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MULTNOMAH COUNTY GRAND JURY

DEATH INVESTIGATION

Deceased: Kelly Vernmark Swoboda )  
Date of Incident: March 12, 2014 )DA Case No. 2293341  
Location: SW Cheltenham Street/ )  
SW Capitol Highway )PPB Case No. 14-20245  
Portland, Oregon )

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled transcript of GRAND JURY proceedings was heard, commencing at the hour of 10:30 a.m., on Tuesday, April 1, 2014, at the Multnomah County Courthouse, Portland, Oregon.

**APPEARANCES**

Mr. Donald Rees  
Mr. Brian Davidson  
Deputy District Attorneys  
On Behalf of the State of Oregon.

\* \* \*

**KAREN M. EICHHORN, CSR, CRR**  
Certified Shorthand Reporter  
Portland, Oregon

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## 1 P R O C E E D I N G S

2

3 EDGAR O. MITCHELL, JR.,

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

6

## 7 EXAMINATION

8 BY MR. DAVIDSON:

9 Q Please state your full name.

10 A Edgar O. Mitchell, Jr.

11 Q Could you spell that for us, please?

12 A Edgar is E-D-G-A-R. Mitchell is

13 M-I-T-C-H-E-L-L.

14 Q All right. And could you please tell the  
15 Grand Jury how you are employed?16 A I'm a police officer with the City of  
17 Portland.18 Q And how many years of law enforcement  
19 experience do you have?

20 A Twenty-five.

21 Q All of that with Portland?

22 A No.

23 Q Can you tell us a little bit about where  
24 you've been a police officer and for how long?

25 A 1989, I got hired by the Portland School

1 District as a police officer. In 2001, we were absorbed  
2 into the City of Portland because the police department  
3 for the school district ceased to exist. And so since  
4 2001, I've been with the Portland Police Bureau.

5 Q And what's your current duty assignment?

6 A I'm on patrol, and I work different  
7 assignments in Central Precinct.

8 Q All right. And when you say "different  
9 assignments," do you mean different shifts?

10 A Different areas of the Precinct that I work,  
11 day shift. And Monday and Tuesday, I normally work the  
12 860 District. Wednesday and Thursday, I work the 870  
13 District.

14 Q And those are different areas within Central  
15 Precinct?

16 A That's correct. Both of them are mainly in  
17 south -- deep Southwest Portland.

18 Q Okay. And how long have you been assigned to  
19 Central Precinct?

20 A I believe since 2005.

21 Q Okay. And could you tell us briefly a little  
22 bit about what you had to do to become a police officer,  
23 your training, the academy, things of that nature?

24 A Well, I went to the police academy. I got  
25 out of college. Searched for different police jobs. I

1 did work for the U.S. Marshals for about nine months  
2 before I became a school police officer. That was in  
3 1988.

4 Then I went to the police academy once I got  
5 hired by the school police. That was a couple months.  
6 And then we had -- that was in Monmouth, Oregon. And  
7 then we graduated from the police academy. I was second  
8 in my class.

9 And then we went -- had some training  
10 internally. Basically we have an 18-month probationary  
11 period. School Police actually has a year probationary  
12 period. Portland has 18 months, but back then it was a  
13 year for the school police. And I went through that.  
14 Got released, and I was on my own working in different  
15 areas of the city.

16 Q And you said that you have a college degree.

17 A Yes. I went to Colorado State University,  
18 business administration.

19 Q That's a four-year degree?

20 A Yes, it is.

21 Q Bachelor's degree?

22 A Yes.

23 Q Terrific. All right. Let's turn to  
24 March 12th of this year.

25 Were you working that day, March 12th, 2014?

1 A Yes, I was.

2 Q And what shift were you working that day?

3 A I was working day shift, 7:00 till 5:00 p.m.

4 Q And were you in uniform wearing a badge and  
5 driving a marked police vehicle that day?

6 A Yes, I was.

7 Q All right. And my understanding is that for  
8 most street officers, your shift begins with roll call;  
9 is that right?

10 A That's correct.

11 Q And what does roll call involve, generally  
12 speaking?

13 A Basically we gather in a room, and the  
14 sergeant hands out any kind of paperwork that needs to  
15 be addressed, meaning the fliers, suspect alerts, just  
16 any communications, just a general meeting where if  
17 somebody has something somebody else needs to look for  
18 in the area, it gets brought up. Then they also give us  
19 our daily assignments.

20 Q And what was your assignment for that day?

21 A 870.

22 Q What area is that?

23 A That's this Wilson High School area,  
24 Southwest Portland. It borders -- it actually goes from  
25 South Waterfront to Southwest Dosch and Patton, which is

1 deep southwest.

2 Q Okay.

3 A It is a fairly large district.

4 Q And that's the district you've been  
5 responsible for in the past?

6 A That's correct, yes.

7 Q And you are fairly familiar with that  
8 district?

9 A Yes.

10 Q Okay. Now, at that roll call on the -- in  
11 the morning of the 12th, was there any discussion about  
12 these reports that had been coming in these previous  
13 days about a male individual in a van who had been  
14 engaged in reported luring activities of young girls in  
15 that area?

16 A It had been brought up that a male in a van  
17 had been following students from both Wilson and Robert  
18 Gray Middle School, Wilson High School and Robert Gray  
19 Middle School.

20 Q That was discussed at roll call that morning?

21 A Yes, it was.

22 Q Okay. Is that the first you heard of that,  
23 or had you had information about those reports previous  
24 to the roll call on the 12th?

25 A I had information previous about that van

1 following students.

2 Q Okay.

3 A And one of the reports came from Officer Lai  
4 who was working -- I think the day that he got the  
5 initial report, I wasn't working 870. I was working  
6 860, so I was on the other side of the mountain, they  
7 call it or other side of town, Northwest Portland, deep  
8 Northwest Portland.

9 And I remember -- I recall he was chasing a  
10 van that was similar to the one we were looking for down  
11 I-5, but it wasn't the right van.

12 Q That happened previous to the 12th?

13 A Yes. It happened about a week before.

14 Q Okay. So maybe you can give us a general  
15 sense of what these reports were that had been coming in  
16 about this van? What was going on with this van?

17 A Basically, it was a male white in a van  
18 following, following school kids.

19 Q Okay. All right. Was the color of the van  
20 ever part of the reports that had been made?

21 A Yes. It was a darker green minivan.

22 Q Okay. So was this discussed again, as you  
23 mentioned, at roll call on the 12th?

24 A Yes.

25 Q Now, at some point, either roll call or

1 subsequently, did you and other officers form any kind  
2 of plan to try and locate this van?

3 A Yes. Officer Romero who is a school police  
4 officer, SRO for Wilson High School and Middle School,  
5 Robert Gray, he requested that we look for the van in  
6 case it was back in the area. He figured it may come  
7 back.

8 Q Okay. Now, you used the term "SRO," what  
9 does that stand for?

10 A School Resource Officer.

11 Q And you are speaking of Officer Romero?

12 A That's correct.

13 Q He's the School Resource Officer for the  
14 Wilson cluster of schools; is that right?

15 A Yes.

16 Q And does his area of responsibility generally  
17 overlap the area of your responsibility; is that how it  
18 works?

19 A Yes.

20 Q Okay. So he was kind of responsible for  
21 patrolling that same area?

22 A Yes.

23 Q Okay. So did you talk with him at roll call,  
24 or was it subsequently you spoke with him about getting  
25 a plan together to look for this green van?

1           A       I did not talk to him at roll call. He  
2 doesn't attend our roll calls normally. I believe I  
3 talked to him over the mobile, our computer in the car.  
4 And I believe I also called him on his cell phone to get  
5 any updates.

6                   And at the time I called him, he was actually  
7 talking to a -- I thought he was talking to a male  
8 student who was a possible witness seeing the van. So  
9 he gave me the updates that he had. His updates was we  
10 were looking for a male white, 50's, gray hair on the  
11 side, bald on the top, wearing glasses.

12           Q       Okay. So did you, with Officer Romero and  
13 potentially other officers form some kind of  
14 investigatory plan as far as how to look for this  
15 person?

16           A       Just be in the area looking for the van to  
17 see if the van comes back in the area. It was a green  
18 van. We had a partial plate of 616 were the first three  
19 letters and an H in the last three letters, an Oregon  
20 plate. So we were just basically looking for that van.

21           Q       Okay. Now, my understanding is that at some  
22 point in the afternoon, prior to the shooting, Officer  
23 Romero pulled over a van that ended up not being the  
24 correct van; is that right?

25           A       That's correct.

1           Q       There was also a 911 call that came in, I  
2 believe, or a call that came in from a citizen saying  
3 that they had spotted a van matching that description in  
4 the area.

5           A       The 911 call actually came in prior to  
6 Officer Romero pulling that van over.

7           Q       Okay. So tell me, what was this 911 call?  
8 What did you know about that?

9           A       A concerned neighbor called 911 on a  
10 suspicious vehicle, thinking that the vehicle matched  
11 the description that the Wilson High School had put out  
12 on a flier about a person following school kids. So  
13 basically a neighbor called in, saying I think the van  
14 that you guys were looking for is in my neighborhood.

15          Q       Okay. And what neighbor -- what area was  
16 that call coming from?

17          A       It was -- I remember it was coming from -- I  
18 call it the Sunset corridor, but the Sunset corridor for  
19 me means Sunset Boulevard from Capitol Highway to Dosch,  
20 so it was coming somewhere in that area.

21          Q       Okay. So did both you and Officer Romero  
22 respond to that area looking for the vehicle? What  
23 happened next?

24          A       Myself, Officer Romero and I believe Officer  
25 Lai was in the area looking for the vehicle. And that's

1 when Officer Romero spotted the vehicle that he later  
2 pulled over.

3 Q And were you present when he pulled that  
4 vehicle over, or did you just hear about it over the  
5 radio?

6 A He announced it over the radio that he was  
7 behind it, and then I was able to catch up and get  
8 behind it also. And then that vehicle turned onto -- it  
9 was on -- when he first spotted it, he was on Southwest  
10 Sunset and Southwest Bertha, which is right up the  
11 street from the middle school, Gray Middle School.

12 And by the time I got behind him, he was by  
13 the library on Sunset and Dewitt and then the car turned  
14 from Sunset onto Dewitt. And I could see it was a  
15 female driver, so I know it wasn't the suspect we were  
16 looking for.

17 Q Was the van the same car? Did it match?

18 A The same color. It was a dark green,  
19 minivan. It had different -- it also had different  
20 plates. It didn't have a 616 plate.

21 Q Okay. So when you realized this probably  
22 wasn't your van, what happened at that point?

23 A I dispatched over the air it was a female  
24 white driver and that it probably wasn't our van. And  
25 Officer Romero, he stopped and pulled over to talk to

1 the driver of the van anyway, and he gave me the  
2 all-clear sign.

3 And then I just, I drove by him and kept  
4 driving, as you call it, east on Dewitt. And I found  
5 another van that was similar to the one he just pulled  
6 over. It was green, a dark green minivan, but it also  
7 had different plates. It did have a male white driver,  
8 and he was wearing a baseball cap, and I could tell he  
9 had hair.

10 Q Let's just slow down one bit here.

11 So, Officer Romero, just so I'm clear, had  
12 pulled over a -- the van with the female on Dewitt.

13 A Correct.

14 Q You had not stopped, though; correct?

15 A I did stop behind, but I didn't get out of my  
16 car.

17 Q Okay.

18 A So I just stopped. He said it's all clear  
19 here, and then I continued on.

20 Q Okay. And you continue on Dewitt. Maybe  
21 this will be a good time -- if you don't mind stepping  
22 up. We do have a diagram of the scene here. Maybe you  
23 can -- it's marked -- obviously, premarked with some  
24 things, but maybe you can show me -- maybe orient the  
25 Grand Jury as to what we're looking at here just to put

1       them kind of in perspective as far as the greater area.  
2       Any major landmarks, you can point out for us.

3           A       Okay. This is the Wilson High School stadium  
4       down to the lower right of the map. Wilson High School  
5       is off over here out of the picture. But this is  
6       basically Wilson High School.

7                    If you continue on Capitol Highway that way,  
8       you'll eventually run into the Willamette River. If you  
9       continue this way, you'll run into Beaverton Hillsdale  
10      Highway, which will take you to Beaverton. Sunset  
11      basically will take you up into the hills of Southwest  
12      Portland.

13           Q       Can you point out the library?

14           A       This is the -- I believe it's called the  
15      Capitol Hill -- I'm not sure.

16           Q       Hillsdale library?

17           A       Hillsdale library. This is Dewitt Park.  
18      This is the fire station. I can't remember which engine  
19      is based out of there. And these are -- this is an  
20      apartment complex here, apartment complex here. This is  
21      like a ReMax -- these are some businesses, some housing.

22           Q       Why don't you point out to us where Officer  
23      Romero had originally pulled over the van that ended up  
24      not being the subject van?

25           A       He originally pulled the van over here on

1 Southwest Dewitt Street.

2 Q So west of the library?

3 A It was almost right in front of the -- well,  
4 I don't know. The directional in Southwest Portland is  
5 a challenge because all of the streets, they don't run  
6 north, south, east or west, so they kind of run  
7 northwest.

8 So I would say that's -- I would say that's  
9 kind of east, so I guess this would be north. This  
10 would be west. But it's not true north, south, east or  
11 west.

12 Q All right. So in front of the Hillsdale  
13 library is where Officer Romero had pulled over the  
14 vehicle that ended up not being the suspect vehicle?

15 A That's correct, yes.

16 Q And you pulled past him?

17 A Yes.

18 Q Heading, I guess east on Dewitt?

19 A Yes.

20 Q Past the fire house?

21 A Yes.

22 Q That's when you spotted the second green van  
23 that matched the general description; is that right?

24 A Yes. It was parked right in here on the  
25 corner.

1           Q       Okay. All right. So you pull up on it, and  
2 kind of just walk us through again what your  
3 observations were, what you decided to do, what you saw  
4 in that second van?

5           A       When I saw the second van, I'm like another  
6 one. So I looked at the plate, the rear plate, and it  
7 didn't have the 616 that we were looking for the H. I  
8 announced the plate over the air so the dispatch would  
9 have it and told them my location.

10                   And then from there, I could see into the  
11 van, and I saw that it was a male white in the van and  
12 he was wearing a baseball cap. Again, I could see he  
13 had hair. And from the description we got, we were  
14 looking for a bald guy with maybe a little hair on the  
15 side.

16                   So I pulled my car up next to his driver's  
17 window, rolled down my passenger window and got his  
18 attention.

19           Q       I'm sorry, in what kind of vehicle were you?

20           A       I was driving an SUV, a Ford Explorer SUV.

21           Q       So something that sits up a little higher?

22           A       Right. So I was a little higher than he was.  
23 So I got, basically got his attention by kind of waving  
24 at him because he was, I don't know, he was just sitting  
25 in his van, fiddling with the dash.

1                   And he kind of looked over at me, kind of  
2 surprised, which is if you have ever been pulled over by  
3 a police officer, they give you -- you get a surprised  
4 look. It was nothing unusual for somebody to look  
5 surprised when I flag at them.

6           Q        So what did you say to him?

7           A        I asked him to roll down his window. I  
8 motioned for him to roll down his window. He rolled  
9 down his window.

10                   And I said, "Sir, just to let you know, we're  
11 looking for a van that fits your description, and we're  
12 looking for a male white also, but he's kind of -- if  
13 you can take off your baseball cap."

14                   And he took off his baseball cap, and he had  
15 a full head of hair. And I said, "Thanks. The guy  
16 we're looking for is bald, and you'll probably get  
17 stopped some other time as long as you are in the area.  
18 I advise you to take off your cap."

19                   And he goes, "Oh, okay." And I says, "What  
20 are you doing anyway?" He goes, "Well, I'm going to go  
21 to the library, which is right here."

22                   It's not unusual for people to park along  
23 here and go to the library and go to the park. So he  
24 said he's going to the library. I said, "Okay. Well,  
25 have a good day." And he got out of his car and started

1 walking back towards the library.

2 Q Okay. Was there anything, in retrospect,  
3 that you observed contemporaneously about his behavior  
4 that caused you any concern?

5 A Like I said, when he saw me, he looked  
6 surprised, but that -- that gave me no indication of  
7 anything at the time, no.

8 Q Didn't seem particularly nervous?

9 A No, not really.

10 Q Okay.

11 A Well, his hands were shaking a little bit  
12 once he saw me, but prior to seeing me, he wasn't -- his  
13 hands weren't shaking. It was kind of like this  
14 (indicating.) I don't know how to describe.

15 Q Okay. So you watched -- now, did you pull  
16 away and then he got out and walked back towards the  
17 library, or were you still parallel?

18 A There was enough room for him to open his  
19 door and get out.

20 Q Okay. And so you were still parallel with  
21 him when he exited his vehicle?

22 A That's correct.

23 Q Okay.

24 A About the same time -- by the time he got to  
25 the back of his vehicle, Officer Romero pulled up next

1 to me.

2 Q Next to you?

3 A Right, on my left side.

4 Q So there was three cars abreast basically?

5 A Yes.

6 Q The green van and then you and then Officer  
7 Romero's vehicle?

8 A Right. The green van parked on the curblin,  
9 then my vehicle and Officer Romero.

10 Q Okay. Now, had you called this stop out on  
11 the radio at all? I mean, how did Officer Romero even  
12 know to come find you?

13 A I called it on the radio. Said I got another  
14 one here, and I gave them a plate.

15 Q So by the time Officer Romero pulled up  
16 parallel with your vehicle, where was the suspect?

17 A He had walked back this way towards the  
18 library on Dewitt.

19 Q So what happened at that point when Officer  
20 Romero pulled his vehicle parallel to yourself?

21 A I remember asking Officer Romero, "We're  
22 looking for a bald guy, right?" He said, "Yeah."

23 And I says, "Well, this guy has got a full  
24 head of hair. It's not him." Officer Romero asked me  
25 if I got his information. And I said, "Well, I put the

1 plate out, we can get his information from DMV that  
2 way."

3 And he goes, "Oh, okay." And then Officer  
4 Romero drove off. I can't remember which way he went.  
5 And I can't remember which way Officer Romero went, but  
6 maybe he went straight. I can't remember where he went  
7 after that. He was facing towards Cheltenham, so I'm  
8 assuming he went onto Cheltenham.

9 Q Okay. And what did you do next?

10 A Well, I couldn't remember the plate I had  
11 read out before talking to the guy, so I said I just  
12 want to make sure, and I'll look at the front plate and  
13 then write down the plate in my notebook, just to make  
14 sure.

15 Because when I was looking at the call --  
16 when you are on a call on your computer, your call pops  
17 up on your screen, and you can read through it to see  
18 what the dispatcher has put it in. I hadn't seen where  
19 the dispatcher had put in the plate that I had read out,  
20 so I wanted to make sure that I had the right plate.

21 Q When you read the plate out, you read it off  
22 the rear plate of the vehicle; is that right?

23 A The rear plate of the vehicle, correct. So I  
24 was even with the vehicle, so I just pulled forward to  
25 look at the front plate. And the front plate was

1 different than the rear plate. And the front plate had  
2 a 616 on it.

3 Q And that's the -- that would match this  
4 description that had previously been given of the van  
5 that was following these kids around?

6 A That's correct.

7 Q All right.

8 A It had a 616, and I believe it also had an H  
9 on it, so it was definitely the plate we were looking  
10 for.

11 Q I'm going to show you some photographs here  
12 if you want to look at the screen. I'm going to show  
13 you this photograph here.

14 Do you recognize this -- what's in this  
15 photograph here?

16 A Yeah. That's the van that I approached.

17 Q Okay. And it appears to be a Dodge green  
18 Caravan; is that accurate?

19 A Yes.

20 Q What's the plate on that?

21 A 847 Boy Charlie Tom or BCT.

22 Q And is that the plate you called out  
23 originally?

24 A Yes.

25 Q Okay. I'm going to show you the second image

1 here. Why don't you tell me what we're looking at here?

2 A That's the front of the van that I had  
3 approached.

4 Q Okay. And the plate on the front of the van  
5 is what?

6 A 616 Charlie King Henry or CKH.

7 Q All right. Obviously, those plates don't  
8 match each other?

9 A That's correct.

10 Q And this front plate is the one you noticed  
11 as you pulled away and that it matched the plate given  
12 as part of the description of this van that was  
13 following kids; correct?

14 A That's correct.

15 Q Okay. So once you saw the front plate, what  
16 did you do?

17 A I, in parentheses, I went, "Oh, shit." And  
18 then I called it out on the air "That's our guy," and I  
19 announced this plate. And I think I might even have  
20 said 1677, which is Officer Romero's call sign, "1677,  
21 that's our guy. He's heading towards the library."  
22 Then I put the plate out.

23 Q Okay. And what did you do next?

24 A And then I did a U-turn and started to head  
25 towards the library because that's the last location I

1 thought he had told me he was going, and that's where he  
2 was heading. So I did a U-turn here at Cheltenham and  
3 Dewitt and then headed back towards the library.

4 Q Okay. And what happened next?

5 A I believe Officer Lai, I'm not sure where he  
6 came from, he was parked already in front of the library  
7 by the time I got here. And then Officer Romero pulled  
8 in behind me, so he must have been over in this area.

9 Q Over by Cheltenham?

10 A Over by Cheltenham, so he pulled in behind me  
11 and then all three of us approached the library.

12 BY MR. REES:

13 Q Officer Mitchell, when you left the van,  
14 before you realized that the front plate was different  
15 than the back, was the driver still behind the wheel?

16 A No. The driver was already gone.

17 Q He was already gone at that point?

18 A Correct.

19 Q Okay.

20 A He had already exited the van and started  
21 walking back towards the library.

22 Q All right. I take it by the time you made  
23 the U-turn, he was now completely out of sight?

24 A Correct.

25 Q So you didn't know where he was?

1           A       No.

2       BY MR. DAVIDSON:

3           Q       So you, Officer Romero and Officer Lai,  
4       converged on the library because that's where the  
5       individual suspect had said he was headed?

6           A       That's correct. That's the last direction I  
7       saw him going.

8           Q       Okay. And what happened when the three of  
9       you arrived in front of the library?

10          A       Myself, Officer Lai, Officer Romero went in  
11       the front doors here of the library. There's a little  
12       end cove area. Officer Romero kind of stopped there and  
13       he said, "You know what, I'm going to go back to the car  
14       in case the guy doubles back to the car."

15                   Then Officer Lai and myself said we'll search  
16       the library because I was the only one who had seen the  
17       guy at the time, so I knew what he was wearing and I  
18       knew what he looked like.

19                   So Officer Lai went in. He went actually to  
20       the front desk to the librarian to let them know what we  
21       were doing. And then I went inside the library and did  
22       an area search to see if I could find the guy.

23          Q       Prior to Officer Romero leaving the library  
24       to go back to the car, did you communicate to Officer  
25       Romero kind of the description of the suspect, what he

1 was wearing, his general description?

2 A I had actually thought Officer Romero had  
3 seen the guy walking away from the car, so I did not.

4 Q Okay.

5 A But I did tell him he had a baseball cap on  
6 and a full head of hair. I think I might have told him  
7 the color of the baseball cap.

8 Q Okay. All right. So you and Officer Lai are  
9 in the library, searching the library, and Officer  
10 Romero has indicated he was heading back towards the  
11 suspect's van?

12 A That's correct.

13 Q What happened next?

14 A I cleared the library. I was just finishing  
15 up walking back up towards the librarian's desk when I  
16 heard over the radio "shots fired," and it was Officer  
17 Romero's voice.

18 Q Now, prior to that call coming out from  
19 Officer Romero, had you actually heard any shots being  
20 fired yourself?

21 A No.

22 Q From inside the library?

23 A No.

24 Q Okay. And did Officer Romero call out either  
25 his number or name, or you just recognized his voice, do

1 you recall?

2 A I don't recall. I recognize his voice, and I  
3 remember him saying, "shots fired."

4 Q Okay. And what was his demeanor? Was he --  
5 did he seem fearful? Was he calm? Could you describe  
6 that to me?

7 A Excited. His voice was not calm, like he  
8 normally was. He was elevated -- his voice was  
9 elevated. His pitch was higher.

10 Q Okay. So other than "shots fired," did he  
11 say anything else over the radio?

12 A He said, "Man down. Officer hit."

13 Q Okay.

14 A I believe that is what he said.

15 Q All right. Anything else?

16 A He gave a location that he was at Capitol  
17 Highway and BHH.

18 Q What does "BHH" stand for?

19 A BHH is Beaverton Hillsdale Highway.

20 Q Okay. So what did you and Officer -- I'm  
21 assuming Officer Lai also heard this over the radio?

22 A Well, I started to run out once I heard it.  
23 And he was actually still -- Officer Lai was still  
24 talking to the librarian. And he kind of looked at me  
25 while I ran past him.

1           I said, "Shots fired," then he started to run  
2 after me. So then maybe he started to hear what I was  
3 hearing, but I don't know what he actually heard.

4           Q       So the two of you run out of the library.  
5 And what did you do?

6           A       We went to our cars. I just took off down  
7 Southwest Dewitt, down Sunset to Capitol, and Beaverton  
8 Hillsdale Highway is west of Sunset, so I started  
9 heading down Capitol to get to Beaverton Hillsdale  
10 Highway.

11          Q       And do you know if Officer Lai is also  
12 heading that direction?

13          A       Officer Lai was behind me.

14          Q       Okay. And what happened as you went down  
15 Capitol?

16          A       Got down to Beaverton Hillsdale Highway,  
17 which is approximately two blocks past the end of this  
18 photo, and I didn't see anybody. So I got on the radio  
19 and asked for a better description or better location.

20                 And Officer Romero got back on the air and  
21 said he was around the corner from the library by the  
22 suspect's vehicle. And so I knew the suspect's vehicle  
23 was here.

24                 So I put on the radio -- I did a U-turn, put  
25 on the radio that he was on Cheltenham because I knew he

1 was -- had to be right here or on Dewitt. So then I  
2 just did a U-turn and headed back this way.

3 Q All right. And what happened when you  
4 arrived on Cheltenham?

5 A I turned the corner on Cheltenham, I could  
6 see Officer Romero up here. I think -- I can't  
7 remember, there might have been another officer with  
8 him. I think it was Officer Westberry, but I'm not  
9 sure. And I pulled my car parallel, blocking the  
10 street, so no cars could pass. I had my lights on.

11 And I could see they were pointing their guns  
12 towards, basically towards me, but more at the curbline.  
13 They weren't pointing them at the street. They were  
14 pointing them like at the curbline.

15 So I looked over at the curbline, I could see  
16 there was a body laying on the curb, like half on the  
17 sidewalk -- mostly on the sidewalk, but his head and arm  
18 was on the curb.

19 Q Did you have your firearm drawn?

20 A Yes, I did.

21 Q Okay. What did you do at that point?

22 A I derived lethal cover on the suspect, and I  
23 could also -- when I was running up, I could also see  
24 that Officer Romero was bleeding from his -- I think it  
25 was his right hand. So I was yelling, "Get him some

1 help. I got the bad guy."

2 Q What do you mean? You mean you told the  
3 other officers that you got the bad guy?

4 A Right. I had him at gunpoint. There was  
5 a -- there was a -- I can't remember if the SUV -- I  
6 think there was an SUV right here. It was like a  
7 Mercedes SUV. So I was kind of behind the SUV, pointing  
8 my gun at the suspect.

9 Q Okay. And was he moving at that point?

10 A No. He was dead. His eyes were open and  
11 glazed over. They call it fixed and dilated, but I'm  
12 not a doctor, so I can't make that. But that is  
13 basically what he was. He wasn't moving or breathing.

14 Q He was motionless, he appeared to be lifeless  
15 to you?

16 A Yes.

17 Q And you just covered him for a period of  
18 time?

19 A Yes. I covered him until Sergeant Pashley  
20 brought out a ballistics shield, and they made an  
21 approach to take him into custody.

22 Q What is a ballistics shield?

23 A A ballistics shield is a shield that the  
24 sergeants will carry, and they can unfold it, and you  
25 can hold it up and walk up on a suspect, and it's a

1 bullet-resistant shield.

2 Q Okay. And were you part of that approach  
3 team with Sergeant Pashley?

4 A Yes. There was Sergeant Pashley -- actually  
5 Sergeant Pashley might have been back. Officer Cox was  
6 holding the shield.

7 Q If you don't have perfect recollection who  
8 the officers were.

9 A There was an officer with an AR. He's new to  
10 our shift, but that's why I can't remember his name  
11 right off the top of my head.

12 Q Okay. What --

13 A Then Officer Lai and I called the custody  
14 team. Once we got up there, we were supposed to put him  
15 in handcuffs.

16 Q I'm sorry, you and -- Officer Lai and  
17 yourself were going to handcuff the suspect?

18 A That's correct.

19 Q Okay. And did you, in fact, do that?

20 A Yes.

21 Q And did he again, seem -- was he moving at  
22 all at that time?

23 A No. He was dead.

24 Q Okay. As you reached him, did you see  
25 whether there was a firearm in the area?

1           A       Yeah.  There was, there was a firearm next to  
2 his head.  It was a handgun, semiautomatic.

3           Q       Okay.  And how close to his body was that  
4 gun, do you recall?

5           A       It was -- the gun was kind of on the street  
6 propped against the curb, I believe, and it was below  
7 his head.  And I think his hand was kind of up, like  
8 this, but his hand wasn't on the firearm.

9                   A GRAND JUROR:  How many feet away from his  
10 hand would you say?

11                   THE WITNESS:  From his hand, I'd say a  
12 hand-length away, maybe.

13 BY MR. DAVIDSON:

14           Q       So quite close?

15           A       Yeah, it was close.

16           Q       All right.  After he was cuffed, the suspect,  
17 what happened next?

18           A       After he was cuffed, we called for paramedics  
19 to come on in just in case he was still alive.  They  
20 came in.  The paramedics came in and checked him, and  
21 pronounced that he was deceased.

22           Q       Are you talking about the suspect?

23           A       The suspect, that's correct.

24                   A GRAND JUROR:  About what time of day did  
25 this happen?

1                   THE WITNESS: I think it was around 3:00. It  
2 was after 3:00. Actually I'd have to look at my notes.

3 BY MR. DAVIDSON:

4           Q       Sometime in the mid-afternoon?

5           A       Yeah, 'cause I remember -- I think Wilson was  
6 out of school, but the middle school was not. The  
7 middle school gets out at 3:45 p.m. and Wilson gets out  
8 at 3:00. And I believe I was up there about 2:45  
9 looking for the suspect vehicle, so it had to be between  
10 2:45 and 3:30 -- or 3:30. It would be about that time.

11          Q       Okay. The suspect who you handcuffed who had  
12 been shot, was that the same individual you had just  
13 previously contacted in the green van parked by the  
14 library?

15          A       Yes, it was.

16          Q       There's no doubt in your mind about that?

17          A       No doubt.

18          Q       I think you particularly recognized his hat;  
19 is that right?

20          A       I recognized his hat and his face.

21          Q       Did you have any contact with Officer Romero  
22 right then at the time around right when the suspect was  
23 handcuffed?

24          A       No. He was being treated by -- I don't know  
25 who. He was back away.

1           Q       Okay. And then so once the suspect had been  
2 cuffed and the paramedics had come in and determined he  
3 was deceased, what did you do at that point?

4           A       Um, Sergeant Pashley took control of the  
5 scene and he gave us individual assignments. My  
6 assignment -- actually it wasn't Sergeant Pashley. It  
7 was another sergeant. It might have been Sergeant  
8 Passadore.

9                   My assignment was to keep everybody out of  
10 the interior crime scene. Basically we have an interior  
11 and an exterior crime scene. Interior is marked by red  
12 tape, so he didn't want anybody inside the red tape.

13                   So that was my assignment, and to keep an eye  
14 on the deceased, the suspect so that, you know, nobody  
15 would move him or move any of the evidence because there  
16 was shell casings laid out about, and he didn't want any  
17 of that to be disturbed.

18           Q       Did you eventually speak with a Portland  
19 Police Bureau detective about what had occurred?

20           A       Yes, I did.

21           Q       Who was that, do you recall?

22           A       Detective Rico.

23           Q       Rico Beniga?

24           A       Yeah.

25           Q       And you gave him, I guess in essence the

1 account that you just gave to us?

2 A That's correct.

3 Q Okay.

4 A GRAND JUROR: Did you or anybody else  
5 actually see this shooting happen?

6 THE WITNESS: I did not see the shooting  
7 happen.

8 A GRAND JUROR: Did you know if any of the  
9 other policemen saw it?

10 THE WITNESS: I do not. Well, no, none of  
11 the other police officers saw it.

12 A GRAND JUROR: Basically we're just hearing  
13 from the officer that did the shooting, so he was the  
14 one that actually shot the suspect?

15 MR. DAVIDSON: We are going to hear from a  
16 variety of witnesses, including police witnesses and  
17 civilians who were present at the time of the shooting,  
18 so we'll hear from a variety of witnesses to include  
19 civilian witnesses who were present at the time of the  
20 shooting.

21 Do any of the other jurors have any  
22 questions?

23 A GRAND JUROR: I gather there's a lot of  
24 shots being fired. You said there was a lot of shells  
25 laying on the ground.

1 THE WITNESS: I saw what looked like three  
2 shell casings by the suspect and two or three shell  
3 casings -- two shell casings further away by where  
4 Officer Romero was, so. Again, I don't know -- I can  
5 say for certain within that area that's where the  
6 shooting occurred, but I don't know who shot what.

7 A GRAND JUROR: The original description was  
8 a male, white, 50's, bald. You mentioned that the  
9 person that he pulled over had a full head of hair.

10 THE WITNESS: Correct.

11 A GRAND JUROR: Did that original 50's, bald  
12 description, does that come from a police officer or did  
13 that come from a call that came in?

14 THE WITNESS: I need to clarify that. The  
15 original description was a male white, 50's, bald on  
16 top, but gray hair on the side.

17 A GRAND JUROR: Okay.

18 THE WITNESS: So he wasn't totally bald.

19 A GRAND JUROR: Okay.

20 BY MR. DAVIDSON:

21 Q Do you know if that came from a civilian?

22 A That description came from one of the teens  
23 that was reporting, either it was a Wilson High School  
24 student or Gray Middle School student. I'm not sure  
25 because I didn't talk to those witnesses, but I got that

1 information from Officer Romero.

2 A GRAND JUROR: Okay. Thank you.

3 A GRAND JUROR: And you stayed at the crime  
4 scene, given your assignment until what point, some  
5 other team comes in and does something?

6 THE WITNESS: Correct, until I was released  
7 by the sergeant, by another officer.

8 A GRAND JUROR: Okay.

9 THE WITNESS: To take over my position.

10 A GRAND JUROR: And then do you immediately  
11 go and make a report or speak to the person that you --

12 THE WITNESS: No. Basically I got with my  
13 union reps and then we didn't -- they separate us so  
14 we're not sitting there talking to each other.

15 Officer Lai got a union rep, and they took  
16 him over here. I got a union rep. They took me over  
17 here. Sergeant Pashley got a union rep. They took him  
18 over there. Officer Romero was heading to the hospital.  
19 I'm sure there was a union rep with him there also.

20 So basically they just separated us. The  
21 detectives do what they do, and then eventually they  
22 call us in to have an interview. Each interview is done  
23 separately.

24 A GRAND JUROR: Okay.

25 BY MR. DAVIDSON:

1           Q       Do you recall, was your interview with  
2 Detective Beniga done that day, the day of the shooting  
3 or was it done later?

4           A       It was done that day.

5           Q       And how close in time was the incident of the  
6 shooting and how much time elapsed between the shooting  
7 and when you were interviewed by Detective Beniga, do  
8 you recall?

9           A       I can guess, but.

10          Q       Approximately?

11          A       It was within two hours.

12          Q       Okay.

13          A       As a matter of fact, the interview took  
14 place -- the people at ReMax let them use their offices,  
15 so the interview took place at the ReMax office. So  
16 basically I went from here to here with my union rep and  
17 then I went to here. I think I had a glass of bottled  
18 water.

19                   A GRAND JUROR: Was the suspect on foot while  
20 he was shot? He didn't go back to the van and drive his  
21 van?

22                   THE WITNESS: He was on foot when he was  
23 shot.

24                   A GRAND JUROR: Okay. So he never went back  
25 to his van, as far as you know.

1                   THE WITNESS: I don't know if he did or not.  
2 I don't know -- I don't know.

3                   MR. DAVIDSON: Anybody else have questions  
4 for Officer Mitchell?

5                   All right. Officer Mitchell, I think you are  
6 finished. Thank you.

7

8

9

SZE SHING LAI,

10

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

13

14

EXAMINATION

15 BY MR. REES:

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

18           A       Okay. My last name is Lai, L-A-I. Sze,  
19 S-Z-E, S-H-I-N-G.

20           Q       Everyone calls you Officer Sze?

21           A       Officer Sze.

22           Q       All right. I've heard Sze Lai.

23           A       Yes.

24           Q       How long have you been a Portland Police  
25 Officer?

1           A       Coming up 21 years.

2           Q       And what's your current assignment?

3           A       Patrol, and I'm a District officer out in  
4 southwest.

5           Q       And you're based out of the Central Precinct  
6 downtown?

7           A       Yes.

8           Q       And what area generally does your District  
9 cover?

10          A       I have -- my area, I cover Beaverton  
11 Hillsdale Highway, Barbur Boulevard, Multnomah Village,  
12 all of the way up to Patton Road, up on the road, and it  
13 goes all of the way down to Vermont. That's my general  
14 patrol area, and west of Sunset, yeah.

15          Q       Is it a fairly large geographic area?

16          A       Yes.

17          Q       In the weeks before this shooting on  
18 March 12, 2014, were you aware of reports of a  
19 suspicious man in a suspicious van in that area of  
20 Southwest Portland?

21          A       Yes. You see my area, like I describe to you  
22 is west of Sunset, and that is what we call District 882  
23 and that is my District. East of Sunset, that is what  
24 we call District 870. That is Officer Jason Graf's  
25 District.

1                   Calls have come out about suspicious car,  
2                   where he took the call and went to assist Officer Graf  
3                   in trying to locate the car weeks prior to that, but, of  
4                   course, at the time we were unable to locate the  
5                   vehicle.

6                   Q           You also pursued a vehicle on Interstate 5, I  
7                   believe that you thought possibly was the suspect  
8                   vehicle.

9                   A           Yeah. One of the incidents where Officer  
10                  Graf responded to and I went to assist him, again, it  
11                  was a green minivan. I saw a van going down Terwilliger  
12                  and then to Barbur and went down to the freeway. I  
13                  actually stopped the van, and it turned out to be not  
14                  the right car.

15                  Q           What was the information that you had about  
16                  this suspicious van?

17                  A           The information I had back then was -- it was  
18                  supposed to be a green van driven by a middle-age person  
19                  maybe in his 50's, gray hair, medium build, and that's  
20                  the information that I had.

