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MIDDLESEX, SS. COMMONWEALTH OF MASSACHUSETTS
DISTRICT COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *
MIDDLESEX DISTRICT ATTORNEY *
*
v. * Docket No. 1853IN000001
*
ALAN GREENOUGH *
*
* * * * *

INQUEST HEARING DAY 9
BEFORE THE HONORABLE STACEY J. FORTES

APPEARANCES:

For the Commonwealth:
By Adrienne Lynch, Assistant District Attorney
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Woburn, Massachusetts
Courtroom 2
June 24, 2019

Quaverly H. Rothenberg, Q & A Transcripts
Approved Court Transcriber

APPEARANCES (Continued):

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I N D E X

WITNESSES: DIRECT CROSS REDIRECT RECROSS

MICHAEL DiCHIARA

By Mr. Pasciucco 5

By Ms. Lynch 27

By Mr. Koufman 34

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139 Disc of Surveillance Videos

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1 [On the Record at 9:11:58 a.m.]

2 THE COURT: Okay.

3 MS. LYNCH: Thank you, just a preliminary matter, when we had
4 last recessed I had asked the Court's permission to offer the
5 complete --

6 THE COURT: Yes.

7 MS. LYNCH: -- disc. We had --

8 THE COURT: Yes.

9 MS. LYNCH: -- used another one. So, I'd just ask that this
10 be marked.

11 THE COURT: Absolutely.

12 THE CLERK: Is this a replacement for one or is it a new
13 exhibit?

14 MS. LYNCH: It's a full -- It's the full four views. The
15 other one was just an edited clips --

16 THE CLERK: Okay. So, Judge, we'll put this as Exhibit --
17 sorry -- Exhibit 139.

18 THE COURT: Exhibit 139.

19 [Disc of Surveillance Videos Marked as Exhibit No. 139]

20 THE COURT: Okay. And, Ms. Lynch, the Commonwealth has no
21 further evidence at that point?

22 MS. LYNCH: No, Your Honor.

23 THE COURT: Okay. All right. You had a witness you'd like
24 to call?

25 MR. PASCIUCCO: Yes, Your Honor. Charles DiChiara.

1 THE COURT: Okay.

2 [MICHAEL DiCHIARA, Sworn.]

3 MR. PASCIUCCO: May I proceed, Your Honor?

4 THE COURT: You may.

5 DIRECT EXAMINATION OF WITNESS, MICHAEL DiCHIARA

6 BY MR. PASCIUCCO:

7 Q Good morning, sir.

8 A Good morning, sir.

9 Q Can you please introduce yourself for the record and spell ,
10 you last name.

11 THE WITNESS: Good morning, Your Honor.

12 THE COURT: Good morning.

13 BY MR. PASCIUCCO:

14 A If it pleases the Court, my name is Charles, middle initial M
15 as in Michael. Last name is DiChiara: "D" as in Delta "i" --
16 C-h-i-a-r-a.

17 Q And Mr. DiChiara, how are you currently employed?

18 A I'm employed as a police officer for the City of Waltham,
19 Massachusetts.

20 Q And how long have you been a police officer?

21 A Over 30 years.

22 Q Okay. And what is your educational background?

23 A I went to -- I have a Bachelor's Degree, a BS in criminal
24 justice from Springfield College.

25 Q Okay. And prior to becoming a police officer, did you attend

1 an academy?

2 A I did.

3 Q And which academy was that?

4 A I first attended the Northeast Regional Police Institute in
5 1988. That was a academy for reserve police officers. And then
6 in 1990 I attended the Topsfield Police Academy in Topsfield,
7 Mass.

8 Q Okay. What is your current assignment with the Waltham
9 Police Department?

10 A I'm currently assigned as a training officer/coordinator for
11 the police department.

12 Q And how long have you held that position?

13 A Approximately four -- four, five years.

14 Q Okay. And what are your duties and responsibilities as a
15 training officer with the Waltham Police Department?

16 A As a training officer I oversee training for a h -- 170-man
17 department, selection of new officers, training the new police
18 recruits at the police academy, also retraining and remedial
19 training for -- or in-service training for veteran police officers
20 as well as specialty classes, active shooter, self defense, things
21 like that.

22 Q And what specific areas do you train police officers in?

23 A Defensive tactics, use of force, firearms, patrol procedures.

24 Q Okay. And what was your position with the Waltham Police
25 Department prior to becoming their training officer?

1 A I worked patrol, nights, the swing shift. Two early nights,
2 two late-nightshifts, for approximately 26 years.

3 Q Okay. Can you give us an overview of your own specialized
4 training as it relates to firearms, defensive tactics, and use of
5 force?

6 A Sure. I've been teaching defense tactics, officer
7 [Indiscernible at 9:15:23 a.m. - pronunciation unclear], use of
8 force for a little over 20 years. After attending the police
9 academy I got more into self-defense type of stuff. So, I have
10 probably 3,000 hours of training in use of force issues. I'm
11 going all over the country. Handcuffing, police baton, firearms.
12 And that's w -- more where I geared my career towards.

13 Q Okay. Do you hold any certifications with respect to
14 training police officers?

15 A I do.

16 Q And what certifications are those?

17 A In Massachusetts I'm a Level 4 of a master instructor in the
18 areas of defensive tactics. And I'm a Level 3, which is an
19 instructor-trainer, in the area of firearms.

20 Q Okay. Can you just go through the different levels and what
21 it means to be a Level 3 or a Level 4 instructor?

22 A Sure. A Level 1 instructor in Massachusetts means you get
23 certified as an instructor, and you're certified and trained to
24 teach only your agency. Like, I can only teach Waltham police
25 officers; that's a Level 1.

1 A Level 2 police officer means you can teach your own
2 department and you can also go and assist at the academies,
3 helping teach veteran officers or new recruits. That's a Level 2.

4 A Level 3 is -- you can be a lead instructor. So, you can
5 teach those other two areas but you all can -- you can also be a
6 lead or a number-one instructor at a police academy.

7 And a Level 4 instructor means you train those levels but you
8 also train all the other instructors. And you train those
9 instructors and certify them. And you handle their -- the
10 instructors' in-service recertifications.

