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MIDDLESEX, SS.

COMMONWEALTH OF MASSACHUSETTS

DISTRICT COURT DEPARTMENT
OF THE TRIAL COURT

FILED

DEC 31 2021

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MIDDLESEX D.A.'S OFFICE

v.

THOMAS CELONA

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* Docket No. 2153IN000001
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WOBURN DISTRICT COURT

HEARING DAY 2
BEFORE THE HONORABLE PETER F. DOYLE

APPEARANCES:

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Courtroom 3
October 19, 2021

Written Record Produced By
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1 [On the record at 8:31:45 a.m.]

2 [Court Not in Session; Court and Parties Not Present]

3 [Recording of the View Played by the Clerk]

4 [Off the Record at 8:56:29 a.m.]

5 [Back on Record at 9:16:50 a.m.]

6 [Call to Order of the Court]

7 [Case Called]

8 [Appearances Noted]

9 THE COURT: Okay. Are we all set to go with the doctor?

10 MR. TARRANT: Yes, Your Honor. We have -- Do you want to
11 hear my -- the plan for today? Because there's --

12 THE COURT: Sure.

13 MR. TARRANT: So, Dr. Atkinson is available. He's outside
14 with -- Susan Dunn would be the next witness, --

15 THE COURT: Yep.

16 MR. TARRANT: -- followed by Lieutenant Donoghue. I did
17 speak to Charles DiChiara last night.

18 THE COURT: Yep.

19 MR. TARRANT: He said -- He indicated that there's a
20 possibility that he could make himself available at approximately
21 11:30, but he was going to let me know as soon as he could. But
22 that might not be right up until just before 11:30, in which case
23 we could do a Zoom --

24 THE COURT: If he's not available, will he be available at
25 3:00?

1 MR. TARRANT: He said, without a doubt, three o'clock will
2 work.

3 THE COURT: That's fine. So, we'll see how things go. If
4 he's -- Do you anticipate him being the last witness?

5 MR. TARRANT: Yes. Well, I --

6 THE COURT: Okay.

7 MR. TARRANT: I would take him -- He would be the last live
8 witness. And then we would -- I think we have some stipulations,
9 which would include some recordings, one report which we need to
10 discuss with Ms. Dewitt, and then the 911 calls and radio
11 transmissions. Those would be introduced by stipulation --

12 THE COURT: Okay.

13 MR. TARRANT: -- and agreement. But the live testimony would
14 end with Mr. DiChiara.

15 THE COURT: Okay.

16 MR. ANDERSON: And, Judge, I think it would be our intention
17 just to play the audio of the interview with Officer Latores with
18 the state police. So we can do that before --

19 THE COURT: Put that in at any point.

20 MR. ANDERSON: Yeah, out of turn.

21 THE COURT: All right. That makes sense. If we do do the
22 three o'clock, if there's a big break between what we're doing
23 here and three o'clock, I might do -- I might go remote, because
24 it's easier for me to --

25 MR. TARRANT: Okay.

1 THE COURT: If I'm doing Zoom, it's tough for me to watch it
2 over there. So I might go remote on that, which --

3 MR. TARRANT: Okay.

4 THE COURT: -- shouldn't affect anything.

5 MR. TARRANT: No.

6 THE COURT: And I invite anybody else who -- I just don't
7 know -- If we're done at noon and then we're going to be on a
8 break until three, I suggest that we just go remote.

9 MR. TARRANT: Okay. Yeah, because I'm not really sure how --
10 what the -- what we would do in here.

11 THE COURT: Yeah, I don't either. It's -- We would do it
12 just as we did those conference dates that we had.

13 MR. TARRANT: Oh, perfect. Yeah.

14 THE COURT: And everybody -- you can use your phone, if you
15 want.

16 THE CLERK: Could I just ask, would there be exhibits during
17 that testimony?

18 MR. TARRANT: No, other than -- I mean, I have his CV or
19 résumé if you want it.

20 THE COURT: Okay.

21 MR. TARRANT: If the Court wants that -- I'm not sure it's
22 necessary. He's going to talk about it. But I could -- we could
23 mark it.

24 THE COURT: All right. We'll play it by ear, and we'll see
25 how things go. All right? Anything else that we need to address?

1 MR. TARRANT: Nope.

2 THE COURT: All right.

3 MR. TARRANT: I think that's it. Just wanted to give the
4 overview.

5 MR. ANDERSON: Judge, just thinking down the road, in terms
6 of closing arguments, summaries, how would handle that? Would you
7 like a written closing? Would you like an oral --

8 THE COURT: It's -- I'm -- You can do oral, you can do
9 written, you could do none at all. It's completely up to you.
10 I'm -- Whatever you prefer to do, I'm happy with. So --

11 MR. TARRANT: And on that note, is the Court expecting
12 anything from me? Because I don't -- I -- my position is that I'm
13 taking no position. So I don't anticipate giving any kind of
14 summary or anything.

15 THE COURT: None expected.

16 MR. TARRANT: Thank you.

17 THE COURT: But if you want to make some remarks, you may.
18 If you want to make some remarks, you may.

19 MR. ANDERSON: And just if we're going to be remote at that
20 point, it may make sense just to submit something in writing
21 and --

22 THE COURT: That's fine, as well.

23 MR. ANDERSON: We'll see what happens. If it's 11:30 --

24 THE COURT: Yeah, let's play it by ear.

25 MR. ANDERSON: Okay.

1 THE COURT: And we'll just make sure we're all on the same
2 page as things go along.

3 MR. ANDERSON: Okay.

4 MS. DEWITT AHERN: Thank you, Your Honor.

5 THE COURT: First witness.

6 MR. TARRANT: Thank you. Dr. Richard Atkinson.

7 [DR. RICHARD ATKINSON, Sworn.]

8 THE COURT: Good morning, doctor.

9 THE WITNESS: Good morning.

10 THE COURT: I'm Judge Doyle. This is an inquest proceeding
11 into the death of Thomas Celona. You can leave your mask on if
12 you like. If you're more comfortable removing it, you may review
13 it.

14 THE WITNESS: Remove.

15 THE COURT: You may inquire.

16 MR. TARRANT: Thank you.

17 **DIRECT EXAMINATION OF WITNESS, DR. RICHARD ATKINSON**

18 BY MR. TARRANT:

19 Q Good morning, sir. Could you please state your name,
20 spelling both your first and last name?

21 A Sure. My name is Richard Atkinson, R-I-C-H-A-R-D
22 A-T-K-I-N-S-O-N.

23 Q And, sir, are you employed?

24 A Yes.

25 Q Where do you work?

1 A I work at the Boston Office of the Chief Medical Examiner in
2 Massachusetts.

3 Q What do you do at the Boston Office of the Chief Medical
4 Examiner?

5 A I am the deputy chief medical examiner.

6 Q And how long have you been deputy chief medical examiner?

7 A For around three years now.

8 Q And as Medical Examiner, are you also referred to as a
9 forensic pathologist?

10 A Yes.

11 Q So -- And what is your -- Just describe your educational
12 background in becoming a medical examiner, forensic pathologist.

13 A It required a four-year degree at an undergraduate
14 institution; a four-year medical degree, M.D.; a three-year
15 residency in pathology; a one-year fellowship in, specifically,
16 forensic pathology.

17 Q And what is a forensic pathologist?

18 A A forensic pathologist, specifically, they're general purpose
19 is to examine the bodies of people who have died and determine
20 their cause and manner of death.

21 Q And do you hold any licenses?

22 A I do.

23 Q What are they?

24 A I have a medical license in Massachusetts.

25 Q And any certifications?

1 A Yes.

2 Q And what are your certifications in?

3 A I have the normal USMLE medical licensing exam that all
4 doctors take. I also passed the anatomic pathology board exam
5 after residency. And then I also am certified as a forensic
6 pathology -- board-certified.

7 Q And are your licenses and certifications -- Are they both
8 current or are they all current?

9 A Yes.

10 Q And I'm showing you a two-page document, ask if you recognize
11 that.

12 A Yes.

13 Q And what do you recognize that to be?

14 A This is my C.V.

15 Q Okay. Does that outline, essentially, the educational
16 background that you've just described, as well as identifying your
17 certifications, licensures, as well as some other information
18 concerning your background as a forensic pathologist?

19 A Yes.

20 Q Thank you.

21 MR. TARRANT: Your Honor, may this be marked?

22 THE COURT: 17?

23 THE CLERK: Yes, Judge.

24 [CV Marked as Exhibit No. 17]

25 BY MR. TARRANT:

1 Q And, sir, can you just describe for us, what is an autopsy?

2 A An autopsy is an examination of the body of someone that's
3 deceased. That includes an external examination of the surface of
4 the body and also an internal examination of the organs and
5 tissues of the body.

6 Q And is it fair to say the purpose of an autopsy is to
7 determine the cause and manner of death?

8 A Yes.

9 Q And can you just describe your procedure as you conduct an
10 autopsy?

11 A Yes. First, I gather information about the case. This is
12 often in the form of medical records, if they went to the hospital
13 beforehand; just the general investigation so far that's occurred
14 around this person's death. The second thing I do is examine the
15 external surface of their body; also take evidence if necessary,
16 depending on the type of case; examine their clothing, anything
17 their found with. And then the external examination of their body
18 surface is to look for signs of disease or injury that you can see
19 externally. And then we incise the body and/or cut into the body
20 to examine the internal organs, also to look for signs of disease
21 or injury that could have caused the person's death.

22 Q And when you say you take evidence from the body, would that
23 include biological substances, fluids?

24 A Yes.

25 Q And for what purpose?

1 A We take fluids to test for toxicology, to see what
2 substances, if any, were in the person's body fluids. We also
3 take blood sometimes, for -- to test for DNA and match it to blood
4 found on a scene. We take hair and fingernail samples sometimes,
5 just for DNA purposes, or to match to hair that might have been
6 found at the scene. That kind of thing.

7 Q And do you document your procedure?

8 A Yes.

9 Q How do you document the procedure?

10 A I document it with an autopsy report.

11 Q And what would be included in your report?

12 A All of the findings that I found during the autopsy. Also,
13 anything that I took. And final diagnoses after everything has
14 been looked at.

15 Q Okay. And do you take notes during an autopsy?

16 A I do.

17 Q Do you also take photographs during an autopsy?

18 A Yes.

19 Q And do you also diagram what you view during an autopsy?

20 A Yes.

21 Q And do those notes, diagrams, photographs become part of your
22 record or report?

23 A Yes.

24 Q And how are you or how are autopsies assigned within the
25 Office of the Chief Medical Examiner in Boston?

1 A They get assigned -- assigned in the morning by the Chief
2 Medical Examiner or by the deputy chief. Sometimes I assign them,
3 too. And it is just -- Whoever was scheduled to be the medical
4 examiner that day on autopsy gets assigned those cases.

5 Q And do you do more than one autopsy in a given day?

6 A Sometimes, yes.

7 Q So approximately how many autopsies have you conducted in
8 your career as a forensic pathologist?

9 A I've done approximately over 1,300. Under 1,400.

10 Q Okay. And approximately of those 1,300 autopsies you've
11 conducted, how many have been ruled homicides?

12 A Just over 100.

13 Q And of the homicides that you have ruled, approximately how
14 many involved gunshot wounds?

15 A Approximately 80 percent, I would say.

16 Q Okay. And an examination of gunshot wounds, are you able to
17 identify both exit wounds as well as entrance wounds?

18 A Yes.

19 Q And the gunshot wounds have -- that you have examined, have
20 they been in various parts of the body?

21 A Yes.

22 Q And as a medical examiner, forensic pathologist, have you
23 testified in court before?

24 A Yes.

25 Q Approximately how many times?

1 A 30 other times before this.

2 Q 30 other times? And would that be in both District and
3 Superior Courts of the Commonwealth?

4 A Yes.

5 Q And just to be clear, in those approximately 30 times that
6 you previously testified, have you done so in the role of forensic
7 pathologist?

8 A Yes.

9 Q And, sir, if I direct your attention to November 3rd, 2020,
10 did you conduct an autopsy on that day, on a person named Thomas
11 Celona?

12 A Yes, I did.

13 Q And where was that autopsy conducted?

14 A At the Boston Office of the Chief Medical Examiner.

15 Q And you conducted the autopsy. But were there other persons
16 present for the autopsy?

17 A Yes.

18 Q And who was also present, if you recall?

19 A There were detectives present.

20 Q Would they be detectives from the state police?

21 A I believe so, yes.

22 THE COURT: And I'm sorry; the date, again? Was it November
23 2nd?

24 MR. TARRANT: It was November 3rd. It was the next day.

25 THE COURT: November 3rd. Okay.

1 BY MR. TARRANT:

2 Q Do you also have any people assisting you from the Office of
3 the Chief Medical Examiner?

4 A Yes.

5 Q And who would that be?

6 A There are technicians that help us do the autopsy.

7 Q And so, with respect to your autopsy on Thomas Celona on
8 November 3rd, 2020, how did you begin your examination?

9 A I began the examination by taking the kind of evidence that
10 we talked about: fingernails, hair, blood for future DNA studies
11 if necessary. Then I examined the external surface of his body.

12 Q Okay. And as part of the examination, did you learn Mr.
13 Celona's age at the time of the autopsy?

14 A Yes.

15 Q And did you learn he was thirty-five years old?

16 A Yes.

17 Q Did you also measure Mr. Celona for height?

18 A Yes.

19 Q And do you recall it being 66 inches?

20 A Correct.

21 Q As well as -- Was Mr. Celona weighed?

22 A Yes, he was.

23 Q And do you recall the weight to come to 167 pounds?

24 A Correct.

25 Q And so during your external examination, did you notice any

1 injuries, external injuries to Mr. Celona's body?

2 A Yes.

3 Q And what were they?

4 A He had a -- an entrance gunshot wound on his chest and some
5 incised wounds, also commonly called "cuts," on his hands. And he
6 also had some abrasions, commonly called "scrapes," and
7 contusions, commonly called "bruises," on the rest of his body.

8 Q And can you just describe the wound that you observed on Mr.
9 Celona's chest?

10 A Yes. It was a circular entrance gunshot wound with abrasion
11 surrounding it and a small area of ecchymosis, which is another
12 word that is synonymous with "bruise," around the edge of the
13 gunshot wound.

14 Q And where -- Can you describe where specifically it was on
15 Mr. Celona's chest?

16 A Yes, it -- one side of it was right in the center of the
17 chest, and it extended toward the right. And it was overlying the
18 sternum or breastbone.

19 MR. TARRANT: And, Your Honor, if I may approach.

20 BY MR. TARRANT:

21 Q Sir, I'm placing just the diagram in front of you. Can you
22 just describe what you're looking at there?

23 A This is the anterior or front surface of a person's body, a
24 man.

25 Q And fair to say it's a diagram of a person's body?

1 A Yes.

2 Q And on that diagram, there appears to be a male human body;
3 is that fair to say?

4 A Correct.

5 Q And the area of the chest where you observed the gunshot
6 wound on Mr. Celona, can that be identified on that diagram?

7 A It's not there, but, yes, I could point to it.

8 Q Meaning the area of where you would see that on Mr. Celona,
9 could that be basically described on the area of that diagram?

10 A Yes.

11 Q So, sir, I'm going to give you this black marker. And just
12 place an X in the area of that diagram where you observed the
13 gunshot wound on Mr. Celona. Thank you.

14 MR. TARRANT: Your Honor, may I have that marked?

15 THE COURT: 18?

16 THE CLERK: Yes.

17 **[Diagram Marked as Exhibit No. 18]**

18 BY MR. TARRANT:

19 Q And, sir, did you, based on your external examination of the
20 gunshot wound to Mr. Celona's test -- did you notice any soot or
21 stippling around that wound?

22 A No, I did not.

23 Q And can you just describe for us what we mean by "soot" or
24 "stippling"?

25 A Soot is a black, fine powder that you can sometimes find

1 around a gunshot wound when it is very close range. For most guns
2 that we use in the United States, that generally means within
3 about 6 inches, if you fired most guns, it would leave soot around
4 the wound within 6 inches. That is the burnt gunpowder that comes
5 out of the barrel of the gun. Stippling happens from the unburnt
6 gunpowder that is larger-sized particles. They travel farther,
7 and they also damage the skin, because they are larger. So you'll
8 get fine little red marks around the gunshot wound. And this
9 shows, in general, for most guns, that it was shot within about 3
10 feet. All of this --

11 THE COURT: Could you tell me the name of that again?

12 THE WITNESS: Stippling, S-T-I-P-P-L-I-N-G.

13 THE COURT: Thank you.

14 BY MR. TARRANT:

15 A For every gun, you have to -- if you want the exact range of
16 fire, you have to test every gun separately. But these are just
17 general estimates of what the range of fire would be if you see
18 soot or you see stippling.

19 THE COURT: And what was the range for stippling, 6 feet?

20 THE WITNESS: About 3 feet.

21 THE COURT: 3 feet.

22 BY MR. TARRANT:

23 A However, if the person is wearing clothing or the bullet goes
24 through something else before it hits them, then you won't see
25 soot or stippling even if it was within those distances. So if

1 | you don't see any, it tells you nothing about the range. If you
2 | do see it, then it tells you -- it can narrow it down to certain
3 | distances.

4 | Q And as part of your external examination, you indicated that
5 | you noticed injuries to Mr. Celona's hands?

6 | A Yes.

7 | Q And showing you this photograph, and ask you if you recognize
8 | what's depicted there.

9 | A Yes.

10 | Q And what do you recognize that to be?

11 | A This is a photograph of the right forearm and hand. And
12 | there are some linear incised wounds or cuts that are superficial
13 | or shallow, mainly just on the skin. But one of them slightly
14 | goes under the skin. And those are on his hand. And then there's
15 | also some ecchymosis or bruises on his thumb and arm.

16 | Q And that's Mr. Celona's right hand?

17 | A Yes.

18 | Q And, sir, looking at that photograph, is that a fair and
19 | accurate depiction of how you observed Mr. Celona's right hand and
20 | arm on November 3rd, 2020?

21 | A Yes.

22 | Q Thank you.

23 | MR. TARRANT: May this be marked?

24 | THE COURT: 19.

25 | THE CLERK: 19.

[Photograph Marked as Exhibit No. 19]

1
2 BY MR. TARRANT:

3 Q Sir, I'm showing you another photograph. And is that
4 essentially the same arm?

5 A Yes.

6 Q And just turned over slightly?

7 A Correct.

8 Q And, sir, do you see also some injuries on the top part of
9 the hand?

10 A Yes.

11 Q And can you just describe those for The Court?

12 A On the top part of the hand and the second or index finger,
13 there are multiple linear -- the same ones I described before,
14 linear incised wounds or cuts. There's also some needle puncture
15 marks within the contusions or ecchymoses.

16 Q And is that a fair and accurate representation of how you saw
17 that view of Mr. Celona's arm on November 3rd, 2020?

18 A Yes.

19 Q Thank you.

20 MR. TARRANT: May I please have this --

21 THE CLERK: 20.

22 THE COURT: 20.

[Photograph Marked as Exhibit No. 20]

23
24 THE COURT: What did the puncture marks indicate to you?

25 THE WITNESS: I wrote in the autopsy report that a lot of the

1 ecchymoses or bruises on the arms, some of them had needle
2 puncture marks that you could see inside of them. Some of them
3 did not. So, the ones that did are probably from a needle
4 puncture. And the ones that didn't could also be from needle
5 punctures or could be from trauma, as well.

6 THE COURT: And did you infer anything from the needle
7 puncture marks?

8 THE WITNESS: That there was a needle that punctured the skin
9 at some point recently.

10 THE COURT: Okay.

11 BY MR. TARRANT:

12 Q And as -- Did you also conduct an internal examination of Mr.
13 Celona?

14 A Yes.

15 Q And based on the internal examination, were you able to track
16 the path of the object that created the gunshot injury to Mr.
17 Celona's chest?

18 A Yes.

19 Q And can you just describe the path of travel?

20 A Yes. It went through the skin of the chest. Then it went
21 through the sternum; the breastbone is the other name of the
22 sternum. Then it went through the pericardium, which is a sack of
23 membrane that surrounds the heart. And then it went through the
24 heart itself. And then it went through the aorta, which is the
25 largest artery that runs through the heart. And then it went

1 through the left 9th rib in the back and entered the musculature
2 of the left side of the back, where the bullet was recovered.

3 Q And so you were able to recover a projectile?

4 A Yes.

5 Q And that was from Mr. Celona's back?

6 A Correct.

7 Q All right. So did you notice an exit wound?

8 A No.

9 Q And so based on that, can you describe the direction of
10 travel?

11 A Yes. The direction of travel was front to back, mostly, and
12 also slightly right to left.

13 Q And so, also as part of your autopsy, were chemical or
14 toxicology tests performed?

15 A Yes.

16 Q And did you request those?

17 A Yes.

18 Q And, sir, showing you a two-page document, ask you if you
19 recognize what that is.

20 A Yes.

21 Q And what do you recognize that to be?

22 A This is the toxicology report for Thomas Celona.

23 Q And did that become part of the record of your autopsy?

24 A Yes.

25 MR. TARRANT: And, Your Honor, may this be marked?

1 THE COURT: 21.

2 **[Toxicology Report Marked as Exhibit No. 21]**

3 THE CLERK: You need it after?

4 MR. TARRANT: Well, I'm using it.

5 BY MR. TARRANT:

6 Q Sir, I'm now showing you what's been marked as Exhibit 21.

7 Can you just, referring to Exhibit 21, describe the results of the
8 toxicology report on Mr. Celona?

9 A Sure. There was amphetamine found in his system; MDMA, which
10 is also known as ecstasy; there were three different drugs known
11 as benzodiazepines: alprazolam, clonazepam, and diazepam --
12 actually, four -- oxazepam, as well; and cocaine. Those were the
13 drugs that were positive.

14 Q And also in relation to the drugs that were positive, did the
15 toxicology report indicate a level or ratio of how much was in Mr.
16 Celona's system?

17 A Yes.

18 Q And based on the levels of drugs in Mr. Celona's system, are
19 you able to -- based on your training and experience -- describe
20 the effects of what those drugs would have had on him?

21 A I cannot describe general -- the general effects of the drugs
22 in most people. But as we know, you can be a happy drunk when
23 you're taking ethanol, for example, or you can be an angry drunk.
24 So, drugs have different effects on different people, depending on
25 their combinations and levels, and it's really hard to -- to guess

1 | how someone will specifically react to drugs.

2 | With that said, some of these drugs are depressants. Some of
3 | them are stimulants. The benzodiazepines are depressants; they're
4 | usually used for anxiety, to calm people down. Cocaine is a
5 | stimulant, so it stimulates your body more, and your mind. MDMA
6 | is a type of amphetamine that is also a stimulant. It also
7 | sometimes produces euphoria; that's why it's called ecstasy. And
8 | it also is a hallucinogenic, so it might cause people to
9 | hallucinate. Any of these drugs at high enough levels can cause
10 | hallucinations; even caffeine can cause that. But MDMA is known
11 | as a hallucinogen. That's what I can say about the drugs.

12 | Q Thank you. And based on the levels, could you say whether or
13 | not one particular drug was having a more dominant effect than
14 | another drug?

15 | A I can't a-hundred-percent say that for sure. But the levels
16 | of cocaine are much higher than the levels of the other drugs.
17 | However, it also depends on how tolerant a person is to any
18 | certain drug. So if a person uses cocaine all the time at high
19 | quantities, they can have higher levels of it without having huge
20 | effect. That's true of almost any drug. But, yeah, his cocaine
21 | is the highest.

22 | Q Okay. So, based on your examination, did you form an opinion
23 | to a reasonable degree of medical certainty on the cause of death
24 | of Thomas Celona?

25 | A Yes.

1 Q And what is that opinion?

2 A His cause of death was the gunshot wound of his torso.

3 Q Okay. And is that opinion based on your examination/autopsy,
4 as well as that -- the toxicology report?

5 A Yes.

6 MR. TARRANT: Thank you. Your Honor, I don't have any
7 additional questions for this witness. But I would ask the Court
8 if we -- if the Court would like to make the medical examiner's
9 file part of the record.

10 THE COURT: Okay.

11 MR. TARRANT: So I'd just ask Mr. -- Dr. Atkinson to just --

12 BY MR. TARRANT:

13 Q If you could, sir, just -- I'm placing this -- Here, I don't
14 think you need the cover letter. Sir, if you take a look at that,
15 is that fair to -- do you recognize that?

16 A Yes.

17 Q What do you recognize that to be?

18 A This is the autopsy report, my diagrams, pretty much the
19 entire chart that we keep, including the medical records that we
20 got from the hospital, and fingerprints. Basically, without
21 looking at the whole thing: all of the materials that we collected
22 on this case.

23 Q Okay. And I will say that I did remove the toxicology report
24 from that package. So is it fair to say that the package that you
25 just reviewed is essentially the entire chart provided by the

1 Chief Medical Examiner, which is missing just the toxicology
2 report that is now marked as Exhibit 21?

3 A Yes, it looks like that's the case.

4 Q Thank you.

5 MR. TARRANT: I want to have that marked.

6 THE COURT: 22.

7 **[Medical Examiner's File Marked as Exhibit No. 22]**

8 MR. TARRANT: Thank you. That's all the questions I have for
9 this witness.

10 THE COURT: Thank you.

11 Attorney Anderson?

12 MR. ANDERSON: Yes.

13 **CROSS EXAMINATION OF WITNESS, DR. RICHARD ATKINSON**

14 BY MR. ANDERSON:

15 Q I have a couple quick questions for you, Dr. Atkinson. My
16 name is Ken Anderson. I represent Winchester police sergeant Jeff
17 Latores. Just to go back to the stippling quickly, the stippling
18 is something when the bullet is discharged from the firearm --
19 There's gases that come out, correct?

20 A Correct.

21 Q And the stippling is kind of the residue that comes out and
22 expands in a circulate pattern for a distance?

23 A Correct.

24 Q And you would expect to see that within about 3 feet?

25 A Yes.

1 Q So if the person who was shot was 5 to 7 feet away, you would
2 not expect to see stippling.

3 A Correct.

4 Q And you also indicated that clothing would prevent stippling
5 from being on the body?

6 A Yes.

7 Q And if we heard testimony in this case that this individual
8 was actually carrying kind of a large blanket or a quilt or a
9 sheet to use as kind of a shield to prevent the taser, would that
10 also stop the stippling?

11 A It probably would. Some clothing, if it's very, very, very
12 thin will not stop stippling. I've seen it in cases where there's
13 just a tank top that's -- or, like, a silk type of a fabric, the
14 stippling will still go through that. But if it's significant
15 fabric, then it will probably block most stippling.

16 Q Now, you told us that of the autopsies you've performed,
17 between 1,300 and 1,400 autopsies --

18 A Correct.

19 Q And a certain percentage of those were homicides, you
20 indicated?

21 A Yes.

22 Q And of the homicides, you said about 80 percent were gunshot
23 homicides?

24 A Correct.

25 Q How many cases have you worked on that have been homicides

1 involving stabbings?

2 A I'd say about 10 to 15. I don't know.

3 Q And of those 10 to 15 homicides committed by stabbing, were
4 there certain places in the body that were consistently stabbed,
5 or were these people that were stabbed in different parts of the
6 body that also counted as wounds?

7 A All different places.

8 Q Now, you mentioned here that the shot actually went through
9 the aorta, --

10 A Correct.

11 Q -- which you said is the largest artery from the heart?

12 A Yes.

13 Q And where do the arteries in your body go? What parts of our
14 body has our arteries?

15 A Almost all the parts of the body.

16 Q So if someone were to be concerned about being stabbed, it's
17 fair to say that you could have an artery cut if you're stabbed in
18 the neck, in the arm, in the stomach, in the chest, in the leg --
19 pretty much every part of your body?

20 A Yes.

21 Q And is there a part of your body that doesn't have an artery?

22 A As the arteries branch out, they get smaller and smaller
23 until they're called arterioles, which are very small arteries.
24 Eventually they become capillaries, which are the smallest kind of
25 arteries -- I mean, the smallest kind of vessels. After the

1 capillaries become veins, similarly, veins are called venules when
2 they're similar. And then they become bigger and bigger as they
3 go toward the heart.

4 Q And we've heard testimony that Mr. Celona had two
5 12-inch-long kitchen knives. Would that be something that would
6 be capable of cutting an artery, in your opinion?

