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In the Matter of: )  
The Officer-Involved Shooting of )  
Jerry Allan Gunter. )

Grand Jury Inquiry of the Officer-Involved Shooting of  
Jerry Allan Gunter,  
taken at 9:00 A.M., Monday, August 11, 2021,  
at the Jackson County District Attorney's Office,  
815 W. 10th Street, City of Medford, County of Jackson,  
State of Oregon, before Eileen M. Leddy-Kalevicoglu,  
CSR No. 93-0265.

## APPEARANCES OF COUNSEL

FOR THE STATE OF OREGON:

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1 MEDFORD, OREGON

2 MONDAY, AUGUST 11, 2021; 9:04 A.M.

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4  
5 MS. HECKERT: So this is Detective Cory Sweet.  
6 We'll now start the grand jury on the inquiry into the  
7 officer-involved shooting with Jerry Allan Gunter.

8 If you raise your right hand, this lady is going to  
9 swear you in.

10 \*\*\*

11 DETECTIVE CORY SWEET,  
12 having been first duly sworn,  
13 was examined and testified as follows:

14  
15 JUROR: Thank you.

16 INQUIRY

17 BY MS. HECKERT:

18 Q. So, Detective Sweet, you work for the Oregon State  
19 Police. How did you get involved in this case?

20 A. My phone rang, woke me up. That was the morning of  
21 July 7 -- and let me get the time -- approximately 4:26 in  
22 the morning that my Sergeant with the Oregon State Police  
23 detective unit called and advised there was an  
24 officer-involved shooting that occurred at the Allergy  
25 Asthma Center, and I looked up the address, 3860 Crater Lake

1 Avenue, said I would be lead on the case and then to respond  
2 to the scene, and I got dressed and headed that way.

3 Q. What does it mean to be the case agent or lead on  
4 the case? Can you explain how we do that in Jackson County.

5 A. Like with the MADIU system?

6 Q. Uh-huh.

7 A. Okay. So it's my understanding -- and the acronym  
8 is -- Major Assault Death Investigation Unit -- it's MADIU  
9 for short. And it's comprised of, well, agencies -- when  
10 there's a major incident involving a death or major serious  
11 crime, agencies around the county will send detectives,  
12 electives, and generally it falls -- the case falls on  
13 jurisdictional lines, who is lead; however, OISs are  
14 inherently different in that --

15 Q. And OIS is officer-involved shooting?

16 A. Yeah. Officer-involved shootings are inherently  
17 different because agency or the jurisdiction may fall -- in  
18 this case, Medford PD -- wasn't actually involved in the  
19 incident. So in the spirit of transparency, county leaders,  
20 you know, we don't want that agency that's involved to be  
21 the lead on the investigation.

22 So the goal to elect another agencies that's part of  
23 the MADIU team to pick a guy to be lead, if you will, and  
24 then those other agencies will contribute detectives and  
25 personnel to assist, but in the end, it falls on that agency

1 and their lead detective to kind of oversee the entire  
2 investigation. In this case, I was chosen.

3 Q. Okay. And when you first get to the scene, you're  
4 giving out, you know, jobs for -- basically for people to  
5 do, tasks for people to work on?

6 A. Well, yeah. Initially, when I -- when you arrive on  
7 scene, there always seems to be somebody who was there first  
8 and "Hey, what happened?" And you get a real brief overview  
9 of what happened. You identify which officers were  
10 involved, and in this case, it was no different.

11 And then the initial task would be to process those  
12 officers, to perform a round count on their weapons, and try  
13 and start collecting whatever evidence would belong to the  
14 officers. And then, you know, allow the officers to go home  
15 and be with their families, and that's what happened here.  
16 Those initial tasks were divvied out and then we, after the  
17 initial information was gathered, all the detectives on the  
18 MADIU team gathered or met at the sheriff's office, and we  
19 hold a briefing, and we all get on the same page of what  
20 we've got at that point.

21 Q. Can you explain what "round count" means, and would  
22 you do that every single time even if we don't have an issue  
23 of like how many rounds we think got fired.

24 A. Sure. I know that in my duty weapon right now I  
25 have a magazine than holds 17 rounds, and I have 1 round in

1 the chamber. So I'm locked and loaded with 18 rounds ready  
2 to go, and I have an extra magazine that carries 17 rounds  
3 right now. If I was involved in a shooting, then -- and I  
4 went through the round-count process, the investigator would  
5 ask me, "How many rounds do you have?" I would tell him.  
6 He would then count what I have and try and determine how  
7 many rounds that were fired; therefore, he can relay that to  
8 the investors on the scene and begin looking for shell  
9 casings and collect those as evidence.

10 So that's the process of round counts. Sometimes  
11 officers don't know exactly what they have, or they forgot  
12 that they had to dispatch a deer or something and haven't  
13 reloaded, and there's sometimes a discrepancy, but the goal  
14 of the round count is just to identify how many casings  
15 could be out there in order to security those as evidence.  
16 And it's kind of a guide for us to say, okay, we're looking  
17 for 2, not 5. And so we don't spend all day searching for  
18 something that didn't exist in the first place.

19 Q. Although we have body cams in this case we can  
20 listen to and know how many shots were fired, those aren't  
21 instantly available to you?

22 A. Correct. No. Those take time. Technology gets in  
23 the way -- there's bad WiFi or whatever -- it takes hours to  
24 download files that can range from 10 to 50 gigabytes.  
25 These body cams are so data heavy, it can take several hours

1 before we can do that. In the meantime, we can have  
2 elements of nature -- rain, wind blowing things around and  
3 disturbing your scene. We do the best we can, and round  
4 counts is the fastest way we can get that done.

5 Q. Can you describe the property where this happened.

6 A. Sure.

7 Q. The allergy clinic.

8 A. It's a -- to me, it's like a doctor's office. It's  
9 an allergy center. You'll hear from the owner later, and  
10 he'll describe exactly what it is. It's like a doctor's  
11 office in the building. It's a standard -- it sits up on  
12 the top of the hill, full parking lot. It's a fairly large  
13 building. I would imagine it would be several thousand  
14 square feet inside the building. There's several exam rooms  
15 lobbies, you know, doctor's offices, sure, typical large  
16 doctor's office building.

17 But to the south side of the building, there's a  
18 very large gravel parking lot, and as we'll get into later,  
19 there's a pathway that walks around the southern perimeter  
20 of the building and -- yeah. The north side of the building  
21 is the street, and there's another small parking lot on the  
22 east side back of the building, if you will.

23 Q. Okay. So when you did kind of a walk through of  
24 business, just tell us like what you saw evidentiary wise as  
25 later in the day as you were actually able to go inside the



1 building. Start with the front door or where --

2 A. Sure. When I first arrived on scene, I'll start  
3 there.

4 JUROR: I have a quick question. Where did the  
5 shooting happen, inside or outside?

6 THE WITNESS: Outside.

7 JUROR: Outside. Okay.

8 THE WITNESS: When I first arrived, I think I  
9 arrived at the scene approximately 5:00 A.M. I walked to  
10 the southwest corner of the building, and I observed broken  
11 glass and a broken window and broken glass all over the  
12 ground. I observed two shoes, which stood out, because they  
13 were mismatched, and they were both left footed.

14 And that -- I don't know -- at that time I thought,  
15 oh, okay somebody definitely broke into there obviously, and  
16 later when we entered the building to begin our  
17 investigation inside, right inside that window, which was  
18 big enough for someone to break and then crawl through,  
19 there was a paver stone, which was -- this was a doctor's  
20 office that this window led into.

21 So it was my belief at that time that that was the  
22 item, if you will; it was a paver stone yay big that was  
23 used to break the window. Right inside there was also a  
24 white trash bag that was filled with various items that  
25 appeared to come from the doctor's office. There was blood

1 evidence in front of the window, and then as we began to  
2 walk through the building, one of the nearest exam rooms,  
3 the cabinet doors were opened, and they were bare, and on  
4 the counter was blood, and there was also a silver tray that  
5 showed some blood.

6 I continued on through the building and went into --  
7 I guess we could call it the control room, and there the  
8 owner with -- was with us at that time, and he advised that  
9 the copier was out of place and then noticed that the --  
10 high above the ceiling, too high for someone of my height  
11 even to get close to touching, there was a control box that  
12 was opened, and there was wires exposed.

13 When he said that the copier was out of place, it  
14 became evident, if I was -- if I needed to get to that, I  
15 would have to move the copier, get on that, get on the  
16 fridge, get to the wires. So it kind of -- it kind of  
17 created like a step, if you will, to get up there, and we  
18 noticed that.

19 We made our way to the far southern-western side  
20 of -- I'm sorry -- the eastern -- southeastern side of the  
21 building, the backside, if you will, and it's like a small  
22 kitchen. And I noticed that the dishwasher door was ajar,  
23 which -- I don't know -- I just noticed that. I had known  
24 at this time that there was a knife in play and observed the  
25 knife, and it was a basic kitchen knife. So we were kind of

1 on the lookout for that.

2 And I'll back up first one sec. In the control room  
3 where the copier was out of place, there was also two other  
4 steak knives that the owner said was out of place as well.  
5 That's about that.

6 Q. The copier room, did you locate like a sweatshirt  
7 also identified as out of place?

8 A. Yes. Yes. There was a black sweatshirt. I mean,  
9 the room was neat and tidy with exception to the stuff that  
10 was out of place. But then draped across the counter was  
11 this black sweatshirt that was dingy, and it didn't seem to  
12 make sense why it would be there. This was a very pristine  
13 doctor's office as you can imagine.

14 JUROR: The control panel.

15 THE WITNESS: Yeah.

16 JUROR: Why would anybody want that?

17 THE WITNESS: Well, an audible alarm was sounded  
18 when the person made entry.

19 JUROR: They cut it off?

20 THE WITNESS: I don't know. I would guess. If it  
21 was me and I was trying to shut the alarm off, I'd be okay  
22 and "shhhu" and start ripping wires, but that would be my  
23 guess. The alarm emitted from that control box. I don't  
24 know for sure-sure. I don't know.

25 Q. BY MS. HECKERT: And then in that same copier room,

1 we'll call it, there was this large toolbox that --

2 A. Yes.

3 Q. -- was going to be --

4 A. Crash --

5 Q. -- a crash cart?

6 A. It was a crash cart, and the drawers had been pulled  
7 out and completely emptied.

8 Q. And the bag that was right inside the doorway where  
9 the window was broken, that bag, you said, contained kind of  
10 miscellaneous items, was that like medications?

11 A. Various -- there was no narcotic. The owner advised  
12 it was just various allergy treatment stuff in there. I  
13 wouldn't know what I was looking at. Maybe I would have  
14 thought it was something else if I was seeking that. Yeah,  
15 it was just various allergy-related stuff, and then there  
16 was a white trash back outside that I guess I'll get to that  
17 when we get there.

18 Q. That was pretty much all we saw disturbed and  
19 different inside that building, I think, for the most part?

20 A. I think so, yeah. That about covers it. Those are  
21 the three main rooms I noticed things.

22 JUROR: Do you recall if there was any blood on the  
23 copier or any place else in that room?

24 THE WITNESS: No.

25 JUROR: Okay.

1           THE WITNESS: I don't -- now that I think about it,  
2 in one of the exams room, the pillow was missing, which  
3 comes into play later. Those little white pillows on the  
4 bed where you lay down, one of those was missing.

5           Q. BY MS. HECKERT: So then when there was a bag  
6 located outside the building as well. Can you tell us about  
7 that.

8           A. Sure. It was, it was --

9           Q. On the body cams, you can tell. You can give them a  
10 brief overview of --

11          A. Body cams.

12          Q. -- what you saw on the body cams.

13          A. You'll observe the body cams later. The -- when the  
14 subject or suspect was shot and fell, he was carrying a  
15 white trash bag and a green lunch box, and inside the white  
16 trash bag was the white pillow that I just alluded to and  
17 other various items that was obvious came from inside the  
18 building. And the green lunch box there was peanut butter  
19 and mixed nuts, and we learned from the owner that was, I  
20 guess, allergy items -- right? -- people with peanut  
21 allergies and whatnot, they use it for test purposes. So he  
22 had snatched that.

23          Q. Okay. And so from the, from the body cam videos  
24 that you've been able to watch, Mr. Gunter comes out of the  
25 back of the building and just tells kind of briefly what

1 happens so they won't be wondering where we're going.

2 A. Sure. Well, when I observed -- how do I say it? --  
3 the -- in the southern perimeter of the building, if you  
4 will, and when I observed the broken glass I was talking  
5 about, that's on one corner of that wall. Where the body  
6 cam -- where the suspect exits and we first pick him up  
7 exiting the building, it's on the same wall, but on the  
8 other corner, so the southeastern corner. So all the stuff  
9 kinds of happens on that side.

10 JUROR: Did he come in the broken window and got out  
11 another way?

12 THE WITNESS: That would be my belief. The window  
13 was definitely big enough to get out. In fact, the officer  
14 made it through the window and let the other officers in  
15 that ended up clearing the building.

16 Q. BY MS. HECKERT: The room where he came out of was  
17 the kitchen?

18 A. The kitchen area where I noticed the dishwasher was  
19 ajar. As he exits that building, exits that door, he's  
20 immediately challenged by Medford Police Officer who tells  
21 him to, you know -- I don't remember exactly -- but  
22 announces his presence, and in the video you can hear  
23 Mr. Gunter say, "You're not the police" or "You ain't the  
24 police" or something to that effect, which tells me that,  
25 you know, he obviously heard the guy, and I guess, if you

1 will, had a brief conversation with him.

2 He then proceeds to walk around the building, and  
3 several body cams will show that officers are identifying  
4 themselves; they are giving commands to stop, and you  
5 actually see in one of the body cams Mr. Gunter holding the  
6 knife. And as he makes his way around the corner of the  
7 building, and then he -- out of the initial officer's view,  
8 you lose him, and he starts walking down that path, and that  
9 path, it's a very narrow path. There is a large shrub line  
10 that runs down the southern side, and then you have the  
11 building wall itself.

12 So it's certainly wide enough for you to walk  
13 unobstructed down, and it's just pavers that are inside of  
14 dirt or bark, and -- but it's not very wide. I don't, I  
15 don't -- I can't think if two people could walk abreast to  
16 each other down it, but certainly one. And then he ends  
17 up -- there's a like a -- I mentioned on the other side of  
18 that shrub line is the large gravel parking lot, and a lot  
19 of officers staged in that area. And then there's the one  
20 officer who encounters head on Mr. Gunter, but on that very  
21 narrow path.

22 Q. Okay. And how is Mr. Gunter dressed?

23 A. He's dressed in -- well, the thing that stands out  
24 to you, he's dressed in a very white pristine lab -- white  
25 lab coat looks similar to what a doctor, a doctor would

1 wear. He's also wearing pants, yeah, a pair of green pants  
2 that had a belt, and I mean, his clothes were very dirty, so  
3 typical of, you know -- I don't know -- someone who hadn't  
4 changed their clothes in a while.

5 And the white coat, on the other hand, appeared --  
6 especially with the body camera -- to be crystal clean so  
7 definitely stood out.

8 Q. He doesn't have a shirt on underneath the lab coat?

9 A. You know, not that I recall. I didn't recover a  
10 shirt that day.

11 Q. It's not at the autopsy?

12 A. And I hadn't reviewed the body cam. I can't recall.

13 Q. Shoes?

14 A. No. No shoes.

15 Q. He had no shoes on?

16 A. Yeah.

17 Q. And he has like a plastic glove or a glove on. Do  
18 you recall that?

19 A. I don't.

20 Q. Okay. We'll see it on the video.

21 A. Yeah.

22 Q. So then what information did you learn from the  
23 alarm company or you've seen like the readout from the alarm  
24 company? What did that kind of tell you as far as --

25 A. Yeah.



1           Q. -- times?

2           A. So the alarm company is Stanley Alarm Company, and I  
3 contacted them and requested a report of that morning's  
4 service, and upon reviewing the report that they provided,  
5 at 2:31 is when the alarm goes off, 2:31 A.M. And they  
6 don't contact law enforcement until 2:44. So for 13 minutes  
7 the alarm had been sounding.

8                   And it's -- from what I understand, alarm companies  
9 will not immediately notify law enforcement. The typical  
10 procedure is to contact key holders and other various people  
11 that are in charge of the business to determine, "Hey, do  
12 you know what's going on?" Because alarms go off all the  
13 time. We get alarm calls as law enforcement all the time,  
14 and it's -- most the time, it's just somebody who didn't  
15 press the keys right, and the thing goes off.

16                   And in this case, it took 13 minutes to notify 911.  
17 The dispatchers put it out to the officers, and the first  
18 officer was on scene at approximately 2:47. In that time,  
19 though, from when the officer arrived on scene -- the  
20 officer arrives on scene -- shortly thereafter, the alarm  
21 company actually discontinues the request for law  
22 enforcement. So at one point the officer was actually told  
23 by dispatch to, you know, you can cancel. You don't need to  
24 respond, which the officer -- I'm not sure exactly where he  
25 was or what he saw at that point, but he observes the broken

1 glass I did. And says, "No, no. There's something not  
2 right here," and then he called in for more back up.

3 Q. Okay. Perfect.

4 JUROR: Sorry. Who said to stop the -- who said to  
5 change -- who changed their mind about --

6 THE WITNESS: The alarm company --

7 JUROR: Thank you.

8 THE WITNESS: -- notified dispatch, "You can cancel  
9 your response." Dispatch relayed that to the officer, but  
10 by that time, the officer had observed, you know, same  
11 broken glass I did, and it's pretty clear that something was  
12 going on at that point.

13 JUROR: Thank you.

14 Q. BY MS. HECKERT: So you brought with you the knife  
15 that Mr. Gunter had?

16 A. Yes. Well, yes. Yes, I did.

17 JUROR: Do you think it would be helpful to pull up  
18 a picture as we hear him so we can get a better view of what  
19 the building looked like and what the area looked like.

20 MS. HECKERT: One of our witnesses a little bit  
21 later has some photos that we'll be putting in.

22 JUROR: Okay. That's fine.

23 MS. HECKERT: And they are not here, but otherwise  
24 I'd show those to you now.

25 JUROR: Even the map will help.

1 JUROR: Did Mr. Gunter have a gun?

2 MS. HECKERT: No. He had a knife.

3 JUROR: Just a knife?

4 THE WITNESS: Yeah.

5 JUROR: Okay.

6 MS. HECKERT: Thank you. So Detective Sweet was  
7 trying to give you an overview of what parts he did and what  
8 he was involved in, but you're going to hear from lots more  
9 witnesses that will fill in much more of the blanks.

10 Does anyone have a questions at this time for him?

11 JUROR: Will you repeat what MADIU stands for.

12 THE WITNESS: Was I right?

13 MS. HECKERT: Yes.

14 THE WITNESS: Major Assault and Death Investigation  
15 Unit.

16 JUROR: Major Assault.

17 THE WITNESS: And Death Investigate Unit.

18 JUROR: Okay. And will you tell me what the round  
19 count -- do we, do we rely entirely on the officer's  
20 impression of what is -- how much they have, or does the  
21 officer -- is that information shared already? Does the  
22 office know that there's that many rounds? Are we relying  
23 entirely on the officer's impression?

24 MS. HECKERT: We ask the officers how many -- how  
25 they load their guns because different officers load it

1 differently.

2 THE WITNESS: Yes. For example, in my -- I'm issued  
3 a rifle, and in my magazines, the capacity are 30 rounds;  
4 however, I choose to only carry 28. So in the event I was  
5 involved in a shooting with my rifle, you can't rely on the  
6 magazine capacity. You have to ask the officer how many  
7 rounds do you normally carry?

8 JUROR: Okay.

9 THE WITNESS: In my case I say, "I always carry  
10 "28", and then they can count there.

11 JUROR: We rely on --

12 THE WITNESS: Again, it's just to try and help us  
13 determine what kind of evidence is out there so we can keep  
14 looking for that stuff. It goes on forever, and the wind  
15 blows.

16 JUROR: Is there anything ever recorded that says,  
17 you know, the officer is going on duty with 28 rounds?

18 THE WITNESS: No.

19 JUROR: Okay.

20 THE WITNESS: No. I mean -- no. Again, things  
21 happen throughout the night. I don't know how many times  
22 I've had to go out to discharge my weapon to catch an animal  
23 that's been road struck, and maybe I don't get to the ammo  
24 cache that night.

25 JUROR: Okay.

1 THE WITNESS: So I pop a new mag in or whatever.

2 JUROR: Thank you.

3 Q. BY MS. HECKERT: The reason people don't load their  
4 guns to capacity, you think -- well, just load to  
5 capacity --

6 A. Right.

7 Q. -- and we know exactly how many everyone has,  
8 there's some thought as to why we don't do that?

9 A. There's inherent strain on the equipment. If you  
10 continue to keep your magazine at full capacity, the spring  
11 will go out on you, and it won't function properly. Some  
12 magazines are better over time than others, but that's the  
13 rule.

14 JUROR: That's interesting. I didn't know that.

15 MS. HECKERT: The things you learn.

16 THE WITNESS: Everybody has their own theory. One  
17 guy is, "I'm always one shy. I'm always two shy."

18 MS. HECKERT: But good question. Any other  
19 questions at this point? And Detective Sweet will be  
20 available. He's going to be around all day. So if we have  
21 questions and have to pull him back in, we can do that as  
22 well.

23 JUROR: Right.

24 MS. HECKERT: All right.

25 JUROR: Was there any reason by the alarm company

1       for discontinuing the alarm?

2               MS. HECKERT:  You're going to hear from the next  
3       witness.  We'll try and fill in those blocks.

4               JUROR:  Thank you, Detective.

5               MS. HECKERT:  We try to give you little pieces.

6               THE WITNESS:  By the end of the day --

7               JUROR:  We're good at puzzles.

8               MS. HECKERT:  Go ahead and have a seat there.

9               THE WITNESS:  Okay.

10              JUROR:  Smart to bring that.

11              MS. HECKERT:  This is --

12              JUROR:  Good self care.

13              MS. HECKERT:  This is Dr. Edward Kerwin.  If you  
14       raise your right hand, Doctor, this lady is going to swear  
15       you in.

