## MULTNOMAH COUNTY GRAND JURY DEATH INVESTIGATION

Deceased: Patrick K. Kimmons )

Date of Incident: September 30, 2018 ) DA No.

Location: Southwest Third Avenue and ) 2390609-1 & 2

Harvey Milk Street, Portland, Oregon ) Volume 1

## TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled transcript of GRAND JURY proceedings was heard, commencing at the hour of 9:12 a.m. on Monday, October 29, 2018 at the Multnomah County Courthouse, Portland, Oregon.

## APPEARANCES:

Mr. Todd Jackson
Deputy District Attorney
On Behalf of the State of Oregon

\* \* \*

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1 EXAMINATION

- 2 BY MR. JACKSON:
- 3 Q. Okay. Could you please state and spell your
- 4 name?
- 5 A. Darren Posey, D-A-R-R-E-N, P-O-S-E-Y.
- 6 Q. And what is your occupation?
- 7 A. I'm a detective with the Portland Police.
- 8 Q. How long have you been a detective?
- 9 A. I've been a detective for approximately 12
- 10 years.
- 11 Q. And how long have you been a police officer in
- 12 total?
- 13 A. I've been a police officer for 21 years with
- 14 the Portland Police Bureau and then an additional three
- 15 years as a reserve deputy for Multnomah County.
- 16 Q. And since your time being a detective, what
- 17 different details have you worked for?
- 18 A. I've worked in various different areas. I've
- 19 worked in our afternoon shift detectives, which did various
- 20 different cases from assault, assisting homicide, assisting
- 21 in sex assault cases.
- I've worked, over my 12-year period, in
- 23 various different places. For about nine years, I worked
- 24 in robbery detail. During that time, I worked in
- 25 conjunction with the FBI Task Force and have been certified

- 1 to work with the FBI and take cases federally, as well as
- 2 with the ATF. I worked on a gun task force for a period of
- 3 time during that and preparing cases for federal
- 4 prosecution.
- 5 Along with that, I've worked in sex assault.
- 6 And then recently, in January 2018, I started working with
- 7 homicide detail, focusing on homicides and suspicious
- 8 deaths and officer-involved shootings.
- 9 Q. Okay. And have you received special training
- in the areas of homicide investigations and
- 11 officer-involved shootings?
- 12 A. Yes, I have. Over the course of our training
- 13 as detectives, we go to different conferences. We go to
- 14 different training seminars dealing with officer-involved
- 15 shootings themselves, as well as homicide investigations.
- 16 Q. Okay. And have you assisted in the
- 17 investigation of the use of deadly force by police officers
- 18 before?
- 19 A. Yes, I have.
- Q. All right. Could you briefly take us through
- 21 how the Portland Police Bureau investigates an
- 22 officer-involved shooting or the use of deadly force by
- 23 police officers?
- 24 A. Okay. So to kind of go with who responds to
- 25 an officer-involved shooting to start off with.

- 1 Officer-involved shooting investigations are conducted by
- 2 the homicide detail.
- They also get additional support from the
- 4 Major Crimes Unit for Multnomah County, who will provide
- 5 additional investigators from other agencies within
- 6 Multnomah County.
- 7 A -- essentially, a complete investigative
- 8 team is dispatched to manage the crime scene, and that also
- 9 includes the forensic evidence division, who also provides
- 10 criminalists to help assist in identification of evidence
- 11 and collection.
- 12 I'll go into patrol responsibilities. So with
- 13 patrol responsibilities, the initial response to
- 14 officer-involved shootings takes place with patrol response
- 15 and establishing a protected crime scene.
- So, essentially, over the course of time,
- 17 we've trained officers to set up as big of a crime scene as
- 18 possible, and then we have an inner and an outer perimeter
- 19 that we have.
- 20 So involved officers are removed from that
- 21 scene as soon as practical. The officers on scene will
- 22 also work to identify witnesses and separate them out as
- 23 well.
- O. Does that include both officer witnesses and
- 25 nonofficer or civilian witnesses?

- 1 A. Correct. So -- so, essentially, what happens
- 2 is officers who witnessed the shooting, they'll be
- 3 separated as well, and then the citizen witnesses will also
- 4 be separated out.
- With that, officers who were involved in the
- 6 shooting incident will be provided an uninvolved officer so
- 7 that they can, one, just monitor the officer, as well as
- 8 keep them separate from other people and prevent them from
- 9 talking about the incident at that point in time.
- 10 With that is, the detective response takes
- 11 place. So once that's been established, there's a call-out
- 12 procedure that takes place where the on-scene supervisors
- 13 will take -- will make the call-out so that obviously all
- 14 the resources out can come and show up for the incident in
- 15 the beginning of the investigation.
- 16 Q. Okay.
- 17 A. So should we go to the detective
- 18 responsibilities?
- 19 Q. Sure.
- 20 A. Okay. So the homicide detail runs these
- 21 investigations and coordinates the resources needed for the
- 22 particular incident.
- 23 Supervisors for the homicide detail set up
- 24 officer briefings and supervisor briefings and then
- 25 delineate assignments for the detectives who show up.

- 1 So after assignments have been completed, we
- 2 also conduct further briefings in order to share that
- 3 information gathered and potentially develop further
- 4 evidence and witness information through those briefings
- 5 together.
- 6 What we initially do is we'll set up a command
- 7 post for a particular location, and we use that. It's our
- 8 mobile command center that we use to essentially run the
- 9 investigation. We have a place to be able to talk about
- 10 things privately and be able to work together and share
- 11 information.
- During this investigative process, a deputy
- district attorney is present to provide any support and
- 14 oversight.
- 15 Separation of witnesses, so I want to go into
- 16 that just a touch at this point. As part of the
- 17 investigative process, we do that for an important reason.
- 18 One, we want to maintain what people have seen and their
- 19 memory and keep it secure from other people's, what they've
- 20 seen and what they've heard.
- Oftentimes, in traumatic incidents, things of
- 22 this nature, it's a natural reaction to talk about it with
- 23 other people, but we know that that also tends to start to
- 24 change other people's memory of what they saw in the
- 25 situation. So what we do is we separate people in that

- 1 fashion.
- 2 That's why we also provide an uninvolved
- 3 officer to be with our involved officers so that they can,
- 4 you know, have somebody that they can be with, but also
- 5 that person can monitor them so that they're not talking
- 6 about the situation.
- 7 Q. Do the detectives also become involved in
- 8 crime scene processing with the Forensic Evidence Division?
- 9 A. So part of the work that's done with a
- 10 call-out from the homicide detail is we'll separate out a
- 11 group of detectives who worked at the scene, as far as
- 12 evidence collection, and they work with the criminalists in
- order to document the crime scene. And then we'll have
- 14 another set of detectives that will work on conducting
- 15 witness interviews.
- So we -- we kind of separate people out to
- 17 manage those things.
- 18 O. In an officer-involved shooting where firearms
- 19 were involved, is something called a round count also
- 20 completed by detectives?
- 21 A. Yes.
- 22 0. What is that?
- 23 A. So essentially what we do is the involved
- 24 officers will come to us, and we will take their firearms
- 25 and take their ammunition that they have, and we

- 1 essentially count down their ammunition that they have on
- 2 their person.
- From that, what we do is we determine what or
- 4 how many rounds were fired based upon the ammunition that
- 5 they were carrying on their person.
- 6 Q. So is it known how many bullets the officer
- 7 had when they started their shift, for example?
- A. Yes. So training dictates that the set up of
- 9 our firearms is that we're -- we're provided three
- 10 magazines, one for the gun or pistol, and then two extra
- 11 magazines.
- 12 Each magazine in a Glock 17, which is our
- 13 standard bureau-issued sidearm, is 17 rounds. So typically
- 14 how we're trained is when you load your firearm, you'll
- 15 load the firearm with the round chamber in it so that
- 16 there's one in the barrel, and then that will leave 16
- 17 rounds in the magazine. We then top off that magazine so
- 18 that it has 17 rounds in it again, and we insert that
- 19 magazine.
- 20 So the officer will have 18 rounds in the
- 21 handgun, and then they'll have two additional magazines,
- 22 typically, of 17 rounds.
- Q. And so if you count the number of remaining
- 24 rounds following an officer-involved shooting, you can
- 25 determine how many rounds that officer fired in the

- 1 incident?
- 2 A. Yes.
- Q. Okay. What is a communication restriction
- 4 order?
- 5 A. So a communication restriction order is done
- 6 by our lieutenant in the detective division. Essentially,
- 7 what it is is it's an order telling the witness officers
- 8 and the involved officers to not talk about the incident
- 9 with anybody else.
- 10 Q. Okay. Otherwise, known as a gag order?
- 11 A. Correct.
- 12 Q. Okay. So moving now to this case, on
- 13 September 30th of 2018, were you called out to investigate
- 14 an officer-involved shooting?
- 15 A. Yes, I was.
- 16 Q. What time did you receive the call?
- 17 A. I'm not exactly sure what time I received the
- 18 call. I -- I think I arrived on scene at about 4:50 a.m.
- 19 I believe the crime scene log was established at 0324 hours
- 20 that morning.
- Q. All right. And who called you out?
- 22 A. I was called by Sergeant Hughes, my homicide
- 23 detail sergeant.
- Q. And in that initial call, did you learn that
- 25 an officer-involved shooting had occurred at Southwest

- 1 Third and Harvey Milk, formerly known as Stark Street, in
- 2 downtown Portland?
- 3 A. Yes.
- 4 Q. And is that where you responded?
- 5 A. That is where I responded. We had -- the
- 6 officers had set up a -- the mobile precinct on Southwest
- 7 Third between Southwest Oak and Southwest Harvey Milk
- 8 Street.
- 9 Q. Okay. Who responded with you to the scene?
- 10 A. We had a full complement of detectives from
- 11 the homicide detail. I'm trying to remember everybody that
- 12 was there.
- 13 Essentially, most of the -- the homicide
- 14 detail was there at that point in time. We had several
- 15 detectives, including, I think, a Gresham detective as well
- 16 who responded to assist with interviews and the crime
- 17 scene.
- 18 Q. Okay. And did a member of the district
- 19 attorney's office also respond to the scene?
- 20 A. Yes.
- 21 Q. And homicide sergeants and other command
- 22 staff?
- 23 A. Correct.
- Q. Okay. Could you kind of take us through some
- 25 of the preliminary investigative steps you took in this

- 1 case?
- 2 A. So the first order of business, Sergeant
- 3 Hughes and I, along with Rico Beniga, who's also a homicide
- 4 detective, we conducted a briefing with Sergeant Schmautz
- 5 and Sergeant Wuthrich.
- 6 They were the on-scene sergeants and arrived
- 7 shortly after the officer-involved shooting had taken
- 8 place.
- 9 Q. Are they members of patrol?
- 10 A. Yeah. They're patrol sergeants, I believe,
- 11 for Central Precinct.
- 12 Q. Okay. And at that point, had patrol already
- 13 established a crime scene?
- 14 A. Yes, they had.
- 15 Q. And when you and the other homicide detectives
- 16 arrived, did you assume control of the crime scene?
- 17 A. Yes.
- 18 Q. Had patrol also identified several witnesses?
- 19 A. Yes, they had.
- Q. Okay. And were those witnesses separated
- 21 pursuant to the protocols you just outlined for us?
- 22 A. Yes, they were.
- 23 O. And did those witnesses include both civilian
- 24 and officer witnesses?
- 25 A. Yes.

- 1 O. Were the involved officers also identified?
- 2 A. Yes, they were.
- 3 Q. And were they removed from the scene and
- 4 separated?
- 5 A. Yes.
- 6 Q. And was a noninvolved officer posted to stand
- 7 guard over them?
- 8 A. Yes.
- 9 Q. Ultimately, were communication restriction
- 10 orders, similar to what you just described, given to the
- 11 involved officers in this case?
- 12 A. Yes, they were.
- Q. And who were the involved officers?
- 14 A. The involved officers were Sergeant Britt and
- 15 Officer Livingston.
- 16 Q. What is the name of the person who was shot by
- 17 police in this case?
- 18 A. The name of the person shot by police was
- 19 Patrick Kimmons.
- Q. How was he identified?
- 21 A. He was identified by Officer Asheim, and he
- 22 was identified when he was being loaded into the ambulance.
- Q. Was he also formerly identified, after the
- 24 autopsy, by criminalists with the Portland Police Bureau's
- 25 Forensic Evidence Division?

- 1 A. Yes.
- 2 Q. So you said you received a briefing -- a
- 3 preliminary briefing about the events that had transpired
- 4 that night?
- 5 A. (Nodding head).
- 6 Q. At this point, I'd like to have you take a
- 7 look at the board up here.
- 8 A. Uh-huh.
- 9 Q. Do you see this aerial map of Southwest
- 10 Portland?
- 11 A. Yes.
- 12 Q. Could you come up to the board and indicate
- 13 for us where it was that you responded that night?
- 14 A. So this is the SP Plus parking lot. This
- 15 is -- it says Southwest Stark, but it's also Southwest
- 16 Harvey Milk Street. This is Southwest Third. This is
- 17 Southwest Fourth.
- 18 The mobile command center was set up just back
- 19 here on Southwest Third.
- 20 Q. And we can see along the top of the screen
- 21 here, is that the Burnside Bridge?
- 22 A. Yeah. So the Burnside Bridge is up to the
- 23 north, and Southeast Morrison Bridge is to the south.
- Q. Okay. And can you describe what we're seeing
- 25 here in terms of this map?

- 1 A. So this is a closer-up view of the parking lot
- 2 that's surrounded by Third, Fourth and Stark.
- 3 This building here is the Church of
- 4 Scientology building. This over here on this side, there's
- 5 a nightclub that's called the Golden Dragon, and then over
- 6 here there's also another nightclub.
- 7 Our incident takes place in this parking lot.
- 8 Q. Okay. And did the Church of Scientology have
- 9 cameras mounted on the back side of that building?
- 10 A. Yes. So I'll go into the video canvass that
- 11 we do.
- 12 So any time that we have a crime incident take
- 13 place, part of our work is to do what's called a canvass.
- 14 We look around for cameras and places that would have video
- 15 systems in place for security purposes.
- In this particular location, there are two
- 17 cameras that are located approximately here and
- 18 approximately here, and there's the Church of -- they
- 19 belong to the Church of Scientology. They cover all of
- 20 this parking lot. They also cover outside this street as
- 21 well. They have a camera on this side.
- Q. For the record, you're indicating along
- 23 Southwest Third Avenue?
- 24 A. On Southwest Third Avenue, correct.
- 25 O. Between Stark or Harvey Milk and Oak Street?

- 1 A. Yes.
- Q. Okay.
- 3 A. On the east side of Southwest Third, there
- 4 were camera -- cameras located at several businesses at
- 5 this location, and then to the south on Southwest Harvey
- 6 Milk, the Hi-Lo Hotel also has a camera that covers their
- 7 area just in front of the building.
- Q. Okay.
- 9 A. We weren't able to locate any cameras that
- 10 were directly in the direction of the parking lot on the
- 11 west side.
- 12 O. You mean Fourth Avenue, the west side of the
- 13 parking lot?
- 14 A. Yes, correct.
- 15 Q. Okay. So when you arrived on scene, was
- 16 Mr. Kimmons there or had he already been transported to the
- 17 hospital for treatment?
- 18 A. He had already been transported to the
- 19 hospital for treatment.
- 20 Q. Okay.
- 21 A. And upon arrival, I had learned that he had
- 22 passed away.
- Q. In that initial briefing, did you also learn
- 24 that Mr. Kimmons had shot two people in that parking lot?
- 25 A. Yes.

- 1 Q. And what did you do in response to that
- 2 information?
- 3 A. First of all, we -- we knew that on --
- 4 according to the information that we had, we had heard and
- 5 found out that there was an altercation on this east side
- 6 next to Southwest Third. There was a fight and a shooting
- 7 that took place on this side of the street, on the west
- 8 side of Southwest Third in the parking lot.
- 9 We extended the crime scene once that had been
- 10 determined, and one of the things that we did while we were
- 11 investigating is we conducted a walk-through with Officer
- 12 Moore who was a witness officer, and he helped point out
- 13 where some of the people were located as they -- as they
- 14 had arrived and watched what unfolded.
- 15 And so they also indicated some of the areas
- 16 of fire that they saw take place. So down at this end of
- 17 the street, Patrick Kimmons was here, and essentially his
- 18 direction of fire that he shot was towards the north
- 19 towards the Scientology building.
- 20 Q. Okay. And then where did the second shooting
- 21 occur, according to the information you learned, involving
- the police officers?
- 23 A. So the second shooting that takes place takes
- 24 place just up from -- from this location, and it takes
- 25 place approximately right here.

- 1 So if we split the parking lot in half, one
- 2 shooting takes place here after a fight that takes place.
- 3 And then the second shooting, which involves the officers,
- 4 takes place just back here, probably five or six spaces
- 5 back up.
- 6 Q. Into the parking lot?
- 7 A. In, yeah, towards the west into the parking
- 8 lot.
- 9 Q. Okay. And so when you learned that there are
- 10 suspected people with gunshot injuries, what do you do with
- 11 that information?
- 12 A. So we -- first response is any time a hospital
- 13 receives gunshot wound patients, they notify police. So we
- 14 were informed of that information.
- 15 And so in addition to officer response, we
- 16 also sent a group of detectives to the hospital because
- 17 information -- initial information from this scene said
- 18 that there was likely other people injured who had left the
- 19 location and maybe gone to a hospital.
- 20 Q. And so which hospital did you receive word had
- 21 received people suffering from gunshot wounds?
- 22 A. So Emanuel Hospital made contact with police
- 23 that they had received two subjects who had -- who arrived
- 24 with qunshot wounds.
- 25 O. Okay. And did you send patrol officers and

- 1 ultimately detectives out to investigate --
- 2 A. Yes.
- 3 Q. -- that shooting?
- A. Yes.
- 5 Q. Okay. And did you ultimately learn that the
- 6 two people who had arrived at Emanuel Hospital had been
- 7 shot at this scene at Harvey Milk and Third by Patrick
- 8 Kimmons?
- 9 A. Correct.
- 10 Q. Okay. Now, you mentioned that -- well, first,
- 11 did those two individuals survive their gunshot injuries?
- 12 A. Yes, they did.
- 13 Q. You mentioned that you conducted a
- 14 walk-through with witness Officer Moore?
- 15 A. Correct.
- 16 Q. And during that walk-through and any time
- 17 period following, were you and other detectives able to
- 18 identify items of evidence to corroborate the information
- 19 you had learned in your briefing?
- 20 A. Yes.
- Q. Okay. I'm going to put this board up right
- 22 here. You can help me attach it on that side.
- Okay. And so what do we see here on this
- 24 board?
- 25 A. Okay. So what we're looking at here is a

- 1 basic diagram of the parking lot. Obviously, it's not to
- 2 scale.
- 3 Here we have -- circled are the items of
- 4 evidence that we collected from the scene.
- 5 You'll note, just as a general overview, that
- 6 we have essentially two sets of -- or zones, so to speak,
- 7 of evidence.
- 8 You'll notice that on this side of Southwest
- 9 Third on that west side, partially in the parking lot and
- 10 outside of the parking lot, items of evidence. And then we
- 11 have a clear distinction, separation; and then we have a
- 12 whole other set of items of evidence that are recovered.
- So it clearly delineates there's two different
- 14 areas of involvement going on in that parking lot.
- 15 Q. And does this scene, although not to scale, at
- 16 least note where the vehicles in the parking lot were
- 17 located shortly after the crime occurred?
- 18 A. Correct.
- 19 Q. Okay.
- 20 A. So each of these little boxes here, as you
- 21 see, are -- are vehicles.
- These two vehicles up here are going to be the
- 23 police patrol vehicles, and these vehicles here are
- 24 citizens' vehicles.
- Q. All right. And so did the Forensic Evidence

- 1 Division and detectives document the crime scene
- 2 photographically?
- 3 A. Yes.
- 4 Q. And have you looked at the photographs taken
- 5 from -- or by the Forensic Evidence Division?
- A. Yes, I have.
- 7 Q. If you look up on the board here, the TV here,
- 8 what do we see?
- 9 A. So we're in the parking lot. We're kind of
- 10 central in the parking lot, but on the east side of it.
- 11 We're looking eastbound, and that's Southwest Third that
- 12 we're looking at.
- 13 And across from -- from that patrol car that's
- 14 kind of straight ahead, that one there, that's the Golden
- 15 Dragon straight across.
- 16 Q. Right here?
- 17 A. Yeah.
- 18 Q. Okay. And so if we look at this line, we're
- 19 kind of looking in this general orientation?
- 20 A. Correct.
- Q. Okay. And this photograph is taken in broad
- 22 daylight?
- 23 A. Yes.
- Q. When you responded to the scene, do you
- 25 remember -- well, you said it was about 4:00 in the

- 1 morning?
- 2 A. Yeah.
- 3 Q. 4:30?
- 4 A. Yeah.
- 5 O. Was it dark out still?
- 6 A. Yeah. It was still dark out when I arrived.
- 7 Q. And what is the lighting like in this parking
- 8 lot?
- 9 A. It's general lighting. It's streetlights.
- 10 There is overhead lights that shine down on the parking
- 11 lot.
- 12 O. What are these little white boxes that we can
- 13 see on the ground there?
- 14 A. So those are placard markings. They're raised
- 15 up like that so that when -- when the area is scanned for
- 16 measurement purposes, you can take measurements and also
- 17 identify things at a distance.
- 18 O. Okay. And so what are some of the items of
- 19 evidence that we see marked here in this photograph?
- 20 A. So some of the items that we're looking at
- 21 here, I'll point it out. So underneath the car, you'll
- 22 notice there's a cone. That's a bullet.
- 23 Some of the other items, I think this
- 24 particular item, is a taillight cover that was knocked out
- 25 by gunfire.

- 1 Down here, there's another bullet that was
- 2 located at number 19, and then out here there's some other
- 3 items, as well as some blood spots, that are located out
- 4 here.
- 5 O. What do we see here?
- 6 A. So this is number 32, and down below is a
- 7 spent bullet.
- 8 O. And then on the left rear of this Audi A4,
- 9 there's a sticker noting G.
- 10 A. Yes.
- 11 O. And what is that?
- 12 A. So this is a bullet strike. And so you'll see
- 13 some other of these types of labels.
- 14 Typically, we use those for an item that we're
- 15 going to photograph, but can't necessarily capture except
- 16 for photograph.
- 17 It indicates that it's a bullet strike.
- 18 Q. Okay. And the vehicle we're looking at, if
- 19 you go back to this line diagram, is this one V7 here?
- 20 A. Correct.
- 21 Q. Okay. What are we looking at here?
- 22 A. So here we're looking at this Toyota Corolla.
- 23 And you'll notice down here there's a little sticker, and
- 24 there's another bullet strike right there.
- 25 O. And on our line diagram, is that vehicle 6?

- 1 A. Correct.
- Q. Okay.
- 3 A. That's a -- that's a close-up, again, a bullet
- 4 strike. That's H.
- Q. Okay.
- 6 A. So these are cones located here. The one that
- 7 I'll point out that is important, this is a spent bullet.
- 8 Also to note about this particular bullet as I
- 9 viewed it, as also on number 32, both of those bullets are
- 10 not any ammunition that we would carry.
- 11 Q. "We" being?
- 12 A. "We" being the police.
- They're a bullet that I know from my training
- 14 and experience as something that would come out of a
- 15 revolver.
- 16 Q. Okay.
- 17 A GRAND JUROR: What number is that one?
- THE WITNESS: That's 19.
- 19 A GRAND JUROR: Thank you.
- 20
- 21 BY MR. JACKSON: (Continuing)
- Q. And do the police carry revolvers?
- 23 A. No.
- Q. And then we have another placard here, 20.
- 25 What is that?

- 1 A. Placard 20 is a blood stain.
- 2 O. On the street?
- 3 A. On the street.
- 4 Q. Okay. If we look back at our diagram here, 19
- 5 and 20 oriented in this location here that we see.
- 6 A. Uh-huh.
- 7 Q. What is this?
- A. So this is the spent bullet, number 19. You
- 9 can see it laying there; blood.
- 10 We have some other items that were dropped: a
- 11 person's ID, some money and a lighter, and then we also
- 12 have some more blood droplets over here.
- 0. What is this?
- 14 A. This is the bullet that was recovered.
- 15 Like I said, it's a common bullet that would
- 16 be potentially used in a revolver. This could also be used
- in a semi-auto pistol. But typically for revolvers, they
- 18 will use a -- either fully -- fully copper jacketed bullet,
- 19 and it also is a -- a snub nose or sometimes referred to as
- 20 a wadcutter type of style.
- 21 Q. Is that what you see here marked as number 19?
- 22 A. Yes.
- 23 Q. Okay.
- A. These are blood droplets.
- 25 O. And they're marked by number 20?

- 1 A. Number 20.
- Q. Okay. And what is this?
- A. This is 21, and these are on the part of the
- 4 white line on the roadway. These are further blood
- 5 droplets.
- 6 Q. Okay. Marked here on our line diagram?
- 7 A. Yes.
- 8 Q. What is this?
- 9 A. More blood drops.
- 10 Q. There's some on --
- 11 A. You can see some further out.
- 12 O. What number is that marked?
- 13 A. 23.
- Q. (Indicating)?
- 15 A. Yes.
- 16 Q. So if we look at 20, 21 and 23 in their
- 17 orientation within the crime scene, does it appear that's a
- 18 blood trail?
- 19 A. Yes, it is.
- 20 Q. Okay. If the person -- or shooting occurred
- 21 in the parking lot, as the evidence at least at this point
- 22 in your investigation indicated, that would be a blood
- 23 trail leading away from the parking -- or from the scene?
- 24 A. Yes.
- Q. Okay. And so that was kind of an explanation

- 1 of this portion of the crime scene in the northeast corner
- 2 of the parking lot?
- 3 A. Correct.
- 4 MR. JACKSON: Do the grand jurors have any
- 5 questions about that before we move to the second location?
- A GRAND JUROR: Do we know whose blood the
- 7 droplets belong to?
- 8 THE WITNESS: Yes. The -- let me explain a
- 9 couple of things.
- 10 One of the things that we note about the blood
- 11 droppings is that they stop there. Also, we know that two
- 12 vehicles left this location directly after the shooting,
- 13 and one of those vehicles, as we later determined, was
- 14 parked right there.

15

- 16 BY MR. JACKSON: (Continuing)
- 17 Q. And where did those vehicles go?
- 18 A. Those vehicles went to Emanuel Hospital.
- 19 Q. And did the evidence indicate that they were
- 20 carrying people who had been shot by gunfire?
- 21 A. Yes, they did.
- 22 O. And were bleeding?
- 23 A. Yes.
- 24 O. Okay. And who were the two individuals that
- 25 were transported to the hospital?

- 1 A. So the first person that arrived was Marcel
- 2 Branch, and then the second person to arrive was Dante
- 3 Hall.
- 4 Q. And is Dante Hall also known as Manny Hall?
- 5 A. Yes.
- Q. Okay.
- A. And a word of note with respect to that,
- 8 Patrick Kimmons, who was identified here by Officer Asheim,
- 9 also notes that he's familiar with Patrick Kimmons and
- 10 Dante Hall. He's had personal interaction with both of
- 11 those subjects, and he knows that they're friends.
- 12 Q. Okay.
- MR. JACKSON: Any other questions about this
- 14 portion of the crime scene before we move to the other?
- 15 I don't see any. All right.
- 16
- 17 BY MR. JACKSON: (Continuing)
- 18 Q. So, Detective, could you just give us an
- 19 explanation of what this photograph is here?
- 20 A. Okay. So these are the two patrol vehicles
- 21 that were in the lot prior to the shooting, and that's
- 22 prior to both shootings. These placards here are
- 23 essentially all of the casings that we recovered from the
- 24 officers' guns. And we're, again, looking eastbound
- 25 towards Southwest Third from this location.

- 1 Q. You can see on the right side of this
- 2 photograph, there's a patrol vehicle marked "Supervisor
- 3 Car"?
- 4 A. Yes.
- 5 Q. And so on our line diagram, "Supervisor Unit,"
- 6 is that this vehicle here?
- 7 A. Correct. We're at the west end of the parking
- 8 lot.
- 9 Q. Looking east across?
- 10 A. Looking east across.
- 11 Q. On our line diagram, "Pay Booth," is that the
- 12 orange building you can see on the left side of this screen
- 13 here?
- 14 A. Yes.
- 15 Q. Now, what is the orientation of this
- 16 photograph?
- 17 A. So now the camera has moved up. We're at the
- 18 front of the patrol vehicles looking east. This is the
- 19 casings collection zone.
- Q. Okay. And then can you also see the placards
- 21 noting the gunfire evidence and blood evidence from the
- 22 initial shooting?
- 23 A. Yes, which is further down here at the
- 24 furthest east end of the parking lot.
- 25 O. So on our line diagram, this photo is taken

- 1 basically from the front right bumper of this patrol car
- 2 looking east?
- A. East, correct.
- 4 Q. What is this photograph?
- 5 A. So this is a nighttime shot. This is to give
- 6 you perspective of what it might look like.
- 7 Of course, you have to understand that in this
- 8 particular photograph, there's back lighting from the
- 9 officer's -- from the criminalist's camera system.
- 10 But you'll note that there's general
- 11 streetlights, as well as a streetlight towards the parking
- 12 lot itself shining down in this -- in this direction.
- So for a city area, it's appropriately lit.
- Q. And these photographs we've been looking at,
- 15 were they taken before anything had been moved within the
- 16 crime scene?
- 17 A. Correct.
- 18 Q. So once patrol came on scene, set up the crime
- 19 scene and froze it, in essence --
- 20 A. This is a picture of that.
- 21 O. This is what we're seeing?
- 22 A. Correct.
- Q. Okay. What's this a photo of?
- 24 A. So this is another perspective on the other
- 25 side of those two patrol cars looking southeast. These are

- 1 the casings, 1 through 12, that we identified that came
- 2 from police officer handguns.
- 3 Q. Okay.
- 4 A. So as you can see, there's casing 11 and 12
- 5 here. You'll note on this black Acura, there's a bullet
- 6 strike. There's also another bullet strike here. And then
- 7 in this trunk, there's a bullet recovered.
- Q. Okay. And on the Toyota Camry, silver, parked
- 9 to the south of that Acura there, is there a bullet strike
- 10 on that vehicle as well?
- 11 A. There's another bullet strike right here.
- 12 Q. Okay. What is the item marked by placard
- 13 number 13 in the parking stall there?
- 14 A. So number 13 is a five-shot black-colored
- 15 Taurus revolver.
- 16 Q. And that's located basically in approximately
- 17 the middle of the parking stall that is empty?
- 18 A. Yes.
- 19 Q. And on our line diagram, that's marked right
- 20 here?
- 21 A. Yes.
- Q. Okay. What do we see here?
- A. So here's a close-up view of 13, the revolver,
- 24 and then here are some medical supplies. This is a medical
- 25 kit that we carry, our police officers carry, and then here

- 1 in this planter, there's some eyeglasses.
- 2 And so there's just some medical supplies that
- 3 were from when officers treated Patrick Kimmons for some of
- 4 his injuries.
- 5 Q. So the officers, post-shooting, rendered
- 6 medical aid to Mr. Kimmons?
- 7 A. Yes.
- 0. What's this?
- 9 A. So we're looking south. This is the red truck
- 10 that's in the background from the previous picture. And
- 11 you'll note that there's some bullet strikes. So we have D
- 12 here.
- 13 There's also E on top, which is a --
- 14 essentially a skip across the top of the tonneau. There's
- 15 a portion of a spent bullet down here on 15.
- 16 Q. Marked by 15?
- 17 A. (Nodding head).
- 18 Q. And if we look at our line diagram, is that
- 19 red truck marked as vehicle 5 --
- 20 A. Yes.
- 21 Q. -- here parked along the north side of Harvey
- 22 Milk Street or the south side of the parking lot?
- 23 A. Yes.
- Q. Okay. Turning back to the item marked as
- 25 number 13, the revolver, can you explain a little bit about

- 1 what we're seeing here?
- A. So this is a downward view picture. It's
- 3 obviously a close-up. This is a five-shot revolver. It's
- 4 a .38 caliber.
- 5 We'll see in some further pictures that all of
- 6 the cartridges that are in this gun are empty. So they had
- 7 been shot.
- 8 So as you're looking here, you can see the
- 9 hammer strikes on each of the -- of the bullet casings.
- 10 Revolvers do not eliminate their casings automatically like
- 11 a semi-auto handgun does.
- 12 Q. They don't eject?
- 13 A. Yeah, they're never ejected. You have to
- 14 manually eject them. So they're still in the gun as they
- 15 were when the gun landed in that position.
- 16 Q. And all five rounds were spent?
- 17 A. Yes.
- 18 Q. So before we go through round counts,
- 19 Detective, could you indicate for us on the line diagram,
- 20 based on your investigation, in essence, what your
- 21 understanding is of what occurred?
- 22 A. So what happens from this information is
- 23 there's an altercation that takes place at the east end of
- 24 the lot. Clearly, there's a shooting that takes place at
- 25 this east end of the parking lot. We had blood evidence

- 1 that somebody has been injured from that shooting, as well
- 2 as evidence that rounds had been fired. We find bullets
- 3 here.
- 4 We also note that the direction of fire is
- 5 towards the north. So it's in this -- this direction
- 6 generally.
- 7 In this section here, we have another
- 8 encounter. We have a shooting incident. We know that
- 9 based upon the casings and witness officer information, as
- 10 well as position of the patrol cars, that this is an
- 11 officer-involved shooting.
- 12 Q. Okay. And we'll view it later on in the
- 13 presentation, but was video evidence obtained in this case
- 14 that captured the sequence of events?
- 15 A. Yes.
- 16 Q. And have you observed that video?
- 17 A. Yes, I have.
- 18 Q. Can you explain for us on this diagram the
- 19 general movements of the involved individuals?
- 20 A. Okay. So the video that we recovered, there
- 21 are two cameras, one here and one here, so we're calling
- 22 them X-1 and X-2. They're on the Scientology building, and
- 23 they're at an elevated position. So they look down onto
- 24 the parking lot.
- 25 What takes place is officers arrive here at

- 1 approximately 3:03 a.m., according to the CAD, which is the
- 2 computer-assisted dispatch system.
- 3 This -- essentially, there's Sergeant Britt
- 4 and Sergeant Livingston here.
- 5 Q. Officer Livingston?
- 6 A. Officer Livingston. Excuse me.
- 7 Down here is a group of people. What we see
- 8 is we see the subject walk from here, and he walks this
- 9 direction towards that group of people and engages in a
- 10 fight with one of the people in that group.
- 11 At that point, another person -- later
- 12 determined to be Patrick Kimmons -- fires upon the two
- 13 subjects fighting. He then runs this direction after the
- 14 shooting and starts running towards the west, along these
- 15 cars.
- So over here, Sergeant Britt and Officer
- 17 Livingston, before the fight takes place, start walking the
- 18 parking lot doing patrol.
- 19 Q. Are their lights on?
- 20 A. Yeah. So at 3:03, their vehicles are parked
- 21 here, and one of them at least has their lights going. So
- 22 there's --
- 23 Q. You mean headlights or the full police --
- A. Full police lights, red and blues going.
- 25 Q. Okay.

- 1 A. So that is at 3:03.
- 2 At -- at the point they decide to walk down,
- 3 as they're only a short distance down, the fight takes
- 4 place.
- 5 As that fight unfolds and the shooting takes
- 6 place, they then engage the subject running from east to
- 7 west.
- 8 O. They start running towards the shooter?
- 9 A. They run towards the shooter, and the shooter
- 10 runs towards them, and then they fire upon that shooter.
- 11 Q. Okay. In the location marked with the casings
- 12 on the ground?
- 13 A. In this -- in this location.
- Q. Okay. And where does the shooter, who's been
- 15 identified as Patrick Kimmons, ultimately come to rest?
- 16 A. So Patrick Kimmons ends up resting here.
- Q. And for the record, you're indicating to the
- 18 south of the two empty stalls near the arborvitae hedge?
- 19 A. Yeah, correct.
- 20 Q. Okay.
- 21 MR. JACKSON: Are there any questions about
- 22 that from the grand jurors?
- I don't see any. All right.

25 BY MR. JACKSON: (Continuing)

- 1 Q. So, Detective Posey, did you and Detective
- 2 Beniga conduct round counts of Sergeant Britt and Officer
- 3 Livingston in this case?
- 4 A. Yes, we did.
- 5 Q. And what do we see on the screen here?
- 6 A. So this is a Glock 17, Generation 4. It
- 7 belonged to Officer Livingston. This is also the round
- 8 that was currently chambered in the gun.
- 9 This is Officer Livingston's magazine from the
- 10 gun. What you'll note is that it's minus several rounds.
- 11 It's minus five rounds from the typical 17 rounds that are
- 12 contained in that magazine.
- 13 Q. Okay. And so these rounds here are unfired or
- 14 unspent --
- 15 A. Correct.
- 16 Q. -- bullets?
- 17 A. Right, and they're just in a tray to keep them
- 18 in order.
- 19 Q. And there's 12 of them?
- 20 A. Yes.
- Q. And that magazine, when fully loaded, holds 17
- 22 rounds?
- 23 A. Yes.
- Q. So it's missing five?
- 25 A. It's missing five.

- Q. What conclusion did you come to based on that?
- 2 A. Based on that, Officer Livingston fired five
- 3 rounds.
- 4 Q. Okay. Did you also check Officer Livingston's
- 5 back-up magazines?
- 6 A. Yes.
- 7 Q. And was there anything of note about them?
- 8 A. No. He had two back-up magazines, and they
- 9 were full.
- 10 Q. Fully loaded?
- 11 A. Fully loaded with 17 rounds each.
- 12 This is Sergeant Britt's firearm. It's also a
- 13 Glock 17, Generation 3, and that bullet that you see there
- 14 was in the chamber.
- 15 Q. Okay.
- 16 A. This is the magazine from that pistol. Noted
- 17 is only 10 rounds in the tray. That was the 10 rounds that
- 18 were in that magazine.
- 19 Q. Fully loaded, there would have been 17?
- 20 A. Correct.
- Q. And so what conclusion did you come to based
- 22 on this evidence?
- 23 A. Sergeant Britt fired seven rounds.
- Q. So between the two officers, 12 total shots
- 25 were fired?

- 1 A. Correct, 12 total shots.
- Q. And how did that information correspond to the
- 3 casings you located at the scene?
- 4 A. We recovered 12 casings from the scene, which
- 5 matched those 12 rounds that we found missing from their
- 6 service pistols.
- 7 Q. You already spoke about the video canvass that
- 8 was conducted in this case.
- 9 Did you review the video that was recovered?
- 10 A. Yes.
- 11 Q. And could you explain briefly for us where you
- 12 saw video -- or where video was recovered from and what it
- 13 showed?
- 14 A. So we recovered video from Church of
- 15 Scientology, so we had those camera angles. We also
- 16 recovered a video image from the Hi-Lo Hotel.
- 17 We attempted to recover the video imaging from
- 18 the Golden Dragon. They had several cameras on that east
- 19 end of Southwest Third. We were not able to get any
- 20 recorded video from them.
- 21 From the information we have is they have
- 22 cameras, they have monitoring, but they do not record.
- 23 Q. Is there a deli on the southeast corner of
- 24 Third and Harvey Milk?
- 25 A. Yes, which is located approximately right

- 1 here. It has a camera for the outside, but it's not
- 2 recorded.
- Q. And I said southeast, but I actually meant the
- 4 northeast corner of the intersection.
- 5 A. Correct.
- 6 Q. Okay. So that camera did not record.
- 7 You recovered video from the Hi-Lo Hotel?
- 8 A. From the Hi-Lo Hotel.
- Just a note about the Hi-Lo Hotel, it's what's
- 10 called a bubble view. It's a very wide angle. So it
- 11 covers a lot of territory, but it also is small in nature.
- 12 It is directed towards the sidewalk. And though we can see
- 13 the section --
- 14 Q. Which sidewalk?
- 15 A. I'm sorry. The south sidewalk of Harvey Milk
- 16 Street, so down here on the diagram next to the Hi-Lo
- 17 Hotel.
- 18 So it covers a portion of the parking lot, but
- 19 it's at a great distance.
- Q. Or appears --
- 21 A. Appears to be a great distance based on the
- 22 view.
- Q. And is it kind of a fisheye orientation?
- 24 A. Yes. That would be another type of way to
- 25 describe it.

- 1 Q. So the image you see is actually distorted
- 2 from what you would -- your eye would actually see?
- 3 A. Yes.
- 4 Q. Okay. Noted on our diagram is an arborvitae
- 5 hedge that runs along the south side of the parking lot and
- 6 up along the southeast side of it?
- 7 A. Uh-huh, yes.
- 8 O. How tall is that arborvitae hedge?
- 9 A. I think at the most, it's three feet tall.
- 10 O. So it's not like a full size, 12, 15 feet
- 11 tall?
- 12 A. Yes. It's like waist level, approximately.
- 13 Q. But would it be tall enough to obscure, like,
- 14 the level of a car hood?
- 15 A. Yes.
- 16 Q. Headlights, that level?
- 17 A. Yes.
- 18 Q. Okay. And so based on your review of the
- 19 video evidence obtained in this case, did you come to a
- 20 conclusion about which ones really captured the most
- 21 information about what happened?
- 22 A. The best video of the parking lot was captured
- 23 by the Church of Scientology cameras. They have one that's
- 24 looking to the southeast, and you have one that's looking
- 25 to the southwest. It covers, essentially, the entire

- 1 parking lot.
- Q. Okay. Detective, I'm going to play the video
- 3 now. You've observed this video?
- 4 A. Yes, I have.
- 5 Q. Do you see on the screen here the paused
- 6 video?
- 7 A. Yes.
- 8 Q. Could you come up and kind of explain what
- 9 we're seeing?
- 10 A. So --
- 11 Q. Before you do that, would it help to turn the
- 12 lights off to be able to see it?
- A. Yeah.
- Q. Okay. So what are we seeing here, Detective?
- 15 A. So this is -- I'll just point it out here.
- 16 We're looking from camera X-1 that's pointed towards --
- 17 yeah, pointed towards the southeast.
- 18 This is the Golden Dragon. This is the
- 19 grocery deli, Cameron's Books. There's a group of people
- 20 here in the middle on this far east end of the parking lot.
- Q. Do you see the date and the time stamp on the
- 22 top right corner of this video?
- 23 A. Yes. It's 3:07:35.
- 0. On what date?
- 25 A. On September 30th.

- 1 Q. Okay. 2018?
- 2 A. 2018.
- 3 Q. And did you determine or other detectives who
- 4 retrieved this video determine whether that date and time
- 5 stamp is accurate?
- A. My understanding is that it's approximately 10
- 7 minutes, five to 10 minutes off.
- 8 O. Okay. In which direction?
- 9 A. Fast, so it's ahead.
- 10 Q. Okay.
- 11 (Video playing)
- 12 O. Okay. So we've moved ahead to what is noted
- on the time stamp as 3:11 a.m. Could you kind of orient us
- 14 to what we're seeing in this frame?
- 15 A. So we have a group of individuals at the
- 16 furthest northeast corner of the parking lot over here.
- 17 You'll note that this particular car at the
- 18 furthest end in the lot still, that is a black Camaro. We
- 19 have a couple other individuals here. And then over here,
- 20 there's the black Acura and a dark-colored Durango, and
- 21 this is an open spot right here where there's some people
- 22 standing.
- Q. And so what is it that we're going to see as
- 24 we play this video?
- 25 A. So as we play this video, we're going to see a

- 1 subject walk from here to this group of people who have
- 2 moved over here. You're going to see Sergeant Britt and
- 3 Officer Livingston walk down in the middle of the parking
- 4 lot here.
- 5 Q. And then what are we going to see after that?
- 6 A. Then you'll see a fight take place here and a
- 7 shooting take place here. Then you'll see the officers
- 8 responding to both the fight and then the shooting, and
- 9 then you'll see a subject run this direction, turn this
- 10 direction as the officers are engaging that subject that
- 11 just conducted the shooting.
- 12 Q. Okay. Do you actually see, as the shooting
- 13 suspect moves away from the group, a muzzle flash in this
- 14 video?
- 15 A. Yes, you do.
- 16 Q. We'll play the video now.
- 17 (Video playing)
- 18 Q. There's no audio for this video, right?
- 19 A. That is correct.
- 20 (Video playing)
- 21 O. Okay. Now we're at 3:12 and 14 seconds on the
- 22 time stamp.
- 23 Detective, has the shooting occurred at this
- 24 point?
- 25 A. Yes.

- 1 Q. Both shootings?
- 2 A. Both shootings.
- Q. Okay. I'm going to back this up and kind of
- 4 walk through it.
- We'll start here at 3:11:27 on the time stamp.
- 6 (Video playing)
- 7 Q. We'll pause at 3:11:49. What do we see here?
- 8 A. So you'll note right here, this person, who
- 9 was later identified as Marcel Branch, he's walking towards
- 10 this group of people here. We later determined that one of
- 11 those people here is Dante Hall.
- 12 Also, in amongst this group is Patrick
- 13 Kimmons.
- 14 (Video playing).
- 15 Q. We're at 3:11:58.
- 16 A. Right here, the fight begins. Marcel Branch
- 17 essentially punches Dante Hall. We later determined during
- 18 our investigation that there's some type of issue between
- 19 the two of them.
- 20 Q. Okay. And is Patrick Kimmons in that group as
- 21 well at this point?
- 22 A. Patrick Kimmons is in amongst that group.
- 23 Q. Okay.
- 24 (Video playing)
- Q. As we click through frame by frame, can you

- 1 see here at 3:12:01 people starting to scatter?
- 2 A. There's a marked change in the group as
- 3 Patrick Kimmons begins firing upon the two subjects
- 4 fighting.
- 5 Q. What can you see in the lower right corner?
- 6 A. You see Sergeant Britt, and I'm not sure which
- 7 one is which at this point, but Sergeant Britt and Officer
- 8 Livingston are right here.
- 9 Q. So this is occurring literally right in front
- 10 of them?
- 11 A. Right in front of them.
- 12 (Video playing)
- 13 Q. Okay. And now at 3:12:04.
- 14 A. Patrick Kimmons, the two officers, they're now
- 15 engaging that person. You'll notice that everybody over
- 16 here has scattered, but you'll note that Marcel Branch is
- 17 making his way back to his car, which is parked right here.
- 18 (Video playing)
- 19 Q. Okay. And at this point, 3:12:08, Mr. Kimmons
- 20 is down?
- 21 A. Yes. He's fallen down behind this Durango
- 22 next to the hedge.
- 23 (Video playing)
- A. And just to note, you can't see what action is
- 25 taking place on this side because the Durango blocks our

- 1 view.
- Q. From this camera angle, you mean?
- 3 A. Yes.
- 4 Q. Okay.
- 5 (Video playing)
- 6 Q. So from this point here, 3:12:01 where
- 7 Mr. Kimmons can clearly be seen shooting, to the point that
- 8 he ultimately comes to rest is a matter of seconds?
- 9 A. Yes.
- 10 Q. 3:12:01 to 3:12:08. So approximately seven
- 11 seconds from when the officers would have seen Mr. Kimmons
- 12 firing on this group of people to the engagement being
- 13 over?
- 14 A. Yes.
- 15 (Video playing).
- 16 A GRAND JUROR: Can you remind me, were all
- 17 five spent rounds up where the fight was?
- 18 THE WITNESS: Yeah -- well, we don't know how
- 19 many rounds at -- given what we found here, we didn't find
- 20 five rounds.
- 21 A GRAND JUROR: Okay.
- 22 THE WITNESS: We found -- I think we recovered
- 23 three rounds, three or four rounds total. One was a
- 24 partial. There was two -- two that were still together,
- 25 and then there was one recovered from Dante Hall.

- 2 BY MR. JACKSON: (Continuing)
- 3 Q. From his body?
- 4 A. From his body, yeah, his leg.
- 5 (Video playing)
- 6 Q. And as we let this play, what do you see
- 7 happening right up here?
- 8 A. So this vehicle that's parked here is going to
- 9 take off that direction, and then you'll note that the
- 10 black Camaro that's parked here was going to drive out
- 11 right behind him.
- One of the things that you'll note is the
- 13 person that gets in the black Camaro is limping.
- 14 (Video playing)
- 15 Q. Are those two vehicles later observed at
- 16 Emanuel Hospital?
- 17 A. Yes.
- 18 Q. And did the two individuals, Marcel Branch and
- 19 Dante Hall, get out of those vehicles?
- 20 A. Yes.
- Q. At Emanuel Hospital?
- 22 A. At Emanuel Hospital.
- 23 A GRAND JUROR: That person that just ran
- 24 across, who was that? Is that an officer?
- THE WITNESS: No. The officers are still

- 1 here. They're dealing with some of the people that are in
- 2 the vehicles here, as well as the subject that's down.
- There were a number of people around,
- 4 including in this zone here. And so what happens is some
- 5 people run away because they're just trying to get away
- 6 from the situation. Some of them later end up being our
- 7 witnesses that we do talk to.

- 9 BY MR. JACKSON: (Continuing)
- 10 O. Let's run this one more time.
- 11 (Video playing)
- 12 Q. Okay. Detective, referencing back to the
- 13 crime scene photos we observed earlier, at this portion of
- 14 the scene, there was evidence of a bullet strike in this
- 15 vehicle here that went into the trunk?
- 16 A. Yes.
- Q. A skip shot off of the rear passenger door?
- 18 A. Yes.
- 19 Q. And a round that entered the passenger
- 20 compartment of this Camry, the vehicle parked to the south
- 21 of the Acura?
- 22 A. Yes.
- 23 Q. Did you find any evidence in the course of
- 24 your investigation to suggest the officers fired in any
- 25 directions other than right at the corner of this Acura and

- 1 then to the south towards the red truck parked here?
- 2 A. No.
- 3 Q. So would that suggest that the officers did
- 4 not start firing until Mr. Kimmons had essentially reached
- 5 this back corner, rear passenger corner of the Acura?
- 6 A. Correct.
- 7 Q. Are you able to tell how far he was from the
- 8 officers when he reaches that position?
- 9 A. So each stall on this side of the parking lot,
- 10 based on measurements from our Leica scan, is approximately
- 11 eight feet in width. So they're approximately eight to 10
- 12 feet from Patrick Kimmons.
- 13 Q. At the point that the evidence shows they made
- 14 the decision to begin firing?
- 15 A. Yes.
- A GRAND JUROR: What is it likely that they
- 17 would be saying at that point?
- 18 THE WITNESS: They would be saying --
- MR. JACKSON: Well, Detective, let me caution
- 20 you not to speculate.
- 21 THE WITNESS: That's true.
- 22 A GRAND JUROR: What would you expect
- 23 normally?
- 24 THE WITNESS: Based on my training and
- 25 experience, "Stop. Police. Drop the weapon," all of those

- 1 types of things.
- 2 MR. JACKSON: And later on in our
- 3 presentation, we'll hear from the witness --
- 4 A GRAND JUROR: I didn't know if there was a
- 5 protocol that --
- 6 MR. JACKSON: So we'll actually hear from a
- 7 member of the Portland Police Bureau training division that
- 8 can answer some of those questions.
- 9 A GRAND JUROR: Thank you.
- 10 MR. JACKSON: All right. Before we turn to
- 11 the reverse angle or the other angle from the Church of
- 12 Scientology building, does anybody have any questions about
- 13 this or wish to see it again?
- 14 All right. I don't see anyone.
- 15
- 16 BY MR. JACKSON: (Continuing)
- 17 Q. Okay. Detective, what are we seeing here?
- 18 A. All right. So we're now looking at the other
- 19 camera view. This is X-2, which is on the -- pointing
- 20 towards the west and south of -- at the parking lot.
- 21 You'll note that down here is the furthest
- 22 west end of the parking lot here, and this is the
- 23 intersection for Southwest Harvey Milk and Southwest
- 24 Fourth.
- 25 (Video playing)

- Q. And we're now at 3:07 on the time stamp, which
- 2 also states September 30th, 2018, 3:07:40?
- 3 A. Correct.
- Q. What do we see pulling into the lot here?
- 5 A. You'll see that the police vehicle is at the
- 6 east end with its overhead lights on.
- 7 (Video playing)
- O. Okay. As we move ahead now to 3:09:04, what
- 9 do we see now?
- 10 A. We now have two vehicles, and they're
- 11 positioning further into the parking lot with their
- 12 overhead lights on.
- 13 (Video playing)
- Q. Now we're at 3:10:43. What's occurring at
- 15 this point?
- 16 A. The police vehicles are moving further into
- 17 the -- into the parking lot.
- 18 Q. Repositioning next to the ticket booth or the
- 19 pay booth?
- A. Yes, yes.
- 21 (Video playing)
- Q. All right. Now at 3:11:50, what do we see
- 23 beginning to occur?
- 24 A. Sergeant Britt and Officer Livingston are
- 25 beginning to walk down to the east side of the parking lot.

