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- 1 [Call to order at 9:08:12 a.m.]
- 2 [Case called]
- 3 THE COURT: All right. Good morning, everyone. Ready to proceed?
- 4 MR. TARRANT: Yes, Your Honor.
- 5 THE COURT: All right. I think we had Sergeant McLean on.
- 6 MR. TARRANT: All right. I think we had Sergeant McLean on.
- 7 THE CLERK: Yes.
- 8 [Witness resumes the stand]
- 9 [Sergeant Sean McLean, previously sworn.]
- 10 THE COURT: Good morning, sergeant. You're reminded of
- 11 course that you're under oath.
- 12 And, again, if you care to remove your mask when testifying,
- 13 You're welcome to do so. You can stand and sit. Whatever's most
- 14 comfortable for you.
- 15 THE WITNESS: Thank you, Your Honor. Good morning.
- 16 THE COURT: Good morning.
- 17 Attorney West?
- 18 MS. WEST: Thank you, Your Honor. May I proceed?
- 19 THE COURT: Yes.
- 20 CROSS EXAMINATION OF WITNESS, SERGEANT SEAN MCLEAN
- 21 BY MS. WEST:
- 22 Q Good morning, sir.
- 23 A Good morning.
- 24 Q My name's Kim West and I represent the family of Michael
- 25 Conlon. Yesterday when we finished up, you had taken a little

1	Q	bit about your training on shotguns. Do you remember that?
2	A	Yes.
3	Q	When were you first trained?
4	A	Probably right after I made sergeant, back in 2012.
5	Q	Okay. And the training, is it yearly?
6	A	Yes.
7	Q	But you also testified you've never actually used a shotgun
8	A	in practice, right?
9	Q	I never used a shotgun in practice?
10	A	On the job, in an incident.
11	A	Oh, just in training.
12	Q	Okay. Yesterday, Mr. Anderson spoke to you about the use of
13	A	force policy. But I'd like to speak to you about another policy,
14	Q	the inspection process.
15	A	MS. WEST: Your Honor, may I approach?
16	THE COURT:	Yes.
17	BY MS. WEST:	
18	Q	So, what I just gave you is General Order 112, subject:
19	A	inspection process. Are you familiar with that?
20	A	Yes.
21	Q	And what is that?
22	A	It's the different types of inspections.
23	Q	And it relates to inspections of the department's property,
24	A	correct?
25	A	Yes, and what's in the cruiser, if there's new damage or if

- 1 anything's not working properly.
- 2 Q And it includes weapons?
- 3 A I believe so, yes.
- 4 Q And it includes the beanbag shotgun?
- 5 A Yes.
- 6 Q So if you could look down --
- 7 MS. WEST: Your Honor, my apologies; would you like a copy?
- 8 THE COURT: If you have it, I'd welcome it.
- 9 MS. WEST: Maybe Mr. Tarrant and I can share. Yes.
- 10 THE COURT: Thank You.
- 11 BY MS. WEST:
- 12 Q If you look down under "Line inspection" to Number 2, do you
- 13 A see that?
- 14 Q "Inventory control"?
- 15 A "Inventory control." And that says, "Each bureau commander
- 16 is responsible for all agency property under his control and must
- 17 ensure property is in a state of operational readiness." And then
- 18 it references an SOP.
- 19 Does that -- Number 2, is it applicable to shotgun beanbags
- 20 as well?
- 21 A Ensure property ... It -- I don't -- I believe so. I mean, I
- 22 don't know ... [Reviewing document.] If "property" means
- 23 equipment that's needed in every cruiser, I believe the statement
- 24 to be true.
- 25 Q Okay. So you don't know if "property" means "equipment"?

1	A	No, I don't.
2	Q	Who is your bureau commander?
3	A	Right now, it's Captain Daniel Walsh.
4	Q	At the time, on January 5th.
5	A	It would be Captain Dennis Dowling.
6	Q	Prior to January 5th, do you know the last time your beanbag
7	A	had been inspected?
8	A	I usually inspect it by checking to see if it's loaded and if
9	Q	it's properly contained.
10	A	All right. Can you turn the page to page 112? And we're
11	Q	going to move down to Number 5, "specialized equipment
12	A	inspection." Do you see that?
13	A	Yes.
14	Q	"It shall be the responsibility of the department armorer to
15	A	inspect all weapons and equipment used in emergency situations."
16	A	The shotgun beanbag is considered a weapon and equipment,
17	A	right?
18	A	I would believe so.
19	Q	And this was an emergency inspection, was it not?
20	A	Yes, it was.
21	Q	"This inspection is to be performed once each month, and a
22	A	log shall be maintained."
23	A	In December of 2020, was your shotgun inspected by the
24	A	armorers?
25	A	I do not know.

- 1 Q In January of 2021 was it inspected?
- 2 A By the armorer?
- 3 Q Yeah.
- 4 A I do not know.
- 5 Q Have you ever seen the log that this references?
- 6 A No, I have not.
- 7 MS. WEST: Your Honor, I'd ask this be admitted as the next
- 8 exhibit.
- 9 THE COURT: Yes.
- 10 [General Order 112 Marked as Exhibit No. 19]
- 11 BY MS. WEST:
- 12 Q So that afternoon, when you were at the bottom of the
- 13 stairs --
- 14 A Yes.
- 15 Q -- with your shotgun, when you arrived on the scene -- Let me
- 16 back up.
- 17 When you arrived on the scene off the bottom of the stairs,
- 18 did you give your shotgun for anyone -- to anyone, to check?
- 19 A No.
- 20 Q All right. You checked it yourself, right?
- 21 A Yes.
- 22 Q When did you check it?
- 23 A Begging off my shift.
- 24 Q And what did you do to check it?
- 25 A I made sure that it was loaded and then secured.

- Q And then did you secure it back in your crucisier?
 2 A No. I can check if it's loaded without un-securing it from
 my crucisier.
 3 Q All right.
 4 A You can just feel it underneath the -- I forget what they
 call it. But you can feel it there's -- if it's loaded or not.
 5 Q All right. And so then when you took it out of your crucisier
 to go upstairs --
 6 A Yes.
 7 Q -- you had already checked it?
 8 A Yes.
 9 Q And then when you got to the bottom of that landing on the
 second floor, you didn't give it to anyone else to check?
 10 A I don't remember doing that.
 11 Q Yes.
 12 Q And then when you got to the bottom of that landing on the
 second floor, you didn't give it to anyone else to check?
 13 A I don't remember doing that.
 14 Q Okay.
 15 A I might have, but I don't remember doing it.
 16 Q When you arrived, Lieutenant D'Angelio told you to call
 NEMLEC, right?
 17 A We discussed it. And I -- we both agreed when we were up
 there that NEMLEC should be involved and contacted. We -- I --
 18 Q Well, at the time, I yelled out to --
 19 A They called NEMLEC, and he told me they had already been
 20 contacted --
 21 A -- Lieutenant Apotheker, who was on the same floor as I was.
 22 Q Yeah.
 23 A They called NEMLEC, and he told me they had already been
 24 contacted --
 25 Q Contacted --

- 1 Q Okay.
- 2 A -- and were en route.
- 3 Q All right. And calling NEMTEC in this type of situation is part of your normal General Orders, correct? Normal procedure?
- 4 A Yeah, yes.
- 5 Q And have you personally been in other situations where NEMTEC
- 6 A was called to help out?
- 7 Q And how many times is that?
- 8 A Yes.
- 9 Q Okay. So, now I want to get you to the bottom of the stairs.
- 10 A I would say a half-dozen.
- 11 Q Okay. You're at the bottom. You're -- who's with you?
- 12 A Lieutenant D'Angelos in front of me, --
- 13 Q Detective Sergeant O'Connell was to the left of me.
- 14 A -- with the bunker shield. For a small amount of time,
- 15 Q Mm-hmm.
- 16 A Mm-hmm.
- 17 Q Mm-hmm.
- 18 A Officer Raymond and Officer Spinnery were to the right of me
- 19 Q but a little bit behind me. Down on that landing, in -- where we
- 20 A were, there really wasn't -- there were other officers there, but
- 21 Q they were -- they were on the second floor hallway, I guess you'd
- 22 Q call it, where the railing is. So . . .
- 23 Q So if you come up -- If you're outside and you go up the
- 24 Q stairs --

- 1 A Yep.
- 2 Q -- and you take a right and there's a hallway, --
- 3 A Yes, ma'am.
- 4 Q -- is that where you say those other offices were?
- 5 A Yes, yes.
- 6 Q And about how many were there?
- 7 A Four or five. Six, maybe.
- 8 Q On any occasion did it get higher than six?
- 9 A It might have. I really wasn't counting.
- 10 Q At some point when you're on that landing, do you see Captain
- 11 DOWLING?
- 12 A He -- Captain Dowling was in --
- 13 Where we were standing, looking up at Mr. Conlon, -- He was
- 14 at the top of the stairs. There was an apartment to our left.
- 15 Q Mm-hmm.
- 16 A And Captain Dowling was able to get access to that apartment,
- 17 I don't know how, through a backdoor or through another entrance.
- 18 And he was in that apartment.
- 19 And the door was open for a while. We were talking to him as
- 20 well.
- 21 And then I went in to converse with him briefly and then come
- 22 back out.
- 23 Q And at some point when Dowling was there and you were
- 24 conversing, did he tell you all about his plan to -- his plan,
- 25 which was: "Time is on our side. And the plan is to wait the

1	Q	subject out until NEMEC arrived?"
2	A	Yeah. I believe that was the general consensus.
3	Q	Who was there when he said this?
4	A	Myself, Sergeant O'Connell, and the team I had around me, I believe.
5	Q	Okay. And that team would include Officer Raymonds?
6	A	Yes.
7	Q	apartment. I wasn't really paying attention to them.
8	A	Yes.
9	Q	Officer Spinnery?
10	A	Yes.
11	Q	Lieutenant D'Angelos
12	A	Sergeant O'Connell.
13	Q	And, you said, O'Connell.
14	A	Yes.
15	Q	And perhaps others as well?
16	A	That's who I had with me. That's who -- we were at the base
17	Q	of the stairs, dealing with Mr. Conlon.
18	A	Yesterday, you testified that Michael asked you what time it
19	Q	was, right?
20	A	Yes.
21	Q	And you said, "It's two minutes before two"?
22	A	Right.
23	Q	And he said, "Then you have two minutes before I cut my
24	A	throat"?
25	Q	

- 1 A Yes.
- 2 Q And that concerned you, because you thought it was
escalating.
- 3 A Sure.
- 4 Q And that was an important issue, right?
- 5 A And you didn't include that in your writeup of this event,
did you?
- 6 A Yes.
- 7 Q And that concerned you, because you put together an action plan,
nonetheless, you then put together an action plan,
- 8 Q Okay.
- 9 A I thought I did.
- 10 A I thought I did.
- 11 Q Right?
- 12 A Yes.
- 13 Q And did you come up with that plan yourself, or was that a
plan that other people brainstromed with you?
- 14 A I came up with it myself. But there was a little bit of
both. I came up with it. And others -- we all came -- Let's say
- 15 Q It was a joint communication.
- 16 A Both. I came up with it myself. But there was a little bit of
both. I came up with it myself. And others -- we all came -- Let's say
- 17 Q Okay.
- 18 A We all came up with it.
- 19 Q And the plan was what you should do "if the suspect
approaches us down the stairs, with or without a knife?"
- 20 A And the plan was what you should do "if the suspect
- 21 Q Approaches us down the stairs, with or without a knife?"
- 22 A Yes.
- 23 Q And if he approached with a knife, what were you going to do?
- 24 A Well, if he started to charge us with a knife, I was going to
- 25 Q have to deploy the -- have Lieutenant D'Angelio in front with a

- 1 bunker, and I was going to go over to him or to the side of him
2 and cap off as many beanbag rounds at Mr. Conlon as possible,
3 until he dropped that knife, --
4 Q Okay.
5 A -- until it was dropped and he couldn't get it, was stunned.
6 And then we could physically apprehend him.
7 Q And if he approached you without a knife, what were you going
8 to do?
9 A Same thing: have Lieutenant D'Angelo with the bunker in
10 front, because he still had that fire extinguisher. And if he was
11 going to swing that fire extinguisher or throw it at us, we were
12 hoping, best case scenario, the bunker could take the hit from the
13 fire extinguisher. And then we would -- I would still try to
14 beanbag him, to drop the fire extinguisher. And once he did, we
15 could then physically apprehend him.
16 Q Okay. But none of those -- those two options, they didn't
17 happen in this case, right?
18 A Unfortunately, no.
19 Q And he stayed in the same spot and did not approach you,
20 right?
21 A No, he did not approach us.
22 Q So as a result, you never used a beanbag.
23 A No.
24 Q And that plan of remediating there, not using a beanbag unless
25 he approached, was consistent with what Dowling said, right?

1	A	I don't know.
2	Q	Well, Dowling said "time is on our side" and the plan was to wait the subject out until NEMEIC --
3	A	Yes. We -- If we could, we could try to wait some shit out, talk to him until eventually he would lose interest in both weapons and --
4	Q	And that event --
5	A	-- come down the stairs. We could try to apprehend him physically or just walk him downstairs. Something. So . . .
6	Q	And that "eventually" could be a half an hour?
7	A	It could be an hour.
8	Q	It could be four hours, couldn't it?
9	A	It could.
10	Q	And you were prepared to wait-out that entire time?
11	A	Yeah, if need be.
12	Q	So, I want to show you what is Exhibit 301. It's already been introduced.
13	A	[Pause to distribute copies and/or locate documents]
14	Q	MS. WEST: Oh, sorry, it's 19.
15	A	MR. ANDERSON: It's 18.
16	Q	MS. WEST: Oh, sorry, it's 18.
17	A	MS. WEST: Oh, it's 18? Thank you.
18	Q	BY MS. WEST:
19	A	So, you remember talking about this yesterday, right?
20	Q	So, you remember talking about this yesterday, right?
21	A	The use of force?
22	Q	Yeah.
23	A	BY MS. WEST:
24	Q	So, you remember talking about this yesterday, right?
25	A	Yeah.

- 1 A No, I didn't talk about the use of force.
- 2 Q Yeah.
- 3 A Maybe a little bit. But I didn't go into great detail.
- 4 Q Okay. So can you turn to page 4?
- 5 A Yeah. [Locating document.]
- 6 Q And the very last paragraph talks about "neutralizing agents."
- 7 A And then it says, "In addition, the use of less-than-lethal
- 8 Q projectile weapons that shoot beanbag-like projectiles intended to stop suspect through blunt, nonlethal force provides one more option of less-lethal force. The less-than-lethal projectile weapon is to be used on the subject who is assaultive," slash,
- 9 A So, this language within this general order, this general order is consistent with the plan you came up with, right?
- 10 Q He wasn't approaching you. He wasn't being -- There was no potential assault. There was no assault.
- 11 A And you did not use a beanbag.
- 12 Q No. However, he was making threats about harming himself, and swinging the fire extinguisher in our direction, in a motion.
- 13 A But we weren't coming up those stairs and we weren't going to engage him physically unless we had to.
- 14 Q Okay. Turn to page 5.
- 15 A [Locating document.]
- 16 Q And you did not use a beanbag.
- 17 Q And you did not use a beanbag.
- 18 A And you did not use a beanbag.
- 19 Q No. However, he was making threats about harming himself, and swinging the fire extinguisher in our direction, in a motion.
- 20 A But we weren't coming up those stairs and we weren't going to engage him physically unless we had to.
- 21 Q Okay. Turn to page 5.
- 22 A [Locating document.]
- 23 Q Okay. Turn to page 5.
- 24 A Okay. Turn to page 5.
- 25 A Okay. Turn to page 5.

- Q And page 5, under "A," this has to do with use of deadly force, correct?
- A Yes.
- Q And if you go to page 7, at the very bottom "C" is less-than-lethal non-deadly force. Do you see that? Bottom of page 7?
- A Hold on. [Reviewing document.] "C"?
- Q It just says --
- A Page 7, "C," says "all officers are responsible for the safekeeping of the --"
- Q Pardon me. The very, very bottom, in bold: "Less-than-lethal non-deadly force."
- Q Okay. So that's the beginning of that section.
- A Oh, yes. All right.
- Q Turn the page and we'll go to that section, okay? Top of page 8.
- So, this is the section on when less-than-lethal force may be used by a police officer in the performance of his duty or here
- "A" is: "When necessary to preserve the peace, prevent crimes, to prevent suicide or self-inflicted injury.
- 22 Sergeant, at the moment that you were going to decide to use
- 23 the beanbag gun, it was when he was approaching you, right?
- 24 He never approached me.

- 1 I didn't use the beanbag gun.
- 2 Q Apologizes. The plan was, if he approached you, you would use
- 3 the beanbag gun.
- 4 A If he did, yes.
- 5 Q And he didn't do it then, right?
- 6 A No, he did not.
- 7 Q So you didn't use the beanbag gun.
- 8 A No, I did not.
- 9 Q Go to "B."
- 10 "When necessary to overcome resistance to lawfull arrest,
- 11 searches, and seizures and to prevent escape from custody."
- 12 Did that apply to your situation?
- 13 A It could have.
- 14 Q How?
- 15 A Well, if he was -- if he was resisting us, if he was going to
- 16 resist us physically.
- 17 Q But he wasn't at that moment, was he?
- 18 A No.
- 19 Q All right. And he wasn't trying to escape from custody?
- 20 A No, not at that moment.
- 21 Q Right.
- 22 Go to "C."
- 23 A Okay.
- 24 Q "When in self-defense or defense of another against unlawful
- 25 violence to his person or property."

- 1 At any point that you saw, prior to the commotion upstairs,
 2 was he doing Number [sic] 2?
 3 "Attempt," maybe.
 4 But not -- I mean, he was banging on some woman's door,
 5 telling her to come out.
 6 He was arguing at one point. He was arguing with another
 7 neighbor up there.
 8 And, I mean, it could have led to that way.
 9 Okay. But at that moment, did you -- was he violating Number
 10 2?
 11 A At which moment?
 12 Q At the moment that you were at the bottom of the stairs,
 13 while you were watching. At any moment that you were at the
 14 bottom of the stairs, before the commotion, was he violating
 15 Number 2?
 16 A He would have, if that woman opened the door.
 17 Q Okay. But she didn't, did she?
 18 A No.
 19 Q And that's --
 20 A Thank God.
 21 Q -- because she wasn't in there, was she?
 22 A I don't know.
 23 Q You had the open window behind you?
 24 A There was a window. Like, it was more to my right. But,
 25 yeah, it was behind me.

- 1 Q And there were officers out on the street?
- 2 A Yes, I believe so.
- 3 Q And did you know Danielle Colletta [phonetic] was also out on
- 4 A The street?
- 5 A Who?
- 6 Q Danielle Colletta. Did you ever hear that name?
- 7 A No.
- 8 Q Did you ever hear Michael yelling for Danielle at that door?
- 9 A I can't remember what name he was yelling. He was yelling
- 10 Q For some name, --
- 11 Q Okay.
- 12 A -- a female name. I can't remember which.
- 13 Q Go to page 9.
- 14 A [Locating document.]
- 15 Q The very bottom. Number 5, you see that?
- 16 "Less-than-Lethal --
- 17 A Yes, ma'am.
- 18 Q -- projectile shotgun? This talk's about the intent. And
- 19 I'm looking at "A."
- 20 It says "Less-than-Lethal options are intended as an option
- 21 Along the use-of-force model in cases in which a violent or
- 22 Potentially violent subject cannot be subdued in any other
- 23 Less-than-Lethal manner without the threat of death or serious
- 24 bodily injury to the officers or other persons. This tool is
- 25 intended to incapacitate the subject and prevent further

- 1 aggregative action." 2
- 2 Do you see that? 3
- 3 Yes. 4
- 4 Did you have any other Less-than-Lethal equipment available
to you at the bottom of the statirs? 5
- 5 I had my -- We all have department-issued pepper spray. I 6
- 6 mean, that's really more of a contact agent than
"Less-than-Lethal." 7
- 7 And -- But besides the pepper spray, anything else? 8
- 8 People had issued batons. 9
- 9 Did you have one on you? 10
- 10 No, I did not have one on me. 11
- 11 Did you have one on you? 12
- 12 Did anyone at the bottom of the statirs have a baton on them? 13
- 13 I believe they did, yes. 14
- 14 Anything else that's less lethal than a shotgun? 15
- 15 No, not -- not to my knowledge. 16
- 16 And the pepper spray and the baton were not used, right? 17
- 17 No, not to my knowledge. 18
- 18 Can you go to page 10, the very top? This is just a
continuation -- 19
- 19 Q Can you go to page 10, the very top? This is just a
method of force lower on the use-of-force model is determined to
risk of injury to a subject and therefore should be used only when
And "B" is: "Less-than-Lethal projectiles do pose a serious
20
21 A Yes.
22 Q -- of this.
23 And "B" is: "Less-than-Lethal projectiles do pose a serious
24
25

- be ineffective or inappropriate."
- 2 And you see that "only" is in capital letters?
- 3 Yes.
- 4 And did you use any other method of force that was lower?
- 5 Than less-than-lethal? Absolutely. We used verbal commands.
- 6 What is the use-of-force model?
- 7 The use-of-force model is the -- it's the triangular model.
- 8 Actually, it looks like the pyramid steps. And do you mind if I
- 9 refer to it right now?
- 10 Yes, please do. It's in this.
- 11 It's basically -- part of it, you see on page 2, is the
- 12 perceived subject's actions. And then the middle, it says
- 13 "threat-perception categories," which puts it -- "strategic,
- 14 tactical, harmful, lethal," and then the reasonable officer's
- 15 response, which is connected to the perceived subject's actions.
- 16 It allow -- It basically gives a guideline to the officer's
- 17 response due to the perceived subject's actions. And that
- 18 categorizes it by perception categories: strategic, tactical,
- 19 Q So --
- 20 A -- harmful, lethal.
- 21 Q Apologizes. So, tell me, if you encounter a situation and
- 22 somebody is just being noncompliant, --
- 23 A Yes.
- 24 Q -- where do you end up on this use-of-force model?
- 25 A The second level: passive resister. Actually, is it still

- 1 called passive resister? Resistant passive? It's hard to see on
2 the green.
3 Q I know, it's hard.
4 Do you mean the green?
5 A Do you have a pair of glasses?
6 Q I don't. I was looking for my --
7 Do you mean the green part?
8 A Yes.
9 Q Okay. And that's this --
10 A On the left-hand side. I can see the right-hand side, because
11 it's light green. But the dark green is very tough to read.
12 Q And the idea is: as the perceived subject action increases,
13 then the threat perception increases, and then your response can
14 increase as well.
15 A It can. But you can still use lower, if need be.
16 Q Okay.
17 A So...
18 Q So, after your plan was formed, your action plan, and before
19 you heard the comment upstair, you heard somebody speaking to
20 Mike, didn't you?
21 A No. Before? Oh, well, I spoke to Mike.
22 Q Yep.
23 A And then Officer Raymond spoke to Mike, as well, calmed him.
24 And then it was Officer Scaltrito.
25 But there was a neighbor on the floor where Mr. Conlon -- Mr.

- 1 Conclusion was. I never saw him, but I could hear him yelling at him
 2 from -- and he wasn't in view. But we were telling him to shut
 3 the door and go inside and --
 4 He was in view or he wasn't in view?
 5 He wasn't in view.
 6 Okay.
 7 I could hear him but I couldn't see him, --
 8 All right.
 9 -- because he was, like, up there. He was up on the third
 10 floor.
 11 So you heard a male voice --
 12 A Yes.
 13 Q -- yelling.
 14 And what did you tell that person to do?
 15 A We all told him to get back inside and lock his door, --
 16 Q All right.
 17 A -- get back in his apartment and lock his door.
 18 Q And then did you continue to -- did you then hear another
 19 male voice?
 20 A No.
 21 Q Did you hear Scaltrito's voice?
 22 A I did.
 23 Q Did that first voice sound like Scaltrito?
 24 A No. It sounded like mine.
 25 Q So you thought that there was a neighbor upstairs, --

1	A	Yes.	Q	-- talking to Mike.	5	indicate that that apartment was full of Newton Police officers and state police, and there was no male civilian in that apartment? Did you ever receive any information about that?	8	A -- When I heard Officer Scalise speaking, I -- I figured I figured that they got that resident out of his -- somehow out of his apartment, maybe through a backdoor like Captain	11	But when we first got up there, he was yelling at -- he was yelling back and forth with someone that lived up on that third	14	floor.	15	It was not recognizable as one of my officers or one of the officers I worked with, unless it was a different agency. I know there were state -- I heard there were state troopers up there,	18	too. So I don't know.	20	MS. WEST: Thank you, Your Honor.	21	THE COURT: Anything else?	22	MR. TARRANT: I have a couple quick questions to follow up.	23	THE COURT: Go ahead.	24	CROSS EXAMINATION OF WITNESS, SERGEANT SEAN MCLEAN	25	BY MR. ANDERSON:
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- 1 Q Sergeant McLean, just quickly, you were asked about
2 conversation you had with Mr. Conlon where he asked you what time
3 it was.
4 A Yes.
5 Q You quickly checked your phone and you told him it was a few
6 minutes before two.
7 A Yes.
8 Q And then he said, you know, "In a few minutes -- I'm going to
9 take my life at two o'clock," or words to that effect?
10 A He was going to cut his own throat.
11 Q And then you were asked if that was in your report today, by
12 Attorney West.
13 A Yes.
14 MR. ANDERSON: Can I approach?
15 THE COURT: Would you just direct counsel to the document?
16 [Pause]
17 BY MR. ANDERSON:
18 Q Let me hand you a six-page document and ask you if you
19 recognize that.
20 A Ah. Page 4, I wrote, "The suspect began asking what time it
21 was and yelled several times at us that, the time we told him, it
22 was "late time" and we only had minutes before he was going to cut
23 his own throat.
24 Q Okay. And just for the record, what document is that, that
25 you're reading from?

- 1 A That is a "Dear Chief" that I wrote about three to four days
2 after the incident.
- 3 Q Okay. And on page 4 of that, you did reference that
4 conversation where he told you it was "fate time" and he was about
5 to cut his own throat?
- 6 A Yes, sir.
- 7 Q Now, just in terms of the action plan that you had, just to
8 maybe help the judge understand: the Less-than-Lethal shotgun, how
9 many rounds does it hold?
- 10 A Five.
- 11 Q And how do you actually -- you pull the trigger to discharge
12 the first round?
- 13 A You pull the trigger to discharge the first round. Then you
14 have to rack the chamber to get off -- to pull the trigger again,
15 then rack the chamber each time.
- 16 Q So it's a matter of sliding something up and down on the
17 bottom of the gun?
- 18 A Yes, sir.
- 19 Q And how quickly could you do that to fire off five rounds?
- 20 A Rather quickly.
- 21 Q So, shoot-bang, shoot-bang, shoot-bang, shoot-bang?
- 22 A There's not much give on those shotguns, not like a regular
23 shotgun where it really has a lot of kickback. Those shotguns
24 have very little kickback, so it's easier to rack-off rounds
25 quicker.

- Q And in your plan, it was your intention to try to get off as many rounds -- If Mr. Conlon did come down the stairs towards the officers you were with, it was your intention to fire as many rounds as you could, towards him, in the manner you were trained?
- A Yes.
- MR. ANDERSON: I have no further questions.
- THE COURT: Any questions, Your Honor?
- MR. MCDONALD: No questions.
- THE COURT: Any questions, counsel?
- MR. ANDERSON: I have no further questions.
- THE COURT: Any questions, Your Honor.
- MR. TARRENT: Nothing, Your Honor. Thank You.
- THE COURT: Thank you, sergeant. You may step down.
- THE WITNESS: Thank you, Your Honor.
- MR. ANDERSON: Judge, I apologize, I was supposed to send a text message to Lieutenant D'Angelio, over -- He's just next-door
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- next door. I think he's -- I mean, I think --
- MR. ANDERSON: I mean, he's -- The police station is
- THE COURT: Is he on his way, counsel?
- next witness. Should we wait for him or . . .
- MR. TARRENT: So, Lieutenant D'Angelio was scheduled as the next witness steps down]
- THE COURT: -- documents.
- THE WITNESS: Oh, okay.
- Sergeant, you can just leave those --
- THE COURT: All right, all right.
- at the station.
- text message to Lieutenant D'Angelio, over -- He's just next-door
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- 1 THE COURT: Okay. I'll step off just for a minute. Why
 2 don't you just get him over here.
- 3 MR. ANDERSON: Okay. And I apologize, I --
- 4 THE COURT: That's quite all right. A court officer will let
 5 me know when he gets here.
- 6 [Court in recess at 9:37:23 a.m.]
- 7 [Back on Record at 9:43:07 a.m.]
- 8 MR. TARANT: Thank you, Your Honor. The Commonwealth calls
 9 Lieutenant D'Angelio, who's on the witness stand. Needs to be
 10 sworn, though.
- 11 [LIEUTENANT KEN D'ANGELIO, Sworn.]
- 12 THE COURT: Good morning, Lieutenant.
- 13 THE WITNESS: Your Honor, how are you?
- 14 THE COURT: Go ahead, counsel.
- 15 MR. TARANT: Thank you.
- 16 DIRECT EXAMINATION OF WITNESS, LIEUTENANT KEN D'ANGELIO
- 17 BY MR. TARANT:
- 18 Q Good morning, sir. Could you please state your name,
- 19 spelling both your first and last name?
- 20 A Lieutenant D'Angelio.
- 21 Q Can you spell that for us? Spell your name.
- 22 A D-A-N-G-E-L-O.
- 23 Q And, sir, are you employed?
- 24 A Yes.
- 25 Q Where do you work?

1	A	Newton Police department.	3	department?						
2	Q	And how long have you worked for the Newton Police	4	28 years.						
3	A	Newton Police department.	5	And what is your current rank and assignment?						
4	A	28 years.	6	I'm a Lieutenant, dayshift commander.						
5	Q	And what is your current rank and assignment?	7	And how long have you been in that position?						
6	A	I'm a Lieutenant, dayshift commander.	8	15 years.						
7	Q	And how long have you been in that position?	9	Can you just describe your duties and responsibilities as the						
10	Q	dayshift commander for the Newton Police department?	10	dayshift?						
11	A	Basically, I oversee the day patrol shift.	12	Basically supervising all the officers on a --						
13	A	Officers and sergeants. There are times when there's two	14	Lieutenants working days. One of us is on the street, one is						
15	Q	inside. For the most part, I'm inside. There have been times	16	when I've been out on the street.						
16	Q	Okay. And so during a given shift in the police department,	17	how many patrol officers and sergeants are working at that time?						
17	A	A minimum of 10 patrol officers and 2 sergeants.	18	19	20	21	22	23	24	25
20	Q	And, sir, if I direct your attention to January 5th, 2021,	21	approximately 1:30, 1:45 in the afternoon, first of all, were you	22	working on that day?				
21	A	Yes.	23	January 5th? And were you working the dayshift?	24	Yes.	25	Yes.		

- 1 Q And do you recall where you were on that day at approximately 1:45 in the afternoon?
- 2 A Yes.
- 3 Q And where was that?
- 4 A I was on the -- I was working as a Lieutenant out in the street, a field Lieutenant.
- 5 A I was on the road -- I was working as a Lieutenant out in the street, a field Lieutenant.
- 6 Q You were on the road?
- 7 A I was on the road, yes.
- 8 Q And do you recall where on the road you were on January 5th,
- 9 Q Okay. So did you receive a radio call to go to --
- 10 A Well, I responded to Lincoln Street, for an in --
- 11 Q approximately 1:45 in the afternoon?
- 12 A Well, I heard a radio call. So I responded as a Lieutenant.
- 13 Q And what was the nature of the call?
- 14 A The initial -- The initial call was: a man had gone into a store on Lincoln Street, candy store, with a knife. And he was trying to get the -- if I remember correctly, trying to get the person that worked in the store to come upstairs with him.
- 15 Q And do you recall how long it took you -- or did you respond
- 16 A Yes. But I was on the other side of the city, so it took me about 15-20 minutes to get up there. I'd say about 15 minutes.
- 17 Q And so upon arrival to Lincoln Street, can you just describe to Lincoln Street after hearing that call?
- 18 A Yes. But I was on the other side of the city, so it took me about 15-20 minutes to get up there. I'd say about 15 minutes.
- 19 Q And do you recall how long it took you -- or did you respond
- 20 A Yes. But I was on the other side of the city, so it took me about 15-20 minutes to get up there. I'd say about 15 minutes.
- 21 Q And so upon arrival to Lincoln Street, can you just describe to Lincoln Street after hearing that call?
- 22 A Yes. But I was on the other side of the city, so it took me about 15-20 minutes to get up there. I'd say about 15 minutes.
- 23 Q And so upon arrival to Lincoln Street, can you just describe to Lincoln Street after hearing that call?
- 24 A What you saw?
- 25 Q When I arrived, I went into the building. And the apartments

- 1 were above the store.
- 2 I went to the second Landding.
- 3 There were several officers at the bottom of the stairs.
- 4 The -- The person that I was called upon -- that we were called about was on the top of the steps, on the third-floor
- 5 Landding. And he was -- had a knife to his throat. And he was
- 6 calling, And he was -- had a knife to his throat. And he was
- 7 yelling at the officers.
- 8 All right. So when you arrived to Lincoln Street, is it fair
- 9 to say that there were several police officers already there,
- 10 before you?
- 11 A Yes.
- 12 Q And did you immediately go into the building upon your
- 13 arrival to Lincoln Street?
- 14 A Yes.
- 15 Q And did you immediately then go up a flight of stairs, to the
- 16 second floor?
- 17 A Yes.
- 18 Q Do you recall who you saw on the second floor when you
- 19 arrived?
- 20 A Yes.
- 21 Q And who was that?
- 22 A It was Sergeant O'Connell, Sergeant McLean, Officer Spinnery,
- 23 Officer Raymond . . .
- 24 Well, I initially made contact with Captain Mazzilli. And
- 25 then he was not at the bottom of the stairs. He was on the

- 1 Landings.
- 2 And then I went to the bottom of the stairs, where those
3 other four officers were.
- 4 Q And so where you spoke to Captain Marzilli, was that at
5 the -- on the second level?
- 6 A It was on the second level but not -- away from the bottom --
- 7 Q It was on the second level but not at the bottom of the steps.
- 8 Q Okay. And what was the nature of the conversation you had
9 with Captain Marzilli?
- 10 A It was very brief. He just basically told me what -- what
11 was going on. And I -- more or less stated that there was
12 somebody at the top of the steps.
- 13 And I said, "Okay." And I just went over to where the other
14 officers were.
- 15 Q And when you went over to where the other officers were, what
16 did you do?
- 17 A I -- I assessed the situation.
- 18 And then I -- immediately, I radioed dispatch for a -- our
19 negotiator, NEMLEC -- NEMLEC, which is our regional tactical team.
- 20 I radioed for -- to have them start a negotiator.
- 21 And then I contacted the officer -- the other Lieutenant. I
22 told him to -- to activate the regional tactical team, the NEMLEC
23 tactical team.
- 24 Q So your request for a negotiator, --
- 25 A Uh-huh.

- 1 Q Was that negotiator that you were requesting part of NEMIEC?
2 A Yes.
3 Q But NEMIEC also has a tactical team?
4 A Yes.
5 Q And that would be separate and apart from requesting a
6 negotiator?
7 A Well, I -- I -- I didn't -- wasn't aware of that. But I
8 found out later that apparently they -- they all go together.
9 So...
10 Q Okay. But nevertheless, you were making sure that you had
11 both a negotiator and a tactical team?
12 A Yes.
13 Q And have you requested the assistance of NEMIEC in the past?
14 A Yes.
15 Q Approximately how many occasions?
16 A I'm sorry?
17 Q How many occasions, if you know, approximately?
18 A Well, I've -- I've -- Not on scene, I haven't requested them.
19 But as the officer in charge, inside, I have been asked to contact
20 them. I've contacted them. But not on scene. So...
21 Q And are you aware --
22 A Probably four or five times, maybe.
23 Q Okay. And --
24 A Five or six.
25 Q Are you aware when you're requesting NEMIEC, you know, --

- 1 Where is that tactical team coming from? Or where the negotiator
2 is coming from, meaning: are they centrally located somewhere?
3 A No, no. They're spread out, a number of cities and towns.
4 Most are north of us. So, it could be anywhere from -- from us
5 all the way up to -- from Newton all the way up to Lowell. So --
6 So...
7 Q Okay. And in the past, if you know, approximately how long
8 does it take NEMLEC to respond once you request their assistance?
9 A I mean, I'm -- I'm -- I know there's been a couple of
10 instances that I can recall. But I would say probably about a
11 half-hour, maybe, before they're all on scene and ready to go.
12 somewhere in that area. I'm sort of speculating.
13 Q And so what -- When you're on the second floor on the
14 building on Lincoln Street, what role did you assume or position
15 did you take once you had arrived?
16 A I sort of -- I guess I was the -- not the on scene commander.
17 But I was the on scene supervisor at that particular location.
18 Q On the second floor?
19 A On the second floor, yes.
20 Q And so what did you do?
21 A Well, after I contacted dispatch and -- to have a NEMLEC team
22 show up, an officer suggested we get a body bunker, which someone
23 did retrieve. I took the bunker and I had -- I had it at the foot
24 of the stairs, just in case someone charged down the stairs
25 towards us. So...

- Q Okay. And as you were at the foot of the stairs holding the body bunker, --
- 3 A Mm-hmm.
- 4 Q -- were there other officers around you?
- 5 A Yes.
- 6 Q And can you describe who they were and what they were doing?
- 7 A Sergeant O'Connell, Sergeant [sic] Raymond -- Sergeant
- 8 Q O'Connell was there.
- 9 Officer Raymond, I believe he had a -- he had his weapon out but at -- just at a low-ready, just in the case that he was charged -- the subject charged us with a knife.
- 10 11
- 12 Officer Spinnery -- No.
- 13 Sergeant McLean, I believe, had a Less-Lethal shotgun.
- 14 Q And were they all in your vicinity?
- 15 A Yes.
- 16 Q Were they facing up the stairway?
- 17 A Yes.
- 18 Q And were you facing up the stairway?
- 19 A Yes.
- 20 Q And can you describe what you saw at the top of the stairs?
- 21 A I saw the -- I'm not sure how to describe him. But what
- 22 I'm --
- 23 Q Is it a -- Did you see an individual who you later learned --
- 24 A I saw the individual standing at the top of the stairs, with
- 25 a knife, you know, yelling at the officers. He had a knife to his

- 1 throat.
- 2 At at one point he -- I did observe him try the knob, the
- 3 doorknob to the apartment that was just to the right of him. Not
- 4 force his way in, but just try the knob.
- 5 At one point, I observed him get a -- grabbed a -- a fire
- 6 extinguisher. And he was threatening to throw it down at us.
- 7 Okay. How was he threatening to throw it down at you?
- 8 He had it in a menacing manner. He -- He had it up. And he
- 9 was starting that he was going to throw it down at us.
- 10 And when he had the fire extinguisher, did he also still have
- 11 that -- something else in his hands?
- 12 He said -- the knife and the fire extinguisher, yes.
- 13 Okay. And so seeing that, what if anything did you do?
- 14 I just maintained that position, just . . .
- 15 Q And then did you hear or see anything happening above you, on
- 16 the floor above you?
- 17 A I heard someone talking from the third floor above us, trying
- 18 to talk to the individual. I was advised that it was other
- 19 officers up on the third floor, above us. Couldn't see them from
- 20 my vantage point, but I could hear them.
- 21 Q And what could you hear?
- 22 A I could hear Officer Scatterto trying to talk to the
- 23 individual, trying to deescalate.
- 24 Q And did you see if the person at the top of the stairs -- the
- 25 individual at the top of the stairs reacting to Officer Scatterto?

