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

GRAND JURY B PROCEEDINGS

Case No. 72

Conducted by:

Amanda Nadell and Nathan Vasquez,
Deputy District Attorneys;
Amy Seely and Elija Michalowski,
Assistant Attorney Generals.

- - -

February 23, 2022

(9:04 a.m. - 3:43 p.m.)

- - -

DA Case No. 2439444

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 2</u>	
3		<u>Page No.</u>
4	February 23, 2022 Proceedings	318
5	Case Called	318
6	Examination of Jason Pearce	318
7	Examination of Jesus Mendoza	367
8	Examination of James Townley	379
9	Examination of Josh Faris	395
10	Examination of Derrick Foxworth	413
11	Examination of Leo Harris	426
12	Examinaton of Ben Davidson	440
13	Examination of Brian Sims	446
14	AFTERNOON SESSION	449
15	Examination of Michele Taylor Stauffenberg	450
16	Examination of Don Livingston	461
17	Examination of Jake Ramsey	499
18	Examination of Joshua Howery	525
19	Examination of Clint Snodgrass	562
20	Reporter's Certificate	572
21	* * *	
22		
23		
24		
25		

1 OIS Death Investigation, re: Alexander Tadros
2 Multnomah DA Case No. 2439444
3 Grand Jury B Recordation, Case No. 72

4 * * *

5

6 (Volume 2, Wednesday, February 23, 2022, 9:04 a.m.)

7

P R O C E E D I N G S

8

9 (Whereupon, the following proceedings were
held in Grand Jury B:)

10 MR. MICHALOWSKI: All right. We're back on
11 the record. This is a matter involving an
12 officer-involved shooting. It's Grand Jury No. 72.

13 A GRAND JUROR: Correct.

14 MR. MICHALOWSKI: It's Day 2. It's January
15 [sic] 23rd, 2002 [sic]. This is Elijah Michalowski
16 from Department of Justice.

17 And our first witness -- sir, can you
18 introduce yourself?

19 THE WITNESS: Jason Pearce, P-e-a-r-c-e.

20 MR. MICHALOWSKI: She's going to -- yep.

21

JASON PEARCE

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

24 ////

25 ////

Examination of Jason Pearce

1 EXAMINATION

2 BY MR. MICHALOWSKI:

3 Q All right. And you anticipated my next
4 question, which was spell your name, so I think --
5 think we got that. Can you tell the grand jurors
6 what you do, what your assignment is and --

7 A I'm the lieutenant in the Special Resources
8 Division and I command the SERT Team, the Explosive
9 Disposal Unit, the Air Support Unit and the K9 Unit.

10 Q All right. And with regard to the SERT
11 Team, what are your responsibilities?

12 A I'm the team commander. So beyond just the
13 day-to-day running of the team, I respond to
14 emergency activations; planning for high-risk search
15 warrant service and lower risk warrant services, too.
16 Everything the SERT Team does.

17 Q All right. And when you're on a -- on
18 scene at a call-out, what are -- what are your duties
19 there on scene? What's your role on scene?

20 A So my role is, like I said, I'm in charge
21 of the SERT Team and all the actions that the SERT
22 Team takes. And on a call-out activation like that,
23 there's a structured, tiered system. The critical
24 incident commander is in charge of the overall event.
25 I'm in charge of the SERT Team.

Examination of Jason Pearce

1 There's a CNT, which is a Crisis
2 Negotiation Team, a lieutenant there as well. And
3 our job is to work with the CIC and our respective
4 teams to help develop plans, develop tactics, think
5 through the event, define the event and work a
6 resolution.

7 Q So you're not -- you're not what would be
8 known as an operator, right?

9 A No, no.

10 Q And do you generally spend most of your
11 time in the command post --

12 A Yes.

13 Q -- or are you closer to the action?

14 A In the command post.

15 Q Okay. And how did you get involved with
16 the incident on August 27th, 2021?

17 A So I got paged. We got a consult -- we
18 call a consult page. And a consult page rather than
19 just a immediate activation is typically a supervisor
20 or sergeant at one of the precincts will call for a
21 consult.

22 And what that entails is one of the SERT
23 sergeants will call that patrol sergeant, go through
24 the event, determine what's happened, what needs to
25 happen and whether or not SERT would be involved in

Examination of Jason Pearce

1 that event. I get those consult pages as well.

2 And as soon as I got the page that morning,
3 I believe it was a day off. Excuse me. What I do is
4 I go downstairs so I don't wake up everybody else,
5 turn on the radio, begin listening to the call. And
6 on my phone, I'll go through and read the call, the
7 CAD call of the printout so far.

8 And on this, as soon as I turn on the radio
9 and begin reading through the call, I heard that they
10 were going to activate the team anyway, so I
11 immediately got dressed, got all my gear, jumped in
12 my car, came in.

13 Q All right. And so at that point, you
14 respond to the scene?

15 A Yes.

16 Q And where did you arrive at the scene?

17 A Believe it was Willis and Fenwick, which
18 was about one block to the -- I guess it would be the
19 -- just to the north of the apartment building. I
20 arrived at the same time as Sergeant Darby who is one
21 of the SERT Team sergeants.

22 My job when I get there is to find out
23 what's going on. And that usually is I'll grab onto
24 the first precinct sergeant or whoever has that most
25 information from that event, to get that information

Examination of Jason Pearce

1 from them, to find out what we're at, find out what
2 has happened and start to begin and chart the course
3 of how we're going to get through this.

4 So on that, I walked up to where the
5 building was. I could hear some yelling going on
6 from the other side. I believe there were Sergeants
7 Wuthrich and McKinley from North Precinct that were
8 there.

9 Had a brief conversation with Sergeant
10 Wuthrich, found out that Sergeant McKinley was going
11 to be what we call the incident commander at that
12 point for the event. And with that, I grabbed onto
13 him and told him, "You're going to be coming with me
14 to the command post." 'Cause he's going to be my
15 contact with the precinct.

16 He is who I'm going to be gathering a lot
17 of information from. And as the event goes on,
18 typically, if there's any need for us to have patrol
19 assist anyway -- could be blocking streets. It could
20 be doing any number of things -- that's who I'm going
21 to work with to get that done.

22 Q All right. So he's kind of, in the command
23 post, he's the one in charge of the patrol officers?

24 A Yes.

25 Q Okay. And then ultimately, though, was he

Examination of Jason Pearce

1 in charge of the scene?

2 A At that point, yes. And so how the
3 activation process occurs, I'm not going to take
4 over. The CIC isn't going to take over until we've
5 been fully briefed on what has occurred. And that's
6 for a number of reasons.

7 At that point, we don't have all the
8 information that the patrol has to begin to make
9 decisions, especially important tactical decisions
10 that are going to influence the outcome of that
11 event. Before we -- we take over and take
12 responsibility for it, we need to be fully briefed.

13 And so that's the usual process that we
14 have. The CIC will get there. I'll -- before that,
15 I'll begin gathering information. When the CIC gets
16 there between the patrol supervisor, typically, and
17 myself, we will brief the incident commander, the
18 critical incident commander at that point.

19 Q All right. And the critical incident
20 commander ultimately for this incident was?

21 A Art Nakamura. He's the commander of the
22 Specialized Resources Division.

23 Q Did you get there before Commander
24 Nakamura?

25 A I did.

Examination of Jason Pearce

1 Q Can you kind of orient us in terms of a
2 timeline and when you arrived?

3 A I don't have my notes in front of me for
4 the exact time that I arrived. As soon as I walked
5 into the building and learned that Sergeant McKinley
6 was going to be the incident commander. And I just
7 told him, "You're going to be coming with me to the
8 command post," that's when I heard a gunshot inside.

9 You could tell it was from the interior of
10 the building. And within a second or two,
11 Officer Snodgrass, North Precinct officer, came
12 limping out. I was right by the front door when it
13 happened.

14 He came limping out and immediately you
15 could see, I guess, kind of a spray of drywall dust,
16 probably is what it was, a big white covering on his
17 pants and he was limping pretty good.

18 And, at that point, realized, well, this
19 event has just changed from what we originally
20 thought it was to now we have an officer that's been
21 shot. So as he came limping out, I grabbed onto him
22 and a couple other of the uniform patrol people
23 grabbed onto him and we got him down the street to
24 pretty much where my car was parked at Willis and
25 Fenwick.

Examination of Jason Pearce

1 Started getting medical in. And I can't
2 remember if it was a SERT medic or someone on scene,
3 began to cut his pants just to see -- to assess
4 what -- what exactly we were dealing with.

5 And I could see that there was a bullet
6 hole entrance on the back of his thigh at the top of
7 the thigh. I could see a bullet path and the bullet
8 actually underneath the skin on the front of his
9 thigh on the inside.

10 Q And then from that point, did you stay in
11 the command post the rest of the --

12 A Yes.

13 Q And while you were at the scene at 1600,
14 did you -- did you observe anybody trying to make
15 contact with the suspect?

16 A When I first had walked up before that shot
17 was fired, I could hear yelling from the other side
18 of the building. I couldn't see the balconies and
19 the side of the building that this person was on and
20 that the other officers were on.

21 I could hear yelling back and forth, so I
22 knew there was some form of communication. I don't
23 know how much you'd consider that dialog, what was
24 really being said at that point.

25 My job is specific that I need to gather

Examination of Jason Pearce

1 info from the folks who'd been there, which, up to
2 and including the DEA folks, what exactly do we have.

3 Q Did you make out any of the statements that
4 the suspect was saying at that point?

5 A I couldn't, no.

6 Q Okay. So once you're back at the command
7 post, what happened?

8 A So, clearly, at that point, the event had
9 changed. The secondary page that had come out was
10 that the DEA had been serving a search warrant there,
11 that the suspect that bailed out of or fled from the
12 original location apartment from one balcony to
13 another and was now inside another apartment.

14 I didn't know anything about the nature of
15 the warrant, what was involved, but that all changed
16 when the shot was fired and Officer Snodgrass
17 was hit.

18 So, in my mind, it went from we just are
19 looking for a suspect in relation to a search warrant
20 to now we have an armed barricade. And we know he's
21 armed now. He's clearly fired rounds through the
22 walls. One of those has stuck an officer. And those
23 rounds were continuing.

24 So with that, now I've got to begin -- and
25 this is always in conjunction with the other

Examination of Jason Pearce

1 sergeants and the other folks who are there, what is
2 the best course of action? How are we going to
3 resolve this incident?

4 And even though he fired shots, the goal is
5 still to resolve it at the lowest level that we can.
6 And I believe Commander Nakamura got there shortly
7 after that. Again, I don't have my notes and
8 couldn't remember the exact time that he arrived, but
9 it was shortly after that.

10 And we began having discussion of what this
11 event is. We call it defining the event. And so we
12 have an armed subject that was the subject of a
13 search warrant that the DEA had. He's fled into a
14 neighboring unit.

15 He is armed. He has been firing his
16 weapon. We have an officer that's been struck. So
17 at that point, we consider that, like I said, an
18 armed barricade. And how do we resolve that? Well,
19 ideally, we would want that person to peacefully
20 surrender and come to us.

21 But how do we do that and what is the
22 mechanism to do that? A gas plan is one of them, and
23 that is introducing gas into that apartment to, one,
24 limit visibility and two, to encourage him to come
25 out to us.

Examination of Jason Pearce

1 That's certainly something that, you know,
2 we'd be very reluctant to make entry on. The other
3 critical component to that is finding out -- it's in
4 an apartment complex -- what other units are
5 occupied?

6 Who is at risk for this person continuing
7 to fire his weapon and we already know one round has
8 come through a wall and hit an officer. It's of high
9 concern what other people are at risk of that.

10 Q So you said you heard the shot --

11 A Mm-hmm.

12 Q -- that hit Snodgrass. Did you hear any
13 other shots?

14 A I did as the event continued, yes.

15 Q So -- and it became an armed barricade.
16 Can you talk about what the concerns are in that sort
17 of situation when somebody is -- is armed and they're
18 barricaded in?

19 A Yes. Is there anyone else in there with
20 him? Does he have any hostages? Is this had been a
21 planned event, there's a huge back story that goes
22 into planning these events and things that we take
23 into account.

24 We just didn't have that, and this event
25 went so quickly, we were always trying to catch up to

Examination of Jason Pearce

1 that information flow. So for me, it's I need a
2 person from the DEA, I need north precinct and I need
3 to get a quick picture of what has happened.

4 What are the stuff that we don't know? And
5 so kind of the responsibilities break down, on the
6 SERT Team, we have the operators, me and the command
7 post. But we also have what's called the SERT intel
8 component, and those are officers whose job it is to
9 gather information and intelligence.

10 And that intel is going to be crucial to us
11 to chart how we're going to work through that call.
12 In conjunction with that, we have the Crisis
13 Negotiation Team. They have their own set of
14 investigators and intelligence folks that are
15 gathering information.

16 In our SERT intel, we always have one
17 person that is embedded with them and they work
18 together to begin gathering information and vet
19 through that information. We just didn't have time
20 on this, it just happened so quickly.

21 We wanted to introduce gas, but in order --
22 knowing that he's already fired rounds that have
23 struck and officer and people, we wanted to have
24 armor up front. And so we have three armored
25 vehicles which are capable of withstanding up to

Examination of Jason Pearce

1 including heavy rifle rounds.

2 And in order to get the gas into -- into
3 that apartment, it's kind of that balance. In order
4 to do so, we're going to expose officers to what we
5 know is a deadly threat. So to minimize the risks to
6 them, we wanted to have armor positioned that they
7 could deploy gas from.

8 So Sergeant Arb (phonetic) and I, we talk
9 on the phone, we talk on the radio. I wanted that
10 gas plan in place quickly, but we needed that piece
11 of armor to get there.

12 Q Okay. So -- so, at this point of the
13 incident, though, is it fair to say that the main
14 thing you're doing is just trying to learn what it is
15 that you're facing?

16 A Exactly.

17 Q And so can you talk about why -- why you
18 chose a gas plan rather than, say, just breaching the
19 door and going in and getting him right away?

20 A We know this person's armed. We know that
21 he is intentionally firing rounds at the police that
22 have struck the police. If we breach the door and
23 make an entry, in my mind, the -- that's almost a
24 guarantee that you're going to have some form of
25 conflict in there, a gun battle, whatever it is, and

Examination of Jason Pearce

1 you're going to expose not only the officers that are
2 tasked with going in at risk, but it also exposes
3 that suspect to risk.

4 And if we can mitigate that by other means,
5 we will do so. And having that armor there and
6 having the, I guess you could call it a higher level
7 of training and tools and equipment that gives you a
8 higher tolerance for these kind of events.

9 So even though he has fired a gun, shot an
10 officer, we were still wanting to come in at a lower
11 level and with that, put a gas plan in, which is,
12 again, hopefully going to mitigate his ability to
13 continue firing rounds and encourage him to come out.

14 Q So that led right into my next question,
15 which is you said you come in at a lower level. So
16 are you talking about levels of use of force?

17 A Yes.

18 Q And can you kind of just walk us through
19 what those are.

20 A On the SERT side?

21 Q Yeah.

22 A Well, we have a lot of tools that patrol
23 uses. We have 40-millimeter launchers, which
24 they'll -- those are on patrol as well. Ours are
25 slightly different form, but they're essentially the

Examination of Jason Pearce

1 same thing. They fire everything from a foam, kind
2 of a harder foam-tipped round, which would be an
3 impact round. We can also launch gas from it.

4 And with that, there's varying levels of
5 gas that we can use that will be able to penetrate
6 through windows, penetrate through barriers,
7 penetrate through siding. That's just any number.
8 Do you want everything, like the --

9 Q Well, I don't need all the -- all the
10 particular tactics or all the particular weapons.

11 A Sure.

12 Q I guess what I'm talking about is those
13 things that you're describing, those would be
14 considered less than lethal?

15 A Yes, yes.

16 Q Okay. And on the use-of-force continuum,
17 the force that the suspect was using at this time
18 would be described as lethal?

19 A Yes.

20 Q Or deadly?

21 A Deadly force.

22 Q Okay. And so when you talk about using a
23 lesser force, you're talking about responding to his
24 use of deadly force with less than deadly force?

25 A Yes.

Examination of Jason Pearce

1 Q Okay. And can you talk about why at this
2 point that's the tactic, that's the strategy. I
3 mean --

4 A The goal is always to resolve any kind of
5 conflict at the lowest level that we can peacefully
6 with a suspect surrendering. That's always the goal.

7 It's not always achievable, but that's
8 always the goal. The -- the gas plan, like I said,
9 is to mitigate his ability to be able to use deadly
10 force against us, hopefully, and to encourage him to
11 come out.

12 We want to make that environment
13 uncomfortable enough where he's choosing to surrender
14 rather than stay in that environment and continue to
15 use deadly force. The armor out front gives us the
16 ability to do that.

17 It allows us to come in at that lower level
18 of force, still provide safety to the people that
19 we're tasking to deal with him and, like I said,
20 encourage him to come out.

21 Q Okay. And so the -- is it fair to say that
22 the goal of the gas plan is to get him to surrender
23 peacefully?

24 A That's the goal. And it's kind of twofold.
25 It's to encourage him to surrender and come out, but

Examination of Jason Pearce

1 also to mitigate his ability to continue firing,
2 hopefully.

3 There are -- there are times where part of
4 that lower level or deescalation plan could be our
5 CNT, our negotiators having contact with him. In
6 this case, we didn't have that.

7 Q And so -- so you ordered that a gas plan be
8 developed?

9 A Yes.

10 Q And at that point, how far out -- how long
11 did you have to wait for armor to arrive?

12 A I believe it was -- it was only a few
13 minutes. Couple minutes, few minutes. It was
14 already en route to the scene when this event
15 kicked off.

16 So any time there's an emergency
17 activation, we bring all pieces of armor to it. It's
18 just a question of having someone get to the precinct
19 where it's at.

20 Q Okay. Once the armor arrived, how quickly
21 was the gas plan implemented?

22 A Pretty quickly. Within a couple minutes.
23 So even though, you know, yes, I can say, yes, I want
24 a gas plan, we want to introduce gas, these are
25 things that the SERT operators are already going

Examination of Jason Pearce

1 through in their minds.

2 They're already developing these plans
3 without me having to tell them to do so. They
4 recognize what the event is as well. And even though
5 this is a structured system, that's why they're in
6 those positions, because they are problem solvers.
7 They're great thinkers.

8 And so this is already in their mind. So a
9 lot of the preparation in order to do that is already
10 taking place without me even having to say, develop a
11 gas plan. And once the armor gets there, that's just
12 the mechanism for them to be able to get in there and
13 do it safely.

14 Q And the actual logistics of implementing of
15 the gas plan, is that something that you direct or is
16 that left to them?

17 A No, that's left to them. I -- I'm not
18 going to ever tell them the tactic they need to use.
19 That's why they're subject matter experts in that
20 field. They are the ones that are up front and see
21 things much more direct than I am.

22 At that point, I'm removed in the command
23 post and they are the ones up front seeing things.
24 So I can't tell them or I would never tell them which
25 window or which door, because I can't see it like

Examination of Jason Pearce

1 they can.

2 They have the most up-front feel to this
3 event, so it's their discretion where they believe
4 they're going to be most successful in implementing
5 that plan.

6 Q All right. And that -- so I want to touch
7 on that a little bit and we'll come -- circle back to
8 that a little bit later also. But the idea that when
9 you're there, you're in the command post.

10 A Mm-hmm.

11 Q And the forward operators are the ones
12 actually seeing the things that happen?

13 A Yes.

14 Q And so the information you have, is it
15 realtime or is there a lag to you getting that
16 information?

17 A I'm hearing it directly on the radio.
18 We're all on the same radio channel, so, you know, if
19 it's an observation one officer has, I'm hearing that
20 directly.

21 Q Would you say that you have all the
22 information that the forward officers -- forward
23 operators have or is there a deficit in the
24 information that you have?

25 A The information's broadcast, but again, I

Examination of Jason Pearce

1 can't see what they're seeing, so I rely on what we
2 call a word picture to a large degree. And in this
3 case, the command post was probably closer than
4 usual. Most of the time, it's out of view, down the
5 street, around the corner or however you phrase it,
6 but you rely on a word picture that you hear over the
7 radio to kind of think and see what they're doing.

8 Q So you're taking what they see firsthand
9 and then the bit of that they broadcast over the
10 radio and then you're reconstructing a picture of
11 that in your mind?

12 A Yes.

13 Q Okay. Once the gas plan was implemented,
14 what happened?

15 A He continued to fire shots. It didn't have
16 the effect that we wanted in mitigating him to -- or
17 his ability or his desire to continue firing shots at
18 us. And it was almost immediate.

19 As soon as the first gas rounds went in,
20 the shots, again, continued. I couldn't tell you how
21 many shots, but there were several that I could hear.
22 But it didn't have the effect that we wanted.

23 Q And did you get information about shots
24 going into other units in the --

25 A Yes, yes.

Examination of Jason Pearce

1 Q And -- and what information did you have
2 about whether the buildings had been evacuated?

3 A That's always the -- the battle that we're
4 facing is getting up-to-date information. And in
5 this case, time was the one thing we did not have.
6 His actions really pushed this event.

7 So I'm relying on our CNT negotiators, our
8 SERT intel, north patrol, what has been done. And
9 keep in mind this is going on all the time while we
10 have people in the lobby right next to this
11 apartment. And we're taking, you know, gunfire.

12 And we're trying to, you know, accurately
13 map out which ones are known to -- that we made
14 contact with that have been evacuated and we just
15 didn't know exactly how many, if all, units had been
16 evacuated or if there were still people in place.

17 Q So there's a lot of pieces of information
18 you would have liked to have known at the time --

19 A Yes.

20 Q -- that you just didn't have yet?

21 A Yes.

22 Q Would you -- is it fair to say that the --
23 that the incident was chaotic?

24 A That is -- yes.

25 Q Is it fair to say that it was rapidly

Examination of Jason Pearce

1 evolving?

2 A Very rapid.

3 Q All right. At some point, was a shot
4 opportunity requested?

5 A Yes, it was.

6 Q Tell us about what a shot opportunity is.

7 A So a shot of opportunity, that is a
8 direction from the command post, either myself
9 through the critical incident commander that we are
10 directing an officer to use deadly force, whether
11 that is someone on the -- in the perimeter, which
12 typically we call, you know, sniper is the more
13 common vernacular term for that, or anyone on the
14 team.

15 With that, it's an exceptionally rare
16 circumstance. But in order for me or the critical
17 incident commander to give that direction, is we have
18 to have some piece of knowledge that they don't have.
19 And we don't have the time to go through it. I just
20 need them to take this direction.

21 With that, it could be any number of
22 things. In this case, it would be I know that there
23 are units that are still occupied that people are at
24 risk of being shot, injured, killed by this guy's
25 actions and the -- the -- the operators don't know

Examination of Jason Pearce

1 this.

2 So we have to have some piece of
3 information that they don't have. The standard or
4 the standard -- standard rules portion?

5 Q Yeah, we'll get to that. Did you have any
6 piece of information --

7 A That was what we were --

8 Q -- that they didn't have?

9 A -- working towards. What I wanted to know
10 is one, are there still occupied units in there? And
11 two, where are they and where are they in relation to
12 where this person is? Have rounds gone through the
13 walls and are these people at risk?

14 I just didn't have that. And again, CNT
15 and our intel folks and patrol, they were doing their
16 best to try and get that information, but that takes
17 time. It takes time to physically go from door to
18 door throughout this entire unit, knock on the door,
19 wait for response, all the while this gun battle is
20 going on.

21 Q Would you say you were rapidly gaining that
22 information or would you say it was trickling in
23 slowly?

24 A They were trying to get it as rapid as they
25 could. And I supposed it's a subjective view of what

Examination of Jason Pearce

1 is a trickle and what is rapid, given the
2 circumstance. In this, because this event was moving
3 so quickly and there was so much chaos, it seemed
4 like it was taking forever, when the reality was they
5 were working through it as quick as they could.

6 Q And so if -- so shot of opportunity,
7 that's -- that's sort of one level where you said, go
8 ahead and take the shot. If the shot opportunity is
9 denied, then what are the rules in play?

10 A Called standard rules. And that is that
11 every officer, whether it's a patrol call or in this
12 case, the very high-risk critical event, has to make
13 their own determination of what level of force that
14 they are going to use and be able to articulate the
15 reasons why and the justification for it.

16 And so it falls back to that individual
17 officer to make that determination that I believe
18 deadly force is the most reasonable force option and
19 the only force option at that point.

20 Q And so a denial of shot opportunity, is
21 that a directive not to use deadly force?

22 A No, it's not at all.

23 Q And there's another term that you used that
24 I was reading. I'm trying to -- was it inherent
25 authority?

Examination of Jason Pearce

1 A You mean appropriate initiative?

2 Q Appropriate authority. That's the term I'm
3 looking for. Yeah, can you describe what appropriate
4 authority is?

5 A Appropriate initiative.

6 Q Initiative. I was --- I was way off, but
7 you got there.

8 A We have lots of -- lots of terms. So
9 appropriate initiative is we -- we -- you know, as
10 I've explained, I'm in the command post and I'm not
11 seeing things as direct as the -- as the operators
12 are.

13 And so they are going to, at times, see an
14 opportunity to resolve an incident and there isn't
15 the time to work through that plan and gain that
16 command authority to do so.

17 With that, there has to be a high
18 likelihood of -- they believe that there has to be a
19 high likelihood of success involved in initiating
20 that.

21 And I suppose it's even more important on
22 critical incidents like this that you -- that you
23 maintain that initiative for those folks to be able
24 to take action. They are in the best place to see it
25 firsthand and determine that that is the best course

Examination of Jason Pearce

1 of action.

2 Q And if -- if they do, in fact, choose to
3 use deadly force under standard rules, does that --
4 does that mean that they then are responsible for
5 their articulating why they used that force?

6 A Yes.

7 Q And who was it in this scene who -- whose
8 authority was to make the decision about a shot of
9 opportunity?

10 A So Commander Nakamura and I, when we're in
11 the command post, we're attached at the hip. And
12 when that question came out, you know, like I said,
13 in order to -- for us to give that direction, we have
14 to have information that the other operators do not
15 have. And we just didn't have it at that point.

16 I believe that we were working towards it.
17 And that would have been, yes, we believe there are
18 people in an adjacent apartment nearby who are
19 subject to injury or death because of this guy's
20 continued use of deadly force.

21 And we need -- we need that act to occur
22 now. And so I guess to answer that, so the shot of
23 opportunity, that would come through us.

24 Q Okay. Is it -- is it sort of officially
25 joint -- you know, it's both of your call or is it

Examination of Jason Pearce

1 officially Commander Nakamura's call at that point?

2 A He's the -- he's the incident commander in
3 charge. My job and the CNT lieutenant's is to come
4 up with options, assess where we're at. We're each
5 going to have our own plans that we would introduce
6 and we're going to, you know, discuss the merits, the
7 pros and cons of both; but, ultimately, it's his
8 decision. He is in charge of the event.

9 Q So it's fair to say you're in full
10 consultation with him.

11 A Constantly.

12 Q And I think that's what you were kind of
13 trying to say. It's more of a conversation rather
14 than just him making a decision, correct?

15 A Correct. You know, you never want the
16 decision to be made in a vacuum without all the
17 information.

18 And that's my job is to provide him as much
19 information on the SERT side, you know, what our
20 capabilities are, where we're at, what the tactics
21 are, what I think is appropriate given where we're
22 at. The same with CNT.

23 Q And so what was the decision about the shot
24 of opportunity?

25 A So at that point, we didn't have that. And

Examination of Jason Pearce

1 it's -- it's that carve-out that says, we have to
2 have information that others don't. We just didn't
3 have that yet. This event was going so quickly,
4 despite the gas not working. He was still continuing
5 to -- to fire rounds.

6 This was the -- the -- I guess, the most
7 rapidly evolving critical incident I've been on,
8 especially in the role as the SERT commander. It
9 just went so quick.

10 Q And as you were discussing it, did you feel
11 that you were close to getting there or did you feel
12 that you were a long way from getting there?

13 A I feel that we were close to getting there,
14 probably closer than I've ever been on an incident
15 like this. You know, it was just that one piece of
16 information that we didn't have. And again, like for
17 us in the command post, we're trying to get this word
18 picture of what everyone's seeing.

19 We're trying to get in all the information
20 that intel and CNT and patrol is -- is giving us to
21 formulate these decisions. So with that, it takes
22 time. In this case, we just didn't have that time.
23 I believe that, you know, as it turned out, there
24 were still people in that apartment complex in some
25 of those units.

Examination of Jason Pearce

1 And had we had that concrete information to
2 act on that yes, that this unit here, this unit
3 there, whatever it was, that could have been the --
4 that factor in making and giving that decision. We
5 just didn't have it.

6 And so it's a very important decision to
7 tell someone, to tell another officer, to direct them
8 to use deadly force. And with that, we're not going
9 to take it lightly.

10 In order for us to justify doing that, we
11 have to have all the information available. And we
12 were working towards it. We just had not got there
13 yet.

14 Q I think I set that up by asking who
15 requested it, but let's just make sure we cover that.
16 Who requested it?

17 A Believe it was Sergeant Livingston.

18 Q All right. And then so in terms of chain
19 of command, when you make a decision about that, you
20 communicate that back to Sergeant Livingston or do
21 you communicate it to the team as a whole?

22 A So I -- I'll do it on the radio so that
23 everyone can hear it and everyone understands where
24 we're at. And it's very important that the folks out
25 in front know exactly where the command post is at.

Examination of Jason Pearce

1 And to say standard rules, it's not a -- it's not a
2 diminishment by any means.

3 It's just I don't have the information to
4 give you that direction, so you being up front and
5 seeing this directly are going to have to make your
6 own decision to use deadly force or not.

7 Q After you -- after you advise to there's
8 still standard rules, did Sergeant Livingston then
9 make any other statements about use of force?

10 A Yes. So he, essentially, summed up the
11 event by, you know, this person, you know, is
12 continuing to use deadly force. He's still shooting.
13 And his expectations were to use force up to and
14 including deadly force.

15 And with that, you know, when we heard that
16 on the radio, I -- I had that discussion with
17 Commander Nakamura and was like, I completely agree
18 with that assessment, because at that point, he is in
19 the best position to -- to make that assessment, more
20 than us at that point, because we're removed from it.

21 He is seeing it up front and I completely
22 concur with that direction that he put out. And --
23 and I suppose you could -- you could say, you know,
24 is it a subtle difference? Well, it's not an
25 authorization.

Examination of Jason Pearce

1 implemented.

