

# APPENDIX

# INCIDENT TIMELINE

## IA CASES: 21COM-0061, 21COM-0069 AND 21COM-0071





Entry	H	M	S	Note	Source
1	23	11		Ellis purchases doughnuts and water at the 96/Steele 7-11	Attorney General's Declaration for Determination of Probable Cause
2	21	19	48	H317 (Burbank/Collins) cleared their traffic stop at 96th and A	2006302234 CAD
3	23	21		Ellis is contacted by Collins and Burbank	Attorney General's Declaration for Determination of Probable Cause
4	23	21	40	Beginning of AG's chronological timeline	Attorney General's Declaration for Determination of Probable Cause
5	23	21	46	Sara McDowell begins recording video #1	Attorney General's Declaration for Determination of Probable Cause
6	23	21	47	First VIVINT video begins recording	PCSD Investigation/VIVANT warrant
7	23	21	53	H317 (Burbank/Collins) mic click	Per SS911 Call Details list, broadcast was from Collins' portable radio (TPD 317)
8	23	21	56	Samuel Cowden begins recording video	Attorney General's Declaration for Determination of Probable Cause
9	23	22	3	PPO Burbank ECT deployment 1 of 3	AXON Taser download (time adjusted 3 minutes from sync)
10	23	22	3	Female (Sara McDowell) saying 'stop. Oh my God, stop hitting him...just arrest him.'	PCSD PowerPoint
11	23	22	6	H317 (Burbank/Collins) mic click	Per SS911 Call Details list, broadcast was from Collins' portable radio (TPD 317)
12	23	22	13	Officer Burbank is able to callout their location of 96 and Ainsworth	AXON Taser download (time adjusted 3 minutes from sync)
13	23	22	26	PPO Burbank ECT deployment 2 of 3	PCSD PowerPoint
14	23	22	30	LOUD growl/grunt heard - VIVINT video	Attorney General's Declaration for Determination of Probable Cause
15	23	22	30	Sara McDowell and Keyon Lowery begin driving around the scene	AXON Taser download (time adjusted 3 minutes from sync)
16	23	22	51	PPO Burbank ECT deployment 3 of 3	
17	23	22	55	Cowden drives away from the scene	PCSD Investigation/VIVANT warrant
18	23	23	20	VIVINT video from White residence shows only patrol car and possibly Shad Hayes standing outside/no cars behind patrol car	Attorney General's Declaration for Determination of Probable Cause
19	23	23	25	I can't breathe sir, I can't breathe - VIVINT video (this is likely the same as listed below, with a different time/source)	PCSD PowerPoint
20	23	23	32	I can't breathe sir, I can't breathe - VIVINT video (this is likely the same as listed above, with a different time/source)	PCSD PowerPoint
21	23	23	45	Male voice, "please sir", another male voice "shut the fuck up man" - VIVINT video	PCSD Investigation/VIVANT warrant
22	23	23	58	VIVINT video from White residence shows only patrol car and possibly Shad Hayes standing outside/no cars behind patrol car	2006302251 CAD
23	23	24	19	PPOs Ford and Rankine arrive	Attorney General's Declaration for Determination of Probable Cause
24	23	24	31	PPO Rankine exits patrol car - VIVINT video	Per SS911 Call Details list, broadcast was from Collins' portable radio (TPD 317)
25	23	24	32	PPO Collins requests a huddle	Per SS911 Call Details list, broadcast was from Lim's vehicle radio (TPD 092a)
26	23	24	35	S092 (Lim) arrives	Per SS911 Call Details list, broadcast was from Lim's vehicle radio (TPD 092a)
27	23	24	42	PCSD 035 (Messineo) arrives	Attorney General's Declaration for Determination of Probable Cause
28	23	24	46	S092 (Lim) advises they're still fighting with him	Per SS911 Call Details list, broadcast was from Lim's vehicle radio (TPD 092a)
29	23	24	49	I can't breathe - VIVINT video	Attorney General's Declaration for Determination of Probable Cause
30	23	24	52	PCSD 160 (Sanders) arrives	Per SS911 East Primary Radio Traffic
31	23	24	58	Can't breathe, can't breathe sir - VIVINT video	Attorney General's Declaration for Determination of Probable Cause
32	23	25	19	Cancel the beeper, he's detained	Per SS911 Call Details list, broadcast was made from PCSD portable radio 076 (035 Messineo)
33	23	25	20	Slow incoming, background - I can't breathe, maybe 2x	Per SS911 Call Details list, broadcast was from Lim's portable radio (TPD 092)
34	23	25	22	S171 (Rock) arrives	2006302251 CAD
35	23	25	26	K933 (Bucart) arrives	2006302251 CAD
36	23	25	33	H205 (Madden/Warmer) arrives	2006302251 CAD
37	23	25	37	U285 (Brats) arrives	2006302251 CAD
38	23	25	44	S092 (Lim) requests Fire (TFD) start for an eval	Per SS911 Call Details list, broadcast was from Lim's portable radio (TPD 092)
39	23	26	7	U078 (Chung) arrives	2006302251 CAD
40	23	26	36	PCSD 512 (Langlow) arrives	2006302251 CAD
41	23	26	49	TFD Engine 10 is dispatched to 96th and Ainsworth (TPD REQUESTING EVAL AFTER ARREST)	TFD Prehospital Care Report
42	23	27	1	WSP Trooper Jones arrives	WSP Incident Details
43	23	27	17	H349 (Guardini/Farinas) arrives (Absolute earliest time the spit hood could have been applied to Ellis)	Per SS911 Call Details list, broadcast was from Farinas' portable radio (TPD 349)
44	23	27	29	S092 (Lim) requests an ambulance, strap down	Per SS911 Call Details list, broadcast was from Lim's portable radio (TPD 092)
45	23	28	8	U023 (Hightower) arrives	2006302251 CAD
46	23	28	17	Dispatch advised TFD was notified (assuming this in response to the retained comment)	TFD Prehospital Care Report
47	23	28	30	TFD enroute (Engine 10)	
48	23	32	5	White begins cell phone video #1	
49	23	32	38	S092 requests an ETA for fire (TFD)	
50	23	32	9	S092 (Lim) request fire to upgrade (assuming upgrading they're response, routine to priority?)	Per SS911 Call Details list, broadcast was from Lim's portable radio (TPD 092)
51	23	33	9	TFD Engine 10 arrives.	TFD Prehospital Care Report
52	23	33	34	WSP Trooper Jones clears	WSP Incident Details
53	23	34	6	TFD arriving (Engine 10)	2006302251 CAD
54	23	34	9	End of AG's chronological timeline	Attorney General's Declaration for Determination of Probable Cause
55	23	34	41	TFD arrives at patient	TFD Prehospital Care Report
56	23	36	16	Electrocardiographic Monitoring powered on	TFD Prehospital Care Report
57	23	37	53	Respiratory Basic - Bag Valve Mask (Absolute latest time the spit hood could have been removed from Ellis)	TFD Prehospital Care Report
58	23	37	32	Electrocardiographic Monitoring	TFD Prehospital Care Report
59	23	41	11	Cardiac - CPR Manual	TFD Prehospital Care Report
60	23	41	59	Respiratory - Basic - Oropharyngeal Airway (OPA)	TFD Prehospital Care Report
61	23	42	8	Vascular Access - IV - Extremity	TFD Prehospital Care Report
62	23	42	2	White begins cell phone video #2	TFD Prehospital Care Report
63	23	45	16	Intubation - Orotracheal - Direct	TFD Prehospital Care Report
64	23	47	64	TFD Tower 2 arrives	TFD Prehospital Care Report
65	23	51	66	TFD Medic 1 arrives	TFD Incident Report
66	0	12	30	Confirmation of Death	TFD Prehospital Care Report

# COURT TRANSCRIPTS

MATTHEW COLLINS

# TAB 1



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BE IT REMEMBERED that on Monday, December 4, 2023,  
the above-captioned cause came on duly for hearing before  
the **HONORABLE BRYAN E. CHUSHCOFF**, Judge of the Superior  
Court in and for the County of Pierce, State of Washington;  
the following proceedings were had, to wit:

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**I N D E X**  
**12/4/2023**

	Page
<b>MATTHEW COLLINS</b>	
Direct Examination by Mr. Ausserer	3

1 MR. AUSSERER: Defense calls Matthew Collins.

2 THE COURT: Please come forward to right about  
3 here and raise your right hand to be sworn.

4 MATTHEW COLLINS, having been duly sworn by the  
5 Court, testified as follows:

6 THE COURT: Thank you very much. Please have a  
7 seat right there. Please state your name and please spell  
8 your name.

9 (The witness took the stand.)

10 THE WITNESS: My name is it Matthew Collins,  
11 M-A-T-T-H-E-W, C-O-L-L-I-N-S.

12 THE COURT: When you're ready, Mr. Ausserer.

13 MR. AUSSERER: Thank you, Judge.

14 DIRECT EXAMINATION

15 BY MR. AUSSERER:

16 Q. Good morning, Mr. Collins.

17 A. Good morning.

18 Q. How are you?

19 A. I am all right.

20 Q. Are you married?

21 A. Yes, sir.

22 Q. How long have you been married?

23 A. Almost 15 years.

24 Q. Have kids?

25 A. Four kids.

1 Q. What are the ages of your kids?

2 A. My daughter just turned 12 this weekend, and then  
3 the boys are 10, 6, and 3.

4 Q. All right. So if your youngest son is 3, was he  
5 born at the time of this incident?

6 A. He was a few months old. He was born January 12th  
7 of 2020.

8 Q. All right. And did you grow up around here?

9 A. No. My dad was in the military, so I moved every  
10 couple years of my life, pretty much.

11 Q. All right. And go to college around here?

12 A. I did. Well, I went to the University of Oregon.

13 Q. All right. I'm sorry about that. When did you go  
14 to the University of Oregon?

15 A. '01 to '06.

16 Q. And so when you said you moved around, can you tell  
17 us just from a 3,000-foot view what that looked like? Where  
18 did you move around to and how often?

19 A. So I was born in Germany on a military base there.  
20 We lived in Central America and Panama after the U.S. went in  
21 there, and Fayetteville, North Carolina, Arizona, kind of all  
22 over. We moved about every two to three years.

23 Q. How did you end up either at the University of  
24 Oregon or up here in Washington, whichever was first?

25 A. So my mom's from Roseburg, and my parents met at

1 Oregon State. So when my dad got out of the military and  
2 retired, they ended up back in Oregon and...

3 Q. So did you graduate high school in Oregon, then?

4 A. I did.

5 Q. And then to the University of Oregon?

6 A. Yes.

7 Q. Okay. And at some point, did you enter the  
8 military?

9 A. I did.

10 Q. Can you tell us when in this timeline we're talking  
11 about you entered the military.

12 A. So in the summer of 2006, September 11th, I  
13 enlisted in the military.

14 Q. Was that -- that would have been after the  
15 University of Oregon?

16 A. Yes. I graduated in August of 2006, it was a  
17 summer school, and then a month later I enlisted in the  
18 military.

19 Q. Why did you enlist in the military?

20 A. In my freshman year of college, my dad, I'll never  
21 forgot, gave me a call and told me to turn the TV on. And I  
22 turned it on and watched the planes go in the towers.

23 MS. EAKES: Your Honor, I am going to object to  
24 the relevance of this and hearsay.

25 THE COURT: Sustained.



1 Q. (By Mr. Ausserer) Did you enter the military after  
2 9-11?

3 A. I did.

4 Q. Okay. And when you enrolled in the military, what  
5 was your assignment?

6 MS. EAKES: Again, I'm going to object to the  
7 relevance of this.

8 THE COURT: What did you say?

9 MR. AUSSERER: His assignment in the military.  
10 Judge, It's going to go to his --

11 THE COURT: I'll allow this briefly.

12 MR. AUSSERER: -- hand-to-hand combat, Judge.

13 THE COURT: I'll allow this briefly, if you don't  
14 bog down into too much detail.

15 MR. AUSSERER: Understood, Judge.

16 A. So I was in infantry, 2nd ranger at the time.

17 Q. What's that?

18 A. So we're a special operations unit, and we're kind  
19 of one of the frontline infantry units for the military.

20 Q. As part of your training, did you receive training  
21 in hand-to-hand combat and/or grappling or dealing with  
22 combative opponents?

23 A. Yes, sir, I did.

24 Q. Describe that for us.

25 A. Well, it was kind of a daily -- you know, as a

1 ranger, you're either training with firearms or you're  
2 training with your hands. But I mean, it was something we  
3 did every day.

4 Q. Okay. And how long did you serve in the military  
5 before you moved on?

6 A. Just under eight years.

7 Q. Okay. And once you completed that eight years,  
8 what was your next employment?

9 A. So right away I got out and I started working  
10 construction. I was working for a framing company, building  
11 schools here in Washington, and then eventually got hired on  
12 by Tacoma Police.

13 Q. Why Tacoma Police? Is that where you applied, or  
14 is that where you wanted to work?

15 A. That's where I applied. But my wife and I had --  
16 you know, we had gotten out of the military and we had  
17 settled and bought a home in Tacoma. And we loved Tacoma, so  
18 that's where we wanted to stay and raise a family.

19 Q. All right. Why did you decide to become a cop?

20 A. I mean, I think from the time that I was little I  
21 kind of -- I had a heart for kind of bullied kids, weak  
22 people who can't protect themselves, and so I just -- I just  
23 always had that in my system. And a police officer is a  
24 direct representation of that, so that's...

25 Q. Did your experience in the military lend itself to

1 becoming a police officer?

2 A. Absolutely.

3 Q. How so?

4 A. Well, I mean, for a police officer, you really want  
5 people who've dealt with a lot of high stress, dangerous  
6 situations because, you know, when you go out into the public  
7 and you face these things, you want people who can think  
8 through situations and be calm and make rational decisions,  
9 and, you know, there's no way to give someone that kind of  
10 experience that you learn real world when your life is on the  
11 line. It's irreplaceable to actual experience. So I think  
12 that there's nothing better for police officers to have but  
13 military experience.

14 Q. Okay. And so when did you -- when did you become a  
15 police officer?

16 A. In 2015. I think it was June 15th, 2015, when I  
17 was hired.

18 Q. Okay. And did you go through -- we've heard a lot  
19 of about basic law enforcement and the training and all the  
20 stuff in order to become a police officer. I assume you went  
21 through all that?

22 A. Yes, sir.

23 Q. And was that in 2015 as well?

24 A. It was.

25 Q. Okay. We heard some information from Officer Ford

1 about, kind of, your reputation. Were you the president of  
2 your class?

3 A. I was.

4 Q. What does that mean?

5 A. It just means you -- you helped control the class  
6 on a leadership level. You make sure everybody gets to the  
7 right place at the right time, has all their gear, and you  
8 just kind of -- you're a middleman between the instructors  
9 and the class.

10 Q. And how many, I guess I'll call them cadets, are in  
11 that class?

12 A. I don't remember. I think it was somewhere around  
13 50, but I am not totally sure.

14 Q. Okay. All right. And we heard some information,  
15 at least, that you were involved as a defensive tactics  
16 instructor?

17 A. I was.

18 Q. When did you become involved in that?

19 A. I think that was around -- I'm not totally sure,  
20 but I think it was around 2017, something like that.

21 Q. And can you tell the jury what a defensive tactics  
22 instructor is.

23 A. Yeah. So defensive tactics is just kind of what we  
24 call our hand-to-hand training at Tacoma. Largely what we do  
25 is we teach, you know, cuffing, dealing with violent

1 subjects, and we put officers -- we create situational arenas  
2 for officers. And then we make them go in there and make  
3 decisions, and we kind of grade them, judge them on that, and  
4 help them progress.

5 Q. What was your role as an instructor? Did you  
6 actually train these folks, or what was your involvement?

7 A. I did train them, yes.

8 Q. And does training include kind of an academic  
9 discussion, or is it practical application?

10 A. Practical application.

11 Q. So tell us what that looks like.

12 A. So for instance, like with cuffing, you heard  
13 Sergeant Nielsen come, the use-of-force expert, and talk  
14 about the three kinds of cuffing. The last kind, high-risk  
15 cuffing, that's more of a situational description. High  
16 risk, he used, you know, a stolen vehicle traffic stop, and  
17 that person is now being compliant because other officers  
18 have their firearms drawn and they're directing them at that  
19 person.

20 But the technique of cuffing is the same in high  
21 risk as it is in noncompliant. It's the same motions. So  
22 basically, there's two kinds when it comes to technique,  
23 noncompliant and compliant cuffing. So that was a big  
24 thing. I mean, you heard Sergeant Nielsen say that at the  
25 academy you train that thousands of times because a large

1 part of the job, the whole part of the job, is getting  
2 people in handcuffs so that we can then deal with the rest  
3 of the situation after. But we're only there because  
4 somebody needs to go in handcuffs, usually.

5 Q. Okay. And how long were you a defense tactics  
6 instructor?

7 A. I think I said since 2017, so whenever, you know,  
8 three years.

9 Q. All right. And does part of that include training  
10 on how to control a subject prior to the application of the  
11 handcuffs?

12 A. Yes, it does.

13 Q. And what's the distinction between those two,  
14 because we've talked about control and we've talked about  
15 restraint. Are those the same things?

16 A. So I guess control and restraint could be  
17 considered the same things, but you -- you know, from the  
18 moment, obviously, best case scenario is we just, you know,  
19 hand someone our handcuffs and they put the handcuffs on. We  
20 don't want to do any of that. But obviously, people don't  
21 want to go to jail, and they don't want to deal with the  
22 police.

23 So it starts with very soft tactics where you're  
24 just, like, talking to them and you're like, Hey, look,  
25 you're going to jail today. Put your hands behind your

1 back. And people will usually comply, and you put their  
2 hands behind their back and there's kind of an easy, low,  
3 use-of-force cuffing that happens.

4 And that progresses and progresses as resistance  
5 progresses. And what I was taught, and what normally is  
6 taught, is that putting them on the ground is a necessary,  
7 because up on your feet, it's very dynamic. People are very  
8 dynamic. We have lots of weapons on ourselves. We don't  
9 know what that person has that we're contacting, so the  
10 safest thing is to take them off their feet, on the ground.  
11 And now I can start to manipulate the arms, and then the  
12 hands get in the handcuffs. And you kind of break things  
13 down in that manner. So that's the way in which I talk  
14 from.

15 Q. So in circumstances where there's resistance from  
16 the subject of being placed in handcuffs, do you have to  
17 control their body and their hands and arms first?

18 A. A hundred percent.

19 Q. What happens if you don't?

20 A. You can't get the handcuffs on. It's impossible.

21 Q. Okay. We've heard a lot about placement of knees  
22 and pressure on individuals who are in the prone position.  
23 Is that part of the control tactics training that you taught  
24 at Tacoma Police Department?

25 A. Absolutely.

1 Q. Is it necessary at times to place knees or weight  
2 on a prone individual in order to gain control and cuff them?

3 A. Not only is it necessary, I think it's the only  
4 thing that you can do.

5 Q. What do you mean by that?

6 A. Well, again, it's very difficult to get someone, no  
7 matter what their size, into handcuffs. And especially when  
8 you start talking about people on strong drugs where their  
9 strength increases and they're not feeling pain and they're  
10 not listening to normal commands, it's a very difficult thing  
11 to do. So I think your question is why specifically knee on  
12 the back?

13 Q. Yeah.

14 A. So again, it's -- you've got to isolate their arms.  
15 So the more the person can move, if I can move my feet, if I  
16 can move my hips, if I have a lot of mobility, it's very  
17 difficult to take you. Because as soon as I grab your arm,  
18 you're just turning and facing me, and we're just going to  
19 dance in the street. So I have to start manipulating your  
20 body, get you down on the ground, get you flat.

21 Now I can take your feet out of the game and I'm  
22 just dealing with your upper body. Then I put my knee  
23 across the back. And now I isolate the upper body, and I  
24 can just work on the arms. So you kind of, again, piece by  
25 piece when you're breaking it down.



1 Q. And kind of the process that you've talked about in  
2 the training that you've discussed implementing at TPD, do  
3 you use that on a daily basis when you're on patrol?

4 A. Yes.

5 Q. So let's talk about patrol, then. What were your  
6 duties at Tacoma Police Department following your hire in  
7 2015?

8 A. I was a defensive tactics instructor. I was a  
9 firearms instructor. I was on the SWAT team, and I was a  
10 shield instructor, which was a new tool that we had received.  
11 But most of my duties were patrol.

12 So Officer Burbank and I worked together in what  
13 we call the 4 Sector, which is the east side of Tacoma, and  
14 we work graveyard shifts. So we started at 8:00 P.M. at  
15 night, and if everything went well, we finished at 6:00 in  
16 the morning. And, you know, on a -- basically, you show up  
17 and there's a list of calls that have been pending from  
18 swing shift, and you pick up what you can, answer the calls.

19 And then if you have time when -- there's always a  
20 time at graveyard about midnight when things die down with  
21 calls, and then we would kind of go to high crime areas and  
22 drive around so that if there was a crime happening, we  
23 could be right there.

24 Q. You talked about being a partner with Officer  
25 Burbank. Were you and Officer Burbank partners from the time

1 that you were hired at TPD, or was it sometime after 2015?

2 A. No. Most officers in Tacoma work as single-officer  
3 cars, especially new officers. So I worked as a solo officer  
4 for quite a while. And then when I got transferred, I was in  
5 the 3 Sector, which is the southwest portion of Tacoma that  
6 goes all the way to Lakewood. When I worked in the 3 sector,  
7 I was a solo officer and then came and worked with Officer  
8 Burbank in the 4.

9 Q. Can you estimate when that would have been  
10 year-wise for the jury?

11 A. He's a lot better with dates than I am, but I think  
12 it was --

13 Q. Let me ask it a different way. How long were you  
14 partners with Officer Burbank?

15 A. I think it was about three years.

16 Q. And you described -- I think you said the 4 Sector?

17 A. Yes.

18 Q. Were you always partners with Officer Burbank on  
19 the 4 Sector?

20 A. For the most part. He was a training officer as  
21 well, so whenever we would get new people, they would send  
22 him to train them, and then I would ride solo or ride with  
23 one of my other squad mates. But for the most part, we were  
24 always together.

25 Q. Okay. For us regular folks, what's the 4 Sector

1 like?

2 A. Well, it's -- it is the highest crime area of  
3 Tacoma.

4 Q. And what are the -- when we say 4 Sector, are there  
5 geographical boundaries of that?

6 A. Yes. So the 4 Sector -- and it's been over  
7 three years, so it goes -- basically our western boundary is  
8 Hosmer, and then it will go all the way to the county, out to  
9 Portland. And it kind of goes out a little bit east of  
10 Portland, but that's mostly county territory.

11 THE COURT: You're referring to Portland Avenue?

12 THE WITNESS: Portland Avenue, yes, sir.

13 A. And then the southern border is 96th, where we were  
14 on this incident. And then county kind of is below us on  
15 96th. There's a few areas where we kind of dip down, but for  
16 the most part, that's the boundary. And then 38th on the  
17 north end.

18 Q. (By Mr. Ausserer) And I think you've described it  
19 as a high crime kind of sector. Tell us what you mean by  
20 high crime and what kind of crime.

21 A. Well, I mean, first of all, Hosmer Street was crazy  
22 when we were there. I mean, there's anything you can think  
23 of. There's a lot of shootings, prostitution, drugs is  
24 rampant. And not just in the 4 Sector, but everywhere in  
25 Tacoma, as people know who are from here. But I mean,

1 domestic violence is probably the number one call we go to.  
2 A lot of times, unfortunately, drugs are involved in that as  
3 well. But I mean, gosh, we had carjackings. We constantly  
4 had stolen vehicles all the time. And --

5 Q. And was that more -- I'm sorry.

6 A. Sorry.

7 Q. Was that more prevalent during your shift or during  
8 the dayshift?

9 A. I think everything -- every shift kind of had its  
10 own thing. But there's definitely a night life in Tacoma  
11 that -- there's a whole other world that happens after hours,  
12 so it was -- it was -- it was its own thing for sure.

13 Q. And Officer Collins, can you describe for the jury  
14 your experience dealing, as a patrol officer, with  
15 individuals who are suffering from mental health issues. Was  
16 that a regular thing? And if so, what does that look like?

17 A. It is a regular thing. I mean, unfortunately, you  
18 know, almost every night we get a call -- for instance, like,  
19 we have a transient male in the 7-11. He's kicking over all  
20 the stands and throwing things at the employees.

21 So we show up and, again, it -- you know, is this  
22 person experiencing a mental health crisis, probably, maybe,  
23 but our job, again, first, is we got to get them in  
24 handcuffs because there's other people in the store a lot of  
25 the time. We got whatever mom with her kids in the back.

1 We've got the employees who are scared, that called us  
2 because they were scared. So first thing is get them  
3 contained. And then we have resources after that to help  
4 people, but first thing is to get them in cuffs.

5 Q. We heard from both Mr. Ryan and Mr. Nielsen that a  
6 patrol officer in that situation or any of these situations  
7 has to first control the scene to make it safe; is that your  
8 training as well?

9 A. Absolutely. Absolutely.

10 Q. For the reasons you just discussed?

11 A. Yes, sir.

12 Q. How about -- I think I know the answer to this.  
13 But describe for the jury the frequency with which you would  
14 deal with individuals who were high on illegal drugs during  
15 the course of your patrol.

16 A. Constantly. All night.

17 Q. Does the fact that a subject is suffering from  
18 mental health and/or high on illegal drugs affect how you  
19 deal with the individual when you come into contact with  
20 them?

21 A. I mean, it does once we can make it safe,  
22 absolutely. Once -- once we can -- because another aspect to  
23 both mental health and drugs is -- and a big thing about this  
24 is people don't think clearly. So you're not making good  
25 decisions. You're not thinking about your future. You're

1 not thinking about going to jail. So the first thing we've  
2 got to do is stop you from hurting yourself, hurting someone  
3 in the community, or us, right, so we've got to get you in  
4 handcuffs. So that's number one always.

5 Q. And it sounds like, correct me if I am wrong, this  
6 is a daily occurrence on patrol, dealing with those sorts of  
7 individuals?

8 A. Absolutely.

9 Q. On a day-to-day basis?

10 A. Yes, sir.

11 Q. Have you been recognized for your dealing with  
12 those sorts of folks during the course of your employment at  
13 TPD?

14 MS. EAKES: Your Honor, I'm going to object as to  
15 relevance.

16 THE COURT: Sustained.

17 Q. (By Mr. Ausserer) Well, did you receive the Medal  
18 of Merit?

19 A. I did.

20 MS. EAKES: Your Honor, same objection to  
21 relevance.

22 THE COURT: Objection sustained.

23 MS. EAKES: Move to strike.

24 THE COURT: The jury will disregard the question  
25 of counsel.

1 Q. (By Mr. Ausserer) Ever been disciplined for  
2 use-of-force violations?

3 A. Never once.

4 MS. EAKES: Again, I'm going to object to  
5 relevance.

6 THE COURT: Sustained.

7 Q. (By Mr. Ausserer) Officer Collins, has the death  
8 of Manuel Ellis affected you?

9 A. Absolutely.

10 Q. How so?

11 MS. EAKES: Your Honor, I'm going to object on  
12 relevance.

13 THE COURT: Overruled. You may answer.

14 Q. (By Mr. Ausserer) How has the death of the subject  
15 you came into contact with affected you, Officer Collins?

16 A. I mean, for police officers, it's the worst thing  
17 that can happen. I mean, you know, in this case,  
18 undoubtedly, Manny was in the wrong. But at the end of the  
19 day, his mother lost a child and his sister lost a brother.  
20 And human life is a precious thing, so obviously it's -- you  
21 know, it's a weight we bear as police officers when we go out  
22 and we step into this stuff every single night. But it's the  
23 worst possible outcome.

24 Q. Well, let's talk about what happened leading up to  
25 your contact with Mr. Ellis. Do you remember being on patrol

1 with Officer Burbank around 11:00 on March 3rd of 2020?

2 A. I do.

3 Q. Tell the jury where you were on patrol that  
4 evening.

5 A. Again, we were kind of floating around 96th Street,  
6 and I think we were headed to Hosmer in the first place and  
7 did a traffic stop at 96th and A, I believe.

8 Q. Okay. All right. And do you recall that traffic  
9 stop at 96th and Ainsworth?

10 A. Vaguely. I remember it was two black females who  
11 had --

12 THE COURT: You said 96th and Ainsworth.

13 MR. AUSSERER: I'm sorry. A Street. Sorry,  
14 Judge.

15 A. Two black females with warrants, I believe, but  
16 they had their car -- they had, like, a headlight out as --  
17 the windshield was all shattered, so yeah.

18 Q. (By Mr. Ausserer) I'm going to show you with the  
19 Court's permission what's been marked as State's Exhibit 13.

20 MR. AUSSERER: Is that okay, Judge?

21 THE COURT: Proceed.

22 MR. AUSSERER: Thank you.

23 Q. (By Mr. Ausserer) Do you recognize State's 13?

24 A. I do.

25 Q. What's State's 13?



1           A.     It's a CAD printout from that traffic stop.

2           Q.     Okay. I'm going to ask you some specific  
3 information about that traffic stop. And if you need to  
4 refer to that to refresh your memory for anything, just let  
5 me know; okay?

6           A.     Okay.

7           Q.     You had indicated that you thought that there were  
8 two African-American females in that car?

9           A.     Yes.

10          Q.     Is that independent recollection or how do you know  
11 that?

12          A.     That is independent recollection. I'm not sure if  
13 it's in here or not.

14          Q.     Okay. Do you know what time you contacted that  
15 vehicle?

16          A.     So it looks like we called it out at 23:15,  
17 59 seconds.

18          Q.     Let's be clear about what that means. When you say  
19 we called out, what is a callout in this context?

20          A.     So it can change a little bit, specifically how it  
21 works, but a lot of times it's just, you know, if one -- so  
22 we rode a partner car, so if one of us saw a traffic stop,  
23 then you'd pick up the mic and you're calling, Hey, we're  
24 going to be on traffic at 96 and A, here's the plate. Then  
25 they'll send it to your computer screen. That's -- you're

1 actually dispatched at that time, but you can call it before  
2 they send you.

3 Q. Why don't you tell the jury, because I assume most  
4 of us don't know, but do you have what's called an MDT in  
5 your car?

6 A. I do.

7 Q. What's an MDT?

8 A. The computer.

9 Q. The mobile data?

10 A. Yeah.

11 Q. So when you say you call it out, do you do that  
12 with a radio on the computer or --

13 A. You can change it. You can actually do it from the  
14 computer. You can just, like, click traffic stop and put in  
15 the information. But I'm pretty sure we usually always  
16 called it out on the radio.

17 Q. Any independent recollection on how you or Officer  
18 Burbank called it out on the contact before you came into  
19 contact with Mr. Ellis?

20 A. I think I just called it on the car mic and just  
21 picked it up and called.

22 Q. Let's talk about that. Is there a microphone in  
23 the car?

24 A. There is.

25 Q. What does that look like and where is it located?

1           A.     So I think you might have seen it in the pictures,  
2     it's just right there on the center console.  It's just a  
3     hand mic that has a little clicker on it.

4           Q.     So on one of the exhibits that we saw, I saw --  
5     maybe it was a yellow-colored, kind of like -- looked like a  
6     walkie-talkie or something like that.  Is that what you're  
7     talking about?

8           A.     Yes, sir, I am.

9           Q.     Is that mounted in the vehicle?

10          A.     It's got, like, a magnet mount on it, just sticks  
11     on the center console.

12          Q.     For instance, if you were to call in this A Street  
13     contact, you would pick that up and say what?

14          A.     Just say Henry 317 traffic, 96 and Ainsworth,  
15     here's the vehicle -- or 96 and A, excuse me.  A, Adam.

16          Q.     So you contact this vehicle on 96 and A.  Describe  
17     that contact for us, if you recall.

18          A.     It was pretty fast.  I remember we approached the  
19     vehicle and the driver was immediately in tears and said she  
20     had warrants and she couldn't take care of it.  But she told  
21     us the story about what she was doing to take care of it.  
22     And she wasn't driving her vehicle, it was someone else's.  
23     So we just told them, have a good night, take care of your  
24     warrants.

25          Q.     And was that vehicle registered to a Mr. Bogans?

1           A.    I believe it was, from my memory.

2           Q.    Would that refresh your memory by looking at the  
3 CAD report?

4           A.    Yeah, I see it right here.

5           Q.    And so in the CAD report, do either you or Officer  
6 Burbank indicate who the registered vehicle -- who it's  
7 registered to so that dispatch knows that information?

8           A.    When you run the plate, when you run someone's  
9 license plate, a DMV registration pops up on your screen. So  
10 it shows registered owner, it shows warrants involved in the  
11 vehicle and then...

12          Q.    Okay. And we heard from Officer Ford that Officer  
13 Ford and Officer Rankine drove by during the course of this  
14 stop. Do you remember that happening?

15          A.    Yes.

16          Q.    Did they actually stop and participate, or did they  
17 just drive by?

18          A.    I feel like they just -- if I remember right, they  
19 just drove up and we kind of gave them the thumbs up like  
20 we're good.

21          Q.    Everything's okay? All right. How long would you  
22 estimate you were at that traffic contact with the lady in  
23 Mr. Bogans' car?

24          A.    Not long.

25          Q.    Okay.

1           A.     It was pretty quick.

2           Q.     Well, we heard from Grant Fredericks, I think maybe  
3 the first day of this trial, about an entry in the CAD report  
4 about when that was cleared. Do you remember Mr. Fredericks  
5 talking about that?

6           MS. EAKES: Your Honor, I'm going to object to  
7 leading.

8           THE COURT: It's foundational. I'll allow it.

9           MR. AUSSERER: May I proceed, Judge?

10          THE COURT: Go ahead.

11          MR. AUSSERER: Thank you.

12          Q.     (By Mr. Ausserer) Look in the CAD report. When  
13 was that stop cleared?

14          A.     23:19 and 48 seconds.

15          Q.     All right. And there was some discussion from  
16 Mr. Fredericks about a minute and 12 seconds from the time  
17 that was cleared to the time the Vivint camera activated. Do  
18 you remember him testifying about that?

19          A.     I do.

20          Q.     Why don't you tell the jury what the clearing  
21 process is when you contact somebody before it's entered into  
22 the CAD.

23          A.     Yeah. So when we -- in the 4 Sector, at least I  
24 can speak for, when we did traffic stops, the common practice  
25 how we did it was you got to think you're getting out,

1 possibly, in a high crime area, and you're doing a traffic  
2 stop. So now people are seeing where you're at, people are  
3 walking by your car. And whenever we're done, if we can, we  
4 leave immediately and we clear away from the scene. Nobody  
5 gets back in their car and starts typing, because you could  
6 be a target at that point.

7 Q. Well, how does the clearing entry get into the CAD?

8 A. So again, you can -- like if we had to get out of  
9 the car really quick, we could just call it and say, Hey,  
10 we're clear from the traffic, now we're on this. Or you can  
11 clear it just by clicking a button on your computer in the  
12 car.

13 Q. All right. And so what was your practice, you and  
14 Officer Burbank's practice, when clearing a call in this high  
15 crime area?

16 A. So immediately, we get out of the area. We'd start  
17 driving, and then whoever was the passenger would enter  
18 notes, enter, you know, wants and warrants or whatever, and  
19 then put a disposition of how we cleared it.

20 Q. Was that Officer Burbank in this case?

21 A. It was. He was the passenger.

22 Q. Where did you guys drive to for Officer Burbank to  
23 enter that information into the computer?

24 A. Well, I was just heading to Hosmer Street from the  
25 stop. That was our destination from the beginning. So he

1 was still clearing as we encountered Mr. Ellis.

2 Q. And when you say still clearing, is he on the MDT  
3 at that time?

4 A. Yeah. He's typing down -- typing on the computer.

5 Q. So when it says cleared at one time, again?

6 A. It says closing time 12:19 and 48 seconds.

7 Q. So is Officer Burbank doing that as you're sitting  
8 at the red light at 96th and Ainsworth?

9 A. Yes.

10 Q. So the minute and 12 seconds that Mr. Fredericks  
11 talked about is occurring while you are at that stoplight?

12 A. Correct.

13 MS. EAKES: Your Honor, I'm going to object. This  
14 is leading and argumentative.

15 THE COURT: I will sustain that.

16 Q. (By Mr. Ausserer) Just so I'm clear, was it  
17 cleared at the time that it has there at the stoplight?

18 A. It was.

19 Q. Okay. All right. Before we get to what happens  
20 once you're sitting at that stoplight, are you trained on  
21 dealing with individuals who exhibit symptomology of what is  
22 labeled as excited delirium?

23 A. I had a class during the academy on it.

24 Q. What are the symptoms associated with an individual  
25 who may have, I guess they call it agitated delirium now, but

1 that symptomology?

2 A. Right. Yeah, so I guess the accepted term now is  
3 agitated or aggravated delirium instead of excited. So  
4 essentially, it's always drugs. It involves delusions,  
5 extreme strength, a lot of high body temperature, rapid heart  
6 rate, and then sudden death.

7 Q. Is your training that that's -- can turn into a  
8 medical crisis?

9 A. Oh, yeah.

10 Q. And are there things that you're supposed to do  
11 once you restrain or control somebody who is exhibiting those  
12 things?

13 A. Yes.

14 Q. What?

15 A. Best practice is to -- well, obviously, best would  
16 be not to restrain them. If we could have them just sit  
17 there and be calm, that would be ideal. But to just limit  
18 the amount of pressure you're putting on them as much as  
19 reasonable and to get them medical aid.

20 Q. As soon as possible?

21 A. As soon as possible, yeah.

22 Q. And why is that?

23 A. Well, you know, I think that there's a lot with --  
24 I mean, like, you can tell from the last descriptor of it,  
25 sudden death. There's a lot of question marks with it. And



1 the best practice that I've seen -- I've heard of, I guess,  
2 that works is when the fire department can administer  
3 ketamine to calm that person's heart rate down, because their  
4 heart is just spiking out of control.

5 Q. Okay. We'll talk about that in a minute as well.  
6 Do you actually have experience, practical experience,  
7 dealing with people who are exhibiting the same symptomology  
8 that you just described?

9 A. Once.

10 Q. Tell us about that.

11 A. So I reference that in my interview with Pierce  
12 County deputies, but that happened -- so there was a night  
13 that Officer Burbank and I got asked to work in the 1 Sector,  
14 which is downtown, which is where we are right now. There  
15 was people sick or something and they needed a two-officer  
16 car to come up. So we came up here and we got a call from  
17 the St. James Apartments, which is right next to the jail,  
18 right up here on Yakima. And it was a single elderly lady  
19 who lived in this apartment, and she called just terrified,  
20 because in those apartments -- they're old-school apartments  
21 and they have on the floor -- there like a brass, like, box  
22 that you can open. And it's the mailman, you can put the  
23 mail in there and close it, and the person inside their  
24 apartment can open it up and grab the mail.

25 Well, this guy was -- she heard someone trying to

1 get into her house or into her apartment. She calls us.  
2 And she looks out the peephole and she can see his feet  
3 dangling out of that little box, and he's trying to break  
4 through her side. So she locks herself in the bathroom and  
5 calls the police and gets us there.

6 Q. Did you have contact with this individual?

7 A. We did.

8 Q. And did this individual exhibit the symptomology  
9 that you've described associated with excited delirium?

10 A. He did.

11 Q. Tell us what happened.

12 A. As soon as we got there, she said that the  
13 apartment across the hallway from hers was vacant and that he  
14 couldn't get in and heard her on the phone, and she told him,  
15 I'm calling the police. He kicks the door in and goes in  
16 that vacant apartment.

17 Q. Did you contact him?

18 A. We did.

19 Q. Tell us what happened.

20 A. So we opened the door and it was an empty, dark  
21 apartment, and he was sitting in the back against the window.  
22 And I'll never forget, because he was sucking on one of those  
23 suckers that has, like, a scorpion in the sucker. And he was  
24 just sitting there, and I could see -- from the light from  
25 the window behind him, I could see it. And he was just

1 looking at us, sucking on this sucker.

2 Q. And did you attempt to arrest this individual?

3 A. We did. We said, Hey, man, you're trespassing.  
4 Come on out here. You're under arrest.

5 Q. And so tell us about your experience trying to  
6 arrest an individual exhibiting the symptomology associated  
7 with excited delirium.

8 A. So just to get to the point of this, eventually, it  
9 progressed. It was like a six-minute fight. I think other  
10 officers -- luckily, the lady who called had heard us  
11 fighting and she called 911 again and said, Hey, I think  
12 these cops are in trouble. You need to get people here.  
13 Because we couldn't get to our radios again. But it was --  
14 it was one of the scariest experiences I've ever had, but the  
15 strength of this guy -- and he was probably very small. He  
16 was probably 150 pounds, kind of skinny. But he was  
17 whispering to us the whole time that he was going to kill us,  
18 and he was throwing me around with -- had all my body weight  
19 on one arm and just slamming me into the wall and throwing me  
20 around. And at one point, I kneed him in his groin as hard  
21 as I possibly could and he started laughing.

