

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

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

GRAND JURY A PROCEEDINGS

Case No. 63

Conducted by:

Amity Girt, Deputy District Attorney
Kelley Rhoades, Deputy District Attorney

ALSO PRESENT: Samuel C. Kauffman
Attorney at Law
- - -

Volume 3

July 7, 2021

(05:34:32)

- - -

DA Case No. 2423136

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

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

Index

1	<u>GENERAL INDEX</u>	
2	<u>VOLUME 3</u>	
3		<u>Page No.</u>
4	July 7 2021 Proceedings	3
5	Case Called	3
6	Examination of Aaron Rizzo	3
7	Examination of Joshua Nyone	15
8	Examination of Whitney Anderson	51
9	Examination of Mark DeLong	80
10	Examination of Joel Walden	94
11	Examination of Michael Brooder	120
12	Examination of Scott Willadsen	193
13	Examination of Adam Wright	230
14	Examination of Garrett Dow	235
15	Examination of Ryan Rasmussen	263
16	Reporter's Certificate	326
17	* * *	
18		
19		
20		
21		
22		
23		
24		
25		

Examination of Aaron Rizzo

1 Death Investigation, re: Officer James Doyle

2 Deceased: Israel Berry

3 Incident Date: May 31, 2020

4 DA Case No. 2423136

5 Grand Jury A, Case No. 63

6 * * *

7

8 (Volume 3, Wednesday, July 7, 2021, 8:40 a.m.)

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

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

12 MS. RHOADES: All right. And we are on the
13 record in Grand Jury A, No. 63, continuing testimony.
14 This is DA No. 2423136. Kelley Rhoades,
15 R-h-o-a-d-e-s. I'm going to go get Officer Aaron
16 Rizzo from the hallway.

17 AARON RIZZO

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

20 MS. RHOADES: All right. And when you are
21 ready, please tell us your first and last name and
22 spell both.

23 THE WITNESS: My first name's Aaron,
24 A-a-r-o-n. My last name's Rizzo, R-i-z-z-o.

25 ////

Examination of Aaron Rizzo

1 EXAMINATION

2 BY MS. RHOADES:

3 Q And what is it that you do for a living?

4 A I'm a police officer for the Portland Police
5 Bureau.6 Q And how have -- long have you been a police
7 officer for?

8 A Almost 11 years.

9 Q Okay. So, as of May of 2020, it would've
10 been about ten years?

11 A Right about ten, yes.

12 Q Okay. And do you know Officer Doyle who
13 works for Gresham Police Department?

14 A I do.

15 Q And were you on duty on May 31st of 2020?

16 A Yes, I was.

17 Q And what kind of was going on in Portland
18 that night generally?19 A It was -- we had active riots and protests
20 going on since the 28th. We'd been ordered in on our
21 days off. Our days off had been canceled, so we
22 reported in to work. And we were at our precinct for
23 what we thought was going to be a gathering at our
24 precinct. And then about 10 o'clock, then nothing
25 really transpired (indiscernible).

Examination of Aaron Rizzo

1 Q And were you partnered with anybody that
2 night?

3 A Yes. I was training a recruit.

4 Q And is there an acronym you use for somebody
5 who trains a recruit?

6 A A coach.

7 Q Coach. Okay.

8 A Or a field training officer.

9 Q Okay. And that's commonly referred to as an
10 FTO?

11 A (No audible response.)

12 Q Is that a yes?

13 A Yes. Yes. I'm sorry.

14 Q Thank you. That's okay.

15 And so that night did you end up responding
16 to an officer-involved shooting?

17 A I did.

18 Q And where were you when you heard the call
19 come out?

20 A I was parked directly in front of our East
21 Precinct, which is located about 106th and Stark area,
22 if you guys are familiar --

23 Q Okay.

24 A -- not too far from Portland Adventist
25 Hospital.

Examination of Aaron Rizzo

1 Q And where was it that the shooting had
2 occurred?

3 A 100 -- 122 and Kelly.

4 Q Okay.

5 A Two miles away.

6 Q And how familiar are you with that area?

7 A Very familiar. I used to work -- that's our
8 970s district, and I worked that for two years prior
9 to my changing to a different district.

10 Q Okay. And when you heard the call come out
11 and were going to respond to the -- the shooting,
12 where was your trainee?

13 A He was inside gathering his gear for the
14 night. I mean, he was inside the precinct. There was
15 not time to wait for him to come back out. So I -- I
16 was in the passenger seat. I jumped in the driver
17 seat and hit respond and left the precinct.

18 Q Okay. So you arrived to the scene of the
19 shooting just by yourself?

20 A Yes, I did.

21 Q Okay. And do you recall about what time
22 it was?

23 A It had to be between 9:30 and 10 o'clock
24 at night.

25 Q Okay.

Examination of Aaron Rizzo

1 A I can't recall the exact time. Sorry.

2 Q And do you remember what the weather was
3 kind of like that night?

4 A Clear. Clear and dry.

5 Q And when you -- just generally, how dark is
6 it at that point of night?

7 A It was pretty -- I mean, it's dark. Maybe
8 the very tail end of light. But, as far as I can
9 remember, it was dark outside.

10 Q Okay. And did you know anything about the
11 underlying call that the officers who were involved in
12 the shooting had responded to?

13 A No, I did not.

14 Q And how long did it really take you to get
15 from East Precinct to the scene where the shooting
16 occurred?

17 A Very quickly. I would say two to three
18 minutes.

19 Q And when you arrive on scene, who is there?

20 A I see -- when I pull up there a marked
21 Gresham trooper patrol car or Portland patrol car.
22 And then there's, like, people on the street.

23 Q Okay. And how many officers would you say
24 were on scene at that point?

25 A For police or -- three or four.

Examination of Aaron Rizzo

1 Q Three or four?

2 A Yeah.

3 Q Okay. And what is it that you see as you
4 pull onto Southeast Kelly?

5 A I see patrol car lights, just lots of red
6 and blue lights. I stopped behind the nearest car.
7 And I get out to go -- I could see whatever's going on
8 in the front of the cars. So I parked behind the last
9 patrol car, which is a Gresham car, and I proceed to
10 the front of that car to assist in any way I can.

11 Q Okay. And do you see the diagram that's on
12 the scene?

13 A Yes.

14 Q Or the screen. Sorry.

15 A Yes, I do.

16 Q And did you provide an interview to
17 detectives after this whole incident was over that
18 night?

19 A Yes, I did.

20 Q And is this particular diagram one that
21 you've helped kind of prepare based on your memory of
22 the events and -- and where things were located that
23 night?

24 A Yes, I did.

25 Q Okay. And when I say "that night," it

Examination of Aaron Rizzo

1 may -- it maybe have been early morning on --

2 A Yeah. It was after midnight.

3 Q Okay. So can you help to describe where the
4 various involved vehicles and people were?

5 A Yes. So just to give you an idea, so when I
6 came, I came southbound on 122 and went east on Kelly
7 Street. So I traveled down Kelly Street. I see
8 patrol cars. I park my car here. So I'm X1. That's
9 my patrol car. I parked right behind O, which is the
10 Gresham PD car. And then right next to me, I guess,
11 is -- just to the south was a Portland Police car.

12 I traveled -- so I get out on foot, go
13 around the front of O, which is a Gresham car, and I
14 see -- there's the black Chevy, which is X3, which is
15 parked on the north side curb line facing west.

16 I see a person down on ground, which is X2,
17 and they're directly south of the black Chevy, laying
18 on the ground when I got there.

19 Q Okay. You can go ahead and have a --

20 A Oh.

21 Q -- seat.

22 A (The witness complies.)

23 Q And the Gresham car that you parked behind,
24 was it bumper to bumper with the black Chevy?

25 A I remember seeing it was nose to nose. I

Examination of Aaron Rizzo

1 don't remember if they were touching. But if I'm
2 using the phrase nose to nose, that is very close.

3 Q And nose to nose would be the front of each
4 of those vehicles?

5 A Yes.

6 Q Okay.

7 A So Gresham car is facing east. Black Chevy
8 is facing west, but on the north side of the street;
9 so they're kind of on the wrong --

10 Q Okay.

11 A -- they're on the wrong side.

12 Q And when you get out of your vehicle, the
13 person is already on the ground that was associated
14 with the black Chevy?

15 A Yes.

16 Q Okay. So you didn't have any kind of role
17 in getting that person out of the vehicle?

18 A I did not.

19 Q And is anybody assisting the person that's
20 on the ground at that point?

21 A Yes. Officer Anderson has a trauma bag that
22 all of our patrol cars have. It's red. It carries
23 tourniquets; trauma shears to cut clothing; various
24 gauzes; patches kind of to treat in the field some
25 serious injuries 'til medical can arrive.

Examination of Aaron Rizzo

1 So she's standing there. There's a Gresham
2 officer standing next to her. So I took over. I open
3 the bag up. I took out the trauma shears, and I
4 started cutting clothes to find -- so part of our
5 training when dealing with an injured person is to
6 find where they're injured.

7 So we call it blood speed or just to check,
8 right, 'cause you might -- you need to cut clothes off
9 to find out where somebody's hurt. So I started
10 cutting clothes off to find out where this person was
11 injured.

12 Q Okay. And were you successful in finding
13 any injuries?

14 A Yes.

15 Q Okay. And where were the injuries?

16 A I found what appeared to be a gunshot wound
17 under the left side of the armpit area.

18 Q And what other life-saving efforts did
19 you --

20 A I knew --

21 Q -- assist with?

22 A So I know that the -- the male was
23 unresponsive to commands, to stern rubs. I could see
24 that he was shallow or agonal breathing.

25 So based on my training and experience, when

Examination of Aaron Rizzo

1 someone has a very severe injury, their body's -- kind
2 of in the process of shutting down, their breathing
3 becomes pretty labored.

4 And it can be noted by, like, maybe instead
5 of their chest rising, their belly rising 'cause
6 that -- there's air getting more to the belly or,
7 like, a snoring sound. I -- I know that this is
8 preceding somebody stopping breathing, so I
9 immediately began CPR.

10 Q And how long would you say you did CPR for?

11 A So I did -- I can't note the exact amount of
12 time, but I know I did six rounds, 30 compressions of
13 CPR. And then across the street a woman came out,
14 advised that she's a paramedic.

15 She had gloves on. At this point, 180 reps
16 of CPR, I'm pretty hot and sweaty and I'm getting
17 pretty tired. So she asked if she could help. I said
18 yes. So she started performing CPR while I stood --
19 while I -- while I recovered.

20 She did two or three rounds. And then I
21 tapped her out. Then I started CPR again. I did two
22 more rounds, and then medical arrived.

23 Q Okay. And then do you hand off to medical
24 at that point?

25 A Yes. Yes, absolutely.

Examination of Aaron Rizzo

1 Q Okay. And do you know if the person lived?

2 A If they lived?

3 Q Yeah.

4 A They -- they were deceased.

5 Q Okay. And when you were on scene and
6 assisting with that man, did you observe any weapons
7 around, traditional weapons, like a knife or a gun or
8 anything like that?

9 A I did not see any.

10 Q Okay. And once you handed off to medical,
11 did you have any other roles on scene?

12 A No. Initially, somebody had flagged me
13 down. Like, a witness had said they had come when
14 they heard some shots. Due to how dynamic the scene
15 was, we hadn't even (indiscernible) crime scene tape.
16 We just asked them to "Please wait in your house.
17 Somebody will contact them in a minute?" And then
18 supervisors are arriving on scene. That's about it.

19 Q Okay. How long do you think you were on
20 scene for?

21 A Probably an hour and a half to two hours.

22 Q And, as indicated earlier, you spoke with
23 detectives and provided a statement about your
24 involvement that -- kind of within the range of that
25 night?

Examination of Aaron Rizzo

1 A Yes, I did.

2 Q Okay. And did you have any sort of
3 body-worn camera or audio or video recordation device
4 that was activated while you were engaged and
5 assisting with this investigation?

6 A No. We do not carry body-worn cameras or
7 in-car --

8 Q Okay.

9 A -- cameras.

10 Q And when you say "we" --

11 A The Portland Police Bureau.

12 Q Okay. So you did not have a body-worn
13 camera?

14 A I did not.

15 MS. RHOADES: Okay.

16 (Whispered discussion, off the record,
17 8:52 a.m.)

18 BY MS. RHOADES:

19 Q So when you are responding to the call
20 itself, what sort of level of response are you
21 engaging in?

22 A As fast as I can possibly drive.

23 Q Okay. And lights activated?

24 A Lights and sirens activated.

25 MS. RHOADES: Okay. All right. Any

Examination of Joshua Nyone

1 questions for the grand jurors -- from the grand
2 jurors?

3 Great. Thank you.

4 A GRAND JUROR: Thank you.

5 THE WITNESS: You're welcome.

6 MS. RHOADES: We can go off the record for a
7 moment, and I'll go retrieve the next witness.

8 (Recess taken, 8:53 a.m. - 8:54 a.m.)

9 A GRAND JUROR: Raise your right hand
10 for me.

11 **JOSHUA NYONE**

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

14 A GRAND JUROR: Thank you.

15 MS. RHOADES: All right. Go ahead and have
16 a seat.

17 And when you are ready, please tell us your
18 first and last name and spell both.

19 THE WITNESS: Joshua Nyone. First name is
20 J-o-s-h-u-a; last name is N-y-o-n-e.

21 **EXAMINATION**

22 BY MS. RHOADES:

23 Q All right. And what is it that you do for
24 a living?

25 A I'm employed with the Portland Police Bureau

Examination of Joshua Nyone

1 as a patrol officer, currently assigned to East
2 Precinct.

3 Q And how long have you been a police officer
4 for?

5 A About five-and-a-half years.

6 Q Okay. So, as of May of 2020, about
7 four-and-a-half years?

8 A Yeah.

9 Q And do you know an Officer Doyle with the
10 Gresham Police Department?

11 A Just the name.

12 Q And, as of May 31st of 2020, had you -- do
13 you know if you've even heard of him?

14 A I wouldn't be able to pick him out of five
15 other officers, no.

16 Q Okay. And were you on duty working for
17 Portland Police on May 31st of 2020?

18 A Yes.

19 Q And what was kind of going on in Portland
20 that night, just generally?

21 A There was riots and protests. I know that
22 we all had adjusted shifts off of our normal. I
23 usually work 4:00 p.m. to 2:00 a.m. And I think that
24 night we were working 7:00 p.m. to 7:00 a.m. on
25 adjusted 12-hour shifts for coverage.

Examination of Joshua Nyone

1 MS. RHOADES: Okay. And if anybody needs
2 anybody to speak louder, we need -- or if you can't
3 hear, please let me know, too.

4 BY MS. RHOADES:

5 Q And were you partnered with anybody that
6 night?

7 A Yeah. I had my trainee, Whitney Anderson,
8 with me.

9 Q Okay. And you were her field training
10 officer?

11 A Yes.

12 Q Okay. And what is the dynamic of a
13 trainee/field training officer?

14 A So the way we have it structured in Portland
15 is after someone goes to the basic academy, they come
16 back and they ride with a field training officer until
17 they complete their probation. So they go through
18 five different phases where their expectations are
19 growing until they are actually on their own.

20 Q And do you recall what phase she was in?

21 A Probably three or four. Five is the last
22 phase where they're on their own, so it's in the later
23 phases.

24 Q Okay. And are those phases pretty concrete
25 in how long they take or is it however long the

Examination of Joshua Nyone

1 recruit needs to --

2 A It is a set amount. Sometimes it can vary a
3 week or two depending on the schedules and such, but
4 it's a set amount unless they get retained in a phase.

5 Q Okay. And so you both were in one vehicle
6 that night?

7 A Yes.

8 Q And who is the driver?

9 A She was driving.

10 Q And so, as the passenger, what's your role
11 in a partner car?

12 A I mean, it's a little bit different because
13 of the FTO and trainee thing. But it -- generally,
14 the person riding shotgun, so to speak, is going to
15 monitor the MDC, which is our computer system.

16 It's just easier for that person to operate
17 and run a computer while the other person's driving.
18 So, you know, I would -- as we'd go to a call, I'd
19 pull up additional information that we had from the
20 call, run people that are attached to the call and
21 such.

22 Q Okay. And you were just responding to calls
23 that night; is that right? You were not on the
24 special riot duty or anything like that?

25 A Correct. Just taking patrol calls, yeah.

Examination of Joshua Nyone

1 Q Okay. And what district were you
2 assigned to?

3 A Probably sixties, but that night, I mean, it
4 was kind of a free-for-all. You're getting sent all
5 over the city because of what's going on.

6 Q Okay. And did you receive a call assignment
7 to Southeast Kelly Street?

8 A Yes.

9 Q Okay. And do you recall about what time
10 that might have been?

11 A Not exactly. Earlier evening, but it was
12 dark out.

13 Q Okay. And this is at the end of May, right?

14 A Yeah.

15 Q Do you remember what the weather was like?

16 A Clear, as far as I can recall. I mean, it
17 wasn't raining. Pretty warm.

18 Q And do you recall what sort of details you
19 had about the call after you got assigned to it?

20 A The details I recall was that it was a
21 disturbance that came out. The -- with a -- a female
22 caller, I believe. And the information we had, that
23 there was a white male in a black Chrysler 200, that
24 was outside honking his horn and making threats to
25 kill the female.

Examination of Joshua Nyone

1 Q Okay. And how is it that you get assigned
2 to a call like that?

3 A Dispatch just sends you to a call based
4 partially on your district; proximity to the call;
5 cover available. So, generally, you know, if -- if
6 they're going to send you to a call with priority,
7 they're going to pick the closest car for the fastest
8 response time.

9 Q Okay. And when -- and dispatch is the one
10 who at least initially provides you with the call
11 details; is that right?

12 A Yes.

13 Q Okay. And is there any other information
14 that you can get about the call itself?

15 A Yeah. We can run address queries. So, for
16 instance, you know, somebody calls in from 12031 Kelly
17 Street, we can click that address and query it and see
18 any previous calls that have been generated from that
19 location.

20 In this particular instance, we also had a
21 name attached to the call of the suspect; and,
22 therefore, we could assume that it is obviously a
23 known person and the female was calling about 'cause
24 they were able to provide a first and last name and
25 date of birth or age for the person.

Examination of Joshua Nyone

1 Q Okay. And without going into what you
2 learned, if you did do this, did you look up any
3 information regarding the person?

4 A Yeah. I ran the name in our CAD system, our
5 computer system, mainly looking to see if there was
6 any kind of no-contact orders or restraining orders in
7 place, and then also to hopefully pull a picture down
8 and see if there's any priors.

9 You know, if I run somebody and they've got
10 a restraining order and multiple calls for assaulting
11 that victim, that's going to change how I respond.

12 Q Okay. And do you get to -- as part of the
13 dispatch and what you're looking into in your computer
14 system, do you actually get to hear the 9-1-1 calls
15 themselves?

16 A No.

17 Q Okay. And so I'm going to play for you the
18 dispatch from that night. I'm going to pause it a
19 little bit in between. I'll just have you kind of
20 translate some of the language.

21 (**TRANSCRIBER'S NOTE:** Audio recording played
22 in open court, 9:01 a.m., as follows:)

23 9-1-1 DISPATCHER: 964.

24 CAR 964: 964.

25 9-1-1 DISPATCHER: 12405 Southeast Kelly

Examination of Joshua Nyone

1 Street. I'm going to find you a cover in a second.

2 There's an unknown male out front in a black --

3 (**TRANSCRIBER'S NOTE:** Audio recording
4 stopped, 9:01 a.m.)

5 MS. RHOADES: I'm going to see if I can get
6 it any louder than that.

7 Can you guys hear that okay?

8 A GRAND JUROR: It had a little echo.

9 A GRAND JUROR: Yeah.

10 A GRAND JUROR: It's coming out of here,
11 too. That's why.

12 MS. RHOADES: Okay.

13 A GRAND JUROR: I mean, it sounded delayed
14 out of here.

15 MS. RHOADES: Oh, interesting. I wonder if
16 that'll help.

17 There we go. We'll try that.

18 (**TRANSCRIBER'S NOTE:** Audio recording played
19 in open court, 9:02 a.m., as follows:)

20 9-1-1 DISPATCHER: 964.

21 CAR 964: 964.

22 9-1-1 DISPATCHER: 12405 Southeast Kelly
23 Street. I'm going to find you a cover in a second.

24 There's an unknown male out front in a --

25 A GRAND JUROR: Try it now.

Examination of Joshua Nyone

1 9-1-1 DISPATCHER: -- black Chrysler honking
2 a horn and threatening to --

3 (**TRANSCRIBER'S NOTE:** Audio recording
4 stopped, 9:02 a.m.)

5 MS. RHOADES: Let's try it again.

6 (**TRANSCRIBER'S NOTE:** Audio recording played
7 in open court, 9:03 a.m., as follows:)

8 9-1-1 DISPATCHER: 964.

9 CAR 964: 964.

10 9-1-1 DISPATCHER: 12405 Southeast Kelly --

11 (**TRANSCRIBER'S NOTE:** Audio recording
12 stopped, 9:03 a.m.)

13 MS. RHOADES: Well --

14 A GRAND JUROR: It's fine. Let's just --
15 yeah.

16 A GRAND JUROR: It's fine.

17 A GRAND JUROR: I think we can listen to it.
18 If we can't hear, we'll let you know.

19 MS. RHOADES: Okay.

20 (**TRANSCRIBER'S NOTE:** Audio recording played
21 in open court, 9:03 a.m., as follows:)

22 9-1-1 DISPATCHER: -- Street. I'm going to
23 find you a cover in a second. There's an --

24 (**TRANSCRIBER'S NOTE:** Audio recording
25 stopped, 9:03 a.m.)

Examination of Joshua Nyone

1 MS. RHOADES: I'm going to start you over,
2 though.

3 (**TRANSCRIBER'S NOTE:** Audio recording played
4 in open court, 9:03 a.m., as follows:)

5 9-1-1 DISPATCHER: 964.

6 CAR 964: 964.

7 9-1-1 DISPATCHER: 12405 Southeast Kelly
8 Street. I'm going to find you a cover in a second.
9 There's an unknown male out front in a black Chrysler
10 honking a horn and threatening to 55 our caller and
11 break out the windows of the vehicle.

12 (**TRANSCRIBER'S NOTE:** Audio recording
13 stopped, 9:03 a.m.)

14 BY MS. RHOADES:

15 Q And can you tell us what 55 means, when they
16 say, "threatening to 55 our caller?"

17 A 55 is our code for death or kill.

18 (**TRANSCRIBER'S NOTE:** Audio recording played
19 in open court, 9:04 a.m., as follows:)

20 CAR 964: Copy.

21 9-1-1 DISPATCHER: Anyone available to free
22 up and cover 964?

23 CAR 8190: 8190 on east. We're available
24 for calls now.

25 9-1-1 DISPATCHER: 8190. Copy. Thank you.

Examination of Joshua Nyone

1 I'll put you on it.

2 Car 964 and 8190, it looks like this is a
3 known subject to our caller. I got a call about him
4 earlier where he stole her phone.

5 CAR 964: Copy.

6 (**TRANSCRIBER'S NOTE:** Audio recording
7 stopped, 9:05 a.m.)

8 BY MS. RHOADES:

9 Q So when this is all being said by the
10 dispatch, this is in realtime?

11 A There's a -- maybe just a slight delay from
12 the call taker to dispatch to us.

13 Q Okay. And when you get assigned, do you
14 start heading to the scene, the address you're
15 assigned to immediately?

16 A Generally. I mean, we get a lot of calls
17 that are, like, "Yeah, that's not really that
18 important." So -- but disturbances, yeah, we're going
19 to (indiscernible).

20 Q And do you recall where you were at when
21 this call came out?

22 A No, I don't.

23 Q Do you remember how long it took you to
24 get there?

25 A Not particularly, no. But I -- I feel like

Examination of Joshua Nyone

1 it was a couple minutes certainly, not like ten to 15
2 minutes.

3 Q Okay. And was it pretty easy to get a cover
4 car that night, given what was going on?

5 A Not really. We had to have a Gresham unit
6 cover us because there just wasn't hardly any bodies
7 out of East taking patrol calls, so --

8 Q And do you remember if you'd been told at
9 the beginning of your shift that you guys would have
10 Gresham covering you?

11 A Yeah. We -- we were informed about that.

12 MS. RHOADES: Okay.

13 (Whispered discussion, off the record,
14 9:06 a.m. - 9:07 a.m.)

15 BY MS. RHOADES:

16 Q So then the other question I had with
17 regards to the dispatch is their numbers that -- the
18 dispatcher using. And so your -- what are those
19 numbers?

20 A Our unit numbers. They'll always preface
21 the dispatch with our unit number so we know to pay
22 attention --

23 Q Okay.

24 A -- (indiscernible).

25 Q So when she said the -- I forget what number

Examination of Joshua Nyone

1 it was. It was six something.

2 A 964.

3 Q 964?

4 A Yeah.

5 Q That was her assigning you guys to that call
6 and contacting -- contacting you about the call?

7 A Yeah. And 964 would be our district number
8 for that entire night.

9 Q Okay. And then when -- it was kind of
10 unintelligible, but when there was a response that
11 said -- I think it was a four-digit number -- saying,
12 "We -- we're available," is --

13 A Yeah.

14 Q -- that your cover officers attaching to
15 the call?

16 A Yes.

17 Q Okay. So then they're assigned to or noted
18 as covering you?

19 A Yeah.

20 Q Okay. So, as you're heading there, what
21 kind of -- there are different response levels that
22 officers can respond to a call to; is that right?

23 A Yes.

24 Q And how were you kind of treating this call
25 in terms of your response level?

Examination of Joshua Nyone

1 A Based on the information we had, we'd be
2 going there quickly, but we're not going to be putting
3 on lights and sirens, generally. That would be more
4 for an active disturbance where people are fighting or
5 we know that somebody's life is in immediate danger
6 because when we drive fast there's an inherent risk to
7 ourselves and also the public. So we don't just fly
8 to every call.

9 Q Okay.

10 A But we would be going to this call straight
11 away and quickly.

12 Q And do you recall specifically if you --
13 as -- especially as you're getting closer to the
14 scene, if you had lights activated? And not just
15 headlights. Sorry. Police lights.

16 A Oh, I don't -- I don't recall having
17 overhead lights activated --

18 Q Okay.

19 A -- as we got there. And then another thing,
20 too, is because you have a cover unit, you're kind of
21 structuring your response to get there at the same
22 time.

23 So, for instance, if your cover unit is
24 still two minutes away, you might park down the street
25 out of sight and wait to arrive at the same time

Examination of Joshua Nyone

1 because that's the point of having a cover unit, is
2 that they're there when you get there.

3 So we're going to go there at the same time.
4 So whoever's further out is probably going to
5 (indiscernible) waiting on them then.

6 Q Okay. And when you do approach the call
7 location, Southeast Kelly, do you see your cover
8 officers?

9 A Yes.

10 Q Okay. And can you describe where they were
11 coming from and how they were approaching?

12 A Ah, I think that -- I think they were coming
13 from -- we were both coming from the north; but we
14 actually -- we bypassed the street, had to do a little
15 U-turn to come back.

16 So then we saw the Gresham unit pull in onto
17 Kelly Street in front of us, and we pulled in behind
18 them. I don't recall seeing any overhead lights
19 activated on their patrol vehicle either.

20 Q Okay. So you -- both vehicles are initially
21 coming down Southeast Kelly, south --

22 A Southbound 122nd.

23 Q Oh, I'm sorry. Gosh, yes. Southbound
24 122nd. And so it would've been a left-hand turn
25 into -- in -- onto Southeast Kelly?

Examination of Joshua Nyone

1 A Yes.

2 Q Is that correct? And you guys missed

3 Southeast Kelly and keep going just --

4 A Yeah.

5 Q -- briefly?

6 A Very briefly, yeah.

7 Q And so Gresham makes that left-hand turn

8 first?

9 A Yes.

10 Q Okay. And do you recall if they had

11 light -- they activated overhead lights?

12 A I don't think so.

13 Q Okay. And do you recall when you pulled on,

14 did -- could you see if they had their headlights on?

15 A I'm sure they did initially.

16 Q And how about your vehicle?

17 A Yeah, we had them on initially as well.

18 There is a lot of times -- I mean, the typical thing

19 that we do on a response to almost any call is you

20 never pull up right in front of the address. We're

21 always going to park somewhere nearby.

22 And depending on what the call is, you know,

23 we might turn the lights off. And usually we walk up

24 a ways. When you pull up to something, you don't have

25 any information about just how to set yourself up for

Examination of Joshua Nyone

1 potentially ambush (indiscernible).

2 Q Okay. So it's pretty common practice to not
3 go in and just park, like, right where the incident's
4 occurring?

5 A Yeah.

6 Q Okay. And that night was that kind of a
7 consideration in not having overheads on as you're
8 pulling into Southeast Kelly?

9 A Yeah. I -- I think probably -- well, I
10 guess I can't speculate on what they did. But if we
11 were the lead car, we might have headlights on, just
12 as far as we needed them to navigate and then maybe
13 parking quite a few houses down and probably turn the
14 lights off.

15 Q Okay. And so I'm going to -- before you --
16 actually, I have you look at the photo, when you are
17 first turning onto Southeast Kelly, what do you first
18 kind of take in and see?

19 A It's a very narrow street. There's cars
20 parked on both north and south sides of the street. I
21 want to say that it's completely lining both sides
22 entirely, but there's a lot of cars and they're not --
23 every -- not everyone's bumper to bumper, but there's
24 a lot of cars. I didn't see any sidewalks, so I think
25 it's an unimproved road --

Examination of Joshua Nyone

1 Q Okay.

2 A -- from what I recall.

3 Q So some potholes, bumpiness?

4 A Yeah.

5 Q Okay. And do you -- there's houses along
6 both sides of the road?

7 A Yeah.

8 Q Okay. And do you see any -- as you kind of
9 continue down Southeast Kelly, do you see anything
10 else that catches your eye?

11 A I don't know if -- I think it wasn't until
12 we actually got out of the vehicle.

13 Q Okay. So as you're arriving, are you behind
14 the Gresham Police vehicle still?

15 A Yes.

16 Q Okay. And how far do you think you're
17 pulling in behind them?

18 A Ah, 20 feet approximately.

19 Q And where -- actually, you were interviewed
20 by detectives in this case, is that right, eventually?

21 A Yes.

22 Q Okay. And, as part of that interview, if
23 you can look at the diagram above -- or the map above
24 your head, did they have you look at an overview map
25 of Southeast Kelly?

Examination of Joshua Nyone

1 A Yes.

2 Q Okay. And you see the initials and the
3 arrow at the top of the map. What is that indicating?

4 A I believe they asked me to mark
5 approximately where I thought our patrol vehicle was
6 parked.

7 Q Okay. And so that's not -- I'm assuming you
8 weren't parked in the middle of that person's yard?

9 A Correct. That is the -- so we would've been
10 on the south side of Kelly approximately right there
11 would be where the arrow is.

12 Q Okay. Great. Thank you. You can have a
13 seat.

14 A (The witness complies.)

15 Q And is that -- when you pulled up and began
16 kind of engaging the scene itself, is that where you
17 started as parked and stayed as parked throughout the
18 entire time?

19 A Yes. We didn't move our vehicle at all
20 after that.

21 Q So your vehicle just stayed there the entire
22 night until it was time to go?

23 A Yeah.

24 Q And were there any other police vehicles on
25 scene at that point?

Examination of Joshua Nyone

1 A Just us and the Gresham car in front of us.

2 Q And do you recall about how far back behind
3 the Gresham car you parked?

4 A About 20 feet.

5 Q And so where my cursor is, is this your
6 vehicle right here?

7 A Yes.

8 Q Okay. And then is this the -- where my
9 cursor is, the Gresham vehicle that's in front of you?

10 A Yes.

11 Q Okay. And is this an accurate depiction of
12 how far between your two vehicles you were parked
13 back?

14 A Yeah, as I -- as I can recall.

15 Q Okay. Thank you.

16 So you park. And then what happens?

17 A The Gresham officers get out of their car
18 first. They began kind of walking down the street.
19 We hopped out of our car. And we were walking behind
20 them as well, probably about 15 feet from where they
21 were. And then my trainee and I were pretty close to
22 each other.

23 Q Okay. And when you say walking up the
24 street, about how far do you think you got up the
25 street?

Examination of Joshua Nyone

1 A Ah --

2 Q And feel free to use the photo for
3 reference, if that's helpful.

4 A I wouldn't say -- I wouldn't -- I don't know
5 that I could estimate the distance exactly, how far --
6 like, how far we were walking.

7 But my perception was that we walked for,
8 you know, maybe ten seconds or so up the street.
9 Probably actually not even that long before we started
10 seeing a person who I believe to be the caller trying
11 to get our attention on the north side.

12 Q Okay. Do you remember if you made it past
13 the Gresham officers -- the back of their vehicle when
14 you saw the person who you believed to be the caller?

15 A I'm pretty sure we would've been.

16 Q Okay. And when you say "pretty sure," are
17 you -- what do you mean by that?

18 A Well, just based on where the target
19 location was and where we -- so we parked kind of, I
20 would estimate, maybe three houses back or so. So I
21 think within the -- the time we would've been
22 (indiscernible).

23 Q Okay. And so when you -- when -- when do
24 you first realize that there's still a portion of the
25 disturbance going on?

Examination of Joshua Nyone

1 A You said when is?

2 Q Yeah.

3 A Ah, out there in the distance a little ways,
4 I recall seeing somebody trying to flag us down. I
5 don't know if that was our caller or somebody else;
6 but they had some light, maybe a light on a phone or a
7 flashlight.

8 The point at which I realized there was
9 still a disturbance going on was I saw a vehicle in
10 the distance. I didn't notice it at first, so my
11 presumption was that -- well, I'm quite certain there
12 was no headlights on at that time either 'cause I
13 would've seen it sitting down there as we were walking
14 on the street.

15 I saw the vehicle pull out, and I saw the
16 female come from the north side. So there's --
17 there's cars parked, you know, staggered up the
18 street. So there's not really any sidewalks there on
19 either side. So I saw a female come out from in
20 between the cars.

21 I couldn't tell if she came in front of this
22 vehicle or behind it. But I -- the next thing I
23 noticed was that she was at the driver side of the
24 vehicle and the vehicle now had its lights on and
25 lurched forward very rapidly. And I saw a female

Examination of Joshua Nyone

1 doing, I guess what you'd call, like a pirouette. She
2 kind of spun around the vehicle.

3 And I don't know if she was trying to tell
4 us that this was the guy that we're there for or
5 whatnot. I couldn't -- she didn't get, like, hit by
6 the vehicle in terms of being at the front of it, but
7 she was on the side of the vehicle. And when it
8 lurched forward, she spun around and then was kind of
9 out of view.

10 Q And do you remember what kind of vehicle
11 it was?

12 A It was a black Chrysler 200. I -- I knew
13 that -- when I saw that -- I saw that vehicle with its
14 lights on, I could tell it was our suspect vehicle.

15 Q Okay. And that's because of the information
16 that you had been provided by dispatcher?

17 A Yes.

18 Q And, at that point, given what you had just
19 seen, did you -- what, if any, safety concerns did you
20 have for the female?

21 A I was certainly worried that she could get
22 run over 'cause she was so near the vehicle. So if he
23 decided to back up or continue forward, he could run
24 over a leg or something, because she had spun around
25 the vehicle.

Examination of Joshua Nyone

1 Q And do you recall how far away from the
2 vehicle you were at that point?

3 A My best guess was that it was approximately
4 25 yards away from us at that point.

5 Q Okay. And about how far behind the Gresham
6 police officers were you?

7 A They were probably about 15 feet in front
8 of us.

9 Q So after the woman who gets spun off the
10 vehicle, what happens? What's the vehicle do?

11 A It actually -- it actually slows,
12 potentially to -- I don't know if it went as low -- it
13 was either going, like, two miles an hour or it did
14 come to a full stop. And then it just kind of sat
15 there for a few seconds.

16 Then, at that point, it was -- it was a
17 distinct pause between the time she gets spun around
18 the vehicle and then, you know, stops. And I don't
19 know what he was doing, but then he guns it.

20 Q Okay. And when you say "he guns it," what
21 do you mean?

22 A Well, the engine revving louder,
23 accelerating quickly.

24 Q Okay. And where were the Gresham officers
25 at the point that the vehicle guns it?

Examination of Joshua Nyone

1 A We were all in the street. So if I was to
2 say that these two windows here were, like, the -- the
3 frame of our street, my partner and I would've been
4 probably back here near each other, more towards the
5 south side of the street, but definitely in the
6 street.

7 And the Gresham guys would've been closer to
8 the north side of the street, but still in the middle
9 (indiscernible).

10 Q And how quickly was the vehicle, the black
11 Chrysler, approaching?

12 A I mean, it -- it definitely wasn't slow.
13 I'd say it was probably as fast as a Chrysler 200, I
14 guess, if you just jam on the gas and go.

15 Q Okay. And was that your impression, was the
16 gas was just totally jammed on?

17 A Yeah. Because it -- it wasn't, like, oh,
18 he's slowly going to roll and come up and do whatever.
19 It was very clear that this thing is accelerating fast
20 right at us.

21 Q Okay. And what, if any, safety concerns did
22 you have at that point for the individuals on scene?

23 A Well, I think it posed a serious safety
24 concern to all four of us officers 'cause we were all
25 in front of the vehicle. And kind of how I explained

Examination of Joshua Nyone

1 that it's a very narrow street with cars parked on
2 both sides, my first thought, first thing was I was
3 looking for avenues of escape.

4 So since I was closer to the south side of
5 the street, I was looking for, you know, distance in
6 between the cars that I could jump to the south side
7 and get out of the street and behind some hard cover.

8 And I feel like the Gresham officers were
9 even more vulnerable 'cause they were more towards the
10 middle of the street than we were. And they were
11 closer than we were; so they wouldn't have the kind
12 of -- they wouldn't have had as much time to react as
13 we would've had, being further away.

14 Q Okay. And other than kind of straight down
15 the street, were there any other options for where
16 that vehicle, the black Chrysler, could -- could go?

17 A No. And I -- I -- I think -- I couldn't say
18 this with 100-percent certainty; but, as I recall, I
19 think (indiscernible) the other end.

20 Q And the -- just to confirm, the black
21 Chrysler is facing towards 122nd, so westbound?

22 A Yes.

23 Q Okay.

24 A There's no turns to go south or north before
25 you get to 122nd.

Examination of Joshua Nyone

1 Q Okay. So what happens at that point?

2 A The car accelerates rapidly. I tried to
3 move off to the side of the road, along with my -- I
4 guess I couldn't say exactly what my trainee did,
5 but -- 'cause we both tried to get off the road. And
6 then I heard shots from one of the Gresham officers.

7 Actually, one thing I should bring up.
8 Prior to the vehicle accelerating, I had seen or
9 recall -- I had thought that one of the Gresham
10 officers had either a flashlight or some light out on
11 the vehicle 'cause we were standing in the street and
12 there were streetlights that are lit, but I -- I seem
13 to recall seeing some light back at the vehicle and,
14 like, a hand up telling -- telling him to stop.

15 Q Okay. So more of a targeted light than just
16 the overall broad light of the streetlights?

17 A Yeah. An actual flashlight or maybe a
18 warning light.

19 Q Okay. And when the -- while you and your
20 trainee, Officer Anderson, are trying to find cover,
21 can you -- are you paying attention to what the
22 Gresham officers are doing?

23 A I could see them. I did see -- I saw the
24 individual who fired into the vehicle. And, as the
25 vehicle continued to approach him, a little bit more

Examination of Joshua Nyone

1 towards the south, to the side, and the vehicle
2 eventually slowed.