- 1 A I -- I don't recall anything specific. He was just still
 2 kind of ranting.
- 3 Q And so can you describe what unfolded after Officer Scalzi left
 4 started speaking upstairis?
- 5 A At some point I -- I observed the individual kind of move
 6 away from my vistion, from my point of view, toward -- what
 7 appeared to be going towards where I could hear the officers.
 8 And then at some point I heard some yelling: "Drop the knife,
 9 drop the knife." I heard some gunshots.
- 10 And then I ran up to the top of the steps and started to
 11 render first aid.
- 12 Q Okay. And so can you just describe what you saw when you got
 13 to the top of the steps?
- 14 A The individual was laying on the -- the landing.
- 15 Myself and another officer, we started to do CPR.
- 16 Q And, sir, are you aware if NEMTIC had responded to the scene
- 17 by that time?
- 18 A I did observe -- I looked out -- There was a small window
 19 on -- on the Landing I was standing at. And I observed one of our
 20 members, who was a NEMTIC -- a tactical member. He was on scene.
 21 He was -- I could see that he was already on scene and he started
 22 to gear-up. I didn't see any other NEMTIC members besides him.
 23 Q Okay. But he would have been an officer from Your
 24 department?
- 25 A He was one of -- He was an officer from our department that

1	Q	had responded as part of NEMIEC.
2	Q	And, sir, how much time would you say -- or, if you know --
3		passed from the moment you arrived on Lincoln Street until you
4		heard the shots fired?
5	A	It had to be at least 20 minutes.
6		MR. TARRANT: Thank you. That's all I have for this witness,
7		Your Honor.
8		THE COURT: Attorney Anderson?
9		MR. ANDERSON: I don't have any questions.
10		THE COURT: Attorney McDonald?
11		MR. MCDONALD: No questions.
12		THE COURT: Attorney West?
13		MS. WEST: Yes, thank you. Just briefly.
14		CROSS EXAMINATION OF WITNESS, LIEUTENANT KEN D'ANGELO
15		BY MS. WEST:
16	Q	Lieutenant D'Angelo, my name is Kim West, and I represent the
17		family. Good morning.
18	A	How are you?
19	Q	I'm well.
20		You said that when you arrived at the scene -- that you spoke
21		to Captain Marzilli, right?
22	A	Yes.
23	Q	Did you understand he was in charge?
24	A	Yes. He was the senior person on scene.
25	Q	Who told you to call NEMIEC?

1	A	Nobody.
2	Q	Was that part of your own procedure, that you did it
3	A	yourself?
4	A	That was my -- That was my judgment, my call after -- That
5	Q	was my -- my call, from assessing the scene.
6	Q	Did you ask state police to send a negotiator as well?
7	A	No.
8	Q	Was there another Lieutenant on the scene?
9	A	No.
10	Q	Is it possible that any other Lieutenant with the Newton
11	police would have asked state police to send a negotiator as well?	
12	A	It's possible the Lieutenant that was inside at -- the shift
13	commander may have. But I wasn't aware of anyone contacting state	
14	police for a negotiator.	
15	MS. WEST:	Thank You.
16	THE COURT:	Anything else?
17	THE WITNESS:	That's it?
18	MR. TARRANT:	Thank you. No further questions, Your Honor.
19	THE COURT:	You may step down, Lieutenant. Thank you.
20	[Witness steps down]	
21	MR. ANDERSON:	Sergeant McSweeney?
22	MR. TARRANT:	Next -- Yes, Michael McSweeney.
23	MR. ANDERSON:	And after McSweeney I'll have --
24	MR. TARRANT:	Captain Marzilli?
25	THE COURT:	I'll text over to -- Okay.

- 1 MR. TARANT: Right.
- 2 THE COURT: Yeah.
- 3 [OFFICER MICHAEL MCSWEENEY, Sworn.]
- 4 THE COURT: Good morning.
- 5 THE WITNESS: Good morning, Your Honor.
- 6 THE COURT: You can stand or sit, whatever's most comfortable.
- 7 for you.
- 8 THE WITNESS: I prefer to sit, your Honor.
- 9 THE COURT: And you -- certainly, if you care to remove your
- 10 mask when testifying and are comfortable, you may do that.
- 11 THE WITNESS: Thank you, Your Honor.
- 12 THE COURT: Thank you.
- 13 MR. TARANT: Thank you, Your Honor.
- 14 THE COURT: Go right ahead.
- 15 DIRECT EXAMINATION OF WITNESS, OFFICER MICHAEL MCSWEENEY
- 16 BY MR. TARANT:
- 17 Q Good morning, sir.
- 18 A Good morning.
- 19 Q Can you please state your name, spelling both your first and
- 20 last name?
- 21 A Michael MCSweeney, M-I-C-H-A-E-L M-C-S-W-E-N-E-Y.
- 22 Q And, sir, are you employed?
- 23 A Yes, sir.
- 24 Q Where do you work?
- 25 A I'm a police officer in the city of Newton, Massachusetts.

1	Q	And how long have you been a police officer for the city of Newton?
2	A	19 years.
3	Q	And what is your current rank and assignment?
4	A	I'm a patrolman. And I'm currently assigned to the Department of Traffic Bureau.
5	Q	And how long have you been in the Traffic Bureau?
6	A	Since 2019.
7	Q	And prior to being in the Traffic Bureau, what did you do?
8	A	I was in the Patrol Bureau.
9	Q	And, sir, can you just briefly describe your duties and responsibilities as an officer in the Traffic Bureau?
10	A	We enforce the motor vehicle laws of the Commonwealth, a pedestrian or a bike or a fatal accident and do accidents
11	Q	chaper 90, as well as investigate any serious accidents involving
12	A	we enforce the motor vehicle laws of the Commonwealth,
13	Q	pedestrian as well as investigate any serious accidents involving
14	A	a cyclist or a bike or a fatal accident and do accidents
15	Q	involving
16	A	reconstructions.
17	Q	And do you work a particular shift?
18	A	I work from 3:30 to 11:30 now. But at the time of this
19	Q	incident I was working dayshift, 7:30 to 3:30.
20	A	And so if I direct your attention to that day, January 5th,
21	Q	2021, do you recall that day?
22	A	Yes, sir.
23	Q	Or were you working on that day?
24	A	I was.
25	Q	And what was your assignment on January 5th, 2021?

- 1 A I was assigned to day-patrol traffic. I believe I was
2 assigned to the north side of the city.
3 Q And you were -- So you were working the dayshift?
4 A Yes, sir.
5 Q And were you working out of a police cruiser?
6 A I was. I was working out of a marked police cruiser. 552 is
7 the number.
8 Q Okay. And is the cruiser also with the police insignia, with
9 lights and sirens?
10 A Yes, sir. It's a fully marked police car.
11 Q And, sir, were you dressed in a police uniform?
12 A I was.
13 Q And do you carry a duty belt?
14 A I -- Yes, sir.
15 Q And what do you wear on your duty belt?
16 A I carry my department-issued pistol. It's a GLOCK. I
17 believe it's a Model 21, .40 caliber. I carry two sets of
18 handcuffs. A baton that's expandable, Monadnock baton.
19 Oleo-silcum, OC spray. A flashlight. A tournequet. And a radio.
20 And a set of handcuff keys.
21 Q Okay. And so if I direct your attention to approximately
22 1:45 in the afternoon on January 5th, 2021, do you recall where
23 you were on that date at that time?
24 A I was, I do.
25 Q And --

- 1 A I was in the back of the police station. I had just pulled
2 into the rear parking lot. And I was getting ready to go up to my
3 desk to finish some paperwork before the end of my shift at 3:30.
4 Q Okay. And what if anything occurred as you were in the rear
5 parking lot of the Newton police department?
6 A The alert tone went out on the radio, which means something
7 is happening, in progress. And a dispatcher got on the air and
8 said, "Armed robbery in progress. Lincoln Street. Newton
9 Highlands. Indulge, the candy store."
10 Q And so, were you familiar with the location of Indulge Candy
11 store at that time?
12 A Yes.
13 Q And so, hearing that broadcast, what if anything did you do?
14 A I listened for more information. They said the call was
15 inside the store. And they believed they were being robbed and an
16 armed robbery were taking place. And they had placed the phone
17 down and they were talking as if they were talking to UPS. And
18 they were talking to the 911 dispatcher. And they said the
19 suspect was a white male with a green coat.
20 Q And so did you proceed to Lincoln Street?
21 A I did. I left the rear of the police station and proceeded
22 there.
23 Q And how long did it take you to get there?
24 A About 5 minutes. I was going -- lights and siren -- to
25 there. And I was listening to the radio.

- Q And --
- A En-route, I heard Captain Marzilli, who's a detective captain, say, "I'm on Route 9. I'm in the area." And he was, I believe, the first officer there. And he said, "Slow everybody down, but keep them coming."
- And then I heard Officer Zaccary Raymond, who was assigned to And then I heard Officer Zaccary Raymond, who was assigned to detail in the area, say that he was off as well.
- Q What does that mean, when an officer radios that they are detail in the area,
- A They're on location.
- Q So before you got there, you knew that Officer Raymond and Officer Spinnery had already arrived?
- A Yes. It was a radio transmission that the suspect had gone upstair from above the candy store, and they said that he was on the staircase.
- Q And so when you arrived to the area of Lincoln Street, what did you observe?
- A I -- I arrived at Lincoln and Walnut. And I observed that there was already a police car that was blocking off the intersection at Lincoln and Walnut. And I looked down Lincoln Street to -- I believe it's Lincoln and Hartford or Lincoln and Columbia. And there was a police car that was blocking off,

1 as well.

2 And then I saw there were numerous other cars that were

3 trying to make three-point turns in the middle of Lincoln Street

4 to try to leave. So I tried to alleviate that.

5 I then saw Lieutenant Bruce Apotheker, who was standing in

6 front of the candy store. And he was pointing up to the

7 third-floor window.

8 And I looked up to the third-floor window and I saw Officer

9 Spinnery.

10 And Officer Spinnery said, "He's up here. He's on the third

11 floor. Don't come up here. It's very tight, it's very narrow,

12 it's very confined. He's up there. He has a knife."

13 Q And so, seeing and hearing that, what did you do?

14 A I looked to my left and I saw Officer -- or, excuse me, not

15 an officer -- Sergeant Glenn Chisholm. I saw Officer Frank

16 Sergeant and Officer Ricky Beninis [phonetic].

17 Sergeant Chisholm, said, "Come with me." So I followed

18 Sergeant Chisholm, along with Officer Beninis, Officer Scattreto.

19 I believe Officer Jerry Wilson was behind me. I believe now

20 since retired Detective Jerry Wilson was with us, as well. He was

21 in plain clothes.

22 So, we proceeded to what would be our left of the building,

23 into an alleyway that led out into a rear parking lot of a bunch

24 of buildings.

25 MR. TARRANT: Your Honor, if I may.

- 1 BY MR. TARRANT:
- 2 Q Sir, showing you what's been marked as Exhibit 2, do you
 3 recognize what's depicted in that photograph?
- 4 A I do, sir.
- 5 Q And the alleyway that you just described, is that depicted in
 6 this photograph?
- 7 A It is. It's where this arrow is, right here.
- 8 Q Can you show it to the court? So, it's the extreme left side
 9 of the photograph?
- 10 A Yes, sir.
- 11 Q And so you went down that alleyway?
- 12 A I did.
- 13 Q And with the other officers that you just mentioned?
- 14 A Yes.
- 15 Q And once you went down that alleyway, where did you go?
- 16 A We went to the rear of the buildings. They were -- The
 17 buildings were all conjointed. And we started checking door knobs
 18 in the buildings to see if we could gain access to the buildings,
 19 if there was a rear staircase.
- 20 Q And --
- 21 A All of the buildings that we checked were locked.
- 22 Q They were all locked?
- 23 A Yes, sir.
- 24 Q So what did you do?
- 25 A Somebody -- I don't know who it was. A female -- it may have

- 1 been the woman from the candy store -- came over with the key.
- 2 And we were able to gain access that way, to the building.
- 3 Q And so a rear door was opened?
- 4 A Yes, sir.
- 5 Q And did you step through that door?
- 6 A I did. I followed -- Sergeant Chisholm, I believe, went
- 7 first. And before he went in he said, "Okay. You guys got my
- 8 back?" And I said yes. And he went in.
- 9 Officer Scalberto went in, Officer Beninis went in. And I
- 10 believe Officer Wilson went in. I was one of the last ones in.
- 11 We went into a small, narrow staircase. And it was dark.
- 12 And the lights didn't work. So I took out my flashlight. We
- 13 proceeded single-file because it was a narrow staircase up to the
- 14 second floor.
- 15 And we -- Once we got to the second floor, we proceeded to
- 16 the third floor. And it was getting steeper and steeper. It was
- 17 almost like a ladder.
- 18 And we got up to the third floor. And we were on a back,
- 19 enclosed porch. And there was almost like a vestibule that we
- 20 were in. And there was a step in front of us. And there was a
- 21 door that was there.
- 22 And on the other side of the door, you could hear a male
- 23 yelling.
- 24 Q And could you hear what -- the words the male was yelling?
- 25 A It was a lot of profanity. He was saying, "I need to speak

- 1 to my father. I need to speak to my real father." And I thought
2 maybe he was on the phone with somebody and he had a stepfather or
3 something like that.
4 Could you see the person?
5 A I could not. I was on the other side of the door.
6 Q And where is that door in relation to the staircase you had
7 just come up?
8 A After we got out of the staircase, there was a small hallway.
9 So the -- it -- the door would be to the right of the -- of the --
10 the right of the exit of the staircase. It was right in front of
11 us. But there was a step up into that door.
12 Q And so hearing that, what did you do? Or what happened next?
13 A Captain Marzilli came up next and took control of the
14 situation.
15 And we advised him that there was somebody on the other side
16 of the door and we could hear him yelling, and that the door was
17 locked.
18 So he instructed myself and Detective Sampson to go out to
19 the enclosed porch on the third floor.
20 There was another door to our left, and there were other
21 items that were on that back porch. It was a table, I think an
22 air conditioner, patio furniture.
23 He instructed us to barricade that door, because we didn't
24 know what was on the other side of it. That door was locked, too.
25 So myself and Detective Sampson moved items in front of that door.

1	And then we stepped back.	2	And we could still hear the male yelling.
3	[Pause]	4	MR. TARANT: Sorry, Your Honor, if I could just have one
5	moment. [Locating photograph.] Okay, here it is.	6	BY MR. TARANT:
7	Q. Sir, I'm showing you a photograph. I'd ask you if you	8	recognize what's depicted there.
9	A. I do.	10	Q. What do you recognize that to be?
11	A. This was the enclosed area of the third-floor porch. And	12	it's a box and a stepstool that Detective Sampson and I placed in
13	front of that door.	14	Okay. That's -- Fair to say that's the door that you just
15	described that you barricaded upon your arrival?	16	A. Yes, sir.
17	Q. And is that a fair and accurate representation of how that	18	area looked after you had barricaded the door?
19	A. Yes, sir.	20	Q. Thank you.
21	THE WITNESS: Do you need to see this, Your Honor?	22	THE COURT: Thank you. Appreciate it.
23	MR. TARANT: Thank you. Can I have this marked, Your Honor?	24	THE COURT: Yes.
25	[Photograph of Enclosed Porch Marked as Exhibit No. 20]		

- 1 BY MR. TARRANT:
- 2 Q So, after barricading this door depicted in what's been
3 marked Exhibit 20, what did you do?
- 4 A We stood there for a while.
- 5 And eventually Captain Dennis Dowling arrived. And him and
6 Detective Captain Marzilli were conferring.
- 7 And Marzilli looked through the door. It was between the
8 doorjamb or the -- or the keyhole.
- 9 And he said, "I see him in there. He's got a knife and a
10 fire extinguisher."
- 11 Q Okay. Is that the same door that's depicted in Exhibit 20,
12 or are you speaking about a different door?
- 13 A I'm talking about a different door. I'm talking about the
14 door that was not barricaded, the door that was in front of us,
15 that was locked.
- 16 Q And is that the door that you would confront coming up the
17 back stairway?
- 18 A Yes, six.
- 19 Q And so describe how -- describe -- I guess just repeat what
20 you were just saying. I interrupted you; I'm sorry.
- 21 A Detective Captain Marzilli looked into either the keyhole or
22 next to the doorjamb. There was a small area that -- You could
23 look into the hallway. There was a hallway on the other side.
24 He said, "He's in there. He's got a knife. He's got a fire
25 extinguisher." And then he said, "He's a big guy."

- 1 And the person, the male on the other side, was continually yelling. He was saying things like, "The situation -- The simulation [sic] won't allow me. I have to control the --" I thought he was saying, "I have to control the situation." But that's what it sounded like to me.
- 2 That's what it sounded like to me.
- 3 simulation [sic] won't allow me. I have to control the --" I
- 4 thought he was saying, "I have to control the situation." But
- 5 That's what it sounded like to me.
- 6 Okay. And so now there's several of you on this back area?
- 7 A Yes, yes.
- 8 And then after that, two uniformed Massachusetts state troopers arrived and said that they were in the area, working a detail, and they wanted to know if they could help.
- 9 I noticed that they both had tasers on their duty belts. And I got the attention of Captain Dowling and said, "Troopers are here, and they have tasers."
- 10 He said, "Okay, I'll keep that in mind."
- 11 I noticed that they both had tasers on their duty belts. And
- 12 I got the attention of Captain Dowling and said, "Troopers are
- 13 here, and they have tasers."
- 14 He said, "Okay, I'll keep that in mind."
- 15 And so are you still in this back area?
- 16 A Yes, yes, six.
- 17 Q On the top of the back staircase?
- 18 A Yeah, in the enclosed porch area.
- 19 Q Okay. And so what if anything occurred as you were all
- 20 congregated in that back porch area?
- 21 A Well, to our left, a door opened from another enclosed porch.
- 22 And a young female came out and said, "This is my apartment. You
- 23 guys can go in there if you want." She says, "I have to get the
- 24 A Well out of here."
- 25 And then somebody -- I don't know who it was -- asked and

- 1 said, "Do you know anything about who's out there, who that guy
 2 is?"
 3 And she said, "I don't know." She -- She goes, "I just
 4 started living in this apartment a couple of months ago. But he
 5 lives here. And he's --" She said, "He's crazy." She said, "All
 6 he does is chain-smoke and sit on the back stairs. And everyone's
 7 afraid of him."
 8 Q And so with respect to the area where the barricaded door
 9 is, --
 10 A Yes.
 11 Q -- did this woman come from that part of the building?
 12 A No. She -- She came from what would be our Left. The
 13 barricaded door would be on our right.
 14 Q Okay. So this is on the opposite side?
 15 A Yes, sir.
 16 Q And so, once the woman came out, did she allow you access to
 17 her apartment?
 18 A She did.
 19 Q And so where did you go, what did you do?
 20 A I still stayed on the back porch with, I believe, Officer
 21 Wilson and Detective Sampson.
 22 Other officers went in: Officer Scalitto, Officer Dennis,
 23 and Captain Marzilli. And Sergeant Chisholm, who was still there.
 24 Sergeant Chisholm, at that time -- I believe he left. I
 25 didn't see him leave. But he came back and he had a

- 1 Less-than-lethal shotgun with him.
- 2 Q Okay. So, just to be clear: when you first went up to that
- 3 third floor through the rear entrance with Sergeant Chisholm
- 4 amongst others, at that time Sergeant Chisholm did not have the
- 5 less-lethal shotgun?
- 6 A I believe so.
- 7 Q But at some point he went and got it?
- 8 A Yes, sir.
- 9 Q And so at any point in time did you enter into the apartment
- 10 on the third floor, where the other officers went?
- 11 A I did. I entered because I could hear a lot of commotion. I
- 12 could hear Officer Scaltrito speaking with somebody. We went into
- 13 the -- the apartment from the rear -- the third-floor --
- 14 third-floor enclosed porch.
- 15 We entered and there was a bedroom and a small bathroom. And
- 16 then there was a small kitchen.
- 17 And to my left there was a butcher block that had knives in
- 18 it. And Detective Sampson picked it up and put it behind us. And
- 19 I remember kicking it even further out of the way.
- 20 And in front -- Excuse me. In front of us was a living room.
- 21 And there was an exercise bike, and a big TV on the wall.
- 22 And the door to the hallway was open. And I could see
- 23 Officer Scaltrito at one end of the -- the hallway. That's all I
- 24 could see.
- 25 And he was talking to somebody. And he was saying, "It's

- 1 Okay. It's okay. We're just here to help..
- 2 And whoever he was talking to, the male voice, was saying,
3 "No, no, you're here to hurt me. You're here to kill me."
- 4 And Officer Scaltrito was saying, "No, no, we're just here to
- 5 get you some help."
- 6 And then the person -- I heard a male voice say, "I need to
7 talk to my father. I need to talk to my real father. The
8 situation won't allow me," or, "The simulation [sic] won't allow
9 me."
- 10 And Officer Scaltrito said, "It's okay. You can use my phone
- 11 to call your father."
- 12 And the person said, "No, your phone is tapped. You all work
13 for the FBI."
- 14 And then Officer Scaltrito said, " Nope. We can have our
15 dispatch call."
- 16 And --
- 17 And where -- I'm sorry.
- 18 All right. And --
- 19 Well, where were you when --
- 20 I was all -- I was still in the kitchen area.
- 21 Okay.
- 22 All I could see through the doorway was Officer Scaltrito. I
23 didn't see anyone else. And then --
- 24 Was Officer Scaltrito in the apartment or out in the hall?
- 25 He was -- He was in the hallway.

- 1 Q Okay.
- 2 A And then the other person in the hallway said to Officer Scaltreto, "I see handcuffs on your belt."
- 3 And Officer Scaltreto said, "We're not -- we're not here to arrest you."
- 4 And Officer Scaltreto said, "We're not -- we're not here to arrest you."
- 5 And then he said, "Put your hand --" The male party said to Officer Scaltreto -- said, "Put your hands up above your head and sweater, out of us -- and he showed that he didn't have anything under his sweater or his uniform sweater.
- 6 And so did Officer Scaltreto have a weapon in his hand at that time?
- 7 Officer Scaltreto -- said, "Put your hands up above your head and turn around."
- 8 And that's what Officer Scaltreto did. He then pulled up his sweater, out of us -- and he showed that he didn't have anything under his sweater or his uniform sweater.
- 9 And that's what Officer Scaltreto did. He then pulled up his hands at that time?
- 10 I believe he may have had his own cell phone in his hand, that he was trying to give to the person in the hallway, or trying to convey that he had a phone that he could use.
- 11 Q And so what happened next?
- 12 A And so did Officer Scaltreto have a weapon in his hand at that time?
- 13 I believe he may have had his own cell phone in his hand, that he was trying to give to the person in the hallway, or trying to convey that he had a phone that he could use.
- 14 A No. His pistol was holstered. He had nothing in his hands.
- 15 I believe he may have had his own cell phone in his hand, that he was trying to give to the person in the hallway, or trying to convey that he had a phone that he could use.
- 16 A Officer Scaltreto looked at Sergeant Chisholm and kind of nodded and ducked back into the room.
- 17 Q And so what happened next?
- 18 A After that, Sergeant Chisholm said, "Okay, get ready," or something to that effect. And he walked out into the hallway with the Less-than-lethal shotgun.
- 19 Q And he was out of my view.
- 20 A After that, Sergeant Chisholm said, "Okay, get ready," or something to that effect. And he walked out into the hallway with the Less-than-lethal shotgun.
- 21 A And he was out of my view.
- 22 A After that, Sergeant Chisholm said, "Okay, get ready," or something to that effect. And he walked out into the hallway with the Less-than-lethal shotgun.
- 23 Q And he was out of my view.
- 24 A After that, I heard Sergeant Chisholm say something to the

- 1 effect of, "Oh, shit. Oh, fuck. He's coming towards me. He's
 2 coming towards me."
- 3 Q And --
- 4 A After that, Sergeant Chisholm backed up into the
 5 doorframe. And he was -- his back was towards me. And he was --
 6 [crying.] I'm sorry.
- 7 And his -- his back was towards me. So I backed up, to give
 8 him room.
- 9 And after that, all I saw was a blur of green. There was
 10 a -- a large male who had a green jacket on. And he was bigger
 11 than I thought he would be. And he was getting very close to
 12 Sergeant Chisholm.
- 13 And, mind you, this all happened in the moments -- like,
 14 fractions of a second.
- 15 And he -- he was in the doorway.
- 16 And Sergeant Chisholm started to duck down.
- 17 And I heard what sounded like static electricity coming from
 18 behind me, or somebody cracking up aluminum foil. And then I saw
 19 a red dot. And then from my peripheral vision, from my right
 20 side, I saw what looked like a fishing line with a fishing lure on
 21 it. And it went over my shoulder. And I -- I -- I guess that was
 22 the taser.
- 23 Q Did you see where it went?
- 24 A No.
- 25 I started to move back, and I started to reach out for

- 1 Sergeant Chisholm.
- 2 And I was doing that, I saw Mr. Conlon was over Sergeant
Chisholm, with a knife in his hand. I believe it was his right
hand. And it was coming down on the area of -- of -- behind
Sergeant Chisholm's neck, to where his shoulders meet.
I then started turning to the left so I could try to pull
Sergeant Chisholm away.
- 3 And then I heard at least two or three shots, gunshots, come
from the front of me, to my left, and a -- maybe about two or
three more, from my right.
- 4 And then I -- I completely turned around to my left and had
And I looked over and I saw Officer Bennetts had his pistol
out. And he was crouched down.
- 5 Sergeant Chisholm with me.
- 6 I then started turning to the left so I could try to pull
Sergeant Chisholm to the left and a -- maybe about two or
three more, from my right.
- 7 Sergeant Chisholm away.
- 8 And then I heard at least two or three shots, gunshots, come
from the front of me, to my left, and a -- maybe about two or
three more, from my right.
- 9 And then I -- I completely turned around to my left and had
And I saw Officer Bennetts had his pistol out.
- 10 And then I -- I completely turned around to my left and had
Sergeant Chisholm with me.
- 11 And then I -- I completely turned around to my left and had
Sergeant Chisholm with me.
- 12 And then I -- I completely turned around to my left and had
Sergeant Chisholm with me.
- 13 And I looked over and I saw Officer Bennetts had his pistol
out. And he was crouched down.
- 14 And I saw in the peripheral vision, I believe, Officer
Scaltrito had his pistol out as well.
- 15 And I saw in the peripheral vision, I believe, Officer
Scaltrito had his pistol out as well.
- 16 And Captain Marzilli said, "Did somebody just shoot?"
- 17 And Captain Marzilli said, "Did somebody just shoot?"
- 18 Somebody let a round off?"
- 19 Officer Bennetts said, "Yep, I did."
- 20 And then Officer Scaltrito said, "I did, too."
- 21 And then Captain Marzilli --
- 22 I got on the radio and said, "Shots fired, shots fired."
- 23 And somebody else -- I believe it was Detective Sampson --
- 24 got on the radio and said, "We need medics up here ASAP. Third
floor. Man down. We need an AED."
- 25

- 1 And then the two troopers along with, I believe, Captain Marzilli went out into the hallway.
- 2 Marzilli started to go around Sergeant Chisholm to go into the hallway as well. But there was numerous people in the hallway or in the doorway. I didn't want to get in the way.
- 3 And I started to go around Sergeant Chisholm to go into the hallway as well.
- 4 And I started to go around Sergeant Chisholm to go into the hallway or in the doorway. I didn't want to get in the way.
- 5 And then Sergeant Chisholm grabbed me and said, "Don't leave me, Mikey."
- 6 And so what did you do then?
- 7 me, Mikey."
- 8 And so what did you do then?
- 9 A -- I thought Sergeant Chisholm had been stabbed, so I checked him for stab wounds. I ran my hands over his torso and his back and his neck and his -- his arms. And I didn't see anything.
- 10 A -- I thought Sergeant Chisholm had been stabbed, so I checked him for stab wounds. I ran my hands over his torso and his back and his neck and his -- his arms. And I didn't see anything.
- 11 A No. But I -- I told Captain Marzilli -- I said, "I got to take Glenn outside."
- 12 Q -- it's fair to say you didn't find any injuries on Sergeant Chisholm?
- 13 A So --
- 14 Q So --
- 15 A No. But I -- I told Captain Marzilli -- I said, "I got to take Glenn outside."
- 16 Q -- it's fair to say you didn't find any injuries on Sergeant Chisholm?
- 17 A No. But I -- I told Captain Marzilli -- I said, "I got to take Glenn outside."
- 18 And he said, "Okay. Go ahead."
- 19 So we went -- He wouldn't let go of me. He said, "Take my hand, please."
- 20 So we went -- He wouldn't let go of me. He said, "Take my hand, please."
- 21 Q So then you escorted Sergeant Chisholm outside?
- 22 A I took him down the back stairs, yeah, the way we came in.
- 23 Q Crying.]
- 24 A [Pause]
- 25 A

- 1 THE COURT: A.D.A. Tarrant, why don't we take a minute?
- 2 MR. TARRANT: That would be good. Thank you, Your Honor.
- 3 THE COURT: Thank You.
- 4 [Court in Recess at 10:21:59 a.m.]
- 5 [Back on Record at 10:30:46 a.m.]
- 6 [Witnesses on the stand]
- 7 THE COURT: All right.
- 8 MR. TARRANT: Thank you, Your Honor.
- 9 BY MR. TARRANT:
- 10 Q So, officer, could you tell us, how far away was Mr. Conlon
- 11 from Sergeant Chisholm when you heard the shots fired?
- 12 A Inches.
- 13 Q And did you -- Where were you in relation to the doorway at
- 14 that point in time?
- 15 A I was behind Sergeant Chisholm.
- 16 Q And how far away from Sergeant Chisholm were you?
- 17 A Within arm's length.
- 18 Q And, sir, how much time would you say had passed from the
- 19 moment you arrived at 18 Lincoln Street until you heard the shots
- 20 fired?
- 21 A Half-hour, 45 minutes.
- 22 MR. TARRANT: Thank you. That's all I have, Your Honor.
- 23 Thank you.
- 24 THE COURT: Attorney Anderson?
- 25 MR. ANDERSON: I don't have any questions.

- 1 MR. McDONALD: No questions.
- 2 THE COURT: Attorney West?
- 3 CROSS EXAMINATION OF WITNESS, OFFICER MICHAEL MCSWEENEY
- 4 BY MS. WEST:
- 5 Q Good afternoon.
- 6 A Good --
- 7 Q Rather, good morning.
- 8 A -- afternoon.
- 9 Q My name is Kim West, and I represent the family.
- 10 You just testified about the location of people when you were
in the third-floor apartment.
- 11 And I heard you say that Scaltrito looked at Chisholm, he
nodded, and then you said he ducked back into the room. Do you
remember Scaltrito actually coming back into the apartment?
- 12 And I heard you say that Scaltrito looked at Chisholm, he
nodded, and then you said he ducked back into the room. Do you
remember Scaltrito actually coming back into the apartment?
- 13 Q And do you remember him ever going out into the -- out again
into the hallway?
- 14 A Yes.
- 15 Q So, I'm going to back up to when you first arrived on the
scene.
- 16 A No.
- 17 Q And at -- while you were interviewed, you said that you were
looking up and you were talking to Spinnery. And you said you were
talking, actually having conversation, and he was in the window.
- 18 A And he looked down and he said, "He's up here. He's up on
the third floor. He's in a small hallway. It's confined."

- 1 There's not a lot of room. He's got a knife. And there's a fire
 2 extinguischer."
- 3 When Spinnery was saying "he" -- "He's up on the third floor.
 4 He's in a small hallway. It's confined." -- You understood him to
 5 be talking about this person whose name you later learned was
 6 Michael.
- 7 A Yes.
- 8 Q And when he said, "It's confined," what did you understand
 9 that to mean?
- 10 A A small space.
- 11 Q That Michael was in a small space?
- 12 A Yes.
- 13 Q After that, you ultimately go around to the back of the
 14 building, correct?
- 15 A Correct.
- 16 Q And a woman lets you in?
- 17 A Yes.
- 18 Q Did you later learn her name was Daniel?
- 19 A No.
- 20 Q Did you ever, while you were up on the third floor, hear that
 21 Mike wanted to speak to Dani or Danielle?
- 22 A No, I don't recall that.
- 23 Q During the period of time when you are -- Excuse me.
- 24 Let me show you again Exhibit 20. From the vantage point of
 25 where that was taken, is that the porch?

- 1 A That is the -- the porch that would be to my right. It
 2 wasn't -- This -- This was -- There was a large enclosed porch
 3 that we were in. This -- There were actually three. We were in
 4 the center one. This one would be to my right. And the other
 5 one, that was to my left, was where the female who let us into the
 6 apartment came out of.
 7 Q All right. So there are three porches. You're standing in
 8 the center one?
 9 A For this picture?
 10 Q Or from that vantage point, yes.
 11 A No, this -- this -- this would not be the center one. This
 12 would be the one to the right.
 13 Q Okay. And so you did not understand that there were any
 14 civilians behind that door who needed to get out, did you?
 15 A No.
 16 Q You thought possibly that Michael could be behind that door
 17 and get out; is that right?
 18 A Yes.
 19 Q So, you said that Captain Marzilli looked through the hole
 20 and he said that he could see a person with a knife, right?
 21 A Yes.
 22 Q And at that point did -- strike that. At some point did
 23 Marzilli give you an idea of what the plan would be?
 24 A No.
 25 Q When you were interviewed, you said -- so, at that point,

- 1 Captain Marzilli said, "Okay," said, "We're just going to try to
 2 wait this out. We'll have somebody come. We'll have a
 3 negotiator. We'll have a -- NEMLEC come soon."
- 4 Do you remember that?
- 5 A I do.
- 6 Q Apologizes: "NEMLEC will come." Do you remember him saying
 7 that?
- 8 A Yes.
- 9 Q Okay. Where was he when he said that?
- 10 A He was in the vestibule area, the -- the enclosed
 11 porch area.
- 12 Q And who was there?
- 13 A Myself and Captain Marzilli and, I believe... I don't know
 14 who else, to be honest with you.
- 15 Q It was a third person, whoever it was?
- 16 A It may have been.
- 17 Q Okay. At some point Captain Dowling shows up, right?
- 18 A Correct.
- 19 Q And you saw him speak to Captain Marzilli?
- 20 A Yes.
- 21 Q Did you overhear what they were talking about?
- 22 A No.
- 23 Q At some point you saw troopers and a cantine, right?
- 24 A I looked over the -- into the rear parking lot. And I saw
 two state troopers there from a K-9 unit. But they did not have

- 1 canines with them. I could tell you were K-9 because they had
 2 distinctive unit forms with the state police K-9 patch on it. But
 3 they didn't have their dogs with them.
 4 Was it possible that the dogs were in the cruisers?
 5 A Yes.
 6 Q And Newton does not have a K-9 officer, does it?
 7 A No.
 8 Q Did you tell the captain that there was a K-9 there?
 9 A I said -- I think I said that I believe there's troopers
 10 downstairs from K-9.
 11 Q And which captain did you tell that to?
 12 A I believe it was Dowling.
 13 Q You also -- And you also testified that you told the captain
 14 that the troopers had taser.
 15 A Correct.
 16 Q And was that Dowling or Marzilli?
 17 A It was Dowling.
 18 Q At some point Captain Dowling said to you -- Pardon me.
 19 You said to Captain Dowling, "Hey, Cap, these troopers have
 20 taser."
 21 [Reading from document:
 22 "And he said, 'Okay, good,' because prior to that Captain
 23 Dowling said to me -- he goes, you know, 'Worst case scenario,'
 24 we'll spray him."
 25 "And I said, 'Okay, all right.'"]

1	Q	Do you remember that?
2	A	I do.
3	Q	Where were you when you said that?
4	A	We were all still in the vestibule area.
5	Q	You yourself have no experience shooting a shotgun, a beanbag
6	Q	shotgun, do you?
7	A	No. Only supervisors in Newton are trained to use those,
8	Q	ma'am.
9	Q	But have you been in situations where it's been used in the
10	Q	past?
11	A	I have.
12	Q	How many?
13	A	One.
14	Q	When was that?
15	A	It would be in -- It was before the pandemic, because we
16	Q	weren't wearing masks. I believe it was in the -- probably the
17	A	spring of 2019. I believe it happened in April, on Arlington
18	Q	Street in Newton.
19	Q	And who was it used on?
20	A	It was used on a suspect that was armed with a knife.
21	Q	Was that suspect 6'3" and over 250 pounds?
22	A	I don't recall.
23	MS.	MS. WEST: Thank you, Your Honor.
24	THE COURT:	Anything else?
25	MR. ANDERSON:	Quickly.

1	CROSS EXAMINATION OF WITNESS, OFFICER MICHAEL MCSWEENEY	
2	BY MR. ANDERSON:	
3	Q Officer MCSweeney, my name is Ken Anderson. I represent	
4	Superior Officers in this matter.	
5	On the call that you were just asked about, where the	
6	Less-Lethal shotgun had been deployed in the spring of 2019 on the	
7	person with the knife, was it successful in dismantling that person?	
8	A It was.	
9	Q And that person was brought into custody without injuries to	
10	self or other officers?	
11	A Yes, six.	
12	MR. ANDERSON: I have nothing else.	
13	THE COURT: Attorney McDonald?	
14	MR. MCDONALD: No questions.	
15	THE COURT: Thank you.	
16	MR. TARRANT: Nothing further. Thank you.	
17	THE COURT: Thank you so much.	
18	THE WITNESS: Thank you, Your Honor.	
19	THE COURT: You may step down.	
20	THE WITNESS: Do you need this, Your Honor? Or the clerk?	
21	THE COURT: Sure, I'll take that.	
22	THE WITNESS: Thank you, Your Honor.	
23	[Witness steps down]	
24	MR. ANDERSON: I gave him the heads up a while ago.	
25	MR. TARRANT: March 11?	

