

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

GENERAL INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PAGE

August 14, 2023 Proceedings

Case Called 3

Examination of James Brewer 3

Grand Juror's Question(s) 11

Examination of Michael Francis..... 13

Grand Juror's Question(s) 28

Examination of Daniel Barnard 31

Grand Juror's Question(s) 68

Examination of Sean Macomber 79

Grand Juror's Question(s) 116

P R O C E E D I N G S

(August 14, 2023)

(1:20 p.m.)

(Whereupon, the following proceedings were held before Grand Jury A.)

MS. HERMANN: All right, we are on the record in Grand Jury A. This is Grand Jury Case Number 15, DA Case -- just one second, let me verify the top issue, thank you -- 2454571, as the criminal investigation, Nicole Hermann presenting. And I will ask the other two attorneys to put their names on the record.

MR. MILLER: Kurt Miller from the Department of Justice.

MR. WENDEL: Dan Wendel from the Department of Justice.

MS. HERMANN: All right, and we have our first witness in person.

JAMES BREWER

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

DIRECT EXAMINATION

BY MS. HERMANN:

Q Have a seat. And can you say and spell your name for the record?

A Yes. First name James, J-a-m-e-s, last of Brewer,

1 B-r-e-w-e-r.

2 Q And how are you currently employed?

3 A With the Portland of Police Bureau.

4 Q And were you working in that capacity on November
5 19th of last year, 2022?

6 A Yes, I was.

7 Q And what, in what capacity were you working that
8 day, what shift, and what was your responsibilities?

9 A I was a patrol officer, assigned to East Precinct
10 at night shift.

11 Q And what time did you go on shift?

12 A Around 22:00.

13 Q Okay. And at some point that you mean after you
14 were already on, were you dispatched to a robbery call?

15 A I was.

16 Q Do you remember what time that was?

17 A Not right offhand.

18 Q And I'm going to hand you your report here in just
19 a second.

20 A Thank you. It was around midnight, 27 hours, so
21 12:27 a.m.

22 Q All right. And where were you dispatched to?

23 A 50th and Powell, to the Super Deluxe. It's a fast
24 food restaurant.

25 Q And what was the nature of the dispatch?

1 A It was a robbery call. The victim called in,
2 said that he -- a couple of people attempted to rob him, at
3 gunpoint.

4 Q And at the time you were responding, did you have
5 information about how and where that robbery occurred,
6 relative to the restaurant itself?

7 A It was in the parking lot of the restaurant.

8 Q All right. And you responded to that call. Were
9 you by yourself, or were you with another person?

10 A I arrived first on scene, yes.

11 Q Who else was dispatched, do you remember?

12 A I do not.

13 Q Were other officers dispatched?

14 A Absolutely.

15 Q And were you by yourself in your car?

16 A Correct.

17 Q And so when you got to the robbery call, what
18 generally were you doing, what information did you have?

19 A The first piece of information I do, or the first
20 thing I always do is I speak with the victim and I try to
21 get suspect information immediately. That way I can put it
22 out to other officers who might be out looking for the
23 vehicle or suspects.

24 Q And so at the time you responded, was the suspect
25 vehicle or the suspects involved still on scene?

1 A No. They had already left.

2 Q And so did you do exactly what you said, talk to
3 the victim and get more information?

4 A Yes.

5 Q And what sort of information were you putting out,
6 do you recall, in the dispatch?

7 A Yes. I was putting out information about the
8 general characteristics of the vehicle, and approximately
9 how many suspects were involved.

10 Q And so what information did you have, at that
11 point?

12 A That it was a dark-colored sedan, and then there
13 were four suspects involved.

14 Q All right. And did you have details about
15 weapons, clothing, things like that?

16 A Yes. The victim told me that the weapon used was
17 a Glock-style handgun, and then the suspect approached his
18 driver-side window and pounded on the window, with the
19 pistol.

20 Q And at the time you responded, you were talking to
21 the victim in this case. Did you have any other information
22 or tools accessible to gain more information about who was
23 responsible for this?

24 A Yes. Later, after reaching out to the manager, we
25 were able to pull up security camera footage.

1 Q As you're there on the robbery call, you
2 mentioned that you're sending this information out onto
3 dispatch. Is that right?

4 A Correct.

5 Q Are you hearing other conversations of what's
6 going on, or are you aware of any follow-up to the
7 information you were putting out at that time?

8 A Yes. I could hear over the radio that the
9 airplane was tracking a similar vehicle, headed into the
10 jurisdiction of Central Precinct.

11 Q Okay. And you were East. Is that right?

12 A That is correct.

13 Q Okay. And what does mean, if it's sending over --
14 or heading into Central Precinct territory? Does that
15 affect anything that you're doing?

16 A No, not at all.

17 Q So as you're hearing that information, are you
18 still on scene?

19 A Yes.

20 Q And had you seen the video, at this point?

21 A No. It took a while to get the video. We had to
22 call, wake up the manager, because of the time at night.

23 Q Okay. And any information that you or other
24 officers on scene that you recall putting out on the radio?

25 A Not till I was able to get a screen recording of

1 the security camera footage.

2 Q And so once you received that, what did you do?

3 A I put out some of the suspect information, and
4 then another just basic general characteristics of the
5 vehicle that I observed on the security camera footage.

6 Q At some point, did you leave the robbery scene and
7 go to a different scene?

8 A I did.

9 Q And how and why did that occur?

10 A So, as I was still waiting for the security camera
11 footage, over the radio I heard that shots were fired. Once
12 I was able to review the security camera footage, I made my
13 way to the scene of the officer-involved shooting.

14 Q And where was that, if you remember?

15 A It was on 39th and I don't recall the cross
16 street, but it was south of Powell.

17 Q Okay. And so by the time you get to that
18 location, you mentioned you'd already heard the shots fired.

19 A Correct.

20 Q The officer-involved shooting has already
21 occurred?

22 A Correct.

23 Q And so when you got there, what was your role at
24 that scene?

25 A So, the first thing I wanted to do was look at the

1 vehicle at the officer-involved shooting and compare it to
2 the vehicle that was used in the attempted robbery at 50th
3 and Powell.

4 Q And what was the purpose of doing that?

5 A Just to connect the two calls together.

6 Q Okay. And so you brought with you the screenshot
7 or the still shot from the video?

8 A I did.

9 Q And when you got to the scene, what did you see?

10 A I determined that it was not the same vehicle, and
11 I determined that because the wheels were different on the
12 vehicle at the suspect robbery at 50th and Powell and the
13 vehicle that was at the scene of the officer-involved
14 shooting.

15 Q All right.

16 A Excuse me.

17 Q Do you recall, Officer Brewer, other than the
18 wheels, were the cars similar?

19 A Yes, they were very similar. They were both four-
20 door sedans, kind of dark or gray in color.

21 Q Okay. And do you recall what type of vehicle was
22 involved in the robbery, in terms of make or model?

23 A I couldn't get an exact model, but I guessed, with
24 my training and experience, that it was a Kia Sportage,
25 which is a smaller SUV, or a kind of a crossover car.

1 Q All right. And in addition to vehicle
2 description, had you given out, or did you provide a
3 description of the person or people involved in the robbery?

4 A Yes, yes. I was able to get out one good
5 description of one of the suspects.

6 Q And can you -- do you recall what that was?

7 A I remember that it was light, or white-colored
8 shoes, dark pants, and then dark-colored tee-shirt or
9 jacket.

10 Q And is that also the person you described, giving
11 out information, had a handgun?

12 A Correct.

13 Q And what about in terms of the number of people
14 involved?

15 A From what I saw on the security camera footage,
16 there were three suspects that exited the vehicle, and
17 another driver who stayed inside the suspect vehicle.

18 Q From the robbery?

19 A Correct.

20 Q Okay. And is that information that had been
21 broadcast out?

22 A Yes.

23 Q Initially, with your contact with the victim?

24 A Correct.

25 Q Okay. So a driver and then at least, you said

1 three other people?

2 A Three others, yes.

3 Q All right. And you said there was at least one or
4 two other officers that were with you at the robbery call?

5 A Yes. After I showed up and started interviewing
6 the victim, I told them the suspects were gone and they
7 could go head down south and help with the other incident.

8 Q All right, the other officers that had responded?

9 A Correct.

10 Q So you stayed at, waiting for the video, and sent
11 everyone else off?

12 A Correct, yes. I stayed until I could review the
13 security camera footage.

14 MS. HERMANN: That is all the questions I have for
15 this witness. Do any of the jurors have any questions?

16 GRAND JUROR: I have a question, please. So,
17 Officer Sathoff headed straight to the south of Powell
18 church parking lot, correct, straightaway, when he heard a
19 call? And --

20 THE WITNESS: I'm unaware of who specifically
21 responded to that location and when.

22 GRAND JUROR: Oh, okay. Because you said when you
23 were airing the event at the Super Deluxe Mart, at the same
24 Air 2 was broadcasting their, whatever they were doing. And
25 how could they simultaneously be -- if you're -- you were --

1 what was the time difference between when you were
2 describing the vehicle that was in the Super Deluxe parking
3 lot and time that Air 2 claimed that they had eyes on it?

4 THE WITNESS: So, when it comes to specifics of
5 the vehicle, I wasn't able to determine, until I was able to
6 see the security camera footage, which came much later,
7 after the OIS had already occurred. So, I was going off
8 what the victim told me about the description of the
9 vehicle, which gave Air 2 the idea to look for a four-door
10 sedan, dark or gray in color.

11 GRAND JUROR: And they had abandoned their other
12 search, or concluded their other search, or did this just
13 take priority over what they were doing?

14 THE WITNESS: I'm not sure if -- because I know,
15 at the time, they were following a stolen vehicle or
16 something. And then everything transpired, they switched
17 over to start tracking the possible suspect vehicle from the
18 robbery.

19 GRAND JUROR: And the, this incident had nothing
20 to do with the owner? They never made it in the store, it
21 was just an alleged carjacking or robbery, car-to-car,
22 vehicle-to-vehicle --

23 THE WITNESS: Yes.

24 GRAND JUROR: -- hit?

25 THE WITNESS: Yes.

1 GRAND JUROR: Question. The suspect who had the
2 gun and did the robbery, his clothing was similar to who
3 other's clothing, before there was the other person? Was
4 there similar between him and the person who got shot by the
5 police?

6 THE WITNESS: I don't know what the person who was
7 shot was wearing.

8 GRAND JUROR: Okay, okay.

9 THE WITNESS: By the time I got down to the scene,
10 they had already transported him to the hospital.

11 MS. HERMANN: Any other questions?

12 (No response.)

13 MS. HERMANN: All right, thank you very much.

14 (Off the record at 1:32 p.m.)

15 (On the record at 1:38 p.m.)

16 THE FOREPERSON: The foreman, we'll start again.

17 MR. MILLER: All right, we are going back on the
18 record in the matter of the death of Emanuel Clark-Johnson,
19 DA Case Number 2454571. We have a witness here. Please
20 raise your right hand to be sworn.

21 MICHAEL FRANCIS

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

24 DIRECT EXAMINATION

25 BY MR. WENDEL:

1 Q All right, please state your name and spell your
2 last for the record.

3 A Yes. My name is Mike Francis, F-r-a-n-c-i-s.

4 Q And I think -- for the record, My name is Dan
5 Wendel, Oregon Department of Justice, Criminal Justice
6 Division. What do you do for a living, sir?

7 A I'm a patrol supervisor for the Portland Police
8 Bureau.

9 Q How long have you been a police officer?

10 A My total years are right around 18 years.

11 Q And how long have you been -- how much of that has
12 been with PPB?

13 A For the last five years.

14 Q How long have you been a patrol sergeant?

15 A I've been an acting patrol sergeant since 2019. I
16 was promoted to sergeant with Portland in October of last
17 year.

18 Q So, just after that, in November, let's see,
19 November 19th of last year, were you on duty at that point?

20 A Yes, I was.

21 Q Just after midnight?

22 A Yeah.

23 Q What was your assignment, at that point?

24 A So, I am the supervisor of the entertainment unit,
25 so we're responsible for all the bars, nightclubs throughout

1 Central Precinct.

2 Q Can you tell about precincts, like what precincts
3 are --

4 A Sure.

5 Q -- how many there are, what that means in terms of
6 what you're doing when you're on duty?

7 A So, we have three precincts in the City of
8 Portland. They're set up geographically, across boundaries.
9 So, we have North Precinct, which essentially runs from St.
10 Johns all the way out to Gresham, and essentially from I-84
11 north. So it's super long and skinny. And then we have
12 East Precinct, which takes up all of the area from I-84 and
13 I believe it's Fremont, out to Gresham, south to Clackamas
14 County, to Cesar Chavez Boulevard, and then Central Precinct
15 encompasses the rest of the city, so primarily focused, our
16 biggest population center is obviously the downtown core
17 inner east side.

18 Q So when you're in one precinct, are these
19 precincts on different radio networks? Are you able to
20 interact with officers in other precincts?

21 A Yeah. So, all the precincts have their own nets,
22 or radio channels. And then any time there's like a big
23 event, the BOEC, the dispatch center sends a message to all
24 the precincts, excuse me, and even to like Gresham,
25 Multnomah County, letting them know that, you know, East is

1 responding to this kind of a call, or Central is
2 responding to this kind of call.

3 Q Is it common for officers to go outside of the
4 precinct that they're assigned to, to go assist with those
5 kinds of calls?

6 A It is. It's much more common when we have better
7 staffing, but it is very common, just because we have areas
8 where, you know, things are very close on it. So, we'll
9 often get calls like on -- classic example would be Cesar
10 Chavez Boulevard, which technically, if it's on the east
11 side of Cesar Chavez Boulevard, it's a East Precinct call.
12 But we have patrol districts that butt up against it, so
13 it's fairly common.

14 Q All right. So, you were -- we're here today about
15 the robbery call that ultimately resulted in a shooting.

16 A Yes.

17 Q What were you doing before you became aware of
18 that incident?

19 A So I was actually Downtown, somewhere around
20 Central Precinct, and heard -- there were two kind of co-
21 occurring things. One that caught my attention was a
22 pursuit where the airplane was following a vehicle, and it
23 was heading towards our precinct. So I kind of started kind
24 of just drifting towards that way. I can't remember what
25 our staffing levels were like that night, but I think it was

1 just one of those things where it was like we were all
2 trying to help each other out.

3 So, I was kind of just already starting to kind of
4 drift towards the East Side. And then the robbery call came
5 out, so I heard that come out. And that was at 50th and
6 Powell. I think it was the Whataburger. And since I was
7 already kind of heading towards the Ross Island Bridge, it
8 was -- caught my attention to start looking for maybe a
9 vehicle, because I believe the initial description, the
10 vehicle was heading east or last seen headed east --
11 westbound, on Powell.

12 Q So do you recall if that previous call that you
13 were drifting that direction for, that resolved itself, or
14 was this just something that was --

15 A It was still ongoing.

16 Q Still ongoing?

17 A Yeah.

18 Q What was it that caused you to switch your focus
19 from that call to this robbery call?

20 A As horrible as this sounds, unfortunately, stolen
21 vehicles are a dime a dozen in the city of Portland. A
22 robbery is a far greater priority call than --

23 Q Right.

24 A -- a stolen.

25 Q So, you want to -- yeah, go ahead, and can you

1 turn around? And are you able to see this map here?

2 A Yes, I am.

3 Q All right. Why don't you -- so, I'll direct your
4 attention up here, the upper right-hand corner. This is
5 50th and Powell. Is that your understanding as to where the
6 general location of the call was?

