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MULTNOMAH COUNTY GRAND JURY

DEATH INVESTIGATION

Deceased: THOMAS MANFORD HIGGINBOTHAM)
Date of Incident: January 2, 2011) DA Case No. 2209602
Location: 3153 SE 82nd Avenue) PPB No. 11-375
Portland, Oregon.)

VOLUME 1

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled transcript of Grand Jury proceedings was heard commencing at the hour of 12:30 p.m. on Wednesday, January 12, 2011 at the Multnomah County Courthouse, Portland, Oregon.

APPEARANCES

Mr. Don Rees, Deputy District Attorney,
Appearing on behalf of the State;

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

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KRISTINA COFFEY:

Examination by Mr. Rees

33

1 A Yes.

2 Q Is that a shopping center?

3 A Yes.

4 Q What are some of the stores in the shopping
5 center?

6 A USA Pawn, Discount World, Dotty's, Food For Less.

7 Q Do you have a regular shift that you work?

8 A Yes. I work on Thursdays from 4:30 to 10:00 in
9 the evening, and then Friday, Saturday and Sunday from 11:00
10 in the morning until 10:00 at night.

11 Q During the time that you have been working as a
12 security officer at Powell Street Station, have you had or
13 did you have repeated contact with a transient who was later
14 shot by the police?

15 A Yes.

16 Q Do you remember when you first encountered this
17 person?

18 A It was about -- well, he's -- I have been there
19 for a little over a year and-a-half, and he has -- I have
20 seen him around the whole time. But, one of the most -- is
21 what kind of started him getting trespassed off the property
22 is one day he was at the car wash next door, and he was on
23 the other side of the fence, and his belongings was on the
24 Powell Street Station side. So I asked him to come and pick
25 his stuff up. And he did, that was no problem.

1 Well, about a week later, I was inside Dotty's
2 sitting down having a soda, he come in to buy a package of
3 cigarettes. And he turned towards me and started saying
4 stuff like, I wish I had a job like yours, just sitting on
5 your butt doing nothing. And I just looked at him and
6 ignored him the first time. Well, then he said it again,
7 and he stated it like two or three times. And so finally, I
8 told him he needed to leave. And he started calling me all
9 kinds of names then.

10 And then he went out the door and I followed
11 behind him. As we got outside, just the two of us, he told
12 me I was going to get what's coming to me. That was the end
13 of that, the cops weren't called or nothing.

14 Q This was about six months ago?

15 A Yes. And so after he made the threats, that is
16 when I trespassed him off the property. And -- but then he
17 just kept coming.

18 Q Do you have authority to trespass people off that
19 property by the merchants who are there?

20 A Yes.

21 Q All right. How did you -- how did you trespass
22 him?

23 A Uhm, we usually just verbally tell them.

24 Q All right.

25 A So after he made the threat, I told him he was

1 trespassed and he can no longer come back here.

2 Q You mentioned a car wash. Is that a car wash that
3 was open for business, or is that an abandoned building?

4 A It's an abandoned one.

5 Q Has that been abandoned during the entire time you
6 have been working as a security officer there?

7 A No, I would say around maybe a year that it's been
8 abandoned.

9 Q All right. And did you ever become aware there
10 were transients living inside of the abandoned car wash?

11 A Yes.

12 Q Were you ever aware that this person you just
13 mentioned who threatened you was living in the abandoned car
14 wash?

15 A Uhm, probably within about the six months.

16 Q How did you know he was living in there?

17 A Well, I kept seeing him, because my office is
18 between the car wash and the front of the mall, so my office
19 is in back of the mall. So I can see him going back and
20 forth, and they just started getting more and more busier
21 with the transients, because the roll-up door, they were
22 rolling it up and down, and that's how they were getting
23 into it.

24 Q You're talking about the big, metal, giant garage
25 door, the front to the car wash?

1 A Yes. Actually, in the very back of the car wash,
2 the back.

3 Q Did you ever try to do anything to try to secure
4 the building or to clear it out?

5 A I didn't.

6 Q Did anyone else with ABM Security Services try to
7 do that?

8 A Yes, my partner that does security at the same
9 mall.

10 Q Were those efforts successful?

11 A No. I guess they told them that there was nothing
12 they could do about it.

13 Q Okay. Now going back to this time when you
14 trespassed this person, I think you started to see -- even
15 though you trespassed him, you kept seeing him in the area;
16 is that right?

17 A Yes.

18 Q Did he ever make any additional threats to you?

19 A Uhm, the next serious one was on December 30th.

20 Q And on December 30th, you actually wrote up a
21 report about what happened; correct?

22 A Yes.

23 Q What happened on that date?

24 A I had received a call from the girl at Dotty's,
25 because usually when we trespass somebody we let the people

1 know they have been trespassed. Well, he kept coming in
2 there, that's where he would buy his cigarettes from. And
3 so I get a call from this girl at Dotty's saying he's there.
4 So I came there just within a few minutes, and, uhm, I told
5 him that he needed to leave. Then he got in my face and
6 started calling names, and he held up his fingers like this
7 (indicating) and would say -- he stated about two or three
8 times, "You're this close to dying."

9 Q Just for the record, you were holding your fingers --
10 your index finger and thumb about an inch apart?

11 A Yes.

12 Q And so, is that how he was holding his hand to you
13 when he made that statement?

14 A Yes.

15 Q And how far away from you was he standing when he
16 said that?

17 A He actually -- he walked up to me and we were like
18 just face to face.

19 Q Did he say anything else?

20 A Uhm, he just kept on saying that. Well, when he
21 started saying that, that was when the girl at Dotty's had
22 called 911.

23 Q All right. In your report you wrote that he
24 started making threats, and that he also you wrote called
25 you all kinds of names?

1 A Yes.

2 Q What did he say to you?

3 A He called me a fucking bitch, and, you know, he
4 would say, "You're going to get your ass kicked," and he
5 would keep calling me a wanna-be cop.

6 Q Had you said anything to him other than to note
7 that he had been trespassed from Dotty's?

8 A Yes. I told him that he was trespassing and he
9 needed to leave.

10 Q All right. Then you said the employee of Dotty's
11 called the police?

12 A Yes.

13 Q What happened after that? Well, did he leave
14 before the police arrived there at Dotty's?

15 A On that day, yes, he did, he left. I followed him
16 up to 82nd to the sidewalk, and I watched him walk down the
17 sidewalk and he turned left into the car wash.

18 Q Did you have contact with the police officers once
19 they arrived?

20 A Yes. One of the officers showed up, and I told
21 him where he went, so that was where he went.

22 Q All right.

23 A And then another cop showed up, and I just pointed
24 him where he went.

25 Q In your report you wrote that you notified someone

1 named James Nacosta about the incident; who is that?

2 A That was the on-site -- well, not on-site, that's
3 my field inspector supervisor for that shift.

4 Q All right. You wrote a report about that incident
5 that was on December 30th?

6 A (Nods head).

7 Q Was the next time you had contact with that same
8 transient then on the day of the shooting, which was January
9 2nd?

10 A Yes.

11 Q Which was a Sunday I believe; is that right?

12 A Yes.

13 Q And according to your report, you had your first
14 contact with him on January 2nd, 2011, at about 3:00 in the
15 afternoon; is that right?

16 A Yes.

17 Q Can you tell the grand jury, please, what happened
18 at 3:00 that afternoon?

19 A Okay. I was walking in front of like Discount
20 World, going towards 82nd, and he was coming from 82nd. And
21 we met, and I told him then that he needed to leave. And he
22 started calling me, of course, fucking bitch again, wanna-be
23 cop. And just the same stuff that he would keep calling me.
24 And then I grabbed the phone out of my pocket to call the
25 police, and he slapped it out of hand, down to the ground,

1 which made the phone even go off.

2 Q What happened after that?

3 A I didn't continue to call the cops then, because
4 by the time I picked up the phone and got it back on, he
5 already left and got out of my sight and I didn't even see
6 him any more.

7 Q All right.

8 A And then do you want me to tell you about the
9 second --

10 Q Go ahead, so there was a second contact after
11 that? What time was that?

12 A And that was just shortly before 4:00.

13 Q Just about an hour later?

14 A Yeah.

15 Q All right.

16 A I was standing in front of Discount World talking
17 to my husband on the phone, and I saw him coming from the
18 apartment complex, because there's an entrance from there to
19 the mall, and I saw him coming towards me. And then I'm
20 going to my husband, I go, oh, no, I think I got trouble
21 coming. So when I'm still talking to my husband, he
22 approached me. I didn't even say nothing to him at this
23 point. He was just in my face and calling me all kinds of
24 names again, kept calling me wanna-be cop. He just wouldn't
25 get out of my face.

1 So I didn't say nothing, I just hung up from my
2 husband, and that's when I called 911. And then when I was
3 calling 911, he walked off of the property over to the car
4 wash.

5 Q All right. Let me go back to your report. I
6 think maybe I overlooked something in your report, but you
7 tell me if this happened. During the first contact, if you
8 look at the narrative section on the first page --

9 A The first report.

10 Q For the report of January 2nd of 2011?

11 A Okay.

12 Q You wrote down that he pointed his finger at you
13 and said, "You fucking bitch, I'm really, really going to
14 hurt you bad"?

15 A Oh, yeah.

16 Q And so that is what he told you?

17 A Yes.

18 Q Okay. And so is that when you took out the phone
19 to call the police? Go ahead and take a look at your
20 report, if you like.

21 A Yes. He kept pointing his finger at me and
22 calling me a fucking bitch, and he kept saying, "I'm going
23 to hurt you really, really bad."

24 Q Okay. And so then the second time you saw him
25 right before 4:00, and you said he approached you. How

1 close did he get to you that second time?

2 A He got -- he got really up close to me and my
3 face, so that I had to kind of back up a little bit.

4 Q So are you talking about less than three feet
5 away?

6 A Yes.

7 Q Was it less than two feet away?

8 A I would just say half a foot to a foot he was.

9 Q Half a foot to a foot?

10 A Yes, he was really close, I had to back up.

11 Q Okay. Feel free to refer to your report if that
12 helps to refresh your memory. But I want you to tell the
13 grand jury what he said to you that second time when he
14 walked up to you and stood that close to you?

15 A Well, he, of course, come up called me a fucking
16 bitch, and I don't even remember what all he was saying,
17 because I was on the phone at this time. But he kept
18 calling me a fucking bitch, just kept on -- you're just a
19 wanna-be cop, and I couldn't even remember everything he was
20 calling me.

21 Q Okay. Well, if you have a copy of your report
22 with you?

23 A Yes.

24 Q I'm just looking at the line right down here, do
25 you see where I am referring to?

1 A You pointed to where he's going to kick my ass,
2 yeah.

3 Q Is that one of the things he said to you?

4 A Yes.

5 Q Okay. And then did you call the police?

6 A Yes. I got on the phone with my husband and
7 called 911.

8 Q All right. It looks as if from the report that
9 both the police arrived and your husband arrived at the
10 scene; is that right?

11 A Yes.

12 Q All right. Tell us about your contact with the
13 police, then. When they arrived, had this transient already
14 left the area?

15 A Yes. He goes over to the car wash.

16 Q Did you see him go into the car wash?

17 A Yes.

18 Q What did you tell the police when they arrived?

19 A When they arrived, I told them that he was
20 threatening me and stuff. And I said he went over to the
21 car wash, and that was when they left and went to the car
22 wash.

23 Q And then after -- was it one police officer or two
24 police officers that you saw?

25 A Uhm, well one approached me, but I seen three or

1 four cop cars come through the parking lot.

2 Q And you spoke to this one officer?

3 A Yes.

4 Q What did you hear or see after that in terms of
5 the shooting that we know followed?

6 A Well, me and my husband walked back to where my
7 office was, by the fence. And we didn't see nothing. I had
8 left the fence and my husband heard the shots, but I didn't
9 hear the shots.

10 Q All right.

11 MR. REES: Any questions from the grand
12 jurors?

13 GRAND JUROR: Did you ever see any weapon or
14 anything?

15 THE WITNESS: No.

16 GRAND JUROR: This threat that he did for
17 you, he never had a weapon in all this threat?

18 THE WITNESS: I never seen him with a weapon
19 or he never threatened me with a weapon.

20 GRAND JUROR: Did he ever threaten anybody
21 else that you're aware of?

22 THE WITNESS: Not that I'm aware of.

23 MR. REES: Anything else?

24 Thank you, Ms. Snider.

25

1 ROBERT MARTIN GRAVES,
2 called as a witness, being first
3 duly sworn, was
4 was examined and testified as follows:

5 EXAMINATION

6 BY MR. REES:

7 Q Mr. Graves, state your full name and spell your
8 name, please.

9 A Robert Martin Graves, G-R-A-V-E-S, R-O-B-E-R-T
10 M-A- R-T-I-N.

11 Q And how old are you, sir?

12 A 51.

13 Q And do I understand correctly, you're a veteran of
14 the United States Navy?

15 A Yes, sir.

16 Q How long did you serve in the Navy?

17 A Only about two years, I was discharged for medical
18 reasons.

19 Q All right. And originally I understand you're
20 from Kentucky?

21 A Yes, sir.

22 Q How long have you been in the Portland area?

23 A Coming up on 14 years. I came out here in May of
24 1997.

25 Q You told me currently you're homeless?

1 A Yes, sir.

2 Q How long were you homeless?

3 A Since the first week of November.

4 Q First week of November? And do you recall when
5 you first met Tom Higginbotham, the person who is deceased
6 in this case?

7 A Yes, I remember.

8 Q When was that?

9 A It was about 11:00 a.m. on the morning of January
10 2nd of this year.

11 Q All right. And that's the first time, the very
12 day that he was killed, that you met him face to face?

13 A Yes.

14 Q But from my conversation with you, I understand
15 that you knew who he was and talked to him before that; is
16 that right?

17 A Yes.

18 Q Can you explain that to the grand jury?

19 A I was -- I volunteer at the St. Francis dining
20 hall fairly regularly, and there I have met a young couple,
21 Greg and Megan, who after some speaking with each other,
22 invited me to come and stay at this -- I don't call it
23 abandoned, I call it closed down car wash where they were
24 staying with Tom, as they told me, because they knew that I
25 had some experience in electricity and other things. We

1 wanted to see if we could get him heat and light. My
2 understanding is he was not -- he was suffering through some
3 health issues. So I went there that evening, it was the
4 Tuesday before Christmas, I remember that. And in the
5 process, you know, we talked in the dark to Tom to let him
6 know I was going to be on the premises.

7 Q All right. And is this the car wash out at
8 Southeast 82nd?

9 A Correct.

10 Q And you hold me that based on what Tom told you,
11 you were under the impression he had permission to be in the
12 car wash?

13 A Yes. Both Tom and the couple I mentioned earlier.

14 Q All right. But you don't have any independent
15 knowledge of whether he actually had permission or not; is
16 that correct?

17 A No, I do not, only what I was told by him and the
18 other two.

19 Q Okay. And after that, did you move your
20 belongings into the car wash?

21 A I did.

22 Q Did you spend the night there?

23 A I spent the night there that Tuesday, and the
24 following day I ended up going into the hospital from the
25 Wednesday from Christmas until New Year's Eve. And after

1 that I went back out there on the 2nd of January.

2 Q All right. And so when you returned on January
3 2nd, 2011 to the car wash, when did you contact Tom?

4 A Well, as I was coming into the driveway of 82nd,
5 he was coming out, and that was the first time I met him
6 face to face and let him know I was back, wanted to check on
7 my belongings and everything.

8 And then he invited me across the street for a
9 drink to the Tik-Tok Club, I think it is called, a lounge,
10 where we talked a little bit. And he assured me we had the
11 permission of the owner of the car wash, and that he had
12 absolutely no problems with my staying there as long as I
13 followed some very simple rules: No bringing anybody back,
14 and no drug use.

15 Q You told the detectives when they interviewed you
16 back on January 2nd of 2011, that you felt like you had a
17 certain commonality to Tom Higginbotham; is that right?

18 A Yes. We were both veterans, both had had some
19 similar experiences throughout the years, and just seemed
20 like we kind of connected in some kind of mental way.

21 Q Uh-huh. Do you recall how much he had to drink
22 when you were at the Tik Tok Lounge?

23 A He had one mixed drink, I had a shot of bourbon
24 with a beer chaser.

25 Q About what time did you leave the Tik Tok?

1 A It was probably 11:45, noon, something like that.
2 We were not -- we were there long enough to have a drink and
3 smoke a cigarette.

4 Q Where did you go after that?

5 A North on 82nd. On the east side of the street is
6 a mall, I think it's called Fubon is the main store, it's
7 Oriental, Asian, primarily place. He wanted to pick up a
8 small camp stove he saw on sale there for \$20, so I
9 accompanied him there.

10 Q And after that?

11 A Uhm, while he was waiting in the check out line, I
12 was in the center of the mall area. We kind of got split
13 up, I guess, I missed him coming out. And so after looking
14 around, I returned to the car wash, knocked on the door a
15 bit. He didn't respond. And then I walked back to the
16 mall, didn't see him, and came back to the car wash. And I
17 decided, well, I'm going to write a note leaving my phone
18 number and I would be back in a little while. And then, you
19 know, I was going to leave the note, go across and see if he
20 was at the bar. And if so, come back; if not, then I was
21 going to go on my way. As I'm writing the note, he comes
22 out of the car wash.

23 Q All right. So you don't know whether he was back
24 at the car wash the first time you came back; right?

25 A I didn't make contact with him at this point, no.

1 But the door was locked, so I assumed that he was inside.

2 Q Okay. Then when he came out and you saw him
3 again, what time about was that?

4 A Might have been 1:00 or 1:30.

5 Q So then what happens after that?

6 A Well, he was going I think he said to get some
7 cigarettes, because I knew we had spoken about that earlier.
8 I went on into the car wash to the area that I stayed at.
9 And I was planning to go to St. Francis dining hall, but I
10 wanted to lighten my backpack beforehand. So I was going
11 through -- I totally emptied it, decided what do I have to
12 have with me, and what can I leave behind.

13 Then during that process, he came back and then
14 left again. I think he only left one time and then came
15 back a little bit later, maybe thirty minutes later.

16 Q So what time about was that the last time he came
17 back?

18 A Last time he came back, I remember looking at my
19 cell phone for the time, it was around quarter after 3:00,
20 because I was kind of in a hurry to get my things together,
21 because the St. Francis closed at 5:00 and I wanted to get
22 over there before that.

23 Q When you say you were going to the St. Francis,
24 was that to eat dinner or spend the night?

25 A Eat supper. They don't have overnight

1 facilities. Eat supper and touch base with some of my
2 friends I had not seen for the week and-a-half I was in the
3 hospital.

4 Q Was anyone else living in the car wash on January
5 2nd of 2011 other than yourself and Tom Higginbotham?

6 A No, just myself.

7 Q Inside of the car wash it looked as if there were
8 a couple of shopping carts and there appeared to be a lot of
9 personal property. Did that belong to yourself and Tom or
10 other people?

11 A Well, some of it was mine, some was Tom's. But
12 probably the majority of it belonged to people that had
13 stayed there and left for one reason or the other.

14 Q So over time, various persons had stayed inside of
15 the car wash?

16 A That's my understanding, yes.

17 Q All right. And so I think you said the last time
18 that Tom came back was around 3:15 in the afternoon?

19 A 3:15 or 3:30, somewhere in that vicinity.

20 Q Did you have any conversation with him at all?

21 A Just to verify it was him that came in through the
22 back door, and, you know, I probably told him I'm going to
23 be leaving, but I'll be back. And he went on into his area,
24 which he had made the office of the car wash kind of like
25 his room.

1 Q When you say to verify it was him, did you see
2 each other eye-to-eye or just yelling at him?

3 A Well, I first yelled to make sure it was Tom, and
4 then I visually spoke to him face-to-face for a minute to
5 let him know what I was going to do.

6 Q I think you mentioned he was staying in a little
7 office of the main car wash; is that correct?

8 A Yes.

9 Q Were you staying in the car wash itself, the part
10 where the cars would go through?

11 A Yes.

12 Q What happens then after you see him and talked to
13 him for the last time and he goes into the office?

14 A Wasn't long after that where I was -- there's a
15 bank of windows that goes all the way across the car wash
16 there. And I had my back to the windows, I was getting my
17 backpack together and talking on my cell phone, at the same
18 time when I hear knocking on the window. I turn around and
19 I see it's two Portland police officers.

20 Q How did you know they were Portland police
21 officers?

22 A They were in uniform.

23 Q Were you able to communicate with them through the
24 window?

25 A No. Basically, what I did, we were using the

1 overhead door at the west end of the car wash, so I motioned
2 to them down that way towards that door, and I went to that
3 door to open it to meet them.

4 Q And this is like a metal garage door?

5 A Yes, like a regular, standard garage overhead
6 door.

7 Q Did you have to unlatch it to open it?

8 A Yes. There's a latch on the inside we locked when
9 we're inside, and unlatched it and lift up the door.

10 Q All right. Did you have any idea why the police
11 were there at that point?

12 A I didn't know for a fact, but I thought they were
13 going to question why -- question what I was doing inside a
14 closed down car wash. And I said as I came into contact
15 with the police, I told them that we had permission from the
16 owner to be there, and that Tom is the one who has the
17 actual contact with the owner.

18 At this point, they asked -- the police asked me
19 if he had been involved in an altercation up the street.
20 And I replied that I didn't know, but I described him to the
21 police, and they said that sounded like him. And I directed
22 the police to the room where he was staying.

23 And I knocked on the door of his room, uhm, pretty
24 hard, and loud. I called his name loud enough to get a
25 response, and I said either -- yeah, one of these two

1 things, and I told him that the police were there and he
2 wanted -- and they wanted to talk to him.

3 Q Did he have any response to that?

4 A Not that I heard.

5 Q All right. And so what did the police officers do
6 at this point?

7 A Well, first I asked the police if they were done
8 with me, if it was okay I went back to my area to complete
9 what I was doing, and they said okay. So, I left that
10 immediate area. And I heard the police knocking on the door
11 and calling his name and identifying themselves saying, we
12 have some questions for you. They did that for awhile, and
13 then all of a sudden, very loud and very insistent, I heard,
14 "Drop the knife, stay where you are," repeated over and
15 over, well over six or seven times.

16 Q Let me back you up before we get to that point.

17 A Okay.

18 Q Do you remember what the police officers were
19 saying, if anything, while they were knocking on the door?

20 A Again, they were calling out Tom's name, Portland
21 police, we would like to talk to you, we have a few
22 questions for you, along those lines.

23 Q Okay. Can you explain to the grand jury, because
24 I don't think this is mentioned about this door and how it
25 operates, does it have a knob on it?

1 A It doesn't have a door knob. The mechanism goes
2 into the latch or the frame is there, you can put a
3 screwdriver in there and slide it back and forth. But also
4 as I came to find out the next day, there's also a slide
5 bolt on the inside of the door where you can lock it from
6 the inside.

7 Q All right. And you told me that while the police
8 were there looking for Tom, you pushed on the door?

9 A Yes. When I knocked on it, I pushed on the door
10 thinking it may be not all of the way closed. If it were
11 all the way closed, the little latch from where the knob
12 would be, would also catch. And I kind of mentioned to the
13 police that this is the case, and that's how it could also
14 be opened. Again, I was unaware of the bolt lock on the
15 inside of the door.

16 Q And you don't know for a fact, but it sounds like
17 you believe that the door was latched since it wouldn't open
18 when you pushed on it?

19 A Correct, yeah. It had to have been latched. I
20 pushed on it hard enough, it is not a very difficult door to
21 move, it's pretty free on its hinges. I pushed hard enough
22 to where if it hadn't been latched, it would have opened.

23 Q Did you see the door open?

24 A I did not.

25 Q Can you explain why you didn't?

1 A Well, I went back to my area, and as you would
2 come out of that office, I would take a left-hand turn. And
3 I was maybe twenty feet from where that office is, but
4 between me and the office was a little bit -- I don't know
5 if you have driven through one of the drive-through car
6 washes, but they have the things hanging down that kind of
7 spread soap and what have you over the windshield. So that
8 was between me and where the office door was.

9 Q So, that is completely blocking your view?

10 A Correct.

11 Q All right, then. I think you had already gone up
12 to the point where after the knocking and after the calling
13 out for Tom, you suddenly hear police say something else?

14 A "Drop the knife. Stay where you are, drop it.
15 Drop the knife, stay where you are, Get down," repeatedly,
16 repeatedly, over and over and over again.

17 Q How many times do you think you heard it?

18 A At least a dozen times.

19 Q At least a dozen times. Do you remember how that
20 was being said in terms of tone or voice or the volume?

21 A It was at a fairly loud volume. I may have been
22 out of sight, but I could hear everything clearly. It was
23 not that large of an area that they were in. So to me it
24 sounded like it was at a pretty good volume, and a very
25 authoritative sort of tone.

1 Q Did you hear anything in response to that?

2 A I heard nothing in response to the police, all I
3 heard was the police giving their commands to drop the
4 knife, get down, stay down, stay where you're at.

5 Q What was the next thing you heard?

6 A I heard the sound of a spark arcing, which I took
7 to be a taser. I didn't see it. I do know the sound of
8 arcing sparks. I was an electrician in the Navy and worked
9 with electricity all my life, it is a pretty distinctive
10 sound.

11 Q Were the police yelling while you heard the spark?

12 A Yes, still giving commands to stay where you are,
13 drop the knife, stay where you are, drop the knife, drop it.

14 Q And what did you hear after that?

15 A After that, I heard two pops, and I automatically
16 went, what is that, in my own mind. And by the third pop, I
17 pretty much identified it as gun fire. At that point, I
18 didn't try to keep track. There were several more shots
19 fired, but I was in the business of putting my back against
20 the wall, getting myself in plain sight so I was not
21 perceived as a threat.

22 GRAND JUROR: I'm sorry, I didn't hear. You
23 said after you heard the what you thought to be a
24 taser, how much time and what happened after that?

25 THE WITNESS: I heard pop, pop.

1 GRAND JUROR: Before the pop, pop?

2 THE WITNESS: Before that, I heard the sound
3 of a sparking, arching sparks going between two
4 points. And at the same time the officers were still
5 giving the command to get down or drop the knife, stay
6 down, drop the knife. Drop the knife, stay where you
7 are. And that went on -- time is really hard to tell
8 during a situation like that, but I'm sure that I
9 heard it at least three times while this was going on.

10 BY MR. REES:

11 Q When you were interviewed by detectives, you said
12 you thought the police officers gave Tom plenty of
13 opportunity to put down the knife?

