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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

DISTRICT COURT DEPARTMENT OF
THE TRIAL COURT

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IN RE: INQUEST INTO THE DEATH
OF PAUL COURTEMANCHE
* * * * *

* Docket No. 2253IN000001
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INQUEST HEARING
BEFORE THE HONORABLE SHELBY M. SMITH

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Woburn, Massachusetts
January 13, 2023

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WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
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CHARLES M. DICHIARA					
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1 (Court called to order.)

2 (10:10 a.m.)

3 THE COURT OFFICER: Good morning, Judge.

4 THE COURT: Good morning.

5 THE COURT OFFICER: This is a continuation of the
6 Courtemanche matter.

7 THE COURT: Good morning, everybody.

8 MR. HARREN: Morning, Your Honor.

9 THE COURT: Okay. Commonwealth, are you ready on your next
10 witness?

11 MR. HARREN: Yes, Your Honor. The Commonwealth calls
12 Officer Charles DiChiara to the stand.

13 THE COURT: Okay.

14 THE COURT OFFICER: And then just face the clerk.

15 THE CLERK: Please raise your right hand.

16 CHARLES M. DICHIARA, Sworn

17 THE WITNESS: I do.

18 THE COURT OFFICER: Just watch your step and have a seat.

19 THE WITNESS: Good morning, Your Honor.

20 THE COURT: You can inquire.

21 MR. HARREN: Thank you.

22 DIRECT EXAMINATION

23 BY MR. HARREN:

24 Q Good morning.

25 A Morning, sir.

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1 Q Would you please state your name and spell both your first
2 and last names for the record?

3 A Yes. If it would please the Court. My name is Charles,
4 middle initial M as in Michael, last name is D, D as in Delta,
5 I, capital C-H-I-A-R-A.

6 Q Where do you work?

7 A I work for the City of Waltham Police Department.

8 Q What is your role with the Waltham Police Department?

9 A I am a police officer there and I currently oversee
10 training for the police department.

11 Q How long have you been a police officer with the Waltham
12 Police Department?

13 A With Waltham, about 27 years.

14 Q How long have you overseen training for the Waltham Police
15 Department?

16 A Approximately the last five years.

17 Q Are you a trainer anywhere else besides the Waltham Police
18 Department?

19 A Yes, sir.

20 Q Where else are you a trainer?

21 A I'm a trainer for the MPTC, which is the Municipal Police
22 Training Committee, which is a governing body that oversees
23 training for the Commonwealth of Massachusetts.

24 Q And so being a trainer for that committee, where
25 specifically do you conduct trainings?

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1 A I teach across the state of Massachusetts, 357 police
2 departments, so I teach at the Police Academy for new recruits,
3 and I also oversee training for veteran in-service police
4 officers.

5 Q Can you describe some of the training that you've received
6 going back to when -- you went to an Academy; is that correct?

7 A Yes, sir. Correct.

8 Q What Police Academy did you go to?

9 A I went at the time, the Topsfield Police Academy.

10 Q What training did you receive at the Academy regarding the
11 use of force?

12 A Ballpark on the hours, it was defensive tactics and use of
13 force fell in together, so it was about 80 hours of defensive
14 tactics including use of force training, classroom training, and
15 hands-on training.

16 Q Now, I think you said that was going on 30 years ago?

17 A Yes. 1990, I believe.

18 Q Can you describe for the Court some of the training you've
19 received during the course of your career regarding the use of
20 force and deadly tactics?

21 A Yes, sir. In I believe 1997, I put in to become Academy
22 instructor, and I went to a, at the time, was a 15-day class to
23 be certified as a state instructor to teach defensive tactics
24 and use of force. That was in about 1996, and I taught -- I've
25 been teaching for approximately 25 years. And then since then,

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1 I've gone to become a nationally certified defensive tactics
2 instructor through FLETC, which is the Federal Law Enforcement
3 Training Center, and I've been to the Advanced Analysis Program
4 with the Force Science Institute.

5 Q So to break that down a little bit, specifically, what were
6 the requirements you had to meet to become a trainer within the
7 State of Massachusetts?

8 A You had to get the recommendation from your chief, and then
9 you had to complete a 15-day class to become an instructor.

10 Q And by complete, successfully pass it --

11 A Yeah --

12 Q -- both physically and regarding the curriculum?

13 A Yes. There was a series of written tests and proficiency
14 tests.

15 Q And you did that, you said, in '96 or '97?

16 A Approximately. Yes, sir.

17 Q When did you become certified on the national level?

18 A Probably 2002, I believe.

19 Q What were the requirements for you to be nationally
20 certified?

21 A To get nationally certified, you had to -- same thing, you
22 had to get a recommendation -- had to get recommendations from
23 other defensive tactics instructors, and then you had to
24 complete training at the national level. At the time, it was
25 down in New Orleans.

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1 Q Can you describe what some of that training was?

2 A It was more advanced training with the baton, control and
3 restraint techniques, ground defense, pepper spray instructor,
4 less lethal tactics, de-escalation techniques.

5 Q In addition to completing the training, you actually had to
6 successfully complete the training in terms of coursework and
7 physical training as well; is that correct?

8 A Yes. You have to complete -- complete it, and also teach
9 back the materials as well.

10 Q Are you involved in any international aspects of training?

11 A Yes, sir.

12 Q What are those?

13 A I -- I'm on the advisory board and I teach nationally for
14 the Safariland Training Group, which an international police
15 training group. Trains officers across the country and also
16 internationally, Canada, Switzerland, Brazil.

17 Q You also mentioned something about being involved in Force
18 Science?

19 A Yes, sir.

20 Q What is Force Science?

21 A Force Science Institute is a --

22 THE COURT: Like the number 4?

23 THE WITNESS: What's that?

24 THE COURT: The number 4 or Force Science, is it --

25 THE WITNESS: It's Force Science Institute. It's a -- it's

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1 a class. It's an organization.

2 BY MR. HARREN:

3 Q Sorry, Officer. So is it the number, numerical 4 Science?
4 Is it F-O-R Science?

5 A Oh, sorry. I'm sorry.

6 THE COURT: That's okay.

7 THE WITNESS: It's Force, F-O-R-C-E.

8 THE COURT: Force.

9 THE WITNESS: Science Institute.

10 THE COURT: Okay.

11 THE WITNESS: Sorry about that.

12 THE COURT: Force Science Institute. Thank you.

13 BY MR. HARREN:

14 Q Bad question on my part.

15 A No, I mumbled, I think.

16 Q So Force Science, not For Science?

17 A Correct.

18 Q My apologies. So what is Force Science?

19 A It's another organization that teaches police officers to
20 analyze use of force investigations and human behavior and
21 to -- it has two phases. The first phase is training officers
22 in use of force training, and the second phase is to analyze use
23 of force investigations.

24 Q What is your role, position, whatever with Force Science?

25 A I went to their basic school, which is a 40-hour class, and

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1 I completed their advanced specialist class, which was an
2 18-week course.

3 Q When did you do all that?

4 A When?

5 Q Yes.

6 A I finished up -- I did the Force -- I did the basic course
7 about 10 years ago, and I just completed their advanced program
8 about two months ago.

9 Q Have you testified in the court in the Commonwealth as an
10 expert witness in the area of use of force and deadly tactics?

11 A I have, sir.

12 Q How many times have you done that?

13 A Approximately 12 times or so, 12 to 15.

14 Q I've used the term a few times in my questions, and then I
15 think in your answers you've said as well, use of force. When
16 we say use of force, what does that mean?

17 A So force for us is described as the amount of effort
18 required by police to compel compliance from an unwilling
19 individual. So we teach police officers when they can use force
20 and what level of force to use, and we teach them standards and
21 guidelines, which is the law and also guidelines when the police
22 officer can use force, and what level of force they should use.

23 THE COURT: I'm sorry, Officer DiChiara --

24 THE WITNESS: Sure.

25 THE COURT: -- can you just define force again for me?

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1 THE WITNESS: The amount of effort required by police to
2 compel compliance from an unwilling individual. And that comes
3 from the definition of the IACP, or International Association of
4 Chiefs of Police.

5 THE COURT: Thank you.

6 BY MR. HARREN:

7 Q So as an instructor in the academies, can you describe in a
8 little bit more detail, I know those are the two broad
9 categories for use of force. So I guess to break it down, at
10 the Academy level for a recruit, what are they taught regarding
11 the use of force?

12 A They are taught to -- they are taught the law, and they are
13 taught a series of I would call them visual aids to teach them
14 appropriate amounts of force.

15 Q So to break down the first aspect first, what is the law
16 that they're taught at the Academy?

17 A They are taught that their use of force has to be
18 objectively reasonable based on the totality of the
19 circumstances, that every situation has a unique set of facts
20 and circumstances, and that they have to analyze the totality of
21 the circumstances, that their use of force must be reasonable
22 and appropriate based on the confrontation in front of them.
23 They're taught that -- to use de-escalation tactics if possible,
24 and before we use any level of force, and that's low levels of
25 force all the way up to deadly force, that de-escalation tactics

1 were attempted and failed, or they weren't feasible based on the
2 immediacy of the threat.

3 Q So that's the kind of law aspects to what they're taught in
4 the Academy; is that correct?

5 A Correct.

6 Q The second aspect where you use some examples, can you
7 describe that a little bit, please?

8 A Yes. We use the totality triangle to help the officers
9 determine what level of force because it's a balancing act. So
10 we try to use the totality triangle coupled with the use of
11 force model.

12 MR. HARREN: Your Honor, may I approach?

13 THE COURT: Yes.

14 BY MR. HARREN:

15 Q I'm providing you with a two-page document. Are you
16 familiar with this?

17 A I am, sir.

18 Q Thank you.

19 MR. HARREN: Your Honor, I move to introduce this as the
20 next exhibit.

21 THE COURT: Is there any objection?

22 MR. ANDERSON: No. No objection.

23 THE CLERK: Okay. Exhibit 59.

24 THE COURT: 59, Madam Clerk?

25 THE CLERK: Yes, Judge.

1 THE COURT: Thank you.

2 (The court reporter marks the Use of Force Model as Exhibit 59.)

