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

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: DEATH INVESTIGATION : No.
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GRAND JURY No. B
PROCEEDINGS
Case No. 24

Conducted by:
Amanda Nadell, Deputy District Attorney
Case No. 2450757

Thursday, December 15, 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 15, 2022

(11:06 a.m.)

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

MS. NADELL: We are on the record. It's Thursday, December 15th, Grand Jury B, Case No. 24. This is an ongoing death investigation case. DA No. 2450757.

Amanda Nadell on behalf of the state here. And we are proceeding with witness testimony. Our first witness today is Teresina Arthur.

So Ms. Arthur, that's your seat. If you could stay standing and raise your right hand. And then the foreperson here will swear you in.

TERESINA ARTHUR

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. And if you could state and spell your first and last name.

A Teresina Arthur. It's T-e-r-e-s-i-n-a. And then Arthur, A-r-t-h-u-r.

Q Thank you for being here today, Ms. Arthur. Can you tell the grand jury where you live?

1 A I live

2

3 Q How long have you lived at that location?

4 A About to be two years now.

5 Q And were you home on the evening of July 27th of
6 2022?

7 A Yes.

8 Q Do you recall anything happening that evening in
9 your neighborhood?

10 A Yes.

11 Q Can you tell us what happened?

12 A There was a shooting that happened.

13 Q How did you first kind of become aware that
14 something was going on that night?

15 A Well, at first, I thought I was hearing fireworks
16 going off. Like they shot off like maybe five, six times
17 before I finally realized that that was not fireworks. When
18 I realized it was because I -- I was in my room when I heard
19 those noises. Then I went to my living room and I look out
20 my window.

21 And it was facing towards my neighbor's house and
22 that's when I saw him coming out with a gun shooting up in
23 the air. And that's when I knew it was, oh, okay, this is a
24 shooting happening.

25 Q So does your living room face 126th Avenue, your

1 living room window?

2 A Yes.

3 Q And were you looking left from your house or right
4 from your house?

5 A From my house, it's left.

6 Q And was this a neighbor that you knew prior to
7 this day?

8 A No.

9 Q What did you -- what do you remember seeing this
10 person do when you saw him shooting?

11 A What I remember was that he was (indiscernible)
12 and like he kept going out. Like shot two, three times.
13 And then like going back inside his house and like maybe a
14 couple more minutes, then he goes back out and shoots more.

15 Q Did that happen -- it sounds like at least two
16 times. Did it happen more than two times?

17 A I think it happened more than two times.

18 Q Did you call 911?

19 A No, I didn't have my phone. But a couple of my
20 neighbors across the street, they were outside. And I think
21 they're the ones that called.

22 Q Did you maintain a position at the window and sort
23 of keep watch on what was going on?

24 A Yeah. I put the window -- our curtains down and I
25 was just like peeking and seeing what was going on.

1 Q At some point, did you see police officers
2 arrive?

3 A Yes, our whole block was filled with police
4 officers. And I saw -- the SWAT team came also. Then there
5 was a couple of police officers that were using my car as a
6 shield.

7 And there was like two or three that broke my
8 fence, my back fence, and my neighbor's fence so they could
9 go through the house that is across from that person's
10 house. Yeah, so there was maybe four or five cops behind my
11 car trying to talk to the guy that was shooting.

12 Q Can you tell us a little bit more -- when you say
13 they were trying to talk to him, what did you hear them
14 saying?

15 A They were mostly just telling him to drop his gun
16 and put his hands up in the air.

17 Q Did the male they were talking to respond at all?

18 A Yeah. He was mostly just saying -- cussing them
19 out and he actually lifted his gun and point it at the
20 police officers.

21 Q You saw that happen?

22 A Yeah.

23 Q What happened at that point?

24 A I think he shot one round at the police officers
25 and that's when the police shot him down.

1 Q When you say the male was cussing out the police,
2 do you recall words he was using?

3 A No, I can't remember. But I just remember that he
4 kept saying like the F word and (indiscernible).

5 Q I'm sorry. F word and what?

6 A He was basically just saying the F word and
7 calling them a B.

8 Q Was your -- was the car that they were -- your
9 vehicle that the police were using to sort of hide behind,
10 where was that parked?

11 A In front of my house in our parking --

12 Q Then the last thing I'm hoping to ask you and then
13 I'll see if the grand jurors have questions -- is I have an
14 aerial map up on the screen. Does that look like --

15 to you?

16 A Yeah.

17 Q Do you see your residence on there? The numbers
18 are a little small but --

19 A Yeah.

20 Q Let me see if I can make it a little bit bigger.
21 Do you see the numbers on the top of the -- like the
22 (indiscernible)?

23 A Yeah. It should be this one.

24 Q is that the -- oh, that's where you live?

25 A Yeah, it should be this one on --

1 Q Well, this says it's but I don't know if it's
2 accurate.

3 A Oh.

4 Q Is that accurate?

5 A Yeah. It's that one. Sorry.

6 Q You probably don't look at your house too much
7 from the air, I'm guessing.

8 A Yeah. Yeah. So it's just parked in front of our
9 house. And my window is right there.

10 Q Just for the record, you were pointing to the
11 south side of your house where the window is it sounds like?

12 A Yeah.

13 MS. NADELL: Thank you so much, Ms. Arthur. The
14 grand jurors get to ask questions, as well. So I'm going to
15 let them weigh in here if they have any questions.

16 GRAND JUROR: So you said you saw him level the
17 gun and then shoot at the police?

18 THE WITNESS: Yes.

19 GRAND JUROR: Were they shooting at the people
20 that were behind your car do you think?

21 THE WITNESS: I think so because they were -- most
22 of them were behind my car.

23 GRAND JUROR: Have you noticed any damage to your
24 car or house from a gunshot?

25 THE WITNESS: No, not that I know.

1 MS. NADELL: Other questions? Any other
2 questions? Thank you so much, Ms. Arthur. Let's pause the
3 record to see -- so I can see if there's another witness
4 here.

5 (Off the record.)

6 (On the record.)

7 MS. NADELL: We're back on the record in the
8 ongoing death investigation case. And Mr. Atkins is here.
9 Atkins, excuse me.

10 THE WITNESS: Atkins. Yeah.

11 MS. NADELL: Go ahead and stand up if you could,
12 sir, and just raise your right hand and the foreperson will
13 swear you in.

14 JESSE AKINS

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

17 DIRECT EXAMINATION

18 BY MS. NADELL:

19 Q Go ahead and have a seat. Can you state your name
20 and spell your first and your last name?

21 A Yeah. Jesse Akins. J-e-s-s-e A-k-i-n-s.

22 Q And Mr. Akins, where do you live?

23 A I moved since the incident. I currently live at
24

25 Q Thank you so much for providing the updated

1 information. Where did you live in July of 2022?

2 A

3 Q Great. And I have a map up on the screen. Do you
4 see that residence there? The numbers are a little small
5 but --

6 A Yes, yes. I'm up there.

7 Q And did -- was there an incident back on July 27th
8 of 2022 that caused you to be alarmed?

9 A Yeah.

10 Q Can you just walk us through what you remember
11 happening?

12 A Yeah, sure. I was sitting on the living room
13 couch watching some TV when I heard a not unfamiliar sound
14 in the neighborhood or in my life. The sound of gunfire.

15 Q And I'm sorry. I should have -- do you mind
16 telling us a little bit about your background?

17 A Sure, yeah. I was -- served in the U.S. Army from
18 '97 to '97. Combat arms, field artillery. Deployed to Iraq
19 in '03/'04. Saw some things, did some things. Had
20 extensive training (indiscernible) over many years. So we
21 have lots of bullets down range. Far more than the average
22 soldier does. And I'm very familiar with many weapon
23 systems and calibers hunting all my life and stuff like
24 that. So quite familiar with this situation.

25 Q So it sounds like you were on your couch on July

1 27th and heard what exactly?

