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

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DEATH INVESTIGATION :
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GRAND JURY No. B

PROCEEDINGS

Case No. 24

Conducted by:

Amanda Nadell, Deputy District Attorney

Case No. 2450757

Wednesday, December 14, 2022

Transcribed by: Katie Leach

Proceedings recorded on FTR audio recording; transcript provided by legal transcriber.

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P R O C E E D I N G S

December 14, 2022

(9:05 a.m.)

(Whereupon, the following proceedings were held
before Grand Jury No. B)

MS. NADELL: We are on the record. It is
Wednesday, December 14th. This is an ongoing case
presentation regarding a death investigation. It's DA Case
No. 2450757. Grand Jury B. This is Amanda Nadell on behalf
of the District Attorney's Office and we are continuing with
witness testimony. Our first witness this morning is
Sergeant Pool. And I will grab him right now.

Stay standing. Raise your right hand.

MICHAEL POOL

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

DIRECT EXAMINATION

BY MS. NADELL:

Q Go ahead and have a seat.

A Is this a reinforced chair?

Q If you could -- I just want to make sure it didn't
have arms so you can sit --

A Yeah, I appreciate that.

Q -- comfortably. Yeah. If you could state and
spell your first and last name, please.

1 A It's Michael Pool. M-i-c-h-a-e-l P-o-o-l.

2 Q And how are you employed?

3 A I'm a sergeant with the Portland Police Bureau
4 currently assigned to East Precinct afternoon relief.

5 Q And how long have you been a law enforcement
6 officer?

7 A I've got a little over 28 years' experience.

8 Q Is that all with the city of Portland?

9 A So I started at Multnomah County as a reserve.
10 Then in May of '95, I got hired with the Portland Public
11 School Police and then the city of Portland took us over on
12 November 1st of 2001.

13 Q And how long have you been a sergeant?

14 A I've been a sergeant since January 25th of 2007.
15 So almost -- just shy of 16 years.

16 Q And you indicated you're currently assigned to the
17 East Precinct. Is that correct?

18 A Yes.

19 Q And I think you said you are a day relief
20 sergeant?

21 A No, afternoon relief.

22 Q Afternoon.

23 A So --

24 Q Thank you for clarifying.

25 A Essentially 4 p.m. until 2 a.m.

1 Q And were you working on July 27th of 2022?

2 A Yes, I was.

3 Q Was that in your same capacity as a sergeant with
4 the East Precinct?

5 A Yes.

6 Q Did you become aware of 911 receiving a call
7 regarding shots fired?

8 A Yes.

9 Q In the area of 125 Southeast 126th Avenue?

10 A Yes.

11 Q Where were you when that -- when you first became
12 aware of that call?

13 A So I was just out driving my car. I was probably
14 around the area of 148 and Division just kind of out on
15 patrol monitoring calls that were coming in that day.

16 Q And what did you -- what do you recall hearing
17 from that first initial dispatch alert?

18 A The first initial call they dispatched Officers
19 Pavon and Jimenez (ph.). There was nothing unusual about
20 it. We get quite a few shots calls. So generally, when
21 those come in, you acknowledge them and you start listening
22 for updates that come in.

23 Q And were Officers Pavon and Jimenez working a
24 partner car?

25 A Yes.

1 Q Initially, it sounds like they were the only ones
2 dispatched to investigate the call. Is that correct?

3 A Yeah. Based on what I remember, they were
4 dispatched. It was a two-person call -- or car so they had
5 their cover with them. And at the time, it was just one
6 caller.

7 Q Did that change?

8 A Yes. So we began receiving multiple calls of
9 shots fired. So they started asking for additional
10 resources. Then I started heading that way based on the
11 number of people calling in.

12 Q When you say based on the number of people coming
13 in, was 911 receiving more calls?

14 A They were receiving multiple calls. I don't have
15 an exact number but probably three, four, five maybe. And
16 that's what kind of triggered me to start heading that way.

17 Q Got it. And where did you respond to?

18 A So we picked the Park & Ride at 122nd and Burnside
19 as a staging location to just kind of gather resources and
20 make up a plan.

21 Q When you arrive at that location, were there other
22 officers there?

23 A Yeah. There were other officers there. There was
24 officers arriving. It was a little confusing because the
25 calls of shots being fired were still coming in and yet we

1 weren't hearing anything. And we knew it was literally a
2 block or two away. We should be hearing it at that time.

3 Q Were you -- at that time in July, were you aware
4 of any sort of delays with BOEC, with the Bureau of
5 Emergency Communications or --

6 A It happens all the time. People are on hold.
7 They've got to type stuff up. So the information comes to a
8 call taker who has to type it up who then gets it to a
9 dispatcher that has to read it. Plus the officers are on
10 there asking questions. So they're obviously multi-tasking
11 so there can be a communication delay.

12 Q So at the time you get to the staging area, it
13 sounds like you're not hearing active shooting. Is that
14 accurate?

15 A Correct.

16 Q Were you aware that Air One, the airplane, was
17 also up in the air?

18 A We asked for the plane just based on the
19 information and the call of shots being fired. It appeared
20 that some of the officers that had responded were familiar
21 with the individual we were called on. And that he had done
22 this in the past.

23 Q Is that information you learned from other
24 officers or --

25 A Yes.

1 Q Did that inform the decision to also have Air One
2 sort of try to get eyes on the location?

3 A Yeah. Just for our safety up in the sky with the
4 camera system versus us exposing ourselves. It made sense
5 to try and bring the plane in.

6 Q So at the staging location, sort of what happened
7 next?

8 A We're asking for Air One, we're marshalling our
9 resources trying to figure out exactly what we have. And
10 that's when we hear the first volley of shots. And it's
11 quite a few. So the -- if I can back up a little bit.

12 Q Yeah.

13 A The information in the call was that the subject
14 had an SKS or AK-style rifle and a handgun. So that first
15 volley we actually heard while we were staged at 122 and
16 Burnside sounded like rifle rounds.

17 Q Does that elevate your concern at all on scene if
18 it's rifle rounds?

19 A Yeah.

20 Q And why?

21 A So rifle rounds travel faster, farther, more
22 lethal. Obviously, the longer sight radius makes them more
23 accurate. So you really have to be careful as far as when
24 you actually deploy where you're deploying, what your cover
25 is. Depending on the direction they're fired, they can

1 travel long distances and still have the ability to be
2 lethal versus a handgun round.

3 Q What happened after you heard the volley of shots
4 then?

5 A So we heard the volley of shots and Air One that
6 was up in the air overhead could actually see the muzzle
7 flashes. So we knew definitely at that point we had shots
8 being fired because we could hear them. The airplane could
9 see them. We -- I believe it was broadcast that they were
10 being fired up in the air but I'm not 100 percent positive
11 on that.

12 So at that point, I asked for a SERT consultation
13 because we had a subject in the blocks actively firing
14 firearms. So that lended credence to all those other shots
15 fired calls that came in. So obviously, this wasn't the
16 first volley. So the main thing we wanted to do at that
17 point was get up to 126th and get that street blocked
18 between Stark and Burnside so we didn't have pedestrians or
19 cars driving by.

20 Q Is Stark the next main thoroughfare south of
21 Burnside there?

22 A Yes.

23 Q What is a SERT consult? Can you tell the grand
24 jury?

25 A So our Special Emergency Reaction Team handles the

1 high-risk situations like that. So basically, you would
2 ask for a consult. The sergeant would call you. You'd tell
3 them the information you have or that you know at the time
4 on that call. Then they make a determination if they're
5 going to come out or not.

6 Some things are mandatory like a hostage
7 situation, an active shooter, armed barricaded subject, that
8 it's a mandatory activation. Some things like a high-risk
9 warrant. There's a SERT checklist where if it scores enough
10 points then SERT will do the warrant. So when you do that
11 consult, you kind of run through what you have, what you
12 know. Maybe you're just asking for advice or maybe you're
13 asking for their specific help with their tools and
14 training.

15 Q As the sergeant on scene were you the one actually
16 communicating with SERT for that?

17 A Yes.

18 Q Was that with a sergeant assigned to the SERT
19 team?

20 A With Sergeant Don Livingston. Yes.

21 Q What was the result of the consult?

22 A Told him what I had. Told him about the shots
23 being fired. Told him we thought we knew who it was based
24 on previous contacts but I needed to follow up on that. So
25 he suggested trying to throw a phone call into the location.

1 See if we can get any cooperation. And if not, he said
2 they were more than willing to come out.

3 Q Was this a consult -- like was Sergeant Livingston
4 on scene or was that --

5 A No.

6 Q -- by phone or --

7 A I don't know where he was. It was via phone.

8 Q Got it. And what happened then?

9 A So information is coming out in this call. And at
10 one point, there is concerns that there is possibly a small
11 child in the house, as well as an adult female that was the
12 mom of the child. And so, as we're -- basically, we're
13 trying to get things locked down.

14 So we've got 126th locked down. I, in essence,
15 become the incident commander of the call. Then I start
16 working with Sergeant Townley and I direct him to take over
17 the tactical aspects to create a custody team, a
18 communication team to try and call in and a contact team.

19 Q Then what happened?

20 A From there, we were working through getting eyes
21 on the house. Normally, you want containment to be able to
22 get all -- get a field of view of all four sides. But
23 tactically, that was not feasible. So we were trying to get
24 officers to the front and the back of the house to be able
25 to get some real-world intel. And we were still putting

1 together a custody and communication team when he --

2 Q I'm sorry. Can I interrupt very quickly?

3 A Yeah.

4 Q Why was it not possible to get a four position?

5 Just the location or --

6 A Location. Officer safety issues. The fact that
7 he had a rifle. How close that would put you. Trying to
8 make things as safe as possible.

9 Q And what is the -- what's a contact team and a
10 custody team? Can you just explain that?

11 A So a custody team, obviously, would be a team of
12 officers. And their sole function would be had we got
13 cooperation, you would give him instructions to come back to
14 you and you would take him into custody. Contact team would
15 be to make contact, try to get attention. Try to get some
16 compliance. Direct him towards the custody team. Then the
17 custody team would take over issuing orders.

18 Q I interrupted you. Go ahead. What happened next?

19 A At one point, we see the -- or they see the little
20 girl in the doorway. So now it's confirmed he's firing
21 shots.

22 Q Who is they?

23 A The officers on scene.

24 Q So I think we maybe skipped a step. Did the
25 position of officers change from the staging area to

1 somewhere else?

2 A Yeah.

3 Q Did you go with them or were you in a different
4 position?

5 A So I went with them. So we all left 122nd and
6 Burnside. And we went up to 126th. Then we shut down 126th
7 from Stark to Burnside. So I am on the west side of 126th.
8 Maybe three houses to the north. Sergeant Townley is on the
9 east side of the street. I'm standing behind an SUV using
10 that as cover. Sergeant Townley has one, possibly two
11 police cars on the east side and he is working on getting
12 the custody team together.

13 Q Got it.

14 A The communication team together. There is a group
15 of officers that have dispersed and they are on the east
16 side of 126th with eyes on the front of the location. And
17 we are working on trying to get somebody to the back of the
18 location so that we can at least have eyes on the front and
19 back of the house.

20 Q Then there was mention that a little girl was
21 there?

22 A Yeah. The team that has eyes on the front of the
23 location sees the girl in the doorway. And then, they see
24 the subject come to the door. There's a shot fired. They
25 yell out and try to contact him. He yells back suck my

1 dick. He's non-compliant. So now with the little girl
2 being there, shots fired, another shot fired, that's when I
3 activate SERT. So I have them coming.

4 And then, he proceeds to fire several more shots.
5 If I had to guess, I'd say somewhere between four and ten
6 shots. So I can hear those distinctly going off from the
7 west side of the street. And while those are going, I can
8 hear one rifle round fired from the east side.

9 Q Did the rifle round fired from the east side, did
10 that sound distinctly different from the other shots?

11 A Yes.

12 Q What happened after you heard that rifle sound?

13 A After you heard that volley of shots, I was pretty
14 sure that an officer had fired and then, in fact, the team
15 on the east side broadcast that shots had been fired.
16 Sergeant Townley and the group of officers grabbed some of
17 the IFAK kits which are medical kits and approached the
18 subject and started rendering first aid.

19 Q Did you change your location at that point, as
20 well?

21 A I did. So I started walking up. But again, as
22 the incident commander, my role is not to get sucked in. So
23 I'm just trying to observe what they're doing and kind of
24 maintain that detached ability to make decisions, call for
25 additional resources. And at that point, my lieutenant came

1 up and asked if he minded if he took over as the incident
2 commander. So he took over that role.

3 And then, between the three of us, we took care of
4 basically setting up the crime scene, making the
5 notifications, finding out who the shooter was, who the
6 witness officers were, separating them, ordering them not to
7 talk about the incident because you don't want anything
8 tainted. Getting a crime scene log going if I didn't
9 mention that. Then I sent Officer Valdez (ph.) back to East
10 Precinct to retrieve the mobile command center which
11 detectives use as a base of operations.

12 Q Can I ask you a couple more follow-up questions?

13 A Yes.

14 Q In terms of what you just described, separating
15 the shooting officer and then the witness officer so that
16 they don't talk to each other, is that standard protocol?

17 A Yes. So it's standard protocol to separate them.
18 Get them what you call a buddy officer so they're not just
19 standing there alone. They can talk about anything they
20 want except for the shooting.

21 Q As far as you were aware based on your role that
22 day, those procedures were followed?

23 A Yes.

24 Q Then you mentioned after learning that the child
25 was present, that you made the decision to activate SERT?

1 A Yes.

2 Q Why is that?

3 A Just due to the increased danger. Now the child
4 is in imminent danger, as well. He's firing shots. And
5 when you activate SERT, you also get CNT which is the Crisis
6 Negotiation Team. So they're good at communication. And
7 obviously, this was quickly evolving into a situation where
8 somebody specialized in communicating with someone in crisis
9 versus just a standard patrol officer; would be a great
10 benefit.

11 Q Did the rest of the interaction unfold before
12 members of SERT arrived?

13 A Yes, it did.

14 MS. NADELL: I don't believe I have any other
15 questions. We'll see if the grand jurors have any
16 questions.

17 GRAND JUROR: Was the activation of SERT known to
18 all the officers on the ground?

19 THE WITNESS: Yes. So basically, the way you
20 activate them is you get on the air, ID yourself. So 3913,
21 activate SERT. Then you give them a safe route in. So my
22 safe route in was any direction on 122nd. And they were
23 going to stage where we had at 122 and Burnside in the Park
24 & Ride.

25 MS. NADELL: Does the activation of SERT, once

1 it's known to officers on the ground, is there an
2 expectation that they not continue to deal with this
3 situation as it unfolds? Are they required to wait for SERT
4 to get there or anything like that?

5 THE WITNESS: No.

6 GRAND JUROR: Were you, from your vantage point,
7 would you say you were at the 106th address up to the top
8 left? I know you said you were behind an SUV. Or were you
9 further down?

10 THE WITNESS: I'm going to guess I was right in
11 this area. To the best of my knowledge. I was maybe --
12 like I had said, two to three houses -- I was on the west
13 side of the street. There was an SUV parked in front of me
14 that I was using as cover.

15 GRAND JUROR: Got you.

16 MS. NADELL: Just so the record is clear, you're
17 pointing near the address of 101 Southeast 126th Avenue.
18 Just so we have that clear.

19 Any other questions? Go ahead.

20 GRAND JUROR: So you had spoken earlier that some
21 officers knew of Stanton. Can you expand on that?

22 THE WITNESS: Basically, when we staged, the
23 information I got was that he had done this before. Come
24 out and fired shots. I didn't have specific times like how
25 many times he had done it. It was just a sense from talking

1 to the officers that they recognized the name as someone
2 that had basically got drunk, come out and fired shots in a
3 previous situation.

4 GRAND JUROR: Do you know who said they knew him?

5 THE WITNESS: I believe it was Pavon and Jimenez
6 who were the primary officers.

7 GRAND JUROR: Okay.

8 THE FOREPERSON: Did you say that because you knew
9 who the shooter was that you tried to call him on the phone,
10 make phone contact.

11 THE WITNESS: So we were going to try and call on
12 the phone.

13 THE FOREPERSON: Oh, okay.

14 THE WITNESS: So that's part of that communication
15 team.

16 THE FOREPERSON: Right, right.

17 THE WITNESS: So we were going to try and
18 research, find a phone number, make a call in, see if we
19 could engage him in conversation. See what was going on.
20 See if we could convince him to come out to us. But we were
21 not able to be successful with that.

22 MS. NADELL: Do you know if a call was actually
23 made or did the situation unfold too quickly? And if you
24 don't know, that's --

25 THE WITNESS: I do not know.

1 MS. NADELL: Are there other questions?

2 GRAND JUROR: Yeah.

3 MS. NADELL: Go ahead.

4 GRAND JUROR: Was there any info of people being
5 -- of wounded people?

6 THE WITNESS: No, there was not.

7 GRAND JUROR: In this -- no, okay. And then
8 you're speaking of the contact team. Did the contact team
9 just give one set of commands and then he said suck my dick
10 and then there was no other contact? Or did they continue
11 talking to him?

12 THE WITNESS: Everything evolved so rapidly. I
13 know they had the initial contact. I'm not 100 percent sure
14 they had a chance to say anything again because the shot
15 from the officer came during the same time that he was
16 firing another volley of rounds which would have precluded
17 any communication.

18 THE FOREPERSON: Were those shots into the air?

19 THE WITNESS: I couldn't tell from my vantage
20 point where any of his rounds were. I could only hear them.
21 There was a bullet strike to a house across the street. So
22 I did send officers out to canvas houses on the east side of
23 126th to try and find any more damage. And I was
24 interviewed that night by detectives and so I never got the
25 result. And I haven't read the entire case file because it

1 gets locked down. So I don't know the results of that
2 search.

3 GRAND JUROR: During your meeting at the TriMet
4 station, the staging situation, and at the 126th, would you
5 say that you're in -- I can't remember which roles you were
6 in -- but were you in control of the situation giving people
7 directions of what to do?

8 THE WITNESS: Yes. So I was the incident
9 commander in charge making the decisions.

10 GRAND JUROR: Making the decisions.

11 THE WITNESS: Then what I did was -- I'm sorry to
12 -- so what I did was then I delegated to Sergeant Townley to
13 take over kind of the tactical aspects. Because when you're
14 the incident commander, you're making decisions but it's --
15 you've got to encompass -- you've got a perimeter. You've
16 got to -- they're asking about light rail being shut down.
17 And how to redirect traffic. So it can quickly become
18 overwhelming if you don't start delegating --

19 GRAND JUROR: Yeah.

20 THE WITNESS: -- tasks. So with his experience on
21 SERT, he was the perfect individual to have there to kind of
22 come up with a contact team, custody team, and some of those
23 things we tried.

24 GRAND JUROR: Then so you were in contact with
25 SERT. They said maybe try contacting the house. Were there

1 any other plans or escalation of force steps that you were
2 in charge of or was that up to Townley at that point?

3 THE WITNESS: I don't think I understand your
4 question.

5 GRAND JUROR: So we're not police but so is there
6 a step where you say, okay, we're going to try to call the
7 residence. That doesn't work. We're going to bring in a
8 40mm or we're going to bring in hostage crisis. Was there
9 any sort of steps or is it -- I think an officer yesterday
10 talked about it being -- what did he say?

11 MS. NADELL: So I think -- let me try to ask the
12 question maybe.

13 GRAND JUROR: Yeah.

14 MS. NADELL: Then tell me if it's not the
15 question. I think the question is getting at -- does -- is
16 there a command -- do officers need permission or the
17 granting of authority from a sergeant or someone in charge
18 on scene to take the steps that Officer Dyk did in this
19 case?

20 THE WITNESS: No.

21 MS. NADELL: Is that the question you're getting
22 at? And if it's not --

23 GRAND JUROR: Not exactly permission from you.
24 But just kind of a structure to escalate the situations.

25 THE WITNESS: So they have a role in the team

1 they're in. Right. They're the contact team. The
2 individual might do something that causes them to react.
3 They don't need my permission to address what they perceive
4 is a threat.

5 GRAND JUROR: Oh, okay.

6 THE WITNESS: Is that kind of answering your
7 question?

8 GRAND JUROR: Yeah, yeah.

9 THE WITNESS: So they're -- I mean, normally, when
10 you build a team, you'll have lethal, you'll have less
11 lethal. You'll have those options built into the team. And
12 anyone on that team can take a specific action. But it's --
13 as a supervisor, it would be getting way too far down in the
14 weeds to try and control because --

15 GRAND JUROR: Micromanage.

16 THE WITNESS: -- at one point, we probably had 30,
17 40 officers. There's no way one person can singularly give
18 orders to every individual on that scene.

19 GRAND JUROR: There's no like standard operating
20 procedure of escalation of force? It's up to the
21 individual?

22 THE WITNESS: You could go literally from getting
23 out of your car to deadly force based on the actions of the
24 individual you're dealing with.

25 GRAND JUROR: Okay, cool.

1 BY MS. NADELL:

2 Q I do want to just flesh that out a little bit
3 more. Do officers with the Portland Police Bureau though
4 receive the same training with regard to de-escalation
5 tactics and use of force and --

6 A Yes.

7 Q -- training about scenarios and how to respond to
8 those?

9 A You have scenarios. They train in de-escalation.
10 So if you look at -- on this call, we use time. That's a
11 de-escalation. We used distance. He was given the time to
12 follow the orders. The officers spoke in calm voices. We
13 had barriers between him and us. We weren't right up on
14 him. We were back. So all those things we're trying to de-
15 escalate but at the same time we have to try and get his
16 attention.

17 GRAND JUROR: Yeah.

18 THE WITNESS: So that's why the team from across
19 the street yelled out to him.

20 GRAND JUROR: So you're saying there was -- in the
21 sense of de-escalation, there was one set of commands made
22 and then the distance they had given him. Were there any
23 other de-escalation tactics?

24 THE WITNESS: There was distance, there was time,
25 there was barriers between the officers and the subject.

1 Another one is attempt to avoid confrontation. If I had
2 more than five hours of sleep, I could probably remember a
3 couple more. But those are kind of the main ones. And then
4 we were working on trying to get even better communicators.
5 We were trying to get him on the phone so it wouldn't be
6 yelling across the way. And based on his actions, we ran
7 out of time. We didn't have time to --

8 MS. NADELL: Did that -- I'm sorry. Just --

9 GRAND JUROR: Okay, go.

10 MS. NADELL: Did that answer your question?

11 GRAND JUROR: Um-hum. Yeah.

12 MS. NADELL: Go ahead.

13 GRAND JUROR: Forgive me. I might have missed
14 this while taking notes. You said there was a bullet strike
15 on a house --

16 THE WITNESS: Yes.

17 GRAND JUROR: -- across the street. Was it -- do
18 you know which house or where specifically?

19 THE WITNESS: I don't. The most rudimentary info
20 I got was that there was a house with a bullet strike. I
21 asked them to search maybe two on each side from where he
22 was firing to try and see if there was any bullet strikes.
23 Make sure we didn't have any victims in those houses.