2 Q Okay. But before officers fired?

3 A Yes.

4 Q So we're talking within a couple minutes,
5 right?

6 A Yes. Very quickly. Very quickly, yes.

7 Q Okay. And then at some point, did you --
8 did you hear that officers had fired?

9 A Yeah, I could hear it.

10 Q You could actually hear them fire?

11 A I could actually hear it. So we were about
12 a block north of the direct line of sight on the --
13 where the armor was. I could see where they were at,
14 but from a distance.

15 Q And when you say you heard it, was the
16 sound from their firearms significantly different
17 than the sound you'd been hearing from his?

18 A Yes, yeah. So the sound's coming from
19 inside. I mean, when you fire a weapon inside and
20 you are removed from it or on the exterior of the
21 building, it -- it's a bit more muffled. You hear it
22 directly, yes, you can tell the difference.

23 Q And then also was there a Zulu call on the
24 radio?

25 A Yes.

Examination of Jason Pearce

1 Q And what is that?

2 A So that is a term we use and it's to let
3 everybody else know what has just occurred. And that
4 is a term the IP uses for any number of reasons, but
5 typically when they -- when they take a shot. And
6 that could be to initiate the assault side, the entry
7 team to make entry or just to let them -- let
8 everyone know, that was me, we just took a shot.

9 Q Okay. And is that so that to avoid
10 confusion and officers thinking that maybe the shot
11 they just heard came from the suspect --

12 A Correct.

13 Q -- instead of an officer?

14 A Correct.

15 Q Once -- did you hear Howery give the Zulu
16 call?

17 A So there were -- there were three shots.
18 There were two that came first and then the last one
19 that Office Howery got on the radio and broadcast
20 Zulu. Yes, I did hear that.

21 Q And did you also hear him say that he
22 believed the subject was down?

23 A Yes.

24 Q What happened at that point in the call?

25 A So once that person's down, you know, any

Examination of Jason Pearce

1 time we use force on someone, especially deadly
2 force, we are now bound to get that person medical
3 treatment as quickly as we can. The bounds being we
4 need to do it safely. We know this person is armed,
5 clearly.

6 We know this person has used deadly force
7 against us. We don't know, even though the ID
8 position in this case, Officer Howery, from a
9 distance looking through a window and you can see
10 that person down, we still don't know exactly what
11 their condition is.

12 Is that person still capable of moving
13 around? Is that person still capable of shooting at
14 us as we make entry? So we want to gather as much
15 information. We're going to rely on the other IP
16 units to try and get a look in.

17 If we need to remove barriers on the
18 window, such as blinds or glass that -- when you look
19 at a building from the outside, depending on, you
20 know, light or where you're at, it can obstruct your
21 view inside of that building.

22 So we want to get as clear a view prior to
23 making entry. But we -- we have SERT medics that are
24 embedded with our -- with our SERT Team. They're
25 Portland Fire Bureau members. They're all certified

Examination of Jason Pearce

1 medics. We do this for a reason.

2 Obviously, if we get hurt and need medical
3 treatment, they're right there, but it's a much
4 quicker ability to get medical treatment to a
5 suspect, especially in a tactical environment like
6 this.

7 It would not be appropriate to just bring
8 an ambulance up to the front of the building and have
9 medical crew go in. We have those SERT medics there
10 for a reason.

11 Q So at this point, did the -- did officers
12 stop firing gas in the building?

13 A Yes. With the person down, we knew at some
14 point we were going to have to make entry into that
15 building to get him medical aid. Even though we have
16 gas masks, we wanted the ability of the gas dissipate
17 a little bit so when we make entry. Yeah.

18 Q And at some point, was an officer able to
19 get a better view of the subject and determine
20 whether he was moving?

21 A A little bit, yes.

22 Q And that information came up to you at the
23 command post?

24 A On the radio, yes.

25 Q And at some point after that, was -- did a

Examination of Jason Pearce

1 team breach the door and go into --

2 A Yes.

3 Q -- the apartment?

4 A Yes.

5 Q And at some point, did you hear that the
6 suspect was pronounced dead?

7 A Yes.

8 Q So I'm out of questions for you, sir. The
9 grand jurors may have some, so --

10 A Okay.

11 MR. MICHALOWSKI: Anybody have any
12 questions? I'm seeing noes.

13 A GRAND JUROR: Yeah, I have a question.

14 MR. MICHALOWSKI: Okay.

15 A GRAND JUROR: So a request came from
16 Sergeant Livingston, but he's not the one who took
17 the shot?

18 THE WITNESS: Correct.

19 A GRAND JUROR: And is that because it was
20 relayed to him to make that request or how does --
21 how is that determined?

22 THE WITNESS: I can't quite hear through
23 the --

24 MR. MICHALOWSKI: She's asking was it
25 relayed to Sergeant Livingston to make the request,

Examination of Jason Pearce

1 like basically did somebody request him to ask you
2 that?

3 A GRAND JUROR: Or was he armed as well?

4 MR. MICHALOWSKI: Did I get that right?

5 A GRAND JUROR: Yeah.

6 A GRAND JUROR: And -- and trying to take a
7 shot?

8 A GRAND JUROR: So is the request made on
9 the radio and then as soon as somebody has the
10 opportunity to take the shot, you take the shot?

11 MR. MICHALOWSKI: I think it might help to
12 start -- or I'll ask a different question.

13 THE WITNESS: Okay.

14 BY MR. MICHALOWSKI:

15 Q And just kind of back you into their
16 questions, I think. Which is, what is Sergeant
17 Livingston's role on the scene?

18 A So we have two -- well, three SERT
19 sergeants that they're in charge of the front line
20 supervision of the SERT Team in these call-outs. And
21 Sergeant Livingston is one of them.

22 His job, yes, he's -- he's an operator.
23 Yes, he takes action just like anybody else, but in a
24 lot of the cases is they are that -- that -- another
25 layer of how to get through this event.

Examination of Jason Pearce

1 Their job is to think ahead. It's less
2 focused than you would say like what you would an IP
3 person doing. They're a supervisor in charge of a
4 critical incident.

5 So I don't know that there was any -- I
6 don't remember any talk on the radio from any of our
7 IP folks asking for -- my recollection is it came
8 right from Sergeant Livingston.

9 Because he's, like me, looking at the
10 context of this whole event and where we're at and
11 summing it up, yet he's got that more direct view of
12 it, being up front.

13 Q And a request for a shot of opportunity, is
14 that for a specific officer or is that goes out to
15 the entire team?

16 A No, that would go out to the entire team,
17 because -- the reason being is if you limit it to
18 just one person, then that might not be the person
19 that has the best view or the best ability to -- to
20 carry that out.

21 MR. MICHALOWSKI: Does that answer your
22 question?

23 A GRAND JUROR: Right, yeah. So it's more
24 of a statement rather than like a -- yeah. Yeah.

25 MR. MICHALOWSKI: Did it answer your

Examination of Jason Pearce

1 question?

2 A GRAND JUROR: Yes. Thank you.

3 MR. MICHALOWSKI: Okay. Anybody else?

4 A GRAND JUROR: Does -- do any officers,
5 like, identify when they're going to take a shot of
6 opportunity? So, for example, like, you know, some
7 sort of verbal cue that says, okay, this is the
8 officer that's going to attempt? Or is it just so
9 fast that it doesn't happen like that? I just didn't
10 know.

11 THE WITNESS: So you mean if one is
12 granted?

13 A GRAND JUROR: So if -- yeah, so if
14 hypothetically it's granted, the operators are in the
15 field, they identify, okay, I've got a shot, do they
16 verbally cue that via the radio or any other way so
17 others know they're the one shooting?

18 THE WITNESS: No. If one was granted, it
19 would be any -- any officer that is in position to
20 carry that out --

21 A GRAND JUROR: Okay.

22 THE WITNESS: -- and be most effective in
23 it. So on a structure like this, we want to contain
24 it. And that means we'll have officers in different
25 positions on different sides of the building.

Examination of Jason Pearce

1 In this case with a person moving around
2 constantly in there, that person on one side might
3 only have a split-second view, where someone on
4 another side might have a longer view or a better
5 ability to do it. So it's -- therefore, it could be
6 someone in the armor. Yeah.

7 A GRAND JUROR: Okay. Thank you. Can I
8 just clarify an abbreviation? Oh, I'm sorry. Mark,
9 go ahead.

10 A GRAND JUROR: Go ahead. Finish your
11 thought.

12 A GRAND JUROR: What does IP stand for?

13 THE WITNESS: Inner perimeter.

14 A GRAND JUROR: Okay. Thank you.

15 THE WITNESS: So the way we -- we split the
16 team in varying roles, the inner perimeter, like I
17 said, that's kind of the -- sorry, most people think,
18 oh, that's a sniper position. We just call it the
19 inner perimeter.

20 On an event, SERT would have control of
21 that inner perimeter portion. Patrol would have
22 control of the outer portion of it. So it's just an
23 easier way to designate it. And we have what's
24 called the entry team. And those are the folks that
25 are tasked with going inside the building.

Examination of Jason Pearce

1 A GRAND JUROR: Okay.

2 MR. MICHALOWSKI: All right.

3 A GRAND JUROR: Yes, sir. So the -- the
4 shot of opportunity wasn't granted and I'm
5 understanding that it's the people on the ground that
6 have to decide when that -- was there still somebody
7 in charge to decide that was there in that area or
8 that -- that -- I know there was two shots made, you
9 know. They weren't near each other.

10 It just seemed like there was something
11 that was organized, you know. One was -- they were
12 nowhere near each other, you know. So what I'm
13 saying was -- was still -- did a commander still make
14 a call or was it an operator that did it or --

15 THE WITNESS: Did they --

16 A GRAND JUROR: Or would they? I don't
17 understand. I'm still a little confused about how
18 you get from -- I understand what happens -- when you
19 say shot of opportunity, everybody is given a green
20 light that has a reasonable and a safe way to do it.

21 THE WITNESS: Mm-hmm.

22 A GRAND JUROR: But that's not what was
23 happening. So they have to make decisions on the
24 side. We had two police officers shooting that were
25 nowhere near each other. How was this organized?

Examination of Jason Pearce

1 How -- did somebody still make a decision on the
2 field? Or I might be asking the wrong person?

3 A GRAND JUROR: Can I ask a question that
4 might help with this?

5 A GRAND JUROR: Please.

6 A GRAND JUROR: Yeah. So you have these
7 two individuals that are on opposite sides. But if I
8 understand correctly, each individual possesses their
9 own authority to make a decision about, I believe
10 this is a threat to life and I need to stop it.

11 THE WITNESS: Correct.

12 A GRAND JUROR: Is that correct?

13 THE WITNESS: Correct.

14 A GRAND JUROR: So each one could
15 independently make that decision?

16 THE WITNESS: Correct.

17 A GRAND JUROR: So while it's possible you
18 have this over-arching global decision of what we
19 call the shot of opportunity, on the ground level,
20 the person that has the kind of closest contact,
21 they're going to still be able to make their own
22 decision?

23 THE WITNESS: Absolutely.

24 A GRAND JUROR: Okay.

25 THE WITNESS: The -- the shot of

Examination of Jason Pearce

1 opportunity, like I said, is us in the command post
2 have to have a piece of knowledge, a piece of
3 information that they don't have.

4 And we need to give quick and clear
5 direction to end that. But even with that, they're
6 still going to have to articulate their expectations
7 and understanding and -- and justify their decisions.

8 And so in this case when you have, you
9 know, multiple officers taking action like this, each
10 one of them is assessing where they're at and making
11 their own decision, yes.

12 A GRAND JUROR: Okay.

13 THE WITNESS: Does that help?

14 MR. MICHALOWSKI: Did that answer your
15 question?

16 A GRAND JUROR: I think so. Thank you.

17 A GRAND JUROR: One more question.

18 THE WITNESS: Yes.

19 A GRAND JUROR: So just to clarify, so with
20 Livingston on the radio verbally saying, we expect,
21 you know, actions up to and including deadly force on
22 the radio for the entire team to hear, would you say
23 that the entire team is now aware, even if -- even if
24 it's internally already expected from their
25 experience, that, you know, potentially deadly force

Examination of Jason Pearce

1 is in consideration of how to resolve this particular
2 event?

3 THE WITNESS: Yes. And, you know, the
4 standard rules is -- and I don't know if this is an
5 apples and oranges comparison. So say this is just
6 your average patrol call that you respond to
7 involving multiple officers. It could be a shoplift
8 or a family disturbance.

9 And each officer doesn't need to request
10 permission from the supervisor in order to take
11 action, whether that is a lower level of force or a
12 decision making in there. We give them the autonomy
13 to be able to make their own decisions and
14 assessments based on the information that they have.

15 And, in this case, that's the same whether
16 it's a member of the inner perimeter folks, the --
17 the IP folks. They're hearing everything on the
18 radio that I'm hearing. They're seeing everything
19 from their angle and their viewpoint.

20 They're just as much aware of what's going
21 on than I am. And so with that, to use that
22 comparison, we would never ever want to remove the
23 autonomy of an officer to take initiative that they
24 feel is justified and reasonable and in policy.

25 Especially when you look at this event that

Examination of Jason Pearce

1 we've talked about, it was so quickly evolving.
2 Things were happening so quickly. We want those
3 officers to be able to -- and that's why they're in
4 these positions and why they're selected for these
5 positions.

6 It's not just their ability to be there,
7 but to think and use their brains. These are some of
8 the smartest, most capable people. And that's what
9 -- it's a higher level of expectation that we would
10 put on them in these roles to be able to make their
11 -- their own decisions.

12 A GRAND JUROR: Sort of a follow-up to that
13 then. With this appropriate initiative, like what --
14 what is the training -- like, do they have a
15 hierarchy of how they want to minimize the threat?

16 Like is there like (indiscernible) or -- or
17 like what is -- what is their training in terms of
18 what type of a shot would they want to take to sort
19 of create success in this action?

20 THE WITNESS: Are you talking about where
21 they should be aiming on a person?

22 A GRAND JUROR: I mean, what -- yeah,
23 what -- like when you --

24 A GRAND JUROR: I can ask a question that
25 could help with this.

Examination of Jason Pearce

1 A GRAND JUROR: Thank you.

2 A GRAND JUROR: Okay. Are police officers
3 training in any way or any scenario, whether it's in
4 this context or on the street, that when they remove
5 their firearm and are going to use deadly force --
6 'cause a firearm is deadly force -- are they trained
7 at all to shoot in any more other than to cause
8 death?

9 THE WITNESS: Correct.

10 A GRAND JUROR: So that is the only way
11 they're trained; is that correct?

12 THE WITNESS: That is it. When -- when you
13 reach that level of deadly force, that is exactly
14 what it is. You are trying to end the threat, the
15 threat that is posed to you, that is posed to other
16 people. Yeah.

17 A GRAND JUROR: So they're not trained to
18 shoot like try to shoot a gun on someone's hand?

19 THE WITNESS: No.

20 A GRAND JUROR: Or try to -- to wing them
21 in the shoulder or in the leg or something of that
22 nature?

23 THE WITNESS: No.

24 A GRAND JUROR: And explain why that is,
25 please.

Examination of Jason Pearce

1 THE WITNESS: It's to end the threat. If
2 you shoot -- shooting someone in a shoulder, I mean,
3 it's -- I'll just say that that's Hollywood. You
4 know, shooting a gun out of a hand, that's Hollywood.
5 It's not realistic.

6 You know, whether that is a patrol call or
7 in this case a SERT call, when you make that decision
8 to use deadly force, it's to end that threat. That
9 is what the goal is.

10 We try everything we can to resolve it at a
11 lower level, and that's why we have less lethal
12 tools, which that's what the goal of those tools are
13 is to be less lethal. Whether that's a gas plan,
14 whether that is an impact round, taser, those are all
15 less lethal.

16 And that's where we don't believe that
17 we've risen to that level of deadly force and so
18 we're trying to resolve it there. Firearm, that is
19 deadly force. And the only time that we would use a
20 firearm is for deadly force.

21 A GRAND JUROR: Okay. So there's --
22 there's no middle ground. It's either less lethal or
23 it's lethal.

24 THE WITNESS: Yeah. The middle ground is
25 all the less lethal tools that we have.

Examination of Jason Pearce

1 A GRAND JUROR: Okay. Thank you for that.
2 Thank you for helping get to that.

3 A GRAND JUROR: And then just one more
4 question, please. So you said there was three shots,
5 right, from the officers?

6 THE WITNESS: Yes.

7 A GRAND JUROR: What was the time between
8 each shot? So it's one shot fired and then like
9 another shot fire consecutively or --

10 THE WITNESS: They were pretty quick.

11 A GRAND JUROR: They were pretty quick?

12 THE WITNESS: Yeah.

13 A GRAND JUROR: And -- and I believe we
14 certainly can look back to the detectives' testimony
15 and there's the -- the BOEC kind of outlines that.

16 A GRAND JUROR: Thank you.

17 MR. MICHALOWSKI: Anything else? All
18 right. Thank you, sir.

19 THE WITNESS: Thank you.

20 A GRAND JUROR: Thank you.

21 (Whispered discussion, off the record,
22 9:57 a.m.)

23 MR. MICHALOWSKI: It's almost 10 o'clock.
24 Does anybody need a break?

25 A GRAND JUROR: I could use like a

1 two-minute break.

2 A GRAND JUROR: Okay. Yeah, now's a good
3 point. We're waiting for one of our witnesses to log
4 on and then we'll go to that one, okay?

5 A GRAND JUROR: I'm going to go off the
6 record.

7 A GRAND JUROR: Great. Thank you.

8 (Recess taken, 9:58 a.m. - 10:06 a.m.)

9 MS. NADELL: All right. So we're back on
10 the record. Our next witness is appearing remotely
11 by video and audio.

12 Mr. Mendoza, just so the record's clear,
13 you just confirmed off the record that you are alone
14 in a room, correct?

15 THE WITNESS: Yes, I am.

16 MS. NADELL: Okay. If you could stand and
17 raise your right hand, the foreperson will swear you
18 in, okay?

19 THE WITNESS: Okay. I don't know if you
20 can see me.

21 MS. NADELL: He's not raising his hand yet.

22 There you go.

23 **JESUS MENDOZA**

24 Was thereupon called as a witness; and, having been
25 first duly sworn, was examined and testified (via

Examination of Jesus Mendoza

1 simultaneous video transmission) as follows:

2 A GRAND JUROR: Great. You can have a
3 seat.

4 Thank you. And if you could state and
5 spell your first and last name for us.

6 THE WITNESS: Yes. It's Jesus, J-e-s-u-s;
7 and my last name is Mendoza, M-e-n-d-o-z-a.

8 MS. NADELL: Great.

9 EXAMINATION

10 BY MS. NADELL:

11 Q Mr. Mendoza, do you live in the state of
12 Oregon?

13 A No, I do not.

14 Q Where do you live, what state?

15 A I live in Texas.

16 Q All right. And in August of 2021, late
17 August, were you staying in Portland, Oregon?

18 A Yes, I was.

19 Q And was that for travel, like vacation, or
20 work?

21 A It was just visiting. It was traveling for
22 vacation.

23 Q Okay. And what sort of accommodations did
24 you stay in?

25 A An Airbnb.

Examination of Jesus Mendoza

1 Q All right. And do you remember the address
2 of that Airbnb?

3 A I -- I do not.

4 Q Okay. Was it in North Portland?

5 A Yes.

6 Q Or what's considered North Portland? Okay.
7 Who were you here with?

8 A A group of friends. There were five of us
9 in total.

10 Q Okay. And did anything happen during your
11 trip that was pretty memorable?

12 A Yes.

13 Q All right. What time -- what time of day
14 was that?

15 A It was about 6:00 a.m.

16 Q Okay.

17 A I -- I was asleep in the living room and I
18 heard loud noises and banging and shouting, which I
19 just presumed to be maybe just someone arguing. And
20 then afterwards, I started hearing a gentleman
21 identify himself as an officer.

22 I don't know the name, but I did hear a
23 police officer identify himself and speaking with
24 another gentleman who I did not know at the time.
25 And they were just arguing back and forth. The

Examination of Jesus Mendoza

1 police officer was attempting to deescalate the
2 situation, but the other gentleman was very
3 incoherent, it sounded like, and really extremely
4 loud and irate. So there was an argument that kept
5 going on.

6 Q So did this happen while you were at the
7 Airbnb or at a different location?

8 A At the Airbnb.

9 Q Okay. And tell us a little bit more about
10 the Airbnb. Was it like a house or what sort of
11 place was it?

12 A It was an apartment. It was in an
13 apartment-condos type of building. So we were in the
14 Airbnb, which was directly across from the situation
15 that happened.

16 Q Okay. And was this a multi-level apartment
17 complex?

18 A Yes.

19 Q And what floor?

20 A We were on the second floor.

21 Q Second floor. Okay. And I know you don't
22 recall the address. Can you recall, though, whether
23 the building you were in, did it -- did it appear to
24 be part of the same complex where the incident was
25 happening, like -- like an adjacent building or --

Examination of Jesus Mendoza

1 A I believe so. The buildings were very
2 similar, so I believe it was a similar owners or
3 property complex.

4 Q Okay. They looked similar, at least, to
5 you? Okay. And then you said that you were in the
6 apartment or Airbnb directly across from where the
7 incident happened. Did your Airbnb have, like, a
8 patio or a porch or anything?

9 A We did have a patio.

10 Q Okay. And how could you tell that your
11 location was across from where the incident was
12 happening?

13 A Well, shortly after we started hearing -- I
14 don't believe it was gun exchanges in the beginning.
15 I believe it was like maybe canisters being shot or
16 some type of gas that maybe was being shot, because
17 there was broken windows directly across.

18 So eventually, I did wake up my friends
19 that were with me and we were trying to figure out
20 what was going on. So shortly after I woke up one of
21 my friends, we looked outside and we could see a
22 sniper from -- in front of the location, so I guess
23 they were trying to get a, like a gunpoint advantage.

24 And then there were more cars that showed
25 up, police officers and SWAT, so we eventually just

Examination of Jesus Mendoza

1 presumed it was across. I mean, I'm not for sure
2 exactly which apartment it took place in.

3 Q Okay.

4 A But the glass was broken across, so we
5 assumed it was that place across from us.

6 Q At the place where the glass was broken,
7 did you see anyone outside or inside that didn't look
8 like law enforcement?

9 A No, I -- I did not.

10 Q Could you hear -- and I know you described
11 hearing what sounded like canisters -- could you hear
12 any conversation between anyone from your vantage
13 point?

14 A Just the officer and the -- the suspect, I
15 guess is what you would call him.

16 Q Okay. And you used -- you just used the
17 pronoun of him. Could you tell that it was a male?

18 A Yes, you could.

19 Q Was that based on the -- the voice?

20 A Just the voice, yeah.

21 Q Okay.

22 A Just the voice near him.

23 Q And what was the --

24 A He was telling --

25 Q Oh, go ahead.

Examination of Jesus Mendoza

1 A He was telling the officer not to come in,
2 'cause if he did, he would shoot him. So, at that
3 point, I presumed it was escalating way beyond the
4 initial conversation that started, 'cause in the
5 beginning it was -- it was loud, but it wasn't
6 violent at first and then it started escalating.

7 And, again, he just sounded really
8 incoherent. He -- he kept saying things, like he
9 needed help. I think he was asking for, like,
10 medicine from the officer.

11 And the officer was trying to talk to him
12 that he could help him, but he was trying to, you
13 know, obviously go in to help him, but the gentleman
14 kept on telling him not to come in.

15 Q Okay. And you said that you heard him say
16 something about that he would shoot if anyone
17 came in?

18 A Yes.

19 Q Okay. You described that -- that things
20 sort of seemed to be escalating with the language and
21 the communication. Was that before or after you had
22 heard what sounded like canisters?

23 A That was before.

24 Q Before? Okay.

25 A So it was like, I want to say, 6:00 a.m.

Examination of Jesus Mendoza

1 To the best of my knowledge, that's what I thought it
2 looked like it was, time-wise. So maybe it was like
3 a conversation that was going on for maybe 30 minutes
4 or so, 30 -- 30 minutes to an hour.

5 Between the hours of 7:00 to 8:00, I want
6 to say, that's when it seemed to escalate and that's
7 when they're simply being more officers that were
8 coming in. And then eventually, we were escorted out
9 around 8:00 from our Airbnb.

10 I -- I guess, SWAT. I'm not too sure, but
11 he was in green, so I presumed. And you can smell
12 tear gas on him, 'cause when we were leaving, you
13 know, it's the dawn of morning, so none of us were
14 dressed already, but you could just smell that tear
15 gas off of that.

16 Q Okay. And that's from the person that
17 helped you out of the building?

18 A Yes.

19 Q Okay. Did you -- were you, like, watching
20 what was happening from the Airbnb before you were
21 escorted out?

22 A Well, I was trying to figure out what was
23 going on, but once I heard gunshots; and, you know,
24 kind of SWAT, at first I didn't know it was
25 canisters. I (indiscernible). And then you could

Examination of Jesus Mendoza

1 hear clear gunshots, so I told everybody, "Let's go
2 into the restroom," while the gunshots were
3 happening.

4 And I presumed -- we were trying to call
5 local law enforcement, which we eventually got ahold
6 of them. And during that time that we did, we were
7 getting escorted out as well. So we were trying to
8 figure out, like, do we need to leave? You know,
9 obviously, are we in a secure location?

10 So I think eventually, once it was safe
11 enough to get us out, they escorted us out. But once
12 I started hearing the loud gunshots, I told who I was
13 with to let's go in the restroom, you know. Let's
14 stay out of the line of sight. 'Cause we just had no
15 idea what was going on.

16 Q Okay. Can you tell me a little bit more
17 about the gunshots you heard?

18 A There was -- I -- it was just so loud and
19 honestly, it was a bit shocking, you know, 'cause I
20 was there on vacation, not really expecting this to
21 happen, but it did happen.

22 So maybe three or so in the beginning is
23 what I heard. And then kind of after that, I checked
24 out, really didn't know what was going on. I was
25 just trying to make sure we were safe.

Examination of Jesus Mendoza

1 Q Okay. And when you heard the gunshots,
2 were you -- sounded like -- correct me if I'm wrong
3 -- you were still in the apartment. Do I have that
4 right?

5 A Yes.

6 Q Okay. And did you hear the gunshots before
7 or after you had heard the man making comments about
8 threatening to shoot?

9 A It was -- it was --

10 Q If you recall.

11 A Yeah, it was a little bit -- yeah, it was
12 so long ago that I don't really remember the specific
13 details at this point. But it was --

14 Q And I don't want you to guess. If you
15 don't remember, we don't want you to guess.

16 A Okay. Yeah, I would prefer to -- because
17 I'm not too sure.

18 Q Okay. Yep. We only want you to testify to
19 what you remember and what actually happened, so if
20 you don't remember something, just let us know, okay?
21 Did you hear, besides gunshots and sort of the loud,
22 what you've described as believed to be a canister,
23 do you hear any other noises of concern?

24 A No. I mean, besides the arguing and
25 besides the gunshots and the canisters, that's all I

Examination of Jesus Mendoza

1 heard. I didn't really hear -- once they were
2 shooting, I didn't hear -- it became silent at a
3 point in time, so I figured that either they
4 apprehended whoever was arguing with the cop or, you
5 know, just the gunshots. At that point in time, I
6 just believed maybe they -- you know, maybe he was
7 killed.

8 Q Did you hear anything that made you think
9 something had been hit by a gunshot?

10 A Yeah. There were definitely loud moments
11 to where it wasn't -- 'cause you could hear
12 shattering on some of them, which was the glass
13 breaking, but then there were moments where you could
14 hear that. It sounded like, because of the silence,
15 that something had happened.

16 Q Then in terms of the conversation you could
17 hear between the subject and the police, did it sound
18 -- what were the police communicating back to him, if
19 you recall?

20 A It just sounded like they were trying to
21 help him, because he was really -- it sounded like
22 maybe a domestic violence type of case or something
23 like that, because you could just hear him yelling
24 and just -- he was just really upset. But he also
25 didn't sound like in the right state of mind. But

Examination of Jesus Mendoza

1 more than once, the officer tried to help him, tried
2 to understand what he wanted.

3 And, again, it sounded like he wanted some
4 type of pills or something. I don't know exactly
5 what he was asking for, but he was asking for pills
6 and he wanted help from the officer.

7 So it seemed like it was something that he
8 had previously experienced before, because the
9 officer knew that, you know, that he can get someone
10 out there to help him and that he wouldn't injure him
11 or do nothing. And then suspect was the one who was
12 just very aggressive and the one who was loud.

13 Q All right. Those are my questions. If the
14 grand jurors have any questions, we're going to get
15 those now, okay?

16 A Okay.

17 MS. NADELL: Seeing none.

18 All right. Thank you so much for you time,
19 sir. You can disconnect and go about your day, okay?

20 THE WITNESS: Okay. Thank you so much.

21 MS. NADELL: Thank you.

22 THE WITNESS: Bye.

23 A GRAND JUROR: Are you able to clarify
24 that he was in the building next to it as opposed to
25 the same building?

1 MS. NADELL: So I think we'll have the
2 ability to get that question answered with another
3 witness.

4 A GRAND JUROR: Thank you.

5 MS. NADELL: Yeah. We'll make sure we get
6 that answered for you.

7 (Whispered discussion, off the record,
8 10:20 a.m. - 10:23 a.m.)

9 MR. MICHALOWSKI: We're using the witness
10 stand up there. And once you get there, just stand
11 and raise your hand and the foreperson will swear you
12 in.

13 THE WITNESS: Okay.

14 **JAMES TOWNLEY**

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

17 MR. MICHALOWSKI: State and spell your
18 name, please.

19 THE WITNESS: James Townley, J-a-m-e-s
20 T-o-w-n-l-e-y.

21 **EXAMINATION**

22 BY MR. MICHALOWSKI:

23 Q And what do you do, Mr. Townley?

24 A I am a police officer with the Portland
25 Police Bureau.

Examination of James Townley

1 Q And are you also assigned to SERT?

2 A Yes, I am.

3 Q How long have you been an officer?

4 A I'm actually a sergeant now, but I've been
5 with the police bureau for a little under 14 years.

6 Q Okay. And how long have you been on SERT?

7 A Almost nine years.

8 Q When the -- so were you involved in the
9 incident on August 27, 2021?

10 A Yes, I was.

11 Q And how did you become aware of that
12 incident?

13 A I was driving into work for the day. My
14 work day starts at 7:00 and I got a page sometime
15 around 6:50 for a SERT call-out.

16 Q And what information did you initially have
17 about the SERT call-out?

18 A The information was that the DEA was
19 serving a search warrant and the -- the subject of
20 the search warrant had jumped from a third floor
21 balcony onto a second floor balcony and that he was
22 threatening to shoot police.

23 Q So you were -- you were actually on duty at
24 the time?

25 A I was almost on duty. Yeah, I was almost

Examination of James Townley

1 at the precinct when this came out.