22 Q. Okay. And so were you able to restrain or control  
23 this individual?

24 A. Eventually, we were.

25 Q. Okay. And that experience, has that informed you

1 on how you would move or deal with those types of individuals  
2 moving forward?

3 A. Yes. So, you know, one of the things that --  
4 again, why you want experience coming to a situation that  
5 you're involved in is you kind of -- you know, as an officer,  
6 you create this Rolodex of all these experiences that you're  
7 collecting along the way. And I remember that one, I went  
8 back through and I was thinking about it, because I mean, we  
9 were -- again, it was confusing because this guy is unarmed,  
10 but he's going for our guns the entire time. He's trying to  
11 reach for our sidearms, and I'm starting to -- nothing's  
12 working.

13 And I remember when I kneed him and that happened,  
14 I started thinking, I'm going to have to shoot this guy.  
15 And obviously, again, that is the last thing in the world  
16 you want to do. And so as I thought about it, I realized  
17 that an LVNR is the best thing for these people because  
18 they're not -- you don't feel pain when you're under this  
19 kind of -- it's not rational. You're not -- you know, you  
20 get hit, it's not a rational reaction like you would have.  
21 You don't feel pain. You don't feel yourself getting tired,  
22 so you can keep going and going and going. And you're  
23 extremely strong.

24 So this guy, I delivered multiple strikes. It's  
25 like, how many -- do I just keep striking him, keep striking

1 him, keep striking him forever? Like, I'm just going to  
2 hurt him, injure him. The best way is to cut off that blood  
3 flow temporarily and make him unconscious and get him in  
4 handcuffs. Again, restrain him.

5 Q. When you say "this guy," we're still talking about  
6 the individual at the --

7 A. At the St. James Apartments, yes.

8 Q. Okay. So that -- it sounds like -- did that  
9 experience inform you on how to deal with similarly situated  
10 individuals moving forward?

11 A. Directly, yes.

12 Q. Okay. And you discussed an LVNR; is that the  
13 Lateral Vascular Neck Restraint?

14 A. Yes, sir.

15 Q. We heard a lot about that. What is that?

16 A. So again, the LVNR, it's a move that's done  
17 where -- so you have to be facing the same direction as  
18 someone, and then you use your forearm to cut off one carotid  
19 and your biceps to cut off the other carotid. And you  
20 temporarily stop the blood. You heard testimony that -- I  
21 think it was Dr. Mitchell who said it cuts off the jugulars  
22 and attacks oxygen. So the jugulars are veins. They're  
23 moving deoxygenated blood away from your brain. The carotids  
24 are pumping oxygenated blood up. So you stop the carotids  
25 and there's no oxygen. Because to attack oxygen is foolish

1 because you -- you know, I knew guys who could hold their  
2 breath for over six minutes that I worked with in the  
3 military. You don't attack oxygen, but -- and also, you  
4 create damage, damage their throat, the muscles in their  
5 neck. So again, it pinpoints on those carotids, stops that  
6 blood, causes unconsciousness, and then the blood immediately  
7 returns once you've stopped.

8 Q. So we heard Officer Nielsen indicate that it took  
9 seven to nine seconds with an appropriate application. Is  
10 that your training as well?

11 A. Yes, that sounds right.

12 Q. And he said it would result in a 15- to 20-second  
13 period of unconsciousness. Is that your training as well?

14 A. That sounds correct.

15 Q. So Jack Ryan suggested to this jury that you had to  
16 get some sort of certification to use this. Have you ever  
17 heard of such a thing?

18 A. I know that there is some departments that do this.  
19 But again, that's -- so that's the kind of things that  
20 happens within government that is actually detrimental,  
21 because what they do is -- LVNR is a company. And so they  
22 trademarked this, and then they come in and they work with  
23 departments and say, These guys need to get certified. And  
24 so then if you want to get certified, basically you go to,  
25 like, a two-hour course, the guy says this is what it is,

1 here's how you do it. You practice it. Now you're  
2 certified. For me, I've been grappling for almost 20 years  
3 at this point, so this was just...

4 Q. Let's talk about that. Is this something that you  
5 learned as part of your grappling experience?

6 A. Oh, yeah.

7 Q. Tell us about your grappling experience. I know  
8 you talked about hand-to-hand combat in the military. When  
9 you're saying grappling, is that something that's different  
10 than that or built off of that? Tell us what you mean by  
11 your 20-years' experience.

12 A. So after high school, I got into Brazilian  
13 jiu-jitsu and submission wrestling. The reason people kind  
14 of call it grappling is it's usually -- it's not wrestling  
15 for a pin, it's grappling to either a joint lock or a  
16 submission.

17 Q. And you said you've been doing that for 20 years?

18 A. Uh-huh.

19 Q. Competitively?

20 A. Yes.

21 Q. When I say competitively, what does that mean to  
22 you?

23 A. Well, I started doing tournaments when I was young,  
24 and then again in the military we did tournaments kind of  
25 within the military and within the three ranger battalions.

1 So I ended up coaching our competitive team.

2 Q. And we heard Mr. Nielsen say that you seemed  
3 proficient in ground control grappling. Is that based on  
4 your grappling training or something else?

5 A. Yeah, I did it -- I mean, that was my pastime,  
6 so...

7 Q. So with respect to the LVNR, when did you first  
8 learn first the appropriate application of that?

9 A. So that's one of the very first things that the  
10 school I went to taught. It's kind of like the base move  
11 that was done.

12 Q. And how many times do you think you've applied that  
13 or participated in practicing application of that?

14 A. Hundreds if not thousands.

15 Q. We're going to talk about that in a minute, because  
16 I think you described the appropriate position of your body  
17 relative to the person you're applying it to. What's the  
18 significance of the positioning of your body relative to that  
19 subject?

20 A. So yeah, if you're not, you know, behind someone,  
21 if you start to get to the side, now you have -- you can  
22 block one carotid, but not the second. Without two, if you  
23 have one supplying blood, there's no choke there.

24 Q. No benefit from that?

25 A. No benefit from that.



1 Q. We'll talk about that in a second; okay?

2 So you're at 96th and Ainsworth and Officer  
3 Burbank is entering the information in the MDT. What, if  
4 anything, is your attention drawn to?

5 A. So in the northbound lane on Ainsworth, there was a  
6 sedan that was trying to turn left and I saw who I now know  
7 as Mr. Ellis at the passenger door, trying to work the  
8 passenger door open.

9 Q. So are you stopped in the lane of travel at the red  
10 light going, I guess, through the intersection?

11 A. Yes, sir.

12 Q. So would the other lane of travel have had a green  
13 light at that point in time?

14 A. So the turning traffic off of Ainsworth would have  
15 a green light, yes.

16 Q. Okay. So you're sitting there and you see  
17 Mr. Ellis in the intersection. What's going through your  
18 mind at that point?

19 A. So as I stated in my statement, I'm trying to  
20 figure this out. So one thing to understand is on the east  
21 side of Tacoma, this was not that crazy of a thing. I mean,  
22 there's stuff happening all the time in the street,  
23 everywhere, really. But I didn't know, you know, was this a  
24 domestic violence thing where somebody got kicked out of a  
25 car? Is this guy trying to get a ride? Is this -- who

1 knows, carjacking? Could be anything.

2 Q. So as you're seeing this transpire, are you  
3 contemplating contacting Mr. Ellis? What's an appropriate  
4 response from you at that point in time?

5 A. Yeah. So I'm immediately trying to develop what we  
6 have here. I remember I picked up the mic and I'm watching  
7 this, and then as I'm trying to figure it out, the car just  
8 takes off, westbound.

9 Q. Can you describe that car for us.

10 A. I believe from my description it was like a gray or  
11 silver sedan, kind of like a Chrysler 300, Charger-type body.

12 Q. And what, if anything, did Mr. Ellis do once that  
13 car turned left headed west?

14 A. He just kind of stayed standing there in the middle  
15 of the intersection.

16 Q. And what's your thought process at that point in  
17 time?

18 A. Well, now I got a guy standing in the middle of an  
19 intersection, who was involved in something, but now he's  
20 just standing there and he's right in the middle of a green  
21 light where cars are moving north to west.

22 Q. So what, if any, action do you take at that point  
23 in time?

24 A. I rolled down my window and I said, Hey, man, what  
25 are you doing?

1 Q. How far away are you from Mr. Ellis when you do  
2 that?

3 A. I don't know, maybe 50 feet or something like that.

4 Q. And tell the jury what, if any, observations did  
5 you make about his person, meaning if you recall what he was  
6 wearing, if he has any objects in his hands, those sorts of  
7 things.

8 A. I don't recall what he was wearing, but I do know  
9 he had a bag, had like a grocery bag in his hand.

10 Q. Forgive me. I didn't catch what you said. What  
11 did you say to him?

12 A. I said something to the effect of like, Hey, man,  
13 what are you doing? Come here.

14 Q. Okay.

15 A. Yeah.

16 Q. And what was Mr. Ellis's response?

17 A. He just immediately started jogging over to the  
18 car.

19 Q. Are you still at the stop bar at the intersection?

20 A. Yes.

21 Q. Had the light turned green at this point?

22 A. I don't know. I was just staying focused on him,  
23 so yeah.

24 Q. All right. Are you still in the driver seat of the  
25 patrol car?

1           A.    Yes.

2           Q.    So describe Mr. Ellis, his interaction with you as  
3 he comes up to the vehicle.

4           A.    Yeah, so then he -- he comes strangely close to the  
5 vehicle. Like, not an average distance. He kind of is right  
6 up on it. And so I backed up. I was like, Whoa, what's  
7 going on?

8           Q.    Can you describe for the jury Mr. Ellis's  
9 appearance when he was that close to you.

10          A.    Yeah. So he -- I immediately knew something was  
11 wrong. His eyes were super wide and he was sweating  
12 profusely, and it was -- it was a cold night.

13          Q.    March 3rd, 2020, do you remember approximately what  
14 the temperature was?

15          A.    I don't, but I was wearing my beanie at the time  
16 and I never wore that unless it was really cold, so...

17          Q.    So Mr. Ellis gets up close to you, and what happens  
18 once he's in that location of the driver's side of the patrol  
19 vehicle?

20          A.    Yeah, so then he gets up to the patrol vehicle, the  
21 window, and he says something like, I got to talk. I'm  
22 having a bad night. I got warrants.

23          Q.    Okay.

24          A.    And I said, All right, man. Calm down, go sit on  
25 the sidewalk and we'll call this out.

1 Q. Okay. And at that point in time, what's your  
2 process? What are you thinking you're dealing with, and what  
3 is your next step?

4 A. So I was going to call it out that we had a subject  
5 that said he had warrants, and we were going to check on  
6 wants and warrants, because that doesn't always mean that.  
7 We've regularly gotten people who said that, we run them,  
8 they have no warrants, and they were like, Look, man, I'm  
9 just cold. I just need some food. They just say something  
10 like that to us. So we still have to investigate, see what's  
11 going on. So I was going to pull into that driveway that you  
12 see that's kind of just north of where we're at.

13 Q. Why did you ask him to go sit on the curb or go to  
14 the curb?

15 A. He's in the middle of the road at this point, and  
16 you know, I'm super uncomfortable because he's right up on my  
17 window and it just didn't seem right.

18 Q. You said that you had planned to pull into that  
19 driveway that we see at the intersection in the photographs?

20 A. Uh-huh.

21 Q. Why would you do that as opposed to just stay where  
22 you are or pull off into the bike lane?

23 A. Because we can't obstruct traffic. You know, we've  
24 got to get out of the way of normal people getting to work  
25 and doing their things, and there's no reason to be out there

1 in the middle of the street putting ourselves in danger if we  
2 don't have to.

3 Q. Would you ever make a contact in the middle of the  
4 lane of travel at the stop bar?

5 A. Not if we didn't have to.

6 Q. So you said you were about to call it in. Why  
7 didn't you call it in?

8 A. Yeah, so part of calling stuff in is -- it's not  
9 only you need to be accurate for dispatch, but like for us on  
10 the east side it's really important because we have all of  
11 the cops kind of floating around. When they hear us call  
12 something out, it tells them, do I need to go there or are  
13 they fine and I just do my own thing. So I'm trying to get  
14 an accurate description of what's going on.

15 So at first I see Manny at the car. I have kind  
16 of already explained the process I'm going through. I'm  
17 like, what is this? Is this DV? Does he know these people?  
18 Is this a random person? Then this person takes off, so now  
19 I have no victim. Now I have a guy standing in the street,  
20 so I call him over.

21 And if he just ran away at that point, we would  
22 have just kept driving. We didn't really have anything.  
23 But he comes to us. Now he looks to be under the influence  
24 of narcotics, sweating profusely, eyes are really wide.  
25 He's saying he has warrants. So now I'm like, okay. Well,

1 I'm going to call out. We got a guy. We're going to check  
2 wants and warrants. So now I've kind of moved onto another  
3 thought process. But then when he started walking around  
4 the car, I immediately knew we were in trouble.

5 Q. Let me slow you down. So you didn't call that in  
6 immediately?

7 A. No.

8 Q. Why not?

9 A. Again, I mean, I'm trying to put out an accurate  
10 description of what's going on and this situation has just  
11 changed multiple times within a very short distance. So I'm  
12 trying to be accurate.

13 Q. And so you said something seemed off when he got  
14 around to the front of the vehicle. Tell the jury what  
15 happened.

16 A. So as soon as he started walking, because I --  
17 remember I told him to go to the sidewalk and get off the  
18 road. And if you remember from the pictures, it's quite a  
19 distance. I mean, there's a space between us and the bike  
20 lane, then there's the bike lane, then there's the sidewalk.  
21 And as soon as he starts walking around, he just fixates on  
22 Officer Burbank.

23 And the way he is looking, you know, part of being  
24 a police officer, we read people's body language and their  
25 eyes for a living. That's what we do. Because one minute I

1 can be talking to a person who just is having a bad day and  
2 you stopped on traffic or someone who's trying to kill us.  
3 The range is huge, so you get really quick on picking up on  
4 cues. His body language, the way he was looking at Officer  
5 Burbank, concerned me greatly when he started --

6 Q. At this point in time, do you know if he's got a  
7 firearm?

8 A. I don't.

9 Q. Do you know if he's armed?

10 A. I don't.

11 Q. You said that how he was fixated on your partner  
12 caused you great concern. Why?

13 A. Because there's a way that -- like I said, you  
14 know, you get used to body language. You get used to  
15 studying people. And there's a way that people look at you  
16 when you're about to be in a fight.

17 Q. Okay. And are you and Officer Burbank in a  
18 position to defend yourselves if Mr. Ellis has a firearm at  
19 that time?

20 A. No.

21 Q. What are your options?

22 A. Well, I don't want to know. If he had a firearm,  
23 it's nothing but bad from there.

24 Q. So you see him fixate on Officer Collins. When did  
25 he first become fixated on Officer -- I'm sorry, Officer



1 Burbank. When we did he first -- so you say, Go to the curb.  
2 I assume he walks around to the front part of the vehicle?

3 A. Yeah.

4 Q. How far does he get before you notice that he's  
5 locked onto Officer Burbank?

6 A. Right to the hood. Right when he gets to the hood,  
7 he starts looking at him through the glass. And then he's,  
8 like, strangely close to the car as he comes around the side.

9 Q. So what do you do at this point?

10 A. So at this point now, now it's changed again. Now  
11 I don't know what's going to happen. And I'm watching him,  
12 and there's a brief interchange where they kind of say  
13 something, and then all of a sudden he starts punching the  
14 window.

15 Q. So is there a reason you didn't pick up the mic and  
16 call it in at that point?

17 A. I mean, in hindsight, knowing that he didn't have a  
18 gun and knowing the circumstances that I do now, I wish I  
19 did. I wish I had said, 96th and Ainsworth, fighting 1,  
20 because then there would have been cops there like that and  
21 maybe it would have been a different outcome.

22 Q. Okay.

23 A. But you know, from my training and experience, you  
24 know, when you get -- so first of all, when somebody attacks  
25 you like that -- you heard Sergeant Nielsen talk about

1 controlled superiority. When someone initiates and you're  
2 sitting in a car or something like that, now they are in  
3 control. They've started this contact. They're dictating  
4 this contact.

5 And so my first instinct is to take back control  
6 of that. With my grappling experience that means -- we do  
7 this all the time, I get people on the ground, get them in  
8 handcuffs, now we can talk. So my first thought is get him  
9 down, get him in handcuffs, and figure out what's going on.

10 Q. Okay. And so what do you do when you see or  
11 hear -- I guess you said you saw him punching the window or  
12 heard some exchange?

13 A. Yeah.

14 Q. What do you do at that point?

15 A. I immediately get out and sprint around the car to  
16 contact him.

17 Q. Tell the jury what happens as you get to the front  
18 of the vehicle.

19 A. As soon as I get to the front of the vehicle, he  
20 takes his focus off of Burbank and comes right at me and  
21 grabs me by my vest and picks me up and throws me backwards  
22 into the intersection.

23 Q. Ever experience anything like that before?

24 A. Never.

25 Q. We heard testimony about Officer Burbank using his

1 door to strike Mr. Ellis. Did you even see that?

2 A. No.

3 Q. Do you know when that occurred?

4 A. No.

5 Q. Where was your focus at that point in time?

6 A. On Mr. Ellis.

7 Q. So he grabs you and lifts you up into the  
8 intersection. What's going through your head?

9 A. Yeah, it was immediately when I felt that strength,  
10 so I think I -- I was probably already taking the cues of  
11 when he came to the door and I saw his eyes and I saw the  
12 sweating. But when he picked me up and threw me, my mind  
13 replayed right back to the St. James Apartments, and I knew  
14 we were dealing with someone in a similar state.

15 Q. Okay. And so you land on -- I assume you land on  
16 your back?

17 A. Yeah. I think I landed, like, on my back, my neck,  
18 and I rolled backwards and got right back up.

19 Q. We saw some photographs during the State's case of  
20 some injuries to the back of your elbows. Did you sustain  
21 those injuries during that interaction?

22 A. I'm not sure. I mean, I assume so.

23 Q. When you're grappling with Mr. Ellis, was there any  
24 point in time in which you would have been on your back and  
25 sustained those sorts of injuries from the pavement?

1           A.    No.

2           Q.    All right.  So he throws you to the intersection.  
3   Where are you relative to the police patrol vehicle at that  
4   point?

5           A.    So when he throws me, I'm like basically right in  
6   front of the hood of the car.

7           Q.    And what do you hear or see next?

8           A.    So the next moments are really -- I mean, what I  
9   remember it as kind of like if you see, like, a GoPro camera,  
10  like, going down a -- downhill and it's just shaking.  So I  
11  hit my back, I roll, I run up.  He's kind of coming back at  
12  me, and I immediately am trying to close the distance and  
13  take him to the ground.  So there was a lot of interchanges  
14  of me trying to drag him down to the ground and get a  
15  takedown on him, and he's just kind of swinging wildly and  
16  stuff is just flying.

17          Q.    And you described it in your interview that the  
18  jury heard as a melee?

19          A.    Yeah.

20          Q.    Are you getting punched, kicked?  What's happening?

21          A.    I mean, I was -- so when you -- one of the benefits  
22  to grappling is when you close that distance and I get my  
23  head in tight, it's harder to hit people.  But there was a  
24  couple of times where he snuck through and did hit me, and I  
25  could feel him just flailing.

1 Q. And as you engaged in the manner you just  
2 indicated, are you able to see where Officer Burbank is while  
3 this is happening?

4 A. No.

5 Q. Are you focused at all on where Officer Burbank is?

6 A. No.

7 Q. Why?

8 A. You know, if he comes into the picture and I see  
9 him, then great. But I don't know -- honestly, I don't know  
10 what's happened there, and so that's not my -- I have to  
11 treat this like I am the only person here.

12 Q. Well, you heard Officer Burbank's description when  
13 they played his interview for the jury of multiple  
14 up-and-down situations with Mr. Ellis. Is that what you  
15 recall?

16 A. Yes, I do.

17 Q. How long does that interchange -- well, strike  
18 that.

19 At some point during the exchange, in your  
20 interview you indicate that you're able to gain, I'll call  
21 it superiority position, on his torso?

22 A. Yeah.

23 Q. How long did this altercation go on before you were  
24 able to gain that position on Mr. Ellis?

25 A. I think we were at a couple of minutes by then.

1 Q. Okay. And tell us about -- we'll watch the video  
2 in a second, but I want you to tell us what happens as you're  
3 able to gain the superiority position on his torso.

4 A. Yeah, so that would be like what you call a mount  
5 position, so I'm on top of him. He immediately is kind of  
6 coming up, trying to take me over backwards, so I'm elbowing  
7 him, trying to push him back down to the ground. Because,  
8 again, I want to pin him, turn him, and start manipulating  
9 his arms to put him in handcuffs. So I am elbowing him,  
10 trying to drive him back down to the ground.

11 Q. What's the desired effect on an individual in  
12 Mr. Ellis's position when you are delivering those elbows?  
13 What are you trying to do?

14 A. Yeah, so, I mean, ideally for me is someone  
15 completely turns their back and faces the ground. That's  
16 kind of the natural reaction. I mean, if you get elbowed in  
17 the face, that's going to be number one. Or like Sergeant  
18 Nielsen said, you kind of turtle. You turn on your side and  
19 you protect yourself. I mean, as soon as you do that, you've  
20 put yourself in the perfect place for me to put two hands on  
21 one of your arms and start the cuffing you process.

22 Q. So is that use of force intended to de-escalate the  
23 situation?

24 A. It is.

25 Q. How so?

1           A.     I mean, again, you've got to meet that force, stop  
2     it. We have got to move to cuffing somehow. So if somebody  
3     is swinging wildly at me and trying to push me backwards, for  
4     me, just trying to catch one of his harms and put him in  
5     handcuffs, that's not a viable option. So I've got to regain  
6     the initiative of this. I've got to get him on the defense.  
7     And like I said, ideally, he flips around, faces the ground,  
8     and then maybe we can start ending this right now.

9           Q.     Okay. We're going to get through the rest of the  
10    altercation with Mr. Ellis, but you've seen Ms. McDowell's  
11    videos?

12          A.     Yes.

13          Q.     In the first video, we see it appears to show you  
14    on Mr. Ellis's torso. Is that the period of time that you  
15    just described?

16          A.     Yes.

17          Q.     All right. And so did she -- was she able to  
18    capture the essence of the interaction between you and  
19    Mr. Ellis or just catch the tail end of it?

20                MS. EAKES: Your Honor, I'm going to object to  
21    this is argumentative and lack of foundation.

22                THE COURT: Overruled. You may answer.

23          A.     Yeah. I mean, that's -- that's right in the middle  
24    of it, maybe towards the end, but...

25          Q.     (By Mr. Ausserer) Okay. So you described that --

1 both in your statement and I think just now, that as you're  
2 delivering those elbow strikes from that superiority  
3 position, Mr. Ellis doesn't do the things that you're hoping  
4 he does?

5 A. Right.

6 Q. What does he do?

7 A. So instead, he just keeps swinging wildly, and he  
8 lunges up at me towards my face, and basically, he is about  
9 to push me over.

10 Q. What do you do in response to that?

11 A. So then the only thing I can do is kind of let him  
12 have his way. So I get up, and then now he kind of passes me  
13 and now he's facing towards Ainsworth, essentially. And  
14 that's when you see Mr. Cowden's video pick up, and I'm now  
15 behind him.

16 Q. All right. So how much time are we talking about  
17 passing between when you're delivering the elbow strikes to  
18 where you end up in the perspective that Mr. Cowden was able  
19 to document?

20 A. I mean, in my mind, it was instantaneous. Like, it  
21 seemed right away.

22 Q. Okay. All right. So explain what is going through  
23 your mind as you end up in the position that you just  
24 described. What's the next option for you?

25 A. So right away, as soon as I'm starting to elbow him



1 and he kind of comes up through me, right away I'm thinking,  
2 I got to LVNR him. We got to put this guy out so we can get  
3 him in handcuffs. And so that's immediately what I'm trying  
4 to start doing. So he's kind of passing me, I'm going to put  
5 him in the LVNR, and it's at that point, like I say in my  
6 statement, now I see Officer Burbank back in the picture and  
7 he has his Taser out. I could see the red lights right on  
8 him.

9 Q. Okay. You just indicated that you said that in  
10 your statement. When did you make your statement relative to  
11 this incident?

12 A. When?

13 Q. Yeah.

14 A. Was it on the 6th or -- I think it was a few days  
15 after.

16 Q. Is that standard?

17 A. Yes.

18 Q. Okay. And at the time you made that statement, did  
19 you know there was any video that documented exactly what you  
20 did?

21 A. No.

22 Q. Did you have an expectation that there might be  
23 video documenting the entirety of your interaction given that  
24 this occurred in a residential neighborhood?

25 A. Oh, yeah. A well-lit street like that, and

1 everyone's got cameras in Tacoma. I'm assuming that there  
2 was.

3 Q. Okay. But you didn't know at that point in time  
4 that there was video?

5 A. No.

6 Q. So you had indicated that you, in your mind, went  
7 to the Rolodex of applications of the LVNR.

8 A. Uh-huh.

9 Q. Describe your attempts to apply that and why it was  
10 unsuccessful.

11 A. So, you know, so I started to apply the LVNR, and  
12 then we started to come to the ground. But when I see  
13 Officer Burbank and Manny and I go to the ground, he's now in  
14 a position where -- and I can walk you through the video and  
15 show you. But you know, if you picture a person -- so Manny  
16 is kind of laying on his side facing you guys and I'm kind of  
17 laying on top of him like this, so our shoulders are  
18 perpendicular to each other and we need them parallel for me  
19 to do that. So now I'm kind of on his side. But once I saw  
20 Burbank with that Taser, I knew that was the more effective  
21 option and so I was going to just hold him until that Taser  
22 took effect.

23 Q. If I understand, you're behind Mr. Ellis. Where is  
24 Officer Burbank relative to you when you see the Taser?

25 A. So he's in front of us, so he's -- so you got the

1 car, you've got me and Manny on the ground, and then Burbank  
2 is standing up, facing us, with his Taser out.

3 Q. We're probably going to take our morning break here  
4 in a second, but before we do, was your position relative to  
5 Mr. Ellis before you saw Officer Burbank with the Taser  
6 conducive to application of the LVNR?

7 A. I could have made it work, yes.

8 Q. Okay. Why did you stop?

9 A. Because I saw Officer Burbank with the Taser.

10 Q. I think we're going to take our morning recess, but  
11 would it be beneficial to demonstrate for the jury how to  
12 appropriately apply the LVNR and why you didn't do it  
13 afterwards?

14 A. Sure.

15 MR. AUSSERER: Judge, I don't know if this is a  
16 good time to break.

17 THE COURT: Okay. We'll take our morning recess,  
18 ladies and gentlemen, for 15 minutes. Please do not discuss  
19 the case among yourselves or with anyone else, and do not  
20 permit anyone to discuss the case with you or in your  
21 presence.

22 (The jury left the courtroom.)

23 THE COURT: Okay. Anything anybody wants to take  
24 up at this point? If not, we'll be at break.

25 MR. AUSSERER: Thank you, Judge.

1 MS. BREMNER: Thank you, Your Honor.

2 (Recess.)

3 THE COURT: Welcome back, everybody. Please be  
4 seated. Are we ready for the jury? Great. Let's have the  
5 jury.

6 (The jury entered the courtroom.)

7 THE COURT: All right. Welcome back, everybody.  
8 Please be seated. You may resume when we're ready,  
9 Mr. Ausserer.

10 MR. AUSSERER: Thank you, Judge.

11 Q. (By Mr. Ausserer) Before we get to kind of a  
12 demonstration on the application of LVNR and the application  
13 of this circumstance, do you remember last week when  
14 Ms. Nicolavo was asking Sergeant Nielsen about probable cause  
15 to arrest, based on the video, the level of offenses? Do you  
16 remember her asking those questions?

17 A. I do.

18 Q. Did you have probable cause to arrest for more than  
19 a misdemeanor at the time you contacted Mr. Ellis?

20 A. Oh, yes.

21 Q. Tell the jury what offenses you had probable cause  
22 to arrest Mr. Ellis for.

23 A. So from the moment he started striking the window  
24 to try and break it, that's a felony assault on a police  
25 officer. And then when I ran around to apprehend him and he

1       threw me, that's a second count of felony assault on a police  
2       officer.

3           Q.     And what's your level of concern once Mr. Ellis is  
4       able to throw you into the intersection?

5           A.     I mean, I was very concerned.

6           Q.     For what?

7           A.     Well, first of all, if someone's able to -- you  
8       know, we struggle with strong people all the time, big guys.  
9       I've wrestled with big, strong guys. There's a difference  
10      when someone lifts you up like a child and throws you. And,  
11      you know, the main -- the real concern in these situations  
12      comes in and it's sometimes hard for nonpolice officers to  
13      grasp. You know, I mentioned in my statement how people  
14      usually, you know, quote/unquote, fight the police because  
15      they don't want to get arrested, so you catch someone doing  
16      something wrong, they don't want to get arrested and they do  
17      just enough resistance to create space and then they run.  
18      That's normally what we see.

19                    But when somebody's aggressing on you over and  
20      over again, we have to assume the worst, that they're trying  
21      to kill us. And the bottom line is -- you know, especially  
22      for us, you know, even if -- there's plenty of instances.  
23      There was an officer in King County killed by a naked man in  
24      an intersection --

25                    MS. EAKES: Your Honor, I'll object to the

1 relevance and move to strike.

2 THE COURT: Overruled. You may continue.

3 A. So, you know, just for one, not to mention the  
4 knives and the other weapons in our kit, I mean, our  
5 firearms, you heard Ms. Bremner allude to the Glock pistols.  
6 There's no external safety on a Glock. So there's nothing --  
7 there's no switch you have to find, there's nothing that you  
8 have to know. If you grab my Glock, you can shoot it. It is  
9 a 5-pound of trigger pull away from that trigger going off.  
10 So as soon as you're -- we have a saying. It's my gun until  
11 someone starts reaching it and we're both grabbing, now it's  
12 our gun. So then it's just who has it; right? So once  
13 someone starts aggressing on us like this, these are the  
14 things that have to go through our heads when we have to  
15 immediately restrain that person, like, yesterday, because  
16 it's very dangerous.

17 Q. (By Mr. Ausserer) All right. Now, you've  
18 discussed in the application of the LVNR positioning. Would  
19 it help to explain to the jury what you were trying to do and  
20 how it's applied by demonstrating?

21 A. Sure.

22 MR. AUSSERER: And with the Court's permission,  
23 I'd ask that -- to allow Mr. Arbenz to come up -- because I  
24 don't want to deal with it -- and allow Officer Collins to  
25 demonstrate and explain to the jury what he's trying to do

1 and the positioning of the body necessary to do it.

2 THE COURT: Any objection?

3 MS. EAKES: I defer to the Court, but we would  
4 object.

5 THE COURT: That's sort of a foot on each side of  
6 the line.

7 MS. EAKES: I'm being practical, Your Honor.

8 THE COURT: Okay. Proceed.

9 A. Okay. And so the LVNR, again, so you have your two  
10 carotid arteries that lie on either side pumping oxygenated  
11 blood up to your head. So for me to do this correctly, I  
12 need to be facing the same direction as the person. If I'm  
13 on the side, I'm only getting one side of someone and I can't  
14 occlude the other side. But from the back, your elbow is in  
15 line, then you go around and I'm blocking both sides, and I  
16 grab my biceps and the other hand will go behind the head and  
17 I'll just go down and forward and you just temporarily stop  
18 that and then they'll go out, put them in cuffs, the blood  
19 starts pumping again, and you go right back to it.

20 Q. (By Mr. Ausserer) And Officer Collins, in order  
21 for it to be effective, how long do you have to apply it in  
22 that position you just demonstrated?

23 A. I think it varies, you know, but at least 5, 6  
24 seconds.

25 Q. Okay. And in the video -- we're going to watch the

1 video in just a minute, it doesn't appear as though your left  
2 arm ever gets to the back of Mr. Ellis's head. Were you able  
3 to get into the position to apply it?

4 A. No.

5 Q. Why?

6 A. Well, I relinquished the position when I saw  
7 Officer Burbank, but kind of how we fell, you know, we're  
8 both falling and I'm behind him and I'm getting it, now I see  
9 the Taser. Now when we hit the ground, I immediately am kind  
10 of on his side. So, again, I'm in this kind of orientation  
11 to him, so Manny's facing the video at the time, and I'm on  
12 top of him here. So from here, I can't get to here, so I  
13 have to start working, which I could have done, but, again, I  
14 saw that Taser.

15 Q. Let me ask you this. You heard a couple of experts  
16 for the State, including Mr. Ryan, indicate that you had your  
17 hand on the front of Ellis' throat choking him. Did that  
18 ever occur?

19 A. No. That's ridiculous. No.

20 Q. Would that be an effective control technique in the  
21 situation that we saw?

22 A. No. That's amateur stuff from people who are just  
23 showing aggression and are just trying to hurt somebody, but  
24 first of all, you'd see marks right away, so -- because we're  
25 very tender here. You damage the stuff around people's



1 necks. So you would see that right away, number one, and  
2 it's completely ineffective, number two.

3 Q. Go ahead and have a seat. Thank you.

4 So when we left off -- I'll let you get situated.  
5 So before we broke, you were telling us or describing for us  
6 what you saw when Officer Burbank displayed the Taser.

7 A. Yes.

8 Q. Okay. So at that point, are you behind Mr. Ellis?

9 A. Yeah. So I'm behind him dragging him to the ground  
10 as I see that.

11 Q. Okay. And was that the first time that you recall  
12 seeing Officer Burbank during this altercation?

13 A. It is.

14 Q. Okay. And so what was your response to seeing the  
15 Taser? What effect did that have on what you were doing to  
16 Mr. Ellis?

17 A. Yeah. I mean, I didn't want to get -- so they have  
18 little barbs, as you probably heard a few times now, but  
19 there's little barbs that shoot out of them and I didn't want  
20 to get shot in the face, so at that point, holding, I'm kind  
21 of trying to shield myself.

22 Q. And are you still in contact with Mr. Ellis when  
23 the Taser application makes contact?

24 A. Yes.

25 Q. Can you feel it?

1           A.     You can feel -- what I felt was that you feel  
2 lockup and you feel the muscles get really tight and stiff.  
3 That's how it kind of manifests.

4           Q.     All right. So tell the jury what happened after  
5 you felt that first Taser application.

6           A.     Yeah. So, again, you can see it on the video, but  
7 I'm holding him, and once I feel that Taser stop his active  
8 resistance, I immediately transfer to his left arm and now  
9 I'm just controlling his left arm. So now it's going to be  
10 Burbank's job to control the right arm and my job on the left  
11 arm.

12          Q.     We'll watch the video in a second, but on the video  
13 it appears as though you're kind of cradling his head. Why  
14 were you doing that?

15          A.     I'll have to watch the video to see exactly what  
16 you're talking about, but yeah. I'm not quite sure.

17          Q.     Let me ask it a different way. What's the desired  
18 effect of the Taser?

19          A.     Well, you get lockup and then the subject goes  
20 limp.

21          Q.     Okay. So did you feel lockup initially?

22          A.     I did.

23          Q.     Did you feel Mr. Ellis go limp?

24          A.     I did.

25          Q.     And so when he went limp, tell us what you did and

1 why you did it.

2 A. Yeah. So I immediately started putting him into a  
3 cuffing position. So I think I know what you're talking  
4 about the cradling of his head. I didn't realize I was doing  
5 it at the time. Probably just to keep his head from slamming  
6 on the cement, but I had one hand on his head and I roll his  
7 body so he's facedown so I can start moving to a cuffing  
8 position.

9 Q. Okay.

10 A. Because you can't cuff him like this. I need him  
11 like this so I can start working his hands.

12 Q. All right. And so were you able to get him in the  
13 prone -- I'll call it the prone position on his stomach?

14 A. Yes.

15 Q. So tell us what you did once you were able to get  
16 him into that position.

17 A. So as soon as I got him into prone, I moved into  
18 our non-compliant cuffing position. There's two main ones,  
19 but the one where my knee and shin goes across the shoulder  
20 kind of at a 45 towards the person's spine.

21 Q. And were you able get your knee into that location?

22 A. Yes. Momentarily.

23 Q. What happened once you got into that location?

24 A. Well, you can see from the video -- I never recall  
25 him saying, "try it again," but when he starts fighting, now

1 we're in a dynamic situation and I'm trying to keep my knee  
2 there, but I'm also trying to keep him to the ground, but  
3 obviously it's hard when somebody's flailing and bucking.

4 Q. But Grant Fredericks testified that you put your  
5 knee on the back of his head; did you ever know that?

6 A. No.

7 Q. All right. In fact, in the video, can you see  
8 Mr. Ellis's sweatshirt sticking out from underneath your  
9 knee?

10 A. Yes.

11 Q. Did he have a design on the back of that sweat  
12 shirt?

13 A. I didn't realize it until they showed the clothes  
14 in court, but he had, like, a -- almost like a Native  
15 American kind of totem pole symbol on his back that was  
16 white. In the video you can see the white of that design  
17 with my knee on his back.

18 Q. Okay. So you had indicated that you didn't hear  
19 him say, "try it again," but that he became combative at that  
20 point?

21 A. Yes.

22 Q. I guess the Taser wears off at that point. What  
23 happens?

24 A. So from there, you know, it's hard to describe play  
25 by play what happened, but, essentially, from there, we had

1 him in a good spot where I mainly had control of that left  
2 arm, Burbank had a control of that right arm, and from that  
3 point, it was kind of just a process of slowly -- you know,  
4 because that's -- again, that's exactly what we want. We  
5 want to get you to the ground. We want to get you facedown,  
6 prone, then we want to start working those arms, so we were  
7 there, and so then it's just a matter of time until we get  
8 the handcuffs on.

9 Q. All right. Was he still resistant with the  
10 application of the handcuffs?

11 A. Yeah.

12 Q. Okay. So describe what he was doing and how he was  
13 resisting.

14 A. I mean, he was trying to stand up the whole time,  
15 he was trying to rip his hands apart, he was kind of kicking  
16 and spitting both directions, as you can see on the video.

17 Q. All right. Can you let him stand up in that  
18 situation?

19 A. No.

20 Q. Why not?

21 A. Well, again, you know, so from -- it starts back up  
22 where I'm on top and I'm throwing elbows. Then he pushes  
23 through me and stands up. So now we've been through a few  
24 different interactions of him aggressing on police officers,  
25 and now he's coming right back to where Burbank is. If he

1 gets away from me before I drive him down, he's going right  
2 back at Officer Burbank.

3 So again, we're now progressing down the line.  
4 It's getting more and more serious. As these things go, we  
5 don't have the option of just saying, okay, we're done.  
6 Have a nice night. This guy has to go. He's a danger to  
7 the public, he's a danger to himself and to us, right, so he  
8 has to go in cuffs. We could be progressing towards a  
9 lethal situation at this point where we're using a firearm.

10 Q. So after that first Taser application, it sounds  
11 like you were not able to apply the handcuffs?

12 A. No.

13 Q. Were there other Taser applications, if you recall?

14 A. Just from the video, seeing it here in court, I can  
15 see where you can see where at times he's giving him more  
16 rise with the Taser.

17 Q. But as you sit here now or before you saw that, did  
18 you have any sort of independent recollection about how many  
19 Taser applications were necessary?

20 A. No.

21 Q. Okay. All right. You described a little bit about  
22 the process prior to getting the cuffs applied to Mr. Ellis.

23 How long did that take once you were in the -- the  
24 position you just described?

25 A. I mean, maybe another two minutes or so.

1 Q. Eventually, were you able to get the cuffs applied?

2 A. Yes.

3 Q. And was that after -- well, I guess you don't know  
4 -- the third Taser application?

5 A. It could be.

6 Q. Okay. Once you got the cuffs applied, tell us what  
7 happened.

8 A. So then as soon as we got the cuffs applied, he  
9 started scooting his knees up underneath himself and trying  
10 to stand up.

11 Q. And we saw some, I'll call it, road rash marks on  
12 his legs in the photographs. Is that consistent with what  
13 you're describing?