21                  Q           All right. And what was the information  
22                  about what the person in this van was doing that was  
23                  causing you concern?

24                  A           The one particular call that I covered  
25                  Officer Jason on, the van actually stopped and tried to

1 talk to a female student that was walking home. And the  
2 female student thought it was odd, and ignored the  
3 person and kind of bolted away, I guess and went home.  
4 And that was one of the calls that I covered on, yeah.

5 Q Let me direct your attention now to the date  
6 of the shooting, which was Wednesday, March 12, 2014.

7 Did you work on your regular patrol that day?

8 A Yes. It was -- my regular shift was  
9 Wednesday. I was kind of getting off my shift, probably  
10 3:30 or so, I got a message from -- in a patrol car, we  
11 have this computer terminal and we can actually type  
12 message to one another.

13 And Officer John Romero, he's the School  
14 Resource Officer for Wilson, he sent a message, what I  
15 call like a group message to 882, which is me, and then  
16 to 881 and 870 saying, "Hey, I'm looking for this van,  
17 which we all know about, would you all be interested in  
18 assisting me?"

19 So I go, "Hey, sure." I type him back, "What  
20 time does school get off?" And then he type back to me,  
21 because Robert Gray Middle School is in my district. So  
22 when he said, "Hey, Robert Gray School gets off at  
23 3:45," and then at the time we were messaging it was  
24 3:40, I said, "Okay, I will take Robert Gray Middle  
25 School," which is east of Sunset.

1                   So we kind of took our own spot. I took  
2 Robert Gray and Officer Romero took Wilson and another  
3 officer said, "I'll go to Sam Jackson Middle School."  
4 And I believe Officer Edgar said, "Okay, I'll just go  
5 around and around like Sunset" because that's where the  
6 car was spotted in the past, Sunset Boulevard.

7                   So I head down to Robert Gray Middle School.  
8 School was out. Kids walking home. So I was doing my  
9 patrol. And then there was one -- Officer Romero -- one  
10 traffic stop. Turned out to be not the car.

11                   I believe after that, we got another call  
12 from some citizen. And she said, "Hey, I have this  
13 information about this green car. I saw it. He have  
14 different plates on it."

15                   And so when I heard that came out, I went  
16 back up to Sunset. I kind of drove around a bit.  
17 Didn't find the car. And then Officer Edgar Mitchell  
18 did a traffic stop on Dewitt.

19                   So okay, he's doing a traffic stop. I'm just  
20 patrolling around. I don't remember exactly how long  
21 after that, but then he came on the air and said, "Hey,  
22 this car got switched plate on it. And the front plate  
23 and the back plate is different." And he gave out the  
24 front plate, which is 616, which is part of the  
25 information we have of the car. The suspect vehicle

1 might have the number 616 on it.

2 Q If I may, to clarify, are you hearing this  
3 information over your police radio?

4 A Yes.

5 Q All right.

6 A So Officer Edgar Mitchell was putting out  
7 this information. Say, "Hey, this car got a switched  
8 plate."

9 So I headed up, I believe it was Martha. I  
10 went up to Sunset, hook a right, went down the hill to  
11 Dewitt. And I saw Officer Edgar's car there, and he  
12 just got off from his car, whatever. I guess he was  
13 kind of crossing the street, so I pull up in front of  
14 his car. I got out.

15 And then he told me that, "Hey, he might be  
16 in the library." I said, "Okay." So I follow Officer  
17 Edgar Mitchell and Officer John Romero was behind me, so  
18 the three of us started walking into the Hillsdale  
19 public library.

20 Just as we entered the front door, Officer  
21 John Romero said, "Hey, since you guys are checking in  
22 here, why don't I go back to the car just in case he  
23 comes back to the car."

24 So Officer John Romero went back to the car.  
25 Me and Edgar went inside and we look around the floor,

1 the public library.

2 You want me to go on?

3 Q Well, I have a question.

4 Did you talk to anyone inside the library who  
5 said that they possibly had seen a person matching that  
6 description?

7 A Yes. There was a male librarian there. When  
8 I tried to explain to them what -- the librarian looked  
9 concerned. I mean, every time you walk into the  
10 library, they look concerned when they see you in your  
11 uniform.

12 One of them looked concerned. I tried to  
13 explain to her, hey, what is going on. And then she  
14 goes, "I just got here. You might want to ask this  
15 other gentleman, another librarian." He goes, "Yeah, I  
16 think he was here but he left."

17 Just at that time -- when I was talking to  
18 librarian, I had my radio down, so I didn't hear the  
19 call come out. But Edgar Mitchell bolted out -- I mean,  
20 he literally bolted out past me, past the door. He goes  
21 "shots fired outside."

22 So I follow right behind him. We ran out to  
23 our car and I saw him hop into the car. He hopped into  
24 the car. I came on the radio, and I go, "Where is he  
25 at? Where is he at?"

1                   And over the radio say -- I thought it was  
2 John Romero that said it, so anyway the radio say  
3 "Capitol and Beaverton Hillsdale Highway," which is --  
4 can I point here?

5           Q       Yes, please. If you want to use that photo  
6 to show us.

7           A       Okay. This is the library, and we were  
8 parked here. The problem is when the information came  
9 out and said that Capitol and Beaverton Hillsdale  
10 Highway, we are assuming it's -- you see Capitol and it  
11 goes down. It splits. Capitol continues to this way  
12 and then Beaverton Hillsdale Highway starts here.

13                   So when we heard that, we came down Sunset  
14 southbound and then westbound on Capitol, so actually  
15 initially we were going in the wrong direction because  
16 the information said Capitol and Beaverton Hillsdale  
17 Highway.

18                   We got here. I remember coming on the radio.  
19 I said, "Hey, I don't see him." Then the radio says,  
20 "Capitol and Cheltenham." We turned around and I  
21 proceeded this way, eastbound.

22                   When I got up here to Cheltenham, I can see  
23 Officer Romero standing right here. There was some cars  
24 parked here. He was standing right here, and he was  
25 waving at me like this (indicating).

1           So when I got here, I turned when he was --  
2 when he was waving at me, I thought the suspect is going  
3 to be to the north of him because he was doing this  
4 (indicating). So when he did this, he was -- when he  
5 did this, I thought the suspect was up here.

6           So I started driving real fast down this  
7 road. Then out of the left corner of my eye, I saw  
8 someone slumped over on the sidewalk. I said, "Oh,  
9 crap." I'm right on to my -- sorry, my language, but I  
10 saw that, so I brake right away.

11           So this is the shooting scene. So my car is  
12 actually right here. Then I ran across Officer John  
13 Romero. And I can see him standing there and I can see  
14 blood dripping all over the floor. And when I look at  
15 him, I can actually see a track mark, like a bullet had  
16 gone underneath his skin.

17           You can see like a tunnel, like a track mark.  
18 I can see a track mark underneath his arm. I was  
19 standing there, and I go, "What happened?"

20           He goes, "He shot me."

21           So at a point, he's standing back away from  
22 the car where he was at. So I took up his position  
23 because we still need an officer to cover the downed  
24 suspect because we do not know -- you know, the way we  
25 are trained, we still have to cover the suspect until

1 he's secured. He's not secured yet. He's lying there.

2 So I took his spot, and then Officer Romero,  
3 I remember him saying, "My arm is feeling numb." He  
4 started to say that.

5 So at that point I was torn between covering  
6 the suspect or helping Officer Romero. So I came on the  
7 radio, say, "Hey, I need some officer to my location  
8 now. I need someone to put a tourniquet on him."

9 And so while I was doing that, I believe  
10 Officer Edgar arrived, and he was down here somewhere.  
11 And I think he threw a tourniquet at me. I didn't see  
12 him. I saw a tourniquet, but I couldn't help Officer  
13 Romero.

14 And, of course, not too long, a lot of cars  
15 arrive. The first officer that I noticed behind me that  
16 came up to me was Sergeant Pashley, which is our day  
17 shift sergeant. He came up and Officer Sharp came up.  
18 He's our guy with the long gun, the AR cover. And  
19 Officer Pashley put together one of our ballistics  
20 shields. And then he asked me to follow him and say,  
21 "Okay, you be the custody team."

22 We walked back down to where Officer Edgar  
23 is, and then Sergeant Pashley goes, "Okay, Edgar and  
24 Sze, you be the custody team. Sharp is the lethal cover  
25 and the sergeant is holding the shield."

1                   Then we approached the downed suspect.  
2   Officer Edgar grabbed the left arm and I grabbed the  
3   right arm. I took my cuff out. I put the cuff on the  
4   downed suspect.

5                   I noticed there was 1911 style handgun that  
6   was laying on the ground. It's a -- you know how the  
7   sidewalk kind of steps up from the street, the handgun  
8   was lying there right up against the sidewalk and the  
9   street like this (indicating), the 1911 style handgun,  
10  and I saw two empty casings next to the downed suspect.

11           Q       And did you believe that to be the suspect's  
12  gun?

13           A       Yes, I do, yes, so cuffed him up. And then I  
14  wait for the paramedic to come in. Then he came in, and  
15  then they confirmed downed suspect's status. At the  
16  time more officers were already on the scene.

17                   Because I was involved in the whole thing,  
18  usually one of the supervisors say, "Okay, Sze, you need  
19  to get off from the scene here," and then I was assigned  
20  to an officer during the rest of the investigators to  
21  arrive.

22           Q       You can return to your seat.

23                   A GRAND JUROR: So you think the man was  
24  still alive when you put the handcuffs on him?

25                   THE WITNESS: I don't know.

1           A GRAND JUROR: You don't know.

2           THE WITNESS: I don't know, because it's hard  
3 to tell under such circumstances. It's hard to tell if  
4 someone had a shallow breathing. There was no movement,  
5 but that's why after we secure him. That's why  
6 straight-away we wait for the paramedic prior to come  
7 in. And two of them came up and check his status, yeah.

8 BY MR. REES:

9           Q       To your understanding, is that consistent  
10 with your training and in that situation?

11          A       It is very consistent with what we do, yeah,  
12 with our training.

13          Q       You mentioned that you had a thought  
14 simultaneous that you needed to cover the downed  
15 suspect.

16          A       Yes.

17          Q       But you also needed to render emergency first  
18 aid to Officer Romero who is bleeding.

19          A       Yes.

20          Q       Did you see who came to the assistance of  
21 Officer Romero?

22          A       Well, I -- let me put it this way. When you  
23 are there -- when I got there and I saw Officer Romero  
24 bleeding, and I was covering the downed suspect, and I  
25 don't see Officer Edgar, so even though I know Officer

1 Edgar is covering the downed person, too, you still want  
2 to cover the downed person.

3 Then I'm also torn because helping Officer  
4 Romero. And then he said that his arm is feeling numb,  
5 and I looked at him. I decided to continue to cover the  
6 downed person because, number one, our training dictates  
7 that usually after the person is down, he may still pose  
8 as a threat, so I have to cover him.

9 And back in 1999, I was involved in a  
10 shooting myself. I got shot in the arm like Officer  
11 Romero, so when I look at him, I basically go, oh, he'll  
12 survive, you know, kind of because I got shot in the arm  
13 right here twice back in 1999.

14 So I look at him, I go okay. That's why I  
15 asked for officer to come to the scene to help him,  
16 because I was really torn between helping him and  
17 covering the downed suspect. But I had to make a  
18 decision, and I felt like that I have to continue to  
19 cover the threat, so.

20 MR. REES: Thank you.

21 Any other questions for this witness?

22 Officer Lai, thank you very much.

23 THE WITNESS: Thank you.

24

25

1 CASEY HETTMAN,  
2 a witness called on behalf of the State, having been  
3 first duly sworn, was examined and testified as follows:  
4

5 EXAMINATION

6 BY MR. DAVIDSON:

7 Q Please state and spell your full name.

8 A Casey Hettman, C-A-S-E-Y. H-E-T-T-M-A-N.

9 Q And how are you employed?

10 A I'm a Portland police officer. I've been for  
11 seven years.

12 Q And you've spent your entire law enforcement  
13 with Portland Police Bureau?

14 A Yes, I have.

15 Q And can you tell us briefly kind of through  
16 your training and experience that you had to go to be a  
17 police officer?

18 A Sure. When I first got hired back in 2007, I  
19 went to the Oregon State Police Academy down in Salem,  
20 Department of Public Safety Standards and Training.  
21 It was a 16-week academy.

22 Then following that, I came back to Portland  
23 and did another what they call Advanced Academy, which  
24 is another 16 weeks of training for topics more specific  
25 to Portland. Then in the years since, we have annual

1 refresher training and whatnot throughout the years.

2 Q And do you have a college or advanced degree?

3 A I have a Bachelor's degree from Portland  
4 State.

5 Q In what topic?

6 A Sociology.

7 Q Terrific. What's your current duty  
8 assignment?

9 A I'm currently assigned to a new project  
10 that's been rolled out at Central Precinct called the  
11 Summer Initiative, which is comprised of a number of  
12 officers that are going to be focusing on livability  
13 issues and some of the transitory populations that  
14 affect the downtown core and Hawthorne area during the  
15 summer.

16 But before that kind of started, in the last  
17 month or so, I was assigned to Central Precinct downtown  
18 for like the last five years.

19 Q Were you on duty, in uniform and displaying a  
20 badge on the afternoon of March 12th of this year?

21 A Yes.

22 Q And, sir, what shift are you working? Is  
23 that -- is there a shift associated with your current  
24 assignment?

25 A It is kind of a modified shift. I'm kind of

1 3:00 p.m. to 1:00 a.m. or 2:00 p.m. to midnight, kind of  
2 depending on the needs of what we're doing that day.

3 But generally, mid-to late afternoon to early morning.

4 Q Okay. We're going to talk about this  
5 shooting that happened on that date. I'm going to ask  
6 you real quickly.

7 Had you been made aware during any of your  
8 briefings or other conversations with officers at  
9 Central that there were these reports coming out of  
10 close-in southwest of the Wilson High School area of  
11 this male in a van that was following kids and teens  
12 from the area?

13 A Yes.

14 Q Kind of sum up what you were aware of.

15 A Yeah. It actually happened that we were at  
16 roll call at Central Precinct getting our daily briefing  
17 on that day. We had already been logged on, so we had  
18 our gear on and the car already outside, and I had my  
19 radio on actually.

20 The sergeants were going through the roll  
21 call box where they read fliers to us about different  
22 things that were going on, people that are wanted with  
23 warrants. And this was one of the fliers that came up.

24 Actually it was a gentleman -- it had been  
25 reported by different sources about a gentleman -- a

1 suspicious van in the area of some schools in southwest  
2 that they were concerned about.

3 Q Now, and that happened at roll call that day?

4 A Correct.

5 Q Now, was that at the same roll call that  
6 Officer Mitchell and Officer Lai would have been at, or  
7 was that a roll call later in the afternoon?

8 A It was afternoon shift roll call, so that  
9 starts at 1600 hours, 4:00 p.m. They would have had  
10 their briefing for morning roll call, which is at 7:00,  
11 0700 in the morning.

12 Q Okay.

13 A 7:00.

14 Q How much time lapsed between when you got  
15 done with your afternoon briefing and roll call and when  
16 you heard the -- assuming you heard a "shots fired" call  
17 coming out over the radio?

18 A Well, ironically, it was simultaneous. As  
19 the sergeants were reading the actual flier about this  
20 suspicious vehicle, I heard in my earpiece the radio  
21 call from Officer Romero saying "shots fired."

22 And at that time we all kind of mobilized out  
23 of the roll call room, and we had a car ready to go  
24 right outside the door, so we were just able to hop in  
25 and head that way while other officers had to kind of go

1 down to the basement and get a car and get all of their  
2 gear thrown in before they could leave. So we had a  
3 head start on everybody.

4 Q Maybe you can tell us where is Central  
5 Precinct roll call held?

6 A Central Precinct roll call is at the actual  
7 Central Precinct, which is downtown on Second, in  
8 between Main and Madison, Second and Third Avenue. The  
9 Justice Center down there. It's in the ground floor.

10 Q So you said -- were you accompanied by a  
11 partner that got into a car?

12 A Yes.

13 Q Who was your partner?

14 A Stephen Yakots.

15 Q And who was driving?

16 A I was.

17 Q And what did you guys do once you got in the  
18 car?

19 A Um, I proceeded to turn the lights and sirens  
20 on and leave -- we began to proceed towards the location  
21 of the call. We were parked on the south side of the  
22 building. We ended up down on Naito and turned into  
23 Barbur and head out that way to get down there.

24 Q Okay. Approximately how long did it take you  
25 to get from Central Precinct to the scene?

1           A       Oh, probably just a couple of minutes. I'm  
2 not sure.

3           Q       Okay.

4           A       We were going at a good clip, I would say.

5           Q       All right. Where did you proceed to exactly?

6           A       We parked on -- we arrived on scene, we  
7 parked right in front of the Portland Fire -- there was  
8 a Portland Fire Bureau station.

9           Q       If you want to stand up, we have a map here  
10 of the area to orientate yourself quickly and maybe tell  
11 us -- point on the map where you parked.

12          A       All right. We came --

13          Q       Actually if you could stand on this side so  
14 all of our jurors --

15          A       Sure. We approached the scene from Capitol  
16 Highway and we turned onto Sunset Boulevard and then  
17 turned on Dewitt. Then we parked pretty much directly  
18 in front -- this is PFB Station 5 right here. We parked  
19 right in here. At that time we got out on foot and  
20 started walking and approaching the scene from this  
21 direction.

22          Q       Okay. What did you observe as you approached  
23 the scene?

24          A       Um, as we rounded the corner, I saw two  
25 officers standing here, who I later determined was

1 Officer Romero and Westbury, I believe. Then looking  
2 down here, I saw a couple other officers that had what  
3 looked like maybe a shield or something, and they were  
4 addressing what looked like a suspect or a subject  
5 downed down here.

6 Q Okay. So what action did you take?

7 A While still en route, there was discussion on  
8 the radio about needing a tourniquet to the scene to  
9 assist Officer Romero, since he was bleeding out of his  
10 arm and hand.

11 I had a tourniquet on my external vest. And  
12 so I went to Officer Romero who was standing somewhere  
13 right in here and told him that I had a tourniquet, and  
14 asked him if it was okay if I helped him with that. And  
15 I put the tourniquet on his arm and applied it the way  
16 we had some instruction on that.

17 And then from there, fire and medical were  
18 just arriving on the scene. And I kind of walked him,  
19 once we had the tourniquet on, back up to a waiting  
20 ambulance, which is also parked in front of the fire  
21 station right here.

22 Q When you say "him," you mean Officer Romero?

23 A Correct.

24 Q Okay. So you walked him up to the ambulance?

25 A Yes.

1 Q What happened once you got to the ambulance?

2 A Um, he was loaded into the back of the  
3 ambulance. I had him walk up into the back and they had  
4 him sit down on the gurney. It was then that one of the  
5 AMR personnel had asked if we could secure his gun or  
6 his firearm.

7 Q Officer Romero's gun?

8 A Correct.

9 Q And what did you do about that?

10 A At that time I looked around to see if there  
11 was a sergeant nearby to let him know our planned course  
12 of action. There wasn't one available.

13 So at that time I went up to Officer Romero  
14 and said, "Hey, they are asking us to secure your  
15 firearm, is that okay with you?" He said, "Yeah, that's  
16 okay." And at that time I removed the -- his sidearm out  
17 of his holster off of his duty belt.

18 Q And what did you do with it?

19 A At that time I made it secure, I made it  
20 safe. It entails taking the magazine out and clearing a  
21 round out of the chamber, then locking it back.

22 Q And what was done eventually with the  
23 sidearm?

24 A Um, there was a sergeant nearby. I walked to  
25 his trunk. We placed the firearm in a plastic bag, and

1 we put the magazine and the single unfired round from  
2 the chamber into a separate evidence bag as well.

3 Q And were you able to observe Officer Romero's  
4 injury?

5 A Yes.

6 Q What did you see?

7 A Um, I saw some trauma to his, I guess, the  
8 outside part of his right hand. It was bleeding  
9 somewhat significantly. And he had long abrasion or a  
10 cut-looking thing going up to the -- pretty much the  
11 entirety of his forearm that looked like maybe the  
12 bullet had grazed his arm going up, I don't know, six to  
13 eight inches of his forearm.

14 Q Was it bleeding significantly, you said?

15 A Yeah, out of his hand. The arm wasn't  
16 bleeding per se, but he was bleeding pretty good out of  
17 his hand. My boots and pants were pretty much covered  
18 in blood by the time we were done.

19 Q Under what circumstances are you trained to  
20 apply a tourniquet to someone?

21 A Well, any time there's any kind of traumatic  
22 injury with the risk of substantial bleeding, I think,  
23 whether it's a gunshot wound, I think would probably be  
24 the most obvious one that comes to mind, but I think  
25 also if there's a traumatic injury like in a car

1 accident or something else, if there's a great loss of  
2 blood, I think that's also a good -- would be a good  
3 application for it also.

4 Q Okay.

5 MR. DAVIDSON: Well, I think those are all of  
6 the questions that I have for Officer Hettman.

7 Does anyone have any questions for Officer  
8 Hettman?

9 Officer, you are free to go. Thank you very  
10 much.

11 THE WITNESS: Thank you.

12

13

GREG PASHLEY,

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

16

17

EXAMINATION

18 BY MR. DAVIDSON:

19 Q If you could slowly state and spell your full  
20 name.

21 A Greg, G-R-E-G. Pashley, P-A-S-H-L-E-Y.

22 Q And could you, please, tell us how you are  
23 employed?

24 A I am a sergeant with the Portland Police  
25 Bureau. I'm assigned to morning relief at Central

1 Precinct, which is the geographic area where we're  
2 seated right now actually.

3 Q All right. And how many years of law  
4 enforcement experience do you have?

5 A I've been a policeman in Portland for 21  
6 years, four of these -- the last four as a sergeant.

7 Q And have you spent your entire law  
8 enforcement career with Portland?

9 A I have in two different departments in this  
10 city. We used to have a separate school police  
11 department. I spent my first eight years there. Became  
12 a lateral hire. I was hired by the Police Bureau. I've  
13 spent the last however many years, 12, 13 years, so it's  
14 all been in Portland.

15 Q Okay. I imagine you've gone to the typical  
16 required police academies.

17 A Yes. I've been through the basic police  
18 academy. I got certifications throughout the years, the  
19 advanced certification through the Department of Public  
20 Safety Standards and Training and then supervisory  
21 certification after I was promoted. I went through a  
22 sergeant's academy and I was promoted as well.

23 Q Do you have a college degree?

24 A I have a Bachelor's degree in theology from  
25 the University of Portland.

1 Q Okay. Now, you said your current assignment  
2 is with Central Precinct?

3 A That's correct.

4 Q You mentioned we're sitting in Central  
5 Precinct right now. Central Precinct actually covers  
6 quite a bit of territory, does it?

7 A It really does. It's a huge area. It's a  
8 very diverse sort of series of settings that goes all of  
9 the way out into -- I don't know exactly how I'm sitting  
10 in this room.

11 But it goes all of the way out to Forest  
12 Heights, Forest Park up in Northwest Portland, across  
13 Burnside and Skyline Boulevard, all of the way to the  
14 other opposite corner, which is over in Southeast  
15 Portland, around 39th and Crystal Springs, sort of where  
16 those streets come together, I-84 and 39th, and then up  
17 into the southwest hills against the Lake Oswego and  
18 Beaverton border.

19 So it's a really huge area. Basically this  
20 side of 39th all of the way to Beaverton and down in  
21 Milwaukie, yeah.

22 Q Okay. Were you on duty and in uniform and  
23 displaying a badge on the 12th of March of this year?

24 A Yes, I was.

25 Q Now, my expectation would be that you were

1 probably aware in the days or weeks preceding that date  
2 of these reports that were coming out of Southwest  
3 Portland of a male suspect in a van who would have been  
4 following or attempting to lure young girls in that  
5 area.

6 A Yes, I was.

7 Q What did you kind of generally know about  
8 that prior to the 12th?

9 A Well, prior to the 12th, not much. The 12th  
10 is -- my workweek is Sunday, Monday, Tuesday and  
11 Wednesday, so the 12th was my Friday. We call it my  
12 Friday.

13 And really leading up to that, because of  
14 whatever else I was doing all week, I had heard little  
15 bits and pieces of something -- some kind of suspicious  
16 car, but -- or van, but nothing much.

17 That morning at roll call, there was a little  
18 bit more of a discussion that there was a van up around  
19 Southwest Portland, maybe by some of the schools in  
20 Southwest Portland, and that there was a little bit of  
21 an effort underway by the officers assigned to the Youth  
22 Services Division, sometimes they are called School  
23 Police Officers. They are Portland police officers who  
24 work specifically with the schools.

25 There was an officer or two there that was

1 sort of investigating this a little more carefully  
2 because the complaints were getting more -- either more  
3 frequent or maybe more alarming, not knowing anything  
4 specifically about the complaints myself.

5 So there was some discussion about license  
6 plates or confusion about license plates at roll call  
7 that morning where we gather at 7:00 to talk about what  
8 our assignments were and the issues of the day. And  
9 that's sort of what I knew up to that morning.

10 And then later in the afternoon, just before  
11 I went out for my last kind of drive around, before my  
12 end of my shift, I heard an afternoon shift officer on  
13 the phone who I deduced was a sergeant from the school,  
14 the School Police, the Youth Services, the guy who took  
15 my job.

16 I did Youth Services for two and a half years  
17 before I came to Central Precinct, and they were  
18 organizing or kind of coordinating that one of the  
19 officers from Youth Services was going to be up in the  
20 southwest for an extra couple of hours that day.

21 And I sort of gathered that, but nothing more  
22 than that as I walked out of the room and got into my  
23 car and went out to the last hour and a half, or what I  
24 thought was going to be the last hour and a half of my  
25 shift.

1           Q       Okay.  Would Officer Edgar Mitchell and  
2           Officer Sze Lai have been at that 7:00 roll call that  
3           you just described?

4           A       Yes.

5           Q       Okay.  But Officer Romero is with the  
6           school -- is a School Resource Officer for Wilson?

7           A       Yes.

8           Q       He's under a different structure?

9           A       Right.  I supervised him in my old job.  He  
10          was in my officer detail, Officer Romero.  So he works  
11          for the Youth Services Division.  They have their own  
12          sergeants, their own captains, and they go to a  
13          different roll call than a Central Precinct officer.

14          Q       Okay.  So just tell us on the 12th, what's, I  
15          guess, the first time you remember becoming aware that  
16          there was something going on in Southwest Portland that  
17          caught your attention?

18          A       So after I left the office in our Precinct  
19          over -- just across the park here, got in my car, and I  
20          was driving around downtown Portland as I sort of apt to  
21          do towards the end of my workweek and the end of my  
22          shift, and just to be out and available as a sergeant  
23          and another uniformed police officer at the shift  
24          change.

25                        So the afternoon roll call is getting ready

1 to go in, probably in a half an hour, maybe this is like  
2 3:30 in the afternoon. So as they are getting ready,  
3 and they are all busy figuring out how they are going to  
4 spend their next ten hours, I like to be out during the  
5 shift change. So I'm out driving around.

6 I wound up parking over by the Koin Tower,  
7 kind of on the backside of the Keller Auditorium, just  
8 to review maybe last minute reports that had come in  
9 from officers from my shift on my computer. They submit  
10 them electronically, and I'm sitting there reading  
11 reports.

12 Now, in that half-hour leading up to where  
13 I'm sitting there, I had heard -- as a sergeant, you  
14 listen to all of the traffic that's coming over the  
15 radio channel that you listen to. What are the officers  
16 doing? How is it going? I tend to drift towards where  
17 the liability or the most hazardous calls are and the  
18 most sort of serious type calls.

19 There's nothing like that happening, but I do  
20 remember hearing Romero doing a traffic stop up around  
21 Capitol Highway or Beaverton Hillsdale Highway.

22 I heard Officer Mitchell, Officer Lai on the  
23 radio and they seemed to be working in some sort of  
24 coordinated effort around the area north of Wilson High  
25 School along Capitol Highway in what I assumed was

1 again, an investigation looking into this suspicious  
2 car.

3 I think that because I heard them talking  
4 about stopping this van and then letting it go because  
5 it wasn't the right van, or, hey, let's go talk to this  
6 person again. That sort of conversation was going on.

7 At some point I heard Officer Romero say that  
8 he was going to talk to an individual, a person. I  
9 don't know anything else about that interaction.

10 I heard Officer Mitchell come over the radio  
11 and said something like he was -- hey, that's the guy I  
12 talked to earlier. I heard somebody say something about  
13 a van with two different license plates.

14 And I had read the call that they were on on  
15 my computer that also indicated something about a van  
16 with two different license plates. So from my  
17 perspective, they were maybe zeroing in on making some  
18 progress on the investigation that they were doing.

19 Suspicious guy in a car around a school is  
20 not particularly uncommon in Portland, and it seemed to  
21 me at the time, again, just looking back, that I was  
22 impressed that these officers were all coordinated so  
23 well and working right toward the end of their shift,  
24 that they were making some progress.

25 That's kind of where it stood until I heard

1 Officer Romero's voice come on the radio and said there  
2 were shots fired.

3 Q Okay. So when you heard him make that call  
4 on the radio that shots had been fired, what did you do?

5 A So I left where I was -- what I was doing and  
6 I drove -- I started to drive up there.

7 He said -- he called his radio number, his  
8 radio number is 1677, "shots fired." He might have even  
9 said shots fired twice. I know Officer Romero. I  
10 worked with him daily for two and a half years. He was  
11 in my detail. We spent a lot of time together.

12 His voice was a little bit more animated than  
13 usual. It seemed that there was something serious going  
14 on. Although, again, it actually didn't fit into the  
15 context of the call that I had conjured up in my mind  
16 that they were on. So it seemed a little surprising to  
17 me that, all of a sudden, he was calling shots fired.

18 So I turned on my lights and started to drive  
19 up there. And I knew the other officers -- some of them  
20 I've known for 21 years. And again, their demeanor up  
21 until this point wasn't what I would call normal. So  
22 the call of shots fired, even as I started driving up  
23 there, didn't seem to be in the right context.

24 So it was a surprise to me. Nevertheless, I  
25 knew that I needed to start to get up there to try to

1 help. I drove it afterwards. It is almost three and a  
2 half miles of a drive. So I started driving up there.

3           Immediately -- I encountered almost  
4 immediately within a block or two, I encountered another  
5 patrol car going on with what we call Code Three lights  
6 and siren. Got in front of me.

7           So my presumption was that I was going to  
8 follow this car up to where we were headed. He pulled  
9 over immediately. I saw an arm come out the window like  
10 this (indicating), so I passed him, and I noticed in my  
11 mirror that he got behind me.

12           I had a pretty good idea where they are --  
13 where they were because I had spent so many years  
14 driving around in a car in this city, that I know the  
15 city pretty well.

16           So I was driving up there, listening to the  
17 radio, waiting for more information, starting to  
18 consider what I may do when I get there.

19           At some point I heard Officer Romero say  
20 something like I'm hit, but I'm okay, something like  
21 that. So I was led to believe that he'd been shot, but  
22 that in his own words he was okay.

23           I drove a little farther. And at some point,  
24 and I have to confess that as you are driving with your  
25 lights and siren on, your perception of what's going on

1 changes a little bit. It's a distraction. I couldn't  
2 tell you how fast I was driving or what car I passed on  
3 my way.

4 So -- and I don't exactly remember the time  
5 frame that all these things happened in, but I remember  
6 after what seemed to me to be a little while, thinking I  
7 hadn't heard anything about a suspect.

8 As I'm getting there, and I presume that I'm  
9 going to be the first supervisor on the scene, and  
10 there's all kinds of things go along with that, I  
11 started to get to the point where -- and this all  
12 happens pretty quickly, as I tell it very slowly, I want  
13 to know who shot John.

14 And so --

15 Q When you say "John," you're saying Officer  
16 Romero?

17 A Officer Romero, sorry, who shot him and what  
18 happened.

19 And so at some point where it seemed like  
20 whatever these officers were saying on the radio,  
21 because they were coordinating amongst themselves and I  
22 think calling for medical attention.

23 There was, there was a moment in the radio  
24 traffic where it was silent where I came on and asked  
25 something like, hey, you know, I know you guys are busy

1 or if when you have a chance, where's the threat or  
2 where is the suspect, or something like that.

3 Then I heard someone say something like the  
4 suspect is down, the guy is down, or something that led  
5 me to believe that while the case -- the moments that  
6 were happening right then were intense; that they  
7 weren't describing any active or continuing threat in my  
8 mind.

9 I kept driving. Officer Lai came over the  
10 radio and started to give specific directions as to how  
11 he wanted the responding officers, the first responding  
12 officers to arrive there.

13 One of the things we concern ourselves with  
14 is which direction guns are pointing to avoid something  
15 called a cross-fire. So if you're pointing a gun, and  
16 you're pointing a gun at me, there's a potential that  
17 you could be pointing your guns inadvertently at each  
18 other.

19 He described a route to come in. And the  
20 streets that come to that would actually take us past  
21 them and around, sort of behind them, which made sense  
22 to me because I knew the streets up there.

23 And so he gave that direction. I sort of  
24 logged that into my little memory bank. Kept driving.  
25 Traffic was pretty heavy, but, you know, we got up

1 there. I don't know how long it took us but fairly  
2 quickly.

3 Q When you say "us," you mean?

4 A Myself and the officer behind me. And as far  
5 as I knew -- I knew there were other officers coming  
6 because I heard them on the radio say "I'm going. I'm  
7 going." People have a tendency to respond over the  
8 radio.

9 It is reassuring to the officers that are on  
10 the scene to hear that there are -- there's help coming.  
11 But for them, the wait can seem very long considering  
12 what they are dealing with.

13 As I approached up Capitol Highway from  
14 Barbur and starting to get close, I imagined that they  
15 could probably hear our sirens. So I came on the radio  
16 again, there was a moment, a lapse in radio traffic, and  
17 I told them that we were going to pass them. They were  
18 going to see us pass them because we were going to come  
19 in the way you told us to.

20 I didn't want them to feel discouraged that  
21 we were driving past them and maybe away from them  
22 because we were literally going to have to look up, and  
23 we could see where the activity was as we passed this  
24 street called Southwest Cheltenham on Capitol Highway.  
25 We got to Sunset, took a right, myself and the officer

1 behind me.

2 Q Would you mind stepping up to the board and  
3 showing us how you approached.

4 A Thank you. I didn't know this was here.

5 Q Please step back so we can all see.

6 A So let me just orient myself here. So this  
7 is Wilson High School's track. This is Barbur down here  
8 someplace.

9 So we came from this direction, which is from  
10 the east. At some point when I was down here by  
11 Terwilliger and Capitol Highway, I gave this, hey, we're  
12 going to pass you guys. I drove -- we drove this way.  
13 Took what is a right turn for us on Sunset, myself and  
14 the other officer. Took a right on Dewitt, which was a  
15 street I heard Officer Lai specifically mentioned that  
16 he wanted us to come from. Drove passed here.

17 Looked into the fire station because I  
18 started thinking about medical help for Officer Romero.  
19 And I was kind of glad that there was a fire station  
20 there. Made a right turn onto Cheltenham. Came down  
21 this road a little ways.

22 I think I parked probably, I don't know,  
23 right about where this big clump of trees is. So I came  
24 a quarter of the way down the street and I parked my car  
25 in the middle of the street. And the other officer

1 behind me parked his car sort of near mine. We sort of  
2 blocked the street. Then we approached on foot.

3 Q What did you observe as you approached on  
4 foot?

5 A The other thing I heard Officer Lai talk  
6 about on my way to the call was a tourniquet. Over the  
7 last couple of years officers had been trained in the  
8 use of and issued tourniquets around the Police Bureau  
9 in case somebody is injured and bleeding and might need  
10 to try to stop the bleeding while medical attention is  
11 coming.

12 So Officer Lai says something like we need a  
13 tourniquet up here. This is before I arrived. I  
14 remember trying to think where is my tourniquet. Is it  
15 in my bag? I know it is not in my pocket.

16 When we got there, I thought, well, the other  
17 officers will be around and I'll grab someone's  
18 tourniquet if I wind up doing the medical help. I got  
19 out of my car and there was a tourniquet laying on the  
20 ground, which was very strange to me. I picked it up,  
21 and I saw Officer Westberry walking towards me.

22 If I can get up again.

23 Q Sure.

24 A So they are walking back this direction, and  
25 I'm walking down the street, and I see him with Officer

1     Romero. I can see Officer Romero's hands by his side,  
2     and blood dripping from one of his hands. I don't  
3     really remember which one actually.

4             And I went up to Officer Westberry and tried  
5     to hand him the tourniquet. I said, "Here." I tried to  
6     actually put it in his hand. He said, "No, we don't  
7     need it." I said, "Okay." So I stuffed it my pocket.

8             I watched them, continued to walk in this  
9     direction and I lost track of what they were doing  
10    because it seemed like Officer Romero was getting the  
11    help he needed.

12            At some point I knew that medical was coming  
13    to help. And I turned my attention back towards where  
14    Officer Lai, Officer Mitchell, I think it was just those  
15    two at the time, were focusing their attention, sort of  
16    towards the sidewalk near two, as I recall, two parked  
17    vehicles.

18            Went down to where they were. Kind of  
19    checked in with them real quick. Could see over the  
20    hood on the sidewalk a man laying on the ground. I  
21    looked at him.

22            I could see that he was wearing a sort of a  
23    button-downed shirt. I could see blood soaking into the  
24    shirt in what I thought was two different places,  
25    somewhere in his chest.

1                   I looked at him. I've been a policeman for  
2 21 years. I see a lot of dead bodies. I've seen a lot  
3 of dead bodies. I've seen a lot of people shot, not  
4 dead, and I looked at him and I thought he's dead.

5                   Nevertheless, I consulted with the officers  
6 real quick and told them I was going back to my car to  
7 get -- I also noticed that there was a gun near his  
8 head -- yeah, a pistol. And so I told the officers I  
9 was going back to my car.

10                  Sergeants in the police bureau carry a shield  
11 in our car. It's folded up in my trunk in a case. It's  
12 a ballistics shield that's the same material as this  
13 vest that I wear, that we all wear. And it provides us  
14 with this similar sort of protection against gunfire  
15 that this vest that I wear every day provides.

16                  It requires me to fold it out -- it's in  
17 three sections. So I took it out of my car. Started to  
18 walk back towards where the officers were and knelt down  
19 behind the car that they were using as cover from where  
20 the man was lying on the sidewalk. Took the shield out.

21                  It requires a little assembly, putting  
22 together some, I don't know what you call them, little  
23 support sticks, basically like putting a tent together  
24 if you've ever camped. Click them together, jam it in  
25 the nylon holder, and it gives it some rigidity, and it

1 creates, you know, a four-foot tall shield.