11 Q Okay. And you're a Level 4 instructor with respect to
12 defensive tactics?

13 A Yes, sir.

14 Q And a Level 3 instructor with respect to firearms?

15 A Correct.

16 Q Okay. And how many Level 4 master instructors are there in
17 the Commonwealth of Massachusetts with respect to defensive
18 tactics.

19 A In Massachusetts, probably -- probably eight to ten across
20 the state.

21 Q Okay. And you're one of those?

22 A Yes, sir.

23 Q Okay. And how many police officers have you trained over the
24 course of your career?

25 A Over 10,000.

1 Q Okay. And do you hold any national certifications?

2 A Yes, sir.

3 Q And what are those?

4 A I'm a -- I'm a master trainer with the Safariland Training
5 Group, which is a police training international -- United States --
6 well, it's only Canada. It's a police training group that goes
7 worldwide. I'm a master instructor with Safariland and I'm a
8 master instructor with TASER International.

9 Q Okay. In addition to your work with the Waltham Police
10 Department, do you take on any other special assignments?

11 A I do.

12 Q And what are those?

13 A I'm assigned to the NEMLEC SWAT team, regional SWAT team.

14 Q And what does NEMLEC stand for?

15 A It's the Northeast Regional Police Institute. It's a -- a
16 group of 63 cities and towns of -- They pool their law enforcement
17 agencies together. So, it's a swat team that covers 63 cities and
18 towns from Great Boston Area, Medford, Somerville, out to
19 Gloucester, out to probably Taunton. So, it's a -- it's a large
20 SWAT team.

21 Q And can you just briefly give us an overview of your roles
22 and responsibilities with the NEMLEC SWAT team?

23 A Yes. I'm currently with the primary entry team and I'm a
24 member of the training cadre, as well, for the 1 -- I'm still
25 currently a member.

1 Q Okay. And what types of calls do you respond to as a member
2 of the SWAT team?

3 A What -- What we would consider high-risk calls, hostage
4 situations, barricaded subjects, active shooter, s -- fugitive
5 apprehension, drug raids only involving guns and drugs -- that's
6 the only time we'll do those.

7 Q Okay. And are you employed in any other capacity in addition
8 to Waltham and the NEMLEC SWAT team?

9 A Just -- With the Municipal Police Training Committee?

10 Q Yes.

11 A Yes.

12 Q And what is your role with the MPTC?

13 A I'm a Level 4 instructor and I sit on their advisory board
14 for defensive tactics.

15 Q Okay.

16 A I'm current -- currently the lead in three police academies.

17 Q And which police academies are those?

18 A The Randolph Police Academy; the NECO [sic], which is
19 Northern Essex Community College, that's a new academy; and the
20 Lowell Police Academy.

21 Q Okay. Just so the record is clear, you were not present at
22 the scene of the incident in this case on February 3rd, 2018.

23 A That's correct.

24 Q Okay. And you played no role in the investigation of this
25 case; is that correct?

1 A Correct.

2 Q And you don't know an individual named Alan Greenough; is
3 that correct?

4 A I do not.

5 Q Okay. And other than me introducing you to him briefly, you
6 don't know my client, Officer Erik Drauschke, personally or
7 professionally; is that correct?

8 A That's correct.

9 Q Okay. And you were asked by myself to testify in an
10 informative manner at this inquest on the topics of use of force,
11 defensive tactics, and police standards and practice; is that
12 correct?

13 A Correct.

14 Q Okay. Now, you've been asked to testify in other cases about
15 your training and experience with respect to topics of use of
16 force, defensive tactics, and police standards and practice; is
17 that correct?

18 A Yes, sir.

19 Q Okay. And you've testified both in Massachusetts District
20 Courts as well as Superior Courts?

21 A Yes, sir.

22 Q And you've testified in Federal Court; is that correct?

23 A I have.

24 Q Okay. And you've been qualified as an expert in those
25 topics, both in Massachusetts District and Superior Courts as well

1 as Federal Courts, correct?

2 A Correct, sir.

3 Q Okay. Now, with respect to use of force, how is it defined?

4 A The definition of force is the amount of effort required by
5 police to compel compliance from an unwilling individual.

6 Q How is deadly force defined?

7 A Deadly force would be force that is intended to or likely to
8 cause death or serious bodily injury.

9 Q Okay. What dictates the amount of force that a police
10 officer is authorized to use in a given situation?

11 A In -- In police work, we train the officers in -- in clearly
12 established case law. So, we have standards based on law, and we
13 have guidelines.

14 Q Okay. And what are the -- what's the difference between
15 standards and guidelines?

16 A Well, s -- standard is the clearly established case law,
17 which is the law -- the case that we use to train police officers
18 in use of force. It's a Supreme Court case.

19 Q And which case is that?

20 A Graham vs. Connor.

21 Q Okay. And what is the -- Just briefly, what is the gist of
22 that case?

23 A The gist of Graham vs. Connor is that a police officer's use
24 of force must be objectively reasonable based on the facts and
25 circumstances that -- that are in front of them at the time that

1 they deployed force, and your force has to be based on -- you
2 know, has to be based on the facts and circumstances in front of
3 the time. And that reasonableness is determined by: the severity
4 of the crime; is the person trying to evade, capture, or fight; or
5 is he a risk to officer safety or others? Those are the -- the
6 big three that we look at.

7 Q Okay. Are the standards and guidelines broken up: federal,
8 state, department? Can you just explain that a little bit?

9 A Well, yeah, the -- the -- the clearly established case law is
10 the Graham vs. Connor. So, we teach that that's the -- that's the
11 law of the land that we train police officers -- We teach them
12 that the use of force must be reasonable and appropriate. And
13 then there's -- there's different cases at the state level, like
14 Julian/Randazzo, which will specify when a police officer can use
15 force. And then we have the s -- department standards.

16 Q Okay. How do you train police officers with respect to use
17 of force in addition to teaching them what the case law is?

18 A Okay. So, -- So, the first thing we do is explain to them
19 what the law is, and the standards. And then we would use the use
20 of force model or the Totality Triangle, which is a teaching tool
21 that we use in Massachusetts to train all the officers in regards
22 to what level of force they should use and what kind of
23 circumstances.

