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MULTNOMAH COUNTY GRAND JURY

DEATH INVESTIGATION

Deceased: Billy Wayne Simms)
Date of Incident: July 28, 2012) DA Case No. 2249350-1
Location: 7-Eleven Store) PPB Case No. 12-65478
6840 North Fessenden)
Portland, Oregon)

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled transcript of
GRAND JURY proceedings was heard, commencing at the hour
of 8:30 a.m., on Thursday, August 9, 2012, at the
Multnomah County Courthouse, Portland, Oregon.

APPEARANCES

Ms. Heidi Moawad
Deputy District Attorney
On Behalf of the State of Oregon;

* * *

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P R O C E E D I N G S

RICO BENIGA,

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

EXAMINATION

BY MS. MOAWAD:

Q Would you please state your name and spell it?

A Rico Beniga. R-I-C-O, B-E-N-I-G-A.

Q How are you employed?

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

Q And what sort of training and experience do
you have?

A I've attended basic police academies, both
here and in Honolulu PD, as well as the Portland Police.
I've attended a detective academy as well as ongoing
training throughout my employment.

Q And what is your assignment?

A I'm assigned to the homicide detail.

Q Okay. So generally, how are homicide scenes
processed?

A We will have a team of investigators that
respond. Usually there's two up team members. They will

1 be the primary investigators. There will also be a
2 support team of other investigators.

3 The way we structure it, currently two will be
4 assigned to work with our forensics evidence people to
5 document the scene. There will be other detectives
6 assigned to assist in other matters.

7 Q Are there differences between, we'll call it,
8 a regular homicide scene and a homicide scene that is the
9 result of an officer-involved shooting?

10 A Yes. The officer-involved shootings generally
11 involve more components in terms of personnel that arrive
12 at the location.

13 Q Okay. Specifically outside agencies are
14 called in to assist?

15 A Correct. We currently have an agreement that
16 investigators will be sent to assist from the East County
17 Major Crimes Team.

18 Q Okay. And also attorneys and union
19 representatives arrive to assist the officers who are
20 involved?

21 A That's correct.

22 Q On July 28, 2012, how were you notified of the
23 officer-involved shooting?

24 A I received a page initially as a member and
25 negotiator with our crisis negotiation team, so I was

1 responding in that capacity. And then when those duties
2 concluded, I transitioned to my duties as a homicide
3 investigator.

4 Q So you mentioned being part of an up team. Is
5 that how you were chosen to be a primary detective in
6 this matter?

7 A Yeah. We usually preselect, our up teams are
8 designated beforehand. In this case, the rotation was
9 mine to be made the primary investigator.

10 Q Was the scene already contained with police
11 tape and things of that nature when you arrived?

12 A Yes.

13 Q Was there anything out of the ordinary at that
14 scene?

15 A Nothing that I noted, no.

16 Q To your knowledge, were there general
17 protocols of officer-involved shootings followed?

18 A Yes.

19 Q So I want to talk about the round counts. In
20 this instance, there were a number of officers at the
21 scene, but only one is believed to have fired a weapon;
22 is that right?

23 A That's correct.

24 Q And one of the ways that that gets determined
25 is by counting the rounds in each officer's magazines for

1 their firearms; is that true?

2 A The weapons and the magazines, correct.

3 Q And that occurred in this case?

4 A Yes.

5 Q And was it determined that, in fact, Justin
6 Clary was the only officer who shot his firearm that day?

7 A Yes.

8 Q I have up on the screen here a diagram. If
9 you could just give us a brief overview. Why were the
10 officers called to this area, this 7-Eleven at North
11 Fessenden and North Columbia Way?

12 A North Precinct officers receiving information
13 from East Precinct officers about a vehicle that had been
14 involved in a shooting a short time earlier, and that
15 vehicle had been tracked to that location.

16 Q Okay. And it had been tracked to that
17 location because it was a rental car with a GPS in it?

18 A That's correct.

19 Q What information are you aware of that the
20 officers knew as they saw this vehicle and made a
21 decision to approach the vehicle?

22 A The information was broadcast, and the shooter
23 involved was a white male. It was a sleeve-typed tattoos
24 and wearing a red hat. And the vehicle involved was the
25 2008 Chevy Cobalt. The license was Oregon license

1 812-DFZ.

2 Q So we will watch the surveillance video in a
3 moment, but what -- do you know from the surveillance
4 videos records where the car was parked in the 7-Eleven
5 parking lot?

6 A It would be that -- that's Officer Hern's
7 vehicle in its final position that you were pointing to.
8 Your question again?

9 Q Well, the vehicle was initially in a stall
10 near where Officer Hern's vehicle ended up; is that
11 right?

12 A Correct, just south of it.

13 Q And it was parked front facing into the
14 7-Eleven?

15 A Correct.

16 Q And when officers arrived on the scene, were
17 there any occupants in the vehicle?

18 A No.

19 Q Were the occupants believed to be in the
20 7-Eleven?

21 A Yes.

22 Q Were they then observed by officers to exit
23 the 7-Eleven?

24 A Yes.

25 Q On the surveillance video -- and maybe we'll

1 just switch to that now. Why don't you take us through
2 what it is we're going to see. We'll do the angle from
3 the store out to the parking lot first.

4 A Okay.

5 Q You can go ahead and start describing it.

6 A (Video played.) So this is the view from
7 Fessenden looking south towards the 7-Eleven store.
8 There were a number of cameras on the site that captured
9 the various viewpoints. This view here is a camera
10 looking out the front doors.

11 Q I'm going to fast-forward here. All right.

12 So we're about five minutes and 11 seconds
13 into the video, and there's a gray vehicle that I'm
14 indicating with the mouse here through the doors.

15 A That's correct.

16 Q And who do we see on the screen now?

17 A The red shirt -- excuse me, the red hat, white
18 T-shirt subject is Billy Simms. The person followed him
19 out the door is Thomas Johnson in the black tank-top.

20 Q I notice Mr. Johnson is not getting into the
21 car. Do we know why that is?

22 A We believe this at this point officers are
23 verbally confronting both subjects and giving them
24 orders.

25 Q So what was it that we just saw occur there?

1 A The car, the Cobalt, tried to reverse. And
2 you see in the video that a police vehicle approaches
3 from the rear preventing the continuing reversal, then it
4 continues forward. It was initially stopped by a
5 concrete curb there, but then proceeds past that, turns
6 northbound on to the sidewalk area and then out of view.

7 A GRAND JUROR: Can we ask a question?

8 MS. MOAWAD: Yes.

9 A GRAND JUROR: Now?

10 MS. MOAWAD: Sure.

11 A GRAND JUROR: We're seeing two people in the
12 upper left-hand corner. Who are they?

13 THE WITNESS: Those are officers.

14 BY MS. MOAWAD:

15 Q There's another angle from outside that's a
16 little better that we'll get to here in just a second.
17 This is a slightly different format.

18 Okay. So let's watch from this angle now,
19 which is from the outside of the store. And here we can
20 see at least two police cars and possibly a shadow from a
21 third police car; is that correct?

22 A I believe that's one of the vehicles, the
23 white Pathfinder that just reversed out of that stall.

24 Q Okay.

25 A And it continued north towards the driveway.

1 Q Okay. And here at nine minutes and 35 seconds
2 into the video, we see the individual we now know to be
3 Billy Simms getting in the vehicle?

4 A Yes.

5 Q Okay. So we now know that the vehicle jumps
6 up over this curb here.

7 A Onto that sidewalk, correct, that's right in
8 front of the entry doors to the store.

9 Q And what am I pointing at with my cursor here?

10 A It is a sign, the 7-Eleven sign.

11 Q And are there propane tanks in that cage as
12 well?

13 A Yes.

14 Q So the vehicle we know then traveled out of
15 the 7-Eleven parking lot to the north?

16 A Correct.

17 Q And tell us where that vehicle ended up.

18 A It ends up crashing into an apartment unit on
19 the north side of North Fessenden.

20 Q Once the vehicle crashed, what did officers
21 do?

22 A They didn't approach the vehicle. There was
23 some uncertainty as to the status and location of the
24 driver, so they set up a perimeter and eventually
25 requested Special Emergency Response Team, our SERT team

1 to the location.

2 Q And did a member of the Portland Fire Bureau
3 by the name of Bradley Cullison check the suspect to
4 determine if he was alive or deceased at about 2:35 p.m.?

5 A He did. And determined he was deceased.

6 Q And I should go back.

7 All of this occurred between 1:30 and
8 1:40 p.m.?

9 A Yes.

10 Q Much later in the day when the firearm -- I'm
11 sorry, when the body was removed from the vehicle, was
12 there a firearm located on the body?

13 A Yes.

14 Q And where was it located?

15 A In the right rear hip area.

16 Q So here is a photograph of it. It is tucked
17 into Mr. Simms' pants?

18 A Waistband area, yes.

19 Q And then that is a photo of the firearm that
20 was recovered from his body?

21 A Yes.

22 MS. MOAWAD: Does anyone have any questions
23 for Detective Beniga at this time?

24 A GRAND JUROR: I'm sorry. I didn't hear you
25 at the beginning of your testimony. You said there's a

1 unique quality to the magazines. And what was the other
2 thing? Bullet casings -- or there were two things.

3 MS. MOAWAD: Oh, I think what he said was that
4 they count the bullets in the magazines because officers
5 have extra magazines outside of the firearm as well as
6 the bullets from the magazine taken out of the firearm.

7 A GRAND JUROR: Got it.

8 THE WITNESS: Yes.

9 MS. MOAWAD: Anything else?

10 Okay. Let's get Dr. Young in here.

11 THE WITNESS: Thank you.

12 MS. MOAWAD: Thank you, Detective.

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1 CHRISTOPHER YOUNG, M.D.,
2 a witness called on behalf of the State, having been first
3 duly sworn, was examined and testified as follows:
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5 EXAMINATION

6 BY MS. MOAWAD:

7 Q If you could start off by stating your name
8 and spelling your first and last for us, please.

9 A My name is Dr. Christopher Young,
10 C-H-R-I-S-T-O-P-H-E-R, Young, Y-O-U-N-G?

11 Q How are you employed?

12 A I am a deputy state medical examiner for the
13 state of Oregon.

14 Q What sort of education and experience do you
15 have?

16 A I earned a medical degree from the University
17 of Texas in Houston, Texas. I did a pathology residency
18 here at Oregon Health and Sciences University. And then
19 after studying pathology, I specialized in forensic
20 pathology in Dallas, Texas, at the Southwest Institute of
21 Forensic Sciences.

22 And I've worked in Oregon since then for about
23 the last eight years as a medical examiner. And I'm
24 licensed to practice medicine in the state of Oregon and
25 board certified in forensic and anatomic pathology.

1 Q On July 29, 2012, did you perform the autopsy
2 of Billy Wayne Simms?

3 A I did.

4 Q All right. So I have photographs here. Did
5 you determine the cause of death?

6 A I did.

7 Q And what was that?

8 A I determined it to be a multiple gunshot
9 wounds.

10 Q During the course of the examination, what
11 were you able to determine? I'll just go through the
12 photos as you ask me to.

13 A I also brought the report.

14 Q Great.

15 A There is a diagram at the end that might be
16 helpful, so you can look at that.

17 Q Thank you.

18 A So let me find my copy here. Mr. Simms
19 sustained six gunshot wounds. And when we do an autopsy,
20 the first thing we do is we describe the body that is
21 received. So this is what he looked like when he came
22 into the ME office. And we describe the clothing and
23 personal effects that are present.

24 And then the next thing we do is we remove the
25 clothing. We look for any kind of injuries or

1 abnormalities on the outside of the body and describe
2 those. And then we make cuts in the body and remove the
3 internal organs and look at those.

4 And so when you look at him here, you can see
5 that there's obvious injuries on his arms, and there's
6 some blood on his face.

7 And before we describe the gunshot wounds,
8 maybe I should talk a little bit about the high-velocity
9 bullets and the type of injuries that they create.

10 Q Yes.

11 A So a handgun, usually the type of injuries
12 that we see will be an entrance wound. And if it goes
13 through the body, an exit wound. Usually the injury
14 tract is about, you know, the size of a bullet or a
15 little bit bigger.

16 When a bullet enters, there's a lot of energy
17 that goes into the body, and it creates a small cavity,
18 kind of a shockwave through the tissues. So a handgun
19 goes a few hundred feet per second or maybe a thousand
20 feet per second, but a rifle is a much faster-moving
21 bullet.

22 So with so much more energy, even though the
23 bullet is usually quite smaller than a handgun, there's a
24 lot of energy that goes into the body and that shockwave
25 causes more injury.

1 So these injuries that you see are the result
2 of the speed of the bullet that comes out of a rifle
3 versus a handgun. So they are not what you typically
4 think as the type of injuries that you might see. So you
5 could see there are injuries on the arms.

6 Let's go to the next picture. So this is
7 after the clothing has been removed. You can see there's
8 some dark coloration on the chest. And these bullets are
9 designed to come apart. They usually have a special tip
10 on the end.

11 And the reason for this is military bullets
12 will be fully jacketed with copper. And they are
13 designed to go through somebody and keep going and keep
14 going through things. And these type of bullets are
15 designed to stop when they hit the first thing that they
16 encounter.

17 So Mr. Simms was in a car. So there could be
18 some intermediate targets like window or other parts of
19 the car. So some of these bullets were -- it had broken
20 up before they struck his body.

21 So there's some -- the abrasion that you see
22 on his chest or those darker areas are not entrance
23 defects, but they are areas where the skin got abraded by
24 pieces of metal or material from the car that had broken
25 up.

1 Q Okay.

2 A Let's go to the next one.

3 So the majority of the gunshot wounds are
4 entered from the right side. There's always a lot of
5 question about, well, what's the trajectory of a bullet
6 through a body so that you can see what the relationship
7 of the shooter or the gun is relative to the body.

8 In this case I think there's a lot of motion
9 occurring on Mr. Simms' part. So he's in a car, but
10 you'll see that it looks like at some point he was
11 probably in a position like he is right here where he's
12 turned sideways.

13 But in this picture you can see there's four
14 of the gunshot wounds that are in my diagram. But
15 there's two holes that are kind of there near the armpit,
16 and they are -- those two are kind of horizontal-looking
17 or elliptical. And then -- correct.

18 And then the thing that you see on the chest
19 is that abrasion. So that's not actually an entrance
20 wound. Then there's a small hole, farther back, right
21 there, and that's the type of entrance wound you'll get
22 if the bullet -- when a bullet is fired, it goes in a
23 spiral, kind of like a football that's thrown.

24 And so if it doesn't hit something else,
25 you'll just get a nice circular hole like that. The

1 other two that are there have an irregular abrasion
2 around them, so the bullet may have been tumbling or
3 breaking up into pieces at the point where it hit.

4 So the one that is -- let me look at my
5 diagram here real quick. So the one that's higher up
6 there, that one enters kind of the back of the arm there
7 and then the defect that's farther down his arm is the
8 actual exit wound.

9 So what you typically have with these type of
10 high-speed bullet wounds is you have a small, tiny
11 entrance because the bullet is very small and then the
12 shockwave of energy, and it creates this very large exit
13 wound, if it does exit.

14 The other two don't exit. The one on the
15 back, the very small one, causes a great deal of injury
16 through his torso. That's gunshot wound, I have it
17 listed, as number three. So it hit very major organs.
18 It hit the lungs, and it hit the large blood vessels that
19 go in and out of the heart.

20 And this is just showing -- there's a needle
21 put through that one gunshot wound, and it is showing
22 that it goes in there and that's the exit.

23 And this is farther down his arm. So you see
24 near the elbow, there's an entrance defect, a circle. It
25 is a bit larger than those others and there's also some

1 holes around it. So this is another bullet that's
2 tumbling or breaking up, and it enters creating a
3 slightly larger hole. And then the exit is down in the
4 wrist, so those large defects. So he had a hole like on
5 this side and then also the other side of the wrist.

6 Then this shows there's another gunshot wound
7 down on his lower right chest. And that's a more typical
8 entrance wound, so that bullet doesn't look like it was
9 tumbling or breaking apart.

10 Then finally, he had a gunshot wound on his
11 left arm. And this one enters on the bicep region, so
12 farther down here. And then these larger defects --
13 yeah, these larger defects that you see up above are exit
14 defects.

15 So as you saw in that first picture, his arm
16 was broken. It was kind of wavy. And this bullet looked
17 like it was breaking up, so there's a few small holes
18 kind of right where the main entrance defect is.

19 And this is a picture of -- this was kind of
20 unusual. There was a bullet casing. So this is part of
21 the bullet that's left behind in a gun.

22 When you fire it, it is either ejected or it
23 stays in the chamber in the gun. And we do x-rays on
24 people who have been shot to look to see where the bullet
25 fragments are. And if I ever see a bullet casing, it is

1 usually because it is in their pocket or their clothing
2 because they had one on their person. But he had
3 actually swallowed this, so it was down in his small
4 intestines.

5 Q And this bullet casing is not from the police
6 officers bullets?

7 A No.

8 Q You are aware that a .22 caliber handgun was
9 recovered from Mr. Simms' person.

10 A Right.

11 Q And this is a .22 caliber casing?

12 A Yes. And also, it had gone past his stomach,
13 so it usually takes your stomach at least 45 minutes to
14 empty. It can be several hours. And so it had already
15 passed through his stomach into his small intestines. It
16 was well on its way through his digestive tract, so it
17 would have been sometime earlier.

18 MS. MOAWAD: Does anyone have any questions
19 for Dr. Young?

20 A GRAND JUROR: Can you, using your diagram,
21 then summarize what rounds entered from his, from his
22 right or right rear and any other direction?

23 THE WITNESS: Well, like I say, when you look
24 at a diagram like this, it is always in anatomic
25 position, so the palms are out like this, and the person

1 is always standing.

2 And so when -- in real life, when somebody is
3 shot -- obviously, he's sitting in a car. So the
4 majority of them are coming in from the right. It is
5 unlikely that the shooter moved all of the way around to
6 the other side to hit this arm.

7 A GRAND JUROR: Okay.

8 THE WITNESS: So what I think most likely
9 happened is the fact that you have one on the left arm is
10 that, you know, he's turned at some point this way, so
11 the bullet would enter here and go into his arm.

12 A GRAND JUROR: Okay.

13 THE WITNESS: Then you've got these other ones
14 that are entering his side. So if he's turned this way,
15 you could have this one entering and going into his arm
16 this way, so turning away from the shooter.

17 And then in the same way you could have an
18 entrance here, if your arm is in this position, entering
19 here and exiting through your wrist (indicating). And
20 then the other ones are all in this side.

21 A GRAND JUROR: Okay. There's no speculation
22 on the timing of the sequence?

23 THE WITNESS: Well, and that's the thing. You
24 usually can't say, you know, what order they were fired
25 in. So looking at these, I couldn't tell you which one

1 was first or second, but I do think that there was a lot
2 of motion involved and then bullets striking parts of the
3 car as well.

4 A GRAND JUROR: Thank you.

5 A GRAND JUROR: Are toxicology tests typically
6 done on gunshot victims?

7 THE WITNESS: They are. On all homicide
8 cases, we do a full toxicology. And it usually takes
9 four to six weeks or six to eight weeks sometimes, so I
10 don't have those results back.

11 MS. MOAWAD: Any other questions?

12 Okay. Thank you, Doctor.

13 THE WITNESS: You're welcome.

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

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EXAMINATION

6 BY MS. MOAWAD:

7 Q Please start off by telling us your name and
8 then spelling your first and last name, please.

9 A Jesse Andrew Robinson. J-E-S-S-E,
10 R-O-B-I-N-S-O-N.

11 Q Okay. And on July 28, 2012, you were at the
12 7-Eleven when an officer-involved shooting occurred; is
13 that right?

14 A Correct. Yes.

15 Q What were you doing there?

16 A Airing my bike tire up. There is no "I" in my
17 name.

18 Q Yes. I caught that when you spelled it.
19 Thank you.

20 A Okay.

21 Q So I have a diagram here, and I've circled
22 where I believe your motorcycle was at the time; is that
23 accurate?

24 A Yes.

25 Q Okay. So would this be -- is this your

1 motorcycle here?

2 A Yes.

3 Q And this is a photograph taken after the
4 shooting; right?

5 A Correct.

6 Q So, for example, this blue truck was not --

7 A No, it was not there.

8 Q So you had a more clear view of what was going
9 on; is that right?

10 A Oh, yeah, yeah.

11 Q Okay. So what first caught your attention and
12 led you to sort of think something was going on there?

13 A Well, I was airing my bike tires up, and I
14 looked in front of my bike, and here comes a cop right to
15 the front of the bike. I'm like, okay, I'm going to get
16 pulled over or something. I don't know.

17 So I went to my front tire, and I aired up my
18 front tire, and I looked back, and he's still sitting
19 there. I'm kind of, like, that's kind of odd.

20 And then the next thing I know I got done
21 airing the tire up and I put the cap on and I look and
22 the cop is not there. He's pulling over a car in the
23 parking spot.

24 Q Okay.

25 A And that's probably right there, next to where

1 the blue truck -- it is blocking the view of the parking
2 spot now.

3 So he pulls in front of my bike behind the car
4 and hits his little horn twice, and the car doesn't --
5 isn't doing anything. And he goes into drive and pulls
6 up on to the little parking strip walkway in front of
7 7-Eleven, and he ain't going to make it, so he backs up
8 and starts to go along the walkway of 7-Eleven, kind of
9 the same way the truck is going. And then I start
10 hearing gunshots.

11 Q Did you see anyone in the car?

12 A Yeah. There was one male in the car.

13 Q Okay. Did you notice anyone else who you
14 thought might be associated with the car?

15 A There was a guy in, like, a black tank-top,
16 black shorts, bald haircut, on the sidewalk, you know.
17 He had his hands up. And the cops ran up, you know, they
18 ran up to him with their AR-15's.

19 I had one coming from behind my bike out and
20 some coming this way. I don't know even where they all
21 came from, but they came around the car trying to keep it
22 there, and he wasn't going to stop. And he went up on
23 the walkway, backed up. And as he's pulling out is when
24 they started opening fire, I believe.

25 Q Did you think at first that he was going to go

1 straight into the 7-Eleven?

2 A Yeah, I did.

3 Q Okay.

4 A But then he hit his brakes, then he went in
5 reverse. I'm, like, what's he going to back up to, you
6 know. Then he turns, and you can see his hands fumbling
7 the steering wheel, you know, trying to move around, then
8 he starts to go again.

9 Q When he started going forward again, were
10 there any people in the way?

11 A There may have been. Okay. That was -- I
12 wasn't really paying attention to that 'cause I was
13 watching the cop. I'm, like, what the heck is going on,
14 kind of -- eyes are going all over the place trying to
15 get everything, you know, into view. And I remember
16 hearing a shot, and then the second shot blew out the
17 back driver glass of the car, and then it was just
18 gunshots.

19 Q Okay. Before the shooting started, were there
20 officers saying anything?

21 A Freeze. Freeze. Don't move. Freeze.
22 Freeze. Don't move. They were screaming it and not
23 saying it, screaming it.

24 Q Okay. And did the guy in the car appear to
25 comply with those commands at all?

1 A Not one bit.

2 Q Okay. And you said you heard shots. Do you
3 remember how many shots you heard?

4 A I heard a shot. The second shot blew out the
5 back glass on the driver's side, but I thought that was
6 kind of odd, you know. I didn't know where the bullet
7 went. It went out with the glass, you know, and then
8 lots of gunshots.

9 Q And then lots --

10 A Lots. I mean, I'd almost say multiples at a
11 time.

12 Q So were you able to see if it was a handgun or
13 a rifle being shot?

14 A I would say probably the AR-15's. That's what
15 they all had in their hands.

16 Q And as the shots were fired, what happened?

17 A I was ducking and moving back behind the fence
18 area, and he was -- boom, boom. After the second shot,
19 it hit the back glass, he was moving faster out of the
20 parking lot, and then the shots were coming in, you know.
21 It seemed like there was a lot of shots coming into the
22 car.

23 And the car sped out, and it looks like it was
24 going to try to make a right-hand turn onto Fessenden.
25 And at that point the car just shot straight across the

1 street.

2 Q Okay. And that's Fessenden here that we can
3 see in the picture, this road along here?

4 A Yes. Yes.

5 Q So you thought at first he was going to take a
6 right, but then he just ended up going straight across --

7 A Yeah.

8 Q -- and into the apartment building?

9 A Yeah, right through the patio window.

10 Q Okay. And what happened after that that you
11 saw?

12 A Two-hour stand-off. We were all inside the
13 7-Eleven, so we couldn't leave. And then the Task Force
14 pulls up, and they go over, and then they leave, and
15 we're still there until the detectives show up.

16 Q Okay.

17 MS. MOAWAD: Does anyone have any questions
18 for Mr. Robinson?

19 All right. That's it. Thank you very much,
20 sir.

21 THE WITNESS: Thank you.

22

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25

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

5 EXAMINATION

6 BY MS. MOAWAD:

7 Q If you would, please, state your name and
8 spell your first name and last name for us.

9 A Avery Bongiorno. A-V-E-R-Y,
10 B-O-N-G-I-O-R-N-O.

11 Q So July 28, 2012, you and your sister went to
12 the 7-Eleven at about 1:30 in the afternoon.

13 A Yes.

14 Q So as you were leaving the store, what did you
15 notice that kind of caught your attention?

16 A All of the police officers showing up.

17 Q So were they kind of pulling up as you were
18 walking out the store?

19 A Yeah.

20 Q Okay. What else did you notice?

21 A That they had their guns drawn.

22 Q Did you see what kind of guns they had in
23 their hands?

24 A Um, pistols, the AR-15's.

25 Q Okay. And I have up here on the screen a

1 diagram and a red circle where I think you were when this
2 kind of all got started. Is that about right by the
3 7-Eleven sign?

4 A Yeah.

5 Q Okay. And so is this the sign here with the
6 "three-dollar lunch" placard that you and your sister
7 were standing next to?

8 A Yes.

9 Q Okay. So what did you hear?

10 A I heard them yelling: Get out of the car.
11 Get out of the car. And I swore I heard them say that he
12 has a gun, and then I heard gun shooting.

13 Q Okay. When you say they were saying, "Get out
14 of the car," do you mean the police officers?

15 A Yes.

16 Q From where you were standing, could you see
17 the car that they were yelling at?

18 A No, not until they drove away.

19 Q What about -- did you see another person that
20 the police were dealing with who maybe had their hands up
21 or came around the corner? Did you notice that guy?

22 A I didn't.

23 Q Okay. So you said you heard the shooting
24 start. Did you see the shooting as well?

25 A Yeah.

1 Q Okay. What did you see?

2 A Well, I saw one of the police officers shoot
3 him, like, four times.

4 Q And how did you know that was the -- how did
5 you know that was the gun that was being used?

6 A Because he was standing right in front of me.

7 Q And at least I recall in your interview with
8 the officers, you said the shells were ejecting. You
9 could see the shells ejecting.

10 A Yes.

11 Q So you didn't see the car until after the
12 shooting starting; is that fair to say?

13 A Yeah.

14 Q Okay. And it came out, you said, from around
15 this corner. You mean the corner of the store?

16 A The store.

17 Q And then headed what's north, across
18 Fessenden?

19 A Yeah.

20 Q Okay. How many people were in the car?

21 A I think one or two.

22 Q Okay. Once you could see the car, what did
23 you notice about the driver?

24 A He was bald and had a red hat.

25 Q And was he leaning a particular way?

1 A To the right.

2 Q So he was leaning down to the right, but you
3 could still see him through the windows?

4 A Yeah.

5 Q And then how did it travel across Fessenden?

6 A Um, he, like, sped into the road and then
7 slowed down and then just rammed it and hit the gas at
8 the apartment building across the street.

9 Q As the gunshot started, did you try to take
10 cover anywhere? Did you hide behind anything?

11 A I kind of froze through the first shot, and
12 then after that, I kind of just went down to the ground.

13 Q Okay.

14 MS. MOAWAD: Anything else? Any other
15 questions for Mr. Bongiorno?

16 All right. That's it. Thank you very much.

17 THE WITNESS: Yeah.

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

5 EXAMINATION

6 BY MS. MOAWAD:

7 Q Go ahead and have a seat. And if you would
8 start off by telling us your name, and spelling your
9 first and last name, please.

10 A My name is Sadie Hassler-Grove. S-A-D-I-E,
11 Hassler, H-A-S-S-L-E-R-G-R-O-V-E.

12 Q Okay. So on July 28, 2012, you and your
13 brother, Avery, were at the 7-Eleven; is that right?

14 A Uh-huh.

15 Q And as you were leaving the store, did you
16 notice the police cars, or did your brother?

17 A My brother pointed them out, so I started
18 looking around, and then I saw there was a lot of police
19 cars there.

20 Q Okay. So I have up here on the screen a
21 diagram, and the 7-Eleven sign is in this area. Is that
22 where you remember you and your brother being when this
23 all got started?

24 A Yeah.

25 Q And on this photograph, were you here by this

1 sign that says "three-dollar lunch"?

2 A Yes.

3 Q Okay. So you actually recognized one of the
4 police officers; is that right?

5 A Yeah.

6 Q And you just waved at one another?

7 A Uh-huh.

8 Q And which officer is that?

9 A Jordan.

10 Q So were you as focused on what was going on as
11 your brother was?

12 A Um, not as much. I was going to keep walking,
13 but he's, like, let's stay and watch, so he started
14 walking back, so I followed him.

15 Q Okay. So what did you see?

16 A Um, I didn't see the guy at first. I just saw
17 the cops and heard them yelling: Put the gun down.

18 Q And what happened after you heard the yelling?

19 A They started shooting.

20 Q At that point could you see the car from where
21 you were?

22 A I actually started backing up when they
23 started.

24 Q Okay. After the gunshots, what did you see?

25 A The guy drove out to the middle of the street,

1 and he started leaning over to the side, and then he
2 drove into the apartments across the street.

3 Q Okay. Do you remember how many gunshots you
4 heard?

5 A Um, maybe four.

6 Q Okay. Did you, did you see another person who
7 you thought might be associated with the vehicle?

8 A I thought I heard them yelling at another guy
9 to get down, like, out of the car.

10 Q But you didn't see that person?

11 A No.

12 Q Okay.

13 MS. MOAWAD: Does anyone have any questions?

14 A GRAND JUROR: I do.

15 MS. MOAWAD: Okay.

16 A GRAND JUROR: Sadie, when did you first see
17 the vehicle that eventually moved out and hit the
18 apartment, while it was parked nose into 7-Eleven or
19 after it moved out?

20 THE WITNESS: After it started moving out.

21 A GRAND JUROR: Okay. And you saw -- if you
22 can describe what position it was doing -- or what it was
23 doing when you first picked up on that vehicle.

24 THE WITNESS: It was just driving into the
25 street.

1 A GRAND JUROR: Okay. And was the nose of the
2 vehicle beyond the, beyond the end of the middle that
3 we're looking at here, or was it still in front of the
4 building?

5 THE WITNESS: It was beyond.

6 A GRAND JUROR: Okay. And was there a police
7 officer between the vehicle and the street?

8 THE WITNESS: There was one further, like, the
9 car and then the police officer.

10 A GRAND JUROR: Okay.

11 THE WITNESS: Not like in the way.

12 A GRAND JUROR: Would you be willing to draw
13 that on the board?

14 THE WITNESS: Yeah.

15 MS. MOAWAD: I'll get you started. That's not
16 to scale, but that's the driveway, and that's Fessenden.

17 THE WITNESS: So the car went here and there
18 was, like, police officers here.

19 A GRAND JUROR: Okay. Thank you.

20 MS. MOAWAD: Any other questions for Sadie?

21 Okay. That's it. Thank you.

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JOSEPH YOUNG,

2

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

3

duly sworn, was examined and testified as follows:

4

5

EXAMINATION

6

BY MS. MOAWAD:

7

Q Go ahead and have a seat. And if you would

8

start off by telling us your name and spelling your first

9

and last name, please.

10

A Joseph Young. J-O-S-E-P-H, Y-O-U-N-G.

11

Q Okay. Mr. Young, you live in an apartment

12

building off of Fessenden, across the street from the

13

7-Eleven; is that right?

14

A Yeah. Yes.

15

Q Up on the screen I have a crime scene diagram

16

with a red circle around a corner of a building. Is that

17

the building that you live in?

18

A Yeah. Right there, yeah.

19

Q Do you live on the top floor or the bottom

20

floor?

21

A The top floor.

22

Q Okay. So you were home July 28, 2012.

23

A Yeah.

24

Q What first caused you to look out your window?

25

What did you hear or see?

1 A Well, I was watching a movie, and I heard a
2 little something at the 7-Eleven, so I peeked my head out
3 the window and I saw a cop pulling over a car.

4 At first, I thought it was just regular -- you
5 know, everybody gets pulled over sooner or later, so I
6 never really paid attention, but then I heard some
7 commotion. And I looked out the window, and I saw
8 somebody get out the car. I don't know if it was a
9 female or a male who got out the car.

10 And that the cop -- all of a sudden, the guy
11 took off, and I saw shots fired. And that's pretty much
12 when -- I didn't really know what was going on, so I hit
13 the ground, so I make sure that I didn't get hit by a
14 bullet.

15 But I saw the guy in the car. Like I don't
16 know if he was, like, losing control of the car or
17 whatnot, but it looked like he tried to run into the
18 apartments. Like I don't know if he's losing control,
19 but it was just, like, momentum or not. And then that's
20 when pretty much the cops were, like, go back inside.
21 Don't do nothing. Don't come outside and stuff.

22 Q Okay. Could you hear what the officers were
23 saying?

24 A Kind of faintly, but not really. I mean, like
25 pretty much, like, he was trying to give them the command

1 to get out of the car. That's what I pretty much
2 remember. I remember somebody getting out. I don't know
3 if it was the guy's girlfriend or somebody getting out
4 the car.

5 Q Okay.

6 A So I never really paid attention. I just
7 thought it was really, you know, somebody telling him to
8 get out the car, and he got out the car. And I never
9 thought it was going to go that far.

10 Q Okay. So the person that was being told to
11 get out of the car didn't get out of the car?

12 A No. He was -- I don't know -- I don't know if
13 he was, like, if he was just -- to the point where he was
14 just, like, I don't care no more or not. But -- I mean,
15 he gave him a few times, tell him to get out the car.

16 Q And when you gave your statement to the
17 officers, you said something about maybe some officers
18 were behind a car with their guns. Was that before or
19 after the shots were fired?

20 A No, that was after. After he already done the
21 crashed into the building, they are behind the car.

22 Q Got it. About how many shots do you remember
23 hearing?

24 A I heard about maybe like five or six. It was,
25 it was a few shots.

1 Q And just so I'm clear, while you were
2 watching, 'cause I know you ducked down at some point --

3 A Yeah.

4 Q While you were watching, is the car already
5 starting to move in the parking space that it is in?

6 A Well, at first, when he was talking to him,
7 the guy tried, like, to peel off. I don't know if that's
8 when I heard the gunfires. I don't know if it was the
9 guy that was driving that was trying to shoot and flee or
10 not.

11 But, all of a sudden, I heard him just start
12 swerving ahead and head toward the building. And then
13 after that was pretty much, you know, survival. I was
14 trying to hit the ground and trying to make sure --

15 Q Right. So in your mind, the shots and the car
16 moving were pretty much simultaneous?

17 A Yeah.

18 Q Okay. And then you said something about the
19 officers telling you to go back in. So after the
20 shooting and everything, did you go outside?

21 A Yeah. I went outside just to make sure
22 everything was, like, okay. I don't know why I did now
23 that I think about it, but I went outside, and the cop
24 is, like, go back inside. It is really dangerous out in
25 here. Go back inside, and I was, like, okay.

1 Q And that's when you saw an officer?

2 A Behind the car. Two of them. One with the
3 shotgun and one with the pistol.

4 Q Okay. So they were behind a police car?

5 A The police car, yeah.

6 Q Okay. And were they then facing north where
7 the car was?

8 A Yeah, they were.

9 MS. MOAWAD: Okay. Does anyone have any
10 questions for Mr. Young?

11 A GRAND JUROR: I do.

12 Mr. Young, did you see the driver of the
13 vehicle?

14 THE WITNESS: No. I saw, like, from my
15 distance, I could see that it was a white male, but I
16 couldn't, like, see really descriptions, you know, like,
17 but I could see he was in a car.