7 A Yes.

8 Q Okay. Why don't you show the grand jury where you
9 were during the initial response you described?

10 A So initially, I was off the map here, a little
11 further to the west, on Powell Boulevard, but I was heading
12 that direction, just driving in traffic. And as I was
13 heading that way, right around 23rd, a vehicle just came out
14 of the blocks, at a real high rate of speed, kind of started
15 driving down the wrong side of Powell Boulevard, and then
16 got back into the normal lanes of travel, and just started
17 just -- I mean, it was cruising at a high rate of speed,
18 eastbound, weaving in and out of traffic.

19 I was kind of stuck in a position where the way I
20 was in traffic, for me to be able to get up to it, or react
21 real quickly was not going to go anywhere. So, I was just
22 doing my best to try and keep an eye on the vehicle, and
23 eventually was able to get traffic cleared in front of me,
24 and tried to get caught up to the vehicle. It continued
25 eastbound, along Powell here.

1 Q Officer?

2 A Yes.

3 Q I'm going to give you this. This might be
4 helpful, if you just hold down this, the top button here.

5 A Okay.

6 Q That shows the pointer, which might be a little
7 bit easier for folks to see.

8 A Okay. So, I started -- right around 26th here, I
9 started to get around traffic. As we were passing -- this
10 is the Motel 6. So as we were passing the Motel 6, he was
11 coming up on Cesar Chavez. And I could see, as I was
12 accelerating, trying to get up to it, I could see the
13 silhouette of like three people in the vehicle as it was
14 being silhouetted from vehicles traveling westbound.

15 When I got to probably within about five blocks,
16 so maybe around 30 -- what is this right here, 34th, it made
17 the right-hand turn, to go south on Cesar Chavez. Oops.
18 There it is. To go south on Cesar Chavez. By the time I
19 got to here -- and at this point I had broadcast, because I
20 had heard the suspect, the initial suspect vehicle
21 description come out, was a four-door sedan occupied by four
22 times, last seen traveling westbound, Powell.

23 Q When you say, occupied four times, what do you
24 mean?

25 A With four people in the vehicle.

1 Q All right.

2 A And in my mind, it was kind of making sense, if it
3 was last seen coming this way -- I've followed a lot of
4 vehicles from the air, and I see them kind of circling in
5 the blocks, and then they'll, you know, get back out onto a
6 major -- and we were again, you know, traveling eastbound.
7 We're heading back towards, excuse me, heading back towards
8 kind of the robbery, where the robbery occurred.

9 Q So just to interrupt, you said you've followed
10 vehicles from the air. What do you mean by that?

11 A I'm also a tactical flight observer in our air
12 support unit, so.

13 Q So, what does that mean?

14 A So we provide, the air support unit provides a
15 number of different functions. One of the major ones that
16 we provide is patrol support, where we provide an eye in the
17 sky for ground units to be able to do things like follow
18 stolen vehicles safely, without engaging in pursuits, and
19 other patrol support functions.

20 Q So just to forecast, you also sometimes have the
21 duty of being in what Air 2 --

22 A Yes.

23 Q -- was doing tonight, in the incident we're
24 talking about now? Okay.

25 A Exactly. So, by the time I reached Powell and

1 Gladstone and made the turn, it was well past Gladstone.
2 And then by the time I got to Gladstone, I had lost sight of
3 it. I don't -- there's this little hook in the road here,
4 at Holgate, and I couldn't see it at that point. I couldn't
5 see the tail lights. And at this time, you know, I'm
6 communicating with our dispatch, letting him know what I'd
7 seen, where it was at.

8 The air support unit finished whatever they were
9 doing, had -- right in that time frame, had finished up the
10 elude that they were working on, and immediately came over
11 and asked where I'd seen it at. So I provided that update.
12 I continued south on Cesar Chavez, and then I turned
13 eastbound on Woodstock, kind of a just a calculated guess.
14 It's a major -- the guy, or the driver was heading eastbound
15 generally, so my thought process is that he was kind of
16 stair stepping the blocks.

17 So at Woodstock, and then I heard the plane pick
18 up a vehicle that was pretty hot, I mean, on the thermal
19 sensor. When vehicles are traveling fast, using a lot of
20 brakes or a lot of engine, they'll develop a thermal
21 signature that's pretty -- that shows as being hot, and
22 it'll be hotter than other vehicles that we're looking at,
23 because obviously it's getting a lot of heavy use.

24 So I turned back around, and came down Steele,
25 which is where Sergeant Barnard had identified this vehicle.

1 It had pulled into this lot down here, somewhere. Myself
2 and several other officers came down and we began, we
3 deployed Stop Sticks.

4 Q Let me go ahead and just zoom in on that. There
5 we go.

6 A So we deployed Stop Sticks at this driveway, and
7 at this driveway, down here.

8 Q Can you describe what Stop Sticks are for the
9 jury?

10 A Yeah. So, Stop Sticks are -- we have single Stop
11 Stick sleeves, and we have sleeves that hold three of them.
12 Basically what they are, it's just a vehicle immobilizer.
13 It's intended to flatten the tires. So it's got -- it's
14 plastic. And encased in the plastic are spikes that are
15 like a straw. And so when a vehicle runs over the spikes,
16 the spikes that are internal to the strips dislodge, and
17 stay in the vehicle. And they allow the vehicle to have a
18 kind of a controlled deflation of the tires. It's a way
19 that we can safely bring pursuits and other eludes to a
20 close.

21 Q All right. So you deployed those, I think you
22 said on the -- across the driveway there?

23 A Yeah, yeah. So, and then by that time, Sergeant
24 Speer, other East Precinct officers, and a K-9 had come, and
25 they began to develop a plan on how to address the vehicle

1 that was back here.

2 Q So what was your role, at this point, as a
3 sergeant in a neighboring precinct? You'd deployed the
4 spike sticks. What was your role in this whole contact?

5 A It was this right here, just maintaining the
6 spikes here.

7 Q Okay.

8 A I mean, really just -- and holding a perimeter
9 spot so that way people aren't --

10 Q All right.

11 A Lights bring people out, and so we just want,
12 don't want people wandering into the area.

13 Q Fair enough. All right, so you're covering one of
14 the exits, or covering the -- well tell me about that. Is
15 it your responsibility to cover one exit and other officers
16 are to cover the other one? Are you -- are there more than
17 one of you that are covering both of them?

18 A At this point, it's fairly static.

19 Q Okay.

20 A So, you know, the group of officers who were
21 developing the plan to go up and make contact with Sergeant
22 Speer were at this driveway, which was covered by spikes
23 that they had laid down.

24 Q And that's the west driveway?

25 A Yes. This is the west driveway. And then Officer

1 Livingston, there was another officer there, and myself
2 were just basically keeping a perimeter position and holding
3 this area here.

4 Q All right. So, the plan is made for other,
5 another group of officers to go up there and make contact.
6 What happened at that point?

7 A Yeah. So, once they assembled their custody and
8 contact team, so a contact team group of officers who were
9 going to go up and make contact, and give commands, and then
10 a custody team, which is usually two officers, who would be
11 the actual people who would go up and do the hands-on, so
12 it's a very controlled -- it's very controlled, at that
13 point. Once they made their plan, they moved to the back,
14 up this driveway here. And --

15 Q From your vantage point, out on Steele, were you
16 able to see anything that happened once those officers moved
17 past the church?

18 A No.

19 Q All right.

20 A No. Once they got to like, right here, this was
21 completely -- you know, there's no view.

22 Q All right. So, what was the next thing you knew
23 about what was going on, in terms of anything you might have
24 heard, or radio traffic or anything of that nature?

25 A Yeah. They got back there. There might have been

1 a ruckus about, like we're moving out, or we're moving up
2 to make contact. And then, so we're back here. We can't
3 even -- there's -- we can't hear anything across this
4 building. And then all of a sudden I heard three shots ring
5 out, so -- pretty succinct order. And that was it. There
6 was a call for shots fired.

7 There were people that began running, or I should
8 say, people from this vehicle running towards this
9 direction, based upon what I could hear from the
10 descriptions that we're giving. And so, at that point, it
11 became another static incident where we were setting up
12 perimeter, or increasing our perimeter, and a K-9 track, and
13 all of the other things.

14 Q Did you yourself, once the -- once you heard the
15 shots, and then heard the shots fired call, did you yourself
16 go up to the scene of the shooting?

17 A No, not at that point.

18 Q All right.

19 A No.

20 Q So just -- I want to just jump back quickly, and
21 when you were -- you had earlier talked about, you know,
22 when you were going -- oh -- okay. So when you were earlier
23 talking about seeing the car coming out of the blocks up
24 here, and you're over in this direction, seeing the car run
25 this way, I mean, during this entire time when you have that

1 car under your observation, what speeds was it going?

2 What speeds were it going at? Were you able to --

3 A Sixties to seventies would be based upon my just
4 experience of doing traffic reports from the --

5 Q You've done traffic for --

6 A Yeah, exactly.

7 Q -- 18 some-odd years?

8 A And I worked in a smaller agency, which is, that's
9 all we have, is traffic. So --

10 Q Is that --

11 A -- yeah, 60 to 70 miles an hour.

12 Q Is that a high rate of speed for these streets, in
13 this area?

14 A That's a very high rate of speed.

15 Q All right.

16 A Yeah. It's a 35-mile-an-hour zone, but it's also
17 a high-crash corridor. There's a number of folks from our
18 houseless population that have camps along that area, that
19 move across the roadway. We have had a number of fatality,
20 you know, pedestrian fatalities and others. So, yeah it's,
21 that's fast.

22 Q In your training and experience, are people
23 fleeing an armed robbery scene, do they tend to go fast?

24 A Yes. Yeah.

25 Q So you've -- so that you called that, you called

1 out your pursuit, or on the radio, around this time here,
2 when the suspect vehicle, or the subject vehicle is going
3 south, and you were still a number of blocks behind. Is
4 that correct?

5 A Yeah, yeah. And really like, probably right into
6 here, I was actually -- because I'm still on Central's net.
7 I can hear the other one, because I'm on scan. But I'm on
8 Central's net, and so I just was -- you know, I think I -- I
9 made a broadcast on Central, like I just -- hey, can I
10 confirm what the suspect vehicle description was? I've got
11 one that's moving at a really high speed, you know, so --
12 and then I switched over to East.

13 Q Okay. So, when you call out on the radio, is
14 there like a call number or radio number that you broadcast
15 to identify yourself?

16 A Yeah, yeah. And mine is 3830.

17 Q All right.

18 A And I usually say, 3830. I sometimes, if I'm in a
19 hurry I'll say 38-30, so if you are listening to the
20 dispatch take, 3830 or 38-30 would be --

21 Q All right. Do you recall confirming on the radio
22 that this was a vehicle that matched the description that
23 you'd been giving?

24 A Yeah. I mean, it's like the first request was
25 like, can we get a confirmation on what the suspect

1 description was? I think probably something to the effect
2 came back of, you know, a four-door sedan, occupied four
3 times. And then I retorted back, well I've got a four-door
4 sedan, it's silver, you know, eastbound, high rate of speed,
5 and it looks like it's occupied --

6 Q All right.

7 A -- by at least three, so yeah.

8 Q And sort of based on what you knew that evening,
9 not any other information that might have come in to you
10 since that time, but based on the information that was
11 available to you at the time when you first observed that
12 vehicle, is it reasonable, in your mind, that that was the
13 vehicle that was involved in the robbery?

14 A It certainly seemed like a very high possibility,
15 yes.

16 MR. WENDEL: Thank you. I don't have any further
17 questions of this witness. Does the grand jury have any
18 questions? Sir?

19 GRAND JUROR: The robbery was on 50th and Powell?

20 THE WITNESS: Correct.

21 GRAND JUROR: And the guy was -- when you saw him
22 the first time, where was he at?

23 THE WITNESS: I saw him coming out of the block.
24 So, from the north, he merged on to Powell, right around
25 23rd, yeah.

1 GRAND JUROR: And how'd he get from Powell and
2 50th to Powell and 23rd?

3 THE WITNESS: Sure. So the last description that,
4 or at least the suspect description that I got was that he
5 was last seen westbound on Powell.

6 GRAND JUROR: Got it. Okay.

7 THE WITNESS: So, and like I said, it's not
8 uncommon for vehicles to drive a long ways and circle back.

9 GRAND JUROR: Okay.

10 BY MR. WENDEL:

11 Q Are you aware of the -- I'm sorry. Are you aware
12 of the rough amount of time it was between when the call
13 came in and when you made the observation?

14 A I'm going to say probably in the neighborhood of
15 about seven minutes, eight minutes.

16 Q All right.

17 A And that doesn't take into account any kind of
18 time delay between the time the call comes in to dispatch
19 and all the other things that can happen.

20 Q All right.

21 GRAND JUROR: One question.

22 MR. WENDEL: Go ahead.

23 GRAND JUROR: Was this Brewer's description from
24 the alleged victim, or was this his description post seeing
25 the video footage from the owner?

1 THE WITNESS: I don't know. It was just the
2 initial description that came out. In fact, I don't even
3 work with Officer Brewer. This the first time I've ever
4 seen him, so.

5 MR. WENDEL: So if I can clarify --

6 GRAND JUROR: Yeah.

7 BY MR. WENDEL:

8 Q You are getting your information from what comes
9 out from dispatch?

10 A Correct.

11 Q Not direct. You didn't have any kind of direct
12 contact with Officer Brewer --

13 A No.

14 Q -- by phone or radio or anything like that?

15 A No, uh-uh.

16 Q All right.

17 GRAND JUROR: Can I just ask, really quick? I
18 know you lost sight around Holgate, and then Air caught it,
19 but were you ever able to confirm that the car that was in
20 the parking lot was the same one that you had been
21 following?

22 THE WITNESS: So, later after everything had done,
23 taken place, I went up to do my detective interview, at the
24 scene, and they asked if the vehicle that was parked out
25 there, if that was the same vehicle. And it -- the vehicle

1 that was parked there was consistent with the vehicle that
2 I had seen.

3 GRAND JUROR: Okay, thank you.

4 GRAND JUROR: Another question, who is Sergeant
5 Barnard? You said you had information from him. And where
6 was he? Was he in the --

7 THE WITNESS: Yes, yes.

8 GRAND JUROR: -- in the area too?

9 THE WITNESS: Yeah. Sergeant Barnard is another
10 tactical flight officer like myself.

11 MR. WENDEL: Any other questions?

12 (No response.)

13 MR. WENDEL: Thank you, Sergeant.

14 THE WITNESS: Thank you.

15 (Off the record at 2:00 p.m.)

16 (On the record at 2:00 p.m.)

17 MR. MILLER: And we are back on the record in the
18 matter of Immanuel Clark-Johnson. It's Grand Jury Case 15.
19 This is Kurt Miller, from the Department of Justice calling
20 the next witness, Sergeant Barnard, and he is going to be
21 sworn in.

22 DANIEL BARNARD

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

25 DIRECT EXAMINATION

FREE STATE REPORTING, INC.
Court Reporting Transcription
D.C. Area 301-261-1902
Balt. & Annap. 410-974-0947
AAERT Member No. 18511641

1 BY MR. MILLER:

2 Q Please have a seat and introduce yourself.

3 A My name is -- sorry, that was loud. My name is
4 Daniel Barnard. I'm a sergeant with the Portland Police
5 Bureau. I spell my name D-a-n-i-e-l, last is B-a-r-n-a-r-d.