24 Q Okay. You mentioned the Totality Triangle?

25 A Correct.

1 Q And what is the Totality Triangle?

2 A The Totality Triangle is made up of three portions. The
3 first is perceived circumstances or threat-perception categories.
4 The second is the subject's actions, what the subject is actually
5 doing. And then, from there, you have the o -- police officer's
6 responses. So, it's a three-prong triangle.

7 Q Okay. With the Court's approval I'm going to show you a
8 chart. Do you recognize that chart?

9 A Yes, sir.

10 Q And what is that chart?

11 A That's the Totality Triangle that we use to teach police
12 officers use of force.

13 Q Okay. Can you give us a little more in-depth outline of how
14 this chart applies to your training?

15 A Okay. So, we train p -- Police officers, we don't train them
16 to respond to just what the subject is doing. The -- The first
17 thing we do so that they have a good understanding of use of force
18 in making decisions is we teach them to respond to the -- The
19 first case is perceived circumstances, which is basically your
20 risk perception. And that means the arena that you're operating
21 in: What's the time of day? Is it a person you dealt with before?
22 Is it -- Do they have a history, a history of drugs, history of
23 violence? -- and basically explain that they should be responding
24 to their risk, the overall risk of the call, first.

25 Q And what is the next step?

1 A Coupled with that, then we would have them also respond to --
2 and analyze what the -- what the subject is doing. Is he
3 compliant? Is he noncompliant? And if he's noncompliant, what
4 level intensity is he taking that noncompliance to?

5 Q Okay. And what is the third step?

6 A After they analyze the risk and what the subject is doing,
7 that should help the officers to form a -- a good, reasonable
8 response to what level of force to deploy. And so, those -- the
9 other ca -- part of the category, reasonable officers' responses,
10 that will explain to them their force options in different type of
11 scenarios.

12 Q Okay. Now, this is the Totality Triangle. You also
13 mentioned the use of force model?

14 A Yes, sir.

15 Q And what's the use of force model?

16 A The use of force model is -- It's a training tool to show
17 police officers. We -- We t -- try to teach officers to have a
18 balanced or reasonable response. So, it -- it's set up like
19 stairs. But it really is inclusive of the totality triangle.

20 Q Okay. With the Court's permission I'm going to show you a
21 second graph/chart. Is this the use of force model you were
22 referencing?

23 A Correct.

24 Q Okay. And can you just explain how you train with respect to
25 this use of force model?

1 A Yes. Could I just point out that -- that this is a -- I
2 think this is a slightly older version.

3 THE COURT: Mm-hmm.

4 BY MR. PASCIOCCO:

5 A So, there's two words -- There's fifteen words in the whole
6 use of force model. There's two that are incorrect. And there --
7 It's -- It says the same thing, but it's different. So, if you
8 look on the risk-perception categories, it'll say "professional."
9 That should say "strategic." And if you go up two spots, where it
10 says "threshold" in the yellow, that should say "volatile." So, I
11 think it's just a little bit of an outdated or different --
12 different model than the one I teach off. I just want to point
13 that out.

14 Q Okay.

15 MR. PASCIOCCO: If we could just zoom this in.

16 BY MR. PASCIOCCO:

17 Q Okay. Can you go through the different categories and
18 explain to the Court how you teach with respect to this model?

19 A Okay.

20 THE WITNESS: Could I use the pointer, just to show the
21 Totality Triangle?

22 THE COURT: Sure.

23 THE WITNESS: Okay. So, --

24 THE COURT: Do you want to step down? You can step down.

25 BY MR. PASCIOCCO:

1 A I just want to show real fast how the -- 'cause the Totality
2 Triangle and use of force is the same but it's different. So I
3 just want to try to show that if -- if the -- if I put the -- The
4 Totality Triangle that I just talked about, if I had laid it down
5 inside this use of force model, it would fit -- it would fit here.
6 So, the top part where it says "risk perception," that would be c
7 -- circumstances, then subject's actions, then officer's response.
8 So, even though this looks like stairs on this version, it really
9 is the Totality Triangle, if that makes sense.

10 Q Yes.

11 A Okay.

12 Q Okay. And, Mr. DiChiara, can you go through the different
13 categories and the different steps?

14 A Sure. So, to me, the most important to teach police officers
15 is not just on what the subject's actions are. I think it's more
16 important to train officers in -- to respond to the overall risk
17 assessment. So, the first thing I teach is that middle category
18 which says "risk-perception categories."

19 So, the lowest level down, at blue, that would be
20 "strategic." And what that means is baseline perception of
21 occupation -- occu -- occupation-accepted risks, which means when
22 a police officer comes to work it's a dangerous job. Especially
23 in this day and age it's a dangerous job. So, when a police
24 officer shows up to work, he should be at a strategic mindset.
25 It's more or less a mindset at this point. So, it's -- he should

1 be at a strategic mindset, be professional, have his head in the
2 game, and that's all really that means. It's -- A police officer
3 when he comes to work should recognize it's a dangerous job. And
4 his mindset should be different when he's on duty than when he's
5 off duty. So, that's just basically how a police officer shows up
6 to work.

7 Q Okay. What is the next category after "professional"?

8 A Next up, if you look on the green, that's "tactical." So,
9 tactical means there's an increase in risk. And the officer is
10 taught and trained to deploy safety strategies. So, would you
11 like me to give an example?

12 Q Sure.

13 A So, if I was -- if I was driving my police car and I -- I'm
14 in a strategic mindset and then a vehicle runs through a red light
15 so now I'm going to initiate a motor vehicle stop -- So, by
16 initiating a motor vehicle stop, it's a more -- there -- there's a
17 higher risk to officer safety. So, it's just deploying sa --
18 basic safety strategies: look for a safe place to stop the car;
19 call in the description of the vehicle; approach from a safe
20 distance, maybe approach from the other side; have the -- have the
21 subject put his hands on the steering wheel. Real basic stuff.
22 But that's what that means, is the officer is just trained to
23 deploy safety strategies as the risk increases.

24 Q Okay. And how about "threshold, harmful, and lethal"? If
25 you could just go up the steps.

1 A Okay. So, "volatile" -- "volatile" means the situation that
2 we're involved with is now -- We use it to describe, like,
3 chemicals. Like, it's got the potential to go bad. It doesn't
4 mean -- It -- It could increase in scope and intensity. It could
5 decrease. But police officers have to recognize that the
6 potential is there for it to go badly.