3 BY MR. HARREN:

4 Q Officer DiChiara, can you see that?

5 A I can, sir.

6 Q Would it be helpful to have another copy with you as we're
7 going through it?

8 A It would. I'm getting old and the struggle is real.

9 (Simultaneous speech.)

10 THE COURT: I can see it from here.

11 MR. HARREN: Okay.

12 THE COURT: Yeah. I think my angle is better than yours.

13 THE WITNESS: I think I'm getting old.

14 BY MR. HARREN:

15 Q Officer, can you please tell us what we're looking at?

16 A So this is the -- some people would call it the use of
17 force continuum. We call it the use of force model. And it's a
18 visual tool to use to help officers determine how to assess risk
19 and threat and subject's actions so that they can -- they can
20 weigh out everything they're -- they're looking at so that they
21 can make a good conscious decision on what level of force they
22 should be using.

23 Q So as we look at this document, on the top, there's
24 something that looks like a triangle that has wording in each of
25 the three corners, or each of the three points of the triangle;

1 is that correct?

2 A Correct.

3 Q What is that referred to as?

4 A That's referred to as a totality triangle.

5 Q What are the three corners we're looking at? What do each
6 of them say and in going through them, after you say them, let's
7 go through what each of them means?

8 A Sure. The first one at the top is going to be perceived
9 circumstances. And what that is, that's where the officer is
10 taught and trained to analyze the risk, or in laymen's terms,
11 the arena that the officer is operating in, whether it's the
12 time of day, why they're there in the first place, what is the
13 call for service, are they by themselves, who are they dealing
14 with, what is the threat potential, what is the time of day, is
15 it a high-crime area? So they're taught and trained to analyze
16 all the factors at that top level. So before they even get to a
17 use of force, they're taught to analyze the big picture, which
18 is everything that's going on at the time.

19 Q Okay. What's the next point on the triangle?

20 A If I'm looking at it, down to the left, you see -- if I'm
21 looking at it directly, perceived subject's actions.

22 Q What is that?

23 A We separate the subject's actions into five categories,
24 really two categories, compliant versus noncompliant. But
25 there's five levels of subject's actions. And --

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1 Q Okay. Do we want to break that down in a moment when we
2 get to the use of force model?

3 A Yes, sir.

4 Q Okay. And so then the last point on the triangle, the one
5 all the way at the right on the bottom, what is that?

6 A That refers to reasonable officers' responses. And that is
7 where the officer, in -- in a perfect world, what we're trying
8 to get the officers to do is analyze risk as well as what the
9 subject is doing, and a correct analysis of those two will help
10 them form the basis for that third category, which is the
11 officer's responses, which you teach an officer what level of
12 force they should be trying to utilize.

13 Q So as an officer's responding to a scene using the
14 triangle, the officer is looking at the big picture of what am I
15 walking into, what is the subject's actions, and then how should
16 I be responding to that walking into this scene; is that a fair
17 assessment?

18 A That's fair. Yes, sir.

19 Q Okay. And then the officer's response is likely perceived
20 subject actions. Those are also broken down in the use of force
21 model as well; is that correct?

22 A Yes. Everything's broken into five levels.

23 Q So then to draw your attention to the second diagram on
24 this where it says MPTC use of force model, I think you said
25 before, but what does MPTC stand for?

1 A That's Municipal Police Training Committee.

2 Q And that's for Massachusetts; is that correct?

3 A Yes, sir.

4 Q So what is the use of force model, before we talk about the
5 nitty-gritty, just in general terms?

6 A Well, it would be called -- it used to be called the use of
7 force continuum, but a use of force model we describe it as.
8 It's a visual learning tool to help the officers determine a
9 reasonable and -- it's a balancing act, so it's -- it's -- the
10 use of force model is help to determine what the officers should
11 be utilizing coupled with analyzing those five levels.

12 Q Okay.

13 THE COURT: I'm just going to interrupt for just one
14 second. Who gets this? Like do you only get this if you've
15 attended one of the trainings that you conduct, or do all
16 officers get this model, or --

17 THE WITNESS: So the -- the curriculum across the state for
18 all agencies is the same for recruits and in-service training.
19 So they get this in their recruit academy, and they also get it
20 annually every year as part of in-service training.

21 THE COURT: Okay.

22 THE WITNESS: So -- and most police departments base their
23 use of force department policies and procedures off of this
24 model. So --

25 THE COURT: But it would include this?

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1 THE WITNESS: Yes.

2 THE COURT: Okay.

3 THE WITNESS: Correct.

4 THE COURT: Thank you.

5 BY MR. HARREN:

6 Q And on that vein, you work for the Waltham Police
7 Department; is that correct?

8 A Yes, sir.

9 Q Did you have any response or any involvement in the
10 incident in Burlington that is the subject of this inquest?

11 A I did not.

12 Q With that, do you know the two officers who were involved,
13 Officer Reyes and Officer Miedico?

14 A I do.

15 Q In what capacity do you know those two officers?

16 A Officer Reyes, I believe I have just trained him at the
17 in-service level. I teach in-service training at the Lowell
18 Police Academy on Fridays for veteran officers. So I believe
19 he's come through some of my trainings. So I don't know him
20 personally or outside of work; I just know who the officer is.

21 Q And then what about Officer Miedico?

22 A I've trained her as a recruit officer. I'm not sure if
23 it -- if it was at the Lowell Police Academy or the Northern
24 Essex Community College Police Academy. One of those two. I
25 believe I had her as a recruit a few years ago. But same deal,

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1 I -- I only know her through the Police Academy.

2 Q So for both officers that were involved and the subject of
3 this inquest, you actually taught them use of force, one at the
4 Academy, one for continuing training?

5 A I did. Yes, sir.

6 Q And you taught both of them about this use of force model?

7 A Correct.

8 Q So can you just orientate us, now I've got the use of force
9 a little more blown up. What are we looking at in terms of how
10 this model is depicted and then let's go through each step of
11 the model?

12 A Okay. The bottom in the blue is the lowest level of force,
13 and as you go up the ladder or you go up the steps, when you get
14 to red, that's the most serious level and highest level of risk
15 and highest level of potential injury.

16 Q So we talked earlier about the triangle where we've got the
17 circumstances of the call, the subject's actions, and the
18 officer's response as we were looking at the triangle, right?

19 A Yes, sir.

20 Q So as we're looking at this model, which is broken out a
21 little bit differently, where lethal is at the top and response
22 of officers and perceived actions are on the sides, we're kind
23 of working our way up to the point of the triangle; is that fair
24 to say?

25 A Correct.

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1 Q Okay. So can you describe then the blue or the lowest
2 level that -- so each of these has five levels; is that correct?

3 A Yes, sir. Correct.

4 Q So there's five levels of perceived subject actions?

5 A Correct.

6 Q And then accompanying them, there are five levels of
7 reasonable officer responses; is that correct?

8 A Correct, sir.

9 Q And tied with that is the threat perception category; is
10 that right?

11 A Yes, sir.

12 Q So threat perception category, if we were looking at the
13 triangle again would be at the top; is that right?

14 A That's correct.

15 Q Okay. So talking about the lowest level for all three
16 categories, what is that? And can you elaborate on it?

17 A So I -- I always try to teach the middle category first.
18 So if you -- if you actually put the totality triangle into
19 that, you would have perceived circumstances otherwise known as
20 threat perception categories. So the first level would
21 be -- would be strategic. And what that means is baseline
22 perception of occupationally accepted risk. It basically means
23 when the police officer comes to work, his risk assessment
24 should be situationally aware. It's a dangerous job and he
25 should be aware that it's a dangerous job and his -- his -- he

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1 should be thinking strategically when he comes to work.

2 Q Okay. So with an officer thinking about that, if they were
3 to respond to a call, and they had a perceived subject action
4 where someone was compliant, what is the definition of compliant
5 you would use in teaching this model?

6 A A compliant individual is doing everything an officer asks
7 and requests, and he's not offering up any degree of
8 noncompliance at all.

9 Q Am I correct in reading this model that the reasonable
10 officer responses would be cooperative controls?

11 A Correct.

12 Q What is the definition of cooperative controls?

13 A Cooperative controls refers to verbal -- verbal skills or
14 command presence. And cooperative controls meaning you're using
15 techniques and tactical based on professionalism and verbal
16 skills.

17 Q So do I understand it correctly then that at the lowest
18 level where we're being strategic, if I'm a police officer going
19 to work in a uniform, and I see someone that I need to engage
20 with, and I was to say to them, "Sir, please come over here,"
21 and they were to follow that instruction, I've been on level 1
22 of the use of force model?

23 A Yes. You're using your verbal skills and command presence
24 and that's as much -- those are your level 1 responses to that
25 type of a situation, cooperative controls.

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1 Q Okay. Can you please discuss the second level, and I think
2 that it's a little fuzzy on the screen for the perceived subject
3 actions, but just so everyone can know what it says, it says,
4 "resistant or passive." Is that correct? Or passive
5 resistance?

6 A Yes, sir.

7 Q All right. So --

8 THE COURT: Officer, just one second before you do that.

9 THE WITNESS: Sure.

10 THE COURT: Okay. Go ahead.

11 BY MR. HARREN:

12 Q So can you describe the -- it goes up level 1 at the bottom
13 level, 5 at the top; is that correct?

14 A Yes, sir.

15 Q All right. So please discuss level 2, the second level.

16 A Level 2 would be a passive resistant individual, which
17 means they're noncompliant, but their noncompliance is not met
18 with any energy-based physical resistance at all. It's more
19 verbal in nature or just refusing your commands.

20 Q Okay. So if I were seated in a chair and you told me to
21 get up and I said no and I did nothing other than saying no and
22 refused to get up, would that be an example of passive
23 resistance?

24 A Correct.

25 Q All right. On the model for that level, it has contact

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1 controls; is that correct?

2 A Correct.

3 Q What is the definition of contact controls?

4 A Contact controls are light touch tactics: push, shove,
5 grab, just basically going hands-on without any level of force.

6 Q And so then where it says for threat perception categories
7 tactical, how does that tie in?

8 A Tactical means now you're shifting to an increase in risk
9 based on the facts and circumstances in front of you. You're
10 noticing that there's some -- some safety concerns and you start
11 to deploy safety strategies at this time, calling for backup,
12 creating distance, waiting for another officer, putting a
13 barrier between you.