6 Q All right. And what do you do for the Portland
7 Police Bureau?

8 A So, I'm assigned to East Precinct, as a
9 supervisor. I think at the time this happened I was working
10 night shift. And then, as a detached assignment, or
11 position, I also work with our air support unit, as a TFO,
12 or tactical flight officer, but basically the, not the
13 pilot. I'm the person that operates the radios and cameras,
14 and equipment of that kind.

15 Q Well since we're on that topic, let's just talk
16 about that. So what kind of equipment do you have available
17 inside an air unit?

18 A Yeah, so we have a camera system. It's on a
19 gimbal. Basically it's a ball. It basically pivots and
20 rotates, right. And that's equipped with a, basically what
21 we call an electro-optical camera, otherwise like a daylight
22 camera, right. It's a nice camera sensor, basically. And
23 then we've also got a IR sensor on it as well, so you can
24 see heat, basically.

25 Q IR being?

1 A Infrared, right.

2 Q And that's the heat signatures that you're
3 referring to?

4 A Right, right. So, we're detecting infrared
5 radiation, which is basically shown as heat emanating from
6 objects.

7 Q So what type of mission does the air unit have?

8 A So, primarily we are flying patrol support,
9 anymore. So, that -- so we still have a couple of different
10 missions, but I can't remember the last time I've been on an
11 investigative follow in the last two, three years. So that
12 has shifted mostly to supporting patrol, so the three
13 precincts that we have.

14 We will go to calls. We refer to them as hot
15 calls, right, but we're typically listening for that, or any
16 call where we can make an impact, right, from -- you know,
17 we're typically loitering at like 4,500 feet, with our
18 camera system. We're still able to see well enough, and
19 then be safe, high enough to be safe enough. If we did have
20 an engine go out, we could probably still glide to an
21 airport or somewhere that's not putting somewhere else at a
22 great inconvenience.

23 So, on that, right, like we're looking for things
24 that we can make an impact on. You know, typically it's
25 people that elude us. That's probably the biggest thing

1 where we wind up filling a role. We can watch a car.

2 Q What do you mean by that?

3 A So, when an officer or deputy goes to stop a car
4 or a motorcycle, right, whatever the case may be, right,
5 they initiate a traffic stop. And then, if someone doesn't
6 yield, or doesn't stop for them, right, we call that an
7 elude. And then on that, right, there's a fork in the road,
8 our pursuit policy is restrictive, but it does allow for
9 pursuits on some very specific cases.

10 So if it did turn into a pursuit, or if it's
11 merely an elude, our goal is to try to get there and help
12 out. You know, driving at high speeds is dangerous,
13 dangerous to everybody involved, on the road, everybody
14 that's, you know, nearby. I mean, I've seen it -- it's just
15 dangerous for everybody involved.

16 So, if we can eliminate some of that risk, that's
17 our goal from the plane. If we can follow the car that's
18 eluding, at least maybe it will just be dangerous, and not
19 everybody else around it trying to respond or pursue it.

20 Q So basically, you're an eye in the sky, that can
21 kind of give information --

22 A Right.

23 Q -- to officers on the ground, that they may not be
24 able to see from their vantage point?

25 A Right. So that, you know, with eludes in

1 particular, I mean that's kind of our thought process, and
2 our approach to that, in a nutshell. The other things we're
3 looking for is really just confirming and denying things
4 that are happening, right. We get a call or, you know, BOEC
5 will -- you know, our emergency communications, right, our
6 dispatch center, they'll get a call.

7 And it happens often that something is reported.
8 Maybe it isn't happening. Maybe it never was happening.
9 Maybe it was happening and it stopped happening and it
10 moved, right. We can get there, a pretty quick response
11 time. We're usually under a minute, in most places in the
12 city, when we're flying. And we can see there. Like if
13 there is something happening or not.

14 So that's kind of the other prong of what we can
15 do for patrol, which --

16 Q So, is there a plane up all the time, or is it
17 only on certain days, or what? How does that work?

18 A Yeah. Like everything else, it's limited to
19 staffing. So, we're -- you know, we try not to steal from
20 the precincts. There's enough staffing issues with that, so
21 we try to play nice with everybody, basically find days that
22 work for everybody that can go fly patrol support flights to
23 help out the precincts without taking a body from those
24 precincts. So it's typically on an overtime basis, on our
25 weekends.

1 So, based on data, we've looked, and talking to
2 our Strategic Services Division folks, right, our bean
3 counters, like kind of the 5 p.m. to 3 a.m. is like the most
4 frequency of hot calls tend to occur in those hours, in the
5 city, according to them and the data that they get from, you
6 know, the computer-automated dispatches and from BOEC,
7 right.

8 So, we try to put our crews together on days where
9 we think there's more activity where we can help out, and
10 then of course during the hours that we think is going to be
11 most active.

12 Q So on November 19th, 2022, were you working?

13 A Yes, yes.

14 Q Were you a TFO, a tactical flight officer on that
15 day?

16 A Yeah, so Andy Jensen was the pilot. Him and I
17 were flying together, for a patrol support flight on yeah,
18 the night of the 18th, so at night. I think we started our
19 day at like 5 p.m. down at Aurora.

20 Q And do you hang out, do you loiter in the air all
21 the time, or is it something that you take off when a
22 certain type of call comes in?

23 A No. So we're based out of Aurora, so we're --
24 like response time from the ground and from Aurora is, I
25 mean, it's not super quick. Even just flight time from

1 Aurora is about 12, 13 minutes. So, what we do is we do
2 kind of two legs, is what we, how we refer to them, right,
3 so two flights. So we'll be up for anywhere, three to five
4 hours, and then we're kind of pushing up against like
5 needing to refuel, you know, maybe needing to eat, maybe
6 needing to stretch the legs from sitting in a small plane
7 for, you know, too long.

8 So, typically three to five hours, we'll do two of
9 those legs, as we call them. And we'll refuel at PDX, if we
10 can. It's a little closer, a little more convenient for
11 getting a service back to, right, the three precincts.

12 Q So somewhere around, on November 18th, at around
13 11 p.m., where were you at?

14 A So, in relation to this, right. So, Andy and I
15 were flying. I think we were kind of -- there were some
16 other calls that had happened, and maybe they just kind of
17 fizzled out. And we were kind over, well roughly like 205
18 and like kind of Southeast Portland. And we had
19 overheard -- there was a robbery with a gun call, came out
20 at the Super Deluxe. There were still some facts kind of
21 that we didn't have from that.

22 But we went into the area, looking for, right,
23 kind of indicators or driving behavior that might be
24 consistent with how we know --

25 Q So prior to the robbery call, were you assisting

1 on another call?

2 A So that, I'd have to go look, like I'd have go
3 digging through --

4 Q You remember, like a stolen vehicle call prior to
5 that?

6 A It happens so much. I know, like -- I would have
7 to go like dig through the CAD and figure out --

8 Q Sure.

9 A -- what I was doing prior to that.

10 Q And when -- the robbery call that you mentioned,
11 what was the stuff that you heard on the radio about that?

12 A So, I heard -- so robbery with gun came out, and
13 it was broadcast over the radio on our East net, or radio.
14 And then that was the area, 50 and Powell. So, kind of our
15 approach to that, right, like we want to get into the area,
16 which we're pretty much -- we were already kind of in the
17 area. You can get pretty far, you know, within a minute,
18 right.

19 So, basically just looking around in the area,
20 waiting for officers to arrive, gather facts, get details,
21 and try to figure out maybe descriptions, descriptions of
22 cars, people involved, and then directions that they were
23 seen going. Another thing I'm looking --

24 Q Did you hear an officer who was focusing on a
25 particular vehicle?

1 A Yeah. So like I was kind of paying attention.
2 We had somebody going to the location that was claiming they
3 were robbed, right. So, that was like, I knew that was
4 coming. There might be better info coming out from that.
5 We were looking in the area. I wasn't seeing anything just
6 yet. And then I heard another officer over off like, it's
7 like 39th, or Cesar Chavez, try to get up to a vehicle.

8 I think it was like a preemptive elude thing, so
9 he -- right. He was trying to -- something caught his eye.
10 He turned on a vehicle. Vehicle reacted by driving fast and
11 kind of recklessly, and going into the blocks to lose him.
12 So, as I understand it, like I don't know if he was really
13 able to get up on him and like activate his overhead lights
14 for the, you know, the tactical stop. And so then we --

15 Q Did you have a description of that vehicle that he
16 was trying to catch up to?

17 A Yeah. If I recall right, I think it's like a
18 silvery kind of sedan, is what I was looking for. So, we
19 kind of switch. You know, 50 and Powell area is like, we're
20 pretty much already there for -- you know, we do about a
21 mile and a half orbit around whatever we're looking at,
22 sometimes two miles.

23 But we were pretty much already in the area, so
24 just swung the camera down there, looking at Cesar E Chavez,
25 kind of working my way south, trying to figure out what

1 exactly he was talking about, if I could find anything
2 that matches up to that. And then I find a -- I pick up a
3 car, and kind of started chatting about it. It was
4 eastbound. I didn't see it leave Cesar E Chavez, but it was
5 eastbound on Steele, I believe.

6 Q Eastbound on Steele?

7 A Or sorry, westbound, going -- yeah.

8 Q I'm going to pop up a map on the screen behind
9 you, see if that kind of helps you figure out locations.

10 A Yeah. So, I'm not -- I don't remember exactly
11 where it was last seen by the officer that stopped it, but
12 so here's Steele. And then, so I pick it up somewhere kind
13 of in here. It wasn't on -- I didn't see it make the turn.
14 But the --

15 Q Which direction was it heading? Was it heading --

16 A So this is west, yeah.

17 Q And what did it look like? Was there anything
18 special about the car that made you -- kind of drew your
19 attention to it?

20 A So, it was a sedan, maybe silvery kind of color,
21 and honestly I forget the colors. Like, at this time of
22 night, I'm looking in IR.

23 Q So infrared?

24 A Infrared.

25 Q Heat signature?

1 A Infrared, yeah. So I'm looking at heat, for the
2 most part, and I'm really -- the things that are going to
3 get me kind of the most -- what's going to inform me best is
4 going to be behavior, right. So, I'm looking at how it's
5 driving. It was driving fairly -- you know, I don't know
6 how fast it was going, because I wasn't super fixated on
7 that just yet. But it was driving faster than what I would
8 consider normal speeds, for that neighborhood.

9 And there was no other cars around. I was kind of
10 looking around. I was kind of keeping a wide angle, looking
11 at other streets, right. I can see -- if I'm in a wide
12 field of view, I can see if there's other cars driving on
13 streets. And they're -- it's really the only thing around.
14 So, looking at that, and like ah, tried to catch it under a
15 streetlight.

16 We talked about the colors of the car. It was
17 like, I think silvery is kind of stuck in my head, so
18 possibly silver, looking at it as it passes under a
19 streetlight, switching to a different camera, right, the
20 electro-optical or daylight. It looks kind of silver to me.

21 Q Did the heat signature seem normal, hot, or --

22 A It looked like it had been driven fairly hard,
23 right. So --

24 Q What do you mean by that?

25 A So right, things that emanate heat on cars, you

1 know, wheel wells, right. You get brakes, your tires,
2 right. Your tires are constantly in friction with the road.
3 Brakes obviously are in friction with the rotors, brake
4 pads. That's usually the biggest indication of how hard a
5 vehicle's been driven.

6 So, I mean, some people drive their cars very
7 hard. But now I'm getting, in particular, interested in
8 this car, because it's the only car I'm seeing in the area.
9 It's kind of driving higher speeds. It looks like it's been
10 driven hard. So --

11 Q And when you're talking on infrared, does it --
12 how do the colors relay? Are they brighter, darker?

13 A So, the -- normally, personal preference, you can
14 look at infrared heat signatures in DOAs (ph.), right. You
15 can switch the polarity of the heat, meaning white hot or
16 black hot. And it's just, it's a user preference thing.
17 It's a technique. You want to break out the background,
18 foreground, kind of play those games, it just helps you kind
19 of define things on the screen sometimes.

20 But I prefer white hot. It just kind of makes
21 sense in my head, right. Hot things are brighter in color.
22 It just computes better in my head. And I think that goes
23 for most people. But, so everything that's hottest on the
24 screen, or that the sensor is detecting will appear, you
25 know, bright white. And then it kind of varies down in, you

1 know, shades of gray to black for cold.

2 But the wheel wells were like, kind of screaming
3 hot, for me so, compared to someone that's just driving
4 normally, right. Like, I see it often, you know, flying
5 around the city, when I do get on a car that's been driven
6 very hard, as compared to the cars that it's passing by at
7 high speeds, right. Like, there's a huge difference between
8 people just going from home to work, or vice -- you know, to
9 the store, just the A to B drivers, so.

10 Q So this particular vehicle, as you picked it up on
11 Steele, heading westbound, where did it go to?

12 A So, it was -- when I first picked it up, it was
13 driving kind of like higher speeds. I don't know exactly
14 what it was doing, but it didn't really seem to -- it seemed
15 to be higher than what was kind of -- than the speed limit
16 for this area. So it winds up kind of slowing down, and
17 then it settles in. It pulls into this church parking lot
18 here, and --

19 Q I'm going to give you a blowup of the church
20 parking lot --

21 A Okay.

22 Q -- if that would help.

23 A So, I was keeping an eye on this, and there were
24 some cross, there was some crosstalk about, you know, is
25 this the car, do you think it's might related -- I was

1 trying to get some better details, maybe.

2 Q When you're saying crosstalk, are you talking
3 about --

4 A Between --

5 Q -- communications with dispatch, other officers?

6 A Yeah, sorry. With officers that responded to the
7 call, with the officer that had seen this car, and then
8 myself. So there was a little bit of crosstalk about that.
9 I felt like there was something going on here, but I wasn't,
10 just wasn't sure yet. And then with the speeds, he was kind
11 of slowing down, so I just wasn't sure.

12 So, but then he turns into this parking lot here,
13 for the church. So he goes -- so this being west, so he
14 stays -- there's an east entrance and a west entrance.
15 Drives up the west entrance, and then parks -- I can't
16 remember which bank of, which space he actually took, but
17 parks in one of these parking spaces, all the way up here in
18 the north end of the lot.

19 Q And what happens after the car parks in the north
20 end of the -- well, let me back up one second. Obviously
21 this picture is very bright, and like, what are the lighting
22 conditions, as you're looking over it without infrared, if
23 you were just looking at your regular camera?

24 A So, it's pretty dark. It's a dark parking lot.
25 There might have been some lights there, but generally, I

1 mean, it's pretty dark. And so --

2 Q Okay. And so after that, what do you see, from
3 the car and its occupants?

4 A Yeah. So the car parks all the way at the top end
5 of the, or the north side of the lot. I thought that was
6 kind of -- it was another odd thing to me, like we're
7 looking for a dark place, we're looking for maybe a place to
8 cool our heels, right. I've seen that before, but I just
9 don't know. So there's some crosstalk about that on the
10 radio, that I'm hearing this, and kind of the behavior that
11 I'm observing with, you know, with officers on the ground.

12 So, as we're kind of watching this, trying to
13 figure out like, what is it really that I'm looking at, I
14 see an occupant of the car exit the car. I can't remember
15 which side of the car they got out on. I want to say it was
16 the driver's side, but I'm not a hundred percent on that.

17 So they walk south, all the way to Steele, along
18 the west side of the church, and they linger at the
19 sidewalk. They kind of look around.