14 A. I suppose.

15 Q. Okay. All right. And so if you have the cuffs  
16 applied and he's on -- I assume still on his stomach?

17 A. Yes.

18 Q. Where are you situated?

19 A. So as soon as the cuffs are applied and he's trying  
20 to stand up, I then go move to his legs so that he can't  
21 stand up. So I immediately start grabbing his legs and what  
22 I'm trying to do is crisscross them, so if you put someone's  
23 foot in the crook of their knee, then I only have to fight  
24 one leg and I can put all my weight on that leg, and that  
25 would keep him from getting underneath himself to stand up.

1 Q. Was that effective?

2 A. I mean, he didn't stand up.

3 Q. Was he still attempting to get away from you?

4 A. He was, yeah.

5 Q. We heard Sergeant Nielsen talking about observing,  
6 I guess, your proficiency in grappling in the video. Did you  
7 use your body to try to keep and restrain and hold Mr. Ellis  
8 in a position until backup could get there?

9 A. Absolutely.

10 Q. So he described putting your legs around his legs.  
11 What's the point of that, or around his hips?

12 A. Grappling's all about your hips, and so it's just a  
13 way to immobilize. You throw that over and then people can't  
14 explode and buck with their hips, so it's just another way of  
15 control.

16 Q. Okay. And at least the portions of the video we've  
17 seen, the only strikes thrown were at that first  
18 McDowell video. Did you throw any strikes at Mr. Ellis after  
19 what we saw in the video?

20 A. No.

21 Q. Why not?

22 A. It wasn't necessary.

23 Q. All right. Did Officer Burbank deliver any strikes  
24 after what we saw in that first McDowell video?

25 A. No, not that I know of.



1 Q. So you're -- got a leg in his crook of his knee,  
2 where is Officer Burbank?

3 A. So he had the handcuffs on and so Officer Burbank  
4 was basically kind of straddling his hips. Because you got  
5 to imagine anatomically, someone with their hands behind  
6 their back, you're not going to sit on their hands or over  
7 their hands, you sit behind them. It kind of places you on  
8 the hips of somebody.

9 Q. In your statement that the jury heard, I think you  
10 said, he's sitting on him, or something along those lines.  
11 What do you mean by that?

12 A. I mean, that was a poor choice of words. I -- you  
13 know, I thought that -- you know, at the time, you got to  
14 understand when we were getting interviewed, I didn't think  
15 in my wildest nightmares that the State would come after us  
16 for wrongdoing in this. I thought we were explaining a  
17 terrible, tragic situation that happened. And so I would  
18 have been very precise in my wording. But if you just think  
19 rationally anatomically about that, there's no -- he would be  
20 sitting behind his hands. He has to be because he also says  
21 he's pressing his hands together because he's seen people  
22 break handcuffs, so in order to press his hands together,  
23 he's got to be behind, lower than the hands.

24 Q. So when you say behind, like if I have my hands  
25 behind my back, are you saying, like, on the buttocks portion

1 of his body?

2 A. Correct. That was exactly what I'm saying.

3 Q. All right. Could you squeeze the hands in the  
4 manner that you described if you're sitting on this -- I  
5 guess the upper torso?

6 A. That would just be -- I mean, someone easily  
7 bucking you right off.

8 Q. Okay.

9 A. You have no leverage from that position.

10 Q. All right. So with Officer Burbank sitting on the  
11 lower torso it sounds like you've got one leg of Mr. Ellis?

12 A. It depends on what time you're talking about,  
13 because he was constantly kind of kicking and flailing, but I  
14 just kept working to that position where, again, I'm trying  
15 to cross his leg, put it in the prone, and then put his other  
16 leg over and place all my weight down on that leg that's on  
17 top.

18 Q. Okay. At some point are you running out of gas?

19 A. Oh, yeah.

20 Q. Where in this sequence?

21 A. It's hard to say. You know, you get so focused in  
22 a fight of that seriousness and magnitude. I don't remember  
23 thinking that at all, but as soon as we were relieved by Ford  
24 and Rankine and Sergeant Lim, I remember getting up and,  
25 like, my hands started to kind of curl, you know, if you grip

1 a lot like that, the fatigue will cause your hands to curl up  
2 and you kind of feel the lactic acid in the forearms, and  
3 that's the first time and I was like, man.

4 Q. Well, let's talk about before those guys get there.  
5 How long were you in that position with Officer Burbank on  
6 his buttocks area and you on the leg before Rankine and Ford  
7 get there? Because they're the first ones that get there;  
8 right?

9 A. Yeah. I think it was fairly quick.

10 Q. Okay.

11 A. I think it was very quick.

12 Q. Okay. So tell us what happened once they get  
13 there.

14 A. So Ford and Rankine show up, and again, so my -- my  
15 positioning, now I'm looking straight down at the street and  
16 have his leg and I'm looking straight down. All my focus was  
17 facing down, so I'm not sure who was doing what, but I know  
18 that they basically replaced us and then I remembered hearing  
19 Sergeant Lim there, and then we were off.

20 Q. Before you got off, did you ask for hobbles?

21 A. Yes.

22 Q. First off, why did you ask for hobbles?

23 A. Yeah, so, again, if you handcuff somebody -- so  
24 first of all, especially someone in this state, if someone's  
25 under a high amount of narcotics and they're not thinking

1 straight, they're not making rational decisions, if you put  
2 them at a position of disadvantage with their hands behind  
3 their back, that is very, very dangerous. So we -- in the  
4 academy, we have to watch a video of this controlled  
5 superiority. And in the video, it's in San Diego, cops lose  
6 control of a suspect with his hands behind his back, runs  
7 across the freeway and gets killed by an automobile. Not  
8 only that, but if he goes up, we have to keep him down. So  
9 if he goes up, then I have to take him back down, now with  
10 his hands behind his back, now he could break something in  
11 his face, he could -- brain damage, who knows, but it's not  
12 good because you're coming from a high position coming down  
13 with no way to protect yourself.

14 Q. Well, we heard the State's expert, Jack Ryan, say  
15 just turn him over on his side and lay on his feet?

16 Is that a practical application?

17 A. No, it's not.

18 Q. Why not?

19 A. I mean, it would be great if he just laid there,  
20 but the whole point of the story is that he wasn't compliant.  
21 And if he was on his side -- you have to have something to  
22 stop the movement against; right? So when they're prone, now  
23 I can put pressure down against an unmovable object, the  
24 street, to stop him from moving. But if it doesn't have  
25 something to stop it, then we're back to square one, fighting

1 his legs.

2 Q. Okay. So we heard Officer Ford testify that he  
3 grabbed one leg and you had the other; do you remember that?

4 A. I don't remember specifically. I know he, at some  
5 point, came to help me. I remember when I looked and got up,  
6 Ford was there.

7 Q. Okay. Do you remember making the request for  
8 hobbles?

9 A. I do.

10 Q. Okay. And how long did it take for -- once you  
11 requested the hobbles for someone to produce them?

12 A. It seemed like 20, 30 seconds, something like that.

13 Q. Do you remember who got them?

14 A. I don't. I know now from testimony that it was  
15 Officer Burbank, but I didn't know at the time.

16 Q. No independent recollection of that?

17 A. Huh-uh.

18 Q. Did you see them get applied?

19 A. I -- kind of. Because I'm facing down, I saw the  
20 loop go over the feet and then -- yes. So yes, I did see  
21 them.

22 Q. Okay.

23 A. Yeah.

24 Q. What did you do once they were applied?

25 A. I was off and I stood up at that point, and then

1       there was so many other officers there, there was at least  
2       three sergeants on scene right there, and so we just kind  
3       of -- you know, police work is a team event always. There's  
4       almost nothing we do from start to finish; in fact, as a  
5       two-officer car, Officer Burbank and I, you know, they put us  
6       two-officer because we kind of handle the most dangerous  
7       situations. And as soon as you do, it was very regular that  
8       when we arrest somebody, we hand them off to other people as  
9       soon as they're in handcuffs. They take them to jail, they  
10      take them to the hospital to get treated, or whatever. So  
11      yeah, we were relieved. Sergeant Lim wanted to talk to us  
12      and say, what happened? Because nobody knew at that point  
13      what went on.

14           Q.     Okay. We'll talk about that in a second.

15                    So in Mr. Liu's opening, he said that you choked  
16      Mr. Ellis unconscious three times. Did that ever happen?

17           A.     No.

18           Q.     You said that you looked up and there were several  
19      officers there. Was Sergeant Lim there when the hobbles were  
20      applied or when you stood up?

21           A.     I believe he was, yes.

22           Q.     Who was Sergeant Lim to you?

23           A.     He was my supervisor.

24           Q.     What does that mean?

25           A.     He's in control of our squad of officers. He was

1 the one who -- he's next up in the chain of command.

2 Q. And so once he's on scene, is he now in charge of  
3 the scene or are you still in charge of the scene?

4 A. He's in charge of the scene.

5 Q. And once you relieve Mr. Ellis to other officers,  
6 who's responsible for Mr. Ellis?

7 A. I mean, every officer is responsible who's directly  
8 in contact with him.

9 Q. Okay. But if you are not in contact, are you still  
10 responsible for him?

11 A. No.

12 Q. Was it your understanding that Sergeant Lim was  
13 responsible for the scene and other officers responsible  
14 for --

15 MS. EAKES: I'm going to object to the leading  
16 nature.

17 MR. AUSSERER: I'll just rephrase, Judge. It's  
18 not that complicated.

19 THE COURT: Okay.

20 Q. (By Mr. Ausserer) Who was in charge of the scene  
21 once you were off?

22 A. Well, definitely one of the sergeants that were  
23 there.

24 Q. And who was in charge of Mr. Ellis once you were  
25 off?

1 A. Whoever was in contact with him.

2 Q. Did you have the authority to go intervene with  
3 Sergeant Lim?

4 A. No.

5 Q. Once you stood up, where did you go?

6 A. So originally, I just walked back towards the car,  
7 in the front of the car, and that's where Sergeant Lim  
8 eventually interviewed us and kind of just said what  
9 happened, guys? Give me a rundown.

10 Q. Well, let me slow you down real quick. You said  
11 the car. What car are you talking about?

12 A. Our car. Our vehicle.

13 Q. The patrol car that's at the stop bar at the  
14 intersection?

15 A. Yes.

16 Q. Okay. I'm going to go back to that in a second.  
17 You heard Ms. McDowell and Mr. Cowden say that  
18 you, I guess, attacked Mr. Ellis when he was walking down  
19 the sidewalk. Did that happen?

20 A. Absolutely not.

21 Q. If you were going to contact somebody walking down  
22 the sidewalk, would you leave your car in the middle of the  
23 intersection?

24 A. No.

25 Q. Why not?



1           A.     Again, I mean, if you're obstructing traffic, it  
2 doesn't make any sense. If you're -- if you're going to  
3 contact someone, you'd pull off the road.

4           Q.     Okay. All right. You said that Sergeant Lim  
5 contacts you at the front of the patrol vehicle. Is there a  
6 discussion about what led to the interaction between you and  
7 Mr. Ellis?

8           A.     Yes.

9           Q.     Was Mr. Ellis still alive at the time?

10          A.     Yes.

11          Q.     Did you have any reason to think Mr. Ellis was  
12 going to die?

13          A.     No.

14          Q.     Did you tell him what happened?

15          A.     Yes.

16          Q.     Did you tell him that Mr. Ellis attacked the patrol  
17 vehicle?

18          A.     Yes.

19          Q.     That he threw you?

20          A.     Yes.

21                MS. EAKES: Your Honor, again, I'm going to object  
22 to the leading nature of the questions.

23                THE COURT: That is leading. New question.

24                MR. AUSSERER: Understood, Judge.

25          Q.     (By Mr. Ausserer) Did you provide a description of

1 Mr. Ellis's contact with you?

2 A. I did.

3 Q. All right. After having a discussion with Sergeant  
4 Lim, what happened next?

5 A. So Sergeant Lim -- I'm not sure what Sergeant Lim  
6 did, but I eventually went to the back of our patrol car and  
7 I was waiting for Fire to show up so I could give them a  
8 rundown of what we were dealing with.

9 Q. Okay. And how long do you think you were in that  
10 position?

11 A. I mean, I'm not sure how long. I mean, you know, I  
12 was trying to collect myself and trying to figure out what in  
13 the world just happened.

14 Q. Where was Officer Burbank?

15 A. I only know from being here and hearing his  
16 statement that he eventually went back and got his magazines  
17 and I think his hat, but I'm not sure specifically.

18 Q. At some point did one of you go back into the  
19 patrol vehicle?

20 A. Yeah. So I don't know when Burbank did, but I know  
21 that at some point, once Fire was there, Sergeant Lim  
22 contacted us and was like, hey, guys, I don't know -- you  
23 know, why don't you guys sit in your car. It's looking  
24 pretty serious now.

25 Q. Meaning they may have to treat this as an officer

1 use-of-force case?

2 A. Exactly.

3 Q. Is there a procedure in place when there is an  
4 officer-involved use of force with a subject?

5 A. Yes.

6 Q. All right. And was that followed once Mr. Ellis  
7 passed?

8 A. Yes.

9 Q. Okay. I think you had indicated that you had  
10 contacted Fire. Tell us how you contacted Fire.

11 A. So they always park a little bit a ways from the  
12 scene and walk in. They have to double make sure that  
13 everything's safe because they have no way to protect  
14 themselves, so they parked a ways back from my car and I just  
15 approached them and Lieutenant Wilson, who testified, I don't  
16 think he was a Lieutenant at the time, but he was the first  
17 one out of the vehicle and he was moving up to the scene, and  
18 so I just kind of gave a rundown as best I could.

19 Q. All right. And why did you indicate to him that  
20 you thought that Mr. Ellis might be suffering from excited  
21 delirium?

22 A. Because it's a serious condition and we know that  
23 sudden death is part of the -- one of the symptomology pieces  
24 to that.

25 Q. Okay. I assume you didn't call for medical aid?

1           A.     No.

2           Q.     Why not?

3           A.     Because I heard Sergeant Lim call it.

4           Q.     When did you hear Sergeant Lim calling for medical  
5 aid?

6           A.     It seemed immediately as soon as hobbles were on,  
7 but I think from the timeline that the State provided, it  
8 looked like 12 seconds from the time he was detained.

9           Q.     And when you say -- what are you talking about the  
10 timeline the State provided? Are you talking about exhibits  
11 that were admitted during the course of the trial?

12          A.     There was an exhibit that was just a white sheet  
13 that showed arrival times of officers, and -- yeah.

14          Q.     Okay. And so is it your recollection that that  
15 brief period is when he contacted aid?

16          A.     Yeah because it was immediately when I stood up.

17          Q.     And if he contacted aid, do you then have to then  
18 contact aid yourself?

19          A.     No. That wouldn't make any sense.

20          Q.     Why not?

21          A.     It's just redundant. They make a call to Fire and  
22 is very busy and has a lot to do, and so they're going to  
23 respond when they can respond. It doesn't matter how many  
24 times that we've asked them to.

25          Q.     Okay. Once you were relieved from Mr. Ellis, did

1 you have any other contact with Mr. Ellis?

2 A. No.

3 Q. Meaning physical contact, I guess.

4 A. No.

5 Q. There's information that Officer Farinas applied a  
6 spit sock. Did you have anything to do with that?

7 A. No, I didn't.

8 Q. Were you present when that occurred?

9 A. I heard him spitting and I heard officers talking  
10 about it, but I wasn't ever sure other than saying it was  
11 Farinas, but I didn't see who it was.

12 Q. Okay. Once Mr. Ellis was hobbled and handcuffed,  
13 did you apply any downward pressure on his torso?

14 A. No.

15 Q. You've had an opportunity, Officer Collins, to  
16 observe the video evidence during the course of the trial;  
17 right?

18 A. Yes, sir.

19 Q. In the video, at least the Vivint video, we can  
20 hear Mr. Ellis saying he can't breathe, I think, twice. Did  
21 you hear that on the video?

22 A. On the video I did.

23 Q. Did you hear it that night?

24 A. No.

25 Q. How could you not have heard it that night if we

1 heard it on the Vivint video?

2 A. In extreme stress situations like that, you have  
3 what's called auditory exclusion -- I mean, I didn't even  
4 report that I said put your hands behind your back or that  
5 Sara McDowell was yelling at us. I didn't hear her yelling  
6 at us. So I get very focused in those situations and I was  
7 focusing on his hands, and I was focused on getting him in  
8 handcuffs, and I didn't hear any of that.

9 Q. Okay. In your statement that you gave a couple  
10 days later, you also didn't indicate that you heard Mr. Ellis  
11 say, "try it again." Did you hear that?

12 A. I did not.

13 Q. On at least in Mr. Liu's opening that indicated  
14 that one of the officers said, "Shut the fuck up." Do you  
15 remember that happening?

16 A. Investigators asked me about that. It was unclear  
17 as to where in the timeline that happened. And I told them  
18 if it had happened when Burbank and I were there, it was me  
19 because I've never heard Burbank cuss on a consultation.  
20 He's like the most professional officer in Tacoma PD. And so  
21 I said if we were the only ones there then it was me, but I  
22 don't have an independent recollection of saying that.

23 Q. So just so I understand, you don't remember saying  
24 that?

25 A. No, I don't.

1 Q. But if one of the two of you did, it would have  
2 been you?

3 A. Yeah.

4 Q. Do you know if any other officers were present when  
5 that was said?

6 A. I don't know.

7 MR. AUSSERER: With the Court's permission, I'm  
8 going to ask that we publish Exhibit 20, which was  
9 Ms. McDowell's first video, and I would ask that Officer  
10 Collins be permitted to move around to the monitor to  
11 explain what we're seeing.

12 THE COURT: That's fine.

13 MR. AUSSERER: Thank you, Judge.

14 THE COURT: It's actually 20B; right?

15 MR. AUSSERER: 20 is the first video.

16 THE COURT: I'm sorry. You're right. Proceed.

17 MR. AUSSERER: Thank you, Judge.

18 Q. (By Mr. Ausserer) Can you orient yourself to this?  
19 Can you show us which officer is you when you look at the  
20 video?

21 A. So I'm the one with my back to you here, and you  
22 can't really -- you can't see Burbank, but he's on the other  
23 side of us.

24 Q. Let me ask you this, Officer Collins: When you made  
25 your statement on the 9th of March, did you know this

1       existed?

2           A.     No.

3           Q.     Did you know this would show part of the  
4       altercation between you and Mr. Ellis?

5           A.     No.

6           Q.     All right.  What I think I would want Shawn to do  
7       is hit play.  I want you to watch it and then I'm going to  
8       ask you a couple of questions; okay?

9           A.     Okay.

10          MR. AUSSERER:  Could you just hit play.

11          (Exhibit 20 was played.)

12          MR. AUSSERER:  You can pause it now.

13          Q.     (By Mr. Ausserer)  All right.  So that was the  
14       total footage captured on at least the first clip between the  
15       officers and Mr. Ellis; is that right?

16          A.     From what I know.

17          Q.     What do we see happening in that clip?

18          A.     So in the beginning, you can see -- and Officer  
19       Burbank describes it perfectly in his statement, but it looks  
20       like -- so he's being kind of chased into the intersection  
21       and then there's some sort of fast interaction that's  
22       happened between him and Mr. Ellis, but you can't tell what.  
23       And then they both go to the ground.  Burbank is at the front  
24       of the car and Mr. Ellis is towards the sidewalk.  And then I  
25       get in the mount position on top of him.



1 Q. All right. And so when you were testifying earlier  
2 this morning, you indicated that in that mount position, you  
3 delivered several elbows to Mr. Ellis?

4 A. Correct.

5 Q. Is that what we see in that video?

6 A. Yep.

7 Q. Okay. Aside from those elbow strikes, did you ever  
8 strike Mr. Ellis?

9 A. Not once.

10 MR. AUSSERER: Can we have 21, please.

11 Q. (By Mr. Ausserer) And while they're pulling that  
12 up, Officer Collins, 21 is the video -- the second video when  
13 she was driving by. And actually, before we get there,  
14 Officer Collins, do you see items in the roadway both here  
15 and here? I'm looking right in front of the dumpsters there.

16 A. I do.

17 Q. Do you know what those are?

18 A. It looks like that -- that plastic grocery bag and  
19 then that's the bottle of water there.

20 Q. Were those the items that Mr. Ellis had in his hand  
21 when he first walked up to the vehicle?

22 A. What I -- I recollect is the bag. I didn't see  
23 anything else one way or the other.

24 Q. So I'm going to ask Shawn to hit play.

25 (Exhibit 21 was played.)

1 MR. AUSSERER: Go ahead and stop, please.

2 Q. (By Mr. Ausserer) Which of those officers were you  
3 relative to Mr. Ellis?

4 A. I was the one towards me.

5 Q. Behind him?

6 A. Behind him, yeah.

7 Q. How did you get in that location?

8 A. I mean, somewhere in the struggle there of trying  
9 to get him in cuffs, he must have turned on his side. I  
10 don't know specifically how I got to there, but somewhere in  
11 that...

12 Q. That was a bad question. I meant from the first  
13 video that we saw in Exhibit 20 where you're on top of him to  
14 the, what, the 12 seconds later that we see that perspective,  
15 how did the three of you end up in that location?

16 A. Yeah. So -- so I'm on him delivering elbow  
17 strikes. He lunges up at my face and starts to stand up, so  
18 I let him go and I went around behind him and I start to put  
19 on the LVNR, and then he falls to the ground. Now we're  
20 facing, like, a southwestern direction, kind of towards  
21 Hosmer and Ainsworth.

22 Q. Okay.

23 A. And so I'm kind of laying on his side, then Burbank  
24 is employing the Taser, and by that point, I think, I've  
25 already moved to his hand, I'm controlling his hand, which

1 you saw in the end of the Cowden video.

2 Q. We'll get there in a second.

3 A. All right. So I'm controlling his hand, Burbank's  
4 controlling his other hand, and somewhere he started  
5 struggling again and now we're -- we're kind of back to he's  
6 on his side, on -- it's a -- he's on his side, I'm behind  
7 him, and Burbank is in front of him.

8 Q. So what we saw right before this clip ended, it  
9 appeared as though you had one knee on the ground; is that  
10 what you recall?

11 A. Yeah. That's what it looks like, yeah.

12 Q. Where was your other knee?

13 A. I was standing on my foot or it was on the ground  
14 on the other side of him.

15 Q. And is Mr. Ellis complying with your repeated  
16 requests to put his hands behind his back?

17 A. I don't remember saying that, but it doesn't appear  
18 so, because otherwise, I would have just put him in  
19 handcuffs.

20 Q. Well, is that your voice that we hear saying --

21 A. That's my voice, yeah.

22 MR. AUSSERER: And if we could rewind it just a  
23 little bit. Just hit play one more time, please.

24 (Exhibit 21 was played.)

25 MR. AUSSERER: Pause it there.

1 Q. (By Mr. Ausserer) Can you see your knee on the  
2 ground?

3 A. I do.

4 Q. Could you point it out to the jury. And you said  
5 your other knee might be on the floor. What makes you think  
6 that?

7 A. You can see right here from the angle. You can see  
8 my foot like this.

9 Q. And can you show us where Mr. Ellis's head is.

10 A. It looks like that's the top of his head right  
11 there.

12 Q. And which way was his head facing?

13 A. Westbound.

14 Q. And you had indicated to us that you were trying to  
15 gain control of an arm. Can you see that in the video?

16 A. I mean, not necessarily. It's pretty dark, but  
17 that's the only thing to be doing in a situation where we're  
18 trying to handcuff him.

19 Q. Can you show us where Officer Burbank is relative  
20 to you in the video.

21 A. So this is -- that's his foot, so he's got one leg  
22 up like this, and that's his hand right there.

23 Q. And can you see the red light from the Taser on the  
24 cement?

25 A. Yes, it's right there.

1 Q. Thank you. You can go ahead and sit down -- or no.  
2 Wait. I'm almost done.

3 MR. AUSSERER: Can we get 546, please.

4 Q. (By Mr. Ausserer) As we're orienting 546, 546 is a  
5 portion of the synchronized timeline that Grant Fredericks  
6 created for this case; do you remember seeing that during the  
7 course of the trial?

8 A. Yes.

9 Q. All right. And I think Mr. Fredericks' testimony  
10 was that this started playing 112 seconds after your clear  
11 appears in the CAD report that's Plaintiff's Exhibit 13.

12 A. Correct.

13 Q. Okay. So when Ms. Smith hits play, I want you to  
14 listen to what's happening and then I'll have her pause that;  
15 okay?

16 A. Okay.

17 (Exhibit 546 was played.)

18 MR. AUSSERER: We're going to pause it there.

19 Q. (By Mr. Ausserer) All right. Can you hear the  
20 struggle between you and Mr. Ellis as this starts recording?

21 A. Yes.

22 Q. How long do you think you were struggling with  
23 Mr. Ellis before this part, if you know?

24 A. I mean, judging by where her video picks up,  
25 probably a couple of minutes.

1 Q. Okay. Is that consistent with what Ms. Mallang  
2 testified hearing for --

3 A. Yes.

4 Q. -- about --

5 MS. EAKES: Your Honor, object. Argumentative.

6 THE COURT: Well, it's not argumentative, but it  
7 is leading.

8 MR. AUSSERER: I'll rephrase.

9 Q. (By Mr. Ausserer) You heard Ms. Mallang testify  
10 about a one-minute-and-15 to two-minute time period where she  
11 heard struggling outside. Would that have been this time  
12 period that we're talking about?

13 MS. EAKES: Your Honor, I'm going to object.  
14 Lacks foundation, argumentative.

15 THE COURT: Overruled. You may answer.

16 A. Yes, sir, that's correct.

17 MR. AUSSERER: Ms. Smith, can you hit play again?

18 Q. (By Mr. Ausserer) What we're going to see is  
19 Mr. Cowden's video on the middle here. I want you to watch  
20 that, watch the interaction, and then I'm going to ask you  
21 some questions about that.

22 (Exhibit 546 was played.)

23 MR. AUSSERER: Go ahead and pause it right there.  
24 Thank you.

25 Q. (By Mr. Ausserer) Do you see Ms. McDowell's

1 vehicle now going past Mr. Cowden's vehicle?

2 A. I do.

3 Q. Okay. Does that appear to line up with what we  
4 just saw in the previous exhibit from her camera?

5 A. Yeah.

6 Q. You've heard it described by some State's experts  
7 that Mr. Ellis might be exhibiting air hunger during that  
8 interaction. Is that what you experienced?

9 A. I've never heard that term until this trial, but,  
10 again, I mean, he's not exhibiting someone who's not able to  
11 breathe. He's fighting us. So we can deal with the air  
12 thing after we get him into handcuffs, but until we do that,  
13 we're still in the same spot.

14 Q. Go ahead and have a seat.

15 If you had heard Mr. Ellis say, "I can't breathe,"  
16 would it have changed what you were obligated to do in  
17 detaining and restraining him?

18 A. No.

19 Q. How come?

20 A. Well, because, again, we have to put you in  
21 handcuffs first so that you can't hurt yourself, anyone in  
22 the public, or us. So we have to get you in handcuffs and  
23 then we can deal with medical issues after that.

24 Q. Did you hear the sounds that Mr. Ellis was making  
25 in those videos?

1           A.    I did.

2           Q.    Did you hear him making those sounds the night this  
3 occurred?

4           A.    I can remember a couple times, like when he lunged  
5 up in my face, he was making similar sounds.

6           Q.    Was he speaking to you at that point in time?

7           A.    I don't remember hearing any words.

8           Q.    Let me ask you this: Did you and Officer Burbank  
9 attack Mr. Ellis?

10          A.    No.

11          Q.    Were your actions responsive to his or was he  
12 responsive to you?

13          A.    We were responsive to him.

14          Q.    Was there anything else that you think you could  
15 have done with a lesser degree of force to restrain and  
16 control Mr. Ellis?

17          A.    No.

18          Q.    Okay.

19                MR. AUSSERER: Thank you, Judge. That's all I  
20 have.

21                THE COURT: We've got five minutes. Do you want  
22 to start? I've got a meeting, actually, that it might be  
23 best that you start at 1:30 rather than breaking it up. So  
24 we'll recess at this time.

25                Ladies and gentlemen, please do not discuss the



1 case amongst yourselves or with anyone else. Please do not  
2 permit anyone to discuss the case with you or in your  
3 presence. And, of course, avoid reports in the media or  
4 elsewhere on the subject of this trial.

5 (The jury left the courtroom.)

6 THE COURT: Okay. We're at break.

7 (Luncheon recess.)  
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# TAB 2

1                                IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
2    IN AND FOR THE COUNTY OF PIERCE

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3  
4                                STATE OF WASHINGTON,                                )  
5    Plaintiff,    )                                Superior Court  
6    vs.    )                                Nos.  
7    )  
8                                CHRISTOPHER SHANE BURBANK,                                )                                21-1-01286-6  
    MATTHEW J. COLLINS,    )                                21-1-01287-4  
9    TIMOTHY EUGENE RANKINE,                                )                                21-1-01288-2  
    Defendants.    )

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10  
11    **VERBATIM TRANSCRIPT OF PROCEEDINGS**  
12    **Afternoon Session**

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13    December 4, 2023  
14    Pierce County Superior Court  
    Tacoma, Washington  
15    Before the  
16    **HONORABLE BRYAN CHUSHCOFF**

17  
18  
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21  
22                                Jennifer L. Flygare, RMR, CRR #2156  
23                                Official Court Reporter  
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24                                334 County-City Bldg.  
    Tacoma, Washington 98402  
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T A B L E O F C O N T E N T S

Monday, December 4, 2023

TESTIMONY

PAGE

MATTHEW COLLINS.....	5
Cross-Examination.....	5

1 BE IT REMEMBERED that on Monday, December 4, 2023,  
2 the above-captioned cause came on duly for hearing before  
3 the **HONORABLE BRYAN CHUSHCOFF**, Judge of the Superior Court  
4 in and for the County of Pierce, State of Washington; the  
5 following proceedings were had, to wit:

6 <<<<<< >>>>>>

7 THE COURT: Welcome back, everybody. Please be  
8 seated.

9 MS. BREMNER: Good afternoon, Your Honor.

10 THE COURT: Good afternoon. Before we have the  
11 jury back, have you guys worked out the arrangements on  
12 this?

13 MS. NICOLAVO: Mr. Conrad and I are going to meet.  
14 Instead of keeping the jury waiting, we're going to meet on  
15 it. I've reviewed it and discussed what we can come to  
16 terms on.

17 THE COURT: So you guys are going to do that after  
18 today's session?

19 MR. CONRAD: Sure. I'm available. I can do it  
20 after today's session.

21 THE COURT: Okay. Good. Glad you guys are  
22 working on it. Okay. Let's have the jury.

23 (Jury enters courtroom.)

24 THE COURT: Welcome back, everybody. Please be  
25 seated.

1                   Okay. Cross-examination, Ms. Eakes.

2                   MS. EAKES: Thank you, Your Honor.

3                                   CROSS-EXAMINATION

4                   BY MS. EAKES:

5                   Q.       Good afternoon, Mr. Collins.

6                   A.       Good afternoon, Ms. Eakes.

7                   Q.       Now, you testified this morning that if it was just  
8 you and Officer Burbank at the scene and someone said "Shut  
9 the fuck up, man," that would have been you; is that right?

10                  A.       Yes, ma'am.

11                  Q.       Corey, could you play 612, please?

12                               Now, Officer Collins, you recall this is one of  
13 the Vivint clips; is that right?

14                  A.       Looks like it.

15                  Q.       And you would agree that you are the only officers  
16 at the scene, you and Officer Burbank; is that right?

17                  A.       At this time, yes.

18                  Q.       All right. I'm going to have it played, and I want  
19 you to listen to it and I want you to listen all the way to  
20 the end where we can hear "Shut the fuck up, man," okay?

21                               (Exhibit 612 played.)

22                  A.       Okay.

23                  Q.       Did you hear that, Officer Collins?

24                  A.       I did.

25                  Q.       And did you hear Mr. Ellis say right before you



1        responded -- well, first of all, was that you who responded  
2        "Shut the fuck up, man"?

3            A.     Again, I don't remember saying that, but if it's  
4        only Officer Burbank and I there, then I would say that's me,  
5        yes.

6            Q.     And you can't recognize your own voice when you  
7        hear that now?

8            A.     No, not from here.

9            Q.     All right. And you would agree that when you said  
10       that to Mr. Ellis, it was because he had said something to  
11       you, correct?

12          A.     I mean, again, I don't remember saying it, but that  
13       would be the usual reason for a response, yes.

14          Q.     You wouldn't tell him to "shut the fuck up" unless  
15       he had said something to you, correct?

16          A.     Or just talking in general when he's not complying  
17       and putting his hands behind his back like we are asking him  
18       to do.

19          Q.     So it's your testimony that even if it was just his  
20       non-compliance as opposed to saying something, you would tell  
21       him to "shut the fuck up"?

22          A.     It's my testimony that anything that somebody would  
23       say to us, until they're compliant and putting their hands  
24       behind their back, is irrelevant to me.

25          Q.     But it would be in response to him saying

1 something, correct?

2 A. I would assume.

3 Q. And did you hear Mr. Ellis say "breathe, sir" or  
4 "please, sir," right before that?

5 A. I couldn't make that out.

6 Q. If it's your testimony that you didn't hear him say  
7 that -- why don't we play that again?

8 (Video played.)

9 A. I heard the first part very clearly.

10 Q. We'll play just the very bottom part.

11 A. Okay.

12 (Exhibit 612 played.)

13 Q. Did you hear it there?

14 A. Can you play it one more time?

15 (Exhibit 612 played.)

16 Q. Did you hear that "breathe, sir"?

17 A. It's possible.

18 Q. Okay. And you're saying that you didn't hear that  
19 at the time?

20 A. No, ma'am.

21 Q. Now, you would agree that you were hands on with  
22 Mr. Ellis at that point, correct?

23 A. Yes.

24 Q. You were physically touching his body?

25 A. Yes.

1 Q. As was Officer Burbank, correct?

2 A. I assume. I can't see it from here, but yes.

3 Q. Based on what you know about the sequence of  
4 things, Officer Burbank was with you the entire time,  
5 correct?

6 A. Yes, but as you note from the video, there's times  
7 he's up pointing his taser and I'm the only one with hands on  
8 Manny Ellis.

9 Q. At this point you would agree that Mr. Ellis was in  
10 handcuffs, wasn't he?

11 A. Well, where in the sequence? I don't know if he  
12 was in handcuffs at this point. I don't know that.

13 Q. Okay. Well, did you hear Mr. Hayes ask if he  
14 needed any help?

15 A. Yes.

16 Q. All right. So let's play that part again.

17 (Exhibit 612 played.)

18 And who was that who responded that said we've got  
19 some backup coming.

20 A. That sounds like Burbank.

21 Q. And do you recall Officer Burbank saying that?

22 A. No, not independently.

23 Q. You actually did recall when you were speaking to  
24 the Pierce County investigators on March 9, 2020, didn't you?

25 A. I recall Mr. Hayes asking us if we needed him to

1 help us.

2 Q. All right. And in fact, you remembered in some  
3 detail a description of Mr. Hayes, correct?

4 A. Yes.

5 Q. And you recalled him asking you if you needed any  
6 help, correct?

7 A. Yes, ma'am.

8 Q. And you indicated that you had told him that the  
9 police were coming, correct?

10 A. I didn't -- I don't know if I said that. But I  
11 know that was said, "the police were coming."

12 MS. EAKES: May I approach, Your Honor, with  
13 Exhibit 59-A?

14 THE COURT: Sure.

15 BY MS. EAKES:

16 Q. I'm handing you what's been marked as State's 59-A.  
17 Do you recognize that as the transcript of the interview that  
18 you gave to the Pierce County Sheriff's Office on March 9,  
19 2020?

20 A. I do.

21 Q. And so that was six days after this incident; is  
22 that right?

23 A. That sounds correct.

24 Q. All right. And if you want to take a look at  
25 page 19.

1           A.     Okay.

2           Q.     And you were asked about whether or not you  
3 recalled any other civilians around, correct, other than the  
4 lady that turned, do you remember being asked that?

5           A.     Yes.

6           Q.     And you said, "There was one of the homeowners, I  
7 kept hearing them say, 'Are you guys okay? Do you need help?  
8 Do you need me to call 911?'" Do you recall saying that?

9           A.     Yes.

10          Q.     And you also gave a description of him, did you  
11 not?

12          A.     Mm-hmm, I did.

13          Q.     And you said that "He was a big Caucasian male,  
14 bald head, and he just kind of came out and was like, 'are  
15 you guys all right? What's going on?'" Do you recall that?

16          A.     Yes, I do.

17          Q.     All right. So in fact, you did hear -- you did  
18 hear Mr. Hayes, that we just heard on 612, ask about whether  
19 or not you needed any help, correct?

20          A.     And I replied that I did. But what you asked me  
21 is, did I tell him that police were coming, and I said I  
22 didn't know if I said that or Burbank.

23          Q.     Take a look at your statement. Does it say whether  
24 or not you told him?

25          A.     Is it on 19 as well?

1 Q. Yes.

2 A. I said, "But once we finally had him in cuffs we  
3 said, 'We're okay. Police are coming.'" So we were finally  
4 able to address him. We didn't both address him. So I'm not  
5 sure. I don't know if it matters which one of us said that  
6 to him, but I'm not sure that I said it.

7 Q. So Mr. Ellis was in cuffs at this point when he  
8 said, "I can't breathe," and you said, "Shut the fuck up,"  
9 correct?

10 MR. CONRAD: I'm going to object. That's not the  
11 testimony.

12 MR. AUSSERER: Object. That's not -- all.

13 MR. PURTZER: Objection.

14 THE COURT: I am going to sustain the objection.

15 MR. CONRAD: Move to strike Ms. Eakes' comment.

16 THE COURT: Jury will disregard.

17 BY MS. EAKES:

18 Q. Well, let's go back and listen to it. Let's go  
19 back and listen to 612, please.

20 (Exhibit 612 played.)

21 You can stop it.

22 So at that point, then, Mr. Hayes had asked "Do  
23 you guys need some help," and you think Officer Burbank  
24 responded that you had -- that you already had somebody  
25 coming, correct?

1 MR. PURTZER: Your Honor, this has been asked and  
2 answered. This is the third time.

3 THE COURT: Overruled. You may answer.

4 THE WITNESS: Can you restate it?

5 BY MS. EAKES:

6 Q. Sure. At the point that Mr. Hayes asked if you  
7 needed help, Mr. Ellis was already in handcuffs, correct?

8 A. I don't know that.

9 Q. Did you just look at your statement where you said  
10 at page 19, lines 20 and 21, "But when we finally had him in  
11 cuffs we said, 'Hey, we're okay. There's police coming,'"  
12 isn't that what you said?

13 A. Yes.

14 Q. And you said, "So we were finally able to address  
15 him when it was over," correct?

16 A. You're asking specifically about the statement that  
17 was made and whether he was in cuffs, and I'm not sure -- I  
18 don't have a recollection of whether he was or was not. It  
19 doesn't say that here.

20 Q. Okay. Well, after Mr. Hayes asked whether or not  
21 you needed assistance is actually when Mr. Ellis -- it was  
22 after that that you said "Shut the fuck up." Correct?

23 MR. AUSSERER: Your Honor, I'm going to object.  
24 That's not what he said.

25 MS. EAKES: Well, we can listen to it, and I can

1 have you actually look at Exhibit 18-A as well.

2 THE COURT: I will let the question stand. You  
3 may answer.

4 BY MS. EAKES:

5 Q. Is that right?

6 A. Repeat your question, please.

7 Q. Sure. Mr. Hayes asked you, "You guys need some  
8 help?" And you responded or Officer Burbank responded, "Oh,  
9 we got somebody coming," correct?

10 A. Yes.

11 Q. And it was after that that you said, "Shut the fuck  
12 up, man." Correct?

13 A. Yes.

14 Q. All right. So you did hear Mr. Hayes, but you're  
15 saying you didn't hear Mr. Ellis say "I can't breathe" right  
16 before you said "Shut the fuck up, man," is that your  
17 testimony?

18 MR. CONRAD: I am going to object.

19 THE COURT: Overruled.

20 THE WITNESS: At that point, I was holding on to  
21 his legs and he was trying to kick me off, so that was where  
22 my focus was, but I was looking to the side as I was holding  
23 his legs, so that's how I noticed Mr. Hayes approached us.  
24 But as far as the sequence of when he asked me that, when  
25 somebody answered him, I don't know that I could draw that



1 from my statement or what you're saying here.

2 BY MS. EAKES:

3 Q. Let me show you what has been marked --

4 MS. EAKES: May I approach, Your Honor?

5 THE COURT: Sure.

6 BY MS. EAKES:

7 Q. And you have seen this transcript, haven't you,  
8 Mr. Collins?

9 A. I believe so. This is from your audio expert.

10 Q. This is the transcript of the synched audio,  
11 correct?

12 A. Looks like it, yes, ma'am.

13 Q. All right. Why don't you take a look at page 4,  
14 the top of page 4.

15 A. (Witness complies.)

16 Q. Actually, why don't we start at the bottom of  
17 page 3. Do you see at 23:23:28, Mr. Ellis says, "Can't  
18 breathe, sir. Can't breathe," the first time that we just  
19 heard it on 612. Do you see that?