- 1 You can see them right there and there.
- 2 (Video playing)
- Q. Okay. As we walk back through this, can you
- 4 describe what you're seeing in terms of the officers'
- 5 movements? We're starting at 3:12:00.
- 6 A. So there's -- there's actually two reactions
- 7 that you'll notice with the officers. You'll note that
- 8 they see the fight take place, and they start to engage to
- 9 move towards that, but then there's a marked reaction.
- 10 Essentially, one of them is seeking to find
- 11 cover because that's when we -- it looks like they're
- 12 reacting to the shots being fired.
- 13 Q. Okay. That was at 3:12:02?
- 14 A. Right.
- 15 Q. Now we're at 3:12:03. What are we seeing now?
- 16 A. So we see that one of them has drawn their
- 17 firearm. That's what it appears.
- 18 Something to note is that all of the casings
- 19 that we recovered, there were no casings in this area.
- 20 They were -- they were all over here next to these -- to
- 21 these vehicles.
- 22 (Video playing)
- A. We have Patrick Kimmons, who's running towards
- 24 them.
- 25 (Video playing)

- 1 Q. Here at 3:12:06, you can see the officers
- 2 positioned to the west side of that open parking space and
- 3 Mr. Kimmons on the east side of that open parking space?
- 4 A. Yeah. So Patrick Kimmons, the officers.
- 5 (Video playing)
- Q. And then at 3:12:09, does he appear to be
- 7 down?
- 8 A. Yes.
- 9 Q. Mr. Kimmons?
- 10 A. Yes.
- 11 Q. Okay.
- 12 A. So as you recall, the five-shot revolver is
- 13 recovered down in between these two vehicles.
- 14 You can note some of his -- Patrick Kimmons'
- 15 body motion. He has it in his hand at some point in there
- 16 and discards it.
- 17 Q. Let's watch it one more time here at full
- 18 speed.
- 19 (Video playing)
- 20 Q. Okay.
- 21 MR. JACKSON: Do you folks have any questions
- 22 about that camera angle or wish to see it again?
- 23 A GRAND JUROR: Have you been able to
- 24 determine from the video when the officers started firing,
- 25 like at what frame or second?

- 1 THE WITNESS: From what I can determine,
- 2 there's -- every indication indicates that they started
- 3 firing as he's still facing them at this corner and then --
- 4 and as he's making the turn.
- 5 As you'll later see, with the injuries that
- 6 Patrick Kimmons ends up having, it's consistent with him
- 7 making a turn away from them, but it's still as he's facing
- 8 them. So it's right at this corner here because there --
- 9 that's the closest apex.
- 10 We didn't find any evidence of gunfire from
- 11 the officers down -- you know, downrange towards this
- 12 direction.

- 14 BY MR. JACKSON: (Continuing)
- 15 Q. To the east?
- 16 A. To the east.
- 17 All of the direction of fire was southeast,
- 18 basically at the back of that -- that car there, from what
- 19 we can see.
- 20 Q. And then also to the south with the rounds
- 21 impacting the red truck?
- 22 A. Correct. And there's a couple of points where
- 23 you can see some smoke from the firearms, and that is
- 24 consistent timing for -- at this location is where the
- interaction, the shooting, takes place.

- 1 THE WITNESS: Does that help?
- 2 A GRAND JUROR: Yes.
- MR. JACKSON: Any other questions about this
- 4 camera angle?
- 5 (No response)

- 7 BY MR. JACKSON: (Continuing)
- Q. Detective, so you've already talked about how
- 9 officers, and ultimately detectives, went out to Emanuel
- 10 Hospital in response to their report that two shooting --
- or two people suffering from gunshot wounds had arrived?
- 12 A. Yes.
- Q. And is this a photograph taken by one of the
- 14 security staff at the hospital of the black car that
- 15 dropped off one of the shooting victims?
- 16 A. Yes.
- 17 Q. And is that car leaving the area?
- 18 A. Correct.
- 19 Q. Okay. And is this vehicle consistent with the
- 20 vehicle you see leaving the scene shortly after the
- 21 shooting occurred?
- 22 A. Yes.
- Q. And then what is this vehicle here?
- A. This is a blue Chevy Cobalt. This was Marcel
- 25 Branch's vehicle.

- 1 Q. And so back to the black Chevy, was it Dante
- 2 Hall that was dropped off out of that vehicle?
- 3 A. Yes.
- Q. And what do we see here on -- back to the blue
- 5 Cobalt, what is this?
- 6 A. This is -- we're looking at the driver's side
- 7 of the blue Cobalt, and you can see blood smears and then
- 8 blood on the interior of the blue Chevy Cobalt.
- 9 Q. Is this the vehicle that Marcel Branch had
- 10 driven himself to the hospital in?
- 11 A. Yes.
- 12 Q. And is this a photograph of Marcel Branch and
- 13 his gunshot injuries in the hospital?
- 14 A. Yes.
- 15 Q. We see one in the abdomen and one in the upper
- 16 right arm?
- 17 A. Correct.
- 18 Q. Did you subpoena medical records from Emanuel
- 19 Hospital for Dante Hall and Marcel Branch?
- 20 A. Yes, I did.
- 21 Q. And upon review of those medical records,
- 22 starting with Marcel Branch, did it indicate that he was,
- 23 in fact, admitted for treatment of gunshot injuries on
- 24 September 30th, 2018?
- 25 A. Yes.

- 1 Q. And what are the injuries noted there that
- 2 were treated?
- 3 A. Gunshot wound to the abdomen and gunshot wound
- 4 to the right arm.
- 5 O. Okay. And then moving on to Dante Hall's
- 6 medical records, was he also admitted for treatment of a
- 7 gunshot injury on September 30th, 2018?
- 8 A. Yes, he was.
- 9 Q. To Emanuel Hospital?
- 10 A. Yes.
- 11 Q. And what was the injury documented there?
- 12 A. Gunshot wound to the left leg and bullet
- 13 recovered from that leg.
- 14 Q. Okay.
- 15 A. And just a note, Dante Hall's injury, he had a
- 16 fractured femur on his left leq.
- 17 And then Marcel Branch was -- both of the
- 18 injuries for Marcel Branch were through and through. So
- 19 two injuries on his right arm and then the injury to his
- 20 abdomen went through. And I'm not exactly sure which
- 21 direction it went, but there's also an injury to his back
- 22 on the left side, which damaged his spleen and small
- 23 intestines.
- Q. Okay. Was security footage obtained from
- 25 Emanuel Hospital?

- 1 A. Yes.
- Q. Let's pause a moment while the player loads.
- 3 Detective, is this the entryway into Emanuel
- 4 Hospital?
- A. Yes. It's one of them.
- 6 Q. And are we going to see Marcel Branch here
- 7 come running in as the black Chevy pulls up into the
- 8 parking lot --
- 9 A. Correct.
- 10 Q. -- entryway?
- 11 A. Correct.
- 12 (Video playing)
- Q. Were you able to observe, as Mr. Branch was
- 14 running up, that he's kind of holding his side?
- 15 A. Yes.
- 16 (Video playing)
- 17 Q. Is this individual being wheeled into the
- 18 hospital on the gurney, is that Dante Hall?
- 19 A. Yes.
- Q. Did detectives actually go out to the hospital
- 21 and identify these two individuals?
- 22 A. Yes, they did.
- 23 (Video playing)
- Q. Is this hospital security coming out of the
- 25 building here?

- 1 A. Yes. He's taking a picture.
- Q. Okay. All right.
- MR. JACKSON: Do grand jurors have any
- 4 questions of Detective Posey about the investigation or the
- 5 crime scene evidence collected there from or identified
- 6 within or the video evidence?
- 7 A GRAND JUROR: I'm assuming we're going to
- 8 hear more about the driver of that Chevy or no? What's
- 9 their involvement? They just kind of drove off.
- 10 MR. JACKSON: That person appears in the video
- 11 to drive away from the hospital.
- 12 A GRAND JUROR: Are they a witness or what is
- 13 the --
- 14 THE WITNESS: We're not sure at this point.
- 15 It's -- it's possible.
- MR. JACKSON: Any other questions of Detective
- 17 Posey?
- I don't see any.
- 19 Let's go off the record and take our
- 20 mid-morning break.
- 21 (Pause in proceedings: 10:43-10:58 a.m.)
- 22
- 23
- 24
- 25

1 MATTHEW MENA

- 2 was thereupon called as a witness on behalf of the State
- 3 and, after having been duly sworn, was examined and
- 4 testified as follows:

- 6 EXAMINATION
- 7 BY MR. JACKSON:
- 8 Q. Would you please state and spell your name for
- 9 the Grand Jurors?
- 10 A. Matthew Mena, M-A-T-T-H-E-W, M-E-N-A.
- 11 Q. I want to take you back to September 30th of
- 12 2018, in the very early morning hours.
- Were you out that night?
- 14 A. Yeah.
- 15 Q. Do you remember what part of town you were in?
- 16 A. Downtown.
- 17 Q. And was a person named Garrett Carroll with
- 18 you?
- 19 A. Yes.
- Q. And who is that to you?
- 21 A. Friend.
- 22 O. A friend of yours?
- A. Yeah.
- Q. Okay. At about 3:00 in the morning, were you
- 25 and Mr. Carroll in front of the Golden Dragon --

- 1 A. Yeah.
- Q. -- in Southwest Portland?
- 3 A. Yes.
- 4 Q. Okay. I'm just going to pull up this
- 5 photograph.
- 6 Can you see, Mr. Mena, on the board here, is
- 7 this an aerial photograph of what was formerly Stark
- 8 Street, now Harvey Milk, Third and Fourth, and the Golden
- 9 Dragon is in this area right here?
- 10 A. Yeah, yeah.
- 11 Q. Is that approximately where you were?
- 12 A. Yeah.
- Q. Were you inside or outside of the building?
- 14 A. I was outside.
- 15 Q. Would you come up to the board here and just
- 16 point to where approximately you were standing?
- 17 A. (Witness complying).
- 18 Q. Okay. Right about there?
- 19 A. Yeah.
- Q. Just on the sidewalk?
- A. Yeah.
- Q. All right. While you were standing out there,
- 23 do you recall some police patrol vehicles entering the
- 24 parking lot to the west of your location?
- 25 A. I didn't notice them until the situation

- 1 happened.
- Q. Okay.
- 3 A. Yeah.
- Q. What did you notice about them, if anything,
- 5 the patrol vehicles?
- 6 A. They were parked in that little parking area
- 7 there. It seemed like their lights were on.
- Q. When you say "their lights were on," do you
- 9 mean headlights or overhead lights?
- 10 A. Overhead police lights.
- 11 Q. Do you remember how many vehicles you saw
- 12 there?
- A. Two, two SUVs.
- 14 Q. Two police SUVs?
- 15 A. Yeah.
- 16 Q. Okay. Could you kind of walk us through what
- 17 you remember occurring?
- 18 A. So I heard two gunshots. I proceeded to look
- 19 across the street. I saw a gentleman who was seemingly
- 20 holding a gun. He ran off into the parking lot.
- 21 A woman who was on the sidewalk across the
- 22 street from me, she hobbled over into a car. I didn't see
- 23 what direction the car went off, but the car took off.
- 24 The gentleman ran into the parking lot. The
- 25 officers pretty much ran towards him. He saw them running

- 1 towards him, so he made a beeline into where the parked
- 2 cars are on the west side there.
- 3 And once he reached one of the cars, the
- 4 officers came from behind him and shot him.
- 5 Q. Okay. When you -- when you first heard those
- 6 two gunshots and looked across the street, you said you
- 7 were standing here on the east side of Third Avenue?
- 8 A. Yeah.
- 9 Q. In this general area?
- 10 A. Yeah.
- 11 Q. When you looked across the street, do you
- 12 remember where it was that you saw the person with the gun?
- 13 A. So he was -- he was right there, in the
- 14 opening there.
- 15 Q. (Indicating).
- 16 A. Yeah.
- 17 Q. In the drive aisle on the --
- 18 A. Yeah. And the car was parked slightly --
- 19 slightly -- go up slightly.
- Q. (Indicating).
- 21 A. Yeah, to the right. It didn't look like it
- 22 was in a space, like a designated space. It just looked
- 23 like it was parked there, though.
- Q. Okay. Is that the car that the person that
- 25 you saw apparently shot get into?

- 1 A. Yeah.
- Q. Okay.
- 3 A. I don't know if they were shot. They were
- 4 just -- they were just, like, on one leg, so that's what I
- 5 assumed, but I didn't actually see them get shot.
- 6 Q. But based on what you were seeing --
- 7 A. Yes.
- 9 A. Yeah.
- 10 Q. Okay. When you first looked over, could you
- 11 describe exactly what it was that you saw happening?
- 12 A. When I first looked over?
- 13 Q. Uh-huh.
- 14 A. So the woman was behind the vehicle. She
- 15 hobbled over, got in the back seat.
- 16 He proceeded to -- he proceeded just to, like,
- 17 look around and run up into the parking lot.
- 18 Q. Did you know any of these people?
- 19 A. No.
- Q. Okay. And so when you say "a woman," are you
- 21 saying that because you knew it was a woman or it just
- 22 looked like a woman?
- 23 A. It looked like a woman, yeah.
- 24 O. Okay.
- 25 A. I don't know for sure if it was a woman.

- O. Okay. The individual that had the gun in his
- 2 hand, how was he moving, away or toward, or how was he
- 3 moving with regard to the group of people?
- 4 A. So he was facing them when I looked over. And
- 5 then he made like a -- kind of like a -- he made like a
- 6 weird movement to, like, spin around and take off running
- 7 afterwards.
- 8 O. And did you see him running -- so if this way
- 9 is north, was he running to the south or was he running a
- 10 different direction?
- 11 A. He ran into the -- into the parking lot.
- 12 Q. To the west?
- 13 A. Yeah.
- 14 Q. Okay. And did you see a gun in his hand?
- 15 A. When I looked across the street, it seemed
- 16 like there was a gun in his hand, yeah. I didn't see him
- 17 drop the gun at any point, drop anything at any point.
- 18 O. Okay.
- 19 A. So I assumed that he had a gun on him until --
- 20 until he fell to the ground.
- Q. As he was running into the parking lot, did
- 22 his running motion appear consistent with holding a gun in
- 23 his hand to you?
- 24 A. I don't know. I don't know. I don't know.
- 25 If they had a gun in their hand, I think everybody would be

- 1 a little different. But he was making pretty intense hand
- 2 motions while he was running.
- Q. Okay.
- 4 A. Like pumping, just really trying to get away.
- 5 Q. Really running?
- 6 A. Yeah.
- 7 Q. Okay. When did you notice that the police
- 8 officers were actually out of their patrol vehicles?
- 9 A. I think they were -- I -- I don't really
- 10 remember. It's kind of fuzzy, but they might have been out
- 11 the entire time, out of their vehicles.
- 12 Q. Okay. When do you first remember actually
- 13 seeing them running up through the parking lot as you
- 14 described it?
- 15 A. Almost immediately, almost immediately.
- So when I looked and I saw him running, I
- 17 could see the police officers already approaching him as he
- 18 was running into the parking lot.
- 19 And I don't know if he saw them or not, but at
- 20 a certain point, the officer did see him, and then he
- 21 turned left into the cars --
- 22 Q. Okay.
- 23 A. -- to try to avoid them.
- Q. That's what it appeared to you?
- 25 A. Yes.

- 1 Q. Okay. Do you remember noting anything about
- 2 the sound of the gunshots that you heard from this
- 3 northeast area of the parking lot?
- 4 A. Small caliber rounds potentially, not a -- not
- 5 a biq qun.
- 6 Q. Okay. Do you have experience with firearms to
- 7 know kind of generally what gunshots sound like?
- 8 A. Not much, no.
- 9 Q. Okay. Do you remember when detectives spoke
- 10 to you shortly after this incident about it?
- 11 A. Do I remember speaking to detectives about
- 12 this situation?
- 13 Q. Yeah.
- 14 A. Yeah.
- 15 Q. Okay. And do you remember thinking at that
- 16 point at least or indicating that it may have been a
- 17 revolver type of a weapon?
- 18 A. That's what it looked like to me. It looked
- 19 like it was all -- yeah, that's just what it appeared like.
- 20 Q. Okay.
- 21 A. I may be wrong.
- Q. Sure. But that's -- and are you talking about
- 23 when you looked over and you saw the guy with the gun --
- A. Yeah.
- 25 O. -- that's what it looked like?

- 1 A. It looked like he had a small little, all
- 2 silver revolver in his hand. It could have been a pistol,
- 3 but I'm pretty sure it was a revolver.
- 4 Q. Okay.
- 5 A. But I don't know for sure, like I said.
- 6 Q. So you said when you looked over and you saw
- 7 this happening, the police were already there with their
- 8 lights on?
- 9 A. Uh-huh, yeah.
- 10 Q. What was your -- how did that strike you that
- 11 this was happening with the police presence?
- 12 A. I was surprised. It seemed like -- it just
- 13 seemed strange that somebody would be so bold to do this
- 14 right when the police were there.
- 15 I don't know. Maybe they didn't notice the
- 16 police were there. I don't know.
- 17 Q. But it surprised you that it would happen?
- 18 A. Yeah, definitely a surprise.
- 19 Q. As the person that you described running into
- 20 the parking lot approached where the officers were running,
- 21 were they kind of converging together? Is that how you
- 22 remember it?
- 23 A. Yeah. And then I assume he noticed this, and
- 24 then that's when he decided to dart left.
- 25 O. When you saw him turn?

- 1 A. Yeah.
- Q. When you say "left," you mean to the south?
- 3 A. Yeah.
- 4 Q. Okay. Do you remember seeing any particular
- 5 movements by the individual as he was making that turn?
- 6 A. No. He was just running away.
- 7 Q. And how about as he had made the turn and was
- 8 proceeding between the parked cars?
- 9 A. So he -- it seemed like he looked back at the
- 10 officers, just to maybe see how close they were to him.
- 11 And then while he was doing that, he was shot.
- 12 Q. Okay. And when you say "he looked back," do
- 13 you mean -- could you describe what specific body movements
- 14 you actually saw?
- 15 A. So he was running full motion, didn't stop
- 16 once. He was just running.
- 17 And then when the officers approached him from
- 18 behind and they gave him the commands, "Stop. Put down the
- 19 gun," it seemed like he looked back like this, and then he
- 20 was shot.
- Q. Okay. Where was the hand that had the gun in
- 22 it moving at that moment?
- 23 A. I want to say it was his right hand. And,
- 24 like I said, he was in motion. So the gun was somewhat at
- 25 his -- so he was running. The gun is somewhat like right

- 1 here --
- Q. Okay.
- 3 A. -- at a certain point, but it --
- 4 Q. And just for the record, you're indicating as
- 5 he looked back, he was looking over his right shoulder
- 6 toward the officers?
- 7 A. Yes.
- 8 O. And the gun in his right hand was, you've
- 9 indicated, kind of near his right hip with his arm in back?
- 10 A. It was there -- it was there at certain
- 11 points. I'm not sure if it was there at the moment he was
- 12 shot, but I did notice he was running like this.
- 0. Okay. And what, if any, commands did you hear
- 14 the police officers giving to the individual?
- 15 A. I'm pretty sure I heard, "Stop" and "Put down
- 16 the gun" or "Put it down," one of those three or all three.
- Q. Okay. Was it a pretty chaotic scene at that
- 18 point?
- 19 A. Oh, yeah. People were screaming all around.
- 20 Yeah, it was very chaotic.
- Q. How many people, if you had to estimate, were
- 22 in this kind of general area at the time this occurred?
- 23 A. So actually, I haven't even mentioned, so
- 24 there was another car that I'm pretty sure was involved, a
- 25 black Charger or Camaro.

- 1 I'm not sure if he was -- the individual was
- 2 with them, but they were there, too, right at the corner.
- 3 Q. Right here?
- 4 A. Downward, yeah. They were there. I don't
- 5 know if they were waiting for the situation to unfold for
- 6 him to get in the car. I don't know what their -- I don't
- 7 know what their -- what their part in this was, but they
- 8 were seemingly involved.
- 9 They were there. There was a bunch of people
- 10 at the food carts. There was a decent amount of people at
- 11 the --
- 12 O. The food carts are down here to the southeast?
- 13 A. Yeah, on that -- on that sidewalk right there.
- Q. Okay. (Indicating).
- 15 A. No, no. Yeah, all lined up there, yeah.
- 16 Q. Okay.
- 17 A. So there was a decent amount of people in
- 18 front of Golden Dragon. There were people across the
- 19 street, but my eyes were fixed on the gentleman and all of
- 20 this.
- 21 O. Uh-huh. When you first look over after
- 22 hearing the gunshot, how many people were in this immediate
- 23 group here?
- 24 A. So there was the driver, and then there was
- 25 the lady. That's all I saw. There might have been more,

- 1 but that's all I saw.
- Q. So were you pretty focused in on this gun that
- 3 appeared in that --
- 4 A. On the -- like the main players, I was focused
- 5 on them, like the guy and the lady who was jumping in the
- 6 car.
- 7 I didn't really -- yeah, I was focused on them
- 8 right there.
- 9 O. Sure.
- 10 So moving back now to where the officers
- 11 engaged with this individual, you described that as he came
- down between the cars, you heard commands being given to
- 13 him.
- 14 Are you sure it was police giving those
- 15 commands?
- 16 A. I'm pretty sure, yeah.
- 17 Q. Okay. That's kind of consistent with how
- 18 police give commands to people?
- 19 A. Well, I was watching them, too.
- 20 Q. Okay.
- 21 A. So...
- 0. As he turned back --
- 23 A. It was -- it was just his head, though, that
- 24 turned back. It wasn't like an actual -- he didn't
- 25 physically turn his body back.

- 1 Q. Okay.
- A. It was just one of these (indicating).
- 3 Q. Okay. And he was still in a running motion?
- 4 A. Oh, yeah. He was booking away. He never
- 5 stopped --
- Q. Okay.
- 7 A. -- until he fell.
- Q. And as you're watching this happen kind of
- 9 realtime, did it strike you as occurring very quickly, or
- 10 did it feel like you were in slow motion, or do you have a
- 11 sense of that?
- 12 A. Happened within seconds. It was all within 10
- 13 or 11 seconds.
- Q. Okay. That was the impression you had?
- 15 A. Yeah.
- 16 Q. Okay. And based on the movements that you saw
- 17 there at kind of the critical moments with police officers,
- 18 did you have a fear that this individual may actually shoot
- 19 at the police based on how he was moving?
- A. Based on how he was moving, no. But based on
- 21 the situation at large, I thought anything was possible.
- Q. Okay. And as that arm was kind of coming
- 23 back, as you indicated, when he looked back over his
- 24 shoulder off his hip, do you remember the gun ever -- or
- 25 the muzzle ever being pointed at the police --

- 1 A. No.
- Q. -- that you could see?
- 3 A. No.
- 4 Q. Okay. Do you recall actually being under the
- 5 impression that it may come up and actually fire at the
- 6 police officers?
- 7 A. No. I think I -- I mean, that impression,
- 8 anything could happen with a gun with just the flick of a
- 9 wrist. It could have happened very quickly. It could have
- 10 happened, but I did not have that impression.
- 11 Q. Okay. And do you remember, when you talked to
- 12 the detectives in this case, saying that you at least had a
- 13 thought that this individual was going to turn and start
- 14 shooting at the police officers?
- 15 A. No, I don't remember saying that, no. If I
- 16 did say that, no, I was wrong.
- 17 Q. Okay. So your testimony, just to be sure, to
- 18 make sure we're clear, is that it didn't look like he was
- 19 going to turn and shoot the police, but it takes a flick of
- 20 a wrist, and anything could happen under those
- 21 circumstances?
- A. Yeah.
- 23 Q. Okay. After he -- after the shooting
- occurred, did you see what happened with the vehicles that
- 25 you identified as being potentially involved in this

- 1 somehow?
- 2 A. No, no. I can't remember anything that
- 3 happened after that.
- 4 Q. Do you remember seeing them at the scene later
- 5 on as you were standing around?
- 6 A. No, no. I would have noticed that. No.
- 7 Q. Okay. So had they left, then? Is that your
- 8 impression?
- 9 A. Yeah.
- 10 Q. Okay. You just didn't see which direction
- 11 they went?
- 12 A. Yeah.
- 13 Q. Okay.
- 14 MR. JACKSON: I think those are all the
- 15 questions that I have at this point for Mr. Mena.
- 16 Do the Grand Jurors have any questions?
- 17 A GRAND JUROR: I just had one question.
- 18 You kept referencing that the police came from
- 19 behind?
- THE WITNESS: Yep.
- 21 A GRAND JUROR: But weren't they running
- 22 towards each other?
- 23 THE WITNESS: Yeah, but he had already -- so
- 24 the police were in that empty -- the empty -- where the
- 25 cars aren't parked, the middle ground.

- 1 So they're both running there. They're going
- 2 to collide.
- 3 He goes this way. The police then go behind
- 4 him as his back is turned.
- 5 You get what I'm saying?
- 6 A GRAND JUROR: Okay. Thank you.
- 7 THE WITNESS: Sure.
- 8 MR. JACKSON: Any other questions?
- 9 I don't see any. All right. That's it.
- 10 Thank you very much.

- 12 GARRETT CARROLL
- 13 was thereupon called as a witness on behalf of the State
- 14 and, after having been duly sworn, was examined and
- 15 testified as follows:

- 17 EXAMINATION
- 18 BY MR. JACKSON:
- 19 Q. Can you please state and spell your name?
- 20 A. Garrett Carroll, G-A-R-E-T-T, C-A-R-R-O-L-L.
- 21 Q. And how do you know Matthew Mena?
- 22 A. I was actually with him on the night of the
- 23 incident.
- Q. Okay. Is he a friend of yours?
- 25 A. Yes.

- 1 Q. So, yeah, we'll take you back to September
- 2 30th of 2018.
- 3 Do you see on the screen here we have an
- 4 aerial shot of Third and Stark, now known as Harvey Milk?
- 5 A. Yes.
- Q. And at about 3:00 in the morning, were you in
- 7 this area outside of the Golden Dragon?
- 8 A. Yes, I was.
- 9 Q. Okay. And was Mr. Mena with you?
- 10 A. Yeah. Yes, he was.
- 11 Q. Could you describe for us what you remember
- 12 occurring while you were standing out there?
- 13 A. I had just crossed the street and --
- 14 Q. Which direction?
- 15 A. Coming towards the Golden Dragon, I had just
- 16 crossed the street from the Euro -- the light by -- I -- I
- 17 made the transition from one side of the street to the
- 18 other.
- 19 Q. Coming across Stark?
- 20 A. Yes.
- 21 O. Okay.
- 22 A. And then Matthew was actually in front of me
- 23 probably like five, six, eight feet in front of me, and I
- 24 heard a shot ring out.
- 25 And that's when Matthew got in front of a

- 1 truck that was about eight feet in front of me, and I was
- 2 standing up.
- 3 Q. Parked on the street?
- A. Yes.
- 5 Q. And are we talking about on the east side of
- 6 Third Avenue?
- 7 A. Yes.
- 8 O. The sidewalk?
- 9 A. Yes.
- 10 Q. Okay.
- 11 A. And I was standing up, and I was watching. I
- 12 couldn't see the guy who did get shot, but I could see the
- 13 cops from the angle that I was at.
- Q. And is there kind of a hedge that goes along
- 15 the southeast part of the parking lot?
- 16 A. Yes.
- 17 Q. And what impact, if any, did that have on your
- 18 ability to see what was happening?
- 19 A. I was at the angle where I could just see the
- 20 hedge. I couldn't see the guy. I could see the police
- 21 officers that were actually in the parking lot.
- Q. Do you remember when you first saw the police
- 23 officers there?
- 24 A. Yes, I do.
- O. When was that?

- 1 A. I couldn't say the time, but I heard one shot
- 2 ring out, and then two cops quickly pulled up to the scene.
- 3 And then shortly after, about four more cop cars pulled up
- 4 to the scene.
- 5 Q. Okay. And so your impression is that they
- 6 arrived around the time that you heard the gunshots?
- 7 A. Yes.
- Q. Do I have it right that you had just crossed
- 9 Stark from the south and were walking north on the east
- 10 side of Third Avenue --
- 11 A. Yes.
- 12 Q. -- when you heard the shots?
- 13 A. Yes.
- Q. So then how did you become aware that the
- 15 police were there? Did you turn and look and see them?
- 16 A. I turned and looked, and I actually saw a
- 17 police SUV pull up.
- 18 Q. Okay. And did it have its lights on?
- 19 A. Yes, it did.
- 20 Q. Could you actually see officers out of the
- 21 car?
- 22 A. Yes. I could see two officers.
- 23 O. Two?
- 24 A. Yes.
- Q. And what were they doing?

- 1 A. They had their guns drawn.
- Q. Okay. Were they just standing there by their
- 3 cars?
- 4 A. Yes, they were.
- 5 Q. And then what happened?
- 6 A. I was -- it was kind of late, but I think they
- 7 did say something, but I'm not sure what was said.
- I did see the cops actually start shooting
- 9 their weapons, but I couldn't necessarily see what they
- 10 were shooting at, but I kind of had knowledge that they
- 11 were shooting at somebody.
- 12 Q. Okay. And this is how soon after you heard
- 13 the initial shots?
- 14 A. Probably about a couple minutes. It was
- 15 pretty quick.
- 16 O. Okay. And what was the -- were there other
- 17 people around in this general area when this was happening?
- 18 A. Yeah. Actually, after the first shot, I saw
- 19 people fleeing the parking lot and running away, and people
- 20 were ducking and covering behind cars. It was a pretty
- 21 hectic scene.
- Q. Were people screaming and yelling and stuff,
- 23 too?
- A. I just -- probably a couple people were, like,
- 25 Oh, shit and then probably ducking behind their cars, but I

- 1 didn't hear much yelling or screaming.
- Q. Okay. Did you see which direction the people
- 3 were running, or was it just kind of everywhere?
- 4 A. Yeah. I know one -- one woman fled the
- 5 parking lot from -- kind of by the IRS Wage, but more
- 6 towards the street.
- 7 A GRAND JUROR: Top left of the parking lot?
- 8 THE WITNESS: Yeah, top left. She was running
- 9 down Stark.

- 12 BY MR. JACKSON: (Continuing)
- 13 Q. This way?
- 14 A. Yeah, but she -- she exited the parking lot
- 15 coming this way and then ran down Stark.
- 16 Q. Okay. Did you see anybody else running
- 17 straight down Third Avenue to the south?
- 18 A. No, I did not.
- 19 Q. Did anybody that you saw running appear
- 20 injured to you?
- 21 A. I couldn't possibly say. It was a pretty
- 22 hectic scene. So if somebody was running a little funny,
- 23 maybe they were trying to get out of there quick. I can't
- 24 possibly know.
- O. Did you see somebody running funny, as you put

- 1 it?
- 2 A. She looked like she was scared, but that was
- 3 the girl that was running down Stark.
- 4 Q. Down Stark to the east?
- 5 A. Yes, yes.
- Q. Okay.
- 7 A. Yeah.
- 8 Q. But nobody, like, limping or holding body
- 9 parts or anything like that?
- 10 A. No, not to my knowledge.
- 11 Q. Okay. And so you're saying that you could see
- 12 the police shoot, but you couldn't see what they were
- 13 shooting at?
- 14 A. Yes, but I could see the direction that they
- 15 were shooting at, and it was towards the south. It was
- 16 towards the south. They had their guns drawn south, and
- 17 they shot south.
- 18 Q. Okay. And could you not see what they were
- 19 shooting at because of the hedge that was growing here?
- 20 Were cars blocking you or what?
- 21 A. The hedge and the cars, yes, because the
- 22 police were visibly in the middle of the parking lot.
- Q. Okay. In this kind of open area?
- 24 A. Yes.
- 25 O. Okay. Okay.

- 1 MR. JACKSON: Those are all the questions I
- 2 have.
- 3 Do the Grand Jurors have any questions for
- 4 Mr. Carroll?
- I don't see any.
- 6 All right. That's it. Thank you very much.
- 7 MR. JACKSON: Why don't we go off the record
- 8 while I try to set up for our next witness.
- 9 (Pause in proceedings: 11:25-11:27 a.m.)
- 10 MR. JACKSON: We're back on the record. We
- 11 have our next witness.

- 13 SERGEANT JEFFREY DORN
- 14 was thereupon called as a witness on behalf of the State
- 15 and, after having been duly sworn, was examined and
- 16 testified as follows:

- 18 EXAMINATION
- 19 BY MR. JACKSON:
- Q. You can have a seat. Please state and spell
- 21 your name.
- 22 A. Jeffrey, J-E-F-F-R-E-Y, Dorn, D-O-R-N.
- Q. And where do you work?
- 24 A. I am a night shift supervisor at North
- 25 Precinct for the Portland Police Bureau.

- 1 Q. And what does it mean to be a supervisor?
- 2 A. I am one of the supervisors of a shift of
- 3 officers that we have. I oversee the personnel matters and
- 4 the ongoings of the shift.
- 5 Q. Do you have a particular rank for that
- 6 position?
- 7 A. Sergeant.
- 8 Q. And approximately how many sergeants are on
- 9 shift during any particular shift?
- 10 A. Two to four. It depends upon the night.
- 11 Q. And what are the general responsibilities of a
- 12 shift sergeant?
- 13 A. There's quite a few calls that end up having
- 14 to have supervisor approval for a variety of reasons.
- 15 We have to make sure that the -- that first
- 16 and foremost that the shift is staffed, so people haven't
- 17 called in sick and we have enough bodies to work the street
- 18 and what districts they work in.
- 19 Q. Okay. Were you working on September 30th of
- 20 2018?
- 21 A. Yes, I was.
- 22 O. And what were the hours of your shift that
- 23 day?
- 24 A. I work 10:00 p.m. to 8:00 a.m.
- 25 O. So did your shift actually start on the night

- of 9/29/18 into the early morning hours of 9/30/18?
- A. I would have -- the time is -- if I look at
- 3 the time, it's 9/30. I would have started my shift on
- 4 9/29, correct, at 10 p.m.
- 5 Q. Okay. And did you respond to Emanuel Hospital
- 6 at about 3:25 in the morning on September 30th?
- 7 A. Yes, I did.
- 8 O. And why did you do that?
- 9 A. There was a call that had been broadcast over
- 10 the radio that there was a -- two gun -- walk-in gunshot
- 11 victims that showed up at the hospital, and this is
- 12 following an incident that had just happened downtown in
- 13 close time frame.
- Q. You said that you're a North Precinct patrol
- 15 sergeant?
- 16 A. Correct.
- 17 Q. And in your capacity as a North Precinct
- 18 patrol sergeant, would you have been aware of incidents
- 19 happening in the downtown area?
- 20 A. Yes. That -- that incident was broadcast, the
- 21 information on our net, that the North Precinct was
- 22 responding to a shots fired call, and I didn't have all the
- 23 information of what was happening downtown, but I was
- 24 already switched over on one of my radios to listen and
- 25 started monitoring the net, and I could hear a fairly

- 1 chaotic scene going on downtown.
- Q. Did you get a general briefing of what had
- 3 happened downtown in terms of the incident itself?
- 4 A. Not really, not really. It was -- it took a
- 5 while from the initial broadcast, because I switched over a
- 6 little late, to even piece together that it was an
- 7 officer-involved shooting that I later learned, you know,
- 8 or sometime in the midst there, I learned it was an
- 9 officer-involved shooting in relation to another shooting
- 10 that had occurred.
- 11 Q. Okay. So when you got the dispatch out that
- 12 two people had walked into Emanuel Hospital with gunshot
- 13 injuries, did you think it was related to the incident
- 14 downtown?
- 15 A. I -- I felt there was a strong likelihood,
- 16 just because of the time frame. And this is a very common
- 17 scene that happens, replays itself over and over throughout
- 18 the years. I've been a police officer for 22 years now and
- 19 working that neighborhood for quite a few of my years.
- 20 So it's not unusual at all, within a short
- 21 time frame after any shooting in the city, for victims to
- 22 show up at area hospitals.
- Q. With gunshot injuries?
- A. With gunshot injuries, yes.
- 25 Q. So when you went out to the hospital, what did

- 1 you do?
- 2 A. I was the first one to arrive, and I pulled
- 3 right into the -- the public entrance where generally most
- 4 of the -- in my experience, most of the gunshot drop-off
- 5 type victims are dropped off.
- There was no vehicles in that drop-off area.
- 7 I walked into the lobby and was met by security personnel
- 8 and an office -- or the clerk at the front desk, who were
- 9 ready to direct me back to where the gunshot victims had
- 10 already been taken. So they were no longer in the lobby.
- 11 They had been rushed back into the actual ER.
- 12 Q. Did you identify the two individuals that had
- 13 been shot?
- 14 A. Yeah. As soon as we could, I was with -- I
- 15 had a couple other officers headed to the hospital as well.
- 16 And then that was first and foremost, I was trying to
- 17 figure out where -- where the two individuals were and what
- 18 their names were.
- 19 And I ended up identifying one of the
- 20 individuals as Manny Hall and the other one as Marcel
- 21 Branch.
- 22 O. Okay. Did you learn about the nature of the
- 23 injuries the two individuals had sustained?
- A. Yeah. So the ER is set up to where there's a
- 25 variety of rooms around the nurses station.

- 1 And Manny Hall was in a room within the ER. I
- 2 was told that the other subject, who had took a while to
- 3 get his name from the nursing staff, he --
- 4 Q. Mr. Branch?
- 5 A. Yes. Mr. Branch was rushed into surgery
- 6 immediately, and he was never in that -- in the vicinity of
- 7 the actual ER. He got rushed back into the operating room.
- Q. Okay. While you were consulting with medical
- 9 staff, did you obtain a set of keys that had come from Mr.
- 10 Branch?
- 11 A. Yes. A nurse came out, because when we were
- 12 trying to figure out if we could figure out who Mr. Branch
- was, she came out and she brought a set of keys, and she
- 14 handed them to Officer Holmgren, who I had there to collect
- 15 any and all evidence that was going to end up transpiring.
- 16 My job there was to kind of facilitate with
- 17 the officers to make sure everything happened and that
- 18 people weren't -- there were no visitors happening. It was
- 19 locked down so that we can protect the integrity of the
- 20 investigation.
- 21 And so the keys were, yes, handed to Officer
- 22 Holmgren.
- Q. Did you know what type of car the keys
- 24 belonged to?
- 25 A. Yes, and the reason is because they came -- it

- 1 looked like the vehicle likely was an old rental car that
- 2 was purchased, and it still had like -- I don't remember if
- 3 it was a Hertz rental car, but it still had the key fob tag
- 4 that said "blue Chevy Cobalt," which immediately in my mind
- 5 was different than the -- the original description of the
- 6 car that dropped off two persons was that the -- the way
- 7 that the 911 call came, I -- I transcribed it as a "Walk-in"
- 8 gunshot wound, two people both from the same vehicle,
- 9 probably related to incident downtown. Drop-off vehicle
- 10 was a black Camaro with a plate to match and that vehicle
- 11 left."
- 12 That's the information I had going into this.
- 13 So it was kind of, well, that guy has keys to a vehicle
- 14 that is not this car.
- 15 Q. So what did you do with that information?
- 16 A. Once we had enough other officers that got to
- 17 the scene to secure the rooms, myself and Officer Holmgren
- 18 went to the security office, and one of the security
- 19 personnel was able to pull up a video feed of the drop-off,
- 20 and we were actually able to watch what -- what occurred.
- Q. And what did you see?
- 22 A. I saw first Mr. Branch walk from what would be
- 23 the north side of the parking lot, out of view, he walked
- 24 into view. He walked across the big -- you know, kind of a
- 25 big U-turn. He walks up to the front door, looks like he's

- 1 injured. And then just as he's walking into the front
- 2 doors of the hospital, the black Camaro pulls up.
- 3 And then from the scene, that was really all I
- 4 was looking for is that they arrived separately. So I
- 5 didn't look at the other video footage, but Mr. Branch
- 6 obviously continued into the front where I think the -- I
- 7 recall the desk gal saying he made it up there and kind of
- 8 collapsed at the desk, and they were tended to and brought
- 9 back.
- 10 Q. Before surgery?
- 11 A. Before surgery, yeah.
- 12 O. Okay.
- 13 A. And then we see Manny Hall was -- he was the
- 14 second person who got out of there.
- 15 Q. Out of the black Camaro?
- 16 A. Out of the black Camaro. And I didn't
- 17 really -- we saw the black Camaro leave, but that was --
- 18 that was it. That was consistent with what I saw because
- 19 it was no longer there.
- Q. Okay. Did you locate the Cobalt in the
- 21 parking lot?
- 22 A. Yeah. So then with that information, we saw
- 23 what direction he walked from. So we went out to the
- 24 parking lot and very quickly found a blue Chevy Cobalt out
- 25 in the lot.

- I don't think I wrote the name -- or the
- 2 license plate down there, but it was -- it had blood
- 3 evidence, what looked like blood evidence all over the
- 4 front seat and on the center console.
- 5 And basically from that point, I instructed
- 6 Officer Holmgren to lock down the vehicle. We're not going
- 7 to touch it. Nobody comes around it.
- I notified the investigators downtown what we
- 9 had and got the ball rolling to turn that into part of
- 10 their investigation.
- 11 Q. Okay.
- MR. JACKSON: Are there any questions for
- 13 Sergeant Dorn?
- I don't see any.
- 15 All right. Thank you very much.
- 16 THE WITNESS: Thank you.
- 17 (Pause in proceedings: 11:38-1:05 p.m.)
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1 SEAN MICHAELS

- 2 was thereupon called as a witness on behalf of the State
- 3 and, after having been duly sworn, was examined and
- 4 testified as follows:

- 6 EXAMINATION
- 7 BY MR. JACKSON:
- 8 O. Could you please state and spell your name?
- 9 A. Sure. Sean, S-E-A-N, Michaels,
- 10 M-I-C-H-A-E-L-S.
- 11 Q. Where do you work?
- 12 A. I work with the Oregon State Police Crime Lab
- 13 in the DNA section.
- 14 Q. And could you briefly explain for us what your
- 15 educational background is for that position?
- 16 A. Sure. I received my bachelor's of science
- 17 degree from Western Illinois University in 2005.
- 18 Q. Okay. And what training did you receive to
- 19 actually work with the Oregon State Crime Lab?
- 20 A. Prior to coming to the Oregon State Police
- 21 Crime Lab, I worked for the Florida Department of Law
- 22 Enforcement in the Tampa lab in the same capacity.
- I received my initial DNA analyst training
- there, which included written and oral examinations,
- 25 practice samples, working with a coach, doing literature

- 1 review and all of that stuff.
- When I came to Oregon State Police, I kind of
- 3 did the same thing. But because I had that experience, I
- 4 kind of had an abbreviated just to apply to the -- how the
- 5 Oregon State Police ran as opposed to Florida.
- 6 Q. And did you go directly into DNA -- the DNA
- 7 unit with the Oregon State Police Crime Lab?
- 8 A. Yes.
- 9 Q. And how long have you been with the Oregon
- 10 State Police Crime Lab?
- 11 A. I've been with them for four years.
- 12 Q. Okay. Doing DNA analysis the whole time?
- 13 A. Correct.
- Q. Okay. Is the Oregon State Crime Lab
- 15 accredited and certified to do DNA testing?
- 16 A. Yes, it is.
- 17 Q. And are the processes used by the lab accepted
- in the scientific community?
- 19 A. They are.
- 20 Q. Okay. Did you generate a report concerning an
- 21 analysis of some swabs taken from a firearm recovered from
- 22 a crime scene involving a shooting with Patrick Kimmons --
- 23 A. I did.
- 24 O. -- in this case?
- 25 And is the report you generated dated October

- 1 26th of 2018?
- 2 A. That's correct.
- 3 Q. Okay. Could you briefly take us through the
- 4 evidence that you received from the Portland Police Bureau
- 5 for analysis and how you conducted your analysis?
- 6 A. Sure. So I received two separate swabs from
- 7 opposite sides of the gun. One was the opposite side of
- 8 the serial number of the gun, and the other one was said to
- 9 be collected from the serial number. I also received a
- 10 blood standard from Patrick Kimmons.
- 11 Our process, DNA analysis process, is we
- 12 pretty much take that swab, we put it into -- we add an
- 13 agent, and what that does is it breaks open the DNA, it
- 14 releases the DNA out of the cells. Then we quantify it to
- 15 see approximately how much DNA is in that sample.
- 16 Once we know approximately how many DNA, then
- 17 we amplify or make millions of copies of it, and then we
- 18 run it on an instrument to collect the data from that
- 19 sample. In turn, we used a program that will interpret
- 20 that data into a DNA profile.
- 21 And in this case, once I ran the gun swabs, I
- 22 also ran the standard separately. What I do is I compare
- 23 the standard DNA profiles to those profiles of the gun
- 24 swabs.
- O. Okay. And did you do that in this case?

- 1 A. I did.
- Q. What did you find?
- 3 A. So when we did the comparison of the swab from
- 4 the opposite serial number side of the gun, and I compared
- 5 that standard to Patrick Kimmons, it was found that Patrick
- 6 Kimmons cannot be excluded as the major contributor to that
- 7 mixture.
- 8 So what that means is he was -- in comparison,
- 9 he was the major profile on that gun or cannot be excluded
- 10 as a major profile.
- And what we do is it gives a stat of what's
- 12 called a likelihood ratio. What it does is you have two
- 13 likelihoods, you have two scenarios. Is one scenario more
- 14 likely than another?
- And in this case, it was 3.23 or 32.3
- 16 septillion times more likely to observe the evidentiary
- 17 mixture that the contributors are Patrick Kimmons and three
- 18 unknown, unrelated individuals rather than four unknown,
- 19 unrelated individuals.
- So, again, you have the one scenario compared
- 21 to the other, and it's saying that the one scenario, with
- 22 him not being excluded, is 32.3 septillion times more
- 23 likely than the other scenario with four unknown people.
- 24 So that --
- 25 O. That he would be excluded from?

- 1 A. Could not be excluded. So he would be a
- 2 contributor with three other people, rather than four
- 3 unknown, unrelated people on the gun swab. So that was for
- 4 the first swab.
- 5 The second swab, which was the serial side of
- 6 the gun, did that same comparison, did the standard to that
- 7 mixture.
- 8 That mixture was assumed to be from three
- 9 contributors with at least one male. And then with that
- 10 comparison, he could not be excluded as a major contributor
- 11 to that mixture.
- 12 And then again with the statistic, it was at
- 13 least 55.8 octillion times more likely to observe the
- 14 mixture if the contributors are Patrick Kimmons and two
- 15 unknown, unrelated individuals rather than three unknown,
- 16 unrelated individuals.
- 17 Q. Okay. And what did it mean when it's
- 18 identifying him as not being excluded as a major
- 19 contributor?
- 20 A. So in this mixture, once the -- so we have a
- 21 program that deconvolutes or unravels the mixture. So when
- 22 we have a bunch of DNA from several people, we consider
- 23 that a mixture, so more than one person out there. And to
- 24 unravel that mixture, it deconvolutes, and it separates it
- 25 into certain people.

- 1 When we have a major contributor, it's over a
- 2 certain percentage that that contributor is weighted, and
- 3 in our case it's 70 percent.
- 4 So if a contributor is assumed or weighted 70
- 5 percent or greater to that mixture, it can be known as a
- 6 major contributor. In some instances, majors are people
- 7 who leave more DNA than, say, a minor contributor.
- 8 O. Okay. And when you say "leaves more DNA,"
- 9 what is it that you're talking about?
- 10 A. So, again, a major would be someone who would
- 11 leave more DNA than a minor contributor. Reasons can be
- 12 that a person held something longer, they're sweating.
- It's just that they're leaving more DNA, say,
- 14 than the other contributors to that mixture.
- 15 Q. And Mr. Kimmons was identified as a major
- 16 contributor from both swabs?
- 17 A. Correct. He could not be excluded as the
- 18 major on both swabs.
- 19 Q. Okay. When you're looking at a mixture, how
- 20 are you able to identify the number of different people
- 21 that may be present within that mixture?
- 22 A. So we initially look at the DNA profile
- 23 initially to see how many -- in your DNA, you get half your
- 24 DNA from your mom, half your DNA from your dad. So you
- 25 have two types: one from your mom, one from your dad.

- 1 So at each location, you can have one type,
- 2 which is, say, for example, your mom gives you a 25 and
- 3 your dad gives you a 25. You would only be a 25 because
- 4 both of them gave you a 25.
- Now, there's another one where you have two
- 6 peaks where your mom gives you a 24, your dad gives you a
- 7 25, so you have two different types. We look at those peaks
- 8 and the number of peaks to determine how many people would
- 9 be present.
- 10 So based on the one or two peaks, we would
- 11 know that you can't have more than a certain amount of
- 12 peaks to have that many contributors.
- Q. And from that, you can determine at least how
- 14 many different individuals' DNA is present on an object --
- 15 A. That's right.
- 16 0. -- or in a swab?
- 17 A. Yes.
- 18 Q. And so in this case, from the swab from the
- 19 opposite side of the serial number side of the gun, it's
- 20 assumed to be from four contributors. Is that right?
- 21 A. Correct.
- Q. But, again, to be labeled as a major
- 23 contributor, Mr. Kimmons would have to be over 70 percent
- 24 there. Is that correct?
- 25 A. Yeah. So when it -- when this program breaks

- 1 out the contributors, it gives them weight. So based on
- 2 the information in that sample, it will say, based on how
- 3 DNA acts, what each contributors' weight to that profile
- 4 is.
- 5 And in this case, the major contributor was 70
- 6 percent. And when I compared that standard to that, he
- 7 could not be excluded as that contributor.
- 8 Q. Your report indicates that you received the
- 9 evidence directly from the Portland Police Bureau.
- 10 Did they personally hand it to you, or what is
- 11 the process of evidence handling within the crime lab?
- 12 A. So an agency will come to a lab. We have an
- 13 evidence intake area, and they will log in the evidence,
- 14 and it will be stored in a secure locker until I go down to
- 15 the locker and take the evidence into possession through a
- 16 chain of custody.
- 17 Q. Okay. And did you analyze the actual firearm
- 18 in this case, or did you only analyze swabs taken from the
- 19 firearm?
- 20 A. Just swabs from the firearm.
- 21 O. Okay. And was it members of the Portland
- 22 Police Bureau that actually collected the swabs and
- 23 submitted them?
- A. That's correct.
- MR. JACKSON: All right. Do you folks have

- 1 any questions?
- 2 I don't see any.
- 3 All right. Thank you very much.
- 4 THE WITNESS: Thank you.
- 5 (Pause in proceedings: 1:21-1:24 p.m.)