14 A I say absolutely so.

15 Q Can you explain to the grand jury what you meant
16 by that?

17 A Well, the repeated commands of the police, you
18 know, it's not a very large area, and it wouldn't take much
19 time for someone to cross the area to the door. But, in my
20 opinion, the number of times that the officers repeated the
21 command to drop the knife and stay where you are, it had to
22 go on for fifteen, twenty seconds at least before any gun
23 fire was heard. And, again, time does funny things, under
24 that type of situation.

25 Q Are you saying, then, that you believe that the

1 officers were making the commands to put down the knife for
2 about fifteen to twenty seconds before you heard the sound
3 of the gun fire?

4 A Yes.

5 GRAND JUROR: You said you heard two shots.
6 But you started to say, did you hear another shot?

7 THE WITNESS: I first heard two shots first,
8 and I thought, what is that? And then I heard a third
9 shot, and I was able to know it was a gun shot. And
10 then there were several more gunshots after that. I
11 didn't keep track at that time after the third shot.
12 I was making sure I was not going to be in the way.

13 GRAND JUROR: How big is that office?

14 THE WITNESS: My estimation is it's about
15 eight by ten feet, maybe a little off. I have been a
16 general contractor in the past, my estimation of size
17 and distance I'm pretty proud of.

18 BY MR. REES:

19 Q Maybe you already said it, but based on the
20 commands that you heard police officers say, was it clear to
21 you that they were Portland police officers?

22 A Absolutely, they identified themselves as Portland
23 police early on when they were still knocking on the door.
24 I told them -- told Tom that the police were here to speak
25 with him.

1 Q You also said that --

2 A Yes

3 GRAND JUROR: I have another question. You
4 said that you lived there, you were brought in because
5 you were an electrician. Was the lighting good in the
6 office? Were the lights working?

7 THE WITNESS: There were no lights working,
8 but there was light in the office during daylight
9 hours through a window. Most of the window was
10 covered with a tarp, because it was almost like a
11 floor to ceiling like window. The top portion allowed
12 plenty of light -- plenty of daylight, and it was a
13 nice day out that day. Cold, but sunny.

14 BY MR. REES:

15 Q This was a cold, cold, sunny, windy day. Was it
16 the time of daylight at the time of the shooting?

17 A Yes, it was around 4:00 in the afternoon.

18 Q What did you see happen after the shots were
19 fired?

20 A Again, I just -- I stood still. One of the other
21 officers turned around and pointed a weapon at me and told
22 me not to move, stay where I'm at. I am thinking I'm
23 already three steps ahead of you. After that I saw other
24 officers arrived. I was told to side step to where they
25 were, they patted me down, cuffed me, took me away from the

1 scene. And I waited in a police cruiser until detectives
2 were ready for me. I didn't stay handcuffed the whole time.

3 Q And you made a statement to the detectives and
4 it's recorded?

5 A Yes.

6 Q Is there anything I didn't ask you that you think
7 is important for the grand jury to know?

8 A I just feel -- I just don't understand why it had
9 to happen that way, that, you know, it was just clear to me
10 that the officers gave him every opportunity to comply. I
11 mean, I know there was plenty of time. I don't know what
12 happened in his head, because he seemed perfectly normal to
13 me a couple of hours earlier, that caused that to happen. I
14 feel like the officers were backed into a corner. It is a
15 small area, somebody coming across the area with a knife
16 could get there pretty quick. I know I could have. So --
17 all right.

18 GRAND JUROR: I just wanted to know if you
19 had ever seen Tom with a knife?

20 THE WITNESS: No, I had not.

21 GRAND JUROR: Had you ever seen a knife in
22 that office laying around?

23 THE WITNESS: I had not really been in that
24 office up to that point. However, in some of the gear
25 that had been left behind out where I was shortly

1 before that, I ran across a big kitchen knife. So it
2 wouldn't have surprised me one bit if there was that
3 or anything else in that office that could be used for
4 self defense or as a weapon.

5 GRAND JUROR: Did the police officers ask you
6 if there was other people inside of the car wash?

7 THE WITNESS: I think, you know, I'm not
8 positive. I can't say for sure. But I want to say
9 that as we're going to Tom's area, that they asked if
10 it was just us two or something along those lines, but
11 I can't be positive. At this point I'm going to say
12 it would only have made sense had they done that, but,
13 yeah.

14 MR. REES: Anything else? Thank you, Mr.
15 Graves.

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1 KRISTINA COFFEY,
2 called as a witness,
3 being first duly
4 sworn, was examined and testified as follows:

5 EXAMINATION

6 BY MR. REES:

7 Q Detective, for the record, please state your name
8 and spell your first and last name?

9 A Kristina Coffey, K-R-I-S-T-I-N-A C-O-F-F-E-Y.

10 Q And what's your occupation?

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

12 Q How long have you been a police officer?

13 A I was hired in August of 1998.

14 Q And then when did you become a detective?

15 A Promoted to rank of detective January of 2007.

16 Q What's your educational background?

17 A Bachelor of science from Portland State
18 University.

19 Q What's your current assignment as a detective?

20 A Currently assigned to the homicide detail.

21 Q And were you assigned as one of the detectives to
22 investigate the use of deadly force by Portland police
23 officers on January 2nd of 2011?

24 A Yes, I was.

25 Q Do you also have a co-lead detective on the case?

1 A Detective Sponhauer.

2 Q Would you tell the grand jury, please, the names
3 of the two officers who were involved in the shooting?

4 A Officer Larry Wingfield and Officer Jason Lile.

5 Q So if you could please tell the grand jury where
6 the shooting took place?

7 A The shooting occurred at 3147 SE 82nd Avenue.

8 Q What is at that location?

9 A It is a car wash that is currently closed.

10 Q And were you or any of the other investigators
11 involved in the case able to determine who owns that closed
12 down or abandoned car wash?

13 A Yes.

14 Q Where is that person?

15 A The owner of that of the property is in San Jose,
16 California.

17 Q To your knowledge, did that person ever indicate
18 whether they had agreed to have squatters living in the car
19 wash?

20 A I spoke to the owner on the 2nd of January, he
21 told me that nobody was allowed inside of the car wash, that
22 he is the owner and he's not allowed anybody to stay there,
23 or to be inside.

24 Q Did the owner indicate when the car wash shut
25 down?

1 A Approximately eight to ten months ago.

2 Q Eight to ten months ago. Detective, I'm going to
3 the best we're able -- maybe what you want to do is use this
4 chair as an easel, if you want or can. And you can hold
5 that. Stand off to one side so everyone can see that. Can
6 you explain what that diagram shows?

7 A Sure. This is a diagram of the car wash. I'll
8 stand on this side here. On this west side would be the
9 garage door you would open up and the cars drive into the
10 car wash. On this northernmost line is the track that your
11 tire would drive on, and just south of that is the drain for
12 the car wash.

13 This first door is a utility room, that's the
14 westernmost door on this north side of the building. And
15 the second door opens up to the office, which this is the
16 office that is blown up just above it. So this door here is
17 this door in the upper diagram. So the car wash, you drive
18 from west to east, you would end up going towards 82nd
19 Avenue. And like I said, this would be the blown- up
20 diagram of the office.

21 Q All right. And, folks, if you need to move to see
22 that more clearly, feel free, or you want the detective to
23 come closer -- can everyone see that okay?

24 GRAND JURORS: Uh-huh.

25 BY MR. REES:

1 Q If you would explain, we see an outline of a human
2 body on the lower part of the diagram. Uhm, does that
3 indicate where the deceased was shot?

4 A No. This is where the deceased was when we
5 arrived on the scene.

6 Q And what is your understanding of where the
7 shooting actually took place, and why the body is in a
8 different location?

9 A The shooting actually took place in the front
10 office, and the body was moved into the car wash to allow
11 for medical personnel room to work on the deceased.

12 Q All right. And maybe if -- you might want me to
13 hold the diagram, I'm going to ask you, if you would, to
14 tell the grand jury what evidence was found at each of the
15 locations marked with a placard and a number.

16 A Placard number 1 is right here in the doorway, you
17 will also see it on the larger diagram, that is one shell
18 casing. Placard number 2 is one nine millimeter shell
19 casing. Placard number 3, one nine millimeter shell casing.
20 Placard number 4, one nine millimeter shell casing, as well
21 as placard number 5. Placard number 6, right up here, that
22 is one knife. Placard number 7, by the door, is one fired
23 bullet with blood on it. Placard number 8, is one nine
24 millimeter shell casing. Placard number 9, one nine
25 millimeter shell casing. Placard 10, one nine millimeter

1 shell casing, as well as 11, 12.

2 Placard number 13 is a black taser blast door.

3 GRAND JUROR: What's that mean?

4 THE WITNESS: A piece of plastic from a taser
5 cartridge. Placard 14 is one nine millimeter shell
6 casing. Placard 15, is one fired bullet. Placard A
7 is one bullet hole through room number two door.
8 Placard B, one bullet hole through room number two
9 door. And placard 16 is a nine millimeter bullet
10 casing.

11 BY MR. REES:

12 Q Thank you. Before we move on, any questions that
13 relate to the diagram?

14 GRAND JUROR: So you're referencing in some
15 of the points a nine millimeter, and other ones you
16 said just a casing.

17 THE WITNESS: They are all nine millimeter
18 shell casings, so in total there were two bullets, one
19 bloody bullet and one bullet. Fifteen was the fired
20 bullet, and then placard 7 was the fired bullet with
21 blood on it. The other shell casings were all nine
22 millimeter casings.

23 GRAND JUROR: I have two questions. How did
24 that casing get way over there, if the police fired
25 all of the shots inside of the room.

1 THE WITNESS: When the officers were
2 searching the room -- when the crime scene officers
3 and the forensic evidence division were searching,
4 they moved the items from room one back here to this
5 area, so this was a displaced casing. When they moved
6 the property, a shell casing had fallen out of some
7 other item, this is where we recovered it.

8 GRAND JUROR: How many shots were fired
9 totally?

10 THE WITNESS: Twelve.

11 BY MR. REES:

12 Q Any other questions about the diagram itself? All
13 right. What are the dimensions of the room where the
14 shooting occurred, that's marked room number one on the
15 diagram?

16 A Seven feet four inches, by thirteen feet eight
17 inches.

18 Q And I think in response to this grand juror's
19 questions, you said twelve shots were fired; correct?

20 A Correct.

21 Q Can you explain how you reached that conclusion?

22 A Sure. The following day we were at an autopsy at
23 the Medical Examiner's office, so January 3rd, 2011. And,
24 uhm, there were ten bullet entrance wounds in the deceased,
25 and there were two bullet hole -- bullet holes through the

1 door of room number two, which means there were twelve
2 rounds that were fired.

3 GRAND JUROR: As I counted as you named off
4 the placards, I thought I counted 13 casings; did I
5 miscount?

6 THE WITNESS: You want me to go back through
7 them one more time?

8 BY MR. REES:

9 Q Answer the question.

10 A There were only twelve shots fired, there were
11 twelve casings, twelve shots fired.

12 Q Now, you have the casings, you just mentioned
13 number of wounds to the deceased. You or other members of
14 the investigation team also looked at the service weapons
15 used by Officer Wingfield and Officer Lile; correct?

16 A Correct.

17 Q And can you talk to us about what was determined
18 when the weapons were examined?

19 A Sure. The detectives seized the weapons from the
20 two officers, Officer Lile and Officer Wingfield, and did a
21 bullet count from their magazines. And there were from the
22 count twelve rounds that were fired.

23 Q All right.

24 GRAND JUROR: How many from each gun?

25 THE WITNESS: There were seven from Officer

1 Wingfield, and five from Officer Lile.

2 BY MR. REES:

3 Q All right. Now, one of the placards had items,
4 you said was a knife; correct?

5 A Correct.

6 Q And do you recall which placard number that was?

7 A Number 6.

8 Q Number 6. Does that correspond to the location
9 seen in this photograph?

10 A Yes, it does.

11 Q If you can pass that around. But, detective,
12 first, if you can point out to everyone where the knife is
13 in that picture.

14 A The knife is on top of some clothing items in the
15 shopping cart.

16 GRAND JUROR: Did you measure the knife blade
17 itself?

18 MR. REES: We have it here, we will show you.

19 BY MR. REES:

20 Q Can you explain as you pass the photo around how
21 the knife ended up in that location?

22 A Sure. Officers Wingfield and Lile exited the room
23 when a third officer arrived on scene. He met them in the
24 actual car wash area, not inside of the room. When officers
25 arrived -- when additional officers arrived, they determined

1 that the room was too small for medical personnel to work on
2 the deceased, so they pulled him out into the car wash area.
3 In doing so, they knew there was a knife in his left hand.
4 One of the officers picked up the knife, handed it to a
5 second officer, and the second officer placed the knife on
6 top of the shopping cart on top of the clothes.

7 Q What's the name of officer that put the knife on
8 top of the shopping cart.

9 A Officer Bacon passed the knife to Officer Reynaga.

10 GRAND JUROR: Did you say the second officer
11 got the knife out of the victim's hand?

12 THE WITNESS: Officer Bacon picked the knife
13 up off the ground and passed it back to Officer
14 Reynaga. Officer Reynaga placed the knife on top of
15 the clothing in the shopping cart.

16 GRAND JUROR: The knife was on the ground or
17 in his hand?

18 THE WITNESS: Underneath the body of the
19 deceased.

20 BY MR. REES:

21 Q Officer Bacon will testify about that later. I
22 have three other photos we will pass around just to orient
23 the grand jury to the scene. If you can start with the top
24 one before you pass it around, explain what we're seeing
25 here?

1 A This is a picture of the car wash bay, looking
2 north into room number one. So, this photograph was taken
3 on the south side of the rails, so in this area pointed
4 northbound, looking into the first door. This photograph is
5 taken from the west side of the car wash, the bay about
6 where the doors roll up looking eastbound. You will see the
7 deceased on the left side of the photo, the north side of
8 the car wash bay and just east of his body is the door to
9 room number one.

10 And the third photo is looking outside of the car
11 wash eastbound into the car wash bay.

12 GRAND JUROR: I had another question. In
13 room one where that initial entry doorway is to where --
14 yeah, to where like the taser mark on the door is, all
15 of that, what is that distance? I know you gave --

16 THE WITNESS: From the south door to this
17 north door?

18 GRAND JUROR: Yeah, there.

19 THE WITNESS: From east to west in room
20 number one is seven feet, four inches.

21 GRAND JUROR: I'm asking on a diagonal, so
22 where -- essentially from here to here, is there a
23 dimension of that?

24 THE WITNESS: No.

25 MR. REES: I'm not sure if she can answer the

1 question, so the record is clear. Is there a way to
2 explain what she just asked?

3 GRAND JUROR: The separation of the officers
4 from where the rounds were at and where the doors are
5 at.

6 BY MR. REES:

7 Q Is there a point of reference on the --

8 GRAND JUROR: Where groupings of placards 1,
9 4 and 7, what's the distance of 1, 4 and 7 to where
10 the placards 13, 14 and 12 about -- what's that
11 distance?

12 THE WITNESS: From here, from the south wall
13 to the taser cartridge?

14 GRAND JUROR: Yes.

15 THE WITNESS: Okay. The taser blast door was
16 four inches west of the east wall, so this is four
17 inches from this wall, and then seven feet, one inch
18 north of the south wall. So seven feet.

19 GRAND JUROR: Okay. Thank you.

20 MR. REES: Does that answer your question?

21 GRAND JUROR: Yes, it does.

22 BY MR. REES:

23 Q Okay. Okay. Now, the casings that were noted
24 with the placard number that you just described, were they
25 all seized at the scene, and then sent to the Oregon State

1 Police crime lab?

2 A Yes, they were.

3 Q And you mentioned that the firearms used by the
4 officers were seized; correct?

5 A Correct.

6 Q Were they also submitted to the crime lab?

7 A Yes.

8 Q What about the taser used in this case, was that
9 also seized and sent to the crime lab?

10 A Seized and sent to the training division.

11 Q And examined by Officer Forsyth?

12 A Correct.

13 Q I ask you to unseal this box, and if you can
14 explain what this item is and where it came from?

15 A This is placard number 6, the knife.

16 Q So this is the knife that we saw on top of the
17 shopping cart and that was placed there by Officer Reynaga?

18 A Correct.

19 Q I don't know if everyone can see it, you might
20 want to pass it around. And then, I know it's part of the
21 investigation, the knife was measured as part of it. Do you
22 recall the measurements?

23 A The blade was eight -- approximately eight inches,
24 and the handle was approximately five inches. The handle
25 was approximately five inches.

1 Q So the total length of knife from the tip of the
2 handle to the tip of the blade is thirteen inches; is that
3 right?

4 A Correct.

5 Q Just for purposes of the record, could you
6 describe the appearance of the knife?

7 A The knife has approximately a five-inch wooden
8 handle, and an eight-inch blade. I'm not sure how you --

9 Q You're not sure how to describe that type of
10 blade?

11 A Correct.

12 Q All right. That's fine. I mean, does it appear
13 to you to be a certain type of knife, or in terms of, you
14 know, hunting versus kitchen knife, or are you completely
15 unfamiliar with knives like that?

16 A I'm not familiar with knives like this.

17 Q All right. All right. Just by way of background,
18 I wanted to ask you some questions about the protocol that's
19 followed when Portland police use deadly force. Are you
20 familiar generally with the protocol?

21 A Correct. What happened on this incident was, I
22 was paged out from the office to the scene, paged out as
23 well as the forensic evidence division and the Metro Task
24 Force, which consists of two detectives from additional
25 agencies that assist in the investigation. Typically in a

1 homicide investigation, we have one supervisor on scene.
2 With an officer involved shooting, the command staff comes
3 out as well to oversee and assist in the investigation.

4 Q All right. Is the crime scene itself treated
5 essentially as a homicide investigation?

6 A Yes, it is.

7 Q What's that involve in terms of preservation of
8 evidence and interviewing witnesses?

9 A The initial crime scene is set up, the inner crime
10 scene is set with up with an officer guarding the entrance,
11 in this case, to the car wash, with a crime scene log, so
12 everybody who enters the crime scene is logged into the log-
13 in sheet. We also have an exterior crime scene. The
14 officers that were involved were all separated, they were in
15 their patrol vehicles with an officer that was not at the
16 scene at the time, so they were all separated and with
17 another officer.

18 Q Okay. And are all of the interviews of the
19 various witnesses recorded?

20 A Yes, they are.

21 Q In terms of personnel that respond to the scene,
22 are you aware of the protocol calling for additional
23 investigators from outside agencies?

24 A Correct. The Metro Task Force --

25 Q Or --

1 A I'm sorry, East County Major Crime Team.

2 Q All right. Did two detectives from those outside
3 agencies respond to this scene?

4 A Yes, they did.

5 Q Now, at the scene you have shown us this knife
6 that was seized. Are you aware of whether other weapons
7 were also found in the car wash?

8 A There were several knives in the car wash bay
9 entrance. May I refer to one of these?

10 Q Please.

11 A There were -- there was one additional knife on
12 the cart just outside of door number one. And there was
13 also at least one other knife on the ground outside of door
14 number one.

15 Q Are you aware there was also a meat cleaver at the
16 scene?

17 A Yes, there was.

18 Q Did you attend the autopsy of Mr. Higginbotham on
19 January 3rd, the following day?

20 A Yes, I did.

21 Q Did you observe whether additional weapons were
22 found on his person?

23 A Yes, there was. There were two additional knives,
24 one folding knife in a coat pocket, and one pocket knife in
25 a coat pocket.

1 Q In terms of the deceased, can you tell the grand
2 jury what you learned about him as far as his age, and his
3 background?

4 A Sure. Mr. Higginbotham was born in 1943, 67 years
5 old. He has a criminal history in the state of Oregon and
6 in the state of California to include Theft I, attempt to
7 use or carrying a dangerous weapon, Assault I, Burglary, and
8 Burglary I.

9 Q Have you been able to contact any relatives of Mr.
10 Higginbotham?

11 A No, we have not.

12 Q Do you know how long he has been in the Portland
13 area?

14 A His first contact in Portland was in 2001, so at
15 least since 2001.

16 Q You mean first contact with the Portland police;
17 is that right?

18 A Correct.

19 Q You mentioned a number of felony convictions
20 including Assault in the First Degree and Carrying a
21 Dangerous Weapon. Do you know how many contacts or arrests
22 he has had since 2001 with the Portland Police?

23 A In the state of Oregon, he has had 33 convictions
24 in the state of Oregon. With the Portland Police -- I'm not
25 sure how many contacts were with Portland.

1 Q All right. My last question is related to the
2 time frame in the case. We heard testimony that police
3 responded to a 911 call generated by Vicky Snider. Were you
4 able to determine by looking at the radio calls and other
5 records when the police were called and when they arrived,
6 and then when the officers reported that shots had been
7 fired?

8 A Yes, I was.

9 Q Share that.

10 A 15:55. At 15:55 a call was generated by Vicky
11 Snider. Would you like me to read the call, how it came
12 out?

13 Q Sure.

14 A It stated, Vicky Snider was out with a subject who
15 had been making threats, tried to hit the complainant
16 earlier, refusing to leave the property. Unknown name,
17 white male, 60 years old, gray beard, red jacket, blue
18 jeans, unknown weapons. But subject has told others he
19 carries a knife.

20 At 15:56, Officer Bacon was dispatched as primary
21 officer. At 15:57, Officer Jason Lile assigned himself to
22 assist on the call. He arrived on scene, Officer Lile
23 arrived on scene at 15:58. At 16:04 Officer Larry Wingfield
24 arrived on scene, and indicated that he was going to be at
25 the car wash just one block north of the location where

1 Vicky Snider had dispatched the call. And at 16:06, the
2 suspect was down.

3 Just prior to that, I don't have the exact time
4 that this was listed on the BOEC sheet. But just before the
5 officers had asked if there was probable cause to arrest Mr.
6 Higbotham, they had stated that Tom was in the office
7 refusing to open, and when asked if he had weapons, he
8 stated yes. So that happened just prior to Officer
9 Wingfield stating the suspect was down.

10 Q All right. Any questions about that, folks?

11 GRAND JUROR: Yes. Officer Bacon was the
12 first one there?

13 THE WITNESS: Correct.

14 GRAND JUROR: How come he was not involved in
15 the shooting?

16 THE WITNESS: Officer Bacon met with
17 complainant, Vicky Snider, at her location. She was
18 one block south of the car wash.

19 GRAND JUROR: So he was there the whole time,
20 the other two officers went to approach?

21 THE WITNESS: Correct.

22 GRAND JUROR: He didn't back them up?

23 MR. REES: Officer Bacon will testify later
24 in the hearing.

25 GRAND JUROR: Is there a particular type of

1 training for shooting a weapon like single shot or
2 group of three or fire until target goes down?

3 MR. REES: You can answer that question if
4 you're able. We will call an officer from the
5 training division.

6 BY MR. REES:

7 Q Okay. I think I confused you with my question. I
8 was trying to get on the record a physical description of
9 the knife. So, I'm going to attempt to do it, and if anyone
10 disagrees with my physical description, let me know. But
11 this knife from placard number 7?

12 A Number 6.

13 Q Six. Thank you. It has a wooden handle with a
14 grip, polished steel blade which is a single-edged. The top
15 of the blade -- the top of the knife blade curves downward
16 at the end to a sharpened tip.

17 Does that seem to be an accurate description?

18 A Yes.

19 Q Thank you. If there's no further questions, for
20 the witness, then we're done.

21

22 (Whereupon, proceedings adjourned at 3:15

23 p.m.)

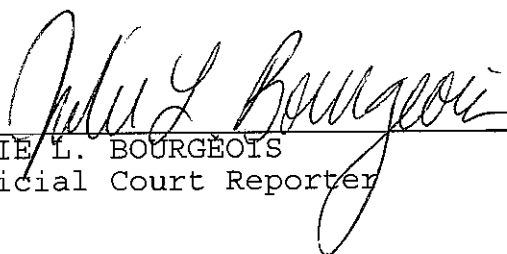
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1 STATE OF OREGON)
2 County of Multnomah) ss.

3 I, JULIE L. BOURGEOIS, an Official Court Reporter
4 for the Multnomah County Circuit Court, hereby certify that
5 I reported in stenotype the foregoing testimony and
6 proceedings had in the aforementioned case; that thereafter
7 my notes were reduced to typewriting under my direction, and
8 that the foregoing transcript, consisting of 53 pages, is a
9 true and correct transcript of said oral proceedings.

10 Witness my hand in Portland, Oregon, this 13th day
11 of January, 2011.

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15 JULIE L. BOURGEOIS
16 Official Court Reporter
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MULTNOMAH COUNTY GRAND JURY

DEATH INVESTIGATION

Deceased: THOMAS MANFORD HIGGINBOTHAM)
Date of Incident: January 18, 2011) DA Case No. 2209602
Location: 3153 SE 82nd Avenue) PPB No. 11-375
Portland, Oregon)

VOLUME 2

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled Grand
Jury proceedings were held, commencing at the hour of 2:03
p.m. on January 18, 2011, at the Multnomah County
Courthouse, Room 738, 1021 SW 4th Avenue, Portland, Oregon.

APPEARANCES

MR. DONALD REES,
Deputy District Attorneys,
Appearing on behalf of the State.

ESTELLE T. KEATING
Court Reporter
Multnomah County Courthouse
Portland, Oregon

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I N D E X

WITNESSES

For the State:	D
Christina Kinnamon	55
Larry Wingfield	58

CHRISTINA KINNAMON,

1

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

5

EXAMINATION

6 BY MR. REES:

7 Q Ms. Kinnamon, once you are settled, if you could
8 please spell your first and last name for the record.

9 A C-H-R-I-S-T-I-N-A, K-I-N-N-A-M-O-N.

10 Q Ms. Kinnamon, what do you do for a living?

11 A I work at Sally's Beauty Supplies.

12 Q And where is Sally's Beauty Supply located?

13 A 82nd and Powell, the little plaza by the
14 carwash.

15 Q All right. And is Sally's Beauty Supply -- when
16 you say 82nd and Powell, is that the Powell Street
17 Station?

18 A Yes.

19 Q All right. And I understand that you are
20 familiar with the subject who is now deceased, Thomas
21 Higginbotham?

22 A Yes.

23 Q And did you know him by that name?

24 A I didn't know his name. I just knew he was, you
25 know, just the gentleman that -- he was okay. Sometimes

1 he had an attitude problem, anger issues.

2 Q All right. Before we talk about that, give the
3 Grand Jury, if you would, please, of how long, on and
4 off, you had contact with this person?