7 A Yes.

8 Q We also heard testimony that Mr. Celona had been struck with
9 a taser that discharged two prongs. Did you notice any evidence
10 of that in your autopsy?

11 A I did not notice any evidence of that.

12 Q And in terms of the drugs that were in the system that you
13 noticed, are any of those drugs that would be used intravenously
14 or through injection?

15 A Almost any drug can be used intravenously. But, commonly,
16 none of these are common intravenously-injected drugs.

17 Q And just in terms of the amount of the cocaine, the 15, 16 mg
18 over ml, is there a way you can quantify that in terms of whether
19 that's a little bit of cocaine, a medium amount of cocaine, a lot
20 of cocaine in the system?

21 A I would say it's a larger amount than I normally see on
22 toxicology reports. But it would depend on the person's
23 tolerance, whether it's a large amount for them.

24 Q But there's no amount to quantify -- For instance, if someone
25 comes in with alcohol in their system, you could quantify it the

1 same way we would look at a breathalyzer and say, "This person
2 would be a .05 or a .10." Is there any way you can do that with
3 cocaine in the system?

4 A This is the exact quantification of the cocaine, just like a
5 percent-alcohol. With alcohol, we have -- we've studied it a lot
6 more, and so we know generally what it causes at certain levels, a
7 lot more. But we also trust that far too much, because alcohol is
8 the same way: you can have -- be totally tolerant and have a much
9 higher level than the legal limit and be able to drive fine if
10 you're an alcoholic; the legal limit is not even really
11 intoxicating to you.

12 MR. ANDERSON: I don't have any further questions, Doctor.

13 THE COURT: Attorney Dewitt?

14 MS. DEWITT AHERN: Just a couple; thank you.

15 **CROSS EXAMINATION OF WITNESS, DR. RICHARD ATKINSON**

16 BY MS. DEWITT AHERN:

17 Q Good morning, Doctor.

18 A Good morning.

19 Q Mr. Anderson asked you about potential injuries caused by
20 stabbing. When you did Mr. Celona's autopsy, he had some stab
21 marks on his -- I think you described sharp-force injuries to the
22 hands.

23 A He had sharp-force injuries. I would call them stab wounds.
24 That's just -- How we classify sharp-force injuries is -- two
25 different kinds: stab or incised wounds. Stab wounds are just

1 deeper than they are long. And these were superficial, so they
2 were long and not deep at all.

3 Q Mr. Anderson asked you about being stabbed by knives -- I'm
4 sorry. Depending on where the knife or the sharp object hits is
5 going to have different results, as far as causing injuries to a
6 person; is that fair to say?

7 A That's definitely true.

8 Q If you have closer to the main arteries in your body, the
9 larger arteries, there's a chance that it's going to be more fatal
10 or cause more injury to the body, --

11 A Right.

12 Q -- as opposed to a stabbing elsewhere, where you have the
13 smaller veins?

14 A Yes. If you stab a large artery, that's going to bleed much
15 faster than a small one.

16 Q So if you have a specific injury where a specific sharp
17 object hit, you can't really tell what it's going to -- the result
18 of that stab, hypothetically?

19 A Right. You would need to know what the injury looked like.

20 Q And some of the drugs that you -- in the toxicology report
21 were medications to treat depression or anxiety; is that fair to
22 say?

23 A Yes.

24 Q And, finally, the cause of death for Mr. Celona is a gunshot
25 wound to the heart?

1 A Yes.

2 MS. DEWITT AHERN: Thank you.

3 THE COURT: Anything else?

4 MR. TARRANT: Nothing for the Commonwealth.

5 THE COURT: Attorney Anderson?

6 MR. ANDERSON: I have nothing.

7 THE COURT: Doctor, thank you very much for being here.

8 Appreciate it. You are now excused.

9 THE WITNESS: Thank you.

10 [Witness steps down]

11 MR. TARRANT: Susan Dunn.

12 [SUSAN DUNN, Sworn.]

13 THE COURT: You can have a seat.

14 THE WITNESS: Thank you.

15 THE COURT: If you'd like, you can remove your mask. If
16 you're -- If you want to leave it on, you can leave it on, as
17 well. It's completely up to you. Okay?

18 THE WITNESS: Okay.

19 THE COURT: All right.

20 MR. TARRANT: Thank you, Your Honor.

21 **DIRECT EXAMINATION OF WITNESS, SUSAN DUNN**

22 BY MR. TARRANT:

23 Q Good morning.

24 A Good morning.

25 Q Can you please state your name, spelling both your first and

1 | last name?

2 | A Susan Dunn, S-U-S-A-N D-U-N-N.

3 | Q And, ma'am, how far have you gone in school?

4 | A I did some -- I completed high school, and I did some
5 | college. And I did a medical assistant program.

6 | Q And so are you currently employed?

7 | A Yes, I am.

8 | Q Where do you work?

9 | A At Costco.

10 | Q And what do you do at Costco?

11 | A I'm a cashier.

12 | Q And how long have you been a cashier at Costco?

13 | A Well, I worked in the vault for five years. And I cashiered
14 | for a few. And now I'm cashiering again. I've been there for
15 | eight years.

16 | Q Okay. So you've worked for Costco for eight years, and it's
17 | fair to say you've had different positions within that company?

18 | A Yep.

19 | Q But right now, you're working as a cashier?

20 | A Mm-hmm.

21 | Q And where do you currently live?

22 | A In the Parkview Condominiums in Winchester.

23 | Q Okay. And what unit do you live in?

24 | A 325.

25 | Q And how long have you lived in Unit 325?

1 A It will be three years in -- It was three years in October.

2 Q And directing your attention to approximately a year ago,
3 October/November of 2020, did you have a neighbor that lived
4 across the hall from you, in Unit 326?

5 A Yep.

6 Q And who was that?

7 A Tommy.

8 Q Tommy?

9 A Mm-hmm.

10 Q Okay. Did you know him as Tom Celona?

11 A Mm-hmm.

12 Q And how long was Tom Celona your neighbor?

13 A Less than a year.

14 Q And did you get to know Tom Celona, living across the hall
15 from you?

16 A Yeah.

17 Q And so how well did you know him? Like, describe the kind of
18 relationship you had with him.

19 A We were friendly. We would talk. He would -- He had dinner
20 at my house a couple times. Like, two times.

21 Q Okay. So is it fair to say you were friends?

22 A Not -- More like acquaintances.

23 Q Okay. But friendly towards each other?

24 A Neighbors. We were neighbors. Friendly neighbors.

25 Q Okay. So if I direct your attention to November 2nd, 2020,

1 do you recall that day?

2 A Yeah.

3 Q Do you recall what you did on that day?

4 A I took my cat to the vet.

5 Q And approximately what time did you bring your cat to the
6 vet?

7 A I don't know. I have it on my calendar on my phone.

8 Q That's okay; do you recall if it was the morning or the
9 afternoon?

10 A It was probably the morning.

11 MS. DEWITT AHERN: Excuse me, Your Honor; I'm just having
12 trouble hearing. The witness is very soft.

13 [Pause to improve audio levels]

14 BY MR. TARRANT:

15 Q So, did something happen, then, when you returned, or did you
16 see Mr. Celona upon your return from bringing your cat to the vet?

17 A Yes, I did.

18 Q And where did you see him?

19 A I saw him in his bathroom, with another gentleman, with his
20 house door open in the hall as I was entering my apartment.

21 Q Okay. So as you're entering your apartment, his door is
22 open?

23 A Yes.

24 Q And you could see inside his apartment?

25 A Yes. I actually spoke to him.

1 Q Okay. And when you're looking into Mr. Celona's apartment
2 from the front door, it's fair to say you're looking directly into
3 the bathroom?

4 A Yes.

5 Q And he was there with somebody?

6 A Yes.

7 Q And did you know that person?

8 A I don't know that person.

9 Q Have you ever seen that person before?

10 A I've never seen that person before.

11 Q Have you seen that person since?

12 A No.

13 Q Did you have any conversation with that person?

14 A No.

15 Q Did you have conversation with Mr. Celona?

16 A Yes.

17 Q And can you just describe that conversation?

18 A I asked him if he had any cartridges for sale.

19 Q Okay. And cartridges for what?

20 A Marijuana cartridges.

21 Q Okay. And is this for, like, a vape pen?

22 A Yes.

23 Q And how did Mr. Celona respond when you asked him that?

24 A He said, "Not at this time."

25 Q Okay. And so what did you do at that point?

1 A I went in my house.

2 Q And then what happened?

3 A And then Tommy knocked on the door and he gave me two
4 cartridges. And he said that they were from his friend, that he
5 had them in his pocket.

6 Q Okay, okay. And did you pay for the cartridges?

7 A No. He just gave them to me.

8 Q And when Mr. Celona's apartment door was open, could you see
9 the condition inside the apartment? How far could you see?

10 A I really didn't look.

11 Q So would it be fair -- So could you tell the condition of his
12 apartment at that time?

13 A Not at that time, no.

14 Q And so did something happen after that particular interaction
15 you had with Mr. Celona that brought your attention back to Mr.
16 Celona's apartment?

17 A Yes, in the evening there was a lot of banging going on.

18 Q And was that unusual?

19 A No. It's happened before.

20 Q Okay. So prior to that occasion, you've heard banging coming
21 from Mr. Celona's apartment?

22 A Yes.

23 Q Did you know what the banging was?

24 A No, and I still don't know.

25 Q Okay. Had you had any conversation with Mr. Celona prior to

1 | that day, concerning the banging in his apartment?

2 | A No. I don't like confrontation.

3 | Q Okay. And at some point did you see Mr. Celona leave his
4 | apartment that evening?

5 | A Yes.

6 | Q And how did you come to see him leave his apartment?

7 | A Through my peephole.

8 | Q Okay. Did you hear him, before looking? Or what were you
9 | doing?

10 | A Yes, I heard him.

11 | Q And did you see Mr. Celona carrying anything when you saw him
12 | leave his apartment?

13 | A Not the first time.

14 | Q Okay. So, the first time Mr. Celona leaves his apartment,
15 | he's not carrying anything?

16 | A No.

17 | Q And did he go somewhere?

18 | A Just -- I don't -- I don't know where he went. I could only
19 | see when he walked down my hallway.

20 | Q Right. But you --

21 | A But once he turned the corner, I don't know where he went.

22 | Q So he left and went somewhere?

23 | A Yeah.

24 | Q And did he return that night?

25 | A He returned in, like, five minutes.

- 1 Q And when he came back, was he by himself?
- 2 A Yeah.
- 3 Q And was he carrying anything at that time?
- 4 A No.
- 5 Q Did he reenter his apartment?
- 6 A Mm-hmm.
- 7 Q Yes? And once he reentered his apartment, did anything else
8 after that point cause you to notice anything coming from his
9 apartment again?
- 10 A Yeah. He shut the door, and there was more banging. And
11 then he was going to leave the apartment again. I heard --
12 because I heard him going to open his door. And I went to look
13 out the peephole again. And I saw him with a butcher knife.
- 14 Q Okay. And where was the butcher knife?
- 15 A In his hand. And he had blood on his hand.
- 16 Q Okay. And did he have blood on his hand the first time you
17 saw him?
- 18 A No.
- 19 Q Or the time after that?
- 20 A The second time.
- 21 Q The second time. This is the second time you saw him leave
22 his apartment?
- 23 A Yes.
- 24 Q So this was the first time you saw blood on his hand?
- 25 A Yes.

1 Q And could you tell which hand the knife was in?

2 A I don't recall.

3 Q Okay. And did you just see one knife?

4 A I only saw one knife.

5 Q And did he again go somewhere, meaning he left his apartment?

6 A I just saw him go down my hall and -- and turn.

7 Q Okay. But you didn't go out and follow him?

8 A No.

9 Q Did you open your door at that time?

10 A No.

11 Q And so Mr. Celona leaves. Did he come back at some point?

12 A He came back with someone.

13 Q With another person?

14 A Yeah.

15 Q And how much time had passed between when he left at that

16 time and came back with another person?

17 A Seven minutes.

18 Q And the other person that came back with Mr. Celona, did you

19 recognize him?

20 A I didn't recognize him. But he was from the building.

21 Q Okay. And how do you know he was from the building?

22 A He said he was.

23 Q Okay. Did you talk to him?

24 A Yeah.

25 Q Okay. So when Mr. Celona came back with this person, what

1 was the first thing that you saw happen?

2 A So, Tommy said, to this gentleman, that his house was
3 broken -- his apartment was broken into by a black man.

4 Q Okay.

5 A And he wanted the gentleman to come in and help him. And he
6 still had the knife in his hand. And I was scared, for the
7 gentleman, that he was going to get killed. And I'm trying to
8 tell the gentleman, "Don't go in there, don't go in there.
9 He's -- Something's wrong with him today. He's not himself,"
10 because he wasn't himself for, like, a few weeks.

11 Q So did you open your door and talk to the gentleman?

12 A What?

13 Q Did you open your door to talk to the gentleman with the --

14 A Yeah, like, a crack.

15 Q Okay.

16 A And --

17 Q Did the gentleman respond to you in any way?

18 A I -- I couldn't really talk out loud, because Tommy was still
19 with him at the time.

20 Q Okay.

21 A But he ended up going in the apartment anyway. And then they
22 shut the door.

23 Q And when they shut the door, what did you do?

24 A I got scared.

25 Q Okay. Did -- Were you continuing to watch and see what was

1 going to happen?

2 A Absolutely.

3 Q And then -- So what happened? What happened after that?

4 A So, like, two minutes later, the guy came out.

5 Q Okay.

6 A And I -- I told him -- I said, "Yeah, he's definitely not
7 himself. He's on something or he took -- you know, he took
8 something he wasn't supposed to. He's just not been himself
9 lately." And --

10 Q Okay. And can you describe the person you're talking to that
11 was with Mr. Celona? What did he look like?

12 A I don't really quite remember too much. I think he had,
13 like, dark hair and --

14 Q Okay. Do you know if he was a white man, black man, Asian?

15 A He was a white man.

16 Q White?

17 A Yeah.

18 Q How about his body type?

19 A I don't remember.

20 Q Okay. And so did you have further conversation with this
21 person that was with Mr. Celona?

22 A Not after I told him --

23 Q Okay. So what did you --

24 A -- fully not to go in there.

25 Q What did you see next, after the man came back out of the

1 | apartment?

2 | A | I just saw him leave.

3 | Q | Okay. Did you see him call anybody?

4 | A | No.

5 | Q | Okay.

6 | A | I heard more banging. And I called security,.

7 | Q | Okay. You called security?

8 | A | Yeah.

9 | Q | And do you know who you spoke to?

10 | A | I spoke to -- He -- He's passed away. His name is on the tip
11 | of my tongue.

12 | Q | If I said it, would you recognize it?

13 | A | I have a bad memory.

14 | Q | If I said Will Gaffney?

15 | A | Yeah. He's my hero.

16 | Q | Is he the person you spoke to?

17 | A | Yeah.

18 | Q | And you know Mr. Gaffney has since passed away?

19 | A | Yeah.

20 | Q | So, you called Mr. Gaffney?

21 | A | Yeah. And I said, "You can't leave me up here alone with him
22 | all night. Something has to be done."

23 | Q | And did Mr. Gaffney tell you that he would do something?

24 | A | He said he would.

25 | Q | And what did he say he was going to do?

1 A He said he would come back or call 911.

2 Q Had you seen Mr. Gaffney at Mr. Celona's apartment earlier
3 that night?

4 A After?

5 Q Or before. I mean, before you called him.

6 A Yeah.

7 Q He was there earlier?

8 A No. I seen him when I called him the first time.

9 Q Okay.

10 A He came up.

11 Q He came up at that point?

12 A Yes.

13 Q And that was the first time you saw him up there?

14 A And -- And the gentleman was still with Tommy, in the
15 hallway.

16 Q Okay. And did you -- did they have some conversation in the
17 hallway?

18 A Yeah.

19 Q And did you hear that conversation?

20 A I did.

21 Q And what did you hear?

22 A He was saying how his house got broken into by a black man.

23 Q Okay. Tommy was saying that?

24 A Tommy was saying that. And I said, "Well, if your house was
25 broken into, then I think we should call the police."

1 Q Okay. You said that?

2 A Yes.

3 Q And you -- did you say that to Tom?

4 A I -- Yes. And he said, "No, we don't need to call the
5 police. You should mind your business and go back in your house,"
6 which was very not like him at all, to say to me.

7 Q It was unusual for him to speak to you like that?

8 A Very unusual.

9 Q So when he said that, what did you do?

10 A I closed my door and went in the house.

11 Q And did you continue to observe what was happening outside
12 your door?

13 A Yes.

14 Q And what did you see next?

15 A I saw the security guard in the hallway. And then I opened
16 my door.

17 Q So, you opened your door again?

18 A Yeah, once the security guard got there.

19 Q And did you talk to the security guard?

20 A Yeah.

21 Q And what did you tell him?

22 A I told him, "I think we should call the police." And then
23 Tom said it again: "No, we don't need the police."

24 Q Okay. And then what happened?

25 A And then when Will left, I ended up calling him again and

1 | telling him, "You can't leave me up here alone, because he's still
2 | banging. And something needs to be done. And he's not in his
3 | right mind."

4 | Q And when you heard banging, could you tell what was --

5 | A I don't know what he was banging. I don't know if he was
6 | destroying his own stuff. I have no idea. But every time --
7 | anytime I've, like, gone into his apartment or, like, looked in
8 | or, like, if his door was open, his house was always spotless. It
9 | was beautiful. His apartment was nicer than mine.

10 | Q So he kept a nice apartment?

11 | A Yeah.

12 | Q And so, on this night, after you called Mr. Gaffney for the
13 | second time, what happened after that?

14 | A He called 911, I guess, like he said he was going to. And
15 | then I just kept watching out the peephole to see if anyone was
16 | coming. And then I saw the police turning the corner.

17 | Q And did they go to Mr. Celona's door?

18 | A Yes.

19 | Q And can you describe what you saw at that point?

20 | A I saw them with their guns out.

21 | Q And how many officers did you see?

22 | A I saw two, at that time.

23 | Q Okay. And what -- So just describe --

24 | A There -- There may have been a third. I don't -- I'm not too
25 | sure.

1 Q Okay. So what did you see the officers do?

2 A Well, they were knocking on the door, and they were calling a
3 different name, saying, "Open the door, open the door,
4 something-name."

5 Q Okay. Do you recall what name they were calling?

6 A I don't recall what name they were calling. But I opened my
7 door and I said, "His name is Tom." And I started calling him,
8 saying, "Tommy, open the door, open the door," figuring if he
9 heard my voice it would help him feel more comfortable and he
10 would open the door.

11 Q And did Tom open the door?

12 A No.

13 Q And so what did you do?

14 A I was crying, and I was upset and -- because I could hear him
15 breaking the glass on the window of the balcony.

16 Q And did that raise special concern for you?

17 A Yeah, because I thought he was going to, like, cut his whole
18 body up and jump off the balcony or something.

19 Q Okay. And so -- But you could hear the breaking of the
20 glass?

21 A Mm-hmm.

22 Q And that, to you, sounded like breaking the glass on the
23 sliding glass door?

24 A Yeah.

25 Q So, --

1 A That's the only glass in the apartment.

2 Q Okay.

3 A Other than the bedroom windows. And those are tiny, so it
4 wouldn't smash that much.

5 Q So based on what you heard and what you knew, that's the
6 logical conclusion you came to?

7 A Yeah, and that's what it was.

8 Q So, after the fact, you know what was broken?

9 A Yeah.

10 Q Did you go into the apartment?

11 A No.

12 Q Okay. Could you somehow see what had happened to the sliding
13 glass door?

14 A I saw the repairmen come and repair.

15 Q Okay. Can you see the sliding glass door from your balcony?

16 A Yes.

17 Q And did you ever go and take a look to see what was
18 happening?

19 A Yeah, and it was boarded.

20 Q Okay. But directing your attention back to the evening of
21 November 2nd, when you went out -- when you opened the door to
22 tell the police his name was Tom and you started calling for Tom
23 to open his door, what happened after that? What did you do?

24 A The police told me to shut my door.

25 Q Okay. And did you do that?

1 A I did.

2 Q And so, did you continue to watch, out your -- and observe to
3 see what the police were doing?

4 A Yes.

5 Q And so can you just describe what you saw at that point?

6 A I saw them trying to bang his door down.

7 Q Like, break it open?

8 A Yeah. And they couldn't. And then they tried to kick it in.
9 And they finally ended up getting it open.

10 Q Okay. And once the door was opened, what did you observe
11 next?

12 A I heard them say, "tase him, tase him." And then I heard
13 Tommy, like, screaming, "Ah, ah," like -- like it was hurting.

14 Q Okay. Did you hear -- Before they were yelling, "Tase him,
15 tase him," did you hear the officers saying anything else once
16 they were in the apartment?

17 A Oh, yeah. They -- Before that, they said, "Tommy, put the
18 knives down. Put the knives down."

19 Q And did -- at any point, did you hear Tom respond to the
20 officers in any way?

21 A No, he -- I just heard glass smashing still.

22 Q Okay. Was the glass continuing to be broken as you heard the
23 officers --

24 A Yes.

25 Q -- ask him to drop the knives?

1 A Yes.

2 Q And so after you heard Tom make that noise, what was the next
3 thing that you observed, either heard or you saw?

4 A What's the question?

5 Q So, after you heard Tom make the -- So, you heard the officer
6 yell, "Tase him," and then you heard Tom make a noise?

7 A Breaking the glass.

8 Q Breaking the glass, but also some kind of groan; is that
9 right?

10 A Yeah.

11 Q And so after you heard that, what was the next thing that you
12 observed, either heard something or saw something? What did you
13 hear or see at that point?

14 A Well, I heard them tase him.

15 Q Right. And then what?

16 A And then I heard him, you know, groaning.

17 Q Okay. And what happened after that?

18 A I don't know if they said it didn't work or whatever. But it
19 didn't work. And so they said, "Do it again."

20 Q Okay.

21 A And they had to do it again. And he started groaning again,
22 in pain.

23 Q Okay. And then what happened?

24 A And then they -- then they said, "Shoot him, shoot him."

25 Q Somebody said, "Shoot him"?

1 A "Shoot him."

2 Q And where was that?

3 A I heard someone say it. And I don't know, but the shot was

4 from the hallway.

5 Q Okay. Did you see the shot?

6 A Mm-hmm.

7 Q You did? Did you see where Mr. Celona was?

8 A No.

9 Q Did you --

10 A Not at the -- I didn't see where he was when he got shot.

11 Q Okay. Did you see him after he got shot?

12 A Yeah.

13 Q And where was that?

14 A They dragged him out of his apartment, into the hallway.

15 Q Okay. So, did you see Tom get hit by a bullet? Meaning,

16 did --

17 A No, I didn't see him get hit.

18 Q Did you see him fall to the ground?

19 A I don't know where he even got hit by the bullet.

20 Q Okay. Did you see him fall to the ground?

21 A No.

22 Q But you did see them pull him out into the hallway?

23 A Yes, and try to work on him.

24 Q And when you say "try to work on him," you mean do CPR?

25 A Yeah.

1 Q First aid?

2 A Yeah.

3 Q Did you come out of your apartment at that point?

4 A Yeah. I offered help.

5 Q Okay. And --

6 A And they said -- shut my door.

7 Q They told you to go back into the apartment?

8 A Yeah.

9 Q And did you see other medical or other personnel show up?

10 A Mm-hmm.

11 Q And did you --

12 A I just feel like they didn't work on him hard enough.

13 Q Okay. And later that evening, you spoke to the police; is
14 that right?

15 A I spoke to a lot of people that evening.

16 Q But you -- But police officers, in particular?

17 A Yeah.

18 Q Okay. And you described what you had seen earlier that
19 night?

20 A Yeah.

21 MR. TARRANT: That's all the questions I have for this
22 witness, Your Honor.

23 THE COURT: Attorney Anderson?

24 MR. ANDERSON: Yes.

25 **CROSS EXAMINATION OF WITNESS, SUSAN DUNN**

1 BY MR. ANDERSON:

2 Q Ma'am, my name is Ken Anderson. I represent Winchester
3 Police Sergeant Latores. I don't know if you recognize him from
4 that night.

5 You told us that you're not a confrontational person,
6 correct?

7 A Yeah.

8 Q But twice this night, you had called Mr. Gaffney because you
9 needed help, because you were afraid of what Mr. Celona could do
10 to you or others or himself, correct?

11 A Yeah.

12 Q And were there any prior occasions when you had called Mr.
13 Gaffney, asking for help? Or was this the first night that you
14 called, asking for help from security?

15 A I think this was the first night.

16 Q But you indicated that there were other times when there were
17 disturbing sounds and breaking sounds in Mr. Celona's apartment,
18 correct?

19 A Yeah.

20 Q And in those prior occasions, you hadn't called Mr. Gaffney
21 for help?

22 A No.

23 Q And you didn't call the police, because you're not
24 confrontational, right?

25 A Right. Well, it didn't go on for that long.

1 Q Okay. So this was kind of -- things were getting much worse,
2 in terms of Mr. Celona's behavior?

3 A Yeah.

4 Q And you were fearful for the other gentleman's safety, the
5 other person from the building who came in to assist, correct?

6 A That's correct.

7 Q And you thought he might get killed by Mr. Celona?

8 A Yes.

9 Q And you thought you might get killed by Mr. Celona.

10 A Correct.

11 Q And did you actually watch this whole thing through your
12 peephole in the door?

13 A That's correct. I actually have a sign on my door, hanging.
14 And it covers the peephole so I can't see out. And I actually
15 took it off that night so I could see out.

16 Q And that's the sign that says "home"?

17 A Yes.

18 Q So were you fearful of what could have happened if the police
19 didn't respond that night?

20 A Yes.

21 MR. ANDERSON: I don't have any further questions, Ms. Dunn.

22 THE WITNESS: Thank you.

23 THE COURT: Attorney Dewitt?

24 **CROSS EXAMINATION OF WITNESS, SUSAN DUNN**

25 BY MS. DEWITT AHERN:

1 Q Good morning, Ms. Dunn; how are you?

2 A Good morning.

3 Q My name is Debra Dewitt; I'm here on behalf of the Celona
4 family. So, on the night of November 2nd, 2020, it got to the
5 point that Tommy's behavior was very unusual. Can you just speak
6 up, ma'am, because it's being recorded and --

7 A Oh. Yes, it -- it was not -- it wasn't Tommy, like,
8 "normal."

9 Q It wasn't the Tommy that you knew.

10 A Right.

11 Q And Tommy is someone that you would have neighborly dinners
12 with, and you'd poke your head in his apartment, and you'd talk?

13 A For, like, the last three weeks that he was alive, he wasn't,
14 like, acting --

15 Q So his condition was escalating?

16 A Yeah.

17 Q So, on this particular night, you said that earlier in the
18 day you were taking your -- I'm sorry; I was having trouble
19 hearing you -- your cat to the vet?

20 A Yes.

21 Q And that was earlier in the day?

22 A Yes.

23 Q And you first encountered Tommy. And that's when he gave you
24 the vape cartridges?

25 A Yes.

1 Q And that's when you saw the gentleman in the apartment?

2 A In -- Yes.

3 Q Do you recall, before noon? Around noon? Two o'clock?

4 A It could've been, like, around noonish.

5 Q Okay. So, after that, you didn't see Tommy. You heard
6 noises from his apartment; is that fair to say?

7 A Later in the evening.

8 Q Okay. So there's a time during the afternoon when it was
9 quiet?

10 A Yeah.

11 Q And then you heard noises later in the afternoon?

12 A Yes.

13 Q Things being thrown around, a commotion from the apartment?

14 A Yes.

15 Q And it's at that time you had seen Tommy leave the apartment
16 once. And this is early evening, maybe?

17 A In the afternoon.

18 Q Okay. The first time he left the apartment.

19 A When I came home with the cat, from the vet.

20 Q Okay. And then later on in the afternoon, early evening, you
21 said to Mr. Tarrant you saw him leave again and come back within
22 five minutes, but he came back alone?

23 A Yes.

24 Q And then, that time, he wasn't carrying anything?

25 A Right.

1 Q And then a short time after that, do you recall -- I know
2 it's a long time ago. A half an hour, ten minutes, when you saw
3 the knife again in his hands?

4 A Yes.

5 Q And do you recall how long that was, about?

6 A How long?

7 Q Between the two times in the night.

8 A How long he went out between them times? Probably, like,
9 maybe fifteen minutes.

10 Q Okay. And it's at that point in time -- Did you see cuts --
11 You saw cuts on his hand at that point in time, too, now?