- 1 THE COURT OFFICER: He's here.
- 2 MR. TARRENT: He's here.
- 3 MR. ANDERSON: Okay.
- 4 [CAPTAIN CHRISTOPHER MARZILLI, Sworn.]
- 5 THE COURT: Good morning.
- 6 THE WITNESS: Good morning, Your Honor.
- 7 THE COURT: You may take your mask off if you're comfortable
- 8 doing so. And you may sit, stand, whatever's most comfortable for
- 9 you, captain.
- 10 THE WITNESS: I'll leave the mask on, if you don't mind.
- 11 THE COURT: All right. Thank you.
- 12 MR. TARRENT: Thank you. May I proceed, Your Honor?
- 13 THE COURT: Yes. Thank you.
- 14 DIRECT EXAMINATION OF WITNESS, CAPTAIN CHRISTOPHER MARZILLI
- 15 BY MR. TARRENT:
- 16 Q Good morning.
- 17 A Good morning.
- 18 Q Can you please state your name, spelling both your first and
- 19 last name?
- 20 A Christopher Marzilli, M-A-R-Z-I-L-L-I.
- 21 Q Sir, are you employed?
- 22 A I am.
- 23 Q Where do you work?
- 24 A I work for the Newton police department.
- 25 Q How long have you worked for the Newton police department?

1	A	36 years.	
2	Q	And what's your current position?	
3	A	I am a captain, captain of the detectives.	
4	Q	How long have you been the captain in Detectives?	
5	A	six years.	
6	Q	So what do you do as the captain of detectives for Newton	
7	A	Daily, supervise 17 detectives, 7 at the police station	
8	Q	Police department? What are your responsibilities?	
9	A	itself, working in the city in Newton. And 3 are assigned to a drug task force, middlesex drug task force. It is assigned to -- a	
10	Q	drug task force, middlesex drug task force. And 3 are assigned to a	
11	A	DEA liaison. And one is assigned as an FBI liaison. Also,	
12	Q	supervise the -- the police prosecutor, a lieutenant that has a	
13	A	liaison with everything here in the courtroom. And also in charge	
14	Q	of a civilian with the -- helping in the processing of gun	
15	A	licenses.	
16	Q	And, sir, if I direct your attention to January 5th, 2021,	
17	A	You recall that day?	
18	Q	Were you working that day?	
19	A	Yes, I was [sic].	
20	Q	Were you working on January 5th?	
21	A	Yes, I was.	
22	Q	And what shift were you working on January 5th?	
23	A	I was on the dayshift.	
24	Q	And what are the hours of the dayshift for you?	
25	A	The dayshift is -- My hours for my dayshift are 8:30 until 5 o'clock.	

- Q So, if I direct your attention to that date, January 5th,
 2 2021, approximately 1:45 in the afternoon, do you recall where you
 3 were on that date at that time?
 4 Yes. I was at John Street, a street off of Beacon Street, up
 5 by the -- in the Chestnut Hill area.
 6 Okay. And what were you doing there?
 7 I was actually checking on -- I was taking a ride to check on
 8 a massage parlor. There was reports that there was illicit
 9 activity going on in massage parlors. My detectives had told me
 10 they could -- they didn't witness any at this location. I just
 11 wanted to go up and take a ride and see the -- the property, what
 12 was the Lay of the Land.
 13 And were you working in a marked or unmarked car?
 14 I was in an unmarked car.
 15 And does your unmarked car -- is -- does that -- is that
 16 equipped with a screen and lights?
 17 Yes, it is.
 18 Q And so as you were on the area of John Street and Route 9,
 19 what if anything occurred?
 20 A I heard over the air that there was a -- from police dispatch
 21 that there was a robbery in -- ongoing robbery in Newton Highlands
 22 square.
 23 Q And so, hearing that, what if anything did you do?
 24 A I listened to the broadcast. It gave a brief description.
 25 And then I put my car in -- in drive and proceeded to head to

- 1 Newton Highlands Square to assist.
- 2 Q And how long did it take you to get there?
- 3 A I did not activate my lights and siren until I was closer-to.
- 4 Q So maybe 3 to 4 minutes.
- 5 Q And did you receive additional information while you were travelling from the area of John Street to the Newton Highlands?
- 6 A Yes. Additional information was a -- a description of a party, 6 foot, with a -- went into a convenience store or a candy store, something -- I can't remember which -- armed with a knife and had left the store and was travelling down Lincoln Street.
- 7 Q And so once you arrived -- so did you end up on Lincoln
- 8 A Yes, eventually, I did end up on Lincoln Street, behind
- 9 Q And so once you got there, you saw a lot of police officers
- 10 A multiple other crusaders.
- 11 Q And so once you arrived -- so did you end up on Lincoln
- 12 A Street?
- 13 Q And so once you got there, you saw a lot of police officers
- 14 A Well, initially, I drove past the exit that everybody was --
- 15 Q So what did you do?
- 16 A Yes.
- 17 Q And so once you got there, you saw a lot of police officers
- 18 A Well, initially arrived on scene?
- 19 Q So what did you do?
- 20 A Well, initially, I concentrated on. My idea was to
- 21 stop traffic further down the road. So I positioned my cruiser
- 22 half a block away from the scene, which looked like the scene to
- 23 assist in any stoppage of traffic, and then got out and proceeded
- 24 A And so where did you go, specifically
- 25 Q to the scene.

1	A	I walked back to Lincoln Street.
2	I -- And on the way, I -- I ran into -- I spoke to Lieutenant Apotheker, asked him what was the -- what was going on. He -- He informed me there was a person inside the building.	
3	Apotheker, asked him what was the -- what was going on. He -- He	
4	And at this point, I could hear the screaming coming from inside 133. I can't really remember the number right now.	
5	Okay. Was it a building on Lincoln Street?	
6	A On Lincoln Street. You could hear screaming coming from inside the building. Lieutenant Apotheker told me that the person	
7	that was reported, that was the person that was inside.	
8	know if it was a robbery or not. He just knew that the person	
9	didn't appear to be -- It appeared to him that he didn't	
10	know if it was a robbery or not. He just knew that the person	
11	inside the building. Lieutenant Apotheker told me that the person	
12	inside -- and we could hear from the outside as -- You know,	
13	screaming, had some kind of psychiatric issues possible.	
14	Okay. And --	
15	The initial --	
16	You could hear screaming, but could you hear the distinctive words being said?	
17	Not the distinctive words, no. Just a very loud screaming	
18	and people screaming back.	
19	And who is Lieutenant Apotheker?	
20	Lieutenant Apotheker was commander of our Community Services Bureau.	
21	Q And you're speaking to Lieutenant Apotheker out on the street?	
22	A Lieutenant Apotheker was commander of our Community Services	
23	Bureau.	
24	Q And you're speaking to Lieutenant Apotheker out on the	
25	street?	

- 1 A Yes, he was on the street.
- 2 Q And so did you take an assessment of the situation that was unfolding in front of you at that time?
- 3 A Yes. I saw where all the crusaders were lined up. The officers were still arriving.
- 4 Q There were already officers on scene, engaging -- it sounded like -- whatever the person was.
- 5 A And which way did you go in?
- 6 Q So I made my way inside the building.
- 7 A I went in through the front entrance.
- 8 Q And once inside the front entrance, where did you go?
- 9 A Front entrance, it's a narrow wooden front entrance.
- 10 Q The screaming and yelling was from the -- from above. So I climbed the first stairs, first set of landings, and made it to the second floor, I observed officers. And you could tell
- 11 Q And when you were on the second floor, what did you observe?
- 12 A From my vantage point that around the corner they were talking to someone on the third floor or on the third-floor staircase.
- 13 Q And when you were on the second floor, what did you observe?
- 14 A On the second floor, I observed officers. And you could tell
- 15 Q And when you were on the second floor, what did you observe?
- 16 A From my vantage point that around the corner they were talking to someone on the third floor or on the third-floor staircase.
- 17 Q And when you were on the second floor, what did you observe?
- 18 A I observed Officer Spinnery, Officer Umtna -- Task Force
- 19 Q Sergeant McLean was there also.
- 20 A Sergeant McLean was there also. And there was also Officer Umtna. And there was also Sergeant McLean; I noticed
- 21 Q And from your vantage point on that level, could you see up
- 22 A Not where I was at that time, no.
- 23 Q the stairway?
- 24 A the stairway?
- 25 Q

- Q So what did you do at that time?
- 2 A At that time, there was -- At this time, you could guarantee
- 3 I asked Officer Spinnery how many officers were here.
- 4 And at the same time, you could ascertain that the person was screaming. Mr. Conlon -- Conlon was on the upper floor, screaming
- 5 incompletely at the top of his lungs: "Get the FBI," You know,
- 6 "How do I know you're police officers?" you know, "Why are you
- 7 dotting this? Leave me --" you know, things -- things of that
- 8 nature.
- 9 So it became actually pretty apparent that this was not a per
- 10 se robbery as much as it was a -- a person having a psychotic
- 11 way, of how you were going to deal with the situation?
- 12 break.
- 13 Q So, recognizing that, did that change your approach in any
- 14 yeah. Well, right after that, I put out over the air that it
- 15 wasn't a -- used my police radio and dispatched that this wasn't
- 16 a -- a robbery, that it was someone having a psychotic episode.
- 17 Q And so how does that change your approach to the situation?
- 18 A Well, in 36 years, now we -- we've just -- until we find out,
- 19 we just cordon off the area and calm -- try and calm the situation
- 20 down as best we can.
- 21 Q And so did you speak to the officers on the second floor?
- 22 A I spoke to Officer Spinnery, telling him, you know, "Was --"
- 23 I asked him, "Was -- Was NEMTIC contacted?"
- 24 And he actually told me at that time, "Yes, NEMTIC was

- 1 Contacted by Lieutenant D'Angelo. "
- 2 NEMLEC is a specialized weapons and tactics organization that
3 we're members of. They arrive . . .
- 4 Okay. So they had already been called by the time --
- 5 They had already been called. Like I said, the officers were
6 on scene before me. So that was done prior to my arrival, I was
7 told, by -- Lieutenant D'Angelo had done that.
- 8 And so after you learned that information, what did you do?
- 9 Like I said, I dispatched it out that it was --
- 10 I asked if they had a body bunker. And Officer Scalberto was
11 also on-scene at that time. I turned to -- And they said no.
12 So I turned to Officer Scalberto and told him to retrieve a
13 body bunker and bring it up to the -- the statutory area.
- 14 And did that occur in your presence?
- 15 I know he went to get it, because he ran to get it. I don't
16 remember him coming back with it.
- 17 Okay. Did you remain on the second floor?
- 18 A I -- For a few moments, I did remain there on the second
19 floor, to secure that area.
- 20 When I was assured that there was a less-than-lethal
21 shotgun --
- 22 Officer Raymond, excuse me, was also there. And he was
23 engaging in speaking to Mr. Conlon.
- 24 And there was enough officers. Officer Ultman was there
25 also. So there was approximately four to five officers at the

- front thing.
- 2 I told the officers I was going to go out and check out front
3 and, you know, secure the area some more.
4 Okay. So did you leave at that point?
5 Pardon me?
6 Did you leave the second floor?
7 That's when I left, at that point, left the front -- front
8 area there and left.
9 And where did you go?
10 A I went out the front. And there was an alleyway around the
11 side in that area.
12 And when I went out to the front, I encountered Sergeant
13 Chisholm. I told Sergeant Chisholm, which -- to get his
14 less-than-lethal shotgun and meet me out back, that we were going
15 to just secure the back to keep -- make sure that he, Mr. Conlon,
16 couldn't exit the -- the apartment out of the backdoor, anywhere
17 in the backdoor.
18 I was also asking for a key to get into the apartment in the
19 back. Wouldn't be -- if we had to. So, it took a while to just
20 talk back and forth: if there was a keyholder, if there was a
21 landlord. People were pointing out, "That might be a landlord,"
22 there. "
- 23 Q So, where was that occurring, where you were having --
24 A That was occurring outside in the -- in the front, on the
25 street, Lincoln Street, and inside the alley, the driveway that --

- 1 Leading to the back of the . . .
- 2 Q And so at some point did you go around to the back of the building?
- 3 A Yes.
- 4 I was talking to people and telling people, you know, "We're going to secure the area. NEMLEC's been contacted. And doublecheck that NEMLEC was contacted." And it was.
- 5 We went out back. Sergeant Chisholm at this time --
- 6 I was also informed there were two state troopers on scene
- 7 with taserers. I didn't see them at that point.
- 8 I was also informed there were two state troopers on scene
- 9 with taserers. I didn't see them at that point.
- 10 They -- Someone had told me they had self-deployed.
- 11 Q Okay.
- 12 At that time, I saw Sergeant Chisholm. He was at the back
- 13 of staffers. He had two officers with him. I believe it was Officer
- 14 staffers. Make sure he can't get out back." And that's where
- 15 I told Sergeant Chisholm, "Just go upstairs and secure the
- 16 upstair. Make sure he can't get out back." And that's where
- 17 they went. And they proceeded to go up the stairs to the back.
- 18 Did you go with them at that time?
- 19 A At that time, I did not.
- 20 So when those officers went up the stairs, what did you do?
- 21 Q I actually went back out front and directed over the air
- 22 maybe a couple people, because it was getting logged with
- 23 officers in the front. So I think I went out -- called out over
- 24 the air to have different officers block off Lincoln Street, keep

- 1 the area secure out front.
- 2 When that happened, I turned around and went back down the
 alleyway. And that's when I went up the stairs --
- 3 And how --
- 4 Q And how --
- 5 A -- to ascertain [sic] the -- the back area.
- 6 Q And how far up the stairs?
- 7 A You could still see -- you could still hear them engaging Mr.
 Conlon, --
- 8 Q And so --
- 9 A -- You know, yelling in the front of the area, in the front
 door area.
- 10 Q So we went up. I went up to the back and proceeded up the
 back staircase to the third floor.
- 11 A And what did you see once you got to the third floor?
- 12 Q On the third floor, there were state troopers in the back,
 not inside the apartment. But the apartment door was open.
- 13 A And the -- there were officers inside on the third floor, now
 engaged with Mr. Conlon, speaking to him. Officer Scattreto was
 speaking to him through an open apartment door.
- 14 Q Now, prior -- So did you go into that apartment?
- 15 A Not at that time. I just -- I recognized it.
- 16 Q At that time, the way it's -- it's situated, you could hear
 the screaming again, constant screaming through a doorway which
 was a hallway door where Mr. Conlon was on the other side of this
- 17 A Door. Okay? And this was an exit door, --
- 18 Q Now, prior -- So did you go into that apartment?
- 19 A Not at that time. I just -- I recognized it.
- 20 Q Now, prior -- So did you go into that apartment?
- 21 A Not at that time. I just -- I recognized it.
- 22 Q At that time, the way it's -- it's situated, you could hear
 the screaming again, constant screaming through a doorway which
- 23 A was a hallway door where Mr. Conlon was on the other side of this
- 24 Q door. Okay? And this was an exit door, --
- 25 A Door. Okay? And this was an exit door, --

- 1 Q Yeah.
- 2 A -- probably, and a -- an egress to the back, which was
3 locked.
- 4 I went to that door because in the doorway itself there was
5 the handle; the doorknob was loosely put in. And on either side
6 of the -- of the doorknob there was areas to look through and see
7 on the other side of the door, see what was going on.
8 So I took advantage of that vantage point, leaned over, and
9 looked in to see what I could see on the other side of the door,
10 Mr. Conlon.
- 11 Q And what did you observe, looking through that little area?
12 A In that small area, I could see Mr. Conlon was approximately
13 maybe 6 to 8 feet in front of that doorway. And on the right hand
14 side was an open door to an apartment, to my right.
15 But Mr. Conlon was in front, screaming, still screaming
16 incompletely.
- 17 He had what I -- appeared and what I was already told -- He
18 had a knife. And he was putting the knife up to his throat. So,
19 I didn't see the knife itself. But I could see from his body
20 language that he had the knife to his throat, in one hand.
21 And in the other hand, in his left hand, he had a small fire
22 extinguisher, a home -- like, a kitchen fire extinguisher. And he
23 was swinging that violently while screaming the whole while, back
24 and forth:
- 25 "Get away from me. Call the FBI. Call my father. Call --

- 1 You know, how do I know who you are? You're not police officers,"
- 2 and, you know, just swinging that fire extinguisher back and forth, with his other hand up to his neck.
- 3 Q And so as you're looking through this little area, are you
- 4 looking from -- could you -- what part of Mr. Conlon's body could
- 5 you see?
- 6 A I just see his back. I don't see his face.
- 7 Q All right. So you're recognizing his body language and
- 8 describing what you see happening?
- 9 A That's right.
- 10 Q And were there -- As you're looking through the -- this
- 11 little area, could you hear anybody trying to engage Mr. Conlon
- 12 trying to talk to him. So I tried to get everybody to calm down:
- 13 from the other side?
- 14 A Yes. There were two -- Actually, to back up:
- 15 I had told the officers, "One voice." When I had first got
- 16 there, there were two: Officer Raymond and Sergeant McLean were
- 17 trying to talk to him. So I tried to get everybody to calm down:
- 18 "Listen, calm down. One voice, talking to the person."
- 19 And the one voice that I heard now, on the top of the stairs,
- 20 was mostly coming from Officer Scalberto, who was on the top floor
- 21 trying to engage Mr. Conlon, telling him to calm down, drop the
- 22 knife. "We're not going to hurt you," things of that nature.
- 23 Q Okay. So how long did you stay in this little area?
- 24 A A minute or two, until I went into the apartment itself,
- 25 checked the apartment, checked who was inside the -- the

- 1 apartment .
- 2 Sergeant Chisholm was there in the doorway, with the
- 3 less-than-lethal .
- 4 And which doorway are you describing?
- 5 In the doorway from the apartment leading out into the
- 6 same -- same hallway where --
- 7 same -- same hallway where Mr. Conlon --
- 8 -- Mr. Conlon was .
- 9 And Officer Scatterto was in the hallway, backed up to the
- 10 Lincoln Street side, trying to engage/talk to him, still
- 11 talking -- actually, yelling back and forth.
- 12 And Mr. Conlon was just still screaming and yelling
- 13 incoherently. I don't know if he was yelling at Scatterto or if
- 14 he was yelling downstairis at Officer Raymond and -- and Sergeant
- 15 McCleam .
- 16 Q Okay. So, once you were in the apartment, what did you do?
- 17 A I assessed the people that were there.
- 18 I said that there were -- I told them that NEMLEC was on the
- 19 way, we're going to wait for NEMLEC. You know, well, actually, I
- 20 just made the notification: "NEMLEC's on the way, guys. You know,
- 21 keep him talking," things of that nature.
- 22 From that area, I was going to go back out. I left the
- 23 apartment. I left Sergeant Chisholm there, told him I was going
- 24 to go back out: "I'll be right back, I'm just going to go back
- 25 out, back out front."

- 1 And then I exited and went down the stairs. And in the back
 2 of the building was when I encountered Captain Dowling.
 3 Q And who is Captain Dowling?
 4 A Captain Dowling is the patrol commander.
 5 He had arrived on scene. I believe he was at a function.
 6 And so I assessed [sic] Captain Dowling of the situation. He
 7 had already been assessed, I believe, because he had already known
 8 what we were dealing with: it was a psychotic person on the
 9 third -- NEMLEC was contacted.
 10 I told him that Sergeant Chisholm was up at the top with two
 11 state troopers and Detective Sampson. I believe Officer
 12 McSweeney -- Officer McSweeney was there. Officer Dennis was also
 13 there. There were -- there were ample men on the top. And there
 14 were three to four, you know, engaging him on the -- on the
 15 statutory.
 16 We both knew that NEMLEC was on the way. We agreed that
 17 this -- "Let's wait this out. There's plenty of time." You know,
 18 we were talking about just, you know, in the past with other
 19 issues of this way [sic], we'd just -- "It's a psychotic issue.
 20 Let's hope to wait and then wait-out the -- the person, for NEMLEC
 21 to show up."
- 22 Q And so after having that conversation, what did you do?
 23 A Well, after that conversation, Captain Dowling was now --
 24 He's the patrol commander, so per our General Orders, you know,
 25 he's taken over. He heads up to the -- to doublecheck on his

- area.
- 2 I'm going to -- I told him, "I'm going to go out front and wait for -- for you out front."
- 3 As I'm walking out front, I come across Officer Kim Manuk [phonetic]. Kim Manuk works in our supply area. She had
- 4 had a box. She has a box of less-than-lethal shotgun rounds. And
- 5 she asked me, "They wanted these! where do I put them?"
- 6 So I took them from her, says, "That's okay." I said,
- 7 "Upstairs." Then I thought about it. I took them from her.
- 8 And I went upstairs to deliver the box of rounds to the
- 9 scene, outside the scene.
- 10 Do you know who -- or do you recall what you did with the box
- 11 of rounds once you got -- you went back up to the third floor?
- 12 A I handed them -- I can't remember, to tell you the truth, who
- 13 I handed them to. I know I -- I brought them into the building
- 14 and announced, you know, "Someone wanted extra least --"
- 15 I handed them to. I know I -- I brought them into the building
- 16 and announced, you know, "Someone wanted extra least --"
- 17 less-than-lethal rounds."
- 18 Q Okay. And so ultimately you passed them off to somebody
- 19 else?
- 20 A Yes.
- 21 Q And, sir, if I show you what's been marked as Exhibit 10, do
- 22 you see the box that you're referring to, off the beanbag rounds
- 23 there?
- 24 A Yes. They're right there on the --
- 25 Q On the table?

- 1 A On the table.
- 2 Q Okay. So you're pointing to a little black box on the far side of the table, on the door side of the table?
- 3 A Yes.
- 4 Q So those are beanbag shotgun rounds?
- 5 A Yes.
- 6 Q So now you're back up on the third floor?
- 7 A And can you just describe what unfolded once you now were
- 8 Q That's correct.
- 9 A back on the second -- third floor?
- 10 Q And can you just describe what unfolded once you now were over that area until we could -- You know, NEMREC showed up or someone else would come up and relieve me. Just needed someone to be in charge of that upstairs area.
- 11 A Captain Dowling was there on the third floor also. Captain
- 12 Q Dowling asked/orderd/requested me to stay on the area to take
- 13 A over that area until we could -- You know, NEMREC showed up or someone else would come up and relieve me. Just needed someone to be in charge of that upstairs area.
- 14 Q Okay.
- 15 A And so I said okay.
- 16 Q And he said he would take -- He said he was going -- We -- He reiterated -- He told me that his action plan, the action plan he had formed with the officers that were there.
- 17 Q And what was that?
- 18 A That was going to be -- The shotgun was going to be the first. If -- If it was needed, the less-than-lethal shotgun would be used.
- 19 Q And then it would be augmented with the two state troopers

- 1 with the -- with their stun guns, if it was needed at all.
- 2 But we both said hopefully it -- you know, it wouldn't be
- 3 needed. We, we waiting for NEMBLEC, for them to show up.
- 4 And to your knowledge was there anybody assigned to Lethal
- 5 cover?
- 6 That was -- That would be Sergeant Chisholm.
- 7 Okay. Well, Sergeant Chisholm had the nonlethal?
- 8 He had the nonlethal. Oh.
- 9 And you --
- 10 No, there was no -- As far as -- I didn't hear of anything --
- 11 of Lethal coming, no.
- 12 Okay. So the only deployment that you're aware of is
- 13 Sergeant Chisholm with the Less-Lethal shotgun.
- 14 And then the --
- 15 And then, to cover him were the two troopers with the taser?
- 16 Yes.
- 17 Okay. But as far as you know, there was nobody else assigned
- 18 to cover, at that point?
- 19 A I was not told that, no.
- 20 Q Okay. And so what happened at that point?
- 21 A Well, at that point Sergeant Chisholm told me he was --
- 22 Sergeant -- Excuse me.
- 23 Captain Dowling told me he'd take the front area, where
- 24 Sergeant McLean and Officer Raymond was, just around the corner.
- 25 Q Would that be on the second floor?

- 1 A On the second floor. He was going to work his way out and around. And I'd be on the second floor -- I'd be on the third floor, with these areas here.
- 2 Q And are you communicating with Sergeant Dowling? I mean Captain Dowling.
- 3 A Captain Dowling? I was -- We were talking on the stairway.
- 4 Q And are you communicating with Sergeant Dowling? I mean Captain Dowling.
- 5 A Captain Dowling. And he left and he went down to his assigment.
- 6 Q Okay? I mean, in the -- in the -- in the apartment. And then he left and he went down to his assigment.
- 7 A Okay?
- 8 Q Okay? I mean, in the -- in the -- in the apartment. And understand, the screaming has never stopped.
- 9 A Okay? I mean, in the -- in the -- in the apartment. And maybe 5 minutes in, Officer Scaltreto starts to yell, yell
- 10 Q And then what happened?
- 11 A Approximately, I want to say, --
- 12 A Well, the screaming has never stopped. You have to understand, the screaming of Mr. Conlon had never stopped.
- 13 Q And so then what happened?
- 14 A Well, we waited a bit. We waited. And he -- It must've been three to four times he said, "The knife's down. We have an opening. We have an opening. The knife is down."
- 15 Q And so then what happened?
- 16 A Well, we waited a bit. We waited. And he -- It must've been three to four times he said, "The knife's down. We have an opening. The knife is down. He dropped the knife."
- 17 Q And so then what happened?
- 18 A Well, we waited a bit. We waited. And he -- It must've been
- 19 A Well, we waited a bit. We waited. And he -- It must've been
- 20 A Well, we waited a bit. We waited. And he -- It must've been
- 21 Q Someone asked -- I think he asked --
- 22 A He said, "He still has the fire extinguisher," so to that effect. But, "The knife is down. Dropped the knife."
- 23 Q Effect. But, "The knife is down. Dropped the knife."
- 24 A I went over the air to speak down to Captain Dowling, who
- 25 Q You know, the bottom of the stairs, you know, one floor was, you know, the bottom of the stairs, you know, one floor

- 1 I below.
- 2 Q When you say "over the air," you --
- 3 A I said over the air -- I said, "We have an opening."
- 4 And Captain Dowling said, "Okay, go. Go ahead," words to that effect.
- 5 Q And when you say "over the air," thought, are you referring to
- 6 You speaking on a radio?
- 7 A Speaking on a radio, yes.
- 8 Q And when you were saying, "We have an opening," what was our understanding that that conversation was referring to?
- 9 A I was listening to Officer Scatterto tell me that the knife -- he had dropped the knife. It was no longer in his hand.
- 10 Q And so -- But you had an opening to do what?
- 11 A It was on the ground.
- 12 Q And so -- But you had an opening to engage in the least -- the less-than-lethal plan that was set up.
- 13 A Had an opening to engage in the least -- the less-than-lethal Okay. So then what happened? After -- so then you relayed that information to Captain Dowling?
- 14 Q And so -- But you had an opening to do what?
- 15 A And so -- But you had an opening to do what?
- 16 Q And Captain Dowling essentially gave you the green light to move forward?
- 17 A Yes.
- 18 Q And Captain Dowling then what happened?
- 19 A Yes.
- 20 Q And Captain Dowling gave you the green light to
- 21 A And then what happened?
- 22 Q Yes.
- 23 A I checked with the people there.
- 24 Q I saw -- told Sergeant Chisholm, "Okay, we're going to go."

- I nodded his assent.
- 2 I checked with the -- the troopers, told them, "We're going to -- we're going to go now."
- 3 And I said, "Ready?"
- 4 And Sergeant Chisholm got ready.
- 5 And Sergeant Chisholm got ready.
- 6 And I said, "Okay," you know, "go." I yelled over the air,
- 7 "Go, go, go."
- 8 And then what happened?
- 9 And this is where I can't really -- I can tell you that I saw the -- Sergeant Chisholm raise the shotgun.
- 10 And in my mind, I thought I heard lethal -- less-than-lethal shotgun rounds being shot. But there were just an awful lot of shots fired. It happened so quick.
- 11 And then immediately I saw Mr. Conlon's face around the corner.
- 12 shotgun rounds being shot. But there were just an awful lot of
- 13 And then immediately I saw Mr. Conlon's face around the corner.
- 14 And then I immediately I saw Mr. Conlon's face around the corner.
- 15 Okay.
- 16 Q Around the corner where?
- 17 A Of the -- the doorway.
- 18 Q Okay.
- 19 A And it's -- The look on his face was just -- He was just enraged. He was around the corner. And his hand was up over his hand [sic]. And then he -- he -- he dropped.
- 20 And once you saw that, what if anything did you do?
- 21 Well, at that -- I -- I happened to look to my left. And I
- 22 Q And once you saw that, what if anything did you do?
- 23 A Well, at that -- I -- I happened to look to my left. And I
- 24 saw that officer Beninis had his weapon out.
- 25 And -- And right off the bat, I said, "Did you shoot?"

- 1 And he said, "Yes, I shot."
- 2 And we went to the -- Mr. Conlon. And Mr. Conlon was on the ground. And you could see he'd been shot.
- 3 So I checked his pulse. And I started to do chest compressions on Mr. Conlon.
- 4 And could you see what anybody else was doing at that time?
- 5 Q And could you see what anybody else was doing at that time?
- 6 Q Or were you just solely focused on Mr. Conlon?
- 7 A I was most -- just focused on Mr. Conlon.
- 8 Q So how long did you perform chest compressions, if you know?
- 9 A I was there doing chest compressions for I don't know how many -- just not too long, because Officer Raymond came up and told me, "Cap, you have no gloves. You have no gloves." I was --
- 10 Q You know, "Let me in. I'll do that."
- 11 A Before that, though, someone had said we need more room to work on Mr. Conlon. So for a moment I did stop and tried to --
- 12 Q under his arms, to drag him a bit so we could all work on him,
- 13 A rather than just me.
- 14 Q But that wasn't happening, so I went back to chest compressions. And that's when Officer Raymond, you know, came over and -- and took over for the chest compressions.
- 15 Q Okay. And did you notice anything on or around the floor where Mr. Conlon was that drew your attention?
- 16 A Not especially, no. I --
- 17 Q Did you recall -- Did you see a knife in the area?
- 18 A Pardon me?

- 1 Q Did you see a knife?
- 2 A No.
- 3 I asked where the knife was, actually. I asked, "Where's the
- 4 knife?"
- 5 Officer Raymond told me, "I -- I got the knife, cap. It's --
- 6 It's back -- I threw it back over here," pointing away from the
- 7 scene and towards Lincoln Street.
- 8 Q Okay.
- 9 A I tried thinking now as a -- as trying to preserve the scene.
- 10 And that was all -- It's -- It's all sort of a blur right
- 11 now. It's -- You know.
- 12 And so, working the chest... And the medics came up right
- 13 away. Strapped on a machine to -- to -- to help with the chest
- 14 compressions. And . . .
- 15 Q Was he then transported?
- 16 A Eventually he did get transported. They worked on him in
- 17 the -- in the hallway for several minutes.
- 18 Q And, sir, do any of the Newton police officer carry taser?
- 19 A No, they don't.
- 20 Q Do you have any experience with taser?
- 21 A No.
- 22 Q And did you see if any taser were deployed?
- 23 A After I'd gone back into the room, I -- I saw the -- the
- 24 leads, the wires. I don't have much experience with them. I --
- 25 just general knowledge of it. But I did see that there were

- 1 tasers, Leads. So it was deployed at the doorway from the trooper
- 2 that was to my --
- 3 Q Okay, because --
- 4 A -- right.
- 5 Q And I think you said this, but just to be clear: because no
- 6 Newton police officer carries a taser?
- 7 A That's right. We're not trained in it.
- 8 Q And so at some point that night you were the -- is it fair to
- 9 say that you were the ranking officer?
- 10 A I was the ranking officer on scene until Captain Dowling
- 11 showed up, yes.
- 12 Q Okay. And then once Captain Dowling showed up, you and he
- 13 conferred, but fair to say he was in charge at that point?
- 14 A Per our general -- yes, the patrol captain -- commander is in
- 15 charge of these occurrences, yes.
- 16 Q Okay.
- 17 MR. TARRANT: Thank You. I have nothing further, Your Honor.
- 18 THE COURT: Attorney Anderson?
- 19 MR. ANDERSON: Yes.
- 20 CROSS EXAMINATION OF WITNESS, CAPTAIN CHRISTOPHER MARZILLI
- 21 BY MR. ANDERSON:
- 22 Q Good morning, Captain Marzilli.
- 23 A Good morning.
- 24 Q Let me just kind of back up and just talk about your career a
- 25 little bit.

1	Q	You said you'd been on for 36 years?
2	A	Yes.
3	Q	And you've been the captain of detectives for the past six
4	Q	Years?
5	A	Yes.
6	Q	And what position did you hold before that time?
7	A	I was the captain of patrol for seven years.
8	Q	And then before being captain of patrol, what did you do?
9	A	I was -- For two to three years I was captain in charge of
10	A	accreditation and statistics.
11	A	And before that, I was a Lieutenant in the patrol bureau --
12	Q	And how --
13	A	-- and sergeant in the patrol bureau and patrolling.
14	Q	And how long did you work as a Lieutenant and a sergeant,
15	A	toughly?
16	A	Sergeant, approximately five years. Lieutenant, seven to
17	Q	eight.
18	A	And in terms of this day, January 5th of 2021, how were you
19	A	dressed?
20	Q	I was dressed as plain clothes, just as you see -- more or
21	A	less see me now, without a tie.
22	Q	Okay. So you're wearing a --
23	A	I did not wear a uniform. I did not have a --
24	Q	-- shirt and a suit jacket?
25	A	I did not have a suit jacket, no.

- 1 Q Okay.
- 2 A And I didn't have a tie. I had just a jacket and -- and a shirt.
- 3 Q But fair to say, being on 36 years, most of the people know who you are, because there's not a lot of captains in the Newton Police department?
- 4 A That's correct.
- 5 Q And how many captains were working that day?
- 6 A I'm not aware of how many captains. I couldn't tell you definitely how many captains were on duty that day.
- 7 Q How many does the department have?
- 8 A Usually at least three -- There are six. So at least two to three are working at any one time, --
- 9 Q Okay.
- 10 A -- if not taking time off, or sick time. I did not know the exact --
- 11 Q And you told us it was your understanding that captain
- 12 A Drowning was at a function that morning?
- 13 Q Yes. I believe he was at a -- a funeral that morning.
- 14 Q Okay.
- 15 A Okay. And does he serve a certain role at the funerals? Or
- 16 Q Yes. I believe he was at a certain role at the funerals? Okay. And does he serve a certain role at the funerals? Okay.
- 17 Q Okay. And does he serve a certain role at the funerals? Okay.
- 18 A Is he -- he's in the --
- 19 Q Is he -- he's in the --
- 20 A He -- He -- He blows the -- He's in the drumming and --
- 21 Q He -- he's in the --
- 22 A He -- He -- He blows the -- He's in the drumming and --
- 23 Q He's in the Boston Police Gaelic Column?
- 24 A Yes, that's right.
- 25 Q And when he arrived on-scene, how was he dressed?

- 1 A He was dressed in his, actually, gaelic outfit, the outfit
 2 for -- that he wears with the Boston -- the -- the drum corps.
 3 Q Was he actually wearing a kit on that day?
 4 A Yes, he was.
 5 Q So, you told us you get out to the scene, you go up to the
 6 first floor. There's Officer Spinnery, Officer Umtna, Sergeant
 7 McLean. And Officer Raymond is engaging him, --
 8 A That's right.
 9 Q -- Mr. Conlon?
 10 And Officer Raymond: do you know his background? Are you
 11 aware of his background?
 12 A Yes.
 13 Q What do you know about his background?
 14 A Officer Raymond, actually, just by word of mouth and knowing
 15 that in the patrol bureau, he's actually very good at speaking to
 16 people in this manner. He had -- He has experience in the
 17 corrections department. And it was just general knowledge that,
 18 You know, he -- I don't know if he had any advanced training here
 19 at the police department.
 20 But whenever -- If you needed anybody spoken to, to calm
 21 down, or even interviewing or things to that effect, Officer
 22 Raymond was a -- the person that -- one of the people that you
 23 wanted to -- He shined in this area. He -- He was better at --
 24 Q And in addition to Officer Raymond, does anybody else stand
 25 out as being good at talking to people who are having mental

- 1 health problems?
- 2 A Actually, Scattreto was known -- that -- that was also
- 3 talking to the . . .
- 4 I knew Officer Spinnery, who was there, often had . . .
- 5 umina, I had confidence in because he is a youth officer.
- 6 And he's dealt with, You know, different issues with kids and
- 7 things of that nature. So, did a lot of psychological breaks and a
- 8 lot of people with mental illness in his role.
- 9 So, yes.
- 10 Q So you had a pretty good staff out there, in terms of dealing
- 11 with people with mental health issues?
- 12 A As good as can be expected, I guess.
- 13 Q Okay. Now, at some point, you went from the front around the
- 14 back. And you ran into Sergeant Glenn Chisholm?
- 15 A Yes.
- 16 Q And do you know how long he's been on the job and how long
- 17 he's been a sergeant?
- 18 A I want to say --
- 19 Q I mean ballpark.
- 20 A In ballpark? 20? Now 20? Maybe 22, 23, 24 years.
- 21 Q And he's been a sergeant for --
- 22 A He's been a sergeant for maybe half of that time.
- 23 Q And you directed him to get the less-lethal shotgun.
- 24 A Yes. I believe he had the less-lethal shotgun.
- 25 Q And is that a weapon that you're familiar with?

- 1 A I've never been trained on it. But I know of its capabilities, yes.
- 2 Q Are you aware of other calls Newton police have responded to where that's been engaged, the less-lethal shotgun?
- 3 A Yes, I have.
- 4 Q And what's your understanding of when it's used and how it's been successful in Newton?
- 5 A I can only tell you that it's -- the times that it has been used -- And it hasn't been used much. But they've all been wanted to stop, without injury.
- 6 Q Now, how many times during this incident did you actually make eye contact with Mr. Conlon?
- 7 A Maybe once. Maybe when I -- the first time I went up, I took a quick glance outside in the hallway to get a look.
- 8 Q And what were your observations at that first time?
- 9 A That first time was just -- This was after I had seen him through the small hole that I was talking about.
- 10 Q He was -- He was frantic. He was . . .
- 11 A And what were your observations at that first time?
- 12 Q That first time was just -- This was after I had seen him through the small hole that I was talking about.
- 13 A He was -- He was frantic. He was . . .
- 14 Q And what were your observations at that first time?
- 15 A That first time was just -- This was after I had seen him through the small hole that I was talking about.
- 16 Q And what were your observations at that first time?
- 17 A And what were your observations at that first time?
- 18 Q He was -- He was frantic. He was . . .
- 19 A He was -- He was frantic. He was . . .
- 20 Q And what were your observations at that first time?
- 21 A I -- I've been to other calls with people with psychotic issues and psychotic breaks. And -- And there's, like, sort of an ebb and flow. Sometimes you can get them to come down and talk and be a little bit lucid. And then they'll rise up again and scream and then their body language . . .

