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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.   DISTRICT COURT DEPARTMENT
                                 OF THE TRIAL COURT

****
IN RE: INQUEST INTO THE DEATH *
OF BRENDAN REILLY   *   2227IN000001
****

RE: INQUEST
(ENTIRE TRANSCRIPT IMPOUNDED)
DAY 4
BEFORE THE HONORABLE MICHAEL D. BRENNAN

APPEARANCES:

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Middlesex District Attorney's Office
By: Graham Van Epps, Assistant District Attorney
By: Caitlin Gemmill, Assistant District Attorney
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                                 Concord, Massachusetts
                                 Courtroom 2
                                 February 10, 2023

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APPEARANCES (continued):

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I N D E X

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1              P R O C E E D I N G S

2    (Court called to order.)

3    (10:04 a.m.)

4              THE COURT OFFICER:  Court is now in

5    session.  You may be seated.

6              Please be quiet.

7              THE CLERK:  Your Honor, good morning.

8              Today is Friday, February 10, 2023.

9              Entering the sealed portion of the

10   record.  This is 2227IN01, Inquest into the Death

11   of Brendan Reilly.

12             THE COURT:  All right.

13             Parties identify themselves for the

14   record, please.

15             MR. VAN EPPS:  Good morning, your Honor.

16   Graham Van Epps.

17             I'm sorry I delayed everything this

18   morning.

19             THE COURT:  That's not a problem.

20             MS. GEMMILL:  Good morning, your Honor.

21             Caitlin Gemmill, on behalf of the

22   Commonwealth as well.

23             MR. MCDONALD:  Good morning, your Honor.

24             Alan McDonald on behalf of the Lexington

25   police officers.
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1   MR. HEINEMAN: Good morning, your Honor.

2   Michael Heineman on behalf of the Reilly

3 family.

4   With me is Attorney Jason Kent.

5   THE COURT: All right.

6   Mr. Van Epps, whenever you are ready.

7   MR. VAN EPPS: Yes.

8   THE COURT: Or Ms. Gemmill.

9   MS. GEMMILL: Yes.

10   Good morning, your Honor.

11   Our first witness this morning is going

12 to be Lieutenant David Cahill of the

13 Massachusetts State Police.

14   THE COURT: Okay.

15   MS. GEMMILL: And I would inquire of

16 Mr. Rojas, if I could please have Exhibits 29

17 through 33.

18   THE CLERK: Sir, I am going to ask you to

19 kindly raise your right hand.

20   Do you solemnly swear or affirm that the

21 testimony you will provide the Court today will

22 be the truth so help you God?

23   THE WITNESS: I do.

24   DAVID CAHILL, SWORN

25   THE COURT OFFICER: Have a seat, sir.

1   THE CLERK: Exhibits 29 through 33.

2   MS. GEMMILL: Thank you.

3   THE COURT OFFICER: I gotcha.

4   THE CLERK: Thank you.

5   THE COURT OFFICER: Yep.

6   MS. GEMMILL: Thank you so much.

7   THE COURT OFFICER: My pleasure.

8   MS. GEMMILL: Your Honor, may I proceed?

9   THE COURT: Yes.

10   EXAMINATION

11   BY MS. GEMMILL:

12   Q.   Good morning, sir.

13   A.   Good morning.

14   Q.   Can you please tell us your first and last

15   name and spell them both for the Court.

16   A.   Yes.

17   David Cahill, D-A-V-I-D C-A-H-I-L-L.

18   Q.   Where are you currently employed?

19   A.   I am a detective lieutenant with the

20   Massachusetts State Police.

21   Q.   And you said you are a detective lieutenant.

22   Does that refer to your rank?

23   A.   Yes, it is.

24   Q.   How long have you held the rank of detective

25   lieutenant with the Massachusetts State Police?

1   A.   Four and a half years.

2   Q.   Okay.   Is there a specific section that you

3   are assigned to within the Massachusetts State

4   Police?

5   A.   I am.

6   Q.   What section is that?

7   A.   I am the unit commander for the Firearms

8   Identification Section, or Blastics Section, for

9   the Massachusetts State Police.

10   Q.   How long have you held the role of commander

11   of that section?

12   A.   Four and a half years.

13   Q.   What was your position prior to becoming the

14   commander of the firearms section?

15   A.   I was the lieutenant, and I was the executive

16   officer.

17   Q.   Okay.   Also for the Massachusetts State

18   Police?

19   A.   Yes.

20   Q.   How long have you worked for the Massachusetts

21   State Police in total?

22   A.   Thirty-six years.

23   Q.   Sir, can you describe for us what your

24   current duties and responsibilities are as the

25   commander of the Firearms Unit?

1 A.   Yes.   I am the unit commander for Firearms

2 Identification Section that involves -- where

3 the Massachusetts State Police Crime Lab, we have

4 18 total examiners assigned to the section.

5   We have four different labs across the

6 State of Massachusetts.

7   I'm responsible for the -- I am technical

8 leader for the lab, for the Firearms

9 Identification Section.

10   That means I'm responsible for the

11 policies and procedures that we follow for the

12 Firearms Identification Section.

13 Q.   All right.   As part of your duties and

14 responsibilities, do you personally inspect

15 firearms- and blastics-related evidence?

16 A.   I do.

17 Q.   Can you describe to us what kind of training

18 you have had in the field of firearms

19 identification and blastics?

20 A.   Yes.

21   I've been in the Firearms Identification

22 Section since I've been a trooper.

23   So when you get to the section, the first

24 two years assigned to the section is more of an

25 apprenticeship program.

1   During those two years you work with other

2 qualified examiners, you learn the field of

3 firearms identification, the microscopic

4 examinations.

5   Also during those two years, you are sent

6 out to numerous training opportunities.

7   I've been to the FBI Academy down in

8 Quantico, Virginia, for advanced techniques in

9 firearms identification.

10   I've been to the ATF School for the

11 knifing [sic] system in Largo -- Largo, Florida.

12   I've been to numerous armorers's courses,

13 Smith & Wesson, Colt, Glock, Ruger, Remington.

14   Those classes are -- we understand the

15 care and maintenance of firearms; also the

16 manufacturing processes that have been used to

17 manufacturer those items.

18 Q. And did those specific armorer and training

19 programs help you learn about how any individual

20 model of firearm actually functions?

21 A. Yes.

22   We learned the care and maintenance of

23 that; and, also, what we try to do is we try to

24 get into the factories to see the manufacturing

25 processes used to manufacturer these firearms.

1 Q.   In the course of your career, have you had

2 the opportunity to actually fire any of the

3 weapons that you learned how to examine?

4 A.   Probably in excess of 2,000 firearms.

5 Q.   Okay. Do you have any kind of -- any kind of

6 higher education prior to or during your time as

7 a Trooper?

8 A.   Yes.

9   I have a bachelor's degree from West New

10 England University for the criminal justice.

11   I also have a master's degree in criminal

12 justice from the University of Massachusetts in

13 Lowell.

14 Q.   Do you have any kind of ongoing training to

15 maintain your expertise in the area of firearms?

16 A.   Yes. We have ongoing training at the lab,

17 both internally and externally.

18   I've been to the AFTE conference. What

19 AFTE is, it's the Association of Firearms and

20 Tool Mark Examiners. They have a week-long

21 conference every year.

22   I've been to several of those conferences.

23 Q.   Do you actually participate in the training

24 of other officers in the identification and

25 examination of firearms and ballistic evidence?

1   A.   I do.

2   Q.   What kind of training do you do?

3   A.   Both -- we have certain signoffs for the

4   examiners assigned to the section, so I get them

5   through the training process to get signed off.

6   The first one would be the functionality

7   of firearms. How firearms work.

8   How we examine them, test-fire them, and

9   generate our reports for -- for court purposes.

10   The second signoff would be for the crime

11   scene response.

12   How do we respond to crime scenes? How do

13   we document and collect crime seen or

14   firearms-related evidence at crime scenes.

15   And the third signoff would be for the

16   microscopic examination or firearms

17   identification.

18   I participate in all three of those for

19   our examiners.

20   Q.   Okay. What kind of examination -- or what

21   kind of -- what kind of services does your unit

22   provide when a case comes in?

23   A.   We examine firearms and firearms-related

24   evidence.

25   Q.   Does that sometimes include actually going

1   out to an active scene?

2   A.   Yes.

3   We get -- we could get evidence two ways.

4   One, the submitting agency or the police

5   department can submit the evidence to the lab

6   over the counter.

7   Also, we provide the services, they can

8   call us to the scene, and we can recover the

9   evidence -- or firearm-related evidence from the

10   scene.

11   Q.   All right.   How did you actually become

12   involved in a case?

13   Like, let's say a locate police department

14   requires the assistance of your firearms section.

15   How do you go out there?

16   A.   We have a notification process.

17   The local police department would call the

18   State Police Headquarters or Troop Headquarters

19   of the jurisdiction of that area.

20   Then the duty officer assigned to that

21   headquarters would has -- has a phone list and we

22   have an on-call list, and he would call the

23   Trooper from our section to respond to the scene.

24   Q.   All right.   And then sometimes you're asked

25   to come directly out to a scene and other times

1   you receive evidence that's been brought to you

2   after the fact; is that fair?

3   A.   Yes.

4   Q.   Okay. When you actually go out to the scene

5   to conduct an on-scene response, what kind of

6   activity do you and your team engage in?

7   A.   First, we would get the phone call; then we

8   get the address. We respond to the scene.

9   The first thing I would do at the scene, I

10   would get in touch with the lead investigator,

11   either from the State Police or the local police.

12   I would let them know that we are here and

13   get a brief synopsis of what they are asking us

14   to do.

15   Q.   Okay. And if you actually go out to the

16   scene, what is your role when you are actually

17   out there?

18   A.   Well, I am part -- I'm part of a team.

19   My role there would be to deal with any

20   kind of firearms or firearms-related evidence.

21   Q.   Are there other members of the Massachusetts

22   State Police Crime Lab that would respond to a

23   scene in a situation where your team is

24   requested?

25   A.   Yes, most of the time there are.

1   Q.   Okay. And at what phase?

2   Like, let's say Crime Scene Services come

3   out to photograph or document a scene, what -- at

4   what point are you allowed to take a look through

5   and look at evidence?

6   A.   Usually we would -- my -- well, myself or

7   people from my section would walk through with

8   Crime Scene Services to do a -- an overall

9   walk-through of the scene.

10   Then Crime Scene Services would process

11   the scene with -- for print -- not with -- for

12   prints, photographs, or videotape.

13   We would come in at the very end and

14   collect all of the evidence.

15   Q.   Okay. I'm going to turn your attention now,

16   specifically to February 12th of 2022.

17   Were you working on that day?

18   A.   I was not.

19   Q.   All right. Were you called in to assist with

20   a scene?

21   A.   Yes, I was.

22   Q.   All right. And were you specifically

23   requested to go to a scene in the area of the

24   Hancock Road Rotary in Lexington on that

25   afternoon?

1 A.   I was.

2 Q.   All right. Do you recall who requested your

3 assistance?

4 A.   Again, we got the call through the Troop Duty

5 Office of A Troop.

6   And that would be the Middlesex County --

7 detectives assigned to the Middlesex County

8 District Attorney's Office.

9 Q.   All right. Did you, in fact, go to the area

10 of that rotary in Lexington on the February --

11 February the 12th?

12 A.   I did.

13 Q.   Did anyone from your team go with you?

14 A.   Yes.

15   A Trooper David Hughes from my office was

16 also there.

17 Q.   David Hughes?

18 A.   Yes.

19 Q.   Okay. When you arrived, can you give us a

20 general description of what was going on?

21 A.   Yes.

22   It was a residential area in the Town of

23 Lexington. There was a small rotary in that

24 area.

25   At that time there were numerous --

1   numerous police and first responders present at

2   the scene.

3   Q.   When you arrived, do you have a sense of what

4   time of day it was?

5   A.   It was approximately three o'clock in the

6   afternoon.

7   Q.   All right. So, at that point in February,

8   did you still have light, like natural light?

9   A.   Yes.

10 Q.   All right. Do you remember anything about

11 what the weather was like that day?

12 A.   I believe it was fairly clear and fairly mild

13 for the time of year.

14 Q.   All right. Was Crime Scene Services on scene

15 as well?

16 A.   They were.

17 Q.   All right. So what did you do -- what did

18 you do first once you got to the area of the

19 rotary?

20 A.   Let the detectives from Middlesex District

21 Attorney's Office know I was present.

22   And I tried to meet up with the other

23 officers from the Crime Scene Services section.

24 Q.   Okay. Did you get a quick briefing about

25 what had -- what had occurred in that rotary

1   early in the day?

2   A.   I did.

3   Q.   Okay. And what was your understanding, just

4   briefly, of what had happened?

5   A.   That it was a police officer-involved

6   shooting.

7   Q.   Okay. And what was your role going to be on

8   that scene?

9   A.   To document and recover and firearms or

10   firearms-related evidence.

11   Q.   Okay. Did you encounter Crime Scene Services

12   as well? I think you mentioned they were there.

13   A.   I did, yes.

14   Q.   And did you go around with Crime Scene

15   Services to tour the scene, so to speak?

16   A.   Yes, we did a basic walk-through of the scene

17   prior to them starting their documentation.

18   Q.   Did -- can you explain to us what your

19   initial observations were walking through the

20   scene?

21   A.   There was firearms-related evidence on the

22   ground.

23   There were discharged shot cells.

24   There were -- the shot cell were bean bag

25   projectiles.

1   There were some discharged-- 9mm Luger

2 caliber discharged cartridge casings on the -- on

3 the ground.

4 Q.   Okay.   Did you participate in documenting the

5 location of those different casings?

6 A.   Yes, in the fact I pointed out what I wanted

7 the Crime Scene Services section to document.

8 Q.   All right.

9   Is there any particular way that Crime

10 Scene Services documents the location of the

11 ballistics evidence that you see besides

12 photographing?

13 A.   Yes.

14   They put plastic placards down on the

15 ground with numbers on them so we can number the

16 items for our reports.

17 Q.   All right.   And you were able look back at

18 those numbered placards later to, you know,

19 remind yourself of where different pieces of

20 item -- different items were located?

21 A.   Yes.

22   As we recover the evidence, we document

23 the time, location, and the Crime Scene Services

24 placard number when we recover it.

25 Q.   In addition to different kinds of cartridge

1   casings and shells, did you also observe any

2   spent projectiles of any kind?

3   A.   In the fact that there were spent bean bag

4   rounds from the less-lethal shotgun.

5   Q.   All right. Are you familiar with the bean

6   bag -- familiar with bean bag rounds?

7   A.   I am.

8   Q.   Okay. I'll get into that in a little bit.

9   What is your responsibility with the scene

10   after you've done a walk-through and had crime

11   scene document the location of each piece of

12   ballistic evidence with a placard?

13   A.   We physically recover the evidence.

14   Q.   Okay. And what does that -- what does that

15   entail?

16   A.   We walk around, and we both document it on

17   paper, and we have individual little -- small

18   manila envelopes.

19   Once we recover the evidence, we'll place

20   it in the manila envelope.

21   And, again, we'll document the date,

22   location, and time of recovery.

23   Q.   All right. Do you wear gloves for that

24   process?

25   A.   We do.

1   Q.   All right. And once you've recover -- once

2   you recover that evidence, where does it go?

3   A.   We return to the State Police Crime Lab in

4   Maynard and enter it into our evidence tracking

5   system or our LIMS system.

6   Q.   Detective lieutenant Cahill, did you prepare

7   a report about your observations on the scene

8   that day?

9   A.   I did.

10   Q.   Okay. And later you also prepared an

11   identification section report from your analysis

12   of those items; is that correct?

13   A.   I did.

14   Q.   Okay. So first I'm going to show you a

15   document and ask you if this is your scene

16   report?

17   If you can just flip through to verify

18   that this is your scene report from that day.

19   A.   It is.

20   MS. GEMMILL: Okay. I ask that this be

21   marked as the next exhibit.

22   THE CLERK: Sixty-one, your Honor.

23   THE COURT: Exhibit 61.

24   (Exhibit No. 61, Scene report, received

25   into evidence.)

1 BY MS. GEMMILL:

2 Q.   Okay.   And Lieutenant Cahill, I'm going to

3 give you another copy of Exhibit 61 for you to

4 reference -- for to refer to, okay?

5 A.   Yes.

6 Q.   So this scene report refers to Lab

7 No. 22-03176; is that correct?

8 A.   Yes, it is.

9 Q.   And can you tell us the -- the date of your

10 report in this case?

11 A.   June 7, 2022.

12 Q.   And fair to say you prepared an -- an earlier

13 report but there was a minor correction that you

14 made later on; is that correct?

15 A.   That is correct.

16 Q.   Can you just tell us the nature of the

17 correction that was made?

18 A.   It was an administrative correction due to

19 the listing of the evidence from the -- recovered

20 from the Medical Examiner's Office.

21 Q.   All right.   So, in addition to items that

22 were recovered on scene in the area of the

23 rotary, did you also retrieve items of evidence

24 from the Office of the Chief Medical Examiner?

25 A.   I did.

1 Q.   All right. And what were those items?

2 A.   There were four copper jackets for spent

3 projectiles and one bean bag round.

4 Q.   Okay. So you were able to recover four

5 9mm-spent projectiles and one bean bag -- spent

6 bean bag projectile from the Office of the Chief

7 Medical Examiner, correct?

8 A.   I was.

9 Q.   Okay. While you were on scene, did you

10 receive any weapons --

11 A.   I did.

12 Q.   -- for examination?

13 A.   Yes.

14 Q.   Okay. What was the first weapon that you

15 received?

16 A.   From the Lexington Police Department, I

17 received a -- a Glock Model 17 Gen5

18 semi-automatic pistol.

19 Q.   All right. A semi-automatic pistol?

20 A.   Yes.

21 Q.   All right. What was your understanding about

22 that pistol, if anything?

23 A.   That was the firearm that the officer used,

24 had discharged at the scene.

25 Q.   Okay. Did you actually take that firearm and

1 take it back to your lab?

2 A. I did.

3 Q. What is the process that you go through to

4 recover -- to recover that weapon?

5 A. When we recover it, we make note of make,

6 model, serial number of the weapon.

7   We will unload it.

8   We'll denote whether the weapon was loaded

9 or unloaded.

10   If it had ammunition, number of live

11 rounds in the weapon itself.

12   Also, if the officer had additional

13 ammunition on his person, we'd check that also.

14 Q. All right. And, in this particular case, did

15 you list that firearm as Item 2-1 on your scene

16 report?

17 A. It is.

18 Q. Okay. Now, did that -- did that Glock pistol

19 have any kind of magazine associated with it?

20 A. It did. It had one magazine inside the

21 weapon itself.

22 Q. All right. So when you received that

23 firearm, it still had a magazine loaded into it?

24 A. It did.

25 Q. Okay. Was there any ammunition recovered in

1   conjunction with that pistol?

2   A.   Yes, there was.

3   Q.   And where was the ammunition located?

4   A.   There was one live cartridge in the chamber

5   of the weapon and 13 live cartridges in the

6   magazine of the weapon.

7   Q.   All right.   And we are going to get into the

8   specifics of that weapon a little bit later in

9   your testimony.

10   But, so the Court is aware now, do you

11 know what the capacity of the magazine for that

12 pistol was?

13 A.   Yes.

14 Q.   How many total rounds can that pistol hold?

15 A.   Seventeen live rounds in the magazine and one

16 in the chamber, so a total of 18 live cartridges.

17 Q.   Okay.   And you recovered 13 rounds from the

18 magazine and one round from the chamber; is that

19 correct?

20 A.   Yes.

21 Q.   So the total capacity for the firearm is

22 18 rounds, including the one in the chamber, and

23 you recovered 14 rounds?

24 A.   That is correct.

25 Q.   Okay.   Were there any other weapons on scene

1   that you took back to your lab?

2   A.   No, there were not.

3   Q.   Okay.   Were there any other weapons on scene

4   that you were made aware of?

5   A.   Yes, I was.

6   Q.   What was that weapon?

7   A.   There was a Remington Model 870 less-lethal

8   pump-action shotgun.

9   Q.   Did you actually take a look at that

10   Remington shotgun?

11   A.   I did.

12   Q.   All right.   And who -- who had it?

13   A.   The Lexington Police Department.

14   Q.   Okay.   What did you observe about that

15   shotgun at the time you took a look at it?

16   A.   Just the make and model and that it had

17   stamped on it, "less-lethal."

18   Q.   All right.   Are you familiar with that

19   Remington model shotgun, less-than-lethal

20   shotgun?

21   A.   I am.

22   Q.   And what kind of familiarity do you have with

23   that shotgun?

24   A.   It is -- it's a common less-than-lethal

25   weapon system that a lot of peop -- police

1   departments use.

2   Q.   Are there ever situations -- in your

3   experience, have you ever received a

4   less-than-lethal shotgun to actually analyze back

5   at

6   your lab?

7   A.   Yes, I have.

8   Q.   And under what conditions or circumstances

9   have you been asked to examine a less-than-lethal

10   shotgun at the lab?

11   A.   If there was a malfunction in the operating

12   of the firearm -- that shotgun at the scene.

13   Q.   Okay.   So in situations where there are some

14   concern that the shotgun itself may not have

15   functioned properly, you have taken it to inspect

16   it and find out whether it was working; is that

17   fair?

18   A.   Yes.

19   Q.   Okay.   So in -- in the circumstances known to

20   you, was there any concern that the shotgun

21   itself had malfunctioned on scene?

22   A.   There was not.

23   Q.   Okay.   You mentioned seeing a series of

24   shotgun casings -- or shotgun shells, if I'm

25   saying that correctly?

1   A.   Yes.

2   Q.   Throughout the scene; is that correct?

3   A.   That is correct.

4   Q.   Those casings, did you recognize them as

5   being associated with this less-than-lethal

6   shotgun?

7   A.   Yes.

8   Q.   Okay. And we'll talk about that further in

9   just a little bit, too.

10   Were there any other weapons that you

11   inspected as part of your on-scene activities?

12   A.   I did?

13   Q.   What other weapons did you look at?

14   A.   There were other Lexington police officers at

15   the scene, so I -- we checked or made note of

16   make, model, serial number of those weapons and

17   what their ammunition -- what the -- what

18   ammunition it carried and how many rounds it

19   carried.

20   Q.   Okay. And you only took the one Luger

21   caliber Glock 17 in Item-2-1, correct?

22   A.   Yes.

23   Q.   And was that because that was the only

24   firearm that you were informed had been

25   discharged on scene?

1 A.   That is correct.

2 Q.   Okay. And would one of your responsibilities

3 back at the lab be to ensure that that is the gun

4 that was fired --

5 A.   That is part of our --

6 Q.   -- so to speak?

7 A.   -- examination process, yes.

8 Q.   Okay.

9   Okay. So you mentioned that you

10 recovered -- that you noticed sev -- several

11 different kinds of cartridge casings.

12   And I believe one of the kinds of

13 cartridge casings you observed were 9mm cartridge

14 casings; is that correct?

15 A.   Yes, it is.

16 Q.   Okay. So let's talk about those first.

17   In looking at your scene report, are those

18 the items -- can you tell us which items are the

19 discharged cartridge casings?

20 A.   Yes, Items 2-5, 2-6, 2-7, and 2-8.

21 Q.   Okay. Can you describe the general location

22 of those casings as you found them on scene?

23 A.   They were probably a little north of the

24 rotary on the right-hand side on the grass.

25 Q.   Okay. How close were they to each other?

1   A.   They are between 12 and 18 inches.

2   Q.   Okay. Were you able to collect those

3   casings?

4   A.   I was.

5   Q.   Okay. And I'm going to show you what has

6   been previously introduced as Exhibit 31.

7   And if you could just flip through

8   Exhibit 31 and tell us if these are photographs

9   of the 9mm shell casings on scene with their

10   placards associated with them?

11   A.   They are.

12   Q.   Okay. Thank you.

13   And those four 9mm shell casings, are

14   those the only 9mm casings you found on scene?

15   A.   Yes.

16   Q.   All right. Now, you also noticed discharged

17   shot shells.

18   Can you tell us in your scene report which

19   items correspond to the discharged shotgun

20   case -- cartridge casings?

21   A.   Yes.

22   Items 2-10, 2-11, 2-12, 2-13, 2-16, 2-17,

23   2-18 and 2-19.

24   Q.   And so that -- if I count correctly, that is

25   eight total discharged shotgun shell casings,

1 correct?

2 A.   Yes.

3 Q.   Okay.

4   THE COURT: Can I just have those numbers

5 once -- one more time?

6   It's 2-10, 2-11, 2-12...

7   THE WITNESS: 2-13, 2-16, 2-17, 2-18,

8 2-19.

9   THE COURT: Thank you.

10 BY MS. GEMMILL:

11 Q.   Were you familiar with the kind of weapon

12 that those discharged cartridge casings come

13 from?

14 A.   Yes.

15 Q.   And what kind of weapon is that?

16 A.   It's a Remington Model 870 pump-action

17 shotgun.

18 Q.   All right. I'm going to show you some

19 additional photographs in just a second.

20   But did you also locate any spent

21 projectiles on scene?

22 A.   I did.

23 Q.   And what kind of intersect projectiles did

24 you locate on scene?

25 A.   There were the bean bag projectiles from

1 those discharged shot shells.

2 Q. Okay. Can you tell us which numbers in your

3 scene report correspond to the spent bean bag

4 projectiles that you found on scene?

5 A. Yes. 2-9, 2-14, 2-15, 2-20, 2-21, 2-22,

6 2-23.

7 Q. Okay. And, by my count, that's a total of

8 seven discharged bean bag projectiles, correct?

9 A. Yes.

10 Q. Or spent bean bag projectiles?

11 A. Yes.

12 Q. But we had eight casings, correct?

13 A. Correct.

14 Q. Did -- and you -- you mentioned recovering

15 another bean bag projectile from the Office of

16 the Chief Medical Examiner; is that correct?

17 A. Yes.

18 Q. Can you tell us what number in your scene

19 report corresponds to the bean bag projectile

20 recovered from the Office of the Chief Medical

21 Examiner?

22 A. Yes, it would be Item 5-4.

23 Q. Okay. Did you locate any spent 9mm

24 projectiles on scene?

25 A. I did not.

1   Q.   Okay. So Lieutenant Cahill, I am going to

2   show you Exhibit No. 29 and Exhibit No. 30 to

3   start.

4   So I am going to show you Exhibit 29

5   first.

6   If you can just look through this and

7   show -- and tell us if these are photographs of

8   the -- of the spent -- some of the spent bean bag

9   projectiles and the shell casings from the

10   shotgun.

11   A.   Yes, they are.

12   Q.   Okay. And I am going to show you Exhibit 30.

13   And if you can flip through Exhibit 30 and

14   tell us if these are additional photographs of

15   some of those projectiles, bean bag projectiles

16   and shell casings from the shotgun?

17   A.   Yes, they are.

18   Q.   Okay. Thank you.

19   I am going to show you Exhibit 32. And

20   look at the third page of Exhibit 32.

21   Is that Placard 18, another one of the

22   bean bag projectiles?

23   A.   Yes, it is.

24   Q.   And, finally, I am going to show you

25   Exhibit 33.

1   And if you can just flip through that and

2   tell us if you see the -- some of the placards

3   with the bean bag projectiles?

4   A.   Yes, I do.

5   Q.   Okay. Did you have the opportunity to

6   actually examine those bean bag projectiles, the

7   spent bean bags?

8   A.   Yes, I did.

9   Q.   All right. And what are -- how are they

10   composed?

11   A.   They are composed of a Kevlar cotton material

12   with about 40 grams of No. 9 lead shot.

13   Q.   Are you familiar with that kind of bean bag

14   projectile?

15   A.   Yes.

16   Q.   All right. And is that -- what kind of

17   casing do those come out of?

18   A.   Those come out of a -- usually a 12-gauge

19   shot shell.

20   Q.   All right. And is that consistent with the

21   12-gauge shot shells that you recovered on seen?

22   A.   Yes.

23   MS. GEMMILL: One moment.

24   BY MS. GEMMILL:

25   Q.   Did you recover any other kind of evidence

1 from the Office of the Chief Medical Examiner

2 besides the bean bag projectile?

3 A.   I did.

4 Q.   All right. And can you tell us what items

5 you recovered from the Office of the Chief

6 Medical Examiner besides the bean bag?

7 A.   Yes.

8   Items 5-1, 5-2, 5-3, and 5-5.

9 Q.   What were those items?

10 A.   Those were copper jacket lead-spent

11 projectiles.

12 Q.   All right. And did you collect those so that

13 you could do further forensic analysis on them?

14 A.   Yes, I received them at the ME's office, and

15 I brought them back to the lab. And then again,

16 I entered them into our LIMS system.

17 Q.   Okay. And fair to say that the items that

18 are recovered from the Office of the Chief

19 Medical Examiner were in conjunction with the

20 autopsy of Brendan Reilly; is that correct?

21 A.   Yes.

22 Q.   Okay. So I'm going to turn you now to your

23 forensic analysis that you conducted in this

24 case.

25   Were you able to actually conduct forensic

1   analysis on some of the items that you received

2   here?

3   A.   I did.

4   Q.   All right. Did you repair -- prepare a

5   report in conjunction with that analysis?

6   A.   I did.

7   Q.   Okay. And I am going to show you a document

8   and ask you if this is your Firearms

9   Identification Section report prepared in

10   conjunction with this.

11   A.   (No audible response.)

12   Q.   Is the document I've just handed you your

13   Firearms Identification Section report dated

14   June 7, 2022?

15   A.   That is correct.

16   Q.   Okay. And fair to say that this is also a

17   corrected report, correct?

18   A.   It is.

19   Q.   And is that due to the administrative

20   correction that you mentioned earlier?

21   A.   Yes.

22   MS. GEMMILL: I'd ask that this be marked

23   as our next exhibit.

24   THE CLERK: Sixty-two, your Honor.

25   THE COURT: Exhibit 62.

1   (Exhibit No. 62, Firearms Identification

2   Section report dated June 7, 2022, received into

3   evidence.)

4   MS. GEMMILL: Thank you.

5   BY MS. GEMMILL:

6   Q.   Lieutenant Cahill, I'm going to hand to you a

7   copy of Exhibit 62 for your reference.

8   Okay. So starting with Item 2-1, the

9   firearm that you recovered from the scene.

10   Were you to conduct an examination of that

11   firearm?

12   A.   I was.

13   Q.   What does your examination of a firearm

14   entail?

15   A.   It is taken to an examination room. We

16   document make, model, serial number of the

17   weapon.

18   We measure the barrelling of the weapon.

19   We measure the trigger pull of the weapon. The

20   trigger pull is how much pressure it needs -- the

21   weapon needs to take to pull the trigger.

22   We also measure or count the number of

23   lanes and grooves in the barrel itself.

24   Q.   Okay. Were you able to confirm the identity

25   of that pistol through your examination of it?

1   A.   I was.

2   Q.   And what did you confirm that pistol to be?

3   A.   That it was a 9mm caliber Glock Model 17 Gen5

4   with the Serial No. of BGTS816.

5   Q.   Okay. Were you able to conduct a test-fire

6   of that weapon?

7   A.   I did.

8   Q.   What was the result of your test-fire?

9   A.   I took two of the recovered lab cartridges

10   from that weapon, brought them into a test-fire

11   room, test-fired the weapon. No malfunctions.

12   Q.   All right. So, ultimately, in your training

13   and experience you were able to determine that

14   this was a working firearm with no malfunctions?

15   A.   That is correct.

16   Q.   Did it have any kind of issue?

17   A.   It did not.

18   Q.   Okay. The Glock 17, is that a weapon that

19   you have encountered before in the course of your

20   employment?

21   A.   Yes, I have.

22   Q.   And do you see that weapon frequently?

23   A.   It is a common off -- police officer-issued

24   weapon.

25   Q.   All right. You also received ammunition in

1 connection with this firearm that you recovered

2 as well, correct?

3 A. That is correct.

4 Q. And that ammunition is described in Items 2-2

5 and 2-4; is that correct?

6 A. That is correct.

7 Q. And fair to say just for clarity, the item

8 numbers between your scene report and your

9 Firearms Identification Section report are the

10 same; is that correct?

11 A. That is correct.

12 Q. Okay. Were you able to examine the

13 ammunition?

14 A. I did.

15 Q. All right. And the -- were you able to

16 determine anything about that ammunition?

17 A. As part of the examination we make note of

18 what we call the headstamp.

