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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

GRAND JURY B PROCEEDINGS

Case No. 24

Conducted by:

- Todd Jackson, Deputy District Attorney
- Shawn Overstreet, Deputy District Attorney
- Kurt Miller, Assistant Attorney General
- Jayne Kimberly, Assistant Attorney General

- - -

September 21, 2021

(04:17:46)

- - -

DA Case No. 2434834-1

Katie Bradford, CSR 90-0148
Court Reporter
Portland, Oregon
(503) 267-5112

Proceedings recorded on digital audio recording;
transcript provided by Certified Shorthand Reporter.

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1 Deceased: Robert Delgado

2 Date: 4-16-21

3 Location: Lents Park

4 DA Case No. 2434834-1

5 Grand Jury B Recordation, Case No. 24

6 * * *

7

8 (Volume 1, Tuesday, September 21, 2021, 9:49 a.m.)

9 P R O C E E D I N G S

10 (Whereupon, the following proceedings were
11 held before Grand Jury B:)

12 MR. JACKSON: Good morning. This is Deputy
13 District Attorney Todd Jackson appearing before Grand
14 Jury B. This is Grand Jury Case No. 24 and this is
15 DA Case No. 2434834-1, a death investigation following
16 the use of firearms by police which caused the death
17 of Mr. Robert Delgado on April 16th, 2021 in the City
18 of Portland.

19 Along with me on this case is Multnomah
20 County Deputy District Attorney Shawn Overstreet.

21 MR. OVERSTREET: Yes, Shawn Overstreet,
22 O-v-e-r-s-t-r-e-e-t, Bar No. 114859.

23 MR. JACKSON: DOJ Attorney Kurt Miller.

24 MR. MILLER: It's Kurt Miller, M-i-l-l-e-r,
25 Bar No. 084210.

Examination of Kaela Ingle

1 MR. JACKSON: And DOJ Attorney
2 Jayme Kimberly.

3 MS. KIMBERLY: Jayme Kimberly,
4 K-i-m-b-e-r-l-y, Bar No. 063966.

5 MR. JACKSON: Again, my name is Todd
6 Jackson, J-a-c-k-s-o-n, Bar No. 114240. We'll start
7 with our first witness.

8 (Pause in proceedings, 9:50 a.m. -
9 9:51 a.m.)

10 MR. JACKSON: Okay.

11 **KAELA INGLE**

12 Was thereupon called as a witness; and, having been
13 first duly sworn, was examined and testified as follows:

14 A GRAND JUROR: Thank you. You can put your
15 hand down and be seated. Thank you.

16 MR. OVERSTREET: Could you go ahead and
17 state and spell your full name, please.

18 THE WITNESS: Yeah. It's Kaela Ingle,
19 K-a-e-l-a, I-n-g-l-e.

20 **EXAMINATION**

21 BY MR. OVERSTREET:

22 Q And, Ms. Ingle, I'm not going to ask you
23 for your exact address, but could you give us the
24 approximate location where you currently reside?

25 A Currently, I reside at 11517 Southeast

Examination of Kaela Ingle

1 Stevens Road, Happy Valley 97086.

2 Q Okay. And in April of this year, 2021, were
3 you living at a location near Lents Park at 92nd
4 and Holgate?

5 A Yes, I was.

6 Q Okay. And do you recall the morning of
7 April 16, 2021?

8 A Yes, I do.

9 Q Okay. And you were -- at that time, were
10 you living at that location near Lents Park?

11 A Yes, I was.

12 Q Okay. And who -- who do you live with
13 there -- or who were you living with there?

14 A I was living with my fiance, Chase Hagen.

15 Q Okay. And that morning at approximately
16 9 o'clock in the morning or shortly after, were you
17 outside of your home?

18 A Yes, I was.

19 Q Okay. And what were you doing that morning?

20 A I was on a walk with Chase. We were walking
21 our dog in the morning.

22 Q Okay. And where were you walking?

23 A We were walking along Lents Park.

24 Q Okay. And do you know the roads over there
25 very well?

Examination of Kaela Ingle

1 A Fairly well.

2 Q Okay. And so several roads border Lents
3 Park. Do you recall which road you were walking
4 adjacent to?

5 A Yes, we were walking on 92nd.

6 Q 92nd?

7 A Mm-hmm.

8 Q And were you walking towards Holgate or away
9 from Holgate?

10 A Towards Holgate.

11 Q Okay. And I'm going to put up a photograph
12 behind you. Do you -- do you recognize this area?

13 A Yes, I do.

14 Q Okay. And on the right-hand side of the
15 screen there, is that 92nd Avenue running north
16 and south?

17 A Yes, it is.

18 Q Okay. And then I think it's marked, but it
19 looks like it says, "Southeast Holgate Boulevard," on
20 the map up at the top.

21 A Yes.

22 Q Okay. And so if you wouldn't mind, if -- if
23 you could stand and kind of point to where on the map
24 you entered the park for your walk.

25 A So we entered the park right at the corner

Examination of Kaela Ingle

1 of Holgate and 92nd --

2 Q Oh.

3 A -- right there.

4 Q In (indiscernible) where my cursor is?

5 A Yes.

6 Q Okay. And which direction did you walk?

7 A We walked towards the baseball field, so
8 down here.

9 Q And did -- were you walking adjacent to 92nd
10 or were you actually walking, like, across the park?

11 A We were walking adjacent to 92nd --

12 Q Okay.

13 A -- near the treeline.

14 Q Okay. So you're walking down this direction
15 here?

16 A Mm-hmm.

17 Q Okay. And was this like any other morning?

18 A Yes and no. The walk was a little
19 bit later.

20 Q And I'm sorry. I'll actually have you sit
21 back down 'cause -- the recording. Sorry. And I'll
22 have you restart that answer.

23 A Sure.

24 Q Was this like any other morning?

25 A Yes and no. I didn't typically take our dog

Examination of Kaela Ingle

1 on walks in the morning. We had -- Chase normally
2 walks our dog around 8:15 or 8:30; but he was a little
3 bit busier that morning, so I was going to take our
4 dog. I didn't want to go alone, so I waited until he
5 had time to go, which was around 9:00.

6 And normally the park is pretty calm in the
7 morning, but I had immediately noticed before we
8 crossed the street -- we crossed from the corner of
9 the 7-Eleven, which is the white building right here.

10 Q Which -- this one?

11 A Other one.

12 Q This one?

13 A We crossed just directly across the street
14 and I had noticed that there was someone near the
15 baseball park that had a very large pile of things
16 near them and was kind of pacing around.

17 And I immediately noticed that because,
18 generally, in the mornings, there's no one at the
19 park. So I had immediately noticed that in the
20 morning. And as we started walking closer, I noticed
21 that the man was moving around and that kind of just
22 struck me as odd the way that he was moving around.

23 Q And could you describe the way that he
24 was moving?

25 A Yeah. He was -- he was kind of pacing back

Examination of Kaela Ingle

1 and forth in front of the fencing and making kind of
2 erratic movements with his body kind of like he was
3 hearing, like, music or something like that.

4 And I didn't think much of it at that point.
5 Just because of the location of the park, there are a
6 lot of homeless people in the area, so that isn't
7 necessarily unusual, the actions of the man that I
8 saw.

9 But as we got closer, we got to about the
10 third or fourth tree, so maybe a little bit -- I'd say
11 right about -- right about there. I saw the man reach
12 into the front of his pants and pull out what looked
13 like a gun and point the gun along the fenceline of
14 the baseball field.

15 Q And I want to -- sorry. I don't mean to cut
16 you off, but I want to make sure we understand where
17 the person was that you're speaking of. Where was he
18 standing or pacing, at least, in the area when you saw
19 him at that point when you're about --

20 A If you --

21 Q -- at the third tree?

22 A If you kind of move the mouse diagonally
23 across the field, more towards -- a little bit more
24 towards the trees, around that area.

25 Q In this general area?

Examination of Kaela Ingle

1 A Yeah.

2 Q You said he was pacing, so he was kind of
3 going back and forth?

4 A Yeah.

5 Q Okay. And -- and you're viewing that from
6 this area over here by this other tree?

7 A Yes.

8 Q Okay. And you said he pulled out something
9 that appeared to be a firearm to you.

10 A Yes.

11 Q Could you just describe that to the best of
12 your ability and what made you think that it was
13 a firearm?

14 A Yes. The way that he grabbed at the front
15 of his pants, it was tucked into the waistline of the
16 jeans. So he reached his hand into the waistline of
17 his jeans, held what I thought was the firearm and
18 just kind of pointed it like this.

19 Q And so for the record, you have your hands
20 clasped together pointing your pointer fingers with
21 your thumbs up in the air.

22 A Yes, I have my hands clasped together. He
23 was pointing what looked like a firearm to me along
24 the fenceline of the baseball field.

25 Q Okay. And was there anybody around him that

Examination of Kaela Ingle

1 he was pointing the firearm at?

2 A No, he wasn't near anyone. There were --
3 there were a few cars in the parking lot right there.
4 One of the cars -- there's a -- a gentleman that, I
5 believe, lives in his car that's always at the park,
6 but other than him, there wasn't really anyone else
7 around.

8 Q Okay. And did you continue walking south on
9 92nd or did you stop or what did you at that point
10 when you noticed that he had a -- a gun?

11 A We stopped. I kept watching the guy for a
12 minute. Chase hadn't noticed him yet. I asked Chase
13 if he was seeing what I was seeing and if he would
14 look and tell me what he was seeing. And he also
15 saw what looked like a man with a firearm doing the
16 same thing.

17 Q And so at that time when you're watching
18 this action, is -- is the individual with the gun, is
19 he continuing that same type of behavior, pointing it,
20 pacing or did he change his behavior at all?

21 A He was continuing the same behavior. He
22 never pointed the gun towards the street. It was
23 always aimed towards the fenceline of the baseball
24 field, but he kept pacing and he kept kind of doing --
25 he would put the gun either back in his pocket or the

Examination of Kaela Ingle

1 front and do the same kind of a motion.

2 Sometimes he crouched down and just kind of
3 bent down and still had it in front of him and aimed
4 towards the fenceline.

5 Q Okay. And could you hear anything coming
6 from him, whether he was speaking or singing or making
7 any sort of noise?

8 A No, not that I can recall.

9 Q Okay. Did it appear that he was fixated on
10 any particular direction or any object or anything
11 like that or was it sort of random?

12 A It was sort of random, but he -- he stayed
13 very much -- he never turned around towards the
14 street. It was always towards the fence when he had
15 the gun in his hands. If he didn't have it in his
16 hands, then he kind of would, you know, face towards
17 the street, pace around.

18 Q Okay. And you say you watched, I think you
19 said, for about a minute or so?

20 A About a minute or so. I didn't want to go
21 any closer just -- if he actually had a gun, I didn't
22 know if he was agitated or if seeing us would agitate
23 him further.

24 So we kept our distance and watched. I
25 didn't want to panic over nothing, so I wanted to be

Examination of Kaela Ingle

1 sure that I could see what -- what I was seeing was
2 what I was seeing.

3 Q And -- and you may have already answered
4 this when I asked you to sort of describe the gun, but
5 I -- I -- I don't recall. Could you see, like, the
6 color of the gun or --

7 A I could see that it was dark. I was not
8 close enough to be able to see any, you know, details
9 of the gun. I could see, like, the clothes he was
10 wearing. I could see the pile of his things next to
11 him, but I couldn't make out any details aside from
12 the shape of the gun.

13 Q Okay. And so at -- at that time, once you
14 had this conversation with Chase and you were stopped
15 at that point, what was your next decision? What did
16 you do after that?

17 A Our next decision, I -- I told Chase that he
18 needed to call nonemergency and that we needed to get
19 away from the park.

20 Q Okay. And where did you go?

21 A We headed back the way we came on 92nd. I
22 believe Chase got ahold of nonemergency when we were
23 at the corner of 92nd and Holgate. And we continued
24 our walk just 'cause we needed to get our dog to go to
25 the bathroom.

Examination of Kaela Ingle

1 Q And when you -- once you got to 92nd and
2 Holgate, which direction did you go?

3 A We went north.

4 Q So you crossed back over Holgate?

5 A Yes.

6 Q Okay. And once you're walking away from the
7 park, did you continue to kind of check back on the
8 individual to see what was going on or did you just
9 turn your attention towards getting out of there?

10 A We kept -- not, like, a very thorough eye
11 on him, but we did keep looking back. We ended up
12 turning down the first street that we could make a
13 left on and that had a -- a view towards the park
14 as well.

15 Q And could you see the individual from that
16 vantage point?

17 A Yes.

18 Q And what --

19 A Yes.

20 Q -- what was he doing at that point?

21 A By the time we had gotten back to a point
22 where we could see the park, I believe he had pretty
23 much just continued the same behavior.

24 Q Okay. Meaning the pacing --

25 A The pacing, the erratic movements.

Examination of Kaela Ingle

1 Q Could you see the gun at that point?

2 A Not that I can recall.

3 Q Okay. And I know you're farther away, but
4 could you hear anything?

5 A No, at that point, I couldn't hear anything.
6 When we -- the -- the last thing I remember hearing
7 before Chase getting the call from the officer was --
8 I actually don't remember hearing anything until the
9 police cars started showing up to the park.

10 Q Okay. And you're with Chase the entire
11 time?

12 A Yes.

13 Q And so you knew that he had called
14 nonemergency and then you were aware that he got a
15 call back?

16 A Yes.

17 Q Okay. And then from that point, did you
18 stay in that same area where you could keep eyes on
19 the individual or did you move from that area?

20 A No. When Chase got the call from the
21 officer, I had started insisting that we head back to
22 the apartment because I didn't know what was going to
23 happen or how many police officers were going to come.
24 But I felt very uncomfortable being outside, so we
25 started heading back up towards 92nd and Holgate.

Examination of Kaela Ingle

1 Q Okay.

2 A Or down.

3 Q Down towards 92nd and Holgate?

4 A Yeah.

5 Q Okay. And were you able to see the same
6 area and this individual when the police did arrive?

7 A Yes and no. When we got back to the corner
8 of 92nd and Holgate, a police car had pulled up onto
9 the grass. Kind of towards the corner of the park and
10 the initial treeline around there, there was a police
11 car there. And once I saw the police car, I just -- I
12 wanted to get out of the area as quickly as possible.

13 Q Okay. And so is that the last point that
14 you had viewed the individual --

15 A Yes.

16 Q -- in the park?

17 Okay. And so you did not see him interact
18 with the police --

19 A I did not.

20 Q -- at all? Did you -- and besides the
21 police vehicle up in the corner of the park, did you
22 notice any other police vehicles at that time?

23 A I believe there was one other police vehicle
24 that was closer to where the man was. I want to say
25 the car was near the --

Examination of Kaela Ingle

1 Q Here we go.

2 A Yeah. Not in the -- the car was on the
3 grass, I believe.

4 Q Oh, in -- in this area of the park?

5 A Yeah.

6 Q Okay. And you're viewing that from back at
7 92nd and Holgate?

8 A Yes.

9 Q Okay. And at that point, the -- from the
10 last time you saw the individual, was he still sort
11 of engaged in that same sort of conduct that you've
12 already described or had he changed at that point?

13 A He was still -- he was still, you know,
14 pacing a little bit, erratic. Yes.

15 Q Okay. And at that point, the last time you
16 saw him, did you notice whether he had the firearm in
17 his hands or -- or not?

18 A I did not notice whether he had the firearm
19 in his hands --

20 Q Okay.

21 A -- or not.

22 Q So if he had it, you didn't see it or if he
23 didn't have it, you didn't see it? You just --

24 A Correct.

25 Q -- didn't notice? Okay. And this is

Examination of Kaela Ingle

1 April 16th at a little after 9:00 in the morning, you
2 said. What was the weather like on that day? Do
3 you recall?

4 A It was a fairly clear and sunny day.

5 Q Okay. The sun was already up?

6 A Yes.

7 Q So is it safe to say the park was well lit,
8 the area was well lit?

9 A Yes, it was very well lit. Where the
10 man was standing, the sun was kind of hitting it,
11 which was part of the reason why I had noticed him
12 so quickly.

13 Q Okay. And you said it was sunny and -- and
14 not raining at all?

15 A No.

16 MR. OVERSTREET: Okay. I'm just going to
17 look at a couple notes.

18 If any grand jurors have any questions.

19 A GRAND JUROR: I had one question. Can you
20 show on the -- when you say pointing towards the
21 fence, where's the baseball fence? Where's --

22 THE WITNESS: So the -- the treeline inside
23 the park --

24 A GRAND JUROR: Just right along 92nd or
25 further in?

Examination of Kaela Ingle

1 THE WITNESS: Right --

2 A GRAND JUROR: Okay.

3 THE WITNESS: Right there, right where the
4 mouse is pointing.

5 A GRAND JUROR: Oh, okay.

6 THE WITNESS: The treeline kind of shares a
7 fence with the baseball field.

8 A GRAND JUROR: All right. Thank you.

9 THE WITNESS: Mm-hmm.

10 BY MR. OVERSTREET:

11 Q And -- and you already sort of mentioned
12 about the people that you noticed in the area,
13 primarily this person that you sort of viewed as
14 somebody who lived in the park maybe or in his
15 vehicle. And did you notice any -- besides cars on
16 the main roads, did you see anybody else in the area?

17 A No, not really. The -- the park in the
18 morning is generally very low traffic. There's
19 typically not anyone there aside from the gentleman
20 that I believe lives in his car.

21 Q Okay. And -- and you stated that you were
22 the one that prompted or at least requested that Chase
23 call nonemergency?

24 A I believe so, yes.

25 Q And what was your concern? Why would you

Examination of Kaela Ingle

1 ask him to call nonemergency?

2 A I asked him to call nonemergency because
3 I -- from the way that the man was pacing, it struck
4 me as being not normal or at least I saw the pile of
5 clothes next to him. I didn't know if he was someone
6 that had been kicked out of his house or if, you know,
7 something had happened and he was agitated.

8 This was shortly after the FedEx mass
9 shooting, so that was also freshly in my mind and
10 my main concern was, if this man was -- if he did
11 have ill intentions and I saw something and I didn't
12 call it in, I would feel at fault if there was a
13 mass shooting.

14 MR. OVERSTREET: Okay. Does -- any of the
15 grand jurors have any follow-up questions?

16 A GRAND JUROR: No.

17 MR. OVERSTREET: Okay. I think that's all.
18 Thank you.

19 A GRAND JUROR: Thank you very much.

20 MR. JACKSON: Okay. We can call Chase next.

21 MR. OVERSTREET: The State will call our
22 next -- next witness, Chase Hagen.

23 (Whispered discussion, off the record,
24 10:11 a.m.)

25 MR. OVERSTREET: And if you could stand by

Examination of Chase Dieter Hagan

1 that chair and raise your right hand, please.

2 THE WITNESS: Sure.

3 **CHASE DIETER HAGEN**

4 Was thereupon called as a witness; and, having been
5 first duly sworn, was examined and testified as follows:

6 A GRAND JUROR: Okay. Thank you. You can
7 put your hand down and be seated, please.

8 MR. OVERSTREET: Go ahead and take a seat.

9 And once you're seated, go ahead and state
10 and spell your full name, please.

11 THE WITNESS: Sure. And my name is Chase,
12 C-h-a-s-e; Dieter, D-i-e-t-e-r; Hagen, H-a-g-e-n.

13 **EXAMINATION**

14 BY MR. OVERSTREET:

15 Q Okay. Sir, now, we've already spoken with
16 Kaela Ingle about where you two were living back in
17 April of this year, but I just want to reiterate with
18 you. Were you living in the area of 92nd and Holgate
19 in April of this year?

20 A Yes, I was.

21 Q And do you recall the events in the morning
22 of April 16th, 2021?

23 A I do.

24 Q Okay. And what were you doing that morning
25 at around 9 o'clock or shortly thereafter?

Examination of Chase Dieter Hagan

1 A We were walking our dog. We had left
2 together in the morning heading down 92nd to do our
3 normal loop around the top corner of the park. It's
4 usually a 15-minute walk with the dog.

5 Q Okay. And was there anything unusual about
6 the walk that -- not -- not what happened, but leading
7 up to the walk. Was this a normal time of day that
8 you would take your walk or --

9 A This was a little later. So -- so I work
10 from home. I start at 8:30 a.m.-ish. I'm salary, but
11 I usually sign in around 8:30. And this morning was
12 Kaela's turn to take him, our dog, and so I was
13 working at -- at around 9:00 a.m.

14 It wasn't super busy and I remember saying,
15 "Oh, I'll go with you." It was a nice day outside.
16 It was sunny, so I said, "I'll go with you," 'cause
17 it's a 15-minute walk and I knew I'd be back at my
18 desk and I had my work phone on me. And so we left
19 and started to do the walk together.

20 That would probably be something that only
21 happened every once in a while that we would both go
22 together in the morning.

23 Q Okay. And you stated that you were walking
24 near 92nd and Holgate. Do you remember exactly which
25 path you took?

Examination of Chase Dieter Hagan

1 A Yes. If you want me to get up and --

2 Q If you could point out --

3 A -- and point -- sure.

4 Q And I'll use a pointer, too, and you can
5 tell me where -- you can direct the cursor.

6 A Sure. So we live at that far corner
7 apartment in those eight units there before the
8 7-Eleven -- so there's a 7-Eleven there and then our
9 unit is the back one on the corner right where that
10 number 9211 is. Like, we're literally under that
11 number, itself, correct.

12 So we walked down toward Holgate, same walk
13 we always do in the morning. And we walked along
14 Holgate and then we crossed at either intersection. I
15 can't remember which one we crossed at that day, but
16 we would, basically, make our way to the corner of the
17 park on 92nd and Holgate.

18 And the normal walk would be to go all the
19 way down to -- around the last -- last tree or so down
20 there and then cut in at the last tree; kind of go
21 around to the divider here, if you will, at the back
22 of the baseball field. Then go up and then go along,
23 just, you know, a potty break, if you will. So that
24 was the normal walk and that's what we were going
25 to do.

Examination of Chase Dieter Hagan

1 Q Okay. And you can go ahead and take a
2 seat and --

3 A Sure.

4 Q -- like I said, I'll -- I'll try to use the
5 cursor, too, and you can kind of direct me.

6 A Oh, sure. Sorry. Yeah. Yeah.

7 Q No, that's fine. I appreciate you pointing
8 that out.

9 A Sure.

10 Q So on this morning, as you're heading down
11 92nd past Holgate --

12 A Yeah.

13 Q -- did you take note of anything unusual in
14 the park?

15 A Well, yeah. From -- from when we basically
16 had crossed over or I had crossed over with her to the
17 corner, I had noticed someone down the way because
18 they were wearing a bright-red shirt. And they were
19 near the entrance of the baseball field where -- if
20 you -- yeah.

21 So -- yeah. Along those trees, there's a
22 gated fence to enter, like, the maintenance area, I
23 would assume, of the baseball field, the back corner.
24 And there was a man in a red shirt and he was standing
25 there. I believe he had black pants on and he had

Examination of Chase Dieter Hagan

1 some stuff next to him.

2 And he was kind of moving around, but out of
3 the corner of my eye. I kind of didn't take note. I
4 assumed he was somebody maybe working at the baseball
5 field doing maintenance.

6 Q Okay. So you just took note of this
7 individual, but you didn't really pay much attention?

8 A No, exactly.

9 Q And did you continue your walk down 92nd?

10 A Correct, yes.

11 Q Okay. And then how far down did you
12 make it?

13 A We made it 'til about the fourth tree, so --
14 yeah. Like, right -- right about there between the
15 third and fourth -- I think we were pretty much up
16 against -- yeah, looks like the fourth tree. Exactly.

17 Q Somewhere around in this area?

18 A Yeah, exactly.

19 Q Okay.

20 A Somewhere around there, yeah. I can't
21 really tell where the first tree starts, but it -- it
22 was around the fourth tree or so.

23 Q And that's as far south you made it on 92nd?

24 A Correct.

25 Q And why is that?

Examination of Chase Dieter Hagan

1 A Because at that moment, the -- the person
2 that was standing over there pulled from his -- I
3 wouldn't say pocket, but his hip area what appeared to
4 be a weapon, a -- a firearm of some kind.

5 Q Now, did you actually see him pull this
6 object from his pants or was that information relayed
7 to you?

8 A So I saw him do that. I -- I -- I did see
9 him -- I was literally -- I remember because she said,
10 "What's he doing over there?" Kaela had said, "What
11 is he doing over there?" and, like -- you know, and
12 the concern.

13 And I remember stopping the dog 'cause we
14 were training him to do an auto sit and, like, stop
15 and he was pulling. So I remember, like, kind of
16 bending down and looking -- getting eye contact with
17 the dog and then looking up.

18 And I do remember him pulling out something
19 and then he took aim into the park, itself, or the
20 baseball field, itself, at the chain-link fence like
21 so as if he was going to, you know, fire, essentially.

22 Q And I'm going to just note for the record
23 that you held both hands up, clasped them and put your
24 index and your middle finger straight forward with
25 your thumbs in the air.

Examination of Chase Dieter Hagan

1 A Correct. I do -- I don't -- I don't recall
2 100 percent if he was holding both hands at -- at that
3 firearm at that exact moment, but -- or what appeared
4 to be a firearm, but he definitely had it in his hand.
5 He basically went like that to the -- to the fence,
6 you know, into the baseball field.

7 Q Okay. And you have referred to it as a
8 firearm or what appeared to be a firearm. What about
9 the object led you to believe that it might be
10 a firearm?

11 A The way he was holding it, the shape of it
12 and the color. It was black, what you would assume
13 the color of a firearm to be.

14 Q Okay.

15 A And then just the way he was holding it and
16 the way he pulled it and the stance he kind of took
17 and that he proceeded to do that several times before
18 pivoting north up to 92nd and doing what I would call
19 a James Bond stance of both hands on the weapon like
20 so with both feet apart facing north.

21 Q Okay. And pointing it sort of at the level
22 or down at the ground, in the air?

23 A Oh, level -- level -- at the level, but --
24 but at nothing. At that moment, when he started to
25 pivot toward that side, we immediately started to head

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1 back up north 92nd.

2 Q Okay. And why did you make that decision to
3 leave the area?

4 A Because I -- I felt we were in danger.

5 Q Okay. And so you were prompt -- or did you
6 call nonemergency?

7 A I did call nonemergency. At -- at that
8 point, we were -- you know, the field -- when we
9 first saw him raise the weapon is when we started
10 to walk away. And then when we were -- as we were
11 walking, we noticed him pivot and we were already,
12 you know, continuing on our way when he had pivoted
13 to the north.

14 He didn't seem to make eye contact or point
15 the weapon at us 'cause he was kind of pointing it due
16 north, like, directly. And so as we were walking,
17 we -- she said, "Do you call -- what -- what do we do?
18 Do we call 9-1-1?"

19 And I said, "Let's call nonemergency,"
20 because he hadn't made eye contact with us and we were
21 far -- far enough away. And it was a busy morning,
22 so there was a lot of vehicles and -- going by and I
23 think there was somebody even walking.

24 I thought there was somebody walking if I'm
25 not mistaken. At that moment, the time frame is a

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1 bit -- you know, but there was somebody walking along
2 92nd. So, at that moment, I didn't feel like he was
3 going to come after us.

4 I was waiting to see, as we were walking, if
5 he was going to start moving toward us, but he didn't.
6 So I felt that, personally, nonemergency was the best
7 choice 'cause I hadn't identified from that distance
8 whether or not it was a -- an actual firearm or
9 anything. And we were able to get away.

10 I felt comfortable with the cars in the road
11 that if he were going to come after us, I would run
12 into the street. People would probably stop and I'd
13 say, "There's a guy with a weapon there. Please
14 help us."

15 Q Okay.

16 A But I didn't -- he was taking that stance,
17 but not really looking at anything or -- or taking aim
18 at anything, so I felt nonemergency was appropriate.

19 Q Okay. And when you called nonemergency, you
20 used terms like "wielding it like a cowboy or" --

21 A Yes, like a gunslinger.

22 Q -- (indiscernible).

23 A Correct. So like a -- and then -- so he --
24 as we were walking and crossing the street and I was
25 on the phone with nonemergency, we could still see

Examination of Chase Dieter Hagan

1 what he was doing until we, you know, stopped looking
2 after we crossed over Holgate to the opposite side in
3 front of the signage for the market there.

4 That's when we kind of were like, okay.
5 Let's -- let's keep moving. Let's -- let's keep
6 walking. The dog is freaking out. He doesn't
7 know what's going on.

8 But as I was talking to nonemergency on the
9 phone crossing the crosswalk, I was looking back to
10 make sure he wasn't going to decide to open fire or --
11 or -- or walk after us. Yeah.

12 Q Okay. And he -- he never advanced towards
13 your direction; is that correct?

14 A No, no. He never advanced towards our
15 direction, no.

16 Q But did he continue that same type of
17 behavior, pulling the gun out, pointing it, that type
18 of thing?

19 A Correct. As -- as far as we could see,
20 like I said, until we -- we made it across the
21 crosswalk, we took one last look at the other side,
22 the corner of -- of 92nd and Holgate where that
23 signage is maybe at the crossing and the -- and the --
24 the traffic signal.

25 And then when we, you know, got past that,

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1 we were just walking straight up the street. You
2 know, we -- we -- we were focused on the dog and we
3 kept walking.

4 Q Okay. And from the time that you were
5 closest to the individual, did you ever hear anything
6 that he said or --

7 A No. It was -- it was very loud with the
8 cars going by in the morning. And -- and I -- I don't
9 remember hearing anything specific, so nothing.

10 Q Okay.

11 A No.

12 Q Did it appear as if he was engaging with any
13 individual in the area or did it appear that he was
14 generally by himself?

15 A I think that it generally appeared like he
16 was by himself. I didn't see anyone.

17 Q And did you -- did you, yourself, see
18 anybody else in the area? You said -- and I'll --
19 I'll clarify.

20 A Mm-hmm, sure.

21 Q You already said that you thought you saw
22 somebody walking on 92nd. Of course, cars in the
23 area. Did you notice anybody else in the area?

24 A No -- no other people nearby. I mean, when
25 we were crossing the crosswalk, itself, I thought I

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1 saw somebody on the opposite side of 92nd and I
2 thought I saw somebody on Holgate approaching 92nd
3 from the -- going -- heading east on Holgate to make
4 that corner.

5 But they were walking on the outskirts of
6 the park near the other row of trees. But no one --
7 and nothing -- no one anywhere near the area of him
8 within probably 100 feet --

9 Q Okay.

10 A -- that I could see.

11 Q And after -- or you were on the phone with
12 nonemergency. You relayed all this information --

13 A Mm-hmm.

14 Q -- to them?

15 A Mm-hmm.

16 Q And did that call -- was that ultimately
17 terminated while you were still at the park or near
18 the park?

19 A No. At that point, the call was terminated
20 probably right where this -- the -- right -- right
21 around where this map ends 'cause the call started
22 before the crossing of the intersection.

23 We had to wait for the light and -- and the
24 call, itself, you know, occurred as we were basically
25 waiting, the crossing, crossing, crossing. A little

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1 bit after we crossed and probably right at the edge
2 of where the map goes here is around where the call
3 terminated, approximately, 'cause we were passing that
4 market that's out of frame on the left there.

5 And then we were into houses. And by then,
6 when we got to the houses, it was -- the phone call
7 was over, I believe. Yeah.

8 Q Okay. And then did you receive a phone call
9 back from a police officer?

10 A I did, yes.

11 Q Okay. And about how long after your call
12 ended with dispatch did that police officer call you?

13 A I couldn't, at this point, tell you for
14 sure. Maybe two minutes, maybe.

15 Q Okay.

16 A Something like that.

17 Q Yeah, and did you --

18 A I can't be for sure, to be honest. Yeah.

19 Q And this police officer, did he announce
20 himself to you?

21 A Yes.

22 Q Do you recall who he said he was?

23 A No. To be honest, no.

24 Q Okay.

25 A I -- I -- I don't recall, no.

Examination of Chase Dieter Hagan

1 Q And could -- during that conversation, were
2 you relaying the same information or -- that you had
3 to dispatch or were you relaying any new information?

4 A To my recollection, the same information.

5 Q Okay.

6 A Yeah.

7 Q Had you made any further observations of the
8 individual between the time the call with dispatch
9 ended and the call with the officer?

10 A No. At that point, we were out of sight
11 and -- no, there was nothing else.

12 Q Do you recall now, thinking back, did you
13 share any additional information with that police
14 officer on the phone that you had maybe just forgot or
15 failed to mention to the dispatch?

16 A It's been a long time. I tried to recall it
17 as best I could, but I -- I don't recall anything
18 specific, no, no key pieces of information. No.

19 Q Okay.

20 A No.

21 Q So do you feel confident that you relayed
22 essentially the same information to that officer that
23 you had relayed to dispatch?