14 Q So would an example on level 2 be for the passive
15 resistance and the contact controls of being tactical if you and
16 another officer were coming to arrest me for a warrant and I
17 refused to get out of my seat, having one officer provide cover,
18 a second officer be contacted, and that officer physically
19 picking me up and placing me under arrest without my assisting
20 him in terms of moving my body; is that an example of level 2?

21 A Correct. Exactly.

22 Q Moving to the third level, can you please discuss that?

23 A Level 3 on the yellow is active resistance. So now it is a
24 noncompliant individual, but the noncompliance is now met with
25 actual energy-based physical resistance. Not necessarily

1 fighting, but energy-based resistance.

2 Q So would an example of that be if again I'm seated in the
3 chair and you came to arrest me and you told me to get up and I
4 said no, and then you went to use contact controls with me and
5 grab my arm, and I pulled my arm away, but I didn't swing a
6 punch at you or assault you, but I pulled myself away, would
7 that be an example of active resistance?

8 A Yes, sir. Correct.

9 Q So then compliance techniques, that's on level 3 as we look
10 at the diagram. Can you describe what that is -- what those
11 are?

12 A Compliance techniques are force options that are meant to
13 stop a person's resistance and gain compliance. And compliance
14 techniques would be referred to as OC pepper spray, the TASER at
15 the drive stun level.

16 Q So can you define that? What is a TASER at the drive stun
17 level?

18 A So TASER, there's two ways of deploying a TASER. One way
19 is to fire two projectiles, two basically darts, and that is
20 at -- that would be considered firing of the probes. That is a
21 higher level of force. Drive stun just means there's
22 no -- there's no impact, and there's no darts. You just -- you
23 just go up, approach the person, and you press the TASER against
24 them, and the electrodes would cause more localized pain, but no
25 trauma or injury. It's more or less like a distraction

1 technique. It's like similar if I took a hot iron and pressed
2 it against you. The pain is more localized, but it doesn't
3 cause any other injuries.

4 Q How does that factor into volatile as we're looking at that
5 level?

6 A Volatile situation means it's -- now your risk assessment
7 has gone to the point of like chemicals. It's volatile. It's
8 got the potential to erupt and go bad. It's got the potential
9 to do people harm.

10 Q The fourth level, assault of bodily harm from the perceived
11 subject actions, describe that, please.

12 A So an assaultive individual, now, the noncompliance has
13 culminated in an actual attack on -- on innocent people or the
14 officers. So an assaultive individual means an assault is
15 taking place or is about to take place, either on the officer or
16 other civilians.

17 Q And on that level for reasonable officer response, it's
18 defensive tactics; is that correct?

19 A Yes. Correct.

20 Q Can you describe what defensive tactics are?

21 A Defensive tactics refers to tactics that are meant to
22 immediately stop a subject's violence actions and gain
23 conclusive control. So they're a high level of force because
24 you're --

25 Q Can you give me an example of what that would be?

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1 A Yes. That would be -- so defensive tactics refers to two
2 things. It refers to personal weapons or intermediate weapons.
3 Personal weapons would be basically weapons of the body. It
4 would be punches, kicks, palm heel strikes, elbow strikes. It's
5 using the personal weapons to defend myself. Those would be
6 personal weapons.

7 Q What are the other types of weapons that would be used at a
8 defensive tactics level?

9 A The intermediate weapons are weapons that would cause
10 impact, so a police baton would fall in at that level, firing a
11 TASER with impact with the two darts, that would be considered a
12 force option of defensive tactics. And we start to get into
13 less lethal force options like bean bags or 40-millimeter can
14 also start to play at that level.

15 Q Okay. And before we get into any more detail of that,
16 we're talking about threat perception category as harmful. How
17 does that play into all of this?

18 A Yes, sir. Whereas volatile means it's got the potential to
19 go bad, harmful is it's -- it's gone past that. It's already
20 gone bad, so now we describe it as now you're in the assault
21 arena. You're not -- you're no longer dealing with somebody
22 that's resisting. You're dealing with somebody that's more
23 violent and more combative. So now, instead of potential to go
24 bad, it has in fact gone bad.

25 Q Okay. And then the fifth level for perceived subject

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1 actions, it says they're assaultive, bodily harm, death. Can
2 you describe what is meant by that in this model?

3 A That is the highest level that we deal with, and that means
4 the assault or potential assault has culminated to a -- to an
5 immediate -- immediacy of the threat. An eminent threat of
6 death or serious bodily harm. That means the assault has gotten
7 to the point where a police officer or innocent people could be
8 killed or seriously injured.

9 Q For a reasonable officer response, it's deadly force?

10 A Yes. Correct.

11 Q Can you describe what's meant by deadly force?

12 A So deadly force is our highest level of force, and it's
13 generally thought to be firearms. That's where our firearms
14 training comes into play, but we would describe it as
15 deadly -- as deadly forces is not tool-specific. It could be a
16 firearm, but it could be a police car. It could be using the
17 baton to a lethal area. It could be using a less lethal round
18 to a potentially lethal area. So deadly force is generally
19 thought to be firearms, but it could be any tools to stop an
20 eminent threat.

21 Q And how do assaultive, bodily harm, or death and deadly
22 force factor into lethality?

23 A Well, lethality means the situation that we're dealing
24 with, we're operating in an area that has a potential to cause
25 somebody death or serious bodily injury.

1 Q To step back a little bit, when we talked about level 4 and
2 level 5, well, at level 4, you said that less lethal weapons are
3 escalating, or maybe that's not the right word that you used,
4 but are bridging from level 4 to level 5 in terms of reasonable
5 officer response?

6 A Yes. Correct.

7 Q So it seems like less than lethal weapons can live in both
8 levels of reasonable officer response 4 and 5; is that correct?

9 A That's correct.

10 Q Can you elaborate on why that is? Why they may live in
11 both levels or bridge the gap between the two?

12 A So this -- this use of force model is to give the officers
13 guidance, so everything is not black or white, cut and dry. So
14 a situation with less lethal options, the core value of
15 everything we do with police training is reverence to human
16 life. It's protect and serve and preserve preservation of life.
17 So if we have an opportunity to use less lethal options in a
18 potentially lethal confrontation, then we -- we will try to
19 teach officers to do that.

20 Q When we say a less lethal option, what -- what are we
21 talking about when we talk about less than lethal?

22 A So our --

23 Q Or less lethal. Excuse me. Not less than lethal.

24 A Yeah. So less lethal options are options that could be
25 lethal but generally speaking, they won't cause death or serious

1 injury, and they're based on -- our less lethal options are
2 going to be our beanbag shotgun which is a less lethal round or
3 40-millimeter round, which is -- what they are is essentially an
4 extended range baton strike. So you're -- you're hitting
5 somebody with impact similar to like a 95 mile an hour fastball,
6 so we teach to hit people in limbs or an area that would stop
7 their violent behavior or stop their potentially deadly behavior
8 as a force option if it's -- if it's possible.

9 Q And when it says -- with the term less lethal, the idea is
10 hit them in one of those not super vulnerable parts of the body
11 to have an impact, like the baton, to get them to stop; is that
12 right?

13 A That's correct.

14 Q But they could be lethal if someone was struck in a
15 more -- I'm trying to think of the word --

16 A Vulnerable area.

17 Q To a more vulnerable area on the body.

18 A Correct.

19 Q So in Massachusetts, are you aware of what the different
20 less lethal options are that are committed in Massachusetts?

21 A Yes, sir. I am.

22 Q What are those?

23 A TASER is considered less lethal option, 40-millimeter
24 impact projectiles are considered less lethal, and 12-gauge
25 shotgun beanbag rounds are considered less lethal. Those are

1 generally our three less lethal options.

2 Q And it may beg the obvious, but the 12-gauge beanbag round
3 discharges a beanbag that strikes the person; is that correct?

4 A Correct.

5 Q The 40-millimeter discharges a rubber projectile that would
6 strike the person; is that correct?

7 A Correct.

8 Q Can you describe how the TASER works? I know you already
9 described it in terms of using it up close on someone, but when
10 you actually deploy a TASER, how does that work?

11 A So a TASER or electrical weapon fires two -- essentially
12 two darts. It's basically two fishhooks straightened out. And
13 the first dart goes point of -- point of aim, point of impact.
14 And then the second one drops down at an angle so it's meant
15 to -- it's meant for the darts to spread apart so that you have
16 a higher area affected.

17 Q How does a TASER work when the two probes that come out
18 actually make contact with someone?

19 A So the way it works is that when the -- when the two darts
20 go in, you're looking for -- you're trying to get a -- an area
21 of spread. So you're trying to have contact on the body, and
22 you're trying to have a spread of at least 12 inches is what you
23 need to have an effect. So when you -- when you hit somebody
24 with a TASER, you're getting pain, but you're also getting
25 neuromuscular incapacitation, which means involuntary muscle

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1 lockup. So you're trying to have a -- so if the -- if one dart
2 hits at the top and one hits at the bottom, the greater the
3 spread, the better impact that you're going to have.

4 Q How does it cause pain? How does it cause muscles to stop
5 working when the two probes make contact with that?

6 A Without being an engineer, it basically gives these
7 electrical -- electrical impulses that are going -- electricity
8 follows the path of least resistance, so in between the two
9 darts, it'll cause these 19-second-per-pulse impulses that will
10 cause pain and neuromuscular incapacitation.

11 Q So you talked about having at least a foot spread between
12 the two darts; is that right?

13 A That's correct.

14 Q What would happen if there was a spread of less than a
15 foot?

16 A If you get spreads of less than 12 inches, you're not going
17 to get -- you're not going to get a good impact. You're not
18 going to get a -- it's only going to be the area affected. So
19 if it's a small area, that's the only area that's going to be
20 affected. So you're not generally going to get -- you're going
21 to get more of a localized pain versus that muscle contraction.
22 So it doesn't work as well unless you have a good spread.

23 Q So with the spread, if I got hit in the chest and then hit
24 on my thigh, it's -- the electrical current is going to go more
25 through my body and have a greater effect; is that right?