12 A I saw blood on his hand, but I -- I didn't see cuts.

13 Q And it's at this point in time Tommy came back to his
14 apartment with another gentleman; is that fair to say?

15 A With the gentleman, yes.

16 Q Now, your apartment is directly across from where Tommy's
17 was?

18 A All's I have to do is go like this, and I can touch his door.

19 Q So you can see out your peephole into his doorway?

20 A Yeah.

21 Q The gentleman that came to Tommy from the building went into
22 the building with Tommy, fair to say?

23 A The gentleman that what?

24 Q That -- Your neighbor, your other neighbor, Mr. Card, went
25 into Tommy's apartment?

1 A I don't know who that is.

2 Q Okay. He came back with a gentleman, right?

3 A Yeah.

4 Q And they went inside Tommy's apartment?

5 A Yeah.

6 Q Okay. And at some point in time, the security guard, Mr.
7 Gaffney, came upstairs also, fair to say?

8 A Yes.

9 Q And went into the apartment also?

10 A Yes.

11 Q And then all of them left the apartment?

12 A Yes.

13 Q And during that course of time, you had indicated that you
14 had said, "Call the police," as did the other gentleman. But
15 Tommy said no?

16 A Yes. And Tommy said no.

17 Q Now, after Mr. Gaffney and your neighbor left, you -- the
18 noises were continuing in Tommy's apartment?

19 A Yes.

20 Q You called the security again?

21 A Yes.

22 Q And indicated to them that they needed to do something?

23 A Yes.

24 Q Now, you were concerned -- Strike that. At that point in
25 time, was -- could you hear if Tommy was hitting the window, or

1 | was it just furniture going around?

2 | A | Like, furniture going around.

3 | Q | And that was unusual, because Tommy's apartment was always
4 | very clean?

5 | A | Yeah.

6 | Q | And after you called back down to Mr. Gaffney, at some point
7 | shortly after, the police arrived?

8 | A | No.

9 | Q | No? Do you recall how long after you talked to Mr. Gaffney
10 | on the telephone --

11 | A | I only talked to Mr. Gaffney to call, like, to come up and --

12 | Q | Okay.

13 | A | -- take care of what was going on.

14 | Q | And he came up.

15 | A | And then --

16 | Q | Okay.

17 | A | Yeah, and to not leave me alone.

18 | Q | Okay. And at some point in time, the police came?

19 | A | Yeah.

20 | Q | And that was as a result of Mr. Gaffney calling them?

21 | A | Yes.

22 | Q | Because you didn't call them, right?

23 | A | I didn't want to call.

24 | Q | And you were somewhat concerned for Tommy's wellbeing?

25 | A | I was concerned for Tommy's wellbeing.

1 Q Okay. When the police came, when you first saw the police
2 arrive, how many police did you see arrive?

3 A It was at least two, but it could have been three.

4 Q Okay. And when you first saw them, you're looking out your
5 peephole at your corridor outside your apartment. Were their guns
6 drawn then, when you first saw them?

7 A I saw at least one gun.

8 Q Okay. And when they started banging on the door, knocking on
9 the door, they were yelling a name that you didn't recognize?

10 A Yeah.

11 Q And you opened the door and said, "His name's Tommy"?

12 A Yeah.

13 Q They told you to close the door?

14 A They said, "Thank you," and then they close -- said, "Close
15 the door."

16 Q Did they tell you to close the door?

17 A Yes.

18 Q Okay. Did they tell you to lock the door?

19 A I don't recall.

20 Q And did they tell you to stay in your apartment and not come
21 back out?

22 A I don't recall.

23 Q And while they're banging on the door when you first opened
24 the door, you indicated that you attempted to also -- because you
25 knew Tommy, maybe you could help bring him to the door?

1 A Yeah, I was calling for him to come out, too.

2 Q But there was no response from Tommy?

3 A No.

4 Q And you shut the door and you continued watching through your
5 peephole. Do you see the police, after the door doesn't open,
6 start -- one of the officers start kicking the door?

7 A Yes.

8 Q And, finally, that door -- the door broke open?

9 A Yeah.

10 Q And obviously you can't see what's inside the apartment
11 through your peephole, but you see them enter into the apartment;
12 is that fair to say? You saw the police enter the apartment?

13 A Yeah.

14 Q And while they're in there, you could hear conversations
15 about tasing?

16 A Yeah.

17 Q And you heard them yell, "Tase"?

18 A Yeah.

19 Q And during this time, same period of time, you could still
20 hear the glass breaking?

21 A Yes.

22 Q And you were concerned that Tommy may try to jump off the
23 railing?

24 A Yes.

25 Q And the time that the police were in the apartment, you said

1 | you heard Tommy -- tasers twice, and Tommy groan twice?

2 | A Yes.

3 | Q After the second time you heard the taser and the groaning,
4 | you see the police come back out of the apartment?

5 | A No.

6 | Q You don't see them come back out? When's the -- So, you hear
7 | the tase.

8 | A They weren't quite, like, fully all the way in. Like, so,
9 | kind of, like, still in the doorway, near the bathroom, sort of.
10 | So I could still kind of see, kind of.

11 | Q Could you see them there during the whole incident in Tommy's
12 | apartment?

13 | A No.

14 | Q Okay. So at some point they may have gone further in?

15 | A Right.

16 | Q Okay. And then you see them again. The next time you see
17 | them after the tasing is when you see them by the bathroom door or
18 | in that entryway?

19 | A Yes.

20 | Q Okay. And at some point in time, they come out of the door,
21 | the apartment door?

22 | A When it's all over.

23 | Q I'm sorry, ma'am?

24 | A When it's all over.

25 | Q You heard a gunshot?

1 A The gunshot happened from the hallway.

2 Q Okay. And did you --

3 A I saw it.

4 Q That's what I was going to ask you; thank you, ma'am. So,
5 you saw it when the gun was shot?

6 A I --

7 Q The officers --

8 A I smelled --

9 Q Were all three of them --

10 A -- the gunpowder.

11 Q I'm sorry, ma'am?

12 A I could smell the gunpowder.

13 Q You could smell the gunpowder. And you could see the gun
14 being shot?

15 A Yes.

16 Q From the hallway?

17 A Yes.

18 Q And you're looking out your peephole when you see this
19 happening?

20 A Yes.

21 Q And you could see the officer that shot the gun, or just the
22 powder?

23 A I don't remember which one it was.

24 Q Oh, no, I'm not asking you that. I'm just asking if you
25 could see the gunshot or just the -- you smelled the powder, or

1 | you just heard it?

2 | A | I could see the gunshot and smell the powder, and I could
3 | hear it.

4 | Q | And you're looking out your peephole. Was Tommy in the
5 | doorway --

6 | A | I don't know.

7 | Q | -- when the shot went off?

8 | A | I don't know where he was when he got shot.

9 | Q | Could you see -- When the gun shot, could you see Tommy?

10 | A | No.

11 | Q | When you heard the gunshot?

12 | A | No.

13 | Q | You couldn't see Tommy. After the gun got shot, you said
14 | that an officer pulled him out the -- out of his apartment?

15 | A | Maybe two officers. I don't know --

16 | Q | Okay.

17 | A | -- how many.

18 | Q | Do you recall where they pulled him from?

19 | A | I don't --

20 | Q | In your apartment by the door, there's a little hallway?

21 | A | Yeah.

22 | Q | And the bathroom's right there?

23 | A | Yeah.

24 | Q | Was Tommy in that area? Is that where he got pulled from?

25 | A | Yeah.

1 Q So he was inside the apartment door when he got pulled out by
2 the officer to administer aid?

3 A I think so, yeah. That's the only place I could see him
4 from.

5 Q Okay.

6 MS. DEWITT AHERN: Just one moment, please, Your Honor.

7 THE COURT: Sure.

8 [Pause]

9 BY MS. DEWITT AHERN:

10 Q During the whole course of this incident on November 2nd, did
11 you hear Tommy say anything to the police?

12 A To the police? No.

13 Q After he was shot, did you hear him say anything, or did you
14 hear any noises from him?

15 A No.

16 MS. DEWITT AHERN: Thank you, Your Honor.

17 **CROSS EXAMINATION OF WITNESS, SUSAN DUNN**

18 BY THE COURT:

19 Q Is your balcony and his balcony adjoined?

20 A Yes.

21 Q Okay. And is there a way -- Like, we went for a view
22 yesterday. And it looked like the divider from your balcony to
23 his balcony is pretty low.

24 A Yes.

25 Q Has he ever gone over that?

1 A Yes.

2 Q To do -- For what reason?

3 A He actually, one day, came home in a hospital gown and socks.

4 Q Do you remember when this was?

5 A This was a couple weeks prior to the incident. And he said
6 he lost his keys again, and -- could he climb over my balcony.

7 And I -- I had a ladder, too. Like, a stepstool ladder.

8 Q Okay.

9 A And I said, "Yeah, sure." And he came in, and he climbed
10 through.

11 Q Okay. And he said he lost his keys again; had he lost his
12 keys previously?

13 A Yeah. He had another incident where he lost his keys and he
14 came in and had dinner with us, me and my partner at the time.
15 And -- And then he wanted to borrow my car. And I was going to
16 let him. But then my partner was like, "I don't think that's a
17 good idea." And I then said I would give him a ride. And I let
18 him use my phone, because he said he lost his phone too. And then
19 he ended up not needing a ride. So --

20 Q Okay.

21 THE COURT: Anything else?

22 MR. TARRANT: Nothing, Your Honor; thank you.

23 MR. ANDERSON: I have nothing.

24 THE COURT: Attorney Dewitt?

25 MS. DEWITT AHERN: No thank you, Judge.

1 THE COURT: Thank you very much.

2 THE WITNESS: Thank you.

3 THE COURT: Appreciate you being here. You're now excused.

4 THE WITNESS: Thank you so much.

5 THE COURT: You're welcome.

6 [Witness steps down]

7 MR. TARRANT: So, next, Your Honor, I would call William
8 Donoghue.

9 [DET. LT. WILLIAM DONOGHUE, Sworn.]

10 THE WITNESS: Good morning.

11 THE COURT: Lieutenant, good morning. You can have a seat.

12 THE WITNESS: Yes, sir.

13 THE COURT: If you'd like to remove your mask, you may. If
14 you prefer to keep it on, you may do that, as well. It's
15 completely up to you.

16 THE WITNESS: Thank you.

17 THE COURT: You're welcome.

18 MR. TARRANT: If I may, Your Honor.

19 THE COURT: You may.

20 **DIRECT EXAMINATION OF WITNESS, DET. LT. WILLIAM DONOGHUE**

21 BY MR. TARRANT:

22 Q Good morning.

23 A Good morning.

24 Q Can you please state your name, spelling both your first and
25 last name?

1 A My name is William Donoghue, D-O-N-O-G-H-U-E.

2 Q And, sir, are you employed?

3 A Yes.

4 Q Where do you work?

5 A I am a Massachusetts state police officer assigned to the
6 Middlesex district attorney's office.

7 Q And what is your current rank?

8 A Detective lieutenant.

9 Q And what is your duties and responsibilities as a detective
10 lieutenant assigned to the Middlesex district attorney's office?

11 A Currently, I'm the commanding officer of the State Police
12 Detective Unit assigned to the Middlesex district attorney's
13 office, which includes the homicide unit as well as the special
14 investigations and narcotics unit.

15 Q And with respect to the Special Investigations Unit, what
16 kind of cases do they investigate?

17 A They generally do narcotics-based investigations as well as
18 public corruption, white collar, financial crimes.

19 Q Okay. And that's a unit you supervise?

20 A Currently, yes.

21 Q And how many troopers are assigned to that unit?

22 A We have four, a sergeant and three troopers, currently, that
23 are assigned there.

24 Q Is the unit usually bigger than that?

25 A It has been, historically, bigger. But staffing has dwindled

1 | our staff. So -- our troopers assigned -- so currently there's
2 | four people. We've had it as high as seven, eight, even nine
3 | officers assigned to that -- that section.

4 | Q And with respect to the homicide unit, can you describe the
5 | duties and responsibilities of that unit?

6 | A So, the homicide unit is a twenty-four-hour on-call unit. We
7 | are set up with four homicide teams, which consists of a
8 | supervisor and two troopers that would be available to respond to
9 | any homicide, sudden death, overdose, unattended death. Any --
10 | Essentially, any major investigation but, in particular,
11 | unattended deaths of a suspicious nature, including any homicides.

12 | Q And so how long have you been the detective lieutenant
13 | supervising these units?

14 | A I have been the unit supervisor since February of this year.

15 | Q And prior to that, what was your homicide?

16 | A I've been assigned to the homicide unit of the Middlesex
17 | D.A.'s office for twenty-one years. I've held the position of
18 | line trooper, essentially responding to sudden deaths and
19 | overdoses. I was a sergeant for nine years as a first line
20 | supervisor, supervising homicide cases. I was promoted, and then
21 | I was essentially the number-two person as a lieutenant, remaining
22 | in the unit with more duties and responsibilities in a supervisory
23 | nature. And then in February I was promoted to detective
24 | lieutenant. And now I'm the commanding officer.

25 | Q Sir, if I direct your attention to November 2nd, 2020, do you

1 recall that day?

2 A Yes.

3 Q Were you working on that day?

4 A I was on call that day.

5 Q If I direct your attention to approximately sometime after
6 8:00 p.m. on November 2nd, 2020, do you receive a call to respond
7 to a location in Winchester?

8 A Yes.

9 Q And was that at 200 Swanton Street in Winchester?

10 A That's correct.

11 Q And is that at a location known as Parkview apartments?

12 A Correct.

13 Q And did you respond to specifically Unit 326 --

14 A Yes.

15 Q -- of that apartment building?

16 A Yes.

17 Q And can you describe what you did when you got there?

18 A Well, essentially, there were officers already on scene. The
19 Winchester police had patrolmen, detectives on-scene. I believe
20 at the time the unit commander was Captain Paul Bowman. He was
21 already on scene, as well as Sergeant Delucia [phonetic], Trooper
22 Delaney [phonetic]. I believe there was mutual aid provided by
23 Woburn police and Stoneham police; those officers were on scene.
24 Upon my arrival in a supervisory position, I wanted to make sure
25 that the cases was moving along and that people had all the

1 resources that were needed.

2 Q And, sir, as Part of your responsibility and your
3 investigation on the evening of November 2nd, 2020, did you go
4 into Unit 326?

5 A I did.

6 Q And did you make certain observations in specific areas of
7 that apartment?

8 A Yes.

9 Q And did you note certain items found in particular locations
10 in that apartment?

11 A Yes.

12 Q And if I show you this photograph, do you recognize this
13 photograph?

14 A I do.

15 Q And what do you recognize that to be?

16 A So, this is a photograph, what I would describe as the front
17 or -- well, essentially, the back living area. It is a photograph
18 of -- of the floor, contained a -- containing a state police crime
19 scene Marker No. 8. It is depicting a -- looks like a silver
20 knife, with some broken glass and some cash in front of a sliding
21 glass door.

22 Q And showing you the second photograph, and ask you if you
23 recognize what that is.

24 A I do.

25 Q What do you recognize that to be?

1 A So, this would be a closeup photo of what was depicted in
2 this overall photograph of -- In this photograph, it is a closeup
3 photo of Marker 8, depicting a large silver kitchen knife,
4 essentially.

5 Q Thank you. And, sir, this photograph, ask you if you
6 recognize what's depicted there.

7 A I do.

8 Q And what do you recognize that to be?

9 A This is a -- again, a closer photograph of what would be
10 depicted in the earlier-referenced overall photograph. It
11 specifically depicts a portion of the sliding glass door that
12 appears to be broken or shattered.

13 Q Thank you.

14 MR. TARRANT: Your Honor, may these three be marked?

15 Individually or --

16 THE COURT: 23, 24, 25.

17 **[Photographs Marked as Exhibit Nos. 23-25]**

18 BY MR. TARRANT:

19 Q Sir, showing you this photograph, ask you if you recognize
20 what that is.

21 A I do.

22 Q What do you recognize that to be?

23 A This would be an overall photograph of the kitchen area of
24 Apartment 326.

25 Q Okay. And specifically directing your attention to the

- 1 center of the photograph, do you see a package on the table there?
- 2 A I do.
- 3 Q Do you recognize that package?
- 4 A I do.
- 5 Q And as part of your investigation, did you open that package,
6 or did you and another investigator in your presence open that
7 package?
- 8 A I don't recall if it was open. I know that this picture
9 depicts a -- a closed package that contains takeout food.
- 10 Q Okay. Do you know what takeout food that contains?
- 11 A It was an order of takeout food from across the street. The
12 name of the restaurant escapes me at the time. But that's the
13 package. I believe there was a receipt attached.
- 14 Q Oh, there was a receipt?
- 15 A I should have -- I misspoke. My understanding: that that is
16 a takeout package that was purchased across the street and brought
17 home.
- 18 Q Do you know if that package was opened?
- 19 A I do not know.
- 20 Q And then I'm going to show you this photograph, ask you if
21 you recognize what's depicted there.
- 22 A I do.
- 23 Q What do you recognize that to be?
- 24 A That's a plastic baggy that is twisted in one corner.
- 25 Q Okay. And do you notice any residue in that baggy?

1 A I do.

2 Q And what do you observe to be residue?

3 A That appears to be white powder residue.

4 Q And based on your training and experience, what significance,
5 if any, does that have for you?

6 A That that packaging would be consistent with narcotics, how
7 narcotics would be packaged in a white corner-twist bag.

8 Q Thank you.

9 MR. TARRANT: Your Honor, may this be marked?

10 THE COURT: 26.

11 **[Photograph Marked as Exhibit No. 26]**

12 THE COURT: Thank you.

13 MR. TARRANT: Okay. Thank you, Your Honor. That's all I
14 have for this witness.

15 MR. ANDERSON: Your Honor, just a couple quick questions.

16 **CROSS EXAMINATION OF WITNESS, DET. LT. WILLIAM DONOGHUE**

17 BY MR. ANDERSON:

18 Q Good morning, Lieutenant Detective Donoghue.

19 A Good morning, sir.

20 Q You did more than just take photographs of this place,
21 correct?

22 A Well, the photographs were taken by our crime scene
23 technicians, but yes.

24 Q But your office conducted a thorough investigation into this
25 entire police-involved shooting, correct?

1 A Correct.

2 Q And part of that involves an interview of Officer Latores?

3 A That's correct.

4 Q And was he fully cooperative in your investigation?

5 A Yes, he was.

6 Q And Sergeant Ryan Mawn, did he also fully cooperate in your
7 investigation?

8 A Yes, he did.

9 Q And Officer Andrew Riccio, did he fully cooperate in your
10 investigation?

11 A Yes.

12 MR. ANDERSON: I don't have any further questions.

13 THE COURT: Attorney Dewitt?

14 MS. DEWITT AHERN: Sure. Thank you, Judge.

15 THE COURT: You're welcome.

16 **CROSS EXAMINATION OF WITNESS, DET. LT. WILLIAM DONOGHUE**

17 BY MS. DEWITT AHERN:

18 Q Good morning, lieutenant. How are you?

19 A Good morning.

20 Q So, by "cooperating," these three officers sat down and
21 discussed and answered questions for you; fair to say?

22 A Yes.

23 Q Okay. No one asserted their Fifth?

24 A Correct.

25 Q And these interviews were recorded?

1 A Yes.

2 Q They were not under oath; they weren't sworn interviews?

3 A Correct.

4 Q And they weren't signed after, acknowledged?

5 A It was an audio statement.

6 Q And -- But there was nothing reduced and signed after?

7 A From the -- No, they did not.

8 Q Okay.

9 MS. DEWITT AHERN: Thank you. Nothing further.

10 MR. TARRANT: That's it. Thank you, Your Honor.

11 THE COURT: Thank you very much, Lieutenant.

12 THE WITNESS: Thank you, sir.

13 [Witness steps down]

14 MR. TARRANT: So, other than Mr. DiChiara, who I have not
15 heard from yet, that would be the conclusion of the Commonwealth's
16 live testimony.

17 THE COURT: Okay.

18 MR. TARRANT: I don't know if Ms. Dewitt and Mr. Anderson and
19 I need to discuss the stipulations. My proposal would be to
20 submit by agreement the 911 calls. There's two -- Well, excuse
21 me; there's actually three calls: two by Mr. -- one from Mr.
22 Lowry, --

23 THE COURT: Mr. --

24 MR. TARRANT: Lowry.

25 THE COURT: Okay.

1 MR. TARRANT: Kevin Lowry, who testified. And I believe he
2 testified that he made a call and he received a call, both 911.
3 There was a -- He called 911. The dispatcher already had the
4 information. They hung up on him and then called him right back,
5 to receive his information. But he does make some statements to
6 the dispatcher at that time. The third call would be from Mr.
7 Gaffney.

8 And then we have a radio transmissions of the communications
9 prior to arrival at the Parkview, between the Winchester officers
10 and dispatch. So I would submit that as one exhibit, just
11 essentially because they're contained in one file.

12 The other statement I would propose by agreement or
13 stipulation is Mr. Gaffney's statement to the police. I did
14 reduce it to a summary. However, in speaking with Mr. Anderson
15 this morning -- and I don't believe we've had -- we haven't had
16 the opportunity with Ms. Dewitt. I am agreeable, if anyone is
17 agreeable, to submit the report based on his interview, which is
18 far more detailed than my summary. So I am agreeable --

19 THE COURT: My preference would be to take the full report,
20 so that --

21 MR. TARRANT: I think that makes sense, and I'm certainly --

22 THE COURT: Okay.

23 MR. TARRANT: -- would submit that. Finally, the only other
24 piece would be -- And I think Sergeant Latores is resting on his
25 recorded interview, --

1 THE COURT: Okay.

2 MR. TARRANT: -- which I would also submit.

3 THE COURT: So, how long is the recorded interview?

4 MR. TARRANT: I think it's about forty minutes.

5 THE COURT: Okay.

6 MR. TARRANT: Maybe a few minutes longer, about forty
7 minutes.

8 THE COURT: Is that something that you want to play?

9 MR. ANDERSON: That's -- I would ask to just play the audio.

10 THE COURT: Okay. And that's something that we all have a
11 transcript of, although --

12 MR. ANDERSON: That was --

13 MR. TARRANT: I did -- No, I do have it.

14 MR. ANDERSON: I never got a copy of that.

15 THE COURT: But it's --

16 MR. TARRANT: I have it.

17 MS. DEWITT AHERN: There was a transcript that --

18 THE COURT: But it's -- I would almost say it was -- It's
19 certainly not -- I don't think it was professionally done.

20 MR. TARRANT: No, Judge; I'm sorry for that.

21 THE COURT: No, it's not a problem. I just -- I think we
22 need to play the full audio, because I think that there are some
23 problems with the transcript.

24 MR. TARRANT: I didn't receive the transcript until Monday
25 morning.

1 THE COURT: It's not a problem.

2 MR. TARRANT: So -- Or Sunday. I think it was Sunday night.
3 But I didn't -- I wasn't able to provide it until Monday morning.
4 So I have not checked it for accuracy.

5 THE COURT: Okay. That's fine.

6 MR. TARRANT: We do have it.

7 THE COURT: So, do either of you want to be heard on the 911
8 calls or the report taken from Mr. Gaffney?

9 MR. ANDERSON: I have no objection to any of that?

10 MS. DEWITT AHERN: I have no objection to any of that?

11 THE COURT: Okay. So, let's do this. 27 is what?

12 MR. TARRANT: I labeled it "Thomas Celona Inquest 911 Radio
13 Transmission."

14 THE COURT: So that's a radio transmission?

15 MR. TARRANT: And 911, yeah.

16 **[Recorded Dispatch Calls Marked as Exhibit No. 27]**

17 THE COURT: 28?

18 MR. TARRANT: And then I have -- I'll submit the disc of Mr.
19 Latores's interview, November 5th, 2020.

20 THE COURT: 28 will be the Latores interview.,

21 **[Recorded Interview of Officer Latores Marked as Exhibit No. 28]**

22 MR. TARRANT: And then the Gaffney statement, I have. I
23 don't know if the Court needs it redacted. There is part of the
24 prior interview on the first page, and then part of a -- just
25 another -- Another report begins on the second page. So I can

1 redact those. Or, I mean, --

2 THE COURT: I'm sorry; what is this again?

3 MR. TARRANT: So, this is -- this report is the narrative
4 specifically for William Gaffney's interview. But it's two pages.
5 The top of the first page contains a portion of somebody else's
6 interview. And the bottom of the second page contains a portion
7 of just observations of an officer that had nothing to do with
8 the --

9 MR. ANDERSON: The interview was part of page 21 and 22 of a
10 31-page report. So he's taking --

11 THE COURT: I got it. Okay. So, you're just going to redact
12 that. And that'll be Exhibit 29.

13 MR. TARRANT: Right, if --

14 THE COURT: That's fine.

15 MR. TARRANT: I'll redact that and I'll bring it back to the
16 Court.

17 THE COURT: No problem.

18 MR. TARRANT: And we'll mark it later.

19 THE CLERK: So, what is that? I'm sorry.

20 THE COURT: The Gaffney statement will be --

21 MR. TARRANT: Thank you.

22 THE COURT: -- Exhibit 29. And A.D.A. Tarrant will submit a
23 redacted copy.

24 MR. TARRANT: Right. I can -- I'll just go downstairs and
25 get it done fairly quickly.

1 THE CLERK: Do you need --

2 MR. TARRANT: Or I can do it now.

3 THE COURT: Yeah, either way.

4 MR. TARRANT: Well, actually, I have a Sharpie right here.

5 THE CLERK: Okay.

6 **[Statements of Mr. Gaffney Marked as Exhibit No. 29]**

7 MR. ANDERSON: So, I --

8 THE COURT: Go ahead.

9 MR. ANDERSON: No, I think the only thing that we would
10 offer: the interview audio and then the two police reports that
11 are part of the shared file. There's an October- -- I think --
12 the-14th call when Mr. Celona was knocking on doors in shorts,
13 with no shoes. And then there's one from the prior December.

14 THE COURT: Is that the hatchet?

15 MR. ANDERSON: That's the hatchet incident.

16 THE COURT: Okay.

17 MR. ANDERSON: I would offer those two.

18 THE CLERK: The problem is I wasn't able to -- I can't access
19 them, for some reason.

20 MR. TARRANT: So, those reports should be in that file?

21 MS. DEWITT AHERN: I have copies. I was going to ask for
22 those reports to come in.

23 THE COURT: Okay. So let's do --

24 MS. DEWITT AHERN: They're highlighted, but --

25 THE COURT: Exhibit 30 will be -- we'll call it "the hatchet

1 incident"?

2 MS. DEWITT AHERN: That would be the December 27th, '19 --
3 2019.

4 THE CLERK: Can I see it?

5 MS. DEWITT AHERN: Report?

6 THE CLERK: Or do you want me to look in the file, or you
7 want someone to give it to me?

8 MS. DEWITT AHERN: I can show it to you, Madam Clerk.
9 It's -- I've got a highlighter, but there's no notes on it or
10 anything. And then the -- a second --

11 THE COURT: We can just make a --

12 THE CLERK: Hold on, hold on.

13 THE COURT: -- copy of that. That's fine.

14 THE CLERK: Is that one?

15 THE COURT: That's --

16 MS. DEWITT AHERN: This is the December -- The hatchet report
17 is --

18 THE COURT: That's hatchet. And then --

19 MS. DEWITT AHERN: December 27th, 2019. And the other report
20 is a October 14th, '20, report.

21 MR. TARRANT: I have clean copies, if you --

22 MS. DEWITT AHERN: Okay.

23 THE COURT: Oh, perfect.

24 MS. DEWITT AHERN: There you go.

25 THE COURT: That makes it easy for the Clerk.

1 MS. DEWITT AHERN: Thank you, Madam Clerk.

2 MR. TARRANT: If I could just maybe get a copy of it back.
3 Or I could just --

4 THE CLERK: All right. So -- All right. So, 30 is December
5 27, 2019.

6 **[Police Report Dated 12/27/19 Marked as Exhibit No. 30]**

7 THE COURT: And 31 is 10/14/20.

8 **[Police Report Dated 10/14/20 Marked as Exhibit No. 31]**

9 THE COURT: Do we have a capability of playing the Latores
10 interview here?

11 MR. ANDERSON: I have a laptop with a speaker that I could
12 hook up and --

13 THE COURT: Perfect.

14 MR. ANDERSON: -- play it on.

15 THE COURT: So, it might be easier if you put it here and put
16 the microphone down to it, because that way it'll amplify how it's
17 supposed to amplify on all these little speakers.