24 A Yes. Essentially, yes, yes.

25 Q Was there anything -- I asked you if there

Examination of Chase Dieter Hagan

1 was anything additional that you had told the officer.
2 Was there anything, now that you think back, that you
3 had -- did not tell that officer, so something that
4 you had omitted when talking to the police officer
5 that you had shared with dispatch?

6 A No. I believe I -- I -- to my best
7 recollection, I said the same thing where it appeared
8 to be a firearm. I wasn't sure if it was. I wasn't
9 sure if it was a toy weapon.

10 I said that it -- it looked like a firearm,
11 that -- but I believe it was the exact same -- the --
12 in a nutshell, essentially the exact same story, yes.

13 Q Okay. And you've already talked about -- a
14 little bit about why you, you know, perceived this to
15 be a firearm.

16 A Yeah.

17 Q You've also mentioned that you were unsure
18 whether it was real or not.

19 A Right.

20 Q What kind of made you unsure about whether
21 it was real or not?

22 A Well, as a child, I played with a lot of toy
23 guns in -- in a family, so I know how realistic some
24 of them look growing up. I've also owned a firearm,
25 so I know what a real one looks like.

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1 But at the distance away that I was, it was
2 impossible for me to make the determination. So
3 that's why I said it could be, it might not be. My --
4 my theory was that at 9:00 a.m. in a park, you know,
5 open like that, that it would seem just crazy for
6 someone to be wielding a -- an actual firearm.

7 But, then again, why would one wield an
8 almost exact looking replica one as well? Again, just
9 growing up, having played with replica firearms
10 growing up, I know how close they look.

11 And you can't tell, you know, with an orange
12 tip, of course, until you get within 30 feet of
13 someone, be able to see that. Yeah.

14 Q But with that --

15 A Yeah.

16 Q -- was there anything about the firearm that
17 specifically led you to believe that it might not
18 be real?

19 A No, there was nothing about it. It was my
20 own personal state of mind thinking that -- that it --
21 it was unusual that someone would be doing that. And
22 that's why I also called nonemergency because it
23 wasn't -- I didn't hear a firearm discharge.

24 I mean, obviously, if there was a -- a round
25 being discharged, it would have been 9-1-1 right away.

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1 But I -- I -- I felt that the nonemergency was
2 appropriate 'cause I could not confirm whether or not
3 it was a -- it was a live firearm.

4 Q And you already sort of touched on this, but
5 did you, yourself, feel that you were possibly in some
6 sort of danger?

7 A Yes, definitely. Absolutely. Like I said,
8 I would have hung up immediately on the nonemergency
9 and called 9-1-1 should he start to approach or --
10 or -- or even take note of us.

11 At -- at that point, you know, as we were
12 looking and getting farther away from him, it became
13 more difficult to see where his head and his eyes were
14 facing. But he didn't seem to take note of us walking
15 at all. You know, like I said, we were a good
16 distance away before we turned around and headed back.
17 So I don't believe that he had taken much note of us
18 at that point.

19 So my concern was really just that, you
20 know, if he did take note, that we were going to be in
21 real danger. And that's when I would have personally
22 hung up on nonemergency and called 9-1-1 and said,
23 "There's somebody coming after us with a possible
24 weapon."

25 MR. OVERSTREET: Okay. Do any of the grand

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1 jurors have any questions?

2 A GRAND JUROR: No.

3 MR. OVERSTREET: Okay.

4 A GRAND JUROR: Mr. Hagen, I --

5 BY MR. OVERSTREET:

6 Q And so, Mr. Hagen, you stated that you
7 called nonemergency already.

8 A Mm-hmm.

9 Q We're going to play that call and I will ask
10 you if this is the call that you had placed that day.

11 A To the nonemergency number, yeah.

12 Q Yeah. I'm going to play it just to play it
13 and then I'll ask you if this is (indiscernible) --

14 A Sure, sure, sure, sure.

15 Q -- making the call.

16 (**TRANSCRIBER'S NOTE:** Audio recording played
17 in grand jury, 10:27 a.m., as follows:)

18 NONEMERGENCY DISPATCHER: Nonemergency. How
19 can I help you?

20 CHASE HAGEN: Hi there. I have a guy in
21 Lents Park who kind of thinks he must be some kind of
22 cowboy. He's wielding what looks to be a firearm.
23 I'm too far away to --

24 (**TRANSCRIBER'S NOTE:** Audio recording
25 stopped, 10:28 a.m.)

Examination of Chase Dieter Hagan

1 MR. OVERSTREET: Sorry. I'm just getting
2 that volume a little louder for you.

3 BY MR. OVERSTREET:

4 Q And could you -- could you hear that,
5 Mr. Hagen?

6 A Yeah, I could hear it. Yes, yeah.

7 Q And is that you making the phone call to --

8 A Yes, definitely.

9 Q -- nonemergency?

10 A Yeah.

11 MR. OVERSTREET: Okay. Thank you.

12 (**TRANSCRIBER'S NOTE:** Audio recording played
13 in open court, 10:28 a.m., as follows:)

14 NONEMERGENCY DISPATCHER: Nonemergency. How
15 can I help you?

16 CHASE HAGEN: Hi there. I have a guy in
17 Lents Park who kind of thinks he must be some kind of
18 cowboy. He's wielding what looks to be a firearm.
19 I'm too far away to tell whether or not it's an actual
20 gun or an airsoft gun. He's wearing a red T-shirt,
21 long black pants.

22 He looks to be probably in his 30s, white
23 male. He's up on the -- near the corner of 92nd and
24 Holgate at the fence of the batting cages to the
25 baseball field and he's got what looks to be a bunch

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1 of stuff in front of him. But he just kind of keeps
2 swinging it as if it's -- I mean, it's definitely a --
3 some kind of gun-shaped object.

4 NONEMERGENCY DISPATCHER: All right. We'll
5 get somebody out --

6 CHASE HAGEN: (Indiscernible).

7 NONEMERGENCY DISPATCHER: -- that way. Does
8 it look like a handgun or a rifle?

9 CHASE HAGEN: Handgun. It's a handgun.
10 It's (indiscernible) --

11 NONEMERGENCY DISPATCHER: Okay. Is he
12 pointing it at anyone?

13 CHASE HAGEN: -- (indiscernible). No. He's
14 wielding it at the fence and, you know, he thinks he's
15 some kind of cowboy, gun play or James Bond, it looks
16 like.

17 NONEMERGENCY DISPATCHER: Okay. Well, we'll
18 get somebody out that way. And can I get your name?

19 CHASE HAGEN: Yeah. Sure, it's Chase,
20 C-h-a-s-e, H-a-g-e-n. He's, basically, just slightly
21 north of the actual little parking lot that you pull
22 into on 92nd.

23 NONEMERGENCY DISPATCHER: Okay.

24 CHASE HAGEN: And right up against the
25 fences of the batting cages and stuff.

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1 NONEMERGENCY DISPATCHER: Okay. Your
2 phone number?

3 CHASE HAGEN: Sure. It's (626) 353-2330.

4 NONEMERGENCY DISPATCHER: (626) 353-2330?

5 CHASE HAGEN: Yep.

6 NONEMERGENCY DISPATCHER: Okay. All right.
7 They're getting somebody out that way.

8 CHASE HAGEN: Thanks so much. Bye-bye.

9 NONEMERGENCY DISPATCHER: Uh-huh, bye.

10 (*TRANSCRIBER'S NOTE: Audio recording*
11 *stopped, 10:29 a.m.*)

12 BY MR. OVERSTREET:

13 Q And so, Mr. Hagen, was that the entirety of
14 your phone call with nonemergency?

15 A Correct. I remember it being longer at
16 those moments, but that was it. That was -- it was
17 much shorter than I remember it, yes.

18 Q Sure.

19 A Yeah. That would make the amount of time
20 waiting at the crosswalk, crossing the crosswalk --
21 yeah, that's it.

22 MR. OVERSTREET: Mm-hmm. Okay. I don't
23 believe we have any further questions.

24 A GRAND JUROR: I have a question.

25 MR. OVERSTREET: Oh, go ahead.

Examination of Chase Dieter Hagan

1 THE WITNESS: Sure.

2 A GRAND JUROR: So you -- you being across
3 from Lents Park, you're walking your dog, you know,
4 every so often --

5 THE WITNESS: Yeah.

6 A GRAND JUROR: -- have you noticed that
7 there's been homeless there before? And have you
8 noticed the same individual with the red -- red shirt?
9 Has he been frequently at the park?

10 THE WITNESS: No, actually. So -- so that
11 park, we -- both myself and -- and that's what was
12 unusual at that moment because it's -- at least for
13 myself and I believe my fiance at least felt the same
14 way, that there was somebody there at 9:00 a.m. in the
15 morning like that with stuff, we had never seen that
16 'cause we walk that exact same route every single day
17 with the dog.

18 And we had never seen any evidence of a
19 homeless person camping there or -- or just with
20 their stuff there in that specific area. And that
21 individual, we had never seen before. There are some
22 people that travel through the park. They don't seem
23 to camp there.

24 At least when I go out there at 8:00 a.m. in
25 the morning, there -- there's nothing there. If they

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1 do, I don't see them. But that individual, never seen
2 before and had not recognized and had never seen
3 somebody with stuff spewed as such around.

4 So it -- maybe a cart going through or --
5 or traveling, but not, you know, setting up camp, if
6 you will.

7 A GRAND JUROR: Thank you.

8 THE WITNESS: Yeah.

9 MR. OVERSTREET: Does that raise any other
10 questions for anyone else? Okay. I believe that'll
11 conclude this witness. Thank you.

12 THE WITNESS: Oh, thank you.

13 MR. OVERSTREET: And we'll go ahead and go
14 off the record while we prepare for our next witness.

15 (Whispered discussion, off the record,
16 10:31 a.m.)

17 (Recess taken, 10:31 a.m. - 10:42 a.m.)

18 MR. JACKSON: Okay. We're back on the
19 record following our morning break. We'll start with
20 our next witness, Detective Anthony Merrill.

21 If you could raise your right hand, sir.

22 **ANTHONY MERRILL**

23 Was thereupon called as a witness; and, having been
24 first duly sworn, was examined and testified as follows:

25 A GRAND JUROR: Thank you. You can

Examination of Anthony Merrill

1 be seated.

2 THE WITNESS: Thank you.

3 MR. JACKSON: And could you please state and
4 spell your name?

5 THE WITNESS: Yes, my name is Anthony
6 Merrill. It's A-n-t-h-o-n-y. Merrill is
7 M-e-r-r-i-l-l.

8 EXAMINATION

9 BY MR. JACKSON:

10 Q Could you tell us where you're currently
11 employed.

12 A I'm employed with the Portland Police
13 Bureau.

14 Q And what do you do for the Bureau?

15 A I'm a police detective. I'm assigned to the
16 Homicide Detail. Been a Portland police officer for
17 23 years and I've been on the Homicide Detail for
18 approximately ten years now.

19 Q And when there is an officer-use-of-force
20 incident, is the Homicide Detail called out to
21 investigate that if it occurs within the City
22 of Portland?

23 A Yes. Yes, we are.

24 Q Okay. And have you been involved in those
25 investigations before?

Examination of Anthony Merrill

1 A I have, yes.

2 Q Could you explain for us in general terms
3 how an officer-use-of-force case is investigated by
4 the Homicide Detail?

5 A Well, it involves several layers of
6 different units within the Portland Police Bureau.
7 For homicide detectives, we're on call. We have,
8 like, the older pagers. We get paged in the middle
9 of the night if it's that time of the night.

10 That happens with several of the command
11 staff, our Forensic Evidence Division unit. The DA's
12 Office usually has a representative there, the Medical
13 Examiner's Office, obviously the initial responding
14 patrol officers. Who else? Those -- those are the --
15 the main units.

16 Also Training Division comes out, too,
17 because they do some work to study uses of force with
18 police officers to try to enhance training.

19 Q Okay. Are representatives from the agency's
20 Internal Affairs also present?

21 A Yes, that was one I missed. That's correct,
22 yes.

23 Q Do they conduct a separate administrative
24 investigation of the incident from the criminal case
25 that you are investigating?

Examination of Anthony Merrill

1 A Yes, they do.

2 Q Okay. Taking you now to April 16th, 2021,
3 were you a detective as you described with the
4 Portland Police Bureau at the time?

5 A I was, yes.

6 Q And were you called to respond to
7 Lents Park?

8 A Yes. I was on call, assigned as the primary
9 investigator on call, so whatever might have come in
10 that would fall into our venue, homicides, kidnappings
11 or officer-involved shootings, suspicious deaths, that
12 would be something that I would take as the primary
13 detective and which I did that -- that day.

14 Q Okay. And do you recall approximately what
15 time you were called out to respond?

16 A I believe it was approximately 10:30 a.m.

17 Q And who called you?

18 A That was my detective sergeant, Joe Santos.

19 Q When you get that call, do you just drop
20 what you're doing and head straight out to the scene?

21 A Absolutely, yes.

22 Q And what did you -- what did you find when
23 you got there?

24 A When we arrived, I could -- you know, I've
25 obviously been to Lents Park before. Lents Park was

Examination of Anthony Merrill

1 completely taped off at the northeast corner, which
2 would be adjacent to Southeast Holgate Boulevard and
3 Southeast 92nd Avenue, completely taped off in that
4 area of the corner of the park there leading back to
5 the baseball field as well as some of the parking lot
6 that's adjacent to that little area there. Is it
7 okay to --

8 Q Yeah.

9 A -- maybe reference this --

10 Q Kind of --

11 A -- for you? Okay.

12 Q I was just going to say, if you look on
13 the screen behind you there, could you describe what
14 that is?

15 A Yes. So you can see at the top-right corner
16 is Holgate. This appears to be Southeast 92nd Avenue
17 vertically adjacent to Holgate.

18 In the right corner, you can see some
19 businesses and I know that to be the 7-Eleven at the
20 top-right corner and then below it, the Ampm Arco
21 station. The Lents parking lot area I referenced is
22 right in this area.

23 Q Okay. Right down here?

24 A Yeah, and this is the baseball field. When
25 we arrived -- I'm sorry. Can you hear me okay

Examination of Anthony Merrill

1 without the --

2 Q Yeah.

3 A -- microphone?

4 Q Mm-hmm.

5 A When we arrived, several of the
6 investigators arrived at the same time. There were
7 several patrol officers already, obviously, at the
8 scene investigating, taping off the area.

9 We have a -- what we call a mobile command
10 post, which is a large RV where we'll conduct some of
11 our interviews and -- and debriefs and things of that
12 nature. There was also a lot of people that were
13 already present at Lents Park, civilian people in the
14 area to the south of us, of our crime scene.

15 And as we're getting there, officers and
16 supervisors are separating the different staff that
17 are already on scene and were on scene when this
18 incident occurred, so the initial patrol officers who
19 responded are then separated.

20 And usually we'll have a representative
21 sit with them, either from the union or another
22 officer, to make sure that they're not speaking with
23 their coworkers.

24 Q Okay. You can have a seat there, Detective.
25 Thank you. Did the other investigative units and

Examination of Anthony Merrill

1 divisions you described generally respond to these
2 calls respond to this call?

3 A Yes.

4 Q Okay. So Forensic Evidence Division,
5 criminalists, yourself with the other investigators
6 from the Portland Police Homicide Division?

7 A Yes. And I should emphasize, not only does
8 the Homicide Detail from the Detective Division
9 respond on -- on an officer-involved use of force, but
10 also, you know, we want as many resources as we can
11 have possible for these to investigate it thoroughly.

12 So we have other detectives -- and we did on
13 this incident -- from other details, like the Assault
14 Detail, the Sex Crimes Detail, different details like
15 that that would help -- help -- assist us with
16 the investigation.

17 Q Okay. Are there also investigators from
18 outside agencies that respond?

19 A Yes.

20 Q Yes?

21 A Yes, that's correct. Sorry, yeah.

22 Q That's okay. In this particular case, did
23 two detectives from the Gresham Police Department come
24 out to assist in the investigation?

25 A They did. I remember Detective Brandon

Examination of Anthony Merrill

1 Craig was one of them and I -- I -- I forget the other
2 detective's name, but, yeah, two of them assisted.

3 Q All right. So you already mentioned that
4 patrol had locked down the scene and put up tape to
5 preserve the area where this occurred --

6 A Correct.

7 Q -- this incident occurred? In terms of
8 the -- what you refer to as the involved officers,
9 what -- what does that mean?

10 A So on an officer-involved-force
11 investigation -- in this case, a -- a fatal
12 officer-involved shooting incident -- involved
13 officers are officers who deployed force, basically,
14 in layman's terms, somebody who either fired their
15 service weapon or perhaps a less-lethal option.

16 Q Okay. And you mentioned those officers are
17 separated with representatives to make sure that they
18 don't talk about the incident --

19 A Correct.

20 Q -- with each other, certainly, right?

21 A Correct.

22 Q And that occurred in this case?

23 A That did occur, yes.

24 Q Are they also issued what are called
25 communication restriction orders?

Examination of Anthony Merrill

1 A They are. It's --

2 Q And what is that?

3 A So that's basically a supervisor -- in this
4 case, it was Detective -- excuse me -- Lieutenant
5 Michael -- Michaelson from the Detective Division --
6 who would issue the communication restriction order.

7 And it's, basically, an order from command
8 staff saying that they are not allowed or permitted
9 to speak about this investigation until it's been
10 adjudicated or at least through grand jury.

11 Q Okay.

12 A And that's to -- again, to preserve the
13 integrity of the investigation at -- while we actively
14 investigate it.

15 Q Okay. And that occurred in this case?

16 A It did, yes.

17 Q Once you were on scene, did you learn the
18 identity of the deceased in this case?

19 A Eventually, yes, we did.

20 Q And who was he identified as?

21 A The -- for the -- I'm sorry. Can you
22 restate the question? Did you say the involved or --

23 Q No, the --

24 A -- the deceased?

25 Q -- the deceased.

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1 A Deceased, yes. Robert Delgado.

2 Q Okay. And was he pronounced deceased at
3 the scene?

4 A He was by paramedics.

5 Q Okay. In terms of the identified involved
6 officers, were they also identified?

7 A They were.

8 Q Okay. Who were they?

9 A So Officer Zach DeLong, Officer Samantha
10 Wutherich and Officer Cameron Smith.

11 Q Okay. As part of your duties on scene at
12 the crime scene, do you participate in and organize
13 the crime scene processing and documentation?

14 A We do. It's very extensive. Our
15 criminalists work with some of our detectives. In
16 this case, it was our -- a couple of our homicide
17 investigators that join in with our Forensic Evidence
18 criminalists to basically document the scene as
19 thoroughly as possible.

20 That would include to -- video, very
21 detailed professional photographs by the criminalists,
22 which they're highly trained in doing. The detectives
23 assist them in identifying relevant pieces of evidence
24 that need to be collected and documented.

25 They also take it even a step further

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1 where the detectives will do a crime scene diagram
2 to do measurements to basically bolster the -- the
3 photographs and videos so you can get a really good
4 perspective of where everything is in our crime scene.

5 In addition to that, there's an application
6 called Leica, which is a three-dimensional laser
7 scanning application we have that the criminalists are
8 trained in. And they can take laser scans of that
9 scene and then later document all the different
10 measurements from one item to another.

11 In addition to that, the primary
12 investigators collaborate with our crime scene
13 investigators by going through the scene as well or to
14 make sure everything is being done properly.

15 Q Okay. And do you also receive a -- a
16 briefing if there are witness officers as to generally
17 what happened so you know where to be looking for
18 items of evidence and things like that?

19 A Yes, we do. The briefing is pretty
20 detailed. That's where we conduct that confidentially
21 in the mobile command post.

22 We'll have the initial responding officers
23 that were witness officers that are able to give us a
24 very -- much better perspective of what we're looking
25 for, where things occurred specifically so we can

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1 really document the crime scene thoroughly.

2 Q Okay. In this incident, were there also
3 civilian witnesses identified that had seen some, all
4 or part of the incident?

5 A Yes. There were several civilian witnesses
6 that had been identified. And as you can imagine
7 Lents Park, if -- if you've lived in Portland a while
8 and been around the area, you know, several different
9 perspectives, whether you're driving by, parked in a
10 parking lot, walking by, jogging, walking your dog.

11 All that was going on that day, so several
12 layers of different perspectives from civilian
13 witnesses that all have kind of a -- for an example,
14 like a piece of a puzzle to kind of put this
15 picture together.

16 Q Okay. And what was done from -- in terms
17 of the investigation with the identified civilian
18 witnesses?

19 A So for each civilian witness, we would have
20 not only an officer that initially identifies them
21 and gets a -- an initial statement, then we have a
22 detective do a follow-up second interview that's
23 recorded and later transcribed.

24 So there's an audio copy of the recording
25 put into evidence that's archived as well as a

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1 transcript so it can be verbatim for that interview.
2 The detective or investigator then writes a summary
3 police report of that interface.

4 And then at the end of this whole -- you
5 know, depending on how long the incident is, at the
6 end of the incident, at the end of the day, we then do
7 a follow-up debrief of all those interviews from those
8 detectives that conducted those to make sure we're not
9 missing any relevant points.

10 Q Okay. And so while parts of the Detective
11 Division, Homicide Detail investigators are working
12 the crime scene with criminalists, are others out
13 conducting those interviews that you just described?

14 A Yes, that's correct.

15 Q Okay.

16 A And that's why it's really helpful to have
17 all those different investigators present for a large
18 scene like this -- like this one was.

19 Q Okay. So in terms of the crime scene,
20 itself, did you personally do a scene walk-through?

21 A I did, yes.

22 Q Okay. And so if you look on the screen
23 behind you here -- sure, we can go -- we've already
24 explained -- this is more a general map of the Holgate
25 and 92nd area of Lents Park, right?

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1 A Right.

2 Q So on this image, is this a more zoomed-in
3 portion of the northeast corner of Lents Park?

4 A Yes, it is.

5 Q And where was your specific scene?

6 A The specific scene was this -- where the
7 brown grass is here, that upper corner, that --

8 Q And --

9 A -- second big tree you're motioning, right
10 in that area between those two, I believe.

11 Q Okay. And what -- what was located in
12 that area?

13 A So there were several items of evidence
14 located in that area. That is the area where
15 Mr. Delgado was pronounced deceased by a large tree.
16 That's difficult to tell with the overhead leaves
17 and everything, but -- and then, obviously, this
18 isn't a picture of the scene, but -- not the actual
19 crime scene.

20 But along -- around Mr. Delgado were several
21 items, including a -- what turned out to be a replica
22 handgun was lying very close to him, camping gear such
23 as a tent, a fly for the tent, different personal
24 effects.

25 There was actually a magazine, like a clip,

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1 if you will. So for handguns, if you have a
2 semiautomatic handgun, a clip goes in the bottom. And
3 there was a clip that went with this replica handgun
4 near by.

5 There was also a less-lethal .40 round fired
6 munition, which is like a soft -- almost like a --
7 it's a soft, blue, like, round item which you'll
8 probably see a picture of eventually, just other
9 personal effects of Mr. Delgado's. And then as you
10 came back towards this area right here --

11 Q Towards the parking lot?

12 A Yeah. Towards the parking lot, at the edge
13 of the parking lot, again, with the overhead foliage,
14 it's difficult to narrow it down. But I believe it's
15 that big tree right there possibly, is a --

16 Q Right here?

17 A -- is a location where we located two spent
18 AR-15 cartridges, okay? So those are casings from
19 live bullets that were fired, so we found two of those
20 to the right side of a tree -- the tree.

21 And then we also found a -- a cartridge for
22 one 40-millimeter less-lethal casing to the other side
23 of the tree, the left side of it. So one less-lethal
24 expired casing and two AR-15 rifle spent casings on
25 the right side of the tree.

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1 Q Okay. And you can have a seat there,
2 Detective. Thank you. You -- you referenced this
3 less-lethal 40 millimeter. Could you explain what
4 that is?

5 A Yes. It's a -- certain, you know, officers
6 are trained and certified to carry a less lethal.
7 It's a less-lethal option that a force needs to be
8 used to try to end a situation or an incident safely,
9 that that can be used.

10 The 40-millimeter launcher is a -- basically
11 like a small gun that expels -- I'm going to use the
12 reference Nerf because it looks like -- almost like a
13 Nerf ball really. Like, but it's a hard, blue, softer
14 round, sort of like a bullet, but it's -- it's about
15 like a baseball size -- well, a little smaller than a
16 baseball size.

17 It has a casing, so when it's fired from
18 the launcher, the casing expels out of the gun and
19 is left nearby. And the projectile, is the word I
20 was looking for before. It's a -- like, a soft
21 projectile. And then the projectile shoots out and
22 it's a less-lethal form --

23 Q Okay.

24 A -- of force.

25 Q Is it designed to impact a person, not in a

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1 fatal way, but to administer some amount of pain to
2 try to gain compliance from the subject?

3 A Exactly. Yes, it is.

4 Q Okay. Historically, did people refer to
5 those as beanbag guns or shooting beanbag rounds?

6 A Yeah. The technology from earlier on was
7 more of a beanbag gun, but they still are referred to
8 sometimes as that.

9 Q Okay.

10 A Yes.

11 Q They'd be used in similar situations,
12 though?

13 A Correct.

14 Q Okay.

15 A Yes.

16 Q So if we look on the screen now, can you
17 describe what it is we're seeing?

18 A So what we're seeing here now, if you were
19 on Southeast 92nd Avenue and you were looking in
20 towards the baseball field, so you're looking to the
21 west from Southeast 92nd Avenue, this is the little
22 parking lot that you can drive into from 92nd Avenue.

23 To the right, way, way over to the right
24 where you see some houses, is Southeast Holgate
25 Boulevard. And what we're seeing are the back of two

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1 of the initial responding patrol officers' vehicles,
2 these two SUVs, marked vehicles.

3 And directly in front of that, you're seeing
4 a large tree in the middle between the two patrol
5 vehicles. And that is the tree where we were able to
6 collect the spent rifle casings that were on the right
7 side of the tree and then one spent 40-millimeter
8 casing on the left side of the tree.

9 If you continue to look through beyond the
10 tree that I'm referencing here between the two patrol
11 cars, you can see a little bit of some different
12 things laid around there, but not too much.

13 But there's a -- there's a fence that's
14 right behind the person. It's a lower fence. That's
15 part of the divider to the baseball field area.

16 Q And so we just put an overhead map next to
17 you there, Detective. So can you --

18 A Yeah.

19 Q -- show us on that map where this photograph
20 was taken from?

21 A Right here on the edge of the parking lot,
22 so that's going to be the north part of the parking
23 lot under these trees.

24 And so you're looking as if you're standing
25 in that lot -- again, 92nd Avenue is here -- as if

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1 you're standing in that lot and you're looking to the
2 west and a little to the north.

3 Q Okay. And these overhead maps are just
4 taken from Google -- Google Maps?

5 A Yes, yes. Just to give you a reference of
6 the area, the geographical area.

7 Q This image on the -- on the screen up here,
8 is this actually -- was this actually taken at the
9 crime scene on April 16th, 2021?

10 A It was. And those are the two -- two of the
11 involved officers' vehicles right there, the initial
12 responding patrol officers.

13 Q Okay.

14 A Thank you.

15 Q And what do we see here?

16 A I'm just going to stand up if that's okay.

17 Q Sure.

18 A It'll make it a little --

19 Q Yeah.

20 A -- easier, I think. Okay. So this, again,
21 is a closer perspective between the two patrol
22 vehicles you just saw in the former picture. This is
23 a closer view of the tree where the two officers, we
24 later learned, were taking cover behind.

25 What you're seeing beyond that is a patrol

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1 vehicle and to the left of the patrol vehicle is a
2 tree in the grass there. And right below to the right
3 of the tree, you can see there's different various
4 items and even to the right of the patrol vehicle,
5 there -- there's the tent, I believe, and some of the
6 personal items of Mr. Delgado.

7 So what you're seeing is a perspective
8 viewpoint that the patrol officers had when they
9 initially arrived and took cover behind this tree to
10 contact Mr. Delgado.

11 Q And so was Mr. Delgado's body also found
12 behind this tree --

13 A Yeah.

14 Q -- back here?

15 A It was, yes.

16 Q Okay. In terms of this patrol car that we
17 see next to the tree where Mr. Delgado's belongings
18 are, is it your understanding from the investigation
19 that that patrol vehicle was driven up after the
20 shooting occurred?

21 A Yes, it was. And that was a common practice
22 in an event like this to have a cover vehicle to try
23 to observe safely without any more injury or -- to
24 anyone. That vehicle actually has bulletproof plates
25 in the doors, so officers can stand behind the doors

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1 as they approach slowly towards the scene.

2 And part of this is to make a swifter
3 response to a -- a dangerous incident to try to even
4 provide the medical care. That's the next step in the
5 training for officers involved in an incident like
6 this, is to try to render medical aid next safely.

7 Q Okay. And what do we see here?

8 A So a closer perspective into the park and
9 closer to where Mr. Delgado was located along with
10 the -- the cover patrol vehicle. You can see there's
11 a -- a ballistic vest, plate vest at the front of the
12 vehicle. Yes.

13 Q Is it a shield --

14 A Shield.

15 Q -- ballistic shield?

16 A Sorry, yeah. Proper terminology here is
17 shield. That was for officers to safely make this
18 advance to contact Mr. Delgado. To the left of that,
19 we see a couple red items.

20 I know those to be IFAK kits, so those are
21 individual first aid kits for -- that all officers
22 carry that are equipped with and trained to use. And
23 in those, they have tourniquets, all kinds of
24 different adhesives and -- for wounds, to cover up
25 wounds and try to stop bleeding, things of that

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1 nature, a -- like, a general first aid, but a little
2 more advanced.

3 Q That's so officers can perform life saving
4 measures immediately as they're waiting for paramedics
5 or other medical personnel to respond?

6 A Exactly.

7 Q Okay.

8 A Yes, it is.

9 Q And then this tree here we see on the left
10 side of the image, is this the tree that Officer
11 DeLong and Wutherich were taking cover behind?

12 A Yes, it is. And as you look closely -- it's
13 kind of hard when you're standing right up next to it,
14 but if you look down here, you can see Placard 1
15 and 2.

16 These are the placards where criminalists
17 mark those two items of evidence. Those are the two
18 spent casings from the rifle, the AR-15 rifle, that
19 were collected.

20 Q Okay. And was that Criminalist Vance
21 Medling (phonetic) that collected those and entered
22 them into evidence on Property Receipt A182984?

23 A Yes, it was.

24 Q Okay. And what do we see here?

25 A So, now, this perspective has moved just to

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1 the left of the same tree that both officers were
2 taking cover behind. So you're right at the edge of
3 the parking lot here in this view, so you can see
4 different angle.

5 And, again, you're still seeing many of the
6 items we discussed already with the cover patrol
7 vehicle, the IFAK kits. And I believe you can see a
8 portion of Mr. Delgado in this photo; if not, his --
9 his personal property right there by the tree.

10 Q And then is this a -- a perspective from the
11 left side of that same tree that Officers Wutherich
12 and DeLong were taking cover behind?

13 A Yes, it is.

14 Q So would this have been the perspective of
15 Officer Wutherich from where she was standing?

16 A Approximately, yes, it would be. And you
17 can notice this is a spent 40-millimeter casing.

18 Q Okay. And those are the soft sponge rounds
19 you described earlier?

20 A Correct.

21 MR. JACKSON: Okay.

22 A GRAND JUROR: Is that -- sorry. Is that
23 No. 3? Is it -- is it not labeled?

24 THE WITNESS: This one's not labeled in
25 this particular photograph. They all are

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1 eventually labeled.

2 A GRAND JUROR: Okay.

3 THE WITNESS: It's just the different
4 chronological photographs that are taken in some
5 of these.

6 BY MR. JACKSON:

7 Q Okay.

8 A And this is a closer -- much closer view of
9 the scene. Again, we're seeing a lot of the same
10 items we've discussed. You can see behind the tree is
11 this fence here blocking the baseball field from the
12 park area.

13 Q And these are the trees that form that
14 treeline we saw on the western edge of that green
15 space from --

16 A That's --

17 Q -- 92nd up to the baseball field?

18 A That's correct, yes.

19 Q Okay. I know there was a question earlier
20 about where the fence was in relation to the trees.
21 Is this -- is this the fence here that runs
22 essentially right along the back side -- or the -- the
23 west side of that treeline?

24 A Yeah. And, specifically, the tree
25 right there --

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1 Q Mm-hmm.

2 A -- I mean, it's a very short distance. It's
3 probably, like, maybe 15 feet to 20 feet maybe to
4 the fence.

5 Q Okay. What is this?

6 A So this is a reverse perspective of
7 everything we've seen so far. So this is if you were
8 standing right by this tree, which is right there to
9 the right where Mr. Delgado is located just behind it
10 to the right here below.

11 So you're looking back now eastbound.
12 You're looking back into the parking lot of Lents.
13 You can see our command post set up in the background.
14 The two -- two of the involved officer patrol vehicles
15 are parked right near the tree we discussed earlier
16 from where they were taking cover.