19   And what the headstamp is, it's the

20 manufacturer's stamp on the weapon. So it gives

21 the caliber and the manufacturer name.

22 Q. Okay. And what did you conclude about the

23 ammunition recovered in 2-2 and 2-4?

24 A. That they were all FC, which is Federal

25 Cartridge Corporation, 9mm Luger caliber live

1 cartridges.

2 Q.   Okay.   Are they all the same -- all the same

3 kind of ammunition?

4 A.   All the same make, model.

5 Q.   All right.   How can you tell from your

6 inspection of an item of ammunition that it's

7 live?

8 A.   But looking at the ammunition, you can see

9 three of the four components.

10   Usually -- ammunition consists of four

11 components: There's the projectile on top;

12 there's the casing itself; there's the primer on

13 the bottom of the cartridge; and there's the

14 gunpowder inside the cartridge.

15 Q.   Okay.   When a weapon is actually fired,

16 how -- how does that process work?

17 A.   Depending on the weapon system, you pull the

18 trigger, the hammer falls or the striker falls,

19 it strikes the firing pin.

20   Inside the firing pin is an explosive

21 compound.

22   Due to the shock of the firing pin hitting

23 it, it ignites or sets off that explosive

24 compound.

25   There are usually what are call flash

1   holes in the bottom of that cartridge case.

2   There is a flash in the primer, it ignites the

3   powder, the powder generates pressure and the

4   pressure does two things.

5   One, it forces the projectile down the

6   barrel.

7   In a semi-automatic pistol, it operates

8   the weapon system itself.

9   Q.   Okay.   And then the bullet fires essentially,

10   right?

11   A.   Yeah.

12   The bullet leaves the barrel and then

13   the -- then the gases come out from the -- the

14   burned powder.

15   Q.   Okay.   Are you familiar with the maximum

16   travel distance of a projectile fired from a

17   Glock 17 semi-automatic pistol?

18   A.   It can -- I know what distance it can travel.

19   Q.   What distance can it travel?

20   A.   Unim -- unimpeded, probably a mile.

21   Q.   A mile?

22   A.   Yeah.

23   Q.   Okay.   Now, you didn't actually have the

24   Remington model less-than-lethal shotgun back at

25   your lab, but you did tell us that you are

1 familiar with that weapon, correct?

2 A.   I am.

3 Q.   Do you have any -- any ballpark familiarity

4 with how far the maximum range of that shotgun

5 is?

6 A.   Usually 25 yards or 75 feet, with that type

7 of ammunition.

8 Q.   Okay. So now I want to turn you to the

9 9mm discharged cartridge casings that you located

10 on scene.

11   Those are Items 2-5, 2-6, 2-7, and 2-8,

12 correct?

13   Try page 1. Sorry.

14 A.   Oh.

15   Yes.

16 Q.   All right. Were you able to examine those

17 cartridge casings?

18 A.   I was.

19 Q.   Okay. What information are you looking for

20 in examining those cartridges?

21 A.   A basic examination we are making note of the

22 manufacturer or the headstamp and -- the docing

23 of that -- the caliber, manufacturer.

24   And then -- then we will microscopically

25 examine it after that.

1 Q.   Okay.   What are you looking for in a

2 microscopic examination of a cartridge casing?

3 A.   We are looking for the individual marks left

4 behind during the firing process from the firearm

5 to the discharged cartridge casings.

6 Q.   Are the marks that are left behind by any

7 particular firearm unique to that firearm?

8 A.   Yes.

9 Q.   Okay.   Were you able to make any comparison

10 between the discharged cartridge casings in Items

11 2-2, 2-6, 2-7, and 2-8?

12 A.   I was.

13 Q.   And what conclusions could you reach about

14 those cartridges?

15 A.   One, they were all fired by the same weapon.

16 Q.   All right.   Were you able to make a

17 compare -- and that was based on your microscopic

18 examination of them?

19 A.   That is correct.

20 Q.   All right.   And you also were able to confirm

21 that they were 9mm caliber cartridges, correct?

22 A.   Yes.

23 Q.   Okay.   Were you able to draw any conclusions

24 between these cartridge casings and the firearm

25 that you were -- that you examined in Item 2-1?

1   A.   I did.

2   Q.   What was the conclusion that you draw about

3   the relationship between those cartridges and

4   that firearm?

5   A.   I compared the test-fires from the firearm to

6   the recovered 9mm Luger cartridge casings from

7   the scene and made the determination that the --

8   the four casings were fired by the recovered

9   Glock semi- -- semi-automatic pistol.

10 Q.   Okay.   So the cartridge casings on scene were

11 fired by that 9mm Luger caliber Glock recovered

12 from the Lexington Police?

13 A.   Yes.

14 Q.   Okay.   Were you able to exam the spent

15 projectiles that you recovered from the Office of

16 the Chief Medical Examiner in Items 5-1, 5-2,

17 5-3, and 5-5 --

18 A.   I did.

19 Q.   -- those 9mms?

20 A.   I did.

21 Q.   What does your examination of those spent

22 projectiles involve?

23 A.   We take them back to the lab; do our physical

24 examination, which is -- encompasses -- we will

25 weigh them.

1   We will measure the diameter of the

2 projectiles.

3   We will look at the rifling on the

4 projectiles.

5   So we will make note of all those

6 observations and measurements.

7 Q. Okay. Were you able to determine what

8 caliber those spent projectiles were?

9 A. I did.

10 Q. What caliber were they?

11 A. 38/9mm caliber class projectiles.

12 Q. Okay. Were you able to draw any conclusions

13 by comparing those spent projectiles to each

14 other?

15 A. I did.

16   I microscopically compared the projectiles

17 to each other.

18 Q. And what did you conclude about them?

19 A. That all four of these 9mm projects [sic]

20 were fired from the same weapon.

21 Q. All right. Were you able to make any

22 comparison between these spent projectiles and

23 the firearm recovered in Item 2-1?

24 A. I did.

25 Q. And what was your conclusion -- what

1 conclusion did you draw about the relationship

2 between those spent projectiles and the firearm?

3 A.   Again, I test-fired the recovered firearm

4 with the submitted ammunition.

5   I compared the two test-fires from the

6 weapon, one to each other. I was able to

7 identify them to each other.

8   And I compared those to the recovered

9 projectiles because I had to make a determination

10 that all four of the recovered projectiles were

11 fired by the Glock model 17.

12 Q.   Okay. Is there any way that you can tell by

13 looking at an individual spent 9mm projectile,

14 what shell casing it would have been associated

15 with?

16 A.   No.

17 Q.   All right. From looking at the spent

18 projectiles, can you draw any conclusion about

19 how far away the shooter was from where the spent

20 projectiles were ultimately recovered?

21 A.   No.

22 Q.   All right. And you -- so you can't determine

23 anything about the -- the muzzle-to-target

24 distance from looking at the spent projectiles,

25 correct?

1   A.   You can.

2   That's not a process that I -- I do

3   myself.

4   Q.   Okay.   What would that involve?

5   A.   It's -- it's -- you are doing gunshot residue

6   testing.

7   So you are testing the chemical compounds

8   from the firing process; you are talking the

9   clothes, chemically treating the clothes, and you

10   are comparing the test -- the test-fires from

11   that weapon.

12   And you chemically treat the test-fires,

13   and you compare the test-fires chemical treatment

14   clothing to the recovery clothing.

15   Q.   Okay.

16   A.   But it's a process that I do not -- or my

17   section does not perform.

18   Q.   And that process is completely separate from

19   the actual discharge -- excuse me, the actual

20   spent projectiles themselves, correct?

21   A.   Yes.

22   Q.   Okay.   Now, were you able to examine the

23   shotgun, the 12-gauge shotgun cartridge casings?

24   A.   I did.

25   Q.   And what conclusions were you able to draw

1   from those shotgun casings?

2   A.   They are all consistent in manufacturer of

3   12-gauge less-lethal ammunition.

4   Q.   Are you able to tell anything about what

5   weapon those -- like what particular weapon those

6   cartridge casings were fired from?

7   A.   I did not do a microscopic comparison of

8   test-fires from the shotgun to the recovered

9   evidence.

10   Q.   Okay. And was there any particular reason

11   why not?

12   A.   There was no question of what weapon was used

13   at the scene. There was only one shotgun used.

14   It wasn't requested to do any microscopic

15   comparison of that.

16   Q.   Okay. Are you able to make any microscopic

17   or forensic examination of the actual bean bag

18   projectiles themselves to determine whether they

19   came from a particular shotgun?

20   A.   No.

21   Q.   Okay. Can you make any kind of forensic

22   comparison between the discharged bean bag

23   projectiles or the spent bean bag projectiles and

24   any particular discharged 12-gauge casing?

25   A.   I can't tie them back to a particular casing

1   other than saying that they are consistent with

2   that type of ammunition.

3   Q.   Okay. And were the bean bag projectiles that

4   you recovered here consistent with the 12-gauge

5   ammunition -- shell casings that you found on

6   scene?

7   A.   They were.

8   Q.   Okay. And the eighth bean bag projectile

9   that was recovered from the Office of the Chief

10   Medical Examiner, that was also in conjunction

11   with the autopsy of Brendan Reilly, correct?

12   A.   That is correct.

13   Q.   And was that bean bag also consistent with

14   the other bean bag projectiles that you found on

15   scene?

16   A.   It was.

17   Q.   Okay. And, again, there's no way for you to

18   tie a particular bean bag projectile to any

19   particular shell casing on scene, correct?

20   A.   That is correct.

21   Q.   You mentioned that you are familiar with the

22   Remington -- to the Remington shotgun.

23   Can you tell the Court how that's

24   typically loaded?

25   A.   Yes. It's a 12-gauge caliber pump-action

1 shotgun.

2   In order to load that, there is a loading

3 port underneath the gun itself.

4   You take the live cartridges and you -- it

5 is a tubular magazine, so you load it in from the

6 bottom, you put the round up into the -- into the

7 magazine.

8   It could have a capacity from four to

9 seven cartridges or shell -- shot shells, so you

10 load them in manually from the bottom.

11 Q.   Okay. And when that shotgun is fired, how is

12 the spent cartridge ejected from the shotgun?

13 A.   Yeah. In order to fire this weapon, you have

14 to, like, unload the ammunition.

15   And to -- and to operate it, it's called a

16 pump action, so there is an action on the front

17 of it that you pull to the rear and push forward.

18   So when you pull to the rear, it strips

19 one large -- one large shot shell from the

20 tubular magazine and when you push it forward, it

21 loads that large shot shell into the chamber of

22 the weapon.

23   Now, it -- it does have a safety on it so

24 you have to disengage the safety.

25   Once you disengage the safety and you've

1 loaded it into the tubular magazine -- from the

2 magazine into the chamber, the weapon's ready to

3 fire.

4 In order to fire the weapon, you just --

5 you pull the trigger.

6 Q. Okay.

7 A. In order to fire the weapon a second time,

8 you need to pull that action to the rear.

9 As you pull that action to the rear, it

10 grabs on to that discharged shot shell and ejects

11 it out to the right of the weapon.

12 So you pull over to the rear; it ejects

13 the discharged shot shell.

14 And then, when you -- to load it a second

15 time, then you push that action to the forward,

16 it strips that next live cartridge from the

17 tubular magazine, loading it into the chamber;

18 the weapon is ready to fire a second time.

19 Q. Does the shot casing that ejects out the back

20 of this weapon, does it always eject in a

21 particular direction?

22 A. In a particular direction, yes.

23 Q. Okay. What direction would that be?

24 A. To the right.

25 Q. Okay. And does it always go an approximate

1   -- approximately the same distance when it's

2   ejected?

3   A.   It does not.

4   Q.   What factors affect how far the cartridge

5   casing would go with -- upon ejection?

6   A.   It would depends on the operator of the

7   weapon, whether -- how -- how hard they pulled

8   that action to the rear.

9   Q.   Okay. So would you be able to draw any

10 conclusion about how far away a shooter of that

11 shotgun was from looking at the location that a

12 cartridge casing landed?

13 A.   No, I would not.

14 Q.   All right. Are there other factors that

15 would affect how far away the shooter is from

16 where the cartridge comes to rest?

17 A.   There are, yes.

18 Q.   What kinds of factors?

19 A.   Depending on how hard he pulls it back is how

20 far it goes out.

21   Also, these are very fluid and, you know,

22 dynamic situations. So a lot of people are

23 coming to the scene, so the physical shot shell

24 could be kicked by a particular person or a

25 vehicle could have, you know, run over it and

1   moved it, also.

2   Q.   All right.   And fair to say that these --

3   these cartridge casings are round; is that

4   correct?

5   A.   Yes.

6   Q.   All right.   And that gives them a little bit

7   of a possibility of rolling?

8   A.   They could, yes.

9   Q.   Lieutenant Cahill, were you able to provide

10   us with a product description for the 12 GA

11   stabilized Triton bean bag ammunition?

12   A.   I was.

13   Q.   Okay.   And I'm just going to show you this.

14   Look at it for us.

15   Now, this is the -- the product

16   description for the 12-gauge shotgun shells.

17   A.   That is correct.

18   Q.   All right.   And is this the same kind of bean

19   bag cartridge that was -- that you recovered on

20   scene in Lexington on the 12th of February?

21   A.   Yes, it is.

22   MS. GEMMILL: All right.   I'd ask that

23   this be marked as the next exhibit.

24   Introducing the next exhibit.

25   THE CLERK: Sixty-three, your Honor.

1   MS. GEMMILL: Thank you.

2   THE COURT: Exhibit 63.

3   (Exhibit No. 63, Product description,

4 received into evidence.)

5 BY MS. GEMMILL:

6 Q. And, Lieutenant, I'm just going to show you

7 Exhibit 63 again quickly.

8   There is a little picture here of the

9 shotgun cartridge, correct?

10 A. That is.

11 Q. All right. And this is the unfired

12 cartridge; is that fair?

13 A. Yes.

14 Q. All right. So it still has its little bean

15 bag loaded in?

16 A. Yes.

17 Q. And do you see like a red color at the top of

18 this?

19 A. Yes.

20 Q. Do you know what that corresponds to?

21 A. It's called wadding.

22   It's a plastic disk that's placed on the

23 top of the -- inside the shot shell on the top.

24 Q. All right. Did you recover any plastic disks

25 like that from the scene, that you recall?

1   A.   I don't recall at the scene.

2   Q.   All right. Was there one in the bean bag

3   projectile recovered from the Office of the Chief

4   Medical Examiner?

5   A.   Yes, there was.

6   Q.   All right. Does that disk usually get

7   ejected out at the same time that the shotgun is

8   being fired?

9   A.   Yes, it is.

10   Q.   Okay. Can you tell anything about -- or can

11   you include anything about the distance from a

12   shooter to the location that a bean bag lands?

13   And, to rephrase that, can you tell how

14   far away a shooter was from a target based on the

15   distance between the discharged cartridge casing

16   and the location that the bean bag projectile

17   ends up?

18   A.   No, you cannot.

19   Q.   All right. And, again, I think you had told

20   us already that you could not match any

21   particular bean bag projectile to any particular

22   shell casing, correct?

23   A.   Yes.

24   Q.   Okay. So to quickly talk about the

25   firearm -- the Glock firearm -- was there

1   anything significant to you on scene concerning

2   the proximity of the discharged 9mm cartridge

3   casings to each other?

4   A.   They were all located between the 12 and

5   18 inches to each other.

6   Q.   What does that -- what does that tell you,

7   based on your training and experience, if

8   anything?

9   A.   It tells me that they were pretty much -- the

10 weapon was discharged at the same location.

11 Q.   Okay. So you could make an inference that

12 whoever's -- whoever's discharging that firearm

13 is in approximately the same spot for each of

14 those shots?

15 A.   Yes.

16 Q.   Okay. Can you make -- can you draw any

17 conclusions about how far away the shooter is

18 from the spot where the cartridge casings land?

19 A.   No.

20 Q.   And why not?

21 A.   It's -- it's too fluid, depending on how the

22 weapon was being held; the angle of the weapon in

23 the person's hand, it could dramatically change

24 the distance of where the weapon, you know, was

25 fired from.

1   Q.   And we talked a little bit about the

2   mechanism of the discharge of a spent casing from

3   the less-than-lethal shotgun.

4   How does the discharge work from a 9mm

5   semi-automatic Glock?

6   A.   Okay.   This weapon's a magazine-fired weapon

7   system.

8   What you do is you have a magazine that

9   holds, in this case, 17 live cartridges.

10   You load that magazine up, put all the

11   live cartridges in; then you insert that magazine

12   into the grip of the weapon.   So now the weapon's

13   loaded.

14   In order to chamber a live round from the

15   magazine into the weapon, you have to pull the

16   top of the weapon back.   That's called the slide.

17   Q.   Okay.

18   A.   So the slide has a very high-tension spring

19   in it.   So you pull that slide to the rear.

20   Once you release that slide, the spring

21   pulls that slide forward.

22   In that process, it strips the first live

23   cartridge off the top of the magazine and loads

24   it into the chamber.

25   So now this weapon is ready to fire.   This

1   particular Glock has no external safety.

2   So once you pull that slide to the rear,

3   load the live cartridge into the chamber, the

4   weapon's ready to fire.

5   In order to fire this weapon, you have

6   to -- you pull the trigger -- it's called a

7   striker-fired weapon.

8   So there is a piece in there that has the

9   firing pin attached to it. The striker's

10   released, the striker strikes the bottom of the

11   cartridge case, that primer we discussed earlier;

12   the explosive compound ignites the powder inside

13   the cartridge case, inside that cartridge case it

14   develops between 20 and 50,000 pounds of pressure

15   in that chamber.

16   The chamber -- that pressure does two

17   things: One, it forces the projectile down the

18   barrel outside the weapon.

19   And the other pressure, it forces that

20   slide to the rear.

21   So it slide -- it pushes that slide to the

22   rear.

23   The slide comes to a stop.

24   Then the spring pressure pulls it forward

25   again.

1   It strips the next live cartridge from the

2 magazine loading it into the chamber. The

3 weapon's ready to fire again.

4   That process happens -- you know, 17 or 18

5 times, depending on how many live rounds were in

6 the weapon.

7   Once the last round is fired, the -- that

8 slide would then lock to the rear and that would

9 be an indication that there's no -- no more any

10 live ammunition in that weapon system.

11 Q.   When a spent casing is ejected from that

12 weapon, what direction does it go?

13 A.   This particular weapon, there are two parts

14 inside that weapon system called an ejector and

15 extractor.

16   They both pull onto the bottom of that

17 cartridge casing. And this weapon ejects that

18 discharged cartridge casing to the right and to

19 the rear.

20 Q.   Do you have a sense of how fast or how far a

21 cartridge would be ejected from that weapon?

22 A.   Semi-automatics are usually 12 to 15 feet;

23 but, depending on the area, you know, whether it

24 hits something -- you know, hits a wall, hits an

25 object, it can stop it.

1   Or like you say, the shot shell, these are

2   round, and they can roll.

3   Q.   Okay. And does the angle that a shooter is

4   holding the gun have any effect on how far the

5   cartridge casing might --

6   A.   It can.

7   Q.   -- travel?

8   A.   Depending on how the weapon is cantered, it

9   determines the distance that that cartridge

10   casing will travel.

11   Q.   Okay. So you are able to infer that the

12   shooter is likely in the same position for these

13   four shots, but you would not be able to

14   determine how close to the spot that these

15   cartridge casings were found, the shooting

16   actually happened?

17   A.   Yes.

18   Q.   Okay. You mentioned that the -- you know, a

19   9mm bullet fired from a semi-automatic pistol

20   like this could travel a mile?

21   A.   Yes.

22   Q.   Are you familiar with the parabolic

23   trajectories of a firearm that's being fired?

24   A.   Yes.

25   Again, depending on how the weapon is

1   held, it could determine the -- how far the

2   projectile could travel.

3   Q.   Okay. Would you expect to see any kind of

4   arcing from, let's say, a target -- let's say

5   somebody fires a gun and hits a target that's

6   15 feet away.

7   Would you expect to see any kind of arcing

8   in that distance?

9   A.   No, I wouldn't.

10   MR. HEINEMAN: Objection.

11   Your Honor, I don't know if we heard

12   qualifications of this witness on that -- this

13   subject matter.

14   THE COURT: If you want to lay a little

15   foundation.

16   I think we did, but...

17   MS. GEMMILL: Sure.

18   BY MS. GEMMILL:

19   Q.   So, in your experience, as -- with firearms,

20   have you ever been trained on the trajectory that

21   bullets take when they are fired from different

22   kinds of weapons?

23   A.   I have.

24   Q.   Okay. And what kind of trajectory does a

25   bullet take from a 9mm semi-automatic pistol like

1   this Glock?

2   A.   Depending how the weapon's held, you know,

3   it's usually a flat -- flat trajectory.

4   Q.   Okay.   All right.   One moment.

5   Okay.   So, in your experience, if a bullet

6   takes -- it's ultimately going to take some kind

7   of arched trajectory; is that fair?

8   A.   A trajectory, yes.

9   Q.   Okay.   And how far would a bullet fired from

10   a -- let's say, it's fired straight from a 9mm

11   gun.

12   How far would that bullet travel before

13   you would expect to see that measurable distance

14   of falling to the earth?

15   A.   Well --

16   THE COURT: We are talking -- we are

17   talking about drop?

18   MS. GEMMILL: Right.

19   BY MS. GEMMILL:

20   Q.   How -- how far would it go before you see

21   drop?

22   A.   Well, the bullet is at its maximum velocity

23   when it leaves the barrel of the weapon.   The

24   second it leaves the barrel of the weapon, the

25   velocity is stopping.

1   So it's -- it's gravity's acting on that

2   projectile the second it leaves the barrel.

3   Q.   Okay.

4   A.   So, depending on how the weapon is cantered,

5   it would depend on how far it would be before it

6   hit -- actually hit the ground.

7   Q.   Okay. But, again, a bullet fired straight

8   could travel up to a mile?

9   A.   Yes, it could.

10 Q.   Okay. Would you expect to see any kind of

11 arcing -- or any kind of are drop or measurable

12 drop in a bullet fired straight from between a

13 target and something 30 feet away?

14 A.   No.

15 Q.   How about between a target and something 10

16 feet away?

17 A.   No.

18 Q.   Okay.

19   THE COURT: Can I ask -- can I just ask a

20 different question?

21   What's the effective range of a 9mm round

22 fired from this weapon?

23   THE WITNESS: As far as leaving the

24 barrel, anywhere from a thousand to 2,000 feet

25 per second.

1   So the effective lethal range is probably

2   a quarter or a half a mile.

3   MS. GEMMILL: Thank you, Detective --

4   excuse me, detective lieutenant, I don't have any

5   further questions for you.

6   THE WITNESS: Thank you.

7   MR. MCDONALD: No questions.

8   THE COURT: Mr. Heineman?

9   MR. HEINEMAN: I do. And I don't know,

10   do you need to -- eleven o'clock, you said you

11   had a witness by Zoom.

12   If you need to break and take that

13   witness, I'm happy to do whatever the Court

14   wants.

15   MR. VAN EPPS: Can we just have a second

16   so I can text the witness?

17   THE COURT: Sure.

18   MR. VAN EPPS: I'm just going to step

19   into the hallway.

20   MS. GEMMILL: I'm just going to return

21   these exhibits to Mr. Rojas while we wait.

22   THE COURT: I think I am going to step

23   off and just grab some water.

24   THE COURT OFFICER: All rise.

25   (10:59 a.m. court in recess.)

1   (11:09 a.m. court resumes.)

2   THE COURT OFFICER: You may be seated.

3   Court is back in session.

4   THE COURT: Our Zoom doesn't want to

5   work.

6   MR. MCDONALD: Maybe you guys didn't pay

7   the bill for the Internet --

8   THE COURT: It's a distinct -- it's a

9   distinct the possibility. I think Carlos took

10   that home.

11   THE CLERK: I lost my car

12   (indiscernible).

13   MR. VAN EPPS: We'll figure it out.

14   MR. HEINEMAN: Thank you, your Honor.

15   EXAMINATION

16   BY MR. HEINEMAN:

17   Q.   Lieutenant, first let's start with some

18   terms.

19   Anybody that uses the term

20   "less-than-lethal" when talking about these bean

21   bag rounds is using an incorrect phrase, correct?

22   A.   It can be, yes.

23   Q.   It's "less-lethal"?

24   A.   Yes.

25   Q.   It's not "less-than-lethal," correct?

1   A.   Yes.

2   Q.   Now, with regard to your reports that have

3   been marked, can we trust that all of the placard

4   numbers that are in your report correlate with

5   those photos?

6   A.   Yes.

7   Q.   And, therefore, if we look at all those

8   photos, we will be able to tell accurately where

9   each of the spent cartridges were and other items

10   that are listed in your report, correct?

11   A.   In relation to the placard, yes.

12   Q.   In relation to the placard, okay.

13   You mentioned that part of your job is

14   to -- when you go to a scene like this, to

15   examine the firearms and firearm-related items

16   that were involved, correct?

17   A.   Yes.

18   Q.   Somebody told you there was one shotgun

19   involved, right?

20   A.   Yes.

21   Q.   Who?

22   A.   Lexington -- Lexington Police Department.

23   Q.   Who?

24   A.   I don't recall the -- the officer.

25   Q.   You didn't know there were two?

1   A.   I did not.

2   Q.   And you did not take custody of the

3   weapon -- the shotgun, the Remington 870, that

4   was used, did you?

5   A.   I did not.

6   Q.   You didn't examine that Remington 870 to see

7   how many casings -- how many shells remained in

8   the gun, did you?

9   A.   I did not.

10   Q.   You didn't make note of whether that

11   Remington 870 had any additional ammo clips that

12   could be on it?

13   A.   No.

14   Q.   You made no notes anywhere in any of your

15   reports about anything about these shotguns

16   themselves, did you?

17   A.   No, I did not.

18   Q.   Didn't get the serial numbers?

19   A.   No.

20   Q.   Didn't identify which officer had them?

21   A.   No.

22   Q.   You arrived at the scene at around 3:00 p.m.

23   you said.

24   And you stayed there for some time, I take

25   it, correct?

1   A.   Yes.

2   Q.   Were you there when District Attorney Marian

3   Ryan gave her press conference?

4   A.   I don't recall.

5   Q.   You don't remember standing right and her in

6   camera?

7   A.   Like I said, I don't recall.

8   Q.   Do you remember District Attorney Ryan

9   announcing what had happened to the press?

10   MS. GEMMILL: Objection.

11   THE COURT: What's the relevance of this?

12   MR. HEINEMAN: I suggest to you that --

13   THE COURT: I mean, it's not a trial.

14   So what's the relevance of this for me as

15 the fact finder?

16   MR. HEINEMAN: Because I think it colors

17 what we're going to hear from other witnesses.

18   THE COURT: That he was standing with the

19 DA?

20   MR. HEINEMAN: No.

21   What the DA said.

22   THE COURT: Okay.   But he's saying he

23 doesn't recall being there; he doesn't recall

24 what the DA said, right?

25   MR. HEINEMAN: Well, that's fine.   I'll

1   move on.

2   THE COURT: Okay.

3   BY MR. HEINEMAN:

4   Q. Regard to the evidence at the scene, it was

5   your job to account for all of the evidence at

6   the scene that related to firearms, correct?

7   A. Yes.

8   Q. You didn't identify or locate or mark any red

9   caps that came from the shotgun shells, did you?

10 A. No.

11 Q. And we know that eight shotgun shells were

12 fired that day, correct?

13 A. Yes.

14 Q. So there should be eight red caps somewhere,

15 correct?

16 A. Well, the one was recovered from the autopsy,

17 so it would be seven.

18 Q. There should be seven out there somewhere?

19 A. Yes.

20 Q. None of them were accounted for?

21 A. No.

22 Q. Am I right that good police procedure demands

23 that police officers not move evidence before you

24 get a chance to look at it?

25 A. Yes.

1 Q. Am I right, you never spoke with any of the

2 officers who were involved in the shooting?

3 A. I did not.

4 Q. I want to talk a little bit about the bean

5 bag rounds, if we could.

6   You told us that you are familiar with

7 these sorts of bean bag rounds; is that right?

8 A. Yes.

9 Q. And, in fact, Exhibit 63 is a -- a picture of

10 the Triton 12-gauge stabilized bean bag, right?

11 A. Yes.

12 Q. That's not a Super-Sock® bean bag is it?

13 A. I think Super-Sock® is a manufacturer's

14 designation. I don't believe so.

15 Q. Right.

16   Are you familiar with the fact that there

17 are different types of bean bag rounds?

18 A. Yes.

19 Q. And Super-Sock® is a trademarked -- it's a

20 particular type of bean bag round; is it not?

21 A. It could be, yes.

22 Q. Are you familiar with the way that each of

23 the different manufacturer type bean bag rounds

24 operate?

25 A. Not every one, no.

1   Q.   So you don't know the difference between a

2   bean bag round that is drag stabilized versus

3   tail-dragged stabilized?

4   A.   No.

5   Q.   No one ever taught you that?

6   A.   No.

7   Q.   Are you aware that the trademark Super-Sock®

8   round is effective immediately upon exiting the

9   barrel because it is drag stabilized?

10   A.   I don't know that for a fact, no.

11   Q.   In any of your training, in your firearms

12   training, were you ever trained that bean bag

13   rounds had a minimum safe distance from which

14   they can be used?

15   A.   No.

16   Q.   Were you aware that the Triton bean bag,

17   the type of bean bags that you found here, is a

18   tail-dragged stabilized bean bag, which is not

19   supposed to be used within 18 feet of a person?

20   A.   I did not know that.

21   Q.   Did you know when you were conducting your

22   examination that the Lexington Policy and

23   Procedure Manuals say that the officers are not

24   supposed to use bean bag rounds within 15 feet of

25   a subject?

1   MS. GEMMILL: Objection.

2   THE COURT: What's your objection?

3   MS. GEMMILL: Your Honor, I don't see how

4 the ballistician's testimony about these things

5 is relevant to the Lexington policies and

6 procedures.

7   THE COURT: How's it relevant, whether

8 he's aware of the Lexington policy?

9   MR. HEINEMAN: I'm sorry, I didn't hear

10 you.

11   THE COURT: How is it relevant -- how is

12 his knowledge of the policy relevant?

13   MR. HEINEMAN: His knowledge of the

14 policy isn't relevant; but the policy itself, I'd

15 suggest is relevant.

16   And I'm asking him if he's aware of it.

17 And I'm happy to show it to him, if he's not.

18   THE COURT: Right.

19   But even if he -- I mean, regardless,

20 let's assume that that's what it says. Let's

21 assume -- because at some point I am going to see

22 what it says, he's already said he's not familiar

23 one way or the other.

24   So I'm not sure -- and then, again,

25 cross-examination -- questioning is allowed,

1   cross-examination technically under our -- the

2   rules of the inquest are not. Not in, at least,

3   this fashion.

4   It's supposed to be things that may aid

5   me, not that would impeach him.

6   I already know that he's not familiar

7   with the particular -- this -- I mean,

8   quote-unquote, Super-Sock®.

9   But, just for the record, I'm looking at

10   Exhibit 62 and Exhibit 63 and each of the

11   discharged shotgun shells are Triton 1212Ts,

12   which is the round in Exhibit 63. Nothing is

13   identified as a Super-Sock®.

14   So if there was something else that is

15   trademarked it *is* a Super-Sock®; there may have

16   been reference to things that were a Super-Sock®,

17   but that doesn't seem to be anything other than

18   what people may have talked about as describing

19   it as a Super-Sock®.

20   And it wasn't used in this case nor in

21   this particular incident, at least according to

22   the evidence that I have.

23   MR. HEINEMAN: Your Honor, I'd offer into

24   evidence at this time the Lexington Policy --

25   THE COURT: All right.

1   MR. HEINEMAN: -- 41B -- Use of Force

2   Policy.

3   THE COURT: Any objection?

4   MR. VAN EPPS: No.

5   MS. GEMMILL: No.

6   THE COURT: I am assuming it was coming

7   in any way, so.

8   MR. HEINEMAN: Yes.

9   MR. MCDONALD: Can I get a copy?

10   THE CLERK: Sixty-four, your Honor.

11   THE COURT: I'm sorry, Carlos, 64?

12   THE CLERK: Sixty-four, yes.

13   THE COURT: Thanks.

14   (Exhibit No. 64, Lexington Police

15   Department Use of Force Policy, received into

16   evidence.)

17   BY MR. HEINEMAN:

18   Q.   So I just want to make sure -- and I think

19   you said this already, but I want to make sure

20   that we are clear -- that we are all clear.