2 A So I heard some gunfire. I wasn't sure what it
3 was at first or how far away it was at first. Like I said,
4 it's kind of common in the neighborhood.

5 Q What do you mean by that?

6 A You often hear gunfire within a mile or two. The
7 street behind us, 127th, there's an apartment complex with
8 some -- a lot of trouble. And there's a lot of gunfire that
9 comes by there. Last year, we had two drive-bys on that
10 street.

11 So just kind of familiar with it, with the
12 environment. Then of course, there's been several shootings
13 on Burnside and 127th, 126th in the last six months or so.
14 More than that now, but -- yeah.

15 Q So when you first heard the gunfire, what did you
16 do?

17 A Well, I listened. I just stopped and listened and
18 determined where -- a lot of the times you'll hear the first
19 one or two rounds and then they'll fade away if they keep
20 going. And the reports will get farther and farther away
21 and change tone with doppler effect.

22 This one didn't. It just kept going. And I was
23 like, oh, okay. This is not going anywhere. It's going to
24 keep going. Let me figure out where it's going to go. So I
25 walked up to the window, took a peek. Couldn't see

1 anything.

2 Walked out to the front porch where I could get
3 better sound and sight and realized it was literally right
4 across the street from me, just down two houses which is --
5 looks further away on the picture than it actually is.

6 Q And how did you confirm that's where it was?

7 A Visually. I mean, audibly first. Like, oh, it's
8 to my left. Looked off to my left and I could see him in
9 his driveway.

10 Q Did you know who it was?

11 A I know him. I have never interacted with him. I
12 didn't even know his name until that day.

13 Q And what house was it then?

14 A What do you mean?

15 Q If you need to use the -- like where on the --
16 which house was it coming from?

17 A Oh, it was this one here with the large backyard
18 and several outbuildings.

19 Q 125?

20 A Yeah.

21 Q So what did you see happening then when you were
22 looking at the house?

23 A At that point, he was firing off a couple of
24 rounds. Then it looked like he reloaded. And that was in
25 reloading phase. I went back inside. Told my girlfriend to

1 go downstairs. Get out of the kitchen, go downstairs. I
2 went upstairs and armed myself. Came back downstairs. Came
3 back out to the porch. Saw my neighbor watering his plants.
4 Told him to go inside, go to his basement.

5 Q Was that Mr. Walker?

6 A Yeah, that was Daniel.

7 Q Daniel?

8 A Daniel Walker. Yep. And then I kind of just kind
9 of crept out to the front of my lawn a little bit to get a
10 better look at what was going on. Saw him -- oh, and I
11 forgot to mention, while I was moving from one part to the
12 other of the house, he switched calibers. I went up in
13 caliber.

14 Q How do you know that?

15 A The sound of the report changes. The -- it's just
16 kind of a bit more resonance to it. And it was more
17 impactful.

18 Q So could you tell based on your experience what --
19 or what you saw, what sort of firearms were being used?

20 A My guess was a short -- like a pistol, handheld
21 weapon, and a long gun of some kind.

22 Q Okay.

23 A I didn't actually see weapons in detail close
24 enough to be able to identify them.

25 Q Fair enough. But you do recall hearing shots

1 that --

2 A The shots were semi-automatic in nature. In
3 rhythms of four, five, six, and sometimes eight or more.
4 There was about 40 to 50 rounds or more fired.

5 Q What happened after you kind of went outside and
6 told Mr. Walker to get inside?

7 A Like I said, I walked out to the front lawn and
8 kind of got a better look at what was going on to kind of
9 determine where he was aiming more than anything. And it
10 looked like he was kind of firing up into the air and off to
11 the north a little bit.

12 I wasn't sure if that was how he had always been
13 shooting but that was the direction he was shooting when I
14 looked. He was looking away from me. He wasn't looking at
15 me. So I didn't want to draw his attention at that point.

16 I grabbed my phone, called 911. Went back up to
17 my porch and kind of got down low. And just waited to see
18 what happened while I talked to 911.

19 Q Then what -- walk us through --

20 A Well, the first report -- first 911 call was
21 short. The operator was brief and took the information and
22 then just kind of went away.

23 Q Did you call back?

24 A I did call back because it was continuing ongoing.

25 Q Yeah.

1 A The caliber had changed. The second time -- let
2 me rephrase. I'm sorry. When I came back in, I called 911
3 for the second time. The first time was when I was going up
4 and down the stairs. Let me rephrase that. I apologize.

5 Q When you called back, did you stay on the line for
6 quite a while?

7 A I did.

8 Q Were you sort of whispering?

9 A I was whispering. I didn't want him to hear me
10 talking. I didn't know where he was because I didn't have
11 eye line.

12 Q Could I play a call and have you see if it's your
13 call?

14 A Sure.

15 Q I'll try to stop it just if you --

16 A No, you're fine. Yeah.

17 (Whereupon, an audio recording was played for the
18 grand jury.)

19 A That's me.

20 Q That's you?

21 A Yeah.

22 Q Do you -- and that's your second call. Correct?

23 A That's my -- I don't know if it was my second
24 call. I think it --

25 Q Well, let me play a little bit more.

1 A I'm pretty sure it was because the first guy was
2 -- the first caller was -- the first --

3 (Recording continued.)

4 A Yeah, it's the second call.

5 Q That's your second call. We will listen to that
6 in a little bit, sir. Thank you. Go ahead. So you called
7 back.

8 A So I called back.

9 Q And where were you at when you made that call?

10 A Say again.

11 Q Where were you at in your home or --

12 A Oh, my porch.

13 Q On your porch.

14 A Laying prone on my front porch behind -- I have a
15 little -- like a little vestibule in the front and I was
16 laying behind the front wall of that.

17 Q And walk us through what you saw, what you
18 remember.

19 A So at that point, I had come back inside from
20 seeing what was going on, telling my neighbor to go inside.
21 I had my phone out. I was talking to 911. There was texts
22 between my girlfriend and Danny and my other neighbor across
23 the street, Katie. I was trying to remember her name for a
24 minute there.

25 And they were kind of talking about what was going

1 on while I was on the phone with 911. And I was just -- I
2 had called 911 because the caliber had changed and it seemed
3 to be escalating.

4 At one point, there was an individual who walked
5 down the street towards that house from the north side
6 towards the south. And I wasn't sure what was going to
7 happen. And I got a little worried that -- and I think that
8 reflects in the phone call.

9 I got a little concerned that it might get
10 escalated. I wasn't sure what that person's intention was.
11 I wasn't sure what the person was firing's mental state was
12 towards anybody walking up.

13 So I was kind of getting myself mentally hyped up
14 to be ready for whatever came next. And anyway, I told the
15 911 call that. And then, yeah, I don't remember exactly
16 what happened turn by turn but that was kind of the process
17 of it.

18 Q Were you still kind of out front when -- did
19 police end up arriving, I guess?

20 A Oh, yes. No, I stayed on the phone. And I stayed
21 up on my front porch all the way up until I saw the aerial
22 going over. I could see the beginnings of the vehicles
23 staging at the north side of the road from where I was. My
24 door faces north so I could look northward. And I stayed
25 out there until I saw two armed officers walking southward

1 across the lawns.

2 They got two -- neighbor on the opposite side of
3 Danny. So not 106 but the one north of that. They got to
4 their front yard and there's a large tree there. And they
5 were -- one of them had posted up behind that. The other
6 had started kind of moving just through the street. And he
7 was like, no, no, no, you go -- come back over here. And
8 then they kind of redirected and they went behind the
9 houses.

10 That's when I went back inside. I didn't want to
11 be their problem. Especially the fact that I was armed. I
12 didn't want any kind of confusion or (indiscernible)
13 happening there. So I went inside. I went down into the
14 basement at that point. I had not -- I did not know they
15 had come through our backyard but they did. And they went
16 to the neighbors on 120 and they came through the gap
17 between our houses.