20 A. 23:23?

21 Q. 28.

22 A. Okay. I see that.

23 Q. Is it your testimony that you didn't hear  
24 Mr. Ellis, what we can hear on that audio, that he said he  
25 can't breathe, "Can't breathe, sir"?

1           A.     Yes --

2           MR. AUSSERER: I'm going to object. This has been  
3 asked and answered.

4           THE COURT: Overruled.

5           THE WITNESS: I never heard him say that, ma'am.

6 BY MS. EAKES:

7           Q.     All right. And then you see at the top of page 4,  
8 bottom of page 3, it just shows a tone and something  
9 unintelligible?

10          A.     Uh-huh.

11          Q.     Yes?

12          A.     Yes, ma'am.

13          Q.     And then at the top of page 4, you see it has  
14 Shad Hayes at 23:23:37 saying, "You guys need some help,"  
15 correct?

16          A.     I'm sorry, one more time where that one is.

17          Q.     Sure. At the very top line on page 4.

18          A.     Yes, okay.

19          Q.     Mr. Hayes says at 23:23:37, "You guys need some  
20 help," correct?

21          A.     Yes.

22          Q.     And at 23:23:39 Officer Burbank apparently replies,  
23 "Oh, we got somebody coming," correct?

24          A.     Okay.

25          Q.     Correct?

1           A.     Yes.

2           Q.     And it's after that that you then make the comment  
3 of "Shut the fuck up"?

4           A.     According to this, yes.

5           Q.     Now, but it's your testimony you never heard any of  
6 those statements by Mr. Ellis that he said he couldn't  
7 breathe; is that right?

8           A.     Correct.

9           MR. PURTZER: Your Honor, again, object, asked and  
10 answered.

11           THE COURT: Overruled.

12 BY MS. EAKES:

13           Q.     Is that right?

14           A.     Yes, ma'am.

15           MS. BREMNER: Join.

16 BY MS. EAKES:

17           Q.     Now, after Mr. Ellis said that the first two times  
18 is when you then asked for hobbles; is that correct?

19           A.     Yes.

20           Q.     And by that time, Officers Rankine and Burbank were  
21 there -- Rankine and Ford were there; is that right?

22           A.     I would need to see that timeline, but I think they  
23 were, if I remember correctly.

24           Q.     All right. If you want to take a look again at  
25 Exhibit 18-A on page 4 just a few lines down, do you see "TPD

1 88," which is Officer Rankine?

2 A. Yes.

3 Q. At 23:24:22.

4 A. Right.

5 Q. And he says, "Show me with 307," correct?

6 A. Yes.

7 Q. And so he would have been present, correct?

8 A. Well, yeah, that's when said he arrived. So within  
9 seconds, I asked for hobbles. So whether he was right there,  
10 I'm not a hundred percent sure, because I was again looking  
11 down at the street at that point.

12 Q. All right. And you would say that according to  
13 this transcript, at 23:24:33 you asked for hobbles, correct?

14 A. Correct.

15 Q. And that would have been 11 seconds after  
16 Officer Rankine said that he was arriving, correct?

17 A. Correct.

18 Q. Why don't we play 614, please.

19 MR. CONRAD: Judge, I'm going to object at this  
20 point, because it's zoomed out so you can't see the time  
21 that's supposed to be going at this point, so I ask that  
22 it's not zoomed out so we can actually see the time frame as  
23 to when the officers are arriving.

24 THE COURT: Is this 18-A again?

25 MS. EAKES: This is 614.

1 MR. CONRAD: And it has a time frame in the upper  
2 right-hand corner. They can zoom in, but let's see the  
3 actual time frame of when they're arriving on scene.

4 MS. EAKES: It doesn't have a time on it on 614.

5 MR. CONRAD: Well, my 614 did.

6 THE COURT: Is this zoomed in at all?

7 MS. EAKES: It's not zoomed in.

8 BY MS. EAKES:

9 Q. And you recognize Exhibit 614 as when  
10 Defendant Rankine and Mr. Ford arrived, correct?

11 A. Looks like it, yes, ma'am.

12 Q. All right. And if we can play 614.

13 (Exhibit 614 played.)

14 And did you hear Mr. Ellis say that he couldn't  
15 breathe there?

16 A. No.

17 Q. You didn't hear it at all?

18 A. No.

19 Q. Can we go back and play that, please.

20 (Exhibit 614 played.)

21 Q. Do you hear that behind the siren?

22 A. It's unintelligible. I can hear yelling.

23 Q. And Officer Collins, you still were in contact with  
24 Mr. Ellis at that point, correct?

25 A. Well, it's hard to say, because as soon as he was

1 hobbled, I was not in contact, I moved away from him.

2 Q. Well, you heard Officer Ford say that Mr. Ellis  
3 said he couldn't breathe for the first time after the hobbles  
4 were applied, correct?

5 A. Correct, and I was not with him after the hobbles  
6 were applied.

7 Q. So when Officer Ford said that you were present  
8 when Mr. Ellis said he couldn't breathe, you were not, is  
9 that your testimony?

10 A. Yes. Well, at that instance. You just played me  
11 another instance where he said it where I was there that I  
12 did not hear.

13 Q. Well, there were no other officers that appear to  
14 be present at this time, correct, on 614?

15 A. On the video you just played?

16 Q. Yes, other than Officers Rankine and Ford?

17 A. No, it looks like there's a lot of officers there.

18 Q. And why do you say there are a lot of officers  
19 there?

20 A. Well, if you watch the video again, you see  
21 Sergeant -- because, again, Sergeant Lim, he was there within  
22 seconds of Ford and Rankine. He was right on top of them.  
23 And then Messineo and Sanders from the county were there  
24 pretty much simultaneously, so everyone kind of was there.

25 Q. All right. Okay. Well, let's play 614 through.

1 (Exhibit 614 played.)

2 A. Sergeant Lim. There's another car, I don't know  
3 who that is, and then Messineo and Sanders had come from  
4 south to north on Ainsworth. So there's multiple -- I think  
5 it was 12 maybe there by that time.

6 Q. Okay. And you heard Mr. Ellis saying "I can't  
7 breathe." "I can't breathe, sir"?

8 A. I hear him saying something, but I can't tell you  
9 what it is at that point.

10 Q. Can you play that very end there. You're saying  
11 you can't hear him say there that "I can't breathe"?

12 A. I can't understand what that is saying, no, ma'am.

13 Q. Okay. Let's play it again.

14 (Exhibit 614 played.)

15 Q. And you didn't hear that?

16 A. I mean, now that you're saying it, I think I can  
17 hear it.

18 Q. And you're saying at the time, even though you were  
19 still present with Mr. Ellis, you couldn't hear it; is that  
20 right?

21 A. I don't know that I was present at this point.

22 Q. Okay. Well, tell us -- so you're saying at this  
23 point when we can hear Mr. Ellis saying "I can't breathe"  
24 that you had already stepped away?

25 A. I mean, literally as soon as the hobbles were

1 placed on, I was off and Officer Burbank and I were walking  
2 back toward the car. And as you can hear, the street is  
3 flooded with sirens, the beeper's still going off on our  
4 radio headset, Sergeant Lim is talking to us. There's a lot  
5 going on. So from this zoomed-out view from this camera,  
6 especially early on, I can hear what you're asking me to  
7 hear. But in there, I can't hear. It sounds like he's  
8 saying something, but I can't tell you definitively what that  
9 is.

10 Q. So it's your testimony that you stepped away so  
11 quickly that you never heard Mr. Ellis on those other  
12 occasions say that he couldn't breathe; is that right?

13 A. I never heard him say "I can't breathe."

14 Q. Never heard him?

15 A. No.

16 Q. And so are you saying that at this point that  
17 Sergeant Lim was there, he had already been hobbled, and then  
18 you had walked away; is that your testimony?

19 A. I was moving away, yes.

20 Q. All right. Let's -- was that all the way  
21 through 614? All right. Let's play 659.

22 (Exhibit 659 played.)

23 Q. You can hear Mr. Ellis saying he can't breathe  
24 there, can't you?

25 A. I can hear something there.



1 Q. Are you saying you can't hear it be said "I can't  
2 breathe"?

3 A. I can hear "breathe" in there for sure. Now you're  
4 asking me over and over again and listening in a courtroom  
5 over and over again, it's much different clarity than on the  
6 street, I can tell you that.

7 Q. Let's listen to it again.

8 THE COURT: This is Exhibit 659?

9 MS. EAKES: 659.

10 THE COURT: Has this been admitted?

11 MS. EAKES: Yes. This is from the dispatch, Your  
12 Honor.

13 THE COURT: Is it a subpart of something that's  
14 been admitted already or was this separately?

15 MS. EAKES: It was admitted separately.

16 JUDICIAL ASSISTANT: Yes, it is, on October 17th.

17 THE COURT: Okay. Go ahead.

18 MS. EAKES: Okay. Can you play it again?

19 (Exhibit 659 played.)

20 Q. And that actually came over the dispatch, do you  
21 recall hearing evidence of that?

22 A. In this courtroom, yes.

23 Q. And you can hear on there Sergeant Lim saying,  
24 "Slow incoming," did you hear that?

25 A. Is that what he says? Can you play it back?

1 Q. Sure.

2 A. It could be "slow incoming."

3 Q. And "slow incoming" means that basically the  
4 situation's at least under control in terms of new officers  
5 coming in, correct?

6 A. Yeah, it's so other officers, when they're flying  
7 to the scene, because they still have this mic clicks and  
8 beepers call that they're coming to, so he's saying you guys  
9 don't need to come here in emergency response.

10 Q. Right. Because it's under control, correct?

11 A. To the other officers.

12 Q. He's telling the other officers it's under control,  
13 correct?

14 A. No, he's saying we don't need additional. Not  
15 necessarily that it's under control, no.

16 Q. Are you saying it wasn't under control at that  
17 point?

18 A. That was his call. Again, I was -- I was just  
19 trying to hang on for dear life to Manny's legs at this  
20 point, and then the hobbles get off and I'm off, and  
21 Sergeant Lim made that call, so you'd have to ask him.

22 Q. Well, you wouldn't have walked away from Mr. Ellis  
23 if you didn't think he was under control, would you?

24 A. Once the hobbles were placed on, I was replaced.  
25 There was other officers. There was no need for me to stay

1           there at that point, in my mind.

2           Q.     So you're saying he wasn't under control, or he was  
3           under control when the hobbles were placed on him?

4           A.     Well, I don't know that he was under control, but  
5           we had him restrained. Those are two different things.

6           Q.     So as soon as the hobbles are placed, you're saying  
7           that you stepped away; is that right?

8           A.     That's correct.

9           Q.     All right. And again, you said you didn't hear  
10          that time when Mr. Ellis said that he couldn't breathe,  
11          correct?

12          A.     I told you I didn't hear it one time.

13          Q.     I'm sorry?

14          A.     I didn't hear him say that one time.

15          Q.     You did not hear him say that one time?

16          A.     I did not.

17          Q.     And I take it you never relayed to any of the other  
18          officers that Mr. Ellis was saying he couldn't breathe?

19          A.     No, because I didn't hear him say it.

20          Q.     So when you heard Officer Ford testify that he  
21          heard Mr. Ellis say he couldn't breathe when you and  
22          Officer Burbank were there, you didn't actually hear it  
23          though, correct?

24          A.     No, I did not.

25          Q.     And it's your testimony that even though you can

1 hear Shad Hayes, you somehow had auditory exclusion as to  
2 everything else Mr. Ellis said about not being able to  
3 breathe?

4 A. I believe I testified to seeing Mr. Hayes and then  
5 noticing him. So at that point we finally had him in  
6 handcuffs, now I'm just holding the legs and I'm looking to  
7 the side, so I was able to see him approach us.

8 Q. Well, you did tell the Pierce County Investigators  
9 what he said, correct?

10 A. Can you point me back to the page and I'll read it?

11 Q. Sure. Page 19.

12 A. Yeah, "There was a homeowner, I kept hearing him  
13 say, 'Are you guys okay? Do you need help. Do you need me  
14 to call 911?'"

15 Q. You did hear him say that, correct?

16 A. According to this, yes.

17 Q. And you remember that, don't you, now?

18 A. I remember seeing him, yes.

19 Q. You recall hearing him say that?

20 MR. CONRAD: Objection, asked and answered.

21 THE COURT: Overruled.

22 You may answer.

23 THE WITNESS: The one thing is, it's hard when --  
24 you know, I have my independent recollection, which is we  
25 told them everything we know when we gave this statement.

1 But as you sit in the courtroom and you hear other people  
2 testify and you're listening to videos and you guys are  
3 playing the video over and over and over again, I'm trying  
4 to remember what I remembered at the time. So I'm answering  
5 you as honestly as I can in this.

6 Q. At the time that you gave this statement, you would  
7 agree that the events were freshest in your mind on March  
8 9th?

9 A. Yes, ma'am, that's correct.

10 Q. And you were attempting to provide all of the  
11 information that you had; is that right?

12 A. That's right.

13 Q. And at that time, you clearly remembered Mr. Hayes  
14 saying, "Do you need any help," correct?

15 A. Yes.

16 Q. But nowhere in this statement that you gave to the  
17 Pierce County Sheriff's Office did you admit that Mr. Ellis  
18 had said that he couldn't breathe, correct?

19 A. Yeah, because I didn't hear him.

20 Q. So wasn't there, but you did recall Mr. Hayes,  
21 correct?

22 A. Yes, because I was looking at him.

23 Q. Now, you testified earlier today about your  
24 experience as a police officer, correct?

25 A. Yes, ma'am.

1 Q. And in addition to the time that you've been on the  
2 Tacoma Police Department, you also were in the military,  
3 correct?

4 A. That is correct.

5 Q. And as a result of both being trained as an officer  
6 as well as in the military, you received a lot of training  
7 with respect to first aid, correct?

8 A. We did have a lot of battlefield-specific medical  
9 training at the time.

10 Q. Well, you were combat trauma medical trained, you  
11 took that?

12 A. I did.

13 Q. And in addition to that, you were actually  
14 certified as an EMT in 2013, correct?

15 A. That is correct.

16 Q. So you understood from your medical, from your EMT  
17 training and your combat training, and the training you  
18 received through Tacoma Police Department and the CJTC, that  
19 when someone has a breathing issue, that's a serious issue,  
20 correct?

21 A. It can be, yes, ma'am.

22 Q. And you say "it can be," you need to at least find  
23 out whether it is, correct?

24 A. Absolutely.

25 Q. And that's something that you have to look for

1 whenever you're having contact with people, correct?

2 A. Well, I mean, it's not something that I'm just  
3 going to randomly ask every person. But if I'm aware of  
4 something and it's something I can address if they're not  
5 fighting me, if they're not resisting arrest and it's  
6 something I can address, one hundred percent.

7 Q. Even if they're fighting you and resisting arrest,  
8 you still have to take care to make sure that their medical  
9 needs are met, correct?

10 A. Ideally, yes. But if I know it at the time -- I  
11 mean, if you're in a fight for your life, your priority is  
12 getting handcuffs on a person and protecting yourself.  
13 You're not really concerned about the things they're saying  
14 because I've had people call "time-out" before in the middle  
15 of a fight. I've had people say, "I'm not resisting, I'm not  
16 resisting" while they punch me. I mean, the amount of stuff  
17 you hear you kind of get used to just focussing on what you  
18 need to do first, and then we can talk to them and address  
19 their medical needs or whatever else they need from us.

20 Q. But after they're secure, you have to address their  
21 medical needs, correct?

22 A. Absolutely.

23 Q. All right. And you would agree that you do have a  
24 caretaking function to people that are in your custody; is  
25 that right?

1           A.     Every officer has a caretaking function, yes,  
2     ma'am.

3           Q.     And your training also included lessons on  
4     emergencies like breathing problems, correct?

5           A.     I don't recall any specific training on that.

6           Q.     And you did receive training at Tacoma Police as  
7     well as at the CJTC, correct?

8           A.     Training?

9           Q.     Yes.

10          A.     Just in general training?

11          Q.     Yes.

12          A.     Yes, oh yeah.

13          Q.     You receive a lot of training as police officers,  
14     correct?

15          A.     Not so much when you become a police officer  
16     because, unfortunately, the time needed on the street, it's  
17     hard to pull officers away. So we get as much as we can, but  
18     it's not extensive.

19          Q.     Well, you agree that you had at least 1500 hours of  
20     training between the CJTC and the time that you were with  
21     Tacoma Police, correct?

22          A.     I'm assuming you got that from records, so I'm  
23     going to trust you on that, but I don't know the hours.

24          Q.     Okay. Well, we'll take a look at Exhibit 64.  
25     Handing you what's been marked as Exhibit 64, do you



1 recognize that as your training materials or your training  
2 summary roster?

3 A. I've never seen this before.

4 Q. Do you doubt that it's for you?

5 A. Well, that's my name.

6 Q. Right. It says "Employee: Matthew J. Collins."

7 A. It does.

8 Q. And it's dated June 20th?

9 A. It is.

10 Q. And total 1534 hours of training; is that right?

11 A. Yes.

12 Q. And does this sound about consistent with your  
13 memory of the training?

14 A. Oh, I would have no idea. This course was 1534,  
15 ma'am.

16 Q. Well, you understand that the basic law enforcement  
17 training is 720 hours, correct?

18 A. Yes.

19 Q. So the rest of this training, the 1500 hours would  
20 have been while you were a Tacoma police officer, right?

21 A. Yes, I assume. Maybe courses they send me to also.  
22 I don't know if they include that.

23 Q. And you received training in first aid, correct?

24 A. As much as we would do as far as I recollect with  
25 first aid would be, you know, like if we did a taser class,

1 maybe talk about measures you would take after administering  
2 a taser to somebody. Or in like a firearm's class, we would  
3 talk about applying a tourniquet, stopping severe  
4 hemorrhaging, things of that nature. But I don't recall  
5 actual, like, what I would consider a classic first aid  
6 class.

7 Q. All right. Well, why don't you take a look at  
8 page 2 of that document under "general law enforcement," you  
9 see it says "first aid and CPR, 25.3 hours of training."

10 A. We did do a CPR certification class, that is  
11 correct.

12 Q. So you did receive at least 23.5 hours of first aid  
13 training, correct?

14 A. I think every officer has to be CPR certified, yes.

15 Q. And you also received 16 hours of CIT training,  
16 correct?

17 A. What page are you looking at, ma'am?

18 Q. Take a look at page 4.

19 A. You said "CIT"?

20 Q. 16 hours of CIT, crisis intervention team.

21 MR. CONRAD: I'm going to object as to foundation  
22 on this document.

23 THE COURT: He said he's never seen it before. So  
24 it's authentication.

25 MS. EAKES: Your Honor, we can certainly tie it up

1 later. We received it from the Tacoma Police Department.

2 MR. CONRAD: I'm going to object to a speaking  
3 objection.

4 MS. EAKES: It's a printout regarding his  
5 training, Your Honor. This is my copy, but I'll hand it up.

6 THE COURT: Objection is sustained.

7 BY MS. EAKES:

8 Q. Do you have a memory of how many hours you've  
9 received of training, Officer Collins?

10 A. No, ma'am, I do not.

11 Q. Would you agree that you were trained in a variety  
12 of topics including deescalation?

13 A. We talk about deescalation, yeah, we've seen videos  
14 on it. I don't know what you specifically mean. That's a  
15 broad subject.

16 Q. Have you been trained on ground defense?

17 A. Ground defense, like defensive tactics?

18 Q. Yes.

19 A. Yes, ma'am.

20 Q. And you've been trained on mental health training?

21 A. Yes.

22 Q. And you've been trained on use-of-force training,  
23 correct?

24 A. Oh, yes.

25 Q. Now, you said that you acknowledge that every

1 officer has a duty to ensure the safety of a person who is in  
2 their custody, correct?

3 A. Yes, ma'am.

4 Q. And that's because the person can't take care of  
5 themselves, correct?

6 A. Correct.

7 Q. And you would agree that it's important to listen  
8 to somebody who's in your custody to what they're telling you  
9 about their medical situation?

10 A. Absolutely.

11 Q. And you would agree that it's important to respond  
12 to what they say about what their medical -- if they're  
13 having a medical issue?

14 A. Definitely, once they stop attacking you,  
15 absolutely.

16 Q. And after -- and you would agree that it's your  
17 responsibility, once you take somebody into your custody, to  
18 attend to their health, right?

19 A. Yes.

20 Q. And to summon any necessary medical care, correct?

21 A. Yes, ma'am.

22 Q. And you never contacted fire that night, correct?

23 A. No. I did.

24 Q. And you testified that Sergeant Lim contacted fire.  
25 Is that the reason why you didn't contact fire?

1           A.     I'm sorry, I contacted them in person when they  
2 arrived. Sergeant Lim did make the call over the radio, yes,  
3 ma'am.

4           Q.     But you didn't contact them in advance of their  
5 arrival, correct?

6           A.     No, he called within -- I think it was -- if we can  
7 pull the exhibit back up. It was within 12 seconds by the  
8 time Manny was finally restrained in hobbles and cuffs, and  
9 so there's no reason to call again once he's already called.

10          Q.     Okay. So it's your testimony that it was  
11 Sergeant Lim who called for fire; is that right?

12          A.     That's what I believe from the records.

13          Q.     Well, do you have an independent memory of that?

14          A.     I didn't know if it was Burbank or Sergeant Lim or  
15 who, but I knew that they were called.

16          Q.     Okay. Because you did initially say that it might  
17 have been Burbank that called for fire, or you did, correct?

18          A.     It could have been, yeah.

19          Q.     But you never -- in terms of fire being called, you  
20 would agree actually it was dispatch who asked whether or not  
21 fire needed to be called, correct?

22          A.     Oh, I don't know that at all, ma'am. I don't think  
23 that's the case.

24          Q.     Why don't you take a look at Exhibit 18-A and take  
25 a look at page 5.

1 MR. CONRAD: I'm going to ask for the instruction  
2 that accompanies 18-A for illustrative purposes.

3 THE COURT: Well, you're asking him about his  
4 personal knowledge of that night, that's why he's on the  
5 stand. Now you're asking him to say what's in some other  
6 report that he had nothing to do with making.

7 MS. EAKES: Well, Your Honor, I am asking him  
8 about --

9 THE COURT: I don't think that bears on his  
10 personal knowledge.

11 MS. EAKES: Well, it bears on his testimony that  
12 it was only 12 seconds, and it was Sergeant Lim that called  
13 for fire. So I'm permitted to impeach him or ask him about  
14 who actually called for fire here.

15 THE COURT: Well, you're talking about dispatch  
16 asking him.

17 MS. EAKES: Correct.

18 THE COURT: My understanding is dispatch asked Lim  
19 for it and Lim said "yes." I don't know whether you say  
20 they asked for it or Lim asked for it or it's the same  
21 thing.

22 MS. EAKES: That's what I'm asking, Your Honor,  
23 I'm asking about that.

24 THE COURT: You're asking about who said it first,  
25 dispatch or Sergeant Lim? Or maybe it was Officer Burbank,

1 because he said he wasn't sure who said it. It doesn't go  
2 to his personal knowledge. He wasn't on the call.

3 BY MS. EAKES:

4 Q. Do you have a memory as to who actually called for  
5 fire?

6 A. Not from the night of the event, no, ma'am.

7 Q. Now, you were trained on excited delirium, that you  
8 should treat it as a medical emergency, correct?

9 A. Yes, ma'am.

10 Q. And prior to fire's arrival, you never told fire  
11 that Mr. Ellis -- you thought Mr. Ellis had excited delirium,  
12 did you?

13 A. Prior to their arrival?

14 Q. Correct.

15 A. No. When they arrived, I told them.

16 Q. Correct. You didn't contact them in advance and  
17 let them know that you thought he had excited delirium, did  
18 you?

19 A. I didn't contact them.

20 Q. In fact, you didn't tell anybody else at the scene  
21 that you thought he had excited delirium, did you?

22 A. I don't recall if I did or not.

23 Q. You certainly didn't say anything about it in your  
24 statement, did you?

25 A. I don't know. If you let me look at it, I'll

1 check. But I'm not sure if I said that to someone on the  
2 scene or not.

3 Q. Do you have a memory of telling anybody at the  
4 scene that you thought Mr. Ellis had excited delirium?

5 A. Not independent recollection, no.

6 Q. And you would agree that it would be important for  
7 fire to know, wouldn't you, that Mr. Ellis -- that you  
8 thought that Mr. Ellis had excited delirium, correct?

9 A. Yeah, that's why I told them, yes, ma'am.

10 Q. And it might affect the pace at which they  
11 responded to the call, would you agree?

12 A. I don't know, because I don't know what fire had on  
13 their plate that night.

14 Q. Can you think of any reason why you wouldn't want  
15 to tell fire before they actually come out at the start that  
16 you think that this is somebody who has excited delirium?

17 A. Well, I think also you kind of have to look at the  
18 situation, ma'am, where this is not something like right away  
19 we understand it's excited delirium. I mean, this is -- you  
20 know, I have my initial interaction with Manny at the window  
21 when he runs up to the car and the things I'm witnessing  
22 there, and then I have the strength that I'm seeing when he  
23 pick s me up off my feet and throws me. Then we have kind of  
24 like his interaction, how he's acting throughout the whole  
25 arrest.



1                   So he finally gets -- it's not like I just know  
2 right away and I'm explaining this. It's -- this is -- I'm  
3 putting this together, and by the time I'm walking behind  
4 the patrol car waiting for fire to show up, it's starting to  
5 click what we dealt with. But I can't just like -- I wish I  
6 just had a brain where I just knew that instant, but  
7 unfortunately that's not how it works.

8           Q.     But it's your testimony that you did know or you  
9 did believe he had excited delirium before fire arrived,  
10 correct?

11          A.     Yes.

12          Q.     And you're saying, even as you walked to the back  
13 of the car, you knew at that point that he had excited  
14 delirium?

15          A.     I don't know at what point, you know, it became  
16 clear to me, but at some point it did.

17          Q.     And you didn't try to alert fire before their  
18 actual arrival at the scene?

19          A.     No, I did not.

20          Q.     And you would agree that you were also trained at  
21 the police academy and at Tacoma about prone positioning,  
22 correct?

23          A.     Yes.

24          Q.     And you're taught that the prone position is a  
25 transitory position?

1           A.    I don't think I've ever heard that terminology.

2           Q.    You've never been taught that it's a transitory  
3 position?

4           A.    No.

5           Q.    Well, you've been taught that you shouldn't leave  
6 someone in the prone position once they're restrained,  
7 haven't you?

8           A.    I don't think I've been taught that, but that's  
9 pretty common sense. We don't leave people in the prone when  
10 we don't have to. Usually, when someone's cuffed, you put  
11 them in your car or on their bum on the sidewalk. It's kind  
12 of common sense.

13          Q.    And it's common sense because you know that it can  
14 lead to restricting their breathing, correct?

15          A.    It's uncomfortable, and it's just unnatural to  
16 leave someone face down. It's just not something that we do.

17          Q.    And you would agree that you understood from your  
18 training that it could make someone panic to be left on their  
19 stomach also, right?

20          A.    No, I didn't learn that from my training.

21          Q.    Were you trained that you shouldn't put weight on  
22 someone who is restrained and prone on the ground?

23          A.    No.

24          Q.    You never received that training?

25          A.    No.

1 Q. So the training that Mr. Nielsen talked about and  
2 that Jack Ryan talked about you never received?

3 A. Mr. Nielsen never said that we received training to  
4 never put weight on someone's back once they were restrained,  
5 I don't think. That's not what I recall him saying.

6 Q. You don't recall him saying that?

7 A. I don't recall him saying that, no.

8 Q. And when Jack Ryan testified, you disagreed that --  
9 you disagree that you were taught that you shouldn't put  
10 weight on someone who's restrained in the prone position?

11 MR. AUSSERER: Your Honor, I am going to object to  
12 commenting on another witness.

13 THE COURT: Sustained.

14 BY MS. EAKES:

15 Q. Were you never taught that?

16 A. I was never taught that, no.

17 Q. You were aware that there's a danger of positional  
18 asphyxia resulting in somebody's death, correct?

19 A. Yes.

20 Q. And in fact, you even understood that Tacoma Police  
21 had a policy that you couldn't transport somebody when  
22 they're in a hogtied prone position, correct?

23 A. I'm not sure if I knew that was a policy, but it  
24 makes complete sense.

25 Q. And you're aware that there are dangers associated

1 with having someone in a hogtied position, correct?

2 A. We never do hogties, but if you're talking about  
3 use of the hobbles, I think with everything there is a  
4 danger. I mean, you put a person in a handcuffs, you can  
5 dislocate their shoulder.

6 Q. I'm talking about having the hobble connected to  
7 somebody's handcuffs.

8 A. That's the only way that I understood that a hobble  
9 was used.

10 Q. So it's your testimony that you've never used a  
11 hobble without connecting it to somebody's handcuffs?

12 A. I've only seen it one other time and it was  
13 connected.

14 Q. And as part of your training as a police officer,  
15 you're trained to deal with people in crisis?

16 A. Yes, ma'am.

17 Q. And people with mental illnesses?

18 A. Oh, yes.

19 Q. And it sounds like people on drugs?

20 A. Yes.

21 Q. And it's your testimony that you frequently  
22 encounter people on drugs; is that right?

23 A. Unfortunately, yes, ma'am.

24 Q. Now, you understood also as part of your training  
25 about the use-of-force standards, correct?

1 A. Oh, yes.

2 Q. And at the time of this incident, you were trained  
3 that you can only use force when it's necessary to achieve a  
4 lawful purpose, correct?

5 A. I think that's always the standard, yes, ma'am.

6 Q. And you knew you could only use reasonable force?

7 A. Yes.

8 Q. And if someone -- once someone's under law  
9 enforcement control, unreasonable uses of force should cease,  
10 correct?

11 A. Yes.

12 Q. And as a TPD officer, you were never trained in the  
13 LVNR, were you?

14 A. Not specifically at TPD, no.

15 Q. And in fact, when you went to the Basic Law  
16 Enforcement Academy, you weren't permitted to be trained in  
17 the LVNR, correct?

18 A. Well, it's not so much that, it's -- again, LVNR is  
19 a company. So they sent, like, a contractor to the academy  
20 and your department, from how I understood it, could pay for  
21 you to go to this class. But Tacoma did not pay for people  
22 to go to that class, if that's what you're asking me.

23 Q. So Tacoma did not allow you to be trained on the  
24 LVNR when you were at the academy?

25 A. They didn't allow us to go to that class. They

1 didn't pay for us to go to that class.

2 Q. In fact, the TPD policies don't actually refer to  
3 the LVNR at all, do they, use of use-of-force policy?

4 A. No, but it opens up to training outside of the  
5 department that you use if you find it reasonable and  
6 necessary.

7 Q. And my question is: The TPD policies don't  
8 actually have any reference to an LVNR, do they?

9 A. No. We were writing it at the time of this  
10 incident for TPD, but I don't think it was the word or the  
11 term of "LVNR" was in the policy itself at the time.

12 Q. And is it your testimony that you were part of  
13 writing the policies on LVNR?

14 A. I wasn't part of it, but I was part of the cadre, I  
15 was part of the defensive tactics cadre, so I knew that was  
16 something we were going to work on.

17 Q. But the TPD policies didn't mention LVNR at the  
18 time of this incident, correct?

19 A. I don't think they mentioned it, no.

20 Q. Now, you're aware of what proactive policing is,  
21 correct?

22 A. Yes, ma'am.

23 Q. And in fact, TPD encourages proactive policing?

24 A. That's correct.

25 Q. Proactive policing means you don't just respond to

1 calls, but that you actually go out and you try to make  
2 contacts with people to determine whether or not there's any  
3 criminal activity, correct?

4 A. Not necessarily contact with people. It's kind of  
5 like how I was describing to Mr. Ausserer. When we go down  
6 to Hosmer Street, you look and you see -- like,  
7 unfortunately, there's so much crime on that street, you may  
8 just see someone start getting assaulted or someone trying to  
9 grab someone's purse. And by us not sitting at the station  
10 and waiting, but being there on the street and being  
11 proactively looking for a crime, that's kind of more what  
12 that's addressing. But as far as, we didn't go around making  
13 social contacts with people.

14 Q. But you'd arrest people or stop people for, like,  
15 bicycle helmet violations, correct?

16 A. Yes.

17 Q. And that would be a form of proactive policing?

18 A. Yes, ma'am.

19 Q. And you would use that contact to run someone's  
20 name for warrants, for example, correct?

21 A. That did happen.

22 Q. And you could stop people that you saw on the  
23 street and chat with them and get their name, correct?

24 A. If there was a reason. If there was a legal reason  
25 to stop somebody. You have to have a legal reason to stop

1 somebody.

2 Q. And other kinds of proactive policing include  
3 things like headlights being out, correct?

4 A. I mean, that's a traffic violation. But I would  
5 think that's more of a traffic violation, so you're not in  
6 accordance with the state traffic laws at that point.

7 Q. And Tacoma -- you actually received encouragement  
8 from Tacoma Police to engage in proactive policing, correct?

9 A. I don't know if it was ever explicitly stated, but  
10 that was definitely something that we always talked about.

11 Q. Well, you were praised in some of your reviews for  
12 being a proactive officer?

13 A. I'm not aware of that independently.

14 Q. You don't recall seeing that in any of your  
15 reviews?

16 A. It could have happened. I don't remember. It's  
17 been three years since I've even been at the department so  
18 I'm not sure about my reviews.

19 Q. Now, I want to ask you about -- you testified this  
20 morning about a prior police stop -- a prior stop that you  
21 had prior to encountering Mr. Ellis. Do you recall that?

22 A. The traffic stop?

23 Q. Yes.

24 A. Yes, ma'am.

25 Q. And if I heard you correctly, you testified today



1 that that stop involved two black women; is that right?

2 A. That's right.

3 Q. And that one of them was crying?

4 A. Yes.

5 Q. And she said she had a warrant?

6 A. Yes.

7 Q. And you even added that you said they had a broken  
8 windshield; is that correct?

9 A. Yeah. They had, like, trash bag windows where when  
10 your windows are broken and you just put up trash bags and  
11 you tape them up over the window.

12 Q. So it wasn't the windshield that was broken, it was  
13 the side windows?

14 A. I think the windshield was cracked, but there was  
15 side windows that had trash bags for the windows.

16 Q. And you testified that you didn't run them for  
17 warrants, correct?

18 A. Yeah, I don't think we ran them. It would show up  
19 if we ran them on that CAD report. It would add them to the  
20 call.

21 Q. And you didn't issue any tickets, correct?

22 A. We did not.

23 Q. Now, when you gave your statement back on March 9,  
24 2020, you were asked about whether or not there was a prior  
25 stop, correct?

1           A.     Correct.

2           Q.     And in fact, you said that you didn't remember the  
3 prior stop?

4           A.     Yeah, that's right.

5           Q.     And if you want to take a look at Exhibit 56 -- or  
6 59-A, page 16, starting at line 22.

7           A.     Okay.

8           Q.     And read up through page 17 at line 7.

9                     You would agree that you were asked specifically  
10 about this about whether or not there was a prior stop and  
11 you indicated that you didn't remember it, correct?

12          A.     Yeah, I mean, at the time of -- you have to  
13 understand, this was such a traumatic, crazy incident, that  
14 definitely at the time of this, this was all I could think  
15 about for well over a year.

16          Q.     So again, back in March of 2020, March 9, 2020, you  
17 told the officers you didn't remember anything about the  
18 call, correct?

19          A.     Yeah, I don't think that was pertinent for our  
20 interview. I think they just offhandedly asked me.

21          Q.     So you told them you didn't remember anything about  
22 a prior stop, correct?

23          A.     Yes.

24          Q.     Now, you were shown a CAD from that prior stop,  
25 correct?

1           A.    Yes.

2           Q.    I'll show you what's been marked as Exhibit 13.

3           This is the CAD related to that prior stop, correct?

4           A.    Yes.

5           Q.    And you would agree that there's nothing on that  
6           CAD that indicates that these were two black women that you  
7           stopped, correct?

8           A.    Yes.

9           Q.    And so is it your testimony that you never even ran  
10          them to find out what the warrants were?

11          A.    Yes, that's right.

12          Q.    You never bothered to check? It could have been  
13          any kind of warrant, correct?

14          A.    No, because I remember she had a legitimate story  
15          when she told us exactly what was going on. She was driving  
16          her friend's car. She just needed to go to the store. She  
17          had a real story, and we wanted to cut her a break.

18          Q.    But you did run the plate, correct?

19          A.    Looks like it, yes, ma'am.

20          Q.    And you ran the name of a Robert Boggan, correct,  
21          B-o-g-g-a-n?

22          A.    Well, that's who the DMV has as the registered  
23          owner. So when you run a vehicle, it will then attach  
24          whoever is the registered owner of the vehicle.

25          Q.    So you ran it and you discovered that the car

1 didn't actually belong to these two women either, correct?

2 A. Correct.

3 Q. So there's nothing, however, on this CAD that says  
4 anything at all about this being two black women, one of whom  
5 was crying and saying that they had warrants, correct?

6 A. Correct, that was from my independent recollection.

7 Q. That you had some time after this incident,  
8 correct, or after March 9th?

9 A. Yeah, after I was -- you know, Mr. Ausserer showed  
10 me all the paperwork, and I looked through it and I had time  
11 to not be in this interview talking about this incident,  
12 yeah, there was a lot more that I remembered.

13 Q. What's the other materials that Mr. Ausserer showed  
14 you that related to this incident?

15 MR. AUSSERER: Your Honor, I'm going to object.

16 THE COURT: Sustained.

17 BY MS. EAKES:

18 Q. Well, you said something refreshed your memory.  
19 What did you look at that refreshed your memory?

20 A. This right here, this CAD report.

21 Q. The CAD report that doesn't have any mention of the  
22 two black women?

23 A. No, but it mentions the vehicle, and I just  
24 remembered the incident and it kind of got me back into that  
25 situation.

1 Q. All right. I want to talk about the incident with  
2 Mr. Ellis. Now, you testified this morning that you were  
3 sitting at the intersection clearing this prior stop,  
4 correct?

5 A. Correct.

6 Q. And you would agree, you never said that to Pierce  
7 County back in 2020, did you?

8 A. I wasn't asked.

9 Q. Well, they asked you about a prior stop, didn't  
10 they?

11 A. They didn't ask me about when he was clearing it.

12 Q. You said you didn't remember anything about it,  
13 correct?

14 A. Well, he was typing on the computer. There's only  
15 one reason to do that, you ran the information. I remember  
16 when we were looking at Manny, I looked over, and he's still  
17 typing, looking down, and I'm like, what's going on?

18 Q. You'd agree you didn't say any of that to Pierce  
19 County, to the Sheriff's Office, correct?

20 A. It wasn't pertinent at the time.

21 Q. And they asked you questions about the entire  
22 incident and how it transpired, correct?

23 A. They never asked about whether we were clearing a  
24 traffic stop.

25 Q. Did they ask you how it was that you came to be in

1 contact with Mr. Ellis?

2 A. Yes.

3 Q. And you never said anything about you sitting at  
4 this light clearing a stop, correct?

5 A. I don't think I mentioned clearing a stop. Again,  
6 that wasn't relevant. They were just talking about Manny at  
7 the time.

8 Q. So you're saying you remembered it at the time, but  
9 you chose not to tell Pierce County about it; is that your  
10 testimony?

11 MR. CONRAD: Objection. Argumentative.

12 MR. AUSSERER: That's not what he said.

13 THE COURT: Overruled.

14 You may answer.

15 THE WITNESS: For instance, if I'm in a  
16 situation -- you can look at any one of my reports. Say I'm  
17 in a situation where I'm struggling with someone in a  
18 convenience store, am I fighting in the chip aisle? Maybe.  
19 But did I write that in the report, no, because it's not  
20 pertinent to what's going on. So then if you were to ask  
21 me, were you fighting in a pile of chips? I would say,  
22 yeah, I was. Well, why didn't you write that in the report?  
23 I mean, it's just certain things where that wasn't even an  
24 issue at the time.

25 You have to remember, ma'am, when we were getting

1 interviewed, I had no idea that this would be looked at as  
2 our wrongdoing. To us, this was a very clearcut situation.  
3 Tragic, but it was clear cut.

4 And when we were explaining this, I didn't even  
5 think to go into that kind of detail to protect myself for  
6 some reason. It did not occur to me in the slightest.