2 I assigned an officer to hold that shield who  
3 had arrived on the scene as cover, Officer Cox. He held  
4 the shield. I divided up work between an officer who  
5 was providing cover with a rifle towards the man on the  
6 ground next to the gun. And Officer -- his name is  
7 Officer Joe Sharp and then Officer Lai and Officer  
8 Mitchell.

9 So between the four of them and myself, I  
10 assigned them duties. We made some quick adjustments.  
11 And basically we're going to approach with the shield  
12 the man on the ground, handcuff him, because we don't  
13 know exactly what his status is.

14 I know I said I believed him to be dead, but  
15 I don't know that. I want to get some medical attention  
16 to him and get somebody up here to determine what his  
17 medical condition is.

18 And the only way for us -- the way we trained  
19 safely to do that is to handcuff that person so that we  
20 can then forget about them as threat and now deal with  
21 them as a patient basically.

22 And so Officers Mitchell and Lai as we  
23 approach took control of his arms, put him in handcuffs.  
24 We lay him on his side. He was kind of on his back. We  
25 laid him on his left side, hands behind his back in what

1 we call the post-shooting position, which is basically  
2 like a person curled up on their side in bed or on the  
3 ground, anywhere.

4 That way if they are alive and they are  
5 vomiting, they are not going to choke on their vomit  
6 because they are turned sideways, and they are -- there  
7 are other concerns. Basically it's just a position that  
8 we've been trained that is an effective way to stabilize  
9 a person.

10 At that point I look up. He's handcuffed.  
11 The gun is there. I assign Officer Cox to stand here  
12 and monitor this, and no one interferes with him or the  
13 gun.

14 I can see down the street from the bottom --  
15 towards the bottom of that picture on Capitol Highway  
16 coming up now, not the direction that Officer Lai  
17 initially told us, because these officers probably  
18 didn't hear that direction, they are coming up from  
19 Capitol Highway walking towards us, which is essentially  
20 northbound.

21 I see a sergeant and several officers. And I  
22 told them to stay back. We just need medical to come up  
23 at this point because I'm also thinking that this is a  
24 crime scene, and we need the fewer people up here the  
25 better.

1           So most of the officers back off. I can see  
2 that officers are starting to put up tape. Two medics,  
3 I believe it was two medics were escorted up. I watched  
4 as they checked this man.

5           My understanding, I wasn't listening to them,  
6 but they determined that he was deceased. They stood up  
7 and left. Then we all basically, except for the officer  
8 that was assigned to guard the gun and the deceased, we  
9 all backed away and began securing this as crime scene.

10          Q       Okay. At some point Command Staff detectives  
11 began arriving; is that right?

12          A       Right. This happened just after 4:00, which  
13 is when afternoon roll call starts. So they all left  
14 roll call, they came up there. So in waves, there were  
15 more people arriving. One of those waves included our  
16 captain and our commander. Those are the two people in  
17 charge of my Precinct.

18                 I think before I saw them, I gathered with  
19 two -- three other sergeants, four of us gathered and  
20 sort of divvied up the work over the next 15 or 20  
21 minutes, who is in charge of the scene, who else is  
22 going to do what.

23                 We determined that Officer -- Sergeant  
24 Passadore was going to sort of be the overall guy in  
25 charge because his shift was just starting, and he could

1 be here all night if need be. The day shift sergeants  
2 that were there, myself and Sergeant Engstrom, we were  
3 going to take secondary roles and assist as needed with  
4 whatever duties came on. That's kind of how it  
5 proceeded.

6 Command Staff shows up on and on from there.  
7 I don't know. I was up there for the next couple of  
8 hours, it seems like.

9 MR. DAVIDSON: All right.

10 Does anybody have any questions for Sergeant  
11 Pashley? No.

12 A GRAND JUROR: A very good description.

13 THE WITNESS: Thank you.

14 MR. DAVIDSON: All right. Thank you very  
15 much, Sergeant Pashley. You are free to go. Thank you.

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MULTNOMAH COUNTY GRAND JURY  
DEATH INVESTIGATION

Deceased: Kelly Vernmark Swoboda )  
Date of Incident: March 12, 2014 )DA Case No. 2293341  
Location: SW Cheltenham Street/ )  
SW Capitol Highway )PPB Case No. 14-20245  
Portland, Oregon )

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled  
transcript of GRAND JURY proceedings was heard,  
commencing at the hour of 10:00 a.m., on Wednesday,  
April 2, 2014, at the Multnomah County Courthouse,  
Portland, Oregon.

**APPEARANCES**

Mr. Donald Rees  
Mr. Brian Davidson  
Deputy District Attorneys  
On Behalf of the State of Oregon.

\* \* \*

**KAREN M. EICHHORN, CSR, CRR**  
Certified Shorthand Reporter  
Portland, Oregon



1           A       A little over a year and a half.

2           Q       Okay. And what did you do prior to that?

3           A       I worked for, um, Guardian Property  
4 Management in their maintenance department.

5           Q       Okay. So how long have you been doing  
6 maintenance work in general?

7           A       Among other things, maintenance work for the  
8 last 12 years.

9           Q       Okay. Terrific. So if you were employed by  
10 Cascadia in your job being in maintenance for Cascadia  
11 locations, tell us a little bit about kind of what you  
12 do and kind of where you work.

13          A       Um, I work on mostly smaller buildings where  
14 the residents that live there, for the most part, have  
15 some sort of mental disability. A lot of it is severe.  
16 Some of it is minor. Some of them can't take care of  
17 themselves. Others can.

18                   And the particular building that I've been  
19 working at, I don't think they have mental issues. I  
20 think there's more of a physical ailment.

21          Q       Okay. And what specific building is that?

22          A       That's the Hopewell Apartments.

23          Q       And where is that located at?

24          A       It's on Cheltenham Street, right on the  
25 corner -- I don't know the name of the street -- but the

1 street that goes in front of the fire department.

2 Q Is the address of that location you think is  
3 1252 Southwest Cheltenham?

4 A That sounds correct.

5 Q Okay. And that's, I think as you mentioned,  
6 a property managed by Cascadia?

7 A Yes.

8 Q And I think you know we're going to talk  
9 about this shooting that occurred back on March 12th.  
10 Were you actually working at that property on  
11 that date?

12 A I was.

13 Q All right. And what were you there to do  
14 that day?

15 A I was fixing a light on the front walkway  
16 surrounded by a little concrete retainer cylinder. It  
17 had broken and collapsed, so I was just fixing the  
18 light.

19 Q Okay. And before events began to unfold, how  
20 long had you been at that property that day?

21 A I'm not sure because I showed up, then I went  
22 to the hardware store to buy some stuff and then I came  
23 back. I may have been there 45 minutes or so, maybe an  
24 hour.

25 Q Okay. We've got a map here on the wall to

1 show the immediate area.

2           Would you mind standing up -- maybe you can  
3 stand over here so everybody can see. Maybe kind of  
4 show us once you've oriented yourself on this map where  
5 the property is that you were working.

6           A       This is the fire department here.

7           MR. REES: So for your orientation, this is  
8 Cheltenham here.

9           THE WITNESS: Okay.

10 BY MR. DAVIDSON:

11          Q       You said you did not know the name of the  
12 street --

13          A       Of this street.

14          Q       -- the fire house is on, but that's Southwest  
15 Dewitt Street.

16          A       Okay.

17          Q       The library is located here on Sunset  
18 Boulevard. This is Capitol Highway.

19          A       Okay. All right. Now I recognize it now.

20                 This is the Hopewell Apartments. Where you  
21 see this dot here is pretty much where I was parked.  
22 This is the front walkway. You can't see it in this  
23 picture, but on either side of the sidewalk, there's a  
24 little concrete cylinder with the light. I was on that  
25 one.

1 Q Okay.

2 A Standing right there working right there.

3 Q So you were actually working in between  
4 Cheltenham itself and the apartment building, kind of on  
5 the curb area there; is that right?

6 A No. There's a walkway that comes out of the  
7 building and then the sidewalk and then the other side.  
8 I was on the building side of it, just at the edge where  
9 it meets the sidewalk, not on the other side.

10 Q So if you can point to us exactly where you  
11 were standing when things began to unfold.

12 A I wish I had a pen to get smaller, but I was  
13 right there.

14 Q Okay. So how far from the street, Cheltenham  
15 itself, do you think you were standing?

16 A Eight feet maybe.

17 Q Okay. Terrific. All right. Why -- it might  
18 be helpful if you just remain standing so you can  
19 narrate for us using the map.

20 When did you first notice something unusual  
21 occurring?

22 A When I heard a loud voice yell, "sir," is  
23 exactly what it was.

24 Q When you heard that loud voice, what did you  
25 do?

1           A       I looked up, and I didn't see anything, and  
2 then I heard it again, even louder. And I looked up,  
3 and I saw at that time what I couldn't tell was a  
4 fireman 'cause I know the fire department is there or a  
5 police officer. I couldn't tell.

6                   And then he was on the extreme corner there,  
7 hadn't even really rounded it yet, and that's when I  
8 noticed someone else. If I had to guess, they were  
9 maybe here, maybe here.

10                   And it was like a third time, he yelled,  
11 "sir", it seemed like this guy sped up his pace a little  
12 bit.

13           Q       Let's be clear. When you say "this guy sped  
14 up his pace," let's refer to the person as the police  
15 officer. You later learned there was a police officer  
16 involved; correct?

17           A       Yes.

18           Q       And then there was a suspect?

19           A       Yes.

20           Q       When you say "the person sped up," are you  
21 talking about the suspect?

22           A       The suspect, yeah.

23           Q       Okay. He's walking down Cheltenham towards  
24 Capitol Highway?

25           A       Correct.

1           Q       Where was the police officer again? Was he  
2 on Dewitt or Cheltenham at that point?

3           A       Just at the corner.

4           Q       Okay. So on Dewitt, rounding the corner onto  
5 Cheltenham?

6           A       Yes.

7           Q       Heard him say "sir" how many times?

8           A       No less than three. And then the fourth  
9 time, it was, "Excuse me, sir," and he was doing  
10 something. I don't know if he was doing -- he was doing  
11 something with his hands. It looked like he was putting  
12 something away.

13          Q       Again, so we can be clear for the record,  
14 when you say "he was doing something," who were you  
15 referring to?

16          A       The officer.

17          Q       The officer was doing something with his  
18 hands?

19          A       Yeah, I couldn't tell what he was doing. It  
20 looked like he was adjusting something or putting  
21 something away with one hand, or whether it was a radio  
22 or what, I couldn't tell.

23          Q       Okay.

24          A       And then the fourth time, I might have it off  
25 by one or so, but what I think was the fourth time, he

1 said, "Sir, I need to talk to you."

2 And the guy had increased his -- the guy, the  
3 suspect had increased his distance between himself and  
4 the officer a little bit more at that time.

5 Q Before you go on, let me ask you this  
6 question. You obviously were able to clearly hear the  
7 officer calling out to the suspect.

8 A Yes.

9 Q How would you describe the volume in tone  
10 that the officer was using in attempting to get the  
11 suspect's attention?

12 A Very loud, very polite, very respectful.

13 Q Okay. And in your opinion, would it have  
14 been easy for the suspect to have heard those verbal  
15 commands or verbal statements made by the officer?

16 Would it have been easy for the suspect to  
17 have heard those given where he was standing in relation  
18 to the officer?

19 A If he was not hearing-impaired, yes.

20 Q Okay. So the last thing you said is that --  
21 what was the statement the officer made?

22 A "Sir, I need to talk to you."

23 Q Okay. And what happened when the officer  
24 made that statement?

25 A Um, nothing. And that made me think the guy

1 may be deaf, and that's when I saw the officer start to  
2 jog down towards him.

3 Q Down towards Cheltenham -- down on  
4 Cheltenham?

5 A Yeah, down Cheltenham towards the suspect.

6 Q What was the approximate distance between the  
7 officer -- by this time you said originally you weren't  
8 sure if it was a police officer or a fireman.

9 Were you sure one way or the other by this  
10 point?

11 A I was shortly after the second time he said,  
12 "sir" and I was able to get a closer look at him.

13 Q So was he dressed in a police uniform?

14 A Darker. I couldn't tell you how it was made  
15 up or the exact colors. I remember it was darker.  
16 Everything looked impeccable. His demeanor looked, just  
17 looked very professional.

18 Q Okay. So at the time the last statement was  
19 made by the officer, what was the distance,  
20 approximately, if you could say between the officer and  
21 the suspect?

22 A Maybe 150 feet.

23 Q Okay.

24 A Maybe.

25 Q All right. You said the officer began to jog

1 down Cheltenham towards the suspect.

2 A Yes.

3 Q All right. What happened next?

4 A Um, well, thinking in my head that the guy  
5 must be deaf, and the officer was going to make contact  
6 with him, I turned back around, continued my work. At  
7 that point I was looking down at my work.

8 And a few seconds went by, maybe 20, 30 more  
9 went by and then I heard some loud yelling. I couldn't  
10 make out the words. That caused me to stand up and turn  
11 around and look in their direction.

12 Q Before we go on, you said you assumed that  
13 the suspect was deaf. The only reason you assumed that  
14 that is because he was not responding to the very loud  
15 hails of the officer?

16 A Correct.

17 Q There's no other reason to believe he was  
18 hearing-impaired?

19 A No.

20 Q Okay. All right. So you said you heard some  
21 additional voices, but could not make out what they  
22 were.

23 A Right.

24 Q You said you turned to look.

25 A Yeah. It was definitely yelling louder than

1 all of the rest, but they were farther away. I couldn't  
2 make out the words. I turned to look. And almost the  
3 same time I turned to look, I saw the officer with both  
4 hands together, his gun drawn stepping backwards, and I  
5 heard the shooting.

6 Now, because of where I saw with the  
7 buildings, I heard eight bangs, but I also knew at that  
8 time that some of that was echoes. I could hear it  
9 coming from one side of the street and then the other  
10 side of the street, so I wasn't sure how many shots were  
11 fired. I heard what I thought was eight bangs.

12 Q Okay. So you had not changed locations from  
13 where you previously indicated you were; correct?

14 A Correct.

15 Q When you turned and saw the officer, where on  
16 Cheltenham if you can point to us on the map, where did  
17 you see the officer?

18 A There's that -- I couldn't say exactly. It  
19 was, it was in this area.

20 Q About mid-block between Capitol and Dewitt?

21 A Yes.

22 Q Okay. And you said you saw the officer and  
23 you said he was in a shooting stance.

24 A Yes.

25 Q Could you see his gun in his hand?

1           A       I could.

2           Q       Okay. You indicated that he seemed to be  
3 retreating.

4           A       He was definitely retreating, stepping  
5 backwards, never flailing either side. Very, very  
6 poised, walking backwards, very steady.

7           Q       All right. And was he walking backwards  
8 before or after you first heard shots, if you can  
9 recall?

10          A       The time in which those two things happened,  
11 in my memory, it's simultaneous. It was -- I may not  
12 have seen the first shot, but I know, I know there was a  
13 couple bangs that were definitely coming from that area  
14 as he was walking backwards.

15          Q       Okay.

16          A       Because of the echoing and all. Yeah. I  
17 wasn't absolutely sure.

18          Q       Okay. Which direction was the officer  
19 pointing his firearm?

20          A       He was pointing it downhill.

21          Q       So towards Capitol?

22          A       Yes.

23          Q       All right. Now, could you see the other  
24 involved party at that point --

25          A       No.

1 Q -- the suspect?

2 A There was what I thought was a couple of cars  
3 parked there. I didn't see this picture. I only see  
4 one, but I could have sworn there was more than one.

5 Q Let me tell you, I assume this picture was  
6 not taken contemporaneously with the event. This is a  
7 Google overhead picture. So the cars almost certainly  
8 would have been different.

9 MR. REES: Brian, I can confirm that is not  
10 an aerial photo at the time. It is a Google photograph  
11 from some other time.

12 THE WITNESS: Okay.

13 BY MR. DAVIDSON:

14 Q So you're saying there was multiple cars  
15 parked on the curblin?

16 A Yes.

17 Q Okay. And was that obstructing your view of  
18 the other involved party?

19 A Yes, it was.

20 Q Okay. So can you say whether or not the  
21 officer fired first or whether or not the other party  
22 fired first?

23 A Impossible for me to know.

24 Q All right. So please continue. What else  
25 did you observe?

1           A           About the time the shots stopped, I wasn't  
2           sure if they were going to continue. The officer still  
3           had his weapon trained down in that direction. And it's  
4           like only a couple of seconds went by in my mind, and it  
5           was clear he was making sure that more shots weren't  
6           going to come his way.

7                        That's what I was thinking at the time, so  
8           maybe just two seconds went by, then he grabbed his  
9           radio and said, "shots fired." As he said that, he was  
10          going out towards the street to stand behind one of the  
11          vehicles that was there as if to be protected by it that  
12          many shots that may come towards him.

13                      A GRAND JUROR: Are you talking about the  
14          suspect or the cop?

15                      THE WITNESS: The officer was walking out  
16          into the street kind of behind the car as he was calling  
17          on his radio, "shots fired."

18                      A GRAND JUROR: He was no longer on that,  
19          that main street going north and south there. He was  
20          hiding behind the bushes or something there and came  
21          out?

22                      THE WITNESS: No. No, not at all. The  
23          officer was on the sidewalk when I saw him. He had his  
24          weapon pointing downhill, down the sidewalk like this.  
25          And as soon as there were no more shots, maybe two

1 seconds went by, he got on his radio.

2 He would have been walking to his left kind  
3 of diagonally 45 degrees, and there would have been a  
4 car at that point that would have blocked any line of  
5 sight between the suspect, where I thought the suspect  
6 would have been and the officer.

7 BY MR. DAVIDSON:

8 Q So the officer -- is what you're saying was  
9 originally on the curb on Cheltenham during the exchange  
10 of gunfire.

11 A On the sidewalk.

12 Q On the sidewalk, excuse me. After the  
13 gunfire ceased, he actually stepped into Cheltenham  
14 Street itself and took refuge behind an automobile that  
15 was parked on the curbline?

16 A Correct.

17 Q Okay. All right. So what did you observe  
18 next?

19 A Um, at that point I continued to watch. He  
20 proceeded farther downhill, which would be south to try  
21 to get a different view of -- I couldn't see what he was  
22 looking at, but we all know now. He was getting a  
23 different position and a different view. And he kept  
24 his weapon trained in that area.

25 And if he had called again on the radio, I

1 don't remember. I think that's about the time -- maybe  
2 less than 30 seconds after he said "shots fired," I  
3 heard sirens. But there may have been a time where I  
4 could no longer see him because he may have gone between  
5 the two cars to get closer to the suspect probably.

6 In my opinion, I thought he was trying to see  
7 if the guy was still going to shoot at him is what I was  
8 thinking. But since I couldn't see the guy, I was just  
9 guessing.

10 Q And just walk us through what happened next.  
11 Did you stay basically where you had  
12 originally been?

13 A I stayed right where I was. Um, it didn't  
14 even make me nervous for some reason, which it probably  
15 should have. I could have got hit by a ricochet, but I  
16 knew I was on the other side of the street. And I saw  
17 where the gun was aimed, so I didn't give it a thought.

18 Q You would not have been in the officer's line  
19 of fire, though; correct?

20 A Correct.

21 Q If there was somebody, which we learned later  
22 that was downhill from the officer firing up in the  
23 officer's direction, would that have put you in that  
24 line of fire potentially?

25 A From the ricochet.

1 Q Okay. So you said officers -- other officers  
2 showed up shortly thereafter.

3 A Shortly thereafter. There was so much  
4 commotion after that, I quit really focusing on it.

5 Q Okay. Did you ever get down into the crime  
6 scene and actually see the suspect?

7 A No.

8 Q After the shooting?

9 A No.

10 Q Okay. How much time, if you can recall,  
11 elapsed between when you first heard the officer attempt  
12 to hail the suspect verbally and when gunfire erupted?

13 A More than one minute, but less than two  
14 minutes.

15 Q So one to two minutes?

16 A Yes.

17 Q Okay. And were you eventually contacted by  
18 some other officers and detectives and gave them a  
19 statement about what you observed?

20 A I was. I offered up that I saw something.

21 Q And you gave a statement to a detective?

22 A Yes.

23 Q You can go ahead and retake your seat if you  
24 like.

25 A Okay.

1           Q       Mr. Colvin, do you have any observations  
2 about the officer's behavior or his -- how he handled  
3 this situation?

4           A       I do. Especially because I've been working  
5 almost exclusively with people with mental disabilities  
6 and even some hearing-impaired, I'm thinking what if it  
7 would not have been a bad guy, what if it would have  
8 been someone who was deaf or someone that had mental  
9 issues.

10                       Even to the point where he jogged down to him  
11 to get his attention, he did everything so correct, I  
12 was just so amazed at how professional he was. He made  
13 so many attempts to get the guy's attention. I mean,  
14 what if it would have been someone like that. I think  
15 the outcome would have been okay.

16           Q       You think the officer behaved appropriately,  
17 there was nothing about his behavior that caused you any  
18 concern?

19           A       No, not at all. If that would have been my  
20 family member who was deaf or had mental issues, I would  
21 have wanted that guy chasing him.

22           Q       Officer Romero?

23           A       Absolutely, yeah.

24                       MR. DAVIDSON: Those are most of the  
25 questions I have for Mr. Colvin.

1 Does anybody else have any questions?

2 A GRAND JUROR: Yeah, I do.

3 Could you tell the difference from the shots  
4 between the suspect and the policeman?

5 THE WITNESS: No.

6 A GRAND JUROR: So as far as you could tell  
7 from here, the policeman was the only one that was doing  
8 the shooting?

9 THE WITNESS: Well, if you are going to get  
10 that specific, I couldn't tell who was shooting. All I  
11 know is I saw a gun pointed down that way. I couldn't  
12 see any visual flash. I couldn't tell if it was the  
13 officer's gun. I could see the officer pointing his gun  
14 and I could hear shots. So to be more specific like you  
15 are, I couldn't tell who was shooting.

16 A GRAND JUROR: So you couldn't see the  
17 suspect from where you were and you couldn't tell who he  
18 was shooting at; is that correct?

19 THE WITNESS: Nope. Correct.

20 A GRAND JUROR: All the bangs sound the same.

21 THE WITNESS: They sounded the same. In  
22 fact, I could even hear the echoes from the buildings so  
23 I mean I could hear one like on this side of the street  
24 and I knew at that moment, I'm hearing some echoes.

25 I mean, I processed that that some of this is

1 echo. That's why when they asked me originally how many  
2 shots, I said I heard eight bangs, what I think were  
3 eight bangs.

4 BY MR. DAVIDSON:

5 Q Did you -- could you tell from where you were  
6 whether the officer had been injured or not?

7 A At first, no, no. I think his adrenaline was  
8 pumping. He was on his radio. But as soon as the other  
9 officers arrived and he kind of relaxed a little bit  
10 knowing someone else was there to, you know, help with  
11 the situation, that's when I could see actually, I saw  
12 him standing down there and I saw some blood on his  
13 hand.

14 MR. DAVIDSON: Okay.

15 A GRAND JUROR: I think you may have said  
16 this, so I'm sorry if you are repeating, but how far  
17 away distance-wise were you from the police officer  
18 during the time of -- when you heard the shots fired?

19 THE WITNESS: I could drive back there to  
20 pull the measuring tape and give you an exact answer.  
21 This is going to be a guess, and my guess it would be  
22 about 170 feet maybe, 160 feet.

23 A GRAND JUROR: So would you call that half a  
24 block or a --

25 THE WITNESS: Yeah, maybe, that sounds

1 reasonable. Yeah.

2 MR. DAVIDSON: Anybody else with questions  
3 for Mr. Colvin?

4 A GRAND JUROR: What time of day was this?

5 THE WITNESS: Oh, late afternoon, I think  
6 maybe between 3:00 and 4:00.

7 MR. DAVIDSON: All right. I think unless  
8 anybody else has any questions for Mr. Colvin, you are  
9 all finished.

10 A GRAND JUROR: Thank you for being here.  
11 You did a good job.

12

13

14

JOHN CANDA,

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

17

18

EXAMINATION

19 BY MR. REES:

20 Q When you are ready, if you could tell us your  
21 first and last name and spell your first and last name.

22 A John Canda, J-O-H-N, C-A-N-D-A.

23 Q All right. Thank you.

24 And if you want to take a moment, why don't  
25 you tell the Grand Jurors a little bit about yourself

1 and the work that you've done over the past, whatever it  
2 is, 20, 30 years, for the City of Portland.

3 A Absolutely. Most of my work has been in  
4 youth intervention, youth violence prevention. I have  
5 worked very closely with Portland Police Department and  
6 other law enforcement acronyms, and specifically Youth  
7 Gang Outreach.

8 I was the inaugural director of the Office of  
9 Youth Violence Prevention for Mayor Tom Potter, chair  
10 and co-chair for the Youth Gang Violence Task Force  
11 under Mayor Vera Katz and briefly under Bud Clark. So  
12 that's what I've been doing, youth advocacy for about  
13 the last 25 years.

14 Q All right. I suppose you never really retire  
15 from that sort of work.

16 A No.

17 Q But are you currently working full-time or  
18 have you sort of begun some retirement phase?

19 A No retirement in sight, unfortunately. So I  
20 still do youth advocacy on my own time. I started and  
21 founded and chair of a program called Connected, which  
22 is also a youth advocacy group after the 2011 death of a  
23 young man Shilo Hamilton, so we do youth outreach in  
24 Holladay Park on Friday.

25 For pay, I work as a labor market specialist

1 in job development, employment specialist for a company  
2 called Pacific Opportunities.

3 Q All right. Let me now direct your attention  
4 back to Wednesday, March 12th, 2014. And I understand  
5 you happened to be in Southwest Portland in this  
6 neighborhood where an officer-involved shooting took  
7 place.

8 A Yes.

9 Q And if you could, do you want to stand to the  
10 left of this photographic diagram. Why don't you show  
11 the Grand Jurors where you were that afternoon  
12 immediately before the shooting?

13 A Immediately before, we were in the area at a  
14 place called the Hopewell House, which is a hospice care  
15 organization for dying people. My father-in-law was a  
16 patient there. My son and I left the facility, and  
17 walked over to the Subway here on Capitol Highway. And  
18 just before the shooting we were walking back to the  
19 Hopewell House.

20 Q All right. And can you show us on the map  
21 your direction of travel?

22 A Yes. We were traveling east on Capitol  
23 Highway. We crossed north at the light, walked east  
24 down the block, and rounded the corner heading north on  
25 this street here.

1 Q And that's Cheltenham. Does that sound  
2 right?

3 A Cheltenham, yes.

4 Q So you turned from Capitol Highway north onto  
5 Cheltenham. As you are walking up, when did you first  
6 become aware that something unusual was happening?

7 A Um, we rounded the corner, and probably just  
8 at the end of this building here, which is, you know, a  
9 strip mall and different stores, I believe, a  
10 restaurant --

11 Q That would be a couple of car lengths up the  
12 street?

13 A Yes. So probably the third car length, we  
14 looked north, and saw a man walking toward us.

15 Q All right. Did you notice anything about the  
16 man that was unusual at that point?

17 A Not unusual. It was a sunny day, not  
18 necessarily warm, but no, not unusual. He had on a ball  
19 cap and a cap pulled down kind of over his eyes, and  
20 that's the first thing we saw.

21 Q Okay. And then what was the next thing that  
22 you noticed?

23 A The next thing we noticed was an officer  
24 appeared behind him. And now we're walking further up  
25 Cheltenham, and the officer was giving verbal commands

1 to the gentleman who was walking toward us.

2 Q When you say "verbal commands," what are you  
3 hearing?

4 A "Stop. Halt. Show me your hands."

5 Q Did the man in the coat with the cap on his  
6 head have any reaction to those commands?

7 A The first thing that I saw was there was a  
8 retaining wall in front of a building as we get a little  
9 bit further up was him stopped. And he sat on the wall  
10 facing the street. So I believe he would have been  
11 facing eastward. The officer then stopped, and said,  
12 "Show me your hands" once again.

13 Q The police officer said that?

14 A The police officer.

15 Q All right. Could you see this subject's or  
16 this man's hands at that point?

17 A At that point his hands were still kind of  
18 down at his side, so I didn't really pay attention. We  
19 just thought, you know, he wanted to speak with him  
20 about something.

21 Q All right. Could you see whether the man had  
22 any response when the police officer said, "Show me your  
23 hands"?

24 A He stood and turned toward the officer. At  
25 that point, you know, his back was to us. I could see

1 the officer, but I couldn't see, you know, the front  
2 side of the man.

3 Q And in terms of car lengths, if you're able  
4 to estimate, how far down the sidewalk are you from this  
5 man?

6 A Three, approximately three car lengths.

7 Q All right. Would it help at this point to  
8 use the photograph that we showed you that was taken  
9 shortly after at the crime scene?

10 A Yes.

11 Q So we'll put that on the screen. This  
12 photograph that was taken after the shooting. If you  
13 could first just to orient the Grand Jurors, what are we  
14 looking at in this picture?

15 A We are looking at a northbound picture on  
16 Cheltenham. You see a shadow of a car here, that small  
17 red car. We were standing two to three feet in front of  
18 that car and were facing east to cross the street.

19 Q All right. And so in this photograph, the  
20 hospice facility you mentioned is on this side of  
21 Cheltenham, which is the east side, the right-hand side  
22 of the photo.

23 A Correct.

24 Q And then you've mentioned to me earlier that  
25 this car here is your car.

1           A       That's correct.

2           Q       Is that right?

3           A       Yes.

4           Q       That's where you and your son had parked.

5           A       Yes.

6           Q       All right. So then continuing on, if you  
7 would, with what you saw from this location on the  
8 sidewalk after this man stands back up.

9           A       Okay. He stood up. As I mentioned,  
10 immediately turned toward the officer. After hearing  
11 the verbal commands, I saw the officer reach for his  
12 sidearm. Pull his sidearm and begin to fire.

13                    I think my testimony at first was four to  
14 five shots, I believe I heard. And as he was firing, I  
15 grabbed my son and we ducked below the red car and  
16 waited.

17           Q       Just now when you said your testimony was a  
18 certain number of shots, are you referring to your  
19 earlier statements to the police and to The Oregonian?

20           A       To the detectives, yes.

21           Q       Okay. To the detectives.

22                    Do you still think that's accurate as to how  
23 many shots you heard?

24           A       Yes.

25           Q       All right. And you can go ahead and sit back

1 down unless there's something else you want to show us  
2 in the picture.

3 A No.

4 Q After the shooting then, what did you see  
5 happening?

6 A The man was, of course, not in the picture,  
7 because he was lying on the ground.

8 Q Meaning you couldn't see him anymore?

9 A I couldn't see him. He dropped out of view  
10 because of the vehicles we were standing behind. You  
11 know, we looked and stood up and saw the officer  
12 standing there looking at the suspect. He walked either  
13 behind the car, behind my car and was speaking on his  
14 radio. I assumed he was calling for assistance.

15 And as we walked further east to cross the  
16 street, we looked over, in the middle of the street we  
17 were standing and saw the suspect lying half up on the  
18 curb and half in the street. And my son said, "Look,  
19 dad, there's -- he had a gun." And the gun was lying on  
20 the street, I believe, just kind of nudged up against  
21 the curb.

22 And sure enough, it was on the left side,  
23 looking west of his head. And I said, "Yeah, that's a  
24 gun there." And we stood for a moment but walked slowly  
25 across the street to the curb, and looked at the officer

1 who seemed to be functioning okay, on his radio.

2 Seconds after his transmission, we hear sirens coming  
3 from all directions. We stood there for another couple  
4 of seconds.

5 I was thinking he may, you know, had wanted  
6 to talk to us or something, and we walked back to the  
7 Hopewell House, back beyond the red tape down the  
8 walkway.

9 And sometime later, not too long after, my  
10 son came back up just to look and see what was  
11 happening, the officer -- an officer asked if he saw  
12 anything. He said, "Yes. My father and I saw this  
13 incident."

14 They said, "Call your dad, have him come back  
15 up." And that's when we made contact with the officers.

16 Q All right. You also spoke to the Oregonian  
17 newspaper before you talked to the police.

18 How did that happen?

19 A Max Bernstein, she's everywhere.

20 Q That's a reporter for the Oregonian?

21 A That's correct. And I've known her from the  
22 Task Force meetings, the Gang Task Force meetings, which  
23 he actually may have overheard the -- I wasn't there  
24 when my son spoke with her. He spoke with her first.

25 And I came down to find him and I saw her,

1 and I walked away. So she didn't actually see me, but  
2 she knows my name and kind of put two and two together  
3 and called me on my cell phone and said, "Hey, is that  
4 your son?" I said, "Yeah," and that's when we began to  
5 talk.

6 Q All right. But then did you go ahead and  
7 talk and in a record interview with a police detective  
8 after that as well?

9 A Correct.

10 Q During the shooting, and maybe you said this  
11 so I apologize if you already did, but were you and your  
12 son able to move into a position where you felt there  
13 was some cover from the shooting?

14 A We were, because I've been around,  
15 unfortunately these types of scenes before, my initial  
16 reaction was to, of course, drop down behind the engine  
17 of the little red car that was in front of the SUV.

18 My son, you know, was startled. And he was  
19 standing there. I had to kind of yank him down a little  
20 bit. But, yes, we were able to get some cover.

21 Q All right. And in case anyone is wondering,  
22 because we're not calling your son as a witness, he as I  
23 understand it from you since this has happened, he's  
24 returned back to college out of state and so he's not  
25 available is my understanding.

1           A       That's correct.

2                   MR. REES: All right. Thank you, Mr. Canda.

3                   Are there any questions from the Grand Jury?

4                   A GRAND JUROR: Yes.

5                   Were you in the line of fire?

6                   THE WITNESS: I felt that we were.

7                   A GRAND JUROR: But -- but the officer  
8 started shooting, did you see that he was shooting in  
9 your direction and you ducked behind the car?

10                  THE WITNESS: Correct.

11                  A GRAND JUROR: Okay. Now, could you at any  
12 time see the suspect, could you tell if he was shooting  
13 toward the officer?

14                  THE WITNESS: I could not see the front of  
15 the suspect and I only saw his back.

16                  A GRAND JUROR: So you could not personally  
17 testify whether or not you saw him shoot the officer?

18                  THE WITNESS: That's correct.

19                  A GRAND JUROR: Okay. I have a question.

20                  How do you feel that Officer Romero acted in  
21 this situation with the suspect?

22                  THE WITNESS: You know, I thought about that  
23 question many times after the incident. It happened so  
24 fast. And I feel that his reaction time was  
25 appropriate.

1                   I know something about law enforcement  
2 training. I was in the Air Force and was a military  
3 policeman, so I understand how long or how quickly these  
4 incidents can happen if you do not have a very quick  
5 response time.

6                   So I felt like, he shouted, he tried to get  
7 the individual's attention. And when he turned, again,  
8 because I couldn't see what he was doing, as we walked  
9 by and saw the weapon, it seemed to me that the officer  
10 responded appropriately.

11                  A GRAND JUROR: All right. Thank you.

12                  MR. REES: All right. There's no other  
13 questions then, this will conclude the testimony of Mr.  
14 Canda.

15                  Thank you, again.

16                  A GRAND JUROR: I would like to say, Mr.  
17 Canda, thank you for all you've done. I've watched you  
18 on the news and read about you in the paper, I've lived  
19 here all my life, and I appreciate you.

20                  THE WITNESS: Thank you, ma'am.

21                  A GRAND JUROR: It must have been a pretty  
22 frightening experience for you to be there.

23                  THE WITNESS: Absolutely.

24

25



1 left side so we can all see. And can you point out for  
2 the Grand Jurors the apartment complex where you live?

3 A Right here.

4 Q So you're indicating an apartment complex  
5 that is on the east side of Cheltenham?

6 A Yes.

7 Q North of Capitol Highway; is that right?

8 A Yes, it is.

9 Q All right. Thanks. Simon, you can go ahead  
10 and sit down.

11 Does that apartment complex have a name or  
12 just the address?

13 A Um, it does have a name, but I can't recall.

14 Q Okay. Do you know what the address is?

15 A 1332 Southwest Cheltenham.

16 Q Is it 13 or 15?

17 A Thirteen.

18 Q Thirteen, okay.

19 And do you live there with your mom and dad?

20 A My dad and his partner.

21 Q Okay. And when this shooting happened on  
22 March 12th, which was a Wednesday, this was after a  
23 regular day at school; right?

24 A Yes.

25 Q Do you remember about what time in the

1 afternoon it was?

2 A Like 4:00.

3 Q And do you remember what you were doing at  
4 the time?

5 A Um, I was playing on my computer.

6 Q Were you playing a video game?

7 A Yes, I was.

8 Q All right. And where you were on the  
9 computer, does that have a view out onto Cheltenham or  
10 not?

11 A Yes, it does, but I had my blinds closed.

12 Q All right. And did you hear anything unusual  
13 that afternoon?

14 A Um, yeah. I heard really loud bangs. At  
15 first I thought nothing of it, and I heard sirens, so I  
16 looked outside, because I thought that was pretty  
17 strange, and I saw the man laying there on the sidewalk  
18 across the street.

19 Q All right. And just to back up a little bit  
20 and then I'll come back to what you saw. But in terms  
21 of what you heard, you said you heard bangs.

22 Do you remember about how many of these  
23 sounds you heard?

24 A Six or seven is what I think.

25 Q And at the time, did you have any idea what

1 those sounds were?

2 A I thought they were fireworks because I live  
3 next to the high school, but after the sirens started  
4 going, I knew it was something different.

5 Q All right. And so then you looked out of  
6 your blinds through the window onto Cheltenham?

7 A Yeah.

8 Q And we can see from the map that your  
9 apartment complex is really directly across the street  
10 from the shooting scene.

11 Was your window, your vantage point directly  
12 across from the man that you saw on the ground, or is  
13 that in some sort of angle, do you know?

14 A It was probably like 45-degree angle to the  
15 left.

16 Q All right. And what exactly did you see when  
17 you looked out the window?

18 A I saw the man laying on the ground and he was  
19 bloody. And I, I saw the policeman out there, and they  
20 were looking at him on the ground with their, with their  
21 weapons.

22 The man was in between two vehicles, so I saw  
23 him in between the two vehicles, and the police were  
24 looking with their weapons pointed around the two  
25 vehicles. There were about two officers on either side

1 of the vehicles.

2 Q All right. From where you were looking at  
3 the time, could you see whether any of the police  
4 officers were injured?

5 A No.

6 Q Did you see anything else of note? Did you  
7 keep looking out the window?

8 A Yeah. I just watched the scene develop while  
9 they taped the area off and more police officers  
10 arrived.

11 Q One of the questions the detective asked you  
12 when you were interviewed on that same day was about  
13 whether the sounds that you heard seemed to be coming  
14 from the same source or from different points.