- 7 CHRISTOPHER WILLIAMS
- 8 was thereupon called as a witness on behalf of the State
- 9 and, after having been duly sworn, was examined and
- 10 testified as follows:

- 12 EXAMINATION
- 13 BY MR. JACKSON:
- 14 Q. Please state and spell your name.
- 15 A. Chris Williams, Christopher Williams,
- 16 C-H-R-I-S-T-O-P-H-E-R.
- 17 Last name too?
- 18 Q. Yes.
- 19 A. W-I-L-L-I-A-M-S the second.
- 20 Q. Okay. I want to take you back to September
- 21 30th of 2018, the early morning hours of that day.
- A. Uh-huh.
- Q. Were you downtown at Third and Stark, parking
- 24 lot located right there?
- 25 A. Yes, I was.

- Q. Okay. And if you look up on the screen here,
- 2 do you see this aerial photograph of Fourth, Third, Stark,
- 3 now known as Harvey Milk, and Oak?
- 4 A. Yes, sir.
- 5 Q. And is that the parking lot that you were in?
- A. Yes, sir.
- 7 Q. At about -- do you remember about what time it
- 8 was that you arrived?
- 9 A. It was -- it was early in the morning, late at
- 10 night. It had to have been around, like, 2:00, 3:00, I'm
- 11 assuming. It was late.
- 12 0. Okay.
- 13 A. You want me to tell the story on what happened
- 14 or --
- 15 Q. Well, yeah. So were you coming from somewhere
- 16 else, or was that your first stop?
- 17 A. No. I was coming from Century, Century Bar.
- 18 I was coming from Century Bar, and I went into the parking
- 19 lot because I saw my cousin, one of my cousins, and I
- 20 pulled into the parking lot. And, like I said, it was
- 21 around 2:00 or 3:00.
- Q. Okay. And when you got there, were there a
- lot of cars in the lot or was it pretty empty?
- A. No. It was pretty -- it was pretty empty. I
- 25 parked on the left side of the parking lot.

- 1 Q. Okay. When you say "left," you mean the
- 2 south?
- 3 A. Yes.
- 4 Q. The south here where --
- 5 A. Yeah. My car was, like, the fourth or, like,
- 6 fifth row. It was, like, on the outside. It wasn't close
- 7 to the bushes. It was -- the car wasn't close to the
- 8 bushes at all. It was, like, on the second row.
- 9 You could -- you see how there's like one and
- 10 then two? You see how it's, like, row one and two? My car
- 11 was on the row two side.
- 12 O. The drive aisle side?
- 13 A. Yeah, yeah, yeah, yeah.
- 14 Can I show you?
- 15 Q. Yeah, of course.
- 16 A. Like, I drove in. And then my car was, like,
- 17 right over here. So it was row one and row two. The
- 18 bushes are right here, but my car was, like, right over
- 19 there.
- Q. What kind of car were you driving?
- 21 A. A 2017 Durango.
- 22 O. What color was it?
- A. Black.
- 24 O. Okay. A black Durango?
- A. Yeah.

- 1 Q. And you said you saw your cousin there?
- A. Yeah. I saw one of my cousins outside of his
- 3 car, and then I was -- then I pulled into the parking lot
- 4 to say what's up to him.
- 5 Q. Okay. And do you remember who that was?
- 6 A. Yeah, my cousin Mike. His name is Mike. Then
- 7 he introduced me to his little brother, which I didn't know
- 8 that that was my little cousin. His name was Aundree.
- 9 Me and him started talking from my car,
- 10 talking about basketball, actually, because he plays
- 11 basketball.
- 12 Q. Okay. And do you remember what kind of car
- 13 they were driving?
- 14 A. I don't because I -- I think he got -- he has,
- 15 like, two or three cars. I'm assuming it was his car, but
- 16 I just remember seeing him.
- I was just pulling into the parking lot saying
- 18 Hey, cousin, what's up? And then we all started chatting
- 19 it up. I was really talking to Aundree a lot.
- Q. About basketball?
- A. Yeah.
- 22 Q. Okay.
- A. And life, and life, too.
- Q. And life?
- A. Yeah.

- 1 Q. Okay. All right. And were you there by
- 2 yourself?
- 3 A. Yeah.
- 4 Q. Okay. You just pulled in by yourself when you
- 5 saw your cousin?
- A. Yeah, yeah.
- 7 Q. Okay. So you're there. The cousin is parked
- 8 to the -- if this is east, to the east of you or to the
- 9 west of you?
- 10 A. To the east of me.
- 11 Q. To the east of you. Okay.
- Do you remember, were you in adjoining stalls,
- or was there an open stall in between the two?
- 14 A. No, no. It was a close stall because my
- 15 cousin Aundree, he was with, like, a girl and her car was
- 16 right next to mine. He got -- he was getting in -- out of
- 17 the passenger seat, and he was talking to her, like, as if
- 18 they knew each other. Her car was literally right next to
- 19 mine.
- Q. Okay. Were you inside of your car or outside?
- 21 A. Outside. I was outside of it.
- 22 O. And what about your cousin Michael and --
- A. No. We was all outside of the car.
- Q. Okay. Standing -- where were you standing in
- 25 the parking lot?

- 1 A. Yeah, so my car was parked. Let's say this
- 2 one was mine. That was the girl's.
- 3 So I'm outside of my driver's, and he's
- 4 outside of his passenger's of the girl's car. So we just
- 5 talking, like, this literally, like, right there.
- Q. Okay.
- 7 A. Yeah.
- 8 O. And then do you remember if there were other
- 9 people kind of generally around or was it --
- 10 A. It was -- it was -- I'm not going to lie to
- 11 you. I was -- I was drunk.
- 12 Q. Okay.
- 13 A. And it was -- it was so many, like, things
- 14 happening because my whole point was really to -- I was
- 15 headed to Golden Dragon, to the strip club.
- 16 Q. Is the Golden Dragon located right here?
- 17 A. Yeah. So there, like, were so many people
- 18 because the clubs and bars started closing, and that's the
- 19 only thing open until, like, 6:00.
- 20 So there was people everywhere. I wasn't
- 21 really focused on that because I was having such a deep
- 22 conversation with my cousin about basketball and life and
- 23 things like that.
- Q. Sure. You said that you were feeling drunk,
- 25 right?

- 1 A. Yeah.
- Q. I mean, that could mean any number of things,
- 3 right?
- 4 A. Yes.
- 5 Q. Were you, like, falling-down drunk?
- 6 A. No, no. It wasn't like, Oh, I'm fucked up.
- 7 It wasn't like that. It was just, like, I was just buzzed,
- 8 really, really buzzed.
- 9 That wasn't my focus, like, other people. We
- 10 were just having a good -- just a good talk, and I just
- 11 wasn't worried about what everybody else was doing.
- 12 Q. Okay. And then what do you remember
- 13 happening?
- 14 A. So we sitting there talking. And it's funny
- 15 because I was, like, yeah, like, the girls and, like, the
- 16 streets and all this other stuff, it's always going to be
- 17 here; like, you need to stay in Eugene and focus on sports
- 18 and stuff.
- 19 The next thing I know, I see a dude just back
- 20 up, and then I just started hearing gunfire just go off. I
- 21 don't know where he went. I don't know if he got hit.
- I'm just, like, Oh, shit, like -- I start
- 23 running west towards -- well, not running, but hiding
- 24 behind cars type of thing, just like, oh, like in shock,
- 25 don't know really where to go.

- 1 There was so many things going on, and I'm
- 2 buzzed, too, and that's when I tripped, like right where
- 3 the -- where you can come through on Stark, there's, like,
- 4 a -- there's a middle entrance. I don't know why it's
- 5 blocked off right there.
- 6 You can drive -- there's like a drive-in right
- 7 there, too. That's when I tripped. The next thing I know,
- 8 I'm looking up, and I just saw three guns to my head,
- 9 basically, and the cops was, like, Drop the weapon because
- 10 I had my cell phone out in my left hand.
- I was, like, I don't got no -- I'm not part of
- 12 this shit, whatever is going on. I was, like, You all can
- 13 run my name, if you want and do all that shit. Me and my
- 14 cousin we was just sitting here talking, wrong place, wrong
- 15 time.
- 16 So they arrested me, and I looked and then I
- 17 guess I -- the kid who died or whatever, he was just, like,
- 18 sitting there not too far from my car, just, like, laying
- 19 there.
- I was, like, so buzzed, you know what I mean?
- 21 It took me a long time to, like, really figure out, like,
- 22 what just happened kind of.
- So they had me in the back of the cop car for,
- 24 like, an hour or two, and then they let me go.
- 25 O. Okay. So you're standing here in this general

- 1 area?
- 2 A. Yeah.
- 3 Q. Talking to your cousin?
- 4 A. Yeah.
- 5 Q. Do you remember which way you were facing?
- 6 A. Yeah. I'm looking towards Golden Dragon.
- 7 Q. To the east?
- A. Yes, sir, and my cousin is looking at me west.
- 9 I'm on my driver's side outside. He's on the passenger
- 10 side outside.
- 11 Me and him are just talking like this. Next
- 12 thing you know, like three feet away, I just started
- 13 hearing gunfire, and I'm, like, Oh, shit.
- 14 So I, like, run behind my car. I'm ducked
- 15 down, and then I start heading towards Rouge, which is
- 16 west.
- 17 Q. Okay. And is Club Rouge --
- 18 A. Yep.
- 19 Q. -- right here on Fourth and Stark or Harvey
- 20 Milk?
- 21 A. Yes, sir.
- Q. Okay. When you hear the gunfire, was it in
- 23 your field of vision, or did you have to look in a
- 24 particular direction to see what was happening?
- A. Well, because I'm looking at him, and then,

- 1 like, from literally just 10 feet away, it's all like -- I
- 2 was just, like, Oh, shit because I felt like I saw
- 3 something. But then right when I heard it go off, I just
- 4 ducked off.
- Q. Okay.
- 6 A. I just started --
- 7 Q. What --
- A. I tried to get out of there.
- 9 Q. What did you see?
- 10 A. A gun.
- 11 Q. When you looked over there?
- 12 A. Yeah. Well, I saw this dude just backing up.
- 13 Then it's like I'm not really -- I'm still focused on what
- 14 me and my cousin was talking about. The next thing you
- 15 know, boom, boom, boom, like, the shots and I'm,
- 16 like, Oh, shit.
- 17 Q. And so you just -- that sound you made, was
- 18 that the gunfire?
- 19 A. Yeah.
- Q. And so you made more than one. Did you
- 21 actually hear more than one shot?
- 22 A. Yeah, yeah, I did.
- Q. Do you have a sense of how many shots you
- 24 heard?
- 25 A. I don't. It was -- it was a couple, though.

- 1 And I'm not trying to say the wrong number. That's all
- 2 that I'm -- you know what I'm saying? I'm not trying to
- 3 overexaggerate shit.
- 4 Q. No, no. Whatever you remember is what we're
- 5 interested in.
- 6 A. Yeah.
- 7 Q. So could you see what the person with the gun
- 8 was pointing at or which direction he was facing?
- 9 A. No, no. He -- because we're like this. He's
- 10 like this, and then he's backing up. He's backpedaling
- 11 towards us.
- 12 Q. Okay. So if you're facing east talking --
- 13 A. He was headed towards my car.
- 14 Q. To the south?
- 15 A. Yeah.
- 16 Q. Backing away?
- 17 A. Yeah.
- 18 Q. From other people?
- 19 A. I'm guessing so because, like I said, there
- 20 was so many people out there.
- I'm the type of dude that when I'm, like,
- 22 buzzed or drunk and stuff, I'm not worried about other
- 23 people. Me and my cousin was just, like, having a good,
- 24 deep talk, and I just found out that he was my cousin.
- 25 So I don't know. You know what I mean? We

- 1 was just trying to get to know each other. I'm not worried
- 2 about what other people was doing, you know what I mean?
- 3 As soon as I heard the gunfire, then that's
- 4 when I just dipped off, you know what I mean? And then I
- 5 tripped, then I fell literally, like, right where the exit
- 6 is at on Stark.
- 7 Q. Over here?
- 8 A. Yeah -- well, even closer, it's like -- yeah.
- 9 Q. Okay.
- 10 A. They've got cars blocking it off right there,
- 11 but you can drive in that way. I don't know why it's
- 12 blocked off right there.
- 13 Q. Okay.
- 14 A. It's an exit. It's, like, a side exit
- 15 basically. I tripped and fell.
- 16 Q. Just for the record, we're looking at a
- 17 Google-generated aerial map --
- 18 A. Yeah.
- 19 Q. -- as opposed to a photograph from the night.
- 20 A. Got it. I got you.
- 21 Q. Okay. Do you remember, once you heard the
- 22 gunshots, which direction you ran initially, or did you
- 23 just --
- A. Yeah, yeah.
- O. Go ahead.

- 1 A. This is what happened. So let's just say,
- 2 like, again, we're here. The shots went off. My car is
- 3 literally, like, right there.
- 4 So I just started going this way, and then I
- 5 tried -- I was trying to pull up my pants and run for it.
- 6 Then I tripped and fell. The cops closed in on me right
- 7 there. Let's just say right there, that's where the SUV
- 8 came, and that's when they put me in cuffs.
- 9 And that's when I look over, and the kid -- it
- 10 was weird because I guess the kid that got died or
- 11 whatever, he was, like, laid up against, like, the curb.
- 12 So he was, like, on the first row.
- 13 You get what I'm saying?
- 14 Q. Uh-huh.
- 15 A. And that's all I remember.
- 16 Q. Kind of next to where your car was?
- 17 A. Yes, sir.
- 18 Q. The Durango?
- 19 A. Yes, sir.
- Q. Okay. Did you know who any of these people
- 21 over here were?
- 22 A. No, I didn't know nobody besides my cousin. I
- 23 didn't even know the kid.
- Like I said, I was in the back of the car, and
- 25 I'm trying to figure out, like, What the fuck just

- 1 happened, you know what I mean? To be honest, it was just,
- 2 like, wrong place at the wrong time. You know what I mean?
- I was mad at the police, too, because I felt
- 4 like they thought I had something to do with it, but then
- 5 they realized I didn't because it was, like, Dude, I don't
- 6 got nothing to do with this shit, you know what I mean?
- 7 Q. Yeah. And they let you go?
- 8 A. Yeah, yeah, yeah, yeah.
- 9 Q. Okay. So do you recall, as you were kind of
- 10 making your way away from the initial gunfire, hearing any
- 11 other gunfire occurring?
- 12 A. I wasn't even worried about that. Soon as I
- 13 heard them little couple shots, I'm trying to get out of
- 14 there, right? All I saw was Rouge, you know what I mean?
- 15 I'm trying to run towards Rouge.
- I was so drunk, I was -- you know, I'm not
- 17 trying to stand all the way up. So as soon as I stand all
- 18 the way up and try to pull up my pants, I trip, fell.
- 19 That's when the cops is, like, Freeze. Drop your weapon.
- I don't have a weapon.
- 21 O. Uh-huh.
- 22 A. I don't got nothing.
- Q. Did you hear any police officers yelling
- 24 commands at other people, not at you?
- 25 A. No. It was like -- it was so much going on.

- 1 It was, like, so much commotion going on when they was
- 2 yelling at me, it's, like, I -- it was commotion behind me,
- 3 too.
- When it came -- when I saw the cops had the
- 5 guns pointed at me, at that point, I'm worried about I'm
- 6 not trying to be a sad case that gets shot. You know what
- 7 I mean? I don't want them to think my cell phone is a gun
- 8 or nothing. I'm yelling at them, I don't have no effing
- 9 weapon, you know what I mean?
- 10 It was for sure commotion all around, you know
- 11 what I mean?
- 12 O. Uh-huh.
- 13 A. Everything just happened so quick. You know,
- 14 it was just, like, boom, boom. It was like -- that's only
- 15 20 feet away from my car, and cops was right there. I'm
- 16 just like, What the hell. How did you all get here so
- 17 quick?
- Q. When you pulled in, did you see police in the
- 19 parking lot?
- A. Huh-uh.
- 21 O. Anywhere at all --
- A. Huh-uh.
- Q. -- that you noticed?
- 24 A. It was crazy because even when they arrested
- 25 me, I'm talking to the officer. I'm, like, How did you all

- 1 get here so damn quick, you know what I mean, because I
- 2 didn't see no cops on the other side of the parking lot or
- 3 nothing.
- 4 Q. Okay. So the first time you saw police was
- 5 when you fell down basically at their feet?
- A. Yeah, yeah, yeah.
- 7 Q. Okay.
- A. And, too, I don't know. This is kind of
- 9 extra, but I know that they probably got surveillance
- 10 video.
- 11 Q. Well, so, what we're limited to here is just
- 12 your perception and memory of what happened.
- A. Got you, got you, got you.
- 14 A GRAND JUROR: Can I ask two quick questions?
- MR. JACKSON: Yes, please.
- 16 A GRAND JUROR: How long were you there before
- 17 all this happened?
- 18 THE WITNESS: It was crazy. It was, like, I
- 19 parked, and then I'm sitting there talking to my cousin for
- 20 five or 10 minutes. That's when everything just, like,
- 21 happened.
- It probably wasn't even that. It was probably
- 23 five minutes, eight minutes or so. I'm just sitting there.
- 24 We just talking about life and basketball, because I used
- 25 to play basketball.

- 1 He's playing college, and I'm proud of him.
- 2 Even though it's my first time meeting him, I'm telling him
- 3 late nights and girls and all that shit, that's all going
- 4 to come later on, like, stay in Eugene and handle business.
- 5 Fucking 30 seconds later, told you so, you
- 6 know what I mean? It was kind of -- it was crazy, it was
- 7 crazy.
- 8 And then I was, like, freaking out because I
- 9 didn't see my cousins. So I'm thinking that they got hit
- 10 by a stray or, like, I don't know what's going on. But
- 11 then everything ended up being okay.
- MR. JACKSON: They were okay?
- 13 THE WITNESS: Yeah.
- MR. JACKSON: Okay.
- 15 A GRAND JUROR: Was there a car on the other
- 16 side of you?
- 17 THE WITNESS: Yeah, because it was, like, my
- 18 car, I'm on the outside. I'm talking to my cousin and this
- 19 girl's car that he was with.
- 20 A GRAND JUROR: What about the other side of
- 21 you?
- THE WITNESS: Yeah, there was another car, but
- 23 I don't know whose car that was.
- 24 A GRAND JUROR: Okay. Thank you.
- MR. JACKSON: Okay. Are there any other

- 1 questions?
- 2 I don't see any.
- 3 All right. That's it. Thank you very much,
- 4 sir.
- 5 THE WITNESS: Thank you. Yes, yes, yes. You
- 6 all have a good one.
- 7 A GRAND JUROR: You, too.
- 8 (Pause in proceedings: 1:40-1:53 p.m.)

9

- 10 DETECTIVE DARREN POSEY
- 11 having been previously sworn, was re-called as a witness

12

- 13 EXAMINATION
- 14 BY MR. JACKSON:
- 15 Q. We're back on the record.
- 16 Detective Posey, thank you for coming back.
- 17 You're still under oath from this morning.
- 18 A. Yes.
- 19 Q. One additional question I wanted to ask you
- 20 about from your investigation, what items of evidence did
- 21 you submit to the crime lab for analysis and testing?
- 22 A. So I had both of the officers' firearms, the
- 23 two Glock 17s with -- yeah, both of those to the crime lab.
- 24 I also had all of the 12 casings sent to the Oregon State
- 25 Crime Lab as well.

- Along with that, the five-shot revolver with
- 2 its casings were sent to the crime lab, but also Bode swabs
- 3 that were taken off of the gun were also sent to the Oregon
- 4 State Crime Lab.
- 5 Q. Did you say Bode swabs?
- A. Bode swabs, yes.
- 7 Q. What are those?
- 8 A. They're basically swabs that are run across
- 9 the gun to collect touch DNA.
- 10 Basically, your body leaves off skin cells,
- 11 and the swabs pick those items up. And so those swabs were
- 12 sent to the crime lab.
- Q. And those swabs were taken off of the
- 14 revolver?
- 15 A. Correct.
- 16 O. Both sides?
- 17 A. Both sides.
- 18 Q. Okay. Were any of the slugs or bullets that
- 19 were recovered from the scene in the northeast corner
- 20 parking lot shooting recovered and also submitted to the
- 21 crime lab?
- 22 A. Yes. So bullet on placard number 19 and then
- 23 the bullet on placard number 32 were both sent to the
- 24 Oregon State Crime Lab.
- So here's 32. That's the one that was sitting

- 1 underneath the car and then 19 that was sitting on the
- 2 sidewalk.
- 3 MR. JACKSON: Okay. Any questions for
- 4 Detective Posey about that?
- 5 Okay. Thank you very much.

6

- 7 SERGEANT STEVEN WUTHRICH
- 8 was thereupon called as a witness on behalf of the State
- 9 and, after having been duly sworn, was examined and
- 10 testified as follows:

11

- 12 EXAMINATION
- 13 BY MR. JACKSON:
- Q. Could you please state and spell your name?
- 15 A. It's Steven Wuthrich, S-T-E-V-E-N, and
- 16 Wuthrich is spelled W-U-T-H-R-I-C-H.
- Q. And where do you work?
- 18 A. I'm a Portland Police sergeant.
- 19 Q. And you're sergeant for patrol?
- 20 A. Yes, sir.
- Q. And how long have you been a police officer?
- 22 A. It will be 15 years in February of next year.
- Q. And have you worked patrol for that entire
- 24 time?
- 25 A. Yes, sir, I have.

- 1 Q. And when did you become a sergeant?
- 2 A. May 4th of 2017.
- 3 Q. And what is the difference between being a
- 4 patrol officer and a patrol sergeant in terms of
- 5 responsibilities?
- A. Sure. A patrol officer's responsibility
- 7 primarily is to take 911 calls and actively patrol the
- 8 neighborhoods and districts they work. A patrol sergeant
- 9 is the first line of supervision.
- 10 So on a daily basis, I would respond to
- 11 critical incidents in a management or leadership-type role.
- 12 My duties include reviewing officer reports,
- 13 reviewing officers' use of force and a number of other
- 14 administrative duties.
- 15 Q. What part of town do you generally patrol?
- 16 A. I work Central Precinct, which is generally
- 17 the west side of the Willamette.
- 18 Q. All the way up north Portland down into
- 19 southwest, that whole area?
- 20 A. Correct, and then out east to Southeast Caesar
- 21 Chavez.
- Q. All right. How many sergeants are generally
- 23 on shift for a typical night?
- 24 A. On night shift, we generally have -- two is
- 25 probably most common. Occasionally, we'll have three. If

- 1 we're really lucky, we have four working at nighttime.
- Q. And so as a sergeant, are you required to
- 3 respond basically all over the Central Precinct patrol
- 4 location?
- A. Yes, we are.
- 6 Q. Okay. Were you working on September 30th of
- 7 2018?
- 8 A. Yes, sir, I was.
- 9 Q. And what shift were you working that night?
- 10 A. I was working night shift, which is 10 p.m. to
- 11 8 a.m.
- 12 Q. And so did your shift start 10 p.m. September
- 13 29th and go into the early morning of September 30th?
- 14 A. Correct, yes.
- 15 Q. Okay. What part of town were you focusing
- 16 your attention on that night?
- 17 A. Being that it was a weekend night, I went down
- 18 to assist with the entertainment detail, which is made up
- 19 of another sergeant and generally four to six officers that
- 20 focus on the bars and nightclubs downtown.
- 21 They block off the streets to make it safer
- 22 for pedestrians. And we have hundreds, if not thousands,
- 23 of people come from the Portland metro area on Friday and
- 24 Saturday nights to come down and go to those clubs.
- So we have more police staffing to support

- 1 more police calls for service, given the increase in the
- 2 amount of people in the area.
- 3 Q. So there's a specific detail within the police
- 4 bureau to actually deal with that part of town?
- 5 A. That's correct.
- 6 Q. And what part of town are we talking about?
- 7 A. Old Town. So north of Burnside and then
- 8 roughly Broadway east to Naito Parkway.
- 9 Q. Okay. Why were you focusing your attention in
- 10 that particular area?
- 11 A. On that particular night, we had had a large
- 12 number of -- particularly large number of calls involving
- 13 violence.
- 14 We had numerous fights break out. Callers and
- 15 other witnesses in multiple of those -- multiple fights had
- 16 reported that people were armed with firearms.
- 17 And so myself, Sergeant Schmautz, the
- 18 entertainment detail sergeant.
- 19 Q. The what?
- 20 A. Entertainment detail. I apologize.
- 21 We were aware that there was a higher
- 22 possibility of violence given the large number of fights
- 23 and believing that it was more likely than not that people
- 24 involved in fights had guns.
- 25 O. And so when you, throughout your shift, are

- 1 receiving this type of information, how, as a police
- 2 officer, do you respond to that?
- A. Well, we try to respond proactively. So
- 4 having worked down in Central Precinct for about a year and
- 5 a half, I know areas where we're more likely to have
- 6 violent events, shootings, stabbings, large fights. And so
- 7 we try to proactively patrol those areas before we have to
- 8 respond to an incident like that.
- 9 So the idea is having a police presence there
- 10 will deter that kind of violence.
- 11 Q. As opposed to waiting for something to happen,
- 12 generating a 911 call and then going?
- 13 A. Correct.
- 14 Q. Okay. And so you, in your sergeant capacity,
- 15 were assisting in that proactive policing?
- 16 A. That and also just providing visibility in the
- 17 actual enclosure itself.
- 18 0. What enclosure?
- 19 A. So we close vehicular traffic on Friday and
- 20 Saturday nights down around the bars, Davis to Burnside and
- 21 Second Avenue to Fourth Avenue so that if there's a lot of
- 22 pedestrians walking around, which oftentimes we'll have
- 23 intoxicated pedestrians, that they can do so freely without
- 24 cars trying to drive through or creating a danger
- 25 situation.

- 1 So oftentimes, Friday and Saturday nights,
- 2 I'll go down. I'll check in with Sergeant Schmautz, see
- 3 how the night's going, see what the crowd sizes are like
- 4 and try to get a good idea, you know, if we need to devote
- 5 more officers to that area, if we need to devote officers
- 6 to places like parking lots where people sometimes
- 7 congregate when the bars let out.
- 8 And so, frequently, I'll go down and talk to
- 9 Sergeant Schmautz, see what resources I can provide and
- 10 observe and just try to be helpful because he's the only
- 11 sergeant down there.
- 12 There's -- if they're fully staffed, there's
- 13 six people on the entertainment detail, and there's
- 14 hundreds, if not a thousand people that go down there. If
- 15 there's a disturbance, six police officers and a sergeant
- 16 isn't a whole lot of resources.
- 17 Q. Okay. And do the police actually, once the
- 18 bars are closing down, reopen the roads to vehicular
- 19 traffic?
- A. We do, yes.
- 21 O. Okay. So does that also take officers to do
- 22 that?
- 23 A. It does. The barricades that the officers put
- 24 into place and remove at the end of the night are pretty
- 25 big, and they have to be stowed on a trailer that's hooked

- 1 up to a police SUV.
- Q. Is that the responsibility of the
- 3 entertainment detail officers to take those down and put
- 4 them away?
- 5 A. Yes, it is.
- 6 Q. Okay. What time do the bars generally close
- 7 in the entertainment district?
- A. People start letting out about 2:00, and then
- 9 oftentimes people start to congregate in the enclosure
- 10 between 2:00 and 3:00 a.m.
- 11 When people start to congregate outside and
- 12 the bars have closed, security for the bars tries to
- 13 encourage people to be on their way and to vacate the area
- 14 so that we can eventually reopen traffic.
- 15 Q. Is there a set time when you guys reopen the
- 16 roads, or does it happen organically?
- 17 A. It happens organically. It depends on the
- 18 night.
- 19 Q. Okay. On this night, September 30th, were you
- 20 aware of Sergeant Garry Britt also being on shift working?
- 21 A. I was. Actually, he had spent some time down
- 22 in the entertainment detail with Sergeant Schmautz and I.
- Q. That night?
- 24 A. Yes.
- Q. Helping out?

- 1 A. Yes.
- Q. Okay. Do you recall him talking about what
- 3 his kind of next steps were going to be in terms of patrol?
- 4 A. I do. The bars had closed. Most of the
- 5 people had moved out to the street and had gotten in cars
- 6 or walked home or Ubered home.
- 7 I was in Old Town precinct, which is a little
- 8 office, little police office at Northwest Third and Couch,
- 9 and I was talking to a few officers about how the night
- 10 went.
- 11 Sergeant Britt was in the office. And given
- 12 the -- the high number of calls involving disturbances and
- 13 weapons, Sergeant Britt mentioned to me that he was going
- 14 to grab a couple of officers and drive up to the parking
- 15 lot at Southwest Third and Harvey Milk Street just to do
- 16 some proactive patrolling because we have had a history of
- 17 violent events and shootings in that particular parking
- 18 lot.
- 19 Q. Okay. And was it your impression that he was
- 20 intending to go there and do what you previously described
- 21 in terms of just being a police presence there to deter any
- 22 kind of criminal activity?
- 23 A. That's what I believed his intent was, yes.
- 24 Q. As opposed to responding to a call there?
- 25 A. Correct. There wasn't a -- a call that had

- 1 come out there. He took it upon himself to go be
- 2 proactive.
- 3 Q. And did he talk about going alone or bringing
- 4 other officers with him?
- 5 A. He told me he was going to grab a few
- officers, and he ended up -- either officers volunteered to
- 7 go with him, which I think is the case, and they drove up
- 8 more or less together. They left Old Town precinct at
- 9 roughly the same time.
- 10 Q. Do you have a general sense of what time that
- 11 was when this was happening?
- 12 A. The bars had closed and the streets had been
- 13 reopened, I believe. So I would estimate roughly 2:45 to
- 14 3:00 a.m.
- 15 Q. Okay. Did you go with Sergeant Britt to the
- 16 parking lot at Third and Harvey Milk?
- 17 A. I did not. I remained at Old Town precinct at
- 18 that point.
- 19 Q. Okay. Could you describe for us what you
- 20 remember happening then?
- 21 A. Sergeant Britt had been gone for a few
- 22 minutes. I was sitting in Old Town precinct talking to
- 23 some officers.
- Q. Actually, Sergeant, let me ask one other
- 25 question.

- 1 A. Sure.
- Q. How far is Old Town precinct from the parking
- 3 lot at Third and Harvey Milk?
- 4 A. It is approximately six blocks.
- 5 Q. Okay. Is Old Town precinct on this map we
- 6 have on the board here?
- 7 A. No. It would be just north.
- Q. This map basically ends at Burnside on the
- 9 north edge?
- 10 A. Right, correct.
- 11 Q. And so Old Town precinct is north of Burnside?
- 12 A. It's -- it's on Northwest Third Avenue just
- 13 north of Couch.
- 14 Q. Okay. And the surface lot we're talking about
- 15 is down here at Third and Harvey Milk?
- 16 A. Yes, sir.
- Q. Okay. So by car, at this time of night,
- 18 approximately how long would it take to travel there, would
- 19 you say?
- 20 A. Just a normal driving response, you know,
- 21 depending on if you get a red light on Burnside, it could
- 22 be anywhere from one minute to five minutes, just a
- 23 ballpark estimate.
- Q. Okay. And is Third Avenue the road that goes
- 25 southbound and Fourth Avenue goes northbound?

- 1 A. Yes, sir.
- Q. And they're one-way streets?
- 3 A. Yes, sir.
- 4 Q. Okay. So traveling down from Old Town
- 5 precinct to the lot, you'd have to come down Third Avenue.
- 6 If you were going to enter from the west, you'd have to go
- 7 basically around the block and enter off of Fourth Avenue?
- A. Correct, yes.
- 9 Q. Okay. So you remained at the Old Town
- 10 precinct?
- 11 A. I did.
- 12 Q. And Sergeant Britt left?
- 13 A. Right.
- Q. Did you know which officers he was going with
- 15 at that point?
- 16 A. I know Officer Harris and Officer Moore were
- 17 going to go with him. I don't recall who else offered up
- 18 or who else he asked to go with him.
- 19 Q. Is that Todd Harris and Greg Moore?
- 20 A. Yes, sir, it is.
- Q. Okay. So what do you recall happening next?
- 22 A. Well, I was sitting in Old Town precinct. I
- 23 heard an officer microphone key up on the radio, but I
- 24 didn't hear anyone say anything. It was just for a second.
- I thought what I heard was gunshots in the

- 1 background. It took me -- took my brain a minute to
- 2 realize what I heard or thought I heard.
- 3 Q. How were you hearing that?
- 4 A. Through my radio.
- 5 Q. In your ear piece?
- 6 A. I don't wear an ear piece.
- 7 Q. Okay. So it's just coming out.
- 8 We can see you're in uniform today. Is that
- 9 the radio on your belt there?
- 10 A. Yes, sir.
- 11 Q. Okay.
- 12 A. This is a radio, and this is the microphone
- 13 where I transmit and receive.
- 14 Q. Okay. And so if you held the transmission
- 15 button down, it would just pick up the ambient sounds
- 16 around you and transmit them?
- 17 A. Yep.
- 18 Q. Is that what you think was occurring, somebody
- 19 had hit the button, but had not said anything?
- 20 A. That's what I believed had happened.
- Q. Okay. Took a second for your brain to realize
- 22 what you were hearing?
- 23 A. At that point, I was concerned that -- you
- 24 know, based on my observations, I believed an officer or
- 25 officers were in some kind of close proximity to qunfire.

- 1 Q. Could you tell whose radio that was coming
- 2 from?
- 3 A. I could not tell, no.
- 5 A. Just came out.
- Q. Okay.
- 7 A. So I jumped up. I ran to my car, which was
- 8 parked on Southwest Third Avenue.
- 9 As I'm getting into my patrol car, I hear
- 10 Sergeant Britt get on the radio and say something to the
- 11 effect of shots fired.
- I knew roughly where he was because I knew he
- 13 was going to be headed to the parking lot at Southwest
- 14 Third and Harvey Milk.
- 15 So myself and Sergeant Schmautz and the other
- 16 officers that were in Old Town precinct prior to this all
- 17 started driving code 3, lights and siren, south on Third
- 18 Avenue towards where we believed Sergeant Britt to be.
- 19 Q. Is that what code 3 means, lights and sirens?
- 20 A. Yes, sir.
- 21 Q. As fast of a response as you can do safely?
- 22 A. Yes.
- Q. Okay. You're traveling southbound Third
- 24 Avenue from Old Town precinct.
- So when you got up to the lot, were you on the

- 1 east side of the lot?
- 2 A. So I actually -- I didn't know where the
- 3 threat was or what was going on, and so I -- I can't
- 4 remember if somebody on Fourth requested cars come in from
- 5 there, but I ended up going west on Oak and south on
- 6 Fourth.
- 7 Q. Against traffic?
- A. Against traffic, I believe, to the best of my
- 9 memory, and then trying to get eyes on where the officers
- 10 were in the lot.
- 11 Q. Okay.
- 12 A. Eventually, I parked my car on Southwest Third
- 13 Avenue facing the wrong way, facing northbound.
- Q. Right at the entryway here or along the curb?
- 15 A. It was just south of the entryway. So more or
- 16 less in the area of the entryway to the parking lot.
- 17 Q. So as you responded, then, you kind of circled
- 18 the lot, wrong way down Fourth, down Harvey Milk and then
- 19 wrong way down Third before you --
- 20 A. To the best of my recollection, that was my
- 21 route, yeah.
- Q. Okay. What do you remember seeing?
- 23 A. I could see officers, a group of officers --
- Q. If you want to come up to the board, you can.
- 25 A. Sure.

- 1 So I parked right about here facing north and
- 2 walked in this direction.
- I could see a group of officers -- the parking
- 4 lot wasn't this full. I could see a group of officers
- 5 about here directing their attention towards something
- 6 here.
- 7 Do you want me to continue?
- 8 Q. Well, at that point, did you have any
- 9 information about what had happened, other than the shots
- 10 fired broadcast from Sergeant Britt?
- 11 A. I knew Sergeant Britt had broadcast shots
- 12 fired. At one point in a transmission, he said, I'm okay.
- 13 At that point, I wasn't sure if he had been
- involved in the shooting or if he had witnessed a shooting,
- 15 but I was considering both possibilities at that point.
- 16 Q. Okay. So go ahead. You see this group of
- 17 officers.
- Do you remember how many there were standing
- 19 there?
- 20 A. You know, I don't specifically. As I moved
- 21 through the lot, the officers moved in towards a subject
- 22 that was down on the ground, who I later learned was
- 23 Mr. Kimmons.
- 24 They began rendering medical aid. I could see
- 25 them applying tourniquets, chest seals. I saw a black

- 1 revolver just to the north of Mr. Kimmons and the officers
- 2 rendering aid, and there was a black sedan that was
- 3 occupied by two people just to the east of the revolver, to
- 4 the northeast of the revolver.
- 5 So if officers and Mr. Kimmons are here, I saw
- 6 the firearm about here and a vehicle occupied about here.
- 7 And so as I arrived, I saw the officers -- I
- 8 saw that Mr. Kimmons was getting an abundance of emergency
- 9 medical treatment. So I -- I was looking for a role at
- 10 that point. That wasn't needed. That was being done.
- 11 Sergeant Schmautz pointed -- as he was
- 12 rendering aid, he pointed back and said, There's two people
- 13 in that car. We need to detain them.
- No other officers -- all the officers were
- 15 rendering aid to Mr. Kimmons at that point. I didn't know
- 16 if the people in the car were involved. I didn't know if
- 17 they were shooters. I didn't know what their involvement
- 18 was.
- 19 So I went to the driver's side and had the
- 20 driver, who was an African-American female, step out, and I
- 21 secured her in the back -- I detained her in the back of a
- 22 patrol car that was in the parking lot. And then I went to
- 23 the passenger side and had an African-American male who was
- 24 in the passenger seat step out and detained him in a
- 25 separate patrol car that was in the parking lot. And then

- 1 I -- I returned to where the group of officers already were
- 2 rendering aid to Mr. Kimmons.
- There was a lot going on as I was pulling the
- 4 people out of the car.
- 5 Q. Do you mean literally pulling them out of the
- 6 car or just asking them to get out of the car?
- 7 A. I didn't know their involvement. I asked them
- 8 to get out and escorted them, like, by the arm to a patrol
- 9 car.
- 10 0. Okay.
- 11 A. So I didn't have to physically pull them out.
- 12 They both saw me. They both had their hands
- 13 up. They were cooperative. They did everything I asked.
- 14 Q. Okay. You come walking back now and --
- 15 A. So I come back. And as I'm dealing with the
- 16 people in the car, it's -- medical was requested probably
- 17 automatically by dispatch. Medical was already staged, I
- 18 believe, at that point and --
- 19 Q. What does that mean?
- 20 A. So when medical is called to an incident the
- 21 police are involved in, any kind of incident where there
- 22 might be some safety risks, either the fire truck or
- 23 ambulance will usually park out of sight around the block
- or a couple blocks away until the police say it's safe for
- 25 them to come in because they're obviously not equipped to

- 1 deal with armed people or extremely violent people.
- Q. That's what that means to stage?
- 3 A. Right.
- 4 Q. They were staged waiting for the all clear to
- 5 come in?
- 6 A. Right. So sometimes we'll ask, you know, Can
- 7 you start medical respond and have them stage, you know,
- 8 until we can make the scene safe or dispatch will say,
- 9 Medical is staged. And then it's up to the officers to
- 10 say, Okay. The scene is safe. We can go ahead and send
- 11 medical in.
- 12 So I kind of -- at that -- at some point here,
- 13 medical is called in. Mr. Kimmons is placed in the
- 14 ambulance.
- 15 I don't recall when exactly it occurred in
- 16 relation to my interaction with Sergeant Britt and Officer
- 17 Livingston, but when I returned to the scene where the
- 18 officers are, Sergeant Britt and Officer Livingston are
- 19 kind of standing back from where the group of the officers
- 20 applying medical aid were.
- I asked Garry, Sergeant Britt, if he was okay.
- 22 I didn't know if he had been shot at or I didn't really
- 23 have a lot of pieces to the puzzle at this point.
- 24 He said he was okay, and he said, I'm
- 25 involved.

- 1 And that terminology is in our policy. In
- 2 regards to officer-involved shootings, involved members are
- 3 members of the police bureau that used deadly force, and
- 4 then there's witness members that has an additional
- 5 definition.
- 6 So when Garry -- or Sergeant Britt told me
- 7 that he was involved, it led me to believe that he was
- 8 involved in an officer-involved shooting, that he had fired
- 9 his weapon.
- 10 And Officer Livingston was standing next to
- 11 Sergeant Britt. I don't recall if I asked Officer
- 12 Livingston if he was also involved or if he just told me
- 13 without me prompting him, but he also indicated that he was
- 14 involved.
- 15 And just to clarify, I asked them something to
- 16 the effect of, Did you both fire shots? And they both
- 17 indicated yes.
- 18 So at that point, there was no longer a
- 19 question of whether or not it was an officer-involved
- 20 shooting or if they had just -- if it was just a civilian
- 21 shooting. So that kind of started some protocol that I
- 22 needed to do as a supervisor per our policy.
- 23 Q. You can take your seat again, Sergeant.
- A. Thanks.
- 25 So knowing then that Sergeant Britt and

- 1 Officer Livingston were involved, the next arriving
- 2 officers -- per policy, I had officers assigned to Sergeant
- 3 Britt and Officer Livingston.
- I don't remember who I assigned initially, but
- 5 the first officer, next officer that arrived, I said, you
- 6 know, something to the effect of, Can you take Garry to a
- 7 patrol car and sit with him? And then I did the same for
- 8 Officer Livingston to ensure that they were separated so
- 9 that they wouldn't talk about the event so that eventually
- 10 when investigators came and interviewed them, they would
- 11 have their own individual statements and perspectives.
- 12 Q. Okay.
- 13 A. The other thing that --
- 14 Q. They were both monitored by non-involved
- 15 officers?
- 16 A. That is correct, non-involved and non-witness
- 17 officers.
- 18 Q. Okay.
- 19 A. The other thing is once I learned it was an
- 20 officer-involved shooting, I notified dispatch. I got on
- 21 the radio and said, This is, in fact, an officer-involved
- 22 shooting.
- I requested more resources from other
- 24 precincts. I think I asked for at least a sergeant and
- 25 four officers to help us out.

- 1 While this entire event was occurring, we had
- 2 groups of individuals on the east side of the parking lot
- 3 that were extremely angry and yelling, making threats to
- 4 officers.
- 5 And so in addition to trying to preserve this
- 6 crime scene, we had kind of an active threat of people that
- 7 were not being cooperative that wouldn't get back that were
- 8 yelling threats at officers, and so that was kind of a
- 9 drain on resources. We could have used a lot more officers
- 10 there.
- 11 We have 12 officers on our shift per night per
- 12 minimum staffing. Those resources get drained pretty
- 13 quick.
- But once I had officers with Sergeant Britt
- 15 and Officer Livingston, I coordinated with Sergeant
- 16 Schmautz to make sure we divided the workload up a little
- 17 bit and made sure that we knew who our witness officers
- 18 were.
- 19 Sergeant Schmautz was able to take care of
- 20 that and get them separated and get officers to accompany
- 21 them.
- 22 I kind of transitioned into a crime scene
- 23 management role and instructed officers that we needed to
- 24 set up crime scene tape around the entire parking lot.
- 25 I ensured that an officer went in the

- 1 ambulance -- in the back of the ambulance with Mr. Kimmons,
- 2 and that was Officer Torrey Streed, and I ensured that
- 3 somebody set up a crime scene log.
- 4 So any time we have a crime scene, we want to
- 5 document everybody who enters the crime scene.
- 6 Q. What did you do with regard to the gun that
- 7 you'd identified laying on the ground near Mr. Kimmons'
- 8 body?
- 9 A. So right after -- early on in my arrival here,
- 10 after I removed -- asked the two individuals in the sedan
- 11 to get out and placed them in patrol cars, I had already
- 12 seen the black revolver on the ground. I knew it was
- 13 evidence of some kind.
- 14 And so Officer Elena Suciu was one of the
- 15 earlier arriving officers, and I ordered her to stand by
- 16 the gun, make sure it wasn't disturbed, make sure no one
- 17 touched it or came near it or anything to preserve that
- 18 piece of evidence.
- 19 Q. As the scene supervisor, did you also begin
- 20 notifying the variety of people that need to be notified
- 21 when an officer-involved shooting occurs in the City of
- 22 Portland?
- 23 A. I did. I called my lieutenant, acting
- 24 lieutenant, Jenny Baxter. Just prior to doing that, I
- 25 requested dispatch send out some pages, thinking that once

- 1 we received the page, it would take a minute or two before
- 2 they called me so I could call my lieutenant real quick,
- 3 brief her.
- 4 So I briefed her. I notified homicide
- 5 detectives and ended up briefing Detective Michele Hughes.
- 6 Q. Is that the detective sergeant for the
- 7 homicide detail?
- 8 A. Yes.
- 9 Q. Okay.
- 10 A. I briefed her by phone and then made several
- 11 other notifications that I can get into or not.
- 12 O. Did that also include the forensic evidence
- 13 division of the Portland Police Bureau?
- 14 A. Yes, it did.
- 15 Q. And those are the criminalists?
- 16 A. Correct.
- 17 Q. Okay.
- 18 A. I then --
- 19 Q. Go ahead.
- 20 A. To mention one thing that I failed to mention
- 21 is when I was -- when I had learned that Sergeant Britt and
- 22 Officer Livingston were involved in this officer-involved
- 23 shooting, I did ask them what direction they fired their
- 24 weapons because I needed to know where to look for
- 25 evidence.