18 And I -- from the sound of things, I believe they
19 confronted them from the front lawn of 120. There was --
20 this entire time he was still shooting in bursts. And then,
21 not -- but at -- you know, pop, pop, pop, pop, pop. So when
22 the police officers had come up, he fired two more rounds.

23 And then I heard them yell their normal commands.
24 Couldn't hear it specifically but you know what it sounds
25 like. You know the tonality of it. You've all heard it

1 enough to know what they're saying. Then pop, pop. Two
2 different kind of reports. One and one in response.

3 The one that came -- the second one -- hang on.
4 The one -- one of them hit either the fence right outside my
5 window or my building, my house. But it was clearly like a
6 reaction and response kind of thing.

7 Q And that was the last final two you heard?

8 A That was -- and that was it. That -- it was dead
9 silent after that.

10 Q Were they very close in time?

11 A Yes. Everything was like (snaps fingers).

12 Q You've sort of -- well, let me ask you this
13 question first. Has -- had there been -- had you seen this
14 guy with a gun before in his residence or --

15 A No, I'd never seen him with any firearms before.
16 The -- my only interactions with him before that day, again,
17 not directly -- nothing actually interacting with him. Just
18 visual -- just observations. Him out there messing around
19 on a skateboard, playing with his daughter, arguing with his
20 -- I believe his dad who had come by. Apparently, there
21 would be -- sometimes would be arguments and stuff like
22 that.

23 Q Like verbal arguments?

24 A Yeah, verbal arguments. I don't know the extent
25 of them. And then, sometimes loud music and he would drive

1 in and out and that was generally about the extent of my
2 observations with him before that day.

3 Q On this day, did you see anyone else at the home
4 besides the man?

5 A I didn't. No. I later learned that his daughter
6 had been there.

7 Q But during -- while you were watching on the porch
8 and stuff, you didn't see anyone else?

9 A I didn't know she was there. I heard him yell at
10 somebody at one point. I don't know if that was somebody
11 else who had walked up or if it was one of the two
12 individuals I saw walk up. But it didn't seem like the
13 timing was right for that to be one of those two
14 individuals.

15 Q What was your -- can you help us understand sort
16 of what was your impression of the situation? I mean,
17 you've described sort of hearing gunfire pretty regularly in
18 the neighborhood.

19 A Yeah.

20 Q Was this a concerning event to you or more of a
21 run-of-the-mill sort of event?

22 A Oh, no, it -- I mean, it's always concerning when
23 you gunfire, I think. I think none of it --

24 Q But where on the scale --

25 A -- should ever be blasé and if it is, maybe --

1 Q Sure.

2 A -- you should think about your life. But the
3 closeness of it was a concern immediately. It wasn't going
4 away. So I knew it was going to be a persistent issue. And
5 that was immediately stressful. I have -- again, I have
6 somebody I care about in the house.

7 I have my neighbors who are friends of mine. I
8 didn't want them getting hurt. And just a general humanity
9 level, I didn't want people getting hurt. It would be nice
10 if it didn't happen on my doorstep, too. Reality is people
11 do get hurt every day.

12 But yeah, I was stressed. I was concerned. And
13 also with today's political climate, you don't know what's
14 happening. And things happen every day in all sorts of
15 random places. So you just don't know.

16 So it could have been -- it literally could just
17 be two guys just running down the street shooting guns in
18 the air for fun or it could be somebody who is walking house
19 to house and murdering people. You don't know. So yeah,
20 there was stress.

21 Q Was -- I mean, and I don't -- let me think about
22 how to phrase this question. I guess the first question is,
23 at the times you saw the man shooting, what was the
24 directionality or could you tell?

25 A Yeah. When I saw it, it was -- looked like it was

1 up and to the north. North, northeast. Northwest.
2 North, northwest.

3 Q But like, in the air or like at an angle?

4 A Generally, kind of elevated. Didn't look like he
5 was shooting at a target. It looked like he was just
6 shooting consistently, intentionally, the same general
7 direction.

8 Q Did anything about the directionality and the fact
9 that it was in the air mitigate your concerns at all or
10 lessen your concerns?

11 A Yes. I would say yes. When I realized it wasn't
12 in the air, it didn't seem like he was -- to my previous, my
13 just previous comment -- it didn't seem like he was actively
14 trying to kill people.

15 Q When you were on the --

16 A Right.

17 Q -- porch or the whole time.

18 A From when I was watching. After I lost eye line
19 and people started walking up, I didn't know.

20 Q And you continued to hear the gunfire, it sounds
21 like, when you went outside?

22 A Yeah. The steadiness of it, the lack of change of
23 attitude of it, I didn't think that it was necessarily like
24 one of those things but you just don't know so you have to
25 kind of go with the -- with what you have in front of you.

1 And it was either I let it happen and -- or I call 911 and
2 let the police deal with it or I dealt with it. And there's
3 only one of those options that I was okay with.

4 Q Why did you choose to arm yourself?

5 A Because if it came to my front door, I needed to
6 be ready for that.

7 Q I mean, was that a concern to you?

8 A If he was hurting somebody else and I knew that, I
9 would have to be ready for that and it's always a concern.

10 Q So did you have those concerns that it could
11 proceed to that level?

12 A Yeah. Because again, I didn't know what the
13 scenario was. I knew he had argued with people in the past.
14 I had heard the arguing. I didn't know -- I don't know
15 anything about his personality or his life. I don't --
16 didn't know anything about his mental health status before
17 that day. I learned rumors afterwards.

18 Just in general. I -- you know, you don't know
19 where somebody's headspace is. You don't know what they're
20 going to do on a daily basis. They're not declared
21 combatants, they're not undeclared combatants. You just
22 don't know. So you kind of have to roll with the worst-case
23 scenario as possible. Is that what's happening right now.
24 Weight it against the evidence and when it's no longer
25 supported, then you can kind of type back your assumption of

1 risk.

2 Q And the grand jurors will hear your second 911
3 call that you just described.

4 A Sure.

5 Q Or identified yourself as making. But I just
6 wanted to make sure I understood. It sounded like one of
7 the reasons you called back to 911 was because you heard him
8 change to a different caliber weapon.

9 A Correct. Yeah.

10 Q And that -- did that cause you extra concern then?

11 A Yes. Because I didn't know what it was. Again,
12 he was just firing off a pistol, that has a limited range.
13 It has a limited penetrative ability. And the neighbors
14 aren't as risked. Maybe the immediate neighbors are. But
15 four, five houses down aren't as much risk. You switch up
16 to calibers, I mean, then you're playing with more rounds.
17 You're playing with more bullets flying up in the air,
18 longer range.

19 August rain is a real thing. For those who don't
20 know, that's when a bullet comes back down and hits somebody
21 randomly. So if he's firing upward with a semi-automatic
22 weapon and putting 50 rounds downrange, those rounds have
23 got to come down somewhere. So somebody a mile away might
24 get hit with something. It could be on the next block. I
25 don't know. Yeah, it was a concern.

1 MS. NADELL: I don't think I have any other
2 questions. The grand jurors get to ask questions.

3 THE WITNESS: Cool.

4 MS. NADELL: I'm going to see if they have any.
5 Okay? Go ahead.

6 GRAND JUROR: So those two shots -- the shot and
7 the response shot, did those sound like different calibers
8 to you?

9 THE WITNESS: Yes. One sounded like -- it's
10 harder to tell downstairs in the basement but it was a
11 different report to them. Yeah.

12 GRAND JUROR: You said you believe you heard a
13 bullet impact somewhere on your house or fence?

14 THE WITNESS: It felt like at the moment it was my
15 house. It sounded like it was my house. We couldn't find
16 an impact point on the house. So we kind of assume it's
17 either the house or the fence.

18 GRAND JUROR: Thank you.

19 MS. NADELL: Any other questions? Thank you so
20 much, Mr. Akins. I'll have you step out. I'll be out in
21 just a couple minutes. You can keep the record going.