15 Do you remember that question?

16 A Yes.

17 Q And what's your answer to that question?

18 A They didn't sound in-sync. They sounded  
19 different, like they just weren't the same sound.

20 A GRAND JUROR: I'm having trouble hearing  
21 you. Can you speak up?

22 THE WITNESS: Yes. Sorry.

23 A GRAND JUROR: What was it that you just  
24 said?

25 THE WITNESS: They, they weren't in-sync, the

1 sounds, so I knew that it was a different sound.

2 MR. REES: Did you hear what he said?

3 A GRAND JUROR: Yes.

4 MR. REES: Did you hear my question?

5 A GRAND JUROR: Yes.

6 MR. REES: Okay. All right. Well, thank you  
7 very much, Simon.

8 Do any Grand Jurors have any questions?

9 A GRAND JUROR: I just have one question.

10 Did you hear any sort of yelling or anything  
11 before you heard the bangs?

12 THE WITNESS: No. I had my headphones on.

13 A GRAND JUROR: Okay. Thank you.

14 MR. REES: All right. Well, thank you.

15 Thanks for coming in.

16

17 TREVOR LEVITT,

18 a witness called on behalf of the State, having been

19 first duly sworn, was examined and testified as follows:

20

21 EXAMINATION

22 BY MR. DAVIDSON:

23 Q Please state and spell your full name for us,  
24 please.

25 A My name is Trevor Levitt. That is

1 T-R-E-V-O-R, L-E-V-I-T-T.

2 Q Okay. And, Trevor, how old are you?

3 A I am 34.

4 Q And where do you reside?

5 A I reside at 1235 Southwest Cheltenham Street,  
6 in Portland.

7 Q And how long have you lived there?

8 A Um, for four years, three or four years.

9 Q Is that a home that you own or renting?

10 A We used to rent; we just purchased it.

11 Q Okay. And what do you do for a living?

12 A I'm a software engineer.

13 Q And where do you work at?

14 A I work for a company called Truven Health  
15 Analytics. It's actually based out of Ann Arbor,  
16 Michigan. I work from home.

17 Q And who resides with you at your home?

18 A My wife.

19 Q Okay. And I think you know why we're here.  
20 We're here to discuss this officer-involved shooting  
21 incident from March 12th.

22 Our understanding is it occurred kind of  
23 mid-afternoon. You said you work at home.

24 A I do.

25 Q You were home working that day.

1           A       Yes.

2           Q       Okay. Why don't you just walk us through how  
3 you first noticed that something unusual was going on in  
4 your neighborhood.

5           A       My home office is in the back of the house,  
6 but I heard some shouting so I just went to go and  
7 investigate what it was.

8           Q       Okay. Before I actually have you continue,  
9 we discussed this map we got. Maybe you could stand up,  
10 stand over here to the left and maybe indicate for the  
11 Grand Jurors if you see your house on this map.

12          A       So this yellow house is mine. This -- you  
13 can see this back window, this is where my office is,  
14 where it is located, and this is where I was sitting.

15          Q       Okay. So please continue where you left off.  
16 What was going on?

17          A       So I heard some shouting, and I stepped --  
18 walked out to the front door and stood on the porch.

19          Q       Could you discern the nature of the shouting  
20 or what was being said?

21          A       I couldn't. It just -- it sounded like  
22 yelling. It didn't sound happy.

23          Q       Okay. All right. And was it one voice or  
24 more than one voice?

25          A       It was just one voice.

1 Q So you said you went out onto the porch.

2 A Yes.

3 Q What did you observe when you went out to the  
4 porch?

5 A So I went out to the porch, and that's when I  
6 saw the officer walking in front of my house, yelling at  
7 somebody. And I kind of peeked around further, and  
8 that's where, further down the road, he caught up to  
9 this, a person.

10 Q Let me slow you down just a little bit here.

11 So you said this person, you identified as a  
12 police officer.

13 A Yes.

14 Q How could you identify them as a police  
15 officer?

16 A He was wearing a police officer uniform.

17 Q Okay. And you said you saw him walking down  
18 Cheltenham; is that right?

19 A Yes. He was walking down Cheltenham.

20 Q Was he on Dewitt when you first saw him or  
21 was he --

22 A No. He was about at the corner, so he was  
23 pretty much already on Cheltenham when I saw him.

24 Q Okay. And you observed him walking on  
25 Cheltenham towards Capitol?

1           A       Yes.

2           Q       When you first observed him, was he still  
3 shouting or saying anything?

4           A       Not at that point. He shouted something  
5 again further down Cheltenham Street. And at that point  
6 his back was to me, so I couldn't hear it.

7           Q       All right. You said you observed some other  
8 individuals who seemed to be involved.

9           A       Yes. So further down the street is when I  
10 looked to see what maybe he was looking for. And I saw  
11 another person walking away, and that's who I assumed he  
12 was yelling at.

13          Q       And do you know approximately where that  
14 person was when you first observed him?

15          A       When I first observed that person, he was  
16 probably, um, towards Capitol Highway about directly  
17 across from this -- this is actually a Kung Fu gym. He  
18 was probably directly across from that.

19          Q       And how much distance was there between the  
20 officer and this other person when you first observed  
21 the other person?

22          A       I will probably say about 50 feet.

23          Q       Okay. And what happened next? Did the  
24 officer say anything else, and, if so, did this other  
25 person respond?

1           A       I couldn't hear. I never heard anything from  
2 the other person, but the officer yelled one more thing.  
3 His back was to me, I couldn't clearly hear it. And  
4 that's when the other person stopped.

5           Q       Okay. And what did the other person do when  
6 that person stopped?

7           A       That's when they -- the other person turned  
8 around and that's when I heard the shots.

9           Q       Okay. Now, when the other person turned  
10 around, did you get kind of a good look at that person?

11          A       Not really, no.

12          Q       And why is that?

13          A       Um, they were a little far away from me. And  
14 right here, um, further down from my house, down  
15 Cheltenham Street, right on the corner of the Kung Fu  
16 gym is a little -- it's an obstruction, so I could have  
17 kind of clearly seen the back of the officer, but this  
18 obscured my view of the other person.

19          Q       But you could tell that person was facing the  
20 officer?

21          A       Yes. I could see the person turn but then  
22 that's about it.

23          Q       Okay. And you said basically, how long after  
24 that person turned, did you hear the first gunshot?

25          A       Very quickly, a few seconds.

1 Q So a few seconds after you saw that person  
2 turn?

3 A Yes.

4 Q You think you heard the first gunshot?

5 A Yes.

6 Q Okay. Did you discern from whom that gunshot  
7 was coming?

8 A No, not entirely. I couldn't be positive.

9 Q Okay. And you obviously -- I think you said  
10 you were looking at the back of the officer.

11 A Yes.

12 Q So you could not see whether the officer had  
13 pulled a firearm at that point or anything?

14 A No.

15 Q Okay. So how many gunfire shots did you  
16 hear?

17 A Um, I heard, I believe two shots and then  
18 three shots.

19 Q Okay. So do you remember it being a distinct  
20 grouping?

21 A Yes.

22 Q So you heard two?

23 A And then three.

24 Q And could you discern whether or not those  
25 shots appeared to be coming from the same gun or source

1 or different guns or sources?

2 A It seemed to be different guns because I saw  
3 different puffs of smoke.

4 Q When you say you saw "different puffs of  
5 smoke," what do you mean?

6 A So the person was on the sidewalk, um, from  
7 the -- by my -- on Cheltenham Street, but the police  
8 officer was actually in the street a little bit. So I  
9 could see the smoke coming from here and then off to the  
10 side a little bit.

11 Q Okay. So where -- in proximity to that,  
12 which of the two individuals did you see, in your  
13 recollection, the first puff of smoke?

14 A Um, probably from the other person.

15 Q So you believe that the first puff of smoke  
16 you observed came -- was in the area of the other  
17 person, not the officer?

18 A Yes.

19 Q Okay. So did that lead you to believe that  
20 the other person potentially fired first?

21 A It would lead me to believe that, yeah.

22 Q Okay. So you heard two shots. And do you  
23 think both those two shots came from that other person?

24 A Yes.

25 Q And then is it your understanding then that

1 the following three shots came from the officer?

2 A Yes.

3 Q That's your belief?

4 A Yes.

5 Q Okay. What happened next?

6 A What happened next was, um, I watched the  
7 officer. I believe there was -- yeah, there was a car  
8 about -- somewhere around here, that the officer then  
9 kind of approached the other person really slowly. And  
10 then I saw him on his radio.

11 Q The officer?

12 A Yes.

13 Q Did you see what had happened to the other  
14 person? Did he move, or where was he after the shooting  
15 stopped?

16 A After the shooting stopped, that's when, like  
17 with my obstruction, that's when I couldn't see him at  
18 all. So my assumption was that he was down.

19 Q Okay. And then you said you saw the officer  
20 circling around or taking cover.

21 A Yes.

22 Q And just what else happened? What happened  
23 after that?

24 A After that point is when I saw the officer.  
25 That's when I saw him on the radio, and he kind of moved

1 back and forth. I think -- I guess I can't speculate on  
2 that. But that's about when the other police cars  
3 started to arrive.

4 Q Now, after the shots had been fired, did the  
5 officer who was involved, did he move back up towards  
6 your house, or did he stay generally in the same area  
7 he'd been in?

8 A Well, maybe a little towards my house but  
9 kind of generally in the area of around this Kung Fu  
10 gym.

11 Q Okay. And how long do you think it was  
12 before officers, other officers arrived?

13 A Minutes.

14 Q And do you have a sense of how long, how much  
15 time elapsed between when you heard the first shouting  
16 in your house and when shots were exchanged?

17 A Between a minute, two minutes, very quickly.

18 Q And were you close enough to the officer  
19 after the shots were exchanged to make any observation  
20 about whether he was injured or not?

21 A Not really, no.

22 Q You weren't close enough?

23 A No. I was not close enough to really see  
24 what the officer was -- the only time I noticed that is  
25 when they took the officer to the fire house on Dewitt.

1 Q And what did you observe at that point?

2 A I observed other officers like field-dressing  
3 his hand and then taking him over to the police  
4 station -- the fire house.

5 Q Okay. And you were subsequently interviewed  
6 by maybe an officer or maybe more than one officer; is  
7 that right?

8 A I was interviewed by a Portland police  
9 officer and then later a detective.

10 Q Okay. And you basically gave your account of  
11 what you observed?

12 A Yes.

13 MR. DAVIDSON: I think those are all of the  
14 questions that I have.

15 Do any of the Grand Jurors have any  
16 questions?

17 A GRAND JUROR: I did have one question.

18 I know that you couldn't exactly make out  
19 what he said, but based on what you heard and what you  
20 saw, do you think that Officer Romero acted  
21 appropriately in this situation?

22 THE WITNESS: Yes.

23 A GRAND JUROR: Okay.

24 A GRAND JUROR: I have a question.

25 You said there was an obstruction.

1 THE WITNESS: Yes.

2 A GRAND JUROR: I don't know if you said  
3 that, but how much of the person could you see behind  
4 the obstruction? Were you seeing a head, a shoulder,  
5 what? What were you seeing?

6 THE WITNESS: I could see about the head and  
7 the shoulder, yes. It's not a full obstruction. It's  
8 more like kind of lattice work, so you can't get a clear  
9 picture, but you can see the general outline of anything  
10 that's over there.

11 A GRAND JUROR: Okay. Just out of curiosity,  
12 did you ever see anybody from the police force attempt  
13 to save the suspect's life while he was shot?

14 THE WITNESS: Um, I can't say for sure.

15 A GRAND JUROR: So as far as you know, they  
16 just left him there to die; they took care of the  
17 officer?

18 THE WITNESS: I think the first part was to  
19 take care of the officer and quarantine off the scene,  
20 but after that, I did see other officers in the area of  
21 the person.

22 MR. DAVIDSON: Anybody else with questions?

23 All right. Trevor, I think you are all done.

24 A GRAND JUROR: Thank you for coming in.

25 THE WITNESS: Thank you.

1                                   MAI AOKI,  
2 a witness called on behalf of the State, having been  
3 first duly sworn, was examined and testified as follows:  
4

5                                   EXAMINATION

6 BY MR. REES:

7           Q       Please state your first and last name and  
8 spell your first and last name.

9           A       Sure. My name is Mai. It is M-A-I. My last  
10 name is A-O-K-I.

11          Q       And what is your address?

12          A       1332 Southwest Cheltenham Street, Apartment  
13 19, Portland, Oregon.

14          Q       Would you be able to show the Grand Jury  
15 using this photograph where your apartment complex is  
16 located?

17          A       Sure. It's right here.

18          Q       Okay. So could everyone see she's indicating  
19 this same apartment complex that's on Cheltenham off of  
20 Capitol Highway?

21                   All right. And were you in your apartment at  
22 the time of the shooting?

23          A       Yes.

24          Q       And do you have a view from the window  
25 directly onto Cheltenham?

1           A       Yes.

2           Q       And is your angle directly across from where  
3 the shooting took place or are you down on another end  
4 of the apartment complex?

5           A       No. It's directly across.

6           Q       All right. When did you first become aware  
7 that something unusual was happening outside of your  
8 apartment?

9           A       I think it was the moment I heard the  
10 gunshots. Well, first, I heard yelling, but I kind of  
11 ignored that. And then a few seconds later, I heard  
12 shooting. And I wasn't sure if it was a gunshot,  
13 because I've never heard gunshots before.

14          Q       When you heard the yelling, could you hear  
15 what words were being said?

16          A       No. I didn't hear any specific words. All I  
17 can tell was that the tone of it wasn't anything  
18 hysterical. It was more commanding, but I didn't hear  
19 any specific words.

20          Q       All right. And did you have a sense of the  
21 amount of time between the yelling that you heard and  
22 the gunshots that you heard?

23          A       I would say it was no more than a minute. It  
24 was definitely within seconds, like maybe 10, 15, 20, 30  
25 seconds.

1           Q       Now, you just testified that you had never  
2 heard gunshots before. When you heard these sounds, did  
3 you believe they were gunshots or did you think they  
4 might be something else?

5           A       I thought they could be like kids playing  
6 with bee-bee guns, but again, I'm not so sure that I  
7 know what those sound like either. But so my blinds are  
8 closed. So I peeked outside and I saw a man lying on  
9 the ground. And I was like, oh, this is serious, so I  
10 ran outside.

11          Q       Do you have a sense of how many of these  
12 sounds you heard?

13          A       Um, I would say between five to ten, and they  
14 were rapid, rapidly fired, so it was like not one and  
15 then ten seconds later another. It was boom, boom,  
16 boom, boom, boom kind of thing.

17          Q       Okay. And just so we're clear, when you  
18 heard the shouting and then you heard the sounds, your  
19 blinds were closed.

20          A       Yes.

21          Q       So you could not see what was happening on  
22 the street?

23          A       No.

24          Q       And when you did look outside then, this is  
25 from your window?

1           A       Yes.

2           Q       And you mentioned you saw a man down on the  
3 sidewalk.

4           A       Uh-huh.

5           Q       What else did you see?

6           A       Um, well, first of all, he -- so there's the  
7 sidewalk, and then he was kind of -- his head was on one  
8 end, kind of hung back on the edge of the sidewalk. And  
9 then he was lying -- so it was perpendicular.

10                   And then I saw an officer, and then I think  
11 he was yelling at him to not move or else he'd be shot.  
12 And then quite quickly, um, he got back up.

13                   And so there were quite a few officers. I  
14 think there was like two or three that came to the scene  
15 pretty much right after, and they were all saying the  
16 same thing to the man, to not move or else he'd be shot.

17                   And I saw that -- I didn't know who was the  
18 officer that was shot, but I did see two officers kind  
19 of walking away from the scene, and one was kind of  
20 comforting the other. Um, and then an ambulance came,  
21 and one of them disappeared.

22                   And at some point one of the officers came  
23 with a big black shield, and then they approached the  
24 guy. And there was like four, three or four right  
25 behind him. And then the next thing I knew, the guy was

1       faced down, handcuffed.

2                   A GRAND JUROR:  When you say "got up," who  
3       was the "they" that got up?  Was it the man that was  
4       shot, or was it the officer?

5                   THE WITNESS:  No.  The officers had, I  
6       guess -- I didn't see how they handcuffed him, but --  
7       because it was blocking my view, but they had come with  
8       a big black shield, approached the man, and then I guess  
9       rolled him over and handcuffed him.

10                  A GRAND JUROR:  What I'm referring to is you  
11       were talking before all this happened, you said  
12       something about a person got up.  I want to know who  
13       this person was that got up.

14                  Was it a man that was shot and he was able to  
15       raise up with the --

16                  THE WITNESS:  No, no.  The suspect was down  
17       this entire time.  He did not move.

18                  A GRAND JUROR:  So the officer was apparently  
19       kind of leaning over and stood up?

20                  THE WITNESS:  I don't know if I said anyone  
21       stood up, but -- I don't know if I said anyone stood up.

22                  A GRAND JUROR:  Okay.

23                  THE WITNESS:  It was just the man was down  
24       lying on the sidewalk and then an officer had approached  
25       him -- officers approached him and then he was

1 handcuffed.

2 A GRAND JUROR: At any point did you see a  
3 gun near the suspect?

4 THE WITNESS: No, I did not see a gun. All I  
5 saw was the officer holding -- the officer was pointing  
6 their gun towards the man.

7 A GRAND JUROR: Okay.

8 BY MR. REES:

9 Q And I don't think I asked you this, about  
10 your apartment, you're on the third story; is that  
11 right?

12 A Yes.

13 Q And so was that your vantage point throughout  
14 from the third story window?

15 A Yes. Um, when I went outside -- so after I  
16 had peeked through my blinds and saw that the man was --  
17 a man was down, um, I went outside, but I stayed on  
18 my -- there's a way -- there's, not like a balcony, but  
19 I didn't go downstairs to the first floor to continue  
20 observing what was happening. I just stayed on my third  
21 floor, so everything was from the view of the third  
22 floor.

23 MR. REES: All right. Thank you.

24 Are there any other questions from the Grand  
25 Jury?

1           A GRAND JUROR: The officer that you said was  
2 being comforted, did you see any injuries to him?

3           THE WITNESS: No. I don't -- I mean, I saw  
4 him -- I think he was kind of going like this  
5 (indicating), but I didn't particularly see anything  
6 like blood, you know, streaming down or anything.

7           A GRAND JUROR: Okay.

8 BY MR. REES:

9           Q       Just for the record, when you said he was  
10 going like this, you were indicating holding his arms up  
11 to his abdomen?

12          A       Yes, I think so. I think I was just more  
13 noticing the fact that one officer was comforting the  
14 other. And I think that this is what he was doing,  
15 but --

16          Q       Again, indicating --

17          A       That he was cradling his arm or, you know,  
18 his hand or whatever.

19                 MR. REES: All right.

20           A GRAND JUROR: I just have one last  
21 question.

22                 Before all of the other officers arrived and  
23 it was just the one officer, do you think that he acted  
24 appropriately when he was standing there and the man was  
25 on the ground?

1 THE WITNESS: Um, I think so. I mean, all  
2 I -- you know, I just heard the command just to stay  
3 down and not move. You know, he kept his distance. So  
4 I don't think he -- it didn't seem like he was doing  
5 anything that was out of the ordinary that you would  
6 expect from an officer.

7 A GRAND JUROR: Okay. Thank you.

8 MR. REES: All right. Thanks again for  
9 coming in.

10 THE WITNESS: Thank you.

11

12 MARY NUNN,  
13 a witness called on behalf of the State, having been  
14 first duly sworn, was examined and testified as follows:

15

16 EXAMINATION

17 BY MR. DAVIDSON:

18 Q If you could state your full name and spell  
19 it. And if during the entirety of your testimony, you  
20 could speak clearly and loudly for us so we can make  
21 sure we all hear.

22 A Okay. My name is Mary Nunn. Spelled  
23 N-U-N-N.

24 Q And your first name?

25 A Mary, M-A-R-Y.

1 Q Thank you.

2 If you wouldn't mind telling the Grand Jury  
3 how you are currently employed.

4 A I am a detective with the Clackamas County  
5 Sheriff's Office, currently assigned to the homicide and  
6 violent crimes unit.

7 Q And how many years of law enforcement  
8 experience do you have?

9 A Full-time, about 18 and a half.

10 Q And that entire time with Clackamas County?

11 A Two years with the Canby Police Department  
12 prior to Clackamas County.

13 Q And I would imagine you've gone to all of the  
14 typical required police academies?

15 A Yes, I have.

16 Q All right. Well, I'm going to be asking you  
17 about some information that you have about an individual  
18 we are here discussing whose last name is Swoboda.

19 Are you familiar with this individual?

20 A Yes, I am.

21 Q What's his first name?

22 A It's Kelly Vernmark Swoboda.

23 Q Okay. And you're obviously aware that on  
24 March 12th, Mr. Swoboda was engaged in a gun fight with  
25 a Portland Police Bureau officer and was killed; is that

1 correct?

2 A Correct yes.

3 Q Now, as I mentioned, it's my understanding  
4 that you yourself was investigating some other events  
5 involving Mr. Swoboda, particularly the kidnap of  
6 Allison Peabody; is that right?

7 A Yes, I was.

8 Q Why don't you start off by telling us about  
9 the actual events and the subsequent investigation of  
10 the kidnapping of Allison Peabody.

11 A Sure.

12 To summarize, on Monday, January 27th, at  
13 9:31 p.m., our dispatch center started getting 911 calls  
14 about a possible auto-pedestrian hit-and-run crash on  
15 Oatfield Road, which is in unincorporated Clackamas  
16 County.

17 Units responded. Multiple units responded  
18 from the Clackamas County Sheriff's Office and from the  
19 Gladstone Police Department because we're about a mile  
20 from their city limits. And they found Allison Peabody  
21 in the middle of the road, and there was no vehicle  
22 around.

23 Allison had major head injuries, was bleeding  
24 from the head and the face. And she was loaded into the  
25 ambulance, and she was finally able to say that she had

1 been kidnapped from her place of employment. And they  
2 saw duct tape on her ankles over her clothing.

3 Q Okay. But it was originally reported as some  
4 kind of vehicular incident?

5 A Yes.

6 Q Until they had gotten additional information  
7 from Ms. Peabody?

8 A Yes.

9 Q Okay. So what happened next?

10 A Patrol deputies went to her place of work,  
11 which was the Palm Beach Tanning Salon at 17046  
12 Southeast McLoughlin Boulevard. And again, that's in  
13 unincorporated Milwaukie. And they found that the  
14 business was unlocked and there was no one inside, and  
15 they found evidence of a crime scene.

16 Specifically in the office area behind the  
17 front counter, they found pooled blood on the floor, and  
18 they found blood drips from that office leading out the  
19 front door.

20 Q Now, I apologize if you already told us, but  
21 what time did this call come out at?

22 A It came out at 9:31 p.m.

23 Q Okay. All right. Are you involved in the  
24 investigation at this point?

25 A No. I was called at 10:10 p.m., and I

1 responded from home.

2 Q Okay. So what did you learn eventually about  
3 what had occurred to Ms. Peabody?

4 A What I had learned is that at the time an  
5 unknown male came into the tanning salon. And when  
6 Allison -- she saw him enter on the camera monitor, she  
7 was in that back office, and when she opened the door,  
8 the male was pointing a gun at her, and then he hit her  
9 twice in the back of the head, picked her up --

10 Q Do you know what she was struck with?

11 A Um, she isn't sure. She said it was some  
12 sort of black object. She couldn't say if it was the  
13 gun that he had originally had in his hand that she saw  
14 or not.

15 Q Okay.

16 A And she was basically dragged to a van that  
17 was parked out front of the salon next to her vehicle.  
18 And she was put in the van through the back sliding door  
19 behind the driver's door, where the male proceeded to  
20 duct tape her wrists together and her ankles together,  
21 and then he started driving away.

22 Q And this is information you obtained by  
23 interviewing her after the --

24 A Yes.

25 Q What did she say occurred next?

1           A       She said that she couldn't tell where he was  
2 driving, but he wouldn't tell her where she was going or  
3 what he was going to do. And she actually jumped out of  
4 the vehicle.

5           Q       And I'm assuming the vehicle was moving?

6           A       Yeah. When the vehicle was moving, she  
7 jumped out, and then that's when citizens drove up and  
8 saw this injured female in the middle of the road.

9           Q       Okay.

10          BY MR. REES:

11          Q       Did she tell you why she jumped out of the  
12 vehicle?

13          A       Actually what she specifically said was she  
14 had the plan of jumping out of the vehicle because she  
15 didn't know what he was going to do to her. And she  
16 knew where the handle was to jump out, but she  
17 couldn't -- she doesn't actually have a memory of  
18 physically jumping.

19          BY MR. DAVIDSON:

20          Q       Was she concerned that she might be subjected  
21 to violent sexual assault, murder, things of that  
22 nature?

23          A       She was just afraid.

24          Q       Okay. And the injuries she sustained, what  
25 were those injuries?

1           A        She had two skull fractures. She had a  
2       subdermal (sic) hematoma, which is a brain bleed. And  
3       she had numerous scrapes and abrasions, and she had a  
4       cut above and below her left eye, and her left eye was  
5       swollen shut when I saw her the night of the incident.

6           Q        And were you able to discern whether those  
7       injuries were caused by her assailant versus leaping  
8       from the van?

9           A        She believes the two gashes on the back of  
10      her head where she was hit was from the suspect hitting  
11      her, but the rest, we're not sure if they happened from  
12      the assailant or from jumping from the van.

13          Q        Okay. And were you able to collect any  
14      additional corroborating evidence to, I guess, inform  
15      her story?

16          A        Yes.

17          Q        And what was that?

18          A        So in the area where she had been found,  
19      Officer McFarland from the Gladstone Police Department,  
20      he located -- and he'd been by the area earlier in the  
21      night and knew this debris wasn't there, but he found a  
22      roll of duct tape that had blood on the inside of it.  
23      He found a V8 juice bottle.

24                    He found some porno magazines, and he found  
25      some -- a bag that had a couple store receipts in them.

1 And he found -- and also there was like the plastic wrap  
2 that matched items on one of the receipts in the bag.

3 Q And was there anything about any of those  
4 items that was -- would give you a clue as to who might  
5 have kidnapped Ms. Peabody?

6 A First of all, one of the receipts was from  
7 the Albertson's store, and it was for a V8 juice that  
8 matched the size of the empty container that we found.  
9 And that Albertson's store is at 224 and Oak, which is  
10 in the city limits of Milwaukie. So we went to the  
11 store the next day and we found video surveillance.

12 Q How were you able to decide when and where to  
13 look?

14 A There was a store stamp on the receipt. It  
15 has the store and it has the register and it has the  
16 date and time, so we can narrow it down.

17 Q So you went to the store and had them pull  
18 the surveillance video?

19 A My partner did.

20 Q How much earlier had that occurred in  
21 relation to the kidnapping?

22 A That was on the 21st, January 21st, so six  
23 days prior.

24 Q Okay. And what did you get from that?

25 A We found video surveillance that appeared to

1 be the same subject from the video surveillance we had  
2 from the tanning salon.

3 Q So there was some video surveillance that you  
4 have from the tanning salon that actually showed the  
5 kidnapper?

6 A Yes. Yes.

7 Q Okay. And it appeared to be the same person?

8 A Yes.

9 Q All right. So did Ms. Peabody give you a  
10 physical description of her kidnapper?

11 A She gave a little bit of a description that  
12 first night about him being an older male, tall -- no,  
13 at that time she didn't know if he had glasses, but he  
14 had gray hair. And she estimated him to be about 50 or  
15 60 years old.

16 Q Did you say white?

17 A Yes, white male.

18 Q Okay. So what is the next development in the  
19 investigation?

20 A There was also another receipt from a porn  
21 shop from the city of Eugene, and that receipt was dated  
22 January 16th, 2014.

23 On that receipt, it had -- there was a double  
24 pack of DVD's and then a single DVD or a self-made movie  
25 title. And then also there was a plastic wrapper

1 that -- and the cost was 5.95 for that self-made DVD.  
2 Then there was a wrapper with a price tag for a  
3 self-made DVD with a price of 5.95.

4 And then so from that wrapper, the next  
5 morning our CSI were able to find a latent print. And  
6 that was the first hit we got that it matched Kelly  
7 Swoboda.

8 Q So the print that came off the wrapper from  
9 the porn store, which was other material left at the  
10 intersection?

11 A Yes.

12 Q That was a print that was confirmed to belong  
13 to Kelly Swoboda?

14 A Yes. Yes. And at that time, um, one of my  
15 partners in the Homicide Violent Crimes Unit, he was  
16 actively searching for Kelly Swoboda for multiple bank  
17 robberies in our area. And so as soon as he heard that  
18 name, he recognized the video footage as Kelly Swoboda.

19 Q Okay. What was this partner's name?

20 A Jesse Ashby.

21 Q So Detective Ashby was very familiar with Mr.  
22 Swoboda already at that point?

23 A Yes.

24 Q So when you showed him the surveillance video  
25 of both the tanning salon and from the Albertson's, he

1 recognized both those people to be Kelly Swoboda?

2 A Yes.

3 Q Okay. All right. So what was the next step  
4 in the investigation?

5 A Um, and then we had the Oregon State Police  
6 Crime Lab was also working on DNA evidence. And they  
7 were able to pull DNA from that V8 juice bottle. And it  
8 also, at that time it came back to an unidentified male.

9 Q I'm sorry, an unidentified male?

10 A Yes, but at that time they also had DNA from  
11 one of Detective Ashby's robbery cases where they had  
12 pulled DNA off of beer bottles or beer cans, and it  
13 matched; that they already knew was a bank robbery that  
14 Swoboda had done. And it was the same unidentified male  
15 DNA on those beer cans.

16 Q Just so I'm clear now, so I can sum it up.  
17 It can be a little confusing.

18 So from a case that your detective associate  
19 already knew Kelly Swoboda was a suspect on, they had  
20 some DNA. And then you had this V8 juice bottle, which  
21 was found at the intersection.

22 A Yes.

23 Q And you got the DNA off of that.

24 A Yes.

25 Q And those two DNA's were matched together to

1 each other?

2 A Yes. At that time we didn't know who it  
3 belonged to. And then it was later ran by the Oregon  
4 State Police Crime Lab through the national system that  
5 takes longer, and it came back as a positive match, to  
6 Kelly Swoboda.

7 Q All right. So I understand this correctly,  
8 Kelly Swoboda's DNA was already on file with the  
9 national system?

10 A Yes.

11 Q And when they took the DNA that was obtained  
12 from the beer bottles and the robbery and the juice  
13 container in the kidnapping, the DNA off of those two  
14 items was a match to Kelly Swoboda's DNA on file in the  
15 national database?

16 A Yes.

17 Q Okay. All right. So what happened next in  
18 the investigation?

19 A Um, let's see, we had -- I did a lot of  
20 bulletins, a lot of teletypes to law enforcement  
21 agencies trying to track him down.

22 We were familiar with some of his habits,  
23 which included robbing banks and then going to casinos  
24 to gamble the money. Um, so I made a lot of contacts.  
25 We were working with the U.S. Marshal's office who were

1 actively looking for him.

2 Q Some of the -- do you have the fliers in your  
3 binder to show us?

4 A Yes.

5 Q Or I guess pictures or stills that were  
6 taken?

7 A Yes. There are photocopies, so they are not  
8 the -- and a lot of them were released to the media. We  
9 tried to generate as much media coverage as possible.

10 Q I would imagine that this kidnapping of  
11 Allison Peabody back on January 27th, was kind of a big  
12 deal in the law enforcement community and in Clackamas  
13 County.

14 A Yes. It was unusual for a stranger on  
15 stranger. It was very unusual.

16 Q Maybe you can just show us what are we  
17 looking at here.

18 A So this is one of the first bulletins that I  
19 created. And it has a picture of him at the Albertson's  
20 store from January 21. And then another one is a  
21 mugshot. He also has -- had a warrant out of Clackamas  
22 County for a DUII that he had received on November 6 of  
23 2013. And he failed to appear for that court date, so  
24 that's a mugshot from November 6th, 2013. And then  
25 information about how he was considered armed and

1 dangerous, and to call 911 if his location is known.

2 Q Okay. Great. Thank you.

3 All right. So you got fliers out. You have  
4 people looking for Mr. Swoboda. And what occurs next?

5 A Um, a lot of pressure to find him. And then  
6 the next thing I knew, on March 12th, I saw the news  
7 coverage of Portland police and an officer-involved  
8 shooting.

9 And then that evening, it was around in the  
10 6:00 p.m. hour, I started getting a lot -- a lot of  
11 phone calls and text messages from coworkers asking me  
12 if I knew if it was Swoboda that was involved in the  
13 incident. And so I called our DA's office investigator,  
14 and he was able to get ahold of a Sergeant Austria.

15 Q Sergeant Austria is with the Portland Police  
16 Bureau Homicide Division?

17 A Yes, and it was confirmed that the person,  
18 deceased, was Kelly Swoboda.

19 BY MR. REES:

20 Q May I ask?

21 From the kidnapping or from the other bank  
22 robberies associated with this person, did you have a  
23 description of the van he was driving?

24 A Yes. It was -- from the victim, it was a  
25 purple minivan. And we had a picture of it, but it was

1 in the dark from the Albertson's store.

2 And the first time that I heard the minivan  
3 was green was -- I missed the part on February 28th.  
4 Swoboda did another bank robbery in the city of Eugene.  
5 And that's when I first heard that the van was actually  
6 green.

7 Q Well, and that's what I'm asking.

8 Where was that information coming from that  
9 law enforcement received about the description of the  
10 car he was driving?

11 A From our victim, Allison Peabody.

12 Q Okay. But then in the Eugene bank robbery,  
13 you just mentioned there was other information about the  
14 color of the van.

15 A Yes.

16 Q Do you know, did that come from eyewitnesses  
17 at the bank robbery?

18 A Um, it was relayed to me from the detective  
19 from Eugene police and he sent me video. He sent me  
20 still shots from the video from the Home Depot store  
21 next to the bank that was robbed. And they were calling  
22 it green, and we still thought it was purple, but it was  
23 blurry.

24 Q Okay. Did you, to your knowledge, receive  
25 any information between the time of the kidnapping and

1 the most recent bank robbery about the vehicle or about  
2 the suspect? In other words, did law enforcement or  
3 private citizens call in to report that they had seen  
4 this person or the van?

5 A We had a lot of tips from the public, but  
6 none of them were solid.

7 Q I take it you did not know ultimately that he  
8 was in Southwest Portland?

9 A We did not know that.

10 BY MR. DAVIDSON:

11 Q So my understanding is that they were able to  
12 confirm by fingerprints that the person who engaged in  
13 the shoot-out with Officer Romero on the 12th was Kelly  
14 Swoboda?

15 A Yes.

16 Q And you also, I would imagine, learned that a  
17 van, a green van, kind of generally speaking, matching  
18 the description of the van utilized in the Peabody  
19 kidnapping was associated with Mr. Swoboda located near  
20 the scene?

21 A Yes. Yes. And that was very specific when I  
22 talked with Sergeant Austria. If he had a van, which  
23 they had a van there, that I needed that held so we can  
24 process it for our crime scene from the kidnapping.

25 Q Okay. And before I get on to that, I want to

1 ask you, at the time this occurred on the 12th of March,  
2 you had mentioned that Mr. Swoboda at the time of the  
3 kidnapping had an outstanding DUUI warrant; is that  
4 right?

5 A Yes.

6 Q Now, at the time this occurred on the 12th,  
7 was that the only warrant that he had outstanding for  
8 his arrest?

9 A No. He had a parole warrant from the U.S.  
10 Marshal's office, I believe. And then I believe there  
11 was a Grand Jury before the week he was indicted on  
12 additional bank robberies. So he had additional  
13 warrants.

14 Q So there was a new bank robbery?

15 A I knew they were coming.

16 Q There was a new bank robbery case that he'd  
17 been indicted on.

18 A Between November and December, I think.  
19 Detective Ashby advised me that they were looking for  
20 him.

21 Q So the police were interested in him in five  
22 bank robberies. There was one additional indictment  
23 that came -- that there was a warrant for his arrest for  
24 bank robbery. Do you know if that was a federal  
25 indictment?

1           A       Yes, I do know it was.

2           Q       So there was a federal warrant for his arrest  
3 for bank robbery?

4           A       Yes.

5           Q       So let's talk about the van, the green van  
6 that was taken from the scene of the March 12th  
7 shooting.

8                    You and other law enforcement individuals  
9 ended up taking the van to another location?

10          A       Yes.

11          Q       And conducting an analysis of it; is that  
12 correct?

13          A       That's correct.

14          Q       Where was it taken? Who was involved in the  
15 investigation?

16          A       We had it towed to the Clackamas County  
17 Sheriff's Office property room where it also houses our  
18 CSI. And that's located at 2206 South Kaen Road in  
19 Oregon City.

20          Q       And preliminarily, was there anything unusual  
21 about the license plates on this van?

22          A       Yes. It had two separate license plates on  
23 it. The front was a license plate that did not belong  
24 to the vehicle and actually came back, so there's no  
25 record on file. It's old.

1                   And then the back license plate actually  
2 belonged to this van, and that was confirmed with the  
3 VIN on the vehicle.

4           Q       And was the other corresponding license plate  
5 that should have been on the front, was that the license  
6 plate located in the van?

7           A       Yes, it was.

8           Q       Where was it located?

9           A       In the back area of the van.

10          Q       Okay. As you know, we've got some  
11 photographs here. They are not in any typical order.  
12 Let's kind of run through what we're looking at here and  
13 then we can talk about what was located.

14          A       Okay.

15          Q       What are we looking at in this image?

16          A       That is a side view of the driver's seat and  
17 there's blood smears.

18          Q       And how was it confirmed that they were, in  
19 fact, blood smears versus some other type of stain?

20          A       Um, forensic scientist Crystal Bell from the  
21 Oregon State Police Crime Lab. She did a preemptive  
22 test. I don't know the name of the solution they used,  
23 but she confirmed it was preemptive for blood.

24          Q       Is that presumptive?

25          A       Presumptive, thank you. I might stumble.

1 Q What are we looking at here on the second  
2 image?

3 A Okay. That is the -- that's the entry to the  
4 cargo area of the van from this sliding door behind the  
5 driver's side.

6 BY MR. REES:

7 Q I'm sorry, if I may, regarding the blood  
8 stain, did you believe potentially that that was blood  
9 from the kidnapping victim a month before?

10 A Yes.

11 Q You don't know that for certain?

12 A No. That's the final test I'm waiting for.  
13 And I checked before I came here and we still don't have  
14 the results.

15 Q Okay. But that certainly, as an  
16 investigator, that was a possibility you were looking  
17 at?

18 A Yes.

19 BY MR. DAVIDSON:

20 Q And again, the second image, what are we  
21 looking at here?

22 A That is the entry to the cargo area of the  
23 van on the sliding door on the driver's side.

24 Q And it appears there's some staining in this  
25 picture?

1 A Yes.

2 Q And was that tested?

3 A Yes.

4 Q And what was the result?

5 A Blood. I think everything they tested came  
6 back as blood.

7 Q Let's move, which is here, why don't you tell  
8 us what we're looking at here.

9 A Okay. That is the very back where, like, a  
10 third set of seats would go in a minivan. That is the  
11 rail that the seat would snap into. And that's on the  
12 passenger's side of the vehicle. That is a tire chain.  
13 That has been secured to the chair rail with a padlock  
14 and also has ropes tied to it.