20 Q To your knowledge, was anybody else down on Steele
21 at that time?

22 A No. So, I think we've still got, still got
23 officers arriving in the area. We're still -- there's this
24 cross chatter about what it is I'm looking at, if this is
25 going to be the car. Like we're trying to allow time to,

1 you know, so I can see this thing, I know where it's at.
2 I can sort of visually contain it, as we say, right. Like,
3 I can look at it, I can see it, I can watch it, right.
4 There's no pressing like emergency to go contact this thing
5 right now. So --

6 Q And what's that person do after he goes down to
7 Steele, or what does that person --

8 A So, he walks back up. So he kind of lingers,
9 looks around, kind of -- you know, he looks left and right,
10 and then he walks back up to the car. It looks like they're
11 sort of just hanging out. There's some -- like it looks
12 like maybe they're talking to each other. I'm not a hundred
13 percent on that, but that's just the body language, right.
14 It looks like they're chatting with each other.

15 And then, that's kind of a brief thing. And then
16 he goes back to the east side of the church, and walks all
17 the way down to Steele, and sort of does this looking around
18 thing again, and then he walks back to the car.

19 Q Are other officers arriving in the area yet?

20 A So, yeah. They're staging somewhere on Steele,
21 but to the east, and I don't recall their exact staging
22 point. I feel like it might have been a block or two to the
23 east, but -- so I communicate this behavior that I see. I
24 think it's incredibly odd. It's extremely suspicious to me.
25 And I believe, and I relay this, I think they're kind of

1 checking to see if the coast is clear, right. They're
2 looking to see if they've landed in a safe place, if there's
3 any police presence around, or anyone else that is looking
4 to interfere, right.

5 It's not always police presence that people are
6 worried about. Sometimes people are worried about other
7 criminal activity that might or might not occur to them.

8 Q And just so we're clear, this is all just kind of
9 things that were going through your mind --

10 A These are -- yeah. This is --

11 Q -- based on your training and experience, nothing
12 based on any --

13 A This is my experience of seeing these things, and
14 dealing with people on the ground, and 15 years of doing
15 this job, so --

16 Q Okay. And so after the person starts walking back
17 again, what happens next?

18 A So, he makes it to the car. There's another
19 person that shows up, kind of in that little green space,
20 and I'm not sure if they're related, but he's on, it looks
21 like a BMX bike. Kind of -- I don't know if he's a looky-
22 loo, or -- no idea what their role was. And at that point,
23 so we had talked about this. He makes it back to the car,
24 and then folks on the ground decide that they're going to
25 roll into the parking lot.

1 They've got enough resources there, enough cops
2 there to deal with this, they feel like, and they go in and
3 try to contact the car, at the north side of the lot.

4 Q Okay. And so, I'm going to just go one screen
5 ahead. So, do you recognize this?

6 A Yeah.

7 Q So what is this? Kind of just give us an idea
8 about what we're seeing on this picture.

9 A So, this is going to be like the south side of one
10 of -- well, Wimbledon Court Gardens, Apartment -- it's a
11 large apartment complex there, between 28th and Colt Drive.

12 Q And from the picture we were looking at, that's
13 north --

14 A And we're --

15 Q -- of the church, to the top of the church?

16 A So, this is north, that's south, and so Steele
17 would be that way. That's the north side of the church,
18 right there.

19 Q And are there any -- like, we do see some
20 lightness and some darkness here. Is that what you were
21 talking about before, about heat versus not heat?

22 A Yeah. So that's picking up, you know, ambient
23 heat off the leaves of the trees, right. I mean, they
24 generate heat. You know, you can see, you know, everywhere
25 there's -- underneath the car, right. This pickup truck

1 was, it's cooling from the center but, you know, it's got
2 some ambient heat, and probably some ambient heat from the
3 motor. It's been at driven at some point, you know, earlier
4 that evening would be my guess. And you can see the
5 difference, right. That car's been -- right, it's saturated
6 in heat on the hood.

7 Q And so the vehicle that you had seen on Steele, is
8 it in this picture?

9 A Yes. And that's other side of the bushes there,
10 just above the person there.

11 Q And is there anything else around that, that --
12 like do you see people or anything else around that?

13 A Yeah, so I've got -- so, this is -- that's a
14 person, and then there'd be another person here on the
15 passenger side of that car.

16 Q Okay. And does the air unit also have the ability
17 to record images and video?

18 A Yes, yeah.

19 Q And how does that work?

20 A So, it's manually toggled. So that works through
21 the computer system that we have. And basically, the camera
22 feed comes in through a computer. The computer renders that
23 onto a screen. And we're allowed to record what we've got
24 it set for. Just, we've developed our SOP to do that,
25 standard operating procedures.

1 So, it's always recording, but like most CCTV
2 kind of home security stuff, it's always recording, but the
3 moment you want to record it, it buffers back, and you can
4 set that. So we've got it set to a 30-second buffer, where
5 it goes back, captures that last 30 seconds and then goes
6 forward.

7 Q So when you choose to hit the button to record, it
8 backs it up 30 minutes -- 30 seconds --

9 A Thirty seconds, yeah.

10 Q -- and then moves forward?

11 A Yeah. And, you know, the thought process, it's
12 always a struggle, like when to record and when not to
13 record, right. Are we just watching people, are we just --
14 you know, is this a crime occurring? So I tend to -- I
15 always start recording when I believe, right, police action
16 is occurring, or I feel like there is PC for a crime or, you
17 know, a combination of the both, right.

18 So at this point, kind of -- I've described what
19 I've been observing. They make the decision to come in and
20 contact, and I know police action is occurring, so I'm just
21 going to capture whatever it can capture, that and start
22 recording, so.

23 Q And it also captures radio traffic as well?

24 A Yes, yeah.

25 Q All right. So, it'll probably be helpful. I'll

1 start playing it. If you narrate, if it's a significant
2 spot, just tell me to pause, and we can talk about it.

3 A Okay, yeah.

4 Q But we'll kind of let the video speak for a while.

5 A Yeah, sure.

6 (Video recording plays.)

7 BY MR. MILLER:

8 Q That's your voice?

9 A Yes.

10 Q The police units coming in?

11 A Yes, down there to the south off of Steele. So
12 there's the bicycle guy, no idea what his relationship is
13 but he's done.

14 Q I'll pause it a second, because --

15 A Yeah.

16 Q -- we just had a lot of stuff happening.

17 A Yeah.

18 Q Let's talk about it. What did you see? And then
19 we'll back it up and show it again.

20 A So, I can see them, and like, I'm focused on
21 containment, trying to preserve what we can, into to this
22 car, at this point and, you know, whatever evidence may be
23 leaving with them. So that's kind of my approach to this.
24 So, I see cops coming in. They're rolling in to the west
25 side of the church, and I have that conversation.

1 Hey, I see you guys, you're approaching on the -
2 - from the west side of the church. Do we have spike strips
3 set up on Steele for the other entrance, exit, right. So,
4 spike strips, if you don't know, they're -- they look --
5 it's a bunch of like hollow, like hard plastic.

6 Q Sergeant Francis just had a discussion of them.

7 A Yeah, okay. Got it. Gotcha, all right. Then
8 we're past that. So, we have that conversation. As they
9 start rolling up, I see bicyclist doesn't want any part of
10 anything that's now approaching. That's --

11 Q Is that like this person over here, that kind of
12 rode away in the system before you got him?

13 A I think he's already offscreen --

14 Q Okay.

15 A -- or maybe that's him. I'd have to go back and
16 see if that's the bicyclist or not. But --

17 Q I'll back up just a little bit.

18 A So --

19 Q Who is this person?

20 A That's one of the occupants of the car.

21 Q Okay.

22 A So I wasn't -- I had seen this guy earlier. I
23 wasn't sure if it's -- you just never know. Is it a
24 transient on a bicycle that just happens to live somewhere,
25 camping nearby, or -- no idea what this bicyclist is doing.

1 But he's hanging out there, and it's odd to me. He wants
2 no part of whatever this is, for whatever reason, I don't
3 know.

4 Q So focusing on the vehicle and the occupants, when
5 the officers pull up, what do we see from the vehicle?

6 A So from the vehicle, I see this person -- this
7 occupant of the vehicle is still walking towards where that
8 bicyclist was. And then everybody else starts -- they're
9 bailing out of the car. They're running.

10 Q And do you see how many occupants head out of the
11 vehicle and run away?

12 A So there was a total of four in the car when it
13 arrived, and then they were kind of milling around the car.
14 You got the one guy that's going back up and down to Steele
15 and then the other three, right. So two in the back, and
16 another one in the front.

17 Q So two of them run away? Which is the first
18 person running away? Is it a passenger side front, or
19 driver side front?

20 A I'd have to watch it again. So I think it's the
21 driver that does this like button hook thing.

22 Q Yeah. Let's just watch it, and then you can kind
23 of tell me what --

24 (Video recording played.)

25 THE WITNESS: Yeah, the driver wraps around.

1 BY MR. MILLER:

2 Q Okay. So I'm pausing it right there. So, who is
3 this one?

4 A So that's a back passenger.

5 Q And how about this one?

6 A And that's the driver, yeah.

7 Q All right. And this is the other occupant that
8 had not --

9 A That's another, I believe, back passenger.

10 Q Yeah. And there's someone still inside there?

11 A Yes, I believe so. Yeah.

12 Q Yeah. So this is the person from the driver side
13 area?

14 A Right.

15 Q And as they're tracking through here, does it look
16 like one of them falls down?

17 A Yes.

18 Q And which one is it? Is it the front one or the
19 back one?

20 A I believe it's the driver. I'd have to play it
21 again, just to --

22 Q Okay. So the back person --

23 A Yeah.

24 Q Okay. And so I'm going to play that part of it,
25 as we watch the driver and the passengers' movements.

1 (Video recording played.)

2 BY MR. MILLER:

3 Q Okay. And so we kind of heard like a sound on the
4 radio --

5 A Yeah.

6 Q -- as the person went down. In your professional
7 experience, what do you think that sounds like?

8 A So I wasn't sure yet. Nobody had said it, but I
9 was kind of starting to wonder if this has just turned into
10 a shooting or not. It's entirely possible. I was waiting
11 for confirmation on that. So, I'm already shifting my focus
12 a little bit more to, that person is down for some reason.
13 He doesn't seem to be going anywhere for us. Now I'm trying
14 to worry about, you know, which one of these two -- can I
15 contain both of them, see what's going on? Or do I just
16 give it up for this guy?

17 Q Okay. So we still have a person here, a person in
18 the car, this person that's down here, and then this person
19 that's running away, that passenger?

20 A Right, right.

21 Q All right, and so, what was your primary focus out
22 of all of them, at this point?

23 A I was trying to, like -- so it's always a juggle.
24 I'm trying to contain everything, right. You don't always
25 have the luxury of doing that, so it's a matter of

1 prioritizing, right. What's got the priority? What do I
2 think has the priority? So, really just trying to go
3 with -- try and make the best decision, based on what I've
4 seen so far. So --

5 Q Okay. So do end up tracking the passenger?

6 A I stick with the passenger, because bicyclist, I
7 don't know. He could be some random there. Maybe they were
8 there to meet with -- I don't know.

9 Q Okay.

10 A So, I abandon him, so we just don't know those
11 things, and I've got this guy coming from this vehicle, so.

12 Q All right. So let's follow that.

13 (Video recording continues.)

14 BY MR. MILLER:

15 Q That's still that passenger they're talking about?

16 A Yeah. So that's me talking to Andy, that we need
17 to kind of speed up or decide the orbit, just to see.

18 Q This is the passenger still up there?

19 A I believe so. Like, this kind of gets firmed up a
20 little bit. He's still walking like them, but I want to get
21 around and make sure.

22 (Video recording continues.)

23 THE WITNESS: So, I'm fairly certain, at this
24 point, that that passenger is still walking underneath that
25 breezeway.

1 BY MR. MILLER:

2 Q Under this area?

3 A Yeah. He's exiting that side, the east side of
4 that breezeway.

5 Q And back here is sort of the officers --

6 A Correct, yeah.

7 Q The person's still down, for the moment?

8 A Yeah.

9 Q And this is the guy you're focusing on?

10 A Right. Yeah. I'm seeing everybody else from that
11 car is either down and injured, or remaining there, and
12 being challenged by the police.

13 Q I'll stop for a minute. Go ahead.

14 A And then, so my focus of that has shifted to just
15 trying to, you know, capture as much evidence as possible,
16 the right way, at least get somebody to contact this guy and
17 figure out what the deal was.

18 Q There's officers on the scene, dealing with the
19 other three, so --

20 A Right.

21 Q -- the other person is outstanding and still --

22 A Right, and --

23 Q -- being focused on?

24 A Yeah. And so I start talking to, I think it was
25 Jerry Ables, Officer Jerry Ables. I wound up contacting

1 him, (indiscernible).

2 (Video recording continues.)

3 MR. MILLER: Still (indiscernible)?

4 THE WITNESS: Yeah. It's still him.

5 (Video recording continues.)

6 BY MR. MILLER:

7 Q And I'll pause it there. That was just you
8 talking on the radio?

9 A Yeah. That was -- so that was me, talking
10 about -- because it seemed like they were a little uncertain
11 about where this other passenger was. So I wasn't sure if
12 that was -- like there -- it seemed like there was some
13 confusion there, about the two that ran northbound. I don't
14 know that they knew. So that's me trying to clarify that
15 for them. I don't know if that helped or not yet.

16 Q That one had ran northbound and you're following
17 him and the other one had -- is still closer to the scene.

18 A Yeah.

19 Q Laying down.

20 A And there's -- every time somebody tries to key
21 up, basically pressing a button to talk on the radio net
22 that we're using, if someone else is also doing the same
23 thing, somebody gets a honk that basically denies you the
24 ability to send a signal that's received to our Council
25 Crest tower, right. So --

1 Q Short version, it's multiple people trying to
2 talk at the same time?

3 A Yeah, everybody trying to talk at the same time.
4 (Video recording continues.)

5 BY MR. MILLER:

6 Q Are you referring to this officer there?

7 A Yeah.

8 Q And which guy are you referring to on the
9 compound?

10 A So this -- so that's our passenger still, still
11 the lead person running from that car.

12 Q Was that for here?

13 A Yeah.

14 (Video recording continues.)

15 BY MR. MILLER:

16 Q When you say Ken, what is -- who's that?

17 A So, Jerry Ables and Ken Jackson are K-9 officers.
18 They -- I mean, there's very few K-9 officers. They're a
19 city-wide resource for us, so we have a lot of interactions
20 with them. Just, we have a rapport with them. I recognized
21 them by voice over the radio, from the plane. I work with
22 them quite a bit, doing dog tracks, right, perimeter
23 searches.

24 So they're -- we've got a rapport. And so I just,
25 that was me, talking to Jerry, because I think he was trying

1 to clear up whether or not he needed to be worried about
2 something else to the north of him, maybe.

3 Q And you're talking about the officers that --

4 A And I'm talking about --

5 Q -- already had taken the passenger into custody?

6 A Yeah, kind of the primary scene here.

7 Q And you were referring to Ken, being the K-9
8 officer that's down here?

9 A And Ken is Ken Jackson, the other K-9, is what I
10 meant by that.

11 (Video recording continues.)

12 BY MR. MILLER:

13 Q And that's the subject that that (indiscernible)?

14 A Yeah.

15 Q And what is that?

16 A So, AMR is American Medical Response, so the
17 contracted ambulance company with the county.

18 Q They were confirming that --

19 A That we had --

20 Q -- an ambulance had been staged?

21 A Correct, yeah.

22 Q Okay. And over on the other side here, is there a
23 person here? Is that what you're saying?

24 A So there's still a person, laying down, proned
25 out, and I believe there was another person that hadn't been

1 taken into custody yet, that the bushes are kind of
2 covering up right now.