24 GRAND JUROR: Sure.

25 THE WITNESS: There was a couple that I sent to

1 look for cameras, as well. See if we had any video. That
2 might be contained in the case file. I don't have the
3 specifics of what happened with those searches.

4 GRAND JUROR: Did you verify there was a bullet
5 strike on a house?

6 THE WITNESS: I did not personally. No. At that
7 point, you're setting up the crime scene. You're separating
8 the witnesses. So my role at that point transitioned to --
9 the lieutenant had taken over. So I'm maintaining watch on
10 the witnesses. Making sure they're not talking about the
11 incident.

12 I can observe Officer Dyk who was a shooter.
13 We're getting the crime scene log. We're trying to get
14 buddy officers so that the officers aren't just there by
15 themselves. It's a super hot night. So we're trying to get
16 cars to get them out of the heat. We're trying to reopen
17 the light rail we had shut down.

18 So there's a million things going on. And my main
19 concern was if the house had got struck, let's make sure
20 other houses weren't struck. Let's make sure we don't have
21 any victims. So the need to actually go see that myself was
22 very low on the grand scale of everything I was doing at
23 that point. Then I actually got ordered to go back to East
24 and then that's where I was interviewed by detectives about
25 how this call unfolded and what I did.

1 GRAND JUROR: Did you have a visual on the
2 shooter from where you were?

3 THE WITNESS: No. So from where I was on the west
4 side of the street, there was a black SUV in front of me.
5 So I was using that as cover. So the -- basically, if I can
6 see him, he can see me. So at that point, with shots being
7 fired, I want to have some kind of firearm in my hand.

8 And that would take away from my ability to kind
9 of be impartial as the incident commander because I'd be
10 more focused on the tactical versus the overall big picture;
11 what's being done, who do we need to call, what additional
12 resources do we need. Those kind of things.

13 GRAND JUROR: You mentioned a lieutenant stepping
14 in as incident commander. Then there were three of you kind
15 of calling the shots there towards the end. Who were those
16 three? You and a lieutenant?

17 THE WITNESS: Sergeant Stensgard (ph.) who is now
18 Lieutenant Stensgard. He got promoted. Lieutenant Staples
19 was the one that took over. And then myself. So we kind of
20 got together. Chad had the -- so Stensgard had the officer
21 involved checklist which just kind of guides you through.
22 Making sure you get everything you need.

23 So as a team, we just kind of worked through crime
24 scene, the separating the witnesses. Make sure you have a
25 crime scene log going on so you can document everyone that's

1 been there. We have what we call community safety
2 questions. So on a shooting like that, how many suspects.
3 Were the suspect -- we didn't have to ask any of those
4 questions because we were there. We knew where our shot
5 came from. We knew where his came from.

6 We knew it was just the one person we were dealing
7 with. So we didn't have to go that route in the shooting
8 with the community safety exemption questions of Officer
9 Dyk. So between the three of us, we just all kind of jumped
10 in and got everything handled. And then eventually turned
11 the scene over to the homicide detectives.

12 GRAND JUROR: One last one for me.

13 THE WITNESS: Yeah.

14 GRAND JUROR: Remember you actually -- at the
15 beginning, you guys were worried -- was the mother of the
16 child in contact with you saying that the child might be in
17 there? Or were you saying that the mother of the child
18 might be in the house?

19 THE WITNESS: So we thought -- we got info over
20 the radio. I have not gone back through the call to look at
21 where this information came from.

22 GRAND JUROR: Oh.

23 THE WITNESS: But we had information that there
24 may be a small child and there may be the mother of a small
25 child in this house.

1 GRAND JUROR: But she wasn't in contact with
2 you?

3 THE WITNESS: She -- no, she --

4 GRAND JUROR: Oh.

5 THE WITNESS: -- wasn't in contact with us. We
6 observed the small child. After the shooting, you had a
7 group of officers render the first aid. Then you had a
8 group of officers check the house for any additional
9 victims. There was nobody else in the house. So the mother
10 was somewhere else. And at some point, you turn that over
11 to homicide. They would then reach out to the mother. But
12 that's not a general function of patrol at that point.

13 GRAND JUROR: Yeah.

14 MS. NADELL: Are there any other questions? Thank
15 you, Sergeant Pool. You can step out.

16 THE WITNESS: Thank you.

17 MS. NADELL: Can we pause the record while I see
18 if our next witness is --

19 (Off the record.)

20 (On the record.)

21 MS. NADELL: We're back on the record in the same
22 death investigation with our next witness, Sergeant Townley.
23 And you're standing and raising your right hand. Go ahead
24 and swear him in, please.

25 JAMES TOWNLEY

1 was thereupon called as a witness; and, having been first
2 duly sworn, was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MS. NADELL:

5 Q Go ahead and have a seat. Can you state and spell
6 your first and last name, please?

7 A Yeah. James Townley. J-a-m-e-s T-o-w-n-l-e-y.

8 Q And how are you employed?

9 A I'm a sergeant with the police bureau.

10 Q With the Portland Police Bureau?

11 A Correct.

12 Q How long have you been in law enforcement?

13 A About 14 years, I think.

14 Q All with Portland?

15 A Yes.

16 Q How long have you been a sergeant?

17 A About a year and a few months.

18 Q Were you a sergeant back on July 27th of 2022
19 then?

20 A I was. Yes.

21 Q What is your particular assignment as a sergeant?

22 A So I am one of the sergeants for the Focused
23 Intervention Team which is our uniform team for gun violence
24 in the city.

25 Q Can you describe Focus Intervention Team a little

1 bit more? What do you do?

2 A Yeah. So we have 12 officers and three sergeants.
3 We work primarily in uniform. And we work kind of an
4 afternoon shift, 2 to midnight. We cover five days a week.
5 And our primary mission is to prevent shootings. So we work
6 throughout the entire city. We're not tied to a specific
7 precinct.

8 And we spend our time -- we use data to kind of
9 tell us where shootings are most likely to occur. So we
10 spend our time trying to be visible in those locations.
11 Then when shootings come out throughout the city, we also go
12 to those shootings to help the precinct officers with their
13 initial response. Then also help them with the initial
14 investigation once they actually get on scene.

15 Q Were you working in the capacity of FIT sergeant
16 or Focused Intervention Team sergeant on July 27th of 2022?

17 A I was, yes.

18 Q Were you one of the responding officers to a shots
19 fired call in the area of Southeast 126th Avenue and
20 Burnside?

21 A Yes.

22 Q What do you recall -- just for reference, I have
23 an overhead map behind you on the screen. Do you recognize
24 that location?

25 A I do.

1 Q What was the -- what do you recall being the
2 initial information that came out in the call?

3 A The initial information -- we were eating dinner
4 when it came out and so we're listening to the radio. The
5 initial information was -- to the best that I remember,
6 several neighbors calling 911 saying that there was a guy
7 out on his porch firing off a gun.

8 Q And you indicated you were eating dinner. Were
9 you with other law enforcement officers?

10 A I was, yes.

11 Q Who were you with?

12 A I was with the FIT officers.

13 Q Did any of the other officers respond with you?

14 A Yes.

15 Q Who were they?

16 A Boy, I couldn't tell you exact names of everybody
17 that was there.

18 Q That's okay.

19 A But everybody that was working that night came
20 with us.

21 Q Got it. Where did you respond to?

22 A So East Precinct had come out on the radio and
23 somebody had said let's meet at 122nd and Burnside. We kind
24 of call that a staging. When you go to a big call like this
25 that's going to -- it's super dangerous. It's going to take

1 a lot of resources. A lot of times, we will go to a
2 staging location close to the actual incident so that we can
3 gather resources so that officers aren't going in
4 necessarily by themselves if they don't have to.

5 And so that we can also then kind of come up with
6 a really quick strategy of where we're going to deploy our
7 resources once we get there. So the staging point was 122nd
8 and Burnside. So I told my officers we're going to go to
9 the staging point. Then we will divvy out jobs from there.

10 Q And what happened when you arrived at the staging
11 location?

12 A Well, by the time we got there, they had already
13 done all of that. So they were driving towards the
14 location. So we just kind of followed behind them to catch
15 up with them.

16 Q Were you in contact with any of the officers that
17 had been to the staging and sort of had that initial
18 planning session?

19 A I was not, no. Not at that point at least.

20 Q Got it. So what happened next, I guess, when you
21 joined them as they moved to a different location. Where
22 did you move to?

23 A So they started driving east on Burnside to about
24 124th, 125th, somewhere in there. Then they started to
25 park. So we did the same thing. Got out of our cars and

1 just started walking towards 126th. Kind of following
2 behind them and -- the plan was to just once we get to 126th
3 or once they get to the point to where they start to deploy,
4 then we'll catch up. We'll discuss what we're going to do
5 and kind of move forward from there.

6 Q What happened at that point?

7 A So all of that happened. Officers got to 126th.
8 They kind of started moving towards the south. My officers
9 just kind of filtered in with the precinct officers that
10 were arriving. And they started filling roles. At some
11 point -- you guys already heard from Sergeant Pool. He was
12 the East Precinct sergeant that was running the incident.
13 At some point, he and I connected, had a quick conversation.
14 And started coming up with our game plan.

15 Q Were any responsibilities delegated to you by
16 Sergeant Pool?

17 A Yes.

18 Q And what were you then in charge of or responsible
19 for?

20 A So I was -- several officers had pushed south kind
21 of towards where this incident was happening. I'm going to
22 back up just a little bit.

23 Q That's fine.

24 A So when you have something like this happening,
25 right, somebody is out on their porch in a residential

1 neighborhood and they're firing off a gun all over the
2 neighborhood, one of the first things that you want to do is
3 you want to try to contain them. With the idea being that
4 there are people in these houses that are calling the police
5 asking for us to come and do something.

6 So we need to somehow try to get there as safely
7 as we can and keep this person that is acting violently --
8 try to keep them from going somewhere else, right. Because
9 if you allow them to move freely in this neighborhood, then
10 you're putting unknown numbers of people in danger.

11 So the first concept is to kind of contain the
12 problem. So that was one of the things that Sergeant Pool
13 and I had discussed. Some of the officers that had arrived
14 before I actually got onto 126th were pushing south with
15 that purpose; to try to get containment of this problem.

16 One of the most important pieces of containing a
17 problem is getting what we could call eyes on. So what that
18 is is just getting an officer or a couple officers in a
19 position to where they can physically see what is happening.
20 And there's several reasons that you do that. One of the
21 reasons is because if you don't do that, then your source of
22 information is 911 callers.

23 So that information is delayed. A lot of times
24 it's inaccurate because if you can imagine, somebody calls
25 911 and they're saying hey, this guy is on the porch, he's

1 shooting off rounds all over the neighborhood, one of the
2 things that the dispatcher is going to tell them is find
3 somewhere in your house where you can safely hide.

4 So they're not going to be standing there watching
5 this person or this incident unfold. So a lot of that
6 information can be inaccurate. So it's best if we can put
7 our people in a position to where they can see the problem.
8 They can give us information immediately. And generally,
9 that information is going to be much more accurate.

10 Q So what happened next?

11 A And I think I left out a couple things.

12 Q All right.

13 A There was a lot going on.

14 Q Fair enough.

15 A As we were getting there -- we had an airplane up
16 that night. As we were getting there, the airplane got
17 overhead and this guy came out onto the porch and was firing
18 off rounds and the airplane actually like put that
19 information out. I don't know if that's come up or not but
20 that's a pretty big piece of information.

21 Q And that was something you were hearing.

22 A That was something that was put out over the
23 radio.

24 Q On the radio.

25 A As we are -- it was probably as we were coming

1 into 122nd and Burnside. Yeah. So that's that. What was
2 next? Sorry.

3 Q Well, so you had described sort of officers
4 starting to work on the containment issue by proceeding
5 south on 126th Avenue. I guess --

6 A Yeah.

7 Q -- my first question is, was that on foot or in
8 vehicle or --

9 A So it was both. So one of the first things that
10 you want to do is you want to contain the problem so that it
11 can't spread so that more people aren't in danger. So
12 generally, that entails officers being out on foot.

13 One of the other things that you do, which is
14 another thing that Sergeant Pool and I discussed, was you
15 set up what's -- what we call a custody team. And a custody
16 team is a group of officers, typically five to seven-ish,
17 kind of depending on how many resources you have. And those
18 officers are generally -- they're out on foot but they are
19 next to vehicles.

20 And the purpose of that custody team is -- in an
21 ideal world, there's going to be also a communication team
22 which I'll get to that's going to call this guy on the phone
23 and say hey, put the gun down, come outside please, and give
24 up, and let's talk about this.

25 So then if that happens, then the custody team

1 would be the team that's like, hey, come down here, you
2 know, come talk to us. Then they'd take him into custody.
3 And then the incident is over. In an ideal world, that's
4 how things unfold.

5 So we had a custody team that was out on foot on
6 126th with officers on foot with vehicles there. Then we
7 also had a communication team. And the communication team,
8 the purpose of that team is to get on the computer and
9 research this address. Try to figure out who this person
10 is, try to get phone numbers for this person, try to figure
11 out who lives in the house with this person, gather
12 information so that we can make good decisions. Because
13 without information -- without accurate information, you're
14 not going to be able to make good decisions.

15 Then also, when we have things -- when we have
16 containment set, when we have our custody team set, then
17 maybe try to communicate with this guy. Maybe try to make a
18 phone call. Maybe try to use the loudspeaker on the car to
19 call to him. So those are kind of the three basic teams
20 that we started to put together after my conversation with
21 Sergeant Pool.

22 Q Walk us through then -- I guess, did those teams
23 get into position? How did that go?

24 A So the communication team was -- and I guess also
25 what I would say is our officers are trained on these

1 things. So they start to do them on their own. It
2 doesn't require a supervisor to say, you know, these are the
3 jobs that we need to fill on this incident. So when we got
4 there, there were officers moving south on 126th. They were
5 putting themselves in those positions to accomplish these
6 tasks.

7 So we did get -- by the time I got there, there
8 were, I believe, three -- it might have been four --
9 officers that were working on a communication team. They
10 had formed themselves as they should. They were right next
11 to the custody team which, at that point, was a pretty
12 dangerous place for them to be. So I moved them further to
13 the north towards Burnside.

14 This guy -- I couldn't tell you the exact number.
15 I'm sure you guys will review the 911 tapes and all that.
16 But he had come outside and been shooting multiple times.
17 When we first got there, he was inside but the expectation
18 was -- history repeats itself -- he's probably going to come
19 back out and do this again.

20 So I didn't want our -- I didn't want more people
21 that could get hurt if he came back out and did this again
22 to be in that place than had to be. So I sent our
23 communication team kind of out of the way for the moment.
24 They could do their research, look up the address. Try to
25 figure out names, phone numbers, all that stuff kind of out

1 of harm's way. So that was formed. They were working on
2 that.

3 Q Do you remember where they -- where you sent them
4 to be in a better position?

5 A No. I didn't go with them. I sent them to the
6 north. I said this is not a good spot for you to. Go to
7 the north, start working on your tasks.

8 Q Did you go with the custody team then?

9 A I did. Yeah. I stayed with the custody team. We
10 had a couple of police cars there with us that we could hide
11 behind that would stop bullets from hitting us in theory.
12 And so, I stayed with the custody team.

13 We had -- and I couldn't tell you how many. We
14 had a few officers that had pushed further south towards the
15 location as part of that containment piece. I didn't know
16 how many were down there. I had one of my officers, Officer
17 Hertzler, who I've worked with for a very long time -- he's
18 on our tactical team. I have a lot of trust and respect for
19 him. He's an expert in his own right.

20 I told Officer Hertzler -- and I -- I told him go
21 forward to the south and help me figure out who we have to
22 the south and what our positions are with the intention of
23 him moving up. Figuring out where we had containment pieces
24 and where we needed to put more officers to contain the
25 incident better. And I believe that he took Officer Dyk

1 with him when he moved to the south to do that.

2 Q Did you also -- were you also aware that some
3 officers had positioned themselves around the area of 106 --
4 or 106 Southeast 126 Avenue or slightly to the north. And
5 just -- yeah, refer to the map behind you.

6 A Let's see here. Which way is north on this?

7 Q Left, I believe.

8 A So that's north. That's south.

9 Q Yeah.

10 A Right? Yeah.

11 Q Just to orient you --

12 A Burnside is up there.

13 Q Yeah, I think it -- actually, let me just show you
14 a --

15 A Yeah. That --

16 Q -- different aerial if you want.

17 A This is where the incident occurred. Correct?

18 Q Let me just show you a different -- there is --

19 A Okay, yeah.

20 Q -- north. Or there's -- just so the record is
21 clear, more aerial map. But let me ask a different
22 question, I think. Were you aware of some officers
23 positioning themselves near a residence that included
24 Officers Lovato and Pavon?

25 A Yes.

1 Q Were you with them or were you somewhere else?

2 A I was not with them. I was further to the north.

3 I -- and so, I knew that those officers were there. Officer
4 Lovato is actually one of my officers. Officer Pavon is an
5 East Precinct officer. I knew that they were. I didn't
6 know -- which is part of the reason why I sent Officer
7 Hertzler to the south. I didn't know if there were
8 additional teams anywhere else to the south.

9 Q So when you say Officer Lovato is part of your
10 team, he's on the Focus Intervention Team?

11 A Correct, yes.

12 Q Did you give him a particular role that day or did
13 he assume a role that you're aware of?

14 A I did not. He assigned a containment role. Yeah.
15 And again, that's kind of one of those things that I was
16 talking about earlier where officers are trained on these
17 things so that we don't have to specifically tell them every
18 single thing to do. They're trained on how we respond to
19 these incidents. So he filled that role as he should have.

20 Q After you sent Officer Hertzler further south,
21 what happened?

22 A Make sure I'm not missing anything. A short time
23 later, somebody put out over the radio and I don't know who
24 it was -- it could have been Officer Lovato's team. It also
25 could have been Officer Hertzler or Officer Dyk. But a

1 short time later, somebody broadcast over the radio that a
2 little girl came out onto the porch. And I guess I should
3 -- that's pretty important information, too.

4 So part of the information that came out with the
5 initial call was that -- and I believe it came from a
6 neighbor. They said that this person lived at this house
7 with a wife and a little girl. So that was the next thing
8 that happened. A little girl came out onto the porch.

9 Q So you hear that over the radio?

10 A Yep, yep. I heard that over the radio. And then,
11 I mean, seconds later, over the radio, it was that he came
12 out onto the porch -- and it might have even been the same
13 transmission. It was he's shooting. And then I could hear
14 the gunshots. I mean, we were four or five houses away at
15 that point.

16 Q One shot or more than one shot?

17 A Multiple shots. I couldn't tell you how many. It
18 was a lot. I mean, it was enough that I was having
19 conversations with the people in the custody team like, get
20 down, get behind the car. It was enough that -- I mean, 10,
21 15, 20. Something like that. In a residential
22 neighborhood. It was a lot.

23 Q Were you -- did you have any concerns -- I mean,
24 you're explaining -- telling people, get down, take cover.
25 Were you concerned with your safety even though you had

1 positioned yourself, you know, multiple houses north of
2 where this person was?

3 A Yeah, absolutely. I was concerned for everybody's
4 safety out there. I mean, this was -- those bullets go a
5 long ways. They'll go blocks. And even when you're hiding
6 behind a car, or even when you're in a house, those bullets
7 will go through. Sometimes they'll go through a car,
8 sometimes they won't.

9 Like I said, one of my primary responsibilities is
10 I go to shootings. I go to shootings day in and day out.
11 And I see every day what these bullets do. And some bullets
12 will hit a house and fall to the ground. Others will go all
13 the way through multiple walls through an entire house.

14 Q So you're hearing the shots, you're aware that,
15 based on the radio transmission, this subject is out there
16 with a girl. What do you recall happening next?

17 A So he -- yeah, so the little girl comes out. He
18 comes out. He starts shooting. I heard and I'm -- I can't
19 be 100 percent certain on exactly who it was. I think it
20 was Officer Lovato. I heard him starting to challenge this
21 guy, to give him commands. And the idea being -- there
22 being -- I mean, it's a de-escalation technique, right.
23 This person is out on their front porch.

24 There's a little girl standing next to them. He's
25 firing off rounds. We're in a residential neighborhood. We

1 have to do something. We have people in a position now.
2 So he's -- I could be wrong. It might not have been Officer
3 Lovato but it was somebody that was there with him. They're
4 telling him, hey, put the gun down, stop, put the gun down,
5 put the gun down, put your hands up. Those sorts of things.

6 Q Could you hear any -- could you hear whether the
7 subject was responding at all to that?

8 A I did not. I heard continued gunshots. I did not
9 hear that person respond. No.

10 Q Then what happened?

11 A And then, a short time later, I mean, seconds, if
12 that, the command were probably continuing. I heard a
13 broadcast over the radio that -- and I don't remember the
14 exact verbiage, but there had been an officer-involved
15 shooting. A short -- you know, in pretty much the same
16 breath, you know, it's he's down on the porch. The little
17 girl is right next to him. Then a short time later -- like
18 I said, I had sent Officer Hertzler to the south.

19 So I knew he was somewhere down there. My
20 assumption was that he could see what was going on. That he
21 had more information than me. So I got on the radio and I
22 started asking him, like, what do you have, what do you
23 need, what can I do to help you. What can we do to get this
24 little girl out of here somewhere safe and then get up to
25 this guy and, one, make sure that he's not shooting anymore,

1 and then two, offer him some aid.

2 I don't recall whether or not Officer Hertzler
3 ever responded. In that time after I asked him what he
4 needed, I started to organize my custody team to move
5 closer. Typically, a custody team will set up in a location
6 and you stay there. You don't typically move once you're
7 there.

8 So it took a little organization to put a couple
9 people in cars because I wanted to take cars down with us to
10 use as cover from the bullets because I didn't know -- I
11 couldn't see what was happening. I knew that they were
12 going to need help. I knew that we needed to get down
13 there. But I didn't want to jump ahead of -- in my
14 decision-making especially when I had people down there that
15 had information that I didn't have yet.

16 So I started to organize that so that we could
17 move closer. Seconds later, I saw officers just running
18 across the street towards where this guy and this little
19 girl were. I didn't know why they were running. I didn't
20 know what they had. But I was like, okay, we're going to go
21 with them. We're going to go help them. So we took our
22 custody team and we drove our vehicles down there and we ran
23 down there to help them.