15 Q Please continue.

16 A So it appeared to us that it was a way to  
17 secure people, because you'll see in later pictures, the  
18 cup holder right above that on the passenger side,  
19 there's an open padlock, like as if it were ready to  
20 secure somebody is the impression that I had.

21 Also, there on the key chain, I had the key  
22 chain to the van, and there were several small keys on  
23 that key chain, which matched both padlocks.

24 Q Now, when you had interviewed Ms. Peabody  
25 about her abduction, did she mention this chain setup in

1 the back of the van or being chained in this way?

2 A No, she did not.

3 Q And she was able to escape obviously, during  
4 the course of her abduction?

5 A Yes.

6 Q Okay. Anything else worth discussing in this  
7 photograph?

8 A No. And it appears he was living in this  
9 van. That's a pillow. It was set up as a bed with a  
10 pillow and a sleeping bag behind the driver's area.

11 Q So this also would have been the area he was  
12 sleeping in?

13 A Yes. Another view from the back, open hatch  
14 of the rear of the van looking in at the chain setup and  
15 the sleeping area.

16 Q Next image.

17 A Yup, same thing, just a closer view.

18 Q It looks like, if I'm seeing this correctly,  
19 it looks like he actually used the padlocks to secure  
20 the chains to each other within -- under this bar that's  
21 part of the securing mechanism for the -- what would be  
22 the bench seat if it had been there?

23 A Yes.

24 Q What are we looking at here?

25 A Those are porn movies that we found inside

1 the van, the back area of the van.

2 Q Looks like there were 11 different  
3 pornographic DVD's?

4 A Yes. There were a lot, yes.

5 Q Some of them at least seem to indicate an  
6 interest in teenaged girls; is that right?

7 A Yes. Yes.

8 Q For example, "Tight Teen Sluts" is the title  
9 of the black one on the left-hand side.

10 Let's go to the next one. What do we have  
11 there in this view? Are they garbage bags?

12 A Yes. It looks like garbage bags.

13 Okay. That's a box of white latex gloves.  
14 We found several used ones in the van as well, but in  
15 the video surveillance, we have Swoboda going into the  
16 tanning salon, and he's wearing white gloves.

17 Q White latex gloves?

18 A They appear to be, but I can't say 100 --  
19 they look to be white latex gloves, but I couldn't say  
20 100 percent.

21 Q What are we looking at in this image?

22 A Those are more porno magazines. The bottom  
23 one on the left-hand side is young girls.

24 Q There appears to be an interest again in  
25 teenaged girls, in particular, because of the titles,

1 "18," I guess and "Just 18" are some of the titles.

2 A Yes.

3 Q With young-appearing girls on the front  
4 cover?

5 A Yes.

6 Q What are we looking at in this image?

7 A This is one of the first photos that we took  
8 of the van before we started removing items.

9 Q And you had mentioned it appeared that he was  
10 living in this van.

11 A Yes.

12 Q Were your indications that he was living  
13 there?

14 A The sleeping bag is set up on the left-hand  
15 side behind the driver's seat. And then in those  
16 containers we found food items. A shower kit was in a  
17 backpack, in that backpack. There's a bicycle.

18 There was a receipt on the dashboard for a  
19 stay in an Oregon State park back on March 8th and  
20 9th down in Florence, Oregon. And the bicycle had a  
21 bunch of dirt and debris, like as if he used it in the  
22 woods or in someplace that he rode on dirt and debris.

23 Also that blue box that's underneath the  
24 driver's seat, it appeared to be the matching chain for  
25 that one chain that is secured to the back to the chair

1 rail.

2 Q And that box is a box that's marked for tire  
3 chains?

4 A Yes.

5 Q The next photo.

6 A Once we removed the chains, that was the rope  
7 that was also tied.

8 Q Next. What is this?

9 A Those are flex cuffs and it's opened.

10 Q Now, you refer to them as flex cuffs.

11 A Oh, those are -- I can't read.

12 A GRAND JUROR: Zip ties.

13 THE WITNESS: Thank you. Zip ties. In law  
14 enforcement, actually a larger version are used for flex  
15 cuffs.

16 BY MR. DAVIDSON:

17 Q When you say "flex cuffs," is that some kind  
18 of equivalent to handcuffs?

19 A Yes.

20 Q Okay. What's the difference between regular  
21 handcuffs and flex cuffs?

22 A You only carry so many sets of handcuffs on  
23 your person when you are on uniform patrol or in plain  
24 clothes. And when you have large arrest incidents that  
25 you respond to, they are extra handcuffs to use when you

1 need them.

2 Q They are made of plastic?

3 A Uh-huh.

4 Q Okay. So could these be used potentially to  
5 restrain someone at the wrists?

6 A Yes.

7 Q Basically they were open?

8 A Yes. You see on the bottom on the left-hand  
9 side, it's torn.

10 Q I think those are all of the photographs that  
11 we've got cued up.

12 I wanted to ask you about --

13 BY MR. REES:

14 Q You know, Brian, let me ask a question if I  
15 may.

16 In summary, we've just seen the photos of the  
17 items found in the back of Kelly Swoboda's van that you  
18 examined after the shooting.

19 A Yes.

20 Q As an investigator, looking at chains mounted  
21 to the floor, ropes, zip ties, teen pornography,  
22 padlock, what are you thinking when you see all this?

23 A I'm thinking exactly that one victim got  
24 away, and he wasn't going to let the next one get away.  
25 That is what it looks -- that was our impression. Our

1 discussions at my office is that he was coming up with a  
2 better way to restrain somebody in his vehicle.

3 Q And did it look to you that Kelly Swoboda had  
4 essentially converted this minivan into a movable  
5 dungeon or torture chamber where he could hold someone  
6 captive and carry them away?

7 A Yes.

8 Q Do you know, based on your training and  
9 experience, that serial criminals learn from their  
10 mistakes and modify their behavior and do what they need  
11 to do in order to accomplish their crimes?

12 A Yes.

13 Q So when you looked at those chains and  
14 everything, did you think that's what potentially  
15 happened with Kelly Swoboda?

16 A Yes.

17 Q All right. Have you ever seen anything like  
18 that van with the chains and the locks and the ropes in  
19 your career?

20 A No, I have not. I also have background.

21 Can we discuss background?

22 Q You had further background or additional  
23 information about Mr. Swoboda.

24 A Oh, yes.

25 Q And what was that?

1           A       Okay.  So back in -- part of my  
2       investigation, I was getting all of the background  
3       history while we were still looking for him to look for  
4       clues and to build a case for prosecution.

5                    In 1999, the Milwaukie Police Department had  
6       arrested Kelly Swoboda for another DUI.  When I got that  
7       report, it was originally called in as a suspicious  
8       person trying to get a 13-year-old girl in his vehicle.  
9       And the vehicle had switched plates on it.

10                   The patrol officer found the vehicle.  They  
11       found Swoboda.  They did a traffic stop on him.  And  
12       arrested him for DUII.  In that vehicle, um, they found  
13       a sawed-off shotgun.  They found latex gloves.  They  
14       found duct tape, and they found like a razor blade  
15       knife.

16       BY MR. DAVIDSON:

17           Q       And just to kind of finish off the inventory  
18       of the van and the most recent incident, in addition to  
19       the things you've already discussed, sexual lubricant  
20       was also found?

21           A       Yes.

22           Q       And I don't know that you already mentioned  
23       this, that duct tape was located.

24           A       No.  There was no duct tape located.

25           Q       No duct tape?

1 A No.

2 Q That a gun case matching the gun that was  
3 recovered next to Mr. Swoboda's body was found in his  
4 van?

5 A Yes. It was in between the two front seats.

6 Q The ammunition was located in the van?

7 A Yes. It was inside the gun case.

8 Q And do you remember what the caliber of the  
9 ammunition was?

10 A Forty-five.

11 Q Which, to my understanding, is the same  
12 caliber of the shell casings in the .45 caliber gun  
13 found next to Mr. Swoboda?

14 A That's what I understand.

15 Q And my understanding is that a saw was  
16 located in the van as well?

17 A Yes. There was an old beat-up saw.

18 Q Like an old-style wood saw or like --

19 A Yes. Yeah.

20 Q Okay. And has -- my understanding is that  
21 after the van was searched, some of the items were sent  
22 off for further forensic analysis.

23 A Yes.

24 Q And beyond what you've already told us about  
25 the results from earlier forensic work, has there been

1 any other forensic conclusions reached as far as other  
2 things from the van or any other part of the  
3 investigation?

4 A No. I'm waiting to see if the blood matches  
5 Allison Peabody, and I'm looking for any potential other  
6 victims.

7 Q Is there some concern that there may be other  
8 unidentified victims?

9 A Yes. Yes.

10 MR. DAVIDSON: Do any of the Grand Jurors  
11 have any additional questions for the detective?

12 A GRAND JUROR: How old was Ms. Peabody?

13 THE WITNESS: 23 years old.

14 A GRAND JUROR: Did she look young for her  
15 age?

16 THE WITNESS: Yes.

17 A GRAND JUROR: So he went in specifically to  
18 kidnap her?

19 THE WITNESS: That's my impression, yes. And  
20 the reason why I say that is there were items of value.  
21 And she even offered him money and her diamond bracelet  
22 and he didn't take any of them.

23 The cash register was undisturbed. The  
24 office where she was at, there was a bank bag sitting  
25 right there, it was undisturbed.

1                   A GRAND JUROR:   Okay.

2   BY MR. DAVIDSON:

3           Q       How long was Ms. Peabody in the hospital?

4           A       She was -- that was on a Monday.  The  
5   following Monday, she was in there a week.

6           Q       A week for her injuries?

7           A       Yes.

8           MR. DAVIDSON:  Any further questions for the  
9   detective?

10                  All right.  Detective, I think you are  
11   finished.  Thank you very much for coming.

12

13

14

DERRICK FOXWORTH,

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

17

18

EXAMINATION

19   BY MR. REES:

20           Q       Officer, could you please state your first  
21   and last name and spell your first and last name?

22           A       First name is Derrick, D-E-R-R-I-C-K.  Last  
23   name is F-O-X-W-O-R-T-H.

24           Q       Let me begin by going over your education,  
25   training and experience, starting with your educational

1 background.

2 A I have a Bachelor's degree in political  
3 science from the University of Portland. Also recently  
4 completed my Master's degree in public administration  
5 from Portland State with specialization in human  
6 resource management.

7 Q All right. Then what about in terms of your  
8 training, specifically law enforcement?

9 A Law enforcement, when I was first hired, I  
10 attended the basic police academy, like all officers do.  
11 At that time it was located in Monmouth, Oregon. And at  
12 that time it was about a 16-week program.

13 After I completed that, I attended the  
14 Portland Police Bureau's advanced academy, which was a  
15 14-week program I believe at the time. Those two  
16 academies cover a variety of topics, including defensive  
17 tactics firearms training, how to conduct a criminal  
18 investigation, how to conduct a traffic stop, really a  
19 wide range of topics directly related to law  
20 enforcement.

21 Q All right. Then what about in terms of your  
22 experience, we obviously can see, because you are in  
23 uniform you are a Portland police officer. The record  
24 can't reflect that, so I should have asked you. You're  
25 currently obviously employed as a Portland police

1 officer?

2 A Sure. Currently employed as a police officer  
3 for the City of Portland assigned to the training  
4 division now.

5 Q When did you first start working as a police  
6 officer?

7 A I was hired in 2003, September 11.

8 Q All right. And so in those 11 years as a  
9 police officer, what assignments have you had?

10 A I worked -- primarily my first was hired at  
11 North, Northeast Portland working night shift and  
12 afternoon shift as a district officer. From there, I  
13 went to work with the Gang Enforcement Team where I  
14 worked there for four and a half years as both an  
15 investigator and on the afternoon patrol side.

16 During that time I either was on scene or  
17 responded to over 100 gang-related shootings in and  
18 around the City of Portland. Recently went to the  
19 training division about two years ago where I now am one  
20 of the two leading instructors assigned to the Patrol  
21 Tactics Program.

22 Q All right. So this Grand Jury, of course, is  
23 reviewing for potential criminal conduct on the part of  
24 an officer-involved -- an officer-involved shooting in  
25 the last two years.

1           Have you been training police officers on the  
2 latest procedures and tactics as it would relate to use  
3 of deadly force?

4           A       Yes, I have. A couple other things I'd like  
5 to throw out, too.

6           Q       Sure.

7           A       As a lead instructor, I also attended an  
8 80-hour course in order to become a patrol tactics  
9 instructor course. I'm also a firearms instructor for  
10 the Portland Police Bureau. That was a 100-hour course.

11                   I'm also a AR-15 operator for the Portland  
12 Police Bureau, a less lethal operator for the Portland  
13 Police Bureau, and also a member of our Special  
14 Emergency Response Team, which is Portland SWAT team.

15           Q       And so now, in terms of the training that's  
16 being presented to officers currently, first let me ask  
17 you about the concept of action-reaction.

18                   Are you familiar with that term?

19           A       Yes, I am.

20           Q       What does that refer to?

21           A       It is a concept we usually introduce our  
22 brand new officers to the concept of action-reaction.  
23 And the thought behind it is that any pure action will  
24 always beat any reaction. There's a perceptual lag that  
25 takes place.

1           Generally, we explain, in terms of the OODA,  
2           which you may or not be familiar with. It is a concept  
3           that was developed by a United States Air Force Colonel.  
4           It stands for observe, orient, decide and act.

5           So in any particular instance, an officer  
6           will have to observe an event. They will be taking in  
7           raw data, raw information. What takes place next is  
8           they then have to filter that information against  
9           previous training, previous life experience and then  
10          decide upon, you know, a course of action. And then the  
11          final piece is they have to put that action into place.

12          To kind of give you an example, let's say I  
13          was going to take this pen and throw it at the  
14          foreperson today. So she would have to observe that  
15          action. So she would have to physically watch me take  
16          the pen out of this holster.

17          Start to process, okay, I'm seeing him take  
18          this pen out, he's raising it behind his head, and now  
19          the pen is starting to come towards me, so you have raw  
20          information. You're observing that action. You're  
21          filtering that information based on previous experience.

22          Okay. He's raising his hand, it looks like  
23          he's going to throw it at me. Then you have to make a  
24          decision: Am I going to move? Am I going to try to  
25          block this pen, or am I going to get hit in the face

1 with it? Whatever you decide, you have to put that into  
2 action.

3 I'm going to be able to make that decision,  
4 yup, I want to throw my pen at you faster than you are  
5 going to be able to process that information potentially  
6 to move out of the way.

7 Q All right. And in terms of a police officer  
8 on the street, what would be an example that you would  
9 teach officers how this works in an everyday situation?

10 A Certainly. Specifically talking about the  
11 deadly force encounters, because that's where it comes  
12 up most often, an officer has to take in all of the  
13 information that they are getting.

14 They have to decide is this individual an  
15 immediate threat of death or serious physical injury to  
16 myself or potentially somebody else based off of their  
17 actions. So that's where they are taking that raw  
18 information.

19 Then they have to decide, can I potentially  
20 implement deadly force? Meaning can I take out my  
21 weapon and shoot this person? What are the other  
22 considerations they might have? One of the things we  
23 talk about is what lies beyond the officer's target. So  
24 if that officer were to miss, what is that round going  
25 to strike?

1           So these are all these different pieces of  
2 information that the officer is having to take in,  
3 process, assess, and then decide upon a course of  
4 action. A lot of times it's in a matter of seconds at  
5 best.

6           Q       So with that backdrop, what are officers  
7 taught in terms of when they should prepare to defend  
8 themselves by taking that sidearm or their firearm from  
9 the holster and preparing themselves to be in a position  
10 to shoot?

11          A       There's going to be multiple instances when  
12 that may take place. Again, I mention that officers are  
13 always working behind this perceptual lag.

14                So things that may take into account is the  
15 individual being compliant. Where their hands are  
16 positioned. Are their hands in their pockets?

17                One of the thing we often talk about with our  
18 officers is that a majority of weapons that individuals  
19 carry are oftentimes in what we call the 60th  
20 percentile, so that's going to be the waistband area,  
21 the pocket area.

22                That's a huge concern for us, especially if  
23 we can't clearly see the hands because an individual can  
24 remove a weapon out from those areas very, very quickly.

25                And then again, an officer has to see that,

1 recognize it, and then decide upon a course of action.  
2 So that's an example of an instance where an officer may  
3 draw their firearm.

4           If it's a high-risk type incident, for  
5 example, maybe a high-risk vehicle stop, maybe the  
6 officer is responding to a gang-related shooting, maybe  
7 it's a burglary in progress, there's really kind of an  
8 infinite number of possibilities, but it's got to be a  
9 threat assessment based upon what that officer is seeing  
10 at that moment in time.

11           Q       Let me give you a more specific example then  
12 and you tell me what the training would be.

13                    If an officer believed that a subject was  
14 noncompliant and armed with a handgun and potentially  
15 was going to use the handgun, would you teach that the  
16 officer should wait until they saw the suspect actually  
17 pulling the handgun out of a place of concealment or  
18 should they act before that?

19           A       If the officer has -- was under the belief  
20 that this person is armed, we would definitely advise  
21 that officer -- we train officers to go ahead and draw  
22 your firearm. Start giving that individual some  
23 commands. Show me your hands.

24                    Because if they are thinking that this  
25 individual is going to pull this gun out and potentially

1 engage that officer, if we were to leave our firearm  
2 holstered, we're even now behind this larger perceptual  
3 lag, the time that we're going to have to unholster,  
4 retrieve, come up.

5 We're definitely behind the curve on that, so  
6 we would definitely be -- and we do train our officers  
7 to have their firearm out, be giving that individual  
8 some commands, and assessing that situation to see if  
9 they are going to be compliant or not.

10 Q Of course, on television or in the movies, we  
11 see the police pull their weapons and fire even after  
12 they've been shot at. They are always quicker than the  
13 suspect, bad guy.

14 But is that, is that how it is?

15 A No, it is unfortunately, not a reality. Most  
16 officer's holster we use, which is a three-point  
17 retention holster, to unholster and get one to two  
18 rounds to a target takes about 1.5 seconds for most  
19 officers give or take.

20 So that's just getting it out of the holster.  
21 It's not really factoring in the piece of actually  
22 consciously making the decision to fire your weapon. So  
23 again, there's built-in time lags that we're constantly  
24 working against.

25 Q You say one and a half seconds to unholster

1 their weapon and to raise it in a firing position?

2 A Correct.

3 Q What can happen in that time? What can a  
4 suspect do in that time frame?

5 A In that time frame, the suspect if they've  
6 made the conscience decision I'm going to shoot this  
7 officer, they would be able to shoot that officer.

8 Q Let me ask you about what you taught in terms  
9 of when to shoot and where to shoot?

10 A With regard to when to shoot, the main thing  
11 that we're going to be looking at is the officer or a  
12 third-party in danger of immediate threat of death or  
13 serious physical injury.

14 So that could be an individual running at the  
15 officers with a baseball bat or a hammer, an axe, or  
16 some of those other things that we typically think as  
17 tools in their common day usage, or a knife or a  
18 firearm. So there has to be that threat of immediate  
19 safety to the officer or another individual to use  
20 deadly force.

21 Q And what about where are they shooting? And  
22 again, just using, because people are familiar with  
23 depictions of shootings on television and movies,  
24 fictionalized accounts where frequently people were shot  
25 in the foot or the hand or something, or maybe there's a

1 warning shot in the air, but what are officers actually  
2 taught?

3 A Sure. So we are trained to center mass,  
4 which is basically from the waist up. The reason being  
5 that is the largest portion of the body. And again,  
6 when you are talking about discharging a firearm in a  
7 city environment, we want to increase the likelihood  
8 that officers are going to hit what they are shooting.

9 Smaller targets, like you mentioned, the  
10 hands, the feet, the hands is a very small target and it  
11 can move very, very quickly. One of the things we  
12 taught our officers is you're all responsible for each  
13 and every round that you fire. So we're concerned about  
14 what happens if I miss.

15 So again, in order to increase our likelihood  
16 of getting -- putting the round exactly where we want  
17 it, we want to aim at the largest target.

18 The second piece of that is incapacitation,  
19 which is what we're looking for to mitigate that deadly  
20 force threat. A shot to the hand may not necessarily  
21 incapacitate or mitigate that deadly force threat.  
22 There's not a lot of things to the hand that would stop  
23 an assailant. So we are looking for incapacitation.  
24 Again, that's going to be generally center mass.

25 Q Are officers taught to fire a particular

1 number of times in this situation?

2 A No. Each situation will have, you know, some  
3 unique circumstances. And it depends on where that  
4 round actually impacts as far as what type of  
5 incapacitation you might see.

6 Q So what are officers trained in terms of how  
7 many times to fire?

8 A They are going to basically make an  
9 assessment after they fire, you know, maybe one to two  
10 rounds, but there isn't a prescribed number. We say,  
11 you know, fire until that threat has stopped.

12 So if you have fired three, four, five  
13 rounds, and the suspect has gone down and the deadly  
14 force threat is done, then that would be, you know, the  
15 prescribed number of rounds that you would need in that  
16 fire in that situation. There isn't a set number.

17 I've been to many, many gang shootings. I've  
18 seen people shot multiple times in different body parts,  
19 and they are still talking to me. They are still awake  
20 and conscious.

21 So we don't want to give our officers a set  
22 number, especially if an individual is wearing body  
23 armor. That's something we talk about as well. So  
24 there's not a set number that we give our officers. We  
25 want them making a decision and assessment on a

1 case-by-case basis.

2 Q Until the threat is over?

3 A Correct.

4 Q You mentioned that you've seen persons who  
5 have been shot multiple times. And I assume your  
6 reference was not by police officers but by --

7 A Correct, by gang members.

8 Q Gang member upon gang member?

9 A Correct.

10 Q Who were still talking and moving?

11 A Correct.

12 Q Do you also know from your training of  
13 situations where people have been involved in shootings  
14 who have been able to not only talk, but to continue to  
15 fire weapons, drive a car, fight with the police?

16 A Yes. Absolutely. We probably -- a case in  
17 point would be last year, an Oregon State Police  
18 trooper, there was a shooting on I-84, where a trooper  
19 got a fatal round on an individual.

20 And in the time that individual had actually  
21 taken that round, was able to pick up a magazine off the  
22 ground, put it to the weapon, charge that weapon and try  
23 and shoot the officer again, walk back to their car and  
24 then take off, and drive another mile down the road  
25 before they finally succumbed to those wounds.

1           I also attend a tactical combat casualty  
2 class, which talks about wound ballistics. A lot of it  
3 comes down to where that round actually impacts. Muscle  
4 mass, shots to the stomach where you are not hitting  
5 vital organs, it's painful, but you are not going to  
6 necessarily see that immediate incapacitation.

7           Obviously, shots to the head, you may see  
8 more immediate incapacitation or more vital organs. So  
9 a lot of times the different shootings that we have in  
10 the city that are gang-related, you see those extremity  
11 injuries, and you see the person able to either flee,  
12 get in a car, walk into the hospital or something of  
13 that nature, so.

14           Q       All right. And then that ties into the third  
15 area I wanted to ask you about, which is officer  
16 training in the aftermath of a shooting in terms of what  
17 should be done with the person who's been shot. So if  
18 you can answer that.

19                    What are officers taught that they should do  
20 after the shooting?

21           A       Okay. There are several things. So we talk  
22 about it basically in terms of post-shooting.

23                    So one of the first things we want the  
24 officer to do if they haven't done so already is to seek  
25 the position of cover so that they can put some type of

1 barrier between them and potentially the person they've  
2 just been involved in deadly force encounter.

3 We want them to do a self-check to see if  
4 they are injured, start making that assessment. And  
5 these are all of the things that are happening very,  
6 very quickly.

7 We want them to assess their weapons, to see  
8 if this situation comes up again, and they are faced and  
9 they potentially have to shoot again, we want them to be  
10 ready to do so.

11 And then at that point we want them to start  
12 giving the downed individual some commands. Move away  
13 from the gun. Drop the gun. That does a couple things  
14 for us. Then we start assessing their level of  
15 compliance. Is this person incapacitated? Is this  
16 person dead? Is this person -- did I miss them and they  
17 are just simply, you know, potentially playing possum?

18 And then very shortly after, there's getting  
19 on the radio and giving some pretty quick broadcasts.  
20 Shots fired. Subject down. Maybe it's an officer  
21 that's been hit. Officer down. Code three cover.  
22 Start medical.

23 A lot of times we will stage medical a block  
24 or two off. If we're unsure what the status is of that  
25 individual, we don't want to bring paramedics and

1 firefighters into this if this individual is going to  
2 reengage in potential shooting or taking some type of  
3 action with deadly force.

4 We do want to get this person medical  
5 treatment as quickly as possible and safe to do so. So  
6 there's going to be an assessment piece that we have to  
7 make. Again, we have to go back to why an officer has  
8 just used deadly force, because either their life was in  
9 danger or the life of somebody else was in danger.

10 So we want this to be a very, um, conscious  
11 decision, so it's quickly and safely as we can. We do  
12 have some tools that we have on the disposal.

13 We have shields, which is a ballistic shield.  
14 It's the same ballistic protection as our body armor.  
15 It's just a little bit longer, so that's a tool that an  
16 officer might have.

17 If they are going to wait for additional  
18 officers to arrive on scene, and then if they are  
19 seeing, hey, this person is clearly incapacitated, they  
20 are no longer a threat to us or the public, and it's  
21 safe for us to approach, they'll go ahead and approach.

22 Things that factor into that decision are  
23 going to be, where is the weapon? Is the knife right  
24 next to them? Is the gun right next to them? Can I not  
25 see the gun? Are they trying to lure me in closer so

1 they can reengage us in deadly force? These are all  
2 decisions that happen very, very quickly.

3           If an officer determines, okay, the gun is  
4 far enough away or it's clear that this person is  
5 incapacitated, either they are in the process of --  
6 they've got a femoral artery bleed or they are trying to  
7 bleed out, or there's a head shot that's been taken,  
8 it's clear that this person is incapacitated, we want to  
9 move that process up, but it has to be safe for the  
10 officers to move forward.

11           If the officer on scene determines it is not  
12 safe to move forward based on those things, it will  
13 probably end up being a SERT Team call-out. We have  
14 some additional tools and resources that we can bring to  
15 safely approach that individual.

16           Q       All right.

17           MR. REES: Any questions from the Grand Jury?

18           A GRAND JUROR: Some years back I was  
19 involved in an armed robbery. And the minute that man  
20 took out his pistol and aimed it at me, I was gone. I  
21 didn't stick around to see if he was going to pull the  
22 trigger or not.

23           Why can't police officers do that?

24           THE WITNESS: Because if we leave, there's no  
25 one else to stop that individual.

1           A GRAND JUROR: But he left. Why wouldn't  
2 the guy that you were pursuing leave as well? You don't  
3 know that.

4           THE WITNESS: Are you talking about in your  
5 particular instance?

6           A GRAND JUROR: Yes. Yes. He left just as  
7 soon as I ducked out of sight.

8           THE WITNESS: Well, the expectation that the  
9 public has of us that, you know, someone has called us  
10 to this particular scene, so we can't necessarily -- in  
11 some instances, we may do a tactical retreat. But for  
12 most, in your situation there, if you had called a  
13 police officer because someone just pulled a gun on you,  
14 it's a situation that we need to definitely deal with.

15           A GRAND JUROR: Okay. Now, the next question  
16 I have, if you saw somebody approaching you with a gun,  
17 wouldn't you act in a defensive manner and protect  
18 yourself?

19           THE WITNESS: I as an officer?

20           A GRAND JUROR: As anybody. If I saw  
21 somebody coming towards me with a gun and I had a gun, I  
22 would take it out and protect myself with it.

23           THE WITNESS: Sir, are you talking about --

24           A GRAND JUROR: I have a question.

25           So my question is, what is a round? Is that

1 a single bullet, or is it multiple bullets?

2 THE WITNESS: Yes, ma'am. One round is a  
3 single bullet.

4 A GRAND JUROR: Okay. To the untrained ear,  
5 I'm assuming that different guns when they are shot,  
6 when they are fired make a different sound, or is that  
7 not true?

8 THE WITNESS: Yes. Um, you know, even I who  
9 have been around firearms for a number of years and  
10 shoot a variety of different weapons, to the untrained  
11 ear, it sounds like a loud pop or a firework a lot of  
12 times. So distinguishing between different calibers  
13 based off of sound is difficult.

14 A GRAND JUROR: Okay. So we had a witness  
15 earlier that stated that they heard like inconsistent  
16 bangs.

17 Would that be something that you would  
18 believe to be more than one weapon, or is that something  
19 that anybody -- could it be just one? Does that make  
20 sense?

21 THE WITNESS: Do you mean like --

22 A GRAND JUROR: The witness says that the  
23 bangs weren't in-sync.

24 THE WITNESS: Like, boom, boom, boom.

25 A GRAND JUROR: Right. So it was more --

1 because they said there was like two shots and then  
2 three.

3 THE WITNESS: You know, it's hard to say  
4 without actually hearing it, you know. It could be  
5 multiple weapons. It could be a break in the fire.

6 There could have been two rounds initially,  
7 and maybe an individual is assessing what those rounds  
8 or fire did and determining, hey, this is not enough  
9 because the threat is still there. And then they go  
10 into a second or third string of fire.

11 A GRAND JUROR: Okay. That's all.

12 MR. REES: Anything else? All right.

13 Thank you, Officer.

14 A GRAND JUROR: Thank you for your time.

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1           A       Since the end of 2007.

2           Q       And how long have you been a detective?

3           A       Since 2003.

4           Q       And do you have any college degrees?

5           A       No.

6           Q       Now, what are the general responsibilities of  
7 a homicide detective?

8           A       Obviously, we investigate homicides,  
9 kidnappings, officer-involved uses of force. In this  
10 case, you know, we have an officer-involved shooting,  
11 which someone who is dead, so it's a homicide. Things  
12 like that very serious assaults that could result in  
13 death, things like that.

14          Q       Okay. And how many homicide investigations  
15 do you think you've been involved in?

16          A       Over 100.

17          Q       And how many investigations into officer uses  
18 of deadly force have you been involved in?

19          A       Pretty much every one since 2005.

20          Q       And do you have an approximate idea of how  
21 many that was?

22          A       Oh, I can't. 30, maybe 40. I don't know the  
23 exact number.

24          Q       All right. It's my understanding that you  
25 are the primary lead investigator relating to the

1 shooting that occurred on March 12th in Southwest  
2 Portland; is that right?

3 A That's correct, yes.

4 Q It's your understanding that Officer John  
5 Romero was the officer involved in that incident?

6 A That's correct.

7 Q And you come to learn that Kelly Swoboda was  
8 the other person involved in that exchange of gunfire;  
9 is that right?

10 A That's correct, yes.

11 Q All right. We're going to talk about a  
12 variety of aspects of the investigation.

13 Are you aware of whether or not -- are you  
14 aware of these reports that have been made in that area  
15 of Portland in the days and weeks prior to the shooting  
16 relating to this van that had been seen following young  
17 people around the area?

18 A Yeah. There were a couple of different  
19 reports.

20 Q Can you summarize a couple of them for me  
21 that you were aware of?

22 A So on March 4th of this year, 2014, Cheri  
23 Gallison called 911, stating her daughter, Lauren  
24 Gallison, had been followed by this green van. The  
25 police checked the area, did not locate the van.

1 Q What area of Portland was that?

2 A That was -- we don't have that map. It was  
3 in the Hillsdale area. It would be to the north and  
4 west of Capitol and Sunset, up off of Sunset. It is  
5 like the 2400 block of Sunset, I believe.

6 Q Okay.

7 A And then on March 11th of 2014, Officer Graf  
8 took a report -- I'm sorry, Officer Romero took a report  
9 from -- no, it was Officer Graf took a report from two  
10 students who had been followed again in this  
11 Capitol-Sunset area by a van.

12 And then Officer Romero had also taken a  
13 report of an incident that occurred back in the end of  
14 January of 2014, where two students from Robert Gray  
15 Middle School were followed by a van.

16 Q And do you remember the general details of  
17 the Gallison report, that first report, do you remember?

18 A Yeah. Lauren was walking home from Wilson  
19 High School.

20 Q Is she a student there?

21 A Yes. And this van followed her as she was  
22 walking up Sunset and down Bertha eventually all of the  
23 way up to Cheltenham. And there's a cul-de-sac there,  
24 Altavista, or something like that. She took this path.  
25 It is a foot path that leads from the street she was on

1 up to this cul-de-sac.

2           It's not a well-known foot path. It is kind  
3 of made from the kids that go to and from school. And  
4 this van had been following her back and forth. She was  
5 getting scared. She went up to the cul-de-sac. When  
6 she got up to the cul-de-sac, the van was up there.

7           This scared her so bad, that she ran and hid  
8 in a yard of a friend that lives nearby, Saioa Lostra,  
9 and called her mom. Her mom works nearby down here at  
10 Capitol and Sunset. She went up there and got her. And  
11 that's when 911 was notified.

12           And Lauren was then interviewed on March 12th  
13 by Oregon State Police Detective Scott Sudaisar. And  
14 Saioa Lostra was also interviewed. She also reported  
15 that she had seen this van. It had driven by her a  
16 couple of times, but hadn't followed her to the extent  
17 that it followed Lauren Gallison. That all occurred on  
18 March 4th.

19           Q       So these reports of a van and this behavior  
20 that seemed to be following young people in the area,  
21 were the descriptions of the van in general and the  
22 individual driving the van, were they consistent of a  
23 particular nature?

24           A       Yeah. It was a green van, sometimes with  
25 gray bumpers. One of the reports said it was a white

1 van, but all of the accounts were of an older white male  
2 with some sort of facial hair driving the van.

3 Q Okay. And these are, as you understood  
4 later, are the reports that led Officer Romero and the  
5 other southwest officers to go looking for this van on  
6 the 12th?

7 A So on March 11th, at the end of shift,  
8 Officer Romero was notified by Officer Graf that he had  
9 taken a report of this green van following kids from the  
10 local school.

11 And I later learned that the next day,  
12 Officer Romero decided to put together an impromptu  
13 mission with some of the district cars working in this  
14 area to sit out in the Hillsdale area and be on the  
15 watch for this green van following kids after school let  
16 out.

17 Q Now, it's my understanding from earlier --  
18 our understanding from earlier testimony of the other  
19 officers, Officer Mitchell and Szi Lai, that at some  
20 point during that day, when they were out looking for  
21 this green van, that there was a 911 call that came from  
22 a resident in Hillsdale to report this green van in the  
23 area; is that right?

24 A Yes.

25 Q And do you know who made that call?

1           A       Heidi Howard.

2           Q       And did you have an opportunity to review  
3 that 911 call and actually speak with Ms. Howard  
4 yourself?

5           A       I did, yes.

6           Q       And why don't you tell us about that.

7           A       Heidi Howard had noticed on a Facebook post  
8 earlier that day from another friend, be on the  
9 watch-out for this green van that was in the area  
10 following children.

11                   And she went to pick up her kids at the  
12 school. And when she came back, in front of her house,  
13 which was up Sunset, she sees the green van sitting  
14 there at the corner right across from her house.

15                   It appears he was watching the occupant of  
16 the van. This older white male was watching three  
17 middle school-aged girls standing at the corner just  
18 talking after school. So she was concerned.

19                   She went over there to get the license plate  
20 of the vehicle, and the driver saw her. And when the  
21 driver saw her, she said he had to shuffle stuff around  
22 on his lap is how she described it before he could  
23 engage the vehicle and drive away.

24                   And as he drove away, he turned around, and  
25 then she noticed that the front license plate did not

1 match the rear license plate of the vehicle. And she  
2 was able to get a partial rear plate, the numbers 616  
3 and then an H as well in the license plate. Then she  
4 called and broadcast this information to 911.

5 Q Now, let's leap forward to your direct  
6 involvement on the 12th.

7 When did you become aware of the shooting in  
8 Southwest Portland?

9 A After it occurred. I was paged by my  
10 sergeant and told to respond to this area to investigate  
11 the shooting.

12 Q And do you know approximately when you  
13 arrived?

14 A There's very heavy traffic during rush hour,  
15 so it was probably around 5:15, 5:30, somewhere in  
16 there.

17 Q Can you just generally describe the scene  
18 when you arrived there?

19 A The entire area had been shut down. Between  
20 basically Sunset, Capitol, Cheltenham and Dewitt were  
21 completely shut down. Those were all inside the crime  
22 scene. And we had our mobile command precinct set up in  
23 the parking lot. The officers had been separated. And  
24 Officer Romero had been taken to the hospital.

25 Q Okay. And maybe if you wouldn't mind

1 stepping up to this board and stand off to the left.  
2 Can you give us a general sense of the scene as you  
3 found it? What items of interest are noted on the map?

4 A So up here on Dewitt Street, this is the  
5 library at Sunset and Dewitt. There's a fire station  
6 right here on Dewitt. And then right here at the corner  
7 is where Mr. Swoboda's green van was parked facing to  
8 the east.

9 And then Officer Romero had parked this  
10 vehicle several car lengths back on Dewitt. And it was  
11 just parked on the side of the street, illegally parked,  
12 and he had exited his vehicle. Down here on Cheltenham,  
13 just north of Capitol Highway is where the shooting  
14 actually occurred.

15 And there was a long row of parked cars here  
16 with a Honda Element at the back end, and then there's a  
17 Dodge Durango just on the other side of this driveway  
18 here, and then a small red car parked almost at the  
19 front of this row, closest to Capitol Highway.

20 Q And the whole scene had been taped off to  
21 prevent members of the public --

22 A Yes. All layers of crime scene tape.

23 Q Do you have a general sense of how many  
24 officers were at the scene when you eventually responded  
25 to this incident?

1 A Eventually?

2 Q Yes.

3 A More than 50, I would imagine.

4 Q Okay. And I'm assuming that a number of  
5 detectives were activated in addition to yourself?

6 A Yes.

7 Q Do you have any sense of how many detectives  
8 were involved in the investigation?

9 A 10 to 12.

10 Q And did that include detectives from outside  
11 the Portland Police Bureau?

12 A Yeah. Detective Scott Sudaisar of the Oregon  
13 State Police and Detective Robert Harley with the  
14 Gresham Police Department also responded.

15 Q And they were part of the investigation as  
16 well?

17 A Yes.

18 Q What roles did they take?

19 A They interviewed Lauren Gallison and Saioa  
20 Lostra and both of their parents.

21 Q Okay. My understanding is that a variety of  
22 photographs were taken at the scene. Is that accurate?

23 A Absolutely.

24 Q Okay. If you want to retake your seat. I'm  
25 actually going to perhaps let you pilot us through these

1 photographs, so you can go through them and maybe just  
2 walk us through the significant observations at the  
3 scene.