18 BY MS. MOAWAD:

19 Q Is this picture here on the screen a pretty
20 good vantage point?

21 A Yeah.

22 Q I mean, it is obviously from ground level, and
23 you were up a little bit?

24 A Yeah.

25 Q And so when you first saw the car --

1 obviously, this is after the shooting, so this -- where
2 this police car is here, that's about where the Chevy
3 Cobalt was?

4 A Yeah, but a little bit farther up towards the
5 street.

6 Q Okay. And so as you saw that car, where were
7 the officers as you were looking out at that point?

8 A After they already shot the person?

9 Q No, before the shooting.

10 As you are looking out and they are yelling at
11 the car, where are they?

12 A They are about, a little bit about there.
13 Like I guess from, you know, they came from the store at
14 first, I guess.

15 Q The people associated with the car?

16 A Yeah, the car. So I guess the cops tried to
17 stop them before they even got in the car, and that's
18 when everything went bad, like, you know.

19 Q Okay.

20 A I mean, it happened pretty fast. It was,
21 like, pretty much, you know, right after -- one thing
22 after another.

23 Q Did you think that car was going to hit anyone
24 or anything in the parking lot?

25 A I mean, there's always a possibility that he

1 could hit somebody. But from what I saw, like, I mean if
2 you would -- I don't know if he would have hit somebody
3 or not.

4 Q Okay. How many police officers did you see in
5 the parking lot?

6 A Two. I saw the first guy, then I saw two. I
7 saw one with the shotgun. That's when he was backing up
8 his partner, because at first, he took the shots, and
9 then I was -- I think he was radioing for back-up. I
10 don't know what he was doing, but he was behind his car.

11 Q Well, let's go -- I'm sorry. I didn't ask
12 that specifically.

13 As you are looking out your window before the
14 shooting, how many police officers did you see?

15 A The only -- I could only see one cop so far.
16 When I was looking out my window, I could only see one.

17 Q All right.

18 MS. MOAWAD: Any other questions for Mr. Young
19 at this time?

20 All right. Thank you very much. You are all
21 done.

22 THE WITNESS: All right. Thank you.

23

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25

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

5 EXAMINATION

6 BY MS. MOAWAD:

7 Q Go ahead and have a seat. And if you would
8 tell us your name, and spell your first and last name,
9 please.

10 A Marissa Leitch. M-A-R-I-S-S-A, L-E-I-T-C-H.

11 Q Marissa, you were at the 7-Eleven on July 28,
12 2012; is that right?

13 A Yeah.

14 Q What were you doing there?

15 A I was getting gas and my cousin was getting a
16 snack.

17 Q All right. So where were you when it became
18 apparent something was going to happen?

19 A We were pulling out on Fessenden, taking a
20 left.

21 Q Okay.

22 A Yeah.

23 Q I have up here on this a crime scene diagram.
24 And I've put in where I think your vehicle kind of
25 approximately was.

1 A Yeah. I think the blue vehicle was a
2 little -- I think -- yeah, yeah. That's about right.
3 The blue vehicle might have been a little bit more up. I
4 felt like a cop car was closer to us.

5 Q So -- I'm sorry.

6 A I felt like a cop car was closer to us.
7 That's approximately right.

8 Q I'll tell you that these are where the police
9 cars ended up after the shooting, so, you know, they
10 moved.

11 A Okay.

12 Q So would this be a decent representation, this
13 photograph, of your angle?

14 A No.

15 Q Okay.

16 A I was looking back at the --

17 Q Okay. So you were pulled further forward?

18 A Yeah.

19 Q And looking back?

20 A Yeah.

21 Q Okay. Were your windows in your car up or
22 down?

23 A Down.

24 Q Radio on or off?

25 A Off.

1 Q And so how did you guys first realize, right,
2 that something was going on?

3 A Well, we were trying to pull out, and like
4 tons of cop cars came around and started to swarm the
5 area. And the cop car that sort of parked really close
6 to us, there was, like, people, detectives out or
7 policemen. There's one guy that was dressed in regular
8 clothes, and then there was a lot of policemen. And,
9 yeah, one guy came out with a big gun. And that's how I
10 knew something was about to go down.

11 Q Okay. And did you see then two guys exit the
12 7-Eleven that the police turned their attention to? Did
13 you notice that?

14 A Well, we were looking at the police and
15 wondering what was going on because the guy had --
16 another guy had just came out with a large gun. We're,
17 like, what's going to go on.

18 A GRAND JUROR: A policeman with a large gun?

19 THE WITNESS: A policeman with a large gun.

20 And then when they started shouting, that's
21 when I saw everything, 'cause they were, like, trying to
22 figure out who was in the 7-Eleven. You could tell that
23 they were, like, looking into the 7-Eleven and trying to
24 see the people.

25 BY MS. MOAWAD:

1 Q Okay. So you said they started shouting.
2 Could you hear what the police officers were
3 shouting?

4 A I think it was just, like, get down on the
5 ground. Freeze. Stop. Kind of those things.

6 Q And were you watching the guy in the car at
7 all?

8 A Um, well, yeah, I was. So it all happened
9 pretty fast. I don't know how much you want me to go
10 into.

11 Q Well, we'll go into all of it.
12 So to start with, was he doing what the police
13 officers were telling him to do?

14 A One guy did.

15 Q Okay. So that was -- can you describe that
16 guy?

17 A He was bald, I think, and had a black tank-top
18 and maybe a little heavier, not too heavy.

19 Q So he was doing what the police told him to
20 do?

21 A Yeah, it seemed like he -- I actually looked
22 him right in the eye. He laid down right at the
23 7-Eleven, right by that police car.

24 Q So around the corner here?

25 A Yeah.

1 Q Kind of where that police officer is standing
2 in this picture?

3 A Yeah. That's where they cuffed him.

4 Q Okay. And then there was another guy in the
5 car?

6 A Yes.

7 Q And was he doing what the police officers were
8 telling him to do?

9 A No.

10 Q And was that car -- it was in one of these two
11 spots; right?

12 A Yeah. I think it was in that one, yeah.

13 Q The third.

14 Okay. So could you see into the car at that
15 point?

16 A Yes.

17 Q And what did you see the person doing?

18 A He pulled forward towards the 7-Eleven trying
19 to get away, obviously. So he pulled forward and then he
20 pulled back. And I think when he was pulling forward,
21 that police car right there came in, um, and then he
22 pulled back, and then the shots started happening.

23 Q Okay. And then what happened?

24 A Well, I saw -- I mean, I didn't see the
25 shooting, but I saw an image in my head of the dude in

1 the car with broken glass, so I saw it. But once the
2 shouting happened, I got down. So once I heard shots,
3 that's when it was, like, I was down.

4 Q And so you talked about what the car was
5 doing. I'm curious if you were able to see at all what
6 the guy in the car was doing.

7 A Um, it looked like he was just trying to get
8 away.

9 Q Okay. Could you see what he was wearing at
10 all?

11 A I thought he had a blue hat with, like,
12 diamonds on it or white things on it, maybe a red shirt.
13 Um, I don't know.

14 Q So you have an image of the driver and
15 breaking glass.

16 A Yes, and then I got down. And then the next
17 thing, I got up, and the car was across the street inside
18 the apartment building.

19 Q Okay. Do you remember how many shots you
20 heard?

21 A I don't know, like, five. It was pretty close
22 to me, so it was sort of, like, echoing.

23 Q All right.

24 MS. MOAWAD: Does anyone have any other
25 questions for Ms. Leitch?

1 BY MS. MOAWAD:

2 Q How many officers -- you said you saw one in
3 plain clothes, one with the big gun. How many others did
4 you see?

5 A Well, in our area, there was probably like
6 four.

7 Q Okay. And where about were they standing as
8 this all gets started with the car moving around?

9 A Probably right the tip of the police car.

10 Q Okay.

11 A In that area.

12 Q So they are in the parking lot?

13 A Yeah, from that point to my car.

14 Q Okay. So they are spread from east to west?

15 A Yeah.

16 Q Along that driveway there.

17 Were you at all worried that the Chevy Cobalt
18 was going to hit anyone or anything?

19 A Yeah. That's actually what I was worried
20 about.

21 Q Okay. What did you think -- who did you think
22 could get hurt?

23 A Well, I thought he was going to hit the car
24 that we were in, so that's why I was watching because I
25 didn't want him to hit it or come towards me and anything

1 happen.

2 I mean, crossfire, I don't know that that was
3 happening yet, but I didn't really know what was going to
4 happen. So I was actually trying to find a way to leave
5 the spot I was in because I did not want to be there.

6 Q But you were stuck because of the blue car in
7 front of you?

8 A Yeah. Yeah.

9 Q And a police car?

10 A Yeah.

11 Q Real close behind you?

12 A Yeah.

13 Q Okay.

14 MS. MOAWAD: Does anyone have any other
15 questions based upon what I just asked Ms. Leitch?

16 A GRAND JUROR: Just a quick one.

17 You said there was a plain clothes officer.

18 THE WITNESS: Yeah.

19 A GRAND JUROR: And how did you know --

20 THE WITNESS: That he was an officer?

21 A GRAND JUROR: Yeah.

22 THE WITNESS: He had a gun on him and seemed
23 like the head honcho guy. I don't know. He was giving
24 directions. And he was the one that told us to, like,
25 just stay in our spot. We're witnesses, and, so, yeah,

1 he just seemed like the guy.

2 BY MS. MOAWAD:

3 Q Do you remember if he had a badge around his
4 neck?

5 A No, I don't.

6 MS. MOAWAD: Any other questions?

7 Okay. That's it. Thank you very much.

8 THE WITNESS: That was fast.

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

5 MS. MOAWAD: For the record, Mr. Aboussie is
6 testifying via Skype, which is a form of simultaneous
7 television transmission authorized by Oregon Revised
8 Statutes 132.320(5).

9 THE WITNESS: Wait. I'm going to get my
10 headphones, so I can hear you better.
11

12 EXAMINATION

13 BY MS. MOAWAD:

14 Q Thank you.

15 If you would start off by telling us your
16 name, and spelling your first and last name, please.

17 A My name is Charles, C-H-A-R-L-E-S, Robert,
18 R-O-B-E-R-T, Aboussie, A-B-O-U-S-S-I-E.

19 Q Okay. So, Mr. Aboussie, you were with your
20 cousin, Marissa, at the 7-Eleven on July 28, 2012?

21 A That's correct.

22 Q And today, you are back in Washington, D.C. ;
23 right?

24 A That's correct.

25 Q You were visiting the Portland area on

1 July 28th?

2 A Yes, ma'am.

3 Q So while she was getting gas at the Shell
4 station, what did you decide to do?

5 A I walked into the 7-Eleven to go pick up some
6 trail mix.

7 Q Did you notice police activity while you were
8 still in the store or while you were going out to the
9 car?

10 A While I was going out to the car.

11 Q Okay. What did you notice?

12 A Several police cars and vehicles and several
13 officers were descending upon the location.

14 Q While you were in the car there, were the
15 windows opened?

16 A I can't remember.

17 Q Okay. Do you remember if the radio was on?

18 A No.

19 Q Okay. So what did you first hear or see as
20 things heated up?

21 A I saw several police officers walk passed --
22 not walk, sort of moved towards past my car, and I heard
23 them yelling in the direction of the 7-Eleven and in the
24 direction of the store.

25 Q Okay. And your car was where?

1 A It was situated behind a blue truck, facing
2 the intersection or where -- the entrance to the street
3 there. I'm not sure which street it is.

4 Q Okay. So you said "they" started yelling.
5 The police officers started yelling?

6 A That's correct.

7 Q And what did you hear them say?

8 A Things like -- I mean, I can't remember
9 specifically, but it was things like get down on the
10 ground, you know, surrender-type voice. You know, just
11 yelling at the men, trying to get them to surrender.

12 Q Sure. So giving them commands?

13 A That's correct.

14 Q Did you see -- you said "men." How many men
15 did you see?

16 A As far as police officers?

17 Q Sorry. No. The men that they were yelling
18 at.

19 A Two.

20 Q Okay.

21 A Or one initially and then the second came out
22 the door.

23 Q Okay. And who did you see first?

24 A I'm sorry. Can you repeat the question?

25 Q Who did you see first?

1 A The -- a man in a black shirt was bald. That
2 was actually the one guy I got a good look at.

3 Q Okay. And was that the guy that complied with
4 the police officers?

5 A Yes, ma'am.

6 Q Okay. And then the other guy, did you see him
7 before he got into his car?

8 A Him and his friend surrendered later. Had
9 actually walked passed me in the 7-Eleven while I was in
10 there purchasing the trail mix.

11 Q Okay. So you saw him before. And then as he
12 exited the store, did you see him?

13 A Which, the man who surrendered?

14 Q No, the other guy.

15 A No. I didn't see him exit the store. I just
16 know that they -- I just assumed that he did because the
17 police were yelling at him.

18 Q Sure. So did you ever see that guy in the car
19 then as the police were yelling?

20 A The man who tried to escape?

21 Q Yes.

22 A No. I did not see him get into the car.

23 Q Okay.

24 A From the angle that I was, you know, sitting,
25 it would have been very difficult. I was facing the

1 complete other direction.

2 Q Sure. And that's a good point.

3 Were you in the passenger or the driver's side
4 of that car?

5 A Passenger.

6 Q And according to Marissa, you guys had to even
7 turn backwards a little bit to see the car. Is that your
8 memory as well?

9 A That's correct. Although, I was not very
10 interested in seeing what was going on. I was more
11 interested in my own safety at the time.

12 Q Sure. And were you trying to help Marissa
13 trying to figure out a way to get out of there?

14 A Yes.

15 Q So what did you -- as the men were being
16 yelled at by the police --

17 A That's correct.

18 Q -- and the one man was complying, did you
19 see --

20 A Yes.

21 Q -- did you see the other car -- the car that
22 the other man was in do anything?

23 A From the vantage point that I saw, I didn't
24 see him try to escape or -- at that point I was literally
25 trying to face straight ahead trying to figure out how we

1 can leave the area.

2 Q I need you to say the first part of your
3 sentence again. You were breaking up a little bit on us.

4 A I'm sorry.

5 At the time we were -- I was more focused
6 on -- I didn't see the man try to escape. What I saw
7 was -- what I was really trying to do was trying to get
8 us away from the area, so that we wouldn't get caught up
9 in something.

10 Q So you did not see the car moving at all prior
11 to the shooting?

12 A No.

13 Q Okay. I'm curious then, you talk about this
14 being the man who was trying to escape. Is that just
15 something that you assumed based on what happened next?

16 A Well, yes.

17 Q Okay. So when did you hear the shots start to
18 be fired?

19 A After, you know, several seconds of yelling,
20 then I heard shots fired.

21 Q How many shots do you remember hearing?

22 A I could not give you a finite number. As the
23 gunfire started, I then ducked under the windows, and I
24 was sort of a little bit afraid there.

25 Q Okay. All right. So when the gunfire ended

1 and you felt it was safe to finally come back up, what
2 did you see?

3 A I just saw some tire marks, and, you know,
4 many police officers looking towards another building
5 where I saw the car smashed into the apartment.

6 Q Okay. In relation to where you guys were in
7 the Nissan Pathfinder, do you remember how many police
8 officers were nearby your vehicle?

9 A I couldn't give you a finite number. I would
10 guess at least five or ten.

11 Q Okay. And were they in a cluster or fanned
12 out?

13 A There were two officers ducked behind a car
14 taking cover and looking at the apartment. And then to
15 my right, there were other officers. But I don't
16 remember clearly enough what they were doing. I'm
17 assuming that they were looking at the building.

18 Q Okay. I'm sorry. I actually -- I should have
19 said that more specifically.

20 Before the shooting started, do you remember
21 how many officers were there?

22 A Again, I couldn't give you a finite number.
23 Several, more than five.

24 Q Okay. And where were they before the shooting
25 began?

1 A Well, when we were facing the -- we were
2 facing the street. They came up from that side just to
3 our left, which is how we saw them. So, like, if we were
4 facing the entrance to the street, straight ahead, the
5 officers who were descending upon the 7-Eleven came from
6 our left up the road. And I think I turned to my right,
7 and several other officers came from that side as well
8 trying to surround the perimeter.

9 Q Okay. And you -- I just want to make sure I'm
10 clear. You didn't see the car move at all before you
11 ducked down, or did you see the car moving?

12 A No. I just heard the yelling and didn't want
13 to really look. I kind of was more looking for a way to
14 get out of the area.

15 MS. MOAWAD: Okay. Does anyone have any
16 follow-up questions for Mr. Aboussie?

17 Okay. Thank you very much.

18 THE WITNESS: Thank you.

19 MS. MOAWAD: We're all done.

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

5 EXAMINATION

6 BY MS. MOAWAD:

7 Q Okay. Go ahead and have a seat. If you would
8 start off by telling us your name and spelling your first
9 and last name, please.

10 A Valerie Castillo. Valerie, V-A-L-E-R-I-E,
11 Castillo, C-A-S-T-I-L-L-O.

12 Q Okay. And so you were at the 7-Eleven on
13 July 28th?

14 A Yes.

15 Q What were you doing there?

16 A Getting ice and soda.

17 Q And who were you with?

18 A With my boyfriend.

19 Q And that's Mr. Vital?

20 A Yes.

21 Q So where were you when you first noticed
22 police activity?

23 A I was driving. I was trying to pull out of
24 the 7-Eleven parking lot. I was at the driveway of the
25 driveway and the street, the edge there --

1 Q Okay. So I have --

2 A -- to the parking lot.

3 Q So I have a diagram of the scene. Is that
4 about where your truck would have been where the red
5 circle is?

6 A Yes.

7 Q Okay.

8 A Because I was pulling out of the parking lot
9 onto Fessenden.

10 Q Okay. And were you unable to do that because
11 of the police cars --

12 A That is correct.

13 Q What did you see after the police cars pulled
14 up?

15 A They pulled up very quickly. That's why I
16 could not pull out into the street. And they all jumped
17 out of their cars. They were all pulling out their
18 rifles.

19 And they were yelling at a guy to get out of
20 the car, which I looked in the rear-view mirror. There
21 was a guy in a car that was in a parking spot parked back
22 behind my truck. As I was pulling out, he was in the
23 rear of my vehicle.

24 Q Okay. So this photograph here is not
25 necessarily from your vantage point because you were

1 further --

2 A Well, that's my truck right there, the nose.

3 Q The nose of your truck. That's after the
4 shooting because you moved your truck after the shooting;
5 is that right?

6 A Yes, 'cause it was further that way by the
7 street.

8 Q Okay. So you mentioned you actually were
9 looking in your rear-view mirror to see what the guy was
10 doing. So what did you see him doing?

11 A Well, I was trying to see who they were
12 yelling at. There wasn't a guy that was just -- he was
13 in the car and just sitting there in one of the parking
14 spots. I know it was that one that's closest to the nose
15 of the truck there.

16 Q That one?

17 A I think it might have been that one or one of
18 the ones next to it. I don't remember exactly which one,
19 but he was parked there. And they were yelling at him to
20 get out of the car, and he didn't get out of the car.

21 And I was watching, because I didn't know what
22 else to do. And he had one hand on the steering wheel,
23 and he was trying to shift with the other hand.

24 Q Okay.

25 A And the car went forward towards the store,

1 and he hit one of the parking stumps. And then he
2 shifted again, backed up a little bit, and then went
3 forward again. Like I think the tires went between the
4 parking spots.

5 He went up over the walkway and down the
6 walkway towards the street. And while he started to try
7 to get away, that's when they -- one of the officers
8 started to fire.

9 Q Okay. Now, you mentioned -- could you see the
10 gentleman's hand actually on a gear shift from where you
11 were, or you just saw the hand below making movements?

12 A No. He was going right past my -- our truck.
13 And I was in the driver's seat, 'cause that's my
14 boyfriend's truck, but I was driving. And you could see
15 he had one hand up on the top of the steering wheel, and
16 he was going like this (indicating) trying to shift with
17 the other hand.

18 Q Okay. And you could see that even from where
19 you were when you were looking in your rear-view mirror?

20 A Yes, because he started to drive past the
21 truck. As he was driving passed, I'm watching him as
22 he's trying to shift. He slowed down by the sidewalk,
23 and he was looking to try to see which way to go. Well,
24 he can't go anywhere.

25 Q Okay.

1 A And I guess at that time the guns had already
2 been fired, and the window in the car was broken. They
3 shot it out. And then he just continued to go forward
4 and across the street into the apartment.

5 Q Okay. So just so I have the sequence of
6 events clear in my head. You see him in the parking
7 space. And at that point when he's in the parking space,
8 you can see one hand on the steering wheel and one hand
9 on the gear shift.

10 A As he started to move the car, yes.

11 Q Okay. And then he comes up and around. At
12 what point during all of this do you hear the shots start
13 to be fired?

14 A When he started to -- it is kind of hard to,
15 to determine exactly the point, 'cause it all happened so
16 fast. For me, it was very scary. And I noticed that --
17 they told him to get out of the car. He didn't get out
18 of the car. That's when he tried to get away.

19 So when he started to pull the vehicle
20 forward, and they said stop, stop, get out of the car, he
21 still didn't get out of the car. He continued. So as he
22 went up over the walkway and started going towards the
23 street, that's when they started to fire.

24 Q Okay. And that's when you could see his hand
25 on the gear shift for --

1 A While he was driving, yeah, because he was
2 trying to shift to get away.

3 Q Okay. And just so I'm clear. When you saw
4 him in the parking space, could you also see the gear
5 shift, or you just know one hand was up and one hand was
6 down?

7 A No. When he was in the parking space, he was
8 just parked there. I didn't see his hands. I just saw
9 his face. I didn't see his hands until after they told
10 him to get out, and then he put his hand on the wheel and
11 tried to move the car to get away.

12 Q Okay. And did you see how many officers there
13 were before the shooting?

14 A There was too many.

15 Q Okay.

16 A And it wasn't much time before the shooting.

17 Q Where were those officers?

18 A Everywhere. The ones that were shooting or
19 the ones that were not shooting?

20 Q Both.

21 A Everywhere.

22 Q Okay.

23 A I can't pinpoint exactly. All I recall is the
24 ones -- the one that was shooting was somewhere between
25 the store and the apartment building that's across the

1 street on that side of the building. It was on the side
2 of the building.

3 Q Okay.

4 A And they were pointing their rifles this way
5 towards the store. They were over there.

6 Q So they were, like, not in this picture. If
7 they had been standing at this point --

8 A You couldn't see them. They were out further.

9 Q Okay. Over here and looking towards the
10 store?

11 A Yes.

12 Q Okay. And were they in the path of the car as
13 it was leaving?

14 A I don't believe so, because when the car was
15 going out, they were further out that way. And the car,
16 he slowed down when he got towards the sidewalk and the
17 street. He realized he can't turn left. He couldn't
18 turn right. It was all blocked off. Where was he going
19 to go? He can't go anywhere.

20 And then, you know, I don't know if he just
21 went into the apartment building, 'cause he got shot or
22 if he went into the apartment building because there was
23 nowhere else for him to go, but that's where he ended up.

24 Q Okay.

25 A He was just -- I think he was just trying to

1 get away.

2 Q Okay. Did you see the other man associated
3 with the vehicle?

4 A I did, but not until well after the fact,
5 'cause a lot of people did not even notice that there was
6 another person until that person was already in the back
7 of that -- he was in the back of that police car right
8 there. So we didn't even realize that there was another
9 person until we seen him in the back seat.

10 Q Okay. So your attention was focused from the
11 moment the police officers started yelling, you were
12 looking at the car?

13 A Yeah.

14 Q Okay. And again, when you started watching,
15 you were watching in your rear-view mirror?

16 A Yes.

17 Q Did you turn around and look or did you watch
18 in your rear-view mirror until the car came alongside of
19 you?

20 A No. I was watching in the side mirror and the
21 rear-view mirror because the cops were everywhere and
22 they were yelling. And there was an officer wearing
23 street clothes and a badge around his neck, and he was
24 just telling us to stay there. Stay there. So I was too
25 scared to do anything. I was just staying there until

1 they said I could move.

2 Q All right. Okay. So as it started, you were
3 watching in your mirrors. And then did you ever turn
4 around or did it -- once you started looking at the car
5 kind of with your own eyes, it was when it came into your
6 line of sight?

7 A When he was passing me is when I noticed. I
8 didn't turn around.

9 Q Okay.

10 MS. MOAWAD: Does anyone have any other
11 questions for Ms. Castillo?

12 A GRAND JUROR: Yes.

13 At one point you seem to indicate that there
14 were several officers that were shooting and at another,
15 you said the officer who was shooting.

16 THE WITNESS: No. There were several officers
17 there, but I think -- I'm sure that there was only one --
18 there could have possibly been two, but one that I know
19 of that shot. The other ones were not firing. They had
20 their rifles drawn, yes, but they were not all firing.

21 A GRAND JUROR: So you actually only saw one
22 officer firing?

23 THE WITNESS: Yeah.

24 A GRAND JUROR: Okay.

25 Can you remind me again where that officer was

1 in relationship to the vehicle?

2 THE WITNESS: He was out further that way,
3 like, on the side of the building there. I think he was,
4 like, across the street standing by a pedestrian's car by
5 the sidewalk, across the street.

6 BY MS. MOAWAD:

7 Q So you think the officer was over here
8 somewhere?

9 A Yes. Well, there was a couple of officers
10 over there, but one of the one -- the one that shot, the
11 shot came from over there.

12 Q Okay. You think the shots were fired, the
13 officer was across the street to the north of Fessenden?

14 A (Nods head), but I'm not positive, though,
15 because it happened so fast, but I know that only one
16 person shot.

17 Q Okay.

18 A GRAND JUROR: How did you know it was a
19 shot? Was there -- did you see a flash?

20 THE WITNESS: No. I seen it, but -- and then
21 I heard it. It was like -- it is like six times, I
22 think, five or six times. Because you heard this boom,
23 boom, boom, boom. And it was like right in front of our
24 truck. And I was just -- I was just in shock because I
25 never seen stuff like that before.

1 A GRAND JUROR: Thank you.

2 A GRAND JUROR: Did you see the flashes?

3 THE WITNESS: No.

4 A GRAND JUROR: So you didn't see the flashes
5 of the weapon firing?

6 THE WITNESS: No. I didn't -- I didn't even
7 look at the one that fired. I was just -- I was stunned.
8 I was shocked, because there was so much going on, and
9 I'm not used to be around stuff like that.

10 A GRAND JUROR: So you can or cannot say that
11 you --

12 THE WITNESS: I know it came from that side,
13 but if you put the officer in front of me, I can't
14 actually say, yes, he did it or he did it. But I know it
15 was one person, and I'm pretty positive that it was only
16 one gun.

17 The officers that were off to my right, which
18 would have been the other way on the street, like when
19 you are going out the driveway to the right, they were
20 not firing. And there were a lot of the officers.

21 A GRAND JUROR: Thank you.

22 BY MS. MOAWAD:

23 Q So over here you think there were officers?

24 A I know there were, yes. But -- and they all
25 had their rifles out, but they were not all firing.

1 Q Okay. And when you say "rifles," I just want
2 to make sure, are you saying long guns?

3 A I don't know what they are. They are the big,
4 long ones, yes.

5 Q Okay. As opposed to a handgun?

6 A Yes.

7 A GRAND JUROR: And, and, therefore -- there
8 were not officers to your left between your vehicle, the
9 blue vehicle and --

10 BY MS. MOAWAD:

11 Q In this area here?

12 A Yes. There was one standing there on that
13 side of the street, and then there was another one across
14 the street, and there was cars blocking off the street
15 there.

16 A GRAND JUROR: Okay. Thank you.

17 BY MS. MOAWAD:

18 Q And I just want to make sure that we're clear
19 because we've had this issue come up a few times.

20 You are describing what you see before and as
21 the shooting is occurring as opposed to once it is kind
22 of over and calmed down somewhat and you take another
23 look around?

24 A Right.

25 Q Okay.

1 A 'Cause it was all just really, really fast.

2 Q All right. And then you and your boyfriend
3 stuck around like everybody one else did.

4 Did you go into the 7-Eleven?

5 A Yes. We were told to. We didn't have a
6 choice. They told us to pull -- to back the truck up
7 into the parking lot. That's how it got where it was in
8 the photo. So they made us back it up and they told us
9 to park it, lock it up and leave it there.

10 They made everybody go into the store. And
11 we're in there from I think it was, like, around noon or
12 maybe a little after until almost 6:00 when they were
13 letting everyone go, so.

14 Q Okay. Someone took your statement and all
15 that stuff that night?

16 A Yes.

17 Q Okay.

18 MS. MOAWAD: Does anyone have any other
19 questions?

20 THE WITNESS: Okay.

21 MS. MOAWAD: That's it. Thank you very much.

22

23

24

25

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

5 EXAMINATION

6 BY MS. MOAWAD:

7 Q Go ahead and have a seat. If you would start
8 off by telling us your name, and spelling your first and
9 last name, please.

10 A My name is Ruben Vital. It is spelled
11 R-U-B-E-N, V-I-T-A-L.

12 Q And you were at the 7-Eleven on July 28th?

13 A Yes.

14 Q With your girlfriend, Ms. Castillo?

15 A Uh-huh.

16 Q Did you yourself go into the store with her?

17 A No. I stay outside.

18 Q You stayed out in the car. Was the car parked
19 in the lot initially?

20 A I didn't see that part.

21 Q Okay. No, I mean your car. Sorry.

22 A Oh, my car, yeah, it was.

23 Q So then she finished up and came out of the
24 car, and you guys were getting ready to leave; is that
25 right?

1 A Yeah.

2 Q And so where were you -- where was the car
3 when you -- your car when you started to notice police
4 activity?

5 A We were heading up the parking lot.

6 Q Okay. So if this is the scene, I've got a
7 blue box with a red circle around it, is that about where
8 your truck was?

9 A Yeah.

10 Q Okay. Were you in the driver's side or the
11 passenger's side?

12 A Passenger.

13 Q Okay. So what caught your attention first?

14 A All of the cops arriving.

15 Q Okay.

16 A And pulling out their weapons.

17 Q Okay. And were you watching the police at
18 that point, or were you turning around and looking back
19 in the store? What were you looking at?

20 A I was watching at the police.

21 Q Okay. Did you hear the officers start yelling
22 at someone or some people?

23 A Yes.

24 Q What did you hear him yelling?

25 A First I hear one say stop, stop, stop. I

1 think it was the other guy that was the partner that they
2 caught, so he stopped, and they got him. And then after
3 that, I started hearing get out. Get out.

4 But I was wondering, because that car was
5 behind me, so he goes, get out. Get out. Get out. And
6 suddenly I start hearing spinning tires. And that's when
7 I turned around, and I see the car run, take off.

8 And then he went -- first he went forward,
9 trying to get into the window and then he backed up. And
10 when he backed up, he turned toward where the police were
11 standing. So he -- at that point the police was saying
12 stop, stop, too, and then suddenly he just start throwing
13 shots.

14 Q Okay. So you say he started going toward the
15 window. Do you mean the window of the 7-Eleven store?

16 A Yeah.

17 Q Okay. Then he backed up and then went forward
18 again?

19 A Yeah.

20 Q And he turned towards where the police
21 officers were standing?

22 A Yes.

23 Q Okay. Were you worried that he might hit
24 someone or something?

25 A Not -- at that point I wasn't worried. I just

1 was worrying about, you know, how the situation was going
2 to happen.

3 Q Okay. Could he have hit one of the police
4 officers from where they were standing versus where the
5 car was traveling?

6 A Yes.

7 Q Okay. So you said as the car then makes that
8 turn and is heading towards the officers, you start to
9 hear the gunshots?

10 A Yeah. The police, the one that shot, he was,
11 like, right in front of, you know, the street.

12 Q Okay.

13 A Like between, let's say, my truck and on that
14 side where the other car is, like, right there but
15 forward.

16 Q North or south?

17 A North.

18 Q Okay. So the police officer who was doing the
19 shooting was -- was he in the street or was he on the
20 sidewalk or in the parking lot?

21 A At that point I think he was in that, in the
22 street, like right about there.

23 Q Okay. And you think that's where he was
24 standing when he started shooting at the car?

25 A Yes.

1 Q And do you remember where the car was? Would
2 it have been already heading that direction as well, or
3 was it still in the parking space?

4 A As he was heading out, as he was heading out,
5 that's when I heard the shots.

6 Q Do you remember how many shots you heard?

7 A It was, like, probably around four or five.

8 Q Okay. And you said one police officer shot.
9 Is that just the one that you saw shooting, or did you
10 see other people shooting?

11 A That's the only one -- with the rifle, that's
12 the only one that I saw.

13 Q And you mentioned other officers had guns as
14 well.

15 A Yeah.

16 Q Were other officers armed with rifles or
17 pistols, do you remember?

18 A Pistols, but they spread. So the one that
19 was, the one with the rifle, so they spread, so I didn't
20 start --

21 Q Right. So as the shots started to fire, what
22 did you do?

23 A I just -- I don't know. I see that guy,
24 just -- I think I see him take a shot. He was going
25 (indicating) with both hands in the wheel.

1 Q Okay. So you were kind of jerking your body.
2 Because we have a court reporter here, I just want to
3 narrate a little bit. You're jerking your body as if he
4 was getting shot. And you say he had both hands up on
5 the steering wheel as you saw that.

6 A Yes.

7 Q And so at that point he was -- was his car
8 next to yourself and driving forward as you saw that, or
9 was it in front of you?

10 A No. It was back. I had to turn like that to
11 be able to see it.

12 Q Okay.

13 A I was sitting on the passenger side.

14 Q So it was still behind you as the shots were
15 being fired, and then -- do you recall the car passing by
16 you?

17 A Yeah. That's when I, I still seen him going
18 like this (indicating), shaking.

19 Q So he was still shaking. Were the shots still
20 being fired, or do you remember?

21 A Yeah. They was still firing.

22 Q Okay.

23 A But it went so fast, it was like fast.

24 Q And so what did you see the car do at that
25 point, his car?

1 A I seen him going straightforward, trying -- he
2 was trying to turn at the same time to the street instead
3 of going, but I guess he couldn't control no more, and he
4 just went straight to the apartment.

5 Q Okay.

6 MS. MOAWAD: Does anyone have any questions?

7 A GRAND JUROR: I do.

8 As the car was, the suspect's car, as it was
9 leaving the 7-Eleven after he was shot, did you see --
10 did it appear that he was going to make a left or a right
11 on that cross-street?

12 THE WITNESS: That, that thing I notice is
13 that as soon as -- that as soon as he hit that curb, that
14 one, you know, the curb when you go down, I see him, he
15 was trying to turn, but at the same time he was, like,
16 shaking and still after -- 'cause when I saw him -- when
17 I saw him get the shots, he's still going like that,
18 (indicating.)

19 But as he's going out, he's still like
20 shaking, you know, at the same time trying to turn to the
21 street. But I don't know what happened. He just went --
22 the car just went straight across.

23 BY MS. MOAWAD:

24 Q And did you get a good look at the man in the
25 car? I mean, like, could you describe, for example, what

1 he was wearing or what race he was, what his hair color
2 was, anything like that?

3 A Well, the only thing I noticed is he was
4 white, but I didn't, I didn't -- it happened too fast. I
5 wasn't able to look at it.

6 Q Okay. What about the guy that was taken into
7 custody outside of the car, did you get a good look at
8 him?

9 A Yeah.

10 Q What did he look like?

11 A He's like bald and had a beard.

12 Q Okay. White, black, Hispanic?

13 A White.

14 Q Do you remember what he was wearing at all?

15 A No.

16 Q Okay.

17 MS. MOAWAD: All right.

18 Any other questions? Okay.

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

4

5

EXAMINATION

6 BY MS. MOAWAD:

7 Q Okay. If you could start out by stating your
8 name and spelling it for us.

9 A Nichole Johnson. N-I-C-H-O-L-E,
10 J-O-H-N-S-O-N.

11 Q And go ahead and have a seat.

12 So you were at the 7-Eleven on July 28th,
13 2012; is that right?

14 A Yes.

15 Q So where were you in relation to the store
16 when you first noticed something was going on that was
17 out of the ordinary?

18 A Well, I was actually on the -- how does that
19 work, that picture up there?

20 Q So I'll help you out here. This is the
21 7-Eleven here.

22 A Okay. That's the entrance.

23 Q Okay. This is Fessenden and this is Columbia
24 Way.

25 A Okay. So I was on the corner as I noticed,

1 like, ten cop cars rolling by, then I crossed the street
2 right there on the corner of Columbia and Fessenden.

