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P R O C E E D I N G S

July 27, 2022

(9:43 a.m.)

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

MR. HUGHEY: We are on the record in DA Case No. 2445351. This is a death investigation related to the officer-involved shooting where the involved officers are Zachary Kenney and Reynaldo Guevara.

This is DDA Sean Hughey. We are in Grand Jury A. It's July 27th, 2022. And this is Grand Jury Case No. 43. And we are beginning with the witness testimony.

(Off the record.)

(On the record.)

MR. HUGHEY: This is going to be -- you have a seat right here in the middle. And then, before you take a seat, I'll just ask you to stay standing and raise your right hand. And then the foreperson will swear you in and then you can have a seat.

BRENT MACIAS

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

DIRECT EXAMINATION

BY MR. HUGHEY:

Q Thank you. good morning. Go ahead and have a

1 seat. Then the first thing I will ask you to do is just to
2 introduce yourself and spell out your first and last name.

3 A Sure. My name is Brent Macias. It's B-r-e-n-t.
4 Last name M-a-c-i-a-s.

5 Q Thank you. Do you live at the apartment complex
6 at 911 Southwest Broadway -- it's Drive. Right?

7 A Yes. Drive.

8 Q Do you live there?

9 A Yes.

10 Q How long have you lived there?

11 A About three years.

12 Q Which apartment do you live in?

13 A Number 10.

14 Q I am going to pull up -- I'm going to zoom in.
15 Yeah, sorry, I'll ask you to sort of crane your head behind
16 you here. This is a Google Map satellite image of I think
17 your apartment complex. Would you mind showing us where
18 your apartment and Apartment 10 is?

19 A (Indiscernible).

20 Q Oh, sorry.

21 A Yeah, it's over there. Probably about right here.

22 Q Do these have -- is this a two-story building
23 where there's lower-level apartments and upper level
24 apartments?

25 A It actually traverses all the way up the hill.

1 But that -- all the buildings are two levels.

2 Q Is the -- is Apartment Number 10 on the upper
3 level or the lower level?

4 A Upper level.

5 Q Is it the one directly below Apartment Number 9?

6 A I believe 9 is down there. I'm not sure. But
7 yes.

8 Q Got you. I want to -- I think you're good to turn
9 back around but if there's anything that's helpful to point
10 out, just let us know.

11 A Sure.

12 Q And we can have you spin around again. I want to
13 ask you about the evening of February 19th of this year when
14 there was a shooting there. Well, I guess, two shootings
15 actually in the parking lot near there. Do you remember
16 that evening?

17 A Yes.

18 Q Can you just kind of start from the beginning? In
19 your own words, tell us who you were with and what you were
20 doing?

21 A Sure. I was with my son. We were just sitting
22 down to eating dinner and watching a movie. And that was
23 pretty much all we were doing. Literally we were just
24 sitting down when we heard the gunshots.

25 Q How old is your son?

1 A He's 12.

2 Q What -- obviously, I'm sure you don't know to the
3 minute or anything but give us a sense of what time of night
4 this was if you can recall.

5 A Yeah. It was probably about 5:30, 6:30-ish. I'm
6 not sure but it was dinner time. It was still dusk out or
7 it was about dusk. It was still light out.

8 Q You said you heard some gunshots.

9 A Yeah.

10 Q At that time.

11 A Yes.

12 Q What did it sound like and what did you do next?

13 A Well, I'm military. Familiar with firearms. So I
14 immediately heard the gunshots. It just went pop, pop, pop.
15 I got up. Looked out my window. Told my son to get down.
16 Looked out the window and I could see an individual -- can't
17 see it -- but he was on the stairwell leading up to the
18 apartments and he had his gun out directed towards the
19 parking lot. Yeah.

20 He had his gun out directed out towards the
21 parking lot. When I looked where he was pointing his gun, I
22 could see a vehicle that was moving forward. I looked back
23 at the individual. He was, at that point, coming up the
24 stairwell, readjusting his aim. Sounded like he popped off
25 another one. When I looked, all I saw was an individual

1 jumping out of the car as the car crashed into the wall.
2 And the individual running down the parking lot to the
3 street down at the bottom there.

4 The individual was trying to gain an aim on him or
5 readjust his aim as he was fleeing. Couldn't do it so he
6 literally just -- ah, whatever. Came up the stairwell. The
7 individual that fled [sic], it looked like he jumped into
8 another car and then proceeded to take off. I think they
9 went up the road instead of down the hill. And the
10 individual with the gun, like I said, he kind of gave up.
11 Was slowly walking up the stairwell. Was kind of looking in
12 that direction of where he was shooting.

13 Then kind of just -- you could see it on his face.
14 He's like, oh, well, I messed that up. And then, he kind of
15 just got up to the top of the stairs, paused, looked up.
16 And then he saw me or what I thought he could see me. And
17 then he just kind of acknowledged and then proceeded to walk
18 inside the apartment beneath me.

19 Q The one right --

20 A Yeah.

21 Q -- directly beneath you?

22 A Directly below my apartment.

23 Q When you said that he sort of acknowledged you,
24 was that -- were you guys making eye contact at that time?

25 A Yeah. I mean, to me, it was like, oh, yeah, you

1 saw what I just did. And that was it.

2 Q What was going through your head when you were
3 kind of making eye contact with him when he was walking
4 (indiscernible)?

5 A I mean, he was in the unit directly below. I knew
6 that he had the gun on him. So either he was going to try
7 to shoot me or he was going to leave or something. So I
8 immediately told my son -- because we were just sitting in
9 like our lounging clothes and it was cold. So I figured we
10 would leave immediately. So I told him to grab his jacket
11 and stuff. I was trying to grab my jacket, as well. I was
12 trying to call the police at that same time. I know he went
13 into the house.

14 And that's when I was debating, do we stay or
15 should we go. And then, still couldn't get through to the
16 cops. I remembered that was the annoying factor. They put
17 me on hold or it was something ridiculous. Still couldn't
18 get a hold of them. So we left. We ran out. But at that
19 -- at the point where we were getting ready to leave, there
20 were cops coming. I saw a unit come up the hill.

21 Q Meaning a police car?

22 A Yes.

23 Q Oh, okay.

24 A A police unit. He was -- they were approaching.
25 I figured they were calling -- or responding to the gunshots

1 but they were careless as if they didn't know it was a
2 gunshot. So they were just walking up. And I was trying to
3 flag them. Let them know that the shooter was still active
4 downstairs. At that point, I did finally get put in through
5 the operator and I was just yelling at them, you've got a
6 unit here walking up to a house with a gun. YOU need to let
7 them know, let them know. Then the second unit showed up.
8 They were walking up.

9 So I was yelling, there's a gun down there,
10 there's a gun down there. They weren't -- they kind of
11 realized something was going on. So they -- oh, and then
12 they stopped. So they blocked off my car so I couldn't get
13 to the car. So I was like, okay, I grabbed my son and we
14 just ran downstairs. And at that point, I believe the cop
15 units -- there was -- like I said, there was two units. One
16 unit that was right there in the parking lot trying to walk
17 up.

18 And then there was more units that had showed up
19 down there in the cul-de-sac portion. So I couldn't get to
20 my car because they blocked us in. So we just ran down to
21 the police. I told them that the gunman was still in the
22 house. Because again, I was yelling at the other cops.
23 They didn't tell those cops so they were saying, go up
24 there. And I was like, no, there's a gunman. You need to
25 stop.

1 So finally, one of the officers heard what I was
2 saying. Stopped. Pulled me aside. Asked me what was going
3 on. And I told him exactly what I saw and that the gunman
4 could have been in the house.

5 He did not leave at the point before I left. And
6 I said that it's possible that he could have gotten out the
7 back window. There is a hill. There is an area that you
8 can run out in the back. I couldn't hear anything. I mean,
9 the apartment has thin walls. So I can kind of hear things.
10 So I knew he went in there but I did not hear him leave. So
11 that's why I left. And I would have heard the back window
12 open up or something.

13 Q Got you.

14 A So that's what I was telling the cops. He's
15 either in there or he's in the back. Because then at that
16 point, they were just telling cops to go back behind the
17 house. And I was like, you need to stop. It's dark.
18 There's no light. He can be hiding back there and he's got
19 a gun. So then they stopped.

20 One of the officers directed us -- said jump in
21 the car. And I said, no, we're in the line of fire. I had
22 my son. They were like, oh, yeah, you're right. We need to
23 get you out of here. So they were like again trying to
24 direct me somewhere else. And I said, no, that's in the
25 line of fire. I'm going over here. So at that point, like

1 I said, we were down there. And I was looking over there
2 to -- up the hill and there's a dumpster and a wall. And I
3 was like, I'm going over there. They were like, oh, yeah,
4 there's cover over there. They had an officer over there
5 and they said, okay, go over there. Wait there. We'll have
6 -- we can't have you leave the scene. We'll have an officer
7 with you. And they'll be your escort or something like
8 that. One of those lines.

9 Q Can I just ask you a clarifying question? I think
10 I'm with you where the points you're describing but I just
11 want to make sure we're all on the same page.

12 A Sure.

13 Q Is this -- this really doesn't do it justice from
14 this overhead map. But is it kind of a steep grade up here?

15 A It is. But I mean, it -- there used to be some
16 kind of little park back there. So there is like a flat
17 area all beneath our -- at least in that building.

18 Q Got you. Is the -- it looks -- from looking at
19 the map, you'd think that the parking lot could just be
20 level with the apartment but --

21 A Yeah, but it's not.

22 Q -- is it up like a --

23 A It's --

24 Q -- retaining wall?

25 A Yeah. It's about, I'd say, 20 feet. It's almost

1 a 20-foot wall.

2 Q Is that the staircase you were talking about?

3 A Yes, the gunman was probably a third of the way up
4 at the bottom. Then he proceeded to make his way up in
5 those areas.

6 Q The guy that was shooting with the gun, as well as
7 the guy that was being shot at in the car, did you recognize
8 either of them or were they total strangers?

9 A The gunman I recognized because I had seen that
10 individual around the house. The person that was fleeing, I
11 just saw a tall individual. So I was like, oh, shoot. I
12 don't know if that's somebody here or not. But I knew that
13 that person that was the gunman -- I knew that was the guy
14 that was hanging out there. Because he was just living
15 there temporarily.

16 Q Oh, okay.

17 A And I had seen him before.

18 Q In the apartment beneath yours?

19 A Oh, yeah. Because they smoke right beneath me.
20 So I can see them when they're outside.

21 Q Oh, I see. So they'd be out.

22 A So I was -- it was -- yeah, I had seen him in
23 passing plenty of times.

24 Q Got you. So you see -- the shooter is the guy
25 that you had seen smoking cigarettes and was staying in the

1 apartment below yours.

2 A Yes.

3 Q And you said you didn't see the guy who was
4 getting shot at all that well.

5 A No.

6 Q Other than being tall. When the officers came up,
7 was that sort of in the parking lot area directly in front
8 of your apartment where I've got the cursor?

9 A Yeah, yeah. They were -- they drove up real
10 slowly. So it seemed like they knew that was -- something
11 was going on. Then they just like went for it. And that's
12 when I was like, stop, stop, stop. Because they were
13 walking right up.

14 Q When you said they wanted you to sit in your car
15 and you thought that was a bad idea, was that sort of --

16 A Oh, yeah.

17 Q -- (indiscernible).

18 A It was down here. So -- and their -- I was like,
19 no, we can get shot at still from down here. Because like I
20 said --

21 Q Got you.

22 A -- you have an advantage up there if you're
23 shooting.

24 Q So like when you were saying like line of fire,
25 that would have been an area still sort of just --

1 A Oh, yeah.

2 Q -- in front of the apartment?

3 A Like I said, if he wanted to come out right out
4 his door, he could have picked everyone off or he could have
5 walked even closer and then picked us all off down there
6 easily. It would have been no problem.

7 Q So the area that you ended up going with the
8 dumpsters that you were talking about, is that down this
9 driveway --

10 A Yep. Keep going. It's --

11 Q -- that we see labeled at Southwest 9th Avenue?

12 A This is literally it right here. That's the wall.
13 And there's dumpsters right there. And then there's --

14 Q Those --

15 A -- like a little walkway, I think, that goes up
16 back there.

17 Q Do we actually -- you can see blue on the map.
18 Are those maybe dumpsters there?

19 A No. I'm not sure what that is.

20 Q Oh, okay.

21 A But yeah, that's where it is.

22 Q Right about there.

23 A Yeah. It's only (indiscernible).

24 Q Understood. And is this like a different
25 apartment complex over here?

1 A Yes. That's an entirely different apartment
2 set.

3 Q So you went -- let's see, I think this is correct
4 with the cardinal directions. You went to the east.

5 A Yes.

6 Q Basically out of the --

7 A And uphill.

8 Q -- view of --

9 A Yeah.

10 Q Got you. Thank you. That's helpful. You and
11 your son were not injured at all. Right?

12 A No.

13 Q That's really fortunate. How -- actually, we'll
14 pick up kind of where you left off. But I just wanted to
15 ask another question. Could you see whether the shooter was
16 hitting anything when he was shooting at the car or just the
17 shots themselves?

18 A No. I definitely remembered -- because the car.
19 I remember when I looked at the car, I could see what were
20 bullet holes.

21 Q Oh, okay.

22 A Yeah. Because like I said, when I saw him do
23 that, pop, pop, and then the car just rolled off. And
24 that's what I saw first actually was the car crashing into
25 the embankment wall. And I was like, oh, there's nobody in

1 there. Thank God. But then I saw the person running.
2 Because those trees were like right in between the two
3 things. So I just saw the car crash and the guy take off on
4 the right side of it.

5 Q Got you. Okay. So you're over here kind of in an
6 area with some more safety.

7 A Yeah.

8 Q Still with your son.

9 A Yes.

10 Q Tell us what's happening now. What were the
11 police doing around you?

12 A At that point, they were still -- and it sounded
13 like they still had some confusion. Because then it sounded
14 like they thought it was my apartment. So I was trying to
15 clarify them. And then, again, they were like walking out
16 in the back. And I was like yelling at them, he could be
17 hiding back there.

18 Because like I said, at no point did I -- he never
19 went out the back. But as soon as I went out, I knew there
20 was a possibility that he could've gone out the back. So I
21 was -- that was the other reason I went that way because I
22 was making sure I didn't see him pop out over there.

23 Q When you say the back, that's like the north side
24 of this -- of your apartment building?

25 A I don't -- yeah, I guess that is north if that is

1 it. Yeah. It would be back there.

2 Q It looks -- I mean, just from the satellite image,
3 we can see there's tons of trees there. Is it kind of like
4 a wooded area?

5 A Yeah. It's -- this is a little green patch. Like
6 I said, it kind of goes right back here. And it's just --
7 it's only enough for like a little area to have a little
8 picnic or something.

9 Q Got you.

10 A Then it goes straight up to the -- or the hill.

11 Q I see. So you're explaining to the police that he
12 could have been out there.

13 A Yeah.

14 Q Yeah. Pick up there. What happens next?

15 A So at that point, it -- they -- another officer
16 came over. Asked me everything. Clarified. And then,
17 that's when they all surrounded the place and stopped trying
18 to go in. They were planning something. I think they were
19 calling out to him at that point. And then, that's when the
20 officer who was going to be our escort -- he came over to
21 us. Was just talking to us. He was just -- he was being
22 very cool. I guess the only way I can describe it. He was
23 just trying to be just calming or trying to make the
24 situation better, I guess, in his way. Because I guess my
25 son, you know, I got a little 12-year-old. So he --

1 Q Was -- and you said that officer was sort of
2 like hanging around with you guys?

3 A Well, yeah. He was our escort because they said
4 they were going to put a cop with us or we were going to --
5 like I said, I think he -- they did say escort. But they
6 said something on the lines.

7 Q Do you remember that officer's name?

8 A No.

9 Q Sorry. I keep interrupting you.

10 A No, that's okay.

11 Q You're doing fine.

12 A So yeah, he was just kind of keeping the situation
13 light. Talking to us. Talking to my son. Then he had to
14 leave. He said, I'll be right back. I got to go ask
15 something. Like I said, they were there initially in the
16 cul-de-sac, and then they kind of brought it back down to
17 the actual entryway of the driveway. But they still were
18 kind of hanging out there. So he went down there to talk to
19 them.

20 Q Sorry. Just so we're all clear. Like the area of
21 the --

22 A Yeah.

23 Q -- entry into the parking lot from 9th Avenue?

24 A Yeah. Right here. That's where they were hanging
25 out. Then they all kind of -- that's when they started

1 building up down there.

2 Q At this point, are there additional police cars
3 that have --

4 A Oh, yeah.

5 Q -- arrived?

6 A It was -- yeah, they had everybody there. I think
7 even at that point they might have had -- or they were
8 calling for SWAT or something. I can't remember what the
9 officer was saying.

10 Q Were they giving commands or trying to communicate
11 with the apartment at all?

12 A Yeah. That -- I remember at one point they were
13 doing that. They did have somebody with a bullhorn. And
14 they again asked me which apartment. And I was like, it's
15 that one. You are directing your voice at the right one.
16 So --

17 Q Do you remember what sort of stuff they were
18 saying through the bullhorn?

19 A They knew his name. I remember they were calling
20 out his name. They were trying to -- you know, come out of
21 the house, put the weapon down. Stuff like that. They were
22 just giving commands. Nice commands. And then, that's when
23 the individual showed up. As I said, we were -- there's
24 steps in that spot. So we were sitting --

25 Q The spot where you were around here?

1 A Yeah. There was a line of dumpsters. And we
2 were sitting behind the dumpsters. Because like I said, we
3 were protected. And behind a wall. Then we were sitting on
4 the steps behind there. While we were sitting there --
5 yeah, he came from the street. So I imagine he went through
6 the back and there's a back way even through there that I
7 didn't know.

8 Q The street meaning 9th Avenue --

9 A Yeah.

10 Q -- where this parking lot is?

11 A But he came from here.

12 Q Who is he, the individual?

13 A It's the shooter.

14 Q So the shooter sort of reappeared.

15 A Yeah. I didn't -- when I first saw him, the first
16 thing that came into my head was holy, shit; the saying is
17 true. Criminals really do come back to the scene of the
18 crime after they've done it. And he was just weird. He was
19 walking up or walking towards us. Dark hoodie. Dark
20 clothes.

21 So I didn't recognize him at first. I just -- I
22 remember that was the first thing in my head. And that this
23 guy was weird. So I got in between him and my son. And he
24 was just asking, well, what's going on. And I was like, oh
25 -- because like I said, I didn't put it together but I knew

1 there was something wrong. So I just lied to him and I
2 said, oh, I don't know. We live here. We were just trying
3 to walk. And they stopped us and said we can't go anywhere.