24 By the time I got there, another one of my
25 officers -- I believe Officer Romick (ph.) had the little

1 girl and was taking her somewhere safe. There were
2 already officers at the guy who had been shooting. They had
3 put him in handcuffs. They had -- we carry -- it's a red
4 bag. It's a first aid kit essentially. It's got trauma
5 equipment in it, tourniquets, chest seals, gauze, all the
6 things that you would need to try to treat a trauma injury.

7 There were three or four officers there with him.
8 They had their kits there and they were providing aid to
9 him. I called in -- we had an ambulance staged nearby.
10 That's another thing we do on incidents like this. We stage
11 ambulances nearby so that if something bad happens, they are
12 close and we can get them in there fast because --

13 Q And I want to stop you right there. When you say
14 incidents like this, do you mean kind of the shooting calls
15 that your team regularly responds to or --

16 A You know, yes and no. I mean, it kind of just
17 depends. A lot of the shootings that my team would respond
18 to are, say, a drive-by shooting and all the information
19 tells you that the suspects are gone and maybe your
20 information is coming from somebody in the house. And
21 they're like, no, nobody is hurt. They're telling the
22 dispatchers that. And so, you know, a shooting --

23 Q Yeah.

24 A -- we would not necessarily stage an ambulance
25 nearby. But any sort of police call where we have a belief

1 that somebody could be injured, we will stage an ambulance
2 nearby.

3 Q So was this one -- because it was like an active
4 shooting situation, is that why medical was staged?

5 A Yes, yes. Absolutely, yes. I mean, yes.

6 Q Then you mentioned that the individual was in
7 handcuffs by the time you got up to the location. Was that
8 something that surprised you or was that something that you
9 would expect to see?

10 A No. That's absolutely something that I would
11 expect to see.

12 Q Can you tell us why?

13 A Yeah. You just don't know people's mind state.
14 You know, you cannot predict what somebody is going to do.
15 This person was just on his front porch with a little girl
16 shooting off rounds into a neighborhood. While he may be --
17 he was -- he had been shot and he was under control at the
18 moment, you don't know how that can change.

19 I have seen people, in my experience, that you
20 would assume there's no way this person is going to cause a
21 problem -- a guy shot himself in the head and you would
22 assume that this is not a problem and I have seen him -- a
23 person like that sit up and fight with officers. So you
24 just don't know. So it's a thing that we do for our safety
25 and their safety so that we can render aid, so that AMR can

1 come in and render aid. That's very standard.

2 Q Then that evening, do you recall Officer Bartlett
3 also being on scene?

4 A Yes.

5 Q Is he a member of the Focus Intervention Team?

6 A He is, yes.

7 Q What about Officer Dyk? Is he a member of the
8 same team?

9 A He is, yes.

10 Q And then, are you what the bureau refers to as a
11 rifle operator? Are you certified as such?

12 A I am, yes.

13 Q Can you tell us what that means?

14 A Yeah. So a rifle is -- it's a tool, essentially,
15 right. Every police officer carries a pistol. Not every
16 police officer carries a rifle. There are capabilities that
17 a rifle brings to different situations that a pistol doesn't
18 bring.

19 So the police bureau has a process of selecting
20 officers that they -- that have shown a history of making
21 good decisions to take on this additional responsibility and
22 carry a rifle. I don't remember the exact training hours
23 that it takes. So I'm not even going to guess.

24 But it's an additional training course put on by
25 our training division. In addition to that, you have to

1 qualify with it every time we do qualification, which I
2 believe is three times a year. Then they also have
3 additional yearly kind of maintenance training that rifle
4 operators go through specifically for the use of the rifle.

5 Q To your knowledge, given that Officer Dyk is on
6 your Focus Intervention Team, was he a rifle -- certified
7 rifle operator, as well, at the time of this incident?

8 A Yes.

9 Q Give me one second just to review my information
10 here. Sergeant, I think those are the questions I had.
11 I'll see if the grand jurors have any questions for you.

12 A Okay.

13 MS. NADELL: Go ahead.

14 GRAND JUROR: Did you hear over the radio that
15 there were bullet impacts when you were on the scene?

16 THE WITNESS: You know, I do not remember hearing
17 that. And I would be surprised if anybody, at least in the
18 moment, would have been able to give that information. I
19 don't recall hearing that. No.

20 GRAND JUROR: And then you said Hertzler and
21 Lovato and Dyk were on the containment team?

22 THE WITNESS: Correct.

23 GRAND JUROR: What's the usual duties of
24 containment?

25 THE WITNESS: So typically, kind of like I

1 described, you have a dangerous incident happening at a
2 location. So the containment team is -- the purpose of the
3 containment team is to make sure that that problem doesn't
4 go somewhere else and become a bigger problem basically.

5 Then in addition to that, to give information.
6 Typically, your containment team is going to be able to see.
7 A lot of these incidents occur like in a house like this one
8 did. So typically your containment is going to be able to
9 see the house. So they can give you immediate information
10 that you count on as being reliable.

11 GRAND JUROR: Then do you remember -- so you were
12 with -- is there a difference between a communication team
13 and a contact team?

14 THE WITNESS: Yes, yes.

15 GRAND JUROR: And --

16 THE WITNESS: So the contact team is kind of
17 another term that you would use for a custody team.

18 GRAND JUROR: Oh, okay.

19 THE WITNESS: It's essentially the same thing. I
20 guess another thing that I would throw out is I think you
21 asked if Officer Lovato and Officer Hertzler and Officer Dyk
22 were on the containment team.

23 GRAND JUROR: Yeah.

24 THE WITNESS: And I would say yes. But what I
25 talked about -- the officers are trained in these jobs, too.

1 The semantics of a custody team versus your initial --
2 remember I said part of the containment is your eyes on
3 team. So the semantics of your custody team versus your
4 eyes on team can get a little bit -- they can -- kind of one
5 can come -- become the other.

6 GRAND JUROR: Yeah.

7 THE WITNESS: A custody team can also be part of
8 your eyes on team. They can also serve as part of your
9 containment team. It's kind of getting into the weeds a
10 little bit.

11 GRAND JUROR: Yeah.

12 THE WITNESS: So I'm just -- for what that's
13 worth. You could say that early on in an incident like this
14 one -- you could say that your eyes on could very well be
15 part of your custody team. And you could -- it would also
16 be correct to say that your custody team is part of your
17 eyes on team for what that's worth.

18 GRAND JUROR: Then you were with the communication
19 team but was -- you said you weren't sure -- it was maybe --
20 who was giving the commands to Stanton?

21 THE WITNESS: I don't know. I think it was
22 Officer Lovato who was part of -- he was part of our initial
23 eyes on team which would have -- which I would say is part
24 of the containment piece. But he was -- I mean, he's 20
25 feet from the custody team so it's kind of semantics.

1 GRAND JUROR: Yeah. Do you know where Lovato
2 was when he was talking to him?

3 THE WITNESS: Yes.

4 GRAND JUROR: Giving commands.

5 THE WITNESS: I couldn't tell you -- yeah, I know
6 where he was. I could see him from where I was. Yes.

7 GRAND JUROR: Where was he in relation to the
8 house?

9 THE WITNESS: Oh, boy. Let's see. He was to the
10 -- it's probably easier just to describe it because I don't
11 know exactly what house he was in front of but he was to the
12 north of the house. He was on the east side of the street
13 and I would guess he was maybe two or three houses north of
14 the house where the incident occurred. And I was probably
15 like one house further north than that for what that's
16 worth.

17 GRAND JUROR: Was he -- I'm guessing he was just
18 using his voice --

19 THE WITNESS: Just loud -- yeah, clear voice.

20 GRAND JUROR: -- no (indiscernible). And he was
21 the only one giving orders?

22 THE WITNESS: If it was him, and I believe it was
23 him, he was the only one that I heard. Yes.

24 BY MS. NADELL:

25 Q Would that be pretty typical that only one officer

1 is giving the commands?

2 A That would be very typical. Yes.

3 Q Why is that?

4 A To avoid confusion. You know, imagine if 10
5 people are yelling at you to do something, inevitably,
6 they're going to say different things and you're going to be
7 confused. So the idea is you have one person communicating
8 and then they only have to listen to one thing.

9 Q I have a couple more questions based on some of
10 those questions.

11 A Yeah.

12 Q So in terms of the containment team, you've
13 described that as also kind of being the eyes on the scene.
14 Based on your training and experience, would you expect
15 members of the containment team to position themselves in a
16 manner that keeps them out of sight?

17 A Yes.

18 Q And why is that?

19 A Yeah. So you have kind of two -- I don't -- I'm
20 not going to remember the exact terms that our training
21 division uses. But it's like visible deployment where, if
22 I'm trying to keep you in your house, I can go stand in
23 front of your house and you can see me and I can, in theory,
24 contain you in the house. Right? Not a good strategy
25 necessarily if somebody is shooting a gun. Invisible

1 containment or invisible deployment would be the opposite.
2 Right? Like they can't see you. That's kind of the theory.

3 What happens in reality is kind of a combination
4 of the two because the reality is, generally speaking, for
5 me to be able to see you, you have to be able to see me. So
6 we tried to conceal ourselves as much as possible so that we
7 can't be seen generally but that's not always accomplished.
8 You're not always able to accomplish that.

9 Q Given that you and Officer Dyk are both rifle
10 operators -- well, first question, I guess, was anyone else
11 on scene a certified rifle operator as far as you recall?
12 If you recall.

13 A Yes. Officer Hertzler is a rifle operator. I
14 believe Officer Lovato is but I could be wrong. And I'm
15 certain there were more but I couldn't give you a list
16 though off the top of my head.

17 Q You know, when you were describing it earlier, you
18 sort of motioned to your uniform and that every officer
19 carries a pistol. Would it be fair to assume most officers
20 aren't carrying their rifles to every call they go to?

21 A No, no. Generally, Your rifle sits in your car in
22 a locking thing and you only bring it out on a call where it
23 seems like you might need it.

24 Q And so the next question is, was this the type of
25 call where you would expect --

1 A Yes.

2 Q -- rifle operators to take their rifle with them?

3 A Yes, absolutely. And, you know, to add to that
4 further, not every rifle operator is going to bring their
5 rifle out. I did not have mine with me because I have other
6 jobs that I need to do. That doesn't mean that I would
7 never take mine out but on this one, I knew that I had lots
8 of officers there who were rifle certified. So I did not --
9 I chose not to bring mine.

10 But yes, this is absolutely a call where you would
11 expect somebody who is certified with a rifle to potential
12 bring their rifle especially when you're talking about
13 putting somebody in a containment position where they're
14 going to be trying not to be seen. They're going to be a
15 long distance away.

16 You have somebody that's coming out on their porch
17 firing off a gun indiscriminately into a neighborhood. You
18 have to prepare yourself to use force in that situation if
19 you have to to prevent somebody else from being injured.
20 And the best tool for that in this scenario is a rifle.

21 Q So in terms of this particular incident, given
22 your role on scene as one of the sergeants, and based on
23 your training and experience, was it consistent with your
24 expectation and your training that Officer Dyk would have
25 brought his rifle with him as part of the containment team?

1 A Yes, it is my expectation that he does that.

2 Yes, absolutely.

3 Q Then in terms of your investigation of shootings
4 generally, and as a member of the Focus Intervention Team --
5 I mean, I don't know if you could even estimate how many
6 shooting investigations you've been a part of.

7 A A lot. I don't know. Hundreds if not thousands.

8 Q Does it -- I guess can you explain to the grand
9 jury how common or not common it may be that folks report
10 believing their homes or cars have been struck by bullets
11 and whether you actually recover evidence of that?

12 A I want to make sure I understand the question.

13 Q Sure.

14 A How common is it for us to recover evidence of
15 when houses are struck?

16 Q That maybe isn't the question I'm asking. I guess
17 when people report their homes or cars were struck by
18 bullets, do you always recover like a shell casing or --

19 A No.

20 Q -- find evidence of that?

21 A No.

22 Q And based in your training and experience then, is
23 that -- like if you -- if you don't find evidence of a
24 strike or a shell casing, does that lead you to believe a
25 strike didn't occur or can you really glean from that one

1 way or another? If that question makes sense.

2 A Yeah, no -- I think I understand what you're
3 getting at. You -- shootings happen all the time that we
4 collect no evidence of. It's a very common occurrence. I
5 think nationally, there are estimates that police
6 departments only capture something of like 20 percent of the
7 shootings that happen in the city.

8 And so, you can imagine if we have a thousand
9 shootings in a year, which we have more than that that we
10 actually capture, there's several thousand that we don't
11 capture because people don't report it. There's no
12 evidence. Whatever. Somebody hears something and they go
13 out and they look and they find no evidence.

14 Even the shootings that we capture, there are lots
15 of shootings that we will track and that we will investigate
16 where we locate no evidence. And an example of that would
17 be, you know, somebody coming outside hearing gunshots and
18 then seeing somebody shooting a gun down the street and then
19 calling 911. We show up and there's no evidence of a
20 shooting.

21 I mean, that's -- revolvers retain their casings.
22 People pick up casings. Bullet holes are really small and
23 they're hard to find, you know. Lots of reasons why we may
24 not find those things. It happens frequently.

25 Q And could the time of day you're searching for

1 evidence impact if you find anything?

2 A Yeah, absolutely. Yeah, when it's dark out, it's
3 hard to see things especially small -- this is small
4 evidence that you're looking for.

5 MS. NADELL: Are there other grand juror -- go
6 ahead, sir.

7 GRAND JUROR: Yeah. The person making contact,
8 you said Officer Lovato, is it standard for them to also be
9 doing that invisible deployment or are they trying to create
10 a visible contact with the person?

11 THE WITNESS: I would say it depends. Kind of
12 like I said, the invisible versus visible is kind of like a
13 theory thing. Right? It's like it's -- it's almost like a
14 whiteboard concept. What happens in reality is somewhere in
15 the middle simply because like -- kind of like I said, in
16 order for me to see you, you have to be able to see me.

17 So I'm certain that they were doing everything
18 that they could to not be seen because I'm certain that they
19 were also afraid of being shot. However, I would guess that
20 they probably were visible.

21 GRAND JUROR: Okay, cool.

22 GRAND JUROR: Were Officers Dyk and Hertzler in
23 communication at all as they moved up the street?

24 THE WITNESS: With me?

25 GRAND JUROR: Were they responding to questions or

1 broadcasting anything out?

2 THE WITNESS: Boy, I don't remember that. I mean,
3 everybody has got a radio. They had radios. They were
4 listening to the radio. I'm certain -- I mean, those are
5 questions you would have to ask them. But I would almost
6 guarantee they are in communication with each other.

7 There -- in an incident like that -- this was a
8 very fast-moving incident. There's a lot of radio traffic
9 and probably -- depending on what's happening at the moment,
10 there may not have been an opportunity for them to get out
11 on the radio at different times so I don't know if I could
12 give you a real good answer on that.

13 GRAND JUROR: Am I able to refer previous
14 testimony at all?

15 MS. NADELL: What I would suggest -- why don't you
16 ask the question and then we'll see what it is. Is that
17 fair?

18 GRAND JUROR: Okay. Yeah, sure. So let's see,
19 were you aware of like a plan made by the four officers at
20 the 106 address on how they would address the shooter before
21 they started moving up the street?

22 THE WITNESS: No.

23 GRAND JUROR: Was it common that if they kind of
24 made this plan amongst themselves, they were able to execute
25 it without letting anyone know?

1 THE WITNESS: Yeah. Yes. And in fact, I would
2 expect that they would do that. I do not want police
3 officers to show up and stand there and wait for me to tell
4 them everything to do. If that's what we have, we are going
5 to be in big trouble. I expect officers to understand the
6 concepts and know the concepts of how to respond to an
7 incident like this and then go there and carry that out.

8 GRAND JUROR: Yeah.

9 THE WITNESS: And I think that is -- so you know,
10 I had -- I didn't know that. I'm happy to hear that. I
11 expected that that had happened because at an appropriate
12 time, an officer started giving commands. Because the
13 reality is, I don't have time to tell every officer what to
14 do, you know. I expect them to know what -- know our goals,
15 know our concepts, and make good decisions.

16 GRAND JUROR: Sure. Just kind of gauging the
17 autonomy that they're afforded.

18 THE WITNESS: Yeah. I mean, you know, a
19 reasonable amount -- I -- as a supervisor, you want to
20 monitor and control an event. You want to be in charge of
21 big decisions. But the reality is is that you have to trust
22 your people, you have to train your people and you have to
23 hold them to high standards. And you have to give them the
24 autonomy to make decisions like that.

25 Because if every team that went out was calling me

1 and asking me, hey, what do you want me to do for this,
2 what do you want me to do for that, I wouldn't get anything
3 done and I wouldn't be able to make any big -- any bigger
4 decisions.

5 I wouldn't be able to help Sergeant Pool make any
6 bigger decisions because we'd be bogged down with all of
7 these things. And that's why we train. That's why we
8 practice so that officers can go and they can make those
9 decisions.

10 BY MS. NADELL:

11 Q And I guess, just to follow up on that, so fair to
12 say use of force tactics, use of deadly force, when to use
13 it, when not to use it, is that all covered in bureau
14 training?

15 A Yes, yes. And again, that is something that --
16 those are independent decisions that officers based on their
17 training. And that is -- that's how -- in my opinion, that
18 is how you -- how it has to be. Because like I said, I
19 can't -- we just don't have the capacity for somebody to
20 call me for every decision that they make. You have to --
21 that's why you have -- that's why you hire good people.

22 Q And I guess, I mean to be fair or is it fair to
23 say that -- I mean, an officer could be by themselves on,
24 say, pulled someone over to issue a traffic citation and
25 that could escalate to a dangerous situation similar to

1 something where you've dispatched 20 officers. Correct?

2 I mean, it's sort of the --

3 A Absolutely.

4 Q Is it the unknown of how a situation --

5 A Yes.

6 Q -- could develop that is part of the reason
7 officers have the autonomy to make decisions for themselves?

8 A Yeah. And I think the community expects it. I
9 think the expectation is that if you call the police because
10 you're getting beat with a baseball bat by somebody and a
11 police officer shows up, you expect that officer to
12 intervene.

13 I mean, I think everybody would be pretty upset if
14 an officer showed up and they didn't intervene. That's the
15 whole purpose. If that officer shows up and has to call me
16 before they can stop this guy from beating you with a
17 baseball bat, then we've failed.

18 MS. NADELL: Did we go through the rest of your
19 questions?

20 GRAND JUROR: Yes, I think so.

21 MS. NADELL: Well, keep double --

22 GRAND JUROR: Yeah.

23 MS. NADELL: -- checking. I know you had your
24 hand up, too.

25 GRAND JUROR: I got a couple, I think.

1 MS. NADELL: Go ahead.

2 GRAND JUROR: So one is your radios. Point-to-
3 point or broadcast only?

4 THE WITNESS: I'm not sure I'm following the --

5 GRAND JUROR: Could Hertzler and Dyk have been
6 speaking to each other without everybody hearing?

7 THE WITNESS: Oh, got you. No, no. Everybody
8 would hear it.

9 GRAND JUROR: Perfect. Thank you.

10 THE WITNESS: I mean, I guess they could use their
11 cellphones. But no, it's -- everybody hears it.

12 GRAND JUROR: Certified rifle operator. In your
13 experience, what is the focus of that training? Is it
14 marksmanship only? Is it --

15 THE WITNESS: No.

16 GRAND JUROR: -- target selection?

17 THE WITNESS: It is use of force decision-making.
18 The marksmanship is -- that's the easy piece. I can teach
19 anybody to shoot a rifle and hit what they're aiming at.
20 It's the decision-making. And a lot of times it is -- it's
21 a deadly force option and so in our policy, you can use
22 deadly force to protect yourself from death or serious
23 physical injury, but also to protect somebody else from
24 death or serious physical injury.

25 And so, the rifle training concentrates -- it

1 biases towards the protection of a third person. So if
2 somebody is trying to shoot you and so I am trying to
3 protect you by using deadly force against this person. That
4 is where it's focused. Scenario-based decision-making, use
5 of force training.

6 GRAND JUROR: Great, thank you.

7 MS. NADELL: Yeah. Just very quickly.

8 GRAND JUROR: Yeah.

9 MS. NADELL: And you testified earlier that the --
10 not every officer gets the rifle operator training.
11 Correct? I mean, that's an enhanced certification.

12 THE WITNESS: Correct.

13 MS. NADELL: Thank you. Go ahead, sir.

14 GRAND JUROR: Based on where Mr. Stanton was
15 struck, would that be kind of consistent with training in
16 terms of like --

17 THE WITNESS: Yeah. I'll --

18 GRAND JUROR: -- where to shoot?

19 THE WITNESS: -- be honest, I don't even know
20 where he was struck.

21 MS. NADELL: Well, let me --

22 THE WITNESS: We go to these things and you get
23 your detective interview and you can't talk about it. You
24 guys know way more about this thing than I do.

25 MS. NADELL: Are you trained -- let me -- if I

1 could try to ask the question.

2 GRAND JUROR: Yeah. Of course.

3 MS. NADELL: Are you -- do you receive training
4 about if you have to employ deadly force, fire your weapon,
5 are you trained to aim where you would cause someone's death
6 or just injure them?

7 THE WITNESS: No. You are trained to aim center
8 mass. Which -- right -- so this is -- I'm a mass. You are
9 trained to aim at the center of the mass because while our
10 training focuses heavily on the decision-making -- anybody
11 can learn to shoot a rifle -- it is still hard to hit a
12 moving target. And people do not just stand still typically
13 speaking. So we are trained to aim center mass.

14 GRAND JUROR: Got you.

15 MS. NADELL: Did that answer your question?

16 GRAND JUROR: Yes, yeah.

17 MS. NADELL: Any other questions? I see none.

18 All right. Thank you so much, Sergeant. You can step out.
19 And why don't we take -- go off the record. Take our
20 morning break.

21 (Off the record.)

22 (On the record.)

23 MS. NADELL: We are back from our morning break on
24 the same death investigation case with Officer Lovato. Go
25 ahead and be sworn in.

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DOMINIC LOVATO

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

DIRECT EXAMINATION

BY MS. NADELL:

Q Can you state and spell your first and last name?

A Sure. My name is Dominic Lovato. My first name is spelled D-o-m-i-n-i-c. Lovato is L-o-v-a-t-o.

Q And how are you employed?

A I'm a Portland police officer.

Q And how long have you been a Portland police officer?

A Since May of 2008. So 14 and 1/2 years-ish.

Q And are you assigned to a particular team or precinct?

A Yes. Currently, I'm assigned to FIT which is the Focused Intervention Team. It's Portland's latest generation of kind of a gun violence reduction team you might think of it as. Yeah.