3 Q Okay. So down here more?

4 A No. It was right there on the corner.

5 Q Okay.

6 A No.

7 Q Here?

8 A To your right, right about there.

9 Q Okay.

10 A So then we crossed the street because we were
11 going to the store, and then where that triangle is in
12 the middle, right there, and I was going to buy some
13 cigarettes.

14 And I noticed an officer -- I went up there
15 with my sister, so I didn't -- I seen all of the cop
16 cars, and I wasn't for sure what was going on, so she
17 just disappeared. And I looked around the corner, and I
18 seen the officer with his big gun.

19 So I just yelled for my sister. I'm like,
20 Necci, and she ran back. And I heard the officer. He's
21 pointing at the guy that came out the store. He's, like,
22 get down on the ground -- what did he say? Get down on
23 the ground. Put your hands up.

24 And then so we started running because we
25 didn't know what was going to happen. And then, all of a

1 sudden, another officer shot across the street four
2 times.

3 Q Okay. So let me have you go back for a
4 second. You were at the Shell sort of pay area here to
5 buy cigarettes.

6 A Yes.

7 Q Were you on the Fessenden side or the Columbia
8 Way side?

9 A The Columbia Way side.

10 Q So you are down here.

11 A Yes.

12 Q And you didn't see your sister, you said?

13 A I didn't see her at first because she walked
14 around the corner of the -- yeah.

15 Q So she was over --

16 A She's walking in the 7-Eleven as the suspect
17 is walking out.

18 Q Okay.

19 A And the cop pulled his gun out. He's, like,
20 get on the ground. All I seen was that. And she's about
21 to walk right in the middle of it.

22 So I'm, like, Necci, and I yell for her to
23 come back, and they are, like, get down on the ground.
24 So then I run to the other side of the, like, to the
25 other side of the pump here, to the first one.

1 And so we're, like, bent over. And then,
2 like, we're kind of looking up through a lady's car
3 through the windows to see what's going on. And, all of
4 a sudden, another officer was behind a patrol car, and he
5 was pointing directly across the street, and he just shot
6 four times.

7 Q Okay. Let me go here.

8 So you would have been from this perspective a
9 little further back from the store than from where this
10 picture was taken?

11 A Yeah.

12 Q And these two trucks were not here at the
13 time.

14 A Exactly.

15 Q Right. So were you behind this Mustang, or do
16 you think you were even over one more set of cars? Do
17 you remember?

18 A No, 'cause there's -- okay. There's the two
19 pumps on this side and then there's a little square thing
20 in the middle, then there's two more. I was I think
21 probably where the Mustang is, but that car wasn't there.
22 It was, like, a green van or something.

23 Q Okay. So where was the police officer that
24 had the gun?

25 A Right -- well, right -- probably maybe 6 feet

1 in front of the door.

2 Q So in the parking lot?

3 A Uh-huh.

4 Q So he was somewhere here?

5 A Yes, 'cause he was going to get the suspect
6 that was coming out of the store.

7 Q Okay. So did you see two guys coming out of
8 the store that the police were yelling at?

9 A Just one.

10 Q You saw one. What was that guy? Can you
11 describe him to us?

12 A No, because by that time I saw the gun. I'm
13 trying to look for my sister, and then I just -- yeah.

14 Q Were you under the impression that that guy
15 was out of the car and doing what the police officers
16 were telling him to do?

17 A Yes, he was.

18 Q Okay. And then did you see the guy in the
19 car?

20 A No. I didn't see the guy in the car.

21 Q Okay. Did you see the car moving?

22 A No. The car wasn't moving at all. It had
23 already crashed into the wall and it was sitting there.
24 And, like, we thought maybe the guy had got out and ran
25 upstairs, and maybe that's why they shot at him, because

1 we -- it didn't make sense.

2 Q Okay. So the car is out of the parking lot
3 and already in the apartment building before you hear any
4 of the shots being fired; is that correct?

5 A No. This is -- the car -- yeah, the car is
6 there once the shots are fired. It is already there.

7 Q Okay. The car is in the apartment, then you
8 hear the shots fired?

9 A Yes.

10 Q Okay. All right. And you never saw the guy
11 in the car?

12 A No.

13 Q And you never saw that car getting out of the
14 parking lot from your vantage point?

15 A No. It was just parked there.

16 Q All right.

17 MS. MOAWAD: Does anyone have any questions
18 for Ms. Johnson?

19 BY MS. MOAWAD:

20 Q How many shots do you remember hearing?

21 A Probably 12 all together, four in the
22 beginning, and then there was, like, eight at the end.

23 Q Okay. And you mentioned one officer that you
24 saw shooting. Do you think he shot all of the shots, or
25 do you think other people were shooting guns?

1 A No. I think the one officer shot all those
2 shots. And then the eight shots, I don't know, because
3 we were so far back -- they made us stay there. But we
4 were so far back, we couldn't see at that time.

5 MS. MOAWAD: Okay. Great.

6 Did those questions prompt any of you to have
7 follow-up? Okay. Thanks very much.

8 THE WITNESS: Thank you.

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

4

5 EXAMINATION

6 BY MS. MOAWAD:

7 Q Go ahead and have a seat. If you would start
8 off by telling us your name, and spelling your first and
9 last name.

10 A Lanice Clark. L-A-N-I-C-E, Clark, C-L-A-R-K.

11 Q And you were at the 7-Eleven on July 28th when
12 this all happened?

13 A Yes.

14 Q Okay. So I have a crime scene diagram up here
15 on the screen. Where were you when you first noticed
16 that something out of the ordinary was happening because
17 of all the police activity?

18 A Walking into the store.

19 Q So the entry of the store is about right here?

20 A Uh-huh.

21 Q And you were with your sister Nichole?

22 A But she was -- she was by the cigarette place.

23 Q So she was over here at the Shell?

24 A Yeah. I was going to get a doughnut.

25 Q Okay. So tell us what you heard and what you

1 saw.

2 A I just remember walking into the store and I
3 remember seeing a guy come out. And all I heard was get
4 down on your hands and knees right now. And I didn't
5 know what was going on with him. Then I just heard four
6 shots.

7 Q Okay. Were you still in the store or did
8 you --

9 A I never made it in the store.

10 Q Okay. So you didn't make it all of the way
11 into the store. Where you standing right there?

12 A Yeah, and I saw the policeman with the gun
13 out. And that's when he was, like, get down on your
14 knees right now.

15 And then he -- once I heard the shots, I ran
16 back to where -- because I heard Nichole call my name, so
17 I ran back to where she was. And it was me and a
18 customer and a gas station attendant, we were all down on
19 the ground, huddled between the passenger's car and the
20 little curb thing.

21 Q Okay. So when the police were yelling at the
22 man, was that a man in a car or a man outside of a car?

23 A I have no idea. I don't know who they were
24 yelling at because it was two. I saw some people in a
25 car, and I saw a man coming out the store as I was going

1 in, so I don't know who they were yelling at.

2 Q Okay. Did you see the car at that point in
3 time? Did you notice there was a person in the car at
4 that moment?

5 A Uh-huh.

6 Q Okay. Do you think the police were yelling at
7 him and another guy?

8 A Uh-huh, because they arrested the guy coming
9 out the store.

10 Q Do you remember what that guy was wearing?

11 A He was wearing jeans. He had, like, on a
12 plaid shirt.

13 Q Okay. White, black, Hispanic?

14 A He was white.

15 Q Do you remember if he had hair?

16 A Yeah. He had hair.

17 Q Okay. So that guy gets arrested. Did you
18 see -- in the moment, did you see where he was?

19 A In the back of the police car.

20 Q Okay. The other guy, you saw him in the car?

21 A I didn't see anybody in the car.

22 Q Okay. Okay. But they were clearly yelling at
23 someone in the car?

24 A Right.

25 Q Okay. And what did you hear them yelling to

1 the guy in the car?

2 A Get out. Get out of the car right now. Get
3 out. Get down on your hands and knees right now.

4 Q And did you see a guy get out of a car?

5 A No.

6 Q Did you see what that car did?

7 A All I saw was the shots, and the car ran into
8 the lady's patio door.

9 Q Okay. So did you see how the car got out of
10 the parking lot, how it got out of its parking space?

11 A I think it was probably taking off to run
12 probably. And I think maybe the -- he just didn't get a
13 chance to run because the police shot at him, and that's
14 how he ended up in the patio door.

15 Q Okay. So you -- do you remember if the shots
16 started to be fired while he was still in the parking
17 lot?

18 A No.

19 Q It was after he had left the parking lot?

20 A Right. Right.

21 Q Was he in the street or already at the
22 apartments before --

23 A He was in the street.

24 Q Okay. He was in the street. The car was in
25 the street.

1 Do you remember where the officer with the gun
2 was?

3 A Right behind his car.

4 Q Okay. And so shooting at him from behind?

5 A Uh-huh.

6 Q Okay. And do you remember if that officer had
7 a long gun or a handgun?

8 A It was an AK.

9 Q Okay. And so the officer is shooting as the
10 car is crossing the street, and then you see it crash
11 into the apartments?

12 A Uh-huh.

13 Q And where are you at that point? Are you
14 still standing in front of the store?

15 A I am back over -- no. I'm, by now I'm huddled
16 over down in the little corner over here, but I can still
17 see.

18 Q Okay. Sure. Sure. So at what point in all
19 of this -- so had you already moved by the time the shots
20 started firing, or was it the shots firing that made you
21 move?

22 A It was the shots firing that made me move.

23 Q Okay. So the shots start to fire and you run
24 out over here?

25 A Right.

1 Q So you don't run over here until the car is
2 already in the street?

3 A Right. Right.

4 Q All right. Do you remember how the car got
5 out of its parking spot? I mean, do you remember what
6 route it traveled?

7 A Huh-huh. Clearly, it had nowhere to go. It
8 can only go -- I mean, there was nowhere for the car to
9 go. There was just nowhere for the car to go.

10 Q Right. Do you remember how it got out of
11 there?

12 A I'm assuming -- I mean -- no, no, no, I don't.
13 I'm not even going to assume. I don't know if he was
14 attempting to take off because he saw his buddy get
15 arrested. I don't know. All I know is he got -- he got
16 killed coming out of the parking lot.

17 Q Okay. And did you see whether or not the
18 police officers -- well, let me put it this way.

19 Were there people around the car as it was
20 moving?

21 A It was people everywhere. They handled that
22 situation so -- if -- if the other car would have shot
23 back, they would have hit me.

24 Q Okay.

25 A That's how close I was to it. And no one

1 said, get down. No one said, ma'am, get out of the way.
2 Everybody, get on all fours. No one said anything. They
3 just start shootin' out in -- right in front of
4 everybody.

5 Q Okay. And just so I'm clear, you're saying if
6 the man in the car had started shooting, you think you
7 would have been hit?

8 A Yeah, I would have.

9 Q Okay. Okay. And what about the other people,
10 could they have been hit?

11 A Yup, they sure could have.

12 Q Okay. And could they have been hit by the car
13 as well as gunfire?

14 A Yeah.

15 MS. MOAWAD: Okay. Does anyone have any
16 questions for Ms. Clark?

17 A GRAND JUROR: From your understanding, was
18 there only one person shooting or more than one person
19 shooting?

20 THE WITNESS: One person. That was the police
21 officer.

22 A GRAND JUROR: One police officer?

23 THE WITNESS: Right.

24 MS. MOAWAD: Okay. Any other questions? All
25 right. That's it. Thank you very much.

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

5 EXAMINATION

6 BY MS. MOAWAD:

7 Q Please go ahead and have a seat. And if you
8 would start off by telling us your name, and spelling
9 your first and last name, please.

10 A It is Robert Dean Mills, R-O-B-E-R-T. D is my
11 middle name, Mills, M-I-L-L-S.

12 Q All right. Mr. Mills, you live in the general
13 area --

14 A Yeah.

15 Q -- that this occurred on July 28th; is that
16 right?

17 A Yes.

18 Q And, in fact, you were outside working on a
19 boat at the time this all happened?

20 A Yeah. I have a boat directly across the
21 street from the 7-Eleven at my good friend's house.

22 Q Okay. So I have up here a crime scene diagram
23 with just a big red circle. Is that about the area you
24 were, or were you a little further?

25 A Is this the 7-Eleven?

1 Q 7-Eleven is right here. This is Columbia Way.

2 A Okay. And then -- yeah, that's exactly
3 where -- but there's a street called Nashton that slides
4 off. If you took your pencil --

5 Q Like that?

6 A No, the other way. It goes -- can I show you?

7 Q Sure.

8 A It slides off like this, and then there's
9 another street that comes like that, so there's like a
10 triangle, and my boat is right, right here.

11 Q Okay.

12 A So I mean, I'm up like -- I'm like a birdseye
13 view. I was up, like, maybe 10 to 15 feet at the time.
14 Yeah, that's exactly where I'm at.

15 Q So is that your boat in this picture?

16 A Yes. That's my boat.

17 Q So you are looking across the street. That's
18 Columbia Way here; right?

19 A Yeah.

20 Q Across the street over in the parking lot?

21 A Yeah.

22 Q All right. So what first caught your
23 attention that led you to notice the police activity?

24 A Well, there were no sirens. They were just --
25 they just started -- I started seeing cop cars pull up.

1 I mean, just coming out. I mean, you are talking -- this
2 happened so quick. It was -- it just happened really
3 quick. I don't know. Maybe three minutes, four minutes
4 max. That might be exaggeratin' a little. Maybe a
5 little quicker.

6 From the first time I seen the cops, I got out
7 of the boat because I knew something was happening,
8 because -- and there's no sirens. I'm just -- I'm going,
9 oh, my God.

10 So I jump out of my boat, because all these
11 cops are coming. I'm going, what's happening. My first
12 thought is 7-Eleven is probably getting robbed or
13 something. That's my first thought. I mean --

14 Q Sure. Makes sense.

15 A Okay. So I jump out of my boat because I
16 don't want to be involved in what's going on. I don't
17 know what's going to happen next.

18 And so right where that boat is, the guy's
19 stairs are like here, and the porch sits -- I could look
20 way above the boat. The detective that came and talked
21 to me yesterday, I took him right where I stood.

22 Q And that was actually, just for the record,
23 the investigator who gave you the subpoena to be here?

24 A Yeah, yeah. That's where I met him, because I
25 was working on my boat again. I constantly do that.

1 But -- so I'm looking up, and then the next
2 thing I know, you know -- like I said, it is going so
3 quick. There's, like, maybe four cops with their
4 handguns out, and I'm this far away from 7-Eleven. And
5 the car was parked to the right of, like, where the van,
6 the van is.

7 Q This van here?

8 A Yes. Somewheres -- it was either on that side
9 or just on the other side of the van.

10 Q Closer to you or away from you?

11 A I would say when -- the cops are coming from
12 right here -- I got to show you. The cops are coming
13 from here, this direction behind.

14 Okay. The car, I don't know if it was in
15 between these two or this, but I know the propane tank is
16 right here. And what he did was they are all -- they are
17 screaming at him, get down, get down. Get your hands up.
18 Hands up.

19 One guy surrendered. The other guy, he's in
20 the car, and he just backs out a little bit, not much.
21 And they are just -- they are screaming at him. They are
22 yelling, you know, you need -- hands up.

23 The other guy surrendered. And the only thing
24 I know is he punched the car. The car popped up over the
25 curb. There's a curb right here. He popped up over the

1 curb. And as soon as he got in front of the propane
2 tank, they opened fire on him.

3 Q Okay.

4 A And I just watched it. I couldn't believe my
5 eyes, you know. And I don't -- I'm not -- I hate to be
6 in their position. I don't know what's right or wrong,
7 but I'm just telling you what I seen.

8 Q Okay.

9 A And -- but he did -- he kind of -- he jumped
10 the curb because the front end of his -- he accelerated.
11 As soon as they shot, I just knew in my heart that he was
12 dead. I mean, they were real close to him.

13 Q So you're saying "they" shot. Do you know if
14 it was one officer or multiple officers who was doing the
15 shooting?

16 A From what I heard, it was, like, six shots. I
17 don't know because -- you know, it is during the day.
18 You don't have gun smoking or fire coming out like in the
19 movies.

20 Q Sure.

21 A So I don't know that. I can't really tell you
22 that for sure.

23 Q Okay. Now, you mentioned one guy surrendered.
24 Did you see that guy? I mean, could you describe him to
25 us?

1 A He was a white male is the only thing I knew.

2 Q And could see what he was wearing, for
3 example?

4 A I wasn't paying attention. After the shots
5 were getting fired, I was, like, I did not know what to
6 do. I mean, I was -- I've never seen anything like that
7 in my life, so I didn't -- it is not an everyday
8 occurrence.

9 Q Sure. What about the guy in the car, could
10 you see him?

11 A I could not see him because the other cars
12 were in the way. But I did see the car and what the
13 car -- what he did with the car. And then after they --
14 after they fired the shots, I just knew -- I go, God,
15 he's gone.

16 And then the car stopped acceleratin', and it
17 went across the street. Thank God nobody was coming down
18 Fessenden or they would have T-boned him, and then he
19 crashed through a fence.

20 I mean, there's a car parked here and there's
21 a tree here, and the car was, like -- it just -- it was a
22 miracle how it got between the tree and the, um -- it
23 just showed the -- I mean, how it just -- it was, like,
24 like half a circle or whatever.

25 And then it crashed through the fence, and

1 then there's a sliding glass doors. And I've lived in
2 this area for most of my life, and I know those
3 apartments, and I knew that was a kitchen.

4 I'm going, oh, my God, I hope there are no
5 kids in there or even anybody in there, and then he went
6 right through there. And they didn't know -- I didn't
7 know what was going on then.

8 All of the cops are behind their cars with
9 their guns drawn, and I sat and watched. I just -- I
10 was -- I didn't know what else to think. I just, I
11 couldn't believe what I just saw.

12 Q Sure.

13 A But, you know, I don't know what -- I heard
14 six shots, though.

15 Q Okay.

16 MS. MOAWAD: Does anyone have any questions
17 for Mr. Mills?

18 A GRAND JUROR: You said that if there
19 happened to be someone coming down Fessenden at that
20 time, there could have been quite a serious crash.

21 THE WITNESS: Oh, yeah, because when he hopped
22 the curb and he turned, they were behind -- the police
23 department was behind the car. They were coming towards
24 the car. They were coming up on him like that.

25 And I believe one guy had a rifle, and I mean,

1 they are screaming at him. But when the car hopped the
2 curb, he already accelerated, so there was nothing to
3 block him -- he knew he couldn't back out because there's
4 a cop car here and there's other cars here.

5 So the only way for him to get out of this
6 mess was to hop the curb, and that's what he was trying
7 to do, and he come out.

8 And that right there is, like, where he comes
9 out across Fessenden. And, like, where this picture is
10 right now is kind of like where the apartment complex,
11 where he crashed into.

12 A GRAND JUROR: Is Fessenden, I don't know
13 that area, is that two-lane, four-lane?

14 THE WITNESS: It is two lanes, but it is
15 pretty busy. It goes right into -- it goes into a
16 residential area, but a lot of people take that, and they
17 go up -- it rounds out like this and goes to St. John's
18 Bridge.

19 People from Hillsboro will come through that
20 area to go back to Vancouver, whatever. It is kind of --
21 instead of hitting the freeway, you hit that, then you
22 hit Columbia Way, and then it is a shorter -- it is not
23 as busy route as I-5 would be, you know.

24 But it was 1:00, 1:30, I believe, 1:30, 'cause
25 I arrived at my friend's house around 1:00, so it was

1 just -- I just got there.

2 BY MS. MOAWAD:

3 Q So that is your friend's house in this picture
4 here?

5 A Yes. That's where I was standing. So I was
6 like looking down at the whole thing. I could see it
7 pretty clear.

8 A GRAND JUROR: I have a question.

9 Was there any police in front of the vehicle?

10 THE WITNESS: In front of the vehicle? I
11 don't -- I don't think so. They were coming up from the
12 side, from the sides and the back. He wasn't boxed in,
13 or I don't think he would have gunned it to get out, you
14 know what I mean. It wasn't boxed in. I believe that
15 police car that is sittin' right there in front of
16 7-Eleven --

17 MS. MOAWAD: This one?

18 THE WITNESS: Yeah, I believe that one was not
19 there. I'm not sure. I really -- but I know there was
20 one -- this one right here was there, because he come
21 right through -- this is the -- this is the propane
22 tanks. And there's a little curb right here where you
23 step on to go to into the 7-Eleven with the curb. He
24 hopped that to try to go that way, and he swung this way,
25 he came right into the house.

1 A GRAND JUROR: Thank you.

2 Do you recall where the victim's car was when
3 the shots rang out?

4 THE WITNESS: Right in front of the -- as soon
5 as he hopped the curb right in front of the propane
6 tanks. As soon as he -- he hopped the curb. I seen the
7 car jump up like this, and then they just started doing
8 their thing, you know.

9 A GRAND JUROR: So he had or had not made it
10 to the street yet?

11 THE WITNESS: Oh, no, he was dead before he
12 hit the street. That's my feelings. 'Cause, I mean,
13 when you are driving a car and you accelerate and then,
14 all of a sudden, as soon as the shots were fired, it was
15 right in front of the store, the car just -- it was slow
16 motion after that.

17 I mean -- and it just makes my hair stand up
18 just talking about it. And it was -- even when I go over
19 there today, I still see it. And he just -- like I said,
20 it was just slow motion right across Fessenden right --
21 rolled over the fence and right into the people's house.

22 BY MS. MOAWAD:

23 Q And when you say he was dead before he hit the
24 street, that's just your belief?

25 A That's my opinion, yeah. Well, I mean, you

1 hear six shots and you just see how the car, the car
2 reacted. I mean, he wasn't -- it wasn't like he steered
3 it into there.

4 I don't think he did, because it was like slow
5 motion. It was like boom, boom, boom, boom. And then it
6 just went -- they did not fire -- I mean, they fired
7 right there in front of the store.

8 It wasn't, like, they were firing at him as
9 he's crossing the street, you know. I'm pretty sure they
10 knew that they hit him, because they -- it took
11 probably -- there was no ambulance, nothing.

12 And they just waited out for maybe, like, an
13 hour and a half until -- then the SWAT team finally came.
14 And the SWAT team pulled up, and there was crowds of
15 people, so then they started roping off. They roped
16 everything off.

17 I mean, it got all of the way to the house and
18 by the trucks. No one could move their vehicles.
19 Nothing. And I ended up spending the night over my
20 friend's house. But I mean, he was just -- you couldn't
21 go -- well, you could go somewhere. You just had to
22 walk, you know. But, you know, they had a total
23 investigation, so. It is pretty crazy.

24 MS. MOAWAD: Does anyone else have any other
25 questions for Mr. Mills?

1 Okay. That's it. You are all done.

2 **THE WITNESS:** Thank you.

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1 DESIREE SELMAN,
2 a witness called on behalf of the State, having been first
3 duly sworn, was examined and testified as follows:
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5 EXAMINATION

6 BY MS. MOAWAD:

7 Q Okay. Go ahead and have a seat. Could you
8 state and spell your name, please?

9 A Desiree Selman. D-E-S-I-R-E-E. Last name,
10 S-E-L-M-A-N.

11 Q Okay. And you work at the Shell gas station
12 that's next to the 7-Eleven?

13 A Correct. Same property on it, same property.

14 Q Okay. So this is an overhead of the crime
15 scene. The Shell station area, gas station area is here,
16 and this is the 7-Eleven.

17 A Okay.

18 Q And I've got a red circle around the kiosk
19 area here. Is that about where you were when this all
20 got started?

21 A Yes.

22 Q Okay. So tell us what you were doing when you
23 first noticed the police officers.

24 A I was walking across the street to work when I
25 saw about seven cars, I guess at the time, coming around

1 from Columbia Boulevard and pulling into our parking lot.

2 Q Were you crossing Fessenden or --

3 A I was coming across Fessenden.

4 Q All right. So go on.

5 A And then I came in, signed in, started to do
6 my count when -- then I, like, heard and stepped out and
7 seen a bunch of cops with their guns drawn, straight out
8 of their cars with their guns drawn, saying stop, stop,
9 stop.

10 And I walked back inside to the other side of
11 our pumps to make sure our other employee was okay. And
12 when she said she was okay, I heard about seven fires go
13 off. And then I walked back to where pumps one through
14 four is, I guess I can say, and seen the car hit the
15 driveway and go across and into the apartments across the
16 street.

17 Q Okay. So pumps one through four, are they up
18 over here on the Fessenden side of the lot?

19 A Correct. Correct.

20 Q Okay. So you were -- I just want to make
21 sure -- you were in this kiosk when the shooting --

22 A I was out on the pump side when I seen all of
23 the cops -- no, the other side. When I seen all of the
24 cops going towards a car with their guns pulled, when I
25 walked back inside, 'cause they were screaming stop,

1 stop, stop, and to make sure the employee at pumps five
2 and eight were okay, and then --

3 Q So you came down here?

4 A Yes, ma'am, but only to the door, though. I
5 never actually walked all of the way to the pump.

6 And by the time I got back by walking through
7 the building again, I hear the gunfires go off. By the
8 time I got back to the door on sides one through four, I
9 seen the car hitting the driveway and then going across
10 the street into the apartments.

11 Q Okay. So did you see who the cops were
12 yelling at?

13 A I seen -- I seen -- when they were going
14 towards him, I seen them all yelling at a car, but I
15 wasn't like -- I didn't see a person per se. And I seen
16 him have another guy on the -- like at 7-Eleven, they had
17 another guy, but I didn't, like, see the guy, like, who
18 was in the car or, like, specific car, you know.

19 Q So did you see any of the attempts of that
20 car?

21 A I did see the car pulling off towards him, you
22 know. I seen the car, like, coming out, but I didn't
23 see -- I didn't see him when they shot directly at the
24 dude. I only seen, like, when he was attempting to start
25 coming, and that's when I went to the other side. I

1 wanted to make sure my other employee was okay.

2 Q And you said when he was coming towards them,
3 do you mean his car was --

4 A When he started to back out, I guess.

5 Q Okay. And did you see a police car do
6 anything in reaction to the car backing up?

7 A No. I just seen a bunch of cops. I never saw
8 a police car. I just seen a bunch of cops going towards
9 him.

10 Q All right. And so the car was already in
11 motion when you heard the shots fired; is that right?

12 A When I went to the other side, he was starting
13 to get out. But, like I say, I didn't see him, like,
14 turn his car, like, maneuver it forward, but I seen him
15 started coming back, and then I went to the other side
16 then and heard the fires.

17 Q Okay. And again, you heard the officers
18 yelling what to him before that started?

19 A Stop. Stop. Stop. You know -- just, you
20 know, stop, stop, stop. Get out, you know.

21 MS. MOAWAD: Okay. Does anyone have any
22 questions for Ms. Selman?

23 A GRAND JUROR: Regarding "coming out," can
24 you describe what that means relevant to the store?

25 THE WITNESS: He was reversing, reversing out.

1 I didn't see him turn towards the cops yet, but I seen
2 him start to maneuver out.

3 A GRAND JUROR: Okay. So you saw him back up?

4 THE WITNESS: Yes.

5 A GRAND JUROR: Did you see him go forward?

6 THE WITNESS: No.

7 A GRAND JUROR: Okay. And did you see the car
8 at any time -- between that moment and the time that it
9 stopped across the street?

10 THE WITNESS: Yes. I seen it when it was at
11 the driveway -- after they, I guess, shot the guy, I seen
12 it at the driveway, then go across the street and run
13 into the building.

14 A GRAND JUROR: Okay. And you heard what
15 prior to it exiting and going out of the street?

16 THE WITNESS: I heard stop, stop, stop, and
17 then I heard the gunfires, and then I seen his car going
18 across the street.

19 A GRAND JUROR: And the sounds that you call
20 shots, you heard prior to it entering the street?

21 THE WITNESS: Correct, while he was still in
22 the parking lot.

23 A GRAND JUROR: Okay.

24 BY MS. MOAWAD:

25 Q So you were over here in this area looking at

1 this picture here, but a little bit further that way?

2 A Yes, ma'am.

3 Q So you see the car as it starts to leave the
4 driveway here and go across the street?

5 A Correct.

6 MS. MOAWAD: Okay. Does that make sense?

7 Any other questions?

8 A GRAND JUROR: I have a question.

9 Was there any police in front -- well, in
10 front of the car, but in the way of the car when the car
11 was backing up?

12 THE WITNESS: I really couldn't say if they
13 were behind him or not. I couldn't tell you that. I'm
14 sorry.

15 MS. MOAWAD: Any other questions?

16 Okay. That's it. Thank you.

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1 CHARLES REI,
2 a witness called on behalf of the State, having been first
3 duly sworn, was examined and testified as follows:
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5 EXAMINATION

6 BY MS. MOAWAD:

7 Q Go ahead and have a seat. And if you would
8 start off by telling us your name, and spelling your
9 first and last name, please.

10 A Charles Rei, C-H-A-R-L-E-S, R-E-I.

11 Q And, Mr. Rei, you are also employed at the
12 Shell gas station?

13 A I am.

14 Q Okay. You were working Saturday, July 28th?

15 A I was.

16 Q Okay. Tell us when you first realized that
17 something out of the ordinary was going on there.

18 A Well, I walked out to help a customer, and he
19 said, what's going on here? I didn't know what he was
20 talking about. I turned to my left, and I saw that there
21 were a couple of police cars in the 7-Eleven parking lot.

22 Q Were you working on the Fessenden side of the
23 kiosk?

24 A Yeah. That's where I was, yeah.

25 Q All right. Go on.

1 A And so I look over, and not very long, just a
2 couple seconds after that, I hear a man's voice yelling
3 very loudly, very clearly, stop. Stay where you are.
4 Don't move. He said it, like, five or six times, one or
5 more of those statements, you know.

6 At first I thought he was talking, you know,
7 at the guy that just come out of the 7-Eleven, but he
8 just kept on walking, and then I realized, oh, they must
9 be yelling at car there.

10 Then, all of a sudden, one of the police cars
11 went in right behind the car, so it couldn't back up.
12 And then the guy went forward and turned to the right.

13 And just a few seconds later, five or six
14 really loud gunshot sounds. I didn't see where they came
15 from or who did it, but -- and the car kept going north
16 towards the street. Got about to the end of the
17 driveway, almost came to a complete stop, and then, all
18 of a sudden, lunged forward and went across the street
19 and straight into the apartment.

20 Q Okay. Did you see how many -- before the
21 shooting happened, did you see how many police officers
22 were out of their cars?

23 A I only saw one that I recall being out of his
24 car.

25 Q All right. And do you recall if he had a

1 firearm in his hand?

2 A Yeah. He had a pistol.

3 Q Okay.

4 A A handgun.

5 Q Anybody in the path of travel for that car? I
6 mean, did you say to yourself, someone is going to get
7 hit by that car if they don't get out of the way?

8 A I didn't see that there was anybody there.

9 Q Okay.

10 A Other than possibly the one police officer I
11 saw could have been in the path of where that car was
12 going.

13 Q What about when he lunged forward, were you --
14 did you think at first he was going into the 7-Eleven or
15 did he have a good right-hand turn going on?

16 A He had a good right-hand turn going on. He
17 cleared the building, so...

18 Q All right.

19 MS. MOAWAD: Any questions for this witness?

20 A GRAND JUROR: You saw the car go forward,
21 turn right in front of the store all of the way to the
22 point where it stopped across the street?

23 THE WITNESS: I saw most of that. There was
24 probably a second where a gas pump was in my way, that I
25 didn't see it.

1 A GRAND JUROR: Okay. At what point did you
2 hear shots?

3 THE WITNESS: That's kind of hazy. It was
4 between the time he started moving and before he got to
5 the end of the parking lot.

6 A GRAND JUROR: Thank you.

7 MS. MOAWAD: Any other questions? All right.
8 That's it. Thank you very much.

9 THE WITNESS: You're welcome.

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1 THMEKA CURRY,
2 a witness called on behalf of the State, having been first
3 duly sworn, was examined and testified as follows:
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5 EXAMINATION

6 BY MS. MOAWAD:

7 Q Go ahead and have a seat. And if you could
8 start off by telling us your name and spelling your first
9 and last name for us.

10 A Thmeke Curry, T-H-M-E-K-A, C-U-R-R-Y.

11 Q Ms. Curry, you live in the area where the
12 7-Eleven is at Six Points; is that right?

13 A Yes.

14 Q I have a crime scene diagram here. So if this
15 is Fessenden, this is the 7-Eleven, you actually live in
16 the same apartment building where the vehicle crashed; is
17 that right?

18 A Right.

19 Q Okay. So tell us what you were doing that day
20 this all happened.

21 A Just hanging out with my fiance and his sister
22 and my kids.

23 Q Okay. And so what did you hear?

24 A I heard, like, four or five gunshots and then
25 followed by, like, this loud sound. I thought it was an

1 earthquake at first because we felt the building move.

2 Okay. That's all I heard.

3 Q Okay. Did you hear any yelling before you
4 heard the gunshots?

5 A No.

6 Q Do you have any windows that face out on the
7 Fessenden from your place?

8 A No.

9 Q So you felt the building move and heard the
10 loud crash, and then did you guys leave your apartment,
11 or what happened after that?

12 A We got the kids and went upstairs and put them
13 in the bathroom because we didn't know where the shots
14 were coming from. We just knew they were really close
15 by. And so just got the kids in the bathroom, and then
16 we was, like, trying to look out the windows to see if we
17 can see everything, but we couldn't see anything.

18 Q Okay. So pretty scary?

19 A Yeah.

20 Q Everyone was safe in the end, though?

21 A Uh-huh.

22 Q Okay. Anything else that you saw after that?

23 A Um, like, 20 minutes later, we went outside,
24 had a cigarette, and then we walked towards the street,
25 and then we saw the police hiding behind the trail cars

1 with guns drawn, and that's when we went back in the
2 house because obviously, it wasn't safe for us to be out
3 there. And that's basically all I saw.

4 Q All right.

5 MS. MOAWAD: Does anyone have any questions
6 for Ms. Curry?

7 All right. All done. Thank you.

8 THE WITNESS: You're welcome.

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

5 EXAMINATION

6 BY MS. MOAWAD:

7 Q Okay. And if you could start -- have a seat,
8 and then start off by telling us your name, and spelling
9 your first and last name, please.

10 A David Elberson, D-A-V-I-D, E-L-B-E-R-S-O-N.

11 Q Okay. And, Mr. Elberson, were you at the
12 7-Eleven at Six Points on July 28th?

13 A Yes.

14 Q Okay. So this is an overhead of the crime
15 scene. So this is Columbia Way here, Fessenden up here,
16 7-Eleven is here, and the Shell gas station is right here
17 just, so you have your bearings.

18 A Okay. I was at the corner right there on
19 Fessenden and Columbia.

20 Q So right about here?

21 A Yes.

22 Q Okay. And what were you doing?

23 A I was riding my bicycle into 7-Eleven to grab
24 a couple of beers.

25 Q Okay. And so as you were riding your bicycle

1 up, is that when you noticed police activity, or when did
2 you notice?

3 A I know I was right across the street from Six
4 Points Bar.

5 Q Okay.

6 A And I heard pop, pop, pop. Then I heard pop,
7 pop, pop. And I told the barmaid at Six Points, close
8 your doors, lock them quick, and so she did.

9 Q Okay.

10 A Okay. And then so after that, I kind of rode
11 up further to 7-Eleven, and I was kind of looking to see
12 what was going on, and I seen the black car go into the
13 apartment complex.

14 Q Okay. So did you hear any yelling before you
15 heard the shots fired?

16 A No. I was still riding my bicycle up that
17 way.

18 Q Okay. And this --

19 A I was riding from behind the auto parts store,
20 and then coming up to 7-Eleven passed Six Points Bar.

21 Q And, as I recall, Six Points Bar is on the
22 other side -- on the north side of Fessenden; is that
23 right?

24 A Yes.

25 Q Okay. So you were across the street at the

1 point you heard the shots being fired?

2 A Yes.

3 Q All right. Were you in the bar or were you
4 just by the bar?

5 A No. I was riding past on Fessenden.

6 Q Okay. So you yell at her, and then you come
7 across the street up to 7-Eleven?

8 A Yeah. It was still opened. I -- I seen the
9 black car going into the apartment complex, and I seen
10 the police officers there. And there's still people in
11 7-Eleven, so I went into the 7-Eleven, too.