3 Q Okay. And did the -- do you remember if
4 the -- when the vehicle slowed in relation to the
5 gunshots?

6 A Yeah. After the shots were fired.

7 Q Okay. And did you actually see the shooting
8 officer, which officer, which Gresham officer shot?

9 A I -- I couldn't, no. I didn't -- I didn't.
10 I just saw the (indiscernible). I didn't know if he
11 was the one more in front or behind, but I -- my
12 recollection was the one who was further out.

13 Q Okay. And did the vehicle eventually stop?

14 A Yes.

15 Q Okay. How long do you think you were on
16 scene for, from the time you parked and got outside of
17 your vehicle and realized there was kind of still a
18 disturbance going on to when the actual shooting
19 occurred?

20 A I mean, we didn't even have a -- we didn't
21 even have time to talk to anybody or make contact with
22 the person, so we're talking seconds. Not, like,
23 three seconds, but just as we're walking up, so I
24 think it could've been even less than 30 seconds.

25 Q Okay. So after the vehicle stops, what

Examination of Joshua Nyone

1 happens?

2 A We -- we all took cover with, you know, eyes
3 on the vehicle. I think that my partner and I took
4 cover behind the Gresham vehicle; tried to get people
5 out of the street in case he decides to accelerate
6 again.

7 So after people took over, we put out over
8 the radio what had happened, you know, we're going to
9 wait until we get more resources to help deal with it
10 safely. And -- and we just kind of waited for the
11 next cover unit to come in.

12 And another Gresham unit responded. And it
13 seemed like two officers came at the same time. I
14 don't know if they were a partner car or if two other
15 Gresham units came separately. But I remember having
16 two other guys there.

17 And then they moved their vehicle up to --
18 on the front end of the suspect vehicle, so they
19 couldn't continue moving down, inhibiting if he
20 continued to go westbound.

21 Q And the black Chrysler, do you remember if
22 it was still on at that point?

23 A Yeah. I think it was still on.

24 Q Okay. And did you know whether or not it
25 was in park or drive at that point?

Examination of Joshua Nyone

1 A My assumption was that he had just had his
2 foot on the brake because with how -- when he
3 accelerated that rapidly, it wouldn't have slowed
4 unless he applied the brake --

5 Q Okay.

6 A -- at some point later.

7 Q And after the shots were fired, do you
8 recall if the driver of the black Chrysler had said
9 anything?

10 A The only thing I remember him saying was
11 something along the lines of, "You guys shot at me."

12 Q Okay. So after the Gresham car comes up and
13 blocks the black Chrysler, what do you guys do from
14 there?

15 A So we had -- you know, at that point most
16 everyone's got their guns out. So we kind of start
17 divvying up tasks. So one of the Gresham guys at
18 least that arrived on scene after the initial, too,
19 had a rifle.

20 So he took lethal cover on the suspect. And
21 my trainee and I, I think we already had gloves on.
22 So I told them, "We can help with getting this guy out
23 of the vehicle. You guys can stay lethal cover."

24 And so we started working on a plan to get
25 him safely out of the vehicle while being able to keep

Examination of Joshua Nyone

1 eyes on him and have lethal cover on him. I believe
2 that somebody went up to the door to try to open it,
3 and it was locked. And I believe that he reached
4 inside, so obviously the window must have been down,
5 and opened it.

6 And at that point the male was just sitting
7 there in the driver seat, not responding to anything
8 we say. And we got the seatbelt off and pulled him
9 out of the vehicle a little bit a ways away from the
10 vehicle, so we could begin rendering emergency aid.

11 At that point I remember I told my trainee
12 to -- well, maybe even prior to that -- to go grab our
13 med kit out of the car. We keep, like, a trauma kit
14 in the car with a bunch of different tourniquets,
15 chest seals, gauze, et cetera.

16 So I began taking the shears and cutting up
17 the pants, the arms, 'cause we're trying to find any
18 and all wounds on the body that we can treat. We
19 already had Code 3 medical coming, which is our
20 fastest response time, lights and sirens.

21 I believe we applied a chest seal to one of
22 the bullet wounds that we found up near the armpit. I
23 didn't find anything on the extremities, like the arms
24 or legs.

25 And that is about the extent of what you can

Examination of Joshua Nyone

1 do with a chest wound is put a seal on it. You're
2 trying to help them with breathing. Somebody began
3 doing CPR on him at that point as well.

4 Q Do you remember if during this time in
5 trying to find the wounds and engaging kind of
6 life-saving efforts if there were any other officers
7 who arrived on scene to assist?

8 A Yeah. I -- there was at least a two-person
9 car that came later, and then the law enforcement guys
10 just filtered in here and there. I remember Rizzo was
11 there at some point.

12 But I -- it's kind of like -- I mean, it's
13 a -- it's a hodgepodge of everybody and everybody is
14 coming and showing up and trying to help as they need,
15 so --

16 Q And do you remember, just to jump back a
17 little bit, when you're watching the Gresham officers
18 kind of walk up the street at the same time that you
19 and your partner are walking up the street, did the
20 Gresham officers have their guns unholstered and
21 drawn?

22 A No. No. Not when they're just walking up
23 the street initially.

24 Q And how about you and your partner?

25 A No.

Examination of Joshua Nyone

1 Q Okay. Did you ever draw your gun?

2 A Not until the point at which I believe the
3 Gresham officer fired.

4 Q Okay.

5 A Because, to be honest, there's kind of the
6 -- the action and reaction. And, for me, I was
7 looking more for an avenue of escape and that was just
8 (indiscernible).

9 MS. RHOADES: Okay.

10 (Whispered discussion, off the record,
11 9:33 a.m.)

12 BY MS. RHOADES:

13 Q So when you're driving down 122nd preparing
14 to turn left onto Southeast Kelly --

15 A Mm-hmm.

16 Q -- as you're driving down, do you see any
17 vehicles come off or even slightly out of Southeast
18 Kelly onto 122nd?

19 A Not that I recall, no.

20 Q Any vehicles come out, fishtail, U-turns,
21 anything like that?

22 A No, not that I recall. I mean, I would've
23 then -- I -- I knew the -- the description of the
24 suspect vehicle, so I would've been looking for that
25 one.

Examination of Joshua Nyone

1 Q Okay.

2 A So if anybody came out of there, it
3 would've -- a black car (indiscernible).

4 Q Okay. You would've noted that --

5 A Yeah.

6 Q -- you had seen that vehicle?

7 A Yeah, 'cause that's what we were looking
8 for.

9 Q And then when -- could you see the Gresham
10 officers exit their vehicle?

11 A I mean, they were in front of us. I -- you
12 know, maybe one of them. I was on the passenger side.
13 So, you know, our car's a little bit offset there, so
14 I probably saw the passenger get out -- I don't know
15 about the driver necessarily -- get out of the
16 vehicle.

17 But, as we're walking up, I can see
18 everybody. We're all -- you know, they're ten to
19 15 feet in front of us up here. And me and trainee
20 are back here, and we can see everyone
21 (indiscernible).

22 Q And when you're walking up the street, have
23 you crossed -- like, what direction do you take in
24 relation to their vehicle?

25 A Ah, I can't say for sure. I probably

Examination of Joshua Nyone

1 would've gone in the middle of the street because I
2 knew that the place we were going to eventually go to
3 was on the north side.

4 So -- and there's no sidewalks really, so
5 I -- I imagine I would've walked in front of our
6 patrol vehicle and around the driver side of their
7 vehicle.

8 Q And then when you -- I just want to make
9 sure I understand that. On arrival you've gotten out
10 of your vehicle and you see the Gresham officers. Was
11 there any chance or opportunity for you to communicate
12 and say, "Hey, we're here," or, "We -- we're covering
13 you," or anything like that?

14 A I don't remember if anything was said.
15 We -- I -- I recall that they knew we were there. We
16 were the primary designated on the call. So on any
17 call you have your primary and then you have your
18 cover officers is kind of the way it's structured.

19 So, generally, our job would be to go and
20 talk to the victim and get the information. And we
21 were going to be the ones taking the -- the report
22 per se. So, I mean, they were a little bit in front
23 of us. But, yeah, we -- we all knew each other were
24 there (Indiscernible).

25 Q Okay.

Examination of Joshua Nyone

1 A I would've imagined they knew 'cause we
2 pulled up right behind them.

3 Q And during this incident did you have a
4 body-worn camera or any other kind of audio or video
5 recordation device activated?

6 A No. We do not have any body-worn cameras
7 for Portland police officers. I -- nothing
8 mainstream.

9 MS. RHOADES: Okay. Did the grand jurors
10 have any questions?

11 A GRAND JUROR: No.

12 MS. RHOADES: Thank you.

13 A GRAND JUROR: Thank you.

14 MS. RHOADES: And we can go off the record
15 for a couple minutes.

16 (Recess taken, 9:27 a.m. - 9:39 a.m.)

17 A GRAND JUROR: Could you raise your right
18 hand, please.

19 WHITNEY ANDERSON

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

22 A GRAND JUROR: Okay.

23 MS. RHOADES: All right. Go ahead and have
24 a seat.

25 And when you are ready, please tell us your

Examination of Whitney Anderson

1 first and last name and spell both.

2 THE WITNESS: My name is Whitney Anderson,
3 W-h-i-t-n-e-y, A-n-d-e-r-s-o-n.

4 EXAMINATION

5 BY MS. RHOADES:

6 Q All right. And what is it that you do for
7 a living?

8 A I'm a police officer with Portland
9 Police Bureau.

10 Q Okay. And how long, as of May 31st of 2020,
11 had you been a police officer?

12 A A little over a year.

13 Q Okay. All right. And you're still a
14 police officer?

15 A Yes, ma'am.

16 Q Okay. And during that time, were you still
17 in kind of the training probationary phase?

18 A Yes, ma'am.

19 Q And there are, what, five different phases?

20 A Mm-hmm.

21 Q And what phase were you in?

22 A I was fresh into the plainclothes Phase 4.
23 So Phase 4 is divided into two separate sections, one
24 when you're still riding with your FTO, but they're --
25 they take a little bit of a step back and it's a

Examination of Whitney Anderson

1 little bit more of a partner car rather than
2 supervision.

3 And then the second part of Phase 4 is
4 they're just a plainclothes officer and you -- they're
5 just there for supervision and feedback, but you
6 operate autonomously.

7 You utilize cover officers, supervisors,
8 directives if you have any questions (indiscernible)
9 but you're kind of supposed to pretend they're
10 not there.

11 We were supposed to be a plainclothes car
12 that day, but because of what was going on in the city
13 and the staffing levels, we came in and our
14 supervisors were like, "No plainclothes. You guys are
15 both in uniform working a partner car."

16 Q Okay. And who was driving that night?

17 A I was.

18 Q Okay. And what district were you working?

19 A We work 960s, which is in East Precinct.
20 That's, basically, Southeast 134th up to 160th, I
21 believe, from, like, Stark to -- gosh -- Powell, I
22 believe. It's been a little while. I work at Central
23 now, but I -- that's the rough outline of that
24 district.

25 Q Okay. And because of what was going on in

Examination of Whitney Anderson

1 Portland that night, were you supposed to be kind of
2 flexible in terms of what calls you took as well?

3 A We were all over East Precinct that night,
4 yeah. There were not very many of us working in East.

5 Q Okay. And so did you get assigned to a call
6 on Southeast Kelly Street?

7 A Yes, ma'am.

8 Q And how is it that you are assigned
9 to calls?

10 A It's, basically, about availability, so
11 who's available, who's closest. Obviously, the
12 assignment would go to a district officer first. But
13 if that isn't an option, which it wasn't that night,
14 it goes to the car that is available.

15 Q Okay. And there were other agencies
16 covering you that night as well; is that right?

17 A Yes, ma'am, we found that out later.

18 Q Okay. So you were unaware of that at that
19 time?

20 A We knew that outside agencies would be
21 helping downtown for the demonstrations. But at the
22 time, things were moving very quickly when we got into
23 roll call that night, so we weren't aware that outside
24 agencies were helping us on the street.

25 Q Okay. So you get assigned to the Southeast

Examination of Whitney Anderson

1 Kelly call. And what is your understanding of what
2 that call was?

3 A There is a male outside of a female's house
4 and he is threatening to kill her.

5 Q Okay. And was that male a known subject?

6 A He was added to the call, so he became
7 known. My FTO, Officer Nyone, queried him in our MDT,
8 mobile data terminal, which provides us
9 more information.

10 Q And when I say, "known subject," that
11 doesn't necessarily mean that you knew personally
12 about him; is that right?

13 A Correct.

14 Q Okay. So do you recall about what time it
15 was that you got assigned?

16 A I don't. I know that it was evening. Our
17 shift was adjusted that night. We were supposed to
18 report for duty at 4:00, but we were adjusted to
19 7:00 p.m. start time.

20 So while it felt like it was early --
21 earlier in my shift, it was -- it was later in the
22 evening than it would have normally -- normally have
23 been for us.

24 Q Do you have any idea about how long you'd
25 been on the adjusted shift for?

Examination of Whitney Anderson

1 A Maybe a couple hours, so I'm guessing around
2 9:00 p.m.

3 Q Okay. And do you remember what the weather
4 was kind of like outside?

5 A It was clear and warm.

6 Q Okay. And what was, like, the lighting out?
7 Was there still any daylight? Was it pitch black?

8 A So I remember -- so a little sidetrack here,
9 I'm pretty fresh in -- from my academy training.
10 Something that we learn about as police officers is
11 how high-stress -- they're called critical incidents
12 when you're a first responder -- how that affects
13 your memory.

14 Something that wasn't very apparent to me
15 until after this was something that, in this critical
16 incident, my brain kind of turned the lights on.
17 Other things happen to other people in these
18 high-stress environments.

19 Maybe it's auditory exclusion. Maybe time
20 slows down. Maybe time speeds up. Tunnel vision is
21 a really common thing that people get in these
22 situations as well, but it's not something that you
23 can fix when you go through something traumatic.

24 So there is a moment when it is very
25 bright outside for me, but I do remember seeing

Examination of Whitney Anderson

1 headlights. So I know that it was dark and that
2 there were headlights.

3 Q Okay.

4 A But lighting is different for me depending
5 on what time this memory happens.

6 Q Okay. Thank you for explaining that.

7 A Mm-hmm.

8 Q And what was supposed to be your car's role
9 in this call?

10 A I was the primary officer. I was dispatched
11 to that call. So when you hear your number come up,
12 even if you're not that district's officer, you are
13 the primary officer responding.

14 Q Okay. And what is typically the role of
15 the primary?

16 A Primary officer is going to be kind of the
17 main decision maker when you arrive on scene. So
18 you might be directing other officers to gather
19 information or interview victims or set up perimeters,
20 but depending on what your comfort level is, maybe
21 you're establishing rapport with a victim or a
22 suspect. You're kind of directing traffic.

23 Q And were you assigned a cover officer
24 as well?

25 A We heard an unfamiliar call sign attach.

Examination of Whitney Anderson

1 smart thing. So while I was getting there and I was
2 trying to get there quickly, I also wanted to give
3 dispatch time to find us cover. So I don't think we
4 heard cover attach until we were almost there.

5 Q Okay. And when you are responding, are you
6 using your overhead lights?

7 A No. We were not running code 'cause I
8 wanted to -- I -- I wanted the best chance of us
9 having people there with us when we got there.

10 Q Okay. And can just define what "code"
11 means?

12 A "Code" is lights and sirens. So there's
13 just regular driving and then there's just -- there's
14 just lights and no sirens and then there's Code 3 when
15 you're lights and sirens.

16 Q Okay. So no lights and sirens?

17 A Yes, ma'am.

18 Q Okay. And you said you were going pretty
19 far away. Do you remember how long it took you to
20 get there?

21 A I -- in my detective's interview, I believe
22 we were starting at about 150 and Stark.

23 Q Okay.

24 A Yeah.

25 Q And you responded to 122nd and Kelly?

Examination of Whitney Anderson

1 A Yes.

2 Q And how familiar with that area were you at
3 that point?

4 A Not terribly familiar. It's pretty far
5 outside of my district. So while I live in the
6 City of Portland and I'm familiar with East, it's a
7 little bit different when you're driving and you're
8 responding and you're under stress. So it's not
9 terribly familiar for me.

10 Q Okay. And when you're approaching Southeast
11 Kelly, are you coming from the north or the south?

12 A We were traveling southbound on 122
13 from Division.

14 Q Okay. So -- and Kelly is -- that part of
15 Kelly, it would have been on the east side?

16 A Yes.

17 Q Okay. So left turn into it?

18 A Yes.

19 Q And who was your navigator?

20 A Officer Nyone, but he was also collecting
21 information, so it would have been kind of a team
22 effort for us. It's a small street, so I remember us
23 kind of trying to figure out, like, where -- where are
24 we landing here.

25 Q Okay. And as you're coming down 122nd and

Examination of Whitney Anderson

1 approaching Southeast Kelly, do you see any other law
2 enforcement in the area?

3 A Yes. I saw the Gresham car pull in, like,
4 almost directly in front of us. And that's when I
5 realized, like, oh, that call sign that we heard is a
6 Gresham officer.

7 Q Okay. So as you're getting on scene, that's
8 what you're --

9 A Yes.

10 Q -- putting together? Okay. And when you
11 came down 122nd to turn onto Southeast Kelly, did you
12 turn onto Southeast Kelly, like, as intended, like,
13 right away or did you end up missing it?

14 A I missed that turn initially.

15 Q Okay. And how quickly did you get
16 turned around?

17 A I think it was pretty quickly. I -- I
18 honestly can't be terribly sure on that, but it was,
19 like, oh, it's behind us. We got to turn around.

20 Q Okay. And as you're kind of approaching and
21 passing Southeast Kelly, were you aware of what the --
22 the vehicle description was for the call that you were
23 responding to?

24 A It was a black sedan.

25 Q Okay. And did you see any black sedans

Examination of Whitney Anderson

1 kind of exiting Southeast Kelly onto 122nd or pulling
2 U-turns or kind of spinning out right there as
3 you're passing?

4 A As I was passing Kelly, no.

5 Q Okay. And how about as you're
6 approaching Kelly?

7 A As I -- no. I didn't see a black sedan
8 until I was on Kelly.

9 Q Okay. So you get turned around, turn back
10 onto Southeast Kelly. And how far would you say
11 you're behind the Gresham Police vehicle?

12 A When we turned onto Kelly, maybe two car
13 lengths behind.

14 Q Okay. And about how far down Kelly do you
15 think you get before you stop?

16 A It's a dead-end street and I remember I
17 could see that it was a dead-end street and it's --
18 and it's not terribly deep. We probably got about
19 halfway down.

20 Q Okay. And can you kind of just describe
21 Southeast Kelly, itself?

22 A It's a -- it's kind of a typical residential
23 street in southeast. It's narrow. There aren't --
24 there isn't necessarily, like, designated
25 parking spots.

Examination of Whitney Anderson

1 It's oftentimes one of those streets where,
2 when you're driving down, you're going to kind of have
3 to take turns if another car's coming into oncoming
4 traffic and kind of swoop a little bit into the
5 shoulder and let the car past.

6 But it's residential, houses, an apartment
7 complex, I think, early on on the street.

8 Q Okay. Any sidewalks?

9 A I think in the very early part of Kelly,
10 there's a newer apartment complex and there's a small
11 sidewalk there. But for the rest of the street, I --
12 I don't believe so.

13 Q Okay. And how about any light poles, things
14 like that?

15 A I don't recall.

16 Q Okay. And when you pull onto Southeast
17 Kelly, what -- what -- what are you kind of first
18 seeing? Can you describe that?

19 A I see an African-American woman kind of
20 running out and flagging us down and she's running
21 towards me on the opposite side of the street. And
22 then I see a -- a black sedan behind her. Gresham
23 officers stopped their car. I anchor my car and
24 jump out.

25 Q And what do you mean by "anchor" your car?

Examination of Whitney Anderson

1 A Just you stop really fast and throw it into
2 park 'cause it's time to make decisions.

3 Q Okay.

4 A Things were happening fast.

5 Q So you're actually seeing the female before
6 you even stop your car?

7 A Yes.

8 Q Okay. And you said -- where is she -- is
9 she on the road (indiscernible)?

10 A She's in the street, yes.

11 Q She's in the street? Okay. And where is
12 the sedan in relation to her?

13 A The sedan is pretty close behind her,
14 less than a car length, less -- maybe less than half
15 a car length.

16 Q And if you're looking at the front of the
17 sedan, can you kind of describe, like, where on the --
18 the car she would be positioned?

19 A She's, like, in the middle of the car.

20 Q Okay. And were the headlights on?

21 A I don't remember.

22 Q And so car's behind her. And then can you
23 still see her when you stop your car?

24 A Yes. There's a lot of information I'm
25 taking in when I'm pulling up. So the car is behind

Examination of Whitney Anderson

1 her. It is, like, lurching forward and at some point,
2 you know, she's, like, realizing this car is
3 lurching forward.

4 She actually at one point, I think, looked
5 behind her and put her hands behind her like she was
6 afraid the car was going to hit her. And at that
7 point, I'm very, very focused on the car and the
8 car only.

9 And I know that she ran off of the street
10 into -- into a yard at -- at some point. I don't
11 remember if I was out of the car when that happened,
12 if I was still in the -- I -- I believe I was out of
13 the car when that was -- was happening.

14 Q Okay. And do you -- while you're kind of
15 observing all of this, do you have any recollection of
16 where the Gresham officers were?

17 A I don't. When this is happening, I became
18 aware of where they were after all of this -- after
19 the shooting took place. But in this moment, my focus
20 was the car. I was most concerned with this car.

21 Q Okay. So I'm going to show you a
22 photograph. Do you see the police vehicle that you
23 were driving that night in this photo?

24 A Yeah, this is our car.

25 Q Okay. So the Portland Police one. And then

Examination of Whitney Anderson

1 do you see the Gresham Police vehicle that you had
2 pulled in behind?

3 A This is their car. This car was not there
4 when we arrived.

5 Q Okay. And the -- the Gresham Police vehicle
6 that was not present when you arrived, it's up against
7 another vehicle.

8 A Yes, ma'am.

9 Q Do you recognize that vehicle?

10 A That's the black sedan.

11 Q Okay. And is that where the black sedan
12 ultimately came to rest?

13 A Yes.

14 Q Okay. Did your police vehicle -- did you
15 remove it again after you had anchored it?

16 A No.

17 Q Okay. So this is where it was stopped
18 at the time of you pulling on, stopping and the
19 incident happening?

20 A Yes.

21 Q Okay. So when you get on scene, what do
22 you do?

23 A When I get on scene, I get out of the car.
24 There's a lot happening very quickly. Like I said,
25 the car was kind of lurching forward. Initially, this

Examination of Whitney Anderson

1 woman was in front of the car.

2 So it became a series of rapid decisions
3 of -- I remember, as we were pulling up, my FTO,
4 Officer Nyone, and I were saying, like, "I think this
5 guy -- like, this guy's trying to leave."

6 And it -- it was very apparent that he
7 wanted to get out of there and he wanted to get out of
8 there no matter what. So our thought process was, do
9 we need to get out of this car right now? Do we need
10 to figure out if we need to possibly pursue if he gets
11 out of here?

12 We knew Gresham had exited their vehicles,
13 so we got out of our car. And at that point, I was
14 trying to think of, where is this car's path going to
15 go? Like I said, it was a very narrow street.

16 So I was trying to figure out, is he -- it's
17 either going to be he's going to hit other cars, which
18 is probably not what a person who wants to get away is
19 going to do. I was very exposed and kind of on the
20 front -- off the angle of the front bumper of my car.

21 So I'm thinking about trying to step back in
22 and get cover behind my car and the Gresham car. My
23 FTO, I believe, had come around the front as well.
24 So, yeah, it was just a rapid decision making process
25 of, where do I need to be to be safe?

Examination of Whitney Anderson

1 What is this car going to do? Where is it
2 going to end up and -- and what are our next decisions
3 going to be?

4 Q All right. And you're -- kind of the
5 discussion that you and your FTO have, how quickly is
6 this occurring?

7 A Seconds. I mean, we were on that street for
8 maybe a total of ten seconds before we were out of our
9 car. And I think that shots were fired maybe within
10 five seconds of us getting out of our car.

11 Q Okay. And can you describe -- or let
12 me back up. Did you have any kind of, prior to
13 the shooting, interaction verbally with the
14 Gresham officers?

15 A No.

16 Q Okay. Any kind of communication, hands
17 signs or anything like that?

18 A No.

19 Q And what do you remember about them prior to
20 the shooting?

21 A Not a lot. I remember seeing them get out
22 of their car and after that, my focus was this sedan.
23 I -- I wasn't -- I was -- I was not worried about what
24 Gresham officers were doing at that point. I was
25 worried about what I needed to do about this person

Examination of Whitney Anderson

1 driving this car and where I needed to be.

2 Q Okay. And why were you so concerned
3 about that?

4 A This was a person who had been threatening
5 to kill somebody prior -- moments prior to our -- our
6 arrival and seemed pretty desperate to get out of the
7 area, whether it be through myself, through Gresham
8 officers or through this lady who was just in front of
9 his car.

10 It's a warm summer night in East. There
11 could have been other people coming out of their
12 homes. I was -- yeah. I was most concerned with
13 where this car was going to go in relation to myself
14 and other people.

15 Q Okay. And were there other avenues of
16 escape that this vehicle could have -- the Chrysler
17 could have taken other than the road, itself?

18 A Not that I remember. It was -- it -- it --
19 it's -- there's a lot of homes and there's apartments.
20 It was pretty much cars parked everywhere. I don't
21 think that -- at least in that immediate area, I don't
22 think there was anyone -- anywhere for him to go
23 rather than straight down the street.

24 Q Okay. And do you remember anything about
25 the sound of the vehicle?

Examination of Whitney Anderson

1 A I remember hearing the engine rev as we were
2 pulling up. When -- when we were -- when we were
3 pulling up and that woman was in front of his car, I
4 remember seeing the front of the car dip like it had
5 hit the brakes really hard.

6 And then I remember hearing the engine rev
7 and the front of the car pop up like -- like, you
8 know, it was rapid acceleration.

9 Q Okay. Let's see. And then once the -- do
10 you remember what was going on at the time of the
11 shooting, itself?

12 A Things happened really fast, so I
13 can't really put all of that -- that timeline
14 into perspective.

15 Q Okay. And do you remember how many shots
16 were fired?

17 A Approximately three to five.

18 Q Okay. And so shooting takes place and then
19 what happens from there?

20 A There's a feed that feels really long and
21 then my FTO kind of shifted into gear and was like,
22 "Hey, we need to clear this car and we need to get
23 this person out. We need to start rendering aid." He
24 got on the radio, "Shots were fired. Officers are
25 okay. We need medical now."

Examination of Whitney Anderson

1 At that point, other Gresham officers had
2 gotten there. I don't know who they are. I know they
3 both had rifles and they were like, "Hey, we have
4 rifles. We can be lethal cover." My FTO and I had
5 our weapons out, so we holstered our weapons and we
6 said, "Okay. We're going to be hands."

7 We made a plan to go contact this person in
8 the car. Somebody cut the seatbelt and we pulled him
9 out. I'm really sorry.

10 Q It's okay.

11 A (Indiscernible). We were looking for
12 wounds, obviously. I believe my FTO cut off his
13 clothes, cut off his shirt. We found one bullethole.
14 I believe it was under his armpit -- his left armpit.
15 I started putting on a chest seal. Someone was
16 doing CPR.

17 Officer Rizzo arrived at some point. He
18 might have taken over chest compressions. There was
19 an assistant there who was a nurse who offered to take
20 over chest compressions. I -- even before that --
21 pardon me -- we got him out of the house and I -- I
22 was running back.

23 We have a -- a kit in our car. It's called
24 an IFAK kit. And that's where all the gauze and chest
25 seals and things are. And I remember either running

Examination of Whitney Anderson

1 to the car or running back from the car.

2 There was one Gresham officer who was kind
3 of standing, you know, just kind of with his arms at
4 his side like a -- like a statue, which is not a
5 normal thing for a police officer to do in a situation
6 like that.

7 So I was -- I asked if he was the shooter
8 and he said, "Yeah, I shot." And I was like, "You got
9 to go sit down. Like, you have to go. You can't be
10 here."

11 It's a very big situation to be a part of
12 and if you're the person who has done that, again,
13 going back to my training and trauma responses, you
14 shouldn't -- you should not -- if -- if any -- if --
15 if it's at all possible, you should be removed from
16 that situation immediately and someone needs to be
17 with that person immediately.

18 Yeah. So chest seal, chest compressions
19 and then at some point -- you know, I don't even
20 remember -- other officers were arriving after we're
21 administering aid. But a sergeant pulled me and my
22 FTO away and said, "You guys are done here," and
23 removed us as much as he could from the scene.

24 Q And you provided a statement to detectives
25 either that night or very early morning?

Examination of Whitney Anderson

1 A Yeah. It was the next day, technically,
2 very early morning.

3 Q And when you were talking to detectives, did
4 they show you a Google Map --

5 A Yeah.

6 Q -- of the area?

7 A Yes. And this was what I drew as far as
8 where our cars were, his car were. I remember this
9 alley being important to me.

10 You know, in looking at this picture now,
11 it's -- I mean, there's what looks like another alley
12 there. But we -- we stood in -- in an alley for a
13 very long time after that scene, a very long time --

14 Q Just --

15 A -- (indiscernible).

16 Q -- waiting after the incident, itself?

17 A Yeah.

18 Q Okay. And the two circles on the south side
19 would represent --

20 A Those are -- that's -- that's my patrol car
21 and that's the Gresham officer's car. That was the
22 suspect vehicle.

23 Q And before the shots were fired, did you
24 see -- between the time that the vehicle -- the
25 Chrysler had started really revving its engine and

Examination of Whitney Anderson

1 accelerating --

2 A Mm-hmm.

3 Q -- and the time the shots were fired, did
4 you ever see a brake?

5 A A brake? Like --

6 Q Like, did it try and brake or
7 stop acceleration?

8 A I remember seeing -- when she was in front
9 of the car, I remember seeing a -- a very aggressive
10 dip in the car like he slammed on the brakes.

11 And then I remember seeing that -- the --
12 the hood jump like he -- like he hit the gas hard. I
13 don't remember seeing anything like the front of
14 the -- the car dip again like the first time I saw.

15 Q Okay. So when you talk about hearing the
16 car's engine rev, is that when the car actually, like,
17 accelerated again for the second time? There's the --
18 the woman --

19 A The --

20 Q -- the pause --

21 A Yeah.

22 Q -- right? And then you hear the engine rev
23 and you kind of see the --

24 A Mm-hmm.

25 Q -- headlights rise up. Is that when you're

Examination of Whitney Anderson

1 hearing kind of the engine revving --

2 A Yes.

3 Q -- and it's accelerating?

4 A Yes.

5 Q Okay. And was the car, itself, moving when
6 the shots were fired?

7 A I don't know.

8 Q Okay. And then from your position, which
9 was about, what, a car length or so behind the Gresham
10 car, your -- your vehicle, what was your assessment
11 of the car's speed heading in your direction, the
12 black Chrysler?

13 A I -- 15 to 20 miles an hour maybe. I -- I
14 can't be positive about that.

15 Q And how --

16 A (Indiscernible) --

17 Q Sorry. Go ahead.

18 A We were, like you were saying, about a car
19 length behind the Gresham car. And from my
20 perspective, it appeared that that car was slightly in
21 front of the Gresham car at that time.

22 So perspective on how fast that car was
23 traveling from it being in front of me and me kind of
24 canted off to the side and down the road is -- that's
25 a -- that's a tough estimate.

Examination of Whitney Anderson

1 Q Okay. And how many car lengths do you think
2 the car was away from you when you were standing -- or
3 when it was starting to accelerate?

4 A I mean, it was slightly in front of the
5 Gresham car, so I -- does that make it two car
6 lengths, two-and-a-half car lengths?

7 Q Okay. And then you work for Portland. Do
8 you wear any sort of body-worn camera?

9 A No, ma'am.

10 Q Okay. Is that something that you guys are
11 required to wear ever?

12 A No.

13 Q Okay. Any other kind of audio or video
14 recording device activated that night for you?

15 A No.

16 Q Okay. And then did you ever have the
17 opportunity to view the -- any of the Gresham
18 body-worn-camera footage?

19 A No.

20 Q Okay. And then do you remember what you
21 were thinking when the car front raised up and kind
22 of accelerated?

23 A I was thinking this person is desperate to
24 get out of here and he's going to do almost anything
25 to get out of here. I was worried about where I was

Examination of Whitney Anderson

1 standing, where my car was parked. I was worried
2 about my FTO.

3 While I don't remember seeing that woman
4 anymore, I don't -- I was so honed in on that car.
5 She could have been farther down the street. She
6 could have run back into a yard, but, yeah, I was --
7 I was worried about people getting hurt.

8 MS. RHOADES: Okay. Do any of you have
9 questions for Officer Anderson?

10 A GRAND JUROR: Is there any dashcam on
11 the car?

12 THE WITNESS: Only certain cars in the
13 Bureau have -- are outfitted with recording devices.
14 There's a very, very limited number of those cars and
15 you have to be trained on how that works.

16 And I don't believe Officer Nyone has been
17 trained on that. And I -- at my point in my career, I
18 certainly haven't. So that wasn't an option for us to
19 take that car out.

20 A GRAND JUROR: I was going to ask, did you
21 hear any commands given to the car before the shots
22 were fired?

23 THE WITNESS: No.

24 A GRAND JUROR: Okay.

25 A GRAND JUROR: What was your --

Examination of Whitney Anderson

1 A GRAND JUROR: Same question.

2 A GRAND JUROR: Oh, sorry. Go ahead.

3 A GRAND JUROR: No. I was -- I was --

4 A GRAND JUROR: Oh.

5 A GRAND JUROR: -- just going to ask the
6 same (indiscernible) --

7 A GRAND JUROR: Okay.

8 A GRAND JUROR: -- (indiscernible).

9 A GRAND JUROR: What was your, like,
10 reaction to, I guess -- did you have any initial
11 reactions to when the car started revving and you
12 heard the shots and everything --

13 THE WITNESS: It was --

14 A GRAND JUROR: -- if that makes sense?

15 THE WITNESS: -- very scary.

16 A GRAND JUROR: Yeah.

17 THE WITNESS: The whole situation was
18 very scary.

19 A GRAND JUROR: Mm-hmm.

20 THE WITNESS: The type of call that we were
21 sent on is -- it's complicated to describe police work
22 to -- to people who haven't done it before.

23 A GRAND JUROR: Mm-hmm.

24 THE WITNESS: I took this job very, very
25 late in my life. I have done a lot of other things

Examination of Whitney Anderson

1 before I did this. I wasn't raised in a military
2 family. I wasn't raised in a law enforcement family.
3 I had no perspective on law enforcement before I took
4 this job.

5 I was a firefighter many, many moons ago,
6 so I know what public service is. But we go to a lot
7 of calls every day and a lot of those calls seem very
8 mundane after you do them over and over and
9 over again.

10 And to say that I hadn't been to a call
11 where someone had been threatening to kill another
12 person probably a hundred times before this one
13 would -- that -- that would be a lie. I've been to
14 that call a lot of times. This was very different.

15 A GRAND JUROR: Mm-hmm.

16 THE WITNESS: This is not how people respond
17 to when police show up, so --

18 A GRAND JUROR: Okay. Thank you.

19 MS. RHOADES: Any other questions?

20 A GRAND JUROR: Do you believe that all
21 options were essentially exhausted -- let's -- leading
22 up to the shooting of --

23 THE WITNESS: I wasn't standing where
24 Gresham was standing. I can only take in the
25 information that I took in from where I was, so I

Examination of Whitney Anderson

1 cannot speculate on what they saw. I only know what
2 I saw.

3 A GRAND JUROR: Okay.

4 A GRAND JUROR: Did you -- did you see if
5 the windows were rolled up or rolled down at the time
6 of the -- I know it's a blur, but do you remember if
7 the windows were rolled up?

8 THE WITNESS: I know that when shots were
9 fired, the driver's-side window broke.

10 A GRAND JUROR: Mm-hmm.

11 THE WITNESS: I don't know if that means
12 that it was all the way up or all the way down. Yeah.

13 MS. RHOADES: Any other questions?

14 BY MS. RHOADES:

15 Q And I'm sorry. I may have asked you this,
16 but I'm going to just make sure I did. Did you know
17 Officer Doyle at the time?

18 A No, ma'am.

19 Q Do you know him now?

20 A No. I only know that a friend works at
21 Gresham and -- and he had told me that his name was
22 Officer Doyle. That's all I know about him.

23 MS. RHOADES: Thank you.

24 Sam, did you have any questions?

25 MR. KAUFFMAN: I don't.

Examination of Mark DeLong

1 MS. RHOADES: Okay. Great. Thank you.

2 THE WITNESS: Thank you very much.

3 MS. RHOADES: Okay. Thank you.

4 And we can go off the record.

5 (Recess taken, 10:12 a.m. - 10:29 a.m.)

6 MS. RHOADES: Ready? If you can stay
7 standing next to that chair, please, and raise your
8 right hand.

9 **MARK DeLONG**

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

12 MS. RHOADES: Okay. Go ahead and have
13 a seat.

14 THE WITNESS: Thank you.

15 MS. RHOADES: And when you are ready --

16 A GRAND JUROR: Good morning.

17 MS. RHOADES: -- please tell us --

18 THE WITNESS: Good morning.

19 MS. RHOADES: -- your first and last name.

20 THE WITNESS: Mark DeLong, M-a-r-k,
21 D-e-L-o-n-g.

22 **EXAMINATION**

23 BY MS. RHOADES:

24 Q All right. And on May 31st of 2020, what
25 was your occupation?

Examination of Mark DeLong

1 A I was a Gresham police officer. I was
2 assigned to day shift, uniformed patrol.

3 Q Okay. And what do you do now?

4 A I am retired. I retired this year,
5 April 1st.

6 Q And on May 31st of 2020, were you on duty
7 working for Gresham?

8 A Yes, I was.

9 Q And was there anything different about your
10 shift that night?

11 A Yes. There was a large protest in downtown
12 Portland and it -- there were several Portland
13 officers that had gone downtown to work that protest.
14 And it left the districts in -- in East Portland short
15 of officers, so they asked a couple two-person Gresham
16 cars to cover calls in -- in East Precinct for them.

17 So I was assigned to one of those two-person
18 cars. I was working with Officer Joel Walden and we
19 just responded to calls for service in East Precinct.

20 Q Okay. And how familiar are you with East
21 Precinct's area?

22 A Very familiar. I am also a retired Portland
23 police officer. I worked 28 years for the Portland
24 Police Bureau and retired in 2012 and then started
25 over as a Gresham officer in 2013, so 35 years total

Examination of Mark DeLong

1 between the two agencies.

2 Q Okay.

3 A And I finished my career in East Precinct.

4 Q And that night, did you end up responding to
5 an officer-involved shooting on Southeast Kelly?

6 A I did.

7 Q And do you recall about what time that was?

8 A It was around 9:44, if I recall correctly.

9 Q Okay. And --

10 A In the evening.

11 Q -- do you remember who was driving your
12 guys' vehicle?

13 A Yes, Officer Walden was driving. I was in
14 the passenger seat.

15 Q Okay. And where were you coming from?

16 A We were on patrol going nowhere in
17 particular. We were driving southbound on Southeast
18 122nd Avenue and just passing Powell, I believe.