18 MR. ANDERSON: Okay.

19 THE COURT: Are you prepared to do that right now?

20 MR. ANDERSON: I mean, it would take me a minute just to get
21 the --

22 THE COURT: Okay.

23 MR. ANDERSON: -- computer out and turn it on and -- But if
24 we were going to play the 911 stuff, it may make sense to do the
25 911 stuff, take a quick break, see if we're going to have DiChiara

1 at 11:30; and then, if not, we could play this at 11:30.

2 THE COURT: I think that makes sense.

3 THE CLERK: And I thought there was something else that you
4 wanted to submit. Or no?

5 MR. ANDERSON: No, it was just those two reports.

6 THE CLERK: Okay. Sorry, Judge; okay.

7 THE COURT: Okay. So, here's the radio transmission and the
8 911. Can you set that up?

9 [Pause to set up audio playback]

10 THE CLERK: [Checking status of receipt of medical records at
11 the clerk's office.] We're looking into it.

12 [Pause]

13 [911 Call Playing at 11:03:41 a.m.]

14 THE COURT: And the person speaking is Mr. Gaffney?

15 MR. ANDERSON: I believe so.

16 MR. TARRANT: Yeah.

17 MR. ANDERSON: Let me just try to rewind this, see if we can
18 get this at a volume --

19 MR. TARRANT: I don't know if he says his name or if he just
20 identifies his position; forgive me.

21 THE COURT: And how old was Mr. Gaffney when he passed away?

22 MR. TARRANT: Fifty or fifty-one. He's -- I believe his date
23 of birth is 1970.

24 [Pause to adjust audio playback]

25 [Dispatch audio playing at 11:05:37 a.m.]

1 MR. ANDERSON: Is that a better volume? Let me go back to
2 the beginning.

3 [Dispatch audio recording:]

4 "Q 911. This line is recorded. What is the address of your
5 emergency?

6 "A 200 Swanton Street, Parkview condominiums.

7 "Q 200 Swanton Street? What's the unit?

8 "A 326.

9 "Q Unit 326? What's going on there?

10 "A I'm security. I got a guy saying someone broke in. I don't
11 believe they did. I think he's intoxicated, messed-up on
12 something. His hand's cut. His place is a mess. Like, stuff
13 thrown around. From what I heard, the neighbors think it's him,
14 himself. I think they've had some dealings with him recently.

15 "Q What's his name?

16 "A He said his name was Frank Thomas, I think.

17 "Q Are you sitting right now with him?

18 "A I'm downstairs in the office. I left him. He said two black
19 men broke in. But I don't think anybody broke in. I mean, his --
20 his door wasn't broken, the lock wasn't broken. He's in the unit
21 now, looking for his keys.

22 "Q Okay.

23 "A His hand -- His hand's cut.

24 "Q All right. So, 200 Swanton Street, Unit 326. You have a
25 male party, believe his name's Frank Thomas.

1 "A Yeah.

2 "Q He said two black men broke into there, but you did say that
3 he's intoxicated. And his hand's cut?

4 "A Yeah.

5 "Q Okay. And you're with security. And what's your name?

6 "A Will. Will Gaffney.

7 "Q And, Will, what's your telephone number at security?

8 "A 781 --

9 "Q Yep.

10 "A -- 507 --

11 "Q Yep.

12 "A -- 5701.

13 "Q 57-what? I'm sorry.

14 "A 5701. That's my own phone. That's for right now.

15 "Q Oh, okay. All right. I'll send down -- I'm going to send
16 the officers down now.

17 "A Okay.

18 "Q All right. Thank you.

19 "A Yeah. Bye.

20 "Q All right. Bye."

21 [Next dispatch audio recording:]

22 "Q 911. This line is recorded. What is the address of your
23 emergency?

24 "A Hi, Winchester. This is regional. We have a call on the
25 line at 200 Swanton Street in Winchester. It's the Parkview

1 | apartments, on the third floor, Room 321. And he's reporting that
2 | there is someone in the hallway with a knife. I just wanted to
3 | make sure you've --

4 | "Q We -- Yep, we have a police on scene right now.

5 | "A Okay.

6 | "Q If they could just -- Hi. Can I help you, ma'am [sic]?

7 | "MR. LOWRY: No, no. Thank you. I was the one that called.

8 | "Q Okay.

9 | "MR. LOWRY: Thank you very much.

10 | "Q No problem. Just stay in your unit, okay?

11 | "MR. LOWRY: Thank you.

12 | "Q All right. No problem."

13 | [Next dispatch audio recording:]

14 | "A Hello?

15 | "Q Hi. This is Kathy [phonetic] with the Winchester police and
16 | fire department. How are you?

17 | "A I'm fine. How are you?

18 | "Q Good. Could I just get your name, if you don't mind?

19 | "A Yeah. My name's Kevin Lowry, L-O-W-R-Y. I'm in Unit No.
20 | 321.

21 | "Q Yep, you told me that. And your phone number is
22 | 617-872-3970. You said Kevin -- Last name? I'm sorry. L-O-W --

23 | "A -- R-Y.

24 | "Q -- R-Y.

25 | "A Yeah. I just heard the noise. And, I mean, just, normally

1 | you can hear people breathing, it's so quiet in this building.

2 | "Q Yeah.

3 | "A And I heard someone shouting, and I heard banging. And I
4 | went outside in the hall. And when I heard someone say, 'Drop the
5 | knife,' is when I picked up the phone and I called 911.

6 | "Q Okay. All right, Kevin. Well, thank you for calling. I do
7 | have your name. I'm just going to give it to the officers, just
8 | so that they have it.

9 | "A Okay.

10 | "Q All right? Thank you so much. And, just, if you want to
11 | just stay in your unit, if possible.

12 | "A No, I've got the door locked. I never do. And I locked the
13 | door.

14 | "Q Good. Perfect.

15 | "A I've got -- It's a deadbolt. I've got the deadbolt on.

16 | "Q Yeah. Okay. Perfect.

17 | "A But, all right, if they need anything they can come down
18 | that -- You know, but it -- it -- it was going on for a little
19 | while. So --

20 | "Q Yeah, if they have any questions they'll come down and talk
21 | to you.

22 | "A Terrific. Thank you.

23 | "Q Thank you so much for calling, sir.

24 | "A Bye, now.

25 | "Q Bye-bye."

1 [Beginning of call with Mr. Gaffney replaying at 11:09:34 a.m.]

2 THE COURT: So, this is a repeat?

3 [Playback stopped at 11:10:04 a.m.]

4 MR. ANDERSON: Is that it?

5 MR. TARRANT: The radio transmissions should be on there,
6 too. Do you -- Is there more to the file?

7 [Pause to locate audio]

8 MR. TARRANT: Sorry, Judge, but it doesn't appear the
9 transmissions transferred.

10 THE COURT: Okay.

11 MR. TARRANT: And I don't have --

12 THE COURT: Is there anything of significance on the
13 transmissions?

14 THE CLERK: Do you want to try the one I have, or you think
15 it's the same?

16 THE COURT: It's probably the same.

17 MR. TARRANT: Not really, not to my mind. I was just trying
18 to be inclusive. I think it's just more of the directing. You
19 hear the different radio callouts for the different numbered
20 vehicles, I think. And there was one -- there was a piece of
21 confusion that I picked up on that actually was cleared up by
22 Sergeant Mawn, when he identified that his car was broken. And
23 his original car was, I think he said, like, 932. But he was in a
24 different-numbered vehicle.

25 THE COURT: It was in an unmarked?

1 MR. TARRANT: There was -- Yes. So, in the radio
2 transmissions, I remember that there was -- he was being referred
3 to in the car that he should have been in.

4 THE COURT: Got it.

5 MR. TARRANT: You know what I mean? So it was confusing
6 because -- And I may have put this in some of my earlier
7 submissions that I provided to the clerk's office. But he cleared
8 that up when he testified, because I didn't --

9 THE COURT: Okay.

10 MR. TARRANT: I was thinking there might be another car.

11 THE COURT: All right.

12 MR. TARRANT: I think that was really it. So I would just
13 call it "The 911."

14 THE COURT: That's -- I crossed out the transmission portion
15 of it.

16 Attorney Dewitt, do you think there's anything of any
17 significance on there?

18 MS. DEWITT AHERN: No, Judge.

19 THE COURT: Okay.

20 MS. DEWITT AHERN: I was going to see --

21 THE COURT: Attorney Anderson?

22 MS. DEWITT AHERN: -- if they transferred --

23 MR. ANDERSON: I've actually never heard it, so I can't --

24 MS. DEWITT AHERN: But I don't want to do it --

25 THE COURT: Okay.

1 MR. ANDERSON: -- comment. But I think we're fine without
2 it.

3 THE COURT: Do you want to start -- Why don't we at least
4 start Sergeant Latores's interview. And then are you expecting a
5 call, A.D.A. Tarrant, saying he's going to be on at 11:30? Or do
6 we just need to kind of wait at 11:30 to see if he comes on?

7 MR. TARRANT: Well, he told me that if he was going to be
8 able to do it early he anticipated it would be at 11:30.

9 THE COURT: Okay.

10 MR. TARRANT: I told him to let me know as soon as he knew,
11 because we'd have to get everybody together and get him a Zoom
12 link and all that. So I'm not really sure what he's going to do.

13 THE COURT: Okay.

14 MR. TARRANT: But he said no matter what he would be
15 available at 11:30.

16 THE COURT: Okay. But he needs Zoom links and everything for
17 that?

18 MR. TARRANT: Right.

19 THE COURT: Okay.

20 MR. TARRANT: Yeah. Either way, we'd have to --

21 THE COURT: You need a minute to set that up?

22 MR. ANDERSON: Yes. I had the memory stick in an envelope in
23 here, and I just can't find it.

24 MR. TARRANT: I have --

25 MR. ANDERSON: So if you have the disc --

1 MR. TARRANT: Well, I mean, it's on my computer.

2 MR. ANDERSON: Or if you want to just play it, then that's
3 fine.

4 THE COURT: Can you hook up the speaker to it? I just want
5 to make sure we can hear it.

6 MR. ANDERSON: Yeah.

7 [Pause to set up audio]

8 MR. ANDERSON: Actually, would it be possible to take, like,
9 a three-minute men's room --

10 THE COURT: Sure.

11 MR. ANDERSON: -- break?

12 THE COURT: We'll take a five-minute break.

13 MR. ANDERSON: Okay.

14 MS. DEWITT AHERN: Thank you.

15 [Court in Recess at 11:16:16 a.m.]

16 [Back on Record at 11:24:54 a.m.]

17 THE COURT: All set?

18 MR. TARRANT: We are. I just -- I think the volume's good.
19 But let me know.

20 [Interview audio playing at 11:25:11 a.m.]

21 [OFFICER JEFFREY LATORES, Not Sworn.]

22 **RECORDED INTERVIEW OF OFFICER JEFFREY LATORES**

23 "BY MR. DONOGHUE:

24 "Q Today's date is -- or today is Thursday, November 5th, 2020.

25 It is approximately 4:56 p.m. My name is Lieutenant William

1 Donoghue, D-O-N-O-G-H-U-E. I'm a lieutenant assigned to the
2 Middlesex district attorney's office. I'm specifically tied to
3 the -- assigned to the homicide unit within that office. If we
4 could -- We're actually at the Winchester police station here
5 today. If we could go around the room and identify ourselves for
6 the record.

7 "MR. ABDELLA: Lieutenant Joseph Abdella. A-B-D-E-L-L-A.
8 Winchester Police Department. I'm the officer in charge of
9 detectives.

10 "MR. ANDERSON: Attorney Kevin Anderson. A-N-D-E-R-S-O-N.
11 Here for Officer Latores.

12 "A Patrolman Jeffrey Latores with Winchester Police Department.
13 L-A-T-O-R-E-S.

14 "Q We are here today to interview Officer Latores in regards to
15 the facts and circumstances surrounding an officer-involved
16 shooting that occurred in the town of Winchester on November 2nd,
17 2020. Officer Latores, I just want to let you know that, as I
18 consulted with or spoke with your attorney, -- just to get on the
19 record that you're here voluntarily, that you're not in custody,
20 you're free to leave at any time, as well as -- you had an
21 opportunity to talk with your attorney prior to the interview.

22 "MR. ANDERSON: Yes. And just for the record, I've spoken
23 with Officer Latores. He understands his Fifth Amendment rights,
24 his Article 12 rights. He's here voluntarily and freely
25 cooperating with this investigation.

1 "Q Okay. Thank you. So, Officer Latores, you are a patrolman
2 with the Winchester police?

3 "A I am.

4 "Q Okay. And how long have you been employed with the
5 Winchester police?

6 "A I'm in my twentieth year.

7 "Q Twentieth year. Any prior law enforcement experience?

8 "A I worked for two years at the Federal Reserve Bank --

9 "Q Okay.

10 "A -- prior to then becoming a police department employee.

11 "Q Okay. Twenty years is a long time.

12 "A Yeah.

13 "Q And did you have academy training?

14 "A I did.

15 "Q Okay. And describe that to me.

16 "A That was the Third Municipal police training academy, in
17 Weymouth. I started that on October 1st, 2001.

18 "Q And can you describe the curriculum in that training?

19 "A That was criminal law, criminal procedure, emergency driving,
20 firearms, -- It was a long time ago.

21 "Q Okay. When you say 'firearms,' would that include use of
22 force?

23 "A Use of force, correct.

24 "Q And you've been an officer here in Winchester for twenty
25 years?

1 "A In my twentieth year.

2 "Q In your twentieth year?

3 "A Completed nineteen just recently.

4 "Q You're in your twentieth year. And throughout that time, do
5 you or does the Winchester Police Department have in-service
6 training?

7 "A We do.

8 "Q Okay. And what types of in-service training do you have?

9 "A We have annual in-service training, which is 32 hours, which
10 is legal updates, topics from current events, de-escalation,
11 mental health, medical, you know, first-responder, that sort of
12 training.

13 "Q And is use of force included in that training, in-service?

14 "A It is.

15 "Q How about firearms training or prequal, prequalification?

16 "A Prequalification is annual until, this past year, it was
17 twice annually. And so we started doing it twice a year, last
18 year, I believe. And prior to that being a requirement, we did
19 our annual firearms training and qualification. Plus, we had the
20 sheriff's department trailer that played the scenarios, the
21 shoot/don't-shoot scenarios.

22 "Q Okay. Can you describe that a little further, that type of
23 training?

24 "A The trailer --

25 "Q The training, yeah, the shoot/don't-shoot.

1 "A Yeah. It was live-fire, you know, in an 18-wheeler trailer
2 with -- which is basically like a mobile shooting range. And on
3 the screen downrange there's projection of different scenarios
4 that the instructors would -- would provide to us. Some of them
5 were -- You had to hear if it was vocalized and maybe de-escalate
6 a situation and use force if necessary, but also all of our tools:
7 simulate using pepper spray or a baton or taser and a firearm.
8 But the scenarios ranged from school shootings to domestic
9 disturbances to, you know, bank robberies or jewelry store
10 robberies and anything in particular that police deal with.

11 "Q Sure. And when was the last time you've done that type of
12 training?

13 "A It's been a couple of years. We didn't have it last year. I
14 think we're scheduled to have it again.

15 "Q How often have you participated in that training, that type?

16 "A I would guess probably seven or eight times.

17 "Q Mm-hmm. So, directing your attention to Monday, November
18 2nd, 2020, this week, were you working?

19 "A I was.

20 "Q Okay. And what was your assignment and what was your shift?

21 "A I work 4:00 p.m. to 2:00 a.m. on the -- I'm in the 924 sector
22 in a marked cruiser.

23 "Q And geographically where is the -- What are your duties and
24 responsibilities, I should say, in that geographical -- What area
25 do you cover?

1 "A I cover just general patrol. And it's the Medford side of
2 town, is how I -- how I describe it.

3 "Q Okay.

4 "A The side of town that borders Medford and --

5 "Q And do you recall who else was working that night? What is
6 the -- What would be the shift or personnel complement for the
7 Winchester police on an evening shift?

8 "A Sure. Myself in the 925 sector, Officer Ellis in the 922
9 sector. Officer Meiler is in the 921 sector, Officer Riccio's in
10 the 929 sector, which borders my sector, and Sergeant Mawn is the
11 patrol supervisor.

12 "Q And how about in-house? Is there a shift commander? Is
13 there a --

14 "A There is. There is a shift commander. That was Sergeant
15 Hogan, that night.

16 "Q And at some point on Monday did you receive a call or did --
17 was there a call received that you were dispatched to?

18 "A Yes.

19 "Q And do you remember what time that was?

20 "A Shortly after 8:00, about 8:15.

21 "Q Okay. And what was the nature of the call? Can you tell me
22 what information you received?

23 "A That call came in as a possible break into one of the condos
24 at the Parkview complex at 200 Swanton Street.

25 "Q And did you -- were you directed to respond?

1 "A Yes.

2 "Q Was that your sector?

3 "A No.

4 "Q Okay.

5 "A It was Officer Riccio's.

6 "Q And were you directed to respond to that?

7 "A I was.

8 "Q And was that a break in progress, do you know, or possible?

9 "A It -- It was kind of unclear.

10 "Q Okay.

11 "A But it was -- it sounded a little more urgent than a past
12 break.

13 "Q Okay. And what led you to believe, if you recall, that was
14 more urgent?

15 "A Well, first of all, it was sent -- the dispatcher immediately
16 sent 929, myself, and 923 --

17 "Q So.

18 "A -- all at once.

19 "Q So the fact that there were three officers dispatched
20 simultaneously, does that -- what does that indicate to you?

21 "A That -- Doesn't necessarily indicate, but it suggests that
22 it's a little more of an urgent call.

23 "Q And are you familiar with that address?

24 "A I am.

25 "Q Okay. Can you describe the address, the building, and the

1 size and makeup?

2 "A It's -- Yeah. It's 200 Swanton Street. It's -- It's an ugly
3 stone -- I mean, I guess poured-concrete building with -- probably
4 built in the late '60s, early '70s, --

5 "Q Okay.

6 "A -- with tacky-colored windows. It's a large piece of
7 property with, I want to say, five floors, if I remember correct.
8 I don't know the -- I don't know how many people live there.

9 "Q So it's a large building?

10 "A It's a large building.

11 "Q Okay.

12 "A Our largest residential complex.

13 "Q Do you remember where you were when you -- when the call
14 came?

15 "A I was on Highland Ave.

16 "Q And what was your dispatch time from your location to -- from
17 Highland Ave. to --

18 "A From Highland Ave. --

19 "Q -- the -- to 200 Swanton Street?

20 "A Probably under four minutes.

21 "Q Okay. And when you arrived, were you the first officer, or
22 was anyone else there prior to your arrival or simultaneously?

23 "A No, I was -- Officer Riccio and Sergeant Mawn arrived before
24 I did.

25 "Q And did you learn anything about the call on your way there?

1 And did you make any radio transmissions?

2 "A Yeah. So, when the call came in for -- If I -- If I remember
3 right, the dispatcher immediately gave the unit number as the
4 address -- so there was a little confusion -- instead of giving
5 the -- instead of saying 200 Swanton Street. And then -- He said
6 326, which was the unit number. And that was clarified as we
7 still were at -- at the Parkview. I was at -- like, on Washington
8 Street, turning onto Swanton Street, when it dawned on me that
9 the -- that I was familiar with the address, 326.

10 "Q And --

11 "A I'm sorry; Unit No. 326 at Parkview. It was an address of a
12 person that I had dealt with in the past and I knew to have edged
13 weapons. So I got on the radio and reminded Officer Riccio and
14 Sergeant Mawn that the person that lived there was known to me to
15 carry edged weapons.

16 "Q And who was that person?

17 "A Tom Celona.

18 "Q And can you just tell us how -- what your experiences were?
19 You'd known -- You knew him to have edged weapons. How do you
20 know that?

21 "A I don't know the exact date, but approximately a year ago I
22 had a -- a call at the -- at 200 Swanton Street, the Parkview
23 complex, for a person that had confronted another resident there.
24 I think it was for -- he accused this other resident of breaking
25 into his apartment. And he had used a -- swung a hatchet at --

1 | threatened -- threatened the other resident with a hatchet. That
2 | resulted in his arrest and confiscation of the hatchet. And --

3 | "Q Did you participate in that call, or was that a call that you
4 | were aware of?

5 | "A No, I participated in that call.

6 | "Q Okay.

7 | "A I believe -- Actually, I believe I was the primary officer on
8 | that call.

9 | "Q Okay.

10 | "A During the course of that arrest, we ended up towing the --
11 | his vehicle back here. And when we did the inventory search of
12 | the vehicle, we also found kitchen knives, Cuisinart, I believe,
13 | kitchen knives that were kind of distinct on the floorboards next
14 | to the driver's seat in the -- in the car -- in his car.

15 | "Q And what -- When you say 'distinct,' what made it -- what
16 | made that stand out to you as something other than maybe just
17 | simply a kitchen knife in the car? Were there multiple knives in
18 | the car, or -- There's something that drew your concern?

19 | "A What -- What drew my concern about the --

20 | "Q Yeah.

21 | "A -- knives in the car?

22 | "Q You said that there were knives in the car. A lot of people
23 | can have kitchen knives in their car. Was there something --
24 | Obviously in the context -- There was a hatchet involved. But is
25 | there something more distinct? How many were there, and what dre

1 | your concern?

2 | "A I -- I don't remember how many there were.

3 | "Q Yeah.

4 | "A What -- What was distinct to me was the one that was, like,
5 | you know, within reach of the driver. Yes, I know people can
6 | transport knives in their vehicle. But usually they don't do it
7 | in a way that seems like it's menacing or threatening or easily
8 | accessible while you're driving. You don't normally need a --
9 | Well, I think this one that I'm thinking of is like a carving
10 | knife. You don't normally need a carving knife real close to you
11 | when you're driving. So that's what stuck out to me.

12 | "Q Okay. And did you have any -- on that date, did you have
13 | direct interaction with Mr. Celona?

14 | "A I did.

15 | "Q Okay. And did you place him under arrest?

16 | "A I did.

17 | "Q Okay. Any other observations about him that -- during that
18 | time that -- of note that actually contributed to essentially your
19 | state of mind and how you were going to approach this call that
20 | you were going to?

21 | "A Sure.

22 | "MR. ANDERSON: The hatchet call? Or is this --

23 | "Q Yeah. So, I'm just trying to --

24 | "MR. ANDERSON: You're saying general other calls?

25 | "Q Yeah. So, it sounds like there was a couple of instances.

1 But, you know, the information you gleaned from having that
2 interaction with him when there was a hatchet call -- And I think
3 there was another instance that you had with him that you could
4 tell us about. And maybe you could tell us about that. And then
5 I'm just curious about how that entered into how you formulated a
6 plan and what your idea -- what your -- how you've handled this
7 call tonight, --

8 "A Okay.

9 "Q -- if it had an influence on you.

10 "A Sure.

11 "Q Okay.

12 "A Sorry.

13 "Q So, did you interact with him another time?

14 "A I -- Another time, other than the hatchet?

15 "Q Other than the hatchet time.

16 "A Yes.

17 "Q And when was that? Tell me. Describe that.

18 "A A few weeks ago, I was the backup call for a new officer that
19 received a call on Forest Street for a suspicious person that had
20 been knocking or ringing the doorbell on the backdoor of a house.
21 And the residence answered and saw a person that ended up being
22 Tom Celona, who was kind of disheveled and barefoot and had cuts
23 and scrapes all over him.

24 "This is -- This address was not too far from the hospital,
25 Winchester Hospital. And the other officer, like I -- is a new

1 officer. She found him on Washington Street, around the corner
2 from -- from where the initial call came in. I was there. She
3 called off that she was off with -- on the radio that she was off
4 with that -- that party. I was there seconds after her, pulled up
5 behind her. And Sergeant Mawn arrived shortly after that.

6 "That night, I didn't recognize him as -- right away, that it
7 was the same person I dealt with --

8 "Q Yeah.

9 "A -- with a hatchet earlier. But he -- that night, he seemed
10 confused and/or deceptive. You know, we asked him what he was
11 doing, if he was -- if he had been up at -- at this house. He
12 wasn't really asking [sic] any -- any questions. He was kind of,
13 you know, staring at us and not really wanting to talk. But then
14 ultimately he said a name. I don't remember what the name was.
15 But it dawned on me when he said the name that I -- I know this
16 person and that he's -- I can't remember what his name is, but
17 it's not the name that he's giving us.

18 "And a couple seconds later, I -- he -- he -- I'm sorry. He
19 said that he had been in a car crash and he was looking for help
20 after the car crash. That's why he was up at the -- at the house
21 with a cut. But he said his name was something. And it dawned on
22 me that it was -- his -- his name was Tom. I remembered his first
23 name was Tom. And I said, 'That's not your name. Your name's
24 Tom. Well, what did you -- what did you say your last name was?'
25 And he didn't answer.

1 "And then I remembered that it was Tom Celona. I said, 'Your
2 name's Tom Celona. Didn't you just overdose?' because I had read
3 during the start of my shift that night that there was an overdose
4 earlier. I think it might have been my first night on, so I was
5 reading the logs for my days off. And I saw that Tom Celona had
6 overdosed. I couldn't remember if it was the same -- if he had
7 overdosed that day or if it was a previous day. You know, I
8 wasn't really looking at the dates when I read the log.

9 "The reason I asked him that was because of proximity to the
10 hospital. I thought maybe he had overdosed and either fled from
11 the hospital, went -- or checked himself out, or -- or was
12 released. And we -- we get that on occasion, that people are
13 released from the hospital, they don't have a ride, and they're
14 wandering off, not prepared, you know, for the elements.

15 "And he -- I asked to see his wrists he was wearing a
16 sweatshirt -- to see if he had a hospital bracelet on. And he did
17 not. Still trying to figure out what he was doing in the -- in --
18 you know, on other people's property. And he was asking -- I
19 mean, he wasn't really answering questions. He didn't know what
20 town he was in, initially, or what day it was. But he was able to
21 admit that his name was Tom Celona and said he was in a car crash
22 and he was trying to get back to his car.

23 "So, ultimately, I -- I was able to, you know, get his hands
24 behind his back and handcuff him. And then we searched him. And
25 in his sweatshirt pocket, in the pockets that go straight through

1 from one side to the other, pulled out a large, probably 12-inch,
2 like, carving knife again. And it was the same distinct style as
3 the one that he had had in the car. It's, like, -- It's a --
4 Trying to remember the -- the handles, trying to remember what
5 they're called. But they were -- it was one piece of steel, not
6 a -- didn't have, like, a plastic or wooden handle on it. You
7 know, kind of, like, stamped like they were hand-forged. So when
8 I say 'distinct,' that's what I mean. So I was --

9 "Q Okay.

10 "A -- remembering it. I'm sorry.

11 "Q And how did that situation resolve?

12 "A That situation resolved with his confusion. And, you know,
13 he had cuts on his legs. I think at first we thought he was
14 running through the bushes or something. But I actually went and
15 looked for his car around the neighborhood while Officer Valdario
16 and Sergeant Mawn stayed with him. But it ultimately ended with
17 us deciding that he needed to get looked at at the hospital, that
18 something wasn't right.

19 "Q When you say 'looked at,' are you talking drugs and alcohol,
20 are you talking mental health issue, or what?

21 "A We weren't sure. But a mental health evaluation, anyway.
22 So, he -- he agreed to do that.

23 "Q Okay. And then, just briefly going back: the hatchet
24 incident was a result -- what was the circumstance of that -- of
25 his arrest? What was he doing to cause him to be arrested?

1 "A He -- I was able to see the video of the Parkview. It's --
2 He raised a hatchet to other residents that he -- he thought broke
3 into his house.

4 "Q Okay. So, having that information in mind, you were -- those
5 incidences or the familiarity with him, that is what caused you to
6 put that out on the --

7 "A Right. And as a matter of fact, I told the new officer,
8 Valdario, a few weeks ago, you know, 'He lives in town. There's a
9 chance that we're going to run into him again. Next time you see
10 him, it'd be a good idea to put him in cuffs immediately because
11 it's twice now that -- you know, twice now that he's had these
12 edged weapons. And, you know, you don't want to get -- you don't
13 want to get hurt.'