22 Just so the record is clear, I think this call is
23 -- I want to say it's about 15 minutes. So I was going to
24 go ahead and play it and then we'll take our lunch break
25 after that. And just so the record is clear, this is the

1 call Mr. Akins just identified as the second call he made
2 to 911.

3 (Recording continued.)

4 MS. NADELL: And we -- we'll take our lunch break
5 and go off the record.

6 (Off the record.)

7 (On the record.)

8 MS. NADELL: We're back on the record in the
9 ongoing death investigation after the lunch break.
10 Recalling Detective Sims. Since it's a new day, we'll have
11 you re-sworn in.

12 BRIAN SIMS

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

15 DIRECT EXAMINATION

16 BY MS. NADELL:

17 Q Can you state and spell your first and last name,
18 please?

19 A I'm Detective Brian Sims. B-r-i-a-n. Sims, S-i-
20 m-s.

21 Q Detective Sims, just a couple more questions for
22 you regarding this case. Based on your investigation, did
23 you learn that Officers Piombo (ph.) and Wambold (ph.) were
24 part of the team that had taken position behind a vehicle to
25 the north of the location where Mr. Stanton was?

1 A Yes.

2 Q And specifically, were with the group also
3 including Officers Lovato, Pavon -- and Pavon, I guess.

4 A Yeah.

5 Q And Bartlett.

6 A Yes.

7 Q Are you aware of whether Officers Piombo and
8 Wambold are available or working this week (indiscernible)?

9 A They're not. They're both on approved leave.

10 Q Then I think you testified previously that you
11 reviewed the reports written by other officers in this case.
12 Does that specifically include Officer Lee's (ph.) report?

13 A It does.

14 Q Ken Lee. Okay. And in terms of his role in the
15 investigation, did Officer Lee collect video from the -- a
16 neighbor Carl Ben (ph.) had taken?

17 A He did.

18 Q And specifically, were there four different video
19 clips that Mr. Ben provided?

20 A There are four different clips. Yes.

21 Q Have you reviewed those?

22 A I have.

23 Q Just turn your attention to the screen. Does this
24 look like the first of those four clips?

25 A It does.

1 Q Are any of the clips going to show the actual
2 point at which Mr. Stanton is shot?

3 A No, it does not.

4 Q And at least do some of these clips actually show
5 just the lead-up to that interaction?

6 A It does. Three shows the lead-up and then one
7 right after Mr. Stanton is shot.

8 Q So I'm going to play those just in succession
9 here.

10 A So the -- you want me to set up where this is
11 from?

12 Q Yeah, sure. And then I'll (indiscernible).

13 A So this is a residence that's to the south. It's
14 at 211 on 126th. The same side of the street just to the
15 south of Mr. Stanton's residence. And here's Mr. Stanton
16 there on his porch.

17 Q And is 211 actually like some sort of apartment
18 complex or a multi --

19 A Yeah, it's kind of like a flag lot.

20 Q Multiple different --

21 A Yeah, the address --

22 Q -- residents of --

23 A -- in front is a little bit different than the one
24 that's on the flag lot.

25 Q And based on your investigation, do you believe

1 this to be Mr. Stanton that we're seeing in the video?

2 A It is, yes.

3 (Whereupon, a video recording was played before
4 the grand jury.)

5 A You want me to kind of explain what I think is
6 happening?

7 Q Let's let it play and then we'll do that. Based
8 on that -- for that first clip -- started to replay -- in
9 your investigation, what does it appear Mr. Stanton is doing
10 there?

11 A So based on my experience and what I've seen and
12 what was reported, I think this is at one of the points
13 where he's picking up the spent shell casings on the porch.
14 When I watch it, I see him kind of look at his hands and it
15 appears like he throws something in. So that may explain
16 some of the spent shell casings we find inside the house and
17 on his person.

18 Q Oh, sorry, folks. Restart clip number two.

19 (Recording continued.)

20 Q And I'll play clip number three. And just
21 briefly, Detective, do you hear anything in the background
22 of the video as that one starts?

23 A Yeah. On this one, you can actually hear sirens
24 in the background. You can hear us responding to the scene.

25 (Recording continued.)

1 A Maybe you want to replay this one. This one --
2 when I watch it, it appears to me he's now holding the rifle
3 that we end up recovering from the -- in the bedroom. It's
4 significantly different from the clip before where I believe
5 he had the handgun.

6 (Recording continued.)

7 Q Did that appear visually consistent with the rifle
8 that was found in the bedroom?

9 A It is. Same size. It's where -- how you would
10 hold that type of rifle.

11 Q Then the last clip here is after the shooting had
12 occurred?

13 A It is.

14 (Recording continued.)

15 A This is right when officers were approaching. So
16 they're kicking open the front door, making sure nobody else
17 is inside the house. Officers do (indiscernible) of the
18 house. Make sure there's nobody else inside.

19 Q And then, did Officer Lee also collect a phone
20 from someone named Jason Morris that also lives at 211
21 Southeast 126th Avenue in a different apartment?

22 A He did.

23 Q Was that phone, based on your review of reports,
24 turned over to Officer Martinez who was able to extract two
25 videos from that phone?

1 A That's correct.

2 Q I'm going to play those. What are these videos
3 going to show us?

4 A Those are after medical personnel arrived. So it
5 shows the ambulance there and the fire truck as they're
6 treating Mr. Stanton.

7 (Whereupon, a video recording was played before
8 the grand jury.)

9 Q Then the other day, Detective, you testified about
10 attending the autopsy for Mr. Stanton?

11 A Yes.

12 Q And are you aware of whether the doctor who
13 performed that autopsy authored a report?

14 A He did.

15 Q Have you reviewed that report?

16 A I have.

17 Q Did that include results from -- results of
18 testing Mr. Stanton's blood?

19 A It is. Yes.

20 Q And I'm going to show you a copy of that report.
21 Does that look like the report authored in this case?

22 A It is.

23 Q What was the cause and manner of death determined
24 to be?

25 A Cause is a gunshot wound and manner was homicide.

1 Q Was this the first autopsy you've ever attended
2 in your career or have you been to many autopsies?

3 A No. I've been to many autopsies.

4 Q Is it your understanding as -- based on your
5 experience as a homicide detective, is homicide in the
6 context of an autopsy report a medical term or a criminal
7 conclusion.

8 A It's a medical term. It's classification.

9 Q What are the other classifications that you've
10 seen?

11 A Accidental. There's a few others.

12 Q Is suicide one?

13 A Suicide is one. Yeah.

14 MS. NADELL: That report will be made available to
15 the grand jury. Any other questions for Detective Sims from
16 the grand jurors?

17 GRAND JUROR: I don't think so.

18 MS. NADELL: Seeing none. Oh, go ahead, sir.

19 GRAND JUROR: You mentioned a blood test.

20 THE FOREPERSON: Yeah.

21 THE WITNESS: Yeah.

22 GRAND JUROR: What did --

23 THE WITNESS: Well, that's part of the toxicology
24 that's done at the autopsy.

25 GRAND JUROR: Was there anything interesting in

1 that blood test?

2 MS. NADELL: So that -- are the results of the
3 blood test attached to the autopsy report?

4 THE WITNESS: Yes. It's all part of the report.

5 MS. NADELL: It's incorporated.

6 GRAND JUROR: Will we be able to understand that
7 with no real medical background.

8 MS. NADELL: I'm going to make the report
9 available to you and then if you have questions for the
10 detective now, we can go through those. Do you want to tell
11 us what the results were to the best of your ability?

12 THE WITNESS: From what -- yeah, to the best of my
13 ability, the one item that says ethanol, which I believe to
14 be alcohol. So unfortunately --

15 MS. NADELL: Do you know that from your
16 experience?

17 THE WITNESS: I know that from my experience and
18 my training. I just don't know the quantity and the
19 question of how that quantity would affect Mr. Stanton.
20 It's something I wouldn't be able to testify to.

21 MS. NADELL: Then were there two other or three
22 other things that were present in the blood according to the
23 report?