- 1 They both indicated more or less to the south.
- 2 So that was something that I could later pass on to
- 3 Detective Sergeant Hughes.
- 4 Q. Is that known as a field of fire?
- 5 A. Yes.
- 6 Q. So that you would know where to be looking for
- 7 strikes and a variety of other evidentiary items?
- 8 A. Exactly.
- 9 Q. Okay.
- 10 A. And then Sergeant Britt also made a comment to
- 11 me that I forgot to mention. He said something to the
- 12 effect of -- that there was probably somebody else shot in
- 13 the area, and he said, "Not by us," implying not by police,
- 14 but that it was likely that there would be somebody shot
- 15 that left the scene that might walk into a hospital for
- 16 treatment.
- 17 And I think Sergeant Schmautz asked him a
- 18 question about that that he can testify to also.
- 19 Q. And so was that part of your briefing as well
- 20 to the homicide detail in terms of what to be looking out
- 21 for in the minutes and hours following the incident?
- 22 A. Yes, it was.
- Q. Okay. And what I mean is in terms of people
- 24 walking into area hospitals with gunshot injuries?
- 25 A. Sure. And we actually received a call about

- 1 that a short time later.
- Q. Were you still on scene when that came out?
- 3 A. I was.
- 4 Q. At what point did you end up relieving or
- 5 being relieved from your role as the scene supervisor?
- A. A lot of command had showed up, a lot of
- 7 resource had showed up and a lot of detectives had showed
- 8 up.
- 9 The scene became more or less static. And
- 10 when it was time for me to brief homicide detectives, I
- 11 relinquished command of the incident to Sergeant Mike
- 12 Currier.
- 13 Q. Okay.
- MR. JACKSON: Any questions?
- I don't see any.
- 16 All right. Thank you very much.
- 17 (Pause in proceedings: 2:32-3:05 p.m.)
- 18
- 19 CLIFFORD NELSON, M.D.
- 20 was thereupon called as a witness on behalf of the State
- 21 and, after having been duly sworn, was examined and
- 22 testified as follows:
- 23
- 24
- 25

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1 EXAMINATION

- 2 BY MR. JACKSON:
- 3 Q. Could you please state and spell your name?
- A. Clifford Nelson, N-E-L-S-O-N.
- 5 Q. Clifford standard spelling?
- 6 A. Yep.
- 7 Q. And what is your occupation?
- 8 A. I'm a deputy state medical examiner for the
- 9 State of Oregon.
- 10 Q. And is that also known as a forensic
- 11 pathologist?
- 12 A. Correct.
- Q. And how did you become a forensic pathologist
- in terms of your educational background?
- 15 A. Sure. I went to college at the University of
- 16 Portland, graduated with a biochemistry major. Then I went
- 17 to Oregon Health Sciences University School of Medicine
- 18 where I also did a pathology student fellowship, as well as
- 19 my regular medical school.
- 20 I finished that in 199 -- 1989. I did my
- 21 anatomic and clinical pathology residency at Oregon Health
- 22 Sciences University, completed those in 1993. Then I went
- 23 to Atlanta, Georgia, did my fellowship in forensic
- 24 pathology. I finished that in 1994, took my boards and
- 25 passed my boards for anatomic clinical and forensic

- 1 pathology either in '93 or '94.
- I worked at -- I worked for six months in
- 3 Atlanta on staff, then was first medical examiner for Clark
- 4 County, Washington. I stayed there for 18 months. They
- 5 made a new position for me in Oregon, so I came over to
- 6 Oregon. That was 22 years ago.
- 7 Q. Okay. So for the last 22 years, you've been a
- 8 forensic pathologist for the Oregon State Medical Examiners
- 9 Office?
- 10 A. Right.
- 11 Q. All right. In that time, how many autopsies,
- 12 roughly, have you performed?
- 13 A. It's like 4,600 or 4,700 right now.
- 14 Q. 4,700 autopsies?
- 15 A. Yeah, 4,700.
- 16 Q. Okay.
- 17 A. And then another 15-, 1,600 external exams.
- 18 Q. Okay. And what is the function of a forensic
- 19 pathologist?
- 20 A. Basically to look at the entire death
- 21 investigation, including the person's past medical history,
- 22 examining the body, doing an autopsy if it's necessary,
- 23 looking at ancillary labs like toxicology, looking at
- 24 slides under the microscope, looking at culture results, et
- 25 cetera, and coming to a conclusion as far as cause and

- 1 manner of death.
- Q. Okay. And in your capacity as a forensic
- 3 pathologist, have you testified in both state and federal
- 4 courts all around the country as an expert?
- 5 A. Federal courts here in Oregon -- well, no. I
- 6 guess I have in Washington, too.
- But, yeah, as far as state circuit courts and
- 8 stuff, it's all over the -- pretty much except on the --
- 9 except in the Northeast.
- 10 Q. Okay. The rest of the country, though, you've
- 11 been --
- 12 A. Yeah. I -- I've never been to Texas, never
- 13 done it in -- never Texas, California, Mississippi,
- 14 Louisiana or Alabama; Kentucky, Tennessee, I haven't been
- 15 there. So over half the states, though, probably.
- 16 Q. Okay.
- 17 A. Or around half the states.
- 18 Q. Okay. Did you perform an autopsy on the body
- 19 of Patrick Kimmons on October 1st of 2018?
- 20 A. I did.
- 21 O. And where did you do that?
- 22 A. At our office out in Clackamas.
- Q. Okay. And who was present for the autopsy?
- A. Let's see. Paul Ware and Jamin Baker were the
- 25 criminalists. Rico Beniga and -- was the detective; you

- 1 were there and an Officer VanBlokland, and then there was
- 2 also a Detective Posey.
- Q. Okay. And for this particular case, what was
- 4 the purpose of performing an autopsy?
- 5 A. Basically to document the injuries. We -- we
- 6 do it in any type of -- we do an autopsy pretty much for
- 7 every homicide.
- 8 And since this is somebody's death which was
- 9 caused by the actions of other people, it's a homicide by
- 10 definition.
- 11 Q. Okay. And so it would be standard to conduct
- 12 an autopsy, even in an officer-involved shooting context?
- 13 A. Yeah.
- Q. Okay. Can you kind of take us through some of
- 15 the preliminary steps you undertake when performing an
- 16 autopsy?
- 17 A. Sure. One of the first things that will
- 18 happen is one of our pathology assistants will take X-rays
- 19 to find out if there are any bullets left in the person.
- 20 And then in combination with looking where the holes are,
- 21 try to figure out which one of those was -- which fits
- 22 rough size or calibers of the guns being used that were
- 23 involved.
- 24 The next thing is to basically bring them in
- 25 to the autopsy suite, look them over from head to toe. If

- 1 they've got any clothing on, describe their clothing, how
- 2 it's situated, if the holes match up with the holes on the
- 3 body from the gunshot wound.
- 4 Then describe -- describe any other jewelry,
- 5 any medical devices, any procedures they've had. Then --
- 6 then describe the wounds that they've got on their body or
- 7 injuries.
- If it's not in the case of a gunshot wound,
- 9 say it's a car wreck or something, we're describing their
- 10 fractures, lacerations, abrasions, et cetera.
- 11 Q. Okay. And then --
- 12 A. And then when we've done that, that's when we
- do what most people think of as the autopsy, which is to
- 14 make a Y-shaped incision.
- 15 In the case where we've got injuries like
- 16 this, to follow the course of the injuries, see which
- 17 organs were injured, get a general idea of the trajectory
- 18 of the bullet, at least through the body.
- 19 Q. You also examined the other internal organs to
- 20 determine whether or not they were properly functioning, to
- 21 the extent you can?
- 22 A. We don't -- we'll do a gross inspection.
- 23 Usually don't get microscopic slides on something like a
- 24 shooting.
- Q. Okay. So in this case, as part of your

- 1 examination, did you measure Mr. Kimmons' height and
- 2 weight?
- 3 A. I did.
- 4 (Pause-referring). 72 inches, 217 pounds.
- 5 O. Okay. You also mentioned that in the course
- of performing your duties, you identify a cause and manner
- 7 of death.
- 8 Could you explain what those terms mean?
- 9 A. Sure. The cause of death is the one thing
- 10 that kind of eventually led to the person dying. So in the
- 11 case of a gunshot wound, you know, they may bleed to death.
- 12 They may get an infection several days after and die from
- 13 that. They may -- it may be just the trauma from the
- 14 gunshot wound that causes something like spinal shock and
- 15 it -- and messes up their spinal column or their brain stem
- 16 and causes them to stop breathing. But whatever the cause,
- it's still the gunshot wound, wherever it is.
- 18 The manner is one of five things. It's either
- 19 natural, accident, suicide, homicide or undetermined, which
- 20 means just basically it doesn't fit into any of the other
- 21 categories or we don't know where to put it, which category
- 22 to put it in.
- In his case, the cause of death, I presume, is
- 24 listed as multiple qunshot wounds. And the manner is
- 25 homicide because our definition of homicide is death at the

- 1 hands of another person.
- Q. Is that a medical term as opposed to a legal
- 3 term?
- 4 A. Correct. We don't get into murder or
- 5 manslaughter or justifiable or nonjustifiable homicides or
- 6 anything like that. It's just straight definition.
- 7 Q. Death caused by another person, it's --
- 8 A. Right, death caused by another person.
- 9 Q. Okay. In this case, after you performed the
- 10 autopsy, did you reach a -- you already just actually said
- 11 that.
- 12 Did you note, as you performed your autopsy,
- 13 the injuries that Mr. Kimmons had sustained?
- 14 A. Yes.
- 15 Q. Could you take us through some of the injuries
- 16 you noted?
- 17 A. Well, basically, Mr. Kimmons had, I believe, a
- 18 total of nine -- yeah, nine different gunshot wounds, not
- 19 all of which would have been rapidly fatal, but many of
- 20 them would not have been rapidly fatal.
- 21 He had a total of nine injuries. One is of
- 22 the right lower leg, one is the right buttocks. He has
- 23 another one to the right lower and mid buttocks, to the
- 24 left buttocks, left upper buttocks and flank. None of
- 25 those would have been rapidly lethal. He has one of the

- 1 left thigh; again, not a rapidly lethal wound.
- 2 The one in the groin, because of the large
- 3 vessels involved, would have been fairly rapidly lethal,
- 4 but probably could have been salvaged if he was medically
- 5 treated appropriately in time.
- The gunshot wound to the upper chest is not --
- 7 that's not going to be a survivable wound, and the gunshot
- 8 of the right chest, definitely not a survivable wound.
- 9 Q. Okay. You've noted for the eighth and ninth
- 10 gunshot injuries, left chest and right chest.
- 11 Could you explain where exactly on the body
- 12 those qunshot wounds were located?
- 13 A. Probably be easier just to show the pictures,
- 14 unless you really don't want to.
- 15 Q. Oh, we can show --
- 16 A. The external photos.
- Q. Yeah. Do you have printed copies in there?
- 18 A. No. I gave them all back to you, the ones
- 19 that were numbered.
- MR. JACKSON: Let's go off and I'll pull them
- 21 up.
- 22 (Pause in proceedings: 3:26-3:27 p.m.)
- 23
- 24 BY MR. JACKSON: (Continuing)
- 25 O. Dr. Nelson, I'm showing you a photograph. Is

- 1 this one of the photographs taken from the autopsy you
- 2 performed on Mr. Kimmons?
- 3 A. Yes.
- 4 Q. And what is it that we see here in this
- 5 photograph?
- 6 A. This is the entrance wound with a probe in it,
- 7 what's labeled in the autopsy report as number 9, "gunshot"
- 8 wound of the right chest."
- 9 He's face down at the point that the
- 10 photograph is taken.
- 11 Q. Okay. So this gunshot injury noted in the
- 12 right chest is actually on his mid-back; is that correct?
- 13 A. Yes.
- 14 A GRAND JUROR: That was the exit or
- 15 entrance --
- 16 THE WITNESS: It's the entrance.
- 17 A GRAND JUROR: -- on the back?
- 18
- 19 BY MR. JACKSON: (Continuing)
- Q. Okay. So you've noted that the gunshot wounds
- 21 to the leg and buttocks that you indicated those likely
- 22 would not have been rapidly fatal?
- 23 A. Correct.
- Q. But the one to the groin may have been and the
- 25 one to the chest?

- 1 A. The one to the groin involved some major
- 2 vasculatures.
- Q. Okay.
- 4 A. And so he would have been -- bled rather
- 5 rapidly from those.
- Now, if direct pressure is applied and then he
- 7 goes someplace and those -- that is surgically repaired, he
- 8 probably would live through it as long as -- as long as at
- 9 least the bleeding was slowed down until they could repair
- 10 it.
- 11 Q. Okay. And the left thigh gunshot wound, was
- 12 that oriented on the front part of the thigh?
- 13 A. I believe so, but let me check.
- 14 (Pause-referring). Yes.
- 15 Q. Okay. And the groin injury, was that oriented
- 16 to the front left side of the individual as well?
- 17 A. Yes.
- 18 Q. Okay. Were any actual bullets recovered from
- 19 Mr. Kimmons' body?
- 20 A. I believe two were.
- 21 Q. In the course of -- oh, so as follow-up, then,
- 22 the remaining qunshot wounds that you noted were what are
- 23 referred to as through and through?
- 24 A. Through and through, yeah. They exited.
- Q. Okay. In the course of conducting an autopsy,

- 1 is it typical for you to obtain a sample of blood or urine
- 2 for toxicology analysis?
- 3 A. Yes.
- 4 Q. And was that done in this case?
- 5 A. Yes.
- 6 Q. And what were the results of the analysis?
- 7 A. Do you have it handy? If you don't, I can
- 8 probably find it.
- 9 Q. (Handing).
- 10 A. Okay. He's got qualitative positives, which
- 11 means they didn't -- they weren't able to quantitate it to
- 12 tell us how much of it is in his system. But it's positive
- 13 for both ketamine and trazodone.
- 14 Ketamine is a basically an anesthetic-type
- 15 agent. It used to be exclusively for animals. I didn't
- 16 realize they were actually using it in humans now.
- 17 Q. Is it your understanding from the medical
- 18 records that the ketamine was actually administered by OHSU
- 19 Hospital?
- A. Yes, yes.
- 21 O. Okay.
- 22 A. The -- and then the trazodone, which is a
- 23 muscle relaxant/painkiller/anti-anxiety can be given for a
- 24 lot of reasons.
- 25 And then he's got a blood alcohol of .127

- 1 grams per deciliter, which is a little over one and a half
- 2 times the upper legal limit.
- 3 Q. For driving?
- A. For driving.
- 5 Q. Okay. All right.
- 6 MR. JACKSON: Do the Grand Jurors have any
- 7 questions of Dr. Nelson?
- 8 A GRAND JUROR: Can you tell us again, now on
- 9 all of the -- you told us how a couple of the bullets, what
- 10 direction they came from.
- 11 Can you tell us on --
- 12 THE WITNESS: Sure. The one on the right
- 13 lower leg went from back to front, right to left and
- 14 downward. The one on the right buttocks goes from right to
- 15 left, back to front and downward.
- Number three, which is the gunshot wound to
- 17 the right lower mid buttocks, goes from right to left, back
- 18 to front and downward.
- 19 The one on the left mid buttocks goes from
- 20 right to left, back to front and downward. The gunshot
- 21 wound to the left upper buttocks goes from back to front,
- 22 right to left and upwards.
- The gunshot wound to the left thigh goes from
- 24 right to left, down -- and downward. The one to the left
- 25 groin travels below to above, right to left.

- 1 (Pause-referring). This doesn't make sense.
- 2 I'll have to correct this. It should just be right to --
- 3 right to left.
- 4 I think it's --
- 5 A GRAND JUROR: The groin shot?
- 6 THE WITNESS: -- downward, and it does go
- 7 slightly front to back.
- 8 Number 8, gunshot wound to the left chest,
- 9 it's predominately just downward. It's hard to tell
- 10 exactly the flight of this bullet because of the way it
- 11 enters the left arm. It's got a very tangential angle
- 12 here, so it depends on how the person is holding his arm.
- But since it just kind of comes out this area
- 14 after traveling through the soft tissues of the armpit,
- 15 it's more likely than not it's something like this, and it
- 16 just goes like that direction.
- 17 The gunshot wound to the right chest goes
- 18 upward, right to left and back to front.
- 19
- 20 BY MR. JACKSON: (Continuing)
- Q. And, Dr. Nelson, these directions that you're
- 22 giving, is that according to a person oriented in a
- 23 standing position?
- 24 A. Yes.
- Q. And so if a person is actually moving around,

those directions could certainly change? 1 2 Α. Yeah. 3 But there's no way for you to know that? It's just -- it's just with -- it just 4 Α. No. 5 represents its path through the body with the body in 6 anatomic position, which would be palms forward and standing --7 8 A GRAND JUROR: Stationary? 9 THE WITNESS: Stationary. 10 MR. JACKSON: Okay. 11 Any other questions? 12 I don't see any. 13 All right. Thank you, Dr. Nelson. 14 THE WITNESS: Okay. 15 (Pause in proceedings: 3:37-3:42 p.m.) 16 TRAVIS GOVER 17 was thereupon called as a witness on behalf of the State 18 19 and, after having been duly sworn, was examined and testified as follows: 20 21 22 23 24 25

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1 EXAMINATION

- 2 BY MR. JACKSON:
- 3 Q. Could you please state and spell your name?
- 4 A. My name is Travis Gover, first name
- 5 T-R-A-V-I-S, last name G-O-V-E-R.
- 6 Q. Okay. Where do you work?
- 7 A. I work for the Oregon State Police Forensic
- 8 Services Division here in the Portland Metro Forensic Lab.
- 9 Q. And what do you do for the Oregon State Crime
- 10 Lab?
- 11 A. I'm a forensic firearm and tool mark examiner.
- 12 Q. And what training and education do you have
- 13 for that position?
- 14 A. Education, I have a bachelor's degree in
- 15 biology. So it's basically a science that's required by
- 16 the forensic services.
- 17 The actual training for the position, I was
- 18 involved in a year-long training program that was sponsored
- 19 by the Bureau of Alcohol, Tobacco and Firearms. The first
- 20 four months was spent doing research, writing papers,
- 21 understanding the manufacture of firearms, ammunition and
- 22 tools and what makes them unique.
- I spent after that four months actually living
- 24 back in D.C., attending classes at the Bureau of Alcohol
- 25 Tobacco and Firearms National Testing Laboratory.

- 1 And the last three to four months was spent
- 2 back in our laboratory doing a research project, as well as
- 3 assignments to finish up.
- 4 Q. Okay. And then when did you get hired by the
- 5 Oregon State Crime Lab?
- 6 A. I was hired in January of 1999.
- 7 Q. And did you have any work experience doing
- 8 this type of work prior to that?
- 9 A. Prior to that, no. This is basically the only
- 10 setting in Oregon pretty much, unless you're in a private
- 11 lab.
- 12 Q. Okay. And have you done firearms analysis
- 13 ever since 1999?
- 14 A. Yes. I started off basically running a
- 15 database called the Integrated Ballistics Identification
- 16 System. I did that for about a year and a half, and then
- 17 got hired into the firearm and tool mark examiner position.
- 18 Basically, since June of 2000, I've been doing
- 19 that type of analysis.
- Q. Would you explain for us what a tool mark is?
- 21 A. A tool mark is basically the -- kind of the
- 22 overall aspect or discipline of what we do.
- 23 By our standards, a firearm is actually a
- 24 tool. So tools will make marks on a softer object. That's
- 25 how we kind of define a tool.

- 1 So it could be a screwdriver to a vinyl
- 2 window, somebody breaking in. It could be basically fired
- 3 bullets being marked by a firearm. By our definitions,
- 4 it's the same concept.
- 5 It's the same with cartridge cases within a
- 6 firearm. It's the softer of the two metals being marked.
- 7 So the firearm will actually mark the bullets and mark the
- 8 cartridge case the same way a screwdriver will mark a piece
- 9 of lead or like bolt cutters will actually leave marks on
- 10 padlocks or chain-link fence, same with wire cutters. It's
- 11 the same general concept.
- 12 Q. And are you able to actually compare markings
- 13 you see on cartridge casings back to a particular firearm?
- 14 A. Yes, we are.
- 15 Q. Could you explain that process?
- 16 A. Kind of how I just described, the softer of
- 17 the two materials is going to be marked by the harder of
- 18 the two objects.
- 19 So within the manufacturing process of
- 20 firearms, there's basically a lot of cutting involved.
- 21 There's very sharp cutting tools that are basically cutting
- 22 through different aspects of metal to make the pieces that
- 23 go into a firearm.
- So when this cutting process occurs, the sharp
- 25 blade of the cutting object, tool, is being changed at a

- 1 microscopic level with every cut that it makes on, you
- 2 know, an object that's going into the firearm.
- So like a barrel, for instance, there's a
- 4 cutter that actually passes down through the what we call
- 5 bore of the barrel. So as it's moving down through that,
- 6 it's actually cutting lands and grooves, which are raised
- 7 lines within the barrel.
- 8 So when a bullet strikes, you know, the
- 9 interior of the barrel, it imparts a spin, like putting a
- 10 spin on a football, for stability and accuracy.
- 11 As that cutter passes down through the
- 12 interior of the barrel, the cutter is changing at a
- 13 microscopic level as it's passing and cutting. So it's
- 14 actually leaving marks within the barrel that are unique to
- 15 that barrel.
- 16 So when that cutter is actually -- you know,
- 17 passes all the way through and it's moved on to the next
- 18 barrel, the marks on the cutting surface or cutting edges
- 19 of the tool have actually changed since it started the
- 20 previous barrel.
- 21 So the studies that we've done to show the
- 22 uniqueness of how the marks they found on a bullet passed
- 23 through the interior of the barrel are different from the
- 24 next firearm manufactured.
- 25 Same thing with what we call -- we have

- 1 cartridge cases. So I'm going to back up just a little bit
- 2 and kind of use -- define the terminology that I'm going to
- 3 use.
- 4 So an unfired component of ammunition is
- 5 referred to as a cartridge. There's -- basically makes up
- 6 a cartridge case, which is like a brass or aluminum
- 7 container that holds the gunpowder, which is another one of
- 8 the components. And then there's the actual bullet, which
- 9 is the projectile itself.
- 10 Most people -- you'll hear people refer to
- 11 something like a bullet, which is the unfired component.
- 12 The bullet is actually a projectile by itself.
- 13 And the last component of the cartridge -- so
- 14 basically, as you can see on the image, the piece -- the
- 15 cartridge sitting down below is the unfired component, and
- 16 the bullet is the actual projectile, and the cartridge case
- 17 is basically the silver casing that contains the powder,
- 18 and then there's a primer at the end which has an explosive
- 19 compound that ignites when powder and the firing pin hits
- and starts the process.
- 21 O. And so when a cartridge, like the one we see
- 22 on the screen here, is fired, does the bullet actually
- 23 separate from the cartridge casing?
- A. Yes, it does.
- Q. Okay. And we're talking about, in this

- 1 instance anyway, a semiautomatic handgun?
- 2 A. Yes. A semiautomatic pistol is what it's
- 3 referred to as.
- 4 Q. And can you describe what actually happens in
- 5 a firearm that causes it to shoot?
- 6 A. Okay. So the cartridge is loaded into what's
- 7 referred to as the chamber. It's basically the holding
- 8 area within the barrel, which is on, it would be the --
- 9 basically the left side as you're looking at that picture.
- 10 You can see it's inside the slide. The slide is the piece
- 11 that sits on top that actually moves back and forth.
- 12 So when it's closed up, we have an area within
- 13 that slide called a breach face, which would be easier if I
- 14 got up there and actually -- it would be easier to point
- 15 than to try to describe.
- 16 So the small area that you see just inside
- 17 here is referred to as the breach face area. This is
- 18 basically a supporting area for the cartridge when it's
- 19 fired.
- 20 Within that breach face, there's a small hole
- 21 where the firing pin comes through when it's released under
- 22 spring tension. The firing pin actually makes an impact on
- 23 the part of the cartridge referred to as the primer, which
- 24 has an explosive compound within.
- 25 That minor explosion passes through a hole, a

- 1 small hole within the cartridge case base into the open
- 2 area where the powder sits and waits, and it starts the
- 3 burning of the gunpowder. That burning of the gunpowder
- 4 basically generates pressure.
- 5 So at that point in time, this cartridge is
- 6 sitting inside the chamber here, when this is all closed
- 7 up. That pressure forces the bullet down the barrel, but
- 8 we have what we refer to as equal and opposite pressure.
- 9 That's going to push the cartridge case back.
- 10 So at that time, the cartridge case is pushed
- 11 back into the breach face area of the firearm, which also
- 12 starts the process of that slide moving to the rearward.
- 13 This piece right here is referred to as the
- 14 extractor. It's actually hooked within this little rim on
- 15 the cartridge case. So as that pressure is pushing
- 16 everything backwards, that extractor is actually pulling
- 17 the cartridge case to the rear of the firearm until at what
- 18 point this opens up far enough, and a little pin that sits
- 19 down inside referred to as the ejector hits the opposite
- 20 side of the rim of the cartridge case and basically forces
- 21 it to be ejected out of the firearm.
- 22 So but that equal and opposite direction of
- 23 pressure, as it's forcing the cartridge case back into this
- 24 breach face, those tool marks we referred to from the
- 25 cutting process of the manufacturing, are basically being

- 1 impressed into the base area of the cartridge case and also
- 2 onto that primer, which is a softer material.
- 3 Kind of the same, as the bullet is passing
- 4 down a barrel, different types of barrels, the ones I
- 5 described earlier, which had what we call lands and
- 6 grooves, or what we refer to as conventional rifling.
- 7 And then firearms like these have what are
- 8 referred to as polygonal rifling, which don't necessarily
- 9 have those true defined what we referred to as lines or cut
- 10 raised areas. They're more, if you imagine, kind of like I
- 11 always tell people, if you imagine a stop sign, kind of
- 12 like it's a polygon.
- So if you imagine the interior shape of a
- 14 barrel, similar to that, but then put a twist on it over
- 15 length. This is what's referred to as polygonal-type
- 16 rifling. They don't necessarily leave great marks, but
- 17 they're more efficient in the firing process and take less
- 18 energy away from the bullet, but they're not actually
- 19 cutting into the bullet as it passes down.
- 20 So -- but in this particular case, we have a
- 21 Glock firearm, which has the polygonal type rifling, but it
- 22 also leaves very nice marks for the breach face area on the
- 23 cartridge case.
- 24 O. And then how, in a semiautomatic handgun, does
- 25 the firearm reload for the next round?

- 1 A. I don't see it here, but there's what we refer
- 2 to as a magazine. It's basically your ammunition-feeding
- 3 device. It's basically there as you see.
- 4 So this is our magazine. It fits up into the
- 5 grip of the firearm. So the cartridges are loaded in
- 6 through the top of the magazine. The magazine is inserted
- 7 up through the grip.
- 8 So as the fired cartridge case is extracted
- 9 and ejected, the next cartridge sits just below. And as
- 10 the slide moves forward, the bottom of that breach face
- 11 area catches the top of the next cartridge and pushes it
- 12 forward and kind of bumps it up into the chamber so it's
- 13 ready to be fired.
- Q. Does that process also create tool markings?
- 15 A. Not as much. There's a chance sometimes we
- 16 get magazine marks, so there's metal feed lips that are at
- 17 the top of the magazine that hold the cartridges basically
- 18 in the magazine.
- 19 Sometimes we'll get marks from those that will
- 20 reproduce, but a lot of times they're kind of random and
- 21 don't look the same. It's kind of a random process.
- Q. And so for a semiautomatic handgun such as
- 23 this Glock we see on the screen labeled "Officer
- 24 Livingston, what would be the difference between this and
- 25 a fully automatic handqun?

- 1 A. So with a full automatic, it's basically --
- 2 with this particular firearm, the semiautomatic, every time
- 3 the trigger is pulled, the gun is going to fire one time.
- 4 So when that slide retracts and extracts and
- 5 ejects that cartridge case, there's a mechanism within that
- 6 that actually disconnects the trigger from the firing
- 7 mechanism.
- 8 So when that slide comes forward and loads the
- 9 next one up, even if the trigger is still being pulled,
- 10 it's been disconnected. It has to be released to reset and
- 11 then pulled again in order to fire again.
- 12 With an actual automatic firearm, as you're
- 13 holding the trigger, you have the extraction ejection,
- 14 loading. As that slide closes up to load, there's a
- 15 different mechanism altogether that would cause the release
- 16 of the firing pin and basically would fire with just
- 17 holding the trigger one time. So it continues to fire
- 18 until the trigger is released.
- 19 Q. And so this gun here is semiautomatic, meaning
- 20 one round per trigger pull?
- 21 A. That's correct.
- Q. Okay. And is that true also of the firearm we
- 23 see on the screen here labeled "Sergeant Britt handgun"?
- 24 A. Yes.
- 25 O. Both semiautomatic?

- 1 A. Both semiautomatic pistols.
- 2 Q. Could you explain how that process changes
- 3 when the firearm in question is a revolver?
- 4 A. Okay. So a revolver has a different feeding
- 5 mechanism for the ammunition. So as we have the magazine
- 6 for the semiautomatic pistol being our source of
- 7 ammunition, with a revolver there's a cylinder that holds a
- 8 set amount of ammunition within the firearm.
- 9 So as you see with this one, this is our
- 10 cylinder right here, and you can actually see the head of
- 11 the cartridge cases within the cylinder. So as you open
- 12 the cylinder up to the side, it could have five, six,
- 13 seven -- in this case, five, you know, basically what we
- 14 call chambers.
- 15 The pistol has one chamber that's integral
- 16 with the barrel. This has five chambers that rotate each
- 17 piece of ammunition into line with the barrel to be fired.
- 18 Q. Does the firing process in a revolver create
- 19 uniquely identifying tool marks as well?
- 20 A. It does. It has the opportunity. It can
- 21 create marks through the firing pin impression. So as the
- 22 firing pin hits that primer, which is what you see, the
- 23 smaller circle within each of these cartridge cases, if
- 24 there are unique marks on that firing pin, it can actually
- 25 leave those marks or impress those marks into the primer

- 1 area of the cartridge case.
- 2 Sometimes, depending on the firearm, we'll
- 3 actually get marks from that pressure back from the breach
- 4 face area, which is up underneath where the firing pin
- 5 comes out. That can happen sometimes, not as frequent as
- 6 we see with semiautomatic pistols.
- 7 The concept with the bullet is just -- it's
- 8 the same between the bullet -- or the revolver and the
- 9 semiautomatic pistol. That pressure is going to force that
- 10 bullet down the barrel, which would engage rifling. That's
- 11 potential to be marked by the firearm.
- 12 Q. So in that sense, would you have an
- 13 opportunity to analyze an actual fired bullet to determine
- 14 whether or not it was fired by a particular gun?
- 15 A. Yes. If the bullet is recovered, we can look
- 16 at it and determine, you know, first of all,
- 17 characteristics that we refer to as class characteristics,
- 18 you know, is it even possible?
- 19 So this firearm being a .38 Special caliber
- 20 firearm is not going to obviously shoot a .45 caliber
- 21 bullet. It's too big, the difference in size.
- So the first thing we do is we look at some of
- 23 those general characteristics and see is it even possible.
- 24 This particular revolver has conventional
- 25 rifling. That's that cut rifling I described earlier;

- 1 whereas, the Glock and semiautomatic pistols have polygonal
- 2 rifling.
- They show up and look different just even to
- 4 the naked eye as we're looking at them under a microscope
- 5 or even just under light, so we can easily say, No. This
- 6 bullet could not have been fired from this gun. The
- 7 characteristics are not the same from a class type level.
- When I say "class," it's kind of like talking
- 9 about, you know, Chevrolet, Ford, you know, Tahoe models.
- But once you get down to, you know, dents and
- 11 dings, then we're talking about individual characteristics
- 12 that are unique to a particular firearm or unique to a
- 13 particular vehicle as a type of identification.
- 14 Q. Okay.
- 15 MR. JACKSON: Do the Grand Jurors have any
- 16 questions about that, how firearms operate, what a
- 17 cartridge casing is, what a cartridge is, anything like
- 18 that?
- 19 Okay. You can retake your seat. Thank you,
- 20 sir.
- 21
- 22 BY MR. JACKSON: (Continuing)
- Q. Were you asked to do a comparison of some
- 24 evidence concerning the September 30th officer-involved
- 25 shooting involving Patrick Kimmons?

- 1 A. Yes, I was.
- 2 Q. And did you document your findings in a report
- 3 dated October 24th of 2018?
- 4 A. That's correct. I finished up basically end
- 5 of last week.
- 6 Q. Okay. And could you first explain for us the
- 7 evidence that you received for analysis?
- 8 A. So what I received was two Glock semiautomatic
- 9 pistols, one that belonged to each of the officers, which
- 10 also we typically get their magazines, which is more than
- 11 one. It's usually whatever is within their duty belt.
- 12 So I think I received three magazines from
- 13 each and a various number of cartridges depending on what
- 14 they had loaded into them and how many times they may have
- 15 fired.
- 16 I also received 12 fired cartridge cases that
- 17 were of 9mm Luger caliber, two fired .38 caliber bullets.
- 18 So these are -- when I refer to caliber, when
- 19 I say 9mm Luger, it's a specific caliber of cartridge
- 20 designed for a certain type of firearm. A .38 caliber,
- 21 when describing bullets, is kind of a general family, kind
- 22 of described as the diameter.
- I also received five fired .38 Special caliber
- 24 cartridge cases, as well as a .38 Special caliber Taurus
- 25 five-shot revolver.

- 1 Q. Okay. And so did you first compare the two
- 2 Glock handguns you received to the 9mm Luger cartridge
- 3 casings recovered by the scene to determine whether or not
- 4 those guns fired those bullets?
- 5 A. Yes, I did. So I received 12 fired 9mm Luger
- 6 caliber cartridge cases. The two Glock semiautomatic
- 7 pistols are also 9mm Luger caliber. They're designed to
- 8 fire that caliber cartridge case or cartridge.
- 9 Of the 12 cartridge cases I examined, I could
- 10 identify seven to one of the semiautomatic pistols and five
- 11 to the other.
- 12 O. And how did you do that?
- 13 A. So as we were just talking about earlier, the
- 14 marks that are left from that manufacturing process are
- 15 basically microscopic with microscopic striations or
- 16 scratches, in essence, but these striations are reproduced
- in the same general pattern. So the spaces, the widths,
- 18 the heights of these striations are generally reproducible
- 19 between shots.
- 20 So by taking the two firearms out to our
- 21 range, I test fired each one of them, collected the
- 22 cartridge cases separately so I didn't have what I'd refer
- 23 to as known samples with the particular case, and then I
- 24 take them back in. We have a comparison microscope. It's
- 25 kind of a specialized microscope for firearms analysis. So

- 1 it's set up with -- if you have your -- your general
- 2 microscope has one stage, one set of objects.
- 3 My microscope has basically two stages that
- 4 come up into an optical bridge and let me see both sides
- 5 through one set of optics. It's like a split screen.
- 6 So I can look at what's on the left, on the
- 7 left side of my field of view and what's on the right, on
- 8 the right side with a separating line.
- 9 So if I change magnifications and align the
- 10 cartridge cases in the same orientation and use a
- 11 specialized lighting, we can enhance those microscopic
- 12 marks and actually line them up and determine if a
- 13 particular cartridge case was fired in a specific gun.
- 14 Q. And what are the different types of results
- 15 you can get in that comparison process?
- 16 A. The first is an identification where we can
- 17 say, you know, that cartridge case was identified as being
- 18 fired in, you know, firearm Exhibit 1 or Exhibit 2.
- 19 Some of the other conclusions we can come up
- 20 with are what we refer to as inconclusive. We can have
- 21 agreement of those general class characteristics, like it's
- 22 a 9mm Luger, but maybe there's just not any marks being
- 23 produced.
- There are incidents where the gun fires, but
- 25 maybe the breach face is smooth. It doesn't have anything

- 1 to impress on the cartridge case. So it's not unusual. We
- 2 do see it. It's not unusual to see multiple guns that can
- 3 do that.
- 4 So in a case like that, we're not going to be
- 5 able to say it's identified to that firearm. We'll say
- 6 it's inconclusive based on a lack of individual detail.
- 7 Sometimes the bullet is too damaged. You
- 8 know, we can make out some general class characteristics,
- 9 but everything else has been wiped out because it skidded
- 10 down the street.
- 11 Sometimes we may have what we refer to as some
- 12 agreement of the individual, but it's not enough to
- 13 basically push it over the threshold of what we know to be
- 14 fired from -- you know, much detail will be produced when a
- 15 bullet is produced from the same firearm.
- So there are times when two guns, you know,
- 17 could be manufactured one after the other. Some of those
- 18 marks will look the same between those two guns.
- 19 Part of the studies that we do as a -- I'm a
- 20 member of an association called Association of Firearm and
- 21 Tool Mark Examiners. We do a lot of these studies with
- 22 consecutively manufactured firearms. So we know what to
- 23 expect and how much agreement to expect between two
- 24 different firearms and we know what to expect from two
- 25 bullets fired from the same firearm. So it allows us to

- 1 develop that threshold and determine, you know, where does
- 2 an identification lie.
- 3 So sometimes we'll get that, you know, just
- 4 that little bit of a grievance, so it will be inconclusive.
- 5 It's just not enough to say yes, but we're not going to say
- 6 it's not from that gun either because we just can't tell.
- 7 Not enough information.
- 8 Then the last is basically an exclusion where
- 9 either those individual marks are so grossly different and
- 10 we can see, you know, the multiple shots produced one set
- of marks, multiple shots that we have from another scene
- 12 are completely different or we have the firearm and we can
- 13 see that those marks are reproduced over and over, and
- 14 they're completely different and unknown.
- We can also exclude on class, obviously, where
- 16 maybe one bullet has, you know, five of those lands and
- 17 grooves in the barrel with a right-handed twist, and the
- 18 bullet I'm looking at from the scene has six of those lands
- 19 and grooves with a left-hand twist. It's physically
- 20 impossible. So we can exclude on that level.
- 21 MR. JACKSON: Are there any questions about
- 22 that?
- 23 A GRAND JUROR: Are you able to determine if
- 24 one came out of a fourth generation versus a third
- 25 generation?

- THE WITNESS: No, no. The rifling process for
- 2 Glocks really hasn't changed from third to fourth
- 3 generation. The Generation 5 supposedly has a new type of
- 4 barrel, a Glock-marking barrel, a marksman barrel. I have
- 5 yet to see one to see what the difference is.
- The marks from the first generation from the
- 7 '80s probably up until a year or two ago used the same
- 8 general mechanism in the machining process. So we haven't
- 9 really seen a lot of difference there.
- 10 MR. JACKSON: Any other questions about that?
- 11
- 12 BY MR. JACKSON: (Continuing)
- Q. Okay. So when you conducted your comparison
- 14 here, what were the results that you found?
- 15 A. So the first comparison I did was involving
- 16 the two Glock semiautomatic pistols. So the cartridge
- 17 cases, the 12 that I received, obviously the same caliber,
- 18 I think it was seven of those cartridge cases I could
- 19 identify to what I referred to as Exhibit 1, which is one
- 20 of the semiautomatic pistols, which is the Glock with
- 21 serial number KDD767.
- 22 And then five of those cartridge cases I can
- 23 identify to my Exhibit 2, Glock semiautomatic pistol, which
- 24 was the pistol with serial number XTA035.
- 25 O. And this photograph labeled "Officer

- 1 Livingston, " is that XTA035?
- A. That's my Exhibit 2 for my lab, yes. I
- 3 identified five cartridge cases to that firearm and seven
- 4 to the other.
- 5 Q. And the photograph we have here labeled
- 6 "Sergeant Britt handgun," that's KOD767?
- 7 A. I think it's KDD.
- 8 O. I'm sorry. KDD767?
- 9 A. Yep, yep.
- 10 O. And those were classified as identifications?
- 11 A. Yes.
- 12 Q. Okay. Meaning those rounds were fired by
- 13 those identified --
- 14 A. Right. Those cartridge cases were identified
- 15 as being fired in those particular firearms.
- 16 Glocks usually give us good markings, so that
- 17 was nice.
- 18 Q. Okay. And what's the next thing that you did?
- 19 A. So the next thing, I had the two fired .38
- 20 caliber bullets, and I knew these weren't fired from the
- 21 Glock semiautomatic pistols based on their weight. They're
- 22 right around what we refer to as 130 grains. It's a
- 23 firearms-related weight.
- 24 Those particular weights are not loaded into
- 25 9mm Luger caliber cartridges. They're typically a .38

- 1 Special target type loadings.
- 2 So I basically, you know, identified what the
- 3 caliber of each of those bullets were and then had a .38
- 4 Special caliber revolver, the Taurus, which I test fired in
- 5 our water tank, which is what we shoot into to capture
- 6 pristine specimens for comparison.
- 7 And with the same process I used with the
- 8 cartridge cases from the nine millimeters, I looked at the
- 9 fired bullets under the microscope. I could identify both
- 10 of those fired bullets as being fired from the .38 Special
- 11 caliber Taurus revolver.
- 12 Q. Again, that was an identification that that
- 13 revolver fired those two bullets?
- 14 A. Yes, that's correct.
- 15 Q. Okay. I guess it's kind of inherent in what
- 16 you've just testified to, but did you test the three
- 17 submitted firearms for operability?
- 18 A. Yeah. As part of our testing, as we write up
- 19 the firearm, we go through and check the safeties, see if
- 20 anything is broken, checking the condition of the firearm.
- 21 Basically, it's mostly to make sure, one, that
- 22 it's safe for us to shoot and then also to report on its
- 23 operability.
- 24 All three of these firearms I found to be
- 25 operable as designed.

- 1 Q. Okay.
- 2 MR. JACKSON: Do you folks have any questions?
- 3 A GRAND JUROR: I have a question.
- In your expertise of firearms in general, what
- 5 would -- so if a revolver or a pistol was being fired, the
- 6 sounds of them, are those noticeably different if you --
- 7 like would somebody --
- 8 THE WITNESS: Not really.
- 9 A GRAND JUROR: Okay.
- 10 THE WITNESS: I don't think I'd be able to
- 11 differentiate if I weren't looking.
- 12 Some of the bigger calibers may have a lower
- 13 pitch. But to differentiate between a semiautomatic pistol
- 14 and a revolver, probably not.
- 15 A GRAND JUROR: Okay. Thank you.
- MR. JACKSON: Any other questions?
- I don't see any.
- 18 Thank you very much.
- 19 (Pause in proceedings: 4:12-4:53 p.m.)

20

- 21 AYAN ADEN
- 22 was thereupon called as a witness on behalf of the State
- and, after having been duly sworn, was examined and
- 24 testified as follows:

25

1 EXAMINATION

- 2 BY MR. JACKSON:
- 3 Q. Could you please state and spell your name?
- A. Ayan Aden, A-Y-A-N, last name A-D-E-N.
- 5 O. Okay. And how old are you?
- 6 A. I'm 17 years old.
- 7 Q. Okay. I want to take you back to September
- 8 30th of 2018.
- 9 A. Okay.
- 10 Q. Were you out that night, the 29th, into the
- 11 early morning hours of the 30th?
- 12 A. Yes. Yeah, I was out. My friend came from
- 13 Eugene. I picked him up from North Portland, and we were
- 14 going to get something to eat.
- 15 Q. Do you remember about what time it was that
- 16 you picked him up?
- 17 A. 2:30.
- 18 Q. In the morning?
- 19 A. Yeah.
- Q. Okay. And where did you guys go?
- 21 A. We went to the food carts on I think Third --
- 22 Third and Stark.
- Q. Do you see up on the board here there's an
- 24 aerial map, Third Avenue, Stark now called Harvey Milk
- 25 Street?

- 1 A. Yes.
- Q. Were the food carts you were going to down on
- 3 this southeast corner of the intersection?
- 4 A. Yeah.
- 5 Q. Okay. And where did you park?
- 6 A. I parked in that parking lot right there.
- 7 Q. Okay. Right here?
- 8 A. Yeah.
- 9 Q. And what kind of car were you driving?
- 10 A. An Acura, black Acura, 1998.
- 11 Q. And was it just you and your boyfriend, is
- 12 that --
- 13 A. No. He's just a friend.
- 14 Q. Just a friend.
- Okay. Just you and your friend in the car?
- 16 A. Yeah.
- 17 Q. And do you remember where in the lot you
- 18 parked?
- 19 A. It was facing Third. It was facing -- it was
- 20 facing Fourth. So I was -- I was kind of by -- do you know
- 21 where the Golden Dragon is?
- 22 Q. The Golden Dragon is right over there.
- 23 A. Okay. So I was facing kind of towards this
- 24 street. Actually, I was facing Stark, and I was parked on
- 25 the -- like closer to the -- facing Stark Street, but on

- 1 this side of the road.
- Q. If you want to come up to the screen, you can
- 3 point for us.
- 4 A. Okay. I think I was parked, like, exactly
- 5 right here, somewhere around there.
- 6 Q. Okay. Facing south towards Stark Street?
- 7 A. Yeah.
- 8 O. Okay. Have a seat. Thank you.
- 9 When you pulled in there, were there other
- 10 cars in the lot?
- 11 A. No -- oh, well, there were other cars, but
- 12 nobody was in it.
- 13 And then so this black car pulled up, and I
- 14 don't really know -- I don't know what model it was. It
- 15 was a black car with black tinted windows.
- 16 Somebody rolled down the window, and Aundree
- 17 realized that it was his cousin. He got out of the car,
- 18 and they started talking about basketball and what he was
- 19 doing in Eugene and stuff like that for a while.
- 20 Q. I'm going to ask you to speak a little slower
- 21 because we have a court reporter trying to keep up with.
- A. Okay, okay.
- Q. Okay. So the car pulls in. Was there more
- 24 than one individual in the car?
- 25 A. Two.

- 1 Q. Two people were in the car?
- 2 A. Yep.
- 3 Q. And your friend and one of them started
- 4 talking about Eugene and basketball and that kind of stuff?
- 5 A. Yeah, but he got out of the car.
- Q. Okay.
- 7 A. Yeah.
- Q. Okay. Did you stay in the car?
- 9 A. Yeah. I stayed in the car the whole time.
- 10 And then I actually got out to go to the food carts, and
- 11 there was guys trying to talk to me. So I just went back
- 12 and waited for Aundree because I didn't know what he wanted
- 13 to eat anyway.
- 14 Q. And is Aundree the friend that you picked up?
- 15 A. Yeah, yeah.
- 16 Q. Okay. And while you were sitting in the car,
- 17 can you kind of take us through what you remember
- 18 occurring?
- 19 A. I was just kind of on my phone, and I remember
- 20 just, like, after I got back in the car, I had a, like, a
- 21 bad vibe off those guys that were talking.
- I was, like, Aundree, get back in the car so
- 23 we can get our food and figure out where we're going to eat
- 24 and then leave.
- Q. Were you in the driver's seat?

- 1 A. Yeah. I was driving.
- Q. And then what happened?
- 3 A. So Aundree got back in the car, and then I
- 4 think Mike was -- Mike is Aundree's older brother. That's
- 5 who we were waiting for, actually.
- 6 Aundree said -- he's, like, Mike is in the
- 7 area. He's in Golden Dragon. Let's just wait for him to
- 8 come up.
- 9 And so we were waiting for Mike, and Mike
- 10 ended up coming out. He was talking to us through the
- 11 window. He's like, Oh, I think -- he's, like, I'm going to
- 12 throw a party or something like that. Maybe you guys could
- 13 come over.
- We were, like, Okay. Let's get food, and
- 15 we'll talk about that because I was pretty tired already.
- 16 And that's when -- Mike was still standing
- 17 there, and I remember --
- 18 O. Was he standing in the front of your car?
- 19 A. Yeah. He was standing in the front of the
- 20 car, leaning on the hood of the car.
- 21 Q. Was he talking to you through the driver's
- 22 window or passenger window?
- 23 A. Passenger window.
- 24 O. Was Aundree or Mr. Polk sitting in the
- 25 passenger seat of the car?

- 1 A. Yeah.
- Q. What happened then?
- 3 A. And then -- when Aundree was sitting in the
- 4 passenger and we were about to actually get out to get
- 5 food, we heard -- both of our windows were rolled down, the
- 6 driver's and the passenger's. We just heard gunshots.
- 7 Me being scared obviously, I was, like,
- 8 Aundree duck. So we just ducked. And there was, like,
- 9 gunshots going on for -- I don't know. I think maybe five
- 10 or six qunshots. And then we -- it was --
- 11 Q. Did you have a sense of where those gunshots
- 12 were occurring?
- 13 A. I knew from the back of me because I heard it
- 14 coming from the back.
- 15 Q. And your windows were down?
- 16 A. Yeah.
- 17 Q. Okay.
- 18 A. I could hear pretty clearly that it was coming
- 19 from the back, and so I ducked.
- 20 And then I think I heard -- I don't know if it
- 21 was police or not, but I heard -- I heard somebody say, "He
- 22 dropped the gun by the car, "but I thought they said, "He
- 23 dropped his gun on your car." And that's when I freaked
- 24 out. I was, like, What? Somebody put their gun on my car?
- 25 That's when the police realized that I was in

- 1 the car, you know, because it was an empty parking lot.
- 2 There were no cars in the parking lot, and then they told
- 3 me to put my hands up.
- 4 But before that, before that happened, Aundree
- 5 looked up, because he's pretty tall. He looked up and
- 6 he's, like, Dude, there's somebody on the floor. He got
- 7 shot in the ass.
- I was, like, Oh, my God. I looked up, and I
- 9 saw the guy laying down, but I heard more bullets, like,
- 10 more gunshots, and I just ducked.
- 11 Q. Okay. So let me just make sure that I
- 12 understand what you're saying here.
- 13 A. Yeah.
- Q. So you're sitting in the car. Mr. Polk is in
- 15 the passenger seat. You're in the driver's seat?
- 16 A. Yeah.
- 17 Q. And Mr. Polk's older brother was leaning on
- 18 the hood on the passenger side and talking through the
- 19 window?
- A. Yeah.
- 21 Q. And the other person that Mr. Polk had
- 22 previously been talking to, is he still there in the other
- 23 car?
- 24 A. I think he went in the car. I don't know
- 25 where they went by that point. They might have walked to

- 1 Golden Dragon or went in the car. I'm not sure.
- Q. Okay. And then you hear five or six gunshots?
- 3 A. Yeah.
- 4 O. From behind?
- 5 A. Yeah.
- 6 Q. Okay. And you duck down?
- 7 A. Yeah.
- Q. And did you hear a break in the gunfire?
- 9 A. Yeah.
- 10 Q. Okay. So how many rounds, if you have an
- 11 idea, did you hear in the first set of gunshots?
- 12 A. Like five or six. I don't remember.
- 13 Everything happened so quick, but I'm pretty sure five or
- 14 six gunshots.
- 15 Q. Okay. And that's what triggered you to duck
- 16 down?
- 17 A. Yeah. I heard them and then ducked.
- 18 Q. Okay. And then did you see anybody moving
- 19 around the car or any --
- 20 A. No.
- Q. In the parking lot at all?
- 22 A. No, I didn't. Just me and Aundree and his
- 23 older brother, Mike. I didn't really see anybody else
- 24 until Aundree pointed out that that guy was on the floor.
- Q. Okay. And so then the second set of gunshots,

- 1 do you have a sense of how many shots you heard that time?
- 2 A. I don't really know. I think maybe another
- 3 five or six. I feel like it was just as long and, like,
- 4 the break kind of happened in the middle of the gunshot.
- 5 Q. Okay. And do you have a sense of how long
- 6 that break was between the two sets of shots that you
- 7 heard?
- 8 A. Maybe like 30 seconds, 45 seconds.
- 9 Q. Okay. So a break that was noticeable --
- 10 A. Yeah.
- 11 Q. -- between the --
- 12 A. It was noticeable.
- 13 Q. Okay. You said you heard what sounded like
- 14 police?
- 15 A. Yeah.
- 16 Q. And what was it about these people that made
- 17 you think it was the police?
- 18 A. It was very commanding, like, Get down on the
- 19 ground, like, Stop or something. I think I heard them say,
- 20 Stop running or something like that.
- 21 Q. You heard them giving commands?
- 22 A. Yeah. I heard them telling whoever they were
- 23 trying to get down, like, to stop whatever they were doing.
- Q. Okay. And then you heard this second round of
- 25 five or six qunshots?

- 1 A. Yeah.
- 2 Q. Okay. When you looked up and you saw the
- 3 person laying on the ground, where was he in relation to
- 4 your car?
- 5 A. He was, like, maybe -- I don't know, probably,
- 6 like, right in the corner of where this room is right
- 7 there. He was on the floor.
- 8 Q. Okay. So if you're facing -- sitting in the
- 9 driver's seat facing the south, you're kind of pointing off
- 10 the front passenger side --
- 11 A. Yeah.
- 12 Q. -- of the car on the ground?
- A. Yeah.
- Q. Okay. Did you see that person run by your car
- or move around your car in any way?
- 16 A. No. I wasn't paying attention. I was just
- 17 talking to Dre. I didn't see anybody run.
- 18 Q. Do you know who yelled out "There's a gun on
- 19 the ground" or "He dropped the gun" or whatever it was that
- 20 you --
- 21 A. It sounded like the police again.
- 22 O. The police?
- A. Yeah.
- Q. Okay. And you yelled out, "What? There's a
- 25 qun?"

- 1 And your impression is that's what made the
- 2 police realize you were in the car?
- 3 A. Yeah, I'm pretty sure.
- 4 Q. Okay. And then what happened with that? Did
- 5 they come up and talk to you?
- A. Yeah. They told me to put my hands up, and we
- 7 had our hands up for 30 seconds, 45 seconds or something
- 8 like that.
- 9 And Mike and Dre were yelling, "Please don't
- 10 shoot, don't shoot."
- 11 They kind of -- they asked us to step out of
- 12 the car, me and Dre, and then they put Mike -- they were
- 13 still talking to Mike. I remember Mike was sitting on the
- 14 front of the hood, and they took me and Dre and put us in
- 15 separate cars.
- 16 Q. Okay. Could you see, after the police had you
- 17 get out of the car, what was going on in the scene after
- 18 that?
- 19 A. I think I saw, like, paramedics helping or
- 20 trying to lift somebody up maybe. Yeah, I'm pretty sure.
- 21 That -- that probably was when I was in the cop car.
- I don't remember. Everything happened. It
- 23 was just kind of a blur. Maybe somebody was standing over
- 24 him.
- 25 I just -- I didn't try to look back or

- 1 anything. I just listened to whatever, you know, the
- 2 police were asking me to do, and I got put in the car.
- Q. I'm sorry?
- 4 A. I got put in the car while the police detained
- 5 me.
- Q. Okay.
- 7 MR. JACKSON: All right. Do you folks have
- 8 any questions?
- 9 Oh, I have one question. I'm sorry.
- 10
- 11 BY MR. JACKSON: (Continuing)
- 12 Q. Did you ever actually look and see a gun on
- 13 the ground --
- 14 A. No.
- 15 Q. -- next to your car?
- 16 A. I didn't see a gun.
- 17 Q. Okay. So you heard somebody talk about a gun?
- 18 A. Yeah.
- 19 Q. But you never actually looked and saw one?
- 20 A. No.
- 21 Q. Okay.
- MR. JACKSON: All right. Any other questions?
- 23 All right. Thank you very much.
- 24 THE WITNESS: Thank you.
- MR. JACKSON: That's it for today.