5 A I have been with Sally's for seven months, maybe
6 eight. Uhm, I guess on-and-off contact with him for the
7 last four or five months.

8 Q All right. And would that be inside of your
9 shop or outside of your shop?

10 A Sometimes inside the store. Most of the time it
11 was outside.

12 Q All right. Now, why would he come inside of the
13 store? I'm guessing -- maybe I'm wrong -- I'm guessing
14 this is a shop mainly where ladies go for hair supplies?

15 A Ladies, gentlemen; we sell shampoo, brushes.

16 Q Was he there as a customer?

17 A He would come in and try to use the products.
18 So I guess he was trying to shop, but didn't have no way
19 of paying for the merchandise.

20 Q What do you mean "trying to use the products"?

21 A He would come in, just pick up a hair brush,
22 start combing his hair with it; like go to the section
23 where we have the gels and try putting it in his hair,
24 things like that.

25 Q All right. And on any occasion did you ever

1 speak to him?

2 A I have asked him several times not to come in
3 our store and use the products.

4 Q How would he react to that?

5 A Sometimes he would be okay, wouldn't say
6 nothing. Other times he would get boisterous, loud.

7 Q You just -- when you talked to the Detectives,
8 you described him as being nice one day and mad the next;
9 is that right?

10 A Yeah. One day he would be the nicest person in
11 the world, and the next day he -- I don't know if it was
12 because he had been drinking or what the issue would be.
13 He would just be really mean.

14 Q And I understand that on one occasion he tried
15 to spit on you; is that right?

16 A Yeah.

17 Q Can you tell us about that?

18 A I had asked him not to be panhandling in front
19 of our store and harassing the customers. And he got
20 angry with me and said a few inappropriate things and
21 tried to spit on me when I asked him to leave.

22 Q Did you ever call the security there at the
23 shopping center or the police about this?

24 A No, never the police. Always -- if I had a
25 problem, I always start with the security and then go

1 from there.

2 Q All right. Did you ever tell security about
3 him?

4 A Yes, I have.

5 Q Okay. All right.

6 Any questions about that, folks? All right.
7 Thank you very much.

8 LARRY WINGFIELD,

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

12 EXAMINATION

13 BY MR. REES:

14 Q Officer Wingfield, could you please spell your
15 first and last name?

16 A First name is Larry, L-A-R-R-Y, last name is
17 Wingfield, W-I-N-G-F-I-E-L-D.

18 Q All right. And you understand that your
19 testimony before the Grand Jury this afternoon is
20 entirely voluntarily, correct?

21 A Yes, sir.

22 Q Meaning you don't have to be here --

23 A Right.

24 Q -- if you don't want to make a statement?

25 A No. I understand that.

1 Q So you have agreed to come here voluntarily?

2 A Yes, sir.

3 Q All right. Officer Wingfield, can you tell the
4 members of the Grand Jury how you are occupied?

5 A I'm a police officer for the City of Portland.

6 Q How long have you been a police officer?

7 A I was hired on March 12th, '92. So I'm just --
8 I think I'm just wrapping up my 19th year.

9 Q And prior to joining the Portland Police Bureau,
10 did you have any other law enforcement experience?

11 A No.

12 Q And how old are you now?

13 A I am 47.

14 Q You are 47? What's your educational background?

15 A I took some -- just high school. Basically, I
16 took some college classes when I was in high school.

17 Q Where did you go to high school?

18 A Anderson, California, which is right outside of
19 Redding, California.

20 Q All right. How did you -- how did you get from
21 that point to making the decision to join the Portland
22 Police Bureau?

23 A Well, I got into working security here in
24 Portland. I worked for Nordstrom's as the security
25 manager of the downtown Nordstorm Store. I met some

1 officers. They read your report, do some cases for you.
2 They said, "You should put in." They wrote letters for
3 me, asked me to put in. I got hired, and so here I am.

4 Q Where did your train to become a police
5 officer -- was that done at Monmouth?

6 A Yeah, in my time, we went through the Monmouth
7 Academy and then came back and did a Basic Academy here,
8 Basic Academy here in Portland.

9 Q And for the benefit of the Grand Jurors, can you
10 explain what -- at that time what was at Monmouth, which
11 was the campus of --

12 A Western Oregon.

13 Q If you could explain what's at Monmouth, which
14 was the campus at Western Oregon State University?

15 A Yeah. There is not a whole lot in Monmouth.

16 Q I mean as far as the police training facility.

17 A That was where we did our police academy. And
18 we did, you know, law classes. We did firearms. We did
19 driving, police emergency driving, defensive tactics.
20 Spent a couple months there.

21 Q All right. And then you were saying after you
22 completed that course, which was the course required by
23 the State of Oregon, you did additional training with the
24 Portland Police Bureau?

25 A Yeah, the trouble with the State Academy is that

1 most of the agencies are very small departments. So the
2 tactics they teach are -- have to be more relevant to
3 what they do more necessarily than us. We have a lot of
4 manpower comparatively. So when you get back to
5 Portland, they basically say kind of forget what you
6 learned tactic-wise and we're going to teach you the way
7 we do because we have more -- we work with more officers.
8 Instead of one guy going to a call, we'll send three guys
9 to make it safer. So everything is just a little
10 different. And they like to teach you their own way.

11 Q All right. So you went through the Basic
12 Academy?

13 A Yes.

14 Q And after that, did you have additional training
15 with Portland?

16 A You do a weekly in-service every year, and then
17 in '98 I became a member of the SERT Team, which is our
18 SWAT Team that we have. And we train four days a month
19 and then a week every year in the summer. So that's
20 thousands of hours of varied training since then.

21 Q And are you still a member of SERT?

22 A Yes. I have been doing that like
23 thirteen-and-a-half years.

24 Q All right. And when you are a member of SERT,
25 how does that work as far as responding to calls?

1 A Well, you are on call 24 hours a day. You carry
2 a pager. Then, like with me, I have a police car that I
3 take home, an unmarked police car. And when it goes off,
4 your pager goes off, you just respond and deal with the
5 problem.

6 And my normal day-to-day job for me is a
7 patrolman. So I work patrol about three weeks a month.
8 And then every other Wednesday-Thursday I do SWAT
9 training. And then the rest of the time I'm a patrolman.

10 Q All right. Have you worked in a patrol capacity
11 through your years with Portland Police or have you had
12 other assignments?

13 A Yeah, I worked patrol ever since I got on. I
14 did take one year of what we call Neighborhood Response
15 Team, where you kind of work the problem areas in your
16 precinct. And that was a uniform assignment also,
17 basically, but you are more specialized. You don't take
18 radio calls necessarily. You deal with drug houses,
19 gangs, whatever your precinct needs.

20 Q Are you assigned to a particular precinct now?

21 A I have been at East Precinct my entire career.

22 Q Generally, what are the boundaries of East
23 Precinct?

24 A It's moved over the years. Right now it's 39th
25 on the west; goes I-84 to Gresham pretty much to

Wingfield - D

1 Clackamas County on the south end. So it's a huge area.
2 It's like 40 square miles.

3 Q And over the years in that precinct have you
4 worked in different districts within the precinct?

5 A Yeah. Predominantly the north end around 82nd
6 and Sandy, Parkrose area, 82nd Avenue a lot. I worked --
7 for one year I worked on the 82nd Avenue end right down
8 by the Clackamas County line. I did that for like a
9 year. Now I'm back on kind of the north end. I kind of
10 work guys' days off now. I fill in their districts on
11 their days off. I'm a SWAT guy, so it makes more sense
12 for me to be a utility guy.

13 Q In those districts you fill in when you are
14 working, what kind of people live within those districts?

15 A Well, East Precinct is really pretty varied.
16 You have every kind of culture and every kind of race in
17 that precinct. And then there is a lot of homeless
18 people out in East County. Eighty-second, you get a lot
19 of that, a lot of drug activity, a lot of prostitution
20 activity on 82nd Avenue, and homeless people, a lot of
21 homeless people, mentally ill people that you deal with.

22 Q Do you work a particular shift?

23 A I work mainly 7:00 to 5:00 on patrol, and then
24 SWAT Team stuff we train 8:00 to 6:00 day shift as well,
25 and then the on-call stuff is any time, obviously. We do

1 most of our search warrants between the hours -- probably
2 one a week, we do those like 2:00, 3:00 in the morning.

3 So I work kind of all hours of the day.

4 Q Okay. But when you are working on patrol --

5 A 7:00 to 5:00.

6 Q 7:00 in the morning until 5:00 in the afternoon;
7 is that right?

8 A Yes.

9 Q Okay. Let me ask you some questions now about
10 the day of the shooting, which was January 2nd, 2011.
11 Was that a day where you were working a 7:00 to 5:00
12 shift?

13 A Yes, it was. It was a Sunday, I believe. And
14 it was the first day of my week. And as I say, we work
15 four ten-hour shifts. I just came off three days off.
16 It was my Monday, basically.

17 Q All right. And can you kind of talk to us about
18 your routine that morning before you went to work?

19 A It seemed like it was a very cold day. I think
20 it was like 17 degrees. So it was fairly slow as far as
21 the amount of activity. And I was working --

22 Q I'm sorry. Let me restate the question.
23 Backing you up to before you began your shift at
24 7:00 a.m. that morning, I'm asking about your routine
25 that morning at home. Do you know what time you wake up

1 to get ready?

2 A I wake up at 4:45. I live east of Woodland,
3 Washington about eight miles. So I have about a
4 45-minute drive every day. So I just -- have been on day
5 shift long enough I automatically wake up, go to work.
6 We have roll call at 7:00, and then I head out after
7 that, work patrol.

8 Q All right. And was anything unusual going on in
9 your life on that date?

10 A No, not at all. I just had a great weekend. I
11 have been married 22 years, same woman, got three kids,
12 and spent the weekend with them, you know. So it was a
13 good weekend.

14 Q You mentioned roll call, seven o'clock?

15 A Yeah.

16 Q What happens at roll call?

17 A You meet with your Sergeant, and if the
18 Lieutenant is working that day, which is probably not on
19 a Sunday, they just kind of advise you what has happened
20 the night before, the last couple days. And then they go
21 through what's called the "all box", where it's people
22 that are wanted that they want us to go look for;
23 pressing issues, you know, stuff that's happened in the
24 last couple days. Like for a guy like me that just came
25 off a three-day weekend, I need to know what's going on

1 in the precincts before we head out. They tell everybody
2 where everybody is going to work. For me it's different
3 each day filling in somebody's day off, so they tell you
4 where you are going to work. If anybody has any
5 questions, other than that, you head out.

6 Q On that Sunday, January 2nd, was there anything
7 unusual happening that was mentioned at roll call?

8 A Not that I recall. It was just kind of a normal
9 day.

10 Q All right. And then I think you actually
11 started to talk about this earlier, about this shift,
12 itself. And I think you were saying it was kind of slow
13 that morning?

14 A Yeah. When you get the cold weather, it
15 oftentimes makes it slow for us on patrol. It helps us
16 with keeping the call load down.

17 Q And that day were you working uniform?

18 A Yes.

19 Q And were you working in a marked patrol car?

20 A Yes, I was.

21 Q Were you working with anyone else, or were you
22 in a car by yourself?

23 A No. I often work with another patrolman, who is
24 also a SWAT guy, but that -- he has one day off a week
25 different than me. So he has Sundays off, Friday

Wingfield - D

1 Saturday, Sunday. I have Thursday, Friday, Saturday. On
2 this day he was off. So on this day I was working by
3 myself.

4 Q Right before this call that took you to the
5 carwash, were you on any other calls immediately before
6 that, or what were you doing?

7 A No. We take calls pretty much about until four
8 o'clock. And the afternoon -- they come out in two
9 shifts pre-relief and afternoon. Pre-relief comes out on
10 the street about 2:30. Their job is to knock down the
11 big calls so we have time to finish our reports and get
12 in. The main relief comes in 4:20; 4:30 is when the main
13 afternoon shift comes out. We are phasing out and they
14 are phasing in. It was just a little before 4:00.

15 I caught up on reports. I think I only wrote a
16 couple reports that day. I met another officer that was
17 working near me. We were at 81st and Holgate just
18 talking out our car doors -- we call it "car to car",
19 just talking. It was Officer Lile, as it turned out, but
20 we were just visiting when that call came out at the
21 carwash.

22 Q All right. And do you remember generally what
23 the nature of the call was?

24 A Yeah, it was the mall there, little strip mall,
25 82 and Powell, and there was a female security officer

1 having trouble with a man who wouldn't leave. And he was
2 a chronic trespasser with her. She's had some physical
3 altercations with him. He was supposedly white male
4 about 60 wearing a red coat, blue jeans. And he's known
5 to carry a knife, although she didn't see a knife on this
6 day.

7 Supposedly she had an incident with him the day
8 before. And she was wanting to arrest him for
9 Trespassing. The call was given to Officer Bacon, who
10 was one of the afternoon pre-relief officers. The
11 Dispatcher was struggling to find a cover car that was
12 available that was close. When the Sergeant heard it,
13 one of our day-shift sergeants, and he said he would
14 cover the call.

15 So I talked to Lile, said, "You know, we're due
16 to go in, but we can pick the cover up on that on the way
17 in. Won't take us long. It will be on the way back to
18 the station."

19 So we just started driving there. We were
20 sitting at 81st and Holgate. So we went west on Holgate
21 to 80th and then north on 80th to Powell. And then we
22 just had to cross Powell right into the parking lot
23 entrance of the shopping mall there.

24 We went over to the northeast corner of the
25 shopping mall. There is a pawn shop there. That's where

Wingfield - D

1 the female security officer was at.

2 Q I want to ask you about the contact with the
3 female officer, but before we get to that point, can you
4 tell us approximately how long it took you to get from
5 where you were when you first received this radio call to
6 that location?

7 A It was only about twelve, 13 blocks. So I would
8 guess a couple minutes at most. And we were scooting
9 along pretty good. A couple minutes.

10 Q And were you familiar with that location that
11 you went to?

12 A No. It's -- it's something I drive by, you
13 know, commonly. But I worked, like I say, on the north
14 end of our station and on the south end for, you know,
15 about a year. That area in the middle, you know. The
16 big thoroughfares I know and most of the big businesses I
17 know, but the intimate little details of that part of the
18 station, no, I didn't know.

19 Q Okay. Now, did you personally meet with the
20 female security officer?

21 A Yeah. As it turned out, I was the first officer
22 on scene. And I went up to the -- parked right in front
23 of the pawn shop. She came up to the window of my car
24 and started telling me that she had this conflict with
25 this guy; that he routinely is panhandling and causing

1 trouble for her. And she's told him he can't be there.
2 And he's got violent with her, threatened her and did
3 that again with her today. And she said that he -- I go,
4 "Where is he? Which way did he go?" She said, "He
5 headed up the street." She thinks he's going up to the
6 carwash where he's camping.

7 About that time, Officer Bacon come walking up.
8 She was going to tell me the whole story. I didn't want
9 to put her through that. I explained to her, "Honestly,
10 I'm one of the cover officers. He's going to write the
11 report and stuff. So I'll have him give you the details.
12 What I can do is go find him and detain him for Officer
13 Bacon before he gets too far away." She said, "No
14 problem." She gave me a 30-second version of what
15 happened, and then I went up to look for the suspect.
16 She said he was up by the carwash.

17 Q All right. And can you just tell us what your
18 thinking is at that point as a police officer?
19 Obviously, you only just arrived and you only have some
20 information.

21 A Yeah.

22 Q But do you have anything in mind as far as what
23 kind of situation it is?

24 A It's a really common call for us. And that can
25 be good or bad. I mean, it sounds like this guy has an

Wingfield - D

1 anger problem. He's known to carry knives. But at the
2 same time, you know, probably more than half the people I
3 arrest have knives on them, especially street people,
4 homeless. So it's real common. That's not necessarily a
5 huge flag for us. You know, when they are mentally ill
6 or, you know, they have this anger problem from being on
7 the street and being dysfunctional, oftentimes they have
8 a bad reaction to us. That's the same thing with the
9 security guards. They have the bad luck of having to go
10 up to these people and move them along and that causes
11 friction between them. Sometimes they get these
12 personality conflicts that add to it as well. So that's
13 what I was wondering if she had a conflict with him.
14 That doesn't necessarily mean we're going to have a
15 conflict. A lot of times we go to them and if you talk
16 to people with respect, you can start over with them and
17 you can make that work.

18 So I wasn't overly concerned about the nature of
19 it. I thought that we would be fine. There was two of
20 us. You know I'm six-foot, 230. My partner is a
21 good-size guy that was covering with me. I thought we
22 were good to go deal with this. It was routine call.

23 Q When you say, "routine call", at this point is
24 it investigating a crime or just talk to this guy?

25 A Just prior to backing out, Tim got there. She

1 told him what's happening. He said, "Honestly, it sounds
2 like you told him to leave many times. Do you want him
3 arrested for Trespassing?" She said, "Yeah, I do."

4 I thought, yeah, we got PC for a crime. We'll
5 just retain him for that. We call Bacon, he can make the
6 decision on whether or not he is arrested. There is two
7 sides to the story we'll just go to detain him and then
8 he can do the interview. So that was our thought.

9 Q And what did you do then at that point? You
10 mentioned Tim, is that Officer Lile?

11 A No. That's Tim Bacon. He was the primary
12 officer, afternoon officer, that was assigned to the
13 call.

14 Q Did you leave Officer Tim Bacon?

15 A Yeah. He started asking her for her address and
16 name, all that. There was no reason for me to sit
17 there and listen for that. I need to go look for the
18 guy.

19 Q Where did you go from there?

20 A We pulled out onto 82nd. We went north. I was
21 going north, kind of up the center divider. It wasn't
22 far. There was a lot of traffic, so I took the center
23 lane. I actually drove past it because I didn't know
24 where I was going. I had never been there before.

25 And Lile stopped. I realized he stopped. He

1 was kind of pointing in. He pulls in ahead of me. And
2 we go back into the carwash, and you know it looks like a
3 pretty nice business. I think it -- probably just with
4 the economy it probably foreclosed or whatnot. So it's
5 not real disreputable-looking on the outside. I was
6 looking for a camper. I didn't really spend a lot of
7 time talking to her. I didn't catch what she was saying.
8 "They are camping there," I thought there would be like a
9 tent or cardboard shack or actual camper.

10 Q Camping outside the carwash?

11 A So I drive to the back. I'm not finding
12 anything. I'm going to probably go look for him on 82nd
13 northbound. And Lile waves to me and says, "Hey, I think
14 she's talking about inside this place. And I read
15 something about it on" -- there is like a blog that we
16 have where officers that work the day before, the shift
17 before, can leave you information. And it was kind of a
18 heads up that there are a lot of people camping in this
19 place, a lot of transients. And it was to try to help
20 patrol it.

21 And he said, "I read about that, heard about
22 it." I said, "Okay. We'll get out. We'll check." So
23 we park our cars, and we go up to the window. And I
24 think Officer Lile knocks on the window; initially can't
25 see anybody in there, but then a guy comes to the window.

1 And he seemed pretty friendly. And we really had a hard
2 time talking to him through the window, but he kind of
3 waved to the west side, a roll-up door. So okay, we'll
4 go around the back.

5 When I got to the window, you could see in
6 there. There was like trash everywhere, shopping carts.
7 I was like this isn't the best place. I put out on the
8 radio dispatch we're going to be inside this abandoned
9 carwash. I didn't have the exact address, but I told
10 them approximately where it was, a block north of the
11 strip mall; so if we needed help, or whatever, they would
12 know where to send cover to us.

13 We go around to the roll-up door. The guy comes
14 to the door, lifts it up. I was the one. Lile had been
15 kind of following me. I interviewed the ladies, Lile
16 hadn't. He didn't know the whole details. So I was the
17 one doing the talking. And the guy came to the door.
18 Like I say, he seemed real friendly.

19 I said, "Hey, you know, did you get in an
20 argument with the lady at the mall, this security
21 officer?" He said, "No, not me. I have been here all
22 day."

23 I go, "Okay. Is there anybody else here?" And
24 he says, "Yeah, Tom's here."

25 I said, "Has Tom been here all day, too?" He

Wingfield - D

1 said, "No. He just got back 10, 15 minutes ago."

2 I go, "Okay, Tom's probably the guy we need to
3 talk to. We had a deal over at the mall, not a big
4 deal." I said, "Can you show us where Tom is at?" He
5 said, "Yeah."

6 So he starts leading us in this place. There is
7 no power in there. Kind of dark and just stuff. I've
8 got to describe to you there is sometimes two or three
9 feet of garbage and trash and shopping carts on the
10 floor. It is a scary-looking place. It's dark in there.

11 We go down this main area where normally you
12 would drive your car through the carwash and there is one
13 entrance to the left. It's like a dark hole; doorway
14 open, real dark, couldn't see in the back. Then the
15 second hallway we went into the same thing, there was
16 maybe seven-feet wide, 13, 14 feet long. There is a
17 little path kind of winds through the middle. There are
18 blankets and boxes and dirty clothes and just crap on the
19 floor.

20 And he goes up to the -- a door at the end of
21 that, and I knew it was probably a pretty small room,
22 having looked at the building from the outside. It was
23 like an L-shape off of the main carwash. So I knew it
24 was, you know, a fairly small room.

25 There was a door that was shut. And there was a

1 hole where the doorknob was. There was a throw-bolt in
2 the door that locked it, but there was no knob to turn
3 it. And this guy that let us in. He leans over to the
4 hole and he says, "Tom, the police are here to talk to
5 you."

6 And when we knock on a door, we always stand to
7 the side, you know, in case -- I have been in a couple
8 incidents where bad guys have shot through the door. So
9 we always stand to the left. So I went to the left of
10 the door. Lile's a little back and the citizen's kind of
11 in the middle.

12 It got real quiet in there, so I knock on the
13 door. I say, "Tom, this is Officer Wingfield, Portland
14 Police. Not a big deal. We just want to talk to you.
15 If you could come out and talk to us, that would be
16 great," just like that. I'm kind of knocking where I
17 know he can hear me through the hole. It know it's a
18 six-by-eight room. I'm talking through the hole, so I
19 know he hears me.

20 It gets really, really quiet in there. Plenty
21 of time had elapsed for this guy to get to the door and
22 he wasn't. So the alarms start going off for me, you
23 know, something is not right here.

24 So I look over at this citizen, you know, that's
25 with me, and he's still looking pretty happy, trying to

1 be helpful. He's not concerned yet. But I ask him, I
2 say, "Hey, this guy got any weapons in there?" And he
3 says, "Oh yeah, he's got weapons in there. He's a
4 two-tour Vietnam vet. He's got weapons."

5 And, you know, about that time, when I said
6 that, I said it loud enough so that the suspect through
7 the door would hear it. I didn't mind him hearing that,
8 let him know we're starting to get worried about him
9 taking time.

10 Anyway, he steps through the door and kind of --
11 says, "Oh, yeah, I got a weapon all right." And he said
12 it in kind of a confident manner. It wasn't loud, like
13 to be a show for us. It was just a quiet, matter of
14 fact, you know, voice.

15 And that was -- that's when everything changed
16 for me. You know, we -- I just kind of grabbed the guy,
17 says, "You need to get out," and moved him to the door.
18 I drew my pistol. I know, without seeing anything, Lile
19 drew his pistol, too. I heard his holster.

20 And I start backing up. I said, "Hey, Tom," I
21 said, "this ain't a big deal. You need to come out with
22 your hands up so we can see them, just step out and talk
23 to us. This isn't a big deal." And nothing, no answer.

24 Then I noticed that there is -- he's got his
25 finger in there or a tool or something in the throw bolt

1 in the hole of the doorknob and he's trying to unlock the
2 door to come out. So I kind of get stopped maybe halfway
3 out. I can hear the other two shuffling out the door.
4 And my partner's getting on the radio. I'm thinking,
5 "Cool. He's probably calling for cover." Letting them
6 know we have a guy that says he's got a weapon kind of
7 barricaded in this hall.

8 I'm kind of working my way backwards through
9 this laundry. It's difficult to work your way backwards
10 and not take your eye off the door in this laundry.

11 The door opens up. First thing I see is this
12 blade coming out the doorway, kind of held up at an angle
13 like this, in his left hand, and then he steps out.

14 And I hear Lile yell at him through the doorway,
15 "Drop the knife, drop the knife." I flip my light on my
16 flashlight. I didn't give him commands. I just -- since
17 Lile was doing it, he was doing it, doing a good job, I
18 just kept quiet. It's kind of confusing when you have
19 got two people yelling at one person. So I let him do
20 that. I was just going to be covering him.

21 And this guy, he steps out, and the look on his
22 face just made me kind of sink inside. I just thought,
23 "Awe, shit, you know, this guy is going to make us shoot
24 him." I just start getting mad, getting angry that he
25 was going to make us do that. I somehow just knew from

1 the look on his face he was going to do that. We were
2 giving him these commands. Lile was shouting them out
3 super confident, excellent commands, the way we're
4 trained, and this guy -- nothing; he's not answering any
5 of it.

6 Then I heard him holster up. I could hear him
7 back up. I heard him holster up, so I know he's going
8 for some type of less-lethal weapon, probably a Taser
9 would be my guess. Then, sure enough, just a second
10 later the guy just stepped out of the doorway. He kind
11 of stops. I hear the Taser go off. It hits this guy. I
12 think one probe is like in the crotch area; one was in
13 his upper chest area. But he had on a lot of clothing, a
14 big red coat on, I think several layers, probably
15 freezing in that place, 17 degrees, he was just layered
16 up. That kind of can defeat our Tasers. It just doesn't
17 get contact. I could give you some effect. You can feel
18 it. It hurts, but it doesn't disable you like it would
19 if you got hit with a T-shirt on.

20 Q Let me interrupt, if I can, just a couple
21 questions?

22 A Go ahead.

23 Q Your description. You said that when the door
24 opened, you see the blade --

25 A Yeah.

1 Q -- in his left hand. How far away are you --

2 A Well, this hallway --

3 Q -- from the blade at that point?

4 A I'm sorry. I didn't mean to cut you off. This
5 hallway is 13 feet long. I'm probably mid way, probably
6 seven feet from the doorway when he comes out. Pretty
7 much like this doorway here, the knife comes out.

8 Q Tell us what you are seeing. Are you seeing
9 just the knife blade or him holding the knife?

10 A Well, it's a long blade. I'm guessing
11 ten inches to a foot-long blade. He had it in his hand.
12 When he stepped out, it obviously came out first. I
13 thought, "Oh, shit, here comes this big-ass knife."