3 Q Okay. And are these, I'm guessing, all the
4 officers around the vehicle?

5 A Yeah, yeah.

6 (Video recording continues.)

7 BY MR. MILLER:

8 Q I'm also going to say, this light spot on the
9 ground over here, if somebody had been proned out and laying
10 down over there, would that also reflect a heat signature
11 into the ground?

12 A Yeah. So, it takes a little bit for like even
13 your cell phone to lose your body heat that you give to it
14 by keeping it in your pocket or, you know, cell phone,
15 whatever the case may be, right, but it's clearly, to me, an
16 object that belonged with that person.

17 Q Yeah. Oh, next to it, right?

18 A Yeah.

19 Q And not just look like a person that had been
20 laying there?

21 A Right. Or -- well, I'd have to watch it longer,
22 so.

23 Q Yeah.

24 (Video recording continues.)

25 THE WITNESS: Yeah, and that's probably just an

1 imprint from the heat of the person that was on the
2 ground.

3 BY MR. MILLER:

4 Q So, can you just tell me what was happening here?

5 A So Ken Jackson is asking me where the -- because
6 he's cueing in to this other person that's down, and they
7 don't -- like, he doesn't seem to understand where he's at
8 in relation to the car that they're challenging and the
9 person that's proned out, that they're trying to get into
10 custody. So, I know why he's asking this, because he wants
11 to make sure that he's not approaching this guy, the proned
12 out subject that they're addressing right now, that this
13 person isn't potentially a threat to them taking that person
14 into custody.

15 So, that's me then, trying to explain exactly
16 where this person is, in relation to the car that they're
17 addressing, right. So I'm describing it, you know, it's
18 northeast, basically a northeast line off the front
19 passenger fender of the car, as it's parked.

20 Q So, is it fair to say they kind of spend some time
21 still taking that other person into custody before they try
22 and address this particular --

23 A Yeah, yeah.

24 Q -- person who was down? So at some point in time,
25 we'll kind of see the video speed up. When it speeds up, is

1 that basically just you circling and watching as they're
2 taking the other person into custody?

3 A Yeah. This take a little bit of time, because
4 they're taking that subject into custody, and then trying
5 to -- there's, I think, some additional crosstalk about
6 where exactly this guy is, because they can't see him, for
7 some reason.

8 Q And then it slows down again when they're
9 approaching to take this person into custody?

10 A Right.

11 Q Okay.

12 (Video recording continues.)

13 BY MR. MILLER:

14 Q Obviously there's no radio at this point in time,
15 because it's a speeded up version of the video.

16 A Right.

17 Q I think you can still see the time ticking up fast
18 in the top left corner, correct?

19 A Yeah, yeah.

20 Q Is that person a passenger, crawling back?

21 A Yeah. So they're probably giving him commands to
22 crawl to them, because they're still uncertain about the
23 location of this other subject.

24 Q Looks like a lot more police units arriving?

25 A Yeah.

1 Q Is that them there, taking that person into
2 custody?

3 A Yeah. So they're going into custody with him,
4 walking him back to a car that just showed up.

5 (Video recording continues.)

6 THE WITNESS: I'm trying to describe this --
7 (indiscernible).

8 BY MR. MILLER:

9 Q Fairly dark down there? The arborvitae is fairly
10 tall?

11 A Yeah. And I'm sure those probably aren't even
12 well-painted parking spaces too, so they may be looking at
13 me like, what are you talking about? Oh, these are -- so.

14 Q Far and back into there. Right down there, right
15 a little bit before that. There we go.

16 (Video recording continues.)

17 BY MR. MILLER:

18 Q And you're describing the person there laying
19 down? Sergeant Barnard, you're describing the person laying
20 down?

21 A Yes, yeah. Yeah. And so you can see, and so
22 those officers are just confirming that that vehicle is
23 clear.

24 Q These officers?

25 A Right, they're -- yeah.

1 Q Confirming that this suspect vehicle is clear?

2 A Correct.

3 Q While these officers are dealing with this person?

4 A Right. Those are that -- so Ken is, I'm assuming,
5 with that team, that's moved up, because he's kind of
6 describing it to me. It's consistent with what I'm seeing,
7 so.

8 Q Okay. I just want to again -- talk to me about
9 there where you were switching to a regular color vision.

10 A So, I was just trying to figure out if there's
11 anything that I can see. You never know -- well, I never
12 know sometimes how much ambient light I'm really going to
13 see down on the ground. And I've also -- we've been
14 descending, during the course of this thing, too. So, I
15 think we initially started out at like 4,500 feet. Cameras
16 capture light better when they're closer to the source of
17 light. And then, so now that we're lower, I'm trying to see
18 if we can maybe get better video, or see better.

19 Q Still fairly dark?

20 A Yeah, so pretty dark. And that was Ken, saying
21 that they can see, that's okay.

22 Q What do they mean by challenging?

23 A Loud hailing, like basically giving them commands,
24 hey, this is the police, you know, time to surrender, kind
25 of a conversation. I don't know exactly what they were

1 saying --

2 Q Do you see the officers over here, kind of holding
3 something?

4 A It's a ballistic shield --

5 (Video recording continues.)

6 THE WITNESS: I think that's a different radio
7 net. That's completely unrelated that you are hearing
8 there. And that's again, a different radio net. I think
9 it's North.

10 BY MR. MILLER:

11 Q From your precincts?

12 A Yeah.

13 Q You see any movement from your --

14 A There's -- you know, it looks like he's doing
15 something with his left hand. It looks like he's, you know,
16 resting on it, resting a head on it, right arm, doing
17 something, manipulating something. It's kind of like fine
18 motor skill stuff.

19 Q Checking again to see if medical was staged?

20 A Yeah.

21 Q We can see Officer Jackson in there?

22 A Right, yeah. Yeah.

23 Q Is it clear what subject's hand is doing there?

24 A It's not clear to me. It looks like he's holding
25 something, maybe -- just can't tell what it is.

1 Q Or putting his hands up (indiscernible)?

2 A Or yeah, like maybe hands together, maybe holding
3 onto something. I don't know.

4 Q So that's the contact team moving up?

5 A Yeah. So that's Andy Jensen (ph.), and he's a
6 sergeant in our Air Force unit. That's our pilot that
7 night, and that's him talking to me.

8 Q Okay. And so we were talking about the church
9 parking lot --

10 A Correct.

11 Q -- and kind of focused on that red block up at the
12 top. And that's, is that like kind of a zoomed up version
13 of that?

14 A Yeah, yeah.

15 Q And just to kind of help us, for reference points,
16 are these the kind of the vehicles that we're focused on?

17 A Correct, yeah. That's --

18 Q Obviously not an actual picture of it, but just a
19 kind of relative --

20 A Right. Correct.

21 Q So, could you just point out the police vehicles,
22 the suspect vehicle and then the two other vehicles
23 involved?

24 A I'm blocking you guys. So, a few patrol cars,
25 that'll be the suspect vehicle, or a representation of it.

1 And then the -- where that, where the suspect fell down
2 would have been kind of right, you know, right there.

3 Q And when you say suspect, do you mean the driver
4 of the vehicle?

5 A The driver of the vehicle, yeah. Yeah.

6 Q And so, kind of that -- see that orange line on
7 there? Is that kind of a fair and accurate reflection of
8 like the path that that person took from the vehicle and
9 where that person ended?

10 A Yes, yeah.

11 Q And then for the other person that was in the
12 vehicle, the passenger that we first saw, that you were kind
13 of tracking over to 30th and Colt, is this red line kind of
14 a fair and accurate reflection of where that person
15 initially was seeing going, and then crossed Colt, and
16 that's where we -- you tracked him down through there?

17 A Yeah, yeah. That's pretty much spot on to what I
18 remember.

19 MR. MILLER: Okay. Does anyone from the grand
20 jury have any questions for this witness?

21 GRAND JUROR: I do have one.

22 MR. MILLER: Go for it, sir.

23 GRAND JUROR: Can you go back to the footage
24 where --

25 MR. MILLER: Did you --

1 GRAND JUROR: -- the infrared footage where --

2 MR. MILLER: Yeah.

3 GRAND JUROR: -- the two guys, the driver and the
4 other guy get out of the car, and start running away?

5 MR. MILLER: Sure.

6 (Video recording played.)

7 MR. MILLER: Okay. So this is right when the --
8 you can -- the doors are opening. And would you like me to
9 move forward any, or --

10 GRAND JUROR: Yeah, yeah. Okay.

11 MR. MILLER: Okay.

12 (Video recording played.)

13 MR. MILLER: Yeah.

14 GRAND JUROR: Okay now, he is the guy closest to
15 the car, yeah, and he looks like he's running away. And
16 what police officers who shot him are where now?

17 MR. MILLER: And Officer Barnard, do you know
18 where -- I'm sorry, Sergeant Barnard, do you know where the
19 officers were that shot him?

20 THE WITNESS: No. I don't know.

21 MR. MILLER: Okay.

22 GRAND JUROR: But they're in one or two cars
23 there?

24 THE WITNESS: Yeah, one of the two cars. I don't
25 know which side, or which car they were on.

1 GRAND JUROR: And does that -- is there sound
2 that shows when the shot occurs?

3 BY MR. MILLER:

4 Q Sergeant Barnard, did you hear anything on the
5 radio that may or may not have been a shot?

6 A Like, there's that -- we kind of talked about it
7 briefly, like that is probably, what I think is probably the
8 moment. I don't know for sure, but that's probably when it
9 happens.

10 Q So, I will play that part.

11 (Video recording played.)

12 BY MR. MILLER:

13 Q And is that what you just heard?

14 A Yeah, yeah.

15 Q And is that around the same time that you see this
16 person --

17 A That's like --

18 Q -- look like they fell?

19 A I hear that, and moments later, he's falling, so
20 yeah.

21 GRAND JUROR: And gunfire wouldn't show up on
22 infrared?

23 THE WITNESS: We'd have to be like much closer to
24 it. So, it's --

25 MR. MILLER: What's your altitude at this moment?

1 THE WITNESS: We're at 4,451 right now.

2 MR. MILLER: So 4,451 feet?

3 THE WITNESS: This is our lat/long, right. Yeah,
4 we're roughly 4,500 feet. And Portland being like some 20
5 feet above sea level, so this is, you know, maybe like
6 4,430-ish -- I'm sorry, 4,430 above ground.

7 GRAND JUROR: I have a couple more questions, if I
8 may.

9 MR. MILLER: Go ahead.

10 GRAND JUROR: What's the chain of command here?
11 So, these two patrol police spoke with the, Officer Francis
12 previously. Is that correct?

13 MR. MILLER: Sergeant Francis?

14 GRAND JUROR: Sergeant Francis?

15 THE WITNESS: Yeah, yeah.

16 GRAND JUROR: And he was talking about putting the
17 spikes down, and it sounded like a pretty healthy perimeter
18 was set up around this area. I don't have the timeline.
19 I'm curious if there's a net or dispatch timeline that we
20 would have access to, of when calls came in. I'm not sure
21 if they get --

22 MR. MILLER: I will assume you'll hear that later.

23 GRAND JUROR: Okay. Who made the decision for
24 these two particular cars, or who would have made, or would
25 have been charge of --

1 THE WITNESS: So that --

2 GRAND JUROR: -- asking these two patrol cars with
3 their respective officers --

4 MR. MILLER: Sergeant Barnard, do you know the
5 answer to that?

6 THE WITNESS: Yeah. So I think that's, it's going
7 to be an East Precinct sergeant, that was working that
8 night. And that was -- so I know Sergeant Speer and --
9 Sergeant Adam Speer and then Sergeant Rich Steinbronn were
10 two sergeants working that night.

11 GRAND JUROR: And would they have to be on site,
12 or would they be making those decisions, could they be
13 remotely?

14 THE WITNESS: Either/or. For this -- so, I don't
15 now exactly where they were at when they made this decision.
16 I just don't know. I heard --

17 MR. MILLER: I'll jump in and give you a
18 foreshadow. You will hear from Sergeant Spear later.

19 GRAND JUROR: Okay, okay. And why have we not
20 heard anybody -- if the shot was fired, a number of shots by
21 an officer, why did this not get picked up anywhere on the
22 chatter, the net, talking about smaller events taking place,
23 everything over here. Where -- is this -- why -- this is
24 not reported --

25 THE WITNESS: So well, it gets --

1 GRAND JUROR: -- at the minute it took place?

2 THE WITNESS: It gets reported minutes after this.
3 So I think that's also someone trying to break in and
4 announce, shots fired, is my read on that. But I don't know
5 that for certain.

6 GRAND JUROR: But you didn't know?

7 THE WITNESS: Right.

8 GRAND JUROR: That whole time you were up there,
9 somebody's down, not moving. And I'm also curious about
10 medical protocol. So, are the number of officers here, take
11 all that time in watching the --

12 THE WITNESS: Yeah.

13 GRAND JUROR: Okay.

14 THE WITNESS: It's -- so, I know the concerns. I
15 mean, I can speak to that. I don't know if you want me to
16 speak to that.

17 BY MR. MILLER:

18 Q It's up to you, sergeant.

19 A Okay.

20 Q If you feel comfortable discussing that now, or if
21 you believe Sergeant Speer would be in a better position,
22 you just tell me what you are most comfortable discussing as
23 far as how that --

24 A Yeah. I mean, they're responding on the ground,
25 so they definitely have a better grasp of their concerns in

1 that regard. But I know from kind of containing this,
2 like I know they're going to need to take the sort of, the
3 closest unknown, and deal with that first, rather than
4 bypassing an unknown.

5 Q I guess the better way to ask that question is,
6 would an officer, if they heard that someone was down over
7 here, and they still had two passengers basically standing
8 there and unaccounted for, would they run --

9 A They would, yeah like --

10 Q -- past those passengers to get to that person?
11 Is that normal training and practice?

12 A They shouldn't. No, we're trained not to do that.

13 Q Why not?

14 A It's unsafe. I mean, that's --

15 Q What's unsafe about it?

16 A Well, I mean, you're exposing yourself to that
17 unknown, right. So that everything that gets us here is
18 we're potentially dealing with armed robbery suspects. And
19 to bypass one of them is really, it's foolish and unsafe.

20 Q What is the fear that you have, if you bypass
21 them?

22 A The fear is that, I mean, you can yourself get
23 ambushed, or shot in the back or, you know, or just -- I
24 mean, the best case, injured, right? So.

25 MR. MILLER: And ma'am, did you have a question?

1 GRAND JUROR: Yeah. So, I cannot see, where's
2 the time stamp on this?

3 THE WITNESS: The time stamp is upper left-hand
4 corner, so you got --

5 GRAND JUROR: The 4-1 --

6 THE WITNESS: So 19 November, yeah, 41 minutes
7 after midnight.

8 GRAND JUROR: Can you go back to the, when they
9 finally got to the injured person?

10 MR. MILLER: So forward in time?

11 GRAND JUROR: Yes, please.

12 MR. MILLER: All right, until when they're
13 contacting --

14 GRAND JUROR: Yes.

15 MR. MILLER: -- him? Okay.

16 GRAND JUROR: I just want to see how much time
17 that is.

18 MR. MILLER: Oh sure, yeah. Sorry, this is me,
19 hand scrolling it, to make sure I don't miss it.

20 GRAND JUROR: Yeah, all the way until when they
21 finally make contact with him.

22 MR. MILLER: All right, there. I think we're
23 coming close to it.

24 (Video recording played.)