2 Q All right. And then so you just rerouted
3 directly to that scene?

4 A Correct.

5 Q Were you one of the first SERT officers to
6 arrive?

7 A I was, yes. I think I was the third to
8 arrive.

9 Q And once you were on scene and what did
10 you do?

11 A Once I was on scene, I met up with Officer
12 Gradwall and Officer Snitley, who were the first two
13 to arrive. And we went up to the front of the
14 apartment complex and met up with the uniform
15 officers that were there.

16 Q Did you learn any additional information
17 about what was evolving?

18 A Yeah. When I got there, there were
19 officers outside the front of the complex. There was
20 somebody who was with the DEA on the ground level
21 trying to negotiate with the subject on the second
22 floor balcony.

23 And there were four DEA officers inside the
24 apartment complex, two on the third level at the
25 original unit that they had served the warrant on and

Examination of James Townley

1 then two on the second level.

2 And I learned that somebody had seen
3 something in the subject's hand as he had jumped from
4 the third floor balcony down to the second floor
5 balcony, although they couldn't say what that was.

6 Q So was there concern that it might be a
7 firearm at that point?

8 A Yes, that was my concern.

9 Q And you said you heard -- heard somebody
10 trying to negotiate with the subject. Did you hear
11 any of that conversation?

12 A I heard some of it. I didn't stay there
13 where that was taking place for long, so I couldn't
14 tell you really what the conversation was. I just
15 kind of heard it as I was doing other things.

16 Q And then what did you do?

17 A I went -- Officer Snitley and I went inside
18 the apartment complex. Our concern was that this guy
19 is threatening to shoot police, somebody saw
20 something in his hand as he jumped from one level to
21 the other.

22 And so I was concerned that he was armed
23 and I was concerned about the people who lived in the
24 unit that he was on the balcony of. This was, you
25 know, 7 o'clock in the morning. Most people are

Examination of James Townley

1 home, probably getting ready for work. And so that
2 was my primary concern, the people who lived in that
3 unit.

4 Q But did you have any information about
5 whether they were actually there or not?

6 A I didn't, no.

7 Q And so what -- what was your primary
8 objective at that point?

9 A My primary objective was to staff an
10 emergency entry team to go into that apartment and
11 rescue those people if we gained enough information
12 that we decided that that was necessary.

13 Q And did you and other officers take
14 position in order to do that if it became necessary?

15 A I did, yeah. Officer Snitley and I went
16 inside the stairwell kind of between Level 1 and
17 Level 2. And I requested three uniform officers from
18 the uniform sergeant that was on scene.

19 Q And were you given three uniform officers?

20 A I was, yes.

21 Q Do you know who they were?

22 A Yeah. Officer Nguyen, Officer Snodgrass
23 and then there was a third officer. I don't recall
24 his name.

25 Q And at some point, did Officer Sparling

Examination of James Townley

1 also arrive?

2 A He did, yes.

3 Q So can you describe at this point the
4 position of -- so there's six officers there?

5 A Correct.

6 Q Can you describe the position of the six
7 officers?

8 A Yeah. So we're in the stairwell between
9 Level 2 and the ground level and we're looking down
10 the hallway towards the door to the unit where this
11 guy's on the balcony. And we're watching the door to
12 see if he comes out.

13 And we're also, like I said, preparing to
14 go in if we have to, to rescue these people. Officer
15 Sparling was in front of me, I was behind Officer
16 Sparling, and then the three uniform officers were
17 behind me.

18 And Officer Snitley was working with the
19 uniform officers, giving them some of the tools that
20 we use to get in through the door, if we have to.

21 Q So was one of those tools you refer to as
22 the key?

23 A Correct, yes.

24 Q And what is the key?

25 A The key is a big, metal, like a ram,

Examination of James Townley

1 basically, that you use to break the door in, to
2 defeat the locking mechanisms.

3 Q And which officer had possession of the key
4 at this point?

5 A Officer Snodgrass had the key.

6 Q So as you're there, are you -- are you
7 listening and sort of trying to gather intel to
8 figure out if there actually are people in the
9 apartment?

10 A Yeah. We're listening, you know, and we're
11 hearing the guy on the balcony yelling. Can't really
12 tell what he's saying. And yeah, we're just kind of
13 trying to get as much information as we had, 'cause
14 we just got there. It's pretty chaotic. We're
15 trying to figure out whether the people are in that
16 unit, all those sorts of things.

17 Q And is -- is another goal of what you're
18 doing at this point containment, if he were to come
19 out of the apartment into the hall?

20 A Absolutely, yes.

21 Q What happened next?

22 A As we're standing there getting our team
23 prepared if we have to go in and save these people, a
24 woman comes out of an apartment that's across the
25 hall and kind of close to the stairwell and she's got

Examination of James Townley

1 her dog with her.

2 And she starts walking towards us and she's
3 surprised. I mean, there's, you know, police
4 standing at the end of the hallway. She's surprised.
5 She may have made a noise. I don't know. And as
6 she's standing there looking at us, a gunshot
7 goes off.

8 And I hear a loud bang, which I didn't
9 know. I recognized the gunshot. I didn't know what
10 the loud bang was at the time. This lady tries to
11 run back into her apartment because she's scared.

12 Wanting to get her out of there and get her
13 to safety, Officer Sparling and I grab her and her
14 dog and we pull her out and get her down the stairs
15 and out.

16 And then I turn around and look behind me
17 and the three uniform officers are gone. And I
18 didn't know what had happened. I know now that
19 Officer Snodgrass had been shot. I looked at the
20 wall and there's a bullet hole or a hole where a
21 bullet had come out, hit Officer Snodgrass somewhere
22 in his hip, something like that. And the --

23 Q Were you given that information on scene
24 that he was shot?

25 A Yes.

Examination of James Townley

1 Q And you talked about a loud bang. Were you
2 able to ascertain what had made that loud bang?

3 A Yeah. He was holding the key. And when he
4 got shot, he dropped the key and that was the loud
5 bang.

6 Q Did you, at this point, hear additional
7 gunshots?

8 A Yeah, yeah. So they got Officer Snodgrass
9 out. Officer Sparling and Snitley and myself, we
10 were able to move to the stairwell, kind of winded up
11 one side and turn and winded up the other, so we were
12 able to move to the other side of the stairwell and
13 at least put another piece of sheetrock between us
14 and this guy, but we could still look down the
15 hallway. And he, over the next several minutes, just
16 continued to shoot.

17 Q Did the shots come in rapid fire or did
18 they come single shot, a pause and then a single
19 shot?

20 A It was single shot, pause, single shot,
21 pause.

22 Q At some point, did you turn your attention
23 to trying to evacuate residents?

24 A Yeah. Once the -- which is why we grabbed
25 the lady that tried to run back into her apartment.

Examination of James Townley

1 Yeah. Once the -- once the -- he started shooting,
2 it was like, okay, now we have to get people out of
3 here, because we just saw this bullet come through at
4 least one wall -- I don't know how many other walls
5 it went through -- and hit one of our officers.

6 It's 7 o'clock in the morning. There are
7 pretty much guaranteed to be people in their
8 apartments, sleeping, getting ready for work,
9 whatever they're doing. And so that -- yeah, that
10 was a huge priority, trying to get people out.

11 Q Were there challenges to that?

12 A The challenge are the -- the challenges are
13 that he's shooting. He's shooting everywhere and we
14 just don't have the people there yet. Our team is,
15 you know, about 26 people, but we're coming from all
16 over the place.

17 You know, some people are, you know, coming
18 from their home. They're on their day off or
19 whatever. And this thing is just evolving rapidly.
20 So those are, you know, some of the challenges. We
21 have to be really quiet.

22 How do you get people out of their
23 apartments without making a bunch of noise? Because
24 you're worried if you make a bunch of noise banging
25 on doors, he's going to start shooting in that

Examination of James Townley

1 direction. And so big problem.

2 Q Were you able to evacuate anyone else?

3 A You know, I don't know, to be honest. I
4 know that we were working on it, but that wasn't my
5 job. My job was still on this rescue team. And so I
6 know that we had officers coming and I know that we
7 had officers, like, moving up to the third floor
8 trying to get people out, but we didn't bring anybody
9 by our side.

10 There were -- the apartment complex, there
11 were a stairwell on the north side and a stairwell on
12 the south side. And we were on the north side
13 stairwell. And we didn't bring anybody that way,
14 because he had already shot somebody through that
15 wall. So everybody was going to the south side.

16 Q And the apartment that you were
17 concentrating on, was that Apartment No. 5?

18 A It was, yes.

19 Q And at some point, did anybody exit
20 Apartment No. 5?

21 A Yeah. So we're standing there. This is
22 after we get the lady out with the dog. We're
23 standing there and we hear, for the -- you know,
24 we're hearing a lot of yelling, but a lot of it's
25 muffled. We can't really tell what he's saying.

Examination of James Townley

1 And then we hear, "I'm coming out, I'm
2 coming out" from that apartment. And so we're
3 looking down the hallway, expecting him to come out.
4 And the door comes open and then two people come
5 running out, crying, towards us.

6 And we figure out, okay, this -- this is
7 not him. It turns out they're the -- you know, the
8 people that lived there, but he let them out,
9 thankfully.

10 Q And were you able to escort them out of the
11 building?

12 A Yeah. They ran to us and we got them down
13 the stairwell and out.

14 Q All right. And then did you continue to
15 stay focused on Apartment 5?

16 A We did, yeah, because we felt good that
17 those people were out of that unit, but we still had
18 people in this hallway in adjoining apartments that
19 we had to assume were occupied.

20 Q Were you able to learn from the two who had
21 left there, was anybody else in the apartment other
22 than the suspect?

23 A So they came to us and we sent them out
24 right away. And they went to other officers, who
25 they -- who they spoke to. And, you know, I don't

Examination of James Townley

1 remember any specifics, but I do remember a shift in
2 our thinking from, like, okay, we feel like nobody
3 else is in there. So I can't recall specifically if
4 that information came out, but it -- I think it must
5 have.

6 Q Okay. And from your position, could you
7 hear the -- could you hear other officers begin to
8 take action?

9 A I could, yeah. And so he continued to
10 shoot. We were having a really hard time getting
11 people out. And so officers started to put gas into
12 his -- into this apartment that he was in in an
13 effort to try to just get him to change his behavior.

14 Q And ultimately, did you hear -- did you
15 hear the Zulu calls on the radio?

16 A I did, yes.

17 Q And what did that mean to you?

18 A It meant that an officer had taken a deadly
19 force shot on the -- on the guy.

20 Q And how many -- how many Zulu calls did you
21 hear?

22 A You know, I couldn't say, to be honest. I
23 don't remember how many.

24 Q After the Zulu calls, did you continue to
25 hear gunshots?

Examination of James Townley

1 A I did not, no. After that, the pace
2 changed pretty dramatically. We stopped hearing
3 gunshots and we were able to slow it down and be a
4 little more deliberate in getting people out.

5 Q Did you, at that point, hear any additional
6 noises from in the apartment?

7 A No.

8 Q Did it change -- did it change your role at
9 this point?

10 A It didn't -- I mean, it didn't change my
11 role. I stayed on that emergency entry team, but
12 we -- you know, somewhere in there, after those two
13 people came out, we shifted from being focused on a
14 rescue team to being more focused on a containment
15 team. And then after the Zulu call, we kind of
16 changed more to like a clearing team to get into the
17 apartment.

18 Q And were you part of formulating a plan to
19 go in?

20 A Yes.

21 Q And what was the plan that you formulated?

22 A The plan was we felt pretty good that he
23 was no longer shooting. We felt like we could
24 probably safely get into the apartment.

25 And so Officer Snitley and Officer Hertzler

Examination of James Townley

1 placed an explosive charge on the door so that we
2 could open the door without being in front of it,
3 'cause we're still worried that he could potentially
4 shoot at us.

5 They set that charge and the door opened up
6 and we moved up. And it just gives us an opportunity
7 to move up slowly, see inside before we actually go
8 inside.

9 Q What did you see?

10 A We got inside and there were -- it was a
11 open room, like a living room space to the left and
12 then a small hallway with a bedroom to the right. We
13 were looking for people.

14 On the floor in the hallway, there was a
15 semi-automatic handgun and there were shell casings
16 on the floor. We didn't locate any people in the
17 living room.

18 We moved to the -- the first bedroom on the
19 left, tried to open the door. The door was
20 barricaded. We had to actually remove the door to
21 get in. When we got in, the subject was sitting up
22 against the wall near a window.

23 Q Did he appear to be alive to you?

24 A No, he did not.

25 Q And then at some point, did -- once you

Examination of James Townley

1 cleared, was a medic able to come in and take an
2 assessment?

3 A Yes.

4 Q You talked about that door to the bedroom,
5 you had to remove it. Once you were able to remove
6 it, were you able to see -- were there items that had
7 been placed against it to make it difficult to open?

8 A Yeah. I don't remember exactly what it
9 was, but it definitely had been barricaded by
10 something, yeah.

11 Q Okay. And you said you saw a handgun, you
12 saw shell casings. Did you see a magazine?

13 A I don't recall if I saw a magazine or not.

14 Q Did you see within the apartment any bullet
15 holes?

16 A I did, yeah. In the -- in the room that he
17 was in, there were -- there was at least one bullet
18 hole through the wall towards the wall that Officer
19 Snodgrass had been shot through. And I looked over
20 at that wall and there was another bullet hole.

21 So I mean, I -- you know, I don't know if
22 they ended up lining up or not. You know, there were
23 a lot of shots fired. But it looked like possibly
24 that bullet could have gone through that wall and
25 then through the wall into Officer Snodgrass.

Examination of James Townley

1 Q So -- and you said in the hall, you saw one
2 firearm. Did you end up seeing any other firearms or
3 was that the only firearm you saw?

4 A That's the only one I saw, but I didn't --
5 I wasn't looking for firearms.

6 Q All right. I'm done with questions for
7 you, but the grand jury may have some.

8 A Okay.

9 MR. MICHALOWSKI: So I'll turn it over to
10 them. I'm seeing head shakes, so I think you're free
11 to go, Sergeant Townley.

12 THE WITNESS: Okay. Great. Thank you very
13 much.

14 (Whispered discussion, off the record,
15 10:44 a.m.)

16 MR. MICHALOWSKI: Take a seat up there.

17 Looks like we've got a grand juror who
18 stepped out for a second, so we'll wait for her to
19 get back.

20 (Pause in proceedings, 10:44 a.m. -
21 10:45 a.m.)

22 A GRAND JUROR: You can sit if you like.

23 THE WITNESS: I was sitting for the last
24 two hours. I'm going to stand if it's okay just for
25 the next two minutes or so. Thank you, though.

Examination of Joseph Faris

1 (Pause in proceedings, 10:45 a.m. -
2 10:46 a.m.)

3 MR. MICHALOWSKI: All right.

4 A GRAND JUROR: Okay.

5 **JOSH FARIS**

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

8 A GRAND JUROR: Thank you.

9 MR. MICHALOWSKI: Sir, state and spell your
10 name, please.

11 THE WITNESS: My name's Josh Faris. Josh
12 is J-o-s-h; Faris is F as in Frank, a-r-i, S as in
13 Sam.

14 **EXAMINATION**

15 BY MR. MICHALOWSKI:

16 Q And what's your position?

17 A I am a Portland police officer.

18 Q All right. How long have you been a -- an
19 officer?

20 A Over 20 years.

21 Q With Portland the whole time or with other
22 agencies?

23 A The whole time.

24 Q And are you also on SERT?

25 A I am.

Examination of Joseph Faris

1 Q And how long have you been on SERT?

2 A Just under ten years.

3 Q So you're just the -- the baby on the squad
4 then?

5 A Just -- I'll have ten years this next
6 month.

7 Q So were you involved in the incident on
8 August 27th, 2001 -- or 2021 -- excuse me -- that
9 resulted in a SERT callout?

10 A I was.

11 Q And tell us how you learned about it.

12 A I received a page on my work phone for SERT
13 activation for --

14 Q Were you on duty or off duty at the time?

15 A Off duty.

16 Q And what did -- what did you learn from the
17 page?

18 A Page -- I think it -- I think it said,
19 like, a DEA -- DEA warrant, barricaded subject.
20 Their -- the pages are pretty -- pretty basic
21 information. We get most of our information from the
22 radio once we turn on the radio.

23 Q So what information did you have -- well,
24 let me back up.

25 A Sure.

Examination of Joseph Faris

1 Q So you responded to the page?

2 A I did.

3 Q And were you learning information en route?

4 A I learned that there was a federal warrant
5 that was being served. A subject had jumped from a
6 balcony to a lower unit, had barricaded himself in,
7 was threatening to shoot the police and there was
8 potentially two people in that apartment that he had
9 entered.

10 Q Okay. And what happened when you arrived
11 on scene?

12 A I -- I'm a breacher on the team, so I carry
13 breaching equipment. So I called one of our fellow
14 breachers and he happened to be on scene. We had
15 information that there was two people in the
16 apartment, so we thought it might be a hostage
17 situation.

18 So I started prepping all my gear for
19 potentially a breach on the door or a breach on a
20 wall, an adjoining apartment wall. So I got out my
21 chainsaw, started working on some of my explosive
22 breach stuff that I have. Then I got information
23 that an -- an officer had been shot inside.

24 Q So in terms of the -- in terms of the
25 breaching gear --

Examination of Joseph Faris

1 A Mm-hmm.

2 Q -- once you heard that an officer had been
3 shot, did you continue to prep the breaching gear or
4 did that change (indiscernible)?

5 A I continued. And then there was
6 information that those two people that were in the
7 apartment had fled the apartment and that it was
8 information from the officers that were in the
9 hallway.

10 Q And at that point, did that change --

11 A That --

12 Q -- change your focus?

13 A It did. It did. We're -- we don't
14 normally breach into a barricaded subject's apartment
15 when he's by himself. There's no reason to force
16 that issue. We might get there, but that's going to
17 be a long ways down and we have time to actually prep
18 that gear. This was more of a hasty-type prep where
19 I'm grabbing my stuff and I'm going to try to go down
20 to the area.

21 Q And so you said, "go down to the area." So
22 at this point, where are you in, you know --

23 A Sure.

24 Q -- comparison to where the -- the scene is
25 unfolding?

Examination of Joseph Faris

1 A I'm about three or four blocks away. I am
2 south of -- on Interstate just right where it makes
3 that bend to Interstate. I think it's Interstate
4 Place is where -- what it changes to.

5 Q Okay. So a couple blocks away --

6 A Sure.

7 Q -- before you said -- and at this point,
8 once you learned that the people that live in the
9 apartment are out, the focus, you said, has changed.
10 What do you do now?

11 A I put my gear back in my truck and then I
12 make my way down to the scene. I had a medic that
13 was there assisting me with -- with my chainsaw
14 'cause he's a Portland firefighter.

15 He knows how to operate those. He had left
16 once the officer had been shot. So I started making
17 my way around. So I went west and then made my way
18 down to Willis from the -- or from the west of the
19 location.

20 Q And at this point, what -- what was your
21 new role?

22 A At that point, I had established a role. I
23 think we were going to try to get armor in front of
24 the scene. So I was going to make my way down there
25 and try to find -- find a role, essentially.

Examination of Joseph Faris

1 Q And did you ultimately find a --

2 A I did.

3 Q -- a role?

4 A Yes.

5 Q And what was your new role going to be at
6 that point?

7 A When I was walking down there, information
8 came from Sergeant Livingston that we were going to
9 gas right away. So I took over that role as kind of
10 a senior member of the team. And I know how to use
11 the gas launcher. I've done it before. So I took
12 over that role.

13 Q Okay. And were you able to immediately
14 begin gas or did you have to wait for other
15 conditions to --

16 A I had to -- I had to find out what
17 apartment we were dealing with. It was -- it was
18 difficult. It's a -- it's a U-shaped apartment
19 building, three or four stories.

20 I can't remember how many, but we were
21 dealing with the second story. I had to have another
22 officer show me which one it was. It was difficult
23 to see. There was a -- a -- a small balcony that
24 had, like, a bamboo -- kind of that woven fake bamboo
25 strapped to it so you couldn't really see any of the

Examination of Joseph Faris

1 windows.

2 I could see a top of a slider that went out
3 onto the balcony and then I could see a top of a
4 window that was right next to the slider. And that's
5 what was pointed out to me as the apartment that the
6 subject had gone into.

7 Q So at the point that you could see this, as
8 I -- I think you --

9 A Mm-hmm.

10 Q Kind of skipped ahead where I -- I thought
11 we were, which is I was asking about, were you
12 waiting, essentially, for armor to arrive before you
13 could show up or --

14 A Our -- our gas launchers are in our armor.
15 So, yes.

16 Q Okay.

17 A I had to wait for the armor to get there
18 before I could actually even get to the weapon
19 system.

20 Q Okay. And then once the armor arrived, did
21 you prep the weapon system?

22 A I did.

23 Q And then -- and talk about how you got from
24 where you were when the armor arrived to where you
25 ultimately were when you're able to see what you just

Examination of Joseph Faris

1 described.

2 A Once armor arrived, gas was -- we were
3 going to go to gas immediately. Information that
4 officer had been shot, we have immediate action
5 drills where if we have no way to stop this subject,
6 we're going to introduce gas into the -- into the
7 environment to try to get him to stop or get him to
8 surrender to affect his ability to -- to harm others.

9 Once I was identified the -- the room, I
10 grabbed the launcher. I prepped it. And this -- and
11 this is a -- a -- a shotgun, essentially, with a
12 launching cup on the end of it. And we will put warm
13 gas canisters in the top of it and then we have to
14 use a 12-gauge blank to fire these rounds.

15 It -- it took probably all of 30 seconds
16 for me to identify the room, to grab the launcher and
17 to launch the first warm gas canister into that --
18 that window.

19 Q Explain what a warm gas canister is.

20 A We have three different types of -- of
21 abilities to launch gas. One is a cold 40-millimeter
22 Ferret round, is what it's -- what we -- what it's
23 called.

24 Essentially, that is a plastic tube that
25 breaks on impact. And there's no propellant. It

Examination of Joseph Faris

1 just falls -- the -- the payload just falls to the
2 ground. It can be moved around with wind, anything
3 like that. Then we have warm gas canisters that look
4 like --

5 Q The first one, is that -- do you refer to
6 that as cold gas?

7 A That's cold gas, yes, sir.

8 Q Okay. And so -- and please continue.

9 A Then we have a warm gas canister, which
10 looks like a soda can. There is a spoon on the side
11 of it and a pin. Once you pull that pin, the spoon
12 will pop and it will ignite a small internal
13 combustion, which will then push the gas out with
14 smoke.

15 So there's a -- there's a small CS payload
16 in there. The smoke will push it out. Then we have
17 a hot gas, which is essentially a larger payload of
18 CS gas. Those are dangerous because they can caught
19 -- catch fire because the flame is so hot and it can
20 ignite stuff around it.

21 So we don't use those. That's -- that's
22 going to burn down the building. So I used a warm
23 gas canister. The internal combustion will push the
24 gas out. It's a small payload, but it pushes it out
25 with the smoke.

Examination of Joseph Faris

1 Q And are there concerns about -- when you're
2 using the warm gas --

3 A Mm-hmm.

4 Q -- canister, are there concerns about
5 getting through windows?

6 A There are. They can be defeated by those
7 double-pane heavy glass windows. So we will try to
8 soften those -- what we call soften those windows.

9 We will try to remove the glass either with
10 the cold gas launcher and the Ferret rounds or we
11 will use our less-lethal launchers, which shoot a
12 blue-sponge-tipped less-lethal round. And that will
13 then break the window and soften it and then allow
14 that warm gas canister to get inside.

15 Q And were other officers firing the cold gas
16 or the less-lethal --

17 A Yes. As --

18 Q -- rounds?

19 A As -- just as I was prepping that warm gas
20 canister -- launcher, 'cause it takes a little bit,
21 another officer was firing cold gas into the window
22 that I was going to try to get gas into.

23 Q And who was that other officer?

24 A That was Neil Parker.

25 Q And was -- is he successful and able to --

Examination of Joseph Faris

1 to break out the window so that you could --

2 A Yes.

3 Q -- have a --

4 A Yes.

5 Q -- shot?

6 A Yes.

7 Q All right. And did you take a shot?

8 A I did.

9 Q And what happened with the first shot?

10 A The first shot hit the window frame. I
11 could see it hit the window frame. It bounced onto
12 the -- the balcony. And I could see the smoke and
13 the gas coming up from the balcony, so I knew it was
14 not successful in getting him to the location.

15 Q And then what'd you do after that?

16 A I reloaded. I -- my goal was to get warm
17 gas into the location. I reloaded the warm gas
18 launcher and fired another round and was successful
19 in getting that one into the -- the window.

20 Q And how do you know it was successful?

21 A I could see it coming out of -- from the
22 window, from that -- that room.

23 Q While you're on scene at this point, are
24 you hearing any gunshots?

25 A I'm hearing gunshots, yes.

Examination of Joseph Faris

1 Q Can you estimate how many gunshots you
2 heard prior to using gas?

3 A And I -- I -- it's -- it's difficult
4 because I'm hearing muffled gunshots. And then I'm
5 hearing the cold -- or, excuse me -- yeah. The cold
6 gas launcher, which uses a .38 blank to fire the
7 projectile, which is exactly what a normal gun sounds
8 like.

9 Q Okay.

10 A You're having my warm gas launcher, which
11 uses a .38 blank in a 12-gauge cartridge which
12 launches that, so I'm hearing multiple shots. It's
13 -- it's -- it's impossible for me to distinguish
14 other than information that I'm getting.

15 He's still firing and I'm hearing muffled
16 gunshots and then I'm hearing somebody right next to
17 me firing the launcher. So for me to guess would be
18 impossible.

19 Q Okay. That's -- that's fair. After you
20 started firing -- well, let's -- before you started
21 firing gas, did you hear some of those muffled
22 gunshots?

23 A I did, yes.

24 Q After you started firing gas, did you
25 continue to hear some of the muffled gunshots?

Examination of Joseph Faris

1 A Yes.

2 Q Okay. Were you at some point aware of an
3 officer firing not gas, but a -- firing a live round?

4 A Yes.

5 Q And how'd you become aware of that?

6 A That was just information from a sergeant
7 right next to me. As I'm hearing all these things
8 going on, somebody had asked -- some -- somebody had
9 said that Officer Ramsey had fired. And that was
10 probably 'cause I was looking right at my sergeant
11 when he said it.

12 You know, in these chaotic events,
13 sometimes you miss things, especially over the radio,
14 which is in my earpiece. And then I have ActivEars,
15 which kind of soften the sounds of gunfire. So I
16 think the way I got that is from looking right at my
17 sergeant, Sergeant Darby, when he said that.

18 Q All right.

19 A I did -- I did not hear him distinctly fire
20 his weapon.

21 Q And then did you -- were you aware that
22 Officer Howery shot at some point?

23 A I was aware that somebody had shot and said
24 the subject went down. I do not know who that
25 officer was.

Examination of Joseph Faris

1 Q And how did -- how were you aware of that?

2 A It was -- came over the radio.

3 Q Okay.

4 A Yes.

5 Q I want to back up a little bit.

6 A Mm-hmm.

7 Q At some point during this scene, did you
8 hear discussion about a shot of opportunity?

9 A There was discussion while I was running
10 down to the piece of armor.

11 Q And what was that discussion?

12 A Somebody had asked for it.

13 Q And -- and what did --

14 A I don't know who that was.

15 Q -- what did you hear?

16 A I heard that standard rules was the
17 response.

18 Q And what does that mean to you?

19 A Standard rules essentially is -- it puts it
20 back on the officer to make the decision on force
21 options based on what they are seeing at the time,
22 based on the totality of the circumstances and what
23 is reasonable based on my decision, what I see
24 currently in front of me.

25 So that's what it -- essentially, I took it

Examination of Joseph Faris

1 as, is each individual officer is going to make a
2 decision based on what they see.

3 Q After you heard -- heard the -- the call
4 that -- that -- that the suspect was down, did you do
5 anything else on scene?

6 A No, we stopped. I had prepped my launcher
7 for a third canister. I left it in the gun. I just
8 set it right next to the piece of armor and we
9 stopped and waited. After the information that the
10 subject was down, we were waiting to see if somebody
11 could get eyes on the subject.

12 They had to move if there was any other
13 gunshots, if there was any movement, any -- any
14 noises, so I did not do anything else. I just stood
15 right there.

16 MR. MICHALOWSKI: Okay. So I don't have
17 any more questions for you, but the grand jurors may,
18 so --

19 THE WITNESS: Sure.

20 A GRAND JUROR: When the warm gas is put
21 into an environment, does that travel throughout the
22 room or would it travel into other rooms maybe?

23 THE WITNESS: The -- the hope is that it
24 travels into other rooms, yes.

25 A GRAND JUROR: Okay.

Examination of Joseph Faris

1 THE WITNESS: The -- the warm propellant
2 or, I guess, the -- the smoke propellant is meant to
3 push it out of the canister. And it'll go into
4 spaces that are -- if we have an open door, it should
5 go into that room, yes.

6 A GRAND JUROR: But if the door is closed?

7 THE WITNESS: If the door is closed and
8 somebody stuffs a towel, it will not get into that
9 room.

10 A GRAND JUROR: And the window that you
11 shot the warm glass in, that was -- or the warm glass
12 into, that was the only window that you could shoot
13 into; is that --

14 THE WITNESS: That's correct. The -- I
15 could see the slider, but it was -- it was such a
16 sharp angle, there was no way I was ever going to
17 make that shot.

18 A GRAND JUROR: Right.

19 THE WITNESS: You know, I was trying not to
20 expose myself too much, you know, with the -- still
21 hearing gunshots, I had no idea where rounds were
22 going.

23 A GRAND JUROR: Thank you.

24 THE WITNESS: Yes.

25 ////

Examination of Joseph Faris

1 BY MR. MICHALOWSKI:

2 Q So -- and I guess we kind of skipped over
3 that a little bit. Can you describe a -- a little
4 bit more about the window that you actually were
5 shooting through?

6 A Sure. As I said earlier, it -- the window
7 looked out onto this balcony that had a -- a
8 bamboo-type screening that -- that somebody had added
9 that -- which blocked my view. It's a second-story
10 room. I'm down on the ground floor and I'm
11 looking up.

12 I could barely see the top third of this
13 window 'cause the bamboo would block the rest of the
14 window. I'm assuming the window was full height. I
15 never saw it.

16 I just saw the top 18 inches of it. And,
17 now, I'm shooting something that looks like a Coke
18 can out of a -- a launching cup with a -- a 12-gauge
19 blank.