19 Q Okay. So about how quickly do you think you
20 were on scene after the call came out that shots had
21 been fired?

22 A Within a minute, about a minute.

23 Q And do you remember what kind of the
24 lighting was like outside just generally at that point
25 in the evening?

Examination of Mark DeLong

1 A It was dark, but it was lit by streetlights.
2 It was well lit by streetlights.

3 Q Okay. And how about the weather?

4 A It was warm as I recall, nice evening.

5 Q Okay.

6 A I remember we -- our windows were down in
7 our car as we were patrolling.

8 Q And did you know anything about the
9 underlying call that the officer involved in the
10 shooting had responded to?

11 A I did not. I didn't hear the call and I
12 didn't know anything about it until the shots-fired
13 transmission went out over the radio. And I didn't
14 know why -- what had happened.

15 Q And did you -- when the shots-fired
16 transmission came out over dispatch, did you know who
17 was involved at that point?

18 A Yes, it was the other Gresham car. I didn't
19 know which officer or if both officers were involved
20 or what had even happened, but we knew that it was our
21 Gresham partners in the other car, Officer James Doyle
22 and Officer Brendon Hayes.

23 Q Okay. And what is Southeast Kelly just like
24 generally physically?

25 A Southeast Kelly, in the area of this call,

Examination of Mark DeLong

1 is a residential street in Southeast Portland.
2 It's east of 122nd Avenue, north of Powell. It's
3 a narrow street.

4 I -- I don't recall if there's even
5 sidewalks on that street. It's -- it's a rather
6 narrow street, middle-class residences. It was at
7 night, a lot of parked cars.

8 Q Okay. And so when you arrive on scene, what
9 do you see?

10 A Well, like I said, we arrived about a minute
11 later. And as we arrived driving eastbound on Kelly
12 Street from 122nd Avenue, we observed -- I observed
13 Officer Doyle and Officer Hayes standing on the south
14 side of the street near their patrol vehicle.

15 They had their pistols out and there was
16 a car stopped in the middle of the street facing
17 westbound with a person in it. And we drove and
18 parked and got out at that point.

19 Q Okay. And westbound would be facing 122nd?

20 A Yes, facing downtown Portland --

21 Q And --

22 A -- that direction.

23 Q Okay. And did you see any other officers
24 on scene?

25 A I didn't initially, no. I didn't. Very

Examination of Mark DeLong

1 well -- there very well could have been, but I just
2 remember focusing on our two Gresham officers and --
3 near their car.

4 Q Okay. So when you arrive and you stop, what
5 do you do?

6 A I got my rifle out of the car, my patrol
7 rifle, and readied it and talked to the two Gresham
8 officers at that point and asked them what
9 had happened.

10 Q And from the perspective of asking, why are
11 you asking what has happened?

12 A Well, I don't know what had transpired.
13 I don't know if somebody had shot at them. I don't
14 know if somebody had tried to stab them, what had
15 happened. And that -- that was the reason for asking
16 at that point.

17 Q And did either of them respond?

18 A Yes. Officer Doyle told me that -- I don't
19 remember the exact words, but he told me that the
20 person in the car had tried to run them over --

21 Q Okay.

22 A -- with the car.

23 Q And so do you form a plan of action
24 from there?

25 A Yes.

Examination of Mark DeLong

1 Q And what do you decide to do?

2 A So based on that, I knew that the weapon
3 wasn't a knife or a gun. I knew that the weapon was a
4 car, so I looked at the -- the vehicle. I could see
5 a -- a single person in the car. I could see there
6 was a driver. He appeared to be slumped over. He
7 appeared to be wounded. That's what it -- it appeared
8 to me from where I was standing.

9 And based on the fact that the -- the
10 vehicle was the weapon and that nothing had been
11 mentioned about a gun or a knife, I said, "Well, let's
12 go up there and see if we can try to perform some
13 rescue efforts, see if we can save -- save him."

14 Q Okay. And what did Officer Walden do with
15 your guys' patrol vehicle?

16 A One of the officers -- I don't remember
17 if it was Officer Hayes or Officer Doyle, but they
18 said -- one of them said, "We think the car is in
19 drive still. Can you block it?"

20 So Officer Walden got back in the car and
21 he drove our patrol vehicle up and put the nose of
22 our patrol vehicle against the -- the front of the
23 car in question --

24 Q Okay.

25 A -- to block it. And then Officer Walden

Examination of Mark DeLong

1 got out and we then approached on foot and ended up
2 opening the door and gloving out, putting gloves on
3 really fast and pulling the gentleman out of the car
4 and laying him down on the sidewalk. And then we
5 started CPR.

6 Q And at that point, were there other officers
7 on scene to assist with those efforts?

8 A Yes. There were two Portland officers there
9 at the scene and I believe you just spoke to them.
10 And then other officers came and -- other Portland
11 officers, I believe.

12 Q And did you observe any wounds on the man
13 who had been in the vehicle?

14 A Yes, I did. I saw what appeared to be a
15 gunshot wound on the -- on his left side under his
16 armpit or below his armpit, as I recall.

17 Q And did you observe any kind of traditional
18 weapons like you were describing earlier, gun, knife,
19 anything like that on the scene --

20 A No.

21 Q -- other than law enforcement?

22 A No.

23 Q Okay. And so what was your role for kind of
24 the remainder of the time on scene?

25 A Just to stay on scene and scene security,

Examination of Mark DeLong

1 I guess.

2 Q Okay. And about how long were you on scene
3 for, do you think, in total?

4 A Around 45 minutes maybe, hour. I actually
5 don't remember. Somewhere in that neighborhood,
6 I think.

7 Q And you had a body-worn camera at the
8 time of --

9 A Yes.

10 Q -- this?

11 A Yes.

12 Q Okay. How long had you been using a
13 body-worn camera at that point?

14 A A few months as I recall. I think it was
15 still pretty early on in the program. I don't
16 remember specifically how long it had been, but I --
17 six months, three months, somewhere in there.

18 Q Okay.

19 A I honestly don't remember.

20 Q And was your body-worn camera recording
21 that night?

22 A So I changed the batteries on it because
23 I finished my shift and I was going to go out and
24 augment Portland, so I switched batteries. I
25 activated the on switch on the camera, but I had --

Examination of Mark DeLong

1 inadvertently had not powered it up.

2 And, normally, when you pull it out of the
3 charger at the beginning of your shift, it powers up.
4 And it hadn't when I switched batteries, so there
5 was a learning curve that I hadn't quite mastered.
6 But -- so I had the switch thrown, but I -- I didn't
7 record anything.

8 Q Okay.

9 A It was user error.

10 Q There's a brief recording of it. Have you
11 seen that?

12 A Yes.

13 Q Okay. So I'm going to go ahead and play
14 that. When's the last time you saw this?

15 A A couple weeks ago.

16 Q Okay. And how many times do you think
17 you've seen it?

18 A Once.

19 (**TRANSCRIBER'S NOTE:** Video recording played
20 in Grand Jury, 10:41 a.m., as follows:)

21 UNIDENTIFIED OFFICER: -- about two or three
22 bites and the shooting came out.

23 (**TRANSCRIBER'S NOTE:** Video recording
24 stopped, 10:41 a.m.)

25 THE WITNESS: Once, maybe twice. Maybe it

Examination of Mark DeLong

1 was played twice for me.

2 BY MS. RHOADES:

3 Q Okay.

4 A Yeah.

5 Q And that's all that's --

6 A (Indiscernible) I saw.

7 Q -- all it recorded --

8 A Yeah.

9 Q -- is that right?

10 A Yeah.

11 Q Okay. And just generally, would you
12 mind kind of covering when it is that you took --
13 believe would have turned your body-worn camera on
14 per Gresham?

15 A Per policy, it's turning it on at the
16 beginning of -- when you're first dispatched to a
17 call, when you start going towards a call, you turn
18 your camera on. I think, at that -- on that date,
19 we hadn't -- the policy hadn't -- that wasn't the
20 policy then.

21 I think it was when you arrived on scene,
22 then you turned it on at that time. But, now, I
23 know it's you turn it on when you're on your way
24 to the call.

25 Q Okay. So it was still that learning curve

Examination of Mark DeLong

1 you were referring to?

2 A Yes.

3 Q So -- okay.

4 A Yes.

5 Q And then is your camera always recording?

6 A No.

7 Q Okay. So you have to manually activate it?

8 A Yes.

9 Q And does it start audio right away?

10 A Oh, it's -- okay. So let me -- let me back
11 up. So it's always recording. There's a 30-second
12 loop that's continually -- it's looping. And -- and
13 so when you turn that on -- and I think it goes back
14 30 seconds of silence and once you turn it on, that's
15 when the audio starts, as I recall.

16 Q Okay. So it's always looping that
17 30 seconds, but kind of writing over it?

18 A Yes.

19 Q Okay. And then once you activate it, it
20 saves that 30 seconds?

21 A Then it starts -- it's (indiscernible).

22 Q And then -- and starts recording the audio
23 from the time that --

24 A Yes.

25 Q -- you turned it on?

Examination of Mark DeLong

1 A As I recall, that's how it works.

2 Q Okay.

3 A Yeah.

4 Q And then what do you do to preserve your
5 camera footage at the end of the shift?

6 A It gets downloaded. It gets put back in the
7 charging dock and that downloads it onto a computer
8 and -- onto a cloud-based storage.

9 MS. RHOADES: Okay. Any questions?

10 MS. GIRT: No.

11 MS. RHOADES: No?

12 Sam?

13 MR. KAUFFMAN: No.

14 MS. RHOADES: Grand jurors, any questions
15 from you?

16 A GRAND JUROR: I was just going to ask,
17 since it was so new in the program with the cameras,
18 was it common or uncommon in your experience to maybe
19 forget to turn it on or to have to remind your partner
20 to do anything like that or had it been pretty much
21 kind of nailed into you guys to remind yourselves to
22 turn it on at the -- at the time? I know it's a long
23 time ago, but do you remember anything like that
24 that --

25 THE WITNESS: Yes, I do. So younger

Examination of Mark DeLong

1 officers, no problem. But I was a dinosaur. I'm
2 59 years old and I kept going, oh, I forgot to turn my
3 camera on.

4 A GRAND JUROR: Right.

5 THE WITNESS: This was a case where I
6 actually remembered, but I didn't have it powered up
7 from the battery switch.

8 A GRAND JUROR: Right.

9 THE WITNESS: So it -- I -- it was a
10 struggle for me and -- does that answer your question?

11 A GRAND JUROR: Yes, it does.

12 MS. RHOADES: Any other questions?

13 All right. Thank you.

14 THE WITNESS: Thank you, folks.

15 MR. KAUFFMAN: Thank you.

16 MS. RHOADES: And we can stay on the record.
17 We're just going to bring Officer Walden right in.

18 (Whispered discussion, off the record,
19 10:44 a.m.)

20 MS. RHOADES: Stay standing and raise your
21 right hand, please.

22 **JOEL WALDEN**

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

25 MS. RHOADES: All right. And when you're

Examination of Mark DeLong

1 ready, please tell us your first and last name and
2 spell both.

3 THE WITNESS: I'm Officer Joel Walden,
4 J-o-e-l; last of Walden, W-a-l-d-e-n.

5 **EXAMINATION**

6 BY MS. RHOADES:

7 Q All right. And you currently work for the
8 Gresham Police Department; is that right?

9 A Yes, ma'am.

10 Q And were -- were you working for them on
11 May 31st of 2020?

12 A Yes, ma'am.

13 Q And how long had you been an officer at
14 that point?

15 A About seven years.

16 Q Okay. Any prior law enforcement experience?

17 A No, ma'am.

18 Q And were you on duty that day?

19 A Yes, ma'am.

20 Q And was there anything different about
21 that night?

22 A So we weren't working for the City -- or
23 in the City of Gresham. We were helping Portland,
24 augmenting their patrol elements 'cause they were
25 downtown. So we were covering east Portland for calls

Examination of Mark DeLong

1 for service.

2 Q Okay. And were you partners with anybody
3 that night?

4 A Yes, ma'am.

5 Q And was that a little bit unusual?

6 A Yes.

7 Q Okay.

8 A Usually as patrol officers, we -- we kind of
9 ride solo cars. But that night, I was partnered up.

10 Q Okay. And you were partnered with Officer
11 DeLong; is that right?

12 A Yes, ma'am.

13 Q And who was driving your vehicle?

14 A I was driving the vehicle.

15 Q And did you respond to Southeast Kelly on an
16 officer-involved shooting?

17 A Yes, ma'am.

18 Q Do you recall about what time that was?

19 A I do not specifically. I know it was later
20 in the evening, maybe not -- I didn't read the call
21 notes, so (indiscernible).

22 Q Okay. And did you know anything about the
23 underlying call that --

24 A I just knew it was a --

25 Q -- was (indiscernible) --

Examination of Mark DeLong

1 A -- it was dispatch -- patrol's -- they were
2 going through a disturbance and that's about as much
3 as I knew.

4 Q Okay. And where were you when you heard the
5 dispatch call come out for the officer involved?

6 A We were at 122nd, Southeast 122nd, around
7 south of Powell area.

8 Q Okay. And what was the lighting out just
9 generally that night? Just --

10 A It was --

11 Q -- pitch black, still kind of light?

12 A It was -- it was dark out. Lit --
13 streetlights had lit everything up, so it was
14 dark out.

15 Q And what about the weather?

16 A It was clear.

17 Q And about how long after you heard the
18 dispatch come out about the shots being fired by the
19 officer in relation to you arriving on scene?

20 A As soon as the broadcast came out about
21 shots were fired, it was probably within a
22 few minutes --

23 Q Okay.

24 A -- I would say. We were fairly close.

25 Q Okay. And when you are responding, what

Examination of Mark DeLong

1 level of code are you responding at?

2 A So it's Code 3 cover, which means having our
3 overhead lights on and the siren.

4 Q So you were driving pretty fast?

5 A Yes.

6 Q Okay. And how familiar are you with 122nd
7 and Southeast Kelly area?

8 A The Kelly area, not specifically that
9 street. I'm fairly familiar with 122nd, not so much
10 with Southeast Kelly.

11 Q Okay. And when you pull onto Southeast
12 Kelly, can you kind of just describe what you recall
13 about the street, itself?

14 A Yeah. So once we pulled down, we were
15 obviously looking for police lights. And that's what
16 we were able to see further down the road. I was --
17 also saw a vehicle with its lights on and it was
18 facing westbound.

19 Q Okay. And what kind of road is it?

20 A It's a very residential street. There's
21 cars parked on the side of the street in driveways.

22 Q Do you recall sidewalks?

23 A I do not recall sidewalks.

24 Q And who all is on scene when you arrive?

25 A So, obviously, myself and Officer DeLong in

Examination of Mark DeLong

1 the partner car. I saw two Portland police officers
2 and then Officer Doyle and Officer Hayes.

3 Q Okay. So four officers total on scene --

4 A Yes, ma'am.

5 Q -- before you? Okay. And when you arrive,
6 what do you do?

7 A So upon arrival, all we knew was it was a
8 disturbance call and that shots were fired. So we
9 didn't know anything else regarding the circumstances,
10 so my partner, Officer DeLong, and I retrieved our
11 rifles that we have in the patrol car.

12 And I had stopped kind of in the street
13 a little bit further back and as we -- after we
14 retrieved our rifles, Officer DeLong exits. And as
15 I'm exiting, I believe Officer Hayes told me to pull
16 the car forward to go basically bumper to bumper, kind
17 of pinning the vehicle --

18 Q Okay.

19 A -- essentially. So that's what I did.

20 Q So I'm going to show you a photograph --

21 A (Indiscernible).

22 Q -- up on the screen --

23 A Yeah.

24 Q -- (indiscernible). You can stand

25 and then --

Examination of Mark DeLong

1 A Okay. Yeah.

2 Q -- you can sit back after you're done
3 explaining. But if you could, explain the car that is
4 on the right side closest to you. Whose car is that?

5 A Yeah, this one was my police car.

6 Q And that's not where you initially parked?

7 A No, I was further back.

8 Q Okay.

9 A Yes, (indiscernible).

10 Q But per -- you think it was the Officer
11 Hayes request -- you pulled up closer and --

12 A Correct.

13 Q Okay.

14 A Yes, ma'am.

15 Q And could you tell if the black vehicle in
16 front of yours was still running at that point?

17 A I could not. I believe it was, but I -- I
18 don't recall specifically, no.

19 Q Okay. And then do you know whose vehicle it
20 is that's kind of in the background?

21 A That vehicle would be Officer Doyle's and
22 Officer Hayes'.

23 Q Okay. And you can go ahead and have a seat.

24 A All right.

25 Q So you kind of go nose to nose --

Examination of Mark DeLong

1 A Yeah.

2 Q -- with the black vehicle and then what do
3 you do?

4 A So after that, I exit the vehicle and rejoin
5 the officers who were on the other side kind of where
6 you see Officer Doyle and Officer Hayes' car. And
7 that was with the Portland officers as well as -- the
8 two Portland officers on scene as well as Mark --
9 Officer DeLong and myself. So we kind of grouped
10 up there.

11 Q And the individual that had been in the car
12 was in the car when you (indiscernible)?

13 A Still in the car.

14 Q Okay.

15 A Yes, ma'am.

16 Q So what do you do from there?

17 A So at that time -- I believe it was Officer
18 Hayes and Officer DeLong -- we move up to the car and
19 the Portland officers as well.

20 We move up and I tell them that I'll take
21 the lethal cover 'cause -- 'cause, again, we didn't
22 know what call we were going to or what happened. So
23 I was remaining cover on the vehicle as they made
24 contact with the subject inside the vehicle.

25 Q And was the subject responsive?

Examination of Mark DeLong

1 A Not at that time, no.

2 Q And so are they able to get the individual
3 out of the vehicle?

4 A Yes, ma'am.

5 Q And how do they do that?

6 A Officer Hayes reaches through the window
7 and, I believe, just unlocks the door. Then I believe
8 it was Officer DeLong and Officer Hayes who took him
9 outside of the vehicle.

10 Q And did officers, various officers, engage
11 in life saving efforts?

12 A Yes, ma'am.

13 Q Okay. And that man, was he ever really
14 responsive during the time?

15 A No, ma'am.

16 Q Okay. And did you observe any wounds
17 on him?

18 A I did not.

19 Q Okay. Were -- how involved in the life
20 saving efforts were you?

21 A Not at all. My place -- my cover -- I was
22 covering the car once they took him out of the car.
23 I made sure it was clear of any other people inside.
24 And there was enough officers there that were doing
25 life support.

Examination of Mark DeLong

1 Q Okay. And did you see any, what might be
2 known as, traditional-type weapons around other than
3 just law enforcement having their own guns? Any
4 knives, guns --

5 A I --

6 Q -- things like that?

7 A I did not.

8 Q Okay. And just generally, what was your
9 role for -- for the remainder of your time on scene?

10 A So once kind of the medical aid was being
11 rendered and there was enough officers there doing
12 that, I kind of took a step back. Officer Doyle also
13 took a step back, so I went and waited with him.
14 Right after that, a sergeant showed up on scene,
15 almost immediately, actually.

16 Q And who was your sergeant for this?

17 A It was Sergeant Estes (phonetic) and
18 Sergeant Herrera.

19 Q Okay. Both of which work for Gresham?

20 A Yes, ma'am. And then more officers started
21 showing up.

22 Q Okay. So you just kind of do whatever they
23 tell you --

24 A I --

25 Q -- (indiscernible)?

Examination of Mark DeLong

1 A At that point, it's more of kind of
2 containing the scene and specifically identifying
3 where rounds may have went, to go check on houses or
4 where bullets may have gone.

5 Q Okay. And you had body-worn-camera
6 footage on?

7 A Yes, ma'am.

8 Q And it worked?

9 A Yes, ma'am.

10 Q Okay. And at that time, do you recall
11 when you were required to activate your body
12 camera footage?

13 A Yeah. So I -- I activated it when we were
14 responding to the call. I don't know specifically
15 when, but prior to arriving on scene. It has a
16 30-second delay, so as soon as I turn it on, it'll
17 record the previous 30 seconds without the audio
18 and then it will go live -- or record the audio
19 after that.

20 Q Okay. So it really is recording the audio
21 from the time you turn it on --

22 A Yes, ma'am.

23 Q -- and remembering the 30 seconds
24 before that?

25 A Yes, ma'am.

Examination of Mark DeLong

1 Q Okay. And have you viewed your body
2 camera footage?

3 A Yes, ma'am.

4 Q How many times would you say you've
5 watched it?

6 A Probably four. I've watched it -- not,
7 like, completely, but, like, today, I watched just a
8 brief -- four, five minutes of it when I made contact
9 and when the event happened and then yesterday and
10 last Friday, so --

11 Q Okay. So those three times. And then did
12 you view it after this incident?

13 A Briefly. So we were really new to these
14 cameras, so -- but after the incident occurred and
15 everything was calmed down, I took -- I pulled it
16 out and checked it and just kind of made sure I
17 clicked the play button. I didn't watch the footage
18 or anything.

19 Q Okay. And how -- how long had you had the
20 body cameras at that point?

21 A It was probably less than a month maybe, if
22 that. I'm -- we were the last unit to kind of get it,
23 so, yeah, it wasn't long at all.

24 Q Okay. So not everybody got them at once, is
25 kind of what I'm hearing?

Examination of Mark DeLong

1 A Correct. They kind of phased it out and
2 then, like I said, we were kind of the last guys to
3 get it with the special (indiscernible) right now,
4 so --

5 Q Okay. So some had it longer, some had it
6 shorter at that point?

7 A That is correct.

8 Q Okay.

9 A Yes, ma'am.

10 Q And who decides to turn it off?

11 A I do.

12 Q Okay. And does it have a mute button?

13 A It does.

14 Q And why might you use the mute bottom?

15 A You can use the mute button for -- so the --
16 it's required to be recording anytime we have contact
17 with individuals in the public, things like that, so
18 you can step aside.

19 You can mute it for certain things such as
20 discussing patrol tactics or what your plan of --
21 what -- what you're going to do next, if you're
22 talking about something that's not related to
23 the investigation.

24 I -- sometimes I would have it just walking
25 away once I'm done engaging with the public and just

Examination of Mark DeLong

1 putting it on mute, but letting it record. I mean,
2 technically, that does turn it off, but --

3 Q Okay. So if you're interviewing one of the
4 witnesses in the houses, you would have to have --
5 have it on --

6 A Correct.

7 Q -- and recording audio?

8 A Yes, ma'am.

9 Q But if you're just standing on scene doing,
10 like --

11 A Just standing there.

12 Q -- scene supervision --

13 A Yeah.

14 Q -- or something like that, you don't
15 have to?

16 A That is correct.

17 Q Okay.

18 A Yes, ma'am.

19 Q And how do you kind of turn it in and
20 preserve what's captured on it?

21 A So at the end of the night after a patrol
22 shift, what we'll do is we'll just take it out of
23 the -- the holster we have and then set it in a dock
24 and then plug it in. And it automatically will upload
25 to a network.

Examination of Mark DeLong

1 Q Okay. And how -- how muscle memory was this
2 for you at this point in terms of your training and
3 being able to just know, like, where it is and how to
4 activate it and being very efficient with that?

5 A It definitely took some getting used to.
6 Like, you -- it's not something that we used to do at
7 all and so trying to make that conscious effort of
8 doing, you know, that. So it wasn't super muscle
9 memory at all.

10 Like, I probably, at that time, still
11 couldn't tell you now what some of the buttons on
12 the side do or what it all does. But eventually --
13 like, now, it's like -- just it's an automatic kind
14 of thing.

15 Q Okay. And everything else on your vest,
16 pretty muscle memory?

17 A Yes.

18 Q Okay.

19 A Correct.

20 Q So it's just a new element?

21 A Yes, ma'am.

22 Q Okay. So I'm going to go ahead and play
23 probably about the first four minutes of your --

24 A Okay. Let me step (indiscernible).

25 Q -- footage. If you want to just roll over

Examination of Mark DeLong

1 or sit over here, you're welcome to. And I may pause
2 it if there are things that need --

3 A Okay.

4 Q -- like, definition, like codes.

5 A Yes.

6 (**TRANSCRIBER'S NOTE:** Video recording played
7 in open court, 10:57 a.m., as follows:)

8 (Bodycam muted.)

9 BY MS. RHOADES:

10 Q And what are you doing right now?

11 A That was when I was retrieving my rifle.

12 Q And so why are we getting back in
13 the vehicle?

14 A So that's when I was directed to bring the
15 vehicle forward to pin it in with the other vehicle.

16 Q Okay. And it was -- it went by quickly, but
17 the people that are standing (indiscernible) are who?

18 A Those are the officers.

19 Q Okay.

20 A Yes. 'Cause I had parked -- yeah -- a
21 little bit further back.

22 MS. RHOADES: Okay. (Indiscernible).

23 OFFICER 1: Let me know.

24 OFFICER 2: Okay. Good.

25 OFFICER 3: Right there, you're good.

Examination of Mark DeLong

1 (Indiscernible). Okay. Bring him on his side. Bring
2 him on his side. Get his knees up.

3 OFFICER 1: Okay.

4 OFFICER 4: (Indiscernible).

5 OFFICER 1: I got live camera, too.

6 OFFICER 2: (Indiscernible).

7 OFFICER 4: (Indiscernible) shooter?

8 OFFICER 2: No.

9 OFFICER ANDERSON: No, he's in the car
10 right now.

11 OFFICER 3: Can you go (indiscernible)?

12 OFFICER 1: I -- yeah, I'm going with Doyle.

13 Doyle, where you at? We -- we need.

14 (Bodycam muted.)

15 BY MS. RHOADES:

16 Q If you can kind of narrate what's going on
17 right now.

18 A Yeah. So I had walked back with him and
19 just was waiting with Officer Doyle. That's when the
20 sergeant shows up. Obviously, Officer Doyle handed
21 me his rifle to hold. Yeah. And I was just still
22 waiting. That's when we were trying to figure out
23 where round accountability is, like, where --

24 OFFICER ANDERSON: I didn't --

25 OFFICER 1: No one outstanding

Examination of Mark DeLong

1 (indiscernible) like that.

2 OFFICER 5: People that were involved,
3 anyone that was in front of the car he was trying to
4 run over (indiscernible).

5 OFFICER 4: So -- so -- so you don't have to
6 go into that.

7 OFFICER 1: Just --

8 OFFICER 2: Okay.

9 OFFICER 1: -- what direction did you shoot?

10 OFFICER 5: (Indiscernible).

11 OFFICER 6: (Indiscernible) we got medical
12 coming in so we can --

13 OFFICER 2: Yes.

14 OFFICER 6: -- get him out of here.

15 OFFICER 1: You stay (indiscernible).

16 OFFICER 2: Yeah.

17 OFFICER 1: My car is pinned to the front of
18 that car, so (indiscernible).

19 OFFICER 2: (Indiscernible).

20 OFFICER 1: Yeah.

21 OFFICER 2: (Indiscernible) that -- that
22 truck, so (indiscernible).

23 OFFICER 1: Yeah.

24 OFFICER 2: (Indiscernible).

25 OFFICER 1: Let's come back here.

Examination of Mark DeLong

1 (Bodycam muted.)

2 BY MS. RHOADES:

3 Q And this is somebody just assigned to stay
4 with the shooting officer (indiscernible)?

5 A Yeah. Typically until we can get someone
6 else there to come take him back to the office and
7 go through the whole process. And I actually get
8 relieved from that. I think a sergeant takes
9 over once --

10 Q Okay. But that's your role --

11 A Mm-hmm.

12 Q -- right now?

13 A Yes, ma'am. I think, at this point, the
14 ambulance was getting ready to arrive. Or, no. So at
15 this point, I go and put our rifles back in the car.

16 Q So at this point, you've been relieved of
17 Officer Doyle?

18 A Yes, that is correct.

19 Q And you're putting your rifles back in
20 the car?

21 A Yeah.

22 Q And -- okay. So what are the other duties
23 that you end up kind of engaging in?

24 A So I think almost -- relatively right after
25 that is when the ambulance is starting to --

Examination of Mark DeLong

1 Q I'm sorry. I fast --

2 A No, it's --

3 Q -- forwarded there.

4 A I thought it was (indiscernible) at first,
5 but --

6 Q Mm-hmm.

7 A The ambulance was starting to arrive. So as
8 you can see, it was kind of a thin -- a narrow street,
9 so we were trying to move -- got ready to move some
10 cars so it could pull up.

11 And, at that time, like, the ambulance
12 pretty much drives up behind the car and it's useless
13 there for me to move my car. So after that,
14 establishing the crime scene, kind of setting up the
15 tape and then doing a quick kind of canvass, like, of
16 the area where we believed possibly rounds had went,
17 so going to the door and speaking with neighbors or
18 witnesses, making sure everyone's okay, asking them if
19 they heard anything, that type.

20 MS. RHOADES: Any questions?

21 MS. GIRT: No.

22 MS. RHOADES: Any questions, Sam?

23 BY MR. KAUFFMAN:

24 Q So, Officer, you have your uniform on and
25 your full implement of --

Examination of Mark DeLong

1 A Yes.

2 Q -- devices and such.

3 A Yes.

4 Q Can you just show us where the body-worn
5 camera is --

6 A Sure.

7 Q -- and how that works?

8 A I can actually pull it out and kind of --

9 Q Sure.

10 A -- show you guys, too. So this is -- what
11 it is is the Motorola body camera. Essentially --
12 so you can -- you can -- it's very useful. Like, you
13 can flip it around. You can -- so you can have the
14 screen. You just -- you power it on.

15 After being docked, you have to power it on.
16 Some guys sometimes forget that. But once you do
17 that, essentially all you got to do -- there's this
18 button right here that you just -- you slide up and it
19 automatically turns on and starts recording.

20 There'd be -- there's a red light that
21 starts beeping, showing that it's recording. There's
22 different setting that you can use as far as turning
23 the red lights off 'cause that -- when it's completely
24 dark out, it's really bright and you can see it.

25 There's, like I said, the mute button and

Examination of Mark DeLong

1 there's certain tools you can use to, like, poke this
2 up to, like -- like, this could take place on my
3 actual microphone. It's very user friendly. So it'll
4 record an incident.

5 Once you're done with that, you slide the
6 same button down and it captures that into the memory
7 here in this body camera. And then you just go in and
8 log in under a case number, whatever that may be.
9 Then at the end of the night, just dock it. So it's
10 really -- did you want to look at it or --

11 Q No. No, (indiscernible).

12 A Yeah, it's --

13 Q So you're -- and you have (indiscernible) --

14 MS. RHOADES: Does anyone else want to look
15 at it?

16 MR. KAUFFMAN: Oh, I'm sorry.

17 MULTIPLE GRAND JURORS: No.

18 MS. RHOADES: Good.

19 MR. KAUFFMAN: Very -- very -- very nice.

20 BY MR. KAUFFMAN:

21 Q And so you have it positioned. Is that
22 where you chose to position it or is it there --

23 A Yeah. So I've done, like, kind of, like --
24 after watching bodycam footage -- and this -- that was
25 when it was still new when I still had it, so this --

Examination of Mark DeLong

1 it may have been lower or higher.

2 But, typically, I'll do it with one kind of
3 flick up just so the camera's a little bit -- 'cause
4 I keep it a little lower instead of higher. But
5 they're you know, just kind of a preference thing.

6 Q Would you when -- when they first rolled
7 them out -- and I think you said that people have
8 different kinds; is that correct?

9 A Yes, sir.

10 Q Would -- did it take a while to -- to learn
11 to turn them on and --

12 A Absolutely.

13 Q Okay. So there were --

14 A Yes.

15 Q -- a lot of people who forgot to turn them
16 on and --

17 A Yes.

18 Q Yeah.

19 A It -- quite a bit. It was a big learning
20 curve at first 'cause it's something you're not used
21 to. And then it just kind of starts to get -- like
22 everything, you just kind of get in the habit and
23 start doing it and doing it. And then you get better.

24 Q Okay. So on the video, it -- it appeared
25 that you had hit the mute button several --

Examination of Mark DeLong

1 if he is the one who shot, even if that could be
2 recording evidence for later stuff, it -- are you
3 still able to mute it or --

4 THE WITNESS: Yes --

5 A GRAND JUROR: Okay.

6 THE WITNESS: -- that is correct. Yeah.

7 A GRAND JUROR: Okay.

8 THE WITNESS: Currently, we're just --
9 if we're not contacting with the public or citizens
10 like that.

11 A GRAND JUROR: Okay.

12 THE WITNESS: I could have just turned
13 it off.

14 A GRAND JUROR: Right.

15 THE WITNESS: (Indiscernible) was done, but
16 I just left it.

17 A GRAND JUROR: Okay. My other question
18 would be: What was Doyle's demeanor after this? He
19 kind of seemed like he was sort of moving around. He
20 might -- you know, how -- how was he acting --

21 THE WITNESS: Yeah. He was very --

22 A GRAND JUROR: -- after this event?

23 THE WITNESS: -- I don't want to say
24 (indiscernible), just kind of shocked or --

25 A GRAND JUROR: Mm-hmm.

Examination of Mark DeLong

1 THE WITNESS: -- kind of just didn't know
2 what to think. Like, I'd say shocked or stunned
3 kind of.

4 A GRAND JUROR: Okay. Did he -- did he make
5 any comments to you?

6 THE WITNESS: He did not.

7 A GRAND JUROR: Okay. That's all that
8 I have.

9 MS. RHOADES: Thank you.

10 Any other questions?

11 All right. Thank you.

12 THE WITNESS: Thank you.

13 MS. RHOADES: All right. (Indiscernible)
14 off the record.

15 * * *

16 (Noon Recess taken at 11:08 a.m.)

17

18 **AFTERNOON SESSION**

19 (Whereupon, the following proceedings were
20 held in open court, the Grand Jury being present,
21 1:01 p.m.):)

22 MS. GIRT: All right. We're on the record.
23 I'm going to call Officer Brooder as our next witness.

24 A GRAND JUROR: And raise your right hand,
25 please.

Examination of Michael Brooder

1

MICHAEL BROODER

2

Was thereupon called as a witness; and, having been

3

first duly sworn, was examined and testified as follows:

4

A GRAND JUROR: Okay.

5

MS. GIRT: And go ahead and take a

6

seat there.

7

THE WITNESS: (Indiscernible).

8

MS. GIRT: No problem. And we'll just have

9

you, when you're ready, start off by stating and

10

spelling your first and last name.

11

THE WITNESS: My name's Michael Brooder,

12

M-i-c-h-a-e-l, B-r-o-o-d-e-r.

13

EXAMINATION

14

BY MS. GIRT:

15

Q All right. And are you an officer with the

16

Gresham Police Department?

17

A I am.

18

Q Okay. How long have you worked for

19

Gresham Police?

20

A Since 2008.

21

Q Okay. Did you have law enforcement

22

experience before that?

23

A No, I did not. It was my first law

24

enforcement job.

25

Q All right. And what's your current

Examination of Michael Brooder

1 assignment with Gresham?

2 A I'm assigned to patrol operations, our East
3 Metro SWAT tactical team and our use-of-force unit.

4 Q Okay. Does that give you a particular set
5 shift during the day?

6 A I work day shift from Thursday to Sunday.

7 Q Okay. And then for your SWAT assignment, is
8 that on an as-needed --

9 A It's on an as-needed --

10 Q -- call-out basis?

11 A -- basis with planned training and then
12 either emergency or pre-planned activations.

13 Q Okay. How do you work in your other
14 training duties into your regular shift hours?

15 A Yeah. So that's also an ancillary duty
16 where either the expectation is that I'm going to be
17 put on some kind of special duty status.

18 MS. RHOADES: Mm-hmm. You know what I'm
19 going to do --

20 THE WITNESS: Should be --

21 MS. RHOADES: -- real quick? Sorry. So I'm
22 not peeking around you, I'm just going to scoot this a
23 little bit. Sorry about that. There we go. Okay.

24 MS. GIRT: We're good?

25 THE WITNESS: (Indiscernible) --

Examination of Michael Brooder

1 MS. RHOADES: Go ahead. Sorry. I didn't
2 mean to interrupt.

3 THE WITNESS: It's okay. I'll be put on
4 either some kind of special duty status to create
5 organized training, facilitate training or chip away
6 at more long-term projects in the downtime that
7 presents itself during a given day.

8 BY MS. GIRT:

9 Q Okay. How long have you been a trainer with
10 the Gresham Department?

11 A Since 2012.

12 Q Okay. And has that been use of force
13 exclusively or other areas of training?

14 A It's been use of force specifically since
15 2012 simply because that's when I formally took on an
16 assignment to our defensive tactics, survival skills,
17 use-of-force unit. However, the instruction I do
18 started before that simply by virtue of being assigned
19 to our East Metro SWAT tactical team.

20 In the capacity of being assigned the
21 tactical team, I started facilitating advanced tactics
22 training for our team and continue to do it for all of
23 Oregon and southwest Washington to this day.

24 Q Okay. So it sounds like you train other
25 SWAT officers outside of just those on the East

Examination of Michael Brooder

1 Metro team?

2 A Correct.

3 Q Okay. And how -- how was it that you got
4 into your other -- your -- your training role once
5 you -- after starting in 2008?

6 A Starting as an officer in 2008, you're
7 presented with various options of things that you
8 can do that are either full-time positions or
9 part-time positions.

10 What drew me to our SWAT tactical team as
11 well as our use-of-force-instruction unit appeared to
12 be the capabilities the instructors and members of
13 those teams had just seemed to make them able to
14 manage doing their full-time job much easier.

15 It seemed to make you a better officer if
16 you're in position where you're oftentimes tasked with
17 having to teach other people how to do some of these
18 critical things.

19 Q Okay. Is there a -- like, an application
20 process where you -- you sort of let folks know at
21 Gresham that you were interested in doing this and
22 they went through and kind of reviewed whether you
23 were going to be a good fit?

24 A Yes, for both.

25 Q Okay.

Examination of Michael Brooder

1 A The one for -- to be a use-of-force
2 instructor consists of submitting a memorandum of
3 interest and a resume of yourself almost as though you
4 don't even work for the Department. And then you're
5 asked to present in a way that is instructional some
6 kind of skill.

7 It does not have to be police or law
8 enforcement related, but they want to assess your
9 ability to teach a skill. And then you have an
10 oral interview panel with probably a member of
11 command staff or some senior supervisory members
12 of that unit.

13 Q Okay.

14 A The SWAT tactical team selection process is
15 a little different. It's now a two-day process that
16 involves some actual physical skills that you have to
17 demonstrate, including physical agility and shooting
18 marksmanship and then some practical skills such as
19 building clearing and then performing well in a
20 confrontational simulation environment assessment and
21 then moving onto an interview process.

22 Q Okay. How many other officers train on
23 use-of-force skills with the Gresham Police
24 Department?

25 A How many officers are trainers?

Examination of Michael Brooder

1 Q Yeah, like yourself.

2 A Oh, oh. There are perhaps as many as
3 15 instructors assigned to the unit --

4 Q Okay.

5 A -- as well as two sergeants.

6 Q Okay. And are you -- what is your role
7 within that group of 15 or so and the -- and the
8 two sergeants?

9 A I'm a lead instructor.

10 Q Okay.

11 A So what that means is, for the last several
12 years in particular, I'm the one that has developed
13 what the training curriculum is going to be for our
14 entire Department's annual, what we call, in-service
15 training, which is a block of training that we try
16 to give to all of our officers at least once per
17 year above and in addition to any other training
18 they relevant.

19 So I've been developing and administering
20 that for the past several years or designating who's
21 going to do it and kind of overseeing how it's going
22 to be rolled out and what it's going to look like.

23 I'm the lead instructor for our impact --
24 impact munitions program and I have some national
25 instructor certifications in impact munitions,

Examination of Michael Brooder

1 chemical agents, distraction devices. So I'm kind of
2 the custodian of those programs as well.

