the tool.

20 So again, it really is very
21 circumstantial, and we avoid putting
22 hard-and-fast rules to these things. It's very
23 much up to that person that is in that set of
24 circumstances to be aware, and then to be able
25 to explain that to somebody else later, you

1 know, why did they perceive this particular
2 situation the way they did, what were their
3 circumstances and try to recreate that for
4 somebody that's not there as effectively as
5 possible, try to put them in that moment of
6 here's what I could see or otherwise
7 experience, and here was -- well, how it made
8 me feel, what it made me believe. And then
9 here is how I thought it was reasonable to
10 react to those circumstances.

11 A GRAND JUROR: So the officer is trained
12 to use judgment each and every time in each
13 circumstance to know when to determine whether
14 that bubble has been -- and they have to take
15 more cautionary steps and proceed with a
16 greater sense of urgency, or know that their
17 timing has to be faster?

18 THE WITNESS: Absolutely.

19 A GRAND JUROR: Okay. Thank you.

20 BY MR. REES:

21 Q Okay. Let me ask you specifically about
22 use of lethal or deadly force. Generally, when are
23 officers trained that the -- the use of deadly force
24 could be reasonably applied?

25 A So by policy, what we teach are there are

1 two major circumstances where deadly force is within
2 policy. We say that they will use deadly force to
3 protect themselves or another person from what they
4 reasonably believe is an immediate threat of death
5 or serious physical injury to themselves or that
6 other person. And so, again, what we are saying is
7 they think that in the immediate moment, they had a
8 set of circumstances in which they, themselves, or
9 somebody else is at risk of being killed or very
10 badly hurt to the point where it could result in
11 death, or life-changing type injuries. Those are
12 legally defined. That is the immediate defense.

13 We also are authorized to use deadly force
14 to effect the arrest or prevent the escape of a
15 person if we have probable cause to believe that
16 person presents an immediate threat of death or
17 serious physical injury to the officer or to others,
18 to the community. And that's a little bit more
19 narrow set of circumstances because it's not just
20 immediate defense. But what we're saying is this
21 person in the immediate facts is so threatening that
22 to not arrest them means that somebody else is going
23 to be harmed to that degree of death or physical --
24 serious physical injury. Excuse me.

25 So that's a little bit more narrow, and

1 it's a higher mental state. When we talk about
2 reasonable to believe, that means that somebody else
3 in that same set of circumstances could draw the
4 same conclusions. Probable cause has a standard of
5 more likely than not. And again, it means that
6 based on the objective facts, somebody else would
7 also think that more likely than not, if this
8 person -- if I don't use the deadly force to make
9 this arrest, that that person, when they get away,
10 is now going to be an immediate risk to somebody
11 else's death or serious physical injury.

12 Q What's your training regarding the use of
13 deadly force by a police officer against someone who
14 is armed with a weapon other than a firearm, such as
15 a baseball bat or a hammer, an ax, a club?

16 A So, the things that we're talking about
17 there are defined by law as dangerous weapons. And
18 that means in the manner in which they're used, they
19 could cause death or, again, serious physical injury
20 to somebody. And it really does depend again on
21 these circumstances. But the nature of the -- the
22 implement and what is the person doing, the manner
23 in which it's used; and the -- the environment, how
24 immediately is that thing capable of causing death
25 or serious physical injury to somebody?

1 You know, we were talking earlier, we
2 mentioned, well, you have to be within -- close
3 enough to lunge and to touch somebody with a
4 knife -- with a knife to be a weapon in that
5 circumstance. Again, with -- you know, a blunter
6 object or a -- like a club-type thing, a bat or a --
7 something along those lines, there's a little bit
8 more distance because you can reach out a little bit
9 further with that to hit somebody. I think, you
10 know, dependent on what the person is doing with it,
11 matters greatly. You know, there are plenty of
12 circumstances where a hammer is being used as a
13 hammer, to drive nails. It's much different if the
14 person with whom you're interacting has used that
15 hammer to hurt somebody else or threaten somebody
16 else with the hammer. And then they are now
17 confronting you and still with the hammer. How they
18 are holding the hammer becomes relevant.

19 So again, that's why I keep mentioning
20 that totality of circumstances is so important.

21 But these weapons are certainly capable
22 of -- of hurting people, of killing them. And we do
23 not want our officers to get killed, obviously, at
24 work, or to allow somebody else who is not taking
25 unlawful actions be harmed by somebody unlawfully

1 using one of these tools or implements. And, you
2 know, I could tell you from personal experience from
3 being involved in investigations, you know, you can
4 take one stab with a knife to kill somebody. It not
5 necessarily has to be used repeatedly. One strike
6 to the head with a heavy object is enough to kill
7 somebody. And our people know this, and that goes
8 into the decision-making.

9 A GRAND JUROR: You said that usually this
10 training takes about 30 to 40 hours, or you
11 have, you know, sort of instituted 30 to 40
12 hours annually. And you also said this
13 training involves setting up scenarios, and
14 sometimes they're different.

15 So could you talk a little bit about how
16 do you train people to sort of make that kind
17 of judgment? What I heard is that setting up
18 scenarios is one of the ways to do it. What
19 are the other kind of techniques of training
20 that you have?

21 THE WITNESS: So that they become familiar
22 with making decisions about reactionary gap and
23 things like that?

24 A GRAND JUROR: Uh-huh.

25 THE WITNESS: Okay. Sure. So we may have

1 a scenario where we'll give them some facts
2 about what a lower level threat might appear to
3 be; and then once the scenario begins, that
4 lower level threat may become much more
5 significant. Maybe they are armed with some
6 kind of weapon, and we will see how the officer
7 reacts. And then as part of the debrief
8 processes, this is really where the education
9 happens, we'll talk to them: Hey, when you saw
10 that this person was armed with, let's call it
11 for this, a gun, did you move to a different
12 position? Did you recognize that you didn't
13 have more time to try talking because now this
14 person has pulled a gun and pointed it at you
15 and said, I'm going to shoot you? Did you
16 recognize that you had lost any time reaction?
17 Maybe in a different scenario, we might
18 challenge them with somebody that's armed with,
19 say, a blunt instrument. But because of the
20 circumstances, the officer has a little bit
21 more distance. And we'll see how they react.
22 And we may talk to them: Hey, why did you --
23 why would you get closer if you already saw
24 that they were armed? Why wouldn't you stay
25 further back rather than put yourself, you

1 know, in a position where you had less time to
2 react? You closed that reactionary gap. Or,
3 it was good that you stayed back at your police
4 car and did not get closer to this person, but
5 tried to give him verbal instructions from this
6 distance.

7 So we might recreate different situations
8 where we want to reinforce some of these
9 concepts.

10 A GRAND JUROR: In -- in your training, do
11 you also talk about the -- do you also try to
12 talk about ways to de-escalate the threat
13 level? Because you talk about different levels
14 of threat. There are certain things you can do
15 where you can escalate the threat level. There
16 are certain things you can do, move away, to
17 kind of be, you know, out of harm's way.

18 Do you sort of talk about how to -- if
19 you're in a tense situation, how to diffuse?

20 THE WITNESS: Sure. When we talk about
21 de-escalation, what we're talking about are
22 de-escalation skills. And I just want to make
23 sure that we talk you cannot de-escalate
24 somebody else. You can do things and hope that
25 because of the skill and the technique that

1 they choose to de-escalate. But really that
2 other person has to be a willing participant.
3 I mean, sometimes there are things that we can
4 physically do to them that can change that
5 experience. But in terms of talking to people
6 or maybe presenting them with a certain set of
7 things that they have to react to, when we talk
8 about de-escalation, it's still understood that
9 that other person has to react in a matter to
10 de-escalate. De-escalation, and we're talking
11 about -- I think where I left off was this
12 concept that there has to be a reaction from
13 the other person to get to de-escalation. So
14 we may use skills to try to get to
15 de-escalation. De-escalation technique,
16 de-escalation tactics, but the de-escalation
17 itself doesn't happen unless this other person
18 will join us. And so that's an important part
19 of that.

20 And we do talk in our training about, you
21 know, trying to apply these, trying to
22 reduce -- when we refer to de-escalation,
23 reducing the necessities of force or the
24 intensity of force maybe, and that's where our
25 aspiration is. But we don't always get there.

1 And then also importantly, de-escalation
2 skills cannot always be applied. There may be
3 circumstances where it would be, in fact,
4 foolish to try to de-escalation skills. For
5 somebody that's shooting at you, that is not a
6 time to talk to them. So that's hopefully
7 responsive to your question.

8 BY MR. REES:

9 Q In the movies, of course, police officers
10 shoot objects out of people's hands. Is that -- is
11 that realistic?

12 A It's not realistic at all. Shooting is a
13 fairly tough physical skill requiring quite a bit of
14 eye-hand coordination, fine motor skills. And even
15 against targets that are not moving, it can be a
16 challenge to have people reliably hit that target.
17 And then you introduce some movement, and it becomes
18 very difficult. And the smaller the target, say
19 like somebody's hand, it becomes almost impossible
20 to reliably get that result, and especially
21 depending on the distance. And that's why it's in
22 the movies because how much of -- do we go to see
23 ordinary actual things happen in movies? We go to
24 movies to see the extraordinary, the things that we
25 cannot just walk out of our house and take in on a

1 daily basis.