1 A Exactly. Correct.

2 Q If I get two in my chest, it's only going to have the
3 current effect, right, on my chest localized?

4 A That's correct.

5 Q So you talked about that when a TASER is deployed, one dart
6 goes straight, the other comes off at an angle, and that is
7 designed to create that spread; is that correct?

8 A That's correct.

9 Q And then what could cause the spread when the two darts
10 make contact on a subject to be that less than a foot ideal
11 portion?

12 A If you're too close, then the darts don't have a chance to
13 spread.

14 Q For the reverse effect, can it be that the darts are too
15 far apart? Well, let me ask it a different way. Fair to say
16 that after the taser is deployed until it runs out of inertia,
17 the targeted dart will continue to go straight, and the dart
18 that comes out at an angle will continue to go at an angle; is
19 that correct?

20 A Correct.

21 Q So the spread will get wider as it gets further away from
22 the TASER itself?

23 A That's correct.

24 Q Does it therefore become an issue at too great of a
25 distance in terms of the effectiveness of the TASER getting both

1 darts into a subject?

2 A Correct. It's much harder to hit accuracy-wise, and
3 from -- from that distance, you have -- you're too far back, so
4 the darts might break -- they're copper wires, so they might not
5 make it to that distance, or they might miss the target.

6 Q What is the acceptable range that's taught for using a
7 TASER?

8 A So even though you can use them from 0 to 5 feet, the
9 optimal distance, we teach that that's too close. We teach
10 optimal distance is 7 to 15 feet generally.

11 Q Why is that?

12 A Higher hit probability. It's enough distance that the
13 probes should spread, and also 7 to 15 feet gives you enough
14 reactionary gap if the TASER doesn't work, because it doesn't
15 work all the time. Seven to 15 feet will give you time and
16 distance and space to use another force option or to try to tase
17 a second time or to use another force option.

18 Q In the use of force model, is this model assuming there is
19 one officer responding to a scene or multiple officers
20 responding to a scene? I'll ask that first question. So does
21 it assume one or multiple officers?

22 A It's to be used one or multiple officers.

23 Q Okay. The perception, the threat perception categories,
24 can that change whether there's one or multiple officers?

25 A Yes. It could.

1 Q The reasonableness of an officer's response in terms of
2 what use of force they're allowed to use, does that change based
3 on the number of officers?

4 A Yes. It could.

5 Q Are you familiar with lethal cover and nonlethal cover?

6 A Yes, sir.

7 Q What is lethal cover?

8 A Lethal cover is if you're dealing with a potentially lethal
9 environment, and you're dealing with -- you're dealing with a
10 situation that could cause you or somebody else serious injury
11 or death, then we would -- we would -- we would teach lethal
12 cover, a lethal -- lethal option, lethal force option.

13 Q And when we say lethal cover, what do we mean? Obviously,
14 by lethal we're talking about deadly, but when we say cover,
15 what's the cover aspect of that?

16 A Have your firearm out at the low-ready position and -- and
17 have some cover if possible or barrier.

18 Q So are you ready to potentially use your firearm if things
19 go sideways?

20 A Correct.

21 Q Maybe the nomenclature way to put it?

22 A Yes, sir. Correct.

23 Q What is less lethal cover?

24 A So less lethal as a force option would mean if we have
25 multiple officers there and you can deploy other force options,

1 we would use a less lethal option. So less lethal cover would
2 generally mean if I have my firearm out and a second officer
3 arrives, if the situation dictates and it's safe to do so and
4 it's more static and we're containing it, then I will call for a
5 less lethal option. I'll call for less lethal cover, which
6 means it could be a 40-millimeter. It could be a taser, and
7 then we'll try to use a less lethal option as well. So most of
8 the time, if we have two officers there, if possible, as
9 situation would dictate, we'll try to have a lethal option and a
10 less lethal option.

11 THE COURT: I just have a question. So cover refers to
12 what you're armed with essentially?

13 THE WITNESS: Yes. Correct.

14 THE COURT: Okay. So then less lethal would be the
15 coverage with the beanbag -- what the -- the mechanism that
16 releases beanbags or the 40-millimeter?

17 THE WITNESS: Yes, Your Honor. Correct.

18 THE COURT: Okay. Thank you.

19 BY MR. HARREN:

20 Q Would an officer use less lethal -- when we're talking
21 about a level 5 lethal threat perception category, if an officer
22 were by themselves, would they cover themselves with less lethal?

23 A If an officer is alone, there is -- and you're dealing with
24 a lethal confrontation or a lethal risk assessment, it is always
25 going to be a lethal option if you're by yourself.

1 Q Why is that?

2 A Because the situation you're dealing with has the potential
3 to cause you or somebody death or serious bodily injury, and
4 less lethal options don't always work.

5 Q And what would be the concern if an officer was by
6 themselves and they used a less lethal cover or a less lethal
7 option that didn't work?

8 A If they use a less lethal option and it doesn't work, and
9 then the assault continues, then there's a chance somebody's
10 going to be killed.

11 Q If there are two officers on a scene, would both officers,
12 if confronted with a harmful, we'll say harmful level 4
13 category, would both officers arm themselves with less lethal
14 cover?

15 A No, sir.

16 Q Why?

17 A Because when you get to that level of risk, and you get to
18 that level of behavior, and you get to that intensity of a
19 violent encounter, to have both officers armed with less lethal
20 would -- would pose a significant risk to the officer and as
21 well as the community.

22 Q Why is that?

23 A Because there's no -- less lethal options
24 are -- they're -- we utilize them when possible, but they don't
25 always work. And if the less lethal option doesn't work, now

1 the officers are stuck with a less lethal option and now
2 they -- they have to try to transition to deadly force when they
3 should already be there. So we try to teach contact cover. We
4 try to teach if there's a less lethal option, there is always
5 going to be a lethal option because of the situation and the
6 facts and circumstances that we're dealing with.

7 Q Are you familiar with real world and test deployments of
8 the 40-millimeter?

9 A Yes, sir.

10 Q What is your understanding of the effectiveness of that
11 with one deployment?

12 A Overall, and I've used the 40-millimeter multiple times,
13 it -- on average, one 40-millimeter seems to have a pretty good
14 effect depending on -- depending on clothing, distance, where
15 you put it on the body, and also the subject's mindset. But
16 one -- one 40-millimeter round sometimes works.

17 Q You say sometimes works. Does it always work?

18 A No, sir.

19 Q Are you aware of situations, whether personally or in the
20 course of your training and expertise, been aware of more than
21 40-millimeter round being necessary?

22 A Yes, sir. Multiple times.

23 Q And is that because everyone responds to things differently
24 and there's different factors that play in?

25 A Yes. It really -- it really comes down to shot placement

1 and the subject's ability to fight through pain and discomfort
2 and the subject's mindset.

3 Q To step back for a few moments, something that you just
4 talked about with the 40-millimeter in terms of if clothing can
5 affect it, so if I'm wearing a big, puffy jacket, that may help
6 deaden the blow of the 40-millimeter as opposed to if I'm not
7 wearing a shirt at all; is that correct?

8 A Correct.

9 Q Can clothing and other factors come into play with the
10 effectiveness of a TASER?

11 A Yes, sir. Absolutely.

12 Q Can you speak to that, please?

13 A So a TASER works best if there is -- if the dart is
14 actually into the body. It will work into the clothing, but it
15 has -- the electricity has to jump through the clothing, and it
16 doesn't always do that. So there is very -- with TASER
17 deployments, there is a lot of failures based on clothing,
18 especially being in the northeast where people where thicker
19 jackets or sweatshirts. So wearing clothing definitely has an
20 effect on the TASER use effectiveness.

21 Q What if someone were carrying something like a blanket,
22 could that affect the effectiveness of the TASER?

23 A Yes, sir. There -- TASERS, towels, anything that might
24 break the -- the wires on the TASER are very thin, and they
25 break pretty easily. So lot of times, a blanket or a towel can

1 defeat the TASER.

2 Q And a blanket or a towel could also be a barrier to prevent
3 the probes from making contact or having the effect on the
4 subject?

5 A Yes, sir. Correct.

6 Q Since we've talked about the 12-gauge beanbag, can you talk
7 about the effectiveness of that as an option or as a tool as a
8 less lethal device?

9 A So in Massachusetts, those are our only two less lethal
10 options. We use 40-millimeter or 12-gauge shotguns. They're
11 both effective. The difference I would say with the 12-gauge is
12 a lot of police departments use the 12-gauge because the
13 40-millimeter, you generally get one round even though it can be
14 more effective, you'll get one round. With the 12-gauge, you
15 can get five rounds, so a patrol officer can carry more rounds
16 at their dispersal, so a lot of police departments carry the
17 12-gauge shotgun.

18 My opinion is just based on training across the country is
19 with a 12-gauge, they actually cause more potential injury and
20 they're not as effective because you end up using it multiple
21 times. The benefit is you have multiple rounds, but it's not as
22 effective, and you use -- you have to use multiple rounds,
23 three, four, five rounds versus a couple of rounds.

24 Q I believe in your answer you said the 40-millimeter and the
25 12-gauge beanbag round are the only two acceptable less lethal

1 devices in Massachusetts?

2 A As far as firing. And the TASER would fall in as a less
3 lethal, so really those three, but in terms of firing a
4 projectile, it's going to be the 40-millimeter or 12-gauge.

5 Q Okay. So for firing a projectile, those two, but a TASER
6 is still a less lethal option?

7 A Correct, sir.

8 Q Are you familiar with something, the so-called 21-foot
9 rule?

10 A I am.

11 Q Can you describe what that is?

12 A So it's not -- it's not a rule, and it always gets
13 described as a rule, like anything within 21 feet is -- is okay.
14 Anything outside -- and it's -- and it's really not. It got
15 kind of misconstrued, but it is a -- we do teach it in the
16 Academy. We do explain it. So the 21-foot rule, it's more a
17 concept of -- of distance and space and reaction time. And it
18 came from 30 years ago, a defensive tactics Academy instructor
19 wanted to design a drill to show how long it would take an
20 officer to respond to a deadly threat of somebody armed with a
21 knife, and what they figured -- the 21 feet comes from an
22 average officer could determine a threat, draw their firearm,
23 and stop a person with a knife. And the average person could
24 close 21 feet in the time it would take the officer to respond.
25 So it's -- it's more or less a concept that we try to teach on

1 distance and space, but it's not a hard and fast rule. It
2 doesn't come from any case law. It's just something that we
3 explain for distance.