3 Q All right. I have, like, I -- I think,
4 an -- an okay understanding of what all those things
5 mean, but can you explain for the grand jury what all
6 those things -- starting with impact munitions, what
7 that means?

8 A Impact munitions are the things that are
9 projected from what's usually a working firearm, but
10 that aren't actual bullets. They might be things
11 like sponge rounds.

12 Our Department in particular, at a patrol
13 level, the only impact munition we have patrol
14 officers using is a blue, foam, sponge round that's
15 about 40 millimeters across, which is designed to
16 create blunt-force trauma when it impacts a person and
17 hopefully enough discomfort to make them stop doing
18 whatever bad thing it was that they were doing that
19 made us feel like we had to do that.

20 And then chemical agents would be things
21 like OC or CS gas, sometimes known as tear gas, OC
22 being used -- being the only chemical agent used
23 by patrol and then CS being used only by SWAT at
24 this time.

25 Q Okay.

Examination of Michael Brooder

1 A Distraction devices are commonly called
2 flashbangs. It might seem strange to have it be
3 somebody's job to deal with just this one really
4 particular thing.

5 But there's a lot of liability associated
6 with those, particularly 'cause they're federally
7 controlled by the ATF and they have resulted in law
8 enforcement deaths, unfortunately. So they're
9 something that has to be handled very carefully.

10 Q Okay. So all three of those things you just
11 described, are those sort of individual certifications
12 that officers would have in Gresham as far as their
13 ability to use and carry and deploy those instruments?

14 A Yes.

15 Q So then, you know, as far as your -- your --
16 kind of your regular sort of run-of-the-mill patrol
17 officer, would you expect them to have impact
18 munitions at their disposal, just (indiscernible) --

19 A I -- I'd say about 50 percent --

20 Q 50 percent?

21 A -- of them.

22 Q Okay. And are those folks that have gone
23 through that additional training and certification to
24 be able to handle that type of instrument?

25 A Yes.

Examination of Michael Brooder

1 Q Okay.

2 A And we can talk about that in detail when
3 the time comes if you'd like.

4 Q Okay.

5 A Or --

6 Q Sounds good. All right. Okay. So as far
7 as your role as a trainer, do you train officers at
8 the time of hiring and then at -- at -- at later sort
9 of segmented periods of time?

10 A Yes and no.

11 Q Mm-hmm.

12 A Previously, yes. We've actually moved away
13 from a model of pre-academy use-of-force training. We
14 did that up until about 2017, 2018. We moved away
15 from that simply because we were training our officers
16 prior to them going off to a police academy.

17 And what we were finding was that,
18 absolutely appropriately, once they went to the
19 academy, they were focusing very much on the academy
20 curriculum and nothing we were training them in really
21 stuck. So we would kind of just start over when they
22 came back from the academy.

23 I mean, so we decided to forgo that model
24 of pre-academy training. But I do less frequently
25 train brand-new officers, but sometimes do. It just

Examination of Michael Brooder

1 usually now starts after they've completed a basic
2 police academy.

3 Q Okay. All right. And as far as your role
4 in use-of-force training and kind of what the expected
5 curriculum is for a brand-new officer kind of up
6 through maybe a couple years of service, can you
7 describe what that looks like?

8 A Sure. So as mentioned, we've gone away from
9 the pre-academy model. But when they graduate from
10 the academy, they attend a week-long training course
11 with us as a use-of-force unit that we call our
12 post-academy training.

13 After they go through post-academy training,
14 there are several other kind of specialized areas
15 in the Department about which I think you're going
16 to hear from other witnesses where they also
17 received training.

18 And then after that, there are times when
19 enough newer officers are kind of at the same place in
20 their training where it makes sense to also attend an
21 advanced skills course, which kind of depends on where
22 our newer officers are in line with each other at
23 the time.

24 While they're completing all of this
25 training, they've also now began, as academy

Examination of Michael Brooder

1 graduates, their field training. I am not a field
2 training officer, so I probably can't talk in a ton
3 of detail about what the field training program is.

4 But, generally, what it is is these newer
5 officers in uniform presenting as police officers,
6 first riding as passengers with a coach officer who is
7 going out doing police work and instructing on how it
8 is carried out.

9 They then transition to a role of them being
10 the driver of the car and expected to be the primary
11 officer taking action with regard to the events they
12 respond to. And they phase through several different
13 coaches as they're doing this, as well as have to do
14 things like, I believe, take midterm exams.

15 And there's a journaling component where
16 both the coach and the training officer are logging
17 how things are going, the goal of that being then
18 progressing to a point where their coach then
19 transitions to plain clothes for a period of perhaps
20 two weeks.

21 I apologize. I'm not sure. And the
22 expectation is that they are fully capable of handling
23 all of the police incidents to which they're expected
24 to respond.

25 So the visual component of the coach being

Examination of Michael Brooder

1 in plain clothes is just meant to solidify that the
2 expectation is that they take responsibility for
3 what's going on, though we're not yet completely
4 turning them loose to work by themselves.

5 Q Okay. So that program is a lengthy one, it
6 sounds like.

7 A Yes. And I apologize for not being a field
8 training officer --

9 Q That's okay. I don't need to --

10 A -- but --

11 Q -- go into too much detail about it, but I
12 guess suffice to say it's separate and aside from any
13 of your use-of-force curriculum?

14 A Correct.

15 Q Okay. And you said that right out of basic,
16 there is a week-long use-of-force training that all
17 new officers complete with Gresham?

18 A That's correct.

19 Q Okay. And running through kind of what that
20 curriculum looks like for that first week, we're
21 talking, like, a full day each day of training
22 curriculum?

23 A Yeah. Either --

24 Q Okay.

25 A -- either four ten-hour days or five

Examination of Michael Brooder

1 eight-hour days. Sometimes that simply depends on
2 venue availability. We find we're usually able to get
3 more done in five eight-hour days than --

4 Q Okay.

5 A -- four ten-hour days. But the curriculum
6 for that week of training typically looks like
7 starting off with classroom instruction that covers
8 our use of force within the Department and the way in
9 which we try to train use of force.

10 We cover some policy as well as case law
11 regarding law enforcement use of force. After that,
12 we move into some physical skills very briefly such
13 as handcuffing and searching. And that tends to take
14 an entire day. Those two component then take an
15 entire day.

16 The second day, depending on whether we're
17 on the four-ten or five-eight schedule, we'll move
18 into some more physical skills such as how to
19 physically interact with someone in, like, an
20 adversarial or confrontational way, so things like
21 striking and blocking and things of that nature.

22 And after that, we're able to move into some
23 very baseline what we call confrontational simulation
24 training, which is when officers, in all their
25 equipment with training replicas of their firearms and

Examination of Michael Brooder

1 use-of-force options, all of that is present.

2 And they are given a brief of the nature of
3 incident to which they're expected to respond. And
4 then you have instructors wearing protective equipment
5 that kind of role play, act out whatever incident it
6 is that we're expecting the officers to respond to.

7 Somewhere in there, it's necessary for us to
8 do some what we call exposures to things like OC spray
9 and Taser certification. Taser certification is
10 probably the one wild card that may take place before
11 an academy, immediately after an academy.

12 It tends to just fall into the realm of what
13 we do at some point. And after the confrontational
14 simulation training and exposures are complete, that
15 tends to round out that week of training.

16 Q Okay. When you say exposure to things like
17 a Taser, does that mean the new officer is getting
18 Tased as part of their training?

19 A That's correct.

20 Q Okay.

21 A At their discretion.

22 Q All right. So I -- I also want to give you
23 an opportunity to -- to define what you mean by --
24 what I'm meaning and you're meaning by "use of force."

25 A Mm-hmm.

Examination of Michael Brooder

1 Q Sort of -- sort of a broad concept. What
2 does it mean in the line of police work when you're
3 talking about use of force or use-of-force training?

4 A Yeah. And I think that's probably the most
5 important part of that week of training. And what we
6 do is we present them with a model that's sometimes
7 called amendment-based use of force that teaches the
8 reasonableness standard.

9 So what are those things, right? We moved
10 to -- about 2017, we moved to a model of thinking
11 that if we teach our officers how their use-of-force
12 decisions and actions are going to be judged by legal
13 professionals, it'll probably help better inform them
14 as to, like, what decisions to make and what actions
15 to take.

16 And the way in which we do that is we
17 explain to them what this concept of reasonableness
18 means. Courts have said that, although it is not a
19 precise definition, what the objective reasonableness
20 standard is, is would another officer with the same or
21 similar training and experience have acted in, like, a
22 same or similar fashion when confronted with same or
23 similar circumstances, right?

24 But it also has to allow for an embodiment
25 and consideration that officers have to make very

Examination of Michael Brooder

1 quick decisions in, like, tense circumstances that are
2 rapidly unfolding. And that's what we teach them.

3 We try to make it very clear that -- how
4 their actions are going to be judged based on this
5 reasonableness standard and the Fourth Amendment. And
6 that really doesn't all come together very well until
7 we move out of that use-of-force discussion into the
8 case law discussion that's part of the same day and
9 same, like, classroom in a lecture-style environment.

10 Q Okay. And is that a concept -- as far as
11 reasonableness and reasonableness training, is that
12 a concept that carries throughout your use-of-force
13 curriculum, like, as you sort of progress deeper into
14 and longer into being a police officer?

15 A Absolutely.

16 Q Okay.

17 A And I understand why, but when we were
18 talking earlier about what maybe the first couple
19 years looks like, we tended -- we stopped at field
20 training, which is fine. But what we would have gone
21 on to discuss would be these in-service trainings
22 or these --

23 Q Yeah.

24 A -- optional topics courses --

25 Q Right.

Examination of Michael Brooder

1 A -- where that reasonableness standard
2 is absolutely still stressed with regard to
3 decision making.

4 Q Okay. So after -- for the first year of a
5 police officer with Gresham doing your week-long use
6 of force -- kind of more basic use-of-force training,
7 then their lengthier field training as -- as trainee,
8 what other in-services would be part of a -- like, a
9 newer officer curriculum for the first year -- year or
10 two or even three --

11 A Mm-hmm.

12 Q -- involving use of force?

13 A So the in-services aren't specific to
14 newer officers.

15 Q Mm-hmm.

16 A Part of what we have come to realize very
17 quickly as a use-of-force unit is that we are tasked
18 with teaching a whole lot of things, right?

19 And what tends to happen as we're developing
20 in-services is we try to look at trends of what's
21 going on either within our Department or other parts
22 of the country or this region that are concerning to
23 us from a use-of-force perspective.

24 Now, that could be criminal actor trends or
25 it could be that we're seeing poor report writing

Examination of Michael Brooder

1 within our own Department or we're having police
2 officers getting hurt.

3 And then we will kind of gear what we think
4 the necessary training is to address these issues.
5 And that's how we'll develop, say, the topic of
6 in-service for a given year.

7 Q Okay.

8 A So there's not a new-officer in-service.
9 In-service, (indiscernible) everyone goes to.

10 Q Okay.

11 A For the period of time which we are
12 discussing, I happen to know what they were if you
13 would like me to discuss that.

14 Q Yeah, that would be helpful. Thank you.

15 A So the advanced -- the post-academy class
16 that was offered in May of 2018 was successfully
17 completed by the students. And then it just -- pure
18 happenstance, in-service training for 2018 happened
19 in June.

20 Q Okay.

21 A So very quickly after that. A new officer
22 in that period of time --

23 Q Okay.

24 A -- would have gone to in-service training
25 soon after post-academy.

Examination of Michael Brooder

1 Q Okay. And let me just interrupt real quick
2 to give a frame of reference. So before we kind of
3 launch into more of this, are you familiar with
4 Officer Doyle's training record as far --

5 A Yes.

6 Q -- as -- as it pertains to use-of-force
7 training?

8 A Yes.

9 Q When was he hired?

10 A I believe January of 2018.

11 Q Okay. And so when did he complete academy?

12 A May.

13 Q Okay. And so the time period that you're
14 referencing, is that because that would fall into line
15 with when he was actually done with academy and -- and
16 hired as a Gresham police officer?

17 A Yes.

18 Q Okay.

19 A (Indiscernible).

20 Q All right. So I didn't -- didn't mean to
21 interrupt, so --

22 A That's okay.

23 Q -- go ahead.

24 A That's okay. So after that post-academy
25 class in May, we moved into June 2018 in-service.

Examination of Michael Brooder

1 June 2018 in-service was titled, "Emergency response
2 prioritization and crisis entry."

3 So what we're talking about when we talk
4 about that kind of training is an in-progress event
5 that officers are tasked with responding to and
6 trying to manage.

7 The focus of that training was how to deal
8 with some kind of armed or dangerous criminal actor
9 that may or may not have access to innocent people and
10 proposing some strategies for how to deal with that.

11 As an aside, there are some components that
12 are necessary to cover when you're talking about that
13 thing, such as ways to breach doors and stuff like
14 that, which was part of the training.

15 But the focus was more on this conceptual
16 framework in which they could operate to allow them to
17 be more successful. A big part of allowing them to be
18 successful in that environment is stressing something
19 that they've been taught before and are taught
20 periodically.

21 And that is what we refer to as our safety
22 priorities and priority-based decision making. What
23 our safety priorities are a way of us trying to
24 categorize the different ways in which different
25 people are involved in an event.

Examination of Michael Brooder

1 And depending on the nature of their
2 involvement, we might make different decisions over
3 here in priority-based decision making land to either
4 safeguard them or ourselves or other people or
5 identify that no further action needs to be taken.

6 Our safety priorities are these groups that
7 consist of either people that are under imminent
8 threat right now or are some kind of hostage in this
9 incident. "Hostage" is a very specific definition
10 that even really seasoned law enforcement
11 professionals tend to fumble with sometimes.

12 So I like to talk about this imminent threat
13 component as well. Those are the people that we're
14 going to take a lot of risks to help. Those are the
15 people whose safety we're absolutely going to put
16 above ourselves or our own.

17 Other than that, we have innocent people in
18 the immediate area who may not be directly involved in
19 this event, but they may be the kind of person that
20 the criminal actor or the other dangerous subject has
21 access to.

22 And we're going to take some risks to
23 safeguard these people. We're going to try to set up
24 a physical location between those people and, say,
25 this criminal actor or this dangerous person.

Examination of Michael Brooder

1 In addition to that, we have law
2 enforcement, which would be ourselves, when we insert
3 ourselves in those situations. And then we would have
4 our criminal actors or our suspects.

5 After criminal actors and our suspects, I
6 think it's important to talk about evidence as a
7 component of our safety priorities, not only because,
8 very thankfully, law enforcement has moved to a place
9 where we're not doing dangerous stuff anymore to, say,
10 seize drugs.

11 Like, that's not a good program to be on.
12 But also because, unfortunately, once someone's
13 deceased, they become evidence, even if it's me or
14 it's my best buddy. We're not going to risk life
15 to recover a dead body, which is why I think it's
16 important to discuss evidence.

17 And when we talk about this prioritization,
18 it's important to remember that it's not as though
19 we're ranking these groups of people and we don't
20 value any of these groups of people over the others.
21 The way we come into these categories is by talking
22 about control.

23 Everyone thinks that law enforcement has
24 the most control over a situation, but in the vast
25 majority of circumstances we respond to, it's actually

Examination of Michael Brooder

1 the criminal actor or the suspect that has complete
2 control over what happens.

3 They're usually the only person that gets to
4 decide exactly how this event is going to end. We do
5 our best to have it end favorably for us, but, to put
6 it quite simply, the majority of the time, criminal
7 actors can simply choose to abandon their agenda and
8 peacefully surrender.

9 They have that control. And people on the
10 other end of the spectrum like our hostages or people
11 under imminent threat of death or serious physical
12 injury, they have zero control. Our innocent people
13 have a little bit of control.

14 Law enforcement starts to have more and our
15 criminal actor has the most, which is kind of where
16 and why those categories have come into play. That's
17 the priorities of life, safety priorities piece of it.

18 We move into the priority-based decision
19 making piece of it. Priority-based decision making
20 dictates that once we identify whose safety is the
21 priority in this event, then every decision we make
22 has to be in the furtherance of their best interest.

23 And that might seem obvious, but the reason
24 I think it's important is that when you find yourself
25 in a position where you're having difficulty choosing

Examination of Michael Brooder

1 a course of action or assessing whether a certain
2 course of action is a good idea or not, you can almost
3 use this system to check yourself.

4 Like, well, I've decided this person or
5 these people's safety is the most important thing in
6 this event. I don't know whether I want to be here or
7 much closer over there.

8 Much closer over there is safer for them,
9 then that's what I'm going to go do. It's something
10 that cops can wrap their heads around to help arrive
11 at that decision making process.

12 But you have to have a sound understanding
13 of our safety priorities as well as likelihood of
14 success to be well informed in your priority-based
15 decision making.

16 And those are the themes that kind of drive
17 all of our topics-based or more tactically oriented
18 in-service trainings throughout the Department.

19 Q Okay. And so you, yourself, developed some
20 of this curriculum, correct? (Indiscernible) --

21 A I didn't develop either of those things.

22 Q Yeah.

23 A I can't take credit for that, but I -- I
24 do develop --

25 Q Yeah.

Examination of Michael Brooder

1 A -- our training curriculum, yes.

2 Q And is it accurate to describe your
3 curriculum as often based on sort of what kind of new
4 sort of hotter topics in policing are or have become?
5 Is that fair to some extent?

6 A It's not always generally policing. It
7 could be specific to us. We could be struggling as a
8 Department with --

9 Q Got it.

10 A -- an area and we might create a training to
11 address that --

12 Q Yeah.

13 A -- or we might recognize a deficiency
14 in comparison with other departments that have
15 specifically to do with, quote, "hotter topics" --

16 Q Yeah.

17 A -- in law enforcement.

18 Q Yeah.

19 A But it's not always just the hot topic.

20 Q Okay. What -- give us an idea of, like,
21 percentage-wise, how much of a new hire's training
22 with the Department -- through the Department is
23 focused on the use of -- like, the concept of use
24 of force?

25 A It would be hard to give a percentage.

Examination of Michael Brooder

1 For example, the -- Officer Doyle, I believe,
2 had approximately 950 hours of training on his
3 training record.

4 Q Okay.

5 A And if we think that a 40-hour block of
6 that -- I'm -- and I'm going to have to exclude the
7 academy. I apologized. I just simply don't know.

8 Q Right.

9 A If we think a 40-hour block of that is our
10 post-academy training and we think a 40-hour block of
11 that was 2018 in-service and we think a 40-hour block
12 of that -- or excuse me.

13 Probably a 20-hour block of that would be
14 2018 in-service. A 20-hour block of that would be
15 2019 in-service. A ten-hour block of that would be
16 his 2020 impact munitions operator course.

17 Q Okay.

18 A And then however much we want to say that
19 the two ten-hour days of firearms training annually --

20 Q Right.

21 A -- pertain to use of force --

22 Q Yeah.

23 A -- that would be as close as I could get to
24 offering an approximation of how much of his training
25 is use of force.

Examination of Michael Brooder

1 shooter. We think that threat distinction is
2 important because we have had incidents in Gresham
3 where these exact criteria have been met and the
4 response pattern that we're advocating in the training
5 should have been used where it was an edged-weapon
6 event or something like that.

7 Q A -- a what weapon event?

8 A An edged-weapon event. Sorry.

9 Q Oh, sorry. Like --

10 A Like -- like --

11 Q -- a blade. Got it. Mm-hmm.

12 A -- like a knife --

13 Q Okay.

14 A -- or something. We also discuss how these
15 could be vehicle-borne events like it happened in
16 Charlottesville, I think in August of 2018, which was
17 only -- probably about a year before we were tasked
18 with developing this curriculum. That was kind of
19 fresh in everyone's mind at the time.

20 And then our police chief at the time was
21 actually in France and witnessed a vehicle-borne
22 mass casualty event from the window of her hotel,
23 which was shocking and kind of brought things home
24 to our Department.

25 But that is all -- that is to say that's the

Examination of Michael Brooder

1 reason we stress this active threat component, is that
2 it is not always a firearm. It is sometimes a weapon
3 of opportunity, edged weapon or vehicle that is
4 absolutely used to bring on this death or serious
5 physical injury.

6 The crux of that training was to -- excuse
7 me -- educate our officers a little bit to some of
8 what the trends have been in those events, what has
9 worked for law enforcement, what has not worked for
10 law enforcement.

11 And then their ability to distinguish when
12 it is time to enter into certain, what we refer to as,
13 modes action where it's either time to go and try to
14 contact and neutralize the person who's doing this
15 terrible thing because you know where they are and
16 you have the ability to do that or it's time to
17 have to actively search for that person so that
18 you can achieve that goal or it is time to simply
19 rescue people who are going to die if they're not
20 attended to.

21 And the -- one of the things that's come
22 about in the last few years is incorporating fire
23 personnel into that rescue component. So it was a
24 two-day training that culminated in incorporating
25 actual Gresham Fire into the scenario-based training

Examination of Michael Brooder

1 to facilitate distinguishing between those
2 three modes.

3 Q Okay. So this two-day training then is
4 included, like, live scenarios, like more tactical
5 involvement? Was it -- was it just classroom or had
6 those -- those component?

7 A It was about a half day of classroom and
8 then a half day of what I would call repetitions of
9 physical skills that are needed to be successful
10 in scenarios, things like traversing a dangerous
11 open area safely in a lethal-threat environment,
12 recognizing what a near ambush is, recognizing what
13 a far ambush is and why the distinction's important
14 because the immediate action is different to stay
15 in the higher likelihood of success, as well as
16 simply clearing structural areas in a lethal-threat
17 environment, something that most police officers don't
18 get enough training or practice in doing.

19 And then by the end of that first day,
20 they're doing these physical skills drills with
21 role players, though I wouldn't call what they are
22 doing scenarios.

23 And then the second day when they show up
24 to training, they're supposed to be able to hit the
25 ground running and move right into full scenario

Examination of Michael Brooder

1 mode of responding to these different kind of
2 active-threat events.

3 Q Okay. So was some -- then some component of
4 that training then, did it involve the idea and, like,
5 recognition of a -- the vehicle -- of a vehicle being
6 used as a weapon?

7 A Yes.

8 Q Okay.

9 A The -- basically the explanation I offered
10 a minute ago about that distinction between the
11 different kinds of threats that these -- these events
12 can have, that was part of the classroom instruction
13 that was going on.

14 Q Uh-huh.

15 A It was not part of a scenario --

16 Q Okay.

17 A -- for example.

18 Q I was just about to ask, was there any
19 part of that scenario training that involved an
20 officer having a vehicle driven at him at a high
21 rate of speed?

22 A As realistic as we try to make scenarios --
23 the short answer is no.

24 Q Okay.

25 A As realistic as we try to make

Examination of Michael Brooder

1 scenario-based training and we -- and we do recognize
2 the possibility of officers being faced with that
3 dynamic, it's very difficult to safely recreate a
4 training environment where a vehicle as a weapon
5 presents itself as a stimulus and to also elicit a
6 realistic response from an officer just given the --
7 things like OSHA. It -- it would be --

8 Q Sure.

9 A -- very difficult to present that in a
10 realistic fashion.

11 Q Okay. Okay. And then you mentioned one
12 additional in-service that would have involved
13 use-of-force topics that Officer Doyle completed.
14 What was that?

15 A (Indiscernible) I think I might have
16 mentions is less-lethal certification class.

17 Q Impact munitions?

18 A Yes.

19 Q Is this -- is -- is -- was there one
20 additional use-of-force in-service in addition to that
21 or was it (indiscernible)?

22 A No. There was a 2018 --

23 Q Okay.

24 A -- emergency response in-service, 2019
25 active threat in-service. And then in the beginning

Examination of Michael Brooder

1 of 2020, he happened to complete his impact munitions
2 operator course.

3 Q Okay.

4 A The reason I think that class
5 is important --

6 Q Yes.

7 A -- if -- if you would like --

8 Q I was going to --

9 A Okay.

10 Q -- get into that, just what that
11 class involves --

12 A Okay. Sure.

13 Q -- and what it allows him to do and how
14 he's trained --

15 A Sure.

16 Q -- to use it.

17 A Sure. More than the tool, right -- we're
18 talking about impact munitions. We're talking about
19 the ability to use that tool.

20 More than the tool, what's important about
21 that class is that as trainers, we recognize that
22 people who are self-selecting to receive additional
23 training, to have additional ways of resolving
24 problems are probably the people that are going to be
25 driving some of the decision making that goes on in

Examination of Michael Brooder

1 these events.

2 Recognizing that, part of the way we've
3 geared that training is to also bring up some of these
4 elements that are a little bit more advanced that
5 aren't necessarily just specific to impact munitions,
6 but have to do with resolving in-progress events.

7 A big component of our impact munitions
8 training is the decision making process. The reason
9 we talk so much about adult decision making processes
10 with regard to impact munitions is that a key
11 component of deploying impact munitions is continual
12 assessment, right?

13 We have an obligation to, sure, utilize
14 impact munitions, but then assess whether it's been
15 effective, assess if we should apply another impact
16 munition, assess if this has changed to a lethal
17 threat and, above all, recognize if we're just simply
18 doing the same thing over and over again and not
19 achieving a desired result and is that going to look
20 punitive in some way.

21 So when we're talking about all these
22 decision making processes is when we move into this
23 concept of understanding the two worlds in which
24 reactionary gap lives as well as a decision making
25 acronym called OODA that was developed by an Air Force

Examination of Michael Brooder

1 lieutenant colonel.

2 Q Okay. Let's talk about -- well, both --
3 both concepts, both OODA and then also reactionary
4 gap. Are these things that officers are taught in
5 their use-of-force training?

6 A Yes.

7 Q Are these things that Officer Doyle
8 would have been taught and instructed on in his
9 use-of-force training?

10 A Yes.

11 Q Okay. So let's start with OODA and what
12 that --

13 A Sure.

14 Q -- training is -- what -- what that
15 training involves.

16 A So OODA is an acronym, stands for, "Observe,
17 orient, decide and act." And it's meant to be simple,
18 something that we can remember, right?

19 But what it refers to is the process that
20 has to take place before we can simply take action in
21 some kind of confrontational, maybe even adversarial,
22 environment with other people.

23 It's very easy to, for example, stand on a
24 shooting range and be told, when you hear the word
25 "up," you're going to draw your gun and shoot at the

Examination of Michael Brooder

1 middle of this target. I take it back. That's not
2 even -- that's not even easy.

3 But all the decision making has been done
4 for you. Most officers can do that very quickly
5 because there's no decision making component. They
6 have all this time before the "up" word to see where
7 they're at and know exactly what they're going to do.

8 When we're in a live operational
9 environment, something that all of us have to do as
10 people, particularly as law enforcement when we're
11 having to react to someone else's actions, we have to
12 first observe what is going on, right?

13 We have to notice where we are. We have
14 to notice where other people are, what they're doing
15 and take all of that in in order to be able to then
16 orient ourselves to it so that it's more than just
17 information presented to us.

18 It's something we can perceive, orient to
19 and interpret to be able to drive what our decision is
20 going to be about how to then act. And those may seem
21 like processes that take place instantaneously or very
22 fluidly, but what we see are delays in our abilities
23 to make decisions and take actions when we're actually
24 in a confrontational environment.

25 And I would never purport to have done

Examination of Michael Brooder

1 controlled-sample studies of this or anything, but
2 in my opinion, as a trainer who's trained large
3 numbers of people throughout the State of Oregon
4 and Washington, particularly in confrontational
5 simulation environments, is that this OODA process
6 does take some time.

7 We may expect scenario-based training to
8 go a certain way or we may expect responses in a --
9 with a certain manner of timeliness, but it takes
10 considerable time for people to work through
11 this process.

12 The reason it's important to know that in
13 impact munitions training, which is how we got started
14 on this, right, is because of that assessment piece.
15 We think about this OODA and decision making process
16 as only being necessary to begin taking some kind
17 of action.

18 But what we have to remember is we have to
19 go through the same process to be able to stop taking
20 some kind of action that we've already committed to.
21 We have to see what we are seeing, decide -- orient
22 ourselves to whether or not it's been effective,
23 decide to stop and then physically stop whatever it is
24 that we're doing, which is a -- basically the concept
25 of OODA as stressed in that impact munitions class as

Examination of Michael Brooder

1 well as others.

2 Q Okay.

3 A But --

4 Q The -- the reactionary gap --

5 A Yeah. I was just going to ask you a
6 question about that before we go to reactionary gap.

7 Q Yeah, go ahead.

8 A Reactionary gap?

9 Q Yes, please.

10 A Okay. So in discussing reactionary gap, I
11 mentioned that it lives in these two worlds, right?
12 I think it's important to inform any kind of
13 discussion of reactionary gap with that a reactionary
14 gap can be something that actually exists in physical
15 space, right?

16 I can put distance between myself and
17 something to which I might have to react or, in
18 the absence of the ability to put distance, I can
19 put objects which might have the same effect as
20 increased distance.

21 And that can be a reactionary gap over which
22 I have control that actually exists in physical space
23 that might afford me some kind of advantage. And the
24 only reason I bring that up is because I think these
25 two worlds of reactionary gap sometimes get discussed

Examination of Michael Brooder

1 interchangeably and they're absolutely not.

2 The other world in which reactionary gap
3 lives has much more to do with OODA. And that
4 reactionary gap is the -- the actual time it takes for
5 us to go through that process and the delay built into
6 us being able to then take the action we've decided to
7 take or be able to stop taking whatever action it is
8 that we were taking --

9 Q Mm-hmm.

10 A -- once we've reoriented ourselves to the
11 effects of what we did.

12 Q Okay. And when you're talking about this
13 concept with officers getting trained in use of force,
14 are you talking about, you know, the discussion of
15 there being several seconds in reactionary time or is
16 it -- is it much shorter and smaller than that?

17 A We will talk sometimes about a
18 three-quarters of a second to a second and a half
19 actual gap.

20 Q Mm-hmm.

21 A And then we will do our best to demonstrate
22 these theories through stimulus response drills for
23 the student, such as a role player arming themselves
24 with an object that they would have to touch a student
25 officer to be able to harm them with and being a

Examination of Michael Brooder

1 certain distance away and demonstrating to them how
2 quickly someone who has the initiative -- initiative
3 being the freedom to take action -- someone who has
4 the initiative can move a certain distance and affect
5 you with that contact-necessary object prior to you
6 being able to move through this entire decision
7 making process.

8 Or we might have a person who's armed
9 with an object where they don't have to physically
10 touch you, such as a training firearm, that is in a
11 position that is not necessarily oriented toward the
12 student officer.

13 And the student officer is allowed to have
14 their gun in their holster, have their gun in a ready
15 position or they can even point their gun at this role
16 player until what -- let them witness the difference
17 in reaction time because they are behind the curve in
18 this OODA cycle and this reactionary gap dynamic in
19 which we're -- we're discussing.

20 Q Okay. And how are officers taught about,
21 you know, ways to improve or speed up or eliminate a
22 reactionary gap? And is -- is it -- is it possible to
23 eliminate that through training?

24 A It's possible to mentally prepare yourself
25 for what these situations are going to be and it's

Examination of Michael Brooder

1 also possible to streamline your decision making
2 process based on those earlier concepts I discussed of
3 safety priorities and priority-based decision making.

4 So it is possible to speed up this process
5 with a more well-informed decision -- decision making
6 process.

7 Q Mm-hmm.

8 A But I would not pretend to know the science
9 behind, can you physically change --

10 Q Right.

11 A -- your .87-second reaction time? I
12 would -- I wouldn't know the answer to that.

13 Q Okay.

14 A But we do tell officers that we can
15 absolutely set ourselves up to have a higher
16 likelihood of success if we have a sound understanding
17 of what our safety priorities are and we're constantly
18 trying to make determinations as to what people's
19 involvement in a situation is and if we're abiding by
20 our priority-based decision making model to where --
21 kind of like the example I talked about earlier, if
22 they're the priority, should I go stand there or be
23 here, to where we don't have to have that mental
24 discussion anymore.

25 We can just do it. Those are the ways we

Examination of Michael Brooder

1 try to overcome those reactionary gap lags and that
2 time of that OODA cycle.

3 Q Okay. Okay. And we've talked a little bit
4 about Officer Doyle's course of training. Being
5 another Gresham police, do you know -- personally know
6 Officer Doyle?

7 A I know him as a coworker. He's a slightly
8 newer officer to us. I think I've seen him outside of
9 a work environment maybe twice.

10 Q Okay.

11 A I have nothing against him. We just don't
12 happen to be friends.

13 Q Okay.

14 A Whereas -- and the only reason I say that is
15 that I have coworkers with whom I absolutely go on,
16 like, family vacations with. Officer Doyle and I have
17 never really kind of developed that relationship.
18 We've never been to each other's houses or --

19 Q Okay.

20 A -- anything like that.

21 Q Is he someone that you've kept in touch with
22 following this incident that happened, this critical
23 incident, last May of 2020?

24 A The incident at issue?

25 Q Yeah.

Examination of Michael Brooder

1 A I have actively avoided contact with him
2 because I've anticipated the possibility of having to
3 participate in some kind of proceeding about it.

4 Q Okay. And as far as your role here today,
5 were -- I mean, were you ever asked by the District
6 Attorney's Office or detectives to review the video
7 and offer analysis of it?

8 A I was asked by a supervisor at our
9 Department to view about a minute of the video on
10 either end of the -- the incident at issue.

11 Q Okay.

12 A In the -- in, I'd say, the weeks after the
13 event, so probably a year ago now, I think I watched
14 that section of video twice at full speed and --

15 Q Okay.

16 A -- that was it.

17 Q And that was the only other time you
18 watched it?

19 A Yes. I sat down and watched it with a
20 supervisor who had asked me to -- that -- well, on
21 that one occasion, just watched it twice.

22 Q All right. Is there any course of training
23 that is offered at Gresham that you are aware of that
24 involves, you know, drawing your weapon and using
25 deadly force at a vehicle?

Examination of Michael Brooder

1 A A -- in addition to what we've discussed --

2 Q Mm-hmm.

3 A -- I do not know there's a specific course
4 of training that seeks to address specifically
5 shooting at a vehicle.

6 Q Okay.

7 A We do conduct firearms training, which I
8 defer to the other witness today --

9 Q Sure.

10 A -- having to do with penetrating vehicle
11 glass with bullets.

12 Q Yeah.

13 A But I think our active threat training that
14 I -- which I discussed --

15 Q Yeah.

16 A -- is the only training I'm aware of where
17 we, in a use-of-force setting, talk about the
18 lethality of mobile vehicles.

19 Q Sure.

20 A A lot of the training we do with regard to
21 police vehicle operations, for example, stress the
22 lethality of vehicles, particularly that we are
23 operating on.

24 And we also train at times that, if needed,
25 our vehicle can be a nontraditional means of lethal

Examination of Michael Brooder

1 force where justified, reasonable and appropriate.

2 That would be a use-of-force component of that.

3 Q Sure.

4 A The police vehicle operations component of
5 that would be all of the reasons why it's so important
6 that we do regard for the safety of other people when
7 we're operating police cars with, say, lights and
8 sirens on because of the absolute lethality of
9 mobile vehicles.

10 Q Sure. And what are officers trained and
11 kind of what is the Department, you know, cutoff or
12 definition for when an officer has used force?
13 What -- what all -- where does that start and kind of
14 what's the broad range of use of force?

15 A What do we consider a use of force?

16 Q Yes.

17 A We would consider use of force to be
18 any kind of physical contact or control that has
19 resulted in injury, was likely to result in injury
20 or is likely to result in some kind of litigation
21 regarding force.

22 We train our officers that the Fourth
23 Amendment is absolutely what is going to govern their
24 actions with regard to use of force, which seems
25 counterintuitive since the Fourth Amendment having to

Examination of Michael Brooder

1 do with search and seizures, most people think of
2 police entering their home and taking property.

3 But the courts have said that when we use
4 physical force on someone, we have seized them and
5 that is a seizure as governed by the Fourth Amendment.
6 So we try to ask our officers to consider, are the
7 components of injury, likelihood of injury, potential
8 liability and would this be considered a Fourth
9 Amendment seizure through physical force?

10 Q Okay. I want to go back and talk a -- a
11 little bit about the impact munitions.

12 A Sure.

13 Q So you mentioned that Officer Doyle had
14 received training on that. And was he certified to --
15 to use impact munitions?

16 A Yes.

17 Q And -- and in what format? That's a less
18 lethal -- what would you describe it as?

19 A How would I describe our impact munitions
20 program for patrol?

21 Q Or what specific -- does it tie back to a
22 specific less-lethal instrument or weapon that --

23 A Yes.

24 Q -- he's then permitted to carry?

25 A Yes. So at present, it is a Lewis Machine

Examination of Michael Brooder

1 and Tool -- Lewis Machine and Tool being a
2 manufacturer -- 40-millimeter, single-shot impact
3 munitions launcher, 40 millimeter referring to the
4 diameter of the round that comes out of it as well as
5 the barrel.

6 It is a rifled barrel, which means it uses
7 spin stabilization to make the round very accurate.
8 There are other impact munitions that use things like
9 fin or drag stabilization. Spin is probably the most
10 accurate and it can be even more accurate when
11 combined with fin.

12 But drag is terribly inaccurate and that is
13 what, like, for example, a beanbag shotgun uses. A
14 beanbag shotgun will fire a very heavy projectile
15 wrapped in cloth, but then has these tails on it that
16 try to use drag stabilization to make it go straight.

17 Unfortunately, that stabilization system
18 does not work very well and we've moved away from
19 that as an impact munitions program and have gone
20 strictly with the 40-millimeter foam rounds as our
21 impact munitions.

22 Q Okay. And is that -- does it look like a --
23 like a -- describe to me how it looks. And did -- you
24 didn't bring it, did you?

25 A No, (indiscernible).

Examination of Michael Brooder

1 Q No. What does it look like?

2 A Can I see that red cup?

3 Q Yeah. You want the rubber bands up?

4 A Sure. So if you'll ignore for a minute that
5 this is a -- a truncated cone and pretend that this
6 is a cylinder, I'd say that a 40-millimeter impact
7 munition is about this height, which appears to
8 be about three inches and is awfully close in
9 circumference -- or diameter -- excuse me -- and
10 probably, therefore, circumference.

11 I'm not a mathematician -- very close in
12 diameter to the white bottom portion of this cup,
13 maybe slightly smaller. And what it is, is it's an
14 aluminum casing that kind of looks like galvanized tin
15 or something like that that has a black, plastic
16 circle visible before a distinctive break where it
17 becomes a blue dome about the color of these cables
18 here.

19 Q Mm-hmm.

20 A A blue dome of soft foam. And what --
21 there's a primer in the bottom of the casing that
22 obviously gets struck by a firing pin and allows this
23 projectile to fire.

24 And what comes out of your launcher is
25 that black ring is what contacts the rifling of the

Examination of Michael Brooder

1 barrel and allows the round to spin and go very
2 straight. And that blue foam is what would strike
3 your intended target.

4 Q Okay. And once you've been trained and
5 certified to -- to carry that as -- as an impact
6 munition projectile, what do you -- where do you put
7 it? Where do you keep it?

8 A You keep them in a platform that can clip
9 onto a belt --

10 Q Mm-hmm.

11 A -- that carries either four or two rows of
12 four. And it can simply clip onto a belt. Some
13 people also just grab them and throw three or four in
14 a cargo pocket if they're going to deploy with this
15 weapon system.

16 And this weapon system has to be locked up
17 and secured. It's not something that I would advocate
18 officers use in the immediacy in an event. This is
19 what I consider a very deliberate tool. This is not a
20 life saving tool.