4 If you want to step up here, maybe you can  
5 walk us through the photographs that we've got.

6 A Okay. So this is the red car I was talking  
7 about that's at the front of the line. Then you have  
8 the cars going back. I'm going to step over here.

9 This is Mr. Swoboda here. This is a  
10 cinderblock retaining wall that's been built to keep the  
11 hillside from falling down on the sidewalk. This is the  
12 driveway here leading into that parking lot here, and  
13 then the Dodge Durango that I was referencing would be  
14 right over here.

15 Q If you can maybe go to the map real quick and  
16 point to us from what perspective are we looking at  
17 from?

18 A Here, you are standing on Cheltenham looking  
19 to the north.

20 Q Okay. And that's Mr. Swoboda on the sidewalk  
21 there?

22 A That's correct, yes. He's handcuffed in the  
23 post-shooting position at that point.

24 Q Okay.

25 A Also, standing on Cheltenham looking to the

1 north, if you look up here at this green dot, that is  
2 the street sign for Dewitt, which is Dewitt runs across  
3 here, so that's the street sign right there. It's up on  
4 Dewitt where the van is parked. You can't quite make  
5 that out in this photograph.

6 And then the shooting happens down here out  
7 of view of this photo. But this shows the distance that  
8 Officer Romero followed Mr. Swoboda trying to get his  
9 attention.

10 A GRAND JUROR: Is that a yellow house in the  
11 back, and is that one of our witness' houses?

12 THE WITNESS: That is a yellow house. And I  
13 do not believe that is the house of one of the  
14 witnesses.

15 A GRAND JUROR: Is that directly on the  
16 corner?

17 THE WITNESS: Yeah. It looks like it is,  
18 yes.

19 MR. DAVIDSON: I think that might be Mr.  
20 Levitt's s house.

21 THE WITNESS: Okay.

22 A GRAND JUROR: He was one of our witnesses,  
23 he said he lived in a yellow house.

24 MR. REES: Yes.

25 THE WITNESS: That's probably it then.

1           A GRAND JUROR: So where in relationship to  
2 that house is the downed man?

3           THE WITNESS: Right down here off the view.

4           A GRAND JUROR: Okay.

5           THE WITNESS: Then this is the retaining wall  
6 again. That is Mr. Swoboda right there. And this area  
7 right here by the little concrete stairs going up is  
8 approximately where Officer Romero was standing at the  
9 time of the shooting.

10 BY MR. DAVIDSON:

11           Q       And how do you know that?

12           A       Four shell casings, 9-millimeter shell  
13 casings were located right there.

14           Q       Are 9-millimeter shell casings -- are  
15 9-millimeter rounds are standard rounds used by Portland  
16 Police Bureau?

17           A       That's correct, yes.

18           Q       There were shell casings of different caliber  
19 found near Mr. Swoboda's body; is that right?

20           A       There were four to five shell casings found  
21 right here, so we know that Mr. Swoboda was standing  
22 approximately there at the time that he fired.

23                   This is the Honda Element that I referenced,  
24 which is going to be just behind where Officer Romero  
25 was standing.

1           Q       So what do you believe the distance to be,  
2 approximately between Officer Romero and Mr. Swoboda at  
3 the time the shooting occurred?

4           A       It was a little over 21 feet.

5                   And then again right here, this is the  
6 retaining wall, Mr. Swoboda, and right here by these  
7 stairs is where Officer Romero was standing.

8                   So that just shows -- that's looking south on  
9 Cheltenham towards Capitol.

10           A GRAND JUROR:  Could you tell me again how  
11 many .45 casings?

12                   THE WITNESS:  Four.

13           A GRAND JUROR:  Thanks.

14                   THE WITNESS:  Yes, ma'am.

15                   This is Mr. Swoboda's van parked on Dewitt in  
16 front of the yellow house.  And as you can see Officer  
17 Romero's car is nowhere in this photo.  His car is  
18 significantly further up the hill here.

19 BY MR. DAVIDSON:

20           Q       The patrol vehicle that we do see on the  
21 corner, is that someone arriving later?

22           A       Yes, that's correct.  That's actually  
23 Sergeant Engstrom's vehicle who shows up much later.

24                   So that's the, Mr. Swoboda's van with the  
25 rear license plate of 847 BCT.

1                   And then the front license plate of 616-CKH.

2                   This is Mr. Swoboda. That is the .45 caliber  
3 handgun he had.

4                   You can actually see one of the shell casings  
5 right there.

6                   Then this is a picture taken from  
7 approximately where Officer Romero was standing showing  
8 his line of sight.

9                   This is the Honda Element. Underneath this  
10 Honda Element is where we recovered a fired .45 caliber  
11 bullet. Then you can see the blood trail starting here,  
12 which is going to be Officer Romero's blood where it's  
13 dripping from his hand. You can see it circle around as  
14 he moves to a position behind this Honda Element away  
15 from Mr. Swoboda.

16                   That's just a closeup picture of the gun as  
17 it was found canted against the curb like that.

18                Q       Detective, I notice that the hammer on the  
19 gun is in the backwards position. What does that  
20 signify about the weapon?

21                A       It's ready to fire. This is a .45 replica  
22 handgun, so it has two safeties on it. There's a grip  
23 safety back here, which has to be pressed in. And then  
24 on the other side of the slide is a safety that was not  
25 on.

1                   So this gun could have just been picked up  
2                   and fired with the hammer locked back like that. It's  
3                   ready to go. When we unloaded it, there was a round in  
4                   the chamber and four rounds in the magazine.

5           Q       And how many rounds does the magazine holds?

6           A       The magazine will hold seven, but the gun  
7                   itself is capable of holding eight. He puts seven  
8                   rounds in the magazine, puts the magazine in, pull the  
9                   slide back which strips around off the magazine and  
10                  loads it into the chamber. Then you take the magazine  
11                  out and reload it to seven. So you have eight rounds in  
12                  the magazine -- eight rounds in the gun, seven in the  
13                  magazine.

14          Q       How many shell casings were found of .45  
15                  caliber?

16          A       Four.

17          Q       Do you believe there were four rounds that  
18                  were fired by Mr. Swoboda?

19          A       That's correct.

20                   There's just -- placard 17 is the fired  
21                  bullet that we recovered underneath the Honda Element.

22          Q       Maybe you can explain to our Grand Jurors who  
23                  may not be gun savvy what the difference between a shell  
24                  casing and a bullet might be.

25          A       So a cartridge is composed of the front part,

1     which is the bullet and then the rear part which is the  
2     casing.  Those are -- there's gunpowder inside the  
3     casing.  The bullet is compressed into the casing and in  
4     the back end, there's a primer.

5             When the primer struck, it ignites the  
6     gunpowder, which then fires the bullet out of the casing  
7     and down the barrel.  So a bullet is just the metal part  
8     that's already been fired.  The casing is what's left  
9     behind afterwards and then a cartridge is the entire  
10    piece.

11            Q     And typically, in a semiautomatic weapon,  
12    when you fire it, the bullet is fired down range, you  
13    said.  What happens to the casing?

14            A     The casing is then -- as the slide recoils  
15    back, the casing is ejected out the side.  It is both  
16    pushed and pulled.  And it gets launched in a --  
17    99.9 percent of all firearms, the casing is ejected off  
18    to the right.

19            Q     And another round is automatically loaded?

20            A     Right.  Then the slide goes forward.  It  
21    picks up another round off the magazine and loads it in.

22            Q     In both Officer Romero's weapon and the .45  
23    caliber weapon that Mr. Swoboda had -- or semiautomatic,  
24    did it function in that way?

25            A     Correct.

1           Q       So again, what are we looking at in this  
2 photograph?

3           A       Placard 17 is underneath the Honda Element, a  
4 fired bullet, that we believe we have the .45 caliber  
5 bullet that went through Officer Romero's hand.

6           Q       So you believe that round to be the round  
7 that actually hit Officer Romero?

8           A       Correct.

9           Q       The rest of the placards?

10          A       Fourteen is a blood spot. Fifteen is a blood  
11 spot. One, two, I believe, are 9-millimeter casings.

12          Q       And --

13          A       Thirteen was a blood spot. Same with 12 up  
14 there in the front.

15          Q       In earlier photographs, was daytime. This  
16 appears to have been taken later at the end of the day.

17          A       Correct. This was after we locked everything  
18 down, secured the scene in the daylight. Photographs  
19 were taken in the daylight and then that takes time.

20                    The measuring system we use was set up and  
21 run. And then items of evidence were located and then  
22 placarded, and these are just the photographs taken at  
23 that time.

24          Q       And how many hours were you personally on  
25 scene?

1           A       Roughly five to six hours.

2       BY MR. REES:

3           Q       Detective, could you explain why you think  
4       the round that's marked as placard No. 17 is the very  
5       round that struck Officer Romero?

6           A       It's the only fired .45 bullet we found. You  
7       can see in these previous pictures here, so the bullet  
8       is underneath this car here. So Mr. Swoboda is firing  
9       in this direction and he strikes Officer Romero.

10                    The only way that I can think of for this  
11       fired bullet to end up underneath this car is as Officer  
12       Romero is shot, is struck, he's moving.

13                    So when that bullet exits his hand and runs  
14       along his arm, it's losing energy. It loses enough  
15       energy, that it's able to just fall down in there versus  
16       if it's fired, it's going to -- you are not going to end  
17       up underneath there. It's going to strike the vehicle.  
18       And we believe all his bullets actually traveled down  
19       this way toward the north.

20       BY MR. DAVIDSON:

21           Q       When you say "he," who do you mean, Mr.  
22       Swoboda?

23       BY MR. REES:

24           Q       So you believe that round that went through  
25       the hand of Officer Romero and then having lost much of

1 its energy ended up on the ground below that car?

2 A Correct.

3 BY MR. DAVIDSON:

4 Q Go to the next picture.

5 A That's just a closeup of that fired bullet.

6 Closeup of the handgun again.

7 And that's placard 17, the fired bullet.

8 A GRAND JUROR: I gather it doesn't have any  
9 blood on it?

10 THE WITNESS: Well, it may or may not have  
11 blood on it. That bullet was submitted to the lab.

12 When bullets pass through a body, they are  
13 hot, so you may or may not even pick up any blood. But  
14 you will sometimes get skin, which it can be linked via  
15 DNA to the original contributors.

16 BY MR. DAVIDSON:

17 Q Were there any other reports indicating where  
18 some of Mr. Swoboda's other rounds may have struck?

19 A Yes. A couple, John and Susan Narizny were  
20 interviewed, and they live much further up Cheltenham  
21 here. And they were sitting out in their front yard  
22 eating. And heard, at the time of the shooting, heard a  
23 bullet whiz by and then thunk into a tree behind them.

24 We sent a criminalist up there to try to find  
25 the bullet, but he wasn't able -- there's a lot of

1 trees. He wasn't able to find the one bullet in the  
2 tree.

3 BY MR. DAVIDSON:

4 Q Please again, run through -- we talked a  
5 little bit about Mr. Swoboda's 1911 .45 caliber pistol.  
6 What became of Officer Romero's service weapon that was  
7 used in the shooting?

8 A It was placed in the back of Sergeant  
9 Engstrom's patrol vehicle right afterwards before  
10 Officer Romero was taken to the hospital. And we  
11 recovered it from there and did what we call a weapons  
12 count down.

13 So we know how many rounds the magazine can  
14 hold and then you figure out how many are left. And  
15 it's just simple subtraction to find out how many  
16 bullets are missing.

17 In this case, we were able to determine that  
18 Officer Romero fired between five and six rounds. And  
19 the reason for the disparity is because Officer Romero  
20 himself wasn't sure if -- they are 17 round magazines,  
21 and he wasn't sure if when he loaded 17 rounds into the  
22 magazine, put it in his gun and pulled the slide back to  
23 load a round, if he then removed it and topped off the  
24 magazine, put another round in to bring it back up to  
25 17.

1           Q       And so how many 9-millimeter shell casings  
2 were recovered?

3           A       Four were recovered at the scene.

4           Q       So we are missing at least one, maybe two; is  
5 that right?

6           A       Yeah. We believe one to two shell casings.  
7 Most likely one shell casing.

8           Q       Can you explain why the other one is not  
9 recovered?

10          A       Yeah. Let me look at these photos again.  
11                 So right here where Officer Romero was  
12 standing, this is a large brushy area off of -- off to  
13 the west, and we ran metal detectors in there. Didn't  
14 locate anything. That doesn't mean the shell casings  
15 didn't fly up in there somewhere and we just didn't find  
16 it.

17                 It's very, very -- they are very small and  
18 they tend to fly farther. There's no predictable  
19 pattern for where they are going to go. We looked. We  
20 didn't find it.

21 BY MR. REES:

22          Q       So is this correct, that you believe based on  
23 your investigation, that Officer Romero fired his gun  
24 five or six times?

25          A       Correct.

1 Q And that Swoboda fired his gun four times?

2 A Correct.

3 BY MR. DAVIDSON:

4 Q How was Mr. Swoboda actually identified at  
5 the scene?

6 A He was identified at the scene by  
7 fingerprints. And then later at autopsy, his wallet was  
8 recovered with his identification in it.

9 Q And what was the technique used to identify  
10 him with fingerprints at the scene?

11 A It is called an IBIS wand. It is like a  
12 baton that you run the finger across it. It retains the  
13 fingerprint that is then electronically sent to our  
14 forensics evidence division. And it's compared against  
15 a known sets of fingerprints, and came back with Mr.  
16 Swoboda.

17 Q Okay. So what did you do ultimately with the  
18 shell casings, both the 9-millimeter and the .45 caliber  
19 and the .45 caliber pistol and the 9-millimeter service  
20 weapon of Officer Romero? What was done with all of  
21 that?

22 A Those items, along with another fired bullet  
23 that was recovered from the Dodge Durango that I showed  
24 you and two other bullets that were recovered at autopsy  
25 were all sent to the Oregon State Police Forensics

1 Laboratory for ballistic comparison and then DNA  
2 comparison for the bullet that we believed went through  
3 Officer Romero.

4 Q And is it your understanding that forensic  
5 scientist Travis Gover is the person at the crime lab  
6 that's doing the analysis?

7 A Yes. He's handling the ballistics  
8 comparison.

9 Q Okay. Once you were able to determine the  
10 identity of Mr. Swoboda, what did you eventually learn  
11 about Mr. Swoboda, about his background and things of  
12 that nature?

13 A Well, I know that in 1994, he committed a  
14 series of seven bank robberies. And then in 1995, he  
15 was sentenced to prison. And in that time, since 1995,  
16 he's been in and out of prison, violating his conditions  
17 of his release and being sent back to prison by carrying  
18 concealed weapons. He has two driving under the  
19 influence. Both of those he was carrying a concealed  
20 weapon on him at the time.

21 Since he was last released from prison, he  
22 began robbing banks again in the end of 2013 and did one  
23 again in 2014, so he's done five bank robberies where he  
24 was a verified suspect in.

25 He's also responsible for kidnapping a female

1 from a tanning salon down in Milwaukie. And she was --  
2 she was in his van. He pistol-whipped her severely to  
3 get her in the van right from her place of business.  
4 And she was able to jump, literally jump out of this  
5 moving van to escape him.

6 Q Do you know whether or not there was any  
7 outstanding warrants for his arrest at the time?

8 A Yeah. Of the five bank robberies, he had  
9 three, three of those were federal indictments.

10 Q All right. You subsequently attended an  
11 autopsy on Mr. Swoboda; is that correct?

12 A That's correct.

13 Q When did that occur?

14 A The next day, so March 13th.

15 Q And where did that take place at?

16 A At the Oregon State Medical Examiner's office  
17 out in Clackamas.

18 Q And who conducted that post-mortem  
19 examination?

20 A Dr. Larry Lewman.

21 Q And are you familiar with Dr. Lewman?

22 A I am, yes.

23 Q And have you attended many previous  
24 post-mortem examinations that Dr. Lewman conducted?

25 A Dr. Lewman, as well as the other doctors out

1 there.

2 Q Why don't you just walk us through kind of  
3 what was discerned at the autopsy. And let's just start  
4 with what kind of items did Mr. Swoboda have on his  
5 person at the beginning of the autopsy?

6 A So an autopsy is -- you know, it's an overall  
7 examination. It's not just examining the body. It's  
8 examining everything that's with the body.

9 And in this case, he was clothed as you saw  
10 in the pictures. And in that white jacket, there's two  
11 pockets in the front. From the left front pocket, they  
12 found a loaded magazine for his .45 caliber magazine for  
13 his handgun, as well as --

14 Q If I can stop you. How many rounds were in  
15 that magazine?

16 A Seven. It was fully loaded.

17 Q This was a second magazine, obviously, in  
18 addition to the magazine that was actually in the weapon  
19 at the time he used it.

20 A Correct. Also in that pocket were two sets  
21 of rope bindings, narrow rope that -- you know, he  
22 duct-taped Ms. Peabody, the victim in the tanning thing.  
23 And she was able to defeat that, so my guess is he  
24 learned from his mistake, if you will, and went with  
25 rope bindings, which are much harder to get out of. And

1 that's why he was carrying those around.

2 Also in his pants pockets were what we've  
3 termed his surveillance notes. I believe we have a  
4 picture of those.

5 Q Okay. Go ahead.

6 A So these are a little hard to see. We have  
7 some closeup photos of these.

8 What he's done is he's made notes of  
9 locations, vehicles, like the BMW, CLAC TC, Clackamas  
10 Town Center, license plates, and then he has gone ahead  
11 and discerned whether they are blond or brunette and  
12 then he gives them a rating. So this one, she was rated  
13 between seven and eight.

14 Here is another one from Clackamas Town  
15 Center.

16 And you can see he wasn't just in this area.  
17 It was down in Eugene, Klamath Falls.

18 Q I know this is one that says "alone." What  
19 does that mean?

20 A Right. So as he was watching her, he made a  
21 note that she's alone. She's not with anybody.

22 Again, a license plate, a time, a date, a  
23 type of vehicle, nine, blond. There's a ballerina  
24 studio in Eugene that he sat out in front of. He noted  
25 ballerina.

1                   This one is Tuesday out by Wilson High  
2 School, which is -- this is Wilson High School right  
3 here just to the south of Capitol and Sunset.

4                   Another one from Wilson High School.

5           Q       And "BRUN," what does that mean?

6           A       Brunette.

7           Q       Okay.

8           A       This is -- it's kind of hard to make out.  
9 He's written Cheltenham. This is Cheltenham Street  
10 here, which runs significantly further north into the  
11 neighborhoods.

12                   Here he's noted OES tennis, Oregon Episcopal  
13 School tennis courts. And also, in the area much  
14 further to the north and the west down Sunset.

15           Q       He rated the gal from Oregon Episcopal tennis  
16 as an eight and as a brunette.

17           A       Yes.

18           Q       And is that times and dates is what I'm  
19 seeing?

20           A       There's no real dates. It's times and day of  
21 the week, so this was on a Tuesday. I mean, there's a  
22 lot from Wilson High School. Scholls Ferry, he was down  
23 there. And this one is very specific. Cheltenham to  
24 Westwood. As you go up to Cheltenham, it branches into  
25 the Westwood.

1           Q       Detective, how many individual entries where  
2 he documents a girl, you know, her hair color and his  
3 ranking of her did you find those documents?

4           A       I think we came up with around 17.

5           A GRAND JUROR: All these girls were walking  
6 home from school?

7           THE WITNESS: Not necessarily, sir, because  
8 some of them have license plates, so he has seen them  
9 driving and follows them, you know, gets their license  
10 plate.

11                   Some of these girls we've talked to. And  
12 like the Clackamas Town Center, they work there. So he  
13 saw them arrive. Because these are morning times, so my  
14 guess is he's sitting in the parking lot. He sees them  
15 arrive. He makes notes of what they look like, what  
16 their license plate is. We think he followed one of  
17 them home later that night.

18           A GRAND JUROR: Can he track where these  
19 people live through their license plates?

20           THE WITNESS: No, I don't believe he has the  
21 ability.

22 BY MR. DAVIDSON:

23           Q       So you actually were able to identify some of  
24 these actual individuals? How were you able to do that?

25           A       We have the ability to run the license plates

1 and found out who they are. Most of them have been  
2 contacted.

3 Q Okay. So obviously, as an experienced  
4 detective, what does all this mean -- in your  
5 professional experience and opinion, what does this  
6 mean?

7 A He's making notes on people that he finds, I  
8 don't want to use the word "attractive," people he's  
9 interested in for the purposes of abducting them and  
10 doing whatever he's going to do to them.

11 A GRAND JUROR: Were you able to contact each  
12 of the people to know that they are safe?

13 THE WITNESS: Yes.

14 BY MR. DAVIDSON:

15 Q Is that all?

16 A That's all we have.

17 Q Okay. Let's talk about what the findings  
18 were, Dr. Lewman's findings in regards to Mr. Swoboda,  
19 the injuries that he sustained and his cause of death.

20 A He had three gunshot wounds. One entered in  
21 kind of the middle of his right calf. And then that  
22 traveled up his leg and exited out on his -- the inside  
23 of his right inner thigh. Then that bullet was actually  
24 recovered inside his pants at the autopsy.

25 A GRAND JUROR: Would that happen if he was

1     laying down or was he standing up when it traveled that  
2     way?

3                   THE WITNESS:  He probably was on his way down  
4     to the ground when that -- when that bullet went in.  If  
5     you're standing face to face with someone, you are  
6     shooting directly at them, you know, the bullet is not  
7     going to dip down, come up the leg and exit out.

8                   So my guess is he was probably falling to the  
9     ground, and that was probably the last gunshot wound he  
10    received.

11  BY MR. DAVIDSON:

12           Q       Maybe you can talk about the other ones and  
13    then we can discuss them all in context.

14           A       Sure.  So we also had one that went in  
15    underneath his armpit and kind of traveled along his  
16    back, just behind the vertebral column and then  
17    exited -- I'm sorry, that wound was under the skin.  
18    That bullet was recovered.  And then another one that  
19    went in pretty much the middle of his chest.  And that  
20    one traveled through his heart.

21                   As bullets hit something, they expand.  So  
22    when it went in the front of his heart, it was, you  
23    know, maybe a dime-size hole, but out the backside of  
24    his heart, the hole was much larger, almost the size of  
25    a quarter.

1 Q And that would have been a fairly significant  
2 injury?

3 A Yes. Absolutely.

4 Q And are you aware of what Dr. Lewman's  
5 findings were as far as his cause of death?

6 A It was multiple gunshot wounds.

7 Q Now, you obviously have spent a long time on  
8 this investigation.

9 A Yes.

10 Q Hours, days?

11 A Yes.

12 Q Many. Did you end up having a sit-down  
13 interview with Officer Romero?

14 A I did, yes.

15 Q And when did that occur?

16 A That would have been on the Friday following,  
17 so the 14th, I believe of March.

18 Q Okay. And he sat down with you and gave you  
19 his account of what occurred.

20 A He did, yes.

21 Q Okay. Now, you are obviously aware of all of  
22 the other evidence in the case, location of the shell  
23 casings, basically the condition of the scene, all of  
24 the other evidence that was located in the van, the  
25 testimony of the civilian witnesses and the other police

1 officers.

2 Did what Officer Romero -- we're going to  
3 hear from Officer Romero tomorrow. But did what Officer  
4 Romero tell you about what occurred, did it comport with  
5 all of the rest of the evidence that you are aware of in  
6 the case?

7 A Yes. Absolutely.

8 MR. DAVIDSON: At this time do any of the  
9 Grand Jurors have any questions?

10 A GRAND JUROR: I have one.

11 Do you have the feeling that Romero knew that  
12 this was Kelly before he shot him?

13 THE WITNESS: He did not, no, sir.

14 A GRAND JUROR: He didn't know it. So it's a  
15 possibility there's just an innocent man that he's  
16 confronting? Just a person walking down the street, and  
17 he starts telling him to stop and he wanted to talk to  
18 him, but he had no reason to do it.

19 Do you see what I'm getting at?

20 THE WITNESS: I see what you are getting at,  
21 sir, you know, but I've talked to Officer Romero, so I  
22 know exactly what he told me and why he did what he did.  
23 But it wouldn't really be appropriate for me in this  
24 venue to repeat what he has told me.

25 A GRAND JUROR: Yes.

1 BY MR. REES:

2 Q Well, I think, Detective, you can answer the  
3 question generally. The Grand Juror asked whether  
4 Officer Romero knew for a fact that Officer Romero is  
5 confronting Swoboda, and you said he did not know that  
6 for a fact.

7 A Right.

8 Q But I think you can answer the question as to  
9 what the officer's indication was to you of why he  
10 sought to stop and talk to this particular individual at  
11 that time.

12 A Okay.

13 Q What was the basis for that stop and contact?

14 A Officer Romero believed that this person was  
15 the occupant of the green van, the person that had been  
16 seen following school-aged children around the  
17 neighborhood for the last week or so since March 4th.

18 And he was concerned about the safety of the  
19 children. He's a school resource officer. He knows  
20 these kids, so he wanted to talk to this person to find  
21 out why he's there and why he's following kids around.

22 Q So that was the indication from Officer  
23 Romero was that he believed this person was probably or  
24 likely the same individual involved in this reported  
25 stalking incidents where a suspicious van was following

1 teenaged girls from Wilson High School?

2 A Yes.

3 Q All right. Even though he didn't know at the  
4 time that this person was also the wanted felon Swoboda?

5 A Correct.

6 Q Okay.

7 MR. REES: Does that answer your question?

8 A GRAND JUROR: Well, my question was really  
9 kind of because Kelly was not with the van. He was  
10 quite a bit away from it. So how did he make connection  
11 between Kelly and the van? Do you see what I'm saying?

12 THE WITNESS: Yeah, I understand your  
13 question.

14 A GRAND JUROR: He pulled up with Officer  
15 Mitchell.

16 A GRAND JUROR: Mitchell gave him a  
17 description of the gentleman, Officer Mitchell.

18 A GRAND JUROR: Well, I realize that. But  
19 when I was listening to that description, it was rather  
20 vague. It was supposedly a bald-headed man. This man  
21 had a full head of hair.

22 A GRAND JUROR: But he had a baseball cap on  
23 that Mitchell described.

24 A GRAND JUROR: Yeah.

25 MR. REES: Well, so Officer Romero,

1 obviously, can answer that question. To the extent --  
2 are you able to answer that question? If not, we'll  
3 just defer that to Officer Romero.

4 THE WITNESS: Like I said, he believed this  
5 person to be the occupant of that vehicle based upon,  
6 you know, the proximity to the vehicle. You know, he  
7 was seen in the vehicle by Officer Mitchell. He gave an  
8 excuse of I'm here to go to the library, but, you know,  
9 as you can see, the library is significantly closer.  
10 Has its own parking lot.

11 It doesn't make a lot of sense to park almost  
12 two blocks away to walk down to the library and then he  
13 doesn't show up at the library as he walks away, because  
14 Officer Romero finds him again out there right next to  
15 his van.

16 A GRAND JUROR: So you believe that Romero  
17 had a good reason to confront this man, that he actually  
18 thought in his own mind that's the person they are  
19 actually looking for?

20 THE WITNESS: Yes. Absolutely.

21 MR. DAVIDSON: Anybody else with questions  
22 for Detective Kammerer?

23 A GRAND JUROR: Yes. You said you talked to  
24 somebody named Heidi Howard.

25 THE WITNESS: Correct.

1           A GRAND JUROR: I just wanted to make sure.  
2 She noticed herself that the front license plate and the  
3 back license plate on this van were different?

4           THE WITNESS: Correct.

5           A GRAND JUROR: She did report that.

6           THE WITNESS: Correct.

7           A GRAND JUROR: Along with the partial plate  
8 from the back?

9           THE WITNESS: From the front.

10          A GRAND JUROR: Okay.

11          THE WITNESS: Correct.

12          A GRAND JUROR: That's pretty good notice.

13          MR. REES: We actually have that 911 call  
14 that she made that afternoon that we can play for the  
15 Grand Jury.

16          THE WITNESS: Yes. It is transcribed as  
17 well.

18          MR. DAVIDSON: Do you want to hear it?

19          MR. REES: Yes.

20          A GRAND JUROR: What was the date that she  
21 called in?

22          THE WITNESS: She called in on this day,  
23 March 12th, just before 4:00.

24          MR. DAVIDSON: Detective, I've got a couple  
25 of disks that say 911 call. Do you know which one?

1 THE WITNESS: It's the very first one.

2 So what happens is she -- she's using her  
3 cell phone. And it just goes off the nearest tower, so  
4 she actually gets ahold of Washington County's 911  
5 dispatch, then they transfer over to the Portland  
6 dispatch, which is where it picks up after she's been  
7 transferred.

8 (The following is the transcription of the  
9 911 CD played.)

10 Q "911.

11 A "Hi.

12 Q "It's Washington County with a transfer. Go  
13 ahead, ma'am.

14 A "Hi, this, um, is Heidi. I live in Southwest  
15 Portland. I have reports from other moms of a guy  
16 trailing their kids in a dark green minivan with gray  
17 bumpers.

18 Q "Have they contacted us?

19 A "They have before. And so they've put out  
20 reports to you guys before and I just saw the guy. He's  
21 crossed in front of my house. The bump -- the license  
22 plates on his front and his back of his vehicle do not  
23 match.

24 Q "Okay. I'm, I'm sorry. Is -- he's parked in  
25 front of your house?

1           A        "He, he just left when he saw me look at him.  
2           He just, he just put his car in drive and, and drove  
3           around the corner.

4           Q        "Okay. What is your address?

5           A        "My address is 2471 Southwest Sunset  
6           Boulevard, Portland, Oregon, 97239.

7           Q        "Um, what color and type of vehicle was it?

8           A        "He is a, um, an older dark green minivan  
9           with gray bumper. His front and back license plates do  
10          not match the green minivan. They're different plates.

11          Q        "All right. Do you happen to know what --

12          A        "And he --

13          Q        "-- each plate was?

14          A        "I don't. They were both Oregon plates. I  
15          think one was a Crater Lake plate on the back, but the  
16          front plate was not. It did not match. And he -- I,  
17          just 'cause of my Facebook friends said that there had  
18          been reports of this guy doing this earlier this week,  
19          and he's parked right across from where there is usually  
20          a bus stop this time of the afternoon. And I live right  
21          by Robert Gray.

22          Q        "What's your name?

23          A        "My name is Heidi Howard.

24          Q        "Which way did he go?

25          A        "He just went up 19th.

1 Q "Okay. You're gonna have to tell me if  
2 that's north or south or east or west.

3 A "Um, he went kind of northeast.

4 Q "Okay. Well --

5 A "He went towards, he went towards Robert  
6 Gray, from my house. But he was, he was parked right  
7 behind, like, kitty-corner to a kids' bus stop.

8 "And when I walked outside to see if the  
9 plates 'cause my friend got a partial plate earlier this  
10 week, and I went outside to see and I noticed that the  
11 plates didn't match and that he, he quickly turned on  
12 his car and went around the corner. He's really creepy.

13 Q "Okay. Your phone number?

14 A "Is (503)244-3297.

15 Q "(503)244-3297?

16 A "Correct.

17 Q "I'll pass the information on.

18 A "Thank you so much.

19 Q "Okay. All right. Bye-bye."

20 BY MR. REES:

21 Q Detective Kammerer, were you able to see in  
22 your reports or the transcript what time that call was  
23 made?

24 A That call, I can tell you the exact time it  
25 was made, I think it was 1553.

1 BY MR. DAVIDSON:

2 Q Which in non-military time is?

3 A 3:53 in the afternoon. I'm sorry, that was  
4 1547. It was 1553 -- so 3:47 p.m. in the afternoon she  
5 makes the 911 call. And then it's at 3:53 when Officer  
6 Mitchell sees the call and puts himself on it.

7 BY MR. REES:

8 Q And what time did Officer Mitchell or Officer  
9 Romero make contact with Swoboda and the van?

10 A At 4:04.

11 Q At 4:04. And is the location that that 911  
12 caller described, is that within that kind of close  
13 proximity to Cheltenham?

14 A Yeah. If you just keep driving up Sunset,  
15 not very far, you get to that address.

16 Q So given the time and the locations, I assume  
17 you believe or conclude that Swoboda drove perhaps  
18 directly to that area by the Hillsdale library?

19 A That will be my guess. When I spoke to Ms.  
20 Howard, she said that it had been roughly three minutes  
21 after he left before she was able to get through to 911.

22 Q And was Officer Romero advised of that report  
23 from this citizen via Bureau of Emergency  
24 Communications? In other words, was he getting that  
25 information about the report that Heidi made?

1           A       When Officer Mitchell broadcast on the air  
2       that he was going to be taking that call, Officer Romero  
3       pulled the call up, pulled Officer Mitchell's call up  
4       and read it so he had that information.

5           Q       So in terms of answering this Grand Juror's  
6       question, that information would go towards the  
7       development of reasonable suspicion or probable cause to  
8       stop this particular individual?

9           A       Absolutely. Yes. And I think earlier, I  
10      mistakenly told you that that 616 and an H plate came  
11      from Heidi Howard. That came from a report that Officer  
12      Graf had taken the day before.

13                   MR. DAVIDSON: Anybody else? Thank you.

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MULTNOMAH COUNTY GRAND JURY

DEATH INVESTIGATION

Deceased: Kelly Vernmark Swoboda )  
Date of Incident: March 12, 2014 )DA Case No. 2293341  
Location: SW Cheltenham Street/ )  
SW Capitol Highway )PPB Case No. 14-20245  
Portland, Oregon )

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled transcript of GRAND JURY proceedings was heard, commencing at the hour of 10:00 a.m., on Thursday, April 3, 2014, at the Multnomah County Courthouse, Portland, Oregon.

**APPEARANCES**

Mr. Donald Rees  
Mr. Brian Davidson  
Deputy District Attorneys  
On Behalf of the State of Oregon.

\*

\*

\*

**KAREN M. EICHHORN, CSR, CRR**  
Certified Shorthand Reporter  
Portland, Oregon

1 TRAVIS GOVER,  
2 a witness called on behalf of the State, having been  
3 first duly sworn, was examined and testified as follows:  
4

5 EXAMINATION

6 BY MR. DAVIDSON:

7 Q And could you please slowly state and then  
8 spell your full name?

9 A My name is Travis Gover. Last name is  
10 spelled G-O-V-E-R.

11 Q And could you please tell the Grand Jury how  
12 you are employed?

13 A I'm employed with the Oregon State Police  
14 Forensics Services Division here in the Portland Metro  
15 Forensic Laboratory.

16 Q And in what capacity?

17 A I am a forensic firearm and tool mark  
18 examiner.

19 Q And how long have you been involved in  
20 forensic investigations and analysis?

21 A Just over 15 years.

22 Q And all that time with the Oregon State  
23 Police?

24 A Yes.

25 Q And can you tell us a little bit about kind

1 of what your job duties entail?

2 A The job duties of a forensic firearm's  
3 examiner involve, one, examination of firearms, which  
4 includes basically checking the function, which is  
5 checking the function of safeties, the firing mechanism,  
6 making sure that the mechanisms are operating as they  
7 are designed.

8 Other functions include what we call  
9 microscopic comparison. So we compare fired bullets,  
10 fired cartridge cases that have been left at scenes or a  
11 crime scene. We can compare those back to a known  
12 firearm or we can compare those to bullets and cartridge  
13 cases from other scenes to determine if they are fired  
14 from the same firearm.

15 Other duties that we do at the crime lab in  
16 the firearm section is what we call serial number  
17 restoration. Somebody who obliterates a serial number  
18 off of a firearm or another, could be just about  
19 anything, we can restore it with like chemical  
20 techniques.

21 We do what we call distance determination.  
22 So if a firearm is fired within a close proximity,  
23 there's actually gun powder deposited. We can do a test  
24 that may help us determine a bracketed range.

25 As a general idea, that's what the firearms

1 and identification section does.

2 Q And what education and training have you  
3 received that allows you to do this kind of work?

4 A I have a Bachelor of science degree in  
5 biology, which is a requirement. Training, I attended  
6 and completed what's called the Bureau of Alcohol and  
7 Tobacco and Firearms National Firearm Examiner's  
8 Academy.

9 It's a year-long intensive training course,  
10 which involves three months in our own lab doing  
11 research on the manufacture of firearms, microscopy,  
12 what makes firearms unique. And then the next three  
13 months, I spent actually in Washington, DC, at the  
14 Bureau of Alcohol and Tobacco and Firearms laboratory  
15 putting that stuff to practical use. A lot of  
16 microscopy.

17 I visited, I think ten different firearms  
18 manufacturers on the East Coast to observe the  
19 manufacturing process, to see, you know, how the  
20 tooling -- what the tooling is, how it's used, what  
21 makes each firearm unique to itself similar to like what  
22 a fingerprint is to an individual.

23 And I spent another three months doing  
24 assignments and research back in our own lab, and then  
25 it came out to about close to a full year.

1           Q       And during the course of your employment with  
2 the Oregon State Police Crime Lab, how many firearm  
3 examinations do you believe you've completed?

4           A       It would have to be in the thousands.  
5 Probably examined well into the thousands of different  
6 firearms.

7           Q       And let's talk a little more detail about the  
8 science of forensically comparing guns to fired bullets  
9 and shell casings.

10                    Could you talk to us about the basic  
11 principles that allow us to compare and potentially  
12 match those items?

13           A       Okay. Well, as I had mentioned earlier, I  
14 studied the machining process as it makes firearms  
15 unique. So during that process you have a sharp, you  
16 know, metal tool that's actually cutting metal, that's  
17 making up different parts of this firearm that are going  
18 to come in contact with what we refer to as a cartridge  
19 case or a bullet.

20                    And to give you some general terminology that  
21 I'll refer to, I'll refer to -- when I say "cartridge,"  
22 that is the unfired component. So that includes the  
23 bullet, the cartridge case that it's seated in, the  
24 powder within the cartridge case and a small, looks like  
25 a silver dot on it, which we refer to as a primer, which

1 holds an explosive compound that when a firing pin from  
2 the firing hits it, it initiates the whole firing  
3 process.

4 But within that firearm, there's certain  
5 areas that contact that cartridge case when it's fired.  
6 Then the bullet from pressure is driven down the barrel  
7 and through what we call rifling, so there's rifling.

8 If you were to look down a barrel, you would  
9 see lines that basically look like they are swirling.  
10 These are raised lines within the barrel. It will put a  
11 spin on the bullet so it's like a quarterback throwing a  
12 football. Puts a spin on it, it helps it become more  
13 accurate.

14 Well, these lines within the barrel that we  
15 call lands actually dig into the bullet and they leave  
16 marks on the bullet. And those marks are generally  
17 reproducible between shots.

18 So these lines, what we refer to are stria,  
19 are unique to that firearm. And under a microscope, we  
20 have a specialized microscope within our laboratory that  
21 basically has two stages set up that come up into what  
22 we refer to as an optical bridge. So it allows us to  
23 look at both images or both bullets in one field of  
24 view. It has like a little split screen.