4 Q Are you familiar with triangularization?

5 A Yes, sir.

6 Q Can you describe that, please?

7 A So using the triangle is what we'll use -- it's a tactic.
8 So when we're doing contact and cover, we try not to have the
9 two officers standing next to each other, and we try to avoid
10 potential crossfire. So we try to have a -- keep the suspect in
11 somewhat of a triangle so that we have options and less lethal
12 options, and we -- we keep the scene safe for everybody. So
13 that's -- that's what's meant by triangulation.

14 Q Why wouldn't you want the two officers to go if it were
15 two?

16 A Well, based on if somebody was going to assault the
17 officers, it's easier to assault them, and then you also
18 sometimes we do like contact cover, so we'll have one officer
19 primarily trying to do the talking, and the other officer doing
20 cover. So we try to separate the two officers.

21 Q So that helps for the safety of the officers in terms of
22 the contact and cover as well as if force is used, not having a
23 crossfire situation ideally; is that right?

24 A Correct. And it also helps us to potentially keep the
25 problem from getting smaller, because we can get containment a

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1 little bit better with a triangle than two officers together.

2 Q And that's something that is taught in the Academy?

3 A Yes. Correct.

4 Q As well as continuing education?

5 A Correct.

6 Q Are you familiar with de-escalation?

7 A Yes, sir.

8 Q Can you please discuss de-escalation in the context that
9 we've been talking about the use of force?

10 A Yeah. So de-escalation, we've always taught it. It's more
11 of a thing now, but de-escalation is a series of techniques and
12 tactics used to reduce the intensity of an encounter and give
13 the officers more force options while still maintain control and
14 safety of the situation.

15 Q So could you give an example of de-escalation techniques?

16 A De-escalation techniques could be trying to slow down the
17 pace of an incident, trying to take cover, trying to contain the
18 situation, trying to have a verbal dialogue, if possible, with
19 the subject, calling for less lethal options, calling for a
20 court clinician if you had time and space, if the person was
21 inside their residence. But those are the concepts of
22 de-escalation, slowing down, basically forced mitigation.
23 Slowing down the pace of an incident to give more options while
24 still maintaining control and safety if possible.

25 Q And I'm sorry to jump around on you, but to go back to less

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1 lethal for a moment, you're certified on each of the devices
2 that we've talked about, the 12-gauge beanbag, the
3 40-millimeter, and the TASERS?

4 A Yes. Correct.

5 Q You also teach the use of those as well; is that correct?

6 A I do.

7 Q Are officers taught to call out before deploying one of
8 those items?

9 A Yes, sir.

10 Q What are they taught to call out?

11 A So if our officer is going to use TASER deployment, he's
12 taught and trained that he should yell, "TASER, TASER." If a
13 person is going to use a less lethal munition, like beanbag or
14 shotgun, they're taught and trained to yell out commands for
15 less lethal, less lethal.

16 Q Why are they taught to do that?

17 A One, it's to give the subject an opportunity to comply.
18 It's like another level of de-escalation where you're -- you're
19 give -- you're trying to gain verbal compliance by drawing a
20 less lethal -- by pointing a less lethal option and giving
21 warnings. You're trying to also de-escalate the situation. And
22 the second reason is so the other officers know that you're
23 going to use a less lethal because it can be unsafe sometimes if
24 an officer doesn't -- if I were to fire a 12-gauge or a
25 40-millimeter and another officer doesn't -- is not aware that

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1 I'm doing it, they might think that I shot the person, and then
2 you have a -- a potential sympathetic fire. So we try to let
3 the officers and the subject know what we're doing for the
4 safety of the subject and also the other officers so that we
5 don't have an error in judgment.

6 MR. HARREN: Your Honor, I have no further questions.

7 THE COURT: Okay. Any questions?

8 MR. ANDERSON: Yes.

9 CROSS-EXAMINATION

10 BY MR. ANDERSON:

11 Q Morning, Officer DiChiara.

12 A Morning, sir.

13 Q As you know, my name is Ken Anderson and I represent
14 Officer Medico in this proceeding. You and I have done this
15 before, correct?

16 A Correct.

17 Q Let me take a few minutes and just kind of build up your
18 resume a little bit more for the Court. Before becoming a
19 Waltham Police Officer, how were you employed?

20 A I worked for the North Andover Police Department where I
21 started.

22 Q And how long did you work North Andover Police before going
23 to the Waltham Police?

24 A About seven or eight years.

25 Q And what were your job titles or your ranks with the North

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1 (indiscernible -- low audio) -- I mean North Andover Police?

2 A I've always been a patrolman and then assigned to the SWAT
3 team and then patrol.

4 Q And did you ever work as a detective though in North
5 Andover?

6 A Oh, yes, I did.

7 Q And how long did you work as a detective in North Andover?

8 A Approximately three years.

9 Q Okay.

10 A It wasn't --

11 Q And then you lateralled down to the Waltham Police
12 Department?

13 A Correct.

14 Q And you told us about 1996, 1997 you began working as an
15 Academy instructor?

16 A Yes, sir.

17 Q And you went through a 15-day class to get the ability to
18 teach at that level?

19 A Correct.

20 Q And back then, were there different levels of instructors
21 in the Commonwealth of Massachusetts?

22 A Yes, sir. Back then, there was.

23 Q And what would somebody be who would be an instructor, like
24 for instance, you back in the mid to late 90s, as someone who
25 could instruct the Waltham Police Department, what level

1 instructor would you be?

2 A Level 1.

3 Q And who would be the person who would instruct the level 1
4 instructors?

5 A That would be a level -- back then, it was a level 3
6 instructor.

7 Q Okay. And what would a level 2 instructor be?

8 A So a level 2 instructor, when you get upgraded to a level
9 2, it means you've been teaching for a few years, and then you
10 can teach your own agency, but you all can go -- you can also go
11 teach in the Police Academy setting at level 2.

12 Q And at some point, did you go from being a level 1
13 instructor who could teach for the Waltham Department to a level
14 2 instructor who could teach in the Academy?

15 A Yes, sir. I did.

16 Q And the level 3 instructors, what were those back in the
17 day?

18 A So level 3 instructors were the instructors, again, to get
19 upgraded to a level 3, you could run a Police Academy at the
20 level, not just be an assistant instructor. You could run the
21 defensive tactics program, and you could also train the other
22 instructors as well. So the term would be instructor trainer so
23 you can train other instructors as well.

24 Q So that would be the instructor who would run the academy
25 but would also instruct the instructors who would be the level 1

1 people teaching in their own academies?

2 A Correct.

3 Q And then was there a level 4 trainer?

4 A The level 4 at the time was just the one person that was a
5 state -- state coordinator for all the programs.

6 Q And so you were a level 3 instructor?

7 A Correct.

8 Q And do you remain as a level 3 instructor?

9 A I did up until about two years ago.

10 Q Okay. And then two years ago, did you obtain some
11 statewide position?

12 A Yes. I did.

13 Q And what is that position?

14 A I -- the statewide coordinator for defensive tactics and
15 use of force.

16 Q Now, how many police academies are there in the
17 Commonwealth of Massachusetts?

18 A There are 17 total. There are seven through the MPTC that
19 the MPTC runs, same curriculum, and there are 10 across the
20 state that are full-time academies, and they're called
21 MPTC-affiliated, which is the same curriculum, but it would be
22 like the Boston Police Academy or the Worcester Police Academy,
23 big departments that run their own Academy, and there are still
24 MPTC guidelines, but they're separate. So there's 7 MPTC and 10
25 regular, so I believe there's 17 total.

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1 Q And who sets the curriculum for those 17 MPTC police
2 academies?

3 A The MPTC does.

4 Q And what is your role in setting the curriculum?

5 A My role is I help write the lesson plans and course
6 curriculum and the defensive tactics instructor's manual.

7 Q And what is your official title as of now in the
8 Commonwealth?

9 A Statewide coordinator for use of force and defensive
10 tactics.

11 Q And what academies do you currently teach at?

12 A I teach at the Lowell Police Academy, the Randolph Police
13 Academy, the Norther Essex Community College Police Academy. I
14 teach at Merrimack College at their police academy, and
15 Fitchburg State College, their police academy.

16 Q Okay. And you also instruct at Waltham?

17 A Yes, sir. I do.

18 Q And up until recently, did you also work on the street as a
19 Waltham police officer?

20 A Yes. I did.

21 Q And when did you stop actually working on the street and
22 making arrests as a Waltham police officer?

23 A I went to training full time about five years ago. So I
24 did 27 years of night patrol, two early nights, two late nights.

25 Q And during that time, you were also working as an

1 instructor?

2 A Yes. Correct.

3 Q And are you familiar with something called NEMLEC?

4 A Yes. I am.

5 Q Okay. What is NEMLEC?

6 A NEMLEC stands for the Northeast Massachusetts Law
7 Enforcement Council, and it's a consortium of 64 cities and
8 towns that share a tactical team and share resources for crowd
9 management, special circumstances. But they basically -- it's
10 basically a SWAT team that covers 64 cities and towns in greater
11 Boston and Essex and Middlesex County.

12 Q And were you a member of NEMLEC?

13 A Yes. I was.

14 Q And for how long?

15 A Thirty-two years.

16 Q And can you give us a ballpark about how many times you
17 were called out as a NEMLEC responding officer?

18 A Over 1,000.

19 Q Now, you went through the use of force pyramid that you
20 have -- let me just get back to your background a little bit
21 more. You said you've testified a number of times as an expert
22 witness?

23 A Yes. I did.

24 Q And have you testified for me or my firm on occasion?

25 A Yes, sir. I have.

1 Q Have you testified for the Commonwealth in inquests such as
2 the one today?

3 A Yes. I have.

4 Q Okay. How many inquests have you testified for on behalf
5 of the Commonwealth?

6 A I believe this is my fourth one now.

7 Q And do you have another one scheduled in the next coming
8 month or so?

9 A Yes. I do.

10 Q And where is that shooting from?

11 A That is from Lexington Police Department.

12 Q And in the context of you testifying today, it's fair to
13 say you have not reviewed any of the reports, the 911 calls, the
14 interviews, or any of that information, correct?