- 1 Mr. Conlon was -- was -- was at the high end the entire time
2 I saw him and -- through the peephole and all the entire -- that short
3 period of time I saw him and all the time that I heard from when I
4 first pulled up.
5 And that's unique to you, in 36 years of experience?
6 A It was unique, yes. It's not something I'd -- I'd seen that
7 often.
8 Q And in terms of your kind of going back and forth and then at
9 some point having Officer Scalberto say, "He's put the knife down.
10 He's put the knife down," at that time you made a radio call to
11 Captain Dowling?
12 A Yes.
13 Q And you indicated that you thought there was an opportunity
14 and he essentially said, "Let's go ahead and take it?"
15 A He said the words of, "Okay, go. Okay, go ahead," something
16 of those words -- words to that effect. They were on the -- on
17 the radio.
18 Since he was down on the first-floor landing and he heard
19 what I was hearing from Officer Scalberto, --
20 Q Yeah.
21 A You know, he was screaming it loud enough.
22 Q And up until just last week, last Thursday, actually, did you
23 actually see that the less-lethal shotgun had discharged a round
24 in that hallway?
25 A Yes, I did. I was just recently informed that I was

1	MR. ANDERSON:	I don't have any other questions.	BY MR. MCDONALD:	mistaken.
2	MR. MCDONALD:	IF I may.	MR. ANDERSON:	
3	MR. MCDONALD:	IF I may.	MR. MCDONALD:	
4	CROSS EXAMINATION OF WITNESS, CAPTAIN CHRISTOPHER MARZILLI		CROSS EXAMINATION OF WITNESS, CAPTAIN CHRISTOPHER MARZILLI	
5	Q Captain, I'm Alan McDonald. I represent the Newton Police	ASSOCIATION and its witnesses in this case. A couple of	questions.	9
6	had gone down and he said, "Go," what did you understand was	When you contacted Captain Dowling downstairs after the knife	me.	10
7	had gone down and he said, "Go," what did you understand was	That we were supposed engage his action plan that he had told	supposed to happen?	11
8	When you contacted Captain Dowling downstairs after the knife	That we were supposed engage his action plan that he had told	A	12
9	had gone down and he said, "Go," what did you understand was	And what was that action plan that he told you?	me.	13
10	had gone down and he said, "Go," what did you understand was	That officer Chisholm was going to fire the less-lethal,	A	14
11	had gone down and he said, "Go," what did you understand was	And what was that action plan that he told you?	And what was that action plan that he told you?	15
12	had gone down and he said, "Go," what did you understand was	That two troopers would back up if that was -- with their tas	and the two troopers would back up if that was -- with their tas	16
13	had gone down and he said, "Go," what did you understand was	Okay. Now, are you aware that when a sergeant is deployed	guns.	17
14	had gone down and he said, "Go," what did you understand was	With the beanbag shotgun that a cover officer is assigned to	protect him?	18
15	had gone down and he said, "Go," what did you understand was	A cover officer was -- That would be Officer Scaltrito,	you're not aware of that?	19
16	had gone down and he said, "Go," what did you understand was	A cover officer was -- That was behind?	right, that -- that was behind?	20
17	had gone down and he said, "Go," what did you understand was	Officer Scaltrito was in the hallway, correct?	Officer Scaltrito was in the hallway, correct?	21
18	had gone down and he said, "Go," what did you understand was	Q No.	A No.	22
19	had gone down and he said, "Go," what did you understand was	Q You're not aware of that?	A Cover officer was -- That would be Officer Scaltrito,	23
20	had gone down and he said, "Go," what did you understand was	Q Right, that -- that was behind?	A Cover officer was -- That was behind?	24
21	had gone down and he said, "Go," what did you understand was	Q Officer Scaltrito was in the hallway, correct?	Officer Scaltrito was in the hallway, correct?	25

- 1 A He was in the hallway, yes.
- 2 Q And do you know where Officer Benning's was?
- 3 A Officer Benning's was to my left, in the hall -- in the apartment.
- 4 Q Okay. Were you aware that Officer Benning's had been designated
- 5 A No, I was not.
- 6 Q Okay. Are you familiar with the policy of deployment of a beanbag shotgun?
- 7 A I've never been -- This is my first time on scene with a beanbag shotgun.
- 8 Q Okay. Are you aware that the sergeant is aiming and shooting the beanbag shotgun that he is essentially deliberately defenestration it?
- 9 A No, I didn't know that at the time. But I know it now.
- 10 Q You know that now?
- 11 A Yes.
- 12 Q Okay. Are you aware that when the sergeant is aiming and shooting the beanbag shotgun that he is essentially defenestration it?
- 13 A Yes.
- 14 Q Someone were to charge him and the beanbag was ineffective?
- 15 A No, I didn't know that at the time. But I know it now.
- 16 Q You know that now?
- 17 A Yes.
- 18 Q Okay. And that person who is protecting him is the cover officer. Isn't it?
- 19 A Okay. Yes.
- 20 Q Yes?
- 21 A Yes.
- 22 Q Yes.
- 23 A And the cover officer is authorized to use lethal force if he believes that the sergeant is in danger of serious injury or death; is that correct?
- 24 A

- 1 A That sounds correct, yes.
- 2 MR. MCDONALD: Thank you. That's all I have.
- 3 THE COURT: Attorney West?
- 4 MS. WEST: Thank you.
- 5 CROSS EXAMINATION OF WITNESS, CAPTAIN CHRISTOPHER MARZILLI
- 6 BY MS. WEST:
- 7 Q Good morning, captain. My name's Kim West, and I represent
- 8 the family.
- 9 TO start the very beginning: You understood that you were
- 10 responding to an armed robbery at first, right?
- 11 A That's correct.
- 12 Q And upon arrival, you quickly understood that it was a mental
- 13 health issue and it wasn't an armed robbery.
- 14 A That's right.
- 15 Q And as different officers showed up, you told them, "This
- 16 isn't an armed robbery. We're going to talk. It's a psych
- 17 patient."
- 18 A I don't know how many times I was able to tell that. I put
- 19 that out over the air. And anybody I happened to speak to, we
- 20 reiterated, yes, it was a person with a psychotic break, not an
- 21 armed robbery.
- 22 Q All right. Upon arriving on the scene, initially you were in
- 23 charge, correct?
- 24 A That's correct.
- 25 Q But once Captain Dowling arrived, he took over.

- 1 A That's correct.
- 2 Q And you said that was pursuant to General Order.
- 3 A That's correct.
- 4 Q Which one is it?
- 5 A General Order 601, I believe. 600? 600.
- 6 MS. WEST: Your Honor, may I approach?
- 7 THE COURT: Yes. [Receiving document.] Thank you.
- 8 BY MS. WEST:
- 9 Q So, you have in front of you General Order 601.
- 10 A Mm-hmm.
- 11 Q Do you see that?
- 12 A [Reviewing document.] Yes.
- 13 Q Yeah. And this is a special operations General Order?
- 14 A That's right.
- 15 Q And if we go down to procedure -- I'm on page 1. It says
- 16 "critical task of the first officer on the scene." Do you see
- 17 that part?
- 18 A Yes.
- 19 Q It says, "Number one, the first responding officer at any
- 20 critical incident shall act as the incident commander --
- 21 A Mm-hmm.
- 22 Q -- until relieved by a higher-ranking or more-qualified
- 23 authority."
- 24 A That's correct.
- 25 Q In regard -- Would you have been the instant commander in this

- 1 situation?
- 2 A The first responding officer was there. I would have
- 3 relived that responding officer and been the critical incident
- 4 commander, yes.
- 5 Q Okay. And it says "until relieved by higher-ranking or
- 6 more-qualified authority."
- 7 Is this the provision that would put Captain Dowling in
- 8 charge?
- 9 A Critical incident thing? Yes, yes.
- 10 Q Or is there another provision in here that's applicable as
- 11 well?
- 12 A Well, there is a "designated incident commanders" that are
- 13 written. I don't know if it's written in here. They're actually
- 14 for any -- This is a "special operations."
- 15 Q Mm-hmm.
- 16 A "Unusual occurrences," which this would fall under also --
- 17 And each captain has a designation for that. And under that is
- 18 where it would be spelled out where the captain of patrol would
- 19 be, you know, the incident commander.
- 20 As a detective and an -- at an incident, I would be in charge
- 21 of any investigative matters.
- 22 Another captain in traffic would be for Traffic Bureau,
- 23 things of that nature.
- 24 Q Okay.
- 25 A But for emergency things, the first officer -- we relieve

- each other, you know, if a higher-ranking -- critical tasks, and things of that nature.
- Q And that's 601, right?
- A Yes.
- Q General Order that would apply, in regards to who was in charge?
- A All right. But if it was an armed robbery, is there another General Order that would apply, in regards to who was in charge?
- Q So this is the only applicable General Order in this situation in regard to the person in charge?
- A Yes.
- Q So this is the only applicable General Order in this situation in regard to the person in charge?
- A No, there would not.
- Q General Order that would apply, in regards to who was in charge?
- A All right. But if it was an armed robbery, is there another General Order that would apply, in regards to who was in charge?
- Q So this is the only applicable General Order in this
- 9 situations of that nature.
- 10 Q You can just put that down for one second, captain.
- 11 A How many bunker shields does Newton have?
- 12 Q Shields? I'm not quite sure. I think at least every sergeant car has one in two things. So it would be at least six.
- 13 A Shields? I'm not quite sure. I think at least every sergeant car has one in two things. So it would be at least six.
- 14 Q Sergeant car has one in two things. So it would be at least six.
- 15 A So every sergeant has a shield in their cruisers?
- 16 Q I believe so.
- 17 Q And you --
- 18 A I have not worked -- That -- That could be wrong. I have not worked in the patrol bureau. They could have swapped them out and changed them since I was in the patrol bureau.
- 19 Q All right. But do you know that every sergeant also has a change bag shotgun?
- 20 A Yes.
- 21 Q And that's in their cruiser as well?
- 22 A Yes.
- 23 Q And that's in their cruiser as well?
- 24 A Yes.
- 25 Q Yes.

- Q And shields can be used as a ram or general body protection,
 1
 right?
 2
 Q Not as a ram?
 3 A Just general body protection, yes.
 4
 Q Yes, it could be used, as a last resort, as a ram.
 5 A If I'm hearing what you're saying, I don't know if any -- we
 6
 got training in those -- that tactic that you're speaking of,
 7
 ramming the person, when these body bunkers were first issued,
 8
 maybe 20 years ago. I'm not aware of any more training that's
 9
 been used for them.
 10
 But, yes, they -- they can be used for -- in the -- in the
 11
 process that you're speaking of.
 12
 Q Okay. Now, after you initially arrived, you're in the front.
 13
 You go up to the second floor. You come down. You go around to
 14
 the back, right?
 15
 A Which time?
 16
 Q You -- when you first go around.
 17
 A Yes, first time. Mm-hmm.
 18
 Q And ultimately did you see a woman let you in?
 19
 A I didn't notice a woman let me -- let us in, to tell you the
 20
 truth.
 21
 Q You --
 22
 A I don't remember a woman letting us in. I know the door was
 23
 open on the upper -- when I got up there.
 24
 Q Okay. At some point you go up those back stairs, right?
 25

- 1 A That's correct.
- 2 Q And when you get to the top, if you're -- if you come up to
the top, to your right is a door, right?
- 3 A Yes. That's the doorway I spoke of, the exit door, yeah,
- 4 that was locked, yes.
- 5 Q It was locked and it had the little sort of hole in it that
you could see?
- 6 A That's right.
- 7 Q At any point did you hear Michael trying to get out that
door?
- 8 A No. He was not.
- 9 Q So when you're up on the third floor, the first time you're
up there, Dooling is not up there, is he?
- 10 A No, he is not.
- 11 Q But ultimately he comes up there?
- 12 A Ultimately -- After we spoke, when I went downstairs, he went
up after we spoke, yes, like I said.
- 13 Q All right. But at some point the two of you meet and you
have a conversation.
- 14 A Yes.
- 15 Q Was that -- where exactly was that conversation?
- 16 A Well ultimate -- After we spoke, when I went downstairs, he went
up after we spoke, yes, like I said.
- 17 Q All right. But at some point the two of you meet and you
have a conversation.
- 18 A Yes.
- 19 Q Was that -- where exactly was that conversation?
- 20 A Well the first one was when he arrived on scene. We were down --
- 21 Q Was that -- like I said, I was leaving. I was back on the
black parking lot when he first showed up. We exchanged
- 22 A We had two conversations.
- 23 Q The first one was when he arrived on scene. We were down --
- 24 A I was -- like I said, I was leaving. I was back on the
black parking lot when he first showed up. We exchanged
- 25 A We had two conversations.

- 1 Information on what was going on. And that was our discussion
 2 there.
 3 Q Okay. And then tell me about the second conversation. Where
 4 was that?
 5 A The second conversation was when I went up with the round of
 6 shelves, to deliver them for Officer Manuk.
 7 And Captain Dowling asked me to stay and take over that scene
 8 up there while he went down and took care of the scene in the
 9 front.
 10 Q And is it that conversation -- In your interview, you said,
 11 "I made my way out the back to go up to see Captain Dowling to
 12 ask, you know, 'What do you want?'" I was going to make a
 13 suggestion. "What is our action plan right now?"
 14 Where were you when you made that decision to do that?
 15 A I requested of him the action plan. Where are you hearing
 16 this?
 17 Q Let me just say this again. I'll read you the testimony,
 18 then you can tell me --
 19 A Mm-hmm.
 20 Q -- what you remember.
 21 A "I made my way out the back to go up to see Captain Dowling
 22 to ask, you know, 'What do you want?'" I was going to make a
 23 suggestion. "What is our action plan right now?"
 24 And then you were asked, "Were you able to have that
 25 conversation?"

- 1 You said, "Well, especially when we got to the top of the
 2 stairs, crouching down, we did and went back and forth.
 3 "And Captain Dowling said, I'm going to go out front and
 4 take care of out front. Can you stay and take care of this?"
 5 "And we both agreed we were going to talk this guy out. And
 6 NEMLEC was already notified. And we were going to talk him out.
 7 And NEMLEC was getting there to replace our people."
 8 That's about right, yes. When I went back up, I wasn't going
 9 back up to speak to Captain Dowling. Like I said, I was going
 10 up --
 11 This is -- you're talking about my interview directly that
 12 night, --
 13 Q Yes.
 14 A -- you're reading from? Yes. Okay. You have to understand
 15 that was two hours after a very traumatic event. So I'm trying to
 16 still remember what I was saying.
 17 Q Understood.
 18 A So you'll excuse me if it doesn't sound correct.
 19 Q Understood.
 20 A But I'm --
 21 Q So, my question here --
 22 A -- still not in my right mind.
 23 But, yes, to clarify --
 24 Q Yes.
 25 A -- what you just said: yes, I went up, like I said, to bring

- 1 the rounds up and saw Captain Dowling and asked what the plan was,
- 2 You know, moving forward.
- 3 The plan was, you know, we're going to wait for NEMBLEC.
- 4 And he told me that the -- Officer Chisholm was going to
- 5 deploy the less-than-lethal if needed, with backups from the two
- 6 state troopers, and then asked me if I could stay there and take
- 7 over that scene while he went out front and took care of the front
- 8 scene.
- 9 Q So at that point he told you that Chisholm was going to use a
- 10 shotgun?
- 11 A He was armed with the shotgun. Yes.
- 12 Q Do you remember later, after Captain Dowling left, when you
- 13 started to talk about an action plan with the people who were up
- 14 there? And this is without Captain Dowling.
- 15 A I just -- At that time, I just went around to the troopers
- 16 beside me and -- "You guys are going to back up Captain --" I
- 17 asked Sergeant Chisholm --
- 18 I just more or less reworded what Captain Dowling told me.
- 19 I asked Sergeant Chisholm -- I said, "You're going to be
- 20 first, with the less-than-lethal, if needed.
- 21 I talked to the -- the troopers, one to my right, and said,
- 22 "And then you'll be backing him up with your -- the taser."
- 23 They agreed.
- 24 And -- And then it's, "Okay, we're all on the same page."
- 25 And we're waiting for -- you know, "We're waiting for

- 1 NEMIIEC," I think I said at that time, also.
- 2 Q Okay. And that conversation did not include Captain Dowling,
- 3 correct?
- 4 A That conversation did not include Captain Dowling, no.
- 5 Q And it was --
- 6 A I was just making sure that everybody knew what I had been
- 7 told.
- 8 Q Were you also aware that the troopers felt that the tassers
- 9 weren't going to work?
- 10 A When I was in the back, they actually told me the tassers --
- 11 they'd have to get in awful close, that he's wearing a heavy
- 12 sweater, and the tassers might not work through that thick sweater
- 13 that he was wearing.
- 14 Q All right. So you -- strike that.
- 15 So on the third floor -- or were you aware of any other
- 16 civilians on the top -- on the third floor?
- 17 A No.
- 18 Q And the door behind Michael was locked, correct?
- 19 A The door that led out to the back porch area --
- 20 Q Right.
- 21 A -- was Locked.
- 22 Q And you understood that the door he was trying to get into
- 23 was not -- was closed, was not open.
- 24 A I don't know of any door he was trying to get into.
- 25 Q Do you -- Are you aware of any open doors on that floor,

- 1 Other --
- 2 A Yes. There was an open door directly behind him, from where
- 3 I could see in the -- in the area, too, another apartment directly
- 4 to the right, behind him and to the -- and in the back.
- 5 Q You could see into an open apartment behind him?
- 6 A I couldn't see into an open apartment. I could just see that
- 7 the door was open.
- 8 Q All right. So from where you're standing on the top of the
- 9 stairs -- The rear stairs, right?
- 10 A I'm in the rear stairs, bending over, --
- 11 Q Yep.
- 12 A -- Looking through a small hole.
- 13 Q And you're looking through the hole and you see him.
- 14 A Yes.
- 15 Q To his right, you see an open door?
- 16 A There's a doorway, yes.
- 17 Q There's a doorway.
- 18 A Yes.
- 19 Q Was it open or closed?
- 20 A Now I can't remember. But I want to say it was open. I want
- 21 to say it was open. I want to say it was. I don't know.
- 22 Q Okay. As to the second floor, --
- 23 A This is the --
- 24 Q So --
- 25 A -- third floor.

- 1 Q We're on the third floor. I'm going to move you to the second floor.
- 2 A Okay.
- 3 Q You got to the second floor when you first arrived, right?
- 4 A Okay. On that second floor, you saw a number of officers at the bottom of the stairs, correct?
- 5 A Yes.
- 6 Q Okay. On that second floor, you saw a number of officers at the bottom of the stairs, correct?
- 7 A That's right.
- 8 Q And that included Raymond, Spiniello, D'Angelo, Scalzierto at some point?
- 9 A Scalzierto was behind me, because he went and got the body bunker.
- 10 Q He wasn't there at that -- at the time. But he -- he arrived.
- 11 A And Spiniello, Officer Scalzierto.
- 12 Q Okay.
- 13 A He wasn't there at that -- at the time. But he -- he arrived.
- 14 Q And Scalzierto was behind me, because he went and got the body bunker.
- 15 A Okay.
- 16 Q In that location where those officers were at the bottom of the stairs, was -- did you see a door next to them?
- 17 A Q Connell? No. I did not see O'Connell at that time.
- 18 Q In that location where those officers were at the bottom of the stairs, was -- did you see a door next to them?
- 19 A Q Connell? No. I did not see O'Connell at that time.
- 20 Q In that location where those officers were at the bottom of the stairs, was -- did you see a door next to them?
- 21 A Q On the second floor?
- 22 Q Yeah.
- 23 A Yes, there was a door on the side.
- 24 Q And was that door open or closed?
- 25 A Closed, I believe.

- 1 Q At some point did that door open?
- 2 A Not as long as -- I wasn't there that long.
- 3 Q Okay. That location also had a very-front door, right? That
- 4 front door was open this whole time, to the street.
- 5 A To the street. The -- The hallway down and the front door
- 6 was open, yes.
- 7 Q Now, at some point Frank was in the hallway. Did you hear
- 8 anyone talk about him going into the hallway? Or did you -- when
- 9 you arrived, was he just in the hallway?
- 10 A He was in the hallway.
- 11 Q Did you hear him offer to go into the hallway?
- 12 A No.
- 13 Q You saw him in the hallway.
- 14 A I saw him in the hallway.
- 15 Q You saw the diameter of the hallway. You saw how big it was.
- 16 A That's right.
- 17 Q Did you think it was a good idea that he was out in the
- 18 hallway?
- 19 A Not especially.
- 20 At the time, I didn't think of it. I just knew that he was
- 21 engaged in talking to the -- to the man, Mr. Conlon.
- 22 Q You just said, "Not especially, at the time." Why didn't you
- 23 think it was --
- 24 A Because I -- My mind [sic] was -- Honestly, my mind was
- 25 worrying. And I just was happy that someone was talking to Mr.

- 1 I Conclusion.
- 2 Q Were you concerned at all that Officer Scalberto was in a
small, confined hallway with a man with a knife?
- 3 A Yes. We all were. I mean, most of the officers were, with
that lung area. Yes.
- 4 Q And you -- your rank is higher than Officer Scalberto, right?
- 5 A That's right.
- 6 Q You could have told him, "Come in," couldn't you?
- 7 A If I had told him to come in, I'm afraid he would have broken
the conversation with . . .
- 8 Q Also, at the time where I saw Officer Scalberto in the rear,
Sergeant Chisholm was in the doorway, with eyes on Mr. Conlon the
whole time, with his less-than-lethal shotgun.
- 9 A If I had told him to come in, I'm afraid he would have broken
the conversation with . . .
- 10 Q You could have told him, "Come in," couldn't you?
- 11 A Also, at the time where I saw Officer Scalberto in the rear,
Sergeant Chisholm was in the doorway, with eyes on Mr. Conlon the
whole time, with his less-than-lethal shotgun.
- 12 Q You just said if you told him to come in you're concerned
that it would sort of interrupt the conversation?
- 13 A Pardon me?
- 14 Q Okay. So, stop there for a second.
- 15 Q That it would stop the conversation?
- 16 A I was -- yes, I was afraid that it -- I wanted to keep that
that sort of interrupt the conversation?
- 17 Q That would stop the conversation?
- 18 A I was -- yes, I was afraid that it -- I wanted to keep that
that sort of interrupt the conversation?
- 19 Q I was -- yes, I was afraid that it -- I wanted to keep that
that sort of interrupt the conversation?
- 20 A And, yes, he was in -- he was in a direct line. The only
thing stopping him would have been Sergeant Chisholm, with his
- 21 Q Sure.
- 22 A And, yes, he was in -- he was in a direct line. The only
thing stopping him would have been Sergeant Chisholm, with his
- 23 Q Less-than-lethal shotgun.
- 24 A Could an officer Scalberto come into the apartment, keep the
- 25 Q Less-than-lethal shotgun.

- door ajar, and continue to have that conversation?
- 2 A Not without impeding Sergeant Chisholm in that doorway.
- 3 Q So couldn't Officer Scattreto come into the door, hold the door -- Chisholm's behind him -- have a conversation with Michael,
- 4 and if Michael came at him shut the door?
- 5 A It's possible, maybe. That -- That close an area, if he was going to be attacked, to just shut the door in time? Maybe.
- 6 Q You know that there was a bunker shielded on the second floor,
- 7 right?
- 8 A Yes.
- 9 Q Did you ever see a second bunker shielded in the vicinity at the time?
- 10 A On the --
- 11 Q On the --
- 12 A -- third floor?
- 13 Q So, there was one on the second floor; you saw that.
- 14 A There wasn't one on the third floor, right?
- 15 Q You could have moved the one on the second floor to the third
- 16 A No, there wasn't.
- 17 Q There wasn't one on the third floor, right?
- 18 A So, there was one on the second floor; you saw that.
- 19 Q You could have stood behind the bunker shielded,
- 20 A Could have.
- 21 Q Floor, couldn't you?
- 22 A Could have.
- 23 Q And Scattreto could have stood behind the bunker shielded,
- 24 A right?
- 25 Q Could have.

- Q Were you aware that there was a social worker who worked for Newton Police department outside?
- A No, I was not.
- Q Now, the plan from Captain Dowling was: "We both agreed we were going to talk this guy out. And NEMLEC was already notified that we were going to talk him out. And NEMLEC's getting there to replace our people." That's your interview, on page 8.
- A That's what we were hoping for, to keep talking and waiting.
- Q Okay. Why'd you have to keep talking?
- A Yes.
- Q Okay. Why'd you have to keep talking and waiting,
- A Keep him engaged. He was screaming. Like I said, he -- I had never seen anybody, you know, yell and scream that long, that loud, without an ebb or a flow, without coming down and calming
- Q All right. But if you had not talked and instead just closed down at all.
- A the door, he was confined on the third floor, right?
- Q And on the bottom of the second floor, you had a number of officers with a shield and a shotgun.
- A Yes, because we were -- they were there. Yes.
- Q And he was confined. He couldn't get out?
- A And he was confined. He couldnt get out?
- Q Yes, because we were -- they were there. Yes.
- Q And on the bottom of the second floor, you had a number of officers with a shield and a shotgun.
- A That's right.
- Q Right? So he couldn't go down the stairs unless he charged them, right?

1	A	That's right.	Q	So why didn't you just shut the door and let him sit there until NEMLEC arrived?
2	Q		A	Wasn't my call.
3	A		Q	I didn't know it if that would have been prudent. Would have set him off even more.
4	A		Q	We were talking to him, and Officer Scatterto was talking to him.
5	A		Q	I didn't know it if that would have been prudent. Would have set him off even more.
6	A		Q	We were talking to him, and Officer Scatterto was talking to him.
7	A		Q	So why didn't you just shut the door and let him sit there until NEMLEC arrived?
8	A		Q	I didn't know it if that would have been prudent. Would have set him off even more.
9	A		Q	So why didn't you had the --
10	A		Q	So we were keeping up lines of communication as best we could, you know, that way.
11	A		Q	Okay. But you had the authority to tell Officer Scatterto to come back into the apartment and shut the door, didn't you?
12	A		Q	I would have, yes, --
13	A		Q	You could have done that, and you would --
14	A		Q	And he would have followed the order?
15	A		Q	If someone had given -- If Captain Dowling had given that order, yes.
16	A		Q	All right. If you would have given it, he would have followed that order or if I had given that order, he would have followed that order, yes.
17	A		Q	All right. If you would have given it, he would have followed that order or if I had given that order, he would have followed that order, yes.
18	A		Q	If someone had given -- If Captain Dowling had given that order or if I had given that order, he would have followed that order, yes.
19	A		Q	All right. If you would have given it, he would have followed that order or if I had given that order, he would have followed that order or if I had given that order, he would have followed that order, yes.
20	A		Q	All right. If you would have given it, he would have followed that order or if I had given that order, he would have followed that order or if I had given that order, he would have followed that order, yes.
21	A		Q	All right. If you would have given it, he would have followed that order or if I had given that order, he would have followed that order or if I had given that order, he would have followed that order, yes.
22	A		Q	All right. If you would have given it, he would have followed that order or if I had given that order, he would have followed that order or if I had given that order, he would have followed that order, yes.
23	A		Q	All right. If you would have given it, he would have followed that order or if I had given that order, he would have followed that order or if I had given that order, he would have followed that order, yes.
24	A		Q	If Captain Dowling gave it, he would have followed that as
25	A		Q	Well?

- 1 A That's right.
- 2 Q And so what [sic] do you say that "it wasn't my call"? You
- 3 just said, "It's not my call."
- 4 A At that time, no, I wouldn't say it wasn't my call.
- 5 It was just I wasn't -- We were more or less concentrating on
keeping -- keeping him talking, not barricading ourselves inside
so angry he had attacked us through the door, tried to get at us
what if we had come through the door and that had set him off
- 6 "what-ifs, what-ifs."
- 7 the door.
- 8 You're doing -- You're -- You're telling me, You know,
- 9 so angry he had attacked us through the door, tried to get at us
what if we had come through the door and that had set him off
- 10 so angry he had attacked us through the door, tried to get at us
what if we had come through the door and that had set him off
- 11 so angry he had attacked us through the door, tried to get at us
what if we had come through the door and that had set him off
- 12 through the door?
- 13 Q Well, You know --
- 14 A Just locking the door would be enough to stop him? I don't
know. Did we have enough time, with the flimsy door, to -- to --
- 15 If you're going to do -- go down that scenario . . .
- 16 to lock through . . .
- 17 Well, You know he's stuck in the hall right now and the doors
are closed. So he hasn't been able to go through any other door,
- 18 Q Well, You know he's stuck in the hall right now and the doors
are closed. So he hasn't been able to go through any other door,
- 19 has he?
- 20 A Not that I know of, no.
- 21 Q And he hasn't even tried.
- 22 A No.
- 23 Q So if you had shut your door, you were concerned that maybe
he'd try to get into your door?
- 24 Q

- 1 A No. I'm just telling you as a supposition you're making
 2 an -- an -- an -- throwing out "How come you just didn't go
 3 through the door?" Everything would have been fine." I don't know
 4 if everything would have been fine if he came through the door.
 5 Q Okay. But that --
 6 A At the time, we were still talking to him, crying to talk him
 7 down, like we said before with Captain Dowling and I. We were
 8 just talking.
 9 In times in the past we never stopped talking in the middle
 10 of a conversation with a psychotic patient. I had never heard of
 11 "Okay, I'm going to leave now and go and shut the door."
 12 Q And so let me just make sure I get that. You say at times in
 13 the past --
 14 A Mm-hmm.
 15 Q -- you've never interrupted a conversation --
 16 A If --
 17 Q -- when you'd been talking, right?
 18 A Yeah. The few times I'd been there, we had constantly kept
 19 conversation up with the person.
 20 Q Are any of those times within a hallway that was 33 inches
 21 wide and about 12 feet long, with no barrier between the officer
 22 and the suspect? Were any of those times that?
 23 A No.
 24 Q And you -- do you agree with me that the distances of this
 25 very confined space made it a very dangerous situation for Officer

- 1 Scalltreto?
- 2 A Yes.
- 3 Q And Scalltreto was completely exposed, wasn't he?
- 4 A Without -- He had -- Sergeant Chisholm was between, like I
- 5 said. But he had no body bunker in front of him, no.
- 6 Q All right. Well, he was completely exposed to Michael.
- 7 A Yes.
- 8 Q All right. And if Michael came running after Officer
- 9 Scalltreto, Officer Scalltreto could not retreat, correct?
- 10 A No.
- 11 Q He couldn't hide?
- 12 A [No response.]
- 13 Q There was nothing to hide --
- 14 A No.
- 15 Q Did you balance the risk of Scalltreto taking in a no-escape
- 16 halfway versus Scalltreto not taking at all and waiting for NEMEC
- 17 to arrive, the way you planned?
- 18 A No.
- 19 Q Did you make that balance? You didn't.
- 20 A No, I did not. I did not.
- 21 Q So, NEMEC was immediately notified to come. Do you know who
- 22 did that initial call?
- 23 A I was told that call was made to police headquarters to
- 24 make the contact.
- 25 Q All right. And part of the reason is: they bring -- this is

1	Q	You -- page 8 of your interview: "They bring more training, more tactical, more training in this area."
2	A	That's correct.
3	Q	So, you have Special Operations General Order 601 in front of you?
4	A	Yes.
5	Q	Can you -- so, at the bottom on page 1, this is the "critical tasks of the first officer on the scene." And we talked about Number 1, right?
6	A	Yes.
7	Q	"Number two, establish communication and control." This is relaying information to the dispatcher. You did that as well?
8	A	"Number three, identify the hot zone," did you do that?
9	Q	I did not call out that, because it was already known.
10	A	It was clear it was on the third floor.
11	Q	"Number four, establish an inner perimeter," did you do that?
12	A	Clear when we were there. It was called out before.
13	Q	"Number five, establish an outer perimeter," did you do that?
14	A	Yes.
15	Q	"Number six, identify the hot zone," did you do that?
16	A	It was clear it was on the third floor.
17	Q	"Number seven, establish an outer perimeter," did you do that?
18	A	Yes.
19	Q	"Number eight, establish an outer perimeter," did you do that?
20	A	Yes.
21	Q	"Number nine, establish an outer perimeter," did you do that?
22	A	No, I did not.
23	Q	Did you do Number 6, "Establish a command post?"
24	A	And why not?
25	Q	Because I was the incident commander on scene and also had

1	Q	The same hat as designating where the people were going. So I couldn't leave the scene to establish a separate command post.
2	A	I didn't have enough officers.
3	Q	Okay.
4	A	"Number seven, establish a staging area," what about that?
5	Q	And "Number eight, request resources?"
6	A	No, that was not done.
7	Q	Well, the requested resources was NEMFEC and more officers that were showing up.
8	A	Can you turn to page 4, please?
9	A	[Reviewing document.]
10	Q	And this -- In the middle, it says, "critical incident negotiations --
11	A	"NEMFEC negotiators will be requested." And then it gives three things:
12	Q	-- team," and there's a definition. And then it says, "NEMFEC negotiators will be requested." And then it gives three persons; and
13	A	"C," any situation that the OIC determines requires a trained negotiator.
14	Q	Did one of these apply in this situation?
15	A	Yes.
16	Q	One -- "B" is emotionally disturbed and distraught barricaded one is a suicidal person?
17	A	One -- "B" is emotionally disturbed and distraught barricaded in three
18	Q	One is a suicidal person?
19	A	"C," any situation that the OIC determines requires a trained negotiator.
20	Q	"C," any situation that the OIC determines requires a trained negotiator.
21	A	"C," any situation that the OIC determines requires a trained negotiator.
22	Q	One or more?

- 1 A Most. Suticidal, emotionally disturbed, and this definitely
 2 needed a trained negotiator.
- 3 Q Okay. If you work your way down, it has "hostage
 4 negotiations." And then I just want to go through some of this
 5 language.
- 6 It says that the primary goal in any hostage situation is to
 7 ensure the safety of human life. And the second variable is the
 8 arrest.
- 9 "Number two, responding officers should not become involved
 10 in in-depth negotiations if it can be avoided. First contact with
 11 the suspect should consist of situation assessment. And, whenever
 12 possible, await the arrival of hostage-negotiation personnel."
- 13 Now, this was not a hostage situation, --
- 14 A No.
- 15 Q -- was it?
- 16 A No, it was not.
- 17 Q All right. But the spirit of this is associated with the
 18 fact that NEMLEC has expert negotiators, right?
- 19 A That's correct.
- 20 Q And it's the reason why you and Dowling kept saying, "Let's
 21 wait for NEMLEC to replace our people"; is that right?
- 22 A That's right.
- 23 Q Number three is: "Time is on your side. Slow everything
 24 down. Do not rush."
- 25 And did you attempt to do that?

- 1 A We attempted, yes. We tried to keep the -- the situation as
 2 It was when we first arrived, yes.
 3 MS. WEST: Your Honor, may 601 be admitted, please?
 4 THE COURT: Yes.
 5 [General Order 601 Marked as Exhibit No. 21]
 6 BY MS. WEST:
 7 Q So, I just want to go back to the plan that you put together
 8 with Captain Dowling.
 9 And then, correct me if I'm wrong, you said you had a second
 10 or -- You had a conversation then with the people who were on the
 11 scene, and that conversation did not include Captain Dowling; is
 12 that right?
 13 A Yes. All I did was -- They were there. Captain Dowling told
 14 me what -- about the plan in front of these people.
 15 Q Okay. And his plan, as on page 8, was: "We agreed we were
 16 going to talk this guy out. And NEMTEC was already notified. And
 17 we were going to talk him out. NEMTEC was getting there to
 18 replace our people." Was that his plan?
 19 A That was one of the plans we talked about, yeah, on the first
 20 time.
 21 I'm talking about when we're -- the second time we were up
 22 on -- when Captain Dowling had gone up and spoken to the
 23 officers --
 24 Q Yeah. And what did --
 25 A -- on scene.

- 1 Q And what did he say then?
- 2 A Pardon me?
- 3 Q What did he say then?
- 4 A At that time, Captain Dowling told me, "Can you stay here?"
- 5 T take over this -- this scene."
- 6 And he said -- told me that if needed -- we're going to wait
- 7 the person out. But if needed Sergeant Chisholm would be
- 8 deploying with the less-than-lethal.
- 9 And he would be backed up by the two officers with -- the
- 10 state troopers with the stun guns.
- 11 He left. I looked at everybody and said, "Everybody
- 12 understand that? That, you know, Glenn you're going to be the
- 13 first officer, if needed? We're going to try and talk this person
- 14 out." And I went to the troopers: "And you guys will be backing
- 15 up with stun guns."
- 16 And that was the extent of the conversation about the action
- 17 plan with the people on scene.
- 18 Q So, you said that the plan was "if needed" they would use the
- 19 shotgun.
- 20 A That's right.
- 21 Q Right? And what needed to happen in order then to use the
- 22 shotgun? What event would occur?
- 23 A What event? Any number of events. I don't know.
- 24 If negotiations had broken down and he attacked anybody or
- 25 tried to, You know, attack one of the people there.

- 1 IF there was maybe -- If he started to harm himself. I had
 2 heard before -- You know, he was still suicidal. He still had
 3 that knife at his throat. Our General Orders state "for suicidal
 4 persons also."
- 5 And I had heard just collateral about prior stun gun use.
 6 The person had started stabbing themselves. And then the
 7 less-than-lethal was deployed.
- 8 Or if there was a chance to use the less-than-lethal and
 9 bring the situation to an end peacefully without anybody getting
 10 hurt.
- 11 Q All right. So to make sure I understand: in regard to an
 12 event that would happen that would be the impetus to use a
 13 shotgun, it would be --
- 14 A Mm-hmm.
- 15 Q -- if the negotiations broke down and he attacked somebody,
 16 right?
- 17 A Mm-hmm.
- 18 Q The second one is if he harmed himself.
- 19 A Mm-hmm.
- 20 Q And the third one, there's a chance to use a shotgun and
 21 bring the situation to an end peacefully.
- 22 A That's right.
- 23 Q Okay. So I'm going to show you what's been marked as Exhibit
 24 This is the use-of-force guidelines.
- 25 MS. WEST: Do you have one, Your Honor?

1	THE COURT: I do have one somewhere here, yes. Thank you.	BY MS. WEST:	Q	So this is General Orders 301. If you can go to page 4, the very bottom.
2			A	Mm-hmm.
3			Q	So this is General Orders 301. If you can go to page 4, the
4			A	It says, "In addition, the use of a less-than-lethal projectile weapon
5			Q	"In addition, the use of a less-than-lethal projectile weapon
6			A	is to be used on the subject who is assaultive, slash, bodily
7			Q	harm."
8			A	less-lethal is your number one when you said it if the negotiations
9			Q	So this general order giving you permission to use the
10			A	broke down and he attacked, right?
11			Q	Can you turn the page? Page 5, very top.
12			A	Mm-hmm.
13			Q	It says, "Officers should exhaust all minimum levels of force
14			A	before resorting to more severe options."
15			Q	Did that happen here? Was that part of the plan?
16			A	There were no -- In my opinion -- It's just my opinion.
17			Q	The other less levels of force could not -- would not have
18			A	been tactfully used correctly here. I mean, --
19			Q	And what would those --
20			A	Body -- OC spray.
21			Q	And what would those --
22			A	been tactfully used correctly here. I mean, --
23			Q	been tactfully used correctly here. I mean, --
24			A	And what would those --
25			Q	Yes.