14 "Q Yeah, is it -- I mean, quite plainly, what could happen?

15 "A Quite plainly, what could happen?

16 "Q Yeah. If he has a carving knife in his shirt and you don't
17 see it, --

18 "A Absolutely. One of us could get hurt or killed.

19 "Q So, directing your attention back to Monday night: you arrive
20 at the Parkway [sic]; who do you first talk to, what information
21 do you get, and what happens?

22 "A So, I pulled in. My key -- There's one of those stupid arms
23 that lets you into the property. And my keycard was missing from
24 the cruiser. So I -- I remember I got on the radio and yelled out
25 to the window, because I was afraid they were going to go in.

1 | 'Let --' You know, 'Let me in.' So they -- one of them came out
2 | and came over. A security -- It was a security guard, came over
3 | and opened the gate for me. Drew -- Officer Riccio and Sergeant
4 | Mawn were already out of their cruisers.

5 | "And as I pulled beside to park, I rolled down my window
6 | and -- and I said, 'Ryan, he's got a -- this -- this person has
7 | a -- You remember him. This person has to go into handcuffs.'
8 | And he said, 'Yeah, yeah, yeah. Right. I remember.' You know,
9 | and then -- and then I parked the car.

10 | "Q When you say 'this person has to go into handcuffs' --

11 | "A Like, 'Be careful. If -- If he has -- If we're going to talk
12 | to him, he needs to be restrained.'

13 | "Q And even more specifically, restrained for what reason? Just
14 | not -- If you had been in contact with him, to put him in
15 | handcuffs, would he necessarily be under arrest?

16 | "A No, no, no.

17 | "Q Immediately? Or were you --

18 | "A He'd be handcuffed for our protection.

19 | "Q Okay. So when you're out of the cruiser, do you personally
20 | ever talk to the security guard?

21 | "A I did not, no.

22 | "Q You did not. And that --

23 | "A Other than to say thanks, I think, you know, when he opened
24 | the gate.

25 | "Q When he opened the gate. And then at some point you guys

1 | muster up outside the building, exchange information, and develop
2 | a plan as to how you -- how you're going to approach -- What is
3 | your understanding of what the call was, what it could have been?

4 | "A What was my understanding?

5 | "Q Yeah, at the time, because I understand it was dynamic and
6 | there may or may not have been different things going on. What
7 | was your understanding? What information did you have, and how
8 | did that affect how you --

9 | "A Right. So, like I said, the -- the initial call was a little
10 | confusing. But I -- I -- we believed that there was a report of a
11 | break into a unit. When we got there, the dispatcher told us that
12 | it was a third party that called, which I believe ended up being
13 | the security guard that -- that made the phone call and said
14 | something about -- I think neighbors had said that wasn't so,
15 | that -- that maybe there wasn't a break. So it was kind of, you
16 | know, odd set of circumstances. You know, is there a break or
17 | isn't there a break? So, you know, I think we're a little more on
18 | alert just because of the confusion.

19 | "And we walked up into the vestibule of the lobby --

20 | "Q Can I ask you -- I'm sorry. Did you learn anything else
21 | about the reporting party and what he may have done, prior to
22 | going upstairs?

23 | "A I don't --

24 | "Q Not the reporting party, but -- You're going to a particular
25 | apartment. Did they -- Do you remember hearing any other

1 | circumstances about what had gone on prior to your arrival, in the
2 | building?

3 | "A You -- You mean Celona? What Celona --

4 | "Q Yeah, yeah. Was he doing any -- Did you learn, prior to --
5 | Was he doing anything prior to -- You know, at some point, there's
6 | a call to the department; but did they -- did Officer Riccio
7 | advise you, anything about what Celona or at that time --
8 | ultimately as Celona -- When you get to the apartment, did you
9 | know -- do you recall anything else that he might have been doing
10 | prior to your arrival?

11 | "A I'm just -- I don't remember; I'm sorry.

12 | "Q Okay. We'll get there. So, you got -- What's your plan to
13 | go up?

14 | "A We went into the vestibule, the main lobby. And another
15 | resident -- I'm assuming another resident -- it's a key to get
16 | in -- let us in, which was nice, because you've got to try 15
17 | different keys in order to get into the building.

18 | "As we went up the stairwell, Drew -- Officer Riccio said to
19 | me, 'I'll -- You know, I'll -- I'll have the -- I'll use the taser
20 | if you can be my lethal backup, my lethal' -- sorry -- 'my lethal
21 | cover.' And I said, 'Yeah, no problem.' And he said, 'I'll stay
22 | to your left. I know' -- You know, I draw right-handed. 'I'll
23 | stay to your left. You stay to the right.' 'Yeah. Okay. Yeah,
24 | sure.'

25 | "So we get up to the third floor. We walked the short

1 distance down to 326. And it's a wider main hallway in the
2 building. The -- It's outside perimeter of the building. So,
3 it's interior, just the other side of the stone wall. It's a
4 weird setup where the units have these exterior windows that
5 lead -- that are the windows from the bedrooms. But they look out
6 to the hallway, if that make sense, in my description of it. And
7 then there's smaller corridors that are perpendicular to the
8 hallway, that lead to the -- to two adjacent doors, the
9 adjacent -- adjacent units.

10 "Q And how -- Those small corridors, would you describe them as
11 far as length and widths heading to those doors?

12 "A You could -- You could fit two people side-by-side, walking
13 down the corridors. And maybe 15 feet from the main corridor,
14 main hallway, to the -- to the doors.

15 "Q Okay.

16 "A So when we got to 326, the corridor for 326, Drew -- like we
17 had kind of planned, Drew was on my left and I was on the right.
18 We listened for a minute. And Sergeant Mawn was behind us, the
19 corner, at the -- like, where you can kind of here see the window.
20 You can't see into it. You'd have to stand up on your toes to see
21 into the window. But I personally usually do that. I'll stand up
22 there and see if there's anything going on -- bedroom.

23 "Q Okay.

24 "A We listened. We didn't hear anything inside. So Drew
25 knocked on the -- on the door. And there was no response.

1 "Q Yeah.

2 "A Then he knocked on the door again. And then I think at that
3 point he said, you know, 'Police,' you know, 'Come to the door.'
4 And there was still no response. And I -- I glanced back at Ryan.
5 I says, 'You have any kind of noise coming from the -- the
6 window?' He just kind of, like, shrugged. And then Drew knocked
7 again, louder. And then we started hearing some commotion going
8 on in the -- in the unit. It's like rustling around, at first,
9 and then like maybe somebody's coming -- coming to the door and
10 stepping over some clutter or something. But it sounded more
11 distant, and it was getting louder and louder and more -- more
12 random.

13 "I remember Drew and I looking at each other like 'What's
14 going on?' It sounds like there's -- you know, there's somebody
15 else in there. So he starts banging on the door harder. I walked
16 over to the door. I -- I -- Sergeant Mawn yelled, 'Open -- Open
17 the door, Frank.' And I said -- instead of -- So I'm kind of
18 thinking, 'Why is he calling him Frank?' You know? And then I
19 banged on the door with my -- with my boot, you know, like,
20 louder. And I gave it good kicks and said, you know, 'Police.
21 Open the door.'

22 "And then the woman, the neighbor next-door, the adjacent
23 door, her door opened up. And she -- You know, she stuck her head
24 out and said, 'His name's Tom.' And, you know, I said, 'Okay.
25 Thank you.' And then -- And then she closed the door again.

1 "And Drew started banging harder and yelling, 'Tom, open the
2 door, open the door.' And the commotion kept going on and on.
3 And my thinking was maybe there was a break and there's somebody
4 in there and -- you know, with -- with the resident, you know,
5 wrestling around. Like, I don't know what's going on. But it
6 sounded like there was more than one person in there. It sounded
7 like they were brawling and they were just having a -- you know, a
8 huge fight.

9 "Q Was it loud at this point, or what --

10 "A It --

11 "Q -- was the volume of it, I should say?

12 "A It was loud. It was loud for --

13 "Q Any -- It was loud. Any statements? Any screaming, yelling?

14 "A From inside?

15 "Q From inside.

16 "A No, there was nothing, no -- no -- Couldn't hear any voices.

17 It was just like scuffling, you know, scuffling sounds. At that
18 point, I turned around to Sergeant Mawn and I said, 'We have to
19 get in there.' And he -- Then Drew said, 'I'm -- You know, I --
20 Want me to kick -- kick down the door? Want me to kick in the
21 door?' And he said, you know, bang -- not -- not yet knocking
22 yet. And so Drew just, you know, pounded hard on the door and
23 said, again, 'Open up.' And, you know, I looked back at Sergeant
24 Mawn like -- like, 'We got to get in there.' And --

25 "Q And what was your concern at that point? What was --

1 "A My --

2 "Q What was in -- What was -- I guess what was the purview of
3 the options that could have been going on? What was going in --
4 through your head and your state of mind as to why you would need
5 to get in there?

6 "A Well, my state of mind was that we were there for a -- a
7 break into the house. And I was afraid that somebody did break
8 into the house and that -- that the person in there needed
9 assistance, was fighting this person, the -- you know, whoever it
10 was that broke in. Or I was afraid that the resident, you know,
11 needed some sort of assistance, maybe was trying to harm himself.
12 Something like that.

13 "Q Sure.

14 "A And should I go on?

15 "Q Yeah -- no, yes.

16 "A So, it didn't -- Like, I -- I did notice that there was no
17 damage to the door. It didn't appear like there was any kind of,
18 like, forced entry prior to us getting there. But I have
19 experienced that building and know that the windows are easy to
20 get into from the outside. We've had breaks where people broke
21 into the house that way, and residents don't even know that
22 anybody was in their house.

23 "Q And climbed through that high hallway window?

24 "A Right.

25 "Q Okay.

1 "A So, Sergeant Mawn basically agreed, I think, that we need to
2 get into the -- into the unit. So Drew turned around and -- and
3 asked me if I was ready. You know, at this point I -- I had my
4 firearm out. And he turned and was making, like, donkey kicks
5 onto the door. And they're pretty heavy doors. And he wasn't
6 really budging, the first few times. While he was doing that, you
7 know, he was still yelling to open the door. I believe I did, as
8 well. And Sergeant Mawn was still kind of giving orders to open
9 up the door. The sounds from inside never stopped. You know, if
10 anything, they were getting more, like, hectic, more chaotic.

11 "Q When you say, I guess, 'even more,' particularly, describe
12 them. What sounds are getting more chaotic?

13 "A It was like -- It's hard to say, because after -- When I,
14 after, found out what he was doing, the sounds made more sense.

15 "Q And so --

16 "A But --

17 "Q You do have the benefit of context.

18 "A I -- But it was --

19 "Q So what were the sounds?

20 "A The -- It -- It was like flashing around. It -- It sounded
21 like maybe glass breaking or, you know, cracking. Not shattering.
22 It wasn't like somebody threw a baseball through a window or
23 anything like that.

24 "Q Okay.

25 "A So, after several attempts to -- With each kick, the door was

1 going a little bit more and more. I think Sergeant Mawn had asked
2 for -- I actually asked for another unit. I -- You know, I'm
3 like, 'We might need another guy here.' So I got on the radio. I
4 was like, 'Hey, start somebody else.' And Sergeant Mawn requested
5 the, you know, fire department come by. And --

6 "Q What was the fire department potentially for?

7 "A What was the fire department for?

8 "Q Yeah. Any injury?

9 "A Well, if -- if there was time, they could have assisted us --
10 assisted us getting into the building.

11 "Q Okay.

12 "A But also if there was any medical assistance that was
13 required.

14 "Q Okay. So he continues to kick the door.

15 "A He continues to kick in the door. He's making progress.
16 It's starting to kind of crack and not splinter but, like,
17 separate from the doorjamb. When he finally -- last kick was able
18 to get it open maybe a third of the way. And I remember
19 noticing -- I didn't check afterwards, but it appeared that there
20 was a piece of wood or something, a board that -- on the bottom of
21 it. I don't know if it was part of the door or if it was a
22 piece -- some wood that was used to barricade it in order to keep
23 it closed.

24 "It was dark. We couldn't see in -- in there. But it --
25 Drew had -- You know, I had -- I -- I was probably 5 feet from the

1 doorway. But I leaned towards the wall. So I was kind of pressed
2 up against the wall next to me, to kind of look inside of the
3 unit, and couldn't really see much. Drew used the flashlight on
4 his taser.

5 "Q So, specifically, were the lights in the unit on or off?

6 "A Off.

7 "Q Okay.

8 "A And I -- I wear a flashlight on, like, the lapel of my vest.
9 So I -- I kind of -- I turned it on and leaned in with it, to see
10 that the -- that the unit was -- was cluttered with I don't know
11 what: furniture, boxes, whatever. And -- but saw that there was
12 something going on in the corner, which would have been, like, the
13 left -- the -- furthest distance away from us, in the left part of
14 the -- the unit.

15 "Q Okay.

16 "A There are -- There's balconies in all those units with a
17 slider, slider doors. So it was over in the left corner, near the
18 sliding door.

19 "Drew went in first. And I went right behind. He stayed to
20 the left, and I -- and I took a couple steps to the right. We
21 saw -- You know, he was illuminated with the taser. We saw Tom
22 Celona on his knees, facing the -- I wish I could tell you, you
23 know, north, west, whatever, but I can't picture inside the
24 building where I'd be. But he's facing the right-hand side of the
25 right-hand wall.

1 "Q Is he --

2 "A So he was perpendicular to me.

3 "Q Okay.

4 "A Okay?

5 "Q So, if he's facing the wall, the slider would be on his
6 right?

7 "A The slider would be on his left.

8 "Q So he's facing -- So his -- You came in -- First and
9 foremost, if we're using the sliders as our backdrop, --

10 "A Sure.

11 "Q -- is he skewed to the left or the right of the sliders?
12 Where in the position along the slider wall would he be?

13 "A He's -- He's -- His left side -- His left shoulder would be
14 against the slider.

15 "Q Okay. And that was perpendicular to you?

16 "A Right.

17 "Q And he's facing --

18 "A -- my right.

19 "Q Okay.

20 "A Sorry.

21 "Q Yep, I gotcha. And --

22 "A He was on his knees. And he was staring at us. So he -- he
23 was looking -- I -- I felt like he was looking right at -- at me.
24 And he -- his arms were flailing. And he had two large knives in
25 his hand, a -- like a -- a chef's knife, like a 12-inch chef's

1 | knife, you know, wider blade, in his left hand. And I'm not sure
2 | of the other one, like if it was a carving knife like I -- like I
3 | had previously dealt with, with him. But it was a --

4 | "Q Like a kitchen knife?

5 | "A A kitchen knife.

6 | "Q Yeah.

7 | "A A large kitchen knife.

8 | "Q Mm-hmm.

9 | "A And he was stabbing the glass on the -- on the doors, on the
10 | sliding doors. Like, violently slashing at them, stab -- you
11 | know, flailing into the air and --

12 | "Q Did he make any statements?

13 | "A No, he didn't say anything.

14 | "Q Okay. And what happens next?

15 | "A So, when -- So I -- Like I said, I stepped to the right. He
16 | was to my left. There was an overturned table or a shelf or
17 | something that was between Celona and us, which I was, you know,
18 | thankful for because it created an obstacle between us.

19 | "Q And when you say 'overturned table,' -- You know, you had
20 | described the house in disarray. Is there a difference between a
21 | house in -- You know, you walked into a guy that doesn't keep a
22 | good house, it's messy, unclear? Or is -- When you say
23 | 'disarray,' is it -- Did the condition of the house tell you
24 | something different, particularly in a context where you heard
25 | this noise outside? When you looked at that, --

1 "A No, when I -- when I -- when I looked at the house, it -- it
2 was not normal. It wasn't -- The -- The house was in disarray,
3 with a table overturned. And, you know, I couldn't describe what
4 the clutter was. But it was stuff that we had to kind of step
5 over, to get to him.

6 "Q Okay.

7 "A So it suggested that there was something going. The --
8 The -- The -- The --

9 "Q Yep.

10 "A The commotion probably didn't begin when we got there but
11 likely was happening prior to us --

12 "Q Okay.

13 "A Does that answer your question?

14 "Q Yeah. There's overturned furniture. He's near the slider.
15 And he has two knives?

16 "A Right.

17 "Q What happens next?

18 "A So, he's -- he continues to thrash about, stab the windows,
19 and slash the -- the wall. Never takes his eyes off of us. Never
20 says a word. You know, I was the cover officer; I was trying not
21 to, you know, overstep Drew. Like, he -- he was the one that
22 began with the orders: you know, 'Drop the knives, drop the
23 knives.'

24 "Q So, what did Drew -- So what was Drew saying? So, we're
25 looking at this from your point of view. But also Drew is -- It's

1 his sector, and he was the lead officer, for lack of a better
2 term. What was Drew saying, to the best of your memory?

3 "A What was he saying to --

4 "Q To Tom.

5 "A He was --

6 "Q Mr. Celona.

7 "A He was ordering him to -- He had the taser on him with
8 both -- You know, the lasers were on; the two lasers that -- from
9 the taser were on. You know, I could see they were clearly on
10 Celona. He's yelling at him to drop the knives, drop the -- you
11 know, drop the knives, over and over again. He's repeating the
12 'drop the knives.' When I saw that there was no response from
13 Celona to Drew's orders, I also began yelling, 'Drop the knives,
14 drop the knives.'

15 "Q Did you feel that you had, based upon your prior interactions
16 with him, some insight as to maybe how to approach him,
17 specifically relative to -- Obviously he's armed. We talked about
18 your training and experience relative to how to escalate or
19 de-escalate a scene. What was going through your mind as to how
20 to approach this scene right at that moment?

21 "A Well, yeah, the -- the other two times that I dealt with him,
22 it was not as violent as this. He was not -- He was -- maybe
23 seemed a little confused but was much more composed. The time two
24 weeks prior when he had the knife in his sweatshirt, we talked to
25 him for an extended period of time prior to actually discovering

1 that he had the knife on him. And he wasn't threatening or
2 menacing in any way. He was just more, you know, not
3 a-hundred-percent with it.

4 "So, that night, Monday night, it was a lot different because
5 I had -- I had never seen him like that. I mean, yes, I -- I had
6 been concerned by -- by the knives and the -- the hatchet in the
7 past. But I had never seen him actually acting out that
8 violently, irrationally. You know, he -- he saw us. He -- I feel
9 like acknowledged we were there, because he actually was looking
10 at us. And -- But he continued his actions with the -- you know,
11 with the knives.

12 "So I continued to yell, you know, 'Drop the knives.' I -- I
13 don't know if at that point I called him by name. I'm just
14 telling him to -- to drop the knives. And he wasn't getting
15 anywhere. He wasn't -- He wasn't responding at all to -- to our
16 orders. Sergeant Mawn was also yelling for him to drop -- drop
17 the knives.

18 "And he -- At some -- some point, I -- I said to Drew, you
19 know, 'You're going to have to tase him.' And Drew reiterated
20 that. I think he said, 'I'm' -- You know, like, maybe with a nod,
21 but -- 'I'm going to have to taser him.' And he -- I was prepared
22 for that. He yelled, you know, like our -- our training: he
23 yelled, 'Taser, taser, taser,' three times and deployed the taser.

24 "And it -- it was effective, to the point where Celona fell
25 backwards. And, you know, I could see he was -- he was feeling

1 the shock, just because of the -- the way that his body was -- was
2 shaking. So when he did that, I immediately started to make a --
3 like, an arch to my right so that I could cover him while, you
4 know, something -- Sergeant Mawn would be able to come in and
5 handcuff him.

6 "Q And what was the -- Did you still have your firearm drawn?

7 "A I did.

8 "Q What was it -- While he had been tased, what was your -- what
9 was the position of the firearm?

10 "A My position, I was -- I was covering down.

11 "Q You were covering down. So it was extended in, like, a
12 low-ready?

13 "A Low-ready, right.

14 "Q Okay. And for -- What would that be? How would you describe
15 that? We're not on video. How would you describe the low-ready
16 position?

17 "A Low-ready, I'd -- I'd describe -- downrange, down to the
18 target but not quite on target. Is that sufficient?

19 "Q Yeah. So it's not pointing at him. You had it --

20 "A Down, like --

21 "Q -- essentially pointed to the ground?

22 "A Right, at the floor.

23 "Q But ready if you needed to use it?

24 "A Exactly. So --

25 "Q Maybe like -- Maybe a foot before -- at the ground before

1 him. Okay.

2 "A So, like I said, I started moving to the right so that I
3 could keep cover on Celona, knowing that Drew was going to
4 maintain control of the taser. And if he -- he was going to be
5 able to cycle another five seconds of the -- of the shock --

6 "But he never let go of the knives. So, he had both knives
7 in his hands the whole time, while he was shaking, you know, from
8 the response to the shock, and never let go of them. Once I saw
9 that, saw that there was no way we were going to be able to get
10 close enough to him to put handcuffs on him while he was still
11 holding those knives, I moved back.

12 "Q When you say 'no way you were going to get close,' what was
13 preventing you from getting close?

14 "A The -- The knives, the knives that were still --

15 "Q Right. And the potential for what?

16 "A Potential for him -- him to harm me or Sergeant Mawn, Officer
17 Riccio.

18 "Q Okay.

19 "A So I moved back to my previous position, because it was only
20 a few steps. But the reason I moved at all is because I didn't
21 want to -- I wanted to be perpendicular to Sergeant Mawn, as to
22 not have him in my line of fire while he was handcuffing him. So
23 I -- I moved back to my original location and said to Drew, 'Hit
24 him again with the taser.' But -- I'm sorry; I have to back up a
25 second.

1 "He -- After he felt the first initial shock from the taser
2 and he recovered, he sat -- he sat up. I think he was on his
3 knees and kind of, like, squatted. You know, shuffled on his
4 knees, a few feet forward -- still never let go of the knives --
5 and reached down to a blanket that was right in front of him and
6 pulled the blanket up to his -- like, his chin. The way to
7 describe it is like a matador, you know, with the kind of --
8 bullfighter. He was holding the blanket up to his chin, with the
9 knives sticking -- Like, one was, if I remember, perpendicular and
10 the other one was straight up-and-down.

11 "And as -- as he did that, in the same motion, he was
12 standing, rising up to his feet. So he was standing up with his
13 feet, holding the blanket over him, and holding knives. I was
14 concerned that the blanket was going to prevent another deployment
15 from hitting -- of -- of the taser from hitting him. Regardless,
16 I said to Drew, 'Hit him again.' And he -- he ended up deploying
17 the taser.

18 "And it didn't -- it didn't have the same effectiveness as
19 the -- as the first time. Shook a little bit. The only audible
20 sounds he made was, like, a grunt. You know, it shook a little
21 bit. I'm not sure if that was the previous prongs that were in
22 him. But it -- I -- it -- it didn't have the same effect as the
23 first ones did. He kept coming, kept walking towards us.

24 "So -- And at that point, I -- I was still -- I was on-target
25 with him. And --

1 "Q And what was the distance? So, he's standing out, the
2 taser's been deployed.

3 "A Yep.

4 "Q What is the distance between Drew and Mr. Celona and
5 yourself? And what were your concerns about those distances?

6 "A When -- When we -- Where we had set up, we were about 20 feet
7 from him. That's uncomfortably close to -- for me to be near
8 somebody with a -- with knives.

9 "Q Do you base that on experience or training and experience?
10 What do you base that on?

11 "A What I -- Probably one of the things that I can absolutely
12 recall from the academy is the 21-foot rule, where anybody -- any
13 subject with a knife that's 20 feet away from -- 21 feet away from
14 you can be on top of you before you can draw your fire -- your
15 firearm.

16 "Q Were you -- Was he closer to you or was he closer to Drew?

17 "A Drew and I were side by side.

18 "Q Okay.

19 "A He -- We were probably -- He was probably between the two of
20 us, you know, 20 feet away.

21 "Q Okay.

22 "A And he -- So when he got up, when he first got up, you know,
23 he'd taken -- he was only a couple -- maybe 18 feet. You know,
24 we'd only moved a couple of feet after the first deployment. And
25 he started moving towards us. Like I said, I was concerned about

1 the blanket getting in the way of the taser.

2 "Q And can I ask you, just to back up a little: do you remember
3 what he was wearing when you first got in there?

4 "A No. A -- A -- A T-shirt, but --

5 "Q And how would you describe his height, weight, and build and
6 fitness level?

7 "A Average. He's maybe 5'8", 5'9". Average build. Wouldn't
8 say thin, wouldn't say heavy.

9 "Q Okay. So what happens next?

10 "A So, when I -- So, when -- when the second deployment
11 failed, -- I -- I know that Sergeant Mawn doesn't carry a taser.
12 I took my hand -- my left hand off my firearm, looked back at
13 Sergeant Mawn, said, 'You don't have a taser.' I drew my taser,
14 handed it to him, and said, 'Fire' -- said, 'Hit him again.'

15 "And at that time, he was creating -- he was moving in on us.
16 He was getting -- you know, he was getting closer. So --

17 "Q And were you simultaneously -- He's advancing. Are you
18 simultaneously moving back?

19 "A Not at -- Not quite yet.

20 "Q Okay.

21 "A So, when I -- when I handed the taser to Sergeant Mawn and
22 said to hit him again, we hadn't started moving. But once I
23 looked back to Thomas, to Celona, like, a fraction of a second, he
24 had been making ground on us.

25 "So I said, 'Back up, back up,' you know, 'We got to back

1 up.' And I started, like, I guess, pushing them with my body. I
2 was the furthest into the unit. And I was concerned for Drew
3 because he had the taser. And, you know, he deployed it, so he
4 was essentially naked. He -- You know, I -- I hoped that he
5 wasn't going to draw his firearm while I was kind of backing up to
6 him. And --

7 "Q Would that be a cross-fire concern?

8 "A It would create a cross-fire, yeah. So -- But I -- I
9 remember consciously thinking, 'I got to get -- These guys have to
10 get out before me, because I'm covering them.' And, you know,
11 I'm -- It -- So I kind of, like, made sure that -- that I saw them
12 moving out of my peripheral, that they were moving behind me. And
13 then I was backing into them as I was backing up, yelling, you
14 know, 'Back -- Back up, back up. We got to get out, we got to get
15 out.'

16 "He keeps coming. I'm yelling, 'Drop the knives. Drop the
17 knives.' Never says a word. Keeps coming towards us. I'm
18 starting to get concerned about, like, the choke point. It's that
19 narrow little area that is the entrance to those units.

20 "Q So as you're exiting the apartment, you're backing out, not
21 yet at the door. How would you describe that? Is that a hallway,
22 or is that a --

23 "A I guess you'd call it a hallway.

24 "Q Okay. And what's the width of that area?

25 "A Probably, if I'd have to guess, maybe, like, less than -- I

1 mean, maybe half the -- or two-thirds the width of the outside
2 corridor.

3 "Q Okay.

4 "A So it's similar than the --

5 "Q So, in numbers, what would you think? Approximate.

6 "A Maybe 5 feet.

7 "Q Okay. So, you're backing out. Does the order of how you
8 came in -- Drew was leading.

9 "A Right.

10 "Q How -- What is the order of officers exiting?

11 "A So, exiting was, I -- I believe -- The only reason I -- I
12 believe this: I was last, exiting last. Drew, I believe, was in
13 the middle. And Ryan was right behind me. When we got to the --
14 close to the exit, my concern was I -- I want to find the exit. I
15 don't want to end up in the bedroom, because the bedroom is behind
16 us.

17 "Q Can I ask you, as you're talking -- You've been to this
18 building?

19 "A Numerous times.

20 "Q Okay. And are you familiar with the layouts of these
21 apartments?

22 "A Yeah. There's a few different layouts. But I think that I
23 can -- I think I've seen all of them.

24 "Q Okay. And are they -- What's the size of the units,
25 generally, regardless of the specific layout?

1 "A Maybe 900 square feet or --

2 "Q And you're familiar with that, as you're backing out?

3 "A Right.

4 "Q All right.

5 "A So, as we're backing out to this kind of chokepoint of the
6 hallway, like I said, I was concerned that because of the clutter
7 and the door being damaged, not open all the way, -- that I was --
8 we were going to accidentally -- or me, just myself, accidentally be
9 backed into the bedroom because I missed the exit.