24 THE WITNESS: There was. I just don't -- they're
25 medical terminology so I don't know either.

1 MS. NADELL: But they're listed on the report
2 (indiscernible).

3 THE WITNESS: They're listed on the report, as
4 well. Yeah.

5 MS. NADELL: Any other questions? Go ahead, sir.

6 THE WITNESS: Thank you.

7 MS. NADELL: Thank you.

8 GRAND JUROR: Thank you.

9 THE WITNESS: Thank you.

10 MS. NADELL: We'll -- we're still on the record.
11 I'm going to pull up the Air One footage that you saw the
12 other day. There was a request to be able to view that
13 again. And let me play that now. Just so the record is
14 clear, we're starting the Air One footage again from the
15 beginning.

16 (Whereupon, a video recording was played before
17 the grand jury.)

18 GRAND JUROR: Are we going to hear the voice over,
19 too?

20 MS. NADELL: So I'm just pausing it because there
21 was a question from the grand jurors. The volume is on.
22 Yeah.

23 (Recording continued.)

24 MS. NADELL: I am just going to check the audio
25 here. Can we pause the record for a minute?

1 (Off the record.)

2 (On the record.)

3 MS. NADELL: We're back on the record. I just
4 took a brief pause to make sure the volume was working
5 appropriately. It does seem like it is. So we've gone back
6 to the three-minute mark in the video which is time stamped
7 at 20:35:56. It's earlier than we were just at when we were
8 rewatching this.

9 (Recording continued.)

10 MS. NADELL: Why don't we take a quick break?
11 We'll go off the record.

12 (Off the record.)

13 (On the record.)

14 MS. NADELL: We're back on the record from a brief
15 recess and then our next witness will be Officer Dyk. I
16 will grab him now.

17 You are -- that's going to be your chair there.
18 Go ahead and stay standing for a minute. Raise your right
19 hand. And the foreperson will swear you in.

20 JOSHUA DYK

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

23 DIRECT EXAMINATION

24 BY MS. NADELL:

25 Q Go ahead and have a seat.

- 1 A Do you guys mind if I drink water while I talk?
- 2 Q You can take drinks.
- 3 A Okay, right on.
- 4 Q We can take a break at any time.
- 5 A Right on. Thank you. I appreciate it.
- 6 Q Can you go ahead and state and spell your first
7 and last name, please?
- 8 A Yeah. It's Josh Dyk. That's J-o-s-h and then
9 Dyk, D-y-k.
- 10 Q Before we begin, I just want to go over a couple
11 kind of housekeeping questions. Okay?
- 12 A Yeah.
- 13 Q True to say you are not here under subpoena or
14 you're not otherwise compelled to talk today?
- 15 A That's correct.
- 16 Q With that then, you are choosing to testify before
17 the grand jury; that choice is completely yours. Is that
18 correct?
- 19 A That's correct, ma'am.
- 20 Q And you understand we could stop at any time, you
21 could take breaks at any time? Understand that?
- 22 A Yes, ma'am. Thank you.
- 23 Q Yep. Can you tell the grand jury how you are
24 currently employed?
- 25 A Yeah. I'm an officer with the Portland Police

1 Bureau.

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

3 A Anywhere -- like four-and-a-half years, I believe.

4 Q All with the city of Portland?

5 A Yes, ma'am.

6 Q Did you go through the basic academy?

7 A I did.

8 Q And the advanced academy?

9 A I did.

10 Q Are You presently up to date with all required
11 certifications and trainings?

12 A Yes ma'am.

13 Q Was that true in July of 2022, as well?

14 A Yes, ma'am.

15 Q With regard to the case that we're here to talk
16 about today, the incident on July 27th, were you issued, at
17 that time, a communications restriction order?

18 A I was.

19 Q Have You complied with that order in terms of not
20 talking to officers or individuals involved with the
21 criminal investigation portion of this?

22 A Yes, I have.

23 Q Tell us about your duties back in July. Were you
24 assigned to a particular precinct or team?

25 A I was. I was assigned to the Focus Intervention

1 Team. The goal of the Focused Intervention Team is to
2 combat gun violence within the city of Portland. we do that
3 by proactive means along with investigatory, and along with
4 assisting patrol calls.

5 Q Specifically, is a large amount of your focus to
6 investigate shootings in the city?

7 A Yeah, absolutely.

8 Q As a member of that team, were you assigned to a
9 precinct or do you kind of go where calls come?

10 A We go where calls come and we kind of bounce
11 around throughout the city.

12 Q What shift were you working on July 27th?

13 A An afternoon shift.

14 Q What are the hours for that?

15 A I believe 2 to 12.

16 Q So 2 in the afternoon to midnight?

17 A Yes, ma'am.

18 Q Do you recall that day, were you working with a
19 partner?

20 A Yeah. Officer John Bartlett.

21 Q Were you in uniform?

22 A I was.

23 Q Were You guys operating a marked car, do you
24 recall?

25 A It was an unmarked vehicle. It's -- Same thing

1 except it doesn't obviously have Portland police on the
2 side.

3 Q In terms of starting that shift and throughout
4 your shift, were you under the influence in any way of any
5 drugs, alcohol, anything like that during that shift?

6 A Absolutely not.

7 Q And what about things going on in your personal
8 life -- anything going on that you brought with you to work
9 that day?

10 A No.

11 Q In terms of things that would impact your mental
12 faculties.

13 A No, ma'am.

14 Q Tell us a little bit about the shift that day.
15 How did it start?

16 A You know, I remember I got an uncharacteristically
17 amount of sleep last [sic] night. I think it was close to 9
18 to 10 hours.

19 Q The day before?

20 A The day -- yes. I kind of putzed around the house
21 in the morning and then I --

22 Q I guess to be fair, that day. Because if you --

23 A Yes.

24 Q -- get off at midnight.

25 A Yeah. Then I went in. I worked out with my

1 teammates. Then I ate some food, took a shower. Began my
2 shift. I don't recall directly what all happened that
3 shift. I know right before this call, we were tasked with
4 transporting someone down to jail.

5 Q Tell us a little bit more about that. Was that a
6 call that you and Officer Bartlett had investigated or you
7 just served a different role?

8 A We were mainly just charged with just transporting
9 for that specific call. Another officer had made a traffic
10 stop. We showed up to cover that officer. That officer
11 ended up making an arrest and they didn't have the
12 capability to transport him to jail so we did for him.

13 Q By transport to jail, where do you go?

14 A We go down to the Multnomah County Detention
15 Center. It's right across the street from here, 2nd and
16 Main.

17 Q So it sounds like you did that. Any issues with
18 that --

19 A No.

20 Q -- or concerns? What happened after you completed
21 the transport?

22 A So we were on -- We got back to kind of the east
23 side of Portland and we were about to reach the rest of the
24 team for lunch. We try to eat lunch together. And I
25 believe Officer Bartlett and I were looking for a place to

1 go grab lunch.

2 Q Where were you going to meet up?

3 A I believe it's city -- or Crossroads Church. It's
4 on 102nd and Sacramento in east -- or northeast Portland.

5 Q So do folks kind of bring what they grab and all
6 eat together. Is that what you mean by --

7 A Yeah. There's a little contact office that we're
8 -- that has tables and we sit around a table and chat and
9 eat lunch together.

10 Q Were you able to do that?

11 A No. Prior to going to lunch, we heard a call.

12 Q Tell us what you heard in the call.

13 A Yeah. So the call was regarding a male that was
14 shooting a pistol, I believe, if memory serves, a rifle off
15 of his front porch.

16 Q Were you driving or was Officer Bartlett driving?

17 A Officer Bartlett was driving.

18 Q What did you do when that -- when you became aware
19 of that call?

20 A I discussed it with Officer Bartlett. And One of
21 the things we do in the Focused Intervention Team is we're
22 focused on gun violence. We're also here to assist patrol
23 in calls that are going to involve a lot of resources.