7 Q. Mr. Collins, you knew at the time that you gave  
8 this statement that Mr. Ellis had died, correct?

9 A. Absolutely.

10 Q. And you understood that this was a use-of-force  
11 investigation?

12 A. Yes.

13 Q. And there was an investigation into his death,  
14 correct?

15 A. Yes.

16 Q. And you didn't tell them anything about how you  
17 were sitting at the light clearing the prior stop, correct?

18 A. I did say we were sitting at the light, but they  
19 didn't ask about the stop for me to tell them.

20 Q. Understood. You didn't tell them about anything  
21 purportedly about clearing this prior stop at the light,  
22 correct?

23 MR. PURTZER: It's been asked and answered  
24 multiple times.

25 THE COURT: I'll sustain the objection at this

1 point.

2 BY MS. EAKES:

3 Q. Now, according to your statement, you saw Mr. Ellis  
4 for the first time when he was out already in the  
5 intersection, correct?

6 A. Correct.

7 Q. So you didn't see him run out of nowhere into the  
8 intersection, correct?

9 A. I did not.

10 Q. And you never saw him waving his hands to stop the  
11 car, correct?

12 A. No, I did not.

13 Q. When you saw him, he was already in the  
14 intersection?

15 A. He was at the door of the vehicle. He was either  
16 at the front corner panel or at the door by the time I saw  
17 him.

18 Q. And you say that he was trying to open the  
19 passenger door; is that right?

20 A. That's what it appeared from my vantage point, yes.

21 Q. And it was late at night?

22 A. It was. I mean, it was 11:20 something, but that's  
23 a well-lit intersection.

24 Q. It was late at night?

25 A. 11:20, yes, ma'am.



1 Q. And you thought it was a carjacking is what you  
2 told Pierce County, correct?

3 A. That's not what I said.

4 Q. You thought it could be a carjacking, correct?

5 A. You want me to read the statement?

6 Q. Yes, you want to take a look?

7 A. Can you tell me which page, please?

8 Q. Yes. Page 7 to 8, starting at line 21 on page 7.

9 A. Line what now?

10 Q. Page 7.

11 A. What line?

12 Q. Line 21. You said, "So at this point, I didn't  
13 know what we were viewing. I didn't know if this was a  
14 domestic violence thing. Maybe this guy got --"

15 MR. AUSSERER: I'm going to object. This is  
16 improper impeachment. Have him refresh his memory like he  
17 asked.

18 THE COURT: Well, I haven't heard anything about a  
19 carjacking yet. You asked him, didn't you tell them that it  
20 was a carjacking? And he says, I don't think so. Let's  
21 read the statement. So seems to me he's inviting Ms. Eakes  
22 to read the statement.

23 BY MS. EAKES:

24 Q. And you said, "Maybe this guy got kicked out of a  
25 car. Maybe he's trying to car jack it," correct?

1           A.     "I don't know." Yeah, it says it right there.

2           Q.     You said after that, "I don't know." But you said  
3 it could be a carjacking, correct?

4           A.     Your question to me, ma'am, was, "you thought you  
5 were viewing a carjacking." That's much different -- if I  
6 knew it was going to be a carjacking, that's going to be a  
7 much different situation. But I was trying to explain the  
8 mental process I was going through and things I was checking  
9 off in my mind.

10          Q.     All right. And just going back to this issue of  
11 Officer Burbank purportedly clearing the call, in fact, you  
12 were asked to describe what happened, correct?

13          A.     Yes.

14          Q.     And you described that you were travelling  
15 westbound on 96th, correct?

16          A.     Let me follow along with you. Where are you right  
17 now?

18          Q.     On page 7.

19                 THE COURT: Well, let me just --

20                 MR. AUSSERER: This is improper impeachment.

21                 THE COURT: It isn't.

22                 If you're going to ask him what happened, ask him  
23 what happened. If there's an inconsistency with his  
24 statement, then fine. But this is not a quiz about what he  
25 exactly he told the officers a couple days later.

1 MS. EAKES: Understood, Your Honor. I asked him  
2 about whether or not --

3 BY MS. EAKES:

4 Q. It's your testimony that you came to the light and  
5 Officer Burbank was clearing the prior call, correct?

6 MR. PURTZER: Your Honor, that's been asked and  
7 answered multiple times.

8 THE COURT: I think Ms. Eakes is trying to regain  
9 her bearings, but I'll allow her to ask the question.

10 BY MS. EAKES:

11 Q. Is that right?

12 A. He was still typing on the computer.

13 Q. And when you were giving your statement on March  
14 9th to the Sheriff's office, you didn't mention that,  
15 correct?

16 A. I think that's the same point you were going over,  
17 yes, ma'am.

18 Q. And in fact, you described it as, "So once we came  
19 to the stoplight, I stopped facing westbound. I looked over  
20 and there was some sort of disturbance happening. There was  
21 a black male in the middle of the intersection." Correct?

22 THE COURT: We're just going to read this thing  
23 again? I thought we already went through this.

24 MS. EAKES: I just did.

25 THE COURT: No. No. No.

1                   We're going to have our recess at this time,  
2 ladies and gentlemen. Please do not discuss the case.

3                   (Jury excused.)

4                   THE COURT: Couple of things here. I don't know  
5 if the improper impeachment issue applies here where you're  
6 talking about a statement by a party. A statement by the  
7 party itself is evidence. It's already been played and  
8 listened to by the jury and they've had this statement that  
9 they read along with.

10                  My concern is that you're simply reading the  
11 statement back to him and saying, this is what happened,  
12 this is what happened, this is what happened. That's not --  
13 they've already heard the testimony. They already heard the  
14 recording.

15                  If you want to ask him what his recollection is  
16 about stuff, that's fine. And if he says something  
17 different from that, that'd be fine too. And then maybe you  
18 can impeach him. But just to read it to him all over again,  
19 which it's already been played and read to the jury, what's  
20 the point of that?

21                  MS. EAKES: Well, Your Honor, maybe I was doing it  
22 ineffectively, but I thought I was impeaching him with  
23 respect to his prior statements.

24                  THE COURT: Well, you were reading him his prior  
25 statement. How are you impeaching him about it?

1 MS. EAKES: Because he had previously said  
2 something different, Your Honor.

3 THE COURT: Well, I think he's explained at least  
4 some of that that you seem to be going back over about the  
5 entry into the computer and why it isn't in the statement,  
6 which is not inconsistent with the statement. It is just  
7 omitted from the statement and he's explained why that might  
8 be.

9 So I don't know if that's really impeachment  
10 either. Although if it's an important omission, I mean,  
11 that could be impeachment, sure.

12 But we are going over, it sounds like, line by  
13 line over this statement, which really just becomes a mental  
14 test about what was in the statement. If you wanted him to  
15 memorize it and read it back, I suppose that would be one  
16 thing, but it's already been played to the jury, it's  
17 already been read to the jury. To go over it again in this  
18 fashion is just simply reintroducing your evidence again.

19 If you want to ask him questions, fine, if they're  
20 related to the event obviously, and we'll see what his  
21 answers are and then we'll see if there's reason to bring  
22 this statement back up again. Otherwise, we're just  
23 repeating the same stuff over and over again.

24 So that strikes me as cumulative and not genuine  
25 cross-examination. So that's kind of where I'm coming from.

1 I can sense it's a statement by a party opponent. I can see  
2 where the substance comes in. That's why it's already come  
3 in.

4 MS. EAKES: Correct.

5 THE COURT: So it's not really an impeachment  
6 issue. We are just bounding this same rug twice.

7 MR. AUSSERER: You use impeachment because she's  
8 trying to point out something different than what he's  
9 testified to.

10 THE COURT: I understand that. And if she's using  
11 it for impeachment, that would be one thing. She isn't  
12 using it for impeachment. She's using it to read it all  
13 over again.

14 MR. AUSSERER: Understood. But I'm attempting to  
15 avoid speaking objections. My issue is when I object,  
16 Ms. Eakes just keeps on going as if she doesn't hear us.

17 THE COURT: That's the reason why I kind of  
18 stopped. I thought we made a ruling. I thought it was  
19 understood, and we went right back to it immediately. And  
20 so I thought maybe it'd be useful to have this moment to  
21 sort of see where everybody's at and to be sure Ms. Eakes  
22 understands what the nature of the ruling is and why.

23 MS. EAKES: Your Honor, can I ask, the Court  
24 sustained the objection to the documents that we received  
25 from the Tacoma Police Department showing what his training

1 is. Obviously, we can have someone here from Tacoma to  
2 testify about what the training documents are, but I'm not  
3 certain why the Court would sustain an objection to a  
4 document we provided in discovery, he's had it, and it  
5 clearly relates to his time. We asked for it from Tacoma.

6 THE COURT: Well, it seems to me a couple things  
7 that are potentially problems, since you asked me.

8 He took a class. For instance, you were talking  
9 about a first aid class. He called it a CPR class. The  
10 document says first aid/CPR.

11 So you kind of were talking past each other  
12 because he didn't see it as a first aid class, he saw it as  
13 a CPR class. If you read the whole description, there might  
14 have been some understanding.

15 But the problem is, if I talk to you about being a  
16 lawyer, you took an evidence class? Yeah, I took an  
17 evidence class. You know everything that's in there?  
18 Everything? Probably not. So saying the title of a  
19 particular class doesn't tell me much about anything.

20 MS. EAKES: Well, I had the documents that showed  
21 that they were talking about things like breathing problems,  
22 but the Court cut me off because you wouldn't let me quiz  
23 him about it. He knows what those things are, Your Honor.  
24 It goes directly to his credibility and the fact that he's  
25 had significant training about these topics is significant.

1 THE COURT: He said he's never seen this  
2 particular document.

3 MS. EAKES: It doesn't matter whether he saw that  
4 particular document. If he's had training --

5 THE COURT: Well, you're saying he's familiar with  
6 this training?

7 MS. EAKES: He's familiar with what his training  
8 was, Your Honor.

9 THE COURT: You're going to tell me -- there's a  
10 variety of training.

11 This is five and a half pages, a bunch of stuff  
12 online. This is just one page. This is another page.  
13 There's the back side of it. This tells me what? This is a  
14 computer and technology class.

15 MS. EAKES: I wasn't asking him about that. I  
16 asked him about deescalation. I asked him about mental  
17 health, and I asked him about the training that's relevant  
18 to this case.

19 THE COURT: Did he deny taking deescalation  
20 classes?

21 MS. EAKES: But I'm entitled to ask him about the  
22 number of hours and the Court sustained the objection with  
23 respect to the number of hours that are on there. That's  
24 significant.

25 THE COURT: This is a summary report citing the



1 individual classes. We don't know in the deescalation  
2 training, I don't know what that consisted of. This is a  
3 one-line deal. And you asked about CIT, I assume you're  
4 talking about the crisis intervention team.

5 MS. EAKES: Crisis intervention training.

6 THE COURT: Well, it says "team." There's another  
7 one here, "critical thinking."

8 MS. EAKES: To understand, the Court's not saying  
9 that the document is not authentic, but you don't think it's  
10 fair cross-examination because we can't both put on what his  
11 training is and I can't ask him about the document that  
12 shows that he had training?

13 THE COURT: You asked him about his training. Was  
14 there anything where he denied it? He can tell you what the  
15 training is. I don't know how many hours in a -- how many  
16 hours did you have in evidence class? Right? Plenty.

17 MS. EAKES: I'm not on trial, Your Honor. Sorry.  
18 I went to school in 1989. So I'm sorry, I don't remember  
19 how many hours I had. But I think it's a fair question to  
20 somebody.

21 THE COURT: Was it a course you took for an hour a  
22 day for four or five days a week for a semester or even for  
23 a year?

24 But my point is, the 2.25 hours on this doesn't  
25 tell me much about anything about a particular line. And

1 it's not a point about something that is particularly in  
2 dispute, is it?

3 MS. EAKES: Well, I disagree, but again, this is  
4 cross-examination, Your Honor. Not the Court deciding --

5 THE COURT: What's in dispute has to do with  
6 what's relevant and what's cumulative and what's a waste of  
7 time.

8 And if he denied having any training like that at  
9 all, then maybe we'd be there. But at the moment, does he a  
10 have a responsibility to care for any of his suspects, he  
11 says yes.

12 MS. EAKES: He denied that he knows that he's been  
13 trained not to put weight on the back of someone who is in  
14 the prone position.

15 THE COURT: Does that document say anywhere on  
16 there that he was trained on that?

17 MS. EAKES: No, but I can call Russ Hicks to  
18 testify about that. That's what Russ Hicks will testify  
19 about, and that he was trained that the prone position was a  
20 transitory position.

21 THE COURT: Well, anyway, you got my ruling.

22 MR. CONRAD: Judge, can I address one other issue?

23 THE COURT: Go ahead, Mr. Conrad.

24 MR. CONRAD: So one of my concerns is 18-A as well  
25 as the transcripts have been admitted for illustrative

1 purposes only. There's an instruction that accompanies  
2 those exhibits. I think we've gotten a little bit loose  
3 with use of illustrative exhibits as substantive evidence  
4 now.

5 I mean, the oral statement or the recording is  
6 what the substantive evidence is. That's what the  
7 instruction says. And I think the State's using not only  
8 18-A as substantive evidence, but as well, the statements of  
9 the officers. It is not the best evidence.

10 THE COURT: I think what they're doing is fine and  
11 it's practical. Do you want them to queue you up the  
12 recording and play it back each time?

13 MR. CONRAD: No, but I think at the very least  
14 there needs to be some instruction as to the illustrative  
15 nature of 18-A.

16 THE COURT: They've already received that  
17 instruction.

18 MR. CONRAD: Okay. Understood.

19 THE COURT: All right. We're at recess.

20 (Proceedings at recess.)

21 THE COURT: Welcome back, everybody. Please be  
22 seated. Are we ready for the jury? I'll take that as a  
23 yes.

24 (Jury enters courtroom.)

25 THE COURT: Welcome back, everybody. Please be

1 seated.

2 Ms. Eakes, continue when you're ready.

3 MS. EAKES: Thank you.

4 BY MS. EAKES:

5 Q. Mr. Collins, you were talking about when you  
6 initially saw Mr. Ellis he was in the intersection, correct?

7 A. Yes, ma'am.

8 Q. And you thought it could be a domestic violence?

9 A. I didn't know what it could be, but --

10 Q. You told the Pierce County Sheriff's Office that  
11 you thought it could be a domestic violence, correct?

12 A. Again, same answer, ma'am. I think I listed a few  
13 things. My first instance was I didn't know what I was  
14 viewing, and then I rambled off some things that I thought  
15 could have been applicable.

16 Q. And the things you rambled off were a carjacking,  
17 correct?

18 A. That was one of them.

19 Q. Or domestic violence, correct?

20 A. Yes.

21 Q. Or that he had been put out of the car, correct?

22 A. Correct.

23 Q. And you would agree that you had no idea at that  
24 point whether or not Mr. Ellis was armed, correct?

25 A. I did not.

1 Q. And in fact, he had on a bulky sweatshirt?

2 A. He did.

3 Q. And you didn't radio in at that point that you were  
4 having contact with somebody, did you?

5 A. No.

6 Q. And you didn't turn on your emergency lights?

7 A. No, there was no reason to.

8 Q. And you didn't get out of your car?

9 A. No, ma'am.

10 Q. And you said "there was no reason to." So even  
11 though you saw something that you thought could be a domestic  
12 violence or carjacking, you didn't think there was any reason  
13 to turn on your emergency lights?

14 MR. PURTZER: Object to the form of the question.  
15 She is taking it completely out of context to what he had  
16 said. There's no relevance.

17 THE COURT: I don't know where this is going. He  
18 said the car drove away.

19 MS. EAKES: I'll ask another question.

20 THE COURT: So he didn't know what had happened.  
21 That's what he said, I'm not sure what was happening.

22 BY MS. EAKES:

23 Q. Well, you knew that Mr. Ellis was still out in the  
24 middle of an intersection, correct?

25 A. After the car left, correct.

1 Q. Where there were cars, correct?

2 A. I mean, I assume -- there wasn't a car at the time,  
3 but that's where the cars would go. That's why I called him  
4 out of the intersection.

5 Q. There were other cars on 96th, correct?

6 A. Not at the time.

7 Q. And there were other cars that could be turning on  
8 Ainsworth, correct?

9 A. That's definitely possible, yes, ma'am.

10 Q. And did you realize that Mr. Ellis could be in  
11 danger of getting hit by a car?

12 A. Yes.

13 Q. And you didn't turn on your emergency lights?

14 A. I'm not sure how that would stop him from getting  
15 hit by a car, ma'am.

16 Q. So you didn't turn on the emergency lights because  
17 it wouldn't help him getting hit by a car?

18 A. No. So you have to be careful when you're an  
19 officer when you turn your emergency lights on and the way  
20 you seize people. So where we're at right now with this --  
21 with Manny, he's in the street, there's this car turning, so  
22 we have a possible crime. So this is kind of where you start  
23 to get what they call a Terry stop. But then once the car  
24 takes off, that's our potential victim. They're gone. They  
25 don't want our help. They're gone. So now that crime is

1 over.

2 Now, we have a Terry stop, which means we can talk  
3 to them and kind of investigate, there's something  
4 suspicious going on.

5 Again, like I stated before to Mr. Ausserer, if he  
6 had ran off at that time, we would have said, "Have a nice  
7 night," because it wasn't enough.

8 So if I was to turn my lights off, I'm essentially  
9 seizing that man and that would be improper use of force.

10 Q. Well, turning on your lights might also protect him  
11 from getting hit by a car in the intersection, correct?

12 A. I'm not sure how that would happen.

13 Q. You don't think that turning on your lights would  
14 help him if another car were to come?

15 MR. PURTZER: Objection to the question.

16 THE COURT: I'll sustain the objection.

17 BY MS. EAKES:

18 Q. Now, you're trained not to call a civilian over to  
19 your car, particularly if they're acting aggressively, right?

20 A. I don't think that's ever specific. I mean that's  
21 common sense, but he wasn't aggressive at the time I called  
22 him over.

23 Q. Well, you're trained to get out of your car before  
24 you make contact with civilians, aren't you?

25 A. No.

1 Q. You're not trained on that?

2 A. Every situation is different. There's no real hard  
3 absolutes because everything is kind of evolving and  
4 different in the streets, so you kind of deal with things on  
5 a case-by-case basis.

6 Q. Are you generally trained that it's dangerous to  
7 sit in your car and have contact with unknown subjects?

8 A. I mean, I think that's probably good practice, yes.

9 Q. And you're trained on that, correct?

10 A. I'm not sure I was ever trained on that, that I was  
11 specifically trained, but I think that's probably, like I  
12 said, best practice for police, yes.

13 Q. Because you could be a sitting duck in your car,  
14 correct?

15 A. You can be.

16 Q. And you can't defend yourself from somebody if they  
17 walk up to your car door and they have a gun and you're  
18 sitting in the car, correct?

19 A. Correct.

20 Q. And that's why officers get out of their car before  
21 they have contact with civilians, correct?

22 A. Again, it's situationally dependent, so you're  
23 using a very kind of vague open -- I mean, sometimes officers  
24 get out of the car. Sometimes officers stay in their car.  
25 It's literally different every situation.



1 Q. And sometimes you get out of your car when you're  
2 having contact with an unknown subject, correct?

3 A. Yes, ma'am.

4 Q. And it's your testimony that even though you didn't  
5 know Mr. Ellis, that you stayed in your car; is that right?

6 A. That's correct.

7 Q. And you called him over to your window, correct?

8 A. Yes.

9 Q. And you didn't know if he had a weapon?

10 A. I did not.

11 Q. And you didn't recognize him?

12 A. I did not.

13 Q. And you never interacted with him before?

14 A. No, I did not.

15 Q. You didn't know anything at all about his personal  
16 history, correct?

17 A. I knew nothing.

18 Q. In fact, you had no idea if he lived in the  
19 neighborhood or if he was just passing through, right?

20 A. That's correct, ma'am.

21 Q. And you didn't know whether or not he was on drugs?

22 A. Well, I had a strong suspicion once he got to my  
23 window and I observed some things that was definitely not  
24 what you normally observe someone like.

25 Q. But before you called him over to your window, you

1 had no idea if he was on drugs, correct?

2 A. No, I couldn't know that from that distance.

3 Q. But it's your testimony that you rolled down your  
4 window and called him over, said, "Hey, come over here to my  
5 car," correct?

6 A. That's correct.

7 Q. Correct?

8 A. Yes, ma'am.

9 Q. And he responded, right?

10 A. He did.

11 Q. So obviously he followed your command, correct?

12 A. Yes.

13 Q. And he came straight over to the window; is that  
14 right?

15 A. He did.

16 Q. And it's your testimony that he said something to  
17 the effect of "I've got warrants"; is that right?

18 A. That's right.

19 Q. And you've become aware that Mr. Ellis didn't  
20 actually have any warrants, correct?

21 A. It was my understanding he was pending a robbery 2  
22 day in court, so I think maybe he thought that that was  
23 happening, but I don't know if he had any active warrants. I  
24 think he did not.

25 Q. My question is, he did not have any active

1 warrants, correct?

2 A. I don't think it was active at the time.

3 Q. And in the terms of your comment about he's pending  
4 a robbery 2, you learned about that in the course of this  
5 case, correct?

6 A. That is correct.

7 Q. You did not know that on that night?

8 A. I did not.

9 Q. So it's your testimony that Mr. Ellis said, "I have  
10 warrants," even though he didn't have a warrant, correct?

11 A. Yes, I guess that is correct.

12 Q. And you said that he came up really close to the  
13 car, and it sounds like it was sufficient to concern you,  
14 correct?

15 A. He was definitely on it.

16 Q. And you still didn't radio in?

17 A. No, ma'am, I still didn't know what he had at that  
18 point.

19 Q. And you still didn't flip on your lights?

20 A. I actually don't remember when I turned the ambers  
21 on. It might have been right when I contacted him. But we  
22 kind of keep our hand on the control for the car, and it's  
23 something you just kind of start doing second nature. So I  
24 don't even recall turning the ambers on, but at some point I  
25 flipped the switch to amber. So whether that was right when

1 I called him or right when he came to the window, I'm not  
2 sure of the exact moment.

3 Q. But you didn't get out of the car, even though you  
4 were concerned about him coming up to the window so closely,  
5 correct?

6 A. That's correct.

7 Q. And you said that at that point you said to  
8 Mr. Ellis, "Go sit over on the curb," correct, or something  
9 to that effect?

10 A. "The sidewalk," I think I said.

11 Q. And Mr. Ellis never actually went all the way over  
12 to the sidewalk, did he?

13 A. No, ma'am.

14 Q. And it's your testimony, that instead, he started  
15 walking around the car, correct?

16 A. Correct.

17 Q. And I think you said on direct this morning that as  
18 he was at the hood of the car, you saw him fixating on your  
19 partner, Officer Burbank, correct?

20 A. Yes, ma'am.

21 Q. But even at that point, you didn't call in,  
22 correct?

23 A. Correct.

24 Q. And in fact, you can call radio and just say, "96th  
25 and Ainsworth with unknown subject," correct?

1           A.     Well, yeah, I mean in hindsight, there's a million  
2 things I could have said. But like I was explaining to  
3 Mr. Ausserer, it's kind of the mental process, because I want  
4 to be very accurate, because again, I didn't know if I was  
5 witnessing a crime at first. And then he comes to me and I  
6 don't know, you know, if this is a medical thing, does he  
7 actually have warrants, so I'm processing that. And then he  
8 turns it into, okay, now he's fixating on my partner and this  
9 is about to get violent. So I'm just trying to process this  
10 in my brain and call it out clearly because I want my fellow  
11 squad mates to also know do we need help or are we good.

12           Q.     Well, you're trained that your radio is a lifeline,  
13 correct?

14           A.     I think so.

15           Q.     And that that's how dispatch or your fellow  
16 officers know where you are, correct?

17           A.     Absolutely.

18           Q.     And that's why you radio in your locations,  
19 correct?

20           A.     Yes.

21           Q.     And you didn't radio in "96th and Ainsworth," did  
22 you?

23           A.     I did not, unfortunately.

24           Q.     Even though you then saw Mr. Ellis, what you said,  
25 fixating on your partner, correct?

1 A. Yes.

2 Q. And you still didn't get out of the car at that  
3 point?

4 A. No, ma'am.

5 Q. And you still didn't flip on your lights?

6 A. I never put the blue and reds on. The ambers were  
7 on for the time.

8 Q. And you said that he then walked over to Officer  
9 Burbank, correct?

10 A. Correct.

11 Q. And you saw Officer Burbank roll down his window?

12 A. Yes.

13 Q. And you heard a conversation between Officer  
14 Burbank and Mr. Ellis, correct?

15 A. Yes.

16 Q. And in your statement to Pierce County Sheriff's  
17 Office, you said that Mr. Ellis said something about  
18 threatening to punch Officer Burbank in the face, correct?

19 A. That is correct.

20 Q. And even at that point, you didn't radio in,  
21 correct?

22 A. Well, pretty much the instant he said that, he  
23 started punching the window, so it all kind of happened like  
24 that.

25 Q. Well, first Officer Burbank had to roll up his

1 window, correct?

2 A. He started -- I think he started to roll up his  
3 window, but it was like, I mean, everything happened within  
4 milliseconds, we're talking.

5 Q. And the statement that you gave to Pierce County  
6 Sheriff's Office, you said that Officer Burbank rolled up his  
7 window and then Mr. Ellis started punching the window,  
8 correct?

9 A. Again, I think he started to roll up the window. I  
10 don't think it ever got all the way up.

11 Q. How far down was the window?

12 A. I think it was maybe, you know, half way.

13 Q. And it's your testimony that even at the threat of  
14 a punch, you didn't get out of the car?

15 A. No. No. My testimony is, as soon as he started to  
16 punch the window, I immediately sprinted out of the side of  
17 the car and tried to approach him.

18 Q. But you didn't call it in?

19 A. No.

20 Q. Is that right?

21 A. That's right.

22 Q. All right. And you said that after -- how many  
23 times did Mr. Ellis punch the car window?

24 A. I'm not sure. I'm not sure. As soon as the first  
25 strike happened, I was out of the car running.

1 Q. Do you know how hard he punched the window?

2 A. I mean, what do you mean "how hard"?

3 Q. Did you see how hard he punched the window?

4 A. Like I said, as soon as he hit the first one, it  
5 looked like a full punch to me, very hard and as soon as the  
6 first one hit, it was hard and I was out and running. I  
7 wasn't watching him.

8 Q. And you say you got out of the car and you ran  
9 around to the passenger side; is that correct?

10 A. Correct.

11 Q. To the front of the passenger side; is that right?

12 A. I didn't quite make it all the way to the passenger  
13 side, but I was headed that way, yes, ma'am.

14 Q. Now, according to you, at that point, you say that  
15 Mr. Ellis turned around and basically picked you up and threw  
16 you; is that right?

17 A. That's correct.

18 Q. And you never said anything in your statement and  
19 you didn't see Officer Burbank door check Mr. Ellis?

20 A. I did not.

21 Q. So you never saw Mr. Ellis get hit by Officer  
22 Burbank's door?

23 A. I did not.

24 Q. And is it your testimony you never saw Mr. Ellis  
25 stumble forward or fall forward onto the ground?



1           A.     He didn't fall forward on the ground at that point.

2           Q.     So in terms of what you saw, Mr. Ellis never had  
3 that interaction of being door checked with Officer Burbank,  
4 correct?

5           A.     He might have been, but he wasn't on the ground is  
6 what I'm saying.

7           Q.     But you didn't see it?

8           A.     I didn't see the door check, no, ma'am.

9           Q.     And you never said anything about it to Pierce  
10 County, correct?

11          A.     I didn't see.

12                 MR. PURTZER: I object. He said he didn't see it.

13                 THE COURT: I'll permit it.

14 BY MS. EAKES:

15          Q.     Did you say it to Pierce County Sheriff's Office?

16          A.     I didn't see it, ma'am.

17          Q.     So you didn't say it either?

18          A.     Because I did not see it, no.

19          Q.     And you say that Mr. Ellis picked you up all the  
20 way off the ground; is that right?

21          A.     Kind of like a shove backwards and I left my feet  
22 and went back on my back into the middle of the intersection.

23          Q.     And you said that you literally were off your feet,  
24 correct?

25          A.     That is correct.

1 Q. And you would agree that if someone was there  
2 watching, they would have seen that, correct?

3 A. Yes, I assume they would.

4 Q. Would have been obvious to anybody who was  
5 watching?

6 A. If they were there, yes.

7 Q. And you said in your statement that that was when  
8 you realized that Mr. Ellis had "superhuman strength"; is  
9 that right?

10 A. That would qualify, yes, ma'am.

11 Q. And is that the term that you used "superhuman  
12 strength"?

13 A. I think it was.

14 Q. And that's a term that you learned in your excited  
15 delirium training, correct?

16 A. I mean, I probably learned that as a kid, but maybe  
17 it was in the excited delirium training.

18 Q. Well, isn't that one of the things that you're  
19 trained as a police officer that someone might have excited  
20 delirium if they have superhuman strength?

21 A. It probably says "extreme strength" or "abnormal  
22 strength." I don't know the direct wording of what it says  
23 in the training.

24 Q. But you've trained that to say when someone has  
25 excited delirium, that they might have extreme strength as

1       superhuman strength?

2           A.     Yes, ma'am.  Yes, ma'am.

3           Q.     Now, according to your statement, you said that --  
4       or your testimony -- at that point you said that you jumped  
5       onto Mr. Ellis, is that right, after you got back up?

6           A.     So, I believe in my statement it's described as --  
7       I described it as a melee, because when I hit, I rolled  
8       backwards and I immediately charged forward again, and then  
9       it was just really violent, you know, a lot going on up and  
10      down.  And it wasn't very clear until -- the next clear point  
11      for me was when I mounted him and started to strike him,  
12      which is where I start picking up right where McDowell's  
13      video starts.

14          Q.     And your statement to Pierce County Sheriff's  
15      Office, you never said anything about after he threw you into  
16      the intersection that you rolled backwards, did you?

17          A.     I'm not sure if it was asked, but...

18          Q.     Did you say it?

19          A.     Was it asked?

20          Q.     Did you say it?  You were describing the events,  
21      correct?

22          A.     I would only answer the questions they asked,  
23      ma'am, so if it wasn't asked, then I probably didn't answer  
24      it.

25          Q.     Well, isn't most of your statement just a

1 narrative? They didn't really ask you any questions?

2 A. They did, yeah, they just let me talk.

3 Q. Right. And you didn't say anything about having  
4 rolled backwards, did you?

5 A. I mean, I definitely didn't just lay there.

6 Q. And you didn't say anything about having charged  
7 forward at Mr. Ellis, did you?

8 A. No. Maybe I said "close the distance" or I don't  
9 know what wording I used.

10 Q. Now, you said that Ms. McDowell's video picked up  
11 when you were mounted on Mr. Ellis; is that right?

12 A. Well, it was actually when he's chasing Officer  
13 Burbank kind of toward the intersection and they're fighting  
14 in the intersection over there.

15 Q. Well, all right. Well, let's look at Exhibit 440,  
16 please.

17 This is the video of Ms. McDowell's that you're  
18 talking about, correct?

19 A. It is, ma'am.

20 Q. And this is the stabilized and magnified one,  
21 correct?

22 A. If you say so.

23 Q. All right. Let's go ahead and play it.

24 (Video played.)

25 MS. EAKES: You can stop it there.

1 BY MS. EAKES:

2 Q. When it first opens, you would agree that Officer  
3 Burbank is picking up Mr. Ellis and slamming him to the  
4 ground?

5 A. No, ma'am, I would not agree to that.

6 Q. Let's go to exhibit 439, please, which is the PDF.  
7 And you've heard the testimony of Grant Fredericks about the  
8 PDFs, right?

9 A. I heard a lot of things from him, yes, ma'am.

10 MS. EAKES: Sorry, I meant 441.

11 THE WITNESS: Ms. Eakes, if you're willing to  
12 provide me with Officer Burbank's testimony, I'll be able to  
13 walk you through this video.

14 BY MS. EAKES:

15 Q. I'll just ask you some questions about this. I'm  
16 not asking you about Officer Burbank's testimony or his  
17 statement that he gave.

18 A. All right.

19 Q. So taking a look at 440 -- and why don't we just  
20 kind of run through it.

21 THE COURT: This is 441.

22 BY MS. EAKES:

23 Q. 441. Excuse me. This is the PDF.

24 (Video playing.)

25 And do you see Mr. Ellis's leg there going up?

1           A.     I do.

2           Q.     And do you see Officer Burbank's arm underneath his  
3 leg?

4           A.     It looks like it, yes, ma'am.

5           Q.     Okay. Keep going.

6                     And you see Mr. Ellis being slammed down to the  
7 ground?

8           A.     Oh, no. I see Officer Burbank's arm going like  
9 this, and that's why he flies back onto his back on the front  
10 side of the vehicle, which is what Ms. Mallang described.

11          Q.     All right. Let's go forward.

12                     And you see Mr. Ellis on the ground, correct?

13          A.     Yep. And he kicks Officer Burbank, and then  
14 Officer Burbank falls to his back in front of the patrol  
15 vehicle and that's the point I mount.

16          Q.     And you can see Officer Burbank's hand still  
17 standing up there, correct? Do you see his hand there with  
18 the little yellow arrow?

19          A.     I'm not sure what that is, but I see the yellow  
20 arrow for sure.

21          Q.     Do you recall the testimony of Grant Fredericks  
22 tracking of Officer Burbank's hands?

23          A.     Yes, ma'am, I remember him.

24          Q.     And he testified that that was Officer Burbank's  
25 hand. You would agree Officer Burbank was not on the ground?

1 MR. PURTZER: Object to the form of the question.  
2 She's testifying.

3 THE COURT: Well, you're looking at the video, and  
4 you shouldn't compare his testimony to another witness like  
5 that. But you know, if you play that back, you can tell  
6 it's the hand. I don't think there's anything complicated  
7 about it.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: The question is, did Burbank fall on  
10 the ground? Is that the question?

11 BY MS. EAKES:

12 Q. Yeah, you would agree in this part of the video  
13 that Officer Burbank is not on the ground, correct?

14 A. Well, you can't see his body.

15 Q. Can you play it forward and then back?

16 (Video playing.)

17 A. In his testimony -- see, he disappears, in his  
18 testimony, he said he went to the ground --

19 MS. EAKES: Your Honor, I'm going to object that  
20 this is non-responsive.

21 MR. PURTZER: She asked the question --

22 MS. EAKES: He's talking about Officer Burbank's  
23 statements as responsive.

24 MR. PURTZER: She asked the question and she did  
25 not like the answer.

1 THE COURT: Yes, it is, under the circumstances of  
2 how you asked this question.

3 BY MS. EAKES:

4 Q. That's fine. Why don't you go ahead and tell us  
5 what Officer Burbank's said because we can listen to his  
6 testimony.

7 MR. PURTZER: Object.

8 MR. CONRAD: I'm going to object.

9 MR. AUSSERER: Object.

10 MR. CONRAD: And I would move to strike the  
11 commentary.

12 THE COURT: Counsel, confine your questions to  
13 questions and no other extraneous remarks.

14 BY MS. EAKES:

15 Q. I'll go back and ask you.

16 Can you play it back, please.

17 (Video playing.)

18 You can see Officer Burbank standing up, correct?

19 A. Yes, ma'am.

20 Q. And you see him taking Mr. Ellis to the ground,  
21 correct?

22 A. I'm not sure how --

23 Q. Stop there.

24 A. I see this with my eyes and I understand what  
25 you're describing but that is not what's happening. He's



1 just like his -- the reason I said to look at his statement  
2 is because I don't know what he's seeing, but when I read his  
3 statement for the first time in court, he describes this  
4 perfectly in his statement, and what he says is, they collide  
5 and they're twisting and then he goes to the ground. And you  
6 can see in this video his arm go like this and then all the  
7 sudden -- are you saying he just retreats back to the front  
8 of the car? He says he's kicked back, which is exactly what  
9 I see on this video.

10 Q. Let's go forward.

11 (Video playing.)

12 Let's stop right there. You would agree that  
13 Officer Burbank's leg is right here, he's standing up,  
14 correct?

15 A. Point that out again, please.

16 Q. Yes, Officer Burbank's leg is right here and he's  
17 standing up, correct?

18 A. Yes.

19 Q. And Mr. Ellis is lying on the ground, correct?

20 A. Correct.

21 Q. On his back or on the back and side, correct?

22 A. Correct.

23 MS. EAKES: Okay. And why don't you go back a  
24 little bit and then go forward.

25 (Video playing.)

1 THE WITNESS: Let me get a pointer really quick.

2 BY MS. EAKES:

3 Q. And you would agree -- let me ask you the question.  
4 Officer Burbank is still standing up, correct?

5 A. He is.

6 Q. And Mr. Ellis has a foot -- his feet are off the  
7 ground, correct?

8 A. There's one foot on the ground and there's one foot  
9 that looks like it's controlled by Officer Burbank's arm.

10 Q. And Officer Burbank's arm is underneath Mr. Ellis's  
11 leg, correct?

12 A. It would appear so.

13 Q. And he's lifting him up in a takedown move,  
14 correct?

15 A. That's not -- if you continue to play it like in a  
16 freeze-frame, I guess you could get to that. But if you play  
17 the video and pause it for a second, you'll see his upper  
18 body twists as he's getting thrown that way. So if you want  
19 to do that, you can play it and pause it.

20 Q. Play it forward?

21 (Video playing.)

22 A. Pause it. Okay, you can see his hand is moving  
23 this way, and now he's getting thrown and then you can you  
24 can see Mr. Ellis kick him and he appears off the screen.

25 Q. Let's go forward then.

1 (Video playing.)

2 A. Goes back.

3 Q. And you see that Mr. Ellis is on the ground,  
4 correct?

5 A. He is.

6 Q. And Officer Burbank is still standing up, correct?

7 A. Yes, ma'am.

8 Q. All right. Now we see Officer Burbank then move  
9 out of the scene, correct?

10 A. Well, he doesn't move out, he gets kicked out.  
11 See, here's the feet and he extends his body. And is it -- I  
12 don't understand. Are you saying that he just ran to the  
13 front of the car?

14 Q. I'm asking you questions, Officer Collins.

15 A. I just don't understand.

16 Q. I know you want to argue about what's on the video.

17 MR. PURTZER: Objection, Your Honor.

18 MR. AUSSERER: Objection.

19 MR. CONRAD: Objection to the extraneous comments.

20 MS. EAKES: Well, Your Honor, I'm just asking him  
21 questions about it.

22 THE COURT: He's trying to describe that  
23 Mr. Burbank lost his balance and was thrown in that  
24 direction, and every time gets to that point you stop it.  
25 Stop interrupting his testimony and let him describe this

1 from beginning to the end, and then you can ask whatever  
2 questions you want and without future commentary.

3 BY MS. EAKES:

4 Q. Officer Collins, is Mr. Burbank standing up at that  
5 point?

6 A. Is that him there now? It looks like he's still  
7 standing.

8 Q. He's still standing, correct?

9 A. As far as I can tell, yes, ma'am.

10 Q. And as he goes out of this screen, he's still  
11 standing, correct?

12 A. I don't know.

13 Q. Well, would you agree that there's no -- you can't  
14 see anything on the video to suggest that Officer Burbank is  
15 lying on the ground?

16 A. That's true. I just see the car, ma'am.

17 Q. And you can't see Officer Burbank; is that right?

18 A. That's right.

19 Q. You can take your seat again.

20 Now, this is the point at which you come in and  
21 mount Mr. Ellis; is that right?

22 A. Yes, ma'am, that's correct.

23 Q. All right. And let's go back to Exhibit 440,  
24 please. And if you can play it forward.

25 (Video playing.)

1                   If you could back up just a little bit there.

2                   And that's the part you're talking about where  
3 Mr. Ellis is -- you're mounted on him and you're striking  
4 him, correct?

5           A.     Yes, ma'am.

6           Q.     And isn't it correct that you said that he was  
7 swinging wildly at you at that point, correct?

8           A.     Yes, and kind of, like, reaching up at me.

9           Q.     But he was swinging wildly, that's what you told  
10 Pierce County, correct?

11          A.     Yes, ma'am.

12          Q.     All right. Let's go back to 441, the PDF, please.  
13 And if you could play it forward, please. Would you agree  
14 that there's nothing in this video that shows Mr. Ellis  
15 swinging wildly at you?

16                   (Video playing.)

17          A.     Well, it's very hard to see what's going on. All I  
18 can see is the white of my hand as my arm goes up to strike  
19 him.

20          Q.     Let's go back to 440, and if you could just play it  
21 slowly, Corey, please.

22                   (Video playing.)