4 Q Let me -- sorry. I'm interrupting you again. Let
5 me just ask -- when you said like there seemed like there
6 was something wrong, are you saying the guy was sort of
7 making you uneasy?

8 A No. There was just -- there was something. I
9 don't know if it was some subconscious like I did recognize
10 him. And I just didn't -- am I sure, am I not sure. No,
11 maybe not. I'm just --

12 Q I see.

13 A But there was something. I knew there was
14 something.

15 Q Is it -- would it be fair to say or accurate to
16 say that you thought he might have been the shooter but had
17 some uncertainty about whether or not he was for sure?

18 A Yeah, I thought he was. That's why I lied to him.

19 Q I see.

20 A When he approached him, I did not. But -- I
21 thought he was the shooter. That's why I lied.

22 Q Got you.

23 A Because I didn't know if he was going to shoot me.
24 I didn't know if he did recognize me. That's what he was
25 doing. Like, oh, hey, what's going on; are you the guy up

1 there.

2 Q Right. You didn't want to be like, they're
3 looking for your or something.

4 A Yeah. So I lied to him. And I just said, we're
5 just sitting here. We were trying to go for a walk and they
6 stopped us. And he was like, oh, okay. He was like, well,
7 where do you live. I was like, I said here but we can't go
8 anywhere. We were just trying to leave. And he was like,
9 oh, okay. Well, you think I can get through. And I was
10 like, no, man. There's all kinds of cops here. I'm not
11 sure where you're trying to get through.

12 And he was like, well, I'm just trying to go up
13 the hill. I was like, okay, well, you're not going to be
14 able to go up the hill, man. You may as well just go home
15 or go back wherever you came from. Then that's when it got
16 weirder. Because then I was like, obviously, this guys
17 doesn't live here. Obviously, he came from the street.
18 That is a dead end. He couldn't have been walking home.
19 Nobody comes up this way.

20 Q Meaning Southwest 9th Avenue? It just --

21 A Yeah.

22 Q -- kind of ends at the other end of this --

23 A Oh, yeah. You don't --

24 Q Oh, you can even see it.

25 A It doesn't go anywhere.

1 Q Right here.

2 A It goes absolutely nowhere.

3 Q I see.

4 A So when he came from that direction and he said
5 that, that just made it even weirder. So at that point, the
6 cop wasn't there so I just stayed between him and my son.

7 Q So this was the part where the escort officer said
8 he needed --

9 A Yeah. He --

10 Q -- to go check on something.

11 A -- still left. He was still gone.

12 Q Got you.

13 A So I was just staying in between my son and him.
14 He kept asking stupid questions like, can I get up there. I
15 think I asked -- or can I ask them. And I was like, I don't
16 know. But you're not going to be able to get through. I
17 was like, you can try going downhill and going down south.
18 And then he just kind of stood there and just kept on
19 standing there waiting. And that's when the officer showed
20 up --

21 Q The same escort officer or a different one?

22 A Yeah. Same officer, same officer. Couldn't say
23 anything to him because he was right there. So --

24 Q Tell me -- what do you mean by that? Like you
25 were reluctant to sort of --

1 A Oh, yeah. I would have told him I think this is
2 the guy. But I didn't because I knew he had a gun on him.

3 Q And you didn't want to say it like right --

4 A Yeah.

5 Q -- in front where he would hear.

6 A Yeah. So we just stood there. I tried to talk to
7 the cop. Then it started raining. So he was like, hey,
8 maybe you should go under the awning there. Then this first
9 building -- they all have garages underneath them, open
10 garages.

11 Q Like open carport type things?

12 A Yeah. They're a double. Each one -- or they're a
13 double carport for each two buildings. So he's like, why
14 don't you go ahead and get under there --

15 Q And these are the ones -- I'm kind of just saying
16 this for the recording -- on the north side of Southwest 9th
17 Avenue. The other apartment complex.

18 A Yes. He was like, why don't you get under there.
19 Get out of the rain. So we got under there. And the guy
20 was still hanging around. He walked away. So I thought,
21 oh, okay, maybe he does live here. Maybe I had it wrong.
22 And maybe he was just trying to go somewhere.

23 So he walked away. Then he came back. Then
24 that's when -- and I didn't say anything to the cop because
25 he walked away. He just disappeared. So I was like, okay,

1 maybe that's not him. Maybe I was just real paranoid. So
2 he was gone. Then more people showed up.

3 Q. More like people from apartments or police or --

4 A. People -- yeah, people that actually lived there.
5 There was a lady or a girl that was trying to go to work. I
6 told her, hey, you're not going to -- I don't think you're
7 getting anywhere. So she kind of sat there and hung out. I
8 think a couple might have come by or was it somebody --
9 another person came by. Was trying to walk through. And
10 the cop was like, no, you're not going to get through here.
11 Then that's when the gunman came back. And he was like, do
12 you live here. And he was like, oh, no, I'm just trying to
13 go up the hill and he was like --

14 Q The -- sorry. The officer asked the gunman --

15 A Yeah.

16 Q -- do you live here?

17 A Yeah. I remember he gave him some kind of
18 questioning. And I'm pretty sure it was like, do you live
19 here. Where you trying to go. And he was just like, oh,
20 no. I'm just trying to go up the hill. Then the tried. He
21 was like, can I get through, can I go up the hill. And he
22 was like, no, you're not going to be able to right now.
23 You're --

24 Q Can I -- so now we're at the point where the
25 officer is interacting with this guy that you recognize as

1 the shooter.

2 A Yeah.

3 Q Is that right?

4 A I wasn't 100 percent he was the shooter. But
5 yeah.

6 Q Right, right. I understand.

7 A Yeah.

8 Q That you were sort of maybe wavering if you were
9 correct.

10 A Yeah, yeah.

11 Q Are you -- is this happening when you and your son
12 are still kind of behind the carport wall?

13 A Yeah, yeah. We're still behind it. At that
14 point --

15 Q And where -- sorry, go ahead.

16 A Yeah. We were right there at the corner. So we
17 could still what was going on. And just making sure -- and
18 I told my son -- when the guy came back, I told my son,
19 here, take my phone. Go sit in the corner. I didn't want
20 him anywhere close to him.

21 Q Like the back corner of the carport?

22 A Yeah, literally all the way in the very far left
23 corner of there. So we were standing at the corner though
24 here at the street. Me and the officer.

25 Q The corner where the carport opens up to --

1 A Yeah.

2 Q -- Southwest 9th Avenue?

3 A Yeah, right there. The gunman was right about
4 there. And like I said, we had two or three other people
5 that were on the other side sitting or something.

6 Q So there's -- your son is back in the carport.

7 A Yes.

8 Q You're kind of at the mouth of the carport.

9 A Yes.

10 Q The escort officer it sounds like is somewhere
11 kind of at the opening to the carport.

12 A Yes.

13 Q And then, the gunman is in that same vicinity.

14 A He's right there with us. Yeah, he's right there.

15 Q And a couple other people are hanging around
16 this --

17 A Yeah. On the very opposite side.

18 Q Then any other police or is it just the one escort
19 officer?

20 A There was a tac guy. I remember I talked with
21 him.

22 Q What do you mean by tac guy?

23 A Tactical gear. He -- it was one of the SWAT
24 officers or just somebody that showed up in tac gear.

25 Q Oh, okay. Like what type of gear are you

1 describing?

2 A Oh, like he was tactical. He had the helmet; he
3 had a vest on.

4 Q Oh, okay.

5 A He had his rifle and everything. Like I said, I
6 think they were getting ready to just swarm. Because he
7 actually did come up to me. So I thought he was one of the
8 leaders or coordinators. Because he was like, please run
9 down with me everything. Tell me about the apartment and
10 everything. So I gave him all the layout and everything,
11 what it was.

12 Q And is that conversation happening in the same
13 place?

14 A Same area.

15 Q Kind of at the mouth of the carport?

16 A Yeah. He came to us. I think the officer told me
17 that somebody wanted to talk to me. So I thought I was
18 going down. But he came up. So we were talking. Oh, no,
19 sorry. I'm jumping ahead. People had showed up. The other
20 group had showed up. The officer had said something like,
21 oh, I think somebody else is coming up here. Because we
22 were talking. We were just chitchatting. Me and the cop.

23 Q The escort officer?

24 A Yeah. We were just talking about stuff. What
25 he's going through as a cop, you know. It was the

1 (indiscernible) and all that crap going on back then. So
2 we were just talking. That's when he was like, oh, I think
3 they're bringing somebody else over here. Hang tight. And
4 then, that's when I saw the lady and the guy start walking
5 up towards us.

6 And I kind of recognized the girl as if I had seen
7 her before. And they were walking up. And the gunman is
8 still to my left. They were walking up. And I could kind
9 of hear them talking. And then I kind of pieced together --
10 I was like, oh, shoot, those are the people that got shot
11 at. So I was like, okay, thank, God. They're alive. And
12 they were coming up.

13 Q Like -- okay.

14 A Yeah. Like as if, okay, you're going to go stay
15 with the people that are a part of the scene. You know,
16 how --

17 Q I see.

18 A -- if someone is a part of the scene, they have to
19 hold onto them.

20 Q How did you figure out that they might be the
21 people that got shot at? From the things they were saying
22 or from recognizing them or --

23 A Yeah. And just kind of reading their lips and
24 seeing from a distance and looking and just looking at the
25 way they were behaving. I was like, okay, yeah, those are

1 probably the people that got shot at and got away. So
2 when they were walking up towards us, I think the officer or
3 somebody did say something like, hey, get them with them.
4 We need to hold them. So it was in relation to me and my
5 son.

6 So they were walking over towards us or walking up
7 towards us. And I could see the girl's face. And she just
8 -- she did not look -- like just something came over here as
9 soon as she started walking up. So I looked to the left.
10 And I was like, oh, shit. This is probably him.

11 Q From the way you were observing the woman react
12 to --

13 A The female. Yeah.

14 Q To the guy.

15 A So when she got closer, she then -- that's when
16 the tactical officer and that's when the officer -- the
17 escort was like, hey, these people are coming here. We're
18 going to hold onto them but this guy needs to talk to you.
19 So I was like, getting ready to go down. And he was like,
20 no, no. Just hold up. And that's when the tactical guy
21 came up. Then that's when the female -- I saw her -- she
22 went up to the officer and she grabbed him by the arm. And
23 I remember that was something. And I was just like, okay,
24 yeah, that's probably him. She's probably telling him right
25 now.

1 Q But you thought the female was telling the
2 officer, hey, that's the shooter.

3 A That was him. Yeah.

4 Q And is the guy that --

5 A He's right there.

6 Q He's still just kind of --

7 A He's still standing right there.

8 Q -- milling around outside --

9 A Yeah.

10 Q -- the mouth of the carport?

11 A He came here because he's to the left -- I mean,
12 he was either under the influence or just really out of it.
13 I don't know. But like I said, he was just chilling there.
14 I noticed the female.

15 Q When you say to the left, are we saying --

16 A Yeah.

17 Q -- towards the dead end or --

18 A To my left.

19 Q -- towards the opening?

20 A To -- yeah, towards the end.

21 Q Towards the dead end.

22 A He was towards that end. Yeah. So I'm here. He
23 was to my left.

24 Q So you're --

25 A Escort is -- he's taking off. And I could see the

1 female with him. Then the tactical officer -- he's like,
2 oh, come over here. So I -- all right. I'm talking to you.
3 So we talked. I'm still watching the female talking to the
4 escort. And I'm just answering his questions. Then I see
5 our escort coming back over to us. And I didn't like the
6 look of him.

7 Q Of the escort officer?

8 A Yeah.

9 Q What do you mean? Like what had changed about
10 him?

11 A He had his hand on the gun. That's the one thing
12 I --

13 Q He had his hand on his gun?

14 A Yeah, yeah. I remember that.

15 Q Was that after the female had tugged on his arm
16 and talked to him?

17 A Yeah. She had -- like I said, it was all
18 happening at once. So when he was like, he this guy has got
19 to talk to you about this, he was introducing me or saying
20 something and then that's when the female grabbed him by the
21 arm. And that was the other thing. You know, if a cop gets
22 touched, they're going to react. But he was like, oh. And
23 then went with her.

24 So yeah, so I was just answering the tactical
25 officer's questions. He was like, thanks. (Indiscernible)

1 that. And then that's when the escort literally just came
2 in between us. And my son had gotten closer at that point.
3 He got -- he was more towards the corner at that point
4 towards us.

5 Q Towards the opening of the carport?

6 A Actually, yeah. He got up. He was standing next
7 to me. Or he was doing something. He was down on the
8 ground. And that's when the escort came in between us. And
9 it wasn't like -- he literally went in between me and the
10 tactical officer. And it was just like, okay. And then I
11 remember as I'm backing away as he's going between us, he
12 was saying -- talking to the guy. And he said something
13 like --

14 Q The guy that you thought was the shooter?

15 A Yeah, the gunman. He said get back or step back.
16 And he kept saying step back, step back. So I figured he
17 was just trying to get distance because, you know, we were
18 all right there.

19 Q How far away was everybody from --

20 A He was right there to my left.

21 Q Just like a couple feet?

22 A Yeah, not even. He was right there because I
23 could see the gun and the flash, feel it. So when he got in
24 between saying, get back, get back, I just remembered him --
25 why, why, why. Why you hassling me. Why have I got to get

1 back. And he just -- get back, get back. No, why -- and
2 then, he -- I saw him do that. And that's when I grabbed my
3 son.

4 Q And just -- sorry, it's easy for us to understand
5 what you just did there. But you just sort of reaching your
6 right hand --

7 A Oh, he reached for a gun. He reached for his gun.

8 Q What --

9 A I immediately turned around to my left. Grabbed
10 my son because he -- if he was going to pull it, he was
11 going to pull it in my direction or his direction.

12 Q Were you seeing an actual gun or just seeing him
13 reach into his pocket or both?

14 A I saw him reach into his pocket and pull -- it was
15 enough for me to grab my son and fling him.

16 Q Understood.

17 A It was enough for me to do that.

18 Q When you say, like, your son --

19 A I threw him 20 feet.

20 Q You just pushed him.

21 A Yeah.

22 Q Threw him back in the carport?

23 A Yeah. Because he -- like I said, he came back.
24 And I just -- I literally threw him. When I turned back
25 around, that's when the officer had already pulled out his.

1 I could feel the muzzle flashes from -- pop, pop, pop. Or
2 whatever it was. So I just turned back and dived to where
3 -- because there was -- it was -- it's a double carport but
4 there was a car in the second port. And I had threw my son
5 over the hood or something. Because he was in the front of
6 there. So I dived over to him.

7 And that point -- I know -- I saw him going back.
8 I don't know if he was getting shot back or if he was still
9 going back. But I remember watching him go back. The cop
10 going that way. I dived. Waited. Heard the pops. And
11 then another tactical officer came up. So I just kept on
12 yelling civilian, civilian, civilian. The guy kind of was
13 like, who are you. Didn't know. So he was like, okay.
14 They said something like, we've got these two people.

15 So they grabbed us. I don't know if it was still
16 -- something was going on because they kept -- they told us
17 to get down. And then, we ended up -- there's like a weird
18 drop-in hole on these apartments. I don't even know how to
19 describe it. But for whatever reason, there's just this big
20 dropdown. Then there's a window down there to the lower
21 level of it. So they just throw us -- threw us in there.
22 We got down. They said, you need to wait; we need to get a
23 unit up here to protect you. So they got a unit up.

24 Q Meaning a car, another (indiscernible).

25 A Yeah, yeah. They said they didn't want to pull us

1 out so we were protected from the gunfire or something.
2 So they got the car up. They got us out of the hole. And
3 then, just ran us down the hill and to a unit right there.
4 Another cop unit down the hill.

5 Q Yeah.

6 A And that was it.

7 Q Then subsequent to that, did you do like -- do an
8 interview with detectives and everything --

9 A Yeah. My son is special needs. So at that point,
10 you know, it had already been like three hours or something
11 we were outside. So my son was just wanting to get back
12 into the house. So I just -- I asked the cops if -- is it
13 possible -- can I just take my son back to our house.
14 Because I knew my house was a crime scene so I couldn't just
15 go in there. So they're like, yeah, give us some time.
16 We'll get you back up there. So they were really nice. And
17 they got us up there pretty quickly.

18 Q Is -- I'm sure this is really, really scary. Is
19 your son doing okay with the passage of time or --

20 A He's still jumpy. He's still -- yeah, it's got
21 its effects.

22 Q Yeah, I'm sorry.

23 A Yeah. But he did good. We got up there. They
24 said we'll -- we got to check out everything and then we'll
25 be back up to you later. And yeah, it was later. They

1 probably didn't up there until 1 or something. I don't
2 know. It was really late. So they -- I think there was
3 three detectives. And they did the interview with me and my
4 son. They just let him chime in as I was giving the
5 interview. And then, that was it. They said they would
6 call me back if there's anything else.

7 Q What -- thank you. I appreciate you just kind of
8 running through that. It's probably not the most fun thing
9 to recollect especially having your son there that you were
10 working to protect.

11 When the gunfire started, again, I'm sure this is
12 like chaotic and everything. Do you have a recollection of
13 seeing who was firing or where or which --

14 A Oh, yeah, yeah. It was our escort. Yep. I knew
15 it was the escort. I don't believe the tactical officer
16 even responded. I think he had already left. And I think
17 he took off because it was just our escort that did it all.
18 As far as I could tell. Like I said, I just -- I remember
19 seeing him going like that, why. And then going down.
20 Pulling something (indiscernible). And -- moving my son.
21 Pop, pop. And then I saw it. When I turned back around, I
22 could see the muzzle flashes from both of them.

23 MR. HUGHEY: Do any members of the grand jury have
24 questions for Mr. Macias?

25 GRAND JUROR: Do you remember Mr. Arevalo pointing

1 the gun or you were diving at that point? If you saw him
2 pull it.

3 THE WITNESS: No, I saw him pull it. That's what
4 I saw.

5 GRAND JUROR: So you --

6 THE WITNESS: Because it -- when that interaction
7 happened, I remember looking at both of them. And I could
8 see and I could hear his reaction which was just -- it
9 wasn't right. It wasn't typical of what somebody normally
10 would do. And it just seemed very typical of what somebody
11 would do in a situation if they're about to shoot somebody.
12 And that's -- yeah, he went like that.