2 Q When officers do make the decision to use
3 deadly force, where are they trained then to shoot
4 at a person?

5 A We tell them with deadly force, that we
6 want to aim for center mass. And that's the term
7 that we use. And when we say "center mass," we mean
8 the largest part of the target. And in this case,
9 we're talking deadly force, we're talking a person.
10 So the largest part of the person that they can try
11 to aim at. And generally on somebody that was, say,
12 standing, that's going to be the middle of their
13 torso because of where the greatest portion of me
14 is, as I line my hands up here. It would not be the
15 legs, it would not be the arms. And the main reason
16 for that is it gives us the greatest probability of
17 actually hitting that target. It is more forgiving
18 of technique.

19 Yes?

20 A GRAND JUROR: What is the range of
21 accuracy for shooting with somebody standing
22 five to six feet away?

23 THE WITNESS: Well, I think -- I just want
24 to make sure that we're using the same terms
25 because you said "range," and then you just

1 told me five or six feet.

2 A GRAND JUROR: Okay. I'm using "range"
3 in a different way. I should say, what is the
4 margin of accuracy; how accurately can you
5 shoot?

6 THE WITNESS: I don't know that I can
7 speak to any kind of specific percentage. And
8 again -- you'll hear me say this over and
9 over -- it's very circumstantial. You know,
10 one of the major factors is that environment.
11 If I have given you some practice time, and
12 it's a nice, controlled environment with no
13 threat to you, no adverse consequences, in
14 those cases I can get somebody -- especially
15 the distance that you mentioned, six feet --
16 probably to reliably hit that target. If that
17 target is maybe doing something very bad to me,
18 or the potential to do very bad things to me,
19 and I'm experiencing a lot of stress, it
20 becomes much less of a sure thing because of
21 all those physical and cognitive effects that
22 stress have on us for me to reliably hit that
23 target. And that is a very normal human
24 performance limitation, the experience of
25 stress and how does it change what can we

1 otherwise do, you know, in less threatening
2 circumstances.

3 And again, you know, I try to relate some
4 things to everyday life. But if you've ever
5 needed to get into your car quickly, right,
6 maybe something was happening, and you're
7 trying to get your keys out or you're trying to
8 get them into that lock, all of a sudden this
9 simple physical skill has become much more
10 challenging if you're experiencing that little
11 bit of stress. And again, you know, if you
12 don't get in that car quickly, it's not going
13 to be that you're potentially going to get
14 really injured or die. So that thresh --
15 threshold of stress is amplified even that much
16 more greatly under those circumstances than
17 something more run of the mill.

18 So, sorry for a very long answer to your
19 question, but I don't know that I can say, you
20 know, well, 50 percent of the time, 70 percent
21 of the time.

22 A GRAND JUROR: Sure.

23 THE WITNESS: I really couldn't give you a
24 figure like that. And also there's an
25 individualized response to that.

1 Yes?

2 A GRAND JUROR: I have another question.
3 In training, when do you know when to stop
4 shooting; when the person is done, when you're
5 out of bullets? I don't know.

6 THE WITNESS: We look for -- I'm sorry.
7 Yeah. We look for a change in circumstances.

8 A GRAND JUROR: Okay.

9 THE WITNESS: And, you know, maybe that
10 we're looking for a reaction from that person.
11 Maybe we've been able to move ourselves to a
12 different place where now our circumstances
13 give us a little bit more of that reactionary
14 gap. In other words, because we've moved or
15 we've put a physical barrier between us and
16 them, how we've changed that circumstance so we
17 have more time to work with. You know, it
18 could be, like I say, that the other person's
19 behavior changes: They relinquish a weapon,
20 they change their posture. Things like that,
21 you know, will influence that decision. So
22 much like the decision to begin using deadly
23 force is really based on that immediate threat,
24 when that threat becomes less immediate, then
25 we would not want to use deadly force anymore.

1 We would stop using deadly force.

2 Understand, too, when we talk
3 action/reaction, we talk about that processing
4 delay. That will occur with deadly force as
5 well. And you even have circumstances to where
6 a test subject in a fairly stale environment
7 will begin shooting at a target, and something
8 signals them to stop, and they may still fire a
9 shot because they have to perceive this signal
10 here says no more shooting, and then they have
11 to physically react then. If they have made
12 that decision to take a shot as they're now
13 perceiving it, they may not be able to stop
14 that actual -- that action on their part. And
15 again, the more complex the environment,
16 typically the longer the delay time is going to
17 be in reacting to that changed environment.

18 A GRAND JUROR: So, I'm curious. In
19 training, is there any -- any focus if you have
20 two officers and one becomes a -- you know,
21 unexpectedly gets in a vulnerable situation,
22 like the one officer that tripped, like he
23 became more vulnerable once he fell, because
24 he's down on the ground and the guy is above
25 him, is there any training on where there's

1 another officer there, do they take the lead in
2 the deadly force or force, or is it -- I mean,
3 I imagine that is incredibly vulnerable -- you
4 feel incredibly vulnerable as a reaction.

5 THE WITNESS: I don't know that we would
6 say we directly train that, but then, again, it
7 goes to the overall circumstances: What do you
8 know about your environment and what's going
9 on. And, you know, with the things that you're
10 pointing out, knowing that somebody is down on
11 the ground and that there's a person trying to
12 attack them, yes, it does make them more
13 vulnerable. They have less mobility, less ways
14 to react to this threat. So that changes the
15 nature of the threat and perhaps the immediacy
16 of the threat. And it might drive that
17 decision to use deadly force maybe more quickly
18 than if somebody was not in those
19 circumstances. But again, it goes into that
20 overall perception of the -- of what's going on
21 and how to react to it.

22 MR. REES: Okay. Anything else?

23 A GRAND JUROR: Any other questions?

24 MR. REES: All right.

25 A GRAND JUROR: We're done. Thank you

1 very much for your time.

2 MR. REES: Thank you, Officer.

3 THE WITNESS: Thank you.

4 A GRAND JUROR: Thank you, Officer.

5 THE WITNESS: Thank you.

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1 BRANDON COX,
2 was thereupon produced as a witness on behalf
3 of the State and, after having been duly sworn on
4 oath, was examined and testified as follows:

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6 EXAMINATION

7 BY MR. REES:

8 Q All right, Officer. If you would please
9 state your first and last name, and spell your first
10 and last name.

11 A Name is Brandon Cox. B-R-A-N-D-O-N,
12 C-O-X.

13 Q All right. And are you a Portland police
14 officer?

15 A Yes, I am.

16 Q All right. How long have you been a
17 police officer?

18 A About five-and-a-half years.

19 Q All right. And were you working on the
20 date of this shooting on Thursday, June 12th?

21 A Yes.

22 Q And what -- what shift do you work?

23 A Night shift, 10:00 p.m. to 8:00 a.m.

24 Q 10:00 p.m. Okay. So at the time of the
25 shooting, you still had about two hours on, I guess?

1 A Roughly two hours.

2 Q And where were you when you first learned
3 that there had been an officer-involved shooting?

4 A About 82nd and Powell, Southeast 82nd and
5 Southeast Powell Boulevard.

6 Q Okay. So what did you do when you -- when
7 you received that information?

8 A Went straight there. I -- my partner did
9 his best to attach us to the call, and we just went
10 straight there, see what we could do to help out.

11 Q All right. And just in terms of a rough
12 estimate, unless you know precisely, how long did it
13 take you to --

14 A About a minute.

15 Q -- arrive?

16 A About a minute.

17 Q All right. And what was happening; what
18 did you see when you arrived at the scene of the
19 shooting?

20 A Well, we arrived, other officers were
21 arriving. I think we were the second or third car
22 to arrive there. And when we got there, we saw
23 Officer Brown and Officer Nilsen on the Springwater
24 Trail -- or, right, Springwater Trail on 104th and
25 Foster.

1 Q And what were they doing?

2 A Well, the other officers that got there
3 before us, they were with them, so they were finding
4 out information. When I got up there, I heard
5 Officer Nilsen say: He came out at us with a
6 crowbar.

7 And the next question was: Where is he?

8 He said: He's down there in the shrubbery
9 down there.

10 And we went over and got eyes on him, on
11 the subject. And we started talking to him, trying
12 to give him commands, see if we could get any
13 response from him. There was no response.

14 Q Commands to this individual who had
15 been -- your understanding was he had been shot?

16 A Yes.

17 Q Okay. And you said there was no response?

18 A Yes. There was no response at all.

19 Q Okay. And so what -- what did you do
20 after that?

21 A I believe Sergeant Rosier got to the scene
22 and we got a custody team with somebody who had a
23 lethal on the subject. So Officer Keller had a
24 rifle on the subject, so he had -- just in case he
25 did -- he's playing possum and he pops up with a

1 crowbar, starts swinging at us again, then we have
2 somebody to protect us because the two people that
3 were assigned for custody team, their main purpose
4 is just to go down there and take him into custody,
5 put handcuffs on him and make sure he's in custody.