23                   You can't see Mr. Ellis swinging wildly at you,  
24 can you in that video?

25          A.     I mean, you can't see much of anything, no, ma'am.

1 Q. You would agree it doesn't show him swinging wildly  
2 at you, correct?

3 A. I would agree it doesn't show much of anything,  
4 like I said, ma'am.

5 Q. Now, you testified that Mr. Ellis -- or you said to  
6 Pierce County that nothing was affecting Mr. Ellis; is that  
7 correct, in terms of the punches to him?

8 A. Unfortunately, that is correct.

9 Q. And you can hear him on this video, and I don't  
10 know, there might be a better one, 443, is that right, in  
11 terms of the sound that Mr. Ellis is making when you're  
12 striking him?

13 A. Yes, ma'am.

14 Q. If we could play 443.

15 (Video playing.)

16 Let me stop you right there, first of all. 546.  
17 Okay. First of all, you told Pierce County that after  
18 Mr. Ellis said that he was going to punch Officer Burbank in  
19 the face, he never said anything else that you understood,  
20 right?

21 A. That's correct.

22 Q. And in fact, you said that he only made animal  
23 noises and that he was growling; is that correct?

24 A. That is correct.

25 Q. And let's listen at 546.

1 (Video played.)

2 Stop it there. Actually, I think it's Exhibit 440  
3 that's magnified and stabilized.

4 Do you hear Mr. Ellis responding when you're  
5 striking him?

6 A. In this I can.

7 Q. In that video?

8 A. In this video.

9 Q. And was that the animal noises that you were  
10 talking about that Mr. Ellis was making?

11 A. That's some of it, yes.

12 Q. Why don't we play that, then.

13 (Video playing.)

14 So Mr. Ellis crying out, that's what you call  
15 animal noises?

16 A. That sounds more like crying out in that video, so  
17 that must not have been the moment I was talking about.

18 Q. And you also say Mr. Ellis was growling; is that  
19 correct?

20 A. That is correct.

21 Q. Now, during the interview that you had with the  
22 Pierce County Sheriff's Office, you never said anything about  
23 another civilian Sara McDowell being at the scene, did you?

24 A. I didn't hear her, no, ma'am.

25 Q. So it's your testimony you never heard Ms. McDowell

1 when she was screaming?

2 A. That's correct, ma'am.

3 Q. And you heard it on the video, maybe we can play  
4 Exhibit 20.

5 (Video playing.)

6 Is it your testimony that you never heard  
7 Ms. McDowell say any of those things?

8 A. That is correct.

9 Q. And you never heard Mr. Lowery either?

10 A. No, ma'am.

11 Q. Now, in your statement to Pierce County, you  
12 described your reasoning with respect to why you thought you  
13 needed to use LVNR on Mr. Ellis; is that correct?

14 A. That is correct.

15 Q. And is it true that you told Pierce County that  
16 part of what you were concerned about is that you couldn't  
17 even see Officer Burbank at that time and so you weren't sure  
18 if he was unconscious; is that right?

19 A. That is true.

20 Q. And you felt like applying the LVNR was your only  
21 option to get him under control; is that right?

22 A. I thought it was the best option.

23 Q. All right. Let's take a look at Exhibit 440. I  
24 want to identify the point at which you say that you couldn't  
25 see Officer Burbank. So could you see Officer Burbank at



1 this time, in Exhibit 20?

2 A. Yeah, I think it's as soon as he gets kicked by  
3 Manny back in front of the car, from that point I didn't know  
4 where he was at that point until Manny started to stand up  
5 again and I'm getting behind him, so I'm in that period. So  
6 I didn't know what had happened there.

7 Q. So in Exhibit 220 -- or excuse me, in Exhibit 20,  
8 Ms. McDowell's first video, you could see Officer Burbank,  
9 correct?

10 A. Yes. So, from here.

11 Q. And let's take a look at Exhibit 438 then,  
12 Mr. Cowden's video. And you can stop it there.

13 (Video playing.)

14 Now, this is the point at which you were using the  
15 LVNR on Mr. Ellis, correct?

16 A. I wasn't using the LVNR. I was starting to  
17 position myself to get into it, yes, ma'am.

18 Q. And you can see, if you can just back up a little  
19 bit there, you're actually pulling him backwards with a hold  
20 around his neck, correct?

21 A. Yes, getting in position for the LVNR, yes, ma'am.

22 Q. And you would agree that Officer Burbank was right  
23 there in front of you at that point, correct?

24 A. I saw him once I had those taser lights in my eyes,  
25 yes, ma'am.

1 Q. So you did see him before you actually finished the  
2 LVNR, correct?

3 A. Just as I said on my statement, yes, ma'am.

4 Q. Let's go ahead and play it forward in slow, please.  
5 (Video playing.)

6 So Officer Burbank was right there at that point,  
7 correct?

8 A. When I saw him, yes.

9 Q. Once you were already in the position of the LVNR?

10 A. Once we started to fall on our sides and I saw the  
11 taser out, that's when I noticed Officer Burbank.

12 Q. Now, is it your testimony that Mr. Ellis did not  
13 lose consciousness as a result of the LVNR?

14 A. I mean, an LVNR was never placed on him, so that  
15 wouldn't work. But it was my feeling when I was waiting for  
16 the taser to take effect that the taser took appropriate  
17 effect, and that's why I didn't move to cuff him from that  
18 position.

19 Q. Let's go ahead and play that one forward again  
20 until we see Mr. Ellis drop his head down.

21 (Video playing.)

22 And you see Mr. Ellis, you still have your arm  
23 around his neck, correct?

24 A. Can you play it back, ma'am, the point you're  
25 asking me?

1 Q. Sure.

2 (Video played.)

3 A. So I'm cradling his head right there. My arm is not  
4 around his neck. You can see I'm kind of in front of his  
5 face.

6 Q. You still have your arm around Mr. Ellis's neck,  
7 correct?

8 A. Yes, ma'am. But as you can see, you see how he's  
9 facing us and I'm on top of him like this, I'm not getting  
10 this side of his neck that's facing me.

11 Q. Can you play just a little bit further back from  
12 before that, please.

13 (Video played.)

14 And you see at that point that Mr. Ellis drops  
15 down onto the ground, his head does, correct?

16 A. Yes, right when the taser application is finished.  
17 When the taser application kind of goes grey, that's right  
18 when I transition to cuffing, as I stated.

19 Q. And you would agree that Mr. Ellis was not moving  
20 at that point, correct?

21 A. He was not.

22 Q. And was he unconscious?

23 A. I'm not sure what he was. If he was exhausted, if  
24 the taser hurt and he was done, I don't know, but I wasn't  
25 waiting to figure it out.

1 Q. And he wasn't moving?

2 A. Not for that split second, no.

3 Q. And long enough for you be to be able to flip him  
4 over onto his stomach, correct?

5 A. Yes.

6 Q. And you never told Pierce County Sheriff's Office  
7 that you put your knee on Mr. Ellis's head, did you?

8 A. I didn't put my knee on his head.

9 Q. So it's your testimony that you never put your knee  
10 on his head or on his neck?

11 A. No, ma'am. So if -- now, when you play something  
12 and stop a still and he's fighting and I'm trying to maintain  
13 position on him, if my knee slips to his neck, that happens.  
14 But what we need to understand from combat is, that's an  
15 amateur move. That is what like a big brother does to a  
16 little brother trying to hurt him. There is nothing  
17 effective about that.

18 If you do that, the person has the entire leverage  
19 of their body and all they have to do is hit their knee off  
20 of your head and they're back in the fight. The only thing  
21 that makes sense is to pin the middle of their body or their  
22 hips, which is what I was trying to accomplish the whole  
23 time, but everything is not easy when someone's fighting and  
24 kicking.

25 Q. So you don't think that the video shows that you

1 have your knee on Mr. Ellis's head and on his neck?

2 A. I'm sure you could pause it at a point that looks  
3 like that, but that's not what I'm doing.

4 Q. And you said you never put your knee on his head or  
5 his neck?

6 A. Same answer, ma'am.

7 Q. Now, you also talked in your statement about the  
8 fact that Mr. Ellis was tased a second time, correct?

9 A. Yes.

10 Q. And that was after you had already put him over  
11 onto his stomach, correct?

12 A. So with taser application is, once the probes are  
13 in, the only person who's really going to know is effectively  
14 the guy holding the taser, because they can read -- they  
15 administer the taser. So all I can kind of go by is feel.  
16 So after the first one took effect and I move to cuffing,  
17 from that point I'm just on that arm until this is -- he's  
18 cuffed. So I'm not sure when Officer Burbank hit his taser  
19 button or not, but if that's what you're asking, the  
20 specifics, I do not know.

21 Q. Well, you did talk about him being hit with a  
22 second round from a taser, correct?

23 A. I know he was hit with at least two others.

24 Q. Right. And so you did feel or saw that there was a  
25 taser, a second taser application to Mr. Ellis, correct?

1           A.     I'm not sure I said I felt it, but I know -- like I  
2     said, I know there was more than one.

3           Q.     All right. Well, why don't you take a look at  
4     Exhibit 59-A, at page 11. And again, this is the statement  
5     that you gave to the Pierce County Sheriff's Office.

6           A.     What line are you looking at, Ms. Eakes?

7           Q.     Page 11 at line 11.

8           A.     Yeah, and it says, "I feel Shane give him another  
9     round from the taser."

10          Q.     So you did feel that there was another round from  
11     the taser correct?

12          A.     Yeah. "His body locks back up, we start to move  
13     eventually" yes.

14          Q.     And you said that his body locked up and you  
15     started to move in and you eventually got him into cuffs,  
16     correct?

17          A.     That is correct.

18          Q.     All right. If we could play 443 at the third taser  
19     application.

20                     (Video playing.)

21                     Is it your testimony that you don't recall that  
22     there was a third taser application?

23          A.     I mean, again, it's hard to say whether I got that  
24     from in this trial. Did I say it in here in the report, I  
25     don't know. But again, I'm focused only on cuffing, so

1 whether Officer Burbank is administering taser rounds, I'm  
2 not sure, but you can tell that from his download 23:22:59.

3 Q. From the download from his taser?

4 A. Yeah, right here.

5 Q. So what you said in your statement to Pierce County  
6 was that you only accounted for two taser applications,  
7 correct?

8 A. That's possible, yes.

9 Q. And you're saying now that you don't know whether  
10 or not there was a third taser shot used on Mr. Ellis?

11 A. Is it in my statement? Are you referring to my  
12 statement right now?

13 Q. I'm asking what you recall.

14 A. Like I said, as soon as I got to that arm, my only  
15 job was to get him into handcuffs, which is all I was focused  
16 on.

17 Q. And you were able to get him into handcuffs after  
18 the second taser application, correct?

19 A. I'm not sure if it was the second or third or how  
20 many, but we eventually got him into handcuffs.

21 Q. Now, you were not treated by the medics for any  
22 injuries that night, were you?

23 A. No, ma'am.

24 Q. And you didn't -- your suit that you were wearing,  
25 didn't have any tears in it, correct?

1           A.    It did not.

2           Q.    Or any damage to your uniform?

3           A.    I don't think it did.

4           Q.    Now, you talked earlier about incidences where  
5 other people had gone for your weapon. You never claimed  
6 that Mr. Ellis had gone for your weapon, did you?

7           A.    No, he didn't at the time of the fight, no.

8           Q.    He never went to your weapon, did he?

9           A.    Not that I know.

10          Q.    And he never threatened to kill you?

11          A.    No. Again, I didn't hear any verbal intelligible  
12 words.

13          Q.    And he didn't threaten to assault you; is that  
14 right?

15          A.    Well, he didn't need to threaten me because he  
16 punched me and threw me, so he acted it out, so he didn't  
17 need to make the threat, I guess.

18          Q.    He never verbally threatened you, right?

19          A.    Again, I had no intelligible words.

20          Q.    Now, is it your testimony that there were a series  
21 of kind of up and down movements with Mr. Ellis, where you  
22 were up and then back down on the ground?

23          A.    That is correct.

24          Q.    And the up parts, you would say were not shown on  
25 the video, correct?



1           A.    I think it's been established there's a couple  
2 minutes not on video, yes, ma'am.

3           Q.    And any up times that you say happened are not on  
4 video, correct?

5           A.    Well, I think Ms. McDowell's video starts when I'm  
6 up, and then I go down to the mount position, and then  
7 Cowden's video starts and Manny and I are both up and then we  
8 go down, so that would be two of the up and down probably  
9 referenced.

10          Q.    Well, the video doesn't show -- Ms. McDowell's  
11 video doesn't show Mr. Ellis up when you're on him, does it?

12          A.    It shows him up with Officer Burbank.

13          Q.    Now, you talked about you remained at the scene,  
14 correct, until fire arrived and even after; is that right?

15          A.    Yes, ma'am.

16          Q.    I think you said that after the hobbles were  
17 applied, you went back and stood at the front bumper of your  
18 car; is that right?

19          A.    Yeah, so we kind of were like in the front, we went  
20 behind the car at one point, or at least I did, so when  
21 specifically you're talking about, I don't know.

22          Q.    And you would agree that when you're at the front  
23 bumper of the car, you can see where Mr. Ellis is, correct?

24          A.    No. At that point, I mean, there was probably 15  
25 maybe 20-plus officers there, so there was literally, I mean,

1 a crowd. It was kind of -- if you look at Ms. Mallang's  
2 second video, that's what it looked like very quick.

3 Q. And you're saying it was like that from right after  
4 you stepped out, that there were people blocking?

5 A. So from the moment I got up and kind of started to  
6 move away and talk to people, within seconds when I looked  
7 back and I started -- because I remember hearing "He's  
8 spitting on people. Someone get a spit hood." And I look  
9 back and I couldn't even see him at that point, he was kind  
10 of swallowed up kind of by everyone standing and the lights  
11 were on.

12 Q. You were close enough to hear somebody say he was  
13 spitting, correct?

14 A. Yes.

15 Q. And you never saw Mr. Ellis spitting, did you?

16 A. I never saw him spitting.

17 Q. And Mr. Ellis remained on the ground the entire  
18 time after the hobbles were on him, correct?

19 A. I didn't view him, so I'm not sure.

20 Q. You never saw him again after you put the hobbles  
21 on him?

22 A. I did not. Well, I might have looked through -- I  
23 think at one point I looked through the crowd and saw, you  
24 know, parts of him but, no, I wasn't viewing him in the  
25 manner that you're asking.

1 Q. And you don't know who said that he was spitting?

2 A. I don't.

3 Q. And you don't know who got the spit hood?

4 A. I do now, but I didn't at the time.

5 Q. And you were aware, were you not, that a spit hood  
6 had been put on him, correct?

7 A. I heard it asked for.

8 Q. You heard someone ask for the spit hood?

9 A. I heard someone asked for it, yeah, I mean, I knew  
10 it was coming.

11 Q. And didn't you know that it was put on him?

12 A. I don't recall if at the time I knew or not, but I  
13 knew it was coming to be put on him.

14 Q. And you would agree it took a long time for fire to  
15 arrive; is that right?

16 A. I mean, I don't know specifically how long it took.  
17 I know they do the best they can every night. They're very  
18 busy in Tacoma.

19 Q. You don't dispute that it took about nine minutes  
20 for fire to get there?

21 A. You have the records, ma'am, I'll trust you.

22 Q. Well, you've heard the testimony correct?

23 A. Yes.

24 Q. Does that seem about right?

25 A. It's possible.

1 Q. Did you think it was a long time?

2 A. I don't remember independently thinking that.

3 Q. Now, you didn't perform any kind of first aid on  
4 Mr. Ellis?

5 A. No.

6 Q. And you said you ran and spoke to the fire  
7 department, to Lieutenant Wilson, where did you speak to him  
8 at?

9 A. Behind my vehicle some distance. So they parked, I  
10 don't know, maybe it was a half a block back, maybe a little  
11 bit more, and I just approached them at their rig.

12 Q. So you approached them before they ever got to  
13 Mr. Ellis; is that right?

14 A. That's correct.

15 Q. And you never actually walked up while they were  
16 treating Mr. Ellis; is that your testimony?

17 A. Yes, ma'am, I did not.

18 Q. And was Officer Burbank with you the entire time  
19 after you stepped away from Mr. Ellis?

20 A. Not the entire time, no. I was alone when I  
21 approached fire. And I heard from his statement that he went  
22 back and eventually and retrieved those handgun magazines,  
23 which I think turned out to be his, and his hat maybe. So  
24 there was a period there where we were not together.

25 Q. Do you recall, other than what you read in Officer

1 Burbank's statement, what do you recall about where Officer  
2 Burbank was after you stepped away?

3 A. I remember at one point we were getting interviewed  
4 by Sergeant Lim in front of the vehicle, and then at another  
5 point, we were in the car together after -- I think that was  
6 after fire arrived. But I don't independently recall where  
7 he was the entire time.

8 Q. And you didn't go into the car until after fire had  
9 arrived, correct?

10 A. I'm not a hundred percent -- yeah, no, that would  
11 be correct because I was behind the vehicle and approached  
12 them and I think after that I was in the vehicle.

13 Q. And when Sergeant Lim was asking you questions  
14 about what had happened, you were there, you were talking  
15 with Officer Burbank, correct?

16 A. When Sergeant Lim was asking me questions?

17 Q. Yes, when he was asking you guys what happened?

18 A. When I was talking to Sergeant Lim, is that what  
19 you're asking?

20 Q. You were both present?

21 A. We were both present.

22 Q. All right. You weren't separated?

23 A. No.

24 Q. So from the time that Mr. Ellis was put into  
25 hobbles, he remained on the ground the entire time, correct?

1           A.     Again, I don't know that, ma'am.

2           Q.     Do you have any reason to believe he wasn't on the  
3 ground?

4           A.     Well, I've heard other testimony --

5           MR. PURTZER:  Objection.

6           MR. AUSSERER:  Objection to speculation.  He said  
7 he doesn't know.

8           THE COURT:  You may answer.  Overruled.

9           THE WITNESS:  Again, I heard testimony that he was  
10 continuing to fight, so I don't know what that looked like  
11 because I wasn't viewing it, so I don't want to answer.

12 BY MS. EAKES:

13          Q.     So you're saying if he continued to fight, you  
14 never saw it?

15          A.     That is correct.

16          Q.     You never saw him off the ground, did you?

17          A.     Not once he was hobbled, I didn't.

18          Q.     And you never removed the handcuffs from him?

19          A.     No.

20          Q.     And you never removed the hobbles from him?

21          A.     No, ma'am.

22          Q.     And after Mr. Ellis was in the hobble and the  
23 handcuffs -- well, once he was in the handcuffs, he never  
24 struck you, did he?

25          A.     No, he did not.

1 Q. And he never spit at you, did he?

2 A. He did not spit at me.

3 Q. And Mr. Ellis wasn't out in the eastbound lane of  
4 traffic, was he?

5 A. I don't think so, maybe not quite that far.

6 Q. He remained in front of the patrol car essentially,  
7 correct?

8 A. I think he did.

9 Q. And you never saw him wiggling or trying to get  
10 himself out into the street, did you?

11 A. Oh, yeah, I mean, well, so again, after he was  
12 handcuffed, he immediately started to stand up and that's  
13 kind of that motion we're talking about, his hips going up,  
14 he's on his knees and then as he flattens out he's getting  
15 further out, and so he's up on his knees he's going down, so  
16 that's why I'm just holding his legs at that point.

17 Q. And did he move out into the eastbound lane of  
18 traffic?

19 A. I don't think we made it into the eastbound lane of  
20 traffic.

21 Q. After Officers Rankine and Ford arrived, Mr. Ellis,  
22 from what you saw, never moved out into the lane of traffic,  
23 did he?

24 A. Again, I couldn't really see him, ma'am, because  
25 there was tons of people there by then.

1 Q. And at the point that you walked away, what  
2 officers were there when you claimed you walked away?

3 A. There was a lot. I remember --

4 Q. Who do you remember?

5 A. I remember two county officers and I remember  
6 Sergeant Lim, I remember Ford and Rankine. And then there  
7 was other people there, because I remember walking by people,  
8 but I don't remember faces. And then once I looked at the  
9 CAD, there was so many officers, I don't know.

10 Q. Is it your testimony that all of those officers  
11 were there before you stepped back to your patrol car?

12 A. Well, I don't know if they all were there. There  
13 was definitely other officers there. Sergeant Lim was there.  
14 Messineo and Sanders were there, Ford and Rankine were there  
15 for sure. I don't know about who else I can name.

16 Q. So at that point that you stepped back, you say  
17 after Mr. Ellis was hobbled, to your patrol car, Ford  
18 Rankine, Sanders, Messineo and Lim were there; is that right?

19 A. At a minimum.

20 Q. At a minimum?

21 A. Yes, ma'am.

22 Q. So there were five other officers present?

23 A. Yes, ma'am.

24 MS. EAKES: If I could have just a moment.

25 BY MS. EAKES:



1 Q. You talked this morning about a case, an incident  
2 that you said informed how you handled Mr. Ellis on this  
3 occasion, correct?

4 A. That is correct.

5 Q. And that was an incident at the Saint James  
6 Apartments; is that right?

7 A. Yes, ma'am.

8 Q. And according to your testimony, the individual was  
9 in one of the empty apartments, correct?

10 A. Correct.

11 Q. And there had been a woman who reported a concern  
12 about him?

13 A. Yes.

14 Q. Something to do with her mail flap?

15 A. Yes.

16 Q. Is that correct?

17 A. Yes.

18 Q. And according to you, that individual was about  
19 150 pounds, I think you said, he was a little guy?

20 A. He was small, yeah. He was smaller.

21 Q. And you say that he was whispering to you that he  
22 was going to kill you throughout?

23 A. Among other creepy things, yes.

24 Q. And you said you had to put him in an LVNR; is that  
25 right?

1           A.     No, I did not put him in an LVNR. That's where --  
2     see, what I was trying to explain is, that's where I realized  
3     that's what has to happen in that situation because people  
4     under that amount of narcotics, they're not making rational  
5     decisions, they can't feel pain, they can't feel themselves  
6     get tired, so you're just going to injure them repeatedly, so  
7     the safest thing for them and the officer I came to was the  
8     LVNR. That's where I learned that, is what I was saying.

9           Q.     And did you use the LVNR on people who you claim  
10    had excited delirium after that occasion?

11          A.     So the only two people I've ever encountered at  
12    this magnitude was that man in that apartment and Mr. Ellis  
13    the night of the incident.

14          Q.     And that was in 2017, wasn't it?

15          A.     I don't recall what the date was.

16          Q.     And you said there that you thought that the  
17    individual had excited delirium, correct?

18          A.     I did.

19          Q.     And you wrote a report about that incident, didn't  
20    you?

21          A.     Yes, I did.

22          Q.     And do you recall that in the report that you  
23    wrote, you never said anything about the individual having  
24    excited delirium, did you?

25          A.     No, I wasn't -- I don't think it was pertinent.

1 Q. You didn't write anything at all about it, did you?

2 A. No.

3 Q. And in fact, you described the individual -- you  
4 didn't describe any threats by the individual, did you, that  
5 he threatened to kill you?

6 A. I don't remember independently my report from back  
7 then.

8 Q. I can show it to you.

9 A. Okay.

10 MS. EAKES: If I could have this marked as  
11 Exhibit 77.

12 BY MS. EAKES:

13 Q. Handing you what's been marked as Exhibit 77, do  
14 you recognize that as the report that you wrote back on  
15 October 15, 2017, about the incident at the Saint James  
16 Apartments?

17 A. Yes, ma'am.

18 Q. And Officer Burbank was there as well, correct?

19 A. He was, yes.

20 Q. And this involved a man by the name of Filimon  
21 Jerome Shark?

22 A. Filimon Shark, yes.

23 Q. And you would agree that the description that you  
24 put of him in this report is that he was six feet tall and  
25 200 pounds, correct?

1           A.     Sounds like that's what it is.

2           Q.     You want to look at the report that you wrote.

3           That's what I've handed you.

4           A.     Can you maybe point me to the point in the report  
5           where that would be.

6           Q.     Sure.   Take a look at page 2, Arrestee A-1.

7           A.     I'm sorry, are you looking on the booking form?  So  
8           you're looking not on the actual written report?

9           Q.     I'm looking at what I've handed you as Exhibit 77.  
10          It says page 1 of 12, and it's on page 2 of 12.

11          A.     Oh, okay.  Yeah, so like when this stuff goes in,  
12          you know, this is like off of a driver's license.  This is  
13          not -- so probably years of drugs.  He was not 200 pounds.

14          Q.     So even though you listed him as 6 feet tall and  
15          200 pounds you're saying he was actually only about  
16          150 pounds?

17          A.     Again, I didn't list him.  So when you do these  
18          official reports, you kind of type in someone's birthday,  
19          name and everything, and then they get loaded up as to what  
20          the DMV from the state of Washington has them as, but they  
21          don't keep up on these guys as they continue to change  
22          throughout the years.  I mean, I think my license says I'm  
23          200 pounds.

24          Q.     Did you prepare this report?

25          A.     I did.

1           Q.     Okay.  And if you take a look at your report, your  
2 narrative at page 11, you don't describe Mr. Shark as  
3 threatening to kill you, whispering that he was threatening  
4 to kill you, do you?

5           A.     Sorry.  Give me a second.  I want to read this.  I  
6 said -- I'm going to read through some of this because  
7 there's a lot here.

8                     "While he was saying this, I identified a black  
9 weapon holster sticking out underneath Shark's coat on his  
10 right hip" --

11           THE COURT:  Slow down.

12           THE WITNESS:  "It was right after this, I noticed  
13 Shark became assaultive by standing up, attempting to pull  
14 his arms downward towards his waistline while driving them  
15 towards us -- his weight towards us.  All the while, A-1  
16 Shark was staring at me with the same distant and calm  
17 glance" --

18           MR. CONRAD:  Officer Collins, can you slow down,  
19 please.

20           THE WITNESS:  I'm sorry.  I'll repeat that.  "It  
21 was right after noticing that A-1 Shark became assaultive by  
22 standing up and attempting to pull his arms downwards  
23 towards his waistline while driving them towards us -- his  
24 weight towards us.  All the while A-1 Shark was staring at  
25 me with the same distant and calm glance and began to

1 whisper to me."

2 Q. And he said, "Is your partner a rookie? He feels  
3 like it."--

4 A. -- "he feels like it."

5 Q. Correct? And then you wrote that he said, "You  
6 know how he easily I could hurt you guys," correct?

7 A. Yeah.

8 Q. And above that, you wrote that when you had reached  
9 out to grab him, he became actively resistant stating in a  
10 distant whisper, "No, I don't think so," correct?

11 A. Yes, ma'am.

12 Q. You don't have anything else in here about threats  
13 that he whispered to you that he was going to kill you, does  
14 it?

15 THE COURT: Well, that's what he was looking for,  
16 Ms. Eakes.

17 THE WITNESS: No, ma'am. I think this goes back  
18 to our original conversation about, you know, there's no  
19 need when I write a report to write every single -- unless  
20 it's pertinent. If we know a timeline is pertinent, then  
21 I'll write exactly what's going on based on a timeline. If  
22 I know what he says is pertinent, he's already made threats,  
23 so to me, I've already covered that. So to cover everything  
24 he said, it just wouldn't be necessary.

25 Q. And you didn't include anything in this report

1 about Mr. Shark purportedly having excited delirium, correct?

2 A. I don't think I did. We tased him, he said, "Oh,  
3 yeah, that feels good."

4 Q. You would agree it would be a pertinent fact that  
5 you thought this person had excited delirium, correct?

6 A. If we think he's entering a medical emergency,  
7 absolutely. So if he starts sweating profusely and going  
8 comatosed, then, yes, this is very dangerous very quick.

9 Q. So is it your testimony that even though you say he  
10 had excited delirium, you didn't think it was pertinent at  
11 the time?

12 A. Yes. There's different stages of it, yes, ma'am.

13 MS. EAKES: If I could have just a moment.

14 THE COURT: Sure.

15 MS. EAKES: That's all I have. Thank you.

16 THE COURT: Okay. It's about three minutes to  
17 4:00, so we'll take our break for the day. Please do not  
18 discuss this case among yourselves or with anyone else.  
19 Please do not report on this case to social media or  
20 otherwise.

21 (Jury excused.)

22 THE COURT: We're at break.

23 (Proceedings at recess.)  
24  
25





# TAB 3



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BE IT REMEMBERED that on Tuesday, December 5, 2023, the above-captioned cause came on duly for hearing before the **HONORABLE BRYAN E. CHUSHCOFF**, Judge of the Superior Court in and for the County of Pierce, State of Washington; the following proceedings were had, to wit:

<<<<<< >>>>>>  
**I N D E X**  
**12/5/2023**

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1 THE COURT: Good morning, everyone. Welcome.  
2 Please be seated. Well, it's my understanding we are  
3 still missing a juror, so we can't get started yet. But I  
4 thought maybe we could take the time to talk about these  
5 medical records exhibits. Have you guys made any progress  
6 about this conversation?

7 MR. CONRAD: Some progress. At least I think  
8 we know where we disagree and -- well, where we disagree.

9 THE COURT: Keep talking. Is there anything  
10 you agree on? Maybe let's start there. How's that?

11 MR. CONRAD: I don't know. I think that's a  
12 question better suited for the State, because the State  
13 knows what I'm proposing. I don't think -- in all  
14 honesty, I'm not sure, Judge. I don't think there's a  
15 single record that they're agreeing to, but maybe I'm  
16 wrong.

17 MS. NICOLAVO: I think a little bit more  
18 accurate description would be that the State understands  
19 the purpose for which the Defense wants them in. The  
20 State will continue with a standing objection to that  
21 purpose. But recognizing the Court's prior comments on  
22 the records, we are prepared to discuss what would be  
23 admissible based on the Court's prior comments. And with  
24 that, when Mr. Conrad was before the Court last time, and  
25 I had the transcript from that, he indicated that the

1 highlighted versions were what he wanted in.

2 When we met yesterday, he told me, well, those  
3 were the important parts, but he wants more in than what's  
4 highlighted. So when I had initially gone through it, I  
5 went through it with the understanding that the highlighting  
6 is what he wanted in and what our objection would be to that  
7 but what we anticipate the Court's ruling would be on it.  
8 And after last night's meeting, it looks like he wants more  
9 than that in.

10 There's a couple of things that the State would  
11 want to add to a few of the records, and I think Mr. Conrad,  
12 for the most part, agrees to those few paragraphs. But from  
13 the State's perspective, Your Honor, I recognize he wants in  
14 the auditory hallucinations, the methamphetamine use, some  
15 of the chest pain, and some of the schizophrenia, and, you  
16 know, he has multiple exhibits addressing those issues, and  
17 I don't understand why we can't have two or three which  
18 address that. And it provides for the corroborating of the  
19 Defense theory, and it satisfies what's been requested.

20 And as the Court noted, the more and more you keep  
21 going through the same thing here, it does get to be  
22 cumulative. I recognize that you said that wasn't the  
23 proper objection that you would likely rule it under, but  
24 how many times do we have to hear that he's been using meth  
25 since he was, you know, a teenager and that he used it

1 routinely?

2 He has the records from 2019. Well, first, I  
3 think we could exclude 2004. The Court specifically said on  
4 the record last time that you didn't see any relevance to  
5 that one. Defense didn't have the transcript, but it's on  
6 page 7 --

7 THE COURT: Which exhibit number?

8 MS. NICOLAVO: 2004. I guess it would be 2004A,  
9 on page 17 of your transcript. You had gone through it and  
10 said you didn't see any relevance to it, which the State  
11 agrees with.

12 THE COURT: There was this business here about him  
13 having a foot injury. A gunshot wound, I guess, to his foot  
14 or to his leg. It wasn't clear what that was all about.

15 MR. CONRAD: I'm fine with redacting that.

16 THE COURT: She wants to eliminate. Is there  
17 something in it that you wanted?

18 MR. CONRAD: Yes, Your Honor.

19 THE COURT: What is it that you want?

20 MR. CONRAD: It's on Bates stamp Rankine Medical  
21 Expert 4429. It says, Manuel Elijah Ellis --

22 THE COURT: Wait a minute. Hold on. Okay. 4429,  
23 uh-huh.

24 MR. CONRAD: That last paragraph there.

25 THE COURT: What do you want about this, the

1 auditory hallucinations?

2 MR. CONRAD: Yeah. And that it's tied to  
3 methamphetamine use.

4 THE COURT: Then what about the rest of that  
5 paragraph?

6 MR. CONRAD: There's one other thing within this,  
7 4433.

8 THE COURT: You're moving to another page. What  
9 about the rest of that paragraph that we were just looking  
10 at, 4429?

11 MR. CONRAD: I mean, if the State wants to redact  
12 that his foot's swollen and red and all that stuff, I don't  
13 have any objection to that.

14 MS. NICOLAVO: And Your Honor, from the State's  
15 position, there hasn't been any testimony regarding this.  
16 This is from July 25th of 2015. There's -- it's documented  
17 in records later, which have similar information which we've  
18 actually heard testimony from, and when he goes to the  
19 uncontrolled hypertension, again, there hasn't been any  
20 testimony regarding that that ties it to anything. It's  
21 just putting records in front of the jury without it  
22 being --

23 MR. CONRAD: That's not true.

24 THE COURT: What about the 4433? That's what you  
25 want, the uncontrolled hypertension?

1 MR. CONRAD: Yeah.

2 MS. NICOLAVO: I believe that's what he wants.

3 MR. CONRAD: I ended cross-examination, I think,  
4 with the majority of their experts by saying, Mr. Ellis had  
5 uncontrolled hypertension; correct? And they'd say yes.  
6 And I'd say, Do you see people die with uncontrolled  
7 hypertension? They'd say yes. He had cardiomyopathy? Yes.  
8 Do you see people die with cardiomyopathy? Yes.

9 MS. NICOLAVO: I don't believe this record was  
10 utilized for that, but I could be mistaken on that. But  
11 even if it was, he has that in the record and nobody  
12 disputed it.

13 MR. CONRAD: But you said no one disputed it.

14 MS. NICOLAVO: Well, uncontrolled hypertension.

15 THE COURT: We could spend five hours going  
16 through it at this pace.

17 MR. CONRAD: I mean, the State could waive it, but  
18 I've given notice of these records a long time ago.  
19 Pursuant to the statute, the State waives any objection that  
20 they have to them, to the admissibility of them. So it  
21 really should just be a discussion between the Court and  
22 the Defense at this point, but the State keeps interjecting  
23 themselves into the conversation, which I understand.

24 THE COURT: Well, I'm going to let them do that  
25 for a while longer. Maybe until the case is over.



1 MS. NICOLAVO: Your Honor, I guess from the  
2 State's perspective also, and as I mentioned earlier, there  
3 are records that are more recent that contain similar  
4 information. I mean, if you look at Exhibit 984, for  
5 example, where it goes through his schizoaffective disorder  
6 and again, recognizing the State has a standing objection,  
7 I'm just going through it for the purpose of trying to get  
8 there.

9 THE COURT: I understand.

10 MS. NICOLAVO: You look at this and he wants dim  
11 3, and, you know, that's going to be consistent with what  
12 the Court previously stated is going to be admissible.

13 The State's position is the first paragraph should  
14 be redacted for dim 1, dim 2 should be added, dim 3 Defense  
15 gets. Which --

16 THE COURT: I mean, I --

17 MS. NICOLAVO: -- could ask --

18 THE COURT: I --

19 MS. NICOLAVO: When you --

20 THE COURT: You're looking -- I don't have 984,  
21 so.

22 MS. NICOLAVO: Maybe it's 984A.

23 THE COURT: 984A. Okay.

24 MS. NICOLAVO: I apologize. I have these listed  
25 based on what was sent.

1           So he's -- essentially, it's giving him the  
2 information that he wants regarding the meth use, the  
3 psychosis.

4           MR. CONRAD: But the difference is, is that we're  
5 talking about this being a recurrent issue over a period of  
6 time, and that's why the State doesn't want the multiple  
7 instances of it that show this is a recurrent, ongoing  
8 issue. Because then they're able to argue, oh, because it  
9 happens on this one time as if it's some unexpected  
10 instance, when we know this is an ongoing issue since --  
11 dating back to 2015.

12           THE COURT: Well, I think I know how I'm going to  
13 resolve this.

14           MR. CONRAD: Okay.

15           THE COURT: You already know from our last  
16 conversation that there's several items in here that need to  
17 be redacted further.

18           MR. CONRAD: Correct.

19           THE COURT: Make those redactions.

20           MR. CONRAD: Yes, Your Honor.

21           THE COURT: You, on the other hand, need to make  
22 whatever redactions you think are important, and then I'll  
23 choose.

24           MS. NICOLAVO: Sounds good, Your Honor, thank you.

25           MR. CONRAD: Okay.

1 THE COURT: Okay. Thanks. That'll speed things  
2 up a bit.

3 MS. NICOLAVO: Your Honor, I did provide defense  
4 counsel -- we went through them yesterday and this morning,  
5 exactly what areas were being redacted, so we'll do the full  
6 redactions for the Court. Do you want them marked so you  
7 can see what we're redacting, or do you want them blacked  
8 out? I guess my point is, when the Court reviews it, do you  
9 want to be able to see what our proposal is for what we're  
10 taking out versus you're getting it like this and you don't  
11 know what it is?

12 THE COURT: Well, presumably, I've got this, and  
13 if they haven't blacked it out, then I can compare it with  
14 that. So that should make your job a little easier.

15 MS. NICOLAVO: Great. Thank you.

16 MR. CONRAD: Understood.

17 THE COURT: Okay.

18 Well, I'm not sure if we got our last juror here  
19 yet, but before we get started with that, there's a couple  
20 of things, or at least a thing, I want to talk about. We've  
21 had a conversation a little bit about courtroom decorum and  
22 so on from time to time during the course of this trial. It  
23 does seem to me that people are letting their impulses get  
24 the best of them. I'm increasingly hearing little murmurs  
25 or whatever, based on one thing or another that's either

1 testified to or a ruling from me or otherwise. And I don't  
2 much mind that, particularly if there's no jury present,  
3 because I can take whatever criticisms are of me and I'm  
4 going to ignore whatever cheerleading there might be for one  
5 side or the other, although it certainly looks bad no matter  
6 what.

7 But if the jurors can hear these remarks, it's  
8 potentially affecting their deliberations and their outcome  
9 and their decision-making, and that's a problem. So we've  
10 got to keep it to yourselves. If you've got a problem about  
11 that, well, I'm sorry. If it continues, we may have to  
12 remove people from the courtroom. That's not the thing I  
13 want to do, so fair warning. One.

14 Number two, it's come to me, some information,  
15 that there has been some emotional feelings outside the  
16 courtroom in between people and people letting their  
17 emotions run on this. And I've had too many times where  
18 people get angry about something and words go back and forth  
19 between people and the next thing you know, egos get in the  
20 way and nobody wants to back down, and the next thing you  
21 know, this thing escalates into something really serious and  
22 somebody gets hurt.

23 Obviously, I can't control your behavior outside  
24 the courtroom. But I do want everybody to stay safe. And I  
25 can imagine, too, that anything that's said outside the

1 courtroom can be brought into this courtroom in the sense of  
2 the emotions of it and so on. And we don't need any more of  
3 that than we have already.

4 So I would urge you all to be circumspect of what  
5 you say, you know, cautious, keep it to yourself. If you  
6 have emotions about this thing, you may express them  
7 elsewhere but not in the presence of the folks who are going  
8 to potentially take offense at it. And that goes for both  
9 sides. So -- because it just wrangles people up and the  
10 next thing you know, we have another tragic event, which I  
11 say we don't need. So hopefully, that will be taken to  
12 heart and we won't have additional problems with it.

13 Did you send Hannah to go check on the jury?

14 THE CLERK: She was going to and then deliver  
15 paperwork from something this morning. And here she is.  
16 Are they all here?

17 THE COURT: We're still missing a juror?

18 MS. HANNAH: Yes.

19 THE COURT: Mrs. Winnie, make an inquiry. I think  
20 you know who that might be. See what you can do and find  
21 out what the status is on the jury.

22 So we'll be at break until at least -- at least  
23 for a few more minutes until we figure out what's going on  
24 with the other juror. Thank you.

25 (Recess.)

1 THE COURT: Okay. Welcome back, everybody.  
2 Please be seated. I believe our juror is here now, so we  
3 can resume.

4 MR. AUSSERER: Can Officer Collins retake the  
5 stand, Judge?

6 THE COURT: Yes. I believe it's Mr. Purtzer or  
7 Mr. Fricke's examination.

8 MR. PURTZER: Yes, Judge.

9 (The witness resumed the stand.)

10 (The jury entered the courtroom.)