14 Q I take it your focus is on the knife?

15 A Yeah.

16 Q But beyond that, are you seeing all of this
17 person as well?

18 A Well, I mean, just half a second later, you
19 know -- I mean this is all really slowed down in my mind.

20 Q Sure.

21 A But he steps out and he's looking at me. And
22 he's got the eyes of like a shark. It's like there is no
23 emotion. He looks mad. He looks angry. There is no
24 response to anything we're saying or doing. And he looks
25 very determined or angry. And it it's just like -- I

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1 knew he was going to make us shoot him. I go, "Damn it,"
2 you know. I'm thinking in my mind this is a guy who
3 obviously well in his 60's. He's a two-tour Vietnam vet.
4 I mean this is the last guy I want to get into shooting
5 with, you know. I don't know, that was a big deal with
6 me being that he was a military service guy and, you
7 know, and being an elderly guy, too. There is nothing
8 about this that I want any part of.

9 But I start to back up. And I want to get some
10 more distance between me and him. And as I'm backing up,
11 I'm kind of one step with my back leg, dragging my front
12 leg and I'm moving back. When he gets Tasered, I kind of
13 stop for a second just to see if that's going to work,
14 and it doesn't. Then he starts coming. And he's got
15 this determined look on his face. He is going to fight
16 through the Taser.

17 And I hear Lile -- I think he dropped his Taser
18 on the ground and went to his pistol. I hear his pistol
19 coming out. And the guy is coming at me, and I'm backing
20 up.

21 At this point, I hit the back of the door. And
22 Lile's on one side of the door and I'm on the other. And
23 I'm caught on the wrong side of the room. I'm tripping
24 on this laundry and boxes and stuff. I realize I'm not
25 going to make it out of this door. He's going to beat me

1 before I get around the door and get out of here. It's
2 just not going to work; going to finish right here. The
3 Taser didn't work and just didn't have any options left.
4 The only thing left was shoot him.

5 And I decided to fire. I'm not sure if I fired
6 first or Lile did. I think Lile actually fired just a
7 second before I did. And his gun -- he's left-handed
8 with him on the other side of the door his gun went off
9 right in my right ear. That was tremendous. We're in a
10 concrete block room, eight feet by twelve feet. It was
11 horrendously loud, the shot going off. My shot went off
12 the same. I'm a trained 10-year SWAT guy. I have seen
13 people shot. I don't know why I expected this. But when
14 I hit him, I knew I fired accurately and it was a
15 center-mass hit, and it made no impact on this guy that I
16 could see, you know. He was kind of leaned forward. I
17 shot him -- I know I hit him -- I wouldn't be surprised
18 if I hit him right in the heart. You know, it's probably
19 just -- you know, things are kind of slowed down for me.
20 Then I thought, "You know, he's really close; I need to
21 just stop this guy because he's getting to me with this
22 big knife." I'm leaning back at this point, trying to
23 get away from the knife. And I just fired, I'm guessing
24 seven to nine rounds -- I don't really know -- all center
25 mass. And finally he spins and kind -- it's like nothing

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1 is working. Then all of a sudden he spins real quick to
2 his right, takes like one step and then turns at a
3 90-degree to the right and ends up falling face down in a
4 sleeping bag like-bedding area and he's down and it's
5 done.

6 And I get around the door to where we're both
7 behind a position of cover, behind the doorway. And, you
8 know, Lile -- he's okay. The citizen's off to my right a
9 little bit. He's doing good. I get on the radio --
10 actually, as we're moving, I get on the radio, "Shots
11 fired, suspect down. I need Code 3 medical for this guy.
12 He has been shot several times in the chest. He's down
13 hard. He's not going to be a threat to us. Get the
14 medical here. You need to get here fast. He's hurt
15 bad."

16 I get behind the door. I tell Lile, "I need to
17 reload my weapon." I fired many rounds, I had to get
18 back up to where I had enough rounds to feel comfortable.
19 He said, "Go ahead."

20 And we're waiting for cover at that point. This
21 guy, you know, I have been trained in wound ballistics
22 classes for SWAT Team. I know there is really nothing I
23 can do for him first-aid wise. I can't, you know, give
24 him CPR or anything like that. With multiple chest
25 wounds that would just pump him out. Really we need to

1 get medical there, get oxygen on him and get him to
2 Emanuel, OHSU; that's what needs to happen. I can't do
3 anything for him. Also we got the problem, he's still
4 got the knife.

5 So we're covering him, waiting for cover. And
6 it took probably two or three minutes for the next
7 officer to arrive. And when they got there, they said,
8 "Hey, we need to get in there, get medical to this guy."
9 So we moved forward. And I said, "I don't know if the
10 knife's in his hand or underneath him or what, if he
11 dropped it in some of this stuff."

12 I kind of moved up to him and I kind of leaned
13 over the shoulder, and I could see the knife in his left
14 hand there. He kind of fell holding it.

15 I have seen a lot of dead people, and this guy
16 had passed away. He was already dead. He had been shot
17 a dozen times right in the chest. So he was gone.

18 And while we were watching him, I was watching
19 him breathe for about ten seconds and his breathing
20 stopped. I knew he had passed away. My thought, "We
21 can't do anything for this guy. The knife is under him
22 still. He's gone. It's a crime scene there."

23 I told Bacon when he got there what we had. The
24 guy has been shot several times. They cleared the
25 building, made sure no one else was in there. They

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1 cleared us out of there, took over and then they dealt
2 with him. I'm not sure how they worked it out. He had
3 passed away.

4 Q All right. I want to ask you a few follow-up
5 questions about that and really going back to your
6 initial contact with this person. You said Officer Lile
7 was giving excellent commands?

8 A Yeah.

9 Q Can you explain what you meant by that?

10 A Well, you want to be, you know, authoritative,
11 loud, firm, let him -- so there is no doubt in their mind
12 what you want them to do. He said, "Drop the weapon, put
13 the weapon down." There was no response to that. He
14 actually started coming forward.

15 Then at one point he actually said, "Tom, we
16 don't want to shoot you. I thought that was a nice
17 touch, to be honest with the guy. That's true; we didn't
18 want to shoot him. That got us nothing.

19 Q I'm sorry. In terms of these commands, can you
20 give us an idea of the tone of voice and the volume that
21 was being used by Officer Lile?

22 A He was shouting at this guy, yelling at this
23 guy, "Put it down." You know, it was very, very firm.
24 He was yelling.

25 Q And at that point, is Officer Lile in visual

1 contact with this subject?

2 A Yeah, he's -- I'm assuming he's about in the
3 doorway or maybe even a step or two inside the doorway,
4 in the room with me now. He had stepped out to use his
5 radio, and then when the door opened up, he must have
6 heard it and came back in.

7 Q Could you see Officer Lile?

8 A I could have if I had turned to look, but you
9 know once he said he had a weapon and I saw him opening
10 the door, I just -- I was just focused on that. That was
11 a huge deal for me not to take my eyes off that. I was
12 just trying to back up, get out of there. At the time I
13 didn't want to take my eyes off. I didn't know it was a
14 knife. It could be a gun, you know.

15 Q Let me get the diagram. If you could show us
16 where you were standing at?

17 A Sure.

18 JUROR: Did you know for sure that the man in
19 the office was this Tom or how did you know that?

20 THE WITNESS: Well, when the guy answered the
21 door -- or actually when the guy went up to the door, he
22 said, "Tom, the police are here." So I was expecting the
23 guy inside there. He said there was only one other guy
24 there. That's the guy that came to the door.

25 I didn't mention it to you earlier he was

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1 wearing the red jacket and blue jeans. He matched the
2 description perfectly. I was confident it was Tom.

3 JUROR: And you were confident there was only
4 one other person there on the scene?

5 THE WITNESS: We hadn't cleared the building,
6 but the guy who let us in, he said there was only one
7 other person in there. He took us in there. That could
8 be wrong. These guys come and go and they don't always
9 check in with each other, but --

10 JUROR: Do you know the other man that was
11 there?

12 THE WITNESS: I didn't know him -- either of
13 these people. But -- no, I didn't know him.

14 MR. REES: I'll just hold this up. That allows
15 everyone to see this, and maybe you could just give us
16 kind of a general idea. You see what they have done
17 here?

18 A Right.

19 Q Kind of enlarged the room off of the main
20 carwash for the diagram. Is it possible to show us where
21 you were standing?

22 A Yeah. The roll-up door was here, so we met the
23 guy here. He let us in. We walked down this path, past
24 this door to this door here. And this is the entrance.
25 It takes up again here. This is the same door for all

1 intent and purposes, and I went in.

2 The citizen guy -- I can't remember his name --
3 but he went up to the door here and yelled through the
4 door at Tom. I took up a position right here. The
5 citizen was standing here and Lile was right there. And
6 then when he said he had -- when the suspect said he had
7 a weapon, I turned around to this guy and motioned him
8 out, and he didn't -- we didn't ask twice. He pretty
9 much headed out.

10 Then Lile went out here to use the radio. I
11 made it to about here, I think. And I was just standing
12 there when the door actually opened. And then he came
13 out. He got tased right about here, and then he fought
14 through that. He made it to about here when I shot him
15 the first time. I was right about here on this side of
16 the door. Lile was on this side of the door. So we're
17 talking, you know, six, eight feet when we first shot
18 him. He fell backward and ended up right here kind of on
19 the ground.

20 Q Did everybody see that?

21 A It's a small, small room.

22 JUROR: The door you backed into, where was it?
23 On that diagram it shows it straight out. Kind of a
24 strange position for it to be in.

25 THE WITNESS: I think it's hinged on the left,

1 not on the right. I'm not positive. When I backed up, I
2 remember feeling it against my back. And Lile was on
3 this side of it. So it was probably kind of something
4 like this and I came straight back into it, if that helps
5 (indicating.)

6 JUROR:: I'm just trying to visualize it in my I
7 head.

8 THE WITNESS: Yeah.

9 BY MR. REES:

10 Q Can you describe, if you recall, how he was
11 holding the knife?

12 A It was in his left hand. And it was kind of up
13 at an angle, like this. It wasn't chest high, wasn't
14 stomach high, kind of right in the middle. He was kind
15 of upright when he got hit with the Taser. Then he kind
16 of went, was kind of bent over and coming at us like
17 this. After I hit him a couple times, he kind of stood
18 up straight. I don't know if the impact of the rounds
19 stood him up. He kind of stood up straight. He never
20 did get to a standing position or anything like that. He
21 ran into a hail of bullets. I guess, that stopped him at
22 about six, eight feet.

23 Q Did he say anything at any time?

24 A Never that I remember. I guess it's possible
25 and it just didn't register. But I remember early on

1 that he wasn't saying anything to Lile's commands. And I
2 was like, "Crap," you know, because I mean we didn't want
3 to shoot this guy. It was a bad deal. But --

4 Q And based on your training and experience, is
5 that an unusual reaction when two police officers are
6 pointing their weapons at someone and yelling at them to
7 do something?

8 A Yeah.

9 Q Do most people react to that?

10 A Absolutely, yeah. Most people, you know, they
11 drop their weapon, get down on the ground, hands up,
12 whatever. When the guns come out, it's usually serious,
13 you know. And this guy was just not like that. He --
14 you know, like I say, it looked like there was
15 determination on his face; he already made his decision.
16 And, you know, I just knew it the minute I saw his face.
17 "Awe, crap, he's going to make us do this." It was a
18 sinking feeling, you know.

19 Q Based on your training and experience, what's
20 the danger posed to a police officer by someone who's
21 armed with a knife like that?

22 A Well, you know they are all slightly different,
23 but they train us to not let anybody get within 21 feet
24 of you with an edged weapon. When they reduplicate these
25 things in training with like a training knife and

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1 somebody with simulation rounds in their gun, the
2 action-reaction you need to defend yourself it's very
3 likely you are going to at least get cut, if not killed,
4 by the person with the knife before you can accurately
5 fire on them and stop them. Handguns are pretty good
6 weapons, but they are not that lethal. It takes a second
7 or two sometimes, and you can cover 21 feet really fast.

8 Q And in this case, was this person --

9 A Yeah, he started out at twelve feet. And we let
10 him get to six, eight feet. And that -- you know, that
11 was, honestly, a mistake. If I look back on anything I
12 would do differently, I wouldn't let him get this close.
13 He was an older man. He was a veteran. You know, we
14 just didn't want to shoot him. I put my partner at risk.
15 I put myself at risk to try to save this guy.
16 Tactically, it was a mistake.

17 Q He was well beyond the 21-foot --

18 A Yeah, our vests don't protect us from knives.
19 You know, this knife was pretty long. And I mean they go
20 right through our vests. It stops bullets pretty good,
21 but not knives. They go right through.

22 Q All right. Now, have you seen someone who has
23 been tased before?

24 A I have been tased. I have tased a dozen people,
25 I suppose. So yes.

1 Q All right. And are you familiar with how
2 variable the Taser is in terms of being an efficient
3 means of debilitating someone?

4 A Sometimes it's devastating, it just drops
5 people. But I've had times where it's failed. You know,
6 you don't know what you are going to get.

7 I shot a guy once with baggy jeans, had one
8 probe in the jeans and he had a button-up shirt that was
9 not tucked in, it was just loose. He was holding two
10 knives. We shot him in the shirt and pants. It didn't
11 work. Actually, another guy shot him. It didn't work.
12 So I stepped up, I shot him with mine. And the probes
13 were just too far away from his skin. It didn't work.
14 So that's, you know, the failure that I had myself. And
15 I -- I was fully expecting him to drop that guy with the
16 knives, and it didn't.

17 Q In this case, did the Taser seem to have any
18 effect?

19 A I think it did. I think it had some effect.
20 But it just kind of seemed like it made him mad and it
21 made him more determined to fight through it, get to us.
22 And I think it was great that Lile got it out quickly and
23 tried it, you know. It might have worked. It might have
24 saved this guy's life. You know, we got defeated by the
25 three or four layers of clothes. But, you know, it was

1 awesome that he tried it. I don't know that I would
2 have -- I was too close. I couldn't, you know, couldn't
3 go to the Taser at that distance. It wouldn't have been
4 smart. He was a little further back. That's what he
5 chose to do. I was his lethal person while he used the
6 Taser. So it kind of made sense for him to try it from
7 his position. But, you know, I wish it would have
8 worked, but it didn't.

9 Q Okay. Let me ask you about your decision to
10 fire. Obviously, this was an intentional act on your
11 part, correct?

12 A Yes.

13 Q And can you talk to us about your decision to
14 pull the trigger and to fire your weapon?

15 A Yeah. I realized, like I said, I was against
16 that door. And I wasn't going to get out of there
17 without shooting him or going hands on, you know, trying
18 to grab the knife and dealing with that. And that's just
19 not a good option. You are going to get cut up bad doing
20 that.

21 Q Meaning what, what did you think was about to
22 happen?

23 A Well, he was pretty pissed off and, you know,
24 pretty determined to get to us. And he had this big
25 knife. I mean he knows he's coming at two armed police

1 officers with guns. He's got to know it's going to be a
2 deadly encounter, you know. So I think he was coming at
3 us with the intention of trying to hurt us. I'm not -- I
4 wouldn't be surprised at all if he was wanting to be
5 killed by us. Suicide by police is not uncommon. And
6 everything that I saw leads me to believe that's probably
7 the case. And maybe he wanted to take one of us with
8 him. I'm not sure. He was arrested a lot of times. He
9 may not care for the police.

10 Q Did you perceive a threat specifically to
11 yourself?

12 A There is no doubt. I mean, you know, I honestly
13 don't -- I was never afraid. I was confident that I
14 could stop him with my pistol up until I fired that first
15 shot. When that first shot didn't give me anything, it
16 was kind of scary. Then I was really leaning back
17 against that door. You know, I made a decision. I just
18 started shooting more because this guy is not stopping.
19 He's coming right through our pistols. It was a bad
20 deal. I was a little bit nervous then, I got to admit.
21 Prior to that I was very confident. Maybe being a SWAT
22 guy 14 years, I have been in a lot of situations. I can
23 deal with this.

24 But when, you know, when he got too close and I
25 hit that door and I was stuck, it kind of changed for me.

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1 I was in a bad spot. I think Lile knew I was in a bad
2 spot. I think that's why he stepped in and he fired his
3 shot -- he dropped the Taser and shot the guy.

4 Q When you decided to fire, did you perceive a
5 threat to Officer Lile?

6 A Obviously, you know, he's going to be close to
7 me. So he's in danger, too. But the guy was coming at
8 me. He wasn't coming at Lile. I was closer. He had a
9 lock on me. He was coming at me. So I would have had
10 the first issue and then Lile second.

11 Q Okay. Can you talk to us about your decision to
12 stop shooting?

13 A You know, I'm guessing the shots that I fired,
14 seven to nine shots, maybe a second, second and a half.
15 It's almost like one continuous sound with our nine
16 millimeters. If you train with them a lot, you can fire
17 them very, very quickly and very accurately. At that
18 distance, it's very, very accurate.

19 I shot like, say, six, seven times, and that's
20 when he started spinning. And he turned, and he kind of
21 turned real quickly. I know one of my rounds, I'm
22 guessing, probably hit him in the side. My last round, I
23 wouldn't be surprised if it hit him in the back, because
24 he spun and turned. I made a decision to shoot, shoot,
25 shoot, and he turns. Before I got the pistol stopped,

1 I'm probably confident I hit him probably the last time
2 somewhere right here in the back. That surprised me for
3 a second. Great, I shot the guy in the back. Probably
4 ridiculous at that point to even worry about that. But
5 the way we get criticized in the media for the stuff we
6 do, it just struck me, you know. But it was just
7 happened very, very fast.

8 I'm describing this to you in a -- it probably
9 seems like a long time. From the minute we went in the
10 roll-up door until I called the suspect down is two
11 minutes on the radio log, between those on two
12 transmissions, so this whole thing happened very fast.
13 The shooting part of it, second and a half. The contact
14 between the door opening and its over, maybe six, seven
15 seconds. So it's a lot harder to describe it and takes
16 more time than it really happened. It was a very quick
17 deal.

18 Q Okay. Well, let me ask you, again, if it's
19 possible to kind of put this in capsule form?

20 A Sure.

21 Q But during the shooting, there came a moment in
22 time when you stopped, right? And what I'm asking is
23 what did you see or realize or understand that made you
24 decide to stop firing your weapon?

25 A When he turned, I kind of made a decision. I

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1 stopped shooting. He was turning. Turning is not
2 necessarily the end of it, but just as he turned he fell
3 also. And it was like it was over just that quick. It
4 was like wasn't working, wasn't working, then spin, fall
5 down and over. I mean it happened real quick.

6 Q All right. What I'm really getting at is your
7 understanding pursuant to your training of when the
8 decision is made to use deadly force, when it's
9 appropriate then based on your training to stop doing
10 that?

11 A You stop when they are not a threat. And when
12 he was on his feet with that handgun -- or not handgun,
13 but a knife, he was a threat at that distance. And, you
14 know, like I say, if he had turned away from me, was
15 moving the other way, I wouldn't have shot him in the
16 back. But it was simply it happened so quickly that the
17 last two rounds before I got the gun off, I did shoot him
18 partly, at least, in the back. If he was trying to move
19 away, I would have got out, shut the damn door, hold it.
20 It just happened real quick. He fell and was done. The
21 minute they go down, I'm good with that.

22 Q All right. Are there any questions?

23 JUROR:: I have a few. Can you to the best of
24 your ability describe the lighting that was available?

25 THE WITNESS: Yeah. They had some looked like

1 sheets of cardboard paper on the windows. There was one
2 window in the room, I think the guy was using as a
3 bedroom where he came out of, and then the hallway there
4 was like one window and a door. And they were partially
5 covered up with paper taped to the windows. I don't know
6 to make it warmer, privacy? I don't know exactly.

7 When I went in there, there was no power,
8 obviously. So I had my flashlight in my hand and was
9 using it to light up the hallway. When we got in the
10 hallway, there was enough light that I didn't have my
11 light on inside that hallway. But I had it in my hands
12 ready for when the door opened up that I could shine it
13 in there. I anticipated that room would be pretty dark.

14 And, you know, when he said he had a weapon, the
15 flashlight went away, the pistol came out. Pistols also
16 have lights on them right at the bottom of the gun. When
17 he came out the door, I turned my light on him and had
18 that right in his face when he stepped out the door.

19 JUROR: So his face was clearly lit for you?

20 THE WITNESS: What's that?

21 JUROR: His face was clearly lit for you, then?

22 THE WITNESS: Yeah, like from me to you, right
23 here, just the light right in his face. It was a clear,
24 intense beam. They are very bright.

25 JUROR: With the Taser, does it continue to be

Wingfield - D

1 effective when it is dropped?

2 THE WITNESS: It will go for five seconds, I
3 think, before it stops. And you can hold the trigger
4 down if you need it longer than that or you can flip the
5 safety on and stop it. But it will continue to give the
6 shock for five seconds. So if after two seconds he
7 starts running at you, you drop it on the ground. It
8 will continue for another three unless it hits the
9 safety, knocks it off, or the wires break. They are thin
10 wires and they can break sometimes.

11 JUROR: You said you were concerned or some
12 variation of that when your first shot did not seem to
13 effect him. Have you ever had to use lethal force
14 before?

15 THE WITNESS: I have not shot anybody myself. I
16 have been on this SWAT Team. I have been there for like
17 four other gun battles where I've seen people get shot.
18 But it's typically with rifles and stuff. I have never
19 seen another handgun incident. I have been trained that
20 handguns are not very effective and don't count on much.
21 I have had friends tell me they have shot guys at close
22 range and they didn't go down right away. So I don't
23 know. It was just one of those deals that, you know, I
24 knew I hit the guy in a good spot. I was expecting more,
25 and that's probably unrealistic. With my training I

1 should have known better. You know, like I say, it was
2 just a tenth of a second deal. The next round was on the
3 way and just keep shooting until he went down.

4 JUROR:: Can you take a guess at how far he
5 moved after being tased before you fired at him?

6 THE WITNESS: He was probably about the
7 twelve-foot mark. Well, at the end -- he was like a foot
8 outside the door of his room. And I was about halfway.
9 And I start moving back when he got shot with the Taser.
10 And about a second or two into that, he decides I'm
11 coming through this and he starts coming at me. And I
12 made it to the end of the hallway, but he kind of gained
13 on me a little bit. So I don't think we were ever really
14 much more than eight, ten feet apart.

15 Q How far did he travel, three or four feet then
16 after he had been tased?

17 A No, probably five or six feet. Because I was at
18 the door, which is 13 feet from his room. And he got to
19 six, eight feet from me before I shot him.

20 JUROR: Okay. I think that clarifies it for me.
21 Thank you.

22 MR. REES: Anything else, folks?

23 JUROR: I had a question about the light on your
24 pistol?

25 THE WITNESS: Yes.

Wingfield - D

1 JUROR: You said it was bright?

2 THE WITNESS: They are very bright.

3 JUROR: Would he have been able to see that you
4 both had weapons drawn at the time, or would that have
5 interfered with his vision or did he know that you had --

6 THE WITNESS: You know, we told him, "We don't
7 want to shoot you, Tom." We had drawn our weapons before
8 he came out. And I pointed my gun at him. And I reached
9 up, flipped my light on. So he should have seen the gun
10 in my hands before I flipped the light on. Even by that
11 you can tell by the body language what's going on there;
12 they are holding a gun on you. Honestly, he has been
13 arrested a lot. He's probably seen the police before.

14 BY MR. REES:

15 Q Kind of to follow up on that question. I don't
16 know whether you said or not. When Officer Lile was
17 giving his commands, did you announce yourselves as
18 Portland Police officers?

19 A When I knocked on the door, I said, "Tom, this
20 is Officer Wingfield, Portland Police. It's not a big
21 deal. We just need to talk to you." And to me it really
22 wasn't a big deal. We were going to arrest this guy for
23 Trespassing. They were going to take him to jail. He
24 would be out three, four hours. This didn't need to
25 happen. This wasn't a big deal. Maybe I'm menacing on

1 this, too, but that would have been it. It wasn't worth
2 anybody dying for. It was just a bad deal.

3 MR. REES: All right.

4

5 (Testimony concluded.)

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MULTNOMAH COUNTY GRAND JURY

DEATH INVESTIGATION

Deceased: Thomas Manford Higginbotham)
Date of Incident: January 2, 2011) DA Case No. 2209602
Location: 3153 SE 82nd Avenue) PPB No. 11-375
Portland, Oregon)

VOLUME 3

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled transcript of Grand Jury proceedings was heard, commencing at the hour of 10:05 a.m. on January 19, 2011 at the Multnomah County Courthouse, Portland, Oregon.

APPEARANCES

Mr. Donald Rees, Deputy District Attorney,
Appearing on behalf of the State;

JULIE L. BOURGEOIS
Court Reporter
Multnomah County Courthouse
1021 SW 4th Avenue Rm. 554
Portland, Oregon 97204

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1 TRANSCRIPT OF PROCEEDINGS 1/19/11 10:05

2

3 BRENT MAXEY,

4 called as a witness,

5 being first duly sworn,

6 was examined and testified as follows:

7 MR. REES: State your name and spell it for
8 the record.

9 THE WITNESS: Brent, B-R-E-N-T, Maxey, M-A-X-
10 E-Y.

11 EXAMINATION

12 BY MR. REES:

13 Q Thank you, Officer Maxey. Tell the members of the
14 grand jury, please, what you do for a living?

15 A Police officer with the city of Portland.

16 Q How long have you been a police officer?

17 A Nine years.

18 Q Do you have any previous law enforcement
19 experience?

20 A No.

21 Q What's your educational background?

22 A I have a four-year degree in communication from
23 Southern Oregon University.

24 Q And then did you upon receiving your degree
25 immediately become a Portland police officer or do something

1 else?

2 A No. I had a job with ESPN radio in southern
3 Oregon for about a year doing marketing, sales. And after
4 that I applied up here and got accepted into the Oregon
5 Police Corps Program, which is a scholarship program, does
6 some college reimbursement. Once I got hired, I actually
7 got hired after the academy and then started my career here.

8 Q Currently you're assigned to east precinct?

9 A Yes, east precinct, the afternoon shift.

10 Q Have you been in that precinct the whole nine
11 years?

12 A No. I started off on probation. We do rotations,
13 at the time we had five precinct, I rotated through four of
14 the five. Once off probation, I was assigned to central
15 night shift where I stayed until, I want to say, about April
16 of 2006. At this time I went to southeast precinct, stayed
17 there until it closed in 2009. And that was, I want to say,
18 about June. And at this time I chose to go over to east
19 precinct. East and central kind of took all the officers
20 from southeast that -- we were kind of divided, and I went
21 to east.