13 MR. HUGHEY: When -- again, this is another one of
14 those times where it was totally easy for us to all see what
15 you just did with your arm. What --

16 THE WITNESS: Yeah, he --

17 MR. HUGHEY: When you said, I saw him pull it, you
18 made a gesture. What was that that you were mimicking?

19 THE WITNESS: He kind of did the whole -- with his
20 hands out to the side like why you messing with me. What's
21 -- and I remember him saying that. Like why you bothering
22 me. Why you coming after me or something. And that's when
23 the cop was like get back. And then, that's when he pulled
24 his hand out. And then, that was it.

25 GRAND JUROR: And the hand had the gun?

1 THE WITNESS: Yeah. I didn't see the gun
2 specifically. I saw the gun when I first witnessed him
3 shooting.

4 GRAND JUROR: Oh, okay.

5 THE WITNESS: But I know enough to know when
6 someone is pulling a gun. And that was enough for me. And
7 it was enough for the officer, as well.

8 MR. HUGHEY: Even to the point where you threw
9 your son back into the --

10 THE WITNESS: Yeah, I threw my baby 20 feet. It
11 wasn't nice.

12 MR. HUGHEY: Other questions?

13 GRAND JUROR: Do you have a description of the
14 firearm by chance? Do you know what it looked like?

15 THE WITNESS: I would have said it was -- you
16 know, it was definitely a small hand-held. It wasn't a
17 revolver. I know that much. And yeah, that was all I saw.
18 I remember it was a small hand-held.

19 MR. HUGHEY: Do you remember the color or
20 anything?

21 THE WITNESS: It might have been silver-ish and
22 black. But I'm not 100 percent sure.

23 MR. HUGHEY: And that, when you're recalling
24 seeing it, that's from when he was shooting sort of the
25 first time in the car.

1 THE WITNESS: Yes.

2 MR. HUGHEY: Or I'm sorry. Not in the car. At
3 the car.

4 THE WITNESS: Shooting at the drivers. Yeah.

5 MR. HUGHEY: That was a good question. Other
6 questions?

7 GRAND JUROR: Was the officer, your escort, the
8 only officer that you remember shooting?

9 THE WITNESS: Yes. He was the only one. Yeah.
10 Just -- yeah, he's the only one. I wanted to thank or at
11 least talk to or something.

12 MR. HUGHEY: What makes you say that? That you
13 wanted to talk to him after.

14 THE WITNESS: Just -- he was a good guy. He was
15 -- from the very minute it all started, he was just trying
16 to do his best from the situation. And I mean, we were even
17 -- in the short time we were talking, we were talking about
18 some serious things. Especially with what was going on with
19 -- at that time with the defund the cops. The whole
20 (indiscernible). We were talking about that.

21 And just -- the stuff that he was going through.
22 And he just seemed like a really genuine guy. Then, like I
23 said, he was trying to comfort me. He was trying to comfort
24 my son. And what he did I'm grateful for. But I can't
25 imagine that would be something easy for him. And I just

1 wanted to tell him thank you. He protected me and my son,
2 from what I seen.

3 MR. HUGHEY: Any other questions from members of
4 the grand jury? Anything that jumps out at you from any
5 part of the night that's a memory that I haven't asked you
6 about or some important --

7 THE WITNESS: No, that's pretty much every detail
8 I can remember from it.

9 MR. HUGHEY: Yeah, thank you. You took your time
10 to really go through it in pretty great detail so that we --
11 I think we all appreciate that. Thanks for doing that.

12 THE WITNESS: Sure.

13 GRAND JUROR: Thank you.

14 MR. HUGHEY: I think you're all set. Thank you.
15 Let's go ahead -- why don't we pause the record and if you
16 guys want --

17 (Off the record.)

18 (On the record.)

19 MR. HUGHEY: We're back on the record.

20 Mr. Gutierrez, I am going to ask you to raise your
21 right hand. Then I'm going to point the camera over at our
22 foreperson and we're going to swear you in.

23 MR. HUGHEY: Thanks very much.

24 IVAN GUTIERREZ

25 was thereupon called as a witness; and, having been first

1 duly sworn, was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. HUGHEY:

4 Q And it looks like your video is getting a little
5 choppy but now it's back. Can you start by just telling us
6 your first and last name? And would you spell them both out
7 when you do that?

8 A Yes. First name is Ivan. I-v-a-n. Last name
9 Gutierrez. G-u-t-i-e-r-r-e-z.

10 Q Thank you very much. And I want to -- I'm just
11 going to kind of jump right in. I want to ask you about an
12 incident from February 19th of this year that happened at
13 the apartment complex at 911 Southwest Broadway Drive.

14 Do you remember that night?

15 A Yes, I do.

16 Q Were you over at that apartment complex that
17 night?

18 A No, I wasn't. I was at our condominium complex.

19 Q Oh, okay. Is that adjacent to the apartment
20 complex?

21 A Yes, it's adjacent to the apartment complex.

22 Q And I don't -- boy, I hate to tempt technology.
23 But I'm going to try to share my screen with you real quick.

24 A Okay.

25 Q Yeah. Can you see what's on my screen right now?

1 A Yes, I can.

2 Q So the 911 Southwest Broadway apartments are over
3 here. Then the condominium complex, is this the -- to the
4 east of that apartment complex that you were talking about?

5 A Yes, that's correct.

6 Q And do you live over there or were you visiting or
7 what?

8 A Yes, I live in the condominiums there.

9 Q Is it possible to give us a sense for which one
10 yours is? It doesn't have to be exact on the map but like
11 close to the driveway, further back towards the cul-de-sac?

12 A Let's see. It's the -- not the longest row right
13 there. See the half-barrel ceilings or roofs on those?

14 Q I sure do.

15 A Not the longest set but the second set.

16 Q This one right here that says 851?

17 A Yeah, 851. Yep. We're on 851 and I'm at the
18 furthest one, the last one. Yeah.

19 Q Perfect. That is -- let's see. Stop sharing.
20 I'll get you back to the normal way. So did -- well, let's
21 see. Did you see and hear something that night that you
22 ended up talking to the police about?

23 A Yes, we did.

24 Q Would you mind just sort of starting at the
25 beginning and you can just tell us in your own words where

1 you were and what you saw and what you heard?

2 A Yeah. We have a balcony facing Broadway Drive,
3 overlooking it, the long road. And I was out there tidying
4 up the balcony around -- it must have been around anywhere
5 between 6:30 to 7:30 p.m. Tidying it up. Then we heard a
6 few loud bangs. And since we overlook that canyon where
7 Marquam Trails is and OHSU, it's always hard for us to tell
8 where the sounds are coming from because of that echo
9 created by that canyon. So we heard those.

10 And then a few minutes later, we seen a lot of
11 police cars coming up Broadway Street and so then we just
12 deduced, oh, it must have been gunshots. Then as we kept
13 cleaning, we noticed more and more police cars on Broadway
14 Drive. Then we didn't think much of it until we went
15 outside of our front door and then looked outside. Then we
16 seen the -- yeah, all the police cars were at -- we figured
17 they were at the 911 -- the first address you mentioned, the
18 apartment complex. 911 Southwest Broadway.

19 And so, the police cars had -- they had that
20 blocked off. And then, there was a police officer at our
21 condominium's dumpster. And they were kind of just not
22 letting anybody leave or not -- or come onto the premises.
23 Then that's --

24 Q Is that dumpster adjacent to the carport on the
25 end there?

1 A It is. The dumpster is sort of -- it's sort of
2 like the halfway point between like our complex and then
3 their -- and then there's like a little dead-end cul-de-sac.
4 Then it's the other apartment complex. So that dumpster
5 kind of -- yeah, I think it's a spot where they'd be able to
6 see anybody coming in or leaving -- leaving or coming in
7 from our complexes for sure. So I think that's why the
8 officer was posted up there. And not letting anybody pass
9 by.

10 Q Were you out in the driveway like looking around
11 or in your apartment or give us a sense for where you were.

12 A We have a front porch, too. So yeah, we didn't
13 get off of our front porch. We were just looking there.
14 And we could peek our head around the corner and see over to
15 911 Southwest Broadway. And so we figured the gunshots --
16 there was something that the incident happened over there at
17 that apartment complex.

18 Then yeah, the night progressed. We did see that
19 individual, the -- you know, the victim, or whatever. He
20 was talking with the police officer there. He was talking
21 with the police officer at the dumpster. And it just seemed
22 like the police officer wasn't letting him by. Wasn't
23 letting him leave. Then -- and he was on his cellphone
24 calling somebody. And then, when he walked past us, past
25 our front porch.

1 And I asked him, hey, what's going on. You
2 know, what's going on over there. And he just said, oh,
3 they're not letting anybody leave. And he's like, I just
4 want to go home. So we're like, oh, okay. We can't leave.
5 Then a couple more hours passed by. And the police cars
6 were still there at the other complex. And so we still
7 didn't really know what was going on. And then, at that
8 point, an officer -- one of the female officers did -- that
9 was doing the rounds, did stop by and we asked her what was
10 going on.

11 And she said that somebody -- she couldn't
12 disclose much information but she did say that somebody
13 that's been giving them a lot of trouble downtown or
14 something, like all day, that they were after him. So we
15 thought maybe they got him. And then, apparently, someone
16 -- a suspect had been shooting at the 911 Southwest Broadway
17 apartments from the -- because those are all -- they stand
18 really high off the road.

19 And we were told that somebody was shooting from
20 up there and shot at a car. Shooting at a car on -- either
21 leaving their parking lot or on Broadway Drive. So that's
22 what we figured. There was -- that's why there was like 20
23 cop cars. Because there was like 20 police cars that night
24 there.

25 Q That's what a police officer told you had

1 happened?

2 A Yeah. They said they couldn't really disclose
3 much. But they said -- yeah, they said that the -- the
4 police officer told us that it was -- that somebody that's
5 been -- the suspect that's been giving them trouble all day
6 or something from downtown. And that they had the situation
7 under control. They told us not to worry. The police
8 officer just said we can't leave our -- nobody could leave
9 their house until it was done with. So we -- by then, it
10 was maybe -- you know, a couple hours had gone by. 9:30.

11 We figured we'd -- since we couldn't leave, we
12 figured we just -- we had our children with us in the house.
13 Me and my wife. Our three kids. And then, we're like, oh,
14 let's just watch a movie in the living room. Make a pizza.
15 Stay in. And then, I had a pizza in the oven and that's
16 when I -- when I was at the oven is when -- right outside of
17 our window we heard the gunshots.

18 By then it was 9:30 or 10 p.m. Whatever. I don't
19 know what time it was. And it just sounded like loud --
20 somebody banging on loud pans and -- pots and pans outside
21 of -- right outside of our window. And yeah, and then,
22 minutes after that, the police -- a couple police officers
23 came and knocked on our door. And they said they were --
24 they were asking if we were okay. If anybody was hit. And
25 then, they wanted to look around and see if any bullets or

1 anything had penetrated or come through our condo.

2 But they still weren't allowed to give us any
3 information so we didn't know what was going on. And we
4 still didn't know that somebody had been shot or anything.
5 Then -- and yeah, so it was just a lot of confusion. But we
6 just -- you know, right when we heard the gunshots, we just
7 all got on the floor, went downstairs. And like just laid
8 low. We knew something -- like some -- we knew it was kind
9 of a dangerous situation.

10 Q Is your wife -- is that Ms. Ilias? Did I say that
11 right?

12 A Yes.

13 Q Were you both inside watching the movie when you
14 heard the shots? I guess my question is did --

15 A Yes.

16 Q -- you guys see anything or was it just hearing it
17 from inside the apartment?

18 A Yeah. It was just seeing -- I mean, hearing it.
19 We didn't see anything because we weren't allowed to -- we
20 were told we weren't allowed to leave the apartment complex
21 anymore. Yeah, all of it was just heard.

22 Q Did one of you guys take a picture of the guy that
23 was outside asking about getting back or --

24 A Yeah, yeah.

25 Q Tell me about that.

1 A Yeah. Since it was already getting -- yeah, it
2 was my wife. Since it was already getting dark, it was
3 already pretty dark, we were like, what are they doing over
4 there. And she just had a newer cellphone that has -- like
5 her iPhone has the night -- it's a night vision -- or sort
6 of like the camera can kind of have the night picture
7 feature where it makes the pictures kind of seem like
8 daylight even though it's nighttime. So we couldn't really
9 see what was going on over there.

10 So she kind of took a picture or two. Trying to
11 get a better idea of what was going on over there at that
12 complex. But she ended up taking a picture of the police
13 officer posted up at the dumpster. And then, the gentleman
14 talking with the police officer. And he's on his cellphone
15 on the picture. And that's when -- yeah, she -- you could
16 see his face and stuff because it was really clear or
17 clearer with her video -- with her cellphone picture.

18 Q I see. And did you -- was it your understanding
19 that she was just taking the picture to kind of test out the
20 iPhone or was she trying to actually capture something going
21 on that she took a picture of?

22 A No. I think we were just trying to see -- yeah,
23 just see what was going on in general. It's not every day
24 that you see dozens of -- a couple dozen police cars
25 blocking off the entrance and blocking off Broadway Drive --

1 Q Sure.

2 A -- in both directions. So I think just to get a
3 better -- a clearer visual of the whole general -- yeah,
4 landscape. She took a few -- took a couple pictures. And
5 just so we could see better than with our own eyes. And
6 yeah, and then -- and that was like one of the pictures she
7 captured.

8 MR. HUGHEY: I see. Do any members of the grand
9 jury have any questions for Mr. Gutierrez?

10 Did that pretty much capture everything you guys
11 saw and heard that night or anything we missed?

12 THE WITNESS: Yeah. I mean, since we weren't
13 allowed to leave, we didn't know that somebody had been
14 shot. And we didn't know it was that guy either. And we
15 did -- the guy -- he wandered like by our parking lot, too.
16 And we kind of just -- I asked him like, hey, do you live
17 here. And he said, no, I'm just visiting a friend. And he
18 pointed towards farther condos in our same complex. And
19 he's just like, yeah, they're not letting anybody leave. So
20 I was like, oh, yeah.

21 And then we just -- we all just looked over --
22 from our parking lot, looked over onto Broadway Drive and
23 seen -- just seen all the cop -- all the police cars having
24 it blocked. And then, we're like, yeah, all right. And
25 that was pretty much it. He just seemed pretty calm, pretty

1 -- he just kind of wanted to get home.

2 And I think the only way down from there is --
3 they had it blocked -- the police officer wasn't letting
4 anybody. So yeah, we just went inside. Me and my wife just
5 went back inside. And didn't see him anymore until we
6 learned the next day that it was -- that he was the person
7 shot.

8 MR. HUGHEY: I think there was one question. Go
9 ahead.

10 GRAND JUROR: At any point, did the police
11 explicitly instruct you not to leave your apartment?

12 MR. HUGHEY: Could you hear that okay?

13 THE WITNESS: No. I didn't hear anything.

14 MR. HUGHEY: The question was, at any point did
15 the police explicitly instruct you not to leave the
16 apartment?

17 THE WITNESS: Yes. At a few points throughout the
18 night. Maybe a couple times before the shooting and then a
19 couple times after that.

20 GRAND JUROR: Thank you.

21 MR. HUGHEY: Any other questions? We can let you
22 go, Mr. Gutierrez. Hey, I really appreciate you taking the
23 time to connect with us today.

24 THE WITNESS: Yes. No problem. Thank you.

25 MR. HUGHEY: Yeah, all right. Take care.

1 THE WITNESS: You, too. Bye.

2 MR. HUGHEY: Bye. Mr. Kachlik, can you see and
3 hear us? Let's do this. Ms. Ilias, can you see -- oh, I
4 guess I can only do one at a time.

5 GRAND JUROR: Yeah (indiscernible).

6 MR. HUGHEY: I brought this on ourselves by making
7 two of them or three of them. Ms. Ilias, can you see and
8 hear us okay?

9 THE WITNESS: Hold on. I can hear you.

10 MR. HUGHEY: Yeah. We can hear you. You sound
11 great.

12 THE WITNESS: Let me get -- let me get this
13 camera.

14 MR. HUGHEY: I appreciate it. Thank you. Hi.

15 THE WITNESS: Hello.

16 MR. HUGHEY: Thanks for connecting with us this
17 morning and for being a little bit patient. I think we're
18 ready to go if you're good. We can -- if you have a place
19 with some privacy, we'll have you raise your right hand and
20 the foreperson will swear you in.

21 THE WITNESS: Can you tell me a little bit more?

22 MR. HUGHEY: Yeah. So we're in the grand jury
23 here. And basically, we just want to swear you in and ask
24 you some questions about the shooting incident on
25 February 19th of this year and really just -- we're going to

1 be asking you to tell us what you saw and heard just in
2 your own words.

3 THE WITNESS: Then what are my rights? Or like
4 why do I have to do -- do I have to do this?

5 MR. HUGHEY: Well, we'd like you to do this. I'll
6 tell you what, why don't we pause the record real quick and
7 I'll chat with you. Are you feeling like --

8 (Off the record.)

9 (On the record.)

10 MR. HUGHEY: We're back on the record. I'm going
11 to point you at the foreperson over here. And we'll ask you
12 to just raise your right hand and then we'll swear you in.

13 Can you go ahead and raise your right hand,
14 Ms. Ilias?

15 THE WITNESS: Do you need to see it?

16 MR. HUGHEY: Oh, well, I -- we can see it now.
17 Thank you.

18 ISIS ILIAS

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

21 DIRECT EXAMINATION

22 BY MR. HUGHEY:

23 Q Thank you. Could you start by just telling us
24 your first and last name and spelling them out?

25 A Isis Ilias. I-s-i-s I-l-i-a-s.

1 Q Thank you. I'm sorry. I was mispronouncing it
2 Alias so I won't do that again. Do you live in one of the
3 condos just off of Southwest Broadway Drive there?

4 A Yes.

5 Q I'll kind of just cut right to the chase. I want
6 to ask you about the evening of February 19th of 2022 of
7 this year. There were a couple shootings. Were you there
8 at that time?

9 A Yes.

10 Q Go ahead and -- if you can, just go ahead and tell
11 us in your own words where you were, what you saw and heard
12 that caught your attention and we'll go from there.

13 A What caught my attention was the police presence.
14 There's a time on my (indiscernible). It might be 6, 7, or
15 8. And the gunshots that I heard were around 8:45. But
16 again, that's like on my phone. And it has a time stamp on
17 that. But everything that happened was 6, 7, 8 in the
18 afternoon. And I was cleaning my porch. We were going
19 camping or we were going to a (indiscernible) event. But
20 the porch had like my overstock stuff. And so we were going
21 out there and looking through items. I was like making
22 posts on Instagram about some of the photos I was finding on
23 -- in my storage.