6 Q All right. And so from your vantage
7 point, although this subject didn't respond to
8 commands, I take it you couldn't see whether he was
9 injured or not.

10 A No. He was laying facedown. His left
11 hand was down by his left side. His hands were
12 probably about thigh or maybe down by his knee area.
13 And his right hand was underneath him. And he was
14 wearing a backpack. So we couldn't see exactly what
15 was in his hands or what he was doing down there
16 because there's also probably knee-high shrubbery
17 around him, weeds and whatnot around him.

18 Q All right. And is this pursuant to your
19 training to assume that a person in this situation
20 may still pose a threat?

21 A Yes. He was last reported armed, so we
22 have to assume that he is still armed. So that's
23 what we train to do as well for a custody team; we
24 have one person with a firearm, lethal, and then we
25 have two people as a custody. And all three of us

1 approach the subject that we're going to take into
2 custody, and the lethal person stays on to the
3 target and the custody team, their main purpose is
4 just to take somebody in custody, put handcuffs on
5 and secure them.

6 Q And what steps were taken to provide
7 medical assistance?

8 A After we got him handcuffed, we put him in
9 a post-shooter position, which is he's on his side
10 and then you bend one of his knees so pretty much
11 one leg is straight and the other one is bent like
12 this so it makes a tripod so he can't fall back on
13 his stomach, what that is. Then after we got him
14 post-shooting position, I looked up and I saw his
15 eyes were wide open and he had bubbles on his mouth
16 beginning to dry. I checked to see if I find a
17 pulse. There was no pulse. Right after we had the
18 handcuffs on, we immediately told AMR to come in --
19 come in to the patient. And right after I checked
20 the pulse, AMR -- I looked back and AMR was coming
21 down through the shrubbery behind us to come check
22 him. And that's when we started tending to him.

23 Q AMR being American Medical Response, the
24 paramedics?

25 A Yes, yes. The paramedics. I'm sorry.

1 Q And did you receive an indication from the
2 paramedics of their determination of whether this
3 person was deceased at this time?

4 A Yes. Right when they got there, they did
5 their initial checks, and then they conveyed that he
6 was deceased.

7 Q Prior to the indication that you received
8 that there had been an officer-involved shooting,
9 did you have some awareness of a call that Officers
10 Brown and Nilsen were involved in?

11 A Yes, there was -- I believe it came out as
12 a theft of a bicycle, and the suspect left -- or
13 theft of something from near the Springwater Trail,
14 and the suspect left.

15 Q And how did you know about that?

16 A They were discharged. I think it might
17 have been a priority 4. They usually dispatch
18 priority 1 through 4s. Priority 1s are the most
19 important, and then it just tapers down that way.

20 Q Do you remember, would that be a radio
21 call you heard?

22 A It was on radio. They got dispatched,
23 yes.

24 Q So you'd heard that call earlier?

25 A Yes.

1 Q And do you have an estimate of how much
2 time passed between when you first heard that call
3 and when you heard an indication that there had been
4 a shooting?

5 A No, I -- I can't tell you.

6 Q Okay.

7 A I have no idea.

8 Q Okay. All right.

9 MR. REES: Any questions for this officer?

10 A GRAND JUROR: Ballpark time that you
11 guys arrived is about a minute after the call
12 went out; right?

13 THE WITNESS: After they called out that
14 shots were fired.

15 A GRAND JUROR: Shots fired call.

16 THE WITNESS: Yes.

17 A GRAND JUROR: You, the other officer and
18 the third officer with the firearm, with the
19 rifle, you were assigned to be the --

20 THE WITNESS: Custody.

21 A GRAND JUROR: -- custody team.

22 Immediately, like, within seconds of getting
23 there on scene; was it a couple of minutes?

24 THE WITNESS: It was maybe a minute after
25 we got there.

1 A GRAND JUROR: So pretty moving: Out of
2 the car --

3 THE WITNESS: Yeah --

4 A GRAND JUROR: -- you guys --

5 THE WITNESS: -- we got out of the car, we
6 ran up, made sure the officers were okay, and
7 then we put together a team and went down there
8 and we dealt with the suspect.

9 A GRAND JUROR: Okay.

10 THE WITNESS: Yes.

11 A GRAND JUROR: Yes. You said something
12 earlier on about, I guess, maybe relaying what
13 someone else is saying. You said he was just
14 playing something, and I don't hear it that
15 well. He just popped out on us. Did you say
16 he was just playing possum?

17 A GRAND JUROR: They wanted to make sure
18 he wasn't playing possum.

19 THE WITNESS: He wasn't playing possum.

20 A GRAND JUROR: Playing dead.

21 THE WITNESS: Yeah, yeah.

22 A GRAND JUROR: So who was saying that?

23 THE WITNESS: No, nobody said that.

24 A GRAND JUROR: Oh, but you were -- you
25 were -- that was your --

1 THE WITNESS: That's usually what we do in
2 case somebody is. We usually announce: Don't
3 move your arms; if you reach for a weapon,
4 you're going to be shot. That's usually what
5 we say to somebody in custody. Either palms
6 are down, we can't see their hands, we know
7 they were armed at one time, we don't know if
8 they're still armed.

9 A GRAND JUROR: So you still have to be
10 very careful.

11 THE WITNESS: Yes, that's correct.

12 A GRAND JUROR: I guess you mentioned
13 someone holding a rifle.

14 THE WITNESS: Yeah. That was the guy that
15 was going to protect the custody team as we
16 went up there.

17 A GRAND JUROR: So the custody team has to
18 be protected.

19 THE WITNESS: Yes, because the custody
20 team's main purpose is to take somebody in
21 handcuffs, and you need both hands to put
22 somebody in handcuffs. So...

23 A GRAND JUROR: Any other questions for
24 Officer Cox?

25 Brandon, thank you very much.

1 THE WITNESS: Thank you.

2 MR. REES: All right.

3 Thank you, Officer.

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1 MATTHEW NILSEN,
2 was thereupon produced as a witness on behalf
3 of the State and, after having been duly sworn on
4 oath, was examined and testified as follows:

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6 EXAMINATION

7 BY MR. REES:

8 Q Officer, can you please state your first
9 and last name, and spell your first and last name.

10 A I've got to spell the first too? Matthew
11 Nilsen. First is M-A-T-T-H-E-W, and last is
12 N-I-L-S-E-N.

13 Q And are you a Portland police officer?

14 A I am.

15 Q How long have you been a police officer?

16 A Just over 18 years.

17 Q All right. And where are you currently
18 assigned?

19 A East Precinct, night shift.

20 Q All right. And another witness testified
21 that night shift is from 10:00 p.m. to 8:00 a.m.

22 A Yes, sir.

23 Q Is that correct?

24 A Yes.

25 Q Were you working that shift on Thursday,

1 June 12th of this year?

2 A Yes.

3 Q All right. Anything unusual during that
4 shift in terms of your work prior to the situation
5 that we're going to talk about?

6 A No, nothing unusual before that.

7 Q All right. So let me direct your
8 attention then to the call that brought you to the
9 location that's on the diagram behind you where the
10 Springwater Corridor crosses Southeast Foster Road.

11 A Okay.

12 Q Do you remember what the nature of the
13 call was?

14 A The original call was, I believe, a
15 strongarm robbery, is what they call it.

16 Q All right. Did that come out over the
17 radio or on your video display in the car?

18 A Both.

19 Q Okay. And do you remember what
20 information that you -- you received from dispatch?

21 A The caller said that his bike was taken,
22 and I do not remember any mention of weapons in the
23 call.

24 Q All right. And was that the extent of the
25 information that you had then, the person --

1 A It gave a basic description of the
2 suspect, was supposed to be bald, dressed in black,
3 white male.

4 Q Okay. And did you go to that location
5 then?

6 A Yes, we did. It was about 104 and Foster,
7 or Foster and they call the Springwater Corridor,
8 which is the old train tracks that they've turned
9 into a running track.

10 Q All right. Did any other police officers
11 respond to that scene?

12 A The original call, yes, Officer Bob Brown.

13 Q All right. Who arrived there first?

14 A He did.

15 Q Okay. By some period of minutes or -- or
16 just very briefly before you?

17 A Briefly. Maybe a minute.

18 Q Okay. If you could refer to the diagram
19 behind you, can you show the Grand Jury which --
20 if -- assuming it's on there, which police car would
21 be the one driven by you when you arrived?

22 A That should be this one. And this is
23 arriving basically the second time. Officer Brown
24 arrives, talks to the victim, we went and checked
25 the area for the suspect. Because that bike trail

1 runs along Foster. And then Officer Brown had come
2 back, and he got me on the air and said, hey, I
3 think the suspect's in the bushes down here,
4 possibly hiding. So he asked me to come back. So
5 when I come back, this is where I parked my police
6 car, and his is parked there on the tracks.

7 Q Okay. Great. You can resume your seat.

8 And then let's pick up then by way of
9 explanation, as you were saying. You actually came
10 to the scene twice. So the first time when you
11 initially arrived, you go ahead and tell the Grand
12 Jury what -- what happens.