17 Q Is this that tree?

18 A Yes, it is.

19 Q Okay.

20 A And then, again, you're seeing those IFAK
21 kits that we discussed, the first aid kits, some other
22 medical gear as well as the tactical approach patrol
23 vehicle here.

24 Q Okay. What do we see here?

25 A So this is the same tree that Mr. Delgado

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1 is found directly behind, maybe a little off to the
2 right -- or better to say a little to the northwest
3 of -- behind the tree. There's the fenceline directly
4 behind it.

5 And, obviously, you can see in this photo
6 there's a handgun, a black handgun, located in the
7 grass there to the left of the tree or south of the
8 tree and west.

9 Q And can you tell or do you know, I should
10 say, approximately how far away from the replica gun
11 this photograph was taken?

12 A The photograph taken?

13 Q Mm-hmm.

14 A I would say probably ten feet, maybe a
15 little more than 10 feet. Maybe 10 to 15 would
16 be safe.

17 Q Okay.

18 A It's hard to tell where they're standing,
19 but I do see the shadow (indiscernible) by the tree.

20 Q All right. Okay. And then what is this,
21 Detective?

22 A So this is a close-up photograph of the --
23 the black handgun. As you can see at close
24 observation, it has an orange tip, and what we later
25 learned is that this is a replica handgun. It's not a

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1 real semiautomatic handgun that fires bullets.

2 Q Okay. What do we see here?

3 A So, now, we're a little further into the
4 grass a little bit to the north of the tree and just
5 to the east. You're seeing another placard here.
6 Placard No. 5, I think I mentioned earlier, there was
7 a -- a magazine, a solo magazine found that apparently
8 corresponded with the replica handgun.

9 That's what Placard No. 5 is you're
10 seeing right here, so that's, like, a black clip
11 or magazine that goes into the bottom of a handgun.
12 You're also seeing a -- a tent that's pretty much
13 disassembled right in the center here, a large one.
14 You're seeing --

15 Q Here?

16 A Yep. And then behind that, you're seeing a
17 tent fly, another IFAK kit, I believe, to the right,
18 the red object, and then strewn-about personal items
19 that we believe belonged all to Mr. Delgado.

20 Q Okay.

21 A Over here --

22 Q Oh, sorry.

23 A Oh, I was just going to say, over here to
24 the left of the patrol car, you can see that yellow
25 tripod camera system that's, like, a -- a crime scene

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1 diagraming camera.

2 Q The --

3 A So, again, now, you have a closer
4 perspective of the personal property of Mr. Delgado's
5 lying to the right of the cover patrol vehicle. This
6 is Placard 16, the disassembled tent.

7 And, again, this view, now, you're looking
8 back again towards Southeast 92nd Avenue in the
9 parking lot and the location where the -- two of
10 the -- I should say this one is further going back
11 towards the Arco now, this perspective here. So it's
12 going east towards Southeast 92nd and Holgate, the
13 intersection area.

14 Q And so could you show us on this board
15 overhead map where --

16 A Sure.

17 Q -- this photograph's perspective is?

18 A So right about in here and it's located
19 towards this intersection, here to there. So as you
20 can see the gas station overhead rooftop there, that's
21 the Arco.

22 Q Okay.

23 A And that is the intersection right there of
24 92nd and Holgate. And these are several patrol cars
25 that had responded to assist in -- in this incident.

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1 Q Okay. And then -- so right up here at
2 the top of this photograph, this is Holgate going
3 east/west and 92nd running down this portion of
4 the photograph?

5 A Correct.

6 Q Okay.

7 A Yes.

8 Q All right. Thank you.

9 A Mm-hmm.

10 Q And what is this a photograph of, Detective?

11 A So this is a -- a perspective of looking
12 towards the baseball field from the area to the east
13 of the -- in the park, in the grass and then looking
14 towards the west and just a little bit south.

15 And, again, you can see the patrol car that
16 we've been discussing and the -- the -- the tree with
17 the IFAK kits lying around it. That's that same
18 location we've been talking about. You can see the
19 fence behind the tree dividing the field from the --
20 or the grassy area from the baseball field.

21 To my left, you see the tree referenced
22 there, the large tree, where the -- two of the
23 involved officers were taking cover as they contacted
24 Mr. Delgado. And then you start to get a distance
25 here of the two locations when they contacted

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1 Mr. Delgado and the distance that they were looking
2 at him from.

3 Q Okay.

4 A So this -- this is one of the -- this is the
5 crime scene diagram that was created by one of our
6 investigators assigned to the case, Detective
7 Jennifer Hertzler.

8 A GRAND JUROR: Can I ask a question?

9 MR. JACKSON: Oh, yes, sir.

10 A GRAND JUROR: You -- you're maybe going
11 to get to this point. So you said an idea of the
12 distance. Did you -- is there a measurement someplace
13 of what that distance is?

14 THE WITNESS: There -- I believe with our
15 Leica scan, we have that documented. I don't have
16 that memorized in my head right now, but in the Leica
17 scan, we should have that documented. Yeah.

18 MR. JACKSON: Okay.

19 A GRAND JUROR: Okay.

20 THE WITNESS: So this is, again, the
21 crime scene diagram. This is one that one of our
22 criminalists put all together on one paper so we could
23 see the legend with the items of evidence numbered
24 along with the placarded items corresponding.

25 Some of them are a little small and kind

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1 of hard to see. But it shows you where the patrol
2 vehicle cover car is up at the top. It shows you
3 the location of Mr. Delgado in the green shape at
4 the top.

5 You then see the two contact patrol
6 vehicles, the initial responding patrol vehicles, at
7 the bottom left here in purple. And then you see the
8 X right above the -- the patrol vehicle was locating
9 the tree that the officers took cover behind.

10 You see the two placards to the lower right
11 of that tree, which were the fired rifle cartridges,
12 casings. And then right above it, you see the
13 casing -- expended casing from the 40-millimeter
14 launcher, less-lethal gun.

15 BY MR. JACKSON:

16 Q And that was identified under Placard No. 3?

17 A Correct. And then if you go to Placard
18 No. 1 -- let me see here. I'm sorry. I'm not finding
19 1. Is it -- 1 and 2 are over here.

20 Q This should be Placard No. 4.

21 A Yeah. That's what I was just noticing
22 'cause 1 and 2 are there.

23 Q Yeah.

24 A So No. 4, if -- if you see on the legend,
25 that's another 40-millimeter less-lethal cartridge

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1 casing spent, so that means that that was the
2 second less-lethal spent casing from another
3 less-lethal launcher.

4 Q Now, based on your investigation, did
5 you determine that was fired after the fact as the
6 officers were trying to determine whether it was safe
7 to approach Mr. Delgado?

8 A I did, yes. That was part of the tactical
9 approach to try to get to Mr. Delgado quickly to make
10 sure they weren't in danger, as they believed that
11 there was a -- a handgun with him at that moment.

12 Q Okay. So in other words, that 40-millimeter
13 less-lethal cartridge casing labeled under Placard 4
14 was not directly involved in the use-of-force
15 incident?

16 A No -- no, it was not.

17 Q In terms of while it was happening?

18 A Correct.

19 Q Okay. And then the remaining placards,
20 are they documenting various items belonging to
21 Mr. Delgado?

22 A Yes, the majority of them. And then you do
23 see that there's Placard No. 6, which is a -- that's
24 an actual round from the less lethal that made contact
25 with Mr. Delgado and I believe that that was one of

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1 the -- one of the rounds that was located from the
2 less lethal.

3 Q Okay. All right. And then these two black
4 Xs up here at the top of the photograph, are those
5 denoting trees?

6 A They are.

7 Q Different trees? Okay.

8 A That's correct.

9 Q All right. So, Detective, if you want to
10 have a seat here. Can you describe what this image
11 we're seeing on the screen is.

12 A Yes, so this is a -- a CAD printout. CAD is
13 computer-aided dispatch. So in our patrol cars, we
14 have what's called an MDC. An MDC is a -- it's a
15 computer, basically, in our patrol car that gives
16 us -- gives patrol officers all their information on
17 any call that they're responding to.

18 MDC stands for mobile data computer. And
19 this is something that we can later print out from the
20 call to see what the officer or officers received as
21 they're responding to an incident.

22 Q And how -- Detective, can we take just one
23 step back? Can you explain how it is that when
24 someone calls either 9-1-1 or nonemergency, how that
25 information being reported by the person on the phone

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1 at the scene gets to the responding police officers?

2 A Absolutely. So if you were to call
3 nonemergency or 9-1-1, there's a call taker at the
4 Bureau of Emergency Communications Center. BOECC,
5 it's called, or 9-1-1 center. There's a call taker
6 that takes the -- the initial information, documents
7 it, types it up.

8 That information is then relayed to a
9 9-1-1 dispatcher. That dispatcher then radios that
10 information out to a patrol officer whether it's in
11 their specified assigned area, which, in this case,
12 it was, District 980 and 981. The officer will then
13 receive an air radio transmission from the 9-1-1
14 dispatcher explaining what the call is they're
15 responding to.

16 Q Will they also receive the typewritten
17 information from the dispatcher on the MDC
18 you described?

19 A Yes, they do. Very similar to what -- what
20 you're looking at right here, yes.

21 Q Okay. So, in other words, the officer would
22 be getting both verbally information about the call
23 through the radio, but then also be able to see
24 documented information about the call on the MDC?

25 A That's correct, yes.

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1 Q Okay. Are the officers who are responding
2 to a call ever put in direct contact with the 9-1-1
3 callers through the Bureau of Emergency Communication?

4 A Yes. They have that -- that's definitely an
5 option, a viable option, where the call taker or the
6 9-1-1 dispatcher will, either by air, by voice over
7 the radio or by the CAD message you see here that's
8 sent to the officer, they can have the phone number of
9 the caller, the person's name. And they're able to
10 call them directly to get more intelligence as they're
11 responding to any kind of incident if they choose to
12 do so.

13 Q Okay. But just to clarify, the officers
14 wouldn't be put directly on line with the 9-1-1 caller
15 as the 9-1-1 call is occurring?

16 A No.

17 Q They just get the number and then have to
18 call back to get more information if --

19 A Yeah. They're going to get -- what they're
20 going to get is the 9-1-1 dispatcher telling them the
21 call that they're assigned to, where they're going,
22 the nature of the call.

23 And then they're going to get this on their
24 MDC, this CAD printout or message that they can read
25 on their MDC. And then if they choose to do a

Examination of Anthony Merrill

1 followup on their own because they have the contact
2 information of the caller with the phone number, they
3 can do so, in which case they did in -- the officer
4 did that in this situation.

5 Q Okay. And you mentioned that the dispatcher
6 would be reaching out to the district unit officers
7 depending on where the call is occurring.

8 A Correct.

9 Q I think you -- you said District 980
10 and 981.

11 A Correct.

12 Q Can you explain what those terms mean?

13 A Sure. So this jurisdiction of Lents Park
14 is considered East Precinct. For Portland Police
15 Bureau, we have North Precinct and we also have
16 Downtown Central Precinct.

17 So East Precinct, each geographical area
18 within a precinct is -- has basically geographical
19 locations that are broken down into districts for each
20 patrol officer that's working --

21 Q Like boundaries?

22 A -- that shift. Boundaries, yes.

23 Q Okay.

24 A Yes. So the 980 district, there's sometimes
25 two vehicles assigned to one district 'cause it's a

Examination of Anthony Merrill

1 decent-sized boundary or area. And in this case,
2 there were two 980 cars that represent -- that -- that
3 were assigned to that geographical location. So 980
4 was one and the second car was 981.

5 Q Okay. And so when a patrol officer comes
6 on duty to work a patrol shift, would he or she be
7 assigned to a particular patrol district number?

8 A Yes. That is normally the way the
9 assignments are. Everybody has a district that
10 they're assigned to to respond to any given calls
11 that -- during that shift that they take.

12 Q And then are they generally referred
13 to throughout that shift as the 980 car or the
14 981 car?

15 A Yes, they are. Correct.

16 Q Okay.

17 A Mm-hmm.

18 Q So if you were working a patrol shift
19 assigned to the 980s or the 980 district, when the
20 dispatcher came on, would he or she be saying, you
21 know, "Officer Merrill, we've got a call at Lents Park
22 you need to come to," or would he or she be referring
23 to you as, "980, we have a call at Lents Park that we
24 need you to respond to"?

25 A They would refer to me as the District

Examination of Anthony Merrill

1 No. 980, yes.

2 Q Okay. Is that true also in the
3 documentation you see in the CAD reports that the
4 officers were referred to by district assignment as
5 opposed to by name?

6 A Yes. Yes, it is.

7 Q Okay.

8 A So as you go through all these different
9 lines, a little bit to the right, maybe about four or
10 five spaces down, you'll see 980, 981, 980.

11 Q Okay. As the officers respond to a call and
12 continue to communicate information over the radio,
13 does that continue to be documented in CAD?

14 A It does, yes.

15 Q And how does that work?

16 A So if an officer chooses to do the follow-up
17 phone call as they're responding to an incident and
18 they get further intel, more detail from the caller,
19 they then could get on their radio from in their
20 patrol car or in their pack set from outside the
21 patrol car and basically relay that information to the
22 dispatcher, who then documents it into the radio call.

23 Q Okay. And is that so other officers who may
24 also be responding to this call can have the most
25 up-to-date information on developments?

Examination of Anthony Merrill

1 A Yes, it is. Mm-hmm.

2 MR. JACKSON: Okay. Are there any questions
3 from the grand jurors about how the CAD system works,
4 dispatch works, how officers get notified of calls
5 and -- and respond?

6 A GRAND JUROR: Hmm-mm.

7 MR. JACKSON: I don't see any.

8 BY MR. JACKSON:

9 Q Okay. So, Detective Merrill, turning now to
10 this specific call, you mentioned that what we see on
11 the board behind us is the CAD report or part of it
12 for the call on April 16th, 2021?

13 A Correct, mm-hmm.

14 Q At Lents Park involving Mr. Delgado?

15 A That's correct, yes.

16 Q Can you see on this report what time the
17 nonemergency call from Chase Hagen came in?

18 A Yes. So if you start at the top of the page
19 and you go down five lines to time, date, unit ID, so
20 the time is 9:28:28, so 9:28 with 28 seconds. And
21 it's a Priority 1 call, which means it's a -- it's a
22 serious incident. It's a very hot call.

23 The location, Lents Park, below that, that's
24 the actual physical address of Lents Park. And then
25 you go through. If you look at "community" all the

Examination of Anthony Merrill

1 way to your right, it starts talking about District
2 East Zone 981.

3 Q Okay. And that would be referencing the
4 particular patrol officer assigned to that district
5 and whose responsibility this call should be?

6 A That's correct, yes.

7 Q Okay.

8 A As you continue to go down, there's
9 different -- different categories. They're sometimes
10 checked if something comes up in the call when the
11 9-1-1 caller gives information.

12 Q And we see here this is Chase Hagen
13 documented as being the caller?

14 A That's correct, with his phone number listed
15 below it.

16 Q Okay. And as we keep working down the page
17 here, do you see an entry at 9:30:10?

18 A Yes.

19 Q Okay. And what is that?

20 A So this gives a -- a description. So,
21 again, 98 -- 92nd and Holgate side at the batting cage
22 fence, the letter M, to represent male, with a handgun
23 in hand, not threatening anyone with it, white male,
24 30s, red T-shirt, black pants.

25 Q And is this the message that would -- oops.

Examination of Anthony Merrill

1 Sorry. Is this the message that would appear on the
2 MDC for the officers?

3 A Yes.

4 Q Okay.

5 A Yes.

6 Q And then as we move down here to 9:30:32, we
7 see ER 981 and ER 980. And what is that denoting?

8 A So that shows each district officer, that
9 they're en route to the location. They're responding
10 at that point. They've -- they've made, you know,
11 other air -- radioed out on the air to the dispatcher
12 so that the time is marked and archived.

13 Q Okay. And for this particular day, was
14 District 980 assigned to Officer Zach DeLong?

15 A Yes, it was.

16 Q And District 981, was that assigned to
17 Officer Samantha Wutherich?

18 A Yes, it was.

19 Q Okay. As we keep moving down the call here,
20 we see one at 9:30 -- or the CAD, I should say. We
21 see at 9:34:54 in the morning -- what is that entry?

22 A So that entry then shows the number, the
23 district number you see just to the right of that
24 is 980.

25 Q Okay.

Examination of Anthony Merrill

1 A And --

2 Q Does that mean Officer DeLong is putting
3 this information out?

4 A Yeah, Officer DeLong was putting this
5 information out. I know that because I've listened
6 to it. And it -- it -- he, basically, relays back to
7 dispatch, "Red shirt, black pants, doing quick draws
8 with a gun, coming in from the east. Other cars, come
9 towards north side of parking lot."

10 So that's Officer Zach DeLong giving
11 tactical information and more intelligence about what
12 he gleaned from the -- in this case, it was a
13 nonemergency caller, but that's the further
14 information he received from them.

15 Q And is it your understanding that he
16 actually called Mr. Hagen to try to get some more
17 information about the call as he was responding?

18 A That's correct, yes.

19 Q And so this CAD entry here, is that
20 documenting the information he learned?

21 A Yes, it is.

22 Q And, again, so other officers responding
23 would have benefited that information?

24 A Correct.

25 Q Okay. And then we see 9:36 from 981, an

Examination of Anthony Merrill

1 update. And what is that?

2 A So that's -- that's 981 giving out the
3 information that the subject is by Pickles Field.
4 Pickles Field is the name of that small baseball field
5 there -- or baseball field, I should say, so giving
6 more information about what they're observing as
7 they're arriving on --

8 Q Okay.

9 A -- the scene and seeing.

10 Q And, again, 981 is Officer Wutherich?

11 A Yeah, I think we had her reversed before.
12 Yeah, yeah.

13 Q Okay. So then 9:37:02, we have an update
14 from 980. Again, that's Officer DeLong?

15 A Correct.

16 Q And what is that?

17 A So Officer DeLong is radioing out, "Eyes on
18 him, no shirt, black pants, eastern side of the park
19 near the parking lot. Hands are empty now."

20 Q Okay. And so right here at this 9:36, 9:37
21 time frame, this is our first information, according
22 to CAD, that officers are actually on scene with eyes
23 on Mr. Delgado?

24 A Yeah, that's correct. Yes.

25 Q Okay. And then 9:37:59, so approximately

Examination of Anthony Merrill

1 one minute later, do we have an update from 980,
2 Officer DeLong?

3 A Yes, "Hands appear empty now." So, again,
4 he's radioing out -- radioing out further information,
5 intel for the responding -- other responding officers
6 what he's seeing right now.

7 Q Okay. And then at 9:38:32, what do we have?

8 A So at 9:38, you have Officer DeLong again
9 indicating -- he says on the radio, "Not compliant.
10 Others saying he has a gun."

11 Q Okay.

12 A At 9:39, Officer DeLong, again,
13 "Noncompliant. Subject with gun." And you can see
14 that the dispatcher puts in these comments, "Hot --
15 hot call" --

16 Q What --

17 A -- basically.

18 Q What does that mean or what is that supposed
19 to indicate to other responding officers?

20 A That they should be on extreme -- exercising
21 extreme officer safety as they respond and being
22 careful about how they tactically respond to the
23 location and being concerned about crossfire issues
24 and there's a subject with a -- a gun.

25 That -- that's what he's indicating here

Examination of Anthony Merrill

1 based on the information they have. And he's not
2 compliant with him.

3 Q Okay.

4 A So --

5 Q And then at 9:39:44, what do we have?

6 A "Gun in back pocket."

7 Q Okay. And --

8 A So that's Officer DeLong again that's
9 indicating he thinks the gun's in his back pocket.

10 Q Okay. And then last update here at
11 9:40 a.m. and 15 seconds?

12 A 980 again, Officer DeLong, he's radioing out
13 that shots have been fired and the suspect is down.

14 Q Okay. And so according to this CAD report,
15 essentially from the time the police actually got on
16 scene and had located Mr. Delgado to the time when
17 the shots were fired was approximately three to
18 four minutes?

19 A Correct.

20 Q Okay. And so all of these updates were
21 occurring over that three to four minutes as the
22 police were trying to work with the situation?

23 A That's correct.

24 Q Okay.

25 A Yes.

Examination of Anthony Merrill

1 Q All right. So you mentioned that this
2 information is relayed out to the police officers not
3 only through written -- or not only in written form,
4 as we see here, but also verbally over the radio?

5 A Correct, mm-hmm.

6 Q And is that dispatch recorded?

7 A It is, yeah.

8 Q Okay. And have you had a chance --

9 A It's all recorded.

10 Q -- to listen to the dispatch recording
11 related to this call?

12 A I have, yes.

13 Q All right. Let's see what time. I'm going
14 to start this here, Detective. Just let me know if
15 this is the dispatch call -- or dispatch recording
16 related to the call at Lents Park on April 16th.

17 A Okay.

18 (**TRANSCRIBER'S NOTE:** Audio recording played
19 in open court, 11:35 a.m., as follows:)

20 POLICE DISPATCH: 981.

21 UNIT 981: 981.

22 POLICE DISPATCH: You and 980, Lents Park,
23 4727 Southeast 92.

24 (**TRANSCRIBER'S NOTE:** Audio recording
25 stopped, 11:36 a.m.)

Examination of Anthony Merrill

1 BY MR. JACKSON:

2 Q I'm going to stop it there. Does that sound
3 like the call?

4 A Yeah, it does.

5 Q We'll see if we can get the volume --

6 A Yes.

7 Q -- up here for folks.

8 And before we continue with this, Detective,
9 do -- does the communication between the dispatch
10 person and the patrol officers occur at a very rapid
11 pace?

12 A Yes. Yeah. I mean, can you -- can you ask
13 that question again? I want to make sure I --

14 Q Yeah.

15 A -- answer it properly.

16 Q Are -- are they speaking very quickly back
17 and forth --

18 A Yes.

19 Q -- to each other?

20 A Yes, they are, absolutely. It's very
21 dynamic, especially in a hot incident with a person
22 armed with a gun. It's not -- you know, it can be
23 very fast and quick.

24 Q Okay.

25 A Yes.

Examination of Anthony Merrill

1 Q And is there a lot of shorthand terminology
2 that's used in the communications between dispatch and
3 the patrol officers?

4 A Yes, absolutely.

5 Q Okay. So, Detective, as we listen to this,
6 if you could explain what it is that we're hearing, I
7 can pause it --

8 A Okay.

9 Q -- so you can explain sort of what the --
10 what the communication is that we're hearing.

11 A Sure.

12 MR. JACKSON: All right.

13 (**TRANSCRIBER'S NOTE:** Audio recording played
14 in open court, 11:37 a.m., as follows:)

15 POLICE DISPATCH: Subject at the -- 981.

16 UNIT 981: 981.

17 POLICE DISPATCH: You and 980, Lents Park,
18 4727 Southeast 92. Subject at the 92 and Holgate side
19 at the batting cage fence with a handgun in hand,
20 white male, 30s, red T-shirt, black pants. He's not
21 doing anything with the gun. It's just in his hand.

22 UNIT 980: Copy.

23 UNIT 981: Copy. En route.

24 (**TRANSCRIBER'S NOTE:** Audio recording
25 stopped, 11:37 a.m.)

Examination of Anthony Merrill

1 BY MR. JACKSON:

2 Q Okay. So what did we just hear there?

3 A So the dispatcher's radioing out the call to
4 Districts 980 and 981, so Officer DeLong and
5 Officer Wutherich, that there's a subject with a
6 handgun in the park next to the batting cage, I
7 believe she said, with a red shirt, black pants.

8 And then you hear the response from the two
9 district cars, 980 and 981, again, Officer DeLong and
10 Officer Wutherich, saying they copy and they
11 acknowledge the call.

12 Q Okay. And did the dispatcher also relay
13 out the information that the person had a handgun
14 in hand?

15 A Yes.

16 Q Okay. And so in -- quick -- quick
17 information out, right?

18 A Right.

19 Q Is that the total amount of information that
20 the officers received about the call from that
21 initial dispatch?

22 A Yes.

23 Q That and the written message we saw on the
24 previous slide?

25 A Yes --

Examination of Anthony Merrill

1 Q Okay.

2 A -- that's correct.

3 Q The two voices, one female, one male,
4 saying, "Got it," and, "En route," that was Officer
5 DeLong and Officer Wutherich --

6 A Correct.

7 Q -- acknowledging the call?

8 A Correct, yes.

9 Q Okay. So we'll move the recording now up to
10 3 minutes and 30 seconds into it.

11 (**TRANSCRIBER'S NOTE:** Audio recording played
12 in open court, 11:39 a.m., as follows:)

13 UNIT 980: 980, info.

14 (**TRANSCRIBER'S NOTE:** Audio recording
15 stopped, 11:39 a.m.)

16 BY MR. JACKSON:

17 Q And what does that mean?

18 A "980, info," so that's Officer DeLong
19 telling dispatch he has -- he has further information
20 to give.

21 Q Okay. And we're now three minutes from that
22 initial dispatch?

23 A Correct.

24 MR. JACKSON: Okay. Okay.

25 (**TRANSCRIBER'S NOTE:** Audio recording played

Examination of Anthony Merrill

1 in open court, 11:39 a.m., as follows:)

2 UNIT 981: 980.

3 UNIT 980: So I called the caller. This guy
4 is wearing a red shirt and black pants like in the
5 call. Apparently, he's acting like James Bond or like
6 a cowboy doing, like, quick draws with it. He's not
7 pointing it at anybody.

8 (Indiscernible) myself going to come in from
9 the east and try and get eyes on. And if the other
10 cars that are headed here can still just come towards
11 the north side of the parking lot. He's supposed to
12 be right by the Pickles Field.

13 (TRANSCRIBER'S NOTE: Audio recording
14 stopped, 11:39 a.m.)

15 BY MR. JACKSON:

16 Q Okay. So that was Officer DeLong providing
17 that update of information?

18 A Right. He just confirmed on the air that he
19 called the caller and was given further information
20 that the subject was using the handgun to do quick
21 draws kind of like James Bond or a cowboy, not
22 pointing at anyone at that point, but right next to
23 the Pickles Field.

24 And then he's giving tactical information
25 for responding officers to cover them when they

Examination of Anthony Merrill

1 respond to come in a little further from the north
2 and then where he's coming in from the east with
3 Officer Wutherich.

4 MR. JACKSON: Okay. So we'll move the
5 recording now up to about six minutes in.

6 (**TRANSCRIBER'S NOTE:** Audio recording played
7 in open court, 11:40 a.m., as follows:)

8 UNIT 980: All right. And I have eyes on
9 him. He's not wearing a shirt now, just black pants.
10 He's on the eastern side of the park right by the
11 parking lot. And I think his hands are empty right
12 now. We're just going to pull into the parking lot
13 and address him from distance.

14 (**TRANSCRIBER'S NOTE:** Audio recording
15 stopped, 11:41 a.m.)

16 BY MR. JACKSON:

17 Q Okay. So --

18 A So --

19 Q -- what was that? I mean, pretty
20 self-explanatory, but if you could just explain
21 for us.

22 A Sure, yeah. So Officer DeLong just giving
23 further information that they're going to try to
24 contact him verbally from a distance for safety,
25 obviously; that he does not see a handgun in his hands

Examination of Anthony Merrill

1 at this point, is what it appeared; that the subject's
2 on the east side of the park near the parking lot.
3 And, again, they're going to -- they're going to
4 address him from distance.

5 MR. JACKSON: Okay. So we'll move this up
6 to seven-and-a-half minutes into the call.

7 (**TRANSCRIBER'S NOTE:** Audio recording played
8 in open court, 11:41 a.m., as follows:)

9 UNIT 980: Okay. 980. He's not compliant.
10 He's flipping us off. The transients in the parking
11 lot are saying he has a gun. That car that's pulling
12 up at 92 and Holgate right now, if you can take that
13 corner, if you can keep him from running north --
14 northbound, we'll get some more cars here.

15 UNIDENTIFIED UNIT: (Indiscernible) copy.
16 (Indiscernible).

17 (**TRANSCRIBER'S NOTE:** Audio recording
18 stopped, 11:42 a.m.)

19 BY MR. JACKSON:

20 Q Okay. And so what -- what was that?

21 A So Officer DeLong, again, radioing out that
22 the subject's not compliant, "He's flipping us off."
23 The -- per his radio transmission, the transients
24 in the park are saying he has a gun. And then he's
25 giving further instructions to the responding cover

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1 officers to try to contain the subject by coming into
2 the north side of the park.

3 Q Okay. Yeah. Did you notice a change at
4 all, Detective Merrill, in Officer DeLong's tone, the
5 urgency in his voice?

6 A Yeah. He sounds much -- to me, he sounds
7 more serious. I don't know if serious is the right
8 word, but -- but very to the point and his voice is a
9 bit elevated as he's directing other patrol officers
10 to come in to have a safe entry when they come in in a
11 tactical entry. Yeah, that's --

12 Q Okay.

13 A -- sounds like that to me.

14 Q Does he sound more concerned about the
15 situation as it's unfolding?

16 A Yeah, I would say that -- that is
17 consistent. Yes.

18 Q And based on your experience -- I mean,
19 before you were a homicide detective, were you a
20 patrol officer?

21 A Yes.

22 Q And did you respond to calls -- similar
23 calls in the course of your career?

24 A Yes.

25 Q When faced with a -- a person that is

Examination of Anthony Merrill

1 noncompliant or acting openly hostile toward you,
2 is that cause for concern or reason to become more
3 concerned about the situation?

4 A Yes, absolutely.

5 MR. JACKSON: Okay. So we'll move the call
6 now up to 8 minutes and 20 seconds.

7 (**TRANSCRIBER'S NOTE:** Audio recording played
8 in open court, 11:44 a.m., as follows:)

9 UNIT 981: 980, did you want anyone to the
10 south of you?

11 UNIT 980: Okay. 80, let's hold the air
12 here. Very noncompliant. I think the gun's in his
13 back pocket.

14 POLICE DISPATCH: Nonemergency, has gun in
15 the back pocket.

16 UNIT 981: 981.

17 (**TRANSCRIBER'S NOTE:** Audio recording
18 stopped, 11:44 a.m.)

19 BY MR. JACKSON:

20 Q Okay. So what did we hear there?

21 A Oh, again, it's -- his voice definitely is
22 changing more now. And he's saying -- it's Officer
23 DeLong again radioing out that the subject's very
24 noncompliant, that he thinks the gun's in his
25 back pocket.

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1 Q And when he started that, he said, "980,
2 hold the air."

3 A Yes.

4 Q What -- what does that -- what does
5 that mean?

6 A Well, that's for whenever we have a -- a --
7 an emergency situation and we need the air to be clear
8 so nobody else will get on the air for a traffic stop
9 or whatever else. Everything else takes a second seat
10 to what's going on at this moment. And Officer DeLong
11 and his officers on that call have the air.

12 Q Okay. And is that a signal to other
13 officers that this is important and people need to
14 stop talking and listen to what I'm saying?

15 A Yes, absolutely. And, at this point, what
16 we know so far what Officer DeLong knows is there's
17 reportedly a man that's been brandishing a handgun in
18 the park. The park is a busy place. It's broad
19 daylight.

20 It's nice out and sunny. There's people
21 everywhere. So not only is there a fear for the
22 safety of Officer DeLong and cover officers,
23 coworkers, but also the public all around the area
24 there with a man with a gun that's being noncompliant.

25 MR. JACKSON: Okay. So we'll move the

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1 recording now to nine minutes and -- oops --
2 nine minutes and ten seconds.

3 (**TRANSCRIBER'S NOTE:** Audio recording played
4 in open court, 11:45 a.m., as follows:)

5 UNIT 980: Let me get some more cars to
6 here. I just need containment to the north and I need
7 more over here.

8 (**TRANSCRIBER'S NOTE:** Audio recording
9 stopped, 11:45 a.m.)

10 BY MR. JACKSON:

11 Q Okay. And was that Officer DeLong again?

12 A Yes. It's Officer DeLong again asking for
13 more cars, he needs more containment. And, again, you
14 know, based on my training and experience, there's a
15 fear that a man that's noncompliant with a gun in a
16 park, you don't want that person running through the
17 residential area as well.

18 That's another factor that I believe would
19 be going through my mind at that time. And so he's
20 asking for more containment in case this person,
21 whatever happens next, they're prepared more and they
22 have more cover and resources.

23 Q And in practical terms, what does that mean?
24 I mean, containment to the north.

25 A "I need more officers to cut off any escape

Examination of Anthony Merrill

1 route so he can't get -- go run off with a gun into
2 the -- the neighborhood. I need more cover officers
3 in case this turns into something different like
4 possibly lethal force."