16   \*\*\*

17   DR. EDWARD KERWIN,

18   having been first duly sworn,

19   was examined and testified as follows:

20

21   INQUIRY

22       BY MS. HECKERT:

23               Q.  Dr. Kerwin, your business is the Allergy and Asthma  
24       Center in Medford?

25               A.  Yes.  That's right.

1 Q. And on July 7, did you get a call for the alarm?

2 A. Yes, I did. I believe I don't know the exact date.  
3 It was early on, I think, a Wednesday morning.

4 Q. Okay.

5 A. And I got a call, I believe, around 1:45 in the  
6 morning from our alarm.

7 Q. It could have been 2:45?

8 A. It could have been 2:45.

9 Q. That's not a problem.

10 A. I know.

11 Q. You live a distance away, about 30 minutes or so  
12 away from where the asthma clinic is?

13 A. That's right. We've had the Stanley Alarm Company  
14 for years, and I'm about third on the call list. So they  
15 did call me, but apparently they had already talked to  
16 another employee, Dan, who lives closer, and he had asked  
17 them to dispatch the police.

18 Q. Okay.

19 A. I believe he was called at, you know, 2:40 or  
20 something or 2:42.

21 Q. Okay. And then at some point did you ask the  
22 police -- or did you ask your alarm company to cancel the  
23 police?

24 A. I did. We've had the building there 20 years.  
25 We've never had a break-in, and so I told them it might be a

1 false alarm and that I would go check it out. So that was  
2 at 2:45.

3 Q. Okay. And then when you got onto the scene, at some  
4 point, were you able to finally disable the alarm?

5 A. Yes. I'll just say that I was getting ready to head  
6 from Ashland to the building, and I got a call from, I  
7 believe, a Medford Police dispatcher around 2:55, about  
8 10 minutes later. And they told me there was a broken  
9 window; there was someone inside the building; the person  
10 had said they were armed.

11 They said there were five police personnel on scene,  
12 and they did want me to come down and be available, and so I  
13 did get to the building, I guess, half hour later, about  
14 3:25 maybe then. And I, I -- at that time, the building --  
15 the building and parking areas were sealed off with police  
16 tape. There were 20 police vehicles of different sorts  
17 there, and I walked around and just identified myself as the  
18 building owner. And after about 10 minutes, one of, I  
19 believe, the Medford Police officers had me go in the  
20 building with my key, and I turned off the alarm.

21 Q. At that point could you still hear the audible alarm  
22 going off?

23 A. Yes, yes. The building has both door sensors, but  
24 in this case, motion sensors were activated. We think  
25 within a minute or two of the intruder entering the



1 building, a motion sensor went off, and it sounds a loud  
2 horn from a central part of the building.

3 Q. Is that where the copier is located? Because  
4 they've heard a little bit about that room.

5 A. Yes, that's right. Later that next morning, I did a  
6 walk-through with you and a couple of the officers, and we  
7 found that the intruder had entered in a corner office by  
8 breaking a window. Apparently, they rifled a couple of  
9 rooms close to there, and then toward the center of the room  
10 where the horn is, they had tried to climb on a copier and a  
11 refrigerator and broken into an alarm control box, but that  
12 doesn't really silence the alarm. And they rifled a few  
13 medicine drawers by throwing medicines into garbage bags,  
14 and apparently then they departed the building.

15 Q. In the same copier room, there's a large tool, what  
16 we would all call like a tool chest you have out in your  
17 garage. You call it a crash cart?

18 A. We call it a crash cart. We're an allergy clinic;  
19 so we have medicines to treat clinic emergencies like  
20 epinephrine, antihistamines, corticosteroids. And they are  
21 in a red F pipe toolbox. It's kind of on wheels, and, yeah,  
22 later that morning, we found that two to three drawers of  
23 that had been emptied out and thrown into bags, and  
24 apparently they were carried by the intruder. I believe he  
25 found that central room because the alarm horn is located

1       there; so he was trying to inactivate the horn or something  
2       like that.

3           Q.   Okay.  And then the medicines that were in the crash  
4       cart, you later were given back, and they were in that white  
5       plastic bag by the broken glass door or window?

6           A.   Yes.  We, we -- based on the later walk-through, we  
7       feel the medicines were thrown in a garbage bag.  All of our  
8       garbage cans have little plastic bags in them.  And  
9       apparently the intruder on the way out propped the door open  
10      with a plastic box, and we found most of the medicines were  
11      in the plastic bag or in that plastic box near the exit  
12      door.

13          Q.   Okay.  And do you know the total square footage of  
14      your building by chance?

15          A.   I do.  It's about close to 11,000 square feet.

16          Q.   Okay.

17          A.   It's pretty big, and it's a medical office building.

18          Q.   And there are eight exterior doors; is that correct?

19          A.   There are.  There are eight exterior doors.  The  
20      door that was on the side that was entered does have some  
21      motion censor lights.  We think there was a brick outside  
22      the door used to prop the door sometimes, and we think  
23      possibly the intruder might have been by earlier and noticed  
24      that corner of the building, and the brick outside was used  
25      to break the window and enter.

1           Q. Okay. And then did the officer show you another bag  
2 that was located outside and that had some items in it as  
3 well?

4           A. I do not know that I saw another bag of items  
5 outside. I, I mean --

6           Q. Okay. That's okay if you don't remember.

7           A. There were a number of stray items that had been  
8 picked up out of our rooms. There was a white coat.  
9 Apparently a little paring knife that one of our doctors  
10 used to cut his lunch fruit was taken, and the medicines  
11 were taken.

12          Q. Do you remember like a pillow also being recovered  
13 out someplace else? If you don't, that's okay.

14          A. I don't remember that personally.

15          Q. Okay. That's fine. No problem. Could you give  
16 like a ballpark value of the medications that were in the  
17 crash cart? Do you have any idea?

18          A. Yeah, I can estimate that. I'll just say we're an  
19 allergy office; so we have zero narcotic medicines in our  
20 building. It's not really a -- none of the medicines would  
21 be any good for abuse; however, there were -- it was just 3  
22 or \$400 of medicines that were pulled out of our crash cart  
23 to -- out of convenience, I think.

24          Q. Okay. And then when the -- did the police show you  
25 the knives? Do you recall?

1           A. Yes, yes. They showed me two knives that were -- so  
2 this procedure room where the alarm horn goes off in the  
3 middle of the building, that was where the red crash cart  
4 was and the copier and the freezer and the alarm box. And  
5 there were two wood-handled knives sitting on a -- kind of,  
6 I think, a metal container in that room. And they didn't  
7 look familiar to me.

8           So I saw those knives, and then they showed me a  
9 photo of another knife. I remember seeing it. It looked  
10 like maybe a six-inch blade, nothing too dramatic, and those  
11 knives didn't look familiar to me at the time. It's  
12 possible one of them might have come from -- there was a  
13 room right next to the office where they broke in was a  
14 doctor's office, and afterwards that -- we found out that  
15 that doctor's white coat and maybe a small lunch paring  
16 knife had been taken.

17           MS. HECKERT: Okay. Okay. So any questions for  
18 Dr. Kerwin?

19           JUROR: Yes. The detective had mentioned cabinet  
20 doors were opened and things were emptied out, that the  
21 cabinets were emptied. Were there allergy medications in  
22 there that were also taken?

23           MS. HECKERT: I think that's Exam Room 22 --

24           THE WITNESS: Yes.

25           MS. HECKERT: -- if you remember.

1           THE WITNESS: So the intruder broke in on kind of a  
2 corner office and then went in an immediately adjacent  
3 doctor office and took -- found a white coat and possibly a  
4 small knife. Then they went in an exam room, and the exam  
5 room just had -- it actually had folded-up pillow cases that  
6 are disposable pillow cases. It had some different supplies  
7 used for seeing patients. Not really medicines, but more  
8 supplies.

9           JUROR: Supplies. Okay.

10          THE WITNESS: And, you know, it was clear that the  
11 doctor office and that one exam room were entered, and then  
12 apparently the intruder made their way to the larger room  
13 where the alarm was.

14          JUROR: Uh-huh. Okay. Thank you.

15          THE WITNESS: So there wasn't much medicine.

16          JUROR: What kind of doctor is the doctor next door?

17          THE WITNESS: The doctor next door is my partner,  
18 Dr. Parks.

19          JUROR: Allergies?

20          THE WITNESS: He's an allergist.

21          MS. HECKERT: The entire building was used for  
22 allergies?

23          THE WITNESS: Yeah, allergy, and another company  
24 called Velocity Clinical Research uses the far half.

25          JUROR: Okay.

1           THE WITNESS: But their side of the building wasn't  
2 entered.

3           JUROR: Okay.

4           JUROR: Were you familiar with the deceased?

5           THE WITNESS: No. In fact, I have actually not even  
6 read news reports. I've just heard from others that this is  
7 someone who had a history of breaking into buildings and  
8 possibly -- I don't know.

9           MS. HECKERT: You didn't know him?

10          THE WITNESS: I don't know. I still don't know the  
11 name.

12          MS. HECKERT: Mr. Gunter or --

13          JUROR: Did you look to see if he was a patient of  
14 your clinic?

15          THE WITNESS: I did not look. I don't even know his  
16 name; although I'm sure it's been reported. We do think  
17 it's possible he might have looked at our -- at the outside  
18 of the office previously because he picked a place to enter  
19 where there was a brick used as a doorstep.

20          MS. HECKERT: Uh-huh.

21          THE WITNESS: He entered using the brick.

22          JUROR: You mentioned Epinephrine. Will you tell me  
23 the other medicines that were in the bag.

24          THE WITNESS: Sure. In the -- well, in the crash  
25 cart, yes, there are a lot. It had prednisone pills. We

1 use -- we use different antihistamines, Zyrtec. I'll just  
2 give you the trade name -- it's easier -- Zyrtec, Allegra,  
3 Claritin. We had bags of IV saline. We have other  
4 antihistamine like Benadryl and Hydroxyzine, and we have  
5 IV -- we have syringes for administering medicines into the  
6 IV, if need be, and IV catheters.

7 And there are also some breathing -- there's some  
8 masks used for hooking up oxygen or giving a nebulization  
9 treatment. There was also nebulized Albuterol used for  
10 nebulizing and nebulized Ipratropium, I-p-r-a-t-r-o-p-i-u-m.  
11 It's also called Atrovent.

12 Q. And "nebulize" means it's in steam and you inhale  
13 it?

14 A. Like that, you plug it in. We have a little air  
15 compressor, and it shoots an air jet in. So the patients  
16 who are having acute asthma can't always take an inhaler; so  
17 the nebulizer makes kind of a mister cloud and let's them  
18 breathe in the mask.

19 MS. HECKERT: Other questions? Okay. Thank you.

20 THE WITNESS: Okay.

21 MS. HECKERT: Thank you.

22 THE WITNESS: Thank you very much.

23 JUROR: Thank you.

24 MS. HECKERT: This is Officer Christian Bryant. If  
25 you raise your right hand, this lady is going to swear you

1 in.

2 \*\*\*

3 OFFICER CHRISTEN BRYANT,  
4 having been first duly sworn,  
5 was examined and testified as follows:  
6

7 JUROR: Thank you.  
8

9 INQUIRY

10 BY MS. HECKERT:

11 Q. So, Officer Bryant, you're a Medford Police Officer?

12 A. I am.

13 Q. How long have you been a Medford Police Officer?

14 A. Well, I was first hired in 2002, and then in 2016, I  
15 left, and then I was rehired in 2019.

16 Q. Okay.

17 A. So --

18 Q. Back since 2019?

19 A. Yeah. I know. It's kind of a -- well, that's a  
20 little --

21 Q. Not an easy answer?

22 A. A long time, but I took a break.

23 Q. Were you very close to the call when you heard the  
24 alarm call come in?

25 A. I was, yeah. We were just down the street.



1           Q. And just tell us what you heard and what you did.

2           A. Sure. I was with another officer on a domestic that  
3 we were just finishing up, but they dispatched an alarm call  
4 just down the street from where we were to two other  
5 officers that were downtown. This location is pretty north  
6 of our, our jurisdiction, and a significant time would be  
7 taken from the officers to respond. So I said, "Hey, I'm  
8 clear. I'll respond, and I'll advise on any cover" because  
9 I just drove up the street, parked, and I was there in less  
10 than a minute.

11                 So I got out of the car. I was walking. The  
12 building is north to south with the parking lot on the west  
13 side. So I was walking through the parking lot and -- you  
14 just wanted me to go through the whole thing?

15           Q. Yeah. Just keep going.

16           A. So I was, gosh, halfway, two thirds through the  
17 parking lot when dispatch came on the radio, said, "The  
18 alarm company called and said we could cancel." And I'm  
19 like, well, I'm out of the car; I'm halfway, most of the way  
20 through the parking lot. I may as well walk around the  
21 building and see if I can figure out why the alarm was hit.

22                 So as soon as I got to the south end on the  
23 west-facing side, there is kind of -- the building is inlet;  
24 it kind of goes in the corner like it got pushed in.  
25 There's two doors. There's a door on the west-facing side,

1 and clearly there was shattered glass and like a potted  
2 plant on the, on the stoop right there that looked like  
3 obviously it was used to shatter the glass. There are also  
4 two shoes out there, which was odd, but clearly that was the  
5 reason for the alarm. And so I immediately called for  
6 cover.

7 Q. What does that mean, "cover"?

8 A. I, I called for another unit to respond. Since --  
9 with my response time was pretty quick, there's still shoes  
10 right there. I was thinking we probably had somebody inside  
11 the building, which we're not going to handle alone; so I  
12 immediately called for another unit to respond and waited  
13 outside until I -- my cover showed up.

14 You know, I called dispatch to see if they could  
15 figure out why the alarm got canceled to see if -- you know,  
16 maybe sometimes we get employees on scene that enter the  
17 wrong code, and then they enter the right code; so the alarm  
18 company will call and cancel us. They were unable to get in  
19 touch with the alarm company.

20 But with shattered glass, it's a different scenario.  
21 You clearly had somebody in there that wasn't supposed to  
22 be. So my cover showed up. It was Officer Moffitt. And  
23 shortly after that, Officer Quintero, who was down the road  
24 with me on the domestic, also responded. But  
25 Officer Moffitt and I were now checking out the broken

1 glass. There was a point where, you know, he --  
2 Officer Moffitt -- addressed the, you know, the interior of  
3 the building through the broken glass, and we actually heard  
4 a response. Someone was in there. And so we announced on  
5 the radio, "There's somebody inside," said --

6 JUROR: Excuse me. So they said, "Is there anybody  
7 in there?"

8 And somebody said, "Yes."

9 THE WITNESS: Well, we said, "Medford Police." We  
10 announced ourselves.

11 JUROR: Sorry.

12 THE WITNESS: "Medford Police. Come out now." And  
13 someone actually responded to us.

14 JUROR: Cool. Okay.

15 THE WITNESS: And --

16 Q. BY MS. HECKERT: Were you able to hear what he said?

17 A. Yeah. Yeah. He, he said -- I believe he said that  
18 he was -- that he was the police and he had a weapon and he  
19 didn't want us to force him to use it on us.

20 Officer Moffitt asked him what weapon he had, and he, he  
21 responded that he had a knife.

22 So now we knew we had somebody inside that was  
23 possibly armed, and so we announced on the radio what we  
24 discovered, and then pretty much everybody, the whole team,  
25 started responding. As they responded, I started directing

1 people to the different corners so we could lock the  
2 building down to make sure he didn't go out a back door, and  
3 so units were responding. I had -- you know, we had the --  
4 all corners of the building so we could keep all the  
5 building addressed.

6           There was a point Officer Moffitt started -- he -- I  
7 believe he's a lock pick; in fact, he is. So he was getting  
8 his lock-picking tools to try to open the doors so we could  
9 make -- gain entry. We tried to call for someone to respond  
10 with a key. I called to say, "Hey, we need somebody here."  
11 They found someone to respond, but they were 30 minutes out,  
12 which made me mad because 30 minutes is an eternity. And I  
13 was -- you know, you're thinking why can't you -- can you  
14 find someone closer, please, with a key.

15           And so Officer Moffitt was now working on picking  
16 the lock. Officer Quintero and I were stationed -- because  
17 picking a lock is very dangerous because the windows were  
18 mirrored. We couldn't see inside. You don't know who is  
19 inside, and now we have someone there with a weapon. So  
20 it's a dangerous time.

21           As we're covering him while he's working on the  
22 lock, County units started responding. So we had a lot of  
23 people. There was -- there was a -- there was a point  
24 where, you know, some of the guys saw someone moving inside  
25 the building and announced they were moving kind of north

1 through the building. Then they lost sight of him.

2 Q. These things are being reported over the radio, and  
3 you're hearing them?

4 A. Yes, correct, correct. You know, the -- and both.  
5 We had guys on the west side that were moving to the north  
6 side, and they were looking through the window, and they  
7 could hear. So I heard them not only on the radio, but also  
8 they were right there, so I heard them.

9 So as we're working on the door, all of a sudden, we  
10 hear, "contact east side" or "contact --" I think he said,  
11 "contact on the east side." Anyway, we had contact.  
12 Officer Moffitt, who is -- you know, I'm standing next to  
13 him -- asked, you know, "Is that inside the building or  
14 outside the building?" And they said, "Outside."

15 So we immediately now started shifting because we  
16 were on the south side of the building. We started shifting  
17 east to go try and make contact or try and get this guy into  
18 custody. So, you know, as -- and it's dark, and the south  
19 side is a -- it's not really lighted very well. It's where  
20 the air-conditioning unit is; so it's where the utility --  
21 it's the utility side of the building.

22 Q. And the paver path is there?

23 A. Pardon me?

24 Q. We've already heard about the paver path that's  
25 there as well.

1           A. Yeah. So there's a row of hedges on the, on the  
2 south side, and the row of hedges separates the building  
3 from a large gravel lot or a just a big dirt flat lot,  
4 wide-open space. On that south side, there's the  
5 air-conditioning unit, but there is, you know, pavers. It's  
6 a path, of course, along that building in between the  
7 building and the hedges.

8           And the hedges aren't, you know, like a hedge where  
9 it's really tight. You could walk through them. But the  
10 branches are touching each other in most of the areas, but  
11 you could still walk through it. You know, I had cleared  
12 that area before with my light to make sure there were no  
13 doors that someone could come out of. But when we heard,  
14 "Contact on the east side," everybody that was right  
15 there -- there were a few of us -- we started shifting kind  
16 of east and then in a diagonal towards the south.

17           We knew the guy had a knife; so we didn't want to  
18 just, "Hey, how are you doing? Come here." Someone with a  
19 knife is extremely dangerous. The fact is we just watched a  
20 training video earlier at the start of our shift with a guy  
21 with a knife.

22           JUROR: Today or then?

23           THE WITNESS: That, that shift. And it's -- we  
24 watch training videos quite a bit, and this one happened to  
25 be a guy in, I believe he was in a park, with a knife, and

1     you know, he had a two-officer response, one with a gun, one  
2     with a taser. And the guy with the taser ended up on the  
3     ground with the guy with the knife on top of him. So, you  
4     know, you're always seeing these videos. You're always  
5     being trained on how dangerous these things can be and how  
6     to respond.

7             So as we were moving. We were all kind of moving,  
8     you know, east by southeast basically in a diagonal. And  
9     it, it felt like we were sort of in a squirmish line, that  
10    we were kind of creating this big net to then encounter the  
11    person with the knife and try and take him into custody.  
12    You know, I, I looked around, and it -- to my impression, it  
13    was -- everybody had their guns out, and I recognized that,  
14    well, wait a minute. We need to have less-lethal option  
15    here. So I pulled my taser out, so, if the opportunity  
16    arose where we could hit the guy with the taser, hopefully  
17    we can take him into custody that way.

18            As we were moving out, the suspect came from, from  
19    the east side walking south, and you could hear other  
20    officers saying, "He has a knife. He has a knife." So they  
21    saw the knife, confirming it, and it was real simple. We  
22    had moved through the hedges, and we were now -- a lot of  
23    us -- were standing in that parking lot or in that dirt lot  
24    with the hedges between us and the suspect.

25            We were kind of hoping the suspect would walk

1 through the hedges and come out to us, and naturally he  
2 didn't. He immediately turned west and went down that path  
3 along the building. And next -- and I mean, it just, it  
4 happened fast. It happened so fast.

5 I could just -- I heard Officer Moffitt yelling at  
6 him. He was walking right towards him, and I mean, he just  
7 didn't stop. And he was walking pretty quick. He was  
8 walking with a purpose. I mean, it wasn't --

9 JUROR: How was he handling the knife?

10 THE WITNESS: The -- I, I couldn't tell you.

11 JUROR: You don't know.

12 Q. BY MS. HECKERT: You had the hedges?

13 A. Yeah.

14 JUROR: Sorry.

15 Q. BY MS. HECKERT: That's okay.

16 A. I never did see the knife; so I never had an  
17 opportunity to do anything. I just saw he was wearing a  
18 white coat with -- like a lab coat, actually, which I think  
19 was what it was. So I saw the white -- I saw him clearly.  
20 We had our lights on him, and he just turned, and he went  
21 right at Officer Moffitt, and I heard Officer Moffitt  
22 yelling at him.

23 And the suspect just kept coming right at him, and  
24 next thing, I heard two shots or three shots. But I heard  
25 Officer Moffitt, you know, clearly his weapon fired twice,



1 and then I heard a third, and then the suspect was down.

2 Q. And from where you were at on the opposite side of  
3 the hedge, you never had an opportunity to use your taser on  
4 the suspect?

5 A. No, I did not.

6 Q. You can't shoot a taser through bushes?

7 A. No.

8 Q. Can you tell me a little bit about how the taser  
9 works.

10 A. Yeah. It's battery operated. It's electronic, so  
11 when you pull the trigger, it fires two probes from a  
12 cartridge. The two probes are connected by wires, and they  
13 are designed to -- you know, they'd probably go through my  
14 shirt. If I was wearing a jacket, they might not.  
15 Definitely wouldn't have gone through the hedges because it  
16 would get deflected, or they'd stop.

17 JUROR: Is there a part of the body they deflect off  
18 of?

19 THE WITNESS: Part of the body?

20 JUROR: Yeah.

21 THE WITNESS: If they hit the body, they are going  
22 to -- usually they are pretty successful when they are  
23 successful.

24 JUROR: If you get them in the arm, they are going  
25 to do the same thing?

1           THE WITNESS: The idea behind the taser, when the  
2 probes go in, they complete the circuit once they hit the  
3 body. It's usually like a three degree down angle on the  
4 bottom probe. The first one fires straight; so with  
5 distance, they separate. The greater distance you have, the  
6 more effective it's going to be. It creates a sur -- you  
7 know, the surface muscle, and I'm not the expert on taser.  
8 But what I do know is I've been hit by it, and it  
9 incapacitates you. So it will drop you down. I've used it  
10 before.