24 Obviously, this call is someone shooting a gun
25 within the city of Portland. We don't really have a lot of

1 details. That's going to involve a lot of resources. We
2 were fairly close to the address of the call. I believe the
3 address was 125 Southeast 126th Avenue. We were at 122nd
4 and Halsey when we heard it.

5 So we decided to head that way and assist with the
6 call. We let the rest of our team know that we were going
7 to be heading that way. And they said they were also
8 heading that way.

9 Q Where did you respond to?

10 A We Responded to the staging area which is 122nd
11 and Burnside. There's a TriMet lot there. A lot of times
12 for calls like these, what we want to do is you want to
13 align our resources together and kind of come up with a game
14 plan before we contact the people involved.

15 This way we are out of sight, we're not
16 overwhelming that person, we're able to kind of think about
17 -- when we can, we want to think about what we're going to
18 do and approach the situation as safely as possible. So we
19 responded to the TriMet parking lot at 122nd and Burnside
20 where we met with other officers who were also assigned to
21 that particular call.

22 Q Did you and other officers then start to develop a
23 plan or discuss what you were going to do?

24 A Yeah. I pulled a laptop out of the car and I kind
25 of pulled up like a Google Earth kind of image of kind of

1 where the address was. So we were kind of thinking, all
2 right, if we go up Burnside and we take a right on 26th, Can
3 kind of park out of sight and tried to get an idea this
4 house is going to be so many houses down on the right.

5 There was another officer there, Officer Ken Lee
6 who is a fantastic officer. He was able to -- he's got
7 skills at researching and stuff like that. He Requested my
8 laptop to be able to do some research on the premise of the
9 call and see if there had been any prior calls there.

10 Q Did he learn anything that was shared with you?

11 A Yeah. I briefly saw that there was a welfare
12 check there. I didn't see any details of the welfare check.
13 While we were doing that, we --

14 Q Like on a different day? I'm sorry.

15 A Yes, yes.

16 Q Go ahead.

17 A While we were doing that and kind of going over
18 it, getting our game plan together, we hear -- we heard
19 shots from the location where the call came from.

20 Now, obviously, a shooting within the city of
21 Portland -- we don't know if someone is getting shot at, we
22 don't know if someone is hit, someone needs emergency
23 medical aid. We don't know if bullets are going into
24 houses. So we kind of all make the decision we should
25 probably get a little bit closer so that, if needed, we can

1 react quickly to intervene to save lives or render
2 emergency medical aid. And maybe just kind of get eyes on
3 the actual location to see what's going on.

4 So we kind of all hop in our cars. I'm with
5 Officer Bartlett. And we kind of -- I think we were the
6 third car back. We kind of conga line out to Burnside and
7 then onto 126th Avenue. From there, we take a right-hand
8 turn east -- I'm sorry. That would be southbound on 126th
9 Avenue. And we are still able to park out of sight of the
10 house.

11 Again, we want to make sure that when we go in
12 these situations, we are not just overwhelming that person
13 but we do want to be calculated. So we tried to park out of
14 sight and move in in somewhat a minimal and stealthy-ish
15 manner.

16 Q What happened next?

17 A So I am a rifle operator with the Portland Police
18 Bureau and I've received training on how to operate a rifle.
19 Kind of based on the call, there's a person armed with at
20 least a handgun, possibly a rifle, that shooting within the
21 city of Portland.

22 I chose to -- that this is probably a role that I
23 need to be is being a rifle operator on this call. I took
24 my rifle out and I checked to make sure that it was
25 operational. I loaded a round into the chamber. I -- the

1 reasons I did that are a couple.

2 For one, the rifle is a precision tool. We carry
3 AR-15 rifles. It allows us to create -- talk with the
4 subject while still maintaining the ability to fire
5 accurately, if worst case scenario happens, from a distance.
6 We want to make sure we give the subject that we are talking
7 with as much distance as possible.

8 It's what we're trained in the Portland Police
9 Bureau. It's a de-escalation tactic. So that's kind of
10 another reason that I chose to use the rifle or at least
11 take it out.

12 Another reason is this person allegedly is armed
13 with a handgun and a rifle. We want to at least have the
14 same tools as the person that we're contacting so I figured
15 it would probably be advantageous to do so.

16 Q Had you -- in terms of the information coming in
17 that he maybe had both a rifle and a handgun, was that
18 information coming in through BOEC, through the 911 calls?

19 A I believe so.

20 Q I mean, I should say, that's information you were
21 getting as you were responding to the call or as you were
22 driving up to 126?

23 A Yes, ma'am.

24 Q Going back to when you were at the staging area
25 and you heard shots, was that one shot, more than one shot?

1 A It was more than one shot. It was a volley of
2 shots.

3 Q Did that impact your sense of urgency or fear or
4 anything like that in terms of the -- what you were there to
5 investigate?

6 A There -- it does add some exigency. So like I
7 said, we don't know if someone is hit, we don't know if
8 bullets are going into houses. So yes, there was some
9 exigency to at least get eyes on the location and see what
10 happened. We weren't going to go rush in there and try to
11 force a confrontation. But we wanted to be able to react
12 quickly if we needed to.

13 Q Fair to say at the staging location, 122 and
14 Burnside, you do not have the ability to have eyes on 125
15 Southeast 126th Avenue from there?

16 A That's correct.

17 Q So at -- when you've now arrived at 126 Avenue,
18 decided to take your rifle with you, tell us what happened
19 next.

20 A So a group of officers had moved up to kind of a
21 clump of trees and they kind of had a limited view of the
22 house or not the best view, not the worst. And I moved up
23 with them. I saw the house and confirmed it was the one we
24 were talking about. And I looked behind me and saw that my
25 sergeant, Sergeant Townley, along with another officer,

1 Officer Hertzler, had arrived.

2 I met with Sergeant Townley and Officer Hertzler
3 and we discussed the idea of moving up closer through the
4 backyards on the east side of 126 Avenue. That way we could
5 safely move up out of the view of the house and get a better
6 view of the house so we could see what was going on.

7 Q What happened next?

8 A Sergeant Townley agrees that that's an
9 advantageous plan. So Officer Hertzler and I begin to -- or
10 we actually go up to the group of officers first that was
11 stationed by the trees and we kind of discuss some things
12 that might happen.

13 We talk about if this guy comes out and he has a
14 gun and is not displaying any other threatening behavior, we
15 are not going to fire at him. I talk about specifically,
16 even if this guy shoots up in the air and is not displaying
17 any other threatening behavior, I am not planning on firing
18 at him.

19 Q Is that's something that you had decided at that
20 moment and you communicated to the group?

21 A Yeah. And we were all kind of pow-wowing about --
22 you know, about kind of what our plan was so we were just on
23 the same page at that clump of trees.

24 So we kind of get on the same page. And then,
25 Officer Hertzler and I set off and we push through the

1 backyards of some homes.

2 Q I'm sorry. Not to interrupt you. But were --

3 A Yeah.

4 Q -- there other things discussed besides a scenario
5 of him just shooting in the air?

6 A We discussed that if he levels the gun or -- we
7 would do what is reasonable and we would make a reasonable
8 decision based on the facts that happen.

9 Q I'm sorry. So you and Officer Hertzler begin
10 moving in a different direction?

11 A Yes. So we begin moving through the backyards on
12 the east side of 126 Avenue. So the opposite of the house.
13 And we're kind of going over fences trying to kind of be as,
14 I guess, for lack of a better word, as sneaky as we can
15 until we get to the house that's just across the street from
16 the house that's involved.

17 Q I'm going to pull up an image here and see if you
18 -- it's right behind you on the screen. Is -- do you
19 recognize that?

20 A Yes, I do, ma'am.

21 Q What is that?

22 A That's the house we were behind.

23 Q A photograph of the house?

24 A Yep.

25 Q Is that where you eventually stopped?

1 A Yes, ma'am.

2 Q Go ahead, sir.

3 A So we get there and we set up behind like a
4 lattice fence. From this position, I can see the house
5 pretty well. I can see that there's a chain-link fence and
6 then there's a raised porch. While watching the house, I
7 see a male exit the house. The male matched the general
8 description of the original call. It was a white male with
9 a shaved head wearing shorts, no shirt.