13 A When I initially arrived, I did not get
14 out of my car. He would -- Officer Brown was parked
15 besides -- where my car was. And he told me over
16 the air that he might have gone down the bike path.
17 So I just turned around and went down. I didn't
18 actually stop and talk to anyone the first time.

19 Q Did you -- other than Officer Brown at
20 this time, were there any other people around at
21 all, as far as the caller to 9-1-1, that you saw?

22 A I did not see him, no.

23 Q All right. And other than telling you
24 that they might be at a different location --

25 A Right.

1 Q -- did Officer Brown give you any other
2 information?

3 A No.

4 Q Okay. So then you leave that area.

5 A Uh-huh.

6 Q And what do you -- what do you see or what
7 do you -- what do you learn as you -- as you leave?

8 A I leave. I go down the bike path and
9 check a couple areas down there, talk to a couple
10 citizens, asking if they'd seen anybody who looks
11 similar to this description. Everyone said no. So
12 I was about two blocks away when Officer Brown asked
13 me to come back.

14 Q All right. And so then you returned, and
15 then you parked your car as seen here on the south
16 curb line?

17 A Correct.

18 Q Just west of the crosswalk?

19 A (Nods head in the affirmative.)

20 Q Okay. So when you returned, what's
21 happening then?

22 A Then I get out of the car. Officer --
23 let's see. This is turned around for me.

24 So the victim is standing somewhere in
25 this area here. Officer Brown is standing over

1 here, looking down. This is all forested down here,
2 like the wetland thing. He's standing here looking
3 down in this area.

4 I get out of my car and come over by him.
5 I don't know how far back, but quite a ways back you
6 can see a figure that's male, dressed in black, with
7 a suitcase, walking out towards us. He's -- he's
8 down here, and he's kind of walking in this
9 direction. So not directly at us, but kind of off
10 this direction.

11 Q All right. And you said that when you
12 first arrived, you referred to the victim standing
13 by Officer Brown's police car.

14 A Uh-huh.

15 Q And was that person the individual who had
16 called 9-1-1?

17 A Yes.

18 Q All right. And do you recall that
19 person's name?

20 A I don't. Yeah. If I heard it, but I
21 don't know, off the top of my head.

22 Q All right. And so to pick up where you
23 were, you're now seeing this other person, I think
24 you said, dressed in black coming up out of the
25 brush or the woods there.

1 A Correct.

2 Q All right. And did you have an
3 understanding at that point of exactly what was
4 happening on this call, or were you still kind of
5 gathering information?

6 A Still gathering information. All I know,
7 that supposedly the victim's bike was taken, and
8 some kind of strongarm robbery. He didn't even --
9 he was standing there. He didn't look injured at
10 all.

11 Q Okay.

12 A So that's about all I knew at that time.

13 Q All right. So go ahead then and walk us
14 through what happens as this person is coming up the
15 hill now.

16 A Okay. He comes up, kind of starts to walk
17 up this stretch. And Officer Brown calls to him and
18 asks him to come up to us, which he does. He
19 changes course and comes up to us. And he stands
20 basically -- do they have the telephone pole on
21 here? Not really.

22 Q Yeah.

23 A Oh, I -- okay. Yeah, basically where his
24 bag is is basically where he stands.

25 Q Yeah, and if you want to go up to the flat

1 screen, you can do that.

2 A Oh, okay.

3 So when he comes out of the bushes, right
4 on the other side of this street there's a little
5 path that comes out. So he came out, and he
6 basically stood in that basic area the whole time.
7 And so we're talking to him. Officer Brown is
8 talking to him. While Officer Brown is talking to
9 him, I go over and talk to the victim, get his
10 information, get a little more of a story about what
11 happened.

12 Do you want me to go into history at all?

13 Q Sure.

14 A He's also a transient, and he's been
15 living -- or has a camp back in the back. And he
16 called it the cement platform, I believe. Something
17 about concrete and cement. I have not been back
18 that far, but I assume it must be some kind of
19 either little wall or structure that he was camped
20 by. He said he was back there sleeping. And from
21 this direction he could see the suspect here, and he
22 told him -- he said that that guy came back there,
23 was yelling and screaming, and woke me up. And
24 the -- oh. No, I'm sorry. I'm getting stories
25 switched. I apologize.

1 He was canning -- not canning, but
2 scrapping. And they go back and look for scrap
3 metal. So he went back there. He said he knew of a
4 rim -- he indicated, like, a tire rim being in the
5 Johnson Creek. So he had gone back there to get
6 that rim, to scrap it, with his bike. He walks back
7 and ends up encountering the suspect, who he doesn't
8 say was sleeping, but just pops out from behind the
9 concrete and is yelling, and he's not sure why he's
10 yelling at him. He doesn't know him, he says. And
11 then the suspect attacks him. He says they get into
12 scuffle. And then he doesn't give me specifics
13 about what happened at that time.

14 And then he ran -- the treeline basically
15 ends on this far side. So he popped out this side
16 and he said he ran out to Foster and had someone
17 call 9-1-1 for him. And he said that his bike was
18 still back there, and he thought that the suspect
19 had taken his bike.

20 Q So that's the information this man gave
21 you?

22 A Correct.

23 Q And while you were talking to him, was
24 Officer Brown also standing there, or was he doing
25 something different?

1 A He was talking to the suspect.

2 Q The other individual?

3 A The other individual. I'm sorry.

4 Q Okay.

5 A At the time we thought he was the suspect.

6 Q All right. And when you're talking to the
7 9-1-1 caller, does he tell you where his bicycle is
8 at that time?

9 A He said he left it back in the back where
10 they had the original contact.

11 Q Okay. And so let's switch places, and you
12 can sit down for at least a minute here.

13 A Okay.

14 Q So after you gathered that information
15 from him about what he's telling you had happened
16 earlier that morning, what do you -- what are you
17 thinking and what -- what plan develops?

18 A He had talked about being in a scuffle.
19 He hadn't indicated that he was, you know, attacked
20 for the bike, and that was what the subject had
21 done.

22 I worked this area a lot, and we have a
23 high transient population down there. And it is
24 common for them to get into disagreements and fights
25 over camping areas, properties, the corners where

1 they hold their placards. And so that was my
2 thinking, that they had gotten into a disagreement
3 about something and got into a fight, and the caller
4 had lost. So he called the police.

5 Q Okay.

6 A That's common.

7 Q And so with that thought in mind, did you
8 have any particular plan for resolution of this
9 problem?

10 A Yeah. While I was talking to him, Officer
11 Brown was talking to the other subject. He did
12 not -- the other subject with the suitcase did not
13 have the bike with him. And so we wanted to find
14 out, one, where the bike was, and if the other
15 subject could get his bike back. Because I asked
16 him: What do you want to do? And he just wanted
17 his bike back. And usually they want their
18 property. They don't want to try to prosecute or
19 anything. He just wanted his bike back. So that
20 was our plan.

21 Q Okay.

22 A My plan. I had not had time to talk to
23 Officer Brown about that yet.

24 Q All right. Did there come a point then
25 when you did talk to Officer Brown about that?

1 A Uh-huh. I left the victim there, came
2 back to Officer Brown, who was still talking to the
3 other subject. At this time, I gave him the
4 victim's name. He'd gotten the other subject's
5 name. He went back to his car to run them, wanted
6 to make sure they weren't wanted, that kind of
7 thing. So at this time I just kind of stood and
8 talked to the subject for a little bit.

9 Q And did you notice anything unusual about
10 his appearance or demeanor?

11 A Appearance? He was dirty. He looked like
12 he was, you know, a transient that had been living
13 outside. If I remember, he had real baggy blue
14 jeans on that were dirty, and he had a -- a black
15 hooded jacket, I guess you'd call it, that was also
16 dirty. He -- the whole time, the suitcase -- he was
17 holding onto the suitcase the whole time. He didn't
18 set it down.

19 And talking to him, he start -- I figured
20 that he probably had some kind of mental illness or
21 use of drugs because he talks -- started talking
22 about that he's the Russians and we're the Nazis.
23 And not getting violent. And his voice went up a
24 little bit, but he made no overt actions, you know,
25 threatening-wise. His hands never went in his

1 pockets. He didn't do anything that really made me
2 key up that he was a big threat.

3 So he did that a little bit, and then he
4 starting coming down. Officer Brown came back and
5 he said, hey, you know, you need to calm down. I
6 don't know that those are his specific words. But
7 he does -- the subject calms down. They're talking
8 a little bit more. We have the victim that was by
9 the police cars. We asked him to go back and see if
10 he could get his bike. And he goes back. We're
11 still talking to the subject.

12 Q And if I could just interject at this
13 point.

14 A Yep.

15 Q In your mind at this point --

16 A Right.

17 Q -- how do you think this -- this encounter
18 is going, this call is going with these two guys?

19 A Smooth. Nothing unusual. They're both
20 being cooperative, both calm. Like I said, the
21 other -- neither of them gave me any indication that
22 they were looking to fight or being belligerent at
23 all.