5 MR. JACKSON: Okay. So we'll move this
6 forward now to 9:35.

7 (**TRANSCRIBER'S NOTE:** Audio recording played
8 in open court, 11:46 a.m., as follows:)

9 UNIT 981: 81, shots fired.

10 UNIT 980: 980, shots fired. Suspect down.
11 I can't see him.

12 Ken, you have the best eyes.

13 (**TRANSCRIBER'S NOTE:** Audio recording
14 stopped, 11:47 a.m.)

15 BY MR. JACKSON:

16 Q Okay. Oops. And so we heard two voices
17 come on there in rapid succession. Do you know whose
18 voices those were?

19 A Yes. 981 was Officer Samantha Wutherich,
20 who -- who -- who radioed out that shots were fired.
21 And then it was 980, Officer Zach DeLong radioing out,
22 "Shots fired, suspect down. I can't see him right
23 now." And I think that was most of it, yeah.

24 Q Okay. He said, "Ken, you have eyes" --

25 A Oh, that --

Examination of Anthony Merrill

1 Q -- "on him." Was that another officer that
2 had responded to the scene?

3 A Yeah. I know because he was one of our
4 witness officers. Officer Ken Le was at the scene
5 and -- and involved in much of the call after this.

6 Q And do you know based on the investigation
7 where Officer Le was positioned as it relates to
8 Officer Delgado -- or DeLong and Wutherich?

9 A Yes. So Officer Ken Le responded into the
10 area near Southeast 92nd Avenue to the east -- to the
11 east of the immediate scene. In one of the pictures
12 we looked at earlier, you saw a lot of patrol cars
13 parked here. This is Southeast 92nd Avenue again.
14 This is where Mr. Delgado's position was in here.

15 Officers DeLong and Wutherich were in here
16 and you saw another group of responding cover officers
17 come into the area, as Officer DeLong directed them to
18 come further to the north, south to north. So they
19 came in this area. So I know that Officer Ken Le was
20 in that location.

21 Q In that group of officers up here more to
22 the north?

23 A Yeah. There's a bunch of patrol cars
24 parked here that, when they responded, they -- that's
25 where they responded to that area based on Officer

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1 DeLong's request.

2 MR. JACKSON: Okay. All right. So we're
3 getting close to the noon hour here and so this may be
4 a good spot to take our lunch break, although I will
5 ask if there are any questions about the CAD printout
6 or recording that we've just heard.

7 Yes, sir.

8 A GRAND JUROR: Yeah. My -- I think it's
9 kind of logistical more -- so the -- the -- the
10 recording that's sitting there and you're saying,
11 "Okay. We're going to go six minutes in, three
12 minutes in," whichever, so what is -- can you describe
13 how long -- what is that recording?

14 Is it a -- is it the dispatch? Is it just
15 related to this? Are there other things that are
16 sitting in there and so -- just --

17 THE WITNESS: So the -- the recorded --
18 the 9-1-1 call, the recording, the dispatch from
19 the officers, all that radio chatter that we're
20 hearing -- not the 9-1-1 call, I should say, but
21 the officer-dispatch --

22 A GRAND JUROR: Mm-hmm.

23 THE WITNESS: -- interaction that you're
24 hearing there, we have a recording. And then there --
25 there's a timer of when that recording started and

Examination of Anthony Merrill

1 when it ends of just how -- how long that audio is.

2 I know I can marry that up or correspond
3 it with the -- the CAD call that we saw earlier that
4 has all the different times of the different audible
5 transmissions. So, for instance, when 980 and 981 are
6 indicating shots are fired, that's at 9:40 a.m.

7 I know that the call came out at 9:28. You
8 can hear that being called out and then -- so we can
9 go back and look at all that and view that.

10 A GRAND JUROR: So it's -- it's essentially
11 like the recording is just turned on and it's just
12 left on so you have this big, long recording and --
13 and you're -- or is -- is it --

14 THE WITNESS: It records the whole -- the
15 whole time of the incident --

16 A GRAND JUROR: Okay.

17 THE WITNESS: -- if that answers your
18 question. It records --

19 A GRAND JUROR: Yeah.

20 THE WITNESS: -- the whole incident from the
21 beginning to the end. And then it's archived for us
22 as -- you know, any of the investigators to be able
23 to pull that audio so we can go back and look at
24 everything and analyze it carefully. Yes.

25 MR. JACKSON: And --

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1 THE WITNESS: Does that --

2 MR. JACKSON: -- maybe I can ask a --

3 THE WITNESS: -- answer your question?

4 MR. JACKSON: -- follow-up question --

5 THE WITNESS: Yeah.

6 MR. JACKSON: -- along the same lines.

7 BY MR. JACKSON:

8 Q So is this recording specific to this
9 call or is it the general dispatch recording for
10 East Precinct?

11 A GRAND JUROR: Yeah.

12 THE WITNESS: It -- it is the general
13 recording for dispatch. You know, notwithstanding,
14 though, they asked for the air, so pretty much --

15 A GRAND JUROR: Right.

16 THE WITNESS: -- it's this call, right,
17 because nobody else is interrupting what's going on in
18 this hot call. But, yes, it is the overall dispatch
19 for East Precinct, so does that --

20 A GRAND JUROR: And so --

21 THE WITNESS: -- (indiscernible)?

22 A GRAND JUROR: -- so you're saying it --
23 there could be other stuff in there. It's just --
24 it's --

25 THE WITNESS: Yeah.

Examination of Anthony Merrill

1 A GRAND JUROR: -- like, from this point of
2 time to this point of time, here's all the interaction
3 coming into dispatch during that time frame and then
4 you pull -- these are -- this is stuff specific to
5 this incident?

6 THE WITNESS: Yeah.

7 A GRAND JUROR: Okay.

8 THE WITNESS: So, yeah. So when I request
9 this recording, I talk to one of the supervisors of
10 BOEC, Bureau of Emergency Communications --

11 A GRAND JUROR: Mm-hmm.

12 THE WITNESS: -- to pull the -- the audio
13 dispatch recording from the time this call began to
14 the time it ended. And it just so happens that it's
15 at East Precinct, so, like, again, there may be other
16 transmissions that come through related to other
17 stuff. But once they held the air, it was exclusively
18 for this call on that recording.

19 BY MR. JACKSON:

20 Q So in the -- in the portions of the
21 recording that we skipped over to jump to things
22 pertinent to this incident, is that, essentially, just
23 dead airspace or information relating to unrelated
24 calls that are coming through dispatch?

25 A Well, you'll -- on this -- for this

Examination of Anthony Merrill

1 particular incident, you'll have other officers
2 talking about how they're responding, you know, 9 --
3 whatever their vehicle is. 9 -- let's say, for
4 instance, 983 or 990, "I'm responding." You know,
5 you'll hear other officers transmitting information as
6 well; so, yes.

7 MR. JACKSON: All right.

8 A GRAND JUROR: All right. Thank you.

9 MR. JACKSON: Does that answer your
10 question, sir?

11 A GRAND JUROR: Yeah.

12 MR. JACKSON: All right.

13 A GRAND JUROR: I have a question.

14 MR. JACKSON: Yeah.

15 A GRAND JUROR: So going back to the graph,
16 will you pull up the graph again of the dispatch
17 minute by minute?

18 MR. JACKSON: Sure.

19 A GRAND JUROR: So where it says, "PP mental
20 health, Y or N," what does that mean?

21 THE WITNESS: So the N is for no, obviously.
22 Y or N is yes or no. And that's if there was an
23 indication if there's a -- a mental health issue
24 involved in the incident.

25 That would require us or assist us in trying

Examination of Anthony Merrill

1 to get specially trained officers that are ECIT
2 trained, crisis intervention training, to be able to
3 respond as well and assist in the call.

4 A GRAND JUROR: So that's a big, hot button
5 in Portland. With determining that the officer knows
6 that this person's mentally ill or not, I know
7 officers have second-to-second decisions to make. How
8 is it determined if a person's mentally ill or not?

9 THE WITNESS: Well, from the radio call,
10 from the caller, you know, you have this information
11 that's given to you from the nonemergency phone call
12 display -- describing what they're seeing.

13 I don't know that you can make that -- that
14 observation or that result, right, just from that
15 information alone. I think there's a lot of other
16 factors that play into it.

17 Could it possibly be the case here? Sure,
18 100 percent, it could be. Could it not? Sure. So I
19 think it's a very difficult thing to forecast with
20 just that information, in my opinion.

21 And I was a Crisis Intervention Team officer
22 previously when I was on patrol, so you need a lot
23 of -- you know, a lot of more information, I think, to
24 make that -- to make that decision.

25 A GRAND JUROR: All right. So I'm going to

Examination of Anthony Merrill

1 follow up with the same thing. So -- 'cause I -- it's
2 hard to read from --

3 THE WITNESS: Uh-huh.

4 A GRAND JUROR: -- with my eyesight here.
5 So -- so you see that it says, "PP mental health, yes,
6 no." And so an indicating that -- and then right
7 before that, the -- I can't read that.

8 THE WITNESS: It says, "Clearance: Cleared
9 by Sergeant Huntinghouse."

10 A GRAND JUROR: Okay. So this is -- if you
11 just explain the process, that's what I'm more -- so
12 this is coming out of dispatch, correct?

13 THE WITNESS: Correct.

14 A GRAND JUROR: And so it's -- somebody --
15 it looks like this PP mental health, somebody has put
16 that in there. Who -- who puts that information
17 in there?

18 THE WITNESS: That is, from my knowledge --
19 granted I'm not a patrol officer anymore and I haven't
20 been --

21 A GRAND JUROR: Right.

22 THE WITNESS: -- for about 15 -- 4 --
23 14 years now. But there are face -- screen faces
24 that show up on all of our calls and I believe mental
25 health is definitely one of them that if -- if --

Examination of Anthony Merrill

1 if there's mention from the caller, perhaps -- I'm
2 not saying this is 100 percent on everything. But
3 if there's --

4 A GRAND JUROR: Sure.

5 THE WITNESS: -- a mention that the person
6 suffers from a mental health diagnosis because they're
7 familiar with them, then that would be marked --
8 that's possibly a yes. And then they start making --
9 taking measures to respond to that appropriately.

10 A GRAND JUROR: Right.

11 THE WITNESS: Other times, when you can't
12 tell from the information you're given initially, it
13 takes officers possibly interacting verbally to --

14 A GRAND JUROR: Mm-hmm.

15 THE WITNESS: -- try to get more information
16 more intelligence, you know, if behavior is being
17 exhibited, those sort of things.

18 A GRAND JUROR: So at this point, what --
19 the information is from the phone call that's come in
20 from Chase --

21 MR. JACKSON: Hagen.

22 A GRAND JUROR: -- Hagen and then somebody
23 processing that and putting it into, "All right. This
24 is" -- and -- and then it goes out, at that point,
25 saying to 980, 981, right?

Examination of Anthony Merrill

1 THE WITNESS: Yeah. So that next -- that
2 next line below "mental health" --

3 A GRAND JUROR: Right.

4 THE WITNESS: -- "Holgate side at batting
5 cage fence. Male with a handgun in hand, not
6 threatening anyone with it," and then a description
7 of him --

8 A GRAND JUROR: "White male, red shirt" --

9 THE WITNESS: -- and his clothing. So, you
10 know, we don't always have --

11 A GRAND JUROR: Sure.

12 THE WITNESS: -- that -- all the information
13 right away, obviously. And so --

14 A GRAND JUROR: Okay.

15 MR. JACKSON: Yeah.

16 A GRAND JUROR: Yeah. I have a couple
17 questions, but relating to this -- this screen, I'll
18 start with that one. In -- on the bottom there, it
19 says, "980, shots fired, suspect down." But in the
20 audio, I heard 981 say, "Shots fired," first. Does
21 that mean she just shot the -- the nonlethal?

22 THE WITNESS: She -- when -- when 980 says,
23 "Shots fired," going back and forth on the 80 and
24 81 -- I believe that's Officer DeLong, 980 --

25 A GRAND JUROR: Yeah.

Examination of Anthony Merrill

1 THE WITNESS: -- that's Officer DeLong
2 radioing in on the audio, "Yes, she did hear the
3 other factor." And I think that's because this is
4 a summarized thing. It's not the entire thing 'cause
5 it would be several pages --

6 A GRAND JUROR: Okay.

7 THE WITNESS: -- to give you time frames.
8 But then the audio, as we said, as you're listening to
9 that, you're hearing all that come out.

10 And I think there were certain areas to
11 highlight for you to understand when very relevant,
12 pivotal things occurred like, you know, responding to
13 the call at 9:28; arriving on scene at 9:37 -- or 9:36
14 or '7; 9:37, putting eyes on the subject; a little bit
15 before that, the call to the call taker from Officer
16 DeLong -- you know, kind of highlighting those areas.

17 So I think what you're seeing is the
18 distinction between, this isn't the full printout of
19 the CAD right here --

20 A GRAND JUROR: Okay.

21 THE WITNESS: -- but very relevant time
22 frames in the audio. There is a CAD that has the
23 full printout of everything.

24 And in the audio, as you play it, you'll
25 hear, you know, some of those other transmissions like

Examination of Anthony Merrill

1 we discussed before about the earlier question. Does
2 that make sense?

3 A GRAND JUROR: Yeah.

4 THE WITNESS: Okay.

5 A GRAND JUROR: What I'm trying to get at is
6 when the officer says in -- in the audio, "Shots
7 fired," does that mean they pull the trigger and fired
8 or are they saying they -- they saw shots fired? I
9 mean, how -- how do we make that distinction --

10 THE WITNESS: It -- it --

11 A GRAND JUROR: -- when the -- both officers
12 says, "Shots fired," are they saying only what -- that
13 they fired a shot?

14 THE WITNESS: I think all of the above
15 because, at this moment when shots are fired,
16 everyone's going to say it 'cause that's, like,
17 immediate most critical situation in a police
18 officer's shift if something like this happens is to
19 announce shots are fired.

20 Now, I know from the investigation Officer
21 Wutherich fired her less lethal, but I also know
22 Officer DeLong fired his -- his AR-15, which are
23 obviously lethal --

24 A GRAND JUROR: Right.

25 THE WITNESS: -- rifle rounds, right?

Examination of Anthony Merrill

1 A GRAND JUROR: I'm trying to determine
2 which one shot first and can we tell that by the
3 audio alone?

4 THE WITNESS: I don't know if I can --
5 BY MR. JACKSON:

6 Q Yeah. Maybe I can ask just a quick
7 follow-up question.

8 A Yeah.

9 Q So, Detective Merrill, just based on
10 this CAD report and what we heard in the dispatch
11 recording, are you able to tell whether, when Officer
12 Wutherich says, "Shots fired," if she's talking about
13 her own shot or Officer DeLong's shot?

14 A I can't tell for certain 100 percent, no.

15 A GRAND JUROR: Okay. Thank you for
16 clearing that up.

17 MR. JACKSON: Sure, yeah.

18 Yes, sir?

19 THE WITNESS: Sir.

20 A GRAND JUROR: On the CAD report, "Hands
21 appear empty now," asterisk. Is that alluding to
22 more text? 'Cause I -- we did hear on the physical
23 recording a similar phrase was mentioned, but that
24 seems like a pivotal thing. So the asterisk, I'm
25 curious what that alludes to.

Examination of Anthony Merrill

1 THE WITNESS: I think -- oh, the asterisk?

2 A GRAND JUROR: Yeah.

3 THE WITNESS: You know, again, it's -- I
4 think with the -- the call to dispatchers sometimes,
5 because things are happening so fast, they will
6 shorthand things. So I think they are trying to
7 highlight that that's what he said at that moment.

8 At that moment, the guy that they responded
9 to a call with -- that had a gun, he's now saying,
10 "Hands appear empty now." So I think that's
11 something -- maybe they put an asterisk to emphasize
12 that, but I can't say 100 percent because that's --
13 you know, that's not me writing that --

14 A GRAND JUROR: Sure.

15 THE WITNESS: -- so I can't say it for sure.
16 But I would assume that may be why it says that. And
17 as you heard through the audio, there's a couple of
18 transmissions where he -- he continues to say, "I
19 don't see the gun. The hands are empty right now."
20 And then at one point, he's saying, "I think I see it
21 in his back pocket." So it changes as it evolves.

22 A GRAND JUROR: So, Mr. -- Mr. Jackson, are
23 we going to be able to see the full report, the full
24 printout, or is this what we're going to see?

25 MR. JACKSON: You can see the full

Examination of Anthony Merrill

1 printout --

2 A GRAND JUROR: Okay.

3 MR. JACKSON: -- if you would like to
4 see it.

5 A GRAND JUROR: I would like to see it.

6 MR. JACKSON: Okay. Yeah.

7 A GRAND JUROR: Yeah. And another question
8 I had was, in the previous -- in one of the previous
9 slides where you had the -- the crime scene where you
10 had -- had the actual casings on the ground, it'd be
11 either -- talking about two -- two different slides.

12 But how -- how far away are the casings from
13 the actual officer? Do -- do the casings just drop
14 straight from the gun where they stand or do they fly
15 out in -- in a different direction or how can --

16 THE WITNESS: Yeah, you --

17 A GRAND JUROR: -- can that be determined?

18 THE WITNESS: You know, I -- there's -- you
19 know, from shooting at the firing range with my own
20 service weapon, from shooting shotguns, from shoot --
21 you know, they -- the casing's exported out the export
22 chamber and it can fly. And it's just physics.
23 Depends what it hits maybe, ricochets off.

24 A GRAND JUROR: Mm-hmm.

25 THE WITNESS: I don't think you can ever say

Examination of Anthony Merrill

1 it's going to go exactly two feet or something. It
2 always seems to change based on your surroundings and
3 the, you know, geography around you.

4 A GRAND JUROR: So it's not going to be
5 exactly where the officer stands or within a foot or
6 two of that?

7 THE WITNESS: I mean, it could be, right,
8 'cause it could bounce back.

9 A GRAND JUROR: Right.

10 THE WITNESS: You never know. I've had them
11 hit me in the face and land right at my feet and I've
12 had them go way out. And I've had them, from other
13 crime scenes, go on a rooftop where it expended and it
14 went on a roof.

15 A GRAND JUROR: So it kind of depends on how
16 the officer was holding the gun --

17 THE WITNESS: Yes.

18 A GRAND JUROR: -- and how -- what -- what
19 point it was fired, what direction it was -- it
20 was angled --

21 THE WITNESS: Yes. All those --

22 A GRAND JUROR: -- that type of thing?

23 THE WITNESS: -- factors, I think, play a --

24 A GRAND JUROR: Okay.

25 THE WITNESS: -- play a role in that, yes.

Examination of Anthony Merrill

1 A GRAND JUROR: And one more.

2 THE WITNESS: Mm-hmm.

3 A GRAND JUROR: Do we know whether or not
4 these officers have -- had bodycams and whether or not
5 they turned them on at any point?

6 THE WITNESS: We don't have body cameras
7 in Portland.

8 A GRAND JUROR: Oh, okay.

9 BY MR. JACKSON:

10 Q And along those same lines, are the -- any
11 of the patrol vehicles with the Portland Police Bureau
12 equipped with video, audio recording devices?

13 A They are. There's a -- not a -- a lot, but
14 there's a few. I should say more than a few. And so
15 we went out and interviewed our people in our Records
16 Division that handle the application and the software
17 for that to see if they could pull any -- it's called
18 MAV, M-A-V, for our patrol car vehicles equipped with
19 that video system.

20 None of them showed up on the application,
21 so I then went out and interviewed each one of the MAV
22 operators. I believe there was a total of maybe seven
23 or eight. None of them had footage from this.

24 We also tried to pull video from all the
25 TriMet buses, anything that might have been driving by

Examination of Anthony Merrill

1 that would capture anything. Nothing. We tried -- we
2 did pull all the video from the area, which was the
3 Arco.

4 Even though the cameras didn't even face it,
5 we still pulled it because we wanted to make sure
6 that -- maybe Mr. Delgado had gone in there earlier
7 and it might give us more information. Didn't
8 find him.

9 We also pulled video from the 7-Eleven
10 across the street from the Arco at the same
11 intersection. Same situation, cameras didn't
12 cover the scene, but we wanted to see if there was
13 anything more.

14 We also recovered video footage from the
15 McDonald's several blocks to the north. We also
16 canvassed the entire neighborhood and we could not
17 get any further video. So we really explored that
18 to -- thoroughly, very thoroughly. I know 'cause I
19 personally was part of it.

20 MR. JACKSON: Okay. Thank you.

21 THE WITNESS: You're welcome.

22 A GRAND JUROR: Mm-hmm.

23 MR. JACKSON: Any other questions?

24 A GRAND JUROR: Nope.

25 MR. JACKSON: I don't see any.

1 Okay. So why don't we take our lunch break
2 now? We can go off the record.

3 A GRAND JUROR: Okay.

4 * * *

5 (Noon Recess taken at 12:05 p.m.)

6

7

AFTERNOON SESSION

8 (Whereupon, the following proceedings were
9 held before Grand Jury B, 1:17 p.m.):)

10 MR. JACKSON: We're back on the record
11 following our lunch break. And we're going to proceed
12 now with our next witness.

13 MS. KIMBERLY: And for the record, we are
14 calling David Hernandez.

15 Thank you.

16 (Whispered discussion, off the record,
17 1:18 p.m.)

18 MS. KIMBERLY: So, Mr. Hernandez, if you
19 want to go around and stand at the podium.

20 A GRAND JUROR: If you could stay standing
21 for a moment, raise your right hand.

22

DAVID JOSEPH HERNANDEZ

23 Was thereupon called as a witness; and, having been
24 first duly sworn, was examined and testified as follows:

25 A GRAND JUROR: All right. And put your

Examination of David Joseph Hernandez

1 hand down and have a seat.

2 MS. KIMBERLY: Good afternoon.

3 Mr. Hernandez -- Hernandez, could you state your name
4 and spell your last name for the record, please.

5 THE WITNESS: My full name is David Joseph
6 Hernandez. The spelling of my last name is
7 H-e-r-n-a-n-d-e-z.

8 EXAMINATION

9 BY MS. KIMBERLY:

10 Q All right. Thank you, sir.

11 Mr. Hernandez, in April of 2021, were you
12 living in and around the Lents Park area?

13 A Yes, I was.

14 Q Okay. And so let's talk about that. How --
15 how -- you know, where did you stay? Did you sleep in
16 your vehicle or in the park or what was your routine
17 in --

18 A I lost my apartment back in 2017, so we've
19 been staying in the Lents Park neighborhood for the
20 past three or four years. We've been in the same
21 exact spot exactly on the opposite side of the park
22 from where the scene is at, next to a big, green
23 house. My --

24 Q Okay. And I'm going to slow you
25 down here --

Examination of David Joseph Hernandez

1 A Okay.

2 Q -- just 'cause I -- I want to be sure --
3 I'm going to get to all the questions, but let's
4 say then --

5 A Okay.

6 Q You say, "we." Who's "we"?

7 A Me and my life partner, Anthony Adams.

8 Q Okay. And was Mr. Adams with you on the
9 morning of April 16th of this year?

10 A Yes, he was.

11 Q Okay. So I'm going to approach. I'm going
12 to show you a diagram here that --

13 A Okay.

14 Q -- maybe could help clarify where you and
15 Mr. Adams stay.

16 A Can I drink in here?

17 Q Yes, of course, sir. Okay. So,
18 Mr. Hernandez, this is kind of a big overview of the
19 park. I'll give you a second to look at it and to
20 orient yourself. So where do you and Mr. Adams
21 normally park your car?

22 A Right there.

23 Q Right there? Okay. So I'm looking --

24 A Exactly right there for the past
25 three-and-a-half, four years.

Examination of David Joseph Hernandez

1 Q Okay. So that's on Holgate on the
2 (indiscernible)?

3 A Oh, no, that's Holgate?

4 Q The -- this is Holgate.

5 A We stayed on -- I -- I was looking at 88th.
6 We stayed on 88th and -- 88th and -- 88th and
7 Schiller.

8 Q Okay.

9 A Right here.

10 Q So down below. Okay.

11 A Yeah.

12 Q So on this side of the park.

13 A Yeah.

14 Q Okay.

15 A 88th and Schiller.

16 Q Okay. And let's --

17 A Oh, right there.

18 Q Right there.

19 A That's the empty field next to us where the
20 big, green house is right there.

21 Q Okay.

22 A And we park right there.

23 MS. KIMBERLY: Okay. Can everyone see where
24 Mr. Hernandez is pointing? Okay.

25 A GRAND JUROR: Yeah.

Examination of David Joseph Hernandez

1 BY MS. KIMBERLY:

2 Q So, Mr. Hernandez, what is, just generally,
3 yours --

4 A Oops.

5 Q -- and Mr. Adams', you know, kind of morning
6 routine?

7 A Our morning routine is, on the opposite side
8 of the park, every morning, we wake up about 5:30,
9 6 o'clock and go to Lents Park routinely, every single
10 day, travel this road, come around this way and -- is
11 that the main field? Yeah. And -- boy, I can't see
12 the parking lot. Oh, this is the parking lot.

13 Q Okay.

14 A And right here, we park --

15 Q And let me show you this diagram 'cause
16 maybe this view -- this is a little bit more blown up
17 of where --

18 A Okay.

19 Q -- the scene was.

20 A Oh, that's (indiscernible).

21 Q Maybe this will help you.

22 A Okay. Lents Park, 92nd -- yeah, right
23 there. That's the exact spot where we parked. The
24 officers that jumped out jumped -- were parked here
25 behind this tree.

Examination of David Joseph Hernandez

1 Q Okay.

2 A And Robert Delgado was over here.

3 Q Okay. All right. So this -- you recognize
4 this, so you --

5 A Yeah.

6 Q -- came around and parked there?

7 A Right there. I back up.

8 Q And that's where you parked every morning?

9 A Every single morning.

10 Q Okay. And what sort of things do you do --
11 or what did you do on the morning of --

12 A Well, I usually --

13 Q -- April 16th?

14 A We -- we go there 'cause that's -- they have
15 the porta potties out in front, so --

16 Q Okay.

17 A -- you know, we do our business and then we
18 sit there and, just to blow off the morning, we drink
19 some coffee or soda, smoke a little weed.

20 Q Okay. So let's talk about the morning of
21 April 16th specifically.

22 A Okay.

23 Q Do you know about what time you pulled your
24 car into that parking lot in Lents Park, that parking
25 spot you pointed out on the diagram?

Examination of David Joseph Hernandez

1 A 6:00, 6:30 at the latest.

2 Q Okay. And did you encounter Mr. Robert
3 Delgado when you parked there that morning?

4 A Not right away.

5 Q Okay.

6 A When we -- I showed you the route we take.

7 Q Uh-huh.

8 A When we pulled into the park and parked, we
9 noticed a red tent out in the middle of the field.
10 Very rarely do you see anybody camping out in the
11 middle of the field.

12 Q Okay.

13 A Excuse me. And -- but we didn't really pay
14 no attention to it.

15 Q Okay.

16 A So we continued just to do our thing. Do
17 you want me to tell more?

18 Q Well, yeah. So you --

19 A Okay.

20 Q -- did your thing. You said you saw the
21 tent, but you didn't -- did -- did you -- so you
22 didn't see Mr. Delgado at that point?

23 A No. At that point, no.

24 Q Okay. So how long was it before you
25 saw anybody?

Examination of David Joseph Hernandez

1 A We was there maybe about an hour, hour and
2 a half --

3 Q Okay.

4 A -- before he popped out.

5 Q Okay. And had you -- you -- you indicated
6 that you had lost your apartment in 2017 and
7 you'd been --

8 A Well, I gave it up. I didn't really
9 lose it.

10 Q Oh, okay. So you gave -- gave it up, but
11 you'd been at -- was this Lents Park area and where
12 you pointed --

13 A Since then, yes.

14 Q Since 2017 --

15 A Yes.

16 Q -- you've been staying in that area?

17 A Yes.

18 Q Okay. So prior to that morning on
19 April 16th, had you met Mr. Delgado before?

20 A I've never seen him in my entire
21 life ever --

22 Q Okay.

23 A -- but, apparently, the neighbors in the
24 surrounding houses know him. Other homeless people
25 know him, but I -- I've never met him.

Examination of David Joseph Hernandez

1 Q Never met him?

2 A 'Til that moment.

3 Q Okay. So you said you saw him pop out.

4 A He popped out and he was dressed fairly
5 nice. I mean, it was wrinkled 'cause he had to sleep
6 in it, of course; but it looked like he had a nice
7 (indiscernible) on, decent shirt, nice dress pants and
8 some dress shoes his family just bought him.

9 Q Okay.

10 A And --

11 Q And how do you know his family had just
12 bought them?

13 A Well, because after this -- after everything
14 happened, I got involved with the family, so --

15 Q Okay. All right. So that wasn't something
16 he told you that day, that --

17 A No.

18 Q -- his family had bought him clothes?

19 A No.

20 Q No? Okay. All right. So you said he was
21 wearing -- do you remember what he was wearing or the
22 colors of his clothing that day?

23 A Dark.

24 Q Dark?

25 A Yeah, his jacket was dark.

Examination of David Joseph Hernandez

1 Q Okay.

2 A His shoes were, like, a hush puppy leather
3 brown, patent, whatever you want to call it.

4 Q Okay. So did you have a conversation with
5 Mr. Delgado?

6 A As he -- when he pops out of his tent and he
7 comes walking towards me --

8 Q Mm-hmm.

9 A -- and he gets to be just a little bit aways
10 [sic] from me, I notice the handle of a gun sticking
11 out of his -- underneath the left side of his shirt
12 or jacket.

13 Q Mm-hmm.

14 A I also noticed that it didn't have a clip.
15 He repeatedly said it was a BB gun, but I didn't
16 pursue it. I didn't care 'cause I carry my own. I
17 didn't even see, but that's -- that was legal.

18 Q So I'm -- I'm going to slow you down. So
19 you said he said it was a BB gun, but you didn't --

20 A I didn't pursue to --

21 Q All right.

22 A -- find out if it was --

23 Q Okay.

24 A -- because --

25 Q What part of the gun -- you said you saw --

Examination of David Joseph Hernandez

1 A Just the handle.

2 Q Just the handle?

3 A And I saw that it did not have a clip in it.

4 Q Okay.

5 A Now, I -- I couldn't see the barrel that it
6 had an orange tip.

7 Q Okay.

8 A But -- then we continued talking and he's --
9 sorry. He's right at my window and we're talking and
10 he seems totally coherent. He didn't smell like
11 alcohol. He didn't seem high.

12 Q Okay.

13 A But during that -- during that time of us
14 talking, my partner gave him a couple cigarettes and
15 then we smoked a joint and a bowl with -- of marijuana
16 with him. And then he went to go off to do his -- to
17 break down his tent and stuff like that.

18 And he was doing weird stuff to the air.
19 And then that's when he walked over there and started
20 taking everything down and moved to the fence so he
21 could fold stuff up and put it away and go about
22 his day.

23 Q Now, when you say you -- so I understand you
24 talked a little bit and smoked some cigarettes and
25 smoked some marijuana with him. After he went to

Examination of David Joseph Hernandez

1 start -- you know, go back to his tent and doing stuff
2 with his tent, did you have any more conversation with
3 him during that time?

4 A After he left my truck --

5 Q Yeah.

6 A -- and did that little stuff in front in
7 the -- in the air and went over there, we didn't talk
8 to him no more.

9 Q Okay. Okay. Now, after -- you said you saw
10 the gun -- or the barrel of the gun in -- or not the
11 barrel. I'm sorry -- the handle --

12 A Handle.

13 Q -- handle in -- out, did you see him with
14 the gun after that at all? Like, while he was around
15 his tent.

16 A Before he got shot or --

17 Q Before, yes.

18 A He was -- he had it and he was pointing, you
19 know, like this, not -- away from everybody and was
20 pointing it towards, like, the baseball -- the -- the
21 baseball stadium. He wasn't --

22 Q Okay.

23 A -- threatening with it in any way.

24 Q Yeah. Okay. But you saw him pointing it
25 towards the baseball field --

Examination of David Joseph Hernandez

1 A Yeah.

2 Q -- and that sort of thing? Okay. So -- so
3 about how long after you talked to him at your truck
4 before -- well, let me ask you this. Did -- did you
5 see police show up?

6 A Police showed up. I wasn't paying attention
7 to -- to the clock.

8 Q Mm-hmm.

9 A I heard the report went out around 9:30 --

10 Q And -- and, again, how did you hear
11 the report went out at 9:30? Who gave you
12 that information?

13 A I think one of the officers.

14 Q Okay.

15 A I just can't remember who.

16 Q Okay. So --

17 A 'Cause I talked to so many officers
18 that day.

19 Q Yeah. Okay.

20 A Where was that?

21 Q Yeah. Just -- so I was just asking you --
22 and we'll -- we'll talk to other people about exact
23 times and that sort of thing. I'm just asking what
24 you recall from that day, about how long it was after
25 you had your conversation with Mr. Delgado at your

Examination of David Joseph Hernandez

1 truck where you smoked some cigarettes and some weed
2 before --

3 A The officers showed up?

4 Q -- the officers showed up.

5 A Remembering that 9:30 part, probably -- I
6 don't know. 10 o'clock maybe before the --

7 Q Okay.

8 A I couldn't give you an exact time.

9 Q Okay. That's fine. So -- so -- but did you
10 observe some officers show up to the park?

11 A Yes. I observed a female and a male officer
12 jump out of a car. The lady officer had a -- the
13 beanbag shotgun.

14 Q Mm-hmm.

15 A And the male officer had the AR-15.

16 Q Okay. And I'm going to slow you down
17 again here --

18 A Okay.

19 Q -- sir, and bring out this diagram. And
20 I think you kind of pointed to it earlier when
21 talking about it, but -- so you said you were parked
22 right here?