Q We heard some testimony earlier about the Focused Intervention Team. Can you describe -- well, how long have you been a member of that team?

A Since its inception in January of this year. So almost a year.

Q And my understanding is FIT or Focused

1 Intervention Team responds to shooting investigations?

2 A Yeah. That's one of our responsibilities.

3 Correct?

4 Q And also tries to curb gun violence in the city?

5 A We do.

6 Q What can you tell us about the intervention part
7 of that team's name in terms of responding to a shooting
8 call or an active shooting investigation?

9 A So if there's a shooting call, we'll assess to see
10 if it falls within our purview. And by that, I mean, to
11 make sure it's not a robbery or a shooting that's domestic-
12 violence related. If that's the case, then that goes to
13 those respective investigative units. If not, generally, we
14 take it.

15 Sometimes we'll take it even if it is a robbery or
16 a DV because they don't have people to send out or whatever.
17 And if we're out on patrol, then it makes sense that we kind
18 of pick up that investigation.

19 But we'll respond to the scene. We'll diagram the
20 scene. We'll take DNA from any casings, collect evidence.
21 We'll -- at the direction of detectives if they come out
22 with us, we'll interview witnesses. We typically don't
23 interview victims because that's a detective thing.

24 We might do an initial interview with a victim.
25 Like say at the hospital. To kind of gauge their level of

1 cooperation which oftentimes they're not. Because in the
2 world of repeat shooters, you know, today's victim is
3 yesterday's suspect and it's kind of a vicious cycle.

4 We'll collect video surveillance from Ring
5 cameras. That sort of thing. And we kind of try to package
6 it up so that if it gets assigned to a detective as a
7 follow-up, they can kind of hit the ground running.

8 Q I may have some more questions about that later.
9 But turning to this particular investigation, were you
10 working the evening of July 27th of 2022?

11 A I was.

12 Q And as a member of the FIT team?

13 A Correct.

14 Q Did you respond to a shooting investigation call
15 in Southeast Portland off of 126th Avenue?

16 A We did. So that's kind of different than what I
17 explained. What I explained prior was kind of a shooting
18 that's completed and the scene is culled. Right? It's not
19 active. There's no outstanding threats to anyone. All
20 suspects have been accounted for type of thing. Like what
21 you think of as a cold incident.

22 So this was active. That evening, our team -- we
23 were eating lunch at a nearby rest stop and a call comes
24 out. I believe someone had texted Sergeant Townley. I
25 believe it was Officer Wuthrich (ph.) saying, hey, do you

1 hear this call coming out. Because we are all eating. We
2 are kind of eating, talking to each other. We're not
3 necessarily keyed in on what's going on on the radio because
4 we're not -- as our unit, we are not married to any precinct
5 or district. We're not responsible for patrol calls. That
6 isn't to say we don't go to them but it's not our primary
7 responsibility.

8 So we kind of pulled the throttles back. We're
9 eating -- we weren't necessarily fully aware of what was
10 going on in East. So Officer Wuthrich text Townley, like,
11 hey, do you hear this. So we all kind of switch our radios
12 over to East. And there's a call currently happening now in
13 progress. Multiple callers. And this is what dispatch is
14 saying over the radio. There's multiple callers about a
15 person firing shots off into the air, five or six callers.
16 And dispatch kind of had a sense of urgency in her voice.

17 We -- there's literally over a thousand shooting
18 calls in Portland each year as of lately. Not all of them
19 garner the attention from dispatch or from cops but this one
20 did. So it just had a different sense of urgency to the
21 call. We thought, oh, wow. There's a bunch of callers on
22 this. This is probably worth going to so everyone decides,
23 hey, pack your lunch, let's go. So I was riding with
24 Officer Gabri Hertzler that day. Pack up our lunch, get
25 into our FIU. I was driving, he was --

1 Q What's an FIU?

2 A What is it? Ford Intercept Unit. I don't know
3 what it stands for. But it's the Explorer.

4 Q Like an SUV?

5 A Yeah. It's the Explorer that you see us all
6 drive. Ours is unmarked, it's like silver and color. No
7 visible light bars but you turn it on and it's got the head
8 and lights and stuff like this.

9 We turn the radio to East, start listening. And
10 it's more of the same. Hey, multiple callers saying that
11 there's a person out on their front porch firing shots into
12 the air. So we're talking -- on our way there, we are
13 talking about how we're going to respond to this. We were
14 very close. We were 102 and Sacramento so just -- 102 north
15 of Halsey-ish. And the incident location was basically 126
16 and Burnside. So we're pretty close.

17 And we anticipate that we'll be involved in one
18 way or another given our proximity to the incident location.
19 So we're going. As we're headed there, someone calls out
20 says, hey, we're going to stage at 102 and Burnside. One of
21 the patrol units in East that's responsible for this call.
22 And staging is where you meet up away from the incident
23 location to come up with a plan. And typically, you assign
24 roles and come up with a rough outline of how you want to
25 proceed forward with the call.

1 So we are on our way to staging and we're
2 talking about different contingencies. Would you like me to
3 talk about the contingencies if we --

4 Q Yeah. If that's part of what you guys discussed
5 day, please.

6 A Yeah. So we're going there and we -- the call is
7 shots are being fired into the air and so we're talking
8 about how -- what we're going to do if we get there and
9 shots are fired into the air. So what we arrive on is if
10 the person is shooting shots into the air, not leveling it
11 out at the community, then our plan is to use distance and
12 cover. Cover meaning something that will stop bullets.

13 So we want to be far enough away from this person
14 and behind something that stops bullets so we're not
15 exposing ourselves creating this environment where now we
16 feel we have to shoot at this guy because we made a bad
17 decision in terms of our position. Right?

18 So we are talking about if we have cover and
19 distance and this person is shooting into the air, that's
20 something we're willing to tolerate so that we would
21 challenge him. Meaning we would identify ourselves as
22 Portland police and give him commands to put the gun down.
23 We said that that was our comfort level. None of us -- you
24 know, we felt we were willing to shoulder a certain amount
25 of threat of harm to ourselves in order to avoid having to

1 use force on this person that's pointing a gun into the
2 air shooting.

3 Q Can I ask you a question about that?

4 A Yes.

5 Q You're saying we. I mean, was that just you and
6 Hertzler or was that --

7 A That was just me and Hertzler in the car on the
8 way to the staging location --

9 Q Got it. Okay.

10 A -- at 122 and Burn. So it's a conversation --
11 it's only happening between us.

12 Q Go ahead.

13 A We decided, well, if we get there and the person
14 levels the gun either at us or out into the community at a
15 house or something, that we would probably use deadly force
16 because there's just no telling where that bullet is going.
17 Typically, on a call like this, we would -- you would want
18 to initiate reverse 911 which is where 911 calls the
19 surrounding locations and says hey, shelter in place;
20 there's police activity going on, get to the back of your
21 house. I'm not exactly sure what dispatch tells people but
22 something to that effect.

23 But bullets travel through houses and can kill
24 people so we thought that's where our kind of threshold was
25 to use deadly force but that we still wanted -- if we had

1 distance and cover -- we understood it to be a handgun.
2 Handguns aren't as accurate as, say, like a rifle for
3 instance, something you use two hands to hold. And if we
4 had enough distance, that we may let him level it and us
5 still identify ourselves as Portland police from behind
6 cover. Like hey, Portland police, you know, drop the gun.

7 But if he points it at the direction of a house,
8 that's different because then we have a responsibility
9 potentially to that third party to protect them what we
10 perceive to be -- what we reasonably believe to be the
11 immediate threat of death or serious physical injury which
12 he creates by pointing a gun at a house and then shooting.

13 Q And on the drive there -- I'm sorry. Just to
14 interrupt very quickly. You said you -- the information you
15 had on the drive there was that it was a handgun only. Is
16 that correct?

17 A I believe. Yeah. Yeah, firing a handgun into the
18 air. That's the information we had. And that's the
19 information --

20 Q Got it.

21 A -- we were working off of. So that's where we
22 landed with our plan was use distance and cover to keep us
23 safe, identify ourselves as Portland police, give him a
24 chance to surrender if rounds are being fired into the air.
25 If he pointed it at us, we wouldn't expose ourselves as

1 targets. We'd still identify ourselves and give him a
2 chance to surrender. If he pointed it out into the
3 community, we were going to use deadly force. That's where
4 we landed with our plan.

5 So we get to 122 and Burn, the staging area. And
6 I'm not exactly sure what occurred there but -- I don't know
7 if we got there late and the patrol officers from East had
8 already made their plan and were executing that plan or if
9 they just staged there and kind of had a tacit plan. I
10 don't know. But we got there and people were leaving from
11 122 and Burn. They're now traveling -- there's a conga line
12 of patrol cars going east toward this call location which I
13 think was on Southeast 126.

14 So we follow this group of patrol cars. We get to
15 the intersection of Burnside and 126 and cars start
16 stopping. Some officers start running south down 126 toward
17 the incident location. My assumption was that was that eyes
18 on team. So one of the ways we train to address critical
19 incidents, which this would be one, is to get containment on
20 a location. The first part of that containment is typically
21 what we call eyes on.

22 So we want officers to deploy to an invisible
23 location. Ideally, they'd be invisible. Not -- so that
24 they can't be targeted by the suspect. So that they can
25 give us first-hand, unfiltered information in real time as

1 opposed to a caller, you know, talking to a call taker.
2 That call taker messages a dispatcher, the dispatcher sends
3 it out to us. So we're not playing this telephone game. We
4 want real-time info firsthand from a police officer. I
5 assumed that's what they were doing.

6 Q Do you recall who you saw running?

7 A I believe it was Officer Pavon and Officer Piombo
8 (ph.). They were running south. So I get out of our FIU.
9 Officer Hertzler is getting his rifle out, making it ready.
10 And behind us was Sergeant -- now Lieutenant Stensgard who
11 was part of our detached FIT program. So he's not assigned
12 to FIT full time but he does it kind of as an extra duty.

13 So I'm getting a ballistic shield out of the back
14 of our car. It's probably three feet by two feet. It's
15 black. It's made of some synthetic material. It will stop
16 rounds from a firearm. I'm getting that as an added layer
17 of protection because I'm thinking me and Gabe Hertzler are
18 going to execute this plan we talked about.

19 But Sergeant Stensgard says, hey, follow those
20 guys with the shield. So I was like, okay, great. No
21 problem. So me and Officer Hertzler then become split up at
22 that moment. So I start running behind officers -- well, in
23 the direction I saw Piombo and Pavon running. They had
24 taken up a position on the east side of 126, a few houses
25 south of Burnside.

1 Q And I'm going to pull up a map here and see if
2 you can identify where you took up position. Let me get to
3 that. The house numbers are quite small on this but --

4 A Yeah. You know, I can't say with 100 percent
5 certainty.

6 Q If you have a general --

7 A I want to say -- I haven't gone back to that scene
8 and walked it through. Had -- if I went there, I could tell
9 you. I want to believe it was 106 because of the
10 positioning of the driveway.

11 Q And did Officer Hertzler then continue south from
12 that location?

13 A Not at that moment.

14 Q Not at that moment. Okay.

15 A He stayed back at the car. I don't know what --

16 Q Fair enough.

17 A -- occurred with him but he didn't come with me.
18 So I get to what I think is 106. There was a white Dodge
19 Caravan or maybe a Chrysler Voyager. Whatever. A white
20 minivan. And Piombo and Pavon had both positioned
21 themselves with rifles facing south. Toward the incident
22 location, Officer Wambold (ph.) was there. He had a pair of
23 binos out. And then, Officer John Bartlett, who is also
24 assigned to FIT, showed up with a 40mm less-lethal launcher.

25 Q What is that?

1 A It's a less-than lethal tool. It fires like a
2 40mm sponge round. It's used against people that -- I mean,
3 our force standard has changed. But in layperson's terms,
4 someone that is showing the intent to use physical force
5 against someone, for instance, would be a reason to use a
6 40mm against that person. It's a pain-compliance tool. I
7 have not been trained in it. I'm not a 40mm operator. My
8 understanding is it's like being hit by a fastball. So it
9 relies on some pain compliance to get you to change your
10 behavior.

11 Q So at your position, you had two officers with
12 rifles. One officer with the 40 and then you were there
13 with your shield.

14 A Yes. And an officer with binos was there, as
15 well. Officer --

16 Q What is binos?

17 A Binoculars.

18 Q Binoculars. Okay.

19 A So I get there. I don't have another job. So I
20 think, hey, we need to come up with a plan as to how we're
21 going to act as a team. So I essentially relayed the same
22 plan to those officers in terms of what I was willing to
23 tolerate on behalf of the suspect.

24 And I was like, is everyone okay with that.
25 Everyone acknowledged that they were okay with it. And I

1 said, hey, you know -- I made a point to say if he -- if
2 he's compliant, I'm going to tell him to put the gun down
3 slowly just so everyone knew to expect him to be lowering
4 the gun. Because if I'm facing you and I have a gun in the
5 air and then you tell me to put it down, at some point, it's
6 probably going to be pointed at you. I didn't want any
7 confusion. I wanted people to expect that, at least
8 briefly, a gun might be pointed at us in the suspect's
9 attempt to comply with our orders.

10 Q A question about that. Was that communicated on
11 the radio, too or --

12 A Both, yeah. After the fact. After we had
13 established our plan, that was communicated.

14 Q Go ahead.

15 A As I was confirming with everyone, I wanted
16 positive confirmation from every officer that they
17 understood the plan and agreed with it because I didn't want
18 to force into a situation where they weren't comfortable --
19 Pavon actually finished my sentence for me.

20 I was like, hey, and if he points it at us, he
21 says I'm going to shoot him. I said okay. Like, it's not
22 my role as an officer to tell someone when to use deadly
23 force. I mean, I guess I can say deadly force is authorized
24 by the letter of the law and policy but I can't tell you to
25 make that choice.

1 Q It's an individual decision --

2 A It's an individual decision.

3 Q -- for the officer.

4 A Officers have that discretion. And they use that
5 discretion on a daily basis. So --

6 Q Can I ask you question?

7 A Sure.

8 Q When Officer Pavon finished your sentence for you
9 in that way, based on your training and experience as a
10 Portland police officer, your training and use of force, use
11 of deadly force, I mean, did that -- did what he was telling
12 you his plan was kind of -- did it surprise you or was it
13 consistent with your training and experience?

14 A It did not at all surprise me. It's consistent
15 with our training, with policy. Certainly, with his level
16 of experience and mine, Officer Pavon, I think, is at least
17 a 10-year officer. So this is likely a scenario with which
18 he would be familiar or has encountered or has run in his
19 head ahead of time to be prepared for an event like this.

20 Q And based on -- let me think how to ask this.

21 A Can I add something to that?

22 Q Absolutely. While I'm thinking here.

23 A And also, he's a rifle operator. I've been
24 through that same course. I've helped instruct that course.
25 There is -- so part of that rifle operator's course is a

1 marksmanship. Like can you hit what you're aiming at.
2 And the other portion is a decision-making course where it's
3 like, we throw difficult scenarios at you to -- so that your
4 brain engages in this problem solving and you have answers
5 to similar situations down the road. And it makes people
6 articulate their use of force decisions so that they are
7 able to navigate tricky deadly force encounters.

8 And there's a situation used in that course that
9 is very similar in nature to this one and that there's a
10 weapon involved. It's fired and you don't necessarily get a
11 look at the victim that this person -- basically, you're
12 giving a short window to make a force decision in defense of
13 a third party and then they disappear from view. So at
14 least as it pertains to that training, I'm -- I'd be almost
15 certain that he has faced similar decision-making problems.

16 Q And I guess, since you are -- you've gone through
17 rifle operating course and I assume you're up to date on all
18 trainings required by the bureau.

19 A Yes.

20 Q Is there any sort of -- does training cover sort
21 of -- if someone levels a firearm at an officer, is -- does
22 a shot need to be fired before an officer responds at least
23 based on what you've learned in the training?

24 A No. Training policy --

25 Q Like where does the -- at what point is that a

1 threat, I guess, under training?

2 A I would say the moment an officer reasonably
3 believes that that weapon is going to be pointed at them. I
4 think an -- most officers could articulate that they
5 reasonably believe that to be the immediate threat of death
6 or serious physical injury which is the threshold in our
7 policy that you have to meet in order to use deadly force.

8 Q Do you -- are you actually trained in bureau
9 trainings that a firearm pointed at someone is a threat
10 before the firearm is actually fired?

11 A Correct, yes. Yeah, you certainly don't have to
12 wait for a shot to be fired. You don't have to wait for
13 someone to use force either, you know, deadly or less than
14 deadly force, on you in order to defend yourself against
15 what you reasonably believe to be that.

16 Q So I got us on a tangent and I apologize.

17 A Yeah. No problem.

18 Q So Officer Pavon finishes your sentence.

19 A Yes.

20 Q Then what happens next?

21 A So he finishes my sentence. I get confirmation
22 from everyone that they understand the plan.

23 Q Is that at that point then when it's dispatched or
24 sent over the radio that this is the plan?

25 A Not yet. Not yet. At that point, Officer

1 Gabri Hertzler and Josh Dyk appear from behind me. So
2 they seemingly had run south down 126 also. We had a brief
3 conversation. They told us, hey, we're going to go get eyes
4 on.

5 And then I see them disappear from view to what I
6 believe is going to be -- they're going to be hopping
7 through backyards so that they can kind of remain undetected
8 by the person with the gun and arrive at a spot that's
9 closer where they can get better information. In the event
10 that they have to fire a shot, they're closer, which
11 provides an added benefit of being able to fire more
12 accurate rounds.

13 So it's my understanding they're going to go get
14 eyes on down 126. I don't know exactly where they end up.
15 Still don't know. But I see them headed south through some
16 backyards. They -- it was either right before or right
17 after they said that we're -- we have eyes on -- actually,
18 they're making their way down there. The suspect comes out.
19 Wambold has his binos up. Like, hey, there's movement.

20 And it was during the summer. It was still light
21 out. And there was a glass storm door. So you know like
22 you open a storm door, you get glare. Like you can kind of
23 see movement. You can't really see exactly what's going on.
24 Like, I could see movement, I could see glare of the storm
25 door opening. And a male comes out. There's a small child,

1 long, dark hair, with them. Comes out.

2 I yell, hey, it's Portland police. Put the gun
3 down slowly. Come out to the street. Get some force
4 warnings out like, hey, we don't want to use force on you
5 but if you don't do exactly as we say, we may use force on
6 you. He yells, suck my dick. The only reason I know that
7 is because Hertzler gets on the radio and -- presumably,
8 he's in closer proximity down the street like I was talking
9 about. Gets on the radio, says, hey, he suck his dick.
10 Raises a gun in the air, fires five or six shots.

11 We get on the air. I think it might have been
12 Pavon or someone is like, hey, they're shooting into the
13 air. I remember my partner is like, hey, I'll get the
14 radio. You guys concentrate on what you're doing. I'm
15 going to -- I wanted to free up their mental capacity to
16 concentrate on whether or not they were going to use a force
17 decision. I didn't want them on the radio.

18 So I get on the radio. I tell people, hey, this
19 guy fired shots into the air. This is where we're at on our
20 force decision-making -- I said, hey, if they -- if this guy
21 points it in the air and fires off rounds, we're willing to
22 tolerate that. If he levels the gun out in the community or
23 toward officers -- what I said on the radio was like, we're
24 going to do whatever we think is reasonable just because I
25 didn't want people thinking that I was the IC and had made a

1 force decision decision. Does that make sense? I didn't
2 want to think that if someone shot, that it was under my
3 order.

4 For the officers, they would have understood that
5 whoever -- you know, that we had planned -- we had talked
6 about things. We had run some contingencies because this is
7 all part of our training and that whoever the less lethals
8 were had arrived at the decision that that was a reasonable
9 decision; that they were going to use force.

10 So I get that out over the air. So there's more
11 movement at the front door. They may have disappeared. I
12 think they went back into the house because Wambold is like,
13 hey, they want back into the house. Some time passes. They
14 come back out. I start to yell again, Portland police. And
15 I -- really loud, booming voice.

16 Like I'm certain they're hearing me. I knew he
17 heard me because he responded with the profanity the first
18 time. So at this point, I'm thinking, all right, this guy
19 is willfully ignoring our lawful orders and he's making a
20 decision to do what he's going to do in spite knowing the
21 police are there.

22 Q Can I ask you a question about that?

23 A Yes.

24 Q So are you on a microphone or just --

25 A No.

1 Q -- using your voice?

2 A Just using my voice.

3 Q And are you -- at the points you're giving
4 commands, is there also gunfire happening or like --

5 A Not simultaneously. So they pop back out a second
6 time. I start to give commands. And Wambold is like, hey,
7 a gun is coming up. And -- so the first time he fired, it
8 was like straight up in the air like this. Then the second
9 time it was kind of more like at (indiscernible) 45. Fires
10 some rounds off. Not responding to our direction to come
11 out on the street, put the gun down slowly.

12 So we're getting on the radio -- we're getting on
13 radio saying all of this. So some time passes. We're still
14 yelling to no effect but it's -- I'm not exposing myself to
15 anymore danger so I don't see a downside of continuing to
16 try and give this person commands, give him a chance to
17 surrender.

18 So I'm yelling. There's a conversation between me
19 and the airplane because we had an airplane circling
20 overhead. And there was trees in the neighborhood. So the
21 plane is like trying to key in on where this is. At some
22 point, I'm describing the house. Like, hey, there's a
23 person in a driveway.

24 So I'm guessing it was one of the callers that was
25 in a driveway to the south of where the suspect was that's

1 kind of walking out watching this guy shoot rounds off of
2 his front porch, which I thought was -- I found that odd.
3 Like this guy felt comfortable enough to be wandering out in
4 the driveway while this person is firing off rounds. But it
5 got mentioned like, hey, is it -- I think it's one north to
6 where this guy. So we're -- so that me and the plane are --
7 we're all on the same sheet music as to where the call
8 location was.

9 So then, like he's standing at the door. From our
10 view, you would -- what you would think of as broadside.
11 Right? Like we could see his complete profile. Like I am
12 to you. But then he starts to turn because I -- I can see
13 his profile go from broad to thinner. And he's turning
14 toward us. And I duck down. I can -- he's leveling the gun
15 toward us as I duck down. And I'm expecting one of our
16 officers to shoot because that was kind of where our
17 threshold was.

18 Q Just based on how you saw the gun leveling, you
19 thought it was at that point?

20 A Yes. I believed he was pointing it at us and was
21 going to fire at us. So I was expecting one of our rifle
22 operators to respond to that with deadly force by shooting
23 him.