12 I thought, okay, so I went in and purchased my
13 two beers. And as I was coming out, they said, no, you
14 turn around, put your bike inside the store right now, so
15 I did. And I sat there for two and a half hours.

16 Q Until someone was able to take your statement?

17 A Yes.

18 Q Now, you mentioned you saw the car going
19 across the street. Was it going -- what rate of speed
20 was it going?

21 A Slow.

22 Q Slow?

23 A Yeah.

24 Q Okay. Did you see into the car? Could you
25 see into the car from where you were?

1 A No. But once I got to 7-Eleven and seen the
2 car go across the street, I see the brake lights were
3 still on for about two or three minutes.

4 Q Okay.

5 A And that was it. So, and then I seen the SWAT
6 team and everybody else come up, and that was all I can
7 tell you.

8 MS. MOAWAD: All right. Okay.

9 Does anyone have any questions for this
10 gentleman?

11 A GRAND JUROR: So you saw -- what was the
12 first time and in what position was the car? Was it in
13 the lot or in the street?

14 THE WITNESS: It was going out of the lot
15 across the street into the glass doors.

16 A GRAND JUROR: Okay. So you saw it prior to
17 it exiting the lot?

18 THE WITNESS: Yeah.

19 A GRAND JUROR: And the shots you heard
20 occurred where in that time frame?

21 THE WITNESS: I was across the street, across
22 from 7-Eleven.

23 A GRAND JUROR: Okay. And where was the car
24 at the time you heard the shots?

25 THE WITNESS: Coming out of the 7-Eleven

1 parking lot.

2 A GRAND JUROR: Thank you.

3 MS. MOAWAD: Any other questions of

4 Mr. Elberson?

5 Thank you.

6 THE WITNESS: Thank you very much. You all

7 have a nice day.

8 MS. MOAWAD: Thank you.

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1 JUDE ESSIEN,
2 a witness called on behalf of the State, having been first
3 duly sworn, was examined and testified as follows:
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5 EXAMINATION

6 BY MS. MOAWAD:

7 Q All right. If you would have a seat, and then
8 state your name and spell your first and last, please?

9 A Jude Essien, J-U-D-E, E-S-S-I-E-N.

10 Q And, Mr. Essien, you live in the area of the
11 7-Eleven; as a result?

12 A I live right across 7-Eleven.

13 Q Okay. And you were returning a DVD to the Red
14 Box there at the 7-Eleven on July 28th?

15 A Yes.

16 Q Okay. So if this is the crime scene, do you
17 live on the Columbia Way side or the Fessenden side?

18 A No. I live on the Columbia Way side.

19 Q Okay. So where were you when you first
20 noticed police cars in the carry?

21 A All right. I was walking away from apartment
22 towards the Red Box.

23 Q And is the apartment kind of over here a
24 little bit?

25 A Yeah, yeah.

1 Q So you are walking down?

2 A Yeah. I spotted a police car right there at
3 the gas station, that car, yeah.

4 Q Okay.

5 A I thought it was just normal -- it is North
6 Portland. So when I moved another 20 feet from where I
7 was standing, then I saw someone backing up a car from
8 7-Eleven and the police officers are firing into it.

9 Q Okay. Did you hear the police officers doing,
10 yelling, saying anything before that?

11 A Yeah. I heard them yelling, but I didn't -- I
12 didn't quite understand what they was saying, yeah.

13 Q Okay. So the police were yelling, and then
14 you were continuing to walk east?

15 A Yeah. I was going -- I actually was right
16 very close to the Red Box. I don't know why I did that,
17 but I did.

18 Q And where is the Red Box? Is it outside?

19 A Yes. It is right -- it is outside the
20 7-Eleven. It is in the building.

21 Q Is this a picture of it right here?

22 A Yes. That's the Red Box.

23 Q So you were all of the way up there when the
24 car started moving?

25 A Yes. I was halfway from my apartment. And

1 that's my apartment. See that plant right there, it is
2 the building behind it. My apartment is right there, so
3 I'm halfway to the Red Box.

4 Q Okay. So you were -- I'm sorry. Your
5 apartment is where?

6 A Behind that plant right there.

7 Q Back that way. Okay. Got it.

8 So do you think when the car started moving,
9 you were still on the street or the sidewalk here?

10 A No. When the car moved, I was, I was in the
11 parking lot outside the 7-Eleven, yeah.

12 Q Okay. All right. And what did you see as far
13 as the car moving? What kind of movement did you see the
14 car?

15 A It was a rapid movement. I believe someone
16 was trying to escape. And I heard all of the officers
17 yelling at him. And the officer that was standing behind
18 him -- the officer was standing behind the car, so he
19 backed the car like this to get to Fessenden, shot into
20 the car. He lost control and drove into the apartment.

21 Q Okay. Did you see the officer who was firing
22 the gun?

23 A I saw him. I wouldn't recognize his face
24 right now. Although, I saw him on the news. I saw the
25 victim. I didn't see the police officer.

1 Q Okay. So did you see the man in the car that
2 day?

3 A Not that day. I saw him on the news.

4 Q And before the shots were fired as you were
5 walking up, could you see other police officers? How
6 many police officers did you see in the parking lot
7 there?

8 A When I spotted the first one in the gas
9 station, I didn't notice other police officers until I
10 started hearing people yelling. That's when I saw two in
11 front of 7-Eleven, right in front there, and one behind
12 him, one beside him, and one on the other side.

13 Q Okay. So you saw about five?

14 A About five.

15 Q And these were police officers that were out
16 of their car on foot?

17 A Yeah. Yeah.

18 Q Where were they in relation to the car that
19 was trying to escape?

20 A Okay. The officer that took the shot was
21 behind the car, like I said. The guy backed up his car.
22 His car was parked right in front of 7-Eleven right
23 there, the way those cars are parked.

24 So he backed it right there, so the police
25 officer shifted a little bit. When he got on to the side

1 like this, and the police officer was almost here, that's
2 when he fired into it. So he was trying to drive and
3 escape into the Fessenden, and he lost control and drove
4 into the building. But I'm sure there was not a police
5 officer in front of his car. They were trying to get him
6 to surrender or something.

7 Q All right. If I'm hearing you correctly, you
8 saw the vehicle back up and then turn right?

9 A I saw it back up, back into 7-Eleven, trying
10 to get on Fessenden. I don't know if he wanted to go
11 right or left, but all I know he lost control and go
12 straight into the apartment.

13 Q Okay. So did you see the vehicle go forward
14 at all towards the 7-Eleven during that time?

15 A Sorry. I don't understand.

16 Q Was it going forward towards the 7-Eleven and
17 out of the parking lot or backing up out of the spot and
18 turning out?

19 A Backing out -- like right there, that's
20 Fessenden, so he was backing up like this to get on
21 Fessenden.

22 Q Okay. And when the car started moving, is
23 that when you heard the shots, or was it real close in
24 time? I'm just trying to get a sense of the order of
25 events.

1 A Okay. When he backed out of 7-Eleven, he was
2 warned because the cops were yelling. And it was when he
3 backed out of that line, trying to back out, trying to
4 get on Fessenden, that's when the officer shot into the
5 car.

6 Q Okay. And you said it appeared to you that
7 the car lost control as it went across Fessenden.

8 A Yes. It lost control.

9 Q Was it going slow, fast?

10 A Fast.

11 Q Okay. And did you see it then crash into the
12 apartment?

13 A Yeah. I saw it crash into the apartment.

14 Q Okay. What did you see after that?

15 A Well, the police officer that shot the guy was
16 still keeping aim. He didn't shoot at the car anymore,
17 but he was keeping aim in case somebody runs out of the
18 car.

19 And other police officer, for some reason,
20 they didn't get into the building. Because while I was
21 standing there, someone came up from the apartment, which
22 is my girlfriend, and ask me to come. She thought I was
23 the one that got shot. So I got -- probably had a bigger
24 view, and I saw the police officers just standing there.

25 Q So you went back home and then you had a

1 little bit more of a birdseye view of the scene?

2 A Yes.

3 MS. MOAWAD: Does anyone have any questions
4 for Mr. Essien?

5 A GRAND JUROR: Could you put that diagram of
6 the lot up, please?

7 MS. MOAWAD: Yes.

8 A GRAND JUROR: Okay. Where was the car
9 relevant to the parking lot and the street when you heard
10 shots?

11 BY MS. MOAWAD:

12 Q If you want to get up and show us.

13 A Yeah. I'm sorry. Can I use the picture?

14 Q Yes. We have a couple of different pictures.

15 A I mean, the actual picture. That's better.

16 Q Okay.

17 A All right. This is 7-Eleven. That's Red Box
18 right there. The guy was parked right here in between
19 this car. It was parked right here.

20 So I was standing walking -- this is my
21 apartment right here. So I walked down here. First of
22 all, I notice a police car right here in the gas station.
23 I kept walking down here towards the Red Box.

24 That's when the car backed out like this
25 trying to get on Fessenden -- this is Fessenden. Trying

1 to get on Fessenden. When he backed out trying to move
2 out of the parking lot, that's when he got shot. He lost
3 control and crashed into the apartment.

4 Q Okay. So would you say then in looking at
5 this photograph that his car was maybe right around where
6 these two police cars are when the shots started firing?

7 A I'm sorry. Ask me again.

8 Q Yes.

9 So was his car -- because, of course, this
10 picture is taken after the shooting, and these cars are
11 in different places.

12 A Yes.

13 Q Was his car right in this area where this
14 police car was when the shots started to get fired?

15 A This police car was not parked right here
16 before it started. This -- there was a car here. This
17 car was parked here.

18 Q Okay. Right. And then when the shots were
19 fired, was it already pulling out of the driveway?

20 A He pulled out, he pulled out here. There was
21 a police officer standing behind him, a couple in front
22 of him. So when he pulled out, the police shifted. And
23 when he had a good view, then he took a shot into the car
24 from the side, from the passenger side, and he lost
25 control and drove to the apartment.

1 Q Okay. Do you remember how many shots you
2 heard?

3 A Um, I heard six.

4 Q Okay.

5 MS. MOAWAD: Does anyone have any other
6 questions?

7 A GRAND JUROR: Did you say that you saw an
8 officer do the shooting, or you just saw officers and you
9 heard shooting?

10 THE WITNESS: No. I saw the officer.

11 A GRAND JUROR: You saw the officer who was
12 doing the shooting?

13 THE WITNESS: Yeah.

14 A GRAND JUROR: And where was he located? Was
15 he in front of or behind the car?

16 THE WITNESS: Okay. Let me do a diagram
17 again. This is 7-Eleven here. This is the parking lot.

18 BY MS. MOAWAD:

19 Q Here you go.

20 A Thank you.

21 So this is the 7-Eleven. The guy is parked
22 right here. This is the front of 7-Eleven. The police
23 officer is standing right here. The officer that shot
24 him was standing behind the car.

25 So when he drove -- he backed out of and

1 shifted a little bit. So he backed out like this, trying
2 to move a little bit, not out of the parking lot yet.
3 The officer took the shot around six times through the
4 car, and he drove here and lost control into the
5 apartment.

6 A GRAND JUROR: Thank you.

7 MS. MOAWAD: Okay. Any other questions?

8 All right. We're all done. Thank you very
9 much.

10 THE WITNESS: Thank you.

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

5 EXAMINATION

6 BY MS. MOAWAD:

7 Q Go ahead and have a seat. And if you would
8 start off by tell us your name, and spelling your first
9 and last name, please.

10 A Thomas Johnson, T-H-O-M-A-S, J-O-H-N-S-O-N.

11 Q Okay. Mr. Johnson, how was it that you knew
12 Billy Wayne Simms?

13 A Um, just mutual friends.

14 Q Okay. Were you both part of the Northside
15 Family Set?

16 A Yeah.

17 Q So you've shown your hand, you've got some
18 tattoos. And Mr. Simms was in the same set as you. I
19 need you to answer out loud.

20 A Yes.

21 Q Okay. Thanks.

22 So how was it that you guys ended up at the
23 7-Eleven on July 28th?

24 A Um, I don't know. Got thirsty, I guess.

25 Q Okay. So you were in the store getting some

1 Slurpees.

2 A Yup.

3 Q And some snacks. And did you or Mr. Simms
4 notice the police officers arriving in the lot?

5 A Yeah, I did.

6 Q Did you point them out to Mr. Simms?

7 A Yup.

8 Q What did he say to you?

9 A He's like, don't trip.

10 Q All right. Was there any further discussion
11 between the two of you about the police in the parking
12 lot?

13 A Nope. I just -- I'm like all right. He's,
14 like, we paid for everything, and I grabbed it, and we
15 started out the door. And when I got to the door, the
16 car was parked right in front -- like, if we're walking
17 out, it is kind of, like, the space is right there, but
18 there's no cars on that side of us now, on that side
19 right there. And that cop car was parked right there.
20 But that one that's facing, the one that's facing us --

21 Q So this car was parked where it is in the
22 picture?

23 A Kind of, yup. And that one was pulled around
24 the same way as this one but back up toward the gas
25 station.

1 Q Okay.

2 A And the car we were in was parked where that
3 cop car facing us is, right beside that SUV, right in
4 front of the store. And he looked, like, sped up and
5 kind of jumped in the car.

6 And there's a cop on this side of the car, of
7 this guy right there. And there's, like, one kind of in
8 front of it. But the one in front of it on foot -- they
9 were both on foot. The one in front of it had an AR-15
10 and the one behind it had a Glock, I think, or something.
11 He had a pistol, right.

12 And Billy got in the car, and I was standing
13 there on the porch of the 7-Eleven still. I didn't know
14 what to do, because they were all screaming to stop,
15 stop. And he jumps in the car and he kind of backs up
16 like a foot and drives up on the sidewalk, and then the
17 cop with the AR-15 shoots him four times.

18 Q Okay. So when you say you were still on the
19 porch of the 7-Eleven, do you mean you were on this
20 walkway?

21 A I was standing right, like, almost in the
22 doorway still, but I kept coming this way. And I came
23 all of the way over to where on this side of the propane
24 tank is right there, on the side of the 7-Eleven before
25 they even paid attention to me.

1 But they were, like -- they were telling us to
2 get down or whatever, but they weren't, like, focusing on
3 me because there's, like, ten people in front of the
4 7-Eleven at that time.

5 Q So you keep saying -- you're looking at the
6 picture and you are talking. So you're saying that you
7 were walking this way north towards Fessenden?

8 A Yup.

9 Q Okay. And kind of around the corner, maybe
10 where these propane tanks are?

11 A That's where they threw me down on the ground
12 and, like, emptied all my pockets out, and then put me in
13 that car that's facing us.

14 That's where I sat -- I sat there until -- for
15 probably three hours in that car. And then they moved me
16 from that car, after the SWAT team came, because when
17 they shot him, he came straight across the street and
18 drove into the apartment building across the street.

19 Q All right. So I want to go back to when you
20 first come out of the store.

21 The minute you guys -- are you in front of
22 Billy or behind him?

23 A No. He's in front of me.

24 Q Billy is in front of you. And he walks to the
25 driver's door.

1 A Yup.

2 Q You said he was walking quickly.

3 A Yup.

4 Q Were the police yelling commands right then?

5 A I can't say for sure.

6 Q Okay. Pretty quickly thereafter?

7 A Yup.

8 Q All right. Did you ever approach the car or
9 get in the car?

10 A No.

11 Q So you walk to what would have been your left?

12 A Yup.

13 Q Around kind of towards Fessenden on this
14 walkway. Are you looking back and watching Billy, or are
15 you kind of just trying to keep your head down?

16 A No. I seen the whole -- no. I wasn't, like,
17 trying to walk away. I was, like -- I don't know, kind
18 of shocked, kind of. I didn't know -- everything was
19 going so fast, that -- but I seen the whole thing.

20 As soon as the bullets hit, glass shatters,
21 like, over toward me. I felt something hit my leg.
22 That's how close it was. And the car, like, wiggled and
23 then he sped up. And I knew it. I --

24 Q You knew that he'd been hit? You're nodding
25 your head. Does that mean "yes" you knew that he got

1 hit?

2 A Yes, I knew that.

3 Q Okay. Did you have to get out of the way so
4 that the car didn't hit you?

5 A No.

6 Q How close did the car come to you?

7 A Two feet.

8 Q All right. What about, did you see other
9 officers that were near the car?

10 A Huh-uh.

11 Q Did you see --

12 A I mean, none were in the path, like, the way
13 he was driving. None jumped out of the way. None -- I
14 mean, they were all spread out to where --

15 Q What were the police officers saying to Billy
16 while he was in the car?

17 A Nothing. They said stop like four times.
18 That's it. And then the dude with the AR-15 shot him.

19 Q Where was the officer with the AR-15?

20 A In front of that car.

21 Q In front of this car?

22 A Yup.

23 Q Okay. And you said you heard four shots?

24 A Yup.

25 Q And the car went to the driveway and then sped

1 across Fessenden into the apartments?

2 A Yup.

3 Q What about Billy, could you see Billy as all
4 this was going on?

5 A Nope. I seen him -- the last I seen him is
6 when the bullets hit. And then I didn't see him -- after
7 that, once the car went across the street, I seen the
8 back of it. And then it went into the apartment, like
9 halfway through the slide door, so I didn't see it -- I
10 couldn't see him at all.

11 Then they brought -- I kept saying, what
12 happened to the driver? Where is the driver at? They
13 are, like, I don't know. I don't know. I don't know.

14 And I'm, like, well, the SWAT team came. They
15 just let me sit in the car. Then the SWAT team, they
16 went over there and they came out, and I knew for a fact
17 he was dead in my own mind. I knew he was dead.

18 Q Just because of the way the scene was handled?

19 A Yeah.

20 Q Could you see Billy in the car before the car
21 started moving, before it starts moving when it is still
22 in the 7-Eleven parking lot?

23 A Yup.

24 Q Okay. Was he complying with what the officers
25 were telling him to do?

1 A As far as what?

2 Q Did he stop?

3 A No.

4 Q Did he freeze? Did he put his hands up?

5 A Huh-uh.

6 Q You're shaking your head, so that means "no,"
7 he didn't do any of those things?

8 A No. No.

9 Q Did you hear him start the car? I mean, is
10 that, like, a memory that you have him starting the car?

11 A I don't know that.

12 Q The car was turned off when you went into the
13 7-Eleven; right?

14 A Yes. I remember that.

15 Q Was it an automatic or a stick shift, do you
16 remember? If you don't remember, that's okay.

17 A I think it was a stick.

18 Q Okay. So could you see him? Did he have both
19 hands on the wheel, one hand down, one hand up? Could
20 you see any of that?

21 A Yeah. He had both hands on the wheel.

22 Q Okay. And so tell me again what you exactly
23 saw his car do.

24 A He's like, back -- look, I seen him shift like
25 this (indicating.) That's why I think it is a stick,

1 'cause I knew the shifter was between the seats anyways,
2 but I think it was a stick. 'Cause he put it in reverse
3 and backed up just a little bit. And then -- and then
4 like flipped around. Like that cop car is right there,
5 how that cop car flipped around, that's how close he came
6 to the sidewalk. He wasn't, like, on the sidewalk, you
7 know what I'm saying.

8 Q You don't think he went up -- his car went up
9 on the sidewalk?

10 A No. He was, like, that right there, because I
11 was on the sidewalk, so look how much distance is still
12 between the car and the building. I was standing right
13 there when it happened.

14 Q And it is there as he's turning right that you
15 first hear the shots fired?

16 A Like right when that -- the way that cop car
17 is turned, that's when they shot him.

18 Q Okay.

19 A And the car went like this. It wiggled like
20 this, and I knew right then that that's when they killed
21 him.

22 Q So you think that Billy was deceased before
23 the car even went out into the Fessenden?

24 A I know for a fact he was. I know that
25 100 percent fact in my heart. I know that -- I was

1 standing right there. I know that he was dead before he
2 hit Fessenden. I know he was dead before he passed that
3 second cop car.

4 Q Okay. And you're saying that because of
5 something --

6 A I seen it.

7 Q You saw Billy or you just believe that based
8 on the way the car reacted?

9 A No. I seen -- I seen -- I seen when the
10 bullets hit him, and I seen the car wiggle like this
11 (indicating), and then it kind of sped up. And by that
12 time he was right there at the driveway when the car sped
13 up. And I couldn't see him after that because he was --
14 like, I was behind him then. I couldn't see it.

15 Q Was he sitting straight up or was he leaning
16 one way or the other? Could you see that?

17 A When the bullets hit him, he was sitting
18 straight up.

19 Q Okay. What about his arms, do you know where
20 his arms were at the time the bullets hit him?

21 A I know, like, one was on top of the wheel.
22 His left hand was on top of the wheel. I can't really
23 say where the right hand was, like, maybe on the side of
24 the wheel because he had both hands on the wheel.

25 Q Okay. In the interview -- you talked to

1 police that night.

2 A Yup.

3 Q And you said something in that interview that
4 I wanted to follow up on with you.

5 And you said that you felt like Billy was
6 trying to keep you out of the car. Do you remember
7 saying that?

8 A Yup.

9 Q What do you mean by that -- what did you mean
10 by that?

11 A I mean, I don't see how -- I don't see how I
12 could have got in the car anyway because the cops were
13 right there on the side, on the passenger side, right.
14 But when we hit the 7-Eleven door, he just kind of like,
15 like, physically sped up away from me.

16 Q Okay. So he separated himself from you. Did
17 you know because of something he had said to you that he
18 was going to try and get away?

19 A No.

20 Q Did you think by the way he was acting he was
21 going to try and get away?

22 A No. The only thing he said to me in the
23 store -- I said, look, Billy there's the cops. And he's
24 like, don't trip. He said just it like that, don't trip.

25 Q Did you observe Billy at some point between

1 12:30 and 1:30 swallow a shell casing?

2 A No, I didn't see that.

3 Q Okay. Do you know that Billy had a gun that
4 day?

5 A I need to talk to my attorney.

6 A GRAND JUROR: I didn't hear that.

7 MS. MOAWAD: He said he wants to talk to his
8 attorney.

9 THE WITNESS: I don't know how to answer that
10 question.

11 MS. MOAWAD: Go ahead and head into this
12 hallway over here.

13 (Brief Recess.)

14 BY MS. MOAWAD:

15 Q So we're back on the record. And the question
16 was, did you know if Billy Simms had a gun on him that
17 day?

18 A Yes. At a certain point I did, yes.

19 Q Okay. All right.

20 MS. MOAWAD: Does anyone have any questions to
21 ask Mr. Johnson?

22 A GRAND JUROR: I have one.

23 Do you have any idea why he didn't respond the
24 way you did? I mean, did he have a problem hearing the
25 commands or anything at all that might have gotten in the

1 way of his following the commands the way you did?

2 THE WITNESS: I really don't know. I don't --
3 he, he thought for himself. That's all I can say. I had
4 no idea it was going to play out like that at all.

5 BY MS. MOAWAD:

6 Q Had he said anything to you earlier in the day
7 about not wanting to go into custody, not wanting to be
8 back in custody, anything like that?

9 A No.

10 Q Okay.

11 A GRAND JUROR: Was the question about
12 possessing a gun that day or at 7-Eleven? What was that
13 question?

14 BY MS. MOAWAD:

15 Q I think I said that day, but we can certainly
16 ask.

17 As far as you knew, did he still have the gun
18 at 7-Eleven?

19 A As far as, as far as I knew, yes.

20 Q Okay.

21 A Because he kept it. Once I knew that he had
22 it, I was kind of, like, stepped out, right, but he kept
23 it on him at all times, so...

24 Q And you -- you never saw him put it anywhere
25 else that day?

1 A No.

2 Q Okay.

3 A GRAND JUROR: I have a quick question.

4 You had mentioned that you saw officers, one
5 with a pistol and one with a rifle. Can you remind me
6 again, where you saw the one with the rifle and the one
7 with the pistol?

8 THE WITNESS: The one with the rifle -- like,
9 see, the car with its back us to, the one with the rifle
10 was -- when this other car was pulled up around by the
11 gas station part right there, like, facing the same way
12 that car is, right, that that officer with the rifle was
13 in front of this car right here.

14 BY MS. MOAWAD:

15 Q In front of this car?

16 A And the guy with the pistol was kind of
17 between the two cars. Before the, before the first --

18 Q So closer to the 7-Eleven or closer to the --

19 A No. The rifle -- the guy with the rifle is in
20 front of this car right here with the back to us right
21 here. And then the guy with the pistol was between the
22 two cop cars when that cop car was pulled around facing
23 the same way this one is.

24 Q Okay. So he was closer to the gas pumps?

25 A Yes.

1 Q Okay.

2 A GRAND JUROR: Thank you.

3 BY MS. MOAWAD:

4 Q And were those the only two police officers
5 that you saw?

6 A I seen the two cop cars and those two, and I
7 seen a car over on the street.

8 Q Okay.

9 A I mean, just like by a random blink of an eye,
10 that's what I saw.

11 Q Okay. Any other police officers closer to the
12 7-Eleven that you saw? So you saw two police officers on
13 foot with guns drawn.

14 A Yup.

15 Q Okay.

16 MS. MOAWAD: Any other questions? Okay.

17 That's it.

18

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

5 EXAMINATION

6 BY MS. MOAWAD:

7 Q Okay. Go ahead and have a seat. All right.
8 And we'll have you start off by telling us your name, and
9 spelling your first and last name for us, please.

10 A Laurie Simms. L-A-U-R-I-E, S-I-M-M-S.

11 Q Okay. And your brother was Billy Wayne Simms.

12 A Yes.

13 Q Okay. So tell us about your family.

14 A Um, our mother actually passed away exactly a
15 year and one day before Billy passed away. Our father
16 passed away when we were all teenagers. So it has been
17 pretty much just us kids.

18 Q How old was Billy?

19 A Twenty-eight.

20 Q And are you his older sister or younger
21 sister?

22 A Older sister.

23 Q Okay. And does Billy have other brothers and
24 sisters?

25 A We have one more sister, her name is Janie,

1 and she's also older. And we have a half-brother named
2 Corey, and he's younger.

3 Q And I know Billy had some kids.

4 A Yes, he did. He had four beautiful little
5 girls.

6 Q Okay. And those are some pictures?

7 A Yeah.

8 Q All right. Do you want to tell us about those
9 pictures?

10 A They are just pictures of them from a very
11 young age. And I wrote on here "momma's boy" because he
12 was really close to our mom and he always has been.

13 And just us growing up all together, we've
14 always had a lot of fun times together. And then
15 pictures of him when his daughter was born. He was
16 actually able to deliver two of his daughters. The
17 doctor actually let him deliver them. And he was really
18 proud of that.

19 Q Okay. And at the time that Billy passed away,
20 he wasn't married; right?

21 A No. He never got married.

22 Q And I know Billy had some tough things happen
23 to him growing up.

24 A Yeah.

25 Q Okay. And so things were hard for Billy.

1 A Yeah. When he was a young teenager, something
2 pretty bad happened to him, and I think from that point
3 on it was kind of hard for him to deal with.

4 Q Do you want to tell us anything about kind of
5 some of the choices that he made, or do you not want to
6 focus on that?

7 A I mean, because of what happened to him, I
8 think he got really depressed and harbored a lot of
9 feelings, and he had turned to drugs. And he actually
10 graduated from a rehab about six months before this
11 happened. And, you know, he always -- he always found a
12 way to come up out of whatever was going on, you know.
13 He was a really strong person.

14 Q And do you know in July -- I mean, had
15 anything kind of changed back for him, or was he having a
16 tough time again?

17 A I think he was having a really tough time,
18 because it was the one-year anniversary of our mom's
19 death, and it was hard for all of us. And with him being
20 such a momma's boy, it was really hard on him.

21 Q Okay. All right. What else would you like to
22 tell us about Billy?

23 A Just that he was a great person. He always
24 meant well. If he had something you needed, he'd be
25 right there for you.

1 He did make some bad choices in his life, but
2 all it took was one of us sitting down and talking to him
3 to get him right back where he needed to be. He always
4 meant well.

5 He was really -- he was not a bad person at
6 all. He cared a lot about his family. He had a lot of
7 nieces and nephews and his four little girls. He tried
8 anything and everything to be there for them. Even if he
9 wasn't with their mom, he'd be there for them.

10 Q Do you want to tell us how old the girls are?

11 A He has a six-year-old, a four-year-old, a
12 two-year-old and a one-year old. They are all very young
13 and struggling to understand what's going on right now.

14 Q Is there anything else you want to tell us
15 about Billy?

16 A Just the person that he was -- I don't feel
17 like he deserved this in any way. I feel like there was
18 another option.

19 I mean, I know there may have been other
20 things that happened with that vehicle he was in that
21 day, but I feel like if they found it at 7-Eleven, they
22 could have found it later, you know. I just feel like --

23 Q You wish it would have been handled
24 differently?

25 A Exactly.

1 Q But -- and just so that we're clear, you
2 weren't there, so you don't know exactly what happened.

3 A I was not there, no. But the minute I was
4 called, I was there at the scene and sat there for hours
5 and hours and hours until the police told me for sure if
6 it was him or not.

7 Q All right.

8 A Which I still don't understand to this day why
9 they made me wait so long, but obviously, that was their
10 choice.

11 MS. MOAWAD: Does anyone have any questions
12 for Ms. Simms?

13 Okay. Anything else you want to tell us?

14 THE WITNESS: No. I just hope that when you
15 guys make your decision, that it is the right one.

16 MS. MOAWAD: Okay. Thanks.

17

18 FRIDAY, AUGUST 10, 2012

19

20 DAVID WINFIELD DUNCAN,

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

23

24

EXAMINATION

25 BY MS. MOAWAD:

1 Q All right. Go ahead and have a seat. And
2 would you start off by telling us your name and spelling
3 your first and last name, please.

4 A David Winfield Duncan, D-A-V-I-D, Winfield,
5 W-I-N-F-I-E-L-D, and Duncan, D-U-N-C-A-N.

6 Q All right. And, Mr. Duncan, you were in the
7 area of the Six Points 7-Eleven on July 28th, 2012?

8 A That's correct.

9 Q And I have a laser pointer here. If you could
10 just show us kind of where you were when you realized
11 something was going on that was out of the ordinary.

12 A I was heading eastbound on -- it doesn't show.

13 Q I'll point to it.

14 A I was approximately between the -- heading
15 eastbound on Fessenden between North Alma and North
16 Midway, somewhere right in there.

17 Q Okay. And were you on foot, in a car?

18 A I was driving my brother-in-law's Ford F-150
19 which is a '94 and rather loud. My eight-year-old nephew
20 was in the truck with me. We were heading eastbound,
21 like I said. I heard several popping sounds, probably
22 five or six. That's just an estimation. It didn't
23 register to me right away that that was gunfire.

24 The first -- the very first thing I thought
25 was something was wrong with the truck, so I checked the

1 gauges. And this is, you know, with a split second.

2 The next thing, I looked back up on the road,
3 and several officers were running into the street
4 approximately at North Columbia Way, just probably right
5 where the DA is pointing, right in that vicinity.

6 I had already -- I was right about Midway or
7 even past it. The officers had their service firearms
8 drawn. At least two of them had assault rifles. They
9 looked like AR-15's to me. So I immediately knew it was
10 gunfire that I had heard, and I pulled over.

11 So I watched for several moments. The
12 officers surrounded the apartment building that was just
13 west of the Six Point Tavern.

14 One of the officers was yelling loud enough
15 that I could hear over the vehicle, get out of the car.
16 Get your hands up. Get out of the car. I did not see
17 which vehicle they were referring -- they were directing
18 their attention to, because there were several vehicles
19 parked, including there was an SUV, a cop SUV parked
20 opposite traffic -- no. It would be with traffic in
21 front of Six Point Tavern. So I know that attention was
22 focused in front of that.

23 After several moments, several cars were
24 passing by heading eastbound. They went through the
25 intersection right by the police with their guns drawn.

1 The cops maintained their cool and focused on the suspect
2 area and were trying to wave traffic through or stop it.
3 However, at least half a dozen to a dozen cars came
4 through the intersection during the action.

5 Q And you yourself pulled over -- these are two
6 photographs, kind of not very elegantly put together, but
7 you yourself pulled over; is that right?

8 A That's right. I pulled over to the right. It
9 would have been closer to that treeline, well behind that
10 van, right about where you are pointing. I believe
11 there's a Mexican restaurant somewhere right in there.

12 Q Okay.

13 A Somewhere right in there. I was far enough
14 away. I was, you know, at least a block away, right in
15 the area of Midway. I can't remember if I was -- had
16 passed over Midway or not. I want to think that I did
17 because I made a U-turn and came back several blocks and
18 then went around to my destination.

19 Q Okay. I wanted to ask you, you hear the pops
20 and looked down at the gauges. Do you see a car across
21 North Fessenden?

22 A I did not see a car across North Fessenden.
23 Again, driving, I was just focused on the normal routine.
24 It was just beyond the normal field of vision. So I
25 didn't see any car cross over. And within a split

1 second, I heard the pops.

2 You know, I am familiar with guns and gunfire,
3 so I know what it sounds like. It is not that unusual in
4 North Portland. But my first instinct was to check the
5 gauges for the car because I'm not familiar with the
6 truck that I was driving. But within a second, I looked
7 back up to get my surroundings, and the scene had
8 changed. The cops were running into the street from the
9 7-Eleven direction.

10 Q All right. And you actually decided, based on
11 what you had observed to write a letter to the Chief of
12 the Bureau; is that right?

13 A That's correct, because I didn't want --
14 specifically since my nephew was in the car with me and
15 obvious from the scene, there was ongoing action and
16 gunfire, I didn't want to stick around for obvious safety
17 reasons, so I left the area.

18 After that, there was several police cruisers
19 heading to that direction all over North Portland, so I
20 knew something had happened. Since I wasn't able to stop
21 and give any statement to the police at that time, I
22 wrote a letter to the police to point out that I had seen
23 stuff and if it was of any value to the investigation,
24 and commend the officers for their professionalism with
25 dealing with the circumstances.

1 Really, the most alarming thing to me was the
2 several cars going through the middle of the action right
3 in front of the officers with guns drawn. They
4 maintained their cool, and, you know, a safe distance
5 from their focus point, which I now know to be there was
6 a vehicle involved. They didn't rush into that. They
7 maintained their cool and set, you know, the perimeter
8 for the investigation.

9 MS. MOAWAD: Does anyone have any questions
10 for this witness?

11 A GRAND JUROR: Yes.

12 You were driving down this road and looking in
13 that direction?

14 THE WITNESS: No. I believe this would be --
15 I was heading towards you from this direction.

16 A GRAND JUROR: All right. So you were coming
17 towards us at this point?

18 THE WITNESS: Yeah. This picture looks
19 westbound. I was heading eastbound towards this point.

20 A GRAND JUROR: Okay.

21 THE WITNESS: And this picture is taken right
22 before the traffic intersection. I would say right to
23 the right would be the apartments and Six Points Tavern.
24 To the left, you see the 7-Eleven sign and there's a gas
25 station there.

1 So this is probably -- you know, this is
2 probably about the crosswalk on the west side of that
3 intersection with North Columbia Way.

4 A GRAND JUROR: Where are the officers at the
5 time that you saw them?

6 THE WITNESS: They were in this -- the DA is
7 showing us the general area, so they were --

8 BY MS. MOAWAD:

9 Q So coming out of this 7-Eleven driveway?

10 A Coming out of the 7-Eleven driveway. They
11 were forming a semicircle around that vicinity, right
12 where these people are standing here, right in front of
13 this white pickup is the driveway to what I believe is
14 the apartment building.

15 So officers basically formed a semicircle
16 through the street back to the sidewalk. And I mean,
17 they were staggered, so it was a rough semicircle.

18 There was at least one officer right where
19 that red tape would be, you know, in the medium with his
20 assault rifle. They all had their weapons drawn by then.
21 I mean, it is pretty instantaneous. You recognize
22 gunfire and what the situation is going on, so they had
23 cordoned off that area.

24 Q How many officers did you see, do you think?

25 A I would estimate probably ten. I think there

1 was at least at that point approximately six cruisers
2 that I could identify, including at least one SUV.