10 "And at some point I kind of, like, looked back, just to
11 check my bearings. And Ryan had stumbled over. There was, like,
12 a metal stool. And I realized at that point that Celona must have
13 used or may have used that stool as a barricade to close the -- to
14 block the door. And I realized that we were close to the door.
15 And I thought right there, when he stumbled, 'Shit, I don't want
16 to end up in a pile here. I -- I don't want to be on the top of
17 this -- this pile, underneath these two guys, with him coming at
18 us and -- and --'

19 "Q And at that point, what was the speed at which -- with which
20 he was approaching, Celona was approaching you?

21 "A He -- He wasn't running. It was like a -- a walk, you know,
22 like a slow pace. But he had the luxury of walking forward; and
23 we had to walk backwards.

24 "Q And what was the lighting condition?

25 "A Still dark. At -- At that point, my -- my light -- my

1 flashlight wasn't on. And the taser, I don't remember if Drew
2 holstered it or what he had done with it. But the flashlight on
3 the taser was ineffective.

4 "Q Okay. And what happens next?

5 "A So, that was the first time -- At the point when -- when Ryan
6 tripped over the -- the stool was first time I started to get a
7 little fearful for my life, my safety, and theirs. Like I said,
8 my -- I don't know how quickly it happened, but I just kind of
9 pictured us tripping over each other and having, you know, a pile
10 of us and having him come right down on us with the -- with the
11 knives, especially after seeing the way that he was violently
12 attacking the -- the -- the slider, you know.

13 "Fortunately, Ryan didn't trip. You know, he just stumbled
14 over the -- a -- a little bit, was able to get his footing and
15 exiting out the door. So he went out, Drew went out, I went out.

16 "And I'm still on-target on -- on Celona, you know, pleading
17 with him to drop the knives. And this is where, like, everything
18 kind of sped up, I guess, for me, my -- for my -- for my thought
19 processes. We were really close to the exit. And I -- I had just
20 crossed over the threshold, leaving the -- leaving the unit. And
21 he was right -- you know, right at the threshold.

22 "And my first thought was the woman in the hall, you know,
23 his neighbor next-door that came out to tell us what his name was.
24 I don't know why, but I just pictured her opening the door, like
25 people sometimes do, without thinking, do some silly things, and

1 | him either rushing in after her or slashing at her or grabbing
2 | her. You know, backing out, you're like, 'Please don't open that
3 | door,' you know, as I'm yelling at him to -- to drop -- drop his
4 | knives.

5 | "And he -- So I'm in the corridor now. And my -- I -- I kind
6 | of took over where Drew was when we initially went in: I was on
7 | the left-hand side. So, my left shoulder was on the left -- on --
8 | on the wall of the corridor, adjacent to the neighbor's door.
9 | Okay?

10 | "And he was still coming, not fast. And I remember thinking,
11 | 'Just go back inside.' You know, if he goes back inside, then we
12 | have a little bit of time to regroup here and we can figure out,
13 | you know, what to do. 'Just go back inside.' I'm thinking this
14 | while I'm yelling, 'Drop the knives. Drop the knives.' And I'm
15 | thinking, 'What other options do I have -- do we have here?'

16 | "I feel Drew's shoulder on my shoulder. So Drew -- I believe
17 | it would be his left shoulder, pressed up against my right
18 | shoulder, because of -- because I have my firearm up. And I
19 | thought, 'We can retreat. We can back out of this corridor. And
20 | then if I do that, there's going to be two ways that he can go, if
21 | the woman -- if the neighbor doesn't open the door.' Two ways he
22 | can go: he can either go left or right.

23 | "And there's people that live here. You know, there's --
24 | there's no way I can allow that. It's a -- The building's curved,
25 | so you can't see all the way down the corridor. It's like a

1 horizon on its side, where it's -- it bends and you can only see,
2 you know, I don't know, 20, 30 feet on either way. But somebody
3 could be 31 feet around the -- around the --

4 "Q So you're saying that an additional civilian could be
5 there --

6 "A Correct.

7 "Q -- without you seeing them. They could be actually much
8 closer, just because of the way the --

9 "A Right.

10 "Q -- curve is?

11 "A They could be -- They could be right around the corner. And
12 then one step, you don't see them; and then one -- one other step,
13 you see them. So my concern was if we keep retreating here he can
14 go out either one of these hallway -- You know, whichever way
15 we're -- we're not, he's going to go, I assumed.

16 "If I -- If I retreated left down the hallway, he was going
17 to go right. And if I -- if that happened and there happened to
18 be another resident coming along the hallway, I might have to
19 shoot this guy in the back and/or I might have to take a shot that
20 I don't want to take because there's a resident, you know, there's
21 a -- a civilian on -- on the other side of him.

22 "So I thought, 'This sucks. I'm kind of stuck.' And he --
23 you know, he's standing there with the knives. And I'm pleading
24 with him, 'Drop the knife. Drop the knife. Drop the knife.' I'm
25 still backing up a little. I felt Drew roll away from me. So for

1 a minute, I felt like I was by myself. And --

2 "Q And this hallway is --

3 "A In the -- In the corridor.

4 "Q You were in the small hallway?

5 "A Small hallway, yeah.

6 "I have five kids. I thought of my kids. Thought of my
7 wife. And I'm like, 'I can't with a -- with a good conscience let
8 him pass me, because he's going to hurt somebody else.' So, you
9 know, I have to deal with it there.

10 "Q Well, and in that moment you are in fear for --

11 "A In that moment, I was in fear for my life. And -- Excuse me.
12 And I remember, you know, training. They say everything kind of
13 slows down and speeds up, I guess, at the same time. And I was
14 saying to him, 'Drop -- Drop the knife.' I think I called him by
15 name: 'Tom, drop the knife.' I said -- I remember saying, 'I
16 don't want to shoot you.' Like, those are the words that came out
17 of my mouth. And my brain is saying, 'You're going to have to
18 shoot him. You're going to have to shoot him,' and then, 'Shoot
19 him.'

20 "And then I pulled the trigger. He dropped to his knees and
21 slumped forward. His eyes never came off me, just staring at me,
22 as he slowly -- knives -- knives were still in his hand as he
23 slowly moved forward. It was like, you know, he -- he -- his head
24 was going down but his eyes were following me. While that was
25 happening, I'm looking him right in the eyes. I'm like, 'Drop the

1 | knife. Drop the knife. Drop the knife.' He never dropped the
2 | knife until his head hit the floor. And then the knife released
3 | from his hand.

4 | "I -- I said, you know, 'Shots fired,' on the radio. I don't
5 | think it went through. Usually I wait a couple of seconds to
6 | talk. And I -- you know, I slid the knife -- this was the knife
7 | in his left hand, the chef's knife -- slid the knife, with my
8 | foot, back to Ryan. Picked it up -- I said, 'Drew, we need to
9 | cuff. And watch out for the knife. He still has a knife.' I
10 | stayed covering him.

11 | "Drew kind of reached in, grabbed his wrist, pulled him a
12 | couple of feet, and then grabbed his shirt or his shoulder and
13 | pulled him out to the main hallway, dragged him out to the main
14 | hallway, handcuffed him. Still -- I was still covering him until
15 | he handcuffed him. As soon as he got the cuffs on him, I put my
16 | gun down by my side.

17 | "And he -- Drew lifted his shirt. I saw the bullet hole.
18 | Didn't believe it. And I was kind of shocked for a second. I
19 | said, 'Where did I hit him?' He said, 'Dead center.' And then
20 | Drew immediately started CPR. I wandered off, maybe 10 feet down
21 | the hall, caught my breath. At some point, -- I don't know who it
22 | was -- said, 'Put your gun away,' and I put my gun in my holster.

23 | "Hyden Meiler showed up. And he said to me -- he put his
24 | hand on my shoulder and said, 'Are you okay?' I said, 'Now I'm
25 | fine. Go help him' -- Drew. And he went over and -- and helped

1 | Drew with CPR. That was it.

2 | "Q So, at the moment that you discharged your firearm, what was
3 | the distance between you and Mr. Celona?

4 | "A 6 to 8 feet. It's easier with social distancing to know what
5 | 6 feet is nowadays.

6 | "Q And you processed a lot in your brain, as you just told us.
7 | What was the -- When you got -- When he got to within that 6 to 8
8 | feet, as you described, you were giving verbal commands. What is
9 | the timeframe --

10 | "A Seconds.

11 | "Q -- before you discharged? Okay. And then going back to --
12 | Let's start when you first enter the apartment or the unit and you
13 | identify Mr. Celona on the other side when you enter. What is
14 | your estimation of the duration of time between when you first
15 | engaged him, when you breached the door, and when you end up back
16 | at the -- the front door and you ultimately discharge your
17 | firearm? What do you think that timeframe is?

18 | "A So that's -- So -- So, from the time we got into the unit?

19 | "Q Yes, when you were actually dealing with him and giving him
20 | those commands.

21 | "A I don't know. Maybe four minutes?

22 | "Q Any -- Did -- Outside of the woman next-door -- had opened
23 | her door, any other civilians in the hallway at that time, do you
24 | know?

25 | "A Not that I saw.

1 "Q And then you were in the hallway, other officers are
2 arriving. Where did you go immediately after that?

3 "A Officer Ellis arrived on scene and Lieutenant
4 O'Connell [phonetic]. I don't remember the order. I think it was
5 in that order. And Lieutenant -- Somebody -- Somebody said to
6 bring me back to the station. So Officer Ellis drove me back to
7 the station. And from -- from there, I ended up going to Lahey.

8 "Q And at some point did your sergeant or lieutenant secure your
9 gun belt and your firearm?

10 "A Yes. When I got back to the station, they -- they
11 relieved -- took my -- my whole -- my whole duty belt.

12 "Q I'm --

13 "A Officer Riccio handed me my taser at -- still on-scene. And
14 at the Parkview, I put it back on the belt.

15 "Q And did Mr. Celona make any statements at any time during
16 this incident?

17 "A The only audible sound that came out of his mouth was the
18 grunt when he initially was tased. It was -- It wasn't even a
19 reaction. That was it.

20 "Q Okay -- None at this time.

21 "MR. ANDERSON: I don't have any questions. I think you gave
22 a very good narrative.

23 "Q Just give me one second. Make sure --

24 "MR. ABDELLA: Can I interject?

25 "A Of course.

1 "BY MR. ABDELLA:

2 "Q When you handed Sergeant Mawn your taser --"

3 THE COURT: Do we know who's talking here? It says

4 "unknown."

5 "Q -- and you're retreating backwards, did you anticipate --

6 MR. TARRANT: I believe it's Lieutenant Abdella.

7 THE COURT: Thank you.

8 "Q -- that he would move to the head of the stack and use it?

9 Or was it not clear? Was there a clean line of sight?

10 "A No, when -- when I -- when I handed Ryan the taser, I thought

11 that there was going to be time for him to use it right then and

12 there. But that wasn't going to work out, because he had already

13 started moving towards us.

14 "Q So this was an evolving plan?

15 "A Right.

16 "Q You gave -- You tried an option?

17 "A I -- I thought -- I wasn't confident in it because of the

18 blanket. But I thought, 'What the hell, let's try the taser. A

19 couple -- You know, we have two more shots, two more cartridges.'

20 "Q Right. Just enough time to try it. The presence of mind to

21 think of options in a very short span.

22 "A Well, I mean, yeah. For a minute, I thought -- When we first

23 got in there I thought, you know, maybe we could use pepper spray.

24 But I don't -- I don't want to spray pepper spray where it's going

25 to affect us and start wrestling with a guy with knives. That's

1 | stupid. So --

2 | "Q The only thing I would -- If we could just go over -- If we
3 | could just -- We had talked about when you first entered the
4 | apartment. And then draw -- Just we had kind of an outline here.

5 | "A Yep.

6 | "Q Your position in the -- Your -- The officers' position and
7 | where Mr. Celona was -- And, again, it's not to scale; we
8 | understand that. But just generally to give us an idea of
9 | where --

10 | "A When we first walked in?

11 | "Q When you first walked in, and then the second positions,
12 | where you were in the hallway, where Mr. Celona was, and the other
13 | officers, at the time of the discharge.

14 | "A Okay. [Marking diagram.] Should I just use initials?

15 | "Q Yeah. That's perfect. So -- Yep. And then where you and
16 | the other officers were.

17 | "A [Marking diagram.]

18 | "Q Okay. And then maybe we can kind of mark this as Number 1,
19 | where you first see him. And then what was the position of the
20 | officers, yourself, and then Mr. Celona at the -- toward the end
21 | of the event?

22 | "A [Marking diagram.] I don't know where.

23 | "Q Yeah, so he was behind --

24 | "A That makes sense, where you're --

25 | "Q Beautiful. So, if you'd -- Yeah.

1 "A [Marking diagram.]

2 "Q Okay. And maybe we can just -- That door was closed, right?

3 "A Yeah, I'm sorry; no.

4 "Q Okay, no, that's okay. Just want to be clear. And then this
5 is the main hallway, right here. Perfect. Okay. That gives me a
6 better idea. So if you could just date and sign it. Date and
7 time.

8 "A [Signing.] Sorry; what's today, again?

9 "Q Today is --

10 "MR. ANDERSON: The 5th.

11 "Q -- the 5th.

12 "BY MR. ANDERSON:

13 "A Oh, sorry.

14 "Q No, no, no. Do you want to just put it where the turned-over
15 table and stuff was, too, or whatever obstacles were in there?

16 "A [Marking diagram.]

17 "Q And you wrote "table" and a rectangle. And that was actually
18 upside down or sideways or something? Okay.

19 "A I -- I don't know, because it was flat like a tabletop. And
20 it was at a slant.

21 "Q Okay.

22 "A Make sense?

23 "Q Sure.

24 "A I think, like, somewhere over there was a stool.

25 "Q And that stool was on the ground? That was the one that

1 Sergeant Mawn tripped over as he was --

2 "A Right.

3 "Q -- walking backwards?

4 "A Right. And then there's, like, assorted clutter/debris.

5 "BY MR. ABDELLA:

6 "Q And what is this room here?

7 "A I --

8 "Q If you know.

9 "A This is the bathroom.

10 "Q Okay.

11 "A This is the bathroom. This would be the bedroom.

12 "Q Okay. If you could mark it.

13 "A [Marking diagram.]

14 "Q And then this here, if you recall what that is. Okay.

15 "A And this is, like, a galley kitchen. I don't even remember
16 seeing it. I know they all -- but --

17 "Q Okay.

18 "A -- I don't know.

19 "Q I don't have anything else.

20 "MR. DONOGHUE: I don't have anything else.

21 "MR. ANDERSON: I don't have anything else."

22 [End of Interview at 6:05 p.m.]

23 THE COURT: Okay.

24 MR. TARRANT: So, during that, I did hear from Mr. DiChiara;
25 he confirmed three o'clock.

1 THE COURT: Okay. Other than him, is there any other
2 evidence that you want to offer?

3 MR. TARRANT: No, Your Honor; thank you.

4 MR. ANDERSON: No.

5 THE COURT: Attorney Dewitt?

6 MS. DEWITT AHERN: Judge, I do have medical records. I don't
7 know if they're available. I would submit I have -- They're
8 medical records starting from December of last year until,
9 actually, November 2nd, which is included in the records of the
10 medical examiner. They cover the timeframe that's been discussed
11 throughout this whole --

12 THE COURT: So we -- I have them, or I don't?

13 MS. DEWITT AHERN: No. I have -- I believe some were
14 subpoenaed in. I'm not sure if they arrived yet. I have some
15 that I've obtained through the family.

16 THE COURT: Okay.

17 MS. DEWITT AHERN: I don't know what Mr. Tarrant or Mr.
18 Anderson's feeling is about that. They're not -- They haven't
19 been subpoenaed into The Court.

20 THE CLERK: Well, they've been subpoenaed but not brought in.

21 THE COURT: Yeah.

22 MS. DEWITT AHERN: I have copies to provide.

23 THE COURT: If you have copies of what you think is coming
24 from the hospital, that's sufficient for me.

25 MS. DEWITT AHERN: I think it's pretty clear. And I do --

1 And part of my belatedness this morning was trying to make extra
2 copies. I do have two copies for counsel, if they want to --

3 THE COURT: Okay.

4 MR. ANDERSON: And I would just object on a relevance basis.

5 THE COURT: Look, I think it's relevant. How much weight I
6 give to it --

7 MR. ANDERSON: Okay. No, this is a unique procedure; I
8 understand it.

9 THE COURT: This --

10 MR. ANDERSON: So --

11 THE COURT: Fortunately for me, there are no rules of
12 evidence, there's no right to appeal, so I think I have complete
13 discretion. So I think I want to look at them. But, again, what
14 weight I give them is a different story.

15 MS. DEWITT AHERN: Judge, and I would submit the medical
16 records that I have.

17 THE COURT: Okay. So that's going to be Exhibit --

18 THE CLERK: 32.

19 THE COURT: 32.

20 **[Medical Records Marked as Exhibit No. 32]**

21 [Pause]

22 THE COURT: Okay. Attorney Dewitt, is that it for --

23 MS. DEWITT AHERN: Yes, Judge, that would be it. I'm just
24 getting them out for The Court and the clerk so that -- and make
25 sure they're organized, somewhat.

1 THE COURT: Okay.

2 MS. DEWITT AHERN: Hopefully organized.

3 THE COURT: So, Attorney Anderson, -- So, did you want to
4 submit something? It's completely up to you. I'm not requiring
5 anything. If you want to submit something in writing, you're free
6 to do so. If you want to make an argument, you can do that.
7 Whatever you want to do. I'm -- It's --

8 MR. ANDERSON: I would like to make an argument, but it's
9 just a little bit awkward because we haven't heard from DiChiara
10 yet. So that's why if I could just submit something in writing
11 with kind of the basic legal principles -- I think he's going to
12 talk about Graham vs. Connor and reasonableness, "Fourth Amendment
13 is the standard," just kind of what the rules of procedures
14 discuss and how it fits into the facts here.

15 THE COURT: Okay. Okay. So you'd prefer to do that in
16 writing after he testifies? Or orally? It's up -- Because what
17 I'm thinking, at this point -- I don't think it makes any sense
18 for everybody to sit around here until three o'clock.

19 MR. ANDERSON: Okay. And that's my understanding, is that
20 we're all going to --

21 THE COURT: I'm going on -- I'm going to go -- I'm going
22 north --

23 MR. ANDERSON: Okay.

24 THE COURT: -- to either Newburyport or somewhere quiet, and
25 I'm going to log onto the Zoom, let him testify on Zoom. You can

1 all question him. Is that all right?

2 MR. ANDERSON: I can do that; I can make an argument on Zoom,
3 after that.

4 THE COURT: That's fine.

5 MR. ANDERSON: Okay.

6 THE COURT: That's fine. Does that work for you?

7 MS. DEWITT AHERN: That's fine with me, Judge.

8 THE COURT: Yeah, I don't -- just don't see any reason to
9 wait here for 2 hours and 15 minutes. Everybody can go find a
10 comfortable spot. And the Celona family is certainly welcome to
11 log on. Nobody else, but just them. Okay?

12 MR. TARRANT: And will the clerk be sending us the link?

13 THE CLERK: I just -- Yeah, I'll give it to you. I just gave
14 it to you.

15 MR. TARRANT: Oh, okay. Great.

16 THE CLERK: I mean, I can give it to you right now.

17 [Pause to receive Zoom link]

18 MR. TARRANT: Thank you, Your Honor.

19 THE COURT: I want to thank all of you very much for a very
20 well presented case and very professionally presented case. And I
21 appreciate everybody's cooperation. And I appreciate the Celona
22 all being here today. All right.

23 MS. DEWITT AHERN: Thank you, Your Honor.

24 THE COURT: Thank you all very much.

25 [Court in Recess at 12:41:00 p.m.]

1 [Back on Record viz Zoom at 2:58:42 p.m.]

2 [Case Called]

3 [Appearances Noted]

4 THE COURT: So, A.D.A. Tarrant, did you want to inquire? Or
5 did you want Mr. Anderson to inquire?

6 MR. TARRANT: I was anticipating that I would.

7 THE COURT: Okay. So why don't we swear in -- Is it Officer
8 DiChiara?

9 THE WITNESS: Yes, sir; yes, Your Honor.

10 THE COURT: Okay.

11 [OFFICER CHARLES DiCHIARA, Sworn.]

12 THE CLERK: I'm sorry, Judge; what was the first name, just
13 so I can write that he's here?

14 THE WITNESS: Charles, C-H-A-R-L-E-S.

15 THE CLERK: Thank you. And I have the last name. Thank you.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Mr. Tarrant.

18 MR. TARRANT: Thank you.

19 **DIRECT EXAMINATION OF WITNESS, OFFICER CHARLES DiCHIARA**

20 BY MR. TARRANT:

21 Q So, I guess, sir, I -- you -- I think you were just asked,
22 but can you go ahead and just say the name, spelling both your
23 first and last name?

24 A Yes, sir. My name is Charles, middle initial M as in
25 Michael, and my last name is DiChiara, D-I capital C-H-I-A-R-A.

1 Q Sir, are you employed?

2 A Yes, sir.

3 Q Where do you work?

4 A I work for the city of Waltham, police department.

5 Q And how long have you worked for the city of Waltham, police
6 department?

7 A I've been a police officer for 33 years. I was in the North
8 Andover police department for 8, and I've been with Waltham for
9 about 25.

10 Q And what's your current assignment with the Waltham police
11 department?

12 A I am currently assigned to the NEMLEC, Northeast
13 Massachusetts SWAT team. And I'm also the training officer for
14 the police department, overseeing police department training for
15 the police department, veteran officers and new officers.

16 Q So how long have you been the training officer for Waltham?

17 A I've been fulltime training officer for about six years now.

18 Q And prior to that, what was your assignment with the Waltham
19 police department?

20 A I worked nights, on patrol.

21 Q And, sir, can you just describe your educational background?

22 A I went through the North Andover school systems, graduated in
23 1986. I attended college for one year, Salem State. Then I took
24 a break and got onto the police department. And then I went to
25 college part-time, over the next ten years. I eventually got a

1 | bachelor's degree from Springfield College. That was my
2 | highest-level education.

3 | Q And can you just describe your duties and responsibilities in
4 | your current assignment as the training officer?

5 | A My current assignment is: I oversee training for the -- We
6 | have a 160-man police department. So I oversee training for the
7 | veteran officers, veteran patrolman, all the way up to
8 | supervisors, in areas of firearms, self-defense, patrol
9 | procedures, also the field training officers' program. And I also
10 | assist at the police academy, training new officers.

11 | Q And can you describe what specialized training you've had as
12 | it relates to firearms, defensive tactics, and use of force?

13 | A My -- My training is ongoing. I -- I've received probably
14 | thousands of hours in specialized training. I -- I started
15 | initially with a basic firearms course, which is 40 hours, and a
16 | basic defensive tactics course, which is 40 hours. And then
17 | I've -- I've continued on with my training for the last 25 years.
18 | So I've been to a 160-hour, one-month, advanced defensive tactics
19 | program. I've trained with the Safariland training program. And
20 | I've trained -- My firearms training is ongoing, usually 40 -- at
21 | least 40 hours per year.

22 | Q Do you have any certifications relative to being a training
23 | officer for police officers?

24 | A I do, sir.

25 | Q And what are those?

1 A I am -- I've worked for the municipal police training
2 council, as well, which is the state organization that oversees
3 police training. And I am currently a level four defensive
4 tactics instructor, a level four firearms instructor -- and patrol
5 procedures. And I'm also a master instructor for the Safariland
6 training group, which is a -- which is an international police
7 training group.

8 Q Okay. And you say you're a level four instructor; can you
9 just describe what the different levels are and what they mean?

10 A Sure. A -- A level one is a basic instructor. A level one
11 instructor, you go to the school and you're able to train other
12 police officers within -- within your own police department. A
13 level two instructor means you can train officers at your own
14 department but also assist helping at the police academy. And a
15 level three instructor means you can do the other levels, but you
16 can also be a lead instructor at a police academy. And a level
17 four instructor, those are the instructors that train and certify
18 the other instructors across the state and also write the policies
19 and write the manual and things like that.

20 Q Okay. And so you're a level four instructor?

21 A Correct.

22 Q And how many level four instructors are there in
23 Massachusetts?

24 A There's different disciplines. But I would say in firearms
25 there's probably 25 to 30. In defensive tactics I believe there's

1 | probably 12 to 15.

2 | Q And could you tell us how many police officers you have
3 | trained in use of force or defensive tactics?

4 | A I've trained, across -- across the country, probably over
5 | 10,000. I've trained over 5,000 in Massachusetts. But I've
6 | trained police officers in other states and other countries.

7 | Q Okay. So, because you have trained in other states, do you
8 | hold any national certifications?

9 | A Yes, sir.

10 | Q And what are those?

11 | A I am currently a master instructor with the Safariland police
12 | training group, which is a -- which is a worldwide police training
13 | organization. It trains officers in -- across the United States
14 | but also Canada, Switzerland, England. I've trained the Columbian
15 | national police.

16 | Q Now, you also mentioned that you're a member of the NEMLEC
17 | SWAT team?

18 | A Yes, sir.

19 | Q And, can you just briefly first describe, what is NEMLEC?

20 | A Well, NEMLEC is the Northeast Massachusetts Law Enforcement
21 | Council. It's a law enforcement consortium of 64 cities and towns
22 | in northeast Massachusetts and the greater Boston area. And they
23 | respond to critical incidents: you know, a hostage/barricade
24 | situation, active shooter, considered high-risk drug raids,
25 | considered high-risk situations within our cities and towns.

1 Q And aside from your work with Waltham police department and
2 NEMLEC, are you employed by any other agencies?

3 A The municipal police training committee.

4 Q And what is that?

5 A That's the law enforcement -- That's the state organization
6 that governs police training for the state of Massachusetts.

7 Q And are you currently an instructor at any police academies?

8 A Yes, sir.

9 Q And what academies are you an instructor --

10 A I currently work -- teach at the Lowell police academy, the
11 Northern Essex Community College police academy, the Randolph
12 police academy, Fitchburg State police academy, and Merrimack
13 College just started a police academy which I just started
14 teaching at.

15 Q And, sir, directing your attention to November 2nd, 2020, did
16 you respond to an incident in Winchester, Massachusetts, on that
17 day?

18 A No, sir, I did not.

19 Q Are you aware if any -- if NEMLEC or any members -- Well, are
20 you aware if NEMLEC responded to an incident?

21 A No, sir, we didn't. We -- We did not.

22 Q And are you familiar with any officers from Winchester Police
23 Department, basically, who responded to the November 2nd, 2020,
24 incident that is the cause for your testimony today?

25 A I -- I know the officers through, you know, small -- I know

1 | police officers in other jurisdictions. But I don't know them
2 | personally, or I don't have any relationship or know them
3 | off-re-job or anything like that.

4 | Q Okay. And have you testified previously in courts for the
5 | Commonwealth, relative to use of force?

6 | A Yes, sir, I have.

7 | Q And how do you define "use of force"?

8 | A "Force," when Massachusetts uses "force," it is defined by
9 | the amount of effort required by police to compel compliance from
10 | an unwilling individual.

11 | Q And how do you define "deadly force"?

12 | A We would define "deadly force" as force which is intended to
13 | or likely to cause death or serious bodily injury.

14 | Q What dictates the amount of force an officer is authorized to
15 | use in a given situation?

16 | A We train police officers in a series of standards and
17 | guidelines. So, standards would be what the law says about police
18 | work. This is -- The laws define when police can use force:
19 | self-defense, defense of another, to compel compliance, or to keep
20 | somebody from harming themselves. And the level of force is -- is
21 | on -- level of force we teach officers to use is force that's
22 | objectively reasonable. And we use tools to teach them which
23 | level of force would be reasonable.

24 | Q You said there are also guidelines?

25 | A Yes, sir.

1 Q And what are the guidelines, and where do you get them from?

2 A The guidelines that we use for -- is the Federal guidelines.

3 So, the standards and the guidelines. The case that we --

4 dictates how our use of force is governed and viewed is the case

5 Graham vs. Connor, which is the United States Supreme Court case.

6 And we -- we train the officers on the Graham standard and

7 basically that the use of force officers must use must be

8 objectively reasonable, based on severity of the crime, based on

9 the subject's level of resistance, if he's actively fighting or

10 resisting, and based on the immediacy of the threat that the

11 officer is dealing with.