20 Accuracy is -- is good, but it's very
21 difficult to make sure that it will get in. That's
22 why that first round hit the -- hit the frame. So it
23 was a small -- small area that I was -- I was trying
24 to get gas in.

25 Q About what distance were you?

Examination of Derrick Foxworth

1 perimeter is?

2 A Yeah. So our inner perimeter is generally
3 charged with making sure that whatever the location
4 is, that there's containment on that. So if an
5 individual that we're looking to take into custody,
6 they can't escape that initial containment.

7 Q All right. And so on August 27th and 2021,
8 it -- were you part of the -- were you -- you called
9 out on the SERT team?

10 A Yes. I received a page, is usually how
11 we're activated. There'll be a page sent out over
12 our phone with location time and general brief
13 message of what's taking place.

14 Q Were you on duty at the time or off?

15 A I believe I was off duty. I think I was
16 home, I believe, at the time.

17 Q All right. So did you make your way to the
18 location?

19 A Yes, I did.

20 Q Were you gathering any information as you
21 were in transit?

22 A Yeah. So standard protocol is we have a
23 dedicated radio net that will turn on and start
24 getting updates about the call and providing
25 information, start coordinating resources and

Examination of Derrick Foxworth

1 strategies.

2 Q So what information did you have by the
3 time you arrived on scene?

4 A By the time I arrived on scene, I was aware
5 that the incident started with -- I believe it's the
6 DEA was attempting to serve a search warrant. And
7 they were -- were challenged with a firearm.

8 As I continued to respond to the location,
9 I heard over the air that the -- an officer had been
10 shot and that they were working on evacuating that
11 officer.

12 Q Had you heard -- had you heard whether the
13 suspect had been making threats to shoot police?

14 A Yeah, there were some. I mean, obviously,
15 we had an officer shot, so we knew that those threats
16 were -- were real and valid and that there was an
17 operational firearm. But there was, I believe, some
18 information about, you know, weapons prior to the
19 officer being shot that came in from the DEA.

20 Q Did you also have information that -- that
21 he was making threats about suicide by cop?

22 A I believe so, yes.

23 Q What does that mean to you?

24 A Suicide by cop means that an individual
25 will take actions, threatening actions, whether with

Examination of Derrick Foxworth

1 some type of weapon to -- to try and evoke a deadly
2 force response from law enforcement.

3 Q Okay. And were you aware whether or not
4 that armor had been called and was en route?

5 A Yes. Armor was asked for and was en route.

6 Q What happened when you arrived on scene?

7 A When I arrived on scene, standard protocol
8 was, you know, get to staging location, grab my gear
9 and -- and necessary equipment and then start to make
10 my way to where the -- the problem or the -- the
11 location is.

12 I linked up pretty quick with
13 Officer Howery, Officer Leo Harris and Officer Joel
14 Akunzie (phonetic), who are also members of our inner
15 perimeter. And we quickly split up into two teams to
16 try and get containment on the -- on the location.

17 Q Who did you go with?

18 A I went with Officer Howery.

19 Q And -- and -- and did you begin hearing
20 shots fired as you were -- were approaching?

21 A Yeah. As I was approaching, I heard
22 several shots that were fired. Our focus and our job
23 at that point was to try and get to a location where
24 we could get eyes on the -- on the subject for a
25 variety of reasons, either to deploy less-lethal

Examination of Derrick Foxworth

1 options if that was appropriate or potentially lethal
2 force.

3 Q And where did you try to get a vantage
4 point from?

5 A Initially, we went to what would be the
6 north of the 1570. There's an apartment that had
7 three stories that I originally thought might give us
8 the vantage point that we needed. And it did not, so
9 we -- we moved.

10 Q All right. And -- and so north was
11 directly across the street from --

12 A Correct.

13 Q -- 1570? And is 1570 the building that's
14 directly east of 1600?

15 A Yes.

16 Q And after you realized that that point
17 didn't -- that building didn't give you the vantage
18 point that you were seeking, what'd you do?

19 A From there, because we're hearing shots go
20 off, we're using vehicles as cover 'cause we're
21 concerned, obviously, with getting shot as we're
22 moving across the street. There was a -- I believe,
23 a Vancouver officer that we linked up with
24 momentarily.

25 That officer had a -- a robot that was

Examination of Derrick Foxworth

1 positioned to roughly see where we thought the
2 suspect was, so we took a moment to get a really good
3 idea of where that was 'cause we didn't want to get
4 into a position where we wouldn't have adequate cover
5 and potentially put ourselves in a, you know, pretty
6 dangerous spot where we might get shot.

7 Q So did he show you the -- the screen from
8 the camera of the robot?

9 A Correct.

10 Q Is that what -- oh. And at this time, is
11 the suspect continuing to fire rounds?

12 A Yes, he was.

13 Q And is -- in terms of timeline, where does
14 this lay versus when other SERT members start
15 deploying gas?

16 A This is happening all simultaneously.

17 Q All right. What'd you do next?

18 A At that point, we began to work our way on
19 the east side of the building directly across -- I
20 think it's 1600 -- directly across from the target
21 location 'cause that provided us cover and our goal
22 at that point was to try and wrap around the building
23 to get an eye on the exact apartment that the suspect
24 was in.

25 Q So to -- to clarify, the suspect was in --

Examination of Derrick Foxworth

1 was that 1600?

2 A I believe 1600.

3 Q Okay. And the building that you were on
4 the east side of, was that the other building?

5 A Yes.

6 Q And so was that 1570?

7 A Yes.

8 Q All right. Have you and Howery had any
9 discussions or -- or determined what your primary
10 roles were?

11 A Yeah. Early on when we first arrived
12 there, determined that Officer Howery would be
13 primary lethal cover if need be. He had a .338 scope
14 rifle, which provides precision accuracy.

15 I grabbed my gas bag so I had ability to
16 deploy gas or 40-millimeter less lethal. So those
17 roles were divided up early on. And I also had a --
18 an AR-15 rifle with me as well.

19 Q Okay. So -- so he was primary shooter and
20 you had the -- the less lethal?

21 A It -- yes.

22 Q And so as you came around 1570, were you
23 able to get to a place that there was a vantage point
24 to see the -- the suspect?

25 A Yes, there was. So it was a fairly narrow

Examination of Derrick Foxworth

1 section between the edge of the building and the
2 retaining wall. It's roughly kind of the space that
3 we're having here. So if you can imagine, where the
4 mic is is the edge of the building. And this is the
5 retaining wall, so we had about three feet.

6 Officer Howery was -- was walking first and
7 was able to round that corner, look back to the north
8 and I basically paused a couple steps --

9 Q Yeah.

10 A -- behind him.

11 Q We'll pause you for a second just because
12 it's audio recording. I want to make sure it's on
13 the record. So for the record, Lieutenant Foxworth,
14 put his hand in front of him when he said where the
15 microphone is and then he put his hand behind him
16 near the wall when he said where the retaining wall
17 was, is -- what was the approximate distance between
18 the building and the wall?

19 A Three to four feet.

20 Q And from that vantage point, was -- was it
21 a good vantage point for both of you to see or just
22 one of you to see?

23 A Just one.

24 Q And who -- who was in the position to be
25 able to see?

Examination of Derrick Foxworth

1 A Officer Howery.

2 Q How long were you at that vantage point
3 prior to the shots being fired?

4 A Maybe 60 seconds.

5 Q All right. And did you observe Officer
6 Howery fire shots from that vantage point?

7 A I did.

8 Q How many shots?

9 A One.

10 Q Were you able to see his target while he
11 was firing?

12 A I was not. I was able to see him raise his
13 weapon in an upward position. I saw a muzzle flash
14 and heard one -- one round fired.

15 Q What did he do next?

16 A At that point I realized that he had fired,
17 I made sure that he was okay, that we hadn't taken
18 incoming rounds. And then we swapped positions. I
19 took over lethal cover, had him stay -- step back
20 just to make sure he hadn't, you know, taken a round
21 and gotten injured.

22 And then we -- I believe he put out what
23 would be referred to as a Zulu. It's a term that we
24 use so that everyone knows that SERT or a member of
25 SERT has taken a shot so there's no confusion about

Examination of Derrick Foxworth

1 who shot. And, at that point, we held there until
2 Sergeant Livingston came over to relieve Officer
3 Howery.

4 Q All right. And when you say Livingston
5 came to relieve Howery, is that part of the protocol
6 after use of deadly force?

7 A Yes, it is.

8 Q So -- and is that also why you swapped him
9 to take primary lethal cover?

10 A Yeah. As soon as possible to get the
11 primary shooter out of that position once it's safe
12 to do so.

13 Q All right. And at that time in leading up
14 to Officer Howery taking the shot, what did you know
15 about whether or not evacuations had occurred from
16 the buildings?

17 A I didn't know if evacuations had been
18 completed. At that point, still operating under the
19 theory. It's 7 or 8 o'clock in the morning during
20 the week. You have two, you know, medium-sized
21 apartment buildings. My expectation's that some of
22 those were still occupied.

23 Q In fact, did you see anybody in either of
24 the buildings?

25 A I do recall seeing a couple folks as we

Examination of Derrick Foxworth

1 worked on that east side of the building still
2 inside. And I think they were on the second floor if
3 I recall.

4 Q And that would have been of 1570?

5 A Correct.

6 Q All right. Did you hear discussion on the
7 radio about a shot of opportunity?

8 A I did not.

9 Q Okay. Did you hear Sergeant Livingston
10 and -- talk about expectations on the radio?

11 A I did not.

12 Q Okay. And -- and at that point, did you
13 believe that the suspect presented an imminent threat
14 or an immediate threat of death or serious physical
15 injury?

16 A Yes, absolutely.

17 Q Okay. And -- and to whom?

18 A To the officers on scene, to the folks in
19 the neighborhood, in the building adjacent. I knew
20 that we had an officer that had been shot through a
21 wall, so anyone within that immediate area was in
22 immediate danger of potentially being harmed.

23 MR. MICHALOWSKI: Okay. All right. I'm --
24 I'm done with questions for you, but the grand jurors
25 may have some, so --

Examination of Derrick Foxworth

1 Yes, sir.

2 A GRAND JUROR: Did -- did you know that
3 there was shots from police before?

4 THE WITNESS: Yeah. I knew that there'd
5 been gas deployed as well as rounds fired from SERT.

6 A GRAND JUROR: So you knew there were
7 rounds, but they -- you guys were moving into a
8 position and the -- the suspect was still up and --
9 and he took a shot?

10 THE WITNESS: So if I understand your
11 question --

12 A GRAND JUROR: Yeah, I just -- I'm sorry.
13 Just you did hear that there were -- that the police
14 had been firing, attempting to shoot the assailant
15 from another location?

16 THE WITNESS: I was aware that officers had
17 returned fire and tried to shoot the suspect, yes.

18 A GRAND JUROR: Thank -- thank you.

19 BY MR. MICHALOWSKI:

20 Q How are you aware of that?

21 A I heard them.

22 Q You heard the -- you -- you heard the
23 actual shots being fired?

24 A Correct.

25 Q And how could you distinguish them from --

Examination of Derrick Foxworth

1 A 'Cause when I was first at the officer with
2 Vancouver PD, I could hear and see our officer in the
3 turret, so I was able to hear those rounds from armor
4 'cause I was in basically close proximity to them.

5 Q Oh, okay. And did you hear the -- the Zulu
6 calls on the radio for that?

7 A I did not.

8 Q And so -- but it was after those two shots
9 that you went around the far side of -- the east side
10 of -- of 1570?

11 A It was basically all right in that same
12 time frame.

13 MR. MICHALOWSKI: Okay. I think you had a
14 question.

15 A GRAND JUROR: Oh, yeah. I just wanted to
16 touch back to the suicide by cop comment. Did that
17 go out over the radio or was that something that -- I
18 don't remember hearing about that in other ways.

19 THE WITNESS: To my recollection, that was
20 information that was put out on She 2 (phonetic),
21 which is a net that we use as we're en route, one,
22 that he was armed; two, we had an officer hit and
23 that there was mention of a potential suicide by cop.

24 A GRAND JUROR: Okay. Thank you.

25 MR. MICHALOWSKI: Anybody else?

Examination of Leo Harris

1 All right. Lieutenant, I think you're
2 done.

3 THE WITNESS: Thank you.

4 MR. MICHALOWSKI: Thank you.

5 (Whispered discussion, off the record,
6 11:20 a.m.)

7 MR. VASQUEZ: Go ahead and raise your right
8 hand and we'll have you sworn.

9 LEO HARRIS

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

12 A GRAND JUROR: Okay.

13 MR. VASQUEZ: All right. Go ahead and have
14 a seat.

15 Just start off by telling us your first and
16 last name, spell those for us and tell us how you're
17 employed.

18 THE WITNESS: Leo Harris, L-e-o,
19 H-a-r-r-i-s. And I work for the Portland Police
20 Bureau as a police officer.

21 EXAMINATION

22 BY MR. VASQUEZ:

23 Q And how long have you been with Portland
24 Police?

25 A Just over 20 years.

Examination of Leo Harris

1 Q Okay. And what's your current role or
2 responsibility with Portland Police?

3 A I work in our Training Division and I'm the
4 wellness program coordinator. And I'm also in a
5 detached role on the SERT team.

6 Q Okay. And back in August of 2021, were you
7 also in that capacity at SERT?

8 A Yes.

9 Q Okay. And then on August 27th, 2021, did
10 you get that page out to go out to 1600 North Willis?

11 A Yes, I did.

12 Q Okay. And do you remember roughly kind of
13 what time you arrived or maybe in the sequence of --
14 of where things were?

15 A I remember it was in the morning. I
16 actually don't remember if it was 6:00 in the morning
17 or 8:00 in the morning, but it was early. And I
18 arrived somewhere in the area of McClellan and
19 Interstate. And when I pulled up and was about to
20 start getting dressed, I believe that's when Officer
21 Snodgrass was shot through the wall.

22 Q Okay. And so once you got yourself kind of
23 geared up, what was going to be your role going into
24 this situation?

25 A My role is going to be to go try to get a

Examination of Leo Harris

1 view onto the balcony where the suspect -- we thought
2 the suspect was. And that was confusing on how to
3 get there.

4 So I got my gear on, walked several blocks
5 down and around, met with Sergeant Don Livingston.
6 And he explained to me where I needed to go. And so
7 then I had to go back around, retrace my steps.

8 During that route, I ended up with my
9 normal inner-perimeter partner, Officer Akunzie, and
10 then Sergeant Foxworth and Officer Howery. And so
11 then we all went around to the east and split up
12 there.

13 Officer Howery and Sergeant Foxworth, who I
14 thought were going to go off somewhere to the north.
15 And I don't actually still know where they ended up.

16 Q Okay.

17 A And then Officer Akunzie and I started
18 trying to get into the building that was just to the
19 east. And in order to do that, we had to come in
20 from the east side, which was not their front doors.
21 So we knocked on several backdoors and windows.
22 Somebody finally opened a slider door and let us in.

23 They knew something was going on on the
24 west side of their building and we told them it was
25 not safe. One of the things we did see as we were

Examination of Leo Harris

1 coming up the street towards their place, we knew we
2 couldn't evacuate people --

3 Q Mm-hmm.

4 A -- down the street -- down Willis because
5 there was a view from that balcony. And so I felt
6 like keeping them there was probably the safest even
7 though that wasn't super safe either.

8 And so somebody let us in. We went through
9 their apartment into the inner corridor and then went
10 up to the second and third level and ran up and down
11 and knocked on some of the doors that were facing to
12 the west, where the suspect was shooting.

13 We were very worried that the round -- some
14 of the rounds that were fired might be going through
15 the walls. We had no way to know if somebody in
16 there had been hit or needed help. Obviously, we
17 didn't have enough police resources to go start
18 evacuating people, so it was very quickly.

19 Our goal was to try to get to the third
20 floor of this building, get a view onto the balcony
21 where we thought the suspect was shooting from. And
22 so Officer Akunzie went to the second floor just for
23 a minute and then joined me on the third floor.

24 And I just ran down the hallway knocking on
25 each door, not stopping until I got to the room that

Examination of Leo Harris

1 we ended up in. At some point, people came out into
2 the hallway to see who was knocking on the door.

3 And we explained, "Hey, there's somebody
4 shooting on the outside. It's not safe. But you're
5 not safe going down the street either." I told them
6 to go down the stairwell and wait on the downstairs
7 floor on the east side of the building.

8 Q Okay.

9 A It seemed like everybody did that. And
10 then Officer Akunzie and I got into one of the
11 third-story rooms that was going to be overlooking
12 where we thought the suspect was shooting from on
13 this balcony.

14 Q So while all this is going on, from what
15 I'm hearing, it sounds like you're trying to evacuate
16 that building that is next to where the shooter is.
17 And people are leaving; is that right? Or trying --
18 trying to get people to leave?

19 A Yeah. I don't know if I'd call it an
20 evacuation 'cause we didn't have anywhere safe for
21 them to go. Trying to make their situation a little
22 bit better, maybe go to the east side of their
23 building and downstairs --

24 Q Okay.

25 A -- just to put as much, you know, Sheetrock

Examination of Leo Harris

1 and walls between them.

2 Q Okay.

3 A We were trying to not have people on the
4 east side of that building in case, you know, bullets
5 could easily go through the walls.

6 Q Is it fair to say at that point you weren't
7 able to do, like, a room-by-room,
8 apartment-by-apartment search to make sure you've
9 gotten everyone who was maybe asleep or waking up to
10 get them out?

11 A Correct, yeah. I would have liked to, but
12 there's an ongoing situation where somebody is
13 actively shooting. And so our primary goal is to try
14 to get to a spot where we could stop that. And then
15 you could bring in a lot more police officers, go
16 door to door.

17 I think that's one of our worst fears, is
18 there's somebody hurt, injured in one of those rooms
19 and nobody's there getting them help because there's
20 this other ongoing situation.

21 Q And -- and can you hear shots going off
22 while this is happening?

23 A I don't remember. I felt like I didn't.
24 One of the things is we have -- like, in the -- on
25 the helmet, there are -- there's hearing protection.

Examination of Leo Harris

1 So when you're at the range or in a situation like
2 this and there's all these loud noises, it allows you
3 to talk to somebody right next to you and it also
4 cancels out some of those loud noises.

5 Q Mm-hmm.

6 A Over-the-radio earpiece that's in my ear, I
7 could hear at times when people were keying up and
8 talking about things that were going on. I could
9 hear shots being fired, but I was hearing it over the
10 radio earpiece.

11 Q Mm-hmm. And did you, at -- at some point
12 -- so you talked about you found an apartment to get
13 access to and then you're able to kind of get to a
14 balcony?

15 A Mm-hmm.

16 Q Now, in that sequence, did you hear at any
17 point the -- over the radio, the discussion that the
18 individual may have been down or shot?

19 A Yes, at some point. I don't know when that
20 was. We got to a point where we got to a balcony
21 door and we're able to look over and onto a balcony
22 that had some bamboo around the balcony, which was
23 where we believed the suspect was inside that unit.

24 Wasn't able to see him. And at some point
25 then -- I don't know when -- somebody said that they

Examination of Leo Harris

1 had shot at him and that he might be down.
2 Officer Akunzie and I had to put our gas masks on and
3 we started looking up and down the -- what I think
4 would be the west side of the -- the building where
5 the suspect was.

6 And I could see a window that was a little
7 bit farther to the south that had a window screen
8 that had been popped out at the top, still attached
9 at the bottom. I don't remember if it was sticking
10 straight out. Looked like maybe the window was
11 broken and there was some blood on the window sill.

12 Q Okay. Now, I'll show you the -- the --
13 some photos here. This is Slide No. 18.

14 A Mm-hmm.

15 Q If you can take a look. That window you're
16 describing, is that pictured in that particular
17 slide?

18 A Yes.

19 Q Okay. And is that the one that we see on
20 the right-hand side with the screen down?

21 A Correct.

22 Q Okay. So at this point, is it your
23 understanding -- when you're seeing that with some
24 blood on the window sill, is it -- is it your
25 understanding at this point that -- that the suspect

Examination of Leo Harris

1 has been -- has been shot?

2 A Yes. And most likely in that window sill
3 somewhere.

4 Q Okay. And then from your vantage point,
5 you said you're on the third floor. And in looking
6 at the photographs, we see the one building is kind
7 of painted a white color and the other one is a -- I
8 -- I don't know if that's a darker blue or gray,
9 but --

10 A Mm-hmm.

11 Q -- darker color. Were you in the
12 darker-colored building?

13 A Correct.

14 Q And so you're looking down into -- into
15 this area where that -- where that window is located?

16 A Correct.

17 Q Okay. And do you remember -- and I can
18 certainly orient you as well with an overhead photo
19 -- whether you were kind of to the north, south of --
20 of where that was located? Here's the -- the -- the
21 building here, overhead view. This is Slide No. 2.

22 A On the other photo, we would have been
23 farther to the north.

24 Q Okay.

25 A I think we were -- I think it ended up

Examination of Leo Harris

1 being the unit maybe farthest to the north. When I
2 came out on the balcony, I don't think there were any
3 more units farther towards --

4 Q Okay.

5 A -- Willis.

6 Q So if I -- if I put my cursor, is this
7 roughly where -- where you would have been located?

8 A No. I would have -- I think it was the
9 other end.

10 Q Okay. So you would have been on this
11 end --

12 A Correct.

13 Q -- looking down this way?

14 A Correct.

15 Q Okay.

16 A Yes. And back to the south a little bit,
17 towards that window.

18 Q Perfect. Okay. So, now, at -- at this
19 point, are -- is your role now to try to kind of, for
20 lack of a better term, just gain information about
21 what's happening inside that -- where the suspect
22 was?

23 A Yes. After there was radio transmission
24 about him potentially being shot and down, we didn't
25 hear any more shots or people saying that he was

Examination of Leo Harris

1 still shooting. So, yes. I think our -- our role
2 was to try to figure out if he was down or not
3 'cause, obviously, all the stuff that I just talked
4 about, people that are potentially injured, we want
5 to give medical aid to them.

6 At this point, it's so dangerous medical
7 professionals are not going to come in and start
8 working on people even if you find somebody.

9 Q Mm-hmm.

10 A And we don't have the freedom to bring in
11 lots of resources and start looking. So the first
12 goal is to figure out if he is not a threat anymore.
13 At some point, we asked Sergeant Livingston if we
14 could try to knock that window shade down that's in
15 that picture that's on he right.

16 Q Okay.

17 A In case he was down and in there, we could
18 get a view of him 'cause, obviously, it's very
19 different for us. It's much more dangerous if he is
20 somewhere in the apartment and not down and still has
21 a gun and is waiting for officers. He's already shot
22 an officer or shot at officers.

23 If we can pinpoint his location, we can
24 much more quickly figure out if he's a threat or not,
25 give him medical aid if he needs it and then start

Examination of Leo Harris

1 going and checking --

2 Q Mm-hmm.

3 A -- other places. So that was our goal in
4 trying to get the window shade knocked down.

5 Q Okay. And when you say, like, "knock it
6 down," or, "move that window shade," how -- how do
7 you accomplish that?

8 A We have 40-millimeter launchers that shoot
9 a sponge round. And so that was one of my roles. I
10 was trying to -- at the very top of that picture
11 where there's some substantial part of the window
12 blind, hit it with one of those sponge rounds and
13 knock it down.

14 Q Is this roughly where my cursor's
15 located now?

16 A Correct.

17 Q Okay.

18 A Yep. And that upper-left hole, I think, is
19 from me. The sponge rounds go fast enough that on
20 something very light like that window shade -- I
21 don't know if it was metal or plastic -- it went
22 right through them. And so I was trying to hit that
23 left side.

24 There was, it seemed like, the most amount
25 of cord and top bar and it wasn't working. And so on

Examination of Leo Harris

1 the very last round, my partner said, "Hey, why don't
2 you" -- 'cause we were at an -- we were above that
3 window looking down.

4 He said, "Why don't you put that round into
5 the window sill and skip it into the bottom? There's
6 a more substantial part of the window shade at the
7 bottom. And push it back and see if we can see."

8 And that actually worked. So the round
9 impacted on the window sill, hit the bottom of the
10 blind and then drug it out maybe a foot or so. And,
11 at that point, we could see him sitting in there
12 facing to the north. I don't know if there was a bed
13 there. It was really hard to see.

14 Q Sure.

15 A But I -- what looked like him sitting like
16 this facing to the north. His arm was down like this
17 by the window sill. I couldn't see if there was
18 something still in his hand or not. And I have no
19 idea if there was. But I felt like I could see part
20 of it.

21 And I thought, oh, there could be something
22 in his hand. But he did not look like he was moving.
23 He looked like he was deceased. And we radioed that,
24 which allowed the other teams to move in closer and
25 much more quickly get him into custody.

Examination of Leo Harris

1 MR. VASQUEZ: Okay. All right. I think
2 those are the questions I have.

3 So if -- ladies and gentlemen of the grand
4 jury, if you have any questions for -- all right.

5 Thank you, sir.

6 THE WITNESS: Thank you very much.

7 MR. VASQUEZ: All right. Have a great day.
8 Thank you.

9 Yeah. You're going to go in the witness
10 stand up there. And just get there and raise your
11 right hand for us when you get there.

12 MS. NADELL: Raise your right hand.

13 THE WITNESS: Okay.

14 MR. VASQUEZ: Oh, there.

15 MS. NADELL: She'll swear you in.

16 **BEN DAVIDSON**

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

19 A GRAND JUROR: Great.

20 MS. NADELL: Go ahead and have a seat.

21 And if you could, state and spell your
22 first and last name, please.

23 THE WITNESS: My name is Ben Davidson,
24 B-e-n, D-a-v-i-d-s-o-n.

25 ////

Examination of Ben Davidson

1

EXAMINATION

2

BY MS. NADELL:

3

Q And how are you employed?

4

A I'm a police officer with the City of

5

Portland.

6

Q How long have you been an officer?

7

A I've been an officer for about

8

18-and-a-half years.

9

Q Okay. Are you assigned to the SERT team?

10

A Yes.

11

Q How long have you been a member of the SERT

12

team?

13

A About four years.

14

Q All right. And what -- do you have a

15

specific role with that team?

16

A Yeah. I'm a canine handler assigned to

17

SERT --

18

Q Okay. Does --

19

A -- and -- and the canine unit.

20

Q Does that mean you have a canine dog?

21

A Yes.

22

Q Okay.

23

A I have a German shepherd. His name's

24

Chester.

25

Q Chester? Okay. And specific to SERT

Examination of Ben Davidson

1 callouts, what is your typical role as a canine
2 handler?

3 A So Chester is trained to detect and trail
4 fresh human scent, search for fresh human scent. So
5 we use Chester sometimes if we need to search for
6 somebody in the blocks, if we need to search a
7 building or safely clear it.

8 We can attach cameras to him so we can see
9 what he sees out ahead of us. And then he's also
10 trained in suspect apprehension, so he's trained to
11 bite if -- if we need him to, prevent escape and
12 stuff like that.

13 Q Okay. On the morning of August 27th, 2021,
14 were you and Chester dispatched to 1600 North Willis
15 Boulevard on a SERT call?

16 A Yes.

17 Q And did you arrive at the location?

18 A Yes.

19 Q What happened when you arrived?

20 A I arrived and began gearing Chester up to
21 -- to get ready. I got -- put his bulletproof
22 harness on, got his camera system ready to go in case
23 we needed to go into the building and have him search
24 or apprehend the suspect. As I was doing so, that's
25 when stuff started kind of kicking off.

Examination of Ben Davidson

1 Q Okay.

2 A Started hearing gunfire from inside. This
3 was just within a few minutes of me getting there.
4 Heard -- heard a gunshot inside and pretty quickly
5 saw some Portland officers and DEA agents evacuate
6 out the front -- the north door of the building where
7 I was staged.

8 Q Were you staged then on North Willis, like,
9 pretty close to the building?

10 A Yes.

11 Q Okay.

12 A Just essentially right in front of the
13 building.

14 Q Okay. And was there any -- other than
15 seeing the agents and officers come out, was there
16 anything noteworthy about them leaving?

17 A I noticed one officer was limping pretty
18 severely and two other officers were kind of -- he
19 had his arms around two officers as he came out.
20 And --

21 Q Okay.

22 A -- learned that he'd been shot --

23 Q Okay.

24 A -- in the leg.

25 Q What happened after they had exited the

Examination of Ben Davidson

1 building?

2 A They exited and -- and got out. I heard a
3 few more shots within -- within the building. I saw
4 some neighbors that turned out to be the neighbors of
5 the apartment he had gone into get evacuated out the
6 front door. Heard additional gunshots and, at some
7 point, one shot went off inside and I heard what
8 sounded to me like an animal screaming.

9 I -- I thought it was probably a rabbit or
10 something. And then SERT officers began deploying 40
11 rounds at the glass to break out glass and then began
12 administering gas canisters into the apartment.

13 Q Okay. Did you and Chester remain outside
14 then?

15 A Yes.

16 Q Okay. And did you or he have a specific
17 role then?

18 A At that --

19 Q Did you get past the point of, like,
20 getting him ready to go in terms of actual SERT --

21 A Yeah. So we hadn't been --

22 Q -- service?

23 A -- assigned anything at that point.

24 Q Okay.

25 A Our -- our role was going to be --

Examination of Ben Davidson

1 essentially, our role at that point was going to be
2 if the suspect jumped off the balcony and attempted
3 to run into the blocks. We considered him enough of
4 a danger to where we could deploy Chester to keep him
5 from escaping or hurting anyone else.

6 Down the line, it -- it kind of got the
7 point where if we needed to go in, we -- we could
8 potentially send Chester in camera'd to potentially
9 search for the suspect within the apartment.

10 Q Okay. Did the incident continue much past
11 the gas can -- canisters being deployed?

12 A Yeah. The gas canisters got deployed. I
13 heard additional gunfire from -- from inside the
14 apartment. I heard the suspect yelling something out
15 at us, but I couldn't understand what he was saying.
16 And, eventually, IP officers, sniper officers, shot
17 and put the suspect down --

18 Q And did you --

19 A -- from -- from our --

20 Q -- hear that through the radio as well
21 as --

22 A I heard --

23 Q -- the shots?

24 A -- heard that over -- I heard one shot from
25 what sounded like a rifle from our end, but was

Examination of Ben Davidson

1 advised that they had shot, but that he was still
2 moving around. And then a few seconds later, a
3 second shot from our end and was advised over the
4 radio that he appeared to be down.

5 Q Okay. Did that kind of end your
6 involvement and Chester's involvement or did -- did
7 you just --

8 A The -- we --

9 Q -- (indiscernible)?

10 A -- we had talked about potentially using
11 Chester to -- to go in and get eyes on the suspect
12 via his camera so we could see where the suspect was
13 within the apartment, if he was down, if he was
14 deceased or still moving, still a -- a threat.