24 Then there was like several cops on Broadway Drive
25 in their trooper Suburban type of vehicles closing the

1 street. And my porch had been open and we had heard --
2 you hear it all the time. These condos are next to OHSU.
3 We're -- there's like a little dip, a valley, and then it's
4 OHSU. So you hear loud things, ambulances 24/7 especially
5 like at night. And so -- it's like ramping up to be night.

6 So then you hear this, boom, boom. And it just
7 sounded like either -- like a bomb, like explosion type, or
8 it was like -- but we heard it in the valley. We didn't
9 hear it up here. Later we found out it was the apartments
10 up at the top. Supposedly gunshots. I didn't see those.
11 That's what I heard because my door was open. Like I said,
12 that's what I was doing.

13 The police arrived after that. They didn't arrive
14 before that. They closed the street. They hung out for a
15 long time. And then, Kenney Guevara [sic], the guy that
16 they killed was standing next to them -- I have a picture.
17 He came over to Apartment 54 and we were all looking over
18 the rail because a high volume of police presence -- like my
19 body just wanted to know what is going on.

20 And getting too close to them and stuff was out of
21 the question. We just decided to stay in. But they were
22 over here in this parking lot so we were able to look over.
23 And he was there. And we were like -- he was calm. He had
24 just been with the cops. So to me, this is a no threat
25 person. You know, obviously, he's not part of it. So I was

1 like, okay.

2 But there's a lot of police presence. And I'm a
3 mom and I just don't have -- I don't speak to strangers. I
4 don't make small talk with men. I don't do those things
5 initially before this. I don't even want to talk to certain
6 people because I don't know what that's going to result in.

7 So I walked back into the apartment after seeing
8 him. But his presence was calm. He asked my partner --
9 they interacted. And just like, where do you live, man.
10 And what's going on. Stuff like that was exchanged. And I
11 was there and I heard that. And it was --

12 Q Is that --

13 A -- all calm --

14 Q Oh, sorry to interrupt. Is that Mr. Gutierrez
15 that you were referring to that he had an exchange with?

16 A Yeah, that's right. Yeah.

17 Q Sorry. Continue. Sorry to jump in.

18 A Then walked back in the apartment. And that's
19 when they shot Kenney [sic] in front of 53. So I'm 54.
20 I've seen pictures of him dead. He was wearing the exact
21 same thing that I took a picture of him. It's been
22 confirmed to me that it was him. So the calm person that
23 they had had interaction with is dead in front of 53 for the
24 rest of the night. They come and take pictures. There's
25 like investigators, detectives figuring out that stuff. So

1 that's what I saw that night.

2 I also -- when I heard the shots that killed
3 Kenney, they had so many police that it just like -- our
4 neighborhood got sprayed with bullets. And one of my
5 closest neighbors is 74. And 74 had a bullet go through
6 their window. And they had text (indiscernible). I was
7 like, hey, M.J., are you guys okay. I just -- you know,
8 these are -- it's all happening so you're just like -- you
9 start to wonder. M.J. wasn't in town with her daughter.
10 They were hanging out at a retreat. And Jacob was there.

11 And I was like, oh, I'll text Jacob. And he text
12 me a picture of the hole in the window. So when the cops
13 came after the spray of bullets, I didn't think there was
14 any bullets on my place so I told them to go to Jacob's. I
15 was like, go check if they're okay because at that point, we
16 didn't know where the bullets had come from until you go see
17 afterwards. And you see where the body was and like -- he
18 couldn't have just -- he couldn't have been (indiscernible)
19 like with an AK. I don't know. There's like different
20 stories.

21 From what I saw, I saw the dead body. I saw them
22 taking -- detectives taking pictures and being out here. I
23 saw him alive. I saw him calm. I saw the pictures that my
24 neighbors had sent me of the bullets that had gone through
25 their windows. I went outside and I saw the bullet holes

1 over here on my unit. And on the unit of 53. It went
2 right through the window. That's where the bathroom is.
3 This is where people live. And the place -- they don't know
4 how to use a Taser or I don't know if they don't know how to
5 use it.

6 They sprayed bullets into the neighborhood. And
7 that's what I saw. A ton of (indiscernible). And then,
8 yeah, they didn't really mark them correctly. Because my
9 porch in the front has two broken -- and they thought those
10 were bullets. But those are not bullets. Those are just
11 broken little porch things.

12 So yeah, I saw what was there before. This is
13 what they don't know is like -- we know what this feels
14 like. We know what it feels like to live here. And we know
15 our neighbors. And we all checked in on each other. Like
16 53 we were texting. And they're like, oh, yeah, here's a
17 picture of the dead guy. I was like, yep, that was him.
18 And we were just all talking like -- yeah, do you see this.
19 Do you see what's happening. (Indiscernible) have to walk
20 over the dead guy to get home. They were out of town.

21 So I saw from different perspectives and from the
22 apartment. I just came back inside. It's kind of unsafe to
23 be around -- the whole street was blocked off and the police
24 had just come into our parking lot. So physically, I saw
25 his presence. And then, later, I just -- through my own

1 video, I like would zoom in to the cops on the street
2 downtown or on Broadway. Excuse me. Then I would zoom into
3 my neighbors. I saw the pictures of my neighbors. And
4 yeah. Traumatic, yes. Traumatic because it was violent,
5 yes. And then, just -- it just seems really like -- yeah,
6 so I saw a lot.

7 Q Thank you. And again, I appreciate you sharing
8 with us what was I'm sure a traumatic experience. Let me
9 just make sure I'm understanding you correctly. It sounds
10 like you saw the guy that later you learned had been shot
11 when he was outside like interacting with the police and
12 that seemed like normal and calm. Is that right?

13 A Yeah. I have a picture. So --

14 Q I think I might have that picture, as well.

15 A Yeah, you -- yep. You might. It's -- I'm on my
16 -- I went out to my porch. Again, like I said, I stayed
17 really near my unit that night. But I got out on my porch
18 and I went over the balcony. And that's where you can see
19 down the entire condo. You can see to the west side.
20 That's it. Yeah.

21 Q Is this -- okay. So --

22 A And so that picture, I couldn't see because I was
23 -- I started recording but I couldn't see it was so dark.
24 So I zoomed in and then I just took a picture. And it's
25 like super bright. And from there, what Kenney does, he

1 walks to my unit. So right -- at that moment, he had just
2 talked to that cop. Then he came over here. So Ivan goes,
3 what unit are you in. Something like that. I don't
4 remember their interaction. Because I didn't talk. So he's
5 like, oh, yeah, I'm here visiting a friend.

6 Then Kenney -- we're like, oh, what did the cops
7 say. He's like, oh, yeah, it's just closed over there. So
8 the cops are telling him it's closed over there. So there's
9 like a normal interaction. So he's the guy that's creating
10 the -- if he's got a gun and stuff, didn't they grab him
11 over there? Anyways, he's over here. And he just tells us,
12 yeah, we can't go that way because it's closed. There's no
13 -- you can't go that way. Something like that. Because
14 like what's going on never got answered. We didn't know
15 what was going on. We just knew that way is closed.

16 So then that interaction. And then I just felt
17 super uneasy that -- and I didn't need to be out there. And
18 I have children. So I walked into my unit and I don't know
19 if Ivan stayed out there. But we were just kind of looking
20 -- so from there, he walks about 40 feet over here. Talks
21 for about two minutes. Looks over the balcony. We come
22 inside.

23 And the time from that picture to the time -- the
24 shooting -- look, we thought -- by the time we came back in
25 and he's told us that everything is closed, we thought that

1 the event was over. So to hear what went down afterwards,
2 it sounded like -- so that was the second sound of guns that
3 I heard. And that was really close. One of them hit right
4 here. Our corner of our unit. That's why it sounded so
5 loud. Then they were just sprayed right behind me like
6 right through here. There are multiple -- like I think we
7 have pictures and so I know we've counted over like 10 --

8 Q And --

9 A -- that just shot into the neighborhood.

10 Q And that was when you were inside with your kids
11 is when you heard those gunshots happening outside?

12 A Yeah. And I want to say I have like a time-
13 stamped video like probably 8:45-ish.

14 Q Did --

15 A Or like 8:41. But that's when we heard the police
16 gunshots (indiscernible). And that's when we heard -- it
17 sounded like fireworks. The kids actually said, are those
18 fireworks. Then we ran downstairs to the closet. Hid with
19 the kids. They -- yeah, this is -- it's not even something
20 I really talk about to them. Because we -- I don't know
21 how. And then, we weren't asked to -- then the police came
22 over the balcony.

23 And they were like, are you all okay. There's a
24 hole in your unit. And that's when I started recording
25 again. And I went and met up with the cops and that's when

1 I told them, go to 74. Like he has a bullet.

2 Q Seventy-four is the neighboring condominium
3 number?

4 A Yeah, 74 is one of the units here at this complex.

5 Q Understood.

6 A And they're the -- it's the ones that I -- I get
7 along with them because they have a kid, too. And we go
8 play dates and stuff like that.

9 Q Sure. Did you see any of the shooting from your
10 unit or just hear it when you were --

11 A Hear.

12 Q Sorry. You broke up a tiny bit there. Just heard
13 it?

14 A Yeah.

15 Q Could I ask you one more question? You were -- I
16 think you were referring to the deceased person as Kenney.
17 Is -- did you know him by name or hear that later or --

18 A Isn't it on the docket right there when you guys
19 like sent us this? It says Kenney Guevara.

20 Q Is that where you were getting that from?

21 A Yeah.

22 Q Did you actually know the deceased person's name?

23 A No, I don't know them.

24 MR. HUGHEY: Understood. Let me turn -- do any
25 members of the grand jury have any questions for Ms. Ilias?

1 Hey, I understand that was a traumatic thing for you and
2 your family. And I appreciate you kind of revisiting it
3 here today. Thank you for taking the time to do that.

4 THE WITNESS: All right. Bye.

5 MR. HUGHEY: Okay. Take care. Let's go ahead and
6 we can pause the record again.

7 (Off the record.)

8 (On the record.)

9 MR. HUGHEY: Thank you so much. We're back on the
10 record. Okay, Mr. Kachlik. We are going to have you -- I'm
11 going to point you at the foreperson. We'll ask you to
12 raise your right hand from where you're sitting there. Then
13 we'll swear you in. Thank you.

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

17 DIRECT EXAMINATION

18 BY MR. HUGHEY:

19 Q Thank you very much. To start with, can you just
20 tell us your first and last name and spell them both out?

21 A Yeah. Eric, E-r-i-c. Kachlik, K-a-c-h-l-i-k.

22 Q Thank you. Do you manage the apartment complex at
23 911 Southwest Broadway Drive?

24 A Um-hum. Yeah. I own, I manage.

25 Q Own and manage?

1 A Correct.

2 Q Got you. Thanks. Do you also live in one of the
3 units there?

4 A I do. Yeah, temporarily I do.

5 Q Sure. I want to ask you about a shooting incident
6 that happened on February 19th of this year. Were you there
7 that night?

8 A I was.

9 Q And I guess let's do two things. I want to ask
10 you what you personally, directly saw and heard and then
11 also we'll kind of circle back and ask what you were able to
12 see and learn from video surveillance. That sound good?

13 A Sure, yes.

14 Q Give us a sense -- we've looked at an overhead map
15 of the apartment complex. Give us a sense -- in fact, I'll
16 share my screen with you here so you can see it, as well.
17 Give us a sense of where your apartment is that you're
18 living in or that you were living in on that night.

19 A When you come into the -- between the two
20 buildings there, you pull straight forward and I'm the
21 upstairs corner unit. So I've got a window facing my
22 parking lot. And a window facing the condos next door.

23 Q So like the end unit that's adjacent to Southwest
24 9th Avenue there?

25 A Correct. Upstairs, top unit.

1 Q Got you. That's helpful. Were you there on the
2 evening of February 19th of this year?

3 A I was.

4 Q Did you hear something that got your attention?

5 A Yeah, definitely.

6 Q Tell us about that. Just go ahead and start kind
7 of at the beginning in your own words. What you saw, what
8 you heard.

9 A Yeah. I was watching TV. And I all of a sudden
10 heard like probably six or seven gunshots. So I -- at that
11 time, I kind of ran into the bedroom and -- hide from it. I
12 didn't know exactly what was happening.

13 Q What time of day was this?

14 A Approximately 7:30, 8:00 in the evening.

15 Q Did you try to look outside or just stay in the
16 bedroom?

17 A I have cameras so I can see everything going on on
18 my phone. So I pulled up the cameras to see what was
19 happening.

20 Q These are like surveillance security cameras
21 mounted to the outside of the apartment building?

22 A Correct. Yeah, I've got --

23 Q And you're able to access the camera footage
24 through your cell phone?

25 A Remotely. Correct.

1 Q I see. Can you look at --

2 A Yes.

3 Q -- previously recorded footage, as well as view
4 the cameras in real time?

5 A Yes.

6 Q When you were in the bedroom, which of those two
7 things did you do first? Look in real time or look at
8 previously recorded footage?

9 A I looked at real time. What was -- to see what
10 was happening.

11 Q Yeah. Tell us what you saw in real time as you
12 watched.

13 A I pulled up the cameras and I looked at the
14 parking lot. And I could see a vehicle that had swerved off
15 and hit the rock retaining wall to the end of the parking
16 lot there. And then, later on, I did play the video back to
17 kind of see what was happening. But at that time, I saw the
18 car was pinned up against the retaining wall. The horn was
19 blaring so I could hear the horn the whole time this is
20 happening.

21 Q Did you --

22 A And then --

23 Q Did you then -- I guess did you keep watching live
24 or did you switch back to look earlier and see what had
25 happened on the video?

1 A I -- at that time, I watched live. The Portland
2 police arrive very quickly after the shooting. Within a
3 couple of minutes. So at the time, I was watching live.
4 And then, I did -- I don't know. Ten, fifteen minutes --
5 I'm guessing about 10, 15 minutes later, I did rewind and
6 watch to see exactly what had transpired.

7 Q Had you talked to the police at that point or were
8 you still just doing that on your own in the bedroom?

9 A Yeah. At that time, I had come to the front
10 window and kind of looked out. And I could see the car
11 directly below my apartment there. And I did watch the live
12 video. And I could see the Portland police had pulled in.
13 One kind of up by the car. And then they -- over time, they
14 had more and more officers pull in. And I did rewind to
15 watch what happened.

16 And I could see the -- my one tenant from
17 Apartment 9 was in his car in the parking spot just starting
18 to back up. And there was a fellow that all of a sudden
19 pulled a gun out and started firing at the vehicle. He had
20 tried to take off in the vehicle and hit the rock wall. I
21 could see him jump out the passenger side of the vehicle and
22 run down the hill to get away. And in the meantime, the
23 gunman had ran up the stairs kind of around and past a tree
24 at the top of the staircase there. Kind of looked to see
25 what -- where the -- my tenant had ran off to. Then from

1 there, he ran back into the apartment. Apartment 9.

2 Q Is that in -- there's two levels. There's upper
3 level and a lower level. Is that right?

4 A Yep. Correct. It's a lower level.

5 Q Is that directly beneath Apartment 10?

6 A Correct, yes.

7 Q Just to be clear -- I know you already said this.
8 But just to be clear, this is -- you're watching on the
9 cameras. You're not seeing this directly through the window
10 or something.

11 A This was -- no, I watched window but this was on
12 camera seeing him go into the apartment, seeing the
13 gunshots. I only heard the gunshots. And heard --

14 Q Got you.

15 A -- probably six or seven shots is about what I
16 heard.

17 Q And you said that the guy that you saw in the car
18 getting shot at, you recognized him as the tenant of
19 Apartment 9?

20 A I recognized the car and then when he jumped out
21 the passenger side, I could tell that that was the tenant.
22 He's a tall guy.

23 Q I see.

24 A It looked like him from what I could see at the
25 time.

1 Q What's his name? Do you know or did you know?

2 A I do know his name. It is -- I'm drawing a blank.
3 I could look it up on my computer real quick.

4 Q Is that Mr. Penner (ph.)?

5 A Yeah, yeah, yeah. Mr. Penner. Yes.

6 Q And the guy that you saw with the gun that was
7 shooting, did you recognize that person at all or was that a
8 total stranger to you?

9 A It was a stranger. I saw him earlier in the day.
10 Him and Mr. Penner were outside smoking a cigarette standing
11 outside in the front. So I had seen him earlier in the day.

12 Q Did -- take us -- so you're in your bedroom.
13 You've kind of seen this footage to see what happened. What
14 happens next? At some point, do you talk to the police or
15 -- pick us up there.

16 A Um-hum. Yes. The police did call me. They had
17 me text pictures of the gunman. I had been in contact with
18 the police throughout the evening. It lasted probably a
19 couple hours. About -- I'm guessing about an hour-and-a-
20 half into it, the police realized they had a camera on the
21 back side of the building. So they asked if I had watched
22 it. At that point, I had not watched the back of the
23 building. So I did play the video and I watched through it.
24 And saw somebody run out the back towards the condos next
25 door. So I did some screenshots of the pictures and text

1 those to the officer that I had been speaking with.

2 Q I was going to -- that was going to be my next
3 question. So when you saw the gunman on the video, you took
4 like a screenshot or a still image and sent it to one --

5 A Yeah.

6 Q -- of the officers?

7 A Yeah, I took several. Some in the front. Some in
8 the back. The front one was earlier in the evening that
9 they had me screen shot and text the one officer. Then when
10 they realized I had a back camera, I had kind of forgotten.
11 I was more focused on the front of the building at the time.
12 So I didn't even think about watching the back camera. But
13 they asked to review it about an hour, hour-and-a-half into
14 the situation there. And I did. Yep. That's in the front
15 of the building.

16 Q Is this one of the still images that you emailed
17 or texted to the -- one of the police officers?

18 A It is.

19 Q Got you. Thank you.

20 A And that's right after the shooting had occurred.
21 He was running back into the apartment at that time.

22 Q I see. Yeah. Did you stay in your apartment or
23 did you come out and talk to police in person?

24 A I -- at one point, I was going to try and come out
25 and they were surrounding the building. And they said to

1 stay inside so I stayed in the apartment the whole time
2 until after everything was over.