21   You don't know the difference between a

22   Triton bean bag round and a Super-Sock®

23   trademarked bean bag round with regard to how

24   they operate?

25   A.   I do not.

1   Q.   All bean bag rounds, to your knowledge, in

2   general operate that when the round exists the

3   barrel, that red cap, or whatever the wadding is,

4   at the front drops away or moves away and allows

5   the contents of the cartridge to be released,

6   correct?

7   A.   Yes.

8   Q.   And if it's a typical shotgun shell as

9   opposed to one of these bean bag shells, there

10   will be some shock that spreads, correct?

11   A.   Or the projectiles, yes.

12   Q.   And if it's a bean bag round, it's the bean

13   bag that comes out of that cartridge and then

14   goes towards its intended target, correct?

15   A.   Yes.

16   Q.   Now, part of your direct examination you said

17   that you made note of the weapons that were at

18   the scene.

19   We've already talked about the shotguns.

20   We've talked about the one 9mm.

21   Did you examine any of the other

22   officers's weapons?

23   A.   Other than just to make -- make, model, and

24   serial number and the ammunition load, no.

25   Q.   And where in your reports, Exhibits 61 and

1   62, are those make, model, serial numbers and

2   ammunition counts listed?

3   A.   They are not in my -- in my report. They are

4   in my field notes.

5   Q.   All right. Your field notes.

6   Are your field notes in addition to your

7   report?

8   A.   Yes.

9   Q.   All right. Do your field notes reference the

10 sources of information?

11   In other words, when you are making your

12 notes, do you say, that I was told this by so and

13 so?

14 A.   My field -- make, model, and serial number

15 and the officer who -- the officer's name who the

16 weapon belonged to.

17 Q.   Do your field notes make reference to who

18 told you there was only one shotgun?

19 A.   No.

20   MR. HEINEMAN: That's all I have, Judge.

21 Thank you.

22   THE COURT: All right.

23   Can I just ask you a couple questions?

24   THE WITNESS: Yes, sir.

25   THE COURT: You indicated that the -- the

1 Remington 870 less-lethal was stamped

2 "less-lethal."

3   THE WITNESS: Yes.

4   THE COURT: Is there anything particular

5 on the furniture of that particular weapon system

6 that would identify it as a less-lethal --

7   THE WITNESS: Yes, your Honor.

8   THE COURT: -- system?

9   Or in particular of the weapons that you

10 identified, was there anything about the

11 furniture on those weapons that would identify it

12 as less-lethal?

13   THE WITNESS: On the shotgun, it's

14 actually stamped on -- in letters, "less-lethal."

15   THE COURT: All right.

16   THE WITNESS: And it's a different color

17 than a normal.

18   THE COURT: Okay. Do you recall the

19 color?

20   THE WITNESS: I don't, your Honor.

21   THE COURT: Okay. But it's something

22 other than --

23   THE WITNESS: It's not -- it wasn't brown

24 --

25   THE COURT: -- black or brown?

1   THE WITNESS: -- or black.   It wasn't

2   black or brown.

3   THE COURT: All right.   And I don't know

4   that it matters one way or the other, but

5   basically your familiarity with the particular

6   weapon system, is it smoothbored or rifled?

7   THE WITNESS: It's smooth bore, your

8   Honor.

9   THE COURT: All right.

10   And I think we already talked about

11 effective range of the G17 or the Glock 17, at

12 least as it relates to a flat trajectory or at

13 least leth -- lethal distance.

14   And, again, I don't know that it makes a

15 difference, just other than my own curiosity, and

16 as far as capacity, but the -- the Triton 1212T,

17 is that a two-and-three-quarter or a three-inch?

18   THE WITNESS: I believe it's a

19 two-and-three-quarter, your Honor.   I think it

20 says it right on the fact sheet there.

21   THE COURT: That's what I was trying to

22 find, and I couldn't find it.

23   With respect to the Glock firearm, you

24 indicated the manner in which it operates as far

25 as the magazine goes into the handle of the gun,

1   it's charged, loaded, and that there are no

2   external safeties to the weapon.

3   THE WITNESS: There's no lever you have

4   to turn on or off to --

5   THE COURT: So there's no -- there's no

6   safety device, but there is a device on the

7   trigger that keeps it --

8   THE WITNESS: Yes, it's a trigger safety.

9   You have to -- so you have to fully

10   engage the trigger for it to discharge.

11   THE COURT: So the firearm will not

12   discharge unless the trigger is pulled or

13   pressed?

14   THE WITNESS: Yes, your Honor.

15   THE COURT: With respect to the

16   less-lethal round or -- that was recorded, the

17   evidence that was recovered from the Medical

18   Examiner's Office, what was recovered was a

19   plastic disk or the wadding --

20   THE WITNESS: Yes, your Honor.

21   THE COURT: -- and a bean bag round?

22   THE WITNESS: Yes, your Honor.

23   THE COURT: Based on -- and if you can't

24   answer this question, please tell me.

25   But, based upon your familiarity with the

1   system, the system is not developed or designed

2   to penetrate, correct?

3   THE WITNESS: Correct, your Honor.

4   THE COURT: If it was fired from less

5   than the manufacturer's safe distance, could it

6   create a penetrating wound?

7   THE WITNESS: Yes, it could, your Honor.

8   THE COURT: All right.

9   And the design of the -- of the system,

10   as I think Mr. Heineman was getting at, is that

11   that wadding, when it's fired, it's coming out at

12   however many feet per second but at some point

13   the wadding is blown off of the front of the --

14   THE WITNESS: Yeah.

15   THE COURT: -- of the sock?

16   THE WITNESS: Yeah, aerodynamics take it

17   and it -- it falls --

18   THE COURT: In a different way?

19   THE WITNESS: Yes. It kind of falls off.

20   THE COURT: And if it was recovered from

21   inside of Mr. Reilly's body, then we know that it

22   was at a distance where it didn't have time for

23   it to dislodge from the stock?

24   THE WITNESS: Yes, your Honor.

25   THE COURT: All right. And you indicated

1   that the maximum distance -- I'm not sure if it's

2   the maximum -- the effective range or the maximum

3   distance -- was it, I think -- was it 25 yards?

4   THE WITNESS: Yes, 25 yards, 75 feet,

5   your Honor.

6   THE COURT: Seventy-5 feet.

7   And that's -- is that -- so what happens

8   to the sock after 25 yards?

9   Is it hitting the ground? Assuming --

10   assuming a level trajectory.

11   THE WITNESS: Yeah, it -- yes, it most

12   likely was -- it's hitting the ground after that,

13   that's...

14   THE COURT: All right. So if the -- if

15   the weapon is pointed in a level direction, as

16   opposed to being pointed up in the air where

17   there would be some parabolic trajectory, if it's

18   pointed level, after 25 yards, given the

19   effective gravity on that sock, you would -- you

20   would assume that it would hit terminal velocity

21   or stop or hit the ground?

22   THE WITNESS: Yes, it would -- its energy

23   would be expended probably at the 75-foot

24   morning.

25   THE COURT: All right. And if the

1 manufacturers and/or the Lexington Police Use

2 of Force Guidelines say not to use the weapon

3 within -- and we are not -- again, we are talking

4 about the less-lethal Remington 870 -- not to use

5 it within 18 feet, is that because -- if you

6 know, is that because the manufacturer might

7 expect a penetrating wound within that distance?

8   THE WITNESS: That could be one of the

9 reasons, your Honor, yes.

10   THE COURT: All right. Okay.

11   Anything on my questions?

12   MR. HEINEMAN: No, your Honor.

13   MR. MCDONALD: No.

14   MS. GEMMILL: Just very quickly.

15   EXAMINATION

16 BY MS. GEMMILL:

17 Q. You told us that you couldn't recall the

18 exact color of the less-lethal shotgun.

19   Do you have a sense of whether or not it's

20 a bright color or a dull color?

21 A. It's usually a bright color so people in

22 stress don't grab the wrong weapon system.

23 Q. Okay. And the little -- the red caps, is

24 that something that you would ordinarily be

25 looking for when you respond to a scene looking

1   for blastics evidence?

2   A.   Not necessarily.

3   Q.   All right. Is there any kind of forensic

4   testing you can do with those red caps back at

5   your lab?

6   A.   Other than maybe possibly gunshot residue,

7   that's it.

8   Q.   Okay.

9   A.   No microscopic examination.

10   MS. GEMMILL: Okay. All right. I don't

11   have anything further, thank you.

12   THE COURT: Thank you.

13   Thank you, sir.

14   THE WITNESS: Thank you, your Honor.

15   (Witness excused.)

16   MR. VAN EPPS: I was going to try one

17   more time to get the Zoom set up.

18   THE COURT: All right. And, I mean, I

19   can help out, too, so let's just try and make

20   it -- and this would be for which witness?

21   MR. VAN EPPS: It's Maddie Lane. She

22   lives in California.

23   THE COURT: Right.

24   So were you having trouble logging in to

25   Zoom or...

1   MR. VAN EPPS: Not logging in, but it

2 seems like the Internet connection out of the

3 building is the hang-p.

4   So it's -- I'll...

5   THE COURT OFFICER: It's been brutal this

6 week anyways. Not here, just everywhere.

7   (Audio visual difficulties -

8 troubleshooting 11:27 a.m. - 11:34 a.m.)

9   MR. VAN EPPS: Ms. Lane, do you hear us

10 all right?

11   THE COURT: You know what you need to do,

12 you need to get on a microphone --

13   MR. VAN EPPS: Oh, yeah, I forget.

14   THE COURT: -- because that's the only

15 way it works with the FTR.

16   MR. VAN EPPS: Ms. Lane, can you hear us

17 all right?

18   THE WITNESS: I can. Yeah, can you hear

19 me?

20   MR. VAN EPPS: Great.

21   I'll -- I'll let the clerk swear you, and

22 then we'll get started.

23   THE WITNESS: Okay. Thank you.

24   THE CLERK: Ma'am, I'm going to ask you

25 to kindly raise your right hand.

1   Do you solemnly swear or affirm that the

2   testimony you will provide the Court today will

3   be the truth so help you God?

4   THE WITNESS: Yes.

5   THE CLERK: Thank you.

6   MADELYN LANE, SWORN

7   MR. VAN EPPS: And just -- if you could

8   just keep your voice up so that we can hear you

9   in the courtroom.

10   THE COURT: Ms. Lane, you can put your

11   arm down.

12   THE WITNESS: Okay. Yes.

13   MR. MCDONALD: Okay. Good.

14   EXAMINATION

15   BY MR. VAN EPPS:

16   Q. Could we have your name and could you spell

17   your full name for the record, please?

18   A. Yeah. My name is Madelyn Lane,

19   M-A-D-E-L-Y-N; last name Lane, L-A-N-E.

20   MR. VAN EPPS: And, Judge, can you hear

21   her all right?

22   THE COURT: I can hear her fine.

23   MR. VAN EPPS: Good. Okay.

24   BY MR. VAN EPPS:

25   Q. And, Ms. Lane, I understand you used to live

1   Lexington but now you live in California; is that

2   right?

3   A.   Correct.

4   Q.   Okay. And back in -- on February 12th of

5   2022, what was your address?

6   A.   6 Victory Garden Way in Lexington,

7   Massachusetts.

8   Q.   Okay. And that, as I understand it, is a

9   house that is right near the -- it abuts Hancock

10   Street and the road to the Diamond Middle School,

11   right, where the rotary is?

12   A.   Correct.

13   Yes, on the corner.

14   Q.   Okay. Were you home that morning or that --

15   or that day around noontime?

16   A.   I was.

17   Yes, I was.

18   Q.   And what were you doing at that time?

19   A.   At that time I was in my family room watching

20   basketball with my dad.

21   Q.   Okay. Your dad was home.

22   Was anybody else in the house as well?

23   A.   Yes.

24   My mom was home as well. She was

25   upstairs. She was not downstairs with us.

1   Q.   Okay. So the room where you were watching

2   basketball, is that on the first floor or the

3   second floor?

4   A.   It is on the first floor.

5   Q.   And is -- where in the house is that, you

6   know, compared to the front, back, the other

7   rooms?

8   A.   Right.

9   So this room is at the very back of the

10   house in the corner. So it's in the back right

11   next to the kitchen.

12   So it has windows for -- in the back

13   facing the backyard; and it's also next to the

14   kitchen, which has a sliding glass door.

15   Q.   Okay. And there's a -- you mention a sliding

16   glass door.

17   If you were to walk out of that glass

18   door, where does it take you and what can you see

19   from there?

20   A.   Right.

21   It takes me to a deck which leads into the

22   backyard.

23   From the deck I can see a few trees, and I

24   can see the Diamond Drive, as well as part of the

25   rotary.

1   Q.   Okay.   Now, as you are watching basketball,

2   did something draw your attention away from the

3   TV around, you know, some time a little after

4   noon?

5   A.   Yes.

6   So while we were watching basketball, we

7   heard something that sounded like some sort of

8   shot and some yelling.

9   So because we don't get a lot of excess

10   noise in the backyard, it was out of the

11   ordinary, so it drew our attention away from the

12   game into the backyard.

13   Q.   Okay.   Can you try to describe the noise you

14   described as shots a second ago?

15   A.   Right.

16   Q.   What did they sound like to you?

17   A.   They sounded slightly more muffled than

18   gunshots.   So at the time I didn't believe they

19   were gunshots.

20   At the time I thought they might have been

21   a TASER.

22   I'm not confident why I -- that was my

23   thought at the time but that was what I believed

24   them to be.

25   So it was -- and I don't recall how many,

1   but it was, from what I thought, slightly more

2   muffled than a gunshot but still loud enough to

3   hear over the TV.

4   Q.   Okay.   Just -- just one second, Ms. Lane.

5   So hearing these, what did you do at that

6   point?

7   A.   Got up from my position in the family room.

8   Walked toward the kitchen, opened the glass door,

9   and walked onto the deck so I could see what was

10   going on outside.

11   Q.   And what do you remember about the weather

12   and the lighting --

13   A.   Yeah -- sorry, I didn't mean to cut you off.

14   Q.   No, it's all right.

15   The weather and the lighting as you went

16   out on the deck, ma'am?

17   A.   Yeah, it was a very clear day for February.

18   It was warmer than normal.

19   There was maybe a little snow on the

20   ground but it was fairly warm and pretty bright.

21   So not a lot of clouds but I could very

22   clearly see everything in the area because it was

23   so bright.

24   Q.   Okay.   Now, the -- where that house is --

25   where your house is, there's -- in the backyard

1   there's some shrubs off to the left; am I right?

2   A.   Correct.

3   Q.   And then if you were to look to the left from

4   your back deck, you'd be looking sort of in the

5   direction of Hancock Street; is that right?

6   A.   Yes.

7   Q.   I didn't hear you.

8   A.   Yes.

9   Q.   Okay. And if you are looking straight back

10 from the deck, you'd essentially be looking into

11 the area where the Diamond School Road basically

12 connects to the rotary; is that right?

13 A.   Yes, that's correct.

14 Q.   Okay. And there's some -- at the property

15 line before -- between where your house and your

16 property is and where the Diamond School is,

17 there are -- there's some foliage there, there's

18 some white pines and other evergreen trees; is

19 that right?

20 A.   Yes.

21 Q.   Okay. Are you able to -- from that vantage

22 point on the deck, are you able to make out the

23 layout of the roads and the buildings and things

24 in the rotary and the roads that connect to it?

25 A.   Yes, fairly clearly.

1   I can also see the outline of buildings.

2 I can see cars. I can see movements, and I can

3 also see people, especially when they walk by.

4   So I can see people, colors, outlines

5 pretty clearly as well in the distance.

6 Q. Okay. And as you are standing on the -- on

7 your back deck, is there another house that is

8 visible across the Diamond Road that also abuts

9 the rotary?

10 A. Yes.

11 Q. And what -- do you know what that house is?

12 A. It's a house -- I think it might be a Jewish

13 preschool. I'm not entirely confident.

14   I think there is a Chabad behind that, but

15 I only see the house right in front of it.

16 Q. Okay. All right. So you told us a minute

17 ago that your attention was drawn by some noises;

18 you went to look.

19   What, if anything, were you able to see

20 as you opened the door and stepped onto the deck?

21 A. Yeah.

22   So I was able to see, again, people --

23 outlines of people, colors. So what I saw -- oh,

24 and a police car as well.

25   *So I was able to see a police car. I was*

1   able to see a few officers -- I want to say

2   four -- as well as an individual in the middle --

3   kind of askew from the center of the rotary in

4   the middle of the road on the ground; and then

5   the other individuals -- police officers -- were

6   standing around him in kind of a circular form.

7   Q.   Okay. And a moment ago -- it's a little hard

8   to hear, but I think you mentioned also seeing a

9   police car.

10 A.   I did.

11 Q.   What do you remember the location of that

12 police car?

13 A.   The police car was on the Diamond Drive, and

14 I believe there was also a police car back toward

15 Burlington Street.

16 Q.   All right. So --

17 A.   I don't recall exactly in what location the

18 second one was.

19 Q.   And Diamond Drive, is that the -- the road

20 that takes you to the Diamond Middle School?

21 A.   Yeah, sorry, that's what we call it.

22 Q.   I just want to make sure we are talking about

23 the same thing.

24   What did you observe about the -- the

25 police officers both in terms of the way they

1   were dressed and where they were standing?

2   A.   Yeah, so they were dressed in pretty dark

3   clothes.

4   Whether it was black or navy, I couldn't

5   be certain, but they were dressed very similarly

6   to each other.

7   They were in uniform pretty clearly. And

8   they were also somewhat surrounding the

9   individual not quite as far as the walkways, but

10 they were around him kind of at the edge of the

11 rotary.

12 Q.   Okay. The individual that they were -- you

13 described as sort of surrounding.

14   What do you remember about that -- that

15 individual?

16   And what I'm asking you is, you know,

17 apparent genders, skin color, clothing, you know,

18 a physical description if you are able to provide

19 one.

20 A.   Yes.   He was a white male.

21   Because he was on the ground, I wouldn't

22 be able to tell you how tall he was at that time.

23   And he was wearing a much lighter color, I

24 believe it was a gray, so he was very distinct

25 from the police officers.

1   So I could very clearly differentiate

2   between the officers and this individual.

3   Q.   Okay. And I'm trying to visualize where in

4   the rotary you are seeing the officers and the --

5   the individual.

6   Can you try to describe it with more

7   detail?

8   A.   Uh-hum. Right.

9   So if there -- there is a green circle in

10 the center of the rotary.

11   Toward the left of that, if you are

12 looking from my backyard in the road, slightly

13 before Burlington Street but slightly after the

14 Diamond driveway entrance, if that's more clear.

15 Q.   All right. So the Diamond driveway entrance

16 is closer to you --

17 A.   Correct.

18 Q.   -- and it's -- it's between that and where

19 the rotary feeds into Burlington Street?

20 A.   Yes.

21 Q.   Okay. And it is or is not on the actual

22 grass circle in the middle of the rotary?

23 A.   The individual was not. There might have

24 been police officers but I did not see the grass

25 from my -- my view.

1   Q.   All right.   So -- so you are looking at

2   something happening in the roadway itself; if you

3   understand you?

4   A.   Correct.   Yeah, it was in the street.

5   Q.   Okay.   Can you describe the apparent distance

6   between the officers and the individual and

7   the -- how the officers were standing in relation

8   to each other?

9   A.   Right.

10   So the officers were standing further from

11   each other than they were the individual, if I

12   recall correctly.

13   And they were -- couldn't have been more

14   than a few yards from the individual.

15   They were keeping -- not too large of a

16   distance but -- and they were close enough that

17   they had circled him with a few officers.

18   So they were close enough to have him

19   completely circled without a ton of excess room

20   in between the officers, and between the

21   individual.

22   So what -- it couldn't have been more than

23   a few yards, maybe three, four, but again, I was

24   slightly far away so I can't imagine it was more

25   than a few yards --

1 Q.   Okay.

2 A.   -- based on what I was seeing.

3 Q.   And could you hear whether there were any

4 voices talking?

5 A.   Yes.

6 Q.   Coming from that direction?

7 A.   Yes.   There were definitely voices raised.

8 Yelling.   I could not make out what they said.

9 Q.   Could you tell whether it was a single voice

10 or more than one voice that was yelling?

11 A.   I believe it was more than one voice.   It was

12 definitely not just one single voice.   It was a

13 few.

14   But I couldn't tell you whether it was

15 two, three, four, but it was more than one.

16 Q.   Could you tell whether the -- whether any of

17 voices were coming from the individual or the

18 police or both or not?

19 A.   I had made an assumption that it was both.

20 Q.   Okay.

21 A.   But whether I could definitively say,

22 probably not.

23 Q.   Okay. Could you see whether or not the

24 police officers were holding anything in their

25 hands or carrying any objects?

1   A.   No.   I -- from where I was standing, I

2   couldn't see anything in anybody's hand.

3   I could see individuals, their movement,

4   and their color and outline, but I could not tell

5   whether anybody was holding anything in their

6   hand.

7   Q.   Okay.   And so I have the same question, the

8   individual, were you able to observe whether the

9   individual was holding any objects or carrying

10   any objects?

11   A.   I was not able to see that.

12   Q.   Okay.   All right.   So you are watching this

13   from the deck.   You've heard these noises.

14   What transpires?

15   What, if anything, do you observe at that

16   point?

17   A.   Right.

18   So from here, the individual is in a

19   seated position or some sort of position on the

20   ground.

21   Whether he is seated or kneeling, I don't

22   recall; but he is definitely not laying on the

23   ground.

24   At this point he does start to run towards

25   Burlington -- Burlington Street road, that

1   direction, Burlington/Blake.

2   And at this time there is another shot,

3   the same one I heard that drew me to the scene in

4   the first place, and then he does fall back down

5   again.

6   Q.   Okay. And are you able -- are you still

7   hearing voices at this point and if so, are there

8   any changes in them?

9   A.   I am still hearing voices. I don't recall

10   whether there are changes.

11   Q.   Okay. So you -- the shot that you heard

12   as the individual began to run towards the

13   Blake/Burlington -- you know, where those two

14   streets are off the rotary --

15   A.   Uh-hum.

16   Q.   -- how did that shot sound compared to the

17   one that had drawn your attention when you were

18   watching TV?

19   A.   It was identical. It was the same sound.

20   Q.   Okay. And you had described the individual

21   as not laying down, but seated in some position.

22   Can you describe with any greater detail,

23   you know, the -- the position of the individual's

24   torso or the individual's arms and legs at that

25   point?

1 A.   Right.   So prior to him getting up?

2 Q.   I didn't hear you, ma'am.

3 A.   And running towards -- is this prior to

4 getting up and --

5 Q.   Yes.

6 A.   -- and running toward Burlington?

7 Q.   Before the movement.

8 A.   Okay.   Right.

9   I believe he was in a knelt position.

10   Again, I was -- I'm confident that he

11 wasn't lying on his back or on his stomach on the

12 ground with his hands and legs out, but I believe

13 it was closer towards like a knelling or seated

14 position.

15 Q.   Okay.   All right.   When the individual began

16 to run towards the Blake and the Burlington

17 Street/Blake Roads, do you have a sense of how

18 quickly after that you heard the shot?

19 A.   So he was able to take a few steps towards

20 Blake and Burlington before I heard the shot.

21   He -- I definitely saw him on his feet

22 running in that direction.

23   So he was able to get up and make a little

24 bit of distance.   How far he was able to get, I

25 don't recall.

1   But he -- he was definitely running toward

2   that street.

3   Q.   All right. And as -- so after the individual

4   moved, did the -- did you observe any change in

5   the position of the police officers?

6   A.   I believe they -- as they were in a circle --

7   started to follow him. I don't think I can get

8   more specific than that.

9   Q.   Okay. All right. So then what transpires

10   after that?

11   There's a shot?

12   A.   Right. So the --

13   Q.   What --

14   A.   -- individual in the --

15   Q.   My question is --

16   A.   Sorry.

17   Q.   -- after you hear the shot, can you see

18   whether or not the position of the individual

19   changes at all?

20   A.   So he goes back into a similar seated

21   position that he had begun in -- (coughing)

22   excuse me.

23   So he's back on -- whether it's his hands

24   or knees or in a seated position, I don't recall

25   exactly, but again, he's not lying fully on the

1 ground.

2   He's in some sort of crouched, seated

3 position. Again, not standing, not fully lying

4 on the ground.

5 Q.   Okay.

6 A.   And there are some extra -- excess movements

7 while he's on the ground.

8 Q.   Okay. And are you -- are you hearing voices

9 still at this point?

10 A.   I am still hearing voices.

11   Again, couldn't make out what they are or

12 whether they are more or less excessive than they

13 had been at the beginning.

14 Q.   All right. And when the individual goes down

15 after the shot, he described him only taking a

16 few steps in the direction of Burlington Street.

17 A.   Correct.

18 Q.   What -- what do you see transpire at this

19 point?

20 A.   So, at this point, he's still surrounded by

21 officers. And it is a few minutes of this, I

22 think.

23   I couldn't tell you how long exactly, but

24 the officers are still surrounding him. They're

25 all looking at him. So they are not faced away;

1   they are all looking toward him, those that I can

2   see.

3   And at this point one of the officers

4   who's facing the individual either takes a step

5   back and slips or trips and falls to the ground.

6   And at this point, while the officer is

7   falling, the individual in the middle notices

8   this and lunges toward the officer in, like, a

9   forward, upward movement.

10   And so while he is making this targeted

11   movement toward the police officer, I hear at

12   this point three very quick, distinct gunshots

13   that sound different and distinct from the

14   initial sounds that I heard.

15   Q.   I want to go back and sort of talk about some

16   of the -- the things you described.

17   You described seeing an officer; you

18   characterize it as a trip or a slip.

19   There's a number of officers there.

20   Can you tell which officer it was, first

21   of all, and where was that officer standing, if

22   you are able to describe it for the Court?

23   A.   He -- yes.

24   So he was standing in front of the house

25   across from the Diamond driveway entrance.

1   So he, I believe, was on the corner near a

2 curb, but he was closer to the Diamond driveway

3 than he was towards the Blake/Burlington Road.

4 Q.   Okay. And so you -- you characterize it as a

5 trip or a slip.

6   Physically you are looking at these

7 officers standing there. Physically, what is the

8 movement that you see by that officer? You know,

9 how does -- how does the officer's position and

10 posture change?

11 A.   Right.

12   So it appears as though he's -- he starts

13 standing forward and what I saw was that he fell

14 somewhat backward, it was as if he had taken a

15 step back and tripped on a curb and kind of, like

16 fell, toward, like, a seated position where --

17 yeah, it looked like he had taken a step back or

18 had slipped on something and had fallen, still

19 facing the individual, but fallen behind.

20 Q.   Okay. And thinking -- how quickly did

21 that -- that step and that movement occur, based

22 on your, you know, as you are watching him?

23 A.   Fairly quickly.

24   I -- you know, when I -- I saw -- it was

25 kind of like a fluid motion. It wasn't a step

1 back and then he caught his balance.

2   It was he stepped and then he fell pretty,

3 pretty quickly.

4 Q. Okay. And then you described the individual

5 moving.

6   Before we get to that, when that officer

7 dropped or fell, how were the officers

8 positioned?

9   Meaning, how -- how close or far do they

10 appear from each other and from the individual?

11 A. At this point they are probably a similar

12 distance from each other as well as the

13 individual.

14   So, again, it can't be more than a few

15 yards. I think the distance at this point is

16 pretty similar to the distance that I outlined at

17 the beginning.

18 Q. Okay. All right. And you -- earlier in your

19 testimony you had described them seemingly

20 surrounding or being in some sort of circle

21 around the individual.

22   When the officer falls, has that changed

23 in any way or is it -- you know, is their

24 position similar in that way, too?

25 A. I don't recall the other police officer's

1   position, but I was more focused on the one

2   who had fallen and then the individual after

3   that.

4   Q.   Okay.   And then in your testimony you

5   described the individual moving towards the

6   officer that had fallen.

7   How -- how much time passed between when

8   the officer fell and when that individual moved

9   in that direction?

10   A.   Very little time.   I don't even think the

11   officer had hit the ground.

12   I think it was a very, very, quick

13   response.

14   The officer fell and almost immediately

15   the individual made a targeted motion toward him.

16   Q.   Okay.   When the individual moves in that

17   direction, can you describe his posture, you

18   know, where he starts from compared to where he

19   ends up meaning, you know, laying down, sitting,

20   standing, whatever --

21   A.   Right.

22   Q.   -- whatever you observed.

23   A.   Right.

24   So he started, again, in, like, a

25   crouched, seated position; and, after the officer

1 falls, he starts moving toward him. So both

2 toward the officer and up.

3   So he begins to get up and move toward the

4 officer at the same time.

5   So he's slightly higher and slightly

6 closer to the officer. So he starts that way and

7 then continues to get closer to the officer.

8 Q.   Okay. And so as this happens, what's the

9 next thing that you recall seeing or hearing?

10 A.   So pretty immediately all these incidences

11 occurred simultaneously almost, back to back. I

12 heard three gunshots and then very quickly after

13 I saw the individual fall --

14 Q.   Okay. The --

15 A.   -- back down.

16 Q.   The three shots that you heard, how

17 were -- how were they similar to or different

18 from the earlier shots you had heard?

19 A.   They were pretty different. They were

20 louder.

21   They were a little bit clearer. I

22 mentioned the earlier shots were slightly

23 muffled. These were clearer.

24   And I don't recall the quantity of the

25 initial shots but this was very clearly three

1   distinct shots very quickly.

2   Q.   Okay.   Did -- when you heard those shots, how

3   much ground had the individual covered, meaning

4   had he been able to get any closer to any of the

5   officers?

6   A.   He was definitely closer to the officer who

7   had fallen.   How much ground exactly he had

8   covered, I can't be sure.

9   Q.   Okay.   And then what did you observe happen

10 after that, after the shots?

11 A.   Right.

12   So after the shots, the individual did

13 fall down and one of the police officers, I'm not

14 sure which one in relation to the incident, did

15 start to perform CPR.

16 Q.   Could you tell where the -- the three

17 gunshots had come from?

18 A.   No.

19 Q.   Okay.   You described it as CPR.

20   Physically what are you observing in terms

21 of, you know, where the different figures are

22 positioned in relation to each other?

23 A.   Right.   I don't recall how many officers went

24 over the individual.

25   I do recall at least one officer going

1   over to the individual and this individual is now

2   lying on the ground, and the officer starts to

3   perform CPR from what I can see.

4   Q.   Okay.

5   A.   He was standing over the man who was -- or, I

6   guess, kneeling over him -- the one who has

7   fallen.

8   Q.   Okay. Did there come a time thereafter where

9   other people appeared to come over to the fallen

10   individual to do anything?

11   A.   Other police officers?

12   I don't recall at this point what anybody

13   else does.

14   I do confidently recall an ambulance at

15   some point coming to the scene.

16   And then, from there, I believe it was a

17   few people put the man on a stretcher and brought

18   him into the ambulance.

19   Q.   Do you -- do you have a memory or a sense of

20   how quickly there were nonpolice, first

21   responders on scene -- meaning ambulance, fire,

22   things like that?

23   A.   Right. It was a few minutes. I -- I don't

24   recall exactly how long, but I would say probably

25   five minutes.

1   Yeah, I don't recall the exact time frame.

2   Q.   Okay. Now, at one point during this -- well,

3   you're watching this from the back deck; is that

4   correct?

5   A.   Yes.

6   Q.   Did there come a point where you actually

7   attempted to go upstairs and see if you could get

8   an elevated view of what was happening?

9   A.   Yeah. So I did at some point try to go into

10 my sister's room, which faces the back; but from

11 there the tree coverage was a little bit more on

12 the top of the trees than it was on the bottom of

13 the trees.

14   On the bottom you could see pretty

15 clearly.

16   So I -- I went upstairs very briefly, and

17 then I did come back down. This was much earlier

18 on. I believe in between the first and second

19 noises that I heard.

20 Q.   Okay. And so if I understand what you are

21 testifying, it's well before the final three

22 shots that you heard?

23 A.   Correct.

24 Q.   Okay. The -- now you had testified earlier

25 that your mom and dad were also in the house at

1   different points.

2   Did you become aware of whether or not

3   they seemed to be looking at what was going on in

4   the rotary, in the circle?

5   A.   Yes.

6   My dad at -- looked at the same time that

7   I initially was viewing what was happening.

8   So he started at the same time as me, and

9   he was actually able to go out into the tree line

10   and into the fence to look more closely at the

11   scene.