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1	Thank you very much. We're five minutes past.
2	Sorry about that.
3	(Proceedings adjourned at 5:05 p.m.)
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	MULTNOMAH COUNTY GRAND JURY	1	PROCEEDINGS
	DEATH INVESTIGATION	2	Monday, October 29, 2018
		3	<del></del>
	Deceased: Patrick K. Kimmons )	4	MR. JACKSON: Good morning. This is Deputy
	Date of Incident: September 30, 2018 ) DA No.	5	District Attorney Todd Jackson appearing before Grand Jury
	Location: Southwest Third Avenue and ) 2390609-1 & 2	6	Number One. This is Grand Jury Case Number 79, and this is
	Harvey Milk Street, Portland, Oregon ) Volume 1	7	DA Case Number 2390609-1 and 2.
		8	This is a death investigation following the
		9	use of firearms by police, which caused the death of
	TRANSCRIPT OF PROCEEDINGS	10	Mr. Patrick Kimmons on September 30th, 2018 in the city of
	BE IT REMEMBERED that the above-entitled transcript of	11	Portland.
	GRAND JURY proceedings was heard, commencing at the hour of	12	The first witness to be called before the
	9:12 a.m. on Monday, October 29, 2018 at the Multnomah	13	Grand Jury is Detective Darren Posey.
	County Courthouse, Portland, Oregon.	14	Would you please stand up and raise your right
	APPEARANCES:	15 16	hand?
	Mr. Todd Jackson	17	DETECTIVE DARREN POSEY
	Deputy District Attorney	18	was thereupon called as a witness on behalf of the State
	On Behalf of the State of Oregon	19	and, after having been duly sworn, was examined and
		20	testified as follows:
	* * *	21	
	HEATHER M. INGRAM	22	
	Certified Shorthand Reporter	23	
	Portland, Oregon	24	
		25	
	Page 2		Page 4
1	INDEX TO WITNESSES	1	EXAMINATION
2	Page	2	BY MR. JACKSON:
3 4	DETECTIVE DARREN POSEY  MATTHEW MENA  62	3 4	Q. Okay. Could you please state and spell your name?
5	MATTHEW MENA 62 GARRETT CARROLL 78	5	A. Darren Posey, D-A-R-R-E-N, P-O-S-E-Y.
6	SERGEANT JEFFREY DORN 85	6	Q. And what is your occupation?
7	SEAN MICHAELS 94	7	A. I'm a detective with the Portland Police.
8	CHRISTOPHER WILLIAMS 102	8	Q. How long have you been a detective?
9	DETECTIVE DARREN POSEY 119	9	A. I've been a detective for approximately 12
10	SERGEANT STEVEN WUTHRICH 121	10	years.
11	DR. CLIFFORD NELSON 146	11	Q. And how long have you been a police officer in
12	TRAVIS GOVER 160	12	total?
13	AYAN ADEN 182	13	A. I've been a police officer for 21 years with
14		14	the Portland Police Bureau and then an additional three
15		15	years as a reserve deputy for Multnomah County.
15 16		15 16	Q. And since your time being a detective, what
15 16 17		15 16 17	Q. And since your time being a detective, what different details have you worked for?
15 16 17 18		15 16 17 18	<ul><li>Q. And since your time being a detective, what different details have you worked for?</li><li>A. I've worked in various different areas. I've</li></ul>
15 16 17 18 19		15 16 17 18 19	Q. And since your time being a detective, what different details have you worked for?  A. I've worked in various different areas. I've worked in our afternoon shift detectives, which did various
15 16 17 18 19 20		15 16 17 18 19 20	Q. And since your time being a detective, what different details have you worked for?  A. I've worked in various different areas. I've worked in our afternoon shift detectives, which did various different cases from assault, assisting homicide, assisting
15 16 17 18 19 20 21		15 16 17 18 19 20 21	Q. And since your time being a detective, what different details have you worked for?  A. I've worked in various different areas. I've worked in our afternoon shift detectives, which did various different cases from assault, assisting homicide, assisting in sex assault cases.
15 16 17 18 19 20 21		15 16 17 18 19 20 21 22	Q. And since your time being a detective, what different details have you worked for?  A. I've worked in various different areas. I've worked in our afternoon shift detectives, which did various different cases from assault, assisting homicide, assisting in sex assault cases.  I've worked, over my 12-year period, in
15 16 17 18 19 20 21		15 16 17 18 19 20 21	Q. And since your time being a detective, what different details have you worked for?  A. I've worked in various different areas. I've worked in our afternoon shift detectives, which did various different cases from assault, assisting homicide, assisting in sex assault cases.  I've worked, over my 12-year period, in various different places. For about nine years, I worked
15 16 17 18 19 20 21 22 23		15 16 17 18 19 20 21 22 23	Q. And since your time being a detective, what different details have you worked for?  A. I've worked in various different areas. I've worked in our afternoon shift detectives, which did various different cases from assault, assisting homicide, assisting in sex assault cases.  I've worked, over my 12-year period, in

1 (Pages 1 to 4)

Page 5

to work with the FBI and take cases federally, as well as with the ATF. I worked on a gun task force for a period of time during that and preparing cases for federal prosecution.

Along with that, I've worked in sex assault. And then recently, in January 2018, I started working with homicide detail, focusing on homicides and suspicious deaths and officer-involved shootings.

- Q. Okay. And have you received special training in the areas of homicide investigations and officer-involved shootings?
- A. Yes, I have. Over the course of our training as detectives, we go to different conferences. We go to different training seminars dealing with officer-involved shootings themselves, as well as homicide investigations.
- Q. Okay. And have you assisted in the investigation of the use of deadly force by police officers before?
  - A. Yes, I have.

- Q. All right. Could you briefly take us through how the Portland Police Bureau investigates an officer-involved shooting or the use of deadly force by police officers?
- A. Okay. So to kind of go with who responds to an officer-involved shooting to start off with.

A. Correct. So -- so, essentially, what happens is officers who witnessed the shooting, they'll be separated as well, and then the citizen witnesses will also be separated out.

With that, officers who were involved in the shooting incident will be provided an uninvolved officer so that they can, one, just monitor the officer, as well as keep them separate from other people and prevent them from talking about the incident at that point in time.

With that is, the detective response takes place. So once that's been established, there's a call-out procedure that takes place where the on-scene supervisors will take -- will make the call-out so that obviously all the resources out can come and show up for the incident in the beginning of the investigation.

- O. Okav.
- A. So should we go to the detective responsibilities?
  - Q. Sure.

A. Okay. So the homicide detail runs these investigations and coordinates the resources needed for the particular incident.

Supervisors for the homicide detail set up officer briefings and supervisor briefings and then delineate assignments for the detectives who show up.

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Officer-involved shooting investigations are conducted by the homicide detail.

They also get additional support from the Major Crimes Unit for Multnomah County, who will provide additional investigators from other agencies within Multnomah County.

A -- essentially, a complete investigative team is dispatched to manage the crime scene, and that also includes the forensic evidence division, who also provides criminalists to help assist in identification of evidence and collection.

I'll go into patrol responsibilities. So with patrol responsibilities, the initial response to officer-involved shootings takes place with patrol response and establishing a protected crime scene.

So, essentially, over the course of time, we've trained officers to set up as big of a crime scene as possible, and then we have an inner and an outer perimeter that we have.

So involved officers are removed from that scene as soon as practical. The officers on scene will also work to identify witnesses and separate them out as well.

Q. Does that include both officer witnesses and nonofficer or civilian witnesses?

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So after assignments have been completed, we also conduct further briefings in order to share that information gathered and potentially develop further evidence and witness information through those briefings together.

What we initially do is we'll set up a command post for a particular location, and we use that. It's our mobile command center that we use to essentially run the investigation. We have a place to be able to talk about things privately and be able to work together and share information.

During this investigative process, a deputy district attorney is present to provide any support and oversight.

Separation of witnesses, so I want to go into that just a touch at this point. As part of the investigative process, we do that for an important reason. One, we want to maintain what people have seen and their memory and keep it secure from other people's, what they've seen and what they've heard.

Oftentimes, in traumatic incidents, things of this nature, it's a natural reaction to talk about it with other people, but we know that that also tends to start to change other people's memory of what they saw in the situation. So what we do is we separate people in that

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Page 9 Page 11 incident? 1 fashion. 1 2 2 That's why we also provide an uninvolved A. Yes. 3 3 officer to be with our involved officers so that they can, Q. Okay. What is a communication restriction 4 you know, have somebody that they can be with, but also 4 order? 5 that person can monitor them so that they're not talking 5 A. So a communication restriction order is done 6 6 by our lieutenant in the detective division. Essentially, about the situation. 7 7 Q. Do the detectives also become involved in what it is is it's an order telling the witness officers 8 8 crime scene processing with the Forensic Evidence Division? and the involved officers to not talk about the incident 9 9 A. So part of the work that's done with a with anybody else. 10 call-out from the homicide detail is we'll separate out a 10 Q. Okay. Otherwise, known as a gag order? 11 group of detectives who worked at the scene, as far as 11 A. Correct. 12 evidence collection, and they work with the criminalists in 12 Q. Okay. So moving now to this case, on 13 order to document the crime scene. And then we'll have 13 September 30th of 2018, were you called out to investigate an officer-involved shooting? 14 another set of detectives that will work on conducting 14 15 15 witness interviews. A. Yes, I was. 16 So we -- we kind of separate people out to 16 Q. What time did you receive the call? 17 17 manage those things. A. I'm not exactly sure what time I received the 18 Q. In an officer-involved shooting where firearms 18 call. I -- I think I arrived on scene at about 4:50 a.m. 19 were involved, is something called a round count also 19 I believe the crime scene log was established at 0324 hours 20 completed by detectives? 20 that morning. 21 A. Yes. 21 Q. All right. And who called you out? 22 Q. What is that? 22 A. I was called by Sergeant Hughes, my homicide 23 A. So essentially what we do is the involved 23 detail sergeant. 24 24 officers will come to us, and we will take their firearms Q. And in that initial call, did you learn that 25 and take their ammunition that they have, and we 25 an officer-involved shooting had occurred at Southwest Page 10 Page 12 1 essentially count down their ammunition that they have on 1 Third and Harvey Milk, formerly known as Stark Street, in 2 2 downtown Portland? their person. 3 From that, what we do is we determine what or 3 A. Yes. 4 how many rounds were fired based upon the ammunition that 4 Q. And is that where you responded? 5 5 they were carrying on their person. A. That is where I responded. We had -- the 6 Q. So is it known how many bullets the officer 6 officers had set up a -- the mobile precinct on Southwest 7 7 had when they started their shift, for example? Third between Southwest Oak and Southwest Harvey Milk 8 8 A. Yes. So training dictates that the set up of 9 our firearms is that we're -- we're provided three 9 Q. Okay. Who responded with you to the scene? 10 10 A. We had a full complement of detectives from magazines, one for the gun or pistol, and then two extra 11 magazines. 11 the homicide detail. I'm trying to remember everybody that 12 Each magazine in a Glock 17, which is our 12 was there. 13 13 standard bureau-issued sidearm, is 17 rounds. So typically Essentially, most of the -- the homicide 14 how we're trained is when you load your firearm, you'll 14 detail was there at that point in time. We had several 15 load the firearm with the round chamber in it so that 15 detectives, including, I think, a Gresham detective as well 16 there's one in the barrel, and then that will leave 16 16 who responded to assist with interviews and the crime 17 17 rounds in the magazine. We then top off that magazine so 18 18 that it has 17 rounds in it again, and we insert that Q. Okay. And did a member of the district 19 19 magazine. attorney's office also respond to the scene? 20 So the officer will have 18 rounds in the 20 A. Yes. 21 handgun, and then they'll have two additional magazines, 21 And homicide sergeants and other command 22 22 typically, of 17 rounds. staff? 23 Q. And so if you count the number of remaining 23 A. Correct. 24 rounds following an officer-involved shooting, you can 24 Q. Okay. Could you kind of take us through some 25 determine how many rounds that officer fired in the 25 of the preliminary investigative steps you took in this

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Page 15 Page 13 1 1 case? A. Yes. 2 A. So the first order of business, Sergeant 2 Q. So you said you received a briefing -- a 3 3 Hughes and I, along with Rico Beniga, who's also a homicide preliminary briefing about the events that had transpired 4 4 detective, we conducted a briefing with Sergeant Schmautz that night? 5 and Sergeant Wuthrich. 5 A. (Nodding head). 6 6 Q. At this point, I'd like to have you take a They were the on-scene sergeants and arrived 7 7 shortly after the officer-involved shooting had taken look at the board up here. 8 8 A. Uh-huh. 9 9 Q. Do you see this aerial map of Southwest Q. Are they members of patrol? 10 10 A. Yeah. They're patrol sergeants, I believe, Portland? 11 for Central Precinct. A. Yes. 11 12 Q. Okay. And at that point, had patrol already 12 Q. Could you come up to the board and indicate 13 13 established a crime scene? for us where it was that you responded that night? 14 A. So this is the SP Plus parking lot. This 14 A. Yes, they had. 15 is -- it says Southwest Stark, but it's also Southwest 15 Q. And when you and the other homicide detectives 16 arrived, did you assume control of the crime scene? 16 Harvey Milk Street. This is Southwest Third. This is 17 Southwest Fourth. 17 A. Yes. 18 The mobile command center was set up just back 18 Q. Had patrol also identified several witnesses? 19 A. Yes, they had. here on Southwest Third. 19 20 Q. And we can see along the top of the screen 20 Q. Okay. And were those witnesses separated 21 here, is that the Burnside Bridge? 21 pursuant to the protocols you just outlined for us? 22 22 A. Yes, they were. A. Yeah. So the Burnside Bridge is up to the 23 north, and Southeast Morrison Bridge is to the south. 23 Q. And did those witnesses include both civilian 24 Q. Okay. And can you describe what we're seeing and officer witnesses? 24 25 here in terms of this map? 2.5 A. Yes. Page 14 Page 16 1 1 Q. Were the involved officers also identified? A. So this is a closer-up view of the parking lot 2 2 A. Yes, they were. that's surrounded by Third, Fourth and Stark. 3 Q. And were they removed from the scene and 3 This building here is the Church of 4 4 Scientology building. This over here on this side, there's separated? 5 5 a nightclub that's called the Golden Dragon, and then over 6 Q. And was a noninvolved officer posted to stand 6 here there's also another nightclub. 7 7 guard over them? Our incident takes place in this parking lot. 8 A. Yes. 8 Q. Okay. And did the Church of Scientology have 9 Q. Ultimately, were communication restriction 9 cameras mounted on the back side of that building? 10 orders, similar to what you just described, given to the 10 A. Yes. So I'll go into the video canvass that 11 11 involved officers in this case? we do. 12 A. Yes, they were. 12 So any time that we have a crime incident take 13 Q. And who were the involved officers? 13 place, part of our work is to do what's called a canvass. 14 14 A. The involved officers were Sergeant Britt and We look around for cameras and places that would have video 15 15 systems in place for security purposes. Officer Livingston. Q. What is the name of the person who was shot by 16 16 In this particular location, there are two 17 17 police in this case? cameras that are located approximately here and approximately here, and there's the Church of -- they 18 18 A. The name of the person shot by police was 19 Patrick Kimmons. 19 belong to the Church of Scientology. They cover all of 20 Q. How was he identified? 20 this parking lot. They also cover outside this street as 21 A. He was identified by Officer Asheim, and he 21 well. They have a camera on this side. 22 was identified when he was being loaded into the ambulance. 22 Q. For the record, you're indicating along 23 Q. Was he also formerly identified, after the 23 Southwest Third Avenue? 24 24 autopsy, by criminalists with the Portland Police Bureau's A. On Southwest Third Avenue, correct. 2.5 Forensic Evidence Division? 25 Q. Between Stark or Harvey Milk and Oak Street?

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Page 19 Page 17 1 A. Yes. 1 So if we split the parking lot in half, one 2 2 Q. Okay. shooting takes place here after a fight that takes place. 3 A. On the east side of Southwest Third, there 3 And then the second shooting, which involves the officers, 4 4 were camera -- cameras located at several businesses at takes place just back here, probably five or six spaces 5 this location, and then to the south on Southwest Harvey 5 back up. 6 Milk, the Hi-Lo Hotel also has a camera that covers their 6 Q. Into the parking lot? 7 7 area just in front of the building. A. In, yeah, towards the west into the parking 8 Q. Okay. 8 9 9 A. We weren't able to locate any cameras that Q. Okay. And so when you learned that there are 10 were directly in the direction of the parking lot on the 10 suspected people with gunshot injuries, what do you do with that information? 11 11 12 12 Q. You mean Fourth Avenue, the west side of the A. So we -- first response is any time a hospital 13 13 parking lot? receives gunshot wound patients, they notify police. So we 14 14 A. Yes, correct. were informed of that information. 15 15 Q. Okay. So when you arrived on scene, was And so in addition to officer response, we 16 Mr. Kimmons there or had he already been transported to the 16 also sent a group of detectives to the hospital because 17 17 information -- initial information from this scene said hospital for treatment? 18 A. He had already been transported to the 18 that there was likely other people injured who had left the 19 19 hospital for treatment. location and maybe gone to a hospital. 20 20 Q. Okay. Q. And so which hospital did you receive word had 21 A. And upon arrival, I had learned that he had 21 received people suffering from gunshot wounds? 22 22 A. So Emanuel Hospital made contact with police passed away. 23 23 Q. In that initial briefing, did you also learn that they had received two subjects who had -- who arrived 24 that Mr. Kimmons had shot two people in that parking lot? 24 with gunshot wounds. 2.5 25 Q. Okay. And did you send patrol officers and Page 18 Page 20 1 Q. And what did you do in response to that 1 ultimately detectives out to investigate --2 2 information? A. Yes. 3 A. First of all, we -- we knew that on --3 Q. -- that shooting? 4 according to the information that we had, we had heard and 4 A. Yes. 5 5 found out that there was an altercation on this east side Q. Okay. And did you ultimately learn that the 6 next to Southwest Third. There was a fight and a shooting 6 two people who had arrived at Emanuel Hospital had been 7 7 that took place on this side of the street, on the west shot at this scene at Harvey Milk and Third by Patrick side of Southwest Third in the parking lot. 8 8 Kimmons? 9 We extended the crime scene once that had been 9 A. Correct. 10 10 determined, and one of the things that we did while we were Q. Okay. Now, you mentioned that -- well, first, 11 investigating is we conducted a walk-through with Officer 11 did those two individuals survive their gunshot injuries? 12 Moore who was a witness officer, and he helped point out 12 A. Yes, they did. 13 13 where some of the people were located as they -- as they Q. You mentioned that you conducted a 14 14 had arrived and watched what unfolded. walk-through with witness Officer Moore? 15 And so they also indicated some of the areas 15 A. Correct. 16 16 of fire that they saw take place. So down at this end of Q. And during that walk-through and any time 17 17 the street, Patrick Kimmons was here, and essentially his period following, were you and other detectives able to 18 18 identify items of evidence to corroborate the information direction of fire that he shot was towards the north 19 towards the Scientology building. 19 you had learned in your briefing? 20 20 Q. Okay. And then where did the second shooting A. Yes. 21 occur, according to the information you learned, involving 21 Q. Okay. I'm going to put this board up right 22 22 the police officers? here. You can help me attach it on that side. 23 A. So the second shooting that takes place takes 23 Okay. And so what do we see here on this 24 24 place just up from -- from this location, and it takes board? 25 place approximately right here. 25 A. Okay. So what we're looking at here is a

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Page 21 Page 23 1 basic diagram of the parking lot. Obviously, it's not to 1 morning? 2 2 A. Yeah. Q. 4:30? 3 3 Here we have -- circled are the items of 4 evidence that we collected from the scene. 4 A. Yeah. 5 5 O. Was it dark out still? You'll note, just as a general overview, that 6 we have essentially two sets of -- or zones, so to speak, 6 A. Yeah. It was still dark out when I arrived. 7 7 of evidence. Q. And what is the lighting like in this parking 8 8 lot? You'll notice that on this side of Southwest 9 9 Third on that west side, partially in the parking lot and A. It's general lighting. It's streetlights. 10 outside of the parking lot, items of evidence. And then we 10 There is overhead lights that shine down on the parking 11 have a clear distinction, separation; and then we have a 11 12 12 whole other set of items of evidence that are recovered. O. What are these little white boxes that we can 13 13 So it clearly delineates there's two different see on the ground there? 14 14 areas of involvement going on in that parking lot. A. So those are placard markings. They're raised 15 15 Q. And does this scene, although not to scale, at up like that so that when -- when the area is scanned for 16 least note where the vehicles in the parking lot were 16 measurement purposes, you can take measurements and also 17 17 located shortly after the crime occurred? identify things at a distance. Q. Okay. And so what are some of the items of 18 A. Correct. 18 19 19 Q. Okay. evidence that we see marked here in this photograph? 20 A. So each of these little boxes here, as you 20 A. So some of the items that we're looking at 21 see, are -- are vehicles. 21 here, I'll point it out. So underneath the car, you'll 22 22 notice there's a cone. That's a bullet. These two vehicles up here are going to be the 23 police patrol vehicles, and these vehicles here are 23 Some of the other items, I think this 24 citizens' vehicles. 24 particular item, is a taillight cover that was knocked out 25 Q. All right. And so did the Forensic Evidence 25 by gunfire. Page 22 Page 24 1 Division and detectives document the crime scene 1 Down here, there's another bullet that was 2 2 photographically? located at number 19, and then out here there's some other 3 3 items, as well as some blood spots, that are located out A. Yes. 4 4 Q. And have you looked at the photographs taken 5 5 from -- or by the Forensic Evidence Division? O. What do we see here? A. So this is number 32, and down below is a 6 A. Yes, I have. 6 7 7 Q. If you look up on the board here, the TV here, spent bullet. 8 8 what do we see? Q. And then on the left rear of this Audi A4, 9 A. So we're in the parking lot. We're kind of 9 there's a sticker noting G. 10 10 central in the parking lot, but on the east side of it. A. Yes. 11 We're looking eastbound, and that's Southwest Third that 11 O. And what is that? 12 12 A. So this is a bullet strike. And so you'll see we're looking at. 13 And across from -- from that patrol car that's 13 some other of these types of labels. 14 14 kind of straight ahead, that one there, that's the Golden Typically, we use those for an item that we're 15 Dragon straight across. 15 going to photograph, but can't necessarily capture except 16 16 Q. Right here? for photograph. 17 A. Yeah. 17 It indicates that it's a bullet strike. 18 18 Q. Okay. And so if we look at this line, we're Q. Okay. And the vehicle we're looking at, if 19 kind of looking in this general orientation? 19 you go back to this line diagram, is this one V7 here? 20 20 A. Correct. A. Correct. 21 Q. Okay. And this photograph is taken in broad 21 Q. Okay. What are we looking at here? 22 22 daylight? A. So here we're looking at this Toyota Corolla. 23 23 And you'll notice down here there's a little sticker, and A. Yes. Q. When you responded to the scene, do you 24 24 there's another bullet strike right there. 25 remember -- well, you said it was about 4:00 in the 25 Q. And on our line diagram, is that vehicle 6?

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Page 27 Page 25 1 1 A. Correct. A. Number 20. 2 Q. Okay. 2 Q. Okay. And what is this? A. That's a -- that's a close-up, again, a bullet 3 3 A. This is 21, and these are on the part of the 4 strike. That's H. 4 white line on the roadway. These are further blood 5 Q. Okay. 5 droplets. 6 A. So these are cones located here. The one that 6 Q. Okay. Marked here on our line diagram? A. Yes. 7 7 I'll point out that is important, this is a spent bullet. 8 8 Also to note about this particular bullet as I O. What is this? 9 9 viewed it, as also on number 32, both of those bullets are A. More blood drops. 10 10 not any ammunition that we would carry. Q. There's some on --11 Q. "We" being? 11 A. You can see some further out. A. "We" being the police. 12 12 What number is that marked? 13 13 They're a bullet that I know from my training A. 23. 14 and experience as something that would come out of a 14 Q. (Indicating)? 15 A. Yes. 15 revolver. 16 Q. Okay. 16 Q. So if we look at 20, 21 and 23 in their 17 A GRAND JUROR: What number is that one? 17 orientation within the crime scene, does it appear that's a 18 THE WITNESS: That's 19. 18 19 19 A GRAND JUROR: Thank you. A. Yes, it is. 20 20 Q. Okay. If the person -- or shooting occurred 21 BY MR. JACKSON: (Continuing) 21 in the parking lot, as the evidence at least at this point 22 Q. And do the police carry revolvers? 22 in your investigation indicated, that would be a blood 23 23 trail leading away from the parking -- or from the scene? 24 Q. And then we have another placard here, 20. 24 A. Yes. 2.5 25 What is that? Q. Okay. And so that was kind of an explanation Page 26 Page 28 1 A. Placard 20 is a blood stain. 1 of this portion of the crime scene in the northeast corner Q. On the street? 2 2 of the parking lot? 3 A. On the street. 3 A. Correct. 4 4 Q. Okay. If we look back at our diagram here, 19 MR. JACKSON: Do the grand jurors have any 5 5 and 20 oriented in this location here that we see. questions about that before we move to the second location? 6 A. Uh-huh. 6 A GRAND JUROR: Do we know whose blood the 7 7 droplets belong to? O. What is this? 8 THE WITNESS: Yes. The -- let me explain a 8 A. So this is the spent bullet, number 19. You 9 9 couple of things. can see it laying there; blood. 10 10 One of the things that we note about the blood We have some other items that were dropped: a 11 person's ID, some money and a lighter, and then we also 11 droppings is that they stop there. Also, we know that two 12 12 vehicles left this location directly after the shooting, have some more blood droplets over here. 13 O. What is this? 13 and one of those vehicles, as we later determined, was 14 14 A. This is the bullet that was recovered. parked right there. 15 Like I said, it's a common bullet that would 15 16 be potentially used in a revolver. This could also be used 16 BY MR. JACKSON: (Continuing) 17 in a semi-auto pistol. But typically for revolvers, they 17 Q. And where did those vehicles go? 18 18 will use a -- either fully -- fully copper jacketed bullet, A. Those vehicles went to Emanuel Hospital. 19 and it also is a -- a snub nose or sometimes referred to as 19 Q. And did the evidence indicate that they were 20 20 a wadcutter type of style. carrying people who had been shot by gunfire? 21 Q. Is that what you see here marked as number 19? 21 A. Yes, they did. 22 22 Q. And were bleeding? A. Yes. 23 O. Okay. 23 A. Yes. 24 A. These are blood droplets. 24 Q. Okay. And who were the two individuals that 25 25 were transported to the hospital? Q. And they're marked by number 20?

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Page 29 Page 31 1 A. So the first person that arrived was Marcel 1 basically from the front right bumper of this patrol car 2 2 Branch, and then the second person to arrive was Dante looking east? 3 3 A. East, correct. 4 Q. And is Dante Hall also known as Manny Hall? 4 Q. What is this photograph? 5 A. Yes. 5 A. So this is a nighttime shot. This is to give 6 Q. Okay. 6 you perspective of what it might look like. 7 7 A. And a word of note with respect to that, Of course, you have to understand that in this 8 Patrick Kimmons, who was identified here by Officer Asheim, 8 particular photograph, there's back lighting from the 9 9 also notes that he's familiar with Patrick Kimmons and officer's -- from the criminalist's camera system. 10 Dante Hall. He's had personal interaction with both of 10 But you'll note that there's general 11 those subjects, and he knows that they're friends. 11 streetlights, as well as a streetlight towards the parking 12 12 Q. Okay. lot itself shining down in this -- in this direction. 13 MR. JACKSON: Any other questions about this 13 So for a city area, it's appropriately lit. 14 14 portion of the crime scene before we move to the other? Q. And these photographs we've been looking at, 15 15 I don't see any. All right. were they taken before anything had been moved within the 16 16 crime scene? 17 17 BY MR. JACKSON: (Continuing) A. Correct. 18 Q. So, Detective, could you just give us an 18 Q. So once patrol came on scene, set up the crime 19 explanation of what this photograph is here? 19 scene and froze it, in essence --20 A. Okay. So these are the two patrol vehicles 20 A. This is a picture of that. 21 that were in the lot prior to the shooting, and that's 21 Q. This is what we're seeing? 22 22 prior to both shootings. These placards here are A. Correct. 23 essentially all of the casings that we recovered from the 23 Q. Okay. What's this a photo of? 24 officers' guns. And we're, again, looking eastbound 24 A. So this is another perspective on the other 25 towards Southwest Third from this location. 25 side of those two patrol cars looking southeast. These are Page 30 Page 32 1 Q. You can see on the right side of this 1 the casings, 1 through 12, that we identified that came 2 2 photograph, there's a patrol vehicle marked "Supervisor from police officer handguns. 3 Car"? 3 Q. Okay. 4 4 A. Yes. A. So as you can see, there's casing 11 and 12 5 5 Q. And so on our line diagram, "Supervisor Unit," here. You'll note on this black Acura, there's a bullet 6 6 strike. There's also another bullet strike here. And then is that this vehicle here? 7 7 A. Correct. We're at the west end of the parking in this trunk, there's a bullet recovered. 8 8 Q. Okay. And on the Toyota Camry, silver, parked lot. 9 Q. Looking east across? 9 to the south of that Acura there, is there a bullet strike 10 10 on that vehicle as well? Looking east across. 11 Q. On our line diagram, "Pay Booth," is that the 11 A. There's another bullet strike right here. 12 12 Q. Okay. What is the item marked by placard orange building you can see on the left side of this screen 13 13 number 13 in the parking stall there? here? 14 A. Yes. 14 A. So number 13 is a five-shot black-colored 15 Q. Now, what is the orientation of this 15 Taurus revolver. 16 Q. And that's located basically in approximately 16 photograph? 17 A. So now the camera has moved up. We're at the 17 the middle of the parking stall that is empty? 18 18 front of the patrol vehicles looking east. This is the A. Yes. 19 19 And on our line diagram, that's marked right casings collection zone. 20 20 Q. Okay. And then can you also see the placards here? 21 noting the gunfire evidence and blood evidence from the 21 A. Yes. 22 22 Q. Okay. What do we see here? initial shooting? 23 A. Yes, which is further down here at the 23 A. So here's a close-up view of 13, the revolver, 24 furthest east end of the parking lot. 24 and then here are some medical supplies. This is a medical 25 25 kit that we carry, our police officers carry, and then here Q. So on our line diagram, this photo is taken

Page 35 Page 33 1 in this planter, there's some eyeglasses. 1 that somebody has been injured from that shooting, as well 2 2 as evidence that rounds had been fired. We find bullets And so there's just some medical supplies that 3 were from when officers treated Patrick Kimmons for some of 3 here We also note that the direction of fire is 4 4 towards the north. So it's in this -- this direction 5 Q. So the officers, post-shooting, rendered 5 6 6 medical aid to Mr. Kimmons? generally. 7 7 A. Yes. In this section here, we have another 8 8 Q. What's this? encounter. We have a shooting incident. We know that 9 9 A. So we're looking south. This is the red truck based upon the casings and witness officer information, as 10 that's in the background from the previous picture. And 10 well as position of the patrol cars, that this is an you'll note that there's some bullet strikes. So we have D 11 11 officer-involved shooting. 12 12 here. Q. Okay. And we'll view it later on in the 13 13 There's also E on top, which is a -presentation, but was video evidence obtained in this case 14 that captured the sequence of events? 14 essentially a skip across the top of the tonneau. There's 15 15 a portion of a spent bullet down here on 15. A. Yes. 16 Q. Marked by 15? 16 Q. And have you observed that video? 17 A. (Nodding head). 17 A. Yes, I have. Q. And if we look at our line diagram, is that 18 18 Q. Can you explain for us on this diagram the 19 red truck marked as vehicle 5 --19 general movements of the involved individuals? 20 A. Yes. 20 A. Okay. So the video that we recovered, there 21 Q. -- here parked along the north side of Harvey 21 are two cameras, one here and one here, so we're calling 22 Milk Street or the south side of the parking lot? 22 them X-1 and X-2. They're on the Scientology building, and 23 A. Yes. 23 they're at an elevated position. So they look down onto 24 24 Q. Okay. Turning back to the item marked as the parking lot. 25 number 13, the revolver, can you explain a little bit about 25 What takes place is officers arrive here at Page 34 Page 36 1 what we're seeing here? 1 approximately 3:03 a.m., according to the CAD, which is the 2 2 computer-assisted dispatch system. A. So this is a downward view picture. It's 3 obviously a close-up. This is a five-shot revolver. It's 3 This -- essentially, there's Sergeant Britt 4 4 and Sergeant Livingston here. a .38 caliber. 5 5 We'll see in some further pictures that all of Q. Officer Livingston? 6 the cartridges that are in this gun are empty. So they had 6 A. Officer Livingston. Excuse me. 7 7 been shot. Down here is a group of people. What we see 8 So as you're looking here, you can see the 8 is we see the subject walk from here, and he walks this 9 hammer strikes on each of the -- of the bullet casings. 9 direction towards that group of people and engages in a 10 10 fight with one of the people in that group. Revolvers do not eliminate their casings automatically like 11 a semi-auto handgun does. 11 At that point, another person -- later 12 Q. They don't eject? 12 determined to be Patrick Kimmons -- fires upon the two 13 13 A. Yeah, they're never ejected. You have to subjects fighting. He then runs this direction after the 14 14 manually eject them. So they're still in the gun as they shooting and starts running towards the west, along these 15 were when the gun landed in that position. 15 16 16 So over here, Sergeant Britt and Officer Q. And all five rounds were spent? 17 17 Livingston, before the fight takes place, start walking the A. Yes. 18 18 parking lot doing patrol. Q. So before we go through round counts, 19 19 Detective, could you indicate for us on the line diagram, Q. Are their lights on? 20 20 A. Yeah. So at 3:03, their vehicles are parked based on your investigation, in essence, what your 21 understanding is of what occurred? 21 here, and one of them at least has their lights going. So 22 22 there's --A. So what happens from this information is 23 there's an altercation that takes place at the east end of 23 Q. You mean headlights or the full police --A. Full police lights, red and blues going. 24 the lot. Clearly, there's a shooting that takes place at 24 25 this east end of the parking lot. We had blood evidence 25 Q. Okay.

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Page 39 Page 37 1 1 Q. What conclusion did you come to based on that? A. So that is at 3:03. 2 At -- at the point they decide to walk down, 2 A. Based on that, Officer Livingston fired five 3 3 as they're only a short distance down, the fight takes rounds. 4 4 Q. Okay. Did you also check Officer Livingston's 5 5 back-up magazines? As that fight unfolds and the shooting takes 6 6 place, they then engage the subject running from east to A. Yes. 7 7 Q. And was there anything of note about them? 8 Q. They start running towards the shooter? 8 A. No. He had two back-up magazines, and they 9 9 A. They run towards the shooter, and the shooter were full. 10 runs towards them, and then they fire upon that shooter. 10 Q. Fully loaded? 11 Q. Okay. In the location marked with the casings 11 A. Fully loaded with 17 rounds each. 12 on the ground? 12 This is Sergeant Britt's firearm. It's also a 13 A. In this -- in this location. 13 Glock 17, Generation 3, and that bullet that you see there 14 O. Okay. And where does the shooter, who's been 14 was in the chamber. 15 identified as Patrick Kimmons, ultimately come to rest? 15 Q. Okay. 16 A. So Patrick Kimmons ends up resting here. 16 A. This is the magazine from that pistol. Noted 17 Q. And for the record, you're indicating to the 17 is only 10 rounds in the tray. That was the 10 rounds that 18 south of the two empty stalls near the arborvitae hedge? 18 were in that magazine. 19 A. Yeah, correct. 19 Q. Fully loaded, there would have been 17? 20 Q. Okay. 20 A. Correct. 21 MR. JACKSON: Are there any questions about 21 Q. And so what conclusion did you come to based 22 that from the grand jurors? 22 on this evidence? 23 I don't see any. All right. 23 A. Sergeant Britt fired seven rounds. 24 24 Q. So between the two officers, 12 total shots 25 BY MR. JACKSON: (Continuing) 25 were fired? Page 38 Page 40 1 Q. So, Detective Posey, did you and Detective 1 A. Correct, 12 total shots. 2 2 Beniga conduct round counts of Sergeant Britt and Officer Q. And how did that information correspond to the 3 Livingston in this case? 3 casings you located at the scene? 4 4 A. We recovered 12 casings from the scene, which A. Yes, we did. 5 5 O. And what do we see on the screen here? matched those 12 rounds that we found missing from their 6 A. So this is a Glock 17, Generation 4. It 6 service pistols. 7 7 belonged to Officer Livingston. This is also the round Q. You already spoke about the video canvass that 8 8 that was currently chambered in the gun. was conducted in this case. 9 This is Officer Livingston's magazine from the 9 Did you review the video that was recovered? 10 10 gun. What you'll note is that it's minus several rounds. 11 It's minus five rounds from the typical 17 rounds that are 11 Q. And could you explain briefly for us where you saw video -- or where video was recovered from and what it 12 contained in that magazine. 12 Q. Okay. And so these rounds here are unfired or 13 13 14 14 unspent --A. So we recovered video from Church of 15 A. Correct. 15 Scientology, so we had those camera angles. We also 16 16 O. -- bullets? recovered a video image from the Hi-Lo Hotel. 17 A. Right, and they're just in a tray to keep them 17 We attempted to recover the video imaging from 18 18 in order. the Golden Dragon. They had several cameras on that east 19 19 Q. And there's 12 of them? end of Southwest Third. We were not able to get any 20 A. Yes. 20 recorded video from them. 21 Q. And that magazine, when fully loaded, holds 17 21 From the information we have is they have 22 22 rounds? cameras, they have monitoring, but they do not record. 23 23 Q. Is there a deli on the southeast corner of A. Yes. 24 Q. So it's missing five? 24 Third and Harvey Milk? 25 A. It's missing five. 25 A. Yes, which is located approximately right

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	Page 41		Page 43
1	here. It has a camera for the outside, but it's not	1	parking lot.
2	recorded.	2	Q. Okay. Detective, I'm going to play the video
3	Q. And I said southeast, but I actually meant the	3	now. You've observed this video?
4	northeast corner of the intersection.	4	A. Yes, I have.
5	A. Correct.	5	Q. Do you see on the screen here the paused
6	Q. Okay. So that camera did not record.	6	video?
7	You recovered video from the Hi-Lo Hotel?	7	A. Yes.
8	A. From the Hi-Lo Hotel.	8	Q. Could you come up and kind of explain what
9	Just a note about the Hi-Lo Hotel, it's what's	9	we're seeing?
10	called a bubble view. It's a very wide angle. So it	10	A. So
11	covers a lot of territory, but it also is small in nature.	11	Q. Before you do that, would it help to turn the
12	It is directed towards the sidewalk. And though we can see	12	lights off to be able to see it?
13	the section	13	A. Yeah.
14	Q. Which sidewalk?	14	Q. Okay. So what are we seeing here, Detective?
15	A. I'm sorry. The south sidewalk of Harvey Milk	15	A. So this is I'll just point it out here.
16	Street, so down here on the diagram next to the Hi-Lo	16	We're looking from camera X-1 that's pointed towards
17	Hotel.	17	yeah, pointed towards the southeast.
18	So it covers a portion of the parking lot, but	18	This is the Golden Dragon. This is the
19	it's at a great distance.	19	grocery deli, Cameron's Books. There's a group of people
20	Q. Or appears	20	here in the middle on this far east end of the parking lot.
21	A. Appears to be a great distance based on the	21	Q. Do you see the date and the time stamp on the
22	view.	22	top right corner of this video?
23	Q. And is it kind of a fisheye orientation?	23	A. Yes. It's 3:07:35.
24	A. Yes. That would be another type of way to	24	Q. On what date?
25	describe it.	25	A. On September 30th.
	Page 42		Page 44
1	Q. So the image you see is actually distorted	1	Q. Okay. 2018?
2	from what you would your eye would actually see?	2	A. 2018.
3	A. Yes.	3	Q. And did you determine or other detectives who
4	Q. Okay. Noted on our diagram is an arborvitae	4	retrieved this video determine whether that date and time
5	hedge that runs along the south side of the parking lot and	5	stamp is accurate?
6	up along the southeast side of it?	6	A. My understanding is that it's approximately 10
7	A. Uh-huh, yes.	7	minutes, five to 10 minutes off.
8	Q. How tall is that arborvitae hedge?	8	Q. Okay. In which direction?
9	A. I think at the most, it's three feet tall.	9	A. Fast, so it's ahead.
10	Q. So it's not like a full size, 12, 15 feet	10	Q. Okay.
11	tall?	11	(Video playing)
12	A. Yes. It's like waist level, approximately.	12	Q. Okay. So we've moved ahead to what is noted
13	Q. But would it be tall enough to obscure, like,	13	on the time stamp as 3:11 a.m. Could you kind of orient us
14	the level of a car hood?	14	to what we're seeing in this frame?
15 16	<ul><li>A. Yes.</li><li>Q. Headlights, that level?</li></ul>	15 16	A. So we have a group of individuals at the
17	A. Yes.	17	furthest northeast corner of the parking lot over here.
18	A. Tes. Q. Okay. And so based on your review of the	18	You'll note that this particular car at the furthest end in the lot still, that is a black Camaro. We
19	video evidence obtained in this case, did you come to a	19	have a couple other individuals here. And then over here,
20	conclusion about which ones really captured the most	20	there's the black Acura and a dark-colored Durango, and
21	information about what happened?	21	this is an open spot right here where there's some people
22	A. The best video of the parking lot was captured	22	standing.
23	by the Church of Scientology cameras. They have one that's	23	Q. And so what is it that we're going to see as
24	looking to the southeast, and you have one that's looking	24	we play this video?
25	to the southwest. It covers, essentially, the entire	25	A. So as we play this video, we're going to see a
			11 (Pages 41 to 44)

11 (Pages 41 to 44)

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1	subject walk from here to this group of people who have	1	see here at 3:12:01 people starting to scatter?
2	moved over here. You're going to see Sergeant Britt and	2	A. There's a marked change in the group as
3	Officer Livingston walk down in the middle of the parking	3	Patrick Kimmons begins firing upon the two subjects
4	lot here.	4	fighting.
5	Q. And then what are we going to see after that?	5	Q. What can you see in the lower right corner?
6	A. Then you'll see a fight take place here and a	6	A. You see Sergeant Britt, and I'm not sure which
7	shooting take place here. Then you'll see the officers	7	one is which at this point, but Sergeant Britt and Officer
8	responding to both the fight and then the shooting, and	8	Livingston are right here.
9	then you'll see a subject run this direction, turn this	9	Q. So this is occurring literally right in front
10	direction as the officers are engaging that subject that	10	of them?
11	just conducted the shooting.	11	A. Right in front of them.
12	Q. Okay. Do you actually see, as the shooting	12	(Video playing)
13	suspect moves away from the group, a muzzle flash in this	13	Q. Okay. And now at 3:12:04.
14	video?	14	A. Patrick Kimmons, the two officers, they're now
15	A. Yes, you do.	15	engaging that person. You'll notice that everybody over
16	Q. We'll play the video now.	16	
			here has scattered, but you'll note that Marcel Branch is
17	(Video playing)	17	making his way back to his car, which is parked right here.
18	Q. There's no audio for this video, right?	18	(Video playing)
19	A. That is correct.	19	Q. Okay. And at this point, 3:12:08, Mr. Kimmons
20	(Video playing)	20	is down?
21	Q. Okay. Now we're at 3:12 and 14 seconds on the	21	A. Yes. He's fallen down behind this Durango
22	time stamp.	22	next to the hedge.
23	Detective, has the shooting occurred at this	23	(Video playing)
24	point?	24	A. And just to note, you can't see what action is
25	A. Yes.	25	taking place on this side because the Durango blocks our
	Page 46		Page 48
1		1	
1	Q. Both shootings?	2	view.  Q. From this camera angle, you mean?
2	A. Both shootings.		A. Yes.
3	Q. Okay. I'm going to back this up and kind of	3 4	A. 1es. Q. Okay.
4	walk through it.	5	
5	We'll start here at 3:11:27 on the time stamp.	6	(Video playing) Q. So from this point here, 3:12:01 where
6	(Video playing)	7	
7	Q. We'll pause at 3:11:49. What do we see here?		Mr. Kimmons can clearly be seen shooting, to the point that
8	A. So you'll note right here, this person, who	8	he ultimately comes to rest is a matter of seconds?
9	was later identified as Marcel Branch, he's walking towards	9	A. Yes.
10	this group of people here. We later determined that one of	10	Q. 3:12:01 to 3:12:08. So approximately seven
11	those people here is Dante Hall.	11	seconds from when the officers would have seen Mr. Kimmons
12	Also, in amongst this group is Patrick	12	firing on this group of people to the engagement being
13	Kimmons.	13	over?
14	(Video playing).	14	A. Yes.
15	Q. We're at 3:11:58.	15	(Video playing).
16	A. Right here, the fight begins. Marcel Branch	16	A GRAND JUROR: Can you remind me, were all
17	essentially punches Dante Hall. We later determined during	17	five spent rounds up where the fight was?
18	our investigation that there's some type of issue between	18	THE WITNESS: Yeah well, we don't know how
19	the two of them.	19	many rounds at given what we found here, we didn't find
20	Q. Okay. And is Patrick Kimmons in that group as	20	five rounds.
21	well at this point?	21	A GRAND JUROR: Okay.
22	A. Patrick Kimmons is in amongst that group.	22	THE WITNESS: We found I think we recovered
23	Q. Okay.	23	three rounds, three or four rounds total. One was a
24	(Video playing)	24	partial. There was two two that were still together,
25	Q. As we click through frame by frame, can you	25	and then there was one recovered from Dante Hall.
		ı	12 (Pages 45 to 48)

12 (Pages 45 to 48)

Page 51 Page 49 1 1 then to the south towards the red truck parked here? 2 2 BY MR. JACKSON: (Continuing) 3 3 Q. From his body? Q. So would that suggest that the officers did 4 A. From his body, yeah, his leg. 4 not start firing until Mr. Kimmons had essentially reached 5 (Video playing) 5 this back corner, rear passenger corner of the Acura? 6 Q. And as we let this play, what do you see 6 7 7 Q. Are you able to tell how far he was from the happening right up here? 8 A. So this vehicle that's parked here is going to 8 officers when he reaches that position? 9 9 take off that direction, and then you'll note that the A. So each stall on this side of the parking lot, 10 black Camaro that's parked here was going to drive out 10 based on measurements from our Leica scan, is approximately 11 right behind him. 11 eight feet in width. So they're approximately eight to 10 12 One of the things that you'll note is the 12 feet from Patrick Kimmons. 13 person that gets in the black Camaro is limping. 13 Q. At the point that the evidence shows they made 14 (Video playing) 14 the decision to begin firing? 15 Q. Are those two vehicles later observed at 15 A. Yes. 16 Emanuel Hospital? 16 A GRAND JUROR: What is it likely that they 17 A. Yes. 17 would be saying at that point? 18 Q. And did the two individuals, Marcel Branch and 18 THE WITNESS: They would be saying --19 Dante Hall, get out of those vehicles? 19 MR. JACKSON: Well, Detective, let me caution 20 A. Yes. 20 you not to speculate. 21 Q. At Emanuel Hospital? 21 THE WITNESS: That's true. 22 A. At Emanuel Hospital. 22 A GRAND JUROR: What would you expect 23 A GRAND JUROR: That person that just ran 23 normally? 24 across, who was that? Is that an officer? 24 THE WITNESS: Based on my training and 25 THE WITNESS: No. The officers are still 25 experience, "Stop. Police. Drop the weapon," all of those Page 50 Page 52 1 here. They're dealing with some of the people that are in 1 types of things. 2 2 MR. JACKSON: And later on in our the vehicles here, as well as the subject that's down. 3 There were a number of people around, 3 presentation, we'll hear from the witness --4 4 A GRAND JUROR: I didn't know if there was a including in this zone here. And so what happens is some 5 5 people run away because they're just trying to get away protocol that --6 from the situation. Some of them later end up being our 6 MR. JACKSON: So we'll actually hear from a 7 7 witnesses that we do talk to. member of the Portland Police Bureau training division that 8 8 can answer some of those questions. 9 BY MR. JACKSON: (Continuing) 9 A GRAND JUROR: Thank you. 10 10 MR. JACKSON: All right. Before we turn to Q. Let's run this one more time. 11 11 the reverse angle or the other angle from the Church of (Video playing) 12 Q. Okay. Detective, referencing back to the 12 Scientology building, does anybody have any questions about 13 crime scene photos we observed earlier, at this portion of 13 this or wish to see it again? 14 14 the scene, there was evidence of a bullet strike in this All right. I don't see anyone. 15 vehicle here that went into the trunk? 15 16 A. Yes. 16 BY MR. JACKSON: (Continuing) 17 Q. A skip shot off of the rear passenger door? 17 Q. Okay. Detective, what are we seeing here? 18 18 A. All right. So we're now looking at the other A. Yes. 19 Q. And a round that entered the passenger 19 camera view. This is X-2, which is on the -- pointing 20 20 towards the west and south of -- at the parking lot. compartment of this Camry, the vehicle parked to the south 21 of the Acura? 21 You'll note that down here is the furthest 22 22 west end of the parking lot here, and this is the A. Yes. 23 Q. Did you find any evidence in the course of 23 intersection for Southwest Harvey Milk and Southwest 24 24 your investigation to suggest the officers fired in any Fourth. 25 directions other than right at the corner of this Acura and 25 (Video playing)

13 (Pages 49 to 52)

Page 53 Page 55 1 Q. And we're now at 3:07 on the time stamp, which 1 Q. Here at 3:12:06, you can see the officers 2 2 also states September 30th, 2018, 3:07:40? positioned to the west side of that open parking space and 3 3 A. Correct. Mr. Kimmons on the east side of that open parking space? 4 4 Q. What do we see pulling into the lot here? A. Yeah. So Patrick Kimmons, the officers. 5 A. You'll see that the police vehicle is at the 5 (Video playing) 6 east end with its overhead lights on. 6 Q. And then at 3:12:09, does he appear to be 7 7 (Video playing) down? 8 Q. Okay. As we move ahead now to 3:09:04, what 8 A. Yes. 9 9 Q. Mr. Kimmons? do we see now? 10 A. We now have two vehicles, and they're 10 A. Yes. 11 positioning further into the parking lot with their 11 Q. Okay. 12 12 overhead lights on. A. So as you recall, the five-shot revolver is 13 13 recovered down in between these two vehicles. (Video playing) 14 14 Q. Now we're at 3:10:43. What's occurring at You can note some of his -- Patrick Kimmons' 15 15 this point? body motion. He has it in his hand at some point in there 16 A. The police vehicles are moving further into 16 and discards it. 17 17 O. Let's watch it one more time here at full the -- into the parking lot. speed. 18 Q. Repositioning next to the ticket booth or the 18 19 19 pay booth? (Video playing) 20 20 A. Yes, yes. Q. Okay. 21 (Video playing) 21 MR. JACKSON: Do you folks have any questions 22 22 about that camera angle or wish to see it again? Q. All right. Now at 3:11:50, what do we see 23 beginning to occur? 23 A GRAND JUROR: Have you been able to 24 24 determine from the video when the officers started firing, A. Sergeant Britt and Officer Livingston are 25 beginning to walk down to the east side of the parking lot. 25 like at what frame or second? Page 54 Page 56 1 You can see them right there and there. 1 THE WITNESS: From what I can determine, 2 2 (Video playing) there's -- every indication indicates that they started 3 3 Q. Okay. As we walk back through this, can you firing as he's still facing them at this corner and then --4 describe what you're seeing in terms of the officers' 4 and as he's making the turn. 5 5 movements? We're starting at 3:12:00. As you'll later see, with the injuries that 6 6 A. So there's -- there's actually two reactions Patrick Kimmons ends up having, it's consistent with him 7 7 that you'll notice with the officers. You'll note that making a turn away from them, but it's still as he's facing 8 8 they see the fight take place, and they start to engage to them. So it's right at this corner here because there --9 move towards that, but then there's a marked reaction. 9 that's the closest apex. 10 Essentially, one of them is seeking to find 10 We didn't find any evidence of gunfire from 11 cover because that's when we -- it looks like they're 11 the officers down -- you know, downrange towards this 12 reacting to the shots being fired. 12 direction. 13 Q. Okay. That was at 3:12:02? 13 14 14 A. Right. BY MR. JACKSON: (Continuing) 15 Q. Now we're at 3:12:03. What are we seeing now? 15 Q. To the east? 16 A. So we see that one of them has drawn their 16 A. To the east. 17 firearm. That's what it appears. 17 All of the direction of fire was southeast, 18 18 Something to note is that all of the casings basically at the back of that -- that car there, from what 19 that we recovered, there were no casings in this area. 19 we can see. 20 They were -- they were all over here next to these -- to 20 Q. And then also to the south with the rounds 21 these vehicles. 21 impacting the red truck? 22 22 (Video playing) A. Correct. And there's a couple of points where 23 A. We have Patrick Kimmons, who's running towards 23 you can see some smoke from the firearms, and that is 24 24 them. consistent timing for -- at this location is where the 25 25 interaction, the shooting, takes place. (Video playing)