3 Q Tell me about that. When they were surrounding
4 the building, could you hear what was going on outside?

5 A I could hear a lot of it. Yes.

6 Q What was happening outside that you could hear?

7 A Well, I could see there were several -- there was
8 a fellow behind -- I've got my generator out in the parking
9 lot. There were a couple officers with AR-15s. And the
10 other ones surrounding. There was a group of officers by
11 the dumpsters at the condos next door. There were several
12 police cars up and down the street. And at one point -- I
13 didn't hear a lot of what they were saying. But at one
14 point, they did get on the microphone and ask the -- let the
15 gunman know that they were coming into the apartment.

16 Q Over like a loudspeaker or something?

17 A Over a loudspeaker. Yes.

18 Q Did you hear gunshots then later, as well?

19 A I did, yes.

20 Q Tell us about that. Where were you and what did
21 you hear?

22 A I was standing in my living room. And I was
23 looking at both my side window towards where the officers
24 were standing up by the dumpsters at the condos and kind of
25 in the front. I could kind of see both areas. And they got

1 on the microphone there and they asked three times. They
2 said that they were going to come into the apartment. They
3 were going to use force if needed for him to come out or
4 they were coming in.

5 After the third time -- I was standing, I could
6 see, I could hear few gunshots and then a barrage of
7 gunshots. And probably 30 after that. And then a bunch of
8 commotion by the condos there by the dumpster. I could see
9 what was my tenant there hiding and running behind a car.
10 Then I had kind of laid down on the ground right after I saw
11 that. I didn't want to get hit by a stray bullet so I laid
12 down after I seen that.

13 Q Which --

14 A And then --

15 Q Oh, sorry. Continue. I didn't mean to cut you
16 off.

17 A Yeah, go ahead.

18 Q Oh, I was just going to ask, which tenant did you
19 see over by the dumpster there?

20 A I saw Chris. Mr. Penner.

21 Q Oh, okay.

22 A And there were several officers standing over
23 there by that section of the condos next door.

24 Q Do your cameras -- do any of your cameras reach
25 back into the driveway of the condos or are they pretty much

1 limited to the area around the apartments?

2 A They're my area. They just catch the entry of the
3 condos but not up into their parking lot.

4 Q And the -- that second shooting that you were just
5 describing hearing --

6 A Yeah.

7 Q -- were you able to see anything that happened in
8 the shooting or just hear the shots?

9 A I could see a little bit. It was a little dark.
10 So I couldn't see exactly what was happening. There was
11 lots of people scurrying. And I could hear the shots. I
12 could see some flashes of the gun muzzles. And at that
13 time, I did drop to the ground. I didn't want to get hit by
14 a stray bullet. I wasn't sure which direction these -- the
15 bullets were coming.

16 Q After this was all over, did you end up talking to
17 detectives about everything you'd seen and heard?

18 A I did.

19 Q And did you also provide police personnel with
20 access to or copies of the video surveillance footage?

21 A I don't recall if they ever asked. I do have some
22 saved still of the incident. But I do not recall if they
23 ever asked for it.

24 Q You don't remember whether the police got a hold
25 of those -- that footage that night?

1 A That night they did not. No. I spoke to
2 Detective Dickinson the next day. And I don't believe he
3 asked for video.

4 Q Anything else important about this whole episode
5 that we haven't talked about that jumps out in your mind?
6 Or did that pretty much capture everything you saw and
7 heard?

8 A Yeah. I believe that captures everything.

9 MR. HUGHEY: Do any members of the grand jury have
10 questions for Mr. Kachlik? Hey, I appreciate you connecting
11 with us today. We can let you go and thank you again.

12 THE WITNESS: Yeah, thank you. Have a good day.
13 Bye.

14 MR. HUGHEY: You, too. Take care.

15 GRAND JUROR: Is he mistaken about not -- him not
16 handing over the footage or did a detective really not ask
17 him for it?

18 MR. HUGHEY: Hang on one sec. I just want to see.

19 GRAND JUROR: Just curious if they didn't ask.

20 GRAND JUROR: Yeah.

21 MR. HUGHEY: Let's see. I think that might be up
22 for our witnesses. We can go off the record.

23 (Off the record.)

24 (On the record.)

25 MR. HUGHEY: We are back on the record in DA Case

1 No. 2445351. This is a death investigation related to an
2 officer-involved shooting with the involved officers
3 Zachary Kenney and Reynaldo Guevara. This is DDA Sean
4 Hughey. It is July 27th, 2022. We're in Grand Jury A.
5 This is Case No. 43. And we are continuing with the witness
6 testimony.

7 We're ready for you. Come on in. Good afternoon.
8 We'll have you raise your right hand.

9 JASON KOENIG

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

12 DIRECT EXAMINATION

13 BY MR. HUGHEY:

14 Q Good afternoon. Could you start by introducing
15 yourself and spelling out your first and last name, please?

16 A I'm Jason Koenig. J-a-s-o-n K-o-e-n-i-g. I'm a
17 detective with the Portland Police Bureau. I work in the
18 Homicide Unit.

19 Q How long have you been a Portland police
20 detective?

21 A A little over four years. Is -- or just about
22 four years as a detective. I've been with the police bureau
23 for almost 21 years.

24 Q How long have you been part of the homicide unit?

25 A A year ago from April. So a year and three

1 months.

2 Q Were you assigned to assist in investigating
3 really what was two shootings but culminating in an officer-
4 involved shooting in the evening of February 19th of 2022?

5 A Yes, I was.

6 Q Did you, along with other detectives, respond to
7 the scene at 911 Southwest Broadway Drive that evening?

8 A Yes, I did.

9 Q Let's see. At that scene, did investigators
10 locate the body of the deceased, Joel Arevalo?

11 A Yes.

12 Q And any time somebody is killed by way of a
13 gunshot wound or an apartment gunshot wound, does the
14 medical examiner's office collect the body and transport it
15 to the medical examiner's office to conduct an autopsy?

16 A Yes.

17 Q Did that happen with the deceased body of Mr.
18 Arevalo?

19 A Yes, it did.

20 Q Do personnel from the medical examiner's officer
21 actually come to the scene and have their own transport
22 vehicle and everything?

23 A Yes.

24 Q Have you attended a number of autopsies just
25 generally in your work as a detective?

1 A Since going to homicide, yeah. I've probably
2 been to seven or eight.

3 Q What -- I'm not asking for like the highly
4 technical medical things but just generally, what is going
5 on at an autopsy? Who is conducting it and what's being
6 done?

7 A So it's at the State Medical Examiner's Office.
8 There is a medical examiner, a doctor with the -- from the
9 office there that is in charge and does the examination.
10 They'll usually have one or two assistants that are there
11 with them helping prep the body or assisting in the autopsy.
12 But they're doing an examination of the body primarily to
13 determine the cause of death.

14 Q And I think you said the medical examiner is
15 actually a medical doctor?

16 A Yes.

17 Q Do they -- essentially open up the body, look at
18 the organs, look at any injuries, do all that sort of thing?

19 A Yes. They're -- they examine the body. Weigh all
20 the organs, examine all the organs, and look at the
21 injuries.

22 Q Was there an autopsy performed by a medical
23 examiner for Mr. Arevalo?

24 A Yes. It was Dr. Michelle Stauffenberg (ph.) with
25 the State Medical Examiner's Office.

1 Q Was that on February 21st of this year?

2 A Yes.

3 Q Did you attend that autopsy?

4 A I did.

5 Q Can you -- were there apparent gunshot injuries to
6 Mr. Arevalo that you could observe and then also that Dr.
7 Stauffenberg identified?

8 A Yes. She -- like you said, they were visible to
9 me, as well. But she confirmed that she believed there were
10 gunshot wounds -- two gunshots wounds. One to the upper
11 left arm of Mr. Arevalo and one to the left side, kind of
12 right below the armpit.

13 Q Were those two to the upper left arm and to the
14 upper left side of the torso the only two gunshot injuries
15 that had hit him?

16 A Yes.

17 Q And does -- when a medical examiner conducts and
18 autopsy, do they determine a cause of death and also a
19 manner of death?

20 A Yes.

21 Q What was the cause of death for Mr. Arevalo?

22 A And a quote from Dr. Stauffenberg was that the
23 cause of death was gunshot wound of the chest and left arm.

24 Q And when the medical examiner identifies a cause
25 of death, is that essentially a description of the mechanism

1 of how the person actually was injured or came to die?

2 A Yes.

3 Q What was the manner of death that Dr. Stauffenberg
4 concluded applied to Mr. Arevalo?

5 A Homicide.

6 Q Unlike, I guess, a cause of death where you're
7 just going to be describing physically what happened, is the
8 manner a choice from one of a number of things like
9 homicide, suicide, accident, things like that?

10 A Yes.

11 Q And essentially, does the manner of death homicide
12 mean that a person was killed by the conduct of another
13 person?

14 A Yes.

15 Q Is it a commentary on whether that conduct was or
16 was not lawful or just simply the fact that a person caused
17 the death of another person?

18 A Just the fact that a person caused the death of
19 another.

20 MR. HUGHEY: I think those are essentially the
21 questions. Let me turn to the members of the grand jury.
22 Do any of the grand jurors have questions for Detective
23 Koenig related to the autopsy. All right. I think you're
24 all set. Thank you.

25 THE WITNESS: Okay.

1 GRAND JUROR: Thank you.

2 GRAND JUROR: Thank you.

3 MR. HUGHEY: Let's see. We can pause the record
4 real quick. I'm just going to --

5 (Off the record.)

6 (On the record.)

7 MR. HUGHEY: We are back on the record. And
8 calling our next witness. Come on in. Have you raise your
9 right hand.

10 ERIK KAMMERER

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

13 DIRECT EXAMINATION

14 BY MR. HUGHEY:

15 Q Thank you. Go ahead and have a seat. And the
16 first thing I will ask you is just to introduce yourself and
17 spell out your first and last name when you do that.

18 A Erik Kammerer. E-r-i-k K-a-m-m-e-r-e-r.

19 Q Thank you. How are you employed?

20 A I'm a detective with the Portland Police Bureau.

21 Q How long have you been a Portland police
22 detective?

23 A I've been a detective since 2003.

24 Q How long have -- or are you currently with
25 Homicide Unit or Homicide Division?

1 A I am currently assigned to the Homicide Detail.

2 Q Detail. That's the word I was looking for. How
3 long have you been assigned to the Homicide Detail?

4 A Since 2007.

5 Q Can you give us a sense for what the Homicide
6 Detail does within the broader collection of detectives in
7 the Portland Police Bureau?

8 A Absolutely. So obviously, we investigate murders.
9 We also take on kidnappings. And significant uses of force
10 by the police, including shootings, officer-involved
11 shootings.

12 Q So any time there is an officer-involved shooting,
13 are the homicide detectives going to investigate?

14 A Yes, that's correct.

15 Q How -- and when we say like detectives are going
16 to investigate, how does a detective first learn that there
17 has been either an officer-involved shooting or any other
18 type of incident that you might respond to like a murder or
19 something?

20 A So generally, I'll receive a page from my sergeant
21 or a phone call informing me that something has happened and
22 we need to respond to the scene.

23 Q Do a number of detectives respond day or night?

24 A Yeah, absolutely. We're on call 24/7. And you
25 get the whole team. So you'll get the primary investigator

1 and the primary's partner. Then you'll get two detectives
2 that are dedicated just to processing the crime scene, as
3 well as additional detectives. At least two additional
4 detectives but usually more than that. That will conduct
5 any kind of interviews that need to be done or canvassing,
6 video canvas. Basically, anything that needs to be done
7 over the course of the initial investigation.

8 Q Did you respond to the scene in the area of 911
9 Southwest Broadway Drive on the night of February 19th of
10 this year?

11 A I did, yes.

12 Q Was that because there had been an officer-
13 involved shooting?

14 A That is correct. Yes.

15 Q Were you assigned to be the primary detective to
16 this incident?

17 A I was, yes.

18 Q Give us like just a couple sentence summary of
19 what the investigation revealed had happened and then we'll
20 kind of narrow in on like exactly what evidence led you to
21 reach that conclusion.

22 A Sure. Officers had been at this location looking
23 for an individual that had shot a gun at somebody else that
24 lived there. During the course of attempting to locate this
25 person, that same person walked up to the police perimeter

1 and ended up pulling out a gun on a couple officers that
2 were there who fired at him.

3 Q Were the officers that were there and who fired at
4 him Acting Sergeant Zachary Kenney and Officer
5 Reynaldo Guevara?

6 A Yes, that's correct.

7 Q Real quick. Let's pull up -- and I'll -- sorry,
8 I'll ask you to kind of turn around. I've got a satellite
9 image from Google Maps of the area. I think this is from
10 your case file. Can you orient us to where both of those
11 incidents happened?

12 A Sure. Stand up for this.

13 Q Yeah, that's great. Just talk nice and loud so
14 the microphone picks you up.

15 A Absolutely. So officers initially responded to
16 the shooting that happened in this parking lot here of 911
17 Southwest Broadway. And the command post area was kind of
18 set up right here in the driveway off of Southwest Broadway
19 Drive. So it's labeled Southwest 9th Avenue but it's really
20 just a driveway.

21 So they were in this area. And had moved over
22 into this parking lot over here that's also labeled
23 Southwest 9th Avenue. But that's just a parking lot for
24 these units over here which are separate from this unit.

25 And the perimeter was kind of over here in this

1 location. And that's where the second shooting had
2 occurred. The one that involved the officers.

3 Q When you use the term command post being sort of
4 in that driveway, what do you mean by command post?

5 A In this case -- I'll sit down --

6 Q Oh, sure. Yeah.

7 A -- since it's going to take a while to explain.

8 Q Thanks.

9 A So in this case and in most cases, it's not just a
10 pell-mell rush of a bunch of officers showing up and running
11 around doing things. It's very controlled. So in this
12 incident, we had an overall incident commander who was
13 Sergeant Ortiz. Then in that role she is directing other
14 units. So we'll have a unit that's specifically designed to
15 communicate. So any communications, loud hailing, or phone
16 calls, any kind of negotiation, there's a unit that's just
17 designated to do that. And Acting Sergeant Kenney was in
18 charge of that unit.

19 Then you'll also have a unit that's designated
20 just to take custody of a person. So if they are in a
21 residence and come out, they will -- this is the unit that
22 will move up to take custody of the person. Or have them
23 come out to them. It's to avoid this crossing of roles. So
24 everybody knows what they're doing. Everybody has a job and
25 nobody is trying to do too much.

1 So the overall area was run by the incident
2 commander and that's what I'm referring to as the command
3 post in this case. So it's not like a big building or a
4 vehicle. It's just a gathering of people in an area.

5 Q Kind of like where most people would be assembling
6 and talking about what the next steps would be. Would be in
7 that little driveway --

8 A Yes.

9 Q -- leading -- okay, got you. Let's see. What --
10 before we come back to the specific incident. When -- are
11 there some procedures that are put in place any time a
12 police officer fires their weapon?

13 A Oh, yeah. Absolutely.

14 Q What happens when a police officer fires their
15 weapon both for that police officer right off the bat and
16 then what are some of the next steps that an investigating
17 detective would do?

18 A When an officer fires their weapon, they'll make a
19 notification of that usually via the radio. Something
20 similar to, shots fired, or some kind of phrasing like that.
21 That kind of lets everybody know, police officer just fired
22 their weapon. Medical will be started immediately to
23 provide medical aid for the person that's been shot. The
24 officer will be removed from that scene as soon as possible.
25 Separated, monitored. Investigators are notified. We

1 respond.

2 The involved officer is provided an attorney.
3 Then as the lead investigator, I will work through that
4 attorney. We'll do a round countdown of the officer's
5 firearm. This is for accountability purposes. These
6 usually occur under very high-stress situations. So most
7 people cannot keep track of -- well, I fired four rounds, or
8 I fired exactly five rounds. They just know that they fired
9 a few times.

10 So we'll do a countdown on the weapon. Determine
11 how many rounds are missing based on how many rounds they
12 should have. Then we'll have an idea of how many rounds
13 were fired. Then we'll go out to the scene and we'll
14 compare that. So if we're missing three rounds from the
15 firearm and there's three casings at the scene, then we know
16 we have a match. That we found everything. If we're
17 missing five rounds and we've only found three, then we know
18 we need to look more to find the remaining casings.

19 Q Got you. Thank you. That is -- so let's -- we'll
20 come back to that in the context of this particular
21 investigation. But now let's go sort of to the broader
22 scene in this investigation.

23 When you responded, you mentioned that there had
24 been sort of an initial shooting in the parking lot. Did
25 you take a look at where that had happened?

1 A Yes.

2 Q What -- give us a quick summary of what you saw
3 and then we'll flip through some pictures that capture that
4 scene.

5 A Yeah. If I could just reference this map again
6 here.

7 Q Oh, yeah. Sure.

8 A So there's a rock wall kind of along the back of
9 the parking lot here. So there was a silver car that had
10 crashed into that wall. There were bullet holes in that
11 car. Then there were casings kind of in the parking lot
12 here. And there's one over in this area, as well. So we
13 knew some sort of shooting event had occurred here involving
14 that vehicle.

15 Q Let's see. And this is probably a good picture to
16 look at as we look -- actually, I'll flip back and forth.
17 Tell us what this picture is capturing here.

18 A So this is that parking lot kind of towards the
19 east end of that 911 building. And then you have stairs
20 going up from the parking lot. The building is set up above
21 the parking lot. So you have a set of stairs going up to
22 the actual residences.

23 Q Even though -- obviously, you can't see the
24 elevation changes from this overhead. This is like this
25 part of the apartment building that we were just looking at?

1 A Yeah. You can reference the little white grided
2 out area there that's -- allows access to the stairs from
3 the parking lot so people don't park in front of the stairs.

4 Q Oh, I see. I see. Okay. And that's -- I see
5 what you're saying. Let's see. This is kind of looking
6 from the bottom of the stairs. What are we looking at here?

7 A So yeah, if you're at the bottom of the stairs,
8 you'd be looking east. And there's that silver car that's
9 kind of crashed into that wall. Then this is Officer
10 Fenske's patrol vehicle. She was the first person to
11 respond to the scene.

12 There was a lot going on in that initial call
13 which didn't include a shooting. So when Officer Fenske
14 responds she's not aware that the shooting is occurred. But
15 she does see the crashed car. So she pulls her car in to
16 block the car in. So that's why her car is right there.

17 Then these placards that you see here, the little
18 yellow things, those denote, in this instance, shell
19 casings. So once we process the scene, our criminalists
20 will come out and they'll start putting these placards on
21 items of evidence that are going to be collected. And
22 that's what you're seeing there.