12 Q Okay. And I don't suppose you have the cite for Graham v.

13 Connor in front of you?

14 A I don't have it in front of me, because I don't have any
15 paper.

16 Q Okay.

17 THE COURT: I have the cite.

18 MR. TARRANT: Okay. Thank you, Your Honor. And I think I
19 have it as 490 U.S. 386, just if anybody else --

20 BY MR. TARRANT:

21 Q And so can you just describe what Graham -- you know, in your
22 work and your instructions, what Graham v. Connor stands for, what
23 you use that case for?

24 A We use that to -- to -- to set the standard for the level of
25 force that a police officer must use: that a police officer must

1 | always use the amount of force that's reasonable and appropriate
2 | for the confrontations and circumstances that they're dealing
3 | with.

4 | Q Okay. And is there a three-pronged test associated with
5 | that?

6 | A Yes, sir.

7 | Q And what is that?

8 | A So, the -- it's -- There's different factors with Graham, but
9 | there's three main factors, which is -- which is severity of the
10 | crime, the first one; second one is immediacy of the threat that
11 | the officer is dealing with; and the third one is "Is the subject
12 | actively fighting or resisting or attempting to evade capture?"

13 | Q And is the standard different between Federal and state, or
14 | by jurisdiction?

15 | A Well, there's -- there's -- there's state law, as well, that
16 | works off of Graham vs. Connor, which just again explains when a
17 | police officer is justified to use force. But it follows -- it
18 | follows in line with the Federal guidelines in Massachusetts.

19 | Q Okay. So they're fairly consistent; is that fair to say?

20 | A That's fair to say.

21 | Q And as part of use-of-force training for police officers, do
22 | you teach the law and the standards?

23 | A Yes, sir, we do.

24 | Q And what other teaching tools do you employ?

25 | A So, the law -- the laws that we use fall under the standards.

1 And then the guidelines we use for guidance is the officer's
2 individual department policy and procedure. But we also have the
3 municipal police -- the MPTC has a use-of-force model that we use,
4 what some people call "the use-of-force continuum." We refer to
5 it as "a use-of-force model" and "the totality triangle."

6 Q So what is the totality triangle?

7 A So, the totality triangle actually falls within the
8 use-of-force model. But the totality triangle is -- There's three
9 sides to the totality triangle. The first one is perceived
10 circumstances, which is basically the -- all the factors and the
11 officer's response to the situation that they're dealing with.
12 So, the first category is perceived circumstances. The second
13 category is perceived subject's actions, which is what the subject
14 or suspect is actually doing. And then the third part is
15 reasonable officer's responses. So, the way the totality triangle
16 is utilized is: the officer should take in all the information,
17 risk assessment, and analyze the circumstances they're dealing
18 with as well as analyze what the subject is doing. And if he has
19 a correct analysis of those two parts, then the third part of the
20 triangle, the officer's -- officer's responses is that he's able
21 to take a reasonable and appropriate force option based on the
22 other two parts of the triangle.

23 Q Do you also use what's called the use-of-force model?

24 A We do, sir.

25 Q And what is that?

1 A Well, the use-of-force model is based off the totality
2 triangle. It basically deals with five levels, five steps. So
3 there's basically fifteen words in the use-of-force model, but it
4 basically deals with five steps. We deal with all the way from
5 "compliant" up to "deadly force."

6 Q Okay. And what are the five steps?

7 A So, the first -- When we talked -- I -- When I talked about
8 "totality triangle," first portion is threat perception. So, in
9 the middle part of the model -- It's basically set up like stairs.
10 But the middle part of the category is strategic, tactical,
11 volatile, harmful, and lethal. And those -- those are the five
12 words that -- The officers basically take in all the information.
13 And those five words describe essentially what the officer is
14 dealing with in the arena that he's operating in. So there's five
15 levels of -- there's five levels of risk perception, there's five
16 levels of subject's actions, and there's five levels of officer's
17 response.

18 Q Okay. And so what are the action categories that relate to
19 the officer's response category?

20 A Okay, so, after we analyze the -- the first part, the second
21 part is the subject's actions. So, the subject's actions, there's
22 two parts. Essentially, the person is going to either be
23 compliant or noncompliant. So, level one is a compliant
24 individual. Level two is a passive-resistance individual. Level
25 three is an active-resistance individual. Level four is an

1 assaultive individual. And level five, the highest level, is an
2 assaultive individual with the risk of death or serious bodily
3 injury to the officer or some -- or innocent person.

4 Q So how does the risk-perception category and the
5 subject-action category relate to officer response?

6 A So, we -- we train the officer to -- to analyze his risk
7 depending on what the subject is doing and try to have a
8 balanced -- try to have a balanced or parallel response to what
9 the subject is doing. So if a person is a cooperative person, a
10 level one, we would teach the officers, as a rule of thumb -- it's
11 not a hard-and-fast rule, but to try to use level one responses in
12 dealing with a level one individual. Try to use level four when
13 dealing with a level four individual. So we look to try to keep
14 the response balanced and reasonable.

15 Q And so what would be a level one response?

16 A So, a level one response would be what we would call
17 cooperative control. And that deals with when you're dealing with
18 a compliant individual. It's obviously a low level. So the
19 officers -- the cooperative control would mean the officer could
20 use verbal skills, professionalism, and command presence. So this
21 would be your level one responses and cooperative controls.

22 Q What's a level two response?

23 A Level two we would call "contact controls" and, again, a very
24 low level of force. If you're dealing with a passive-resistant
25 individual, which means they're not compliant but they're not

1 really offering any physical force, then we would use contact
2 controls, which -- light touch tactics: push, shove, guide, drag,
3 escort. Basically, light touch tactics: putting your hands on
4 somebody.

5 Q Okay. And what would be level three?

6 A Level three, now we're -- now we're dealing with an actively
7 resistant individual, which is -- They're noncompliant, but their
8 noncompliance is met with actual energy-based physical resistance,
9 not necessarily fighting, but energy-based resistance. So then we
10 would be justified or we would teach to use compliance techniques.
11 And they're technically distractions or pain-compliance techniques
12 where pepper spray or pressure points, counter joint
13 manipulations, using the drive taser to drive some level, and
14 other pain compliance techniques. So those would be the level
15 three compliance techniques.

16 Q And how about level four?

17 A Level four is now the -- Now the interaction is more intense,
18 and you're dealing with an assaultive individual. So your goal is
19 to gain more immediate conclusive control. So we would use what
20 we call "defensive tactics." And that really refers to tactics
21 that are defensive in nature, self-defense. So that would be two
22 categories, essentially: personal weapons, which would be
23 empty-hand strikes or elbow strikes or knee strikes; and
24 intermediate weapons. And the intermediate weapons would be your
25 baton or your using your taser with probe deployment, at level

1 four.

2 Q Okay. And then level five?

3 A Level five is considered deadly force. That's the assaultive
4 individual in which the risk is imminent harm, death, or serious
5 bodily injury. And then the police officer can utilize deadly
6 force. And it's -- deadly force is not tool-specific. It's
7 generally -- Generally speaking, it's firearms. But if somebody's
8 life is in peril, then they could use any tool they need to, to
9 stop a deadly attack.

10 Q Okay. And in a deadly force scenario where an officer
11 discharges their firearm, are they trained -- are officers trained
12 on where to aim their firearm?

13 A Yes, sir.

14 Q And where are they trained to aim the firearm?

15 A We teach all our officers to shoot -- shoot to stop the
16 threat and to shoot at center mass, which means -- "Center mass"
17 means center of the available target.

18 Q Okay. And so, center of the body?

19 A Yes, sir.

20 Q And typically where would that be?

21 A If a person is in front of you, the body, it would be
22 technically the torso or the chest area.

23 Q And are the officers trained to shoot, for any reason, at any
24 other part of the body? For example, the limbs?

25 A We don't teach to shoot at the -- at the limbs or the hands

1 and the arms or the legs, which is a misconception. We teach to
2 shoot center mass, not limbs.

3 Q And why is that?

4 A Well, first of all, if it's a -- if it's a deadly force
5 situation, it's a dangerous confrontation. So the first thing we
6 want the officer to do is to be able to stop that deadly threat.
7 So we want the officer to shoot at center mass so that he can hit
8 the target that he's shooting for. So we shoot center mass. It's
9 much more difficult to -- to hit a -- an arm or a leg that's
10 moving quickly.

11 Also, there's the misconception of shooting somebody in the
12 leg or the arm -- there's -- You know, if you shot somebody in the
13 leg, there's the femoral artery; so, you know, it could -- someone
14 could get just nicked in the femoral artery and it could be fatal,
15 whereas they could get shot in the chest or even in the head
16 and -- and survive. So we don't really know what's going to
17 happen when -- when -- when the bullet leaves the weapon.

18 And the other reason we teach -- teach shooting center mass
19 is, at the end of the day, all police officers in Massachusetts --
20 We teach 100-percent round accountability. So, this is basic
21 officer -- There's some basic safety issues when a firearm is out,
22 which means we're responsible for every bullet that leaves a
23 weapon. So we don't want to be missing rounds, because every
24 bullet's going to find a home. So we don't want to miss our
25 target and hit innocent people or hit in a dangerous area. So

1 that's probably the third reason we really teach not to shoot
2 limbs.

3 Q Are police officers trained to -- on how many shots to fire?

4 A They're not, because they -- They're trained -- They're
5 trained that whichever action -- Whichever deadly action causes
6 them to use their firearm, we teach them to analyze the shots.
7 But we don't count the number of rounds because, you know, under
8 stress we just want them to -- We teach them to stop the deadly
9 threat. And when that -- when the action stops, then they stop
10 shooting. But we don't teach to count -- teach them to count
11 rounds in any shooting situation.

12 Q And are you familiar with what is sometimes referred to as
13 "the 21-foot rule"?

14 A Yes, sir.

15 Q And what is that?

16 A So, the 21-foot rule has been -- been around a while. We
17 deal with a lot of edged-weapon type scenarios. So, 21 foot just
18 gives the officers -- They teach it right down in the academy,
19 where 21 feet is standard, that the -- It's from a test years ago,
20 but basically a -- a normal -- an average person could cover the
21 distance of 21 feet, armed with a -- armed with a knife. It's not
22 a gun, it's not for a gun call. It's for a person with an edged
23 weapon. Average person could close a distance of 21 feet at the
24 time it would take the police officer to observe a threat, make a
25 decision, and to stop it with -- with a firearm. So the 21-foot

1 rule is kind of an officer-safety rule that most officers are
2 aware of.

3 Q And are you familiar with the term "nonlethal cover"?

4 A Yes, sir.

5 Q What is meant by "nonlethal cover"?

6 A Sometimes -- Some people call it "nonlethal cover." I'm
7 sorry; what?

8 Q Yeah, what is meant by "nonlethal cover"? My -- Could you
9 hear me?

10 A It just cut out; I'm sorry. So, I think I caught the
11 question. So, some people will call it "contact cover" or
12 "nonlethal cover." But basically if an officer has a firearm out
13 and there's other force options, one officer would be out at
14 lethal cover with his firearm out and another officer could be out
15 with a -- a secondary response or a nonlethal response, like a
16 taser or pepper spray or police baton.

17 Q Okay. So is it -- in your experience and the way you train,
18 are lethal and nonlethal cover -- Are they employed together?

19 A They can be. If an officer is by himself and it's a lethal
20 situation, then we would teach lethal cover. But where we teach
21 the preservation of life, we teach that if a -- if there was
22 multiple officers on scene, then you can have a -- a lethal cover
23 officer and an officer on nonlethal cover.

24 Q Did -- Would you consider pepper spray an effective method of
25 quelling deadly force?

1 A I would not consider that, no, sir.

2 Q And why is that?

3 A Pepper spray falls under compliance techniques, which is a
4 level three technique. It doesn't mean that you couldn't. But
5 you're -- you're basically essentially using a level three
6 response to a level five situation. So it's not -- Pepper spray
7 is a -- is a distraction technique. It's an effective force
8 option, but it's more effective for getting somebody to stop when
9 they can comply. It's not -- It would not be safe for the
10 officers to deploy pepper spray in a deadly force situation. And
11 it doesn't generally cause immediately conclusive control. Pepper
12 spray takes a little bit of time to work. So it would be
13 dangerous for an officer to try to use pepper spray in a
14 deadly-force confrontation.

15 Q And do you also train on the use of taser?

16 A I do, sir.

17 Q And under what circumstances is it appropriate to use a
18 taser?

19 A So, tasers -- taser is -- falls into two, actually,
20 categories. So the first way, we would call it "the drive stun"
21 mode. And that's at level three. That would be a pain compliance
22 technique. So, at the drive stun level, it -- you're not firing
23 any probes at the person; you're just pressing the taser up
24 against a person's skin. And it's more or less a touch stun. And
25 it basically is used for pain compliance. It's a lower level of

1 force, and it's a -- used in a less violent confrontation.

2 And then we also use it as what we call "probe deployment,"
3 which is the primary way a taser is utilized. And that's when
4 you're dealing with an assault of a violent person. You fire
5 two -- essentially two darts or two probes, which are Number 8
6 fishhooks, at the person. And then it sends -- it can
7 incapacitate a person, based on -- based on the volts.

8 Q And do you consider it or is it appropriate to use a taser
9 when confronted with a subject approaching with edged weapons?

10 A So, a -- a taser is not a deadly-force option. What we
11 would -- We would teach it in training that if the -- if an
12 officer was by himself, then it would not be a good force option.
13 If an officer -- If there were multiple officers there, if there
14 were two or three officers there and they had lethal cover, which
15 means they had an officer covering with lethal, then you could use
16 a lesser force option, which is the taser. Then we would teach
17 that they could attempt to utilize a taser if you had multiple
18 options. But certainly not if they were by them -- if they were
19 by themselves, because anything -- A taser is not considered a
20 deadly-force option. It's considered a nonlethal or less-lethal
21 option.

22 Q Are you aware of variables that could impact the functions of
23 a taser?

24 A Yes, sir.

25 Q And what is that?

1 A Some of it is just the subject's ability to fight through it.
2 Some of it is the -- the person's muscle mass, their -- their
3 indifference to pain. Also, there's a bunch of other factors,
4 like clothing. If they have any kind of barriers between them,
5 thick clothing, the wires, they're very thin, so they could break
6 really easy. And also the -- the probes, if you're -- if you're
7 somewhat close to a person, the probes don't have a chance to --
8 the probes will land close to each other. And basically the way
9 it works is if there's not a great probe-spread the taser doesn't
10 work very well. So there's a lot of factors that determine how
11 well a taser works.

12 Q And are officers trained on what to do immediately after
13 employing deadly force?

14 A Yes, sir.

15 Q What are they trained to do once they employ deadly force?

16 A Once they stop a threat, they're -- they should immediately
17 handcuff the individual to make the scene safe and then start
18 medical attention, call for an ambulance, and then for the
19 officers themselves to start medical measures.

20 Q Okay. So why is the individual handcuffed?

21 A They have to be handcuffed because it still is a -- it still
22 is a dangerous situation. And then we're going to start to bring
23 in medics and firefighters and stuff. So we have to make the
24 scene safe for everybody. So, the safest way is to at least get
25 handcuffs on the subject. And then we immediately start with

1 | medical.

2 | Q Okay.

3 | MR. TARRANT: That's all the questions I have for this
4 | witness, Your Honor.

5 | MR. ANDERSON: Judge, I had a couple. I think you're muted,
6 | Judge.

7 | THE COURT: I'm sorry. Mr. Anderson, you may inquire.

8 | MR. ANDERSON: Okay.

9 | **CROSS EXAMINATION OF WITNESS, OFFICER CHARLES DiCHIARA**

10 | BY MR. ANDERSON:

11 | Q Officer DiChiara, in terms of -- Let me just show you what's
12 | on page 5 of the Winchester police use-of-force policy. And I
13 | apologize for not knowing what exhibit it is. I don't know if you
14 | can see.

15 | A Yes, sir.

16 | Q I'm showing you -- These are the five levels that you were
17 | talking about, --

18 | A Yes.

19 | Q -- level one being compliant, level five being assaultive,
20 | presenting a threat of serious bodily injury or death.

21 | A Correct.

22 | Q Okay. How would you characterize or where would you put
23 | someone on that spectrum who is a distance of 18 to 20 feet away
24 | and is possessing two 12-foot-long [sic] knives which they refuse
25 | to put down after multiple verbal commands, trying to engage them

1 | by calling him by first name? At that distance, 18 to 20 feet,
2 | where would you put them on that use-of-force spectrum?

3 | A Based on that fact pattern, sir, I would put the risk as
4 | being a lethal risk, and I would put the subject's actions as
5 | being assaultive, serious bodily harm or death. So that's
6 | considered a deadly force confrontation.

7 | Q And is that the type of situation, you said, where it'd be
8 | one officer, it would not be instructed to use a taser, because
9 | that would not be safe?

10 | A Yes, correct. If it was one officer there, I -- that -- that
11 | officer would be trained at that -- deadly force, that's -- that's
12 | a firearm call, at that level, when you're by yourself.

13 | Q And if you have multiple officers, would it be appropriate to
14 | have one officer attempt to use a taser by discharging prongs, one
15 | other officer have lethal cover for that officer?

16 | A Yes, we would try to teach that, that less -- Obviously,
17 | preservation of life is important to us. So we would try to teach
18 | that, if you had multiple officers there and were safe, to try to
19 | deploy a taser first before going right to deadly force.

20 | Q And that 21-foot rule, how actually is that taught to
21 | officers at the academy?

22 | A Well, they'll -- we'll demonstrate -- we'll demonstrate,
23 | like, -- we call the OODA-loop: observe, orient, decide, act. So
24 | we would -- we would basically just try to show some drills on --
25 | We would put a, you know, white T-shirt on a recruit and give a

1 subject a red magic marker. And just to show the -- how long it
2 takes you to respond to a threat, we try to do that, to teach
3 officers distance and stuff. So, it's not a hard-and-fast rule.
4 It's not inside of 21 feet is a green light or outside is -- But
5 it is definitely a drill that we do to show safe distances when
6 dealing with people with an edged weapon.

7 Q Are you familiar with the function of tactical vests?

8 A Yes, sir.

9 Q And how do they respond to edged weapons?

10 A That's -- I'm -- As far as I'm concerned, a vest does not
11 stop an edged-weapon attack. There's vests on the market that do,
12 but a general ballistic vest won't stop a stab wound or a
13 puncture.

14 Q And in terms of the OC spray, you were asked a couple of
15 questions about that briefly. But are there factors that you want
16 to consider in using it, in terms of where you're located, the
17 number of people present, the size of the room that you're in?

18 A Yes, sir. Pepper spray, like anything, is a force option
19 that has its limitations. But depending only around the room,
20 cross-contamination is always a factor, too. If you use pepper
21 spray, generally speaking, the officer's going to get hit with
22 some pepper spray, or the other officers. So there's a
23 cross-contamination issue if you're in a closed room. So -- And,
24 again, the bigger thing with pepper spray is that it's a low level
25 of force. It doesn't -- It does not really have conclusive

1 control. So we teach it as an option. But in some -- in some
2 scenarios, real violent confrontations, we don't consider it a --
3 a viable force option.

4 MR. ANDERSON: I don't have any other questions for Officer
5 DiChiara.

6 THE COURT: Attorney Dewitt?

7 MS. DEWITT AHERN: Yes, I do, Judge; thank you very much.

8 THE COURT: You're welcome.

9 **CROSS EXAMINATION OF WITNESS, OFFICER CHARLES DiCHIARA**

10 BY MS. DEWITT AHERN:

11 Q Good afternoon, officer. So, I just want to take -- Can you
12 hear me okay?

13 A Yes, ma'am, I can.

14 Q Thank you. So, I just want to elaborate a little bit on
15 Attorney Anderson's scenario. You have a person with, call it,
16 two blades approximately 12 inches long, not 12 feet long. And
17 they --

18 MR. ANDERSON: I apologize if I said 12 feet. We all know
19 that that was --

20 MS. DEWITT AHERN: I know; it was a slip of the tongue.

21 BY MS. DEWITT AHERN:

22 Q And they're not addressing the opposite or -- addressing an
23 inanimate object with these knives. And there's three officers.
24 Does it change the scenario, as opposed to this individual
25 confronting the officers?

1 A So, as far as the distance goes? So, he's not -- he's not
2 physically confronting the officers?

3 Q Right. He's hitting an inanimate object, such as a window,
4 with the knives.

5 A Yes. Also, it's still considered a -- it still is a
6 lethal -- it still is a lethal risk assessment, because in a
7 matter of -- in a matter of one -- very short period of time, that
8 can change. So the officers would have their firearms out in that
9 situation. But it -- it could change the dynamics. Anything
10 could, obviously.

11 Q And if one of the officers already has their firearm
12 drawn, -- You talked about the 21 feet because of the fact of how
13 quick a person may move, the -- and the ability or inability to
14 draw a weapon at that time. So, the weapon's already drawn for
15 coverage's sake. That would clearly, I think, minimize that risk,
16 because the officer could easily pull the weapon and discharge it
17 without any hesitation, if it's already drawn, in his hand, by his
18 side.

19 A Oh, if -- if the weapon is in the officer's hand at the time,
20 that will -- that will -- that will quicken the response. But,
21 you know, again, obviously, at that distance, it's --

22 Q And --

23 A -- always unsafe.

24 Q And, Officer, if you have a situation -- Let me ask you a
25 general question: on the use of force, each situation has to be

1 analyzed separately; no two situations are alike?

2 A Correct.

3 Q Correct? And these situations are often based on a number of
4 factors, including mental-health issues or drug use, fair to say?

5 A That's fair.

6 Q And obviously when an officer is entering into a situation,
7 they need to use everything they have available at the time in
8 analyzing the situation, fair to say?

9 A Yes, it's -- it's an ongoing event. And they're --
10 they're -- they're taking in information, analyzing as they go,
11 and then they're evaluating and also reevaluating.

12 Q And in -- And, officer, in a situation where this person is
13 not a suspect in a criminal act, in fact may be a victim or a
14 witness in a situation, and they're confronted with an unusual
15 situation where maybe the person has a mental-health issue, --

16 A So, I'm just not sure --

17 Q Sure. So, let me rephrase this.

18 A Sure.

19 Q Each situation is different. If someone has mental health --
20 when they enter into this situation, they have to take that into
21 account, or they should take that into account; that's what
22 they're trained to do, right?

23 A Police officers are taught to take everything into account.

24 Q Okay. So, you're in a situation where a person has -- is
25 tasered and there's a small response to that. You hear the

1 | scenario where a person is going toward an officer with two
2 | knives. He's not lunging at them. He's not thrusting the knives
3 | at them. The officers have the ability to walk back away from the
4 | situation and keep a distance between them, where the person isn't
5 | actively being aggressive towards the officers. Is that still a
6 | lethal situation?

7 | A Okay, are -- are -- are you asking me -- So, I don't know the
8 | fact pattern of all of this. I'm just -- I'm testifying here
9 | today --

10 | Q Correct.

11 | A -- to the way police officers are taught and trained. So I'm
12 | not -- I'm not giving an opinion on this case, because I don't
13 | have --

14 | Q No, I'm not asking.

15 | A -- facts to --

16 | Q But you testified for Attorney Anderson that if he has two --
17 | if he -- the person has two knives, then it's definitely a lethal
18 | situation.

19 | A Okay. Yeah, it could be -- it could be a lethal situation.
20 | There's a bunch of --

21 | Q And --

22 | A -- different ways to handle all of these calls.

23 | Q Right. And it could not be a -- it may not be a lethal
24 | situation. If -- In fact, Officer, on a level three on the use of
25 | force that Attorney Anderson just showed you, you have a "subject

1 that directs energy and strength to a posture of resistance. The
2 officer should receive it as a potential threat." But that is not
3 for the use of lethal force, is it?

4 A Right. That would be assaultive. Yes.

5 Q And there'd be other ways of handling that situation?

6 A Yes, ma'am.

7 Q Correct. Now, you've testified that the use of OC spray
8 could be -- if it's in a small area, it could be disruptive to
9 everyone, harmful to everyone, including the officers, fair to
10 say?

11 A Not harmful. It could be a distraction. It could be --

12 Q A distraction. So it could be a distraction. So it's not
13 impossible to use in a situation like that.

14 A I would -- I would never train an officer to use a pepper
15 spray in a -- in a deadly force situation -- in that situation,
16 because if they would -- you're -- you're putting the officers at
17 risk. Pepper spray does not cause immediate conclusive control.
18 It takes a while to work. And it causes cross-contamination. So
19 I would not be able to -- be able to teach an officer that that's
20 a good response.

21 Q But I think in an actively resistant situation you said it
22 would be a possibility.

23 A If he was actively -- actively resisting, yes -- i.e.,
24 energy-based resistance, which is: a person --

25 Q You're trained in hostage situations or barricaded

1 | situations?

2 | A Yes, ma'am.

3 | Q And a barricaded situation is where the officers are
4 | confronting someone that may be locked into an apartment or a
5 | room; is that fair to say?

6 | A Yes, ma'am.

7 | Q And in doing so, the officers clearly need to make sure the
8 | area around where they're working and they're addressing the
9 | situation is clear and free to protect any other individuals in
10 | the area. They should -- Right? They should make sure there's no
11 | innocent bystanders?

12 | A In some situations, yes.

13 | Q Okay. And you testified that an officer is taught to shoot
14 | center mass. And that's -- When -- The center mass is the center
15 | part of the body that's apparent when the officer sees them; fair
16 | to say?

17 | A Yes.

18 | Q Isn't that correct?

19 | A Yes. And the center available target; that's correct.

20 | Q So, in any situation where the officer is confronted with a
21 | knife or a gun or any type of weapon and the person is coming
22 | close to them, they shoot to kill?

23 | A Officers are -- I've been teaching officers for twenty-five
24 | years, and I've never heard an officer be trained to shoot to
25 | kill, no.

1 Q But they shoot center mass, correct?

2 A They shoot center mass, correct.

3 Q And center mass, in the front of your body, in the torso
4 area, is the -- torso area is your heart area, fair to say?

5 A Right. Yes, correct.

6 Q And so when you shoot center mass, should you not shoot in
7 the heart? Should you shoot maybe in the gut or the stomach area?

8 A No. You should use center mass so that the officer can hit
9 the target. It's -- To try to avoid hitting somebody in the heart
10 or the stomach in that situation -- We're teaching officers just
11 to stop the deadly threat that they're dealing with, so that's why
12 we teach center mass.

13 Q When officers are trained -- And you're also trained in
14 mental health, dealing with mental-health issues with suspects or
15 people. There are certain -- And you -- When officers are
16 trained, they're trained to look for certain types of behaviors of
17 person; is that fair to say? For mental health behaviors?

18 A That's fair to say.

19 Q And some of those behaviors -- Obviously, you train a lot of
20 officers. And there's certain things that really are evident when
21 you look for mental health; is that fair to say? Maybe bizarre
22 mannerisms; is that fair to say?

23 A That is a -- That is a -- That would be a clue that there's
24 mental-health issues, possibly, yes.

25 Q If there was an irrational explanation of events, would that

1 | be something to look for in a mental-health issue?

2 | A It could be.

3 | Q If a person is blankly staring at an officer or at a person
4 | without really looking at them, or almost looking through them:
5 | maybe a clue that there's something going on, a mental-health
6 | issue or some other issue going on?

7 | A It could be.

8 | Q So, those are all things that should be taken into
9 | consideration when use of force is employed at any level?

10 | A No, it -- The whole -- When I talked about threat perception,
11 | all the facts and circumstances are taken into account, ma'am.

12 | MS. DEWITT AHERN: Just one moment, Judge, please.

13 | THE COURT: Sure.

14 | [Pause]

15 | BY MS. DEWITT AHERN:

16 | Q Now, you train all over the country, fair to say?

17 | A Yes, ma'am.

18 | Q And there are suggested ways that officers should be trained,
19 | fair to say?

20 | A As far as what? As far as --

21 | Q In general. There are standards, correct? Are there
22 | training standards of use of force?

23 | A I'm not really sure the question -- There's --

24 | Q Sure.

25 | A -- guidelines that -- There's standards and guidelines that

1 we train people -- But, yes, there are no hard-and-fast rules. We
2 try to give officers training in everything from patrol procedures
3 to -- to response to use of force to firearms. But it's a very --
4 it's a very broad question.

5 Q That's what I'm -- I'm just asking that. But it's -- Whether
6 or not they're employed, it depends on the individual officer,
7 fair to say?