24 That didn't happen. A round cracked off. He shot
25 a round. And I look around and we're all ducking which is

1 completely -- that's human reaction. If someone points a
2 gun, you think you're going to shot. You're going to duck.

3 So I'm looking around. I'm like, okay. Lino, are
4 you okay. I ask Lino if everyone is okay. Everyone is
5 okay. So then we kind of peek up. None of us -- we're all
6 okay so we're kind of peeking out behind the car. Then I
7 see he's back broad side like I am to.

8 Then he levels the gun like he's pointing straight
9 across the street. I don't know if he saw -- that's where I
10 assumed Officer Dyk and Officer Hertzler were. I don't know
11 if he saw them or if he was just pointing it at a house. I
12 don't know.

13 But the gun was leveled. Then I see him drop.
14 And I thought well, that's weird because I didn't hear any
15 gunshots. And I thought to myself, like, did I miss
16 something. Did I blink and did he shoot himself. But then
17 I realized I had my helmet on and it's got ear protection so
18 it's got active hearing protection on it so that it -- at a
19 certain decibel level, it cuts out and protects you from
20 losing -- from loud noises. So I hear someone on the radio
21 say shot fired.

22 Q And what does that mean to you?

23 A To me, it means an officer has fired a shot at
24 someone. So then, it was -- it took me a moment because
25 there was dissonance between what I was saying and what was

1 going on on the radio because I didn't hear a shot. I
2 just see this person drop. So it was weird to process.

3 So shot fired goes out over the radio. Then
4 Officer Bartlett and the other officers that I was with
5 start running down towards the location. I'm thinking to
6 render medical aid. So I follow in along behind them.

7 As we're running down there, I see Officer Dyk
8 kind of appear from across the street. And we're all up on
9 the porch. The little girl is there. Officer Romick
10 immediately grabs her, removes her from the scene. And I
11 asked -- like Josh is about to get -- Officer Dyk is about
12 to get in on the handcuff -- I'm like, hey, did you shoot.
13 And he's like, yes, I shot.

14 So I'm also an executive board member for the PPA
15 so I represent members in various capacities. And I'm
16 familiar with our post-shooting protocol, which is that if
17 you're involved, if you're an officer that was involved in a
18 deadly force incident, you should be extracted from that
19 situation if it's tactically feasible which it was because
20 we had at least four or five other sets of hands there.

21 So I tell Josh -- I was like, hey, we got to get
22 you out of here. I gave him his admonishment which is part
23 of our policy. Like hey, don't talk to anybody about this,
24 about what you just did, any decisions you made, you know,
25 observations. Don't talk about any of it. We're going to

1 sequester him. I told him what to expect. Like, hey,
2 we're going to put you in a car with someone. You can talk
3 to him about anything that doesn't involve this. Don't
4 disclose any details of your use of deadly force.

5 So I'm kind of walking Josh away from the scene.
6 I believe Sergeant Stensgard was walking toward us. I was
7 like, hey, he shot. We need to get him separated. Then I
8 wasn't sure of Officer Hertzler's role. And I was like,
9 hey, did you shoot. And he told me that like, he was
10 knocking on a house and telling them to get to the back of
11 their house or something. He was telling people basically
12 to shelter in place. What had happened -- I was like, okay.

13 We made -- Stensgard and I made sure that Josh got
14 put in a patrol car and I -- he was with someone like --
15 it's practice to put them with another officer to make sure
16 that they're not talking about the incident by phone or text
17 or whatever. But also, so that they have a peer support
18 person there. Because this is an extremely traumatic event
19 for everyone involved.

20 So we get him sequestered in a car. Some other
21 officers are rendering medical aid. AMR was there in a
22 pretty quick fashion. It's my belief that they were already
23 staged. I don't know that. But I would guess by their
24 timeliness that they were parked nearby ready to come in
25 when we called for them.

1 Then after that, it was kind of just all the
2 post-shooting stuff, getting everyone separated, identifying
3 who is a witness, who is involved per policy. So we kind of
4 started that whole process. Then everyone got separated. I
5 was identified as a witness officer so I ended up sitting in
6 a car with another peer support member kind of juggling my
7 PPA duties until enough PPA representatives showed up. And
8 then --

9 Q Just so that the record is clear, what is PPA?

10 A The Portland Police Association. On a deadly
11 force incident, the PPA sends out representatives to rep
12 witnesses and the interviews that occur immediately
13 afterward. Then also because if you're involved, then we
14 have legal counsel that shows up. So there's some
15 Association business that occurs -- that has to occur on
16 officer-involved shootings that requires additional help
17 apart from the two full-time staff we have.

18 So once all of that got dialed in, I sat with
19 Officer Wuthrich and then eventually I was interviewed at
20 East Precinct by Detective Sims. And I basically told him
21 what I told you guys.

22 Q Can I ask a couple follow-up questions?

23 A Please do.

24 Q So you mentioned that when you went up to the
25 residence after the subject had been shot, there was a

1 little girl. Was that the first you became aware of her
2 presence?

3 A No. I suppose I skipped over that. She was there
4 the entire time. At one point, the door opened and she was
5 out there and then he came out. But she was there for the
6 entirety of the incident.

7 Q Were you hearing that through Officer Womble who
8 had the binoculars or could you see her, too?

9 A I could definitely see her. It appeared to me
10 that she was a little girl. Like I said, she was obviously
11 short and had long, black hair.

12 Q How, if at all, did her presence assess your
13 decision-making, your thoughts about the situation?

14 A You know, I was concerned. Is this a hostage
15 situation. I assumed it was his daughter. I had no
16 information from dispatch or otherwise to suggest that.
17 That was just what I assumed and kind of by the body
18 language maybe. So I was like, okay, is this a hostage
19 thing. It didn't appear to be. I never saw a firearm
20 pointed toward her. I never saw anything that led me to
21 believe that she was in danger by the suspect.

22 Q And then, am I understanding correctly that you
23 gave verbal commands at two different times?

24 A Um-hum. Yeah. Both when he came out -- before
25 shots were fired and then also after shots were fired, I

1 gave commands from behind cover.

2 Q And is it your belief, as you testify here today,
3 that he was able to hear you --

4 A Yes.

5 Q -- from your vantage point?

6 A Yes. Certainly at least from the first set of
7 commands I gave because he responded, suck my dick, which
8 was relayed to me through Officer Hertzler that was closer
9 to the location who could hear him.

10 Q And from what you observed, did the subject seem
11 to make any effort to comply with your commands?

12 A None that I saw.

13 Q For either time you gave them?

14 A No.

15 Q Did he ever look to be -- try to drop the weapon,
16 for example?

17 A No.

18 Q Or communicate verbally any desire to talk to the
19 police, give up, surrender, say I'm not a threat, anything
20 like that.

21 A No. There was no effort on his part to
22 communicate with us other than telling us to suck his dick.

23 Q Then you described seeing the firearm become level
24 and pointed in the direction where you were. Is that
25 correct?

1 A Um-hum. So he faced -- well, edged toward us I
2 guess you might think about it. Then he starts to lower the
3 gun. I wasn't going to stick around and see if he was going
4 to shoot it at me. It was my assumption that he was
5 completing that movement. So I ducked behind the minivan
6 and heard a shot.

7 Q And did other officers duck, too? It sounded like
8 you said they did.

9 A Indeed, yes. Because I looked around -- that's
10 the time where I expected one of the rifle operators was
11 going to shoot him. But no one did because we react as
12 humans and we all ducked when we saw this gun being pointed
13 at us.

14 Q Got it. And then, if I understood you correctly,
15 you -- after that occurred, then you saw him lower the gun a
16 second time?

17 A Yeah. So some time passes. So you build some
18 courage to peek out from behind cover again. So I'm kind of
19 peeking out and after a moment or two, he levels the gun to
20 across the street. So if he's on the west -- his house is
21 on the west side of 126th. It would be pointed across to
22 the east side. Then I saw him drop. Like I said, I didn't
23 hear a gunshot. Maybe it was because my activators or
24 something. But I didn't hear a gunshot.

25 Q And going back to the Focus Intervention Team for

1 a moment, you've described what your team does how you
2 investigate shootings. The word intervention in the context
3 of this scenario, is there either an expectation of the team
4 or a commitment to intervene in this sort of scenario more
5 than what you did? I'm really asking you to apply the
6 intervention part of FIT --

7 A This --

8 Q -- to this set of circumstances and explain that a
9 little bit for the grand jury.

10 A So I would say this has nothing to do with our
11 duties as the Focused Intervention Team and everything to do
12 with our roles as police officers. The call seemingly
13 created a great hazard to members of the public and other
14 officers and there's an expectation by the community and the
15 city and the police bureau that we, as police officers,
16 respond to that. So that is the driving force in us
17 responding to that call. We were close. It sounded like it
18 was going to be a rather resource-intensive call so we went
19 to assist.

20 Q And in terms of, I guess, attempts to, again,
21 intervene or de-escalate with options other than force -- I
22 mean (indiscernible) commands were given. Correct?

23 A Yeah. So de-escalation I think you have to think
24 of as -- a lot of people think of de-escalation just as like
25 verbal de-escalation where I'm trying to talk you down. But

1 we also in the police bureau define -- we think of de-
2 escalation as any attempt to reduce the amount of force
3 necessary to resolve a confrontation. Right?

4 So by us using distance and cover to give that
5 person commands, we're using that distance and cover. It
6 allows us to tolerate dangerous behavior on their part. For
7 instance, when he pointed a gun and shot us. Had we went
8 closer and not used cover, we would have availed ourselves
9 as targets and that would have -- you can think of that as
10 escalation as opposed to de-escalation. By giving him
11 commands, we're giving him a chance to comply and surrender
12 so we don't have to use deadly force.

13 We had a lot of officers there. What we think of
14 as numerical superiority. That gives us an advantage in
15 that it reduces the load of each person. So if you have
16 only one or two officers there, they have to think about
17 lethal, less-lethal options. They have to think about
18 communicating. They have to think about containing. They
19 have to think about contingencies. They have to think about
20 all these things. But when you have a multitude of
21 officers, you can divvy out those tasks so that it's more
22 efficient, it's more effective. Yeah.

23 We used -- I think we used all of the de-
24 escalation tools available to us that were appropriate for
25 that situation. But de-escalation is -- it's a two-way

1 street. You also have to be willing to accept these
2 things that I'm trying to give you. And the suspect didn't.
3 He disregarded our efforts to try to get him to comply.
4 So --

5 MS. NADELL: I don't think I have any other
6 questions. We'll see if the grand jurors have questions.

7 GRAND JUROR: Just real quick. So were you close
8 enough to hear the child at all?

9 THE WITNESS: I did not hear the child at all.

10 GRAND JUROR: Because I'm a little confused with
11 -- you're wearing this helmet so that -- okay, I can
12 understand you might not hear the child but you could hear
13 the gunfire when he did shoot your -- towards you?

14 THE WITNESS: Um-hum. So that was a stressful
15 situation. Part of the body's stress reaction oftentimes --
16 I'm sure that some of you have experienced it -- is auditory
17 exclusion. That might be why I didn't hear Officer Dyk
18 shoot. I mean, I -- yeah.

19 There's -- I know that part of my stress reactions
20 when I'm in high-stress situations, oftentimes I experience
21 auditory exclusion. In real life and training, it's just
22 part of the body's reaction.

23 GRAND JUROR: Oh, I'm sorry. Real -- did you see
24 the father have any interaction with the child on the porch?

25 THE WITNESS: Other than maybe like putting his

1 hand on her shoulder, directing her, no. No.

2 MS. NADELL: And at the time you observed him to
3 be shooting, was the girl out with him?

4 THE WITNESS: You mean generally or which specific
5 time? She -- there --

6 MS. NADELL: That's a fair question, I guess.

7 THE WITNESS: Yeah. I know at least in one
8 instance she was outside when he was firing the gun into the
9 air.

10 GRAND JUROR: And this is the gun. Not the rifle.
11 Because that would take two hands. Correct?

12 THE WITNESS: He never had a rifle.

13 BY MS. NADELL:

14 Q That you saw?

15 A That I saw. The only rifles that I saw were
16 possessed by Portland police officers.

17 Q So I'm sorry. Can I ask a follow-up question
18 really quick?

19 A Sure.

20 Q So you saw him possess a handgun.

21 A Correct.

22 Q Just so we're clear on the record.

23 A Yes.

24 Q At the time that he leveled his weapon and pointed
25 the handgun in your direction, were you concerned that even

1 based on the distance you had, if you didn't take cover,
2 you could have been shot?

3 A I think there was certainly a possibility. But
4 again, I used -- we used a fair amount of distance that --

5 Q Sure.

6 A -- barring some expert level marksmanship or luck,
7 which there's a strong element of luck in a lot of things,
8 that we were probably going to be okay. Probably. But
9 bullets don't stop until they hit something, you know.

10 Q Sure.

11 A So there is a danger to the community.

12 MS. NADELL: Sorry, I interrupted.

13 GRAND JUROR: Yeah. So that whole time, you were
14 perceiving he had a handgun?

15 THE WITNESS: Yes.

16 GRAND JUROR: Had -- did Bartlett ever say
17 anything about using his 40mm?

18 THE WITNESS: Not that I recall. I -- my thinking
19 was that would be part -- if that was going to come into
20 play, it would be after he became compliant and maybe part
21 of a custody contingency. From that distance, it just --
22 it's not an appropriate tool. I don't even know -- I'm not
23 a 40mm operator but I would imagine that the distance that
24 we were dealing with was beyond the 40mm's capability.

25 GRAND JUROR: Did you have a visual on Dyk --

1 THE WITNESS: No.

2 GRAND JUROR: -- once he left?

3 THE WITNESS: Nope.

4 GRAND JUROR: Did -- had Dyk said anything over
5 the radio?

6 THE WITNESS: I did not Dyk at all. He might have
7 been the person that said shots fired. But he wasn't
8 contributing anything to the situational awareness over the
9 radio that I ever heard.

10 GRAND JUROR: Then when you were making that
11 contingency, you said you made it in the car --

12 THE WITNESS: Um-hum.

13 GRAND JUROR: -- with Hertzler.

14 THE WITNESS: Yep.

15 GRAND JUROR: That was about a handgun. Then when
16 you were talking about it again at 106 --

17 THE WITNESS: 126?

18 GRAND JUROR: Yes, 126.

19 THE WITNESS: Oh, I'm sorry. Yeah, 106 is the
20 location and 126 is the -- yeah, sorry.

21 GRAND JUROR: Yeah. You talked about then still
22 perceiving it as a handgun.

23 THE WITNESS: Correct.

24 GRAND JUROR: And then, Dyk and Hertzler came up
25 and then you said you went over the radio with the

1 contingency plan?

2 THE WITNESS: They were already in place.

3 GRAND JUROR: Oh, okay.

4 THE WITNESS: We're talking about it. Hertzler
5 and Dyk tie up with us. They tell us what they're going to
6 do. My guess was that they were in place or near there
7 because when I got on the radio, I was like, hey, Gabe, same
8 plan as you and I talked about. Then I explicitly stated
9 what that plan was for the benefit of other officers
10 listening.

11 GRAND JUROR: And you said with a handgun
12 saying --

13 THE WITNESS: Well, so I said the gun.

14 GRAND JUROR: The gun. Okay.

15 THE WITNESS: Yeah.

16 GRAND JUROR: Because you're saying that it was
17 tolerable because you thought it was a pistol, that if it
18 was leveled at you, that no shots should be taken?

19 THE WITNESS: I wouldn't say should. I mean,
20 that's -- that is up on the individual. It's something that
21 we agreed on that we would tolerate. Because it was a
22 handgun.

23 GRAND JUROR: But no speaking of a rifle. Because
24 I think you did say, like, but if it was a rifle, it would?

25 THE WITNESS: So that -- so there was no talk of a

1 rifle on scene. When I spoke of a rifle, that was just
2 to give you kind of a point of reference as to --

3 GRAND JUROR: Yeah.

4 THE WITNESS: -- why we were willing to tolerate
5 that from someone that had a handgun versus if they had a
6 long gun. There was no -- the term rifle never entered the
7 conversation there on scene amongst any officers I talked
8 to.

9 BY MS. NADELL:

10 Q So I want to clarify that though because that
11 question was a little bit different than what you testified
12 Officer Pavon kind of finished your sentence in saying he
13 would shoot if the gun was leveled. And I --

14 A Um-hum.

15 Q Was it your understanding he was also talking
16 about a handgun when he --

17 A We said the gun.

18 Q So the -- yeah, so --

19 A I --

20 Q -- can you describe -- was there a difference in
21 your discussion with Officer Hertzler on the way there about
22 whether you would shoot if the gun was leveled versus when
23 you were on scene with Officer Pavon and then get on the
24 radio? And it might have just been how the question came
25 out. But I think it's an important point.

1 A So I'm not exactly sure of your question at
2 this point.

3 Q So his question to you was -- suggested that you
4 and Officer Hertzler had decided there would not be a return
5 of -- the police would not shoot if the gun was leveled.

6 A Correct, yes.

7 Q But then you've testified that --

8 A At us.

9 Q Right.

10 A Because we had distance and cover.

11 Q But then you indicated Officer Pavon finished your
12 sentence in saying if the gun was leveled.

13 A At us. Correct. So that was Gabe and I's
14 conversation. So I know Officer Hertzler -- so I can't tell
15 any officer how much risk you should shoulder before you use
16 deadly force. We can all pretty much agree on, are you
17 there in terms of policy and ROS. I can't tell you how much
18 you're willing to risk.

19 Me and Gabe were willing to risk this person
20 leveling a gun at us provided we had distance and cover. I
21 don't --

22 Q On the way there?

23 A On the way there in the car. I don't know Officer
24 Pavon as well. I don't have that kind of working
25 relationship where I feel like I want to pressure him into

1 taking more risk than he wants to. I felt like, okay,
2 well, if he levels the gun at us, most officers are probably
3 going to feel like, hey, I'm past the point where I'm
4 willing to risk myself. This guy is pointing a gun at me.
5 I'm going to shoot him. So I guess it's just a difference
6 of (indiscernible). And I know Officer Hertzler's tolerance
7 probably -- well, for sure better than I did Pavon's just
8 because I don't work with Pavon often.

9 Q So do you recall then -- and I'm sorry to
10 interject. I just want to make sure we're all on the same
11 page -- what was communicated then over the radio after --

12 A I -- so you can --

13 Q -- this conversation?

14 A -- pull the dispatch tapes. I believe that if it
15 was leveled at officers or at the community, that that's
16 kind of where the line was that we were going to use deadly
17 force.

18 Q That's where you had communicated that I -- or you
19 were testifying earlier, I think, then in that communication
20 it wasn't you were authorizing it because you didn't want to
21 give the order --

22 A Right. I don't authorize force.

23 Q -- but you shared an -- that officers were talking
24 about expecting to --

25 A Yes. I wanted other officers to know what actions

1 we were going to take. And to let other officers know
2 what our expectation is so that they can act accordingly.
3 Again, like I can't order someone to use force or authorize
4 it. But I want them to know that if we use deadly force,
5 this was where our threshold was.

6 Q And I -- I'm sorry. Just one more question. To
7 -- after the subject shot in the direction where you and
8 other officers were, how, if at all, did your perception of
9 the threat posed change?

10 A I expected someone was going to shoot him in short
11 order. His behavior was escalating and I fully expected
12 that an officer was going to shoot this person in the next
13 few moments. And unfortunately, that is exactly what
14 happened.

15 Q When you say unfortunately, that's a word that has
16 a lot of meaning behind it. What do you mean by that?
17 Just --

18 A Well, I mean, it resulted in loss of life. It was
19 tragic both for him, his family, the officers involved.

20 Q When you say the threat -- or the behavior was
21 escalating, did you the lowering of the weapon even before
22 it was fired as an escalation of the subject's behavior?

23 A I did, yeah.

24 MS. NADELL: Thank you for letting me interrupt.

25 GRAND JUROR: Yeah. So just to clarify, the only

1 time you were saying leveling is okay is with Hertzler?

2 THE WITNESS: Yes.

3 GRAND JUROR: Not over the radio.

4 THE WITNESS: Correct, yes.

5 GRAND JUROR: Okay, cool. Then can you explain to
6 us how you perceive lowering the weapon and leveling the
7 weapon?

8 THE WITNESS: What do you mean, I guess?

9 GRAND JUROR: Because you differentiated the two.
10 You're saying, okay, if we see him lowering the weapon,
11 that's okay. If he's leveling the weapon, that's not okay.

12 THE WITNESS: So the lowering of the weapon was
13 when we talked about if he complies, in his -- between
14 having the weapon up and putting it down on the ground like
15 we were requesting, at some point, it was going to be
16 lowered likely at us.

17 GRAND JUROR: Yeah.

18 THE WITNESS: So I wanted officers to expect that
19 it would be pointed at them at some point. I guess really
20 leveling and lowering is just a matter of semantics. I
21 wanted officers to expect that during his compliance with my
22 order, that at some point he was likely going to point a gun
23 at us. That we should perceive that as compliance, not as a
24 threat.

25 GRAND JUROR: So kind of the whole situation

1 (indiscernible).

2 THE WITNESS: Yeah, right. But at the point where
3 he faced us or edged toward us and kind of pointed it at us,
4 that was not at all consistent with, hey, you know --

5 GRAND JUROR: I'm continuing to lower it.

6 THE WITNESS: -- put the gun down, walk out to the
7 street. That was an escalation in my mind. In my mind, he
8 hears where the cops are yelling from. So he's pointing a
9 gun toward us. That was my interpretation of it.

10 GRAND JUROR: Okay, cool. Yeah, thank you.

11 GRAND JUROR: I have a question.

12 THE WITNESS: Yeah.

13 GRAND JUROR: So you discussed the -- your plan
14 reactions with the group you were with. Communicated that
15 on the radio and got confirmation. Who did you get
16 confirmation from?

17 THE WITNESS: So that was -- so before I went out
18 on the radio, I got confirmation from Pavon, from Piombo,
19 from Wambold, and Bartlett that, like, hey, is everyone --

20 GRAND JUROR: Just those four that were --

21 THE WITNESS: Just those four.

22 GRAND JUROR: Not from -- not broadcast on the
23 radio. Not --

24 THE WITNESS: So I didn't solicit a confirmation
25 on the radio. That was just information for other people's

1 benefit. I just wanted to make sure that the people I
2 was with were comfortable with that. And my expectation is
3 if someone wasn't comfortable with that, that was their
4 responsibility to speak up and then we could have a quick
5 discussion then.

6 GRAND JUROR: Thank you.

7 MS. NADELL: Any other questions? We can go off
8 the record. Thank you, Officer.

9 (Off the record.)

10 (On the record.)