12   I did stay at the deck and my mom -- and

13   so after I had gone upstairs after the first

14   sound before the second sound, that's when my mom

15   came down with me.

16   But she also made her way, eventually into

17   the backyard. The two were together. I don't

18   recall at what point they went back there

19   together.

20   Q.   Okay. So if I understand you, so you are

21   watching from the deck. At one point your dad is

22   with you watching from the deck.

23   At one point he gets closer --

24   A.   Yes.

25   Q.   -- and then he -- and then after that he

1   comes back to where you are?

2   A.   Yes.

3   Q.   Okay. At some point you took some

4   photographs with your cell phone of what was

5   going on or attempted to; is that correct?

6   A.   Correct.

7   Q.   Okay. And do you have a memory of when those

8   were compared to the events you've described?

9   A.   It was later on. I don't recall at what

10 point exactly I took the photos.

11 Q.   Okay. And you --

12 A.   They are timestamped but I don't exactly know

13 at what point during the events the photos were

14 taken.

15 Q.   Okay. So what I'm going to do is -- just so

16 there is a record of it, what I'm going to do is

17 I'm going to approach the camera and just show

18 you the photos -- show you some photos and show

19 you some notes that are on them and just ask you

20 to confirm if those are correct.

21   THE COURT: Are you going to use the

22 ELMO, or are you going to use the...

23   MR. VAN EPPS: I'm just going to walk up

24 to the camera.

25   THE COURT: All right. So it looks like

1   your lens cover is on --

2   MR. VAN EPPS: Oh, okay.

3   THE COURT: -- just so you're aware.

4   MR. VAN EPPS: Okay.

5   THE CLERK: I know how that works, Judge.

6   (Laughter.)

7   BY MR. VAN EPPS:

8   Q.   All right. I'm just going to show you a

9   series of photos.

10   And the bottom -- in the bottom right

11   corner of these there's some handwritten notes

12   with times.

13   I wonder if you can just look at these and

14   confirm the information is correct.

15   So this is -- this is the first photo.

16   And you'll see in the bottom corner there is a

17   notation, 12:52.

18   Do you see that?

19   A.   Yes. That's my dad in the backyard. 12:52.

20   Q.   The second page of this. It's a similar

21   photograph with a figure standing in the

22   backyard, noted 12:52.

23   Do you see that?

24   A.   Correct.

25   Q.   Then we have a third page noted 12:56, and

1   there is a figure on the back deck.

2   Who is that?

3   A.   Correct. 12:56, yep.

4   Q.   Is that a figure of that mom?

5   A.   Oh, yes. Sorry.

6   Q.   That's all right.

7   Four pages.

8   Do you see that? Do you see two figures

9   approaching from the house in the direction of

10 the pine trees in the backyard?

11 A.   You cut out for a second. It is my mom and

12 dad walking at 12:57.

13 Q.   Okay. And then we have an image that's

14 marked 12:59.

15   It's two figures standing right by the

16 trees looking out in the direction of the rotary;

17 is that right?

18 A.   Yes. 12:59, my mom and dad at the tree line.

19 Q.   And then we have a picture you later took to

20 get a picture of the deck.

21   It looks like it's at, I think, 1:42; is

22 that right?

23 A.   It is 1:42, yes.

24 Q.   And then the last picture in this group of

25 photos, it's marked 2:22.

1   And it looks like it's looking through

2 blinds or out a window.

3   Do you see that?

4 A.   Yes.

5 Q.   Do you recall what room this was taken from?

6 A.   This is taken from the family room where we

7 initially were watching basketball and heard the

8 sound.

9 Q.   And this photo looks like it's -- it's 2:22,

10 you could see, it looks like yellow tape and some

11 emergency vehicles with lights on.

12   Do you see that?

13 A.   Yes.

14   MR. VAN EPPS: I'd like to mark these as

15 the next exhibit.

16   THE CLERK: Sixty-five, your Honor.

17   (Exhibit No. 65, Photographs, received

18 into evidence.)

19   MR. VAN EPPS: If I could just have a

20 moment, your Honor.

21   THE COURT: Uh-hum.

22   MR. VAN EPPS: Ms. Lane, that's all the

23 questions I have for you.

24   Judge Brennan or Mr. McDonald or

25 Mr. Heineman may have questions, so just wait

1 there, please.

2   THE COURT: Mr. Heineman?

3   MR. MCDONALD: Nothing.

4   THE COURT: Mr. Heineman -- oops.

5   Actually, Mr. Heineman you could have

6 stayed there, the microphone is -- it doesn't

7 make any difference which microphone.

8   MR. HEINEMAN: Ms. Lane, can you hear me?

9   Can you hear my, Ms. Lane?

10   THE WITNESS: Yes, I can.

11   Can you hear me?

12   MR. HEINEMAN: My name is Mike Heineman,

13 I just have a few follow-up questions.

14   EXAMINATION

15 BY MR. HEINEMAN:

16 Q. I assume you and your mom and your dad talked

17 a bit -- talked together about what you saw that

18 day after the events, right?

19 A. Yes.

20   THE COURT: Her audio just went out.

21   MR. HEINEMAN: Are you still with us,

22 Ms. Lane?

23   THE WITNESS: Yeah, can you hear me?

24   THE COURT: So I just got a -- I just got

25 a thing that said -- I'm not sure if it's her

1   bandwidth or ours is low.

2   THE WITNESS: Can you hear me now?

3   THE COURT: If you can just try and

4   really keep your voice up.

5   THE WITNESS: Yeah.

6   Can you guys hear me?

7   THE COURT: Yes.

8   It's difficult but, yes.

9   MR. HEINEMAN: Can you hear us, Ms. Lane?

10   THE COURT: I am going to do this.

11 I'm --

12   THE WITNESS: Is this any better?

13   THE COURT: I'm going to jump off.

14   MR. HEINEMAN: Okay.

15   THE COURT: See if that helps.

16   MR. HEINEMAN: Are you still with us --

17   THE WITNESS: I can hear you guys, it's

18 just --

19   MR. HEINEMAN: There you go.

20   THE WITNESS: Yeah. Is this any better?

21   MR. HEINEMAN: Okay, great. Thank you.

22 BY MR. HEINEMAN:

23 Q. So, Ms. Lane, after this incident happened,

24 did you and your mom and your dad talk about what

25 you had seen?

1   A.   We did, yes.

2   Q.   And did you also see news reports about what

3   had happened?

4   A.   I did not see a lot of news reports.

5   Q.   All right.

6   A.   I was not interested in keeping up with that.

7   Q.   Okay. So bear with me as I kind of go

8   through what you already told us.

9   If you get confused by my questions, let

10   me know, I'm going to jump around a little bit.

11   A.   Thank you.

12   Q.   If -- if I understand you correctly, when you

13   first heard the sound outside that drew your

14   attention and you went to the back deck and

15   looked, you saw a man on the ground in the rotary

16   area closer to Burlington Street and the Diamond

17   Street area surrounded by some police officers,

18   correct?

19   A.   Correct.

20   Q.   He was on the ground at that time, the

21   individual who was not a police officer, correct?

22   A.   Yes.

23   Q.   And then, after you saw him on the ground

24   there for some period of time, you observed him

25   get up and begin to run, correct?

1   A.   Yes.

2   Q.   And he was running in a direction away from

3   the police officers, correct?

4   A.   I don't recall whether there were police

5   officers there. I just recall the direction was

6   Burlington Street.

7   Q.   Okay. So from your vantage point he was

8   running away from you, correct?

9   A.   Correct.

10 Q.   And he took some number of steps, you are not

11 sure exactly how many, and then you heard a

12 second shot, correct?

13 A.   Yes.

14 Q.   And right after you heard that second shot,

15 the man went to the ground for a second time,

16 correct?

17 A.   Yes.

18 Q.   On the second occasion when the man was on

19 the ground, he was further away from you than he

20 was on the first occasion he was on the ground,

21 correct?

22 A.   By a few steps, yes.

23 Q.   All right. And the photos that were

24 produced, those were just produced to the police

25 and the District Attorney's Office last -- last

1   month, just a couple weeks ago, right?

2   A.   Yes.

3   Q.   No one had ever asked you for those photos

4   beforehand?

5   A.   No.

6   Q.   You had never been interviewed by the police

7   or anybody from the District Attorney's Office

8   from February of 2022 up until January of 2023,

9   almost a year later, correct?

10 A.   Correct.

11 Q.   When you were interviewed, you told them you

12 had these pictures, correct?

13 A.   Yes.

14 Q.   And the times that go along with the

15 pictures, you got by looking at your cell phone

16 and were relying on the times that are on your

17 cell phone, right?

18 A.   The timestamps, yes.

19   That's how I could be so precise.

20 Q.   All right. So I want to kind of see if we

21 can orient your pictures with the sequence of

22 events, if we could, okay.

23 A.   Okay.

24 Q.   Do you remember that your dad went out

25 towards the fence line to get a closer look at

1   what was going on and then he returned back to

2   the house near you?

3   A.   Yes.

4   Q.   And at the time the final three shots

5   happened, he was at the house with you, right?

6   A.   I -- to be honest, I don't recall where he

7   was at that time.

8   Q.   Okay. Your mom never went out to the fence

9   line during the incident; she only went out to

10 the fence line after the final shots, right?

11 A.   Again, I'm sorry. I don't recall at what

12 point exactly it was.

13 Q.   Okay. So you're not -- are you then -- if we

14 are looking at the picture of 12:52 with your dad

15 alone out at the fence line, you can't tell us

16 whether that is before or after the man got up

17 and ran towards Blake?

18 A.   I can't be a hundred percent certain when

19 that was.

20 Q.   Okay. And at the picture that's at 12:56

21 which has your mom out on the deck, can you

22 tell -- do you remember whether your dad was

23 still outside?

24 A.   When she was on the deck, I don't believe he

25 was outside.

1   Q.   So at 12:56 then --

2   A.   Um.

3   Q.   -- it would be consistent with your memory

4   that we've got a picture of your mom out on the

5   back deck and your dad then would be back in the

6   house or near you around 12:56, correct?

7   A.   Right.

8   Q.   All right. And then the photos at 12:57 show

9   your mom walking out to the fence line followed

10   by your dad, correct?

11   A.   Yes.

12   Q.   All right. I want to break down into the

13   very small piece of time about the last 10

14   seconds before those final three shots that

15   you've told us about, okay?

16   A.   Uh-hum.

17   Q.   Do you remember in those last 10 seconds

18   seeing any of the police officers move closer to

19   the man on the ground?

20   A.   Prior to the officers falling or after?

21   Q.   Prior.

22   A.   I don't recall.

23   Q.   In the last 10 seconds or so before the final

24   three gunshots that you remember, did you hear

25   any other of those -- any other of those muffled

1   shots that you described earlier?

2   A.   I don't recall hearing any of the other

3   muffled shots.

4   Q.   So, as you sit here today, or sit there in

5   California today, your memory is that you heard

6   two muffled shots in total, correct?

7   A.   Correct.   Yes.

8   MR. HEINEMAN: Thank you, Ms. Lane.

9   That's all the questions I have.

10   THE WITNESS: Thank you.

11   THE COURT: Anything on that?

12   MR. VAN EPPS: That's all I have, Judge.

13   Thank you.

14   THE COURT: Ms. Lane, can I just ask you

15   a couple of questions?

16   THE WITNESS: Yes.

17   THE COURT: Just to clarify, the two

18   muffled shots, when did you -- as best you can

19   recall, when did you hear the two muffled shots?

20   THE WITNESS: (No audible response.)

21   THE COURT: Was it when -- was it when

22   he -- the man on the ground was kind of by the

23   Chabad and the rotary, or was it when he was over

24   at Blake and Burlington?

25   THE WITNESS: So there were two separate

1   instances --

2   THE COURT: Okay.

3   THE WITNESS: -- of a muffled shot. I

4   don't recall the quantity at each point.

5   The first one was when he was in between

6   the Diamond driveway and -- or I guess when he

7   was on the ground when I first went over.

8   The second time was immediately following

9   him running toward Burlington and Blake.

10   THE COURT: Okay. So you heard a muffled

11   shot and that was what caused you to come outside

12   was that first muffled shot?

13   THE WITNESS: Yes.

14   THE COURT: All right. And then the

15   second muffled shot was when the individual

16   came off the ground and ran toward -- from the

17   Diamond -- the Diamond Road or the Diamond Lane,

18   Diamond Road towards Blake and Burlington?

19   THE WITNESS: Correct.

20   THE COURT: Okay. Anything on that?

21   MR. VAN EPPS: Nothing else.

22   THE COURT: Thank you very much.

23   THE WITNESS: Thank you.

24   MR. VAN EPPS: Judge -- Ms. Lane.

25   EXAMINATION

1 BY MR. VAN EPPS:

2 Q.   Do you know whether there -- you described --

3 sorry.

4   You described two -- two of the we'll call

5 them the more muffled shots.

6   When you are hearing those, are you

7 hearing like a single noise or multiple noises

8 grouped together?

9   Can you -- can you clarify for us if

10 you -- do you have a memory?

11 A.   Unfortunately, I don't recall.

12 Q.   Okay. And had you heard anything unusual as

13 you are watching the basketball game that seemed

14 unusual but didn't rouse your attention enough to

15 go to the door?

16 A.   No. The first thing that I heard that

17 sounded unusual was the voices yelling and the

18 shots.

19   MR. VAN EPPS: That's all I have.

20   Thank you.

21   THE COURT: All right. Thank you very

22 much.

23   THE WITNESS: Thank you.

24 (Witness excused.)

25   MR. VAN EPPS: Patricia Lane will be the

1   next witness.

2   MS. GEMMILL: You are waiting for us?

3   Sorry.

4   THE CLERK: No. I think she went to get

5   her, right?

6   MS. GEMMILL: Oh.

7   MR. VAN EPPS: I believe Ms. Foley went

8   to find her.

9   THE COURT OFFICER: Come this way, ma'am.

10   If you could stand here and face the

11   clerk and raise your right hand.

12   THE CLERK: Do you solemnly swear or

13   affirm that the testimony you will provide the

14   Court today will be the truth so help you God?

15   THE WITNESS: Yes, I do.

16   PATRICIA LANE, SWORN

17   THE COURT OFFICER: Come over here and

18   have a seat.

19   I'll lower this mic down for you okay.

20   THE WITNESS: Okay. Thanks.

21   THE COURT: Go ahead.

22   EXAMINATION

23   BY MS. GEMMILL:

24   Q. Good afternoon, ma'am.

25   A. Hi.

1   Q.   Can you please tell the Court your first and

2   last name and spell them both for us.

3   A.   Yes.

4   It's Patricia Lane, P-A-T-R-I-C-I-A

5   L-A-N-E.

6   Q.   And, ma'am, where do you currently live?

7   A.   6 Victory Garden Way, Lexington.

8   Q.   How long have you lived at that address?

9   A.   Ten or 11 years.

10 Q.   Okay.   Does anyone else live there with you?

11 A.   Yes.

12 Q.   Who else lives there with you now?

13 A.   My husband, Jim.

14 Q.   Is that Jim Lane?

15 A.   Yes.

16 Q.   Who -- was anybody else living at the home

17 with you in February of 2022?

18 A.   Yes.

19 Q.   Who else lived there with you at that time?

20 A.   My daughter Maddie, Madelyn, and my daughter

21 Carolyn.

22 Q.   Okay.   And your daughter, Madelyn, is now

23 working in California; is that correct?

24 A.   Yes.

25 Q.   And how about your daughter, Carolyn?

1   A.   She's at college.

2   Q.   All right. Do you currently work?

3   A.   No.

4   Q.   All right. Did you ever have an profession?

5   A.   Yes.

6   Q.   What did you do when you were working?

7   A.   I worked for a sales and marketing arm of an

8   automotive company.

9   Q.   Okay. I'm going to turn your attention now

10   to February 12th of 2022.

11   Were you at home at your home at 6 -- 6

12   Victory Garden Way in Lexington on that day?

13   A.   Yes.

14   Q.   And were you home around midday?

15   A.   Yes.

16   Q.   Who else was home with you on that particular

17   day?

18   A.   My husband, Jim, and my daughter, Maddie.

19   Q.   Okay. And at some point after twelve o'clock

20   in the afternoon, do you recall what you were

21   doing?

22   A.   Yes. I was folding laundry.

23   Q.   Okay.

24   A.   Upstairs in my bedroom.

25   Q.   And describe for us a little bit just the

1   general layout of the main part of your house.

2   Like, what's on the first floor?

3   A.   The first floor is front entry, then a living

4   room, and an office in the in front of the house

5   with a dining room, kitchen, and family room in

6   the back of the house and a staircase sort of in

7   the middle.

8   Q.   Okay. And the staircase goes up to a second

9   floor?

10   A.   Yes.

11   Q.   All right. So at some point afternoon where

12   are you folding laundry?

13   A.   I'm upstairs in the front of the house

14   looking at the house on the right. So above the

15   living room in the front bedroom.

16   Q.   If you are in the front of the house in,

17   like, the front bedroom area, what road are you

18   looking out on to?

19   A.   Victory Garden Way.

20   Q.   If you were downstairs in your kitchen, what

21   view do you have -- like, what road are you

22   looking out at if you look out the kitchen?

23   A.   I called it the Diamond driveway.

24   It's -- it's a road that comes off the

25   rotary on Hancock.

1   So it's Diamond driveway from the kitchen

2 and then the corner.

3 Q.   Okay. So if you're sitting in your kitchen,

4 do you have a view -- like, what does your view

5 out of your kitchen windows look like?

6 A.   So there's a view from the sink that is the

7 backyard to the Diamond driveway, and then there

8 is a view from sort of the eat-in area, which is

9 a sliding glass door and fixed windows out into

10 the yard which goes sort of at an angle to where

11 the rotary is and where the roads meet at the

12 rotary.

13 Q.   All right. Do you have a back deck in your

14 backyard?

15 A.   Yes.

16 Q.   All right. Where is the family room in

17 connection to your kitchen area?

18 A.   So moving from sort of right to left, if you

19 are facing the back of the house, it's the

20 kitchen and then the eating area and then the

21 family room is to the left on the far sides.

22 Q.   Is there any kind of door that closes the

23 family room off from the eating area and the

24 kitchen?

25 A.   No.

1   Q.   And you called that the family room, correct?

2   A.   I did.

3   Q.   All right. Is there a TV in that room?

4   A.   Yes.

5   Q.   While you were upstairs folding laundry on

6   the 12th, do you know what your husband, Jim, was

7   doing?

8   A.   Yes.

9   Q.   Where was he?

10   A.   Watching TV.

11   Q.   All right. Where would that have been?

12   A.   In the family room.

13   Q.   How about Maddie?

14   A.   I think she was in the kitchen or in the

15   family room. She was definitely downstairs.

16   Q.   Okay. Was your daughter Carolyn home?

17   A.   No.

18   Q.   Okay. So you're upstairs, the rest of the

19   family is downstairs in the kitchen, family room

20   area, as far as you know at that time?

21   A.   Yes.

22   Q.   While you are upstairs folding laundry, does

23   anything unusual catch your attention?

24   A.   I heard yelling. I heard a lot of yelling

25   outside.

1   Q.   Could you tell where the yelling was coming

2   from?

3   A.   Not -- not really at first, no.

4   Q.   All right. And could you tell anything about

5   the voices or the voice or voices that you heard

6   yelling?

7   A.   I could tell it was a lot of men's voices.

8   Q.   Okay. Did it sound like more than one voice

9   to you?

10   A.   Yes.

11   Q.   Could you tell how many voices you were

12   hearing?

13   A.   I would say it would be a guess of three,

14   initially, while I was upstairs.

15   Q.   So, safe to say, more than one voice yelling?

16   A.   Yes.

17   Q.   All right. Now, could you make out any words

18   that were being said when you first heard those

19   yelling sounds?

20   A.   Not at first.

21   Q.   Did you hear any other unusual noises right

22   at that first part?

23   A.   No.

24   Q.   Okay. So what -- what did you do?

25   You hear these noises; do you do anything?

1 Do you go downstairs or anything like that?

2 A.   I continued to fold laundry.

3 Q.   Okay.

4 A.   But I heard my daughter come up the stairs,

5 so I stopped folding laundry to ask her if she

6 knew what was going on.

7 Q.   Okay. And that's Maddie, correct?

8 A.   Yes, it is.

9 Q.   And Maddie comes upstairs. Does she come to

10 find you or where does she go?

11 A.   No. She was going to look out a back window.

12 Q.   All right.

13 A.   She said, I don't know what's going on. And

14 she said, I am going to see if I can see.

15 Q.   What did you do?

16 A.   I followed her.

17 Q.   Okay. So what room do you -- the two of you

18 go into?

19 A.   So we went to my other daughter's room,

20 Carolyn, her room.

21 Q.   All right. Are there windows in Carolyn's

22 room?

23 A.   Yes.

24 Q.   What do those windows look out on to?

25 A.   She has aside window that looks out on to

1   Hancock and back windows that look out the

2   backyard over that side of the house.

3   Q.   Can you see, like, the Hancock area rotary

4   from outside of those windows?

5   A.   Yes.

6   Q.   Did you actually look out the window?

7   A.   Yes.

8   Q.   Could you see anything out of your window

9   that seemed unusual?

10   A.   Yes.

11   Q.   Can you describe for the Court what you saw

12   at that first point when you are looking out that

13   window?

14   A.   It just looked like there were people moving

15   around the street at that point. That's really

16   all I can gather from it.

17   Q.   Okay. So let's parse that out just a little

18   bit.

19   You see people.

20   Are these people on foot or on bicycles or

21   something else?

22   A.   On foot.

23   Q.   Okay. About how many people can you see?

24   A.   Again, I think maybe three or four, max.

25   Q.   Can you make anything out about the general

1 size or gender of those individuals from there?

2 A. They were male. I knew that. The size I

3 don't know.

4 Q. Could you tell anything about what they were

5 wearing?

6 A. I don't think I looked that closely at what

7 they were wearing; I think I understood that some

8 of them were from law enforcement.

9 Q. Okay. So some of the individuals you could

10 see who were on foot outside the window appeared

11 to be law enforcement?

12 A. Yes.

13 Q. Did there -- did there appear to be any

14 people who were not law enforcement --

15 A. Yes.

16 Q. -- from that vantage point?

17 A. One.

18 Q. And what could you see about that one

19 individual from that point, if anything?

20 A. You know, not a lot. It was kind of shocking

21 to just see that there was some -- something

22 going on, and I couldn't really get a good feel

23 for what was happening at that point.

24 Q. Okay. While you are out that back window,

25 does Maddie look out the window with you?

1   A.   Yes.

2   Q.   And is the window closed or open?

3   A.   I think closed.

4   Q.   Could you hear any of those sounds you were

5   hearing before like any of the yelling from that

6   back window?

7   A.   There was yelling. I couldn't be specific

8   about what I heard at that point though.

9   Q.   Okay. So you still can't make out words,

10   correct?

11   A.   I couldn't.

12   Q.   Right?

13   And can you tell where the yell is coming

14   from?

15   A.   Everyone.

16   Q.   All right. It appeared that everybody that

17   you could see out the window who was on foot were

18   yelling?

19   A.   Yes.

20   Q.   Where were those people located in

21   relationship to the road?

22   A.   I -- I don't know specifically. I can't say.

23   Q.   Did they appear to be on the street or on the

24   grass related to the rotary?

25   A.   No, not on the rotary.

1 Q. Okay. Not on the grass part or not on the

2 street part?

3 A. I think they were on the street part.

4 Q. Okay. Did you notice any vehicles in the

5 area at that point?

6 A. I don't recall.

7 Q. All right. So you can see some things out

8 this window.

9   How long do you stay at the upstairs

10 window watching?

11 A. Pretty briefly.

12 Q. Okay. What did you do then?

13 A. Went downstairs.

14 Q. All right. And why did you go downstairs?

15 A. Because I thought I could get a better sense

16 of what was going on.

17 Q. All right. So where do you go once you've

18 gone downstairs?

19 A. Down to the kitchen, the eat-in area of the

20 kitchen.

21 Q. Okay. At this point does Maddie come back

22 downstairs with you?

23 A. Uh-hum. Yes.

24 Q. Where does Maddie go?

25 A. Same, I believe.

1   Q.   How about your husband, Jim, did you see

2   where Jim was when you came downstairs?

3   A.   At -- at that point, I'm not -- I'm not at

4   what point he was either in the house or out of

5   the house, but he was there.

6   Q.   Did there come a time when Jim left the

7   house?

8   A.   Yes.

9   Q.   Okay. And at some point does he go into your

10   backyard area?

11   A.   Yes.

12   Q.   All right. So you go downstairs; you are in

13   the kitchen -- you are in the kitchen dining

14   area.

15   Are you at that back sliding door?

16   A.   Yes.

17   Q.   Okay. What do you do from that position?

18   A.   I just watched what was going on.

19   Q.   Okay. Do you recall whether or not the

20   sliding door was opened or closed?

21   A.   I believe it was open.

22   Q.   And from where you were standing, could you

23   hear anything?

24   A.   Yes.

25   Q.   All right. Were you also able to see

1 anything out through your sliding glass doors?

2 A.   Yes.

3 Q.   Can you describe what your -- what the view

4 is?

5   Like, when you are looking outside of that

6 sliding glass window, what do you see?

7 A.   So it -- it goes deck, and then our yard, and

8 then there is a line of pine trees.

9   We have a split-rail fence, and then from

10 there you can see the driveway, the road, the

11 rotary through this area.

12 Q.   Okay.   And what is the street that goes right

13 in front of your backyard, like, just passed that

14 split rail fence?

15 A.   I refer to it as the Diamond driveway.   It's

16 the Diamond Middle School road that goes back to

17 the school.   I'm not sure if it has a name other

18 than that.

19 Q.   Okay.   And that road connects to the -- the

20 kind of Hancock rotary, correct?

21 A.   Yes.

22 Q.   All right.   Can you see Burlington from --

23 Burlington Street from where you are looking?

24 A.   You can see the entrance to all the roads

25 that connect around.

1   Q.   Can you see anything about the buildings that

2   are on -- opposite from your house on the other

3   side of the so-called Diamond driveway?

4   A.   Yes.   I can see my backdoor neighbor's

5   driveway and part of their home.

6   I can see there's another yellow house

7   further over to the left from there.

8   And from that vantage point, I can see the

9   beginning of the street, Blake, I think it's

10   called.

11   Q.   Okay.

12   A.   And I don't recall the name of the street

13   next to the house that's -- I think is No. 100

14   Hancock.

15   So you can sort of see the whole rotary

16   circular area.

17   Q.   How much detail can you see things that are

18   going on in the rotary like through your backyard

19   fence and trees?

20   A.   I mean, you can see a pretty good amount of

21   detail.

22   If -- if you see people walking or riding

23   bikes or walking dogs, you can get a pretty good

24   sense of what's there.

25   Q.   Okay.   So you are able to see some details

1   and see colors and things like that?

2   A.   Yes.

3   Q.   All right. So you are standing in -- in your

4   dining area; you're looking out the sliding

5   doors.

6   When you first come back downstairs, what

7   are you hearing?

8   What can you hear out there?

9   A.   I hear -- I hear people saying, Drop the

10   knife. Drop the knife, Brendan or Brandon.

11   I can hear, Get down on the ground. I can

12   hear, We want to get you back to your family. We

13   want to get you help.

14   I can hear someone say, I'm gonna f'n kill

15   you all.

16   Just a lot of back-and-forth in that

17   regard between what I am assuming are law

18   enforcement and an individual.

19   And a lot of, Drop the knife. Stay on the

20   ground. Drop the ground. We want to help.

21   Using a name Brendan or Brandon.

22   Q.   Okay. The people you described seeing in the

23   rotary outside or in the street outside of the

24   window upstairs, can you still see those people

25   once you've gone downstairs to watch through your

1 kitchen slider?

2 A.   Yes.

3 Q.   Okay.   Where are the individuals that you

4 assumed were law enforcement positioned when you

5 are hearing these voices yelling, Drop the knife?

6 A.   So I see several what I'm calling law

7 enforcement in kind of a circle around an

8 individual trying to contain, I think, an

9 individual.   And I can see several of them.

10   It's not a still circle; it's sort of

11 moving about the street kind of in a direction

12 for me from Hancock toward -- not the rotary

13 but -- toward the rotary but toward Diamond

14 driveway and then toward the other home across

15 the way.

16 Q.   Okay.   About how many of those law

17 enforcement people could you see?

18 A.   I don't have an actual memory of how many;

19 but I believe it's about four or five, maybe.

20 Q.   Okay.   Could you see who they were talking

21 to?

22 A.   Yes.

23 Q.   All right.   And who -- can you describe what

24 the other individual on scene looked like?

25 A.   A man who had on, I think, a white T-shirt

1   and gray bottoms, I believe, and sort of in the

2   center of this group somewhat agitated and -- and

3   yelling.

4   They were all yelling back and forth to

5   each other.

6   Q.   Okay. When you first start watching out of

7   the slider, you see several individuals who

8   appear to be law enforcement.

9   Are they standing, or are they sitting

10   down, or how are -- how are had he arranged?

11   A.   They were standing and moving.

12   Q.   Okay.

13   A.   They're not standing still. They are all

14   moving.

15   Q.   All right. And where is the man in relation

16   to those law enforcement?

17   A.   In -- in the center of where the law

18   enforcement were.

19   Q.   Okay. When you are first watching this man,

20   how is he positioned?

21   A.   When I first get there?

22   Q.   When you first get there, yes.

23   A.   I don't recall when I first got there. I

24   think it -- was registering with me.

25   I don't recall where he was at that first

1   moment when I looked.

2   Q.   Okay. And as you are first watching, do you

3   have a sense of whether or not he -- you said

4   that folks were moving around, right?

5   How were -- how were the law enforcement

6   officers moving?

7   A.   They -- it appeared that they were

8   encircle -- encircling him, building, like, a

9   circle around him; and as he moved, they were

10 moving.

11 Q.   Okay. Could you see whether he was getting

12 up to his feet to move or is he --

13 A.   There was --

14 Q.   -- how was he -- how was he moving?

15 A.   There was some movement on his feet and there

16 was some movement on the ground.

17 Q.   Okay. So you're hearing voices saying, Drop

18 the knife.

19   Are those -- are those coming -- is it --

20 is it one person saying that or multiple voices

21 you hear saying that?

22 A.   I believe multiple voices.

23 Q.   Okay. And did that appear to be -- could

24 you tell what voices those were, like who those

25 came -- seemed to be coming from?

1 A. From the people around the perimeter.

2 Q. Okay. So the law enforcement officers?

3 A. Yes.

4 Q. Okay. And you mention someone was yelling,

5 I'm going to f'n kill you all.

6 A. Yes.

7 Q. Who was yelling that, if you can tell?

8 A. The man in the middle.

9 Q. All right. So the man who's got the white

10 T-shirt, gray pants?

11 A. Yes.

12 Q. And is surrounded by law enforcement is

13 yelling those words?

14 A. Yes.

15 Q. Could you see at that point whether or not --

16 could you see that man's hands?

17 A. Yes.

18 Q. What were his hands doing as you are first

19 watching?

20 A. He appeared very agitated. So there was just

21 a lot of movement.

22 Q. Okay. And when you say agitated, can you

23 describe for us like physically what -- what

24 movements you were seeing?

25 A. Moving about and screaming, and he wasn't

1   calm. He wasn't standing still. There was a lot

2   of action, a lot of -- it was very hectic.

3   Q.   Could you see whether or not he had any kind

4   of object in his hands?

5   A.   Something in his hand.

6   Q.   All right. So you could see something.

7   Could you see what it was?

8   A.   No.

9   Q.   All right. Okay. So you're watching this

10   interaction.

11   At some point do the officers and this man

12   that you are watching move to a different

13   location at all?

14   A.   Yeah, they were constantly shifting.

15   Q.   Okay. All right. Can you describe for us

16   what happens as you are -- as you are watching?

17   You are hearing this yelling back and

18   forth.

19   What happens next?

20   A.   Well, I heard, you know, Drop the knife.

21   And then I heard some kind of sound

22   that -- what I believed to be some kind of, like,

23   a TASER-type item that was used and the man in

24   the middle sort of fell down, not all the way to

25   the ground, but kind of in, like, a crawl-stance.

1   And then I would hear the officers say,

2 you know, Stay on the ground. Drop the knife.

3   And the person in the middle would get

4 back up again and there was a -- this occurred,

5 you know, maybe once or twice while I was down

6 there.

7   So, as he was on the ground, he was moving

8 a little bit and then the circle was moving with

9 him.