14 (Pages 53 to 56)

	Page 57		Page 59
1	THE WITNESS: Does that help?	1	Q. And what are the injuries noted there that
2	A GRAND JUROR: Yes.	2	were treated?
3	MR. JACKSON: Any other questions about this	3	A. Gunshot wound to the abdomen and gunshot wound
4	camera angle?	4	to the right arm.
5	(No response)	5	Q. Okay. And then moving on to Dante Hall's
6		6	medical records, was he also admitted for treatment of a
7	BY MR. JACKSON: (Continuing)	7	gunshot injury on September 30th, 2018?
8	Q. Detective, so you've already talked about how	8	A. Yes, he was.
9	officers, and ultimately detectives, went out to Emanuel	9	Q. To Emanuel Hospital?
10	Hospital in response to their report that two shooting	10	A. Yes.
11	or two people suffering from gunshot wounds had arrived?	11	Q. And what was the injury documented there?
12	A. Yes.	12	A. Gunshot wound to the left leg and bullet
13	Q. And is this a photograph taken by one of the	13	recovered from that leg.
14	security staff at the hospital of the black car that	14	Q. Okay.
15	dropped off one of the shooting victims?	15	A. And just a note, Dante Hall's injury, he had a
16	A. Yes.	16	fractured femur on his left leg.
17	Q. And is that car leaving the area?	17	And then Marcel Branch was both of the
18	A. Correct.	18	injuries for Marcel Branch were through and through. So
19	Q. Okay. And is this vehicle consistent with the	19	two injuries on his right arm and then the injury to his
20	vehicle you see leaving the scene shortly after the	20	abdomen went through. And I'm not exactly sure which
21	shooting occurred?	21	direction it went, but there's also an injury to his back
22	A. Yes.	22	on the left side, which damaged his spleen and small
23	Q. And then what is this vehicle here?	23	intestines.
24	A. This is a blue Chevy Cobalt. This was Marcel	24	Q. Okay. Was security footage obtained from
25	Branch's vehicle.	25	Emanuel Hospital?
	Page 58		Page 60
1	Q. And so back to the black Chevy, was it Dante	1	A. Yes.
2	Hall that was dropped off out of that vehicle?	2	Q. Let's pause a moment while the player loads.
3	A. Yes.	3	Detective, is this the entryway into Emanuel
1			Detective, is this the chiryway into Emantici
4	Q. And what do we see here on back to the blue	4	Hospital?
5	Q. And what do we see here on back to the blue Cobalt, what is this?		
	Cobalt, what is this?  A. This is we're looking at the driver's side	4	Hospital?
5	Cobalt, what is this?	4 5	Hospital? A. Yes. It's one of them.
5 6	Cobalt, what is this?  A. This is we're looking at the driver's side of the blue Cobalt, and you can see blood smears and then blood on the interior of the blue Chevy Cobalt.	4 5 6	Hospital? A. Yes. It's one of them. Q. And are we going to see Marcel Branch here
5 6 7	Cobalt, what is this?  A. This is we're looking at the driver's side of the blue Cobalt, and you can see blood smears and then blood on the interior of the blue Chevy Cobalt.  Q. Is this the vehicle that Marcel Branch had	4 5 6 7	Hospital?  A. Yes. It's one of them.  Q. And are we going to see Marcel Branch here come running in as the black Chevy pulls up into the
5 6 7 8	Cobalt, what is this?  A. This is we're looking at the driver's side of the blue Cobalt, and you can see blood smears and then blood on the interior of the blue Chevy Cobalt.  Q. Is this the vehicle that Marcel Branch had driven himself to the hospital in?	4 5 6 7 8	Hospital?  A. Yes. It's one of them.  Q. And are we going to see Marcel Branch here come running in as the black Chevy pulls up into the parking lot  A. Correct.  Q entryway?
5 6 7 8 9 10	Cobalt, what is this?  A. This is we're looking at the driver's side of the blue Cobalt, and you can see blood smears and then blood on the interior of the blue Chevy Cobalt.  Q. Is this the vehicle that Marcel Branch had driven himself to the hospital in?  A. Yes.	4 5 6 7 8 9 10 11	Hospital?  A. Yes. It's one of them.  Q. And are we going to see Marcel Branch here come running in as the black Chevy pulls up into the parking lot  A. Correct.  Q entryway?  A. Correct.
5 6 7 8 9 10 11	Cobalt, what is this?  A. This is we're looking at the driver's side of the blue Cobalt, and you can see blood smears and then blood on the interior of the blue Chevy Cobalt.  Q. Is this the vehicle that Marcel Branch had driven himself to the hospital in?  A. Yes.  Q. And is this a photograph of Marcel Branch and	4 5 6 7 8 9 10 11 12	Hospital?  A. Yes. It's one of them.  Q. And are we going to see Marcel Branch here come running in as the black Chevy pulls up into the parking lot  A. Correct.  Q entryway?  A. Correct.  (Video playing)
5 6 7 8 9 10 11 12 13	Cobalt, what is this?  A. This is we're looking at the driver's side of the blue Cobalt, and you can see blood smears and then blood on the interior of the blue Chevy Cobalt.  Q. Is this the vehicle that Marcel Branch had driven himself to the hospital in?  A. Yes.  Q. And is this a photograph of Marcel Branch and his gunshot injuries in the hospital?	4 5 6 7 8 9 10 11 12 13	A. Yes. It's one of them. Q. And are we going to see Marcel Branch here come running in as the black Chevy pulls up into the parking lot A. Correct. Q entryway? A. Correct. (Video playing) Q. Were you able to observe, as Mr. Branch was
5 6 7 8 9 10 11 12 13	Cobalt, what is this?  A. This is we're looking at the driver's side of the blue Cobalt, and you can see blood smears and then blood on the interior of the blue Chevy Cobalt.  Q. Is this the vehicle that Marcel Branch had driven himself to the hospital in?  A. Yes.  Q. And is this a photograph of Marcel Branch and his gunshot injuries in the hospital?  A. Yes.	4 5 6 7 8 9 10 11 12 13	Hospital?  A. Yes. It's one of them.  Q. And are we going to see Marcel Branch here come running in as the black Chevy pulls up into the parking lot  A. Correct.  Q entryway?  A. Correct.  (Video playing)  Q. Were you able to observe, as Mr. Branch was running up, that he's kind of holding his side?
5 6 7 8 9 10 11 12 13 14 15	Cobalt, what is this?  A. This is we're looking at the driver's side of the blue Cobalt, and you can see blood smears and then blood on the interior of the blue Chevy Cobalt.  Q. Is this the vehicle that Marcel Branch had driven himself to the hospital in?  A. Yes.  Q. And is this a photograph of Marcel Branch and his gunshot injuries in the hospital?  A. Yes.  Q. We see one in the abdomen and one in the upper	4 5 6 7 8 9 10 11 12 13 14 15	Hospital?  A. Yes. It's one of them.  Q. And are we going to see Marcel Branch here come running in as the black Chevy pulls up into the parking lot  A. Correct.  Q entryway?  A. Correct.  (Video playing)  Q. Were you able to observe, as Mr. Branch was running up, that he's kind of holding his side?  A. Yes.
5 6 7 8 9 10 11 12 13 14 15 16	Cobalt, what is this?  A. This is we're looking at the driver's side of the blue Cobalt, and you can see blood smears and then blood on the interior of the blue Chevy Cobalt.  Q. Is this the vehicle that Marcel Branch had driven himself to the hospital in?  A. Yes.  Q. And is this a photograph of Marcel Branch and his gunshot injuries in the hospital?  A. Yes.  Q. We see one in the abdomen and one in the upper right arm?	4 5 6 7 8 9 10 11 12 13 14 15	Hospital?  A. Yes. It's one of them.  Q. And are we going to see Marcel Branch here come running in as the black Chevy pulls up into the parking lot  A. Correct.  Q entryway?  A. Correct.  (Video playing)  Q. Were you able to observe, as Mr. Branch was running up, that he's kind of holding his side?  A. Yes.  (Video playing)
5 6 7 8 9 10 11 12 13 14 15 16 17	Cobalt, what is this?  A. This is we're looking at the driver's side of the blue Cobalt, and you can see blood smears and then blood on the interior of the blue Chevy Cobalt.  Q. Is this the vehicle that Marcel Branch had driven himself to the hospital in?  A. Yes.  Q. And is this a photograph of Marcel Branch and his gunshot injuries in the hospital?  A. Yes.  Q. We see one in the abdomen and one in the upper right arm?  A. Correct.	4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. Yes. It's one of them. Q. And are we going to see Marcel Branch here come running in as the black Chevy pulls up into the parking lot A. Correct. Q entryway? A. Correct. (Video playing) Q. Were you able to observe, as Mr. Branch was running up, that he's kind of holding his side? A. Yes. (Video playing) Q. Is this individual being wheeled into the
5 6 7 8 9 10 11 12 13 14 15 16 17	Cobalt, what is this?  A. This is we're looking at the driver's side of the blue Cobalt, and you can see blood smears and then blood on the interior of the blue Chevy Cobalt.  Q. Is this the vehicle that Marcel Branch had driven himself to the hospital in?  A. Yes.  Q. And is this a photograph of Marcel Branch and his gunshot injuries in the hospital?  A. Yes.  Q. We see one in the abdomen and one in the upper right arm?  A. Correct.  Q. Did you subpoena medical records from Emanuel	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. Yes. It's one of them. Q. And are we going to see Marcel Branch here come running in as the black Chevy pulls up into the parking lot A. Correct. Q entryway? A. Correct. (Video playing) Q. Were you able to observe, as Mr. Branch was running up, that he's kind of holding his side? A. Yes. (Video playing) Q. Is this individual being wheeled into the hospital on the gurney, is that Dante Hall?
5 6 7 8 9 10 11 12 13 14 15 16 17 18	Cobalt, what is this?  A. This is we're looking at the driver's side of the blue Cobalt, and you can see blood smears and then blood on the interior of the blue Chevy Cobalt.  Q. Is this the vehicle that Marcel Branch had driven himself to the hospital in?  A. Yes.  Q. And is this a photograph of Marcel Branch and his gunshot injuries in the hospital?  A. Yes.  Q. We see one in the abdomen and one in the upper right arm?  A. Correct.  Q. Did you subpoena medical records from Emanuel Hospital for Dante Hall and Marcel Branch?	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. Yes. It's one of them. Q. And are we going to see Marcel Branch here come running in as the black Chevy pulls up into the parking lot A. Correct. Q entryway? A. Correct. (Video playing) Q. Were you able to observe, as Mr. Branch was running up, that he's kind of holding his side? A. Yes. (Video playing) Q. Is this individual being wheeled into the hospital on the gurney, is that Dante Hall? A. Yes.
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Cobalt, what is this?  A. This is we're looking at the driver's side of the blue Cobalt, and you can see blood smears and then blood on the interior of the blue Chevy Cobalt.  Q. Is this the vehicle that Marcel Branch had driven himself to the hospital in?  A. Yes.  Q. And is this a photograph of Marcel Branch and his gunshot injuries in the hospital?  A. Yes.  Q. We see one in the abdomen and one in the upper right arm?  A. Correct.  Q. Did you subpoena medical records from Emanuel Hospital for Dante Hall and Marcel Branch?  A. Yes, I did.	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. Yes. It's one of them. Q. And are we going to see Marcel Branch here come running in as the black Chevy pulls up into the parking lot A. Correct. Q entryway? A. Correct. (Video playing) Q. Were you able to observe, as Mr. Branch was running up, that he's kind of holding his side? A. Yes. (Video playing) Q. Is this individual being wheeled into the hospital on the gurney, is that Dante Hall? A. Yes. Q. Did detectives actually go out to the hospital
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Cobalt, what is this?  A. This is we're looking at the driver's side of the blue Cobalt, and you can see blood smears and then blood on the interior of the blue Chevy Cobalt.  Q. Is this the vehicle that Marcel Branch had driven himself to the hospital in?  A. Yes.  Q. And is this a photograph of Marcel Branch and his gunshot injuries in the hospital?  A. Yes.  Q. We see one in the abdomen and one in the upper right arm?  A. Correct.  Q. Did you subpoena medical records from Emanuel Hospital for Dante Hall and Marcel Branch?  A. Yes, I did.  Q. And upon review of those medical records,	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. Yes. It's one of them. Q. And are we going to see Marcel Branch here come running in as the black Chevy pulls up into the parking lot A. Correct. Q entryway? A. Correct. (Video playing) Q. Were you able to observe, as Mr. Branch was running up, that he's kind of holding his side? A. Yes. (Video playing) Q. Is this individual being wheeled into the hospital on the gurney, is that Dante Hall? A. Yes. Q. Did detectives actually go out to the hospital and identify these two individuals?
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Cobalt, what is this?  A. This is we're looking at the driver's side of the blue Cobalt, and you can see blood smears and then blood on the interior of the blue Chevy Cobalt.  Q. Is this the vehicle that Marcel Branch had driven himself to the hospital in?  A. Yes.  Q. And is this a photograph of Marcel Branch and his gunshot injuries in the hospital?  A. Yes.  Q. We see one in the abdomen and one in the upper right arm?  A. Correct.  Q. Did you subpoena medical records from Emanuel Hospital for Dante Hall and Marcel Branch?  A. Yes, I did.  Q. And upon review of those medical records, starting with Marcel Branch, did it indicate that he was,	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Yes. It's one of them. Q. And are we going to see Marcel Branch here come running in as the black Chevy pulls up into the parking lot A. Correct. Q entryway? A. Correct. (Video playing) Q. Were you able to observe, as Mr. Branch was running up, that he's kind of holding his side? A. Yes. (Video playing) Q. Is this individual being wheeled into the hospital on the gurney, is that Dante Hall? A. Yes. Q. Did detectives actually go out to the hospital and identify these two individuals? A. Yes, they did.
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Cobalt, what is this?  A. This is we're looking at the driver's side of the blue Cobalt, and you can see blood smears and then blood on the interior of the blue Chevy Cobalt.  Q. Is this the vehicle that Marcel Branch had driven himself to the hospital in?  A. Yes.  Q. And is this a photograph of Marcel Branch and his gunshot injuries in the hospital?  A. Yes.  Q. We see one in the abdomen and one in the upper right arm?  A. Correct.  Q. Did you subpoena medical records from Emanuel Hospital for Dante Hall and Marcel Branch?  A. Yes, I did.  Q. And upon review of those medical records, starting with Marcel Branch, did it indicate that he was, in fact, admitted for treatment of gunshot injuries on	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. Yes. It's one of them. Q. And are we going to see Marcel Branch here come running in as the black Chevy pulls up into the parking lot A. Correct. Q entryway? A. Correct. (Video playing) Q. Were you able to observe, as Mr. Branch was running up, that he's kind of holding his side? A. Yes. (Video playing) Q. Is this individual being wheeled into the hospital on the gurney, is that Dante Hall? A. Yes. Q. Did detectives actually go out to the hospital and identify these two individuals? A. Yes, they did. (Video playing)
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Cobalt, what is this?  A. This is we're looking at the driver's side of the blue Cobalt, and you can see blood smears and then blood on the interior of the blue Chevy Cobalt.  Q. Is this the vehicle that Marcel Branch had driven himself to the hospital in?  A. Yes.  Q. And is this a photograph of Marcel Branch and his gunshot injuries in the hospital?  A. Yes.  Q. We see one in the abdomen and one in the upper right arm?  A. Correct.  Q. Did you subpoena medical records from Emanuel Hospital for Dante Hall and Marcel Branch?  A. Yes, I did.  Q. And upon review of those medical records, starting with Marcel Branch, did it indicate that he was, in fact, admitted for treatment of gunshot injuries on September 30th, 2018?	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	A. Yes. It's one of them. Q. And are we going to see Marcel Branch here come running in as the black Chevy pulls up into the parking lot A. Correct. Q entryway? A. Correct. (Video playing) Q. Were you able to observe, as Mr. Branch was running up, that he's kind of holding his side? A. Yes. (Video playing) Q. Is this individual being wheeled into the hospital on the gurney, is that Dante Hall? A. Yes. Q. Did detectives actually go out to the hospital and identify these two individuals? A. Yes, they did. (Video playing) Q. Is this hospital security coming out of the
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Cobalt, what is this?  A. This is we're looking at the driver's side of the blue Cobalt, and you can see blood smears and then blood on the interior of the blue Chevy Cobalt.  Q. Is this the vehicle that Marcel Branch had driven himself to the hospital in?  A. Yes.  Q. And is this a photograph of Marcel Branch and his gunshot injuries in the hospital?  A. Yes.  Q. We see one in the abdomen and one in the upper right arm?  A. Correct.  Q. Did you subpoena medical records from Emanuel Hospital for Dante Hall and Marcel Branch?  A. Yes, I did.  Q. And upon review of those medical records, starting with Marcel Branch, did it indicate that he was, in fact, admitted for treatment of gunshot injuries on	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. Yes. It's one of them. Q. And are we going to see Marcel Branch here come running in as the black Chevy pulls up into the parking lot A. Correct. Q entryway? A. Correct. (Video playing) Q. Were you able to observe, as Mr. Branch was running up, that he's kind of holding his side? A. Yes. (Video playing) Q. Is this individual being wheeled into the hospital on the gurney, is that Dante Hall? A. Yes. Q. Did detectives actually go out to the hospital and identify these two individuals? A. Yes, they did. (Video playing)

15 (Pages 57 to 60)

	Page 61		Page 63
1	A. Yes. He's taking a picture.	1	A. Yeah.
2	Q. Okay. All right.	2	Q in Southwest Portland?
3	MR. JACKSON: Do grand jurors have any	3	A. Yes.
4	questions of Detective Posey about the investigation or the	4	Q. Okay. I'm just going to pull up this
5	crime scene evidence collected there from or identified	5	photograph.
6	within or the video evidence?	6	Can you see, Mr. Mena, on the board here, is
7	A GRAND JUROR: I'm assuming we're going to	7	this an aerial photograph of what was formerly Stark
8	hear more about the driver of that Chevy or no? What's	8	Street, now Harvey Milk, Third and Fourth, and the Golden
9	their involvement? They just kind of drove off.	9	Dragon is in this area right here?
10	MR. JACKSON: That person appears in the video	10	A. Yeah, yeah.
11	to drive away from the hospital.	11	Q. Is that approximately where you were?
12	A GRAND JUROR: Are they a witness or what is	12	A. Yeah.
13	the	13	Q. Were you inside or outside of the building?
14	THE WITNESS: We're not sure at this point.	14	A. I was outside.
15	It's it's possible.	15	Q. Would you come up to the board here and just
16	MR. JACKSON: Any other questions of Detective	16	point to where approximately you were standing?
17	Posey?	17	A. (Witness complying).
18	I don't see any.	18	Q. Okay. Right about there?
19	Let's go off the record and take our	19	A. Yeah.
20	mid-morning break.	20	Q. Just on the sidewalk?
21	(Pause in proceedings: 10:43-10:58 a.m.)	21	A. Yeah.
22		22	Q. All right. While you were standing out there,
23		23	do you recall some police patrol vehicles entering the
24		24	parking lot to the west of your location?
25		25	A. I didn't notice them until the situation
			Page 64
1		1	
1	MATTHEW MENA	1	happened.
2	was thereupon called as a witness on behalf of the State	2 3	Q. Okay.
3 4	and, after having been duly sworn, was examined and testified as follows:	4	A. Yeah.
5	testified as follows.	5	Q. What did you notice about them, if anything, the patrol vehicles?
6	EXAMINATION	6	•
7	BY MR. JACKSON:	7	A. They were parked in that little parking area there. It seemed like their lights were on.
8		8	Q. When you say "their lights were on," do you
9	Q. Would you please state and spell your name for the Grand Jurors?	9	mean headlights or overhead lights?
10	A. Matthew Mena, M-A-T-T-H-E-W, M-E-N-A.	10	A. Overhead police lights.
11		11	Q. Do you remember how many vehicles you saw
12	Q. I want to take you back to September 30th of 2018, in the very early morning hours.	12	there?
13	Were you out that night?	13	A. Two, two SUVs.
14	A. Yeah.	14	Q. Two police SUVs?
15	Q. Do you remember what part of town you were in?	15	A. Yeah.
16	A. Downtown.	16	Q. Okay. Could you kind of walk us through what
17	Q. And was a person named Garrett Carroll with	17	you remember occurring?
18	you?	18	A. So I heard two gunshots. I proceeded to look
19	A. Yes.	19	across the street. I saw a gentleman who was seemingly
20	Q. And who is that to you?	20	holding a gun. He ran off into the parking lot.
21	A. Friend.	21	A woman who was on the sidewalk across the
22	Q. A friend of yours?	22	street from me, she hobbled over into a car. I didn't see
23	A. Yeah.	23	what direction the car went off, but the car took off.
24	Q. Okay. At about 3:00 in the morning, were you	24	The gentleman ran into the parking lot. The
25	and Mr. Carroll in front of the Golden Dragon	25	officers pretty much ran towards him. He saw them running

16 (Pages 61 to 64)

	Page 65		Page 67
1	towards him, so he made a beeline into where the parked	1	Q. Okay. The individual that had the gun in his
2	cars are on the west side there.	2	hand, how was he moving, away or toward, or how was he
3	And once he reached one of the cars, the	3	moving with regard to the group of people?
4	officers came from behind him and shot him.	4	A. So he was facing them when I looked over. And
5	Q. Okay. When you when you first heard those	5	then he made like a kind of like a he made like a
6	two gunshots and looked across the street, you said you	6	weird movement to, like, spin around and take off running
7	were standing here on the east side of Third Avenue?	7	afterwards.
8	A. Yeah.	8	Q. And did you see him running so if this way
9	Q. In this general area?	9	is north, was he running to the south or was he running a
10	A. Yeah.	10	different direction?
11	Q. When you looked across the street, do you	11	A. He ran into the into the parking lot.
12	remember where it was that you saw the person with the gun?	12	Q. To the west?
13	A. So he was he was right there, in the	13	A. Yeah.
14	opening there.	14	Q. Okay. And did you see a gun in his hand?
15	Q. (Indicating).	15	A. When I looked across the street, it seemed
16	A. Yeah.	16	like there was a gun in his hand, yeah. I didn't see him
17	Q. In the drive aisle on the	17	drop the gun at any point, drop anything at any point.
18	A. Yeah. And the car was parked slightly	18	Q. Okay.
19	slightly go up slightly.	19	A. So I assumed that he had a gun on him until
20	Q. (Indicating).	20	until he fell to the ground.
21	A. Yeah, to the right. It didn't look like it	21	Q. As he was running into the parking lot, did
22	was in a space, like a designated space. It just looked	22	his running motion appear consistent with holding a gun in
23	like it was parked there, though.	23	his hand to you?
24	Q. Okay. Is that the car that the person that	24	A. I don't know. I don't know. I don't know.
25	you saw apparently shot get into?	25	If they had a gun in their hand, I think everybody would be
	Page 66		Page 68
1	A. Yeah.	1	a little different. But he was making pretty intense hand
2	Q. Okay.	2	motions while he was running.
3	A. I don't know if they were shot. They were	3	Q. Okay.
4	just they were just, like, on one leg, so that's what I	4	A. Like pumping, just really trying to get away.
5	assumed, but I didn't actually see them get shot.	5	Q. Really running?
6	Q. But based on what you were seeing	6	A. Yeah.
7	A. Yes.	7	Q. Okay. When did you notice that the police
8	Q it seemed like that's what happened?	8	officers were actually out of their patrol vehicles?
9	A. Yeah.	9	A. I think they were I I don't really
10	Q. Okay. When you first looked over, could you	10	remember. It's kind of fuzzy, but they might have been out
11	describe exactly what it was that you saw happening?	11	the entire time, out of their vehicles.
12	A. When I first looked over?	12	Q. Okay. When do you first remember actually
13	Q. Uh-huh.	13	seeing them running up through the parking lot as you
14	A. So the woman was behind the vehicle. She	14	described it?
15	hobbled over, got in the back seat.	15	A. Almost immediately, almost immediately.
16	He proceeded to he proceeded just to, like,	16	So when I looked and I saw him running, I
17	look around and run up into the parking lot.	17	could see the police officers already approaching him as he
18	Q. Did you know any of these people?	18	was running into the parking lot.
19	A. No.	19	And I don't know if he saw them or not, but at
20	Q. Okay. And so when you say "a woman," are you	20	a certain point, the officer did see him, and then he
21	saying that because you knew it was a woman or it just	21	turned left into the cars
22	looked like a woman?	22	Q. Okay.
23	A. It looked like a woman, yeah.	23	A to try to avoid them.
24	Q. Okay.	24	Q. That's what it appeared to you?
25	A. I don't know for sure if it was a woman.	25	A. Yes.

17 (Pages 65 to 68)

Page 71 Page 69 1 Q. Okay. Do you remember noting anything about 1 A. Yeah. 2 2 the sound of the gunshots that you heard from this Q. When you say "left," you mean to the south? 3 3 northeast area of the parking lot? A. Yeah. 4 A. Small caliber rounds potentially, not a -- not 4 Q. Okay. Do you remember seeing any particular 5 5 movements by the individual as he was making that turn? a big gun. 6 Q. Okay. Do you have experience with firearms to 6 A. No. He was just running away. 7 7 know kind of generally what gunshots sound like? Q. And how about as he had made the turn and was 8 A. Not much, no. 8 proceeding between the parked cars? 9 9 A. So he -- it seemed like he looked back at the Q. Okay. Do you remember when detectives spoke 10 to you shortly after this incident about it? 10 officers, just to maybe see how close they were to him. 11 And then while he was doing that, he was shot. A. Do I remember speaking to detectives about 11 12 Q. Okay. And when you say "he looked back," do 12 this situation? 13 Q. Yeah. 13 you mean -- could you describe what specific body movements 14 14 A. Yeah. you actually saw? 15 15 Q. Okay. And do you remember thinking at that A. So he was running full motion, didn't stop 16 point at least or indicating that it may have been a 16 once. He was just running. 17 17 And then when the officers approached him from revolver type of a weapon? 18 A. That's what it looked like to me. It looked 18 behind and they gave him the commands, "Stop. Put down the 19 gun," it seemed like he looked back like this, and then he 19 like it was all -- yeah, that's just what it appeared like. 20 20 was shot. Q. Okay. 21 A. I may be wrong. 21 Q. Okay. Where was the hand that had the gun in 22 22 Q. Sure. But that's -- and are you talking about it moving at that moment? 23 23 when you looked over and you saw the guy with the gun --A. I want to say it was his right hand. And, 24 like I said, he was in motion. So the gun was somewhat at 24 A. Yeah. 25 Q. -- that's what it looked like? 25 his -- so he was running. The gun is somewhat like right Page 70 Page 72 1 A. It looked like he had a small little, all 1 here --2 2 silver revolver in his hand. It could have been a pistol, Q. Okay. 3 but I'm pretty sure it was a revolver. 3 A. -- at a certain point, but it --4 4 Q. Okay. Q. And just for the record, you're indicating as 5 5 A. But I don't know for sure, like I said. he looked back, he was looking over his right shoulder 6 Q. So you said when you looked over and you saw 6 toward the officers? 7 7 this happening, the police were already there with their A. Yes. 8 8 lights on? Q. And the gun in his right hand was, you've 9 A. Uh-huh, yeah. 9 indicated, kind of near his right hip with his arm in back? 10 10 Q. What was your -- how did that strike you that A. It was there -- it was there at certain 11 this was happening with the police presence? 11 points. I'm not sure if it was there at the moment he was 12 A. I was surprised. It seemed like -- it just 12 shot, but I did notice he was running like this. 13 seemed strange that somebody would be so bold to do this 13 Q. Okay. And what, if any, commands did you hear 14 14 right when the police were there. the police officers giving to the individual? 15 I don't know. Maybe they didn't notice the 15 A. I'm pretty sure I heard, "Stop" and "Put down 16 16 the gun" or "Put it down," one of those three or all three. police were there. I don't know. 17 17 Q. But it surprised you that it would happen? Q. Okay. Was it a pretty chaotic scene at that 18 18 A. Yeah, definitely a surprise. point? 19 19 Q. As the person that you described running into A. Oh, yeah. People were screaming all around. 20 the parking lot approached where the officers were running, 20 Yeah, it was very chaotic. 21 were they kind of converging together? Is that how you 21 Q. How many people, if you had to estimate, were 22 22 in this kind of general area at the time this occurred? remember it? 23 A. Yeah. And then I assume he noticed this, and 23 A. So actually, I haven't even mentioned, so 24 24 then that's when he decided to dart left. there was another car that I'm pretty sure was involved, a 25 Q. When you saw him turn? 25 black Charger or Camaro.

18 (Pages 69 to 72)

Page 75 Page 73 I'm not sure if he was -- the individual was 1 1 Q. Okay. 2 2 with them, but they were there, too, right at the corner. A. It was just one of these (indicating). 3 3 Q. Right here? Q. Okay. And he was still in a running motion? 4 4 A. Downward, yeah. They were there. I don't A. Oh, yeah. He was booking away. He never 5 know if they were waiting for the situation to unfold for 5 stopped --6 him to get in the car. I don't know what their -- I don't 6 Q. Okay. 7 7 A. -- until he fell. know what their -- what their part in this was, but they 8 were seemingly involved. 8 Q. And as you're watching this happen kind of 9 9 They were there. There was a bunch of people realtime, did it strike you as occurring very quickly, or 10 at the food carts. There was a decent amount of people at 10 did it feel like you were in slow motion, or do you have a 11 11 sense of that? 12 O. The food carts are down here to the southeast? 12 A. Happened within seconds. It was all within 10 13 A. Yeah, on that -- on that sidewalk right there. 13 or 11 seconds. 14 14 Q. Okay. (Indicating). Q. Okay. That was the impression you had? 15 15 A. No, no. Yeah, all lined up there, yeah. A. Yeah. 16 Q. Okay. 16 Q. Okay. And based on the movements that you saw 17 17 A. So there was a decent amount of people in there at kind of the critical moments with police officers, 18 front of Golden Dragon. There were people across the 18 did you have a fear that this individual may actually shoot 19 street, but my eyes were fixed on the gentleman and all of 19 at the police based on how he was moving? 20 20 A. Based on how he was moving, no. But based on 21 Q. Uh-huh. When you first look over after 21 the situation at large, I thought anything was possible. 22 hearing the gunshot, how many people were in this immediate 22 Q. Okay. And as that arm was kind of coming 23 group here? 23 back, as you indicated, when he looked back over his 24 A. So there was the driver, and then there was 24 shoulder off his hip, do you remember the gun ever -- or 25 the lady. That's all I saw. There might have been more, 25 the muzzle ever being pointed at the police --Page 74 Page 76 1 but that's all I saw. 1 A. No. 2 2 Q. -- that you could see? Q. So were you pretty focused in on this gun that 3 3 A. No. 4 4 A. On the -- like the main players, I was focused Q. Okay. Do you recall actually being under the 5 5 on them, like the guy and the lady who was jumping in the impression that it may come up and actually fire at the 6 6 police officers? 7 7 I didn't really -- yeah, I was focused on them A. No. I think I -- I mean, that impression, 8 8 right there. anything could happen with a gun with just the flick of a 9 Q. Sure. 9 wrist. It could have happened very quickly. It could have 10 10 So moving back now to where the officers happened, but I did not have that impression. 11 engaged with this individual, you described that as he came 11 Q. Okay. And do you remember, when you talked to 12 down between the cars, you heard commands being given to 12 the detectives in this case, saying that you at least had a 13 13 thought that this individual was going to turn and start 14 14 shooting at the police officers? Are you sure it was police giving those 15 commands? 15 A. No, I don't remember saying that, no. If I 16 16 did say that, no, I was wrong. A. I'm pretty sure, yeah. 17 Q. Okay. That's kind of consistent with how 17 Q. Okay. So your testimony, just to be sure, to 18 18 make sure we're clear, is that it didn't look like he was police give commands to people? 19 19 A. Well, I was watching them, too. going to turn and shoot the police, but it takes a flick of 20 20 Q. Okay. a wrist, and anything could happen under those 21 A. So... 21 circumstances? 22 22 A. Yeah. Q. As he turned back --23 A. It was -- it was just his head, though, that 23 Q. Okay. After he -- after the shooting 24 occurred, did you see what happened with the vehicles that 24 turned back. It wasn't like an actual -- he didn't 25 physically turn his body back. 25 you identified as being potentially involved in this

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Somehow?  A. No, no. I can't remember anything that happened after that. Q. Do you remember seeing them at the scene later on as you were standing around? A. No, no. I would have noticed that. No. Q. Okay. So had they left, then? Is that your impression? A. Yeah. Q. Okay. You just didn't see which direction they wen? A. Yesh. Q. Okay. You just didn't see which direction they wen? A. Yesh. Q. Okay. You just didn't see which direction they wen? A. Yesh. A. Yesh. A. Yesh. A. Garatt Carolinors have any questions that I have at this point for Mr. Mena. Behind? A. GRAND JUROR: Just had one question. You kept referencing that the police came from the behind? THE WITNESS: Yeah. A GRAND JUROR: Sub ut he had already—so the police were in that cumpty—the empty—where the cars aren't parked, the middle ground.  Page 78  So they're both running there. They're going to collide. You get what I'm saying? A GRARD JUROR: Okay. Thank you. THE WITNESS: Sue. MR. JACKSON: Any other questions? I He goes this way. The police then go behind him as his back is turned. You get what I'm saying? A GRARD JUROR: Okay. Thank you. Thank you very much.  Page 78  So they're both running there. They're going to collide. You get what I'm saying? A GRAREIT CARROLL And that's when Matthew got in front of me, and I was standing up, A Yes. Could you describe for us what you remember occurring while you were standing out there? A Coming uovards the Golden Dragon, I had just crossed the street and — Yes. Q Okay. A Yes. A Yes. A Yes. Q Okay. A Yes. A Yes		Page 77		Page 79
2 A. No, no. I can't remember anything that 3 happened after that. 4 Q. Do you remember seeing them at the scene later 5 on as you were standing around? 6 A. No, no. I would have noticed that. No. 7 Q. Okay. So had they left, then? Is that your 8 impression? 9 A. Yeah. 10 Q. Okay. You just didn't see which direction 11 they went? 12 A. Yeah. 13 Q. Okay. You just didn't see which direction 14 drey went? 15 questions that I have at this point for Mr. Mena. 16 Do the Grand Jurors have any questions? 17 A. GRAND JUROR: Jiss thad one question. 18 WITHENSE: Yep. 21 A. GRAND JUROR: But weren't they running 22 towards each other? 23 THE WITNESS: Yeah, but he had already – so the police were in that empty – the empty – where the 25 to collide. 26 A. GRAND JUROR: Okay. Thank you. 27 THE WITNESS: Sure. 38 MR. JACKSON: Any other questions? 40 A. GRAND JUROR: Okay. Thank you. 41 Thank you very much. 42 Thank you very much. 43 CARRET CARROLL 44 A. GRAND JUROR: Okay. Thank you. 45 THAN WITNESS: Sure. 46 A. GRAND JUROR: Okay. Thank you. 47 THE WITNESS: Sure. 48 MR. JACKSON: Any other questions? 49 C. Okay. 40 Coming across Stark? 41 Truck that was about eight feet in front of me, and I was standing up. 41 Thank you very much. 42 Thank you very much. 43 CAPEL TO ARROLL 44 A. Yes. 45 Coming towards the Golden Dragon, I had just crossed the street one other. 46 Thank already – so the other. 47 Depoil of the Stark of the Stark and the transition from one side of the street to the other. 48 Octomic provides the treat of the street to the other. 49 Octomic provides the street to the other. 40 Octomic provides that have a streat provides the street from the Euro – the light by – I – I made the transition from one side of the street to the other. 40 Octomic provides that have a streat provided the provides that have a streat provided the provides that the provides that have a streat provided the provides that the provides that have a streat provided the provides that have a streat provided the provides that have a streat provided the	1	somehow?	1	O. So, yeah, we'll take you back to September
a happened after that.   Q. Do you remember seeing them at the scene later on as you were standing around?   A. No, no. I would have noticed that. No. on Q. Okay. So had they left, then? Is that your impression?   A. Yeah.     Q. Okay. You just didn't see which direction they went?   A. Yeah.     Q. Okay. You just didn't see which direction they went?   A. Yeah.     Q. Okay. You just didn't see which direction they went?   A. Yeah.     Q. Okay. And was Mr. Mena with you?   A. Yeah.     Q. Okay. And was Mr. Mena with you?   A. Yeah.     Q. Okay. And was Mr. Mena with you?   A. Yeah.     Q. Okay. And was Mr. Mena with you?   A. Yeah.     Q. Okay. And was Mr. Mena with you?   A. Yeah.     Q. Okay. And was Mr. Mena with you?   A. Yeah.     Q. Okay. And was Mr. Mena with you?   A. Yeah.     Q. Okay. And was Mr. Mena with you?   A. Yeah.     Q. Okay. And was Mr. Mena with you?   A. Yeah.     Q. Okay. And was Mr. Mena with you?   A. Yeah.     Q. Okay. And was Mr. Mena with you?   A. Yeah.     Q. Okay. And was Mr. Mena with you?   A. Yeah.     Q. Okay. And was Mr. Mena with you?   A. Yeah.     Q. Okay. And was Mr. Mena with you?   A. Yeah.     Q. Okay. And was Mr. Mena with you?   A. Yeah.     Q. Okay. And was Mr. Mena with you?   A. Yeah.     Q. Okay. And was dood you know as attail the other?   A. Yeah.     Q. Okay. And was attail your one side of the street to the other.     Q. Okay. And was attailly in front of me, and I was standing up.     Q. Okay. And was attailly in front of me, and I was standing up.     Q. Okay. And was attailly in front of me, and I was standing up.     Q. Okay. And what impact, if any, did that have on your ability of the police were in that empty – the empty – where the cars aren't parked, the middle ground.     Page 78				· · · · · · · · · · · · · · · · · · ·
Comparison   Com	3		3	
5	4		4	
6 A. No, no. I would have noticed that. No. 7 Q. Okay, So had they left, then? Is that your impression? 8 impression? 9 A. Yeah. 10 Q. Okay, You just didn't see which direction 10 they went? 11 they went? 12 A. Yeah. 13 Q. Okay. 14 MR. JACKSON: I think those are all the questions that I have at this point for Mr. Mena. 15 questions that I have at this point for Mr. Mena. 16 Do the Grand Jurors have any questions? 17 A GRAND JUROR: I just had one question. 18 You kept referencing that the police came from 19 behind? 19 behind? 20 THE WITNESS: Yep. 21 A GRAND JUROR: But weren't they running 21 to collide. 22 Towards each other? 23 THE WITNESS: Yeah, but he had already so the police were in that empty the empty where the 25 curs aren't parked, the middle ground.  Page 78  1 So they're both running there. They're going 2 to collide. 2 He goes this way. The police then go behind him as his back is turned. 4 him as his back is turned. 5 You get what I'm saying? 6 A GRAND JUROR: Both and you. 7 THE WITNESS: Sure. 8 MR. JACKSON any other questions? 9 I don't see any. All right. That's it. 10 Thank you very much. 2 Could you describe for us what you remember occurring while you were standing out ther? A. I had just crossed the street and Q. Which direction? A. I had just crossed the street and Q. Which direction? A. I had just crossed the street and Q. Which direction? A. Coming across Stark? A. Coming across Stark? A. Yes. Q. Okay. A. Yes. Q. Okay. A. Yes. Q. Okay. A. And then Matthew was actually in front of me probably like five, six, eight feet in front of me, and I was standing up. A flath as when Matthew got in front of a struck that was about eight feet in front of me, and I was standing up. A Q. Parked on the street? A. Yes. Q. Okay. A. Yes. Q. And are we talking about on the east side of Third Avenue? A. Yes. Q. Okay. A. Yes. Q. Okay. A. Yes. Q. And are we talking about on the east side of Third Avenue? A. Yes. Q. Okay. A. Yes. Q. Okay. A. Yes. Q. Okay. A. And I was standing up, and I was watc	5		5	•
This area outside of the Golden Dragon?	6		6	Q. And at about 3:00 in the morning, were you in
B   Impression?   9   A. Yeah.   9   Q. Okay. And was Mr. Mena with you?	7		7	
10 Q. Okay. You just didn't see which direction they went? 11 they went? 12 A. Yeah. 13 Q. Okay. 14 MR. JACKSON: I think those are all the questions that I have at this point for Mr. Mena. 15 Do the Grand Jurors have any questions? 16 Do the Grand Jurors have any questions? 17 A GRAND JUROR: I just had one question. 18 You kept referencing that the police came from behind? 19 behind? 20 THE WITNESS: Yep. 21 A GRAND JUROR: But weren't they running towards each other? 22 THE WITNESS: Yep, and Grand Jurors have an empty — where the cars aren't parked, the middle ground. 23 THE WITNESS: Yeah, but he had already — so behind with a shis back is turned. 24 the police were in that empty — the empty — where the cars aren't parked, the middle ground. 25 So they're both running there. They're going to collide. 26 You get what I'm saying? 27 A GRAND JUROR: Okay. Thank you. 28 A GRAND JUROR: Okay. Thank you. 39 THE WITNESS: Sure. 40 A GRAND JUROR: Okay. Thank you. 41 THE WITNESS: Sure. 42 A GRAND JUROR: Okay. Thank you. 43 THE WITNESS: Sure. 44 A GRAND JUROR: Okay. Thank you. 45 You get what I'm saying? 46 A GRAND JUROR: Okay. Thank you. 47 THE WITNESS: Sure. 48 MR. JACKSON: Any other questions? 49 John the say of the sure of the street? 40 A Yes. 41 A Yes. 42 A Yes. 43 A Yes. 44 A Yes. 45 Q. And are we talking about on the east side of Third Avenue? 46 Third Avenue? 47 A. Yes. 48 MR. JACKSON: Any other questions? 49 John the street of the tight by — 1 — 1 made the transition from one side of the street in othe other. 49 Q. Parked on the street? 40 A. Yes. 41 A Yes. 42 A. Yes. 43 A. Yes. 44 A. Yes. 45 Q. Okay. 46 A GRAND JUROR: Okay. Thank you. 47 THE WITNESS: Sure. 48 MR. JACKSON: Any other questions? 49 John the street from the zero — to the light by — 1 — 1 made the transition from one side of the street in the other. 49 Q. Okay. 40 Parked on the street? 40 A. Yes. 41 A Yes. 41 A Yes. 42 A. Yes. 43 A. Yes. 44 A. Yes. 45 Q. Okay. 46 Third Avenue? 47 A. Yes. 48 MR. JACKSON: Any other questions? 48 MR. JACKSON: Any other qu	8		8	
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13    A. I had just crossed the street and	11	they went?	11	Q. Could you describe for us what you remember
MR. JACKSON: 1 think those are all the questions that I have at this point for Mr. Mena.   15	12	A. Yeah.	12	occurring while you were standing out there?
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21			19	
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He goes this way. The police then go behind him as his back is turned.  You get what I'm saying? Fig. 1 A. Yes.  Qound are we talking about on the east side of Third Avenue? The WITNESS: Sure. Results of Third Avenue? Thank you very much.  Thank you very much.  GARRETT CARROLL  GARRETT CARROLL  GARRETT CARROLL  And I was standing up, and I was watching. I couldn't see the guy who did get shot, but I could see the cops from the angle that I was at.  And is there kind of a hedge that goes along the southeast part of the parking lot?  EXAMINATION  BY MR. JACKSON:  BY MR. JACKSON:  And I was actually with him on the night of the  And I was thereupon called as a witness on behalf of the State and spell your name?  And I was atthe angle where I could just see the ledge. I couldn't see the guy.  And is there kind of a hedge that goes along the southeast part of the parking lot?  And I was at the angle where I could just see the ledge. I couldn't see what was happening?  And I was at the angle where I could just see the ledge. I couldn't see the guy. I could see the ledge. I couldn't see the guy.  And is there kind of a hedge that goes along the southeast part of the parking lot?  And I was at the angle where I could just see the ledge. I couldn't see what was happening?  And I was at the angle where I could just see the ledge. I couldn't see the guy. I could see the police officers that were actually in the parking lot.  And I was actually with him on the night of the see officers there?				1436 00
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20 (Pages 77 to 80)

	Page 81		Page 83
1	A. I couldn't say the time, but I heard one shot	1	didn't hear much yelling or screaming.
2	ring out, and then two cops quickly pulled up to the scene.	2	Q. Okay. Did you see which direction the people
3	And then shortly after, about four more cop cars pulled up	3	were running, or was it just kind of everywhere?
4	to the scene.	4	A. Yeah. I know one one woman fled the
5	Q. Okay. And so your impression is that they	5	parking lot from kind of by the IRS Wage, but more
6	arrived around the time that you heard the gunshots?	6	towards the street.
7	A. Yes.	7	A GRAND JUROR: Top left of the parking lot?
8	Q. Do I have it right that you had just crossed	8	THE WITNESS: Yeah, top left. She was running
9	Stark from the south and were walking north on the east	9	down Stark.
10	side of Third Avenue	10	
11	A. Yes.	11	
12	Q when you heard the shots?	12	BY MR. JACKSON: (Continuing)
13	A. Yes.	13	Q. This way?
14	Q. So then how did you become aware that the	14	A. Yeah, but she she exited the parking lot
15	police were there? Did you turn and look and see them?	15	coming this way and then ran down Stark.
16	A. I turned and looked, and I actually saw a	16	Q. Okay. Did you see anybody else running
17	police SUV pull up.	17	straight down Third Avenue to the south?
18	Q. Okay. And did it have its lights on?	18	A. No, I did not.
19	A. Yes, it did.	19	Q. Did anybody that you saw running appear
20	Q. Could you actually see officers out of the	20	injured to you?
21	car?	21	A. I couldn't possibly say. It was a pretty
22	A. Yes. I could see two officers.	22	hectic scene. So if somebody was running a little funny,
23	Q. Two?	23	maybe they were trying to get out of there quick. I can't
24	A. Yes.	24	possibly know.
25	Q. And what were they doing?	25	Q. Did you see somebody running funny, as you put
	Page 82		Page 84
1	A. They had their guns drawn.	1	it?
2	Q. Okay. Were they just standing there by their	2	A. She looked like she was scared, but that was
3	cars?	3	the girl that was running down Stark.
4	A. Yes, they were.	4	Q. Down Stark to the east?
5	Q. And then what happened?	5	A. Yes, yes.
6	A. I was it was kind of late, but I think they	6	Q. Okay.
7	did say something, but I'm not sure what was said.	7	A. Yeah.
8	I did see the cops actually start shooting	8	Q. But nobody, like, limping or holding body
9	their weapons, but I couldn't necessarily see what they	9	parts or anything like that?
10	were shooting at, but I kind of had knowledge that they	10	A. No, not to my knowledge.
11	were shooting at somebody.	11	Q. Okay. And so you're saying that you could see
12	Q. Okay. And this is how soon after you heard	12	the police shoot, but you couldn't see what they were
13	the initial shots?	13	shooting at?
14	A. Probably about a couple minutes. It was	14	A. Yes, but I could see the direction that they
15	pretty quick.	15	were shooting at, and it was towards the south. It was
16	Q. Okay. And what was the were there other	16	towards the south. They had their guns drawn south, and
17	people around in this general area when this was happening?	17	they shot south.
18	A. Yeah. Actually, after the first shot, I saw	18	Q. Okay. And could you not see what they were
19	people fleeing the parking lot and running away, and people	19	shooting at because of the hedge that was growing here?
20	were ducking and covering behind cars. It was a pretty hectic scene.	20 21	Were cars blocking you or what?
21	Q. Were people screaming and yelling and stuff,	22	A. The hedge and the cars, yes, because the
22	Q. Were people screaming and yening and stuff,		police were visibly in the middle of the parking lot.
22 23		') 2	
23	too?	23	Q. Okay. In this kind of open area?  A. Yes
23 24	too?  A. I just probably a couple people were, like,	24	A. Yes.
23	too?		