7 Q Okay. And that's "threshold" or, as you termed it,
8 "volatile"?

9 A Volatile situation, yes, sir.

10 Q How about "harmful"?

11 A "Harmful" -- Whereas "volatile" has the potential to turn
12 bad, "harmful" means it's -- it's gone bad, it's increasing in
13 scope and intensity, it's gotten to the point where it's a risk to
14 others or it's a risk to the police officer at the scene. We call
15 -- We describe that as the "assault arena," assaultive-type
16 individuals.

17 Q Okay. And how about "lethal"?

18 A "Lethal" involves the least encountered but most serious risk
19 to officer safety, which means the arena that we're operating in
20 based on the facts and circumstances in front of us; that call
21 that we're on has the potential to cause us or somebody else death
22 or serious bodily injury.

23 Q Okay. Can you now discuss how the risk-perception categories
24 you just went through relate to the subject-action categories to
25 the officer-response categories?

1 A Sure. After we analyze the risk of w -- w -- what -- the
2 call that we're on, then we have to analyze what the subject is
3 doing. And there's five levels of that, as well. The first under
4 the blue is "compliant." And that just means the subject is
5 compliant. Most of the people we deal with are complaint; 95
6 percent of the people we deal with are compliant. Which means
7 there's -- the scope and intensity is to the point where they're
8 doing and asking what we say.

9 Q Okay. And if they're not compliant, what's the next
10 category?

11 A They're either complaint or their noncompliant. So, the next
12 four level is a null -- is all noncompliant individuals.

13 So, a "passive-resistant" individual would just mean an
14 individual that's not compliant but they're -- their behavior has
15 not met with any physical or energy-based resistance. So, it
16 could be just verbal defiance. It could be a passive protest
17 where people are just being dead weight. So, they're not
18 compliant but they're not offering up any physical resistance.

19 Q Okay. How about "resistant (active)"?

20 A "Active-resistant" means -- It's -- Active resistance isn't
21 fighting. Active resistance is just noncompliant, and their
22 noncompliance -- their verbal noncompliance is now met with
23 energy-based physical resistance. You know, grabbing onto the
24 steering wheel, pulling their arm away, just failing to comply but
25 using physical force to not comply.

1 Q Okay. And how about "assaultive (bodily harm)"?

2 A "Bodily harm" means any injury that's not serious or
3 life-threatening. But "assaultive" means an assault is taking
4 place or is about to take place. It could be assault on a police
5 officer but it could be assault on a third party, as well. So,
6 that just means the behavior is assaultive or combative in nature.

7 Q Okay. And the final category, "assaultive (serious bodily
8 harm/death)"?

9 A Yeah, "assaultive (serious bodily harm or death)" would be a
10 injury that's either death or serious injury, loss of limb,
11 blindness, paralysis. And that would be -- If the assault rises
12 to that level, it would be -- it would be considered deadly-force
13 scenario.

14 Q Okay. And then how are those -- the risk-perception
15 categories and the subject-action categories, how do those relate
16 to the officer-response categories?

17 A Well, hopefully if -- if the officer analyzes the risk
18 coupled with what s -- what the subject is doing, that should help
19 him form a balanced response, a balanced or what we would say --
20 reasonable response.

21 So, the first level is "cooperative controls." So, if the
22 person is compliant, we're looking for balanced response. We can't
23 be above where the -- where the subject is. So, it's on a -- On a
24 compliant individual, we can use our cooperative controls. And in
25 plain English, that just means verbal skills, command presence,

1 professionalism, at that level.

2 Q Okay. How about "contact controls"?

3 A Contact controls we use on a passive-resistant individual,
4 which means they're not complying but they're -- they're -- their
5 resistance is minimal. So, we use mini -- we use reasonable
6 amount of s -- force, which is -- Contact controls is just hands
7 on but light: push, shove, guide, drag, escort. Light-touch
8 tactics.

9 Q Okay. How about "compliance techniques"?

10 A Compliance techniques, when we're dealing with an
11 active-resistant individual, we teach police officers that they're
12 allowed to use compliance techniques, which really is
13 pain-compliance techniques. So, we're -- we use force at this
14 situation to get somebody to stop resisting and comply. And the
15 pain-compliance techniques could be -- They're lower levels of
16 force, general don't cause a lot of serious injury, but -- pepper
17 spray, taser, drive-stun, pressure points, joint manipulations,
18 using the baton as a controlling device, not to strike anybody.
19 So, they're lower levels of force. So, it -- Active-resistant
20 compliance techniques we -- means we can use force to get somebody
21 to stop resisting and comply. And when the resistance stops, the
22 -- the comp -- pain-compliance techniques stop.

23 Q Okay. And how about "defensive tactics"?

24 A Defensive tactics refers to dealing -- On a -- On a situation
25 where we're dealing with an assaultive individual, it's a much

1 more serious event, a much more intense event. So, we want to use
2 force to get somebody to stop their violent behavior immediately.
3 So, the -- the -- the responses are higher.

4 So, defensive tactics means personal weapons or intermediate
5 weapons. So, your personal weapons would be punches, palm-heel
6 strikes, elbow strikes, knee strikes, in order to get somebody to
7 just stop their violent behavior. And intermediate weapons would
8 be your taser or your police baton.

9 Q Okay. And then, finally, "deadly force"?

10 A Finally, deadly force, again, it's risen to the level where
11 the officer feels his life is in im -- imminent peril or somebody
12 else's life is in peril. And deadly force doesn't specify tools.
13 Most people think firearms, but usually it's firearm but it could
14 be other tools of immediate opportunity. Like, if -- if it was a
15 serious situation and -- and I had to run somebody over with a
16 police car, even though the police vehicle isn't in there as a
17 force option, it would be a tool of immediate opportunity if it
18 was reasonable.

19 Q Okay. Now, is every use of force scenario, in your opinion,
20 different?

21 A Oh, yes, sir.

22 Q And why is that?

23 A There's just -- There's always going to be a set of facts and
24 circumstances surrounding it. So, every -- every use of force is
25 entirely situation-driven, terrain-driven.