3 MS. MOAWAD: Any other questions?

4 All right. Thank you very much.

5 THE WITNESS: Thank you.

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1 JEFF SHEARER,
2 a witness called on behalf of the State, having been first
3 duly sworn, was examined and testified as follows:
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5 EXAMINATION

6 BY MS. MOAWAD:

7 Q If you would have a seat, and state and spell
8 your name for us, please.

9 A Jeff Shearer. J-E-F-F, S-H-E-A-R-E-R.

10 Q How are you employed?

11 A I'm employed as criminalist for the Portland
12 Police Bureau.

13 Q What sort of training and experience do you
14 have to be a criminalist with the bureau?

15 A I have -- well, the training program is
16 extensive. I've been a criminalist for 11 years. The
17 training program was two years, starting with
18 fingerprints, but I'm also certified as a crime scene
19 analyst, and I've been trained in forensic photography,
20 videography and recently trained in the Leica ScanStation
21 C10.

22 Q So were you a police officer, and were you a
23 patrol officer before you --

24 A Yes, I was. I was a police officer for the --
25 for the Portland Police Bureau to be a criminalist, which

1 basically we do crime scene investigations. So we go out
2 and we look for fingerprints and other physical evidence.
3 We do photos, video and other gathering of evidence.

4 But for the Portland Police Bureau, you have
5 to be an officer first and then take a promotional exam.
6 So you have to show that you want to do it and then it is
7 on-the-job training.

8 Q All right. And you mentioned that you
9 recently have been certified in the Leica technology.

10 A At this point I hesitate to use the word
11 "certified." What we've -- we've recently purchased the
12 Leica ScanStation. And they weren't able to schedule
13 training until September for half of our division. So
14 I've been -- I was picked to be familiarized with it to
15 show other people how you turn it on, how you conduct a
16 scan, and download the information to a computer.

17 At this point we have not had the training to
18 utilize it completely. So basically what it does is it
19 does a laser scan, and then it goes and does photographs,
20 digital photographs. And they are melded together in the
21 computer, so that you can look at things and click on
22 them. And hit D for distance, it will you how far apart
23 they are. It is literally integrating a scan and the
24 photos.

25 Eventually, we would be able to take this and

1 run it in several locations at a crime scene so that all
2 of the evidence is, in you know -- that is scanned you
3 could, if you want to do a virtual walk-through or a
4 fly-through and see it from whatever vantage point you
5 wanted.

6 A GRAND JUROR: You can't do that yet?

7 THE WITNESS: I cannot do that yet. I can
8 show you glimpses of it, but the software is not written
9 for novices.

10 A GRAND JUROR: So all we see now is the angle
11 from which --

12 THE WITNESS: The camera took the picture,
13 except for one function. I can go directly into the
14 laser scans individually. They are not integrated
15 together.

16 I can go individually into a scan, and we can
17 see from different vantage points there, because if the
18 scanner sees it, it records the data. If it doesn't, it
19 is black. It doesn't see it at all. It is just black.
20 So a little bit later, I'll show you what I'm referring
21 to.

22 BY MS. MOAWAD:

23 Q Okay. Well, why don't we just have you show
24 us the images that you collected that night on July 28th,
25 2012.

1 basically this is set up at the edge of the crime scene.
2 That's my understanding that's Officer Clary's car right
3 here. Of course, basically we're parallel with the front
4 of the 7-Eleven. I think that's Hern's car. You can see
5 several other placards there marking the casings for the
6 .223.

7 In addition to us running this scan, because
8 we're not able to register and quickly turn it into a
9 two-dimensional diagram, basically a birdseye diagram,
10 the traffic division came and they did a total station
11 assessment of the scene also.

12 Q And that's the crime scene diagram that we've
13 been using throughout the testimony.

14 A There you can see the placement of where they
15 are surveying the total station was. So then you come
16 around here -- so basically, as I said, I'm just right on
17 the edge of the red crime scene tape, so the car
18 basically goes right up through these weeds into there.

19 So the next position was just over far enough
20 to basically get the car into the apartment.

21 Q And what is the blue thing that looks like
22 kind of a target or bulls-eye on top of the car there?

23 A That's exactly what it is. It is a target.

24 Q Okay.

25 A So at the time -- this is the second scan. I

1 also have a target that's on the top of that truck right
2 there. So at the time I thought we were going to be
3 conducting another scan from inside the apartment.

4 And in order to later put these together, I
5 need reference points that are visible from the inside
6 and from the outside so that they are called control
7 points or targets so that the software will understand
8 exactly how to mesh the separate scans together to make a
9 virtual world.

10 Later on, they said there's no point in
11 scanning the inside. It is not part of the shooting. It
12 is after the fact. And, yeah, it is tragic, but it is
13 not relevant to --

14 A GRAND JUROR: So these targets are just an
15 artifact of your technique. They have nothing to do
16 with --

17 THE WITNESS: Exactly. They are for the scan.
18 I set them where -- I literally went inside the apartment
19 where I thought I was going to set the scan up later, and
20 I had a coworker place the targets where I could see them
21 inside and out so that they would not have to be moved,
22 and that they would then be able to tie it together.

23 A GRAND JUROR: Would you call those indexing
24 points?

25 THE WITNESS: They are -- Leica uses the term

1 "targets" and they use control points.

2 Oh, one of the things that I utilized in
3 several of the scans -- I mean, I'm just going to go back
4 for a second and reference it.

5 This is another -- the red tripod here has
6 targets on it as well. And those need to be in at least
7 one of your scans of a crime scene using this, the Leica
8 machine, because they are put together very precisely to
9 be exactly 1.7 meters apart.

10 And that way you know the machine is working
11 because you can check the calibration. So it is a
12 calibration test is the reason for that. And I used it
13 in more than one of the scans, but it has to be in at
14 least one for the protocol.

15 This is probably -- this is the one labeled
16 "behind shooter's position," so I went back far enough so
17 that it would cover what it appeared to be the shooter's
18 position. And, of course, one of the things that's
19 changed is that car got moved in after the shooting, so
20 the car right in the center.

21 BY MS. MOAWAD:

22 Q And when you say what you assume is the
23 shooter's position, you draw that conclusion based
24 primarily on the location of the shell casings?

25 A Exactly, where the evidence is. The AR-15

1 ejects the casing out the right side of the rifle. It
2 will roll a little bit on asphalt, of course, but they
3 eject out the right side. So you look at it and you put
4 the shooter off to the left.

5 The other reason I say that is because I don't
6 have the opportunity to ask where were you standing when
7 you fired the shots. We just have to go with what other
8 people tell us and where the physical evidence actually
9 is located.

10 So one of the things -- and it has all been a
11 learning experience because we've basically been using
12 the Leica machine since mid-June, so this is the second
13 officer-involved shooting.

14 I've used it on three crime scenes at the time
15 this was -- well, actually this was the third crime scene
16 that I ever used it on. I used it a lot on training, so
17 that's why -- this one was really interesting, as an
18 aside, because there were so many cars at strange angles,
19 they basically -- the scanner can't see on the other side
20 of that car. So if there's evidence, you need to scan on
21 the other side of it as well.

22 This is one where I will open up the scan
23 directly now. We're just looking at the scanned data.
24 It is called a point cloud because it is just little data
25 points that the scanner has measured. And here is where

1 I'm able to basically pick a location as a new pivot
2 point and rotate it to see the different areas that could
3 see that location.

4 I can literally put myself somewhere in the
5 middle of those placards and then spin that point cloud
6 around and look at different things.

7 So over here, the XYZ, that's the exact
8 location in this -- where the scanner sat. So the only
9 thing that it doesn't record is a 90-degree cone directly
10 underneath of it. But there, you are looking off towards
11 North Columbia Way, and what's the other street, Nashton.
12 That's basically where you are looking at, North Nashton
13 and North Columbia Way.

14 So now, we're back to the true space, which
15 just lets you see it from the perspective of the scanner.
16 So now, we're just -- where the scanner was looking at
17 the scene.

18 So one of the things that's handy about this
19 is, as I said, the photograph and the scanner integrate
20 it. And if I want to, I can mark two things. So any two
21 things in the scene, I can mark them and then ask how far
22 apart they are.

23 So in this case, it is just an example, it is
24 of no relevance, but that's one of the things that these
25 scans preserve is the ability to go in later and find out

1 how far something is that you didn't even know was
2 evidence at the time.

3 BY MS. MOAWAD:

4 Q Could we go back then to the behind the
5 shooter's position scan and measure the distance -- let's
6 measure the distance from, you know, where we think
7 approximately the officer would have been to this parking
8 space here, please?

9 A Sure. Just the center of it?

10 Q Sure.

11 A It doesn't want to let me click right now.

12 Q All right. It is fine if it doesn't work.

13 A Yes. That's frustrating. I was just checking
14 to see if it is something that I did when I was in that
15 other scan.

16 Q Would the store front have some of the same --

17 A It has some of the same, definitely. So from
18 this angle, it says 23'1".

19 A GRAND JUROR: Where to where?

20 THE WITNESS: From the middle of that parking
21 space next to the van.

22 A GRAND JUROR: To.

23 THE WITNESS: Just off the corner of that
24 patrol car.

25 A GRAND JUROR: It doesn't draw a line between

1 the two?

2 THE WITNESS: Well, it does, but it is really
3 thin between those two dots.

4 A GRAND JUROR: Okay.

5 THE WITNESS: I'm going to go back to the
6 other position and check something. It is because I
7 turned off the laser data. So the laser data is what has
8 to be -- that's what provides the measurement, and I had
9 inadvertently turned it off.

10 So you understand that those casings are not
11 all fired -- it would be my educated opinion those
12 casings are not fired from the same position, so he was
13 moving when the shots were fired.

14 BY MS. MOAWAD:

15 Q And the car was moving?

16 A And the car was moving.

17 Q Right.

18 A So with a little better angle, 26'5" from the
19 center of that parking lot to about -- and then I can
20 click one more time. I'm trying to zoom in. So another
21 5'3" to that casing. So again, that's kind of an
22 educated guess. Six feet from those casings is about
23 where I would put him.

24 Q And there were six casings collected at the
25 scene?

1 A Exactly. There are six casings. So you have
2 four casings -- maybe I can use this as a better pointer.
3 You have casings one, two, three, four here, and then
4 five and six down here.

5 Q And the placard that's behind them kind of up
6 next to the wall is indicating the property that was left
7 behind by the passenger in the vehicle?

8 A The passenger. It is the Slurpee and a phone
9 and a pack of cigarettes, exactly.

10 Q And remind me, were you part of the round
11 count?

12 A I was not.

13 Q Okay.

14 A I was not. Any other specific locations,
15 because I've got other locations?

16 MS. MOAWAD: Is there any other vantage point
17 that the Grand Jurors would be interested in knowing what
18 some of our witnesses have told us about where they were?

19 A GRAND JUROR: What -- what I'm wondering is
20 we have so far witnesses indicating that they saw the
21 vehicle come out of the parking lot, and they heard the
22 firing before he got out of the lot.

23 But we don't -- I don't know how it did it.
24 Did it come out the lot perpendicular to the street? Did
25 it come out of the lot at an angle?

1 THE WITNESS: My scans aren't going to answer
2 that.

3 A GRAND JUROR: Yes, I can understand that.

4 THE WITNESS: Because all they can record is
5 what is right in front of them, what they see.

6 BY MS. MOAWAD:

7 Q Could you go back to a vantage point of the
8 7-Eleven driveway then, looking across the street to
9 where the vehicle ended up?

10 A So that's really the first one, isn't it?

11 Q Probably. Just to get a sense of how it
12 traveled, go to maybe where the officer's car is.

13 A Okay.

14 Q Of course, even this is not going to tell us
15 if the vehicle was maneuvered or not. Because -- Officer
16 Shearer, maybe you can answer this for us.

17 Sometimes a vehicle's car will leave certain
18 either tire marks or other evidence on the street
19 surface, but, to my knowledge, there was none of that at
20 this scene that would give us really any insight into the
21 exact path the vehicle traveled.

22 A Correct. Where we were looking for marks
23 specifically were where it hit curbs or parking stops, so
24 the sidewalk and the curb bump, whatever, in the parking
25 lot of the 7-Eleven.

1 What I was told is that it literally, you
2 know, it narrowly avoided this car. And people were
3 looking for marks on the bumps here, you know, so -- at
4 every opportunity, we were looking for either scrape
5 marks or rubber marks to define the path that that car
6 took.

7 But basically the only ones that had marks on
8 them were right in front, towards the front door of the
9 7-Eleven. And then after that, he swerved around a
10 propane tank dispenser and a parked car.

11 The amazing thing is threading the needle in
12 front of the red Honda, because the people -- while I was
13 doing the scan, people were coming out and wanting to
14 know that their cars were okay because they were parked
15 there on the street.

16 Q Okay. So we believe he goes through here and
17 out the driveway here because this car is -- this is
18 Officer Edner's car, and I don't believe its position
19 changed. Although, we'll clarify when the officers are
20 here.

21 And then it goes -- I don't know if it goes
22 straight or curves in some way, but that is it passes in
23 front of this red car through those bushes and into the
24 apartment there.

25 MS. MOAWAD: Any other questions?

1 A GRAND JUROR: I have a question about your
2 role.

3 Is your job to just use this high-tech
4 equipment to gather lots of data and be available for
5 questions, such as the one she posed to you, or are you
6 supposed to do an analysis of what you see and make
7 certain --

8 THE WITNESS: At this point this tool is to
9 gather the data and to do the analysis that we can, so I
10 was at this scene. This was my job was the Leica scan.

11 There were two criminalists that were doing
12 other functions. So one is doing regular crime scene
13 photography. One is doing videography. And I think
14 there's two other criminalists that are basically
15 photographing the officers and counting the rounds. So
16 we're responsible for, you know, several different
17 aspects.

18 Because this is a new tool, and I got picked
19 to learn how to use it. That's all I did at this scene
20 was run the Leica scan.

21 A GRAND JUROR: So no one asked you to give
22 your opinion based on these Leica scans to reconstruct
23 what happened?

24 THE WITNESS: Well, the opportunity for the --
25 the full reconstruction takes a long time. As I said, I

1 won't even be getting the training to do that until
2 September. If we had to do it immediately, we would send
3 it off and pay an expert to do it now.

4 And that's the -- basically this is a tool
5 that we got with a grant. We're the only ones in the
6 Northwest that have it, so it is highly specialized, and
7 we're trying to use it.

8 Previous to this, we didn't have this. We did
9 the total station to measure the crime scene, or we went
10 out with a tape measure and a scribe and we said how far
11 is it from -- from every item of evidence to the nearest
12 reference point, which is a power pole, something
13 permanent.

14 So this basically is going -- this is
15 high-tech, and it is going to give us advantages that we
16 didn't have in diagramming and measuring. And one of
17 those is with the previous way we gathered the
18 measurements. We could not do a three-dimensional
19 reconstruction, a virtual reconstruction of a crime. Now
20 we have the data. It is just that I'm still not able to
21 utilize it.

22 BY MS. MOAWAD:

23 Q So some day, for example, you could take the
24 surveillance video in this case, the officer's statements
25 in this case and reconstruct to the best of your ability

1 where each officer was as the car was moving, for
2 example, things of that nature?

3 A Exactly.

4 Q But not today?

5 A Down to the point where this officer is 6'1",
6 so that's how far off -- you know, that's his vantage
7 point and so on. I mean, down to the tenth-degree of
8 measurements. This will measure -- right now, I just
9 have it set at feet and inches. It will measure to
10 millimeters if we ask it to.

11 MS. MOAWAD: Okay. Any other questions for
12 this witness?

13 A GRAND JUROR: Are you going to -- are you
14 able to show a view similar to the one that you last had
15 up there where you are looking north, in essence; is that
16 correct?

17 THE WITNESS: Yes, that is.

18 A GRAND JUROR: Okay. And will it also show
19 where the rounds are from this point, the shell casings?

20 THE WITNESS: The shell casings, you can see
21 several of them. They are right there. Those little
22 flags standing up are the placards for those shell
23 casings.

24 So from that position where that is, the
25 scanner is, you can see the coordinates that mark it from

1 that spot. Some of the placards are hidden behind that
2 car, which is why we have to move it to different vantage
3 points to cover all of the evidence.

4 A GRAND JUROR: Okay. And if an officer stood
5 in one spot and fired his weapon, what kind of pattern
6 would you see in the shell casings, within a six-foot
7 circle or --

8 THE WITNESS: Well, as I said, on asphalt,
9 they will roll, but they won't be -- you know, these are
10 more than -- they are more than six feet. We can
11 actually -- I mean, that's something else. If you
12 wanted, we could also measure the distance --

13 A GRAND JUROR: Okay.

14 THE WITNESS: -- from one end to the other
15 so -- I don't know. In some places you can actually see
16 the green line there as it appears. So 27'11" from one
17 end of the shell casings to the other.

18 A GRAND JUROR: Okay. From this particular
19 weapon, a shell ejects up to the right and down?

20 THE WITNESS: It ejects to the right slightly
21 up.

22 A GRAND JUROR: And how far roughly?

23 THE WITNESS: That's what I guessed, six feet.
24 It can roll farther. But it is one of those things that
25 there are studies, and I'm not -- I don't have the data.

1 MS. MOAWAD: We have an officer from training,
2 who does the AR training coming in later today, and maybe
3 he can answer that question.

4 A GRAND JUROR: Thank you.

5 THE WITNESS: But there are -- they literally
6 do studies where they take a weapon and they shoot it on
7 different substrates and they see what the pile of
8 casings looks like, how far they are spread apart and so
9 on.

10 MS. MOAWAD: Okay. Any other questions? All
11 right.

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1 JORDAN WINKEL,
2 a witness called on behalf of the State, having been first
3 duly sworn, was examined and testified as follows:
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5 EXAMINATION

6 BY MS. MOAWAD:

7 Q Go ahead and have a seat. And if you would
8 start off by telling us your name, and spell your first
9 and last name, please.

10 A My name is Jordan Winkel. J-O-R-D-A-N,
11 W-I-N-K-E-L.

12 Q Okay. How are you employed?

13 A I'm employed by the Portland Police Bureau.

14 Q And I know you are a relatively new officer,
15 so when did you start?

16 A I started in March of 2011.

17 Q So what kind of training have you been
18 through?

19 A I've been through the basic academy, advanced
20 academy, and things like laser training, Lidar radar.

21 Q So were you on duty July 28th, 2012?

22 A I was.

23 Q Was that regular patrol duty?

24 A I was on uniform patrol with my coach, Officer
25 LaFrenz, in plain clothes.

1 Q Okay. And who was driving, you or Officer
2 LaFrenz?

3 A I was driving.

4 Q You mentioned Officer LaFrenz was in plain
5 clothes. Were you in plain clothes or were you in
6 uniform?

7 A I was in uniform that day.

8 Q Displaying a badge?

9 A Yes.

10 Q Were you guys driving a marked patrol vehicle?

11 A Yes.

12 Q So I want to jump right into this and ask you
13 what information you had relative to this incident
14 leading up to your arrival at the 7-Eleven.

15 A Um, not too much. I heard over lunch, I think
16 I had lunch around 11:30 or something like that that day,
17 that something come over the radio with information from
18 dispatch that East had shots fired. I wasn't sure if
19 that was officer or something else.

20 And also, that it involved -- it is kind of
21 tough because I've heard things since, and I'm trying to
22 remember what I knew at the time. And I think I remember
23 it being associated with a Cobalt, a Chevy Cobalt. And
24 at the time other officers might have known more about
25 it. That's what I heard come out at lunch.

1 I was helping Officer Baer with a fight call
2 in McCoy Park, and I asked him if he was good. He said I
3 can clear and go help out with the shots call.

4 And I didn't know what he meant about that, so
5 I went back to my car and tried to look up information on
6 our computer about what was going on, and then I heard
7 that the car was in our area.

8 Q Okay. So was the location of the car being
9 updated?

10 A Yes.

11 Q And was that coming on your computer or over
12 the radio or both?

13 A I didn't notice if it was coming on the
14 computer, but I kept hearing updates over the radio about
15 where the car was.

16 Q Okay. And what about any suspect
17 descriptions? Did you know who you were looking for?

18 A At the time, no.

19 Q Okay. You didn't know if it was a male or a
20 female?

21 A No. Actually I think I remember being male,
22 not female, but any further descriptors, I wasn't sure.

23 Q Okay. When you got to the 7-Eleven, though,
24 at some point you were aware the suspect was wearing a
25 red hat.

1 A And in my memory I still can't recall colors
2 at some points. I remember him wearing a hat. I might
3 have said in my interview that he was wearing a red hat.
4 Sometimes -- I'm not sure specifically what color he
5 was -- what color hat he was wearing.

6 Q Okay. So as you arrived on the scene, where
7 did you park your car?

8 A Where did I park my car?

9 Q Where did you park it?

10 A Behind Officer Clary's car.

11 Q Okay. So up here is a crime scene diagram.
12 And I believe, and correct me if I'm wrong, that your car
13 actually is not pictured on the crime scene diagram, so
14 I've indicated it here with a circle.

15 A Right. It would be about there.

16 Q Okay. And what did you notice as you were
17 pulling up behind Office Clary?

18 A I noticed Office Clary reaching for his AR, so
19 that made me kind of -- I know I was missing a couple of
20 facts from what was going on, and that kind of heightened
21 my safety senses, I guess.

22 Q It communicated to you the seriousness of the
23 call?

24 A Right. Something serious was going on.

25 Q Okay. And what other officers do you remember

1 being there as you approached the 7-Eleven on foot?

2 A Some parts of it go faster than others. So I
3 remember coming up to Officer Clary's vehicle, and then
4 he gets out, and somehow he ends up in front of me -- as
5 we were approaching the 7-Eleven, and the vehicle is
6 right there. Somehow he ends up on the right of me, and
7 then Officer Edner is on the left of me. I remember they
8 were both in front of me.

9 Q All right. Was Officer Clary, to the best of
10 your recollection, also in uniform, displaying a badge?

11 A Yes.

12 Q Officer Edner?

13 A Yes.

14 Q And did you see Officer Hern there? Were you
15 aware Officer Hern was there as well?

16 A If he was standing online with us, I don't
17 have any recollection of that.

18 Q And you already mentioned your coach, Officer
19 LaFrenz, was in plain clothes. Do you have a
20 recollection of where he was?

21 A I don't, until after everything.

22 Q All right. So as the three of you then are
23 approaching, do you have your weapon drawn at that point?

24 A I remember noticing Officer Edner -- I
25 remember seeing his Glock out, and he was holding his

1 Glock. And I think I remember seeing Officer Clary at
2 low ready with his AR.

3 Q Okay. When you say "low ready," what does
4 that mean?

5 A He doesn't have it pointed at anybody
6 specifically, but it is low and ready to be pointed at
7 somebody, if necessary.

8 Q And Officer Edner, you said he had a handgun.
9 Was it pointed at somebody or was it down at the ground?

10 A I believe it was down at the ground.

11 Q So did you draw your weapon at that point?

12 A At that point I did.

13 Q So from the time that you all are walking up
14 to the 7-Eleven, when then do these two men come out of
15 the 7-Eleven?

16 A Well, I only noticed one man come out of the
17 7-Eleven, and that's the man with the hat that I recall.
18 I think I'd have to check it with my interview, but I
19 thought I recalled him wearing a white T-shirt at the
20 time, but he was walking out towards the car.

21 And I noticed Edner and Clary were challenging
22 him. Telling him to show his hands. Repeatedly telling
23 him to show his hands. Put his hands up.

24 I remember my interview, I don't know why I
25 said it when they were saying put up your hands, but I

1 told him to get out of the car. And I still don't
2 remember him actually opening the door and sliding into
3 the car. But he did get into the car after he walked out
4 the doors of the 7-Eleven.

5 Q Okay. Just so I'm clear on that, you remember
6 seeing him come out and you remember seeing him go to the
7 driver's side of the car.

8 A Right.

9 Q You remember the officers giving commands.

10 A Right.

11 Q Then at some point he's in the car, but you
12 just don't have a conscious memory of him getting into
13 the car?

14 A Yeah, or that happened very quickly. I can't
15 recall it.

16 Q Okay. So as you mentioned he was wearing a
17 hat. You remember a white T-shirt. Do you remember
18 anything else about his appearance?

19 A I don't.

20 Q Up here on the screen now is a drawing that
21 you did that kind of traces, I think, the path.

22 These dots on this drawing, is that the path
23 that you and the other officers walked?

24 A Yeah. That's about the path that I walked.

25 Q Okay. And so as you are standing there and

1 you see the man in the car, you say that you know you
2 yell at him to get out of the car?

3 A Yeah. I remember when I was standing, and I
4 thought I was online, the same firing line as Officer
5 Clary and Officer Edner, I remember telling him to get
6 out of the car.

7 Q Did he get out of the car?

8 A No.

9 Q Did he comply with any of the commands that
10 any of the officers were giving him?

11 A I remember his hands being put up. He put up
12 his hands. And I remember him reaching back down to the
13 shifter after he put up his hands.

14 Q Okay. So maybe a moment of compliance?

15 A Right.

16 Q Okay. So once you saw him put his hand back
17 down, what do you remember next happening?

18 A I don't remember the specific order, but at
19 some point when he was in the car when he had his hands
20 up, he said, I didn't do anything. And I think he might
21 have said that before he reached down for the shifter.

22 So he reached down for it, and I remember his
23 car start to move backwards. And then Officer Hern, what
24 I think was Officer Hern's patrol car, came up and
25 stopped him from backing out of the space, and then I

1 remember his car jolting forward.

2 And I remember thinking it was going to go
3 into the glass, into the 7-Eleven, hurt people that were
4 in there. But either he stepped on the brake or the
5 parking slab caught him.

6 And then I remember seeing his wheels turn
7 towards my direction and -- to where the three officers,
8 me, Edner and Clary were, from what I can recall, turn
9 our direction.

10 And then I remember seeing the car go over the
11 parking slab. I'm not sure how fast it accelerated, but
12 then it accelerated towards Fessenden. And I remember
13 seeing Officer Clary fire, I don't know how many rounds,
14 towards the vehicle.

15 Q Okay. What did you do in response to that car
16 turning in your direction?

17 A I moved. I moved immediately towards the gas
18 pumps, away from where that car could go.

19 Q In your interview that night, you used the
20 word "lunged out of the way." Is that a fair description
21 of what you did?

22 A Yeah, because it was an instinctual reaction,
23 I guess. It wasn't like I had to sit there and think,
24 oh, that car -- I just moved by instinct because I did
25 not want to get hit.

1 Q And so in your mind the shots don't start
2 getting fired until the car has made that turn and is
3 going towards Fessenden, or did the shots start before
4 that? Or if you don't know, that's an okay answer.

5 A I don't know. I might have said something
6 different during the interview as far as where it was,
7 but I can't say exactly where the shots happened.

8 Q And what did you notice about the car's speed
9 as it then went northbound and crossed over Fessenden?

10 A I recall it going -- accelerating towards
11 Fessenden. And then on that diagram up there, you could
12 see, I don't know, I guess, a little rainbow-type thing.

13 Q Right there?

14 A Yeah. That's about where it came to an abrupt
15 stop as if he was slamming on the brakes. And then I
16 remember it changing direction just a little bit and then
17 it accelerated straight towards the apartment.

18 Q Okay. So once it crashed into the apartment,
19 what were you and the other officers doing?

20 A At that point I thought he could still be a
21 threat, so I took a position behind the patrol car in
22 that picture right there.

23 Q Okay. And let me just ask you, the patrol car
24 that we see the back of or the front of?

25 A The one you see the back of, but I was at the

1 front of that car.

2 Q Okay. So you were here facing north?

3 A Right. I was using the car as cover.

4 Q Okay.

5 A And keeping eyes on the suspect in the
6 vehicle.

7 Q You continued to have a firearm drawn at that
8 point?

9 A Yes.

10 Q And is that where you remained until you were
11 cleared from the scene?

12 A Right. Sergeant Christensen relieved me.

13 MS. MOAWAD: Any questions for this witness?

14 A GRAND JUROR: Yes.

15 Before you got to the 7-Eleven, were you aware
16 of, one, why you were going there, and, two, who you were
17 looking for, looking at?

18 THE WITNESS: Just the vague -- from what I
19 heard over the radio earlier that day is all I had to go
20 on because as we were finding out the updates, it was
21 tough to get a radio break in to figure out.

22 I remember thinking to myself as we were going
23 towards it, can we get some charges or things like that
24 going up on this guy, but by the time we got there, we
25 were already moving.

1 A GRAND JUROR: Okay. As you got out of your
2 vehicle and you saw someone come out of the 7-Eleven,
3 only one person came out?

4 THE WITNESS: I think there were two from what
5 I heard later, because while I was posted up behind the
6 patrol car right there, my coach in plain clothes, that's
7 kind of when I noticed him, he pointed out the second guy
8 who came out of the 7-Eleven because he noticed him at
9 first and I didn't.

10 And he asked Officer Edner to put him in
11 handcuffs because he was related to the whole incident.
12 So I think Officer Edner did that, and I was still trying
13 to pay attention to where the suspect's vehicle was.

14 A GRAND JUROR: But the person who came out
15 with the white T-shirt, did you know that he was a person
16 of interest as soon as you saw him?

17 THE WITNESS: Based on what the other officers
18 were doing, yes, that's where I got the information.

19 A GRAND JUROR: Thank you.

20 You said that you lunged out of the way. Was
21 that because you were in imminent danger or saw the tires
22 coming, you put two and two together, he's turning his
23 wheels towards me, I better get out of the way?

24 THE WITNESS: Um, I guess the best way I could
25 describe it earlier is it was like an instinctual kind of

1 thing. I didn't have to think much about it at all.

2 Yeah, I don't know. I don't know.

3 A GRAND JUROR: Were you in that path that
4 vehicle took?

5 THE WITNESS: I had moved, and so the path
6 that the vehicle did take, I don't think I was in the
7 path.

8 A GRAND JUROR: Had you not moved?

9 THE WITNESS: You know, I don't know. It is
10 tough to recall how close I was when it actually did pass
11 me and where I was before I moved.

12 MS. MOAWAD: Any other questions for this
13 witness? Okay.

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

5 EXAMINATION

6 BY MS. MOAWAD:

7 Q If you could start off by telling us your name
8 and spelling your first and last name for us, please.

9 A Chris LaFrenz. C-H-R-I-S, L-A-F-R-E-N-Z.

10 Q How are you employed?

11 A Police officer for the City of Portland.

12 Q And if you would tell us the training that
13 you've gone through, and how many years you've been an
14 officer.

15 A I've been a police officer for Portland for 14
16 years. I've gone through the basic academy, advanced
17 academy, and in-service training every year.

18 Q And you are also a coach?

19 A I am a field training officer.

20 Q Field training officer. Does that require
21 additional training?

22 A It does, yes.

23 Q On July 28, 2012, were you on duty?

24 A Yes, I was.

25 Q You were Officer Winkel's training officer?

1 A That is correct.

2 Q So were you wearing a uniform that day?

3 A I was not. During the last two weeks of
4 phase, we call it phase four, so right before he goes on
5 his own, the last two weeks of that, the FTO or coach
6 wears plain clothes, so it kind of puts the focus on the
7 recruit officer and kind of makes them, you know, do all
8 of the work.

9 Basically so when you get out of a car, people
10 kind of go to the uniformed police officers. I'm
11 theoretically supposed to blend in, that's why.

12 Q You did, however, have a badge on?

13 A Yes.

14 Q And have a bulletproof vest?

15 A Yes.

16 Q Was the vest on over your clothes or under
17 your clothes?

18 A No, it was underneath.

19 Q Okay. So in general, I just wanted to talk to
20 you about ways that information comes to officers about a
21 particular call. Can you take us through that, please?

22 A Such as radio?

23 Q Radio, MDT, cell phones.

24 A Right. Exactly. I mean, from other officers,
25 they broadcast information on the radios and then

1 messages get sent to the computers in our car. A lot of
2 people use emails, too. And that's -- like, if we have
3 pictures, they will email it. So, yeah, there's many
4 different ways. Nextel is our cell phones, so...

5 Q And I said MDT, and you said computers in your
6 cars. Is that the same thing?

7 A Yeah. It is interchangeable.

8 Q And how does dispatch tend to communicate with
9 police officers?

10 A Radio.

11 Q All radio?

12 A Not all radio. I mean, if it is an important
13 priority, obviously, it will go on the radio. That way
14 we get it instantly, and we're listening to it, but if it
15 is a lower priority, then it is going to be sent through
16 the MDT computer.

17 Q So in this instance, what information do you
18 recall having? And if you remember, how did you receive
19 that information?

20 A Officer Jordan Winkel and I were clearing a
21 call in the Villa, and there was information on the
22 radio, it came out through the radio that there was a
23 vehicle, suspect vehicle in a shooting from out at East
24 that was actually in our area at Six Points, St. John's
25 area, so that was on the radio.

1 Q Were you being updated as to the location of
2 that vehicle?

3 A Yes.

4 Q And based on the updates, did you think -- how
5 did you think that the updates were that good and that
6 clear?

7 A I was assuming it was being followed -- not
8 followed, but tracked by a GPS tracker because I mean,
9 there was consistent locations, direction of travel,
10 addresses. I mean, it was pretty obvious it was being
11 tracked by a GPS tracker.

12 Q As far as the suspect information, what do you
13 remember knowing as you get to the 7-Eleven and are
14 walking up?

15 A That the driver, the shooter who was the
16 driver was a white guy, wearing a red hat.

17 Q Do you recall which officer located the
18 vehicle?

19 A It was Officer Hern.

20 Q Okay.

21 A He said that on the radio as well.

22 Q So here is a diagram, crime scene diagram.
23 And your car is not included in there, so it is just off
24 a little bit and circled there.

25 A Yes.

1 Q So as you and Officer Winkel arrived on the
2 scene, what other officers did you sort of first come
3 into contact with?

4 A I remember seeing Officer Edner. He's the
5 first one I talked to.

6 Q Okay. And did you and Officer Edner exchange
7 any information?

8 A I asked him, where is the car? Because if you
9 could see where the "WL" is, that's where our car is, so
10 we can't see into the parking lot from as I'm walking up.

11 I see Edner, and I ask him, hey, where is the
12 car? And then he's, like, hey, it is in the lot. And
13 that was it.

14 Q Did you also see Officer Clary at that point?

15 A I believe I walked by his car and he was still
16 getting out of his car.

17 Q Okay. Do you remember where Officer Winkel
18 was at that point?

19 A He's somewhere directly behind me.

20 Q Okay.

21 A So, I mean, you know, it is kind of like --
22 well, I'm not supposed to let him out of my sight, so...

23 Q He was near you?

24 A Yes.

25 Q Was there a time between your arrival and the

1 arrival of other officers and the two men exiting the
2 7-Eleven for you all to formulate a real plan?

3 A No.

4 Q Okay. So as you are approaching the 7-Eleven
5 on foot -- and what I've switched to here is a diagram
6 that you drew that night. Does this arrow indicate your
7 line of travel?

8 A Yes, walking on foot.

9 Q Okay. And this here says "first saw," so kind
10 of take us through what you mean there.

11 A So as I'm walking by, like I said, I saw
12 Edner. I couldn't see into the lot. Hey, where is the
13 car? Edner is, like, it is in the lot. So as I'm
14 walking around, about where -- can I get up?

15 Q Sure.

16 A So about, about right here is where I see the
17 car. And so Justin and I are about here. Justin is in
18 front of me.

19 Q When you say "Justin," you mean Officer Clary?

20 A Yes, Officer Clary. And so it was right about
21 in here where we started -- when we saw the suspect out,
22 ' cause when I was here, nobody said the car was
23 unoccupied or not, so I wanted to go kind of verify for
24 myself.

25 I looked in the car, and it was pretty

1 obvious, I was just assuming, it was unoccupied. I
2 didn't see anybody. I didn't see any heads, any
3 movements. It was just parked right in front of the
4 front doors to the 7-Eleven. So I was just thinking,
5 okay, yeah, they are obviously in the 7-Eleven buying
6 something.

7 So right about in here is when Officer Clary
8 and I see two guys walking right out of the front door
9 towards the suspect's car. We have the plate, and the
10 plate -- I mean, it is matching. There's no question
11 that's the car that was involved in the shooting.

12 So I see a guy wearing a red hat walk right
13 from the -- straight from the front door to the driver's
14 side. And so Officer Clary and I are about here.

15 And then so the driver -- the guy in the red
16 hat is our main guy who is the one we were concerned
17 about. So Officer Clary, and I, we started yelling at
18 him about here. And this is all open. This is an open
19 area. There's no cars. It is the parking lot for the
20 7-Eleven.