15 But we transitioned from using Chester to
16 using the idea of using a robot to go in and see the
17 stuff, but then, eventually, one of our sniper
18 officers was able to get a visual on him and
19 basically essentially tell us where he was within the
20 apartment and there was no movement.

21 Q Okay.

22 A So we didn't use Chester for anything
23 beyond that.

24 MS. NADELL: All right. I don't think I
25 have any other questions.

Examination of Brian Sims

1 All right. Do the grand jurors have any
2 questions? Seeing none.

3 All right. Thank you --

4 THE WITNESS: Okay.

5 MS. NADELL: -- Officer.

6 THE WITNESS: Thank you.

7 (Whispered discussion, off the record,
8 11:39 a.m. - 11:40 a.m.)

9 MS. NADELL: Since it's a new day,
10 Detective Sims, let's re-swear you in.

11 THE WITNESS: Okay.

12 **BRIAN SIMS**

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

15 A GRAND JUROR: Thank you.

16 MS. NADELL: Okay. All right. And just
17 for the record, go ahead and state and spell your
18 first and last name again.

19 THE WITNESS: Detective Brian Sims,
20 B-r-i-a-n; Sims, S-i-m-s.

21 **EXAMINATION**

22 BY MS. NADELL:

23 Q All right. Good morning. Yesterday,
24 Detective, you had testified that the involved
25 apartment building from this incident had several

Examination of Brian Sims

1 Airbnb residents; is that accurate?

2 A Yes.

3 Q "Residents" may not be the --

4 A Renters.

5 Q -- best term. Renters, thank you. And to
6 your knowledge, based on the investigation, was one
7 of those individuals Jesus Mendoza?

8 A He was.

9 Q Okay. And do you recall from the
10 investigation where he had been staying at -- on
11 August 27th of 2021?

12 A Yes. So he was staying in Building 1570,
13 which is the building just to the east of our target.
14 So --

15 Q Is that --

16 A -- (indiscernible) --

17 Q -- this one where my cursor is on the
18 overhead?

19 A Let me see your cursor again.

20 Q Oh.

21 A I don't see it. Yes.

22 Q Okay.

23 A So he's in that building in Apartment No.
24 4. And he was staying on the living room couch. And
25 so Apartment No. 4 is on the second floor directly

Examination of Brian Sims

1 across from the balcony of Apartment No. 5.

2 Q Okay. So I pulled up another photo. The
3 one on the left shows 1600 and then kind of at the
4 very edge of the photo, there's a gray building. Is
5 that the --

6 A Yeah, that's --

7 Q -- 1570?

8 A -- it. It should be 1570.

9 Q Okay.

10 A So that's -- he was -- he was closest to
11 that balcony.

12 Q Okay. So they kind of shared -- there was
13 the alleyway in between the two buildings?

14 A Yep. And then that --

15 Q And the two --

16 A -- back --

17 Q -- apartments.

18 A -- window --

19 Q Okay.

20 A -- looks onto Apartment 5. So same level,
21 directly across the kind of small courtyard.

22 Q All right.

23 A Does that make sense?

24 A GRAND JUROR: Mm-hmm.

25 A GRAND JUROR: Yeah.

Examination of Brian Sims

1 MS. NADELL: I think so. Let me see --

2 A GRAND JUROR: Yeah.

3 MS. NADELL: -- if there's any questions.

4 Any other questions for the --

5 A GRAND JUROR: No, no.

6 MS. NADELL: -- detective?

7 Okay. Thank you so much.

8 THE WITNESS: Okay. You bet.

9 MS. NADELL: And I think we can go off the
10 record (indiscernible) this morning.

11

12 * * *

13 (Noon Recess taken at 11:43 a.m.)

14

15 **AFTERNOON SESSION**

16 (Whereupon, the following proceedings were
17 held before the Grand Jury, 1:05 p.m.):)

18 MS. SEELY: There we are.

19 Hello Dr. Stauffenberg. We're going to get
20 started here. We're in Grand Jury B. And we're
21 ready to have you sworn, if you are ready.

22 THE WITNESS: I'm ready.

23 MS. SEELY: Okay.

24 A GRAND JUROR: Would you mind raising your
25 right hand?

Examination of Michele Taylor Stauffenberg

1 Thank you.

2 **MICHELE TAYLOR STAUFFENBERG**

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

5 EXAMINATION

6 BY MR. MICHALOWSKI:

7 Q All right. Before we continue, can I
8 just -- could you just confirm that you're in a room
9 by yourself; there's nobody else listening in?

10 A I am in a room all by myself.

11 Q All right.

12 A Nobody listening.

13 Q Great. So, Dr. Stauffenberg, can you state
14 your name and -- and spell it for the record, please.

15 A Yes. Michele Taylor Stauffenberg,
16 S-t-a-u-f-f-e-n-b-e-r-g.

17 Q And what do you do?

18 A I am a deputy state medical examiner.

19 Q And what are your qualifications for that?

20 A I am a medical doctor. I'm board certified
21 in forensic pathology, as well as anatomic and
22 clinical pathology. I've been practicing as a
23 forensic pathologist since 2001.

24 I worked for 14 years in Atlanta as the
25 deputy chief medical examiner there. I've worked

Examination of Michele Taylor Stauffenberg

1 here since 2017. And I've performed close to 5,000
2 autopsies and external examinations.

3 Q So that leads into my next question, which
4 is do you do autopsies; so obviously you do. What
5 are the circumstances that come about in which you
6 would end up doing an autopsy?

7 A An autopsy is -- is one of the tools that
8 we can use to evaluate and investigate a death that
9 is sudden or unexpected or due to trauma, injury,
10 poisoning, a nonnatural or unexpected death.

11 Q And did you do an examination, including an
12 autopsy, of Alexander George Tadros?

13 A Yes, I did.

14 Q When did you conduct that?

15 A That was on Saturday the 28th of
16 August 2021.

17 Q All right.

18 A At 8:00 in the morning.

19 Q Just before we get into the specifics of
20 that examination, can you just walk the grand jurors
21 through your process, what you do when you do one of
22 these examinations?

23 A I like to describe an autopsy as a physical
24 examination that I perform on my patients. An
25 autopsy begins with examining the outside of the

Examination of Michele Taylor Stauffenberg

1 body. They may be wearing clothing. Observation of
2 the general condition of the body, is there evidence
3 of injury and so forth.

4 The clothing is removed. We clean the body
5 and look at the skin and see if there are any
6 injuries or abnormalities that would indicate a cause
7 or manner of death.

8 And then we do an internal examination.
9 The body is opened. The organs are examined as they
10 sit. And then they're removed and examined
11 individually for any injuries or abnormalities that
12 might relate to the cause of death.

13 Q And, as part of this process, do you
14 collect samples for -- for testing?

15 A Yes, I do.

16 Q What -- what types of testing?

17 A Generally, we save blood and urine, if we
18 can get it, on all cases. And my practice is to send
19 toxicology on every case. We can also collect
20 whatever other materials or samples might be useful
21 in an individual case.

22 Q All right. And turning to this specific
23 evaluation. And can you walk us through what you did
24 and what you saw?

25 A Yes. Once again, this -- this case began,

Examination of Michele Taylor Stauffenberg

1 like most of our autopsies do, the body was examined
2 after being received in a body bag. The hands were
3 covered with paper bags. And so the -- the bags were
4 removed and the hands were photographed for
5 documentation purposes.

6 The clothing was examined and detailed,
7 photographed and collected as evidence. The body was
8 cleaned and examined to look for injury. So in this
9 case he had an injury of the head. During the
10 examination of the body, his head was found to be
11 distorted.

12 He had a lot of skull fractures that made
13 his head an abnormal shape. And he had a gunshot
14 wound that went into his right ear and entered his
15 head that way, that caused this distortion of the
16 head.

17 Q Did you see -- other than his head, were
18 there other injuries that you noted?

19 A Yes. He had a gunshot wound of his left
20 hand that looked like a graze gunshot wound where a
21 bullet rubs against the skin and makes an abrasion.
22 He also had some superficial cuts that were on the
23 back of his left arm, a cluster of these very
24 superficial cuts, measuring up to 1 inch in length.

25 Q With regard to those -- those cuts, did you

Examination of Michele Taylor Stauffenberg

1 make any determinations about them or are they just
2 noted?

3 A Only to say that they were consistent with
4 cut injuries, as opposed to blunt injuries. It
5 looked like they had been caused by an edge of some
6 sort.

7 Q All right. Let's see. And based on your
8 observations -- you already kind of described the --
9 the head wounds. Based on those, were you able to
10 determine a cause of death?

11 A Yes. His cause of death is gunshot wound
12 of head.

13 Q All right. And was there any findings
14 within the toxicology that were of note?

15 A It looks like he has methamphetamine
16 amphetamine, Fentanyl, norfentanyl and 4ANPP.

17 Q I think -- I think methamphetamine is
18 commonly understood. Can you talk about the
19 difference between methamphetamine and amphetamine in
20 terms of -- is amphetamine a metabolite of
21 methamphetamine, is -- is where --

22 A Yes. Amphetamine is a metabolite of
23 methamphetamine, but it's also active. They both act
24 as stimulant drugs. So just metabolizing
25 methamphetamine doesn't make the effect go away. It

Examination of Michele Taylor Stauffenberg

1 just changes it into amphetamine, which continues the
2 stimulant effect.

3 Q So -- and I'm -- I'm guilty of causing
4 confusion here, I think, because I threw out a term,
5 "metabolite," without having you explain what that is
6 is, so --

7 A Oh, all right. Yeah. Metabolite just
8 means that a drug is changed by the body into a
9 different form. So if a person takes
10 methamphetamine, then the body is going to work on it
11 and change it into another chemical, which is
12 amphetamine. And that's a -- that's called a
13 metabolite.

14 Q And you noted also Fentanyl and
15 norfentanyl. Is norfentanyl a metabolite of
16 Fentanyl?

17 A Yes, it is.

18 Q And -- and I'm not familiar; so I'm
19 actually asking out of curiosity what 4ANPP is?

20 A 4ANPP is a substance that is -- it's an
21 opioid substance that's related to Fentanyl. In
22 pharmaceutical preparations of Fentanyl, they
23 generally purify it so that the only thing you're
24 really getting is Fentanyl.

25 You don't get 4ANPP. But illicitly

Examination of Michele Taylor Stauffenberg

1 manufactured Fentanyl might have a little bit of
2 4ANPP in it. It's kind of a precursor. It's a
3 substance that -- like, an ingredient that you start
4 with to make Fentanyl. And it also is a breakdown
5 product as well.

6 The significance of 4ANPP is that its
7 presence indicates that the Fentanyl didn't come
8 from, say, the pharmacy or a prescription medication
9 for Fentanyl. It's generally associated with street
10 Fentanyl.

11 Q All right. And were those -- were those
12 detected in the blood or the urine or both?

13 A Both.

14 Q All right. And is there a difference on --
15 can you tell the difference about whether it's
16 psychoactive, whether it's having an effect on the
17 person if it's in the blood versus the urine?

18 A Well, anything that's in the blood can
19 potentially act on the person's system. It's
20 considered active on their thoughts, feelings,
21 actions, whatever, at the time of death.

22 Anything that's in the urine has been
23 removed from circulation. So the -- the blood has
24 gone through the kidneys. The kidneys have filtered
25 it out and put it into the urine. And so anything

Examination of Michele Taylor Stauffenberg

1 that's in the urine has been in the body, but it's
2 not in the body anymore.

3 Q All right. And in your examination then
4 did you -- let me get at it this way. When he came
5 to you, he obviously had a -- had a gunshot wound to
6 the head. That was probably one of the first things
7 you saw, correct?

8 A Yes.

9 Q Did you -- did you do a thorough
10 examination to rule out other causes of death as
11 well, or did you just jump to that conclusion?

12 A No. We did a complete autopsy. We
13 examined everything. So I have -- let's see -- as
14 one of my findings, one of my findings in this
15 autopsy, no evidence of natural disease.

16 Q All right. All right. Those are all my
17 questions. I'm going to ask the grand jurors if they
18 have any questions for you?

19 A All right.

20 A GRAND JUROR: Is there any information
21 about the amounts of these drugs that were found in
22 the system?

23 A GRAND JUROR: Yeah.

24 BY MR. MICHALOWSKI:

25 Q The question is -- is there any information

Examination of Michele Taylor Stauffenberg

1 about the amounts of the drugs that were found in his
2 blood or urine?

3 A Yes. Let's see. In his -- I've got
4 amounts for blood. For methamphetamine, 2.7
5 milligrams per liter. Amphetamine is 0.11 milligrams
6 per liter. Fentanyl, 54 nanograms per milliliter.
7 Norfentanyl, 16 nanograms per milliliter. And no
8 quantitation on 4ANPP, only that it is present.

9 Q And is -- is there anything -- I mean, does
10 the scientific literature -- or is there a basis,
11 based on scientific literature, to draw conclusions
12 from those numbers about how much it was -- is
13 affecting him?

14 A It really depends on the drug. These --
15 the -- for methamphetamine and Fentanyl, we've got
16 two different ways to interpret these. For
17 methamphetamine, the way I interpret it is if it's
18 there, then it's significant because it's not like
19 you reach a certain threshold and it results in
20 death.

21 Methamphetamine is a stimulant, and so it
22 acts on the heart to make it beat harder and faster.
23 It increases your heart rate. It increases the blood
24 pressure until a point where you get a fatal
25 dysrhythmia, an abnormal heart rhythm, and the person

Examination of Michele Taylor Stauffenberg

1 dies.

2 For Fentanyl, the amount varies. So it's
3 not like there -- you reach a certain threshold and
4 you die either, just -- just like methamphetamine.
5 But the difference here is people have different
6 levels of tolerance to the drug. So someone who's
7 never had Fentanyl before or any kind of opioid, they
8 may die at a much lower level of Fentanyl than
9 somebody who uses it every day.

10 So the way I interpret Fentanyl is if
11 there's Fentanyl onboard and the person is dead and
12 there's no other reason for them to be dead, then
13 it's very likely that they died from using the
14 Fentanyl.

15 Q So I guess that -- that takes me down two
16 different -- separate avenues of questions. And the
17 first one I'll say is -- so you're talking about --
18 you're talking about quantities of drugs in terms of
19 an overdose, in terms of that quantity being -- being
20 fatal. And so, given the information that you have,
21 did you rule those out as causes of death?

22 A Yes.

23 Q Okay. And so the other path would be do
24 you have -- can you draw conclusions from the
25 information that you have about his impairment prior

Examination of Michele Taylor Stauffenberg

1 to death based on the presence of those -- those
2 substances in his system?

3 A No. I can draw no conclusions about how
4 that would affect his behavior.

5 UNIDENTIFIED SPEAKER: Okay.

6 A GRAND JUROR: Yes. I was hoping to find
7 out about impairment, but yes. Thank you. That
8 answers it.

9 UNIDENTIFIED SPEAKER: That's why I -- I
10 saw where you were going. That was why I asked that
11 question.

12 Anybody else?

13 A GRAND JUROR: You got to it. Thank you.

14 UNIDENTIFIED SPEAKER: Okay. I -- I think
15 that's all we have for you today. Thank you so much
16 for your time.

17 THE WITNESS: All right. Have a good day.

18 UNIDENTIFIED SPEAKER: You too.

19 (Whispered discussion, off the record,
20 1:21 p.m. - 1:22 p.m.)

21 MS. SEELY: And, Sergeant Livingston,
22 before you take a seat, if you will look over here
23 and be sworn in.

24 THE WITNESS: Yes.

25 ////

Examination of Don Livingston

1

DON LIVINGSTON

2

Was thereupon called as a witness; and, having been

3

first duly sworn, was examined and testified as follows:

4

UNIDENTIFIED SPEAKER: Thank you.

5

EXAMINATION

6

BY MS. SEELY:

7

Q Good afternoon, Sergeant. My name is Amy

8

Seely. I'm with the Oregon Department of Justice.

9

Before we go any further, could I have you state your

10

full name and spell your first and last, for the

11

record, please.

12

A Yes. My name is Don Livingston. First

13

name is D-o-n. And last name is L-i-v-i-n-g-s-t-o-n.

14

And Don and actually short for Donald, so

15

D-o-n-a-l-d.

16

Q Thank you for the clarification. Could you

17

tell us a little bit about what you do for a living

18

and how long you've been doing it?

19

A Yeah. I'm a sergeant with the Portland

20

Police Bureau. My current assignment is I'm attached

21

to the Special Emergency Reaction Team, or SERT,

22

which is the SWAT team for the City of Portland. I

23

work in the Special Resources Division. And I've

24

been a police officer for 25-and-a-half years.

25

I started my career in the City of Medford.

Examination of Don Livingston

1 I worked for the Medford Police Department for a year
2 and a half before I transferred to the City of
3 Portland.

4 Q And does being on the SERT team require a
5 special type of training?

6 A Yes, it does. So, in addition to your
7 regular training, once you get selected for the team,
8 you have to go through the basic SWAT school, which
9 is hosted by the Oregon Tactical Officers
10 Association. It's a one-week school, held in Camp
11 Rilea, where you learn basic techniques and how to
12 use the equipment that we're all issued.

13 In addition to that, I went to the Basic
14 Sniper School, which is also hosted by the Oregon
15 Tactical Officers Association. Again, it's a
16 one-week school, very similar. Our teams are split
17 up into two sides. We have an entry side and what we
18 call the inner perimeter side.

19 And the inner perimeter is responsible for
20 containment, custodies, typically to observe and
21 report and, in very rare incidences, to use
22 potentially deadly force, like most people would
23 think with a sniper. We don't typically use those
24 terms in the Portland Police Bureau, military terms.

25 So we use the inner perimeter as a term for

Examination of Don Livingston

1 the -- which would be equivalent to what, I think,
2 most people would think of as a sniper.

3 Q Are you what's known as a SERT supervisor?

4 A Yes. There's technically three of us that
5 are supervisors for the team. Sergeant Darby is a --
6 the team leader, and he supervises the entry side.
7 And I am a sergeant, and I supervise the inner
8 perimeter.

9 Q Okay. And by supervising the inner
10 perimeter, can you tell us a little bit what you mean
11 about that?

12 A So, like I said before, the team is split
13 up into two details. And I am responsible for the
14 inner perimeter.

15 Whenever we have a call or a search warrant
16 or any type of activation, I work with the
17 individuals in my detail to form containment. I give
18 them specific assignments of where to go and they
19 report directly to me.

20 Q And within the Portland Police Bureau, are
21 you responsible for any specific type of training or
22 instructing?

23 A So, throughout my career I've been an
24 instructor in various different topics, disciplines.
25 I became a defensive tactics instructor in 1999,

Examination of Don Livingston

1 which defensive tactic is the hands-on portion of
2 police work.

3 I -- in 2001 I transferred to the Training
4 Division full-time as an instructor. And I also got
5 certified to teach patrol tactics and firearms. So I
6 spent seven years in that division teaching officers
7 in the bureau through advanced academy training and
8 also ongoing in-service training, various -- various
9 topics.

10 In addition to that, I was also an
11 instructor in some of the less-lethal tools that we
12 carry on our duty belts. I taught the Hobble leg
13 restraints. I was an instructor in the Taser, and I
14 was also an instructor in pepper spray. So currently
15 I'm responsible for still doing defensive tactics and
16 firearms.

17 And a lot of the tactics that we teach
18 officers throughout the bureau regarding building
19 clears, kind of -- and response to active threat kind
20 of fall back towards the SERT team, which I help
21 instruct as well.

22 Q And when we're talking about defensive
23 tactics involving firearms, what are we talking about
24 specifically?

25 A Well, they're two different topics. So

Examination of Don Livingston

1 defensive tactics would be the hands-on portion of
2 police work, the handcuffing, the working in
3 partnerships to take somebody into custody. That
4 would fall under the defensive tactics realm.

5 Firearms would be a proficiency with
6 shooting various types of weapon platforms that we
7 have in the Police Bureau. Both involve
8 understanding of use of force and when you
9 specifically are justified in using specific tools.

10 Q And you talked a little bit about
11 less-lethal options. Would shooting be considered
12 deadly force?

13 A Yes. Shooting would be deadly force.

14 Q We've had some questions about why officers
15 don't shoot to disarm a suspect or shoot to subdue a
16 subject, as opposed to killing them. Could you talk
17 a little about that?

18 A Yeah. So we are taught and we teach
19 officers to shoot center mass. It kind of increases
20 your opportunity of hitting a target. Very difficult
21 to shoot, especially a moving target, if you're
22 trying to shoot something small, like a weapon out of
23 somebody's hand, it's very difficult to do.

24 So to increase the likelihood that you will
25 stop the threat immediately, we shoot towards center

Examination of Don Livingston

1 mass, which is the target that's available to you of
2 the person. If they're, like, leaning behind a piece
3 of cover, something that would stop a bullet, like a
4 car or a brick wall, your target might be smaller.

5 But if, like, you're looking at an
6 individual, you would go for the center of what is
7 available to you to stop them from doing whatever
8 action they're doing to prevent loss of life or
9 serious physical injury.

10 Q And based on your training and experience,
11 when is an officer allowed to utilize deadly force?

12 A So there's two prongs. The first prong
13 would be to prevent death or serious physical
14 injury -- immediate death or serious physical injury
15 to yourself or somebody else. And the second would
16 be if you have probable cause to believe somebody
17 that's fleeing poses an immediate threat to the
18 community.

19 Q Thank you. I'd like to turn your attention
20 to August 27th, 2021. Do you happen to recall if you
21 were on duty that day?

22 A It was my day off.

23 Q Okay. So what were you doing at about --
24 let's start around 6 o'clock in the morning.

25 A I woke up at about 6:00 a.m. I remember

Examination of Don Livingston

1 being down in the kitchen, and I was making a shake
2 to drink. I was going to go work out after I drank
3 the shake. And I received a page to -- from dispatch
4 to call Sergeant Jeff Dorn (phonetic) of North
5 Precinct.

6 Q And so what'd you do?

7 A Well, the page goes to four of us: Myself,
8 Sergeant Darby, Sergeant Frankis (phonetic) and then
9 Lieutenant Pearce. And we kind of take turns
10 handling those calls. Sergeant Darby sent a text to
11 the group saying that he would handle that call.

12 So he phoned Sergeant Dorn. And I got onto
13 my phone, and I read the call in the CAD dispatch.
14 And then I also got onto Google Earth and looked at
15 the location, just to kind of get an outline of what
16 was happening and start thinking about if we had to
17 respond what we would need to do.

18 Q And you mentioned CAD. What is CAD?

19 A So it's computer-aided dispatch. It kind
20 of lists exactly what's happening in the call. The
21 dispatcher will type in updates; so you kind of get
22 an idea of what's happening at the scene.

23 Q And when you initially reviewed that
24 information, what, if anything, do you recall
25 about it?

Examination of Don Livingston

1 A So I remember reading it and learning that
2 the Drug Enforcement Agency, or the DEA, was serving
3 a search warrant at 1600 North Willis. I believe it
4 was apartment eight. They had -- after they
5 attempted to serve the warrant, a subject jumped off
6 the balcony from number eight to number five, which
7 is the apartment directly below.

8 They had called for additional help from
9 North Precinct. North Precinct officers arrived, and
10 they were talking to that individual on the balcony.
11 They could see something in his hand that was dark in
12 color. They were unsure if it was a weapon. During
13 their conversations he had made threats to shoot
14 officers.

15 He had also made some comments that led
16 them to believe that he was contemplating suicide by
17 cop. And they were unsure if the apartment was
18 empty, if there were occupants inside of the
19 residence. They felt -- at one point when they were
20 talking to him, they saw a light go on inside the
21 apartment that he couldn't have turned on.

22 So they kind of felt like somebody was in
23 there. But they also had information from somebody
24 who was not at the scene that said that the occupants
25 of that apartment road Harleys and if the Harleys

Examination of Don Livingston

1 were gone they were likely not at the residence.

2 They looked outside, and the Harleys were
3 gone. So it was kind of unsure if it was occupied or
4 not, but the light switch going on led me to believe
5 more likely than not it was occupied.

6 Q You mentioned suicide by cop. Do you
7 recall any particular comments that made -- that --
8 that made you think that that was something that was
9 being contemplated?

10 A No. I just remember reading specifically
11 in the call it said -- said that language
12 specifically, but it did not say what the subject had
13 said to lead them to believe that.

14 Q And you may have already stated, but what
15 time were you paged to respond, if you remember?

16 A So my recollection is the original page for
17 the consult came through at 6:29. And then I think
18 at 6:51 the actual call-out came. So we call it a
19 page. It's technically a text message that goes to
20 your phone.

21 I still do have a pager; so I get them on
22 both. But it gives you direction to respond and to a
23 location specifically with a safe route to that
24 location. And it gives you a little bit of detail
25 about the call itself.

Examination of Don Livingston

1 Q And about how far away did you live from
2 the location?

3 A I -- I live about 23 miles away from the
4 location.

5 Q Okay. So what did you do next?

6 A So I kind of had an idea it was coming. I
7 went upstairs and got dressed. I got my basic
8 uniform on. And then I got into my vehicle and
9 started driving to the location with lights and
10 siren.

11 I also turned on my radio onto the dispatch
12 net, she three, which is what we use on SERT and CNT,
13 so I could communicate with the dispatcher and let
14 them know that I was in route to the location. And
15 also I could get continuous updates as I responded.

16 Q And, as you were listening to the radio on
17 that drive and updating them yourself, do you recall
18 getting any additional information?

19 A I do. I remember Sergeant Darby coming on
20 the radio and letting everybody know that, from his
21 conversation with Sergeant Dorn, that he learned
22 there was probable cause to arrest the subject that
23 jumped from number eight to number five for felony
24 crimes related to a Fentanyl drug investigation.

25 The DEA was doing a search warrant at the

Examination of Don Livingston

1 location related to Fentanyl. And additionally I
2 learned several times the staging location kind of
3 went changed and what direction we needed to come in.
4 So I was a little unsure exactly what the safe to say
5 way to approach this apartment was.

6 I knew where to park when I got there, but
7 I was unsure if it was completely open in front of
8 the location.

9 Q And I have a map up here on the screen. If
10 the staging location is on that map -- and you can
11 actually see it in the monitor right --

12 A Oh, okay.

13 Q -- in front of you. Could you indicate
14 about where that was? And I'll see if I can
15 highlight it with my cursor.

16 A Yeah. So I don't know if you can see
17 McClellan.

18 Q Yes.

19 A Yes. So right where -- just further to the
20 right, right about there is where we were going to
21 stage. And that's about where I parked.

22 Q Okay. And do you recall what time you
23 arrived?

24 A About 7:50, 7 -- or -- I'm not 100 percent
25 sure.

Examination of Don Livingston

1 Q Okay.

2 A Yeah.

3 Q Well, you said you thought you got paged at
4 6:51 and you live --

5 A Yeah.

6 Q -- about 23 miles away.

7 A So, yeah, maybe about 7:25, in that --

8 Q Okay.

9 A -- range. I mean, giving me time to get
10 dressed and stuff.

11 Q Sure. And once you arrived on scene, did
12 you proceed immediately to the command center? Or
13 did you need to do some things to prepare first?

14 A Yeah. So I wasn't wearing my full gear; so
15 I -- typically on a call I'll park and get out and
16 get the rest of my gear on. And so I remember being
17 at the back of my rig. We have a safe in the back of
18 my rig.

19 I opened it up, and I was getting my gear
20 together. And I -- I could hear Officer Gradwahl on
21 the radio saying that shots had been fired and an
22 officer had been hit.

23 Q Before we get into that, what kind of gear
24 does SERT team members have specifically that might
25 be different from what you'd normally see on a police

Examination of Don Livingston

1 officer?

2 A So our equipment is a little different.
3 It's a different color so we can kind of designate
4 who is on the team. Our stuff is green. I wear a
5 helmet. Patrol officers have helmets as well.
6 Theirs is black, but mine is green. I grabbed my
7 vest, which is a a heavy vest. It offers the same
8 protection threat level as the street vests do.

9 They're just larger. They get more body
10 protection. So I grabbed my vest as well, put that
11 on. My duty belt, which includes a handgun, and then
12 my -- my rifle that's issued to me through the Police
13 Bureau. I was grabbing all those pieces of equipment
14 together to get ready to go down to the location
15 itself.

16 Q And then you indicated you heard over the
17 radio that an officer had been shot?

18 A Yes. I heard Officer Gradwahl said that
19 shots had been fired and an officer had been hit.
20 The main part of the -- all the officers that were on
21 scene were working on North Precinct's dispatch net.
22 And, again, I was on she two. So we have two
23 separate radio notes.

24 Q Okay. And so where the shots were fired --
25 I'm knowing to hover with my cursor -- was it your

Examination of Don Livingston

1 understanding that they were up in this area?

2 A Yes. From a -- from my observations on
3 Google Earth, that's where I felt the apartment was.
4 I hadn't been up there to get actual visual eyes on
5 it, but that's where I thought it happened.

6 Q So the command center was kind of on the
7 opposite side of that block?

8 A Yes, it was. And I -- you know, call-outs
9 happen kind of differently every time. I -- I show
10 up and typically, if there's time, I'll go to the
11 command post and get a briefing from the on-scene
12 supervisor that has a lot of the information and
13 we'll come up with a plan that I'll run through
14 supervisors and then we'll deploy.

15 This one was so rapidly evolving that I
16 didn't go to the command post itself. I went
17 directly to the scene to provide assistance.

18 Q And that's what I wanted to cover next.
19 Once you heard the call that there had been a shot
20 fired and an officer was injured, what did you do?

21 A Well, I heard -- Officer Gradwahl also made
22 a statement saying that we needed to get some inner
23 perimeter officers to the north with eyes on the
24 balcony because they couldn't see the balcony itself
25 without exposing themselves. And he said there was

Examination of Don Livingston

1 several DEA agents on scene and there was a couple
2 DEA agents out there in that location that were
3 providing cover.

4 But they didn't have radio net -- a common
5 radio net to communicate with each other. So I knew
6 that was a priority for me. I walked down -- if you
7 look at that map that's up there, I walked from the
8 staging location. I walked northbound on Interstate
9 to Willis. And then I started walking westbound on
10 Willis towards the apartment.

11 And if you move that cursor to the right a
12 little bit, right about where that tree is -- keep
13 going -- right about there I saw a DEA agent standing
14 out in the street. And I walked over and asked him a
15 few questions. I specifically wanted to know which
16 apartment the suspect was in.

17 And, second, I wanted to know where his
18 fellow officers or agents were so we could replace
19 them and move in and start communicating with the
20 officers inside on a common radio net.