11 MS. NADELL: We are back on the record. Wanted to
12 be mindful of -- that it's the noon hour. We will take our
13 lunch break now. We can go off the record.

14 (Off the record.)

15 (On the record.)

16 MS. NADELL: We are back on the record in Grand
17 Jury B, Case No. 24, the ongoing death investigation case,
18 DA 2450757. This is Amanda Nadell. We are back from the
19 lunch break. And we will call -- or hear from Officer
20 Bartlett next.

21 If you could raise your right hand.

22 JOHN BARTLETT

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

25 DIRECT EXAMINATION

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1 BY MS. NADELL:

2 Q Go ahead and have a seat. And if you could state
3 and spell your first and last name, please.

4 A Sure. It's John Bartlett. J-o-h-n B-a-r-t-l-e-t-
5 t.

6 Q Great. How are you employed?

7 A I'm a police officer with the city of Portland.

8 Q And how long have you been a police officer?

9 A Six years.

10 Q All with the city of Portland?

11 A Yes.

12 Q What's your current assignment?

13 A I'm currently assigned to the Focused Intervention
14 Team which is a specialty unit which primarily investigates
15 gun violence in the city.

16 Q And were you a member of that team back in July of
17 this year?

18 A Yes, I was.

19 Q Were you one of the officers who responded on July
20 27th of this year to a shots fired call in the area of 125
21 Southeast 126th Avenue?

22 A Yes.

23 Q Do you recall where you were when you first
24 learned of that call?

25 A Yes. I was driving my police car with a partner,

1 Officer Josh Dyk. And we were on Northeast 102nd Avenue
2 when we heard the radio dispatch about that call come over
3 the radio.

4 Q What shift were you working that day?

5 A We work -- just -- so I was working my regular
6 shift hours which is kind of an afternoon shift. We work
7 from 2 p.m. to midnight.

8 Q This call came in approximately how many hours
9 into your shift then?

10 A Five-ish. I was driving to dinner I remember.

11 Q And driving -- you were in the driver's seat?

12 A Yes, I was.

13 Q Officer Dyk was in the passenger's seat?

14 A That's correct.

15 Q Had you been partners on other shifts prior to
16 this one?

17 A I'm sure that I have. Yeah.

18 Q Does it sometimes rotate though who you're working
19 with?

20 A Only occasionally. I normally work with a
21 different partner but she was adjusted off for some other
22 reason and so all the members on the team are -- we all work
23 with one another. But generally speaking, we have these
24 kind of semi-established partnerships that we like to stick
25 to just because it helps us be a little bit more efficient.

1 But things -- we are flexible and Josh is wonderful to
2 work with. So he was --

3 Q Sure.

4 A -- riding with me that day.

5 Q So he was a member of the FIT team, as well?

6 A Correct.

7 Q So what was the nature of the call when you first
8 learned about it?

9 A It was a person in -- on the residential street of
10 126th Avenue firing shots in the neighborhood.

11 Q Where did you and Officer Dyk respond to?

12 A So we listened to East patrol. This is all
13 occurring in East Precinct. And being a patrol call, it was
14 dispatched to a patrol unit who established a staging area
15 at the Park & Ride parking lot that is on the southeast
16 corner of 122 and Burnside.

17 And so, we clicked over. Made sure that the rest
18 of our team who was also arriving at dinner -- that they
19 heard it and that we had all kind of concurred that we were
20 going to assist just because of the nature of the call. And
21 we drove to the Park & Ride.

22 Q What happened when you got to the Park & Ride?

23 A Officers were assembling. We found a sergeant,
24 Mike Pool. Let him know that we were available. And just
25 to help out for resources. I remember them establishing

1 kind of like a very preliminary containment unit. So
2 just basically an officer to go to the south side of 125 to
3 be there in the event that the person who was firing in the
4 neighborhood went to like, let's say, walk south to Stark
5 Street depending on how the event evolved, actually having
6 the ability to contain someone.

7 Q Okay. Oh, go ahead.

8 A Well, just to continue on. While we were
9 organizing in the Park & Ride, we heard more gunshots being
10 fired to our east, which was on 126th Avenue. So the
11 officers there responded. We got up onto Burnside and then
12 drove over to the very north end of 126 and Burnside there.

13 And there's no turns off of that street. So it
14 just is a straight shot straight from Burnside to Stark on
15 126. And we kind of staged up there and started trying to
16 come up with a plan for how to respond while sergeants began
17 discussing -- consulting with our SERT team.

18 Q When you were at the staging area and heard shots
19 -- I mean, you're saying plural. Do you -- can you estimate
20 how many shots you heard or anything else about that?

21 A The first time that I heard gunfire there was
22 probably five to ten shots. I can't remember exactly how
23 many but at least five to ten. Yeah.

24 Q Did you hear more at the -- when you were still at
25 the staging area or later? You just -- you phrased it as

1 the first time so I'm trying to clarify.

2 A Right. Well, there were more shots later. And
3 those were actually -- I actually saw those take place. But
4 the -- that first kind of volley -- I can't remember if I
5 saw or heard more like after we got to 126. Yeah, I guess I
6 can't recall.

7 Q Well, sounds like we'll get there to --

8 A Yeah.

9 Q In part. So you end up at 126 with other
10 officers. What is -- what plan is developed or what actions
11 do you take at that point?

12 A Because we know we have southside containment, or
13 with the rest of the officers that have arrived on the north
14 side, we kind of have two ends of containment. I know that
15 there are officers working on running addresses and trying
16 to nail down exactly which home is the -- kind of the source
17 of the gunfire.

18 When I get down there, there's kind of a crest in
19 the street so you can't see all the way from the north side.
20 You can't see all the way down. You can't see all the way
21 to the end of 126 at Stark Street which is a good thing
22 because we're not trying to position ourselves yet into a
23 place where we would be seen by the person who was doing the
24 shooting and we don't want to have contact until we are
25 ready.

1 But in the event that there is -- like they
2 take further action, if they begin shooting, if they become
3 some kind of a greater threat, we want to have the ability
4 to react. And so, what happens is a number of officers
5 organize themselves with different tools, including a
6 ballistic shield, first-aid kit. We had more than one rifle
7 operator there.

8 And then, I also am a less-lethal operator so I
9 have -- it's like -- it's called a 40mm launcher. And it is
10 a single-shot 40mm large -- kind of just looks like a
11 firearm that shoots a heavy sponge type round that only has
12 a certain effective distance. But it can be effective for
13 affecting or changing behavior. And while it's not
14 necessarily the best tool for like a deadly threat, it is
15 important to have rather than be presented with a situation
16 where you might need it and then not have it.

17 So I grabbed my launcher and I joined this smaller
18 group of officers. And we made a plan to move to the east
19 side of the street and then move down closer to what we then
20 found out was the target location. The address is 125
21 Southeast 126. And position ourselves in a way where we
22 still had a great distance away from the home where we could
23 have some cover from anyone who might shoot at us. Then --
24 but where we could still see the house, see the front door,
25 and provide information.

1 Q Do you remember who else was part of that team
2 that you were with at that point?

3 A Yes. When we first moved down, it was Officer
4 Josh Dyk and myself. There was Officer Gabe Hertzler. Then
5 you had Dominic Lovato. There was Mark Piombo. I believe
6 Lino Pavon was there. And Nicholas Wambold. Yes. Yeah.
7 All of those were there.

8 And we moved down -- I can't remember the name of
9 the -- or the address of the residence that we stopped at.
10 But there was a driveway with multiple cars parked in it
11 which we felt was positioned well so that we could actually
12 have that cover that we wanted but we still had a really
13 good distance to keep ourselves safe but where we could
14 still see 125 Southeast 126.

15 Q Once you got to the location with the cover from
16 vehicles, did the team stay together or did anyone kind of
17 break off at that point?

18 A Yeah. Gabe Hertzler who is also on FIT and he's
19 also a member of the Portland Police Bureau's SERT team
20 which is kind of like our SWAT team. It just has -- we
21 don't call it a SWAT team. He and Josh Dyk as a pair --
22 they actually pushed further east into the backyard of the
23 house that we were in front of. Then they moved further
24 south through backyards to try and go closer to the target
25 address and try and position themselves kind of just on the

1 other side of the street. So perpendicular to the target
2 address where they could have even more information and be
3 able to give out even better updates.

4 Q Did you know that they were doing that because
5 they were updating over the radio or that was the plan they
6 announced --

7 A Yeah.

8 Q -- before they left or --

9 A Yes. That was a coordinated plan for them to move
10 as a pair rather than have, say, like all of us go. They
11 could move more quickly and do so with a greater amount of
12 stealth. So they could do that and deploy kind of in secret
13 for their safety. So that anyone who is doing the shooting
14 wouldn't know that they were there.

15 Q What happened next?

16 A So eventually, the front door of the address
17 opened and like a young girl came out. And she stepped out
18 onto the front porch and stood there alone. She didn't run
19 away from the house. And she didn't really go back inside.
20 She just kind of stood there. And she seemed -- I don't
21 know -- kind of vaguely concerned and seemed to be waiting
22 until another person -- an adult male then exited the front
23 door, as well.

24 Q Then out of the 125 address?

25 A Yes.

1 Q What happened then?

2 A We watched him walk out onto the front porch.
3 This adult male. So with our plan from where we were, we
4 had discussed about what we would do if -- once we found out
5 that there's a person that lives there and we believe that
6 he's probably the only person there. And this was the
7 person was responsible for firing this gun in the
8 neighborhood.

9 And we decided that given our standoff distance,
10 that we felt safe from our place of cover that we could call
11 out to this person and try and gain some kind of compliance.
12 If we could get him to just understand that we're police
13 officers, put down any firearms that he had, and then we
14 could bring him over to us and take him into custody. And
15 we could do this all safely without us having to use any
16 force.

17 Q When he came out of his -- of the residence, did
18 you see anything in his hands initially?

19 A I can't recall if I saw anything in his hands
20 initially. However, once the person on our small team that
21 we had designated to be the communicator which was Officer
22 Dominic Lovato, he called out to the person. Immediately
23 identified us as police and asked him to not move so that we
24 could communicate very clearly that we wanted him to keep
25 his hands free where we could see them.

1 He just yelled back to us and started cussing.
2 He said -- excuse my language -- but he said suck my dick.
3 He just screamed it out at us. And then, with his left
4 hand, raised a pistol into the air. Not like straight up.
5 He kind of held it at an angle and began to continue to
6 shoot rounds off into the air.

7 Q Can you describe as best you can the angle that he
8 held it out if it wasn't straight up?

9 A Yeah. I mean, it was about 45 degrees I would
10 say.

11 Q Did he shoot one time or more than one time?

12 A Multiple times.

13 Q Prior to him firing, when Officer Lovato started
14 giving commands and then you heard the subject say suck my
15 dick and some other thing, do you know anything else he said
16 or can you recall or was there more than that?

17 A That was -- so just generally speaking, his
18 response to us whenever we would try and open up some form
19 of communication was for him to just like swear at us and
20 cuss at us.

21 Q Did it seem like he was hearing and that it was
22 responding to Officer Lovato or did it seem like someone who
23 was just kind of yelling at it happened to correlate with
24 the situation?

25 A Yeah. I think it was directly in response to

1 -- like he was answering Dom.

2 Q Did you make any observations about the subject's
3 voice or tone or speech as he was making those comments?

4 A I mean, it's been so long now but I remember, at
5 the time, kind of being able to perceive that maybe he was
6 slurring his words a bit.

7 Q Slurring his words?

8 A Yes.

9 Q Did that -- I mean, what was your impression of
10 that?

11 A Just that -- I mean, I generally equate something
12 like that as being frequent with people that I know to be
13 drinking alcohol. So if someone drinks a lot, oftentimes,
14 they slur their speech.

15 Q So commands were given by Officer Lovato. You've
16 talked about the subject's verbal response to that. Did the
17 subject appear to make any physical efforts to comply with
18 commands?

19 A Oh, no, no.

20 Q And then you've described that he brandished or
21 held the firearm -- excuse me -- at a 45-degree angle and
22 fired some shots. What happened at that point?

23 A Well, we continued to try and engage him. I got
24 on the radio and made sure to communicate to other officers
25 because there was still officers at the south end of 126 and

1 at the very north end. And I made sure to communicate
2 that the rounds that we saw him fire, they were up in the
3 air. And as far as I could tell, they weren't actually
4 aimed at anybody.

5 And I did that purposefully because I wanted them
6 to know that he didn't, at that point, seem to be showing an
7 intent to hurt somebody rather than potentially just -- this
8 is incredibly -- this crazy behavior that is very dangerous.

9 But I didn't want other officers to think that
10 they needed to come rescue us or I didn't want that to jack
11 things up and precipitate some other kind of use of force.

12 So we continued to try and reach out to him, try
13 and talk to him. It was ineffective. And --

14 Q How was it ineffective?

15 A Just that he continued to ignore us and just cuss
16 at us. Until he -- I want to say that there was a second
17 volley. I would have to read my report in detail to
18 remember if there was just that one first volley that I've
19 already described or if he actually fired again. But at one
20 point --

21 Q Can we clarify just for the record, you mentioned
22 report -- did you write a report in this case?

23 A Well, so I was interviewed by detectives and they
24 transcribed that interview.

25 Q I just want the record to be clear. So you didn't

1 as -- were you considered a witness officer --

2 A Yes.

3 Q -- in this case. So with that comes protocol that
4 you're interviewed as opposed to writing a report. Correct?

5 A That is correct.

6 Q Sorry. I interrupted.

7 A No.

8 Q Go ahead.

9 A The -- yeah, the person that -- the adult male
10 that was on the front porch still had his handgun. Had
11 fired it into the air. Then at one point, while he was not
12 facing towards us -- he was kind of facing the street so
13 he's facing eastbound. He has the gun in his left hand.
14 And while it's kind of pointed in the air, he just kind of
15 dips the muzzle towards us. He doesn't seem to really like
16 directly -- he doesn't charge at us or anything like that.

17 But I see the gun just kind of point directly at
18 me. And the round -- a round cracks off. And everybody --
19 we all jump on the ground because I could hear -- I don't
20 know where it landed but it hit either one of the houses or
21 one of the cars that was right next to us. I never did
22 really find out where that shot landed. But I just remember
23 hearing the shot hit either one of the cars or hit the
24 house. And we all just jumped down. Then when I peeked
25 back up, that male was down.

1 Q Based on what you heard, was it your belief
2 that bullet that was fired in your direction did land
3 somewhere near you? And then when you say house or car --

4 A Yeah.

5 Q -- are you talking in your immediate vicinity?

6 A Yes. Yeah, yeah, yeah. Yeah, there was a
7 distinct -- a difference between the shot of his gun going
8 off down the block and the thud, the impact of the bullet
9 striking the -- well, wherever it landed. Again, yeah, I
10 don't know if it was one of the cars that we were kind of
11 hiding behind, taking cover behind, or if it was the house
12 just kind of directly next to us.

13 Q Then after you hear that shot fired -- I'm sorry.
14 Did you hear another shot from anywhere?

15 A Right. Yeah, the -- right after this all
16 occurred, I thought -- and I guess I couldn't really clearly
17 remember. It's been a while and I've thought a lot about
18 this. And I don't remember hearing another shot.

19 I think I initially kind of told detectives that I
20 thought I must have heard another shot. But I don't know if
21 that's actually the case. I think I just remember hearing
22 that just one large boom from the gunshot and hearing the
23 thud from the impact near to us.

24 Q Based on your training and experience, and then
25 your involvement that day, did you consider the subject

1 firing in your direction to be a demonstration on his
2 part of trying to de-escalate or comply -- de-escalate the
3 situation or comply with commands?

4 A No.

5 Q How did you perceive that?

6 A I would say it's the exact opposite. That this
7 person was trying to escalate the situation. And actually,
8 you know, like kind of taking a shot at us was -- I mean,
9 showing his -- what felt like his -- what -- I perceived it
10 as him making things quite a bit worse and more dangerous.

11 Q Then the 40mm launcher -- I know you described
12 sort of bringing that with you to the location from where
13 you and the officers were positioned. Does that even have
14 -- if you had fired that, could it have reached 125?

15 A No.

16 Q Distance-wise?

17 A No. Based On my training, that's a weapon system.
18 It has a little sight on it. It's like a red dot sight.
19 It's a little electronic piece of equipment that's a tube
20 and when you look through it, it has a little red dot. And
21 you can use that -- you put the dot on the area that you
22 want to impact and when you squeeze the trigger, the round
23 can impact-- should impact right on that spot. But it's
24 only accurate out to like a maximum of 35 yards. And this
25 was quite a bit beyond that, quite a bit.

1 Again, I brought that as like a -- as part of a
2 possible contingency for some unknown hypothetical that
3 could have occurred where our engagement distance changed,
4 right, decreased a lot. But then, let's say, the person
5 then somehow either continued to be a deadly threat or maybe
6 was no longer a deadly threat but was still an actively
7 aggressive threat where we might want a tool like that or
8 some other kind of less-lethal option. We would want it.
9 And I would rather have it and not need it than need it and
10 not have it.

11 But on the -- at the distances that we were, it
12 would have been not appropriate for me to try and use it
13 especially with the young girl, his -- the young girl that
14 had exited the house earlier. With her -- I wouldn't trust
15 that weapon system to be as accurate as I was needed to.

16 Also, I'm trained you never aim high to try and
17 compensate for the drop of the round. You always just put
18 that little dot that I described on what you want to impact
19 and if -- but knowing how that weapon system kind of works,
20 I know that that round would have fallen and been in the
21 dirt well before it ever could have reached him.

22 Q After you became aware that the subject was down,
23 what did you do?

24 A Well, so after that, that round cracks off, we all
25 jump down. I only stayed down for about a second or two and

1 then I'd creep back up to try reacquire this person. And
2 then, I want to know is he moving, is he coming towards us.
3 When I see that he's down, I just kind of perceive that for
4 just a moment before I see Gabe Hertzler emerge from his
5 place of cover or concealment from across the street.

6 He just comes running straight across the street,
7 runs straight to the house, to 125. And he's running to the
8 little girl. So I immediately take off running as well and
9 we run down there. I see -- Gabe grabs her and just
10 immediately runs off. He runs back northbound to get to the
11 officers that are still up there just to get her out of that
12 place. So we run up and immediately start -- not just
13 detaining the person but beginning -- trying to begin some
14 life-saving measures. Try to do some emergency medical aid.

15 I located -- there was just like a single -- what
16 appeared to be a gunshot wound in his chest and so we broke
17 open a first-aid kit and got out chest seals in order to try
18 and stop any airflow that could affect his breathing in his
19 chest cavity. And then, immediately began using the radio
20 to try and get EMS in there to try and get him to the
21 hospital.

22 MS. NADELL: Let me see if the grand jurors have
23 questions.

24 GRAND JUROR: When he fired the round towards you,
25 you said he kind of like -- like kind of lazily put the gun

1 down. Would you say it was like a leveling aim or just
2 kind of -- I don't know -- like he was -- what am I trying
3 to say here. Did it seemed like he was intentionally
4 aiming, I guess?

5 THE WITNESS: I think that based on him calling
6 out to us -- he would kind of -- he never really fully
7 addressed us. He never faced us and looked down on us. But
8 he did kind of turn his body to kind of shout back at us.

9 So it was my perception that he knew where we
10 were, at least our general direction. And I mean, there's
11 five of us and there's one or two cars. So we weren't doing
12 like -- we were in, we were out. We're talking to him.
13 We're not doing a great job of hiding ourselves.

14 GRAND JUROR: Sure.

15 THE WITNESS: So while he didn't have this very
16 steadily aimed fire, I think he knew where we were and it
17 was this kind of lackadaisically kind of just -- yeah, he
18 kind of just (indiscernible) where he had kind of very
19 easily be shooting that gone up into the air, he just kind
20 of flipped it over and then shot that round at us.

21 GRAND JUROR: So the entire time you were only
22 seeing a handgun.

23 THE WITNESS: That's correct.

24 GRAND JUROR: That's correct. Did you hear -- did
25 you have any idea of possibly another gun?

1 THE WITNESS: It's been too long for me to
2 recall. I think that there might have been information that
3 there could have been a rifle involved but I can't recall
4 for sure.

5 MS. NADELL: Are there other questions?

6 GRAND JUROR: I don't think so.

7 MS. NADELL: Thank you, Officer. We can go off
8 the record.

9 (Off the record.)

10 (On the record.)

11 MS. NADELL: We are back on the record. There is
12 another case before the grand jury that we're going to
13 interrupt this presentation for so that that case can
14 proceed forward and we will resume this death investigation
15 later this afternoon. We can go off the record again.

16 (Off the record.)

17 (On the record.)

18 MS. NADELL: We are back on the record in the
19 ongoing death investigation. It's still the afternoon of
20 December 14th. And Officer Hertzler will be our next
21 witness.

22 Go ahead and raise your right hand.

23 GABRI HERTZLER

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

DIRECT EXAMINATION

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BY MS. NADELL:

Q Have a seat. Can you state and spell your first and last name for us?

A Yeah. My name is Gabri Hertzler. Gabri is G-a-b-r-i. And Hertzler is H-e-r-t-z-l-e-r.

Q And how are you employed?

A I'm a police officer of the city of Portland.

Q And how long have you been a police officer?

A I've been a police officer in Portland for 18 years.

Q Are you assigned to any particular precinct or teams within the bureau?

A I am. I'm currently assigned to the Focused Intervention Team. It's a team that ends up combating gun violence throughout the city so the goal of responding to intervening and helping with the investigations of gun violence.

That's like my full-time job day to day. I'm also a member of the Special Emergency Reaction Team which is -- in the city of Portland, I guess probably more commonly thought of as like Portland's tactical team. That's a job that I've been doing for about 12 years now. But that's not my day-to-day job. It's a call-in job. There's training and a bunch of stuff associated with that. But my full-time

1 job is a member of the Focused Intervention Team or FIT.

2 Q And have you been a member of FIT since its
3 inception, sounds like early 2022?

4 A Yeah. I believe it was January 6th or somewhere
5 close to that, 2022.

6 Q Were you working or on duty on July 27th of this
7 year, 2022?

8 A I was.

9 Q Did you become aware of a shots fired call in the
10 area of Southeast 126th and Burnside?

11 A Yes.

12 Q What was the information you learned in the
13 initial call or -- information.

14 A The -- as I remember, we were eating dinner as a
15 group. The Focused Intervention Team, normally, we work in
16 a group with the goal of having people there especially for
17 dealing with people involved in gun violence. We want to
18 make sure we have enough officers there to deal with that.
19 And we met up to have dinner, I believe, at like -- there's
20 a contact office, just a place that we could go sit and eat
21 at. 102 and Sacramento.