22 Q Were you assigned to a particular district at east
23 precinct?

24 A I'm what they call a utility officer, where I just
25 kind of fill in where it's needed. However, I generally

1 work the 9-10's area between 82nd to 39th, Division on the
2 north and Holgate on the south. I worked there generally
3 three days a week.

4 Q Let me direct your attention to December 30th,
5 2010 in the afternoon. Did you respond to an unwanted
6 person call at 8001 Southeast Powell?

7 A Yes.

8 Q Can you tell the members of the grand jury what
9 the nature of the call was?

10 A Yeah. It was an unwanted person call, was the way
11 it was coded. And then the information that I had, it was
12 set up as a holding call. We have -- our priority calls are
13 voice dispatched, and holding calls go into a cue, and we
14 pick them up as we're available. This call was holding as
15 unwanted person. The text that I had on my computer screen
16 in the car was, guy who has been 86'd numerous times.

17 Q Meaning what?

18 A This person had been kicked out of this business
19 several times in the past. And it said back, meaning that
20 he had come back, meandering at a snail's pace on the
21 property. White male, late 50's, six foot, medium as in
22 medium build, dark baseball cap, gray -- longer gray hair,
23 gray facial hair, red Adidas jacket, light blue jeans as in
24 light colored blue jeans, said made some 55 threats this
25 time.

1 Q What's that mean?

2 A 55 is a code for death threats.

3 Q Did you go to that location after receiving that
4 call?

5 A I went -- there was an update as I was -- as I was
6 en route to the call that said, you know, it said the person
7 was meandering off the property. And there was an update
8 that a security guard was watching this person going onto a
9 car wash property that was just north of the shopping center
10 that this call originated from. And I'm familiar with the
11 car wash, having worked in the area, I know that a lot of
12 transient type people stay on that property -- on that car
13 wash property.

14 So I went there, looking for this person, and
15 generally my experience has been that the people that camp
16 at that property stay on the outside. There's a fence that
17 separates the shopping center property from the car wash,
18 and there's some bushes. And my experience has been that
19 they usually sleep along that fence line. And I went there
20 and didn't find anybody at this time.

21 Q Did you contact the complainant, the security
22 officer, Vicky Snider?

23 A I did. After looking, I went back and spoke with
24 her. She was still standing on the sidewalk at 82nd north
25 of Powell at the -- I guess it would be like the northeast

1 corner of the shopping center property. I went back and
2 talked to her, and just real briefly. I had spoken with Ms.
3 Snider on several other calls. Before I pulled up she told
4 me this person actually goes inside of the car wash. It
5 recently closed, I don't know how long ago, but it's more or
6 less, you know, I don't -- it's just an out of business car
7 wash at this point. And so this was the first knowledge I
8 had that people actually went inside to camp.

9 So she told me he goes into the back side which
10 would be the west side roll-up door. So I went back to look
11 for him inside of the building.

12 Q Officer Maxey, just to clarify, are you saying
13 that the first time you were aware that transients were
14 actually staying inside of the car wash was on this meeting
15 with Vicky Snider on December 30th of 2010?

16 A Yes.

17 Q Okay. So, I'm sorry. Sounds like after you
18 received that information, then you returned to the shut
19 down or abandoned car wash?

20 A Yes.

21 Q What happened when you went back?

22 A I drove my car around to the back side to the
23 roll-up door that she told me about, it's the entrance to
24 the car wash where when you drive through, you drive around
25 to the back and then pull your car in to get your car

1 washed. I just drove up to that door. And I tried to open
2 the door, and it was clearly locked by, you know, I don't
3 know if it was was blocked or if it had a locking arm or
4 something. But it had a -- I was tugging on it pretty hard
5 to see if I could get it to open, but it only had an inch of
6 give or so.

7 I also, you know, kind of banged on the door a
8 little bit to see if anybody would come up. I didn't hear
9 anybody inside. I walked completely around the building at
10 least twice, I tried all of the doors, they were all locked.
11 I was looking inside of the windows. The windows were
12 pretty tinted. There were windows to an office that looked
13 like they were covered with some type of paper or something,
14 so I couldn't see inside. But the windows to the actual car
15 wash, itself, were really tinted, so I was able to get my
16 flashlight up there.

17 I could see that it was definitely some type of a
18 camp that was inside with tarps and blankets and bedding,
19 things like that, but I couldn't see any person in the car
20 wash. And the last thing that I tried was there was a
21 window on that car wash side, and these are windows that
22 almost go from the ground all the way up to the roof, they
23 are pretty big. There was one that was boarded up with
24 plywood, clearly had been broken out, and I pushed in on
25 that. It was boarded up from the inside. I pushed in on

1 that to see if I could find an opening that maybe people
2 were coming and going from, but it was solid, so I was
3 unable to get inside.

4 Q All right. What did you tell Vicky Snider to do
5 if she saw this subject again?

6 A I told Ms. Snider and the original caller from the
7 Dotty's at the shopping center whom I spoke with over the
8 phone, called and told them both to call 911 if this subject
9 had returned. Uhm, but given the fact that I couldn't
10 locate him or couldn't get inside of the building and I just --
11 there was nothing more I could do at this time.

12 Q All right. And what time of the night or day was
13 that contact?

14 A The call came out at 6:53 p.m.

15 Q Were you on duty then on Sunday, January 2nd,
16 2011?

17 A Yes, I was.

18 Q You mentioned this morning that you were afternoon
19 shift.

20 A Yes.

21 Q So what time does that shift begin?

22 A Afternoon shift starts at 4:00 and goes until 2:00
23 in the morning.

24 Q Okay. Did you begin your shift then at 4:00,
25 January 2nd of 2011?

1 A Yes.

2 Q What happened as you were beginning your shift
3 that day?

4 A Uhm, well, first thing we do is have a roll call
5 or briefing. And basically it's just a meeting with the
6 officers and the sergeants, and we go over important
7 information, wanted fliers, roll call bulletins, things like
8 that, and they read off who was working where that day.
9 This particular day I was working in the 9-20's district
10 which is south of the area that -- the 9-10 area I
11 described. About, I don't know, part way through roll call,
12 one of our sergeants had been listening to the radio and
13 told us that there had just been an officer involved
14 shooting, and told us to go.

15 And so we all left. I grabbed my things, put them
16 in my patrol car and headed straight for this call. I got
17 there within five minutes or so. As I was on my way to the
18 call, I heard an officer, Officer Bacon saying that arriving
19 officers could go to the back side roll-up door that I
20 described. So when I got there, I went immediately there,
21 to the back side, and you want me to continue?

22 Q Sure.

23 A When I got to the door, I, you know, passed
24 several officers that were, you know, kind of in the
25 driveway. But when I got to the door, Officer Sawtelle told

1 me they may need -- he knows I carry a less lethal bean bag
2 shotgun, and he told me they may need that inside. I
3 retrieved the less lethal bean bag shotgun, and went inside
4 with the contact team or the custody team who was still
5 trying to figure out a safe approach to contact the subject
6 that had been shot.

7 Q At some point, did you enter the room and see the
8 person who was deceased?

9 A I did.

10 Q And what did you note about his appearance?

11 A I just -- I kind of went back to the call I had
12 had there previously, and thinking of the description of
13 what I had gotten that day on December the 30th, matched the
14 person who I saw had been shot. And just to confirm that,
15 once everything was secure and I was back in my car, I went
16 back. We have the ability to pull up our previous calls in
17 our car, and I went back and read the previous call and saw
18 that it did, in fact, match the person that I had seen
19 inside of the car wash.

20 Q All right. When you first saw this person lying
21 on the floor, as you had written in your report, could you
22 tell whether he was necessarily dead or not?

23 A I couldn't at the time. He was -- it was a very
24 small room, you know, and there were several of us in there.
25 I made my way kind of to the front as the less lethal

1 officer, just in the event it was needed I could deploy it.
2 But, there was a lot of bedding, a lot of boxes, things like
3 that on the floor, real cramped, and he was laying down. I
4 was kind of at his feet and he was laying down facing away
5 from me on his right side. And all I could really see was
6 his back, his legs and his feet. And then there was some
7 bedding that was kind of behind him that kind of obscured my
8 view a bit. He didn't appear to be moving, but I couldn't
9 tell one way or the other if he was alive or not.

10 Q Any questions?

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1 TIM BACON,
2 called as a witness,
3 being first duly
4 sworn, was examined and testified as follows:

5 EXAMINATION

6 BY MR. REES:

7 Q For the record, could you please state and spell
8 your first and last name?
9 A Tim Bacon, T-I-M B-A-C-O-N.
10 Q Officer Bacon, how are you employed?
11 A Portland police officer.
12 Q How long have you been a Portland police officer?
13 A 17 years here in April.
14 Q Do you have prior law enforcement experience?
15 A I worked in California for five years.
16 Q With the sheriff's office?
17 A Deputy sheriff.
18 Q What jurisdiction?
19 A Humbolt County, northern California.
20 Q And prior to that, what were you doing?
21 A Officer in the Marine Corps.
22 Q How long did you serve in the Marine Corps?
23 A About three and-a-half years.
24 Q Were you -- you are currently working east
25 precinct?

1 A I am.

2 Q Were you on duty on January 2nd, 2011, the date of
3 this shooting?

4 A I was.

5 Q Where were you when you first learned that there
6 had been a shooting?

7 A I was there when I first learned there had been a
8 shooting.

9 Q Where were you standing?

10 A Well, I got out of my vehicle, approached the
11 building, the car wash, and I got to the corner of the car
12 wash. I knew there was a garage door at the end of it, the
13 west end. I got to the corner and I heard gunshots, six to
14 eight gunshots.

15 Q All right. To back up, from that moment, what was
16 the original reason why you were at the car wash?

17 A I got a call of a security guard calling in at
18 Powell Station, which is by 82nd and Powell, a strip mall
19 there, saying a transient was there, wouldn't leave, had
20 tried to assault her earlier that day, had been armed with a
21 knife in the past, she wanted him off the property. That's
22 the call I originally got.

23 Q So you went to the location?

24 A I did.

25 Q And were there other police officers there when

1 you arrived?

2 A Officer Larry Wingfield was there when I got
3 there, another officer pulled up. I didn't know who he was,
4 I assumed it was Officer Jason Lile, but I did not see him.

5 Q Did you contact a lady named Vicky Snider?

6 A Yes, I did, the security guard that was there.

7 Q Did she give you any additional information as far
8 as why she called the police?

9 A This guy had kind of been a continuing problem,
10 he's been trespassed off the property in the past. And like
11 I said, he had swung at her earlier that day, didn't connect
12 with the punch, but she wanted him off the property. And
13 because she had trespassed him, I could arrest him for
14 trespass, that was my intention.

15 Q Did she give you a physical description of this
16 person?

17 A She did.

18 Q And do you recall whether she told you anything
19 about him having weapons at this time or during her previous
20 contacts with him?

21 A She said he had in the past had a knife.

22 Q And while you were talking to her, what were the
23 other police officers doing?

24 A Well, again, Officer Lile was in the car behind
25 me, I didn't really see him. Officer Wingfield, I don't

1 know if he got out of his car or not. He was right near
2 where I was, and when he heard -- I asked her if she wanted
3 him arrested, meaning the transient person, she said yes.
4 At that point, Officer Wingfield left.

5 Q And after you talked to Vicky Snider, did you
6 leave that location and go some place else?

7 A Yes. When Officer Wingfield basically got on the
8 air and said he was at the car wash, I said I was en route.
9 I had to get information from Vicky Snider for my report. I
10 said I was en route. I went to the car wash and two cars --
11 police cars were already there when I arrived.

12 Q Did you walk to the car wash or drive to it?

13 A Drove. It's just north of, but you want your
14 police car when you arrest somebody to put them in the car.
15 You don't want to walk that person anywhere.

16 Q And if you could just describe what happened then,
17 once you drove up next to the car wash?

18 A Sure. I pulled up, I saw the transient inside of
19 the car wash. There's a bunch of glass windows, I realized
20 that was not the transient described to me, he seemed to be
21 focused to the west. I assumed that's where the other
22 officers were by the garage door. I got out of my car, went
23 to the corner of the car wash. As I said, I heard gunshots,
24 came around the corner, peeked my head in and saw Officer
25 Lile and Officer Wingfield at a doorway of a small room.

1 I yelled at them, "I'm coming in." Somebody said,
2 okay. I came in, I made contact with I think it was Officer
3 Lile, touched him so he knew where I was. At that point I
4 saw the transient kind of walked out to where we were, and I
5 didn't know what had happened with him or if he was
6 involved. So I put my gun on him, told him to put his hands
7 up. When officers arrived, we were going to pat him down.
8 We needed to see where he was for now. He said sure, I'll
9 do that, kind of waited for other officers to get there.

10 Q How was his demeanor?

11 A Very calm. I said, I've got to hold you at gun
12 point for awhile. I'm sorry. He said, don't worry, that's
13 fine. I understand. It was more of conversational, I was
14 not yelling at him, I was talking to him basically.

15 Q All right. At that point you did fully understand
16 what was happening; correct?

17 A Well, I knew shots had been fired. I had heard
18 gunshots. And I couldn't see anybody in the room, because
19 Officer Lile and Officer Wingfield were kind of blocking my
20 view. I was kind of focused on the other person.

21 Q Did Officer Lile or Wingfield say anything to you?

22 A Not to me. Like I -- again, when I peeked in, I
23 said, I'm coming in, they said okay. Somebody, I don't know
24 who it was, said something about the knife's in his hand,
25 something to that effect. They were kind of talking to each

1 other I think, not really to me about that. And I don't
2 recall, I didn't have a conversation with them except at the
3 end. They were getting ready to leave, I kind of came in
4 the room. I wanted to know kind of -- I think I said to
5 them, what's the plan, as far as getting the knife away from
6 the person? At that point, they actually were pulled out
7 and I kind of took over that.

8 Q Pulled out by?

9 A Other officers, I couldn't tell you who. When
10 we're in a shooting, our goal is to get the officers that
11 are directly involved in the shooting out of the area as
12 soon as possible.

13 Q All right. And so, as other officers arrived and
14 you moved into the room where the shooting took place, what
15 did you see?

16 A I saw a person lying on the ground, and there was
17 a lot of debris in the room, bags and stuff. It was hard to
18 see. I saw the tip of a blade of a knife kind of near his
19 head.

20 Q And, uhm, was that knife in his hand or near his
21 hand or could you tell?

22 A Yeah. I couldn't really see his hand from where I
23 was at, until I walked up and removed the knife. And when I
24 did, I saw it was on -- the left hand was on top of the
25 handle of the knife.

1 Q All right. What did you do with the knife?

2 A I picked it up, tossed it aside.

3 Q Were there other officers in the room at that
4 point?

5 A Yes.

6 Q All right. And my last question is just about
7 what your thought process was at that point seeing this
8 person on the ground with the knife. In your mind at that
9 point, was there still a potential threat of this person?

10 A Absolutely. I was not sure, you know, if he was
11 going to move or not or was able to move. So, yeah, our
12 concern is we have to remove the weapon as soon as possible,
13 so we can be safe and everybody can be safe.

14 Q Any questions about that, folks?

15 GRAND JUROR: Yeah. When you went to remove
16 the weapon, did you look into his face?

17 THE WITNESS: No.

18 GRAND JUROR: How come you didn't, didn't you
19 want to know if he was alive or dead?

20 THE WITNESS: I was focused on the knife.

21 GRAND JUROR: What happens if he jumped up
22 and stabbed you?

23 THE WITNESS: Well, sir, my focus is on the
24 knife and the hand holding the knife. I'm going right
25 for that. I grabbed the knife, I tossed it at this

1 point. I grabbed his hand, I pulled -- the other
2 officer grabbed his hand, and I pulled him out of the
3 room to awaiting medical attention. My focus was on
4 the knife and get it away from him.

5 MR. REES: That answer your question?

6 GRAND JUROR: Yeah, it answered it. But, I
7 don't know if that was the safest thing to do, to go
8 for the knife. You didn't know if he -- he could have
9 seen you reaching down there and went like that right
10 into your neck.

11 THE WITNESS: It's possible, you know.
12 Typically, we have to secure the scene. At some point
13 somebody has to reach down, whether a gun or knife, to
14 remove the weapon.

15 GRAND JUROR: You do it safely?

16 THE WITNESS: I had other officers there as
17 cover. I went down to remove the knife and toss it to
18 one side. We did it as safe as we could have. It was
19 a cramped, compact area. We did it as safe as we
20 could, sir.

21 MR. REES: All right. Any any other
22 questions?

23 GRAND JUROR: No.

24 THE COURT: Thank you.

25

1 HOMERO REYNAGA,
2 called as a witness,
3 being first duly sworn,
4 was examined and testified as follows:

5 EXAMINATION

6 BY MR. REES:

7 Q Officer, please state your first and last name and
8 spell it.

9 A First name, H-O-M-E-R-O, last name, R-E-Y-N-A-G-A.

10 Q Are you a Portland police officer?

11 A Yes, I am.

12 Q How long have you been with the Portland Police
13 Bureau?

14 A Since 1998.

15 Q And are you currently assigned to east precinct?

16 A Yes, I am.

17 Q And where were you when you learned that there had
18 been an officer involved shooting on January 2nd, 2011?

19 A I was north of Division when an officer, I later
20 learned Officer Wingfield, asked for Code 3 medical for a
21 person that he said had been hit hard. At that point, I did
22 not know what he meant, so I continued southbound on 82nd to
23 their location, because they were asking for more officers.

24 As soon as I arrived, I learned that there was an
25 officer involved shooting, they stated over the air, officer

1 involved shooting. I got out of my car -- drove into the
2 parking lot of the car wash, got out of my car, went to the
3 west side of the building, to the main entrance of the car
4 wash. The door was half way opened. As I go around,
5 Officer Barber comes out with a person handcuffed, a male,
6 white in his 40's. I continued into the car wash, and I saw
7 Officers Wingfield and Lile near the door, a door facing
8 into a room, outside of the threshold. I came behind
9 Officer Wingfield, tapped him on the shoulder, told him I
10 was right there behind him.

11 Q Did Officer Wingfield say anything?

12 A He looked back at me, and there was some comment
13 said, and he said, I think he's dead. He's still holding
14 the knife. The person was -- the room faces northbound, so
15 the person was lying down with his back to us, so we
16 couldn't really see. So we looked over, saw that he was
17 still holding the knife.

18 Q And did you learn who the shooting officers were?

19 A Someone in the background, I don't know who it
20 was, as more officers arrived, asked who were the officers
21 involved. It was pretty -- it was not said, it was
22 determined that it was Officers Wingfield and Lile. He
23 said, pull them out, they don't have to be there any longer.
24 Myself and Officer Bacon took their position. Officer Bacon
25 stood to my left, I took the right side.

1 Q And what happened, then, as far as securing that
2 location and seizing the knife?

3 A At that point, the biggest concern was to get the
4 person medical attention, but the obstacle was he was still
5 holding the knife. So, we formulated a plan and during that
6 time, we asked for a bean bag. An officer was coming with a
7 bean bag, which Officer Maxey responded. And during that
8 time, that window, before he arrived, I challenged that
9 person numerous times, "Drop the knife. This is police,
10 drop the knife."

11 He was not responding. Soon as Officer Maxey
12 arrived, he stood to Officer Bacon's left side. But, I
13 mean, the whole room was so much garbage and clutter, it was
14 impossible to get everybody in there. So what happened was
15 Sergeant Golliday was behind us, he basically yelled out,
16 "You're so close, kick him on the leg -- on his foot, to see
17 if he reacts." And I believe Officer Maxey kicked him in
18 the leg, there was no response. So at this point, due to
19 the -- I mean, the room was so cluttered, we decided to pull
20 him out so AMR can check him out.

21 At that point, Officer Bacon reached in and took
22 the knife from him, he placed it down on the ground. But
23 once he placed it on the ground, I thought that's not a safe
24 place for it to be. I grabbed it and placed it higher, next
25 to the door. The knife was approximately twelve inches, the

1 blade -- it was a large kitchen knife with a wooden handle.

2 Q This is the knife that was found at the location
3 and marked with a placard. Does that appear to be same
4 knife you're describing?

5 A Yeah, that's the knife. As soon as I placed the
6 knife on top, because I was designated at that point as
7 lethal cover, so in case this person made any movements or
8 whatever, I was supposed to cover the other officers in case
9 he was still a threat. So at this point, once the knife was
10 taken out, he was pulled out into the main car wash, uhm,
11 AMR was already coming in. And they checked him out and
12 determined he was dead.

13 Q All right. Any questions about that folks?

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1 KAREN GUNSON,
2 called as a witness,
3 being first
4 duly sworn, was examined and testified as follows:

5 THE WITNESS: Karen Gunson, K-A-R-E-N
6 G-U-N-S-O-N.

7 EXAMINATION

8 BY MR. REES:

9 Q Spell your name again?

10 A First name, K-A-R-E-N, last name G-U-N-S-O-N.

11 Q Good morning. What is your occupation?

12 A Forensic pathologist. I'm a physician, I
13 specialize in forensic pathology. My title is Oregon State
14 Medical Examiner.

15 Q Could you give the grand jury a summary of your
16 training and experience in the field of medicine?

17 A I graduated from Whitman College in Walla Walla,
18 Washington in 1976 with a bachelor of arts degree in
19 biology. I have a bachelor of arts in zoology from Oregon
20 State University, and I got that degree in 1977. And in
21 1977 I started at Oregon Health Sciences University as a
22 medical student. Long ago it used to be called University
23 of Oregon Medical School. That takes four years of medical
24 school.

25 In that time, I took care of patients on the ward,

1 helped with surgeries, delivered babies, all the usual stuff
2 a medical student does. When I graduated in 1981 with an
3 M.D. degree, I was asked to stay on as resident officer
4 trainee in anatomic and clinical pathology. That requires
5 four years.

6 A clinical pathologist is a person who looks at
7 blood and urine and other bodily fluids to help diagnose
8 disease of somebody in hospital. An anatomic pathologist is
9 somebody that looks at tissues that are removed at the time
10 of surgery, like organs and biopsies, usually to diagnose
11 things like cancer. But they also do autopsies or
12 post-mortems of people who die in the hospital. So I did
13 those when I was a resident.

14 When I successfully completed that program, I went
15 to the Oregon State Medical Examiner's Office in 1985, and I
16 have been at the State Medical Examiner's Office ever since
17 then. So, for fourteen years I was Deputy State Medical
18 Examiner, and then in 1999 I was appointed as the State
19 Medical Examiner. So about 25 years.

20 Q As the State Medical Examiner, generally speaking,
21 what are your duties and responsibilities?

22 A Well, first of all, I have administrative duties,
23 we oversee the entire state program. So I oversee 36
24 counties and their local death investigation programs in
25 each county. We also cover directly and give service to all

1 of the counties in the northwest corner of the state, as far
2 as their autopsies, all of the counties along the Columbia
3 Gorge and everybody in eastern Oregon. So, we do about 1000
4 autopsies in my office every year, and I do about -- since I
5 have administrative duties and have to worry about budget
6 and stuff like that, I do about 180 autopsies to 200
7 autopsies every year, and my three other partners do the
8 rest.

9 Q Do you know how many autopsies you performed over
10 the course of your career?

11 A Well, when I first started, we did a lot more, I
12 was doing 250 or so. So if we look at 25 years, I suppose
13 around 4000, maybe a few more.

14 Q You said are you certified in a particular medical
15 specialty.

16 A Board certify by the American Board of Pathology
17 in anatomic, clinical and forensic pathology.

18 Q In addition to all of the activities you just
19 mentioned, have you taught at the university level or
20 medical school?

21 A Yes. I'm assistant professor and clinical
22 instructor at Oregon Health Sciences University. We teach
23 the pathology residents there, as well as medical students.
24 We routinely give classes to both physicians and attorneys,
25 including district attorneys, and defense attorneys and

1 police officers as well.

2 Q Have you taught or lectured specifically on gun
3 shot wounds?

4 A Oh, yes. Probably a couple of times a year or so,
5 probably 50 or 60 times in my career or more.

6 Q Did you conduct an autopsy on a person named
7 Thomas Higginbotham on January 3rd, 2011?

8 A I did do that autopsy January 3rd at our Medical
9 Examiner's Office in Clackamas, Oregon.

10 Q Thank you. Briefly describe to the grand jury
11 what an autopsy is?

12 A Yeah. Autopsy is, of course, a complete
13 examination of a decedent. And so, in cases where we
14 suspect homicide or some suspicious kind of case, we leave
15 them clothed until autopsy. At the autopsy, I start with
16 the clothing, describe that, whatever is in the pockets. We
17 remove that clothing and keep it as evidence, and then we
18 describe all of the injuries that are present on the surface
19 of the body. Any evidence of scarring, any evidence of
20 natural disease. We do describe all of that, and we do it
21 at the table, that is the table -- I dictate at the table as
22 we go along.

23 Once we describe all of the injuries, we open the
24 body cavities including the chest and abdomen, the neck and
25 the head to look at the evidence of injury. And we also

1 look for any natural disease that person might have.
2 Sometimes, we have to take tissues to look at them under a
3 microscope. But usually we can arrive at cause of death
4 right at the time we do the autopsy. We also routinely take
5 blood and urine and eyeball fluid to look at in the tox lab
6 for any kind of drugs or alcohol and so forth.

7 Q Who else was present during the autopsy on Mr.
8 Higbotham?

9 A You, yourself, was present at this autopsy, Mr.
10 Rees. And criminalist Ken Jones and Shawna McMurray.
11 Portland police bureau took clothing, personal possessions,
12 the pocket contents, photographs and bullets, as well as
13 fingerprints and a blood spot card. Portland Police Bureau
14 Officer Paul Meyer from training division was present as was
15 Detective Kristina Coffey and Mark Sponhauer.

16 Q And did you measure how tall Mr. Higbotham was?

17 A Yes, I did. He was 72 inches in length.

18 Q How much did he weigh?

19 A 169 pounds.

20 Q What was his age at death?

21 A 67 years.

22 Q Did you note anything unusual about his -- at all
23 about his physical appearance?

24 A Well, when we examined the body, we could see
25 there was -- that he had quite a bit of dirt and dry skin

1 present, as if he had not bathed for a awhile, long
2 fingernails with dirt present beneath the edges and toe
3 nails the same way.

4 Q In terms of height and weight, given his age, did
5 that appear within the normal range, did you think?

6 A I think he's quite robust for a 67 year old. He
7 was well muscled, not at all fat or over weight. And he
8 appeared in very good health actually.