1 Q Okay. With respect to a deadly force scenario, if an officer
2 discharges his or her firearm, where are they trained to aim?

3 A So, we train and teach officers to shoot center mass, which
4 means center of available target.

5 Q Okay. And why not arms or legs?

6 A Well, it's for accuracy, obviously, because if we're in a --
7 if we're in a deadly force situation, you -- you don't want -- you
8 need to hit where you're shooting at.

9 It's for -- It's for safety of other people because we're
10 responsible for every bullet that comes out of our firearm. We're
11 responsible f -- f -- to the general public. We don't have
12 innocent people -- innocent people getting hurt.

13 And at -- at the end of the day, shooting somebody in the
14 arms or legs, those are moving targets. It's hard to hit those
15 targets. But also we -- we're just trying to stop -- we teach to
16 stop the threat. We don't shoot to kill or anything like that.
17 We shoot to stop the threat. And the easiest way to do that is to
18 hit where you're shooting at.

19 And the last couple shootings I debriefed were -- people got
20 shot in the -- in the head and lived. But you could get shot in
21 the leg or the -- or the pelvic or l -- and -- and -- and -- and
22 pass away. So, we -- it's kind of the -- it's out of our hands,
23 as far as whether you live or die. It's just we're trained to
24 shoot center mass of available target, sir.

25 Q Okay. And are police officers trained to fire any specific

1 number of shots in a deadly force scenario?

2 A No, sir.

3 Q Okay. And why is that?

4 A They're trained -- Whatever action made them shoot, they're --
5 they're trained to shoot until that -- that behavior stops. So, it
6 might be one round, it might be three rounds. So, we don't -- we
7 don't count rounds. We're just trained to s -- stop the threat.

8 Q Okay. Are you familiar with the suicide-by-cop phenomenon?

9 A I am.

10 Q And can you just briefly describe what the phenomenon is?

11 A Well, it's a -- if it's a -- Unfortunately, it's a phenomenon
12 we deal with quite a bit in recent years. And it's a -- it's a
13 scenario where somebody has suicidal tendencies or -- or wants to
14 die and for -- sometimes it's religious reasons, sometimes
15 personal reasons. And they're suicidal but they don't want to do
16 it themselves. So they put the police officer in a position where
17 they have to use deadly force in the event. And we deal with that
18 quite a bit.

19 Q Okay. And how would a scenario like that play out, just for
20 example?

21 A Well, a person could pretend to have a gun. Sometimes they
22 call up and give a false report. They could pretend to have a
23 weapon. They could keep their hands inside their sweatshirt.
24 They could say that they have a weapon. And they're basically
25 giving the perception -- you know, saying, "Shoot me, shoot me,"

1 things like that. They could -- They could be giving the --
2 putting the officer in that position.

3 Q Okay. Is it possible in your opinion for police officers to
4 use deadly force in a scenario where the subject or the suspect is
5 unarmed?

6 A It's possible.

7 Q And why is that?

8 A Well, it's a -- it's a -- it's based on the officer's
9 perception at the time. So, it's a -- it's a perceived threat of
10 lethality. It could be -- It could be actual physically they have
11 a weapon, or they could perceive -- and another police officer in
12 that situation would also reasonable percei -- perceive that that
13 person had a weapon. So, it's a perceived threat of lethality,
14 real or perceived.

15 Q Okay. And in your opinion, could someone or a police officer
16 then be in a scenario where they're authorized or justified to use
17 deadly force if they have a reasonable perceived perception that
18 the person is armed but that perceived perception is mistaken?

19 A They could, yes.

20 Q And why is that?

21 A Again, it's based on -- it's based on the -- These situations
22 happen fast, split seconds to decide what level -- level of force
23 to use. And it's -- Again, it's perceived threat of lethality
24 versus actual. But if the officer believes at the time that he
25 shot that his life was in imminent peril of -- of death or loss or

1 life -- or somebody else's loss of life.

2 Q Thank you, sir.

3 THE COURT: Ms. Lynch, do you have any questions?

4 MS. LYNCH: Yes, pursuant to the --

5 CROSS EXAMINATION OF WITNESS, MICHAEL DiCHIARA

6 BY MS. LYNCH:

7 Q In terms of use of deadly force with an officer confronted
8 with a situation where he orders a person to do something and that
9 person does not comply with their hands and then begins running
10 towards the person, are there dangers that you train officers on
11 in terms of being disarmed by their subject?

12 A In -- So, if -- if the person was armed, how to successfully
13 defend them?

14 Q Yes.

15 A Yes.

16 Q And in terms of your role as a use of force trainer, are you
17 familiar with what is referred to sometimes as a 21-foot rule?

18 A Yes, ma'am.

19 Q And what is that?

20 A Well, it -- it originally started as a -- as a test in the
21 police academy by -- by a -- a police officer named Dennis
22 Tueller. And basically it was a decision -- it was a -- on how
23 much distance was a safe distance for a person armed with a -- a
24 weapon, with a knife, for me to -- for a reasonable police officer
25 to recognize a threat and a reasonable police -- a reasonable

1 person could close distance of 21 feet by the time it would take
2 me to observe a threat and -- and -- and -- and handle the threat
3 and draw a firearm.

4 Q Now, in terms of the training that you provide to police
5 officers, are there levels of preparedness, if you will, when
6 approaching a situation in terms of, for example, officers having
7 a triple-retention holster, taking steps to at least make the
8 weapon accessible while in the holster?

9 A Yes, ma'am.

10 Q And can you just explain that, with a triple-retention
11 holster?

12 A Yeah. W -- With triple-retention holster, just for officer
13 safety -- And the officer would have to do basically three things:
14 unsnap the weapon, rock it forward to the rear, and then draw the
15 weapon. So, it's three -- Triple retention means, like, three
16 steps in order to get their firearm out.

17 Q So, if someone were approaching a situation, one lower level
18 of response would be to use or undo one of those or two of those
19 retention features on the holster?

20 A Sure. Could be. Yes, ma'am.

21 Q In terms of an officer who was confronted with a motorist in
22 a motor vehicle who opens a door of the car and orders the person
23 to come out and show his hands, in your role as a trainer would --
24 is it appropriate for an officer to draw his weapon when met with
25 resistance, in terms of showing someone their hands?