22 We were there eating dinner and I think the first
23 time I was aware of it is -- we were on -- I believe I was
24 on -- my radio was turned to the North Precinct radio net.
25 And someone had mentioned that something was going on on the

1 East Precinct radio net. We were right on the border in
2 that location at 102 and Sacramento. So I turned my radio
3 over and started to hear the event.

4 Q What do you recall sort of learning when you
5 switched over to the East Precinct --

6 A As I switched over there -- some people I believe
7 inside the office had like -- one of our MDTs, the Mobile
8 Data Terminal -- MDT -- in there. I was like pulling up the
9 call to get information from the call. And they'd said that
10 there was, you know, a person in the area of 126 and
11 Burnside who was outside in front of the location firing off
12 a firearm. When I switched over radio nets, I was hearing
13 radio traffic consistent to that. That there was people
14 calling in about a person in front of their house that was
15 firing off a firearm.

16 Q Did you and others decide to respond to the
17 location?

18 A Yeah. One of the things that we do for the
19 Focused Intervention Team, as well as respond to the gun
20 violence-related calls is try to assist operations, like the
21 patrol precincts, with calls that potentially they may need
22 more help with. So with that, we -- I think finished up our
23 -- put our stuff away. Got up, went to the cars, and ended
24 up responding there with the goal of trying to assist East
25 Precinct however we could.

1 Q Were you working in a partner car that day?

2 A I was. That night I was working a partner car
3 with Officer Dominic Lovato.

4 Q I presume the two of you responded towards 125
5 Southeast 126th?

6 A Yeah. As we responded there, there was updates
7 that the person was continuing to fire rounds in front of
8 the house. We were driving and there was information that
9 we were going to -- that there was going to be a staging
10 location at Burnside and 122nd Avenue.

11 And a staging location being something where --
12 like law enforcement or police resources, we could arrive
13 and we can kind of like put together a plan so we can
14 coordinate the response to an event like this.

15 So we started driving in that -- to 122nd and
16 Burnside. And when we got there, a number of other officers
17 from East Precinct and other people in the area had arrived
18 and started to drive up Burnside towards the area of 125th.

19 Q And on the way there, did you and Officer Lovato
20 have any sort of conversation about what was going on and
21 develop any sort of plan of response?

22 A We did. One of the things is definitely helpful,
23 that I find helpful, is that -- like the time we have
24 responding to the call, there's a lot of radio communication
25 going on. There's a lot of things that are -- that's

1 happening. And it's an opportunity especially working a
2 partner car, you have a discussion about, hey, how are we
3 defining this call; what do we believe is going on right
4 now. And also figure out when we get there and maybe a
5 strategy to try to, as safely as possible, intervene with
6 the event.

7 So I remember as we were driving there, Officer
8 Lovato and myself, talking about -- at this point, I believe
9 they were talking about firing a gun in the air and then we
10 were talking about the danger associated in the heavily
11 populated residential area in the summer when a lot of
12 people are out about firing a gun in the air.

13 And when we got there, what our plan was to do,
14 how we were going to deploy, things that we'd want to take
15 with us when we leave the car because we have all the stuff
16 we carry on our person, as well as things that we carry in
17 the vehicle as well, as well as things like a person firing
18 a gun in the air -- at what point do we provide force
19 warnings or communication.

20 We want to -- we were talking about those things
21 as we're driving. So getting updated with information but
22 also trying, to the best of our abilities, to have as much
23 of a plan as possible when we're actually there so you have
24 a little bit to work with.

25 Q Was that discussion just between the two of you or

1 was that on the radio?

2 A That was a discussion that we were having
3 together.

4 Q Did you proceed then to arrive at the staging area
5 at 122 and Burnside?

6 A Yeah. As we were pulling up to the staging
7 location, there's a -- as I remember it, a number of cars
8 there that had started to drive eastbound on Burnside. So
9 my impression that was that the vehicles had staged, had
10 staged, and they felt like they had enough resources to
11 safely start to move towards the area where the event was
12 occurring.

13 So we pulled in there. Never got out of the car
14 at the staging location. And drove towards the Burnside and
15 126 area. And end up parking our car just west of that
16 intersection and a bunch of other police cars.

17 Q Did you have any sort of understanding as to why
18 officers had started moving or --

19 A No.

20 Q Did you get an update on that?

21 A Not specifically.

22 Q What happened then when you proceeded to join
23 them?

24 A As we got out of the car, we went through the --
25 we -- based on our conversation, Officer Lovato ended up

1 getting a ballistic shield out of the car just in case we
2 could find a use for that at some point. Ballistic shields
3 -- it's a small -- just that. It's a bullet-resistant
4 shield depending on the kind of firearm that encounters --
5 it's probably, in size-wise, similar to this table which is,
6 what, like two by three. And there's different kinds.

7 We potentially would use something like that. He
8 ended up getting that. We both put on helmets that are
9 issued by the bureau for added protection. Then I brought
10 my patrol rifle.

11 Q Are you a certified rifle operator?

12 A I am.

13 Q What happened next?

14 A Excuse me. A group of officers kind of working up
15 their way. There's a little bit of a rise. So if you're on
16 Burnside at the 126 intersection, there's a little bit of a
17 rise prior to it. You'd be able to see southbound there.
18 So officers started to kind of make their way up there ahead
19 of us.

20 I -- we started to walk up there trying to get a
21 lay of the land. While we're doing this, there's an
22 airplane, police bureau airplane that's in the area that was
23 advising that there's like multiple rounds being fired. To
24 step back.

25 One of the -- some of the information that I

1 remember hearing -- I believe it was on the way to the
2 call -- was that -- and I -- it may have been from a
3 neighbor. Was that the subject was armed with more than gun
4 and described one of them as a rifle. Like a magazine-fed
5 rifle. Which is concerning for us. It kind of went to some
6 of the decisions we made to bring specific items from the
7 car.

8 Q Can you elaborate that?

9 A Yeah. So a rifle is -- compared to a handgun, the
10 ballistic shields and the ballistic armor that we
11 (indiscernible) is not rated to stop rifles. Short of
12 people who have like a piece of their vest that has some
13 rifle-related, depending on the rifle, ability to stop a
14 rifle round. So a rifle in general would be -- have a
15 longer range and would be able to penetrate the body armor
16 that we would be wearing.

17 Q Then you said that sort of informed the decision-
18 making in terms of items you gathered. Are you speaking in
19 part about you grabbing your rifle?

20 A Correct.

21 Q And walk us through that decision then.

22 A So a person who was armed with a rifle or a
23 handgun, one of the goals of the deployment of a rifle in
24 the city of Portland, the way that the police bureau sees
25 that, is a patrol rifle provides standoff. It provides you

1 the ability to not be as close to a threat area if the
2 person is armed with a handgun or a rifle.

3 Ideally, we would be able to stay as far away from
4 that as possible. At some point, the further you are away
5 from a problem, it provides some protection for you. Like
6 the further I'm away from a person who has a -- say a
7 handgun or a rifle -- the safer I am. But sometimes that
8 doesn't account for other people in the area who could be in
9 a risk, as well.

10 The rifle does provide that additional standoff
11 which, when applicable, we like to use to be as away from a
12 dangerous area as possible. Also, things that -- it's -- a
13 patrol rifle is far more accurate than a handgun just by the
14 nature of the way that it's constructed, the way that it's
15 held and fired. A rifle is far more accurate than a handgun
16 and the ability to shoot them.

17 So when it comes to -- in a heavily populated area
18 or a time where we're trying to maximize distance, a patrol
19 rifle also provides the ability to have a higher level of
20 precision if you get into a position where you're forced to
21 use a firearm as a force option during an event.

22 In addition to that, the patrol rifles that the
23 bureau carries, the penetration of the rounds as far as what
24 we'd expect is actually -- is less -- we'd expect it to
25 penetrate less than a handgun round by the nature of the

1 construction and the way that they're built. So there's
2 a layer of potential safety involved in there if you're
3 worried about things that we're always worried about. Is --
4 we may be dealing with something but what's beyond it.

5 We're not on a range, we work in a very urban
6 area. This was in the evening in the summer. There's
7 people out. So the ability to have a precision tool which
8 is a weapon that allows standoff, that allows a high degree
9 of accuracy, especially when we have a person who is
10 reported to be armed with a rifle.

11 And even if they were armed with a handgun, plenty
12 dangerous being armed with a handgun. It's a tool that we
13 would probably advocate for at least some people who are
14 certified to carry them to make sure we have that as an
15 option in -- amongst all the other options we could
16 potentially deploy with.

17 Q I think we left off -- you -- some officers were
18 walking south on 126th. And did you follow them or go with
19 them or --

20 A Yeah. I made my way up to the top of the hill to
21 kind of get a lay of the land. We were given information
22 from the airplane that it was -- I believe they were saying
23 it was like the fifth house south of Burnside on the west
24 side of the street which seems very specific. And the
25 airplane as a resource is great for us because it provides

1 some situational awareness of where things are so I don't
2 just go walking up to it. But when I got up there, you were
3 looking down the street. We're looking at very shallow
4 angles so it's very hard to tell which one the fifth house
5 down is.

6 At that specific point, I hadn't heard any gunfire
7 since I had walked up that hill. And -- so I was trying to
8 determine -- I think my impression was people were trying to
9 determine how close we could get to this without being in
10 danger. And also, wanting to be able to have enough control
11 that you could influence this.

12 I believe at this point there was an estimation
13 that maybe 30 rounds had been fired. I believe that was
14 information that I got on the radio responding to that.
15 Unfortunately, you know, a handgun being fired or a rifle
16 being fired in the city of Portland is not uncommon.

17 The volume of rounds that were being fired in
18 this, it was -- it definitely felt different. It was not
19 something that one -- a round was fired and then it stopped.
20 It was continuing to happen over the course of our response
21 there and it was definitely a concern.

22 So wanting to understand where the location was
23 was important so that we could tailor our response to safely
24 intervene with that. I believe just in looking at the other
25 East officers that were there, it looked like they were

1 setting up for potentially a communication team, someone
2 who would be in a position to communicate.

3 And also, like a custody team. A group that would
4 be able to take physical custody of a person if need be.
5 And that was kind of getting worked up right on kind of top
6 of that hill, as I remember right. But also there was some
7 -- unsure like how close can we be to this problem right now
8 based on the danger.

9 Q Then what happened at that point?

10 A Sergeant Townley, who I work with on FIT, ended up
11 -- he ended up coming up the hill. I saw him. We had a
12 brief conversation. And asked that if I could get into a
13 position where we could try to locate where this problem is.
14 Try to be able to safely get into a place so we could
15 observe what's happening and help direct resources into
16 where this was, relay information back.

17 So I ask him during like a quick conversation
18 about trying to get into a position across the street from
19 this so that we could see what was happening.

20 Q Were you able to do that?

21 A Yes. As I walked up to the group of officers that
22 were up there kind of working through the problem, some of
23 them had kind of made their way over to the east side of the
24 street and were trying to kind of work behind cars to get
25 like across the street view and a view down to see where it

1 was. But we're still challenged at that.

2 So I ended up seeing Officer Josh Dyk there who is
3 a member of FIT, as well. I told him, hey, how about you
4 come with me and we're going to work our way to try to get a
5 view of this so we could locate it and try to bring
6 resources in as best as possible.

7 Q And do you recall -- did Officer Dyk have any
8 additional items with him?

9 A Officer Dyk had a patrol rifle with him.

10 Q Do you recall -- I mean, did the other officers
11 have their patrol rifles, too?

12 A No. One of the things --

13 Q That you recall.

14 A -- that we try to do is every event there's a
15 bunch of different equipment that you want to have involved.
16 And that could be -- whether it's a patrol rifle or, say, a
17 less-lethal impact munition or K-9 or air support. Or
18 there's a bunch of different resources that we could bring
19 to the table. And it's one of the times where not everyone
20 would have those. You kind of want to put specific tools in
21 specific places to solve specific problems.

22 He had a patrol rifle. I can't recall who else on
23 the scene there, what specifically they had.

24 Q Did you and Officer Dyk then split away from the
25 group at that point?

1 A Yeah. We ended up pushing to the east, along
2 the east side of the street. We pushed into the backyard of
3 one of the houses where the officers were kind of working to
4 get a view of where this was happening. And started to work
5 our way through backyards in an attempt to get to a location
6 that would be across the street or as close to across the
7 street or in the area where we could at least locate where
8 this problem was, observe it, and try to bring in resources
9 with a thought that -- it felt like some of the -- we were
10 really trying to determine where this FIT house was.

11 And it seemed to me that it was a little bit more
12 difficult than just looking down the street and counting to
13 five and knowing where this was happening. So we ended up
14 working through the backyards, pulling fence boards of the
15 houses along the east side of the street with an attempt to
16 locate a place where we could get good observation of the
17 front of the house.

18 Q As you were making your way through those yards,
19 did you hear or see anything or --

20 A You know, there's -- as you can imagine, there's
21 quite a bit of radio traffic going on. I believe there was
22 a number of rounds that were fired during this time. It's
23 hard for me to specify specifically which ones. It was
24 definitely work. We were trying to get there and see if
25 there was ways we can navigate through these yards short of

1 pulling fence boards. Trying to locate a ladder. Trying
2 to -- at times -- like go up to the -- kind of the fence
3 line to look and be like, are we in the right spot yet. And
4 trying to work our way into that position.

5 Q Did you eventually get to a yard or a position
6 where you felt like you had arrived at the place he needed
7 to be?

8 A Yes. We -- I believe there was information from
9 the airplane that the subject had gone inside at one point.
10 I think we had a vague description of what the house was.
11 And we came to a house and kind of approached -- I would
12 say, if the house is in the center, there's like a gate on
13 both the north and south side of it.

14 We approached the north gate of the house that was
15 maybe just shaded just to the north and across the street.
16 We went up there and saw the house. And I'm like, I feel
17 like we're in a position now that we do have a view of this
18 and that we can start directing resources in and making a
19 plan.

20 Q And I don't know if you -- if the map is helpful.
21 Do you recall which home you were at when you made that
22 determination?

23 A Let me get oriented here. North?

24 Q North is to the left is what we've heard. Yes.

25 A I believe the house was this house right here, I

1 believe.

2 Q I don't know if a visual would --

3 A Yeah. (Indiscernible) --

4 Q I'm going to show you a --

5 A Yeah.

6 Q -- photo here to see if it looks --

7 A Yeah. This one or maybe the one --

8 Q -- familiar.

9 A -- directly north of that.

10 Q Does that -- do you recognize that location?

11 A Yes, that looks familiar.

12 Q So that is, just for the record, 120 Southeast
13 126th Avenue. Is that where you eventually stopped with
14 Officer Dyk, do you recall?

15 A Yes.

16 Q At that point, were you in the front of the
17 property, in the backyard still?

18 A We were -- this fence that we're looking at here,
19 you see there's the carport with the two cars in it, one of
20 them covered with -- it looks like a car cloth -- and where
21 this arrow is kind of pointed is where we were. The fence
22 at this point was not open. There is a wooden fence with
23 this kind of lattice work and ivy kind of over it is where
24 we -- was our initial location inside --

25 Q And you were behind the --

1 A -- in the yard. Correct.

2 Q So into the backyard?

3 A Correct.

4 Q What do you recall happening at that point when
5 you go to that location?

6 A We got there. I believe in short order after that
7 -- we're kind of trying to determine if this is a spot we're
8 to be in -- there's a bunch of radio traffic going on. And
9 at some point, the subject ends up coming outside. I do not
10 recall if that was first put out by the airplane which was
11 watching this.

12 But the subject was coming outside. And Officer
13 Dyk mentioned that the subject was coming outside. And at
14 some point, I believe -- I'm not sure if it was someone else
15 on scene or airplane, said that the subject was putting on a
16 shirt or they were like putting on a shirt.

17 Q Then what happened?

18 A So we're looking there trying to determine what's
19 going on. And Officer Dyk says -- he's looking -- and
20 things that we're definitely looking for is -- there's been
21 quite a bit of gunfire so far. We're concerned about the
22 safety of the neighborhood and so we are looking to see if
23 this person is armed with a firearm.

24 And I go up to -- next to Officer Dyk. And he's
25 looking really hard through the fence trying to determine if

1 this person is armed or not. And he says -- he's like, I
2 believe his hands are clear, like are free. That there's
3 nothing in his hands. And I looked and I could not see
4 anything is well.

5 So Josh is taller than I am. And the fence -- I'm
6 kind of like looking to look over it. Josh, being
7 considerably taller than I am, has a pretty good view of
8 this. So I step back to put information out on the radio
9 that we have a view of this subject and that his hands are
10 free.

11 And as I'm communicating this -- I put out we have
12 a view of the subject out in front of the house, I believe
13 his hands are free -- a round is fired immediately. And --
14 or like right afterwards. And I didn't see where the
15 firearm came from but subsequently, I saw what looked like a
16 dark -- consistent with like a dark-colored handgun and a
17 muzzle flash kind of directed up -- like pointing kind of
18 up.

19 Q And this is coming from the subject location?

20 A Yes.

21 Q Then what was the next thing that you recall?

22 A So I forget if I -- it was I think pretty obvious
23 to people on scene -- and I couldn't see exactly where the
24 rest of the patrol and East Precinct, and other vehicles
25 were at this time, just based on our location. And I don't

1 recall if I had put out the subject is armed but it
2 seemed pretty clear. That was concerning. We were
3 continued to -- that he -- continuing to fire rounds off.

4 And so, and I forget exactly at what point, but I
5 heard some communication coming from up in the direction of
6 where the officers were and some kind of -- subject out on
7 the porch, armed with what I believed to be a handgun at
8 this time, and is kind of moving around, and hearing some
9 attempts at communication from the north.

10 Q Do you recall what the communication was from the
11 officers or the nature of it?

12 A It was -- it sounded to me like it was over one of
13 our vehicle PA systems which is something that you can
14 either remotely talk through or use a PA device like a
15 microphone to talk through to amplify your voice. And it
16 was -- I do not recall based on what was going on
17 specifically to what the communication was.

18 Q Was it commands or announcement of police, if you
19 recall? If you don't, that's fine but --

20 A I do not recall specifically what they were.

21 Q I want to just clarify. So you were still at this
22 vantage point when you're hearing that communication coming
23 from the north?

24 A I believe so. And I can clarify that. At some
25 point, I start looking to see if we have a better position

1 that we can be -- you know, we're out behind a fence
2 which would provide concealment for us but a wooden fence
3 with a latticework definitely would not stop -- or I
4 wouldn't expect it to stop a bullet. So looking for a safer
5 location for us. So there was time where I'm kind of like
6 -- where Josh is there. And I'm kind of now -- took a
7 little bit of a step back. And I'm kind of looking to see
8 if we have a better spot.

9 Q My question mostly though, being at that
10 residence, are you sure that the communication you were
11 hearing coming from the north was not through your radio.
12 Because you mentioned having a helmet on, too.

13 A Yeah.

14 Q Like this was external to the radio communication.
15 Right?

16 A I believe so.

17 Q Did the subject seem to respond at all when you
18 heard that communication coming from the north?

19 A Yes. Seemed to like kind of direct attention to
20 the north where I knew the officers were and said -- and
21 think he said something to the effect of like, suck my dick,
22 or something like that.

23 Q Did you communicate what the subject had said back
24 to the police via the radio?

25 A I believe so, yes.

1 Q What happened at that point?

2 A The airplane starts -- they were giving
3 information, as well, now. And a lot of -- you know, a lot
4 of stuff is coming in. A lot of radio communication. But
5 at some point, I believe I heard -- the first time that I am
6 aware of this is they say they believe the subject is out
7 and maybe moving around the back of a car. Which was kind
8 of contrary to my understanding of where the subject was.

9 And then, over the radio, I believe someone said
10 there is a child out there, too. That there's a kid out in
11 kind of proximity to where this is going on. That became a
12 huge concern to have someone firing rounds off in the area
13 around a child.

14 With that, one of my other concerns is there's a
15 glass door that opens. Like -- I don't know if it would be
16 categorized as a storm door. But you have an interior door
17 and then an exterior door which I believe had a pane of
18 glass in it, at least in the upper section of that.

19 And at times, the way the subject was standing,
20 the door would open and so there'd be some median, whether
21 it's glass or something, in between where we were and he
22 was. And some of my concern was if we lose view of him like
23 inside the house, took like a slight step back in there, we
24 would not be able to see what was going on. And I thought
25 it was important to try to understand what's going on as

1 much as possible.

2 The addition of the small child in proximity to
3 this. So I end up telling Josh that I was going to go look
4 for -- sorry, Officer Dyk. That I was going to go look for
5 another location if I could find a better spot for us. I
6 went and I banged on the back of the door of the house that
7 we were behind. Two people opened the door. They seemed
8 alarmed with what was going on. And I asked them if I could
9 come into their house and see if there was a different
10 option that I could have for maybe having a view of where
11 the incident was happening.

12 So I -- they directed me to come in. I went to
13 the front of the house. They showed me a front window which
14 I believe was blocked partially by a TV and also directed me
15 to the front door which opened into like an exterior
16 mudroom, like entryway. Either of those places I didn't
17 think were going to be overly conducive to what we wanted to
18 do. My ability to see what was going on was very limited
19 and so I didn't like that.

20 Ended up coming out. I believe I communicated
21 that with Josh that I didn't -- that there was -- that was
22 not going to work. And then, ended up kind of working a
23 plan to maybe move around -- for me to move around the South
24 side of the house.

25 Q And then what happened?

1 A So while I was back -- I believe when I was
2 back communicating with Josh, the subject had the gun, was
3 directing it around. And at some point -- my view is
4 limited to probably like below waistline. So I can see the
5 gun come up above waistline and at some point, I see him
6 like looking down or in the area where I know this child is.
7 That was -- I was extremely concerned about that.

8 Subject -- my impression was the officers'
9 attempts to communicate -- the subject had responded to
10 that; that they couldn't understand the police were there.
11 It was what I would understand as like an attempt of
12 communication. It seemed aggressive. Rounds had been fired
13 in the proximity of the child.

14 I was extremely concerned for the safety of the
15 child at this point. On top of that, this is July. It was
16 a nice day, there were people out everywhere. One of the
17 goals that we would have and to try to keep the area safe
18 would be to do some sort of evacuations or something to keep
19 people away from the dangerous situation like this. We were
20 unable to do that.

21 It was an occupied residential neighborhood with
22 multiple rounds being fired by the subject. There's a small
23 child in close proximity to this. Not being responsive with
24 law enforcement. And I was extremely concerned for the
25 safety of the child and the people in the neighborhood.

1 I told Josh that my plan was I was going to go
2 to the South side of the house and try to get into position
3 where I could maybe have a better view or I could have a
4 view that if the subject were to move further into the house
5 or use the door in a position where it would partially
6 obstruct our view, that I would be able to see that. So end
7 up going around to the south side of the house and was
8 making attempts to open a gate.