9 Q All right. Was anything of interest noted
10 regarding his clothing?

11 A Uhm, well, he was clothed in multiple layers.
12 When we talk about the clothing, I just go through. And
13 briefly, he had on a red wind breaker. There were taser
14 probes that were embedded in the right front of the wind
15 breaker. Multiple defects were present in the front of the
16 wind breaker. He had a flashlight, pack of cigarettes and a
17 Tri-Met bus schedule in the pocket. He also had on a dark
18 blue fleece type jacket, there were several defects present
19 in this jacket, once again.

20 He had a silver colored pocket knife and a half
21 teaspoon measuring or teaspoon measuring spoon in the pocket
22 as well as he also had miscellaneous cards and a very large
23 folding knife present in the pocket of this jacket. He had
24 on a blue, dress style shirt, the kind that buttons up the
25 front. It was still buttoned, but had several defects in it

1 as well as blood soaking. Pair of blue denim jeans were
2 present on the lower portion of the body. Just had some
3 pocket change and pocket comb.

4 And then he had on a pair of athletic shoes,
5 athletic socks, underwear, had a wrist watch, white metal
6 ring and a blood soaked T shirt. And we actually recovered
7 three bullets from the clothing. One from the left sleeve
8 of the shirt, one from the right side of the shirt, right
9 side of body, and one that was lying on the table underneath
10 him within the body bag.

11 Q Was it possible to tell whether those were bullets
12 that had entered and then exited the body, or had they not
13 entered?

14 A All of the bullets appeared to have entered and
15 exited the body.

16 Q And somehow retained by the clothing?

17 A Correct.

18 Q Is that something you observe or have observed in
19 gunshots cases?

20 A Yes. There's many times the bullet passes through
21 the body and lose it's kinetic energy, lose the poop, and
22 can't get out of the clothing. So it is uncommon, but not
23 rare for us to find bullets in the clothing. And in
24 particular bullets such as this that are designed to
25 mushroom out and basically not pass through the body.

1 Q I was recollecting there were two bladed tools or
2 instruments in his possession; did you mention both?

3 A Yes. There was a pocket knife which was smaller,
4 and a large folding knife, which I estimate to be about five
5 inches long or so.

6 Q And you mentioned the taser wires and a probe.
7 Were you able to tell whether the two probes had entered
8 into his body?

9 A The probes did not enter into his body. I found
10 one probe, but it was stuck in his clothing.

11 GRAND JUROR: If taser probes -- do they
12 leave a mark if they impacted the skin?

13 THE WITNESS: Yes, they would.

14 GRAND JUROR: And were any such marks found?

15 THE WITNESS: No.

16 Grand juror: Thank you.

17 BY MR. REES:

18 Q Doctor, following the autopsy, did you come to a
19 conclusion regarding the manner of death in this case?

20 A Manner of death is homicide.

21 Q What does that mean from your perspective, the
22 medical perspective?

23 A When we decide the manner of death, it is a
24 medical determination, nothing to do with the legal system
25 at all. So when we talk about homicide or suicide or

1 accidents, those are the kind of things we use, or natural.
2 When I say homicide, I mean death at the hands of another.
3 Whatever the legal system -- when it comes to -- when they
4 decide what it is, it may be completely different, but
5 homicide is a medical determination

6 Q Did you determine the cause of death?

7 A I did determine cause of death, and I called it
8 multiple gun shot wound of the chest and abdomen.

9 Q All right. And briefly, can you explain how a
10 forensic pathologist reaches her conclusion as to manner of
11 death, taking into account both the cause of death and then
12 other external facts or circumstances?

13 A Well, of course, we take into account the injuries
14 that we have on the body. And then, of course, there are
15 injuries that could be either suicide or accident or
16 homicide, any of those things.

17 But what we do also is take into account what we
18 know about the scene. I have my own investigator present at
19 the scene, they are not associated with the police, so they
20 report back to me about what they see, what they hear, what
21 witnesses tell them. And then, of course, when I have the
22 detective present at the time of autopsy, I ask them
23 directly about what is happening in their particular arena,
24 what they discovered.

25 What we have in our office, basically, from the

1 deputy medical examiner's report is a snap shot of the scene
2 at about the time of death. Things may change later as more
3 information comes out, but that's important to me to have
4 that snap shot. So I take all of that information and
5 synthesize a manner of death. The cause of death is usually
6 pretty straightforward. It's the manner of death that is
7 sometimes the problem.

8 Q In this case was there any question in your mind?

9 A No. In this case there was no question in my
10 mind.

11 Q All right. How many gun shot wounds did you
12 observe on the body?

13 A There were ten entrance wounds. There were many
14 more gun shot wounds injuries than that, but ten entrance
15 wounds. If I could explain, there are some exit wounds as
16 well, and there are some exits and re-entrances as well. So
17 that's what I mean by more than one injury. So there are
18 ten entrance wounds and we line them up with the rest of the
19 injuries to the body.

20 Q So, from that, do you conclude that or are you
21 saying that Mr. Higginbotham was struck by ten bullets?

22 A Yes.

23 Q All right. And can you describe for us where
24 those were located on the body?

25 A Yes. First of all, I number my gun shot wounds,

1 but that is just because I'm trying to keep track of a
2 particular wound. So understand, in no way am I saying
3 these occurred in a certain order, I cannot tell you the
4 order they occurred in. But, we will start with number one --
5 actually, number one, two and three. Number one, two and
6 three are located in the back. Uhm, number one and two are --
7 number one is on the left side -- I'm sorry. One is on left
8 side on the back, sort of by the shoulder blade area. I'm
9 not going to give you an exact description of it, that will
10 take all day, but in the shoulder blade area. Number two is
11 located somewhat below that, couple of inches below that.
12 Three is located directly across from number one on the
13 right side.

14 Now, because we have so many bullets going through
15 the body, sometimes it is hard for me to tell exactly which
16 path belongs to which bullet hole. In this case, because
17 they are coming from the back, and they are relatively low,
18 they are going from back to front, but they do hit both the
19 liver and the spleen on their way towards the front of the
20 body.

21 There are three bullets that are located just
22 beneath the skin here in the front of the body. Two of them
23 are up here in the breast area, or just below the breast,
24 and another one is just here in sort of the upper abdomen on
25 the right there. One almost exited, there was a little

1 hole, I could see the bullet beneath it. The three bullets
2 are located right here, almost in a cluster in the front.
3 And those I could trace back to the three bullets in the
4 back.

5 Number 4 is located here in the forearm on the
6 right, it's on the side of the arm. If you were holding
7 your arm straight down, palms facing back, it's here on the
8 side of the arm. And this goes through and fractures the
9 arm here in the radius, so it fractures this part of the
10 arm, and then it exits here. But because it passes through
11 that bone, the jacket of the bullet separates from the core
12 of the bullet. So we have lead and copper both make an exit
13 right here (indicating) in the forearm. And this is one of
14 the bullets that I found in the clothing that came from this
15 bullet, this wound.

16 Now this is not a fatal injury. In fact, the
17 three others are not really fatal injuries if they were to
18 get to the hospital, because there's plenty of times when
19 people have survived injuries to the liver such as this.

20 Now, number 5 is a bullet that enters here on the
21 right shoulder. And this bullet is going from above to
22 below, from right to left, and from front to back. It
23 passes into the right chest cavity and perforates the right
24 lung and enters into the pericardial sac, the sac that
25 surrounds the heart. After it enters into that sac, it

1 actually strikes the heart and the aorta as it exits.
2 That's the big blood vessel that comes out of your heart,
3 goes all the way down and furnishes blood to the rest of the
4 body.

5 It hit the aorta, and actually hits the aortic
6 valve and travels through the left ventricle, exits the
7 heart and the pericardial sac, hits the left lung, and it
8 comes to rest -- the bullet comes to rest, is embedded in
9 the diaphragm, the left hemi-diaphragm on the left side.
10 Because of this bullet passing through, there's 500 cc's of --
11 a couple of cups of blood in the right chest cavity.
12 There's 300 cc's of blood or about a cup in the pericardial
13 sac that surrounds the cup and 200 cc's of blood in the left
14 chest cavity.

15 So then we have number six, the bullet number six
16 enters a little bit lower in the chest, and it passes
17 through the left -- I'm sorry, it's on right side, passes
18 through the right lung, and it passes through the diaphragm,
19 the right diaphragm and through the liver. There's two
20 lobes of the liver, it practically amputates the lobes
21 apart. It passes through the liver and this bullet rests up
22 against the back bone at the lower part of the chest,
23 overlying what we call thoracic vertebrae number ten. It's
24 lying against number ten. We recovered the bullet from
25 there.

1 Gun shot wound number seven enters lower in the
2 chest, in fact, pretty much in the abdomen. And it travels
3 straight across the body and exits here on the left. Now,
4 this bullet is going once -- going pretty much from right to
5 left without a lot of front and back change, but it's going
6 slightly below to above.

7 Gun shot wound number eight never actually enters
8 into the chest cavity. It's a gun shot wound that starts
9 here, just above the nipple area, it skips across the skin,
10 it enters, exits, re-enters and exits again, and we find
11 this bullet in the clothing over here on this side.

12 Gun shot wound number nine is a similar gun shot
13 wound, in that it is just below number eight. And once
14 again, it enters, exits, enters, exits and finally exits on
15 the left side. So, of course, these bullet are going pretty
16 much straight, right to left, across the front of the body.
17 And finally gun shot wound number ten is located in the
18 right lower chest, and it traverses the liver once again,
19 and it is actually found just under the skin here on the
20 left on what we call sort of along the line of your axilla
21 or arm pit, and just before it exits it actually strikes the
22 left kidney as well.

23 There is blood present in the abdominal cavity,
24 but it's mostly present as clotted blood, and there is not a
25 lot of it. It's -- all of the blood is mostly concentrated

1 in the chest and pericardial sac area.

2 Gun shot wound number five is a lethal gun shot
3 wound. All of these together are lethal gun shot wounds,
4 except for the ones through the arms and the ones that skip
5 across the chest. When somebody is struck in the heart like
6 this, there is the potential for them to have 30, maybe even
7 40 seconds of activity, because you have to bleed down
8 enough to become unconscious in order for you to stop your
9 activity. So there's the potential for a fair amount of
10 movement after being struck even in the heart and aorta, and
11 certainly after being struck in the kidney, liver and spleen
12 such as we see.

13 GRAND JUROR: How long did you say?

14 THE WITNESS: As much as 30 to 40 seconds.

15 In this case I think it's probably -- the potential
16 might be closer to 30 seconds, because of the fact it
17 hit the aorta and the left ventricle. But I certainly
18 have had cases in the past where people have had gun
19 shot wounds to the heart, stab wounds to the heart and
20 aorta, where there was a fair amount of activity after
21 the wound was sustained.

22 BY MR. REES:

23 Q Other than the gun shot wound to the heart then,
24 would any of the other nine gun shot wounds be immediately
25 life threatening?

1 A They are life threatening, but not immediately
2 incapacitating. You know, it can hit in the abdominal area.
3 It was not bleeding nearly as much when he was hit there.
4 So while they may eventually be fatal to him if they can't
5 get him immediately to the trauma hospital, there's a lot of
6 complications that can occur after you get to the hospital.
7 So I couldn't say he would for sure live, but they are life
8 threatening but not immediately incapacitating.

9 Q All right. And I know you have testified to this,
10 but just for clarity of the record again, doctor, the
11 numbers that you assigned to the gun shot wounds were for
12 your documentation, not to suggest the order in which the
13 wounds occurred; is that correct?

14 A That's correct.

15 Q All right. And I assume it would be impossible to
16 know through this examination, this autopsy, what the order
17 would have been of the gun shot wounds?

18 A I can't tell you what the order is, no.

19 Q All right. Now, we have all seen numerous times
20 in movies and television shows, people being shot where they
21 dramatically fly back. And sometimes people, you see them
22 fly out through a window or over the furniture when they are
23 shot; is that actually what happens?

24 A No, that's not at all what happens. The kinetic
25 energy of the bullet is transferred to the body as a wound,

1 and I actually unfortunately or have had the opportunity to
2 see many films where people have been shot, obviously true
3 life films where people have been shot, some by high powered
4 rifles, and there's no movement of the body whatsoever.
5 They might sort of look surprised, but there's no movement
6 of the body forward or back, and it is because of the
7 physics. The bullet is only this big, it's not like you're
8 going to shove something with a bullet that's a few grams.

9 Q And so, in this case where one officer -- the
10 shooting officers testified after firing the first rounds
11 from his hand gun, there was not any apparent immediate
12 reaction. Would that be consistent with what you know about
13 gunshots from a handgun?

14 A Yes, that would be consistent.

15 MR. REES: Any questions about the testimony?

16 GRAND JUROR: Maybe not important, how many
17 times did his liver get hit?

18 THE WITNESS: Multiple times, I would call it
19 pulpification. There were bits of liver just free in
20 the abdominal cavity. The one gun shot practically
21 split it through with two large pieces, plus multiple
22 small pieces. So, at least six times. And the liver
23 or the spleen was also quite badly damaged, but that
24 was just one gun shot wound that went through the
25 spleen. The spleen is quite fragile, not a lot of

1 connective tissues to support it. So there were
2 pieces of spleen as well as separated from the main
3 body.

4 GRAND JUROR: Do you take X-rays of the body
5 before you operate?

6 THE WITNESS: Yes, we do take X-ray's. Most
7 of our x-rays are taken right in our office, and they
8 are mostly to find the bullets. But it also clues us
9 into stuff that's in the pocket of the clothing to
10 protect ourselves so we don't stick ourselves or
11 something. But mostly it is for finding bullets.
12 They are not real -- I mean, they are not highly
13 detailed.

14 BY MR. REES:

15 Q Okay. One final question. People may be curious
16 about the toxicology for blood and alcohol, are those
17 available?

18 A Those are not available yet, though I have been
19 promised from the lab I might get alcohol either today or
20 tomorrow. So my plan was to perhaps phone Mr. Rees with
21 that report so you may have that.

22 MR. REES: All right. Thank you, doctor.

23

24

25

1 TRACY CHAMBERLIN,
2 called as a witness,
3 being first duly sworn,
4 was examined and testified as follows:

5 EXAMINATION

6 BY MR. REES:

7 Q Officer Chamberlin, for the record spell your
8 first and last name, please?

9 A Tracy, T-R-A-C-Y, last name, Chamberlin,
10 C-H-A-M-B-E-R-L-I-N.

11 Q Thank you. How are you employed?

12 A I'm employed with the Portland Police Bureau. I'm
13 currently assigned to the training division. I'm lead
14 patrol tactics instructor. Prior to that, I was the lead
15 firearms instructor for about five years in the training
16 division. Prior to that, I was working east precinct. I
17 was a NRT officer, Neighborhood Response Team officer, then
18 I worked patrol.

19 Q In all, how many years have you been with the
20 police bureau?

21 A Thirteen and some change.

22 Q All right. What were you doing before that?

23 A I was in the Army for many years. I served in
24 infantry, light infantry, and then in college for, geez,
25 eight years.

1 Q Well, we have called you before the grand jury to
2 give us background on firearms training within the Portland
3 Police Bureau. What does firearms training consist of when
4 an officer first becomes a member of the police bureau?

5 A We have an extensive firearms program. Initial
6 training an officer receives with the Portland Police Bureau
7 is simply the mechanics of shooting. The five fundamentals
8 of shooting is one of the things we teach, which are stance,
9 grip, marksmanship, and various other basic skills. As they
10 progress in their firearms training, we teach reduction
11 drills, also called malfunction drills. If there's
12 something wrong with the weapon, how to fix it, get it up
13 and running in timely fashion.

14 Once they master the basic skills we talked about,
15 we move on to precision shooting, shooting drills. How to
16 shoot quickly, how to shoot accurately, where to shoot
17 somebody if you were forced to shoot somebody. How many
18 times to shoot. Drills that will impart shoot or no shoot
19 situations, so scenario type drills. Whereas, they would
20 walk through a maze on the range and various targets pop
21 ups, some are shoot targets, they are threats, and others
22 are no shoots, like they have a cell phone in their hands.

23 Training starts basic and progresses to more
24 shooting skills in the end of training. We break it down.
25 We have advanced academy, so once the students graduate from

1 basic academy at DPSST, Department of Public Safety and
2 Standards and Training, it is our state accreditation agency
3 for police officers, once they have graduated from that
4 academy, they will come through our academy, which is
5 another twelve weeks. And there they receive extensive
6 training, patrol tactics, firearms, many other disciplines
7 and skills.

8 Q Does firearm training continue once the officers
9 are working on patrol with the bureau?

10 Yes, throughout. Once they graduate from all
11 these various schools in the academies, we receive training
12 each year during in-service, called in-service training. At
13 in-service training every year we receive four additional
14 hours -- at least four additional hours of firearms
15 training. In addition to that, every year three times a
16 year officers have to qualify. So they have to take their
17 duty weapon, maybe back-up weapon, to the range and shoot
18 our qualification course and have a passing score to remain
19 certified to carry a weapon in the Portland Police Bureau.

20 Q What does that consist of in terms of the in-
21 service training and qualification? What's an officer have
22 to do?

23 A In-service training is different than
24 qualification. In-service training can be a variety of
25 different training scenarios we take somebody through. It

1 can be as simple as reviewing basic schools they learned
2 during advanced academy firearms and manipulation reduction
3 drills, or more advanced. It depends on what we need to
4 teach. That is given every year. So we do more scenario
5 training, shoot, no shoot scenarios.

6 Firearms qualification is a totally different
7 animal. That implies simply going to the range, whether a
8 downtown range where we have an indoor range, or the
9 Tri-County Gun Club, which is a place we shoot. We don't
10 have a true training facility at this point.

11 They go through their qualification course, which
12 is various rounds fired at various different yardages, from
13 the five-foot line all the way to the 25 yard line.
14 Officers have to score a minimum of 75 percent to maintain
15 their certification. If they don't, there's various steps
16 to go through to try to get them retrained and up to speed.

17 Q All right. Do all of the officers within the
18 bureau carry a standard weapon?

19 A Yes. And that's relatively recent. I would say
20 within the last ten years we went to a standard weapon. We
21 all carry the Glock 9 millimeter. There are three models we
22 carry of the Glock. We carry the Glock 17, the large frame
23 Glock. We carry a Glock 19, a smaller frame. And a compact
24 Glock, the Glock 26 it's called, but they all shoot the
25 exact same bullet. Depending on your assignment if you work

1 detectives, you might want a small weapon to carry that's
2 concealed or a smaller hand, you might want Glock 19 or a
3 Glock 17.

4 Q Are you familiar, generally speaking, with why
5 that particular weapon was selected by the bureau?

6 A Yes. We used to have the option of carrying a 9
7 millimeter or 45 caliber, 45 caliber being a little bigger
8 than the 9 millimeter. However, we had some issues with
9 that particular gun and that particular round exploding. We
10 had two for sure that I know of in a relatively short period
11 of time that exploded on the range, and injured some of our
12 officers.

13 We weren't getting very good feedback from Glock
14 as to why this was happening. We were not getting feedback
15 from Federal, our ammunition maker why this was happening.
16 So, we decided to go to the one gun, the 9 millimeter, we
17 don't have issues with it. It is a simple gun. Glocks are
18 easy to shoot, a very well performing gun and very easy to
19 work with. By work with, I mean if your gun breaks, it's
20 very easy to fix. They have drop-in parts. So if my
21 trigger spring breaks, I can drop in a part, whereas if you
22 carry a Colt 1911, which is a pretty common police gun, if
23 that gun breaks, it could take months to fix it, including
24 milling, and a true gunsmith has to work on the weapon.
25 Glocks are simple, I can fix a Glock. I'm not that great at

1 fixing guns.

2 Q How many rounds of bullets do the weapons carry?

3 A Standard Glock 17 has a 17 round magazine, so you
4 can have potentially 18 rounds in the gun, one in the
5 chamber, rest in the magazine.

6 GRAND JUROR: Is that the standard for all of
7 the policemen in Portland for Glock 17?

8 THE WITNESS: Yes, sir.

9 GRAND JUROR: The type of range firing -- I
10 mean, I understand you have the basic target,
11 different ranges. Do you do different stances like
12 sitting, things like that, or different light
13 conditions?

14 THE WITNESS: Yes, we do all of the above.
15 Predominantly, most of the shooting we do is standing,
16 but several different kneeling positions. There are
17 four of them. We shoot prone -- standard prone
18 position like the military shoot; advanced prone
19 position, roll over prone. We shoot on our back, we
20 are taught to shoot between our legs on our backs, a
21 variety of different shooting positions.

22 As far as low light or reduced light, we do
23 that as well. Our basement range at the Justice
24 Center where central is located, we can turn off the
25 lights, it's pitch black. We do quite a bit of low

1 light shooting as well.

2 GRAND JUROR: You use a combination with a
3 hand held flashlight or just light attachments?

4 THE WITNESS: We do both, in case one of the
5 systems goes down. The light we have attached to the
6 Glock now, the TLR, it's called a streamline, attaches
7 directly to the Glock. It clamps onto it. It's
8 relatively new for us. We have been working with that
9 to get used to it. We do it with light attached to
10 the gun, which you manipulate with index finger or
11 have a flashlight in one of the hands, the
12 non-shooting hand we can use, and shoot different
13 styles with that.

14 GRAND JUROR: Would you say brightness of the
15 light on the Glock you're using now would be somewhat
16 distracting if shown directly in someone's eyes?

17 THE WITNESS: That's a great question.
18 Absolutely. It's very effective. Even in a bright
19 room like this, if I came in and shined the light we
20 have attached to our Glock in our your eyes, you can't
21 see me. It's very effective for that reason. And
22 hand held flashlights as well are as effective.
23 That's one of the common tactics we teach to have
24 flashlights to help incapacitate the person's vision.

25 BY MR. REES:

1 Q And why do you teach that as a technique?

2 A We teach anything that will give us a tactical
3 advantage, so anything that will help us either not have to
4 use a higher level of force, or to win a fight. If we're
5 forced to use force, that's what we call a tactical
6 advantage. Shining a flashlight in someone's eyes if they
7 are intent on hurting you, impedes their ability to get to
8 you and hurt you.

9 Q Is it true some people actually back off when a
10 flashlight is shone in their face?

11 A Yeah. I'm not sure if they actually back off, but
12 they often cower and turn away, the light hurts their eyes,
13 to avoid the light shining in their eyes.

14 Q Let me ask you in terms of training about the
15 concept of action-reaction. Is that a concept you're
16 familiar with, and is that something that the officers are
17 taught about?

18 A It's something we teach. It's a very basic skill
19 or basic principle all officers are familiar with. What we
20 teach in advanced academy, that's my forte. I teach new
21 cops predominantly, although I teach seasoned cops
22 action-reaction.

23 Pure action will always beat pure reaction,
24 meaning if you made a decision right now to pull a gun and
25 shoot me before I can react to you, you're going to

1 accomplish your goal. So we teach to combat that. We know
2 we're on the losing side of things. In order to combat
3 action-reaction, we teach to try to have some kind of
4 tactical advantage, the light. If I hit you with the light,
5 it reduces your ability to draw your gun and point it at me.

6 We're always behind the power curve. It is
7 important for new officers to understand that we're always
8 behind. The time it takes to formulate thoughts, is time
9 that we don't really have, but it's what we're forced to do.
10 Let me illustrate that better, it didn't make a lot of sense
11 to you.

12 If you make the decision to shoot me, that mental
13 process you're going through is done. Once you point the
14 gun at me, I have to go through the mental process of what
15 do I do now? Do I turn and run? Do I shoot back? Do I
16 hide? What do I do? That takes time, and all the while
17 you're still gaining that advantage, because, you know, I'm
18 thinking.

19 Once I make up my mind of what reaction I'm going
20 to make to your overt threat, I have to think, okay, hand
21 needs to go to weapon now, or I need to get flashlight out,
22 whatever it is. So I'm further behind the power curve.
23 Hence, action-reaction, we're behind the power curve.

24 GRAND JUROR: The aggressor would be inside
25 of the thought curve basically?

1 THE WITNESS: Yeah. Does that make sense?

2 GRAND JUROR: Yeah.

3 BY MR. REES:

4 Q In addition to the threat from firearms, are
5 officers taught about the threat posed by knives or other
6 sharp objects?

7 A Yes. We have what is referred to often, maybe
8 slightly incorrectly, the 21 foot rule.

9 GRAND JUROR: I didn't hear the question.

10 BY MR. REES:

11 Q Whether officers are taught about the threat posed
12 by knives or sharp objects.

13 A Better way to describe or to label it is the
14 reactionary gap. And this was a study that came out in 1983
15 published in SWAT Magazine. The article stated, and it
16 seems common sense, but it was pretty new at the time, even
17 in 1983 it was a new idea. That how long it takes an
18 average officer to get their gun out of holster and fire one
19 round. The answer then, and it's changed and we'll talk
20 about that, was 1.5 seconds. It takes the average officer
21 in 1983 1.5 seconds to get their gun out of holster and fire
22 a round.

23 So, the guy who wrote the study, Dennis Tueller,
24 wanted to know how fast or far can somebody travel in 1.5
25 seconds. And the answer was, the average person can cover

1 21 feet in 1.5 seconds; hence, the 21 foot rule. It's
2 mislabeled a rule, it should be called a concept, because
3 there's a bunch of other factors officers need to think
4 about. Somebody simply within 21 feet with a weapon is not
5 enough to use force, there has to be lot of other things to
6 consider.

7 Since Tueller's original study in 1983, we have
8 had advances in our holsters. Our new holsters are level 3
9 holsters, meaning they have three levels of retention,
10 harder to get the gun out. So the average time to draw from
11 a level 3 holster, come up on a target and fire one round,
12 is now about two seconds or a little more than two seconds.
13 How far can somebody travel in a little over two seconds?
14 The answer is between 26 to 31 feet. So it is a lot more
15 distance than the 21 feet originally.

16 So with the advancement in our holster, the
17 reactionary gap increased to maintain safe distance with the
18 suspect with an edged weapon towards a police officer.

19 GRAND JUROR: This holster -- new type of
20 holster, and the reason why it takes two seconds, is
21 because you got a little leather strap that you have
22 to unclick or what?

23 THE WITNESS: There's two things you have to
24 do. One is there's a button that locks into the
25 bottom part of the gun in the holster, you have to

1 pull back with your thumb, which unlocks that, and at
2 the same time you're pushing forward on the leather
3 strap to get that forward to get the gun out that you
4 described.