21 And that's -- and the only reason I bring
22 that up is it might -- the question might come, well,
23 why does it have a securing lock? Shouldn't it be
24 readily available? I do not think it needs to be
25 readily available.

Examination of Michael Brooder

1 I think it's more important it not get
2 stolen because we abandon our cars all the time. This
3 is not a life saving tool. It's a deliberate tool.
4 This is something that the fifth, sixth, seventh
5 officer arriving on scene should consider deploying
6 with if we still have a problem that needs solving.

7 Q Okay. So when you say it's kept separate
8 and should be locked up, does that mean that once an
9 officer's been certified to -- to have it and use it,
10 are they not carrying it on them?

11 A No, you --

12 Q No.

13 A There's -- there's no way to carry this
14 secure on your person. It has to be a deliberate
15 decision to, okay.

16 I'm going to deploy with this weapon system
17 now for these specific reasons and I'm going to have
18 to have complete ownership and responsibility of this
19 weapon system until this event is resolved one way or
20 the other, which is a bit of a process.

21 It has to be unsecured from a location
22 in the car. You have to gather these rounds of
23 ammunition, put them on yourself and then move into
24 the dynamic of this event.

25 MS. GIRT: Okay. Okay. All right. Going

Examination of Michael Brooder

1 to see if anyone else has questions for you and then
2 we'll just take a -- we'll pause the record, turn off
3 the record and take a quick break.

4 Do you have any questions, Kelley, that you
5 can think of?

6 (Whispered discussion, off the record,
7 1:51 p.m. - 1:52 p.m.)

8 BY MS. GIRT:

9 Q Okay. Two other topics I wanted to cover
10 with you. There -- are you aware of a training course
11 with Gresham that is actually more of a traffic
12 training course that involves sort of the tactical
13 placement of spike strips in a -- in a vehicle
14 pursuit situation?

15 A Yes.

16 Q And is that training that you, yourself,
17 have been through?

18 A It's a training I've been through as
19 a student.

20 Q Okay.

21 A Yes.

22 Q And is that something that's also offered to
23 all new officers in the course of their training?

24 A So it's part of our police vehicle
25 operations program.

Examination of Michael Brooder

1 Q Mm-hmm.

2 A And the reason I do not know the cycle with
3 which that training is offered is that I know, for
4 example, through police vehicle operations, we might
5 rotate from one year to the next on, do we need to do
6 pursuit intervention --

7 Q Yeah.

8 A -- technique training and certification?
9 And the next year, we might need to do driving skills
10 like backing courses. And we'll rotate through the
11 programs like that. Unfortunately, I'm not able to
12 testify to what our new hire police vehicle operations
13 program is. But I am absolutely familiar with --

14 Q Okay.

15 A -- the drill you're describing.

16 Q Okay.

17 A I'm just not sure if the -- if Officer Doyle
18 has had it.

19 Q That's okay. So let me ask you a -- a --
20 another way. Once somebody has been -- if -- if --
21 if somebody had been trained to use spike strips to --
22 to stop a car, 'cause that's what they're meant to do,
23 are those also something that are -- you know, that is
24 out of reach and not just on your tool belt, that you
25 can just throw down a spike strip?

Examination of Michael Brooder

1 A Spike strips --

2 Q Yeah.

3 A -- again --

4 Q Yeah.

5 A -- because of the danger inherent to
6 attempting to apply them when necessary, are a very
7 deliberate tool that are secured in a car.

8 You would have to -- by -- according to the
9 way we train, you are to park your vehicle, find
10 yourself a location where, if a car were to be coming
11 at you, you would be afforded cover from that car
12 before even considering getting these items out.

13 And then you would, as mentioned, have to
14 go retrieve these items, typically from the trunk of
15 a car that now has to be opened with a key for
16 security reasons.

17 Q Okay.

18 A Then un-Velcro them from their position,
19 take the rod that has the string inside, unsecure that
20 so that these things can fly and get into a position
21 where you think you stand a high likelihood of success
22 to be able to deploy them. It's -- it's a bit of
23 a process.

24 Q Okay. And I'm -- I'm using the term "spike
25 strip." What does that mean to you? What does that

Examination of Michael Brooder

1 actually mean?

2 A It means that you're not familiar with what
3 we carry.

4 Q Yeah, it's not --

5 A No. We do not --

6 Q -- a spike strip?

7 A -- happen to use spike strips. We use
8 Stop Sticks.

9 Q Stop Sticks.

10 A Spike strips are the kind of accordion thing
11 that you see cops on YouTube throw it across the road
12 and there's sharp stuff sticking up.

13 Q Okay.

14 A We use these things called Stop Sticks
15 which are these triangular-shaped, three-section
16 tubes, essentially, that have multidirectional tire
17 deflation devices in them.

18 They're designed triangularly so that they
19 can land and be secure in a way, but then also be
20 driven over easily by a -- a vehicle we're attempting
21 to stop.

22 Q Okay. And so as far as that -- that type of
23 traffic training which you have familiarity with only
24 as a student and then the active threat training that
25 you've already covered in which some topics of, you

Examination of Michael Brooder

1 know, a vehicle as the active threat was covered,
2 are you aware of any other trainings through the
3 Department that involve, you know, a vehicle as a
4 weapon or a vehicle as a threat, potentially?

5 A No. But I feel like I have not yet been
6 afforded the opportunity to discuss the impact that
7 Stop Stick training had on me as a student.

8 Q Yeah.

9 A Would you be okay if I discuss that?

10 Q Sure. Because we haven't --

11 A Purely as --

12 Q -- heard about your -- this is an experience
13 that you had when you had this training yourself?

14 A Purely as a student --

15 Q Uh-huh. Okay.

16 A -- prior to -- purely as a student early on
17 in my career as an instructor --

18 Q Okay.

19 A -- I would say. What struck me about this
20 training as a student in trying to deploy Stop Sticks,
21 what we're doing with that training is an instructor
22 is driving a vehicle that we know is going to come
23 past a fixed position where we are online as students
24 with training simulators of Stop Sticks that aren't
25 actually going to deflate tires.

Examination of Michael Brooder

1 And what we have found is that as more and
2 more police officers have been run over while trying
3 to deploy Stop Sticks or spike strips, that the sooner
4 this criminal actor driving this car knows the
5 intervention technique you're trying to use, the more
6 time they have to take whatever kind of action it is
7 they're going to use to counteract what we're doing,
8 even if that means harming or killing us.

9 So the goal of the training is to have the
10 criminal actor driving the car have as little time as
11 possible to react to what you're doing. The reason
12 that's difficult is that you have to gauge how fast a
13 moving vehicle is coming at you.

14 And the reason cars have brake lights that
15 light up, right, is because if it weren't for that, we
16 would have to rely solely on the car in front of us
17 getting bigger to know that it's getting closer to us.
18 We -- humans are very bad at that.

19 In use of force and defensive tactics,
20 we talk a lot about striking and how if you're not
21 telegraphing by flexing muscles in your upper body
22 that's going to strike someone, it's much harder for
23 that person to perceive they're going to be struck
24 because we're not very good at simply seeing that your
25 hand is getting bigger.

Examination of Michael Brooder

1 If that's the only indication that you're
2 going to hit me, I'm probably going to get hit, right?
3 So that's part of the reason why it's so difficult to
4 gauge the speed and distance from a vehicle that's
5 coming at you as opposed to one that's activating
6 brake lights that you're approaching.

7 So what we're trying to do is deploy these
8 Stop Sticks, have them land in a way that makes sense.
9 get the line attached to them as low to the ground as
10 possible and then pull them into the roadway so that
11 they will be run over, the whole time knowing that if
12 we get a finger or anything caught up in this string,
13 it's probably going to get ripped off.

14 It's a bit of a high-stress training and
15 you're trying to perform well because it's training
16 with regard to your profession.

17 But what struck me about it is how fast a
18 moving vehicle can get on top of where you are before
19 you can do something that seems very simple, like
20 throw something out in the road and pull it back
21 again, just with the added stress of managing this
22 string because of the factors discussed.

23 It is very hard to know exactly when that
24 very fast moving motor vehicle is going to be right on
25 top of you, is what I walked away from that training

Examination of Michael Brooder

1 with as a student.

2 Q Okay. And -- and from that training and
3 that takeaway that you just described, I mean, is that
4 something that you -- you as an officer have applied
5 to your -- your duties as an officer and as a trainer
6 as far as kind of assessing that -- that vehicle
7 component of a threat?

8 A It's definitely factored into my decision
9 making with whether or not to attempt something like
10 Stop Sticks. And it's also -- I know it has - it has
11 also colored the way in which I've framed some of the
12 training where we've discussed active threat and
13 mobile vehicles.

14 Q Including the trainings that you've provided
15 to Officer Doyle or that he would have taken from
16 the -- the Department during his time there?

17 A Correct. I happened to teach the class he
18 was in for that class, but, yes.

19 Q Okay. Okay. And then another question I
20 wanted to just cover with you is when you're talking
21 about an active threat situation, how do you train
22 officers to assess or evaluate the proximity component
23 of that as it might relate to the -- the imminency of
24 the threat and the decision making that they have to
25 engage in?

Examination of Michael Brooder

1 makes sense.

2 Anything else?

3 MS. RHOADES: No.

4 MS. GIRT: Do you have anything, Sam?

5 MR. KAUFFMAN: Just -- yeah, quickly.

6 BY MR. KAUFFMAN:

7 Q So, Officer Brooder, there -- it seems to
8 me that there are situations that officers would be
9 confronted with that are -- that unfold relatively
10 slowly or at least slow enough that -- that the
11 officer could consider the -- can weigh the benefits
12 and risks and all the things that you discussed and
13 make the right decision.

14 And then there are some that unfold in a
15 split second or in a matter of seconds. Would that --
16 and without -- it seems like you wouldn't be able to
17 make -- you know, have -- have the luxury of making
18 all of those determinations.

19 Are you able to train for those latter
20 situations or is that just a level of experience that
21 the officer has or how -- can you comment on that?

22 A You're able to mentally prepare for
23 situations like that. And I think what you're
24 discussing is absolutely true that there are times
25 when we have the ability to come up with deliberate

Examination of Michael Brooder

1 plans for how to resolve an event.

2 There are times when we have to come up
3 with very hasty plans to resolve an event and there
4 are times when we purely have to react and take
5 immediate actions. And we call those things immediate
6 action drills.

7 The way we try to train for those is we try
8 to recognize common categories of instances where
9 immediate action is necessary, like sudden attack or
10 like near ambush or like far ambush. And we can train
11 those immediate action drills.

12 But I think mental preparedness and mental
13 rehearsal is much more effective and important. And
14 I -- again, I would never pretend to have studied that
15 in any way or conducted polls or research. I'm only
16 speaking from experience.

17 But you can mentally prepare yourself armed
18 with the information available to you during your even
19 response to an event as to what categories of things
20 might take place.

21 And the faster you can categorize what it is
22 that you're confronted with, the faster you can go to
23 that Rolodex in your brain and be like, okay. This is
24 the appropriate course of action to begin taking. It
25 might not solve the problem, but I'm going to start

Examination of Michael Brooder

1 going down this road and assess.

2 If I need to go down a different road, I'll
3 go down a different road and assess. So the -- does
4 that help --

5 Q Yeah. Does it all --

6 A -- answer your question?

7 Q -- become an instinctive-type thing where
8 you're not -- you don't have time to really
9 deliberate, but it just --

10 A I don't think it becomes instinctive, but I
11 think you can grow more efficient at it --

12 Q Okay.

13 A -- over -- over time and with experience and
14 willingness to commit to that mental preparation
15 because that's something you have to take on yourself
16 to -- in your own self-improvement.

17 Q So it would -- is it fair to say that
18 experience is a component in -- in that -- in the
19 split-second decision making? Like, a -- a more
20 experienced officer may have --

21 A The reason I wouldn't immediately say yes
22 is that different experience is going to factor
23 differently into the actions that officers take. And
24 it's not always going to be -- it could be the case
25 that being very experienced is going to change the

Examination of Michael Brooder

1 lens through which your actions are judged.

2 So you might act differently when a less
3 experienced officer who wasn't aware of what all the
4 officer's options were might take the same action and
5 be judged through a different lens because experience
6 is such a key component of this thing that cops are
7 taught, is going to factor into how their actions
8 are judged.

9 So I wouldn't necessarily say experience
10 drives the ability to be more efficient at that. It's
11 more like you could spend a very long time working as
12 a police officer doing nothing to self-improve and not
13 paying attention in training or you could spend a much
14 shorter period of time as a police officer, make
15 active efforts to self-improve and pay attention and
16 arrive at very different places in your career.

17 So I'd be -- I'd be hesitant to say
18 that purely experience drives being better at that
19 process, but -- simply because there are multiple
20 factors there.

21 MR. KAUFFMAN: Sure. Okay. Thank you.

22 THE WITNESS: Sorry.

23 MS. GIRT: Okay. Do you guys have questions
24 for Officer --

25 A GRAND JUROR: I -- I have a couple.

Examination of Michael Brooder

1 MS. GIRT: Okay. Go ahead.

2 A GRAND JUROR: So my first one would be,
3 what standards are Gresham Police held to in terms of
4 the accuracy of their firearms usage?

5 THE WITNESS: Sure. We have a qualification
6 course that they need to successfully complete. And
7 I'm happy to talk about that, but I feel like that's
8 exactly the realm of what we have another witness here
9 to discuss --

10 A GRAND JUROR: Okay.

11 THE WITNESS: -- if that's okay.

12 A GRAND JUROR: Yeah.

13 MS. GIRT: Yeah. We can -- we can hold that
14 question over --

15 A GRAND JUROR: So --

16 MS. GIRT: -- (indiscernible).

17 A GRAND JUROR: I -- I'll -- I'll do that
18 with them. Oh, sorry. One more since you're teaching
19 use of force. So before -- if lethal force is decided
20 to be used, what sort of procedure is used against
21 the suspect?

22 Are they -- is the police officer -- do they
23 have to tell them that they're going to use lethal
24 force? Like, what is the sort of procedure to commit
25 lethal force against somebody else?

Examination of Michael Brooder

1 THE WITNESS: So that's a great question.
2 And the way I'm going to answer it is I'm going to
3 discuss several court cases if that's okay.

4 A GRAND JUROR: Okay.

5 THE WITNESS: So you're talking about if the
6 decision has been made to use lethal force.

7 A GRAND JUROR: Mm-hmm.

8 THE WITNESS: So it's okay that we can
9 accept that that decision has been made and move to
10 the point where that decision has been made. And
11 you're talking about giving a warning --

12 A GRAND JUROR: Mm-hmm.

13 THE WITNESS: -- correct? So there have
14 been instances where law enforcement officers have
15 used lethal force on people without giving a warning
16 where it has been deemed later that they probably
17 could have given a warning, right?

18 Most -- and I'm specifically referencing
19 Tennessee v. Garner (phonetic) here as a court case.
20 What Tennessee v. Garner showed us is that, when
21 feasible, an officer should give a warning prior
22 to using, first of all, any kind of force, but
23 specifically deadly force.

24 But what "when feasible" language is in
25 there. What we're also taught and what also carries

Examination of Michael Brooder

1 through in policy and things like that is that we're
2 not forced to subject ourselves to harm or possible
3 harm before deciding to use force.

4 So, absolutely, when feasible, when we can,
5 we are to give a warning prior to use of any kind of
6 force. But that also, by definition, allows for the
7 existence of instances where that's simply not an
8 option because we don't have to subject ourselves
9 to actually being harmed before we decide to take
10 some kind of action to mitigate someone's ability
11 to do that.

12 And I apologize. That was the first
13 component of your question, but there were additional
14 ones for --

15 A GRAND JUROR: Oh, the last one that I'll
16 give towards you and now towards the next one is, when
17 you are teaching about use of force, are you also
18 teaching the trainees or the officers about anatomy
19 and what types of -- what places on the body would be
20 worse to use force on in the case of if it were to go
21 wrong or stuff like that, like where are spots more
22 sensitive versus not and stuff like that?

23 THE WITNESS: Yeah. Again, several-part
24 answer, but good -- good question. So use of force
25 in general --

Examination of Michael Brooder

1 A GRAND JUROR: Right.

2 THE WITNESS: -- right? We're absolutely --
3 I'd -- I'd be hesitant to use the word "anatomy"
4 because --

5 A GRAND JUROR: Okay.

6 THE WITNESS: -- that would make me sound
7 like I'm pretending to be a doctor and I'm not.
8 But when we talk about use of force in general,
9 particularly use-of-force tools or striking, we talk
10 very much about different parts of the body.

11 We carry tool -- we carry tools, for
12 example, such as impact munitions as mentioned where
13 if I am to direct impact munitions at you at our
14 preferred target zones --

15 A GRAND JUROR: Right.

16 THE WITNESS: -- that is a use of force
17 that's less lethal and not likely to result in great
18 injury.

19 But if I were to decide -- deliberately
20 decide to use impact munitions in other parts of your
21 body, that would be a lethal-force decision where I
22 would need to be justified in using lethal force to
23 deliberately decide to apply those rounds to that part
24 of your body.

25 A GRAND JUROR: Mm-hmm.

Examination of Michael Brooder

1 THE WITNESS: Additionally with Taser, we
2 talk about being very diligent about where the probes
3 end up and trying not --

4 A GRAND JUROR: Right.

5 THE WITNESS: -- to have a person's heart in
6 between where the two probes are. When we're talking
7 about lethal force, we do train to target specific
8 areas of the body based on what's available. But,
9 again, I'm going to defer that to our other witness --

10 A GRAND JUROR: Okay.

11 THE WITNESS: -- and make one step forward
12 where, in line with that, we teach in our tactical
13 emergency casualty care how to do some treatment of
14 wounds to various parts of the body --

15 A GRAND JUROR: Right.

16 THE WITNESS: -- since you asked about
17 anatomy. There's some distinctions we make about what
18 kinds of wounds to pack versus what kinds of wounds
19 to tourniquet versus what kinds of wounds to seal.

20 And that would probably be the most detailed
21 training we get with what our force options might do
22 to the human body.

23 A GRAND JUROR: Right. So officers
24 generally have an idea of what areas on the body,
25 after this sort of training, would be -- would cause

Examination of Michael Brooder

1 the most harm to a human?

2 THE WITNESS: The only reason I would say
3 not cause the most harm is that it's very hard to
4 predict in any way --

5 A GRAND JUROR: Right.

6 THE WITNESS: -- what a bullet -- because it
7 seems like that's what we're talking about --

8 A GRAND JUROR: Right, right.

9 THE WITNESS: -- what a bullet's going to
10 do once it enters human tissue. What we train is the
11 most effective way is to mitigate those bad effects.

12 A GRAND JUROR: Okay.

13 THE WITNESS: It's very hard to know
14 what's going to happen once bullets start entering
15 human tissue --

16 A GRAND JUROR: Okay.

17 THE WITNESS: -- in terms of travel --

18 A GRAND JUROR: Yeah.

19 THE WITNESS: -- and injury. And I'm sorry.
20 Did you have another component to your question about
21 giving warnings prior to lethal force?

22 A GRAND JUROR: No. I -- I think it was
23 just more about just making sure if the person had
24 heard it or if -- you know --

25 THE WITNESS: Okay.

Examination of Michael Brooder

1 A GRAND JUROR: -- stuff like that, if there
2 was anything that would, you know, affect how a case
3 is handled or something like that if the officer did
4 not give a warning, if that changes how the nature of
5 the shooting occurs or stuff like that --

6 THE WITNESS: Okay.

7 A GRAND JUROR: -- if that makes any sense.

8 THE WITNESS: Yeah.

9 A GRAND JUROR: That's kind of a jumbled
10 word hodgepodge, but just more along the lines of when
11 it's acceptable versus when it's not to use lethal
12 force if there's no warning given prior, if that puts
13 the officer into doubt of whether the decision was
14 made consciously of trying to give the other person
15 the chance to stop --

16 THE WITNESS: Sure.

17 A GRAND JUROR: -- versus immediately using
18 lethal force.

19 THE WITNESS: Sure, yeah. And I think that
20 that requires an analysis of --

21 A GRAND JUROR: Okay.

22 THE WITNESS: -- objective --

23 A GRAND JUROR: Right.

24 THE WITNESS: -- and likelihood of success.

25 When we're talking about officers deciding to use

Examination of Michael Brooder

1 lethal force, it's obviously incumbent upon them
2 to make a sound analysis of whether this force is
3 reasonably necessary in line with law, policy and
4 ethics at the time I'm going to use it.

5 Where warnings come in are in instances
6 where -- it could absolutely be the case that,
7 according to our safety priorities, we can overtly
8 alert this person who's doing something bad enough
9 where we're considering using lethal force that we're
10 here and we would like them to stop and we think that
11 stands a high likelihood of not resulting in death or
12 serious physical injury.

13 We can absolutely give that person a warning
14 based on likelihood of success. But we might have to
15 make an analysis where even if that person maybe
16 doesn't know we're here, they're already doing
17 something that's bad enough that we have to stop
18 them now.

19 A GRAND JUROR: Okay.

20 THE WITNESS: And I use the word "stop" very
21 deliberately, meaning that our goal in using force is
22 to gain compliance and our goal in using lethal force
23 is to get someone to simply stop doing whatever the
24 bad thing is that they're doing that we need them to
25 stop doing.

Examination of Michael Brooder

1 A GRAND JUROR: Yeah. In -- in -- in the
2 case where a priority-based decision or using safety
3 priorities, if a situation happens fast enough and an
4 officer does not have necessarily time to note where
5 the witnesses are, note where civilians might be,
6 they've just pulled up --

7 THE WITNESS: Mm-hmm.

8 A GRAND JUROR: -- do you teach on kind of,
9 you know, those sort of split-second decisions where
10 priority-based decisions might not be available in
11 that sort of sense where you kind of only have --

12 THE WITNESS: Yeah.

13 A GRAND JUROR: -- you know, in this case, a
14 car, right, that we're talking about where something
15 happens very quickly? Is it just sort of on instinct
16 or how do you -- how do you approach that when
17 training someone?

18 THE WITNESS: And I wouldn't use the word
19 "instinct" necessarily, but I think the question that
20 came up a little bit earlier is that even when, on the
21 face of it, it looks as though there is little to no
22 information about what is taking place here, we have
23 to account for officer perception.

24 What priority-based decision making is as a
25 model is identifying who or what the priority is in an

Examination of Michael Brooder

1 event and, absent much information, you may be the
2 priority, then assessing available information and
3 intelligence, intelligence is being information that
4 has been verified; determining what the environment
5 is, what operational environment are you working in;
6 and allowing that to drive the tactics and tools you
7 use; all the while with this underlying component of
8 allowing for officer intuition.

9 And you both brought up instinct. And that
10 model that I'm discussing is put forth by the National
11 Tactical Officers Association as the priority-based
12 decision making model.

13 And even when it seems as though there's
14 very little available information about what's going
15 on, we have to account for officer perspective of what
16 they've been told on their way there.

17 Have they responded to this location before?
18 Do they recognize this name? And all of that comes
19 into play and drives that decision making process,
20 even in the apparent absence of available information.

21 MS. GIRT: Okay. Great. Good questions.
22 Any other questions?

23 Okay. Excellent. I'll have you step down.

24 And we'll -- go ahead and you can hit the
25 recorder off for just a moment here.

Examination of Michael Brooder

1 (Recess taken, 2:14 p.m. - 2:17 p.m.)

2 MS. GIRT: We're going to go ahead and have
3 you stand up and raise your right hand. We'll get you
4 sworn in now that we're on the record.

5 **SCOTT WILLADSEN**

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

8 MS. GIRT: All right. Go ahead and take a
9 seat.

10 And why don't you start by stating and
11 spelling your first and last name.

12 THE WITNESS: My name is Scott Willadsen.
13 That's S-c-o-t-t, W-i-l-l-a-d-s-e-n.

14 **EXAMINATION**

15 BY MS. GIRT:

16 Q All right. And where are you currently
17 employed?

18 A I work for the police academy known as the
19 Department of Public Safety Standards and Training.

20 Q Okay. Is that abbreviated as DPSST?

21 A That is.

22 Q Okay. And how long have you worked for
23 DPSST?

24 A I've been there full time since 2008. I
25 started as a part timer in 2000.

Examination of Michael Brooder

1 Q Okay. And so are you, yourself, a police
2 officer?

3 A Yes.

4 Q And prior to joining DPSST, where did you
5 work?

6 A I worked for the Union County Sheriff's
7 Office. That's out in Eastern Oregon. La Grande is
8 the county seat.

9 Q Okay. And how long did you work for Union
10 County?

11 A Ten years.

12 Q All right. Did you work for any other
13 agency prior to that?

14 A No.

15 Q Okay. And what took you to DPSST for work?

16 A A lot of things. I had been a part timer
17 there for quite a while. They were expanding the
18 program as they moved from Monmouth to Salem, so they
19 were hiring quite a bit of staff.

20 They recruited me. I -- like I said, I had
21 been there for a while as an instructor. I instructed
22 at my own agency almost since the very beginning and
23 just worked out pretty well for my family.

24 Q Okay. And so is DPSST responsible for
25 training all new Oregon peace officers?

Examination of Michael Brooder

1 A Yeah. Every police officer in the State of
2 Oregon, Corrections officer, Parole and Probation
3 officer, everyone has to attend the basic academy for
4 whatever their amount of time is. For police
5 officers, it's roughly four months, 16 weeks.

6 Q Okay. And are there other academies that
7 are offered later on down the road for more
8 experienced officers?

9 A We don't offer other academies, but we do
10 offer additional training. That could be for -- when
11 you would consider instructor-level trainings, so we
12 -- I teach an instructor class for use-of-force
13 instructors. They teach instructor classes for what
14 we would call confrontational simulation training.

15 It's for some force training where they have
16 to go into an unknown environment and attempt to
17 resolve a situation and can span anything from some
18 verbal judo all the way up to simulated deadly force.

19 Q Okay. I want to focus on basic academy
20 with you.

21 A Yep.

22 Q And so you teach use-of-force tactics at --
23 at the basic academy?

24 A That's correct. I run the use-of-force
25 program for DPSST.

Examination of Michael Brooder

1 Q All right. And so as the program head, how
2 many instructors, do you work with?

3 A Full time, I only have one. Part time, I
4 have about 55.

5 Q Okay.

6 A Give or take.

7 Q And does part time mean that they might work
8 for other agencies and instruct --

9 A Yeah.

10 Q -- there?

11 A They all work for --

12 Q Okay.

13 A Either they were -- they worked for another
14 agency and they're retired or they currently work for
15 another agency. And so they're -- they're either
16 Parole and Probation officers, police officers,
17 Corrections officers.

18 And they've gone through either our
19 instructor-level training or other instructor-level
20 training and gone through a hiring process and picked
21 them up so they can assist in our teaching.

22 Q Okay. And did you, yourself, have to go
23 through specialty training to become a trainer for --

24 A I --

25 Q -- DPSST?

Examination of Michael Brooder

1 A Yes.

2 Q Okay. And what did that involve?

3 A How much time do you have?

4 Q You can give us the 15-second version. How
5 about that?

6 A The 15-second version. I went through, I
7 want to say, at least 20 different instructor
8 development classes --

9 Q Okay.

10 A -- from defensive tactics to firearms to use
11 of force to the force-on-force instruction we were
12 talking about, building searches, vehicle stops, how
13 to do classroom instruction, how to write lesson
14 plans, things like that.

15 In addition to that, the academy is really
16 good and sends me all around the country to -- to keep
17 up on my training. And I've attended thousands and
18 thousands of hours of additional use of force and
19 survival skills type training.

20 Q Okay. And so year to year, is the
21 curriculum the same or does it change to some degree?

22 A It -- it evolved slowly as new case law
23 emerges, but for the most part, we teach a
24 constitutional use-of-force program. And so the --
25 the primary case that we use is called Graham v.

Examination of Michael Brooder

1 Connor. I'm sure you've probably heard about it
2 already. And that came out in 1989 and hasn't changed
3 since.

4 So that's the foundation of what we do. And
5 then we'll sometimes add or subtract a little bit here
6 or there based on some new Ninth Circuit ruling that
7 may -- may or may not have come out.

8 Q Okay. And so without getting into, like,
9 the legal nitty gritty of Graham v. Connor, can you --

10 A You bet.

11 Q -- explain to the grand jury kind of what
12 the takeaway is that you want to make sure these new
13 officers understand?

14 A Sure. The primary takeaway of Graham v.
15 Connor is really just to understand that every case is
16 individualized and the courts are going to look at a
17 variety of factors.

18 And they have six main factors that they
19 really look at. What's the severity of crime or why
20 is the officer there? Is a person an immediate threat
21 to the officer or others?

22 Is a suspect actively resisting arrest or
23 attempting to evade arrest by flight? That's your
24 first kind of main four. And then we discussed two
25 others that come from the Graham v. Connor ruling,

Examination of Michael Brooder

1 which is, is this situation tense, uncertain, rapidly
2 evolving or not? 'Cause, of course, there's an
3 opposite side to that.

4 And then, what's the totality of the
5 circumstances? And that's really the foundation of
6 what we try to get every new officer to understand.

7 Q Okay. And what do you explore when you talk
8 about assessing the totality of the circumstances?

9 A Well, there's a really long list of totality
10 of the circumstances 'cause it's the totality. But
11 things like, you know, is the subject larger than you?
12 Is the subject stronger than you? Are they
13 intoxicated? Is it dark? Is it light outside? Is it
14 rainy?

15 Am I fatigued either due to a foot pursuit,
16 a fight or maybe I'm just at the end of a shift at the
17 end of a really long week? It could be anything that
18 could affect not only the perceptions of the officer,
19 but the abilities of the officer 'cause the officer
20 can only do what they're able to do.

21 And if they're incredibly tired because of
22 whatever the situation is, they can only do certain
23 things and are only going to process so quickly versus
24 if they're in excellent physical condition and the
25 lighting's really good and they're stronger than the

Examination of Michael Brooder

1 suspect.

2 So it could be any number of things. And
3 it's a -- it's a list that includes, but is not
4 limited to, so there's a lot to it.

5 Q Okay. And what you're discussing sounds
6 like sort of classroom setting. So is that part of a
7 classroom component to the --

8 A There --

9 Q -- training?

10 A Yeah. There's both a classroom component,
11 which is roughly 20 hours of instruction, and then
12 there's also a scenario-based component, which is
13 another 20 hours specifically dedicated to
14 use-of-force scenarios.

15 That doesn't include roughly 50 some odd
16 hours of firearms, 50-plus hours of defensive tactics
17 and other scenarios that may touch on some
18 use-of-force elements throughout the academy.

19 We run in a -- a program where -- and -- and
20 I'm talking the academy in -- in general where we try
21 to give the officers plenty of -- of, quote, unquote,
22 experience before they hit the street. And so there's
23 scenario training starting pretty early. As far as
24 specifically to the use-of-force program, though, it's
25 roughly 20 hours.

Examination of Michael Brooder

1 Q Okay. And to some degree, does that 20
2 hours, do -- are they also -- you kind of talked about
3 this, a little crossover, there's some crossover with
4 things like firearms training they might receive as
5 well?

6 A Yep.

7 Q Okay. So what would you say the -- the --
8 the total number of hours or days or weeks is of that
9 16-week basic academy that's, like, you know, directly
10 on use-of-force training?

11 A Well, a week of mine, a week and a half of
12 firearms, a week and a half of defensive tactics.
13 That doesn't include vehicle stops, which is probably
14 another half of a week.

15 That doesn't include, of course, the legal
16 classes, verbal judo. It's probably, I want to say,
17 at least a month and a half of their training. And
18 that's -- that's a ballpark right there, but --

19 Q Okay.

20 A -- it's a --

21 Q And if we're --

22 A -- just an estimate.

23 Q -- talking in sort of generals of what the
24 curriculum entails, as you talk about it today, would
25 it have been similar to a high degree as of, like,

Examination of Michael Brooder

1 spring of 2018?

2 A It would have been almost exactly the same.

3 Q Okay. Do you know who Officer James
4 Doyle is?

5 A Not by face or name, no.

6 Q Okay. And do you have any recollection of
7 training him yourself?

8 A No.

9 Q Okay.

10 A At any one time at the academy, I can have
11 close to 300, 400 students.

12 Q Okay. And the academy, is that something
13 that is offered several times a year or is it, like,
14 you come in the spring or you miss it?

15 A It's offered every single month. So what we
16 do is we pick up an -- a new police class every month
17 when we graduate a class.

18 So we, oftentimes, although not right now
19 because of the pandemic and certain slowdowns in
20 hiring; but normally we would run four police classes
21 simultaneously, so they would each be at a different
22 month of their training.

23 And then that doesn't include where basic
24 corrections might get inserted and we run a new --
25 there's six weeks. We run a new basic corrections

Examination of Michael Brooder

1 class, on average, four times a year, so about every
2 two months, we pick up one of those. And a couple
3 times a year, we run a parole and probation class.

4 Q Okay.

5 A Every single one of those -- I don't know if
6 I said this. Every single one of those is about 40
7 students.

8 Q Okay. All right. So in addition to the
9 factors that you were discussing from *Graham v.*
10 *Connor*, sort of the -- all of the various ways of --
11 of, I guess, assessing really reasonableness of a
12 response, right?

13 A Right.

14 Q What are some of the other sort of bedrock
15 training factors that you make sure that they have in
16 a classroom setting before they get into the tactical
17 piece of it?

18 A So those are really the six main ones. And
19 what we really do is we -- we break them apart and we
20 get -- we get specific with the six basic elements,
21 which is, how much time do I have to respond when
22 we're talking about tense, uncertain or rapidly
23 evolving.

24 And so we will -- we will run scenarios, for
25 example, and we'll look at a -- whether it's a video

Examination of Michael Brooder

1 scenario and I can actually mark the time or it's on
2 the video and we can mark the time.

3 So that'd be one way we get really specific
4 on that. Oh, another one would be with immediate
5 threats. We really dial down into, like, how could we
6 assess a threat better? What are some of the clues
7 that you might see?

8 What are some of the things that officers
9 often miss? And then, you know, what are the problems
10 with trying to figure out, you know, in a -- in a
11 quick time frame, like, who is or isn't a threat? We,
12 basically, just take those six and just kind of divide
13 them up into really small categories.

14 Q Okay. And what are some of the things that
15 they are taught to assess for kind of how immediate or
16 not immediate a threat actually is?

17 A Danger would be the --he big one. So just
18 to use a very simplified example, if an officer were
19 to arrive on a scene and a suspect were to jump out of
20 a car and point a gun at them, that's an incredibly
21 immediate situation that requires an immediate
22 response.

23 Otherwise, you know, the officer could be
24 shot and/or killed. And, unfortunately, you know, in
25 a situation like that, they don't have a lot of time

Examination of Michael Brooder

1 to thoughtfully assess everything that's going on, so
2 that's one version of that.

3 Another one would be a slowly evolving
4 situation where they show up and they have an
5 interaction with somebody and see how that goes. And
6 they -- they listen for verbal cues of, are they going
7 to cooperate with me?

8 Are they not going to cooperate with me?
9 Every -- every situation is going to be different when
10 it comes to that. And, quite frankly, the spectrum is
11 really broad.

12 Q And so with an officer who's coming in,
13 they're coming into basic academy with maybe some
14 department pre-academy training or maybe nothing,
15 right?

16 A It -- yeah. It depends --

17 Q Okay.

18 A -- very much on the agency.

19 Q Okay. And so when you -- when you kind of
20 launch into this topic of using force and why -- why
21 you use it, how are they trained to -- what are they
22 trained to understand as far as, like, why we use
23 force, why you're going to use force in some
24 situations and also what the purpose of using force
25 is?

Examination of Michael Brooder

1 A Sure. So for that, we -- we revert back to,
2 what do the ORS statutes allow us or give us the
3 justification to use force for? So the two big ones
4 up 'til recently, which the -- the Legislature has
5 rewritten -- although I don't know what the new ORSs
6 are going to be.

7 But literally up 'til just now, it was
8 161.235 and 161.239. That's a police officer's
9 allowed to use physical force in order to make an
10 arrest or prevent an escape. And then there's some
11 subcategories in there that give a little bit of
12 nuance to the specific circumstance.

13 And then the other one, which is 239, that's
14 a police officer's allowed to use deadly physical
15 force in order to make an arrest or prevent an escape.
16 And then, of course, that statute gives a few specific
17 circumstances in there, some other things for the
18 police officer to understand.

19 Those are the two big ones. But we also go
20 through every single statute that has to do with
21 force, whether it's just simply the right to protect
22 yourself.

23 Can you use physical force or deadly
24 physical force to do that? Whether it's to prevent a
25 suicide. So that's where we discuss, like, why are we

Examination of Michael Brooder

1 doing what we're doing?

2 We really start with the law because if the
3 law doesn't allow it, then you're not allowed to do
4 it. And so we have to make sure they have a
5 foundation there. But then we get into that Graham v.
6 Connor analysis. We look at the severity of crime.
7 What are we there for? What am I -- what am I
8 investigating?

9 What am I attempting to prevent? And we --
10 we're trying to align those as much as we can because
11 we obviously don't want police officers to shoot
12 people who've stolen a pack of bubble gum from the
13 Fred Meyer and they're running away.

14 Even though they're allowed to use force to
15 make an arrest, that's -- that's far too much. That's
16 outside the spectrum. So we spend a lot of time
17 discussing and interweaving it into scenarios, why are
18 they there? What are they either attempting to
19 investigate or prevent?

20 Q Okay. And then sounds like from your
21 description of some of the examples that you've given
22 that that would kind of dovetail into deciding how
23 much force is necessary?

24 A Yes.

25 Q Okay. As a component of your training?

Examination of Michael Brooder

1 A Yep.

2 Q All right. Meaning, you know, are you --
3 are you simply going hands on with this person or are
4 you drawing your weapon type of training?

5 A Correct.

6 Q Okay.

7 A Yep.

8 Q And so when we move into some of these
9 tactical exercises, what's kind of the range of, like,
10 you know, controlled and expected response versus, you
11 know, you have no idea whether you're going to be
12 drawing your firearm in this particular training or --
13 or how uncontrolled it might be? Like, what's the
14 range of tactical exercises?

15 A I'm going to try -- I -- I think I know what
16 you're asking, so let me --

17 Q Okay.

18 A -- give it a shot.

19 Q Yeah.

20 A The range is we put them in -- quite simply,
21 we take the four kind of types of people we deal with,
22 which is -- actually, there's five, just to give a
23 little bit of a -- a background on this. We have
24 perfectly cooperative, compliant people who do
25 everything we ask.

Examination of Michael Brooder

1 Well, we don't run those scenarios in my
2 particular venue 'cause we're there for use-of-force
3 issues. Those scenarios are handled in another part
4 of the academy where they don't have to worry about
5 throwing people in the ground or safety issues and
6 things like that.

7 Q Okay.

8 A So what we handle are, quite broadly, people
9 who passively resist, people who actively resist,
10 people who try to beat me up and people who try to
11 kill me.

12 Q Okay.

13 A And then that's where we start them, is just
14 really those four kind of super-simple concepts. And
15 then we start to add nuance and complexity as they
16 move through the training.

17 And we start to put them in scenarios where
18 it's a little more gray where, depending on the
19 officer, maybe they use deadly force, maybe they don't
20 use deadly force.

21 So if I can use an example of we often put
22 officers in a ground fight situation where they're
23 wrestling around on the ground with the person and
24 we'll put them in the worst position possible, which
25 is on the bottom.

Examination of Michael Brooder

1 Well, depending on who the officer is and
2 depending on who that suspect is, which are perfectly
3 random in our training on purpose, they could use
4 physical force to get that person off of them.