25 MR. MILLER: Oh, that was already at the time.

1 GRAND JUROR: Yeah.

2 MR. MILLER: There we go, right around there.

3 GRAND JUROR: Okay, so then that is -- it's 1, so

4 --

5 MR. MILLER: It's 1:22.

6 THE WITNESS: Twenty-two.

7 GRAND JUROR: Okay.

8 MR. MILLER: And did you have another question
9 from there?

10 GRAND JUROR: Just an observation.

11 MR. MILLER: Okay. And did we answer all your
12 questions, Ma'am?

13 GRAND JUROR: I have a few more, but it sounds
14 like they might be answered, so I'm good.

15 MR. MILLER: Okay. Sir?

16 GRAND JUROR: Now it looks like when the guy, the
17 driver, got out of the car, he immediately -- he was running
18 when he fell down. Okay. He stopped, and then ran away,
19 and fall down -- he was in one motion.

20 MR. MILLER: Oh yeah. I mean, I can play it
21 again. I can't answer a question. I can play the video
22 again, or you can ask Sergeant Barnard that question.

23 GRAND JUROR: I'll ask that question. Did he --
24 when the driver got out, did he -- he ran away, and then
25 fell down?

1 THE WITNESS: Yeah. That's what -- he was
2 running from the car, yeah.

3 GRAND JUROR: Yeah, okay. But --

4 GRAND JUROR: I do have one more question for now,
5 please. You're a helicopter or fixed wing?

6 THE WITNESS: So, we're fixed wing.

7 GRAND JUROR: Fixed wing.

8 THE WITNESS: There's a number of like, rabbit
9 holes to go down that with, but the decision is mostly
10 budgetary. Fixed wing is, you know, jet fuel, higher
11 maintenance cycles, exponentially more expensive.

12 GRAND JUROR: So, the officers, the first, the set
13 of officers in the two vehicles that first arrived on scene
14 were aware of your presence?

15 THE WITNESS: Yes. Yeah.

16 GRAND JUROR: And do you believe that the suspects
17 were aware? Would they be aware, or could you -- were you
18 audible during that?

19 THE WITNESS: It's pretty rare. Like, I am aware
20 of people that are aware of that's when we're flying, but --
21 and that would be a different sort of behavior, probably.
22 But --

23 GRAND JUROR: But it wouldn't be audible, at
24 4,500, circling?

25 THE WITNESS: It's -- so, it's like listening to a

1 lawnmower 4,500 feet away. You've got to be kind of tuned
2 in to it, and look at it. I mean, there's always -- there
3 are always planes, aircraft, training helicopters that are
4 flying through, that everybody thinks are police
5 helicopters. They're usually little trainers out of Newberg
6 or, you know, Hillsboro Airport, or Troutdale, that are
7 flying through. But there's always aircraft over Portland.

8 MR. MILLER: Anything else for Sergeant Barnard?

9 (No response.)

10 MR. MILLER: Sorry. Anything else?

11 GRAND JUROR: No.

12 MR. MILLER: All right. Thank you, Sergeant
13 Barnard.

14 THE WITNESS: Okay. Thanks also.

15 MR. WENDEL: Are you going outside?

16 MR. MILLER: Yeah. I think you can be free to go
17 off -- yes.

18 MS. HERMANN: And then --

19 MR. MILLER: Let's take a break, and then we'll go
20 off the record.

21 (Off the record at 3:01 p.m.)

22 (On the record at 3:15 p.m.)

23 MS. HERMANN: And we are back on the record after
24 a short break. We are still on Case Number 15, DA Case
25 2454571. This is now Nicole Hermann from the DA's office.

1 We have our next witness in person. Go ahead and raise
2 your right hand.

3 SEAN MACOMBER

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

6 DIRECT EXAMINATION

7 BY MS. HERMANN:

8 Q Have a seat, and can you state and spell your name
9 for the record?

10 A My name is Sean Macomber. My first name is
11 spelled S-e-a-n. my last name is spelled M-a-c-o-m-b-e-r.

12 Q And how are you current employed?

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

15 Q And what is your current assignment?

16 A I'm currently assigned as detective to the
17 homicide unit.

18 Q All right. And as a member of a homicide unit,
19 what do you primarily investigate, and then how does it
20 relate to this particular case?

21 A So, we investigate non-natural causes of death in
22 the city of Portland, not to include traffic accidents,
23 which are part of the Traffic Division. But -- and I've
24 been there since about 2021. And I'm continuing in that
25 role.

1 Q All right. And as part of the work of the
2 homicide unit, does the homicide unit also respond to
3 officer-involved shootings?

4 A Yes.

5 Q Regardless of whether the person shot lives or
6 passes away?

7 A Correct.

8 Q All right. Were you working as a member of the
9 homicide unit as a detective on November 19th of last year,
10 2022?

11 A Yes, I was.

12 Q And were you called out or paged to the incident
13 we're here to talk about today?

14 A Yes, I was.

15 Q And how does that whole paging system work, and
16 then how did you particularly get assigned?

17 A So, when an officer-involved shooting occurs, it's
18 the supervisor's responsibility on patrol who takes over the
19 incident commander position, to make the page to our
20 homicide unit supervisors. The homicide supervisors receive
21 a brief bit of intel from the person requesting the page as
22 to what occurred. And then they initiate a messaging
23 system, pager. We don't carry pagers anymore, but it's a
24 cell phone notification that there's been an incident, we
25 need the up team to respond.

1 The homicide unit currently has 24 detectives.
2 We have three squads of eight detectives, that rotate on a
3 three-week basis, as far as which squad is up for a
4 rotation, and generally detectives are assigned a case based
5 on who was the last person to receive a case. So it
6 basically goes down the line of the eight detectives as to
7 who gets the next case in line.

8 So, during this particular incident, I got paged
9 approximately 1:30 in the morning, I believe. And en route
10 to the call, one of the supervisors notified me that I would
11 be taking the primary investigative position for this
12 incident.

13 Q And do you have another detective then, that works
14 as your second?

15 A Yes, I do.

16 Q And who is that in this case?

17 A In this case it was Detective Rico Beniga.

18 Q All right. And so in addition to you and
19 Detective Beniga, multiple other homicide detectives also
20 respond to the scene. Is that right?

21 A Yes. And typically, in bigger or more involved
22 situations, detectives from other squads will show up as
23 well, just to assist in the investigation, as well as, in
24 officer-involved shootings, we have detectives from East
25 County Major Crimes Team come out to assist, just to bring

1 in that outside agency.

2 Q And there were detectives from Gresham Police
3 Department in particular, in this case, assigned?

4 A Yes.

5 Q And you mentioned about 1:30 you got called out.
6 That is sometime after the shooting in this case took place.
7 Is that right?

8 A Yes.

9 Q And is that typical?

10 A Yes, it is.

11 Q Because by the time it gets to you, it gets
12 relayed through multiple people. Is that right?

13 A Yeah. And, you know, typically at a scene, it
14 takes a lot of work to -- you know, the responsibility of
15 the people on scene is to make the scene safe, and to
16 continue with the incident until things have gotten to a
17 point where it's a scene where they can put up crime scene
18 tape and somewhat manage what's going on in the scene.

19 Q All right. And so when you respond to a scene, or
20 when you responded to this scene in particular, where do you
21 go, and how does information start coming in? What is the
22 setup for the start of the investigation?

23 A So typically, at a crime scene, there are two
24 areas that are primarily contained. There is an immediate
25 actual crime scene, which is taped off with red tape, and

1 then there is what we call a warm scene, which is taped
2 off with yellow tape.

3 The red tape is meant to keep pretty much
4 everybody out except for whoever is, has a responsibility
5 inside of the main crime scene. The yellow-taped area is
6 areas where people can gather and have a buffer between the
7 main crime scene and the general public use area.

8 So, in this case, there was a command post. We
9 have large -- they're retrofitted RVs that we have mobile
10 offices and computers in, that we can set up a kind of a
11 private meeting room and delegate out responsibilities once
12 we arrive at the scene. So, as I arrived at the scene,
13 those two crime scenes that I described had been set up
14 already. And then the detectives were gathering at the
15 command post.

16 Q Inside the mobile unit?

17 A Correct.

18 Q All right. And once you get in to that mobile
19 unit, and everyone's who's responding arrives, how does
20 information start coming in to you as the lead investigator
21 about what's going on?

22 A So initially, there are -- every incident in the
23 city is assigned a case number. And so, our mobile phones
24 have the capabilities to pull up incidents. And you can
25 read the dispatch notes, and the calls that officers have

1 been assigned to. And so this incident had been assigned
2 initially to an incident number on the street. And so I
3 briefed myself by reading that call, and getting the
4 background from the original call that was associated in our
5 computer-aided dispatch, which is also called a CAD.

6 And so, getting information that way, and then as
7 well as getting information passed down from supervisors.
8 And then eventually, there is -- there can be a couple of
9 different ways, just based on timing, and how things need to
10 get set up with, when you get a briefing from the officers
11 that responded to the call, and also, going in to the crime
12 scene and viewing what evidence had been located.

13 Typically, our Forensic Evidence Division
14 criminalists are responsible for collecting evidence,
15 identifying evidence and the crime scene. And so, part of
16 beginning the call is viewing the crime scene, getting a
17 kind of an overall picture of what's happened, and then
18 getting a briefing from the officers that were not
19 necessarily directly involved, but had information relevant
20 to the case.

21 Q And tell me a little bit about that piece. Who
22 are you getting the briefing from when those officers do
23 finally come in to talk to you and the other detectives, and
24 who are you not hearing from?

25 A During that time, we're hearing from officers that

1 had knowledge of portions of the call, but were not direct
2 witnesses to the officer-involved shooting. We also are
3 getting information from the incident commander, to get an
4 understanding of what was told. There is a public safety
5 statement that is obtained from officers that are involved
6 in involved shootings. And so we get the information
7 trickled down that way, from the involved member. And then
8 the witness officers are separated, and then later
9 interviewed by detectives further on in the event.

10 Q All right. In this particular incident, you
11 mentioned that as you're responding to the scene, you are
12 looking at the initial CAD information, or the initial
13 dispatch call. And you referenced it being sort of a, in
14 this case, a different police number then ultimately gets
15 assigned. Is that right?

16 A Correct.

17 Q And so what information are you looking at, or are
18 you aware of as you're going to the scene?

19 A So as I'm going to the scene, I'm understanding
20 that there had been a robbery that had taken place at 5009
21 Southeast Powell Boulevard, and that dispatch had entered
22 some notes as to the description of the individuals that had
23 attempted a robbery at gunpoint, at that location, and then
24 had broadcast, or had dispatched several officers to respond
25 to that crime scene, to take the report.

1 And then I became aware that Sergeant Francis
2 had spotted a vehicle that had matched what description had
3 been put out, and he believed that based on -- well, he
4 described driving tendencies of, or observations of the
5 vehicle that made them want to continue investigating that
6 vehicle and finding it, to determine where it ended up.

7 So, also I was able to learn from the CAD that
8 they had used the airplane to observe the vehicle, and had
9 eventually found a vehicle, or followed that vehicle into
10 the parking lot of the church located at 2901 Southeast
11 Steele Street.

12 Q All right. And so, at the time you are responding
13 after you get paged out, so sometime after 1:30 in the
14 morning, that you're responding to the church, is your
15 understanding or the information you have at that point that
16 the vehicle stopped at the church is associated with, or
17 could be associated with the robbery?

18 A Yes.

19 Q All right. And just looking at this map above us,
20 up here at 5009 Southeast Powell Boulevard, are you familiar
21 what's at that location?

22 A Yes, I am.

23 Q What is that?

24 A So, the robbery location was a hamburger
25 restaurant called Super Deluxe. Across the street you have

1 a Taco Bell, across to the west, and then across the
2 street to the south, you have a Burger King, so.

3 Q All right. And then this road, we have heard
4 testimony already about this, but just to clarify using this
5 map, this road right here is what?

6 A That's Southeast Powell Boulevard.

7 Q All right. And so going from the Super Deluxe,
8 this direction, so to the left on this map, is going which
9 cardinal direction?

10 A Westbound.

11 Q All right. And so, when your understanding of
12 reading the notes as Officer -- or Sergeant Francis picks
13 the vehicle up and is reporting it in, that you could see,
14 what the direction is the vehicle going?

15 A So, his initial broadcast is that he can see the
16 vehicle going south on Cesar Chavez Boulevard from Powell
17 Boulevard.

18 Q And that's here going down on this map?

19 A Correct.

20 Q All right. And then, bringing us all the way down
21 here, what is this at 2901 Southeast Steele Street?

22 A So that is the church that the vehicle ends up
23 parked in the north part of the lot.

24 Q And so when you respond, where do you go to?

25 A So, our command post was set up in the parking

1 lot, to the southwest corner.

2 Q Over here?

3 A Yes.

4 Q All right. And so did you ever go to or have any
5 contact with the Super Deluxe or the robbery location?

6 A No, I did not.

7 Q All right. At the time you're responding and
8 coming to the incident command that's being set up, had
9 Officer Brewer arrived on scene yet?

10 A To the OAS location, no. He had not.

11 Q Okay. And so you had not heard from him or heard
12 anything about his additional observations?

13 A Correct.

14 Q Do you recall at what point during the
15 investigation or your involvement here on scene, Officer
16 Brewer showed up to compare the video from the robbery to
17 the vehicle here on scene?

18 A So, based on my recollection, it was towards the
19 end of when we were about ready to move our location from
20 the crime scene at that spot to the Justice Center downtown,
21 to where we were going to interview the witness officers.

22 Q So fair to say, you'd been on scene for over an
23 hour or more?

24 A Two to three hours.

25 Q By the time he's able to get the video and come to

1 the scene?

2 A Yes.

3 Q All right. So looking at this map, and let's look
4 one more down, what is the significance of the area in the
5 red square?

6 A So, the area in the red square is where the
7 majority of this incident took place. The vehicle was
8 parked along the row of arborvitae hedge, in the center of
9 the square. And the patrol vehicles had approached from the
10 south to the north.

11 Q And I'm jumping a little bit ahead. Later, we'll
12 look at some video from the church. Do you recall roughly,
13 from the church video that was recovered, was there more
14 than one angle?

15 A Yes.

16 Q And in the particular video that we are going to
17 watch, roughly where does that come from?

18 A So, there was one angle that was from behind the
19 patrol vehicles. One thing that you cannot see on the
20 screen is that there is a significant hill that you have to
21 climb, going from the west side to the north edge of the
22 lot. This is a significant grade. The security camera is
23 here on the corner of the building, and it's about halfway.

24 This is a two-story building right here, and the
25 security camera, even though it is placed above the second,

1 but below the second -- or above the first but below the
2 second floor, by the time the grade of the parking lot comes
3 up to this level, it's actually just about level with this,
4 with the ground right here. It's about a story above the
5 ground, as it sits right here, but then it's about level.

6 Q All right. I'm just going to wait for the boat
7 horn. Okay. And then, is this a zoomed-in photo of that
8 red square area?

9 A Yes.

10 Q And we'll go one more. In this particular
11 photograph of the red square area, what are we looking at
12 here?

13 A This would be generally the crime scene perimeter
14 that was set up that night.

15 Q And Detective Macomber, have you been to this area
16 at -- obviously you were -- it was nighttime while you were
17 there.

18 A Yes.

19 Q Have you also been, in the daytime?

20 A Yes, I have.

21 Q Is there a difference in your, what you're able to
22 see are viewpoints, from day to night?

23 A Yes.

24 Q How significant is that difference?

25 A Very significant. There is not any real

1 streetlights positioned in the area that you can see here.
2 There's some ambient light coming from the apartment
3 complex. And there's some lights that exist in the church
4 to the south, but it's fairly dark.