1 A Yes, ma'am.

2 Q And can you explain that?

3 A Well, just -- It's -- The -- The -- We train the -- the --
4 It's called the OODA loop. And officers are taught and trained,
5 like, they have to observe, orient, make a decision, and -- and
6 act. So, all that takes time. So, if we're -- if -- if a person
7 pulls a firearm out or a weapon or tries to assault you, they're
8 in -- they're in "act" phase. So they're in the third level of
9 that. And we're still trying to take in information. So,
10 basically, action is going to be reaction every single time. So,
11 we teach the officer when they're confronted with a -- a risk to
12 start to make preparations and get -- and get ready to act, i.e.,
13 unsnap their weapon, take cover, create some distance, and -- and
14 that type of stuff. SO --

15 Q So, if -- in a situation such as that, if an officer then
16 draws his weapon and repeats the command and the individual does
17 not comply, does that -- and based upon your training and the
18 training that you give others, does that heighten the expectation
19 of danger --

20 A Ye --

21 Q -- to the officer?

22 A Yes, ma'am, of course.

23 Q Now, in terms of an individual who is met with an officer who
24 draws his weapon on the individual, are there concerns that are
25 raised in the field of defensive tactics if a person does not

1 | comply to a gun being pointed at them?

2 | A Yes, ma'am.

3 | Q And in terms of that, you indicate that the officer's
4 | response is to try to create distance?

5 | A Possibly, yes.

6 | Q And in terms of the tools, if you will, that an officer has
7 | to maintain a situation, in the face of possible deadly force or
8 | an officer's belief that he is being met with deadly force, is
9 | pepper spray an effective method for quelling that?

10 | A It's not. Pepper spray or any other use of force options are
11 | not inclusive.

12 | Q And what about the use of a baton in a situation where the
13 | officer believes that a person may be armed with a firearm or a
14 | hatchet or a knife or something like that?

15 | A Yes, a baton would not be a reasonable response based on the
16 | way we teach.

17 | Q And what do you teach an officer to do with a baton?

18 | A Strike a person in the primary striking area to get them to
19 | stop their behavior. We would not teach an officer to use it to s
20 | -- If they were confronted with an armed individual, we would not
21 | teach the officer to res -- respond with a police baton.

22 | Q Now, does any of your training go to the reasonableness of an
23 | officer's belief that someone is armed? Like, are there certain
24 | factors that they're trained to be aware of that may indicate that
25 | a person is armed?

1 A Yes, ma'am.

2 Q And can you give us some examples of that?

3 A Well, they're -- they're trained not to just respond to what
4 the subject's doing. They respond to their -- what their training
5 and experience tells them about the event, s -- similar calls
6 they've been on in the past, the person's body language. We teach
7 them to read pre-attack indicators based on what the subject's
8 doing or saying or even reading body language, pre-attack
9 indicators. And they're taught to respond in that manner.

10 Q Now, in terms of officers on the street, patrol officers, if
11 you will, is it normal for an officer to have a loaded
12 department-issued firearm and additional magazines?

13 A Yes, ma'am.

14 Q And the purpose for additional magazines is what?

15 A Well, in case they are get into a -- an officer-involved
16 shooting, to have extra magazines, or malfunctions. But they --
17 Mostly, general -- Police officers carry a weapon with one in the
18 chamber -- that's a directive for most departments -- and two
19 additional magazines.

20 Q Okay. Now, in terms of an officer faced with a situation in
21 which they believe that they are faced with deadly force, are you
22 familiar with the concept of tunnel vision?

23 A Yes, ma'am.

24 Q And can you generally describe what that is?

25 A Well, basically in tunnel vision they -- a lot of police

1 officers w -- when they're involved in deadly force scenarios,
2 they get a -- they get a heightened sense of vision because
3 they're dealing with high-stress situation. When the heartrate
4 goes up, you get tunnel vision so you focus more on what's in
5 front of you. And sometimes you don't hear what's going on around
6 you and you're just focusing on the threat, on the high-intensity
7 situations.

8 Q And with regard to your training and your experience, are you
9 familiar with officers who have been required in the course of
10 their duty to use deadly force, describing basically slow motion?

11 A Yes, ma'am.

12 Q Can you describe that or --

13 A So, under -- under high stress, officers have different --
14 there's been different types on -- on officer debriefings or
15 officer sh -- shootings. Some police officers get tunnel vision.
16 Some police officers get -- the situation speeds up. But more
17 often than not, you get this perceptual decrease in time.
18 Everything seems to be moving really, really, really slow, almost
19 in slow motion.

20 So, I had a police officer, last police officer I debriefed,
21 he could -- he could actually see -- he was -- he had such tunnel
22 vision and he had such -- the -- he was -- he could see the slide
23 on the weapon coming back and the round being spent out of the
24 gun. It -- That's how much the situation had slowed down.

25 Q Now, in terms of a response to the use of deadly force, once

1 an officer uses deadly force is it -- is there any training that
2 has to do with what the officer should do next, specifically
3 handcuff a subject that's been shot? Is that usual, in your
4 experience?

5 A Yes. So, w -- we're not doctors, so we teach that after
6 somebody's been shot we immediately handcuff 'cause we're still
7 not sure about the threat, and -- and then to start to provide
8 medical attention if possible.

9 Q And so, that protocol is not unusual in your experience, that
10 officers were trained to handcuff the individual first to make
11 sure they cannot grab a weapon?

12 A Yes, we have to do that. Yes, sir. Yes, ma'am.

13 Q Similarly, just to go back for a moment, in terms of use of
14 tasers, do all departments in Massachusetts utilize tasers?

15 A No, they don't.

16 Q If a taser is available to an officer, if someone is within
17 6 feet of them and is not showing their hands, is a taser an
18 effective means of quelling the threat?

19 A So, it -- The only time that would be effective is o -- one,
20 if there was a taser at the scene, but if a -- if a -- We would
21 consider a taser in that situation a secondary response. A
22 primary response would be a firearm because the tasers don't
23 always work. Sometimes there's clothing disconnects, sometimes
24 you miss. So, in a -- in a imminent defensive life situation, if
25 the taser didn't work then you would be in real trouble.