21 And so then he's got -- there was another guy
22 that was with him that -- so when this guy starts walking
23 towards this way, this guy sees us first, his passenger.
24 I'm assuming it is his passenger because he walks right
25 towards the passenger side, and he sees us first.

1 And the driver guy, the guy in the red hat,
2 the guy we're worried about that has the gun that was,
3 you know, involved in the shooting out at East, suspect
4 in a shooting, doesn't really see us until we start
5 yelling at him.

6 And so this guy is kind of like, I don't want
7 to have anything to do with this. He kind of starts to
8 try to -- like I'm not with this guy. He kind of does
9 that, you know, I'm not like with this guy. I don't know
10 what you are talking about. He's trying to walk off.

11 And I don't blame him. But so we start
12 yelling at this guy. Like get your hands up. Get your
13 hands up. And, you know, he decides to get into the car.

14 Q Okay. So he's not complying with the commands
15 that you and the other officers are giving him?

16 A No.

17 Q Did you have your weapon drawn?

18 A I did not. Since I was in plain clothes, I
19 was trying -- well, I didn't have my weapon out for a few
20 reasons. Number one, Justin was in front of me, and he
21 had his AR, has his rifle out, and that was plenty of --
22 that was plenty of enough protection.

23 So the other reason is -- another reason is
24 because we've always been kind of trained to have, like,
25 one weapon out. That way there's no crossfires. There's

1 just one line of fire.

2 And the other -- another reason is because I
3 was in plain clothes, and I didn't -- when you are in
4 plain clothes, it is kind of a tough situation. I mean,
5 if you are in uniform, obviously, everybody knows you are
6 a cop.

7 So when I'm wearing plain clothes, yeah, it is
8 kind of like the movies, my badge is hanging out around
9 my neck, but a lot of people, they don't -- you know,
10 they don't fixate on that, and it kind of moves around
11 and that kind of stuff. And so those are the reasons why
12 my gun wasn't out.

13 Q So once the driver gets into the suspect car,
14 what is he doing?

15 A He's, he's determined to get the hell out --
16 pardon my language, probably swear a little bit, but he's
17 just -- I mean, just determined.

18 At that point we're trying to -- I mean,
19 things are happening so quick. We're trying to get into
20 a plan. Like as we were walking up yelling at him, I was
21 trying to get other cops, because I don't think they saw
22 him, like, hey, guys, you know, come up here. He's here,
23 and we're going to try to form a custody team. But he
24 came out so quick and went right through that thing after
25 we started yelling at him.

1 So Officer Hern -- I hear Hern say he's going
2 to box him in. So Hern pulls in right behind the
3 suspect's car, and the suspect just -- I mean, like, I
4 said the passenger guy kind of walks off. And the driver
5 is just like -- he just throws it in reverse, rams up
6 against Hern's car, and then goes forward.

7 And we're yelling at him stop, stop, stop.
8 And Justin is, like, right in front of him, and I'm
9 behind Justin. And Justin can see into the car better.

10 And so the guy is just, you know, going back
11 and forth ramming. He goes up and over those little
12 parking strip things. And this is right in front of the
13 7-Eleven on a hot day.

14 And I've been there many times, there's
15 people. I mean, there's people in front of the 7-Eleven
16 all around. People getting gas at the gas station. And
17 I was, like, this guy is going to either run out -- he's
18 just so determined to get out of there, that he's going
19 to run somebody over. And it was just he was so
20 determined to get out of there.

21 So my first thought is he's going to run right
22 in front of the 7-Eleven right through the, through the,
23 um, glass windows, the front door.

24 But it was kind of weird because Justin was --
25 like he had a direct line of sight. So how do I describe

1 it? So we're looking basically right through the
2 passenger side, passenger window. So Justin has a direct
3 sight into the driver because nobody is in the passenger
4 seat. I mean, it is just straight. I mean, just a
5 straight line.

6 I remember thinking this guy, he's like
7 digging around down here, and he's looking at Justin, and
8 he's digging around here, and he's looking at Justin all
9 while he's, like, going back and forth and getting all
10 over the place.

11 And so first, I thought he's going to run
12 somebody over or he's going to run us over, but then it
13 was, like -- I also started thinking he was definitely
14 reaching for something.

15 And, you know, we already knew that he was a
16 suspect in a shooting, so I was thinking he was going to
17 grab a gun or a weapon or something like that.

18 It was just weird because of the way he was so
19 fixated on Justin. I mean, I'll never forget that. It
20 is just -- I mean, he just -- I mean, if somebody is
21 pointing a rifle at you -- Officer Clary had his rifle
22 out, and he's pointing his rifle at him, I mean, the kind
23 of normal reaction would be, like, whoa, like this.

24 I mean, you don't -- you don't get that
25 aggressive, like, you know, where you are staring at

1 somebody and you are going to, you know, you are going to
2 do something. I mean, it is just -- yeah. It was -- he
3 was just totally fixated on him.

4 Q You mentioned that your vantage point was
5 behind Officer Clary, but that you could see into the
6 front passenger or rear passenger window.

7 A Well, I couldn't see into the vehicle at all.

8 Q Okay.

9 A Justin could.

10 Q Okay.

11 A I was behind him and off to the side.

12 Q Okay.

13 A But our -- what I was trying to say is that it
14 was -- well, could we go back to that other diagram?

15 Q Sure.

16 A It is more like -- it is more like this is
17 what I was trying to say. Like here is the passenger
18 side. We're looking like straight, straight into it.

19 Q Okay.

20 A That's what I was trying to say. It is
21 basically like perpendicular. That's what I was trying
22 to say.

23 Q Okay. So I'm a little confused because you
24 said you couldn't see into the car and yet, you have
25 described the driver doing things.

1 A Right. Well, I could only see from here up.

2 Q Okay.

3 A Is what I'm saying.

4 Q Thank you.

5 A Obviously, if somebody is reaching down in a
6 car -- I mean, you can see -- yes, I can see from here
7 up. Does that make sense?

8 Q Okay. Yes, it does.

9 So the actions that you described are actions
10 that you personally observed?

11 A Yes.

12 Q Of reaching and being fixated on Officer
13 Clary?

14 A Yes.

15 Q Okay. And your vantage point was through the
16 passenger window?

17 A Right. Yeah. That's what I was trying to
18 describe. It is, like, straight through, perpendicular
19 into the driver -- through the passenger into the driver,
20 but I couldn't -- but I can only see, you know, the top
21 half of his body.

22 Q Okay.

23 A Does that make sense?

24 Q So do you recall where -- I'm assuming based
25 on the fact that you've said it is perpendicular, he's

1 still in the parking space at that point.

2 A No. He's moving.

3 Q Okay.

4 A He's moving, but it was -- since Hern was
5 trying to block him in, it was, it was more like this way
6 than this way, and we're, like, this way.

7 Q Okay. So you are adjusting your position as
8 he's adjusting his position?

9 A Yeah, 'cause I was -- I'm, like, crap, which
10 way do I get out of here? And I started going right, and
11 I'm, like, the guy is going right and then he started
12 backing up and he went left.

13 I'm, like, there's nowhere to go because he's
14 so determined to get out of there. He's ramming into a
15 police car. He went up and over the thing that's right
16 in front of the store, and he's going to run into the
17 store, so, yeah. I mean, that's why -- it was kind of --
18 yeah. Just kind of weird.

19 Q Okay. So you're saying you were concerned
20 about where you were going to go to avoid being hit by
21 the car?

22 A Yes. I had no idea where to go.

23 Q Okay. Do you recall when in this sequence of
24 events Officer Clary fired the first shot?

25 A It was somewhere after he ran off -- ran over

1 the front bumper -- the parking-strip thing and was,
2 like, right next to us.

3 Q Okay.

4 A So, I mean, I couldn't tell you how many times
5 after he rammed the car, patrol car and then went
6 forward. I couldn't tell you the number.

7 Q Okay. And what did you observe the suspect
8 vehicle do after the shots were fired?

9 A The shots were fired. He continued in a north
10 path across Fessenden, and then kind of -- it, like, sped
11 up a little bit and then slowed down, and then went right
12 into an apartment building.

13 Q Okay. Once he was in the apartment building,
14 what did you do?

15 A People were getting on the radio. I don't
16 know exactly what was being said. I took -- I took --
17 oh, I yelled at Officer Edner, hey, grab that guy, the
18 guy that was trying to walk off. Yelled at Edner to get
19 that guy. Put him in cuffs. Put him in the car, which
20 Edner did.

21 And then I took -- traffic was still flowing
22 on Fessenden. I'm, like, crap, we need to shut down
23 Fessenden, because we've got this car over here. And so
24 I take the patrol car, that's why it is not in that
25 diagram, and close Fessenden off for eastbound traffic.

1 That way we can deal with the guy in the car that's in
2 the apartment complex.

3 And then I came back and told Edner, somebody,
4 I think it was Edner, to start setting up crime scene
5 tape behind us, because, like I said, it is a nice summer
6 day, and lots of people there. People are trying to
7 leave.

8 I'm, like, well, did you see what happened?
9 They are, like, yeah. I'm, like, all right, I'm sorry, I
10 need you to stay. You guys are witnesses. So just kind
11 of trying to protect the crime scene and hold onto
12 witnesses.

13 Q And then it is typical, is it not, that
14 officers who are also witnesses then eventually once
15 enough other resources are on the scene, you guys get
16 pulled from the scene?

17 A Right. That's correct. You just kind of want
18 to protect -- same thing. When we show up on a call,
19 like a shooting or stabbing, we separate from the
20 witnesses. That way you protect statements.

21 Because when witnesses talk to other
22 witnesses, it kind of influences kind of, you know, maybe
23 puts things in their head that they didn't see or
24 didn't -- you know, that kind of stuff. So it just kind
25 of protects the integrity of the investigation is why.

1 MS. MOAWAD: Follow-up questions for this
2 officer?

3 A GRAND JUROR: Could you go back to that last
4 picture showing the car with the brake lights facing
5 south?

6 May I ask you where you and Winkel and
7 Clary -- generally where were you standing relevant to
8 this -- and was this car with its brake lights on, was it
9 in that position?

10 THE WITNESS: I don't remember that one. I
11 think that was taken later.

12 BY MS. MOAWAD:

13 Q This was. But I think this is Edner's car and
14 this is Hern's car after the shooting.

15 A Well, yeah, because there's red tape up there,
16 so that's -- yeah. The cars are different. So, yeah,
17 actually -- yeah, the one that's facing towards us, the
18 front of it, that's Edner's car, and that's where we put
19 the --

20 A GRAND JUROR: That was the car that did the
21 blocking?

22 THE WITNESS: To be honest with you, I don't
23 know. I can't say.

24 A GRAND JUROR: Well, okay. Given -- if the
25 vehicle that we're looking at the trunk of was indeed

1 there when the three of you were first standing there,
2 where were the three of you, relatively speaking, or
3 relevant to the store front and that vehicle that has its
4 rear end pointed towards us? Were you east of it, west
5 of it, behind it?

6 THE WITNESS: So you are asking me where I was
7 standing relative to this?

8 MS. MOAWAD: Where were you in the parking
9 lot?

10 THE WITNESS: It would be more -- you can see
11 the red tape. So the red tape is where the crime
12 scene -- where the AR rounds are. It is hard to tell
13 from this. It would be probably where this truck is.

14 A GRAND JUROR: So you approached from the
15 east side of that vehicle versus from the west side of
16 it?

17 THE WITNESS: Well, this vehicle?

18 A GRAND JUROR: Yes.

19 THE WITNESS: This vehicle wasn't there when
20 we were approaching it.

21 A GRAND JUROR: Okay. That's what I needed to
22 know.

23 THE WITNESS: That's why I'm a little
24 confused.

25 A GRAND JUROR: Thank you.

1 THE WITNESS: No problem.

2 BY MS. MOAWAD:

3 Q You are sure it wasn't, or you don't remember
4 it being there?

5 A Well, when we first went -- when they were in
6 the store and we were approaching, this car was not like
7 that.

8 Q Okay.

9 A GRAND JUROR: Thank you.

10 THE WITNESS: I couldn't tell you at what
11 point that car got there. I couldn't tell you that at
12 all.

13 A GRAND JUROR: Thank you.

14 MS. MOAWAD: Other questions?

15 A GRAND JUROR: Yes. Officer, did you ever
16 draw your weapon during this --

17 THE WITNESS: No.

18 A GRAND JUROR: So I have a question about
19 leaving. Did you view anybody in front of the suspect
20 car leaving yourself, any other officers? Were they in
21 front of the car as it was fleeing?

22 THE WITNESS: No. Nobody was in front of the
23 car. Like I said, it was more, like, on the side of it,
24 like -- like, it was perpendicular, but, no, nobody was
25 directly in front of it.

1 A GRAND JUROR: You said that you were worried
2 that he might run over someone in an attempt to get away.

3 Did you have any other concerns?

4 THE WITNESS: That he was reaching for a gun.

5 A GRAND JUROR: What made you think that?

6 THE WITNESS: We already had information that
7 that was the plate, and that was the suspect description
8 who shot at somebody else at East, and had a red hat, and
9 the way I was describing his movements and how he's
10 fixated on somebody.

11 A GRAND JUROR: What did you -- what were your
12 thoughts about that fixation thing?

13 THE WITNESS: So it is kind of like a
14 challenge, like, like finding a target. If somebody --
15 it is just -- if somebody -- how do I describe it? I
16 don't want to do it to somebody.

17 MS. MOAWAD: You can do it to me.

18 THE WITNESS: Like if I am -- if I perceive
19 her as a threat and I'm going to challenge her, I'm
20 totally fixated on her. I want to target her. It is
21 like targeting. That's what it is called. Targeting.
22 So I'm just going to stare at her. I'm going to reach
23 for my weapon, and I'm not going to take my eyes off of
24 her so that way I know where I'm shooting.

25 Does that answer your question?

1 A GRAND JUROR: So you were really worried
2 that he could potentially grab a gun and --

3 THE WITNESS: Yes. Extremely.

4 A GRAND JUROR: -- and hit Clary, or someone
5 else?

6 THE WITNESS: Yeah. The way he was looking at
7 Clary, it is just -- I mean, that, that intense look,
8 like, I'm going to challenge you. This is -- it is on.

9 I mean, it is -- so, yeah -- I mean, it is --
10 that's why -- I mean, like I was saying earlier, if
11 somebody is pointing a rifle at you, your normal reaction
12 is would be, like, oh, okay, whoa, I don't want to have
13 anything to do with this.

14 So what I'm saying is his actions, the way he
15 was reaching in the car -- I was worried for two reasons.
16 Yes, obviously, the driver, that he was either going to
17 run somebody over or something like that. But the way he
18 was challenging Clary. Like, I don't care what happens,
19 I'm going to take you out kind of mentality.

20 So the way he fixated on him, the way he was
21 reaching in the car, it was just, like, he didn't care.
22 I mean, you've got a rifle pointed at me, I don't care,
23 I'm going to shoot you, that kind of thing.

24 A GRAND JUROR: Did you know at the time that
25 it was a stick shift car?

1 THE WITNESS: No.

2 A GRAND JUROR: The fixation that you are
3 describing, is that something that is taught as behavior
4 in your training or something that's more intuitive that
5 you learn from?

6 THE WITNESS: It is both. I mean, we do go
7 over that in the academy and that sort of stuff. I
8 mean -- yeah, so, both.

9 MS. MOAWAD: Any more questions? Okay.

10 THE WITNESS: Thank you.

11 MS. MOAWAD: Thank you.

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

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5 THE WITNESS: My name is Anthony Christensen.
6 I'm a sergeant assigned to North Precinct day shift.

7

8

EXAMINATION

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BY MS. MOAWAD:

10 Q Please spell your name for us.

11 A A-N-T-H-O-N-Y, C-H-R-I-S-T-E-N-S-E-N.

12 Q What sort of training do you have to be a
13 police officer?

14 A What sort of training do I have?

15 Q Yes.

16 A Well, my training started in the Army when I
17 went and was an MP, so I went to MP school. Then I went
18 through the reserve academy with Newberg, and then the
19 basic police academy in Monmouth for Oregon, when I got
20 certified with Lincoln City.

21 And then I got hired with Portland and went
22 through the advanced academy with Portland. After I got
23 promoted, I went through detective academy, sergeant's
24 academy, then I've had numerous trainings in between.

25 Q In-services they are called?

1 A In-services. Extra training that I've gone
2 through, I went through the Caliber Press Officer
3 Survival training back in the early '90s.

4 Q And how many years all together do you have as
5 a police officer?

6 A Roughly 26.

7 Q You were on duty July 28th, 2012?

8 A Yes.

9 Q As the sergeant, do you have a specific patrol
10 district, or what are your general duties going to be?

11 A Well, that day, there were two sergeants, so
12 we generally split the precinct in half. And one is west
13 side and one is east side.

14 Q Okay.

15 A And on that day, I was the west side sergeant.

16 Q All right. So how was it that you became
17 aware of this suspect vehicle in the area?

18 A Well, I was on a call in the Columbia Villa
19 with Officer Hern and another officer. We were just
20 clearing that call when I heard this broadcast, but I was
21 still involved in the call.

22 And so I told Officer Hern, well, maybe we
23 should start going that way. So I didn't hear the
24 beginning of it, but I heard that an East Precinct
25 sergeant was broadcasting information about a suspect

1 vehicle from a shooting and was updating locations.

2 Q Okay. What about, did you know anything as
3 you were heading that direction and even upon arrival at
4 the 7-Eleven about the suspects themselves?

5 A I believe they were white suspects. I don't
6 recall the number of suspects. I do recall he talked
7 about them being armed with a .22 caliber pistol and
8 talked -- "him" being the East Precinct sergeant -- a
9 magazine from a .22 caliber.

10 Q Okay. And so you said you headed that
11 direction.

12 A Yes.

13 Q And who first located the vehicle, do you
14 recall?

15 A I believe it was Officer Hern. We were
16 getting updates from the East Precinct sergeant, and we
17 were both traveling westbound on Columbia. Officer Hern
18 got off at Columbia Way. I continued west down Columbia
19 to about Oswego area.

20 Q Okay. And so once Officer Hern broadcasts
21 that he believes he's located the suspect vehicle, did
22 you return to the area of the 7-Eleven?

23 A Yes, I did.

24 Q I've got a crime scene diagram up above, and
25 one vehicle is circled in red. Is that approximately

1 where your vehicle was parked?

2 A Yes.

3 Q Okay. Is that a photograph of your vehicle
4 there at the gas pumps at the Shell station?

5 A I believe so.

6 Q And then this is a drawing that you did.

7 A Yes. Art is not my strong suit.

8 Q Right. This indicates your vehicle here.

9 A Yes.

10 Q Columbia Way, Fessenden to the north.

11 A Yes.

12 Q You have another vehicle drawn in here with an
13 "S."

14 A That would be the suspect vehicle.

15 Q Okay. So did you stay in your car or get out
16 of your car?

17 A I got out of my car.

18 Q All right. And were you approaching the
19 7-Eleven?

20 A Yes.

21 Q Where are you in the parking lot when the
22 suspects walk out of the front of the store?

23 A Can I point to the diagram?

24 Q Yes.

25 A Can I approach the diagram?

1 Q You can.

2 A So roughly I'm in this area as the suspects
3 are exiting the 7-Eleven. And I can't see the other
4 police officers over here. I'm blocked.

5 Q Because there's that kiosk right there?

6 A Yes.

7 Q Can you hear your other officer -- can you
8 hear the officers?

9 A I heard them on the radio and then heard them
10 give commands as a suspect is exiting.

11 Q Could you hear specifically the commands that
12 were being given?

13 A They were very loud, something to the effect,
14 please show us your hands, something like that. Loud
15 enough and forceful enough that there was a witness that
16 was basically in this area and ran over here from the
17 officers.

18 Q Okay. And so just take us through where you
19 are and what your vantage point is and what you are
20 observing, please.

21 A Well, I'm basically right here. I see the
22 suspects exit. There's some confirmation over the radio
23 about one of them wearing a red bandanna. I can see one
24 of the suspects wearing a red bandanna. That's
25 ultimately the person that got in the driver's seat of

1 the vehicle. There's another individual that is bald
2 that went on the passenger side of the vehicle, and I saw
3 officers with him.

4 Q Okay.

5 A The driver runs and gets into his vehicle, and
6 then the police vehicle pulls in behind it blocking it
7 from backing up and exiting. And thinking that we're,
8 we're done, we're going to be able to take him into
9 custody because there's nowhere for him to go, but I was
10 wrong.

11 Q Right. So tell us, where are you standing?
12 Are you still standing in one stationary point or are you
13 advancing?

14 A I'm advancing. I can't tell you exactly where
15 I'm at. I'm roughly in this area by the kiosk.

16 Q Okay. And then so do you from there see the
17 suspect vehicle start moving again?

18 A Yes.

19 Q All right. What did you see it do there?

20 A It moves forward and then turns right
21 northbound in front of the 7-Eleven. There's a walkway
22 there, and it is basically moving north on that walkway.

23 Q Do you see the other officers at this point?

24 A Yes, but this is all transpiring very quickly.
25 I remember seeing Officer Clary, but he's the only

1 officer I clearly remember.

2 Q And do you remember when the shots began to
3 fire relative to where the vehicle was?

4 A Roughly right here when the vehicle is in this
5 area.

6 Q So it has made the turn to sort of head
7 northbound and the shots start firing?

8 A Yes.

9 Q Do you see the driver from your vantage point?

10 A I don't remember seeing the driver.

11 Q Okay. Were you concerned about anyone's
12 safety?

13 A Yes. I was concerned about the officer's
14 safety as the vehicle drove this way. There were
15 other -- I remember there was other witnesses over here,
16 other civilians, so, yes, I was concerned about this
17 violent turn of the vehicle and as it proceeded
18 northbound.

19 Q Do you remember how many shots were fired?

20 A I think two or three, but as the vehicle is
21 moving, I'm moving northbound also, so I'm not certain of
22 how many shots were fired.

23 Q Okay. You can have a seat.

24 And do you remember who fired the shots?

25 A Officer Clary.

1 Q What did you see the car do after the shots
2 were fired?

3 A It continued at a high rate of speed
4 northbound and then ultimately crashed into an apartment
5 north of the 7-Eleven.

6 Q What did you and the other officers do at that
7 point?

8 A Officer Clary and I proceeded northbound
9 across Fessenden. Officer Clary took up a position
10 covering the vehicle west of the location, and I took up
11 a position east of the apartment. And I really wasn't
12 paying attention to what the officers were doing behind
13 me.

14 Q Okay. So at that point did you radio for or
15 did other officers radio for additional resources to come
16 into the area?

17 A Yes.

18 Q Is it standard in a situation like this for
19 the witness officers to be relieved of their duties as
20 quickly as possible?

21 A Yes, and I tried to facilitate that as soon as
22 I could.

23 Q All right. Another sergeant came on the
24 scene, Sergeant Kelly; is that correct?

25 A Yes.

1 Q And you and Sergeant Kelly discussed
2 tactically whether uniformed officers should approach
3 that vehicle or whether or not you should active the SERT
4 team; is that correct?

5 A Correct.

6 Q The decision was made to active SERT?

7 A Yes.

8 Q So can you explain to us why you decided to do
9 that?

10 A Well, my concern is I couldn't see where the
11 driver went. I didn't know if he was hit or not for
12 sure. He's either in the vehicle or in the apartment.
13 And there's a lot of area to try to cover and try to get
14 through without any, any hard cover.

15 We don't train with shields in clearing a
16 vehicle, in clearing a house like that. So there was a
17 lot tactically that I would be asking officers to do in
18 that situation, and that's why we chose to call the
19 tactical team.

20 Q And you mentioned shields, you mean an actual
21 shield that an officer would hold in front of them?

22 A Yes.

23 Q A uniformed patrol officer is not trained in
24 that but a SERT officer is?

25 A Yes.

1 MS. MOAWAD: Okay. Does anyone have any
2 questions at this time?

3 A GRAND JUROR: So you stated that you
4 weren't -- you weren't able to see the victim at that
5 time in his car.

6 THE WITNESS: No.

7 Have you seen pictures?

8 MS. MOAWAD: Yes.

9 THE WITNESS: He crashes through a fence and
10 then into this apartment, so I am offset. So I don't
11 have a view right into the car from where I'm at. I'm
12 actually blocked by the fence.

13 MS. MOAWAD: I think I can bring a picture up.

14 BY MS. MOAWAD:

15 Q So you were somewhere over here?

16 A I'm actually not in -- I'm over more offset.
17 I'm not even in front of the driveway over here. There's
18 a light poll over here, and that's where I'm at. So I
19 don't have a view because I'm blocked by this fence.

20 Q Were you that far off because in the event he
21 came out one of those apartment doors?

22 A Yes, and I wanted to get behind something
23 hard-covered.

24 MS. MOAWAD: Okay. Any other questions?

25 A GRAND JUROR: So there was -- there was a

1 chance you thought that he was alive and out and running
2 in the apartment building?

3 THE WITNESS: I didn't know. I knew that
4 there was shots fired. I didn't perceive that he was
5 actually hit. I knew that the car had crashed, so I
6 didn't know.

7 A GRAND JUROR: So it is customary then to
8 wait for the SERT or whatever it is to come before anyone
9 checks the car to see if he was alive or dead or
10 whatever?

11 THE WITNESS: Yes.

12 MS. MOAWAD: Any more questions? Okay.

13 THE WITNESS: Thank you.

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1 PAUL HERN,
2 a witness called on behalf of the State, having been first
3 duly sworn, was examined and testified as follows:
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5 EXAMINATION

6 BY MS. MOAWAD:

7 Q If you would start off by telling us your
8 name, and spelling your first and last name, please.

9 A It is Paul Hern. P-A-U-L, H-E-R-N.

10 Q How are you employed?

11 A With the City of Portland through the police
12 bureau.

13 Q I assume, like the other officers, you've gone
14 through the basic academy, advanced academy and
15 in-service training?

16 A Correct.

17 Q Any other specialized training that you've
18 been through?

19 A CIT training.

20 Q CIT stands for?

21 A Crisis Intervention Techniques. I went
22 through AR-15 school to certify myself last year. I'm
23 sure there's more. I just can't recall.

24 Q Okay. How many years have you been a police
25 officer?

1 A Fifteen years.

2 Q Were you on duty July 28, 2012?

3 A Yes, I was.

4 Q What type of duty were you working that day?

5 A I was working patrol.

6 Q Were you in uniform displaying a badge?

7 A Yes, I was.

8 Q Was you in a marked patrol vehicle?

9 A I was.

10 Q When were you first aware that suspects in a
11 shots-fired or shooting call were in your North Precinct
12 area?

13 A Sergeant Christensen and Officer Nguyen and I
14 were finishing up a call in the area of McCoy Park, which
15 is in the New Columbia area, and we began getting updates
16 on a vehicle, with an East sergeant providing updates on
17 the location of this vehicle.

18 And I recall turning to Sergeant Christensen
19 and saying, what do they got? He advised me that we were
20 getting updates on a vehicle that was involved in the
21 shooting.

22 So I started tuning into the updates, and I'm
23 starting to hear that it is, like, traveling westbound on
24 North Columbia Boulevard. So at that point we left our
25 location and started heading up towards North Columbia

1 Boulevard.

2 Then I ended up getting -- recall hearing an
3 update that it was in the 4700 block of North Columbia
4 Boulevard, which is kind of the area that we were at.

5 Q And at some point you knew the license plate
6 of the vehicle?

7 A Yes.

8 Q Because you wrote it down on your hand?

9 A I did write it down on my hand. And I asked
10 dispatch what the license plate of the vehicle was. And
11 when dispatch, when they were giving it to me, I was
12 writing it down on my hand.

13 Q We have a photograph of that here on display.

14 A Correct.

15 Q So were you the officer who actually found the
16 vehicle in the 7-Eleven parking lot?

17 A Yes.

18 Q How soon after you arrived and broadcast the
19 information that you located the vehicles did the other
20 officers arrive?

21 A You know, I got into the parking lot of the
22 7-Eleven. And I don't know if you are familiar with that
23 area, but it is like a gas station and a 7-Eleven. They
24 have two separate addresses, but they kind of share the
25 same location.

1 I pulled into the parking lot and I see this
2 vehicle parked in the parking lot of 7-Eleven. It was
3 unoccupied. And I remember looking at the license plate
4 and checking my hand, and I'm, like, well, there's the
5 vehicle, but no one was in the car.

6 So I began to ask dispatch descriptions of the
7 occupants of the car, and I could see two subjects at the
8 cashier's stand inside the 7-Eleven as I'm asking
9 dispatch this.

10 While I'm there, I recall Officer Edner, he
11 came up on my driver's side of my vehicle, so I knew I
12 had another officer there, but during the contact, he
13 ended up kind of going out of my periphery as I was
14 watching the 7-Eleven, and he kind of disappeared.

15 So I'm sitting there by myself, you know, not
16 knowing where the other officers were at the time waiting
17 for a description on the subjects.

18 Q So this is a diagram, a crime scene diagram
19 that was done with vehicle locations after the shooting.

20 So I have attempted to approximate where you
21 were with the blue box with the red outline. Is that
22 about where you were?

23 A That's approximately where I was. It might
24 have been more, maybe towards Fessenden a little bit and
25 more towards the gas station, but that's a good

1 approximation.

2 Q Okay. As you and dispatch are communicating
3 about the suspects, are the descriptions of the suspects
4 matching these guys that you are seeing through the
5 window?

6 A I don't -- the only thing I recall, because
7 I'm sitting there looking at these two subjects at the
8 cashier's stand, and I'm advising dispatch, and I
9 remember advising them, okay, I'm watching a male white
10 with a reddish or pinkish and white hat, white T-shirt,
11 and the other subject was a male, white, balding -- or he
12 was bald, and I was waiting for a description.

13 And I recall dispatch coming back with, like,
14 something about a do rag, but, you know, about the time
15 that I'm starting to get descriptions, these subjects are
16 exiting the 7-Eleven.

17 Q And do they associate themselves with the
18 suspect vehicle?

19 A As soon as they -- as soon as they were
20 exiting the 7-Eleven, I recall hearing behind me, like,
21 maybe on my passenger side of my car, you know,
22 authoritative commands at them.

23 And as they exit, I could see, you know, the
24 passenger was going to the passenger side of the vehicle
25 and the driver was going to the driver's side of the

1 vehicle. And to me in that brief moment, okay, these are
2 the folks with this car.

3 Q Okay. Could you hear the words of the
4 commands or just the tone, and you knew it was your
5 fellow officers?

6 A I could just hear the tone, and I knew it was
7 my coworkers.

8 Q Okay. What were the reaction of the two men
9 associated with the suspect vehicle?

10 A What I saw when the commands were given was
11 the passenger -- the fellow that came out to the
12 passenger side, he started complying with our commands,
13 but then I noticed the driver wasn't complying. And he
14 was, he was starting to urgently walk to his driver's
15 side door of the car.

16 And at that point, you know, I believe I was
17 trying to get out of the car to help out my coworkers,
18 but I started focusing in on him. When I focused in on
19 him, I noticed he was going for the car, so I never made
20 it out of my patrol car at that point.

21 And I put my car in drive, and he started up
22 his car and he was going to leave the location. And I
23 made a decision right then, I don't want this guy to
24 leave, so I maneuvered to block in the vehicle at the
25 location.

1 A GRAND JUROR: How did you do that?

2 THE WITNESS: Well, can you -- I just went to
3 go pull up right behind him with my front bumper. My
4 idea is I was going to go put my front bumper as close to
5 that back bumper as I could.

6 So I ended up -- you know, I was parked. I
7 guess, you know, my front end was facing south. You
8 know, the car was probably facing west. So I went in to
9 turn and get up right behind it and put my bumper on his
10 bumper so it wouldn't go.

11 So, you know, he ended up popping it into
12 reverse, and I moved in real quick. Then he -- from what
13 I remember is he may have gone forward and then he went
14 back again, and then he was maneuvering to get out.

15 A GRAND JUROR: Did he make contact with your
16 vehicle?

17 THE WITNESS: You know, to this day, I don't
18 know. If he did, I didn't feel it. I don't believe he
19 did, but I don't, I don't know. I don't think he did.

20 BY MS. MOAWAD:

21 Q No damage to the vehicle that you saw?

22 A Not that I remember.

23 Q Okay. So you say, I'm not letting this guy
24 leave this parking lot.

25 A Right.

1 Q Why?

2 A Well, already we've got officers giving
3 commands, and he's not complying, and he's been involved
4 in a shooting in a different precinct, and he's a danger.
5 He's a danger.

6 And if he gets away, and I start pursuing him,
7 I mean, he's going to put me at risk for trying to do my
8 job. He's going to put the public at risk because he's
9 going to do what he can to get away from us. And I just,
10 you know, I do not want him to get away.

11 Q So as the car is going back and forth and
12 starting to turn north, do you recall where the car is
13 when you first hear the shots?

14 A Exactly in the sequence, I don't remember
15 exactly when. I knew there was, like, a backing, a
16 forward, and I believe there was a backing and then maybe
17 as he's going forward, there's shots.

18 That sequence, I don't know. I know there's a
19 couple of shots prior to him maneuvering to get out. And
20 exactly in the sequence, I don't remember.

21 Q Okay. So you've talked a little bit about the
22 concerns that you would have had if he had gotten away.

23 In that moment as he's maneuvering the
24 vehicle, did you have any concerns for your safety or the
25 safety of others?

1 A I -- and I've thought about that. I just
2 reacted, and I just went in. I don't want this guy to
3 go. I didn't have -- everything unraveled so quickly,
4 that didn't even come into my mind. I just reacted.

5 Q Were other people -- did you perceive other
6 people to be in the line of travel of that vehicle?

7 A I got -- that whole thing, seeing -- I kind of
8 got tunnel vision, so to speak, and that whole thing.
9 Once I noticed that the passenger was compliant, I got so
10 focused in on that car and that driver, that I didn't see
11 the other surroundings, whether there was pedestrians up
12 on the sidewalk, where my officers were. My focus was on
13 that car and I didn't want it to leave.

14 Q And you mentioned your focus was on the
15 driver. Were you able to see anything he was doing in
16 the car from your vantage point?

17 A No. No, I wasn't.

18 Q After the shooting, the vehicle travels across
19 the street. Did you see it travel across the street?

20 A Yeah.

21 Q Anything you remember about that speed, change
22 of direction, change of speed?

23 A To me I recall as it was leaving the parking
24 lot, and I later recalled this since I initially spoke
25 that day, I remember the vehicle slowing down. Going

1 across Fessenden, it was slowing down.

2 Q And then what did you do after that?

3 A I ended up -- 'cause when the car was getting
4 away, I went to turn my vehicle around, because, you
5 know, I was thinking, okay, you know, he's getting away.

6 And, you know, when I mentioned that, you
7 know, I notice the vehicle slow down across Fessenden,
8 and I saw the vehicle crash into the residence across the
9 street, I was maneuvering my car to get out to pursue the
10 vehicle, but then I see this and then I saw Officer
11 Edner, he was still at that time by himself dealing with
12 the passenger. And he had the passenger at gunpoint at
13 the time and he was by himself.

14 So I ended up getting my car turned. I
15 parked. And I ended up -- Officer Edner and I ended up
16 taking the passenger into custody. And then when we
17 placed him into custody, we sat him in my patrol car.

18 Q So that's your patrol car there parked in
19 front of the 7-Eleven after the shooting?

20 A Right.

21 Q Okay.

22 A And we took custody of him on the north side
23 of the wall there, like, kind of in front of my --

24 Q There are some Slurpee cups and stuff here?

25 A Right.

1 Q And those were his personal effects; is that
2 right?

3 A That is what was on the ground when I helped
4 out Officer Edner.

5 Q Okay.

6 A GRAND JUROR: And this is the opposite
7 direction of where you pulled into the parking lot;
8 right?

9 THE WITNESS: Do you mind if I stand up?

10 MS. MOAWAD: No, of course not. Come on over.

11 THE WITNESS: I initially had pulled into this
12 slot here. So my car was -- my front end is facing this
13 way. And from what I believe, you know, the car was
14 parked in the 7-Eleven like that. So I was parked this
15 way.

16 And then, you know, I ended up turning to
17 block it in, and it was making its way out. It came out
18 across this way across North Fessenden. And, you know, I
19 ended up getting my car turned, and that's where, you
20 know, I ended up.