23 Q This is kind of the same view.

24 A If I may, from this picture --

25 Q Sure.

1 A -- you can actually see (indiscernible) but you
2 can see through to the parking lot, if you will, of those
3 other buildings. So deep down there where that car is,
4 that's where that other shooting occurred. The one we're
5 here for.

6 Q So if we jump back to the map, what we see here
7 with like the brick-colored end of the building, that would
8 be the western end of this condo building?

9 A Yes, that's correct. The one that's labeled 859
10 on the map.

11 Q Got you. Same. Let's see, and these -- I don't
12 know if these are -- are there -- is there a shell casing
13 visible or maybe it's right next to that?

14 A Yeah. It's probably on the other side of it. So
15 these have a little cut-out like a little L-shaped cut-out.

16 GRAND JUROR: Yeah, I see it.

17 GRAND JUROR: It's on the right.

18 THE WITNESS: Yeah.

19 BY MR. HUGHEY:

20 Q Were those -- were these 9mm casings found in the
21 parking lot here?

22 A That's correct. Yes.

23 Q Do you recall how many were found?

24 A I don't recall the exact number. No.

25 Q At least the two that we see out -- here is a

1 close-up. Yeah.

2 A Yes. We know from the video that more rounds were
3 fired than we were able to locate casings for.

4 Q Oh, okay. Got you. Was this determined to be
5 Mr. Penner's car?

6 A Yes. This vehicle belongs to Christopher Penner
7 who is a resident of Apartment Number 9 in this location.

8 Q Was there some damage to the Mazda here?

9 A Yes.

10 Q What kind of damage are we seeing?

11 A So you have a broken window on the driver's window
12 there. Then the windshield, as well. Those were caused by
13 bullets going through there.

14 Q And was this how the car was with this passenger
15 door popped open?

16 A Yes, that's correct.

17 Q This gives kind of a decent view looking back up.
18 Do you know -- is Apartment 9 -- is it one of these two?

19 A No, it's not. It should be this apartment over
20 here.

21 Q Oh, okay. Further. This one.

22 A Yeah.

23 Q So almost like at the top of the stairs?

24 A Yeah, that's correct.

25 Q Got you. This is just sort of giving a broader

1 look from the driveway area?

2 A Yeah. So Broadway Drive would be back here. And
3 this is the driveway coming in. Then it splits into 911.
4 Then the other unit is on the other side.

5 Q I think we're back to Mr. Penner's car. What are
6 these placards that we're looking at?

7 A So items of evidence that are going to be
8 collected are given a number. Then items of evidence that
9 can't be collected but can be shown are given a letter. So
10 in this case, D denotes a bullet strike. So the initial
11 strike will be at D, a letter. Then as we start tracking
12 that strike through items, they'll get a number to show a
13 path. So D will be the initial strike. Then D1 where it
14 hits next. D2, D3, et cetera.

15 Q And is this a bullet strike here in the door
16 pillar?

17 A So 4 is actually a bullet.

18 Q Oh. Is that -- is this actually metal bits right
19 here?

20 A Yes, yes. That's correct.

21 Q Got you. So unlike a letter, that can be
22 collected out of the pillar and collected as evidence?

23 A That's correct, yes.

24 Q Now we're looking at D --

25 A Yeah, so D is the initial strike to the

1 windshield. The bullet penetrates the windshield.
2 Continues on. Hits the (indiscernible) pillar of the
3 vehicle and then it's -- that's D1 where it hits and is
4 collected as item 4.

5 Q Oh, okay. Got you. So like basically, was it
6 determined that the entry here is D and then the next part
7 where that projectile hit was here at D1?

8 A Correct, yes.

9 Q This is probably -- maybe an easier to see view.
10 Let's see. Let's move now to the -- so that was the scene
11 over in the parking lot of 911 Southwest Broadway Drive.
12 And you said that the shooting where officers were involved
13 was down in this driveway that's labeled Southwest 9th
14 Avenue but it was really just kind of a driveway in those
15 condos?

16 A Yes, that's correct.

17 Q And for members of the grand jury, I mentioned
18 this, we're going to look at some photos of that. I think
19 there will be a photo of Mr. Arevalo's deceased body just to
20 give people a quick heads-up. What are we -- what vantage
21 point is this picture showing?

22 A So we're still facing east. But west of that
23 driveway that leads into the two separate apartment areas.

24 Q So like looking down this driveway?

25 A Correct, yes.

1 GRAND JUROR: So those blue things are trash
2 cans. That's what we were asking earlier.

3 THE WITNESS: Yeah. So the dumpster and then
4 recycle bins there. Those are of some importance.

5 BY MR. HUGHEY:

6 Q What makes you say that those are of some
7 importance?

8 A Because people were standing at that location at
9 the time that this incident occurred.

10 Q Got you. Was that Mr. Brent Macias and his son?

11 A Yes. And Mr. Penner and his girlfriend were also
12 in that vicinity.

13 Q And then these are like open carports on the left
14 side?

15 A Yeah. They're -- so you have a carport underneath
16 with residents above it. Then there's two vehicle spots per
17 carport.

18 Q And is this the body of Mr. Arevalo that we see
19 over here?

20 A It is, yes.

21 Q We can -- let me go back a sec. We can see a
22 number of placards. Is every placard here necessarily a
23 shell casing or are these marking other pieces of evidence,
24 as well?

25 A No. They're not all shell casings. Some are just

1 other items of evidence that we've identified. Every item
2 of evidence gets a placard.

3 Q And is this looking basically back out from
4 roughly the dumpster?

5 A Yeah. So you're looking west. And in the
6 distance then you can see the driveway of 911 Southwest
7 Broadway or the parking lot. Excuse me.

8 Q And this police car that we can see, is that the
9 one that was sort of blocking in the Mazda?

10 A Yes, correct.

11 Q There's a couple -- so this is, I think, just in
12 the first carport here. There's a couple items marked with
13 placards. What are these items if you recall?

14 A Yeah, so we dodn't know what's evidence and what's
15 not when we get there. We haven't talked to all the
16 witnesses yet. So anything that -- this doesn't look like
17 it should be here. You know, you usually don't find
18 someone's keys or wallet just laying in carport. So we
19 marked those as evidence. We'll collect them. We'll go
20 through it later. And then, okay, is this really evidence
21 or can it be explained by talking to people and then -- now,
22 you know, we understand why it's there.

23 Q Were you able to figure out where those keys and
24 wallet came from?

25 A Yeah. They were the personal property of -- I

1 believe it was Mr. Macias who had been in that vicinity.

2 Q Then what is this -- what are we seeing from this
3 picture?

4 A The carports are numbered sequentially starting
5 with number 13 and then moving down. So we're at 15, 16,
6 17, and 18. So now we're in the second and third carports
7 to the east from that entrance. Then this police car here
8 was not her initially at the scene but was moved up later
9 one to help affect custody of Mr. Arevalo after he'd been
10 shot. Then the placards then denote items of evidence.

11 Q This is sort of towards the right side or the
12 south side?

13 A Yeah. Same vehicle. You're just now on the
14 passenger side to that vehicle.

15 Q This is -- looks like it's looking from in that
16 adjacent carport.

17 A Yeah. So you'd be standing in carport 18 looking
18 out.

19 Q This view it looks like is looking the opposite
20 direction back to the west.

21 A Correct.

22 Q You just talked about those. These are the keys
23 and the wallet. What -- here we can see Mr. Arevalo's body.
24 What are these items marked as 22, 23, and 24?

25 A So after Mr. Arevalo had been shot, he was

1 unresponsive. He was not in this position after he'd been
2 shot. This firearm was just underneath him just poking out
3 where officers could see it. So there was a concern that he
4 was not incapacitated. Was perhaps lying in wait for
5 officers to approach.

6 So one of the ways to mitigate this is to use a
7 less lethal to be deployed on him which then, you know, it's
8 a pain compliance tool. Most people cannot ignore that.
9 And so, it's an indicator of whether or not he's conscious,
10 capable of further aggressive action or not. In this case,
11 a less lethal round is deployed. And 22 is that actual
12 munition which is a 40mm exact impact. So it's a blue foam
13 tip that crushes and dispenses energy upon impact. The
14 round itself crushes. It doesn't crush body parts.

15 GRAND JUROR: Is it like a rubber bullet or
16 something?

17 THE WITNESS: Yeah. What people would call a
18 rubber bullet.

19 GRAND JUROR: (Indiscernible) crowd control kind
20 of thing.

21 THE WITNESS: Yeah, yeah. And that's the round
22 that all our officers carry. So that was deployed with no
23 result, no reaction. So that's just where it ended up
24 lying.

25 BY MR. HUGHEY:

1 Q Let me make sure that everyone is on the same
2 page. So when -- if somebody is -- appears to be injured
3 from gunfire, is it -- I guess, is it -- would it be within
4 somebody's police training to go rush right up and try to
5 help them or would you be more tentative at first?

6 A Cautious is more the word. There's always a
7 saying. Right. You don't want to rush to your own death.
8 You just deployed lethal force against someone who has given
9 you some sort of indicator that they intended to do that to
10 you. So you're going to get more personnel there and make
11 this situation as safe as possible for everyone before you
12 then move up. God forbid, you rush up there and he's not
13 injured to the point where he's incapacitated and starts
14 shooting. Maybe hits you, maybe hits your partner, or maybe
15 hits somebody in these residences. All those scenarios are
16 to be avoided if possible.

17 Q When you talk about the foam-tipped less lethal
18 round that we see there on placard number 22, a couple times
19 you used the term deployed. Does that mean you shoot it at
20 the person and see if they react at all?

21 A Yes, that's correct.

22 Q Will that -- would that give you some insight as
23 to whether or not they are conscious or incapacitated or
24 something like that?

25 A Yeah, absolutely.

1 Q Flipping back, when we saw that patrol car, how
2 is that used to approach somebody that may be injured but
3 you might not know the extent of their injuries at that
4 point?

5 A That can be used as cover. A lot of our patrol
6 cars have ballistic panels in the doors. So you can open
7 the door, stage your team behind that. And then, if you'll
8 notice this object here in the corner. That's a ballistic
9 shield. So using the vehicle and using the shields you can
10 get up nice and close, assess the situation, mitigating the
11 risk to the officers. And then, once the situation has been
12 assessed, then you can move in. Take the person into
13 custody and then get medial in there as quick as possible.

14 Q When you use the term take the person into custody
15 meaning put handcuffs on them?

16 A Yes.

17 Q Do you do that even if they appear to be injured?

18 A Yes.

19 Q Does that go back to kind of what you were just
20 saying about, I guess, not being 100 percent certain about
21 the level of their injuries and whether they're still going
22 to be a threat?

23 A Yes, that's correct.

24 Q A couple times you just used the term ballistic
25 for door panels and the shield. Does that mean bulletproof

1 or does that mean something different?

2 A Nothing is really bulletproof. But it is rated to
3 stop certain levels of ammunition.

4 Q Bullet resistant.

5 A Yes.

6 Q Sure. Let's see. Is this a little bit better
7 view of the less lethal foam tip round at 22 and the handgun
8 that was near Mr. Arevalo on placard 23?

9 A Yes, that's correct.

10 Q Was this his wallet in number 24?

11 A No. I believe 24 -- there's a railing in the
12 background there.

13 Q Oh.

14 A And I believe that's a railing cap that came off.

15 Q Oh, okay. Obviously, this is photographed in
16 place. Later on, did you -- or rather, investigators
17 collect this and do a more careful check to see if it was
18 loaded and things like that?

19 A Yes.

20 Q I think is that what we're now seeing?

21 A That's correct, yes.

22 Q That this is placard 23, the gun. Was the gun
23 loaded?

24 A Yes. So one of the things we'll do is we'll
25 photograph every step of what we do. So in this case, the

1 firearm was picked up. The magazine was removed showing
2 that there are cartridges in the magazine. Then there
3 should be another picture of the slide being pulled back
4 showing that there's an actual round in the chamber.

5 Q Yeah. For -- I think you're right in just another
6 picture. But as we stop here. For anybody that's not
7 familiar, could you just explain generally how does a pistol
8 like this or a handgun that's semi-automatic like this work?
9 Where does the magazine go?

10 A Sure.

11 Q Where do the bullets come out? I know that sounds
12 kind of dumb but --

13 A Not at all. Not at all. So handguns, you have
14 basically two main types. A revolver and a semi-automatic.
15 Revolvers have a cylinder like you see in westerns. The
16 bullets go in the cylinder and then you pull the trigger,
17 fire it. The cylinder spins putting the next round in line
18 with the barrel. No casings are ejected. You just keep
19 shooting. It keeps rotating.

20 Semi-automatic handgun such as this, it has a
21 magazine. The rounds are loaded into the magazine. The
22 magazine is then inserted usually through the grip of the
23 handgun. Then when you cock the gun or rack the slide, it
24 comes back. Then as the slide moves forward, it takes that
25 first round off the top of the magazine and loads it into

1 the chamber. When you fire the gun, the recoil causes
2 the -- basically, it's a controlled explosion inside that
3 barrel.

4 So the firing pin hits the primary, ignites the
5 powder in the casing, which then launches the bullet down
6 the barrel. When that happens, there's (indiscernible) all
7 of the pressure is sent out the barrel. So you get what's
8 called a blowback action where the slide comes back and then
9 there's a little ejector and an extractor inside the gun.

10 So the ejector pushes it out. The extractor pulls
11 it out. And it launches the casing out of the side of the
12 gun. Then as the slide moves forward, it gets the next
13 round in the magazine and you're ready to fire again. So
14 when you do this multiple times, you get casings that come
15 out of the gun.

16 Q And I didn't mean to say that that would be a dumb
17 question but just sort of a basic explanation.

18 A Sure.

19 Q Is this part that we see here -- this is the
20 magazine?

21 A Yeah. So that's the magazine that was removed
22 from the grip from inside the gun.

23 Q Even though this magazine is out, is it possible
24 that there's still a bullet inside this gun that could fire?

25 A I would absolutely expect there to be one in

1 there. Yes.

2 Q How so? I know this is kind of what you just
3 explained. But can you explain --

4 A Unless there is some sort of malfunction, the gun
5 is going to function as designed which is when that slide
6 comes back and moves forward again, it's going to load the
7 next round into the chamber.

8 Q What's happening in this picture?

9 A The slide is being slightly pulled back. And you
10 can see the round inside the chamber.

11 Q This little part of the brass casing that we see?

12 A Yes, that's correct.

13 Q What -- how is this -- I guess what is this
14 picture capturing?

15 A Now that we've documented the condition of the
16 firearm, it's now unloaded. So you have the slide locked
17 back. There's usually a mechanism on the slide to prevent
18 it from going forward. So you lock it back. Now the gun is
19 not capable of firing in this condition. It's been rendered
20 safe. So you have the actual handgun, the magazine as
21 removed from the gun. Then the round that was in the
22 chamber.

23 Q Got you. This is the round that was in the
24 chamber. And then here's obviously the magazine.

25 A Yes.

1 Q Were these rounds -- were these 9mm rounds?

2 A Yes.

3 Q Were they consistent in like the appearance and
4 make and model with the casings that you found over by the
5 crashed Mazda that Mr. Penner had been in?

6 A Yes, that's correct.

7 Q Same casings?

8 A Yes.

9 Q Let's see. Coming back to -- I know we may not
10 have captured every single -- or at least maybe I didn't use
11 photos of every single shell casing here. Were you and
12 other investigators able to discern roughly where the two
13 involved officers had been when they fired at Mr. Arevalo?

14 A Yes.

15 Q Can you give us a sense for where they were?

16 A Yeah. So Acting Sergeant Kenney would have been
17 in this area over here at the corner of 851. And Officer
18 Guevara would have been over in this carport entrance area
19 across from there.

20 Q So if you think of -- I guess if you think of them
21 as -- well, let's see. This driveway goes west to east and
22 Acting Sergeant Kenney was on the south side of it. And
23 Officer Guevara was on the north side of it?

24 A Roughly, yes.

25 Q Roughly. Got you. When -- did investigators make

1 contact with Mr. Kachlik, the owner and manager of the
2 apartment complex?

3 A Yes, they did.

4 Q Was he able to provide surveillance video footage
5 from some of the cameras that he had monitoring the
6 premises?

7 A Yes. For 911 Southwest Broadway. Not for these
8 units here. There were no cameras over here.

9 Q Got you. Is part of the investigation doing a
10 canvas for video cameras?

11 A Absolutely.

12 Q How does that work? What does the term canvas
13 mean in that context?

14 A It literally means to walk around and look. So
15 you can do a witness canvas where you knock on every door
16 and -- hey, did you see anything. Video canvas is you walk
17 around and you look for cameras and then contact the owners
18 or the controllers of the buildings where these cameras are
19 located and then ask them for the footage.

20 Q Did Mr. Kachlik's camera footage capture some of
21 that original shooting where Mr. Arevalo had been firing at
22 Mr. Penner in his car?

23 A It did. Yes.

24 MR. HUGHEY: This is kind of picky. It was giving
25 me problems before, as well. If all else fails, I'll bring

1 my laptop down and we'll just connect it to the TV.

2 GRAND JUROR: Yeah. Normally, VLC will play.

3 MR. HUGHEY: Yeah. I had been having problems
4 with VLC but success with Windows Media. Let's see. This
5 one will work (indiscernible) confidence. Let's watch this
6 one. Then I'll -- if I have to, I'll grab my laptop and
7 we'll just connect it to the TV here.

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

10 BY MR. HUGHEY:

11 Q Which -- what part of the apartment complex is
12 this camera capturing?

13 A So if you look right here. There's a light that's
14 in the way. But if you look here, those are the stairs
15 going down to the parking lot. So these are the stairs that
16 lead up to Apartment Number 9 which is over in this area
17 here.

18 Q Is this -- the light kind of washes out this chunk
19 of the frame. Is this where Mr. Penner's car is going to
20 be? Like kind of right in the light here?

21 A Yes, that's correct.

22 Q Is this Mr. Arevalo that we see coming out of the
23 apartment?

24 A Yes, it is.

25 Q Was that -- in the very beginning, we saw somebody

1 -- and for the record, this is camera four. In the very
2 beginning, we saw somebody. Is this Mr. Penner here?