10   And then he got back up, and they would

11 say, Get back down and Drop the knife.

12   And so this was all occurring sort of

13 quickly in this circle rotating.

14   And then I think there was another round

15 of something that made him fall somewhat, but not

16 all the way to the ground.

17   And -- and as the circle is shifting,

18 there was someone who was in a position to be

19 moving backwards on the outside, you know, one of

20 the law enforcement --

21 Q. Okay.

22 A. -- who appeared to, as he stepped backwards,

23 slip on some kind of ice or something tripped;

24 but it looked more like a slip, his foot came out

25 from under him and he went down.

1   Q.   All right.   So before we get into too many

2   details about that piece of it, you mentioned

3   that there were times that you heard a sound that

4   you thought was maybe some kind of a TASER?

5   A.   Yes.

6   Q.   And you think you heard that how many times?

7   A.   I think I heard that twice.

8   Q.   Okay.   When you would hear that sound, did

9   it -- was it, like, multiple sounds together or

10   did it sound like one loud noise?   How would you

11   describe it?

12   A.   It sounded like multiple sounds together.   I

13   think three.

14   Q.   Okay.   Could you tell where those sounds were

15   coming from?

16   A.   No.

17   Q.   Could you -- as you are watching the -- as

18   you are watching all these individuals, can you

19   tell whether any of the law enforcement are

20   holding anything?

21   A.   Yes.

22   Q.   Okay.   What did you notice about the

23   officers -- what the officers were holding?

24   A.   One officer was holding something that

25   appeared to be a rifle-size weapon, but it

1 was -- I'm not a firearms person, so I can't

2 say -- but it was, like, a bright orange color.

3   And I think other officers had more like

4 what would be a smaller maybe pistol-size weapon.

5 Q. All right. How many of those, like, longer

6 rifle-type weapons did you see?

7 A. I saw one.

8 Q. All right. And you said it was a bright

9 orange color?

10 A. Yes.

11 Q. When you heard the -- the TASER sound, could

12 you tell where that was coming from?

13 A. No.

14 Q. Before the first time you heard the TASER

15 sound, can you describe what the individual in

16 the white shirt was doing right before that sound

17 happened?

18 A. Just threatening with, I'm going to f'n kill

19 you, I'm going to kill everyone; and -- and kind

20 of just moving around this group.

21 Q. Right before the sounds, could you tell

22 whether or not that man was standing up or was he

23 on the ground?

24 A. I was standing up.

25 Q. Okay. And you said that you saw -- after you

1 heard the sound you saw him kind of fall back

2 down?

3 A. Yes.

4 Q. Okay. Would he fall all the way down, like,

5 into a lying position or how would he go down?

6 A. No, he would not fall all the way down into a

7 lying position. He was down on all fours or down

8 on his knees.

9 Q. Okay.

10 A. But not all the way down.

11 Q. Would you -- could you see him trying to move

12 while he was down on the ground?

13 A. Yeah.

14 Q. Can you describe what that movement was like?

15 A. It was a little bit, like, crawling but with

16 your bottom down, so like a crawl.

17 Q. Did he have his hands behind him or in front

18 of him?

19 A. I think they were behind him.

20 Q. Okay. And you thought you heard this muffled

21 sound a couple of times?

22 A. Yes.

23 Q. So you see the man go down again.

24   About where is it located about the time

25 that you saw this other officer -- the officer

1   who appeared to slip and fall?

2   A.   From my view, it appeared to be to the right

3   of in front of the rotary from where I was

4   positioned.

5   Q.   Okay. About -- had he -- had they made any

6   movement away from you from where you were first

7   watching?

8   A.   It was more across not away.

9   Q.   Okay. So I'm going to show you a printout of

10   a Google map here and ask you if can kind of see

11   the area we are talking about in the rotary,

12   okay.

13   Okay. So I am handing you a Google map,

14   and you can feel free to turn it to orient

15   yourself.

16   A.   Uh-hum.

17   Q.   Correct me if you can see, it's kind of right

18   down here in the bottom right corner you have

19   sort of an edge of -- of your home at Victory

20   Garden; is that correct?

21   A.   Yes.

22   Q.   Okay. And then you can also see Burlington

23   Street going north here and Blake Road connecting

24   off?

25   A.   Yes.

1   Q.   All right.   Is this a fair and accurate

2   depiction of an aerial view of the Hancock rotary

3   area just in that spot?

4   A.   Yes.

5   MS. GEMMILL: Okay.   I ask that this be

6   introduced as our next exhibit.

7   THE CLERK: Sixty-six, your Honor.

8   THE COURT: Exhibit 66.

9   (Exhibit No. 66, Google Maps photograph,

10 received into evidence.)

11 BY MS. GEMMILL:

12 Q.   And Ms. Lane, I'm going to hand you

13 Exhibit 66 again.

14   I am going to give you a marker.

15   Now, if you could just put a little "X"

16 for us in the -- in the bottom corner, like in

17 the approximate area of your home.

18   I know it's forgot necessarily in this

19 picture very well?

20 A.   Oh, it's way over here.

21 Q.   Okay.   Just put an "X," like, that on the

22 bottom.

23 A.   Uh-hum.

24 Q.   Can you -- do you see the general area in the

25 street on this map, Exhibit 66, where you were

1   first watching the man and the law enforcement

2   officers surrounding him?

3   A.   I think it was a little further down.

4   Q.   You think it's even further, even further

5   down?

6   A.   Yeah.   Yeah.

7   Q.   Can you indicate to us on this map with a

8   circle the area where you saw the officer fall?

9   A.   Generally.

10   Q.   Generally.

11   A.   (No audible response.)

12   Q.   Around there?   Okay.   Thank you.

13   Just so you don't get that on you.

14   MS. GEMMILL: Just handing Exhibit 66 to

15   the Court.

16   BY MS. GEMMILL:

17   Q.   Okay.   So the officer who you saw fall, what

18   is happening -- what is the man doing right

19   before this officer falls?

20   A.   He's on the ground.

21   Q.   Okay.   And how is he positioned on the

22   ground?

23   A.   He's on his -- again, sort of hands behind

24   him, legs in front, and he's facing in the

25   direction of that officer.

1   Q.   Okay. Could you see whether that officer was

2   holding anything?

3   Like, you described a series of possible

4   weapons for us earlier.

5   You --

6   A.   I'm not sure.

7   Q.   Okay. About how far away was the man in the

8   white shirt from the officer who fell just before

9   the officers -- the officer fell?

10   A.   I think it's around five or six feet.

11   Q.   Okay. All right. So what do you see the

12   officer do?

13   Like, what precipitates this falling that

14   you saw?

15   A.   Well, as the circle was moving, this officer

16   is in the -- in a position where he's moving

17   backwards.

18   Some over here are moving forward; he's

19   moving backwards, and his foot goes into -- it

20   looks like ice, and comes out from under him, and

21   he lands with -- just lands down on the ground.

22   Q.   Okay. And so you are kind of demonstrating

23   for us a little bit --

24   A.   Yeah, I know.

25   Q.   -- so it looked like his feet kind of went

1   out from under him --

2   A.   Yes.

3   Q.   -- and he falls backwards?

4   A.   Yes.

5   Q.   Okay. What do you see the man with the white

6   shirt do --

7   A.   He gets --

8   Q.   -- while the officer's falling?

9   A.   He immediately lunges towards the officer.

10   Q.   Okay. Now, you described that he had been

11   down with his hands behind him.

12   A.   Uh-hum.

13   Q.   How does his body change as you are watching?

14   A.   I feel like he just pushes himself up and

15   starts to move in that direction.

16   Q.   Okay. Could you see whether or not he had

17   gotten to his feet?

18   A.   I think he did, yes.

19   Q.   Was he able to make any -- any kind of --

20   well, so let me ask you.

21   What direction is he -- is he headed as he

22   gets up?

23   A.   At the person who had fallen.

24   Q.   Okay. How fast was this happening?

25   A.   Incredibly fast.

1   Q.   Could you see whether or not the man who's

2   gotten up is closing any of that distance --

3   A.   Yes.

4   Q.   -- between himself and the officer?

5   A.   Yes. He was lunging in that direction.

6   Q.   Could you see whether or not he had anything

7   in his hands, the man?

8   A.   I don't know.

9   Q.   All right. So what did you -- what happened

10   next? You are watching this forward motion. The

11   officer's down on the ground.

12   What happens next?

13   A.   Three more popping sounds.

14   Q.   Those -- those three popping sounds, are they

15   the same kind of sound you heard earlier that you

16   attributed to the TASER, or are they different?

17   A.   They are different.

18   Q.   Can you describe what they sounded like?

19   A.   They just sounded louder and sharper.

20   Q.   All right. And noticeably -- noticeably

21   different from the sounds you had heard before?

22   A.   Yes.

23   Q.   Could you tell where they were coming from?

24   A.   No.

25   Q.   Did you observe anything happen to the man

1   with the white shirt when you heard those sounds?

2   A.   He fell down.

3   Q.   All right. Could you tell how he fell?

4   Did he fall to his hands?

5   Did he fall backwards or...

6   A.   I don't know.

7   Q.   All right. Did you see that man get back up

8   again?

9   A.   No.

10 Q.   Okay. So what happened next, did you keep

11 watching?

12 A.   I did.

13   The police said, Drop the knife. And

14 approached and then I think immediately started

15 to render first aid.

16 Q.   Okay. So after the man -- after you hear the

17 sounds and the man falls, you continue to hear

18 the officer saying something to him?

19 A.   Yeah. Let go of the knife, that kind of

20 thing.

21 Q.   Could you tell whether that was one person

22 talking or multiple people saying it?

23 A.   No, I think it was multiple people.

24 Q.   All right. About how quickly after the man

25 fell did they move in to provide -- to provide

1   aid?

2   A.   Very quickly.

3   Q.   Okay.

4   A.   Moments.

5   Q.   Okay. Did you see whether or not there were

6   any emergency services like ambulances and things

7   like that that arrived?

8   A.   Yes.

9   Q.   And about how fast did that happen?

10   A.   I think the ambulance was there prior to that

11   even occurring.

12   Q.   Do you recall seeing the ambulance like

13   staged nearby while --

14   A.   Yes.

15   Q.   -- this was all unfolding?

16   Okay. Do you know where that ambulance

17   was?

18   A.   I can't recall the name of the road -- is it

19   Hamilton -- the road that comes opposite of the

20   Diamond driveway across the rotary.

21   Q.   Okay. So --

22   A.   Not Burlington.

23   Q.   -- in -- something in -- in the rotary area?

24   A.   Yeah. One of the roads right off of the -- I

25   can't recall the --

1   THE COURT: Is it the road right next to

2 100?

3   THE WITNESS: Yes, it is.

4 BY MS. GEMMILL:

5 Q. Okay. Did you move position at all from

6 where you were originally watching?

7 A. No.

8 Q. Okay. So, once you came downstairs to watch

9 from your -- your dining area, is that where you

10 stayed?

11 A. Yes.

12 Q. Okay. How about your husband, did you notice

13 when or if he went outside to watch?

14 A. He did go outside.

15 Q. Okay. Did you see where he went?

16 A. He went out toward the fence line of the

17 property.

18 Q. Okay. Do you know what was going on

19 when -- when your husband actually went out to

20 the -- all the way to the tree line?

21 A. I think it was early on when there was a lot

22 of the yelling going on, the back and forth.

23 Q. And did he stay -- did you observe your

24 husband stay outside to observe this?

25 A. For part of it.

1   Q.   Okay. Did you ever see him go back inside

2   the house?

3   A.   Yes. He came back inside.

4   Q.   Okay. And about when was that?

5   A.   He was inside when -- when the shots were

6   fired. So he came in prior to -- prior to the

7   time -- the last time the man in the center fell.

8   Q.   Okay. And was with you in the dining area

9   watching?

10   A.   Yes.

11   Q.   All right. How about Maddie?

12   A.   Yes.

13   Q.   She was with you, too?

14   A.   Yes.

15   MS. GEMMILL: Okay. I don't have any

16   other further questions for you.

17   The Judge and the others may.

18   Thank you.

19   THE WITNESS: Okay.

20   THE COURT: Mr. McDonald?

21   MR. MCDONALD: Nothing.

22   THE COURT: Mr. Heineman?

23   MR. HEINEMAN: If I could.

24   If I can indulge the Court for the photos

25   that we marked in Ms. Lane's -- no, Ms. Lane's.

1   Thank you.

2   May I approach?

3   THE COURT: Yep.

4   EXAMINATION

5   BY MR. HEINEMAN:

6   Q.   Good afternoon, Ms. Lane.

7   My name is Michael Heineman, and I just

8   have a few questions for you?

9   A.   Okay.

10   Q.   Those photos that I've just handed you, which

11   are exhibit, I think, 65, do you recognize those

12   photos?

13   A.   Yes.

14   Q.   And are those photos that your daughter,

15   Maddie, took on the day that we are talking

16   about?

17   A.   Yes.

18   Q.   Do those photos fairly and accurately reflect

19   your view of what you can see from your back

20   screen -- your back porch, as you look out

21   towards the area where this shooting happened?

22   A.   Some do and some do not.

23   Q.   Is it an accurate statement that the back of

24   your road -- the back of your yard, you and your

25   husband over the years have tried to build up

1   that back area to provide a little bit of a

2   buffer from the traffic going around the rotary

3   in and out of Diamond School?

4   A.   Not over the years.   Last year.

5   Q.   Oh, last year.   Those photos shows a line of

6   trees there.   There are -- there were trees there

7   on the day this happened, right?

8   A.   Yes.

9   Q.   And so when you are making the observations

10   you've told us about, you are looking from your

11   deck across your yard through those trees and

12   into the area where you made these observations,

13   correct?

14   A.   That's correct.

15   Q.   And your husband went out at one point to the

16   backyard, you understood, so he could get a

17   better view of what was going on, right?

18   A.   Perhaps.

19   Q.   And then he came back, and he was with you at

20   the house at the time the final shots were fired,

21   right?

22   A.   That's true.

23   Q.   So those photos -- if you can just flip,

24   there's times on the photos that your daughter

25   was kind of enough to give us.

1   The photos at 12:56 -- I'm sorry, the

2 photo at 12:57 shows two people walking in your

3 backyard?

4 A.   Uh-hum.

5 Q.   Is that you in the lead and then your husband

6 behind you?

7 A.   It is.

8 Q.   You went out after the shots to see what had

9 happened, right?

10 A.   Yes.

11 Q.   So 12:57, that photo was -- is definitely

12 after the final shots had been fired?

13 A.   I believe so.

14 Q.   And 12:56, the photograph just before that,

15 is that you on the back porch?

16 A.   Yes.

17 Q.   All right. I've been dreading having to do

18 this because I've got kind of a bum knee; but I

19 just want to get an understanding of the

20 positioning that the man was on the ground just

21 before the final shots.

22 A.   Uh-hum.

23 Q.   Okay? And I think you told us that he was

24 down sort of this in position?

25 A.   Yeah, sort of.

1   Q.   So sort of on his rear end with his hands to

2   his side or slightly behind?

3   A.   He wasn't stationary.

4   Q.   Okay. So was moving a little bit?

5   A.   Yes. He was up on his feet a little bit,

6   too.

7   Q.   Okay.

8   A.   From that position, sort of in a crawl.

9   Q.   Okay. I want to focus you just on the

10   moments right before the final shots.

11   MR. VAN EPPS: Before we get to that

12   question, can we just -- Judge, if you want to

13   document it, the position that counsel is

14   assuming?

15   THE COURT: Just for the record,

16   Mr. Heineman is maybe at a 45-degree angle

17   with --

18   MR. VAN EPPS: As best you can.

19   THE COURT: -- his backup; his feet are

20   on the ground; his arms are behind him.

21   And that's...

22   MR. VAN EPPS: Knees are bent.

23   THE COURT: Knees are bent.

24   MR. HEINEMAN: In a very athletic pose.

25   THE COURT: Yes.

1 BY MR. HEINEMAN:

2 Q.   Mrs. Lane, in the movements before the

3 shooting, the final three shots, was the man on

4 the ground in approximately the position I am in

5 now?

6 A.   I can't say for sure.   I don't -- I think he

7 may have been even up -- a little more up.

8 Q.   A little more up?

9 A.   Yeah.

10 Q.   Okay.   So when the officer fell, can you tell

11 us what position the man on the ground was in?

12 A.   He was in -- he was not standing upright.

13   He was on the ground between fully on the

14 ground and moving towards an upright position.

15   He was -- he was very agitated and moving,

16 and he was -- could have been on two hands

17 down and one foot up and one foot, you know,

18 ready to -- he was -- he wasn't stationary on the

19 ground.   He was moving.

20 Q.   And how many police officers were between you

21 and the man on the ground?

22 A.   Probably one.

23 Q.   Okay.   Well, you say "probably," so I have to

24 ask a little more detail.

25   Do you remember if it was one or more than

1 one?

2 A.   If you mean from where I am to the next -- to

3 the next person to the individual on the ground,

4 then one.

5 Q.   Okay. And the individual, the officer that

6 fell, was he the officer that was between you and

7 the man on the ground, or was he somewhere else?

8 A.   No. He was -- that was not the officer.

9 Q.   Where was he?

10 A.   He was -- if -- if I am here and the one

11 between me and the person, he was on the other

12 side of the circle.

13   THE COURT: Just so we are clear, to your

14 right?

15   THE WITNESS: To me right, yes, sir.

16 BY MR. HEINEMAN:

17 Q.   And I want to, again, go back to that last

18 10 seconds before the final three shots that you

19 heard.

20   In the final 10 seconds before those three

21 shots, did you hear any of those other sounds,

22 the TASERs, or those things you described before?

23 A.   No.

24 Q.   In the final 10 seconds or so before you saw

25 the officer fall, did you see any officer move

1   closer to the man on the ground?

2   A.   Not that I recall.

3   Q.   Thank you, Ms. Lane.

4   Let me get those photos back from you, so

5   I don't forget.

6   A.   Thank you.

7   THE COURT: Anything on that?

8   MS. GEMMILL: Yes, just a little bit your

9   Honor, if I may.

10   EXAMINATION

11   BY MS. GEMMILL:

12   Q.   So just taking Exhibit 65 again here, I'm

13   just going to show you Exhibit 65.

14   So is it fair to say as you are looking at

15   the -- the third page here, you know, it looks

16   like there are a lot of trees in the way in this

17   picture; is that fair?

18   A.   Yes.

19   Q.   Is this a clear depiction of how much you can

20   actually see in real life when you are looking

21   through those trees?

22   A.   Not in my view.

23   Q.   Okay. And why not?

24   A.   One reason is I'm -- where I'm standing, I'm

25   blocking an opening in the tree line.

1   If you want, I can show you what I mean by

2 that.

3   So --

4   THE COURT: So, just to be clear, her

5 vantage point is not the vantage point of the

6 photograph.

7   MS. GEMMILL: Right.

8   THE WITNESS: Yes.

9 BY MS. GEMMILL:

10 Q.   And that photo that you are looking at on

11 page 3 is from approximately the sliding door

12 inside the kitchen area, correct?

13 A.   I believe so.

14 Q.   Right.

15   And that's where you were watching a lot

16 of this incident from, correct?

17 A.   Yes.

18 Q.   Okay. So from that vantage point, what it

19 appears you can see through those trees, is that

20 accurate to what you can see through those trees

21 in real life; what you could see that day?

22 A.   I think that photographs give you an idea,

23 but I think in person it's a -- a different view.

24 It's a little more than you would imagine.

25 Q.   Okay. So the kind of movement and the kind

1   of color and the kind of detail you could

2   actually see --

3   A.   Yes.

4   Q.   -- is not really captured in that picture; is

5   that fair?

6   A.   Yes.

7   MS. GEMMILL: All right.

8   I have nothing further for you.

9   Thank you.

10   MR. HEINEMAN: If I could just briefly.

11   EXAMINATION

12   BY MR. HEINEMAN:

13   Q.   And do you understand, ma'am, that that's

14   because of the way the human mind works, is it

15   fills in the blanks that it can't see?

16   MR. GEMMILL: Objection.

17   THE COURT: Sustained.

18   BY MR. MCDONALD:

19   Q.   You could see movement and color through all

20   those trees, correct?

21   A.   Yes.

22   Q.   Never once could you see the man on the

23   ground in his entirety, his whole body all at

24   once, without something blocking part of your

25   view, correct?

1   A.   No, that's not true.

2   Q.   Okay. So there were times you could see the

3   man without any of those needles or trees

4   blocking any portion of his view?

5   A.   Yeah.

6   Q.   And the officer as well that fell, could you

7   see him the entire time without any needles or

8   trees blocking --

9   A.   I saw the officer slip and fall. I saw the

10   whole thing.

11   Q.   I understand that, ma'am.

12   My question was: Could you see the entire

13   officer's body without anything blocking any part

14   of his body?

15   A.   I did.

16   Q.   Okay. Thank you.

17   THE COURT: Thank you, Ms. Lane.

18   You are all set.

19   THE WITNESS: Okay. Thank you.

20   (Witness excused.)

21   THE COURT OFFICER: Watch your step.

22   You are free to go.

23   THE COURT: Why don't we break until

24   2:00.

25   THE COURT OFFICER: All rise.

1   Court will be in a recess until 2:00.

2   (1:04 p.m. court in recess.)

3   (2:05 p.m. court resumes.)

4   THE COURT OFFICER: Court is now in

5   session.

6   Please be seated.

7   MR. VAN EPPS: Good afternoon, Judge.

8   THE COURT: Do we know where Ms. Gemmill

9   is?

10   THE CLERK: She just stepped out a moment

11   ago.

12   THE COURT: All right. Who is up next?

13   MR. VAN EPPS: It's going to be Angela --

14   Angela Schmidt.

15   THE COURT: Okay.

16   MR. VAN EPPS: I almost said Angela

17   McDonald.

18   THE COURT: And, Commonwealth, whenever

19   you are ready.

20   MR. VAN EPPS: Oh, I didn't realize, your

21   Honor.

22   THE COURT: That's all right.

23   MR. VAN EPPS: Angela Schmidt, please, is

24   the next witness.

25   I'll go out and get her. We don't have

1 any extra court officers.

2   So the clerk will swear you and then you

3 can have a seat in the witness chair over there.

4   THE CLERK: So, ma'am, you can remain

5 standing and raise your right hand.

6   Do you solemnly swear or affirm that the

7 testimony you will provide the Court today will

8 be the truth so help you God?

9   THE WITNESS: Yes, I do.

10   THE CLERK: Thank you.

11   ANGELA SCHMIDT, SWORN

12 BY MR. VAN EPPS:

13 Q. Good afternoon, miss.

14 A. Hello.

15 Q. Can we have your full name, please, and can

16 you spell it for our record?

17 A. Angela Schmidt. A-N-G-E-L-A S-C-H-M-I-D-T.

18 Q. Great. And, miss, what do you do for a

19 living?

20 A. I am a registered nurse.

21   I practice -- I am a visiting nurse with

22 Comfort Home Care.

23 Q. Okay. So you are an RN.

24   How long have you been an RN for?

25 A. For approximately five years.

1   Q.   And where did you study to become an RN?

2   A.   I studied at Bunker Hill Community College.

3   THE COURT: Mr. Van Epps, let me just

4   interrupt.

5   Ms. Schmidt, can you just pull that

6   microphone toward you a bit?

7   THE WITNESS: Sure.

8   THE COURT: Perfect.

9   BY MR. VAN EPPS:

10   Q.   Okay. You said five years, I think?

11   A.   Yes. 2018.

12   Q.   What did you do before that?

13   A.   Before that, I was a general manager with

14   Petco Supplies and a human resource manager.

15   Q.   Okay. And what does Comfort Home Care do?

16   A.   Comfort Home Care provides visit nursing

17   throughout Massachusetts for psychiatric patients

18   and medical patients.

19   Q.   Okay. And is Comfort Home Care typically

20   hired or contracted by other groups that have

21   patients with mental health issues?

22   A.   Yes.

23   Q.   Is there a company named Eliot or an

24   organization named Eliot that you are familiar

25   with?

1   A.   Yes.

2   Q.   And what is Eliot?

3   A.   Eliot is a -- a health -- mental health

4   function -- I don't know, facility. They help

5   with people are mental health issues or

6   addictions and...

7   Q.   And do you understand Eliot to operate a

8   series of group homes in Massachusetts?

9   A.   Yes.

10   Q.   Okay. Is one of those group homes located at

11   98 Hancock Street in Lexington?

12   A.   It is a group home but there was no

13   supervision there. There was no inside

14   supervision.

15   Q.   So that was a group home?

16   A.   Yeah.

17   Q.   Okay. And so it sounds like what you are

18   saying is there are groups homes in which it's

19   supervised and there are some groups homes that

20   are not; is that right?

21   A.   Absolutely.

22   Q.   In terms of when you say "supervision," does

23   that mean that there's somebody from Eliot or

24   whoever runs the group home living there kind of

25   keeping tabs on the residents there?

1   A.   That is correct.

2   Q.   Okay.   The -- the group home run by Eliot at

3   98 Hancock Street in Lexington, are you familiar

4   with that one?

5   A.   Yes.

6   Q.   You've been there before?

7   A.   Yes, I have.

8   Q.   Over what period of time were you seeing

9   patients at that group home?

10 A.   I was seeing patients for approximately ten

11 months there.

12   Brendan Reilly was my patient that I saw

13 there but I did not -- his start of care was in

14 January of '21.

15 Q.   Okay.

16 A.   But I did -- I was not the original nurse.   I

17 think I started with him maybe a few months after

18 that so...

19 Q.   And so how often would you see him?

20 A.   I saw him Monday through Friday daily.

21 Q.   Okay.

22 A.   He was seen twice a day.   Another nurse would

23 see him in the p.m.

24 Q.   So you'd see him in the morning?

25 A.   Yes.

1 Q. And as part of that was your -- was one of

2 your duties to administer whatever prescribed

3 medication he needed?

4 A. Yes.

5 Q. Okay. And were you required to make sure

6 that he took it in your presence as opposed to

7 just leaving it with him to take when -- you

8 know, when he was by himself?

9 A. Yes. Yes.

10 Q. Okay. And, through that, did you also become

11 acquainted with him and from time to time have

12 contact with members of Mr. Reilly's family?

13 A. Yes.

14 Q. Can you tell us who?

15 A. His mother, Carol.

16 Q. Through your visits with -- with Mr. Reilly,

17 I imagine you had, you know, various

18 conversations with him and became somewhat

19 familiar with him; is that right?

20 A. Sure. Yes.

21 Q. All right. Are you aware of whether there

22 was a reason that you were instructed to make

23 sure that he took his medication in your

24 presence?

25 A. Yes.

1   I -- I'm aware that he -- I don't know how

2   to say -- he was ob -- a little obsessive with

3   his medication --

4   Q.   Uh-hum.

5   A.   -- and he wouldn't -- he was in jeopardy of

6   maybe hoarding his medication or not taking it

7   and saving it.

8   Q.   All right. Understanding that you are not an

9   M.D. --

10   A.   Uh-hum.

11   Q.   -- do you have a general understanding, or

12   what was your understanding of what his diagnoses

13   were that required this medication?

14   A.   The diagnosis that we had on chart were

15   unspecified mood affective disorder and opioid

16   dependence, unspecified.

17   Q.   Before coming here today, I understand that

18   you went back and tried to assemble a list of the

19   medications that you were required to administer

20   with Mr. Reilly during your visits.

21   A.   Yes, I did.

22   Q.   I've given a copy to other counsel.

23   I just want to show you this one-page

24   document?

25   A.   Uh-hum.

1   Q.   Please tell me if you can identify what it

2   is?

3   A.   Yes, it's a list of medications.

4   Q.   You made that?

5   A.   Yes, I did.

6   Q.   Okay. And that's based on your reference to

7   whatever notes or records are available to you

8   through Comfort Home Care?

9   A.   That is correct.

10   MR. VAN EPPS: I would offer this as the

11   next exhibit, Judge.

12   THE COURT: All right.

13   THE CLERK: Sixty-seven, your Honor.

14   (Exhibit No. 67, One-page list of

15   medications, received into evidence.)

16   MR. VAN EPPS: I am just going to give it

17   to the Court.

18   THE COURT: Thank you.

19   BY MR. VAN EPPS:

20   Q.   All right. Did there come a time in -- in or

21   about January 9, 2022 [sic], when you visited the

22   house --

23   A.   Yes.

24   Q.   -- the group home -- to check on Brendan

25   Reilly?

1   A.   Yes.   I was due for -- to go there for a

2   visit that morning as well.

3   Q.   Okay.   Tell me about what you saw and heard

4   when you first got to the house.

5   A.   I arrived at the home and let myself in.   And

6   the safe was on the floor in the living room.

7   Q.   What safe?

8   A.   I mean the dining room, I'm sorry.

9   THE COURT: I'm sorry, can we just back

10   up.

11   What date was this?

12   MR. VAN EPPS: February 9th, Judge.

13   THE WITNESS: February 9th.

14   THE COURT: Thank you.

15   A.   The Megasafe for Brendan's medication.

16   Q.   Okay.

17   A.   And it was kept in there so it would be safe.

18   Q.   So you wouldn't have to bring all the

19   medications with you every time?

20   A.   No.   Usually I would not bring the medication

21   with me.   I did on this day happen to have his

22   medication because I just picked it up at the

23   pharmacy.

24   Q.   Okay.

25   A.   But there was also medication in the safe.

1   Q.   Okay.   And what is a Megasafe?

2   What did that Megasafe look like?

3   A.   I would say it was is that two-by-two or

4   two-foot by two-foot.   It was concrete in the

5   back with a metal front.

6   Q.   Uh-hum.

7   A.   Combination lock.   It was very heavy, very --

8   it was a lot more secure than the other safes.

9   Q.   So you were saying when you went in, I think

10   you said it was in the dining room; is that

11   right?

12   A.   Yeah.   It was on the floor in the dining

13   room.

14   Q.   And what did you observe about it's

15   condition?

16   A.   It was busted completely, the top of it.   The

17   metal was completely dented up and -- and there

18   was fingerprints with -- it looked like blood

19   fingerprints on the corners of the safe on all

20   sides.   Yeah, it was very damaged.

21   Q.   Okay.   Did it look like it had been opened?

22   A.   It did not look like that -- even though

23   there was a large fold or a dent, you could not

24   access the stuff inside.

25   Q.   Okay.   What other observations did you make

1 about the house?

2   Were you able to figure out who was home,

3 if anybody?

4 A.   The -- Brendan was upstairs in his room

5 sleeping.

6   I had not gone up there yet. As far as

7 any of his roommates, I did not see. I did not

8 come across anybody else.

9 Q.   Okay. From time to time you would also see

10 another patient at that house, though; is that

11 right?

12 A.   Yes.

13 Q.   Who is that?

14 A.   James Hanify.

15   He was not my patient but if the nurse

16 that covers him was on vacation or had to not see

17 him, they asked if I could, you know, prepour his

18 medication for him or something.

19 Q.   Okay. All right. So finding the -- the

20 Megasafe, I think you called it, in this damaged

21 condition, what did you then do?

22 A.   I had called my nurse supervisor and let her

23 know the condition of the safe when I got there

24 and that I -- also, I had -- I attempted -- I put

25 gloves on and attempted to open up the safe, and

1   I was unable to get it to open. I called my

2   nurse supervisor to get some advice on -- on

3   where to go from here because I have medication

4   on me. The safe is not -- I am unable to open

5   the safe.

6   Q. So you can't put it in the safe?

7   A. So I can't put it in the safe. And...

8   Q. So after that conversation, what did you

9   decide to do?

10   A. We decided that we were going to try to get

11   him sectioned or get him some help.

12   Q. And a "section" is what?

13   A. A section is to keep -- to bring him to the

14   hospital and -- but without his permission.

15   Q. Involuntarily?

16   A. Involuntarily, yes.

17   Q. And so what -- and then so then what steps

18   did you take to try to make that happen?

19   A. I went -- I went up to Brendan's room and

20   knocked on his door and asked him to come

21   downstairs and discussed with him about what

22   happened the previous evening.

23   Q. Okay. Did you make any observations about

24   his -- his condition, meaning whether he was

25   alert, coherent or -- or -- or any other

1 observations that you would make based on your

2 training as a nurse?

3 A.   Yeah, he was alert and oriented. He was --

4 his anxiety was increased probably due to the

5 circumstances of, you know -- but originally he

6 denied that he did that to the safe; but then he

7 said, no, I did do it, and I'm sorry. My mom

8 will pay for the safe.