21 Q And I just want to stop and ask you a
22 question to make sure I understood something
23 correctly. Is it correct that the DEA agents were
24 unable to communicate with Portland Police on their
25 radio system and, therefore, unable to communicate

Examination of Don Livingston

1 with SERT team members?

2 A That is correct.

3 Q Okay. So in order to get the information
4 directly from DEA, you had to physically talk to
5 somebody?

6 A I had to go face-to-face with him.

7 Correct.

8 Q Okay. And was there anything about that
9 question with that first DEA agent that was of note?

10 A He pointed out the apartment to me,
11 specifically where the suspect was. It was easy to
12 see because the balcony itself was lined with bamboo
13 lattice. So it kind of stood out. It was the only
14 one that had that. As far as -- what I got from him,
15 he was the only one out there.

16 And he wasn't really in a good spot to get
17 eyes on the balcony without exposing himself to the
18 balcony itself. So I kind of knew that I needed -- I
19 knew where I needed to place officers at that point
20 after talking to him, but I didn't feel like any DEA
21 were in any vital spot that we needed to replace.

22 Q Okay. And so what I'd like you to do is
23 walk me through setting up the inner perimeter and
24 where you deployed people to and who you deployed to
25 certain areas. And I'll -- I'll move around my

Examination of Don Livingston

1 cursor at your direction.

2 A Okay. So from where you last had me, if
3 you go back to the left a little bit and then up to
4 the north and then just a little to the right, about
5 where that car is, there was a house there.

6 I talked to Sergeant Foxworth. And my
7 first point was to get him and whoever he could grab
8 in that -- in that backyard or the house that would
9 have eyes on the balcony. They could find something
10 there that would at least give them concealment or
11 cover from the balcony.

12 And then they could give updates if the
13 subject walked out of the balcony or he was pointing
14 a gun at anybody, that we could actually intervene
15 and provide assistance. So that was number one.

16 Q I should ask: Was an armored vehicle
17 already on scene, or had one been requested?

18 A It had been requested. There -- there were
19 two coming to the location, but they had not
20 arrived yet.

21 Q Okay. Please go on.

22 A The other thing I noted and caused me
23 concern was when I walked and talked to the DEA agent
24 I noted that the apartment to the east of the target,
25 which is -- you see that blue arrow?

Examination of Don Livingston

1 Q Yep.

2 A If you go to the right of that -- so it was
3 identical. There were two identical buildings. And
4 I could see people inside of that building.

5 And I could also see down the street it was
6 residential and there was people kind of out on their
7 porches and stuff. And I was trying to get people to
8 go back inside. So I had concern if the subject came
9 out onto the balcony and started firing, there would
10 be community members in danger.

11 So that was additionally my concern of
12 getting set up on the location. The number two spot
13 would be the apartment to the right of the target.
14 There you go.

15 And I asked Officer Leo Harris, I called
16 him on the phone and wanted him to go up to the third
17 floor of that apartment and get in so he could see
18 down onto that balcony. So him and Joel Kunze
19 (phonetic) went to that location.

20 Q Okay.

21 A And at the time I had run out of people.
22 There were still people in route, but those were the
23 only officers that I had on scene. So those are the
24 two spots that I filled. Once I kind of communicated
25 all that, I walk all the way around. I went back

Examination of Don Livingston

1 south on Interstate to McClellan, up to Interstate
2 Avenue and then over to Fenwick, back down to Willis
3 and then over towards the location.

4 That was the only way I could safely get
5 there 'cause if I crossed that threshold it would've
6 been exposed to the balcony. And at that point the
7 armored vehicle still had not arrived. I met up with
8 Sergeant Darby at that point. I remember looking at
9 the apartment building and noting just glass windows
10 on the north side.

11 And I knew the apartment was the very
12 furthest to the north on the second level. I first
13 was concerned that maybe those windows led to the
14 apartment in question. They did not. It was a
15 stairway that kind of led up towards the landing
16 where the apartment was or the hallway where the bank
17 of apartments were.

18 And, as I was standing out there, I -- the
19 next thing I remember hearing was a muffled pop that
20 I thought was a gunshot based on my years of
21 experience as an officer and hearing similar things.
22 And I remember hearing an officer get on the radio
23 and saying that there was a gunshot inside of the
24 residence.

25 Q And what did you do in response?

Examination of Don Livingston

1 A Well, we're still waiting for armored
2 vehicle to get there. I did know that inside of the
3 apartment building itself we had four officers from
4 SERT. There was also four DEA agents in there with
5 them as well.

6 They were working on several things. One
7 was getting eyes on the subject's door; in case he
8 tried to come out of that door, that they would be
9 able to intervene, try to get him into custody in the
10 hallway without allowing him to freely roam through
11 the apartment.

12 And, second, they were still working on
13 evacuating that building. When I walked up, I could
14 see on the third level people still inside of their
15 apartments. I saw one lady who was standing on the
16 balcony as I walked up. She was saying, "Thank you
17 for coming." She was obviously distraught.

18 And then she started -- it appeared like
19 she was praying for us as I walked by. So I knew the
20 apartment building itself was not empty. So those --
21 those officers inside were providing protection for
22 them and additionally trying to get everybody out of
23 the building.

24 Q At this time did you have any information
25 as to where the subject was shooting or who the

Examination of Don Livingston

1 subject was shooting at?

2 A I did not.

3 Q Okay. Please continue.

4 A The next thing I heard on the radio was an
5 officer saying that he just released two hostages.
6 So I -- I looked up in the window of the bank of
7 windows on the north side that led to that stairway.
8 And then I could see a male and a female coming down
9 the stairway. I waited at the front door and kind of
10 motioned them over to me.

11 When they came out of the door, I walked up
12 to talk to them. The female was extremely
13 distraught, upset. She couldn't speak. The male
14 also was very upset. I asked them if they were okay.
15 He responded yes. He said -- I said, you know, "Is
16 there anybody else in there?"

17 I was worried that there was another human
18 inside of the location with the suspect. And he
19 said, "No, it's just him and he's shooting." And I
20 wanted to clarify; so I said, "100 percent, are you
21 certain that there's nobody else inside of that
22 apartment?" and he said yes.

23 I didn't have the time to do a full
24 interrogation of him and kind of learn the lay of the
25 apartment and exactly what the guy was doing. But I

Examination of Don Livingston

1 did know that members of the Crisis Negotiation Team,
2 or CNT, were on scene and also SERT intel. I could
3 see a group of officers, the -- patrol officers
4 standing at Willis and Fenwick.

5 And I -- I had them escort those two
6 individuals to Willis and Fenwick. And I got on the
7 radio and requested the CNT and SERT intel meet up
8 with them and start interviewing them.

9 Q And at this time had the armored arrived
10 yet?

11 A Armor still had not arrived.

12 Q What did you do next?

13 A So I -- I walked back out into the street
14 on Willis. And it was about that time, after they
15 left, I could see the armored vehicle starting to --
16 to drive up. It met us in the street.

17 And the officers that were there, you
18 know -- and, again, in my recollection it was Chase
19 Price and Jim Darby, Nick Frankis, Josh Faris and
20 Jake Ramsey and myself were all kind of out in the
21 street.

22 The armor rolled up. I had Jake Ramsey get
23 into the armor, into the turret. The turret is the
24 hatch on top of the armored vehicle that pops up.
25 And he'd be able to see the -- the balcony itself

Examination of Don Livingston

1 when we rolled up to that location. So once we all
2 got behind the armor and he got inside the vehicle,
3 we drove up to in between -- and parked in between
4 the two buildings, which gave us a view of the
5 balcony.

6 Our first goal was to get CS, a chemical
7 agent or gas inside of the apartment itself. That's
8 delivered in several different fashions. One would
9 be what we call cold gas or powdered. And that's
10 delivered from our less-lethal 40-millimeter guns.
11 And then the other would be in a tri-chamber form.

12 It's a canister that contains the same
13 stuff, CS gas, but it's actually delivered with some
14 smoke so it's airborne. The powder, when it hits, it
15 just explodes and it's concentrated to a specific
16 area. So if -- in other words, if I hit a canister
17 against the wall here and we move to the other side,
18 we'd likely be unaffected.

19 A CS canister would use the smoke to carry
20 it throughout a location and be a lot more effective.
21 So we were trying to get both of those inside of the
22 apartment to prevent his actions of shooting. And,
23 as we were rolling up to that location and walking
24 behind armor, I continued to hear gunshots inside of
25 the apartment.

Examination of Don Livingston

1 Q About how many gunshots would you estimate
2 you heard?

3 A I heard -- including the original one that
4 I heard when I walked up, I ended up hearing five
5 additional -- or five total gunshots. And that
6 doesn't include the one that hit Officer Snodgrass
7 'cause I wasn't there for that. But I heard five
8 gunshots before I made a decision. I'll just say
9 that for now.

10 Q Okay.

11 A I heard five shots basically in the time we
12 were driving up. Additionally, I heard officers
13 reporting on the radio that they could see Sheetrock
14 exploding inside of the apartment building and
15 that -- one officer got on the radio and said that
16 one of the shots was directed to the east.

17 Now, if you remember earlier, I said that
18 apartment to the east was still occupied by community
19 members, had not been evacuated. There were several
20 residence on Willis Street that were within view of
21 the balcony in question. So I had concerns for the
22 individuals that were still in danger.

23 Q And about how far spaced out were these
24 shots -- or this second grouping of shots?

25 A The first one happened, and then we had

Examination of Don Livingston

1 enough time to get those two individuals out of
2 the -- the building itself, escorted off. And then,
3 as we were getting behind armor and driving up, I
4 could hear the shots just kind of starting to get
5 more rapid. So I guess one and then the next four
6 were within about 30 seconds.

7 Q And based on the suspect's actions, did
8 you -- did your perception of the scene change?

9 A Yes. I felt that it was becoming a lot
10 more dangerous for all the community members and the
11 officers inside of the building itself. I did not
12 know if he knew specifically where officers were. I
13 knew that he had shot through a wall and hit
14 somebody.

15 I didn't know if he was specifically
16 targeting where he thought officers were. But I felt
17 exigency for the members inside of the -- the
18 building and the community members as well.

19 Q And could you walk us through the
20 decision-making process that led up to what you did
21 next?

22 A So it had been asked, like, to me in person
23 and on the radio for a shot of opportunity, which
24 basically means that there is a person in charge of
25 this incident. Up to the point Commander Nakamura

Examination of Don Livingston

1 took over, it was Sergeant Dorn, who was on scene and
2 did the consult with Darby and been running this
3 thing until we got there.

4 Commander Nakamura got on the radio and
5 said that he had been briefed and he was now going to
6 be in charge of the situation. He sits in a command
7 post about a block away.

8 It's a -- oftentimes it's a mobile home.
9 Sometimes it's a -- it's a car. I don't know which
10 one they used in this specific time. But he's not
11 listening to a specific radio.

12 He has a lieutenant from SERT; he has a
13 lieutenant from CNT; and they're both feeding him
14 information because things are happening on two
15 different radio nets. So someone had asked for a
16 shot of opportunity, and that approval would come
17 from Commander Nakamura.

18 Q And do you recall who asked for a shot of
19 opportunity or if you initiated the request?

20 A I -- I -- somebody had asked me. And I
21 felt like it had gotten out on the radio and it maybe
22 would cause some confusion if it did not get
23 answered; so I asked for clarification.

24 So I asked Lieutenant Pearce. Lieutenant
25 Pearce came back. The answer was "standard rules,"

Examination of Don Livingston

1 which means we're operating under state law, Portland
2 Police Bureau policy, the same rules that we do on
3 any call when we go out any -- any day of the week
4 that you get a call. And there was also no
5 restrictions on that. So he didn't say, "I don't
6 want you to say this, this or this." His response
7 was "standard rules."

8 So during that time I kind of met up with
9 Sergeant Darby and kind of reflected on what had
10 happened to this point. Officers were still inside
11 of the location, and I was concerned for their
12 safety. From the beginning I knew the DEA had
13 responded to this location to do a search warrant for
14 Fentanyl.

15 There was probable cause to arrest this
16 individual for felony drug crimes. I knew that he
17 attempted to evade capture by jumping off a balcony.
18 I knew that he entered an apartment that was later
19 found to be occupied by two individuals. And from my
20 encounter with those two individuals, I felt like
21 they were held in there against their will for over
22 an hour.

23 I knew that he shot an officer through the
24 wall. I knew that the building in -- itself, the
25 building to the east and residence to the east were

Examination of Don Livingston

1 still occupied. We had not had enough time to do
2 evacuations. I knew that there was eight officers
3 inside of the building itself; so I was concerned for
4 the safety of the -- the individuals, the community
5 members and the officers inside.

6 I felt, based on his actions and his
7 continued shooting, that in order to prevent further
8 loss of life or serious physical injury that deadly
9 force would be justified in order to prevent his --
10 his -- him continuing to shoot.

11 So I got on the radio. And I -- I felt
12 this didn't contradict what Commander Nakamura said
13 because it was within standard rules, it complies
14 with state law.

15 And I said, "I believe, based on what's
16 happening -- we have officers in -- in spots where
17 they're exposed; we have community members exposed --
18 if the subject exposes himself, it's my expectation
19 that we use deadly force to prevent him from
20 continuing his actions and preventing him from
21 hurting somebody else."

22 Q And do you remember what time you put that
23 out on the radio?

24 A I don't remember the specific time.

25 Q Would it have been close in time to after

Examination of Don Livingston

1 the shot of opportunity was denied?

2 A Yes.

3 Q Okay.

4 A Yes.

5 Q And let me ask -- let me ask you this. Did
6 you, therefore, abandon the gas plan?

7 A No. We continued to work on the gas plan.
8 You know, and we train as a unit. The inner
9 perimeter, we train as a unit. If the subject were
10 to decide to give up, like maybe he's done and he
11 wants to come up, I mean, that's -- that's not a time
12 to -- to shoot him.

13 We'll give him the opportunity to give up.
14 But if he's continuing his action, then, yes, we need
15 to prevent him from hurting somebody else. So --

16 Q Up until this time had you seen the subject
17 take any action that made you think he was
18 surrendering or contemplating surrender?

19 A No.

20 Q Either by --

21 A No.

22 Q -- word or deed?

23 A No.

24 Q Okay. So after you put your expectations
25 out on the radio, what did you do next?

Examination of Don Livingston

1 A We continued to work to get gas into the
2 location. I remember hearing more gunshots. And
3 then at some point I heard a -- what I thought was a
4 shot from Jake Ramsey, who was in the turret of the
5 armored vehicle that I was standing behind. And I
6 confirmed with him if he had actually fired a shot.
7 And he said, yes, that he did.

8 Q And let me back up so we can walk through
9 that a little bit. Do you remember what time gas was
10 deployed?

11 A I don't, without looking at the CAD report.

12 Q That's okay. I think we have it on a
13 timeline somewhere. And you indicated -- well, let
14 me ask this. After gas was deployed, what, if any,
15 actions did the subject inside take?

16 A I heard more gunshots after gas was
17 deployed. I -- you know, and I never saw him pop out
18 at that point. He continued to put people lives in
19 danger by shooting.

20 Q Well, gas is a less than lethal
21 opportunity, correct?

22 A That is correct.

23 Q Okay. And he was using deadly force by
24 firing a firearm?

25 A That is correct.

Examination of Don Livingston

1 Q Based on your training and experience, was
2 the use of gas in this situation mitigating it such
3 that the defendant was being deterred -- or excuse
4 me -- the subject was being deterred from using
5 deadly force?

6 A That was our hope, that it would stop him
7 from using deadly force, that it would force him to
8 surrender, but it was not working.

9 Q So what happened next?

10 A So after I -- I heard what I thought was a
11 gunshot from Ramsey, I asked him if he had fired a
12 shot. And he said yes. I asked if he hit him. And
13 he said, "I'm not sure." Now, during these events it
14 can be chaotic. Oftentimes officers would get on the
15 radio and say, "Shots fired."

16 That becomes a little confusing. Like, who
17 fired the shot? Was it the suspect? Was it you? So
18 within our team we use a term "Zulu, Zulu, Zulu."
19 That just means shot fired from an officer from a
20 perimeter position; so there's no confusion. So I go
21 out on the radio and let everybody know that we had
22 fired a shot from armor towards the suspect.

23 Q And if you could just look at your screen.
24 I'm hovering over North Willis Boulevard, right in
25 the middle of this illustration. Would that have

Examination of Don Livingston

1 been from right about here?

2 A Yes.

3 Q Okay. And if you could estimate the
4 distance from where Ramsey would've taken that shot
5 to the building?

6 A I would say about 25 yards.

7 Q Okay. And after Ramsey took his first
8 shot, what happened next?

9 A So we weren't sure if he -- he hit him or
10 not. And then moments later he popped out again.
11 And Officer Ramsey took a second shot. And, again, I
12 notified people over the radio.

13 Officers who witnessed it felt like the
14 suspect kind of fell back into the apartment a little
15 harder; so we felt he probably hit him. And I let
16 people know that. And then --

17 Q And, now, when you say officers who saw it,
18 did you personally see this? Or were you relying on
19 what was being relayed to you?

20 A I was relying on what was being relayed to
21 me. Where I was standing, I -- there was no window
22 through the armored vehicle to get a view on what was
23 happening.

24 And my role really as a supervisor in this
25 is to kind of direct people and know what was going

Examination of Don Livingston

1 on; so that's what I was doing, but I couldn't see
2 him, the suspect.

3 Q Okay. And do you have an estimation as to
4 how long elapsed between the first shot and the
5 second shot by Ramsey?

6 A About 20 seconds.

7 Q Go ahead.

8 A So after I had put out information that a
9 second shot was fired by Officer Ramsey and we
10 believed the suspect had been hit, Officer Howery put
11 on the radio that he fired a shot and the suspect
12 went down right at the window.

13 So from that information I gathered that
14 he -- he came out to the window again and Officer
15 Howery, who had moved during this encounter --

16 Q And let's talk about that. When did
17 Officer Howery and, I believe it was, Foxworth move?

18 A So, as soon as we drove up with the
19 armor -- if I remember, I had asked them to go to
20 that house where that car is. As soon as we drove up
21 with the armor, they kind of became ineffective; so
22 we kind of took their role. So they went straight
23 down from that car around to the back of this
24 apartment and to the corner right there.

25 So they would have containment. If the

Examination of Don Livingston

1 suspect jumped out the window and tried to run that
2 direction, we would have some officers there to
3 intercept him and it also gave them a good view of
4 the balcony and the windows on the back.

5 Q And after Officer Howery fired his firearm,
6 what happened next?

7 A Well, there was a lull. We couldn't hear
8 anything happening inside of the apartment. Officer
9 Leo Harris called me on the phone and said, from his
10 vantage point, the blinds were blocking the view into
11 the apartment itself.

12 But he felt like if he used a 40-millimeter
13 less-lethal sponge round to hit the blinds, he could
14 knock it down and then get view inside of the
15 apartment itself and hopefully see if the suspect was
16 inside. So I talked to Sergeant Darby. We felt like
17 that was a good idea, gave him to permission to do
18 that.

19 He moved out onto the balcony. And him and
20 Officer Kunze -- I'm not sure which one -- were able
21 to shoot the blinds, knock them down. And then they
22 could see the subject inside of the window laying on
23 the floor, and they believed that he had been hit.
24 And they could not see movement.

25 Q Why was it important to take that step

Examination of Don Livingston

1 before entering the apartment and trying to render
2 aid?

3 A Well, if he was still active and able to
4 shoot, if you walked through that door, based on his
5 previous actions, I felt like it would've put
6 officers in danger of being shot to go inside of the
7 apartment. So it became imperative for me to know
8 that they would be safe going inside.

9 So able to see him and determine that he
10 was not moving and not -- not an active threat at
11 that point, now we could move in and move forward
12 towards rendering aid.

13 Q What was your next step?

14 A Well, the problem became much smaller.
15 Sergeant Darby was in communication with the officers
16 inside the building. Based on our policy in the
17 Police Bureau, we need to sequester the officers who
18 were involved or used deadly force. So I walked over
19 to where Officer Howery was and got him taken out.

20 And I walked back to armor and grabbed
21 Officer Ramsey. And then based on my radio
22 transmission, I felt like I would be considered
23 involved as well. And I didn't want any, you know,
24 confusion or cause any concern with the three of us
25 walking up together.

Examination of Don Livingston

1 So I asked Sergeant Defrain (phonetic) to
2 escort us up to the command post where we could be
3 put into separate cars and not talk to each other.
4 So Sergeant Defrain facilitated that for us.

5 Q And is that what ended up happening?

6 A Yeah. So we walked up to the area of the
7 staging location. We were all placed in separate
8 cars and -- and we had a partner placed with us that
9 was not involved in the incident.

10 Q And did you have any further involvement
11 with this scene?

12 A I did not.

13 MS. SEELY: Okay. I think those are my
14 questions. Just give me a second.

15 And I'm going to give the grand jury an
16 opportunity to ask any questions that they might
17 have.

18 Yeah.

19 A GRAND JUROR: I just have a question
20 about the two shots that were fired by Ramsey. How
21 much time was there between that? I'm sort of
22 unclear as to --

23 THE WITNESS: About 20 seconds.

24 A GRAND JUROR: Oh, okay.

25 THE WITNESS: Yeah.

Examination of Don Livingston

1 A GRAND JUROR: So pretty rapidly. Okay.
2 Thank you.

3 MS. SEELY: Yes.

4 A GRAND JUROR: About how long after you
5 had let everybody know your expectation of deadly
6 force was reasonable did deadly force -- did -- did
7 the first shots go?

8 THE WITNESS: You know, I haven't looked at
9 the CAD specifically for a while, but my --

10 A GRAND JUROR: Do you have any sense?

11 THE WITNESS: My guess would be about
12 45 seconds to a minute.

13 BY MS. SEELY:

14 Q Well, hold on. I don't want you to guess.
15 If you --

16 A Okay.

17 Q -- if you can estimate, great. If you're
18 not sure, that's okay.

19 A I'm not sure. It's been six months, yeah.

20 A GRAND JUROR: Okay. Well, so I -- I
21 guess my -- my question would be did you give
22 permission to fire? I mean, were the -- I understand
23 that the rules say that they can make their choice.
24 But were they probably waiting for some sort of lead?

25 THE WITNESS: I just -- the reason I said

Examination of Don Livingston

1 it was --

2 A GRAND JUROR: I know -- I understand why.

3 I was just wondering if that was the trigger that --

4 THE WITNESS: Yeah.

5 A GRAND JUROR: -- got the next thing.

6 THE WITNESS: I don't know --

7 MS. SEELY: Well, I think --

8 THE WITNESS: Yeah.

9 MS. SEELY: -- that would require us to
10 speculate as to --

11 A GRAND JUROR: Okay. I'm just trying
12 to -- I'm trying to --

13 MS. SEELY: Sure. I understand.

14 A GRAND JUROR: Okay. Well, I get -- I get
15 why you did it. And that's not my question. I was
16 just --

17 THE WITNESS: I feel like you'd have to ask
18 those officers.

19 A GRAND JUROR: And -- and -- and I
20 probably will. Thank you. Or I'll listen to them.

21 MS. SEELY: And they're -- they'll be up
22 right next.

23 A GRAND JUROR: Thanks.

24 MS. SEELY: Any other questions?

25 Thank you so much, Sergeant. Appreciate

Examination of Jake Ramsey

1 it?

2 THE WITNESS: Thank you.

3 (Whispered discussion, off the record,

4 2:04 p.m.)

5 MS. SEELY: But before you take a seat, if
6 you could raise your right hand and be sworn.

7 **JAKE RAMSEY**

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

10 **EXAMINATION**

11 BY MS. SEELY:

12 Q All right. Before we get started, my name
13 is Amy Seely. I'm with the Oregon Department of
14 Justice. I'll be asking you just a couple of
15 questions today. Could you please, for the record,
16 state your full name and spell your name.

17 A Yes. My name is Officer Jake Ramsey,
18 J-a-k-e, R-a-m-s-e-y.

19 Q And could you tell us a little bit about
20 your law enforcement experience?

21 A Sure. I've been a sworn police officer
22 with the Portland Police Bureau for five years.

23 Q Any prior law enforcement experience?

24 A No.

25 Q Could you tell me a little bit about the

Examination of Jake Ramsey

1 training that you've completed to become an officer?

2 A Sure. I attended a basic police academy,
3 which is 16 weeks in length, in Salem, Oregon. Where
4 went from there to attend a ten-week advanced academy
5 with the Portland Police Bureau.

6 Additionally I've attended a one-week basic
7 SWAT course with the Oregon Tactical Officers
8 Association, which is held in Camp Rilea, which is an
9 Army base.

10 And then additionally I trained a quarter
11 of my time as a police officer with our tactical
12 team. So every week we train one day a week.

13 Q And how long have you been doing that?

14 A I've been on Portland -- what we refer to
15 as SERT, Essential Emergency Reaction Team, for a
16 year and a half.

17 Q All right. And I just want to cover a few
18 things. You're not compelled to be here today, are
19 you?

20 A No.

21 Q Okay. And you understand that you could
22 get up and leave at any time, correct?

23 A Yes.

24 Q And you've been invited here today to give
25 the grand jury your perspective of the events of

Examination of Jake Ramsey

1 August 27th, 2021?

2 A Yes.

3 Q All right. I'd like to turn to that date
4 now, August 27th. Were you on duty that day?

5 A No.

6 Q Can you tell me how you got involved in the
7 call that would take you to 16 North Willis
8 Boulevard?

9 A Yes. As part of the Portland Police
10 Bureau's Special Emergency Reaction Team, I'm on-call
11 24/7. I received a page at approximately 6:50 in the
12 morning, and I woke up to that page on that date.

13 Q And what information was contained in that
14 page?

15 A I learned from the page that the DEA, or
16 the Drug Enforcement Agency, was serving a search
17 warrant at this 1600 North Willis Boulevard and that
18 there was a subject inside that had jumped from the
19 third-story balcony to the second-story balcony.
20 Additionally that subject was threatening to shoot
21 officers.

22 Q And where were you when you got this
23 information?

24 A I was at home when I got that information.

25 Q And was this just the initial page, or was

Examination of Jake Ramsey

1 this the actual call-out to report to the scene?

2 A This was the page. This was the call-out.

3 Q Okay. And so what did you do in response?

4 A I responded to the location from my house.

5 I made a brief stop at North Precinct, and then I

6 went to the staging location, as we refer to it. And

7 then from the staging location I went to the actual

8 incident location.

9 Q Okay. And when you're responding, are you
10 in a marked police vehicle?

11 A Not a marked police vehicle. As a member
12 of our tactical team, we have take-home vehicles that
13 have lights and sirens so we can respond to incidents
14 such as these, what we refer to as code threes, so we
15 can get there quickly.

16 Q And what does code three entail?

17 A Code three is lights and sirens, but
18 there's no markings on the side of the vehicle that
19 would indicate a police vehicle outside of the lights
20 and sirens.

21 Q Okay. So you stopped by the command center
22 first, and then you proceed to the location?

23 A Basically. I stopped by North Precinct
24 first and --

25 Q Oh, I'm sorry.

Examination of Jake Ramsey

1 A -- and then I went to the staging location,
2 as we refer to it, which is where the command
3 structure is. And everybody is getting there so we
4 can delegate tasks and whatnot.

5 Q Okay. And so about what time did you
6 arrive, if you can recall?

7 A I can't recall. From waking up at
8 approximately 6:50 in the morning, I would assume
9 that it took me approximately 20 minutes to get to
10 North Precinct.

11 Q Okay. That's about how long your drive
12 would be?

13 A To North Precinct. And then another 15
14 minutes to the staging location, give or take.

15 Q Okay. Were you one of the first people at
16 the command center, would you say?

17 A No.

18 Q There were other people already on scene?

19 A Yes.

20 Q Who was already on scene, if you recall?

21 A When I arrived to the staging location, I
22 arrived with a couple other Special Emergency
23 Reaction Team members, one of which was a supervisor.
24 And I remember hearing on the radio that other
25 officers were obviously on scene at the incident --

Examination of Jake Ramsey

1 Q Okay.

2 A -- when it was taking place.

3 Q And did you have a radio in your car as you
4 were traveling to the location?

5 A Yes.

6 Q Were you getting updates as you were
7 traveling there?

8 A Yes.

9 Q Do you remember any of the updates you were
10 receiving?

11 A I do. We have two radios. There's two
12 radio channels that we operate under. One radio
13 channel is an administrative radio channel. The
14 other radio channel is the operational radio channel.

15 So everything that's happening, for
16 instance, at the incident is happening on the
17 operational radio channel. The administrative radio
18 channel is what our team -- our tactical team uses to
19 delegate tasks, so on and so forth. So I was
20 listening to both radios.

21 However, I remember learning on the way
22 there from leaving the house that there had been an
23 individual who had jumped from the third-story
24 balcony to the second-story balcony. He was saying
25 that he was armed. He was threatening to shoot the

Examination of Jake Ramsey

1 police. And then I remember while I was on the way
2 there was some confusion in talk about if there's
3 people inside the apartment he was in.

4 I remember learning that there was, in
5 fact, people in there and they were being threatened
6 to be killed by the person that had jumped from the
7 third story to the second story.

8 I had learned that he was talking to the
9 police in some manner and that he was saying to the
10 police that if they tried to make contact with him he
11 would kill the people inside. So he was threatening
12 these hostages. Additionally when I arrived at the
13 staging location, I learned that an officer had been
14 shot.

15 I heard on the radio, the operational
16 radio, on that channel, that an officer had been
17 shot. I heard that, from what I remember, to be a
18 member of our team, which made me think that, okay,
19 there are at least a few members of our team that are
20 actually on scene.

21 Once the officer had been shot and that had
22 been put out over the radio, some other officers had
23 described on the radio that they needed medical
24 attention to start coming in. They started asking
25 for shields for protection. And they started saying

Examination of Jake Ramsey

1 that the officer that had been shot had been shot
2 through the wall.

3 Q So if I understand you correctly, initially
4 you thought the individual who had been shot was part
5 of the SERT team?

6 A I didn't know if he was part of SERT or if
7 he was just a patrol officer or if he was a DEA
8 agent. I didn't know.

9 Q You just knew law enforcement had been
10 shot?

11 A Yes.

12 Q Okay. So you arrive at the command center.
13 Where do you go next?

14 A When I arrived at the staging location, we
15 were bringing up some armored vehicles. These
16 armored vehicles are essentially big trucks that are
17 made by -- this particular one that I'm going to
18 discuss, it's just made by Ford.

19 It just has some metal outside of it that
20 provides some ballistic protection for the officers
21 inside and additionally for community members and
22 citizens and whatnot.