21 (Pages 81 to 84)

Page 85 Page 87 1 MR. JACKSON: Those are all the questions I 1 of 9/29/18 into the early morning hours of 9/30/18? 2 2 have. A. I would have -- the time is -- if I look at 3 3 Do the Grand Jurors have any questions for the time, it's 9/30. I would have started my shift on 4 4 Mr. Carroll? 9/29, correct, at 10 p.m. 5 5 Q. Okay. And did you respond to Emanuel Hospital I don't see any. 6 6 All right. That's it. Thank you very much. at about 3:25 in the morning on September 30th? 7 7 MR. JACKSON: Why don't we go off the record A. Yes, I did. 8 8 while I try to set up for our next witness. Q. And why did you do that? 9 9 (Pause in proceedings: 11:25-11:27 a.m.) A. There was a call that had been broadcast over 10 MR. JACKSON: We're back on the record. We 10 the radio that there was a -- two gun -- walk-in gunshot 11 have our next witness. 11 victims that showed up at the hospital, and this is 12 12 following an incident that had just happened downtown in 13 SERGEANT JEFFREY DORN 13 close time frame. 14 14 was thereupon called as a witness on behalf of the State Q. You said that you're a North Precinct patrol 15 15 and, after having been duly sworn, was examined and sergeant? 16 testified as follows: 16 A. Correct. 17 17 Q. And in your capacity as a North Precinct 18 **EXAMINATION** 18 patrol sergeant, would you have been aware of incidents 19 BY MR. JACKSON: 19 happening in the downtown area? 20 20 A. Yes. That -- that incident was broadcast, the Q. You can have a seat. Please state and spell 21 your name. 21 information on our net, that the North Precinct was 22 A. Jeffrey, J-E-F-F-R-E-Y, Dorn, D-O-R-N. 22 responding to a shots fired call, and I didn't have all the 23 Q. And where do you work? 23 information of what was happening downtown, but I was 24 24 A. I am a night shift supervisor at North already switched over on one of my radios to listen and 25 Precinct for the Portland Police Bureau. 25 started monitoring the net, and I could hear a fairly Page 86 Page 88 1 Q. And what does it mean to be a supervisor? 1 chaotic scene going on downtown. 2 2 A. I am one of the supervisors of a shift of Q. Did you get a general briefing of what had 3 officers that we have. I oversee the personnel matters and 3 happened downtown in terms of the incident itself? 4 4 A. Not really, not really. It was -- it took a the ongoings of the shift. 5 5 Q. Do you have a particular rank for that while from the initial broadcast, because I switched over a 6 position? 6 little late, to even piece together that it was an 7 7 officer-involved shooting that I later learned, you know, A. Sergeant. 8 Q. And approximately how many sergeants are on 8 or sometime in the midst there, I learned it was an 9 shift during any particular shift? 9 officer-involved shooting in relation to another shooting 10 10 A. Two to four. It depends upon the night. that had occurred. 11 Q. And what are the general responsibilities of a 11 Q. Okay. So when you got the dispatch out that 12 shift sergeant? 12 two people had walked into Emanuel Hospital with gunshot 13 A. There's quite a few calls that end up having 13 injuries, did you think it was related to the incident 14 to have supervisor approval for a variety of reasons. 14 downtown? 15 We have to make sure that the -- that first 15 A. I -- I felt there was a strong likelihood, 16 16 and foremost that the shift is staffed, so people haven't just because of the time frame. And this is a very common 17 called in sick and we have enough bodies to work the street 17 scene that happens, replays itself over and over throughout 18 18 and what districts they work in. the years. I've been a police officer for 22 years now and 19 Q. Okay. Were you working on September 30th of 19 working that neighborhood for quite a few of my years. 20 2018? 20 So it's not unusual at all, within a short 21 A. Yes, I was. 21 time frame after any shooting in the city, for victims to 22 22 Q. And what were the hours of your shift that show up at area hospitals. 23 day? 23 Q. With gunshot injuries? A. I work 10:00 p.m. to 8:00 a.m. 24 24 A. With gunshot injuries, yes. 25 Q. So did your shift actually start on the night 25 Q. So when you went out to the hospital, what did

22 (Pages 85 to 88)

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A. I was the first one to arrive, and I pulled right into the -- the public entrance where generally most of the -- in my experience, most of the gunshot drop-off type victims are dropped off.

There was no vehicles in that drop-off area. I walked into the lobby and was met by security personnel and an office -- or the clerk at the front desk, who were ready to direct me back to where the gunshot victims had already been taken. So they were no longer in the lobby. They had been rushed back into the actual ER.

- Q. Did you identify the two individuals that had been shot?
- A. Yeah. As soon as we could, I was with -- I had a couple other officers headed to the hospital as well. And then that was first and foremost, I was trying to figure out where -- where the two individuals were and what their names were.

And I ended up identifying one of the individuals as Manny Hall and the other one as Marcel Branch.

- Q. Okay. Did you learn about the nature of the injuries the two individuals had sustained?
- A. Yeah. So the ER is set up to where there's a variety of rooms around the nurses station.

looked like the vehicle likely was an old rental car that was purchased, and it still had like -- I don't remember if it was a Hertz rental car, but it still had the key fob tag that said "blue Chevy Cobalt," which immediately in my mind was different than the -- the original description of the car that dropped off two persons was that the -- the way that the 911 call came, I -- I transcribed it as a "Walk-in gunshot wound, two people both from the same vehicle, probably related to incident downtown. Drop-off vehicle was a black Camaro with a plate to match and that vehicle

That's the information I had going into this. So it was kind of, well, that guy has keys to a vehicle that is not this car.

- Q. So what did you do with that information?
- A. Once we had enough other officers that got to the scene to secure the rooms, myself and Officer Holmgren went to the security office, and one of the security personnel was able to pull up a video feed of the drop-off, and we were actually able to watch what -- what occurred.
  - Q. And what did you see?

A. I saw first Mr. Branch walk from what would be the north side of the parking lot, out of view, he walked into view. He walked across the big -- you know, kind of a big U-turn. He walks up to the front door, looks like he's

Page 90

1 injured. And then just as he's walking into the front 2 3

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doors of the hospital, the black Camaro pulls up. And then from the scene, that was really all I was looking for is that they arrived separately. So I didn't look at the other video footage, but Mr. Branch obviously continued into the front where I think the -- I recall the desk gal saying he made it up there and kind of

collapsed at the desk, and they were tended to and brought

back. Q. Before surgery?

A. Before surgery, yeah.

Q. Okay.

A. And then we see Manny Hall was -- he was the second person who got out of there.

Q. Out of the black Camaro?

A. Out of the black Camaro. And I didn't really -- we saw the black Camaro leave, but that was -that was it. That was consistent with what I saw because it was no longer there.

- Q. Okay. Did you locate the Cobalt in the parking lot?
- A. Yeah. So then with that information, we saw what direction he walked from. So we went out to the parking lot and very quickly found a blue Chevy Cobalt out in the lot.

And Manny Hall was in a room within the ER. I was told that the other subject, who had took a while to

3 get his name from the nursing staff, he --4

Q. Mr. Branch?

A. Yes. Mr. Branch was rushed into surgery immediately, and he was never in that -- in the vicinity of the actual ER. He got rushed back into the operating room.

- Q. Okay. While you were consulting with medical staff, did you obtain a set of keys that had come from Mr. Branch?
- A. Yes. A nurse came out, because when we were trying to figure out if we could figure out who Mr. Branch was, she came out and she brought a set of keys, and she handed them to Officer Holmgren, who I had there to collect any and all evidence that was going to end up transpiring.

My job there was to kind of facilitate with the officers to make sure everything happened and that people weren't -- there were no visitors happening. It was locked down so that we can protect the integrity of the investigation.

And so the keys were, yes, handed to Officer Holmgren.

- Q. Did you know what type of car the keys belonged to?
  - A. Yes, and the reason is because they came -- it

23 (Pages 89 to 92)

Page 95 Page 93 1 I don't think I wrote the name -- or the 1 review and all of that stuff. 2 2 license plate down there, but it was -- it had blood When I came to Oregon State Police, I kind of 3 evidence, what looked like blood evidence all over the 3 did the same thing. But because I had that experience, I 4 4 front seat and on the center console. kind of had an abbreviated just to apply to the -- how the 5 And basically from that point, I instructed 5 Oregon State Police ran as opposed to Florida. 6 6 Officer Holmgren to lock down the vehicle. We're not going Q. And did you go directly into DNA -- the DNA 7 7 to touch it. Nobody comes around it. unit with the Oregon State Police Crime Lab? 8 I notified the investigators downtown what we 8 A. Yes. 9 9 had and got the ball rolling to turn that into part of Q. And how long have you been with the Oregon 10 their investigation. 10 State Police Crime Lab? Q. Okay. 11 11 A. I've been with them for four years. 12 12 Q. Okay. Doing DNA analysis the whole time? MR. JACKSON: Are there any questions for 13 13 Sergeant Dorn? A. Correct. 14 14 Q. Okay. Is the Oregon State Crime Lab I don't see any. 15 15 All right. Thank you very much. accredited and certified to do DNA testing? 16 THE WITNESS: Thank you. 16 A. Yes, it is. (Pause in proceedings: 11:38-1:05 p.m.) Q. And are the processes used by the lab accepted 17 17 18 18 in the scientific community? 19 19 A. They are. 20 20 Q. Okay. Did you generate a report concerning an 21 21 analysis of some swabs taken from a firearm recovered from 22 22 a crime scene involving a shooting with Patrick Kimmons --23 23 A. I did. 24 24 Q. -- in this case? 25 25 And is the report you generated dated October Page 94 Page 96 1 SEAN MICHAELS 1 26th of 2018? 2 2 was thereupon called as a witness on behalf of the State A. That's correct. 3 and, after having been duly sworn, was examined and 3 Q. Okay. Could you briefly take us through the 4 4 evidence that you received from the Portland Police Bureau testified as follows: 5 5 for analysis and how you conducted your analysis? 6 **EXAMINATION** 6 A. Sure. So I received two separate swabs from 7 7 BY MR. JACKSON: opposite sides of the gun. One was the opposite side of 8 8 the serial number of the gun, and the other one was said to Q. Could you please state and spell your name? 9 A. Sure. Sean, S-E-A-N, Michaels, 9 be collected from the serial number. I also received a 10 10 blood standard from Patrick Kimmons. M-I-C-H-A-E-L-S. Q. Where do you work? 11 11 Our process, DNA analysis process, is we 12 A. I work with the Oregon State Police Crime Lab 12 pretty much take that swab, we put it into -- we add an 13 13 agent, and what that does is it breaks open the DNA, it in the DNA section. 14 14 Q. And could you briefly explain for us what your releases the DNA out of the cells. Then we quantify it to 15 educational background is for that position? 15 see approximately how much DNA is in that sample. 16 Once we know approximately how many DNA, then 16 A. Sure. I received my bachelor's of science 17 degree from Western Illinois University in 2005. 17 we amplify or make millions of copies of it, and then we 18 18 run it on an instrument to collect the data from that Q. Okay. And what training did you receive to 19 19 actually work with the Oregon State Crime Lab? sample. In turn, we used a program that will interpret that data into a DNA profile. 20 20 A. Prior to coming to the Oregon State Police 21 Crime Lab, I worked for the Florida Department of Law 21 And in this case, once I ran the gun swabs, I 22 22 also ran the standard separately. What I do is I compare Enforcement in the Tampa lab in the same capacity. 23 I received my initial DNA analyst training 23 the standard DNA profiles to those profiles of the gun 24 there, which included written and oral examinations, 24 swabs. 25 practice samples, working with a coach, doing literature 25 Q. Okay. And did you do that in this case?

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Page 97 Page 99 When we have a major contributor, it's over a 1 A. I did. 1 2 2 Q. What did you find? certain percentage that that contributor is weighted, and 3 3 A. So when we did the comparison of the swab from in our case it's 70 percent. 4 4 the opposite serial number side of the gun, and I compared So if a contributor is assumed or weighted 70 5 that standard to Patrick Kimmons, it was found that Patrick 5 percent or greater to that mixture, it can be known as a 6 6 Kimmons cannot be excluded as the major contributor to that major contributor. In some instances, majors are people 7 7 mixture who leave more DNA than, say, a minor contributor. 8 8 So what that means is he was -- in comparison, Q. Okay. And when you say "leaves more DNA," 9 9 he was the major profile on that gun or cannot be excluded what is it that you're talking about? 10 10 as a major profile. A. So, again, a major would be someone who would 11 11 And what we do is it gives a stat of what's leave more DNA than a minor contributor. Reasons can be 12 12 that a person held something longer, they're sweating. called a likelihood ratio. What it does is you have two 13 likelihoods, you have two scenarios. Is one scenario more 13 It's just that they're leaving more DNA, say, 14 14 likely than another? than the other contributors to that mixture. 15 And in this case, it was 3.23 or 32.3 15 Q. And Mr. Kimmons was identified as a major 16 septillion times more likely to observe the evidentiary 16 contributor from both swabs? 17 17 mixture that the contributors are Patrick Kimmons and three A. Correct. He could not be excluded as the 18 unknown, unrelated individuals rather than four unknown, 18 major on both swabs. 19 19 Q. Okay. When you're looking at a mixture, how unrelated individuals. 20 20 So, again, you have the one scenario compared are you able to identify the number of different people 21 to the other, and it's saying that the one scenario, with 21 that may be present within that mixture? 22 him not being excluded, is 32.3 septillion times more 22 A. So we initially look at the DNA profile 23 23 likely than the other scenario with four unknown people. initially to see how many -- in your DNA, you get half your 24 24 DNA from your mom, half your DNA from your dad. So you So that --2.5 Q. That he would be excluded from? 25 have two types: one from your mom, one from your dad.

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A. Could not be excluded. So he would be a contributor with three other people, rather than four unknown, unrelated people on the gun swab. So that was for the first swab.

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The second swab, which was the serial side of the gun, did that same comparison, did the standard to that mixture.

That mixture was assumed to be from three contributors with at least one male. And then with that comparison, he could not be excluded as a major contributor to that mixture.

And then again with the statistic, it was at least 55.8 octillion times more likely to observe the mixture if the contributors are Patrick Kimmons and two unknown, unrelated individuals rather than three unknown, unrelated individuals.

- Q. Okay. And what did it mean when it's identifying him as not being excluded as a major contributor?
- A. So in this mixture, once the -- so we have a program that deconvolutes or unravels the mixture. So when we have a bunch of DNA from several people, we consider that a mixture, so more than one person out there. And to unravel that mixture, it deconvolutes, and it separates it into certain people.

So at each location, you can have one type, which is, say, for example, your mom gives you a 25 and your dad gives you a 25. You would only be a 25 because both of them gave you a 25.

Now, there's another one where you have two peaks where your mom gives you a 24, your dad gives you a 25, so you have two different types. We look at those peaks and the number of peaks to determine how many people would be present.

So based on the one or two peaks, we would know that you can't have more than a certain amount of peaks to have that many contributors.

- Q. And from that, you can determine at least how many different individuals' DNA is present on an object --
  - A. That's right.
- Q. -- or in a swab?
  - A. Yes.
  - Q. And so in this case, from the swab from the opposite side of the serial number side of the gun, it's assumed to be from four contributors. Is that right?
    - A. Correct.
  - Q. But, again, to be labeled as a major contributor, Mr. Kimmons would have to be over 70 percent there. Is that correct?
    - A. Yeah. So when it -- when this program breaks

25 (Pages 97 to 100)

Page 103 Page 101 1 out the contributors, it gives them weight. So based on 1 Q. Okay. And if you look up on the screen here, 2 2 the information in that sample, it will say, based on how do you see this aerial photograph of Fourth, Third, Stark, 3 3 DNA acts, what each contributors' weight to that profile now known as Harvey Milk, and Oak? 4 4 A. Yes, sir. 5 5 Q. And is that the parking lot that you were in? And in this case, the major contributor was 70 6 6 percent. And when I compared that standard to that, he A. Yes, sir. 7 7 could not be excluded as that contributor. Q. At about -- do you remember about what time it 8 8 Q. Your report indicates that you received the was that you arrived? 9 9 A. It was -- it was early in the morning, late at evidence directly from the Portland Police Bureau. 10 Did they personally hand it to you, or what is 10 night. It had to have been around, like, 2:00, 3:00, I'm 11 11 assuming. It was late. the process of evidence handling within the crime lab? 12 A. So an agency will come to a lab. We have an 12 Q. Okay. 13 evidence intake area, and they will log in the evidence, 13 A. You want me to tell the story on what happened 14 14 and it will be stored in a secure locker until I go down to or --15 15 the locker and take the evidence into possession through a Q. Well, yeah. So were you coming from somewhere 16 chain of custody. 16 else, or was that your first stop? 17 17 A. No. I was coming from Century, Century Bar. Q. Okay. And did you analyze the actual firearm 18 in this case, or did you only analyze swabs taken from the 18 I was coming from Century Bar, and I went into the parking 19 19 firearm? lot because I saw my cousin, one of my cousins, and I 20 20 pulled into the parking lot. And, like I said, it was A. Just swabs from the firearm. 21 Q. Okay. And was it members of the Portland 21 around 2:00 or 3:00. 22 22 Police Bureau that actually collected the swabs and Q. Okay. And when you got there, were there a 23 submitted them? 23 lot of cars in the lot or was it pretty empty? 24 A. That's correct. 24 A. No. It was pretty -- it was pretty empty. I 25 MR. JACKSON: All right. Do you folks have 25 parked on the left side of the parking lot. Page 102 Page 104 any questions? 1 Q. Okay. When you say "left," you mean the 1 2 2 south? I don't see any. 3 All right. Thank you very much. 3 A. Yes. 4 4 O. The south here where --THE WITNESS: Thank you. 5 (Pause in proceedings: 1:21-1:24 p.m.) 5 A. Yeah. My car was, like, the fourth or, like, 6 6 fifth row. It was, like, on the outside. It wasn't close 7 7 CHRISTOPHER WILLIAMS to the bushes. It was -- the car wasn't close to the 8 8 was thereupon called as a witness on behalf of the State bushes at all. It was, like, on the second row. 9 and, after having been duly sworn, was examined and 9 You could -- you see how there's like one and 10 testified as follows: 10 then two? You see how it's, like, row one and two? My car 11 11 was on the row two side. 12 **EXAMINATION** 12 Q. The drive aisle side? 13 BY MR. JACKSON: 13 A. Yeah, yeah, yeah, yeah. 14 Can I show you? 14 Q. Please state and spell your name. 15 A. Chris Williams, Christopher Williams, 15 Q. Yeah, of course. 16 C-H-R-I-S-T-O-P-H-E-R. 16 A. Like, I drove in. And then my car was, like, 17 Last name too? 17 right over here. So it was row one and row two. The 18 18 Q. Yes. bushes are right here, but my car was, like, right over 19 19 A. W-I-L-I-A-M-S the second. there. 20 20 Q. What kind of car were you driving? Q. Okay. I want to take you back to September 21 30th of 2018, the early morning hours of that day. 21 A. A 2017 Durango. 22 22 A. Uh-huh. O. What color was it? 23 Q. Were you downtown at Third and Stark, parking 23 A. Black. Q. Okay. A black Durango? 24 lot located right there? 24 25 A. Yes, I was. 25 A. Yeah.

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Page 105 Page 107 1 Q. And you said you saw your cousin there? 1 A. Yeah, so my car was parked. Let's say this 2 2 A. Yeah. I saw one of my cousins outside of his one was mine. That was the girl's. 3 3 car, and then I was -- then I pulled into the parking lot So I'm outside of my driver's, and he's 4 4 to say what's up to him. outside of his passenger's of the girl's car. So we just 5 5 talking, like, this literally, like, right there. Q. Okay. And do you remember who that was? 6 A. Yeah, my cousin Mike. His name is Mike. Then 6 Q. Okay. 7 7 A. Yeah. he introduced me to his little brother, which I didn't know 8 that that was my little cousin. His name was Aundree. 8 Q. And then do you remember if there were other 9 9 Me and him started talking from my car, people kind of generally around or was it --10 talking about basketball, actually, because he plays 10 A. It was -- it was -- I'm not going to lie to 11 basketball. 11 you. I was -- I was drunk. 12 12 Q. Okay. And do you remember what kind of car Q. Okay. 13 they were driving? 13 A. And it was -- it was so many, like, things 14 14 A. I don't because I -- I think he got -- he has, happening because my whole point was really to -- I was 15 15 like, two or three cars. I'm assuming it was his car, but headed to Golden Dragon, to the strip club. 16 I just remember seeing him. 16 Q. Is the Golden Dragon located right here? 17 17 I was just pulling into the parking lot saying A. Yeah. So there, like, were so many people 18 Hey, cousin, what's up? And then we all started chatting 18 because the clubs and bars started closing, and that's the 19 19 it up. I was really talking to Aundree a lot. only thing open until, like, 6:00. 20 Q. About basketball? 20 So there was people everywhere. I wasn't 21 A. Yeah. 21 really focused on that because I was having such a deep 22 22 Q. Okay. conversation with my cousin about basketball and life and 23 A. And life, and life, too. 23 things like that. Q. And life? 24 24 Q. Sure. You said that you were feeling drunk, 25 A. Yeah. 25 right? Page 106 Page 108 1 Q. Okay. All right. And were you there by 1 A. Yeah. 2 yourself? 2 Q. I mean, that could mean any number of things, 3 3 right? A. Yeah. 4 4 Q. Okay. You just pulled in by yourself when you A. Yes. 5 5 saw your cousin? Q. Were you, like, falling-down drunk? 6 6 A. No, no. It wasn't like, Oh, I'm fucked up. A. Yeah, yeah. 7 7 Q. Okay. So you're there. The cousin is parked It wasn't like that. It was just, like, I was just buzzed, 8 8 to the -- if this is east, to the east of you or to the really, really buzzed. 9 west of you? 9 That wasn't my focus, like, other people. We 10 10 were just having a good -- just a good talk, and I just A. To the east of me. 11 11 wasn't worried about what everybody else was doing. Q. To the east of you. Okay. 12 12 Q. Okay. And then what do you remember Do you remember, were you in adjoining stalls, happening? 13 or was there an open stall in between the two? 13 14 A. No, no. It was a close stall because my 14 A. So we sitting there talking. And it's funny 15 cousin Aundree, he was with, like, a girl and her car was 15 because I was, like, yeah, like, the girls and, like, the 16 16 right next to mine. He got -- he was getting in -- out of streets and all this other stuff, it's always going to be 17 the passenger seat, and he was talking to her, like, as if 17 here; like, you need to stay in Eugene and focus on sports 18 18 they knew each other. Her car was literally right next to and stuff. 19 19 The next thing I know, I see a dude just back mine. 20 20 Q. Okay. Were you inside of your car or outside? up, and then I just started hearing gunfire just go off. I 21 A. Outside. I was outside of it. 21 don't know where he went. I don't know if he got hit. 22 22 Q. And what about your cousin Michael and --I'm just, like, Oh, shit, like -- I start 23 A. No. We was all outside of the car. 23 running west towards -- well, not running, but hiding 24 24 Q. Okay. Standing -- where were you standing in behind cars type of thing, just like, oh, like in shock, 25 the parking lot? 25 don't know really where to go.

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Page 111 Page 109 1 There was so many things going on, and I'm 1 like, from literally just 10 feet away, it's all like -- I 2 buzzed, too, and that's when I tripped, like right where 2 was just, like, Oh, shit because I felt like I saw 3 3 the -- where you can come through on Stark, there's, like, something. But then right when I heard it go off, I just 4 4 a -- there's a middle entrance. I don't know why it's ducked off. 5 blocked off right there. 5 Q. Okay. 6 6 You can drive -- there's like a drive-in right A. I just started --7 7 Q. What -there, too. That's when I tripped. The next thing I know, 8 I'm looking up, and I just saw three guns to my head, 8 A. I tried to get out of there. 9 9 Q. What did you see? basically, and the cops was, like, Drop the weapon because 10 A. A gun. 10 I had my cell phone out in my left hand. 11 Q. When you looked over there? 11 I was, like, I don't got no -- I'm not part of 12 A. Yeah. Well, I saw this dude just backing up. 12 this shit, whatever is going on. I was, like, You all can 13 13 run my name, if you want and do all that shit. Me and my Then it's like I'm not really -- I'm still focused on what 14 14 me and my cousin was talking about. The next thing you cousin we was just sitting here talking, wrong place, wrong 15 know, boom, boom, boom, like, the shots and I'm, 15 time. 16 16 So they arrested me, and I looked and then I like, Oh, shit. 17 Q. And so you just -- that sound you made, was 17 guess I -- the kid who died or whatever, he was just, like, 18 that the gunfire? 18 sitting there not too far from my car, just, like, laying 19 A. Yeah. 19 20 Q. And so you made more than one. Did you 20 I was, like, so buzzed, you know what I mean? 21 actually hear more than one shot? 21 It took me a long time to, like, really figure out, like, 22 22 what just happened kind of. A. Yeah, yeah, I did. 23 Q. Do you have a sense of how many shots you 23 So they had me in the back of the cop car for, 24 heard? 24 like, an hour or two, and then they let me go. 25 A. I don't. It was -- it was a couple, though. 25 Q. Okay. So you're standing here in this general Page 110 Page 112 1 1 And I'm not trying to say the wrong number. That's all area? 2 A. Yeah. 2 that I'm -- you know what I'm saying? I'm not trying to 3 Q. Talking to your cousin? 3 overexaggerate shit. 4 A. Yeah. 4 Q. No, no. Whatever you remember is what we're 5 5 Q. Do you remember which way you were facing? interested in. 6 A. Yeah. I'm looking towards Golden Dragon. 6 A. Yeah. 7 7 Q. To the east? Q. So could you see what the person with the gun 8 8 A. Yes, sir, and my cousin is looking at me west. was pointing at or which direction he was facing? 9 I'm on my driver's side outside. He's on the passenger 9 A. No, no. He -- because we're like this. He's 10 10 side outside. like this, and then he's backing up. He's backpedaling 11 Me and him are just talking like this. Next 11 towards us. 12 thing you know, like three feet away, I just started 12 Q. Okay. So if you're facing east talking --13 hearing gunfire, and I'm, like, Oh, shit. 13 A. He was headed towards my car. 14 Q. To the south? So I, like, run behind my car. I'm ducked 14 15 down, and then I start heading towards Rouge, which is 15 A. Yeah. 16 16 Q. Backing away? west. 17 Q. Okay. And is Club Rouge --17 A. Yeah. 18 A. Yep. 18 Q. From other people? 19 Q. -- right here on Fourth and Stark or Harvey 19 A. I'm guessing so because, like I said, there Milk? 20 20 was so many people out there. 21 21 I'm the type of dude that when I'm, like, A. Yes, sir. 22 22 Q. Okay. When you hear the gunfire, was it in buzzed or drunk and stuff, I'm not worried about other 23 your field of vision, or did you have to look in a 23 people. Me and my cousin was just, like, having a good, 24 particular direction to see what was happening? 24 deep talk, and I just found out that he was my cousin. 25 A. Well, because I'm looking at him, and then, 25 So I don't know. You know what I mean? We

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Page 115 Page 113 1 was just trying to get to know each other. I'm not worried 1 happened, you know what I mean? To be honest, it was just, 2 2 about what other people was doing, you know what I mean? like, wrong place at the wrong time. You know what I mean? 3 3 As soon as I heard the gunfire, then that's I was mad at the police, too, because I felt 4 4 when I just dipped off, you know what I mean? And then I like they thought I had something to do with it, but then 5 tripped, then I fell literally, like, right where the exit 5 they realized I didn't because it was, like, Dude, I don't 6 6 got nothing to do with this shit, you know what I mean? is at on Stark. 7 7 Q. Over here? Q. Yeah. And they let you go? 8 8 A. Yeah, yeah, yeah, yeah. A. Yeah -- well, even closer, it's like -- yeah. 9 9 Q. Okay. So do you recall, as you were kind of Q. Okay. 10 A. They've got cars blocking it off right there, 10 making your way away from the initial gunfire, hearing any but you can drive in that way. I don't know why it's 11 other gunfire occurring? 11 blocked off right there. 12 12 A. I wasn't even worried about that. Soon as I 13 Q. Okay. 13 heard them little couple shots, I'm trying to get out of 14 14 A. It's an exit. It's, like, a side exit there, right? All I saw was Rouge, you know what I mean? 15 15 basically. I tripped and fell. I'm trying to run towards Rouge. 16 Q. Just for the record, we're looking at a 16 I was so drunk, I was -- you know, I'm not 17 17 Google-generated aerial map -trying to stand all the way up. So as soon as I stand all 18 A. Yeah. 18 the way up and try to pull up my pants, I trip, fell. 19 That's when the cops is, like, Freeze. Drop your weapon. 19 Q. -- as opposed to a photograph from the night. 20 20 I don't have a weapon. A. Got it. I got you. 21 Q. Okay. Do you remember, once you heard the 21 Q. Uh-huh. 22 gunshots, which direction you ran initially, or did you 22 A. I don't got nothing. 23 23 Q. Did you hear any police officers yelling 24 24 A. Yeah, yeah. commands at other people, not at you? 25 Q. Go ahead. 25 A. No. It was like -- it was so much going on. Page 114 Page 116 1 A. This is what happened. So let's just say, 1 It was, like, so much commotion going on when they was like, again, we're here. The shots went off. My car is 2 2 yelling at me, it's, like, I -- it was commotion behind me, 3 literally, like, right there. 3 too. 4 So I just started going this way, and then I 4 When it came -- when I saw the cops had the 5 5 tried -- I was trying to pull up my pants and run for it. guns pointed at me, at that point, I'm worried about I'm 6 6 not trying to be a sad case that gets shot. You know what Then I tripped and fell. The cops closed in on me right 7 7 there. Let's just say right there, that's where the SUV I mean? I don't want them to think my cell phone is a gun 8 8 came, and that's when they put me in cuffs. or nothing. I'm yelling at them, I don't have no effing 9 And that's when I look over, and the kid -- it 9 weapon, you know what I mean? 10 10 It was for sure commotion all around, you know was weird because I guess the kid that got died or 11 whatever, he was, like, laid up against, like, the curb. 11 what I mean? 12 12 Q. Uh-huh. So he was, like, on the first row. 13 You get what I'm saying? 13 A. Everything just happened so quick. You know, 14 14 Q. Uh-huh. it was just, like, boom, boom. It was like -- that's only 15 A. And that's all I remember. 15 20 feet away from my car, and cops was right there. I'm 16 16 Q. Kind of next to where your car was? just like, What the hell. How did you all get here so 17 A. Yes, sir. 17 18 18 Q. The Durango? Q. When you pulled in, did you see police in the 19 19 parking lot? A. Yes, sir. 20 20 Q. Okay. Did you know who any of these people A. Huh-uh. 21 over here were? 21 Q. Anywhere at all --22 22 A. No, I didn't know nobody besides my cousin. I A. Huh-uh. 23 didn't even know the kid. 23 Q. -- that you noticed? 24 Like I said, I was in the back of the car, and 24 A. It was crazy because even when they arrested 25 I'm trying to figure out, like, What the fuck just 25 me, I'm talking to the officer. I'm, like, How did you all

Page 119 Page 117 1 get here so damn quick, you know what I mean, because I 1 questions? 2 2 didn't see no cops on the other side of the parking lot or I don't see any. 3 3 nothing. All right. That's it. Thank you very much, 4 Q. Okay. So the first time you saw police was 4 5 when you fell down basically at their feet? 5 THE WITNESS: Thank you. Yes, yes, yes. You 6 A. Yeah, yeah, yeah. 6 all have a good one. 7 7 Q. Okay. A GRAND JUROR: You, too. 8 8 A. And, too, I don't know. This is kind of (Pause in proceedings: 1:40-1:53 p.m.) 9 9 extra, but I know that they probably got surveillance 10 10 DETECTIVE DARREN POSEY 11 Q. Well, so, what we're limited to here is just 11 having been previously sworn, was re-called as a witness 12 your perception and memory of what happened. 12 13 A. Got you, got you, got you. 13 **EXAMINATION** A GRAND JUROR: Can I ask two quick questions? 14 BY MR. JACKSON: 14 15 15 MR. JACKSON: Yes, please. Q. We're back on the record. 16 A GRAND JUROR: How long were you there before 16 Detective Posey, thank you for coming back. 17 17 all this happened? You're still under oath from this morning. 18 THE WITNESS: It was crazy. It was, like, I 18 A. Yes. 19 parked, and then I'm sitting there talking to my cousin for 19 Q. One additional question I wanted to ask you 20 five or 10 minutes. That's when everything just, like, 20 about from your investigation, what items of evidence did 21 happened. 21 you submit to the crime lab for analysis and testing? 22 22 It probably wasn't even that. It was probably A. So I had both of the officers' firearms, the 23 five minutes, eight minutes or so. I'm just sitting there. 23 two Glock 17s with -- yeah, both of those to the crime lab. 24 We just talking about life and basketball, because I used 24 I also had all of the 12 casings sent to the Oregon State 25 to play basketball. 25 Crime Lab as well. Page 118 Page 120 1 He's playing college, and I'm proud of him. 1 Along with that, the five-shot revolver with 2 2 Even though it's my first time meeting him, I'm telling him its casings were sent to the crime lab, but also Bode swabs 3 late nights and girls and all that shit, that's all going 3 that were taken off of the gun were also sent to the Oregon 4 4 to come later on, like, stay in Eugene and handle business. State Crime Lab. 5 5 Fucking 30 seconds later, told you so, you Q. Did you say Bode swabs? 6 know what I mean? It was kind of -- it was crazy, it was 6 A. Bode swabs, yes. 7 7 Q. What are those? crazy. A. They're basically swabs that are run across 8 8 And then I was, like, freaking out because I 9 didn't see my cousins. So I'm thinking that they got hit 9 the gun to collect touch DNA. 10 10 Basically, your body leaves off skin cells, by a stray or, like, I don't know what's going on. But 11 then everything ended up being okay. 11 and the swabs pick those items up. And so those swabs were 12 MR. JACKSON: They were okay? 12 sent to the crime lab. 13 13 THE WITNESS: Yeah. Q. And those swabs were taken off of the revolver? 14 14 MR. JACKSON: Okay. 15 A GRAND JUROR: Was there a car on the other 15 A. Correct. 16 16 Q. Both sides? side of you? 17 THE WITNESS: Yeah, because it was, like, my 17 A. Both sides. 18 car, I'm on the outside. I'm talking to my cousin and this 18 Q. Okay. Were any of the slugs or bullets that 19 girl's car that he was with. 19 were recovered from the scene in the northeast corner 20 20 parking lot shooting recovered and also submitted to the A GRAND JUROR: What about the other side of 21 you? 21 crime lab? 22 22 THE WITNESS: Yeah, there was another car, but A. Yes. So bullet on placard number 19 and then 23 I don't know whose car that was. 23 the bullet on placard number 32 were both sent to the 24 24 A GRAND JUROR: Okay. Thank you. Oregon State Crime Lab. 25 MR. JACKSON: Okay. Are there any other 25 So here's 32. That's the one that was sitting

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Page 123 Page 121 1 underneath the car and then 19 that was sitting on the 1 we're really lucky, we have four working at nighttime. 2 2 Q. And so as a sergeant, are you required to 3 3 MR. JACKSON: Okay. Any questions for respond basically all over the Central Precinct patrol 4 Detective Posey about that? 4 location? 5 Okay. Thank you very much. 5 A. Yes, we are. 6 6 Q. Okay. Were you working on September 30th of 7 7 SERGEANT STEVEN WUTHRICH 2018? 8 was thereupon called as a witness on behalf of the State 8 A. Yes, sir, I was. 9 9 and, after having been duly sworn, was examined and Q. And what shift were you working that night? 10 testified as follows: 10 A. I was working night shift, which is 10 p.m. to 11 11 8 a.m. 12 **EXAMINATION** 12 Q. And so did your shift start 10 p.m. September 13 BY MR. JACKSON: 13 29th and go into the early morning of September 30th? 14 Q. Could you please state and spell your name? 14 A. Correct, yes. 15 A. It's Steven Wuthrich, S-T-E-V-E-N, and 15 Q. Okay. What part of town were you focusing 16 Wuthrich is spelled W-U-T-H-R-I-C-H. 16 your attention on that night? 17 Q. And where do you work? 17 A. Being that it was a weekend night, I went down 18 A. I'm a Portland Police sergeant. 18 to assist with the entertainment detail, which is made up 19 Q. And you're sergeant for patrol? 19 of another sergeant and generally four to six officers that 20 A. Yes, sir. 20 focus on the bars and nightclubs downtown. 21 Q. And how long have you been a police officer? 21 They block off the streets to make it safer 22 A. It will be 15 years in February of next year. 22 for pedestrians. And we have hundreds, if not thousands, 23 Q. And have you worked patrol for that entire 23 of people come from the Portland metro area on Friday and 24 time? 24 Saturday nights to come down and go to those clubs. 25 A. Yes, sir, I have. 25 So we have more police staffing to support Page 122 Page 124 1 Q. And when did you become a sergeant? 1 more police calls for service, given the increase in the 2 2 A. May 4th of 2017. amount of people in the area. 3 Q. And what is the difference between being a 3 Q. So there's a specific detail within the police 4 4 patrol officer and a patrol sergeant in terms of bureau to actually deal with that part of town? 5 5 responsibilities? A. That's correct. 6 A. Sure. A patrol officer's responsibility 6 Q. And what part of town are we talking about? 7 7 primarily is to take 911 calls and actively patrol the A. Old Town. So north of Burnside and then 8 8 neighborhoods and districts they work. A patrol sergeant roughly Broadway east to Naito Parkway. 9 is the first line of supervision. 9 Q. Okay. Why were you focusing your attention in 10 10 that particular area? So on a daily basis, I would respond to 11 critical incidents in a management or leadership-type role. 11 A. On that particular night, we had had a large 12 My duties include reviewing officer reports, 12 number of -- particularly large number of calls involving 13 reviewing officers' use of force and a number of other 13 14 administrative duties. 14 We had numerous fights break out. Callers and 15 Q. What part of town do you generally patrol? 15 other witnesses in multiple of those -- multiple fights had 16 16 A. I work Central Precinct, which is generally reported that people were armed with firearms. 17 the west side of the Willamette. 17 And so myself, Sergeant Schmautz, the 18 18 Q. All the way up north Portland down into entertainment detail sergeant. 19 southwest, that whole area? 19 Q. The what? 20 A. Correct, and then out east to Southeast Caesar 20 A. Entertainment detail. I apologize. 21 Chavez. 21 We were aware that there was a higher 22 22 Q. All right. How many sergeants are generally possibility of violence given the large number of fights 23 on shift for a typical night? 23 and believing that it was more likely than not that people A. On night shift, we generally have -- two is 24 24 involved in fights had guns. 25 probably most common. Occasionally, we'll have three. If 25 Q. And so when you, throughout your shift, are

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lice 1 up to a police SUV.
2 O. Is that the responsibility of the

receiving this type of information, how, as a police officer, do you respond to that?

A. Well, we try to respond proactively. So having worked down in Central Precinct for about a year and a half, I know areas where we're more likely to have violent events, shootings, stabbings, large fights. And so we try to proactively patrol those areas before we have to respond to an incident like that.

So the idea is having a police presence there will deter that kind of violence.

- Q. As opposed to waiting for something to happen, generating a 911 call and then going?
  - A. Correct.

- Q. Okay. And so you, in your sergeant capacity, were assisting in that proactive policing?
- A. That and also just providing visibility in the actual enclosure itself.
  - O. What enclosure?
- A. So we close vehicular traffic on Friday and Saturday nights down around the bars, Davis to Burnside and Second Avenue to Fourth Avenue so that if there's a lot of pedestrians walking around, which oftentimes we'll have intoxicated pedestrians, that they can do so freely without cars trying to drive through or creating a danger situation.

Q. Is that the responsibility of the entertainment detail officers to take those down and put them away?

A. Yes, it is.

- Q. Okay. What time do the bars generally close in the entertainment district?
- A. People start letting out about 2:00, and then oftentimes people start to congregate in the enclosure between 2:00 and 3:00 a.m.

When people start to congregate outside and the bars have closed, security for the bars tries to encourage people to be on their way and to vacate the area so that we can eventually reopen traffic.

- Q. Is there a set time when you guys reopen the roads, or does it happen organically?
- A. It happens organically. It depends on the night.
- Q. Okay. On this night, September 30th, were you aware of Sergeant Garry Britt also being on shift working?
- $A. \quad I \ was. \ Actually, he had spent some time down in the entertainment detail with Sergeant Schmautz and I.$ 
  - Q. That night?
- A. Yes.
  - Q. Helping out?

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So oftentimes, Friday and Saturday nights, I'll go down. I'll check in with Sergeant Schmautz, see how the night's going, see what the crowd sizes are like and try to get a good idea, you know, if we need to devote more officers to that area, if we need to devote officers to places like parking lots where people sometimes congregate when the bars let out.

And so, frequently, I'll go down and talk to Sergeant Schmautz, see what resources I can provide and observe and just try to be helpful because he's the only sergeant down there.

There's -- if they're fully staffed, there's six people on the entertainment detail, and there's hundreds, if not a thousand people that go down there. If there's a disturbance, six police officers and a sergeant isn't a whole lot of resources.

- Q. Okay. And do the police actually, once the bars are closing down, reopen the roads to vehicular traffic?
  - A. We do, yes.
- $\,$  Q.  $\,$  Okay. So does that also take officers to do that?
- A. It does. The barricades that the officers put into place and remove at the end of the night are pretty big, and they have to be stowed on a trailer that's hooked

A. Yes.

- Q. Okay. Do you recall him talking about what his kind of next steps were going to be in terms of patrol?
- A. I do. The bars had closed. Most of the people had moved out to the street and had gotten in cars or walked home or Ubered home.

I was in Old Town precinct, which is a little office, little police office at Northwest Third and Couch, and I was talking to a few officers about how the night went.

Sergeant Britt was in the office. And given the -- the high number of calls involving disturbances and weapons, Sergeant Britt mentioned to me that he was going to grab a couple of officers and drive up to the parking lot at Southwest Third and Harvey Milk Street just to do some proactive patrolling because we have had a history of violent events and shootings in that particular parking lot.

- Q. Okay. And was it your impression that he was intending to go there and do what you previously described in terms of just being a police presence there to deter any kind of criminal activity?
  - A. That's what I believed his intent was, yes.
  - Q. As opposed to responding to a call there?
  - A. Correct. There wasn't a -- a call that had

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Page 129 Page 131 1 1 come out there. He took it upon himself to go be A. Yes, sir. 2 2 Q. And they're one-way streets? 3 3 Q. And did he talk about going alone or bringing A. Yes, sir. 4 other officers with him? 4 Q. Okay. So traveling down from Old Town 5 A. He told me he was going to grab a few 5 precinct to the lot, you'd have to come down Third Avenue. 6 officers, and he ended up -- either officers volunteered to 6 If you were going to enter from the west, you'd have to go 7 7 go with him, which I think is the case, and they drove up basically around the block and enter off of Fourth Avenue? 8 more or less together. They left Old Town precinct at 8 A. Correct, yes. 9 9 roughly the same time. Q. Okay. So you remained at the Old Town 10 Q. Do you have a general sense of what time that 10 precinct? 11 was when this was happening? A. I did. 11 12 A. The bars had closed and the streets had been Q. And Sergeant Britt left? 12 13 reopened, I believe. So I would estimate roughly 2:45 to 13 A. Right. 14 3:00 a.m. 14 Q. Did you know which officers he was going with 15 Q. Okay. Did you go with Sergeant Britt to the 15 at that point? 16 parking lot at Third and Harvey Milk? 16 A. I know Officer Harris and Officer Moore were 17 A. I did not. I remained at Old Town precinct at 17 going to go with him. I don't recall who else offered up 18 that point. 18 or who else he asked to go with him. 19 Q. Okay. Could you describe for us what you 19 Q. Is that Todd Harris and Greg Moore? 20 remember happening then? 20 A. Yes, sir, it is. 21 A. Sergeant Britt had been gone for a few 21 Q. Okay. So what do you recall happening next? 22 minutes. I was sitting in Old Town precinct talking to 22 A. Well, I was sitting in Old Town precinct. I 23 some officers. 23 heard an officer microphone key up on the radio, but I 24 Q. Actually, Sergeant, let me ask one other 24 didn't hear anyone say anything. It was just for a second. 25 question. 25 I thought what I heard was gunshots in the Page 130 Page 132 1 A. Sure. 1 background. It took me -- took my brain a minute to 2 Q. How far is Old Town precinct from the parking 2 realize what I heard or thought I heard. 3 lot at Third and Harvey Milk? 3 Q. How were you hearing that? 4 A. It is approximately six blocks. 4 A. Through my radio. 5 5 Q. Okay. Is Old Town precinct on this map we Q. In your ear piece? 6 have on the board here? 6 A. I don't wear an ear piece. 7 7 A. No. It would be just north. Q. Okay. So it's just coming out. 8 Q. This map basically ends at Burnside on the 8 We can see you're in uniform today. Is that 9 north edge? 9 the radio on your belt there? 10 10 A. Yes, sir. A. Right, correct. 11 Q. And so Old Town precinct is north of Burnside? 11 Q. Okay. 12 A. It's -- it's on Northwest Third Avenue just 12 A. This is a radio, and this is the microphone 13 north of Couch. 13 where I transmit and receive. 14 Q. Okay. And the surface lot we're talking about 14 Q. Okay. And so if you held the transmission 15 is down here at Third and Harvey Milk? 15 button down, it would just pick up the ambient sounds 16 16 A. Yes, sir. around you and transmit them? 17 Q. Okay. So by car, at this time of night, 17 A. Yep. approximately how long would it take to travel there, would 18 18 Q. Is that what you think was occurring, somebody 19 you say? 19 had hit the button, but had not said anything? 20 20 A. Just a normal driving response, you know, A. That's what I believed had happened. 21 depending on if you get a red light on Burnside, it could 21 Q. Okay. Took a second for your brain to realize 22 be anywhere from one minute to five minutes, just a 22 what you were hearing? 23 ballpark estimate. 23 A. At that point, I was concerned that -- you 24 Q. Okay. And is Third Avenue the road that goes 24 know, based on my observations, I believed an officer or 25 southbound and Fourth Avenue goes northbound? 25 officers were in some kind of close proximity to gunfire.

33 (Pages 129 to 132)

Page 135 Page 133 1 Q. Could you tell whose radio that was coming 1 So I parked right about here facing north and 2 2 from? walked in this direction. 3 3 A. I could not tell, no. I could see a group of officers -- the parking 4 4 Q. Okay. Just came out? lot wasn't this full. I could see a group of officers 5 A. Just came out. 5 about here directing their attention towards something 6 6 O. Okay. 7 7 A. So I jumped up. I ran to my car, which was Do you want me to continue? 8 8 parked on Southwest Third Avenue. Q. Well, at that point, did you have any 9 9 As I'm getting into my patrol car, I hear information about what had happened, other than the shots 10 Sergeant Britt get on the radio and say something to the 10 fired broadcast from Sergeant Britt? 11 effect of shots fired. 11 A. I knew Sergeant Britt had broadcast shots 12 I knew roughly where he was because I knew he 12 fired. At one point in a transmission, he said, I'm okay. 13 was going to be headed to the parking lot at Southwest 13 At that point, I wasn't sure if he had been 14 Third and Harvey Milk. 14 involved in the shooting or if he had witnessed a shooting, 15 So myself and Sergeant Schmautz and the other 15 but I was considering both possibilities at that point. 16 officers that were in Old Town precinct prior to this all 16 Q. Okay. So go ahead. You see this group of 17 started driving code 3, lights and siren, south on Third 17 officers. 18 Avenue towards where we believed Sergeant Britt to be. 18 Do you remember how many there were standing 19 Q. Is that what code 3 means, lights and sirens? 19 there? 20 A. Yes, sir. 20 A. You know, I don't specifically. As I moved 21 Q. As fast of a response as you can do safely? 21 through the lot, the officers moved in towards a subject 22 A. Yes. 22 that was down on the ground, who I later learned was 23 Q. Okay. You're traveling southbound Third 23 Mr. Kimmons. 24 Avenue from Old Town precinct. 24 They began rendering medical aid. I could see 2.5 So when you got up to the lot, were you on the 25 them applying tourniquets, chest seals. I saw a black Page 134 Page 136 1 1 east side of the lot? revolver just to the north of Mr. Kimmons and the officers 2 2 rendering aid, and there was a black sedan that was A. So I actually -- I didn't know where the 3 threat was or what was going on, and so I -- I can't 3 occupied by two people just to the east of the revolver, to 4 4 the northeast of the revolver. remember if somebody on Fourth requested cars come in from 5 5 there, but I ended up going west on Oak and south on So if officers and Mr. Kimmons are here, I saw 6 Fourth. 6 the firearm about here and a vehicle occupied about here. 7 7 Q. Against traffic? And so as I arrived, I saw the officers -- I 8 8 saw that Mr. Kimmons was getting an abundance of emergency A. Against traffic, I believe, to the best of my 9 memory, and then trying to get eyes on where the officers 9 medical treatment. So I -- I was looking for a role at 10 were in the lot. 10 that point. That wasn't needed. That was being done. 11 11 Q. Okay. Sergeant Schmautz pointed -- as he was rendering aid, he pointed back and said, There's two people 12 A. Eventually, I parked my car on Southwest Third 12 13 in that car. We need to detain them. 13 Avenue facing the wrong way, facing northbound. 14 14 No other officers -- all the officers were Q. Right at the entryway here or along the curb? 15 A. It was just south of the entryway. So more or 15 rendering aid to Mr. Kimmons at that point. I didn't know 16 16 if the people in the car were involved. I didn't know if less in the area of the entryway to the parking lot. 17 17 they were shooters. I didn't know what their involvement Q. So as you responded, then, you kind of circled 18 the lot, wrong way down Fourth, down Harvey Milk and then 18 was 19 19 wrong way down Third before you --So I went to the driver's side and had the 20 20 driver, who was an African-American female, step out, and I A. To the best of my recollection, that was my 21 route, yeah. 21 secured her in the back -- I detained her in the back of a 22 Q. Okay. What do you remember seeing? 22 patrol car that was in the parking lot. And then I went to 23 A. I could see officers, a group of officers --23 the passenger side and had an African-American male who was 24 Q. If you want to come up to the board, you can. 24 in the passenger seat step out and detained him in a 25 A. Sure. 25 separate patrol car that was in the parking lot. And then

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Page 137 I -- I returned to where the group of officers already were 1 2 rendering aid to Mr. Kimmons. 3 There was a lot going on as I was pulling the 4 people out of the car. Q. Do you mean literally pulling them out of the 5 definition. car or just asking them to get out of the car? 6 7 A. I didn't know their involvement. I asked them to get out and escorted them, like, by the arm to a patrol 8 9 his weapon. 10 Q. Okay. A. So I didn't have to physically pull them out. 11 They both saw me. They both had their hands 12 up. They were cooperative. They did everything I asked. 13 Q. Okay. You come walking back now and --14 involved. 15 A. So I come back. And as I'm dealing with the people in the car, it's -- medical was requested probably 16 automatically by dispatch. Medical was already staged, I 17

And that terminology is in our policy. In

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regards to officer-involved shootings, involved members are members of the police bureau that used deadly force, and then there's witness members that has an additional

So when Garry -- or Sergeant Britt told me that he was involved, it led me to believe that he was involved in an officer-involved shooting, that he had fired

And Officer Livingston was standing next to Sergeant Britt. I don't recall if I asked Officer Livingston if he was also involved or if he just told me without me prompting him, but he also indicated that he was

And just to clarify, I asked them something to the effect of, Did you both fire shots? And they both indicated yes.

So at that point, there was no longer a question of whether or not it was an officer-involved shooting or if they had just -- if it was just a civilian shooting. So that kind of started some protocol that I needed to do as a supervisor per our policy.

- Q. You can take your seat again, Sergeant.
- A. Thanks.

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So knowing then that Sergeant Britt and

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deal with armed people or extremely violent people.

A. So when medical is called to an incident the

police are involved in, any kind of incident where there

ambulance will usually park out of sight around the block

them to come in because they're obviously not equipped to

or a couple blocks away until the police say it's safe for

might be some safety risks, either the fire truck or

- Q. That's what that means to stage?
- A. Right.

believe, at that point and --

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Q. They were staged waiting for the all clear to come in?

A. Right. So sometimes we'll ask, you know, Can you start medical respond and have them stage, you know, until we can make the scene safe or dispatch will say, Medical is staged. And then it's up to the officers to say, Okay. The scene is safe. We can go ahead and send medical in.

So I kind of -- at that -- at some point here, medical is called in. Mr. Kimmons is placed in the ambulance.

I don't recall when exactly it occurred in relation to my interaction with Sergeant Britt and Officer Livingston, but when I returned to the scene where the officers are, Sergeant Britt and Officer Livingston are kind of standing back from where the group of the officers applying medical aid were.

I asked Garry, Sergeant Britt, if he was okay. I didn't know if he had been shot at or I didn't really have a lot of pieces to the puzzle at this point.

He said he was okay, and he said, I'm involved.

Officer Livingston were involved, the next arriving officers -- per policy, I had officers assigned to Sergeant Britt and Officer Livingston.