15 A Correct. I have not.

16 Q So you're not here to render an opinion whether or not this
17 shooting was justified or not justified; you're just here to
18 explain training?

19 A Yes. Correct.

20 Q And you actually worked at the Academy and taught at the
21 Academy where Officer Miedico was trained?

22 A Correct.

23 Q Now, talking about the use of force pyramid that you told
24 us about, you indicated that the purpose is to have somebody
25 respond objectively reasonable based upon the circumstances?

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1 A Yes, sir.

2 Q And where does that object reasonableness term come from?

3 A So we use that case when we talk about standards and
4 guidelines --

5 Q Yes.

6 A -- the standard -- the standard, we use Mass law, but we
7 also use the -- the federal law of Graham vs. Conner. We use
8 that case because that's what sets -- that's what we call the
9 law of the land. So police departments across the country use,
10 we call it the Graham standard of analysis. So we use that
11 Graham vs. Conner case across the country because it's kind of
12 like the -- oversees what our -- our core values is.

13 Q And what are the components of the Graham vs. Conner?

14 A Well, the components are a police officer has to make
15 split-second decisions and circumstances are tense, stressful,
16 and rapidly changing. And that we should base it multiple
17 factors, and that the -- the main three factors is going to be
18 one, the severity of the crime; two is immediacy of the threat;
19 three, is the person actively resisting, fighting, or trying to
20 evade capture. Those are the big three, and then there's more
21 of the smaller factors, the size, skill, number of officers,
22 other smaller factors. But those are essentially the big three:
23 severity of the crime, immediacy of the threat, actively
24 fighting or resisting or trying to evade capture.

25 Q And this use of force model that we have, do you know where

1 that was designed?

2 A Yes. I do.

3 Q Okay. Where was that designed?

4 A That was designed in 1991, I believe, by Greg Conner at the
5 FLETC, Federal Law Enforcement Training Center in Glynco,
6 Georgia.

7 Q And have you -- just in teaching in Massachusetts, have you
8 taught in other states?

9 A I have.

10 Q And how many states have you taught?

11 A Probably at least 15 other states.

12 Q And is this model in Graham vs. Conner the objective
13 reasonable standard? Is that taught in all the states that
14 you've taught in?

15 A Yes, sir. Correct.

16 Q And is that taught nationwide?

17 A Correct.

18 Q Now, if I could --

19 MR. ANDERSON: Judge, what I would like to do, and I don't
20 think there's any objection, is to offer a copy of the
21 Burlington Police Department use of force policy. If I could
22 have it marked and then show it to Officer DiChiara?

23 THE COURT: Is there any objection?

24 MR. HARREN: No objection.

25 MR. ANDERSON: The Court was kind enough to make copies of

1 this for us today.

2 THE COURT: Thank you, Madam Clerk. Is that 60, Madam?

3 THE CLERK: 60, Judge. Yes. Sorry.

4 (The court reporter marks the Use of Force Policy as Exhibit
5 60.)

6 BY MR. ANDERSON:

7 Q Let me show you what's entitled Burlington Police
8 Department PAT001, use of force policy.

9 A Yes, sir.

10 Q Are you familiar with the use of force policies throughout
11 the Commonwealth of Massachusetts?

12 A I am.

13 Q And most departments in Massachusetts are accredited?

14 A Yes.

15 Q And to get accredited, does it have to be uniformity
16 between the policies?

17 A Yes. They're big on standardization now.

18 Q And if I could have you turn to page 5 of that policy.
19 Yeah. You can throw it up there.

20 THE COURT: Do you want me to show -- can you see?

21 BY MR. ANDERSON:

22 Q If I could just read the use of force paragraph, Section
23 1.3.2 to you, and then I'm going to ask you to comment on it.

24 It says, "The guidelines for the use of deadly force have
25 been developed with serious consideration for the safety of both

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1 the police officer(s)" -- with the S in parentheses -- "and the
2 public acknowledge that officers sometimes must make
3 split-second decisions in a life and death situation. This
4 policy and the rules set forth by the Burlington Police
5 Department are based upon the Municipal Police Training
6 Committee's MPTC use of force model."

7 In there where it talks about police making split-second
8 decisions and life or death situations, is that coming directly
9 from Graham vs. Conner?

10 A Yes, sir. It is.

11 Q And it says here that "officers are authorized to use
12 deadly force when there is no less drastic means available to
13 them, one, to defend himself" -- it should say or herself -- "or
14 another from unlawful attack which he reasonably perceives as an
15 eminent threat of death or serious physical injury."

16 A Yes, sir.

17 Q Is that consistent statewide in terms of use of force
18 policy when it comes to deadly force?

19 A Yes, sir. Correct.

20 Q And again, that references what someone reasonably
21 perceives, is that going back to Graham vs. Conner?

22 A Correct.

23 Q Now, you were asked about the 21-foot rule, which isn't a
24 rule, correct?

25 A Correct.

1 Q But that's the study essentially that says by the time an
2 officer can perceive a threat, react, draw their firearm and
3 protect themselves, the average person can travel 21 feet and
4 approach him, correct?

5 A Correct. Yes, sir.

6 Q And are officers trained to have certain vigilance when
7 someone who is within that range or distance from them?

8 A Yes, sir.

9 Q Are you familiar with the term called a reactionary gap?

10 A Yes, sir.

11 Q What is a reactionary gap?

12 A We teach that almost from day one at the Academy, which is
13 a reactionary gap is, you know, 4 to 6 feet, which is a distance
14 that they should try to always maintain when dealing with a
15 suspect. Anything too close in that, the officer would not have
16 time to react to any kind of a threat because reaction action,
17 there's always going to be reaction. So the reactionary gap
18 means we always try to maintain minimum distance of 4 to 6 feet.

19 Q Okay. And in terms of police department holsters, are
20 there special steps that need to be taken for law enforcement to
21 get their firearm out of a holster?

22 A Yes. There's definite threat levels on holsters.

23 Q Are you familiar with a triple retention holster?

24 A Yes, sir.

25 Q And what is that?

1 A Triple threat means they have basically essentially three
2 safeties in order to get the firearm out. They have to use a
3 thumb brake. They're all different, but a triple threat means
4 you have to do multiple things in order to get the firearm out.

5 Q And is that something to prevent if you're in a struggle
6 with an individual, prevent them from taking the officer's
7 firearm out of the officer's holster?

8 A Exactly.

9 Q And in terms of actually perceiving a threat, doing the
10 three steps to get the firearm out and then engage somebody,
11 that's a 21-foot distance is what officers are trained?

12 A Correct.

13 Q Now, you were --

14 THE COURT: I'm sorry. Can you ask that -- can you just
15 ask the question again and then, I'm sorry, can you ask that
16 question, the previous question before?

17 BY MR. ANDERSON:

18 Q Well, the 21-foot rule, I mean how hard is that hammered
19 into officers, recruits when you're training them?

20 THE COURT: Okay.

21 BY MR. ANDERSON:

22 Q Is that something you go over it once, or is that something
23 that's repeated multiple times?

24 A We go over it once, but we also explain that that is -- it
25 was also from a holster position that, you know, if the gun is

1 out, it's different. And we still try to teach totality of the
2 circumstances, but it's definitely ingrained to them, that 21
3 feet, but we also try to teach it 21 feet with a 67-year-old,
4 you know, drunk person might not be the same distance as a
5 220-pound person. So we try to still always teach totality of
6 the circumstances, but keep the 21-foot rule in mind.

7 THE COURT: Thank you.

8 BY MR. ANDERSON:

9 Q You were asked some questions about TASERS and the
10 efficiency of TASERS and distance that you could use a TASER.

11 MR. ANDERSON: If I could -- can you just toss the pyramid
12 back up there or the triangle?

13 MR. HARREN: The triangle or the pyramid?

14 MR. ANDERSON: The pyramid. The use of force model. If
15 you could zoom in on that.

16 BY MR. ANDERSON:

17 Q If we hear testimony during this inquest that there was an
18 individual coming towards officers holding a knife in his right
19 hand up over his head, some witness -- one witness described it
20 as attack mode. We've heard it running aggressively, coming
21 quickly towards that officer, and the officer's perceive him
22 within a range less than 21 feet, where would that fall on this
23 use of force model? What would a threat perception category be
24 for that situation?

25 A With an armed individual closing the distance, we would put

1 that at a -- as a lethal risk.

2 Q Okay. And would a TASER be appropriate in that situation?

3 A I would not teach an officer to use a TASER in that
4 situation.

5 Q Okay. And you mentioned clothing can impact the
6 proficiency of a TASER?

7 A Yes. Correct.

8 Q And did you testify at an inquest involving some Winchester
9 Police Officers where the suspect actually held up a quilt as he
10 came towards the officers so that the TASER could not go
11 through?

12 A I did, sir. Yes.

13 Q What about OC spray in that same situation where you have
14 somebody rapidly approaching within 21 feet holding a knife over
15 their head coming toward you with a thousand-yard stare. Would
16 OC spray be appropriate in that situation?

17 A No, sir. Not at all.

18 Q When Officers are forced to discharge their firearm, where
19 are they trained to shoot?

20 A They are taught and trained to shoot center mass, which
21 refers to the center mass of the available target to them.

22 Q Okay. Can you describe that in a little bit more detail
23 for the Court?

24 A So center mass, if you were standing there in front of me,
25 your center mass would be the center of your body. If you were

1 peeking out behind a barricade, then center mass might change,
2 but we shoot center mass of available target for -- for
3 accuracy.

4 Q So are officers in Massachusetts trained to shoot people in
5 the leg or in the arm?

6 A No. Not at all.

7 Q At the Academy -- let me back up. Are you familiar with
8 the term called either suicide by cop or police-assisted
9 suicide?

10 A Yes, sir. I am.

11 Q And have you read some of the research in a study for that?

12 A Yes. I have.

13 Q And what is police-assisted suicide?

14 A We've been involved in a lot of these type of situations.
15 And what it is is it's somebody that has suicidal tendencies and
16 somebody who wants to die, but they don't want to do it
17 themselves for -- for multiple reasons, whether it be religious
18 reasons or they just can't go through with it. So what they do
19 is they -- they try to create a circumstance or fabricate a
20 scenario where the police officers have to take their life.