11           JUROR: How is the training? I'm sorry.

12           THE WITNESS: Pardon me?

13           JUROR: The training video you saw with the officer  
14 with the taser and he got overtaken with someone with a  
15 knife --

16           THE WITNESS: Correct. Yeah. Well, the guy with  
17 the knife charges, and you know, we have training, and, you  
18 know, what you think is safe isn't. I mean, you can be a  
19 significant distance away, and someone with a knife can  
20 still get on you and cause some severe damage and kill you.  
21 So, yeah, this we're aware of, you know, but it's still, you  
22 know, an option that we want to have available.

23           And like I said, I looked around, hey, if this is a  
24 possibility, but looking over there with that path and the  
25 hedge, you know, it's like -- I think Officer Moffitt was

1 the only person there with that option. I had several  
2 officers near me with lethal cover; so I was okay with the  
3 taser out because I knew I had lethal cover near me. So if  
4 he had run towards me and attacked me, I knew I had several  
5 officers that would be able to provide lethal cover, if  
6 needed. You know, that was the thought behind it, but he  
7 didn't come my way. He didn't come through the hedges.

8 JUROR: So there was no opportunity for the other  
9 officers to taser him?

10 THE WITNESS: No, no, not from -- not from where I  
11 was and not from where they were.

12 JUROR: Because he was charging?

13 THE WITNESS: Well, he was -- he was walking pretty  
14 quick, yeah. I mean, it was clear his intention was -- you  
15 know, I mean, he was -- he was walking really fast. I mean,  
16 yeah, you -- you -- your brain is spinning at 1,000 miles an  
17 hour, but you're seeing a man that was fast, so --

18 JUROR: So were you trained to have -- like in that  
19 situation where somebody sees him, they don't -- do they  
20 have guns out, or do they have --

21 THE WITNESS: Oh, yeah.

22 JUROR: -- or taser?

23 THE WITNESS: No. It's guns, yeah. A knife can  
24 kill you. A knife can kill you pretty quick, yeah.

25 JUROR: So Officer Moffitt was by himself --

1           THE WITNESS: Essentially yeah.

2           JUROR: -- so it wouldn't have been prudent to have  
3 a taser out. He wouldn't have the opportunity --

4           THE WITNESS: No.

5           JUROR: -- to pull his gun if he needed it?

6           THE WITNESS: No.

7           JUROR: Okay.

8           THE WITNESS: If I was in Officer Moffitt's  
9 position, I would have my gun out clearly.

10          JUROR: What was your break between 2016 and 2019  
11 about?

12          THE WITNESS: Oh, a friend of mine from college  
13 started a company with a doctor up in Portland to provide  
14 healthcare for small businesses that was better than what  
15 they were currently getting, and I thought it was a great  
16 opportunity.

17          JUROR: Did you have to start all over to get your  
18 police degree?

19          THE WITNESS: No, no.

20          JUROR: And I don't know if we're going to have a  
21 witness from the alarm company, but is it routine for you to  
22 continue your investigation even though it's been called off  
23 by the alarm company?

24          THE WITNESS: Yes. Yeah. I mean, I was --

25          JUROR: It's routine.

1           THE WITNESS:  -- I was already out.  It's part of  
2 customer service.  There's a reason for the alarm.  You may  
3 as well go look.

4           JUROR:  Even thought they call off the alarm?

5           THE WITNESS:  Yeah, in effect.

6           Q.  BY MS. HECKERT:  If you had been driving there,  
7 would you continue to drive there, or was it more because  
8 you were out of the car?

9           A.  It's hard to say.  For me, I was out of the car two  
10 thirds of the way through the apartment; so I may as well  
11 keep walking.  If I was driving there, it would depend.  I'd  
12 probably find out why they canceled.  I mean, there's a lot  
13 of times you've been canceled, "Okay, clear," but I think we  
14 just had one also where the alarm company canceled, and it  
15 turns out someone broke the glass and stole thousands of  
16 dollars worth of product.  If it was your business, you'd  
17 probably want me to get out and check it out anyway, so --

18           JUROR:  When you said it made you mad, did anyone --  
19 did you act on your anger or --

20           THE WITNESS:  Huh-uh.

21           JUROR:  -- you said --

22           THE WITNESS:  Oh, no.  Oh, no, no.  It's a  
23 frustration because --

24           Q.  BY MS. HECKERT:  I think that was related to the --

25           A.  The 30-minute response.

1           Q. -- 30 minutes to respond.

2           A. Yeah. It's just like, oh, my gosh. You know, can't  
3 we -- can we find somebody closer because it would be nice  
4 if we could get in and check it out.

5           JUROR: You were first on the scene and then  
6 Officer Moffitt and then Officer Quintero?

7           THE WITNESS: Yeah. And then everybody else --

8           JUROR: And then everybody else --

9           THE WITNESS: -- started responding.

10          MS. HECKERT: Did you finish your question though?

11          JUROR: Does "contact" mean -- what does "contact"  
12 mean? That there was contact, that the person was seen  
13 or --

14          THE WITNESS: No. We, we heard their voice. They  
15 responded to us. Yeah, we didn't see anybody, but we heard  
16 someone announce that they were inside.

17          JUROR: That was in the beginning, and then later  
18 you said then there was contact.

19          THE WITNESS: Yeah. Then we had, you know, visual  
20 contact.

21          JUROR: Visual, okay.

22          THE WITNESS: Yeah.

23          Q. BY MS. HECKERT: That was by radio?

24          A. Radio, yeah.

25          Q. You were --

1           A. I believe that was Officer Terando that came on the  
2 radio and said, "Contact," which is standard, and that's why  
3 we asked, "Is it contact inside the building?" You know,  
4 were we talking to the guy, or did we see the guy? We were  
5 trying to establish what kind of contact we had. "No. It's  
6 outside the building," so that meant physically he's  
7 outside. And at that point, you know, you know, it just --  
8 it was fluid. It just happened quickly.

9           JUROR: You said it was real simple. What do you  
10 mean by that? You said, "It was real simple."

11          MS. HECKERT: When did he say that, in context to  
12 what?

13          JUROR: In the context --

14          MS. HECKERT: What was he talking about?

15          JUROR: After he said, "He has a knife. He has a  
16 knife," and you said, "It was real simple," meaning it  
17 wasn't complicated?

18          THE WITNESS: I'd have to -- I apologize.

19          JUROR: Oh.

20          THE WITNESS: Yeah. I, I, I don't know what I  
21 meant.

22          JUROR: Okay.

23          THE WITNESS: I don't know what we were talking  
24 about on that part. No. It -- yeah -- I --

25          JUROR: Okay.

1           THE WITNESS: Sorry. I don't know to what I was  
2 referring to.

3           Q. BY MS. HECKERT: So just a couple other questions.  
4 When they are taking him into custody after he's been shot,  
5 can you tell us what you did in relation to the knife?

6           A. Yeah. So we -- once he's down, we, we were moving,  
7 and we continued to yell, and he was still moving, and his  
8 hands -- we couldn't see his hands. I heard Officer Moffitt  
9 yelling, you know, to -- typical -- "Show us your hands."  
10 So we know where his hands are in relation to is he still  
11 holding the knife? Because we're not going to walk up on  
12 him if he's still holding the knife. It's still a threat.

13           As we were getting closer, you know, through the  
14 hedges, I could see where he had moved his hand up, and so  
15 we felt it was safe to, to then move forward. So we moved  
16 forward. As soon as I got through the hedges, I could see  
17 the knife laying on the ground; so I immediately stepped on  
18 the knife so he couldn't reach back and grab it. You know,  
19 at that point, I had my gun out, and we were making sure he  
20 was no longer a threat.

21           I holstered and helped get him into handcuffs, but  
22 as we were doing that, I picked up the knife, and I put the  
23 knife up on the -- away from him up on the ledge of the  
24 building next to the window. So the knife was no longer a  
25 threat to us.



1 Q. Did you help load him into the ambulance?

2 A. I did, yeah.

3 Q. And on the ambulance?

4 A. So once we had him in handcuffs, we immediately  
5 started going into first-aid, you know, looking for who has  
6 first-aid on them. My car was, you know, way on the other  
7 side of the building. So someone else ran to get first-aid  
8 items. We were able to get a chest seal that we put on him  
9 immediately. The ambulance I had called in once -- once he  
10 was down, I called the ambulance to -- you know, who was  
11 staging. I called the ambulance in.

12 They responded into the parking lot. They were  
13 saying, "Hey, we can't get our gurney back there." So we  
14 decided -- we grabbed him and just picked him up and carried  
15 him to the gurney and put him on the gurney, and he  
16 immediately was taken into the ambulance, and I stood by at  
17 that point with the ambulance. Then I followed the  
18 ambulance up to the hospital.

19 MS. HECKERT: Okay. So any other questions for  
20 Officer Bryant?

21 JUROR: Was he still conscious?

22 THE WITNESS: He was. He was moaning, yeah. There  
23 was -- I mean, he was, he was moving at first. You know,  
24 when we got the first-aid on him, he was moaning. When we  
25 took him to the gurney, he was moaning, and then after that,

1 I was not -- I kept my eyes on him, but I was not near him.  
2 So --

3 JUROR: Was anyone doing CPR? Were those agonal  
4 breaths or --

5 THE WITNESS: I have no idea.

6 JUROR: Who would have -- was anyone looking? Who  
7 was --

8 THE WITNESS: He was being treated by Mercy Flights  
9 at that point.

10 JUROR: Oh. He was shot twice?

11 Q. BY MS. HECKERT: If you know. If you only know from  
12 you saw it or --

13 A. Yeah. I heard three shots.

14 MS. HECKERT: But you'll hear that. You're going to  
15 find out later.

16 JUROR: Yeah.

17 MS. HECKERT: Sometimes he doesn't know the answer  
18 unless someone told him.

19 JUROR: What hospital did you go to?

20 THE WITNESS: RPMC Rogue Regional.

21 MS. HECKERT: Good questions. Any other questions?

22 JUROR: No. But I'd like to say -- can I say  
23 something?

24 MS. HECKERT: Yeah.

25 JUROR: I'd like to thank you for educating me. I'm

1 always educatable. I had a concept, for some reason --  
2 because I had no experience with it -- that it seemed to, if  
3 somebody had a knife, there was some things you could do  
4 work with them, but listening to you in your experience and  
5 your explanation, it was very thorough. Thank you.

6 I have a total different understanding of that space  
7 and what a knife can be. And I, I get that, yes, you could  
8 die very easily, very quickly with a knife. So I have a  
9 totally different respect for that as well. And thank you  
10 for educating me.

11 THE WITNESS: Absolutely.

12 MS. HECKERT: You're going to hear from some other  
13 people on that topic as well. It's definitely one that we,  
14 you know, as civilians, we're like it doesn't seem so bad.

15 JUROR: There was one question.

16 MS. HECKERT: All right.

17 JUROR: When he said he's the police, does it come  
18 into play -- I would think maybe -- I don't know. It  
19 doesn't seem like it's a rational question, but I'm going to  
20 ask it. Does it come into play, you know, you're dealing  
21 with somebody not in their right mind?

22 THE WITNESS: Absolutely, absolutely.

23 JUROR: Yeah.

24 THE WITNESS: It doesn't change their threat. A  
25 knife is still a knife unfortunately.

1 JUROR: Yeah, yeah.

2 THE WITNESS: Yeah.

3 JUROR: Yeah.

4 THE WITNESS: We, we -- my wife hopes that I show up  
5 every day and come home every day.

6 JUROR: Yeah.

7 THE WITNESS: And she hopes that I never have to  
8 hurt anybody, but understands that sometimes that's out of  
9 our hands.

10 JUROR: Thank you for what you do. You're  
11 officially in my prayer circle.

12 THE WITNESS: Thank you.

13 MS. HECKERT: All right.

14 JUROR: Can we take a quick break, please.

15 MS. HECKERT: Of course.

16 THE WITNESS: Good morning.

17 JUROR: Welcome to our house.

18 THE WITNESS: You're sandbox; I'm just playing in  
19 it.

20 JUROR: Exactly.

21 MS. HECKERT: So this is Officer Levi Moffitt from  
22 the Medford Police Department. Can you raise your right  
23 hand. This lady right here will swear you in.

24 /

25 //

1 \*\*\*

2 OFFICER LEVI MOFFITT,  
3 having been first duly sworn,  
4 was examined and testified as follows:  
5

6 INQUIRY

7 BY MS. HECKERT:

8 Q. Okay. So I think we're going to start out by  
9 watching the body cam, and then I'm going to take him  
10 through the questions that I have for him. And then if you  
11 want to again watch the body cam at that point, we can.

12 JUROR: Okay.

13 MS. HECKERT: I don't know if that actually will  
14 help. I think it will.

15 (Body cam played at this time; not reported.)

16 MS. HECKERT: There is audio. It takes a few  
17 minutes to click in.

18 JUROR: Can you turn the sound up?

19 MS. HECKERT: Yeah. These are all the things we  
20 figure out after the first one.

21 THE WITNESS: I think the volume is all the way on  
22 the left.

23 JUROR: That's -- yeah. Thank you.

24 MS. HECKERT: Let me see if I can turn up on the  
25 volume in my computer. It's much better.

1 JUROR: For us deaf people.

2 JUROR: Thank you. Much better.

3 JUROR: In the movies, they get it on the first try.

4 THE WITNESS: Yeah.

5 JUROR: So not like real life.

6 THE WITNESS: Yes, ma'am.

7 JUROR: So not true. If we have any break-ins,  
8 we'll know who to turn to.

9 JUROR: Are you hitting the key? Is that what  
10 you're doing?

11 THE WITNESS: Yeah.

12 JUROR: What was the time period between when you  
13 saw him and shot him?

14 MS. HECKERT: Someone will have that answer for you.

15 JUROR: Okay.

16 MS. HECKERT: It's one of your later witnesses, but  
17 they'll be able to tell you that.

18 JUROR: Thank you.

19 MS. HECKERT: They've watched it frame by frame.

20 JUROR: You don't have time to really think.

21 JUROR: You have time to react with training, I  
22 would think.

23 MS. HECKERT: Now I'll go through my questions and  
24 again, if we want to watch it again after he's done or at  
25 any point, let me know.

1           Q. So how long have you worked for the Medford Police  
2 Department, Officer Moffitt?

3           A. 21 years. Almost -- well, 21 1/2.

4           Q. And prior to working for Medford, did you have prior  
5 law enforcement or military experience?

6           A. I was in the Army for three years in the first  
7 infantry division, and in high school, I was a cadet at the  
8 Medford Police Department for three years.

9           Q. Can you briefly tell us a little bit about your  
10 training that you received.

11          A. Sure. In the 21 years that I've been here, I've  
12 actually been a firearms instructor for the police  
13 department for 14 years.

14          JUROR: A what instructor?

15          THE WITNESS: Firearms. So I've been through a slew  
16 of handgun training courses, shotgun training courses, rifle  
17 training courses. I'm actually one of the lead firearms  
18 instructors for the department. So I provided other  
19 officers training on how to deal with close quarters  
20 engagements. And other than that, we do a ton of training  
21 here in Medford, a lot of stress inoculation training, a lot  
22 of defensive tactics training. So I've had a little bit of  
23 everything.

24          Q. What's stress inoculation training?

25          A. Stress inoculation is actually very important. It's

1 running scenarios. We use sim guns that shoot little paint  
2 balls kind of, but it's getting you actually used to stress  
3 and stressful situations and keeping your brain active. You  
4 know, if you've never been in a tense situation before, a  
5 lot of times we call it vapor lock where your brain spins,  
6 and you kind of lock up, and you're not able to react  
7 appropriately.

8 So a lot of our training is actually hands-on  
9 training, and we call it stress inoculation. It gets you  
10 used to being in stressed environments and keeping your  
11 brain engaged and acting appropriately. That actually sets  
12 us apart from a lot of other agencies in the state.

13 Q. So July 7 of this year, you were working on patrol?

14 A. Yes.

15 Q. And you're part of like a team. Can you just kind  
16 of tell us how the teams work. Bryant talked a little bit  
17 about it.

18 A. Sure. We have seven patrol teams in the department.  
19 I'm assigned to Team 6; so Team 6 works you Monday, Tuesday,  
20 Wednesday nights, 6:00 P.M. to 6:00 A.M.; so different  
21 patrol teams work different schedules. We have two patrol  
22 teams that work just at night and two patrol teams that work  
23 just during the daytime. Then we have a couple that are  
24 either day-swing combination or just swing shift. So we bid  
25 twice a year by seniority as to what teams you're going to



1 be on. That's when you pick basically your days and hours  
2 and who you're going to work with.

3 Q. We watched your body. Tell us where you wear that  
4 body cam.

5 A. I wear my body cam pretty much straight in the  
6 middle of my chest; so it's down below my line of sight.  
7 It's pretty much right here.

8 Q. So when you turned, like sometimes depending on how  
9 far you turn, we might be looking at the wall?

10 A. Correct.

11 Q. Depends on how you turn?

12 A. Yes.

13 Q. And then in the video you also -- on the radio, you  
14 were asking for the RP. Tell me what that means.

15 A. The RP is the responsible party. In this case, we  
16 needed the responsible party to come with the keys to the  
17 business to open the door so we can get in and figure out  
18 where this guy was. But it's a big safety thing. I think  
19 you heard us talk about it. For us to crawl through that  
20 window is a very dangerous thing to do.

21 So if we know he's in there, we'll keep containment  
22 on him. So we'll wait until we can get the door open.  
23 That's what I was trying to do is bump a lock is a way of  
24 picking it. Once they said the RP was going to be  
25 30 minutes out, at least we can try to get the door open.

1 When we get enough resources, we can go in, and that just  
2 burned 30 minutes.

3 Q. And we could hear you have a conversation, but we  
4 really couldn't hear what he said. So tell us from there  
5 like what's happening.

6 A. Sure. You know, when I first started reaching  
7 through that window, it was mainly just with the whole  
8 window broken out, odds are good that somebody actually  
9 crawled in. There was blood on the blinds that I could see.  
10 I started pushing out the blinds so I could see what was  
11 used to break out the window -- a lot of times it's a big  
12 rock or something -- also to see if there was signs of  
13 disturbance in there to see where he was.

14 And also that door was right next to there; so I was  
15 trying to lean through and see if I could open that door.  
16 That's when he started yelling at me first, and that's when  
17 I turned my body cam on. He originally told me to go away,  
18 and I told him I was a police officer. He said he was the  
19 cops and that I was not the police. And then he told me  
20 that he was armed and that, if we didn't leave, he was going  
21 to be forced to take care of business.

22 And then I tried -- backed away from the window and  
23 tried to talk to him a little bit, and that's when he left  
24 that window, and that was the last I talked to him before  
25 the incident happened so --

1 JUROR: Did he say what he was armed with?

2 THE WITNESS: He did not. I asked him, and he  
3 didn't say -- he didn't say anything.

4 Q. BY MS. HECKERT: At some point you asked to have  
5 Mercy dispatched. Can you explain that.

6 A. Mercy Flights ambulance is the ambulance company  
7 that works here in the Rogue Valley. So when we asked Mercy  
8 to stage, that means can you have the ambulance, you know,  
9 come within the area. At this time, you know, we knew we  
10 had a burglary suspect inside the building. He's purporting  
11 himself to be armed. So that kind of increases the chances  
12 that somebody might get hurt and taking care of this.

13 So a lot of times we'll try to get the ambulance  
14 staged close by in the area. That way their response time  
15 is a whole lot quicker so we can render aid a lot more  
16 quickly either to where -- whoever we're dealing with, or  
17 it's a good idea to have medical as close as you can. So I  
18 asked them to stage in the area.

19 Q. And is that just pretty normal?

20 A. It's fairly routine. Anytime we're dealing with  
21 something that has the potential to be a violent encounter  
22 or especially somebody barricaded in a business and they are  
23 saying they are armed, then we'll get medical staged.

24 JUROR: And this building is located where?

25 THE WITNESS: Crater Lake Avenue and Hollyhock.

1 It's the Asthma & Allergy Clinic research center, northeast  
2 Medford, kind across from Hobby Lobby.

3 JUROR: Okay.

4 Q. BY MS. HECKERT: You said there was blood on the  
5 blinds. Was there much blood?

6 A. Just a few little drops. It was apparent whoever  
7 broke the window cut their hands, and that blood got  
8 transferred to the blinds. There was a good chance that  
9 somebody had entered through the window.

10 Q. So then after you're lock picking and you have heard  
11 that he is outside of the building, just walk us through  
12 what happened from your perspective, what you saw.

13 A. Yeah. So I put my lock kit stuff away. I didn't  
14 want to lose it. And everybody else that was with me went  
15 deep to the parking lot on the south, and nobody went down  
16 that little tiny avenue between the building and the hedges.  
17 So that's where I went. I thought there was an officer  
18 directly behind me.

19 That was a very close, confined, and dark space; so  
20 it was maybe four feet between the building on my left and  
21 the hedges to my right. It was very dark, and I was already  
22 told by Officer Terando that the guy was armed with a knife.  
23 So I had my pistol out. I have a tac light on my pistol.

24 JUROR: How did you know he had a knife?

25 THE WITNESS: Officer Terando told me that he had a

1 knife. He had been on the east side, and over the radio, he  
2 said he was out, it was a male, he was armed with a knife,  
3 and he was heading towards us.

4 JUROR: Thank you.

5 THE WITNESS: I, I entered at that little pathway.  
6 That was very uneven ground. It had paving stones on it,  
7 and a bunch of people went farther south in the parking lot.  
8 Somebody turned on their light kind of south of us, which  
9 backlit the gentleman. And when I first saw him backlit,  
10 all I saw was a white lab coat and that he was wearing latex  
11 gloves, and my brain said what the heck is a janitor doing  
12 here? I thought this was 30 minutes before they got here,  
13 and you know, what's going on?

14 So I turned on the light on my pistol and shined it  
15 at the person and saw that he had a knife up in front and  
16 was making jabbing motions while he was coming toward me.  
17 At the time I saw him, I believe he was maybe 10 or 12 feet  
18 away, very close, and I had no avenue to create distance or  
19 time. I couldn't go to the left. There was a building  
20 there. I couldn't go to the right because of the bushes.

21 I know from experience and from teaching others that  
22 backing up under high stress, especially on uneven ground,  
23 is a much greater risk for me falling to the ground, and  
24 with him being so close and jabbing at me with a knife, I  
25 knew, if I fell down, he was going to jump on top of me and

1 stab me repeatedly. I told him to get back twice, which he  
2 didn't. And he was finally coming towards me again making  
3 the jabbing motions. I felt like he was about 6 or 7 feet  
4 away just outside of arm's reach.