25 So as we magnify those stria and lines, we

1 can actually put them together and try and line those up  
2 to see the detail that's reproducing between those  
3 shots.

4           The same kind of goes with the fired  
5 cartridge cases. They contact an area in the firearm  
6 referred to as the breach face. This is where the  
7 firing pin comes out through a little hole, hits that  
8 primer and initiates that firing process.

9           So what happens when that primer is struck,  
10 it initiates the burning of the powder, generates a lot  
11 of pressure. That is what forces the bullet down the  
12 barrel, but at the same time, that pressure is equal and  
13 opposite in direction.

14           So it forces that cartridge case back into  
15 what we refer to as that breach face area of the  
16 firearm. So it's imprinting marks from the firearm on  
17 the base of that cartridge case.

18           So we can look at those cartridge cases as  
19 the same way we did with the bullets on the comparison  
20 microscope, brings into the same image or same field of  
21 view, and we can start to line up the marks that are  
22 left from the gun on those cartridge cases to identify  
23 two cartridge cases as being fired from the same  
24 firearm, or if we have a firearm, we can test-fire it in  
25 our laboratory so we have a known sample to compare to

1 so we can identify a known cartridge case as being fired  
2 in a particular firearm.

3 Q And this is fairly long-standing and  
4 well-accepted forensic process; correct?

5 A Yes, it is.

6 A GRAND JUROR: Is a cartridge casing that  
7 has a shell casing basically the same thing?

8 THE WITNESS: Yes.

9 A GRAND JUROR: Thank you.

10 BY MR. DAVIDSON:

11 Q Okay. So my understanding is that you were  
12 supplied with various evidentiary items relating to this  
13 March 12th shooting in Southwest Portland that involved  
14 an Officer John Romero and Kelly Swoboda; is that  
15 correct?

16 A That's correct.

17 Q And what particular items of evidence did you  
18 receive for analysis?

19 A I received one 9-millimeter caliber Glock  
20 semiautomatic firearm. It was reported to be Officer  
21 Romero's. And I received what's called a Rock Island  
22 Armory .45 auto caliber, semiautomatic firearm as well.

23 Q That was purported to be Kelly Swoboda's?

24 A Yes. On top of that, I was also supplied  
25 with, it was four .45 auto caliber fired cartridge

1 cases, four 9-millimeter Luger caliber fired cartridge  
2 cases.

3           There were four bullets that were what we  
4 call 38/9-millimeter caliber. And the reason I refer to  
5 them as 38/9-millimeter is it is kind of a family. So  
6 there's a lot of different specific calibers that fall  
7 within this big group. And I also received one .45  
8 caliber bullet as well.

9           Q       All right. Why don't you explain to us the  
10 forensic processes. Let's start with the firearms.

11                   What did you do with the two firearms you  
12 received?

13           A       The two firearms, I examined them. I  
14 examined the safeties, the firing mechanisms, just what  
15 we call general class of characteristics.

16                   So I examined the interior of the barrel to  
17 see what type of rifling the firearm had. So I was  
18 referring to lands within the barrel earlier. The  
19 manufacturers will make these guns with a certain number  
20 of these lands, sometimes five, sometimes six, sometimes  
21 even seven and nine.

22                   So that's a way that we can -- we start to  
23 narrow down the field of could this -- could this  
24 particular bullet be fired from a gun in question.

25                   We look at it as the bullet has marks from

1 six lands, and I look at a gun and it has nine, then I  
2 know that just by that alone, I can eliminate that  
3 particular gun.

4           There's two different types of rifling. One  
5 is called conventional. So there's actually these lines  
6 or lands within the barrel that actually have sharp  
7 edges. So as you are going around the interior of the  
8 barrel, they actually have sharp edges along. It will  
9 be easier to show on the board. I'll keep it brief.

10           So the conventional rifle, inside of the  
11 conventional rifle barrel has these defined edges. We  
12 refer to them as the lands.

13           The second type of rifling is referred to as  
14 polygonal rifle barrels. They are not as well-defined  
15 and they don't leave as good an identifiable mark as a  
16 conventional rifling.

17           So as I go around, they are just kind of  
18 rounded edges a little bit. So they really don't dig  
19 into the bullet at all, and they don't leave  
20 identifiable marks hardly ever.

21           So that just kind of gives you an idea of the  
22 different styles and types of rifling. So not only do  
23 you have different types of rifling, but you can also  
24 have different numbers of these particular lands within  
25 the barrel.

1           Q       And how is this distinction relevant to the  
2 case at issue here?

3           A       The Glock firearm has polygonal style  
4 rifling. The .45 auto caliber firearm has the  
5 conventional style rifling. So it's easy to  
6 differentiate that polygonally-rifled bullets, which are  
7 obviously not going to be fired from the  
8 conventionally-rifled firearm.

9                       So I can eliminate those real easily. And  
10 vice versa, the conventionally-rifled bullet couldn't  
11 possibly be fired from the polygonally-rifled firearm.

12 BY MR. DAVIDSON:

13           Q       Detective, can you walk us through the  
14 assessment of the firearms?

15           A       Okay. So it's basically a test of the  
16 safeties, a test of the fire mechanism. With  
17 officer-involved shootings, we'll typically take the  
18 officer's firearm.

19                       And so the ammunition that was submitted with  
20 it, we try and take the magazine that was within the gun  
21 at the time. We'll take it out to our range and put it  
22 through a small series of tests.

23                       So basically we'll shoot one, shoot two real  
24 fast, shoot three. We're trying to see if there's  
25 anything abnormal that this gun is going to jam. Is it

1 not going to jam? Is it going to function as it was  
2 designed?

3 Other things that we do is we'll test the  
4 safeties, make sure that they are working, and there's  
5 nothing inappropriate or accidental that, you know,  
6 could have happened. We'll test the trigger-pull of the  
7 firearm to see how much pressure it takes on the trigger  
8 for that firearm to actually discharge and see if it's  
9 within a normal range of what we expect.

10 And then part of that is when we're  
11 test-firing it on the range. We'll collect those known  
12 samples that I had mentioned earlier for comparison  
13 purposes.

14 Q And you did that test with both the  
15 9-millimeter Glock that was attributed to Officer Romero  
16 and with the .45 caliber semiautomatic pistol that was  
17 attributed to Mr. Swoboda; is that correct?

18 A With the .45, I just test-fired it in our  
19 water tank. I used ammunition similar to what was  
20 received with the gun. And I also used some additional  
21 laboratory ammunition.

22 We don't put officers' guns into our  
23 database. But any other firearm, we can put into our  
24 database, which is called IBIS, which is the Integrated  
25 Ballistics Identification System.

1                   So I have a couple of fired cartridge cases  
2 that we're going to put into our system to see if  
3 there's any possible links to other crimes basically.

4                   We don't typically go through the full  
5 process of one shot, two shots, three shots on our  
6 range. We do that primarily with the officer's weapons.  
7 In case that ends up going to civil trial later, we can  
8 say that it was operating as it was designed.

9           Q       Let me ask you, what was your eventual  
10 assessment of the functionality of these two firearms?

11          A       From my examination, both of the firearms  
12 operated as they were supposed to.

13          Q       All right. All of the safeties functioned  
14 correctly?

15          A       Yes, they do.

16          Q       Trigger-pulls were appropriate and within  
17 norms?

18          A       Yeah. They are right around six to seven  
19 pounds, which is -- that's how much pressure it takes to  
20 pull the trigger and to fire a firearm. So it's within  
21 about a normal range of what I would expect it to be.

22          Q       Okay.

23                   A GRAND JUROR: Just out of curiosity, is the  
24 rifling affected by the number of times the gun is shot?

25                   THE WITNESS: Like the marks that are left on

1 the bullet?

2 A GRAND JUROR: Yeah. The marks that are  
3 left on the bullet, does that rifling wear down so that  
4 the marks are less prominent the more times you shoot  
5 it?

6 THE WITNESS: It can, but it can take  
7 anywhere from 10 to 20,000 shots before it starts to,  
8 starts to wear, so.

9 BY MR. DAVIDSON:

10 Q All right. So what was the next assessment  
11 you conducted on these firearms and the shell casings  
12 and bullets you received?

13 A Once I, you know, had taken care of the  
14 firearms, I basically go through a process with the  
15 fired bullets and the fired cartridge cases, which is  
16 just simple documentation of how all of the evidence is  
17 received, whether I have conventional rifling, polygonal  
18 rifling, the number of lands that I see on the bullet.

19 The caliber, the best I can tell, sometimes  
20 we get them too damaged and it's hard to determine  
21 exactly what the caliber is, the style and the type of  
22 bullet.

23 The conventional-rifled bullets, those lands  
24 will actually have measurable widths, which is kind of  
25 another general class type of characteristics, so I

1 measure those.

2 I'll measure the ones from my test-fires from  
3 the gun and see if they are within close range.

4 Sometimes I could have a gun with six lands. I could  
5 have a bullet with six lands, but the widths are  
6 completely different.

7 So that's another feature that I could use to  
8 eliminate the lands on the bullet that I had and what I  
9 compared to the gun were very close, so it's enough for  
10 me to say, okay, I can go to the microscope and pursue a  
11 further microscopic comparison of this evidence.

12 So once that process is done, I've kind of  
13 identified, you know, what I have for evidence. So I've  
14 got four .45 cartridge caliber cases, 4 9-millimeter  
15 caliber cartridge cases. I've got my test-fire samples  
16 that I know came from a particular gun. I can go to the  
17 microscope and do my comparison.

18 So the bullet in question was slightly  
19 damaged, but we had --

20 Q Which bullet are we talking about?

21 A The .45 caliber bullet in question was  
22 slightly damaged, but it still had two or three of these  
23 lands that were visible that I could see.

24 Taking my known sample from the .45 caliber  
25 firearm, I can put that on one side of my microscope,

1 put the .45 caliber unknown bullet on the other and  
2 start the comparison process.

3 So it's a matter of lining up those lands  
4 under that field of view and then looking at that  
5 microscopic stria detail, and it's a matter of rotating  
6 the bullets around. And if the detail reproduces, which  
7 a lot of times it does, you can line up that individual  
8 detail in the microscope.

9 We have a screen that is set aside on a  
10 camera that transfers it. We can actually take photos  
11 for our notes and document the detail that we see and  
12 keep it in our notebook as to why we had called that  
13 identification.

14 So when I say "identification," we're  
15 identifying that bullet, which I did as being fired in  
16 that firearm. So the .45 caliber bullet that I had, I  
17 identified as being fired from the Rock Island Armory  
18 .45 caliber firearm.

19 Q Do you have a picture of the firearm, the  
20 .45?

21 A Yes.

22 Q Just hold it up and show us.

23 A So that's the .45 caliber firearm.

24 Q All right. So you were able to forensically  
25 match the fired .45 caliber bullet recovered from the

1 scene as being fired from that .45 caliber pistol?

2 A Yes.

3 Q What did you do next?

4 A From there I looked at the fired cartridge  
5 cases, the .45 caliber fired cartridge cases.

6 So this involved looking at the detail that's  
7 imprinted basically on the base of the fired cartridge  
8 case. So I had samples that I had gotten from the  
9 firearm, which I tried to use the same type of  
10 ammunition.

11 There's different types of ammunition that  
12 can mark differently. They can produce different  
13 pressures. They can be made of different types of  
14 metals, so they can produce their marks differently. So  
15 I tried to use the same ammunition, which we had some,  
16 which is fortunate.

17 So I did the same process under the  
18 comparison microscope. I looked at that -- those fired  
19 cartridge cases from my gun that I obtained within the  
20 laboratory, and I compared it to the marks from the four  
21 fired cartridge cases from the scene. And I could  
22 identify those four fired cartridge cases as being fired  
23 in that .45 caliber pistol.

24 Q Okay. All right. What was your next  
25 examination?

1           A       The next examination involved the Glock  
2 semiautomatic firearm.

3           Q       And do you have a picture of that?

4           A       Yes, I do.

5           Q       Maybe tell us, was there anything notable  
6 about the exterior condition of the firearm when you  
7 received it?

8           A       When I received the Glock firearm, the  
9 technical flashlight on the front of it had a good  
10 coating of what we call apparent blood. I didn't test  
11 it, but it had definitely the appearance of blood.

12          Q       This was Officer Romero's sidearm?

13          A       That's correct.

14          Q       This is the Glock semiautomatic pistol?

15                 A GRAND JUROR: Where was the blood at?

16                 THE WITNESS: The blood was -- basically, I  
17 found most of it on the flashlight.

18 BY MR. DAVIDSON:

19          Q       So in this particular pistol, there's a small  
20 under-mounted flashlight; is that right?

21          A       Yes, so basically the same type of process  
22 that I used with the .45 caliber firearm.

23                 I compared the fired cartridge cases first.  
24 Glock's produce a unique firing pin shape where the  
25 firing pin comes out of the breach face. It's actually

1 rectangular in shape. And most other firearms have a  
2 circular shape.

3 This particular type of breach face, the way  
4 this firearm operates proves that it's really easy to  
5 identify marks that are kind of specific to Glock  
6 firearms and then also to one other Smith and Wesson  
7 series firearms. So it's a pretty narrow group that  
8 produces these types of marks.

9 So the four 9-millimeter caliber cartridge  
10 cases that I had produced this rectangular shaped, what  
11 we call, firing pin flow.

12 When I obtained my known samples from the  
13 Glock firearm, like I did with the .45, I would go to  
14 the comparison microscope and compare the marks that  
15 were left from the known firearm to the four  
16 9-millimeter caliber cartridge cases from the scene, and  
17 I could identify those four cartridge cases as being  
18 fired in that Glock pistol.

19 And the last process was to compare the four  
20 38/9-millimeter caliber bullets that were also submitted  
21 to me. These had the polygonal style rifling like that  
22 which we typically see in the Glocks. And there's  
23 another handful of firearms out there that produce this  
24 polygonal-type rifling.

25 The polygonal-type rifling, as I said

1 earlier, it doesn't produce the individual striated  
2 marks like a conventionally-rifled firearm. So based on  
3 our science of what we have, we don't have the marks to  
4 identify. We have another range of conclusions that we  
5 refer to as inconclusive.

6 So that basically that conclusion reads it's  
7 inconclusive if those bullets were fired from the  
8 firearm based on an absence of detail. So my test-fire  
9 showed that same absence as the four unknowns.

10 So when I compared them, there was really no  
11 marks other than the general class-type marks, just that  
12 there are polygonal rifling on the bullets. But there's  
13 no individual marks that could be particularly  
14 identified to that particular firearm. It's just not  
15 something we commonly see with these Glock firearms.

16 Q So if I understand you correctly, it is just  
17 something inherent with Glock-style firearms and they  
18 don't leave the -- the nature of their polygonal groove,  
19 they don't leave the kind of detail that a standard  
20 rifling would that would allow you to do that kind of  
21 match comparison?

22 A That's correct.

23 Q But everything you saw on these rounds, these  
24 9-millimeter rounds was consistent essentially, if I'm  
25 using the right terminology?

1           A       They could not be excluded from being fired  
2 from a Glock pistol.

3           Q       Okay. This is not surprising to you; this is  
4 what you expect to find?

5           A       Yes, it is.

6           Q       Let me ask you a little bit about the  
7 9-millimeter versus a .45 caliber.

8                   For those of us who aren't as well versed in  
9 firearms, can you tell us what the difference is between  
10 those two, which is larger or which is smaller, and  
11 maybe just a little bit about that?

12           A       Okay. So to give you a little background,  
13 the .45 caliber bullet is actually .4515 inches in  
14 diameter. And 9-millimeter caliber bullet is right  
15 around .355 to .357 inches in diameter. And with those  
16 bullet styles or bullets, there's typically weight  
17 ranges that fall with those different calibers.

18                   So .45's, I think go up to 230 grains.  
19 Grains being a measurement used by basically the  
20 firearms community. The maximum weight you'll see with  
21 a 9-millimeter caliber, 9-millimeter Luger caliber  
22 firearm is about 148 grains.

23                   So you see with the smaller diameter, we have  
24 a little bit lighter bullet. So the .45 is typically  
25 bigger, a little bit heavier. When they are fired, they

1 are also moving slower. They don't produce them to go  
2 as fast.

3 So they still have -- they could have similar  
4 energy, because you've got a bigger mass, but it's  
5 moving slower. With the 9-millimeter, you've got a  
6 smaller bullet, but it's moving faster.

7 So in the end, the energies could be similar  
8 depending upon the style and the type of bullet and how  
9 the -- what the manufacturer was trying to achieve with  
10 that particular style of load, so.

11 Q Just all things being equal, is the .45  
12 caliber weapon and cartridge considered a more powerful  
13 cartridge, all things being equal in the 9-millimeter?

14 A It's a hard question to answer basically  
15 because you have different types of cartridges that are  
16 being produced, the unfired components.

17 So there could be -- some cartridges produce,  
18 you know, with higher velocities with different bullet  
19 styles, but it just depends on what the manufacturer is  
20 trying to achieve. So there's a lot of different types  
21 out there that fall within that same -- those same  
22 calibers.

23 Lot of people think of the .45 as more  
24 powerful, but it has a little bit more of a recoil  
25 because it's trying to push a heavier bullet out. But

1 it depends on the velocity of which the bullet leaves as  
2 to kind of gauge some of that power. So it can be kind  
3 of one of those that fluctuates.

4 Q Okay. Let me ask you, you didn't find  
5 anything in your forensic investigation analysis of the  
6 guns, cartridges and fired bullets in this case that  
7 would indicate to you that anything other than these two  
8 particular firearms were involved in this altercation?

9 A No. I didn't see anything that would suggest  
10 that there was another firearm or a third firearm out  
11 there.

12 MR. DAVIDSON: Do the Grand Jurors have any  
13 questions for Mr. Gover?

14 A GRAND JUROR: Is the .45 the standard issue  
15 for Army pistols?

16 THE WITNESS: It used to be.

17 A GRAND JUROR: Used to be, no longer is,  
18 though?

19 THE WITNESS: No. The Beretta took over  
20 quite, I think maybe in the '80s or '90's. The military  
21 adopted the Beretta, the M9, which is a 9-millimeter. I  
22 know some -- still, like, officers I believe still have  
23 the choice of using the .45 1911, but I think the  
24 Beretta and -- there's some different standard-issued  
25 pistols out there now.

1           A GRAND JUROR: You have no way of knowing  
2 whether this is a military-style .45 or --

3           THE WITNESS: It's military style. It's the  
4 1911 model, but there's also -- probably several hundred  
5 manufacturers out there that produce this 1911 model.  
6 The 1911 model, which is basically that basic shape and  
7 design is probably one of the most popular designs in  
8 existence.

9           A GRAND JUROR: Okay.

10          MR. DAVIDSON: Anybody else with any  
11 additional questions?

12          A GRAND JUROR: I have a question.

13                 There was some earlier testimony saying that  
14 when the suspect fired north, there was a bullet that  
15 whizzed past a couple eyewitnesses and stuck in a tree  
16 and they were unable to find it.

17                 Is that search for that bullet still ongoing  
18 or is that just --

19          MR. DAVIDSON: Well, I don't know that this  
20 particular witness would know the answer to that  
21 question.

22          THE WITNESS: I don't know.

23          A GRAND JUROR: Is that something that needs  
24 to be -- to do a complete check of the bullets, the  
25 firearm, do they need to account for anything that was

1 fired?

2           So my question is, when you were talking  
3 about the bullets and there are different weights and  
4 they vary by weights and all that kind of stuff, and  
5 it's hard to determine necessarily velocity, but can you  
6 get a determination of that for these two weapons based  
7 on your testing?

8           THE WITNESS: It would take some additional  
9 testing, if it were something I felt was relevant. If  
10 there's something I thought maybe the velocity affected  
11 for the markings, but the velocity didn't really, I  
12 don't believe had an effect on the markings that I was  
13 looking at.

14           There's additional testing that we can do  
15 with -- we have to have that exact ammunition. And we  
16 have what we call a chronograph, which basically will  
17 measure the velocity of a bullet that's traveling.

18           So it would just give us an idea of what that  
19 velocity is, but the markings are pretty much dependent  
20 upon the firearm. And then I've seen bullets fired from  
21 different styles that will still produce the same marks.  
22 So they can be producing different -- you know, coming  
23 out at different velocities, but they will still produce  
24 the same or similar marks enough to identify.

25           So I don't think the velocity difference --

1 there's no -- I don't see a relevance for measuring the  
2 velocity between the two different ones.

3           Maybe if we wanted to try and generate the  
4 amount of energy that each one was producing, which I  
5 don't see what the need would be for, I think the  
6 question is what bullets were fired from what firearm,  
7 what cartridge cases came from what firearms. But we do  
8 have the ability to measure velocity if it's something  
9 that's necessary.

10           MR. DAVIDSON: Okay. Anybody else with  
11 questions for Mr. Gover?

12           No. Okay. Thank you, Mr. Gover.

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1 be state certified in Monmouth, Oregon. And then right  
2 out of that, I was, I took the Advanced Police Academy  
3 that Portland Police offer. That's a 16-week academy.

4 And then after that academy, I rode with a  
5 field training coach for approximately 18 months --  
6 well, from the date of hire, minus the two academies,  
7 right after that, after the 18 month from my first day  
8 of hire, I was riding with the field training coaches  
9 until I got off probation.

10 Then aside from the yearly in-services that  
11 we have, we usually have a few days of in-service which  
12 is a refresher, updated law, scenario-based training  
13 that we do every year.

14 We qualify on the shooting range quarterly.  
15 And I myself am an AR-certified officer, which is a  
16 rifle. I've taken, I think it's a 40-week course on  
17 carrying the AR-15 rifle. And I've taken a two-day  
18 course on carrying the less lethal shotgun. And I've  
19 also taken a two-week course on patrol tactics as a  
20 patrol tactic instructor.

21 Q All right.

22 A GRAND JUROR: No college?

23 THE WITNESS: I do have college in my  
24 background. I graduated with a Bachelor of arts in  
25 psychology from California State University Bakersfield.

1 BY MR. REES:

2 Q And you have other work experiences as well.  
3 Why don't you tell us what you did after college.

4 A So after college, even through when I was in  
5 college, I have always kind of worked around teens and  
6 did things with young people, that is kind of why I  
7 found my niche as a School Resource Officer here in the  
8 Portland Police Bureau.

9 But I coach football. I coached baseball. I  
10 did about five years of social work with pregnant  
11 parenting teens. And then after that before becoming a  
12 police officer, I did about a year of juvenile probation  
13 in California.

14 Q And your current assignment with the Portland  
15 Police Bureau, I think you just mentioned is as a School  
16 Resource Officer.

17 A That's correct.

18 Q What is that?

19 A A School Resource Officer -- so for the most  
20 part, all of the high schools within the City of  
21 Portland have a School Resource Officer, an officer  
22 assigned to that high school.

23 That specifically takes and handles problems  
24 or issues or even just getting out, you know, doing  
25 community things with the kids at the schools. So it's

1 a good way for us to get to know the kids and the kids  
2 to get to know us, but it entails lots and lots of  
3 different things. Too many to describe here.

4 I mean, I've been involved in different types  
5 of investigations as a School Resource Officer, but I've  
6 also done extra things as far as community policing,  
7 getting engaged with the students and the kids.

8 So not only do -- I do, like I said,  
9 investigations within the Portland Public Schools, but  
10 also we do events in my division, and we're able to  
11 connect with the community by doing, you know, fund  
12 raisers for the kids.

13 We do -- I do community meetings. I do the  
14 high school meetings. Right now we're working on a  
15 talent show for all of the Portland Public Schools. We  
16 do bike fairs. We do all kinds of different things with  
17 the youth.

18 So every high school in the City of Portland  
19 has a School Resource Officer assigned. And so my  
20 assignment right now is Wilson High School in Southwest  
21 Portland. And I also cover the two middle schools that  
22 feed into Wilson, which is Gray Middle School and  
23 Jackson Middle School. And I have about five  
24 elementaries that I also cover. So that's the Wilson  
25 cluster.

1                   My main office is right there at Wilson.  
2                   They do have an office there for me, but my cluster is  
3                   the Wilson cluster, all of the feeder schools that go  
4                   into Wilson.

5                   A GRAND JUROR: Did you say five elementary  
6                   schools?

7                   THE WITNESS: Yes, five elementary schools.

8                   BY MR. REES:

9                   Q           I think I saw that you had coached football  
10                  and baseball for youth in the past as well; right?

11                  A           Yes.

12                  Q           And so is this current position something  
13                  that you sought out as an assignment because you were  
14                  interested working with youth?

15                  A           Yeah. When I first became a police officer  
16                  and working -- wanting to work for the Portland Police  
17                  Bureau, I noticed that there's a lot of opportunity to  
18                  do different things within the police bureau.

19                                One of those things that, when I first  
20                                started going through my training, I noticed that there  
21                                were school police officers or officers that worked with  
22                                teens and officers that did this kind of stuff.

23                                I was like, man, I can totally do that once  
24                                after I get off probation and after I, you know, do my  
25                                due diligence as police officer and get the experience.

1           But I specifically signed up and applied to  
2 be a School Resource Officer because of that reason,  
3 because I had the experience, because I enjoy working in  
4 that, in that arena.

5           Q       Let me ask you now about the events of  
6 Wednesday, March 12th, 2014.

7           A       Okay.

8           Q       Was that a regular working day for you as a  
9 School Resource Officer?

10          A       Yes.

11          Q       And what time did your shift begin?

12          A       7:00 a.m. in the morning.

13          Q       And do you drive a regular, marked police  
14 car?

15          A       I do, yes.

16          Q       And do you wear a regular Portland Police  
17 Bureau uniform, displaying a badge?

18          A       Correct, I do, full duty belt, everything,  
19 yes.

20          Q       And as your shift began that day, talking  
21 about before the events of the afternoon, anything  
22 unusual happen, or was it sort of a routine day, would  
23 you say?

24          A       Nothing unusual happened. I did -- I guess  
25 something at the very getgo of my shift that morning, I

1 got a phone call from the Central Precinct neighborhood  
2 response officer. That phone call in the morning was --  
3 he wanted to find out about, more about this report that  
4 an officer, Jason Graf, had taken.

5 I told him that Jason Graf had talked to me  
6 on Tuesday evening, and told me that he had taken a  
7 report from two Wilson High School kids about a green  
8 van following kids. And he said he was going to write a  
9 report on it.

10 So he gave me the case number when I talked  
11 to him on Tuesday evening. But that phone call from the  
12 Central Precinct officer, he was asking me more  
13 information about that, and I had told him that, you  
14 know, I would call him after roll call, and that I had a  
15 similar report that I had taken a week prior to that.

16 That was kind of -- I usually don't get phone  
17 calls right at 7:00 in the morning right when I'm going  
18 to roll call, so that was kind of interesting and  
19 different.

20 Q All right. Other than that, was there  
21 anything unusual about that day?

22 A No.

23 Q Now, you just mentioned that information  
24 received from Officer Graf in an earlier report from a  
25 week before.

1           A       Correct.

2           Q       The report from a week earlier, was that  
3 related to a suspicious van also?

4           A       It was, yes.

5                    So a week prior to this Wednesday on the  
6 12th, a week prior, I had taken a report from two 6th  
7 grade students at Gray Middle School.

8                    And it was actually the vice principal of the  
9 school who was telling me that the two kids had told  
10 their parents, and wanted a police officer to make a  
11 report. That's one of my jobs, so I go to the schools  
12 and I will make the report.

13                   So I called the parents up, and they wanted  
14 to meet after school. This was the week prior. So we  
15 met at 3:45 p.m., and I talked to the two 6th grade  
16 girls that had told me that there was a suspicious  
17 person following them in a van.

18                   Do you want me to get into the details?

19           Q       Yes, a little.

20           A       So they said for two Thursdays in a row, it  
21 wasn't just one time, it was the past two Thursdays in a  
22 row, a person in a white van had driven past them.

23                   So I asked them specifically about the latest  
24 incident of this. So they told me, after school, both  
25 girls said they were walking home. And they were

1 walking behind Gray Middle School. There's a pedestrian  
2 bridge that goes into the neighborhood.

3 And they said that they saw a white van, that  
4 the guy in it that was staring at them drive by, but  
5 they didn't really take notice of it until they  
6 continued to walk, and this white van did a U-turn and  
7 did a second pass by them.

8 Okay. And so that's when they noticed the  
9 van -- or they noticed it was kind of a weird situation  
10 for them and didn't really feel comfortable.

11 So as they are walking through the  
12 neighborhood, there's a street, Sunset Boulevard, that  
13 comes across that goes down to Wilson. They said the  
14 van had made a right turn onto Sunset, and they walked  
15 across Sunset into the next neighborhood up.

16 Well, apparently this van had made another  
17 U-turn and turned on the street that they had crossed  
18 over, that they had walked on. So actually the van had  
19 made a third pass by them with the person slowing down,  
20 looking at them, really creeped them out. And they said  
21 that this had happened two times in a row. And they  
22 described the van as a white van.

23 Again, I'm talking to two 6th grade girls, so  
24 it was hard to get a good description of, you know, what  
25 kind of van it was or the age of this person that was --

1 that was looking at them for, you know -- they even said  
2 the guy was looking at them, looking at them for a long  
3 time, and really slow, almost to a stop.

4 And so trying to get that information out the  
5 best I could. I mean, they said the person was in their  
6 30's and had black hair. So I took that report, gave  
7 the case number to the parents, and wrote that report  
8 up.

9 And then when I get the phone call the  
10 following Tuesday from Officer Graf kind of explaining  
11 the same, you know, a van -- so then Officer Graf said  
12 that this was two Wilson students. He tells me about  
13 this. So that happened the week prior.

14 Now, we're on Tuesday, the day before  
15 Wednesday of the event. I start to get a little like  
16 that's really weird because the two 6th grade girls said  
17 it was a van. Jason Graf told me it was a green van  
18 this time.

19 But in my mind, I'm thinking it's the same  
20 area on Sunset, the same general area, the same time of  
21 day. And it's really kind of -- and now, he's taking a  
22 report from two Wilson kids. So something is going on  
23 in this area that prompted me to do a little bit more  
24 because of the two separate reports, but the  
25 similarities.

1           Like I said, the same time of day, kind of  
2 the modis of operation. The person is like, you know,  
3 driving by these kids, really stopping -- almost to a  
4 stop and looking at them for a long time, and creeping  
5 the kids out.

6           So that is what gets my, I better do a little  
7 bit more on this here. It's starting to not feel right,  
8 so.

9           Q       Later in your shift then on Wednesday,  
10 towards the afternoon, was there some conversation  
11 amongst the officers working in the district that covers  
12 Wilson High School or the adjacent districts to make  
13 some effort to potentially look for the suspicious van?

14          A       Yeah. So when I mentioned the officer had  
15 called me that morning, on Wednesday morning, he had  
16 basically given the information out at roll call at  
17 Central.

18           So the Central officers are the ones that  
19 work out in the Wilson area. So they had an idea that  
20 there was the suspicious van that followed kids, and  
21 that -- and then -- we were going to do more about it to  
22 see what's going on. So he had relayed that information  
23 to the officers that work that area.

24          Q       All right. And did you have some contact at  
25 some point with those other officers?

1           A       I did. I talked to Edgar Mitchell, Officer  
2 Edgar Mitchell on the phone. I had typed a message on  
3 the computer, because we can do that from our cars,  
4 computer to computer to other officers, if they wanted  
5 to help me stay in the area after school on Wednesday to  
6 look for, you know, basically, you know, vans in the  
7 area that were suspicious, you know, that were either  
8 slowing down or just -- any type of suspicious behavior  
9 because, like I said, the frequency of it happening.

10                   Even if we can get a name or two, just in  
11 case, you know, somebody -- if a kid or somebody were to  
12 come up missing, we might have license plates, we might  
13 have a lead for detectives.

14           Q       All right. So what time does school end for  
15 Robert Gray Middle School and for Wilson High School?

16           A       So school for Wilson High School lets off at  
17 3:15. Gray Middle School usually lets off about  
18 3:45 p.m.

19           Q       And did you receive information that  
20 afternoon that a citizen had called 911 to report seeing  
21 a suspicious van in that very neighborhood on Sunset  
22 Boulevard?

23           A       We did, yes.

24           Q       And do you remember about what time in the  
25 afternoon that was?

1           A       That must have been around 3:50 p.m.,  
2       somewhere around 3:45, maybe 3:50, maybe.

3           Q       Do you remember how you received that  
4       information?

5           A       I received that information from the  
6       computer, from dispatch computer.

7           Q       Would there be a printout of that 911 call  
8       then?

9           A       It would be -- for us, it would be just the  
10      initial description of what the call taker gets from 911  
11      and that's what we see. We read whatever the  
12      call-taker -- so whatever is relayed to the call-taker,  
13      they type it up, and it gets relayed to us in the  
14      computer.

15          Q       What did you think when you read that?

16          A       I was thinking -- because I had worked so  
17      diligently that day to try to get a press release out  
18      because of the frequency of this type of -- the  
19      suspicious behavior -- suspicious vans following kids or  
20      whatever, looking at kids or creeping kids out, I was  
21      working that whole day, trying to get the principal at  
22      Gray and the principal at Wilson to push out a letter to  
23      parents to talk about warning kids about staying in  
24      pairs, you know, to report things that are suspicious.  
25      I was trying to get them to do that. And I came up to a

1 roadblock.

2           So I actually went back to our -- my  
3 division. I talked to my captain and my sergeant about  
4 putting out a press release as fast as we could just so  
5 I can get the information out.

6           That's what I was doing probably from about  
7 1:00 to about 3:30 that afternoon, 3:15 p.m., working on  
8 that press release. So I had to get on the phone with  
9 the -- with our public information officer to get that  
10 press release out.

11           So when I got this call around 3:45, I think  
12 the actual press release came out at about 3:30,  
13 somewhere around there, and we get this call almost 15  
14 minutes later after this flash alert came out. I was  
15 impressed because I looked at the call on our computer,  
16 and I didn't recognize the name.

17           I remember thinking whoever gets their flash  
18 alerts on their cell phone or on their email, whatever,  
19 must have been some alert citizen, because I was  
20 impressed on how fast the fast alert came out -- the  
21 flash alert came out and how fast this person called 911  
22 to report the suspicious van. That's what I was  
23 thinking at that time.

24           Q       Okay. And so were you aware of whether any  
25 particular police officer was responding to that 911

1 call?

2 A Was I, yes.

3 Q And who was that?

4 A Edgar Mitchell had, I believe, over the radio  
5 had mentioned something about that he was going to take  
6 that call.

7 Q All right. So what did you do at that point?

8 A At that point I was, I was in the area of  
9 Gray Middle School, just driving around in the  
10 neighborhoods because school was letting out. When I  
11 heard over the radio that he was going to take that  
12 call, I started to head that way.

13 So at that point, I was in the neighborhood.  
14 And I come up onto Sunset Boulevard closer to Dosch  
15 area, and in front of me, as I'm pulling onto Sunset, I  
16 see a car, the car or a car with a similar description  
17 of what we are looking for. It was a minivan, a green  
18 minivan with gray bumpers.

19 So I start to get behind the car. And as I'm  
20 going down towards the library on Sunset, I get on the  
21 air and I said to the dispatcher that I was following a  
22 car, basically a car that looked like the car that we  
23 were looking for. I said that I'm right behind a green  
24 van with gray bumpers, and that I was going to conduct a  
25 traffic stop on that car.

1                   So that's what happened. So basically the  
2 car is driving towards Wilson on Sunset and turns right  
3 onto Dewitt where the library is, and I conduct a  
4 traffic stop on that vehicle.

5                   And so --

6           Q       And that turned out to be a female driver?

7           A       Correct.

8           Q       And so when you saw that it was a female  
9 driver, did you believe that was not then the person  
10 that had reported the 911?

11          A       Absolutely.

12          Q       All right. What did you do after that?

13          A       So at that point I went up to the female  
14 driver, you know, I explained to her that -- I  
15 apologized. It did -- I did explain to her that we were  
16 looking for a specific van and a specific person.

17                   Obviously, she didn't match that description.  
18 I apologized. She understood. She said, "No, I totally  
19 understand."

20                   I explained to her at that point, like, what  
21 we were doing out there, and that there was probably a  
22 lot of police cars out there, for her not to be alarmed  
23 or anything like that.

24                   And so at that point, she says, "No problem.  
25 I understand." She starts to -- I gave her have a nice

1 day, ma'am. Then she starts to turn her car into a  
2 parking spot at that point. At that point I can see  
3 down the street where Officer Mitchell is, and he was  
4 talking to somebody through his car window.

5 Q All right. Let me ask you, if you would, to  
6 stand up, and stand up on the left-hand side of this  
7 photographic diagram.

8 Please show the Grand Jurors where you are at  
9 this point, where you said that now that you have said  
10 good-bye to the female driver of the van and that now  
11 you are seeing Officer Mitchell down the street. Is  
12 that right?

13 A Correct.

14 Q So go ahead and show us where that is.

15 A So I'm talking to the lady at the van right  
16 here.

17 Q So this is on Southwest Dewitt Street?

18 A Southwest Dewitt, correct. I'm out of my  
19 van. I'm having a conversation with her at her car.  
20 And down right here at about the corner, I can see Edgar  
21 Mitchell in his patrol SUV.

22 He's got the SUV that day. He was driving  
23 the SUV. It's like a Ford Explorer or something like  
24 that. But I can see him parked right in the middle of  
25 the street, and he is talking to somebody that's

1 standing on the sidewalk. And there's a green van with  
2 gray bumpers right there.

3 Q All right. You're indicating that's the  
4 corner of Southwest Dewitt Street and Southwest  
5 Cheltenham?

6 A That's correct.

7 Q All right. And do you drive up to that  
8 location then?

9 A Yes. So at that point the lady, like I said,  
10 she's free to go. She ends up parallel parking right in  
11 this area right here somewhere. Then at that point I  
12 get in my patrol vehicle and I start to come up this way  
13 here.

14 And I hear Edgar Mitchell saying something  
15 about I talked to the driver of this van, and it's not  
16 the guy. So I pull --

17 BY MR. DAVIDSON:

18 Q I'm sorry, did you hear that over the radio  
19 or did he say that to you?

20 A I believe he said that over the radio. I  
21 can't remember. I'm pretty sure he said that over the  
22 radio.

23 So I drive up next to him, and I ask -- I  
24 roll down my window on my passenger side and I ask,  
25 "Edgar," I was like, "hey, did you get that guy's name?"

1                   And he's, like, "Oh, no, that's not the guy.  
2                   He's got a full head of hair."

3                   I said, "Okay. Is the plate in the call?"  
4                   And I'm talking about the van that's parked right there.

5                   And he says, "I think the dispatcher put it  
6                   in. I'm just going to double-check." So he gets on the  
7                   air and he asks the dispatcher, "Is this plate in the  
8                   call," and she confirms. She says something about let  
9                   me look it up to make sure. So there's a delay there.