24 There's different key things that we'll
25 look at when you're dealing with someone. Like this

1 guy, he had the suitcase and his other hand was
2 usually out or down. He wasn't making any furtive
3 movements; what I mean, movements towards his
4 clothes for maybe a weapon. He wasn't balling his
5 fists like he was looking to fight. He didn't take
6 a sideways stance like a boxer would, different
7 things like that that would kind of give you an
8 indication that somebody is looking for, you know,
9 either fight or -- he didn't have furtive movements
10 looking like he was trying to run, like he wanted to
11 get out of there. He was just conversating back and
12 forth. He disagreed with the story about what
13 happened, but he didn't seem very upset about that.
14 So it was a very -- for me, typical contact.

15 Q All right. And so I think where I
16 interrupted, you and Officer Brown are now talking
17 to that subject who is later identified as Nicholas
18 Davis --

19 A Right.

20 Q -- while the 9-1-1 caller has now gone
21 off into the woods to retrieve his bicycle.

22 A Correct.

23 Q All right. So what happens?

24 A Okay. At that point -- do you want me to
25 go back to --

1 Q Sure. Let me trade you, switch here.

2 A So it would be Mr. Davis is standing here,
3 holding his suitcase. Basically facing us. Officer
4 Brown would have been right in this area, right in
5 front of these wires. And I was off about probably
6 here. We do a something they call triangulation,
7 and it's a safety thing. So Officer Brown is here
8 and I'm here. So if there is to be any kind of, you
9 know, problem, we have -- his attention would be
10 split between two, you know. If we're right next to
11 each other, it's more easy for him to attack both of
12 us. So it's just common practice and becomes second
13 nature that you triangulate. So that's why I was
14 over here.

15 And then we also have what we call
16 contacting cover officers. Officer Brown was the
17 contact officer or the primary officer. So his job
18 is talking to the suspect or the victim. At this
19 point it was Mr. Davis, the suspect. And then I'll
20 cover. So I'm covering him, kind of watching this
21 subject, also watching the area around us because
22 we're on the bike path and this runs down -- it's
23 early morning, nice weather, we had several bikers
24 going by, runners. And then also knowing that this
25 is a big transient population out here, I kind of --

1 my job is to pay attention to those areas. And
2 he -- he basically keys on the subject.

3 So at that point we're talking. I can see
4 the victim way in the back with his bike walking
5 out. And Officer Brown is talking -- do you want me
6 to go into the whole --

7 Q Sure.

8 A For me, I can see everything, but it
9 happened very fast. Sometimes you talk about
10 people, that time will slow down and things will go
11 very slow. I can see each point, but for me it felt
12 like it all happened at once.

13 So I see him down here. I'm paying
14 attention to the bike path. And I don't know what
15 drew my attention, but the next thing, I looked at
16 Mr. Davis and he has a crowbar in his hands. To me,
17 it looks big, you know, three-plus feet. It's
18 metal, it's got the big hook on the end. And he's
19 standing here with that. Where it came from, I
20 don't know because I wasn't looking directly at him,
21 so I don't know where he came -- where that came
22 from. But I see him standing there with it
23 two-handed. And he takes a step to his right, this
24 direction, takes a step over. And at that time our
25 power, practice training is get some distance.

1 Distance gives you time, gives you options. So I
2 start backing up this direction and down this little
3 path here. And so, actually, I was a little close.
4 I would have been right in here. And Officer Brown
5 is backing up this direction.

6 At the same time as I'm backing up -- and
7 that's what I mean this all happens at one time --
8 at the same time I'm backing up, I'm drawing my
9 weapon and I'm yelling at him to drop it. As I do
10 that, I'm backing up, drawing. As I'm doing that, I
11 see Officer Brown go down. He's far enough away
12 that I know he hasn't been hit, so my -- I think --
13 I don't look directly at him, but I think he's
14 probably tripped or fallen over something. So he
15 goes down here. I continue to yell at him. I --
16 "drop," "out." And I remember him lifting the
17 crowbar up like he's going to swing. At this point,
18 a lot of stuff goes through my head. And I
19 apologize. But I look at him, and I see -- the
20 thing that comes to mind -- and I did not expect to
21 get this emotional. I apologize.

22 I see the crowbar and a watermelon. You
23 know how a watermelon would pop? And that's all I
24 see. And so when he raises it up, I come down on my
25 sights and I'm thinking, oh -- bad word -- I'm going

1 to have to shoot this guy. And at that point, I
2 hear what I think are two shots -- I here two pops.
3 They're not as loud as usual gunshots out here, from
4 beside me. And he immediately reacts in turning
5 away, stumbles up the path here, and then down into
6 the bushes.

7 Q Let me --

8 A Yeah.

9 Q -- just back you up a little bit --

10 A Okay.

11 Q -- and follow up with something you said.

12 A Uh-huh.

13 Q Why did you think that you were going to
14 shoot this person?

15 A I don't know what it was about him,
16 whether it was a look on his face and his actions,
17 but I felt that he wanted to hurt us or kill us. He
18 had a weapon that was able to do it. Officer Brown
19 was down on the ground, and I want to say this is
20 seven, eight feet maybe. But he could easily
21 approach. I did not have time to go to other
22 options. We have a Taser. The way we have to carry
23 our Tasers, it's in a holster with a flap that flips
24 over, so I would have to actually unflip it and draw
25 it at the same time putting my other weapon away.

1 Also with his coat being baggy, the darts, they're,
2 I want to say, maybe an inch, inch-and-a-quarter
3 long. So sometimes you get good contact. But other
4 times the clothing will stop that and you won't get
5 a good contact.

6 You also need a distance for a good
7 contact because the electricity goes between the
8 probes. And if you're too close, you'll just get --
9 it will hurt, but it won't have the debilitation if
10 you had a better spread. And OC also, I didn't -- I
11 wouldn't have time to pull out that. And I have had
12 people fight through that and continue, and they've
13 done different studies on that.

14 A GRAND JUROR: OC?

15 THE WITNESS: Pepper spray.

16 A GRAND JUROR: Okay.

17 THE WITNESS: I personally have had people
18 fight through that and continue to fight with
19 me. So I -- like I said, I saw that -- that
20 crowbar and a head like a watermelon popping,
21 and that --

22 BY MR. REES:

23 Q That was the visual image that you saw?

24 A Yeah. And it's weird. I don't know why,
25 but that's what popped into my head.

1 Q Were you surprised when you heard the
2 sound of Officer Brown shooting?

3 A Yes, I was.

4 Q You were?

5 A Yes.

6 Q And were you surprised because of the
7 circumstances, or just because you didn't know he
8 was also drawn on the subject?

9 A I didn't know that he had recovered to the
10 point where he could -- I saw him go down, and so I
11 was focused on Mr. Davis. So I didn't know what
12 condition was he -- he was in. You know. And I
13 didn't know that he had gotten -- I don't know what
14 he did, but somehow he had recovered to the point
15 where he could engage the subject.

16 Q All right. And why didn't you fire?

17 A Because before I could, the subject
18 reacted to the shots from Officer Brown. Like I
19 said, he turned away from us and tumbled away.

20 MR. REES: All right. Before Officer
21 Nilsen sits back down, does anyone have any
22 questions where you want him to use the
23 picture?

24 A GRAND JUROR: Yeah. I know this is
25 probably crazy emotional putting all this stuff

1 back together. I can't even fathom to relate
2 to what this is.

3 But if you can back up a little bit to the
4 point at which you turn and he had the crowbar
5 in his hand --

6 THE WITNESS: Right.

7 A GRAND JUROR: -- you were about at the
8 end of the placard 4?

9 THE WITNESS: Yeah, I was on the asphalt
10 here right in this area.

11 A GRAND JUROR: Okay. And Officer Brown
12 was up at the placard --

13 THE WITNESS: Right.

14 A GRAND JUROR: You step back and give
15 yourself some space. He steps back and you see
16 him go down.

17 THE WITNESS: Right.

18 A GRAND JUROR: At this point, what is
19 he -- is the suspect standing still, is the
20 suspect walking towards you? What's the --

21 THE WITNESS: I -- I don't remember him
22 approaching towards us.

23 A GRAND JUROR: Okay.

24 THE WITNESS: And I said it happened so
25 fast.

1 A GRAND JUROR: Right.

2 THE WITNESS: And all I remember is him
3 coming at us with that crowbar and him coming
4 up. So I don't know if he approached or not.

5 A GRAND JUROR: The distance roughly,
6 based on your memory, between you and Officer
7 Brown who was on the ground; three feet, five
8 feet?

9 THE WITNESS: Yeah, probably four to five
10 feet.

11 A GRAND JUROR: Okay.

12 THE WITNESS: Maybe six.

13 A GRAND JUROR: And then as you draw, are
14 you approaching the suspect as you draw, or are
15 you standing still?

16 THE WITNESS: I'm backing up.

17 A GRAND JUROR: You're backing up?

18 THE WITNESS: Yeah. I'm stepping back as
19 I'm drawing.

20 A GRAND JUROR: Okay.

21 A GRAND JUROR: So did you hesitate to
22 shoot; is that -- I mean, were you kind of
23 pausing? I know it happened --

24 THE WITNESS: Yeah. And that's one thing
25 I've gone over and over in my head. And

1 there's several different factors in play.
2 One, I've got a little more distance than
3 Officer Brown. I'm up in a standard platform,
4 so I feel comfortable there in defending
5 myself. And I start to give him a command.
6 And what they've taught us in training --
7 several studies I've read -- if you're talking,
8 you're not shooting. Your brain basically does
9 one thing at a time. And so you have to make
10 that conscious change from talking to the
11 decision to move your finger. And so as I -- I
12 think that's part of what slowed me down was
13 that I was yelling at him to drop it, and then
14 by the time I made that mental switching to an
15 action, Officer Brown had already made that
16 decision and that action.