1 So, the only time a taser comes in, in this -- those
2 scenarios, is a secondary force option. So, if somebody else came
3 with another less-lethal option, then possibly. But not in a
4 situation where it was one person refusing to show their hands,
5 ma'am.

6 Q Thank you.

7 THE COURT: Thank you.

8 Do you have an offer you want to make?

9 MR. KOUFMAN: Yes. I'd just like to make an offer of proof
10 with respect to the officer's background, if I may, and also his
11 relationship with Officer Drauschke.

12 THE COURT: You can ask with regard to his relationship with
13 Officer Drauschke, yeah.

14 **CROSS EXAMINATION OF WITNESS, MICHAEL DiCHIARA**

15 BY MR. KOUFMAN:

16 Q Sir, you're a member of a union; is that correct?

17 A Yes, sir.

18 Q And it's the Mass. Coalition of Police Officers?

19 A Correct.

20 Q And members of the union have certain benefits; isn't that
21 correct?

22 A Correct.

23 Q And members include police departments across Massachusetts;
24 is that correct?

25 A Yes, sir.

1 Q And the Reading Police are members, as well; is that correct?

2 A Correct.

3 Q And to your knowledge, Officer Drauschke is a member, as
4 well?

5 A I believe so, yes.

6 Q And as a member, you would have the benefit if you go to
7 court or if you're named as a Defendant in a case, the union would
8 pay --

9 MR. PASCIUCCO: Objection.

10 Q -- for your defense.

11 THE COURT: What -- What's the objection?

12 MR. PASCIUCCO: Relevance.

13 THE COURT: Overruled.

14 BY MR. KOUFMAN:

15 A Okay. Can you repeat? I'm sorry. Just --

16 Q The union would --

17 A -- repeat the question.

18 Q -- pay for the officer's defense?

19 A I -- So, I think it depends. I think that sometimes -- I
20 think the -- the -- the Mass. COP union board -- I'm not -- I'm
21 not on their board. I think that they -- sometimes they'll --
22 they'll back an officer and take a case, but sometimes they won't.
23 So it's not automatic, I don't think.

24 Q But in this case it's the union that's paying you to be here
25 today?

1 A Yes, sir.

2 Q Okay. And, now, you testified that you've been involved in
3 other cases involving allegations of use of force; is that
4 correct?

5 A Correct.

6 Q And over the last 10 years, how many cases have you been
7 involved with?

8 A Maybe 20. Maybe 20.

9 Q And is it fair to say out of those 20 cases that you never
10 involved -- well, offered your services to someone who alleged
11 that they were the victim of excessive use of force by the police?

12 A Nobody has ever approached me and asked me to work on their
13 case, no, sir.

14 Q So, in all your cases, you were there to help the police
15 officer; is that correct?

16 A Incorrect.

17 MR. KOUFMAN: May I ask questions about his training of
18 police officers?

19 THE COURT: Specifically what, 'cause I have all of his --

20 MR. KOUFMAN: He's done some -- It's my understanding that
21 he's done some training with respect to when officers come into
22 the academy and he puts them in stressful situations and he
23 videotapes them. And then, afterwards, he asks them to write
24 reports. And the report's often very inconsistent with the video.

25 THE COURT: So, what's the specific question you want to --

1 MR. KOUFMAN: That when an officer is under specific threats
2 or stress, he doesn't accurately always remember what in fact
3 happened.

4 THE COURT: Okay. You can ask that question. Yeah.

5 BY MR. KOUFMAN:

6 Q Is that true?

7 A Okay. So, just rephrase the question.

8 Q Yeah.

9 A I'm not sure what you're asking me.

10 Q Officer, you do videotape training; is that correct?

11 A Sometimes, yes.

12 Q And the purpose of the videotaped training is to put officers
13 in stressful situations; is that correct?

14 A Correct.

15 Q And then after you put them in -- What types of stressful
16 situations do you put them in?

17 A Well, we could -- we could give them -- Mostly the -- the --
18 the videotaping that you talk about is we give them, like, a -- we
19 -- we'll give them a use of force scenario, like a -- We'll give
20 them, like, a harder response, a -- a chaotic bar fight. And we
21 just create as much chaos as possible. And then we have them
22 handle the call. And then what we'll do is afterwards we'll have
23 them kind of either explain it or -- or write a report as to what
24 took place at the time.

25 Q And is it true that the report can oftentimes be very

1 inconsistent with the actual video of what happened?

2 A I would say sometimes.

3 MR. KOUFMAN: Just -- Could I just some questions about using
4 the two shots in this case?

5 THE COURT: Yes, mm-hmm.

6 BY MR. KOUFMAN:

7 Q Officer, before you testified that before a police officer
8 uses deadly force they have to go through a certain assessment as
9 to whether the force is justified; is that correct?

10 A Correct.

11 Q And basically they have to assess whether or not the force
12 will be sufficient to stop the threat; is that correct?

13 A Correct.

14 Q And his assessment must be reasonable and based upon
15 objective facts; is that correct?

16 A Yes, sir.

17 Q Okay. And you train officers to make these kinds of
18 assessments in very fast-moving situations; is that correct?

19 A Correct.

20 Q And they constantly -- you train them to constantly reassess
21 the circumstances in the situation; is that correct?

22 A Correct.

23 Q So, when an officer is using a gun and -- He must make an --
24 that assessment as to whether lethal force is justified each time
25 he pulls the trigger; is that correct?

1 A So, are you asking me if when he pulls the trigger he has to
2 stop and reassess before he pulls the trigger again, then stop and
3 reassess before he pulls --

4 Q Well, the first time --

5 A -- the trigger again?

6 Q -- he pulls the trigger, he has to assess to determine
7 whether or not lethal force is justified, correct?

8 A When you -- When you use your firearm, it's -- We shoot -- We
9 teach officers to shoot -- What -- Whatever action made them
10 shoot, when that action stops, that's when they're trained to stop
11 shooting. So, we don't shoot -- we don't teach officers to shoot
12 a round and analyze if there's still a deadly force threat, and
13 then another round. We shoot to stop the threat.