8 A It depends on -- It depends on the scenario, it depends on
9 the subject's actions, and it also depends on the officer's
10 response.

11 Q And the officer's use of their training and experience, fair
12 to say?

13 A Sure.

14 MS. DEWITT AHERN: Nothing further, Judge.

15 THE COURT: Okay. A.D.A. Tarrant, anything?

16 MR. TARRANT: Nothing further; thank you, Your Honor.

17 THE COURT: Attorney Anderson?

18 MR. ANDERSON: Just a couple quick follow-up questions.

19 **RE CROSS EXAMINATION OF WITNESS, OFFICER CHARLES DiCHIARA**

20 BY MR. ANDERSON:

21 Q Officer DiChiara, you were asked questions about somebody who
22 was level three, actively resisting; do you remember those
23 questions?

24 A I do.

25 Q And according to what's in the Winchester use-of-force

1 | policy, some of the options there would be wristlock, arm bars,
2 | controlling and restraining techniques, and OC spray. If I told
3 | you that's what I just -- I'm reading here on page 5 of that
4 | exhibit, is that consistent with what you teach?

5 | A That's consistent, yes.

6 | Q And would a wristlock or an arm bar or controlling and
7 | restraining techniques -- would those be appropriate in that same
8 | scenario I mentioned before, where there was somebody with two
9 | 12-inch knives about 18 feet away from the officers?

10 | A No. The officer would be -- The officers would be putting
11 | their lives at risk if they -- if they tried those techniques.

12 | MR. ANDERSON: I have nothing else, Judge.

13 | THE COURT: Okay. A.D.A. Tarrant, did you want to make any
14 | closing remarks?

15 | MR. TARRANT: No thank you, Your Honor.

16 | THE COURT: Mr. Anderson?

17 | MR. ANDERSON: Yes, briefly, Judge.

18 | **CLOSING ARGUMENT ON BEHALF OF THE SUBJECT**

19 | MR. ANDERSON: At the outset, I just want to say -- myself
20 | and Sergeant Latores -- we agree that this was a tragic situation,
21 | and our hearts go out to the Celonas. I mean, they're obviously a
22 | good family. They're a caring family. They're a dignified
23 | family. And we feel horrible for what happened in this situation.
24 | But unfortunately, this is a situation where Sergeant Latores and
25 | Officer Latores really had no other alternatives. And that's the

1 whole tragedy of this situation.

2 Just going back to the Winchester use-of-force policy, on
3 page 2 of the Section II, it says "Officers of the Winchester
4 Police Department --"

5 THE COURT: Mr. Anderson, let me just interrupt you really
6 quickly. Is it all right -- I know that Officer DiChiara stepped
7 away from something; is it okay if we release him at this point?

8 MR. ANDERSON: I have no objection if you want to release
9 him.

10 THE COURT: Office DiChiara, thank you very much.

11 THE WITNESS: Thank you, Your Honor. Thank you very much.

12 THE COURT: You're welcome to stay, but you can certainly do
13 whatever you have to do at this point.

14 THE WITNESS: I appreciate it; I'll probably get in trouble.
15 Thank you, sir.

16 THE COURT: All right. You're welcome.

17 [Witness leaves call]

18 THE COURT: I'm sorry, Mr. Anderson.

19 MR. ANDERSON: No, just -- Under the use-of-force policy, it
20 says "Officers of Winchester Police Department may use lethal
21 force only when an officer reasonably believes" -- so there's a
22 subjective intent -- "that the action is in defense of human life,
23 including the officer's own life, or in defense of any person in
24 imminent danger of serious physical injury, or to prevent the
25 escape and effect the arrest of a fleeing felon who the officer

1 | has probable cause to believe will pose a significant threat of
2 | human life should escape occur."

3 | If you jump down further down on page 2, it defines the
4 | reasonableness standard. And it says "Requires careful attention
5 | to the facts and circumstances in each particular case, including
6 | whether the subject poses and immediate threat to the safety of
7 | the officer or others, the severity of the crime, and the level of
8 | resistance offered by the subject. This standard allows for the
9 | fact that officers are forced to make split-second judgments in
10 | circumstances that are tense, uncertain, and rapidly evolving."

11 | Now, that's language that's taken right out of Graham vs.
12 | Connor, where it specifically says "the calculus of reasonableness
13 | must embody allowance for the fact that officers are forced to
14 | make split-second judgments" and that circumstances are tense,
15 | uncertain, rapidly evolving -- about the amount of force to use.
16 | And this is exactly what happened here. And Graham vs. Connor
17 | also says that reasonableness "must be judged from the perspective
18 | of a reasonable officer on the scene," rather than with 20/20
19 | vision of hindsight.

20 | So, we've had two days to kind of kick around this fact
21 | pattern about what happened. But Officer Latores had literally
22 | just a matter of seconds to make that decision, whether to
23 | discharge his firearm or not. And as he testified today through
24 | this statement he made to the police back on November 5th of 2020,
25 | he actually said that it was like time slowed down and sped up at

1 | the same time.

2 | And as they got to the threshold and they're leaving the
3 | apartment and he's got this decision to make, and he says he
4 | thought of his kids, his heart says no but his mind says, "You
5 | have to shoot this person because I can't -- A) I'm afraid for my
6 | life and B) I can't get out of here and let him walk down this
7 | hallway, because he would pose a risk to anybody," in that very
8 | large apartment building that we saw, with that very strange
9 | layout with the hallways that you can't see.

10 | And if they were to somehow retreat, let Mr. Celona down the
11 | corridor to the hallway, and if they went right and he went left,
12 | and some neighbor comes out on the way to the gym or to the
13 | grocery store or to wherever they may be going, and they're
14 | confronted by somebody with a 12-inch knife who's clearly not in
15 | his right mind, who's clearly under the influence of some
16 | significant mental-health issues and a boatload of drugs, the
17 | officer is then put in a situation where he has to shoot someone
18 | in the back, with an innocent person walking towards them. And
19 | it's just not a tenable situation.

20 | Just briefly, in terms of how the testimony all came out: the
21 | officers get this call, and they're not exactly sure what's going
22 | on at the scene. It comes in different through dispatch. They're
23 | not sure. But Officer Latores has two documented prior
24 | interactions with Mr. Celona. He knows from one prior interaction
25 | there was a hatchet involved and that there were long kitchen

1 knives secreted in the floor of the car. He knows that just from
2 two weeks earlier there was another kind of erratic situation,
3 where he had a 12-inch knife in the pocket of his sweatshirt; and
4 he had to be cuffed and that was taken out.

5 So, at the outset, he says, "Listen, this is who we're
6 dealing with. You know, we need to be careful of our safety. And
7 we need to cuff him, you know, once we get in there if we're going
8 to talk to him, because in two prior situations he's had these
9 knives."

10 But when they get up to the unit, they see blood in the
11 hallway, and then they hear these noises inside. And this is a
12 situation where Linda Copeland -- I'm sorry -- Susan Dunn, the
13 neighbor across the hall, testified that she was, herself, in fear
14 for her own life. And earlier in the day, she'd been in fear for
15 the life of Thomas Card. And even though she had heard these
16 disturbances for a number of months periodically, this was the
17 first time it actually prompted her to call security twice,
18 saying, "I need your help," you know, "Can you call the police for
19 me?" And she didn't want to call the police, because she wasn't
20 confrontational. But she sensed that there was this danger there.
21 And it's the same sense the officers got.

22 When they finally get to the door, there's no response. But
23 they can hear noise inside. They're concerned maybe there was a
24 robbery. Just because the door is not damaged doesn't mean
25 there's not somebody in there. There could be somebody in there

1 | who's injured, who's bleeding to death, who's tied up. There
2 | could be a struggle going on. And some of them described it as
3 | sounding like a struggle. I mean, we now know what was going on.
4 | With two knives, Mr. Celona was smashing the windows. And that's
5 | what they heard outside.

6 | When they came in -- And if you go back to the testimony from
7 | yesterday, of Linda Copeland, the woman next-door, she said she
8 | heard the officers, you know, just begging for him. You know,
9 | they were trying to connect. They're trained in de-escalation.
10 | They're calling him by his name. Some of the words that I wrote
11 | down as she was testifying: that the police were begging him, that
12 | it could not have been more kindly said, and that he was treated
13 | in the best way they could, to help end it. Nobody wanted to go
14 | in there and shoot somebody, certainly not a twenty-year veteran
15 | who has five kids himself. He just wants to go home to his
16 | family, at the end of the day.

17 | And they're put in this situation where it's clearly --
18 | according to the testimony of Officer DiChiara, who's instructed
19 | 5,000 Massachusetts officers, it's a level five deadly force
20 | situation. And I think the police really used incredible
21 | restraint by not going to that level, that they tried to tase,
22 | they tried to communicate. Just two and a half weeks earlier,
23 | Officer Latores had been able to get Mr. Celona to get in an
24 | ambulance voluntarily and go to the hospital. I mean, that would
25 | have been the ideal situation here, and that's what they all would

1 have loved.

2 But unfortunately the nonlethal option didn't work. They
3 tried deploying the taser. It worked briefly, and then it didn't
4 work. They tried to recharge it; it didn't have the same effect.
5 And then when Mr. Celona had the matador shield out in front of
6 him, the taser option was off the table. And then it becomes a
7 situation for the officers' own safety and the safety of everybody
8 in that building, where they're trying to retreat backwards in
9 what we know is a very tight hallway.

10 The hallway in the apartment going to the door was 41 inches
11 in width. And we know that there were shoes and debris that's
12 strewn about there. These are all seen in Exhibits, I think, 4A
13 through E. They were bumping into each other, going back. And
14 Officer Latores was afraid that if somebody trips they're all
15 going to go down, and there's somebody with a knife who's 18 feet
16 away but now comes up to 6 to 8 feet away. And somewhere in that
17 middle ground, if they fall down, I mean, they were all just going
18 to get, you know, butchered there.

19 So they're concerned. They're going out. And it comes to
20 the decision point where, just as in Graham vs. Connor, it's that
21 split-second decision making that -- you can't look back on 20/20
22 hindsight. He's there. It's a rapidly changing situation. And
23 he followed the use-of-force policy. He followed his training.
24 And I think it's very clear that what happened here was justified.

25 I know this is a non-adversarial proceeding, but if you look

1 at the model jury instruction on self-defense, I mean, that was
2 something that the Commonwealth would have to disprove. And it's
3 clear that in this situation the prongs of self-defense -- I mean,
4 officers clearly believed that they were being attacked or
5 immediately about to be attacked and that they did everything they
6 could to avoid physical combat and that they felt it was necessary
7 to defend themselves in this situation.

8 So it's clearly legally justified, it's justified under
9 policy, it's a reasonable response, it was a split-second
10 decision, and it was -- You know, it's unfortunate. And nobody
11 wanted to do this. And in fact, Officer Latores said before he
12 discharged that weapon, "Don't make me shoot you."

13 And if you look at the statements of Mr. Gaffney that was
14 offered as an exhibit today, he specifically says on the second
15 page of the statements he took the elevator to the third floor,
16 and when he got out of it it was the nearest apartment, 310. He
17 stated he began to walk in the direction of Unit 326. As they got
18 about halfway there, "We heard voices shouting the words, 'Drop
19 the knife!'"

20 Mr. Gaffney continues that he heard the officers shouting
21 this once more. He stated that he heard loud bangs, then heard
22 police say, "I don't want to shoot you." Mr. Gaffney heard
23 Officer Latores say, "I don't want to shoot you." And then it
24 says he continued to walk the hallway, and due to the curved
25 structure he couldn't see much beyond where he was standing. He

1 | stated he heard one gunshot as he rounded the curve. So, Officer
2 | Latores did not want to shoot Mr. Celona. This is unfortunately
3 | just what happened.

4 | And mental health being in the picture doesn't mean that this
5 | person, Mr. Celona, was not a threat to them. If you look at the
6 | exhibit that was offered yesterday, the Policy 23.2, Handling the
7 | Mentally Ill, on page 23 of that policy, Section E(1)(d) --

8 | THE COURT: What exhibit is that?

9 | MR. ANDERSON: It -- I apologize; I was not good with writing
10 | down the numbers yesterday. It was --

11 | THE COURT: That's all right; I'll find it. It's the mental
12 | health training?

13 | MR. ANDERSON: It could be Number 15, because that's where I
14 | have a gap in my numbers.

15 | THE COURT: Okay.

16 | MR. ANDERSON: But it's on page 23, Section E(1)(d). It
17 | specifically says, "It is not necessarily true that mentally ill
18 | persons will be armed or will resort to violence. However, this
19 | possibility should not be ruled out. And because of potential
20 | dangers, the employee should take all precautions to protect
21 | everyone involved." So, this does not mean that mentally ill
22 | people can't cause great physical harm or death to individuals,
23 | particularly in this situation.

24 | So I would ask, once you review all the evidence, to come
25 | back with a finding that there was no criminal conduct committed

1 in this situation.

2 THE COURT: Attorney Anderson, thank you very much.

3 Attorney Dewitt?

4 MS. DEWITT AHERN: Yes, Judge; thank you very much.

5 **CLOSING ARGUMENT ON BEHALF OF THE FAMILY**

6 MS. DEWITT AHERN: This is a sort of an unusual situation for
7 me, but, Judge, I'm going to ask the Court to find that the
8 shooting, the killing of Mr. Celona, was not justified. Judge,
9 hindsight is 20/20. First, I'd like to talk a little bit about
10 what the officers knew.

11 From listening to Mr. Gaffney's 911 call, it was, I think,
12 clear that there was no one else in that apartment, that there was
13 even a question if it was really a break in. Mr. Gaffney said in
14 that call that he was acting high or something. And this was
15 relayed to the officers by the -- when the call was made to the
16 officers.

17 Additionally, what was known to the officers: immediately,
18 Officer Latores, now-Sergeant Latores, knew of that address and
19 knew of the resident having a history, according to him and what
20 he says in his statement, of being involved in -- with knives.
21 But he also knew there was a history of mental health issues going
22 on.

23 And he also knew that his history of knives -- And I urge the
24 Court to look at the police report from 12/27/19, wherein
25 Mr./Officer Latores's statement he indicates that they found a

1 bunch of kitchen knives in the car. I think when you look at the
2 report and the property and read the report, the only thing that
3 was found in that was a -- an axe. And if you read the report,
4 this was not an -- a random incident with Mr. Celona; it was an
5 issue where he was having a dispute with another individual. And
6 the officer's report, to Officer Latores's credit, disbelieved to
7 a certain extent the alleged victim in that case. And the case
8 ultimately was dismissed.

9 But the point is, Judge, there wasn't a correlative knife
10 found in the car at that point in time. It was an incident
11 between two people. And it was -- appeared even from the report
12 it wasn't even a random -- It was two people that appeared to know
13 each other. And also, there's a reference in Officer Latores's
14 statement that it was an allegation. And to make it sound like
15 this was a pattern of Mr. Celona's that involved a break-in --
16 There was a comment to Mr. -- by Mr. Celona to Officer Latores
17 that he had an issue with his apartment. He didn't ever accuse
18 anyone of breaking in.

19 When you look at the 10/20 report -- and it's referenced
20 again in Officer Latores -- When Sergeant Mawn testified yesterday
21 after -- On direct from Mr. Tarrant, he testified about the issue
22 of the knife. When -- The court heard, when he was asked about a
23 weapon, he admitted to it. He handed it -- He let the police
24 search, take it off of his person at that point in time. Again,
25 he was disoriented. He didn't know where he was. He was

1 | confused.

2 | But the police didn't section him. They voluntarily said,
3 | "Okay, you can go to a hospital." And I think that's important,
4 | Judge, because Ms. Dunn says for approximately two weeks this
5 | situation had been escalating with Mr. Celona. There's been a
6 | change in him during that period of time. Ms. Dunn, although on
7 | that evening was concerned, the evening of the 2nd, and afraid for
8 | everyone, including Mr. Celona, she never said that he was ever
9 | violent to her. In fact, on that night, when he was acting
10 | strange, he was not violent to her. She was concerned for Mr.
11 | Card. Mr. Card had indicated that he was not violent to him. In
12 | fact, Mr. Card indicated that he was very cooperative with him,
13 | Judge.

14 | The police are going to this call -- And I would say we heard
15 | a lot of testimony about "we didn't know how many people were in
16 | that apartment." I would say they did know how many people were
17 | in the apartment. They knew Mr. Celona was in that apartment.

18 | The other thing, Judge, is that they did nothing to try to
19 | enter that apartment without breaking down the door. They never
20 | called for the master key. They didn't call for the security, to
21 | say, "Bring up the master key." They heard banging and
22 | throwing-around in that apartment. When they spoke, there was no
23 | answer. When Ms. Dunn testified today, she said, "I was thinking
24 | maybe Tommy would answer me. He knew me." There was no response.
25 | They broke down the door.

1 Mr. Celona, who was sitting, beating on a window with two
2 knives, never left the window. He never lunged at them. He never
3 threatened them. He never left his position at that window. I
4 would suggest to the Court at that point in time the police could
5 have backed out of the apartment and should have backed out of the
6 apartment. And they never called for -- The fire was on the site,
7 fire department was onsite, but they never called for any sort of
8 mental-health backup or anyone else to intervene with Mr. Celona.

9 They say once he's tased there's 18 to 21 feet between the
10 two of them. At no time, other than -- And I think the testimony
11 was from Officer Riccio he squared and looked at him and then
12 continued to hit the window. At no time did he ever thrust those
13 knives, either one of those knives, at the police or threaten
14 them.

15 He got up and walked with a blanket. The police are saying
16 he used that blanket to block him from further tasers. He may
17 have done that, Judge, because you've heard Ms. Dunn testify that
18 she heard the tasers and she heard him moan twice.

19 They keep saying they didn't know where the second knife was,
20 but they never said anything other than -- when I asked them, the
21 blanket was held up by his hands with one knife. And they could
22 see that. They all agreed that that was the situation. Mr.
23 Celona is walking towards them. He's looking blankly at him, like
24 he's looking through. He's never threatening them. He's never
25 lunging at them.

1 They back out into the hallway at an angle, as Officer Riccio
2 said yesterday. Ms. Dunn, who's looking through her window, her
3 peephole, says she sees the officer shoot the gun, and she can
4 smell the powder burn -- powder. The officers want the Court to
5 believe that Mr. Celona was in the threshold of that door when
6 that shot occurred, which would have put his body, when it fell
7 forward, into the corridor. You heard Ms. Dunn say that when she
8 could see the gun and the officer with the gun, she didn't see Mr.
9 Celona in that doorway. You also heard her say that one of the
10 officers drug him out of the apartment.

11 When you look at, I think, Exhibit 6, -- and one of the
12 witnesses testified yesterday that there was a lot of blood on the
13 inside of the door -- you can see the blood. And you can see the
14 blanket where I think it's fair/reasonable to say that's where it
15 fell when Mr. Celona was shot. He goes down, according to the
16 police, Officer Latores, on his knees and falls forward, when he
17 left -- let go of the blanket and the gun [sic], Judge.

18 I would suggest to the Court that at that point in time there
19 was other alternatives. Ms. Dunn said she heard today -- she said
20 she heard them say, "Shoot, shoot, shoot." And that's what
21 happened. The police didn't back into the hallway.

22 They didn't try to block him from exiting that corridor.
23 They didn't do -- And then they kept testifying that they were
24 concerned about other residents. They did nothing to shut down
25 the building or the residents on that floor or to make sure no one

1 left. They did nothing. Even Ms. Dunn said when she opened the
2 door and they said -- told them his name was Tommy -- "Close it."
3 She didn't recall if they said to lock the door. She didn't
4 recall if they told her not to come out again, Judge. I would
5 suggest that there were other alternatives.

6 Mr. -- One thing -- I know it's -- going to say "we all
7 forgot," but -- Mr. Celona was not a suspect. He was not
8 committing a crime. He, in fact, was the "victim" of a crime when
9 this all unfolded, Judge. I would suggest to the Court that from
10 the moment -- the police mishandled the situation from the moment
11 that they kicked in that door to the moment that Mr. Celona was
12 shot, Judge.

13 I don't disregard that this was probably a very difficult
14 situation, but I would suggest to the Court that this should not
15 have ended in the shooting and killing of Mr. Celona. The medical
16 examiner said today the death of Mr. Celona was caused by a bullet
17 hole to his heart, Judge. And I would suggest to the Court that
18 under the circumstances, with three officers present -- and the
19 Court could see the size of Officer Latores and Officer Riccio;
20 and we know from the medical examiner that Mr. Celona was 5'6",
21 167 pounds -- that this should not have ended the way it had
22 ended, Judge. And I would suggest -- I'd ask the Court to find
23 that the officer was not justified in his actions.

24 THE COURT: Thank you, Attorney Dewitt.

25 Is there anything else that we need to address at this point?

1 MR. TARRANT: Not from the Commonwealth, Your Honor.

2 THE COURT: Okay. So, the next step of the procedure is for
3 me to review everything and issue a report. I hope to have that
4 done as quickly as possible. But I try to set the outside of that
5 at ninety days. So you can expect something within the next
6 ninety days. Again, I'll try to do it as quickly as possible. I
7 know that everybody would like to see the report as quickly as
8 possible. And I'll do my absolute best. So, I want to thank
9 everybody again. I appreciate it. And, all, please take care and
10 stay safe.

11 MS. DEWITT AHERN: Thank you, Your Honor. Thank you for the
12 opportunity.

13 THE COURT: You're welcome. Thank you.

14 MR. TARRANT: Thank you, Your Honor.

15 MR. ANDERSON: Thank you.

16 MS. DEWITT AHERN: Have a good day, all.

17 [Adjourned at 4:04:12 p.m.]

C E R T I F I C A T I O N

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December 19, 2021

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TODAY'S DATE: December 19, 2021 TRANSCRIBER NAME: Quaverly Rothenberg

CASE NAME: MIDDLESEX D.A.'S OFFICE v. THOMAS CELONA

DOCKET NUMBER: 2153IN000001

RECORDING DATE: October 19, 2021 TRANSCRIPT VOLUME: III OF III

TYPE: FTR JAVS

QUALITY: EXCELLENT GOOD FAIR POOR

ISSUES:

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COMMENTS:

#	86, 7; 86, 24; 87, 25; 98, 24; 100, 2; 100, 19; 101, 5; 101, 22; 2001 [1] 95, 17; 2019 [3] 83, 3; 83, 19; 84, 5; 2020 [17] 15, 9; 16, 8; 20, 20; 21, 17; 35, 3; 35, 25; 56, 4; 70, 25; 71, 6; 72, 3; 80, 19; 93, 24; 94, 17; 97, 18; 152, 15; 152, 23; 181, 24; 21 [14] 24, 1; 24, 2; 24, 6; 24, 7; 27, 2; 81, 9; 127, 13; 162, 17; 162, 19; 162, 21; 162, 23; 169, 4; 171, 12; 191, 9; 21-foot [5] 127, 12; 162, 13; 162, 16; 162, 25; 168, 20; 22 [3] 27, 6; 27, 7; 81, 9; 23 [3] 73, 16; 187, 7; 187, 16; 23-25 [1] 73, 17; 23.2 [1] 187, 6; 24 [1] 73, 16; 25 [4] 73, 16; 148, 9; 149, 17; 150, 25; 26 [2] 75, 10; 75, 11; 27 [3] 80, 11; 80, 16; 84, 5; 27th [2] 83, 2; 83, 19; 28 [3] 80, 17; 80, 20; 80, 21; 29 [3] 81, 12; 81, 22; 82, 6; 2:00 a.m. [1] 97, 21; 2nd [14] 15, 23; 35, 25; 49, 21; 56, 4; 66, 10; 70, 25; 71, 6; 72, 3; 94, 16; 97, 18; 143, 9; 152, 15; 152, 23; 190, 7; 3 [4] 19, 9; 19, 20; 19, 21; 27, 24; 30 [8] 15, 1; 15, 2; 15, 5; 82, 25; 84, 4; 84, 6; 134, 2; 150, 25; 31 [3] 84, 7; 84, 8; 134, 3; 31-page [1] 81, 10; 310 [1] 186, 16; 32 [4] 96, 9; 144, 18; 144, 19; 144, 20; 321 [2] 88, 1; 88, 20; 325 [2] 34, 24; 34, 25; 326 [14] 35, 4; 71, 13; 72, 4; 73, 24; 86, 8; 86, 9; 86, 24; 101, 6; 101, 9;	101, 11; 112, 1; 112, 16; 112, 16; 186, 17; 33 [1] 148, 7; 386 [1] 154, 19; 3:00 [1] 5, 25; 3rd [6] 15, 9; 15, 24; 15, 25; 16, 8; 20, 20; 21, 17; 40 [4] 149, 15; 149, 16; 149, 20; 149, 21; 41 [1] 185, 10; 490 [1] 154, 19; 4:00 p.m. [1] 97, 21; 4:56 p.m. [1] 93, 25; 4a [1] 185, 12; 5 [5] 28, 1; 117, 25; 130, 6; 167, 12; 179, 3; 5'6 [1] 193, 20; 5'8 [1] 128, 7; 5'9 [1] 128, 7; 5,000 [2] 151, 5; 184, 19; 507 [1] 87, 10; 57-what [1] 87, 13; 5701 [2] 87, 12; 87, 14; 5th [5] 80, 19; 93, 24; 141, 10; 141, 11; 181, 24; 6 [8] 19, 3; 19, 4; 19, 19; 137, 4; 137, 5; 137, 7; 185, 16; 192, 11; 617-872-3970 [1] 88, 22; 64 [1] 151, 21; 66 [1] 16, 19; 6:05 p.m. [1] 142, 22; 7 [1] 28, 1; 781 [1] 87, 8; 8 [7] 72, 19; 73, 3; 137, 4; 137, 7; 148, 8; 165, 5; 185, 16; 80 [2] 14, 15; 28, 22; 8:00 [1] 98, 20; 8:00 p.m. [1] 71, 6; 8:15 [1] 98, 20; 900 [1] 131, 1; 911 [18] 6, 10; 45, 1; 47, 14; 77, 20; 78, 2; 78, 3; 80, 7; 80, 12; 80, 15; 84, 24; 84, 25; 85, 8; 85, 13; 86, 4; 87, 22; 89, 5; 91, 13; 188, 11; 921 [1] 98, 9; 922 [1] 98, 8; 923 [1] 99, 16; 924 [1] 97, 21; 925 [1] 98, 8; 929 [2] 98, 10; 99, 16; 932 [1] 90, 23; 9th [1] 23, 1;	:] [3] 86, 3; 87, 21; 88, 13; A a-b-d-e-l-l-a [1] 94, 7; a-hundred-percent [2] 25, 15; 123, 3; a-n-d-e-r-s-o-n [1] 94, 10; a-t-k-i-n-s-o-n [1] 9, 22; a.d.a. [5] 81, 22; 92, 5; 147, 4; 178, 15; 179, 13; abdella [4] 94, 7; 139, 1; 139, 6; 142, 5; ability [3] 166, 1; 171, 13; 173, 3; able [22] 14, 16; 22, 15; 23, 3; 24, 19; 31, 9; 80, 3; 82, 18; 92, 8; 106, 20; 106, 23; 108, 1; 117, 17; 124, 4; 125, 5; 125, 9; 132, 14; 150, 11; 156, 20; 161, 6; 174, 19; 174, 19; 184, 23; abrasion [1] 17, 10; abrasions [1] 17, 6; absolute [1] 194, 8; absolutely [3] 43, 2; 108, 18; 127, 11; academies [2] 152, 7; 152, 9; academy [13] 95, 13; 95, 16; 127, 12; 149, 10; 150, 14; 150, 16; 152, 10; 152, 11; 152, 12; 152, 12; 152, 13; 162, 18; 168, 21; access [1] 82, 18; accessible [1] 103, 8; accidentally [2] 131, 8; 131, 8; according [4] 178, 25; 184, 18; 188, 19; 192, 15; account [4] 172, 21; 172, 21; 172, 23; 177, 11; accountability [1] 161, 20; accuracy [1] 80, 4; accurate [2] 20, 19; 21, 16; accuse [1] 189, 17; accused [1] 101, 24; acknowledged [2] 77, 4; 123, 9; acquaintances [1] 35, 22; across [10] 35, 4; 35, 14; 58, 16; 74, 11; 74, 16; 150, 18; 151, 4; 151, 4; 151, 13; 183, 13;
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