- 1 A OC spray was -- is meant to temporarily blind. You'd have to spray. And we trained to spray and move. It's just a blinding agent to knock the person off-kilter. And then they try to listen. It's -- it's more open-area. So he would get a known to attack where the last threat was. And there's no -- nowhere to move. Also, the spray in this individual might have two-second burst and then you'd move so -- because the person is enraged him even more.
- 3 And also the cross-contamination in that small area, the officers that were there would be contaminated with OC spray.
- 5 What other less level of force could be used?
- 7 The other less level of force that we're trained -- I'm not
- 9 And also the cross-contamination in that small area, the
- 11 What other less level of force could be used?
- 12 The other less level of force that we're trained -- I'm not
- 13 trained in well is just a baton.
- 14 Q Yep.
- 15 A Baton strikes. Gentleman had a knife. We wouldn't engage
- 16 with a baton when someone has a knife.
- 17 Q Okay. What else?
- 18 A That would -- for the less-than -- in this situation?
- 19 Q Yeah.
- 20 A That would probably be it.
- 21 Q Would --
- 22 A You said once before with the body bunkers.
- 23 Q Yeah.
- 24 A Rushing and -- and gang-tackling.
- 25 Q Yeah.

- 1 A You saw where this was. You saw where -- the narrow
 2 stairway. You saw the 2-foot-high wooden thing.
 3 Also, like I told you, I don't believe officers were trained
 4 in that tactic. And it's not as simple as it sounds. So, there
 5 was no training in that area for -- that I can be assured of, that
 6 I would feel comfortable...
 7 Q Okay. Can you turn to page 9? And at the very bottom,
 8 Number 5, this talks about the Less-than-Lethal projectile
 9 shotgun.
 10 And this says, "Less-than-Lethal projectiles, beanbags,
 11 not intended to be substituted for higher levels of force. If
 12 Lethal or deadly force is used or threatened by the subject, a
 13 response at the same level must be considered."
 14 And then Number A or Letter A: "Less-than-Lethal projectiles
 15 are intended as an option along the use-of-force model in cases
 16 where a violent or potential violent subject cannot be subdued
 17 in any other less-than-lethal manner without the threat of death
 18 or serious bodily injury to the officer or other persons."
 19 I'm just going to stop right there. And we'll go on, but for
 20 right now, this focus is on "unless the person can be subdued in
 21 any other less-than-lethal manner."
 22 In this situation, Officer Scattreto was speaking to him,
 23 right?
 24 A Pardon me?
 25 Q Officer Scattreto was speaking to Michael, right?

- 1 A He was speaking to him, Yes.
- 2 Q And he was trying to get him to drop the knife.
- 3 A That's right.
- 4 Q And at one point after speaking to him, Michael dropped the knife, to his waist. Do you know that?
- 5 A No. I was told he dropped the knife. All -- he dropped the knife.
- 6 A Okay. But at another point he put it on the ground, correct?
- 7 Q I just -- It was on the ground. I heard he was -- "He dropped the knife. The knife is dropped. He dropped the knife."
- 8 A Were you aware that he also dropped the fire extinguisher?
- 9 Q So would you agree with me that the conversation, negotiation
- 10 A that officer Scalberto was having, was being successful?
- 11 Q At the time, maybe.
- 12 A The next sentence is: "This tool is intended to incapacitate the subject and prevent further aggressive actions."
- 13 Q At the time that he dropped the knife, he was not being
- 14 A aggressive, was he?
- 15 Q Still screaming uncontrollably, so --
- 16 A At the time that he dropped the knife, he was not being
- 17 A At the time that he dropped the knife, he was not being
- 18 A At the time that he dropped the knife, he was not being
- 19 A At the time that he dropped the knife, he was not being
- 20 Q Still screaming uncontrollably, so --
- 21 A At the time that he dropped the knife?
- 22 A Yes. When -- when Officer Scalberto said, "He dropped the
- 23 A knife," he was still screaming. He was still ranting and ravaging,
- 24 A Yes. That's the extent that I heard, Yes.
- 25 Q Can you go to page 10? At the very top is "B":

- 1 "Less-than-Lethal projectiles do pose a threat of serious
 injury to a subject and therefore shall be used only when methods
 of force lower on the use-of-force model is determined to be
 ineffective or inappropriate."
- 2 Did you make that determination? I -- I'm of the opinion that,
 yes, he would -- would have been assaultive if -- His actions in
 the past 45 minutes that I was there, the screaming, the
 incoherence, not listening to anybody directing that... Yes.
- 3 And if you go down to the middle of that paragraph, this is
 some language you saw before.
- 4 It says, "The use of this weapon must be on a person who is
 assaultive, slash 'bodily harm.'"
- 5 At the moment that the weapon was not being assaultive, was
 not outwardly assaultive, no, not that I know of.
- 6 So, earlier, you talked about the events that would have to
 occur in order to use the beanbag. And one of them was the chance
 to use the shotgun and bring the situation to end peacefully. Do
- 7 you remember saying that?
- 8 That's right.
- 9 Do we see that anywhere in this general order?
- 10 Without harm to the person," yeah.
- 11 I'm sorry?
- 12 Doesn't it say -- [Reviewing document.]

- 1 Possiblly not. What I meant to say was maybe just to bring
2 the situation to an end, a volatile situation to an end.
3 All right. But that language is not in General Order 301, is
4 it?
5 Not that I know of, no.
6 You're familiar with the concept of de-escalation, --
7 That's right.
8 -- right? And it's important, correct?
9 Yes.
10 That's -- You have to say --
11 Yes.
12 Yes? Why is it important?
13 A De-escalation, it's what we all strive for so no one gets
14 hurt, no -- the suspect, people, officers. It's just talking
15 people down.
16 Q And you tried to do that here, right?
17 A The officers did, yes.
18 Q And they -- And Officer Scaltreto was successful, correct?
19 A He was successful in getting the knife dropped, yes.
20 Q And was there a policy in place in January of 2021 regarding
21 de-escalation?
22 A In -- just as far as the General Order to deescalate, yes.
23 Q Which General Order is it?
24 A No, I'm just saying in this. Just as far as this. This is
25 our only use-of-force, in 601.

- 1 Q Is de-escalation in 301? Pardon me?
- 2 A
- 3 Q Is there anything about de-escalation in 301? Do they talk about it as --
- 4
- 5 A No.
- 6 Q No?
- 7 A Note that I know of.
- 8 Am I wrong? I'm sorry; I'm getting a little depressed.
- 9 I know we were always taught to and told to.
- 10 Am I wrong? Am I wrong?
- 11 Q So, my question is: is there anything about de-escalation in
- 12 301?
- 13 A [Reviewing document.] Yes, right at the beginning, when our
- 14 first procedure -- officer's perception of having... [Reviewing
- 15 document.]
- 16 I'm going to say no.
- 17 Q Do you know if there's another General Order that was in
- 18 place at the time, that talked about de-escalation?
- 19 A Dealing with emotionally disturbed persons, whether or not . . .
- 20 [Reviewing document.]
- 21 Q I'm sorry! do you -- Was there another one?
- 22 A I might've been confused with -- Yes, we have a
- 23 de-escalation, dealing with emotionally disturbed persons, whether
- 24 or not it's a General Order or just general training.
- 25 Q And does the dealing with emotionally disturbed persons talk

- 1 about the de-escalation as well?
- 2 A I believe so, yes.
- 3 Q And separate from that, you said that you had training on
de-escalation.
- 4 A just in-service training twice a year at the police station.
- 5 Q Okay. So you can't recall a time when there's been specific
no specialized de-escalation training, have I had.
- 6 A just in-service training twice a year at the police station.
- 7 Q Okay. So you can't recall a time when there's been specific
- 8 de-escalation training, in-service training.
- 9 A just dealing with emotionally disturbed people at -- At
in-service, we've covered that.
- 10 Q When did you cover that?
- 11 A Last year and -- Last year? I haven't -- Excuse me; I
haven't gotten -- I'm due on December 14th to have this year's
- 12 Q Okay.
- 13 A Last year and -- Last year? I haven't -- Excuse me; I
haven't gotten -- I'm due on December 14th to have this year's
- 14 Q Okay.
- 15 A MS. WEST: Your Honor, I have "Dealing with Emotionally
disturbed Persons." However, I only have one copy. May I show it
to him, ask him some questions, and then we can --
- 16 Q Okay.
- 17 A MS. WEST: Your Honor, I have "Dealing with Emotionally
disturbed Persons." However, I only have one copy. May I show it
to him, ask him some questions, and then we can --
- 18 Q Okay.
- 19 A THE COURT: [No audible response.]
- 20 A MS. WEST: Thank you. All right. And also, Your Honor, I
will tell you that the copy I have has some highlighting in it as
- 21 Q Well. So I want you to know --
- 22 A THE COURT: All right.
- 23 Q Well.
- 24 A MS. WEST: Okay.
- 25 Q BY MS. WEST:

- Q Captain, just take a moment and go through that.
- 2 A Mm-hmm. [Reviewing document.]
- 3 Q Did you have an opportunity to review it, sir?
- 4 A I reviewed this before, yes.
- 5 Q Okay.
- 6 A I'm -- I'm aware of it. This is what I was talking about
- 7 When I said for de-escalation before -- was I --
- 8 Q And is there a section in there, a specific section, entitled
- 9 "De-escalation"?
- 10 A Pardon me?
- 11 Q Is there a specific section in there entitled
- 12 "De-escalation"?
- 13 A No, I did not see any de-escalation. It was just talking --
- 14 how to talk to people.
- 15 Q So what part in there has to do with de-escalation, if any?
- 16 A Police officer's response: communicate with the individual,
- 17 attempt to determine what's bothering him or her, you know, relate
- 18 your concern for his or her feelings, allow them to vent their
- 19 feelings. When possible, gather information on the subject from
- 20 acquaintances, things of that... Do not threaten the individual.
- 21 Everything you've highlighted --
- 22 Q Okay. All right.
- 23 A -- is de-escalation. It's not highlighted; it's just our
- 24 police officer response.
- 25 Q But there's no particular section with de-escalation, right?

- 1 A That's correct.
- 2 Q And de-escalation is much broader than just dealing with an
3 emotionally disturbed person, isn't it?
- 4 A I would say so. I don't know enough about the area of
5 de-escalation. But, yes, generally speaking, there is a -- maybe
6 more than just that. But . . .
- 7 MS. WEST: Your Honor, can we admit that as the next exhibit?
- 8 THE COURT: Yes.
- 9 [General Order 554 Marked as Exhibit No. 22]
- 10 BY MS. WEST:
- 11 Q So, sir, I now have General Order 301 in front of you. But
12 this is the revised version. This was revised after the fact,
13 revised in July this year and then early October of this year.
14 Can you --
- 15 MR. ANDERSON: I would object to this on relevance basis, if
16 it wasn't in effect at the time.
- 17 MS. WEST: Your Honor, the fact that there was no
18 de-escalation policy at the time is certainly relevant.
- 19 And the fact that there is now is something the court should
20 consider.
- 21 MR. ANDERSON: Judge, my client didn't make these policies.
22 This is an request here for you to determine if a crime was
23 committed. How he's being held responsible for some policy that
24 he didn't create, didn't know about, is beyond me.
- 25 THE COURT: How are the changes relevant, counsel, to the

1 Inquiry before this court?

2 MS. WEST: Your Honor, I think it's relevant to what these
3 officers knew at the time in regard to de-escalation. They didn't
4 know anything at the time. And in any of those orders, there's
5 not one mention or -- section on de-escalation.
6 The fact that it is here now after the fact is relevant to
7 show the understanding of what Newton police department knew that
8 it did wrong at the time.

9 THE COURT: Again, how is that, though, applicable to the
10 analysis of this court in terms of looking at the events that
11 unfolded on January 5th and the charge that this court has with
12 regard to this inquiry? I --

13 MS. WEST: Your Honor, I think it's -- it can assist the
14 court in its determination of the material circumstances at the
15 time, with the knowledge that no de-escalation policy existed.
16 But the department later on put in a policy with the understanding
17 that it should have had a policy and it didn't.
18 THE COURT: Well, don't it stand on its own, that there was
19 no de-escalation policy in place, in a department like this?
20 MS. WEST: Thank you, Your Honor, that's fine.
21 MR. ANDERSON: But that's not even completely accurate. If
22 You look at Exhibit 18, the current or --
23 THE COURT: Yes.
24 MR. ANDERSON: The policy that was in effect at this time, on
page 4, it's not the --

- THE COURT: I understand what you're saying. And I
2 understand the conclusion that counsel wants the court to draw.
3 MR. ANDERSON: Yeah, but it --
4 THE COURT: Two different interpretations, potentially, of
5 similar information.
6 MR. ANDERSON: But the old policy specifically says,
7 "Effective verbal communication can often reduce and/or manage
8 anxious, aggressive, or even violent behavior. The appropriate
9 use of verbal communications can often prevent or at least
10 minimize the need for force." So this does talk about
11 de-escalation, in the original policy.
12 THE COURT: Agreed. I appreciate --
13 MR. ANDERSON: Okay.
14 THE COURT: -- your pointing that section out. I saw it.
15 MS. WEST: That's fine, Your Honor.
16 THE COURT: Thank you.
17 MS. WEST: I withdraw it. Thank you.
18 THE COURT: Anything else, Attorney West, for this witness?
19 MS. WEST: No, thank you.
20 THE COURT: All right. Counsel, anything else you want to
21 revisit with the witness?
22 MR. TARRANT: Just briefly.
23 RECALL EXAMINATION OF WITNESS, CAPTAIN CHRISTOPHER MARZILLI
24 BY MR. ANDERSON:
25 Q DO YOU HAVE POLICY 301 IN FRONT OF YOU OVER THERE, CAPTAIN?

1	A	Yes.
2	Q	And you were asked a number of questions about things that
3		needed to fit in this policy before the less-lethal shotgun
4		could be discharged. Remember those questions that Attorney West
5		asked you?
6	A	All the . . .
7	Q	Yeah. But if I could direct your attention to page 4 of
8		Exhibit 18, General Order 301. And right there in the third
9		paragraph, under the copyright, do you agree with me that it says,
10		"No set of guidelines for this use of force could possibly cover
11		every situation that might arise. Every officer in this
12		department is expected to respond with the highest level of good
13		Judgment and professional competence?"
14		THE COURT: Counsel, before your witness answers that,
15		because I know that this had been handed out, which is the revised
16		version, I want to make sure that your witness is looking --
17		which -- what is he looking at? The exhibit?
18		THE WITNESS: Oh, I'm looking at the --
19		THE COURT: What was the --
20		THE WITNESS: I'm looking at the General Order that was in
21		place on the date --
22		THE COURT: On the date in question?
23		THE WITNESS: On the date in question.
24		THE COURT: Thank you.
25		MR. ANDERSON: Yeah.

1	THE COURT:	I just wanted to make sure of that.
2	MR. ANDERSON:	It has a "GO" up at the top.
3	THE COURT:	Yeah.
4	THE WITNESS:	I believe that is also in -- Yeah, I'm looking
5	at here. Okay. And it's also -- it should be in here, unless it	
6	was taken out. Well, I'm looking at --	
7	THE COURT:	It should have an exhibit number as well,
8	captain.	
9	MR. ANDERSON:	Yeah.
10	BY MR. ANDERSON:	
11	Q	But you agree with me that what I just read there on page 4
12	under the copyright part is that these are really guidelines,	
13	because no policy can cover every specific situation that's out	
14	there, because things are always changing, correct?	
15	A	That's correct.
16	Q	And you're supposed to use the highest level of good judgment
17	and competence you have, correct?	
18	A	Correct.
19	Q	And do you feel that all the actions that you took on January
20	5th of 2021 and all the decisions that you made were made with the	
21	best intentions of bringing this situation to an end-result where	
22	neither Mr. Conlon or the Newton officers were injured?	
23	A	Yes.
24	Q	Or anybody else, for that matter?
25	A	Yes, of course.

1 MR. ANDERSON: I have nothing else.

2 THE COURT: Thank You.

3 Anything else?

4 MR. MCDONALD: A couple further, please, if it please the

5 court.

6 RECROSS EXAMINATION OF WITNESS, CAPTAIN CHRISTOPHER MARZILLI

7 BY MR. MCDONALD:

8 Captain, you told us two or three times that the plan that
9 you understood was to wait for NEMBLEC to appear before
10 intervening, correct?

11 That's correct.

12 But that didn't happen, did it?

13 No, it did not.

14 You intervened before NEMBLEC got there.

15 That's correct.

16 Who made the decision to do that?

17 Captain Dowling.

18 Okay. And was it Captain Dowling's decision that if the --

19 Mr. Conlon dropped the knife that would be an opportunity to

20 try to subdue him without injury to him?

21 That's correct.

22 Okay. And that was the decision that Captain Dowling either
23 through you or directly explained to the officers on the third

24 floor, correct?

25 Did he -- I'm sorry; what?

- Q Did he or did you explain that that was the plan, to the
officers on the third floor, before it was implemented?
A I believe he explained it to them --
Q Okay.
A -- before. I can't tell you if he did or not.
Q Okay. So when Captain Dowling said, "GO," you understood
that mean [sic] to implement that plan, didn't you?
A That's correct. He used words of . . .
Q And when you told the officers to go ahead, you intended that
they would -- that the sergeant would shoot the beanbag in an
attempt to stun or otherwise disable the -- Mr. Conlon so that he
could be taken into custody without injury; is that correct?
A That's correct.
Q Thank you. That's all I have.
THE COURT: Anything else for this witness?
MR. ANDERSON: I have nothing.
THE COURT: Okay. All right. Thank you, Captain. You may
step down.
- 11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
- MR. TARANT: -- Leaves the bench, can I just address
THE COURT: Sure.
MR. TARANT: Before the court --
five-minute kind of stretch --
All right. At this point, we'll just take about a
step down.
- MR. TARANT: Thank you, Your Honor.
- THE COURT: All set?
- MR. ANDERSON: I have nothing.
- THE COURT: Okay. All right. Thank you, Captain. You may step down.

1	scheduling real quick?
2	THE COURT: Oh, yes, absolutely. Looks like your next witness should be Captain Dowling; is that correct?
3	MR. TARANT: Yes, that's anticipated, and then Sergeant Chisholm. Dylan Finney [phonetic] contacted me last night, was unavailable. He can be here tomorrow morning.
4	THE COURT: Okay.
5	MR. TARANT: Yes, that's anticipated, and then Sergeant Chisholm. Dylan Finney [phonetic] contacted me last night, was unavailable. He can be here tomorrow morning.
6	MR. TARANT: Christian Howell [phonetic] I believe is here.
7	THE COURT: Okay.
8	MR. TARANT: Christian Howell [phonetic] I believe is here.
9	The person -- My concern right now is Charles Dicchiarra. He is a Wallham police officer who would be traveling here to testify this afternoon. Given the length of this particular witness, I'm wondering -- I told him I would let him know at one o'clock if I thought we would reach him. I didn't want him to make an unnecessary trip.
10	THE COURT: Well, --
11	So I'm just wondering if --
12	MR. TARANT: -- the court can advise me as to what to tell
13	THE COURT: Well, --
14	Mr. Dicchiarra.
15	THE COURT: I suspect that with the witnesses who you do have present today and that we could proceed through that might bring us to the end of the session today. And I would assume that Mr. Dicchiarra will take a certain length of time that might make more sense just to push until tomorrow so that we have his continuous testimony, kind of.
16	THE COURT: I suspect that with the witnesses who you do have
17	present today and that we could proceed through that might bring us to the end of the session today. And I would assume that Mr. Dicchiarra will take a certain length of time that might make more sense just to push until tomorrow so that we have his continuous testimony, kind of.
18	THE COURT: I suspect that with the witnesses who you do have
19	present today and that we could proceed through that might bring us to the end of the session today. And I would assume that Mr. Dicchiarra.
20	THE COURT: I suspect that with the witnesses who you do have
21	present today and that we could proceed through that might bring us to the end of the session today. And I would assume that Mr. Dicchiarra will take a certain length of time that might make more sense just to push until tomorrow so that we have his continuous testimony, kind of.
22	THE COURT: I suspect that with the witnesses who you do have
23	present today and that we could proceed through that might bring us to the end of the session today. And I would assume that Mr. Dicchiarra will take a certain length of time that might make more sense just to push until tomorrow so that we have his continuous testimony, kind of.
24	THE COURT: I suspect that with the witnesses who you do have

1 MR. TARRENT: I appreciate that, and I'll let him know.

6 ATTORNEY West, do you have -- This was the revised.

7 MS. WEST: Yes, thank you.

8 THE COURT: So I just want to make sure you get that back.

9 MS. WEST: Yeah. And, Your Honor, I will provide this court

10 with a clean version of the other order.

11 THE COURT: Okay. And then we can switch it.

12 MS. WEST: Yeah, yeah.

13 THE COURT: That's fine.

14 MS. WEST: Thank you.

15 THE CLERK: Judge, I just want to note that Exhibit No. 22 is

16 General Order 554. So, just for your records, counsel.

17 THE COURT: All right. Thank you for that.

18 [Court in recess at 12:17:42 p.m.]

19 [Back on Record at 12:29:16 p.m.]

20 THE COURT: All right, counsel. All set?

21 MR. TARRANT: Yes, Your Honor. Commonwealth calls Captain

22 Dennis Dowling.

23 [CAPTAIN DENNIS DOWLING, Sworn.]

24 THE COURT: Good afternoon, captain. You're welcome to stand

25 or sit, whatever is most comfortable for you. And if you would

1	Like, you can remove your mask or leave it on.	THE WITNESS: Thank you, Your Honor.	MR. TARRANT: Thank you.	BY MR. TARRANT:	DIRECT EXAMINATION OF WITNESS, CAPTAIN DENNIS DOWLING	Q	5
2							6
3							7
4							8
5							9
6							10
7							11
8							12
9							13
10	A	Sure. Dennis Dowling, D-O-W-L-I-N-G. And Dennis is	D-E-N-N-I-S. I'm a captain with the Newton police department.	Okay. And how long have you been employed by the Newton	And where are you currently assigned in the Newton police	Q	17
11							16
12	Q	Okay. And how long have you been employed by the Newton	And how long have you been a captain?	And how long have you been a captain?	And where are you currently assigned in the Newton police	Q	20
13							21
14	A	For 35 years.	For 35 years.	Special Operations.	About 8 months.	A	22
15	Q	And how long have you been a captain?	And how long have you been a captain?	Special Operations.	About 8 months.	Q	23
16	A	Since 2009.	Since 2009.	Special Operations.	And what do you do in Special Operations?	A	24
17	Q	And where are you currently assigned in the Newton police	And where are you currently assigned in the Newton police	And what do you do in Special Operations?	We're in charge of training, hiring, in-service, the medical	Q	25
18							26
19	A	Police department?	Police department?	And how long have you been in Special Operations?	We're in charge of training, hiring, in-service, the medical	A	27
20	Q	And how long have you been in Special Operations?	And how long have you been in Special Operations?	And how long have you been in Special Operations?	control officer falls underneath me, the range.	Q	28
21	A	About 8 months.	About 8 months.	About 8 months.	The shooting range?	Q	29
22	Q	And what do you do in Special Operations?	And what do you do in Special Operations?	And what do you do in Special Operations?	control officer falls underneath me, the range.	Q	30
23	A	We're in charge of training, hiring, in-service, the medical	We're in charge of training, hiring, in-service, the medical	We're in charge of training, hiring, in-service, the medical	control officer falls underneath me, the range.	A	31
24	Q	control officer falls underneath me, the range.	control officer falls underneath me, the range.	control officer falls underneath me, the range.	control officer falls underneath me, the range.	Q	32

1	A	Shooting range, yeah, firearms.
2	Q	And previous to being in Special Operations, what did you do?
3	A	I was a Patrol Bureau captain.
4	Q	And how long were you the Patrol Bureau captain?
5	A	Approximately five years.
6	Q	And what are your responsibilities as the Patrol Bureau
7		captain for the police department?
8	A	I'm in charge of 8 lieutenants, 14 sergeants, and about 70
9		patrolman. We handle all the 911 calls, service calls, you know,
10		radar. I'm also assigned to work with the city in construction
11		and detail projects.
12	Q	And, sir, are you familiar with the less-than-lethal shotgun?
13	A	I am.
14	Q	And how are you familiar with it?
15	A	I was certified on it when I was a sergeant.
16	Q	And so just briefly describe -- what is it?
17	A	It's a Remington shotgun. We put a orange stock on. And we
18		also put an orange where -- the slide where the action is on the
19		shotgun is colored orange. We use a -- a less-lethal round. It's
20		like a -- a beanbag round. And it's designed only for
21		less-lethal purposes.
22	Q	And --
23	A	No live fire ammunition is allowed in that gun.
24	Q	And who carries the less-lethal shotgun?
25	A	They are assigned to the patrol supervisors, which is the

- 1 sergeants that are on the street.
- 2 Q And when would a Less-Lethal shotgun be employed by a Newton
- 3 A Police officer or a sergeant?
- 4 A Generally when someone is trying to inflict harm upon themselves, or a suicidal individual. A number of times, it's been used with people with knives.
- 5 Q And so, being a captain, you don't carry a Less-Lethal
- 6 A shotgun?
- 7 Q Are you aware of, in your experience, whether any Newton
- 8 A I do not.
- 9 Q Police officers have ever had an occasion to use a Less-Lethal
- 10 A On approximately how many occasions?
- 11 Q And do you recall the results of those situations where
- 12 A Less-Lethal has actually been discharged at an individual?
- 13 Q They were all successful in the end. There were some
- 14 A injuries incurred by the person. But knives -- I think one case a
- 15 Q I can think of about five or six off the top of my head.
- 16 A And do you recall the results of those situations where
- 17 Q Less-Lethal has actually been discharged at an individual?
- 18 A They were all successful in the end. There were some
- 19 Q lighter, trying to put the place on fire -- They were able to
- 20 A get -- bring those to a conclusion safely.
- 21 Q And you say each of the sergeants carry a -- The patrol
- 22 A sergeants carry a Less-Lethal shotgun. How many are on the road
- 23 Q at any particular time?
- 24 A generally, due to staffing now it's only about two. There
- 25 A

- 1 can be up to four.
- 2 Q And, sir, if I direct your attention to January 5th, 2021, do you recall that day?
- 3 A I do.
- 4 Q Were you working on that day?
- 5 A I was.
- 6 Q And during your workday, did you leave your workday for any reason, to attend some other kind of duty?
- 7 A I had received permission from the chief to attend a line-of-duty death for a Taunton police officer.
- 8 Q And what was your purpose for attending that event?
- 9 A Part of the ceremonial unit, the Boston Police Gaelic Column.
- 10 Q And we had been requested to play for the -- the family and the officer.
- 11 A Okay. And so you play a particular instrument in that regard?
- 12 Q Okay. And so you play a particular instrument in that
- 13 A And so did you travel to Taunton on January 5th, 2021?
- 14 Q And so did you travel to Taunton on January 5th, 2021?
- 15 A Okay. And so you play a particular instrument in that
- 16 Q And at some point were you -- did you attend the funeral for the bagpipes.
- 17 A The bagpipes.
- 18 Q And so did you attend the funeral for the bagpipes.
- 19 A I did.
- 20 Q And at some point were you -- did you attend the funeral for the officer?
- 21 A I did.
- 22 Q And upon your return from that funeral, could you describe what if anything occurred?
- 23 A As I was coming down 128, I heard a radio broadcast of a

- 1 possible armed robbery in progress.
- 2 Q And were you provided a location of that potential armed
- 3 robbery in progress?
- 4 A It was given out as Lincoln Street, initially. And then I think the dispatcher confirmed it as -- I believe it was either 16
- 5 or 18.
- 6 Q Okay. And hearing that, what if anything did you do?
- 7 A At that time, I was -- I was still on the highway. A short
- 8 time later, I got off on Grove Street. And then I turned around
- 9 and I started to head back towards the Newton Highlands.
- 10 And essentially did you make your way to Lincoln Street?
- 11 Q And approximately how long did it take you to get there, from
- 12 A I did.
- 13 Q And essentially did you make your way to Lincoln Street?
- 14 the time you first heard that radio broadcast?
- 15 A Roughly 10 minutes.
- 16 Q And so once you got to Lincoln Street, what did you see on
- 17 Lincoln Street at that time?
- 18 A There was a number of police officers there. There was a
- 19 number of police cars there.
- 20 Q And seeing that, what did you do?
- 21 A I had heard that Captain Marzilli was on the radio. I went
- 22 out to locate the captain.
- 23 Q And did you find Captain Marzilli?
- 24 A I did.
- 25 Q And where did you find him?

- 1 A In the alleyway off the building.
- 2 Q And did you have a conversation with Captain Marzilli at that
- 3 A time?
- 4 Q And what was the nature of that conversation?
- 5 A He basically briefed me, what had occurred. The officers had
- 6 confronted him out in the street. And then he chased him up to
- 7 the third floor, where they had him secured.
- 8 He mentioned he was waving a fire extinguisher, he had a
- 9 knife, and he had a knife to his throat.
- 10 He also mentioned the second team was trying to make their
- 11 way up to the third floor.
- 12 Q So as a result of that conversation, what if anything did you
- 13 do?
- 14 A We broke up responsibilities. I -- He took the second floor,
- 15 where the group had -- group of officers had staged. And I said
- 16 I'd go up to the third floor.
- 17 Q So did you then go up to the third floor?
- 18 A I did.
- 19 Q And when you got to the third floor, what did you see, what
- 20 A I encountered a couple of our patrolmen. They gave me kind
- 21 Q of a brief breakdown of what was going on.
- 22 A And who were the patrol officers that you saw?
- 23 Q And who were the patrol officers that you saw?
- 24 A I believe it was McSweeney, Wilson, and Detective Sampson.
- 25 Q And who were the patrol officers that you saw?

- 1 Q And so you had a brief conversation with those officers?
- 2 A Yeah. Yes.
- 3 Q And where did that occur?
- 4 A That occurred at the top of the stairs. There's porches at the back of the apartments. It would be the rear -- rear portion of the building.
- 5 Q Okay. So then after that conversation, what did you do?
- 6 A The officers had just made entry into an apartment off to the left, which I believe was Number 4. I started to enter it. As I was entering, the resident blew right by me.
- 7 Q The -- when you say "the resident," can you describe that person?
- 8 A The officers had just made entry into an apartment off to the left, which I believe was Number 4. I started to enter it. As I was entering, the resident blew right by me.
- 9 Q Okay. So then after that conversation, what did you do?
- 10 A The officers had just made entry into an apartment off to the left, which I believe was Number 4. I started to enter it. As I was entering, the resident blew right by me.
- 11 Q The -- when you say "the resident," can you describe that person?
- 12 A It was a white female. And she just -- right by me.
- 13 Q Okay. Did you talk to her?
- 14 A She just said, "I'm getting the hell out of here."
- 15 Q And could you hear or see anything else occurring as you were entering that apartment?
- 16 A I mean, I could hear a lot of yelling.
- 17 Q And did you recognize the voice -- voices that were yelling,
- 18 A Not initially, no.
- 19 Q And what -- could you understand the words that were being said?
- 20 A Q or voice?
- 21 Q And what -- could you understand the words that were being said?
- 22 A Q And what -- could you understand the words that were being said?
- 23 Q And what -- could you understand the words that were being said?
- 24 A It was something about wanting to talk to his father and --
- 25 Q and wanting to talk to Danielle.

- Q And did you know who was saying that, at that time?
- A I didn't have visual, no. I just assumed it was the person
- 3 They had chased up the stairs.
- 4 Okay. So from there, what did you do?
- 5 I met Sergeant Chisholm and I believe Officer Beninis in
- 6 the -- in the living room section of the home.
- 7 They told me he was just on the other side of the door.
- 8 I opened the door to peek out, just to get a quick
- 9 assessment.
- 10 Q And what did you see?
- A I saw a gentleman, good-sized gentleman, with an army coat
- 11 on, or a green coat, and a knife buried in his throat.
- 12 Q And how long did you take to make that observation?
- A I don't know; maybe 30 seconds, a minute.
- 13 Q And was anybody -- Was that individual saying anything at
- 14 that time?
- 15 Q And was anybody -- Was that individual saying anything at
- 16 that time?
- 17 A More of the wanting to talk to his father and -- and -- and
- 18 something to do with Daniel.
- 19 Q Okay. Did you come to learn that person's name to be Michael
- 20 Conclusion?
- A Much later, yes.
- 21 Q Was anybody else in the hallway at that time, on the third
- 22 floor?
- 23 A No. Just Michael Conlon.
- 24 Q And so, seeing that, what did you do next?
- 25 A

- 1 A I had Sergeant Chisholm go downstair and -- and get his
 2 less-lethal. He returned. We kind of formulated a plan that, you
 3 know, if we had to do something we could do that and deploy the
 4 less-lethal weapon.
 5 Q And so what was the plan that you formulated?
 6 A Well, as we were talking, two troopers came up the back
 7 stairs. Both of those officers had taser on their duty belts.
 8 So I asked them to step forward and take -- We opened the door to
 9 get an assessment, to see if they thought a taser would be
 10 practical to use.
 11 Q And did the troopers look out the door?
 12 A One of them did, yes.
 13 Q And did he retreat back from the door at some point?
 14 A He did.
 15 Q And did he discuss with you whether or not taser would be a
 16 useful option in this situation?
 17 A We did discuss that, yes.
 18 Q And what did the trooper tell you about the ability of the
 19 taser to be useful in the current situation?
 20 A He felt, based on the coat that Mr. Conlon had on him, was
 21 not -- the probes wouldn't penetrate. It would not be an
 22 effective use of the tool.
 23 Q Okay. So the coat was essentially too thick?
 24 A That's what they told me, yes.
 25 Q And so after having that conversation, what happened next?

- 1 A So, again, I brought the two troopers, Sergeant Chisholm,
and -- and Officer Beninis. We -- We formulated a plan, with the
Less-Lethal being the primary means if it had to be deployed.
Officer Beninis would serve as the -- the backup officer for
the person using Less-Lethal.
And we had the troopers off to the side.
And were the troopers actually given a task or a role in this
If necessary, you know, that would be the backup to the
backup, basically.
Okay. Was it understood at that time, at least by you, if
you communicated to the troopers, that regardless of how thick the
clothing was -- that the taser may be attempted in any way,
regardless of their assessment?
It was just -- It was just too tight in there. I don't think
it would have been feasible.
Okay. And so how did -- Well, with respect to the
less-lethal shotgun that Sergeant Chisholm had, at any point in
time did you take possession of that?
- 19 Q For what purpose?
A I did.
20 Q And after doing that, did you hand it back to Sergeant
Chisholm?
21 Q And after doing that, did you hand it back to Sergeant
Chisholm?
22 A To -- To load it and to make sure it was ready to go.
23 Q And after doing that, did you hand it back to Sergeant
Chisholm?
24 A I did.

- Q And then as part of this plan, did you discuss where people would align themselves or set themselves in relation to the apartment, the door, and the hallway?
- A Not at that time, no.
- Q Okay. So what happened at -- So what was happening at this time?
- A So as we're discussing what we're going to do, Officer Scatterotto stepped up and -- and -- and went to the door and tried to engage Mr. Conlon.
- Q Did Officer Scatterotto discuss with you trying to do that,
- A No. I -- I've known Officer Scatterotto for a long time.
- He -- He's very, very good at dealing with mental health calls.
- We have a social worker he works with -- both of them -- over the years, quite well.
- Q So is it fair to say that Officer Scatterotto's stepping up and taking that role would have been a natural event under these kind
- of circumstances --
- A Yes.
- Q -- that the Newton Police were dealing with?
- A Yes.
- Q And so where did Officer Scatterotto go?
- A He was right at the threshold of the door.
- Q And what was he doing, that you could observe?
- A He was trying to converse with Mr. Conlon.

- Q And was Officer Scaltrerto carrying his weapon in his hand at
2 that time, or anything in his hands, at that time?
3 At that time, I don't recall. No, I don't -- I don't believe
4 so.
5 Q And could you tell what effect Mr. Conlon was having with Mr.
6 I was more concerned dealing with the officers in the room
7 than the conversation. It -- There was still a lot of yelling
8 and . . .
9 So what did you do at that point?
10 A Shortly thereafter, Captain Marzilli came up the stairs. He
11 had some extra Less-Lethal rounds. We talked briefly.
12 And I told him I was going to go downstairs and talk to the
13 officers that were at the foot of the stairs on the second floor.
14 Q And so was it your understanding that Captain Marzilli was
15 then going to remain on the third floor?
16 A And so you went down to the second floor?
17 Q And so you went down to the second floor?
18 A Yes.
19 Q And what did you do when you got down to the second floor?
20 A I met with, let's see, Lieutenant D'Angelio and Sergeant
21 O, Connell, Sergeant McLean, and . . .
22 And Officer Raymond was speaking with him.
23 And Officer Raymond was speaking with him.
24 And Officer Spinnery was there, as well.
25 Q Officer -- who was Officer Raymond speaking with?