23 A Yes --

24 Q Okay. So --

25 A -- I did.

Examination of David Joseph Hernandez

1 Q -- where did you see the officers,
2 the male --

3 A They pulled in right here --

4 Q -- and the female?

5 A -- behind the tree that they jumped
6 out behind.

7 Q Okay. And did you see where the female
8 officer went?

9 A Yeah, this is the tree. The female officer
10 was on the left-hand side and the male officer was on
11 the right-hand side --

12 Q Okay.

13 A -- of the tree, but behind it.

14 Q Of this tree here?

15 A I'm guessing that's the -- you know --

16 Q It's hard to tell.

17 A -- you got a couple trees there.

18 Q Yeah. Okay. So the female went to one side
19 and the male officer went to the other side?

20 A Yes.

21 Q And you said the female had what type of
22 weapon on her?

23 A She had what looked like a beanbag gun. I'm
24 pretty sure that my video shows or you can -- you can
25 hear the beanbag go off.

Examination of David Joseph Hernandez

1 Q Okay. And we'll -- we'll see the
2 video here --

3 A Yeah.

4 Q -- shortly, so that's fine. I'm just asking
5 what you remember, okay?

6 A Yeah.

7 Q Did -- was the male officer -- did he have
8 any weapon in his hands?

9 A He had the AR-15.

10 Q Okay. So let me ask you this then. You
11 said that the officers came up and they went to either
12 side of the tree.

13 A Uh-huh.

14 Q Did you -- were you able to see what
15 Mr. Delgado was doing?

16 A Whereas he showed up and got behind the
17 tree, they started barking orders. And then his
18 whole demeanor did a 100 -- a 360-degree turn.
19 He just verbally got violent with the -- with the
20 police officers.

21 Q Mr. Delgado did?

22 A Yeah.

23 Q And what do mean, "verbally got violent"?
24 What -- what did you hear?

25 A Well, he kept saying, "Get away. Leave."

Examination of David Joseph Hernandez

1 Q Mm-hmm.

2 A Then he made a -- during the officers'
3 commands, he made verbal threats.

4 Q And what type? Did you hear
5 anything specific?

6 A "I'll kill you," or, "I'll shoot you" --

7 Q Okay.

8 A -- one -- one of those, I'm pretty sure.

9 Q Okay. And then --

10 A GRAND JUROR: I'm sorry. Could you just
11 repeat that? 'Cause I'm trying to write it down and
12 I don't --

13 THE WITNESS: Oh.

14 A GRAND JUROR: -- want to miss anything.

15 THE WITNESS: Sorry.

16 A GRAND JUROR: What exactly did you hear
17 him say? "I'll kill you," or, "I'll shoot you"?

18 THE WITNESS: Yeah, I don't know --

19 A GRAND JUROR: Okay.

20 THE WITNESS: -- exactly, yeah.

21 A GRAND JUROR: That's hugely important --

22 A GRAND JUROR: Yeah.

23 A GRAND JUROR: -- so thank you. Thank you.

24 BY MS. KIMBERLY:

25 Q So what was Mr. Delgado doing when he was

Examination of David Joseph Hernandez

1 saying -- what was his tone of voice when he was
2 saying these things?

3 A Very angry, very -- yelling at the top of
4 his voice. Flailing, rummaging through his stuff on
5 the ground.

6 Q Okay. And did you -- were you able to --
7 where you were at -- where did you stay during this
8 event? Did you stay --

9 A I didn't move.

10 Q -- in your truck?

11 A I was frozen.

12 Q Yeah. Okay.

13 A Yeah.

14 Q So were you --

15 A That's it.

16 Q -- at your truck where you pointed to on
17 the map?

18 A Yeah.

19 Q Is that -- was that your location?

20 A I stayed there for quite a few hours until
21 the officers released me.

22 Q Okay. So what was your vantage point?
23 And -- and we'll see the video, what you recorded --
24 but what was -- what could see as all of this was
25 going on?

Examination of David Joseph Hernandez

1 A Ah, I could see everything.

2 Q Okay.

3 A I mean, from the very second -- I remember a
4 lot of stuff in my head. It's difficult 'cause I've
5 never been in this type of situation before.

6 Q Well, let me -- I'm just going to ask you to
7 take me step by step. So you said --

8 A Yeah.

9 Q -- that Mr. Delgado was yelling and very
10 angry.

11 A Yes.

12 Q What were the officers doing?

13 A They were -- I wasn't paying attention too
14 much to what they were saying, but they were -- they
15 were barking commands like, "Where's the weapon? Put
16 it down. What's the location of it?"

17 Q Okay.

18 A Stuff like that.

19 Q And then what do you --

20 A Telling him to stand still, "Don't move."

21 Q Okay. And then what were -- you -- you
22 talked a little bit about what Mr. Delgado was doing,
23 but what did you observe specifically about when
24 Mr. Delgado was shot? What did you see?

25 A Something I've never seen before in my life.

Examination of David Joseph Hernandez

1 I was terrified. Everybody's seen a body at a
2 funeral, but I've never seen a life taken, rather
3 when the situation was right or wrong. I've never
4 seen that before, so I'm kind of, like, mentally
5 screwed up --

6 Q Okay.

7 A -- in the head.

8 Q So I just want to hear what you
9 actually saw.

10 A Okay.

11 Q So let's -- what -- what -- let's just talk
12 about what Mr. Delgado -- so what did you see about
13 Mr. Delgado before he was shot?

14 A Before he was shot?

15 Q Yes.

16 A It was really nice, really --

17 Q Yeah. I want to -- I'm taking you to, like,
18 the exact moments --

19 A Oh.

20 Q -- like, when he's interacting --

21 A When he was --

22 Q -- with police.

23 A -- being violent --

24 Q Okay.

25 A -- you know --

Examination of David Joseph Hernandez

1 Q But then what exactly did you see, sir?

2 A I seen him flailing around, barking threats
3 at the cops --

4 Q Okay.

5 A -- told them their commands and stuff and --

6 Q Okay.

7 A -- he wouldn't reply.

8 Q Okay. So then what did you see? Did --
9 did -- did you -- were -- could you see him in the
10 moments before he was shot?

11 A I can describe the -- I remember right now
12 the -- the last few moments before he got -- at the --
13 the time he got shot.

14 Q Yes, uh-huh.

15 A Like, the -- like, the -- like, the tree
16 thing, he moved all of his stuff over here towards --
17 towards the fence behind the tree where he was shot
18 at. He was scrounging around on the ground hunched
19 over, you know, looking -- searching for stuff. He
20 gets over here to this side of the tree and --

21 Q And I just want the record to be clear.
22 You -- you're using a water bottle as the tree to --

23 A Yeah.

24 Q -- demonstrate. And so --

25 A This is the front facing the street.

Examination of David Joseph Hernandez

1 Q Okay.

2 A This is the back facing the baseball field.

3 Q Okay.

4 A He's turned around the back as he's on the
5 ground searching for whatever.

6 Q Okay.

7 A He gets to this point and I see him pick
8 something up.

9 Q To the left of the tree? So you're
10 kind of --

11 A Well, if you're facing the tree, it's to
12 the left --

13 Q To the left? Okay.

14 A -- if you're looking at the street, it's the
15 right. Yeah.

16 Q Yeah. Okay.

17 A I see him pick something up, but I couldn't
18 see what it was.

19 Q Okay.

20 A The officers gave their last command and he
21 had something in his hand. He was crouched over. He
22 turned his head and started to stand up and that's
23 when the officer shot him.

24 Q Okay. And you said you couldn't see what
25 was in his hand?

Examination of David Joseph Hernandez

1 A Yeah, I couldn't see.

2 Q Okay.

3 A What was in his hand after he got shot when
4 the heavysset officer ran up to him after he shot him
5 with the beanbag gun, again, he -- I seen him kick
6 something dark out of the way.

7 Q Okay.

8 A But I couldn't see what it was. It shows it
9 on the video, too.

10 Q Yeah.

11 A On one of the videos I got.

12 Q And we're going to talk about that.

13 A Yeah.

14 Q So -- so at what point did you decide to
15 start recording this with your cell phone?

16 A The very second the police pulled up and
17 jumped out with the guns.

18 Q Mm-hmm.

19 A I said, "Oh, no, something's going to
20 happen."

21 Q Okay. And did you keep that recording
22 going through --

23 A Yeah. I kept the recording as long as my
24 camera would record and then it restarted again, so I
25 have, like, five or six -- five or six videos.

Examination of David Joseph Hernandez

1 Q Okay. And you already talked earlier about
2 how you stayed there the whole time 'til police --

3 A Released me, yeah.

4 Q -- yeah, police came. So did you turn all
5 of those videos over to police?

6 A Yeah. They had me sign a -- a -- a waiver
7 form, whatever you want to call it. And then he took
8 my phone and they downloaded or did what they do, I
9 guess, to record the videos. But I don't like what
10 they did to my phone.

11 Q Okay.

12 A What they did, they -- they totally
13 pixilated all the pictures and videos that I had to do
14 with that scene.

15 Q Okay.

16 A I was lucky, though. Before I gave it to
17 the police, I sent the videos out to different friends
18 so they got the whole copies.

19 Q Okay. And --

20 A I ended up getting a new phone.

21 Q So I'm going to take you back then. You
22 saw -- you saw Mr. Delgado get shot.

23 A Mm-hmm.

24 Q What did you see then? Like, what did you
25 witness in the moments after he was shot?

Examination of David Joseph Hernandez

1 A What I witnessed was the way Mr. Delgado was
2 -- the reactions of his body when he got hit. I seen
3 him -- seen him fall. And the police did not -- I --
4 that's giving my opinion. The police didn't engage
5 with his body real soon. I mean, they waited a while.

6 And I don't know what the state of his body
7 was at that time, but when the paramedics showed up,
8 they got the stretcher out, but they didn't do
9 nothing. I think my video might show that. I don't
10 remember. It's been a while since I seen it. And it
11 shows -- my video shows one officer trying to do CPR;
12 but that was, like, way after he got shot.

13 Q Okay. Did you watch when officers did go
14 and approach Mr. Delgado after he was shot?

15 A Yeah.

16 Q What did you witness? What did you see?

17 A All of them standing around his body eating
18 pizza. They were having a party on the car right next
19 to his body.

20 Q And is that on your video?

21 A I don't know. I don't know.

22 Q So when you -- you've said kind of a couple
23 different things after Mr. Delgado was shot. You said
24 that they -- that it took a while for police to go up.

25 A Mm-hmm.

Examination of David Joseph Hernandez

1 Q And then you said that someone shot him with
2 a beanbag gun.

3 A Yeah.

4 Q Okay. What did you witness about that?

5 A After he got shot and the officer announcing
6 that he was shot, I didn't see the name, but a
7 heavysset male white officer ran behind a -- a tree
8 that was a little bit away from the -- where the
9 officers were, but closer to the victim.

10 Q Mm-hmm.

11 A And then he shot the body with a
12 beanbag gun.

13 Q Okay.

14 A I'm assuming that's to see if he was still
15 alive or not or -- that's what I gathered out of it.

16 Q Okay. And then what did you observe?

17 A Shortly after that, the PT Cruiser pulled
18 across the lawn with officers in shields approaching
19 the body.

20 Q Okay. And then what happened after they
21 approached the body?

22 A They were looking at the body. I think they
23 were, you know, checking -- checking things on the
24 body or --

25 Q Okay. And then was it during that time that

Examination of David Joseph Hernandez

1 they were eating pizza?

2 A It was after that. It was after that.

3 Q Okay.

4 A On the hood of the car that pulled up to --
5 the Cruiser and stuff.

6 Q And then you've testified that you,
7 since this happened, have since met Mr. Delgado's
8 family, correct?

9 A Yes.

10 Q Okay. And what's your relationship like
11 with them?

12 A Really close now.

13 Q Okay. Have they been helping you?

14 A No.

15 Q No?

16 A I mean, they'll bring me snacks or something
17 to eat.

18 Q Okay.

19 A I don't need much help. I got the apartment
20 already. I'm cool. (Indiscernible) --

21 Q Oh, good. Well, I'm glad for that.

22 A Yeah.

23 (Whispered discussion, off the record,

24 1:45 p.m.)

25 THE WITNESS: Your mask is cool.

Examination of David Joseph Hernandez

1 A GRAND JUROR: Thank you.

2 BY MS. KIMBERLY:

3 Q So, Mr. Hernandez, I -- sorry. We just like
4 to check our notes to make sure we --

5 A Yeah, yeah.

6 Q -- covered everything with you. So,
7 Mr. Hernandez, did you -- when officers first arrived,
8 the female and the male officer --

9 A Uh-huh.

10 Q -- first arrive at the tree, did you tell
11 them that he -- Mr. Delgado had a gun?

12 A Yes.

13 Q You did? Okay. And then you -- and --

14 A But I wasn't the one who called and
15 reported it.

16 Q Oh, no, we -- yeah. That --

17 A Okay.

18 Q -- we know that, but -- but you did tell
19 the -- the -- the officers when they arrived
20 on scene --

21 A Yeah.

22 Q -- that? Okay. And then, Mr. Hernandez,
23 you indicated that Mr. Adams is your life partner.

24 A Yes.

25 Q Okay. And so does he still currently reside

Examination of David Joseph Hernandez

1 with you?

2 A Yes.

3 Q Okay. So he's here in town?

4 A Yes.

5 Q Okay. Excellent.

6 A This is heavy.

7 MS. KIMBERLY: Okay. Do you have anything
8 else?

9 Does the grand jury have any questions for
10 Mr. Hernandez?

11 A GRAND JUROR: Yeah.

12 A GRAND JUROR: I do.

13 MS. KIMBERLY: Yeah. Oh, you do. Okay. So
14 let's go first.

15 Mr. Foreperson.

16 A GRAND JUROR: Sure.

17 A GRAND JUROR: Yes, (indiscernible).

18 A GRAND JUROR: So, first, thank -- thank
19 you so much for coming in.

20 THE WITNESS: Mm-hmm.

21 A GRAND JUROR: I know it's hard.

22 THE WITNESS: Yeah.

23 A GRAND JUROR: Just want to clarify just
24 for us to understand the timing of things. So you
25 said the officers showed up.

Examination of David Joseph Hernandez

1 THE WITNESS: Mm-hmm.

2 A GRAND JUROR: And do you -- which -- which
3 officer did you talk to when they showed up? Male
4 or female?

5 THE WITNESS: I didn't approach them or
6 nothing. I just yelled it from my truck, but it was
7 the female.

8 A GRAND JUROR: And -- and what did you yell
9 from your truck?

10 THE WITNESS: "He has a gun."

11 A GRAND JUROR: Okay.

12 THE WITNESS: And she said, "I know."

13 A GRAND JUROR: Okay. All right. And
14 then did you hear them -- what were they yelling to
15 Mr. Delgado?

16 THE WITNESS: You know, it's been a minute.
17 I can't remember exact words, but --

18 A GRAND JUROR: Close enough.

19 THE WITNESS: -- things like, "Stand still.
20 Where's the weapon? Where's the gun? Lay down. Put
21 your hands out," basic officer stuff, I guess.

22 A GRAND JUROR: Okay. And his reaction was
23 to start yelling?

24 THE WITNESS: His demeanor from when I first
25 met him --

Examination of David Joseph Hernandez

1 A GRAND JUROR: Yes.

2 THE WITNESS: -- completely flipped

3 100 percent. He just got irate --

4 A GRAND JUROR: And was that --

5 THE WITNESS: -- and wouldn't listen -- he
6 wouldn't listen to any of the officers' commands.

7 A GRAND JUROR: Okay. And was that -- did
8 it change before the officers showed up or after?

9 THE WITNESS: After.

10 A GRAND JUROR: After? Okay.

11 THE WITNESS: Yeah.

12 A GRAND JUROR: There was another thing.

13 So -- and, again, I -- we appreciate very much you
14 reliving and going through it again. So there's this
15 barking of orders and angry responses and things. And
16 at some point, there was a shot. Was it -- you said
17 it -- was it the beanbag shot?

18 THE WITNESS: Everybody says they didn't see
19 or hear it. I heard the beanbag shots first.

20 A GRAND JUROR: Okay.

21 THE WITNESS: My video, I think you can hear
22 the beanbag gun going off first.

23 A GRAND JUROR: Do you have any recollection
24 of the length of time between what you heard --

25 THE WITNESS: First?

Examination of David Joseph Hernandez

1 A GRAND JUROR: -- the beanbag shot and then
2 what you then heard as the AR-15 (indiscernible)?

3 THE WITNESS: How much time in between?

4 A GRAND JUROR: Yeah.

5 THE WITNESS: Minute, minute and a half.

6 A GRAND JUROR: Okay.

7 THE WITNESS: Two at the most maybe.

8 A GRAND JUROR: Okay.

9 THE WITNESS: It might have been longer.
10 Just -- everything happening so fast, it's just --

11 A GRAND JUROR: Yeah. It's hard to know,
12 you know --

13 A GRAND JUROR: I know. It's
14 (indiscernible).

15 A GRAND JUROR: -- one second or five
16 seconds can be -- feel like five minutes and --

17 THE WITNESS: Yeah.

18 A GRAND JUROR: -- five minutes can feel
19 like a lot, so -- okay. Yeah, that's -- that helps
20 clarify that. Thank you.

21 THE WITNESS: Okay.

22 A GRAND JUROR: Okay. Yeah,
23 (indiscernible).

24 MS. KIMBERLY: We're just going to go down
25 the line 'til -- 'til everyone gets --

Examination of David Joseph Hernandez

1 A GRAND JUROR: I -- well, I -- thank you so
2 much for being here.

3 THE WITNESS: Mm-hmm.

4 A GRAND JUROR: Really appreciate it. And
5 it's -- you know, it's a hard situation, so thank you.

6 THE WITNESS: Yeah.

7 A GRAND JUROR: I just want to clarify a
8 couple things. Did -- did Mr. Delgado smoke weed?
9 I -- I somehow --

10 THE WITNESS: With us, yes.

11 A GRAND JUROR: -- was writing down and I
12 was missing that.

13 THE WITNESS: With us, yes.

14 A GRAND JUROR: He was. Okay. So he
15 definitely did. Thank you. And did -- you said --
16 and I think it's on the record here. You said he got
17 violent and said to the -- or said at some point, "I
18 will kill you and shoot you."

19 THE WITNESS: Maybe not in that exact order,
20 but, yes.

21 A GRAND JUROR: Yeah. So he did say, "I'll
22 kill you and shoot you"?

23 THE WITNESS: Yeah.

24 A GRAND JUROR: So he did -- did
25 say something?

Examination of David Joseph Hernandez

1 THE WITNESS: Yeah.

2 A GRAND JUROR: Okay.

3 THE WITNESS: I mean, yes.

4 A GRAND JUROR: So he -- so Delgado got
5 violent and he said, "I will kill you and shoot you"?

6 THE WITNESS: Yeah.

7 A GRAND JUROR: Okay. Thank you. Next is,
8 when you said officers asked him to put his weapon
9 down, that's correct?

10 THE WITNESS: If it's down there that I said
11 it, then -- then, yeah. But right now at this exact
12 moment, all's I -- all I remember is the afterwards.

13 A GRAND JUROR: Sure.

14 A GRAND JUROR: Of -- of course. I know
15 it's all -- it's very confusing. Also you had
16 mentioned he was flailing and not complying when they
17 ask -- the -- the officers asked him to put the weapon
18 down, he was flailing and would not comply.

19 THE WITNESS: Right.

20 A GRAND JUROR: Okay. Good. So we're --
21 that's -- that's a yes. Okay. You could not see what
22 was happening, though, at that point, other than --
23 oh, you said he was rummaging through his stuff.

24 THE WITNESS: Yeah.

25 A GRAND JUROR: Okay. Great. Thank you.

Examination of David Joseph Hernandez

1 And I'm sorry. I'm not (indiscernible) sound like I'm
2 being mean. I'm not being mean.

3 THE WITNESS: No, you're good.

4 A GRAND JUROR: I so appreciate -- and I'm
5 sorry you're in this situation. You said they were
6 having a party --

7 THE WITNESS: Yeah, it -- it was --

8 A GRAND JUROR: -- with their pizza.

9 THE WITNESS: It looked exact -- oh. I
10 mean, they didn't have no party favors or nothing, but
11 they had a pile of pizzas sitting on the hood and a
12 lot of the officers were standing around eating pizza,
13 leaving the body there uncovered for all the kids and
14 everybody to see. It was just horrible.

15 A GRAND JUROR: Oh, they didn't cover
16 the body?

17 THE WITNESS: No, they didn't cover the body
18 at all.

19 A GRAND JUROR: Oh. I know 'cause it was in
20 the morning, so it was daylight. So --

21 THE WITNESS: Yeah.

22 A GRAND JUROR: -- people are -- I know --

23 THE WITNESS: And the park was full.

24 A GRAND JUROR: -- it was in the morning, so
25 it's a very --

Examination of David Joseph Hernandez

1 THE WITNESS: The parking lot was
2 almost full.

3 A GRAND JUROR: -- dangerous situation with
4 the guy having the gun and --

5 THE WITNESS: Mm-hmm.

6 A GRAND JUROR: -- it's the park in the
7 morning. I -- I know. It's just -- I'm sorry that
8 you had to go through this and everyone in the park
9 had to go through this. And the other thing that you
10 had said -- and I just want to clarify this, too. You
11 said that you had told the officers -- did tell them
12 Delgado had a gun, right?

13 THE WITNESS: Yes.

14 A GRAND JUROR: Thank you.

15 THE WITNESS: Mm-hmm.

16 A GRAND JUROR: That's crucially important.
17 Thank you.

18 THE WITNESS: Mm-hmm.

19 A GRAND JUROR: All right. Next.

20 A GRAND JUROR: Thank you very much
21 for being here. We really appreciate your -- your
22 testimony.

23 THE WITNESS: Mm-hmm.

24 A GRAND JUROR: My original question that I
25 had was answered by his question. But a followup to

Examination of David Joseph Hernandez

1 one of hers, after you smoked weed together --

2 THE WITNESS: Uh-huh.

3 A GRAND JUROR: -- did you observe any
4 change in his body language or anything?

5 THE WITNESS: Not at all, no.

6 A GRAND JUROR: Okay.

7 THE WITNESS: 'Cause, like I said, we only
8 smoked, like, a joint and a bowl with him. That's
9 loud. A joint and bowl with three people is not going
10 to really do anything --

11 A GRAND JUROR: Okay.

12 THE WITNESS: -- except maybe give you a
13 little head change.

14 A GRAND JUROR: Okay. Thank you very much.
15 That's --

16 THE WITNESS: Yeah.

17 A GRAND JUROR: -- all I have.

18 THE WITNESS: Mm-hmm.

19 MS. KIMBERLY: Do you have any questions?
20 Any questions back here? I'm looking at the grand
21 jurors. No questions?

22 A GRAND JUROR: I do.

23 MS. KIMBERLY: Okay.

24 A GRAND JUROR: Do you recall how much --
25 first of all, thank you for being here.

Examination of David Joseph Hernandez

1 THE WITNESS: Mm-hmm.

2 A GRAND JUROR: Do you recall how much
3 time -- or, I mean, not -- I'm sorry. Not how much
4 time, but in between the officer shot from, like, the
5 beanbag -- what they call the beanbag gun --

6 THE WITNESS: Uh-huh.

7 A GRAND JUROR: -- and the actual AR, was
8 there any further commands from the officers in
9 between those two instances?

10 THE WITNESS: Yes.

11 A GRAND JUROR: What did they say?

12 THE WITNESS: Oh, they -- just -- just what
13 you said. "Where's the weapon? Stand still. Put
14 your hands up."

15 A GRAND JUROR: And he did not comply?

16 THE WITNESS: No.

17 A GRAND JUROR: Okay. Thank you.

18 THE WITNESS: Yeah.

19 (Whispered discussion, off the record,
20 1:55 p.m.)

21 BY MS. KIMBERLY:

22 Q So, Mr. Hernandez, I want to be clear on
23 some time frame just so we're all --

24 A Okay.

25 Q -- clearly talking about the same thing.

Examination of David Joseph Hernandez

1 You know, we know that the female officer had the
2 beanbag gun. We'll just call it that for -- 'cause
3 that's the language you used, so the --

4 A Okay.

5 Q -- beanbag gun and then the other -- the
6 male officer had the AR-15.

7 A Yes.

8 Q And you said, in your video, you can hear
9 her AR -- her -- her beanbag gun --

10 A Go off first.

11 Q -- go off. Okay.

12 A Yeah.

13 Q Sitting here now -- I mean, we'll -- and
14 we'll get to see the video and just see some of this
15 for ourselves, but when did the AR-15 go off in
16 relation to her beanbag gun?

17 A Shortly afterwards.

18 Q Shortly afterwards.

19 A Yeah.

20 Q Okay. So then there was a second beanbag
21 gun, right, with the heavy set white male cop --

22 A Yes.

23 Q -- that came up --

24 A Yeah.

25 Q -- to see if he was still alive --

Examination of David Joseph Hernandez

1 A Yeah.

2 Q -- was what you thought was possibly --

3 A Yeah.

4 Q -- why he did that?

5 A Yeah.

6 Q Okay. So I want to be very clear about the
7 timing and sequence of these commands.

8 A Okay.

9 Q The female's beanbag gunshot -- the female
10 officer's beanbag gunshot and the AR-15 shot, were
11 there any commands between those two shots that you
12 can recall?

13 A A specific time frame, I can't recall.

14 Q You can't recall. Okay.

15 A Yeah.

16 Q So when you -- so I just want to be clear
17 that, you know, we're clear on what you're saying.
18 The last question was, from the beanbag gunshot, you
19 recall hearing other commands. Which beanbag gunshot
20 are you talking about where you heard commands?

21 A After the beanbag shot is when they gave
22 their last command.

23 Q Now, I just want to -- which beanbag? The
24 heavy male officer --

25 A Oh.

Examination of David Joseph Hernandez

- 1 Q -- or the female officer?
- 2 A The female officer.
- 3 Q The female officer.
- 4 A Yeah.
- 5 Q Okay.
- 6 A After that --
- 7 Q All right.
- 8 A -- they gave him one last command.
- 9 Q Okay.
- 10 A He didn't comply. And I think that's right
- 11 when he bent down and I saw him pick something up, but
- 12 I couldn't tell what it was.
- 13 Q Okay.
- 14 A But after the cop shot him and I seen
- 15 where -- I seen where he dropped whatever it was he
- 16 had in his hand, the officer -- the heavysset officer
- 17 kicked it out of the way.
- 18 Q Okay.
- 19 A But I don't know what it was.
- 20 Q Okay. But your video captured the shot,
- 21 right?
- 22 A Yeah.
- 23 Q The -- the rifle shot and the --
- 24 A Yeah.
- 25 Q -- beanbag shot, correct?

Examination of David Joseph Hernandez

1 A Yeah.

2 Q So when we see the video, the video will
3 be the thing that will tell us exactly when these
4 shots happened?

5 A Yeah.

6 Q Okay. All right.

7 A I don't know how to work cameras. I don't
8 know if the videos have the time lapse on it or not.

9 Q Okay.

10 A So --

11 MS. KIMBERLY: Okay. All right.

12 Any questions?

13 MR. JACKSON: No.

14 MS. KIMBERLY: No?

15 Okay. Any other questions?

16 A GRAND JUROR: Nothing.

17 MS. KIMBERLY: All right. Thank you,

18 Mr. Hernandez, you're -- you may step down.

19 THE WITNESS: Is that it?

20 MS. KIMBERLY: That's it.

21 A GRAND JUROR: That's it.

22 THE WITNESS: Oh, my God. You guys
23 are awesome.

24 A GRAND JUROR: Mr. Hernandez, thank you
25 so much.

Examination of David Joseph Hernandez

1 THE WITNESS: Yes, no problem.

2 A GRAND JUROR: Thank you very much.

3 A GRAND JUROR: We appreciate it.

4 THE WITNESS: Bye, guys.

5 A GRAND JUROR: Goodbye.

6 A GRAND JUROR: Bye.

7 A GRAND JUROR: Have a nice day.

8 THE WITNESS: (Indiscernible) my
9 phone number.

10 MR. JACKSON: All right. So we can
11 certainly take a break now if you guys would like or
12 we can continue with Detective Merrill's testimony.

13 A GRAND JUROR: Anybody need a break?

14 MULTIPLE GRAND JURORS: No.

15 A GRAND JUROR: No? Let's go.

16 MR. JACKSON: Okay.

17 A GRAND JUROR: Keep going.

18 A GRAND JUROR: Let's go, yeah. So we're
19 going back to Merrill, right?

20 A GRAND JUROR: Yeah.

21 (Whispered discussion, off the record,
22 1:59 p.m.)

23 MR. JACKSON: Okay. And, Detective Merrill,
24 you're still under oath from earlier, all right?

25 THE WITNESS: Yeah.

Examination of Anthony Merrill

1 incident occurring?

2 A Yes. I was approached by Officer Harris
3 when I arrived at the scene and he explained to me
4 that he had contacted a witness named David Hernandez.

5 And he explained to me that -- that he --
6 that Officer Harris learned the video was taken by
7 Mr. Hernandez's cell phone at the location there from
8 the parking lot.

9 Q Okay. And was that video evidence obtained
10 from Mr. Hernandez?

11 A Yes, it was.

12 Q And have you had a chance to view it?

13 A I have, yes.

14 Q Okay. If you look on the screen here,
15 is this a still frame taken from the video
16 Mr. Hernandez took?

17 A Yes, it is.

18 Q And can you orient us here on the -- what
19 the perspective is and who we're seeing?

20 A Sure. So this is the -- the tree where the
21 initial responding officers -- Officer DeLong is
22 crouched on the right.

23 This is the spot where they responded to
24 take cover behind that tree we discussed. And you can
25 see there's -- it's kind of hard to see, but that's

Examination of Anthony Merrill

1 Officer Wutherich standing right directly behind the
2 tree.

3 Q Uh-huh.

4 A She's also taking cover behind that tree.

5 Q Okay. She's partially obscured by
6 this bush --

7 A Correct.

8 Q -- branch here?

9 A Yeah.

10 Q Okay.

11 A And you can see the parking lot is just
12 adjacent there.

13 Q Right here. And are -- is this the front
14 bumper of one of the patrol vehicles that was parked?

15 A Yes, it is.

16 Q Okay. In terms of where we're looking,
17 so this is out northeast, the -- this is Holgate
18 up here?

19 A Correct.

20 Q And 92nd coming down the side of the screen?

21 A Correct.

22 Q And then the gas station we've talked about,
23 that's right behind this foliage here?

24 A The Arco?

25 Q Yeah.

Examination of Anthony Merrill

1 A Yeah. A little to the -- to me, it seems
2 it's a little to the right.

3 Q Okay. Right back in over here?

4 A Yeah.

5 Q Okay. And then -- so where, based
6 on this --

7 A Yeah, no. Actually, it's further to the
8 right way over here.

9 A GRAND JUROR: Yeah, right in the corner.

10 THE WITNESS: (Indiscernible).

11 A GRAND JUROR: There -- there is it is --

12 THE WITNESS: Right there.

13 A GRAND JUROR: -- right there where your
14 purse is, yeah.

15 MR. JACKSON: Okay.

16 A GRAND JUROR: Yeah.

17 THE WITNESS: Yeah.

18 MR. JACKSON: Oh, I see it. Okay.

19 THE WITNESS: Where you're pointing right
20 there is sort of the middle of the intersection where
21 92nd and Holgate intersect.

22 BY MR. JACKSON:

23 Q Got it. Okay. And then where is
24 Mr. Delgado in relation to this perspective?

25 A So he's in the south -- or excuse me --

Examination of Anthony Merrill

1 northwestern direction off to the left there out of
2 frame is where his location was --

3 Q Okay.

4 A -- based on this perspective.

5 Q Okay. And so, Detective, this video is
6 approximately 12 minutes in length; is that right?

7 A Yes.

8 Q And so as we play this, could you explain
9 what we're seeing? And if we need to pause it, we can
10 do that to facilitate that.

11 A Sure. And before we start the video, would
12 this be a good time for me to furnish you with the
13 distance? I was obtain that from the
14 Leica calculation.