17 A GRAND JUROR: But you did make that
18 switch, because you did say --

19 THE WITNESS: Yeah, I --

20 A GRAND JUROR: -- I'm going to have to
21 shoot him. So definitely you guys felt
22 threatened. You said that.

23 THE WITNESS: Yeah, I did. I definitely
24 felt threatened.

25 A GRAND JUROR: So finger on the trigger,

1 you made the decision to fire.

2 THE WITNESS: Yeah. Actually, I made the
3 decision, then finger goes to trigger.

4 Yes, ma'am?

5 A GRAND JUROR: Did you say that you
6 saw -- you felt -- or you felt that the
7 distance between Brown and the suspect was
8 about four to five feet maybe; is that what you
9 said?

10 THE WITNESS: As between Officer Brown and
11 I?

12 A GRAND JUROR: And you.

13 THE WITNESS: Right.

14 A GRAND JUROR: Between the two of you.

15 THE WITNESS: Right, the distance between
16 Officer Brown and the subject was probably
17 seven feet.

18 A GRAND JUROR: Can you show us that
19 physically? Like between you and me, what that
20 would mean?

21 THE WITNESS: Yeah.

22 A GRAND JUROR: So if I were who; Officer
23 Brown? So how --

24 THE WITNESS: And who am I?

25 A GRAND JUROR: You.

1 THE WITNESS: We're probably this distance
2 apart talking to him. The subject would be
3 probably about where the phone is -- Kleenex,
4 phone, right there. About like that. And, you
5 know, it's not static because I'd move around a
6 little bit, you know. That kind of thing. But
7 it's about those distances.

8 A GRAND JUROR: But this feels tight to
9 me.

10 THE WITNESS: Uh-huh. It is a little bit.
11 It was -- I think we -- and this has been
12 explained by, he was on the bike path and we
13 were kind of on the edge of the grass. It
14 feels constrained. We're also in a room. I
15 think it felt more open there. It's real open
16 area.

17 A GRAND JUROR: Okay.

18 BY MR. REES:

19 Q Just for the record, you were standing, I
20 believe your testimony would be, about, then, five
21 or six feet from Officer Brown --

22 A Right.

23 Q -- with -- with some movement --

24 A Right.

25 Q -- back and forth. And then something

1 like seven to eight, nine feet from --

2 A Mr. Davis.

3 Q -- or --

4 A Is that his name?

5 Q Yeah, the subject who was shot. But
6 something like that distance?

7 A Correct.

8 Q Am I about right?

9 A Yeah.

10 Q Okay. And why don't you go ahead, and you
11 can sit down.

12 THE WITNESS: Thank you.

13 A GRAND JUROR: When the subject got --
14 maybe one or two more clarifying questions.

15 When the subject was shot, you had your
16 eyes on him, and then you were surprised to
17 hear two shots to your left.

18 THE WITNESS: Right.

19 A GRAND JUROR: Struck the suspect. Did
20 he -- you say he kind of spun and stumbled into
21 the bushes. Was it -- picked up a couple feet
22 or was it just --

23 THE WITNESS: I did not know that he'd
24 been hit.

25 A GRAND JUROR: Okay.

1 THE WITNESS: I just know that I heard the
2 shots, and he reacted.

3 A GRAND JUROR: Okay.

4 THE WITNESS: It could -- I still to this
5 day, I don't know where he was hit. And from
6 his back, I didn't see anything. I just -- he
7 turned, he stumbles down and then into the
8 bushes face forward. So I never actually saw
9 that he was shot. He didn't -- the only
10 reaction is I hear the pops, and then he turns
11 away and stumbles.

12 A GRAND JUROR: Was he holding the crowbar
13 at the time of the pops?

14 THE WITNESS: Yes.

15 A GRAND JUROR: Okay.

16 BY MR. REES:

17 Q So you didn't know if he was hit or not?

18 A Right.

19 Q You just knew he was now moving back?

20 A I knew that he had turned away from us.

21 That way he still can't swing at us as easy, and
22 that he was moving away from us.

23 Q Earlier in the contact, of course, he's
24 making some statements to you, questions were asked
25 of him. Did -- did he say anything that you recall

1 once he had the crowbar?

2 A No, once I saw the crowbar, I do not
3 remember him saying anything.

4 Q All right. And you testified that you
5 gave some commands at gunpoint. What do you think
6 you said?

7 A "Drop it." And I don't remember if I got
8 the whole thing out. I remember saying "drop." I
9 don't remember saying if I got...

10 Q All right. Do you know remember if
11 Officer Brown said anything?

12 A No, I did not hear anything. I don't know
13 if he did or not.

14 Q Okay. And --

15 A And that's another thing that you get, in
16 special situations you get tunnel sight and tunnel
17 hearing. And that's why when we talk later about he
18 was shot, they sounded very quiet to me, almost like
19 a cap gun. Not like when we've been at the range
20 practicing. It's a totally different sound. So I
21 figured that's what happened to me was I went into
22 that, you know, tunnel sound. So if Officer Brown
23 said something, I didn't hear it.

24 A GRAND JUROR: Do you recall seeing
25 Officer Brown at that point in time?

1 THE WITNESS: No.

2 A GRAND JUROR: He wasn't in your
3 periphery anymore. You were --

4 THE WITNESS: Right. Yeah.

5 BY MR. REES:

6 Q Did Nicholas Davis have any reaction to
7 your verbal command?

8 A No.

9 Q You mentioned you've run this through your
10 mind many times, I'm sure, since June 12th. On that
11 reflection, do you see any other option under the
12 circumstances in response to the threat presented by
13 Mr. Davis?

14 A No. You know, there's always, I think,
15 what could I have done, you know. If we had a
16 police state and we searched everybody we talked to
17 and everything, maybe then. But, you know, being
18 with -- you know, treating people as people, and he
19 gave no indications that he wanted to harm us at the
20 time. I -- I don't see anything we could have done
21 different.

22 Q And I guess by that you mean, had you had
23 some way of knowing he was armed with a crowbar.

24 A Right. If the victim had said he had a
25 crowbar or just had a weapon.

1 Q But given that you didn't know that --

2 A Right. And he made no indication -- and I
3 still don't know where it came from. This hand was
4 on the suitcase the whole time, his other hand was
5 out. There's something they call indexing, and you
6 see a lot of officers and people that carry a weapon
7 do. They'll arm -- they'll touch it. You know,
8 it's just a comfort thing to make sure -- because
9 I'm wearing a gun right now -- and it's just --
10 okay, you know it's right there, you know where it
11 is. They might adjust it. But they call it
12 indexing. And he never made anything like that. If
13 he had it in his pants, I don't know. If he had
14 baggy pants on, that would be heavy. You know, he
15 made no movements towards pulling them up that I
16 remember. No indication that he had a weapon there,
17 to my knowledge.

18 A GRAND JUROR: Anyone have any questions?

19 A GRAND JUROR: Yes, one question.

20 You said earlier on, you said you were
21 talking to the victim, and he was reporting to
22 you about what happened to his bike. He said
23 he was attacked for the bike. Do you remember
24 if he said how he was attacked; was he attacked
25 with any object, or was he simply bike, taken

1 by force from him; did he say?

2 THE WITNESS: He didn't even say he had
3 the bike taken by force. He said that he got
4 into a scuffle or a fight with fists with him,
5 and then he had ran out, and then he said the
6 subject had his bike. He never indicated to me
7 that the subject stole my bike.

8 A GRAND JUROR: Uh-huh.

9 THE WITNESS: The stories we have get on
10 the radio at the beginning commonly change a
11 lot by the time we get there, everybody's
12 story, because dispatch can only get so much in
13 that short period of time.

14 A GRAND JUROR: So he didn't indicate that
15 there was any objects used. It was simply just
16 a scuffle.

17 THE WITNESS: Correct. Correct.

18 A GRAND JUROR: Any other questions?

19 Officer Nilsen, thank you very much for
20 your testimony today.

21 THE WITNESS: Thank you, guys.

22 A GRAND JUROR: Thank you.

23

24

25

1 ROBERT BROWN,
2 was thereupon produced as a witness on behalf
3 of the State and, after having been duly sworn on
4 oath, was examined and testified as follows:

6 EXAMINATION

7 BY MR. REES:

8 Q Thank you, officer. If you would, please,
9 state your first and last name.

10 A Robert Brown. I'm a Portland police
11 officer.

12 Q All right. And just for the record, could
13 you also spell your first and last name.

14 A Okay. R-O-B-E-R-T, B-R-O-W-N.

15 Q All right. Officer Brown, how long have
16 you been a member of the Portland Police Bureau?

17 A In January it will be 16 years, so about
18 15-and-a-half right now.

19 Q All right. And what's your current
20 assignment?

21 A I work East Precinct. I work District
22 998.

23 Q All right.

24 A Patrol, basically.

25 Q And that district encompasses generally

1 what -- what area in Southeast Portland?