23 What I'll say is that the G3, as I'll refer
24 to it, is an armored vehicle that was being used and
25 I was assigned to. So there was a variety of

Examination of Jake Ramsey

1 officers that were getting into that armored vehicle,
2 one of which was a supervisor named Sergeant
3 Foxworth. Sergeant Foxworth and I --

4 Q I'm just looking to see if I can get a
5 photo of it with the doors closed, but I'm not sure I
6 have one. I don't think I do. Go ahead.

7 A But there was a photo of it there.

8 Q Yes.

9 A Sergeant Foxworth and I are assigned to a
10 section of the team called the inner perimeter. As
11 part of that part of the team, we have magnification
12 on our rifles in the form of a scope.

13 So, because of that and because he was a
14 supervisor delegating tasks amongst the officers
15 getting into that armored vehicle, where got into
16 what we referred to as the turret, basically the top
17 of it, that exposed area where you can stand on the
18 platform inside the vehicle and have half of your
19 body above the vehicle.

20 The reason I did that is because I was the
21 only officer, outside of Sergeant Foxworth, who had
22 magnification on his rifle and was able to utilize
23 that weapon system in that way. I had the most -- I
24 had -- I had the -- the equipment that would've been
25 used in the best manner at that location.

Examination of Jake Ramsey

1 Q All right. So we're talking now about when
2 the armored has arrived. Prior to the armor
3 arriving, did you hear any gunshots or observe
4 anything at the apartment complex? Or did you get
5 there kind of after that all initial had happened?

6 A Just for time clarity, essentially right as
7 I arrived at the staging location, I heard an officer
8 had been shot. I was getting into the armored
9 vehicle as that was happening.

10 Q Okay.

11 A As that was happening, we were talking
12 about which way to go to get to the incident location
13 where this was actually taking place. I was hearing
14 officers on the radio saying that he was shooting
15 through the walls.

16 Q And where did you get into the armored
17 vehicle? Is it on this map that we have here?

18 A I don't recall exactly where our staging
19 location was. As far as I can remember, it was at
20 Interstate and Fenwick, but it could've been a couple
21 blocks past that.

22 Q Okay. So once you got into the armored
23 vehicle, what'd you do next?

24 A We began driving towards the incident
25 location, the 1600 North Willis Boulevard.

Examination of Jake Ramsey

1 Q Okay.

2 A We went from the west to the east. And, as
3 we were driving down the street, I began hearing the
4 gunshot, the first gunshot that I -- I heard.

5 A point that I want to make clear here is,
6 as we were driving down the roadway, Sergeant Darby,
7 who was on scene as a supervisor of some of our
8 officers, was saying aloud that the number one
9 priority is to get armor on scene.

10 I heard some concern in his voice. It
11 seemed as if that was a big deal obviously, and so we
12 were trying to help him -- we were trying -- we were
13 trying to get the armor to his location for that
14 reason.

15 The reason that that was such a big
16 priority, as far as I remember, is because we wanted
17 to start changing the individual's behavior inside in
18 some manner or try to help the situation because it
19 was incredibly dangerous.

20 So Sergeant Darby said on the radio, as far
21 as I remember, that he wanted to begin using chemical
22 munitions as soon as we arrived on scene with the
23 armored vehicle. The reason --

24 Q And by chemical munitions, one of those
25 would be, like, a gas?

Examination of Jake Ramsey

1 A Yes.

2 Q Okay. And what about this particular
3 situation was so concerning? I know it's obvious,
4 but I'd like you to explain it in your words.

5 A Well, this is -- kind of goes back to when
6 I first woke up and I read the address. The address
7 in the page said number five, 1600 North Willis
8 Boulevard, which just having a unit number, in and of
9 itself, makes me think that there's probably more
10 people around.

11 That is either an apartment complex or a
12 hotel or a motel, something like that. So this isn't
13 a contained house. Additionally when I got to the
14 location I realized that this is an apartment
15 complex. I'm thinking about the time of day. This
16 is 7:30 in the morning, something close to that.

17 People are waking up, getting ready to go
18 to work. There's people driving up and down the
19 roadways. This is a normal, everyday Friday, as I
20 remember it.

21 Early enough in the morning to where
22 there's a variety of people up and at em.
23 Additionally there's people inside of these
24 neighboring apartments. There was people that are
25 inside an apartment that a person had just broken

Examination of Jake Ramsey

1 into and taken hostages -- taken hostage at gunpoint.

2 There's so many officers there at the
3 location, not to mention federal officers and
4 Portland police officers. There's people across the
5 way. It was almost worst-case scenario for the
6 community.

7 Q Because of an active shooting situation?

8 A Yeah. I mean -- yes. We like to define
9 events. And -- and the definition of this event is
10 in a lot of ways an active threat. This person is
11 active and he's using deadly force against others
12 kind of indiscriminately.

13 Q So once you arrived in the armored, what
14 could you see? What could you hear?

15 A When I arrived in the armored vehicle, I
16 asked what I was looking for, for an officer had
17 already been there for a pretty substantial period of
18 time, just so that he could direct me to exactly
19 where I was supposed to be looking.

20 My role is to protect everybody behind me
21 and protect everybody that I can, if possible. All
22 these people using this armored vehicle as
23 protection, I'm the only one up there with the
24 ability to use force to protect them from deadly
25 force from another person.

Examination of Jake Ramsey

1 And so I could hear gunshots happening
2 inside the apartment. There were multiple and they
3 were continuous. I could hear officers below me
4 starting to delegate, trying to create plans.

5 I could hear them getting some of the
6 chemical munition cartridges into some of those
7 weapon systems so that we could start using chemical
8 agents against this individual to change his
9 behavior.

10 I could hear all of that, and I could also
11 hear, like, things that I remember, which sounds kind
12 of bizarre, but the engine running or the loud -- the
13 loud hailer, right, the person in -- in the front is
14 saying really loudly over a big speaker that the --
15 this individual needed to surrender, he needs to stop
16 shooting, he needs to come out with his hands up, all
17 those things.

18 Q And you mentioned the loud hailer. In
19 response to those loud hail commands, what, if any,
20 action did the subject inside the apartment take?

21 A None at all. He -- he continued putting
22 lives in significant danger.

23 Q Did you ever see him do anything that made
24 you think he was attempting to surrender?

25 A Nothing at all.

Examination of Jake Ramsey

1 Q Okay. Could you see him from your vantage
2 point, the person that was in that apartment?

3 A At -- at a certain point in this, yes.

4 Q Okay. And -- and let me ask you: Up until
5 the point that you arrive in the armored, how many
6 gunshots had you heard?

7 A Somewhere between five and eight.

8 Q Okay.

9 A If I were to estimate.

10 Q Oh, okay. So what happened next?

11 A Once I was oriented to the specific
12 apartment he was in, we began launching chemical
13 munitions into that apartment. We began launching
14 gas into that apartment, further solidifying that I
15 was oriented on the correct apartment.

16 Once the gas started going in, I know that
17 it takes time for some of these chemical agents to
18 affect people. And there was a very short pause,
19 somewhere between one minute and two minute, where
20 there weren't any shots.

21 And then I saw and heard one of the windows
22 began crashing. That window is, in relation to the
23 apartment, by construction, connected. And I can
24 tell.

25 Q I'm just looking --

Examination of Jake Ramsey

1 A As -- as we look --

2 Q -- to see if I can --

3 A As we look for this photo, it'd be easy to
4 point it out. That's the best one, I think, the one
5 you just had. So I was directed to the bamboo
6 railing, the second-story apartment.

7 Directly to the left of this telephone
8 pole, there's a window. That window, we'll refer to
9 as the first window. There's another window past the
10 gutter system that would be a -- something as a
11 second bedroom. That is the window I'm referring to.

12 Q Okay. And are we seeing that perhaps in
13 this screen here?

14 A Yes.

15 Q Okay.

16 A So the -- what I noticed is that the screen
17 begins coming off of the window. It was an abrupt
18 movement. The window screen comes open, and then I
19 see the subject post his hands on the railing and
20 then push his head out very briefly.

21 Q And, just because we are on the record
22 here, it looked like as you said that you leaned
23 forward, as though looking over the sill?

24 A Yes. And just to make it clear, I can't
25 see his hands. What I can see is a movement of his

Examination of Jake Ramsey

1 shoulders and body, which makes me feel like he's
2 leaning his head, posting his hands down, moving his
3 body out the window. So I can't see his hands
4 necessarily, but I can see the upper portion of his
5 body begin leaning out the window.

6 Q And what about that, if anything, caused
7 you concern?

8 A Well, I know from training and experience
9 that people like to get away from chemical agents. I
10 also know that people like to run away from the
11 police. I also know that typically people will use
12 any vantage point they can to let the police know
13 that they're going to surrender.

14 They'll use windows. They'll use front
15 doors. They'll use back doors, whatever. What's
16 significant about this incident is that this person
17 was not doing any of those behaviors. When he
18 initially poked his head and upper torso out of the
19 window, he looked directly at me and then went right
20 back inside.

21 There was no hands up. There was no
22 yelling. There was no surrender in any manner. When
23 he went back inside, he fired another shot. So not
24 only at this point do I think he knows where I am,
25 but he also knows that the police are there and that

Examination of Jake Ramsey

1 he's not surrendering.

2 Q So did the use of the gas seem to mitigate
3 this shooting, or did it seem to exacerbate the
4 situation?

5 A The use of the gas is, in my opinion, very
6 helpful. It makes it harder for people to see. It
7 makes it harder for people to think clearly. It
8 makes it -- it makes an environment very
9 uncomfortable.

10 And that's the point of it, is if somebody
11 is being -- using deadly force indiscriminately
12 against the community and officers, we want them to
13 stop doing that or make it at least harder for them
14 to do that.

15 Q In this situation did it have the desired
16 effect?

17 A I don't know.

18 Q Did he stop shooting?

19 A No.

20 Q Okay. So after you see him put his upper
21 torso or at least head out of the window and then pop
22 back in, what happened next? What did you next
23 observe?

24 A These are a very quick movement. This is
25 happening in a manner of seconds. It would be best

Examination of Jake Ramsey

1 if I could show you; however, obviously that's hard.
2 My best way to describe it is that he is popping out
3 and popping in, popping out and popping in, popping
4 out and popping in.

5 He does this three times. At this point I
6 believe that he's going to shoot me. I'm exposed,
7 and I feel as if I'm the only one exposed when I'm
8 sure I wasn't, but it felt that way. And I was
9 responsible for protecting everybody else. This
10 person knows exactly where I am. And he's doing what
11 police officers commonly refer to as target glancing.

12 Q And when you say target glancing, can you
13 describe what that means?

14 A Yes. This person probably knew that he was
15 in danger of being shot or else he wouldn't be moving
16 so quickly. If he just wanted to see where I was, he
17 could poke his head out there and just look at me.
18 He wasn't doing that. He was going in and out very
19 quickly, very abruptly.

20 He was trying to get, in my opinion, what
21 seemed like an idea of where the officers are around
22 him.

23 Q The three times he popped out, was he
24 looking in your direction? Or was he looking all
25 over the place?

Examination of Jake Ramsey

1 A He was looking in my direction. He was
2 looking right at me.

3 Q And all three times, were you able to see
4 his hands?

5 A No.

6 Q Were you ever able to see his hands?

7 A No.

8 Q All right. What happened next?

9 A The third time he came out of the window, I
10 was able to time his movements enough to take a -- an
11 accurate shot at him. That's when I fired my first
12 round, is about the third time that he came out the
13 window.

14 Q Now, I want to back up for a moment because
15 we've had some discussion about a shot from -- of
16 opportunity. And were you able to hear the radio
17 discussion about that event?

18 A Yes.

19 Q Okay. And can you tell me what your
20 understanding was?

21 A Sure. Prior to him coming to the window
22 and breaking the screen out, there was a request, as
23 far as I remember, of a shot of opportunity. The
24 CIC, the commander in charge of the incident, quickly
25 got on the radio and said "standard rules."

Examination of Jake Ramsey

1 Q Okay. So standard rules, what does that
2 mean?

3 A Standard rules is what everyday police
4 officers use for their normal everyday job. They use
5 it 24/7. It's a threat that's high enough. Would an
6 objectively reasonable officer do the same thing in
7 my situation? And we are trained in using standard
8 rules. This is something that we use every single
9 day.

10 I'm very aware of what standard rules are.
11 And that is -- that is clear to me that this
12 situation at the time that it was occurring was --
13 deadly force was authorized under standard rules.

14 Q And what made you think that?

15 A This person was putting everybody in
16 significant risk of death and serious physical
17 injury. This person was shooting indiscriminately
18 through walls. Sheetrock was coming through the
19 walls. There was neighboring apartments that weren't
20 evacuated. There was an officer that had already
21 been shot through a wall.

22 Had that been four feet higher, potentially
23 would've shot him in the head and killed him. There
24 was people that were in immediate danger.

25 Q And at that point were you aware of whether

Examination of Jake Ramsey

1 the apartment complexes had been evacuated or not?

2 A I was aware that the apartment complex had
3 not been evacuated.

4 Q Okay. So based on all of your
5 observations, the totality of the circumstances, were
6 you concerned for your own safety?

7 A Yes.

8 Q Were you concerned for the safety of
9 others?

10 A Yes.

11 Q Were you concerned that if you didn't take
12 action someone could be seriously injured or killed?

13 A Yes.

14 Q Okay. So after the shot of opportunity is
15 denied, what, if anything, do you recall next?

16 A I recall hearing Sergeant Don Livingston
17 get on the radio and say that his expectation is that
18 deadly force is used if we can see this guy or this
19 subject involved.

20 Q So how did you interpret that?

21 A I interpreted that as him putting out his
22 idea and his intention for this situation to end;
23 however, we are trained, especially on our team, to
24 operate independently and make sure that we make --
25 our decisions are our decisions and make sure that we

Examination of Jake Ramsey

1 make them under the information that we have.

2 Now, that information could be somebody
3 else saying, "Shot of opportunity is approved." And
4 there's reasons for why that approval could make me
5 use deadly force in a specific situation.

6 However, in this circumstance standard
7 rules was how I was operating and standard rules is
8 why I used deadly force. I was not operating under
9 anybody else's decision.

10 Q Okay. So walk me through that use of
11 deadly force. Walk me through taking a shot.

12 A Sure. This -- so he pushes the window out.
13 He poked his head and chest area out, leans sideways
14 so that I can see a chest and head area, torso, upper
15 torso. He does that three times.

16 I fired my first round. He goes back
17 inside the apartment. He goes right back to the
18 window, and he does the same behavior again. Nothing
19 has changed at all. I fire a second round.

20 Q And stop right there. About how much time,
21 if you could estimate, passed between the shooting of
22 the first round and the second round?

23 A Less than five seconds.

24 Q Could you tell if the first round had any
25 effect on him?

Examination of Jake Ramsey

1 A I could not tell.

2 Q Okay. So you take the second shot. And
3 then what happens?

4 A After I fire a second shot, he disappears
5 from my vision. He goes back into the room. And I
6 couldn't tell if I hit him or not. There was a brief
7 lull. And when I am brief, I would describe it as
8 approximately 20 to 30 seconds. He comes back to the
9 window; however, this time he's oriented in a
10 different direction.

11 He's not oriented towards me, at a right
12 angle towards me. He's oriented forward facing the
13 window. I'm looking at him at a right angle, and
14 he's forward facing the window.

15 He comes to the window. And I only see the
16 section of his -- frontal section of his body, so
17 approximately 1 inch of the front portion of his
18 chest. I don't have an opportunity to use deadly
19 force on him right there because I can't see him well
20 enough to take an accurate shot.

21 I hear the report of another gunshot from
22 elsewhere in the area. It sounded as if it did not
23 come from within the apartment, which made me believe
24 that it was another officer. When that gunshot went
25 off, I saw what appeared to be the subject inside

Examination of Jake Ramsey

1 that apartment drop out of sight. I then heard on
2 the radio another officer get on and say that he had
3 fired a round and that the subject had went down.

4 Q So do you believe that it was the third
5 shot that subdued the -- the subject?

6 A Yes.

7 Q Okay. Are you familiar with the autopsy
8 reports in this case?

9 A No.

10 Q Okay. One of the conclusions that the
11 autopsy made was that the subject had a graze to his
12 left hand that appeared to be made by a bullet.

13 When you are shooting at someone -- or
14 based on your training and experience, are you ever
15 aiming for the shoulders, the hands, the knees, a way
16 to incapacitate a shooter? Or are you shooting for
17 the center of mass?

18 A Typically we shoot for center of mass.

19 Q And why would that be?

20 A Well, center of mass provides people -- an
21 officer with the biggest target, so less chance of
22 missing. In situations like these, where there's
23 other occupied apartment complexes and there's other
24 people around, we want to not miss what we're
25 shooting at, if at all possible.

Examination of Joshua Howery

1 jury to ignore the last statement made.

2 Those are my questions. Do you have any
3 questions for me? Or not for me. Pardon me. For
4 the witness. I am not the witness. I'm the
5 attorney. Any questions for the witness?

6 Okay. Thank you very much.

7 THE WITNESS: Thank you for your time.

8 MR. VASQUEZ: Would -- ladies and gentlemen
9 of the grand jury, do you need a break for the
10 bathroom, just to have a moment for the bathroom,
11 things of that nature?

12 A GRAND JUROR: Yeah.

13 MR. VASQUEZ: If we could just take a short
14 break. We'll be right -- all right. Go off the
15 record.

16 (Recess taken, 2:38 p.m. - 2:48 p.m.)

17 **JOSHUA HOWERY**

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

20 **EXAMINATION**

21 BY MS. SEELY:

22 Q Good afternoon.

23 A Hello.

24 Q Could you please state your full name and
25 spell your first and last.

Examination of Joshua Howery

1 A My name is Josh Howery, J-o-s-h,
2 H-o-w-e-r-y.

3 Q And could you please tell us how you're
4 currently employed and how long you've been doing
5 that job.

6 A I'm a Portland police officer. I've been
7 employed for 21 years.

8 Q And any prior law enforcement experience?

9 A No.

10 Q And what's your current rank?

11 A I'm an officer.

12 Q All right. Could you tell us a little bit
13 about the training and experience required to hold
14 your position?

15 A Yes. I went to the basic academy. I went
16 to the advanced police academy put on by the Portland
17 Police Bureau. And then, as far as my current
18 assignment, I've been to a lot of training.

19 I've -- 12 -- for the last 12 years I've
20 been assigned to SERT, our Special Emergency Reaction
21 Team. For that I have to go to the basic SWAT
22 school.

23 And then, as a member of our inner
24 perimeter, I have attended the basic sniper school,
25 advanced sniper school, several of them. I'm

Examination of Joshua Howery

1 currently one of the lead instructors for the inner
2 perimeter. So I have gone to the advanced sniper
3 instructor school. We do 40 hours of training every
4 month, assigned to the Special Emergency Reaction
5 Team.

6 Q And with SERT how many -- how many
7 call-outs would you say you've gone out on with SERT,
8 if you can estimate?

9 A Oh, boy, I think it's in the hundreds, if
10 not the low thousands.

11 Q How many would you say a year?

12 A If we talk just call-outs, call-outs range.
13 And we're probably between 20 and 30 call-outs a
14 year. If you include all missions for SERT, it can
15 be up in the hundreds, up above a hundred in any
16 particular year.

17 Q And what is your role with the SERT team?

18 A I work on the inner perimeter. So I'm one
19 of the perimeter officers. I typically take a
20 position outside of whatever structure or wherever
21 our -- the mission would be.

22 So whether that's a -- a warrant and
23 we're -- we're serving a warrant on a structure or
24 a -- or a vehicle or something like that, typically
25 I'm on the outside of that.

Examination of Joshua Howery

1 I'm not one of the entry team that's going
2 to go inside. Because of my role on the inner
3 perimeter, we usually use optics and then some other
4 tools that we're able to observe and report, give
5 information about what's going on the outside. We
6 also carry tools to help with containment.

7 So if we have a suspect on the inside that
8 we don't get to get out, we'll -- we typically carry
9 extra less-lethal tools and in some cases gas
10 capabilities to try to keep people from escaping the
11 perimeter.

12 Q And I want to turn our attention to
13 August 27th, 2021. But before I do, I just wanted to
14 go over a few -- a few basic ground things.

15 A Yes.

16 Q Are you compelled to be here today to speak
17 to us?

18 A No.

19 Q Are you here voluntarily?

20 A Yes.

21 Q And are you here to give the grand jury
22 your perspective of the events as they unfolded on
23 August 27th?

24 A Yes.

25 Q Okay. And you understand you're free to

Examination of Joshua Howery

1 leave at any time?

2 A Yes.

3 Q Okay. Going forward then, could you tell
4 us how you got involved with the August 27th
5 call-out?

6 A Yes. From the very beginning?

7 Q From the top.

8 A Okay. I woke up that morning. I came out
9 to my kitchen, and my wife told me that my kids
10 wanted donuts. So I took my wife to the doughnut
11 shop in Tualatin, which is about 25 minutes away from
12 my house.

13 And I was getting a dozen donuts for the
14 kids. And I walked back out to the truck, and my
15 pager was going off. And I looked at the initial
16 page and said there was a call-out and they needed
17 SERT to -- to respond.

18 Q Okay.

19 A And so I immediately started to -- I jumped
20 in the truck and initially thought, well, my wife is
21 with me. If I can get her home, that would be more
22 convenient for her and everybody else.

23 However, where knew I was driving the wrong
24 way. So about 30 seconds later I re-evaluated that
25 and said that's not going to work. And I turned

Examination of Joshua Howery

1 around and I started going back toward the call-out,
2 stopped at a restaurant and let my wife out with her
3 box of donuts so she could get an Uber home and --

4 Q Okay. Hold on one second.

5 A Yes.

6 Q You abandoned your wife with a box of
7 donuts to take an Uber home?

8 A Yes.

9 Q Okay. I just wanted to make sure I had
10 that stream of events right.

11 A Yes.

12 Q I'm sure you got in trouble for that later.

13 A It was my day off and, you know, that's --
14 that's why -- you know, I was out doing normal human
15 things, I think. But, yeah, the call-out came. And
16 it was a response that -- I needed to respond to
17 that, so --

18 Q So it's fair to say when you get one of
19 those calls it's a priority?

20 A Yep, it's a priority. You know, I was able
21 to read an update on the call and could see that this
22 was a very serious situation. So I made the decision
23 that that's how we were going to do that.

24 Q Okay. Let's talk about the information
25 that you were provided. In that first page or text

Examination of Joshua Howery

1 or whatever it might be, the call-out, what
2 information did you glean from reviewing that?

3 A I don't -- I don't remember exactly what
4 it -- what it said. I mean, we were talking about
5 six months ago.

6 Q Sure.

7 A I -- it was something that I think that
8 somebody was serving a warrant and that the suspect
9 had -- had gotten -- was getting away and was
10 threatening to shoot officers, if I remember right.
11 Again, I don't fully remember exactly what the --
12 what the --

13 Q That's okay. And I just -- I want you to
14 testify as to what you do remember. And if you don't
15 remember, just say, "I don't remember," or, "I don't
16 know." That's fine.

17 A Okay. I do remember that it, you know, had
18 to do with, you know, a suspect and -- threatened --
19 threatening shooting.

20 Q Okay. So did you have all the equipment
21 that you needed in your truck to respond?

22 A Yes.

23 Q And is this a police vehicle that you were
24 driving or something different?

25 A It is. This is a police vehicle that's

Examination of Joshua Howery

1 provided to me from the city. It has a full light
2 package, siren and everything else. But it's also --
3 you know, it's a -- it's a full truck because of all
4 the gear that we carry and everything else like that.
5 It allows me to just have it with me, again, so we
6 can respond in a much more timely manner.

7 Q And so from the restaurant where you
8 dropped off your wife to the location you were
9 responding to, about how far is that distance? How
10 long would it take you to travel there?

11 A I figure it's about 15 miles. Maybe a
12 little bit more.

13 Q Okay.

14 A It probably took about 20 minutes to get
15 there.

16 Q So on your ride there, are you doing
17 anything in particular to --

18 A Yeah.

19 Q -- keep apprised of the situation?

20 A Yes. So, as soon as the call comes out, I
21 turn the radio on and I start listening to the call,
22 how it's developing and what's happening in realtime.
23 That lets me get updates from the -- from the
24 dispatcher and then other officers that are actually
25 there.

Examination of Joshua Howery

1 Q And we've heard a little bit today about
2 different radio channels that people have access to.
3 What were --

4 A Yes.

5 Q -- you being provided information on as you
6 were driving?

7 A I believe it was she two --

8 Q Okay.

9 A -- is our radio channel that we typically
10 go to first. Sometimes we end up going to the main
11 net where the -- where the event started. So I'm not
12 100 percent sure which one I was listening to.

13 But I know that we had -- typically the
14 page comes out and it says go to she two. And
15 that -- so that's where I would've gone to first. If
16 there was a switch -- honestly, at this point I don't
17 remember if we switched over or not.

18 Q That's fine. As you're -- as you're
19 driving, are you learning any additional information
20 that's new to you?

21 A Yes.

22 Q Can you tell me about that?

23 A So I'm driving toward the call. And we're
24 getting constant updates of how, you know -- how this
25 call is developing. Other officers that are

Examination of Joshua Howery

1 arriving, what they're trying to get done. And I
2 believe it was on the way there that I heard that
3 there was a team inside the -- I think that -- I got
4 information that this guy had left the initial
5 apartment they were trying to do a warrant on.

6 And he had gone down a balcony and gone
7 into another apartment. And we had officers trying
8 to set up outside that apartment. And at some point
9 during that drive there, I heard one of our officers
10 say that there were shots fired through the wall and
11 we had an officer that was hit.

12 Q Okay. And do you recall how much longer it
13 took you to get to the staging area or the command
14 center, if that's where you responded to, after the
15 officer had been shot?

16 A I don't remember exactly the time. It was
17 probably between ten minutes and maybe 15 minutes, if
18 that.

19 Q Okay. So you were not one of the first
20 officers on the scene?

21 A That's correct.

22 Q Oh, okay. When you did respond, where did
23 you go?

24 A I went to -- they had a staging location
25 that came out on the -- on -- on the initial page.

Examination of Joshua Howery

1 As I'm looking at this -- at this map here, this
2 overhead map, I believe I ended up parking at the
3 corner of North Interstate Place and North McClellan
4 Street.

5 Q Okay. So somewhere in this vicinity?

6 A Yes.

7 Q And if it would be of assistance while
8 we're talking, if you want to indicate places, I can
9 move the mouse there so they can all see it as well.

10 A Oh, okay. Excellent. Thank you.

11 Q No problem. All right. So you responded
12 to this area. What was the first thing you did when
13 you arrived?

14 A I stopped the truck. I got out. I went to
15 the back, and I started to gear up.

16 Q And when you say "gear up," what do you
17 mean?

18 A Well, I had actually stopped and put on
19 some green -- green pants and a green top, which is
20 typically what our uniform is, when I stopped at
21 the -- at the restaurant earlier.

22 And so when I say gear up, I put on my --
23 my duty belt, which holds my handgun and my medical
24 kit. And then I put on my ballistic vest, which
25 carries some magazines of ammunition, you know, has

Examination of Joshua Howery

1 the -- it has the ballistic panels in, a helmet,
2 protective eyewear. And I grabbed my rifle.

3 Q All right. And do you recall about what
4 time you arrived?

5 A Oh, I -- you know, I want to say that the
6 call-out came around 6:30 in the morning, but I
7 don't -- I don't know exactly the time that I
8 showed up.

9 Q That's all right. So once you got geared
10 up, where did you go and what did you do?

11 A As I was gearing up right there in that
12 intersection, there were three other perimeter
13 officers that were also gearing up at the same time.
14 And they were -- they had gotten their a little bit
15 before I had.

16 I quickly got my gear together and then we
17 split up into two -- two pairs to go walk northbound
18 on Interstate Place there to try to get into
19 position.

20 Q And we've talked a little bit about the
21 inner perimeter. What would the inner perimeter be
22 in a situation like this? Or in this particular
23 situation, if you can recall.

24 A Well, we would try to take a position. So
25 we -- there's an arrow there at the apartment where

Examination of Joshua Howery

1 the action was happening, where the -- where this
2 event was happening.

3 Typically, we would try to get containment
4 around that place and then try to get eyes on, like a
5 vantage point where we could see any windows, doors,
6 anything where a suspect may come out or -- or
7 present himself so we could get information to the
8 rest of the team so we -- as we're making a
9 coordinated effort to try to resolve the situation.

10 Q So thus far we've been referencing slide
11 number two, which is an overhead of an apartment
12 complex. And I see two buildings with white roofs
13 that are semi rectangular next to each other. Would
14 those be both buildings that you would have as the
15 inner perimeter or only the one building?

16 A Well, only the one building -- well, we
17 would try to get any -- any position around the one
18 building where this event was happening, including
19 using that building right next to it, potentially to
20 get a -- a vantage point there.

21 Q Okay. Thank you for explaining that to us.

22 A Sure.

23 Q Now, you said you were walking north along
24 Interstate Place. And I think you indicated you were
25 with three other SERT members; is that correct?

Examination of Joshua Howery

1 A That's correct.

2 Q Okay. Do you recall who those SERT members
3 were?

4 A Yes. It was Officer Leo Harris, Officer
5 Joel Kunze and Officer Derrick Foxworth.

6 Q All right.

7 A I'm sorry. Sergeant Derrick Foxworth at
8 the time, so -- and now promoted.

9 Q Got it. And where were you headed?

10 A So we made it -- as we were walking north
11 on Interstate Place, the four of us made a plan to
12 split up. And I believe that Officer Harris and
13 Officer Kunze were going to try to get into the
14 building right next to the building with the arrow on
15 it there.

16 Q Okay. So this building right here?

17 A That's correct.

18 Q Okay.

19 A I believe they were going to try to get
20 into that building and get a vantage across that
21 small courtyard between the two buildings. As we
22 went, they actually -- Officer Harris suggested that
23 Officer -- Sergeant Foxworth and I went across Willis
24 to the north of here.

25 Q Okay.

Examination of Joshua Howery

1 A And it's not on this picture here, but just
2 across the street and a little bit to the east of the
3 buildings is another apartment complex there.

4 Q Okay.

5 A It's a three-story apartment complex. And
6 it has -- there is a balcony at the top of the stairs
7 there that we thought maybe if we got high enough we
8 would have a vantage point to get an angle across and
9 be able to see the particular landing and apartment
10 where this event was happening.

11 Q And as you were attempting to get into
12 these positions, are you continuing to either make
13 observations of your own or hearing reports on the
14 radio about any ongoing activity at that apartment?