5 GRAND JUROR: Thank you.

6 BY MR. REES:

7 Q Do the Kevlar vests officers wear provide
8 protection against knives?

9 A No. Our vests are level 3-A vests. They stop
10 most handgun rounds, but do not stop an edged weapon
11 whatsoever. It's like a thick shirt on as far as
12 protection.

13 GRAND JUROR: Isn't that not very safe?
14 Shouldn't you have a vest that has protection for
15 bullets and knives too?

16 THE WITNESS: Yes, that would be nice. But
17 technology unfortunately is not our friend. To have a
18 vest that protects from rifle rounds or knives would
19 probably weigh upwards to 50 pounds. And this current
20 environment, to be a police officer, that's not very
21 realistic to have that much weight.

22 BY MR. REES:

23 Q In terms of using deadly force on the street, uhm,
24 what are officers taught, if you're able to put this into a
25 capsule, when they should shoot?

1 A We have laws, which I'm sure you folks have gone
2 over, and we have policy. Our current policy in the police
3 bureau is called 1010.10, that's deadly force policy, and it
4 states quite simply that an officer has to be in immediate
5 threat of serious physical injury or death to yourself or
6 others, so the officer's life or someone else's life, and
7 then we're authorized to use deadly force to protect
8 ourselves or someone else.

9 Q And that internal policy is actually more
10 restrictive than state law?

11 A Absolutely.

12 Q If an officer makes the decision to use deadly
13 force to fire their weapon, where are they taught to shoot?

14 A We teach to shoot center mass, center mass of a
15 person being the center of their chest. We do that for a
16 couple of reasons. The first reason we teach that is
17 because it's the largest area, easiest area to hit.

18 Second reason we teach center mass is that's where
19 all of the stuff is that neutralize a threat or stop a
20 person quickest other than the head. It's the easiest area
21 to shoot at, and the easiest way to neutralize a threat.

22 Q The question always seems to come up, officer, why
23 the police didn't do like Marshal Dillon you see on
24 television shooting somebody in the hand or the foot or
25 something like that. Is that ever part of the training to

1 do that?

2 A No, we don't, and myself included, I'm definitely
3 not immune to this. We don't get enough firearms training
4 to be that good. And, quite frankly, I don't know if
5 anybody in the world gets enough firearms training to be
6 that good. There's the rare person that might be able to do
7 that, but usually they are exhibition shooters for wild,
8 wild west shows maybe.

9 I have a lot of shooting experience. I was a
10 sniper in the US Army, spent time on the SERT team in
11 Portland. I shoot recreationally. I have shot in high
12 powered rifle competitions when I was younger, still enjoyed
13 shooting as much as I used to. And I know for a fact I
14 could not hit somebody in the arm or leg if they were coming
15 at me, unless I had a lucky shot. It's just not feasible.
16 And probably more importantly, shooting somebody in the arm
17 or the leg, may or may not have any impact on that person.
18 It is not going to neutralize the threat, not going to stop
19 the person. It may hurt, may get them to wince, but not
20 neutralize the threat. It won't necessarily stop the
21 threat.

22 Q Once the officer makes the decision to use deadly
23 force, when are they taught to stop shooting?

24 A We teach that there's no magic number of rounds to
25 fire at any one person in any one situation. We simply

1 shoot until the threat is neutralized. Then we stop and
2 assess. It could be one round, it could be 100 rounds. Who
3 knows how long or how many rounds it takes to neutralize a
4 person?

5 Q What does that mean to stop a threat or neutralize
6 the threat?

7 A Until the person is no longer a threat, until the
8 person is no longer doing the activity or performing the
9 actions that caused you to feel you needed to use deadly
10 force.

11 Q Okay. And do you know why or how that is -- that
12 has evolved into what is being taught, as opposed to firing
13 once or twice, and then assessing what is going on?

14 A I have never since I have been a police officer
15 for thirteen years and some change, we have never had
16 training to shoot X number of rounds, and then assess. It's
17 always shoot until the threat is neutralized. Once you feel
18 the threat, there is no longer a threat, then you assess the
19 situation and start doing other things.

20 Q All right.

21 A Does that answer the question?

22 Q It does. And that's the consistent training
23 throughout the time that an officer is a member of the
24 Portland Police Bureau?

25 A Since I have been on it, yes.

1 Q Okay. Any questions about any of those training
2 related areas?

3 GRAND JUROR: Often an officer presented with
4 a real situation may have a number of options
5 available to them to address. What kind of training
6 do they receive to help them quickly assess which
7 option is going to produce the best result?

8 THE WITNESS: Good question. We pride
9 ourselves in the training department of having that
10 type of training, it's scenario based training, it's
11 not classroom and static stuff on the gun range. It
12 is using real life actors -- well, we're the actors,
13 the training division and the folks we use from the
14 street. Simply actors presenting factual situations
15 to an officer, and they are forced to decide what to
16 do, what level of force to use, what options to use in
17 a bunch of different environments, could be a house,
18 could be outside in a wooded area, could be in a
19 warehouse, could be in a vehicle, could be in the open
20 field.

21 So we spend a lot of time and stress most of
22 our training is done in scenario based setting to make
23 it as realistic as possible, to make the officer think
24 what other options do I have available, what are my
25 tactical advantages, what are my disadvantages? What

1 does my environment offer me as far as limitation or
2 advantages? We spend a lot of time with that kind of
3 training, it's very important to us.

4 ~~THE COURT:~~ **MR. REES** Anything else? All right. Thank
5 you, officer.

6 THOMAS FORSYTH

7 called as a witness, being,

8 first duly sworn,

9 was examined and testified as follows:

10 EXAMINATION

11 BY MR. REES:

12 Q Officer, for the record, please state and spell
13 your first and last names.

14 A Thomas Forsyth, F-O-R-S-Y-T-H, T-H-O-M-A-S.

15 Q And what's your occupation?

16 A Portland police officer.

17 Q And are you assigned to a particular division or
18 detail?

19 A Assigned to the training division.

20 Q All right. And do you have a particular expertise
21 in the use and functioning of the taser?

22 A I do. I'm taser training lead.

23 Q How long have you been doing that?

24 A Nine years.

25 Q All right. And did you bring a taser with you

1 today for demonstrative purposes?

2 A I did.

3 Q He's not going to deploy it, folks. But we heard
4 in this case about a taser, and so I thought it might be
5 helpful to understand what we're talking about.

6 Go ahead and explain what you have there.

7 Q Okay. The Portland police bureau uses Taser X 26,
8 a common model around the country, it operates at 50,000
9 volts. Voltage is a measurement of how far energy arcs
10 through the air. It's .0036 amps. So, amperage is how much
11 energy is in that arc. So the purpose for the 50,000 volts
12 is so it can arc a distance from the probes to the body.
13 And the purpose is to cause neuromuscular incapacitation.
14 It applies enough energy to the skeletal muscles to cause
15 rapid contraction and release of the muscles causing the
16 person to lock up. That's in a perfect world.

17 The way it operates, there's a probe cartridge
18 that attaches to the front of the device. And this probe
19 cartridge has two probes, and they are oriented vertically.
20 This is a probe cartridge. That's the blast doors on it,
21 they are oriented vertically. And when the energy is
22 applied from these contact points on the cartridge port to
23 correspond with contact points on the back face of the
24 cartridge, that energy is delivered up to the surface of the
25 opposing cartridge. The energy goes under the blast doors

1 back there, and finds this lightning rod, if you will, a pin
2 that delivers that energy into the cartridge and causes it
3 to deploy.

4 The probes are oriented vertically, and the top
5 probe goes with the laser site which is on the wall, the top
6 probe will go where the laser site is. And the bottom one
7 goes at -- the second probe goes down at a downward 8 degree
8 angle for maximum spread of 36 inches at 21 feet. So
9 there's 21 feet of wire in this cartridge. So we can be 21
10 feet away and the probes are oriented vertically, three feet
11 apart. The purpose is to get the probes far enough apart,
12 the further the probes are apart, the more muscle groups
13 will be interrupted or caused to react to the energy when
14 it's delivered.

15 Uhm, there's a five second automatic timing cycle.
16 When I take the safety off, pull the trigger off, it cycles
17 for five seconds. However, the officer can hold the trigger
18 down, it cycles as long as the trigger is held down.

19 Here's -- I can pass around this cartridge.
20 That's a spent cartridge, there's no probes in it. You can
21 see where the probe wells are, and on the outboard areas of
22 the cartridge is where the wire is S-folded and clipped by a
23 plastic clip.

24 GRAND JUROR: Could somebody shoot it and
25 then release and then electrocute or shock again,

1 whatever?

2 THE WITNESS: Yes.

3 GRAND JUROR: You can start and stop?

4 THE WITNESS: Yes. You can have multiple
5 cycles.

6 BY MR. REES:

7 Q You mentioned the blast door, and we heard the
8 testimony of Detective Coffey that a taser blast door was
9 found at the scene. That's one of the items on the placard.
10 What's that indicate when it's found at the scene?

11 A On this live cartridge, the blast doors are the
12 silver portion of -- on the face of it. The blast doors are
13 covering -- if you'll notice when the cartridge comes
14 around, it covers the front surface of the cartridge to keep
15 debris and other things out. The other thing it does, is
16 ensure that the energy that is transmitted across the
17 surface is held down to the surface of the cartridge to
18 allow it to hit that lightning rod and set off the
19 cartridge. It is part of the ignition process as well.

20 Q And so what you're calling the blast doors, are
21 really two pieces of plastic that are going to fly out when
22 it's deployed?

23 A When they -- it's deployed, they fly out, land a
24 couple of feet from you. They are light, the wind will take
25 them, things of that nature. They come off to allow the

1 deployment of the cartridge -- of probes.

2 Q So under ideal conditions, what would be the
3 desired effect of the taser when it's used against a person?

4 A Desired effect is that neuromuscular
5 incapacitation where the person experiences a lock up of
6 muscle groups affected by the energy, and that depends on
7 where the energy is delivered, where the probes end up on
8 the body, uhm, there's different reactions, depending on
9 where the probes actually are delivered. If both in the
10 lower body, if there's one above the belt and one below,
11 there's a lot of variable as far as reaction and where the
12 energy is delivered.

13 Q And in between that ideal situation and complete
14 failure, then, it sounds like you may have something in
15 between too?

16 A Yes. Now, I mentioned about voltage and arcing
17 through the area. The reason it is high voltage, low
18 amperage, is so the energy can arc through clothing or other
19 things of that nature. Heavy or thick clothing or light
20 clothing like this shirt, if it were to be loosely worn, and
21 as the probe was on it's path, hit the clothing, the light
22 clothing robbed the energy from the probe and didn't allow
23 it to attach to the skin, that happened as well.

24 So in order for it to be effective, we need to
25 have the probes an inch apiece or a combined two inches away

1 from the skin. If you have a probe in the skin and one that
2 is dangling away from the skin two inches, you would be on
3 the outside envelope of effectiveness or both of the probes
4 away one inch. And by and large our failure issues are
5 predominantly clothing related.

6 Q Explain that. You're talking about complete
7 failure or doesn't work at all?

8 A Even intermittent failure where because someone is
9 temporarily affected or affected in a minor way when they
10 move, perhaps the probe becomes a little closer and they
11 feel a little more of the energy. But as they move, they
12 get that intermittent effectiveness because of the movement
13 of their clothing.

14 Q All right. And can you also have a complete
15 failure where then the probes simply are not in contact
16 close enough to the skin due to layers of clothing, for
17 example?

18 A That's right, yes.

19 Q Did you bring some probes to show us?

20 A I did. This is an example of a taser probe. The
21 probe, itself, the needle portion is one 3rd of an inch
22 long.

23 GRAND JUROR: Why are they so short? No
24 wonder they can't go through clothes, they need to be
25 longer.

1 THE WITNESS: Yes. There are some probes
2 that are longer, actually a half inch long.

3 GRAND JUROR: Why not use them all of the
4 time?

5 THE WITNESS: That's something in the program
6 we looked at and evaluated and continue to evaluate.

7 BY MR. REES:

8 Q In this cases, Dr. Gunson, Medical Examiner,
9 testified about multiple layers of clothing worn by the
10 deceased, and she observed the probes had not penetrated the
11 clothing, and she testified there were no marks on the skin.
12 Is that something that -- in terms of the failures, have you
13 seen, is that something that has happened in other cases,
14 not necessarily where there's been use of deadly force, just
15 where there's been use of the taser and it failed to stop a
16 subject because of multiple layers of clothing?

17 A Yes. Multiple layers of clothing or loose, light
18 clothing as well.

19 Q Okay. Uhm, did you examine the taser used by
20 Officer Lile in this case on January 2nd, 2011?

21 A I did.

22 Q When did you examine that?

23 A It was delivered to me by Detective Coffey on the
24 6th.

25 Q All right. And go ahead, if you would, please

1 describe what you did to check functioning and operation of
2 the taser?

3 A I did a function check on the device. Also, I did
4 a down load. Each of these have the capability of recording
5 over 1500 trigger pulls, date and time and internal
6 temperature and the battery or -- battery life existing at
7 the time. I did the down load. When I do my function test,
8 I spark the device. I pull the trigger, allow it to spark
9 for five seconds, and then I put the safety on, take the
10 safety off, I spark it again for two seconds.

11 The reason I do that is that being an electronic
12 device, sometimes this down load print-out is not -- I don't
13 want to say accurate, but I don't want to say it is as
14 consistent as others. Sometimes the stamp is in a different
15 place. I want to see it at the end, that gives the record
16 of the last trigger pull. And I'm able to find the event or
17 incident prior to my test, that's why I do it that way.

18 Q Was Officer Lile's taser operating properly?

19 A It was operating properly. The down load was
20 operating properly, and I noted my test fires and then the
21 deployment time. And also we have our officers at the
22 beginning of each shift when they check the taser out, they
23 do a spark test to make sure it is operating properly. I
24 found Officer Lile's spark test at the beginning of his
25 shift.

1 Q He did the test at the start of his shift? Were
2 you able to tell at what time on January 2nd, 2011 he then
3 used the taser?

4 A Yes. According to the down loaded material here,
5 it was -- spark test was 7:12 in the morning, that would
6 have been around shift start time or just before. And
7 deployment was at 4:18.

8 Q In the afternoon?

9 A In the afternoon.

10 Q 4:18. Could you tell if he used it multiple times
11 or what the duration was?

12 A Just one time.

13 Q What was the duration?

14 A Five seconds.

15 Q Is that automatic?

16 A That's automatic timing cycle. If you pull the
17 trigger, take the finger off, it runs five seconds and then
18 stops.

19 Q Okay. Any questions about the test or just the
20 taser in general?

21 GRAND JUROR: What propels the probes? Is
22 that a combustion type thing like a bullet, or
23 something else?

24 THE WITNESS: Inert nitrogen. What happens
25 in the lightning rods when energy is -- when the

1 energy on the surface of the probe hits that lightning
2 rod, it goes down into the cartridge and causes a
3 primer to ignite. The primer pushes a capsule of
4 inert nitrogen against the back face of the cartridge.
5 That puncture pin that's hollow, it allows the inert
6 nitrogen channeled behind the probe and propels the
7 probe.

8 GRAND JUROR: If you were where I am now and
9 you shot the taser at the wall, would the probes stick
10 into the wall behind you?

11 THE WITNESS: Into a hard surface, they
12 bounce off. So into that wall?

13 GRAND JUROR: Sheet rock wall?

14 THE WITNESS: I've seen them stick in sheet
15 rock and bounce off hard surfaces. Usually they
16 bounce off.

17 GRAND JUROR: Does your log show amperage
18 distributed from the spark? When it sparks, does it
19 show how much energy is actually passed through it or
20 just that it sparked?

21 THE WITNESS: Just that it sparked.

22 MR. REES: Anything else? All right. Thank
23 you, officer.

24 (Whereupon, Grand Jury adjourned at 3:40
25 p.m.)

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

3 I, JULIE L. BOURGEOIS, an Official Court Reporter
4 for the Multnomah County Circuit Court, hereby certify that
5 I reported in stenotype the foregoing testimony and
6 proceedings had in the aforementioned case; that thereafter
7 my notes were reduced to typewriting under my direction, and
8 that the foregoing transcript, consisting of 69 pages, is a
9 true and correct transcript of said oral proceedings.

10 Witness my hand in Portland, Oregon, this 21st day
11 of January, 2011.

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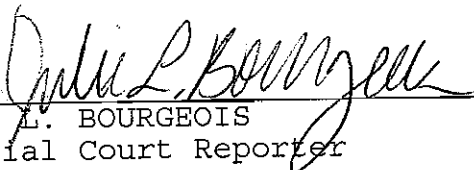
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JULIE L. BOURGEOIS
Official Court Reporter

1 MULTNOMAH COUNTY GRAND JURY

2 DEATH INVESTIGATION

3
4 Deceased: THOMAS MANFORD HIGGINBOTHAM)

5 Date of Incident: January 20, 2011)

6 Location: 3153 SE 82nd Avenue)

Portland, Oregon)

DA Case No. 2209602

PPB No. 11-375

7
8 VOLUME 49
10 TRANSCRIPT OF PROCEEDINGS11 BE IT REMEMBERED that the above-entitled Grand
12 Jury proceedings were held, commencing at the hour of 2:03
13 p.m. on January 20, 2011, at the Multnomah County
14 Courthouse, Room 738, 1021 SW 4th Avenue, Portland, Oregon.15
16
17 APPEARANCES18 MR. DONALD REES,
19 Deputy District Attorneys,
20 Appearing on behalf of the State.21
22 ESTELLE T. KEATING
23 Court Reporter
24 Multnomah County Courthouse
25 Portland, Oregon

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I N D E X

WITNESSES

<u>For the State:</u>	D
Kristina Coffey	172
Jason Lile	174

1 MR. REES: This afternoon I received a
2 supplemental report from Dr. Gunson. I believe she
3 mentioned yesterday she was working on the toxicology.
4 And so this is from Karen Gunson, M.D., Oregon State
5 Medical Examiner, and it says, "Thomas Higginbotham's
6 blood alcohol was .26%. That is about three times the
7 legal limit for driving, which is .08."

8 KRISTINA COFFEY,

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

12 **EXAMINATION**

13 BY MR. REES:

14 Q Detective Coffey, yesterday afternoon the
15 Foreperson of the Grand Jury had a question about the
16 floor of the room where the shooting occurred; is that
17 correct?

18 JUROR: Yes. The nature of the debris on the
19 floor, I was trying to assess how it might have affected
20 the footing of the people involved. Uhm, was this like a
21 path through there, or was it just all junk scattered
22 everywhere? Uhm, would -- might it have affected
23 somebody to the point where they are stumbling and
24 unsteady?

25 THE WITNESS: I brought another photo in from

1 the crime scene photos, and this image is --

2 MR. REES: Why don't you pass it around.

3 A This image would be looking from room number two
4 towards the carwash bay.

5 Q So our victim would have seen approximately
6 this?

7 A Correct. So this view would be standing in this
8 doorway, looking this direction. So you'll be -- this
9 door here would be the entrance into room number one.

10 JUROR: That actually may help a few other
11 thoughts, too.

12 JUROR: When did you take this picture?

13 THE WITNESS: This was taken the night of, on
14 the 2nd.

15 JUROR: But do you know if these were moved or
16 was there a clear path?

17 THE WITNESS: This was exactly how we found it.

18 JUROR: Can you identify where the victim's feet
19 were in this mess? The victim doesn't appear to be in
20 this photo.

21 THE WITNESS: Negative. Mr. Higginbotham had
22 been moved out of that room into the carwash bay upon our
23 arrival.

24 MR. REES: All right. So does that answer your
25 question?

1 JUROR:: Well, partially. There is a couple of
2 pieces of debris in the clear path. It looks like a
3 couple of baskets. And I was wondering if he had made it
4 past those baskets or not before the shooting occurred?

5 MR. REES: That would probably be from the
6 officer's point of view.

7 All right. We'll call Officer Lile.
8
9
10

11 JASON LILE,

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

15 **EXAMINATION**

16 BY MR. REES:

17 Q Officer, please state your first and last name
18 and spell your names?

19 A Jason Lile, J-A-S-O-N, L-I-L-E.

20 Q And you are a member of the Portland Police
21 Bureau?

22 A I am.

23 Q Officer Lile, you understand that your
24 appearance before the Grand Jury today is purely
25 voluntary, correct?

1 A I do.

2 Q You don't have to be here and you don't have to
3 make this statement?

4 A Correct.

5 Q All right. But you are willing to do so?

6 A I am.

7 Q All right. How long have you been a member of
8 the Portland Police Bureau?

9 A Ten years, over ten years. Next month will be
10 11 years.

11 Q All right. And do you have any prior law
12 enforcement experience?

13 A Prior to becoming a police officer with the
14 Portland Police Bureau, I was a probation officer in
15 Arizona for two different counties for seven, eight years
16 total.

17 Q All right. And what's your educational
18 background?

19 A I have got a degree, a Bachelor's Degree, in
20 Criminal Justice from Northern Arizona University.

21 Q Since you have been with the Portland Police
22 Bureau, have you served in different assignments?

23 A No. I have worked patrol the entire time.

24 Q All right. Have you worked in different
25 precincts?

1 A Yes.

2 Q What's your current assignment?

3 A East Precinct, day shift, patrol.

4 Q And day shift being what hours?

5 A I start at 7:00 and end at 5:00.

6 Q And what days of the week do you work?

7 A I work Thursday through Sunday. I have Monday,
8 Tuesday and Wednesday off.

9 Q Have you received any special training while you
10 have been with the Portland Police Bureau in terms of
11 tactics or firearms or do you have any special
12 certifications?

13 A Well, along with everybody else now, I'm CIT
14 trained. That was a couple years ago that everybody went
15 through that process.

16 Q CIT meaning what?

17 A Crisis Intervention Training.

18 And then, in addition to that, I was trained in
19 the AR-15 rifle and then Taser certified, which everybody
20 is now.

21 Q Directing your attention to the day of the
22 shooting, which is Sunday, January 2nd, 2011, that would
23 have been the last day of your work week; is that
24 correct?

25 A Correct, correct.

1 Q All right. And this occurred at the end of your
2 shift, as I understand it?

3 A Correct.

4 Q All right. Prior to the call that led to the
5 shooting, was there anything unusual about that Sunday,
6 in terms of what happened during your shift?

7 A No. Actually, it was a pretty slow Sunday.

8 Q And what was going on immediately before the
9 radio call that took you to the carwash where the
10 shooting occurred?

11 A Uhm, about 30 minutes to an hour before the call
12 came out, I was parked in a parking lot of I think it's a
13 Plasma Donation Center at about 80th and Holgate. And I
14 was parked there just to go through some things on the
15 computer. And like I said, it was a slow Sunday. There
16 wasn't a lot going on.

17 So I pulled into this parking lot towards the
18 back, and I was reviewing -- it's a new computer program
19 that we have that's called Shift to Shift, I think is
20 what it's called. It's like a bulletin board. It's
21 where officers can leave information on there for other
22 officers about anything you want to leave on there,
23 whether it's a drug house or a problem area or somebody
24 that you dealt with that you think, you know, this person
25 might have contact with the afternoon shift or night

1 shift. It's a way to communicate with other shifts.

2 And so I was reviewing that. And, in fact, one
3 of the things that I read on there was some information
4 about this carwash.

5 And while I was doing that, Officer Wingfield
6 pulled into that parking lot and pulled up next to me,
7 and we were facing door to door and just having a
8 conversation, just chatting.

9 Q All right. And then did you receive a call
10 regarding an incident that had occurred in the area of
11 82nd Avenue and Powell?

12 A Yeah. What happened was the -- the Dispatcher
13 broadcast what they call an "info call". So this is a
14 way for the Dispatcher to use the radio to let officers
15 know that there is a call, a lower-priority call holding.
16 So she -- she broadcasts the information of the call and
17 said, "This call will be holding for self-dispatch,"
18 meaning she's not assigning an officer to it right now,
19 but she wanted to put the information out so that we knew
20 that it was holding. And, in fact, after she got done
21 broadcasting that, Officer Bacon said, "I will go to
22 that."

23 So it's something that the dispatchers do every
24 once in a while. It seems to be done -- a lot of times
25 when it's a borderline call, do they really need to

1 dispatch somebody right now? Maybe it doesn't meet the
2 criteria to be dispatched right away, but they still want
3 us to know because maybe there is somebody close by that
4 does want to go and take it right away, and I think
5 that's what happened in this case.

6 Q All right. And what did you do?

7 A Well, I heard Officer Bacon assign himself over
8 the air to that call. And I -- I think Sergeant Keen got
9 on the air and said he would be going as a cover officer.
10 And Officer Wingfield, who I was chatting with, said,
11 "Oh, I think I'll stop by that on my way in," because it
12 was getting close to the end of our shift. And we were
13 also close, just down the street at Holgate. And I said
14 "Okay. I'll go with you." So we both went, you know,
15 headed that way.

16 Q What information did you have when you headed in
17 that direction as far as what was going on at that
18 location?

19 A The only information I had was what the
20 Dispatcher had said, which was the complainant, the
21 person who called, was reporting that someone had
22 apparently tried to hit them and was refusing to leave.
23 You know, I was -- when the Dispatcher put that
24 information out, I was kind of in mid-conversation with
25 Officer Wingfield. So I just caught it, you know, didn't

1 have my full attention.

2 But when I read the computer CAD entry, it
3 mentioned, I think, that the complainant -- it was my
4 understanding the complainant was like a security guard
5 and was somehow related to the Dotty's there and this
6 person had been trespassing before and was refusing to
7 leave and had tried to hit her earlier in the day. And
8 there were no weapons involved, but that the person was
9 known to maybe carry a knife.

10 Q All right. Now, you are describing your
11 recollection 18 days since the incident, correct?

12 A Right.

13 Q You haven't had the opportunity, I assume, to
14 review any materials related to that?

15 A The only thing I reviewed is the CAD printout,
16 which is the terminal in the car that your call shows up
17 on.

18 Q Okay. Was that a location you were familiar
19 with from any previous contacts there or not?

20 A No, it actually wasn't. That district that this
21 call came out in was actually the district I was working,
22 but I don't usually work that district; hadn't worked it
23 in a long time. So I was actually confused as to
24 where -- I'm familiar with that shopping center, but when
25 the call first came out, I thought they said something

1 about Dotty's and for some reason, I was thinking Dotty's
2 was on the south side of Powell. There was -- I'm not
3 sure what the name of it is. There is like a
4 Dotty's-like establishment on the south side of Powell.
5 So, in fact, when I drove up 80th Avenue to get there, I
6 pulled into the back lot of that establishment and got on
7 the air and said, "I'm arriving." And, in fact, I was at
8 the wrong spot.