5 And I honestly believed he was going to try to kill  
6 me with that knife; so I fired twice. As soon as he fell to  
7 the ground, he was no longer a threat to me, so I stopped  
8 shooting. I gave him some commands to throw the knife,  
9 which he did, and I kept him there until other officers and  
10 deputies arrived and kind of took over from there. And then  
11 I stepped out and made sure that we had an ambulance coming.

12 Q. So you said it's dangerous to be backing up. Did  
13 you -- were you aware that you did back up?

14 A. I, I didn't back up very far. I maybe backed up a  
15 step or two, but continual backing up increases your chance  
16 of tripping; so I may have taken a step or two back,  
17 retreating, full-on retreating on a retrograde is not a good  
18 idea.

19 Q. Okay.

20 JUROR: What about turning around and running?

21 THE WITNESS: Well, that would have been an option  
22 except the time it takes to turn around, if he's still  
23 advancing, I'm exposing my back to him with no way of  
24 defending myself, and he still could have jumped on me and  
25 stabbed me in the back.

1 JUROR: You can do 6 feet pretty quick.

2 JUROR: Yeah.

3 Q. BY MS. HECKERT: Did you feel you had opportunity at  
4 that point to switch to less lethal?

5 A. Absolutely not. It happened so fast transitioning  
6 to just to draw and get a taser out takes, you know, a  
7 second, three quarters of a second to a second. And that's,  
8 that's time I didn't have. I wasn't willing to bet my life  
9 on the fact that my taser would even work at that situation,  
10 you know. At that close, the tasers spread, the taser  
11 probes, and the farther the probes get, which is the farther  
12 away from the taser, then the more effective they are going  
13 to be if both probes actually make contact with the skin.

14 The more muscles involved between the probes the  
15 better, the chance it's going to work. Now you have to bet  
16 that you can get out of the holster and get two probes in,  
17 and at that distant, that's going to be a very big spread.

18 JUROR: Not going --

19 THE WITNESS: I wasn't willing to bet my life on the  
20 taser was going to work.

21 JUROR: If you had tried it and it didn't work --

22 THE WITNESS: Right. I'd have to transition back to  
23 my pistol.

24 JUROR: Which if he's already on you, you didn't  
25 have time.

1 JUROR: Which is all --

2 JUROR: This is all in a order.

3 THE WITNESS: You saw how fast it was.

4 JUROR: Did you think -- even think to --

5 THE WITNESS: He was a lethal threat to me, and he  
6 was jabbing at me while advancing. I'm not willing to bet  
7 my life on the fact that a less lethal is going to work to  
8 protect myself.

9 MS. HECKERT: So any questions for Officer Moffitt?

10 JUROR: Was this your first shooting involved  
11 incident?

12 THE WITNESS: Yes, sir.

13 JUROR: It's hard. Were you ever hurt by someone  
14 with a knife before?

15 THE WITNESS: I have not been stabbed with a knife  
16 before. I have injured myself. I've had two different  
17 surgeries. I know that being in prolonged fights with  
18 people, people get hurt. And I've been -- I've had surgery  
19 on my wrist before. I've destroyed my shoulder, and I was  
20 off for six months, and I know that going hands on with  
21 somebody that's not around, there's a good chance you're  
22 going to get hurt. And somebody armed with a knife, there's  
23 a very good chance you're going to get seriously hurt or  
24 killed.

25 JUROR: Do you know any other officer that was hurt



1 with a knife?

2 THE WITNESS: I do not.

3 JUROR: Does the department have, like, say when  
4 this happens, you know, you've shot someone --

5 THE WITNESS: Uh-huh.

6 JUROR: -- it's got to be traumatic for you as well  
7 as the victim -- does the department have some way for you  
8 to -- do you get to talk to someone and kind --

9 THE WITNESS: Yes.

10 JUROR: -- work through it?

11 THE WITNESS: Yes. Actually, we're required to have  
12 a couple different sessions with a counselor. We have  
13 wellness officers. We have somebody that drives you home  
14 and they brief your family to what to expect. Our support  
15 system is actually very -- it's annoyingly persistent. So,  
16 yes, they do a very good job of taking care of us.

17 JUROR: You're on administrative leave now?

18 THE WITNESS: Yes, yes.

19 Q. BY MS. HECKERT: And then can you tell them briefly  
20 what a companion officer is.

21 A. Sure. So a companion officer -- when something like  
22 this happens, you know, a lot of times your brain filters  
23 out everything except what you need just to get through at  
24 that moment. It takes a while. Over the next couple  
25 months, it will pop back there.

1           They take an officer that you trust, that they drive  
2           you back to the station; they sit with you. You know, if  
3           you're hungry, they get you food, and they make sure you're  
4           getting your family in the loop, and they just kind of walk  
5           you through the process on what it's going to take to help  
6           you calm down and get your head in the right space.

7           A lot of that is they drive you home and sit with  
8           your family and call your family. You know, these are the  
9           resources for us. If you need anything, let us know and  
10          kind of tell your family what to expect from the officer  
11          emotionally. It's a traumatic thing. They do a very good  
12          jog of taking care of us.

13          JUROR: You said you were in the Army?

14          THE WITNESS: Yes, ma'am.

15          JUROR: So I don't know if I -- I don't know if I  
16          want to see it again, but could you have ran sideways into  
17          the bushes?

18          THE WITNESS: I could not go through those bushes;  
19          they were very tight.

20          JUROR: You don't go through the bushes.

21          Q. BY MS. HECKERT: Had you been there before?

22          A. This was the first time I ever had a call at this  
23          place before. I've been around it, but I never had an alarm  
24          there.

25          JUROR: But the hedges look pretty dense --

1 JUROR: Yeah.

2 JUROR: -- right over there where you were standing.

3 JUROR: And I, I don't know. I mean, to go this  
4 way, I have to look this way and make sure I'm not falling.

5 JUROR: Yeah.

6 JUROR: I don't want to look off you.

7 JUROR: You hadn't been down that path prior?

8 THE WITNESS: I had walked down that path once  
9 before, before I turned my body cam on.

10 JUROR: Okay.

11 THE WITNESS: All I knew at the time I had a second  
12 or two to make a decision with this person trying to stab me  
13 in the face with a knife.

14 JUROR: Right.

15 THE WITNESS: My best option at that time was to  
16 make him no longer a threat to me, and that was to use my  
17 pistol.

18 JUROR: What made you think he was going to stab you  
19 in the face?

20 THE WITNESS: The fact that he was walking towards  
21 me with a knife up towards this.

22 JUROR: Was it that high?

23 THE WITNESS: Yeah.

24 JUROR: He was up to this, shoulder high, what I  
25 saw.

1 JUROR: It happened so fast. It was -- it was right  
2 there so --

3 MS. HECKERT: These always do happen very quickly.

4 JUROR: Yeah.

5 JUROR: Was it determined why he left his shoes?

6 THE WITNESS: I have no -- I have no idea, sir.

7 MS. HECKERT: He didn't work on the investigation.

8 JUROR: He obviously wasn't in his right mind.

9 THE WITNESS: This is the only video I've seen.

10 JUROR: Yeah, I understand.

11 MS. HECKERT: Any other questions? And he'll be  
12 available to us if you have other questions as you listen to  
13 other witnesses.

14 JUROR: Thank you very much.

15 JUROR: Thank you, Officer.

16 MS. HECKERT: This is Officer Cody Walker.

17 If you raise your hand, this lady is going to swear  
18 you in.

19 \*\*\*

20 OFFICER CODY WALKER,  
21 having been first duly sworn,  
22 was examined and testified as follows:

23

24 JUROR: Thank you.

25 JUROR: Could I get you to move a little bit that

1 way so I can see you.

2 THE WITNESS: Absolutely.

3 JUROR: Otherwise, I'm in the kitchen.

4 MS. HECKERT: Great. That's not what I wanted to  
5 do. Did it work all right to watch the video first and then  
6 ask the questions, or would you prefer to ask -- now you've  
7 seen it. Do you want us to ask questions and then watch it?

8 JUROR: Watch video and ask questions.

9 JUROR: My choice is to do this first.

10 MS. HECKERT: This is Officer Walker's body cam.

11 (Body Cam played and not reported.)

12

13 INQUIRY

14 BY MS. HECKERT:

15 Q. All right. So, Officer Walker, how long have you  
16 worked for the Medford Police Department?

17 A. I've worked for the Medford Police Department for  
18 about a year and a half.

19 Q. And you have police experience prior to that?

20 A. Yes, ma'am, I do.

21 Q. Where was that?

22 A. At the Escambia County Sheriff's Office. It's in  
23 the Panhandle of Florida.

24 Q. For how long?

25 A. For approximately three years.

1 Q. So on 7/7, you were working?

2 A. Yeah.

3 Q. And tell us when you first heard about this call.  
4 You were out on patrol or what?

5 A. Yes. So I was out on patrol. I got assigned to --  
6 it came out as an alarm call, so I started responding to  
7 that.

8 Q. Okay. With lights and sirens and a real inquiry or  
9 what?

10 A. I went normal response. It came in as an alarm. I  
11 was one of -- I was farther away than the other unit that  
12 was responding. The other unit that got on scene -- I heard  
13 on the radio -- "Hey, there's glass break; it's going to be  
14 a good -- you know, it's going to be a good burg." So I  
15 continued going.

16 At that point more officers arrived on scene, and as  
17 I was responding, I alerted radio, "There's someone inside.  
18 The man advised that he's armed." So at that point I went  
19 lights and sirens because he was armed with a weapon.

20 Q. When you say, "a good burglary," what do you mean by  
21 that as opposed to like a false alarm?

22 A. If the alarm was somehow tripped some way, if it  
23 was, you know, weather or whatever, sometimes alarms can be  
24 false, and there are some false alarms, but it just means  
25 there was forced entry so there was some crime that

1 occurred.

2 Q. And so when you arrive, at this point, what you've  
3 heard on the radio is the person inside is armed. Do you  
4 know what with what?

5 A. I have no idea with what. Over the radio, it just  
6 said he was armed. I didn't know if it was a handgun or a  
7 knife or whatever.

8 Q. So what do you do?

9 A. So once I arrive on scene, I, I know that there's  
10 multiple other officers on the scene; so I grabbed my rifle.  
11 Just due to the fact of not knowing what he had, I wanted to  
12 have good distance in case it was a firearm that he had.

13 So I grabbed my rifle. We typically don't have one  
14 in the chamber, so I racked a round, turned my body cam on,  
15 went to the officers on scene, asked where I was needed, and  
16 they told me to go to the southeast corner and stage. So  
17 that's where I went, and that's where I was at the start of  
18 the video was the southeast corner.

19 Q. What kind of rifle?

20 A. Naveske 22 -- it holds a .223 caliber rifle round.

21 Q. And so from what we see, you're kind of like in the  
22 bushes. Can you describe the area where you were staging --

23 A. Yes, ma'am.

24 Q. -- around the corner?

25 A. So around that corner, I knew it was dark. There

1 was some ambient light, but there wasn't a whole lot. I  
2 knew the cover of darkness helped, and I had had concealment  
3 with the bushes. I, I moved a lot trying to get a good  
4 position. There was like a concrete patio table and chairs  
5 that were surrounding. So I was kind of having to maneuver  
6 around that to get in a position where I could see my side  
7 of the door. I knew there was another officer at the other  
8 corner, and it was our job to maintain coverage on the  
9 backside of the building.

10 Q. We've heard about like the walkway. You're not in  
11 the walkway --

12 A. No, ma'am.

13 Q. -- like where the pavers are?

14 A. I'm just to the east side of that walkway with the  
15 pavers.

16 Q. So the building, the walkway, the hedge bushes is  
17 what we've been calling them --

18 A. Uh-huh.

19 Q. -- you're on the opposite side of that --

20 A. Yes, ma'am.

21 Q. -- is that correct?

22 And so when he leaves the building, what do you see?  
23 Because we don't always see everything you see because of  
24 the way the you wear the body cam; correct?

25 A. Correct. So what I saw when he first exited the



1 building -- it was -- it was very hard to see. I could see  
2 that a man had stepped out, which was why I said, "Show me  
3 your hands." That side of the building, the door that he  
4 actually existed was an alcove. So with my angle, that's  
5 why I was moving around to see if I could see him better,  
6 clearer, see his hands, which is why I said, "Hey, show me  
7 your hands."

8 I announced myself as a police officer and continued  
9 to do that. At that point, that's when Officer Terando -- I  
10 heard him say, "Drop the knife," so he saw a weapon, and I  
11 was trying to move accordingly to that.

12 Q. So at some point, do you see the knife?

13 A. I do. I see he continues to move westward. I saw  
14 that he had a knife. It was about his midsection, blade  
15 exposed, and that's where I told him to, you know, drop the  
16 knife and made several repetitions of that trying to get him  
17 to drop it.

18 Q. And --

19 JUROR: Officer Terando also told him to drop the  
20 knife?

21 THE WITNESS: Yes, ma'am. Yes, ma'am, he did.

22 JUROR: Okay. Thank you.

23 Q. BY MS. HECKERT: So you said the blade was exposed.  
24 Can you kind of show, I guess, how you saw him holding the  
25 knife or from your perspective.

1           A. Yeah. Like a pen, but from my perspective, he had a  
2 knife out like this, so the blade exposed out, and it was  
3 about up here. It was open, and it was out that way as he  
4 was moving.

5           Q. And how would you -- describe how he was moving down  
6 the walkway.

7           A. It appeared very, very quickly like with a purpose.  
8 He, you know, at that point, he hadn't listened to any of  
9 the multiple commands that I gave him or that I heard  
10 Officer Terando give him too. And he just seemed like he  
11 had a purpose, and he was moving, you know, kind of like  
12 with authority down that westward direction.

13          Q. And are you looking at him through the bushes, and  
14 then you're moving along as the bushes in between you?

15          A. Yes, ma'am. So I'm --

16          Q. You don't see him constantly is what I'm trying to  
17 say, or do you?

18          A. I feel like I do. There's spaces in the bushes.  
19 It's not like a full hedge; so I can plainly see him the  
20 entire time as he's going that way in that direction.

21          Q. Are you aware of where Officer Moffitt is?

22          A. I do. I knew he was staged at that corner of the  
23 building. As I was moving, I could hear him as well giving  
24 commands because that's when he made visual contact with  
25 the, with the individual.

1           Q. So what are you thinking at that point?

2           A. So at that point, as he's moving towards  
3 Officer Moffitt, he wasn't stopping; he wasn't listening to  
4 any commands. So at that point, I, I felt that  
5 Officer Moffitt was in immediate danger of being maimed or  
6 killed by a knife. I know from my experience, fixed-blade  
7 objects or sharp objects like knives can do a lot of damage  
8 and can kill people. So I was afraid for his safety.  
9 That's when I fired my shot from my rifle.

10          Q. You said from your experience. I guess can you  
11 elaborate on that a little bit about what experience you had  
12 with knives.

13          A. So, so I've had several instances at Escambia County  
14 Sheriff's Office where individuals were stabbed, sliced in  
15 the jugular neck, dealt with deceased subjects that got  
16 stabbed multiple times and cut with the knife to major  
17 arteries.

18          Q. So when you fired you, you weren't in fear for  
19 yourself. You were in fear for Officer Moffitt?

20          A. That's correct. I was in fear for Officer Moffitt's  
21 life.

22          Q. And did you feel like you could, at that point, have  
23 used anything that was less lethal?

24          A. No, not at all.

25          Q. And at the time you fired, do you hear

1 Officer Moffitt fire?

2 A. So the best way I can describe that is as I'm --  
3 I've made the decision I'm going to shoot to protect him.  
4 As I'm squeezing the trigger, it almost sounded like it was  
5 simultaneous to me. I'm hearing fire as I'm firing, and  
6 that's when he ends up going to the ground. That immediate  
7 threat was no longer there. That's why I only fired the one  
8 shot.

9 Q. Are you aware that your shot did not hit Mr. Gunter?

10 A. No, I was not aware of that.

11 MS. HECKERT: Okay. Questions for Officer Walker.

12 JUROR: Didn't you think that Moffitt could shoot  
13 him himself? Like why did you think that you needed to  
14 shoot him if he was -- had a gun?

15 THE WITNESS: Because I, I didn't know -- so  
16 Officer Moffitt -- I could hear where he was. I knew about  
17 where he was. So I didn't know -- I knew it was within  
18 probably 6 to 10 feet. Officer Moffitt was in that danger,  
19 but I made the decision because at that point, I hadn't  
20 heard any shots. So no shots had been fired. I don't know  
21 what's going through his mind. I just know that he is  
22 dangerously close. I know his life is in immediate danger.  
23 So I'm going to do what I have to do to protect him.

24 JUROR: Did you have any idea like, oh, maybe  
25 Moffitt decided not to use a gun or maybe he forgot how to

1 use his own or the one that -- you were protecting -- you  
2 were protecting your colleague?

3 THE WITNESS: Yeah.

4 Q. BY MS. HECKERT: What ideas came to your head as to  
5 why that colleague could not handle the situation all by  
6 himself?

7 A. Just if I -- I wanted to make sure that, when I  
8 fired, that I was going to protect my colleague no matter  
9 what. If he ended up missing, I, I -- the ultimate goal was  
10 for him not to get killed or maimed, seriously injured.

11 JUROR: The officer?

12 THE WITNESS: Officer Moffitt, correct. So that was  
13 my goal. That's why I pulled the trigger in order to  
14 protect him.

15 Q. BY MS. HECKERT: And the distance that Mr. Gunter  
16 was from Officer Moffitt was part of what played into that  
17 for you?

18 A. It was.

19 Q. Had he been a further distance, do you think he  
20 would have made the same decision?

21 A. I mean --

22 Q. Was there something special about -- was it 7 to  
23 10 feet -- whatever the number you used -- essential about  
24 that?

25 A. That's just what I would estimate. There was -- he

1 was close enough that I knew I had to make this decision  
2 now, or something was going to get bad. Officer Moffitt was  
3 going to be hurt. So I knew I had to make the decision.

4 JUROR: Is that part of your training, that there's  
5 a window for you guys that in this scenario with a person  
6 that you move beyond 6 feet or something, that's a -- you're  
7 in severe danger? Or 10 feet?

8 THE WITNESS: Not fixed parameters like that.  
9 We're, we're not given like, "Hey, if it's in this window,  
10 do this; if it's in this window, do this," no.

11 JUROR: Did you shoot through the bushes, or did you  
12 travel through the bushes?

13 THE WITNESS: I shot from that, that position that I  
14 was on the screen. Probably 20 feet away from him, 20,  
15 25 feet away from the individual.

16 JUROR: So did you end up being in the bushes when  
17 you were shooting or --

18 THE WITNESS: No. I was out. I was outside, but  
19 like I said, it was broken bushes. I could plainly see him,  
20 and I knew my backdrop was a brick wall.

21 JUROR: And he's moving; right?

22 THE WITNESS: He is moving, yes, ma'am.

23 MS. HECKERT: Any other questions?

24 JUROR: Because it was in the video, I'm not sure  
25 which officers were saying this, but -- so he -- the person

1 was already shot, and yet you're still yelling at him to  
2 drop something?

3 THE WITNESS: So I didn't yell. I actually don't  
4 know who was yelling.

5 JUROR: Okay. It was --

6 THE WITNESS: It was on my camera. I don't know who  
7 was yelling.

8 JUROR: Oh.

9 THE WITNESS: At that point there was some JCSO,  
10 Jackson County Sheriff's Office, people there too. So I  
11 don't -- I don't know who was yelling. I know that I, I  
12 approached to render aid, medical assistance, and then there  
13 was enough officers doing that. So then I ended up leaving,  
14 so --

15 Q. BY MS. HECKERT: Is it pretty common in your  
16 experience, when something has happened and then you're  
17 trying to take the person into custody, does someone give  
18 commands to the person on what to do?

19 A. Typically that's -- especially involving weapons. I  
20 mean, obviously, when he's on the ground, he still has the  
21 capability of the knife in his hand to hurt somebody. So we  
22 would want him to have a command to let go of the knife so  
23 we can take care of you and help you at that point. So  
24 because, at that point, after that situation is over, our  
25 immediate concern to make sure that he's going to be okay.

1 We try to render that medical aid.

2 JUROR: But you can only help him if he let go of  
3 the knife?

4 THE WITNESS: Typically, yes, we don't want to get  
5 stabbed while doing it. That's typically what we try to do.  
6 We are going to give some sort of command after the incident  
7 already happened just to protect us, protect him, and make  
8 sure we can render that aid effectively.

9 JUROR: Why did he need to lay on his stomach after  
10 being shot?

11 THE WITNESS: I mean, that's -- that would be for  
12 them to answer. I didn't give those commands, so I don't --

13 JUROR: Who will answer that?

14 Q. BY MS. HECKERT: Typically you handcuff people  
15 behind the back?

16 A. That is correct.

17 Q. So that's how you get somebody to get their hands  
18 behind their back?

19 A. Yeah.

20 Q. You wouldn't have them lay on their back?

21 A. That's correct.

22 Q. Because you don't handcuff in the front.

23 A. Yeah.

24 JUROR: Not on the side?

25 THE WITNESS: Typically, that's how it's done.



1 JUROR: So you just figure, well, if shot, we'll put  
2 him on his back, he's probably going to die now? He's  
3 already been shot now. Now we're putting him on his back.  
4 I mean, is there a high likelihood that he's going to die  
5 now that you're asking him to lay on his stomach?

6 JUROR: How can he have the knowledge he's going to  
7 die?

8 THE WITNESS: At this point, we're trying to render  
9 aid; so we're going to make sure that he's detained. That  
10 way nobody else gets hurt, and we were going to render that  
11 aid in order to save his life. The ultimate goal is to save  
12 his life at that point. We're trying to render medical aid.  
13 We have EMS or Mercy coming with lights and sirens. They  
14 were already staged in the area because we want -- I mean,  
15 we wanted him to live.

16 JUROR: But he's on his stomach with his --

17 THE WITNESS: With his hands behind his back.

18 JUROR: Handcuffed?

19 THE WITNESS: Yes, ma'am.

20 JUROR: That position doesn't seem like a position  
21 where someone is going to be able to have -- I mean, you  
22 can't give CPR to someone --

23 Q. BY MS. HECKERT: He doesn't stay like that.

24 A. He doesn't.

25 Q. Are you aware of that in this particular situation,

1 or do you walk away?