5 Q All right. Okay. Looking at this picture, or
6 added to map from the last photograph, can you explain to us
7 who all of the added cars belong to? We'll start with that.

8 A Sure. This would be the K-9 officer, Officer
9 Jackson's vehicle. In Officer Jackson's vehicle, Officer
10 Postula was a passenger. And the police vehicle to the
11 right, or to the east, would be Sergeant Adam Speer's
12 vehicle. Riding with Sergeant Speer in the passenger seat
13 was Officer Sathoff. And then in the rear passenger seat of
14 the sergeant's vehicle was Officer Holsti.

15 The gray vehicle that's inserted to the north is a
16 gray Kia that did not have plates displayed that night. And
17 that was the vehicle that the four passengers that were
18 riding in. The vehicles to the upper side, that is the two
19 other vehicles that had bullet strikes located in them, to
20 the north.

21 Q All right. And ultimately, as we can see on the
22 video, where Mr. Clark-Johnson is located, is that in
23 relation to these two cars?

24 A Yes.

25 Q All right. And in terms of -- and maybe we'll see

1 it here in a photo, but Officer Jackson's car, this one,
2 what is different about the back of this car as compared to
3 Sergeant Speer's car where Officer Holsti is?

4 A So, K-9 vehicles typically do not have a prisoner
5 cage for prisoners to sit inside of. It's a cage that is
6 specifically built out to house the canine. Also, Sergeant
7 Speer's vehicle does not have a typical prisoner cage. It's
8 a supervisor vehicle, and it has more of a regular backseat
9 setup.

10 Q All right. And so, does that make a difference in
11 regards to the backseat passenger, how efficiently or unable
12 someone would be to get out of that car?

13 A Yeah. So, it is somewhat more cramped, but there
14 is a seat there for somebody to sit inside.

15 Q In other words, in a regular patrol vehicle that
16 had a cage, the backseat passenger would not be able to open
17 that door. Is that right?

18 A Correct, right.

19 Q But in this case, Officer Holsti was sitting back
20 there?

21 A Yes.

22 Q And he was able to open the door?

23 A Yes.

24 Q All right. Looking at this photograph, can you
25 explain to us kind of when these are taken and who generally

1 is taking these pictures?

2 A So, these photos are taken after the scene has
3 been set up with the crime scene, and after detectives and
4 investigating officers have been called. Our Forensic
5 Evidence Division and criminalists take these photos, and
6 they also typically do a laser scan, to capture measurements
7 and be able to make 3D renderings of crime scenes.

8 Q All right. And we'll see some photographs with
9 evidence placards in a minute, but at the time that the
10 evidence division is taking these photographs, have things
11 been moved, or have cars been searched, things like that?

12 A Not at this point. At this point, the scene is as
13 much as it can be kept clandestine, and is intact as to when
14 the event occurred, is kept that way.

15 Q All right. So in this picture, my next question,
16 there's lighting you can see, sort of here, that's
17 illuminating these cars here. Where is that lighting coming
18 from?

19 A That's coming from our Forensic Evidence Division.
20 They bring out their own spotlights to help illuminate the
21 scene.

22 Q And so this lighting that looks quite bright in
23 the foreground of this picture, that is not lighting that's
24 actually what that was at the scene at the time that this
25 occurred?

1 A Correct.

2 Q This vehicle right here, whose vehicle is that?

3 A That Officer Jackson.

4 Q And it may not be obvious, or it may be, but what
5 does this stand for here?

6 A So, he is a -- he has a patrol dog that he carries
7 with him, so that is his K-9 insignia.

8 Q All right. Right here, what vehicle is this?

9 A That is the Kia four-door sedan that was found by
10 the airplane.

11 Q And ultimately -- you said it had no plates. Were
12 you able to determine who the owner of this vehicle was?

13 A Yes.

14 Q And who was that?

15 A It was a individual named Ginger Reyal (ph.).

16 Q And is that person at all associated with that
17 incident?

18 A No.

19 Q And these hedges here, are those the hedges were
20 the arborvitae that we can see in some of the other aerial
21 photographs?

22 A Yes.

23 Q And so, it's hard to see, from this picture, and
24 we'll see some others, but right here, do the arborvitae
25 continue, or what is that?

1 A No. There's a parking strip that separates the
2 two parking lots. And so, there is a curb, and then it's
3 actually a little bit of an elevation drop to get to that
4 next lot to the north.

5 Q All right. And then this vehicle here, whose
6 vehicle is that?

7 A That would be Sergeant Speer's.

8 Q And it looks like the door here is open. Would
9 that be the way it was left, or do you know?

10 A If the scene is captured fairly quickly and people
11 don't move their cars, they would leave them that way.

12 Q And that statement leads me to my next question.
13 This car here -- and I'm going to switch to the next
14 photograph, this vehicle here, what do you know about this
15 vehicle?

16 A So there's actually two vehicles there. There's
17 one in front, and then there's one just behind it. Those
18 two vehicles were brought up later, in the event, to effect
19 the custody of Mr. Clark-Johnson.

20 Q All right. And so this vehicle here, and then the
21 one just past it here were not there when the shooting
22 occurred?

23 A Correct.

24 Q Okay. What do we see from this angle?

25 A So, again you see Sergeant Speer's vehicle. The

1 passenger side door would have been the compartment where
2 Officer Sathoff was seated, when he initially rolled into
3 the scene, Officer Holsti, in the back passenger seat, the
4 no-plated Kia. You see the other two vehicles that were
5 from the previous image that were inserted.

6 Q These two cars right here?

7 A Well, those two cars, but then the other two to
8 the north are the two cars where Mr. Clark-Johnson was
9 found.

10 Q All right. And so is this vehicle right here the
11 blue vehicle in that diagram?

12 A Yes.

13 Q And it is, in fact, a blue car. Is that right?

14 A Yes.

15 Q All right. And so is this then the gap that can
16 be seen on the air video and the aerial footage?

17 A Yes.

18 Q And then what about these right here? I'm going
19 to go to the next picture. What are these three yellow
20 markers?

21 A So those markers are marking the casings that were
22 located that night.

23 Q Oops. I'm going to go back. One second. Oh,
24 this one? Okay. And so this here is where Officer Sathoff
25 was standing?

1 A Yes.

2 Q And then these are the three casings?

3 A Yes.

4 Q And what do we see here?

5 A Again you see the three casings, two fairly close,
6 and one separated.

7 Q All right. What about in this image?

8 A In this image, so you see the doors open from the
9 Kia. When the officers arrived, one person was already out
10 on foot. The driver and the front seat passenger both
11 exited and ran from the car. And then the backseat
12 passenger on the driver side stayed seated until he was
13 taken into custody by the initial officers.

14 Q And let's start with the first person you
15 described. One person was already out of the vehicle.
16 Which direction was that person?

17 A So, Stephanie Lasley (ph.) was on foot to the west
18 of the vehicle, so as you're looking at the image, to the
19 left.

20 Q All right. And who was identified as the driver
21 of the vehicle?

22 A Immanuel Clark-Johnson.

23 Q And he runs which direction, in front of the car?

24 A In front of the car, correct.

25 Q This direction?

1 A Yes.

2 Q And is he the person that's located right around
3 in here?

4 A Yes.

5 Q And then who was identified as the front
6 passenger?

7 A Damon Dubois (ph.).

8 Q And where does he go?

9 A He actually gets ahead of Immanuel Clark-Johnson,
10 and continues to run north. And then the plane is able to
11 somewhat keep track of him as he goes a little bit to the
12 east, and then backtracks and comes back around to the
13 north, and then out to Southeast 30th Avenue.

14 Q And the fourth person you said was still in the
15 vehicle?

16 A Yes.

17 Q And who was that person identified as?

18 A Abel Reyna (ph.).

19 Q All right. And here we can see a little bit
20 something through there. What is that? And I'll go to the
21 next --

22 A So, there were -- besides clothing that was left
23 from Immanuel Clark-Johnson having been cut off, there was
24 left, material left behind from, Portland Police carry what
25 we call an IFAC kit, individual first aid kit, contains

1 lifesaving equipment for gunshot wounds, including
2 material for wound packing, chest seals as well as
3 tourniquets.

4 Q And it's hard to tell in this picture again, but
5 what color is this car?

6 A Blue.

7 Q And so when we turn to this viewpoint, is that
8 that same car right here?

9 A Yes, it is.

10 Q All right. And is this what you were just
11 describing here?

12 A Yeah. That would be the individual first aid kit.

13 Q And what about here? And I'll go one more in.

14 A That was clothing that was removed from Immanuel
15 Clark-Johnson.

16 Q And when you say removed, removed by who?

17 A It was either removed by officers that had
18 approached him to assess his wound and treat it prior to
19 medical arriving, or it would have been removed by the
20 medics, AMR.

21 Q All right. And Mr. Clark-Johnson, was he taken by
22 ambulance from the scene?

23 A Yes, he was.

24 Q And where was he taken to?

25 A He was taken to OHSU.

1 Q All right. Okay. So what do we see here in
2 this viewpoint?

3 A So, this is the camera that I described, the view
4 that's on the northwest corner of the building. It's
5 approximately right between the first and second story of
6 the building. And this is the hill of the parking lot that
7 goes up to the north part of the parking lot, where the
8 event takes place.

9 Q All right. And so, over in this, the right side
10 of this screen, is that gap, or space if you will, between
11 the arborvitae and that apartment complex?

12 A Yes.

13 Q And I also want to touch base about the time stamp
14 on this video. When FED, the Forensic Evidence Division
15 collected the video, were they able to determine whether or
16 not the time was correct on this video?

17 A Yes. So, their determination was that the video
18 was 64 minutes fast.

19 Q Okay. So this is 64 minutes ahead of what the
20 actual time is?

21 A Correct.

22 Q And we've already watched the Air 2 video, but is
23 the Air 2 video the correct time stamp?

24 A Yes.

25 Q All right. I'm going to play the beginning

1 portion of this, and then I'm going to pause it. I think
2 I'm going to pause it. Oh, just did it.

3 UNIDENTIFIED SPEAKER: There's a front pause.

4 MS. HERMANN: No, I can do it on here, I think.
5 All right, the car that -- well, it did just blow in. Hold
6 on. Can I do it on here, or am I going to have to --

7 UNIDENTIFIED SPEAKER: Direct it on pause, so
8 that's how they work.

9 MS. HERMANN: Oh, that is better.

10 THE WITNESS: And while you're working on that,
11 I'll point out that you can see the lighting differences
12 between the left side of the image versus the right side of
13 the image as well.

14 BY MS. HERMANN:

15 Q And is that partly in relation to that, what
16 appears to be some sort of streetlight in the far left
17 corner?

18 A Yes.

19 Q So the vehicle that's pulling in right now and
20 parking, what vehicle is that?

21 A That is the no-plated gray Kia.

22 Q All right. And so here it appears that time is
23 speeding up. Is that fair to say?

24 A Yeah.

25 Q All right. And so, we've seen the Air 2 video,

1 but as this -- as time is going on, is this the period of
2 time where Sergeant Barnard is up monitoring the vehicle?

3 A Yes.

4 Q All right. I want to go back, just so -- there is
5 a person that gets -- let me go all the way back.

6 (Counsel confer.)

7 BY MS. HERMANN:

8 Q All right, so right here, as it's speeding up,
9 there's a person -- oh man. Sorry, everyone. That gets out
10 of the -- there was a person who gets out of the vehicle.
11 Who is that person determined to be?

12 A Abel Reyna.

13 Q And it looks like he goes off to the right and
14 then comes back to the car?

15 A Yes.

16 Q All right. And there's a -- oh, why is it doing
17 that? All right. There's a person who gets out -- I don't
18 know why I'm having so much trouble with this. All right,
19 there's a person -- right as these vehicles come up, there
20 is a person here. Who is that determined to be?

21 A Stephanie Lasley.

22 Q All right. Now I'm just clicking around. Okay.
23 So here's -- there's one vehicle that comes up here on the
24 right, and one vehicle here. Whose vehicle is this?

25 A It's K-9 Officer Jackson and Office Postula in the

1 passenger seat.

2 Q The front passenger seat?

3 A Yes.

4 Q And then this vehicle here?

5 A That is Sergeant Speer, with Officer Sathoff and
6 Officer Holsti.

7 Q And so when Officer Sathoff gets out of the
8 vehicle, which side of this, what will be less of a blinding
9 light in a second, does he get out on?

10 A The right side, as you're looking at the image on
11 the screen.

12 Q So over here?

13 A Yes.

14 Q I'm going to go back in just a second. Okay. So
15 in looking at this, who is this officer here?

16 A This is Kayla Postula.

17 Q And then over here, it's a little bit difficult to
18 tell, but who is this person here?

19 A I believe that would be Officer Sathoff, in front
20 of Officer Holsti.

21 Q So you can see it a little better here. So
22 there's one person here, and then one right behind them?

23 A Yes.

24 Q And so that would be Officer Holsti behind Officer
25 Sathoff?

1 A Yes.

2 Q Okay. And again, this person here is Ms. Lasley.
3 Is that correct?

4 A Yes.

5 Q And at this point, the vehicle here is blocking
6 that gap. Is that right? Between the arborvitae.

7 A So, the gray Kia?

8 Q No, the police vehicle.

9 A Oh yeah. Yeah, the police vehicle, yes.

10 Q And as Ms. Lasley's getting down here, there's
11 someone getting out of this vehicle. And who is that?

12 A That would be Abel Reyna.

13 Q All right. Detective Macomber, I am going to go
14 back, and maybe it will let me do it, if I can get my mouse
15 in there. It's messed up. I was winding through. So, in
16 this video, can you see any of the shots fired by Officer
17 Sathoff?

18 A No.

19 Q What about when we watch Ms. Lasley? What can we
20 see? I'm going to play it and have you describe it here.

21 A So, you see a flinch, a item that was in her hand
22 fall to the ground, at the time that she flinches, as though
23 a loud sound had just occurred.

24 Q And based on your review of this video and the Air
25 2 video, and even the dispatch records as well, do you --

1 what do you believe happened at that moment?

2 A I believe she's reacting to hearing shots.

3 Q I'm going to go one more. All right. Okay.

4 Detective Macomber, as part of your investigation, did you
5 go back through the BOAC report CAD timeline dispatch
6 records?

7 A Yes, I did.

8 Q And can you kind of explain what that is and what
9 you're looking at?

10 A So, there are a couple of different things that
11 happen during an incident. So, dispatchers will -- they're
12 responsible for managing the information that gets dispersed
13 and accumulates during a call. So, they will broadcast
14 information, but then they will also input time stamps and
15 notes into the CAD call.

16 So, I reviewed both to see if there was
17 information that was perhaps broadcast on the air and not
18 put in the notes of the CAD call, and vice versa, as whether
19 there was information in the CAD call that was not
20 dispatched over the air.

21 Q All right. And so, if an officer is responding or
22 you yourself, can they see those CAD notes?

23 A It's possible to see them, yes.

24 Q And who's putting those in?

25 A The dispatcher is.

1 Q Okay. So the dispatcher --

2 A Officers can put their own memo notes into calls
3 as well, but on an initial response, it's typically just the
4 dispatcher.

5 Q Okay. So the dispatcher is typing in notes, and
6 that is different than the actual statements that are coming
7 over the radio?

8 A Yes.

9 Q Okay. And so you reviewed both the notes inputted
10 by the dispatcher as well as the radio talk?

11 A Yes.

12 Q Okay. And we've heard some discussion about their
13 being perhaps a central channel, an East channel, different
14 ways that communication is happening. What are you
15 reviewing in this case?