5 If, for example, the person on the bottom is
6 large and strong and maybe skilled in Brazilian
7 jujitsu or the person on the bottom is not large and
8 strong and they're not skilled in Brazilian jujitsu,
9 but the person on top of them is large and strong.

10 So we start to -- to weave those scenarios
11 in, which require a lot more kind of individualized
12 attention and nuance per the situation. Does that
13 answer your question?

14 Q Yeah, it does. And so it -- to the extent
15 that any -- I guess kind of building on that, the
16 extent that any of your use-of-force training directly
17 intersects with firearms training --

18 A Yeah.

19 Q -- is there sort of a range of exercises
20 that offers sort of more of a controlled environment
21 with sort of an expected response kind of all the way
22 to the extreme of there's none of that present?

23 A So that would be the very beginning where
24 we -- where we are in -- inputting a lot of nuance or
25 kind of gray areas.

Examination of Michael Brooder

1 So, for example, when we very first start,
2 we will present somebody a suspect who -- I'll just
3 give you two examples on -- they -- they would expect
4 to encounter on day-one scenario training.

5 One is a person who immediately draws a
6 knife and sprints across the room. And the knives we
7 use are specifically designed for the training and
8 they have an electrical current that runs on the
9 outside. So it actually puts a little bit of fear and
10 surprise into the officers.

11 And our expectation is that they would move
12 their feet, draw their gun, get to cover and -- and
13 shoot that suspect who's literally yelling at them,
14 "I'm going to kill you," and is chasing them at high
15 speed with a knife.

16 Q Okay.

17 A On the other end of the spectrum is we'd
18 give them another scenario where we have a suicidal
19 person with a knife at range, sitting on the floor,
20 not moving around very much, maybe they're on a bench.
21 And they're not saying anything threatening.

22 They're simply expressing the fact that they
23 may want to kill themselves. And in that scenario,
24 we'd be looking for them to deescalate and use crisis
25 intervention techniques that they would have learned

Examination of Michael Brooder

1 in other classes or maybe for -- for the CONSIM
2 academy.

3 Q Okay.

4 A And so those are two ends of the spectrum
5 where we give them a -- a -- you know, a person with a
6 knife and we have completely different expectations of
7 how they're going to respond to that.

8 Q Okay. So you've described some of the
9 threats that they're trained to respond to as being,
10 you know, people with knives, people with a firearm --

11 A Yep.

12 Q -- people doing maybe dog -- dog piling in a
13 huge group. To what extent, if any, does a vehicle as
14 the active threat come into play in your training
15 tactics?

16 A That'd be zero.

17 Q Okay. And so why is that?

18 A Safety is our number-one issue. It's -- we
19 talked about it and we know it's a -- and it's an
20 issue for real officers in the real world.

21 There's just no way to safely train for an
22 officer to have a car drive at them and then see if
23 they'll move out of the way versus if they'll use
24 deadly force 'cause, quite frankly, a -- a fail on
25 that one is -- is not hurt feelings.

Examination of Michael Brooder

1 It's -- you know, it's a (indiscernible)
2 'cause we run them over; and, you know, we just get a
3 new student later and it's fine. Obviously, that's
4 not a safe way to train. We can't do that. We can't
5 drive cars at them.

6 We have a video simulator system where we
7 could try to simulate that, but it's -- it's obviously
8 a video simulator. And -- and we run scenarios with
9 bad guys who sprint at the camera and very rarely do
10 you see the officers trying to lunge sideways 'cause
11 there's nowhere to go.

12 The camera -- the screen is right in front
13 of them, so they -- they kind of just plant their feet
14 and deal with the problem, whether that's with deadly
15 force or a Taser or something like that.

16 Q Okay.

17 A So it's just really hard to simulate safely,
18 which is why we don't do it.

19 Q Okay. All right. Do they receive any
20 training that has anything to do with how to respond
21 if it's a class -- more of a classroom setting, not
22 tactical, to a vehicle, as, like, a -- a moving
23 vehicle as an active threat?

24 A We talk about it, I don't want to say, at
25 length, but the discussion comes up in a couple of

Examination of Michael Brooder

1 different ways. When we're talking about, for
2 example, whether somebody could use force to prevent a
3 suspect from evading arrest by flight, well, there's
4 two primary ways people can evade arrest by flight.

5 One is they could run away on foot and the
6 other one is they could drive away. And we -- we do
7 discuss with the officers about the problems as far
8 as, like, trying to, quote, unquote, box them in where
9 they try to get around the car and keep them there
10 versus not being in the front of the car.

11 But those conversations are very organic.
12 Sometimes it -- and it's very class dependent. It
13 depends on the question the students may ask. It
14 might be a two-minute conversation. It might be a
15 20-minute conversation.

16 Q Okay.

17 A We discuss it, but at no real length.

18 Q Okay. All right. So as you sit here today,
19 do you have any specific knowledge of exactly when
20 James Doyle, you know, took basic academy or, you
21 know, what week he would have taken your initial
22 week-long use-of-force class?

23 A So it -- it isn't one week. It's spread
24 out.

25 Q Spread out. Sure.

Examination of Michael Brooder

1 A And so we do -- for example, one day might
2 be four hours. One day might be two hours.

3 Q Mm-hmm.

4 A It depends on the week, but if he came
5 through in 2018, which is when I think he would have
6 come through, we should have started use-of-force
7 training either week three or four at that time.

8 Q Okay. All right. Do you teach at all
9 about, you know, officers being mindful of expecting
10 to some degree, like, a -- a gap or a delay in their
11 response times to certain tactical events and
12 trainings that you run with them?

13 A Quite a bit.

14 Q And how do you -- how do you account -- how
15 do you teach for that?

16 A So there's a couple ways we do it. We
17 primarily use the video simulator I was discussing
18 earlier. And the reason is because it's got time
19 stamps on it.

20 So it'll actually measure down to the
21 thousandth of a second. They're equipped with a laser
22 pistol. It doesn't actually fire bullets. It fires
23 laser beams.

24 No real recoil, so it's not a perfect
25 substitution for their -- their firearm on the range,

Examination of Michael Brooder

1 but it's -- it's almost exactly the same except for
2 the fact that it doesn't go bang. We do it in two
3 primary ways, although the -- we -- it could come up
4 with any number of conversations.

5 But the two main ways we do it is we'll
6 actually run just targets for them to shoot at. And
7 it'll be on a beep, plus they'll get a visual
8 stimulus, which is the target will pop up.

9 And we'll have them draw and fire to see how
10 quickly they can do that and just to show that even
11 though there was a quote, unquote threat at the moment
12 the beep happened, which is when the -- the target
13 appears, it still takes them, if their gun is in the
14 holster, roughly a second and a half.

15 If their gun is out of the holster, it takes
16 them roughly a second to see it, recognize it and
17 respond to it. And that's just from doing it
18 thousands and thousands of times with students in the
19 simulator room.

20 Q Okay.

21 A That's one way we do it.

22 Q Okay.

23 A The other way we do it is actually we'll
24 refer back to those times when it comes to a scenario,
25 itself. So if we watch a scenario where there's a

Examination of Michael Brooder

1 shooting and we'll talk about, when could you have
2 fired and do you think he was a deadly immediate
3 threat to you?

4 We can actually track back. And that's one
5 of the reasons we do the initial one with them, is
6 'cause I want to know, okay. If it takes them 2.2
7 seconds on -- you know, in the best-case scenario, to
8 draw and shoot their -- their laser pistol, well, in
9 their less-best-case scenario, I'm curious to see, are
10 they anticipating bad things happening or they -- are
11 they slow to respond to an immediate threat?

12 And so we'll track that video backwards
13 literally a ten -- tenth of a second at a time to when
14 the bad guy does the thing, whatever that thing is,
15 whether it's point a gun or whip a knife out and say,
16 "I'm going to kill you," to see whether or not they're
17 either going too early, like, they're using force too
18 soon or they're using force too late or if they're
19 about right where we would expect them to be.

20 And so we do that frequently with students.
21 And we often see a gap of anywhere from one-and-a-half
22 to two seconds as far as starting to act.

23 Q Okay. And does that involve -- the starting
24 to act involves from the -- the gun actually being
25 holstered when they start the act?

Examination of Michael Brooder

1 A Both.

2 Q Both? Okay.

3 A Yep.

4 Q Okay. And then so those scenarios that
5 you've described, are the officers -- are they prepped
6 with, like, "This is how it's going to run and if this
7 happens, you're going to do this and if this doesn't
8 happen, you're not" -- you know, that gives them a
9 level of instruction on what's --

10 A In --

11 Q -- expected?

12 A In the very beginning, we do --

13 Q Okay.

14 A -- but not for very long because we want to
15 know, how are they going to respond to an unknown
16 situation? They -- they get to interact with lots of
17 known situations, whether it's on the firearms range
18 or if it's in the defensive tactics building where
19 they're rolling around on the floor with a partner.

20 They're told by the instructors, "This is
21 what's going to happen and I want you to do this about
22 it." My environment is just trying to figure out,
23 what will they actually do when they don't know what's
24 going to happen?

25 Sometimes we give them some false alarms.

Examination of Michael Brooder

1 Sometimes we -- we kind of ambush them a little bit
2 and surprise them. But most of the time, if they're
3 paying attention, they should see some of the clues
4 ahead of time. And we don't give them a whole lot of
5 prep other than, "You just made a traffic stop for
6 speed. This guy was going 40 in a 25."

7 Q Okay. And then how does training in that --
8 in the course of these kind of various scenarios that
9 you've covered, how do you cover the decision to stop
10 using force and -- and how to -- how to train for that
11 best -- best-case scenario?

12 A So that's a -- that's a really good question
13 because we -- we get to see that a lot, which is,
14 depending on who the officer is, we can see where they
15 fired their last shot.

16 So when they -- we'll just continue to use
17 the deadly threat with a -- with a gun. If the bad
18 guy points a gun at them and they draw their gun and
19 they start shooting, I can tell when they -- I can
20 usually tell kind of when they made that decision
21 based on the earlier time -- time trials we did with
22 them on a target.

23 As far as the stop shooting response, that
24 is a little bit more officer specific. And we know
25 kind of a window of where they should. And we can

Examination of Michael Brooder

1 actually track, like, if the suspect is falling down
2 or dropping a gun or kind of leaning back in a chair.

3 We can tell when they were, quote, unquote,
4 not a bad guy anymore and we could see where it is the
5 average officer stops shooting. It usually takes the
6 average officer roughly a second to recognize, for
7 example, a suspect start to fall and drop their gun.

8 It takes them roughly a second to
9 understand, oh, I -- I stopped that person. I don't
10 need to shoot them anymore. The reason that's
11 important is 'cause we'll often see some officers who
12 we have to retrain or give additional training who
13 don't stop when they should and go way too long.

14 And then we have others who stop way too
15 early. Maybe they fired one round and it was
16 unsuccessful and then they're waiting for the bad guy
17 to fall and then they go, oh, no, I got to do it
18 again.

19 Q Okay.

20 A So that's why we -- we monitor that.

21 Q And is there sort of a hard-and-fast rule
22 that they're taught on how many rounds you fire and at
23 what distance are you assessing, like, how many rounds
24 is appropriate to fire or not appropriate to fire?

25 A No. And the reason is because, just like in

Examination of Michael Brooder

1 the real world, they don't always know when their
2 rounds are -- are hitting or being effective. They
3 don't know necessarily where their rounds are going.
4 And it really depends on the actions of the suspect.

5 If a suspect doesn't stop whatever that
6 action was that the -- that the officer responded to,
7 they're usually going to continue to try to use force
8 to stop them.

9 Q Okay.

10 A Some officer, they won't know where their
11 rounds are going until the bad guy falls. And then,
12 you know, I have to go backwards and show it to them
13 on the computer. But that's in a debrief screen.

14 So there is no, like, red dot or a puff of
15 blood or anything like that on the screen when they
16 shoot, so they won't know. And then the same thing
17 with the -- the live scenarios, the -- the rounds they
18 use, sometimes we use marking rounds, sometimes we
19 don't.

20 But they almost never see exactly where
21 they're getting hits on the person. They won't know
22 how effective they are until the -- the bad guy stops
23 being a bad guy.

24 Q Okay. So what are they taught as far as,
25 you know, like, when to -- how many times to shoot and

Examination of Michael Brooder

1 when you know that it's time to stop shooting. I
2 mean, is there a number of shots? Is it a one time
3 and then you reassess? Is it a -- whether the --

4 A Yeah. We -- we teach them to --

5 Q -- (indiscernible) --

6 A -- shoot until the threat stops being a
7 threat.

8 Q Okay.

9 A Now, that doesn't necessarily mean that they
10 fall down and die. It could mean that they give up.
11 It could mean that they run away. Stopping a threat
12 doesn't necessarily mean death. And, in fact, we --
13 we -- we reiterate that. We're not shooting to kill.
14 It could take two rounds.

15 It could take 20 rounds, especially if
16 they're not being very accurate. And they just have
17 to continue to use force and use cover until they are
18 no longer in danger of whatever that suspect is trying
19 to do to them.

20 Q Okay. All right. Let me look at my notes
21 here real quick. Just make sure I got some of the --
22 the -- the times that you mentioned, I heard a second
23 and a half. I heard 2.2 seconds.

24 I heard a full second to -- to realize that
25 the threat has ended and they can stop shooting in

Examination of Michael Brooder

1 that example. Are these based on your, you know,
2 13-plus years of experience and then prior to that,
3 you know, while you were part-time trainer or is this,
4 like -- are these, like, studies that you have studied
5 and incorporated into your training?

6 A There are studies that I've studied, but
7 this is not based on any of that. It's based on just
8 observations of officers for over a decade.

9 Q Okay. And so beginning with that sort of
10 1.5 second to 2.2 second, what -- what is the
11 significance of those times as far as response to a
12 threat initially?

13 A That's how long it takes them to -- to see
14 what's happening, understand that they have to act and
15 actually start to go through the physical motions of
16 reaching for their gun, unlocking all the safeties on
17 their holster or drawing it out, presenting that gun
18 in front of their face, lining up the sights and
19 pulling the trigger. And that's how long it takes
20 almost everybody to do it.

21 Q Okay.

22 A Obviously, some students are going to be
23 slightly faster than others if they've got a lot of
24 experience and training. You know, I -- I sometimes
25 see wild deviations.

Examination of Michael Brooder

1 That's why this is an average because most
2 students kind of hover around that -- that
3 one-and-a-half to two-second mark as far as drawing
4 out of the holster or coming from a -- a -- what we
5 would call a ready position. And that could be the
6 gun out in front of their body like this or that could
7 be the gun extended at arm's length, but down.

8 Q Okay.

9 A There's not a significant time difference in
10 a scenario between there. And I -- I should qualify
11 that with saying on the firearms range, they're faster
12 when their gun's out of the holster.

13 Q Sure.

14 A That's because the instructor on the
15 firearms range told them, "Hey, when the target turns,
16 I want you to shoot twice and then step to the right."
17 So they're told they're going to get in shooting.

18 Q Yeah.

19 A In the scenario, they have no idea if the
20 guy's going to drop the knife and put his hands up,
21 which we have scenarios where I can choose to do that,
22 where my -- my suspect can do any number of things.
23 If they draw their gun and they give the right
24 commands, I could say, "I want you to comply."

25 They don't know which one it's going to be.

Examination of Michael Brooder

1 And so because they don't know which one it's going to
2 be, it takes them longer to make that decision.

3 Q Okay. And so, I mean, based on your -- the
4 way that you've developed some of these training
5 programs, is that -- is that something that you offer
6 to be more akin to a real life, you know, when you're
7 in your police officer -- your -- a police car,
8 rather, (indiscernible) training scenario?

9 A Absolutely.

10 Q Okay. And then the second that you
11 mentioned, is that, again, falling within -- within
12 that sort of average range of how long it might take
13 to -- to turn off something?

14 A Correct.

15 Q Okay.

16 A Yeah. That's -- like I said, that's an
17 average. That's -- out of a class of 40 students, I
18 would expect to see at least 25 to 30 in that -- that
19 one-second range, figuring it out. Not to name any
20 names, but the -- the officers who are not getting it,
21 they'll go longer.

22 And then the officers who don't want to use
23 force at all, they'll go a little bit shorter. But
24 for the most part, most of those officers are right
25 around a second.

Examination of Michael Brooder

1 MS. GIRT: Okay. All right. I think that's
2 all I was going to cover with you.

3 Do you have some questions?

4 Do you have questions, Sam?

5 MR. KAUFFMAN: No, I don't.

6 MS. GIRT: Okay. Do the jurors have
7 questions?

8 A GRAND JUROR: My -- my only question from
9 the little -- the little last bit was, how much of
10 that time within police training in those 16 weeks is
11 dedicated to firearm accuracy?

12 THE WITNESS: All of it.

13 A GRAND JUROR: All of it?

14 THE WITNESS: Yeah. They're -- they're
15 not --

16 A GRAND JUROR: Right.

17 THE WITNESS: -- allowed to be inaccurate.
18 Now, I'm not sure if I should -- I -- you didn't ask
19 the question, but I'm going to give a little feedback
20 on that anyway.

21 We know they're going to be less accurate
22 under real-world conditions. So when they're on the
23 firearms range, we expect as much accuracy as we can
24 get them to do in -- in a timely manner.

25 Obviously, you know, if we said, "You have

Examination of Michael Brooder

1 five minutes to -- to shoot four rounds," they're
2 going to be super accurate. So in the real world, we
3 know there are time constraints and so we have to push
4 them a little bit if you want them to be accurate.

5 What I can tell you is this: They're
6 significantly less accurate in scenarios than they are
7 on the firearms range.

8 A GRAND JUROR: Okay.

9 BY MS. GIRT:

10 Q And I guess I'll just build one question on
11 top of that. Do they -- firearms range, does that
12 include moving targets, not just stationary targets?

13 A Yeah. It includes moving -- the officer
14 could be moving. The target could be moving, multiple
15 targets on the -- on the range. Quite honestly, the
16 real issue with the range is they're not under
17 pressure.

18 Q Okay.

19 A There isn't somebody shooting at them with a
20 gun with rounds that hurt. They're not being chased
21 by a person with a shock knife. They're not
22 surprised. They were told all the things they were --
23 and they were literally given an example of, like, "Do
24 it just like this."

25 So they're always going to be much better on

Examination of Michael Brooder

1 the firearms range than they are in scenario training.
2 In scenario training, we -- we see wild variations in
3 accuracy.

4 Q Okay. And this may be sort of a -- a silly
5 question, but I'll ask it anyway. Is there -- or do
6 the officers that you have trained tend to be less
7 accurate or -- or more accurate if it's a moving
8 target?

9 A Less accurate.

10 MS. GIRT: Okay.

11 A GRAND JUROR: How fast are the targets --
12 I mean, I know -- I don't know if you can, like,
13 change how fast they move, but on average, do you know
14 how fast --

15 THE WITNESS: On the --

16 A GRAND JUROR: -- those targets --

17 THE WITNESS: -- firearms range?

18 A GRAND JUROR: Yeah.

19 THE WITNESS: I don't think I've ever timed
20 it. They move about like this.

21 A GRAND JUROR: Okay. So pretty -- so --

22 THE WITNESS: They're --

23 A GRAND JUROR: -- moving, but not --

24 THE WITNESS: Their move --

25 A GRAND JUROR: -- like, you know --

Examination of Michael Brooder

1 THE WITNESS: They move --

2 A GRAND JUROR: -- super --

3 THE WITNESS: -- smoothly. They don't move
4 like a person.

5 A GRAND JUROR: Okay.

6 THE WITNESS: Yeah.

7 MS. GIRT: Okay. Good question.

8 Any other questions?

9 All right. I think we can have you step
10 out. Thanks.

11 THE WITNESS: Okay.

12 MS. GIRT: So go ahead and have you step
13 out.

14 And then here's my question to pose for you
15 guys real quick. We need to take a break. We've got
16 one witness after who should literally take five
17 minutes, very quick. And I was thinking, let's get
18 him in before we break. Does that work?

19 A GRAND JUROR: Yep.

20 A GRAND JUROR: Yeah.

21 MS. GIRT: Okay.

22 A GRAND JUROR: That's fine.

23 MR. KAUFFMAN: I think we're still on the
24 record.

25 MS. GIRT: Oh, let's -- yeah. We can --

Examination of Adam Wright

1 actually, you can leave it on the record.

2 MR. KAUFFMAN: Oh.

3 MS. GIRT: (Indiscernible).

4 MR. KAUFFMAN: Sorry.

5 A GRAND JUROR: No, you're fine.

6 MS. GIRT: Come on in. Thank you.

7 (Indiscernible).

8 ADAM WRIGHT

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

11 MS. GIRT: You can have a seat.

12 And when you're ready, please tell us your
13 first and last name and spell both.

14 THE WITNESS: Adam Wright, A-d-a-m,
15 W-r-i-g-h-t.

16 EXAMINATION

17 BY MS. GIRT:

18 Q And you are a police officer with which
19 department?

20 A The Gresham Police Department.

21 Q And how long have you been a police officer
22 for?

23 A About 11-and-a-half years now.

24 Q And what is your current assignment?

25 A I'm assigned as a detective in our

Examination of Adam Wright

1 Investigations Division.

2 Q And were you assigned to that division in
3 May 31st of 2020?

4 A Yes, I was.

5 Q And were you peripherally involved in an
6 officer-involved shooting on May 31st of 2020?

7 A Yes.

8 Q And what was your role?

9 A I actually got called the -- early the next
10 morning just into June 1st by one of our investigation
11 sergeants. He initially asked me just to respond to
12 assist with the investigation.

13 Once I got to the Police Department, he told
14 me our command staff was -- needed some assistance
15 downloading some body-worn camera video footage.

16 Q And you were not the one that actually
17 collected the footage, itself?

18 A So I exported it from the -- back up. I
19 didn't collect the cameras, themselves, or move the
20 footage from the cameras to kind of the cloud storage
21 system that retains it.

22 That had already been done. My part was to
23 take the video and the associated files out of the
24 cloud storage and provide them to the Portland Police
25 investigators.

Examination of Adam Wright

1 Q Okay. And how do you do that?

2 A So our cameras operate where the camera's
3 just a local recording device. When it's docked, the
4 software on it automatically uploads that video over
5 an internet connection to a cloud-based storage system
6 that's accessible through any internet browser.

7 My part was then to go into that storage
8 system, find the videos from the various officers that
9 were involved. In this case, I ended up tagging them
10 with some information such as, like, case number.

11 And it has built-in automatic retention
12 periods for these purposes. 'Cause it involved a
13 death, we are going to retain that indefinitely, so I
14 overrode that.

15 And then there are some built-in sharing
16 features to the software. Those vary depending on
17 your level of kind of program access and your need.

18 In this case, it needed to go to an outside
19 investigator, so I ended up downloading it, a copy,
20 out of the cloud onto my computer and burning it to a
21 disk to give to them.

22 Q Okay. And when you say it's available on
23 any internet browser, it's still a restricted access
24 to the cloud? Not -- I can't just go on Google and
25 access your --

Examination of Adam Wright

1 A Correct. You'd have to have a username and
2 password to get into the system. And then within the
3 system, each of those users kind of has a defined
4 role. Some are just end users that have a certain
5 level of access to view things.

6 Others may not even be able to view things,
7 but can do maintenance tasks all the way up to an
8 administrative kind of account that would have much
9 more full control to move recordings, delete
10 recordings that are, like, an accidental activation by
11 the camera or something like that.

12 Q Okay. And who all did you have footage for
13 that you downloaded?

14 A In this case, I had Officers Doyle, Walden,
15 DeLong and Sergeant Herrera.

16 Q Okay. And there was no footage for Officer
17 Hayes; is that right?

18 A Correct.

19 Q And did you actually check his physical
20 camera to confirm that there was, indeed, no video on
21 it?

22 A Yes. I went back to the docking station and
23 all the cameras are identified with the officer's
24 DPSST number on the camera.

25 I checked that camera and Sergeant Este's

Examination of Adam Wright

1 (phonetic) camera, who was also on scene, and
2 confirmed there was no video on theirs that had been,
3 as far as I could tell, properly set up to upload any
4 video had it been there.

5 Q Okay. And at this point in time, was your
6 guys' program still relatively new?

7 A Yeah. The cameras, at this point, we'd
8 selected a vendor and begun rolling them out
9 patrol-wide.

10 I don't know whether we'd actually rolled
11 out the cameras to our detectives and other units, but
12 it was still a -- a new program where the kind of
13 policies and the way they were used were evolving and
14 have continued to evolve since then.

15 Q Okay. And so you preserved a copy for
16 evidence, itself, and then also provided a copy to
17 Portland Police Bureau?

18 A Correct. I burned one disk that went into
19 actual physical evidence and then a second disk that
20 went to Detective Winters with the Portland Police.

21 MS. GIRT: Okay. I have no other questions.
22 Do you?

23 MR. KAUFFMAN: I don't.

24 MS. GIRT: Any of the grand jurors?

25 A GRAND JUROR: Nope.

Examination of Garrett Dow

1 A GRAND JUROR: No.

2 MS. GIRT: All right.

3 THE WITNESS: Thank you.

4 MS. GIRT: Thank you.

5 A GRAND JUROR: Thank you very much.

6 MS. GIRT: Okay. We can go off the record.

7 (Recess taken, 2:57 p.m. - 3:09 p.m.)

8 MS. GIRT: All right. And we're on the
9 record.

10 And, if you can, raise your right hand.

11 **GARRETT DOW**

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

14 MS. GIRT: Okay. All right. And when you
15 are ready, please tell us your first and last name and
16 spell both.

17 THE WITNESS: Yep. First name is Garrett,
18 G-a-r-r-e-t-t; last name is Dow, D-o-w.

19 **EXAMINATION**

20 BY MS. GIRT:

21 Q All right. And where is it that you work?

22 A I work for the City of Portland.

23 Q Okay. And are you a police officer?

24 A Yes.

25 Q And how long have you been a police officer

Examination of Garrett Dow

1 for?

2 A 20 years.

3 Q And has that always been with the City of
4 Portland?

5 A Yes.

6 Q And what division do you currently work in?

7 A Traffic division.

8 Q And were you working there on May 31st of
9 2020?

10 A Yes.

11 Q And how long have you been in the Traffic
12 Division?

13 A For five years.

14 Q Okay. And what is your role in the Traffic
15 Division?

16 A I'm a major crash investigator, so I
17 investigate typically crashes involving fatalities.

18 Q Okay.

19 A So I'm a traffic crash reconstructionist.

20 Q And what sort of specialized training do you
21 receive to become a crash reconstructionist?

22 A So I have, I think, 440 hours of training.
23 It starts out with basic on-scene investigations, how
24 to collect evidence.

25 It then moves on to advanced investigations

Examination of Garrett Dow

1 and then on to an actual reconstruction course, which
2 gets into mathematics, physics, learning how to
3 interpret the evidence, determine vehicle speeds,
4 directions, velocities, what happened and kind of put
5 -- put the scene back together and figure out what
6 happened based on the evidence that was collected.

7 Q So you're kind of working backward from the
8 crash scene?

9 A Yeah, yeah. You're there after it's already
10 happened and then trying to figure out what
11 precipitated to that point.

12 Q Okay. And did you become involved with an
13 investigation relating to an officer-involved shooting
14 that had occurred on May 31st of 2020?

15 A Yes.

16 Q And were you involved that night?

17 A No.

18 Q How and when did you become involved?

19 A It was in August -- or maybe June, actually.
20 June 22nd, actually, I believe it was, I became
21 involved.

22 Q Okay. And how did you become involved?

23 A I was contacted by Detective Winters of the
24 Portland Police Bureau's Detective Division and he
25 wanted me to do a workup on the speed of the

Examination of Garrett Dow

1 Chrysler 200 based on skid-mark evidence that he had
2 collected at the scene that day.

3 Q Okay. And did you ever go to the shooting
4 scene?

5 A I did visit it, yeah.

6 Q And why did you visit it?

7 A Two reasons. One was to see if I could
8 locate any tire evidence myself. I -- just a part of
9 the training that I attended is very detailed on
10 collecting information on skid marks, where they
11 begin, where they end, how to interpret them.

12 So I wanted to go back to the scene and see
13 if I could find any evidence myself. Unfortunately,
14 by that time, there was no more evidence of tire marks
15 on the -- on the ground.

16 Then the second reason is to do a speed
17 workup, you need to know what the frictional value is
18 of the tire and the road. So when a tire skids,
19 there's an actual -- it's called a coefficient of
20 friction, but it's a value that -- that helps to
21 determine how sticky the tire and the road surface is.

22 And so to get the best -- the best value is
23 we actually have a computer that we put in the car,
24 drive it 30 miles an hour and slam on the brakes and
25 skid.

Examination of Garrett Dow

1 And then the computer tells us what that
2 frictional value is. And so I perform those tests to
3 make sure we had the most accurate variables for the
4 formula that -- that I ran for the speed.

5 Q Okay. So you actually performed those
6 frictional tests on Southeast Kelly?

7 A Yeah. There isn't a more accurate way to do
8 it than to actually go to the scene and actually drive
9 over the same surface in the same direction.

10 Q Okay.

11 A Yeah.

12 Q And then that number is one that you plug
13 into the actual mathematical formula to help calculate
14 the speed?

15 A That's correct.

16 Q All right. And what is it that causes skid
17 marks?

18 A So skid marks are when you have the black
19 rubber. That's actually caused by the heating up of
20 the road. So it's not actually rubber that you're
21 seeing on the ground. It's actually more of the tars
22 and the oils that come out.

23 In fact, if you skid on -- on concrete, you
24 don't really see the black so much. It looks more
25 like a scrub mark. So it's -- so as you heat up the

Examination of Garrett Dow

1 asphalt, these oils come to the surface.

2 Q And that's what's actually creating the
3 physical mark?

4 A That can create the mark. There's other
5 evidence that can come. You can have debris on the
6 tires, maybe a pebble or something in there. And when
7 you skid on that, that'll leave scratch marks in the
8 ground as the tires lock up, too.

9 Q And so what sort of items of evidence did
10 you have to help determine where the skid marks were
11 from this Chrysler 200 had -- that had been involved?

12 A I had to depend completely on the
13 measurements taking -- taken by Detective Winters.
14 The pictures that he sent to me show small patches
15 that, you know, I'm only guessing that maybe they're
16 four inches long. But they're intermittent. Those
17 patches were white in color, so it looks more like --
18 like light pebbles that are on the tires.

19 And when the -- this Chrysler 200 is
20 equipped with anti-lock braking, so anti-lock braking
21 allows the wheel to roll and then when it locks, it
22 allows it to roll again and then it locks. And it's
23 so that the driver can maintain control of the
24 vehicle.

25 Well, those segments where it locks is where

Examination of Garrett Dow

1 you'll -- where I could see these -- these -- kind of
2 these white marks in the picture. And so it confirmed
3 that it was anti-lock braking, but I can't see in the
4 pictures black skid marks, so I don't know if they're
5 not present, if he saw them or not or if he was going
6 just based on seeing these white scuff marks that were
7 intermittent along the roadway.

8 Q Okay. And what does it take for a vehicle
9 to anti-lock brake?

10 A Well, I mean, assuming the vehicle's
11 equipped, then it's simply a wheel-speed sensor that
12 noticed -- that determines that the wheel speed has
13 gone to zero and so the computer unlocks the caliper
14 just for a split second to allow the wheel to turn
15 again.

16 And then when -- then it'll stop that cycle
17 and if the same input is causing the wheel to lock up
18 again, it just repeats. And it can happen multiple
19 times a second.

20 Q Okay. And does that have to be a pretty
21 sudden stop in order for that to happen or would it
22 just stop as I'm slowly rolling up to a stop sign
23 and --

24 A Well --

25 Q -- applying my brakes?

Examination of Garrett Dow

1 A Yeah, the -- it's designed for emergency
2 braking. So if you're braking hard enough to cause a
3 skid -- and, obviously, on different surfaces, that --
4 that is different. So, like, on a rainy surface, it
5 would take less braking.

6 This particular service had a very, very
7 high coefficient of friction, one of the highest that
8 I've measured around the city, so -- and it was dry.
9 So in order to do that, it would require probably
10 maximum braking, like, the pedal to the floor.

11 Q Okay.

12 A Yeah.

13 Q And so were you able to calculate enough
14 information -- or collect enough information to
15 determine what the actual speed was or --

16 A Yeah.

17 Q -- an estimate of what the speed was?

18 A Yeah. So there's only two variables that I
19 need for the -- for the equation. And that's the
20 coefficient of friction, which we got with the
21 computer. The other one's the distance, which is the
22 measurement.

23 So when I plug those two in, that can give
24 me what's called a -- a minimum speed value. So it's
25 typically conservative. It won't overestimate. If

Examination of Garrett Dow

1 anything, it underestimates. But the actual name of
2 the equation is -- it's the minimum-speed equation.

3 Q And just to -- behind you, I've got the
4 computer screen up. Are these -- this photo, the
5 first one, is this one of the photos that you were
6 provided with by Detective Winters?

7 A Yes.

8 Q And how about the second photo?

9 A Yes.

10 Q Okay. And the actual photos, themselves,
11 how much help were they in your calculation?

12 A I -- zero. I had to get everything from his
13 work.

14 Q Okay. So it was more of his being on scene
15 having taken the measurements or an officer taking the
16 measurements and then you being provided with those
17 measurements from that night of the skid marks; is
18 that right?

19 A Yes, that's correct.

20 Q Okay. So what was the minimum speed?

21 A So the -- the distance I took was what he
22 gave me to the rear tire. The reason why I use the
23 rear tire is the -- is the assumption that when a
24 vehicle goes into anti-lock braking, that all four
25 wheels are beginning to brake at the same time.

Examination of Garrett Dow

1 And -- and then because there's distance
2 between those wheels, that the first skid you will see
3 beginning into the skid will be from the rear -- rear
4 wheel. That's the assumption. And then you measure
5 that to the rear wheel and that gives you the shortest
6 distance.

7 And so that's the first calculation that I
8 did. And that result was -- was 14.22 miles per hour.

9 Q Okay. And that's a conservative --

10 A That's conservative. I -- I -- you -- I
11 can't tell here because there were additional marks in
12 front of the tire. I don't know if -- if these marks
13 are actually caused by the front tire.

14 So if they're actually caused by the front
15 tire, I ran that again because I know the wheelbase of
16 that vehicle. And I ran that again. So I ran that
17 speed. Is that a speed you'd like to hear also or --

18 Q Yes.

19 A Okay. So when I run to the front tire,
20 it's -- it's 20.56 miles per hour. So you can see
21 where going to the rear ends up being the most
22 conservative value.

23 MS. GIRT: Do you -- any of you have
24 questions based off of that (indiscernible) so far?

25 BY MS. GIRT:

Examination of Garrett Dow

1 Q So then you also conducted a CDR download in
2 this case; is that right?

3 A Yes.

4 Q What is -- what does CDR stand for?

5 A Sure. So the car is equipped with airbags.
6 And so there's a computer in the vehicle that controls
7 when the airbags are deployed. So certain events have
8 to occur in order to deploy those airbags. This
9 computer's called an airbag control module. We call
10 it CDR because Bosh makes -- it's called the CDR tool
11 that we can plug in to the computer and download data
12 from that airbag control module.

13 Now, even though the airbags don't deploy,
14 it doesn't mean that the system doesn't collect data
15 because there's something called a nondeployment event
16 where it -- it sensed a -- if you will, a trauma to
17 the vehicle that woke up the algorithm, but then the
18 algorithm decided -- can decide that there is or is
19 not enough trauma, if you will, to -- to deploy the
20 airbags.

21 But it will still maintain and record that
22 data in the car. So it's always worth taking a look
23 to see if it's there because you can't tell if the
24 data's there by looking at the car. You have to
25 actually plug it in and download it. So I did that.

Examination of Garrett Dow

1 I downloaded this vehicle.

2 There was a nonevent in there. However, the
3 nonevent was about 1500 ignition cycles previously.
4 So there should only be one additional ignition cycle,
5 right, from the -- from this until I -- I have to turn
6 the car on in order to download it so that you would
7 get an increase of one ignition cycle.

8 So 1500 ignition cycles tells me that this
9 wasn't this event, so some other event had occurred
10 not related to this that was on the box. So my
11 conclusion is there was no data related to this event.

12 And that would match my training and
13 experience because, typically, you need to get a
14 reduction in speed, like, a split second reduction in
15 speed of about 17 miles per hour to cause the computer
16 to wake up.

17 And unless -- and it usually takes a really
18 hard curb strike or really -- or running into another
19 vehicle. Even running into a pedestrian typically
20 won't cause the computer to even see that trauma and
21 so you'll get nothing. So I guess a long story short
22 here is there's no data related to that event on the
23 -- on the computer's airbag control module.

24 Q And the speed that you calculated, was that
25 -- that would have been at the time of the braking

Examination of Garrett Dow

1 beginning?

2 A Yeah. So the only thing I know is that --
3 and this is only if Detective Winters' measurements
4 are correct, meaning they weren't actually longer and
5 -- you know, if he's not trained to be able to find
6 this. But what I -- what I can't tell from a skid
7 mark is, was the vehicle rolling a constant velocity,
8 like, coasting and stop or was it accelerating?

9 All I know is, from that point to that
10 point, it was braking and so that speed was a minimum
11 of 14 -- about 14 miles per hour when the braking
12 began, but I can't tell you what the car was doing
13 before it hit the brakes.

14 Q Okay. And do you have any training or any
15 experience with regards to pedestrians being struck at
16 similar speeds?

17 A So I have 80 hours of training with courses
18 of pedestrians versus motor vehicle collisions. One
19 of them was for daytime and one -- the other one was
20 for nighttime and inclement weather. So, yeah, I do
21 have quite a bit of training.

22 And -- and then my experience, being a fatal
23 crash investigator, I probably -- as I rotate through
24 the cycle, probably go to five or six pedestrian
25 fatalities a year.

Examination of Garrett Dow

1 Q Okay. And what sort of trauma can a vehicle
2 cause at those speeds?

3 A So at 15 to 20 miles per hour, it's
4 considered most likely survivable. It's when you
5 start getting speeds above 25 miles per hour that the
6 likelihood of death, the percentage increases. That
7 being said, I've been to two different fatalities of
8 people that were hit at low speed, just even five
9 miles per hour in a crosswalk, just enough speed to
10 knock them over.

11 And they struck their head on the ground and
12 the impact with their head on the ground was enough to
13 cause their death.

14 Q Okay. And when you say, "likely
15 survivable," how does that kind of fit in with serious
16 physical injury?

17 A Well, so I -- I guess what I'm talking about
18 is percentage. So it's not 100 percent survivable.
19 It's, you know, maybe 20 percent of people are more
20 likely to -- to die at -- at those lower speeds. And
21 then if you get to 55 miles per hour, you get up
22 closer to 80 to 100 percent likelihood of death.

23 So the -- the injuries -- I mean, I don't
24 typically go to crashes where somebody got hit and
25 they walked away from it or they just went to the

Examination of Garrett Dow

1 hospital with minor injuries.

2 I go to the ones where -- where people were
3 seriously injured. Vehicles, this one in particular,
4 probably weighs 2500 pounds. Force equals mass times
5 acceleration. That's something I think we learn in
6 school.

7 And so when you have a vehicle that weighs
8 2500 pounds and it's doing 14 miles per hour, put that
9 into 20 feet per second and it -- and it strikes a
10 human who weighs 200 pounds and is not moving at all,
11 the car will win every time.

12 So at the very least, at that speed, at --
13 at 14 miles per hour, I expect to see, with a car like
14 this Chrysler, into -- I could see it breaking very
15 easily femur bones, breaking knees and -- and then
16 lower leg bones.