3 A It is. Yes. And you can see some movement on the
4 other side of that railing. That's where his car is.

5 Q Like right about here?

6 A Yeah. So from other angles, we know he was
7 getting into his car right there.

8 GRAND JUROR: You can kind of see it.

9 Q Yeah, like he's getting in the door.

10 A Sorry. That's my emergency call-out thing. But I
11 don't need to leave so --

12 Q Are you okay to stay with us for a little bit
13 longer?

14 A Yes, yes.

15 Q Is this Mr. Arevalo here that we see going all the
16 way down to the parking lot?

17 A Yes, that's correct. Sorry if I'm in your way.

18 Q Is that the Mazda --

19 A Yeah. So that's Mr. Penner backing up now.

20 MR. HUGHEY: If we look at the -- I know it's not
21 the greatest video but --

22 GRAND JUROR: (Indiscernible).

23 MR. HUGHEY: Something in his right hand there.

24 Okay. I know this is -- basically, did the shooting occur
25 in this exact spot that's kind of washed out by the light

1 here?

2 THE WITNESS: Yes. And there were other reports
3 of Mr. Arevalo firing from on the stairs, as well. We never
4 found anything to substantiate that. But we couldn't rule
5 it out.

6 GRAND JUROR: Yeah. Because you could stand at
7 the top of the stairs and fire and you wouldn't see it.
8 Light washes out the muzzle flash.

9 MR. HUGHEY: But the shooting -- I know we were
10 just having technology problems. But the shooting itself --
11 or at least parts of it were captured on other video angles.
12 Is that right?

13 THE WITNESS: Yeah. So what you see -- you see
14 that car back up and it suddenly accelerates, that's when
15 the shooting is happening. And I think probably Mr. Penner
16 ducked down and hit the gas and just didn't -- turn and
17 accelerated into that concrete wall or the rock wall.

18 MR. HUGHEY: Well, I'm pretty confident we can
19 make this work. Let's pause the record. I'm just going to
20 grab my laptop because I think it'll work on my laptop.

21 (Off the record.)

22 (On the record.)

23 BY MR. HUGHEY:

24 Q Thanks. We're back on the record. Detective
25 Kammerer, I've been struggling with the video here. Are

1 these -- these files, the A-01, does that reflect that
2 it's one camera, the camera number 1 and then A-02 is camera
3 number 2, et cetera?

4 A Yes, that's correct.

5 Q If I can get these playing, we'll watch them and
6 come back to that. But for now, let's come back to the
7 investigation of the officer involved shooting itself.

8 You were telling us a little bit earlier about the
9 procedure to do a round count or countdown. Did you do that
10 both with Officer Guevara and Acting Sergeant Kenney?

11 A Yes, I did.

12 Q Let's start with Acting Sergeant Kenney who you
13 said was more on the south side of that driveway. Tell us
14 about that. How -- what kind of gun are we talking about?
15 How many in the magazine? How many in the firearm? How
16 many had been fired?

17 A Sure. So Acting Sergeant Kenney had a Glock 17
18 handgun which is a 9mm handgun. Each magazine is capable of
19 holding 17 cartridges. And so, you know, theoretically,
20 that would give you a total number of rounds. He had three
21 magazines including the one in the gun. However, police
22 officers conduct what's called a top-off. So we will load
23 all the magazines to capacity and then we will chamber a
24 round so there's now one in the chamber, take that magazine
25 out, and replace that missing round with another round.

1 So a loaded gun will have 18 -- could be
2 capable of firing 18 times before you have to reload.
3 Again, with your next magazine which now you're only going
4 to have 17 because it's an empty magazine or an empty gun,
5 you put that magazine in there with 17 rounds. The slide
6 goes forward. There's now one ready to go and there's only
7 16 in the magazine.

8 So when we did a countdown of Officer Kenney's
9 firearm, the spare magazines both had 17 rounds in it. And
10 the one in the gun had 15 rounds in it.

11 Q If the gun is capable when it's fully loaded and
12 topped off of holding 18 rounds or 17 plus 1 -- 17 in the
13 magazine, 1 in the chamber -- even I can do that math. Does
14 that suggest --

15 A Three rounds. Yes.

16 Q So from the round count, at least, was your
17 conclusion that Acting Sergeant Kenney had fired three
18 times?

19 A That's correct, yes.

20 Q Then moving to Officer Guevara. Same thing. Can
21 you give us an overview of his firearm and magazines?

22 A Yeah. He also had a Glock 17. So he had the two
23 spare magazines at 17 rounds and the magazine in the
24 chamber. He also topped off. So there's 11 rounds in his
25 magazine. So he'd fired six times.

1 Q So 11 in the -- in his magazine, 1 remaining in
2 the chamber.

3 A Correct.

4 Q Would be 12. And then of course to a full
5 capacity of 18 would be 6. Coming back. Then as you were
6 talking about the procedure for verifying that -- let's see
7 here. Coming back to the scene, we saw some of them. But
8 were there shell casings located around the shooting area
9 here at the carport and in the driveway in between this
10 condo building?

11 A Yeah. Over on the corner of the building near
12 where we believe Acting Sergeant Kenney had been standing,
13 there were three 9mm casings. And the casings we use -- the
14 ammunition we use is -- everybody uses the same one in the
15 police bureau. It's different than what most people carry.
16 The earlier one you saw was a brass casing. Ours our
17 aluminum so they're shiny silver looking compared to that
18 brass color.

19 Q Do they have like a brand stamped on the head of
20 the casing?

21 A They do. So all your ammunition has what's called
22 a head stamp on the back of the cartridge, on the back of
23 the casing. So ours our Federal. So it will say FC for
24 Federal cartridge on it.

25 Q You said there were there Federal cartridges

1 recovered from the area where Sergeant Kenney was?

2 A Yes, that's correct.

3 Q I mean, not exactly maybe where he was standing.

4 A Right.

5 Q Actually, tell us about that. When cartridges
6 eject from a handgun, how far do they go? Where do they go?

7 A It absolutely depends on the terrain. So they'll
8 eject from the right side of the gun because that's where
9 the port is, the ejection port for the casings to be
10 removed. In a completely sterile environment where you're
11 not moving and the gun is not moving, you would expect all
12 three casings to end up very close to each other.

13 Where people are moving, where the gun is moving
14 as it's being fired, that changes the trajectory of
15 everything. What those casings impact as they come out will
16 change where they land. So there's no science of shell
17 casing pattern analysis or anything like that. But you can
18 get a rough idea of where someone was standing based on
19 where the casings end up.

20 We knew there is three casings that came from a
21 single shooter in that area. And the other six casings,
22 which appeared to have come from a single shooter who was
23 moving, on the other side.

24 Q So I think you just kind of covered where I was
25 about to go next on the side. On the left side or the north

1 side of this driveway where Officer Guevara was, were
2 there six additional casings?

3 A Yes.

4 Q Anything that didn't seem to add up like an extra
5 one or one that was not accounted for or did it match -- did
6 they match the round counts consistently?

7 A No, sir. The round count was consistent with the
8 casings that were located.

9 Q And then, going back to the scene of the other
10 shooting where we obviously saw this brass color cartridge
11 casings that you pointed out, were any of those -- or was
12 there -- I guess, could you make an inference about whether
13 Mr. Arevalo had actually gotten a shot off or had fired?

14 A There is no indication that Mr. Arevalo fired his
15 handgun over here in this part of the parking lot.

16 Q Right. Drawing a distinction from the other
17 side --

18 A Yes, correct.

19 Q -- where he shot the Mazda. Okay. One other
20 question. As we look at this section of the condo units, we
21 can see that there's like presumably either a window well or
22 maybe even a stairwell down here and windows down here. Do
23 investigators check to see whether any rounds hit or entered
24 the walls of these other units?

25 A More specifically, we check -- we look -- we try

1 to account for everything. So bullets are moving. And
2 we try to account for where they land. So in that process
3 of accounting, you know, we locate bullet strikes. And in
4 this case, yes, these windows -- we found a strike.

5 Q Was -- did a round actually enter one of the units
6 down there behind --

7 A It did, yes.

8 Q Was anybody injured from that?

9 A No. Nobody was injured.

10 Q Or hit at all.

11 A No. Nobody was struck.

12 Q Was that this unit that we see kind of like
13 directly behind Mr. Arevalo here?

14 A Yes, that's correct.

15 Q I don't know. Do you happen to know the number
16 for that?

17 A I believe it's unit 51.

18 Q The lower one down here?

19 A Well, so that's like a basement. So yeah, it's
20 not a stairwell there. It's just like a little cutout for a
21 basement window. So --

22 Q I got you.

23 A -- like on the other side --

24 Q (Indiscernible) --

25 A -- of this, it would look like a two-story

1 townhome. But this side because of the elevation, as you
2 come in the parking lot, they have the cutouts for the
3 basement windows.

4 Q I got you. Let's see. Oh, did investigators take
5 pictures of the back of the apartment building where Mr.
6 Arevalo had been staying in number 9 there?

7 A Yes, that's correct.

8 Q Did you take a look back there, as well?

9 A I did. Yes.

10 Q What did you see when you looked back there? I'll
11 pull up the pictures while you're talking.

12 A So again, the way the terrain is, you have to come
13 up the stairway to get to the units. Right. This is all
14 kind of built on a hillside. But on the back side, it's at
15 ground level same as the front side for Apartment Number 9.
16 So then on the back on number 9, there was an open window
17 with the screen removed for Apartment Number 9. And that's
18 how we believe Mr. Arevalo exited Apartment Number 9 after
19 he ran inside.

20 Q So is this the back window of Apartment Number 9
21 here?

22 A Yes, correct.

23 Q Does this show us a little bit of what the terrain
24 looks like if you're at the back of the building?

25 A Yeah. So if you're to come out this window and

1 then move down this building, you can see the hillside
2 back there again. There's trees, a little open area, and
3 then you get to those other apartments with the carports
4 where the shooting occurred.

5 Q Is this looking sort of from the -- from just
6 coming out from behind the building down to those other
7 apartments or condos?

8 A Yes, that's correct.

9 Q This one -- is this staying up high and not
10 dropping down into the parking lot?

11 A Yes, correct.

12 Q Or maybe this one sort of gives us the best view.
13 Is this -- this is kind of like this bushy hillside that is
14 just pretty steep over here.

15 A Yes, that's correct.

16 Q I think probably everybody gets this. But the way
17 we're looking here from the Apartment 9 open window, if we
18 match that up on the overhead map, that would be like
19 looking from this side out towards this way?

20 A Yes.

21 MR. HUGHEY: I think -- let me turn to the members
22 of the grand jury. I know people -- some people had some
23 questions in mind for Detective Kammerer.

24 GRAND JUROR: Yeah. I'm not really an expert on
25 9mm handguns. But most handguns do have a safety. So this

1 gun, I'm assuming, had a safety. Was it on or off when
2 it was found with the deceased?

3 THE WITNESS: It was -- this is Kel-Tec. I can't
4 remember if it has a safety or not. But I know it was
5 capable of being fired.

6 GRAND JUROR: Yeah. I don't see anything that
7 would indicate a safety.

8 THE WITNESS: Yeah. Just that slide lock lever
9 there.

10 GRAND JUROR: Yeah, that's not -- definitely not a
11 safety. Okay.

12 GRAND JUROR: So just to clarify. YOU said that
13 the deceased did not have a gun -- or -- so was the gun in
14 their hand when the police fired less lethal, the rubber
15 bullets?

16 THE WITNESS: No. He was on top of the gun. And
17 they could see just a portion of it poking out from under
18 his shoulder area.

19 GRAND JUROR: Like under the armpit?

20 THE WITNESS: His hands were kind of like this
21 with the gun kind of --

22 GRAND JUROR: Oh, like holding right here? Like
23 this?

24 THE WITNESS: Yeah.

25 GRAND JUROR: I see. So not pointed at them at

1 all?

2 THE WITNESS: Correct.

3 GRAND JUROR: Do we know how many feet away the
4 officer was from the --

5 THE WITNESS: Well, when you say the officer, we
6 have two different officers that were shooting --

7 GRAND JUROR: The one that actually shot -- fired
8 -- that actually hit him, that killed him.

9 THE WITNESS: Well, we don't know.

10 GRAND JUROR: Oh, okay.

11 GRAND JUROR: So you don't know which --

12 THE WITNESS: We have two officers that are
13 firing. One who is mostly remaining stationary. One who is
14 moving quite a bit.

15 GRAND JUROR: Which one is moving? The --

16 THE WITNESS: Officer Guevara.

17 GRAND JUROR: Officer Guevara.

18 GRAND JUROR: Okay.

19 THE WITNESS: And I want you guys to understand.
20 We're not imagining things. We go through and we
21 forensically analyze stuff. So I sent the nine casings to
22 our Oregon State Police Crime Lab with the two handguns.
23 Then they were able to then link up casings -- because each
24 handgun imparts toolmarks is what they call them, markings
25 on casings and bullets. And they can -- they're individual

1 based on the machining process that goes into
2 manufacturing them. So no two guns will leave the same
3 style of impressions on a casing. So we can match casings
4 up to specific guns.

5 And in this case, we matched three casings up to
6 Sergeant Kenney's gun. And we matched six casings up to
7 Officer Guevara's gun. And the three casings that were
8 matched to Sergeant Kenney's gun were all from that area at
9 the corner of the building that we talked about where
10 Sergeant Kenney was standing.

11 So that's how I know where Acting Sergeant Kenney
12 was roughly standing. And the trail of casings that lead
13 back to the carport, that's how I know Officer Guevara was
14 firing and moving. So that's how I'm able to determine who
15 is moving and who is firing and which casings come to which
16 person.

17 Now, bullets generally have that same individual
18 classification. There's what's called rifling inside the
19 barrel of a gun. And it's like a constriction in the
20 barrel, if you will, in a curve. So as the bullet moves
21 down, those rifling grabs the outside of the bullet and
22 begins to spin it. So by the time the bullet is coming out
23 the end of the barrel, it's spinning quite rapidly which
24 then gives it stability and flight. Which makes it more
25 accurate.

1 Glocks have what's called polygonal rifling
2 which does not impart individual characteristics upon the
3 bullet so we cannot match bullets fired from a Glock to a
4 gun specifically. We can match them to -- this was fired
5 from a Glock-style gun.

6 GRAND JUROR: But can't you tell based on the --
7 like physics, the trajectory of the bullet, where the
8 officer is standing? There should be like an entry point of
9 the wound of the gunshots. So on the autopsy it should
10 theoretically show technically if it was front, behind, if
11 it was -- if it was an exit wound, if it stayed there. Like
12 so that to me is -- another way you could tell where people
13 were standing at the time and who actually shot him. So is
14 that looked at at all (indiscernible).

15 THE WITNESS: Absolutely. And if everybody was
16 completely motionless, that works. And if you know
17 everybody's exact spot at the time the gun is fired, it
18 works.

19 GRAND JUROR: Oh, so you said when he was standing
20 over off to the side, like Officer Kenney, like that's not
21 where he stayed. Like they were both moving?

22 THE WITNESS: Yeah, so police officers, we're not
23 -- the way we're trained -- we're not going to just stand
24 like this and then shoot, shoot, shoot, and just stay --
25 we're going to move at the same time we're firing because we

1 don't want to get shot.

2 GRAND JUROR: (Indiscernible) how do you all move?

3 THE WITNESS: However the terrain dictates we need
4 to move to get to safety. I would imagine -- and I can't
5 speak for him. But Acting Sergeant Kenney standing right
6 next to a building. That's going to provide some good
7 cover. He's going to begin moving towards that cover. You
8 move to the closest -- as safe as possible as quickly as you
9 can.

10 So we can determine entrance wounds and exit
11 wounds but we cannot really determine how he was standing,
12 how he was facing at the time the bullet entered him to
13 allow for where that bullet came from.

14 MR. HUGHEY: Would that also change depending on
15 if Mr. Arevalo was moving even just like changing his angle
16 to which way (indiscernible) --

17 GRAND JUROR: In a defensive stance.

18 THE WITNESS: Yes. And people will move as
19 they're being shot. And so a bullet will go in and come
20 out. But if you shoot me as I'm turning -- so the bullet
21 enters me. But as I'm turning, the bullet now exits that
22 way. Which makes no sense unless you know that I'm turning
23 as the bullet is traveling through my body. Because bullets
24 move in a straight line. Right?

25 GRAND JUROR: Yes.

1 THE WITNESS: There's so many variables that we
2 really can't -- unless we know, you know, it's on video. We
3 can account for positioning and everything like that. We
4 can't make that determination based on trajectory.

5 BY MR. HUGHEY:

6 Q Fair to say that you could make an initial
7 inference about -- from the round count and where people
8 were standing by looking at the casings and then that would
9 be confirmed by the tool markings that the lab confirmed.
10 Six from Officer Guevara's gun and three from Acting
11 Sergeant Kenney's gun. Is that right?

12 A Yes, that's correct.

13 Q But then to try to use the trajectories to
14 determine exactly which bullet or from whom caused the death
15 of Mr. Arevalo -- it sounds like that would just be not
16 possible or too speculative?

17 A Right. So when we get there, he's as you see him.
18 Right? And we know he's since been moved since he was
19 laying on the ground. Because they moved him to treat him.

20 GRAND JUROR: (Indiscernible).

21 THE WITNESS: I can't tell in looking that exactly
22 how he was standing, which way he was facing. So without
23 that knowledge, I can't determine trajectory.

24 GRAND JUROR: (Indiscernible). Yeah.

25 BY MR. HUGHEY:

1 Q And you said move to treat him. Did medical
2 personnel provide some care or at least initially try to
3 before they found out he was deceased?

4 A Yes. They came up to make an assessment. As
5 police officers, we're not going to assess -- unless it's
6 extremely obvious -- whether someone is still alive or not.
7 We're going to get trained medical professionals up there to
8 make that assessment.

9 Q Is that what this little white sticker is like
10 from an EKG or something that a medical provider would put
11 on?

12 A Correct, yes.

13 MR. HUGHEY: Sorry. Was there --

14 THE WITNESS: I believe you had a question, ma'am.

15 MR. HUGHEY: Yeah.

16 GRAND JUROR: Along those lines, are police
17 officers trained first responders?

18 THE WITNESS: Yes, absolutely.

19 GRAND JUROR: Would police officers or did police
20 officers make any attempt to provide any first aid after
21 that less than lethal round was fired?

22 THE WITNESS: Not immediately, no. Because the
23 less lethal round is fired --

24 GRAND JUROR: Right. To determine whether or not
25 it was safe to approach. Right. So after --

1 THE WITNESS: Correct.

2 GRAND JUROR: -- it was determined that it was
3 safe to approach, was -- no first aid was provided to him?

4 MR. HUGHEY: Or was he placed in custody after?

5 THE WITNESS: Yeah. He was placed in custody.

6 And then --

7 GRAND JUROR: I think they're not supposed to.

8 GRAND JUROR: But no first aid was provided before
9 medical?

10 THE WITNESS: No. Because the officers believed
11 he was deceased. So let's just get medical personnel up
12 here and have them do their job.