16 A In this case I reviewed the notes that are in the
17 dispatch that had -- transmissions that had occurred on the
18 East net.

19 Q And is that where the robbery call initiates?

20 A Yes.

21 Q Okay. And so when does that robbery call first
22 either come out, or what information from the dispatcher?
23 What's the time frame on that?

24 A So, the dispatch is showing it received a 911 call
25 at 00:24 hours. So, if you're going off the 24-hour clock

1 to the regular 12-hour clock, it'd be 12:24 in the
2 morning.

3 Q All right. And at what point then are officers
4 actually dispatched to that call?

5 A So, the broadcast information was put out -- the
6 notes indicate that the dispatcher put out information about
7 the robbery at 00:25 hours and 5 seconds, and that the
8 dispatcher showed Unit 948 and 977 en route at 00:25 hours
9 and 28 seconds and 32 seconds, respectively.

10 Q And you mentioned two numbers there, as people
11 that are going out. What do those number mean?

12 A So, the Police Bureau breaks up the city into
13 small little sections and chunks. We call those districts.
14 And so those district numbers typically associate to that
15 small geographical area that an officer is responsible for,
16 and then depending on the time of day. So the first two
17 numbers typically go to the district. The last number
18 typically associates with a shift.

19 So, a typical district of 970s, you could have
20 different officers working over the day of 971, 972, 974,
21 975, 976. And so, but that typical area is described as
22 970s.

23 Q And so when officers that you can hear on the
24 dispatch are referring either to themselves, or the
25 dispatcher is referring to a person as a number, like --

1 A Yes.

2 Q -- 977, is that what that is?

3 A That's -- yeah, it's specific to whatever that
4 individual was assigned to work that night as a district.

5 Q And would that be the same thing as Sergeant
6 Francis describing his number that night as 3830?

7 A So, supervisors have a little bit different
8 designation. They're a four-digit number, and all beginning
9 with a 3. So, and then their second number would dictate
10 what precinct they're at, so a 3600 number would be a
11 Central Precinct sergeant. A 3900 number would be an East
12 Precinct sergeant, and a 3600 number -- I'm sorry, 3600
13 would be North Precinct. And downtown cars are 38s, so.

14 Q And would you say it's consistent that everyone
15 always uses their number, or sometimes is it difficult to
16 tell?

17 A Yeah. It can rotate sometimes.

18 Q And do the K-9 officers also have a slightly
19 different way of identifying themselves?

20 A Yes. They have K-9 1, K-9 2, K-9 3.

21 Q All right. So the first call -- and I'm going to
22 play this in just a second, but the first call -- or the
23 first dispatch is at 00:25 for the robbery. Is that right?

24 A Yes.

25 Q And at some point, does Sergeant Francis come on

1 the audio?

2 A Yes.

3 Q And discuss what he sees?

4 A Yes.

5 Q And at what time does that happen?

6 A The dispatcher input those notes at 00:31 hours
7 and 37 seconds.

8 Q And so that's roughly six minutes or so after the
9 dispatch to the robbery?

10 A Yes.

11 Q All right. And at what point then does Air 2 pick
12 up the vehicle?

13 A Air 2 indicates that they're en route to the call
14 at 00:32 hours. But they dispatch a vehicle description at
15 34 minute -- or 00:34:58.

16 Q All right.

17 A So another three minutes later, two minutes later.

18 Q Okay. And then, at what point -- well, let me ask
19 this. Is there an entry in the dispatch or audio of a
20 report of shots fired?

21 A It's at 00:41:42 hours.

22 Q All right. So that would be at around 12:41 a.m.?

23 A Yes.

24 Q Okay. And does that come through in the -- well,
25 you've seen the Air 2 video. Is that right?

1 A Yes.

2 Q On the Air 2 video, can you hear everything, all
3 of the radio traffic from that video that you can hear when
4 you pull the dispatch?

5 A No.

6 Q Okay. And so can you hear more in the audio
7 dispatch notes?

8 A Yes.

9 Q So the officers who are on the ground or in
10 vehicles or reporting to dispatch, the audio that you
11 pulled, is that the audio that those people can hear?

12 A Yes.

13 Q A better way to ask that is --

14 A Yeah.

15 Q -- can Air 2 hear everything that's being said on
16 the ground?

17 A Yes. Yeah.

18 Q Can they?

19 A Yes.

20 Q Air 2 can?

21 A On East net, yeah.

22 Q Okay.

23 A They were on East net at that time, so they should
24 have been able to hear.

25 Q Okay. But if it doesn't come through -- if the

1 audio of shots fired isn't coming through in the Air 2
2 video, you can -- you are able to listen to it on the
3 dispatch?

4 A Yeah.

5 Q Okay.

6 A I mean, so radio is a two-way transmitter. So,
7 you know, you have a transmit and a receive. So, but if
8 you're pushing down on the button at the same time, you're
9 not going to hear. Or -- I mean, there's radio things, so
10 if you didn't hear it on the video, then there could have
11 been issues with the radio traffic.

12 Q Okay. But at some point, or at -- well, at 41:20,
13 it was -- or 41, excuse me, yeah 41:20, it was reported to
14 911 or to dispatch that shots were fired?

15 A Yeah. So, the dispatch notes showed at 41:42, but
16 the audio that I received from BOEC is not time stamped.
17 And so, you have to manually add the time from the beginning
18 of the call to determine the time. So, if you have a 41:20,
19 that may be an issue with the timing not -- it takes a few
20 seconds for dispatchers to type and then hit enter. So,
21 there can be discrepancies in just small amounts of time
22 like that.

23 Q All right. And so just to summarize, the initial
24 911 call comes in at -- and I'm going to use 12-hour instead
25 of 24-hour time clocks, at 12:24 a.m., and the shots fired

1 call is at 12:41 a.m.?

2 A Yes.

3 Q All right. I'm going to play this audio recording
4 from the dispatch recording, and I'm going to -- well, I'm
5 going to try to start it, and then I'm going to pause it,
6 just to orient to what is the first thing we're hearing.

7 (Audio recording played.)

8 MS. HERMANN: It isn't very loud. Let me see if I
9 can turn that up. Here, let me try that. Again, we may
10 need to turn the --

11 (Audio recording played.)

12 MS. HERMANN: Okay. It did not start at the
13 beginning, so I'm going to back it up, but who is that
14 talking at that point?

15 THE WITNESS: That is the dispatcher.

16 (Audio recording played.)

17 MS. HERMANN: So is that the initial callout from
18 dispatch at 00:25 or 12:25?

19 THE WITNESS: Yes.

20 (Audio recording continues.)

21 BY MS. HERMANN:

22 Q At the start of that statement, we heard 3830.

23 A Yes.

24 Q And is that then the callsign or the reference
25 number that we've referred to earlier?

1 A Yes.

2 Q Okay. And so that would be Sergeant Francis?

3 A Correct.

4 (Audio recording continues.)

5 BY MS. HERMANN:

6 Q And who was that, making that statement?

7 A That was the air unit, Air 2.

8 Q So that'd be Sergeant Barnard?

9 A Asking for clarification. Yes.

10 (Audio recording continues.)

11 BY MS. HERMANN:

12 Q All right, so I want to go back through just a
13 couple of points in that audio. So we hear from Officer
14 Francis about eight minutes and six seconds or so into that
15 audio, which started at 00:25 hours. Is that right?

16 A Yes.

17 Q So that would be around 33 minutes or so in -- or
18 excuse me, around --

19 A 12:33.

20 Q -- 12:33 a.m.?

21 A Yes.

22 Q All right. And so is it Officer Francis then,
23 that is describing the vehicle moving -- or Sergeant
24 Francis, excuse me, describing the vehicle moving from south
25 onto Cesar Chavez?

1 A Correct.

2 Q There is an officer, and do you know who that is,
3 who asks to confirm whether the suspect vehicle in the
4 robbery was a gray sedan?

5 A I don't know who that officer is, but --

6 Q Okay. The dispatcher then, what is 8 minutes and
7 28 seconds into the audio, so at roughly 12:33:30 or so, 28,
8 says, "977 affirm." Were you able to determine who 977 was
9 that night?

10 A Yeah. So that was a partner car, and that was
11 Officer Ford and I believe Brewer.

12 Q Or Braun (ph.)?

13 A Braun. Yeah, sorry. Officer Brewer, I think,
14 might have been 908. I'd have to just look at the CAD
15 dispatch real quick.

16 Q Okay.

17 A So 977 would be Officer Braun, Officer Ford. Unit
18 908 would be Officer Brewer.

19 Q All right. So then at that point, at about
20 12:33:28 and 12:33:34 a.m., dispatch says, "977 affirm," and
21 then it sounds like 977, which would be Officer Braun. Is
22 that right? And just to clarify, is Officer Braun a male
23 officer?

24 A Yes, correct.

25 Q And Officer Ford a female officer?

1 A Yes.

2 Q Responds, "I think, based on location, it seems
3 reasonable, it probably is."

4 A That statement is made, but yeah, I can't say that
5 that's Officer Braun for sure.

6 Q Okay. But 977 is Officer Braun?

7 A Yes.

8 Q All right.

9 A And so the way dispatch works, when somebody keys
10 up their radio, the dispatcher can see what unit number is
11 broadcasting. And so if a dispatcher comes back with a unit
12 number like that, it's typically because she's responding to
13 the officer that raised the question.

14 Q All right. And so she's saying affirm, that it's
15 a light gray colored vehicle related to the -- from the
16 robbery?

17 A And stating the unit number first, so that the
18 unit that just asked a question knows that she's responding
19 to his question.

20 Q All right. And then a little bit later in that
21 audio, around 13 minutes in, so around 12:38 a.m., we hear,
22 "908 info," dispatch says "go." And then 908 gives the
23 additional description of four occupants, one was driving
24 the car, three people on foot during the robbery, black
25 semiautomatic handgun similar to a Glock?

1 A Yes.

2 Q And who was 908, did you determine?

3 A Officer Brewer.

4 Q Okay. So that's Officer Brewer from the robbery
5 scene?

6 A Yes.

7 MS. HERMANN: All right. I think that was my last
8 question related to the audio. All right, detective, that
9 is all the questions I have for you at this point. And just
10 so the grand jurors know, we will hear from him again near
11 the end of our case.

12 But at this point, does anyone have any questions
13 for Detective Macomber?

14 GRAND JUROR: I have a couple, please. And I
15 don't -- can they only be directed to him, or a couple --
16 well, let me --

17 MS. HERMANN: You can ask it.

18 GRAND JUROR: Okay.

19 MS. HERMANN: Yeah, and then if he can't ask him,
20 we'll --

21 GRAND JUROR: Right. So who placed the 911 call
22 at the Super Deluxe?

23 THE WITNESS: So that would have been the
24 complaint of the robbery. I believe his last name is
25 Mendez.

1 GRAND JUROR: And that was the gentleman, the
2 alleged victim?

3 THE WITNESS: Yes.

4 GRAND JUROR: Yes. And they did not get away with
5 his vehicle?

6 THE WITNESS: Correct. It was an attempted
7 robbery.

8 GRAND JUROR: Okay. And we just heard, if I heard
9 correctly, at that time, the first description that went out
10 about that event was four males in a first unknown color,
11 then to dark brown, then it winds up in the latest, in the
12 most recent dispatch turns from silver to light gray to
13 silvery?

14 THE WITNESS: So, I don't think I ever heard the
15 color brown. The descriptions that I can give you, that
16 were put out, I can read from the transcript.

17 GRAND JUROR: And was it noted at the time that
18 the car was (indiscernible) at the Super Deluxe?

19 THE WITNESS: That information was not put into
20 the CAD from that call.

21 GRAND JUROR: And when a call goes to dispatch,
22 it's -- there -- are all calls recorded within the CAD?

23 THE WITNESS: So, 911 calls that come from victims
24 of crime are recorded. The audio is not put into a place
25 where officers can hear it. The audio is only heard by --

1 from the victims calling 911 is only heard by the
2 dispatcher.

3 GRAND JUROR: But the initial description of the
4 vehicle would have been, would have shown up in CAD in the
5 officers' vehicles who were in the area, or in the --

6 THE WITNESS: People that -- yes. So, the way
7 dispatch works it, the primary officers get like an email,
8 text message with all the pertinent information, all the
9 notes that dispatch has typed into the call. It's available
10 in there. The units that are not assigned to the call, they
11 have the capability, if they want to read the call, that
12 they can send a CAD command to retrieve the information from
13 the call if they want to read it.

14 GRAND JUROR: So would it have been likely that
15 Sathoff and his partner would have gathered that information
16 from Brewer's initial description from the alleged victim in
17 the Super Deluxe?

18 THE WITNESS: So I think you're going to talk to
19 Officer Sathoff, and I would wait to have you talk to
20 Officer Sathoff directly about that.

21 GRAND JUROR: And maybe just to clarify that
22 question, when someone calls 911 and provides information in
23 the 911 call, is the dispatcher then typing that
24 information, and/or relaying it verbally to officers?

25 THE WITNESS: Yes, but one other portion of it is

1 this, they're typing kind of a shorthand. I can give you
2 an example from some of the CAD calls. So, like information
3 that a officer would see on the screen, "C-o-m-p, n/a, g-r-y
4 2003 Lexus behind the store. S-u-b-j-s left in a v-e-h,
5 question mark, u-n-k color sedan, L/S, w-b on Powell." So
6 it's kind of a shorthand that has to be translated and
7 understood to get what the actual information from the call
8 is.

9 GRAND JUROR: And then Brewer, who took the
10 statement from the alleged victim, his information that he
11 gathered would then, it would say, please look in the area,
12 anybody else on patrol, please keep your eyes open for the
13 following. And that would also go into it?

14 THE WITNESS: Yeah. So, when an officer would
15 dispatch, or provide dispatch with more information
16 regarding the call, dispatchers would typically type that
17 information into the CAD history as well.

18 BY MS. HERMANN:

19 Q And also to clarify, the dispatcher, the person
20 typing the information and/or relaying it verbally is not
21 the 911 call taker?

22 A Correct.

23 Q And then also, it's getting relayed from the
24 officer. They're hearing it, and then resending it out?

25 A Correct.

1 MS. HERMANN: Any other questions?

2 GRAND JUROR: Did I miss it, or was there no place
3 that said shots fired?

4 MS. HERMANN: At what point does that get relayed, that
5 shots were fired?

6 THE WITNESS: It's at 12:41 a.m.

7 GRAND JUROR: And that was not here?

8 GRAND JUROR: (Indiscernible) --

9 GRAND JUROR: Oh, okay.

10 MS. HERMANN: Oh, we -- yeah. Does the audio that
11 we just listened to cut off?

12 THE WITNESS: Prior to, yes.

13 GRAND JUROR: Okay.

14 GRAND JUROR: In the church security camera
15 footage, shortly after Officer Sathoff's vehicle pulls up,
16 and before Ms. Lazlee flinches, it appears like someone
17 exits the vehicle. Does -- and on the driver's side. Did
18 we ever identify who that was?

19 THE WITNESS: So there is one person that runs
20 around the front of the vehicle from the driver's seat, and
21 that is Immanuel Clark-Johnson.

22 MS. HERMANN: Any other questions?

23 (No response.)

24 MS. HERMANN: Okay. Thank you very much. And for
25 the record, that concludes our testimony for today, and we

1 can go off the record.

2 (Whereupon, the proceedings ended at 4:26 p.m. on
3 August 14, 2023.)

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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 120 pages constitute a full, true and accurate transcript of the proceedings as noted herein.

August 29, 2023
Date


PAMELA C. JACOBSON
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.