2 A. By that point, I've walked away. There's enough  
3 officers doing medical attention that another body is going  
4 to add to, you know, add to it, so --

5 JUROR: Okay.

6 THE WITNESS: -- there was enough officers on scene  
7 rendering aid.

8 JUROR: Thank you.

9 MS. HECKERT: The one previous officer testified  
10 they put the chest thing on him. They do do things. They  
11 flip him back over and do things to him to try to help until  
12 the ambulance is actually there, right there.

13 JUROR: When they flip him back over, his hands are  
14 still behind his back handcuffed.

15 MS. HECKERT: Yes. Our use-of-force experts will  
16 talk a little bit about that.

17 JUROR: Okay. Thank you.

18 MS. HECKERT: Any other questions for  
19 Officer Walker?

20 JUROR: There's no real standard protocol for  
21 whether or not you should grab your rifle or not? There's  
22 not -- I mean, it seems to me that -- would that be a  
23 standard thing to do?

24 THE WITNESS: Yes. In that type of situation,  
25 especially when he's armed because it turned out to be a

1 knife, but at that point, I didn't know if it was going to  
2 be a knife or a gun. If it's a gun, I'm going to want to  
3 create more distance --

4 JUROR: Right.

5 THE WITNESS: -- to where a rifle is going to be  
6 able to have that contact if he starts shooting, if there's  
7 that scenario.

8 Q. BY MS. HECKERT: Nobody told you to grab the rifle.  
9 That was just your own --

10 A. That was my own instinct.

11 Q. -- insight that made you decide to --

12 JUROR: Previous officers talked about how it seemed  
13 like everyone had a gun out and a taser out. There's no  
14 protocol or guidance that you get in terms of when to use  
15 a -- it seems like, if you have a taser in your hand, you're  
16 going to use a taser, and if you have a gun in your hand,  
17 you're going to use a gun. No standards on when you should  
18 draw a taser versus a gun?

19 THE WITNESS: Standards as far as like the set  
20 parameters?

21 JUROR: Or at least guidance.

22 JUROR: Training.

23 THE WITNESS: There's -- when it comes to training  
24 to becoming -- I'm sure the use-of-force expert can really  
25 go into detail more with that. But there's -- there comes a

1 point where there's the immediate danger of death to an  
2 officer, or you know, in a different scenario, a civilian or  
3 whatever the situation is to where you're going to want that  
4 lethal force to be used.

5 So I mean, it's definitely an unfortunate  
6 circumstance. It's not something that I walked into that  
7 day hoping to happen or wanting to happen or even thought  
8 would happen.

9 JUROR: Sure.

10 THE WITNESS: I just know there's that chance in  
11 this line of work.

12 JUROR: Was the doctor who owned the clinic there at  
13 the scene by the time you got there?

14 THE WITNESS: No, he was not.

15 JUROR: Was there a general understanding what kind  
16 of facility it was and what -- was there like a  
17 consciousness, oh, like this is a burglary --

18 THE WITNESS: At that time --

19 JUROR: -- of the people of the officers there?

20 THE WITNESS: I mean, with somebody inside, forced  
21 entry through a broken glass and being armed, there was that  
22 knowing there was a felony committed, and there was an armed  
23 guy that committed the felony inside the building. So there  
24 was that kind of general understanding after I had gotten on  
25 scene or as I was going to the scene, yeah.

1 JUROR: Is there a difference between understanding  
2 that there's a burglary at a bank and a burglary at a  
3 allergy clinic? Does that -- is there any of that  
4 understanding of the degree of the crime --

5 MS. HECKERT: The type --

6 JUROR: -- that's happening?

7 Q. BY MS. HECKERT: Would the type of building affect  
8 whether it was a burglary?

9 A. It wouldn't affect if it's a burglary. A burglary  
10 is a burglary.

11 JUROR: Anything?

12 THE WITNESS: Yeah.

13 MS. HECKERT: Any questions? Okay. No.

14 All right. So this is Officer Terando. Am I saying  
15 it right?

16 THE WITNESS: You've got it. You nailed it.

17 MS. HECKERT: If you'll raise your right hand, this  
18 lady is going to swear you in.

19 \*\*\*

20 OFFICER TAYLER TERANDO,

21 having been first duly sworn,

22 was examined and testified as follows:

23

24 /

25 //

1 INQUIRY

2 BY MS. HECKERT:

3 Q. All right. So we have one more body cam. This is  
4 his body cam.

5 JUROR: Can you turn that light off.

6 THE WITNESS: Yes.

7 JUROR: Both please. Thank you.

8 (Body cam played at this time and not reported.)

9 JUROR: I watch the body cam and go like this to  
10 look around. I'm so involved.

11 Q. BY MS. HECKERT: Okay. So, Officer Terando, how  
12 long have you been with the Medford Police Department?

13 A. It's since October of 2016.

14 Q. And you were working on this date, and you had a  
15 ride-along. Tell us about that.

16 A. Sure. I had Officer Salazar. He's a brand-new  
17 officer with the department. He was back on vacation for  
18 4th of July. They closed at the OSP academy for 4th of  
19 July. He was on a ride-along. He's a uniformed officer.  
20 His sole purpose is to watch and observe my actions  
21 throughout the shift, so he was with me on this particular  
22 shift.

23 Q. So does that kind of add a little change on like  
24 what you should -- could or should do at times, and you're  
25 also trying to watch him too; correct?

1           A. Yeah, exactly. Because he's such a brand-new  
2 officer, I treated -- even though he's trained to a certain  
3 degree with his equipment, you know, I have to be mindful of  
4 his actions as well. So my attention often is split  
5 especially on, you know, incidents like these where, you  
6 know, things are dynamic and constantly changing or  
7 evolving. So I'm constantly having to be aware of where  
8 he's at and what he's doing now as well as he's relying on  
9 me and my knowledge of how to operate at this point in his  
10 career.

11          Q. And if the building is a rectangle -- I know it's  
12 not exactly -- the window is broken at this corner, and  
13 you're at this corner?

14          A. That's correct, yes.

15          Q. And then when we watch on the body cam, where do you  
16 wear your body cam?

17          A. I wear it high on my chest. I'm a shorter person;  
18 so it's a little lower view, but it's approximately right  
19 here on me, so about 4, 4 feet, 4 1/2 feet up.

20          Q. So when we're watching the video, a lot of times we  
21 have a nice view of bushes --

22          A. Yes.

23          Q. -- and that's because you're bladed. Can you tell  
24 us what that means.

25          A. So blading, our stand is obviously standing and

1 moving my torso like this or not being squared up with  
2 whatever the camera is perceiving or able to see at that  
3 point at that time. So with a lot of moving -- you saw my  
4 arm in front of me -- that's where that position is when I'm  
5 holding my firearm or talking with people. I'm pretty  
6 animated sometimes. It blocks the camera on occasion.

7 Q. So often you might see something before we see it on  
8 the camera --

9 A. That's correct, yeah.

10 Q. -- from the way you're standing there?

11 So could see Officer Walker from where you were, or  
12 did you know he was there because of traffic or what?

13 A. So I knew basically from the traffic that there was  
14 somebody over there, and I just assumed it was  
15 Officer Walker because he was the only other available  
16 officer other than the three that we had seen at the  
17 beginning that were up at that entry where the glass was  
18 broken.

19 Q. Okay. And then are you the first one who talked to  
20 the person that comes out of the building, or do you know?

21 A. So I, I believe Officer Walker -- what got my  
22 attention was seeing Officer Walker's flashlight on his  
23 firearm, and then I believe he began addressing -- which  
24 caught obviously my attention, and that's why I moved to  
25 that position.



1 Q. Okay. And you could hear Officer Walker's commands?

2 A. Yes.

3 Q. And you made commands as well. What did you do?

4 What else did you --

5 A. Yeah. So basically what you saw on the video, my  
6 first priority is to advise the other officers who aren't in  
7 that area that, hey, we've got contact, which essentially  
8 means that the gentleman or the suspect in this case is on  
9 the backside, the east side of the building so they are  
10 aware of that. We're not just yelling out there just  
11 because there's a purpose.

12 Obviously, you see my -- I turn on my flashlight at  
13 that point. He kind of makes a motion. I call it the  
14 punch-out motion, and you can hear me say, you know, "Drop  
15 the knife," which is what I perceived as a blade. It had  
16 that reflection as any kitchen knife would, and that's  
17 essentially where I began addressing him as such to drop  
18 that knife, and at which point, he didn't. And then I  
19 proceeded to try to at least get him to stop and put his  
20 hands out, essentially as you guys heard on the radio.

21 Q. And then you traveled through the back parking lot,  
22 and then do you go past the hedge is what we're calling  
23 it --

24 A. Sure.

25 Q. -- and into the gravel parking lot? Is that how you

1 travel?

2 A. Yeah. Because I don't know if you guys notice on  
3 the left side there's a large retraining wall. There was no  
4 really scaling that. My priority at that point, we have a  
5 crossfire situation with Officer Walker facing myself and  
6 Officer Salazar. There's a potential of us getting struck  
7 if something were to go wrong.

8 But then I recognized that now we've got officers  
9 coming the other direction around that corner where the  
10 suspect, in fact, went. So now I've got two situations  
11 here. I've got to really move. So there's a small path and  
12 the hedge, and we were able to just go right through there  
13 and into that gravel area as seen on the video.

14 Q. And from there, do you actually see much? Do you --  
15 do you continue to track this person? Do you see what he's  
16 doing or anything like that? Because now I assume you're  
17 behind him, to the side and behind him.

18 A. Yeah.

19 Q. He's got his back to you?

20 A. Yeah. When he rounded that corner, there's that  
21 light on the corner of the building. From then on, I could  
22 not see. There's a big screen of bushes and hedges, you  
23 guys are referring to it as. The only thing I could do is  
24 hear commands being given and just getting out of that line  
25 of fire potentially with Officer Salazar. That's why we

1 kind of skirted wide into that parking lot, and there was a  
2 number of deputies and other Medford units there in that  
3 area.

4 MS. HECKERT: All right. Any questions for  
5 Officer Terando?

6 JUROR: How does that get all coordinated with so  
7 many people on the scene that someone doesn't get shot?

8 THE WITNESS: Are you talking about to avoid like a  
9 crossfire or something like that?

10 JUROR: Well, you've got someone from the Sheriff's  
11 Department, Medford Police, Central Point.

12 THE WITNESS: Uh-huh.

13 JUROR: It seems like there's a lot of people. Does  
14 the officer that's first on the scene take charge of it?  
15 Who is in, in charge at that point?

16 THE WITNESS: So it's pretty dynamic. In a perfect  
17 world, I'd like to say, yeah, you know, we've got one person  
18 calling the shots, and everybody is moving accordingly. And  
19 I think in the real world is that we perceive the situations  
20 and threats, and we react based off our training and  
21 experience in prior incidents.

22 You know, with Officer Moffitt's experience and  
23 tenure with the department and he's there working the point  
24 of entry for the suspect, his focus is there, and at that  
25 point, we're, we're waiting for supervisors to arrive on

1 scene, and there's a game plan getting formulated between  
2 those primary officers and then our watch commander, which  
3 at this point was Corporal Friend.

4 You guys can't hear it, but there's radio traffic  
5 going on where we're discussing different options of what to  
6 do and where to be and that stuff; so basically, though, at  
7 that time, we were working with what we had -- five patrol  
8 officers and a brand-new recruit out of the academy -- and  
9 we were adjusting to that dynamic situation.

10 So managing it, it's difficult especially with that  
11 many bodies. I actually didn't know how many deputies were  
12 even on scene at that point. I knew we had deputies  
13 en route. I had no idea of the, the number and exactly  
14 where they were at because my task at that point was just at  
15 that position, and then we moved from there. So hopefully  
16 that answered your questions.

17 JUROR: Does anyone coordinate how many officers go  
18 to a scene at one time?

19 THE WITNESS: That's a good question. No. I mean,  
20 unless a supervisor is removing -- like saying to his  
21 officers, "Hey, you know, I want you to clear. Go be  
22 available somewhere else." Typically, though, during that  
23 time, there wasn't a lot going on around the city, and  
24 obviously there was county deputies that were nearby. There  
25 wasn't much going on that they were needing to respond to,

1 so they come to assist, you know, throughout the night.

2 That's not uncommon, I guess, so --

3 Q. BY MS. HECKERT: Like were you aware that someone  
4 was trying to get a K9?

5 A. I was, yeah. So, you know, again you guys can't  
6 hear my radio. It's in my earpiece. We were trying to  
7 coordinate with officers to -- first we check County to see  
8 if they have a K9 available. We then had to actually call  
9 in one of our own K9, who was off duty, so he was  
10 mobilizing, getting his dog ready to come in and assist with  
11 that.

12 In this incident, though, the suspect, you know,  
13 just exited, and that was really the only thing that changed  
14 really the dynamics of everything that occurred because we  
15 were preparing to approach it at one -- in one way, and  
16 again, these things are dynamic and ever changing, and this  
17 changed it so --

18 JUROR: What would the K9 have done?

19 THE WITNESS: So I can't --

20 Q. BY MS. HECKERT: In other incidents --

21 A. So, yeah --

22 Q. -- have you deployed --

23 A. -- I'm actually on the K9 team. I'm a chew toy for  
24 the dogs. I take bites. I'm familiar with the K9 unit and  
25 how they operate. Essentially we're sending the K9 in, and

1 I believe -- and I recall this individual purporting to be  
2 armed to some degree, which is obviously a higher risk  
3 factor for officer safety purposes.

4 They would have made announcements, "Hey, we're  
5 going to send the K9 in," done that for a period of time.  
6 Once -- depending on the level of cooperation, if there was  
7 no cooperation from the suspect, they would send the dog, in  
8 and there would have, more likely than not, been a bite.

9 And hopefully that would have -- you know, depending  
10 on the circumstances, that would have been enough to take  
11 the individual into custody, but because of just the time  
12 delay and the, you know, not having a readily available K9  
13 officer, you know, there's just that time of mobilization  
14 and response that just has to be allowed. So unfortunately,  
15 he just wasn't able to get there by the time the suspect  
16 decided to get out of the building so --

17 JUROR: If you had a K9 on task on scene --

18 THE WITNESS: Uh-huh.

19 JUROR: -- would you have stood out farther?

20 THE WITNESS: No. To me personally --

21 JUROR: I mean, not gone in?

22 THE WITNESS: Well, so we, we accompany the dog; so  
23 we don't necessarily -- we'll send the dog in, but then  
24 you're going to have officers that are going to go through  
25 because, you know, a K9 is a great tool, a great asset to

1 have, but you also need to be able to control the K9. And  
2 there's a bunch of stuff that has to be considered for  
3 liability purposes, injuries, a number of things. And so  
4 had the dog been there, we still would have been going in  
5 there with the dog.

6 JUROR: Right.

7 THE WITNESS: Because you don't want somebody just  
8 getting bit on for a long period of time --

9 JUROR: Yeah.

10 THE WITNESS: -- obviously. So there's a -- there's  
11 an aspect of that that we need to be cognizant of.

12 JUROR: Do you call off --

13 THE WITNESS: Yeah, exactly.

14 Q. BY MS. HECKERT: You would have required access to  
15 the inside of the building also?

16 A. Yeah.

17 Q. Either the reporting party had to do it or the lock  
18 picking had to work. Something had to happen in order to  
19 get in?

20 A. Exactly. Yeah, yeah. We wouldn't just bash our way  
21 through. There would have been a series of steps to go  
22 through that process of entry, yeah.

23 JUROR: You feel that the job would be enhanced by  
24 having a K9 on every shift?

25 THE WITNESS: Boy, in some situations, yeah. You

1 know, I think the dogs --

2 JUROR: Because they can be intimidating.

3 THE WITNESS: Sure. And they can be very helpful  
4 tools. They are another tool in our many tools of  
5 toolboxes.

6 JUROR: But the threat of the bite sometimes is  
7 bigger than the bite.

8 THE WITNESS: We also have to take into  
9 consideration the dog safety. We're not going to get a dog  
10 in to get stabbed, shot, or otherwise injured, but at the  
11 same time, we understand their capabilities and the  
12 abilities that they have that we don't, so -- and the things  
13 they are able to overcome.

14 Q. BY MS. HECKERT: But in this case, if you had a K9  
15 with you, you still hadn't had access to the building yet,  
16 so you wouldn't have been able to deploy?

17 A. No. It wouldn't have been an immediate deploy.

18 Q. Before he decided to leave?

19 A. Correct, yeah. I think he made that decision.

20 JUROR: On your cam you said something like, "just  
21 like fixed." What were you saying about "fixed"? What was  
22 that about?

23 THE WITNESS: Sorry. You're going to recollect me  
24 on where exactly that was. Sorry.

25 JUROR: Okay. That's all I got was the word



1 "fixed," so I didn't know if it's stare -- if the person's  
2 stare was fixed, but that's what I was asking.

3 THE WITNESS: Oh.

4 JUROR: Where did your student end up being for the  
5 academy?

6 MS. HECKERT: Officer Salazar.

7 THE WITNESS: Oh, Officer Salazar, so he was behind  
8 me or kind of like to the angle of me when I was addressing  
9 the suspect. He ended up actually doing a good job by  
10 following me; so I was very happy that he did that. And  
11 then I think I had -- he kind of came behind me, and I  
12 remember directing him just kind of through that hedge.  
13 There's a path, a cement path, that I directed him towards  
14 and wanted to get him through. So we can get out of that  
15 crossfire.

16 JUROR: Another time you said, "Stay back," so were  
17 you talking to the officers on the other side of the  
18 building who you saw that the man was going to encounter?  
19 Were you talking to those officers when you said, "stay  
20 back"?

21 Q. BY MS. HECKERT: I think to Salazar.

22 A. Yeah. I think I was referring to -- yeah, because I  
23 said to Salazar, "Stay back." I didn't want him -- we  
24 sometimes, as individuals, we have a tendency to go towards  
25 the threat to try to neutralize or follow it, keep a track

1 on it. And I didn't want him to go with the suspect. As  
2 funny as that sounds or weird as that sounds, sometimes we  
3 actually will go after it because we want to, you know, grab  
4 a hold, take custody of, and take control of the situation.

5 So my -- again, my purpose was, hey, don't follow  
6 that direction. We're going to go this way, and I think it  
7 was so quick, hey, we're going this way kind of situation.

8 JUROR: Okay.

9 JUROR: I had a question. At the very end of what  
10 we watched, you were running around and shots were fired.  
11 Did you say four shots?

12 THE WITNESS: I said, "Shots fired --"

13 JUROR: Oh.

14 THE WITNESS: "-- 264." So that's my call sign is  
15 264.

16 JUROR: Oh, okay.

17 THE WITNESS: Yeah. When I key up my mike, so that  
18 dispatch understands whose talking, yeah, 264.

19 JUROR: All I heard was "four shots."

20 THE WITNESS: No, no.

21 JUROR: I thought I heard "four shots," but okay.

22 THE WITNESS: No. Three shots is what I heard.

23 JUROR: I'm getting a different sense of time. The  
24 previous officer said, "Oh, we have to wait 30 minutes for  
25 someone with a key," and yet you're saying, oh, there's --

1       there wasn't much activity. What would have been wrong with  
2       waiting 30 minutes for someone to show up with the key  
3       instead of the key person -- the pick lock person doing that  
4       tap, tap, tap, you know, that was probably driving the  
5       person crazy in the thing? Why was there a rush? You know,  
6       why couldn't we just wait 30 minutes for the key to arrive?

7               THE WITNESS: So to me in, in this situation, we  
8       were waiting. As far as just getting the door open -- so  
9       I'm assuming you're referring to Officer Moffitt's ability  
10      to lock pick?

11             JUROR: That's what I'm saying, instead of waiting  
12      the 30 minutes.

13             THE WITNESS: So in some instances what we want to  
14      avoid is when we have responders, citizens that come to  
15      scenes, like I mentioned before, dynamic, we don't want to  
16      rush or get them at risk or put them in a position of risk;  
17      right? So if Officer Moffitt can just, hey, I'm going to  
18      unlock this, and we can keep -- we can either phone the  
19      responsible to say -- to get permission. There's a lot of  
20      things to consider. And I don't think Officer Moffitt's  
21      not -- the perception that he was rushing -- I think we were  
22      all ready to stand by and wait for Officer Esqueda, who is  
23      the K9 officer, to respond, you know, and then go through  
24      the process of clearing the building and taking the suspect  
25      into custody.

1           I never felt during that time like there was any  
2 urgency from either the watch commander or any officers on  
3 the scene other than when the suspect exited. At that  
4 point, that's when the dynamic shifted very quickly, and we  
5 had to adjust accordingly. So he's -- I've been on many  
6 calls with Officer Moffitt. He's picked locks, and we've  
7 stood by for however long it takes or is needed to either  
8 get access or do all that stuff.

9           JUROR: Okay.

10          THE WITNESS: That's, that's based on his decision,  
11 and he's just trying to help facilitate smoothly into  
12 whatever the next step is for our purposes or investigation.

13          JUROR: I would think you're on task to get a job  
14 done.

15          THE WITNESS: Yeah.

16          MS. HECKERT: You have to remember this is an  
17 11,000-square-foot building and that alarm is going off and  
18 he's inside. So I don't know -- I mean, who knows --

19          JUROR: Oh.

20          MS. HECKERT: -- whether he could hear what we're  
21 hearing. We're listening right next to his body cam, so  
22 we're hearing the tap, tap, tap. The alarm is going  
23 "vvvvvv" throughout the building. I don't know that he  
24 would have ever heard that honestly, but who knows. We'll  
25 never know.

1 JUROR: Thanks.

2 JUROR: No.

3 MS. HECKERT: Other questions?

4 JUROR: From the man's behavior, did you get any  
5 sense of how his attitude was? Was he -- did you think he  
6 was mentally disturbed? You know, earlier he had said, "I'm  
7 the --" someone said that he said, "I'm the police."  
8 Did you think he was despondent? Did you think he was  
9 suicidal? Just from his demeanor.

10 THE WITNESS: You know, I didn't really have any  
11 contact until the back of that building, and at that point,  
12 you know, based off of what I'm saying, what I'm commanding  
13 him to do, I'm getting an armed individual who is not  
14 obeying commands given by multiple officers. And I feel  
15 like we were very clear and concise. It wasn't like in some  
16 situations where you hear people just yelling, and it was so  
17 despondent, you know, they are so despondent, they can't  
18 understand what's being yelled. Understand, me and Officer  
19 Walker were very clear in what we were trying to do: "Show  
20 me your hands. Drop the knife."