15 A Yes, both of those.

16 Q Okay. And can you tell me a little about
17 those?

18 A So, as we were getting into position, we're
19 constantly hearing shots coming from the apartment.
20 We're also hearing reports on the radio from officers
21 who are inside that building that shots are coming
22 through the walls at them.

23 Q And how could you personally tell the shots
24 were coming from the apartment?

25 A I could hear the shots inside the

Examination of Joshua Howery

1 apartment. The other thing is there the -- one of
2 our pieces of armor was parked on Willis there. And
3 I knew that, from the updates, I believe we were
4 starting to launch gas at the apartment. And the --
5 the shots of the gas are a different -- are a
6 different noise than shots coming from inside that
7 apartment.

8 Q And were you present when any of the gas
9 canisters were actually fired?

10 A Yes.

11 Q Okay. So walk me through that. When did
12 you disengage from this apartment complex north of
13 Willis and come back to the area?

14 A Well, Sergeant Foxworth and I went across
15 there, started up the stairs. And I said, "If you
16 stay down, I'm going to run all the way up to the
17 third floor to see what we have and see if this is
18 going to be a good vantage point for us or not and if
19 it gives us any view where we can give good
20 information or help resolve this situation."

21 I got to the third floor. I realized that
22 the angle that that gave me was not good. It did not
23 give me a good view. It was a little bit further
24 away. And, in addition, the armor was between me and
25 the location, which meant that anybody in the armor

Examination of Joshua Howery

1 had the -- had the same view as I did, but they were
2 much closer.

3 So I came back down the stairs and told
4 Sergeant Foxworth, "We don't -- we don't have a good
5 view from here. We need to find a better place to be
6 to help resolve this."

7 Q So at that point what did you do?

8 A At that point I ran -- we ran back across
9 Willis Boulevard. And we ended up in -- so the
10 apartment across from the apartment where this is
11 happening, on the sidewalk there, one of the EDU
12 officers -- and I believe he was a Vancouver
13 officer -- was there. And he was --

14 Q And just because we're not great with
15 acronyms, EDU?

16 A Oh, I'm sorry. Explosive Disposal Unit.

17 Q Great. Okay. So you met somebody that was
18 there. And what agency was he from?

19 A I believe he was from Vancouver.

20 Q Okay. Go ahead and continue.

21 A I'm sorry. He was -- so he was there. And
22 he was looking at a small screen. And I recognized
23 him, that he was one of the Explosive Disposal Unit
24 guys. And I asked him, I said, "Which apartment
25 exactly can you tell me where this is exactly

Examination of Joshua Howery

1 happening?" 'cause I'm still trying to run around,
2 trying to find a good view.

3 But I wanted to make sure exactly the
4 apartment, exactly which -- which one of these
5 buildings, which floor. I wanted as much information
6 as I could. And he had been there for a little
7 while.

8 And he says, "It's the" -- where he was
9 standing, he said, "It's not this building right in
10 front of us here. It's the next one over. It's on
11 the corner, and it's -- there's at least three, I
12 believe, doors or windows one-week second floor.
13 There's three stories."

14 And he goes, "I have my robot parked in the
15 middle right now. You can see it on my screen." And
16 he said, "You can see him coming out right now."

17 Q And did you observe that?

18 A I did. I looked at the -- at the screen,
19 and I could see the suspect coming -- poke his head
20 out the window.

21 Q Okay. And when you say "poke his head out
22 the window," can you describe that a little bit
23 further?

24 A Not really. It was -- you know, we're
25 talking about a -- about a four-inch screen --

Examination of Joshua Howery

1 Q Okay.

2 A -- six months ago. He --

3 Q Sure.

4 A I -- I remember I was able to see the --
5 the movement on that -- on a particular window. I
6 could -- what it allowed me to do was to understand
7 and get kind of a visual of how many -- which windows
8 are we talking about in which building, how far does
9 this actually go down the side of the building for
10 the window where he's coming out. And this is the --
11 this is the suspect.

12 Q And, as you're looking at this screen,
13 making these observations, do you recall whether or
14 not gas had already been deployed?

15 A Gas had been deployed, yes.

16 Q You could smell it or you were aware it was
17 there?

18 A Yes. I -- I'd seen -- as I was coming
19 across the street, I'd seen this -- I think it was
20 Officer Faris launching gas.

21 Q Okay. So what did you do in response?

22 A At that point I had the information and I
23 knew this -- this individual had been shooting
24 through the walls. If I can back up a little bit.

25 Q Go ahead.

Examination of Joshua Howery

1 A Also during this time we got information
2 somewhere in there that two people that had been
3 inside that apartment when this -- when the suspect
4 entered the apartment had -- had left.

5 They had gotten out and they had been
6 debriefed and there was nobody else in the apartment.
7 So at that point I already knew that there was nobody
8 else left in that -- in the apartment except the
9 suspect.

10 Q In that particular -- in apartment number
11 five, correct?

12 A In that -- yes, in that -- in that one
13 apartment.

14 Q Were you aware as to the status of the
15 other apartments and whether or not they'd been
16 evacuated?

17 A No.

18 Q Okay.

19 A I gave the information that I had to
20 Sergeant Foxworth, my partner that day. I started --
21 I said, "We need to get around to the other side, the
22 south end of these buildings, because I don't believe
23 we have an eye. We don't have a vantage point."

24 And when I say "we," I don't believe that
25 our team, the -- the SERT, had anybody there that had

Examination of Joshua Howery

1 an eye from that -- from that angle anymore. I knew
2 we had it from the north because of the armor there,
3 but I didn't believe we had anybody from the south.

4 And so I went about -- at 1600 North Willis
5 Boulevard, where the red marker is, I started down
6 there to see if I could get around and noticed there
7 was a big fence there.

8 But I could get -- if I just went on the
9 west side of that fence, I would be able to get all
10 along that apartment building and then pop out on the
11 southwest corner there.

12 Q And where I have the cursor positioned now,
13 at the corner of that building, is that approximately
14 where you were?

15 A That's -- that's correct.

16 Q Okay. Then what happened?

17 A So as I was -- as Sergeant Foxworth and I
18 were making our way along that building to get into
19 the position where you have the cursor there, I could
20 hear more shots being fired from the apartment. I
21 also heard radio transmissions that Officer Ramsey
22 had fired shots back, that there was question whether
23 he had hit the suspect.

24 And then, as I was also walking there, I
25 believe Sergeant Livingston came on the radio and

Examination of Joshua Howery

1 said something to the effect that he expected deadly
2 force to be used.

3 Q Okay. Prior to this, had you heard any
4 discussion about what's known as a shot of
5 opportunity?

6 A I don't believe that I heard that on the
7 radio. There was a lot going on. And, as I'm
8 running up and down stairs, there's definitely the
9 possibility that I missed some of that information.
10 When I did -- I did hear -- prior to
11 Sergeant Livingston saying that, I believe I heard
12 one of the assault -- one of the entry folks on the
13 inside say that shots were still being fired through
14 the wall.

15 And this is after I had seen the suspect
16 poke his head out the window on the -- on the camera.
17 Shots were still being fired through the wall. And I
18 believe somebody asked if the IP could get shot of
19 opportunity.

20 Q And by IP we mean?

21 A Inner perimeter. I'm sorry. Yes. So, you
22 know, the -- the four of us on the perimeter team
23 that were deploying at that point.

24 Q Okay.

25 A And I -- and then after that -- after that

Examination of Joshua Howery

1 request is when I heard Sergeant Livingston say he --
2 something to the effect that he expected deadly force
3 to be used.

4 Now, something may have been said in
5 between that, and I don't know 'cause, again, I just
6 didn't hear anything else besides those two things.
7 I checked with Sergeant Foxworth, who I was with, I
8 said -- because he said, "Did you hear that?" I
9 said, "It sounded like we're expected to use deadly
10 force." And he goes, "Yeah." And I said, "Okay."

11 But, as I was making my way down there,
12 prior to any of that, I believed that I was -- that
13 if I saw the suspect, based on everything that he was
14 doing, that it was very likely I was going to use
15 deadly force against this suspect to stop him from
16 continuing to shoot at police officers.

17 I believed he posed an immediate threat of
18 death or serious physical injury to the team members,
19 to the other police officers that were inside, to
20 other people in adjoining apartment, which I didn't
21 know if they had all been evacuated.

22 But, because of the fact that he was
23 shooting through the walls, he had come to the window
24 and then he went back and he was continuing to shoot
25 through the walls -- and this is in the midst of us

Examination of Joshua Howery

1 trying to stop him by using gas and everything else
2 to get him to stop -- that he was going to continue
3 to shoot through the walls.

4 Every shot that come through the walls
5 could absolutely hit a person and cause death or
6 serious physical injury.

7 So I was -- as I was making my way through
8 there, in my mind I was saying -- I was thinking this
9 person is an immediate threat of death or serious
10 physical injury now and that I will -- if I get a
11 chance to stop that using deadly force, I was going
12 to take it.

13 Q And that's something, as a law enforcement
14 officer, you're authorized to do under the standard
15 rules, correct?

16 A Yes.

17 Q Okay. I want to talk a little bit about
18 the situation that was going on outside the
19 apartment. Could you hear any of the loud hails that
20 were being made?

21 A I could hear -- I don't know that I
22 remember any loud hails as I was going into any of
23 those positions.

24 Q Did you ever hear the subject's voice.

25 A I don't believe so.

Examination of Joshua Howery

1 Q Did you ever see or hear anything that made
2 you think he was attempting to surrender?

3 A No, not at all. In fact, I saw him come
4 out of the apartment and his hands did not go up. He
5 didn't -- I didn't hear anybody say, "I give up." I
6 didn't hear -- I didn't see any indication of
7 somebody who was trying to surrender.

8 Q And I should've asked you this earlier.
9 But when you did see him popping in and out of the
10 window, could you observe his hands?

11 A No, I could not see his hands.

12 Q Could you see if he was holding anything?

13 A No.

14 Q Okay. So you're standing on the
15 southwestern corner. You're looking up towards
16 apartment number five.

17 A Yes.

18 Q And I believe you indicated that you became
19 aware that Officer Ramsey had fired a weapon?

20 A Yes.

21 Q How did you know he'd fired?

22 A He -- he said something on the -- he -- he
23 told us on the radio that he had fired his weapon.

24 Q Okay. And I should also ask: The gas is
25 a -- a less than lethal tool for police to use,

Examination of Joshua Howery

1 correct?

2 A Yes, that's correct.

3 Q And the hope is that it will mitigate a
4 situation such that someone will give up or
5 surrender?

6 A Yes, that's correct.

7 Q Was the gas seeming to have that mitigating
8 effect with this subject?

9 A No. Because, again, gas had been launched
10 into that apartment. It had been used against him.
11 There was smoke in the apartment. You know, the --
12 some of our gas canisters use smoke as -- as a way to
13 deliver the gas.

14 And you could see that there was gas in the
15 apartment. He came out. Again, he stuck his head
16 out the window on the screen where I was able to see
17 it and then went right back inside and then continued
18 to shoot.

19 Q And do you recall approximately how many
20 shots you heard after gash was dispersed?

21 A I don't remember.

22 Q Okay. Going back to your position, about
23 how long had you been holding that position before
24 Ramsey took his first shot?

25 A Ramsey was taking shots actually as I was

Examination of Joshua Howery

1 moving into the position.

2 Q Okay. As you were moving into --

3 A Yes.

4 Q -- position?

5 And do you remember how far separated those
6 shots were that Ramsey took?

7 A I don't.

8 Q Okay. Had he taken the second shot by the
9 time you got to the southwestern corner?

10 A Yes.

11 Q Okay. What did you observe next?

12 A I came to the corner. I initially peeked
13 out just to see what looked -- what that courtyard
14 looked like, make sure I could understand the levels
15 of -- like, the three levels of the building and
16 understand where -- what -- where the apartment was
17 from my vantage point now 'cause it had changed
18 completely. I was able to count the windows.

19 Q And we're going now to a photo with the
20 windows.

21 A Yes.

22 Q Okay. So is that the view from where you
23 were looking north toward the apartment with the
24 bamboo banister?

25 A Yes, it is.

Examination of Joshua Howery

1 Q Okay. And what were you observing?

2 A So I basically was observing this. I could
3 see where that -- the window where the screen had
4 popped out there. But I had to step out from the
5 corner to be able to see all that.

6 I stepped out quickly, got an assessment,
7 knew that that -- that window with the screen popped
8 out was the one that he had -- he had stuck his head
9 out that I'd seen on the screen.

10 And I popped back behind the corner briefly
11 and just let Sergeant Foxworth, my partner, know,
12 okay, I have a good view of the apartment from this
13 vantage point. And I'm going to have to just step
14 out here to -- to cover.

15 Q And why did you have to step out?

16 A Because if you -- if -- if I'm completely
17 concealed behind a -- behind a corner, then I also
18 can't see anything. So you just have to -- you have
19 to weigh a little bit the ability to actually see and
20 the ability to be seen, if -- if that makes sense.

21 Q So if the subject is still mobile, stepping
22 out is putting you potentially in a position of risk?

23 A Yes.

24 Q Okay. So you made the decision to step
25 out. What happened next?

Examination of Joshua Howery

1 A As I -- as I was watching from the corner,
2 I could see the blinds start to move in that window.
3 And then I believe at that point that the suspect was
4 going to come out and stick his head out again, as he
5 did before when I saw it on the screen.

6 Q And what did you observe?

7 A He did exactly that. He -- he opened -- he
8 moved the blinds. He stuck his head out the window.
9 It looked like he looked up toward the armor, which
10 is to the north. And then I believe he looked back
11 at me briefly. And then it looked like he was going
12 to reach back inside the window for something.

13 Q And what about that caused you concern?

14 A Everything about that caused me concern
15 because I've already -- I had already -- actually
16 already seen him come to the window once. And after
17 he had gone to -- come to the window, he went back
18 inside. And after that he had fired more shots
19 through the -- through the walls.

20 That concerned me greatly because, again,
21 like I said, every shot that he fires through the
22 walls could be another person hit; could be
23 another -- that could be a death or a serious
24 physical injury.

25 I believed that there -- again, going back,

Examination of Joshua Howery

1 there was nothing that I saw that indicated that he
2 was trying to give up or surrender. And so I
3 believed that this might be an opportunity to -- to
4 stop him from continuing this threat of death or
5 serious physical injury.

6 But if I didn't take it at that point, he
7 goes back in the window and he shoots through the
8 walls again, like he has continually through this
9 event.

10 Q And you mentioned that he was reaching or
11 you made a motion as if he was reaching. Could you
12 describe that a little more?

13 A It just -- well, you know, when -- when you
14 have pretty much the shoulders and the head sticking
15 out and all of a sudden it just kind of turns as if
16 it's going back in the window, it -- there's just --
17 there's -- again, I can't see his hands. But
18 there -- the motion is either he's going to
19 completely disappear or he's just reaching back to
20 grab something.

21 My concern there is I know that shots
22 have -- he's fired shots at the police. There have
23 been shots fired at him. And my -- my concern, since
24 most of his focus had been north toward the -- toward
25 the piece of armor that we had there, that he may be

Examination of Joshua Howery

1 trying to grab something to actually fire back at the
2 armor and -- and -- and have an exchange at that
3 point.

4 He did -- again, he did glance at me
5 briefly. And so if he had seen me, there's always
6 the concern that he could potentially target me. But
7 at this time, again, I was -- I believed I had the
8 opportunity at that point to stop him from continuing
9 to be a threat of death or serious physical injury.

10 Q And at that time did you believe he was a
11 threat of serious physical injury or death either to
12 you or to others?

13 A Yes.

14 Q Okay. So what'd you do?

15 A I fired one shot from my rifle at the
16 target that I had.

17 Q And when you say the target that you had,
18 where on the subject's body were you aiming?

19 A All I had was his head and just the very
20 top of his -- maybe his neck and shoulders.

21 Q Okay.

22 A So --

23 Q And could you tell if your shot had an
24 effect?

25 A Yes.

Examination of Joshua Howery

1 Q Can you describe that?

2 A I fired my shot. The suspect immediately
3 dropped completely out of view.

4 Q And did you see him pop back out the window
5 again?

6 A No. After my shot there was no other
7 activity from the window. There was no other
8 activity from inside that apartment.

9 Q So what did you do?

10 A I put out on the radio that I had fired a
11 shot and that I believed that the suspect was down.

12 Q And what happened next?

13 A We -- we gave it a few seconds, just to
14 make sure that there was no other activity coming
15 from the apartment.

16 I believe some less-lethal rounds were
17 fired from Officer Harris and Officer Kunze's
18 position into that window once I gave the information
19 of where that window was and everything.

20 Q And would that be from the third story
21 opposite the apartment?

22 A That's correct.

23 Q Okay.

24 A They tried to get some less-lethal rounds
25 to knock down the blinds to be able to see inside the

Examination of Joshua Howery

1 apartment to see if they could tell if the suspect
2 was, indeed, down.

3 They were able to -- after several shots,
4 able to open up an opening enough to be able to tell
5 that the suspect was laying there on the ground.

6 Q And once that was determined, where did you
7 go? What did you do?

8 A I stayed at the -- well -- so after I fired
9 my shot, we waited there a few seconds to make sure
10 that the scene was -- I don't know -- that -- that it
11 was static at this point. And then Sergeant Foxworth
12 said, "Hey, why don't you let me cover the window.
13 You go back around the corner."

14 So I went back around the corner. And we
15 started -- you know, we worked through all the next
16 pieces, as far as getting the window open and getting
17 the entry team inside and so that they could get the
18 medic in there and -- and look and see what had
19 happened.

20 Q And is there a protocol for officers who
21 have recently been involved in a shooting that you
22 then followed?

23 A Yes.

24 Q And so were you escorted somewhere?

25 A So after I initially had stopped, I had

Examination of Joshua Howery

1 given some information about what I -- what I knew
2 and what I had seen for the tactical aspect, to make
3 sure the entry team felt safe to go inside and check
4 everything out.

5 Sergeant Foxworth stayed and covered the --
6 the window while all this was happening. I waited
7 until, I believe, it might have been Sergeant
8 Livingston came and got me and took me out back to my
9 staging area, actually.

10 Q And did you have any further involvement
11 with this scene or this subject after that?

12 A No, none at all.

13 BY MR. VASQUEZ:

14 Q Sir, when you -- when you stepped out from
15 cover or to view the -- the window -- well, let me
16 back up.

17 The -- what was the weapon that you were
18 using, the firearm?

19 A I was using the LaRue OBR rifle.

20 Q And when you hold that rifle in a firing
21 position, do you hold it up to your shoulder?

22 A Yes.

23 Q And which shoulder do you hold it to?

24 A Right.

25 Q So in order to step out and get a view, did

Examination of Joshua Howery

1 you have to step out, expose your right shoulder;
2 therefore, expose your entire body out of cover?

3 A Yes, that's correct.

4 Q Were you -- when you were observing that
5 window, were you observing it -- it through the
6 optics on the firearm or were you observing outside
7 of the optics?

8 A Initially, when I first was just looking at
9 the window and the suspect was not there, I was not
10 looking through the optics. I came and my rifle was
11 still low so I could see more.

12 What happens with an -- with a magnified
13 optic oftentimes is if you're looking at it, even at
14 a low power, because of the distance -- and this
15 distance wasn't very great. It was a pretty short
16 distance.

17 It narrows the field of view so that you
18 can only see maybe one window, right? But there was
19 that window that I believed he had come to before,
20 but there were also two more windows past that.

21 And if I look through the optics only
22 through one window, I may miss something that could
23 happen at another window. So when I initially
24 stepped out, I was just looking with -- without any
25 optics.

Examination of Joshua Howery

1 BY MS. SEELY:

2 Q And could you approximate that distance
3 for us?

4 A I believe it was about 15 yards.

5 BY MR. VASQUEZ:

6 Q And so when you -- when you say you
7 initially stepped out, was that the first time? And
8 then you stepped back and talked to Foxworth and then
9 stepped out again?

10 A Yes.

11 Q Okay. Second time you stepped out --

12 A Second time I stepped out, I stepped out,
13 again, looking over the top of my scope until I saw
14 the movement. And then I put the rifle up to my eye
15 and looked through the scope to see him come out --
16 out of the window. I was able to identify him and
17 actually see a lot closer.

18 Q So you -- you first -- your first
19 acquisition of him, though, was not through the --
20 the scope?

21 A That's correct.

22 Q It was only after you first acquired him
23 that then you looked through the optics?

24 A Yes, that's right.

25 MS. SEELY: Those are my questions. I'm

1 going to give the grand jury an opportunity to ask
2 questions.

3 Do we have any questions for this witness?

4 And it looks like the answer is no, so
5 thank you very much?

6 THE WITNESS: Thank you.

7 (Whispered discussion, off the record,
8 3:29 p.m.)

9 MR. MICHALOWSKI: Okay. We have one more
10 witness. I'm going to work on Webex now.

11 A GRAND JUROR: Do you want me to go off
12 the record for a few minutes?

13 MR. MICHALOWSKI: Sure. That's fine.

14 A GRAND JUROR: Yes or no, sir?

15 MR. MICHALOWSKI: Yes, please.

16 (Recess taken, 3:30 p.m. - 3:31 p.m.)

17 MR. MICHALOWSKI: As soon as we're on the
18 record.

19 Okay. It looks like we're on the record.

20 A GRAND JUROR: Would you raise your right
21 hand?

22 Can you hear me okay?

23 Oh, thank you. Okay.

24 ////

25 ////

Examination of Clint Snodgrass

1 S-n-o-d-g-r-a-s-s.

2 Q All right. Thank you. And how are you
3 employed?

4 A (No audible response.)

5 Q Oh, we're, unfortunately --

6 A I am employed with the City of Portland as
7 a police officer.

8 Q Okay. Great. And how long have you been
9 with the City of Portland?

10 A I've been with the City -- it'll be 15
11 years this year.

12 Q Okay. I'm just going to kind of get right
13 to this 'cause we're having a little bit -- it's just
14 a little bit choppy on our end. On August the 27th,
15 2021, were you on duty and asked -- or did you
16 respond to 1600 North Willis?

17 (Whispered discussion, off the record,
18 3:33 p.m.)

19 THE WITNESS: Yes. I'm having audio issues
20 on mine.

21 BY MR. VASQUEZ:

22 Q Yeah. Unfortunately, your video just went
23 out on us. Let's see. Do you have -- are you on
24 Wi-Fi, by chance?

25 A (No audible response.)

Examination of Clint Snodgrass

1 Q The other option is we can always have you
2 call in or FaceTime. Those are other options that
3 are available.

4 A (No audible response.)

5 Q Are you there, by chance? I can hear you,
6 but I can't see you, unfortunately.

7 A (Indiscernible).

8 Q Okay. You're back. But what if I -- what
9 if we tried --

10 A Do you want me to try calling in?

11 Q Why don't I see if I can FaceTime you in.

12 A I am on Wi-Fi. It's kind of spotty,
13 though. I can see.

14 Q Okay. Okay. Let's -- let's try -- you're
15 back; so let's -- let's see if it'll work. Okay.
16 Hold on just a second.

17 A Okay.

18 Q Just give it one second. Okay. Okay. So
19 you were -- on August 27th, 2021, you responded to
20 1600 North Willis?

21 A Yeah.

22 Q And were you just on your regular patrol
23 duties, wearing a uniform on that day?

24 A Yeah. I was working regular patrol in a
25 marked car, wearing a uniform.

Examination of Clint Snodgrass

1 Q Okay. And when you arrived to the scene,
2 were you asked to assist with -- I think we call it
3 hasty team?

4 A Yeah. I was asked -- yeah, like a quick
5 reaction team, yeah.

6 Q Yep. And so just tell us what happened
7 when you entered the apartment itself -- apartment
8 building, I should say.

9 A Okay. Yeah. So I arrived. I was handed
10 the -- we call it the key, which is, like, a handheld
11 ram to -- to hit a door, to force it open, and was
12 told to meet -- there was three SERT officers that
13 were already in the building. I was asked to go meet
14 up with them.

15 So I went into -- there's an external
16 entrance into the stairwell. And I was told they
17 were on the second floor. So I went into the
18 entrance and met them on the second floor with the --
19 the key.

20 Q Okay. And then once inside what was going
21 on? What did you see?

22 A So the -- the three SERT officers were
23 standing on the landing. So it's a -- the stairwell
24 has an interior door to enter into the hallway of the
25 apartment complex. And then there's the landing.

Examination of Clint Snodgrass

1 They were all standing on that landing, just outside
2 that interior door.

3 And so I just stood kind of mid-flight of
4 the stairs and was instructed at that point in time
5 by them that I would operate the key if they needed
6 to go in and -- and force entry into one of the
7 units.

8 Q Okay. And -- and then once -- once you
9 were there in place, did -- kind of what happened as
10 far as were there other people coming out of their
11 apartments, things of that nature?

12 A I couldn't see into the interior of the
13 apartment. But at one point in time I did hear
14 someone leave their room. And the SERT officers
15 instructed them to -- to stay inside.

16 But I couldn't see any of that was going
17 on. And then -- yeah, so that's the only person I'm
18 aware of that may have left the room, but no one
19 crossed from -- no citizens crossed by my location.

20 Q Okay. And -- and then -- so -- so what
21 happened as you're standing there?

22 A So standing there I had a trainee with me.
23 And he -- so once I was kind of given instructions by
24 the SERT operators that I'd operate the key, I kind
25 of just turned my attention toward him to make sure

Examination of Clint Snodgrass

1 he understood his role, which would be just the
2 hands-on and kind of where he would fall in if -- if
3 we did have to make entry.

4 So I was kind of just talking to him and
5 then all of a sudden heard a gunshot go off. And --
6 and simultaneously as I hear it go off I feel like an
7 rush of air kind of pass between my left hand and
8 my -- and my left leg.

9 So I -- and so I looked down. I could see
10 I was covered in drywall powder, like my hands were.
11 And my hand and my arm was -- had the drywall powder
12 just covered it.

13 And I could see a hole coming through
14 the -- the drywall, kind of between -- between where
15 my hand was and where my leg was. I could see that
16 the hole was kind of blowing out into the -- the
17 stairwell from behind.

18 Q Okay. Prior to that had anyone in the
19 stairway said anything or had there been any kind of
20 conversation with the person who was inside that --
21 that you were aware of?

22 A Not that I'm aware of, no.

23 Q Okay.

24 A Not that I'm aware of.

25 Q All right. So you weren't hearing them

Examination of Clint Snodgrass

1 say, like, "Open the door," or anything of that
2 nature?

3 A No.

4 Q Okay. And at what point did you realize
5 that -- that you had, in fact, been shot?

6 A So -- yeah. So the -- I see that, you
7 know, what appeared to be, like, a gun -- or a bullet
8 had traveled through the wall. And I could feel --
9 it was like a -- I describe it as like a -- like a
10 pinch type pain, like a sharp pinch in my leg.

11 And so I kind of was just checking myself
12 to see if -- like, where I could -- figure out where
13 I had been hit. And then couldn't see any immediate,
14 like, obvious signs that I was struck, but I could
15 feel pain and knew that I had been hit.

16 And so at that point in time me and my
17 trainee decided to -- to leave the stairwell to, you
18 know, go out and assess the further outside of the
19 building.

20 Q Okay. And then were you able to walk? Or,
21 I mean, what -- what was the situation with your --
22 your leg there?

23 A Yeah. So I was able to walk. You know,
24 I -- obviously it was painful. But my trainee
25 assisted me out of the building. And we walked to

Examination of Clint Snodgrass

1 kind of the corner of the block. At that point in
2 time other officers had arrived. We cut the pant leg
3 off to kind of figure out where the injury was and
4 found that it had entered in kind of up by my hip and
5 then traveled down my leg.

6 And you could see the bullet was resting
7 just underneath the skin, probably about six or
8 8 inches above my knee, like in the front of my
9 thigh. And so at that point in time we jumped in the
10 patrol car and then we -- I was driven to Emanuel.

11 Q Okay. Did they do, like, a minor surgery
12 to remove the bullet, things of that nature?

13 A So, yeah, I -- I lost the video. I'm not
14 sure if you can still hear me.

15 Q I can hear you now. You're back.

16 A Are you there?

17 Q Yep.

18 A Okay. Yeah. So they -- they -- they took
19 me into x-ray to -- they X-rayed the area and they
20 could see the -- you know, the bullet traveled just
21 through the muscle.

22 It missed all -- any bone or vitals. And
23 then they -- essentially 'cause it was just under the
24 surface, they cut out the bullet and removed it. But
25 there was no -- no surgery per se. I received a

Examination of Clint Snodgrass

1 couple stitches where the bullet was removed.

2 Q Okay. Did you have to take some time off,
3 things of that nature?

4 A Yeah. I -- I missed four works -- or four
5 weeks, not -- sorry. Start over.

6 Four months of work. And I was going to
7 physical therapy twice a month. Due to the kind of
8 trauma to the muscle, I was having some issues with
9 my knee not working correctly.

10 Q Okay. I'm sorry to hear that. I think
11 those are the questions that -- all that we have.
12 But hold on a second, let me check. And I'll check
13 with the grand jurors as well. Okay?

14 A Okay.

15 MR. VASQUEZ: Ladies and gentlemen of the
16 grand jury, any questions you'd like to ask
17 Officer Snodgrass?

18 A GRAND JUROR: How's he doing today?

19 MR. VASQUEZ: Okay. And -- and so
20 excellent question. Thank you.

21 BY MR. VASQUEZ:

22 Q And how are you today with your leg and
23 recovery? How -- how are you?

24 A I'm doing good and well. I went back to
25 work the beginning of January. And so there -- there

Examination of Clint Snodgrass

1 should be no long-term issues with -- with my leg, so
2 I'm good. And thank you for asking.

3 MR. VASQUEZ: All right. I'm glad to hear
4 that. Well, thank you for your time. I do really
5 appreciate. I'm just going to make one last check,
6 and I think we should be done.

7 Anything else?

8 A GRAND JUROR: Did -- do you know what
9 kind of bullet it was that they --

10 BY MR. VASQUEZ:

11 Q Do you know -- do you know what kind of
12 bullet it was that came out? I mean, I -- I don't
13 know if you do or not.

14 A It was a 9-millimeter.

15 MR. VASQUEZ: Okay. All right. Okay.
16 Thank you. All right. Have a good day.

17 THE WITNESS: All right.

18 A GRAND JUROR: Thank you.

19 MR. VASQUEZ: Okay. We can stop our
20 recording.

21 * * *

22 (Conclusion of Grand Jury B Proceedings,
23 Volume 2, 2-23-22 at 3:43 p.m.)

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REPORTER'S CERTIFICATE

I certify, by signing below, that the foregoing is a correct transcript, of the audio record in the above-entitled cause, as recorded on CD and transcribed to the best of my ability and in accordance to the quality of the audio CD.



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