13 MR. HUGHEY: Any other questions?

14 GRAND JUROR: So the gunman never shot back or
15 anything? And that means that -- you said there was an
16 extra bullet that kind of went into a unit. That came from
17 one of the officers. Is that correct?

18 THE WITNESS: Yes, ma'am. That's correct.

19 GRAND JUROR: Can you see where the casings are in
20 any of the photos?

21 GRAND JUROR: Other than like this -- I know we
22 can see (indiscernible) goes back.

23 THE WITNESS: Yeah. There was some casings in
24 this carport over here. Not that one.

25 (Simultaneous comments.)

1 MR. HUGHEY: And are 4 and 6 over here, would
2 those be casings from Sergeant Kenney?

3 THE WITNESS: Correct. Yes.

4 GRAND JUROR: Are there common situations in which
5 less than lethal force, using that rubber bullet, just
6 typically doesn't work that might indicate to the officer
7 that they need to use lethal force. Meaning like maybe the
8 person is on PCP or something. Because I just don't -- if
9 he wasn't even pointing it at them and he has it right here,
10 I don't really -- I mean, I don't -- I mean, that's an
11 assumption then that (indiscernible) he was going to then
12 point it at them and shoot them when it wasn't even pointed
13 in their direction when they're -- when they already shot
14 him. So that's what part I'm just not really understanding.

15 THE WITNESS: So let me break that down a little
16 bit.

17 GRAND JUROR: Yes, thank you so much.

18 THE WITNESS: First of all, the correct
19 nomenclature is less lethal. Less than lethal implies that
20 it's not capable of lethality when any item really if used
21 properly is capable of lethality including these. And so,
22 we're trained on where to shoot these less lethal items so
23 as not to use them lethally. So the head isn't targeted.

24 GRAND JUROR: Oh, I see.

25 THE WITNESS: Certain parts of the body aren't

1 targeted. In this case, it was used to elicit a response
2 from someone who appeared to be incapacitated but they were
3 not sure. And it takes very, very little time to move
4 yourself to deploy that firearm lethally. So --

5 GRAND JUROR: You mean, on the gunman's part it
6 takes little time?

7 THE WITNESS: Yes, correct. Yes. Very, very
8 little time.

9 GRAND JUROR: But they initially suspected that he
10 was somehow incapacitated.

11 THE WITNESS: They suspected but they weren't
12 sure. He'd already showed this intent to kill a police
13 officer. They knew he had fired a gun already trying to
14 kill a person. Then he pulled this gun out on the police.
15 So that shows further intent of aggressive action. Rounds
16 were fired. He appears to be incapacitated but they can't
17 quite tell. He's still well within his ability to -- if he
18 chose to do so, act upon further intent. So that less
19 lethal then was deployed to elicit a response if possible,
20 from him.

21 GRAND JUROR: Do you not use Taser in this
22 situation because if the person has (indiscernible) end up
23 being fired on accident or something?

24 THE WITNESS: I mean, that is a consideration.
25 Yes. However, range is a consideration, too.

1 GRAND JUROR: Yeah, that's true.

2 THE WITNESS: You have to be --

3 GRAND JUROR: What is it? Like 15 feet or
4 something for those ones (indiscernible)?

5 THE WITNESS: Yeah. We like to be -- I think it's
6 capable of firing up to 21 feet. But --

7 GRAND JUROR: You have to have really good like
8 (indiscernible) --

9 THE WITNESS: You want to be close.

10 GRAND JUROR: You hope there's no fan blowing
11 across.

12 GRAND JUROR: Yeah, yeah.

13 THE WITNESS: Yeah, yeah. You want to be within
14 that 21-foot extreme range to ensure that it works. So you
15 have to get pretty close. Whereas the less lethal can be
16 deployed up to 25 yards away with pretty good accuracy.

17 GRAND JUROR: Is it typical that they would only
18 shoot one, the less lethal -- the rubber bullet?

19 THE WITNESS: Generally, yeah. Like I explained
20 earlier, most people don't have the ability to ignore that.
21 So when one round is fired -- you believe they're
22 incapacitated. One round is fired and you get no reaction
23 at all. Most likely, they are incapacitated at that point.

24 GRAND JUROR: Like reaction even from, again,
25 someone who is on like PCP who (indiscernible) or some sort

1 of substance, potentially even in a state of psychosis
2 where they do not have it connection with reality, feeling
3 in their body?

4 THE WITNESS: I mean, I've seen people that have
5 had a 40mm deployed against them where they're clearly on
6 something. And I don't know whether it was PCP or something
7 else. And they're capable of ignoring the pain but they
8 still react to it if that makes sense.

9 GRAND JUROR: (Indiscernible) something.

10 THE WITNESS: Yeah. There will be a movement
11 towards the source of the pain, some sort of indicator that
12 they know that they've been impacted by something. But
13 through chemicals and anger and whatever else, they are able
14 to fight through it and ignore it. But most people laying
15 passively on the ground that are struck by this are not just
16 going to ignore it.

17 MR. HUGHEY: Is the -- I'm sorry. I was going to
18 jump in --

19 GRAND JUROR: No, go ahead.

20 MR. HUGHEY: -- if that's okay. Is the idea then
21 that if somebody appears not to react, that makes it likely
22 enough that they're incapacitated to make it safe to move up
23 with the police car and try to put handcuffs on and then
24 move to the next step of medical?

25 THE WITNESS: Yes. As soon as a person has been

1 shot, the goal is to get the medical assistance as soon
2 as possible safely. So we have to go through this process
3 to ensure it's safe because we also have to take on account
4 the safety of the medical personnel that are coming up.
5 We're responsible for their safety on these scenes, as well.

6 MR. HUGHEY: Will they -- will medical even come
7 up there if somebody with a gun is still out of custody?

8 THE WITNESS: No, they will not.

9 MR. HUGHEY: I was going to ask you one other
10 question but I totally interrupted you. Did you have more?
11 Go ahead.

12 GRAND JUROR: I was just curious. Did they give
13 you specific training on like (indiscernible) how to
14 actually respond to a gunshot wound?

15 THE WITNESS: Yes, ma'am. Yes. We all have
16 fairly high-level training for police officers in first aid
17 wound treatment.

18 GRAND JUROR: (Indiscernible). So the non-lethal
19 projectile (indiscernible). How was that fired?

20 THE WITNESS: It's like a gun. You point it, it
21 has --

22 GRAND JUROR: So it's like a specific gun --

23 THE WITNESS: Yes, it's --

24 GRAND JUROR: -- that the officers carry?

25 THE WITNESS: It's a 40mm launcher. It's a

1 single-shot. You open the breach --

2 GRAND JUROR: Like a flare gun.

3 THE WITNESS: -- load the round, close the breach,
4 aim, pull the trigger, it fires.

5 GRAND JUROR: How easy is that to -- if like you
6 just had to whip it out, how easy is that to do?

7 THE WITNESS: It depends on how you're holding it.
8 So if you're a less lethal operator, especially once -- and
9 it's a planned action. So you have what's called your
10 custody team and so you'll have --

11 GRAND JUROR: So some like -- Officer Kenney
12 wasn't one --

13 THE WITNESS: No, sir.

14 GRAND JUROR: -- (indiscernible).

15 THE WITNESS: No, sir. Yeah. This actually came
16 from the custody team that was run by Sergeant Townley
17 (ph.).

18 MR. HUGHEY: That -- Maybe that's an important
19 point of clarification, too. By the time the custody team
20 is making determinations about using the less lethal and
21 using the car to approach, are Sergeant Kenney and Officer
22 Guevara out of there?

23 THE WITNESS: Yes. Yes.

24 GRAND JUROR: Right.

25 MR. HUGHEY: Because they've --

1 GRAND JUROR: That's what I got earlier from
2 when you were talking about when there was a shot fired.
3 That they immediately -- when it's safe --

4 GRAND JUROR: Yeah, but it's like --

5 GRAND JUROR: -- pulled the officers away.

6 GRAND JUROR: Are they like, pow, pow, and then
7 like everybody just kind of holds. And then somebody is
8 like, hit him with the -- just, you know, go poke him kind
9 of thing. Is that like in 10 seconds kind of thing or --

10 THE WITNESS: No, sir. No, sir. Generally, not.
11 And certainly not in this case.

12 GRAND JUROR: Basically, the person who fired the
13 round was one who (indiscernible).

14 THE WITNESS: When you say fired the round --

15 GRAND JUROR: Prior to the -- the less --

16 THE WITNESS: The less lethal?

17 GRAND JUROR: The non-lethal round.

18 THE WITNESS: No, sir. That's not accurate
19 either. You'll have your custody team which is set up. So
20 you'll have your less-lethal operator. You'll have -- we
21 never deploy a less-lethal without having a lethal cover
22 officer. So someone with a handgun or a rifle.

23 And then you have two people whose sole job is
24 just -- they don't have anything in their hands. It's just
25 to put hands on. To take custody, physical custody. Then

1 you'll have like a shield operator. And in this case,
2 you have a vehicle driver so the custody team is using the
3 vehicle to move -- and you just have someone that's just
4 driving the vehicle. So everybody has a role so there's no
5 confusion over who was doing what.

6 MR. HUGHEY: And is that something that would use
7 superior like a Sergeant or something to plan out how that's
8 going to work. Like say, you are going to drive the
9 vehicle, you are going to be the custody team, you're going
10 to be the less-lethal operator, you're going to carry the
11 shield. Take a few minutes to organize that and then go
12 sort of execute that plan?

13 THE WITNESS: Yeah. Probably less than a few
14 minutes. But yes. And then the sergeant will also move up
15 and they'll have overall control of the custody team.

16 GRAND JUROR: Would that --

17 GRAND JUROR: Go ahead.

18 GRAND JUROR: Would that have been the same sort
19 of situation on the scene before the officer-involved
20 shooting where the custody team would have been the folks
21 that would have deployed less lethal if that was an option
22 that they had available to them, to take Mr. Arevalo into
23 custody?

24 THE WITNESS: Yes, yes.

25 GRAND JUROR: Yes. But the communications team

1 would not have necessarily even had that at their
2 disposal.

3 THE WITNESS: No, ma'am. Yeah. They're close
4 enough but in a different location from -- it's somewhat
5 compartmented in that aspect. Communications team, your job
6 is to communicate. It's not to stop communicating and run
7 over and be part of the custody team.

8 GRAND JUROR: That helps for context. Thanks.

9 MR. HUGHEY: Just so I make sure I'm understanding
10 what you were asking. When you were talking about the other
11 incident like when officers were kind of surrounding
12 Apartment 9 -- is that what you meant?

13 GRAND JUROR: Yes, yeah.

14 MR. HUGHEY: Okay. Got you. Thanks. Sorry. I
15 thought that's what you meant.

16 GRAND JUROR: Um-hum.

17 GRAND JUROR: Do we know if Mr. Arevalo had a
18 permit to own that gun or --

19 THE WITNESS: He did not have a permit to own that
20 gun. No.

21 MR. HUGHEY: Any other questions for Detective
22 Kammerer?

23 GRAND JUROR: Have they run into the same officers
24 that came to the scene earlier in that day? Because one of
25 our witnesses had testified that the officer made a comment

1 to him saying that they had dealt with this guy earlier
2 in the day and sounded like they were frustrated with him.
3 But I wasn't sure -- I don't know.

4 THE WITNESS: I'm not aware of -- the officers
5 have any contact with Mr. Arevalo earlier in the day other
6 than a couple hours prior when the shots were fired in the
7 parking lot.

8 GRAND JUROR: So not anywhere downtown or --

9 GRAND JUROR: Well, I think I remember that there
10 was a response to another scene. That when they showed up,
11 they didn't know about the shooting. So maybe that's what
12 they were talking about.

13 GRAND JUROR: Oh, I see. Okay.

14 THE WITNESS: That is accurate. Yes.

15 MR. HUGHEY: Yeah. Could you shed some light on
16 that? What was -- Do you know what the nature of the first
17 call to come out was and why?

18 THE WITNESS: Yeah. There was a resident in
19 Apartment Number 4 at 911 Southwest Broadway who had called
20 in saying someone was trying to kick in his door. Something
21 about an offer gone bad for a bike or an Xbox or something
22 like that. And then, when they called him back, the guy
23 said, well, I'm not there; I just was told this was going
24 on. But he actually was inside the apartment. I have no
25 idea what that was about or what was going on with that but

1 that kind of went by the wayside once Mr. Arevalo started
2 shooting at Mr. Penner.

3 MR. HUGHEY: Is that what -- and we'll ask them of
4 course, too, but is that what Officer Iverson and Officer
5 Fenske were first responding to? This call about a guy
6 kicking the door about an offer up deal?

7 THE WITNESS: Yes.

8 MR. HUGHEY: So when they --

9 GRAND JUROR: That's interesting.

10 MR. HUGHEY: Basically, the reason they came to
11 the apartment --

12 GRAND JUROR: (Indiscernible) they were there so
13 quick.

14 THE WITNESS: Absolutely.

15 GRAND JUROR: Yeah.

16 GRAND JUROR: They'd have all got ambushed. They
17 could have walked into it.

18 MR. HUGHEY: Okay, yeah. Basically, they were
19 there. They turned out to be there extraordinarily fast in
20 the shooting but in reality, it was because they were
21 already there for what they thought was a totally unrelated
22 call.

23 THE WITNESS: Yeah. I believe the initial 911
24 call that they were responding to came in at 6:44. Then the
25 shooting happened at 6:55 just prior to Officer Fenske

1 pulling into the parking lot.

2 GRAND JUROR: He might have shot them, too.

3 MR. HUGHEY: These are all good questions. Any
4 other questions?

5 GRAND JUROR: Body cameras make this whole --

6 GRAND JUROR: Easier.

7 GRAND JUROR: -- investigation easier.

8 THE WITNESS: I don't know. I've seen body camera
9 footage of shootings and a lot of times, you know, the body
10 camera is somewhere in the upper torso here. And when
11 you're in a stance with a handgun, your arms tend to block a
12 lot of that. So I really can't answer that question. I
13 don't think it could hurt.

14 GRAND JUROR: Kind of take the pressure off you
15 because you'd go, no, this is (indiscernible).

16 MR. HUGHEY: Maybe --

17 GRAND JUROR: Stop asking so many questions.

18 THE WITNESS: I don't mind at all.

19 MR. HUGHEY: Maybe a related question is, did any
20 of these Portland police officers have body cameras?

21 THE WITNESS: No. The Portland Police Bureau does
22 not currently have body cameras.

23 MR. HUGHEY: I imagine people could have assumed
24 that we would have played it but it's worth asking.

25 THE WITNESS: Sure.

1 MR. HUGHEY: Yeah, PPB just doesn't have body
2 cameras at this time.

3 THE WITNESS: Correct.

4 MR. HUGHEY: Maybe sometime in the future.

5 THE WITNESS: I hope so.

6 MR. HUGHEY: Yeah. Any other questions?

7 GRAND JUROR: So the reason the car is there is
8 for helping the less lethal rounds be deployed?

9 THE WITNESS: No, sir. The less lethal was
10 deployed prior to the vehicle moving up. So once the less
11 lethal has been deployed, there's no reaction, they believe
12 it's now safe to approach now that the custody team can move
13 up with the protection of that vehicle and get close enough
14 to where once they've assessed that nothing has changed,
15 they can immediately move in and get hands on and control.

16 GRAND JUROR: When are the placards -- the
17 evidence placards -- is that after everything is --

18 THE WITNESS: Yes, sir. So --

19 GRAND JUROR: -- (indiscernible).

20 THE WITNESS: -- the custody has been taken care
21 of. We've showed up. Our criminalists have showed up.
22 Photographed the scene. And then they start putting
23 placards down to mark items of evidence.

24 GRAND JUROR: Which is why people can't leave
25 until a certain time until they've probably cleared the

1 area.

2 THE WITNESS: Correct, yes.

3 MR. HUGHEY: I want to make sure I'm picturing
4 this correctly. When the -- when you talk about police
5 officers that are part of the custody team using the car as
6 protection or cover, is one officer driving the car like
7 basically very slowly and other officers are staying behind
8 it and walking alongside it as it basically rolls up to a
9 point where they can make contact and put handcuffs on as
10 safely as possible?

11 THE WITNESS: Yes. And slowly to the point where
12 they're probably not even using the gas. They're just
13 taking their foot off the brake and let the engine engage.

14 GRAND JUROR: Probably using it as like a shield.

15 THE WITNESS: Yes.

16 MR. HUGHEY: Effectively is that kind of what you
17 were talking about with the --

18 GRAND JUROR: Like the ballistics shield.

19 MR. HUGHEY: -- (indiscernible) ballistic panels
20 in the door.

21 THE WITNESS: Yes. That's correct.

22 GRAND JUROR: But why would they need that after
23 they did the less lethal?

24 THE WITNESS: Because they don't know, sir. And
25 they're not willing to risk their lives and everybody else's

1 lives on most likely. They want certainty. So you just
2 move up with that protection anyway.

3 GRAND JUROR: Did we get a toxicology report back
4 to see if there was any substances in this man's system that
5 would indicate why he was slower?

6 GRAND JUROR: Might be part of the autopsy.

7 THE WITNESS: I have not received one.

8 GRAND JUROR: Oh.

9 THE WITNESS: But I also haven't received an
10 autopsy report.

11 MR. HUGHEY: Does it -- these days, does the full
12 autopsy report, including the toxicology, does it take
13 months and months for those to be generated?

14 THE WITNESS: Unfortunately, it does. Yes.

15 GRAND JUROR: (Indiscernible) that he -- possibly
16 is under the influence.

17 GRAND JUROR: Yeah.

18 THE WITNESS: Yeah, I don't know the answer to
19 that.

20 MR. HUGHEY: Any other questions?

21 THE WITNESS: Thank you.

22 MR. HUGHEY: I think that will conclude the
23 witness' testimony for today.

24 GRAND JUROR: Thank you.

25 MR. HUGHEY: We can go off the record. Thank you.

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(Whereupon, the proceedings ended at 2:48 p.m.
on July 27, 2022.)

C E R T I F I C A T E

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I hereby certify that the proceedings set forth in the above-entitled matter were reported by audio recording; that thereafter I caused the said audio recorded notes to be transcribed into the foregoing transcript and the foregoing 140 pages constitute a full, true and accurate transcript of the proceedings as noted herein.

August 24, 2022



KATIE LEACH
Official Transcriber

Within this transcript of proceedings, some of the names and/or technical terms are spelled phonetically, inasmuch as exhibits, files and support documentation were not made available to us for reference.