21 JUROR: Do you ever encounter someone who doesn't  
22 speak English?

23 THE WITNESS: Absolutely.

24 JUROR: What happens then if they don't understand  
25 the words, "Drop your hands" and whatever you're saying?

1           THE WITNESS: We -- in this case, I'm going to speak  
2 to this incident. You know, he knew we were police. We had  
3 made that very clear. Officer Moffitt had actually had that  
4 kind of conversation with him through the doorway to my  
5 recollection. I think, you know, based off of the  
6 circumstances and the totality of the circumstances we had,  
7 made our -- made known who we are and were pretty clear and  
8 concise.

9           As far as language barrier goes, we can't account  
10 for every situation like that. We do have a  
11 Spanish-speaking officer. If you want to go back to the  
12 beginning, if he's talking to us in English, the assumption  
13 would be that he can communicate with us clearly in English.  
14 So his understanding of English was clear.

15          JUROR: His words in English were repeating the same  
16 thing said to him.

17          MS. HECKERT: I don't know --

18          THE WITNESS: I don't know.

19          Q. BY MS. HECKERT: Were you on that part?

20          A. I wasn't privy to the complete conversation. I just  
21 remember Officer Moffitt kind of speaking to him through the  
22 door. Again, I don't know the context of that conversation.  
23 I didn't catch that.

24          Q. Okay.

25          A. I was off a ways, but I understood there was, you

1 know, some type of communication that was made with him.

2 JUROR: Okay.

3 THE WITNESS: But, yeah, again, I mean, you know,  
4 "Show me your hands" and "Drop the knife" and those things  
5 wasn't like we were telling him very articulate things to  
6 do. It was, you know, to me very --

7 JUROR: Simple.

8 THE WITNESS: -- simple and straightforward. And  
9 so, you know, again, it was so dynamic and fast, it's hard  
10 to -- hard to ascertain that information in milliseconds.

11 JUROR: It must be --

12 MS. HECKERT: Other questions?

13 JUROR: -- if he said, "I have a knife."

14 JUROR: Officer, you said you weren't clear on how  
15 many officers were there at that point in time, but there  
16 were sheriff's department deputies there.

17 THE WITNESS: Yeah, yeah.

18 MS. HECKERT: That was the only other department?

19 THE WITNESS: Yeah, so they had responded.

20 MS. HECKERT: The Central Point references part of  
21 the MADIU team, I think, maybe.

22 JUROR: Yeah.

23 MS. HECKERT: But they are -- they weren't there.

24 THE WITNESS: I could hear them on the radio traffic  
25 at the time. I knew they had been responding too, but I

1 didn't know -- they weren't in my purview.

2 JUROR: Do you have a sheriff's frequency for  
3 coordinating?

4 THE WITNESS: They'll actually jump on to our  
5 frequency, and that's what they did that night.

6 MS. HECKERT: Any other questions?

7 JUROR: Thank you.

8 MS. HECKERT: Thank you, Officer.

9 JUROR: Thank you.

10 THE WITNESS: Absolutely.

11 MS. HECKERT: Here are those pictures I promised  
12 you.

13 JUROR: Yeah.

14 MS. HECKERT: This is Detective Brandon Amaya from  
15 the Medford Police Department. If you raise your right  
16 hand, this lady is going to swear you in.

17 \*\*\*

18 DETECTIVE BRANDON AMAYA,  
19 having been first duly sworn,  
20 was examined and testified as follows:

21

22 INQUIRY

23 BY MS. HECKERT:

24 Q. Hi, Detective Amaya. Where are you employed?

25 A. I'm employed with the Medford Police Department as a



1 detective.

2 Q. You were called out to the scene on this case?

3 A. I was.

4 Q. As part of the MADIU team?

5 A. Yes. I got the call about 3:44 A.M. from our  
6 Detective-Sergeant.

7 Q. And so everything has already happened by the time  
8 you're arriving?

9 A. That is correct.

10 Q. You're arriving to work on the investigation of  
11 what's happened?

12 A. That is correct, yes.

13 Q. So you weren't involved at all at the time?

14 A. I was not on scene during the time of the incident.  
15 I was called in after the fact.

16 Q. So tell us what you did to locate the casings from  
17 Officer Moffitt's handgun.

18 A. So the body cameras have to be downloaded for us to  
19 view them; so there's a big time lag in between the incident  
20 to the time the cameras were successfully downloaded to view  
21 their stuff. So it was a couple hours later, we had a  
22 laptop on scene, and I watched Officer Moffitt's body cam so  
23 we could locate the handgun cartilages. We didn't know  
24 where he was standing when he shot; so it's like looking for  
25 a needle in a haystack unless you have that information. So

1       that's why we waited for the body camera.

2               We ended up -- what I observed was Officer Moffitt  
3       picking the lock, and then there's radio traffic saying they  
4       had contact with him in the back parking lot which was  
5       completely separated from where he was on the other side of  
6       the building. And there's a little pathway with these  
7       bricks, and I've got a picture I'll show you. He ends up  
8       putting his lock pick stuff back, walks down his path,  
9       doesn't have his light on. In the pathway, there's a bunch  
10      of bushes and --

11       Q. We saw it on body cams. You can go ahead and show  
12      us the pictures.

13       A. Yeah. This is a picture in the day. This was taken  
14      the day of. You can see these types of trees there, and  
15      there's bushes that are more kind of like this. And there's  
16      a tree right here. You can see the top of it, and it comes  
17      all the way to about there, and I watched --

18       JUROR: Can you turn that this way. Can you guys  
19      can see that?

20       THE WITNESS: There's a tree up here that comes all  
21      the way down. And watching Officer Moffitt's body camera,  
22      he walked down this way, and as he's illuminating the  
23      suspect, the suspect is walking this way -- I'm sorry --  
24      it's Jerry Gunter -- Mr. Gunter is walking this way next to  
25      the air-conditioner unit. That's about the time

1 Officer Moffitt starts dipping -- he has a flashlight on the  
2 end of his gun. He ended up dipping it down and  
3 illuminating as it came back up.

4 As he does that, he's standing one brick this side  
5 of this tree here, and he backs up. In the video, I  
6 estimate it to be 7 to 9 feet that he backed up, and he  
7 fired two shots from this tree. So I use this tree as a  
8 reference point after seeing that body cam video. So I went  
9 to this tree, backed up about 8 to 9 feet and ended up  
10 locating it on the right-hand side the two 9 millimeter  
11 casings that were spent right off the fourth pad from where  
12 the suspect was shot at.

13 Then when I say, "pad," it's these pads, 2 feet  
14 each, and it was the fourth one to the right, and I got  
15 another picture that I could show on that.

16 JUROR: So you estimate that he had backed up 7 to  
17 9 feet?

18 THE WITNESS: The first time I watched the video, 7  
19 to 9 feet, just a rough estimation.

20 JUROR: But then you're also saying he shot the  
21 suspect about 8 feet way from him?

22 THE WITNESS: From the, from the position that he  
23 hit the tree and saw him, backed up, at that time, was 7 to  
24 9 feet in my mind, the estimate that I had.

25 JUROR: Right.

1           THE WITNESS: And then fired the two shots. When I  
2 went to that tree, backed up, that's where the casings were.

3           JUROR: Right.

4           THE WITNESS: At that rough estimation.

5           JUROR: In my mind, it sounds like what you're  
6 saying is the suspect basically had crossed enough distance  
7 that he was aware -- the officer was -- before he started  
8 backing up?

9           THE WITNESS: Exactly.

10          JUROR: Okay. So he was coming at him pretty fast?

11          THE WITNESS: We got measurements we took later on.

12          JUROR: Yeah.

13          MS. HECKERT: Why don't you go ahead and tell them  
14 about that.

15          JUROR: Yeah.

16          Q. BY MS. HECKERT: How many feet do you think  
17 Mr. Gunter traveled?

18          A. So -- and I had only seen Officer Moffitt's body cam  
19 at that point on scene. We did a briefing after at Oregon  
20 State Police crime lab processing the scene. We did a  
21 briefing at the Medford Police Department with all  
22 investigators. During that briefing, we watched  
23 Officer Moffitt's body camera, Officer Walker's,  
24 Officer Terando's, Officer Quintero's, and Officer Bryant's.  
25           So now, after watching those, I have the clear view

1 of where he came out from the building, exited the door, the  
2 path of travel that he walked around the building. And so I  
3 wanted to get accurate measurements to what you're saying  
4 now that I have a clear picture of what happened. So it was  
5 Detective Sweet from the Oregon State Police. There was  
6 several detectives from Oregon State Police that came out  
7 and myself.

8 I had a 200-foot tape measure that I got from my  
9 car. So we used that to do the scene measurements, and  
10 these are the exact measurements that you're asking about.  
11 So he exited -- when you watch Officer Terando and Walker's  
12 body camera, we know the door he exited from the building on  
13 the east side of the parking lot. So we started the  
14 measurement at that door and did the same path that he had  
15 walked to the pad. And when I say, "the pad," it was -- and  
16 I got a better picture I'll show you here in a minute. We  
17 knew the exact pad he was standing on when he got shot. One  
18 of the ways we also know that is he ended up rolling back  
19 after he got shot and landed on the pad behind where he got  
20 shot, and there's a blood spot on that pad.

21 So we were able to know exactly where he was  
22 standing when he got shot. So from that back door where  
23 exited to the point where he was shot on the pad was  
24 80 feet, 8-0 feet. And then I took a measurement from the  
25 pad where the suspect -- where Mr. Gunter was shot to the

1 first pad of the air-conditioner unit because you can see  
2 here in this picture the pathway that he took -- this would  
3 be on the other side of the east side of the parking lot.  
4 So he came out this way behind the building, and then  
5 there's a sidewalk that comes around and then another little  
6 pathway with the same bricks just to the right of this  
7 air-conditioner unit, and then it wraps around this way.

8 Q. That's where the picnic table is that I believe we  
9 can see on the body cam.

10 A. That's correct, yes. So that's right back behind  
11 all this stuff. So he ended up walking this way and comes  
12 around. This does a 90-degree turn, and at that pad next to  
13 the air-conditioner unit, he would have stepped onto the pad  
14 that he was shot, which was 16 feet. So we know he  
15 progressed an additional 16 feet to the pad where he was --  
16 ended up being shot on.

17 JUROR: Do you have the time from the door to that  
18 pad?

19 THE WITNESS: I don't have the time from the door to  
20 the pad, but I have the time from where Officer Moffitt's  
21 light first hits Mr. Gunter to the time the shots were  
22 fired, and I will get to that here in a second.

23 JUROR: Okay.

24 THE WITNESS: So another measurement we took, and we  
25 measured this from the middle of the pads because each pad

1 is 2 feet long, so we don't know if he's standing on the  
2 back of the pad or the front of this pad or this couple-inch  
3 gap here. So we did it from the middle of these two pads,  
4 and how we got this measurement -- there's another picture  
5 I'll show you guys here.

6 So this is a still frame of Officer Moffitt's body  
7 cam, and what you're looking at here is his light coming  
8 down. This is actual gun smoke coming out from the weapon  
9 being fired, and this was the exact moment that  
10 Officer Moffitt fired his first round. So you can see this  
11 is the tree that I talked about where he had backed up  
12 approximately 8 feet. This was the tree that we were at.  
13 This tree is really important because it was a reference  
14 point of these two pads where he -- which I'll get to in a  
15 minute.

16 We know he's standing on this pad. If you look  
17 here, you have an open pad here, and then just on the corner  
18 here, you can see just a little bit of the other pad behind  
19 it. So we know when you have a video filming out. It's not  
20 filming your feet because the view was pushed out. So we  
21 know there's two pads, at least two pads, in between  
22 Mr. Gunter and Officer Moffitt.

23 So where we found the casings was the fourth pad  
24 away from this tree -- one, two, three -- on that fourth one  
25 is where we found the casing. So we know Officer Moffitt

1 was standing, like I said, on the back of the pad, middle of  
2 the pad on that fourth one because the casings were right  
3 off that fourth one. So what I did here is -- this was  
4 another picture I can view to kind of show you guys. So  
5 this is after the briefing we went out. This is --

6 JUROR: I can't see over here.

7 THE WITNESS: I'll stand up. Do you mind if I stand  
8 in the middle?

9 JUROR: Don't mind at all.

10 THE WITNESS: This is the tree we talked about.  
11 Officer Moffitt was standing on this pad when he first  
12 observed Mr. Gunter rounding by the air condition unit. I  
13 had this detective stand on that pad. I have two pads  
14 spaced in between with another detective standing on this  
15 pad, and the casings were found to the right, right here off  
16 this pad right here. So that's the distance.

17 So for this next measurement, we measured from the  
18 middle of this pad to the middle of that pad, and that was  
19 7 feet. So we have 7 feet distance from Officer Moffitt to  
20 Mr. Gunter when the first round was fired.

21 JUROR: Is that the minimal -- is the least distance  
22 they are apart then?

23 THE WITNESS: Yes. And I got another picture we  
24 took, and you can see in this picture here, there's a --  
25 this is a big curb, and the door that Officer Moffitt was



1     picking was just to the left of this. So he walked off this  
2     curb, and the building is here and a bunch of brush where  
3     you can't go to the right either. So it was kind of  
4     difficult to take this next picture, but I wanted to get a  
5     side angle to see how close it was. So this is -- I climbed  
6     up onto the building and stood in the window and took this  
7     picture. This is the same distance. They didn't move off  
8     pads.

9             JUROR: Over here, please.

10            JUROR: I can hold it.

11            THE WITNESS: They faced each other here, and I  
12     climbed up in the window, took this picture. He extended  
13     out, and I do want to note in this picture, he has his arm  
14     up, but when Mr. Gunter was shot, his arm was actually down.  
15     He wasn't up like that. It was down. That's just the way  
16     this picture was taken. So you can see the distance if his  
17     arm wasn't up. This would be the distance from his shoulder  
18     to this detective here. So that was the distance --

19            JUROR: I have a question. Earlier, like maybe a  
20     few feet earlier, that one body cam, his arm was pretty  
21     high.

22            THE WITNESS: And I'll get to that in a minute. I  
23     broke down the body cam frame by frame, and I can discuss  
24     that here, and I got a still picture.

25            JUROR: I just wanted to make sure you didn't miss

1       that.

2               THE WITNESS: That was the distance between  
3       Officer Moffitt and the middle of the pad is 7 feet. So  
4       then I used -- going back to this picture here, you can set  
5       those down if you like. Sorry, guys. This picture here,  
6       again going from this tree up here where Officer Moffitt had  
7       stopped and observed him and hit him with his spotlight and  
8       began backing up, we knew he was standing on the one pad  
9       away from it because you could see in the body cam where he  
10      went to stop.

11             So I measured where -- from the pad he stopped to  
12      the pad where he shot on, and that was 8 feet. So he had  
13      backed up 8 feet before he fired his firearm. And in  
14      correlation to that first measurement from where Mr. Gunter  
15      was standing to that first pad of the air condition unit,  
16      that was 16 feet.

17             So the answer to your first question, he was 16 feet  
18      away from Officer Moffitt. Officer Moffitt backed up  
19      8 feet, and he had progressed 16 feet so that he -- so he  
20      came twice as fast in that time frame as Officer Moffitt can  
21      back up. So after we took the measurements, I ended up  
22      going through and analyzing all the officers' body cameras.  
23      I watched them very closely and watched them multiple times.

24             And these are a couple things we took off the body  
25      cams: So as far as commands goes, Officer Moffitt, when he

1 first got on the scene, he told Mr. Gunter inside the  
2 building when they were having verbal contact three times  
3 that it was the Medford Police Department. And then prior  
4 to the shooting when he was backing up the 8 feet, he told  
5 him twice, "Get back." So those are the commands that  
6 Officer Moffitt gave him.

7 Officer Terando, when he exited the back of the  
8 building, he told him twice, "Drop the knife," and one time,  
9 "Let me see your hands."

10 Officer Walker told him three times, "Medford  
11 Police. Let me see your hands" two times and "Drop the  
12 knife" four times. The total commands that Mr. Gunter  
13 received from all the officers on the scene during this  
14 incident was "Medford Police," six times; "Drop the knife,"  
15 six times; "Let me see your hands" three times; and "Get  
16 back," two times. So those are all the commands that the  
17 officers had provided to Mr. Gunter.

18 And your question for the times, the times that I  
19 took, I started a stopwatch and watching the videos, and  
20 from the time Mr. Gunter rounds that corner next to the air  
21 condition unit, when he's getting ready to confront -- the  
22 confrontation is going to happen between Officer Moffitt and  
23 Mr. Gunter, I started the stopwatch when he hits the pad  
24 coming off that air condition unit and making the turn, and  
25 I stopped it at the first round of gunfire, and that was

1 4.8 seconds.

2 JUROR: So what speed is that?

3 THE WITNESS: I don't know the speed, but at -- how  
4 fast -- when you say, "speed," how fast they were walking?

5 JUROR: The velocity, yeah.

6 THE WITNESS: I don't have an answer for that.  
7 That's the time frame they have from the -- where he rounds  
8 that corner straight to the point where he's up to him is  
9 4.8 seconds.

10 JUROR: For how much distance?

11 THE WITNESS: Oh, sorry. Distance wise?

12 JUROR: I was asking the velocity. We can do a  
13 calculation here.

14 THE WITNESS: I don't have any training in that  
15 area.

16 JUROR: Is that the 7 foot distance?

17 THE WITNESS: No. That's the whole 16 feet --

18 JUROR: 16.

19 THE WITNESS: -- in four point -- yeah, 4.8 seconds.

20 JUROR: 16 feet in 4.8 seconds?

21 THE WITNESS: Yeah. And then the other time that I  
22 have, I started as soon as Officer Moffitt illuminated  
23 Mr. Gunter because you guys saw the video, and it started  
24 where he's walking. So the time where his light first hits  
25 Mr. Gunter to the time of the first gunshot was 3.6 seconds.

1 JUROR: Repeat that.

2 THE WITNESS: 3.6 seconds from the time  
3 Officer Moffitt's flashlight illuminates Mr. Gunter to the  
4 time the first round is fired.

5 JUROR: Got it.

6 THE WITNESS: And then I'll show you this too since  
7 you brought up -- your question was in that one picture  
8 where he had his arm up at the 7-feet distance, and I told  
9 you he didn't have his arm up, this is a still shot from  
10 Officer Moffitt's body cam, and you can see the point where  
11 this tree that we discussed here is, and he's stepping onto  
12 this pad.

13 This is a pad that he rolled back onto after he was  
14 shot, and he was standing on this pad when he was shot, and  
15 you can see here again -- oh, hang on. I've got one more  
16 picture to show you. This is another observation I made.  
17 Before he hits the tree, this is about when the light first  
18 starts illuminating him, and he's coming down, and you can  
19 see that he's got his hand out, his left hand out, and if  
20 you watch the other videos from the other officers, the  
21 blade is sticking out from his pinky.

22 So the handle is in his hand here, and he's holding  
23 it like that with a blade sticking out. And you can see  
24 it's pointing at Officer Moffitt, and his light illuminates.  
25 Coming down, now they are at the tree. He's at that pad,

1 and he has the knife up like this.

2 JUROR: I can't see.

3 JUROR: See that line.

4 THE WITNESS: You can see the knife.

5 JUROR: Right. There's the knife.

6 THE WITNESS: Right there.

7 JUROR: Yeah.

8 THE WITNESS: In this last picture, you can see  
9 there's the tree, and he's on this pad when he's shot, so he  
10 progressed. That picture we had was standing on this pad  
11 with the detective's arm up. You can see his arm was down.  
12 So he had -- just on this one, he had it up, and it just  
13 lowered it and taken another step.

14 JUROR: Is it the light shining on Mr. Gunter?

15 THE WITNESS: That's the light from --

16 JUROR: Is there a chance he's trying to block his  
17 face from the light from his face.

18 THE WITNESS: I don't know what Mr. Gunter was  
19 trying to do at that time.

20 JUROR: Okay.

21 JUROR: So as Officer Moffitt backed up, do you have  
22 any idea how close he was to that curb that he had stepped  
23 off of.

24 THE WITNESS: I didn't do a measurement from the  
25 curb, but I know it's a rough estimation of about 10 feet.

1 JUROR: Okay. So that probably was going through  
2 his mind also as he's backing up.

3 THE WITNESS: Again, I don't know what was --

4 JUROR: Sure.

5 THE WITNESS: -- at that time with Officer Moffitt.

6 JUROR: Yeah.

7 JUROR: Will we be able to ask Mr. Moffitt why he  
8 was so close if -- why get so close to Mr. Gunter if  
9 Mr. Gunter wouldn't be able to go through the bushes  
10 because --

11 MS. HECKERT: Well, when you watch --

12 JUROR: I don't think Moffitt ever approached --  
13 once he saw Gunter, he never approached --

14 JUROR: He backed up.

15 JUROR: But why was he placing himself there?

16 THE WITNESS: I could answer that a little bit.

17 JUROR: Okay.

18 THE WITNESS: There's radio traffic that you heard  
19 on the body cam. We have contact with him in the back  
20 parking lot. There's no other traffic of him, "Hey, now  
21 he's walking down the pathway heading your way" until he's  
22 already halfway down the middle. So in watching the video,  
23 Officer Moffitt gets the, "Hey, we're in the back parking  
24 lot out with him, and he's walking towards the back parking  
25 lot."

1 JUROR: Which makes Moffitt decide to do what, get  
2 closer?

3 THE WITNESS: No. He's going to the back parking  
4 lot to assist the officers in the contact with him in the  
5 back parking lot. Because the back parking lot -- do you  
6 mind if I step over here? Is that okay?

7 JUROR: Go ahead.

8 THE WITNESS: The back parking lot --  
9 Officer Moffitt is just to the left of this curb where the  
10 building is at trying to pick the lock. They say, "Hey, we  
11 have contact on the back parking lot." He starts walking  
12 this way. He's walking without any light on, which is how  
13 we're trained in a tactical situation. Don't use your  
14 light. Just get in position. So he's walking. When he  
15 hits this tree right here --

16 JUROR: Does he think he's walking away from Gunter.

17 THE WITNESS: No. Gunter is way over here in this  
18 back parking lot. From this spot here, he's 80 feet away.  
19 Gunter is 80 feet away from him, coming out of that back  
20 door when they say, "We have contact with him on the back  
21 parking lot." So Officer Moffitt walks this way. He's in  
22 the dark. When he's down here by this tree, Gunter ends up  
23 rounding this corner.