21 So does that answer your question?

22 A GRAND JUROR: Which way was your car facing
23 when you blocked the Cobalt?

24 THE WITNESS: The vehicle was facing
25 westbound. So if this is north, this is kind of south,

1 west and east. The vehicle was parked front end in front
2 of the 7-Eleven.

3 A GRAND JUROR: And your vehicle was facing
4 where?

5 THE WITNESS: Initially, when I pulled in the
6 lot, I was facing kind of in a southerly direction. So,
7 yeah, I went to turn, so I was turning west, kind of
8 west.

9 A GRAND JUROR: Thank you.

10 BY MS. MOAWAD:

11 Q So at some point in all of this you do
12 basically a U-turn in the parking lot?

13 A Yes.

14 Q Yes.

15 MS. MOAWAD: Any other questions for this
16 officer?

17 A GRAND JUROR: What have you heard that gave
18 you confidence that this car was the one and these
19 suspects were the ones involved in the shooting? What
20 gave you confidence about the dispatch that you heard?

21 THE WITNESS: Well, we had asked -- like, at
22 the beginning of this whole thing, I had asked radio what
23 the license plate was, and there was a description of the
24 Chevy Cobalt. And so I ended up writing the plate number
25 so I could quickly refer to it. As I'm doing my area

1 check, I could just look at my hands.

2 A GRAND JUROR: That gives you confidence that
3 you've got the one they said. But what gives you
4 confidence that they were sure about what car was
5 involved? Did they say, we absolutely know this car is
6 the one involved in the shooting?

7 THE WITNESS: That's information we're getting
8 from another precinct that was working the incident on
9 the other side of town at the time.

10 You know, the information that we were getting
11 was, you know, this is a license plate and the kind of
12 car that was involved in this, and we're tracking it,
13 and, you know, so we're following.

14 I remember an East Precinct sergeant coming up
15 and giving us updates on the location of where the car
16 was at, so we were trying to all get in the area to find
17 the car. So, you know, East Precinct was the one that
18 was handling all that investigation over there.

19 BY MS. MOAWAD:

20 Q Well, I think -- let me see if I can ask it in
21 a slightly different way.

22 Did you believe the information that you were
23 receiving was reliable that this was the suspect vehicle?

24 A Yes.

25 Q And based on your general training and

1 experience, if they had a description of a vehicle and a
2 license plate and those matched up, would you think that
3 was because a witness had given that information or
4 because --

5 A Well, it is coming from an East Precinct
6 sergeant. And to me, that's -- they are giving me good
7 information, okay. This is the suspect vehicle. This is
8 the location, you know, and we're sitting there following
9 it.

10 A GRAND JUROR: That's helpful.

11 THE WITNESS: Okay.

12 A GRAND JUROR: Then the other question is --
13 and I don't know whether I'm allowed to ask this -- but
14 what had you heard about the crime that this suspect had
15 --

16 THE WITNESS: I had heard it was just -- it
17 was a suspect vehicle in a shooting.

18 A GRAND JUROR: But you didn't know the
19 nature --

20 THE WITNESS: No. I didn't get in all of the
21 details. I didn't get the details.

22 A GRAND JUROR: One question.

23 Officer, do you recall any other officers in
24 the area approaching it with their guns drawn?

25 THE WITNESS: You know, going back, you know,

1 Officer Edner, and I recall him coming up on my driver's
2 side of my vehicle when I got into the lot, and then
3 because I was so focused -- I got the car here, and I'm
4 watching these two guys in the store, and I'm waiting for
5 the descriptions, and so my focus was turned towards
6 them, that I didn't see what was going on behind me with
7 my coworkers.

8 So I didn't know they were there until I heard
9 authoritative commands coming, then, you know, I knew
10 that they were there. So I couldn't tell you placement
11 of where they were at or anything. I was so focused in
12 on watching these guys, waiting for updates from
13 dispatch.

14 A GRAND JUROR: Thank you.

15 So you said you were waiting for descriptions.
16 Was that over the radio?

17 THE WITNESS: Uh-huh.

18 A GRAND JUROR: And then would your other
19 officers have been given access -- would they have any
20 prior information that you did not receive?

21 THE WITNESS: As far as descriptions? It is
22 entirely possible.

23 A GRAND JUROR: Through the MDT system and
24 such?

25 THE WITNESS: Or even radio, because, you

1 know, when this whole thing start, my involvement, this
2 was already going on, because we were clearing up another
3 call, so we were just getting into this. So it is
4 entirely possible.

5 MS. MOAWAD: Any other questions? All right.

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

5 EXAMINATION

6 BY MS. MOAWAD:

7 Q Okay. Have a seat. If you would start off by
8 telling us your name, and spelling your first and last
9 name, please.

10 A Zachary Z-A-C-H-A-R-Y. Last name Edner,
11 E-D-N-E-R.

12 Q How are you employed?

13 A Portland police officer.

14 Q And what sort of training have you gone
15 through to be a police officer?

16 A We go through a basic academy through the
17 state and then Portland has an advanced academy. I've
18 been doing it for just over seven years.

19 Q Were you on duty July 28, 2012?

20 A I was.

21 Q And what kind of duty were you working that
22 day?

23 A Working patrol.

24 Q In North Precinct?

25 A Yes.

1 Q Were you in uniform and displaying a badge?

2 A Yes.

3 Q Were you in a marked patrol vehicle?

4 A I was.

5 Q Do you remember how it was that you first
6 became aware that there was a suspect in a shooting from
7 East Precinct in your precinct area?

8 A Actually, yeah. I believe it was a sergeant
9 over at East on the radio was saying they were doing some
10 tracking, I think. I assumed a GPS system was inside the
11 car. Somehow they were tracking it.

12 Q Okay. So you knew that that was the suspect
13 vehicle in the shooting?

14 A Yes.

15 Q Okay. So as the East Precinct sergeant is
16 relaying information to you updating on where the vehicle
17 is, I understand from your interview that at one point
18 the vehicle had stopped in an area that you had some
19 familiarity with.

20 A Correct.

21 Q And just tell us, I don't need the exact
22 address, but tell us, did that heighten your concern at
23 all?

24 A Yeah. Just I worked that district where that
25 house was. And we have a lot of stolen cars that were

1 located around there and they suspected that house was
2 involved.

3 Q Okay. So you are hearing this information,
4 and thinking to yourself, in addition to it being a
5 shooting suspect car, now I'm also concerned because it
6 is with this -- it is associated with this house that I
7 know something about?

8 A Correct.

9 Q Okay. So where were you in your vehicle --
10 and let me ask you, were you working solo in a vehicle
11 that day?

12 A Yes.

13 Q Where were you in your vehicle when Officer
14 Hern relayed over the radio that he had located the
15 suspect car?

16 A I was driving down Fessenden Street a few
17 blocks near the 7-Eleven.

18 Q Okay. Did you have to change direction or did
19 you just roll right up to the 7-Eleven?

20 A Yeah. I had to do a U-turn, but I was there
21 pretty quickly.

22 Q Okay. Where did you park your vehicle when
23 you arrived?

24 A In the -- I'm trying to see that map, but
25 there's a driveway that leads to 7-Eleven off Fessenden.

1 I parked right like in the middle of the driveway.

2 Q Okay. So there's a diagram up here that you
3 were noticing. There's an "E" on one of the cars. Is
4 that your car?

5 A Yes.

6 Q Okay. And this is the drawing that you did.

7 A Yeah.

8 Q And again, your vehicle is there. It says he
9 "Edner."

10 A Yes. That's my drawing.

11 Q Right there. Did you exit your vehicle?

12 A Yes.

13 Q Where did you go?

14 A Well, I initially walked up to Officer Hern's
15 vehicle, and then I tried to figure out what the plan of
16 action was, and then I went more towards mine.

17 Q So you and Officer Hern didn't actually have a
18 chance to communicate with one another?

19 A I don't remember exactly.

20 Q What about as you are arriving there, what do
21 you know about the suspects themselves? We know the
22 suspect vehicle. You know the license plate. Do you
23 have in your mind a description of the suspects?

24 A That they were white males. I thought they
25 were shaved heads.

1 Q Okay. As you headed back towards your car, is
2 that when you saw other officers arriving, or when did
3 you see that?

4 A Um, well, my focus was mainly towards the
5 entrance of the store. I was kind of just -- had my
6 focus towards the entrance and exit, I guess, the same
7 door.

8 Q All right. Okay. So were you able to form a
9 plan with any of your other officers before these two
10 suspects exited the store?

11 A Not really. It just happened so quickly.

12 Q What did you observe initially about the two
13 suspects?

14 A Well, they were white males, and I believe
15 they both had shaved heads or hair. As they were walking
16 out of the 7-Eleven, the one was walking straight towards
17 the driver's side, and the other one was kind of standing
18 like he was going to walk towards the passenger, but kind
19 of stayed on the sidewalk area in front of the store.

20 Q Did you and your fellow officers immediately
21 begin challenging the suspects?

22 A Yeah. I pointed my firearm at them and told
23 them to get their hands up.

24 Q Did you focus on one in particular?

25 A Um, yeah. Probably the one closest to the --

1 the one I remember most, the one closest to me, which was
2 a guy who came out. He had a Slurpee in his hand.

3 Q So the guy who ultimately you took into
4 custody?

5 A Correct.

6 Q Do you recall at what point -- I mean, was
7 your handgun already out before these guys came out of
8 the store?

9 A No. It was -- as they were approaching the
10 car is when I pulled my gun out.

11 Q Okay. What commands, if any, were you
12 shouting to these men?

13 A Get your hands up. Get your hands up. I just
14 remember repeating that. How many times, I don't
15 remember, but I repeated it a few times.

16 Q Other officers, do you recall what they were
17 saying?

18 A I don't recall what they were saying. I know
19 they were giving orders. They were shouting at them, but
20 I don't remember.

21 Q Were you giving any commands to the man
22 standing next to the driver's door?

23 A Well, it was just a general command. I had my
24 firearm pointed towards that direction, towards the one,
25 but I was screaming at both of them. That's what I felt

1 like.

2 Q As far as the men's compliance with your
3 commands, was one more compliant than the other?

4 A Yeah. The one guy obviously continued to walk
5 towards the car. The other guy, he kind of just stood
6 there. I don't remember him putting his hands up, but he
7 just kind of stood there. Wasn't doing anything
8 aggressive.

9 Q Okay. The man, the man on the driver's side
10 of the car that continued toward the car, was he
11 complying at all with the commands that were being given?

12 A No.

13 Q Did it appear to you that he was aware of your
14 presence and could hear your commands?

15 A Yeah. I felt like he was staring at me as he
16 was getting into his car. And then when he was in the
17 car, he was looking right face to face at me.

18 Q Okay. Where were the other officers in
19 relation to you at that point, do you recall?

20 A I have a hard time recalling that. I was kind
21 of tunnel vision on those guys.

22 Q So what did the driver do once he was in the
23 car?

24 A Well, he started it, and then the other
25 officer had boxed him in, positioned his car behind him.

1 He went in reverse.

2 I think he realized obviously, he couldn't go
3 in reverse, so then he started pulling forward. He
4 continued northbound. There's that little sidewalk in
5 front of the store, and then continued to drive down
6 that. I think it must have been straddling the sidewalk
7 because it was so close to the building.

8 Q Okay. Were you focusing on the driver inside
9 of the car or the car at that point, if that makes sense?

10 A Yeah. Yeah. It is hard to say. I just
11 remember him looking straight at me, so probably I was
12 focusing more on him than the car.

13 Q Okay. Anything that you recall him doing with
14 his hands in the car?

15 A No, I don't. I couldn't see his hands. I
16 don't remember seeing his hands.

17 Q Okay. And so where were you then as the car
18 is up and starting to head north on Fessenden?

19 A Well, I'm near my police car.

20 Q Okay. So I've got this -- it is not perfect.
21 I put two photos together, but they are not perfect. So
22 your car is here, and you think you are over by your car.

23 A Yeah, more towards the front of it.

24 Q So you are towards the front of your car. Do
25 you recall if you were on the west or east side of your

1 car?

2 A I was on the east side.

3 Q Okay. So between your car and the Shell gas
4 station gas pumps?

5 A Yeah.

6 Q Okay. So maybe this area here?

7 A Yeah.

8 Q Okay. Were you aware of any other people that
9 were in the path of that vehicle as it got up and was
10 starting to head northbound on Fessenden?

11 A Yeah. I felt the guy who came out with him
12 was in his direct path.

13 Q So you were worried about the passenger?

14 A Correct. Well, and myself.

15 A GRAND JUROR: What did you say?

16 THE WITNESS: And myself. I was northbound of
17 where he was driving, northbound, so...

18 BY MS. MOAWAD:

19 Q Okay. So did you have to move out of the way?

20 A It happened so quickly. I didn't -- I don't
21 remember moving out of the way.

22 Q Okay. So describe what you observed of the
23 car as it was moving and when you then hear the shots in
24 relation to the car's movement.

25 A Sorry. Can I get that question again?

1 Q Yes.

2 So the car is moving. You've told us it goes
3 back and then forward and turns northbound. In relation
4 to that, do you remember when the first shots were fired?

5 A Um, no. I mean, it seemed like it was when he
6 went straight into his vehicle to go northbound is when
7 the shots were fired.

8 Q Okay. Do you remember how many shots you
9 heard?

10 A Well, at the time I thought it was four, but
11 after I -- like, the night after, once I got some sleep,
12 it seemed like it was more, so I'm not really sure
13 exactly.

14 Q And where did the car go after the shots were
15 fired?

16 A Um, it continued through the parking lot and
17 hit an apartment complex across the street on Fessenden.

18 Q Okay. Anything remarkable about the vehicle
19 as it traveled across Fessenden? I mean, speed, or you
20 know, the changing direction or anything like that.

21 A It just continued straight. But it was
22 accelerating really fast because it hit the apartment
23 building really hard.

24 Q What did you do after that?

25 A I took the other guy into custody.

1 Q Did he make any statements to you?

2 A Um, he made a statement that he said he hadn't
3 done anything wrong, and he was just getting a ride, but
4 I didn't interview him about the incident.

5 Q Okay. Sure.

6 MS. MOAWAD: Okay. Does anyone have any
7 questions for Officer Edner?

8 A GRAND JUROR: Is that your car, the one
9 that's facing south?

10 THE WITNESS: Yes.

11 A GRAND JUROR: And is that where you parked,
12 or has that been moved since this shot was taken?

13 THE WITNESS: That's where I was parked.

14 A GRAND JUROR: You got out. You said you
15 were on the east side of the car. You were on the
16 driver's side of your car?

17 THE WITNESS: Correct.

18 A GRAND JUROR: Okay. And the Cobalt, when it
19 left, did it pass on your passenger side or the driver's
20 side?

21 THE WITNESS: The passenger side.

22 A GRAND JUROR: The passenger side. Thank
23 you.

24 MS. MOAWAD: Any other questions?

25 A GRAND JUROR: So you had your gun drawn.

1 And did you have a clear line of sight to the driver?

2 You said you could see his face.

3 THE WITNESS: Yeah.

4 A GRAND JUROR: Why didn't you decide to take
5 action with your handgun?

6 THE WITNESS: Well, I meant -- I don't know.
7 I felt -- because we always have to worry about our
8 backstop. The way I felt when I was going there, I
9 thought his friend was my backstop. In my mind, if I
10 would have been firing towards that car, then his friend
11 who I was most concerned about would have been in the
12 line of my fire.

13 BY MS. MOAWAD:

14 Q And you had a handgun, a Glock; is that right?

15 A Yes.

16 Q A .9-millimeter?

17 A Correct.

18 MS. MOAWAD: Any other questions?

19 A GRAND JUROR: Yeah.

20 Any specific reason why you decided to park
21 there on the approach? Is there any tactical to it? Was
22 it the only open space?

23 THE WITNESS: Well, it just happened so
24 quickly. I mean -- yeah, I mean, if it wasn't all of a
25 sudden, another officer was with a car, but, yeah,

1 usually we like to park a little bit further away.

2 BY MS. MOAWAD:

3 Q So you didn't put it there, for example, to
4 prevent him from driving out of that parking lot?

5 A No, I didn't. No. When I pulled into the
6 driveway, I wasn't really sure which car it was initially
7 anyways, so I didn't think about that.

8 MS. MOAWAD: Okay. Any other questions? All
9 right.

10 THE WITNESS: Thank you.

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

5 EXAMINATION

6 BY MS. MOAWAD:

7 Q If you would start off, please, by telling us
8 your name, and spelling your first and last name.

9 A Paul Meyer. P-A-U-L, M-E-Y-E-R.

10 Q How are you employed?

11 A I'm employed as police officer for the City of
12 Portland.

13 Q Take us through your training to become a
14 police officer.

15 A My training to become a police officer?

16 Q Yes.

17 A All right. I started with the testing
18 process. Obviously, that was seven, eight months, then
19 got hired 13 months later. I went through the basic
20 academy down, at the time it was in Monmouth, Oregon,
21 which was a week back then.

22 Came back to Portland. Met with the training
23 officer. Rode with them for a number of months and then
24 went to our advanced academy, which was nine weeks then.
25 And then back on with the training officer until my

1 probationary period was over. And then I'm a police
2 officer at that point.

3 Q How many years have you been a police officer?

4 A It will be 20 at the end of this year.

5 Q And currently, you are part of the training
6 division for the police bureau?

7 A Right.

8 Q Tell us about that.

9 A I'm a full-time instructor for the training
10 division. I'm in a position called the special weapons
11 lead. What that means is I'm the lead instructor for the
12 Taser program, the bean bag shotgun program, as well the
13 AR-15 program, the rifle program.

14 Q So I think the two areas that it would be most
15 beneficial for us to cover with you today is the use of
16 deadly force training that all Portland Police Bureau
17 officers receive and then specifically the assault rifle
18 training.

19 So why don't we start with generally what
20 officers are trained to do in situations and when it is
21 appropriate for them to use deadly force.

22 A Okay. So the training they receive starts
23 right from the beginning, basic academy. There are law
24 professors that come in. There are district attorneys
25 that come in and instruct the officers on deadly force,

1 what the state law says, what the Supreme Court says,
2 Graham vs. Connor. They will go into quite in-depth.
3 That continues -- really, the deadly force training
4 continues your entire career.

5 They get, you know, a dedicated block of the
6 basic academy and then again, get it when they come to
7 the advanced academy where a district attorney from the
8 Multnomah County District Attorney's office comes to
9 their class and provides them training.

10 There's written tests to go along with that,
11 then there's discussion and updates there throughout
12 their careers. In-services, discussions about deadly
13 force scenarios that have occurred in Portland, so it is
14 a constant, ever-involving training that we're getting
15 all of the time throughout your entire career. We refine
16 that, what the expectations are and those kind of things.

17 Specific to the AR-15 program, it is a
18 selection process to get into the AR-15 program. When
19 they are accepted into the program, they come to the
20 training.

21 The training currently is 60 hours. It is a
22 day of classroom where deadly force is discussed there,
23 including the policy that we have here in Portland. In
24 fact, on the test, the written test that they take on the
25 last day, the last day, the sixth day, is a pass-fail

1 question. They have to be able to write down the deadly
2 force policy from our directives, the three -- the three
3 prongs to it.

4 If they fail that question, they fail the test
5 right then and there, so all that 60 hours is gone.
6 Obviously, it is very important that our officers who
7 have the rifles understand deadly force. That's why they
8 are getting called to the scene because they have that
9 rifle. So it is a huge amount of responsibility that we
10 don't take lightly. And really hammer into them that
11 they need to know the policy and understand that.

12 It always includes scenario-based training
13 where one day is dedicated really to just deadly force
14 and decision-making. And that course includes reading
15 reports from past uses and articulation of deadly force,
16 so they understand the expectations of what questions are
17 going to be asked, so they can understand what again,
18 what the expectations are.

19 It then moves into actual scenario-based
20 training where we make -- really, the scenario is gray.
21 We don't make them black and white. Black and white
22 scenarios are pretty easy. Somebody points a gun at you,
23 you understand that you are able to use deadly for force.

24 So we make it a little bit gray to have those
25 discussions about what and when and where and what they

1 need to be thinking about during that, what other options
2 are available to you. Because deadly force really is the
3 last option, so what other options were available to
4 them.

5 We want them thinking about all of those
6 things, so that when and if they do use deadly force,
7 that they are able to have that thought process before.
8 The training really is set up, the first part of it, to
9 really get them focused in on how to work the rifle, to
10 understand what that is, so they don't have to think
11 about that at on the scene.

12 We don't want to them thinking about did I
13 load it right or not. I want them thinking about deadly
14 force. Think about the situation that you have at hand,
15 and what does it mean, what are we doing here, why are we
16 here. Should we use or should we not use deadly force?

17 The other thing we do, if possible, is we pull
18 in what we call spotter/observer or a shooter/observer
19 tactic, which is pair up with somebody if you can and
20 start having those discussions with them. So it is
21 focused throughout the entire class.

22 We discussed deadly force throughout the
23 entire class because we obviously know the responsibility
24 that they have and that it cannot be taken lightly, and
25 it has got to be a thoughtful, reasonable process.

1 Q So you mentioned that there are a lot of
2 discussions surrounding when it is appropriate to use
3 deadly force, and that there's a policy that these
4 officers are taught.

5 Can you take us through what that policy is?

6 A So our policy has three prongs to it. The
7 first one being that you have reasonably believed that
8 your life or somebody else's life is in immediate danger
9 of death or serious physical injury. So we talk about
10 that means in.

11 Again, it is the case where somebody is
12 pointing a gun at me or, say, somebody is pointing a gun
13 right at you, and I understand that that poses a deadly
14 threat, or they are coming at you with a knife, and, you
15 know, again, we talk about can you put barriers in and
16 all of the different things that we want them to think
17 about, barriers, distance, all of those things.

18 The other prong to it is is to affect the
19 capture or prevent the escape of somebody. You have
20 probable cause to believe that they pose a significant
21 and immediate threat to others, whether that's death or
22 serious physical injury. So that's the other part.

23 That's the one that is not as easy to think
24 about. That's the one where that guy is running away
25 from you and you need to stop him because he poses such a

1 significant threat to others.

2 And then the last and final prong is if
3 reasonable, a warning will be given, if reasonable. And
4 reasonable is -- feasible. Feasible really is if -- it
5 has to do with a lot of things. Is there time? That's
6 one of them, and, two, tactics.

7 Is it, you know, if I'm hiding over here and I
8 want to use -- I have to use force against you, but if I
9 give up my location, then that poses a threat to me and
10 others. Well, that wouldn't make sense. So it has to do
11 with if feasible.

12 And that's all based right out of Graham vs
13 Connor, which a Supreme Court decision from I think the
14 late '80s.

15 Q And it was a Supreme Court decision about when
16 officers can use deadly force?

17 A Correct.

18 Q So you mentioned giving a warning. I just
19 want to be clear about this. Do you mean a verbal
20 warning? Do you mean firing a warning shot? What do you
21 mean by a "warning"?

22 A A verbal warning. We don't authorize warning
23 shots here. There's certain times when you are
24 authorized to use a firearm with the police bureau, per
25 our directives. I can go into those if you want. But

1 for out on the street, on a call, a warning would be a
2 verbal warning is what we're talking about there.

3 Q So you would never train an officer to shoot
4 up in the air to communicate to the suspect, hey, I'm
5 serious about using my firearm?

6 A Correct. Right. You have to account for
7 every round going down a range. And just launching one
8 around, we don't want to do that.

9 Q So I'd like to talk a little bit about the
10 differences between the assault rifle and the handgun as
11 far as the ammunition used, the accuracy of those
12 weapons, that kind of thing.

13 A Okay. Our handguns are 9 millimeters. It is
14 a standard hollow-point round. It is 124 -- 147 grains.
15 The rifle round is actually smaller. It is 55 grains, so
16 it is just a little less than half the weight.

17 It is more of a high-velocity round. It is
18 coming out at closer to 2800 feet per second to 2900 feet
19 per second, versus the 9 millimeter round is coming out
20 at just over 1,000 feet per second.

21 We pick this specific round with the rifle, it
22 is a hollow-point round. The reason we did that was its
23 penetration. One of the concerns with the rifle is that
24 it is coming out very fast. This round is going to hit
25 somebody, go through them, or go through a car, or go

1 through walls and down the block and through another wall
2 and potentially cause damage.

3 The reason we pick this round is it doesn't do
4 that. This round actual penetrate less than our handgun
5 round, and it is the design of the bullet itself. It is
6 a hollow-point round. It very lightweight, 55 grains
7 versus 147. So when it hits barriers, mediums, it
8 penetrates actually less than our handgun round, so it is
9 safer in that aspect.

10 The lethality of it is far greater. It is
11 because of its velocity. But the round itself penetrates
12 far less than -- and there are times when it is not the
13 appropriate round to use because you need penetration
14 potentially, if you are getting shot through in a car,
15 you know, from somebody, and you want to get through the
16 door, and really nothing works well through a door.

17 But it penetrates less. It is safer without a
18 doubt. Accuracy-wise, it is far more accurate, both up
19 close as well as distances. Anywhere from pointblank to
20 100 yards, 200, 300 yards. It is far more accurate and
21 faster.

22 We train our officers from pointblank all of
23 the way out to 100 yards. And we actually are starting
24 to do a little bit of 200-yard shooting. It is far more
25 accurate, and again, it is more lethal. That is

1 something we think about.

2 But conversely, what that means is there's
3 less rounds fired, and that's always a good thing, too.
4 The potential misses are less. The potential multiple
5 rounds in a very dynamic situation can be dangerous for
6 everybody.

7 Q What about the expectations during the
8 training and qualification phase of an AR officer with
9 regards to their accuracy. I mean, if I'm being trained
10 to be an AR officer and I miss my target while I'm out on
11 the range in a controlled environment, are you going to
12 certify me?

13 A So we have a 25-yard end course. It starts at
14 25 yards and goes into seven. The standard on that is if
15 you miss the silhouette, it is an automatic failure. It
16 doesn't matter what your score is. It is an automatic
17 failure. We require 100 percent hits on the silhouette
18 on that.

19 So on Friday, so it is the fifth day, the
20 sixth day obviously is a scenario, just the testing
21 written test, but on that fifth day, after shooting all
22 week long, they have one shot at that 25-yard
23 qualification course. If they miss the silhouette on
24 that day, they are out. They are not certified.

25 Q So in a situation where a shooting suspect is

1 not responding to officer commands, not putting his hands
2 up, not keeping his hands where officers can see them,
3 why can't an officer fire a warning shot there?

4 A Again, it is the danger that that extra round
5 going out could cause. Where are you going to place that
6 round so it doesn't ricochet, doesn't go somewhere where
7 you don't want it to go.

8 Again, the other concern is if I fire one
9 round, was there going to be sympathetic fire
10 potentially? These officers may not have the same angle
11 that that officer does that fired that warning shot and
12 they may think that deadly force is being deployed, and
13 they need to help with that. So, yeah, verbal is what
14 we're going to go with, not warning shots.

15 Q And if there's a vehicle involved, as is the
16 case here, why not shoot out the tires just to keep the
17 person from leaving the scene?

18 A So shooting out the tire is not super
19 effective. It is not going to stop the car either. We
20 use stop sticks, which you probably heard of those, that
21 we can put in front of a car.

22 What makes those fairly effective, and that
23 actually takes time because it slowly lets the air out,
24 because it is slow. What it does is it actually puts
25 like a metal straw into the tires and gives it avenues

1 for that air to escape.

2 If you shoot it with a .223 round and it is
3 going to be through, probably hit the metal wheel,
4 fragment the round all over the place and now, you are
5 going to have a really tiny, very, very small hole that's
6 going to seal somewhat. And it will be a very slow leak.
7 It is going to take a lot of time for that to actually
8 stop your car, if it does.

9 Q Also, you mentioned other less lethal uses of
10 force, a shotgun, bean bag shotgun, a Taser.

11 A Correct.

12 Q When a -- when there's a driver in a vehicle,
13 are those going to be reasonable options? I know it is
14 going to depend quite a bit on the facts, the specific
15 facts.

16 A Right. So a couple things. One of the things
17 that we talk about, say, the bean bag shotgun, is what
18 point of aim you have with that.

19 Really, for somebody who is armed with a gun,
20 if that's the case that that's believed and they are in a
21 car, really the only area that you have available to you,
22 especially if you are off to the side, is really from
23 about here up.

24 The point of aim for a bean bag is the
25 beltline. The reason that is is that we want it to be a

1 less lethal tool. It is not less than lethal. It can
2 cause death. We want it to be a less lethal tool. We're
3 not trying to cause death with this. Once we start
4 raising that point of aim up into the chest, head, neck,
5 there have been documented fatalities around the country
6 with that.

7 We have not had any here, so the bean bag
8 really is not the appropriate tool for somebody sitting
9 in a car based on the area that they have available to
10 them to target.

11 With the Taser, the concern there is it causes
12 muscle contractions. So, one, it is very difficult to
13 get somebody through a window with a Taser. You got to
14 get up closer.

15 The reason that is is that the top dart is
16 coming out straight, but that bottom dart is coming out
17 at a down angle. The farther back I am -- so every seven
18 feet that I go back, there's a foot of spread.

19 So if I get 14 feet back, I got two feet of
20 spread, that's almost a car window potentially or even --
21 so if I am back a little ways, I'm probably not going to
22 get a hit on him, so that means I've got to get up close.

23 Getting up close on can cause issues also
24 because you don't get the amount of spread that you want.
25 The bigger the spread, the more effective the circuit is

1 going to be, and the more muscles you'll lock up.

2 Muscle contractions, locks up. Tends for a
3 lot of people to stiffen and straighten their body.
4 Running car, stiffen your body, hit the gas, and then
5 that causes some serious issues also, which has happened
6 around the country.

7 So again, those are not the best tools for
8 somebody in a car. There's a lot of concerns and a lot
9 of considerations that you have to take into play when
10 somebody is in a car with one of those tools.

11 Q And when you have a situation where there's a
12 suspect in a shooting who is trying to leave the area,
13 why not just let them leave the area?

14 A Well, suspect in a shooting, that obviously
15 causes some concern. I don't know all of the facts of
16 the case. However, you know this person is -- was
17 involved in a shooting, to me that poses a pretty
18 significant threat that -- and again, it is the
19 circumstances surround that shooting would dictate that,
20 but that's obviously a big concern.

21 You've got somebody out that's shooting
22 people, that poses a pretty significant threat to other
23 people. And that would be a definite thing that you
24 would have to think about.

25 Q All right. So officers are trained

1 potentially to not let a shooting suspect leave a scene?

2 A Right. That's a potential. Yeah, absolutely
3 based on the facts and working through the policy.

4 Q All right.

5 MS. MOAWAD: Does anyone have any questions?

6 A GRAND JUROR: May I ask a question?

7 You talked about some commands about, like, a
8 warning. What would be an example of commands regarding
9 that warning?

10 THE WITNESS: Stop or I will shoot you.

11 Pretty specific is what we tell them. Yeah, stop or I
12 will shoot you. You want it to be very, very clear what
13 the warning is for.

14 That would -- for deadly force, that will
15 probably be -- because there's specific, exact ones that
16 have to be said no, regarding deadly force, but it's got
17 to be up there at that level.

18 I think that's kind of the expectation that it
19 is going -- if you have the time, if it is feasible to
20 give that warning, then it is going to be something that
21 you are very clear on what your intention is going to be.

22 A GRAND JUROR: And during the training, is
23 that -- I'm thinking of people being trained, and
24 there's, you know, kind of like a checklist that people
25 have to complete to finish their training. And during

1 the training, is that one of the checklists of the
2 remarks that you have to say "stop or I will shoot"?

3 THE WITNESS: Not specifically what the
4 warning has to be, but they have to know that they have
5 to give a warning to be feasible. That's one of those
6 three prongs of those deadly force.

7 That's one of those pass-fail questions so
8 they know that has to be done, if feasible. And then
9 just so warnings -- I mean, really kind of through your
10 training, if the potential for deadly force is there and
11 you've got a gun, I mean, that's really what you are
12 going to say.

13 I mean, I'm trying to think if it is a
14 specific thing that says it. I don't know anybody that
15 doesn't know that. That's just -- it just is what it is.
16 That's just kind of one of those things. It is the way
17 it is.

18 So if your gun is out, it is stop or I'm going
19 to shoot you because you are really talking about what
20 your intent is. So if you've got a gun out, then that's
21 what you are going to say.

22 A GRAND JUROR: So the important part of that
23 is that or I will shoot you. Like, if they could just
24 say get your hands up, stop, stop, get your hands up, is
25 that enough of a warning in your opinion or --

1 THE WITNESS: So I think the warning, if you
2 base it on an -- I don't know. I'd have to look at it,
3 but the warnings that the court has kind of talked about
4 with lower levels of force, like Taser and bean bag is
5 that -- well, even with the bean bag, they've kind of
6 said pretty specifically stop or I'll shoot you.

7 I mean -- but they don't specify exactly what
8 has to be said. They just want it specific so that it is
9 not good enough to say, I'll bean bag you or I'm going to
10 use less lethal on you. They want it a little more
11 severe. I will shoot you. Stop, or I'll shoot. Stop or
12 I may shoot you. I mean, it needs to be something like
13 that.

14 A GRAND JUROR: So the word "shoot" is
15 important?

16 THE WITNESS: Usually, yeah. I mean, there
17 could be, you know, an officer out there if they are
18 trying to get their point across very clearly could say
19 stop, maybe throw an expletive in there, or I'll kill
20 you.

21 I mean, it could be -- you know, if it is as
22 severe and as ugly and as nasty as you can make it,
23 that's a good thing hopefully, right, to make them stop
24 doing what they are doing so they get the idea of what's
25 going to happen. Hopefully that works. That's the goal.

1 That's why we're saying it.

2 A GRAND JUROR: I have another question about
3 training. So you have this initial 60 hours.

4 Is there a refresher that people get on that
5 initial training that they have to do over a certain time
6 period or something?

7 THE WITNESS: Yeah. Absolutely. Every year
8 we do a two day in-service which -- in fact, that's what
9 I was doing today, all week actually.

10 So they come out, they shoot one day on the
11 range, getting through qualifications, mechanical stuff,
12 working the rifle, understanding that. We talk about
13 past uses of it so that we can have some of that
14 discussion.

15 The second day, they shoot a little bit more.
16 We do some decision-making shooting, shoot, no-shoot
17 targets. Today, one of them is, all of a sudden, without
18 them knowing, a target turns and there's a shoot target
19 and a no-shoot target. They have to look at both and
20 figure out what they are going to do. And it is a
21 limited exposure, so we kind of push the envelope a
22 little bit.

23 Then the back half day of the day, what they
24 are doing right now is scenario-based training where we
25 talk about deadly force. And we do three scenarios today

1 that are really kind of gray, and they are wide ranging,
2 and they are different types of scenarios.

3 One is a domestic. One is a home invasion
4 robbery. One is a suicidal guy. So we do ongoing deadly
5 force scenario-based training yearly with them.

6 A GRAND JUROR: Is that training tracked by
7 some sort of system, or does the officer have like a red
8 stamp on his card that says I'm current?

9 THE WITNESS: Right. No. It is tracked in
10 our training division database. You'll go to an
11 officer's name, you can look up what their training
12 record is, and it will show this is the class that they
13 attended.

14 And then they can go to another database that
15 shows that they could pull up the actual documents from
16 that class, which include any kind of written materials,
17 any -- a course outline.

18 What I can tell you from the one that I'm
19 doing is it will have the course outline. It will have
20 the scenarios, the discussion points for the scenarios,
21 what the scenarios are, and then the performance
22 objectives for it. So it is absolutely documented, yes,
23 in detail.

24 BY MS. MOAWAD:

25 Q Officer Justin Clary has completed those

1 courses?

2 A Yes, he has.

3 Q And he's current on his training?

4 A Yes, he is.

5 A GRAND JUROR: I didn't understand prong
6 three. Could you go over that again?

7 THE WITNESS: Prong three is if feasible
8 warning is given. That's one of the things that the
9 Supreme Court said in that decision that if --

10 A GRAND JUROR: All right. Okay.

11 THE WITNESS: Yeah. Was there another one
12 that you wanted me to talk about?

13 A GRAND JUROR: No. I thought you mentioned
14 time in that third prong.

15 THE WITNESS: If you have time, if it is
16 feasible. So feasible, what does feasible mean?

17 Sometimes we don't have enough time to give a
18 warning. Things are progressing way too fast. And for
19 me to give a warning may delay my action which
20 potentially could get somebody hurt or killed
21 potentially. So if feasible warning needs to be given is
22 what that kind of means.