9 So, when I pulled in -- I think when I got on
10 the air and said I was arriving, I think the Dispatcher
11 reminded me that the complainant was now in front of the
12 pawn shop. And so as I pulled in this back lot and
13 pulled around, I didn't see anybody. Then I looked on
14 the computer, and I realized by looking at the address
15 that I was on the wrong side of the road. And so at the
16 same time that I realized that, I saw Officer Wingfield
17 pull out onto Powell, get in the center turn lane, like
18 he was going to turn into the shopping center that's on
19 the north.

20 So I realized, 'Oh, I'm not in the right spot."
21 So I pulled out and got in behind Officer Wingfield's car
22 and we both pulled into the correct shopping center at
23 the same time.

24 Q All right. And what did you do when you arrived
25 there?

1 A Well, now I was behind Officer Wingfield. And
2 so we both kind of wove our way through the parking lot
3 over to where the pawn shop is. And I could see a
4 security guard, female security guard, standing out in
5 front of there, but I didn't see anybody that matched the
6 suspect description. So Officer Wingfield, being in
7 front of me, he pulled up, I think, into a parking space
8 there. And the security guard walked over and started to
9 talk to Officer Wingfield.

10 So I just stayed in my car in the parking lot
11 and waited to see what we were going to do.

12 Q All right. And just continue. What -- did you
13 have any contact with the security guard then personally
14 or not?

15 A No. As I sat and waited, just a few seconds
16 went by and Officer Bacon pulled in the lot and he parked
17 and he got out. And he walked over to where the security
18 guard was and to where Officer Wingfield was still.

19 And so at that time I wasn't sure that I was
20 still needed on this call. So -- and, in fact, where I
21 was stopped, I think somebody had pulled up behind me, so
22 now I was kind of blocking traffic. It's kind of a busy
23 shopping center.

24 So I thought, "Well, I'll just pull across the
25 street and get out of the way and wait and see if they

1 are going to do anything, if they need me for anything."
2 So I did that. I pulled across the street. And there is
3 a -- like an auto parts place. I'm not sure if its
4 Schuck's or something. So I pulled in the parking lot
5 across the street where I could still see Officer Bacon
6 and Officer Wingfield, and I just sat and waited.

7 And after a few seconds I saw Officer Wingfield
8 back out, pull out onto Powell -- I'm sorry, out onto
9 82nd Avenue and get in the center turn lane. And I
10 thought to myself it looks like he's going to go try and
11 locate this person. So I thought, well, I'll go with him
12 and assist him.

13 So I pulled in behind him, and he pulled just to
14 the north a little ways. And he kind of overshot the
15 driveway to this carwash. And at this point, I didn't
16 know that's where we were going. But he pointed out of
17 his car window that he wanted to go there. So I pulled
18 in there first. And then that allowed him to back up and
19 then pull in behind me.

20 And as I pulled in there, I realized, "Oh, this
21 is the carwash I just read about on the computer,"
22 because I had not ever been there before, wasn't familiar
23 with it. And I remember the entry on the computer said
24 that the transients that are staying there access it
25 through the west roll-up door.

1 So I drove that direction, towards that door.
2 And as I did that, I looked in one of the windows to the
3 carwash. And I could see a subject in there, but it was
4 hard to tell if it was male or female. But I could tell
5 it had long, dark hair and dark clothing and it didn't
6 match the description of the person we were looking for.

7 Q And just to clarify, when you said that you
8 recalled reading about a carwash where transients were
9 staying, when was that?

10 A When did I read about it?

11 Q Yeah.

12 A Oh, just about 30 minutes prior to the call or
13 an hour, somewhere in there.

14 Q All right. And so you see a person through the
15 window inside the carwash, and what did you do?

16 A So I continued to drive to where the west
17 roll-up door is to see if that door was open so that we
18 could make contact, and it wasn't. It was closed.

19 So Officer Wingfield had pulled in kind of
20 behind me. So I put my car in reverse, so he backed up
21 as well. And then during that process, I rolled my
22 window down to tell Officer Wingfield that I had seen
23 someone in there, because I didn't know if he had seen
24 that person or not. As I told him that, he, Officer
25 Wingfield, told me that he believed Officer Bacon wanted

1 to go 60-1, which is our code for arrest with the person
2 we were looking for. So I continued to back up, and we
3 parked.

4 Q All right.

5 A And so then when I got out of the car, I told
6 Officer Wingfield, you know, "There is a person over
7 here." So we walked over to where that bank of windows
8 is and looked in and saw a person -- that I guess we
9 later identified as Robert Graves -- and knocked on the
10 window, and he motioned for us to go to the roll-up door.
11 And so that's what we did.

12 Q Who?

13 A I think -- I want to say, "I". I know I knocked
14 on the window. I think Officer Wingfield -- there was
15 another door, like a man door, right there, and I think
16 he tried that door to see if we could get in that way,
17 and it was locked. So I think I might have knocked -- I
18 don't remember. We were both standing there, and he
19 motioned to the roll-up door.

20 Q Where did you go from there?

21 A So we did - we walked around to where that
22 roll-up door is, and he opened it up. And before we
23 could even say anything, he started -- I think he assumed
24 we were there about him being in the carwash. Because
25 before we could even say anything, he started to tell us

1 he had permission to be there and that Tom had talked
2 directly to the owner and had permission. And so when he
3 eventually paused long enough, I think Officer Wingfield
4 asked where Tom was and asked him how long Tom had been
5 back, because at this point we didn't know whether Tom
6 was the person we were looking for or not.

7 Q I take it this person you were speaking to did
8 not match the physical description that you had received?

9 A Correct, he didn't match the description at all.

10 Q All right. And did he have a response then to
11 that question of where's Tom?

12 A Yes, he told us Tom was -- he kind of motioned
13 back inside. And like I said, I think Officer Wingfield
14 asked him how long Tom had been -- been there, and he
15 said, "Well -- I think he said that he just got back 15
16 minutes ago or something to that effect.

17 Q And what are you seeing there inside of the
18 carwash at that point?

19 A Well -- so when we first walked in the roll-up
20 door, I did see lots of stuff that was consistent with
21 transients being camped out there for quite some time,
22 just stuff on the floors, you know, just stuff, typical
23 stuff.

24 Q Uh-hum. And how was the lighting?

25 A Well, inside the roll-up door, the lighting was

1 okay, because the roll-up door allowed a lot of light in.
2 But as he walked us back to the room where Tom was, he
3 actually said to us, "Well, you better get out your
4 flashlights, because it's dark in here." And that was
5 true. He took us into a room that was dark.

6 Q All right. And if it would help to illustrate
7 your testimony, feel free to refer to this diagram --

8 A Okay.

9 Q -- if you want, because I'm going to ask you
10 then where you moved to?

11 A Okay.

12 Q I'm just -- do you want to refer to this?

13 A Yes.

14 Q I will put it on the chair and you can stand.
15 You can hold it.

16 Why don't you then describe for us where you
17 moved to with Mr. Graves and Officer Wingfield?

18 A So Mr. Graves opened the door here on -- this is
19 the roll-up door. And so we both started to follow him
20 in here. And somewhere in this area is when I think he
21 said, "You better get your flashlights out. It's dark in
22 here."

23 And so he took us to this door, which is this
24 doorway here. And so he walked in. Officer Wingfield
25 followed and I followed Officer Wingfield. So all three

1 of us walked into this room. And Mr. Graves went to this
2 door and indicated that Tom was in here.

3 And then there was some conversation between
4 Officer Wingfield and Mr. Graves that I didn't quite
5 catch all of. I remember Mr. Graves saying something --
6 you know, something, "He can be kind of cantankerous."
7 That word stood out to me. You don't hear that too
8 often.

9 Q Is that door open or closed?

10 A No, this door is closed.

11 Q Other than Mr. Graves and Officer Wingfield, are
12 you seeing any other people around?

13 A No, no other people.

14 Q All right. And how -- if you remember, how far
15 away are you standing from Mr. Graves and Officer
16 Wingfield?

17 A Well, initially, when we went in the room,
18 Officer Wingfield was, you know, standing just a foot or
19 two away from the door, close enough that you could knock
20 on it. And he was to the left of it. And I was standing
21 back behind him. And then Mr. Graves, I think, paused
22 briefly to the right, is my memory.

23 Q All right. Are you indicating on the diagram
24 then you are standing back from them maybe what, six to
25 eight feet?

1 A No, initially I was pretty close. I was right
2 -- just a foot or two behind Officer Wingfield initially.

3 And I'm not sure of the -- the order of things,
4 but I remember at one point Officer Wingfield knocking on
5 the door and saying something to the effect of, "Hey,
6 Tom, it's the Portland Police. Can we talk to you?" And
7 he may have said that more than once, may have said it
8 twice.

9 And at some point he asked him, "Do you have any
10 weapons?" And I distinctly remember Tom responding from
11 behind the closed door, "Yeah, I got a weapon." It was
12 just this real gruff, direct tone.

13 And I'm not sure if that happened before
14 Mr. Graves left or after. I don't -- I really don't
15 remember. But at one point, Mr. Graves said, "Can I go
16 back to where I was or to doing what I was doing?" I
17 said, "Yeah, why don't you get out of here." And I
18 motioned for him to go to the door, and he left.

19 So, anyway, at the time that Tom said, "Yeah, I
20 got a weapon," that was the first time I had heard
21 anything from Tom.

22 So I stepped back and unholstered my gun,
23 because I didn't know what kind of weapon he was talking
24 about, whether he's got a gun or knife or what.

25 Q When you say you unholstered your gun --

1 A Yeah.

2 Q -- what exactly does that mean?

3 A Well, I just took it out of the holster, and I
4 had it at low-ready.

5 Q All right. And can you just explain why you are
6 doing that?

7 A Well, it's just a timesaver. You know, the time
8 to -- that it takes you to get your gun out of your
9 holster and up on target can be, you know, can cost you.
10 So it can be time enough for him to do something. So I
11 want to be ready in case he is going to do something.

12 Q All right. For the record, you indicated with
13 your hands that the gun was out, but it's pointed down at
14 the ground?

15 A Right. He's still in a room with a closed door,
16 so I really don't have anything to point it at. So I'm
17 just holding it down towards the ground, but it's -- I'm
18 ready if something happens that I can bring it up on --
19 on target.

20 Q All right. And if -- if you recall, can you
21 tell us what you are thinking at this point, given all of
22 the information that you have received up to this
23 point --

24 A Right.

25 Q -- and, you know, against the backdrop of your

1 training and experience?

2 A Sure. So, at this point, you know, I don't even
3 know that Tom is the person we're looking for. We
4 haven't even confirmed that. But -- I haven't confirmed
5 that. I'm assuming that Officer Wingfield and Officer
6 Bacon have received information from the security guard,
7 complainant, that brought us here. And so my role here
8 was just to cover Officer Wingfield. He's got more
9 information than I do, and he's taken the lead on
10 interacting with Mr. Graves and with Tom. So my job is
11 just to help Officer Wingfield should he need help with
12 anything.

13 And so when we get into this room and we knock
14 on the door and we get this, "Yeah I got a weapon," my
15 first thought is, "Okay, there is somebody in here and
16 maybe this is the right guy."

17 And so when he didn't answer initially -- or
18 after that, you know, we both backed up because -- you
19 know, initially, we were just right at the door, because
20 this very easily could have just been an incident where
21 you make contact with him and he's cooperative and
22 compliant and eventually the primary, Officer Bacon,
23 would come over and maybe interview him about what
24 happened and maybe arrest him, maybe not.

25 But when he responded that he had a weapon, that

1 kind of changed the dynamics, because now you do have to
2 be concerned, that information we initially had in the
3 call that he does -- or has indicated to people that he
4 is carrying a knife, he has indicated he's got a weapon.
5 So then, you know, it kind of changes the call into now
6 we're concerned about our safety.

7 And so we both back up. And I back up towards
8 the door here. You know, when I back up, now in my mind
9 we have a subject in a room who's refusing to come out
10 and who's indicating that he is armed. And so I wanted
11 to put -- put that information out on the radio and let
12 the primary know what's going on; and also I wanted to
13 ask him, you know, what are the -- do we have probable
14 cause to arrest him and what -- is there more information
15 that you can relate?

16 And so when I backed up, I turned my back --
17 unfortunately, I turned my back to this door, because
18 there was so much stuff on this floor, it was hard to
19 walk. I couldn't have easily backed up without tripping
20 over something.

21 So I turned my back to this door momentarily and
22 walked towards this door. And I got on my radio, and I
23 said something to the effect of, "We have subject in a
24 room who's refusing to come out. He says he has a
25 weapon. And "Can the primary" -- meaning Officer Bacon

1 -- "advise if there is PC," I think is what I said.

2 Q Meaning what?

3 A Meaning probable cause to arrest him for a crime
4 that he may have committed at the shopping center.

5 Q Okay.

6 A So, as I did that, you know, I think I also
7 subconsciously, I went towards the door, not only just to
8 give myself some distance from that doorway and from
9 where Tom was, but also I knew this was a brick building,
10 you know, like a cinderblock-constructed building, and
11 sometimes our radios don't work that well in there. So I
12 think subconsciously I wanted to get to the doorway to
13 make sure my radio worked when I broadcast that.

14 So, when I did that, as soon as I got done
15 broadcasting that on the air, I turned around, and was
16 very shocked to see Tom standing outside the doorway
17 holding a very large knife up. I think he was using his
18 left hand. And he had it kind of, you know, right in the
19 center of his body and he held it up like this. And it
20 was just -- caught me off guard.

21 Q And just for the record, you are indicating he's
22 holding the knife in his left hand about mid-chest level,
23 close in with the blade pointed -- is it up in the air?

24 A Yeah, not straight up, but, you know, not
25 straight at us either. It was kind of in between. I'm

1 not sure what angle you would call that, but that
2 direction.

3 Q All right.

4 A And it was -- it was -- the way he was holding
5 it was a menacing way, like, you know --

6 Q Pointing out at you?

7 A Yeah, at us, our direction.

8 So it really shocked me. I wasn't expecting
9 that.

10 Q I'm sorry. Maybe you said, but at that point
11 when you turn around, can you describe for us where you
12 are in relationship to the man holding the knife and
13 Officer Wingfield?

14 A Yeah. I'm standing just inside the doorway,
15 kind of in that threshold area.

16 Officer Wingfield has backed up. And this door
17 was opened pretty similar to the way it's pictured here.
18 And I think it was -- there was so much stuff on the
19 floor, that I don't think it could open any further. And
20 so he was kind of backed up against that door, basically
21 with nowhere to go.

22 And so -- and Tom Higginbotham was standing
23 probably right in this area. I would -- if I had to line
24 it up, I would probably say it was between this door and
25 this window here, somewhere in there. So he had

1 obviously stepped out several, you know, feet from this
2 doorway.

3 Q And when he came out, did you hear him say
4 anything?

5 A I didn't hear him say anything. There is a
6 possibility I missed something when I was talking on the
7 radio and had my back to him. But I didn't -- because I
8 didn't even see him come out. I didn't even hear him
9 come out. Unfortunately, I was just -- I distracted
10 myself with my radio.

11 Q And did you receive any response to your radio
12 call?

13 A I don't know that I did, because as soon as I --
14 as soon as I finished transmitting on the radio -- and I
15 think I was turning as I did that back towards this
16 door -- and as soon as I finished is when I saw him
17 standing there with the knife.

18 Q When you saw that, what did you think?

19 A That was the oh, you know -- the "Oh shit"
20 moment. I just really -- surprised me, scared me, didn't
21 expect to see that. I mean, I was really frightened for
22 what could possibly happen.

23 Q And can you just explain that. Why -- why are
24 you thinking at that point, as you put it, "Oh shit" and
25 why are you frightened?

1 A Because we're -- we're really close. You know,
2 I estimated that the distance between him and Officer
3 Wingfield was probably six feet and the distance between
4 him and I was probably eight feet, maybe. And I just
5 know that distance can be closed, you know, really
6 quickly; doesn't take long to take a few steps. And the
7 way he was holding that knife, he meant business. It
8 looked to me like he meant business. And I was just
9 concerned that he was at any moment going to stab one of
10 us. I was more concerned about probably Officer
11 Wingfield than myself just because he was closer. It
12 would seem if he was going to try and attack one of us,
13 that it would logically be Officer Wingfield. But I
14 didn't know. I was concerned for my safety as well.

15 Q All right. Was there anything, in addition to
16 holding the knife as you have described, about the way he
17 was standing or his facial expression or his posture that
18 gave you any clues to what his possible intent was?

19 A Well, it happened really quickly. I mean,
20 really quickly. But just the way that he held that
21 knife -- I mean, he looked angry. He just looked like an
22 angry person. I can't really, you know, describe
23 specifically the facial expression, why I thought that.
24 It's just he was, you know -- he was just entered up with
25 holding that knife. And it -- just in a real kinda angry

1 way.

2 Q And so what did you do?

3 A Well, he had, you know, paused right there.
4 And, you know, as soon as I saw him, you know, the "Oh my
5 gosh" moment happens, and although I had my gun out, I am
6 left-handed primarily, but I do shoot right-handed and do
7 some other things right-handed, right-eye dominant. So I
8 have my gun in my right hand. Because I'm left-handed,
9 this allows me to use my Taser with my left hand.

10 Because he paused briefly right there, I, just
11 as quick as I could, took out my Taser and, you know, got
12 it out of the holster and turned it on and brought it up.
13 Even though this happened extremely quickly, I was trying
14 to hurry just as best as I could, because I was really
15 concerned that Officer Wingfield, being so close, that he
16 was going to shoot him. And so I brought my Taser up and
17 just as quick as I could shot it at him.

18 And I remember when I was able to shoot it at
19 him, a sense of relief came over me because I thought,
20 "Whew," you know.

21 Q If you could explain that thought. Why did you
22 have that sense of relief when you activated your Taser?

23 A Because I really thought Officer Wingfield might
24 shoot him at any moment. It was just -- it was such a
25 dangerous thing for us to be so close to him with that

1 knife. And that really Officer Wingfield -- you know,
2 this happened so quickly, but, you know, I thought to
3 myself, he could shoot this person at any moment because
4 he is in danger. And so I just as quick as I could got
5 out my -- and at the same time, you know, when I first
6 saw him with the knife, I immediately yelled -- you know,
7 your training kind of kicks in. I immediately started
8 saying, "Drop the knife, drop the knife, drop the knife,"
9 giving him commands.

10 Q Did he have any response or reaction to those
11 commands to drop the knife?

12 A No, he did not.

13 Q And at that point, it sounds like from what you
14 said just now, you mentioned your training, was that
15 almost instinctive to start yelling those things?

16 A Totally instinctively, yeah.

17 Q Are you trained to yell commands like that in
18 any particular kind of way?

19 A Uhm, you are just -- you are just trained to
20 give, you know, clear, concise commands, directions for
21 someone to do what you want them to do.

22 Q In this case would be?

23 A To drop the knife. The knife is what, you know,
24 could kill us, and we want that out of his hands. And
25 so --

1 Q Did you think that the Taser would effectively
2 immobilize this person?

3 A Yeah, I did. I really did. I -- like I said, I
4 was so relieved when I was able to deploy it, because I
5 just knew we were really close to having to shoot Tom.

6 Q And so what happened when you activated the
7 Taser?

8 A So I brought the Taser up and deployed it. And
9 I remember a dart -- I want to say a dart hit him -- I
10 call it a dart -- hit him in the stomach area somewhere.
11 And like I said, there was just a real sense of -- real
12 fleeting sense of relief, like whew, we were able to tase
13 him without having to shoot him. And that quickly --
14 quickly went away because it did nothing. It didn't have
15 any affect on him at all.

16 And I remember him looking down at it. I don't
17 know if he was looking at the dart or what, but he looked
18 down, I recall, and just like that he started to come at
19 us. He just started to move forward toward us. So that
20 sense of relief went away, and then this real sense of
21 fear hit me and I was just scared. And I was scared for,
22 you know, for myself and Officer Wingfield.

23 And I remember -- I want to say that Officer
24 Wingfield fired first. It's my recollection, but I'm not
25 100% on that. But as he started to come at us, I just

1 used my weapon and fired.

2 Q How was he holding the knife when he began to
3 move?

4 A He was still holding it right out in front of
5 him, kind of pointed towards us.

6 Q Did you have an impression or do you remember
7 whether he seemed to be moving towards Officer Wingfield
8 or towards you?

9 A I really can't say. It was just a forward kind
10 of motion. So I don't know -- I mean, I want to say
11 logically he probably would go towards Officer Wingfield
12 since he was closer, but I can't say that's where he was
13 going. I just don't know.

14 JUROR: And during this time he's still saying
15 nothing at all?

16 THE WITNESS: Said nothing, right.

17 One thing I forgot to mention, if I could just
18 back up briefly. When we first knocked at this door
19 before he came out, and he said, "Yeah, I got a weapon,"
20 I asked him -- I don't know if Officer Wingfield asked
21 him as well, but I said, "What kind of weapon do you
22 have?" And he didn't respond. So I forgot to mention
23 that.

24 BY MR. REES:

25 Q Have you received any training or instruction

1 about the threat posed by a knife?

2 A We have. I have received training. There is a
3 21-foot rule they teach you about, which is kind of an
4 eye opener. You know, I think a lot of people maybe
5 don't perceive a knife as being as dangerous as you
6 should. You know, a stab wound in the right location can
7 kill you just as easily as a gunshot.

8 And so what they, you know, teach you is
9 distance and time. And you want to create a distance and
10 give yourself more time. And that's why this was so
11 scary, is that we were just so close to him. And, you
12 know, when I moved back towards that door and turned my
13 back for just a second, I mean, that was all the time it
14 took him to come out of that room and step out a few
15 feet. And, you know, it wouldn't take much more time for
16 him to close the distance, so --

17 Q Do you recall how many times you fired your
18 weapon?

19 A I want to say -- my own recollection would be
20 three or four. I think later, when we counted the
21 rounds, I was missing four rounds.

22 Q And where were you aiming?

23 A Just at his upper body. You are just -- you
24 know, the training is you are shooting to stop the
25 threat, and the best way to do that is to just shoot at

1 the biggest target you have, and that's the upper body.

2 Q Did you see any reaction when you began
3 shooting?

4 A No. Actually, I didn't. I never shot anybody
5 before, and I -- you know, again, this is so quickly that
6 this is happening, milli-second.

7 But I remember it seemed like the first couple
8 of rounds that I fired nothing happened. I mean, he was
9 still there. And that surprised me, and at the same time
10 out of my peripheral, I kind of see Officer Wingfield --
11 it seems like he's maybe trying to get back away. And
12 the only place for him to go is where I'm at. So I'm
13 trying to kind of get out of his way and move as well.
14 And so I think my last two shots were -- were kind of in
15 motion maybe. You know, and I -- I didn't have the time
16 to use my sights and I was shooting one-handed because I
17 still had my Taser in my left hand. So I couldn't bring
18 my support hand up. So it was one-handed shooting, and
19 at least the last two were kind of in motion as well.

20 Q When did you stop shooting?

21 A Eventually, he fell to the floor, and that's
22 when I stopped.

23 Q I'm sure you have thought a lot about this since
24 January 2nd?

25 A Yeah.

1 Q In thinking about this and reflecting upon this,
2 do you think there was anything else reasonably that you
3 could have done in this situation?

4 A I don't think so. I think given the information
5 that we had, it was reasonable for us to go in there and
6 try and contact Tom. You know, there was no information
7 that he had used a knife or brandished a knife or weapon
8 to the security guard. It was just that he tried to hit
9 her. And the information that he carried a knife was --
10 that's not unusual information. A lot of people carry
11 knives. And so I don't think that it was -- I mean, I
12 think it was appropriate to go in there and just try and
13 make contact with him and see what had occurred with the
14 security guard.

15 Q What about the use of deadly force?

16 A Unfortunately, I think we just had no other
17 option. I was scared. I was scared for Officer
18 Wingfield. I was scared that one of us could get stabbed
19 and die or be seriously injured. And, unfortunately, we
20 just didn't have any other option. I tried the Taser. I
21 was really, you know, glad that I was able to have the
22 time to get that out and deploy it. And it's really
23 unfortunate that it didn't work. But there was no other
24 option. After that, he continued to advance towards us,
25 and we just had no other option.

1 Q All right. Any questions about that, folks?

2 JUROR: I have a couple. When you turned around
3 and saw Tom had come out of the office, did Officer
4 Wingfield already have his weapon drawn?

5 THE WITNESS: Yes, he did.

6 JUROR: There is a picture over there of what it
7 looked like from Tom's point of view.

8 THE WITNESS: Okay.

9 JUROR:: And I'm wondering, when you saw him, if
10 you can -- you probably weren't paying much attention to
11 the debris.

12 THE WITNESS: Right.

13 JUROR:: But there is a shopping cart there and
14 some baskets on the floor. Do you know where he might
15 have been in relation to those objects?

16 THE WITNESS: You know, I can't say for sure.

17 I --

18 JUROR:: Perhaps it will be easier if you think
19 about how he landed, where his feet were.

20 THE WITNESS: Yeah. With this picture, I'm not
21 quite sure. It would have been probably where whoever
22 took this picture is standing; it would have been back
23 off this direction. I know that this path here -- and
24 I -- I'm not sure that this crate was there when we
25 walked the path. It could have got there afterwards.

1 But I know this path -- that his feet were probably on
2 the path somewhere.

3 JUROR: Okay.

4 THE WITNESS: And that his body was laying -- to
5 use this, his body was laying with his head towards this
6 wall or window here, up towards this wall or window with
7 his feet out of the path direction, if that makes sense.

8 JUROR:: That clarifies some issues for me.

9 MR. REES: Okay. Anything else, folks?

10 All right. Thank you, Officer.

11

12 (Proceedings concluded.)

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

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4

5 I, Estelle T. Keating, Official Court
6 Reporter of the Circuit Court of the State of
7 Oregon, Eleventh Judicial District, certify that I
8 reported in stenotype the foregoing proceedings in
9 the above-entitled case.

10 I further certify that my stenotype
11 notes were reduced to transcript form by
12 Computer-Aided Transcription under my direction.

13 And I further certify that pages 53
14 through 103 and 170 through 206 contain a full,
15 true, and accurate record of my stenotype notes.

16 Dated this 21st day of January, 2011,
17 at Portland, Oregon.

18

19

20


Estelle T. Keating

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