10 Followed by the male was a five-year-old girl or a
11 small girl. I broadcast on the radio, let people know about
12 seeing movement. At least I believe I do. Seeing movement
13 at the front door.

14 I remember telling Officer Hertzler and I believe
15 I broadcasted it out on the radio to let other officers know
16 that I was not seeing a firearm in his waistband or anywhere
17 on his person.

18 The male -- or the officers I can hear through my
19 radio set are letting me know that they are giving the male
20 commands to -- whatever they were saying. To come to them
21 or whatever. And they had given him force warnings.

22 The male responds by yelling obscenities and swear
23 words at the officers. I don't recall exactly what he said.
24 It was clear by what he was saying and the tone of his voice
25 and how he was saying it that he was not just -- there's a

1 difference between non-compliance and then showing ill
2 intent or aggression and agitation towards officers. And
3 this was clearly the latter. It was -- he was showing that
4 ill intent and aggression towards officers by what he was
5 saying.

6 Q Then what happened?

7 A The male went back inside and retrieved a shirt.
8 I remember being kind of confused as why he was putting on
9 his shirt. He puts on a shirt. And he then reaches in his
10 waistband. I don't remember with what hand. And pulls out
11 a black handgun. The male then starts shooting in the air
12 multiple times. I remember at one time the gun -- the angle
13 looked like it was kind of canted not just up but a little
14 more in my direction.

15 At this time, I didn't think that the male had
16 seen me. I didn't think that he was purposely trying to
17 shoot me. So I didn't fire. I didn't want to. And I was
18 relieved when he put the gun down and stopped shooting. I
19 remember as he was firing -- I don't know. I couldn't tell
20 you exactly what angle but it was -- the bullets were kind
21 of going in my direction.

22 The male brings the gun down. And at some point,
23 the little girl runs off this raised elevated porch. She
24 doesn't go back in the house but she runs somewhere off into
25 the yard.

1 Sometime during this interaction -- I don't know
2 if it was before or after the shots -- Officer Hertzler
3 advises me that he's going to go try to find a more
4 advantageous place where he can get another eye on the
5 house. So he moves off and out of -- I don't know exactly
6 where he went.

7 Officers continue -- I hear through my radio piece
8 that they are giving the male commands and more force
9 warnings. Male responds the same way that he did before by
10 yelling obscenities at officers.

11 Eventually, the male, with his left hand -- I
12 don't know if he unholstered the weapon or if he had it in
13 his hand -- he raises the gun up like kind of a dueling
14 stance, for lack of a better word, and begins to extend the
15 handgun down towards officers in the firing position.

16 At this point, you know, we have a male that has
17 shot multiple rounds in front of his house. He's armed with
18 a handgun. He's told officers -- you know, he's been
19 yelling at officers multiple obscenities. He's showing his
20 intent. And now he's extending the firearm out to what I
21 believe shoot and possibly kill officers.

22 I put the red dot on that guy -- on the male's
23 chest and I pulled the trigger to stop him from shooting the
24 officers up the street. I -- my goal was to change his
25 behavior and prevent him from being that threat of death or

1 serious physical injury to the officers up the street.

2 The male then drops down. I didn't need to fire
3 an additional round because I succeeded in changing his
4 behavior and preventing him from shooting at the officers.
5 I believe I broadcasted over the radio something along the
6 lines of 1643 break, break. That was my unit number. Shot
7 fired. One subject down. I can't see him. The fence kind
8 of concealed by ability to see him.

9 Q Once he went down?

10 A Yes. After he went down, the little girl ran up
11 on the porch on top of him. It was -- sorry. I'm good.

12 Q It's all right. It's okay.

13 A The little girl ran on the porch on top of the man
14 and was like shaking him. Sorry, I'm just going to take a
15 drink of water.

16 Q Take your time. It's okay.

17 A So clearly, you know, we -- there's a guy down on
18 the porch. There's a gun there and there's a little girl
19 right next to the gun. Just because we have to shoot at
20 somebody we will still want -- if possible, we want to be
21 able to render medical aid as soon as it's safe to do so.
22 We succeeded in changing the behavior.

23 And now, if we can save this guy's life, we want
24 to. So there's exigency to do that. There's also kind of
25 the factor where this little girl is next to a guy that just

1 tried to shoot police and there's a gun right there. We
2 don't want the little girl exposed to that firearm.

3 I see Officer Hertzler in kind of my peripheral
4 vision moving up and he's like, hey, let's move up. So I go
5 up with him. I see the gun right next to the male and I
6 warn him not to reach for the gun.

7 Another officer takes the little girl off of the
8 male. And then I assist in handcuffing the male. I
9 immediately say, hey, let's get this guy medical attention.
10 And I look around and I see that there's multiple officers.
11 I see that we've already staged medical in case someone was
12 shot prior to going in.

13 So I realize that for the integrity of the
14 investigation, I need to recuse myself from the scene. I
15 leave and I go sit in a patrol car where I later talk to
16 detectives.

17 Q Is it okay if I ask you some --

18 A Yeah, absolutely.

19 Q -- kind of more follow-up questions. So I want to
20 first just make sure the grand jury understands your
21 position here. So I have a couple more photographs up.

22 A Yeah.

23 Q On the left side picture there, is that the fence
24 area that you positioned at?

25 A That is. That is the lattice one.

1 Q Then in the right-hand photograph, that -- there
2 looks like -- it's a gate that's opened. Is that how it was
3 when you were positioned there?

4 A No, it was closed. I was able to brace my rifle
5 on top of this lattice fence.

6 Q Did you -- do you recall if you -- did you exit
7 out of that area?

8 A Yes, I did.

9 Q Tell us a little bit -- you can turn around if you
10 want and --

11 A Okay.

12 Q -- address the grand jury.

13 A Yeah.

14 Q Tell us, how tall are you?

15 A I'm 6'5".

16 Q When you positioned yourself behind that fence,
17 describe for the grand jury what your view and perception of
18 the 125 house was. Were you peeking over, could you see it
19 fully? Tell us a little bit more about that.

20 A To the best of my recollection, I could see my
21 house just fine just standing as I normally am.

22 Q What about when positioned your rifle at the top
23 of the fence, was that a pretty comfortable position to be
24 in for you?

25 A It was a comfortable shooting position. Yes.

1 Q Then you described -- well, I guess, let me make
2 sure I understand. When you got to that particular
3 location, the fence, did you position yourself with the
4 rifle kind of in the ready position the entire time from
5 that point on?

6 A I don't recall when I did. I assume that that's
7 something that I might have done for sure especially when he
8 came out.

9 Q And you described seeing him come out. And
10 initially, it sounds like you did not see a firearm with
11 him. Is that correct?

12 A Originally, yes.

13 Q Then you, at some point, hear shots. Did you see
14 the gun before he started shooting?

15 A I saw him get it from his waistband and then I,
16 obviously, saw it in his hand before he began shooting.

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

18 A It was multiple times.

19 Q And you described getting the sense that some of
20 those bullets were coming in your direction. Can you give a
21 little more context to that or explanation?

22 A Yeah. You know, he was shooting randomly in the
23 air and his wrist was kind of -- when you shoot a gun,
24 there's recoil and he was kind of getting jostled around by
25 the recoil. And at one time, it appeared to me that the gun

1 was angled in my direction but still an upward angle. So
2 it wasn't level with me.

3 Q And was -- it sounds like that was a factor in why
4 you didn't fire at that time. Is that accurate?

5 A Yes, I didn't believe that he was shooting at me.
6 I didn't believe that he was aiming the gun at me or maybe
7 -- I don't even know if he knew I was there. Our goal was
8 to be concealed.