9 Q.   Did you have a discussion with him about

10 whether he would be safe to remain in -- in this

11 unsupervised group home at that point?

12 A.   Yep.

13 Q.   Take your time.

14 A.   I'm sorry.

15   Yeah, so I had a discussion with Brendan

16 at that point that I would like to try to call

17 somebody and get him some help. Get him

18 someplace safe, like, to an emergency room or

19 something on that idea.

20   And he said, I don't want to go. I didn't

21 have any interest in going but I tried to

22 reiterate with him -- at that point I did notice

23 that we were in the kitchen and that the burner

24 was on on the stove in the kitchen.

25   And I'm, like, Brendan, we really -- I

1   think you really need to just -- I am going to

2   call somebody and try to get you some help and

3   get you somewhere, you know, so you will be safe.

4   Q.   And -- and if I understand you, at this point

5   he's -- he's not willing --

6   A.   No.

7   Q.   -- he's not interested in leaving the house?

8   A.   No.   I did -- I then -- we had the discussion

9   about if he felt like he was going to self-harm.

10   If he felt like he had any thoughts of harming

11   anybody else, any self-harm.   He denied any of

12   those characteristics.

13   And I asked him if he had taken any

14   medication that morning.   He did not -- he said

15   he did not take any medication that morning.

16   The safe did not appear to have been --

17   even though it was busted.

18   So I administered his a.m. medication and

19   Brendan went back upstairs.

20   Q.   Okay.   So then did you call anybody?

21   A.   So then I called the police department and

22   the acute -- the crisis -- intervention crisis

23   center.   I'm sorry, I don't have the -- it's ACCS

24   but...

25   Q.   Okay.   And what is the ACCS, the crisis

1   intervention line, what would be the purpose if

2   calling them?

3   A.   Same, to try to do a section.

4   Q.   Okay.

5   A.   To get Brendan some help.

6   Q.   Okay. Did there come a time when police

7   officers from Lexington came to the house after

8   you called?

9   A.   Yes.

10   Three officers came to the house and they

11   came in. I explained to them -- I showed them

12   the safe. It was on the table at this point.

13   And I explained to them that I can't

14   access his medication into the safe -- I can't

15   put medication in; I can't take any medication

16   out, and that I felt that Brendan might be unsafe

17   because of medication -- not being able to leave

18   medication in the home and that he could, you

19   know, possibly overdose or something on that

20   idea.

21   Q.   Okay. Did you have discussions with them and

22   with the crisis intervention folks on the

23   phone --

24   A.   Yes.

25   Q.   -- about whether a section could be obtained

1   so that Mr. Reilly could be taken to a hospital

2   against his will, if necessary?

3   A.   That's what -- yes.

4   Q.   Okay. So how did that unfold from there?

5   A.   The -- the police tried to help me open the

6   safe. They were unable to open the safe as well.

7   They went up to Brendan's room and brought

8   him down, also into the kitchen, and tried to get

9   an idea of where he was mentally, you know.

10   And at the same time I am on the phone

11   with the -- the crisis center trying to get a

12   section from there.

13   Q.   And were they able to obtain a section order

14   to make that happen?

15   A.   No. They -- the outcome was that he was

16   not -- even though I was fearful of future

17   problems with possibly taking drugs or, you know,

18   access to his drugs, they said he was not an

19   immediate danger to himself, so they refused a

20   section.

21   Q.   Okay. Now, following this incident --

22   following your discussions with the -- the folks

23   on the phone and with the officers on scene, how

24   did the -- how did your visit to the house end on

25   the 9th?

1   What happened after that?

2   A.   Okay. At the same time that this is

3   happening, I'm also in talking to my nurse

4   supervisor who emailed Eliot group and let them

5   know that -- about the -- the safe being broken

6   into and that I had administered the morning

7   medication.

8   At that point we thought that we were

9   going to be able to get him into a facility. So

10   that it said that, you know, he was going to go

11   to an emergency room and that we would be

12   discharging from service because we were -- were

13   unable to due to safety concerns.

14   Q.   Okay. And normally when somebody's

15   sectioned, that's essentially where they go, they

16   go to the nearest emergency room facility that is

17   qualified to accept somebody with -- with

18   whatever diagnoses they have, I guess?

19   A.   Yes.

20   Q.   Is that correct?

21   A.   Yes, I believe so.

22   Q.   So Comfort Care informs Eliot that Comfort

23   Care is no longer going to do the visiting nurse

24   service for Mr. Reilly?

25   A.   Yes.

1   Q.   You have medication for him.

2   What becomes of that medication?

3   A.   I speak to the Eliot group after I leave the

4   house -- it was about 10:00, 10:20 somewhere on

5   that idea -- and arrange to drop the medication

6   off at the Eliot group.

7   It was in Concord.   It was 86 Parker

8   Street in Concord.

9   Q.   So -- so you leave around ten something in

10   the morning?

11   A.   Right.

12   But I'm going to drop the medication off

13   after I finish my shift.

14   So I dropped the medication and signed --

15   you know, we transferred the meds over at about

16   1:30.

17   Q.   Now, you mentioned this particular 98 Hancock

18   Street house had a Megasafe.

19   Was that safe always there?

20   A.   No.   No.

21   Q.   Are you aware of why that house had a

22   Megasafe?

23   A.   We brought the Megasafe in because we had

24   difficulty -- past difficulty with Brendan and

25   breaking into safes that were a little bit lower,

1   like moderate, you know.

2   Q.   To get whatever medication he had?

3   A.   Yes.

4   MR. VAN EPPS: If I could just have a

5   minute, Judge.

6   THE COURT: Uh-hum.

7   BY MR. VAN EPPS:

8   Q.   When you were discussing with Eliot the fact

9   that Comfort Care was no longer going to be the

10 visiting nurse provider --

11 A.   Uh-hum.

12 Q.   -- was that a discussion that you had, or was

13 that relayed to you through somebody at Comfort

14 Care that had talked to Eliot?

15 A.   Yes.

16   So that was through my nurse supervisor

17 Kristen Griffin (phonetic).

18 Q.   So that is your impression of what she is

19 telling you that the discussion was?

20 A.   The -- she sent me the -- the email that she

21 sent.

22 Q.   Okay.   When you're leaving the house that

23 morning --

24 A.   Uh-hum.

25 Q.   -- did you have an understanding of whether

1   anybody from Eliot was going to follow up to try

2   to either visit the house or have another

3   visiting nurse provider visit the house?

4   A.   Yes, I did.

5   The person that I spoke to on the phone

6   said that somebody would be going out to the

7   house to check on him.

8   Also, once I arrived at 1:30 to do the med

9   transfer, they had said that they had already

10 been to the house and that they had taken a walk

11 with Brendan and he seemed okay. He seemed all

12 right.

13   We discussed, briefly, about how I thought

14 he needed to be in a more supervised home, like,

15 somebody that -- like, a place where somebody was

16 there with continual supervision.

17   And they -- they just said, Well, you

18 know, we'll figure it out.

19   MR. VAN EPPS: Judge, can I have the

20 exhibit back?

21   THE COURT: Uh-hum.

22 BY MR. VAN EPPS:

23 Q.   I'm going to hand you Exhibit 67, which is

24 the list you made of the different medicines.

25 A.   Uh-hum.

1 Q. So it looks like there's almost a dozen here.

2   Were there particular medicines or

3 medications that Mr. Reilly seemed particularly

4 interested in?

5 A. Yes.

6 Q. You described him as --

7 A. Yes.

8 Q. -- as either anxious or perhaps even hoarding

9 some of the medications or wanting to.

10   Were there certain medications that he

11 felt that way about or -- or was it unspecified?

12 A. Mostly the medications were the Abilify and

13 the Wellbutrin SR. --

14 Q. Okay.

15 A. -- were his -- were ones that he seemed to

16 perseverate on.

17 Q. Those were the ones that he was really

18 interested in?

19 A. Uh-hum. Yes.

20   MR. VAN EPPS: I don't have any further,

21 Judge.

22   THE COURT: Mr. McDonald?

23   MR. MCDONALD: I have a couple of

24 questions for you.

25   THE WITNESS: Okay. Sure.

1   EXAMINATION

2   BY MR. MCDONALD:

3   Q.   Ms. Schmidt, are you able to -- to state with

4   any degree of medical certainty what would likely

5   happen to Mr. Reilly if he stopped taking the

6   psychiatric medications that he had been on?

7   A.   No.   No.   That is not something that I would

8   state being not a doctor.   I'm a nurse.

9   Q.   You are not competent to answer that

10   question.

11   A.   Yeah.

12   Q.   How about with respect to taking too much of

13   any of them, can you tell what the consequences

14   could be?

15   A.   Too much of any medication could cause an --

16   an overdose and respir -- you know --

17   Q.   And what?

18   A.   They would stop breathing.

19   MR. MCDONALD: Thank you, that's all.

20   THE COURT: Mr. Heineman?

21   MR. HEINEMAN: Very briefly.

22   EXAMINATION

23   BY MR. HEINEMAN:

24   Q.   Ms. Schmidt --

25   A.   Sure.

1   Q.   -- Carol Reilly was your main point of

2   contact for Brendan?

3   A.   Yes.

4   Q.   And there were times that you would

5   communicate with her about getting Brendan his

6   meds, right?

7   A.   Yes.

8   Q.   And the two of you would exchange text

9   messages on a fairly regular basis?

10   A.   Yes.

11   Q.   Do you remember that the morning of

12   February 9th it was actually Carol Reilly that

13   sent you a text let you know that Brendan had

14   tried to break into the safe?

15   A.   Yes. I had told them that, yes.

16   Q.   All right. So it wasn't that you came there

17   and discovered it; the Reilly family reported to

18   you that this had happened, and you went there

19   that morning --

20   A.   Yes.

21   Q.   -- and discovered that what they said had

22   happened, had happened?

23   A.   That is correct.

24   Q.   All right. And the reason, based on your

25   understanding when you were there that day,

1   Brendan was calm and -- calm enough and under

2   control enough that the police and the crisis

3   center didn't think a Section 12 was appropriate

4   even though you thought it was?

5   A.   Yes, he was -- he was anxious, but he was not

6   admitting to any self-harm or...

7   MR. HEINEMAN: Thank you, very much,

8   Ms. Schmidt.

9   THE WITNESS: Thank you.

10   THE COURT: All right.   Thank you very

11 much.

12   THE WITNESS: Thank you.

13 (Witness excused.)

14   MR. VAN EPPS: Judge, before we get to

15 our next witness, so I would offer just a few

16 reports.

17   So I have the interview report of Maddie

18 Lane.   The report references photographs which

19 are already in evidence.

20   THE CLERK: Sixty-eight.

21   (Exhibit No. 68, Photographs, received

22 into evidence.)

23   MR. VAN EPPS: I would offer the report

24 of the interview of Patty or Patricia Lane.

25   THE CLERK: Sixty-nine.

1   (Exhibit No. 69, Report of interview of

2 Patricia Lane, received into evidence.)

3   MR. VAN EPPS: As well the report of the

4 interview of Angela Schmidt.

5   THE CLERK: Seventy.

6   (Exhibit No. 70, Report of interview of

7 Angela Schmidt, received into evidence.)

8   MR. VAN EPPS: The report of the attempt

9 to interview of Erin Katz from Eliot.

10   THE CLERK: Seventy-one.

11   (Exhibit No. 71, Report of the attempt to

12 interview of Erin Katz from Eliot, received into

13 evidence.)

14   MR. VAN EPPS: A set of records provided

15 by Eliot, along with a certification; and, in

16 particular -- so this has a bunch of notes from

17 Eliot, including a note from the morning of the

18 12th that the nurse had not been able to see him,

19 which I highlighted just for reference.

20   But the notes go back quite a period of

21 time.

22   THE COURT: All right.

23   MR. VAN EPPS: These are all -- the

24 certification from Eliot attached to it.

25   THE CLERK: Seventy-two.

1   (Exhibit No. 72, Set of records provided

2 by Eliot along with a certification, received

3 into evidence.)

4   MR. VAN EPPS: And then there is a report

5 of the interview of Alula Afework, A-F-E-W-O-R-K,

6 who took over Mr. Reilly on behalf of the next

7 visiting nurse association after Comfort Care who

8 met...

9   THE CLERK: Seventy-three.

10   (Exhibit No. 73, Interview of Alula

11 Afework, received into evidence.)

12   MR. VAN EPPS: And then, with that, I

13 would call -- actually, while I am at it, I would

14 also -- I know the Court had asked for the full

15 medical examiner file.

16   THE COURT: Uh-hum.

17   MR. VAN EPPS: This is the printed file.

18 It's not all the photographs.

19   THE COURT: All right.

20   MR. VAN EPPS: I can offer those, if the

21 Court wants them.

22   THE COURT: And those have -- include

23 the -- I think it's Lahey Clinic records?

24   MR. VAN EPPS: Yes.

25   THE COURT: All right.

1   MR. VAN EPPS: It has the ambulance

2 records as well as the Lahey records.

3   THE COURT: All right.

4   MR. VAN EPPS: And I would actually

5 suggest we keep that with the other medical

6 examiner materials which are he exhibits...

7   THE COURT: Why don't we mark it as 74

8 and I --

9   MR. VAN EPPS: Okay.

10   THE COURT: And I know which one it's

11 going to be a reference to.

12   MR. VAN EPPS: Sure.

13   THE COURT: Just for clarity.

14   THE CLERK: Seventy-four.

15   (Exhibit No. 74, Full Medical Examiner

16 file, received into evidence.)

17   MR. VAN EPPS: And, again, that's not all

18 of the autopsy photos --

19   THE COURT: Right.

20   MR. VAN EPPS: -- that's just a --

21   THE COURT: Right, that's just a

22 printout.

23   MR. VAN EPPS: The next witness is

24 Charles DiChiara.

25   Mr. Clerk, what's Exhibit 70?

1   THE CLERK: Seven, zero is --

2   MR. HEINEMAN: Angela Schmidt.

3   MR. VAN EPPS: Thank you.

4   THE CLERK: Thank you, counsel.

5   All right. Sir, I'm going to ask you to

6 remain standing and raise your right hand.

7   Do you solemnly swear or affirm that the

8 testimony you will provide the Court today will

9 be the truth so help you God?

10   THE WITNESS: I do.

11   CHARLES DICHIARA, SWORN

12   EXAMINATION

13 BY MR. VAN EPPS:

14 Q. Good afternoon, sir.

15 A. Afternoon, sir.

16 Q. Could you give us your full name and spell it

17 for the benefit of the record, please?

18 A. Yes, sir.

19   My name is Charles, middle initial M, as

20 in Michael, last name is DiChiara, D as in Delta,

21 I, capital C-H-I-A-R-A.

22 Q. And I understand you are a Waltham police

23 officer; is that right?

24 A. Yes, sir, correct.

25 Q. How long have you been employed in that

1 position for Waltham?

2 A.   I have been with Waltham for about 26 years.

3 Q.   And what is your current assignment or duty

4 with the Waltham Police Department?

5 A.   I am currently assigned as the training

6 officer for the police department.

7 Q.   Waltham Police Department's approximately how

8 many people?

9 A.   We have 160 officers, I believe.

10 Q.   So you are the training officer for the

11 Department.

12   Are there other training officers?

13 A.   Right now I am the only training officer.

14 Q.   And so what are your -- what are your duties

15 an responsibilities in that role?

16 A.   So I assist with all of the training from the

17 recruit officers, brand-new officers, being

18 hired.

19   I teach the police academy. I train them

20 throughout the academy and a bunch of different

21 things, and I oversee their field training office

22 -- or when they get on the police department.

23   And I am also responsible for veteran

24 in-service training, which every police officer,

25 once they are on the Department, has to get

1 yearly training, annual training.

2   And I am responsible for annual training

3 and specialized training throughout the

4 Department.

5 Q. Okay. So we'll come back to the in-service

6 training in a little bit.

7   What police academy did you graduate from

8 and when was that?

9 A. I graduated, I believe, in 1990 from the

10 Topsfield Police Academy.

11 Q. Now, are you -- do you do some work with an

12 organization known as Safariland?

13 A. Yes, sir, I do.

14 Q. What is that organization?

15 A. Safariland is an International police

16 training group.

17   It has probably over 50,000 officers

18 worldwide, United States and other countries as

19 well.

20   So it's an international police training

21 group.

22 Q. Okay. And what is your connection or

23 affiliation with that organization?

24 A. I am one of the master instructors for the

25 group, and I'm on their advisory board, training

1 advisory board.

2 Q.   What is a "master instructor"?

3 A.   A master instructor trains other end users in

4 the techniques and tactics and it also trains the

5 other -- it also trains other instructors as

6 well.

7 Q.   And what are the topics or the subject matter

8 that Safariland instructors train other police

9 officers on?

10 A.   Use of force, ground defense, police baton,

11 handcuffing, OC pepper spray, deescalation are

12 various tactics.

13 Q.   Okay. All right. And you mentioned that

14 Safariland that it has -- it's International in

15 scope.

16   What -- do you know what countries are

17 involved in that organization?

18 A.   Sure.

19   We've trained offers from Switzerland,

20 Canada, overseas, Columbia National Police,

21 there's a -- there's a bunch of different

22 countries affiliated.

23 Q.   Okay. Do you -- your also, by the way -- you

24 have a position with something called NEMLEC; is

25 that right?

1   A.   Yes, sir, I do.

2   Q.   What is NEMLEC?

3   A.   NEMLEC is, Northeast Massachusetts Law

4   Enforcement Council; and it's a consortium of, I

5   believe, 64 cities and towns in Northeast

6   Massachusetts, Greater Boston.

7   And it responds to critical incidents

8   within those -- those 64 cities and towns.

9   Q.   Okay.   And NEMLEC, correct me if I am wrong,

10   they operate one or more I guess what I would

11   call a SWAT team?

12   A.   That's correct.

13   Q.   Okay.   And is that part of your role with

14   them lack?

15   A.   Yes, sir.   I've been on the SWAT team.   I

16   actually just retired from the SWAT team about

17   two months ago.

18   Q.   Okay.   Now, are -- do you also do any in

19   instructing or teaching with any police

20   academies?

21   A.   Yes, sir, I do.

22   Q.   Tell me which academies and the things that

23   you are involved in in teaching or instructing?

24   A.   I currently teach at various -- there's seven

25   police academies across the state that are

1 affiliated with the Commonwealth.

2   Seven main and then ten affiliated ones.

3   So the seven academies, I teach, I teach

4 at the Lowell Police Academy; the Randolph Police

5 Academy; the Lynnfield Police Academy; the

6 Northern Essex Community College Police Academy;

7 Merrimac College; and Fitchburg State College.

8 Q.   Now, is there something in Massachusetts

9 called the MPTC?

10 A.   Yes, sir.

11 Q.   What is that?

12 A.   MPT -- MPTC stands for Municipal Police

13 Training Committee.

14   And it's the government entity that

15 controls police training throughout the State of

16 Massachusetts for the -- I believe 357 police

17 departments.

18 Q.   Okay. And is that essentially an attempt to

19 have some kind of uniform training across the

20 Commonwealth?

21 A.   Yes. Standardization, yes, sir.

22 Q.   And what is your affiliation with the MPTC,

23 if any?

24 A.   I've taught for the MPTC as an instructor for

25 about 25 years, 24 years.

1   And I am currently the statewide

2   coordinate for defensive tactics and use of force

3   for the state.

4   Q.   Okay.   MPTC used to have a different name; is

5   that right?

6   A.   It did.

7   Q.   What was the prior name?

8   A.   I believe it was called Massachusetts

9   Criminal Justice Training Council.

10 Q.   And I think you mentioned that you were a

11 statewide coordinator for MPTC?

12 A.   Yes, sir, correct.

13 Q.   So what are your duties an responsibilities

14 as a statewide coordinator?

15 A.   To work on the curriculum for recruit

16 officers as well as veteran officers; to oversee

17 training at the police academies.

18   And there are approximately 300 defensive

19 tactics instructors in Massachusetts, so I

20 oversee the other instructors in their

21 recertification process and training as well.

22 Q.   Now, within Massachusetts, officers

23 typically, they go to a police academy, then I

24 think you mentioned something earlier in your

25 testimony called annual in-service?

1   A.   Correct.

2   Q.   What's that?

3   A.   Once a police officer gets out of the police

4   academy, he's required by the state and by

5   post-standards to attend basically 40 hours of

6   veteran in-service training.

7   And the training is yearly, they have to

8   go to maintain certification.

9   It usually has -- it has some -- it has

10   some classes that are always going to be the

11   same.

12   So every year they are going to get some

13   proponent -- some component of legal update, use

14   of force, CPR, first responder; and then they'll

15   mix in other classes like officer wellness, or

16   hate crimes, or something to that effect.

17   Q.   Okay. And have you ever testified in any

18   courts concerning use of force or -- or defensive

19   tactics or deescalation methods, things like

20   that?

21   A.   Yes, sir, I have.

22   Q.   In what courts?

23   A.   I've testified in district, superior, and the

24   United States District Court in Boston.

25   As far as district courts, mostly

1 throughout the whole state, probably from Cape

2 Cod out to Worcester.

3   Superior Court I've testified in Worcester

4 and I've testified in Boston at United States

5 District Court.

6 Q. All right. And in terms of your testimony --

7 let me back up.

8   Are you also, from time to time, consulted

9 by chiefs of police when they are assessing

10 whether there's an Internal Affairs or IA

11 investigation that needs to be done about, you

12 know, use of force on a particular arrest or

13 incident?

14 A. Yes, sir, I am.

15 Q. Okay. And were you asked to testify here

16 today basically about the -- the -- your

17 understanding about the training officers are

18 given about certain weapons, certain less-lethal

19 weapons, certain defensive tactics and the use of

20 force generally?

21 A. Yes. Correct.

22 Q. Okay. Have you been asked to review the

23 whole file and -- and offer opinions based on all

24 the reports that were generated in the case?

25 A. No, sir, I have not.

1   Q.   I'd like to talk to you now about how MPTC

2   trains officers in evaluating what level of force

3   to use in a particular situation.

4   I take it you have some background with

5   that?

6   A.   Yes, sir, I do.

7   Q.   Okay.   So what are sort of the overarching

8   principle or legal principle that the MPTC

9   teaches the officers in -- in these various

10 trainings?

11 A.   We teach officers that it's a series of

12 standards and guidelines that make up use of

13 force training.

14   And we usually give them -- it opens with

15 an eight-hour class on use of force.

16   And we talk about the law, and we talk

17 about standards and teaching tools to teach an

18 officer to use a reasonable and appropriate

19 amount of force.

20 Q.   Okay.   And is there a case that forms sort of

21 the core of that called *Graham v. Connor*?

22 A.   Yes.   Correct.

23 Q.   And from that, how is that -- how are the

24 lessons of that case taught to the officers?

25 A.   Most of the policies and lessens come from

1   that case.   And we teach -- we teach an officer

2   that their use of force must always be

3   objectively reasonable based on the totality of

4   the circumstances confronting the officer at the

5   time.

6   Q.   Okay.   All right.   And has MPTC developed,

7   over time, something called the totality

8   triangle?

9   A.   Yes, sir.

10   Q.   And what is the totality triangle?

11   A.   The totality triangle, it's a visual learning

12   tool to help the officers determine what a --

13   what an effective use of force would be.   What

14   would be reasonable and proportionate as well.

15   So we use that totality triangle -- it has

16   three sides of it.

17   And we teach the officer to analyze -- use

18   that triangle to analyze their risk as well as

19   what the subject is doing to help them make a

20   better decision on what level of force they

21   should use.

22   Q.   So a triangle has three corners; so I take it

23   there's three general areas that officers are

24   taught to think about at least using this

25   totality triangle?

1   A.   Yes.   Correct.

2   Q.   Okay.   I'm going to show you a document and

3   ask you if you recognize it?

4   A.   Yes, sir, I do.

5   Q.   What is it?

6   A.   This is the MPTC Use of Force Reference Guide

7   with the totality triangle at the top of it.

8   Q.   Okay.   And there is also something below the

9   totality triangle.   It's a multi-color -- it

10   looks almost like a -- a staircase.

11   What is that thing?

12   A.   That would be the MPTC use-of-force model or

13   use of force continuum.

14   MR. VAN EPPS: Okay.   Let me offer this

15   as the next exhibit for demonstrative purposes.

16   THE CLERK: Seventy-five.

17   THE COURT: Exhibit 75.

18   (Exhibit No. 75, Totality triangle,

19   received into evidence.)

20   THE COURT: Exhibit 75.

21   MR. VAN EPPS: I'm just going to hand

22   this back to the --

23   THE COURT: Uh-hum.

24   MR. VAN EPPS: -- the witness.

25   THE WITNESS: Thank you.

1 BY MR. VAN EPPS:

2 Q.   So you have this totality triangle with three

3 sort of general areas to focus on.

4   But there's also this use-of-force model

5 that's on the first page of that exhibit.

6   How do the two interplay, if -- if they

7 do?

8 A.   They -- they actually -- it's just two

9 different ways of looking at it.

10   So the first -- if you take that totality

11 triangle with the three sides and you drop it

12 down into the use-of-force model; it also has --

13 it also has three areas as well.

14   What the use-of-force model is actually

15 five levels within those -- within those three

16 parts of the triangle but it is essentially -- it

17 is essentially the same thing just different ways

18 of explaining it.

19 Q.   Okay. And, so conceptualizing it, is it

20 essentially five levels in three areas to think

21 about?

22 A.   Correct.

23 Q.   So using the exhibit you are holding, can

24 you -- can you tell us with the -- the first of

25 the three corners of the totality triangle is?

1   A.   So the first at the top, that's perceived

2   circumstances. And we teach an officer to first

3   analyze risk.

4   So the first thing they should be thinking

5   of, is their risk assessment of the call that

6   they are on.

7   And that perceived circumstances is where

8   all the factors come into play. So perceived

9   circumstances deals with risk.

10   Q.   So a call for a bank robbery is going to be a

11   different perception than a call for, you know,

12   to back up a motor vehicle stop?

13   A.   Correct, sir.

14   Q.   Okay. All right. What's the second point on

15   the triangle?

16   A.   The second part is perceived subject's

17   actions. Which is those are the actions by the

18   subject or suspect that the police officer

19   perceives based on his training and experience

20   is -- is how he's acting.

21   Q.   Okay.

22   A.   And his level of resistance.

23   Q.   Okay. And then the third?

24   A.   The third part is the officer's -- a

25   reasonable officer's response.

1   And the way it works is if an officer has

2   a good understanding and analysis of the risk

3   coupled with what the subject is doing, that will

4   help him make a better decision on what level of

5   force he should utilize.

6   Q.   Okay.   So each of these three areas, if I

7   understand your testimony, the training is that

8   they -- the officers should -- should think about

9   them in terms of levels; is that right?

10   A.   Correct, sir.

11   Q.   Okay.   With respect to perceived

12   circumstances -- or I think we can call it risk

13   assessment -- what are the five levels?

14   And -- and as you explain it, can you try

15   to differentiate them in some way?

16   A.   So it starts off with the least intensive.

17   So strategic, strategic down the bottom,

18   that just means that's baseline perception of

19   occupationally accepted risk.

20   What it means is -- it's a kind of the

21   minimum.

22   When an office comes into work, he should

23   be situationally aware that he has a vest on.

24   Being a police officer is a dangerous job.

25   So the first -- the first level or two

1   really deals with mindset.

2   So strategic means an officer comes in,

3   there is a fair level of risk of being a police

4   officer and he should have -- he should have

5   situational awareness and be professional.

6   Q.   Okay. As that increases to the next level,

7   which I think is labeled tactical, how does that

8   change?

9   A.   Tactical changes when we have an increase in

10   risk.

11   So if an officer is going to stop a motor

12   vehicle or go on a call or even get out just to

13   talk to a subject in a high-crime area, as a risk

14   goes up, we switch into tactical gear, a tactical

15   mindset.

16   And what that means is, we are recognizing

17   there is an increase in risk and safety

18   strategies are deployed, such as calling for

19   backup or waiting or approaching from a different

20   side.

21   Q.   And the next level is what?

22   A.   Volatile.

23   We explain it like -- like think of it

24   like chemical. So a volatile situation is the

25   officer is recognizing that the call that they're

1   on and the arena that they are operating in has a

2   potential to escalate.

3   It could deescalate, but it's got the

4   potential to escalate in scope and intensity.

5   Q.   And what about when you get to the next

6   level, harmful?

7   A.   Harmful means we've passed the point of it

8   could possibly go bad and now it's gone bad.

9   So now the -- the direct focus is on

10   self-defense because now we have a situation that

11   could be causing harm to an officer or innocent

12   people.

13   Q.   And what is the fifth level under perceived

14   circumstances.

15   A.   Finally, lethal is the least encountered but

16   the most serious within the five levels.

17   And that means that the officer is -- is

18   operating in an environment that somebody could

19   be seriously injured or killed; an officer or

20   innocent people as well.

21   MR. VAN EPPS: Okay.   If I can just have

22   a second.

23   MS. GEMMILL: Sixty-four.

24   BY MR. VAN EPPS:

25   Q.   What you are looking at, by the way, the

1 first page of what you are looking at also

2 appears here at -- towards the back of

3 Exhibit 64.

4   Do you see that?

5 A.   Correct. Yes, sir.

6 Q.   I'm just going to hand that to the Court so

7 the Court has something to look at.

8   So there are also -- on the triangle there

9 is also the subject actions corner, we'll call

10 it, and there's five levels that correspond to

11 that; is that right?

12 A.   Yes. Correct.

13 Q.   So explain to me what those are, please.

14 A.   The first level at the bottom is a compliant,

15 a compliant individual. And that's a person

16 that's doing what's required; doing what's asked

17 of him. And they are complying with the

18 officer's commands and demands.

19 Q.   So would an example of that just be like, you

20 know, a person's about to be arrested, they are

21 ordered to put their hands behind their back and

22 they do it?

23 A.   Correct.

24 Q.   Okay. The next level I see is passive

25 noncompliant. Tell me about that.

1   A.   Passive resistant is the next level up and

2   it's in scope and intensity.

3   And a passive-resistant individual is a

4   person that is not compliant but it's a low level

5   of resistance.

6   Their noncompliance is -- is not met with

7   any -- any physical resistance.

8   It's either verbal in nature, they're

9   refusing to go, or sometimes they just become

10   dead weight and refuse to go anywhere.

11   Q.   Okay. And what about the next level?

12   A.   Active-resistant is now the scope and

13   intensity's increased, their verbal -- their

14   verbal -- their verbal defiance is now met with

15   actual energy-based physical resistance.

16   So now they're tensing up, pulling away,

17   trying to run away. So it's -- it's

18   noncompliance met with physical resistance.

19   Q.   Okay. And then you have on that, I believe

20   the next level is listed as assaultive; is that

21   right?

22   A.   Yes, sir.

23   Q.   Tell me about that.

24   A.   Assaultive means that the person that they

25   are dealing with, their actions are a assaultive,

1   violent, and combative in nature.

2   That means an assault is taking place or

3   is about to take place.

4   Q.   Okay. And there is another level of

5   assaultive.

6   What is that?

7   A.   The next level up and the final level is

8   assaultive or serious bodily harm or death.

9   So a serious bodily injury refers to

10   permanent disfigurement, protracted loss or

11   impairment of a limb, function -- a bodily

12   function or organ or substantial risk of death.

13   Q.   Okay. And does the -- does the presence of a

14   weapon or a dangerous instrument, how does that

15   factor into the subject's actions?

16   A.   That goes with the risk assessment. But now

17   if a subject's actions have -- have gone to the

18   point where they are assaultive and violent and

19   they have proximity of weapons, it changes -- it

20   would change -- it would put the person in a

21   higher category because they have the potential

22   to cause imminent harm to the officer or others.

23   Q.   Okay. And then you also have on the triangle

24   there's something called officer responses?

25   A.   Yes, sir.

1 Q.   And so what are the five levels that are

2 trained on as -- as options for the officer to

3 think about?

4 A.   Same thing.

5   Starting at the bottom, so if we are

6 dealing with a compliant person, we would be

7 looking at cooperative control.

8   So the first level is cooperative controls

9 which refers to professionalism, verbal skills,

10 and command presence.

11 Q.   And what's -- if those are insufficient, what

12 is the next level?

13 A.   For a passive-resistant individual, we teach

14 contact controls. That's the ONCATC, contact

15 controls. And what that means is light-touch

16 tactics. It's a lower level of resistance. So

17 it's a lower level of force.

18   So contact controls refers to push, shove,

19 guide, drag, escort; basically light hands-on

20 techniques.