11 THE COURT: Okay. Welcome back, everybody.  
12 Please be seated. Okay. Cross-examine. Mr. Purtzer, when  
13 you're ready.

14 MR. PURTZER: Your Honor, thank you. Cue up  
15 Exhibit 440, please.

16 CROSS-EXAMINATION

17 BY MR. PURTZER:

18 Q. Officer, good morning. How are you?

19 A. Good morning, sir.

20 Q. We want to take a look at Exhibit 440, which is the  
21 first McDowell video, and just had a couple of questions  
22 regarding that.

23 A. Yes, sir.

24 MR. PURTZER: If you could roll this until we see  
25 the flash next to the police car. Go back to where you see

1 the first flash about two seconds in.

2 THE COURT: Flash? Are you talking about the  
3 police light? What kind of -- flash from what?

4 MR. PURTZER: We're going to get to that, Judge.

5 THE COURT: Well, where is that -- where in the --  
6 where would we be looking for this thing?

7 MR. PURTZER: If you could go up, just forward  
8 just a tad from that section. Right there.

9 Q. (By Mr. Purtzer) Officer, that is what, depicted  
10 in the video?

11 A. Well --

12 THE COURT: Are you talking about the sort of  
13 light there in the middle of the picture?

14 MR. PURTZER: Correct.

15 Q. (By Mr. Purtzer) The light right there.

16 A. It's hard to tell here whether it's a hand or a  
17 hand and a Taser, but I know from -- I think further in this  
18 video, you can clearly see a Taser out.

19 Q. You were asked yesterday -- well, you were  
20 suggested to that Officer Burbank attacked Mr. Ellis;  
21 correct?

22 A. Correct.

23 Q. Based upon the training that you've received and  
24 that Officer Burbank has received, would that have been  
25 appropriate to attack a person with a Taser in your hand?

1           A.    No, sir.

2           Q.    Why is that?

3           A.    So in Taser training, you have to gain distance to  
4 pull the Taser out.  It's kind of like how I talked about  
5 with your firearm.  Because it's mine from this distance, but  
6 once we're close, wrestling, and I take it out, it's ours.

7                    So in our Taser training in Tacoma, if -- we're  
8 taught if somebody gets control of your Taser, you're to  
9 lethally engage them through firearms, because now they can  
10 make you incapacitated with your Taser, essentially, grab  
11 your firearm, and now they're a threat to the public.

12                   So in our training, if somebody gets our Taser, we  
13 have to engage with them with the firearm.  So absolutely  
14 not.  You have to have distance before you use a tool like  
15 that.

16           Q.    All right.  And shortly after, in this video, we  
17 actually see Officer Burbank using the Taser on Mr. Ellis;  
18 correct?

19           A.    Yes, sir.

20                   MR. PURTZER:  Thank you.  That's all the questions  
21 I have.

22                   MR. CONRAD:  I don't have any questions, Judge.

23                   THE COURT:  Any redirect?

24                   MR. AUSSERER:  I have some questions, Judge.

25                   THE COURT:  Go ahead, Mr. Ausserer.



1 REDIRECT EXAMINATION

2 BY MR. AUSSERER:

3 Q. Good morning, Officer Collins. How are you?

4 A. Good morning, Mr. Ausserer. I'm all right.

5 Q. I want to work back from Ms. Eakes'  
6 cross-examination yesterday through some areas that she  
7 touched on; okay?

8 A. Okay.

9 Q. So she left off yesterday with Exhibit 77, and with  
10 the Court's permission, I'm going to approach you with  
11 Exhibit 77; okay?

12 MR. AUSSERER: Is that okay, Judge?

13 THE COURT: Yes.

14 Q. (By Mr. Ausserer) What's 77?

15 A. 77 is the incident report from the St. James  
16 Apartments that we talked about.

17 Q. And Ms. Eakes yesterday had you look through 77 to  
18 address the weight of Philman Shark; do you remember that?

19 A. I do, yes, sir.

20 Q. Because your testimony yesterday was that he was  
21 about 150 pounds, and in the document it says 200 pounds; do  
22 you remember that line of questioning?

23 A. I do.

24 Q. All right. At the bottom of Exhibit 77, are there  
25 Bates stamps?

1 A. There is.

2 Q. Do you know what a Bates stamp is?

3 A. Yes, sir, I do.

4 Q. What's a Bates stamp?

5 A. It's a cataloging system for documents so that you  
6 know you have the complete issue of the documents.

7 Q. And what's the Bates stamp on Exhibit 77?

8 A. Washington Attorney -- and so it's WAAG 0036296.

9 Q. And do you know what WAAG stands for?

10 A. Washington Assistant Attorney General.

11 Q. Do you know how those numbers are put on there and  
12 why they're put on there?

13 A. They're put on when you request documents from the  
14 Attorney General's Office. So they stamp them so you know  
15 you're getting the completion of what they have.

16 Q. So that means that was provided to us from  
17 Ms. Eakes; right?

18 A. Yes, sir.

19 Q. Is that the entirety of the incident report in 77  
20 related to this incident?

21 A. It is not.

22 Q. How many pages is Exhibit 77?

23 A. So what I have goes through the last three of 296  
24 up until 307.

25 Q. All right. Is 77 the DOT 1 report that you

1 created?

2 A. It is.

3 Q. What's a DOT 1 report?

4 A. So any -- any incident where you have multiple  
5 officers, the lead officer, whoever is taking control of the  
6 case, will have the DOT 1. It's like the main report. And  
7 anyone else who's writing has DOT 2s, 3s, 4s, whatever is  
8 next. So Burbank and I would switch off, and whatever -- if  
9 the call was that I would -- just me in charge of it, then I  
10 would kind of cover the main probable cause for arrest and so  
11 on.

12 Q. All right. And how many pages is your DOT 1  
13 report?

14 A. The actual -- without the CAD information or from  
15 the whole thing?

16 Q. Just 77 that Ms. Eakes decided she was going to  
17 show you.

18 A. So again, she gave me last three of 296 through  
19 307.

20 Q. And is that the 12 pages that are associated with  
21 your DOT 1 report only?

22 A. Yes.

23 Q. Are there other reports associated, documenting  
24 your interaction with Mr. Shark?

25 A. Yes, sir.

1 Q. Were you provided those by Ms. Eakes?

2 A. No, sir.

3 Q. Why not?

4 A. I do not know.

5 MS. EAKES: Your Honor, I'm going to object.

6 THE COURT: Sustained.

7 Q. (By Mr. Ausserer) Well, with the Court's  
8 permission, I'm going to hand you what's been marked as 2755.

9 THE COURT: Proceed.

10 Q. (By Mr. Ausserer) What's 2755, Officer Collins?

11 A. So this looks like the full incident report that  
12 includes my report. So it goes through, again, 296 in the  
13 beginning through 320 at the end.

14 Q. And are those all Bates stamps and provided by the  
15 Washington Attorney General's Office?

16 A. Yes, sir, they are.

17 Q. Are they sequential from Exhibit 77 through the  
18 rest of the reports associated with the contact with  
19 Mr. Shark?

20 A. They are sequential, but they stop -- they stop,  
21 basically, where the CAD incident inquiry picks up.

22 Q. What else is included in 2755 other than 77, which  
23 was provided by Ms. Eakes?

24 A. So again, it's got the CAD incident inquiry. It's  
25 got my report -- or Officer Burbank's report, I mean. And

1 it's got a use of force supervisor report.

2 Q. All associated with the contact with Mr. Shark in  
3 2017?

4 A. Yes, sir.

5 Q. Yesterday, Ms. Eakes suggested that your testimony  
6 that he weighed 150 pounds was not accurate because of the  
7 entry in page 2 of your report. Can you tell us how you got  
8 that information for page 2 of your report?

9 A. Yeah. So again, that's -- you know, when all of us  
10 get our driver's license, they ask you for your weight and  
11 everything, and that's what the weight is by the DOL. We  
12 don't actually weigh people when we arrest them. So whether  
13 or not they weigh exactly what their DOL says is dependent on  
14 a lot of things.

15 Q. All right. And in your report, the 77 that  
16 Ms. Eakes showed you yesterday, was there any documentation  
17 that Mr. Shark appeared to be under the influence of any sort  
18 of narcotic?

19 A. In what she gave me yesterday?

20 Q. Yes.

21 A. Yes. So I talked about his behavior, and then he  
22 was also found with heroin and other, I think, drug needles  
23 maybe, possibly. He had a kit with a bunch of stuff in it.

24 Q. With your training and experience, does the use of  
25 heroin affect an individual's weight?

1           A.    It does.

2           Q.    How so?

3           A.    Well, I mean, they don't take care of themselves.  
4 They don't eat properly, and they tend to get very skinny,  
5 emaciated.

6           Q.    All right. And did Mr. Shark appear to be under  
7 the influence of heroin when you contacted him?

8           A.    Not when I contacted him, he didn't.

9           Q.    Ms. Eakes suggested in Exhibit 77 that there's no  
10 documentation that Mr. Shark whispered anything towards you  
11 and Mr. Burbank. Do you remember that line of questioning?

12           MS. EAKES: Your Honor, I'm going to object that  
13 that misstates the questions that I had asked.

14           THE COURT: I think it was having to do with  
15 whispering a death threat.

16           Q.    (By Mr. Ausserer) Did you -- does your 77 that she  
17 provided you document that he whispered threats towards you  
18 and Officer Burbank?

19           A.    May I refer to it?

20           Q.    Sure. If it would refresh your memory.

21           A.    So your question, again, was directly, does my  
22 report reference threats to me? Is that what you asked me?

23           Q.    Right. So Ms. Eakes suggested that you didn't  
24 document these threats that you testified to. Does your  
25 report actually document those threats?

1           A.     It does.

2           Q.     And can you read those to the jury, please.

3           A.     Okay.  So starting in the middle of the last  
4 paragraph on 306.  It was right after noticing this that  
5 Arrestee 1 Shark became assaultive, while standing up into us  
6 and attempting to pull his arms downward towards the  
7 waistline, while driving his weight towards us.  All the  
8 while, Arrestee 1 Shark was staring at me with the same  
9 distant and calm glance and began to whisper to me, Hey, is  
10 your partner a rookie?  He feels like it.  Shark then said,  
11 You know how easily I could hurt you guys?  At this point, I  
12 had control of A1 Shark's arm to stop me --

13          Q.     Well, go ahead and stop right there.

14                     So there was a couple of things that you put in  
15 quotation marks in your report.  Why did you do that?

16          A.     Because that's directly what the subject said.

17          Q.     All right.  And so what were the quotes that you  
18 attributed to Mr. Shark?

19          A.     You know how easily I could hurt you guys, and I  
20 think that might be the only one.

21          Q.     All right.  And in the DOT 2 report authored by  
22 your partner at the time, Officer Burbank, does he put in  
23 quotes things that were whispered, threats towards you from  
24 Mr. Shark?  I'll direct your attention to page 405, Bates  
25 stamp 36319, from the Washington Attorney General's Office.

1           A.     Give me one second, please.

2           Q.     Of course.

3           A.     Yes.  At the bottom of --

4           Q.     First off, before you read it, does it indicate  
5           that he's whispering these threats to you as you testified to  
6           yesterday?

7           A.     Yes, sir.

8           Q.     What does he whisper to you and Officer Burbank?

9           A.     How close he is to killing us and wanted to be sure  
10          we were ready to die.

11          Q.     Consistent with what you told the jury on direct  
12          examination?

13          A.     I believe so, yes.

14          Q.     Yesterday, Ms. Eakes questioned you about the  
15          number of times you reported Mr. Ellis being tased when you  
16          were interviewed by Sergeant Brockway on March 9th of 2020;  
17          do you remember that line of questioning?

18          A.     I do.

19          Q.     With the Court's permission, I'm going to hand you  
20          what's been marked as Plaintiff's 59A.

21                   THE COURT:  Proceed.

22          Q.     (By Mr. Ausserer)  What's 59A?

23          A.     59A is that transcript of the meeting with Pierce  
24          County Sheriff's Office.

25          Q.     If I can have you turn to page 10 of 59A.



1           A.     Okay.

2           Q.     And start at line 25 at the bottom. Do you see  
3 that?

4           A.     Yes.

5           Q.     Turn to page 11. Through line 14, read that to  
6 yourself real quick. Do you recall Ms. Eakes asking you  
7 portions of those paragraphs yesterday?

8           A.     I do.

9           Q.     Was that the entirety of your statement that she  
10 asked you about yesterday about how many times the Taser was  
11 applied in this case?

12          A.     No.

13          Q.     Why don't you go ahead and read from page 10, line  
14 25, through page 11, line 14, for us.

15          A.     So at that point I came off the LVNR. I push him  
16 down, facedown, and I move to his left arm. And I tell  
17 Shane, Grab his right arm. So Shane goes to the right arm.  
18 But at this point, you feel the Taser -- we tried to cuff him  
19 under power, but you feel the Taser lose that effect and the  
20 guy comes back to. And he starts growling again and his  
21 hands start kind of hulking away from us. So at this point,  
22 my entire body is around -- I have both arms wrapped around  
23 his arm, and I'm just clenched on his arm, trying to move it  
24 to his back, and he's fighting us. And I feel Shane give him  
25 another round from the Taser. So there's another cycle of

1 the Taser that happens. His body locks up, we start to move  
2 in, and eventually, we get him into handcuffs from here.

3 Q. At any point during your statement, did you  
4 indicate that there was one or two Taser applications?

5 A. It sounds like I said there was two.

6 Q. Did you say eventually you were able to control him  
7 after the Taser applications?

8 A. I did.

9 Q. All right. Consistent with what you told us on  
10 direct examination?

11 A. Yes.

12 Q. Do you recall the line of questioning yesterday  
13 when Ms. Eakes suggested that you could have gotten out of  
14 the car as Mr. Ellis was in the intersection?

15 A. I do.

16 Q. Would you ever get out of the car and walk into the  
17 intersection in that circumstance?

18 A. In that particular circumstance, no.

19 Q. Why not?

20 A. Because I didn't really have anything, again, and  
21 so he might have just run off. And there was just no reason  
22 for me to get out at that point.

23 Q. Would you ever leave your car in the middle of an  
24 intersection while you're out of the vehicle?

25 A. Not unless it was an emergency.

1 MS. EAKES: Objection, leading.

2 THE COURT: It is leading, Counsel.

3 Q. (By Mr. Ausserer) Is there -- well, have you ever  
4 left your car in that situation?

5 A. Not that I recall.

6 Q. Is there a reason you wouldn't do that?

7 A. Well, first of all, it's just blocking traffic.  
8 Again, it's unnecessary. It's creating another hazard for  
9 other pedestrians. But it just doesn't make any sense to do  
10 that.

11 Q. Understood. Yesterday, Ms. Eakes questioned you  
12 during that same line of questioning why you didn't activate  
13 your emergency lights in that situation; do you remember that  
14 line of questioning?

15 A. I do.

16 Q. Is that appropriate at all?

17 A. Not at all.

18 Q. Why not?

19 A. That's an illegal seizure.

20 Q. Why is it illegal?

21 A. Because I didn't have a crime. I mean, you --  
22 once -- like I was explaining yesterday, once you activate  
23 the lights to a citizen, if they start -- you're telling them  
24 they're understood arrest. So you have to have a lawful  
25 arrest reason to do that at that point.

1 Q. What would happen if you had performed that illegal  
2 procedure as Ms. Eakes suggested?

3 MS. EAKES: Your Honor, I'm going to object. It's  
4 argumentative.

5 THE COURT: Overruled.

6 MS. EAKES: And speculation.

7 THE COURT: I'll allow this.

8 A. How so?

9 Q. (By Mr. Ausserer) Well, can you just perform  
10 illegal maneuvers whenever you want because the prosecutor  
11 suggests it's an option?

12 A. Absolutely not.

13 MS. EAKES: Object, misleading and argumentative.

14 THE COURT: I'll allow it to stand.

15 A. I wouldn't deserve to be a police officer. I  
16 wouldn't want to be abusing my power.

17 Q. (By Mr. Ausserer) Yet, yesterday, Ms. Eakes  
18 suggested that you told Sergeant Brockway, in this line of  
19 questioning about activating your lights, that there was a  
20 carjacking; right? Do you remember that?

21 A. Yes.

22 Q. Turn to page 7 of 59A, please. And I want you to  
23 review lines 12 through the bottom of page 7 and the first  
24 line on page 8.

25 A. Okay.

1           Q.     Is that the area of the interview with Sergeant  
2 Brockway on March 9th where you're discussing what you think  
3 you're seeing in the intersection before you have contact  
4 with Mr. Ellis?

5           A.     It is.

6           Q.     All right. And why don't you go ahead and read  
7 lines 12 through the first line of page 8.

8           A.     Okay. So once we came to the stoplight, I was  
9 stopped, facing westbound. And I looked over and there was  
10 some sort of disturbance happening where there was a black  
11 male in the center of the intersection. His back was faced  
12 to me, and there was a vehicle turning west onto 96th Street  
13 from Ainsworth. And he was at the passenger door, working  
14 the handle, and the vehicle was kind of trying to turn left.  
15 It slowly moved around him without hitting him, and then it  
16 took off.

17                     So at this point, I didn't know what we were  
18 doing. I didn't know if this was a domestic violence thing,  
19 maybe this guy got kicked out of a car, maybe he was trying  
20 to car jack it, I don't know. I didn't know. But at this  
21 point, now this gentleman is just standing in the middle of  
22 the intersection and just right out in the middle.

23           Q.     All right. Kind of three times that you said you  
24 don't know what was happening out in that intersection; is  
25 that right?

1           A.     That's right.

2           Q.     And if you don't know what's happening out in the  
3 intersection, what are your limitations as an officer at that  
4 point?

5           A.     Well, I mean, I have to know what I'm looking at,  
6 what -- if I'm dealing with a crime or not.

7           Q.     Okay. And is that consistent with what you told  
8 the jury on direct examination yesterday about --

9           MS. EAKES: Your Honor, I'm going to object as  
10 argumentative.

11          THE COURT: Sustained.

12          MS. EAKES: Move to strike counsel's comment.

13          THE COURT: I've sustained the objection.

14          Q.     (By Mr. Ausserer) So if you didn't know what was  
15 happening out in the intersection, it is appropriate to  
16 activate your emergency lights?

17          A.     No, sir.

18          Q.     Yesterday, Ms. Eakes challenged your testimony  
19 about clearing the previous stop at 96th and A; do you  
20 remember that line of questioning?

21          A.     I do.

22          Q.     And she suggested that you didn't articulate that  
23 in your March 9th interview with Detective Brockway; is that  
24 right?

25          A.     That's right.

1 Q. Did you have any idea at the time you made the  
2 statement that that was an issue in this case?

3 A. No, I did not.

4 Q. Did you have any idea that the State would suggest  
5 that it limited the time you would have interacted with  
6 Mr. Ellis?

7 MS. EAKES: Your Honor, I'm going to object --

8 A. Certainly not.

9 MS. EAKES: -- as to leading and argumentative.

10 THE COURT: Sustained as to leading.

11 Q. (By Mr. Ausserer) Was that of any significance at  
12 the time that you gave this interview on March 9th?

13 A. It was not.

14 Q. Did anybody ask you about where you cleared the  
15 stop on March 9th?

16 A. They did not.

17 Q. Did anybody ask you how you cleared the stop?

18 A. No, sir.

19 Q. If they had, would you have explained it to them?

20 A. Yes.

21 Q. Is that your practice?

22 A. Yes.

23 Q. At the time you gave this statement, had you  
24 received any materials from Mr. Fredericks limiting the time  
25 frame?

1           A.     No, I did not.

2           MS. EAKES: I'm going to object -- withdraw.

3           THE COURT: Answer stands.

4           Q.     (By Mr. Ausserer) Yesterday, Ms. Eakes challenged  
5 your use of the LVNR under the use-of-force policy by the  
6 Tacoma Police Department; do you remember that line of  
7 questioning?

8           A.     Yes, sir, I do.

9           MR. AUSSERER: Can we pull up Exhibit 301, please.  
10 May I approach the witness with the hard copy of 301.

11          THE COURT: Yes.

12          Q.     (By Mr. Ausserer) Officer Collins, what's 301 --

13          A.     301 is our Tacoma Police Department procedural  
14 manual on the use of force.

15          Q.     All right. Yesterday, Ms. Eakes said that TPD  
16 doesn't authorize an LVNR; is that accurate?

17          MS. EAKES: Your Honor, I'm going to object that  
18 that misstates the question that I asked. I asked whether  
19 it referenced it.

20          THE COURT: I'll allow the question to stand.

21          Q.     (By Mr. Ausserer) Do you remember that line of  
22 questioning?

23          A.     I do.

24          Q.     And she, Ms. Eakes, suggested it's not referenced  
25 in your use of force; right?



1           A.     Correct.

2           Q.     And not allowable under TPD policy; right?

3           MS. EAKES: Your Honor, I'm going to object again.  
4     That's a mischaracterization of what I asked, and it's  
5     argumentative.

6           THE COURT: I'll allow the question.

7           Q.     (By Mr. Ausserer) Why don't you read for us  
8     paragraphs 2 and 3 on page 2 of 13 of Exhibit 301?

9           A.     2 and 3?

10          Q.     Yes, please.

11          A.     Members of the department must generally employ the  
12     tools, tactics, and timing of force application consistent  
13     with the models, direction, and departmental training  
14     modules. This model, while requiring the officers to  
15     maintain controlled superiority over a subject, supports the  
16     practice of progressive application of force as part of the  
17     continuous risk assessment process.

18                 Risk is assessed objectively based on the on-scene  
19     reasonable officer's perspective, taking into account the  
20     facts and circumstances of the particular situation that are  
21     known to the officer.

22                 Due to the fact that the officer/citizen  
23     confrontations occur in environments that are potentially  
24     unpredictable and are tense, uncertain, and rapidly  
25     evolving, officers may use tools and tactics outside the

1 parameters of departmental training. All such applications  
2 of force shall meet the same standard of reasonableness as  
3 those which have been previously identified and approved.  
4 No distinction shall be made relative to the age of a  
5 suspect regarding the use of force. Reasonable timing and  
6 tactics shall be the determining factors.

7 Q. So does the policy explicitly allow you to go  
8 outside of TPD training?

9 A. It does.

10 Q. And your training with respect to the LVNR, was  
11 that outside the scope of TPD?

12 A. It was.

13 Q. And did you think that was reasonable given what  
14 you were faced with with Mr. Ellis?

15 A. Absolutely.

16 Q. Consistent with this policy?

17 A. Yes, sir.

18 Q. Yesterday, Ms. Eakes asked you many, many questions  
19 about failing to report hearing Mr. Ellis say he can't  
20 breathe; do you remember those questions?

21 A. I do.

22 Q. Did you hear Mr. Ellis say he couldn't breathe?

23 A. I did not.

24 Q. How are you supposed to report something that you  
25 didn't hear?

1 MS. EAKES: Your Honor, I'm going to object.  
2 That's argumentative.

3 THE COURT: Sustained.

4 Q. (By Mr. Ausserer) How would you report something  
5 if you couldn't hear what something was said?

6 MS. EAKES: Same objection, Your Honor.

7 THE COURT: Sustained.

8 Q. (By Mr. Ausserer) Can you report something you  
9 didn't hear?

10 MS. EAKES: Same objection, Your Honor.

11 THE COURT: Sustained.

12 MR. AUSSERER: Understood.

13 THE COURT: Let's move on.

14 Q. (By Mr. Ausserer) Ms. Eakes asked you questions  
15 about independently calling for medical aid based on  
16 statements from Mr. Ellis that you said you didn't hear; do  
17 you remember that line of questioning?

18 A. Yes, sir.

19 Q. Under what circumstance would you independently  
20 call for aid when your sergeant is on scene and already  
21 contacted for aid?

22 A. If I was not aware that Fire was en route already,  
23 then that would be a reason.

24 Q. And Ms. Eakes asked you about not reporting that  
25 Mr. Ellis said he couldn't breathe; do you remember that line

1 of questioning?

2 A. I do.

3 Q. Did you report whether or not you heard Mr. Ellis  
4 say, Try it again?

5 A. No, I did not.

6 Q. Why did you not report that?

7 A. I don't remember him saying that.

8 Q. Did you report that you told Mr. Ellis to put his  
9 hands behind his back four times without compliance?

10 A. I did not.

11 Q. Why did you not report that?

12 A. I don't remember saying that either.

13 Q. Did you report hearing Sarah McDowell screaming on  
14 scene?

15 A. I didn't hear her.

16 Q. So you didn't report that either?

17 A. No, sir.

18 Q. So did you report only the things that you recalled  
19 and heard?

20 A. Yes.

21 Q. Ms. Eakes suggested you didn't report to Fire your  
22 concerns about excited delirium; do you remember her asking  
23 those questions?

24 A. Yes.

25 Q. Turn to page 13.

1 MS. EAKES: Your Honor, I'm going to object to  
2 that misstates the questions that I asked him. I asked him  
3 about other people there, not about Fire.

4 THE COURT: Well, that's not true, Judge.

5 MS. EAKES: Well, I have the transcript.

6 THE COURT: I'll let the question stand.

7 Q. (By Mr. Ausserer) Do you remember that line of  
8 questioning about filling out the report, excited delirium?

9 A. Yes, sir, I do.

10 Q. Turn to page 13 of 59A, please.

11 A. I'm there.

12 Q. Lines 5 through 12.

13 A. Would you like me to read it out loud?

14 Q. Sure. Is that what you said to Sergeant Brockway  
15 on March 9th shortly after this incident?

16 A. Yes.

17 Q. Go ahead and read it.

18 A. When Fire arrived, I went up to the guys to give  
19 them a rundown and just said, you know, that I had time to  
20 kind of process what had just happened by then and I said,  
21 Hey, this is -- I don't know what's going on, but I think  
22 this guy might be excited delirium. Like, he's just kind of  
23 freakish strength and he wasn't speaking to us. He wasn't --  
24 he was just out of control. That's what I told them.

25 Q. Are you referring in your interview with Sergeant

1 Brockway what you told Lieutenant Wilson on the scene?

2 A. I believe it was who's now Lieutenant Wilson, yes.  
3 He wasn't a lieutenant then.

4 Q. Had you heard Mr. Ellis say, I can't breathe, as  
5 suggested by Ms. Eakes, would it have changed how you handled  
6 restraining and controlling him?

7 A. No, I couldn't have changed that.

8 Q. Why?

9 A. Because, again, I mean, it goes back to our whole  
10 discussion yesterday, but we have to restrain him first. And  
11 if he's now in this state of mind and is standing up with  
12 handcuffs instead of a disadvantaged position, we have to  
13 keep him down on the ground. So at that point, we can either  
14 put a bunch of officers on top of him to keep him down or we  
15 can place him in hobbles so he can't stand up, so...

16 Q. Had you heard him say, I can't breathe, when would  
17 have been the appropriate time to do something about it?

18 A. I mean, right away.

19 Q. Once he's hobbled?

20 A. Yes.

21 Q. And in your interview on the 9th, didn't you report  
22 that as soon as he was hobbled, someone said turn him on --  
23 recovery position?

24 MS. EAKES: Your Honor, I'm going to object again  
25 to leading.

1 THE COURT: I'll permit this. Overruled.

2 A. Yeah. I believe Officer Burbank instructed people  
3 to put him on his side.

4 Q. (By Mr. Ausserer) And did you report that on  
5 March 9th?

6 A. I did.

7 Q. Yesterday, Ms. Eakes had you refer to 18A. With  
8 the Court's permission, I'm going to hand you back 18A. Do  
9 you remember what 18A is?

10 A. Yeah. That's the audio transcript from their audio  
11 expert.

12 Q. And Ms. Eakes asked you specifically about the time  
13 frames in which it references where Officer -- according to  
14 this document, Officer said, Shut the fuck up, man. Do you  
15 see that on page 4 of 6?

16 A. Yes.

17 Q. And what time, at least according to this document  
18 that was used for illustrative purposes only, does it  
19 indicate that that was said?

20 A. 23:23 and 42 seconds.

21 Q. All right. And Ms. Eakes suggested that was  
22 related to Mr. Ellis saying he can't breathe. On page 3 of  
23 6, what time does it document that Mr. Ellis said he can't  
24 breathe?

25 A. 23:23:28.

1 Q. So how long after Mr. Ellis says he can't breathe  
2 is the statement, Shut the fuck up, man?

3 A. From 23:23:28 to 42. I'll let you do the math on  
4 that.

5 Q. So at least 14 seconds?

6 A. Yes, sir.

7 Q. Between the "I can't breathe" and "Shut the fuck  
8 up," how many unintelligibles are attributed to Mr. Ellis?

9 A. Sorry. I'm getting lost here.

10 Q. That's okay.

11 A. How many unintelligibles? You've got one, two,  
12 three.

13 Q. Any idea -- any recollection as you sit here what  
14 shut the F up was relative to?

15 A. No, I don't remember saying that.

16 Q. Lastly, Ms. Eakes asked you, and I wrote it down,  
17 quote, "You were praised in your review when discussing  
18 proactive policing." Do you remember that line of  
19 questioning?

20 A. I do.

21 Q. That is not all you were praised in, is it?

22 A. No, sir.

23 Q. Have you had accommodations and praise for your use  
24 of force as an officer?

25 A. Yes.



1 MS. EAKES: Your Honor, I'm going to object that  
2 this is not relevant and outside the -- I asked him only  
3 about the proactive policing.

4 MR. AUSSERER: She's opened the door by asking him  
5 about his praise.

6 MS. EAKES: Your Honor, this obviously was related  
7 to the proactive policing. It's not relevant as to other  
8 things.

9 THE COURT: Overruled. You may proceed.

10 Q. (By Mr. Ausserer) Have you been praised for your  
11 police work at TPD?

12 A. Yes, sir, I have.

13 Q. How many commendations have you received for your  
14 work at TPD?

15 A. I'm not sure.

16 Q. How many related to de-escalation and use of force?

17 A. I know one for certain, but I'm not sure of any  
18 other.

19 Q. Did you receive the Medal of Merit?

20 A. I did.

21 MS. EAKES: Your Honor, I'm going to object. This  
22 isn't relevant, and it's outside the scope.

23 MR. AUSSERER: She opened the door, Judge.

24 THE COURT: We'll excuse the jury and have a  
25 conversation about this. Ladies and gentlemen, please do

1 not discuss the case.

2 (The jury left the courtroom.)

3 MS. EAKES: Your Honor, my objection --

4 THE COURT: Everybody can be seated.

5 MS. EAKES: Yesterday, I asked one question about  
6 whether or not it was true that he was praised in his  
7 performance evaluation for his proactive policing. It was  
8 discrete to that issue. The idea that Mr. Ausserer can say,  
9 Well, you used the word praise and you talked about and you  
10 asked about a specific thing, that somehow opens the door to  
11 all his other commendations is simply -- it's not relevant  
12 and it's not accurate. And it's -- certainly, I didn't open  
13 the door with respect to any of his other things.

14 I also do have one other issue I want to raise  
15 about 18A and the way that it's being used in light of the  
16 way the Court reconfigured it.

17 THE COURT: I'm sorry?

18 MS. EAKES: I have another issue with respect to  
19 18A that I want to raise also.

20 THE COURT: Okay.

21 MR. AUSSERER: Judge, she chose to ask about  
22 praise related to on-work duty in a fashion that fit her  
23 theory of the case. She doesn't get to limit his praise and  
24 commendations by saying it was only with respect to  
25 proactive policing. I asked those things on direct

1 examination. Ms. Eakes objected, then went into it on her  
2 own. She chose to do that. I now get to follow up on his  
3 praise for that limited scope as she suggested, because  
4 that's not accurate. And I might say --

5 THE COURT: What you're saying is that she --  
6 you're claiming that she suggested that he would have been  
7 more zealous for proactive policing because he was rewarded  
8 for it?

9 MR. AUSSERER: That's what the suggestion is,  
10 Judge.

11 THE COURT: And you're saying there's more to it  
12 than that?

13 MR. AUSSERER: It's not just proactive policing.  
14 In fact, the Medal of Merit, I think the Court probably  
15 knows based on argument, was in fact awarded for  
16 de-escalation of somebody who comes at somebody with a knife  
17 that Officer Collins disarms and de-escalates. So that's  
18 exactly consistent with what I just asked him, that the  
19 State tried to limit in the use of their questions.

20 THE COURT: I think you tried to go into it on  
21 direct and I wouldn't let you do it.

22 MR. AUSSERER: Correct. Because the State  
23 objected to it.

24 MS. EAKES: Your Honor, I mean, it's apples and  
25 oranges. I mean, the issue of whether or not he was praised

1 for proactive policing, and that's all I asked him about, is  
2 not related to whether or not he received commendations for  
3 some other de-escalation. There's no connection between  
4 those two things.

5 Proactive policing is simply going out and causing  
6 things to happen by making contacts with people and  
7 developing criminal activity as a result of it. That's what  
8 the testimony has been, and that's what proactive policing  
9 is about.

10 THE COURT: Right. But when you tie it to the  
11 idea that he's received benefit from doing that, you're  
12 saying that he had an incentive to be aggressive about that.  
13 And what Mr. Ausserer is suggesting is he also had an  
14 incentive to de-escalate problems and so on because he got  
15 praised for that and awarded for that. And so that counters  
16 this idea that the only thing he would get praised for is  
17 being an aggressive officer.

18 MS. EAKES: Well, that wasn't -- what I was  
19 suggesting in terms of the proactive policing was that he  
20 had been recognized for that, that he was being proactive.

21 THE COURT: Right. But the point is, though, it  
22 leaves -- whether that was your intention or not, it leaves  
23 the jury with that potential inference.

24 MS. EAKES: This is just character evidence. But  
25 I understand that the Court is going to let it in with

1 respect to Officer Collins. But, I mean, I just note  
2 that -- I mean, it's --

3 THE COURT: The reason you understand that now is  
4 because now you -- the logic of it has certainly been made  
5 apparent.

6 MS. EAKES: I would disagree. I believe and I'm  
7 very practical about where the Court's going, and I can -- I  
8 hear what the Court's saying about it.

9 THE COURT: You're announcing these rulings before  
10 I make them.

11 MS. EAKES: Well, you pretty much just said how  
12 you're going to rule, so maybe I was jumping ahead to  
13 what --

14 THE COURT: I didn't say that. What I do, if you  
15 haven't caught on by now, is I -- there's a kind of devil's  
16 advocate thing here. I mean, I try to say, well, here's the  
17 argument that's being made, show me where it's wrong. And  
18 when you do, then you win; right? But if you don't, then  
19 you've got a problem. So we have to -- so we go through  
20 that, and I do that to both sides.

21 That's my style. Sometimes lawyers don't like it  
22 because they sometimes think I'm being aggressive towards  
23 them personally, and I'm not. I'm trying to get at the  
24 ideas or the principles which they're trying to advance.  
25 And sometimes they advance principles that are not really

1 consistent with logic or rules of evidence or otherwise, and  
2 sometimes they do. And I've got to sort that out.

3 So yeah, I tend to think that under the  
4 circumstances, he's entitled to go there. So you said you  
5 had another issue with respect to 18A.

6 MS. EAKES: I do. And You know, Your Honor, this  
7 has been the issue from the beginning with the way the Court  
8 decided to limit what was on a 18A. Counsel's now using 18A  
9 to basically say that Mr. Ellis didn't say he can't breathe,  
10 when he knows -- right before the "shut the fuck up." When  
11 he knows that the evidence and what the transcript said, it  
12 said 23:23:41, Mr. Ellis, and you made us change it to  
13 Unintelligible, said, Can't breathe. And that's what I  
14 played yesterday. And then comes the comment of shut the  
15 fuck up.

16 Now he's using this to say, well, these are just  
17 unintelligible, and the time he said shut the fuck up was  
18 from a previous time. And I just think that that's  
19 deceptive in light of what the Court did in terms of  
20 changing the transcript. Obviously, if the Court said at  
21 the time --

22 THE COURT: I don't have 18A. Can you get it?

23 MR. AUSSERER: Hand that to the judge, please.

24 THE COURT: Thank you.

25 MS. EAKES: You recall at this time that the Court

1 said we're not going to allow it in the transcript because  
2 you couldn't hear it sufficiently or there was dispute about  
3 whether or not how strongly Mr. Hallimore could do it, and  
4 so you made us change that one comment to "unintelligible"  
5 even though 18, which I'm happy to show the Court, showed  
6 that he had made the comment about he can't breathe.

7 MR. AUSSERER: Well, the context that Ms. Eakes  
8 fails to point out to the Court is that that was  
9 corresponding to the e-mail from Mr. Hallimore saying, I  
10 can't understand what it is, but if your office agrees to  
11 what it says, I'll add it in there. And then the Court  
12 said, Yeah, we're not doing that because I can't hear it.  
13 And he played it for you 30 times in the court and you still  
14 couldn't hear it. It says "unintelligible" according to the  
15 Court, so what I did was actually consistent with the  
16 Court's ruling and the finding and not disingenuous or  
17 misleading.

18 MS. EAKES: Your Honor, there was obviously  
19 dispute as to whether or not that was said. I can't find  
20 the first binder, but I'll hand up to the Court what we have  
21 marked as 18. And I think that, you know, 18, obviously,  
22 the comment was in there --

23 THE COURT: Was that the little clip that you  
24 played yesterday?

25 MR. AUSSERER: Repeatedly. No, that's --

1 MS. EAKES: One of the clips I played yesterday.

2 MR. AUSSERER: Where you could hear "breathe" is  
3 what the actual testimony was. Or "please."

4 THE COURT: Well, there was one that was really  
5 short and I questioned for a moment whether it had been  
6 admitted or not.

7 MS. EAKES: No. That was 659. That was the  
8 dispatch that you also took out, which was at the  
9 following -- that was at 23:25:21.

10 THE COURT: Well, that's after this, anyway.

11 MS. EAKES: Correct. It was after that.

12 THE COURT: So we have the 23:23:28. I guess I'll  
13 just use the last two numbers. 28, which is "can't  
14 breathe." Then we've got Mr. Ellis at 31, which is three  
15 seconds later. And are you talking about that one or are  
16 you talking about the next one?

17 MS. EAKES: No, I'm talking about the next one,  
18 right above "shut the fuck up, man." 23:23:41.

19 THE COURT: Okay. And you played that one  
20 yesterday, too?

21 MR. AUSSERER: She did, repeatedly.

22 MS. EAKES: I played all of that sequence. That  
23 was Exhibit 612.

24 THE COURT: I don't know what to tell you except  
25 you can use cross-examination. I mean, your expert couldn't



1 tell after going over it and going over it and going over it  
2 and going over it. And I couldn't tell.

3 MS. EAKES: Well, I think that the record is --

4 THE COURT: You may be able to say, Listen, ladies  
5 and gentlemen, it's there. Listen to it. And one might  
6 even come back and say, It's so difficult to hear. How can  
7 you say that that's what he's responding to, even if it's  
8 true? As opposed to the fact that he's saying something  
9 when he's now engaged in a conversation with Mr. Haze, or at  
10 least somebody is, because it says, Mr. Haze, do you guys  
11 need some help? Officer at 37 seconds. 39 seconds,  
12 Officer -- doesn't say which one, Oh, we got somebody  
13 coming. 41, another two seconds later, unintelligible. And  
14 42, we have the "shut the fuck up, man" statement by an  
15 officer that Mr. Collins is saying is probably him.

16 MS. EAKES: Again, I just think that -- well, the  
17 Court's not going to do anything about it. I just think  
18 it's not fair to use that when he knows what it said and  
19 that it was taken out and changed by the Court to  
20 "unintelligible."

21 MR. AUSSERER: She knows what it said.

22 (Multiple speakers.)

23 THE REPORTER: I can't take more than two speakers  
24 at once.

25 THE COURT: When he knows it's not true is I think

1 your point. And I guess I would say I don't know that  
2 anybody knows whether it's true or not. The jury can make  
3 their own determination. You can say, Hey, listen, he says  
4 it here. And of course they could still believe, well, even  
5 if he did, it could have been just -- from the point of view  
6 of the officer when he said it, it could have been just  
7 noise or he could have said that and was telling him, as  
8 your position is, that he was telling him to shut up about  
9 that. Or it could be that it was just like a noise that he  
10 couldn't hear or you thought maybe he was making noise so he  
11 couldn't hear Mr. Haze. Again, I don't know. It's all kind  
12 of possibilities there, and you're certainly entitled to ask  
13 the jury, isn't it true that if you listen to this, you can  
14 hear that he's saying that and then he immediately afterward  
15 says, Shut the fuck up, man. But whether or not that was --  
16 I think we're all agreed that it's Mr. Ellis's voice. What  
17 he said at that point in time is in dispute, and it could be  
18 you're right and it could be you're not. So I don't know  
19 that that makes much difference.