10                  So at that point I saw the guy walk away as  
11                  I'm pulling up to Edgar. I didn't see his face. I did  
12                  see that he was wearing something tan, but I didn't  
13                  see -- he was kind of tall, but I didn't see his face at  
14                  that point.

15                  But as he's walking away, I saw another older  
16                  gentleman behind him, but he was wearing like a red hat  
17                  or like a red bag. He had something red, I remember  
18                  that.

19                  Keep going?

20                  BY MR. REES:

21                  Q            Sure.

22                  A            Okay. So at that point the -- so I asked him  
23                  about the plate. He gets on the air. He asks the  
24                  dispatcher to make sure that the plate is in the call.

25                  So I make a U-turn right in this area and I

1 come back and I start driving back this way. And as I'm  
2 about to the front of the library entrance, Edgar  
3 Mitchell, the officer gets on the air again and says,  
4 "Hey, Romero, stop that guy, the plates on this vehicle  
5 are not matching," he says, something to that effect.

6 So the first thing I do is look at the doors  
7 over here. I don't see the guy that I saw walk first,  
8 but I do see the guy that was wearing the red hat walk  
9 into the library.

10 Okay. So my assumption was well, the guy  
11 that he originally was talking to must have already went  
12 into the library.

13 Q Because he was in front of the person with  
14 the red hat?

15 A Correct. Does that make sense?

16 Q Yes.

17 A Okay. And so I park my car at about right  
18 here. At this time I see -- and we get on the air and  
19 say we're going to look for the guy in the library.

20 Officer Sze Lai is right here on the sidewalk  
21 with me. And now Officer Mitchell joins all three of  
22 us. We are basically at the entrance in the vestibule  
23 here of the library.

24 And Officer Mitchell says something about --  
25 what does he say? Something about wearing a hat or -- I

1 can't remember what he said. But I remember I didn't  
2 see what he looked like.

3 So I tell them why don't you two look -- the  
4 thing is -- all three officers, uniformed officers in  
5 this library, you know, and not wanting to -- being  
6 aware that, you know, three uniformed officers going to  
7 the library, I didn't want to alert a bunch of people  
8 because the library is pretty quiet.

9 Everyone sees three uniformed police officers  
10 go in there, and so I decided, well, you know what, how  
11 about you two, Officer Sze Lai, you two, why don't you  
12 go ahead and look in the library, I'm going to go back  
13 to the van just in case he doubles back on us.

14 Does that make sense?

15 Q Yes. So you left the library at that point?

16 A At that point I left the library. Officer  
17 Sze Lai and Officer Mitchell went and remained in there,  
18 looking in the library to see if they can find the guy  
19 that Officer Mitchell was talking to.

20 Q All right. So as you leave then, do you get  
21 back into your patrol car or are you on foot?

22 A I get back in my patrol car.

23 Q All right. Where did you go?

24 A So at this point I exit the library. I get  
25 back in my patrol car, make another U-turn, come back

1 and I park my car right behind the van that was parked  
2 right there.

3 Q Okay. So, indicating for the record, that  
4 you are now parked behind -- in your police car behind  
5 the green van at the corner of Dewitt and Cheltenham?

6 A Yes.

7 Q And at that point, do you see this person?

8 A No.

9 Q No. So what do you do?

10 A So I get out of my van. And my heightened  
11 awareness is a little bit up because we don't know where  
12 this guy is. We do know there's, obviously, a  
13 suspicious call. That's the reason why we're there in  
14 the first place, but I'm thinking to myself, there's a  
15 heightened awareness here because of the switched  
16 plates.

17 I'm like, you know, so I get out of the van.  
18 I take my flashlight out, and I'm kind of like -- it's  
19 got tinted windows, and I'm doing my best to try to look  
20 in the back of the van.

21 But I'm also thinking in the back of my head  
22 I don't want this person to come up on my back. So I  
23 keep looking over just to make sure no one is coming up  
24 on my back. But I don't know who I'm dealing with. I  
25 don't know what's really -- at this point it's just, you

1 know -- that's where I was at that point.

2 Q Could you see anything inside the van?

3 A The only thing I remember seeing was like it  
4 looked like a bike or a frame or something like that of  
5 a bike, a bicycle or something like that.

6 And the other thing was as I come up towards  
7 the passenger side window, there's like trash and cans.  
8 Nothing out of the ordinary. It just looked like a  
9 dirty car.

10 Q All right. So where do you go after that?

11 A So at this point this area has -- so the van  
12 is parked here. There is the shrubbery on this corner  
13 right here. So as I'm going up and looking into the,  
14 into the vehicle's passenger side, I kind of look to my  
15 right and through the shrubbery, I could see movement.

16 So I was just -- I was again, looking over my  
17 back to make sure nobody was behind me, but then as I  
18 come around the street to look down -- this would be  
19 south, I think down south on Cheltenham, I see somebody  
20 walking away this way with a tan jacket, taller, older  
21 guy. So at that point, like I said, I make that corner,  
22 and he's probably a good 40 yards away from me.

23 Q All right. Go ahead and describe then what  
24 your thought process was and what you did in terms of  
25 attempting to contact that person.

1           A       Okay. So this is kind of hard for me. I  
2 mean, this is -- so, um -- so again, my thought process  
3 was, um, I'm thinking to myself, what crime do we have  
4 here? I mean, what's my justification of stopping this  
5 person? Do I have a crime?

6                   I'm thinking to myself at this point -- at  
7 this point in time, I'm thinking to myself, I don't  
8 necessarily have a crime, full on crime where I have  
9 probable cause to arrest somebody.

10                  Slowing down looking at kids, creeping kids  
11 out isn't a crime because -- it just isn't. In my mind  
12 that's what I'm thinking. Do I have enough -- something  
13 will be prosecutable in a court of law for slowing down  
14 and looking at kids.

15                  But I do have enough to engage in  
16 conversation with this person for reasonable suspicion  
17 based on where I'm at right now with the switched plates  
18 and the suspicious call. That's where I'm at. So I'm  
19 thinking -- that's what my thought process was at the  
20 time.

21                  Heightened awareness of danger. We talk to  
22 people all of the time. You know, we talk to people all  
23 of the time for low-level crimes, for medium-level  
24 crimes, for high-level. We talk to people all of the  
25 time. So my heightened awareness of danger wasn't

1 really high or anything. It was just kind of, where am  
2 I on this as far as the spectrum of danger.

3 Q All right. Reasonable suspicion would give  
4 you a legal basis to briefly detain a person?

5 A Correct.

6 Q And talk to them to investigate; is that  
7 right?

8 A Yes.

9 BY MR. DAVIDSON:

10 Q Officer, if I can ask you, Officer, the fact  
11 that his van had two different license plates on it, is  
12 that a violation of any law?

13 A It is. It is a violation. Again, like you  
14 said, arrestable violation, I'm not sure. Usually we  
15 take those on a case-by-case situation. It could be,  
16 you know, this guy has a legitimate reason why, you  
17 know -- or, you know, I've gone to calls where people  
18 have had switched vans or reported -- or switched  
19 license plates on a particular car because someone had  
20 stolen and replaced it with somebody else is, and they  
21 had no idea they were driving around with switched  
22 plates.

23 So it's not really until we get into the meat  
24 and potatoes of that particular call makes me wonder if  
25 there really isn't a crime happening at that point.

1 Does that make sense?

2 Does anybody have any questions about that?

3 So usually getting into it and figuring out  
4 what the reason is of why the switched plates is where  
5 we can get --

6 Q But it certainly would bear some additional  
7 investigation?

8 A Yes, absolutely.

9 Q It could potentially be a crime?

10 A Absolutely.

11 BY MR. REES:

12 Q All right. So before I interrupted, I think  
13 you had mentioned the distance from yourself to this  
14 person down the sidewalk which was about how far, would  
15 you say?

16 A So when I rounded the corner, he's  
17 probably -- there's a house here. He's probably past  
18 this house, passing these bushes at this point. So  
19 about right here. That's when I turned the corner.  
20 He's still walking away. He's walking at a pretty brisk  
21 pace.

22 A GRAND JUROR: Could you guesstimate how  
23 many car lengths that would be?

24 THE WITNESS: Let's see here, probably about  
25 eight, eight to almost ten.

1           A GRAND JUROR: Is he on the same side of the  
2 street as you or the opposite side?

3           THE WITNESS: He's on the same side. We're  
4 both on -- so if we're facing south, we're both on the  
5 right-hand side.

6 BY MR. REES:

7           Q       Which is the west side of the street?

8           A       Yes.

9           Q       Okay. So go ahead then. What did you do to  
10 make contact with this person?

11          A       So in my mind, I was thinking, um, I'm  
12 looking at the van. Whoever owns this van was probably  
13 trying to get back to it and leave. That's kind of  
14 where I'm thinking at this point.

15                   I'm not sure again, where I'm at as far as --  
16 I know I had the reasonable suspicion to stop somebody,  
17 whoever owns the van, but at the point is when I turned  
18 the corner and I look and see he's -- somebody is  
19 walking away. I assume that's the person that owns this  
20 van.

21                   And so at that point I start walking towards  
22 him and I yell out, "Sir, can you stop right there?" He  
23 continues to walk.

24                   So I say it again, "Sir, can you stop right  
25 there," or I say something in those words, and he

1 continues to walk.

2           So now, I'm thinking in my mind, am I too far  
3 where he can't hear me or is he just ignoring me. I  
4 just don't know at this point.

5           So as he continues to walk, and I'm walking  
6 towards him, I start to do like a jog to close the  
7 distance on him. So now, we're probably about this  
8 area. And I'm almost at a jog, and I'm closing the  
9 distance on him.

10           And I get to about 25 yards, and now, I'm  
11 thinking to myself, okay, he's -- more than likely, he's  
12 ignoring me. So I say, "Sir, stop right there." My  
13 voice changed -- my voice changes from, "Sir, can you  
14 stop right there" to "Stop right there."

15           And the whole time he's walking away, his  
16 hands are in his jacket pocket. He's walking away. And  
17 now that I'm telling him to stop.

18           He is, um, based on my experience, he is  
19 giving a lot of red flags, a lot of indicators for what  
20 I've seen in the past for flight -- fight or run --  
21 flight or -- fight or flight basically.

22           And those indicators could be a lot of  
23 different things. What I really noticed was that he was  
24 kind of turning his shoulders and looking away.

25           Now, I'm at a distance where I know he can

1 hear me and he is still continuing to walk away, and his  
2 hands are in his pockets, but he's doing -- like he's  
3 moving his shoulders, he's looking, and he's doing one  
4 of these, but he's not addressing me, and I'm,  
5 obviously, addressing him (indicating).

6 Q And so all together, all those things that  
7 you just described, does that add up to your suspicious  
8 behavior?

9 A Yes.

10 Q You mentioned his hands are in his pockets.  
11 Why did you notice that?

12 A Again, from day one, um, when I became a  
13 police officer, one of the things in this job that will  
14 get you killed is the hands, controlling the hands,  
15 being able to control the hands and watching those  
16 hands.

17 Because that's -- you know, if someone is  
18 going to pull a gun or going to pull a knife or try to  
19 run, those are the indicators that you are going to see  
20 with the arms and movements and stuff.

21 But being able to see those hands and control  
22 those hands, those are one of the things that we learn  
23 when you become a police officer because those -- these  
24 are dangerous, these things are dangerous especially  
25 when they are concealed.

1           So that's what -- that was, you know, again,  
2 all the little indicators that I don't even think about  
3 and that a police officer don't think about, because  
4 we've seen them so much in other situations, that they  
5 become like a second nature to us. But the red flags  
6 are there, and it's like one going off after another.

7           Q       Did this person ever respond to you at some  
8 point?

9           A       So, yes. Um, after I was about where the  
10 arrow is pointing here, around this -- about right  
11 there, there's a line of cars that is parked all along  
12 here.

13                   See where these cars start, right here,  
14 all -- there's like -- it seemed like that day there was  
15 a line of cars that went all of the way across.  
16 Obviously, not in front of this driveway, but there was  
17 cars here.

18                   So where I'm at is, um, I'm probably pretty  
19 close, pretty close at this point. And again, I'm still  
20 continuing to walk towards him. And at this point when  
21 I tell him, "You need to stop right now," and he  
22 actually stops, and he turns around, but then he looks  
23 away right away.

24                   I said, "Sit down right there," and so he  
25 doesn't do that. And so I respond, "Sit your ass down

1 right there," and I'm pointing towards a retaining wall,  
2 okay.

3           So again he does the turn. He looks at me  
4 (indicating.) He looks away. So I'm thinking he's  
5 going to run. This guy is going to run right now. I'm  
6 starting to close the distance on him. I'm continuing  
7 to walk towards him.

8           And so when I tell him to sit his ass on the  
9 retaining wall, he sits down right there, and he still  
10 has his hands in his pocket. And I'm still walking  
11 towards him.

12           And I said, "Get your hands out of your  
13 pocket," and he doesn't respond to me. The second time  
14 I said, "Get your hands out of your pocket right now."  
15 At that time he's not responding. He looks away again.

16           Again, I can't get this guy to get -- to  
17 listen to me. His hands are in his pocket. I'm closing  
18 the distance on him. At that point he looks away.

19           And as he's looking -- as he turns and looks  
20 at me, I start to draw my weapon because I cannot get  
21 him to get his hands out of his pocket, and I can't  
22 control his hands at that point.

23           So at that point I start to draw. I almost  
24 see that he looks -- like I said, he looks away, then he  
25 looks at me, and he sees that I'm drawing my weapon and

1 starting to come up on him, that's when he stands up and  
2 he -- so basically he's on the retaining wall and I'm  
3 over here. So he stands up and he pulls the weapon out  
4 of his -- a gun, and I hear a pop.

5 Then, um, I felt my hand get hit with  
6 something. And then again, I'm already drawn on him and  
7 I return fire. I think I fired around five shots. I'm  
8 not sure.

9 A GRAND JUROR: So you're saying he  
10 definitely shot at you first?

11 THE WITNESS: Yes. Yes. I specifically  
12 remember hearing this pop and then getting hit in my  
13 hand.

14 As you can see, this is -- my hand was  
15 pointing this way. And I was told that this was the  
16 entry, this was an exit, and then the bullet went  
17 through here and traveled along my arm here, but I do  
18 remember specifically hearing a pop.

19 A GRAND JUROR: May I see your arm again?

20 THE WITNESS: Yes.

21 A GRAND JUROR: Okay.

22 BY MR. REES:

23 Q Were you at that moment, and I recognize this  
24 happened in the split second, were you surprised then or  
25 are you now surprised looking back at this that you were

1 not able to shoot before he shot you as he brought the  
2 gun up?

3 A Um, I'm not surprised. I'm not surprised at  
4 all because, um, you know, another thing that we know,  
5 you know, being a police officer, one of the things  
6 we're trained on is the role of action-reaction and how  
7 my reaction will always be delayed because I'm  
8 responding to whatever somebody is doing to either hurt  
9 myself or hurt somebody else. It's always a delayed  
10 reaction.

11 So am I surprised? Am I surprised he pulled  
12 out a gun and shot me? Yeah. Am I surprised that he  
13 got the first shot off? No, because of that rule, I  
14 know I was reacting to what he was doing at the time.

15 Is that what your question is?

16 Q Yes.

17 And then you began firing. Did you see  
18 whether he had any reaction to that when you were  
19 shooting? Was there any reaction? Or to put it another  
20 way, what did you see happening as you are shooting?

21 A As I was shooting -- so when I started  
22 shooting, almost -- it seemed -- I don't know if it was  
23 just because I was blinking at the time because of, you  
24 know, getting hit or -- it almost -- he went down and  
25 stooped as soon as I started shooting or started to go

1 down.

2 But -- I'm sorry, what was your question  
3 again?

4 Q I think you answered the question. It was  
5 really, what did you perceive when you started shooting?  
6 I think you answered the question.

7 A Okay. I saw -- like I said, it looked like  
8 he winced and he just went straight down. The next  
9 thing I looked -- when I was done shooting, I looked at  
10 my hand, and obviously, I could see this tingling, a  
11 bunch of blood coming out from my arm and my hand here.

12 And I also remember looking at my chest and  
13 this area because I felt something -- I didn't know if  
14 it was part of shrapnel or something that had hit my  
15 vest, but I thought that I had gotten hit somewhere  
16 right here.

17 So I was looking for a hole. I was looking  
18 for something in this area because I thought it felt  
19 like something hit in this area and then bounced off  
20 maybe. I'm not sure, but that is what I was looking at.

21 Then my whole concentration was, is this guy  
22 moving? Is he down? That's when I moved to cover at  
23 that point behind a car that was parked probably like  
24 here in this area.

25 BY MR. DAVIDSON:

1           Q       Officer, can I ask you, what do you think the  
2 distance was between you and the other individual when  
3 he fired that first shot at you?

4           A       It was probably about 15 feet away, 10 feet  
5 away.

6                   A GRAND JUROR: He never at any time tried to  
7 run away from you?

8                   THE WITNESS: No.

9                   A GRAND JUROR: He just stood up and fired.

10                  THE WITNESS: He stood up from that retaining  
11 wall and pulled out and fired at me. So -- and the  
12 distance was probably from here to the wall right there,  
13 yeah, about that distance.

14 BY MR. REES:

15           Q       Did you recognize that you had been hit in  
16 the hand? Did you realize you were hurt?

17           A       I knew I had been hit in the hand. I didn't  
18 know -- yeah, I definitely knew I had been hit in the  
19 hand.

20                   A GRAND JUROR: That's your hand that you  
21 shoot with?

22                   THE WITNESS: Yes. Because again, my hand  
23 would have been here and the entry, exit and then travel  
24 along, yeah.

25                   And so when I came down, I remember seeing my

1 hand. I'm still holding my gun, and blood is dripping  
2 everywhere on it. But then I'm moving behind cover to  
3 make sure that if the guy is, you know, still able to  
4 engage, that I was behind something. And that's when I  
5 remember feeling my hand. It was just tingling. It was  
6 numb. I don't know how bad it was.

7 BY MR. REES:

8 Q What do you think would have happened in this  
9 situation if you had not shot back?

10 A If I had not shot back, um, being so close to  
11 the school, my absolute fear obviously, if I had not  
12 shot back at him, him trying to get away and running.

13 My absolute worse fear would have been him  
14 taking a kid and trying to get away with a hostage, or  
15 shooting it out with, with a police officer again, and  
16 hurting somebody seriously. I mean, that's what we  
17 think about, him trying to get away and what he would do  
18 to get away.

19 Q So that's a concern or a fear for third  
20 persons, other people in the area. But what about  
21 yourself?

22 A Oh, I mean, what was I feeling at the time?  
23 Is that what you are asking?

24 Q Whether at that moment or upon reflection  
25 afterwards, what do you think would have happened to

1 you?

2 A Oh, I mean, I was -- I thank God every day  
3 that, that I wasn't killed, that I wasn't hurt more  
4 serious; that -- there's a number of things that could  
5 have happened to me. I was definitely fearing for my  
6 life at that moment when I heard that pop.

7 A GRAND JUROR: But right away, you didn't  
8 duck for cover once you heard the pop? You didn't move  
9 away? You just stood there and shot him?

10 THE WITNESS: Right. It was, it was just  
11 almost, like I said, almost instantaneously return fire,  
12 almost instantaneously, yeah.

13 BY MR. REES:

14 Q All right. Officer, you can take a seat if  
15 you would. This is a photograph taken at the hospital  
16 during the time you were receiving treatment from the  
17 gunshot wound.

18 Does this picture show how your hand appeared  
19 at that time?

20 A Yes.

21 Q What did the doctors indicate to you about  
22 the path of the bullet?

23 A Um, they did point out the entry-exit wound.

24 Q So is this the entry?

25 A Yes.

1 Q Where your little finger meets the top of the  
2 hand?

3 A Yes.

4 Q And then is this area of the exit wound?

5 A Yes.

6 Q Which is really where your hand meets the  
7 wrist.

8 And then what does this picture show along  
9 your forearm?

10 A That is the path of travel of the bullet as  
11 it exited up my -- this bottom part here, the exit  
12 wound, as it traveled -- as it continued to travel it  
13 went along my arm there. So it's a continuation of the  
14 path of the trajectory of the bullet.

15 MR. REES: All right. Thank you, Officer.

16 Are there any questions from the Grand  
17 Jurors?

18 A GRAND JUROR: Yesterday, we heard a report  
19 of a man walking with his son up this way. Did you see  
20 them at all?

21 THE WITNESS: Did I see them? Um, I remember  
22 seeing somebody -- it was kind of -- because when the  
23 adrenaline started -- I remember seeing a pair of  
24 people -- it was two males. I don't remember -- as I  
25 remember seeing a young and an older guy, but I remember

1 they were like almost walking off in the middle of the  
2 street.

3 So as I was -- as I was making contact and  
4 walking towards, um, the incident here, I remember  
5 seeing two people almost -- I just -- I don't know where  
6 they really were. It's hard to say. It's hard to  
7 recollect where they exactly were.

8 But I just kind of remember -- and it could  
9 be, you know, my fuzzy memory because I was so  
10 concentrated on what was happening in front of me, but I  
11 do remember seeing somebody kind of walking here.

12 Looked like they were crossing the street or  
13 up in the middle of the street and maybe going to their  
14 vehicle that's parked on the other side of the street.  
15 That's kind of what I remember.

16 I'm not sure how accurate that is, but that  
17 seems to kind of stick in my mind that there was two  
18 people in the middle of the street kind of walking past  
19 us.

20 BY MR. REES:

21 Q All right. Just to clarify in the record,  
22 you said Dewitt, but I believe you meant Cheltenham.

23 A GRAND JUROR: Yes. Cheltenham.

24 MR. REES: Sure.

25 THE WITNESS: Cheltenham.

1           A GRAND JUROR: So you didn't actually --  
2 this man that you shot, he wasn't blocking your view of  
3 these two people?

4           THE WITNESS: No.

5           A GRAND JUROR: They were out in the street  
6 already?

7           THE WITNESS: Yeah, yeah.

8           A GRAND JUROR: About how long do you think  
9 it took from when you turned that corner and, you know,  
10 you see this person, you think I need to stop this  
11 person, and then, you know, you are down the street and  
12 you are telling him to sit your ass down on that?

13          THE WITNESS: How long between those two?

14          A GRAND JUROR: About how long do you think  
15 that time frame was?

16          THE WITNESS: Eight seconds, eight to ten  
17 seconds because, like I said, it was probably even less  
18 than that because I'm closing the distance and  
19 continuing to walk towards him as I'm giving him now, at  
20 this point giving him commands.

21          A GRAND JUROR: Okay. So when you finally  
22 made that second command, "Sit your ass down on that  
23 wall," did he do it pretty much right then, or did he  
24 still kind of hesitate?

25          THE WITNESS: He still kind of hesitated.

1 Like I said, one of the things was is -- 'cause I have  
2 had time to think about this. This happened on March  
3 the 12th, as I remember, and I'm thinking -- I'm  
4 thinking to myself, um, why -- the reasons, all these  
5 things that were indicating to me why he was either  
6 going to run or fight or do something out of the  
7 ordinary. Those are all red flags. I'm thinking were  
8 what were those.

9           The only thing that I can think about was  
10 that he had already had contact with Officer Mitchell,  
11 at least talking to him through the window. And we  
12 get -- as police officers, we get inundated with fliers  
13 about wanted people all of the time.

14           And this person's face was, it was a common  
15 person's face. It wasn't like I would have recognized  
16 him. I didn't know who this person was. But I'm  
17 thinking that this person knew that when I was  
18 addressing him and I am starting to address him, that he  
19 was a wanted person, that he was deliberately not --  
20 trying not to look at me.

21           So when I would tell him to stop right there,  
22 when I would tell him to sit down, he kept looking away  
23 from me. And those again, those are the red flags that  
24 all kind of led up to this and what heightened my  
25 danger.

1           And one of the reasons why I ended up drawing  
2 my pistol at that time was because of all those  
3 indicators, all those red flags.

4           But I want to say, and again, I don't know  
5 what he was thinking, but I want to assume or at least  
6 what I think in my mind was that he was specifically  
7 trying to avoid me looking at his face because, because  
8 his face had been, you know, on the news. He had been a  
9 wanted person.

10           And so I think that's -- I think that's  
11 what -- unconsciously, those were the reasons why he was  
12 giving those furtive movements, those movements and  
13 those indicators to me of why he wasn't -- he wasn't  
14 listening.

15           He's looking around. He kept looking away  
16 from me, all those little things that I was picking up  
17 at the time. But I do believe that he was specifically  
18 trying not to let me look at his face.

19           A GRAND JUROR: Thank you. At this time you  
20 had no actual proof that he was the man associated with  
21 the van?

22           THE WITNESS: At that point, again, going  
23 back to the van, because I thought that there's a good  
24 possibility that if he didn't go into the library, that  
25 he would come back, and then going around the corner and

1 seeing the person briskly walk away, that did up my  
2 suspicion about this guy was probably the van owner at  
3 that time.

4 A GRAND JUROR: But wouldn't you think that  
5 this man would get in his van and drive away rather fast  
6 and try to get out of the area if he thought that he was  
7 being suspicious?

8 THE WITNESS: I think, um, I think that was  
9 his point. I think he wanted to do that, but when he  
10 saw me by the van, he tried to get away that way on  
11 foot.

12 A GRAND JUROR: I see. Okay.

13 THE WITNESS: Yeah. I think when he -- when  
14 he -- when he saw a bunch of police officers in the area  
15 and specifically me next to his van, I think he saw me  
16 before I saw him, and he tried to walk away.

17 A GRAND JUROR: Okay.

18 THE WITNESS: Again, that's why I said when I  
19 looked around -- when I looked through the bushes and I  
20 saw the movement, that's when I turned around and I saw  
21 somebody walking briskly away. That's when I knew --

22 A GRAND JUROR: So you knew in your mind that  
23 he couldn't get to that van?

24 THE WITNESS: Yes.

25 A GRAND JUROR: I see.

1           A GRAND JUROR: Okay. Was he wearing that  
2 hat that Edgar Mitchell had described or put out over  
3 the radio, whatever?

4           THE WITNESS: Was he wearing a what?

5           A GRAND JUROR: That hat that Edgar Mitchell  
6 had said that he was wearing.

7           THE WITNESS: You know what, I don't  
8 remember. I don't remember. No, no, no. I'm trying to  
9 remember -- I'm trying to remember. I don't even  
10 remember if -- because I remember when I talked to the  
11 high school kids, getting a better description of this  
12 person, and them saying to me that he was bald or  
13 balding or something like that.

14           I don't even remember seeing if he was bald  
15 or balding or wearing a hat. It just wasn't -- it just  
16 wasn't some of the things that was planted in my mind at  
17 the time.

18           A GRAND JUROR: The other man that was  
19 associated first, you just kind of ruled out of the  
20 picture, he wasn't associated with the man you shot, or  
21 just happened to be walking by? Remember, you talked  
22 about two men going towards the library.

23           THE WITNESS: Right.

24           A GRAND JUROR: The first man or whatever.

25           THE WITNESS: The man with the red backpack?

1           A GRAND JUROR:  Yes.  Yeah.

2           THE WITNESS:  Yeah.  He was not associated  
3 with that van.

4           A GRAND JUROR:  He just happened to be there.

5           THE WITNESS:  He just happened to be there.  
6 The only reason why I mentioned that was because I  
7 remember seeing the man with the red backpack walking  
8 into the library, and the man that Edgar Mitchell was  
9 talking to was walking ahead of him.

10           So when I saw the man with the red backpack  
11 go into the library, I assumed that this guy had already  
12 went inside the library.

13           A GRAND JUROR:  Okay.  So you didn't see them  
14 as two co-conspirators in any way?

15           THE WITNESS:  No.  No.  It was just the time  
16 frame thing, because when he told me, "Hey, Romero, stop  
17 that guy," and I knew that the guy with the red backpack  
18 was behind the first guy.  I saw the guy with the red  
19 backpack walk into the library, so I assumed that --

20           A GRAND JUROR:  He was -- who are you  
21 referring to?

22           THE WITNESS:  No.  I assumed that the person  
23 that Edgar was talking to was walking in front of him,  
24 that he had already gone into the library.

25           Does that make sense?  Let me try it again.

1                   A GRAND JUROR: Which one was he trying to  
2 get you to stop?

3                   THE WITNESS: The guy he was -- do you have  
4 something to draw with or something?

5                   MR. REES: Yes.

6                   THE WITNESS: Okay. Can we use this?

7                   MR. REES: Sure.

8                   THE WITNESS: I don't want to draw on here.  
9 That's a good question because I want to clarify that  
10 for you.

11                   So when I pull my vehicle next to Edgar  
12 Mitchell, so, um, the green van is here. And I'll use  
13 this blue marker here. So this would be -- the blue  
14 marker would be Edgar. The green van is there -- do I  
15 use his name?

16 BY MR. REES:

17                   Q        Sure.

18                   A        Swoboda would be out on the sidewalk kind of  
19 by the van or even in front of it here and Edgar was  
20 talking to him through the window.

21                   Okay. As I pull up my vehicle next to Edgar,  
22 after I'm done with the traffic stop over here, and I  
23 tell the lady that I'm sorry, I pull up next to Edgar  
24 right about here, and this person walks away. Swoboda  
25 walks away. Okay. He starts walking.

1           The only glimpse that I see of Swoboda is  
2 wearing a tan jacket, but I don't see his face. I don't  
3 know what he looks like. So he walks away, and I start  
4 that conversation with Edgar, "Did you get that guy's  
5 name? Did you get the license plate in the call?"

6           And I had saw Swoboda walk away, but I didn't  
7 see him. But what I did see was somebody -- do you have  
8 a red marker?

9           MR. REES: Yes.

10          THE WITNESS: What I did see was somebody  
11 wearing red that turned the corner and started walking  
12 behind Swoboda, okay, and he was an older gentleman,  
13 too, but I remember he had something, a red hat on or  
14 something red on.

15          So when I turned my vehicle around and came  
16 back over here, Officer Mitchell says, "Hey, Romero,  
17 stop that guy. He's got switched plates," or something  
18 about his plates.

19          Well, I didn't see Swoboda go into the  
20 library, but I did see the guy wearing the red hat go  
21 into the library. So I assumed that Swoboda had already  
22 made his way into the library.

23          Does that make sense?

24          A GRAND JUROR: Yes.

25          THE WITNESS: That's why -- that's why we all

1 converged on the library because I didn't see him go  
2 into the library. I told Officer Szi Lai and Officer  
3 Mitchell, "Why don't you guys continue to look in the  
4 library and I will -- I'll go back to the van to make  
5 sure that he doesn't try and make his way out of there,"  
6 so we did want to talk to him.

7 MR. REES: All right. Any other questions  
8 from the Grand Jury?

9 All right. If there are no further questions  
10 from the Grand Jury, then that concludes your testimony.

11 Thank you.

12 THE WITNESS: Thank you very much.

13 A GRAND JUROR: Thank you for your time. I'm  
14 glad you're safe.

15 THE WITNESS: Thank you very much.

16 A GRAND JUROR: I want to be clear on one  
17 thing, just because this van is following these  
18 children, that is not a crime just because of suspicious  
19 activity?

20 THE WITNESS: Exactly. Yes. Yeah. It is,  
21 it is something that -- whenever I hear about it, again,  
22 it's not -- it depends on -- it can go into a crime.

23 It can rise to that level of a crime if the  
24 kids, or if a kid felt threatened for their life or felt  
25 some kind of potential danger could happen to them.

1                   But at that point from the reports that I  
2                   took from the two kids, I wasn't there yet. I wasn't at  
3                   probable cause for a crime yet, so, yeah. Okay.

4                   Thank you.

5                   A GRAND JUROR: Thank you.

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MULTNOMAH COUNTY GRAND JURY

DEATH INVESTIGATION

Deceased: Kelly Vernmark Swoboda )  
Date of Incident: March 12, 2014 )DA Case No. 2293341  
Location: SW Cheltenham Street/ )  
SW Capitol Highway )PPB Case No. 14-20245  
Portland, Oregon )

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled transcript of GRAND JURY proceedings was heard, commencing at the hour of 11:30 a.m., on Monday, April 7, 2014, at the Multnomah County Courthouse, Portland, Oregon.

**APPEARANCES**

Mr. Donald Rees  
Mr. Brian Davidson  
Deputy District Attorneys  
On Behalf of the State of Oregon.

\* \* \*

**KAREN M. EICHHORN, CSR, CRR**  
Certified Shorthand Reporter  
Portland, Oregon

1                                   LARRY LEWMAN, M.D.,  
2     a witness called on behalf of the State, having been  
3     first duly sworn, was examined and testified as follows:  
4

5                                   EXAMINATION

6     BY MR. REES:

7             Q     All right. Good morning, Doctor.

8                     If you would please state and spell your name  
9     for the record.

10            A     Larry V. Lewman, L-E-W-M-A-N.

11            Q     All right. And what is your occupation?

12            A     I'm a physician. I specialize in pathology  
13     with a subspecialty in forensic pathology. I'm  
14     currently one of the four forensic pathologists on staff  
15     of the Oregon State Medical Examiner. And the purpose  
16     of that office is to investigate violent, unexplained  
17     deaths under the State Medical Examiners's Law.

18            Q     Could you give the Grand Jury a brief summary  
19     of your training and experience in the field of forensic  
20     pathology?

21            A     Graduated high school, Kansas State  
22     University in 1963 with a BA in pre-medicine, a  
23     pre-doctorate degree. I attended University of Kansas  
24     School of Medicine, graduating from that medical school  
25     with a M.D. degree in 1967.

1           Following that, I was off to the Institute of  
2 Pathology at Case Western Reserve University in  
3 Cleveland, Ohio, where I received specialty training in  
4 two types of pathology laboratory medicine.

5           The first three years or so are hospital-type  
6 pathology, autopsies on people dying of cancer and  
7 things you find around the hospital, all sorts of  
8 natural diseases, this sort of thing.

9           Following completion of that, I  
10 subspecialized in forensic or medical/legal or so-called  
11 criminal pathology. If you watch some of the CSI stuff,  
12 you get a vague, somewhat-distorted idea of what it's  
13 all about. It's an investigation of unexplained death,  
14 all of the unexplained natural deaths, all of the  
15 violent deaths, drugs, knives, guns, child abuse, the  
16 whole gamut.

17           Then I assumed my position here April 1971  
18 with the State Medical Examiner. I just got my 43rd  
19 anniversary here working in the office. That's about  
20 it.

21           Q       All right. And have you presented any  
22 lectures on gunshot injuries, you know, in a teaching  
23 capacity in addition to your work?

24           A       Many times. I do this annually. I travel  
25 for 10 or 12 days around the nation giving lectures and

1 seminars about gunshot wounds. I don't do that anymore.

2 Q All right. On Thursday March 13th, 2014, did  
3 you perform an autopsy on a body identified to you as  
4 Kelly Swoboda?

5 A I did, yes, sir.

6 Q And where did that occur?

7 A At the State Medical Examiner's office over  
8 in Clackamas.

9 Q And what is an autopsy?

10 A An autopsy is an examination of a person's  
11 body after they've died to determine the cause of death,  
12 the manner of death, and any medical factors that may be  
13 related to the death.

14 It starts with a complete examination of the  
15 body. We look at body wounds, injury, natural disease  
16 that we see. We describe all of the injuries in detail.  
17 We may do toxicology tests, microscopic tests.

18 Following all of that, we come to the  
19 conclusion about the cause and manner of the death. We  
20 sign the medical and death certificate.

21 Q In this case, did you know anything in  
22 particular regarding the content of the clothing when  
23 examining Mr. Swoboda?

24 A He was heavily clothed. Most notably, he had  
25 another magazine full of bullets in pocket. He had two

1 ropes, small ropes in another pocket.

2 Q And upon examination of the body itself, what  
3 did you observe?

4 A He had three gunshot injuries. He had one to  
5 the middle of the chest right here (indicating) which  
6 passed through his heart. The heart has two  
7 ventricles, a left ventricle and a right ventricle and  
8 a septum, which separates the two.

9 It went through the right ventricle, the  
10 septum and the left ventricle, and that bullet exited  
11 about here (indicating). He had another gunshot here  
12 under the right armpit area that passed through his  
13 right lung. I recovered that bullet kind of behind his  
14 backbone there.

15 The third bullet was directed upward in the  
16 left leg, entering about here, passing through soft  
17 tissue. It did not strike any vital structures. Exited  
18 in his right thigh, and we found that bullet loose in  
19 the clothing.

20 Q Is there any way to determine, based on the  
21 facts that were presented to you and the observations  
22 you made, to determine the order of those three travels?

23 A Well, the one through the leg was probably  
24 the third because he was probably on the way down when  
25 that occurred. When it's directed upward, you almost

1 have to be down shooting up to get that trajectory. The  
2 other two, it's hard to tell which one came first, this  
3 one or this one. Could be either one of them.

4 Q And of the gunshot wounds that you observed,  
5 were any of them the sort that would be certain to cause  
6 death?

7 A Yes. Certainly one through the heart. The  
8 one through the chest was potentially saveable,  
9 salvageable if they got them to a trauma center rapidly.  
10 This one here, it could have happened in the  
11 emergency room of the trauma center and you couldn't  
12 have saved him. It just tore his heart apart. It was  
13 rapidly lethal.

14 Q So no first aid efforts would have been of  
15 any value in this particular case?

16 A No, none at all.

17 Q I assume toxicology is still pending in this  
18 case.

19 A Still pending. I would suspect we're going  
20 to have a high level of alcohol. He certainly has a  
21 liver that's typical of alcoholic liver disease. It's  
22 not back yet.

23 MR. REES: All right. Any questions from the  
24 Grand Jury? Hearing no questions.

25 Thank you, Dr. Lewman.

1 THE WITNESS: Thank you.

2 A GRAND JUROR: Thank you.

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1 State of Oregon            )  
                                  )  
2 County of Multnomah        )

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4            I, KAREN M. EICHHORN, C.S.R., C.R.R., a  
5 Certified Shorthand Reporter for the State of Oregon, do  
6 hereby certify that I reported in stenotype the  
7 proceedings had upon the hearing of this case,  
8 previously captioned herein; that I thereafter had  
9 reduced my stenotype notes by computer-aided  
10 transcription; and that the foregoing transcript,  
11 consisting of Pages 1 to 311, all inclusive, constitutes  
12 a full, true, and accurate record of the proceedings had  
13 upon the hearing of said cause to the best of my  
14 knowledge and ability. A transcript without an original  
15 signature, a conformed signature, or digitally signed is  
16 not certified.

17                                Witness my hand and CSR seal, this  
18 day of 15th April 2014, Portland, Oregon.

19

20

21    /s/

22

23            \_\_\_\_\_  
24 Karen M. Eichhorn, C.S.R., C.R.R.  
Certified Shorthand Reporter  
Certificate No. 05-0395

25