23 Does that answer it?

24 A GRAND JUROR: Okay.

25 THE WITNESS: So that's where that time thing

1 came in.

2 A GRAND JUROR: Okay. The other thing that
3 troubled me about what you said, you went from a suspect
4 in a murder to if people are shooting people. That's a
5 big jump. One is, you know, a suspect and -- for one
6 murder, and the other has to do with someone who just
7 wants to kill anybody and everybody.

8 You've said --

9 THE WITNESS: Right.

10 A GRAND JUROR: Do you understand what I'm
11 saying?

12 THE WITNESS: Not quite; I'm trying to work
13 through it, yeah.

14 A GRAND JUROR: There are people who want to
15 murder their wife.

16 THE WITNESS: Yes. Right.

17 A GRAND JUROR: And then there are people who
18 want to go into a Sikh temple and, you know, shoot as
19 many people as they can get. Those are very different
20 people.

21 THE WITNESS: Right. They are, yes.

22 A GRAND JUROR: Does the training of these
23 police officers make that an important distinction?

24 THE WITNESS: Absolutely. Absolutely.

25 A GRAND JUROR: Just because you shot one

1 person doesn't mean that you want to shoot the next 40
2 people that come into your path.

3 THE WITNESS: Absolutely. In fact, the
4 scenario that we did today is an individual, suicidal
5 guy, somebody who shot his wife, and no history beyond
6 that. So it is dealing with that person who is also
7 suicidal, so, absolutely, yeah.

8 We talk about in detail the seriousness of the
9 crime. And that's one of the grand factors is the
10 serious -- severity of the crime. The crime -- really
11 the question you have to ask is you have a murder suspect
12 running way, can you shoot him? The answer should be I
13 don't know.

14 That's -- what's the murder for? What's the
15 details of that crime? You know, was it just like you
16 said? Was it somebody who just shot the wife or wife
17 shot their husband in a crime of passion? Or was it
18 somebody like you talked about in the temple -- I can't
19 remember what state it was in.

20 A GRAND JUROR: Wisconsin.

21 THE WITNESS: And now, they are running with
22 the gun. Those are two different things. The suicidal
23 guy who shot his wife and still has the gun who is
24 running, that's a pretty significant and immediate
25 threat, also especially if they know the police are

1 there.

2 He's now maintained possession of the weapon,
3 and he's trying to get away. That has some concerns,
4 too. But absolutely, we do differentiate between what
5 the crime is. We want to know the details of the crime
6 and what those things are because you are absolutely
7 right. Those are different. Those are very different.

8 A GRAND JUROR: So if you don't have the
9 specific details of the crime, you just go for the
10 assumption that that person probably will be causing --
11 have a gun.

12 THE WITNESS: You got to go with what you
13 know. You got to go with what you know. You know,
14 assumptions are tough. We try to stay away from those
15 things as much as we can. We go with what we've heard on
16 the radio.

17 I mean, unless you have reason to believe it
18 is not true, I mean, but you also think about the
19 information you have and what hand it comes from and
20 where -- who is it coming from and how you get it, but
21 you go with what you know kind of is what you try to do
22 the best you can.

23 And assumptions, I mean, you think about like
24 the example I gave. He has a gun. He's just done a
25 shooting. He's running with the gun. Why would somebody

1 maintain possession of that gun when they know the police
2 are there and they are trying to get away?

3 The assumption is, and I think it is
4 reasonable -- reasonableness is what we're trying to go
5 with. So assumptions become, is it reasonable to believe
6 that somebody is going to do that, so I think if that
7 makes any sense.

8 A GRAND JUROR: Yes. That makes sense.

9 THE WITNESS: All right.

10 A GRAND JUROR: One last thing. I asked her
11 about this and I just want to get your opinion about this
12 as well.

13 THE WITNESS: Absolutely.

14 A GRAND JUROR: Do you not have to consider
15 the safety of the area around? Is that not something
16 that -- well, I guess, this is really a question for you.

17 THE WITNESS: I can answer that because we do
18 train in that.

19 So if I'm going to shoot, do I need to think
20 about what's around? Absolutely. One of the cardinal
21 safety rules -- these are the four rules that we --
22 that's another pass-fail question in a test.

23 One of them is be sure of your target, your
24 backstop, beyond it, what's around it. It is a constant,
25 constant thing that they have to think about.

1 If I shoot this direction, what is the
2 potential all around if I miss where that round is going
3 to go, or if it penetrates and goes through something, a
4 barrier, whatever it is, what is it that I have to be
5 concerned with.

6 Again, another reason why we went to the round
7 that we did with the rifles is that penetration is far
8 less, far less than even our handgun, and that's a good
9 thing.

10 If we miss, we want it to stop on the first
11 thing that it hits. If it is a rock or if it is a street
12 or a tree or a wall, we want it to be able to stop and
13 not cause potentially more injuries down the road.

14 But absolutely, you have to -- what we tell
15 them is you have to account for every single round that
16 goes out of that gun. You have to account for every one
17 of them.

18 A GRAND JUROR: And do you talk -- do you have
19 specific training about shooting someone who's in a
20 moving car?

21 THE WITNESS: So there's training regarding
22 the policy and those kind of things. But really when it
23 comes to shooting somebody, it really goes right back to
24 what the directive is for deadly force.

25 Does that person pose an immediate threat? Is

1 there a significant, immediate threat if somebody is
2 trying to get away? That's really where it comes back
3 to.

4 The training regarding a moving car, there's
5 some language in the directive, and I don't know if
6 you've talked to them about it or not, but there's some
7 language in that directive, but there is training on
8 that, absolutely.

9 BY MS. MOAWAD:

10 Q And there's a difference, and I just want to
11 clarify this with you and see if you agree with me,
12 there's a difference between what the policies of the
13 Bureau are and when criminal liability is going to be
14 coming into play.

15 A Oh, absolutely. Yes.

16 MS. MOAWAD: Any other questions? Okay.

17 THE WITNESS: Thank you.

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

5 EXAMINATION

6 BY MS. MOAWAD:

7 Q Go ahead and have a seat, please. If you
8 would start off by telling us your name and spelling your
9 first and last name.

10 A Justin Clary. J-U-S-T-I-N, C-L-A-R-Y.

11 Q How are you employed?

12 A As a police officer for the City of Portland.

13 Q And what kind of training have you been
14 through to be a police officer?

15 A The training program I did is a little bit
16 different than some of the other officers that you may
17 have heard from. I was part of the program called
18 PoliceCorps, which is no longer in existence, but it was
19 a federal program that you attended in lieu of a state
20 basic academy.

21 It was more lengthy at the time. It was much
22 more lengthy and more thorough than the state-offered
23 training. I believe it was six months long. So that
24 was -- I did that in lieu of the basic academy that was
25 in Monmouth at the time.

1 Q And then did you get hired by Portland, or
2 were you hired by Portland first?

3 A How that program works was there was a
4 conditional offer of employment set forth and they were
5 sort of sponsoring you. And you go through the training,
6 and then at the end of that, you were actually hired. I
7 was hired by Portland.

8 Q And then did you do their advanced academy or
9 did this PoliceCorps training?

10 A I did attend the advanced academy that
11 Portland put on also.

12 Q Okay. In addition, do you attend in-service
13 training?

14 A I do.

15 Q You also are a certified as a rifle officer?

16 A That's right.

17 Q So tell us about the training that you've
18 received relative to the assault rifle and when you first
19 became certified.

20 A It was several years ago. Gosh, it has
21 probably been -- I've probably been an AR-15 operator for
22 probably at least -- probably six years, six years or so.
23 I don't remember exactly.

24 But what it was, that training was a 40-hour
25 training, and it is very intensive and very physical

1 training. And then to accompany that, every year we have
2 an in-service in which we -- we brush up on things and
3 work on stuff that we have -- because the range that we
4 have offered for shooting is just a very short range.
5 Like it is designed for handguns.

6 So that in-service provides us the opportunity
7 to go outside at an outdoor range, and we do that once a
8 year. It is two days. And we are able to practice at
9 longer distances and work on other things that we're not
10 able to do indoors.

11 Q Okay. So you were working on marksmanship in
12 that training?

13 A Yes.

14 Q In addition, you said you talk about things.
15 What kind of things are you talking about in this
16 training?

17 A You know, Officer Meyer, he goes through -- we
18 go through training scenarios. We do combat courses. We
19 learn to move and shoot. We learn different techniques
20 of maybe holding the rifle and just a lot of other
21 things. Then we go over policies and procedures, you
22 know, in regards to use of force and so forth.

23 Q And if you are getting your AR out at a scene,
24 that is -- that is a use of deadly force or at least a
25 threat of deadly force, correct, any time the AR is going

1 to be out and used at a scene?

2 A Yes.

3 Q Okay. So you spend -- do you spend a lot of
4 time talking about that use of deadly force in your AR
5 training?

6 A Yes, we do.

7 Q So you were on duty July 28th, 2012.

8 A I was.

9 Q And what kind of duty were you working that
10 day?

11 A I'm a uniform patrol officer. That's what I
12 was doing that day. I was in full uniform and driving
13 around a marked police car.

14 Q Does a full uniform include displaying a
15 badge?

16 A A badge, yes.

17 Q So you just were working a patrol district?

18 A Patrol district, yes.

19 Q Were you solo in your car? Did you have a
20 partner?

21 A I was by myself.

22 Q And what shift do you work? And what time did
23 you go to work that day?

24 A It is morning-relief. We start at 7:00 a.m.,
25 and our shift concludes at 5:00 p.m.

1 Q So leading up to your arrival at the 7-Eleven,
2 what information did you have about the shots fired
3 incident at East Precinct?

4 A So the way that -- I work in a different
5 precinct than the precinct that that initial incident
6 occurred at 122nd and Division. So working at a
7 different precinct, we have a different channel on our
8 radio. So I'm not hearing everything that's going on
9 over in East dispatch. I'm hearing what's going on in
10 North dispatch.

11 And it is common that when something serious
12 like that occurs, our dispatcher will give a small
13 snippet of information, such as East Precinct is
14 responding to a shots fired call at 122nd and Division.
15 Give us a short description like that.

16 And when I had heard our dispatcher say that
17 on our net, I was out of my police car. I was actually
18 having lunch. I wanted to hear what was going on over
19 there. So I turned my radio, my police radio that I have
20 over to East dispatch channel to listen in and see what
21 was going on over there.

22 Q Okay. So what did you hear as you were
23 listening?

24 A I heard that a vehicle had -- a suspect
25 vehicle had shot at another vehicle with a handgun. And

1 there was a description given of -- included the license
2 plate. I don't recall exactly what the license plate
3 was. I took note of it at that time.

4 And it -- they described the shooter as a
5 skinny, white male that was approximately 27 years old,
6 and he had tattoos. And I believe at that time he was
7 described as having a red bandanna on his head.

8 And I was listening to that and I heard that
9 description, and I listened as officers in the East came
10 on the scene, and it looked like the suspect vehicle had
11 gone. And so they were kind of dealing with a cold crime
12 scene there.

13 So I switched my radio back to my net because
14 I was worried -- I didn't have another radio to listen
15 to, I was worried I was going to miss one of my own
16 calls, so I flipped it back to my net after hearing that
17 brief information of what was going on over there and
18 went back to finishing my lunch.

19 Q Okay. So as far as the suspect vehicle
20 shooting at the other vehicle, anything more specific
21 about the circumstances surrounding why vehicle one was
22 shooting at vehicle two?

23 A I didn't, I didn't hear that initially. I
24 just heard that, that occupants in the vehicle, which I
25 think they described it specifically as the driver, the

1 male that I described, had shot at another group of
2 motorists, or something along those lines.

3 Q Okay. So then at some point did you become
4 aware that that suspect vehicle was in North precinct?

5 A Yes.

6 Q Okay. Take us through that.

7 A As I was sitting there, just not too much
8 longer after I had switched back to my radio net, there
9 was a call that we get frequently of a reckless driver.

10 And the way that dispatch deals with a
11 reckless driver call is, you know, someone as a motorist
12 calls in and sees a vehicle that's, you know, driving
13 erratically or something like that for a variety of
14 different reasons.

15 They will call. And instead -- because the
16 vehicle is moving, the dispatch will just broadcast that
17 information or broadcast the vehicle description and say,
18 you know, a reckless driver is heading, for example,
19 westbound on Interstate 84 at a high rate of speed or
20 passing cars on the shoulder, something like that.

21 And in this circumstance, it was someone, a
22 motorist was calling in that westbound on I-84 was a
23 vehicle traveling at a high rate of speed passing
24 vehicles on the shoulder, and had exited the freeway and
25 had ran through several red lights on Multnomah.

1 And the location of that call, which was set
2 up was Multnomah and Wheeler, which is kind of in that
3 Rose Quarter Transit Center Area, kind of by the Rose
4 Garden.

5 Q And how did you know that that was the same
6 car as the car from East?

7 A The license plate. And then I believe at that
8 time they described it as the gray Chevy Cobalt as well
9 and gave -- the broadcast gave a partial plate. I
10 believe it was missing one of the letters in the plate,
11 but other characters matched up.

12 Q Okay. Do you remember about what time that
13 was?

14 A Um, in relation to the first incident?

15 Q Sure. Yes.

16 A You know, I was still wrapping up my lunch, so
17 it was probably -- this is a rough estimate, but I would
18 guess somewhere around in the ballpark of 15 minutes,
19 maybe later.

20 Q And then at what point does the sergeant from
21 East Precinct get on the radio air and start dispatching
22 or communicating to you all the location?

23 A That was probably about -- let's see, it was
24 probably about another 20 minutes or so, I would guess,
25 after the call of the reckless driver, because I had -- I

1 had finished my lunch, and I was planning on going into
2 that area where that broadcast had been sent from.

3 And I was going to look around the area for
4 that vehicle. And I had another call holding, a
5 non-priority call holding in my district that I was
6 responsible for, which was just a residential alarm.

7 So I had gone to that residence, made sure
8 everything was okay there, and then cleared that call.
9 And just a few minutes after doing that was when Sergeant
10 Besner started giving me updates of the suspect vehicle.

11 Q Okay. Based on the updates that Sergeant
12 Besner was giving you, were you under the impression --
13 or let me put it this way.

14 How do you think Sergeant Besner had such good
15 and specific location information?

16 A If I recall correctly, he had said on the
17 radio it was a rental car, and he was with the, with the
18 persons responsible for it. I forget the exact wording
19 for it. Maybe like a body shop or something like that.

20 And he said that they had the ability to track
21 the vehicle. And it seemed like they were getting
22 real-time updates, like GPS updates, which are real
23 accurate, you know.

24 Q Okay. And what about, were you aware that it
25 had stopped for a period of time at a house in the area?

1 A Yeah. One of the first updates given was that
2 the vehicle was in the 3300 block of North Hunt Street.
3 And that address has significance to me personally. I
4 knew -- I could picture where that was knowing that
5 house.

6 Q And what is significant about it to you?

7 A That location, it is -- there's, there's a lot
8 of stuff that goes on there. A lot of criminal activity
9 goes on there. A lot of criminals that I've seen fliers
10 on and that have been announced in roll calls.

11 Like in our roll calls, a lot of times fliers
12 will go around for someone that's wanted for a specific
13 thing. And there had been different occasions where I've
14 seen this address associated with these kind of folks
15 that were involved in a whole bunch of different kinds of
16 criminal activity.

17 You know, like we recover a lot of stolen cars
18 around that area. There's a very prolific car thief that
19 is associated with that address.

20 Q So does that -- what does that do as far as
21 your level of concern about this suspect vehicle?

22 A Knowing that it was associated with that,
23 obviously, it raised my level of concern because I know
24 quite violent people that are armed and dangerous that do
25 associate with that place.

1 Q Okay. So at what point do you hear -- let me
2 put it this way.

3 Where are you graphically when you hear
4 Officer Hern broadcast that he's located the vehicle at
5 the 7-Eleven at Six Points?

6 A I was essentially there on scene.

7 Q Okay.

8 A I was also, you know, listening to the updates
9 and responding out there very quickly. And the updates
10 that Sergeant Besner was giving were, were telling me
11 that the vehicle was traveling westbound on Columbia.

12 So I got up to Columbia and quickly went down
13 Columbia until I essentially caught up with the updates
14 he was giving, telling me that I'm going to be right
15 there on top of this vehicle at any moment.

16 Q Okay. What other officers did you note were
17 on scene when you arrived?

18 A I know Officer Hern was obviously, because he
19 gave the confirmation over the radio, and I had noticed
20 the vehicle just prior to that. I had turned onto
21 Fessenden from Columbia Way when Sergeant Besner gave the
22 update that it was at the 7-Eleven.

23 And I started to go west on Fessenden, and out
24 of the corner of my left eye, kind of my peripheral
25 vision, I saw the gray Chevy, small car. I didn't see

1 the plate at that time. But as I drove by, I noticed
2 that. I hear Officer Hern on the radio. I didn't see
3 him at that time, but I heard him say that the car is
4 here at the 7-Eleven.

5 Q Okay. So this is a crime scene diagram, and
6 this is where cars were located after the incident, so
7 not before the incident.

8 A Okay.

9 Q But do you recall where you parked?

10 A Yes.

11 Q Okay. And is it in this diagram?

12 A Yes.

13 Q Is it right here?

14 A That's correct.

15 Q Okay. So you are parked to the west of the
16 7-Eleven on Fessenden?

17 A That's right.

18 Q And were you facing eastbound or westbound?

19 A Facing eastbound.

20 Q So you made the decision to remove your
21 assault rifle from your vehicle and take that with you
22 responding to this call?

23 A That's right.

24 Q Talk me through that. How did you decide to
25 take your AR with you?

1 A You know, the seriousness of what had
2 happened, the fact that someone was armed, the
3 information that they had -- that someone in the suspect
4 vehicle had shot at someone before that. And basically
5 what I use to judge whether I'm going to take my rifle
6 out is if someone is armed with a weapon, with a gun, I
7 should say.

8 You know, obviously as a police officer, when
9 you are dealing with someone armed, that really ups the
10 ante. And using -- being able to deploy that assault
11 rifle gives us a lot of advantages.

12 You know, it gives us an accuracy advantage.
13 And it gives us, you know, potentially more distance to
14 deal with something. And you are obviously using a much
15 more accurate tool if you do have to, you know, use it.

16 Q Were you aware of other officers then as you
17 are getting out of your car?

18 A Yes.

19 Q Okay. So what other officers are you in
20 contact with at that point?

21 A At that point as I get out, and I'm grabbing
22 my rifle from the rack in the police car, Officer Winkel,
23 he walks up beside my door as I'm getting out, so he's
24 with me.

25 And as I look east on Fessenden, I could see

1 Officer Edner had pulled his vehicle into the lot there,
2 which I presumed because he was kind of starting to set
3 up to essentially do kind of a modified high-risk stop on
4 this vehicle when the occupants emerged.

5 Q Okay. Were you and the other officers -- you
6 said you made some assumptions. Were you guys able to
7 formulate a plan, or did the situation evolve too
8 quickly?

9 A It unfolded very quickly. You know, when the
10 vehicle was located, it was right there. This all
11 happened, you know, within seconds, so it was, it was
12 fast-moving and fluid. We didn't have an opportunity to
13 all get together and formulate a plan.

14 Q So talk to me then about when the two men exit
15 the 7-Eleven.

16 A So, as I said, I exited my car and I started
17 walking eastbound on Fessenden. And Officer Winkel was
18 walking kind of behind me and to my left.

19 And as I'm walking up, I'm thinking that my,
20 my goal is to get to where Officer Edner has his car. He
21 has it set up sort of in a spot where we can use it as
22 cover and go into -- go into, like I said, a high-risk
23 custody from there, which would, which would mean, you
24 know, confine these guys, if they comply, having them put
25 their hands up, walk back -- we have very specific

1 directions to give them to keep everyone safe, to walk
2 them backwards to a point where we can prone them out on
3 their belly, and then a team would approach and take them
4 into custody from there.

5 Q Okay. And right here in the driveway area of
6 the 7-Eleven, is that where Officer Edner's vehicle was
7 located?

8 A Yes.

9 Q Okay. So what happened next?

10 A So I'm walking, heading towards Officer
11 Edner's car, and my view -- so as I'm walking, the
12 7-Eleven is over here. So the front of the building -- I
13 haven't broken that plane yet where I can see. I kind of
14 park over there out of sight.

15 And so as I'm walking up, my field of view
16 hasn't quite opened up to see that suspect vehicle yet.
17 And I'm walking up quickly, and I kind of key off Officer
18 Edner. I see him.

19 And what I see him is I see him draw and point
20 his handgun toward where that vehicle is. And I see him
21 start to kind of advance toward kind of the driver's
22 side, you know, door of his car, and I see this.

23 And it told me that, okay, somebody must have
24 emerged, you know. And as I'm walking up, I finally get
25 a view around that corner, and I see, I see Mr. Simms had

1 gotten into the driver's side of the car. And he was, at
2 that time he was standing at the driver's side of the
3 car.

4 Q You're calling him Mr. Simms. Did you know
5 his name then, or you just now know it?

6 A No, from what I've learned after the fact.

7 Q Okay. Were you more focused on him,
8 Mr. Simms, or his passenger, or were you checking both of
9 them out?

10 A I was focused on Mr. Simms. At the time I
11 didn't -- I didn't see the passenger. I have since seen
12 the video, and I see, you know, how he came out, but my
13 complete attention was focused on him.

14 As soon as I saw him, I could see that he fit
15 that description that was given from the shooting at
16 122nd and Division. And I saw him at the driver's side
17 of that vehicle, so my focus went to him.

18 Q Were you giving verbal commands at that point?

19 A Yeah. As I said, my goal was to get to
20 Officer Edner's car so we could kind of do it as a team
21 there. But when he emerged, it sort of forced me where I
22 was to stop and challenge him and try to -- you know,
23 with the goal of getting him to comply and take him into
24 custody.

25 So I stopped and I turned. And when I saw

1 him, I raised my rifle and I started, I started yelling
2 and screaming at him to stop and get your hands up.

3 Q Okay. Was he compliant?

4 A No. He, he looked right at me. We're looking
5 right at one another. He opens that driver's door and
6 hops in and sits down in the driver's seat.

7 Q Okay. So are you still at that point on the
8 west side of Officer Edner's vehicle?

9 A Yes.

10 Q Okay. Are you in front of, alongside or
11 behind Officer Edner's vehicle?

12 A The trajectory I was originally taking, I was
13 walking from my car with a plan on going straight to the
14 back of his car.

15 Q Okay.

16 A Like you just described there. When I, when I
17 saw Mr. Simms and I challenged him, it kind of changed my
18 path, and I stopped kind of right in there where you are
19 describing there. And that's where I was when I
20 challenged him.

21 Q When he got into the vehicle, what
22 observations were you making of him?

23 A This part -- it all happened so fast. It is
24 so hard for me to -- I've been struggling to kind of put
25 my memory together and figure out how the sequence of

1 events kind of unfolded.

2 Q Okay.

3 A With the movement of the vehicle and how there
4 was kind of the lurch backwards and the lurch forward,
5 and him hitting kind of the cement little divider thing
6 there, I've been trying to figure out and work through my
7 memory to figure out the sequence of this, but I'll do
8 the best I can.

9 Q Okay.

10 A As he sits down, it is -- it was kind of
11 strange. You kind of go into these things expecting
12 people to comply. You always know they are not going to.
13 But he got in the car, and he kind of still maintains
14 that look through that passenger side window.

15 I'm looking right in the passenger side
16 window, the front passenger side window. He is seated in
17 the driver's seat.

18 Q Is that window up or down, or do you remember?

19 A The best I remember it was down.

20 Q Okay.

21 A And he sits down, and I feel like we have eye
22 contact with one another. And I'm looking at him, and
23 I'm processing all this.

24 And one thing that kind of struck me is -- one
25 thing that kind of struck me and surprised me -- as a

1 police officer, you deal with a lot of people, and, you
2 know, a lot of time -- there's obviously scenarios where
3 people want to get away and people want to escape.

4 And the thing that was different is a lot of
5 times when you see that or, you know, you are trying to
6 take someone into custody and they fight with you or
7 something, a lot of times you could sense that they are
8 scared and that's why they are trying to get away. You
9 know they have a fear that you can kind of see on their
10 face or something like that.

11 And as I'm -- as we're looking right at one
12 another, I don't see any of that fear in him. I see more
13 of just kind of like this determination that I'm just
14 gathering from his, his expression. And, you know,
15 looking at him, that it is more like I'm going to do
16 whatever it takes to get out of here, you know. You are
17 not going to stand in my way kind of thing. It wasn't
18 like I'm scared. I'm panicking. I'm trying to, you
19 know, do what I can to get away.

20 Q Okay. What are his -- what are your other
21 observations of him physically?

22 A I see, I see him put his left hand up on the,
23 on the steering wheel. Again, this is the part that's
24 sort of hazy for me in what I'm trying to piece together
25 sequentially in my mind.

1 But at a certain point he hits that gas really
2 hard in reverse, and the car lurches, lurches backwards
3 really quickly. As it does this, I see a patrol officer
4 come, come in with his patrol car and in an effort to try
5 to block him in from being able to back up. I can't
6 recall, I can't recall if the suspect vehicle actually
7 hit the police car or if it stopped just short.

8 And then right after that, there -- it seems
9 strange, 'cause it all happened so fast, but as I'm
10 processing all this stuff in my brain -- I mean, it seems
11 like slow motion, the things that I'm observing and so
12 forth.

13 But I see the car. It then lurches really
14 hard forward, and slams into -- how would I describe
15 it -- just the small cement pieces where you park your
16 front wheels against that keep you from jumping over and
17 hitting the front of the business or something like that.
18 There's the smash into that.

19 And as this is occurring, I feel like I'm
20 still -- we're still looking right at one another. At
21 that point I still see that left hand up on the steering
22 wheel, and I see the right hand come down.

23 I'm looking through the open window, so I can
24 only see kind of -- if you are thinking of looking into
25 someone seated in a car, you can only see this upper

1 portion of their torso or their arm.

2 And I see him start to reach down. He's still
3 locked glances at me. And he starts to reach around like
4 he's fishing around. And I can't tell what he's doing,
5 but it worries me.

6 I'm like, oh, my God, he's reaching for a gun.
7 And, you know, and I told him get your hands up, you
8 know. Stop. And, and, I can't see with -- what he grabs
9 or what that hand does, but he's still looking over at
10 me.

11 And I see the upper part of his arm -- I start
12 to -- I start to see, like, what looks like his arm is
13 coming this way toward that open window in the passenger
14 side where I am. And the arm starts to raise up, and it
15 starts to raise up.

16 And, and, so I, I'm holding my rifle. And the
17 way we're taught to hold it is when we're giving someone
18 commands or something like that, we have it at what's
19 called the depressed ready.

20 So if you think about it, if you have a rifle
21 up on target, you are looking down the sight so it is
22 taking away a whole piece of your vision and what you can
23 see when you are looking down the sight.

24 When you have it at depressed ready, you are
25 looking over the gun, so you can see what's unfolding in

1 front of you. So I'm doing that. And I see this arm
2 coming up, and I'm telling him -- I tell myself, you
3 know, that arm is coming up, he's got a gun. If I wait,
4 he's going to shoot me. I can't wait.

5 And when that arm reaches to a certain level
6 at that door is when I fired. And I fired a quick burst
7 of rounds. And I felt like I could see -- I felt like I
8 could see the bullets hit him.

9 I think he was wearing a white or a
10 light-colored T-shirt. I instantly see red marks on his
11 shirt. And, and what was really strange to me is when I
12 see that, I guess we've been told this so many times in
13 training that, you know, when someone is shot, they could
14 have so much adrenaline or something like that, they
15 continue to do what they are doing. It is not like
16 Hollywood where someone is shot and they fall down, or
17 something like that.

18 But I shoot this quick burst of rounds, and I
19 feel like I see the impacts. And I don't see -- I'm
20 processing this, and I don't see any change in his
21 posture or anything like that. I guess I expect to see
22 someone fall forward or some acknowledgment that the
23 bullets had just struck them.

24 And I don't see that, and the left hand is
25 still on the steering wheel. And, like I said, it is

1 hard for me to remember the point where the vehicle was
2 at that time. But there's that quick burst of rounds
3 that I fire, and then the car lurches.

4 And I see, I see that, and I don't see a
5 change in behavior, so it all happens almost
6 simultaneously that I fire those first group of rounds,
7 and then I fire a second.

8 And as I fire that second group of rounds,
9 that's when it seems like he just laid on the
10 accelerator. I don't know if he was incapacitated at
11 that point, but the car just revs really hard, and it
12 just -- I'm shocked because I feel like it is stuck kind
13 of in this area in the front of the store.

14 It still amazes me that a vehicle was actually
15 able to get pointed at a different direction in the small
16 amount of space. But as, as I fired that second grouping
17 of shots, the car just races off and just goes straight
18 northbound and misses colliding with anything, and goes
19 straight across Fessenden.

20 And I'm sort of expecting it, to see it turn
21 one way or the other on Fessenden, but the car continues
22 straight and careens into the apartment complex that's
23 directly to the north of the 7-Eleven parking lot.

24 Q In your mind, were there other options
25 available to you at that point, the point you started

1 shooting?

2 A No. I don't feel like there was. I wanted
3 there to be. I sit there and I struggle with why didn't
4 he just do what I said, you know. Why, why did you force
5 me to do this, you know. Why didn't you just put your
6 hands up. Why didn't you stop, you know.

7 Q Do you remember how many shots you fired?

8 A I, I would guess somewhere between four and
9 five. I'm not certain. It happened so fast.

10 Q We obviously heard from Officer Meyer of the
11 training division that one thing you are trained to do,
12 if it is feasible for you to do it is give a very
13 specific warning, "stop or I am going to shoot you."

14 Were you able to give such a warning in this
15 instance?

16 A I wasn't, no.

17 Q Okay.

18 A I was giving the verbal commands. And then
19 this all evolved so rapidly, that I didn't, I didn't have
20 the time to express those amount of words even.

21 Q Okay. Once the vehicle has crashed into the
22 apartment, what did you do?

23 A I kind of -- would it be easiest if I pointed
24 it out?

25 Q If it is easiest for you, yes.

1 A Okay. So what I did as the vehicle goes
2 straight across into the apartment there, is I roll this
3 way and I come up over here. What you can't see on the
4 diagram is there's, there's two other parked vehicles on
5 the street over here, and I take a position.

6 One is a white pickup truck and one is a
7 smaller sedan. And I take up a position behind the white
8 pickup truck as cover and watching the car here that's
9 into the apartment complex. And there's a wooden fence
10 here, so the car is completely out of sight.

11 I can't look in and see if he's still moving
12 or, or what's going on in there, and so I just maintain
13 my spot here in case he does emerge or comes out running
14 or anything like that. I just stayed there until I was
15 relieved.

16 Q Okay. What I'd like to do is you mentioned
17 this surveillance video. I'd like to go through that
18 with you and just have you kind of talk us through it
19 from your perspective.

20 I'm curious, there's the two angles, one from
21 inside of the store and one from outside of the store.
22 Is there one that you feel is clearer, or should we just
23 look at both?

24 A Yeah. You can look at both.

25 Q Okay.

1 A (Video played.) So I'm approaching them, and
2 I don't yet see -- and that's where I start to challenge
3 him there at the car as he's getting in the driver's
4 seat.

5 That's the initial lurch backwards, and you
6 can -- you can barely see that the patrol car comes up
7 from behind and tries to block it in. It all occurs so
8 fast, it is hard to kind of talk through it, if you know
9 what I mean.

10 Q We'll go back one more time.

11 A Those were kind of the lurches that I
12 described in that initial attempt when he tried to back
13 up.

14 Q We'll go now one more time.

15 A (Video played.) So I see Officer Edner, and
16 that's when I break the plane and I see him at the
17 driver's door. And he's giving commands during this time
18 period. And that vehicle tries to block him in, and I
19 believe that I shoot somewhere in that time frame. I
20 know you can see the one window shatter.

21 Q Okay. So I'm going to pause it here for just
22 a second. I can see two police vehicles just in the very
23 distant part of the frame.

24 A Yeah.

25 Q Next to the No. 15, there's the front of one

1 police vehicle, is that Officer Edner's vehicle?

2 A I believe that's Officer Edner's. That's the
3 one that I'm approaching from and trying to reach is that
4 car.

5 Q And then further to the right of the screen is
6 where Officer Hern's vehicle is?

7 A I'm not sure who's operating that one.

8 Q Okay. (Video played.) I'm going to pause
9 momentarily. Do you know which of those three sets of
10 legs are yours?

11 A I'm presuming that I would be -- I was in the
12 front, so I would be the one that's right on where the
13 No. 15 is.

14 Q Okay. I'll go back a couple of seconds here.
15 (Video played.)

16 A That's when I run out of view there is when
17 I'm going over to behind that white pickup truck that I
18 described.

19 Q Okay.

20 MS. MOAWAD: All right.

21 Jurors, any questions for Officer Clary?

22 A GRAND JUROR: I want to understand more what
23 you heard about this suspect beforehand. You heard that
24 he shot at another car. Did you hear that he injured
25 someone in another car, killed someone in another car?

1 THE WITNESS: No. I just heard that -- the
2 information I received was that he had shot at another
3 vehicle.

4 A GRAND JUROR: Okay. And then the next thing
5 you heard was that his reckless driving involved
6 speeding, driving on the shoulder. Was there a third
7 thing?

8 THE WITNESS: Once he got up to Multnomah, he
9 was running through the red lights.

10 A GRAND JUROR: Okay.

11 A GRAND JUROR: Yeah. You said the vehicle
12 stopped at another address prior to arriving at the
13 7-Eleven; is that correct?

14 THE WITNESS: I believe so.

15 A GRAND JUROR: Do you have any idea about how
16 long that vehicle remained at that address before getting
17 to the 7-Eleven?

18 THE WITNESS: From my understanding, just
19 going off of the updates I was receiving from Sergeant
20 Besner over the radio who was there with them as they
21 were tracking the vehicle, it was brief. It was -- I
22 wouldn't be able to speculate on a time frame, but it was
23 brief.

24 A GRAND JUROR: I had a question about that,
25 too.

1 Was -- did he go into a particular apartment,
2 or was he just in a general area that you know to be a --

3 THE WITNESS: I believe what the update was is
4 the way that block is set up, that house kind of sits
5 alone on the south side of Hunt.

6 And I believe the update that we received from
7 Sergeant Besner was that -- I don't know what he's
8 looking at when they are looking at what system is
9 tracking this vehicle, but he says the vehicle had -- was
10 in front of there and had dropped down to zero to 5 miles
11 an hour, and then it remained there briefly before going
12 northbound up to Columbia.

13 A GRAND JUROR: So it is not clear that he
14 went into the -- one or two of these people went into
15 that address. They might have been just --

16 THE WITNESS: I'm not sure.

17 A GRAND JUROR: -- slow or stopped in front.

18 THE WITNESS: Yeah, I'm not sure. I was
19 just -- that's the only information that I had.

20 MS. MOAWAD: Anyone else? Okay.

21 (Testimony concluded.)

22

23

24

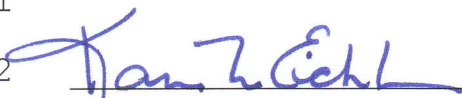
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1 State of Oregon)
2 County of Multnomah)
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4

5 I, KAREN M. EICHHORN, C.S.R., C.R.R., a
6 Certified Shorthand Reporter for the State of Oregon, do
7 hereby certify that I reported in stenotype the
8 proceedings had upon the hearing of this case, previously
9 captioned herein; that I thereafter had reduced my
10 stenotype notes by computer-aided transcription; and that
11 the foregoing transcript, consisting of Pages 1 to 311,
12 all inclusive, constitutes a full, true, and accurate
13 record of the proceedings had upon the hearing of said
14 cause to the best of my knowledge and ability.

15 A transcript without an original signature is
16 not certified.

17 Witness my hand and CSR seal, this 15th day of
18 August 2012, Portland, Oregon.

19
20
21
22 

23 Karen M. Eichhorn, C.S.R., C.R.R.,
24 Certified Shorthand Reporter
25 Certificate No. 05-0395



1 State of Oregon)
)
2 County of Multnomah)

3

4

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25