17 And then -- and then in addition to any
18 injuries that would occur based on the fall,
19 especially if you're unable to catch yourself and your
20 head hits, all of us are tall enough when we stand
21 that if we were to be pushed over and land on our
22 heads without having our arms or whatever to break the
23 fall, the -- the chance of serious brain injury is
24 significant.

25 Q And then how -- for pedestrians, how do

Examination of Garrett Dow

1 headlights and dark conditions affect a pedestrian's
2 ability to perceive how quickly a vehicle is coming at
3 them?

4 A Closure? So -- so the human -- human brain
5 and the human eye, there's being able to see it and
6 then there's -- and then there's perceiving it and --
7 and responding to it. So our human eyes are -- and
8 our brains are much better at processing speed of
9 vehicles that are moving across, like, left to right
10 or right to left.

11 But as they move closer to head on, we
12 become less able to accurately determine vehicle
13 speed. And to take -- an example of that is -- is if
14 you're at a traffic signal or -- or an intersection
15 and you want to make a left turn and vehicles are
16 coming at you, it's much more difficult to determine
17 how fast a vehicle is approaching at you versus
18 crossing in front of you.

19 And so we get these left-hand turn
20 collisions, but we also get many times pedestrians
21 being hit in crosswalks 'cause they look down the
22 street, car's coming at them.

23 It's that head-on situation. And the way
24 the eye works is it's trying to -- because we have two
25 eyes, we -- it's stereo vision, but it's trying to

Examination of Garrett Dow

1 determine depth.

2 And with two eyes, it's easier, but when it
3 comes to vehicles, especially at nighttime, there's a
4 couple of things at play. One, your eyes can actually
5 sense how much your retinas are bulging 'cause your --
6 they change -- you know, the lens changes in order to
7 see something up close or further.

8 So your brain can detect that and try to
9 determine distance, but that has to be relatively
10 close for your eyes to actually change the lens.
11 There's also a convergence of your eyes, so as
12 something gets closer, your eyes converge in to see
13 them. And then when it comes to vehicles, typically
14 what humans do is they look at the two headlights.

15 And the further down the headlights are, the
16 closer they are together. And think about railroad
17 tracks. If you stand on railroad tracks and look
18 down, as you look further down the tracks, it looks
19 like the tracks come together. And so we begin to
20 determine distance by how close those tracks are.

21 Well, we do the opposite with vehicles. We
22 see how far the -- or how close the headlights are.
23 And it gets closer and they get further apart. We
24 look at that as a clue to how close the vehicle is.
25 This -- we -- and we base this based on our past

Examination of Garrett Dow

1 experience with the same situation.

2 So when we make a left turn to go in our
3 neighborhood, we're used to seeing the vehicles come
4 at us and we get used to what the probable speed is so
5 that we can make those safe turns. But then you get
6 the one car that's doing double the speed limit and
7 you're surprised.

8 And if this has happened to you before, this
9 is an example of the reason -- or the problem with
10 trying to estimate speed when it's coming head on as
11 opposed to across your vision. So in the nighttime,
12 it makes it exponentially worse because you don't have
13 landmarks to judge the distance that the vehicle is.

14 You're depending on the -- the convergence
15 or divergence of the headlights as they're getting
16 wider. And that is a particularly poor way to figure
17 out how close a vehicle is to you.

18 Q So is that -- in looking at the headlights
19 and kind of seeing how they're coming, is that a good
20 way to judge speed of a vehicle?

21 A No, it's poor. And for many reasons. One,
22 many vehicles that -- the -- the width of the
23 headlights are -- are not the same.

24 Take a Jeep. You know, Jeeps tend to have
25 closer headlights. And you could have a Cadillac with

Examination of Garrett Dow

1 very, very wide headlights or a big SUV. It's
2 because, as humans, that we focus on that.

3 It's the reason why we tend to see more
4 pedestrian incursions with cars and these fatalities
5 at night as opposed to the daytime because we're
6 focusing on this. The only information we have
7 available to us -- and it's not sufficient enough to
8 overcome -- or to -- to judge the speed of the
9 vehicle.

10 So -- and these are done by -- there's a
11 study between Olsen (phonetic). In Olsen, the
12 scientist who did the study gathered and looked at
13 information from several studies and all of these
14 studies said that these head-on, coming-at-you type
15 encounters, that humans are particularly poor at
16 judging the speed.

17 In my own experience, when I've used a radar
18 gun and I sit on the side of the road and have cars
19 coming at me using radar, after a few cycles of cars
20 coming through with the radar, I can begin to kind of
21 get an idea of how fast the car is going.

22 But, again, this is an example of I'm using
23 experience of what I just saw in order to be able to
24 judge their speed. By law in Oregon, I have to judge
25 the speed visually before I confirm it with the radar

Examination of Garrett Dow

1 gun, so we have to do that traffic study.

2 So then I got, in my opinion, very, very
3 good at determining speed within a couple miles per
4 hour, but then put me in a vehicle and go head on,
5 especially if you're -- I'm moving and I just can't
6 do it.

7 I can't figure out how fast the other car is
8 going. And then I got in a vehicle that had moving
9 radar, so you could radar while you're moving. And a
10 car goes by and it -- it's surprising how fast cars go
11 by that you think are just going a normal speed.

12 You just -- it -- it just -- with my own
13 experience to prove all these studies that you -- just
14 this head on, it just can't judge speed. And even for
15 me in the daytime --

16 Q And --

17 A -- being able to have the benefit of a radar
18 gun to really prove to you that it's really, really
19 difficult to do.

20 Q Okay. And can the sound of an engine kind
21 of flooring it or revving kind of full throttle, can
22 that be a good indicator as to how fast a vehicle --

23 A So you're --

24 Q -- is going to go or is going?

25 A So you're going to use all of your senses to

Examination of Garrett Dow

1 determine the speed. And so hearing is one of them.
2 And example is recently, I -- I -- we went to trial on
3 a pedestrian who was struck. And the pedestrian --
4 one pedestrian was struck and the other one was not.
5 And the comment at the scene was, "We didn't hear the
6 engine revving," and so they thought it was doing the
7 speed limit.

8 So an engine revving would be an audible
9 indicator to somebody that the vehicle was probably --
10 I mean, I'll just -- if you go to the extreme that it
11 was floored and -- and causing high RPMs and if a
12 vehicle's running high RPMs, well, obviously, it's
13 accelerating.

14 And if you can't tell how fast it's
15 accelerating, your ears are telling you that it's --
16 it's accelerating.

17 Q Okay. How about the dipping or rising of
18 headlights?

19 A So the vehicle is on a suspension system.
20 And that suspension system is designed to soften the
21 ride through bumps, but it has the unintended
22 consequence of also shifting during turns or
23 accelerations and decelerations.

24 So if you slap on the brakes really hard,
25 the front nose will dip down. The reason for that is

Examination of Garrett Dow

1 'cause all the weight shifted to the front, the
2 suspension feels the weight and it compresses.

3 So during acceleration, the opposite
4 happens. The weight shifts to the back. The rear --
5 the rear suspension will compress and then that will
6 cause what would look like the headlights to rise,
7 right?

8 'Cause the angle of the -- of the chassis of
9 the vehicle shifted as opposed to the road. And, of
10 course, the more acceleration that is entered in, the
11 more weight that's shifted more violently, which will
12 cause a more obvious rise to the headlights. Yeah, I
13 agree with that.

14 MS. GIRT: Do -- anyone else have questions?

15 Yes.

16 A GRAND JUROR: I have one. You mentioned
17 needing the coefficient of friction and stopping
18 distance to -- to produce this estimate.

19 THE WITNESS: Mm-hmm.

20 A GRAND JUROR: Do you enter other factors?

21 Make and model of the vehicle --

22 THE WITNESS: No, it's --

23 A GRAND JUROR: -- condition of the --

24 THE WITNESS: -- it's actually --

25 A GRAND JUROR: -- roadway, tires?

Examination of Garrett Dow

1 THE WITNESS: Yeah. It's actually not
2 necessary for --

3 A GRAND JUROR: Okay.

4 THE WITNESS: -- for driving. So the
5 equation, if you wanted to write it down, it's 30,
6 which is -- which is gravity -- 29.92, we round to 30
7 -- times distance times F, which is coefficient of
8 friction. Then you take the square root of that.

9 And the reason why that formula comes in is
10 because it doesn't matter the way the vehicle -- it --
11 nothing that -- none of that matters. It's the
12 coefficient of friction to the ground. That is what's
13 causing the vehicle to stop. The weight doesn't
14 matter.

15 The weight comes into more effect on an
16 acceleration factor. So -- and this is a deceleration
17 factor. So weight -- weight doesn't matter, size of
18 the tires don't matter. Corvettes can't stop any
19 faster than Toyota Tercels. It's --

20 A GRAND JUROR: Okay.

21 THE WITNESS: It doesn't matter. Yeah.

22 MS. GIRT: Any other questions?

23 A GRAND JUROR: So you said that the airbags
24 on the vehicle would trigger if the stop was more
25 than, I believe it was 17 miles --

Examination of Garrett Dow

1 THE WITNESS: 17 --

2 A GRAND JUROR: -- per hour?

3 THE WITNESS: -- is right about the -- what
4 they call the change in velocity.

5 A GRAND JUROR: Mm-hmm.

6 THE WITNESS: And it has to happen in -- in
7 a fraction of a second.

8 A GRAND JUROR: Okay.

9 THE WITNESS: So about -- about 17 is where
10 that is.

11 A GRAND JUROR: Right. So if the airbags
12 were not deployed in this car, then we can assume from
13 that that either the stop was slower on the brake or
14 that the vehicle was going under 17 miles per hour at
15 the time of brake?

16 THE WITNESS: What we know from this -- the
17 picture is that the stopping here would have taken --
18 and I can actually do math on how long the stop
19 would --

20 A GRAND JUROR: Mm-hmm.

21 THE WITNESS: -- take. But this is probably
22 a second and a half of --

23 A GRAND JUROR: Okay.

24 THE WITNESS: -- skidding. So if you have
25 -- let's say you were doing 20 miles an hour --

Examination of Garrett Dow

1 A GRAND JUROR: Right.

2 THE WITNESS: -- and it took you a second
3 and a half --

4 A GRAND JUROR: Right.

5 THE WITNESS: -- to stop. That delta V,
6 that change in velocity didn't occur in that .2
7 seconds.

8 A GRAND JUROR: Mm-hmm.

9 THE WITNESS: It occurred over a second and
10 a half.

11 A GRAND JUROR: Okay.

12 THE WITNESS: So you have to consider the
13 time and the -- and the speed change. So --

14 A GRAND JUROR: Okay.

15 THE WITNESS: -- how much speed changed over
16 time. And it has to be a very short time. If you
17 strike a wall and that -- you know, let's say you're
18 doing exactly 17 and you struck a wall and the airbag
19 went off. It went off because you stopped as quick as
20 you can snap your fingers.

21 A GRAND JUROR: Mm-hmm.

22 THE WITNESS: That's what causes that
23 airbag.

24 A GRAND JUROR: Okay.

25 THE WITNESS: We wouldn't want our airbags

Examination of Garrett Dow

1 to go off on just hard braking even if we --

2 A GRAND JUROR: Right.

3 THE WITNESS: -- were flooring, right? We
4 want it to go off when we're going to stop so fast
5 that we can't hold our head --

6 A GRAND JUROR: Right.

7 THE WITNESS: -- from hitting --

8 A GRAND JUROR: Okay. Okay.

9 THE WITNESS: -- the steering wheel.

10 A GRAND JUROR: I got you.

11 THE WITNESS: Yeah.

12 A GRAND JUROR: Yeah.

13 BY MR. KAUFFMAN:

14 Q Can I clarify -- or ask a clarification? I
15 think you -- did you say that the -- not that the
16 airbags would deploy, but the airbag control module
17 would deploy; is that right? Or that there would be
18 some indication?

19 A So there's what's called an event and a
20 nonevent. An event --

21 Q Yeah.

22 A -- is when an airbag is told to fire. There
23 are other safety -- safety systems in your car, like
24 -- like your seatbelts have pretensioners that lock up
25 and --

Examination of Garrett Dow

1 Q Right.

2 A -- there's different things that happen. So
3 what can happen is over this quarter of a second or
4 less -- the computer is super fast -- it says, "Oh,
5 I'm starting to see velocity that's getting close to
6 where I might need to deploy airbag." So the
7 algorithm then wakes up and, let's say, pays more
8 attention, if you will.

9 And if the -- and if you took a line graph,
10 let's say if we're going on the line graph on this
11 change in velocity and we hit this one mark and the
12 car says, "Oh, this might be significant," it wakes
13 up, begins recording. If the line doesn't hit the
14 magic mark to deploy the airbags, then that's it.

15 But the computer will still record that
16 nonevent. And if it goes up over the line and the
17 airbags are deployed, then it will also record the
18 event.

19 There's nuances as to why it does that,
20 locked versus unlocked. And so in this case, this was
21 an unlocked event in the system, which means after
22 multiple of these, it could be overwritten, you know,
23 but the latest one's always in there.

24 But this is the way that they're required to
25 operate based on National Highway Traffic Safety

Examination of Garrett Dow

1 Administration law. So --

2 Q And do you know what the magic speed is for
3 the airbag event (indiscernible)?

4 A There isn't actually a magic speed.

5 Q Okay.

6 A So -- but when I say 17, that's based on
7 experts in the field doing testing with these vehicles
8 across many, many different models and makes of cars.
9 And their testing shows that it's about 17.

10 Q Right.

11 A It might be 15 in one car, it might be 20 on
12 another. But you're looking at a calculation that --
13 that the scientists for each one of these car
14 manufacturers and airbag manufacturers say, "We need
15 to deploy the airbag."

16 And that -- that the physics to that with
17 different -- I'm guessing with different
18 mathematicians or whatever maybe varies a tiny bit.
19 But to say 17, you're right in the ballpark. Yeah.

20 MS. GIRT: Any other questions?

21 All right. Thank you.

22 A GRAND JUROR: Thanks.

23 THE WITNESS: Yeah.

24 (Recess taken, 3:40 p.m.)

25 MS. GIRT: I'll have you remain standing --

Examination of Aaron Rasmussen

1 oh, we're on the record. Awesome.

2 MR. KAUFFMAN: (Indiscernible), yes.

3 MS. GIRT: Get you sworn in.

4 **RYAN RASMUSSEN**

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

7 A GRAND JUROR: Awesome.

8 MS. GIRT: All right. Go ahead and have a
9 seat.

10 THE WITNESS: All right.

11 MS. GIRT: And let's have you start by
12 stating and spelling your first and last name.

13 THE WITNESS: So my first name is Ryan,
14 R-y-a-n. And my last name is Rasmussen,
15 R-a-s-m-u-s-s-e-n. I'm a police officer with the City
16 of Gresham and I've been that way for about 16 years.

17 **EXAMINATION**

18 BY MS. GIRT:

19 Q Okay. And so what's your current assignment
20 with the City of Gresham?

21 A My primary assignment right now is patrol,
22 so I work --

23 Q Okay.

24 A -- the road.

25 Q All right. Do you have any other roles that

Examination of Aaron Rasmussen

1 you've taken on within the department?

2 A I have several. So my main one is I -- I
3 run our firearms program. I've been running our
4 firearms program. I've been a firearms instructor for
5 about 13 years.

6 I've been in charge of the program for
7 probably 11 years. I'm an armor within our firearms
8 program, which means I can work on all of our
9 handguns, all of our rifles.

10 As a lead instructor, I'm responsible for
11 our curriculum, whatever we're setting -- whatever
12 we're training for that particular in-service cycle.
13 I'm sure we'll get into training, but I -- I run and
14 coordinate what we need for that. I'm responsible for
15 coordinating what new officers learn both pre and post
16 academy.

17 I'm responsible for -- if we have any
18 problem shooters or trouble with shooters down at the
19 academy, addressing that and sending instructors to
20 deal with those and address any issues with that. I'm
21 on our department SWAT team.

22 I'm a breacher within that SWAT team, which
23 means I'm responsible for getting an entry element
24 within a structure within a variety of tools. We use
25 rams and chainsaws and explosives and all kinds of

Examination of Aaron Rasmussen

1 things to make sure that that is a success -- a
2 successful mission. I wear a lot of hats within our
3 department.

4 Q Okay. And how did you -- how did you
5 exactly get into the training role?

6 A So I -- I was in the Marine Corps before I
7 was in -- before I was a police officer, I -- I
8 enjoyed teaching Marines.

9 So I came into -- I came into law
10 enforcement with that background. I was in for a
11 little over four years. I came out as a sergeant. I
12 was responsible for between 13 and 25 Marines by the
13 time I got out of that, so being able to mentor and
14 train people was enjoyable for me, so I came in with
15 that background.

16 And then having a firearms background, I got
17 into our program relatively young in my career. And
18 that's kind of just the trajectory I took. I was a
19 field training --

20 Q Okay.

21 A -- officer for a number of years. Probably
22 seven or eight years, I was a field training officer,
23 meaning I taught brand-new police officers.

24 Q Did that --

25 A I'm just going to --

Examination of Aaron Rasmussen

1 Q Did that overlap with your firearms training
2 role?

3 A It -- it did.

4 Q Uh-huh.

5 A It -- I really enjoy teaching brand-new
6 police officers how to do this job correctly, but I
7 just got to a point where I had too many things --

8 Q Okay.

9 A -- on my plate and I had to give something
10 up.

11 Q Okay. And so as a firearms trainer, we've
12 heard a little bit about, you know, periods of time
13 when there was training before basic and then -- and
14 then that kind of went away as there's not maybe as
15 much or even any training before basic at this point.
16 Are -- is there any firearms training that goes on
17 before basic academy with a new hire?

18 A Yes.

19 Q Okay.

20 A Yes. We've got a very set curriculum for
21 all of our police officers. We do a pre -- a
22 pre-academy class and a post-academy class. They're
23 just what they sound like.

24 Q Uh-huh.

25 A For a period, we will hire a police officer

Examination of Aaron Rasmussen

1 and for a period of time, they will be at -- they will
2 be with us, but they haven't gone to the academy yet.
3 There's a lot of administrative stuff that I'm sure
4 you've already heard a lot about. And one of those --
5 one of the main points is the range, is firearms
6 instruction.

7 And it's a three-day course. I've written
8 that -- I've written that criteria, that curriculum,
9 so it's -- the first day is -- it's classroom. It's a
10 lot of PowerPoint. It's issuing of gear. It's
11 explanation of concepts and fundamentals of
12 marksmanship 'cause we -- we get officers, brand-new
13 officers everywhere.

14 And from, I've never even handled a gun to,
15 I've been in the Marine Corps for 20 years and I was a
16 C2B handgun instructor. So we've got -- we've got
17 a -- a very broad program.

18 My program is geared towards someone who's
19 never handled a gun, even, like, new officer -- even
20 officers that come in with prior military or prior law
21 enforcement or, "I've shot a gun for a long time," I
22 start at the beginning 'cause you don't want to miss
23 -- you don't want to miss things.

24 There's a lot of fundamentals that are very,
25 very important to being accurate with a handgun. And

Examination of Aaron Rasmussen

1 so we start at the very beginning, so --

2 Q Okay. So that's a three-day course that's
3 pre-academy. Is there any other firearms training
4 that goes on pre-academy?

5 A Pre-academy, the first day's on the range
6 and the next two day -- or first day is classroom and
7 the next two days are at the range. That's -- that's
8 what they get before the academy.

9 Q Okay. And then they go down to the academy.
10 We've heard a little bit about DPSST and what goes on
11 there. And then they are done with that. And what
12 happens when they -- when they are done with that?

13 A So when we come back, the curriculum
14 transitions a little bit away from pre-academy, is,
15 this is -- this is how you are accurate with a -- this
16 is how you're accurate with a handgun. This is the
17 fundamentals. This is marksmanship.

18 And then when you get back from the academy,
19 they've got a -- they've got an understanding of how
20 to -- how to be accurate with a handgun, but then you
21 also have to do all of the additional skills of, how
22 do I reload?

23 How do I fix my gun? How do I move while
24 shooting? How do I engage multiple threats? How we
25 try and stress our officers to a -- a certain point on

Examination of Aaron Rasmussen

1 the range.

2 And how you do that safely on the range is
3 you either have a -- you time them, you give them time
4 restrictions or see how quickly they can do something
5 or you do some type of physical exertion with -- you
6 have them moving quickly to try and get their
7 adrenaline up, to try and give them some type of
8 stress response.

9 Q Okay.

10 A So there's three days post-academy. The
11 preface is I'm making sure they're -- all of those
12 skills are up to par. And then we also have to cover
13 our qualification. They will qualify the morning of
14 the third day.

15 Q Okay. And what does that mean, to qualify?

16 A So we have a standard qualification course.
17 It's 50 rounds. They have to score an 80 percent or
18 above. And that's just -- that's our -- that's our
19 benchmark 'cause they have to -- they have to be able
20 to qualify.

21 But they also have to show proficiency, so
22 if they can achieve an -- an 80 percent, but they're
23 really, really struggling to achieve that 80 percent
24 or their -- their -- their marksmanship skills are
25 okay.

Examination of Aaron Rasmussen

1 80 percent isn't okay. We usually drive
2 people a lot higher. But that's the minimum standard.
3 If they're doing -- if they're performing at 80
4 percent, but they're unable to manipulate their weapon
5 correctly, not loading it correctly or unloading it or
6 fixing it or recognizing malfunctions, that's not --
7 that's not demonstrating proficiency and we have to
8 give them additional training.

9 Q Okay. And then we've heard some information
10 about in-service and kind of topics being included in
11 some in-services and not in other in-services.

12 Is firearms training something that is just
13 separate from in-service training just in -- in that
14 it would continue kind of throughout the course of
15 somebody's career or -- or is it really dedicated to
16 in-service after that post-academy training?

17 A So we have -- the term "in-service" is used
18 for a section of training. So we have a firearms
19 in-service. We have a defensive tactics in-service.
20 And it's just with a handgun -- with firearms
21 specifically, we do two in-services a year.

22 We train twice a year for -- and as a lead
23 instructor, I'm responsible for coming up with
24 curriculum for those specific in-services. So we'll
25 kind of see what the national trends are, what's

Examination of Aaron Rasmussen

1 skills throughout your defensive tactics course. You
2 have to show solid decision-making skills. We'll talk
3 to your shift supervisor.

4 A certain amount of it -- you have to be a
5 police officer for at least two years. A certain
6 amount of it is shift need, if we have a -- a bunch of
7 officers on the shift that have rifles and very few on
8 this rifle -- or on this shift that don't, we'll
9 prioritize and we'll try and get that useful tool
10 around, but you have to be a police officer for a
11 couple years.

12 Q What are the advantages or sort of the kind
13 of best usages for a handgun, like Gresham carries as
14 their service weapon, versus a rifle?

15 A I think we need to talk about how handguns
16 work in order to answer that question --

17 Q Okay.

18 A -- effectively.

19 Q Well, let -- let me start that. Let me back
20 up --

21 A Yeah.

22 Q -- and just ask you, does everyone in
23 Gresham use the same type of handgun?

24 A Everyone in Gresham uses the same type of
25 handgun. We use a --

Examination of Aaron Rasmussen

1 Q Okay. And what -- what is it?

2 A We use a Glock 17 nine millimeter.

3 Q Okay. So what does that mean? What kind of
4 gun is that?

5 A So Glock is the manufacturer. The model
6 number's a 17, which identifies it as a full size --
7 full-size frame. There's different sizes of guns. So
8 this is a full-size duty handgun that's a nine
9 millimeter in caliber. And it's a capacity of 17 in
10 the magazine and one in the chamber.

11 Q Okay. And so uniform across the Department?

12 A Across the Department.

13 Q Okay. And then what kind -- is there one
14 kind of rifle that Gresham uses as well?

15 A We have a -- we have a specific type of
16 platform, but no specific manufacturer. So we carry
17 an AR-style platform.

18 Q Okay. All right. Well, let's start then
19 with -- just start with just sort of the basics of how
20 a handgun, the Glock that officers at Gresham carry,
21 how that works and how they're -- how officers are
22 trained as far as, you know, the -- the ins and outs
23 of how to holster it, how to load it, how to -- how to
24 draw it, that sort of thing.

25 A So how a handgun works is there's -- it's

Examination of Aaron Rasmussen

1 called a recoil-operated handgun. So there's a round
2 that's in it, a bullet that's in it that has a certain
3 amount of primer in it and a certain amount of powder
4 in it. And when I pull my trigger, a -- a pin, a
5 striker hits the back of the round, round goes off.

6 That creates energy. That energy sends the
7 bullet downrange, but it also causes enough energy to
8 cycle the slide. The top of the gun is the slide. So
9 that creates enough energy to cycle that slide and to
10 load another round. It ejects the old casing, it
11 feeds another round in.

12 I -- I release my trigger and if I need to
13 pull it again, I need to pull my trigger, with -- it
14 shoots one round per depression of the trigger. So
15 a -- that's -- and that's how a handgun works. Rifles
16 are -- are slightly different.

17 Q Okay. And so when you talk about, again,
18 being semiautomatic, does that -- is that a concept
19 that it basically tells you that the -- that the slide
20 is -- is putting another bullet in place after you've
21 fired one round?

22 A The -- a semi -- the definition of a
23 semiautomatic handgun is it will fire one round every
24 time I depress the trigger and will also -- it will
25 also reload.

Examination of Aaron Rasmussen

1 Q Okay.

2 A It will reload. I guess the difference
3 would be a revolver. A revolver is the kind of wheel
4 guns. And that doesn't eject that round. It still --
5 it still cycles -- it still cycles the cylinder, but
6 it won't eject that round.

7 There's also single-shot hand -- there's
8 also single-shot -- single-shot handguns that you'll
9 have to physically reload in order to do that. A
10 semiautomatic handgun, every time I depress the
11 trigger, it will -- it will send another round
12 downrange.

13 Q Okay. Up to 17 and one round?

14 A Up to 18, correct.

15 Q Sorry, up to 18.

16 A Yeah.

17 Q Okay. All right. And so as far as the
18 equipment and its placement, is there a set -- I mean,
19 you come in in your -- in -- with your vest on and,
20 you know, various tools attached to your vest. Where
21 are officers supposed to carry their handgun?

22 A So we -- we really only dictate where three
23 pieces of -- well, now, four with bodycams -- where
24 four pieces of gear are placed on our bodies.

25 The main one is our handgun. Our handgun

Examination of Aaron Rasmussen

1 has to be on our dominant side at 3 o'clock. And then
2 that's -- that's where our handgun is supposed to be
3 or has to be.

4 And then our Taser is supposed to be on our
5 support side. So there's a distinction and
6 delineation in -- in training to -- it's a
7 specifically different draw.

8 And then where our magazines are, our
9 support side. As close to center line as possible is
10 where our -- our reloads come from. And, now, our
11 bodycams are chest high.

12 Q Okay. And as far as bodycam placement, does
13 it matter what side of the chest?

14 A No. It's just got to be chest high
15 somewhere, wherever it fits in your gear.

16 Q Okay. And so the -- does everyone in
17 Gresham, are they issued the same type of holster?

18 A Yes, they are. There is --

19 Q Okay.

20 A There are different models of this type of
21 holster, but they are all manufactured by Safariland.
22 They're all triple-retention holsters, but there are
23 -- there are variations in model.

24 Q Okay. What is a triple-retention holster
25 mean?

Examination of Aaron Rasmussen

1 A Okay. So --

2 Q You've gotten out -- just for the record,
3 you've got some -- you've got some items in your --

4 A I've got some --

5 Q -- hands.

6 A --items.

7 Q So tell us about those.

8 A These are our holsters.

9 Q Okay.

10 A Triple retention refers to how many items I
11 have to unlock or manipulate in order to remove the
12 gun from my holster. The main reason for that is for
13 officer safety.

14 There are a fair amount of police officers
15 every year that are killed with their handguns. And
16 the way to combat that is to make it difficult for a
17 suspect or somebody we're fighting with to get our
18 handguns out.

19 We recognize that that -- that makes us
20 slower. It makes it more difficult for us to get our
21 handguns out. But the -- the benefit of that is it's
22 very difficult for somebody that doesn't know how to
23 manipulate this holster to get the gun out of the
24 holster.

25 I can pass this one around so you guys can

Examination of Aaron Rasmussen

1 see what I'm talking about. So the triple retention
2 refers to -- the first one is going to be this hood
3 over the top. And that holds the gun in. It -- it
4 makes it so it's -- so the gun will not come out. And
5 in order for me to draw my gun, I have to depress this
6 and then push it forward.

7 Q Okay.

8 A And then the second part of it is there's
9 actually a little thumb lever here that I have to pull
10 back and I have to -- I have to pull that and hold
11 that back as I draw my gun.

12 If I don't hold that back, it will lock onto
13 the gun. It won't -- it won't come out. And then the
14 third version of that is the -- the actual molding of
15 the -- of the holster makes it so I have to draw that
16 gun straight out.

17 You can't get it from an odd angle. So if
18 I'm fighting with somebody or someone's trying to yank
19 that gun out from behind me, unless they pull that gun
20 straight out, they can't get it.

21 Q Okay.

22 A So, again, it's the hood that you have to
23 depress and push forward. It's called an ALS lever
24 that you have to pull back, hold back and then remove
25 your gun and then the actual molding of the -- of the

Examination of Aaron Rasmussen

1 holster.

2 Q Okay.

3 A You have to pull straight out.

4 Q Okay. And so are there -- I mean, to your
5 knowledge, are there departments that use a more
6 simple version of a holster?

7 A I'm -- yes, I'm positive there are.

8 Q Okay.

9 A This is industry standard. This is -- most
10 major metropolitan departments will -- will use this
11 holster or something very, very similar because we
12 recognize the risk of -- of an individual being able
13 to pull our gun on us.

14 Q Okay. And so when officers come in, you
15 know, before basic academy, are these the kinds of
16 things, the skills that they learn as far as the
17 handling of their firearm and how to use a holster?

18 A Yes. One of the main things we teach and
19 cover a lot of is how to effectively and quickly draw
20 your handgun, how to manipulate all of these locking
21 mechanisms in a way that you can smoothly and quickly
22 draw your handgun.

23 Q Okay.

24 A We spend a lot of time on that.

25 Q Okay. And as far as the -- you know, you

Examination of Aaron Rasmussen

1 kind of did everything pretty streamlined 'cause then
2 you're very practiced at it, but is there some sense
3 of, like, delay that occurs for newer folks who are
4 getting used to that particular model and version of
5 their service weapon --

6 A It's --

7 Q -- in drawing --

8 A It's --

9 Q -- it?

10 A It's challenging to do. It's challenging to
11 get the timing correct, especially under some type of
12 stress. If there's -- that's fine motor skills. And
13 you'll find officers that, especially if you start
14 timing them or putting them under a little stress,
15 they'll -- there will -- they'll bind.

16 They'll -- they'll try and draw their gun
17 and it will hang up on the lever or it will -- they
18 won't get the hood all the way forward. So there --
19 there is a certain amount of practice that is
20 necessary for -- to be proficient with that style of
21 holster.

22 Q And have you found that -- that people that
23 come into your Department as new hires that have
24 military experience, are they generally more
25 proficient and start out at a more proficient level

Examination of Aaron Rasmussen

1 than others?

2 A It's -- you're probably going to have a more
3 proficient individual coming from the military.
4 There's a wide variety of jobs and individuals that
5 are in the military, so I wouldn't say that's always
6 the case, but if I have somebody that's in the
7 military, it's probably going to be -- they're
8 probably going to be a little more proficient with
9 those.

10 MS. GIRT: Okay. All right. And then I am
11 going to come back to the -- the rifle. And I also am
12 going to cover with you at some point the munitions
13 training and kind of what that involves.

14 But before I move on, just 'cause I -- and I
15 recognize in talking to folks that we've covered a lot
16 of content and sometimes the questions maybe dip back
17 a little bit. I don't -- I want to give you guys an
18 opportunity to ask any questions you have --

19 A GRAND JUROR: Yes.

20 MS. GIRT: -- as of right now.

21 THE WITNESS: Yes, sir.

22 A GRAND JUROR: I apologize if you already
23 answered this, but with your issued gun --

24 THE WITNESS: Mm-hmm.

25 A GRAND JUROR: -- you said it's, like, a

Examination of Aaron Rasmussen

1 semiautomatic.

2 THE WITNESS: Mm-hmm.

3 A GRAND JUROR: Do you have to squeeze the
4 trigger each time to unload a round or can you just
5 hold down the trigger?

6 THE WITNESS: So that --

7 A GRAND JUROR: And --

8 THE WITNESS: -- would -- I'm sorry, were
9 you done?

10 A GRAND JUROR: Or -- yeah.

11 THE WITNESS: Yeah, sorry. If I -- if I
12 am -- if I pull a trigger and I hold it to the rear
13 and it remains to the rear, that's the definition of a
14 fully automatic --

15 A GRAND JUROR: Okay.

16 THE WITNESS: -- handgun or a fully
17 automatic rifle. With a semiautomatic handgun or a
18 semiautomatic rifle, I have to pull the trigger, one
19 round goes off. I have to -- I have to release that
20 trigger to a point --

21 A GRAND JUROR: Okay.

22 THE WITNESS: -- where the gun cycles again
23 and then I depress that trigger again. So one round
24 for every trigger pull is -- is how -- is how our guns
25 and our rifles work.

Examination of Aaron Rasmussen

1 A GRAND JUROR: Okay.

2 MS. GIRT: Okay.

3 A GRAND JUROR: And is the -- the pressure
4 that is applied for subsequent (indiscernible) --
5 'cause you -- 'cause you mentioned you have to release
6 it far enough, but if that doesn't necessarily mean
7 it's all the way to the initial -- from the initial
8 pull?

9 THE WITNESS: Correct.

10 A GRAND JUROR: Right. I got it.

11 THE WITNESS: So the -- the -- the weight of
12 the pull is the same. The length of the pull is
13 different. So when -- when I have a -- this is not a
14 real gun.

15 It's a red gun. I think I'll -- I'll show
16 it to you so you can actually answer that question.
17 There's no live bullets in this. It doesn't shoot
18 live bullets.

19 (Gun cocking.) So you see on the -- this
20 is -- this is the size of our guns. It's the size of
21 the gun that I'm currently carrying. It's earlier
22 generation, but it's the same thing. So where the
23 trigger sits, it's fully forward in its resting
24 position.

25 I can pull that trigger to a certain point

Examination of Aaron Rasmussen

1 and it won't go off. Once that round goes off (gun
2 cocking) and it resets, it only needs to come back a
3 short distance in order for me to be able to pull that
4 trigger again. It's called trigger reset.

5 So the -- but the -- the weight, about
6 four-and-a-half pounds, remains the same for that pull
7 -- the length of the pull is slightly different.

8 MS. GIRT: Okay.

9 A GRAND JUROR: Got it.

10 MS. GIRT: All right. Great. Any other
11 questions about that before I move on to --

12 BY MS. GIRT:

13 Q Talk -- I want to cover before we jump into
14 some more of these other items that I already flagged.
15 I want to talk about Officer James Doyle. You know
16 who that is?

17 A Yes.

18 Q And outside of knowing him from -- from
19 work, are you friendly with him or social with him?

20 A I don't hang out with Officer Doyle. I
21 check on him with -- he's got some newer -- he's got a
22 new baby. I've got young kids. I check in on him to
23 see how he's doing, but that's about the extent.

24 Q Okay. And did you train him in firearms
25 when he was hired?

Examination of Aaron Rasmussen

1 A Yes. I did Officer Doyle's pre-academy
2 class and then I did his rifle class as well.

3 Q Okay.

4 A The rifle class is a 40-hour, four-day
5 course.

6 Q Okay. And so what year was he hired in?

7 A It was 2018.

8 Q 2018? So you did the three-day, pre-academy
9 kind of basic course with him. Sounds like you did
10 not directly do the -- the -- the -- the post-academy
11 class with him.

12 A No. One of my other instructors did the
13 post-academy classes.

14 Q Okay. But as far as the content of that
15 instruction, is it the same if you had taught it or if
16 your coworker --

17 A Yes.

18 Q -- had taught it? Okay. And is that
19 curriculum that you have helped develop, in fact, and
20 trained other officers to teach?

21 A Yes.

22 Q Okay. And so up until the point of this --
23 this incident that we're here to testify -- that we're
24 here to talk about today kind of in general, not the
25 specific incident, but the training leading up to it,

Examination of Aaron Rasmussen

1 what firearms training in total had Officer Doyle had?

2 A Well, he would have done his pre-academy
3 class, the advanced post-academy class and then he
4 would have done every in-service cycle up until that
5 point. And then he would have done his rifle basic --
6 or basic class, which is what I've said is -- is four
7 days, ten hours apiece.

8 So, like, each in-service cycle that we do
9 twice a year, he would have had a handgun class and he
10 also would have had a rifle class. Each of those days
11 is ten hours.

12 Q Okay. And for the rifle class, you said he
13 had to have two years of experience as an officer. Is
14 that from the hire date?

15 A Yes.

16 Q Okay. So if he had been hired in January of
17 2018, does it sound accurate he would have gotten his
18 rifle available to be certified in maybe January
19 2020-ish?

20 A Yes.

21 Q Okay.

22 A (Indiscernible).

23 Q And do you know when that class was that you
24 taught him?

25 A I don't know the exact date. I know --

Examination of Aaron Rasmussen

1 Q Okay.

2 A -- that I taught it. My signature's on
3 the --

4 Q Okay.

5 A My signature's on the qualification course.

6 Q Okay. And once you get certified to carry a
7 rifle in addition to your handgun, tell us a little
8 bit about, you know, what is the rifle used for? In
9 what situations would you use a rifle over a handgun?

10 A So the distinction there is a rifle is a far
11 more effective tool at -- it's far more ballistically
12 effective than a handgun.

13 I think we can talk about how if -- I don't
14 know if this is a good time to talk about the
15 efficiency and effectiveness of a handgun. I think
16 that kind of goes --

17 Q Sure. Why don't you --

18 A -- (indiscernible).

19 Q -- kind of draw some distinctions and
20 comparisons between the two types of weapons?

21 A So a handgun is what we all carry. They're
22 easy to carry. But they're not -- they're not the
23 ideal effective weapon for trying to get somebody to
24 stop doing what they're doing.

25 We carry handguns and it's a -- the -- the

Examination of Aaron Rasmussen

1 tool, how we use it is someone who's doing something
2 that is very dangerous and we need them to stop. And
3 a handgun does that okay, but a rifle is much better
4 at doing that.

5 It's one of the reasons that military and
6 SWAT teams and individuals, their primary handgun --
7 their primary weapon system is a rifle as opposed to a
8 handgun. But a handgun is what every officer can
9 carry in every call.

10 It's mostly a -- a defensive weapon. How --
11 well, how bullets -- how bullets stop people from
12 doing something is really three ways. If I have to
13 shoot somebody, I don't -- we don't -- we don't shoot
14 to kill. I -- you know, we -- everybody likes to
15 throw that around. Everybody likes to say that.

16 And it's not what we do. We do not train --
17 I do not train my officers -- I didn't train my
18 Marines to shoot to kill. I trained them to stop a
19 threat. We train them to stop doing -- whatever this
20 person is doing, they need to stop doing it.

21 How we do that, how bullets do that, it's
22 called terminal ballistics, what the bullet is doing
23 actually with -- inside a human body. We can shoot
24 somebody and they can make the decision that, hey,
25 this hurts. I -- I don't want to do this anymore and

Examination of Aaron Rasmussen

1 they stop.