9 Q The same location though or --

10 A Same location so -- if you just -- this is the
11 north side. So just on the south side of this houses are
12 corresponding or there's -- it's not corresponding. It
13 doesn't look like this gate but there is a gate.

14 Q So I pulled up the aerial map. So --

15 A Yes.

16 Q To the south of 120 kind of in this area right
17 here --

18 A Yes.

19 Q -- in the middle of the two homes.

20 A Yeah. So I make my way around there. I ended up
21 going up to the gate and the gate had just like a relatively
22 normal like (indiscernible) lock on it. I worked that gate.
23 Tried to pull it open and it stops immediately. And I look
24 up and there's a window air conditioner unit. So within the
25 swing of this door or the gate, there's an air conditioner

1 that stops it.

2 So that was -- it took me a second to figure out
3 why this gate wasn't opening and how they actually
4 manipulate this gate because it seems like the way in which
5 it would set up would prevent this gate from ever being
6 used. But there was a latch to it. And I realized that
7 there's actually another gate door that you manipulate this
8 gate. Then you manipulate another small gate door that
9 opens it that allows clearance around this air conditioner
10 unit.

11 Q Then what do you recall?

12 A While I'm doing this, I remember hearing one
13 gunshot from -- which sounded like it came from the north
14 where I was at that southern gate. And as I open this gate,
15 I see the subject who had been armed with the firearm is now
16 up on the porch area kind of now starting to lay and fall
17 down.

18 Q Then what?

19 A The -- I -- there's information from the airplane
20 about where the child is. I -- like I mentioned, the
21 subject is firing rounds around this kid. At this point,
22 the subject is still moving. I know that they're armed with
23 a handgun. I felt like the priority at that point was I
24 need to make sure this (indiscernible) being like a four or
25 five-year-old girl was okay.

1 I ended up kind of running out from this gate
2 and there's a large tree (indiscernible) overhead -- it's
3 hard to tell to differentiate it but there's a relatively
4 large tree in the front yard of the house we were behind. I
5 remember going up to behind that tree and looking and seeing
6 the young child now kind of walking to the north of where
7 the subject -- like kind of the front of this house where
8 the subject was down.

9 As I kind of felt someone come up beside me. I
10 looked over, I saw it was Officer Dyk. I looked at him. I
11 said, are you okay. He said that he was okay. Then I think
12 I told him to come with me. And we ended up running across
13 the street. At this point, I believe Sergeant Townley ended
14 up coming up on the radio and asking if we wanted to start
15 bringing resources up to the scene and I believe I told him
16 I wanted him to start bringing resources closer.

17 And at this point, until I kind of got out into
18 the street, I didn't -- I couldn't tell where they were.
19 Officer Dyk and I ended up running across the street to just
20 north of the location here, the 125. There's a row of
21 arborvitae that are right here. And the child is kind of
22 like wandering around in this area.

23 I can see the subject is still moving. And I go
24 up to the arborvitae and try to get her attention to be
25 like, hey, come to me, come to me. And as I'm sure for a

1 small child in an incident like this, very scary. I'm
2 wearing a helmet. I'm -- so I'm trying to get to come to me
3 and she's -- kind of looks at me and then turns around and
4 starts to kind of like go back up onto the porch.

5 This was concerning for sure. I knew we hadn't
6 accounted for where the firearm was. The subject was still
7 moving. And I believe I told Josh -- I'm like, come with
8 me. We ended up going around to the front of it, of the
9 house there.

10 There's -- in the driveway for the 125 house,
11 there's like -- it was like a chain-link fence, almost like
12 a double chain-link fence that you would use to block a
13 driveway. So I believe it was closed. I went up there.
14 Officer Dyk -- and at this point, I believe there's some
15 other officers I felt like kind of coming up behind us at
16 the time. End up pushing the gate open.

17 Ended up kind of running across the front yard,
18 going up to where the child was. And she's now in very
19 close proximity to the subject who's down. Ended up
20 grabbing her, picking her up, kind of trying to turn her
21 away from where this is. And start to like move her out of
22 this lot as other officers are kind of coming up.

23 Q What happened at that point, I guess?

24 A As I'm taking control of her, she was truly my
25 focus at this point, so as I grab her and move, I believe I

1 see other officers coming up. And see something kind of
2 moved away from the subject which seemed consistent with a
3 handgun. I was not focusing on it at that point but there
4 was something I saw like -- someone pick up and move away
5 from the subject which would be consistent with the way that
6 we would maybe try to move a firearm away from a person if
7 the intent is to maybe provide medical aid for them where
8 the proximity of the firearm would be a problem.

9 So at this point, I ended up just going out to the
10 street. There's a telephone pole just to the north of the
11 location kind of on that west side of the street. I kind of
12 go up behind the telephone pole, sit there, and kind of held
13 her there.

14 I took my helmet off because she was upset.
15 Trying to be like -- look as non-scary as possible and try
16 to calm her down a little bit and talk to her for a second
17 while I saw some other Portland police members going up
18 there with medical aid and stuff and started trying to
19 provide medical care.

20 Q At some point, did another officer take the child?

21 A Yeah. I turn around and I see another police
22 officer pull up in a car there or they came up to me like,
23 hey, do you want me to take her. I said that I would. So I
24 kind of handed her off to another officer.

25 And at this point, there is a number of police

1 officers kind of in the front yard of the house. I
2 believe Sergeant Townley was in the front yard or close to
3 that entrance to the front yard as possible. So I went up
4 to him and checked in -- and just checked with him and said
5 is there anything else I can do to help out right now. What
6 else needs to be done.

7 Q Were you sort of -- was there anything else for
8 you to do at that point?

9 A With the number of rounds that were fired, the
10 information that we had, I didn't feel sure that there was
11 any other people involved in this. We have the subject who
12 is now down in front of the location. People have --
13 they're providing medical care. But it felt like there was
14 some exigency to make sure that no one else was in the house
15 who was potentially injured.

16 There's a group of officers that were kind of
17 towards the front area of the house and were kind of going
18 through to start and clear the location or check the
19 location to make sure there was no injured people inside the
20 house. I stepped up to the group. At that point, there was
21 -- if I had to estimate, maybe like five people kind of in
22 this entrance area.

23 And I just kind of stood back and just kind of
24 gave some direction. Hey, let's grab some people and start
25 clearing these rooms. Let's have some people clear these

1 rooms. And once we -- they had gone through those rooms
2 and indicated that they had not located any victims, I said
3 let's just swap rooms to make sure that we didn't miss
4 something. Swapped rooms. They just -- so we have fresh
5 eyes in fresh rooms.

6 They conducted a search of the location for any
7 injured people. Came out. Said that they didn't locate
8 any. Then we came outside the house and I communicated with
9 Sergeant Townley that the -- that we had found no more
10 injured people inside the location.

11 Q Was there any further -- did you do anything else
12 further at that point or is that sort of when you --

13 A I think I kind of made my way out to the street.
14 At some point there was conversation about -- there was
15 actually exterior access to either a crawlspace or a
16 basement that people had a plan to go verify that there's no
17 one in there. I did not take part of that clear. And at
18 that point, I think that's about the end of my role in this
19 event.

20 Q Can you just -- I just want to make sure I
21 understand. At the time that you learned the subject was
22 down, where were you in relation to Officer Dyk?

23 A I was on the opposite side of the house. So if he
24 was on the -- I believe he was on the -- last place I saw
25 him is he was on that north fence line with the -- or kind

1 of the cross area --

2 Q The same fence area --

3 A -- where the --

4 Q -- you were describing before?

5 A Correct, yeah. Under the carport. So I had moved
6 around the house. So I was like the exact opposite side of
7 the house on the same fence line facing 126.

8 Q I just have a couple more questions.

9 A Sure.

10 Q So as a rifle operator, certified rifle operator,
11 we've heard some testimony that that's sort of an additional
12 training class or classes to earn that certification. Is
13 that correct?

14 A Correct. Just like with any tool that the police
15 bureau certifies you to do or any skill set whether it's an
16 ECIT or enhanced crisis negotiations or things like that,
17 there is a class that's associated with that for
18 certification. So the rifle -- patrol rifle program does
19 have a certification process to allow a person to carry that
20 tool. It's not an item that's just issued to every police
21 bureau member.

22 Q And you've presumably gone through all that
23 training.

24 A Correct.

25 Q And you're certified. Is there a different --

1 based on your training and experience as a rifle
2 operator, were you trained differently by the bureau with
3 regard to principles about self-defense, defense of others,
4 use of force, use of deadly force? Is there a different
5 training that you learned in relation to those just through
6 virtue of the rifle operator?

7 A The force policy whether it is from federal to
8 state to -- policies -- it's the same force policy. There's
9 no specific force policy for rifle operators. It's a tool
10 that provides different advantages. Depending on the
11 incident just like a less-lethal tool. Would have certain
12 times where it would be used. It doesn't change our force
13 policy. It's a different tool that would, depending on the
14 scenario, provide an advantage in deploying it.

15 MS. NADELL: I don't have any other questions at
16 this time. We'll see if the grand jurors have any.

17 THE WITNESS: Yeah.

18 GRAND JUROR: Go ahead.

19 GRAND JUROR: So over that fence -- we don't know
20 how tall Dyk is yet. But is he a head above the fence? Is
21 he getting a whole view of everything? Compared to you?

22 THE WITNESS: He -- I am -- yeah, I'm 5'10".
23 Officer Dyk is tall. I -- if you said he was like 6'5", I'd
24 say that's realistic. He's considerably taller than I am.
25 And I remember -- to try to help -- if I'm looking at the

1 fence, I'm looking at it and I'm trying to see as much as
2 possible but also not -- don't want to get too exposed. And
3 I'm like -- kind of really having to strain to look over the
4 fence and then get a downward enough angle that I could see
5 where it is.

6 GRAND JUROR: Got you.

7 THE WITNESS: I could see it. I would -- Officer
8 Dyk is taller than I am.

9 GRAND JUROR: Did you ever perceive that the
10 subject noticed the two of you when you were in position?

11 THE WITNESS: During the time that I was there, I
12 do not believe so.

13 GRAND JUROR: Did you perceive the child to be in
14 some sort of hostage situation?

15 THE WITNESS: I'd say hostage situations are
16 defined -- we define those specifically -- and the way that
17 I would define a hostage event is an event where a person
18 has value. Where -- like as -- in like your classic
19 Hollywood movie, a hostage situation as defined -- as we
20 would define it would be a person has value. There's a
21 person being held for a specific reason as leverage against
22 something else.

23 I would say conversely, another option and thing
24 that we would talk about would be either a barricade or
25 criminal activity with the victim. We would -- I would

1 assign that -- or the way that we would define that is
2 the person doesn't have value. It's not a negotiation, it's
3 not a: I would like this so I'm not letting this person go
4 until you -- until I'm allowed to leave here freely.

5 So to your question, I would not define as a
6 hostage event. I was very concerned that this was closer to
7 a barricade with the victim which, in my mind, is less -- is
8 far more dangerous on account of the person -- the victim in
9 this does not have value. A hostage event there's value in
10 a victim.

11 As I looked at this, I felt like there was no
12 attempts that I knew of for negotiation and I was very
13 concerned that the child's proximity to this and that it
14 would fall into more of that category where the less value
15 that this victim potentially has, I would equate, with a far
16 more dangerous --

17 GRAND JUROR: And then, if -- I can kind of guess.
18 When you first arrived, what are kind of some instances that
19 you felt like an increase of a threat level that he was
20 posing?

21 THE WITNESS: One of the things increase in threat
22 level is duration. Like I mentioned earlier, if a person
23 walks outside their house and fires around into the air and
24 a neighbor calls in and goes inside and turns all the lights
25 off, I think that's definitely a different event than one

1 that's going on where there's neighbors calling. I
2 believe at one point a neighbor may have even mentioned to
3 911 that they were going to try to intervene. And this is
4 just continuing throughout the response.

5 So I would say there's increased -- my impression
6 of this was as the time went on and this event was not --
7 this was not a person who had just gone out, fired around in
8 the air on the 4th of July although you should never do
9 that. That's definitely a different event than this.

10 And then I think additionally, with the longer
11 this is going on, when police now are on scene and marked
12 patrol cars, this continues. I think that's an increase in
13 danger of the event. Now that the person knows that the
14 police have been called, they're now in view of police
15 officers, going to continue that action.

16 In addition to that, one of the big things and a
17 big concern with me throughout the event was once the child
18 was involved.

19 GRAND JUROR: Okay, cool.

20 MS. NADELL: Go ahead.

21 GRAND JUROR: Did you ever see that north gate --
22 north gate. Yes, the north gate open. It was closed the
23 whole time?

24 THE WITNESS: It was closed at the time. The time
25 that I saw it open was when afterwards when I did a

1 walkthrough with our detectives division. I noticed that
2 was open.

3 GRAND JUROR: Did you have anything to stand on
4 there?

5 THE WITNESS: I don't recall anything that -- I
6 did not stand on anything. I don't recall all the items in
7 the yard at that point so I do not recall something to stand
8 on. But I did not stand on anything while I was behind
9 that.

10 GRAND JUROR: So at 5'10", you're barely peeking
11 over the fence even with a good six inches or maybe a little
12 more on you. That doesn't seem like a comfortable height
13 for shooting over. I'm imagining somebody even at 6'5" with
14 a fence that height --

15 THE WITNESS: Yeah.

16 GRAND JUROR: -- and a rifle --

17 THE WITNESS: I was -- like I would say -- I'm
18 looking over this fence and I'm able to get like -- I can
19 get my arms up -- see this fence. And one of the things
20 that was difficult is as I'm looking, I'm trying to look
21 across in a downward angle. So my positioning, as I recall,
22 in looking at the fence is -- it's kind of like -- it's a
23 pretty tall fence.

24 It wasn't -- without measuring, it wasn't -- my
25 impression was it wasn't like a six-foot good neighbor fence

1 that I would not be able to see -- it was lower than
2 that. But I remember it being like kind of an uncomfortable
3 height for me to get a good view over.

4 GRAND JUROR: Maybe a better, more focused
5 question would be --

6 THE WITNESS: Sure.

7 GRAND JUROR: -- did you ever at any point see
8 Officer Dyk with his weapon positioned over that fence?

9 THE WITNESS: Yes.

10 GRAND JUROR: So it looked like he could position
11 himself for a shot over the fence?

12 THE WITNESS: At the times I was there with him, I
13 believe his rifle was up in a position where he would be in
14 -- he would be able to respond.

15 GRAND JUROR: Thanks. That was my long way to get
16 there.

17 THE WITNESS: Yeah. No -- yeah.

18 GRAND JUROR: So approximately what's the distance
19 from there diagonally to the porch where --

20 THE WITNESS: Oh, boy.

21 GRAND JUROR: Wasn't it 136?

22 GRAND JUROR: 136.

23 MS. NADELL: Oh, I would caution -- let's let the
24 witness answer the question if he knows. And you can
25 always, again, rely on your own notes from any of the

1 testimony you've heard.

2 THE WITNESS: From the -- this is set back. Do
3 you mind going to the overhead?

4 MS. NADELL: No. Let me -- this one?

5 THE WITNESS: Yes, please. Just in looking at
6 this, it was a driveway area, a street, another substantial
7 driveway. I -- if I had to estimate, I'd say like 40 yards,
8 50 yards, something similar to that. But it was -- the
9 front yard of both locations. Both houses are set back and
10 not right on the street. Then the width of the two-lane
11 unmarked road and then a little bit of shoulder on either
12 side.

13 GRAND JUROR: It had something to do with the --
14 did you say that a handgun has -- you have less accuracy
15 shooting? So if he's on that porch -- so his accuracy
16 shooting at either Dyk's location or up going north -- and
17 it's -- what's the daylight like at this time?

18 THE WITNESS: This was in the evening. We
19 didn't --

20 GRAND JUROR: So dusk?

21 THE WITNESS: Dusk, yeah. I never remember having
22 to use any sort of like artificial flashlights or anything
23 to navigate. It was the end of July. Light was up.

24 GRAND JUROR: Yeah.

25 THE WITNESS: A lot of people were out.

1 GRAND JUROR: That was my other question. Does
2 -- is -- does the police department in a situation like that
3 ever use bullhorns to go through the neighborhood to say
4 there's -- to stay inside?

5 THE WITNESS: So the options that the police
6 bureau has -- and I can speak to the ones that I know of --
7 the PA system that are on -- that's on a patrol car. They
8 do that. In addition to that, they have through -- and I
9 can speak in generalities about this because I know it
10 exists but I wouldn't be able to explain to you exactly how
11 it works. They have -- through our dispatch center, they
12 have the ability to locate an area and do -- they call it a
13 reverse 911 call.

14 GRAND JUROR: That's right. Yes, yes.

15 THE WITNESS: And they would say, you know, within
16 -- and I'm not sure how this works. But they'd be able to
17 say, hey, shelter in place during this location and I know
18 they use that for some sort of communication with a
19 community or an area. But specifically, with the police
20 bureau, we have the PA systems that are attached to our
21 vehicles.

22 GRAND JUROR: So where you were located and where
23 the shooter was located and with that handgun, if he had got
24 eyes on you -- no, because you don't know the kind of gun he
25 has. If he could -- if the bullet would go that far. Never

1 mind. I'm thinking out loud.

2 THE WITNESS: No, it's fine.

3 GRAND JUROR: Okay.

4 MS. NADELL: I mean, I think the question is an
5 important one. From the fence area, assuming that the
6 subject was firing with a handgun, were you personally in
7 fear for your safety if he fired in the direction of where
8 you were?

9 THE WITNESS: Yeah, absolutely. I think of this
10 subject were to fire in our direction, I would be absolutely
11 concerned with our safety. And one of the things responding
12 with the Focused Intervention Team, we go to many shootings
13 in the city of Portland. And with that, I've been on scenes
14 where there's a number of rounds fired, you'll go -- you'll
15 walk a block and find a handgun round that has penetrated
16 into the second room of an apartment building or a home.

17 So in distances far further than the one we were
18 at there. So a handgun -- and I mentioned the increased
19 level of accuracy of a rifle which is true but doesn't say
20 that a handgun would not travel that distance, and at that
21 distance, wouldn't be extremely dangerous or potentially
22 deadly or that a person with a handgun -- in generality, I'd
23 say a rifle is more accurate but at the distance where we're
24 looking at here, a person's ability to deploy a handgun
25 effectively I think definitely falls within the range where

1 people can accurately deploy a handgun.

2 MS. NADELL: And you had -- I'm sorry. You
3 Testified earlier that that fence, to you, based on your
4 training and experience, it sounded like you weren't
5 convinced it would stop a bullet. Is that fair?

6 THE WITNESS: Yes.

7 MS. NADELL: go ahead.

8 GRAND JUROR: My next question has to do with kind
9 of (indiscernible) stuff. So as you're going through the
10 backyards, do you hear the officers make contact verbally
11 with the shooter?

12 THE WITNESS: I'm not sure --

13 GRAND JUROR: Because I know you have helmets on
14 and --

15 THE WITNESS: Yeah.

16 GRAND JUROR: -- you've got the radio in your ears
17 so --

18 THE WITNESS: A lot of stuff was going on. Our
19 helmets are outfitted with what they're called -- we call
20 them active ears. And the way an active ear works is it is
21 -- it protects your hearing. And if we were here talking,
22 we could communicate freely. If there was a very loud
23 noise, it would isolate that and just block that.

24 So the goal would be that you could wear hearing
25 protection without losing the complete ability to

1 communicate and hear what's around you. While we're
2 working through those yards, there's a degree of exertion
3 that's involved with pulling fence boards. There's a lot of
4 radio traffic.

5 So I can't specifically say when the communication
6 or attempted communication between the officers on scene
7 were and the subject. The part I could speak to was when I
8 heard communication coming from the north and then him
9 respond to that. What I believe to be responding to that.

10 GRAND JUROR: Or the gunfire.

11 THE WITNESS: I'm sorry?

12 GRAND JUROR: Or the gunfire? You -- never mind.
13 So after -- you saw the victim down, or the subject down,
14 and you met up with Officer Dyk, you didn't know at that
15 time that he had been the shooter?

16 THE WITNESS: No.

17 GRAND JUROR: Since you have experience on SERT,
18 when they're activated, generally, does that change anything
19 on the ground? Is there -- Is it just kind of continue
20 dealing with the situation as you would or is it like, okay,
21 SERT has been activated, now there's different steps in
22 place or anything like that?

23 THE WITNESS: I'll try to answer your question
24 here --

25 GRAND JUROR: Sure.

1 THE WITNESS: What I think you're -- an event
2 like this which is rapidly unfolding, there's no pause
3 button. So the event is going to unfold until -- if SERT is
4 activated, until they get there. And the can -- depending
5 on staffing, on who's working and who's not, depending on a
6 lot of different factors, that time frame to have SERT there
7 incapacity to deploy is -- it's not five minutes. It's --

8 GRAND JUROR: Sure.

9 THE WITNESS: It takes a while. So an event like
10 this where there's -- it's rapidly unfolding, like I
11 mentioned, there's no way to stop this, the event is going
12 to continue and so you're kind of making a plan on if SERT
13 is activated to this, at some point, SERT is going to be in
14 a position to assist in taking over this event. But until
15 then, you have the resources you have.

16 Conversely, if you say like -- an event that's not
17 unfolding such as this, you may hold an event, have SERT
18 arrive, and then they can deal with that if it's like a
19 planned response or something that's not active. An event
20 like this, it's going to continue to unfold with the
21 resources you have under the plans you've made until SERT
22 would be in a position to assist.

23 GRAND JUROR: Yeah.

24 MS. NADELL: Other questions? We can go off the
25 record. Thank you so much, Officer.

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THE WITNESS: Yeah, thank you very much.

GRAND JURORS: Thank you.

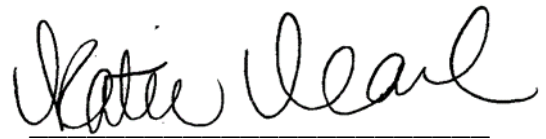
(Whereupon, the proceedings ended at 3:33 on
December 14, 2022.)

C E R T I F I C A T E

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I hereby certify that the proceedings set forth in the above-entitled matter were reported by audio recording; that thereafter I caused the said audio recorded notes to be transcribed into the foregoing transcript and the foregoing 171 pages constitute a full, true and accurate transcript of the proceedings as noted herein.

January 6, 2023



KATIE LEACH
Official Transcriber

Within this transcript of proceedings, some of the names and/or technical terms are spelled phonetically, inasmuch as exhibits, files and support documentation were not made available to us for reference.