21 Q.   Okay. And what's the next level?

22 A.   The next step is for an active-resistant

23 individual. We teach officers to get the person

24 to stop their resistance and comply.

25   So we use compliance techniques. So

1   compliance techniques, they refer to pain

2   compliance techniques and there is a -- there is

3   a -- there is a lot of different options; but to

4   give you example, it would be pepper spray,

5   conjoint manipulations, takedowns.

6   Q.   What's a -- what's a "takedown"?

7   A.   A "takedown" would be basically putting

8   somebody on the ground, either where they are

9   tackling the person to the ground or pulling them

10   down with a wrist or -- or an arm bar takedown to

11   the ground to control and restrain.

12   And also the TASER at the drive stun

13   level.

14   Q.   What's the drive stun on the TASER?

15   A.   There's two ways of getting hit with a

16   taster, the first way is a drive stun, which

17   causes less trauma, less injury, and that is

18   just -- it would be easy to explain like a touch

19   stun. So you are basically take a stun gun, an

20   electrical weapon, and you are touching the

21   person so the pain is more localized in that

22   area.

23   Q.   And then the next level beyond that?

24   A.   The next level -- level up is defensive

25   tactics, and those are tactics that are referred

1   to -- think of impact.

2   So defensive tactics, our goal is to get

3   that person to stop their violent behavior

4   immediately and gain and maintain immediate

5   conclusive control.

6   So we use personal weapons or intermediate

7   weapons. You put --

8   Q.   So what -- what are the personal weapons?

9   A.   Sorry.

10   Personal weapons would be punches, kicks,

11   palm heel strikes, elbow strikes, knee strikes;

12   basically weapons of the body.

13   Q.   Okay. And then you -- you started to talk

14   about intermediate weapons.

15   What are those?

16   A.   Yes, sir. Intermediate weapons would be your

17   baton, department-issued baton, or the TASER,

18   firing of two probes which is more impact.

19   Q.   Just so we are clear, why is the TASER with

20   two probes, why -- why is that considered an

21   intermediate weapon as opposed to just the touch

22   version of the TASER, which is taught as being

23   useful in the lower category?

24   A.   The shooting two TASER prongs at somebody is

25   a high level of force because it can cause more

1 trauma and injury.

2   So we are -- we are only able to use it

3 when the person is violent and combative.

4   So when you -- when you fire the probes

5 from the electrical weapon versus a touch stun,

6 you are firing basically two No. 8 fishhooks at

7 the person that stick into the skin and then it

8 causes -- it causes pain, but it also causes

9 neuromuscular incapacitation, and then sometimes

10 people suffer from fall.

11   So it's considered a higher level of force

12 because of a high level of risk.

13 Q.   Okay. And then the next level after that?

14 A.   The next level up is considered deadly force.

15 And deadly force is not really to a specific --

16 it could be a firearm. It could be a tool of

17 immediate means. It could be a flashlight if the

18 situation dictates.

19   So deadly force is at the highest level.

20 Q.   Okay. And you're aware in the last couple of

21 years that the state has outlawed some things

22 that could be tools used to -- that lead to

23 deadly force?

24 A.   Yes. Correct.

25 Q.   For example, the chokehold?

1   A.   Correct.   Chokeholds are banned.

2   Q.   But where is a police officer's baton,

3   whether it's, you know, the old-fashioned, you

4   know, nightstick or an extendable metal baton,

5   where do those fall in the -- in the five

6   categories of available options for force?

7   A.   A police baton falls in a -- at Level 4 or as

8   a defensive tactic.

9   So a police baton is considered an impact

10   weapon, an intermediate impact weapon.

11   Q.   Okay.   In terms of when dealing with various

12   situations, are there weapons that allow the

13   officer to replicate the impact of a baton but at

14   a distance?

15   A.   Yes.   Correct.

16   Q.   What are those?

17   A.   We teach what we call less-lethal impact

18   munitions, which is basically, like you said,

19   it's an -- it's an extended-range impact similar

20   to a police baton.

21   But we use 12-gauge bean bag shotguns to

22   deliver impact, and we use 40mm -- 40mm weapons

23   as well to deliver impact.

24   Q.   Okay.   So we'll come back to those in a

25   second.

1   In dealing with a situation, for

2   example -- withdrawn.

3   So I want to talk about firearms training

4   a little bit.

5   Are you familiar with that?

6   A.   Yes, sir.

7   Q.   Okay.   If an officer has gotten to a place

8   where he is -- he is resorting to deadly force

9   because of the situation, is there training about

10 how to use the firearm to -- to inflict deadly

11 force?

12 A.   Yes, sir.

13 Q.   Is there training specifically about how many

14 times a firearm should be used?

15 A.   We teach officers that in a deadly force

16 confrontation that they are shooting to stop a

17 threat.   So stop an imminent threat, if

18 somebody's life is in peril.

19   So under immediate defense of life, we

20 teach to stop the threat.   We don't teach shoot

21 to kill.   We shoot to stop the threat.

22   We don't shoot -- we don't teach to count

23 their rounds as they are firing but they are

24 assessing and reassessing as they are shooting.

25   So we teach an officer to stop the

1   person's behavior.

2   And whatever action made them pull the

3   trigger when this action stops, they should cease

4   with their use of force.

5   So they're assessing and reassessing as

6   the event is ongoing.

7   Q.   All right. So if I understand what you are

8   saying, they are not firing a shot, pausing;

9   firing, pausing?

10   They are firing a certain amount and then

11   looking for whether or not, whatever they

12   perceived as the threat is still their upon them?

13   A.   Yes, they are shooting to stop the threat.

14   So they are assessing did they hit the --

15   did they hit the subject and did that subject

16   stop his violent behavior.

17   Q.   Okay. How are the officers trained in terms

18   of where to aim the firearm when they are going

19   to use it?

20   A.   They are trained to shoot at center mass,

21   which refers to center of available target.

22   Q.   And why is that?

23   A.   Well, we are responsible for -- we are

24   responsible for every round that we fire.

25   So we teach center mass first and foremost

1   for accuracy so that they can hit the target that

2   they are shooting at to stop that violent

3   behavior.

4   So it's important that they -- they hit

5   the target, so we teach center mass for accuracy.

6   Also, because we are responsible for every

7   round that we -- if we miss our target than those

8   bullets are going other places.

9   So we try to teach center mass for

10 accuracy to stop the threat and for -- and for

11 the protection of the public as well.

12 Q.   Okay. Are officers trained as to whether or

13 not they should fire warning shots, for example?

14 A.   We don't teach warning shots, no, sir.

15 Q.   Why is that?

16 A.   They just -- years ago they taught them and

17 there's just -- there's really no reason for

18 them, and we feel they are unsafe, so we don't

19 shoot warning shots.

20 Q.   Okay. And you talk about targeting center

21 mass.

22   Why center -- I mean you talked a little

23 bit about why; but is there a reason that

24 officers are now trained to, for example, shoot

25 somebody in the leg or the arm?

1   A.   To shoot somebody -- we don't teach shooting

2   in the arm or the legs because, one, it's a

3   harder target to hit.

4   And two, the femoral artery runs through

5   the leg, so we -- it doesn't -- wherever you hit

6   that target, you really don't know what -- what

7   damage a bullet is going to cause.

8   So the first reason we teach it is for

9   accuracy but the second reason is is we just

10   don't know what's going to happen when the bullet

11   impacts.

12   There's been -- there's been multiple

13   shootings where you hit somebody in the chest and

14   they survive; or they get hit in the leg, and

15   they hit femoral artery, and the person bleeds

16   out.

17   So we don't teach -- we just teach to hit

18   the center mass and stop the threat.

19   Q.   I want to come back now to less-lethal.   You

20   talked about the bean bag.   You also talked about

21   40mm.

22   Is that a launcher?

23   A.   Yes, sir.

24   Q.   Okay.   The bean bag, how is that typically

25   deployed?

1   How -- how do you -- how does an officer

2   actually use that?

3   A.   The bean bag is loaded up into a 12-gauge

4   shotgun, and it's deployed utilizing that

5   12-gauge shotgun.

6   Q.   Okay. Is anything done to differentiate that

7   shotgun from any other shotgun that might be used

8   to fire conventional, you know, shotgun shells?

9   A.   Yes.

10   They try to make it -- most police

11   departments either use red type or an orange

12   stock to make the difference between an actual

13   firearm and less-lethal option so there is no

14   mistake and error or an officer might view --

15   might misunderstand the scenario.

16   So we always dictate less-lethal shotguns

17   with orange or red.

18   Q.   Okay. Now, do you have familiarity with

19   these -- the bean bag gun and/or the launcher,

20   the 40mm launcher?

21   A.   Yes, sir, I do.

22   Q.   How -- what's the basis of that familiarity?

23   A.   I've taught them with our firearms program,

24   and I've used them on SWAT calls multiple times.

25   Q.   Specifically do you use the 12-gauge bean bag

1   system?

2   A.   I have.

3   Q.   Okay.   And I think you mentioned earlier,

4   those are sometimes called impact munitions; is

5   that right?

6   A.   Exactly.   Correct.

7   Q.   Okay.   Now, the bean bag physically what --

8   what is coming out of the shotgun?

9   What does it look like?

10   What is it made of?

11   A.   It is basically a small Kevlar cloth bag

12   filled with 40 grams of, I believe, No. 9 lead

13   shell.

14   Which basically it's -- it's a cloth bag

15   with BBs in it, essentially.

16   Q.   Okay.   And it's fired from a 12-gauge

17   shotgun?

18   A.   Yes, sir.

19   Q.   Is there -- is it a standard shotgun shell,

20   or is there something different about that

21   shotgun shell vs. a conventional shotgun shell?

22   A.   Yes, it's basically a clear shell with no --

23   there's no -- there's no slug or munition in

24   there.

25   Basically the only thing that comes out is

1 the -- the bean bag round.

2 Q.   Is it the same amount of gunpowder that goes

3 into a conventional shotgun shell versus a bean

4 bag round?

5 A.   No, sir, I don't believe so.

6 Q.   How are they different?

7 A.   I'm not sure. I just know -- I just know

8 it's a different round.

9 Q.   Okay. Is the -- is the amount of gunpowder

10 that goes into the bean bag round, is that more

11 than what you'd use for a hunting round, or is it

12 less?

13 A.   It would be less.

14   (Inaudible discussion.)

15   THE COURT: Sixty-three. Sixty-three.

16 BY MR. VAN EPPS:

17 Q.   I am going to show you Exhibit 63, the

18 12-gauge stabilized Triton bean bag.

19   Do you recognize that?

20 A.   Sir, I do.

21 Q.   Are you familiar with it?

22 A.   A little bit, yes, sir.

23 Q.   Okay. Does that appear to be one of the

24 standard options for using a bean bag

25 less-lethal --

1   A.   Yes.

2   Q.   -- shotgun system?

3   A.   Yes.   Correct.

4   Q.   Okay.   And on Exhibit 63, do you see the

5   velocity and the effective range information?

6   A.   Yes, I do.

7   Q.   What is that?

8   A.   For this round it's 275 feet per second.

9   Q.   Okay.   Is that more or less than a typical

10   like a pistol round?

11   A.   Less.

12   Q.   Okay.   And what about the effective range, I

13   believe it's called?

14   A.   Effective range, 75 feet.

15   Q.   I'll take that back.

16   Now, I want to show you this other piece

17   of paper.

18   Do you recognize that?

19   A.   Yes, sir, I do.

20   Q.   What's that?

21   A.   This is just another -- another variation of

22   a 12-gauge bean bag round.

23   That one that you first showed me was an

24   ALS round.   This is CTS.   They are just different

25   companies, different -- different models.

1   Q.   And the one that you are holding in your

2   hand, the CTS one, it's the -- the tradename for

3   it, I believe is Super-Sock®; is that right?

4   A.   Correct.

5   Q.   Okay. And you understand this to just be

6   the -- the product specification form, basically

7   the same version as -- as for this, as

8   Exhibit 63?

9   A.   Yes, they are all -- all very similar.

10   MR. VAN EPPS: I offer this as the next

11   exhibit.

12   THE CLERK: Seventy-six, your Honor.

13   THE COURT: All right.

14   (Exhibit No. 76, Product specification

15   form, received into evidence.)

16   BY MR. VAN EPPS:

17   Q.   Do you see that Exhibit 76 -- what's the

18   effective range for the -- for the Super-Sock®

19   round?

20   A.   It looks like 75 feet as well.

21   Q.   Okay. And you see that the projectile

22   weight, it lists about 40 grams?

23   A.   Yes, sir, correct.

24   Q.   And the velocity is what?

25   A.   On this one it says 280 feet per second.

1 Q.   So not that -- not that dissimilar in weight

2 and velocity from the other one?

3 A.   Correct.

4 Q.   Now, with respect to the bean bag gun, is

5 there a difference in what officers are trained

6 to aim at when they are -- when they are going to

7 fire that gun to inflict force from a distance?

8 A.   Yes, there is.

9 Q.   How is it different?

10   How is it different than what they are

11 trained to aim at when they are going to use

12 their pistol, for example?

13 A.   So with the firearm, we're going to teach

14 center mass, again, for accuracy.

15   But with the less-lethal rounds, it's

16 similar to what we would teach with a baton

17 strike.

18   So we would teach baton strikes primarily

19 because of that impact. We would teach it to the

20 arms or the legs or the pelvic girdle, so whereas

21 the impact is the same, we try to impact arms,

22 legs, pelvic girdle with the less-lethal as well

23 versus center mass.

24 Q.   And why is there a difference?

25 A.   Well, if you -- you don't have that much

1   behind -- there's not as much -- with a

2   less-lethal round, accuracy is important but you

3   are not really putting the public at risk is --

4   is the same as if you fire a weapon downrange.

5   It's a bean bag, it's not -- it's only

6   going to go so far of a distance and it's not

7   going to cause serious injury.

8   So we can afford to try it hit people in

9   the arms and the legs of the pelvic girdle

10   instead.

11   Q.   And is that also partially because you are

12   trying to inflict blunt force trauma and pain to

13   stop a threat as opposed to resorting to deadly

14   force?

15   A.   Yes.

16   It's -- it's force mitigation. We are

17   trying -- we are trying to hit them in their arm

18   or their leg or their hips to stop his violent

19   behavior without having to utilize deadly force.

20   Q.   Okay. Now, you have some experience using

21   this less-lethal weapons; is that right?

22   A.   Yes, sir, I do.

23   Q.   Okay. And are there distances at which it is

24   generally considered too close to be using those,

25   those less-lethal weapons, meaning the bean bag?

1   A.   So across the country there is no minimum

2   standard.

3   We try -- in Massachusetts we've always

4   taught try to use 10 to 15 feet as a minimum

5   stand-off distance.

6   Q.   Okay.   What can happen in your experience if

7   a bean bag gun is used at a range closer than

8   that?

9   A.   If you use it -- if you use it too close it

10 can possibly cause penetrating-type injuries.

11   That can happen at any distance, but we

12 found it's more safe to have a little bit of a

13 stand-off distance, so that's why we -- we put it

14 out a little further than the national standard.

15   The national standard is 5 feet.   In

16 Massachusetts we go 10 to 15 feet.

17 Q.   And is there training given to officers

18 about -- if the officer is in a situation in

19 which the perceived risk involve deadly force,

20 whether the officer should go into that with, for

21 example a baton or what you called intermediate

22 weapon?

23 A.   So if we have is a situation that presents

24 itself that -- of a high-risk situation and we

25 are going to utilize less-lethal force options

1   like a -- a bean bag shotgun or a TASER, we're

2   always going to have a contact option and a

3   lethal to cover the officer as well.

4   So we're gonna -- we always try to have a

5   less-lethal option and a lethal option as well.

6   Q.   And what is the purpose of having both

7   present?

8   A.   Well, the less-lethal -- the less-lethal

9   doesn't always work.

10   So sometimes it's based on the person's

11   mindset or sometimes clothing. So they don't

12   always work.

13   So if it's a dangerous situation and the

14   less-lethal munitions don't work or the

15   less-lethal force doesn't work and then it

16   escalates to a high level of force you -- it's

17   dangerous if all the officers had less-lethal.

18   So we always have the officer with

19   less-lethal being covered with lethal in case the

20   situation gets worse.

21   Q.   Okay. The -- some of the bean bag rounds

22   have a little plastic or a disk of some material

23   at the front of the round.

24   When you fire the round from the shotgun,

25   what happens with the round?

1   What do the different pieces do?

2   A.   Ballistically, I suppose that just the -- the

3   Super-Sock®, the Kevlar bag goes downrange and

4   the shell gets -- gets ejected from the shotgun.

5   Q.   Because it's a standard pump-action Remington

6   780 shotgun; is that right?

7   A.   Correct.

8   Q.   Okay. And what happens to the little disk

9   that's at the top of the round?

10   I think it's visible in the Exhibit 63.

11   What happens to that?

12   A.   Sometimes it's -- sometimes it stays in

13   place. Sometimes it goes downrange a little bit.

14   Sometimes it stays -- it could possibly stay with

15   the bean bag, I guess, as well.

16   It's unpredictable, I would say.

17   Q.   Now, you mentioned if there's multiple

18   officers, normally the trainings that there is a

19   less-lethal but there's always a lethal cover

20   sort of backing that person up, correct?

21   A.   Correct.

22   Q.   Okay. Are there other tactics officers are

23   trained to use before applying any of these

24   weapons that -- that, you know, sometimes called

25   deescalation tactics?

1   A.   Yes, sir.

2   Q.   And tell me about those.

3   What are they?

4   What are the various options and what is

5   the training as to when to use those versus, you

6   know, using something with inflicting force?

7   A.   So the training is always -- we always teach

8   reverence to human life.

9   We always teach preservation of life is

10   first and foremost.

11   So we teach that an officer should --

12   before using any level of force, all the way up

13   to deadly force, that if it's tactically feasible

14   to do so, that we try deescalation techniques and

15   tactics as well.

16   Q.   What are some of those?

17   A.   So deescalation tactics are proactive

18   approaches used by the officer to reduce the

19   intensity of an encounter and stabilize the

20   situation so that the officer will have more

21   options and more time and can call on other

22   resources in an attempt to gain verbal compliance

23   while still maintaining control of a situation.

24   Q.   And perhaps without having to hurt somebody?

25   A.   Correct.

1 Q. Okay. And what are some of those?

2   What are some of the options available?

3 A. There's a -- there's a whole lot of them, but

4 we can start with calling for backup; waiting for

5 additional officers.

6   The first one is always going to be

7 contain the situation.

8   So whatever situation you have, you want

9 to keep the problem from getting bigger, so we

10 contain it so that we can protect the public.

11   Slowing down the pace of the incident.

12   Having one officer do commands versus

13 everybody screaming and yelling simultaneously.

14 Q. Why is that important?

15 A. These situations are high-stress situations.

16   So when everybody is showing up, sometimes

17 a human nature takes over and too many people are

18 yelling.

19   So we teach officers to try to stop and

20 have one officer do the command so that we don't

21 have conflicting commands to escalate the

22 situation or confuse the situation.

23   So we try to have one officer giving

24 commands.

25   We call for mental health advocates, if

1   possible.

2   Try to get behind cover if possible.

3   Q.   And you mentioned a couple times when you

4   were talking about preserving life.

5   You were talking about the life of the

6   subject, the person the officer is dealing with;

7   is that right?

8   A.   Yes, so --

9   Q.   And who else?

10   A.   So our deescalation tactics are meant for

11   preservation of life.

12   So it's preservation of innocent people,

13   bystanders, or people that could be harmed, it's

14   officers, and it's also that subject as well.

15   Q.   Is one of the deescalation tactics you've

16   become familiar with something called tactical

17   repositioning?

18   A.   Yes, sir.

19   Q.   What is that?

20   A.   That -- tactical repositioning could be -- it

21   could be backing off. It could be taking up

22   positions of advantage.

23   What we try to do is contain the situation

24   from going mobile, from getting worse. So we try

25   to -- some people call it triangulation.

1   So we try to have angles so that we can

2   keep the subject contained and still not pose a

3   risk to the public or other officers with

4   crossfire situations.

5   So it really is just about working your

6   angles and having some cover.

7   Q.   Okay.   When using something like an

8   intermediate weapon to -- to inflict pain and

9   blunt trauma at a distance, is there a training

10 about how much to use that or what the right

11 amount to use?

12   I mean, you know, is there a certain

13 number of bean bag rounds, or how is that

14 trained?

15 A.   It's the same thing every time you -- every

16 time you pull the trigger and send a bean bag

17 towards that subject, you have to assess and

18 reassess -- if it hit the person -- that violent

19 behavior stopped.

20   So it's the same thing.   We are not

21 counting rounds, we are shooting and reassessing

22 if it hit the target and if the behavior stopped.

23 Q.   With respect to tactical repositioning and

24 moving around a subject, is there training about

25 what the appropriate distance is so that your --

1   the subject is contained but not -- not able to

2   simply get away but also not too close to -- to

3   be harming anybody else.

4   Is there training about that?

5   A.   Yes, and a lot of times it's going to be to

6   terrain (indiscernible) as well.

7   If you are inside or outside the house

8   it's going to be a big difference, but we try to

9   teach that you don't want to circle around the

10 subject, but you want to keep him somewhat

11 contained and try to have a -- a distance that

12 you don't create officer safety issues.

13   So that if you are too close, you want to

14 be able to have distance so that you can

15 transition from different force options, and you

16 want to give the subject some distance so you can

17 try to have a conversation, if possible.

18 Q.   Okay. From time to time people have cited

19 something called the 21-foot rule.

20   Have you heard that phase before?

21 A.   I have.

22 Q.   What is it?

23 A.   So the 21-foot rule kind of -- it's been

24 around for a long time. So all officers are

25 aware of it.

1   It's -- it doesn't come from any clearly

2 established case law.

3   It really -- not to give you the history

4 of it, but it just goes from a drill 35, 40 years

5 ago where an officer wanted to explain and show

6 and dictate to a class full of police recruits

7 how long it would take you to go through the OODA

8 process -- observe, orient, make a decision.

9   And from holster -- from a holster

10 position, an average person could close a

11 distance of 21 feet in the time it would take the

12 officer to react.

13   So it's less of a hard-and-fast rule that

14 is a -- a demonstration on distance and respond

15 and action versus reaction, that's really what it

16 is.

17 Q. In terms of the perceived circumstances in a

18 particular encounter, are the officers trained to

19 think whether or not they are wearing, you know,

20 ballistic armor or body armor, things like that?

21 A. Every officer should have -- be wearing body

22 armor it's -- it's mandatory now.

23   So it's going to be -- they are going to

24 be wearing body armor as well, but body armor

25 protects your chest and your vital areas, but

1   that's it.

2   Q.   Does it offer any protection against any kind

3   of, like, an edged or a bladed weapon?

4   A.   It does not.

5   Q.   From time to time people use the phase

6   "stand-off distance."

7   What is that?

8   A.   We use stand-off distance just to explain the

9   distance between the officer and the subject.

10   So stand-off distance we want to have a

11   time to react to a threat and time to deploy your

12   force options as well.

13   So "stand-off distance" just refers to

14   that, the distance between the officers and the

15   subject.

16   Q.   I think you touched on this; but with respect

17   to the bean bag gun, the goal is to inflict blunt

18   force -- not penetrative -- trauma through

19   hitting the person with the bean bag, correct?

20   A.   Correct.

21   Q.   Okay.   Have you seen wounds where the -- the

22   bean bag or parts of the round actually

23   penetrated the person's skin and, you know,

24   caused penetrating injuries?

25   A.   Yes, sir, I have, a few times.

1   Q.   Okay. Have you seen those -- or what

2   distances have you seen those occur at?

3   A.   I've done it myself, probably 15 to 20 feet.

4   I had an incident where it impacted into the

5   subject's leg, and I was at least 15, 20 feet

6   away.

7   Q.   Have you seen other officers?

8   A.   Yes, I have.

9   Q.   Okay. And do you have any sense of what

10   distances they were operating at?

11   A.   They were -- they started out at a furtherer

12   distance but the subject was closing the

13   distance.

14   But I've seen -- I've seen them impacted

15   at close distances and far away distances as

16   well.

17   MR. VAN EPPS: I don't have anything else

18   for the witness, Judge.

19   THE COURT: Attorney McDonald, any

20   questions?

21   MR. MCDONALD: Yes.

22   EXAMINATION

23   BY MR. MCDONALD:

24   Q.   You mentioned that a firearm and a flashlight

25   are examples of a weapon capable of inflicting

1 deadly force.

2   What about a knife?

3 A. Yes, sir, a knife as well.

4 Q. And with respect to the cover officer where a

5 lethal -- less-lethal weaponry is being used,

6 what is the primary function of that officer?

7 A. Of the less-lethal operator?

8 Q. Of the cover officer.

9   THE COURT: The cover officer.

10 A. Oh, I'm sorry.

11 Q. For the less-lethal officer.

12 A. I'm sorry. The cover officer is to provide

13 cover for the officer using less-lethal, the

14 less-lethal option.

15   The lethal option is to cover that officer

16 if it doesn't work, if it's not successful, or

17 the behavior doesn't change and the situation

18 escalates.

19   So he's essentially covering the officer

20 that's trying to utilize less force.

21 Q. Can you give us an example of a circumstance

22 where the cover officer would be justified in

23 shooting the subject in center mass to protect

24 the lethal -- less-lethal operator?

25 A. Sure.

1   If I -- if I decided to use a less-lethal

2   shotgun and the subject had a knife and was

3   advancing towards me or advancing towards another

4   person and I used the bean bag to stop his

5   behavior and I either miss or it didn't -- it hit

6   the person and it didn't have the desired affect

7   that I wanted it to and the threat escalated,

8   then my officer with lethal cover would be

9   justified to stop that threat as the situation

10   escalated.

11   Q.   By shooting center mass at the subject?

12   A.   Correct.

13   MR. MCDONALD: Thank you.

14   That's all I have.

15   THE COURT: Mr. Heineman?

16   EXAMINATION

17   BY MR. HEINEMAN:

18   Q.   Good afternoon, Officer DiChiara.

19   In your training of these officers over

20   all these years, you've used phase like -- phases

21   like, getting officers comfortable with violence,

22   right?

23   A.   Correct.

24   Q.   That officers need to be comfortable in

25   violence.

1   That's what you teach officers, right?

2   A.   Comfort with righteous violence, yes, sir.

3   Q.   And you've -- and you also teach that

4   officers need to be -- have a warrior mentality,

5   right?

6   A.   Warrior and guided mentality, yes, sir.

7   Q.   You've been working as an expert witness on

8   use of force for a number of years, correct?

9   A.   Correct.

10   Q.   How many years?

11   A.   Probably 15 years, maybe.

12   Q.   And you've testified in a number of courts in

13   the Commonwealth of Massachusetts, including the

14   federal court, correct?

15   A.   Yes, sir.

16   Q.   Is it an accurate statement, sir, that you've

17   never once testified that an officer was not

18   justified in using force?

19   A.   At a trial I've never testified that an

20   officer used unreasonable force, yes, sir.

21   Q.   Put another way, each and every time that you

22   have testified, it's been your opinion that the

23   officer used appropriate force?

24   A.   That I've testified, yes, sir.

25   Q.   Now, you're also part of a police union

1   called MassCOPs, right?

2   A.   Correct.

3   Q.   And, as part of that union, you go around the

4   state on behalf of the union testifying on behalf

5   of the officers who have been charged criminally

6   with using too much force, correct?

7   A.   I have, yes, sir, on two occasions.

8   Q.   And you also go and testify on behalf of

9   officers who are accused civilly of using too

10   much force?

11   A.   Correct.

12   Q.   You're a big believer that the police officer

13   is brotherhood, right?

14   THE COURT: What is that question again?

15   MR. VAN EPPS: Objection.

16   BY MR. HEINEMAN:

17   Q.   That the police officer is a brotherhood,

18   correct?

19   MR. MCDONALD: Objection.

20   It sounds like an attempt at impeachment.

21   THE COURT: What -- yeah, what is the

22   relevance of that?

23   MR. HEINEMAN: Bias of the witness; that

24   he is going explain --

25   THE COURT: Again, I think -- right.

1   So, I mean, I think -- we just need to

2 be -- so impeachment per se is not permitted at

3 an attempted inquest.

4   It's permitted in other places but not

5 necessarily here.

6   MR. HEINEMAN: I would just think your

7 Honor would want to know if the witness has a

8 bias where he tends to --

9   THE COURT: I -- I understand from your

10 questioning that, A, I understand he is a police

11 officer.

12   I understand that he has only testified

13 in situations where he believes -- well, he's

14 only testified where his opinion was that the

15 police officer used reasonable force, although,

16 by his answer, I take it there were a number of

17 cases where he did not testify where he formed a

18 different impression, and he just -- they never

19 called him because he had a different impression.

20   But as far as how much money he makes on

21 the side, all the standard impeachment things

22 that would be completely relevant at a trial, I

23 mean, I'll give you a little latitude; but,

24 again, impeachment is not permitted in this

25 forum.

1   MR. HEINEMAN: I understand, your Honor.

2   I'll move to a different area.

3   THE COURT: All right.

4 BY MR. HEINEMAN:

5 Q.   The comment his Honor just made about

6 his -- given your prior answer is that perhaps

7 you have formed the opinions that officers used

8 excessive force but you haven't given that

9 testimony, have you ever been hired by any law

10 firm to evaluate the facts of a police-involved

11 claim of excessive force and rendered the opinion

12 that the officer did, in fact, use excessive

13 force here in Massachusetts?

14 A.   I haven't been hired. What I've looked at

15 multiple times is officers's use of force.

16   I don't take retainers. I don't get

17 hired.

18   What I do is I look at the case. If I

19 feel that the officer used reasonable force, then

20 I will work on the case, and then I will be

21 so-called hired.

22   If I do not agree, or I don't like the

23 officers use of force and I think it's excessive

24 force, I tell the attorneys that, I tell the

25 truth, and then they choose usually not to hire

1   me if I'm not going to help their client.

2   Q.   Each time an officer uses force, that use of

3   force needs to be justified, correct?

4   A.   Correct.

5   Q.   And I believe you said earlier that a police

6   officer must constantly assess and reassess

7   whether force is necessary, right?

8   A.   Correct.

9   Q.   So if a subject is initially noncompliant and

10   a certain amount of force is necessary but then

11   the suspect deescalates his or her behavior, the

12   officer also has to deescalate, correct?

13   A.   Correct.

14   Q.   And if a subject is contained on the ground

15   holding a knife no officer within arm's distance

16   of that person, use of a bean bag round on that

17   individual when they are on the ground is not

18   justified, correct?

19   A.   I would say that it depends on the

20   circumstances.

21   It's possible that it could be justified.

22   It depends on the situation.

23   Q.   In what -- under what circumstances would the

24   use of a bean bag round on a person who is seated

25   on the ground holding a knife with nobody within

1 arm's distance of him justified?

2 A. You want me to give you a hypothetical, sir?

3 Q. Sure.

4 A. A subject armed with knife that was causing a

5 risk to the public that was armed and then the

6 officers had lethal cover and less-lethal cover;

7 and now the person is outside of the residence

8 and they have a chance to use a less amount of

9 force to take that subject into custody, an

10 opportunity presents itself to use a bean bag

11 shotgun in a situation that could possibly be

12 lethal than you are using less force, then it

13 could be justified.

14   It's based on the officer's perception.

15 If that officer feels at the time that that

16 person is still a risk to the public.

17   The person who is sitting down, it takes

18 no time for that person to stand up with a knife

19 and to become a risk.

20   So if the opportunity presents itself to

21 end a situation that is possibly a deadly

22 situation with nondeadly force, then, yes, it

23 could be -- it could be reasonable, yes, sir.

24 Q. Why don't we take a look at your MPTC

25 use-of-force model -- and maybe I just missed

1   it -- but I thought you told us that the bean bag

2   was only appropriate when you were at the

3   Level 4; that is, when the subject has assaultive

4   behavior.

5   Is that right or is that wrong?

6   A.   The use-of-force model is to give -- is to

7   help the officer make assessments on what level

8   force to use.

9   The standard the officer has to use is --

10 is -- was it -- was it -- your use of force

11 reasonable?

12   So we teach the officer to use a

13 reasonable amount of force based on the totality

14 of the circumstances.

15   The use the force model has helped them

16 make decisions.

17   So everything is not plugged into an area

18 per se. That use of force continuum,

19 use-of-force model is to help the offer make

20 decisions.