24 JUROR: No longer 80 feet away?

25 THE WITNESS: 16 feet -- less than 16 feet away



1 because he's at this pad here. He backs up 8 feet, but  
2 Gunter had already rounded the corner and was walking toward  
3 him.

4 JUROR: Was Gunter -- was Moffitt given inaccurate  
5 information --

6 THE WITNESS: No.

7 JUROR: -- about being 80 feet away?

8 THE WITNESS: No. He exited the back, and  
9 Officer Terando and Officer Walker contacted him at the back  
10 parking lot, which is on this other side here.

11 JUROR: Okay.

12 MS. HECKERT: Nobody can know what Mr. Gunter was  
13 going to do. That's the piece. That's the wild card.

14 JUROR: Okay.

15 MS. HECKERT: They didn't know what he was going to  
16 do.

17 JUROR: We wasn't given inaccurate information.  
18 They aren't saying he's walking this way and that way.

19 THE WITNESS: Right. They have contact with him in  
20 the back parking lot. He starts going to the back parking  
21 lot. At that point, from where Gunter is shot, we know  
22 that's 80 feet from where he shot to the back parking lot.  
23 So he starts walking there. You can tell he doesn't have  
24 his light on. I can guarantee you, if Officer Moffitt knew  
25 he was coming around the corner, he's not going to walk in

1 the dark up to somebody.

2 JUROR: Yeah.

3 THE WITNESS: No. The way I see it in the body  
4 cam -- you can go frame by frame -- he's standing one brick  
5 this side of this tree down here right about on that pad.  
6 And his flashlight -- he's in the dark, and you see ambient  
7 light. Mr. Gunter is coming around that 90-degree corner at  
8 that air conditioner unit right here, and you can see  
9 Officer Moffitt's hand goes down, and he's activating his  
10 light, and he brings up his light.

11 That's that picture I showed you where he's walking  
12 with the knife right there. So when Officer Moffitt started  
13 walking, Mr. Gunter was not on this pathway. He was at the  
14 back of the building.

15 JUROR: He was coming around the building.

16 THE WITNESS: He was moving around, coming this way.

17 JUROR: Yeah.

18 THE WITNESS: Does that answer your question?

19 JUROR: Yeah. Thank you.

20 MS. HECKERT: Any other questions for  
21 Detective Amaya.

22 JUROR: You were very thorough. Thank you.

23 JUROR: Yeah.

24 MS. HECKERT: It helps a lot when you go by frame by  
25 frame.

1 JUROR: It really helped.

2 MS. HECKERT: We're right at noon. I have my  
3 use-of-force expert who I don't think will be more than 15,  
4 20 minutes, depending on how many questions you have, and I  
5 have someone to talk about the autopsy, which shouldn't be  
6 more than five minutes. And so do you want to press on or  
7 do you want to take a lunch break?

8 JUROR: Go through.

9 MS. HECKERT: Do you want to take a lunch break and  
10 come back? It doesn't matter to me or the witnesses.

11 JUROR: Whatever works best.

12 JUROR: Go to the bathroom.

13 JUROR: Maybe a mini break.

14 MS. HECKERT: A little break.

15 JUROR: Five-minute break.

16 (Break.)

17 MS. HECKERT: This is Detective Fazio. And if you  
18 raise your right hand, she can swear you in.

19

20 \*\*\*

21 DETECTIVE BEN FAZIO,  
22 having been first duly sworn,  
23 was examined and testified as follows:

24

25 JUROR: Thank you. Do you want us to put our masks

1 to?

2 THE WITNESS: Oh, I'm okay. Thank you very much.

3

4

INQUIRY

5 BY MS. HECKERT:

6 Q. So Detective Fazio, where are you employed?

7 A. I'm a detective with the Jackson County Sheriff's  
8 Office assigned to the Jackson County medical examiner's  
9 office program.

10 Q. And as a deputy medical examiner, do you have some  
11 kind of specialized training?

12 A. I do. So in the medical examiner's office, we are  
13 sent to a state certification course where we're taught  
14 investigative skills to help the doctor that we work for  
15 help determining the cause and manner of death in cases that  
16 fall under jurisdiction of the medical examiner's office.

17 Q. Did you attend the autopsy that was performed by  
18 Dr. James Olson on July 9th?

19 A. I did, yes.

20 Q. From that autopsy, can you just tell us what caused  
21 the death of Mr. Gunter.

22 A. Absolutely. There were two penetrating gunshot  
23 wounds to the right side of his chest that traveled in a  
24 front to back, up to downward type angle. Prior to the  
25 autopsy, I had the body brought to Rogue Regional Medical

1 Center where we did CT and had imaging and were able to see  
2 that there were two bullets that were retained within the  
3 torso, which at autopsy we recovered both of those bullets.

4 Q. And so he was shot with the two bullets that  
5 Officer Moffitt fired?

6 A. I, I believe so. I don't -- I don't -- I don't know  
7 that.

8 Q. Two handgun bullets?

9 A. Correct, yes. There were two handgun bullets.

10 Q. We also had a rifle that was fired. That shot  
11 didn't get --

12 A. He didn't have any injury from a rifle.

13 Q. And the bullets remained inside the body? There was  
14 no exit wounds; is that correct?

15 A. Correct.

16 Q. And then just kind of briefly, I guess, what else  
17 did you note during the autopsy that might have been  
18 unusual?

19 A. Okay. Also during the autopsy when Dr. Olson first  
20 started examining the inside after we removed the chest  
21 plate, Dr. Olson was able to see or feel in the small  
22 intestine some type of foreign object in his intestine below  
23 his stomach. Upon examination, after I searched the entire  
24 intestines, we located a small, like about 2 1/2 by 4 1/2  
25 centimeter piece of -- a broken piece of glass or mirror

1       that was in inside of his intestine. It was a section of a  
2       mirror. I know it's kind of hard with the mask.

3               JUROR: Would that have come from the incident?

4               MS. HECKERT: Because it was --

5               THE WITNESS: That was --

6               MS. HECKERT: -- where it was in the digesting  
7       process --

8               JUROR: Yeah.

9               THE WITNESS: Yeah, because of where it was, it had  
10      to be something that was internally taken and had worked its  
11      way through the stomach and down into the intestines.

12              JUROR: How much time ahead of the time?

13              THE WITNESS: That, I think, Dr. Olson would be the  
14      appropriate person to ask on that. I'm not an expert on  
15      that process.

16              Q. BY MS. HECKERT: It definitely wasn't something that  
17      happened inside of the medical clinic?

18              A. It would take some time to get through there. It  
19      wouldn't be something acute that just happened. It would  
20      take time to go through the stomach and be in that part of  
21      the intestine.

22              Q. And then how about any marks on the wrists?

23              A. So on his right wrist he had incised marks. Incised  
24      marks are defects that are caused by a sharp object. They  
25      looked to be self-inflicted hesitation type wounds. You

1       probably heard that term before.

2               JUROR:   No.

3               THE WITNESS:  They were shallow incise marks that  
4       produced those six or seven different injuries to his right  
5       wrist.

6               Q.  BY MS. HECKERT:  Did those also look like they were  
7       like fresh or hadn't healed over, or were they --

8               A.  Yeah.  They looked fairly fresh, but definitely  
9       wouldn't be a cause-of-death-type injury because there was  
10      no depth to them.

11              MS. HECKERT:  So any questions about the autopsy?

12              JUROR:  Those injuries to the wrists -- to the  
13      wrist, were they from that incident there or prior?

14              THE WITNESS:  It -- I wouldn't --

15              JUROR:  Did they look extremely fresh or several  
16      days old?

17              THE WITNESS:  They did look fresh to me, so they  
18      weren't scabbed over; so they didn't appear to be healing at  
19      that point.  So I would say that they were fresh, but I  
20      wouldn't know if that was that day or the night prior.

21              JUROR:  Did they do tests that were individual for  
22      narcotics in the blood system or --

23              THE WITNESS:  So toxicology examples were retained  
24      and submitted.  We don't have those results back yet, but  
25      that is something that occurred.

1           Q. BY MS. HECKERT: It takes a long time to get them  
2 back?

3           A. It does.

4           JUROR: It does take long.

5           JUROR: The wrist slices, were there any evidence of  
6 blood that it would have happened by climbing through the  
7 window?

8           THE WITNESS: I don't -- I don't remember that they  
9 were bloody at the time, but I didn't bring photos with me.  
10 I know they were red and that they weren't healed over, but  
11 they didn't appear to be bleeding.

12          Q. BY MS. HECKERT: Were they the kind of injury -- I  
13 mean, they appeared self-inflicted cutting, rather than  
14 climbing through a window and cutting yourself?

15          A. Correct. In these, what we call hesitation marks,  
16 what you'll see is there will be grouping, and they'll be in  
17 the same direction. I believe they were all grouped  
18 together. He may have -- there were some that were going  
19 this way with the arm also horizontal across. But they were  
20 all grouped together in one space.

21                 And breaking through the glass window, you may be  
22 able to get an incised mark because of the sharpness of  
23 glass, but you might have a more abstract type injury from  
24 that.

25          JUROR: You're confident that the glass in the



1 intestine was not glass that got into his body from climbing  
2 a broken window?

3 A. Correct, yes.

4 Q. The toxicology would also tell us if he had  
5 epinephrine, prednisone, or antihistamine in his system too?

6 A. Yeah, when the toxicology report comes back. I know  
7 we did request a forensic -- they call it a forensic testing  
8 where it does break down all of the controlled substances  
9 that we're testing for.

10 JUROR: Or even noncontrolled.

11 Q. BY MS. HECKERT: The kind of medications that were  
12 inside of the building, were we testing for those like  
13 prednisone or --

14 JUROR: Epinephrine. Maybe he was having an  
15 allergic reaction.

16 THE WITNESS: You know, I'm not aware what all  
17 substances they are testing for. I know it is -- when we do  
18 get the report, it is a pretty thorough list of substances  
19 that are present.

20 JUROR: Okay.

21 JUROR: There was blood found at the scene. Was  
22 there any fresh cuts that were noticed on the hands, arms,  
23 or face maybe that the glass would have cut?

24 THE WITNESS: If you'll hold on one second, I can  
25 review the autopsy report. Is it okay if I testify after

1 reading the report, not from my own memory of it?

2 MS. HECKERT: Uh-huh.

3 THE WITNESS: So Dr. Olson did examine the top of  
4 his left hand, and there were some abrasions, some small  
5 abrasions over the left hand. No mention of any type of  
6 acute lacerations or cuts.

7 JUROR: Okay. Thank you.

8 JUROR: What's a chest plate?

9 THE WITNESS: Oh, that's just the, the sternum and  
10 the ribs.

11 JUROR: Sternum bones.

12 THE WITNESS: When we're going to examine the inside  
13 of a body, we need to remove that. Thank you for asking.  
14 That's what it is. It's us removing the ribs so we can  
15 examine the organs.

16 JUROR: No. This is probably for the other officer.  
17 I forgot to ask. And they said they put a chest plate on  
18 him.

19 MS. HECKERT: Chest seal.

20 JUROR: Chest seal.

21 THE WITNESS: In the field, if somebody has a  
22 gunshot wound or any kind of perforated or penetrating wound  
23 to their chest, a lot of times the first responders will  
24 attach a chest seal to stop either the bleeding or the air  
25 from, you know, collapsing lungs because once you have a

1 hole in your chest, you can start building up blood. You  
2 can have a lot of problems go on there. So a chest seal  
3 would be something that they would have applied on the scene  
4 for life saving measures.

5 Q. BY MS. HECKERT: Like a big bandage.

6 A. It's a sticky seal that seals that.

7 JUROR: Like a Tegaderm kind of thing?

8 JUROR: Did he have any injuries that may have come  
9 from his stomach with his hands behind his back?

10 THE WITNESS: I don't remember any other injuries  
11 like that. No.

12 JUROR: What kind of injury could come from  
13 something like that if your hands are handcuffed behind your  
14 back and you're on your stomach?

15 THE WITNESS: I imagine you could have abrasions to  
16 your -- if you're not wearing clothing, maybe abrasions to  
17 your chest or to your face from being face down.

18 Q. BY MS. HECKERT: Kind of surfaces too?

19 A. Yeah. And to be clear, in scenes where death occurs  
20 at the scene, the medical examiner's office responds to the  
21 scene. In this case, he was transported to the hospital; so  
22 when we go to those, our scene is the hospital. So we don't  
23 go to the crime scene or the scene of the incident. So  
24 those are good questions probably to ask the officers that  
25 were there at the scene. My assignment was the hospital.

1 My job was to view him at the hospital, get the CTs done,  
2 and bring them to the morgue so Dr. Olson could perform an  
3 autopsy day two days later.

4 JUROR: Did he die in the hospital?

5 THE WITNESS: Yes.

6 JUROR: Was that before surgery, or he died in the  
7 emergency room?

8 THE WITNESS: I think -- I believe he died before --  
9 yeah, I know he died before making the surgery. The time of  
10 death was 3:40 in the morning, and the time of the incident  
11 was about 2:44, so about an hour from the time of the  
12 incident to the time he was pronounced deceased at the  
13 hospital.

14 MS. HECKERT: Other questions?

15 Okay. Thank you very much.

16 JUROR: Thank you so much. Have a good day.

17 THE WITNESS: You too. Thank you.

18 \*\*\*

19 BRENDAN QUIRKE,

20 having been first duly sworn,

21 was examined and testified as follows:

22

23 INQUIRY

24 BY MS. HECKERT:

25 Q. So this is Detective Brendan Quirke from the Oregon

1 State Police, and you watched the video and reviewed all the  
2 reports, and you have -- you haven't spoken to witnesses.  
3 You reviewed the information we have?

4 A. Correct.

5 Q. And can you tell us a little bit about your  
6 background and that you've been the use-of-force expert in  
7 the past.

8 A. Yes. So I've been with the Oregon State Police  
9 nearly 14 years. I've been what we call a defensive tactics  
10 instructor, basic ground defense, use-of-force for teaching  
11 recruit level guys here. I've taught at OIT, some of their  
12 security guard staff. We've gone through edge weapon, knife  
13 classes. We've gone through action versus reaction time,  
14 shooting scenarios. For over 10 years, I've done that,  
15 so -- as well as testifying in these, again full-time.

16 Q. And when you -- just from your experience as a  
17 police officer, not necessarily pertaining to this, but  
18 arresting somebody, how that's handled and --

19 A. Well, we don't -- when people are handcuffed,  
20 whether they are compliant or not, it's always behind just  
21 for safety. If their hands are in front, they can  
22 manipulate around and moves things around. Even if it's an  
23 injury crash, shooting, stabbing, assault, or something like  
24 that where there's a person that's injured, our position is  
25 to put somebody on the ground preferably on their belly and

1 handcuff from behind. That happens in shootings, bar  
2 fights, car crashes, things like that.

3           You will pat down the person, or if you're  
4 handcuffing somebody, as you're doing that, somebody there  
5 with you will do it at the same time. And once you  
6 determine, okay, it's safe, they don't have anything that's  
7 going to hurt me or hurt themselves, and we're good to go,  
8 if they need that much more aid, we'll handcuff --  
9 unhandcuff them and then render aid to them.

10           It's more of a safety, if we don't deal with the  
11 problem right then and there and something does spur back  
12 up, our problem just got bigger, and we will have to  
13 possibly use more force on that person than we did prior to  
14 that. So that's why that happens.

15           JUROR: Because we were discussing that a little  
16 bit, and I was thinking, well, you don't know that he  
17 doesn't have a gun stuck in his belt or his pocket or  
18 anything else, and you've got to put yourself out of that  
19 vicinity.

20           THE WITNESS: Uh-huh.

21           Q. BY MS. HECKERT: So when an officer is faced with a  
22 knife, you think just as civilians, you have a gun and I  
23 only have a knife, so you're much more at an advantage than  
24 I am. Can you talk about that a little bit, distance --

25           A. Yeah.

1 Q. -- and what damage that can do?

2 A. So there's this perception of like a lot of people  
3 may have heard of a 21-foot rule. That's more of a  
4 guideline. That's not really a rule, but you take your  
5 average human being, and we'll say even 6 feet -- I'm  
6 6' 1" -- for me to gather 6 feet roughly from me to you, I  
7 can reach you in one step, and I can do it in a half second.  
8 So with a knife --

9 JUROR: Okay.

10 THE WITNESS: -- if I'm moving fast and assertive  
11 and with purpose, you can cover ground quickly. So even  
12 with a knife, it, it -- it's very, very dangerous, and the  
13 perfect example would be, like I said, I did that edge  
14 weapon class. It was taught to us by a guy who works for  
15 Rikers Island in New York where they have over 300 stabbings  
16 a year in the prison, and he came and taught us this class.

17 And we put ourselves in scenarios with untrained  
18 other police officers just like myself with what we had,  
19 like it's a called a chalk knife. So it was like hard, but  
20 you can hit, and you can see where the chalk lines were.  
21 And I, I was pretty confident in my ability, and I went up  
22 against another guy who was newer, and it was a fight  
23 scenario like you go through, and I ended up ultimately  
24 having to fire a sym round, which is like a paint round.

25 And I stepped back, and he said, "How do you think

1     you did?"

2             "I did great." And I looked down, and I had  
3     20-something slash marks on me, and he was inexperienced.  
4     If they are experienced, they are much more directed and  
5     focused on areas that can hurt you and kill you. If it's  
6     somebody that's inexperienced, you'd think with a knife you  
7     can frenzy like swipe, stab, jab -- whatever it be -- and  
8     they are very, very violent. Knife attacks are horribly  
9     violent.

10            So if he's got a knife and he's -- like the video  
11    you see -- he's approaching on you, we're not going to --  
12    first of all, he's coming forward, which everybody knows  
13    moving forward is going to be a lot faster than anybody  
14    moving backward; I don't care who you are. And you had your  
15    stress levels. You have the confined space. You've got  
16    what happens during use-of-force incidents. FBI studies  
17    have shown that you become very tunnel visioned. You don't  
18    see a whole lot around you. Your auditory goes away. Your  
19    finger dexterity goes away. You lose a lot of fine motor  
20    skills.

21            So there's that fight or flight. Flight run towards  
22    them; fight, back up and run. As police officers, we don't  
23    have the option to run. We get paid to be there and deal  
24    with it. When that happens, you make that decision.  
25    Ultimately what happens is our decision making, we can try



1 to play it out as much we want. Like we can say, here is  
2 what we're going to do. That's great in theory, but in the  
3 end, we are reacting to what is presented to us. Like we  
4 can think, hey, here is what I want to do, but we're  
5 reactive. Whatever actions the suspect or person or  
6 whatever the situation has comes at us, we have to react to  
7 it.

8           And we may have this plan: This is what we're going  
9 to do. Sometimes it works; sometimes it doesn't. There is  
10 no set way to do it. And that's where action versus  
11 reaction comes in, and then you have to take into account,  
12 like I was saying, like you're high stress, and you're  
13 sweating. You can be sweating. You can be not sweating.  
14 You can be losing your fine motor skills. You may not hear  
15 what's going on around you. You're so focused.

16           A good way to put it is if you see videos or I've  
17 seen hundreds of officer-involved videos, if you see  
18 somebody with a gun or a knife, it's, it's been really  
19 curious to see -- with the FBI they show us -- like you'll  
20 see somebody will hold a handgun up, and you'll see bullet  
21 holes in that person's hands and in their arm and stuff like  
22 that because you're so focused on what's going to hurt you,  
23 and that's where that tunnel vision comes in too.

24           Ideally, if we're going to shoot, we are going to  
25 shoot at the bigger part of the body because you have tunnel

1 vision. Sometimes you focus so much on that knife, that's  
2 it, where in your brain that's what's going to hurt me:  
3 I've got to stop that. So you're going off again of the  
4 action of what that guy or female is doing to you, and  
5 you're reacting to it.

6 Q. One of the things Officer Moffitt said was he thinks  
7 he only took maybe one step back. Like he doesn't really  
8 remember backing up, it seems from his testimony. Is that  
9 unusual?

10 A. No, absolutely not. You -- like I say, you're --  
11 your body reacts like you're physiological reaction; you  
12 forget things. Like I've been involved in one -- actually  
13 two, and there's parts of mine before the shooting anything  
14 took off, and I can't tell you what the guy said, and we  
15 were in a -- like an enclosed room, and he was yelling at  
16 me. And still to this day, I don't know what he said to me.  
17 So it's not uncommon to lose track of what's being said or  
18 what's going on. You're going to miss things. That's your  
19 human body and your protective -- you're protecting  
20 yourself.

21 That's common to forget. "I took two steps," when  
22 actually you took seven. "I didn't realize that." In your  
23 mind, registering, I'm backing up; by the time you realize  
24 in your head, you've taken two, you may have taken seven or  
25 eight. It's really, really common.

1           Q. Watching from a defense tactics instructor kind of  
2 view, is there anything that you see Officer Moffitt do that  
3 you think, you know, you could have made a different  
4 decision?

5           A. No. I think, watching it and seeing, seeing the  
6 video, I don't -- I don't think he realized he was going to  
7 be that close when he came around the corner. He came  
8 around the corner, and all of a sudden, he's there, caught  
9 him off guard. The taser option in this situation, it's not  
10 an option. A knife can kill you. There's no reason for him  
11 to switch. For what he did, he was absolutely justified in  
12 what he did.

13          Q. And then like, after a shooting, sometimes do  
14 officers just react differently and might take a while for  
15 it to sink in or what?

16          A. Yes. And that's kind of a reason you get them away  
17 from the situation right away. Because you're very much  
18 still in the mode of, okay, here is what's going on; here is  
19 what I need to do. And it may not sound as if a police  
20 officer is like empathetic to the situation or sympathetic  
21 to the person they just had to shoot or something. We don't  
22 want to do it, but you're still thinking work, work, work,  
23 work, work, work, work; and then you can take it -- even  
24 10 minutes later, 20, sometimes a couple days later, and it  
25 sinks into you, oh, wait a minute.

1           So, yeah, it's not uncommon to stay very like to the  
2 point, like, hey, here is what we need to do, here is what  
3 you need to do. And other people show up, and you back up,  
4 and you can finally start to slow your heart rate down, and  
5 you're breathing, and you can start to comprehend really  
6 what's going on around you.

7           MS. HECKERT: So any questions for Detective Quirke?

8           JUROR: Very thorough, very informative. Thank you.

9           JUROR: Who would have evidence that Gunter was an  
10 English speaker versus someone who spoke a different  
11 language?