21 Q And is that something that's strange in the Academy? Do
22 you cover that in the Academy classes?

23 A Yes. It's become quite a thing, so we -- we try to go over
24 it. Yes.

25 Q And are officers trained -- are people who are trying to

1 generate a police-assisted suicide situation, are they less
2 volatile or more volatile? Are they less likely to harm an
3 officer or more likely? Are they the same as everybody else?

4 A Well, I feel that they're more dangerous because people
5 that are suicidal are very -- very unpredictable, and it can
6 pose more of a significant risk if somebody feels they have
7 nothing left to live for, or they feel like they've gotten to
8 that point. They kind of feel like they have nothing to lose.
9 So when we get in these situations, they're very -- they're very
10 volatile, but they're very -- they're very unpredictable.

11 Q And when officers -- when you train officers, when they're
12 in a situation where they're compelled to use deadly force or
13 they feel it's objectively reasonable to use deadly force in a
14 situation, do you train a certain number of shots to be fired?
15 Or what is your training, or how do you train officers in that
16 area?

17 A So we -- we don't teach officers to count the number of
18 rounds in a stressful confrontation, but we teach an officer to
19 only shoot to stop. And that means shoot to stop the eminent
20 threat. So we teach shoot to stop the threat. We don't teach
21 shoot to kill. Whichever behavior made you have to fire your
22 weapon, when that behavior stops, you are to reassess and stop
23 shooting. So we teach shoot to stop.

24 Q If one shot is fired and it hasn't stopped the threat and
25 the person is still coming forward, would officers be justified

1 firing a second shot to neutralize that threat?

2 A Yes, sir. Correct.

3 MR. ANDERSON: If I could just have one moment.

4 THE COURT: Sure.

5 MR. ANDERSON: I have nothing further.

6 THE COURT: Anything further?

7 MR. HARREN: Very briefly.

8 THE COURT: Sure.

9 REDIRECT EXAMINATION

10 BY MR. HARREN:

11 Q In response to something that Attorney Anderson said, you
12 said that you would not teach to use a TASER in the scenario
13 that he gave you, correct?

14 A Correct.

15 Q Why?

16 A Because especially in the northeast, but TASER across the
17 country, but I'll even just stick to the northeast, it's 50
18 percent. So it works. When it -- when you have a good probe
19 deployment and good spread, it works. But because of the
20 clothing and spread, it doesn't always work. So if you -- if
21 somebody is coming at you and they're armed, that's why we
22 wouldn't teach it as a primary response because if you miss or
23 the wires break or you don't get a good response or the person
24 doesn't feel it, now you -- now the officer's life is in -- is
25 in eminent peril. So I wouldn't teach an officer to use a force

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1 option that might work and not -- maybe, maybe it won't work
2 when their life is in peril. And in that situation where
3 somebody is coming at you armed, your life is in peril, sir.

4 Q Thank you.

5 MR. HARREN: I have nothing further.

6 THE COURT: Thank you. Anything else?

7 MR. ANDERSON: I have nothing else.

8 THE COURT: Okay. Thank you. Just one second, Officer.

9 THE WITNESS: Sure.

10 THE COURT: Let me make sure I didn't miss anything. That
11 21-foot rule, how it was developed, the scenario that created
12 the rule was someone coming towards someone with a knife?

13 THE WITNESS: Yes. Correct.

14 THE COURT: Okay. So okay. That was my only question.

15 THE WITNESS: Okay.

16 THE COURT: Thank you very much.

17 THE WITNESS: Thank you.

18 THE COURT: Anything else?

19 MR. HARREN: No thank you, Your Honor. May the officer be
20 dismissed?

21 THE COURT: All right. Thank you.

22 THE WITNESS: Thank you. I appreciate it.

23 (Witness excused)

24 THE COURT: All right. Is there any other witnesses for
25 the Commonwealth?

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1 MR. HARREN: No, Your Honor.

2 THE COURT: Okay. All right. So I think with that, that
3 would be all the evidence that I will hear from the inquest. I
4 don't know if -- Attorney Anderson, was there any evidence that
5 you want to present for the Court to consider? You're here, so
6 I just want to give you the chance.

7 MR. ANDERSON: I don't want to present any evidence. What
8 I would like to offer, I've got a pleading entitled Police
9 Officer Aurise Miedico's proposed "objective reasonableness"
10 legal standard for inquest, which is a two-page document that
11 outlines what I think the legal standard the Court should
12 consider in assessing subjective reasonableness.

13 THE COURT: Okay.

14 MR. ANDERSON: If I could --

15 THE COURT: Sure. That's fine. Have you received a copy
16 of it?

17 MR. HARREN: I have.

18 THE COURT: Okay.

19 THE CLERK: So Judge, do you want this just as a
20 pleading --

21 THE COURT: I don't -- it's just a filing.

22 THE CLERK: Okay. Yeah.

23 THE COURT: It doesn't have to be. It's not an exhibit.

24 THE CLERK: Okay. Thanks, Judge. And I'll make a copy for
25 you, Judge?

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1 THE COURT: Yes, please. Thank you. All right. So while
2 not required per the rule, I did want to give either side an
3 opportunity to be heard and in any capacity that they wanted to.
4 If you do not want to be heard, you don't have to be heard past
5 any of the evidence that we've heard so far. But Commonwealth,
6 I'll give you the opportunity if you wish to be heard at all.

7 MR. HARREN: Thank you, Your Honor. I am not authorized to
8 be heard. My direction was to present the information to the
9 Court for the Court to make a determination.

10 THE COURT: Okay.

11 MR. HARREN: But thank you for giving me that opportunity.
12 One thing I did just want to clarify --

13 THE COURT: Sure.

14 MR. HARREN: -- on the discovery the Court received, the
15 use of force policy that I had received and was provided in
16 discovery turns out was an old use of force policy.

17 THE COURT: Okay.

18 MR. HARREN: Attorney Anderson had gotten the use of force
19 policy in effect at the time of this incident. And so the one
20 that was entered into evidence is the one that was in effect at
21 the time of the incident. When they gave me the one, they just
22 gave me an old one by mistake.

23 THE COURT: Okay. So that's Exhibit 60?

24 MR. HARREN: So just to clarify that in terms of the
25 discovery.

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1 THE COURT: Got it. Thank you. Attorney Anderson?

2 MR. ANDERSON: And Judge, I would ask to make a closing
3 argument.

4 THE COURT: Sure.

5 CLOSING ARGUMENT FOR THE DEFENDANT

6 MR. ANDERSON: And what I would like to do, if the Court
7 would accommodate me --

8 THE COURT: Of course.

9 MR. ANDERSON: -- is towards the end of it, if we could
10 have it queued up, I would like to play from approximately the
11 11-minute mark going forward in the 911 call from when you can
12 hear -- I think it's actually somewhere around -- you can start
13 at the 11-minute mark, but it's at about the 11-minute 13 to
14 15-second mark when you can start to hear outside noises, which
15 I would believe would be the time Mr. Courtemanche exited the
16 building. Up through that point as I would like to make some
17 mention of that.

18 THE COURT: No problem.

19 MR. HARREN: I'm sorry, Attorney Anderson. What's the
20 exact time you would like me to start it?

21 MR. ANDERSON: We could start at the 11, 11:05.

22 MR. HARREN: Okay. Ready?

23 MR. ANDERSON: Yeah. Well, I'm going to -- if we can do
24 that --

25 MR. HARREN: You want me to do that right now? Oh, I'm

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1 sorry. I thought you were asking me to play it?

2 MR. ANDERSON: Yeah, I am. But not yet. I want to kind of
3 get most of the way through this and then kind of talk about
4 that?

5 THE COURT: Sure. Yeah.

6 MR. ANDERSON: Okay. So I'm ready to go?

7 THE COURT: Yup. Whenever you're ready.

8 MR. ANDERSON: So Judge, what I'm about to say is in no way
9 meant to denigrate Mr. Courtemanche or his behavior that day.
10 Clearly, the mind state he was in was not who that person is,
11 and his family's here. They've been very respectful. It's a
12 caring family, and I'm not trying to denigrate him, but the
13 reality is that that was the person on January 23rd that Officer
14 Miedico and Officer Reyes confronted, and I suggest that what
15 we've learned during this inquest, although it may have given
16 some transparency to the situation, we haven't learned anything
17 that was new, that wasn't known before this inquest started.

18 And it almost makes me wonder why we went through this
19 procedure because it's clear at the very outset that the actions
20 of Officer Miedico on that day were objectively reasonable. She
21 had no alternative at that time but to discharge her weapon.
22 And if you look at the standard that we have that I provided for
23 you, and this is right in the policy itself and it's from the
24 testimony of Officer DiChiara is that the proper application of
25 objective reasonableness requires careful attention to the facts

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1 and circumstances of each particular case including the severity
2 of the crime where the subject poses an immediate threat to the
3 safety of the officers or others, and whether he is actively
4 resisting or attempting to evade flight.

5 And here it's clear that he posed an immediate threat to
6 the safety of the officers and to the others. And this Graham
7 vs. Conner standard goes on to state that they can't be judged
8 by 20/20 hindsight, and that you have to take an allowance of
9 the fact that officers are often forced to make split-second
10 judgments in circumstances that are tense, uncertain, and
11 rapidly evolving about the amount of force that is necessary in
12 a situation. And that's exactly what we have in this situation.

13 We have a police officer who is a college graduate, very
14 well trained, very articulate, very bright as you heard in her
15 statement. But she's one year and one month out on the job, and
16 she did an amazing job on that day. This call comes in for
17 service. The dispatcher did an amazing job, and they took all
18 this information that they had learned in the Academy and that
19 they had discussed at role call that day. They were always
20 thinking tactically about how do we respond in these situations.
21 You know, what do we do? What tools do they need? And who is
22 in danger?