15 Q I -- oh --

16 A GRAND JUROR: Yeah.

17 MR. JACKSON: -- yes. Okay. So, yeah.

18 We -- before the break, we did have a question --

19 A GRAND JUROR: Can --

20 BY MR. JACKSON:

21 Q -- about -- actually, here, let me go back
22 to that image. So this was an image of the tree next
23 to which Mr. Delgado was and then the tree over here
24 where Officer DeLong and Officer Wutherich had
25 taken cover.

Examination of Anthony Merrill

1 A Correct. And I didn't want to answer that
2 until I had the exact number in my head and I didn't
3 want to give you wrong information.

4 But -- so the Leica scan, the laser scan, is
5 able to take the two points in a -- they judge the
6 point from Officer DeLong's location by Placard No. 2,
7 which was one of his spent .223 rifle rounds that was
8 next to the tree, to the location of Mr. Delgado where
9 he rested. And it was approximately 91 feet and
10 7 inches between those two distant -- locations. So
11 91 feet, 7 inches.

12 Q Okay. So that's the distance from where
13 Mr. Delgado was over to where that -- the casing hit
14 the ground --

15 A Where --

16 Q -- right next to the tree?

17 A Exactly. And, like we discussed, you can't
18 predict how far the casing's going to go from the
19 exact location from where Officer DeLong was standing.
20 But reasonably we're in that 90-to-91-foot area, maybe
21 a little less.

22 Q Okay. And then if we look at this image
23 here, are these the two placards denoting the rifle
24 round casings on the ground?

25 A Correct, they are.

Examination of Anthony Merrill

1 Q So when you say the measurement was taken
2 from Placard No. 2, that's this one here?

3 A Correct.

4 MR. JACKSON: Okay.

5 A GRAND JUROR: Thank you.

6 MR. JACKSON: All right. Thank you,
7 Detective. So going back now to the video taken
8 by Mr. Hernandez, we'll go ahead and let it
9 play for --

10 (**TRANSCRIBER'S NOTE:** Video recording played
11 in grand jury, 2:05 p.m., as follows:)

12 OFFICER DeLONG: Lay down on the ground now.
13 Put your hands up, dude.

14 OFFICER WUTHERICH: Put your hands up.

15 OFFICER DeLONG: Put your hands up now.

16 (**TRANSCRIBER'S NOTE:** Video recording
17 stopped, 2:05 p.m.)

18 BY MR. JACKSON:

19 Q And who are these voices we're hearing?

20 A So it's Officer Wutherich standing by the
21 tree and Officer DeLong crouched by the tree asking
22 for Mr. Delgado to put his hands up, "Let me see
23 your hands" --

24 Q Okay.

25 A -- similar commands like that.

Examination of Anthony Merrill

1 (**TRANSCRIBER'S NOTE:** Video recording played
2 in grand jury, 2:06 p.m., as follows:)

3 OFFICER DeLONG: Put your hands up, dude.

4 OFFICER WUTHERICH: Put your hands up.

5 OFFICER DeLONG: Put your hands up now.

6 (**TRANSCRIBER'S NOTE:** Video recording
7 stopped, 2:06 p.m.)

8 BY MR. JACKSON:

9 Q And then we just saw an individual walk out
10 of frame over here on the left. Do you know who
11 that was?

12 A That's Mr. Delgado. Throughout this video,
13 you'll see it pan back and forth multiple times.

14 Q And when you say, "pan back and forth," do
15 you mean from where the officers are located over to
16 where Mr. Delgado is --

17 A Yes.

18 Q -- and then back to where the officers are?

19 A That's correct, yes.

20 MR. JACKSON: Okay.

21 THE WITNESS: I'm sorry. Am I blocking your
22 view or can you see okay?

23 A GRAND JUROR: Mm-hmm.

24 THE WITNESS: Yeah? Okay.

25 (**TRANSCRIBER'S NOTE:** Video recording played

Examination of Anthony Merrill

1 in grand jury, 2:06 p.m., as follows:)

2 OFFICER DeLONG: Lay down on the ground now.

3 Put your hands up, dude.

4 OFFICER WUTHERICH: Put your hands up.

5 OFFICER DeLONG: Put your hands up now.

6 OFFICER WUTHERICH: Put your hands up.

7 ROBERT DELGADO: Get your hands up.

8 OFFICER DeLONG: Right now.

9 DAVID HERNANDEZ: This is (indiscernible).

10 ROBERT DELGADO: You tell me fucking
11 (indiscernible). You better get the fuck away from
12 me (indiscernible) right now.

13 BY MR. JACKSON:

14 Q And whose voice is that we're hearing?

15 A (Indiscernible).

16 ROBERT DELGADO: I will (indiscernible).

17 DAVID HERNANDEZ: Oh, this is fucked.

18 ROBERT DELGADO: You better fucking get your
19 fucking ass back there (indiscernible).

20 DAVID HERNANDEZ: Oh, this is fucked.

21 (Two shots fired.)

22 OFFICER DeLONG: (Indiscernible).

23 BY MR. JACKSON:

24 Q And what were those sounds?

25 UNIDENTIFIED SPEAKER: He shot him.

Examination of Anthony Merrill

1 (TRANSCRIBER'S NOTE: Video recording
2 stopped, 2:07 p.m.)

3 THE WITNESS: So, predominantly, I'm hearing
4 the two rifle sounds, rifle shots. I believe the
5 40 millimeter's in there, but I think it -- to me, it
6 sounds like, predominantly, there's two rifle rounds
7 and probably the 40 sound is within one of those two
8 rifle rounds, same time, if that makes sense.

9 MR. JACKSON: Okay.

10 THE WITNESS: Simultaneous.

11 MR. JACKSON: I'm just going to back it up a
12 little bit and we'll just let it play.

13 (TRANSCRIBER'S NOTE: Video recording played
14 in grand jury, 2:07 p.m., as follows:)

15 DAVID HERNANDEZ: Oh, this is fucked.

16 ROBERT DELGADO: You better fucking get your
17 fucking ass back there (indiscernible).

18 DAVID HERNANDEZ: Oh, this is fucked.

19 (Two shots fired.)

20 UNIDENTIFIED SPEAKER: He shot him. I got
21 it on camera. I got it on camera.

22 DAVID HERNANDEZ: Holy, shit.

23 UNIDENTIFIED SPEAKER: He shot him.

24 SPEAKER 1: (Indiscernible).

25 UNIDENTIFIED SPEAKER: He shot him.

Examination of Anthony Merrill

1 SPEAKER 2: Stop. Stop.

2 DAVID HERNANDEZ: Yeah, I know. Whoa.

3 SPEAKER 2: Stop. Stop.

4 DAVID HERNANDEZ: I know (indiscernible).

5 ANTHONY ADAMS: Get out of here.

6 DAVID HERNANDEZ: Hang on.

7 SPEAKER 2: Go back to your car. James.

8 James. James, go back to your car.

9 DAVID HERNANDEZ: I am.

10 THE WITNESS: And that's Mr. Hernandez
11 (indiscernible) James (indiscernible).

12 DAVID HERNANDEZ: Oh, shit.

13 THE WITNESS: And the other voice is
14 Mr. Hernandez's associate named Anthony Adams. They
15 share (indiscernible).

16 DAVID HERNANDEZ: Shit.

17 ANTHONY ADAMS: We're witnesses.

18 DAVID HERNANDEZ: Shit.

19 (Indiscernible voice on a loudspeaker.)

20 DAVID HERNANDEZ: (Indiscernible).

21 (Indiscernible voice on a loudspeaker.)

22 ANTHONY ADAMS: Oh, he is alive. Oh, my
23 God, he's moving.

24 (Indiscernible voice on a loudspeaker.)

25 /////

Examination of Anthony Merrill

1 BY MR. JACKSON:

2 Q Is that voice Mr. Adams?

3 A I believe that is Mr. Adams.

4 (Indiscernible voice on a loudspeaker.)

5 DAVID HERNANDEZ: (Indiscernible).

6 (Indiscernible voice on a loudspeaker.)

7 ANTHONY ADAMS: Oh, my God.

8 BY MR. JACKSON:

9 Q Detective, the commands that we're hearing,
10 are those from a police vehicle's PA system?

11 A That's correct. (Indiscernible).

12 (Many indiscernible voices.)

13 ANTHONY ADAMS: It's just a fucking BB gun.

14 DAVID HERNANDEZ: BB gun -- BB guns don't
15 have (indiscernible).

16 ANTHONY ADAMS: Mm-hmm. (Indiscernible) lay
17 down. Lay down. Oh, shit, dude.

18 (Many indiscernible voices.)

19 ANTHONY ADAMS: Oh, my God. Oh, my God.

20 THE WITNESS: (Indiscernible) giving those
21 commands (indiscernible).

22 DAVID HERNANDEZ: Here come more.

23 ANTHONY ADAMS: Yeah.

24 (Indiscernible voice on a loudspeaker.)

25 ANTHONY ADAMS: Here comes another one.

Examination of Anthony Merrill

1 (Indiscernible voice on a loudspeaker.)

2 ANTHONY ADAMS: Oh, my God, please call me
3 back.

4 (**TRANSCRIBER'S NOTE:** Indiscernible voice on
5 a loudspeaker, 2:11 p.m.)

6 ANTHONY ADAMS: Oh, my God. Oh, my God.
7 ASAP, like, right now. All these cops right here at
8 the park, they just shot somebody.

9 BY MR. JACKSON:

10 Q Is that Mr. Adams?

11 ANTHONY ADAMS: Holy shit.

12 THE WITNESS: Yes. I can't tell if this is
13 the spot that (indiscernible) --

14 ANTHONY ADAMS: Holy shit. Look at all
15 these cops.

16 THE WITNESS: -- cell phone talking to
17 another person about what he just witnessed.

18 ANTHONY ADAMS: Holy shit.

19 (**TRANSCRIBER'S NOTE:** Indiscernible voice on
20 a loudspeaker, 2:12 p.m.)

21 ANTHONY ADAMS: Holy shit. They all got
22 fucking weapons. Look at that shit. Holy shit.

23 BY MR. JACKSON:

24 Q Can you tell what those items were in the
25 officers' hands that just came up?

Examination of Anthony Merrill

1 A Yeah. As I mentioned earlier, you can see
2 (indiscernible) kits. They're the IFAK kits, which
3 were kits (indiscernible).

4 ANTHONY ADAMS: Hey, dude, oh, my God, it's
5 fucking nuts. Some dude just got shot in the fucking
6 park by a bunch of cops. They're all over the fucking
7 place, like, fucking crazy right now. Dave is
8 recording it all.

9 DAVID HERNANDEZ: There's, like, 15 cops
10 here.

11 ANTHONY ADAMS: There's, like, 15 cops here
12 right now.

13 DAVID HERNANDEZ: And they just shot someone
14 in the park.

15 ANTHONY ADAMS: And they just shot someone
16 in the park.

17 DAVID HERNANDEZ: Right in front of us.

18 ANTHONY ADAMS: Dude in the park. Here's
19 another one that just showed -- yeah, here's another
20 one that just showed up. It's unmarked. Holy fuck.
21 Oh, I know. He's -- he's over there in the grass, but
22 they're fucking not going over there. Holy shit,
23 dude. Listen.

24 (**TRANSCRIBER'S NOTE:** Indiscernible voice on
25 a loudspeaker, 2:13 p.m.)

Examination of Anthony Merrill

1 ANTHONY ADAMS: Hold on. Listen.

2 (Indiscernible voice on a loudspeaker.)

3 ANTHONY ADAMS: Listen.

4 OFFICER 1: Less-lethal or lethal force.

5 ANTHONY ADAMS: They're fucking yelling at
6 the fucking guy for having --

7 DAVID HERNANDEZ: Tony, shut up. I want to
8 hear them.

9 (Shot fired.)

10 ANTHONY ADAMS: There goes another shot.

11 DAVID HERNANDEZ: They shooting beanbags
12 at him.

13 (*TRANSCRIBER'S NOTE: Video recording*
14 *stopped, 2:13 p.m.*)

15 BY MR. JACKSON:

16 Q So did you hear that there,
17 Detective Merrill?

18 A Yes.

19 Q Was that a shot in the background? And what
20 -- based on your understanding of the investigation,
21 what was that sound?

22 A Oh, did I just hear that now? I thought you
23 meant about the commentary that -- between --

24 Q No, sorry. The --

25 A Can -- can you play that back? I think I

Examination of Anthony Merrill

1 missed it then.

2 MR. JACKSON: Sure.

3 (*TRANSCRIBER'S NOTE*: Video recording played
4 in grand jury, 2:14 p.m., as follows:)

5 OFFICER 1: Less-lethal or lethal force.

6 ANTHONY ADAMS: They're fucking yelling at
7 the fucking guy for having --

8 DAVID HERNANDEZ: Tony, shut up. I want to
9 hear them.

10 (Shot fired.)

11 MR. JACKSON: Right there.

12 ANTHONY ADAMS: There goes another shot.

13 (*TRANSCRIBER'S NOTE*: Video recording
14 stopped, 2:14 p.m.)

15 BY MR. JACKSON:

16 Q And what -- what was that?

17 A I assume that that was the -- they were
18 doing a tactical approach with the vehicle trying to
19 ensure that there's still not a threat of somebody
20 brandishing a gun as they're approaching that could
21 take a shot.

22 So to -- to ensure that, they're firing a
23 40 millimeter -- again, a less-lethal projectile I
24 described earlier -- to see if there's an indication
25 that the person's still a threat because they're not

Examination of Anthony Merrill

1 getting any -- any other kind of responses.

2 A GRAND JUROR: And what's the time stamp on
3 that? The -- the --

4 BY MR. JACKSON:

5 Q Sure. So, Detective, looking at the time --
6 the time bar here at the bottom of the video, that
7 shot appears to occur roughly 6 minutes, 27 seconds
8 into the video?

9 A Correct.

10 Q On the -- on the counter?

11 A Correct.

12 MR. JACKSON: Okay.

13 A GRAND JUROR: Thank you.

14 MR. JACKSON: Mm-hmm.

15 (**TRANSCRIBER'S NOTE:** Video recording played
16 in grand jury, 2:15 p.m., as follows:)

17 DAVID HERNANDEZ: They're shooting beanbags
18 at him.

19 VOICE ON PHONE: Get the fuck out of there,
20 you know?

21 ANTHONY ADAMS: I know. Dave's sitting here
22 fucking recording the whole fucking thing.

23 VOICE ON PHONE: Yeah. Well, you need to
24 get over there to start apologizing to my
25 grandparents, bro. You kept them up all fucking

Examination of Anthony Merrill

1 night.

2 DAVID HERNANDEZ: Well, that's got to
3 fucking wait right now. We can't go nowhere.

4 ANTHONY ADAMS: We can't do nothing.

5 VOICE ON PHONE: (Indiscernible).

6 ANTHONY ADAMS: I can't do nothing right
7 now. I --

8 VOICE ON PHONE: (Indiscernible) my house
9 and --

10 ANTHONY ADAMS: They're right in front
11 of me.

12 OFFICER 1: (Indiscernible) shot again.

13 ANTHONY ADAMS: That's what I'm saying.
14 They're right in front of me. I can't go nowhere.
15 You're going to have to wait at least 15, 20 minutes.

16 OFFICER 1: Reach for a weapon --

17 ANTHONY ADAMS: I can't go --

18 OFFICER 1: -- (indiscernible) --

19 ANTHONY ADAMS: -- nowhere right now.

20 OFFICER 1: -- or less-lethal force.

21 BY MR. JACKSON:

22 Q What are we seeing here, Detective Merrill?
23 (Simultaneous speakers.)

24 THE WITNESS: This is the (indiscernible).

25 ANTHONY ADAMS: Oh, they're fucking shooting

Examination of Anthony Merrill

1 the guy again.

2 VOICE ON PHONE: What?

3 ANTHONY ADAMS: They shot him again.

4 VOICE ON PHONE: Who?

5 ANTHONY ADAMS: This fucking idiot in the
6 fucking grass with a tent.

7 VOICE ON PHONE: Really?

8 ANTHONY ADAMS: Yeah.

9 VOICE ON PHONE: They shot the gun at the
10 guy in the tent?

11 ANTHONY ADAMS: They shot him twice already.
12 Now, they shot him with a fucking -- something. They
13 got fucking cops all over this fucking park parking
14 lot right now.

15 VOICE ON PHONE: I know.

16 ANTHONY ADAMS: I can't fucking go nowhere.
17 It's that bad.

18 VOICE ON PHONE: (Indiscernible).

19 ANTHONY ADAMS: They're all walking up to
20 him right now. Fuck. (Laughter). I think he's dead.
21 I think he's dead. They just kicked him. I think
22 he's dead.

23 (TRANSCRIBER'S NOTE: Video recording
24 stopped, 2:16 p.m.)

25 MR. JACKSON: Now, we're approximately

Examination of Anthony Merrill

1 eight minutes, seven minutes --

2 A GRAND JUROR: Yeah.

3 MR. JACKSON: -- 59.

4 A GRAND JUROR: From the start of the video.

5 MR. JACKSON: From the very -- from the
6 start of the -- of the video, correct.

7 A GRAND JUROR: Okay.

8 THE WITNESS: Can I make a comment on
9 something I just noticed in --

10 BY MR. JACKSON:

11 Q Sure.

12 A -- the video?

13 Q Yeah.

14 A So as you see the approach, again, I
15 explained this, but I'll just emphasize it again.
16 They have a ballistic shield, a vehicle for cover for
17 officer safety as they approach a man that they
18 believe is armed with a handgun.

19 As they're approaching, the objective here
20 is to try to get to him and render medical aid. As
21 they're getting closer, you'll see the officer that's
22 all the way on the left who had a rifle, I believe, in
23 his hand kick an object on the ground. Did you -- I
24 don't know if you saw that or --

25 A GRAND JUROR: Yeah.

Examination of Anthony Merrill

1 THE WITNESS: -- we can play that again
2 maybe, but --

3 BY MR. JACKSON:

4 Q And --

5 A -- so that --

6 Q Is -- is that roughly where the replica
7 firearm was found laying in the grass?

8 A Yes, it is.

9 MR. JACKSON: All right. Play that again.

10 (**TRANSCRIBER'S NOTE:** Video recording played
11 in grand jury, 2:17 p.m., as follows:)

12 ANTHONY ADAMS: Fuck. It's that bad.

13 VOICE ON PHONE: (Indiscernible).

14 ANTHONY ADAMS: They're all walking up to
15 him right now.

16 BY MR. JACKSON:

17 Q Right there?

18 A Yeah.

19 ANTHONY ADAMS: Fuck. (Laughter). I think
20 he's dead. I think he's dead. They just kicked him.
21 I think he's dead. I think he's dead. I think they
22 killed his ass. Ruthless. Look, they got everybody
23 out here fucking recording this shit. David, look.

24 DAVID HERNANDEZ: Tony, shut the fuck up.

25 ANTHONY ADAMS: Oh, dude. (Laughter).

Examination of Anthony Merrill

1 OFFICER 2: Hey.

2 DAVID HERNANDEZ: How you doing?

3 OFFICER 2: All right. How are you?

4 DAVID HERNANDEZ: A little scared.

5 OFFICER 2: Yeah, I'm sure.

6 ANTHONY ADAMS: That was --

7 DAVID HERNANDEZ: We were -- we were just
8 sitting here smoking a joint with him.

9 (TRANSCRIBER'S NOTE: Video recording
10 stopped, 2:18 p.m.)

11 BY MR. JACKSON:

12 Q And whose voice is this now talking?

13 A Mr. Hernandez's voice.

14 Q Okay. And is this a -- a police officer
15 that's walked up to him?

16 A Yes.

17 Q Okay.

18 A Yes, it is.

19 (**TRANSCRIBER'S NOTE:** Video recording played
20 in grand jury, 2:18 p.m., as follows:)

21 OFFICER 2: I'm sure.

22 ANTHONY ADAMS: That was insane.

23 DAVID HERNANDEZ: We were -- we were just
24 sitting here smoking a joint with him and I saw the
25 gun and it didn't have a clip in it. And he said it

Examination of Anthony Merrill

1 was a BB gun, but I never heard of a BB gun --

2 ANTHONY ADAMS: That had a clip.

3 DAVID HERNANDEZ: -- having a clip.

4 OFFICER 2: So, sir, (indiscernible).

5 SPEAKER 4: I'm waiting for an attorney.

6 OFFICER 2: Huh?

7 SPEAKER 4: I'm waiting for an attorney.

8 OFFICER 2: (Indiscernible).

9 SPEAKER 4: I'm (indiscernible).

10 DAVID HERNANDEZ: He was probably on
11 something (indiscernible).

12 OFFICER 2: Yeah, (indiscernible).

13 ANTHONY ADAMS: I don't know what he was --
14 but is he alive still?

15 DAVID HERNANDEZ: Or is he dead?

16 OFFICER 2: I don't know.

17 DAVID HERNANDEZ: Hey, move.

18 OFFICER 2: But they're -- they're working
19 on him right now.

20 ANTHONY ADAMS: I think he's --

21 DAVID HERNANDEZ: (Indiscernible).

22 ANTHONY ADAMS: I think he's bouncing
23 around. I think he's bouncing around.

24 OFFICER 2: What's your name, sir?

25 DAVID HERNANDEZ: David Hernandez.

Examination of Anthony Merrill

1 OFFICER 2: David Hernandez?

2 DAVID HERNANDEZ: I ain't seen nothing.

3 Don't ask me.

4 OFFICER 2: (Indiscernible).

5 ANTHONY ADAMS: Tony.

6 DAVID HERNANDEZ: He didn't ask you yet,

7 Tony.

8 ANTHONY ADAMS: Oh, I'm just looking at the
9 guy. He's bouncing around like he's having a seizure.

10 DAVID HERNANDEZ: He's probably dying.

11 OFFICER 2: CPR. What's your date of birth,
12 David?

13 DAVID HERNANDEZ: 9-22-68.

14 OFFICER 2: And what's your
15 telephone number?

16 DAVID HERNANDEZ: (503) 462-9469.

17 OFFICER 2: 9469. And a home address
18 for you?

19 DAVID HERNANDEZ: Currently living in
20 the car.

21 OFFICER 2: Okay.

22 DAVID HERNANDEZ: I have a mailing address
23 if you want that.

24 OFFICER 2: Sure.

25 DAVID HERNANDEZ: 910 West Powell Boulevard,

Examination of Anthony Merrill

1 Gresham, Oregon 97030.

2 OFFICER 2: Gresham.

3 ANTHONY ADAMS: Shut up, James.

4 OFFICER 2: And what's your name, sir?

5 Tony?

6 ANTHONY ADAMS: I'm Tony Adams.

7 DAVID HERNANDEZ: Anthony Adams.

8 ANTHONY ADAMS: Anthony, actually. Tony, I

9 go by.

10 DAVID HERNANDEZ: Oh, they're doing CPR.

11 He's dead.

12 ANTHONY ADAMS: He's done. He's gone.

13 OFFICER 2: And --

14 ANTHONY ADAMS: But that's not the point,

15 David. The point of the matter is -- yeah.

16 OFFICER 2: Date of birth, Anthony?

17 ANTHONY ADAMS: 2-15-84.

18 OFFICER 2: 2-15-84?

19 ANTHONY ADAMS: Right.

20 OFFICER 2: And telephone number?

21 ANTHONY ADAMS: (503) 387-0392.

22 OFFICER 2: 387-14 --

23 DAVID HERNANDEZ: 0392.

24 ANTHONY ADAMS: 0392. That was something I

25 did not want to have to see today. I swear to God,

Examination of Anthony Merrill

1 David. Holy fuck. No --

2 (TRANSCRIBER'S NOTE: Video recording
3 stopped, 2:21 p.m.)

4 BY MR. JACKSON:

5 Q Okay. And is that where the video ends,
6 Detective Merrill?

7 A I believe so, yes.

8 A GRAND JUROR: One question.

9 MR. JACKSON: Yes.

10 A GRAND JUROR: About just some time frame
11 (indiscernible). When -- when -- what was the time at
12 the first -- when the shots were fired?

13 MR. JACKSON: Let me go back here.

14 THE WITNESS: Is that a question for
15 me or --

16 A GRAND JUROR: Well, I just -- no. He's
17 got the video, so if it --

18 THE WITNESS: Oh.

19 A GRAND JUROR: -- starts at some point,
20 the -- the officers are behind the tree. They pulled
21 up and then the video starts. And then the shots
22 are just --

23 THE WITNESS: Yeah, I know the shots
24 were fired --

25 (TRANSCRIBER'S NOTE: Video recording played

Examination of Anthony Merrill

1 in grand jury, 2:22 p.m., as follows:)

2 DAVID HERNANDEZ: Oh, this is

3 (indiscernible).

4 (Two shots fired.)

5 (TRANSCRIBER'S NOTE: Video recording

6 stopped, 2:22 p.m.)

7 THE WITNESS: Approximately, 9:40 a.m.

8 MR. JACKSON: Okay. Right there. What

9 time is --

10 A GRAND JUROR: (Indiscernible).

11 MR. JACKSON: That's about 40 seconds,

12 41 seconds into the video.

13 A GRAND JUROR: Into the video? Okay.

14 Thank you.

15 MR. JACKSON: Mm-hmm.

16 BY MR. JACKSON:

17 Q Is that right, Detective Merrill? It's just

18 paused at the shots being fired.

19 A 41 seconds.

20 Q Does the counter say 41 seconds in?

21 A Yes.

22 MR. JACKSON: Okay.

23 A GRAND JUROR: And then the second shot,

24 the -- actually, the -- the second 40 millimeter

25 was -- is at 6:27, so a little under six minutes

Examination of Anthony Merrill

1 later. Okay. Thank you.

2 MR. JACKSON: Okay.

3 A GRAND JUROR: And I have another question.

4 MR. JACKSON: Mm-hmm.

5 A GRAND JUROR: Ah, the -- when they mark
6 the location of the gun with the placard, is that the
7 location where the officer thinks it was before he
8 kicked it or where it actually ends up?

9 THE WITNESS: It's where it actually
10 ends up.

11 A GRAND JUROR: Okay.

12 THE WITNESS: It'd be highly inappropriate
13 to pick the gun back up and move it again. We want to
14 maintain as much of the integrity of the crime scene
15 as possible with correct measurements.

16 The video documents Officer Ken Le kicking
17 it for officer safety concerns because, again, it was
18 much closer to Mr. Delgado, where he fell, apparently.

19 A GRAND JUROR: So back to my -- the time
20 frame here again, I did not -- did -- I mean,
21 you're -- you're closer up to there and you've watched
22 this a number of times.

23 There -- Mr. Hernandez testified that there
24 was -- and -- and the evidence shows there was a
25 40-millimeter shotgun shot and two AK-15 [sic] shots.

Examination of Anthony Merrill

1 I only heard from over here two AK -- were
2 they almost all at the same time or was the
3 40 millimeter -- 'cause it didn't even look like she
4 was shooting at the same time. She didn't --

5 THE WITNESS: So -- so my viewing of the
6 video; and, like you said, viewing it several times,
7 slowing it down, listening very carefully, turning the
8 volume up as high as I can get it, when I watch the
9 body language, it looks like to me both of them, their
10 body language react as if a recoil of a gunshot,
11 including Officer Wutherich. And it looks like the
12 first shot, it's that simultaneous movement of both of
13 them.

14 A GRAND JUROR: So they're both -- it's all
15 happening about the same moment?

16 THE WITNESS: I believe that first AR --
17 AR-15 --

18 A GRAND JUROR: Uh-huh.

19 THE WITNESS: -- .223 round was shot at a
20 very close time frame to the first 40 shot by
21 Officer Wutherich.

22 A GRAND JUROR: Okay.

23 THE WITNESS: So it sounded like maybe it's
24 just one shot.

25 A GRAND JUROR: Okay.

Examination of Anthony Merrill

1 THE WITNESS: And I believe that second
2 noise -- gunshot, I believe, is the second AR-15 shot.

3 A GRAND JUROR: Okay.

4 THE WITNESS: Can I say that with
5 100-percent certainty? No.

6 A GRAND JUROR: It's just -- I didn't -- I
7 never -- from over here listening to that and watching
8 that, I wasn't sure when she actually -- I knew it --
9 it didn't seem like it was seconds long ahead of time.
10 It seemed like it was all compressed --

11 THE WITNESS: Yeah, I would --

12 A GRAND JUROR: -- all about the same time.
13 And just --

14 THE WITNESS: -- I would agree that.

15 A GRAND JUROR: -- and you -- you've watched
16 it slower. You've heard it more. It -- it all seems
17 to kind of blend together. They're all pretty close
18 to each other; is that correct?

19 THE WITNESS: They are. Even as you hear
20 the commentary from the people that are watching it
21 right there, you can hear different versions of, it
22 seems like, what they heard or what they didn't hear.
23 But that's -- what I told you just a moment ago is
24 what I believe I saw and heard.

25 A GRAND JUROR: Okay.

Examination of Anthony Merrill

1 THE WITNESS: But I can't say that for
2 certain.

3 A GRAND JUROR: Sure. Okay. Thank you.

4 THE WITNESS: You're welcome.

5 MR. JACKSON: Any other questions at
6 this point?

7 A GRAND JUROR: I have -- oh.

8 MR. JACKSON: Okay.

9 A GRAND JUROR: You go.

10 MR. JACKSON: Go --

11 A GRAND JUROR: A question about kind of
12 the -- the training of the officers in this type of
13 situation. Would it be -- if -- say -- knowing that
14 your -- the partner or the officer has a beanbag
15 nonlethal round versus the AR-57 [sic] more lethal,
16 are they trained to use the nonlethal force first as a
17 precaution and to basically try to not use lethal
18 force or it's just a judgment call?

19 MR. JACKSON: You know, we -- we actually
20 have some witnesses from the Training Division that
21 may be better suited to answer that particular
22 question --

23 A GRAND JUROR: Okay.

24 MR. JACKSON: -- than Detective Merrill.

25 A GRAND JUROR: Okay. Yeah.

Examination of Anthony Merrill

1 A GRAND JUROR: Since we have -- is -- is --
2 this is the only video, right, of -- of this
3 particular thing?

4 MR. JACKSON: Is this --

5 A GRAND JUROR: Okay.

6 BY MR. JACKSON:

7 Q Is this the only video that you were able to
8 find through the course of your investigation?

9 A That's correct, it is.

10 A GRAND JUROR: At the very beginning of the
11 video, there's a -- there's probably -- what, five or
12 ten seconds in, there's Mr. Delgado moving kind of off
13 screen. Could you go back to that?

14 MR. JACKSON: Sure.

15 (**TRANSCRIBER'S NOTE:** Video recording played
16 in grand jury, 2:27 p.m., as follows:)

17 DAVID HERNANDEZ: (Indiscernible).

18 OFFICER DeLONG: Lay down on the ground now.
19 Put your hands up, dude.

20 OFFICER WUTHERICH: Put your hands up.

21 A GRAND JUROR: Right there. He's right
22 there.

23 OFFICER DeLONG: Put your hands up now.

24 A GRAND JUROR: And his hands are up.

25 OFFICER WUTHERICH: Put your hands up.

Examination of Anthony Merrill

1 ROBERT DELGADO: Get your hands up.

2 (TRANSCRIBER'S NOTE: Video recording
3 stopped, 2:27 p.m.)

4 A GRAND JUROR: Were you actually able to --
5 to -- and I -- I know you can do this. Have you
6 looked close -- I mean, did -- was there anything in
7 his hand?

8 THE WITNESS: I didn't see anything in his
9 hand at that point, no.

10 A GRAND JUROR: Okay.

11 THE WITNESS: Not at that point.

12 A GRAND JUROR: All right. Thank you.

13 A GRAND JUROR: And sorry. His hands
14 were up.

15 A GRAND JUROR: His hands were up and he's
16 kind of spinning around.

17 THE WITNESS: And he's walking away
18 from the --

19 A GRAND JUROR: And he's walking away.

20 THE WITNESS: Yeah.

21 A GRAND JUROR: And there doesn't seem to be
22 anything in his hand.

23 THE WITNESS: And if you listen carefully,
24 the yelling, some of that yelling is Mr. Delgado, not
25 all the officers (indiscernible).

Examination of Anthony Merrill

1 A GRAND JUROR: Right. It's a different
2 voice tenor, yeah.

3 THE WITNESS: Yeah.

4 A GRAND JUROR: Okay. All right.
5 Thank you.

6 THE WITNESS: So, at that point, yes,
7 that's -- that's what I saw. Yeah.

8 A GRAND JUROR: Okay.

9 MR. JACKSON: All right. So -- and --

10 A GRAND JUROR: And --

11 MR. JACKSON: -- and then after he walks off
12 the screen, that's when the video pans back over --

13 (**TRANSCRIBER'S NOTE:** Video recording played
14 in grand jury, 2:27 p.m., as follows:)

15 OFFICER WUTHERICH: Put your hands up.

16 ROBERT DELGADO: Get your hands up.

17 A GRAND JUROR: Right. When you hear
18 (indiscernible).

19 MR. JACKSON: 'cause you see --

20 A GRAND JUROR: (Indiscernible).

21 ROBERT DELGADO: (Indiscernible).

22 DAVID HERNANDEZ: This is (indiscernible).

23 ROBERT DELGADO: You tell me fucking
24 (indiscernible).

25 MR. JACKSON: Now, this is after he's walked

Examination of Anthony Merrill

1 back toward his belongings, correct?