2 A Basically Foster. Foster is my cutoff
3 line. From Foster south, 82nd east all the way out
4 to Gresham. And then from 82nd to Clackamas, that
5 whole range right there. So...

6 Q And were you working on Thursday,
7 June 12th of this year?

8 A Yes, sir.

9 Q And maybe you said, but what shift are you
10 currently working?

11 A I work night shift. I work at 10:00 at
12 night and I get off at 8:00 in the morning.

13 Q All right. Prior to the incident that
14 we're going to talk about that occurred a little
15 after six o'clock in the morning, as I understand
16 it, at Southeast Foster Road and the Springwater
17 Corridor Trail, anything unusual about your shift
18 that night?

19 A No. It was -- it was a regular, kind of
20 boring shift. About five o'clock in the morning,
21 you kind of get off the road most of the time
22 because it's mostly good people that are going to
23 work and they're all late for work, so we kind of,
24 you know, just at five o'clock, we -- we stick to
25 kind of taking calls at that point.

1 Q So that's when the commuters start moving
2 into the city?

3 A Correct. Yes.

4 Q All right. Well, let me ask you then
5 about the call that you received that took you to
6 the location that's shown on the diagram behind you.
7 When the time comes, feel free to refer to that --

8 A Okay.

9 Q -- or to the image that we have on the
10 flat panel.

11 What do you recall about the dispatch call
12 that you received sometime after six o'clock in the
13 morning?

14 A I remember that I was -- I was at 112 and
15 Powell when I received a -- it was a strongarm. She
16 didn't even say "robbery." But anytime you say
17 "strongarm," we think of robbery, where a guy's bike
18 was stolen from him.

19 I remember that the description was a
20 white male, big, large build, I think they said in
21 his 20s, and he had a black hooded sweatshirt on.

22 Q All right.

23 A And that was at -- I believe our victim
24 was going to be at 104 and Foster.

25 Q All right. So when you received that --

1 that call, what did you do?

2 A I -- I was dispatched as -- as cover
3 officer. Officer Nilsen, he was the primary
4 officer. But I knew if this guy said that it
5 happened on the south side of Foster, I knew it was
6 going to be my call. So I went en route. I went
7 down southbound on 112th to the Holgate, went
8 westbound on Holgate and then up to 92nd, southbound
9 on 92nd to Foster. And then went to -- went
10 eastbound. That's where I saw the victim.

11 Q All right. And did you have contact --
12 well, did you have contact with Officer Nilsen prior
13 to that --

14 A No.

15 Q -- to that call that you recall?

16 A No. Not that I recall, no.

17 Q All right. And so when you -- when you
18 contacted this person, did you -- did you talk to
19 him?

20 A Briefly. I saw him standing out on the
21 road. What you want to do is -- is get a brief
22 description if there's -- if he knew the last
23 direction where this -- where this guy was. So I
24 pulled up next to him, and I asked him, you know,
25 you're the victim, you got your bike stolen, and he

1 said yes. I asked where the guy went. He said that
2 he went down the trail, kind of in a southwest
3 direction.

4 Q And do you recall this person's name that
5 you were talking to?

6 A I don't, no. I never got his name. I
7 just -- like I said, I briefly spoke to him because
8 at that point I'm trying to make contact, find out
9 where this -- where the bad guy went, and then go
10 get the bad guy.

11 Q Okay. So where did you go from there?

12 A I made a U-turn because, like I said, I
13 was -- I was facing eastbound. I made a U-turn to
14 go westbound where he told us our suspect went. I
15 think I went down to 100th or 102nd and went
16 southbound there because that's where -- the trail
17 runs right by a neighborhood back there. I was
18 figuring, you know, if -- if he's down there, you
19 know, maybe I could see him, spot him on the trail.
20 After a couple minutes, I didn't see anything, and I
21 came back to -- to talk to our victim at that point.

22 Q All right. And what happened?

23 A I -- like I said, I -- I was going to go
24 down the trail at that point where my car is right
25 there. Our victim was actually standing in the

1 trail -- on the trail. And as I came up, I kind of
2 tried to, you know, hey, scoot over a little bit so
3 I can go down the trail and see where this guy is.
4 At that point, our victim says: He's right down
5 there in the bushes. Can I --

6 Q Yeah, let me trade places with you.

7 A So where I stopped, he was kind of in
8 front. He tells me the guy is down southbound --
9 the south direction. So I stop my car at that point
10 and I get out. And I go try and look for this guy.

11 Q All right. And then do you see him, or --

12 A I do. He's probably, I don't know, maybe
13 50, 60 yards away from me, and he's walking
14 westbound. I go on the trail kind of, you know,
15 walking with him. But he's still way south of me.
16 And I tell him, you know, hey, come on over here, I
17 need to talk with you. At that point, he just -- he
18 kind of keeps -- keeps walking at a slow pace. I
19 yelled to him again: Come on up here, I need to
20 talk to you. And he starts walking towards me.

21 Q Does he eventually come up to close
22 conversational distance to you?

23 A He does, yes. After Officer Nilsen, I
24 believe I got on the -- on the radio, because at
25 that point it's just me, our victim and the suspect.

1 So I got on the -- the radio and asked Officer
2 Nilsen to come meet me there so I'd have cover.

3 Officer Nilsen had him come -- this was --
4 there was a little kind of clearing, opening,
5 between some bushes, and he came up and -- where his
6 backpack is. That's about where he stopped and he
7 tried to converse with him.

8 Q Anything unusual about his appearance or
9 demeanor under the circumstances?

10 A He -- he had real wide eyes. I remember
11 him talking a whole bunch about -- he said he was
12 Russian, and that all Russians need to be under
13 surveillance. I remember him making absolutely no
14 sense. I told -- he told me that our victim
15 assaulted him. I asked him where the bike was, this
16 and that. He seemed real jittery, looking around.
17 His eyes were very wide. At that point, you know,
18 I'm thinking either he is -- he is mentally ill or
19 he is on methamphetamine or both at that point.
20 That's what I'm thinking.

21 Q All right. Were you able to identify him?

22 A I was, yes.

23 Q And how did you do that?

24 A Asked him his name. And what he told me,
25 I wrote it down in my notebook, went back to my car

1 and ran a check over the computer and found out he
2 had a -- he had a misdemeanor warrant, which was --
3 I think it was for Theft 3.

4 Q And do you recall if that was an active
5 warrant in Multnomah County?

6 A Correct, yes.

7 Q All right. And so after you learned that
8 about him, what did you do?

9 A I re-approached. At that point, Officer
10 Nilsen related to me that all our victim wanted was
11 his bike back. It's, like, 6:20, 6:30 in the
12 morning. So I'm thinking, if I can settle this guy
13 down a tad -- because he's -- he's spinning up and
14 he comes back down and he's -- his emotions were up
15 and down. And if I can just let him know, hey, you
16 got a warrant, you need to take care of this, and if
17 our victim is good with just getting his bicycle
18 back, I told him, hey, I'll be on my way, you know.
19 Because at that point I'm thinking, if we have to
20 put him in handcuffs, it's -- it's going to be a
21 fight.

22 I just -- you know, just the way he was
23 feeling. That's what I do. I read people. And I'm
24 pretty good at being able to read somebody, get a
25 read on them. And so I let him know, hey, you got a

1 warrant. It's not a big deal. We can take care of
2 this some other time. If he gets his bike back, you
3 can be on your way. So --

4 Q You're saying you're thinking these
5 things. Are those the things that you then said?

6 A I did -- I did tell him, you know, I told
7 him, hey, you know, you got a little baby
8 misdemeanor warrant, it's not a big deal. Because
9 I'm trying to bring him down. I'm trying -- because
10 he's spun up right now, he's looking around. His
11 eyes are wide. I can still see his hands the whole
12 time though at this point, so I'm okay. Okay. And
13 I let him know, you know, hey, this -- this warrant
14 is not a big deal with me. You know, you can be on
15 your way.

16 Q Do you recall his response to that?

17 A You know, I don't think he said anything.
18 A short time after this while I'm waiting for the
19 victim to come back up with his bike, he -- he tried
20 to -- he tried to split me and Officer Nilsen up at
21 one point. He tried to say, why don't you go with
22 him to get the bike and I'll stay here with this
23 officer. And I just -- I kind of thought, you know,
24 that's -- that's not right, definitely. But he
25 also -- after I told him that, I think the only

1 thing he told me after that, or asked me was, can I
2 go now? And I said: No, you just wait here until
3 he brings his bike up here. We're going to talk
4 about this.

5 Q All right. And did the -- the victim, the
6 person that called 9-1-1, did they ever come back
7 with the bike, that you saw?