- 1 A Officer Raymond was speaking to Conlon, as -- as well. He had initial contact with him.
- 2 Q Okay. And so could you tell what effect Officer Raymond was having at that time?
- 3 A It didn't seem to be producing anything at that time.
- 4 Q And so did you remain on the second floor at that point? Or did you go somewhere else?
- 5 A No, after talking to the officers, they had a good plan in place; they were -- they were good.
- 6 Q And I decided I would head back up to the second -- second floor.
- 7 A And I decided I would head back up to the second floor at that point.
- 8 Q Okay. So were you on the second floor?
- 9 A Yeah. I was on the second floor. I would have had to go down the stairs, out the building, and then progress up the rear of the building to get back to the third floor.
- 10 Q Okay. And so you made another trip up to the third floor at this point?
- 11 A Yeah. So were you on the second floor?
- 12 Q Okay. So were you on the second floor?
- 13 A Yeah. I was on the second floor. I would have had to go down the stairs, out the building, and then progress up the rear of the building to get back to the third floor.
- 14 Q Okay. And so you made another trip up to the third floor at this point?
- 15 A I was attempting to, yeah.
- 16 Q Okay. Did something occur as you were attempting to go back to the third floor?
- 17 A Yes.
- 18 Q Okay. Did something occur as you were attempting to go back to the third floor?
- 19 A Okay. Did something occur as you were attempting to go back to the third floor?
- 20 Q Okay. Did something occur as you were attempting to go back to the third floor?
- 21 A What happened?
- 22 Q Yes.
- 23 A I received a radio transmission from Captain Marzilli.
- 24 Q And what was the nature of the transmission?
- 25 A He said that the person had dropped the knife and -- and he

- had a shot. And by "shot," I mean Less-Lethal.
- Q Okay. And did you respond to Captain Marzilli in any way at that point?
- A I did. I said, "If you think you have it, okay."
- Q And so basically giving him the go-ahead to try the Less-Lethal; is that right?
- A Yes.
- Q And so after having that conversation with Captain Marzilli,
- 8 Q And so after having that conversation with Captain Marzilli,
- 9 What happened next?
- A I heard a number of gunshots ring out.
- 10 Q And hearing that, what did you do?
- A Went back to the front of the building and right up the stairs to the second floor.
- 11 Q And when you got to the second floor, what did you see?
- A There was a lot of officers there.
- 12 A A couple of them ran up to -- to tend to Mr. Colon.
- 13 Q A couple of them ran up to -- I would exit the building and then try and make my way back up to the third floor. I couldn't -- I couldn't
- 14 A get by anybody.
- 15 Q And then from there what did you do?
- A I decided to -- I would exit the building and then try and speak with the officers involved upstair and then mentioned we -- I had officers escort him out to the ambulance.
- 16 Q Escort who out?
- A Officer Scaltreto, Officer Beninis.
- 17 Q Okay. So at that point, you hadn't come to learn that

1	Q	Officer Scaltrito and Dennis had discharged their firearm?
2	A	Correct.
3	Q	And then they were escorted out to an ambulance after that?
4	A	Yes, as well as -- I think Sergeant Chisholm, as well.
5	Q	Okay. And you're also aware that their duty belts were taken
6	A	from them; is that right?
7	A	At some point, yes.
8	Q	So approximately how long were you -- From the -- Well, how
9	A	much time had passed from the moment you arrived on Lincoln Street
10	A	until you heard the shots fired?
11	A	Probably 20 minutes, maybe.
12	MR. TARANTO:	Thank you. That's all the questions I have,
13	BY MR. ANDERSON:	Your Honor.
14	CROSS EXAMINATION OF WITNESS, CAPTAIN DENNIS DOWLING	
15	Q	BY MR. ANDERSON:
16	A	Good afternoon, Captain Dowling.
17	A	Good afternoon.
18	Q	Just in terms of your background, -- just a second, here.
19	A	You've been a police officer for 34 years?
20	A	Almost 35, yes.
21	Q	And you're currently in charge of Special Operations. But at
22	A	this time, you were patrol captain?
23	A	Correct, Yep.
24	Q	And before that? Can you take us through your career, in
25	A	terms of when you came on, what you did, what your promotions

1	WERE?	
2	A I came on in 1987 as a patrolman. I stayed in patrol for	
3	approximately 10 years. '97, promoted a patrol sergeant, a street	
4	sergeant, for 3 years. After that, I served 9 years as a OIC	
5	Lieutenant in charge of a shift. And then in 2009, promoted to	
6	captain and in charge of the communication center, where I worked	
7	for 7 years. And then Chief McDonald put me in patrol in '16,	
8	for 5 years. And in March of this year, March/April, I was	
9	transferred to Special Operations.	
10	And in 2016 when you were put in charge of -- captain of	
11	patrol, who did you replace as captain of -- patrol captain?	
12	A Captain Christopher Marzilli.	
13	Q And do you know how long he had been in that spot?	
14	A Approximately 7 years.	
15	Q Let me direct your attention to January 5th of 2021. How	
16	were you dressed on your way back from the funeral?	
17	A I had on what we wear: kilt, sporran, police uniform with a	
18	badge, duty holster.	
19	Q And in terms of the time that you first heard this radio call	
20	about what came across as a robbery and then turned into more of a	
21	mental health issue, until the time you actually arrived on	
22	Lincoln Street, how much time do you think went by from first	
23	becoming aware of the situation to actually getting on scene?	
24	A I would guess 10, 15 minutes.	
25	Q And when you got on scene, did you take an inventory of who	

- 1 was on scene?
- 2 A I could see officers as I -- I was going.
- 3 . Captain Marzzilli briefed me that there were four or five officers up on the second floor.
- 4 . There was a number of officers in the back. We didn't -- I didn't know who they were.
- 5 . There was a handful of officers in front of the building as well, providing security. Or they had blocked the road.
- 6 Q And until you arrived on scene, who was in charge of that
- 7 . There was a number of officers in the back. We didn't -- I didn't know who they were.
- 8 Q And until you arrived on scene, who was in charge of the road.
- 9 A Captain Marzzilli.
- 10 Q scene, would you say?
- 11 A Captain Marzzilli.
- 12 Q And when you arrived, did you assume control of the scene, by
- 13 A the policy?
- 14 A By the policy, yeah. After -- After speaking with Captain Marzzilli and getting a brief update, by policy I -- I take over.
- 15 Q Okay. But you told us that Captain Marzzilli used to be the captain in charge of patrol. And he used to have the job that you
- 16 A had at this time, correct?
- 17 Q Were you made aware at any time by anyone that NEMLEC was
- 18 A That's -- That's correct, yes.
- 19 Q Were you made aware at any time by anyone that NEMLEC was
- 20 A called out?
- 21 Q I had heard that Lieutenant D'Angelo asked over the radio for a negotiator.
- 22 A And do you know when that request had been made and how long
- 23 Q it generally takes NEMLEC to arrive to a scene like this?

- 1 A I believe the -- his radio transmission was probably within
 2 the first 4 or 5 minutes.
 3 NEMLEC, it can take an hour. It can take more. It depends
 4 on -- Officers are coming from all over the -- Middlesex and Essex
 5 County that respond to these calls. So they're working. And traffic and
 6 where they are at the time, if they're working. And traffic and
 7 such, like that. So it -- it can take a while sometimes.
 8 Q But knowing that NEMLEC was coming, did you have a
 9 conversation with Captain Marzilli about how much time you were
 10 going to give this thing or what a plan was going to be, of
 11 approach?
 12 A Well, initially, when he had the knife to his -- to his --
 13 his throat, I'm like, "We're just going to sit. We'll just --
 14 we'll just talk. You know, we can -- we can slow this down."
 15 We're going to just take it easy."
 16 I mean, some of the officers were obviously excited. So I
 17 just wanted to kind of just, like, calm everybody down: "Let's
 18 just take it easy for a little bit."
 19 Q And in terms of the Newton police department, are there some
 20 officers that have reputations for being really good at talking to
 21 people who are in excited states or going through emotional
 22 breakdowns?
 23 A There are.
 24 Q And who would those officers be?
 25 A It would be Frank Scaltrito and Zach Raymond.

- 1 Q And they were both on scene this day?
- 2 A They were.
- 3 Q And when you were on scene, were you constantly reassessing
- 4 A what was going on at the scene?
- 5 A Yeah. I mean, we were -- like I said, it's fairly common.
- 6 We're going to get them in place, make sure everybody knew what
- 7 They were doing.
- 8 And these things, they go quickly. Things can change
- 9 quickly. And, you know, so, I thought we had a good plan in place
- 10 initially. And then, yeah, we had -- That was the plan for what
- 11 we were dealing with at the time. But things do change.
- 12 Q And it's fair to say at some point the plan was, if something
- 13 changed when the plan was going to be put in effect, that Sergeant
- 14 Chisholm was going to use the less-lethal weapons? Officer Beninis
- 15 was a lethal cover backup? And then the troopers were just going
- 16 to take a shot with the taser but probably not have success?
- 17 A Probably -- yes. That -- That was -- If -- If need be, that
- 18 would be the primary means, the less-lethal. Sergeant Chisholm
- 19 was closer. It was a level shot.
- 20 Q Okay.
- 21 A I felt that was the best use of that, the less-lethal.
- 22 Q And you yourself are trained in the less-lethal firearm.
- 23 A I am.
- 24 Q And do you still have your certifications?
- 25 A I do.

- Q And if I told you yesterday we went out to the scene and that
from the back wall of that hallway down to the door where Sergeant
Chisholm was located it's a distance of 12 feet and 10 inches.
Assuming that this person's -- Mr. Conlon's not directly backed up
against a wall but a foot or two out, from a range of 10 feet how
accurate would that less-lethal firearm be?
A Based on my experience, it's -- guys are pretty much spot-on.
Q And in terms of the number of rounds that you could fire out
of it?
A You could fire up to five rounds before having to reload the
weapon.
Q And mechanically, we had one of the witnessses testify to
this, but can you explain mechanically how you reload that or how
you go from the first shot to the second shot to the third shot to
the fourth shot to the fifth shot?
A Generally, the -- the weapon would be aimed, and you're
aiming for the belt buckle. You would discharge -- Well,
rack-in one round so the -- the weapon's hot, pull the trigger,
discharge, and then you pull the slide back, or the action, and
then rack it back in. The next round pops up. And you can do
that pretty quickly.
- Q How long in terms of seconds do you think it would take to
fire off five rounds?
- A If someone's proficient in it, they could probably get them
all off in 4 or 5 seconds.

- Q And in terms of the number of times you made observation of Mr. Conlon, how many times did you actually lay eyes on him?
- A Just that -- that first time for, I don't know, maybe 30 seconds, a minute maybe.
- Q And, again, what were your observations of him?
- A Yelling, screaming, and he had that -- that knife, like, buried in his neck. I... yeah.
- Q And at that time did he also have the extreme extenuisher?
- A I did not see that at that time.
- Q And when Captain Marzilli contacted you by radio and said, "I think we have an opportunity," were you referring to his judgment because he had 36 years on the job and had worked as a captain of patrol and had, you know, been on the street, been in these situations for a number years?
- A It was more that he had eyes on the scene, he was right there, he had eyes-on, he had a better viewpoint than me, as well as his experience.
- MR. ANDERSON: I don't have any further questions.
- THE COURT: Thank you, counsel.
- ATTORNEY McDONALD:
- CROSS EXAMINATION OF WITNESS, CAPTAIN DENNIS DOWLING
- BY MR. McDONALD:
- Q Now, captain, when a sergeant is deployed with the Lethal -- excuse me -- with the Less-than-Lethal shotgun, is there a cover officer named, as a matter of protocol?

- 1 A There is.
- 2 Q And what is a cover officer?
- 3 A A cover officer would be someone who would have Lethal --
- 4 their duty weapon, whether it be the firearm or a patrol rifle.
- 5 They're there in case something goes wrong: the weapon doesn't discharge, the officer misses, misfire, jam. They're there to protect that officer who has essentially no protection.
- 6 They're there in case something goes wrong: the weapon doesn't discharge, the officer misses, misfire, jam.
- 7 That said the knife had been dropped and you said, "Go. Implement
- 8 Q And did you learn what happened here after you got the call
- 9 that said the knife had been dropped and you said, "Go. Implement
- 10 the plan," basically?
- 11 A Yes.
- 12 Q And what's your understanding of what happened?
- 13 A It was either a jam or a misfire -- I -- misfire of the --
- 14 the Less-Lethal shotgun.
- 15 And Officer Beninis and Officer Scaltrito had to use deadly
- 16 force.
- 17 Q And why did they have to use the Lethal force?
- 18 A To prevent Sergeant Chisholm from getting stabbed in the
- 19 face.
- 20 Q And it was your understanding that Mr. Colon approached
- 21 Sergeant Chisholm with a knife, in a position ready to strike him?
- 22 A That's what I'm told, yes.
- 23 Q Yes. And based upon those facts, assuming they're true, do
- 24 you have an opinion on whether the use of lethal force by either
- 25 or both Officer Beninis and Officer Scaltrito was justified?

1	MS. WEST: Your Honor, I just -- Object. I'm not sure if	2	You will accept objections in that form. But I didn't understand
2		3	that he was here to give an --
3		4	THE COURT: I'm going to sustain the objection to the form of
4		5	the question.
5	BY MR. MCDONALD:	6	
6		7	Did the Newton police department conduct an investigation of
7		8	any kind on the shooting that occurred?
8		9	A The Massachusetts state police did, the CPAC unit of the
9		10	Attorney -- The Middlesex D.A.'s office.
10		11	And was there an outcome to that investigation?
11		12	I have never been shared [sic] with any of that information.
12		13	Q Can you tell us whether -- Strike that.
13		14	MR. MCDONALD: That's all I have. Thanks.
14		15	THE COURT: All right. Why don't we break for the luncheon
15		16	rights. Captain, I'll ask you to be back here with us at two.
16		17	THE WITNESS: Thank you, Your Honor.
17		18	THE COURT: Thank You.
18		19	[Court in recess at 12:59:53 p.m.]
19		20	[Witness on the stand]
20		21	[Call to Order of the Court]
21		22	THE COURT: Attorney West?
22		23	MS. WEST: Thank you, Your Honor.
23		24	CROSS EXAMINATION OF WITNESS, CAPTAIN DENNIS DOWLING
24		25	BY MS. WEST:

- 1 Q Good afternoon, Captain Dowling. My name is Kimberly West,
- 2 A and I represent the family.
- 3 Q Good afternoon.
- 4 A Earlster, on direct, You testified that you heard that Michael
- 5 was screaming, having something to do with his father and somebody
- 6 named Daniel; do you remember that?
- 7 A I do.
- 8 Q And do you know Daniel?
- 9 A I know who she is, by face. I don't personally know her. I
- 10 know she had a store in the -- in the Highlands years ago.
- 11 Q Did you see her that day?
- 12 A I did not.
- 13 Q And you know he's banging on that door, looking for Daniel,
- 14 A right?
- 15 A I didn't know that, whose apartment that was, at that time.
- 16 Q Okay. And no one came out of that apartment, did they?
- 17 A They did not.
- 18 Q And there were no civilians on that third floor at all, after
- 19 the woman -- the resident in the apartment you were in left.
- 20 A We couldn't confirm that third apartment, whether someone was
- 21 in there or not. It appeared that there was no one in there.
- 22 Q Well, you couldn't confirm it; but nobody ever came out.
- 23 A I'm sorry?
- 24 Q You couldn't confirm it; but nobody ever came out.
- 25 A Right. We could not confirm it.

- Q And if you thought that there was a person in there, or any
2 civilian in that entire building, you would have made some efforts
3 to make sure they were safe, right?
4 We certainly would have tried.
5 So, I just want to focus on the third floor for a second.
6 You went to the third floor, and you yourself had an opportunity
7 to go out into the hallway for a short moment, right?
8 Correct.
9 And then you came back into the apartment and just closed the
10 door, right?
11 Correct.
12 Did the door lock automatically?
13 I don't know.
14 So your plan was going -- to talk. And at some point you
15 said, "We're going to wait two -- if we're going to have to wait
16 two hours, we're going to wait two hours." And that was from your
17 interview.
18 And I think you also said, "We're going to talk this guy to
19 death." Is that correct? That was your plan?
20 That was my initial plan, yes.
21 Why did you have to talk with him at all?
22 Oh, me? Not me personally, no.
23 No, I know, my apologies.
24 Why did you have a plan that involved talking to him at all?
25 Once -- the officers, prior to me getting there, were already

- 1 talking to him. Officer Raymond had engaged him for, I think, the
 2 entire process.
- 3 Why did you have to continue the talking?
- 4 It's always the way you want to at least start.
- 5 Well, you have to start. And you talked about things
- 6 changing. You weren't obligated to continue talking, right?
- 7 I mean, we can always continue to talk. We're not -- we're
 8 not obligated to. But it was -- seemed like... I don't know.
 9 You -- you got to at least try.
- 10 All right. But you could also just stop talking, correct?
- 11 You could.
- 12 And by the time you arrived, you knew NEMLEC had already been
 13 called, right?
- 14 I heard it go over the radio, yes.
- 15 And NEMLEC specializes in these type of situations?
- 16 They do.
- 17 And they would have sent a negotiator?
- 18 They would have.
- 19 And that --
- 20 If one was available, they would have, yes.
- 21 Well, you didn't hear any information that one wasn't
 22 available, did you?
- 23 I did not hear that, no.
- 24 Do you know if somebody called the state police, as well, for
 25 a negotiator?

1	A	I do not know that.
2	Q	And the normal procedure would have been: call NEMLEC and wait for them to arrive, correct?
3	A	That -- That was part of the procedure, yeah.
4	Q	Well, and that was your plan, wasn't it?
5	A	Initially, yeah.
6	Q	At some point when you're on the second floor at the bottom of the stairs, where you had a number of individuals, did you notice that the door next to them was open?
7	A	Yes.
8	Q	And that was an apartment that you went into at some point,
9	A	right?
10	Q	And did you know that that was Michael's apartment?
11	A	Yes.
12	Q	And did you know that you went into at some point,
13	A	right?
14	Q	Not when I went in it, no.
15	A	I did not.
16	Q	Was there anyone in there?
17	A	And during that period of time did you have a conversation with those officers at that landing -- and told them, "Time is on our side. Try to deescalate. We'll try to talk him down?"
18	Q	Who was there for that conversation?
19	A	Lieutenant D'Angelio, Sergeant O'Connell, Sergeant McLennan,
20	Q	Zach Raymond -- Officer Raymond, and Officer Alex Spinney.
21	A	I did.
22	Q	Okay. Now, going back up to the third floor, you said when
23	A	Okay. Now, going back up to the third floor, you said when
24	Q	Okay. Now, going back up to the third floor, you said when

- 1 You arrived Frank was already -- excuse me -- Officer Scatterto
 2 was already in the hallway?
 3 He was in the threshold of the door, as I recall.
 4 All right. And did he offer to go into the hallway?
 5 I don't recall. I just remember him being there.
 6 You remember him being out in the hallway?
 7 A Yes.
 8 Q Okay. You could have told him to not go out in the hallway,
 9 right?
 10 A Could have.
 11 Q You could have told him he could have this conversation,
 12 continue this conversation from inside the door, with the door
 13 ajar, couldn't you?
 14 A He was at the threshold of the door, so he was in the doorway
 15 when I last saw him.
 16 Q All right. But at some point he's in the hallway, isn't he?
 17 A I don't know. I never saw him in the hallway.
 18 Q You never saw him actually step into the hallway?
 19 A I did not, no.
 20 Q All right. But you saw him in the threshold with the door
 21 open, right?
 22 A I did.
 23 Q And he was having a conversation at that point?
 24 A Yes.
 25 Q You could have told him to make the door closed and only ajar

- 1 and have that conversation, right?
- 2 I suppose I could have.
- 3 That way, if Michael charged, he could have slammed the door
- 4 shut, right?
- 5 He could have stepped back in and closed the door.
- 6 There was a bunker shielded on the second floor, right?
- 7 Correct.
- 8 Was there another bunker shielded in a car, in one of the
- 9 cruisers outside?
- 10 There could have been.
- 11 But you don't know either way?
- 12 I do not know, no. I don't drive those cars.
- 13 Could the bunker shielded have been brought to the third floor
- 14 so Officer Scattreto could have a conversation behind it?
- 15 It could have. But things were so cramped up there, I don't
- 16 think a ballistic shield -- It would have hindered his ability to
- 17 move, I think.
- 18 hindered Officer Scattreto's ability to move?
- 19 It could have -- It could have hindered his -- his movement
- 20 or other officers, if he had to back up or move quickly. Those
- 21 things are very heavy. They're mostly for ballistic incidents.
- 22 But, I mean, you can -- sharp-edge attack as well.
- 23 All right. But there was one on the second floor, right?
- 24 There was. And there was plenty of room down there --
- 25 Q All right.

- 1 A -- for those officers to move.
- 2 Q And Officer Scaltrito had been on the second floor at some point?
- 3 A I don't know that.
- 4 Q All right. But you could have told Officer Scaltrito,
- 5 "Continue your conversation, but go down to the second floor,"
- 6 where there's a little more room. And you can stand behind the bunker." Couldn't you have done that?
- 7 A He seemed to be making progress with the -- the young man, so
- 8 I decided to leave him there.
- 9 Q Did you know that there was a social worker outside?
- 10 A I do.
- 11 Q What's her name?
- 12 A Sarah Aguirre [phonetic].
- 13 Q Have you ever worked with her before?
- 14 A Some cases. But not -- not generally on the street with her.
- 15 Q You could have asked her to come up and stand behind the bunker and try to negotiate, couldn't you?
- 16 A Not on calls, no. With -- She will come back and talk about
- 17 Q You could have asked her to come up and stand behind the
- 18 A No, I was not bringing her up into that situation.
- 19 Q Could you have brought her up and had her do it behind the
- 20 A I was not bringing her up into that situation.
- 21 Q Could you have brought her up and had her do it behind the
- 22 A I was not bringing her up into that situation. Too many
- 23 Q I was not bringing her into that situation. Too many
- 24 A officers. Too confined a space. It just didn't -- didn't seem to fit.

- Q By allowing Frank to be out and -- excuse me. By allowing
 1
 officer Scalberto to be out in this hallway with Mike, your
 2
 ability to protect him would have been limited, correct?
 3
 A He had Officer -- He had Sergeant Chisholm next to him. He
 4
 could have just stepped back in the room, when I was there.
 5
 Q Who could have stepped back in the room?
 6
 A Officer Scalberto. He was -- When I said -- The last time I
 7
 saw him, he was at the threshold of the door.
 8
 Q And where was Officer Chisholm?
 9
 A He was right beside him. Sergeant Chisholm.
 10
 Q Pardon me; Sergeant Chisholm.
 11
 A But you know that Officer Scalberto walked into the hallway,
 12
 at some point, don't you?
 13
 Q I never saw it happen.
 14
 A All right. Assuming you knew at some point that he went in
 15
 the hallway, would you have called up and said, "Don't let him in
 16
 the hallway, would you have have called up and said, "Don't let him in
 17
 the hallway. Keep him in the threshold?"
 18
 A I don't know.
 19
 I still think he had an opportunity to jump back from where
 he was. And like I said, last time I saw him, he was in the
 20
 threshold. He was very close to the door.
 21
 Q Okay. "He had an opportunity to step back from where he
 22
 was." Do you mean when he was in the threshold?
 23
 A Yeah.
 24
 Q Okay. So, forget that for a moment.

- 1 If you knew that Officer Scaltreto was out in the hallway
 2 having this conversation with Michael, would you have said, "No,
 3 don't do that. That's too dangerous for him. Have him do it from
 4 the threshold?"
 5 A I think Frank was -- had some success with the -- with
 6 Michael Conlon. And I'm sure that's why he stepped out a little
 7 bit further. He had confidence in it.
 8 I don't know.
 9 I give that -- That's -- That's an officer's call. I don't
 10 have a problem with that.
 11 Q Okay. So are you saying that you would not have overriden
 12 that? You would have not said, "That's too dangerous. Get back
 13 into --
 14 A At that particular time, --
 15 Q -- the apartment?"
 16 A -- no.
 17 Q Did you ever balance the risk of Officer Scaltreto talking in
 18 a no-escape halfway versus having him speak to Michael in a safer
 19 tactical -- excuse me -- tactically safer place from inside the
 20 apartment?
 21 A When I was up there, Officer Scaltreto was in the doorway.
 22 So he had the ability to express or exit from the situation, based
 23 on my assessment when I was up there.
 24 Q So are you suggesting that your knowledge of these facts and
 25 Your -- Are you suggesting the basis on which you were ordering

- 1 People here and sort of leading this entire situation was based on
 2 the knowledge that Officer Scaltrito was in a threshold and not in
 3 the hallway?
 4 That's the last place I saw him; I assumed he was still close to the door.
 5 That's where I left him; I assumed he was still close to the door.
 6 And is your testimony that if he had been in the hallway you
 7 would have just left him there, because you feel like that was a
 8 decision that this officer could make?
 9 I don't know how far in the door he would have been. If he
 10 was a step or two, I don't think I would have had a problem.
 11 A step or two outside into the hallway?
 12 The threshold of the door, correct.
 13 Okay. And you saw this halfway yourself, right?
 14 I got a brief glimpse of it, yes.
 15 You are -- You're certified on the beanbag still, right?
 16 A Yes.
 17 Q And when was the last time you were trained?
 18 A It would have been last year. I'm up for a qualification
 19 this -- before the end of this year.
 20 Q And how many times have you fired a beanbag in an active
 21 situation?
 22 A Zero.
 23 Q How many times have you been present when someone else fired
 24 a beanbag in an active situation?

- 1 I two, I wasn't present.
- 2 Q All right. So you've never been present, right?
- 3 A No.
- 4 Q And you've never shot one yourself?
- 5 A Other than down the range, no.
- 6 Q All right. So you told Chisholm -- excuse me -- Sergeant
- 7 C Chisholm to get his, right?
- 8 A Yes.
- 9 Q And what is the process by which you check a bearing before
- 10 You use it?
- 11 A Well, you take the -- make sure the safety's off. You
- 12 rack -- because the gun's supposed to be unloaded. Sergeant's
- 13 supposed to check that every shift. So, it comes with four in the
- 14 tube. The -- the supervisor would rack it. A round would then go
- 15 into the chamber. And it would be ready to go. You can slide it
- 16 back a little bit just to make sure it's seated properly and such.
- 17 But you're good to go.
- 18 Q And when Sergeant Chisholm arrived on the third floor and you
- 19 were there, he gave you his beanbag to check, right?
- 20 A He did.
- 21 Q And you said it was hot?
- 22 A It was good to go, yeah. Something to that effect. Yeah.
- 23 Q All right. So what did you do to check it?
- 24 A Exactly -- I racked the round in. I slid the slide back. I
- 25 saw the -- the super-soft round had seated itself in the chamber.

1	Q	And then I clicked it forward.
2	A	And having a second person check the shotgun, is that part of your policy?
3	A	It is not. But it's a good safety practice, like searching people two or three times just to make sure you don't miss something.
4	Q	Is it possible that when you checked you might have missed something.
5	A	People two or three times just to make sure you don't miss something.
6	Q	Is it possible that when you checked you might have missed something.
7	A	Anythign's possible.
8	Q	Is it possible that your checking made it non-usuable?
9	A	It's possible.
10	Q	Is it possible that your checking made it non-usuable?
11	A	It's possible.
12	Q	So, I'd like to show you Exhibit 19. This is General Order 112.
13	MS. WEST:	112.
14	Q	MS. WEST: Your Honor, do you have a copy of this yourself?
15	A	THE COURT: Which one is that one?
16	Q	MS. WEST: 112.
17	A	THE COURT: I'm sure I do, yes.
18	Q	BY MS. WEST:
19	A	So this is -- The subject of this is "Inspectional process."
20	Q	Are you familiar with this policy?
21	A	I am.
22	Q	Can you go down to Number 2 on the first page?
23	A	[REVIEWING DOCUMENT.]
24	Q	Under "Inventory control" it says, "Each bureau commander is responsible for all agency property under his control and must
25	A	responsible for all agency property under his control and must

- 1 ensure property is in a state of operational readiness."
- 2 Do you agree with me that this beanbag was not in a state of
- 3 operational readiness?
- 4 I can't testify to that, no.
- 5 Do you know that it malfunctioned?
- 6 A I was told it malfunctioned. And that's all I know about
- 7 that.
- 8 Q Okay. And would you consider it "malfunctioning" to be not
- 9 in operational readiness?
- 10 A I consider that "the weapon is broken" or something to that
- 11 effect, that the officer didn't take the proper steps to get the
- 12 weapon fixed.
- 13 There's a number of reasons guns don't go off. It could be a
- 14 bad round. It -- It could be a jam. It could be any number of
- 15 things that caused the weapon to malfunction.
- 16 Q Who is the bureau commander that was responsible for this
- 17 particular shotgun that Sergeant Chisholm was using?
- 18 A The weapons come under Special Operations. That would have
- 19 been Captain Geary. He's responsible for all firearms, firearms
- 20 training, and certifications.
- 21 Q Can you turn the page? Go to page 3. And it's Number 5.
- 22 This is "specialized equipment inspection." Do you see that?
- 23 A On page 3?
- 24 Q Under Number 2 that we just talked about, "inventory
- 25 control," under "vehicle inspection." And it goes on to 4 and 5.

- 1 And 5 is "specialized equipment inspection."
- 2 A Oh, okay. You mean page 2.
- 3 Q Yeah, sorry.
- 4 A So, 5?
- 5 Q It says, "It shall be the responsibility of the department
- 6 armorer to inspect all weapons and equipment used in emergency
- 7 situations. This inspection is to be performed once each month,
- 8 and a log shall be maintained. If any equipment is in need of
- 9 replacement or repair, the armorer shall be notified. "
- 10 In January of 2021, who was the armorer?
- 11 A It would have been Sergeant Valentine.
- 12 Q And do you know the last time that Sergeant Christopher's
- 13 shotgun was inspected?
- 14 A I do not.
- 15 Q Have you ever seen a log of these inspections?
- 16 A I've seen it for the firearms. I know I've seen it for
- 17 the -- patrol rifles.
- 18 Q You haven't seen them for shotguns or beanbag shotguns?
- 19 A I don't think I have.
- 20 Q Right below it, it says "follow up procedure and corrective
- 21 action."
- 22 "Number one, it shall be the responsibility of every superior
- 23 officer to take prompt corrective action any time a line
- 24 inspection determines that . . ."
- 25 And "B" is: "Procedures are not working, not workable, or

- 1 otherwise inappropriate. II-181
- 2 And then it says, "Equipment is missing, damaged, or no
3 longer functional."
- 4 Or "D": "Activity is uncovered that is working to the
5 detriment of the department."
- 6 Are you aware of any of the follow up that happened with this
7 particular shotgun?
- 8 The shotgun got taken out of service --
- 9 Q Yep.
- 10 A -- and is currently down in the armory. And that's where
11 it's sat since the incident.
- 12 Q Captain, what did you expect to happen if the shotgun had
13 worked properly?
- 14 A I would have expected that Michael Conlon would have been able
15 rendered incapacitated and that the officers would have been able
16 to gain control of him.
- 17 Q And when you say "incapacitated," do you mean that he would
18 have fallen down?
- 19 A He -- He would have fallen down and -- and would not have
20 access to anything, a knife or a fire extinguisher or anything
21 like that.
- 22 Q Well, you know the knife was already on the ground, right?
- 23 A I heard that after the fact, yes.
- 24 Q Okay. So if he fell down, he would actually be closer to the
25 knife.

- 1 A He could be. The officers could have -- could have ordered him to move up, crawl up. We've done that in the past so everybody's safe.
- 2 Q All right. Did you consider that he would have been closer to the knife?
- 3 A When I made the plan, he had the knife to his throat. And I to the knife when you made the plan that the beanbag would be used at some point?
- 4 Q Okay. But my question is:
- 5 A Did you consider, when you used the beanbag, that if he was even holding that knife -- if you didn't even know it was on the ground -- if he was holding that knife, that knife would have gone to the ground when he hit the ground, and he would have been closer to the knife?
- 6 Q Okay. But my question is:
- 7 A Even holding that knife -- if you didn't even know it was on the ground -- it was holding that knife -- if you didn't even know it was on the ground -- it was holding that knife, that knife would have gone to the ground when he hit the ground, and he would have been closer to the knife?
- 8 Q Okay. But my question is:
- 9 A Did you consider, when you used the beanbag, that if he was anywhere. It was right at the -- the foot of the stairs. If he went down, that knife could have gone flying down the stairs.
- 10 Q All right. But you know when you got the call from Captain Marzilli that he put the knife on the ground, right?
- 11 A Yes.
- 12 Q That moment, you knew that.
- 13 A Yes.
- 14 Q And you gave the go ahead to use the beanbag, right?
- 15 A Yes.
- 16 Q And you knew that he put the knife on the ground, right?
- 17 A Yes.
- 18 Q All right. But you know when you got the call from Captain Marzilli that he put the knife on the ground, right?
- 19 A Yes.
- 20 Q That moment, you knew that.
- 21 A Yes.
- 22 Q And you knew that he hit him when he used the beanbag, right?
- 23 A Yes.
- 24 Q And you knew that when he used the beanbag, if it hit him he did.
- 25 Q And you knew that when the beanbag was used, if it hit him he

- 1 was going to fall to the ground, right?
- 2 A That's generally the -- the hope, that the person becomes
- 3 incapacitated, yes.
- 4 Q And by doing so, he would have been closer to that knife.
- 5 A Depends where he fell.
- 6 Q So what would be the next plan after that?
- 7 A Have him crawl down the hall so the officers could secure
- 8 him.
- 9 Q Have him crawl down the hall?
- 10 A Yeah. The -- If you go down there, it's -- it's very tight.
- 11 It would have made it -- It made it impossible. I mean, if he got
- 12 back up and started to fight, the officers could have gone over
- 13 the staircase. He could have gone down the stairs.
- 14 Q So just to be clear, my question is:
- 15 What was the plan if you used the beanbag, it hit him, and he
- 16 fell down and there was a knife on the ground? What would be the
- 17 next step?
- 18 A Again, it would be asking him to step away, move away, and
- 19 come closer to the officers at the door. A "Number 4" would
- 20 probably be the best way to handle it.
- 21 Q You said that you've seen a beanbag work effectively five to
- 22 six times?
- 23 A Roughly.
- 24 Q All right. But did you actually --
- 25 A I didn't actually see it, no. I was -- A couple of them, I

- 1 was present after the fact. And others were related to me.
- 2 Q Okay. So you've never actually, yourself, seen it.
- 3 A No.
- 4 Q And any of those people who it was used on, were any of those
- 5 people 6'3" and over 250 pounds?
- 6 A I think the one on Arlington Street, he was a fairly good
- 7 size. But he was seated at the time. I don't know his exact
- 8 size.
- 9 That, I don't know.
- 10 Q So, I'm going to ask you to look at what's Exhibit 18, which
- 11 is the use-of-force policy. And can you turn to page 4. And this
- 12 is the very last paragraph, the very last two sentences.
- 13 It says, "In addition, the use of less-than-lethal projectile
- 14 weapon that shoots beanbag-like projectiles intended to stop a
- 15 suspect through blunt nonlethal force provides one more option of
- 16 less-lethal force. The less-than-lethal projectile weapon is to
- 17 be used on the subject who is assaultive, slash, bodily harm."
- 18 Now, at the moment that the beanbag was used, was -- Sergeant
- 19 Chisholm pulled the trigger, the knife was down, right? You knew
- 20 that.
- 21 A Yes.
- 22 Q And Mr. Conlon was not being assaultive at that moment, was
- 23 he?
- 24 A I don't know. I wasn't up there.
- 25 Q Okay. But you know the knife was down?

- 1 A That's what I was told, yes.
- 2 Q All right. And the knife beating down and him not being assaultive is not, according to this order, a time when you can use a beatbag.
- 3 A There's another area where people trying to commit suicide or self-harm -- it's an option.
- 4 Q That's right. But at that moment, he wasn't trying to commit suicide, if the knife was on the ground, correct?
- 5 A We -- we didn't know what his intent was. I don't know.
- 6 Q You'd have to ask Captain Marzilli. But . . .
- 7 A Well, I'm asking you.
- 8 Q And just what you knew at the time. So, at the time, you get a call or rather a radio from Captain Marzilli. The radio message that he gave to you, how -- what was the communication method?
- 9 A He was on direct, so his radio would not be picked up by the repeater. It would not be recorded.
- 10 Q And could anyone else hear it at that time?
- 11 A It was a radio.
- 12 Q So, that radio is not recorded?
- 13 A He was on direct, so his radio would not be picked up by the repeater. It would not be recorded.
- 14 Q And could anyone else hear it at that time?
- 15 A He was on direct, so his radio would not be picked up by the repeater. It would not be recorded.
- 16 Q So, that radio is not recorded?
- 17 A He was on direct, so his radio would not be picked up by the repeater. It would not be recorded.
- 18 Q And could anyone else hear it at that time?
- 19 A He was on direct, so his radio would not be picked up by the repeater. It would not be recorded.
- 20 Q And could anyone else hear it at that time?
- 21 A If you're -- yeah, if you're in close proximity. Direct
- 22 works within a building, as long as there's no interference like steel or cement or such like that. So . . .
- 23 Q So other people could hear it on their radio?
- 24 A They should have been able to, yeah.

- 1 Q But is it recorded?
- 2 A Not his transmission, just my transmission.
- 3 Q All right. So your transmission back would be recorded.
- 4 A Yes.
- 5 Q And could other people at the time hear it on their radio,
- 6 Q Your response?
- 7 A Yes.
- 8 Q Okay.
- 9 A They should have been able to hear it, yes.
- 10 Q So at that moment, he tells you, "The knife is down on the ground."
- 11 Q And he says -- He asks for your permission to have Sergeant
- 12 A Correct.
- 13 Q Chrisholm take his shot, right?
- 14 Q And so at that moment, you know: knife is not in his hand;
- 15 A Yep.
- 16 Q There is an opportunity here, right?
- 17 Q All right. Just looking at this language here on the bottom
- 18 A Right.
- 19 Q Of page 4, was Michael Conlon being assaultive at that moment,
- 20 Q when the knife was on the ground?
- 21 A No.
- 22 Q Go to the top of page 5. It says, "Officers should --"
- 23 Q Sorry. "Officers should exhaust all minimum levels of
- 24 Q force before resorting to more severe options."
- 25 A

- 1 What minimum levels of force were available to the officers
 2 at that point?
- 3 A We have OC spray, which is like a pepper spray. We also have
 4 a baton. And that's about the extent of what the officers carry.
 5 Q Okay. And you thought the OC spray could be used as a last
 6 resort, didn't you?
 7 A No.
 8 Q You didn't think that?
 9 A No.
 10 Q You didn't tell that to Officer McSweney?
 11 A Not that I'm aware of, no.
 12 Q Can you go to page 8? The very top of 8 is:
 13 "Less-than-Lethal force may be used by a police officer in
 14 the performance of his or her duty A) when necessary to preserve the
 15 peace, prevent crimes, prevent suicide or self-inflicted injury."
 16 Let's stop there.
 17 At the moment the knife is on the ground, he's not trying to
 18 kill himself, is he?
 19 A At that particular second. Nothing to say he couldn't pick
 20 it up.
 21 Q Okay. "B) when necessary to overcome resistance to lawful
 22 arrest, searches and seizures, and to prevent escape from
 23 custody."
- 24 "B" doesn't apply to him either, does it?
- 25 A No.

Q And "C) when in self-defense or defense of another against unlawful violence to his person or property."

3 That doesn't apply here either, does it?

4 It does not, no.

5 Two state troopers were on the third floor, correct?

6 They were.

7 And you understand that they had taser?

8 Correct.

9 And they also advised you that they do not believe that the

10 taser would work through his coat?

11 That's what they told me, yes.

12 Still, it was part of the plan that you put together, wasn't

13 it?

14 It is. I mean, you could dry-stun somebody. But you'd have

15 to get up close, personal.

16 Was there a conversation about dry-stunning someone?

17 No. I didn't think -- I didn't think it would be an option,

18 based on our -- our proximity to . . .

19 All right. So you didn't bring that up?

20 It -- yeah. I said it was a last resort. If nothing else, I

21 mean, if he tried again I guess we could use it. But I wasn't
22 very optimistic on that tool, based on my conversation with them,
23 All right. So I want to talk a little bit about your plan,
24 which you described on page 9 of your interview.