14 Q Right.

15 A So if the threat is ongoing -- This is happening within
16 seconds. I -- I've never ran a drill where I had the officer fire
17 one round and then take a couple seconds to decide if he hit the
18 target. Generally speaking, with a handgun one round is not
19 usually s -- enough to stop the threat. So, they're -- they're
20 taught and trained to stop when the threat goes away.

21 Q So they're authorized to shoot to stop the threat, not to
22 shoot to kill; is that --

23 A Cor --

24 Q -- correct?

25 A Correct.

1 MR. KOUFMAN: May I just ask a quick -- a couple of quick
2 questions about suicide-by-cop that he mentioned, if that's okay?

3 THE COURT: Yeah, sure.

4 BY MR. KOUFMAN:

5 Q Officer, you testified about suicide-by-cop; is that correct?

6 A Yes, sir.

7 Q And in -- Let me ask you this: are prior suicide attempts
8 relevant to determine whether a person engaged in a suicide-by-cop
9 scenario?

10 A I -- I'm not sure of the question, sir; I'm sorry.

11 Q If a person has a history of suicide attempts, is that
12 relevant as to whether or not he has been involved in a
13 suicide-by-cop scenario?

14 A I'm -- I'm not sure I can answer that, sir. I'm -- I'm not a
15 psychologist. I -- I'm -- I've been involved in many, many
16 suicide-by-cop scenarios so I can talk about what a suicide-by-cop
17 scenario is and how they play out but I can't get into -- I'm not
18 a psychologist. I'm just a cop. I can't get into the dynamics of
19 why people do stuff.

20 MR. KOUFMAN: Thank you, Judge.

21 THE COURT: Thank you.

22 Thank you very much.

23 THE WITNESS: Thank you, ma'am.

24 THE COURT: Anything further?

25 MR. PASCIOCCO: No, Your Honor. My --

1 THE COURT: Okay.

2 MR. PASCIUCCO: My client was prepared to testify but he was
3 called by the --

4 THE COURT: Okay.

5 MR. PASCIUCCO: -- Commonwealth so we're all --

6 THE COURT: All right.

7 MR. PASCIUCCO: -- set.

8 THE COURT: Thank you.

9 THE WITNESS: Thank you, ma'am.

10 THE COURT: You're excused.

11 THE WITNESS: Thank you, Your Honor. Thank you.

12 [Witness steps down]

13 THE COURT: Okay. So, this concludes this matter. And I
14 want to make sure that everybody is aware of just a couple of
15 things. It's going to take a while for the Court to be able to
16 write a report. I want to remind everyone again, as I said last
17 hearing, what the purpose of an inquest is so that expectations
18 aren't raised with regard to the Court's findings. An inquest is
19 supposed to look into how an individual met their death. It's a
20 fact-finding; it's not a trial. It does not deal with criminal or
21 civil liability, whether somebody should be charged with a crime.

22 And I say this respectfully: it seems clear to me and has
23 throughout this testimony that the District Attorney's Office has
24 a view that this shooting was justified. And so, I have struggled
25 with why we're having an inquest, which is why I asked Lieutenant

1 Bulman the questions that I did on the last date. And I
2 understand Ms. Lynch's response was "for purposes of
3 transparency," which again in the Court's view is not the purpose
4 of an inquest. And why a determination wasn't made by the
5 District Attorney in her authority, I don't know. But we're here
6 now.

7 And the report that the Court makes will be based on facts
8 and the testimony that was heard. But the conclusion as to
9 whether or not Officer Drauschke should be charged with a crime or
10 whether the shooting was justified I do not see as the role of the
11 Court pursuant to the inquest. So, I want to make sure that
12 that's clear.

13 MS. LYNCH: Your Honor, if I might.

14 THE COURT: Yeah.

15 MS. LYNCH: I just would like to clarify for the record. And
16 I thought I had, the last time.

17 THE COURT: Yeah.

18 MS. LYNCH: Which is that when I use the word "transparency"
19 I mean that there is a question as to whether or not a law
20 enforcement agency can look at the evidence that has been gathered
21 and make a determination independently of the facts of the case.

22 THE COURT: Mm-hmm.

23 MS. LYNCH: And the statute allows for an independent
24 process, the Court, --

25 THE COURT: Mm-hmm.

1 MS. LYNCH: -- to make that review.

2 THE COURT: Mm-hmm.

3 MS. LYNCH: And that is the purpose, is for the fact-finding
4 to be done by someone independent, as that was a complaint that
5 the family had had --

6 THE COURT: Sure.

7 MS. LYNCH: -- in the circumstances --

8 THE COURT: And --

9 MS. LYNCH: -- of this case.

10 THE COURT: And --

11 MS. LYNCH: And that's --

12 THE COURT: Sure. And in those cases, Ms. Lynch, my
13 understanding -- and I completely understand that and maybe I
14 didn't say things, myself, correctly -- is that often in these
15 matters the District Attorney will ask another District Attorney's
16 Office or the Attorney General. I'm just concerned about the
17 purpose of the inquest itself and in adhering --

18 MS. LYNCH: Okay.

19 THE COURT: -- to the -- to why an inquest is called --

20 MS. LYNCH: I think --

21 THE COURT: -- and the purpose of that.

22 MS. LYNCH: I think it has to do with the fact that the
23 A.G.'s Office and other District Attorney's Office are also law
24 enforcement agencies.

25 THE COURT: Right. Mm-hmm.

1 MS. LYNCH: And that --

2 THE COURT: Okay. All right. So, again, it'll take the
3 Court a while to prepare the report and submit the report. But I
4 wanted to make sure that I made that clear. I thank everybody for
5 their patience with the Court and their professionalism
6 throughout. Okay? Thank you very much.

7 MR. KOUFMAN: Thank you.

8 MR. PASCIUCCO: Thank you, Your Honor.

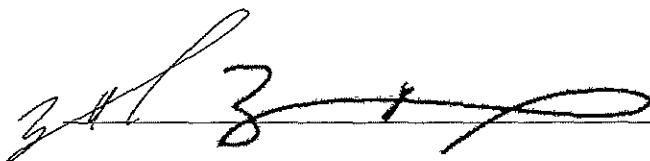
9 [End of Inquest Proceedings at 9:59:27 a.m.]

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October 23, 2019

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