2 And that actually happens -- that actually
3 happens quite a bit. We shoot somebody, they decide,
4 I don't want to do it anymore and they comply. They
5 stop doing things. And we're able to take them into
6 custody, get them medical treatment. The second way
7 is I have to -- I shoot somebody and I have to do
8 enough damage.

9 I have to put enough holes in them that
10 their body physically can't continue to do what it's
11 doing. They -- they have to lose enough blood or lose
12 enough oxygen in order to get them to stop. And that
13 can take some time. It can -- people can -- people
14 can do crazy things with fatal hits on their body.

15 And then the third way is if you're able to
16 achieve a headshot, which is very difficult. It's
17 very challenging. And you're able to shut the
18 brainstem down so that that -- that that body no
19 longer is able to move.

20 So those are our three ways that a -- that a
21 bullet will get somebody to stop doing what they're
22 doing. And a -- a handgun does that okay because
23 that's what we got, but a rifle does that much more
24 effectively. The -- they're more accurate. They're
25 moving much faster, so they're much more damaging and

Examination of Aaron Rasmussen

1 the ballistic efficiency of them is much higher.

2 Q Okay. So a couple follow-up questions --

3 A Sure.

4 Q -- for that. So you -- you were first
5 talking about the scenario where somebody gets hit
6 once and it's effective in making them stop what
7 they're doing. And I -- I think you said something
8 like, "And that happens pretty often," or -- but --
9 but I want to just be clear. You guys don't have,
10 like, a bunch of officer-involved shootings every year
11 in Gresham, right?

12 A No, I'm talking kind of -- no, we --

13 Q Okay.

14 A -- don't. We -- it's -- for -- for a -- for
15 a --

16 Q Just to --

17 A -- department, we're --

18 Q Just to clear --

19 A -- actually pretty --

20 Q -- that up for --

21 A -- low, but as --

22 Q Yeah.

23 A -- kind of nation-wide -- I follow a lot of
24 trends. I -- I'm -- it's my responsibility. Like, I
25 -- I follow what is going on in the nation.

Examination of Aaron Rasmussen

1 And with bodycams now, I mean, it -- there
2 -- it's -- it's so -- it's so easy to track what other
3 departments are doing and watch what's going on. I
4 watched a lot --

5 Q Yeah.

6 A -- of those incidents, to you see -- through
7 that, you see a lot of incidents where officers are --
8 are engaging and using lethal force, but the
9 individual doesn't die and they've made the decision
10 that they're going to stop doing (indiscernible).

11 Q So you're talking about, like, "we," sort of
12 a global perspective as an --

13 A Yes.

14 Q -- officer that somebody in particular who
15 tracks those kind of incidents like --

16 A Right.

17 Q -- yourself? Okay. And so when you are
18 teaching, you know, firearms training, are you -- are
19 you giving these new officers instructions on, you
20 know, "You -- you shoot once and you reassess. You
21 only shoot twice"? I mean, what are the instructions
22 for how many bullets they're supposed to use, if any?

23 A The only time I give my officers guidance on
24 how many rounds to shoot is during a qualification.
25 Maybe in some type of competition, but the only time I

Examination of Aaron Rasmussen

1 designate to my officers, "You will shoot this many
2 rounds," is during qualification. You do that for a
3 very specific reason.

4 Back in the day before I was a cop -- and
5 some may -- hell, some might -- some police officers
6 still might -- or some departments still might do it.
7 They would -- to conserve ammo, they say two rounds.
8 Shoot two rounds, reholster your weapon. Shoot two
9 rounds, reholster your weapon.

10 And what we found is police officers would
11 be involved in a lethal force encounter and they would
12 have somebody advancing on them or they'd be in a bad
13 situation and they would shoot. And they'd shoot two
14 rounds and they'd reholster the weapon.

15 And they'd either have completely missed or
16 the individual was still a threat and they would have
17 -- they would have to redraw their gun or reengage and
18 they would lose vital time where they'd get injured.
19 So the decision making on how many rounds to fire is
20 trained into our officers who have -- I train
21 appropriate number of rounds.

22 All my officers, appropriate number of
23 rounds. And what that means is we're constantly
24 evaluating and we're constantly assessing. And what
25 our -- what our suspect or what the individuals that

Examination of Aaron Rasmussen

1 we're -- we're contacting is doing. And a lot of what
2 I teach in firearms is the physical skills of how to
3 manipulate this handgun.

4 But we preface it a lot with, you need to
5 put yourself in a good position. Doing -- stopping a
6 -- a block away, looking at things, taking a little
7 bit of time, putting yourself in a good position to
8 where you don't have to use lethal force is always
9 going to be beneficial to using lethal force.

10 So how our officers make a judgment on how
11 many rounds to fire is usually around proximity. How
12 close am I to my threat? How close am I to that
13 individual? How -- is my individual agitated? Are
14 they high? Are they -- do they have a weapon? Can I
15 physically see a weapon?

16 Those types of -- those types of factors are
17 what drive round usage. So if I'm 25 yards away and
18 I've got my rifle and there's an individual that has a
19 handgun or has whatever, I -- my round count is
20 probably going to be -- if I have to use lethal force,
21 my round count -- how many rounds I shoot will
22 probably be relatively low in that specific instance.

23 If I'm trying to handcuff somebody and they
24 produce a handgun, my round count is probably going to
25 be much higher because I don't have -- I don't have

Examination of Aaron Rasmussen

1 the time to assess after every round. I don't have
2 the time to evaluate, talk about those three ways
3 of -- of a handgun round or a -- a round stop
4 somebody.

5 I don't have the time between each round to
6 evaluate, so my round count will be much higher the
7 closer I am. And that's how I train my officers.
8 When we -- you move to different yard lines on the
9 range, typically much closer, depending on the premise
10 of the drill, your round count will be much higher.

11 Q Okay. And just to make sure we cover this,
12 do -- do you train them or is that a different --
13 like, a just use-of-force training for the
14 circumstances under which it is appropriate to draw
15 their -- draw their service weapon, draw their
16 firearm?

17 A A lot of the decision making on when to draw
18 their handguns is done in our CONSIM program. Our
19 CONSIM program, which Officer Brooder talked at
20 length, I'm sure, about, all other disciplines support
21 that, support that training. My firearms program,
22 defensive tactics, which is kind of the same thing,
23 our EVOC (phonetic), all support our -- our CONSIM
24 programs.

25 So I will discuss different scenarios or I

Examination of Aaron Rasmussen

1 will set up drills on the range for, "Hey, this is the
2 scenario that you are in," to kind of put officers in
3 a specific mindset. But on a flat range, it -- for
4 safety concerns, we don't do a lot of scenario-based
5 stuff.

6 Q Okay. And is there, like, a policy or
7 particular rationale that they are taught for, you
8 know, what has to be happening for them to draw their
9 weapons? I mean, do they -- do they have to be
10 prepared to use their weapon if they draw it or is it
11 not quite that specific?

12 A So we train -- we give our officers
13 discretion on when they're -- when they're going to
14 draw their handguns and when they're not going to draw
15 their handguns. We give them guidance on what would
16 be a -- a possible scenario or a likely scenario that
17 you would draw your handgun.

18 We, too -- we use -- obviously, this is a
19 holstered position. We use a low-ready position quite
20 a bit, which means our handgun has been removed. I'll
21 show you here in a second. Our handgun has been
22 removed from the holster. It's in a position where I
23 can communicate with other officers.

24 I'm not pointing it at anybody, but it's out
25 of my holster. The main reason for that is it -- it

Examination of Aaron Rasmussen

1 makes me faster to react to whatever I'm being
2 encountered with. So if I am -- I always use the
3 burglary kind of analogy.

4 If there's a building and we just saw an
5 armed robbery suspect run into that building, I'm
6 probably going to draw my gun and have my gun in the
7 low ready when I enter that building 'cause there's a
8 higher likelihood -- and I know there's a higher
9 likelihood that I might have to use lethal force and I
10 have to -- it makes me a little faster through all of
11 these other things to have my handgun in my hand.

12 If it's the same building, but it's been
13 broken into and there's -- maybe someone saw a
14 homeless person going into there. I'm not going to
15 have my handgun in my hand during that because the --
16 the likelihood of me using lethal force is relatively
17 -- relatively low.

18 So those types of -- we leave those types of
19 decisions to our officers and we have discussions on
20 the range just through (indiscernible), field training
21 officers, I have a lot of discussions with my new
22 officers on, "Okay. This would be an appropriate time
23 to do this. Don't -- and just because you see other
24 officers drawing their handguns doesn't mean you draw
25 your handgun.

Examination of Aaron Rasmussen

1 "You have to be able to independently
2 justify why your handgun is out." I draw my handgun
3 on -- on a fairly regular basis. I -- and I've never
4 shot anybody. I draw my handgun not -- not on a daily
5 basis, but a couple times a week, I'm sure I draw my
6 handgun to a low ready for a variety of reasons.

7 Q Okay. And what about the difference between
8 drawing to a low ready, which I'll have you kind of
9 just demonstrate that in a second here, but to
10 actually, like -- you know, in a ready position, like,
11 on target?

12 A So for the most part, if -- if one of my
13 officers, especially, like, my newer officers, the
14 ones that I've trained -- like, I've been a police --
15 I've been a trainer for 13 years. Where I've -- where
16 I've steered the program, most of my officers are
17 going to be pretty rigid on their -- on their low
18 ready.

19 We've got kind of the older-school officers
20 that -- that came up in a time where they would point
21 their guns at people. That was how they were trained.
22 That was the current training of the day. We -- I
23 think we've trained most of them out of it, finally.

24 But if my officers are -- are pointing at
25 somebody, there's -- there's a high likelihood that

Examination of Aaron Rasmussen

1 they're going to shoot somebody. I'm not going to say
2 always, but for the most part, we train that that
3 rigid low ready and that, as a present -- like,
4 they're presenting to engage somebody that they
5 perceive as a threat.

6 There may be something that changes that
7 decision making in the time it takes to go from --
8 let's just talk about it. So the low ready. (Gun
9 cocking). So my handgun is holstered right here,
10 right? And then if I want to come from a low ready, I
11 draw my gun and I come here.

12 So I don't want to block my bodycam. We try
13 not to block -- I try and -- I love my bodycam. I
14 absolutely love this thing (indiscernible). So this
15 here, my gun is low. My gun is pointed to the ground.
16 I can communicate. I can talk to whoever I'm going to
17 talk to.

18 My finger's alongside the slide, so if I
19 fall or get pushed or whatever, I'm not going to --
20 I'm not going to pull my trigger.

21 And then from this ready position, I move --
22 like, if I'm actually going to engage somebody, it
23 moves from the low ready to an -- an actual stance
24 where I'm coming out, I'm locking my wrists, I'm
25 picking up my front sight and engaging my threat.

Examination of Aaron Rasmussen

1 The old-school low ready was here and then
2 you'd see some older officers, they would be here.
3 They'd be -- the -- the -- the training was you'd aim
4 at the suspect's feet. There's a lot of problems with
5 that that we learned over the years to get better at.
6 Here, it's -- it's less invasive.

7 It's just as fast and I can see my entire --
8 I can see my entire threat. It opens my world. It
9 makes our officers less -- less stressed, less zeroed
10 in on exactly what they're dealing with, so we have
11 better decision making at a low ready and I'm not
12 pointing my gun at somebody.

13 I mean, negligent discharge happened -- if I
14 have a negligent discharge when I pull my trigger for
15 whatever reason, it's going to go into the ground.
16 I'm not going to hurt -- I'm not going to hurt
17 anybody. We operate in the public. Obviously, all
18 the time, there are people around us all of the time.

19 So this is a position that is safe and
20 effective for me and my officers to work in. I can
21 talk and I do on a pretty regular basis talk to police
22 officers and talk to people in this fashion. And --
23 and I can effectively and more quickly engage from
24 this position than I can from a holstered position.

25 Q Okay. Okay. And does some of the training

Examination of Aaron Rasmussen

1 regarding, you know, unholstering, figuring out kind
2 of the low ready for -- and what's -- what's
3 comfortable for various officers, you've talked about
4 how it makes it quicker, their response time, if
5 they're not holstered. To what extent do you also
6 train on how to assess kind of what to do with their
7 firearm?

8 These are the -- like, where the threat is
9 or what the threat is or what the -- maybe the -- the
10 proximity or immediacy of a particular threat is.
11 Does that factor at all into decisions that you train
12 them to -- to think about making?

13 A Like, where my -- where I have my gun?

14 Q Yeah.

15 A Proximity is a -- is a factor. I think
16 we've talked about it a little bit. It's mostly
17 present if there's a -- if there's a weapon -- like,
18 presence of a weapon is known or unknown, the -- the
19 nature of the call that we're going to, officers that
20 are more familiar with individuals.

21 We do -- do get repeat callers or repeat
22 people that we deal with and I have -- there's several
23 people that I know typically are going to be more
24 violent, so we're going to -- we're going to -- based
25 on our knowledge, we're going to treat them a little

Examination of Aaron Rasmussen

1 differently. It's more that type of information --

2 Q Okay.

3 A -- that determines whether or not we have
4 a -- a gun in our hand.

5 Q Okay. And do you also instruct around or
6 train around the concept of there being a -- a delay
7 in -- from, like, a decision being made to actually
8 acting on it or what's sometimes referred to as a
9 reactionary gap?

10 A Yeah, it's -- that's what it is, is our
11 reactionary gap. So there's -- there's two types of
12 processes we have to go through in order to actually
13 do really anything. We have to perceive whatever it
14 is we want to do. We have to have a -- a mental
15 calculation on how we want to do that.

16 And then our brain actually has to tell our
17 body to act -- to do the physical skill of whatever we
18 want to do. In a firearms realm, even on the range --
19 so if I'm on the range, I've got my -- my officers at
20 the five-yard line, wherever we're shooting from.

21 And they know when I give them an up
22 command, they're going to engage this target. They
23 know it. The -- the stimulus is going to be me
24 shooting.

25 Well, I tell them, "Up," and there's a delay

Examination of Aaron Rasmussen

1 because they have to process hearing me and then they
2 have to -- then they have to go, okay. Well, now,
3 it's time to shoot.

4 And I -- and then the -- the -- the physical
5 movement of moving my hand on, like, the holster,
6 manipulating my holster, drawing my gun, coming out to
7 a shooting stance, picking up my front sight, pulling
8 my trigger. That takes time.

9 Usually, I mean, we've got some -- we've got
10 some officers that, with triple retention holsters,
11 can get a round off in about a second.

12 Most officers are between a second and a
13 half and -- and two-and-a-half seconds to get that
14 round off depending on how fast and how smooth their
15 -- their draw -- their draws are.

16 But that's a second and half or two seconds
17 when they already know the decision they're making.
18 When you add in, I don't know if this individual has a
19 gun. I don't know what this individual is doing. We
20 work in low-light situations most of the time.

21 So, now, you have to take in an individual,
22 perceive that they're a threat, make a calculation on
23 what type of response I should have and then respond.
24 It can -- it can take a little while. And that is
25 called a reactionary gap.

Examination of Aaron Rasmussen

1 And how we narrow that gap is through
2 training, is through CONSIM, is how to recognize, you
3 know, this individual is favoring their left side or
4 this individual is doing this or this individual is --
5 is hyper. I should have -- I should have my gun in my
6 hand for this or I shouldn't have my gun in my hand
7 for this.

8 How do I -- how do I increase my
9 survivability by, okay. This individual is -- is a
10 threat. I need to move. I need to move while I draw
11 my gun to make that individual react to me. Those
12 types of things are how we -- how we narrow that gap
13 that we know is there.

14 Q Okay. So that's a concept that you guys --
15 that you, yourself, have -- have researched and
16 trained on for anyone doing your firearms training?

17 A Yes.

18 Q Okay. And is the -- is that similarly
19 something that you train in regards to, you know,
20 deciding to stop acting or that a threat has ended and
21 how that affects somebody's reaction time?

22 A So we train -- there's -- we train a post --
23 a -- a post-shoot scenario or a post-shoot process.
24 It -- if I've drawn my gun, I've engaged an
25 individual, the first responsibility is making sure

Examination of Aaron Rasmussen

1 that individual is no longer a threat.

2 So I've -- I've shot this individual or
3 however many rounds you shoot this individual and then
4 you are -- you stop and you evaluate them. Are they
5 -- did they drop the gun? Are they no longer a
6 threat? Are they continuing to advance?

7 So you do that thing -- you do that over the
8 top of your gun, on your sights, on your trigger so if
9 they are still a threat, you are all -- you're already
10 in the position to -- to continue to address them. If
11 they're no longer a threat, that's a conscious
12 decision.

13 You come off -- you come off of that -- that
14 individual with your handgun. You bring your gun back
15 into a low ready and take a breath. You scan your
16 environment. That's -- you're looking for -- if
17 you're in a good position or if you're in a bad
18 position, maybe you move to a -- a piece of cover.

19 If this individual has a gun, I'll move to
20 something that -- that I can stand behind that will
21 probably absorb whatever round he's got. It's called
22 cover. I'm looking for additional officers. If I've
23 got officers that are with me, I want to make sure
24 that they're okay, that I know where they are, that
25 they see me.

Examination of Aaron Rasmussen

1 I'm looking for individuals that may know
2 this -- this person. We work in a lot of apartment
3 complexes and a lot of places in Rockwood that aren't
4 friendly to law enforcement.

5 And if I have to engage somebody, that's not
6 going to go over well, typically, so we -- we train
7 officers to kind of take in their environment, to be
8 aware of the people that are around them. So we --
9 and -- well, now, we train to sweep our bodycams to
10 make sure our bodycams are on.

11 Q Okay. And as far as (indiscernible)
12 training in particular to shooting -- obviously, you
13 talked about shooting at targets.

14 You've talked about that in, like, a range
15 setting, in a non-range setting. To what extent are
16 officers taught about shooting or not shooting at a
17 vehicle or a moving vehicle, rather?

18 A So it's challenging -- it's challenging to
19 -- to try and shoot -- I can't -- I don't think we can
20 shoot at a moving car. I think there's a lot of
21 issues around -- there's a lot of just administrative,
22 logistical issues around that. We have conversations
23 with -- I think there's really two sections there.

24 There's -- we train shooting out of our
25 patrol car. If we're ambushed in our patrol car, we

Examination of Aaron Rasmussen

1 train shooting out of our patrol car. And then we
2 train shooting into a car.

3 We actually just finished an in-service on
4 -- on shooting through ballistic glass. If the car is
5 stationary, that's one thing. If the car is moving,
6 it's -- it's another.

7 So we don't train to shoot at cars. Like,
8 we don't train to incapacitate a car by shooting --
9 we're not shooting the radiator or the tires or
10 anything. None of that -- we don't train any of that.

11 If we're shooting at a vehicle, we're
12 shooting at the occupant of that vehicle in a way that
13 -- to get them to stop doing whatever they're doing,
14 whether the vehicle is moving or whether the vehicle
15 is stationary.

16 If it's a stationary vehicle and -- and
17 we're on a traffic stop or we're doing something and
18 an individual becomes a -- a lethal threat, we're
19 trained to shoot into the individual, not the car.

20 If the car is moving, again, the car is the
21 threat. We're trying to stop that threat. Cars are
22 dangerous. We're shooting at the individual driving
23 that car, not the car.

24 Q Okay. And so you mentioned that --
25 something to the effect of you're not -- you're not

Examination of Aaron Rasmussen

1 supposed to do that as sort of an administrative rule.

2 And you're familiar with that rule?

3 A Yeah, we've got policies.

4 Q Okay.

5 A A lot of -- some departments don't allow you
6 to shoot at moving cars at all. I was opposed to
7 that. Right around 2017, 2016, 2017, we started to
8 see a lot of vehicle-borne attacks, both in London,
9 New York, Charlottesville, all of those attacks.

10 And it was -- people were being trained how
11 to effectively take a -- a Ryder truck or a big -- a
12 -- a large vehicle and use that as a weapon. And it's
13 an effective weapon. It's an effect -- you can do a
14 lot of damage, as we've seen, with a heavy vehicle
15 because they're very difficult to stop.

16 Me in my -- my Ford Explorer isn't going to
17 be able to stop a fully loaded Ryder truck
18 (indiscernible). So that's a very -- that was a very
19 real trend. We haven't seen any in a couple -- in a
20 couple years, thankfully. But for a while there,
21 especially -- this is right when we were writing these
22 policies.

23 They were -- they were opposed to us
24 shooting at a moving vehicle. And -- and I -- I mean,
25 I don't want to shoot at a moving vehicle. I don't --

Examination of Aaron Rasmussen

1 I think effectiveness is -- is varying. But we needed
2 the option. We needed the option to be able to engage
3 the driver of that vehicle in order to have some type
4 of option to stop them from doing what they're doing.

5 And we had the information from those
6 terrorist attacks I've already mentioned that it was a
7 need within law enforcement. We actually did a whole
8 in-service on vehicle attacks. That was prior to --

9 Q Uh-huh.

10 A -- to Doyle's encounter, but we still talk
11 about -- or prior to Doyle's hiring date, but we still
12 talk about those types of tactics and those types of
13 reasons why -- I mean, I'm for one of -- of -- of not
14 -- of putting yourself in a good position where you
15 don't have to shoot a moving vehicle.

16 But if you're in a position where you have
17 to, you're shooting at the -- the occupant. You're
18 shooting at the driver, the operator.

19 Q Okay. And so it sounds like policy-wise,
20 there was -- there is an exception that, at least
21 administratively, is recognized?

22 A Yes.

23 Q Okay. If you want to talk just briefly
24 about, you know, you've got a lot of different tools
25 at your disposal that are generally carried, right?

Examination of Aaron Rasmussen

1 A This is how I -- this is how I was working
2 earlier this morning.

3 Q Okay.

4 A Yeah.

5 Q So do you want to touch briefly upon
6 flashlight? You've got some -- at least one
7 flashlight on your vest?

8 A So the -- I don't think we have any, like,
9 requirement --

10 Q Mm-hmm.

11 A -- for carrying. I don't think it's ever
12 written down, but all officers recognize that we work
13 a lot in the dark. Even on the day shift guy, I still
14 -- I still come in early or work late or we go into
15 dark facilities. So how I train officers is you
16 should have at least two lights on you.

17 And your -- the -- the weapons on a light
18 doesn't count. So you should always have at least
19 two. In case one goes down, you've got a backup.
20 Being able to identify our -- our threat is a huge
21 deal. We can't just blindly shoot in the dark. So
22 being able to identify whether or not somebody is a
23 threat is kind of important.

24 So how we do that is white light. We have
25 to have a flashlight in order to do that. So we

Examination of Aaron Rasmussen

1 stress -- we stress having flashlights on us, having
2 them charged, having backup batteries so if you
3 recognize that they are not -- they're not working,
4 being able to -- to switch that out, having batteries
5 in your car so you can switch them out.

6 So I carry two. I would say most -- most
7 cops carry two, especially our night shifters. There
8 is a weapons-mounted light on our gun. We talk pretty
9 extensively on when that's appropriate to use a
10 weapons-mounted light, what it's for. You can use it
11 as a search tool.

12 We -- but you have to be able to justify it.
13 I can't just -- we were talking about the -- the
14 homeless person that went into a -- a house earlier.
15 There's no weapon -- there's no weapons. There's no
16 threat there. I'm not going to have my gun. I'm not
17 going to be searching with my weapons-mounted light.

18 I'm going to have my -- my flashlight in my
19 hand searching that way. Going back to the armed
20 robbery guy, I'm probably going to have my -- my
21 handgun in my hand. We still train that if I want to
22 check a dark closet or a dark corner, I don't need to
23 point my gun in that corner.

24 The flashlight technology has been amazing
25 in the last couple of years. Our -- our flashlights

Examination of Aaron Rasmussen

1 are, you know -- you know, they're a thousand lumens
2 now, which is really bright. So I can point my gun --
3 I can point my flashlight at the ground in that low
4 ready and I can cast enough light, typically, to clear
5 whatever I need to clear to identify if there's
6 somebody in that.

7 So we -- we -- we can use it as a search
8 tool, but you have to be able to justify it. What the
9 -- the main -- the main purpose of a weapons-mounted
10 light is, if I'm searching with my handheld light and
11 I identify that there's a -- a lethal threat, I can
12 get rid of that -- I can get rid of that light that's
13 in my hand.

14 I can use a two-hand grip, which I'm --
15 which I'm more accurate with, I'm more stable with.
16 I've trained more within that traditional grip. And
17 most of the time, we're working in ambient light or
18 with enough light to be able to recognize, hey, this
19 person is a threat. I can punch out. I can -- I can
20 engage.

21 And maybe I use my weapons-mounted light,
22 maybe I don't. But if I have to use -- if I've
23 engaged that individual, they're down, I have a
24 weapons-mounted light at the end that I could activate
25 and I can evaluate. I can evaluate, okay. Is this

Examination of Aaron Rasmussen

1 person still a threat? Is -- okay. I can see their
2 hands.

3 I can't see their hands. And I don't have
4 to access any other tool. I don't have to look around
5 to get that tool. It's -- it's immediately there when
6 we need it, is just the main kind of very small niche
7 of a weapons-mounted light. If it's --

8 Q Okay.

9 A -- super dark and I ditch my light and I
10 have to activate my -- my weapons-mounted light in
11 order to reacquire that threat, sure, but we are --
12 I'm very rarely in complete darkness.

13 Q And so how would an officer be trained to
14 draw both a flashlight and their gun?

15 A So we train that a couple different ways.
16 Trying -- trying -- under stress, trying to get
17 officers or anybody really to drop something is -- is
18 challenging.

19 So they -- they -- people have a tendency
20 to, under stress, grip and hang onto things, which I
21 watch a lot of bodycam footage and -- and lots of cops
22 hang onto their pens or hang onto their notebooks or
23 hang onto their flashlights and they're shooting one
24 handed.

25 So trying to train officers to -- to get rid

Examination of Aaron Rasmussen

1 of that in your hand is -- is challenging. We do it
2 on the range. We have them with a -- their -- their
3 piece of the plywood that I cut probably 12 years ago
4 and cops have written all over them, but they have it
5 in their hand and I give an up command and they get
6 rid of it.

7 And they draw their gun and they engage or
8 they -- when we do flashlight drills, they're
9 searching with their flashlight and, you know, trained
10 to -- to get rid of their flashlight and -- and -- and
11 draw. In certain circumstances, I may keep my
12 flashlight. I -- I don't -- I don't know.

13 I'm pretty comfortable in a one-hand
14 shooting, so if I draw -- if I have my flashlight in
15 my hand and -- and I can -- I can shoot, I'm -- I'm
16 comfortable.

17 And that's -- other officers might not be as
18 comfortable within that -- within that position. So
19 we -- we try. What we -- what we're going for is
20 officers getting rid of whatever's in their hand and
21 transitioning to that weapons-mounted light.

22 Q Okay. Wanted to talk just briefly about
23 impact munitions. And we got a little description of
24 that from Officer Brooder.

25 A Mm-hmm.

Examination of Aaron Rasmussen

1 Q Do you know whether or not that was
2 something that Officer Doyle was trained to use?

3 A I do not know for sure one way --

4 Q Okay.

5 A -- or another.

6 Q Can you describe the effectiveness of that
7 or efficiency of that as it relates to a -- like,
8 particular types of threats?

9 A So that would be an Officer Brooder
10 question.

11 Q Okay.

12 A I have next to nothing to do with our --
13 with our 40-millimeter program.

14 Q Okay. I'll just move on then to the rifle.
15 Is that something that is kept, like, you know, in the
16 backseat or is that in the trunk typically?

17 A So we have rifle locker -- we have a rifle
18 lock next to us in between the seats.

19 Q Mm-hmm.

20 A So for the most part, like, my -- my rifle
21 rides around with me right next to me all day long.

22 Q Okay.

23 A And it's locked in and I have a button that
24 I need to hit. And my ignition needs to be on. I
25 need to hit a specific button. It releases for a

Examination of Aaron Rasmussen

1 period of time where I have to remove -- it's kind of
2 like a handcuff. I have to remove a shackle and
3 access my rifle.

4 Q Okay. Under what circumstances would you
5 expect an officer to hop out of the car with their
6 rifle also ready to go?

7 A So on a fairly regular basis, I will -- on a
8 way -- on my way to a call, I'll -- I'll -- I'll pull
9 my rifle and I'll put it in my lap. It's usually when
10 there's a mention of -- of some type of weapon,
11 usually a gun, where someone just showed up.

12 They're at my door. They have a gun.
13 They're threatening me. My rifle's going in my lap
14 for that call. As I get there, I -- I park a block or
15 so away depending on the call. My rifle's in my lap.

16 As I exit -- as I exit my vehicle, I -- I
17 rack -- or I rack the charging (indiscernible), you
18 know, putting a round in the chamber 'cause we drive
19 around -- our -- there's -- they're not loaded.

20 There's a magazine inserted, but there's not
21 a round in the chamber. It's just safer that way. So
22 as I exit my patrol car, I'll rack that round in, I'll
23 sling my rifle and then I'll head off to my call.

24 Q Okay. In a -- in a situation where you --
25 you have an idea of what the level of threat is --

Examination of Aaron Rasmussen

1 A Yeah.

2 Q -- and have that time to make some of those
3 decisions?

4 A There's -- I mean, I've been a cop for a
5 long time, so I'll kind of recognize early on if -- if
6 I need to do that. Other times, I'll just park. I'll
7 grab my rifle. I'll -- I'll load it when I -- when
8 I'm already there, if we're going to have -- if we're
9 going to have time to -- to do that.

10 MS. GIRT: Okay. All right. Okay. I think
11 that that's all the questions that I had, but let me
12 just sort of open it up a little bit here.

13 (Whispered discussion, off the record,
14 4:33 p.m.)

15 MS. GIRT: Oh, sure.

16 BY MS. GIRT:

17 Q So we have heard a little bit about the OODA
18 loop. Is that something that also factors into your
19 firearms training?

20 A So OODA loop is something that really all of
21 our disciplines teach, from geography to firearms.
22 It's observe, orient, decide and act. And within
23 every interaction, there's my OODA loop and there's
24 our bad guy's OODA loop.

25 I want mine, through training and

Examination of Aaron Rasmussen

1 experience, to be nice and smooth. This guy does
2 this, I'm going to do this. This guy does this, I'm
3 going to do this. And then I want my individual, my
4 suspect's OODA loop to be disrupted.

5 And I do that through a couple -- for --
6 specifically for firearms, I do that a couple
7 different ways. I can either move, which makes them
8 reacquire me and have to restart that process or I can
9 shoot them.

10 And that -- shooting them interrupts that
11 OODA loop through a lethal-force encounter. So my
12 decision making is I -- I've -- I have -- I need to
13 use lethal force. This is how I do that.

14 This individual that is trying to either
15 injure another person or injure me, I'm disrupting
16 their OODA loop. I'm not allowing them to finish that
17 loop by engaging.

18 Q Okay. And just to make sure that I have --
19 I've covered this -- sorry, it's been a little bit of
20 a long afternoon -- what is -- what is their -- what
21 are the -- the -- what is the training that you
22 specifically give to officers in the context of
23 firearm training about when it is appropriate or, you
24 know, justified to use deadly force, to use lethal
25 force in the context of their firearm?

Examination of Aaron Rasmussen

1 A So the -- a lot of the decision making is
2 constant. A lot of the -- this, we're talking through
3 specific scenarios. My -- my field is, if you have
4 to, this is how you do it.

5 It's hard -- it's hard -- we have
6 conversations on if this individual produces a -- a --
7 a weapon or produces a gun and is trying to shoot you,
8 the -- it's a very clear-cut decision making on the
9 range 'cause it's hard to make a target do any --
10 anything else.

11 We'll do shoot, no-shoot scenarios on the
12 range. And how we do that -- and that -- we kind of
13 -- that's -- that's a decision-making process that we
14 can do on the range and we do and we're required to
15 by law.

16 I will paint indicators, like letters or
17 numbers. We'll use different types of targets where
18 -- well, a qualification target, which is just a gray
19 silhouette.

20 It doesn't look like a person at all. It's
21 just a shape. And then we'll use graphic targets that
22 have people in them. And some of them have guns and
23 some have knives, some have hostage situations.

24 And I will call an indicator. I'll call an
25 X or I'll call a zero and the officer's supposed to

Examination of Aaron Rasmussen

1 search for that indicator and engage that target.
2 They're -- they don't shoot the other targets. That's
3 a shoot, no-shoot scenario.

4 Or I'll call an indicator that's not there
5 and they'll draw and they'll look and they'll
6 challenge -- they'll challenge our targets because
7 they're looking for those specific indicators
8 (indiscernible).

9 And that's -- that's as close as kind of we
10 can get to that on the range environment.

11 MS. GIRT: Okay. Okay. Are there other
12 questions?

13 A GRAND JUROR: I've got a question.

14 MS. GIRT: Go ahead.

15 THE WITNESS: Yes, sir.

16 MS. GIRT: Yeah.

17 A GRAND JUROR: From behind you here --

18 THE WITNESS: Yeah.

19 A GRAND JUROR: -- in the corner. So I just
20 wanted to ask a couple questions about the policy --

21 THE WITNESS: Mm-hmm.

22 A GRAND JUROR: -- not -- not shooting at
23 vehicles. So your department, the Gresham Police
24 Department, has a policy about shooting at moving
25 vehicles; is that right?

Examination of Aaron Rasmussen

1 THE WITNESS: Yes.

2 A GRAND JUROR: And the policy is, comes
3 from the command staff or whomever and the officers
4 are supposed to follow those, right?

5 THE WITNESS: Yes.

6 A GRAND JUROR: In -- so the -- and as I
7 understand it, the policy is you're not to shoot at a
8 moving -- moving vehicle unless there's no other
9 reasonable means to avert that threat?

10 THE WITNESS: Yes.

11 A GRAND JUROR: And why -- why would
12 that be?

13 THE WITNESS: Well, right in the policy, it
14 says that it's fairly -- it's rarely effective to
15 shoot at a moving vehicle.

16 I mean, they're heavy and if they're moving,
17 it's hard to -- it's hard to stop them. We try,
18 through better tactics, putting our -- putting
19 ourselves in different positions, to eliminate or
20 lower the possibility of having to shoot at a moving
21 car.

22 A GRAND JUROR: So -- and, actually, so
23 shooting at a vehicle, I mean, the glass
24 (indiscernible) the bullets and is that kind of the --

25 THE WITNESS: So there's a couple of things

Examination of Aaron Rasmussen

1 that go into -- to actually shooting a moving vehicle,
2 is -- one is momentum. They're -- like I said,
3 they're -- they're heavy.

4 Two is -- is our rounds, especially handgun
5 rounds, shooting through laminated glass is -- is
6 difficult on a bullet. Our bullets work -- they're
7 specifically formulated for an FBI test that shoots
8 through specific types of barriers.

9 There's a -- there's a whole gamut of -- of
10 barrier ballistics gel, light clothing, heavy
11 clothing, which is several layers of denim, plywood
12 and laminated glass is one of the barriers that's
13 tested through -- it's called the FBI protocol.

14 And in order to be certified for a duty
15 round, it has to penetrate those barriers and then
16 also penetrate into the ballistics gel a set amount.
17 And laminated glass is difficult because it has a
18 tendency to be very, very hard on that bullet. Our --
19 our bullets expand or they're supposed to expand when
20 they hit something.

21 And laminated glass -- well, we used to use
22 a -- a different type of ignition. It would actually
23 separate. There's two types of a bullet. There's the
24 core and then there's the jacket. The jacket is what
25 wraps the core. The laminated glass would separate

Examination of Aaron Rasmussen

1 those two.

2 And if you separate them, you lose weight,
3 which means you lose penetration. And the least
4 penetration you have, the less likely you're going to
5 be successful.

6 So we've -- through technology, we've
7 increased the likelihood that that bullet's going to
8 stay together and we're going to be more effective,
9 but it's still very difficult on -- on a round to
10 shoot through laminated glass.

11 A GRAND JUROR: Okay. But there's -- there
12 is an exception in the rule, I think you said, for if
13 there's no other reasonable means to avert the
14 threat --

15 THE WITNESS: Yes.

16 A GRAND JUROR: -- and then --

17 THE WITNESS: We wanted at least the --

18 A GRAND JUROR: Yeah.

19 THE WITNESS: -- the option -- we wanted to
20 train heavily on, we -- we don't want to do this, but
21 if you're in a position, you have the ability to do
22 it. And then you just, like everything else in law
23 enforcement, you have to be able to justify, "I did it
24 for these very clear, very specific reasons."

25 A GRAND JUROR: There were no other -- no

Examination of Aaron Rasmussen

1 other reasonable alternatives available at the time?

2 THE WITNESS: Right. And what they're
3 trying -- what they're trying to avoid with that is
4 you -- again, you look across the nation at different
5 training standards, different policy standards. And
6 I'll see officers get in shootings when they're --
7 they've put themselves in a really bad position.

8 They've purposely walked in front of a car.
9 They've walked to a position where they -- they --
10 they put themselves there and then the car becomes a
11 -- a lethal threat and they've engaged that car. And
12 if you just hadn't put yourself in that position, you
13 wouldn't have had to use lethal force.

14 So we -- we stress -- we stress the need to
15 be smart about your decision making, but if you have
16 to, if there is no other means of getting out of the
17 way or stopping that vehicle, we wanted the option to
18 be able to do it.

19 A GRAND JUROR: Thank you.

20 MS. GIRT: Okay.

21 MS. RHOADES: Just one followup --

22 MS. GIRT: Yeah.

23 MS. RHOADES: -- about OODA.

24 MS. GIRT: Mm-hmm.

25 A GRAND JUROR: How does your time on scene

Examination of Aaron Rasmussen

1 have -- or maybe it doesn't -- have an effect on the
2 OODA loop in your ability to assess?

3 THE WITNESS: Yeah. I don't know if it's
4 necessarily an OODA loop. It's -- it's, how much
5 information do I have?

6 How -- I mean, we get -- sometimes we get
7 really good callers and really -- so there's a whole
8 chain of events. So someone has to call 9-1-1. They
9 have to talk to a call taker.

10 That call taker types in information. It
11 gets sent over to a dispatcher and then a dispatcher
12 has to read it and the dispatcher has to send it to
13 us. There's a delay there.

14 And -- and throughout that whole chain,
15 there's people that are -- are better at it than
16 others or you could have a really good witness who
17 gives you clear, precise information and is able to
18 tell you that or you could have a -- a witness that's
19 just awful and is just screaming into the phone and
20 all our call taker can hear -- hear is, "There's a gun
21 and there's somebody there."

22 And so the -- we get that information two
23 minutes later saying, "There's a gun and there's
24 somebody here," and that's all the information we
25 have. So how much information we have arriving on

Examination of Aaron Rasmussen

1 scene is probably going to be more important into that
2 decision-making process.

3 If we've got a lot of really good
4 information or we've been able to park away and make
5 some phone calls and talk to people ourselves, which
6 we do quite a bit, you know, that's going to -- our
7 time -- that's going to get us in the right mindset
8 faster. So it's not necessarily our time on target
9 that determines that --

10 MS. RHOADES: Thank you.

11 THE WITNESS: -- determines that.

12 MS. GIRT: Okay. Other questions?

13 All right. Folks are shaking their head no,
14 so we can go ahead and go off the record and we can
15 step outside.

16 * * *

17 (Conclusion of Grand Jury Proceedings,

18 V3, 7-7-21 at 4:42 p.m.)

19

20

21

22

23

24

25

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

--o0o--

REPORTER'S CERTIFICATE

I certify, by signing below, that the foregoing is a correct transcript, of the audio record in the above-entitled cause, as recorded on CD and transcribed to the best of my ability and in accordance to the quality of the audio CD.



KATIE BRADFORD, CSR 90-0148
Court Reporter
(503) 267-5112