2 ROBERT DELGADO: You better get the fuck
3 away from me --

4 THE WITNESS: Right.

5 ROBERT DELGADO: -- (indiscernible).

6 THE WITNESS: And he's --

7 ROBERT DELGADO: Right now.

8 DAVID HERNANDEZ: This is (indiscernible).

9 A GRAND JUROR: And he's throwing his stuff.

10 DAVID HERNANDEZ: Oh, this is
11 (indiscernible).

12 A GRAND JUROR: (Indiscernible) --

13 ROBERT DELGADO: (Indiscernible).

14 (*TRANSCRIBER'S NOTE: Video recording*
15 *stopped, 2:28 p.m.*)

16 A GRAND JUROR: -- right?

17 A GRAND JUROR: Okay. Thank you.

18 MR. JACKSON: Okay.

19 A GRAND JUROR: I have a question.

20 MR. JACKSON: Yes, ma'am.

21 A GRAND JUROR: I'm sorry about this whole
22 situation. It's unfortunate we all have to be here
23 dealing with this. One of the things that the --
24 Hernandez, who I believe is taking this video, said,
25 "He is probably on something else."

Examination of Anthony Merrill

1 And I'm -- I -- I'm not sure if you're aware
2 that they had smoked pot earlier in the parking lot,
3 correct? Or, I mean, maybe you don't know that, but
4 he did say, "He is probably on something else." It --
5 that was quoted in the video, correct?

6 MR. JACKSON: Did -- are you asking --

7 A GRAND JUROR: I wrote it down when I --

8 MR. JACKSON: -- him if he heard --

9 A GRAND JUROR: -- heard it on the video
10 'cause he's -- you know how he's --

11 THE WITNESS: Like --

12 A GRAND JUROR: -- talking and then --

13 THE WITNESS: Yeah.

14 A GRAND JUROR: -- he's talking to his
15 partner or he -- or whoever he's -- the -- I believe
16 he called him his partner.

17 A GRAND JUROR: Life partner.

18 A GRAND JUROR: Thank you. Yes, his life
19 partner. And then as he's shooting the video, he
20 said, "He is probably on something else."

21 MR. JACKSON: Okay.

22 A GRAND JUROR: Okay.

23 THE WITNESS: That sounds --

24 MR. JACKSON: Is -- is that --

25 THE WITNESS: -- consistent to me. I

Examination of Anthony Merrill

1 don't remember --

2 A GRAND JUROR: Okay.

3 THE WITNESS: -- what part of the video it
4 might be --

5 A GRAND JUROR: Thank you. Maybe we'll --

6 THE WITNESS: -- in, but --

7 A GRAND JUROR: -- get to some medical
8 records or -- or I have no idea. But -- but when he
9 said, "He's" -- so -- 'cause, again, we knew from the
10 last testimony -- and maybe I can't say that in front
11 of you.

12 But he said in this video -- and I just
13 wrote it down quickly -- "He is probably on something
14 else."

15 MR. JACKSON: Sure.

16 A GRAND JUROR: Okay.

17 MR. JACKSON: Yeah.

18 A GRAND JUROR: Thank you.

19 MR. JACKSON: Yep, no problem.

20 A GRAND JUROR: Yeah.

21 MR. JACKSON: We'll -- any other questions
22 for Detective Merrill?

23 Yes.

24 A GRAND JUROR: Yeah. 'Cause Mr. Hernandez
25 said he had a -- like, keeps starting to record again.

Examination of Anthony Merrill

1 Was this all spliced together? 'Cause he said he had,
2 like, four or five over the whole time frame of --

3 THE WITNESS: Yeah, I heard --

4 A GRAND JUROR: -- the event.

5 THE WITNESS: -- like, five or six videos.

6 A GRAND JUROR: And that he had to keep
7 re -- starting to record 'cause his phone would only
8 record for so long. Was there any evidence of that?

9 THE WITNESS: Yeah. If I remember
10 correctly, it was weird how his phone -- I don't know
11 what the deal was, but there were, like, a couple of
12 versions where one, I think, is a little bit after
13 this and it's a continuation of medical personnel
14 arriving, you know, different activities having --
15 happening after the ending of that, is what --

16 BY MR. JACKSON:

17 Q I think --

18 A -- I recall.

19 Q I think her question, though, Detective, is
20 more -- the video that we just watched, is that an
21 uncut, singular file --

22 A Yes.

23 Q -- video file of that portion of the
24 incident?

25 A Yes.

Examination of Anthony Merrill

1 MR. JACKSON: Okay.

2 A GRAND JUROR: Okay.

3 THE WITNESS: That's correct, yes.

4 A GRAND JUROR: Okay. Thank you.

5 THE WITNESS: You're welcome.

6 MR. JACKSON: Sure. Any other questions at
7 all? You know, I'm looking at the clock. I see that
8 it's now 2:30, maybe a good time for us to take our
9 afternoon break for ten minutes. So why don't we go
10 off the record here --

11 A GRAND JUROR: Okay.

12 MR. JACKSON: -- for our afternoon break?

13 A GRAND JUROR: Okay.

14 (Recess taken, 2:31 p.m. - 2:47 p.m.)

15 MR. JACKSON: All right. We're back on the
16 record following our afternoon break, continuing with
17 Detective Merrill's testimony.

18 Sir, you're still under oath.

19 THE WITNESS: Okay. Thank you.

20 BY MR. JACKSON:

21 Q All right. And so just one additional
22 question for you about the video that we just
23 observed. So did you personally obtain that video
24 from Mr. Hernandez's phone?

25 A No, I did not.

Examination of Anthony Merrill

1 Q Do you know who did?

2 A Yes. We have, in our Forensic Evidence
3 Division unit, a -- a detail called the Digital
4 Forensics Unit. And we have a detective who is
5 qualified, well trained to collect cell phone data,
6 so videos, phone history, things of that nature.

7 His name is Detective Cory Stenzel and he's
8 worked within our unit assisting with cell phone
9 collection for several years now.

10 Q And is his training specifically around
11 forensically obtaining evidence out of phones,
12 pictures, videos, things like that?

13 A It is. It is. And he was paged out
14 specifically to collect the -- the data from that
15 phone and try to help collect other video and things
16 of that nature.

17 Q Okay. So the video that we just watched,
18 that 12-minute clip, was that altered in any way
19 by Portland Police Bureau, enhanced, manipulated,
20 anything like that?

21 A No, not at all.

22 Q Okay. So as part of the investigation, did
23 you conduct what are called round countdowns of the
24 involved officers?

25 A We did, yes.

Examination of Anthony Merrill

1 Q Can you explain what that is and what its
2 purpose is?

3 A So once an incident like this has occurred
4 and officers, witness officers and involved officers
5 are separated, they are -- again, like I said, they
6 have another officer or union representative sit with
7 them to make sure they're not talking to other people
8 or, you know, to -- to sit with them.

9 Once the Detective Division arrives and
10 all the other details, once we've had a briefing, we
11 then have the involved officers come in to the command
12 post where we can have confidentiality and privacy,
13 especially because there was a crowd outside at the
14 time, where we can conduct a round count.

15 And so that's basically to photograph the
16 officers in their uniform to show the condition of
17 their uniform. If there had been a fight, for
18 instance, are we going to see, like, anything ripped
19 or damaged?

20 And then we actually take their service
21 weapon and we have the criminalists in the Forensic
22 Evidence Division photograph all the bullets and
23 everything removed from the weapons.

24 And then we do a countdown of what the gun
25 should be holding and what it's holding right now

Examination of Anthony Merrill

1 after this incident occurred so we can verify the
2 comparison to our evidence at our scene, like expended
3 casings from bullets, that they match and that we're
4 not missing something or we got to continue looking if
5 we didn't find all the expended casings.

6 Q So, in other words, if -- if the information
7 you're receiving is that, for example, there were
8 five shots, you conduct a round count to determine,
9 okay. Are there five rounds missing from this gun,
10 confirming the information that we're hearing?

11 A Correct.

12 Q Okay. And so in this case, the information
13 you received was that there were two shots fired from
14 the AR-15?

15 A That's correct.

16 Q Okay. And so did you have a chance to
17 conduct a round count on Officer DeLong's AR-15 rifle?

18 A We did.

19 Q Okay. What do we --

20 A What the --

21 Q -- see on the screen here?

22 A So this is Officer DeLong in his uniform
23 within the command post. The -- that's an overall
24 photograph of him in his uniform with his AR-15 rifle
25 in his right hand.

Examination of Anthony Merrill

1 Q Okay. What is this?

2 A That's a closeup of the Colt AR-15 that he's
3 certified to carry, his -- his AR-15.

4 Q Okay. And it's maybe difficult in this
5 photograph; but, Detective, is that AR-15 serial
6 number LGC015892?

7 A It is.

8 Q Okay. And it fires a .223 or .223 rounds?

9 A That's correct.

10 Q And is that --

11 A It's --

12 Q -- consistent with the casings you found at
13 the scene?

14 A It is. The two AR-15 casings were
15 .223 rounds --

16 Q Okay.

17 A -- casings.

18 Q And before we continue, was this rifle
19 seized as evidence in this case?

20 A It was.

21 Q And did Criminalist Medling lodge this rifle
22 under Property Receipt No. A071545?

23 A He did.

24 Q Okay. So going now to the round countdown,
25 could you explain what we see here?

Examination of Anthony Merrill

1 A So you can see the AR-15 magazine at the top
2 of the photo. It has now been emptied and these are
3 all the live bullets that were removed from the
4 magazine that was inside his AR-15 at the time of
5 this incident.

6 The AR-15 magazine that he carries, the
7 standard issue, carries a capacity, maximum capacity,
8 of 30 live rounds, 30 .223 rounds, in that magazine.
9 And what we ended up doing on our countdown, in the
10 magazine, itself, we found 27 live bullets.

11 But then also there was a live round in
12 the chamber of the gun, too. After the gun had been
13 fired twice, it inserts another round, a live round,
14 into the chamber.

15 So a total of 28 live bullets were recovered
16 from Officer DeLong, his AR-15 magazine as well as his
17 AR-15 rifle, which would match and be consistent with
18 two .223 rounds being fired during this incident and
19 matching the number of casings we found at the scene
20 as well.

21 Q Okay. Did Officer DeLong have any
22 additional magazines for the AR-15 rifle?

23 A Yeah, I believe he had two additional
24 magazines. I know that the magazines he had were
25 loaded to capacity, each holding a maximum of

Examination of Anthony Merrill

1 35 rounds.

2 Q Okay. So --

3 A And there were no missing rounds -- live
4 rounds from those.

5 Q Okay. And then -- well, before we move on
6 to his handgun, at the conclusion of your countdown
7 relating to the AR-15 rifle, was it your conclusion
8 that only two rounds were fired?

9 A Correct, from the AR-15.

10 Q Okay.

11 A No handgun rounds were fired.

12 Q Okay. So, yeah, let's go to the handgun
13 now. Did Officer DeLong have a handgun on him
14 as well?

15 A Yes.

16 Q What kind of gun was that?

17 A A Glock 17 nine millimeter.

18 Q Okay. And did you conduct the round
19 countdown in the same way for the Glock 17?

20 A We did, yes.

21 Q What did you find?

22 A There were no rounds missing, so the Glock
23 magazine in our nine-millimeter service weapon holds
24 a total of 17 live bullets in the magazine. And you
25 always have one already loaded in the chamber while

Examination of Anthony Merrill

1 your gun is holstered, so 18.

2 And then the two additional magazines he had
3 on his utility belt, each held a maximum of 17, the
4 17-round capacity. So no bullets were missing.

5 Q Okay. And did Officer DeLong have any other
6 firearms on him during this incident?

7 A No, he did not.

8 Q Okay. Who do we see here?

9 A This is Officer Samantha Wutherich.

10 Q And what is that in her hand?

11 A So that is the -- the less-lethal gun we --
12 we've been talking about, a 40-millimeter less-lethal
13 launcher. You can see the action is open. And what
14 you're seeing at the top, though, a cylinder, silver,
15 round shape at the top of the opening right there is
16 the top of a live less-lethal projectile.

17 That's the casing at the top of it. And
18 when that gun is fired, that's the casing that ejects
19 from the gun, ejecting the -- like I described
20 earlier, kind of the round, Nerf-like looking
21 sponge material.

22 Q And what do we see here?

23 A A closeup of that same gun.

24 Q And this is breech loading, so you crack it
25 open in the middle to load the round in?

Examination of Anthony Merrill

1 A Correct.

2 Q And it's a single-shot system, right?

3 A Correct.

4 Q So you can't -- there's no magazine that you
5 put in with multiple rounds or anything like that?

6 A Correct.

7 Q Okay. And so as we see it here in this
8 photograph, it's open. In other words, you could not
9 fire it in this position?

10 A That's -- that's correct.

11 Q Okay. And what do we see here?

12 A So this is the live less-lethal
13 40-millimeter round that's been removed that you saw
14 the top of just a moment ago. Now, you can see a full
15 picture of it, the casing and what I described as the
16 sponge-like projectile top --

17 Q So this --

18 A -- that's ejected.

19 Q -- this portion of the round where the blue
20 is down to this black line, that's what is projected
21 out, goes downrange and impacts the target?

22 A Correct.

23 Q And then this silver part, that's the --
24 the casing or what would be left in the gun to
25 be expelled?

Examination of Anthony Merrill

1 A Correct.

2 MR. JACKSON: Okay.

3 A GRAND JUROR: And I'm sorry. So --

4 MR. JACKSON: Yeah.

5 A GRAND JUROR: So when you say you found a
6 casing, so, essentially, the person fires, breech is
7 open, that casing pops out or do they take it out and
8 drop it on the ground or how -- how does --

9 THE WITNESS: It ejects -- my understanding
10 is it ejects out and it -- well, no, it -- you're
11 right. They take it out and then they load it with a
12 live one right after that.

13 A GRAND JUROR: Okay. So they just drop it
14 on the ground or something or --

15 THE WITNESS: Yeah.

16 A GRAND JUROR: Okay.

17 THE WITNESS: Pretty much. However they
18 get it out and toss it or drop it. Sorry. I think
19 I misspoke and said it ejected, but, yes,
20 you're correct.

21 BY MR. JACKSON:

22 Q So -- and we'll have additional witnesses to
23 talk specifically about how that --

24 A And -- and I have to --

25 Q -- system operates.

Examination of Anthony Merrill

1 A -- apologize. I'm not a -- I have never
2 had a 40-millimeter launcher, but -- they didn't
3 have those when I was on patrol. It was the beanbag
4 gun, but --

5 Q Okay. And so did you conduct a weapons --
6 or I'm sorry -- a round countdown for the
7 40-millimeter launcher as well?

8 A Yes.

9 Q And what did you find?

10 A The one live round that we're looking at
11 here and that was it. And she had a pouch that
12 carries two, so there were no other live rounds to
13 my knowledge.

14 Q Is that pouch on the butt stock here?

15 A I believe it is.

16 Q Okay. And so at the conclusion of that
17 round countdown, did you determine one 40-millimeter
18 round had been fired?

19 A Yes, that's correct.

20 Q Okay.

21 A Yes.

22 Q Did you also, actually at the scene, find
23 the little blue projectile or round where Mr. Delgado
24 was located?

25 A Yes, we ended up finding two of those. We

Examination of Anthony Merrill

1 found one right near Mr. Delgado. I think that was
2 in -- listed in the placard diagram that we saw
3 earlier. We wanted to search for the second fired
4 projectile 40 millimeter that day.

5 But we couldn't because of the crowd
6 encroaching on the crime scene and we had to hastily
7 get out of there after successfully processing the
8 scene with a large contingent of patrol officers
9 guarding the area in a perimeter.

10 Therefore, we were not able to get to
11 the other side of the fence where we suspected the
12 second one went -- the second round went from the
13 less lethal.

14 Q So let -- let -- let me just ask you a
15 couple clarifying questions there.

16 A Sure.

17 Q So based on the investigation, you -- you
18 concluded two 40-millimeter rounds were fired, one
19 from Officer Wutherich and one from Officer Smith much
20 later on when they were doing the tactical approach
21 you described?

22 A Correct.

23 Q And do you know which one that was found
24 next to Mr. Delgado, which person fired that
25 particular one?

Examination of Anthony Merrill

1 A We don't know for sure which one was fired
2 from which gun, but we have -- there's -- based on the
3 trajectory and their angles of where they were when
4 they shot, we believe the one next to Mr. Delgado was
5 fired from Officer Cameron Smith because we know that
6 there was confirmation that it made contact with him.

7 Q Okay. And that's the person that fired
8 later on when -- during the approach?

9 A During the approach to render medical aid.
10 Yeah, the tactical approach in the vehicle.

11 Q So the other round wasn't immediately found?

12 A No.

13 Q Did you go back to the scene to look for it?

14 A Yes. So we came back the following day once
15 there was nobody there and we didn't have officer
16 safety concerns.

17 And we went -- you -- you know, you can't
18 see the fence, but you've seen it in the photos that
19 we went around and got into the baseball field and
20 began searching this area based on the angle where
21 Officer Samantha Wutherich was behind the tree
22 shooting at an angle like this, so a northwest angle.

23 And we did find the projectile up here on
24 this grassy little hill right here behind the fence
25 just before the baseball field.

Examination of Anthony Merrill

1 Q Okay.

2 A And so we photographed that and collected
3 it as evidence. And so then all the less-lethal
4 projectiles, the two of them, now have been recovered.

5 Q Okay. And that one found in the baseball
6 field was consistent from a trajectory standpoint with
7 having been fired by Officer Wutherich?

8 A Yes.

9 Q From the tree?

10 A Yes.

11 Q Okay.

12 A And there was even more indication of that
13 because that fence was there, chain-linked fence.
14 This one that was in the grassy area had, like,
15 little rips and tears and the other one didn't, so
16 we almost -- we believed that it might have passed
17 through the fence and ended up on that hill based on
18 that angle.

19 Q Okay. Did you also do a round countdown for
20 Officer Wutherich's firearm --

21 A We did.

22 Q -- handgun?

23 A Yes, I did.

24 Q And what kind of gun did she have?

25 A A Glock 17, Model 17, nine-millimeter

Examination of Anthony Merrill

1 handgun.

2 Q Okay. And what did you find when you
3 did the round -- the -- the round countdown on
4 that firearm?

5 A None of her live rounds were missing. Her
6 gun was -- had -- it was loaded with one in the
7 chamber, 17 live rounds in the magazine within her
8 service weapon and then the two extra magazines on her
9 utility belt were fully loaded to capacity of 17 live
10 bullets in each one.

11 Q Okay. And what was your conclusion?

12 A That she had not fired her handgun at all.

13 Q Okay. Did she have any other firearms on
14 her person?

15 A I don't recall her having any other
16 firearms, no.

17 Q Okay. Let's see. We already talked about
18 the video canvass that you and the other detectives
19 did. As we look around this Holgate-92nd area, are
20 there a number of different businesses around here?

21 A Yeah. As I mentioned, on the corner of the
22 intersection of Holgate and 92nd, there's the Ampm
23 Arco, which is the -- if you can see, the number is
24 9220 at the top corner, right corner. And then
25 directly above that is a 7-Eleven, 9211. Both those

Examination of Anthony Merrill

1 businesses have video.

2 We canvassed -- we had our -- one of our
3 video specialists, not Cory -- Detective Cory Stenzel,
4 but another specialist named Mark Weber that works
5 with the Forensic Evidence Division. His specific job
6 is get -- going out and canvassing for video.

7 He went to several of the houses in the --
8 in the general area around the perimeter where he
9 saw cameras. He was not able to obtain any footage
10 because the ones he did find were fake cameras, if you
11 will, just to deter people from doing crime in their
12 yard or something of that nature.

13 Q Okay. And the videos that you did obtain
14 from the Ampm, Arco station and the 7-Eleven did not
15 capture the incident in the park?

16 A No, and -- and we knew ahead of time. Like
17 I said, I think we took a -- an extra -- I mean, we
18 wanted to make sure we got anything that was in the
19 area because we were not getting any video from the
20 houses or the residences, in a chance that maybe
21 Mr. Delgado went in the business.

22 All those cameras were just exclusive to
23 their business property and didn't catch an angle
24 of the scene, but we collected them nonetheless to
25 see and we did not see Mr. Delgado in any of the

Examination of Anthony Merrill

1 video footage.

2 MR. JACKSON: Okay. Detective Merrill,
3 I think those are all the questions I have for you
4 at this time. Let's see if the grand jury has
5 any questions.

6 A GRAND JUROR: I have one.

7 MR. JACKSON: Yes, sir.

8 A GRAND JUROR: You said that each of the
9 Glock's have one round in the chamber --

10 THE WITNESS: Mm-hmm.

11 A GRAND JUROR: -- and 17 in the magazine.
12 And -- and each magazine had their full capacity
13 on that.

14 THE WITNESS: Yes.

15 A GRAND JUROR: Why is there -- I mean, not
16 really relevant to the case, but why is that one round
17 still left in the chamber?

18 THE WITNESS: Officer -- officer --

19 A GRAND JUROR: Is that just from firing the
20 previous magazine?

21 THE WITNESS: So you're saying, like, an
22 officer that's on patrol to --

23 ////

24 BY MR. JACKSON:

25 Q I -- I -- I think I might be able to ask a

Examination of Anthony Merrill

1 clarifying question.

2 A Okay. Yeah.

3 Q So when a -- a patrol officer is preparing
4 their sidearm for their shift, how do they go about
5 loading that in preparation to go out on patrol duty?

6 A You always -- as a patrol officer on shift,
7 on duty, you always have your gun loaded. There's
8 always one in the chamber.

9 Q But how? How do you --

10 A So --

11 Q -- actually do it?

12 A So the way -- people do it differently, but
13 the way I do it is I have my -- my live magazine
14 fully -- fully loaded with 17 live bullets.

15 I load it in the bottom of the gun and I --
16 I pull back the action to load one bullet in the
17 chamber. Then I take that mag out and load another
18 round in and then it's fully loaded.

19 Q Got you.

20 A And, usually, a lot of times, that's after
21 we -- we qualify quarterly at the firing range and,
22 usually, you have it set up right after you've
23 qualified, cleaned your gun. You have that set up
24 and -- and you keep it in your -- you keep it on your
25 person like that when you're in uniform and on patrol.

Examination of Anthony Merrill

1 A GRAND JUROR: Okay.

2 BY MR. JACKSON:

3 Q And is loading your firearm in that way
4 standard practice for the Police Bureau?

5 A I think for most people, they load it that
6 way, yes.

7 MR. JACKSON: Okay.

8 A GRAND JUROR: Okay.

9 MR. JACKSON: Did that answer --

10 A GRAND JUROR: Thank you.

11 MR. JACKSON: -- your question, sir?

12 A GRAND JUROR: It did.

13 MR. JACKSON: Okay. Any other questions?

14 A GRAND JUROR: No.

15 MR. JACKSON: I don't see any.

16 A GRAND JUROR: No.

17 MR. JACKSON: Okay. Thank you very much.

18 THE WITNESS: Thank you.

19 MR. JACKSON: That's all I have for you,
20 Detective.

21 Why don't we briefly go off the record while
22 we see if our next witness is ready?

23 A GRAND JUROR: Sounds good. Thank you.

24 MULTIPLE GRAND JURORS: (Indiscernible).

25 (Recess taken, 3:06 p.m. - 3:11 p.m.)

Examination of Paul Lee Rice

1 A GRAND JUROR: Yeah.

2 MR. MILLER: All right. And we're back on
3 the record. We're going to call our next witness,
4 which is Mr. Paul Rice.

5 Mr. Rice, if you'll stand up and raise your
6 right hand, the foreperson's going to swear you in.

7 **PAUL LEE RICE**

8 Was thereupon called as a witness; and, having been
9 first duly sworn, was examined and testified as follows:

10 A GRAND JUROR: All right. Thank you. Be
11 seat -- be seated.

12 MR. MILLER: And, sir, if you'll please say
13 your full name and then spell your name, please?

14 THE WITNESS: Spell what?

15 MR. MILLER: Spell your last name --

16 THE WITNESS: Oh, yeah.

17 MR. MILLER: -- and -- but -- but say your
18 full name and then spell your last name.

19 THE WITNESS: Paul Lee Rice, R-i-c-e.

20 **EXAMINATION**

21 BY MR. MILLER:

22 Q All right. And thank you, Mr. Rice. We're
23 going to talk about an event that occurred back in
24 April 16th of this year. Do you remember that day
25 specifically?

Examination of Paul Lee Rice

1 A I remember that very well.

2 Q And let's take it from the morning, where
3 were you headed to or what were you planning on doing
4 in the morning of April 16th?

5 A I had a bicycle ride that I was leading that
6 started from the parking lot at Lents Park there at
7 92nd and Holgate.

8 Q Okay. And is that something that you do
9 often, you ride bikes with friends?

10 A I do that -- I'm retired. I do that five,
11 six days a week.

12 Q All right. And so on this particular day,
13 how many people were you supposed to be meeting
14 over there?

15 A You never know how many are going to show
16 up. There probably were seven or eight of us there at
17 that time.

18 Q All right. And, specifically, do you
19 remember some other people's names who were there?
20 Were -- was Mr. Charles Dorr or Mr. Donald Zook there
21 with you?

22 A Chuck Dorr was there. Don Zook, Scott
23 Poindexter (phonetic).

24 Q Mm-hmm.

25 A Peter Goodkun (phonetic). I don't recall

Examination of Paul Lee Rice

1 who else might have been there.

2 Q And while -- while you were at the bark --
3 I'm sorry -- the park getting ready for your ride, did
4 anything kind of happen out of the ordinary?

5 A Yes.

6 Q So can you start -- what was the first thing
7 that drew your attention that something was going on
8 out of the ordinary?

9 A We were parked at the north end of the
10 parking lot and then you've got the grass field going
11 up toward Holgate to the north.

12 Q So right there to your right, you can see
13 what I'm --

14 A Yeah.

15 Q Is that a picture of the park?

16 A That is.

17 Q And when you're talking about grass field
18 and a parking lot, I'm going to kind of move the
19 mouse. Is this the parking lot you're referring to
20 down here on the lower-left --

21 A Yes --

22 Q -- corner?

23 A -- that is the parking lot.

24 Q And is this the -- the grass area that
25 you're referring to, kind of the --

Examination of Paul Lee Rice

1 A Yes.

2 Q -- center?

3 A Yes.

4 Q All right. So if you can kind of now orient
5 me, where were you at in the parking lot?

6 A Probably parked underneath the trees where
7 you can't see the cars here.

8 Q Okay. So past where my pointer is --

9 A Yeah. There or maybe a little --

10 Q -- down off the left side of the screen?

11 A -- out of the picture, conceivably.

12 Q Got you. And where was the event that
13 you're describing? Where did that occur at?

14 A We first noticed people shouting and
15 screaming up in the --

16 Q Is it in this area? I see you pointing
17 towards this area.

18 A Up -- up a little higher.

19 Q Okay.

20 A Up right in --

21 Q In the grassy --

22 A Yeah.

23 Q -- the green, grassy area?

24 A Even -- even higher than what you're --
25 yeah, sort of --

Examination of Paul Lee Rice

1 Q Up towards Holgate?

2 A Probably right in that area, yes, closer
3 to Holgate.

4 Q Got you. And what happened from there?

5 A Didn't pay too much attention to it. You
6 always hear people shouting --

7 Q Mm-hmm.

8 A -- in those areas. And all of a sudden --

9 Q Get some time with that --

10 A -- we noticed there were --

11 Q Yeah. What's -- what kind of time passed
12 between that and the next thing you're describing?

13 A Oh, maybe five minutes.

14 Q Okay.

15 A Or it could have been even less than that.
16 It doesn't seem like it was long at all. All of a
17 sudden, there were three police officers.

18 Q And where'd you see those police
19 officers at?

20 A They were at the trees, yeah, there and --

21 Q So down back by the parking lot --

22 A Yeah.

23 Q -- so those --

24 A There and -- and the one slightly to
25 the right.

Examination of Paul Lee Rice

1 Q Okay. So up by --

2 A Yeah.

3 Q -- 92nd?

4 A Yeah. All of a sudden, there were a couple
5 of police -- or three police officers, two --
6 two men --

7 Q Mm-hmm.

8 A -- one woman. And they were taking shelter
9 behind the trees. And then we noticed in the
10 brown area --

11 Q Mm-hmm. Is it right here where
12 I'm pointing?

13 A -- there was a guy standing out in the
14 field, no shirt on --

15 Q Mm-hmm.

16 A -- screaming and shouting.

17 Q Did you hear the words that he was
18 using or --

19 A You -- you couldn't understand what he
20 was saying.

21 Q Was it into the --

22 A And at that -- at that point, we really
23 hadn't paid much attention to what he -- what he was
24 saying.

25 Q Gotcha.

Examination of Paul Lee Rice

1 A And -- and then the police officers showed
2 up. Two of them were behind one tree. One of them
3 was behind another tree.

4 Q Mm-hmm.

5 A And all of a sudden, they started screaming
6 at him to get on the ground. And they repeated that
7 over and over again. And he wasn't responding to what
8 they were saying.

9 Q What was he doing?

10 A He was just continuing to shout and scream
11 and throw his arms in the air and spin around; and,
12 you know, acting very irrationally.

13 Q Okay. But did you see him moving around or
14 was he staying in one spot?

15 A He was mostly just, you know, in a -- in
16 a -- maybe a 30- or 40-foot circle in that brown,
17 grassy area there.

18 Q Okay.

19 A And then he ran over toward the baseball
20 field. There's a fence there right behind those
21 trees.

22 Q Mm-hmm.

23 A And he must have had a campsite set up
24 there. We couldn't see where he went. And then he
25 came running back out again with what could have been

Examination of Paul Lee Rice

1 a tent --

2 Q Mm-hmm.

3 A -- all folded up and whatever. And he spun
4 around and threw it out into the middle of the field.

5 Q What was -- what were the officers doing at
6 that time?

7 A They were behind the tree still shouting at
8 him to get on the ground.

9 Q Okay.

10 A And, once again, he wasn't following any
11 directions. And then he ran back to where -- I assume
12 where he got all that stuff -- where his campsite was.

13 Q Mm-hmm.

14 A And at that point, there was a big SUV --

15 Q Mm-hmm.

16 A -- parked at the far end of the parking lot.

17 Q So I'm going to move you to another photo.

18 Can you kind of describe, what's this car that's
19 closer to us on the right lower side of the screen?

20 A The right one with the bike rack on the back
21 is my car.

22 Q Okay. And you were describing an SUV.
23 Is that the one that you see in the distance?

24 A The red one in the distance by -- right
25 under the tree there. And his --

Examination of Paul Lee Rice

1 Q At the time the event occurred, you see that
2 police car behind it, was that there or no?

3 A That was not there at that point, I
4 don't think.

5 Q Okay. So, now, please continue from where
6 you were at, when the person ran back by that area.

7 A And -- yeah. And then the -- the -- the --
8 I actually don't remember that police car showing up
9 at all.

10 Q Mm-hmm.

11 A At that point, we were a little concerned
12 about what was going on and wasn't paying too much
13 attention to what else was happening. But he ran
14 back behind where his campsite was and I was
15 standing right about here. And that car blocked
16 my view completely --

17 Q Mm-hmm.

18 A -- of where he was and what was going on.
19 And the -- the tree -- I believe it's this one right
20 behind the car -- was blocking my sightline. One
21 officer with a rifle was --

22 Q Mm-hmm.

23 A -- standing at that tree and the tree
24 without much leaves on it.

25 Q Mm-hmm.

Examination of Paul Lee Rice

1 A You had the one male and one female officer
2 standing behind it.

3 Q Over by this one that has no --

4 A Yeah --

5 Q -- not a lot of --

6 A -- that one.

7 Q -- leaves on it to the right side of
8 the photo?

9 A And they're still shouting at him. And, all
10 of a sudden, we heard this massively loud gunshot.

11 Q Mm-hmm. Did you hear more than one gunshot,
12 just one gunshot? What'd you hear?

13 A I don't remember more than one.

14 Q Okay. What happened right after --

15 A But if --

16 Q -- the gunshot?

17 A Once I heard that gunshot, I don't think I
18 was paying too much attention to the -- to anything.

19 Q Mm-hmm. Did it -- did it startle you?

20 A Oh, yes, very much so. I hadn't really
21 expected that.

22 Q Mm-hmm. And so what do you -- what do you
23 remember after the gunshots? What happened?

24 A Well, the police stayed pretty much where
25 they were for a while --

Examination of Paul Lee Rice

1 Q Mm-hmm.

2 A -- trying to decide what had happened.

3 We -- we didn't know that he'd been shot.

4 Q Did you hear the officers saying
5 anything or --

6 A They were talking with each other --

7 Q -- did you see them doing anything?

8 A -- but we're back so far that we can't
9 really understand what they're saying.

10 Q Okay. And did you see them doing anything
11 after the shot? Did you --

12 A Well, eventually, they --

13 Q -- (indiscernible)?

14 A -- they started to creep up on the area
15 where he was and -- and by that time, they all got
16 behind that car and I -- my sight was blocked by
17 everything that they were doing.