I don't remember who I assigned initially, but the first officer, next officer that arrived, I said, you know, something to the effect of, Can you take Garry to a patrol car and sit with him? And then I did the same for Officer Livingston to ensure that they were separated so that they wouldn't talk about the event so that eventually when investigators came and interviewed them, they would have their own individual statements and perspectives.

- Q. Okay.
- A. The other thing that --
- Q. They were both monitored by non-involved officers?
  - A. That is correct, non-involved and non-witness officers.
    - Q. Okay.

A. The other thing is once I learned it was an officer-involved shooting, I notified dispatch. I got on the radio and said, This is, in fact, an officer-involved shooting.

I requested more resources from other precincts. I think I asked for at least a sergeant and four officers to help us out.

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Page 143 Page 141 While this entire event was occurring, we had 1 we received the page, it would take a minute or two before 2 groups of individuals on the east side of the parking lot they called me so I could call my lieutenant real quick, 3 brief her. that were extremely angry and yelling, making threats to 4 So I briefed her. I notified homicide And so in addition to trying to preserve this 5 detectives and ended up briefing Detective Michele Hughes. 6 crime scene, we had kind of an active threat of people that Q. Is that the detective sergeant for the 7 were not being cooperative that wouldn't get back that were homicide detail? 8 A. Yes. yelling threats at officers, and so that was kind of a 9 Q. Okay. drain on resources. We could have used a lot more officers there. 10 A. I briefed her by phone and then made several other notifications that I can get into or not. We have 12 officers on our shift per night per 11 minimum staffing. Those resources get drained pretty 12 Q. Did that also include the forensic evidence 13 division of the Portland Police Bureau? 14 But once I had officers with Sergeant Britt A. Yes, it did. 15 and Officer Livingston, I coordinated with Sergeant Q. And those are the criminalists? Schmautz to make sure we divided the workload up a little 16 A. Correct. bit and made sure that we knew who our witness officers 17 Q. Okay. 18 A. I then -were 19 Sergeant Schmautz was able to take care of O. Go ahead. that and get them separated and get officers to accompany 20 A. To mention one thing that I failed to mention 21 is when I was -- when I had learned that Sergeant Britt and I kind of transitioned into a crime scene 22 Officer Livingston were involved in this officer-involved management role and instructed officers that we needed to 23 shooting, I did ask them what direction they fired their 24 set up crime scene tape around the entire parking lot. weapons because I needed to know where to look for I ensured that an officer went in the 25 evidence. Page 142 Page 144 ambulance -- in the back of the ambulance with Mr. Kimmons, 1 They both indicated more or less to the south. 2 and that was Officer Torrey Streed, and I ensured that So that was something that I could later pass on to 3 somebody set up a crime scene log. Detective Sergeant Hughes. 4 So any time we have a crime scene, we want to Q. Is that known as a field of fire? 5 document everybody who enters the crime scene. A. Yes. Q. What did you do with regard to the gun that 6

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you'd identified laying on the ground near Mr. Kimmons' body?

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A. So right after -- early on in my arrival here, after I removed -- asked the two individuals in the sedan to get out and placed them in patrol cars, I had already seen the black revolver on the ground. I knew it was evidence of some kind.

And so Officer Elena Suciu was one of the earlier arriving officers, and I ordered her to stand by the gun, make sure it wasn't disturbed, make sure no one touched it or came near it or anything to preserve that piece of evidence.

- Q. As the scene supervisor, did you also begin notifying the variety of people that need to be notified when an officer-involved shooting occurs in the City of
- A. I did. I called my lieutenant, acting lieutenant, Jenny Baxter. Just prior to doing that, I requested dispatch send out some pages, thinking that once

- Q. So that you would know where to be looking for strikes and a variety of other evidentiary items?
  - A. Exactly.
  - Q. Okay.
- A. And then Sergeant Britt also made a comment to me that I forgot to mention. He said something to the effect of -- that there was probably somebody else shot in the area, and he said, "Not by us," implying not by police, but that it was likely that there would be somebody shot that left the scene that might walk into a hospital for treatment.

And I think Sergeant Schmautz asked him a question about that that he can testify to also.

- Q. And so was that part of your briefing as well to the homicide detail in terms of what to be looking out for in the minutes and hours following the incident?
  - A. Yes, it was.
- Q. Okay. And what I mean is in terms of people walking into area hospitals with gunshot injuries?
  - A. Sure. And we actually received a call about

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Page 147 Page 145 1 that a short time later. 1 pathology either in '93 or '94. 2 2 Q. Were you still on scene when that came out? I worked at -- I worked for six months in 3 3 Atlanta on staff, then was first medical examiner for Clark A. I was. 4 Q. At what point did you end up relieving or 4 County, Washington. I stayed there for 18 months. They 5 5 made a new position for me in Oregon, so I came over to being relieved from your role as the scene supervisor? 6 A. A lot of command had showed up, a lot of 6 Oregon. That was 22 years ago. 7 7 Q. Okay. So for the last 22 years, you've been a resource had showed up and a lot of detectives had showed 8 8 forensic pathologist for the Oregon State Medical Examiners up. 9 9 Office? The scene became more or less static. And 10 when it was time for me to brief homicide detectives, I 10 A. Right. 11 11 Q. All right. In that time, how many autopsies, relinquished command of the incident to Sergeant Mike 12 12 Currier. roughly, have you performed? 13 13 A. It's like 4,600 or 4,700 right now. Q. Okay. 14 14 MR. JACKSON: Any questions? Q. 4,700 autopsies? 15 I don't see any. 15 A. Yeah, 4,700. 16 All right. Thank you very much. 16 Q. Okay. A. And then another 15-, 1,600 external exams. 17 (Pause in proceedings: 2:32-3:05 p.m.) 17 Q. Okay. And what is the function of a forensic 18 18 19 19 CLIFFORD NELSON, M.D. pathologist? 20 20 A. Basically to look at the entire death was thereupon called as a witness on behalf of the State 21 and, after having been duly sworn, was examined and 21 investigation, including the person's past medical history, 22 testified as follows: 22 examining the body, doing an autopsy if it's necessary, 23 23 looking at ancillary labs like toxicology, looking at 24 24 slides under the microscope, looking at culture results, et 25 25 cetera, and coming to a conclusion as far as cause and Page 146 Page 148 1 **EXAMINATION** 1 manner of death. 2 BY MR. JACKSON: 2 Q. Okay. And in your capacity as a forensic 3 Q. Could you please state and spell your name? 3 pathologist, have you testified in both state and federal 4 A. Clifford Nelson, N-E-L-S-O-N. 4 courts all around the country as an expert? 5 5 Q. Clifford standard spelling? A. Federal courts here in Oregon -- well, no. I 6 A. Yep. 6 guess I have in Washington, too. 7 7 Q. And what is your occupation? But, yeah, as far as state circuit courts and 8 A. I'm a deputy state medical examiner for the 8 stuff, it's all over the -- pretty much except on the --9 State of Oregon. 9 except in the Northeast. 10 Q. And is that also known as a forensic 10 Q. Okay. The rest of the country, though, you've 11 pathologist? 11 12 12 A. Yeah. I -- I've never been to Texas, never A. Correct. 13 Q. And how did you become a forensic pathologist 13 done it in -- never Texas, California, Mississippi, 14 14 in terms of your educational background? Louisiana or Alabama; Kentucky, Tennessee, I haven't been 15 A. Sure. I went to college at the University of 15 there. So over half the states, though, probably. 16 16 Portland, graduated with a biochemistry major. Then I went Q. Okay. 17 to Oregon Health Sciences University School of Medicine 17 A. Or around half the states. 18 18 where I also did a pathology student fellowship, as well as Q. Okay. Did you perform an autopsy on the body 19 my regular medical school. 19 of Patrick Kimmons on October 1st of 2018? 20 20 A. I did. I finished that in 199 -- 1989. I did my 21 anatomic and clinical pathology residency at Oregon Health 21 Q. And where did you do that? 22 22 Sciences University, completed those in 1993. Then I went A. At our office out in Clackamas. 23 to Atlanta, Georgia, did my fellowship in forensic 23 Q. Okay. And who was present for the autopsy? A. Let's see. Paul Ware and Jamin Baker were the 24 pathology. I finished that in 1994, took my boards and 24 25 passed my boards for anatomic clinical and forensic 25 criminalists. Rico Beniga and -- was the detective; you

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were there and an Officer VanBlokland, and then there was also a Detective Posey.

- Q. Okay. And for this particular case, what was the purpose of performing an autopsy?
- A. Basically to document the injuries. We -- we do it in any type of -- we do an autopsy pretty much for every homicide.

And since this is somebody's death which was caused by the actions of other people, it's a homicide by definition.

- Q. Okay. And so it would be standard to conduct an autopsy, even in an officer-involved shooting context?
  - Δ Veah

- Q. Okay. Can you kind of take us through some of the preliminary steps you undertake when performing an autopsy?
- A. Sure. One of the first things that will happen is one of our pathology assistants will take X-rays to find out if there are any bullets left in the person. And then in combination with looking where the holes are, try to figure out which one of those was -- which fits rough size or calibers of the guns being used that were involved.

The next thing is to basically bring them in to the autopsy suite, look them over from head to toe. If

examination, did you measure Mr. Kimmons' height and weight?

A. I did.

(Pause-referring). 72 inches, 217 pounds.

Q. Okay. You also mentioned that in the course of performing your duties, you identify a cause and manner of death.

Could you explain what those terms mean?

A. Sure. The cause of death is the one thing that kind of eventually led to the person dying. So in the case of a gunshot wound, you know, they may bleed to death. They may get an infection several days after and die from that. They may -- it may be just the trauma from the gunshot wound that causes something like spinal shock and it -- and messes up their spinal column or their brain stem and causes them to stop breathing. But whatever the cause, it's still the gunshot wound, wherever it is.

The manner is one of five things. It's either natural, accident, suicide, homicide or undetermined, which means just basically it doesn't fit into any of the other categories or we don't know where to put it, which category to put it in.

In his case, the cause of death, I presume, is listed as multiple gunshot wounds. And the manner is homicide because our definition of homicide is death at the

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they've got any clothing on, describe their clothing, how it's situated, if the holes match up with the holes on the body from the gunshot wound.

Then describe -- describe any other jewelry, any medical devices, any procedures they've had. Then -- then describe the wounds that they've got on their body or injuries.

If it's not in the case of a gunshot wound, say it's a car wreck or something, we're describing their fractures, lacerations, abrasions, et cetera.

Q. Okay. And then --

A. And then when we've done that, that's when we do what most people think of as the autopsy, which is to make a Y-shaped incision.

In the case where we've got injuries like this, to follow the course of the injuries, see which organs were injured, get a general idea of the trajectory of the bullet, at least through the body.

- Q. You also examined the other internal organs to determine whether or not they were properly functioning, to the extent you can?
- A. We don't -- we'll do a gross inspection.
  Usually don't get microscopic slides on something like a shooting.
  - Q. Okay. So in this case, as part of your

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- hands of another person.
  - Q. Is that a medical term as opposed to a legal term?
  - A. Correct. We don't get into murder or manslaughter or justifiable or nonjustifiable homicides or anything like that. It's just straight definition.
    - Q. Death caused by another person, it's --
    - A. Right, death caused by another person.
  - Q. Okay. In this case, after you performed the autopsy, did you reach a -- you already just actually said that

Did you note, as you performed your autopsy, the injuries that Mr. Kimmons had sustained?

- A. Yes.
- Q. Could you take us through some of the injuries you noted?
- A. Well, basically, Mr. Kimmons had, I believe, a total of nine -- yeah, nine different gunshot wounds, not all of which would have been rapidly fatal, but many of them would not have been rapidly fatal.

He had a total of nine injuries. One is of the right lower leg, one is the right buttocks. He has another one to the right lower and mid buttocks, to the left buttocks, left upper buttocks and flank. None of those would have been rapidly lethal. He has one of the

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Page 155 Page 153 1 left thigh; again, not a rapidly lethal wound. 1 A. The one to the groin involved some major 2 2 The one in the groin, because of the large vasculatures. 3 3 vessels involved, would have been fairly rapidly lethal, Q. Okay. 4 but probably could have been salvaged if he was medically 4 A. And so he would have been -- bled rather 5 5 rapidly from those. treated appropriately in time. 6 The gunshot wound to the upper chest is not --6 Now, if direct pressure is applied and then he 7 7 that's not going to be a survivable wound, and the gunshot goes someplace and those -- that is surgically repaired, he 8 8 probably would live through it as long as -- as long as at of the right chest, definitely not a survivable wound. 9 9 least the bleeding was slowed down until they could repair Q. Okay. You've noted for the eighth and ninth 10 gunshot injuries, left chest and right chest. 10 11 11 Q. Okay. And the left thigh gunshot wound, was Could you explain where exactly on the body 12 12 those gunshot wounds were located? that oriented on the front part of the thigh? 13 A. Probably be easier just to show the pictures, 13 A. I believe so, but let me check. 14 14 unless you really don't want to. (Pause-referring). Yes. 15 15 Q. Oh, we can show --Q. Okay. And the groin injury, was that oriented 16 A. The external photos. 16 to the front left side of the individual as well? 17 17 Q. Yeah. Do you have printed copies in there? A. Yes. 18 A. No. I gave them all back to you, the ones 18 Q. Okay. Were any actual bullets recovered from 19 19 that were numbered. Mr. Kimmons' body? 20 20 A. I believe two were. MR. JACKSON: Let's go off and I'll pull them 21 21 Q. In the course of -- oh, so as follow-up, then, up. 22 (Pause in proceedings: 3:26-3:27 p.m.) 22 the remaining gunshot wounds that you noted were what are 23 23 referred to as through and through? 24 BY MR. JACKSON: (Continuing) 24 A. Through and through, yeah. They exited. 25 Q. Dr. Nelson, I'm showing you a photograph. Is 25 Q. Okay. In the course of conducting an autopsy, Page 154 Page 156 1 this one of the photographs taken from the autopsy you 1 is it typical for you to obtain a sample of blood or urine 2 performed on Mr. Kimmons? 2 for toxicology analysis? 3 A. Yes. 3 A. Yes. 4 Q. And what is it that we see here in this 4 Q. And was that done in this case? 5 5 photograph? 6 A. This is the entrance wound with a probe in it, 6 Q. And what were the results of the analysis? 7 7 what's labeled in the autopsy report as number 9, "gunshot A. Do you have it handy? If you don't, I can 8 8 wound of the right chest." probably find it. 9 He's face down at the point that the 9 Q. (Handing). 10 10 A. Okay. He's got qualitative positives, which photograph is taken. 11 11 Q. Okay. So this gunshot injury noted in the means they didn't -- they weren't able to quantitate it to 12 right chest is actually on his mid-back; is that correct? 12 tell us how much of it is in his system. But it's positive 13 13 for both ketamine and trazodone. 14 A GRAND JUROR: That was the exit or 14 Ketamine is a basically an anesthetic-type 15 15 agent. It used to be exclusively for animals. I didn't entrance --16 16 THE WITNESS: It's the entrance. realize they were actually using it in humans now. 17 17 A GRAND JUROR: -- on the back? Q. Is it your understanding from the medical 18 18 records that the ketamine was actually administered by OHSU 19 BY MR. JACKSON: (Continuing) 19 Hospital? 20 20 Q. Okay. So you've noted that the gunshot wounds A. Yes, yes. 21 to the leg and buttocks that you indicated those likely 21 Q. Okay. 22 22 A. The -- and then the trazodone, which is a would not have been rapidly fatal? 23 23 muscle relaxant/painkiller/anti-anxiety can be given for a A. Correct. 24 lot of reasons. 24 Q. But the one to the groin may have been and the 25 one to the chest? 25 And then he's got a blood alcohol of .127

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Page 159 Page 157 1 grams per deciliter, which is a little over one and a half 1 those directions could certainly change? 2 2 times the upper legal limit. A. Yeah. 3 3 Q. For driving? Q. But there's no way for you to know that? 4 A. For driving. 4 A. No. It's just -- it's just with -- it just 5 Q. Okay. All right. 5 represents its path through the body with the body in 6 6 MR. JACKSON: Do the Grand Jurors have any anatomic position, which would be palms forward and 7 7 questions of Dr. Nelson? standing -8 8 A GRAND JUROR: Can you tell us again, now on A GRAND JUROR: Stationary? 9 9 all of the -- you told us how a couple of the bullets, what THE WITNESS: Stationary. 10 direction they came from. 10 MR. JACKSON: Okay. 11 Any other questions? 11 Can you tell us on --12 I don't see any. 12 THE WITNESS: Sure. The one on the right 13 13 lower leg went from back to front, right to left and All right. Thank you, Dr. Nelson. 14 14 THE WITNESS: Okay. downward. The one on the right buttocks goes from right to 15 (Pause in proceedings: 3:37-3:42 p.m.) 15 left, back to front and downward. 16 Number three, which is the gunshot wound to 16 TRAVIS GOVER 17 17 the right lower mid buttocks, goes from right to left, back 18 was thereupon called as a witness on behalf of the State 18 to front and downward. 19 and, after having been duly sworn, was examined and 19 The one on the left mid buttocks goes from 20 testified as follows: 20 right to left, back to front and downward. The gunshot 21 21 wound to the left upper buttocks goes from back to front, 22 22 right to left and upwards. 23 23 The gunshot wound to the left thigh goes from 24 right to left, down -- and downward. The one to the left 24 25 25 groin travels below to above, right to left. Page 158 Page 160 1 (Pause-referring). This doesn't make sense. 1 **EXAMINATION** 2 2 I'll have to correct this. It should just be right to --BY MR. JACKSON: 3 right to left. 3 Q. Could you please state and spell your name? 4 4 A. My name is Travis Gover, first name I think it's --5 5 A GRAND JUROR: The groin shot? T-R-A-V-I-S, last name G-O-V-E-R. 6 THE WITNESS: -- downward, and it does go 6 Q. Okay. Where do you work? 7 7 A. I work for the Oregon State Police Forensic slightly front to back. 8 8 Number 8, gunshot wound to the left chest, Services Division here in the Portland Metro Forensic Lab. 9 it's predominately just downward. It's hard to tell 9 Q. And what do you do for the Oregon State Crime 10 10 exactly the flight of this bullet because of the way it Lab? 11 enters the left arm. It's got a very tangential angle 11 A. I'm a forensic firearm and tool mark examiner. 12 12 Q. And what training and education do you have here, so it depends on how the person is holding his arm. But since it just kind of comes out this area 13 13 for that position? 14 14 after traveling through the soft tissues of the armpit, A. Education, I have a bachelor's degree in 15 it's more likely than not it's something like this, and it 15 biology. So it's basically a science that's required by 16 the forensic services. 16 just goes like that direction. 17 The gunshot wound to the right chest goes 17 The actual training for the position, I was 18 18 upward, right to left and back to front. involved in a year-long training program that was sponsored 19 19 by the Bureau of Alcohol, Tobacco and Firearms. The first 20 20 BY MR. JACKSON: (Continuing) four months was spent doing research, writing papers, 21 Q. And, Dr. Nelson, these directions that you're 21 understanding the manufacture of firearms, ammunition and 22 22 giving, is that according to a person oriented in a tools and what makes them unique. 23 standing position? 23 I spent after that four months actually living A. Yes. 24 24 back in D.C., attending classes at the Bureau of Alcohol Q. And so if a person is actually moving around, 25 25 Tobacco and Firearms National Testing Laboratory.

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And the last three to four months was spent back in our laboratory doing a research project, as well as assignments to finish up.

- Q. Okay. And then when did you get hired by the Oregon State Crime Lab?
  - A. I was hired in January of 1999.

- Q. And did you have any work experience doing this type of work prior to that?
- A. Prior to that, no. This is basically the only setting in Oregon pretty much, unless you're in a private lab.
- Q. Okay. And have you done firearms analysis ever since 1999?
- A. Yes. I started off basically running a database called the Integrated Ballistics Identification System. I did that for about a year and a half, and then got hired into the firearm and tool mark examiner position.

Basically, since June of 2000, I've been doing that type of analysis.

- Q. Would you explain for us what a tool mark is?
- A. A tool mark is basically the -- kind of the overall aspect or discipline of what we do.

By our standards, a firearm is actually a tool. So tools will make marks on a softer object. That's how we kind of define a tool.

microscopic level with every cut that it makes on, you know, an object that's going into the firearm.

So like a barrel, for instance, there's a cutter that actually passes down through the what we call bore of the barrel. So as it's moving down through that, it's actually cutting lands and grooves, which are raised lines within the barrel.

So when a bullet strikes, you know, the interior of the barrel, it imparts a spin, like putting a spin on a football, for stability and accuracy.

As that cutter passes down through the interior of the barrel, the cutter is changing at a microscopic level as it's passing and cutting. So it's actually leaving marks within the barrel that are unique to that barrel.

So when that cutter is actually -- you know, passes all the way through and it's moved on to the next barrel, the marks on the cutting surface or cutting edges of the tool have actually changed since it started the previous barrel.

So the studies that we've done to show the uniqueness of how the marks they found on a bullet passed through the interior of the barrel are different from the next firearm manufactured.

Same thing with what we call -- we have

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So it could be a screwdriver to a vinyl window, somebody breaking in. It could be basically fired bullets being marked by a firearm. By our definitions, it's the same concept.

It's the same with cartridge cases within a firearm. It's the softer of the two metals being marked. So the firearm will actually mark the bullets and mark the cartridge case the same way a screwdriver will mark a piece of lead or like bolt cutters will actually leave marks on padlocks or chain-link fence, same with wire cutters. It's the same general concept.

- Q. And are you able to actually compare markings you see on cartridge casings back to a particular firearm?
  - A. Yes, we are.
  - Q. Could you explain that process?
- A. Kind of how I just described, the softer of the two materials is going to be marked by the harder of the two objects.

So within the manufacturing process of firearms, there's basically a lot of cutting involved. There's very sharp cutting tools that are basically cutting through different aspects of metal to make the pieces that go into a firearm.

So when this cutting process occurs, the sharp blade of the cutting object, tool, is being changed at a

cartridge cases. So I'm going to back up just a little bit and kind of use -- define the terminology that I'm going to use.

So an unfired component of ammunition is referred to as a cartridge. There's -- basically makes up a cartridge case, which is like a brass or aluminum container that holds the gunpowder, which is another one of the components. And then there's the actual bullet, which is the projectile itself.

Most people -- you'll hear people refer to something like a bullet, which is the unfired component. The bullet is actually a projectile by itself.

And the last component of the cartridge -- so basically, as you can see on the image, the piece -- the cartridge sitting down below is the unfired component, and the bullet is the actual projectile, and the cartridge case is basically the silver casing that contains the powder, and then there's a primer at the end which has an explosive compound that ignites when powder and the firing pin hits and starts the process.

- Q. And so when a cartridge, like the one we see on the screen here, is fired, does the bullet actually separate from the cartridge casing?
  - A. Yes, it does.
    - Q. Okay. And we're talking about, in this

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instance anyway, a semiautomatic handgun?

- A. Yes. A semiautomatic pistol is what it's referred to as.
- Q. And can you describe what actually happens in a firearm that causes it to shoot?
- A. Okay. So the cartridge is loaded into what's referred to as the chamber. It's basically the holding area within the barrel, which is on, it would be the --basically the left side as you're looking at that picture. You can see it's inside the slide. The slide is the piece that sits on top that actually moves back and forth.

So when it's closed up, we have an area within that slide called a breach face, which would be easier if I got up there and actually -- it would be easier to point than to try to describe.

So the small area that you see just inside here is referred to as the breach face area. This is basically a supporting area for the cartridge when it's fired.

Within that breach face, there's a small hole where the firing pin comes through when it's released under spring tension. The firing pin actually makes an impact on the part of the cartridge referred to as the primer, which has an explosive compound within.

That minor explosion passes through a hole, a

impressed into the base area of the cartridge case and also onto that primer, which is a softer material.

Kind of the same, as the bullet is passing down a barrel, different types of barrels, the ones I described earlier, which had what we call lands and grooves, or what we refer to as conventional rifling.

And then firearms like these have what are referred to as polygonal rifling, which don't necessarily have those true defined what we referred to as lines or cut raised areas. They're more, if you imagine, kind of like I always tell people, if you imagine a stop sign, kind of like it's a polygon.

So if you imagine the interior shape of a barrel, similar to that, but then put a twist on it over length. This is what's referred to as polygonal-type rifling. They don't necessarily leave great marks, but they're more efficient in the firing process and take less energy away from the bullet, but they're not actually cutting into the bullet as it passes down.

So -- but in this particular case, we have a Glock firearm, which has the polygonal type rifling, but it also leaves very nice marks for the breach face area on the cartridge case.

Q. And then how, in a semiautomatic handgun, does the firearm reload for the next round?

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small hole within the cartridge case base into the open area where the powder sits and waits, and it starts the burning of the gunpowder. That burning of the gunpowder basically generates pressure.

So at that point in time, this cartridge is sitting inside the chamber here, when this is all closed up. That pressure forces the bullet down the barrel, but we have what we refer to as equal and opposite pressure. That's going to push the cartridge case back.

So at that time, the cartridge case is pushed back into the breach face area of the firearm, which also starts the process of that slide moving to the rearward.

This piece right here is referred to as the extractor. It's actually hooked within this little rim on the cartridge case. So as that pressure is pushing everything backwards, that extractor is actually pulling the cartridge case to the rear of the firearm until at what point this opens up far enough, and a little pin that sits down inside referred to as the ejector hits the opposite side of the rim of the cartridge case and basically forces it to be ejected out of the firearm.

So but that equal and opposite direction of pressure, as it's forcing the cartridge case back into this breach face, those tool marks we referred to from the cutting process of the manufacturing, are basically being

A. I don't see it here, but there's what we refer to as a magazine. It's basically your ammunition-feeding device. It's basically there as you see.

So this is our magazine. It fits up into the grip of the firearm. So the cartridges are loaded in through the top of the magazine. The magazine is inserted up through the grip.

So as the fired cartridge case is extracted and ejected, the next cartridge sits just below. And as the slide moves forward, the bottom of that breach face area catches the top of the next cartridge and pushes it forward and kind of bumps it up into the chamber so it's ready to be fired.

- Q. Does that process also create tool markings?
- A. Not as much. There's a chance sometimes we get magazine marks, so there's metal feed lips that are at the top of the magazine that hold the cartridges basically in the magazine.

Sometimes we'll get marks from those that will reproduce, but a lot of times they're kind of random and don't look the same. It's kind of a random process.

Q. And so for a semiautomatic handgun such as this Glock we see on the screen labeled "Officer Livingston," what would be the difference between this and a fully automatic handgun?

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A. So with a full automatic, it's basically -- with this particular firearm, the semiautomatic, every time the trigger is pulled, the gun is going to fire one time.

So when that slide retracts and extracts and ejects that cartridge case, there's a mechanism within that that actually disconnects the trigger from the firing mechanism.

So when that slide comes forward and loads the next one up, even if the trigger is still being pulled, it's been disconnected. It has to be released to reset and then pulled again in order to fire again.

With an actual automatic firearm, as you're holding the trigger, you have the extraction ejection, loading. As that slide closes up to load, there's a different mechanism altogether that would cause the release of the firing pin and basically would fire with just holding the trigger one time. So it continues to fire until the trigger is released.

- Q. And so this gun here is semiautomatic, meaning one round per trigger pull?
  - A. That's correct.
- Q. Okay. And is that true also of the firearm we see on the screen here labeled "Sergeant Britt handgun"?
  - A. Yes.

Q. Both semiautomatic?

area of the cartridge case.

Sometimes, depending on the firearm, we'll actually get marks from that pressure back from the breach face area, which is up underneath where the firing pin comes out. That can happen sometimes, not as frequent as we see with semiautomatic pistols.

The concept with the bullet is just -- it's the same between the bullet -- or the revolver and the semiautomatic pistol. That pressure is going to force that bullet down the barrel, which would engage rifling. That's potential to be marked by the firearm.

- Q. So in that sense, would you have an opportunity to analyze an actual fired bullet to determine whether or not it was fired by a particular gun?
- A. Yes. If the bullet is recovered, we can look at it and determine, you know, first of all, characteristics that we refer to as class characteristics, you know, is it even possible?

So this firearm being a .38 Special caliber firearm is not going to obviously shoot a .45 caliber bullet. It's too big, the difference in size.

So the first thing we do is we look at some of those general characteristics and see is it even possible.

This particular revolver has conventional rifling. That's that cut rifling I described earlier;

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- A. Both semiautomatic pistols.
- Q. Could you explain how that process changes when the firearm in question is a revolver?
- A. Okay. So a revolver has a different feeding mechanism for the ammunition. So as we have the magazine for the semiautomatic pistol being our source of ammunition, with a revolver there's a cylinder that holds a set amount of ammunition within the firearm.

So as you see with this one, this is our cylinder right here, and you can actually see the head of the cartridge cases within the cylinder. So as you open the cylinder up to the side, it could have five, six, seven -- in this case, five, you know, basically what we call chambers.

The pistol has one chamber that's integral with the barrel. This has five chambers that rotate each piece of ammunition into line with the barrel to be fired.

- Q. Does the firing process in a revolver create uniquely identifying tool marks as well?
- A. It does. It has the opportunity. It can create marks through the firing pin impression. So as the firing pin hits that primer, which is what you see, the smaller circle within each of these cartridge cases, if there are unique marks on that firing pin, it can actually leave those marks or impress those marks into the primer

whereas, the Glock and semiautomatic pistols have polygonal rifling.

They show up and look different just even to the naked eye as we're looking at them under a microscope or even just under light, so we can easily say, No. This bullet could not have been fired from this gun. The characteristics are not the same from a class type level.

When I say "class," it's kind of like talking about, you know, Chevrolet, Ford, you know, Tahoe models.

But once you get down to, you know, dents and dings, then we're talking about individual characteristics that are unique to a particular firearm or unique to a particular vehicle as a type of identification.

Q. Okay.

MR. JACKSON: Do the Grand Jurors have any questions about that, how firearms operate, what a cartridge casing is, what a cartridge is, anything like that?

Okay. You can retake your seat. Thank you, sir.

BY MR. JACKSON: (Continuing)

Q. Were you asked to do a comparison of some evidence concerning the September 30th officer-involved shooting involving Patrick Kimmons?

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1 A. Yes, I was.

- Q. And did you document your findings in a report dated October 24th of 2018?
- A. That's correct. I finished up basically end of last week.
- Q. Okay. And could you first explain for us the evidence that you received for analysis?
- A. So what I received was two Glock semiautomatic pistols, one that belonged to each of the officers, which also we typically get their magazines, which is more than one. It's usually whatever is within their duty belt.

So I think I received three magazines from each and a various number of cartridges depending on what they had loaded into them and how many times they may have fired.

I also received 12 fired cartridge cases that were of 9mm Luger caliber, two fired .38 caliber bullets.

So these are -- when I refer to caliber, when I say 9mm Luger, it's a specific caliber of cartridge designed for a certain type of firearm. A .38 caliber, when describing bullets, is kind of a general family, kind of described as the diameter.

I also received five fired .38 Special caliber cartridge cases, as well as a .38 Special caliber Taurus five-shot revolver.

it's set up with -- if you have your -- your general microscope has one stage, one set of objects.

My microscope has basically two stages that come up into an optical bridge and let me see both sides through one set of optics. It's like a split screen.

So I can look at what's on the left, on the left side of my field of view and what's on the right, on the right side with a separating line.

So if I change magnifications and align the cartridge cases in the same orientation and use a specialized lighting, we can enhance those microscopic marks and actually line them up and determine if a particular cartridge case was fired in a specific gun.

Q. And what are the different types of results you can get in that comparison process?

A. The first is an identification where we can say, you know, that cartridge case was identified as being fired in, you know, firearm Exhibit 1 or Exhibit 2.

Some of the other conclusions we can come up with are what we refer to as inconclusive. We can have agreement of those general class characteristics, like it's a 9mm Luger, but maybe there's just not any marks being produced.

There are incidents where the gun fires, but maybe the breach face is smooth. It doesn't have anything

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Q. Okay. And so did you first compare the two Glock handguns you received to the 9mm Luger cartridge casings recovered by the scene to determine whether or not those guns fired those bullets?

A. Yes, I did. So I received 12 fired 9mm Luger caliber cartridge cases. The two Glock semiautomatic pistols are also 9mm Luger caliber. They're designed to fire that caliber cartridge case or cartridge.

Of the 12 cartridge cases I examined, I could identify seven to one of the semiautomatic pistols and five to the other.

Q. And how did you do that?

A. So as we were just talking about earlier, the marks that are left from that manufacturing process are basically microscopic with microscopic striations or scratches, in essence, but these striations are reproduced in the same general pattern. So the spaces, the widths, the heights of these striations are generally reproducible between shots.

So by taking the two firearms out to our range, I test fired each one of them, collected the cartridge cases separately so I didn't have what I'd refer to as known samples with the particular case, and then I take them back in. We have a comparison microscope. It's kind of a specialized microscope for firearms analysis. So

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to impress on the cartridge case. So it's not unusual. We do see it. It's not unusual to see multiple guns that can do that.

So in a case like that, we're not going to be able to say it's identified to that firearm. We'll say it's inconclusive based on a lack of individual detail.

Sometimes the bullet is too damaged. You know, we can make out some general class characteristics, but everything else has been wiped out because it skidded down the street.

Sometimes we may have what we refer to as some agreement of the individual, but it's not enough to basically push it over the threshold of what we know to be fired from -- you know, much detail will be produced when a bullet is produced from the same firearm.

So there are times when two guns, you know, could be manufactured one after the other. Some of those marks will look the same between those two guns.

Part of the studies that we do as a -- I'm a member of an association called Association of Firearm and Tool Mark Examiners. We do a lot of these studies with consecutively manufactured firearms. So we know what to expect and how much agreement to expect between two different firearms and we know what to expect from two bullets fired from the same firearm. So it allows us to

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Page 179 Page 177 develop that threshold and determine, you know, where does 1 Livingston," is that XTA035? 2 an identification lie. A. That's my Exhibit 2 for my lab, yes. I 3 identified five cartridge cases to that firearm and seven So sometimes we'll get that, you know, just 4 that little bit of a grievance, so it will be inconclusive. It's just not enough to say yes, but we're not going to say 5 Q. And the photograph we have here labeled it's not from that gun either because we just can't tell. 6 "Sergeant Britt handgun," that's KOD767? 7 Not enough information. A. I think it's KDD. 8 Then the last is basically an exclusion where Q. I'm sorry. KDD767? 9 either those individual marks are so grossly different and A. Yep, yep. we can see, you know, the multiple shots produced one set 10 Q. And those were classified as identifications? A. Yes. of marks, multiple shots that we have from another scene 11 12 are completely different or we have the firearm and we can Q. Okay. Meaning those rounds were fired by see that those marks are reproduced over and over, and 13 those identified --14 they're completely different and unknown. A. Right. Those cartridge cases were identified 15 We can also exclude on class, obviously, where as being fired in those particular firearms. maybe one bullet has, you know, five of those lands and 16 Glocks usually give us good markings, so that 17 grooves in the barrel with a right-handed twist, and the was nice. bullet I'm looking at from the scene has six of those lands 18 Q. Okay. And what's the next thing that you did? 19 and grooves with a left-hand twist. It's physically A. So the next thing, I had the two fired .38 impossible. So we can exclude on that level. 20 caliber bullets, and I knew these weren't fired from the MR. JACKSON: Are there any questions about 21 Glock semiautomatic pistols based on their weight. They're 22 right around what we refer to as 130 grains. It's a that? 23 A GRAND JUROR: Are you able to determine if firearms-related weight. 24 one came out of a fourth generation versus a third Those particular weights are not loaded into generation? 25 9mm Luger caliber cartridges. They're typically a .38 Page 178 Page 180 THE WITNESS: No, no. The rifling process for 1 Special target type loadings. 2 Glocks really hasn't changed from third to fourth So I basically, you know, identified what the 3 generation. The Generation 5 supposedly has a new type of caliber of each of those bullets were and then had a .38 barrel, a Glock-marking barrel, a marksman barrel. I have 4 Special caliber revolver, the Taurus, which I test fired in 5 yet to see one to see what the difference is. our water tank, which is what we shoot into to capture 6 The marks from the first generation from the pristine specimens for comparison. 7 '80s probably up until a year or two ago used the same And with the same process I used with the 8 general mechanism in the machining process. So we haven't cartridge cases from the nine millimeters, I looked at the 9 really seen a lot of difference there. fired bullets under the microscope. I could identify both MR. JACKSON: Any other questions about that? 10 of those fired bullets as being fired from the .38 Special 11 caliber Taurus revolver. BY MR. JACKSON: (Continuing) 12 Q. Again, that was an identification that that Q. Okay. So when you conducted your comparison 13 revolver fired those two bullets?

- here, what were the results that you found?
- A. So the first comparison I did was involving the two Glock semiautomatic pistols. So the cartridge cases, the 12 that I received, obviously the same caliber, I think it was seven of those cartridge cases I could identify to what I referred to as Exhibit 1, which is one of the semiautomatic pistols, which is the Glock with serial number KDD767.

And then five of those cartridge cases I can identify to my Exhibit 2, Glock semiautomatic pistol, which was the pistol with serial number XTA035.

Q. And this photograph labeled "Officer

- - A. Yes, that's correct.
- Q. Okay. I guess it's kind of inherent in what you've just testified to, but did you test the three submitted firearms for operability?

A. Yeah. As part of our testing, as we write up the firearm, we go through and check the safeties, see if anything is broken, checking the condition of the firearm.

Basically, it's mostly to make sure, one, that it's safe for us to shoot and then also to report on its operability.

All three of these firearms I found to be operable as designed.

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INGRAM COURT REPORTING 503.784.1527

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Page 181 Page 183 1 1 Q. Okay. A. Yes. 2 2 MR. JACKSON: Do you folks have any questions? Q. Were the food carts you were going to down on 3 3 A GRAND JUROR: I have a question. this southeast corner of the intersection? 4 4 In your expertise of firearms in general, what A. Yeah. 5 would -- so if a revolver or a pistol was being fired, the 5 Q. Okay. And where did you park? 6 sounds of them, are those noticeably different if you --6 A. I parked in that parking lot right there. 7 7 like would somebody --Q. Okay. Right here? 8 THE WITNESS: Not really. 8 A. Yeah. 9 9 A GRAND JUROR: Okay. Q. And what kind of car were you driving? 10 THE WITNESS: I don't think I'd be able to 10 A. An Acura, black Acura, 1998. Q. And was it just you and your boyfriend, is differentiate if I weren't looking. 11 11 12 12 Some of the bigger calibers may have a lower that --13 pitch. But to differentiate between a semiautomatic pistol 13 A. No. He's just a friend. 14 14 and a revolver, probably not. Q. Just a friend. 15 15 A GRAND JUROR: Okay. Thank you. Okay. Just you and your friend in the car? 16 MR. JACKSON: Any other questions? 16 A. Yeah. 17 17 I don't see any. Q. And do you remember where in the lot you Thank you very much. 18 18 parked? 19 19 (Pause in proceedings: 4:12-4:53 p.m.) A. It was facing Third. It was facing -- it was 20 20 facing Fourth. So I was -- I was kind of by -- do you know 21 AYAN ADEN 21 where the Golden Dragon is? 22 was thereupon called as a witness on behalf of the State 22 Q. The Golden Dragon is right over there. 23 and, after having been duly sworn, was examined and 23 A. Okay. So I was facing kind of towards this 24 testified as follows: 24 street. Actually, I was facing Stark, and I was parked on 25 25 the -- like closer to the -- facing Stark Street, but on Page 182 Page 184 1 **EXAMINATION** 1 this side of the road. 2 2 BY MR. JACKSON: Q. If you want to come up to the screen, you can 3 3 Q. Could you please state and spell your name? point for us. 4 4 A. Ayan Aden, A-Y-A-N, last name A-D-E-N. A. Okay. I think I was parked, like, exactly 5 5 Q. Okay. And how old are you? right here, somewhere around there. 6 A. I'm 17 years old. 6 Q. Okay. Facing south towards Stark Street? 7 7 Q. Okay. I want to take you back to September A. Yeah. 8 30th of 2018. 8 Q. Okay. Have a seat. Thank you. 9 A. Okay. 9 When you pulled in there, were there other 10 10 Q. Were you out that night, the 29th, into the cars in the lot? 11 early morning hours of the 30th? 11 A. No -- oh, well, there were other cars, but 12 A. Yes. Yeah, I was out. My friend came from 12 nobody was in it. 13 Eugene. I picked him up from North Portland, and we were 13 And then so this black car pulled up, and I 14 14 going to get something to eat. don't really know -- I don't know what model it was. It 15 Q. Do you remember about what time it was that 15 was a black car with black tinted windows. 16 16 you picked him up? Somebody rolled down the window, and Aundree 17 17 A. 2:30. realized that it was his cousin. He got out of the car, 18 18 Q. In the morning? and they started talking about basketball and what he was 19 A. Yeah. 19 doing in Eugene and stuff like that for a while. 20 Q. Okay. And where did you guys go? 20 Q. I'm going to ask you to speak a little slower 21 A. We went to the food carts on I think Third --21 because we have a court reporter trying to keep up with. 22 22 Third and Stark. A. Okay, okay. 23 Q. Do you see up on the board here there's an 23 Q. Okay. So the car pulls in. Was there more 24 than one individual in the car? 24 aerial map, Third Avenue, Stark now called Harvey Milk 25 Street? 25 A. Two.

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Page 185 Page 187 1 Q. Two people were in the car? 1 A. Yeah. 2 2 Q. What happened then? 3 Q. And your friend and one of them started 3 A. And then -- when Aundree was sitting in the 4 talking about Eugene and basketball and that kind of stuff? 4 passenger and we were about to actually get out to get 5 A. Yeah, but he got out of the car. 5 food, we heard -- both of our windows were rolled down, the 6 Q. Okay. 6 driver's and the passenger's. We just heard gunshots. 7 A. Yeah. 7 Me being scared obviously, I was, like, 8 Q. Okay. Did you stay in the car? 8 Aundree duck. So we just ducked. And there was, like, 9 9 A. Yeah. I stayed in the car the whole time. gunshots going on for -- I don't know. I think maybe five 10 And then I actually got out to go to the food carts, and 10 or six gunshots. And then we -- it was --11 there was guys trying to talk to me. So I just went back 11 Q. Did you have a sense of where those gunshots 12 and waited for Aundree because I didn't know what he wanted 12 were occurring? 13 to eat anyway. 13 A. I knew from the back of me because I heard it 14 14 Q. And is Aundree the friend that you picked up? coming from the back. 15 A. Yeah, yeah. 15 Q. And your windows were down? 16 Q. Okay. And while you were sitting in the car, 16 A. Yeah. 17 17 Q. Okay. can you kind of take us through what you remember 18 occurring? 18 A. I could hear pretty clearly that it was coming 19 19 A. I was just kind of on my phone, and I remember from the back, and so I ducked. 20 just, like, after I got back in the car, I had a, like, a 20 And then I think I heard -- I don't know if it 21 bad vibe off those guys that were talking. 21 was police or not, but I heard -- I heard somebody say, "He 22 22 dropped the gun by the car," but I thought they said, "He I was, like, Aundree, get back in the car so 23 we can get our food and figure out where we're going to eat 23 dropped his gun on your car." And that's when I freaked 24 24 and then leave. out. I was, like, What? Somebody put their gun on my car? 25 Q. Were you in the driver's seat? 25 That's when the police realized that I was in Page 186 Page 188 1 A. Yeah. I was driving. 1 the car, you know, because it was an empty parking lot. 2 2 There were no cars in the parking lot, and then they told Q. And then what happened? 3 A. So Aundree got back in the car, and then I 3 me to put my hands up. 4 think Mike was -- Mike is Aundree's older brother. That's 4 But before that, before that happened, Aundree 5 5 who we were waiting for, actually. looked up, because he's pretty tall. He looked up and 6 Aundree said -- he's, like, Mike is in the 6 he's, like, Dude, there's somebody on the floor. He got 7 7 area. He's in Golden Dragon. Let's just wait for him to shot in the ass. 8 8 come up. I was, like, Oh, my God. I looked up, and I 9 And so we were waiting for Mike, and Mike 9 saw the guy laying down, but I heard more bullets, like, 10 10 ended up coming out. He was talking to us through the more gunshots, and I just ducked. 11 window. He's like, Oh, I think -- he's, like, I'm going to 11 Q. Okay. So let me just make sure that I 12 throw a party or something like that. Maybe you guys could 12 understand what you're saying here. 13 come over. 13 A. Yeah. 14 14 We were, like, Okay. Let's get food, and Q. So you're sitting in the car. Mr. Polk is in 15 we'll talk about that because I was pretty tired already. 15 the passenger seat. You're in the driver's seat? And that's when -- Mike was still standing 16 A. Yeah. 16 17 17 there, and I remember --Q. And Mr. Polk's older brother was leaning on 18 18 Q. Was he standing in the front of your car? the hood on the passenger side and talking through the 19 19 A. Yeah. He was standing in the front of the window? 20 20 car, leaning on the hood of the car. A. Yeah. 21 Q. Was he talking to you through the driver's 21 Q. And the other person that Mr. Polk had 22 window or passenger window? 22 previously been talking to, is he still there in the other 23 A. Passenger window. 23 car? 24 24 Q. Was Aundree or Mr. Polk sitting in the I think he went in the car. I don't know 25 passenger seat of the car? 25 where they went by that point. They might have walked to

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	Page 189		Page 191
1	Golden Dragon or went in the car. I'm not sure.	1	A. Yeah.
2	Q. Okay. And then you hear five or six gunshots?	2	Q. Okay. When you looked up and you saw the
3	A. Yeah.	3	person laying on the ground, where was he in relation to
4	Q. From behind?	4	your car?
5	A. Yeah.	5	A. He was, like, maybe I don't know, probably,
6	Q. Okay. And you duck down?	6	like, right in the corner of where this room is right
7	A. Yeah.	7	there. He was on the floor.
8	Q. And did you hear a break in the gunfire?	8	Q. Okay. So if you're facing sitting in the
9	A. Yeah.	9	driver's seat facing the south, you're kind of pointing off
10	Q. Okay. So how many rounds, if you have an	10	the front passenger side
11	idea, did you hear in the first set of gunshots?	11	A. Yeah.
12	A. Like five or six. I don't remember.	12	Q of the car on the ground?
13	Everything happened so quick, but I'm pretty sure five or	13	A. Yeah.
14	six gunshots.	14	Q. Okay. Did you see that person run by your car
15	Q. Okay. And that's what triggered you to duck	15	or move around your car in any way?
16	down?	16	A. No. I wasn't paying attention. I was just
17	A. Yeah. I heard them and then ducked.	17	talking to Dre. I didn't see anybody run.
18	Q. Okay. And then did you see anybody moving	18	Q. Do you know who yelled out "There's a gun on
19	around the car or any	19	the ground" or "He dropped the gun" or whatever it was that
20	A. No.	20	you
21	Q. In the parking lot at all?	21	A. It sounded like the police again.
22	A. No, I didn't. Just me and Aundree and his	22	Q. The police?
23	older brother, Mike. I didn't really see anybody else	23	A. Yeah.
24	until Aundree pointed out that that guy was on the floor.	24	Q. Okay. And you yelled out, "What? There's a
25	Q. Okay. And so then the second set of gunshots,	25	gun?"
	Page 190		Page 192
1	do you have a sense of how many shots you heard that time?	1	And your impression is that's what made the
2	A. I don't really know. I think maybe another	2	police realize you were in the car?
3	five or six. I feel like it was just as long and, like,	3	A. Yeah, I'm pretty sure.
4	the break kind of happened in the middle of the gunshot.	4	Q. Okay. And then what happened with that? Did
5	Q. Okay. And do you have a sense of how long	5	they come up and talk to you?
6	that break was between the two sets of shots that you	6	A. Yeah. They told me to put my hands up, and we
7	heard?	7	had our hands up for 30 seconds, 45 seconds or something
8	A. Maybe like 30 seconds, 45 seconds.	8	like that.
9	Q. Okay. So a break that was noticeable	9	And Mike and Dre were yelling, "Please don't
10	A. Yeah.	10	shoot, don't shoot."
11	Q between the	11	They kind of they asked us to step out of
12	A. It was noticeable.	12	the car, me and Dre, and then they put Mike they were
13	Q. Okay. You said you heard what sounded like	13	still talking to Mike. I remember Mike was sitting on the
14	police?	14	front of the hood, and they took me and Dre and put us in
15	A. Yeah.	15	separate cars.
16	Q. And what was it about these people that made	16	Q. Okay. Could you see, after the police had you
17	you think it was the police?	17	get out of the car, what was going on in the scene after
18	A. It was very commanding, like, Get down on the	18	that?
19	ground, like, Stop or something. I think I heard them say,	19	A. I think I saw, like, paramedics helping or
20	Stop running or something like that.	20	trying to lift somebody up maybe. Yeah, I'm pretty sure.
21 22	<ul><li>Q. You heard them giving commands?</li><li>A. Yeah. I heard them telling whoever they were</li></ul>	21 22	That that probably was when I was in the cop car.  I don't remember. Everything happened. It
23	trying to get down, like, to stop whatever they were doing.	23	was just kind of a blur. Maybe somebody was standing over
24	Q. Okay. And then you heard this second round of	24	him.
25	five or six gunshots?	25	I just I didn't try to look back or
	The of the guidinois.		1 just 1 didn't dy to look back of
			48 (Dages 189 to 192)

48 (Pages 189 to 192)

	David 102		Danie 105
	Page 193		Page 195
1	anything. I just listened to whatever, you know, the	1	STATE OF OREGON )
2	police were asking me to do, and I got put in the car.	2	)
3	Q. I'm sorry?	3	COUNTY OF MULTNOMAH )
4	A. I got put in the car while the police detained	4	
5	me.	5	I, Heather M. Ingram, Certified Shorthand Reporter for
6	Q. Okay.	6	the State of Oregon, do hereby certify that I reported in
7	MR. JACKSON: All right. Do you folks have	7	stenotype the proceedings had upon the hearing of this
8	any questions?	8	case, previously captioned herein; that I thereafter had
9	Oh, I have one question. I'm sorry.	9	reduced my stenotype notes by computer-aided transcription;
10		10	and that the foregoing transcript constitutes a full, true
11	BY MR. JACKSON: (Continuing)	11	and accurate record of the proceedings had upon the hearing
12	Q. Did you ever actually look and see a gun on	12	of said cause to the best of my knowledge and ability.
13	the ground	13	Witness my hand at Portland, Oregon, this 16th day of
14	A. No.	14	November, 2018.
15	Q next to your car?	15	Congon (S)
16	A. I didn't see a gun.	16	Heather M. Changer 1997
17	Q. Okay. So you heard somebody talk about a gun?	17	Heather M. Ingraries
18	A. Yeah.	18	Oregon CSR No. 93-0279
19	Q. But you never actually looked and saw one?	19	Oregon Certificate expires: 9/21/2021
20	A. No.	20	Washington CSR No. 2188
21	Q. Okay.	21	Washington Certificate expires: 9/25/2019
22	MR. JACKSON: All right. Any other questions?	22	
23	All right. Thank you very much.	23	
24	THE WITNESS: Thank you.	24	
25	MR. JACKSON: That's it for today.	25	
	Page 194		
1	Thank you very much. We're five minutes past.		
2	Sorry about that.		
3	(Proceedings adjourned at 5:05 p.m.)		
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