21   And if a person is assaultive at one

22 point, and it's an ongoing event, an officer

23 could still perceive him as an assaultive

24 individual.

25 Q.   All right. Let's try it this way.

1   You're familiar with the term "less-lethal

2   force," right?

3   A.   Yes.

4   Q.   Have you ever seen the Lexington Police Use

5   of Force Policy?

6   A.   I'm not sure. I don't -- I possibly have

7   over the years. I'm not sure.

8   MR. HEINEMAN: May I approach?

9   THE COURT: Sure.

10   MR. HEINEMAN: Can I have Exhibit 64, if

11   I could.

12   Thank you.

13   Sixty-four.

14   MR. VAN EPPS: Okay.

15   THE COURT: He has -- he has -- he has

16   the actual exhibit.

17   MR. HEINEMAN: Okay. I am going to take

18   the other exhibit back.

19   THE WITNESS: Oh, sorry.

20   THE COURT: Oh, here we go.

21   THE WITNESS: Sorry about that.

22   THE COURT: That's all right.

23   BY MR. HEINEMAN:

24   Q.   If you turn to page 8 of 18 in that policy,

25   under sub -- subpart F, less-lethal force. It

1   says, The Department recognizes that armed and/or

2   violent subjects cause handling and control

3   problems that require special training and

4   equipment.

5   Thus, the Department has adopted the use

6   of less-lethal force; i.e., Super-Sock®

7   trademarked round, also known an extended-range

8   less-lethal projectile.

9   Fired through a 12-gauge shotgun, the

10   less-lethal application meets operational

11   objectives with less potential for causing death

12   or serious physical injury than the use of deadly

13   force.

14   The extended-range, less-lethal projectile

15   is approved for use when.

16   Are you with me so far?

17   A.   Yes, sir.

18   Q.   Then there is a box.

19   And that box is when the Lexington Police

20   Department -- that's where the Lexington Police

21   Department defines when the use of this device is

22   appropriate.

23   It says, Important considerations when

24   deploying less-lethal force.

25   Quote, deadly force is justified and

1 available for backup but lesser force may subdue

2 the aggressor, and/or deadly force is justified

3 but its use could cause collateral effects such

4 as injury to bystanders.

5   Do you see that?

6 A.   I do.

7 Q.   Do you believe that that's an accurate

8 statement of the -- of the appropriate use of

9 less-lethal force?

10 A.   I'm confused with the -- I'm confused what

11 you are asking me, sir.

12 Q.   Is the use of a bean bag round appropriate in

13 circumstances when deadly force is justified and

14 available for backup but lesser force may subdue

15 the aggressor?

16 A.   I guess I'm just confused with what you are

17 asking me.

18 Q.   Is the use of a bean bag round by a police

19 officer on a subject the appropriate use of force

20 when deadly force would be justified and is

21 available for backup but lesser force may subdue

22 the aggressor?

23 A.   It could be, yes.

24 Q.   And then the second part of that.

25   Is the use of a bean bag round appropriate

1 when deadly force is justified but its use could

2 cause collateral effects such as injury to

3 bystanders?

4 A.   Yes, sir.

5 Q.   In both of those circumstances that the

6 Lexington Police Department in their policy says

7 that the use of these bean bag rounds is

8 appropriate, it starts with deadly force would be

9 appropriate but there's other circumstances which

10 mean we could use instead or in addition, right?

11 A.   That's what their policy says.

12 Q.   Yeah.   Is that policy an accurate statement

13 of the use of force with regard to these devices?

14 Is that right?

15   MR. VAN EPPS: Objection.

16   THE COURT: I'm not sure I understand the

17 question.

18   It's -- it is one category, right?

19   I think from his testimony he said it can

20 be used in circumstances where lethal force would

21 be available but the police don't want to shoot

22 the person; but it might also be used as a

23 stand-off weapon when an -- when they would be

24 authorized to useless than lethal force as in an

25 impact weapon, a stand-off impact weapon.

1   MR. HEINEMAN: Okay. Let's clarify that

2 because I'm hearing it a little different.

3 BY MR. HEINEMAN:

4 Q.   Is it a true statement, yes or no, that

5 before an officer can use on impact weapon like

6 these bean bags, that the suspect has to be

7 engaged in assaultive behavior?

8 A.   No, sir.

9 Q.   So it doesn't have to get up to Level 4 under

10 force continuum?

11 A.   It has to be reasonable.

12 Q.   If a suspect has never made an assaultive

13 move towards anybody --

14   THE COURT: (Indiscernible.)

15   THE WITNESS: Sorry.

16   THE COURT: That's all right.

17   THE CLERK: I got it.

18   THE COURT: I'll have Carlos straighten

19 one. I won't have him straighten two.

20   UNIDENTIFIED SPEAKER: Thank you, Matt.

21 BY MR. HEINEMAN:

22 Q.   Is it your testimony, Officer, that there

23 were circumstances on the use of an impact

24 munition like these bean bags is appropriate even

25 when the suspect hasn't engaged in assaultive

1 behavior?

2 A.   Yes, sir.

3 Q.   So if somebody is just noncompliant, is the

4 use of these bean bag appropriate?

5 A.   Sir, everything is dictated by the totality

6 of the circumstances.

7   Every use of force has a unique set of

8 circumstances.

9   If a person -- if a suicidal person is

10 standing in front of me from 20 feet away and

11 they are trying to -- and they are -- they are

12 armed with an edged weapon, and they are trying

13 to commit suicide and kill themselves, and I

14 can't get too close, and he is doing harm to

15 himself under -- under -- under reverence to

16 human life, I would think that's reasonable for

17 me to use a bean bag shotgun to impact him to

18 stop his behavior to save his life. Yes, sir,

19 correct.

20 Q.   I agree with that.

21   Let's set that exception aside.

22 A.   You asked me for a hypothetical, sir. I gave

23 you one.

24 Q.   Okay. We'll keep going.

25   Set aside that the person's going to harm

1   themselves -- take that out of the equation, no

2   indication that the person is going to harm

3   themselves -- if that suspect has not been

4   assaultive towards any other person, is the use

5   of a bean bag round on that person appropriate?

6   A.   Sir, it depends on the situation.

7   Q.   If a suspect who is just being investigated

8   -- well, strike that.

9   Let me back up.

10   THE COURT: So I think, Mr. Heineman, you

11   are probably going to get the same answer.

12   I'll listen to the question, but I think

13   the answer is going to be it depends on the

14   circumstances.

15   MR. HEINEMAN: I get the sense I am going

16   to get that a lot. I am actually go to a

17   slightly different area.

18   Let's talk about these bean bag rounds.

19   May I approach, again, your Honor?

20   THE COURT: Yep.

21   MR. HEINEMAN: I am going to have to give

22   you (indiscernible).

23   I'll give you my two.

24   THE WITNESS: Thank you, sir.

25   BY MR. HEINEMAN:

1 Q. The one on your left hand is the Triton

2 round; the one in your right hand is the

3 Super-Sock® trademark round, correct?

4 A. It appears so, yes, sir.

5 Q. On the Super-Sock® trademark round, there is

6 some language typed there on the bottom that says

7 something about it's effective immediately upon

8 exit or something a long those lines.

9   Could you read that out nice and loud to

10 us?

11   THE COURT: Not much time left. Maybe I

12 can move it along. I can read.

13   So let's just ask him the question

14 because I can read.

15 BY MR. HEINEMAN:

16 Q. The Super-Sock® round doesn't have a minimum

17 distance because it is effective immediately upon

18 exiting the barrel of the shotgun, correct?

19 A. Yes, sir.

20 Q. The Triton doesn't have that, does it?

21   THE COURT: I think it's 63, right?

22 A. I'm not seeing -- I'm not seeing minimum

23 distance here so...

24 Q. Do you know the distance between drag

25 stabilized and tail drag stabilized bean bag

1   rounds?

2   A.   Do I know the difference?

3   Q.   Yeah.

4   A.   So supposedly on the Super-Sock® rounds it's

5   effective right out of the shotgun; and with the

6   drag stabilizer there's some kind of a tail on it

7   so it's supposed to be more accurate.

8   Q.   And the ones that are -- have tail stabilized

9   and are or accurate take longer to deploy; and,

10   therefore, they have a minimum safe distance,

11   right?

12   A.   I'm not sure about that, sir.   No, sir.

13   Q.   I'll take those back.   Thank you.

14   Are you aware that the Lexington Use of

15   Force Policy says that these bean bag rounds

16   should not be fired less than 15 feet from a

17   subject?

18   A.   I have not seen the policy, no, sir.

19   Q.   If I -- if you except my word for it that

20   that's what's in there, would that be consistent

21   with the good use of force of those bean bag

22   rounds?

23   A.   Sure.   It's consistent.   10 to 15 feet is the

24   standard in Massachusetts.

25   Q.   And so if an officer became frustrated that

1 prior bean bag rounds didn't seem to be having an

2 affect and chose to advance closer to a subject

3 getting within about 5 feet of the subject before

4 firing one of those bean bag rounds at the

5 subject, would that be an appropriate use of

6 force?

7 A.   It could be.

8 Q.   It could be?

9   Deescalation tactics.   Let's talk about

10 those.

11   Time is one of the great deescalation

12 tactics out there, isn't it?

13 A.   Correct.

14 Q.   Time's on the officer's side when the subject

15 is contained, right?

16 A.   It could be, yes, sir.

17 Q.   Officers are trained that they should be

18 patient and take their time to try to talk a

19 situation down before resorting to the use of

20 force, correct?

21 A.   Sure.   Correct.

22 Q.   And they are also taught that there should

23 not be multiple officers giving instructions to

24 the same subject, correct?

25 A.   They are taught that, yes.

1   Q.   And are there also -- do you also teach your

2   officers that when the subject is an individual

3   who is known to have mental health issues, it is

4   even more important not to barrage that

5   individual with multiple people giving

6   instructions?

7   A.   We -- we teach officers a whole slew of

8   things when it deals with people suffering from

9   mental illness.

10   But, yes, we always try to teach one

11   person talking, if possible. It's not always

12   realistic.

13   Q.   Are you aware -- I think I asked this; and I

14   am getting a little old so I am just forgetting,

15   I don't mean to be repetitive.

16   Are you aware of whether the Triton

17   manufacturer publishes minimum safe distances for

18   the use of their ammunition?

19   A.   I am not sure what the vendor specifics are,

20   no.

21   MR. HEINEMAN: That's all I have.

22   Thank you.

23   THE COURT: All right. Can I ask you a

24   couple questions?

25   THE WITNESS: Sure, sir.

1   THE COURT: So just standard police body

2 armor is soft ballistic armor, correct?

3   Most police officers are not wearing

4 plate -- or plate carriage, right.

5   THE WITNESS: That's correct.

6   THE COURT: All right. And it would be

7 the plate that would be -- would defeat -- might

8 defeat an edged weapon?

9   THE WITNESS: Yes. Correct.

10   THE COURT: All right. Not that it's

11 relevant to this case, but I understand that

12 chockeholds are banned in Massachusetts. But is

13 that even when the use of deadly force is

14 authorized?

15   THE WITNESS: As of last year, chokes are

16 banned even as a deadly force option -- even if

17 the officer's life is in peril or even if

18 somebody else's life is in peril.

19   THE COURT: I get it when it's --

20 whatever I won't...

21   There were a number of questions by both

22 lawyers -- actually both lawyers, not all three

23 lawyers -- about the use of the less-lethal

24 shotguns and penetrating wounds and different

25 things.

1   And the purpose of the less-lethal is as

2 a stand-off impact weapon.

3   THE WITNESS: It's very similar to a

4 baton strike --

5   THE COURT: Right.

6   THE WITNESS: -- except you are able to

7 use a little bit of distance to be more safe.

8   THE COURT: And while it is less-lethal,

9 it certainly can be lethal, correct?

10   THE WITNESS: It could be to certain

11 target areas, the face, or the throat.

12   THE COURT: The face or the head?

13   THE WITNESS: Correct.

14   THE COURT: Or either -- depending on

15 where -- and, again, certain penetrating wounds.

16   If -- if a situation presented itself

17 where lethal force was authorized and a police

18 officer -- used regardless of distance -- used a

19 less-lethal shotgun as a potentially lethal

20 intervention, would that be authorized if lethal

21 force was authorized?

22   THE WITNESS: It -- it would.

23   So the way we describe it as the -- as

24 the threat level comes up, the firearm could come

25 up.

1   So if we are teaching to hit somebody in

2   the leg or the pelvic, go to a less-lethal; and

3   it doesn't work, and the person is advancing

4   towards the officer, then the officer would be

5   able to rise the shotgun and hit the person in

6   the chest or the face because now it's become a

7   deadly force situation.

8   So here you are using a less-lethal

9   munition in a deadly force situation.

10   THE COURT: And, again, with respect to

11   the scenario that Mr. Heineman posited, which was

12   an officer simply approaching too close distance

13   to hit a person that's down on the ground, that

14   would not be a -- an authorized -- generally

15   speaking, that would not be an authorized use of

16   a less-lethal weapon, right?

17   THE WITNESS: Correct.

18   If the person wasn't -- if the person

19   wasn't posing a risk than no, so...

20   THE COURT: All right. But a person on

21   the ground who might be moving around with a

22   knife may or may not, depending on the

23   circumstances?

24   THE WITNESS: It could be, yes, sir,

25   correct.

1   THE COURT: All right. Anything on any

2 either of those questions?

3   EXAMINATION

4 BY MR. VAN EPPS:

5 Q.   Officer, we talked a little bit about it

6 before. The -- so the -- in contrast to

7 firearms, the training is to aim at extremities,

8 essentially; is that right? For a less-lethal?

9 A.   For a less-lethal, yes, sir.

10 Q.   And those are -- the officers are taught to

11 think of those as intended target areas?

12 A.   Yes, sir, correct.

13 Q.   Okay. You described it as being similar to a

14 baton that can strike at range.

15   In other -- in other situations where

16 you've testified, you've described the amount of

17 pain inflicted in other -- using other metaphors.

18   How have you described it before?

19 A.   That impact at 280 feet per second is similar

20 to probably a 94-mile-an-hour fastball, so it

21 would cause that blunt trauma jury to those

22 extremities.

23   So similar to a fastball is the best way I

24 could describe it. I used to say Roger Clemens,

25 but then I show my age and nobody knows what I'm

1   talking about.

2   Q.   If I could just see the Use of Force Policy

3   for Lexington.

4   I know you just put it back in the packet.

5   MS. GEMMILL: Sixty-four.

6   BY MR. VAN EPPS:

7   Q.   On the back of -- on the back of Exhibit 64,

8   the last two pages. Page 17 there is a --

9   something called a Monadnock Baton Chart?

10   A.   Yes, sir, correct.

11   Q.   And the last page, page 18, do you recognize

12   that?

13   A.   Correct. Yes, sir.

14   Q.   What are these things we are looking at, the

15   red, yellow, green, on page 18 of Exhibit 64?

16   A.   So, green, yellow, red, target areas for the

17   -- for --

18   THE COURT: Go or no go.

19   A.   Yes, it's similar to a traffic light. Green

20   is go; yellow is caution, because of injuries;

21   and red is stop, unless you are at deadly force.

22   MR. VAN EPPS: Okay. That's all I have.

23   THE COURT: Mr. McDonald? Mr. Heineman?

24   MR. MCDONALD: Yes. Just a couple.

25   EXAMINATION

1 BY MR. MCDONALD:

2 Q.   You were asked by counsel about a

3 hypothetical which is when officer had contained

4 someone who were on the ground would it be

5 appropriate to use less-lethal force.

6   And you said it's circumstantial, right?

7   There might be circumstances where that

8 would be appropriate?

9 A.   Yes.   Correct.

10 Q.   Let's assume for purposes of the hypothetical

11 that the reason the officers were there was

12 because the person who was on the ground in the

13 middle of the officers; had threatened to kill

14 someone and a housemate of his; and that that

15 person fled the house; fled the police with a

16 knife in his hand, is finally contained by the

17 police; was threatening to kill the policeman;

18 was moving around on the ground aggressively and

19 was highly agitated; bean bag rounds from the

20 distance weren't working.

21   Would that be a circumstance where an

22 officer would be appropriate in getting closer to

23 the target and try to make a more effective

24 shot?

25   And I'm not talking about an officer's

1 safety; I am talking about for purposes of

2 controlling and containing the individual.

3 A. It could be.

4 Q. Would it matter if there were a crowd of

5 people around watching all of this event and the

6 -- the subject was trying to get up and flee from

7 the containment?

8 A. It could have some bearing on the officer's

9 perception, it could.

10   MR. MCDONALD: Thank you.

11   THE COURT: Anything on that?

12   MR. HEINEMAN: No, your Honor.

13   THE COURT: All right. Thank you, sir.

14   MR. VAN EPPS: That's all I have.

15   I just have a few things I would like to

16 mark before we wrap up today.

17   THE WITNESS: Thank you, your Honor.

18   THE COURT: Thank you.

19   MR. VAN EPPS: I have the interview

20 report of Tavery Hutchinson. I would offer as

21 the next exhibit.

22   MR. HEINEMAN: Your Honor, if we could

23 talk about Tavery Hutchinson at some point, I'd

24 love to.

25   THE COURT: Who is Tavery Hutchinson?

1   MR. VAN EPPS: Ryan Hutchinson's mother.

2   THE COURT: Okay. All right.

3   THE CLERK: Seventy-seven, your Honor.

4   THE COURT: Okay.

5   (Exhibit No. 77, interview report of

6   Tavery Hutchinson, received into evidence.)

7   MR. VAN EPPS: May I have the Lexington

8   Police Supplemental Report of George Snell

9   (phonetic) concerning locating a 911 extract, and

10   there is a disk that goes with the report?

11   THE CLERK: So, your Honor, there's two

12   pieces with this.

13   It would be 78A and 78B.

14   THE COURT: Perfect.

15   THE CLERK: A being the report; B the

16   disk.

17   (Exhibit No. 78A, Lexington Police

18   Supplemental Report of George Snell, received

19   into evidence.)

20   (Exhibit No. 78B, Lexington Police disk

21   of George Snell, received into evidence.)

22   THE CLERK: Seventy-eight B the disk.

23   THE COURT: Anything else?

24   MR. VAN EPPS: Just a couple things,

25   Judge.

1   I have the State Police Interview Report

2 of Jean Philip Koesters, K-O-E-S-T-E-R-S.

3   THE CLERK: Seventy-nine.

4   (Exhibit No. 79, State Police Interview

5 Report of Jean Philip Koesters, received into

6 evidence.)

7   MR. VAN EPPS: I've got a Lexington

8 Police interview report of Toby Schlein,

9 S-C-H-L-E-I-N.

10   THE CLERK: Eighty.

11   (Exhibit No. 80, Police interview report

12 of Toby Schlein, received into evidence.)

13   MR. VAN EPPS: I've got a Lexington

14 police interview report of Eileen Lowe.

15   THE CLERK: Eighty-one.

16   (Exhibit No. 81, Lexington police

17 interview report of Eileen Lowe, received into

18 evidence.)

19   MR. VAN EPPS: If I may have just one

20 second, Judge.

21   THE COURT: Uh-hum. What was the name on

22 79, Carlos?

23   THE CLERK: Seventy-nine?

24   THE COURT: Yeah, what's the name on the

25 interview?

1   THE CLERK: The interview is Jean Philip

2   Koesters.

3   MR. VAN EPPS: I'll spell it for your

4   Honor.

5   THE COURT: There you go.

6   MR. VAN EPPS: Can you give me 80, again,

7   please?

8   THE CLERK: Eighty is --

9   THE COURT: Toby Schlein.

10   THE CLERK: Supplemental report of Toby

11 Schlein.

12   MR. VAN EPPS: The next is the -- it's

13 titled the State Police Crime Scene Report of

14 Sergeant Lance Mellow (phonetic). It's one page.

15   THE CLERK: Eighty-two.

16   (Exhibit No. 82, State Police Crime Scene

17 Report of Sergeant Lance Mellow, received into

18 evidence.)

19   MR. VAN EPPS: Next is the Crime Scene

20 Report of Lieutenant Colleen Tanguay,

21 T-A-N-G-U-A-Y. It's a State Police report.

22   THE CLERK: Eighty-three.

23   (Exhibit No. 83, Crime Scene Report of

24 Lieutenant Colleen Tanguay, received into

25 evidence.)

1   MR. VAN EPPS: Next one is the report of

2 investigations, it's a State Police report by

3 Trooper Kathryn Marcotte, M-A-R-C-O-T-T-E.

4   THE CLERK: Eighty-four.

5   (Exhibit No. 84, State Police report by

6 Trooper Kathryn Marcotte, received into

7 evidence.)

8   MR. VAN EPPS: And the last is the

9 Cellebrite extraction report from Brendan

10 Reilly's cell phone generated by Trooper Quigley,

11 just calls, pictures, text messages, and so

12 forth.

13   THE CLERK: Eighty-five.

14   (Exhibit No. 85, Cellebrite extraction

15 report, received into evidence.)

16   THE COURT: All right. So Mr. Heineman,

17 with respect to Tavery Hutchinson.

18   MR. HEINEMAN: Tavery Hutchinson. A

19 woman who was at least 40 feet closer to this

20 than the Lane family who drove by, who -- her

21 phone used to take photos and video and is not

22 being called; but today we have Jim Lane waiting

23 to possibly be recalled.

24   And so I'm just baffled and perturbed

25 that a witness who, perhaps, was in the best

1   position to see exactly what happened is not

2   being called.

3   And I -- and I have no control over it,

4   your Honor, but I suspect --

5   THE COURT: Right.

6   MR. HEINEMAN: -- you do.

7   THE COURT: I'm looking at a report, just

8   for the record, that indicates she entered the

9   rotary that was comprised of North Hancock,

10   Burlington Street, Blake Road, Hancock Street,

11   and Hamilton Road.

12   During this time a confrontation

13   with -- between the police and Reilly was taking

14   place.

15   Ryan Hutchinson was in the front seat and

16   Tavery Hutchinson was operating the car.

17   She was focused on the road and only

18   briefly observed police officers using their

19   firearms, pointing them at Reilly.

20   Tavery Hutchinson then made several

21   attempts to avoid the confrontation while her son

22   was observing and recording the incident.

23   She heard two gunshots while they were

24   driving away from the rotary and saved it once at

25   the basketball game and concluded later in the

1 evening the scene had been cleared.

2 So I'm not sure, frankly, if she's going

3 to testify consistent with that report -- I

4 understand that you may have a theory that she

5 saw more, but it sounds like she is saying she

6 didn't.

7 And that actually is consistent with what

8 the video showed because she wasn't look willing

9 around on the video.

10 She was focused on the road. She wasn't

11 focused on what was going on.

12 MR. HEINEMAN: Two things then, first,

13 your Honor.

14 The very first witness has testified

15 before you, Ms. Hine. The report of her

16 interview, she got on that stand on Day 1 and

17 said, I never told that officer that.

18 THE COURT: Yep.

19 MR. HEINEMAN: There are a number of

20 those examples that I could point your Honor to

21 throughout all of these. If this were -- the

22 roles were reversed and we had a dead police

23 officer, there would not be a witness who's not

24 being called here.

25 I have the video of Ms. Hine.

1   THE COURT: Just on that note, we've

2   heard from an awful lot of witnesses that I don't

3   think I needed to hear from, frankly. An awful

4   lot of witnesses that I don't think I needed to

5   hear from.

6   But -- I mean, I think the DA's office

7   has tried to be -- I'm not sure if there's -- I'm

8   assuming the reason that they've -- they are not

9   going to call Tavery Hutchinson is she doesn't

10 really offer anything that any one of 30 other

11 people haven't testified to.

12   And I understand that you want a

13 timeline, and that may be relevant to a future

14 proceeding; I don't know that -- because here's

15 the thing, the timing is going to be off with

16 these people because half of these people heard

17 one shot; half of them heard -- maybe not half.

18   A number heard one shot; a number heard

19 three shots; a number heard four shots; a few

20 heard two shots.

21   Some people say that the people were all

22 carrying rifles. Somebody said nobody was

23 carrying a rifle.

24   I mean, I think I said this at some point

25 when we were all talking before that kind of the

1 testimony's all over the place, which makes it,

2 frankly, a little bit harder for me to figure out

3 what I need to figure out.

4   I'm looking at that report, and I'm

5 looking at the video evidence that I have. And

6 the video evidence is consistent with that

7 report.

8   She wants nothing to do with this scene

9 and having her kid there.

10   The kid wants -- the kid's, you know,

11 he's like he's watching a video game, right? But

12 she wants nothing to do with this.

13   MR. HEINEMAN: I just ask your Honor to

14 look at that Hine video again --

15   THE COURT: Uh-hum. I will.

16   MR. HEINEMAN: -- and I want to make sure

17 that that Hine video's in evidence --

18   THE COURT: Oh, it is. It is.

19   MR. HEINEMAN: -- if it's not.

20   THE COURT: Oh, it is. It is.

21   MR. VAN EPPS: It is.

22   MR. HEINEMAN: -- but in the Hine -- in

23 the Hine video you see the Hutchinson vehicle

24 driving this way with the altercation going on

25 here. And you can see clearly Ms. Hutchinson

1   looking directly at it.

2   THE COURT: Well -- and, again, if she

3   does this and she does that, right?

4   I mean, all I am saying is the

5   Commonwealth has the -- they have the

6   responsibility to bring the evidence.

7   I understand that you think that there

8   may be critical evidence here and it may be that

9   at some point that's what turns out.

10   I -- we have the Hine video and we have,

11   also, the Hutchinson video -- and I am going to

12   review everything -- but it seems to me, based

13   on what I've been able to observe, that

14   Ms. Hutchinson's presence on scene is fleeting at

15   best. So...

16   MR. VAN EPPS: I was going to say, my

17   recollection of the Hine video -- and it is in

18   evidence.

19   THE COURT: Yep.

20   MR. VAN EPPS: We can watch it in the

21   courtroom, but when -- when that vehicle goes

22   through, I believe there is an ambulance in the

23   background, and they are -- they are doing work

24   on Mr. Reilly as he's already been knocked down.

25   THE COURT: So...

1   MR. VAN EPPS: So, as I understand it,

2   that would be after the shooting.

3   THE COURT: So is Exhibit 2 the Hine

4   video?

5   MR. VAN EPPS: So...

6   THE CLERK: The --

7   THE COURT: I just want to make sure that

8   Exhibit 2 is the Hine video?

9   THE CLERK: The exhibit -- the Hine

10   video, your Honor, is Exhibit 12A.

11   THE COURT: Oh, there we go. Okay.

12   MR. VAN EPPS: Is that right?

13   MS. GEMMILL: No.

14   MR. VAN EPPS: Hold on.

15   MS. GEMMILL: That's the Mukherjee

16   (phonetic) video.

17   THE COURT: No. That's -- that's not.

18   12A is something else. I've got 12A I think

19   relates to -- is Mukherjee.

20   MR. VAN EPPS: There -- there might be

21   a disk that has both of them on it because I

22   think --

23   THE COURT: Oh, you know what, I take

24   that back.

25   12A, I believe, is the Hine video; 12B is

1   the report Rittenel (phonetic)?

2   Are you sure?

3   THE CLERK: Yeah. Can I see 12A?

4   Because I'll just -- I'll pull it up on the --

5   THE COURT: I just to confirm, because I

6   have videos. And it may be that it's both,

7   because I have videos written down.

8   I just want to make sure that the Hine

9   video is a part of the record.

10   Because 12B is the report regarding

11   Mukherjee video.

12   THE CLERK: It's either 12A or 11A.

13   THE COURT: 11A?

14   MR. VAN EPPS: I think it's on 12A.

15   THE COURT: 11A and B, I've got 911 Wood

16   transcript and CD.

17   And C and D are the police and fire CAD.

18   THE CLERK: Correct, your Honor.

19   Twelve -- so it has to be 12A.

20   THE COURT: All right. Let's just make

21   sure. How are you going to get it to play?

22   It's on the shared drive, regardless.

23   THE CLERK: Yeah. I just -- I just want

24   to make sure --

25   THE COURT: As long as we -- I've just

1 got to make sure -- I've just got to make sure

2 it's part of the record.

3   THE CLERK: Yeah, I just want to make

4 sure it's on here and that it works.

5   THE COURT: That's the Hine video, right?

6   THE CLERK: Right.

7   The only thing I know is there's a police

8 car and Mr. Reilly is -- (indiscernible).

9   THE COURT: Yeah, I can take a look at

10 it, but I just wanted to make sure it's there.

11   THE CLERK: I was think -- I was thinking

12 of one of the other photos.

13   THE COURT: All right. Twelve -- so 12A

14 is Hine video. Is it also the Mukherjee video?

15   THE CLERK: I believe so. There's just

16 folders on the main -- it says, the disk is

17 labeled Hine, Mattoon and Mukherjee's. So it's

18 the Hine video, Mukherjee's video and the

19 interview of Scott Mattoon.

20   THE COURT: Okay.

21   All right. So the next date is 16th; is

22 that right?

23   MR. HEINEMAN: 3/16, yes, your Honor.

24   MR. VAN EPPS: 3/16.

25   THE COURT: You guys aren't going to

1   change that on me, are you?

2   MR. HEINEMAN: I don't believe so, your

3   Honor.

4   THE COURT: Tell Anna that she has to do

5   it next time.

6   MR. HEINEMAN: We had -- it very well

7   might come down to it, your Honor.

8   THE COURT: All right.

9   MR. VAN EPPS: Judge, so I know you are

10   going to review the Hine video --

11   THE COURT: I am going to review

12   everything but...

13   MR. VAN EPPS: Yes.

14   But with respect to the -- because I know

15   this was a point of contention earlier.

16   With respect to the view from the Lane's

17   backyard, when we did the initial view --

18   THE COURT: Well, what -- oh, it would be

19   Lane, I'm sorry. I was thinking of Hutchinson.

20   MR. VAN EPPS: Yes.

21   I wasn't aware whether their -- their

22   private property would be available to us.

23   They've indicated that it would be.

24   So if -- you know, if we wanted to do a

25   view from their backyard, if we could.

1   THE COURT: Uh-huh.

2   MR. VAN EPPS: I don't know if the Court

3 thinks it's necessary but it's an option.

4   THE COURT: I'll think about that. I

5 mean -- I don't think anybody -- this is not -- I

6 don't think anybody here has an interest in

7 lying.

8   So, I mean, if they are testifying that

9 they can see something at least with respect to

10 the Lanes -- you know, I -- I mean, I'll think

11 about whether or not it would be worth going out

12 there, but we'll see.

13   MR. VAN EPPS: And -- and because it's so

14 close to here --

15   THE COURT: It's close to here, and it's

16 close in time to the time of year so...

17   MR. VAN EPPS: And we don't need to do it

18 on the 16th.

19   THE COURT: No. Correct.

20   MR. VAN EPPS: We can do whenever it is

21 convenient for everybody.

22   THE COURT: Correct.

23   MR. VAN EPPS: And that would be the only

24 think we do that day.

25   THE COURT: Right.

1   MR. VAN EPPS: It will be a 15-minute

2 thing.

3   THE COURT: How long do we think the

4 witnesses -- well, the witnesses on the 16th will

5 probably take all day.

6   MR. VAN EPPS: So Dr. Capo -- yeah,

7 Dr. Capo, I'm envisioning maybe at least half an

8 hour.

9   THE COURT: Yep.

10   MR. VAN EPPS: I need to find out whether

11 she has the basis to talk about some of the

12 chronological stuff the Court asked about.

13   THE COURT: Uh-hum.

14   MR. VAN EPPS: It may be that I -- I get

15 somebody from Bridgewater to talk about that.

16   THE COURT: Okay.

17   MR. VAN EPPS: And then the rest of the

18 day would be the -- the officers.

19   THE COURT: All right. Yeah, I mean,

20 it's -- so have you talked to anybody down at

21 Bridgewater about that?

22   MR. VAN EPPS: No, but I'm -- I'm going

23 to.

24   THE COURT: All right.

25   MR. VAN EPPS: I wasn't able to between

1   when we had our conversation and today.

2   THE COURT: Okay.

3   All right. Have a good weekend.

4   MR. VAN EPPS: Thank you, your Honor.

5   MS. GEMMILL: Thank you, your Honor.

6   MR. MCDONALD: Thank you, your Honor.

7   MR. HEINEMAN: Thank you, Honor.

8   THE COURT OFFICER: Court.

9   All rise.

10 (4:08 p.m. court in recess.)

11 (4:30 p.m. audio resumes.)

12 (Audio from view on December 14, 2022 played

13 4:31:15 - 4:47:47.)

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