18 Q Okay. And did you ever hear the person you
19 described earlier as yelling and shouting, did you
20 ever hear him make any sounds or say anything after
21 the gunshot?

22 A No, no.

23 Q Okay. And after you saw the officers go
24 behind the vehicle in the distance, how long after
25 that did officers come to speak with you about

Examination of Paul Lee Rice

1 the incident?

2 A Probably 15 minutes. One officer came
3 by and said, "Don't leave." So we just stayed
4 right there.

5 Q Mm-hmm.

6 A And it was probably 15 or 20 minutes,
7 maybe -- maybe even longer than that, until somebody
8 came by to get names and a quick summary of what we
9 had seen and heard.

10 MR. MILLER: Okay. All right. Well, that's
11 all I have for you. I'm going to turn straight to our
12 foreperson and then kind of move around to see. I see
13 some nods, so I think we have some other questions.

14 Any --

15 A GRAND JUROR: No, (indiscernible).

16 MR. JACKSON: Ms. (indiscernible).

17 A GRAND JUROR: I just want to confirm
18 something real quick. You said the police asked him
19 to get on the ground and then you said he did not
20 respond and then you also said he was acting
21 irrationally.

22 THE WITNESS: Well, to --

23 A GRAND JUROR: I just want to confirm that,
24 that that -- that that's what you said. I just want
25 to confirm that.

Examination of Paul Lee Rice

1 THE WITNESS: Yes. They -- they repeatedly
2 yelled at him to get on the ground and he was
3 cussing and --

4 A GRAND JUROR: Oh, he was cussing --

5 THE WITNESS: -- when I say acting
6 irrationally, he was spinning around and throwing
7 his arms in the air and essentially acting like a
8 crazy man.

9 A GRAND JUROR: Okay. Thank you very much.
10 Thank you, Mr. Rice. Appreciate you being here.

11 THE WITNESS: Yeah.

12 MR. MILLER: Any other grand jury members
13 have questions?

14 A GRAND JUROR: No, (indiscernible).

15 MR. MILLER: I do not see any. Thank you,
16 Mr. Rice, for coming in today.

17 (Whispered discussion, off the record,
18 3:21 p.m.)

19 A GRAND JUROR: Thank you very much, sir.

20 A GRAND JUROR: Thank you.

21 A GRAND JUROR: Thank you, Mr. Rice.

22 MR. MILLER: Thanks (indiscernible). If
23 you'll make your way up to the stand there. You can
24 head around behind the stand towards that chair, but
25 before you get all cozy, if you'll raise your

Examination of Charles Randolph Dorr

1 right hand.

2 That's -- right here, yeah. And raise your
3 right hand and turn towards the foreperson. The
4 foreperson's going to swear you in.

5 A GRAND JUROR: I'm down here.

6 **CHARLES RANDOLPH DORR**

7 Was thereupon called as a witness; and, having been
8 first duly sworn, was examined and testified as follows:

9 A GRAND JUROR: All right. Thank you. You
10 can be seated.

11 THE WITNESS: Do I (indiscernible)?

12 MR. MILLER: Up to --

13 A GRAND JUROR: (Indiscernible).

14 MR. MILLER: Once you're all cozy, though,
15 if you'll introduce yourself, your first, middle and
16 last name, your complete name, and then spell your
17 last name.

18 THE WITNESS: Dorr, Charles Randolph Dorr.

19 MR. MILLER: And how do you spell your
20 last name?

21 THE WITNESS: D-o-r-r.

22 **EXAMINATION**

23 BY MR. MILLER:

24 Q Thank you. So we heard from Mr. Rice just
25 before this and he mentioned that you -- he and you

Examination of Charles Randolph Dorr

1 are part of a bicycle club and ride bikes. We were
2 talking specifically about an incident that occurred
3 on April 16th of 2021. Do you remember that incident?

4 A Yes, some of it.

5 Q And -- and where were you on that day?

6 A I -- I didn't hear you.

7 Q Where were you on that day? Sorry. I'll
8 talk a little louder to get through the mask.

9 A Well, we were getting ready to start a bike
10 ride at Lents Park --

11 Q Mm-hmm.

12 A -- on 92nd there and Holgate. And --

13 Q And where were you at in the park getting
14 ready to start the bike ride?

15 A The what now?

16 Q Where in the park were you to get
17 (indiscernible)?

18 A Oh, we were in the parking lot.

19 Q All right. If you look on the monitor to
20 your right, you can see a photograph.

21 A Oh.

22 Q Is that Lents Park?

23 A Yeah.

24 Q And do you see in that photo where you
25 were at?

Examination of Charles Randolph Dorr

1 A We were down in this area down here.

2 Q Okay. And, now, you see my cursor. Am I
3 pointing at the area that you were --

4 A Yeah.

5 Q So that's down --

6 A Actually, we were a little --

7 Q -- on the left-hand side?

8 A -- farther down from that.

9 Q Got you. So lower left-hand --

10 A And --

11 Q -- side of the photo?

12 A -- it would -- it'd be just down -- probably
13 down in that area there.

14 Q Perfect. And was the park empty like this
15 photo is or were -- were there other people in
16 the park?

17 A Oh, it was crowded. It --

18 Q Mm-hmm.

19 A -- it always is on, you know, the weekends.

20 Q Okay.

21 A Yeah, a lot of -- a lot of cars. A lot of
22 homeless people park there at night.

23 Q Mm-hmm.

24 A You know, soccer games going on, people
25 walking in the park, dogs, this and that. Yeah.

Examination of Charles Randolph Dorr

1 There was a lot of people in the park.

2 Q So do you often come to this area to ride
3 your bicycle?

4 A Yeah. About two or -- you know, a couple
5 times a month.

6 Q Okay. And on this --

7 A Two or three times a month, we --

8 Q -- particular day --

9 A -- we --

10 Q -- you were there with Mr. Rice?

11 A With Mr. Rice?

12 Q Mr. Rice?

13 A Yeah.

14 Q And Mr. Zook?

15 A Yeah.

16 Q All right. And so did something happen in
17 the park that day that was out of the ordinary?

18 A Well, there was a lot of commotion going on
19 over here in this area here.

20 Q Okay. I see you pointing here towards the
21 end of the parking lot --

22 A Yeah--

23 Q -- the trees.

24 A -- this -- this area here.

25 Q Mm-hmm.

Examination of Charles Randolph Dorr

1 A And the homeless guy had his tent set up
2 kind of right in that area there.

3 Q Is that the area kind of by the fence and --
4 and the treeline?

5 A Well, it's just this side of the trees. He
6 was kind of --

7 Q Got you.

8 A -- out in the grass out here.

9 Q Got you.

10 A And the two policemen were -- there was a
11 couple -- some trees here and they were both kind of
12 hiding behind the trees there.

13 Q Right at the top of the parking lot?

14 A Yeah. And they were hollering at the guy
15 to -- to get down.

16 Q Mm-hmm.

17 A They just wanted him to get on the ground
18 'cause he was kind of acting all weird and stuff.

19 Q When you say, "acting all weird," what do
20 you mean? What did you see or hear?

21 A Well, he just -- he was just yelling and --
22 and pointing and this -- you know, just -- just kind
23 of -- just acting weird, you know.

24 Q Did you see anything in his hands? Did you
25 see him --

Examination of Charles Randolph Dorr

1 A Yeah.

2 Q -- doing anything with his hands?

3 A Moving the hands around, this and that.

4 I mean, he acted like he was -- he was pretty mad,
5 you know.

6 Q Did he have any objects in his hands?

7 A Yeah.

8 Q Yes or -- or no? Did he have an object in
9 his hand or -- yes or no?

10 A No. No, he didn't have anything in
11 his hands.

12 Q He was just moving his hands about?

13 A Huh-uh.

14 Q When you say he was saying things, was he
15 having --

16 A Well, I don't remember.

17 Q -- (indiscernible)?

18 A I mean, I don't really remember what he was
19 saying. I mean, you know, we -- we deal with the
20 homeless people all the time riding around --

21 Q Mm-hmm.

22 A -- on the trails and stuff and they all just
23 kind of talk and, you know, this and that. I mean,
24 I -- you -- they --

25 Q But this particular person --

Examination of Charles Randolph Dorr

1 A -- I don't think he was actually carrying on
2 a conversation with the policemen --

3 Q Sure.

4 A -- at all.

5 Q For this particular person, do you remember
6 him saying anything or just using loud words?

7 A No, I really don't.

8 Q Okay. And how about the officers? Do you
9 remember them saying anything --

10 A They just kept --

11 Q -- specifically?

12 A They just kept hollering, "Get down. Get on
13 the ground. Get on the ground."

14 Q And did it seem like he was reacting to
15 their commands and complying with --

16 A Well, no. He wasn't --

17 Q -- their commands?

18 A -- having anything to do with that. He
19 finally turned around and -- and started getting in
20 his tent. And they definitely didn't want him to do
21 that, so they were screaming at him, you know, "Don't
22 go into the tent. Do go into the tent."

23 Q Mm-hmm.

24 A And at that time, we -- our ride was getting
25 ready to start. So we, you know, kind of walked back

Examination of Charles Randolph Dorr

1 to the parking lot to -- to start the ride. And then
2 that's when we heard the gunshot. And I believe it
3 was just one shot is all we heard.

4 Q Okay. And --

5 A And --

6 Q -- were you watching the officers or the
7 person at that point?

8 A No, we weren't. We were -- we -- we had our
9 backs towards the -- the -- what was going on there.

10 Q Mm-hmm.

11 A And then when we heard the gunshot, I
12 immediately got behind a car and --

13 Q Mm-hmm.

14 A -- and then a -- you know, about a minute
15 later, we started walking back up there to see what
16 was going on and -- and -- and --

17 Q What'd you see at that point?

18 A The what?

19 Q What did you see at that point?

20 A (Indiscernible).

21 Q Were the officers still behind trees? Were
22 they (indiscernible)?

23 A Well, yeah, yeah. They were still behind
24 the -- they were still behind the trees, the two.

25 Q Did you see the person who had been

Examination of Charles Randolph Dorr

1 yelling earlier?

2 A The -- the other guy was laying by
3 his tent --

4 Q Okay.

5 A -- the -- the troublemaker, the homeless
6 guy. And he wasn't moving. He was just laying there.
7 And they weren't -- you know, I think they were just
8 waiting for backup, I would imagine --

9 Q Mm-hmm.

10 A -- is what they were doing.

11 Q Did you ever see the officers approach him
12 or do anything else?

13 A We did when everybody else showed up.

14 Q Who's everybody else?

15 A Probably 25 other cop cars showed up.

16 Q Okay.

17 A And once -- once they pretty well had the
18 thing surrounded, you know, then that's when they all
19 kind of walked up slowly like they do and -- and,
20 you know --

21 Q Did you see them moving up with a vehicle or
22 just by themselves?

23 A I don't think they used a car.

24 Q Mm-hmm.

25 A I -- I don't -- I don't recall that. I -- I

Examination of Charles Randolph Dorr

1 don't -- no. I didn't -- I don't recall seeing a car,
2 you know, where they use the doors open and that type
3 of thing, but -- yeah.

4 Q Did you talk to any officers that day?

5 A Yeah. Well, after that -- after that
6 happened, we -- we hung around for a few minutes. And
7 then -- and then a couple of the detectives, I guess,
8 came over and talked to us. And they were asking
9 anybody if they saw anything.

10 Q Mm-hmm.

11 A And that's when Mr. Rice and Mr. Zook and I
12 said, "Yeah, we -- we saw some stuff going on." We
13 didn't actually see the shooting, but we saw --

14 Q Mm-hmm.

15 A -- you know, what kind of led up to it.

16 Q Got you.

17 A And so then they kind of interrogated us, I
18 guess is what you'd say.

19 Q Took your statements maybe?

20 A Yeah, statement.

21 MR. MILLER: All right. Okay. Grand jury
22 have any questions for Mr. Dorr?

23 A GRAND JUROR: No.

24 A GRAND JUROR: Hmm-mm.

25 MR. MILLER: No? All right.

Examination of Charles Randolph Dorr

1 A GRAND JUROR: No.

2 MR. MILLER: Well, thank you, Mr. Dorr.

3 THE WITNESS: Okay.

4 MR. MILLER: We're going to move on to
5 Mr. Zook now.

6 Glad you remembered your hat.

7 THE WITNESS: Going in for a hip
8 transplant here --

9 A GRAND JUROR: Oh.

10 THE WITNESS: -- (indiscernible). I've got
11 to use this.

12 A GRAND JUROR: Thanks for being
13 (indiscernible).

14 A GRAND JUROR: (Indiscernible) get back on
15 a bicycle.

16 A GRAND JUROR: Exactly.

17 THE WITNESS: Well, I -- I'm going in in
18 March. That's as soon as they can get me in. But
19 thank God I can still --

20 A GRAND JUROR: Yeah.

21 THE WITNESS: -- ride my bike without, you
22 know, anything hurting. It's just walking. It's
23 just -- it's (indiscernible).

24 A GRAND JUROR: Oh. Well, Mr. Dorr, thank
25 you so much for coming in.

Examination of Charles Randolph Dorr

1 THE WITNESS: And, yeah. This --
2 this didn't --

3 A GRAND JUROR: We appreciate it.

4 THE WITNESS: -- this didn't hurt at all.

5 A GRAND JUROR: Okay. Good. Well, thank
6 you for your time.

7 MULTIPLE GRAND JURORS: (Indiscernible).

8 THE WITNESS: Okay.

9 MR. MILLER: And -- and, Mr. Zook, if you
10 will head up and --

11 THE WITNESS: Yeah.

12 MR. MILLER: -- work your way around to that
13 chair. So you're going to kind of loop yourself
14 around the wooden tables there.

15 A GRAND JUROR: Okay.

16 MR. JACKSON: And as you get around to that
17 black chair that's behind there and come down towards
18 the chair, but before you get cozy, we'll have you
19 raise your right hand.

20 A GRAND JUROR: Can you raise your right
21 hand, please?

22 **DON ZOOK**

23 Was thereupon called as a witness; and, having been
24 first duly sworn, was examined and testified as follows:

25 A GRAND JUROR: Thank you.

Examination of Don Zook

1 A GRAND JUROR: (Indiscernible).

2 BY MR. MILLER:

3 Q -- you can take it off just for a little
4 bit, catch your breath and then put it back on. If
5 you need a drink of water, go for it. All right. So
6 at the park on that day, did you see something that
7 was out of the ordinary?

8 A Well, when you ride as a group, you stop
9 different places. And that day, I was riding with
10 Portland Bicycle Club.

11 Q Mm-hmm. And did --

12 A And --

13 Q -- part of your ride take you to Lents Park?

14 A Pardon me?

15 Q And was part of the ride at or near
16 Lents Park?

17 A Yes.

18 Q All right. And where were you at in the
19 park on that day?

20 A You know, I can't tell you exactly --

21 Q Okay. Can you look on the --

22 A -- where the -- what position --

23 Q -- monitor that's right in front of you?

24 A What?

25 Q Can you see that monitor that's just to your

Examination of Don Zook

1 right there?

2 A Yes.

3 Q Does that look like a picture of Lents Park
4 to you?

5 A Yes.

6 Q All right. And can you tell from that
7 picture where you were at on that day? Maybe point to
8 it for us if you see it.

9 A I would say probably right in
10 here someplace.

11 Q Okay. Looks like you're pointing up towards
12 the -- the field around here?

13 A Yes.

14 Q Is that where you're pointing to where you
15 saw something or where you were at in the park?

16 A I believe that's where I was.

17 Q All right. And were you in the field or
18 were you parking lot?

19 A On the edge.

20 Q All right. And what did you see happen?

21 A There was -- the reason I was -- was there
22 is because that's where the group stopped.

23 Q Mm-hmm.

24 A And we stopped there because there was some
25 activity in the field ahead of us. And --

Examination of Don Zook

1 Q What kind of activity do you mean?

2 A Pardon?

3 Q What kind of activity?

4 A Well, there was a -- a -- one or two police
5 officers trying to get the attention of -- of a --
6 a person.

7 Q Mm-hmm. And where was that person at? In
8 the field? In the parking lot? On the street? What
9 do you think?

10 A In the -- in the field or --

11 Q Okay.

12 A -- in the --

13 Q Okay. In the field?

14 A Yeah.

15 Q And what was the person doing?

16 A Well, I think the -- the police officer was
17 trying to get him to -- to stop.

18 Q And why do you think that?

19 A What?

20 Q Why do you think that? Was the officer
21 saying something or doing something?

22 A Well, I wasn't paying a lot of attention to
23 it, but --

24 Q Mm-hmm.

25 A -- I just think that -- there just wasn't

Examination of Don Zook

1 a lot of -- a lot of response to what the police
2 officer said.

3 Q So what did you hear the officer saying?

4 A I think he just said, "Stop."

5 Q All right. And did the person stop?

6 A I think he stopped momentarily and then
7 kept moving.

8 Q Okay. Did you see that person doing
9 anything else, saying things, moving around?

10 A I think he was talking.

11 Q Okay. Did you hear any words?

12 A What?

13 Q Did you hear any words that he was saying?

14 A Not really.

15 Q Did you hear a tone? Was it a -- a
16 conversational tone, a loud tone? Was it a
17 quiet tone?

18 A He was kind of loud.

19 Q Okay.

20 A I thought it -- a little bit of -- a little
21 bit of maybe obnoxious -- not paying -- not paying
22 attention to -- to the officer, what the officer
23 was saying.

24 Q Okay. And did you hear any other type of
25 gunshots or loud sounds?

Examination of Don Zook

1 A Well, eventually, we -- we continued to have
2 our -- our -- our meeting and talk.

3 Q Mm-hmm.

4 A But there was -- the person I think -- I --
5 I didn't observe all of this, but the person --

6 Q Where were you at?

7 A -- moved over towards -- he -- he -- he had
8 a tent.

9 Q Okay. Did you see the person by the tent or
10 is this what somebody else told you?

11 A I didn't see it.

12 Q Okay. Let's just talk -- focus on what you
13 saw or heard. So you said you heard eventually a --
14 a shot?

15 A There was a shot.

16 Q Did -- was it just one shot? Was it more
17 than one shot?

18 A I only heard one shot.

19 Q At the time that the shot was fired, what
20 you heard, could you see anything? Could you see
21 officers? Could you see the other person that they
22 shot at?

23 A Say that again.

24 Q At the time the shot was fired, could you
25 see the officers?

Examination of Don Zook

1 A I think that when the shot was fired, the
2 officers moved toward whoever they shot.

3 Q Okay. And so did you see the person that
4 they shot towards at the time of the shot?

5 A No.

6 Q All right.

7 A It was too far away from me.

8 MR. MILLER: Okay. That's all I have for
9 Mr. Zook. Any questions from the grand jury?
10 Well, thank you, sir.

11 A GRAND JUROR: Yeah.

12 MR. MILLER: That's all we have for
13 you today.

14 THE WITNESS: Thank you.

15 A GRAND JUROR: Thank you very much, sir.

16 MR. MILLER: And for the record, let's go
17 off the record now while we're trying to arrange a
18 call for our next witness with videoconferencing.

19 A GRAND JUROR: Okay.

20 (Recess taken, 3:37 p.m. - 3:40 p.m.)

21 MR. MILLER: So are -- are you ready?

22 Okay. And it looks like we're back on the
23 record.

24 A GRAND JUROR: We are.

25 A GRAND JUROR: Mr. Naas, I'm going to have

Examination of Michael Naas

1 A I do.

2 Q And on that particular day, where were you
3 at in the morning?

4 A I was driving down 92nd northbound when I
5 was headed to work. And I was passing Lents Park when
6 the incident happened.

7 Q Okay. So when you were passing Lents Park,
8 did you notice something kind of out of the ordinary?

9 A I did. As I was passing (indiscernible)
10 through the light, I noticed the Portland police car
11 pulling into the park. And then I also noticed a
12 gentleman with no shirt on, seemed like he was
13 flailing his arms and having some type of dialogue
14 with the police officer.

15 And there was a couple other people standing
16 around in the area, some on bikes. Like, there was a
17 bike riding group there at the time. I'm not sure --

18 Q So were you still --

19 A -- who they were (indiscernible) --

20 Q -- driving in your car at this point in
21 time or --

22 A (Indiscernible).

23 Q -- did you stop? Okay.

24 A I was still driving. When I saw the
25 altercation going on with the -- the man with no shirt

Examination of Michael Naas

1 on and the police officer, I kind of slowed down and I
2 kind of -- you know, kind of grabbed my attention.

3 But as I was passing the lot, I just saw a
4 whole bunch of police cars cut me off and pull up into
5 the grass in front of me. And at that point, I had to
6 stop 'cause there was -- they -- they -- they were
7 impeding my way, pretty much.

8 And then they had my attention, so I was --
9 I pulled over in front of the Ampm -- kind of, like,
10 right before the Ampm.

11 Q Is that the Ampm there on 92nd and Holgate?

12 A Yes, sir.

13 Q All right.

14 A And (indiscernible) --

15 Q So you were closer?

16 A I was closer, yeah. I was -- I was almost
17 to the Ampm.

18 Q All right.

19 A And I could see the gentleman walking away.
20 I heard the police officer yelling at him.

21 Q What did you hear him yelling? Anything?

22 A I just kept hearing -- I -- I kept hearing
23 him like, "Stop." It was hard to understand
24 completely, but he was -- the guy was walking back
25 toward, it looked like, a torn-up tent with a bunch

Examination of Michael Naas

1 of trash all up against the -- the -- the fence for
2 the Pickles --

3 Q Mm-hmm.

4 A -- where they play. And I saw him starting
5 to tear the tent apart, so I'm like, okay. This is
6 just another crazy homeless guy, you know, just
7 acting, you know, like when -- like -- like everywhere
8 in my neighborhood. And --

9 Q Have you ever seen that person --

10 A -- so --

11 Q -- before that day?

12 A I have not. And --

13 Q Okay.

14 A -- honestly, I probably wouldn't have
15 recognized him if I did.

16 Q And did you have your windows up or down?
17 'Cause it says -- you sounds like you heard a lot
18 of things.

19 A They -- they were down. They --

20 Q And how far away were you --

21 A -- (indiscernible) --

22 Q -- from the -- where the -- the guy was
23 doing these things?

24 A I was a good hundred feet, if not more. But
25 then as I -- it had my attention now. I heard him

Examination of Michael Naas

1 yelling, you know, "Don't. Don't." I couldn't make
2 out completely what was going on. And --

3 Q Who was saying, "Don't. Don't"?

4 A Someone over to the -- far away was. And I
5 heard some other cops trying to give the guy commands
6 at the same time. And then I just heard him, you
7 know -- they -- they were yelling commands, yelling
8 back and forth. And then --

9 Q When you say --

10 A -- (indiscernible) --

11 Q I'm sorry. I'm going to interrupt you.
12 When you say, "yelling back and forth," who's yelling
13 back -- are the officers yelling and the -- the
14 subject is yelling back or is the officers yelling at
15 each other?

16 A It was -- it -- I -- honestly, I couldn't
17 tell who was yelling at who, to be honest with you. I
18 just heard yelling. And I -- the -- now, there was a
19 bunch of police officers closer to me --

20 Q Mm-hmm.

21 A -- as I stopped 'cause they had gotten
22 out of their cars now and were setting up, like,
23 tactical positions --

24 Q Mm-hmm.

25 A -- around him. And, I mean, this is all

Examination of Michael Naas

1 happening within, like, 10 to 20 seconds, this whole
2 thing. And, at that point, the man with no shirt on
3 reached down into the -- where the tent was at and
4 there was a bunch of clothing or whatever it was
5 scattered around.

6 And picked up an object which looked like a
7 gun from where I was at. And I -- I -- I don't know
8 how to do it, but he made, like, a -- a -- like, a --
9 like, an aggressive move. Like, he darted toward
10 them and -- and pushed both of his arms out holding
11 the object.

12 Q Mm-hmm.

13 A And then the -- three shots were fired. And
14 I don't know where the three shots were fired from.
15 It sounded like there was two from my left and one
16 from the right, but I'm not sure.

17 And I wasn't sure if one was an echo or not.
18 I just -- it sounded like three shots. And I don't
19 know if they all came from which side, but, I mean, I
20 found out afterward. But -- yeah.

21 Q Okay.

22 A Then I saw him fall.

23 Q Well, I want to focus on exactly what you
24 saw at the time, not what you heard afterwards from
25 someone else.

Examination of Michael Naas

1 A Yeah.

2 Q At the time, you -- you said you could still
3 see the person reaching towards the tent for
4 an object?

5 A He -- he reached down, picked it up and
6 them, like -- I don't know how to say it -- kind of,
7 like, jabbed at some person. It's hard for me to --
8 to do the motion without you noticing me.

9 Q Mm-hmm.

10 A But he kind of went like this and -- you
11 know, yeah. And --

12 Q With one hand --

13 A -- and -- and --

14 Q -- two hands?

15 A It looked like both hands. It was -- I
16 can't tell if he had both hands on it or if he just
17 had one hand up and one hand up in the air. And it
18 was hard to tell from my angle, but --

19 Q Can you describe the object --

20 A -- (indiscernible) --

21 Q -- more for us?

22 A It took a really -- it looked like a rifle,
23 but, like I said, afterward, I did see a -- a -- a
24 picture of his arm with a tattoo and I think I
25 misconstrued the tattoo as part of the weapon. But

Examination of Michael Naas

1 it -- I could tell he was -- he -- he had some type
2 of weapon in his hand by the way his hand was, you
3 know. So --

4 Q So did you see the weapon, itself, or
5 did you see his hands moving like he had a weapon
6 in them?

7 A I saw the weapon, itself.

8 Q What color was it?

9 A It looked black.

10 Q Okay. Do you have any experience with guns,
11 firearms?

12 A I do.

13 Q And what's your experience with them?

14 A I spent nine years in the Marine Corps and
15 I was a firearm instructor for a year as
16 another profession --

17 Q Okay. And --

18 A -- after.

19 Q -- did it involve pistols and rifles and --
20 and different types of firearms, shotguns, et cetera?

21 A Yes.

22 Q Okay. So was there anything that was
23 preventing you from seeing it well, so distance,
24 things blocking your view?

25 A Distance. Distance and I think -- I think

Examination of Michael Naas

1 I had sunglasses on that morning and not my glasses,
2 so --

3 Q But other than distance, was there anything
4 in your way like a tree blocking you or a car or --

5 A No.

6 Q All right. And so you described it as him
7 kind of punching out this thing in front of him and
8 then moving aggressively towards them. Did you --

9 A Yes.

10 Q -- him saying --

11 A He was --

12 Q -- anything?

13 A I -- I couldn't tell if it was him or
14 officers. I -- I -- I couldn't -- there -- there was
15 a lot of yelling going back and forth. It was really
16 quick and then it was done.

17 Q Did --

18 A The shots were fired.

19 Q Then I heard you say you heard what sounded
20 like three shots and then the person who you described
21 as having the gun fell down to the ground?

22 A Yes.

23 Q What happened after that?

24 A At that point, I was kind of shocked like
25 I just saw that, so I turned around and, at this

Examination of Michael Naas

1 point, all of the police officers were slowly
2 converging and -- and moving in around another moving
3 truck -- or, I mean, a -- like, a -- like, a -- one
4 of the Explorers --

5 Q Mm-hmm.

6 A -- and were just trying to get in closer to
7 him. Then they started making, like, PA announcements
8 saying, "Don't pick up the gun. You know, don't make
9 any quick movements." I -- I can't recall exactly
10 what they were saying, but it was to that --

11 Q Did you ever see them --

12 A -- (indiscernible) --

13 Q -- move towards the person that was on the
14 ground to try and give him aid or anything?

15 A They were moving closely -- or, I mean --
16 excuse me -- closer and closer, but slowly. And they
17 were trying to get there with safety behind -- behind
18 the police vehicle. So they were moving closer and
19 they were -- he was still moving a little bit.

20 I could -- I could see him kind of -- like,
21 it was hard for me to tell, my angle, but he was
22 moving like -- I don't know if he was rolling around
23 trying to grab something or just rolling around
24 kicking. I -- I'm not sure (indiscernible).

25 And then as I was trying to get a -- I made

Examination of Michael Naas

1 a U-turn on 92nd and came back around out of their way
2 into the park parking lot on the south end and then
3 just kind of was watching from there at that point --

4 Q Okay.

5 A -- since I couldn't go any further down 92nd
6 'cause of -- of police activity. And I also wanted to
7 be -- tell my -- you know, this is my part of the
8 story that I saw and --

9 Q Okay. So did you ever see them --

10 A -- (indiscernible).

11 Q -- make contact? Did the officers ever make
12 it to the person on the ground or --

13 A They --

14 Q -- were you moved by then?

15 A They -- they did, yes. I -- I -- they did.
16 They eventually got over there. I believe that, by
17 the time they got over there, he was deceased at
18 that point.

19 Q Did you see them try to --

20 A But, I mean, it --

21 Q -- do anything with the person on
22 the ground?

23 A They did. They called in an ambulance, I
24 think, and there were some paramedics that came up --

25 Q Okay.

Examination of Michael Naas

1 A -- at that point.

2 Q All right. And did -- did an officer
3 contact you at some point in time to talk to you about
4 what happened?

5 A Yeah, a detective contacted me. I left my
6 car 'cause they were doing, like, witness reports at
7 their own scene. Then it started getting a little
8 crazy. There was a lot of people around. I
9 didn't realize after I left all of the other chaos
10 that happened.

11 I -- I was there for about another
12 20 minutes, 30 minutes. And, finally, I just -- I --
13 I gave an officer my card and just said, you know,
14 "Here's my information. Contact me," and -- and then
15 a detective, Horonda (phonetic) --

16 Q Mm-hmm.

17 A -- I think he contacted me in the evening --

18 Q Got you.

19 A -- at work. And I gave my statement
20 (indiscernible).

21 Q Thank you. So to take you just back, from
22 all the stuff that you saw leading up to the point of
23 the shooting, the actions of the person that you
24 described as having no shirt, moving around, do you
25 think, based on what you saw, that that person was,

Examination of Michael Naas

1 like, a threat to anyone?

2 A I would say yes, but, I mean, I don't know
3 the guy.

4 Q Sure.

5 A He did look very perturbed or, you know,
6 like, upset. He was flailing his arms. He was
7 throwing things. And, like I said, it seemed like he
8 was unresponsive. The officer was trying to give him
9 commands or yell at him. I'm not sure exactly what he
10 was saying.

11 But the guy kept throwing his arms up as he
12 was walking away and walking back to his tent or
13 whatever his pile of stuff was. It looked like a
14 tent. He was tearing it apart like he was -- he
15 picked it up and was, like -- like, thrashing through
16 it, like, breaking stuff. And --

17 Q Yeah.

18 A -- so I don't know if the -- and I don't
19 know what was in the -- the mess, you know, so --

20 Q How about the actions that you saw of what
21 you described as him kind of pushing something out
22 towards the direction of the officers, I think is what
23 you said? Did you think that was --

24 A And --

25 Q -- a threat?

Examination of Michael Naas

1 A -- the -- it looked like he was trying to
2 shoot somebody, yes.

3 MR. MILLER: Okay. All right. I'm looking
4 towards the grand jury now to see if the grand jury
5 has any questions.

6 A GRAND JUROR: I don't.

7 A GRAND JUROR: I do not.

8 A GRAND JUROR: No.

9 MR. MILLER: I see no questions from the
10 grand jury, so, Mr. Naas, thank you very much for your
11 testimony here today. We appreciate you calling in
12 for us.

13 THE WITNESS: Oh, no problem. Thank you.

14 MR. MILLER: All right.

15 A GRAND JUROR: Thank you very much, sir.

16 MR. MILLER: Take care.

17 A GRAND JUROR: Thank you.

18 THE WITNESS: Thank you.

19 MR. JACKSON: So that concludes the evidence
20 for today, so we can go off the record.

21 * * *

22 (Conclusion of Grand Jury B Proceedings,
23 Volume 1, 9-21-21 at 3:54 p.m.)

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REPORTER'S CERTIFICATE

I certify, by signing below, that the foregoing is a correct transcript, of the audio record in the above-entitled cause, as recorded on CD and transcribed to the best of my ability and in accordance to the quality of the audio CD.



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