12          JUROR: Probably Officer Moffitt.

13          MS. HECKERT: You watched all the videos. Did you  
14 hear --

15          THE WITNESS: Yeah. Officer Moffitt and him were  
16 talking through the window.

17          JUROR: So was Gunter merely repeating the words  
18 that Moffitt was saying?

19          THE WITNESS: No. He actually told him, "I have --"

20          JUROR: I have a knife.

21          THE WITNESS: One of them was something along the  
22 line of, "I have a weapon. Don't make me use it," and  
23 Officer Moffitt never said that.

24          JUROR: All right.

25          THE WITNESS: Not a direct quote. I do remember

1 something in there.

2 JUROR: Different words.

3 JUROR: I wrote those words down earlier when I  
4 watched, "I have a knife. Don't make me use it."

5 THE WITNESS: Yeah. We show up -- when the police  
6 show up, there is a gun, but we don't come out, "We have a  
7 gun. Don't make me use it." We don't use those words to  
8 people. If somebody says that to us, we're going to be  
9 like, wait a minute, there's something wrong here. That's  
10 not normal to say to anybody, let alone a police officer.  
11 So --

12 JUROR: Okay.

13 JUROR: Yeah. I understand that the -- there wasn't  
14 time to switch from gun to taser, but since they, they  
15 already knew that the person was saying they had a knife,  
16 not a gun, would it be reasonable to deescalated through  
17 having tasers out versus firearms out.

18 THE WITNESS: So with a taser, the taser is a great  
19 tool. Don't get me wrong. Great tool. But there are  
20 serious downfalls with the taser. And usually when there is  
21 a situation, if it's ideal, you usually -- if you have the  
22 ability to have one person be called lethal cover with a  
23 firearm, someone less lethal with a taser, but given where  
24 they were at with the branches and everything, when you fire  
25 your taser, when they come out, they separate, and they keep

1 going different directions. So you have to be within a  
2 certain amount of time.

3 Could you try and do it? Yes. But you have to take  
4 in, too, the factors of, first of all, they didn't realize  
5 that he was going to be coming out aggressively toward  
6 Moffitt like that, and with the tree branches and he had  
7 that big lab coat on, you seen that video.

8 JUROR: Yeah.

9 THE WITNESS: If he has that lab coat and it's not  
10 tight to his skin and it's out like this, a taser probe can  
11 hit it, and it may not penetrate it; they may not work.

12 JUROR: Those are the good reasons why a taser  
13 wouldn't be a good choice there. I'm thinking about, just  
14 he -- Moffitt didn't know he was going to confront him. He  
15 didn't know he was going to be by the hedges.

16 THE WITNESS: Right.

17 JUROR: He didn't know the guy was going to wearing  
18 a lab coat and such.

19 THE WITNESS: Right.

20 JUROR: In terms of standard procedure, we heard a  
21 lot of guns, and only one person with a taser out.

22 THE WITNESS: That just depends on each person's  
23 perspective and where they are at. Me, personally, I hear  
24 somebody say, "I have a weapon and don't make me use it on  
25 you," in my mind and where I would be, I would have my

1 firearm as well. It's easier for me to transition down.

2 So say I have my taser, and he comes out, and he  
3 does have a gun, we always go -- the force continuum used to  
4 be like a set of steps. It used to be hard for people to  
5 understand. If we showed up on scene and somebody has a gun  
6 and they point it at us, why didn't you talk to him? Well,  
7 there wasn't time for that. So it's easier to have -- we  
8 always do what we call one step higher. If they have a  
9 knife or they have a weapon -- I don't know what it is --  
10 I'm going to think worse case scenario is, if I have the  
11 time, go down, so every situation is worse.

12 Q. BY MS. HECKERT: When he has a knife, he has lethal?

13 A. Yeah, yeah. And it's -- I mean, it's great thought,  
14 and like I said, we don't want to show up and shoot people.  
15 That's not our intention. And, yeah, we always say just one  
16 above. If they've got a bat, you're a good distance, sure,  
17 taser, but if they are close like that, even a bat, somebody  
18 hits you with the bat -- there's a lot of circumstances that  
19 you can play, well, what can I do here? What can I do here?  
20 We do it all the time. That's one of those things, we react  
21 to what is given to us.

22 Q. And you have -- time is a little bit on your side  
23 until he does --

24 A. Uh-huh.

25 Q. They had a plan here of having the K9 come.

1           A.   Yeah.

2           Q.   All these different things.  If he had stayed inside  
3 the building --

4           A.   Yeah.

5           Q.   -- it would have turned out differently maybe?

6           A.   Possibly.

7           JUROR:  Sometimes you don't have time to react.

8           THE WITNESS:  No.

9           JUROR:  You don't have time to look at your options.

10          THE WITNESS:  Yeah.

11          JUROR:  You have to react and save your life.

12          THE WITNESS:  Yeah.

13          JUROR:  You said you don't want to shoot people.  So  
14 other than -- I can't remember what -- so what efforts were  
15 taken to not shoot this person from -- you're not the  
16 investigator?

17          THE WITNESS:  No, I wasn't.

18          JUROR:  There was multiple times.  How many times he  
19 said --

20          JUROR:  I think he can answer it.

21          Q.   BY MS. HECKERT:  You reviewed everything.  Can you  
22 say what kind of efforts the police were taking?

23          A.   You come out -- first and foremost, they are  
24 conversing with him.  The police are there.  So why would  
25 you come out with a knife?  That's a good question, but we



1 don't have the answer to. That's one, verbal command, "Hey,  
2 police department. We're here." That's one step right  
3 away, announcing in uniform.

4 And then you have other people you can hear -- with  
5 this morning, I'm combining the two names.

6 Q. BY MS. HECKERT: Walker?

7 A. Walker.

8 Q. Officer Terando?

9 A. They are yelling at him, "Hey, police department.  
10 Police department," and he's aggressively moving across from  
11 them. So they are giving verbal commands, and not knowing  
12 what's going on right there -- I can't speak for them, but  
13 from watching it -- they are giving him an opportunity to  
14 stop. Like you're surrounded. Police are here. "Come out.  
15 Put your hands up. Don't move, and you'll be fine."  
16 There's multiple people telling him what to do, and you can  
17 hear -- I don't remember what Moffitt said to him. He was  
18 giving him commands.

19 Q. "Get back."

20 A. "Get back," as he's retrieving. There's no command  
21 of him to try and not make this situation happen. Again,  
22 we're reacting to what's given to us at that point.

23 Q. Okay.

24 JUROR: How did -- and you may not be able to answer  
25 this, and I should have asked before. How did Gunter get to

1 the building? Did he have a car? Did he just walk up? Did  
2 they think someone else is involved?

3 THE WITNESS: Well, we do what we call vet those  
4 things out. Like there was a vehicle in the parking lot.  
5 We determined who that belonged to. The building was  
6 searched after to make sure there was nobody else in there,  
7 and there was nobody there. How he got there, we don't  
8 know, and we may never know.

9 JUROR: Did he have -- was this a -- do we know was  
10 he a homeless guy? Did he have a driver's license? You  
11 know, who is this guy?

12 JUROR: Did he have an allergy?

13 THE WITNESS: An allergy?

14 JUROR: Until they get the tox result --

15 JUROR: Some severe -- right.

16 THE WITNESS: I don't know any of that. I don't  
17 know how he got there. I do know that we had known like --

18 Q. BY MS. HECKERT: I can bring Sweet back in. He can  
19 give you a little more background.

20 A. He has more information on it.

21 Q. I can bring him back in for what we learned about  
22 him, but not a lot.

23 JUROR: That would be great. Thank you, Beth.

24 MS. HECKERT: Any other questions for him on use of  
25 force?

1 THE WITNESS:

2 JUROR: Yeah, I have one. When I watched, if I  
3 heard the officer -- or when I watched it, it was my  
4 assessment that he was -- the motion and the movement  
5 forward had a mission, had a purpose, and my -- whatever you  
6 want to call it -- did you feel that he had that?

7 THE WITNESS: Which person?

8 MS. HECKERT: Gunter or --

9 THE WITNESS: That he's coming toward, like his  
10 mission?

11 JUROR: His movement demonstrated to me that I'm not  
12 going to stop; I'm coming.

13 THE WITNESS: No. It was aggressive and --

14 JUROR: Aggressive. Okay.

15 THE WITNESS: -- his aggressive movement forward  
16 with his hand going like this --

17 JUROR: Yeah.

18 THE WITNESS: -- after he knows the police are  
19 there, he's talked to them, and came out, and they were all  
20 yelling at him, and he's still coming at him like that, what  
21 is going through his head? I don't know. What is perceived  
22 to me is he's aggressively progressing toward a police  
23 officer, jabbing a knife at him as he's yelling, "Get back."

24 JUROR: Is there a chance -- when he first came out,  
25 he had the other officer, the officer that had the student,

1 and through his cam, he was just pausing there. He wasn't  
2 moving. He was pausing there, hesitating, and so he started  
3 to walk down that dark pathway.

4 THE WITNESS: Uh-huh.

5 JUROR: Where Moffitt was, and since it was dark,  
6 maybe he didn't see Moffitt until -- because there was a  
7 light on him, and maybe he was blocking the light from  
8 himself and didn't know that Moffitt was there.

9 THE WITNESS: He may not have known Moffitt was  
10 there. I don't know.

11 JUROR: And he wasn't moving aggressive towards the  
12 student guy.

13 THE WITNESS: The recruit. Yeah, he's not moving  
14 aggressive toward that, but he does see a police officer.

15 JUROR: He paused, and then he goes.

16 THE WITNESS: He comes out, sees a police officer,  
17 turns. Walker is there telling him to stop, and he's still  
18 moving. Moffitt has already conversed with him. He knows  
19 the police are there. He's surrounded. Moffitt's, "Get  
20 back. Get back. Get back" with another light in his hand.  
21 What he's thinking, we don't know; I don't know, but he  
22 definitely had the opportunity to stop.

23 JUROR: He's doing this. He's doing this. If  
24 you're going to block the light, you're not going to move  
25 it. You're going to try and look around it. He was

1 making -- what I saw, he was making that motion.

2 MS. HECKERT: That's probably more for you guys to  
3 discuss among yourselves.

4 JUROR: Yes, exactly.

5 JUROR: With that close range, the bullet  
6 penetrated. Is that common for a 9 millimeter to not go  
7 through?

8 THE WITNESS: You know, ammo is made crazy advanced.  
9 Like we've -- I've seen ammo that's gone in and done things  
10 where you're like really worked -- every human body is  
11 different. Circumstances are different. The 9 millimeter  
12 ammo we carry, I know, works very well. Like from personal  
13 experience involved in it and being involved in others, and  
14 I've seen -- we've seen .45 rounds that have gone in and hit  
15 people, and it hasn't killed them, and you're like I don't  
16 know how. It's just we can't predict everything. We do the  
17 best we can with what we've got.

18 JUROR: Like you said, in the right chest, there's a  
19 lot of soft tissue. What would have stopped it or what kept  
20 the thing in your body? It's my curiosity.

21 THE WITNESS: Right.

22 MS. HECKERT: Yes.

23 JUROR: You're a detective. I'm assuming you've  
24 done this before. You've been involved in other -- have you  
25 ever been involved in a case where you felt the officers

1 actions weren't justified?

2 THE WITNESS: No, I have not.

3 JUROR: How many cases have you been involved in?

4 THE WITNESS: This year alone, officer-involved  
5 shootings, I think we just had our eighth, something like  
6 that. Overall, I've been doing this since 2015, and I've  
7 been lead in easily 20 -- like involved in over 25, 30 plus,  
8 and I've been involved in two myself.

9 JUROR: Okay.

10 JUROR: All those instances, you thought the actions  
11 were justified?

12 THE WITNESS: Yes.

13 JUROR: Other than at Rikers, have you ever been  
14 hurt by a knife?

15 THE WITNESS: I've had knives pulled on me, but it  
16 was from a quite a distance, and they stopped.

17 JUROR: Did you ever work with a police officer not  
18 at Rikers who had been hurt by a knife?

19 THE WITNESS: I have, yes.

20 JUROR: In Medford?

21 THE WITNESS: No.

22 JUROR: Were they killed?

23 THE WITNESS: Was he killed? No. He's alive, but  
24 he was very, very severely injured.

25 JUROR: Do you -- that has -- you can correct me if

1 I'm wrong, based from our perspective out in society, not  
2 knowing everything I'm getting educated on here, it's real  
3 easy occasionally to see some officers that take it over the  
4 line on the wrong side of the line with a little too much  
5 domination, power, and that kind of thing. Do you believe  
6 that occurs?

7 THE WITNESS: Do I believe --

8 JUROR: That officers --

9 MS. HECKERT: Police officers cross the line.

10 JUROR: There are occasionally bad apples in the  
11 bunch of the police that --

12 THE WITNESS: Oh, that's every profession. You're  
13 going -- I mean, you can only train somebody so much. You  
14 can only teach somebody so many things. Unless you're in  
15 that situation, what's going on, it's hard to say. I mean,  
16 people make mistakes. Police officers, they are humans;  
17 they make mistakes. Does that happen --

18 JUROR: Right.

19 THE WITNESS: -- around the entire nation with  
20 everything that's going on? Absolutely. It happens, but  
21 it's not an intent thing, but it does happen.

22 JUROR: Yeah, yeah.

23 THE WITNESS: There's no difference in law  
24 enforcement.

25 JUROR: I wanted to see what your mind set was. It

1 doesn't happen at all?

2 THE WITNESS: No. We make mistakes. Don't get me  
3 wrong. We make mistakes. No different than any other  
4 profession. It's definitely something you have to deal  
5 with.

6 MS. HECKERT: Any other questions? I'll get Sweet  
7 in here.

8 JUROR: Thank you so much.

9 THE WITNESS: Thank you.

10 JUROR: Thank you, Detective.

11 MS. HECKERT: All right. This is Detective Sweet.  
12 You're still under oath.

13 JUROR: We couldn't live without you.

14

15 FURTHER INQUIRY

16 BY MS. HECKERT:

17 Q. So in looking at this case, I guess, did we ever  
18 figure out how Mr. Gunter arrived at the property?

19 A. No.

20 Q. So he may have just walked up to it; we just don't  
21 know?

22 A. Correct.

23 Q. And what were you able to figure out about  
24 Mr. Gunter in just maybe the just few days prior? What kind  
25 of things was going on with him?



1           A. Sure. He, he was in jail in Josephine County and,  
2           and was transferred from there to Jackson County where he  
3           was from, I believe, July 1 to July 4th and then released  
4           from the Jackson County jail, and then I wasn't able to  
5           trace --

6           Q. To the 4th. And you know where he was on the 4th?

7           A. Yeah.

8           Q. Between the 4th and the 7th, we just don't know?

9           A. Don't know.

10          Q. Did you actually have like an address for him that  
11          you could go and knock on the door and talk to anybody?

12          A. No.

13          Q. Okay.

14          A. No. There was multiple -- I mean, we went through  
15          the address search when we were trying to notify the family  
16          that he was deceased, but every -- all the reports I was  
17          getting was that he was transient.

18          Q. And other than that one incident in the jail, were  
19          you aware if he had other police contacts without going into  
20          details about it?

21          A. Several, dating back years.

22          Q. Okay.

23                 JUROR: There's a police contact?

24                 MS. HECKERT: Contacts with police. We can't go  
25          into like what they were or what happened because we weren't

1       there. He wasn't there.

2               JUROR: He had interactions?

3               MS. HECKERT: Contact with police over a period of  
4       time.

5               JUROR: When he was not in jail.

6               MS. HECKERT: Right, right. He was in jail. Just  
7       on the 4th he was released, and then he was shot on the 7th.

8               JUROR: Okay.

9               MS. HECKERT: And where he was those three days in  
10      between, we don't know.

11              JUROR: What was he in jail for?

12              Q. BY MS. HECKERT: Do you even know?

13              A. So I have that notation. Do you want to talk about  
14      that? Like those are the dates.

15              Q. Oh, just different booking dates that he had?

16              A. And the time served.

17              Q. Do you know what he was in jail for on this time?  
18      Was it a warrant? Was it whatever?

19              A. I think -- I don't recall exactly. I think it was  
20      for a P.V. on the July 1 or July 4, and that's when they  
21      brought him down here.

22              Q. P.V. would be probation violation?

23              A. And then, I mean, obviously October, Douglas County,  
24      we know about that one. The rest of these, I don't know  
25      exactly what they were. I just know the dates that he was

1 in jail.

2 JUROR: If he was in Douglas County, that means he's  
3 traveling up and down I-5 kind of because Douglas County  
4 down to Josephine County to Jackson?

5 THE WITNESS: Yeah. And who knows.

6 MS. HECKERT: The police could have been  
7 transporting him too.

8 THE WITNESS: This and that. I don't know. Did the  
9 news article pulled out of his pocket ever reach the --

10 Q. BY MS. HECKERT: No. Now that you mentioned it, you  
11 can go ahead and say something about it.

12 A. It was an interesting thing. When I inventoried the  
13 items in his pants at the autopsy, I found an article dated  
14 from February of this year from the Denver Post, and then I  
15 couldn't find the Denver Post around here to buy, so I  
16 thought that was interesting.

17 JUROR: What was it about?

18 THE WITNESS: It was -- there was a Dear Abby  
19 article in there that I thought was interesting, but  
20 otherwise it was nothing important.

21 Q. BY MS. HECKERT: Dear Abby article was about what?

22 A. I don't remember exactly. I don't want to  
23 speculate.

24 Q. It didn't have something to do with suicide?

25 A. Not that I recall.

1 Q. Okay.

2 A. But I thought maybe -- I was trying to guess why he  
3 would carry this around since February but --

4 JUROR: Interesting.

5 THE WITNESS: -- I don't know. That's just me and  
6 my --

7 MS. HECKERT: Does anybody have any other questions.  
8 We can't give you a lot about his background.

9 JUROR: When they book him, they don't ask for an  
10 address?

11 JUROR: Not really.

12 JUROR: I'm sure they do.

13 MS. HECKERT: We don't have that. We don't have a  
14 person who talked to him.

15 JUROR: I was just curious.

16 MS. HECKERT: No. I don't know other than we were  
17 hearing from different people he was transient which  
18 means --

19 THE WITNESS: He was well-known to the deputies in  
20 Josephine County, well-known in the Cave Junction area.

21 JUROR: Oh, okay.

22 THE WITNESS: They knew the name immediately, so,  
23 yeah.

24 JUROR: When he was shot, he was barefoot; correct?  
25 So the two shoes that were both left feet --

1 THE WITNESS: He has socks on.

2 JUROR: -- he had socks on. Okay. But --

3 MS. HECKERT: Presumably those are his shoes.

4 JUROR: Presumably, yeah. Just trying to wrap that  
5 up.

6 MS. HECKERT: There's a lot of odd weird facts that  
7 I didn't give you. I don't know what significance they  
8 have.

9 JUROR: I was also thinking if he's moving that fast  
10 across pavers barefoot, he's -- he might be in a state of  
11 mind where he's not feeling a whole lot of pain.

12 JUROR: Or just trying to get away.

13 JUROR: Adrenaline.

14 MS. HECKERT: Toxicology, like I said, we're more  
15 than 30 days past, and we don't have the results. It takes  
16 a while, but eventually that will be part of the record as  
17 well.

18 JUROR: Yeah, yeah.

19 MS. HECKERT: All right. Any other questions?

20 JUROR: No.

21 MS. HECKERT: Okay. Thank you.

22 JUROR: Thank you so much.

23 THE WITNESS: You're welcome.

24 MS. HECKERT: I gave you the law. Before I let you  
25 discuss this among yourselves, I want to make sure you don't

1 have a legal questions for me.

2 JUROR: So we are -- I do have -- so the --

3 MS. HECKERT: Okay.

4 JUROR: The -- are we determining just related to  
5 Moffitt?

6 MS. HECKERT: Moffitt.

7 JUROR: -- or also Walker?

8 MS. HECKERT: Walker used deadly physical force even  
9 though he didn't hit anything. It's both of them. Again,  
10 it's whether objectively reasonable -- these are new terms  
11 that the legislature threw out there. That's kind of your  
12 common sense. What is objectively reasonable to the peace  
13 officer under all the circumstances known to the peace  
14 officer.

15 So, again, that -- and those are really good  
16 questions, like whether he's an English speaker, Spanish  
17 speaker -- all those kinds of things, are those facts known  
18 to the police officer. That's what the statute provides  
19 for. And then did that officer believe that the person  
20 posed an imminent threat of death or serious physical injury  
21 the peace officer or third person and the use of physical  
22 force was necessary.

23 So that's the standard that we have, and then we  
24 always ask them about like the less lethal parts of it; so  
25 the statute also says consider alternatives such as verbal

1 deescalation, waiting, using other available resources and  
2 techniques, and then again, if reasonable, safe, and  
3 feasible to use lesser force at that moment.

4 JUROR: How come we don't call them police officers?

5 MS. HECKERT: Peace officers is just what the  
6 statute calls them.

7 JUROR: Sheriff's deputies don't like to be called  
8 police officer.

9 MS. HECKERT: We have officers, deputies, troopers.

10 JUROR: To include all of them.

11 MS. HECKERT: Deputies, officers, police officers.  
12 I will leave you. If you have any questions or you want to  
13 see the -- I can set this up so you can do it, if you wanted  
14 to; so they are all -- just double click on the particular  
15 one if you wanted to watch it, or if you need my help to  
16 watch something, and then those pictures are all right here.

17 JUROR: Does she stay with us?

18 MS. HECKERT: No. We are both going to leave, and  
19 then you just let me know once you've made a decision.

20 (Grand Jury deliberates.)

21 MS. HECKERT: So what did you decide?

22 JUROR: So Officer Moffitt's shooting, we decided he  
23 acted lawfully. And Officer Walker's shooting, we decided  
24 he acted lawfully.

25 MS. HECKERT: Thank you. I really appreciate it.  
(At 1:21 P.M., the above-entitled  
proceeding was concluded.)

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REPORTER'S CERTIFICATE

I, EILEEN LEDDY, Oregon CSR No. 93-0265,  
California CSR No. 9649, Certified Shorthand Reporter,  
certify:

That the foregoing proceedings were taken  
before me at the time and place therein set forth, at which  
time the witness was put under oath by the Grand Juror;

That the testimony of the witness and all  
objections made at the time of the examination were recorded  
stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct  
transcript of my shorthand notes so taken.

I further certify that I am not a relative or  
employee of any attorney or of any of the parties nor  
financially interested in the action.

Dated this 26th day of August, 2021.

---

/s/ Eileen Leddy

Certified Shorthand Reporter

(541) 479-7277



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