25 And you said, "Just in case the guy charged, we had means of

- 1 addressing that with non-lethal methods -- method."
- 2 When you said "nonlethal method," were you talking about the
- 3 shotgun?
- 4 A I'd -- I'd have to see the statement. I didn't --
- 5 Q Sure.
- 6 A Can I get a copy of that and read it in just the context it's
- 7 in?
- 8 MS. WEST: Your Honor, I can show --
- 9 MR. McDONALD: Oh, is that the transcript?
- 10 MS. WEST: Yeah. Do you have it?
- 11 MR. McDONALD: I'm not sure.
- 12 MR. ANDERSON: I have it.
- 13 MS. WEST: Do you have a copy? Thank you.
- 14 [Pause]
- 15 MS. WEST: Your Honor, may I approach?
- 16 THE COURT: Yes.
- 17 BY MS. WEST:
- 18 Q So, you were interviewed about these events, right?
- 19 A Yes.
- 20 Q And this interview was just the day after the event.
- 21 A It might have been a day or two; I'm not sure.
- 22 Q Okay. I'm going to put this transcript in front of you.
- 23 It's not -- There are no page numbers on it. I'm just going to
- 24 point you to a particular page which I know to be 9 --
- 25 A Okay.

- 1 Q -- and direct your attention to this bottom paragraph.
2 A [Reviewing document.] Okay. I'm sorry! What was the
3 question again?
4 Q Okay. So, in part -- in this interview, you explained what
5 your plan was. And you said -- But prior to doing that, you were
6 talking about Officer Scalzi:
7 "I had a sergeant with a less-lethal, the two troopers with a
8 taser, and Officer Beninis in the back with a firearm, just in
9 case. If the guy charged, we had a means of addressing that with
10 nonlethal method."
11 Was that your plan?
12 A Yeah, using the less-lethal shotgun, yeah.
13 Q Okay. So this meant if he did not charge there was no need
14 to use nonlethal, correct?
15 A Things were very fluid at that point. I just wanted
16 something in place should he -- should negotiations go south.
17 Q Okay. So --
18 A Or talking went -- went south.
19 Q Okay. So you wanted something in place if the talking failed
20 and he charged, charged the officers. You wanted to have
21 something for them to do, correct?
22 A At that time, yes.
23 Q Okay. But the negotiations did not fail, and the
24 negotiations were progressing, weren't they?
25 A I don't think Officer Raymond was -- was making much -- much

- 1 progress.
- 2 Q My question regards Officer Scatterto.
- 3 A Officer Scatterto? The -- The progress he was making . . .
- 4 I wasn't up there at that time. I mean, I heard him talking with him. I was talking to other people in the back. And then I probably -- I think I had left at that point. I had gone down to the second floor.
- 5 I wasn't up there at that time. I mean, I heard him talking with him. I was talking to other people in the back. And then I probably -- I think I had left at that point. I had gone down to the second floor.
- 6 I don't know how -- what progress Frank was making.
- 7 Q All right. Well, you knew the knife was on the ground,
- 8 A That's what Captain Marzilli relayed to me.
- 9 Q Okay. And when you left, he had the knife in his hand,
- 10 A right?
- 11 Q All right. Well, you knew the knife was on the ground,
- 12 A That's what Captain Marzilli relayed to me.
- 13 Q Okay. And when you left, he had the knife in his hand,
- 14 A He did, yes.
- 15 Q All right. So if it's on the ground, it means Officer
- 16 A Scatterto's negotiations were working, doesn't it?
- 17 Q So, here, what you said was your plan was: "If he charged, we
- 18 A I would believe that.
- 19 Q had a means of addressing that with nonlethal method."
- 20 Q So that meant if he stayed in one place the plan was not to do anything with nonlethal, right? It was only if he charged.
- 21 A At that particular time, yes.
- 22 Q So, you left the third floor and you went to the second
- 23 A floor. And you let everyone down there know that you were waiting
- 24 Q So, you left the third floor and you went to the second
- 25 A floor, right?

- 1 A Yeah. And to calm them down, too. Make sure they had what
2 they needed. And just basically slowed down, calmed people down.
3 Q Okay. When you say "calm down," what do you mean? Were
4 people too excited?
5 A I don't -- It just -- They'd been through a -- I mean, it's a
6 very traumatic event. You just chased someone up, I don't know,
7 three, four -- three flights of stairs. And it's not a -- a
8 normal call for the Newton police. I mean, this is out -- out of
9 the norm. And I just want to make sure people are just, you
10 know -- Check in with them, just make sure we're good. That's
11 all.
12 Q And the occasions that you were on the second floor, how many
13 people did you actually see there congregating on the second
14 floor?
15 A Five? Maybe six.
16 Q Five or six? Is that in the location at the bottom of the
17 stairs?
18 A It was four at the bottom of the stairs. There was one
19 officer in the open doorway right next-door. And there was
20 another officer kind of down the hall.
21 Q You only saw one officer down the hall?
22 A I believe there was only one. Might have been two.
23 Q And that front door was open, correct? The -- I mean -- When
24 I say "front door" I mean the door to the building.
25 A Yeah, yes. We're on the second floor now, right?

- 1 Q Yes.
- 2 A We're talking -- yeah, there was a door right here. Stairs were here. Four guys were -- I mean, John O'Connell, the sergeant, was there. And there was one officer down the hallway.
- 3 Q Okay. So if those officers -- If Michael charged down the stairs, those officers had two options: they could go into that apartment, slam the door; or they could run around and go outside,
- 4 A or they could use -- use the less-lethal shotgun if they wanted to.
- 5 Q Well, they would have to comply with the General Orders,
- 6 A I think that's -- He's coming down the stairs. That's wouldn't they?
- 7 Q assaultive behavior, I think. Someone with a knife?
- 8 A As to the third floor?
- 9 Q Coming from the third down to the second, yeah. They're at the base of the second or the
- 10 A No, my question is now as to the third floor.
- 11 Q Did Officer Scattreto have any options of retreat?
- 12 A Last time I left him, he could have -- he was a step or two outside the front door out of the apartment there.
- 13 Q I want to go back to this call from Captain Marzilli. He said that he had a shot, right?
- 14 A That's what he said, yeah.
- 15 Q Did he say anything else?
- 16 A said that he had a shot, right?
- 17 Q said that he had a shot, right?
- 18 A No, my question is now as to the third floor.
- 19 Q Last time I left him, he could have -- he was a step or two outside the front door out of the apartment there.
- 20 A I want to go back to this call from Captain Marzilli. He
- 21 Q Did Officer Scattreto have any options of retreat?
- 22 A Last time I left him, he could have -- he was a step or two outside the front door out of the apartment there.
- 23 Q I want to go back to this call from Captain Marzilli. He
- 24 A That's what he said, yeah.
- 25 Q Did he say anything else?

- 1 A He did not.
- 2 Q He didn't say that Michael had charged?
- 3 A He did not say that, no.
- 4 Q But he did say the knife was down, right?
- 5 A He did say that, yeah.
- 6 Q And your plan had been, if Michael charged, you would use the
- 7 Less-than-Lethal weapon.
- 8 And now he's telling you he wants to use the
- 9 Less-than-Lethal; and Michael has not charged. Why did you change
- 10 the plan?
- 11 A The entire time when that plan was put in place, Michael had
- 12 that knife to his -- to his throat. And -- And they had been
- 13 talking to him for well over a half-hour. And by him dropping the
- 14 knife, I thought that gave us an opportunity to -- to get him
- 15 under control. That -- That was our hope. It just -- There
- 16 was -- Between waving the fire extinguisher, the knife, and --
- 17 I've never seen anybody like that before.
- 18 Q So I want you to -- You just said it was over a half-an-hour.
- 19 If I told you that the 911 was at quarter of two and then the
- 20 shots were fired within 27 minutes, would that make sense? Or do
- 21 you believe it was longer?
- 22 A About 30 minutes, yeah. I mean, 29, 30 minutes. 28 minutes,
- 23 yeah.
- 24 Q And you had already called NEMTIC, and you thought NEMTIC
- 25 might be there at least at some point. Coming soon, right?

- 1 A You can't predict when they're -- when they're going to come.
- 2 I mean, sometimes we've waited over an hour or two. It just -- it depends: where they're coming from, what their assignment is, what they're doing. They have to go get their equipment and bring it.
- 3 Some of these guys come from Essex, Gloucester, Dracut, Tyngsboro,
- 4 they're doing. They have to go get their equipment and bring it.
- 5 I mean, there was already a Newton police officer who was on
- 6 Lowell.
- 7 Q Well, there was already a Newton police officer who was on
- 8 Lowell who was outside. Wasn't he?
- 9 A I heard that much later.
- 10 Q You didn't know that, yourself?
- 11 A I did not know that until well after the event was concluded.
- 12 Q Nobody informed you that that person was there?
- 13 A Not until after the event had concluded, long -- weeks later
- 14 I found that out.
- 15 Q And so the answer is yes, nobody informed you.
- 16 A Yes, no one informed me.
- 17 Q So, your reason for the change in plan was -- I need you to
- 18 clarify again, if you don't mind. What's the reason for the
- 19 A It gave us an opportunity. This was the first chance we had
- 20 where he had no knife at his throat.
- 21 And we thought this -- or Captain Marvin thought it was a
- 22 good chance to take. And he's eyes-on, someone who's done the
- 23 job, someone I trust. He's done the job longer than I have.
- 24 Q Wasn't that opportunity inconsistent with the plan that you

- 1 told everybody that you were going to continue on with?
- 2 A The -- The plan at first was with him with the knife at his throat. By him dropping the knife, that now gave us an opportunity to take -- take a less-lethal shot.
- 3 Q Had you discussed if this opportunity comes up, if he drops the knife, then there's a possibility of taking a shot? Was this ever discussed?
- 4 A It was not discussed, no.
- 5 Q So the first you hear of it, the first of even this "opportunity" you talk about is on the radio with Captain Maxzill?
- 6 A Correct.
- 7 Q At that moment, who was responsible for making or giving orders in this incident?
- 8 A Under the policy, it would be me.
- 9 Q Was everybody aware of that?
- 10 A They should be. They signed the General Orders.
- 11 Q They signed the General Orders?
- 12 A They signed the General Orders. And I'm the patrol captain.
- 13 Q So, yeah, when I'm on scene, those incidents are mine.
- 14 A If it's a homicide, it'd be detectives.
- 15 Q When you say "they" do you mean all the officers who were
- 16 A Okay. When you were on the second floor, you stepped into
- 17 Q There?
- 18 A They signed the General Orders?
- 19 Q They signed the General Orders.
- 20 A They signed the General Orders. And I'm the patrol captain.
- 21 Q So, yeah, when I'm on scene, those incidents are mine.
- 22 A They signed the General Orders.
- 23 Q When you say "they" do you mean all the officers who were
- 24 A Yes.
- 25 Q Okay.

- 1 that open apartment, right?
- 2 A I did.
- 3 Q Were you aware that there was a state police K-9 on the scene
4 as well, or at least an officer on the scene as well?
- 5 A There was a state police sergeant that had come up the stairs
- 6 at some point.
- 7 Q Was he a K-9 officer?
- 8 A I do not know.
- 9 Q You were not informed that state police K-9 was there?
- 10 A I don't recall. I -- I know there was a call over the radio
- 11 that state police were on scene.
- 12 Q On that day, how many officers were present overall?
- 13 A I don't know. Probably 12 or 13, just in the building. And
- 14 there was a number of officers outside. I don't know. I don't recall the number
15 of officers that were outside. I don't know. And then the state
16 police came, as well. And then . . .
- 17 Q So 12 or 13 plus at least 2 state police, in the building,
- 18 right?
- 19 A Yeah. There was -- Yeah. There was 2 or 3 people at the
20 front steps . . . yeah.
- 21 Q Were you ever concerned that so many or the appearance of so
22 many officers would escalate the tension at the situation?
- 23 A Most of them were -- Other than the five guys down at the
24 bottom and the one or two up top, everybody else was concealed
25 behind -- in either rooms or downstairs or whatever. People

- downstairs were nowhere, You know, in proximity.
- 2 MS. WEST: Thank You, Your Honor.
- 3 THE COURT: Anything else, counsel?
- 4 MR. ANDERSON: I don't have anything.
- 5 THE COURT: Attorney McDonald?
- 6 MR. MCDONALD: Nor do I.
- 7 THE COURT: All right.
- 8 MR. TARANT: Nothing from the Commonwealth. Thank You.
- 9 THE COURT: All right. Thank You, Captain. You're excused.
- 10 THE WITNESS: All right. Thank You, Your Honor.
- 11 [Witness steps down]
- 12 [Pause]
- 13 [SERGEANT GLENN CHISHOLM, Sworn.]
- 14 THE COURT: Good afternoon, sergeant. You can stand, sit,
- 15 whatever way you're --
- 16 THE WITNESS: I'd like to stand.
- 17 THE COURT: That's fine. And if you'd like to take your mask
- 18 off while you testify, you can. Or you can leave it on. Whatever
- 19 is more comfortable.
- 20 THE WITNESS: Okay.
- 21 MR. TARANT: Thank You, Your Honor.
- 22 THE COURT: Go right ahead.
- 23 DIRECT EXAMINATION OF WITNESS, SERGEANT GLENN CHISHOLM
- 24 BY MR. TARANT:
- 25 Q Sir, can you please state your name, spelling both your first

- 1 and last name?
- 2 A My -- My name is Glenin Chisholm, G-L-E-N-N. Last name is
- 3 C-H-I-S-H-O-L-M, C-H-I-S-H-O-L-M.
- 4 Q And, sir, are you employed?
- 5 A I'm a sergeant with the Newton Police.
- 6 Q How long have you worked the Newton Police department?
- 7 A I'm a month shy of 28 years.
- 8 Q And your current rank is sergeant?
- 9 A For 21-plus, yes.
- 10 Q And where are you assigned as a sergeant with the Newton
- 11 Police department?
- 12 A Patrol.
- 13 Q So what are your responsibilities as a patrol sergeant with
- 14 the Newton Police department?
- 15 A I supervise the officers in patrol on the north side of the
- 16 city.
- 17 Q How many officers is that, that you typically supervise?
- 18 A It fluctuates, given the amount of staffing. But anywhere
- 19 from 4 to 6, 7 guys including traffic officers at times.
- 20 Q Okay. And, sir, as a patrol sergeant for the Newton Police
- 21 department, do you carry what's known as a less-lethal shotgun?
- 22 A Correct.
- 23 Q And what, in your words, is a less-lethal shotgun?
- 24 A It is a real shotgun with less-than-lethal rounds in it. And
- 25 it has an orange stock and slide.

- 1 Q Okay. And when you say "a less-than-lethal round," what are those rounds -- and I'm going to call it "ammunition" --
- 2 A Right.
- 3 Q -- designed to do?
- 4 A They're a beanbag round deployed in the same manner as a shotgun round. And they record [sic] them to a 90-mile-an-hour fastball.
- 5 Q Okay. And is it fair to say that those rounds are meant to disable or stop an individual?
- 6 A That's the intended purpose, yes.
- 7 Q But it's not intended to kill somebody?
- 8 A And so do you -- As a patrol sergeant with the Newton police department, does -- is your car or vehicle that you use equipped
- 9 Q And so do you -- As a patrol sergeant with the Newton police
- 10 A It's less-than-lethal.
- 11 Q And so do you -- As a patrol sergeant with the Newton police
- 12 A And so do you -- As a patrol sergeant with the Newton police
- 13 Q And so do you -- As a patrol sergeant with the Newton police
- 14 A And so do you -- As a patrol sergeant with the Newton police
- 15 Q And so do you -- As a patrol sergeant with the Newton police
- 16 A Excuse me?
- 17 Q And so do you -- As a patrol sergeant with the Newton police
- 18 A Right.
- 19 Q -- as a patrol sergeant, is it equipped with a less-lethal
- 20 A shotguns?
- 21 A That and a -- a -- another firearm, yes. We have those, yes.
- 22 Q And where are those kept? Where is the less-lethal kept?
- 23 A It's in a -- It's in between the passenger seat and the -- my
- 24 A seat. And it's in a -- a locked box, upright.
- 25 Q With the -- barrel goes upright?

- 1 A To the ceiling, yes.
- 2 Q And have you been trained on the less-lethal shotgun?
- 3 A Yes, sir.
- 4 Q And can you describe the training you go through for that
- 5 particular --
- 6 A After regular firings, the less-than-lethal is used for --
- 7 We go through some scenarios. We go through distances. And we go
- 8 through shots and where they're supposed to be placed. There's --
- 9 Q And so --
- 10 A There's --
- 11 Q How many times a year do you go through this training?
- 12 A We used to go through two. We go through one, that I'm aware
- 13 Q Of.
- 14 Q And how long have you been a sergeant?
- 15 A Almost 22 years.
- 16 Q And when did you begin training on the less-lethal shotgun?
- 17 A I don't recall initially when they came in. I'm going to
- 18 guess 10 years, that they've been in place.
- 19 Q And have you been assigned a less-lethal shotgun essentially
- 20 as long as they've been utilized by Newton Police department?
- 21 A Yes, Yep.
- 22 Q And you said that when you train you train using the shotgun
- 23 for different distances?
- 24 A Right.
- 25 Q And so what effect does a distance have on the use of a

- 1 Less-Lethal shotgun?
- 2 A Your aim is at -- is for center mass. There's certain zones.
- 3 And the distance training would be similar to maybe what would go on on the street. And the idea is to get the best accuracy you can get.
- 4 4 And so the distance training deals with training you on the
- 5 5 accuracy of the firearm?
- 6 Q Does it have -- Does the distance have an effect on the
- 7 6 effectiveness of the firearm?
- 8 A Right.
- 9 Q Does it have -- Does the distance have an effective range?
- 10 7 Well, I'm not a ballistics expert. But I would imagine it
- 11 8 does, yeah.
- 12 9 Okay. But is that part of your training? Say, if somebody
- 13 10 is a certain distance away, the less-lethal shotgun may be
- 14 11 And so are you taught an effective range for the less-lethal
- 15 12 shotgun?
- 16 A Yeah.
- 17 Q And so are you taught an effective range for the less-lethal
- 18 13 shotgun?
- 19 A Well, that formula has to -- in part, to do with the person,
- 20 14 the subject, and if they're armed. And so you're going to be --
- 21 15 As we've been trained, you're going to be 21 feet or more for the
- 22 16 purpose of safety, officer safety, your own safety. And so you
- 23 17 got to practice at the different ranges, for multiple reasons.
- 24 18 But the distance is mostly taking into -- the -- the subject with
- 25 19 the weapon.

- 1 Q And so you said that you also train on focusing on where to
 2 strike the body?
- 3 A Correct.
- 4 Q And I believe you said center mass?
- 5 A Right. Center mass is a schematic, an outline given in the
 6 use-of-force continuum in the training. There's green zone,
 7 there's yellow zone, and there's red zones.
- 8 Q And what does -- well, first of all, what does it mean to be
 9 a green zone?
- 10 A Green zone is your -- is your ideal and the safest target to
 11 try to strike.
- 12 Q And where is the green zone?
- 13 A The center mass.
- 14 Q Which would be the torso?
- 15 A Correct.
- 16 Q And what about the yellow zone? What is that?
- 17 A Like, your arms and maybe -- maybe the legs. But the --
- 18 the --
- 19 Q The limbs, essentially?
- 20 A Centre mass is really what we're trained to do.
- 21 Q Are you trained to aim at the head?
- 22 A No. That's definitely off.
- 23 Q And in your experience or in your years as a Newton police
 24 officer, have you ever had to deploy the less-lethal shotgun?
- 25 A No.

1	Q	And so, sir, directing your attention to January 5th, 2021,
2	A	do you recall that day?
3	A	Yes.
4	Q	were you working on that day?
5	A	Yes.
6	Q	and what shift were you working?
7	A	At -- I'm a day sergeant. Yeah.
8	Q	so is that seven to three?
9	A	Seven to three.
10	Q	and if I direct your attention to approximately 1:45 in the
11	A	afternoon on January 5th, 2021, do you recall where you were on
12	A	that date at that time?
13	A	Yes, six, I do.
14	Q	and where were you?
15	A	I was on another call, previous to hearing the -- the call at
16	A	18 Lincoln Street. I was on another call with two officers.
17	Q	and did you clear that call?
18	A	Yes, I cleared that call.
19	Q	and after clearing that call, did you receive a call from
20	A	your dispatcher or radio broadcast?
21	A	I overheard that, yes.
22	Q	and what did you overhear? What was the broadcast?
23	A	That there was a man -- a woman being held at knifepoint, a
24	A	man with a knife.
25	Q	and were you provided a location for that event?

- 1 A Lincoln Street.
- 2 Q And so hearing that, what did you do?
- 3 A I told my officers that we were leaving and going to that
- 4 call.
- 5 Q And who was with you at that time?
- 6 A Officer Wilson and Officer Boudreau, Michael Boudreau.
- 7 Q And from the location where you were, where you first heard
- 8 that broadcast, did you drive straight to Lincoln Street?
- 9 A Right. I -- I only remember the portion of the ride on
- 10 Walnut Street.
- 11 Q Okay. Do you recall how long it took you to get to Lincoln
- 12 Street?
- 13 A I don't.
- 14 Q So, upon your arrival to Lincoln Street, can you describe
- 15 what you saw?
- 16 A There were -- I believe there were cars in the street. There
- 17 were people in the street. I went there as a perimeter sergeant.
- 18 So I was, in my mind, going to place my cruiser -- block the
- 19 square off from Walnut Street and Lincoln.
- 20 Q Okay. Did you do that?
- 21 A I started to. And then I had Officer Boudreau block off that section
- 22 Q And so when you had Officer Boudreau block off that section
- 23 off the street, what did you do?
- 24 A I moved further into the scene with my cruiser, towards the
- 25 candy store.

- 1 Q And once you got to that location, what did you do?
- 2 A I parked it. I got out.
- 3 Q And did you -- Were you making any observations of what was happening around you at that time?
- 4 A I -- I -- Immediately, I made visual and verbal contact with a woman in the foyer of the candy store.
- 5 Q And did she say anything to you or make any direction towards you?
- 6 A She pointed. And she said, "He's up there."
- 7 Q And did she say anything to you or make any direction towards
- 8 A To her left.
- 9 Q Okay. And did you then go to her left, which would be your right?
- 10 A I moved towards that direction. And then I -- And then I made contact with the captain.
- 11 Q Which captain?
- 12 A Captain Marzilli.
- 13 Q And did you have a conversation with Captain Marzilli?
- 14 A And did you have a conversation with Captain Marzilli?
- 15 Q And where was that conversation taking place?
- 16 A It was right out in the street.
- 17 Q In front of -- On Lincoln Street?
- 18 A Yes.
- 19 Q And where was that conversation taking place?
- 20 A Yeah, I did. Yep.
- 21 Q And where was that conversation taking place?
- 22 A It was right out in the street.
- 23 Q You being directed to anything
- 24 A And what was the nature of that conversation. Was he -- Were
- 25 Q You being directed to anything

- 1 A He said, "Get the Less-than-Lethal."
2 Q And -- And I said, "Where do you want me, Captain?"
3 Q Okay. And how did he respond?
4 A I got the Less-than-Lethal. I went back to the exit or the
5 opening of the driveway.
6 Q Now, if I could stop you there, when you went and got the
7 Less-than-Lethal, where'd you get it from?
8 A My -- My vehicle.
9 Q Okay. And was --
10 A I took it out. And I had it secured in both arms. And then
11 I went up to the captain and asked him where he wanted me.
12 Q Now, prior -- Now, at this point, when you take the
13 Less-Lethal out of your car, did you inspect it or examine it in
14 any way?
15 A It's thought to be in a certain... No, I didn't. Not
16 overly. It's thought to be in a certain condition which it's
17 placed in. And I assumed that it was in that --
18 Q When --
19 A -- stage. It -- It's fully loaded and it's ready to go. And
20 it's -- it's -- you take it out, and you -- and you go.
21 Q So to your mind, that shotgun's always loaded?
22 A Yes.
23 Q Okay. So when you take it out, you don't check to see if
24 it's loaded? You just know based on the way it's supposed to be?
25 A Right. We leave them in there. I would -- I use that

- 1 cruises every day. And I wouldn't think it otherwise, that it --
- 2 It would be otherwise, in any other condition.
- 3 Okay. And so do you have extra rounds of ammunition that you
- 4 carry with you?
- 5 Yeah. I don't know where I got them. There was a box.
- 6 Well, is that something that occurred later?
- 7 A Yeah, I think -- Yeah, that became --
- 8 Q Okay. But --
- 9 A Yep.
- 10 Q But, out of your car, did you take any extra box of
- 11 ammunition?
- 12 A I don't remember. I don't remember.
- 13 Q Okay. So you retrieved the less-lethal shotgun. What did
- 14 A I approached Captain Marzilli on Walnut Street. I asked him
- 15 where he wanted me to be. And I suggested, "Do you want me around
- 16 And next thing you know, I was going around back.
- 17 Q Back?"
- 18 A Okay. And how did you get to "around back"?
- 19 Q Okay. And what he was thought to be in.
- 20 A I walked down the driveway and I turned right, to the
- 21 building that he was thought to be in.
- 22 Q And did you go -- Did you walk down that driveway alone or
- 23 with other officers?
- 24 A There -- There may have been some -- There must have been
- 25 some guys behind me.

- 1 Q Okay. Do you recall who --
- 2 A There must have been.
- 3 Q -- they were?
- 4 A But I -- I don't recall seeing them. I know I was -- My
- 5 visual was -- I was walking down there. They could have been in
- 6 back, initially, before me. I don't really recall.
- 7 Q And when you got to the back of the building, did you recall
- 8 seeing anybody back there?
- 9 A The only two guys I can recall were the two guys I conversed
- 10 with. And . . .
- 11 Q And who was that?
- 12 A It was Detective Sampson and Officer Wilson.
- 13 Q And where were they when you conversed with them?
- 14 A They were in the -- were in the back of the building, near a
- 15 suitcase or a door opening.
- 16 Q Okay. So was there a rear door that was open by the time you
- 17 got back up there?
- 18 A I don't know if it was open.
- 19 But all of a sudden, we were going in. And I was -- Well, I
- 20 was going first. And it was dark.
- 21 And I -- I -- I turned around and I asked Detective Sampson
- 22 if he had my back. And he said yes.
- 23 And then halfway up the stairs, it seemed like I was going
- 24 into the spiral, and the staircase narrowed and it was steep. And
- 25 it was real dark. So I asked, "Does anyone have a light?" And

- 1 Officer Wilson had a light. So . . .
- 2 Q A flashlight?
- 3 A Yes.
- 4 Q So was the staticase illuminated at that point?
- 5 A Yep, enough for me to see if something was in front of me.
- 6 Q And as you're in the staticase, can you hear anything going
- 7 on within the building?
- 8 A I don't know if I could hear or not.
- 9 I don't think I was thinking about that. I -- At that point,
- 10 I was just trying to make it to the top of the stairs and then
- 11 deal with whatever I had to.
- 12 Q So how far up the stairway did you go?
- 13 A I went all the way up to the -- to the landing in the back.
- 14 Q Okay. And how many floors is that?
- 15 A It's got to be three.
- 16 Q Okay. And then when you got to the third floor of this
- 17 building, what did you encounter?
- 18 A There was a woman that was totally petrified. And she looked
- 19 at me. And I -- I knew something was going on. I -- She looked
- 20 at me. She was totally petrified.
- 21 And I -- I knew it was her place.
- 22 Q Did this woman say anything to you?
- 23 A "He's in there. He's in there."
- 24 Q And was she -- When she said, "He's in there. He's in
- 25 there," was she directing to a particular area?

- 1 A kind of in her -- in her apartment. But she didn't want to leave where she was. I didn't want her to go any further.
- 2 I -- I -- I asked for a crowbar because I saw a steel door.
- 3 And my thought was that I could pry it open and then get to an area where I thought this -- the subject was.
- 4 And where was the steel door in relation to the back
- 5 Q And where was the steel door in relation to the back
- 6 A There's a -- Like, a back -- probably -- It's a -- was a crowbar.
- 7 Q And at any point were you -- did you try to open that door?
- 8 A I knew, you know, a crowbar, no one was going to have a crowbar.
- 9 Q And then she -- she said, "No, no, this way."
- 10 A And then where -- Did you go somewhere at that point?
- 11 Q I went through the -- the apartment.
- 12 A She said, "He's right out there." And so she stayed and I went.
- 13 Q And I don't know who was behind me.
- 14 A Okay. Did you see anybody in the apartment when you walked in?
- 15 Q Okay. Did you see anybody in the apartment when you walked in?
- 16 A And then she -- she said, "No, no, this way."
- 17 Q She said, "He's right out there." And so she stayed and I went.
- 18 A And I don't know who was behind me.
- 19 Q Okay. Did you see anybody in the apartment when you walked in?
- 20 A Okay. Did you see anybody in the apartment when you walked in?
- 21 Q Is it to your mind that you were the first person or the first police officer into that apartment at that time?
- 22 A No, I didn't see anyone at that time.
- 23 Q Is it to your mind that you were the first person or the first police officer into that apartment at that time?
- 24 A In my mind, yeah.

- 1 Q And so did at some point other officers arrive into that apartment?
- 2 A Yeah.
- 3 Q And who came into the apartment?
- 4 A That I'm aware of, the two guys that followed me.
- 5 I later saw Captain Marzilli and two state troopers, after,
- 6 At some point, two state troopers showed up?
- 7 A Correct.
- 8 Q But that was sometime after Captain Marzilli? If you remember.
- 9 A They were -- They were all there when I looked. It was difficult because I was looking -- My focus was on Officer
- 10 Q Okay. Was Officer Scaltrito already in the apartment when
- 11 Q Okay. Was Officer Scaltrito already in the apartment when
- 12 A He was in the hallway.
- 13 Q Okay. So when you went -- When you got to the third-floor
- 14 A apartment, You saw the woman --
- 15 Q Okay. Was Officer Scaltrito already in the apartment when
- 16 A You got there?
- 17 Q Okay. So when you went -- When you got to the third-floor
- 18 A apartment, You saw the woman --
- 19 Q Okay. So when you went -- When you got to the third-floor
- 20 A Yes.
- 21 Q -- who essentially invited you in; is that a good way to put it?
- 22 A It?
- 23 Q She said, "This way," like this.
- 24 A And I went. And she said -- I -- Either she said the door
- 25 A was open, or I observed that it was open.

- 1 Q And so did you walk through a doorway?
2 A I went right up to the doorway. I could see Officer
3 Scatterto.
4 Q Well, I'm still -- Let's start from the back porch.
5 A Yeah.
6 Q Did you walk in the doorway, a doorway?
7 A I don't know if there's a doorway or it's wide open. I don't
8 recall.
9 Q Okay. But you came into the apartment through the back
10 porch.
11 A Yeah.
12 Q Did you walk through the apartment?
13 A Yes.
14 Q And you were in a bedroom first? If you remember.
15 A I -- I -- I got right up to the front so quick I don't
16 remember what I went through.
17 Q Okay. So now you're up at the front. You see Officer
18 Scatterto.
19 A Yeah.
20 Q Where? Where was he?
21 A He's in the hallway, straight -- The doorway's here. He's
22 straight, or a little off to my left.
23 Q And what kind of room are you standing in at that point, if
24 A You recall?
25 Q The room's behind me, and I'm on the threshold. And we're

- 1 effectively in the hallway.
- 2 Q Okay. And other than the other two officers that came up
- 3 with you, at this point in time, at your first encounter in the
- 4 hallway, are there other officers in that room with you?
- 5 A They must -- They must have been behind me. I never really
- 6 looked back. I -- My focus is on Officer Scalptreto.
- 7 Q And what was Officer Scalptreto doing?
- 8 A He's a patrol officer. He's assigned to the south side of
- 9 the city. I've worked with him.
- 10 Q Okay. What was he doing when you first saw him on the third
- 11 floor?
- 12 A He was at the -- He was at the end of a bannister that has a
- 13 small landing. And he's conversing to the -- to my right, with
- 14 the subject.
- 15 Q Okay. Was he speaking with a person that you later learned
- 16 to be Michael Conlon?
- 17 A Yes.
- 18 Q And did you see Michael Conlon?
- 19 A Three times, yes.
- 20 Q And when you say "three times" what do you mean by that?
- 21 Llike --
- 22 A Well, I -- When I poked out, I had the less-than-lethal, and
- 23 I didn't want him to see that.
- 24 So, he was conversing with Frank. And I was in the doorway.
- 25 And he's off to my right.

- 1 I So he -- if he saw me, he can only see parts of me.
- 2 Q Okay. And so did you try to conceal or keep the less-than-lethal shotgun out of view?
- 3 A Yes.
- 4 Q And how did you do that? You --
- 5 A I have it at my right, like this.
- 6 Q Okay. Down by your side?
- 7 A I have it at my right, like this.
- 8 Q Right.
- 9 Q And are you behind a wall?
- 10 A The corner of the doorway's right here.
- 11 Q Okay.
- 12 A So I'm like this. [Demonstrating.]
- 13 Q So you're just describing yourself at the --
- 14 A I'm just behind the threshold. He was in the doorway, the right side of the doorframe, as . . .
- 15 Q And so are you sticking your head out into the hallway to cover.
- 16 A Cover?
- 17 Q Cover?
- 18 A And based on what you just told us, you did that three times?
- 19 Q To -- Yeah, to see what's going on, right.
- 20 A And can you just describe what you observed when you looked down the hallway each time?
- 21 Q Well, I -- I sized him up. I sized the difference, where he
- 22 A Yes.
- 23 Q And can you just describe what you observed when you looked
- 24 Q down the hallway each time?
- 25 A

- 1 was, his body movements. And we're trained to look at the eyes,
2 look at first of all body language, the eyes, and the hands.
3 Okay. And so --
4 And that's what I was focused on.
5 And so what observations did you make? Can you describe what
6 you saw?
7 He had a knife up against his -- the right side of his
8 throat, with his right hand. And it was -- It appeared from that
9 distance to be about that long. [Demonstrating]. And it was --
10 it was sunken into his skin. So he really had it against his
11 skin, not just laying there or -- It was -- It was really up
12 against it.
13 Okay. And was he saying anything?
14 I got a little tunnel vision.
15 I heard something about his father.
16 I knew Frank was having an exchange with him. It didn't seem
17 to be really...
18 Q And so --
19 A It didn't seem to make a lot of sense. But I don't recall a
20 lot of things that were said.
21 He was very animated. He was moving real quick.
22 I looked at his body size because I knew, you know, I'm
23 6-feet, 210. And I -- I just like to see who I'm going to
24 have to deal with. And so I knew he was bigger than me. I knew
25 he was younger than me.

- 1 I, You know, the -- the weapon he had was a knife.
- 2 So, I think those are the things I took into consideration
- 3 most. Other than that, I ...
- 4 All right. Did you make notes of what he was wearing?
- 5 The one thing I did remember was a -- I believed it was a
- 6 Carhartt jacket, a -- like, a construction-type jacket.
- 7 Do you recall the color?
- 8 I'm going to say my recollection is an off-green or a -- a
- 9 muted green or a brown, you know.
- 10 Okay. And was the jacket open or closed, if you recall?
- 11 A slightly open. At least, I -- At least, I thought that. I
- 12 mean ...
- 13 Q That's your best memory at this time?
- 14 A Right.
- 15 Q And so can you just describe how things unfolded as you're
- 16 standing in the threshold of this doorway, looking out in the hall
- 17 and making your observations, how things progressed from there?
- 18 A It went really fast. I looked out twice. The knife was
- 19 against his neck twice.
- 20 I -- It was at one point I -- I couldn't really discern the
- 21 conversation. And he was -- he was yelling. I -- I don't know.
- 22 I remember something about a phone, something about his father.
- 23 And that's all I recall.
- 24 I was focusing on his actions and Officer Scaltrito.
- 25 Q Okay. But at some point things progressed to another level;

- 1 Is that fair to say?
- 2 A Yes. The third time, the third time was -- It was thought --
- 3 It was stated that he had put down the knife or dropped the knife.
- 4 I -- I heard "dropped" or something to that effect.
- 5 I did not see him do that. But that's what was --
- 6 Q Okay.
- 7 A -- was said.
- 8 Q And did you look out in the hallway at that time, when you
- 9 heard that being said?
- 10 A I heard that being said before I acted. That was really to
- 11 the captain, who was probably -- I don't know; he was in the back
- 12 of the room. I don't know how far back he was.
- 13 And within short order, it was -- it was "It's a go."
- 14 Q And so when you say "the captain," which captain are you
- 15 speaking about?
- 16 A Marzilli.
- 17 Q And when you say "it's a go," what was a go?
- 18 A "If you can, go for it. Try to -- try to knock him down."
- 19 Q And what did you -- well, just what does that mean? Can you
- 20 just explain that?
- 21 A Use less-than-lethal, go in with the plan and our
- 22 training, go in with -- go in with the plan. I'm going to go out
- 23 there with a less-than-lethal.
- 24 Q So --
- 25 A And my guys are going to cover me.

- Q And prior to this point, had you discussed with others a particular plan that you were going to execute at any particular time? Or was there a plan in place?
- A The plan -- The plan is known by all of us, in -- in our training. And clearly that's what took place.
- I -- The only instruction I gave was Officer Beninis.
- Because -- It was Officer Beninis, to stay on my left shoulder.
- And he did that. He did that. He stayed on my left shoulder.
- Q Okay. And so what happened? So you were -- If I can just recap a bit. So at some point you were given a "go" sign.
- A Yeah.
- Q And what did that mean to you?
- A That means you -- you make -- you -- it -- it's the opportunity. It's your best chance. You have to make the opportunity.
- Q And to do what?
- A decision: go.
- Q And to do what?
- A I stepped out.
- Q His arm was down to his side.
- And I had -- I looked for center mass. And I squeezed.
- Q And so did you lift up the less-lethal shotgun?
- A Yeah, I lifted up and pointed it right at him, at his -- his body.
- He was moving. He was moving back and forth, from side to side.
- Q And approximately how far away from you was he?

- 1 A I -- I -- In my mind, I went over it a lot. I -- I -- I
- 2 Q Okay. And so you lifted the less-lethal shotgun?
- 3 A think he was 12 feet away, across the banister, at an angle.
- 4 Q Yes.
- 5 A You took aim?
- 6 A Yep.
- 7 Q And what were you aiming for?
- 8 A Center mass.
- 9 Q And then what?
- 10 A And I squeezed. And it -- And it didn't go off.
- 11 Q So when it didn't go off, what did you do?
- 12 A I was really -- I was kind of in shock for a millisecond.
- 13 And then I went right to -- right to what my training is. And I
- 14 regrouped in my own mind.
- 15 I -- I flexed. I went like this, to here, which is a
- 16 low-ready position, with a little bit of cover. [Demonstrating.]
- 17 I didn't back up. I -- I pivoted with my left foot. So I'm
- 18 across the threshold and I'm clearing, clearing the -- I'm trying
- 19 to clear the weapon.
- 20 Q And when you're clearing, what does that mean?
- 21 A You're trying to rack it, discharge a bad round and then rack
- 22 it forward and then go back to what you can.
- 23 Q And were you discharging rounds?
- 24 A I couldn't clear. It wouldn't clear.
- 25 Q What do you mean, "they wouldn't clear"?