9 Q Then you've described hearing -- could you hear
10 the commands being given by the police?

11 A I don't remember hearing the commands. I remember
12 hearing his response to the commands and then I remember
13 hearing in my earpiece multiple times that they were -- they
14 had given force warnings and that they were giving him
15 commands and telling him to do stuff.

16 Q From your vantage point and from what you were
17 hearing coming from the male, did it seem like he was
18 responding to where you knew other officers were or was he
19 just sort of like shouting around and -- I mean, did it seem
20 in the direction of where you thought people were or did it
21 seem like haphazard?

22 A You know, it was -- it seemed like they would give
23 commands and then he would yell. I can tell you before he
24 shot, I remember him looking -- turning his head and looking
25 at where the officers were prior to extending the firearm

1 down.

2 Q And when we say officers, are we talking about the
3 same group that you had sort of talked with before you and
4 Officer Hertzler went into the yards?

5 A Yeah. I can't see where they're at from where I
6 am but I know they're up the street in that direction.

7 Q Then you've described -- of course, at the time
8 that you did end up discharging your firearm, seeing the
9 male's arm kind of lower. Can you just walk us through that
10 a little bit more?

11 A Yes. So prior to discharging my firearm, I saw
12 the male kind of raise the gun up like this. And then,
13 unlike other times where he shot up in the air, he began to
14 extend the firearm out. So it's no longer just shooting up
15 in the air like this. It's an extension out to taking aim
16 shot.

17 Now, if I let the male get to where he's already
18 aiming at officers, it takes a fraction of a second to pull
19 the trigger. Faster than I can react. So I make the
20 decision right before he is level with the officers to fire
21 my firearm.

22 Q At the moment that you fired your firearm, did you
23 believe he was positioning himself to discharge his weapon?

24 A Yes, I did. I believed he was an immediate threat
25 of death or serious physical injury to my coworkers up the

1 street.

2 Q Obviously, this happened several months ago,
3 almost five months ago. Looking back on what you remember
4 about the day, the situation, would you -- if you could go
5 back, would you do anything different?

6 A No.

7 Q Do you feel like you had any other choice in that
8 situation but to discharge your firearm like you did?

9 A Unfortunately, no.

10 Q I may have some additional questions.

11 A Yeah, no worries.

12 MS. NADELL: I'm going to see if the grand jurors
13 have any. Feel free to take a moment if you need.

14 THE WITNESS: I appreciate it.

15 GRAND JUROR: If you're willing --

16 THE WITNESS: Yeah.

17 GRAND JUROR: So you're with the communications
18 team we'll call them. Is that what you refer them as?

19 THE WITNESS: At the beginning of the call?

20 GRAND JUROR: The contact team -- what was that?

21 THE WITNESS: Yeah.

22 GRAND JUROR: Lovato?

23 GRAND JUROR: Yeah.

24 GRAND JUROR: There was some --

25 MS. NADELL: Oh, no. I don't -- I would really

1 caution the grand jury --

2 GRAND JUROR: Oh, sorry.

3 MS. NADELL: -- from talking about other
4 testimony. I think -- can I try to ask a question?

5 GRAND JUROR: So that meeting you were having with
6 the contingency --

7 THE WITNESS: Yeah.

8 GRAND JUROR: -- plans --

9 THE WITNESS: Okay.

10 GRAND JUROR: When you guys were talking about if
11 he's firing in the air, that's fine; if he's lowering,
12 that's what you're going to do what's reasonable --

13 THE WITNESS: Yes.

14 GRAND JUROR: -- in that meeting situation. Those
15 were the officers going to be giving commands?

16 THE WITNESS: You know, I don't know exactly who
17 was giving commands over there.

18 GRAND JUROR: That group was going to?

19 THE WITNESS: Somewhere -- yes, around that -- it
20 was either that group or a group right next to them.

21 GRAND JUROR: When you were saying that you were
22 going to be going behind the other houses with Hertzler --

23 THE WITNESS: Yes.

24 GRAND JUROR: -- did you know what those other
25 officers were going to be doing?

1 THE WITNESS: I didn't know their exact plan.

2 GRAND JUROR: Oh, okay.

3 THE WITNESS: I assumed that, you know, other
4 officers would move up probably to the location and try to
5 contact this guy and give those commands. I don't know
6 exactly where -- what roles everybody kind of landed in that
7 exact call. But it would be around that same area. Yes.

8 GRAND JUROR: So you're talking about the first
9 time he pulls the pistol out of his waistband --

10 THE WITNESS: Yeah.

11 GRAND JUROR: -- and he's shooting the gun into
12 the air.

13 THE WITNESS: Um-hum.

14 GRAND JUROR: You said it was going everywhere.
15 And he lowered it. Right? And you decided not to shoot at
16 that point?

17 THE WITNESS: Yeah.

18 GRAND JUROR: How did he lower that time?

19 THE WITNESS: You know, and I don't remember
20 exactly how he lowered it. It was definitely different than
21 the way that he -- it wasn't -- you know, you can lower a
22 gun without necessarily taking an aim shot. This -- there's
23 a difference between extending out to a firing position and
24 then lowering a firearm.

25 GRAND JUROR: So that's why you didn't see it?

1 THE WITNESS: Yes.

2 GRAND JUROR: When you -- when you're looking at
3 the house and the subject, you're not able to see any other
4 police?

5 THE WITNESS: That's correct, sir. Yeah.

6 GRAND JUROR: Were you able to see the child?

7 THE WITNESS: At parts. So --

8 GRAND JUROR: When you took the shot, did you know
9 where the child was?

10 THE WITNESS: I knew that she was off of the
11 raised porch. And I knew that my backdrop was clear because
12 she was off of the raised porch. I know that she wasn't in
13 the house. I knew that the house -- the capabilities of my
14 rifle -- the round is made so it doesn't penetrate a lot.

15 So I knew if it -- even if it exited the
16 individual I was shooting at, it would most likely just go
17 into the house and not even exit the house. And I knew -- I
18 was told that the house was only occupied by him and the
19 child. And the child was gone. So I knew that my backdrop
20 was clear.

21 GRAND JUROR: Did you -- what dangers did you see
22 that the child was in? What -- like --

23 THE WITNESS: At what point?

24 GRAND JUROR: -- obviously, gunfire in the air.
25 Did you see him menacing her?

1 THE WITNESS: No, I didn't see him menace her.
2 No.

3 GRAND JUROR: Did you see him using her as a
4 shield at any point?

5 THE WITNESS: No.

6 GRAND JUROR: What -- in terms of the situation
7 escalating, what factor is added to that as time went on?

8 THE WITNESS: I don't know. I mean, as far as
9 kind of why I made my decision to fire was, you know, what
10 which made a difference, escalated for me is there's a
11 difference between shooting up in the air and then shooting
12 at somebody.

13 GRAND JUROR: All right. That's all for now.

14 MS. NADELL: Other questions? I actually had
15 another question --

16 THE WITNESS: Yeah, go for it.

17 MS. NADELL: -- that I forgot to ask. At the time
18 you saw the male lowering his weapon and you perceived it to
19 be sort of positioning to fire, do you know if he got a
20 round off?

21 THE WITNESS: I don't remember. So by the time he
22 was extending out his arm in the firing position, I had made
23 the decision to fire. So my focus goes from everything to
24 making sure -- in that split second to making sure that I am
25 taking an aim shot and that I'm accountable for that round.

1 So my focus is kind of pinpointed on making sure that it
2 is a good shot.

3 MS. NADELL: Any other questions? Did that create
4 any questions?

5 GRAND JUROR: I don't think so.

6 MS. NADELL: No? Seeing none. Thank you, Officer
7 Dyk. You can step out and we will go off the record.

8 (Off the record.)

9 (On the record.)

10 MS. NADELL: We are back on the record after a
11 short recess in the afternoon in the ongoing death
12 investigation case and that will conclude the testimony and
13 evidence. We can go back off the record.

14 (Whereupon, the proceedings ended at 2:49 p.m. on
15 December 15, 2022.)

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C E R T I F I C A T E

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 64 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.