23 And both Officer Miedico and Officer Reyes got on the radio
24 and clarified there's nobody with him. He's there by himself,
25 correct? And in that situation, they did what they were trained

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1 to do, what was proper to de-escalate, to slow it down, to get
2 on the scene. If you look at what the dispatcher did on that
3 call, you know, she gets the name of the suspect, asks if he's
4 treating with anyone, asks if he has any pets. She asked about
5 the blanket. She asked if it's connected to a sports team. She
6 wants to brainstorm with him. She asks how he's feeling, you
7 know, tells him he's strong. She said officers are coming to
8 help you, tries to get him professional help that can help him,
9 asks about his family.

10 She goes on for 12 minutes trying to keep this conversation
11 alive, trying to de-escalate it. The officers get to the scene.
12 They know what tools they need. They know no one's in danger.
13 They know that fire and ambulance are responding, but the fire
14 department isn't going to get engaged until the police make sure
15 it's safe. And we heard from the firefighters that in most
16 situations, the police are able to talk people into coming with
17 them, and they'll do this action as well. And the fire
18 department and the police department, they work hand in hand.
19 They're used to these calls.

20 And the ambulance was smart. They didn't want to provoke
21 anything. They parked around the corner. And in the same
22 manner, Officers Miedico and Reyes parked down around the corner
23 as well. Now, as they're waiting, they're talking tactically
24 about the way these apartments are laid out. This is a place
25 they go to regularly. They're concerned that we could knock on

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1 one front door and someone could come out the other front door,
2 so we need to be considering this thing. So we need to be
3 considering this thing.

4 But at the time they're there, the dispatcher is still
5 communicating with Mr. Courtemanche. They don't know how old he
6 is; if he's white, black, Asian, Hispanic. They don't know if
7 he's 5'5", if he's 7' tall, what he's wearing. There's no
8 description. All they know if they're going to go to a certain
9 apartment at some point, and they're waiting for their then
10 lieutenant, now captain, who's had 500 squad call-offs, who's
11 had 4,000 hours in specialized training, who assisted them that
12 morning in talking about how to stay safe on these calls, and
13 they're there. They're not kicking in the door. They're not
14 trying to grab somebody out of there, take him off in handcuffs.
15 They're down by the corner of the lawn and they're just waiting.
16 They're not trying to provoke anything.

17 And as they're out there, we hear what's going to happen on
18 this call. I don't know if you can now play that, Dan. This is
19 like the 11-minute mark.

20 (Audio played at 11:30 a.m., concluded at 11:30 a.m.)

21 MR. ANDERSON: And you can -- just go past the --

22 MR. HARREN: I'm sorry. Keep going?

23 MR. ANDERSON: Yeah.

24 (Audio played at 11:30 a.m., concluded at 11:31 a.m.)

25 MR. ANDERSON: Okay. We can stop at the whistle. So if

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1 you think about this situation, Officer Firefighter Duprez
2 testified first, had some use of force training. He had worked
3 as a special police officer for a couple years. He had gone to
4 the weekend academy that I think was eight months going
5 weekends, and he was probably more aware of what happened than
6 anybody there sitting on the back looking to see -- assess the
7 scene as the firetruck comes around. And I think it's pretty
8 clear that the coming of the fire truck probably prompted what
9 happened in this situation as Mr. Courtemanche came up front.

10 But Mr. Duprez's testimony was that he was assessing the
11 scene and he saw somebody be described as "in attack mode." He
12 said, "Like he was going to kill her." And then a striking
13 pose/manner is how he described it. And he, knowing what was
14 going on without any tools to defend himself, jumps out of the
15 moving fire truck and runs towards Officer Miedico seeing the
16 direness of the situation. Firefighter Nicholas Menkello again
17 described Mr. Courtemanche as aggressively running at the
18 officer. He said there was no delay in his speed. He heard
19 voice commands coming as official commands.

20 Now, when you go back and you listen to that recording, I
21 suggest it's around the 11-minute 13-second, or 11-minute
22 15-second time in the recording of the 911 call where you hear
23 outside noise. And then at the 11:29 mark, so roughly 15
24 seconds after that, you can clearly hear a command saying, "put
25 the knife down, put the knife down." But before you get to that

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1 11:29 mark, you can hear a little bit of commotion and you can
2 hear some additional yelling, but it's not as loud, it's not as
3 clear, which I suggest makes sense because Mr. Courtemanche, in
4 the phone with the open 911 caller, isn't as close to that
5 scene. And as he gets closer to the officers, the audio from
6 the audio gets on there. You can hear a little bit of a
7 commotion. And the testimony from Officer Reyes was that he saw
8 Mr. Courtemanche when he was about 12 to 15 feet away from her.
9 Again, this is well within that 21-foot zone of danger where
10 someone approaching an officer, the officer won't have the
11 ability to recognize, perceive, draw his firearm, and protect
12 himself.

13 Now, in Officer Reyes's situation, he had the less lethal
14 weapon in his hand. It was loaded. It was ready to go, but it
15 didn't have a sling. And if it did, it probably would have been
16 slung over his shoulder as they were waiting for the lieutenant
17 to arrive on the scene. But he had it, and he did exactly what
18 he was trained to do. He created space. He triangulated. And
19 he yelled, "less lethal, less lethal." That's to give the
20 suspect a warning that I'm going to fire this thing and it's
21 going to hurt, and it's also designed so Officer Miedico doesn't
22 hear that gun go off, think that the partner's shooting and then
23 she fires sympathetically.

24 And as this is going on, Officer Reyes said it took his
25 brain a minute to figure out what was going on. He thought, "oh

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1 shit." He yelled, "Drop the knife," and then he said that there
2 were things that he would never forget again. He said he would
3 never forget the blank stare. He would never forget how he felt
4 seeing Officer Miedico. Officer Miedico at this point is going
5 backwards as she's been trained to create space and distance.
6 They're triangulating back. She has to withdraw her firearm,
7 and she says that this person now comes to her. She describes
8 it as a staggering walk that is fast. She says when she first
9 saw him, he was in a normal place doing a not normal thing, and
10 he accelerated once they saw him.

11 She said he was as close as a zombie as I can imagine, and
12 that she was charging him. She falls backwards. She's got a
13 shield in one hand, a gun in the other. She can't stop that
14 fall. Hits the back of her head, which is documented in the
15 medical records, and she fires at this time saying he's 6 to 10
16 feet away. We know from the physical evidence from the scene
17 that there was gunshot residue on Mr. Courtemanche's sweatshirt.
18 And we know that that had to be within a range of at least 6
19 feet and 7 feet would be the outer limit. When she was
20 questioned during her interview, she said he was within 6 to 10
21 feet away. So she's within that range. And this could have
22 been 6 feet 1 inch as a criminalist testified yesterday, 6 feet
23 2 inches.

24 But in any event, this is well within that 21-foot range
25 where you can't defend yourself. He's not within 6 or 7 feet of

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1 her, vastly approaching. You can run forward faster than you
2 can run backwards. But now she's on the ground. She's hit her
3 head, and she has no option at this point. We know there are
4 four shots fired. I suggest from the testimony from the medical
5 examiner that the first shot that struck Mr. Courtemanche would
6 have been the one through the flank because that's something
7 that would have allowed him to continue forward. That was not a
8 lethal shot in and of itself. And the second shot, we don't
9 know the distance. If the first shot was through the flank and
10 the second one was to the eye, we don't know that distance
11 because there was no gunshot residue test on his head.

12 But if you listen to the recording, after the less lethal
13 and a bang, you hear a bang, bang, bang. That's my
14 understanding. I heard what sounded like three shots. We know
15 there are four shell casings at the scene. We know one hit him
16 on the flank, one hit him in the head, and one round ended up on
17 a car across the street. We don't know where that fourth round
18 ended up. But if that second shot was fired -- if the first
19 shot was fired in a range of about 6 feet give or take and he's
20 fastly approaching and there's a little bit of a gap, he's
21 within, I don't know, 5 feet, 4 feet, 3 feet.

22 Her testimony is she thought that he was dead. It wasn't
23 so. And she fires that shot. It has an upward trajectory,
24 according to the medical examiner which is again consistent with
25 shooting up at someone who's coming towards you. And this is

1 all very consistent -- there's nothing really new that we've
2 learned here. It's just kind of put faces with names for you.
3 But in this context, it's certainly clear that under the use of
4 force policy, officers can fire their weapons to defend himself
5 or another from an unlawful attack which he reasonably perceives
6 as an eminent threat of death or a serious physical injury.
7 This certainly falls in that policy. It's within the law under
8 Graham vs. Conner.

9 And unfortunately, I think this is a situation, as Officer
10 DiChiara testified, where someone wanted to take their life.
11 You have medical records from him from a year before saying that
12 he was suicidal from Holy Family Hospital. The whole context of
13 that call, I'm not feeling well, I may harm myself. Can you put
14 the knife down? I don't know. Can you talk to my officers
15 through the door? Doesn't say yes or no. He says I'm sure
16 they're nice people. This whole thing, I think, is a case where
17 Mr. Courtemanche wanted to end his life, couldn't do it by
18 himself because of the mental state he was in, and
19 unfortunately, Officer Miedico happened to be working that day
20 and drew the short straw and was put in a position where to
21 defend her own life, she had to take his. And that's why we're
22 here. And I'd ask you find no probable cause for any crime
23 being committed here.

24 THE COURT: Thank you, Attorney Anderson. All right.
25 Well, I want to thank the parties, the attorneys, and for the

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1 presentation of the evidence, and everyone present. And I will
2 take the matter under advisement. Thank you.

3 THE CLERK: The matter is taken under advisement.

4 MR. ANDERSON: Thank you, Your Honor.

5 THE CLERK: All right, Judge. Do you want a copy of the
6 exhibit of the excessive use of force?

7 THE COURT: Yes, please.

8 THE CLERK: I will do that as well. Thanks.

9 MR. HARREN: Did she want a use of force? Did she not have
10 it?

11 THE CLERK: The actual exhibit. I was just going to make
12 Exhibit 60.

13 THE COURT: The last exhibit.

14 MR. HARREN: Okay.

15 THE CLERK: Yeah.

16 (Hearing concluded at 11:40 a.m.)

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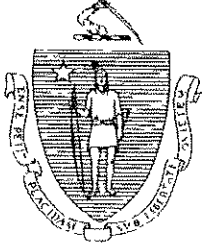
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