- 1 A It didn't clear. It -- It barely moved. I heard a click.
2 And then I clicked it forward. And I said, "Okay, I'm going to
3 give it another chance."
4 And I never got the chance.
5 So when you say, "It didn't clear," what does that mean to
6 you?
7 That means when you rack it, the bad round, the round will
8 come out the port. And you rack it forward and it drops the other
9 round in. And you're ready to go for the other round.
10 Okay. So when you tried to rack it --
11 It didn't go.
12 So, meaning a round did not come out?
13 A No.
14 Q So what does that mean? Was the -- Could you -- Did you know
15 whether there was a round in it?
16 A Oh, there was rounds in there.
17 It didn't come out because I couldn't -- couldn't move the
18 slide all the way.
19 Q Well, what would cause the slide not being able to move?
20 A There was a jam of some sort.
21 Q Okay. So to your belief that there was a round jammed in the
22 shotgun, is it your belief that there was a round jammed in the
23 ground?
24 A I believe from what I did there to right there, within a
25 second, I believed it was jammed and I wasn't get it -- get it

- 1 fixed.
- 2 Q Okay. And so where is your attention drawn at that moment in
- 3 time?
- 4 A I hear the -- the -- volume of whatever noise-wise --
- 5 voice-wise is rising. But I don't know what it is.
- 6 Q Are you --
- 7 A And I go -- And I start with it like this. [Demonstrating.]
- 8 But I'm right here.
- 9 And I look up, and there he is.
- 10 Q And so when you -- So you -- Your attention is drawn from the
- 11 shotgun to --
- 12 A I'm making a motion this way. And I'm coming up with my hand
- 13 through the slitting so that -- you know, I was trained that if your
- 14 hand's in a slit and you get into something with them, they can't
- 15 take it from you.
- 16 Q Okay.
- 17 A And that's my only protection. So I -- I did all that. I
- 18 had it here.
- 19 I don't know that I -- I never expected -- I just heard the
- 20 noise. And I came up. And I never expected what happened to
- 21 happen.
- 22 Q And so when you looked up, what did you see?
- 23 A I saw a knife.
- 24 Q And where was the knife?
- 25 A The knife, the knife was, I thought at the time, about 2

- 1 feet.
- 2 But the knife was right in line with my left eyeball. And it
was moving towards my left eyeball.
- 3 And then what happened?
- 4 I said, "This is it," to me, myself, that it was over.
- 5 But did something else occur?
- 6 Yeah. The room lit up. It lit up.
- 7 What do you mean by that?
- 8 It -- With noise, right in front of me.
- 9 Do you recognize the noise?
- 10 A It was off. Gun. It -- It went off so fast. It sounded
like a percussion bomb. It just -- I couldn't tell you how many
rounds were fired.
- 11 Q And do you know how close you were to the shots being fired?
- 12 A Oh, I was only a foot from the subject. And I assume Officer
Bennetts . . . Officer Bennetts stayed on my left shoulder. So I assume
he was firing from here. And -- But I didn't see him -- him. I
knew he was there.
- 13 Q Okay.
- 14 A And Officer Scalberto was moving towards me. And then the
subject was between me and Officer Scalberto. And he was firing.
- 15 Q And Officer Scalberto was moving towards me. And then the
subject was between me and Officer Scalberto. Maybe someone else did. I
knew they were both firing.
- 16 A Okay.
- 17 Bennis . . . Officer Bennetts stayed on my left shoulder. So I assume
he was firing from here. And -- But I didn't see him -- him. I
knew he was there.
- 18 Q Who was firing?
- 19 A And --
- 20 Q And Officer Scalberto was moving towards me. And then the
subject was between me and Officer Scalberto. And he was firing.
- 21 A Okay.
- 22 Q Who was firing?
- 23 A Officer Scalberto.
- 24 Q I knew they were both firing. Maybe someone else did. I
knew they were both firing.

- I don't know. But I knew they were firing. I -- I knew that was
what it -- what it was. But I went off like a real loud bang, all
very close. It wasn't -- In my mind, it wasn't like that. There
was no delay.
- Q Okay. And so were you injured in any way?
- A Yeah. I had my eardrums blown out and bleeding coming from
my left ear. And I -- I was very disoriented. I lost my balance.
And I couldn't tell what was going on.
- I thought that I was hit. I reached to my left side.
And then Frank come up to me. And we -- And we looked at
each other. And he asked me if I was all right.
And, you know, I -- I realized I wasn't hit. But I was in --
I was in a -- in a kind of like a fog, really.
So do you recall what you did at that point?
- A I don't recall a lot. I don't recall how I left the scene.
I know I -- I recall visions of what -- what happened in front of
me.
- Q And I know I saw the subject's legs in the boots.
And I was really surprised that he didn't come in -- fall
into me, that he fell more to my right, in the hallway.
And I stood up. It was a small exchange between Frank and I.
And -- And then one of the officers grabbed me and I was led out
of the apartment.
- Q Sir, I'm just going to show you this photograph, ask you if
you recognize what's depicted.

- 1 A I -- I don't remember that.
- 2 Q You don't remember that room?
- 3 A I don't. I must have passed through it so quick, and I was never really looking at it. It may have been the one I came through, and it may have been the one I exited. I don't -- I
- 4 A thorough, and it may have been the one I exited. It may have been the one I came
- 5 Q Okay. Do you recognize anything in that room?
- 6 A I can't even tell you where that -- where that is.
- 7 Q That's fine. But do you see your --
- 8 A Oh, I see that -- I did not put -- I don't believe I placed
- 9 Q that there.
- 10 A yeah, that's the less-than-lethal shotgun, yeah.
- 11 Q Is that -- obviously, I may not be able to tell you if that's
- 12 A yeah, that's the less-than-lethal shotgun, yeah.
- 13 Q No, I'm not suggesting you did. But is that --
- 14 A yeah, that's the less-than-lethal shotgun, yeah.
- 15 Q the exact one you were using. But is it -- that look --
- 16 A yeah, that looks like -- I think it's a Remington. I'm not
- 17 Q sure.
- 18 MR. TARRANT: Your Honor, there may already be one, but I'd
- 19 A ask to just have this marked.
- 20 THE COURT: All right.
- 21 MR. TARRANT: Thank you.
- 22 MR. ANDERSON: I think Exhibit 11 might be what you were
- 23 A looking for.
- 24 MR. TARRANT: No, it's fine. I just --
- 25 MR. ANDERSON: Okay.

- 1 MR. TARRANT: Have on the record the one he渭ewed.
- 2 [Photograph of Shotgun in Room Marked as Exhibit No. 23]
- 3 MR. TARRANT: Thank you. I believe that's all the questions
- 4 I have for this witness, Your Honor.
- 5 THE COURT: Attorney Anderson?
- 6 MR. ANDERSON: I have questions.
- 7 CROSS EXAMINATION OF WITNESS, SERGEANT GLENN CHISHOLM
- 8 BY MR. ANDERSON:
- 9 Good afternoon, Sergeant Chisholm.
- 10 How are you doing?
- 11 You told us you've been a sergeant for 21 years?
- 12 [No audible response.]
- 13 You just have to answer in words, because it's --
- 14 Yes, six.
- 15 -- being recorded.
- 16 And it's your best guess that maybe it was 10 years ago that
- 17 Newton started having these less-lethal shotguns that you carry?
- 18 The -- In my estimation, yes.
- 19 And you trained originally twice a year on them? And now --
- 20 Yes.
- 21 -- once a year on them?
- 22 That's right.
- 23 And in terms of the accuracy of these, I mean, you've fired
- 24 them probably --
- 25 A I've always shot very well with them.

- 1 Q Okay. So you probably trained anywhere between 10, 15, 18
2 times with them at the range?
3 A Oh, yeah, yeah.
4 Q Okay.
5 MR. ANDERSON: If I can just approach. I'm going to kind
6 of --
7 THE COURT: Yes.
8 MR. ANDERSON: -- go through some exhibits, here.
9 THE COURT: Go right ahead.
10 BY MR. ANDERSON:
11 Q Are you -- so, Exhibit 23, that's the orange stock of the
12 less-lethal?
13 A Yes.
14 Q And you don't know if this was -- this is the one that you --
15 A I don't know that, no.
16 Q Okay.
17 A I would imagine so.
18 MR. ANDERSON: Just grab Exhibit 11.
19 BY MR. ANDERSON:
20 Q Do you recognize this, sir? Is this the same?
21 A Yes, that's the same. Same -- It appears to be the same
22 weapon, yeah.
23 Q And are you aware from your experience -- You've only fired
24 this at the range, correct? You've never fired them in practice?
25 A No, we -- we don't -- We use outlines and scenarios,

1	A	maybe, --
2	Q	But --
3	A	-- down on the range, but not out in the street. No, I --
4	No.	
5	Q	But you're aware of other situations where --
6	A	Yep.
7	Q	-- Newton Police have used them actually on a call?
8	A	Other sergeants, yes. I've --
9	Q	And what type of calls are you familiar with or heard about
10		where these have been used?
11	A	Lieutenant Leone had related to me he had an incident. He
12		had 21 feet. And he shot the guy five times. And it wasn't until
13		he broke his wrist that the guy stopped. And at the time, he said
14		he could not discern whether or not he was really hitting the guy,
15		because he kept moving.
16		Officer Tramontozzi had an incident in which -- I dealt with
17		that man a year later -- on Arlington Street. And he shot the guy
18		multiple times. And the guy still put the knife in himself and
19		was lucky to live. But he used -- I believe he used five rounds.
20		And I know -- I know the guy went to the hospital, you know.
21	Q	You're familiar with situations where it's been used and it's
22		been successfully used by the Newton Police?
23	A	Yep, Yep.
24	Q	Okay. Now...
25		MR. ANDERSON: Just get Exhibit 13, here. Stick to the -- 13

- 1 and 14.
- 2 BY MR. ANDERSON:
- 3 Q Let me show you what's been marked as Exhibit 13. Do you
- 4 recognize what's depicted in that photograph?
- 5 A Yeah. That's the -- That's -- That's really a lot of what I
- 6 remember. I don't remember the wall being that far. But that
- 7 appears to be the doorway going into the hallway.
- 8 Q And just so I can hold it up -- This is the doorway going out
- 9 into the hallway?
- 10 A I think so, Yeah.
- 11 Q Okay. And that's the doorway that you ultimately went out
- 12 with the --
- 13 A Yeah.
- 14 Q -- Less-lethal?
- 15 A Yep.
- 16 Q And originally was Officer Scaltreto in that little area
- 17 right by that doorway?
- 18 A Yeah.
- 19 Q Engaging Mr. Conlon in --
- 20 A Yep.
- 21 Q -- Conversation?
- 22 A Yep.
- 23 Q And do you recognize what's depicted in Exhibit 14?
- 24 A Right. This is more familiar to me, whereas Frank's here.
- 25 Q Okay. When you say "here" you're --

1	A	He's on the other side of the banister. He's on the other
2		side of the banister, facing the staircase here, facing the
3		subject over here.
4		And I'm right at the doorway. And so Frank is 4 feet away
5		from me. I don't remember this door, but I remember Frank being
6		right here.
7	Q	Okay. So the doorway that's on the left side of this
8		picture, that's the doorway that you came out of?
9	A	Yes.
10	Q	And Frank was over on the other side, behind that banister?
11	A	Yeah, about 4 feet from me, yeah.
12	MR. ANDERSON:	And, Your Honor, with the court's permission,
13		could I measure off the distance of that hallway with the tape
14		measure, from where the court officer is seated?
15	THE COURT:	That's fine.
16	BY MR. ANDERSON:	
17	Q	So, we went out to the scene yesterday morning and determined
18		that it was 12-feet-10-inches from the doorway to the back wall.
19	MR. ANDERSON:	Can you put it down on the floor, there?
20	BY MR. ANDERSON:	
21	Q	So this would be the doorway where you came out. At the end
22		of the tape measure would be the back end of the wall --
23	A	Right.
24	Q	-- of the hallway.
25	A	Right.

- 1 MR. ANDERSON: So, if he steps towards me, it's going to
 2 continue to record?
 3 THE COURT: Yes. Keep your voice up, --
 4 MR. ANDERSON: Yeah, keep your voice up.
 5 THE COURT: -- if you would, sergeant. Thank you.
 6 BY MR. ANDERSON:
 7 Q Can you just step inside this taped-off area?
 8 Okay. So, right now, your back would be against the wall.
 9 If I'm coming out -- you're right handed, correct?
 10 A Correct.
 11 Q So when you came out, you put the shotgun up to your right
 12 shoulder?
 13 A Not that end. Not that end. He's over here.
 14 Q So he's --
 15 A And the static case is right here. The back of the wall is
 16 there. He's in the -- He's on the landing. The static case is
 17 there. And Frank's straight across.
 18 Q Okay.
 19 A So he -- This is the direction. This is the distance that I
 20 recall.
 21 Q Okay. So you were to -- You come out and you step into the
 22 hallway with your --
 23 A Yep.
 24 Q -- Left foot?
 25 A Yep.

- 1 Q And then did you put it up to your shoulder?
- 2 A Yep.
- 3 Q And then you pulled the trigger?
- 4 A Yep.
- 5 Q And nothing happened?
- 6 A Right.
- 7 Q And then did you say you pivoted back into the --
- 8 A That's what --
- 9 Q -- apartment, bent down, trying to clear it?
- 10 A Clear it, yes. Yep.
- 11 Q And then you couldn't clear it.
- 12 A Right.
- 13 Q Correct? And then at some point you turned and you saw a knife right by your eye?
- 14 A I would say 3 seconds -- I went over it a lot in my mind.
- 15 Q And I collected 3 seconds between raising it and trying to clear it and him being right on top of me.
- 16 Q Okay. And then when the shots went off, what was your body position?
- 17 Q Were you back looking towards him, or what was your position?
- 18 Q Okay. And then when the shots went off, what was your body position?
- 19 A I was -- The shots went off. I was right on the threshold,
- 20 Q body position?
- 21 A I was -- standing right on the -- right on the -- right on that board, the
- 22 Q threshold --
- 23 A standing right on the -- right on the -- right on that board, the
- 24 Q door board. I was --

- 1 Q So right underneath the doortrame?
2 A I was right in the doortrame.
3 Q And you were then looking towards --
4 A I was straight -- mostly looking at Frank, which is why I
5 started to recognize that something had changed.
6 And he was moving towards me.
7 And the voices got louder.
8 And I looked up. And that's -- that's what -- I didn't turn
9 or anything.
10 He was -- He wasn't coming at me this way. He was already
11 there.
12 Q Okay. And you can resume the same --
13 MR. ANDERSON: And just, Judge, for the record: the distance
14 that we marked-off here is 12-feet-10-inches, which is shorter
15 than to the end where the court officer sits to the end of the --
16 It's slightly beyond the jury box. But it's short of the witness
17 stand.
18 THE COURT: Okay.
19 MR. ANDERSON: So . . .
20 BY MR. ANDERSON:
21 Q Sergeant Chisholm, what do you think would have happened if
22 officers didn't discharge their firearms?
23 A I know it in my own mind I know what was going to happen. And I
24 believe that was going to happen, that it was over. And
25 uneducated -- uneducated, they saved my life. That's a

- 1 Q Fact.
- 2 Q Okay.
- 3 MR. ANDERSON: I have nothing else.
- 4 THE COURT: Thank you, Attorney Anderson.
- 5 Attorney McDonald?
- 6 MR. MCDONALD: No questions.
- 7 THE COURT: Attorney West?
- 8 MS. WEST: Thank you.
- 9 CROSS EXAMINATION OF WITNESS, SERGEANT GLENN CHISHOLM
- 10 BY MS. WEST:
- 11 Q Good afternoon, sir. My name's Kim West. I represent the family.
- 12 A You said that the beanbag was maintained in your cruiser,
- 13 Q The beanbag was maintained in your cruiser?
- 14 A Right?
- 15 Q What's that?
- 16 A Yes.
- 17 Q And you always drove the same cruiser?
- 18 A Right.
- 19 Q For how many years?
- 20 A I drove 508. I had 508 cruiser for my whole career, 21-plus years.
- 21 Q So how many of those yours was the beanbag in that cruiser?
- 22 A Like I said, I estimate when they first came into being in my first training, maybe 10 years.
- 23 Q Like I said, I estimate when they first came into being in my first training, maybe 10 years.
- 24 A Like I said, I estimate when they first came into being in my first training, maybe 10 years.
- 25 Q First training, maybe 10 years.

- 1 Q So it's been sitting in your cruiser for 10 years, and the
2 only time you take it out is for training?
3 A It's taken out to be inspected.
4 It's taken out for the range.
5 It's -- the firearms people check it.
6 My taking it out? That was the only time I ever took it out.
7 Q Do you know when it was last inspected before January 5th?
8 A I don't know what the range policy is and how they go about
9 that.
10 Q So is the answer no, you don't know the last time it was
11 inspected?
12 A No.
13 Q But when you retrieved it, you made sure that it was ready to
14 go, right?
15 A Yeah.
16 Q And then when you brought it upstairs, you showed it to
17 Captain Dowling, right?
18 A I -- I -- I'm sorry, I can't hear you.
19 Q I'm sorry.
20 When you went upstairs, you showed it to Captain Dowling?
21 A Yeah.
22 Q And what did he do?
23 A He cleared a round from it. And he handed it to me and said,
24 "It's hot. It's ready to go. It's live. Watch out for Frank,"
25 who was right in front of me. "Don't point it at him."

- 1 Q When he said -- I'm sorry.
 2 A You said he cleared a round. So did you see him --
 3 A No.
 4 Q How did he clear a round?
 5 A I don't know. He -- He said there was a -- one round that
 6 was in it. He pulled that round out.
 7 Q So what exactly did you see?
 8 A I didn't see anything. I handed it to him, and I'm looking
 9 at Frank the whole time.
 10 He handed it back to me and told me it was ready to go.
 11 Q So how do you know he cleared the round?
 12 A That's what he told me.
 13 Q Did he say, "It's ready to go," or did he say --
 14 A Not then. Well, he told me when he handed it to me, "It's
 15 hot. It's ready to go. It's live."
 16 Q All right. Did he ever say, "I cleared a round?"
 17 A No.
 18 Q And did you --
 19 A Later --
 20 Q -- ever see him clear --
 21 A Later --
 22 Q -- a round?
 23 A No, I did not. No.
 24 Q So, you also spoke about the purpose of the beanbag. And can
 25 You just tell us again, what is it intended to do?

- 1 A I think the advent of the bombing was a thought to -- I wouldn't say "disarm" but -- to subdue or maybe separate someone from a weapon. That's the -- that's the intended purpose, yeah.
- 2 Q Did you expect it to knock him off his feet?
- 3 A I -- I can't say what I would have thought that would have happened. I -- I don't know. I've never hit anyone with one.
- 4 Q All right. So, I know you've never used it before.
- 5 Q But have you ever observed someone use it before, in an actual situation?
- 6 A No.
- 7 Q There is a General Order about when you can use less-than-lethal. Are you aware of that General Order?
- 8 A Right.
- 9 Q But have you ever observed someone use it before, in an actual situation?
- 10 A Yes.
- 11 Q And I won't go into it right now. But you remember being interviewed about this incident earlier this year?
- 12 A That was two weeks after the incident, I recall having it, an interview, yes.
- 13 Q Interview, yes.
- 14 A Okay.
- 15 Q And I won't go into it right now. But you remember being interviewed about this incident earlier this year?
- 16 A That was two weeks after the incident, I recall having it, an interview, yes.
- 17 Q You were asked, "What is 'less-than-lethal' option?" What is that? How does it work?"
- 18 A I think it was two weeks after, yeah.
- 19 Q Okay.
- 20 A You were asked, "What is 'less-than-lethal' option?" What is that? How does it work?"
- 21 Q And your answer was --
- 22 A Can you hear me okay?
- 23 Q Okay.
- 24 A [No response.]

1	MS. WEST:	Your Honor, can I take off my mask?
2	THE WITNESS:	No, no, no. You can take your mask off.
3	MS. WEST:	All right.
4	THE WITNESS:	I have hearing aids, so --
5	MS. WEST:	Yeah, I know.
6	THE WITNESS:	Yeah, all right.
7	MS. WEST:	Thank you.
8	BY MS. WEST:	
9	Q	You were asked, "How does it work?"
10	And You said, "Less-than-Lethal, is, when confronted with someone and given the proper amount of time and distance --	someone with a knife, not a firearm, someone with something that could injure anyone."
11	Q	"The theory is it's a beanbag with a powerful enough round to stop someone, --
12	someone and given the proper amount of time and distance --	stop someone with a knife, not a firearm, someone with something that could injure anyone."
13	A	Right.
14	Q	"The theory is it's a beanbag with a powerful enough round to stop someone, --
15	someone and given the proper amount of time and distance --	"The theory is it's a beanbag with a powerful enough round to
16	A	Right.
17	Q	-- maybe to knock them off their feet."
18	And as far as I know, it takes more than one round."	"And as far as I know, it takes more than one round."
19	A	Right.
20	Q	Okay. So that's an accurate description of --
21	A	That's correct.
22	Q	Do you know if a beanbag is effective against a person of any size?

- 1 A That's speculation, because people are all different conditions, different size, different distances. It's -- It's not a guaranteed outcome. It's a -- an attempt to save someone. It's an attempt to -- to use less-than-lethal.
- 2 Q Sergeant Chisholm, by the time that you were in that三
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- 1 A I think he was trying to kill himself.
- 2 Q The plan that you -- that was put together, were you involved
- 3 A in the actual details of the plan?
- 4 A A -- The -- the plan? I'm not sure what you're talking about.
- 5 Q Okay. So you were not aware of a plan?
- 6 A The plan is set forth in your training. The situation arises, everybody knows what's going to happen. They know you're going to use less-than-lethal. And they know that the sergeant's going to do that. And they know that they're going to have to -- the officers are going to have to protect me, the sergeant, in the event it doesn't work.
- 7 Q Okay. So apply that training to this situation. What was the plan?
- 8 A The plan was, well, the officer was talking to him.
- 9 Q If it gets to this level, we all know what we're going to
- 10 A have to do. There's no -- no -- no -- There's no roundtable.
- 11 Q There's no one sitting down having a discussion. There isn't any time.
- 12 A All right. So you say, "If it gets to this level we know
- 13 Q what we're going to do." What does "if it gets to this level"
- 14 A mean? What did you mean?
- 15 Q All right. So you say, "If it gets to this level we know
- 16 A what we're going to do." If it gets to this level we know what we're going to
- 17 Q have to do. There's no -- no -- no -- There's no roundtable.
- 18 A there's no one sitting down having a discussion. There isn't any
- 19 Q time.
- 20 A All right. So you say, "If it gets to this level we know
- 21 Q what we're going to do." If it gets to this level
- 22 A mean? What did you mean?
- 23 Q They're trying to kill themselves.
- 24 A And what other possibility would it be?
- 25 Q They try to take someone with them.

- 1 Q Is there any other possibilities, when you would use it?
- 2 A When I'd use it?
- 3 Q In regard to your training, --
- 4 A Yeah.
- 5 Q -- there are times you can use less-lethal. One of them is if they're trying to take someone with them?
- 6 Q -- if they're trying to kill themselves. Another one is if they're trying to object because I just don't understand the question.
- 7 A Right.
- 8 Q Is there -- Are there any other options, any other possibilities?
- 9 A MR. TARRANT: I'm going to object because I just don't understand the question.
- 10 Q MR. TARRANT: I'm going to object because I just don't understand the question.
- 11 A THE COURT: Want to restate?
- 12 Q THE COURT: Thank you.
- 13 A MS. WEST: Sure.
- 14 Q THE COURT: Thank you.
- 15 A MS. WEST: Thank you.
- 16 Q MS. WEST: Thank you.
- 17 A BY MS. WEST:
- 18 Q Under what conditions are you allowed to use less-lethal?
- 19 A The conditions whereby a person is a danger to themselves, another person, and it's employable to use a less-lethal rather than a firearm, a condition whereby in the last 20 years it's thought to be a lifesaving measure.
- 20 Q The conditions are -- The conditions are what they are.
- 21 A rather than a firearm, a condition whereby in the last 20 years
- 22 Q minds who knows what they're on? Who knows what they're going to do?
- 23 A THE COURT: Who knows what they are?
- 24 Q Where a person is not all -- who knows what's going through their mind?

1	do?	BY MS. WEST:
2	MS. WEST:	Your Honor, may I show the witness Exhibit 18?
3	THE COURT:	Yeah. It might be on the bench.
4	MS. WEST:	
5	Q	You have in front of you right now Exhibit 18, which is the use-of-force General Orders. Can you turn to page 87
6	A	[Locating document.] Okay.
7	Q	All right. So at the top, Number 1: "Less-than-Lethal force duty A) when necessary to preserve the peace, prevent crimes, to may be used by a police officer in the performance of his or her At the moment that the knife was dropped, was he trying to inflict an injury on himself?
8	A	Right.
9	Q	At the moment that the -- My question to you is: At the moment that the knife was dropped, was he trying to injury on himself?
10	A	You're assuming that he dropped it. And I did not see him drop it. And in my mind, he did not drop it.
11	Q	Okay. Fine. But were you told that he dropped it?
12	A	Nope.
13	Q	At the moment that the -- My question to you is: At the moment that the knife was dropped, was he trying to injury on himself?
14	A	You're assuming that he dropped it. And I did not see him drop it. And in my mind, he did not drop it.
15	Q	Okay. You couldn't see him, right?
16	A	I saw his arm.
17	Q	But you heard --
18	A	I overheard someone say that, yeah.
19	Q	Okay. You couldn't see him, right?
20	A	Okay. You couldn't see him, right?
21	Q	-- he dropped the knife, right?
22	A	I saw his arm.
23	Q	-- he dropped the knife, right?
24	A	Yes.
25	Q	

- 1 Q And then Marzilli gave you the go-ahead to use the beanbag.
 2 A Right.
 3 Q All right. So you were using the beanbag based off of
 4 someone saying, "He dropped the knife," who could actually see
 5 him, correct?
 6 A Yeah, Yep.
 7 Q All right. "B) It may be used when necessary to overcome
 8 resistance to lawful arrest, searches, and seizures and to prevent
 9 escape from custody."
 10 He was not trying to escape at that moment, --
 11 A Correct.
 12 Q -- was he?
 13 Three: "When in self-defense or defense of another, against
 14 unlawful violence to his person or property."
 15 He was not -- what he was doing does not qualify under
 16 Number [sic] C, right?
 17 A I respectfully need to qualify that. One minute, we're --
 18 we're there to save a life and protect him. In not even a
 19 minute -- we're talking seconds. So, it's going back and forth
 20 from "Is it volatile? Is he -- Is he -- Is he going to -- Is it
 21 qualified?" All of that. It's not static. It never is.
 22 Q You were concerned that at some point he could have thrown
 23 the knife at Officer Scaltrito, correct?
 24 A At all times, a sergeant has to think like that, yes.
 25 Q Okay. So that was an active concern of yours.

- 1 A It always is, with me, yeah.
- 2 Q Did you know that there was a bunker on the floor right below?
- 3 A Later on, I did. yeah.
- 4 Q But that's the second floor. That's got nothing to do with me.
- 5 A The bunker could have come upstairs, correct?
- 6 Q How did you get upstairs?
- 7 A I don't see how.
- 8 Q The bunker could have come upstairs, correct?
- 9 A I came up the back hall.
- 10 Q Couldn't it have come up the back hall?
- 11 A I came up the back hall.
- 12 Q I came up there in a different manner than they approached the front. It's different.
- 13 A Could I have come up with a bunker? Yeah, I suppose I could have done a lot of things. Yep.
- 14 Q Was there a discussion among the people in the apartment where you were as to the best place for Scalzi to stand while he was talking to Michael?
- 15 A No.
- 16 Q There was no discussion?
- 17 A Do You remember any discussion about him maybe standing in the doorway and trying to stick his head out and have that conversation, instead of being in the hallway?
- 18 Q Nothing that I was privy to, no.
- 19 A Do You remember anyone talking about waiting for NEMIEC to do you remember anyone talking about waiting for NEMIEC to

1	A	No.
2	A	arrive?
3	A	And I don't have a lot of faith in NEMEIC. So, no.
4	Q	Do you remember Captain Dowling being upstair on the third floor?
5	A	Yes.
6	Q	What do you remember him saying while he was there?
7	A	He -- My exchange with him, with the less-than-lethal. And
8	A	to watch out for Frank, that he was in front of me. And that was
9	Q	our exchange.
10	A	Do you remember hearing the troopers speak about a taser?
11	Q	He -- My exchange with him, with the less-than-lethal. And
12	A	to watch out for Frank, that he was in front of me. And that was
13	Q	our exchange.
14	A	I -- I met the troopers. They came up behind me. And I had
15	Q	a small exchange between them.
16	A	And -- And then I quickly -- My focus was on Officer
17	Q	Scaltrito.
18	A	All right. But do you remember a discussion with the
19	Q	troopers about how the tasers were not going to go through his
20	A	coat?
21	Q	Yes, I do remember that.
22	A	And were you of the view that it wasn't going to work, the
23	Q	taser was not going to work?
24	A	That's correct.
25	Q	If Mr. Conlon had gotten into the apartment, was there

- 1 anywhere for any of you to retreat, to run?
- 2 A Ma'am, that's speculation. I don't know, if he got in, what
- 3 his intent was to do. I don't even know what was on his mind.
- 4 Q No, my -- I'm sorry! my question is different.
- 5 Was there room for you to retreat?
- 6 A We don't retreat.
- 7 Q What do you mean?
- 8 A When you engage a suspect like that, you can't just leave him
- 9 there to kill himself.
- 10 Q What would you do?
- 11 A You have to stay engaged and try to deal with it.
- 12 Q If you had just left Mike in the hallway and shut the door --
- 13 A Not a chance.
- 14 Q Why not?
- 15 A We don't do that.
- 16 Q Why?
- 17 A Because we were there because he wanted to kill himself.
- 18 Q And NEMEC was on the way, right?
- 19 A I didn't know that. And it's irrelevant.
- 20 Q It's irrelevant that NEMEC was on the way?
- 21 A Yeah. We don't -- You don't -- In my mind, it's irrelevant
- 22 because I don't know that they're coming. I don't know that we
- 23 have enough time.
- 24 And if you wait too long sometimes, to do nothing is not an
- 25 answer. And I suppose they'd have a problem if we watched him

- 1 kill himself.
- 2 Sir, earlier you agreed that you had discussed this issue of
time and distance when you were interviewed. And you said, "A
less-than-lethal, is, when confronted with someone and given the
proper amount of time and distance -- someone with a knife, not a
fixerarm, someone with something -- could injure anyone . . ."
When you said "time and distance," that's what I want to
focus on --
- 3 time and distance when you were interviewed. And you said, "A
less-than-lethal, is, when confronted with someone and given the
proper amount of time and distance -- someone with a knife, not a
fixerarm, someone with something -- could injure anyone . . ."
When you said "time and distance," that's what I want to
focus on --
- 4 kill himself.
- 5 proper amount of time and distance -- someone with a knife, not a
fixerarm, someone with something -- could injure anyone . . ."
When you said "time and distance," that's what I want to
focus on --
- 6 proper amount of time and distance -- someone with a knife, not a
fixerarm, someone with something -- could injure anyone . . ."
When you said "time and distance," that's what I want to
focus on --
- 7 When you said "time and distance," that's what I want to
focus on --
- 8 Yeah.
- 9 -- right now. What do you mean by "time"?
- 10 A First, it's distance. And distance dictates time. If you
don't have a lot of distance, you don't have a lot of time.
He had distance. We may not have liked it, but -- And it
wasn't ideal. But nothing is.
- 11 Q Did officer Scaltrito have any distance?
- 12 A He had distance. We may not have liked it, but -- And it
had distance. We may not have liked it, but -- And it
wasn't ideal. But nothing is.
- 13 Q So you think that he had enough distance --
- 14 A Not with my note being there. I was aware that if he ran --
And this is all speculation, ma'am. If he made a move, my job is
to make sure he doesn't get to my officer. So I was concerned
about that, yeah.
- 15 Q -- to avoid being attacked by Michael if that happened?
- 16 A Note with my note being there. I was aware that if he ran --
And this is all speculation, ma'am. If he made a move, my job is
to make sure he doesn't get to my officer. So I was concerned
about that, yeah.
- 17 Q I --
- 18 A Not with my note being there. I was aware that if he ran --
And this is all speculation, ma'am. If he made a move, my job is
to make sure he doesn't get to my officer. So I was concerned
about that, yeah.
- 19 Q -- to avoid being attacked by Michael if that happened?
- 20 A Note with my note being there. I was aware that if he ran --
And this is all speculation, ma'am. If he made a move, my job is
to make sure he doesn't get to my officer. So I was concerned
about that, yeah.
- 21 Q You -- And you spoke about your concern about Frank, didn't
- 22 A you?
- 23 Q You -- And you spoke about your concern about Frank, didn't
- 24 A you?
- 25 Q Yes. That's the way I operate. That's the way I am.

- 1 Q Okay.
- 2 A I --
- 3 Q And you said, "I was worried about Frank because Frank was the only one in the hallway. He was too close." Do you remember saying that?
- 4 A I don't remember saying it. But I -- I can believe I said that, yeah.
- 5 Q And you thought he was too close, didn't you?
- 6 A I don't remember saying it. But I -- I can believe I said that, yeah.
- 7 Q And you also said, "The scenario wasn't good." Do you remember saying that?
- 8 A That's right.
- 9 Q Because he had no exit, correct?
- 10 A Yep.
- 11 Q You also said, "The scenario wasn't good." Do you remember saying that?
- 12 A And he had no barrier in front of him. He had no shield.
- 13 Q You also said, "The scenario wasn't good." Do you remember that's right.
- 14 Q You also said, "The scenario wasn't good." Do you remember saying that?
- 15 A Yep.
- 16 Q You said, "It -- The layout wasn't good to begin with." Do you remember that?
- 17 A You said, "It -- The layout wasn't good to begin with."
- 18 Q You remember that?
- 19 A Yep.
- 20 Q "It was not a good situation, from the beginning," right?
- 21 A Right.
- 22 Q Why was that?
- 23 A He's at the top of a landing. And if there's any confrontation, the hallway's narrow. The distances are real -- I mean, the -- the time is -- It's real quick. If I had closed with

- him, the officers wouldn't have been able to fire. If I had
closed with him, my back would have been turned.
He's at the top of the landing. And we can speculate all day
long. Go down the staircase, over the bannister?
So you said, in particular, "It was not a good situation,
from the beginning."
Where he was, yeah.
So then why was Officer Scatterto in the hallway to begin
with?
If you read my statement earlier, Officer Scatterto, I know
in my experience, is very good and had has great success --
-- in talking with people. You know, but not all situations
are the same.
Okay. So, you're Officer Scatterto's superior officer; is
that right?
I don't use "superior." I'm a sergeant, I work with him,
okay. So if you gave him an order, he would follow it,
yeah.
Okay. So if you gave him an order, he would follow it,
right?
A sergeant, he would, yeah.
Q All right. And did you balance the risk of having officer
Scatterto in the hallway, having this discussion, versus having
Officer Scatterto in the apartment, trying to have this discussion
from the doorway? Did you think about that or balance that at

1	A	I didn't have time to think that.
2	A	mean -- I don't know.
3	A	That's -- That would mean retreating. That would say that I was thinking all these things. I know what I was thinking. But, no, I never thought of that.
4	A	I mean, you're -- you're right. I -- I couldn't say that I was thinking all these things. I know what I was
5	A	right. So your biggest concern was his safety, right?
6	A	No. I think he -- It's a factor. I think you're -- you're
7	A	there initially to save a life or prevent that person from killing someone else. That's what I was there for, and that's my concern.
8	Q	But you also said, "It did not seem like it was going to work."
9	A	I meant the language going back and forth was going nowhere.
10	Q	Okay. You said, "It got to the point where there was not enough room and there was not enough time."
11	A	enough room and there was not enough time."
12	Q	Do you still believe that?
13	A	[No audible response.]
14	Q	Is that "yes"?
15	A	Yes.
16	Q	MS. WEST: Thank you, Your Honor.
17	THE COURT:	Anything else?
18	BY MR. ANDERSON:	RECORDS EXAMINATION OF WITNESS, SERGEANT GLENN CHISHOLM
19	Q	Just a completely different topic, just to follow up on
20	A	25

1 Cruiseser 508 and the storage of the Less-Lethal in it: are you the
2 only person who drives that? Or does the people who work from
3 four to --

4 A There's two other sergeants. Three shifts.

5 Q So other people share your --

6 A Right.

7 Q -- vehicle with you.

8 MR. ANDERSON: Okay. I have nothing else.

9 THE COURT: Attorney McDonald, anything?

10 MR. McDONALD: Nothing else.

11 THE COURT: All right. Thank you.

12 Attorney --

13 MR. TARANT: Nothing. Thank you, Your Honor.

14 THE COURT: All right. Sergeant, you may step down. Thank

15 You.

16 THE WITNESS: Thank you.

17 [Witness steps down]

18 THE COURT: All right. Before we recess for the day, maybe

19 we can just touch base again on the scheduling. I believe that

20 you had indicated, A.D.A. Tarant, an indication that Dr. Stanley

21 would testify tomorrow morning; is that correct?

22 MR. TARANT: Yes. He's anticipated to be here at 9:00 a.m.

23 THE COURT: Okay.

24 MR. TARANT: And then I have the two state troopers coming

25 in as well, and Charles Dicchner, the Wallham police officer who

1	is the use-of-force training expert, essentially.	THE COURT:	Okay.
2		MR. TARRENT:	We also had Danielle Callinan [phonetic].
3		THE COURT:	Yes.
4		MR. TARRENT:	Just an update on her condition: she -- We
5	anticipat ed she'd be available on Friday. She is telling us today		that she's not feeling well, that she is COVID-positive. She's
6	reached out to her today to see what her status was. We		feeling ill and is now telling us she may not be available until
7			next Tuesday.
8			
9			
10			
11	THE COURT: All right, well, presumably, if necessary, we	THE COURT:	All right, presumably, if necessary.
12	could either come back here, perhaps think about using Zoom or		
13	another platform if the parties want to do that. But we can		
14	discuss that. I'll leave that just as a thought --		
15		MR. TARRENT:	Okay.
16	THE COURT: -- to see about what other options . . .		
17	And also I would also just throw out there that certainly at		
18	the end of the testimony you're offering I would invite any		
19	counsel, if they want, at the conclusion of this proceeding, to		
20	make any statement. Or if there's anything they want to submit in		
21	writing, the court will certainly welcome that. So I just wanted		
22	to -- that you have the opportunity, in essence, a quasi-closing,		
23	I guess, or just a summary of thoughts and statements, whether it		
24	be in writing or orally.	THE COURT:	All right.

- 1 MR. TARRENT: All right. Thank you.
- 2 THE COURT: Anything else we need to touch base on tonight,
- 3 on behalf of anyone?
- 4 MR. TARRENT: Not from the Commonwealth.
- 5 MR. ANDERSON: I have nothing.
- 6 THE COURT: Counsel, all set?
- 7 MR. McDONALD: Nothing.
- 8 THE COURT: Okay. Thank you very much.
- 9 MR. TARRENT: Thank you.
- 10 [Adjourned at 3:58:21 p.m.]

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