8 A While I'm standing, he's -- he's by his
9 bag with his back to the south. I'm trying to
10 look -- I'm still keeping an eye on him, but I'm
11 watching our victim, and I can see him. He's
12 pushing his bike up. So I'm thinking, okay,
13 everything is going to be all right. We'll talk
14 about this and see if they know each other. If this
15 guy gets his bike back and he's okay with this whole
16 deal, we'll be on our way.

17 So at that point, I have him down. I --
18 you know, he's not spun up anymore. He's not amped
19 up and he's not looking around. He's just standing
20 there. He's relaxed. I -- and then out of -- for
21 no reason, I mean, like I said, I -- I read people,
22 I'm real good at reading people -- and he just -- he
23 reached down, just like this -- I mean, a -- I call
24 it aggressively because it was like, you know, it
25 was -- and he lifted his shirt up. And at that

1 point -- at that point, like I said, his back is to
2 the south. I know our victim is coming up here with
3 the bicycle. So I know I have to get distance from
4 this guy because he's reaching in, and I'm thinking
5 he's got a gun. I see something metal, the way --
6 and -- and everywhere -- that's where you keep a
7 gun.

8 So I back up, and I remember telling him
9 "don't do it" as I back up. I back up, and I know
10 that I have to get distance from this guy. I know I
11 draw my gun. I don't remember doing it. And I know
12 I step back this way because I know our victim is
13 coming up kind of behind him. So I know if I do
14 have to shoot, I don't want anything hitting our
15 victim.

16 At that point, like I said, I saw
17 something metal. I'm backing up. I yell, "Don't do
18 it." And I believe I hit this pole here as I'm
19 backing up. I know I fall. And I fell full -- full
20 everything on my elbow. And there's a -- there's a
21 sound that the gun makes when you -- when you
22 actually hit. It's kind of a metallic sound. And
23 I'm on the ground, and I remember looking up, and
24 I'm trying to focus on him, but I remember my gun is
25 pointed this way. And it's Officer Nilsen. I did

1 see it's pointed right at him.

2 After that, I don't know if I got up, I
3 don't know if I was on a knee, I don't know if I was
4 still laying down. But I know that at this point,
5 he has a crowbar. And it's -- it's a big crowbar.
6 And I know he had it when I saw him. He had it like
7 this, and he -- he's coming right up on me. And I
8 know I shot twice. I know I shot two rounds. I
9 don't know if I hit him at that point.

10 He starts running off eastbound on the
11 trail. He goes down a little clearing, an
12 embankment, and I'm thinking to myself, you know, I
13 just missed him. I missed him or -- you know, but I
14 know right then the threat is gone. It's gone for
15 right now. I'm not on the ground and he's not
16 coming at me with a crowbar to bash my frickin'
17 skull in.

18 And then a short time later, he -- he
19 drops face first into some bushes. And, yeah, it
20 was -- it was so unexpected, and it's a tough deal.

21 Q What was the -- what was the level of
22 threat that you felt when you saw that he had now
23 taken this weapon from apparently under his
24 clothing? I don't know if you know if it was under
25 his jacket or concealed in his pants. But when you

1 saw the weapon and you saw him with it, what were
2 you thinking?

3 A I'm thinking this guy is -- he's going to
4 kill me. There's no doubt in my mind that he's
5 coming at me and he's going to kill me. And there
6 was no other option. There wasn't tasing or, you
7 know -- it happened -- it happened so fast. Like I
8 said, I mean, I know this guy, I know he was going
9 to kill me. I know he was going to try and kill me.
10 And it was either I stop him with -- with this or
11 he's going to kill me.

12 Q Can you estimate how far you were from
13 him, do you think, when he was advancing on you?

14 A You know, six to eight feet. I'm not
15 really sure. I'm not -- I've never been good with
16 distances in the first place, but I know that he,
17 like I said, he's coming on me and he's -- it's --
18 it's either you do this or he's going to do that.
19 Yeah, I just -- never had to do this. Never wanted
20 to do it.

21 MR. REES: All right. Thank you, Officer.
22 Are there any follow-up questions?

23 A GRAND JUROR: First of all, thank you
24 for testifying.

25 A GRAND JUROR: Can I ask a question?

1 A GRAND JUROR: Go ahead.

2 A GRAND JUROR: Do you think that he drew
3 that crowbar as you were falling down; he was
4 in the process of drawing it when you were
5 falling down?

6 THE WITNESS: Yes. Like I said, when --
7 when I -- we're -- you know, I always keep my
8 distance from people. I'd say I was probably
9 six, seven feet away from him when, like I
10 said, out of -- out of nowhere. He was calm,
11 out of absolute nowhere he went just like this
12 and started digging. I remember getting the
13 quick look, saying "don't do it," backing up,
14 and trying to go to the right. And that's when
15 I tripped. So when I first saw it, I'm
16 thinking it's definitely a gun because I see
17 something metal. And that's where people
18 always, you know, they always keep guns. Most
19 people are right-handed, so I'm thinking this
20 guy's going to shoot me. As I'm on the ground,
21 I look up and that's when I see him with --
22 with it like this coming at me. So, I mean,
23 things happened -- it happened so fast, and
24 there's still, like, there's still things I --
25 I don't know, you know. I -- like I said, I

1 don't know if I'm on the ground, I don't know
2 if I'm standing up, I'm on one knee. I don't
3 know any of that. I just -- it happened so
4 fast, and it's like -- it's -- it's survival.

5 A GRAND JUROR: Did you see that Officer
6 Nilsen also had his gun drawn?

7 THE WITNESS: I did not. Like I said, I
8 was -- you're keyed into, you know, your
9 threat. I want to go home.

10 A GRAND JUROR: Other questions for
11 Officer Brown?

12 A GRAND JUROR: Yes, I do.

13 A GRAND JUROR: Go ahead.

14 A GRAND JUROR: I'm sorry to get into more
15 detail about this.

16 THE WITNESS: That's all right.

17 A GRAND JUROR: But just to be clear, did
18 you -- when -- before you fell, you saw him
19 with the luggage.

20 THE WITNESS: Yes.

21 A GRAND JUROR: And did you see him with
22 one hand on the luggage and the other hand
23 free?

24 THE WITNESS: Oh, at that point we'd been
25 talking to him for a little bit, and he's been

1 there with us. At that point, the -- the
2 luggage, it's just on the ground. And he
3 doesn't -- he doesn't hold on to it at all.

4 A GRAND JUROR: He's not touching it.

5 THE WITNESS: No.

6 A GRAND JUROR: So his both hands are
7 free.

8 THE WITNESS: Correct.

9 A GRAND JUROR: And they're not touching
10 anything.

11 THE WITNESS: Correct.

12 A GRAND JUROR: So when did you see him
13 reaching for something in his pants or lifting
14 his shirt; when you fell --

15 THE WITNESS: No.

16 A GRAND JUROR: -- or before you fell?

17 THE WITNESS: Before I fell.

18 A A GRAND JUROR: Before you fell.

19 THE WITNESS: Yeah. I'm just sitting
20 here. Like I said, I'm looking at our victim
21 coming up behind him, keeping an eye on him,
22 but watching our victim walk up with the bike
23 towards us. And that's when it just happened.
24 He just dug in here, and I backed up, said no,
25 you know, fell and -- I mean, it --

1 A GRAND JUROR: So you think he took the
2 crowbar from his pants, from underneath his
3 shirt; that's where it came from?

4 THE WITNESS: I believe so, yeah. If it
5 would have been on the outside, you know, I
6 would have definitely saw it.

7 A GRAND JUROR: Right. There was no other
8 place for it to be but his pants.

9 THE WITNESS: No. I mean -- and he
10 definitely -- I think he might have had it,
11 like, hooked over his pants. I don't know.
12 That's assuming. It was -- it was a very large
13 crowbar.

14 A GRAND JUROR: How -- what's the length
15 of it; do you remember?

16 THE WITNESS: I don't know. I know it was
17 large.

18 A GRAND JUROR: Any other questions for
19 Officer Brown?

20 MR. REES: All right.

21 A GRAND JUROR: Officer Brown, thank you
22 very much.

23 A GRAND JUROR: Thank you.

24 A GRAND JUROR: Thank you.

25 * * * * *

1
2 (NOTE: As a matter of firm policy, the stenographic
3 notes of this transcript will be destroyed five
4 years from the date appearing on the following
5 certificate, unless notice is received otherwise
6 from any party or counsel thereon or before said
7 date of July 16, 2019.)

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C E R T I F I C A T E

I, Charlotte A. Powers, CSR No. 90-0050, do hereby certify that I reported in stenotype the proceedings had upon the hearing of this case, previously captioned herein; that I thereafter had reduced my stenotype notes by computer-aided transcription; and that the foregoing transcript, consisting of pages 1 to 171, all inclusive, constitutes a full, true and accurate record of the proceedings had upon the hearing of said cause to the best of my knowledge and ability.

A transcript without an original signature, conformed signature, or digitally signed is not certified.

Witness my hand at Portland, Oregon, this 16th day of July, 2014.

Charlotte A. Powers

Charlotte A. Powers, RMR

CSR No. 90-0050