20 So here's 18A back. And as I say, when you go on  
21 redirect -- or recross, you can ask him about it again if  
22 you want. All right. Let's have the jury back.

23 (The jury entered the courtroom.)

24 THE COURT: Okay. Welcome back, everybody.

25 Please be seated. Okay. Objection is overruled. You may

1 continue.

2 Q. (By Mr. Ausserer) Before we excused the jury, I  
3 asked you about receiving the Medal of Merit. When did you  
4 receive the Medal of Merit?

5 A. I don't recall the day. I think it was around  
6 2018, '17.

7 Q. What's the Medal of Merit?

8 A. It's a commendation for police officers that falls  
9 somewhere under the -- it's the -- I think the third highest.  
10 Medal of Honor, Medal of Valor, Medal of Merit.

11 Q. What did you receive the Medal of Merit for in this  
12 case?

13 A. Officer Burbank and I were responding to a  
14 strong-arm robbery at the 76 station on 84th and Hosmer  
15 street. And in that scenario, the clerk -- guy jumped over  
16 the counter and beat him up and then had taken cigarettes and  
17 some money, I think, and then the guy left. So we were there  
18 taking the report, and while we were there, Officer Burbank  
19 kind of was walking to the back of the store while he was  
20 talking to dispatch, running records. I was interviewing the  
21 clerk, and the assailant came back. And now he was armed  
22 with a 15-inch butcher knife. He had it raised over his  
23 head, and he was coming at me, telling me to kill him.

24 Q. So what did you do?

25 A. We were able to basically -- at the end of the

1 story, we were able, when he turned his back, to get him  
2 safely in custody without hurting him.

3 Q. And did both you and Officer Burbank receive the  
4 Medal of Merit for de-escalating that circumstance?

5 A. We did.

6 MR. AUSSERER: Thank you. That's all I have,  
7 Judge.

8 THE COURT: Recross?

9 MS. EAKES: Just a couple of questions.

10 RECCROSS-EXAMINATION

11 BY MS. EAKES:

12 Q. Officer Collins, is it your testimony that it's  
13 lawful for a pedestrian to be out in the middle of an  
14 intersection in the middle of the night?

15 A. It depends on the circumstances. I mean, they  
16 could be crossing the road, but not just standing there.

17 Q. It wouldn't be; correct?

18 A. No. But it's not a seizable offense. I couldn't  
19 just go run out and arrest someone for that.

20 Q. And it's your testimony that it's to a seizure just  
21 to put on your lights; is that right?

22 A. It can be, yes, ma'am.

23 Q. And you were asked about the St. James report. Do  
24 you recall yesterday when you testified, you explained to the  
25 jury that that St. James incident is the reason why you knew

1 you had to use an LVNR against Mr. Ellis; correct?

2 A. That is correct.

3 Q. And you explained that the individual in St. James  
4 was out of control; correct?

5 A. Yes.

6 Q. And that you had to punch him multiple times. And  
7 you realized that you could just keep punching him, but you  
8 weren't going to get him to stop; correct?

9 A. I'm not sure punching, but striking him, because I  
10 know I did other strikes, yes.

11 Q. Okay. And you also said that you then kneed him in  
12 the groin as hard as you possibly could; correct?

13 A. Yes, ma'am.

14 Q. And you've looked at the report from St. James;  
15 correct?

16 A. The specific parts that I've been asked about.

17 Q. You didn't review the rest of it?

18 A. I didn't read it all.

19 Q. There's actually no reference in that report at all  
20 to you striking Mr. Shark, is there?

21 A. I don't know if there is or not.

22 Q. Why don't I show it to you again.

23 A. Okay.

24 Q. Handing you what's been marked as Defense 2755.

25 A. A second to read through it, ma'am.

1                   It's not specifically referenced, no.

2           Q.     There's no reference at all to you striking  
3 Mr. Shark; correct?

4           A.     There is not.

5           Q.     And there's no reference in that report to you  
6 kneeling Mr. Shark in the groin as hard as you could?

7           A.     That would be the same as striking. No.

8           Q.     There's no mention of you striking him or kneeling  
9 him in the groin; correct?

10          A.     No, ma'am.

11                   MS. EAKES: If I could have just a moment.

12                   That's all I have. Thank you.

13                   THE COURT: Mr. Purtzer?

14                   MR. PURTZER: Yes, thank you, Judge.

15                                   REXCROSS-EXAMINATION

16                   BY MR. PURTZER:

17           Q.     Officer, some more questions regarding the event  
18 there at the apartments. You talked earlier in both your  
19 direct examination and cross-examination regarding various  
20 levels of uses of force; correct?

21           A.     Yes, sir.

22           Q.     And striking a person is a use of force; correct?

23           A.     It is.

24           Q.     And you use your elbows, you use fists, you've  
25 kneed persons. And that is a level of use of force?

1           A.    It is.

2           Q.    All right.  Taser is a level of use of force as  
3 well, is it not?

4           A.    It is.

5           Q.    Where is the Taser in relation to the strikes?

6           A.    It's lower than strikes.

7           Q.    So strikes is higher than Taser?

8           A.    Strikes, you deal with assaultive subjects, so  
9 that's a step up.  Taser, in Tacoma's use of force, is  
10 actively resisting, so it's a step down.

11          Q.    So you had struck the person, it didn't work;  
12 correct?

13          A.    Yes, sir.

14          Q.    And he was responding, apparently, to the strikes  
15 he's receiving?

16          A.    Yes.

17          Q.    How was he responding?

18          A.    By telling us to do it more and laughing and  
19 threatening us.

20          Q.    You did ultimately tase him, though; correct?

21          A.    I did.

22          Q.    How many times did you tase the individual?

23          A.    I think three times.

24          Q.    Why don't you take a look at Exhibit 77 on the last  
25 page, pages 11 and 12.

1           A.     Does it specifically say here or do I need to --

2           Q.     Well, take a look at the last paragraph --  
3     actually, the last four lines of page 11 and the top part of  
4     page 12. And I need to ask you a couple of questions  
5     regarding that.

6           THE COURT: This is the incident at the apartment  
7     complex with Mr. Shark?

8           MR. PURTZER: Yes. Exhibit 77.

9           A.     Okay.

10          Q.     (By Mr. Purtzer) So does that refresh your memory  
11     about the number of times you tased Mr. Shark?

12          A.     Yes.

13          Q.     How many times did you tase him?

14          A.     Three times.

15          Q.     Well, doesn't it reference that you tased him twice  
16     and then you hit him with the ARC switch three separate  
17     times?

18          A.     Yeah. I mean, it depends on how you're asking  
19     about it. So in this sense, because we were in such a close  
20     fight, I did what's called a staple. So you can fire your  
21     Taser cartridge and then fire a second Taser cartridge to  
22     make your spread, and then hit the Arc button on your Taser  
23     to actually tase. So if you ask me maybe how many times I  
24     tased.

25          Q.     Okay. So how many times did you tase him?



1           A.     So it says here three times, until he finally  
2 dropped to the floor.

3           Q.     What was the response that he gave to you upon  
4 being tased?

5           A.     He said, Oh, yeah, that feels good.

6           Q.     Ultimately, though, you were able to cuff him?

7           A.     Yes, sir.

8           Q.     How was he cuffed?

9           A.     How was he cuffed?

10          Q.     Yes.

11          A.     So this was another -- so it says after getting him  
12 to the floor, we finally placed him in handcuffs.  Soon after  
13 dropping to the floor, additional officers arrived at the  
14 scene to assist in detention.  This was another incident,  
15 much like the night of Manny Ellis's incident, where we were  
16 fighting for over six minutes at this point.  So by the time  
17 the officers relieved us, we literally just rolled out and  
18 there was, like, five or six officers involved at that point.

19          Q.     What did those officers do when they arrived?

20          A.     They hobbled him, from what I understand.

21          Q.     So he was not only cuffed, but he was hobbled?

22          A.     That's what I understand.

23          Q.     Consistent with respect to what Mr. Ellis --

24          A.     Yes, sir.

25          Q.     And then after he was actually taken away to the

1 jail, are you aware of how Mr. Shark responded once he was  
2 there at the jail?

3 A. Yes.

4 Q. How did he respond once he was at the jail?

5 A. Yeah. It was bizarre. So as soon as we finally  
6 got him hobbled and then he calmed down. So then the hobbles  
7 were removed. We placed him in our car, and he wouldn't say  
8 a word to us. We took him to the jail. And I remember we  
9 asked for additional corrections officers because we had just  
10 been in this huge fight with him, and he's just totally calm,  
11 won't say a word to us. And he gets to the booking table at  
12 the jail, and as soon as those cuffs come off, he starts  
13 fighting the entire jail staff. And I think it took -- I  
14 mean, there was at least five correctional officers and  
15 people were tasing and it was wild. But we were out of it by  
16 then.

17 Q. All right. And you testified yesterday about the  
18 reason why a person remains cuffed at the scene; correct?

19 A. I believe so, yes.

20 Q. To control the individual?

21 A. Yes.

22 Q. Once the cuffs are removed, the individual is no  
23 longer in control?

24 A. Absolutely, yes.

25 Q. Is this an example of an individual who is in

1 perfect harmony with the officers but then becomes uncuffed  
2 and is completely chaotic?

3 A. Absolutely.

4 Q. And is that why you have did what you did with  
5 respect to Mr. Ellis?

6 A. Yes, sir.

7 MR. PURTZER: Thank you. Nothing further.

8 MR. CONRAD: I have a couple brief follow-up, Your  
9 Honor.

10 THE COURT: Go ahead, Mr. Conrad.

11 RECROSS-EXAMINATION

12 BY MR. CONRAD:

13 Q. So about this incident with Mr. Shark, the initial  
14 call came out from Shirley; is that right?

15 A. That's what it looks like, sir.

16 Q. I'm not going to try and pronounce her last name.  
17 But she is 68 years old, it indicates here. She lived in  
18 that apartment complex?

19 A. Yes, sir.

20 Q. And according to DOL, she weighed about 100 pounds;  
21 is that right?

22 A. Yes, sir.

23 Q. She said that she woke up at 2:00 in the morning  
24 and heard her front door -- someone at her front door; is  
25 that right?

1 A. That's right.

2 Q. And said she looked through her peephole and she  
3 didn't recognize the person that was standing at her front  
4 door, and the person was jiggling the door handle at that  
5 point?

6 A. That's correct.

7 Q. And that was Mr. Shark at her door, trying to get  
8 in --

9 A. That is right.

10 Q. -- at 2:00 in the morning for this lady living at  
11 that apartment?

12 A. Yes, sir.

13 Q. And then about -- well, 911 had responded, but he  
14 had left the -- Mr. Shark had left the location?

15 A. Yes.

16 Q. And about an hour later, at 3:00, he returned to  
17 her door; is that right?

18 A. That's right.

19 Q. Okay. And then he started walking through the  
20 hallway, and he fit through an 18-x-18-inch metal door mail  
21 slot; is that right?

22 A. That's what I was trying to explain about those old  
23 school, little box slots on the bottom of the St. James'  
24 apartment doors.

25 Q. And he was able to crawl through that mail slot

1 into that vacant apartment down the hallway?

2 A. Yes, sir.

3 Q. And then you guys actually found the mail slot  
4 inside with him when you guys went in there?

5 A. Yes, sir.

6 Q. And when you made contact with him, you said that  
7 he -- right away you indicate in your report that he appeared  
8 to be under the influence of some type of narcotic; right?

9 A. Yes.

10 Q. I mean, that's what you write in your report back  
11 in 2017?

12 A. Yes, sir.

13 Q. And that he's just staring at you with this blank  
14 look on his face is what you also write?

15 A. That's correct.

16 Q. And he says to you all, What are you doing here?

17 A. Yes.

18 Q. And he started to grow in aggression towards you  
19 all, and then you discuss, again, trying to detain him in  
20 handcuffs. And he kept that distant stare towards you  
21 throughout that time period, you indicate in your report?

22 A. That's right.

23 Q. And one of the things that you also noticed during  
24 this is that he had a black weapons holster sticking out  
25 underneath?

1           A.    Yes.

2           Q.    Why did you include that in your report?

3           A.    Because once that struggle is happening, we have to  
4 assume he's going for a firearm that's in that holster.

5           Q.    Okay.  You later learn that actually, he didn't  
6 have a firearm on him.  There was like some USB charger or  
7 something like that?

8           A.    Correct.

9           Q.    But you took that into account during your struggle  
10 with him?

11          A.    Yes.

12          Q.    You even discussed being unable to just -- you're  
13 grabbing one of his arms and being unable to hold on to even  
14 just one of his arms, you yourself?

15          A.    Yes.

16          Q.    All right.  And in this report, you actually quote  
17 Mr. Shark as saying after you -- after you used a Taser on  
18 him, you quote him as saying, Oh, yeah, that feels good, and  
19 explanation points after your case note?

20          A.    Yes, sir.

21          Q.    Okay.  And in Mr. Burbank's report, he includes a  
22 couple of additional details as well; right?

23          A.    He does.

24          Q.    And he says that also, Mr. Shark is saying, when  
25 you guys are trying to take him into custody and he's being

1 tased, he says, Keep doing it, you'll love it, and other  
2 oddities is how he explains it; is that right?

3 A. That's correct.

4 Q. You talked about this Rolodex of experiences that  
5 you've had as a police officer that inform your training and  
6 experience, and this is one of them; is that right?

7 A. This was a pivotal one, yes.

8 Q. I wonder what would have happened to that lady that  
9 lived in that apartment had Mr. Shark --

10 THE COURT: Hold on. Hold on. Is there a  
11 question here instead of a comment?

12 MR. CONRAD: I don't have any other questions.

13 THE COURT: Okay. Mr. Ausserer?

14 MR. AUSSERER: Nothing further. Thank you, Judge.

15 THE COURT: Ms. Eakes?

16 MS. EAKES: Nothing further.

17 THE COURT: Mr. Purtzer?

18 MR. PURTZER: No. Thank you, Judge.

19 THE COURT: You may step down.

20 (The witness left the stand.)

21 THE COURT: Thank you. Okay. We'll take our  
22 morning recess now for 15 minutes. Ladies and gentlemen,  
23 please do not discuss the case among yourselves or with  
24 anyone else, and please avoid any reports in the media,  
25 social or otherwise, on the subject of this trial.

1 (The jury left the courtroom.)

2 MR. FRICKE: Your Honor, I just want to make sure  
3 if we could make -- if the Court could break, like, right at  
4 12:00, because I arranged to have a phone court hearing in  
5 Alaska, which they set over the noon hour so that we didn't  
6 interrupt the court proceedings here. So it's at 12:15 and  
7 I need to get back to my office.

8 THE COURT: We'll try to do that.

9 MS. EAKES: Can we ask who's coming next?

10 THE COURT: You can ask. Is there another  
11 non-defendant witness in the area?

12 MR. CONRAD: No, Judge.

13 MS. EAKES: Okay. Thanks.

14 THE COURT: That should be a clue. All right.  
15 We're at break.

16 (Recess.)

17 THE COURT: Welcome back, everybody. Before we  
18 proceed, we have another issue that came up that I want to  
19 talk to you about. One of the jurors informed our staff  
20 that he had inadvertently heard something on the news and/or  
21 saw something on the news, also heard, I think, anyway,  
22 about this case; that it only lasted for a few moments  
23 before it went to a commercial, wanted to let us know about  
24 it.

25 I asked Mrs. Winnie to inquire more specifically



1 about it, and I believe he thought it was on KIRO  
2 television, and my understanding is that he did hear  
3 something about the trial. I got the impression it wasn't  
4 much, but some.

5 I don't know if you want to inquire of this juror  
6 anything more about it than that. I don't know whether it  
7 impacts their view of the case in any way, but we can have  
8 them come out. And I did have Mrs. Winnie inform the juror,  
9 you know, we want to make sure that you don't say anything  
10 to any of the other jurors, and this juror informed us that  
11 that had not happened and would not happen, so that was  
12 good.

13 I also had Mrs. Winnie inform him that we may want  
14 to talk with him about this. So he's prepared for that if  
15 it happens. Anybody want to question the juror?

16 Mr. Fricke.

17 MR. FRICKE: I think certainly we need to know,  
18 however you do it, that he could set whatever he heard aside  
19 and reach a decision. That's the only issue as far as I'm  
20 concerned.

21 THE COURT: Sure. It's an issue you want me to  
22 bring him out to find that out?

23 MR. AUSSERER: I don't, Judge. The fact that he  
24 self-reported this and complied with the request from the  
25 Court gave me assurance he's going to do what the

1 instructions tell him to do.

2 THE COURT: How does the State feel?

3 MS. EAKES: If the Defense doesn't think it's  
4 necessary then we don't think it's necessary.

5 THE COURT: Mr. Fricke, what do you -- you  
6 really -- so do you want me to bring him out or not?

7 MR. FRICKE: No, I said I don't really care how  
8 you do it, but, you know --

9 THE COURT: Well, by --

10 MR. FRICKE: -- I'm always cautious when it comes  
11 to those things. Obviously, I've always taken a position  
12 that to know is better than not to know.

13 THE COURT: Well, by saying I don't care how you  
14 do it suggests that you want me to do something to find out  
15 whether or not, in my view, it impacts his view of the  
16 trial, and I don't know that that's an appropriate rule for  
17 me, so I guess the question is, if you want me to bring the  
18 juror out, I'll do it. If you don't --

19 MR. FRICKE: I don't have any desire to ask him  
20 questions specifically.

21 THE COURT: Well, I can ask the questions if  
22 that's what you're concerned about. And usually, what I  
23 would do is ask the questions and then ask counsel if they  
24 have any questions after I've completed mine. But you may  
25 not want me to ask him anything so. Everybody so far says

1 no except you, Mr. Fricke --

2 MR. FRICKE: I know, and I --

3 THE COURT: -- and I respect that. It's -- I  
4 don't -- I give you the tyranny of the majority, but you can  
5 go your own way. What do you want to do?

6 MR. FRICKE: I've certainly been consistent in my  
7 positions on it and they have as well, so I guess I'll  
8 remain consistent and just ask that you ask the question can  
9 you set it aside and leave it at that. I'm assuming he's  
10 going to say yes, or she, whoever it is, and --

11 THE COURT: So you do want me to bring the juror  
12 out?

13 MR. FRICKE: For that very limited purpose.

14 THE COURT: I will ask a number of questions.  
15 After I do so, I'll ask each party, starting with the State,  
16 whether they have any questions for the juror as well. And  
17 so I don't know where this might go.

18 MS. EAKES: What other questions is the Court  
19 intending to ask?

20 THE COURT: Basically confirming what we already  
21 know, to some extent, which is you did self-report that  
22 there was an issue, that you heard something on the news,  
23 confirm what the source of the news was, as I said, my  
24 understanding is Channel 7, but he might tell me something  
25 else. Ask him if what he learned -- you know, I'm sure

1 trying to get some idea how much information, how long the  
2 duration of the report was that he heard or saw, and ask him  
3 certainly to what extent he thinks it would impact his  
4 ability to be an impartial juror here and influence his  
5 decision, if at all, and confirm that he hasn't talked to  
6 other jurors about it.

7 MS. EAKES: Is the Court then intending to ask him  
8 about the content of what he heard?

9 THE COURT: I wasn't going to. Does anybody want  
10 me to?

11 MS. BREMNER: No, Your Honor.

12 MS. EAKES: If the Defense doesn't want to. I'm  
13 trying to get the parameters of what the Court's going to  
14 ask so that we're clear. If the defense doesn't want that.

15 THE COURT: Well, somebody else could ask it,  
16 conceivably. As I say, once I am finished with my  
17 questions, I'll ask counsel if they want to ask any  
18 particular questions that might be raised by the answers  
19 that have been given, and if they do, I'm not going to  
20 necessarily have carte blanche of everything you might ask,  
21 but chances are you will ask something that will be fine and  
22 then who knows where it will go?

23 MR. FRICKE: I don't think we have any intention  
24 of asking that question.

25 THE COURT: Okay. Well, all right. My

1 understanding is this is Juror No. 12, so would you have the  
2 Juror come in.

3 (Discussion held off the record.)

4 (Juror 12 entered the courtroom.)

5 THE COURT: Welcome back. Please be seated,  
6 everyone. Juror 12, welcome. First of all, you're not in  
7 trouble. It probably feels a little like going to the  
8 principal's office. Don't feel that way.

9 You reported to our staff that you heard something  
10 on the news report on the subject of this trial, and first  
11 of all, I want to let you know reporting that to us was the  
12 right thing to do, so by definition, you're not in trouble.  
13 So I want to discuss just a couple of questions about that.

14 First of all, what was the source of the news  
15 story that you --

16 JUROR 12: The source of the news?

17 THE COURT: Yeah. Was it a television, newspaper?

18 JUROR 12: It was KIRO Channel 7, TV.

19 THE COURT: Television. Now did it happen that  
20 this happened that you happened to hear this report?

21 JUROR 12: I turned on the TV and it was on. It  
22 was on, that was the first thing that came on. I was  
23 watching football. I -- the only thing I -- I was watching  
24 football the day before, and when I turned it on it was on,  
25 and I was just going to the Monday Night Football game and I

1 caught the end of the report.

2 THE COURT: Okay. The end of the report. So that  
3 would ask my other question, is how long a period of time do  
4 you think you were able to hear the report?

5 JUROR 12: It was the very end -- it was the very  
6 end of the report and it moved on --

7 THE COURT: Sure. So did this go on for  
8 two minutes, 20 seconds?

9 JUROR 12: 20 seconds, if that.

10 THE COURT: And then it ended because it went to a  
11 commercial break or you changed the channel?

12 JUROR 12: It just ended because I think it went  
13 to another news topic but I went to watch Monday night  
14 Football after that.

15 THE COURT: Okay. Is there anything about -- I  
16 don't want you to necessarily tell us what you heard, but is  
17 there anything that you heard that you think would affect  
18 your ability to be impartial in this case?

19 JUROR 12: No.

20 THE COURT: Would you be able to disregard that  
21 report if it was somehow contrary to the evidence in our  
22 case?

23 JUROR 12: Would I be able to disregard that  
24 report if it was --

25 THE COURT: Yeah. If there's evidence in the case

1 that's different from whatever you heard on the report,  
2 would you credit just the evidence you've heard in the  
3 courtroom or would you credit this news report?

4 JUROR 12: Oh, no. Yeah. Just -- just what I  
5 hear here. That doesn't hold any weight.

6 THE COURT: Okay. So.

7 JUROR 12: So what I --

8 THE COURT: All right. Now, did you talk to any  
9 of the other jurors about what you heard?

10 JUROR 12: No.

11 THE COURT: Okay. Do any of the lawyers have a  
12 question, starting with the State? Do you have any  
13 questions for Juror 12?

14 MS. EAKES: The State doesn't have any questions.  
15 Thank you.

16 MR. FRICKE: No, Your Honor.

17 MR. AUSSERER: No, Your Honor. Thank you.

18 MS. BREMNER: No. Thank you.

19 THE COURT: All right. Juror 12, thank you very  
20 much. We're going to send you back in the jury deliberation  
21 room for a minute and then we're going to bring everybody  
22 back in. Thank you.

23 (Juror 12 left the courtroom.)

24 THE COURT: Anybody have any comment about  
25 Juror 12, whether it's appropriate to have the juror

1 continue in the case or not?

2 MR. FRICKE: No issues, Your Honor.

3 MR. AUSSERER: No objection to continuing.

4 MS. BREMNER: No issues, Your Honor.

5 THE COURT: State?

6 MS. EAKES: No concern.

7 THE COURT: Okay. So let's have the jury.

8 Who is the next witness?

9 MR. CONRAD: We'll call Officer Rankine to the  
10 stand.

11 (The jury entered the courtroom.)

12 THE COURT: Welcome back, everybody. Please be  
13 seated. Okay. The defense's next witness.

14 MR. CONRAD: We call Officer Rankine to the stand.

15 THE COURT: Please come up to right about here and  
16 raise your right hand to be sworn.

17 TIMOTHY RANKINE, having been duly sworn by the  
18 Court, testified as follows:

19 THE COURT: Thank you very much. Please have a  
20 seat right there. Please state your name and please spell  
21 your name.

22 (The witness took the stand.)

23 THE WITNESS: First name Timothy, T-I-M-O-T-H-Y,  
24 last name Rankine, R-A-N-K-I-N-E.

25 THE COURT: Thank you much. Mr. Conrad.



1 MR. CONRAD: Sure.

2 DIRECT EXAMINATION

3 BY MR. CONRAD:

4 Q. Good morning.

5 A. Good morning, sir.

6 Q. Caught you at a bad moment. Ready to go?

7 A. Good to go.

8 Q. All right. So I want to talk about some background  
9 questions first about you. So I'm going to ask you where you  
10 were originally born.

11 A. I was born in Singapore.

12 Q. Okay. And what year were you born?

13 A. 1988.

14 Q. Okay. And how long did you live in Singapore for?

15 A. Since I was born until I was about 13.

16 Q. Okay. And who -- I mean who from your family is  
17 from Singapore?

18 A. My sisters and my mom.

19 Q. Okay. And how many sisters do you have?

20 A. I have two sisters that are biological, the other  
21 two are stepsisters.

22 Q. Could you pull the microphone a little bit closer  
23 to you?

24 A. (Witness complies.)

25 Q. Okay. So how long did you live in Singapore for?

1           A.    Thirteen years.

2           Q.    So from the time you were born until you were  
3 13 years old?

4           A.    Yes, sir.

5           Q.    And what did your mom do for work?

6           A.    She was a single mom, so she did many jobs.

7           Q.    Okay.  And why did you guys leave Singapore?

8           A.    My mom remarried to my stepdad and he's American,  
9 and he decided to adopt us and move to the U.S.

10          Q.    Okay.  And where did you guys move to in the  
11 United States?

12          A.    The first place we lived at was Atlanta, Georgia.

13          Q.    And did you attend school in Atlanta?

14          A.    I did.

15          Q.    What grades?

16          A.    I started out in middle school, I think it was 7th  
17 grade.

18          Q.    What was it like moving from Singapore to Atlanta,  
19 Georgia?

20          A.    It definitely was quite different.  I think I grew  
21 up a little bit different than most Americans did.  I have --  
22 yeah.  I talk differently, I dress differently when I first  
23 moved over, so I wasn't really treated super nice.

24          Q.    What about, so was English your first language?

25          A.    Kind of.  Chinese and English is predominantly

1 spoken in Singapore.

2 Q. How is your Chinese?

3 A. Now? Kind of rusty.

4 Q. You still speak Chinese at home?

5 A. Yeah, at times with my family.

6 Q. With your mom?

7 A. Yes, with my mom.

8 Q. Okay. And so you're talking about being in  
9 Atlanta. Did you attend high school?

10 A. I did.

11 Q. Where did you attend high school?

12 A. That's in -- I did some years in Arizona and some  
13 years in Virginia.

14 Q. Okay. And what about any schooling after high  
15 school?

16 A. I did some college in Arizona.

17 Q. Okay. And did you finish college?

18 A. I did not.

19 Q. Why not?

20 A. I think for me, college was, I have thought, would  
21 give me purpose. I was playing a collegiate sport, but I  
22 didn't really find the purpose in it. I wanted to do  
23 something more with my life, enjoy the freedoms and rights  
24 that were given to me when I first moved over here. I was  
25 proud to be American, so I joined the military, but without

1 my parents knowing.

2 Q. Without your parents knowing?

3 A. Without my parents knowing.

4 Q. Did that get you in some trouble?

5 A. They found out when I graduated basic and I sent  
6 them an invitation card.

7 Q. Okay. How was that conversation?

8 A. I mean --

9 MS. EAKES: I'm going to object to the relevance  
10 of this.

11 THE COURT: Sustained.

12 MR. CONRAD: Okay.

13 Q. (By Mr. Conrad) So how long were you in the  
14 military for?

15 A. Just shy of six years.

16 Q. Okay. And were you honorably discharged?

17 A. Yes.

18 Q. And what brought you to Washington State?

19 A. I was stationed out here at Fort Lewis at the time  
20 in 2011 and I just stayed after I got out of the Army.

21 Q. And are you married?

22 A. I am.

23 Q. And how long have you been married for?

24 A. Just over a year.

25 Q. How long have you known her?

1           A.     I say ten years, but that might be wrong.

2           Q.     Okay.  You guys have a couple of dogs together;  
3 right?

4           A.     We do.

5           MS. EAKES:  Your Honor, I'm going to object to the  
6 relevance.

7           THE COURT:  Sustained.

8           Q.     (By Mr. Conrad)  So you were talking about being in  
9 Washington State.  I want to talk about when you first  
10 applied to become a police officer; do you remember when that  
11 was?

12          A.     I think it was back in 2018 sometime.

13          Q.     Okay.  And what brought you to apply to be a police  
14 officer?

15          A.     I think for me, it was a career change, for one,  
16 but when I was in the military out here, I spent a lot of  
17 time in Tacoma.  I lived in Tacoma when I was in the military  
18 out here, so for me, I kind of wanted to give back to the  
19 community, you know, I didn't -- being a cop, you meet people  
20 at their worst time and I also know Tacoma was full of crime  
21 and I was trying to help with mitigating crime.

22          Q.     Okay.  And do you remember how much you earned as a  
23 police officer?

24          MS. EAKES:  Objection, relevance.

25          THE COURT:  Sustained.

1 Q. (By Mr. Conrad) I want to ask you about the night  
2 of March 3, 2020.

3 How long had you been a police officer at that  
4 time?

5 A. I think just over a year.

6 Q. Okay. When did you graduate the academy?

7 A. January 2019.

8 Q. January 2019?

9 A. Yes.

10 Q. And take us -- tell the jury -- take us through  
11 kind of after graduating what the next steps are.

12 A. So with Tacoma, after you graduate from the  
13 academy, you go through a bunch of classroom portions, a  
14 bunch of trainings before you start your FTO program, which  
15 is field training officer program. That's when you start  
16 actually patrolling the streets with a training officer, and  
17 that lasts about four months or so.

18 Q. Okay. And the FTO program, is that part of that we  
19 talked -- I think you heard testimony about probationary  
20 period?

21 A. The FTO is part of it.

22 Q. Okay. And who were some of your training officers?

23 A. I had quite a few, but Officer Burbank was one of  
24 them.

25 Q. Okay. And so tell us about the probationary patrol

1 period. How long is that?

2 A. It's a year.

3 Q. And what is that?

4 A. So probation officers, when you first start out,  
5 you are put on a one-year probation period. As new officers,  
6 there's -- actually, any police officers -- it's quite a bit  
7 of a learning curve, so when you're on probation, it's for  
8 other officers to assess you and make sure you can follow the  
9 laws, do all the policies and procedures properly, and  
10 basically be a safe officer without any risks to anyone else.

11 Q. And do you remember when your probationary period  
12 ended?

13 A. I think it was January 2020.

14 Q. Okay. So about a month prior to this incident?

15 A. Yes.

16 Q. Okay. And we've heard about the area that you  
17 patrolled on the night of the incident. Is that an area that  
18 you had been patrolling for a period of time?

19 A. Not really. When I was in the FTO program with  
20 Officer Burbank, I was in the Sector 3, which is what I  
21 patrol, so only after I got off FTO I was placed in the  
22 Sector 3, so I was only there for a few months.

23 Q. In Sector 3 for a few months?

24 A. Sector 3 for a few months.

25 Q. Am I right in thinking that the area where this

1 incident happened is sector 4?

2 A. It's shared. So with Tacoma Sector 3 and Sector 4,  
3 because the crime rate we just call it the South End. Sector  
4 3 and Sector 4 officers comingle. We go to each other's  
5 calls, for the most part, so that area is -- I think it's  
6 Sector 3, to be exact.

7 Q. Okay. And so that's the area that you were  
8 patrolling on March 3, 2020?

9 A. Yes.

10 Q. Which shift were you working?

11 A. Graveyard.

12 Q. What hours is that again?

13 A. 8:00 p.m. to 6:00 a.m.

14 Q. And how long had you been working that shift for?

15 A. Few months, after I got off the FTO program.

16 Q. That's when you first started working graveyard?

17 A. Yeah.

18 Q. And did you have a partner that night?

19 A. I did.

20 Q. Was that Officer Ford?

21 A. It was.

22 Q. How long had you guys been partners at that time?

23 A. Three months so far.

24 Q. How old were you on March 3, 2020?

25 A. Thirty-one.



1           Q.     All right.  And I want to ask about kind of walking  
2 through -- the jury -- walk the jury through kind of this --  
3 this incident from telling us about this prior stop that you  
4 had backed up Officer Burbank and Officer Collins at.

5                     So can you describe to us kind of your involvement  
6 in that traffic stop?

7           A.     So that traffic stop, it's not uncommon for other  
8 officers to back officers on traffic stops.  It's quite  
9 common, especially in the south end.

10                    I think by the time we got there, I had stopped  
11 the car because I was driving that night.  I think Officer  
12 Collins was the one that gave me a thumbs up, and we  
13 stopped, and then we just kept going because they were about  
14 to clear that call.

15           Q.     Okay.  And so what did you do after you had left  
16 that scene?

17           A.     After that we start patrolling the area, so I --  
18 this was, I think, 96th and A Street, A, Adam, Street.  I  
19 started heading north on A, Adam, Street.

20           Q.     Okay.  And so we've heard about these mic clicks.  
21 Do you remember what you were doing directly prior to hearing  
22 these mic clicks?

23           A.     Yeah.  When we were on A, Adam, Street, we  
24 observed, I would say, two younger white females that were  
25 kind of standing, like, off the sidewalk.  A Street is kind

1 of a really dark street that's not really, like, any  
2 apartments. It's like the backside of all the businesses, so  
3 it's -- they were kind of out of place, but a vehicle had  
4 stopped, it was a black Mercedes with super tinted windows,  
5 the girls just kind of jumped in the car really quickly and  
6 the car took off so we just started following the car before  
7 the mic clicks started.

8 Q. What was your concern about what was going on?

9 A. We had -- I mean, we -- besides the car just  
10 speeding off on A Street, we were wondering what was going on  
11 and the two females weren't really dressed for the weather.  
12 It was 40 degrees out, windy, and they weren't wearing  
13 jackets or pants or anything of that sort, so we were trying  
14 to figure out what was going on.

15 Q. And then is it at that time that you hear these mic  
16 clicks?

17 A. I think we followed it for, like, maybe half a  
18 block before we started hearing mic clicks.

19 Q. Okay. Tell us about what you remember about first  
20 hearing these mic clicks.

21 A. So I think it's been told before that, like, the  
22 mic click is not uncommon. We call it accidental mic click.  
23 Someone accidentally hits our hand mics. We actually, like,  
24 bump it or you hit it and it will go off. So the first one  
25 usually we kind of disregard it because I think Officer Ford,

1 someone had come on the air and said, accidental, or  
2 something of that sorts, but this night the mic clicks kept  
3 going, three, four, and dispatch said 317, which is Officer  
4 Burbank and Officer Collins' call sign and just had backed  
5 them up on a traffic stop and there was no response.

6 So at this time, I think it was maybe, you know,  
7 like five, ten miles per hour, I was going pretty slow, just  
8 because we were trying to listen to what's going on. I  
9 turned up the car radio, we each had our headset, ear piece  
10 from our radio on our heads so we could hear all of it. The  
11 mic clicks just kept going up to five or six mic clicks  
12 before dispatch asked them one more time, Henry 317, do you  
13 have traffic? And then no -- nothing came over the radio.  
14 And then finally, Officer Burbank came on the radio and just  
15 screamed out his location, 96th and Ainsworth.

16 Q. Had you ever heard Officer Burbank scream out a  
17 location like that before?

18 A. I had not.

19 Q. And had you ever Bur -- had you been working with  
20 Burbank and Collins?

21 A. I had.

22 Q. You guys had been working the graveyard shift  
23 together?

24 A. Yes.

25 Q. Had you ever heard multiple mic clicks from him

1 like that?

2 A. No. I have never heard any mic clicks like that.

3 Q. Okay. Like as a police officer's?

4 A. As in my little time as a police officer, I never  
5 heard any mic clicks like that.

6 Q. Okay. And so what is the -- I mean, what's going  
7 through your mind at that point when you're hearing that?

8 A. I think Officer Ford and I, I think we both -- you  
9 know, we knew was a physical altercation just because of the  
10 frequency of the mic clicks, how many mic clicks. To me, as  
11 a new officer, it signifies someone was trying to go for  
12 their hand mic to call something out, but they are unable to.  
13 So Officer Ford and I, we thought the worst. We thought --  
14 yeah.

15 Q. So what's your reaction?

16 A. I think at this point in time I was at South 84th  
17 Street and, like, McKinley. I made a U-turn, activating my  
18 lights and made a U-turn really quickly, and I started  
19 heading as quickly as I could to 96th and Ainsworth.

20 Q. Did you have your emergency lights going?

21 A. Yes. And sirens.

22 Q. Are you and Ford saying anything to each other on  
23 your way there?

24 A. I think there was a little bit of discussion back  
25 and forth about what's going on, but I think for the most

1 part, we were trying to keep quiet to listen to what all is  
2 happening over the radio.

3 Q. Okay. And so walk us through kind of when you get  
4 on to 96th. What's next?

5 A. Yeah. So the route we took from 86th and McKinley,  
6 I made a left-hand turn heading southbound on Pacific Avenue  
7 and a right-hand turn heading westbound on 96th.

8 From Pacific and 96th area, if you're going down  
9 towards Ainsworth, you can -- the elevation is slightly  
10 higher, so you can actually see all the way to the other  
11 intersection of 96th and Ainsworth. That's when I observed  
12 Officer Collins' car -- what I thought was Officer Collins's  
13 car.

14 Q. Okay. Where did you observe it?

15 A. It was stopped at the intersection, which is weird.  
16 That's not a good police practice that's taught to us. It's  
17 just stopped in the intersection with just its yellow ambers  
18 on.

19 Q. Is that how we've seen it in the photos?

20 A. Yes.

21 Q. So it's in that same position when you first see  
22 it?

23 A. Yes.

24 Q. Does it ever move from that position?

25 A. No.

1 Q. Okay. And so you're headed down 96th. What  
2 direction are you headed down 96th?

3 A. Westbound.

4 Q. Okay. Westbound, and you see the vehicle up ahead  
5 of you; is that right?

6 A. Right.

7 Q. And can you see anyone in the vehicle at that  
8 point?

9 A. No. I think me and Officer Ford -- I kept asking  
10 Officer Ford if he could see anyone. The whole situation is  
11 just unsettling. You don't hear mic clicks and then see a  
12 vehicle in this kind of a position in the middle of the  
13 roadway, it just doesn't make a lot of sense to us, so I  
14 just -- as we kept driving, I kept asking Officer Ford if he  
15 saw any of the officers.

16 Q. Okay. And at one point, were you able to see  
17 anyone?

18 A. I think we were, I'm guesstimating, three or four  
19 blocks or so, but I had moved, basically, closer, moved my  
20 car over closer to the curb so we both kind of had a line of  
21 sight just past the patrol vehicle. I saw three subjects.  
22 They were 10, 15 feet in front of patrol vehicle that's  
23 stopped at the intersection.

24 Q. Did you make out who was who or what positioning  
25 they were in?

1           A.    I could not at that time.

2           Q.    Okay.  And so what do you guys do next?

3           A.    I think before even the car stopped, Officer Ford  
4 kind of jumped out of the car and he started running.  I  
5 stopped the car and quickly as I could called out on my car  
6 radio that I was with Henry 317 and then I took off running  
7 after Officer Ford.

8           Q.    Okay.  And what do you see when you first get on  
9 scene?

10          A.    So when I first get on scene, what I see about 10,  
11 15 feet in front of me, is now -- well, we now know it's  
12 Manuel Ellis, so Mr. Ellis, he's facedown in the prone  
13 position.  Officer Collins is also in the prone position  
14 trying to secure his legs while he is kicking backwards at  
15 Officer Collins.  I described it as violent, but -- and then  
16 Officer Burbank is kind of over his, like, hips/butt area  
17 with his hands kind of pressing down on Mr. Ellis' back.  And  
18 I think in my statement the only way I can describe it is  
19 literally watching Mr. Ellis buck back and forth and Officer  
20 Burbank looked like he was just riding a wild horse.

21          Q.    Officer Burbank is essentially straddling Mr. Ellis  
22 at that point?

23          A.    Yes.

24          Q.    His knees on either side?

25          A.    Yes.

1 Q. And Collins is behind him holding onto his legs, is  
2 that right, or attempting to?

3 A. Yes.

4 Q. Okay. And what do you and Officer Ford do next?

5 A. As we were running up, I think I was the first one  
6 to address both the other officers. I yelled out, What do  
7 you guys need? And I know that's when Officer Collins  
8 responded on the radio, We need hobbles. And I explained to  
9 them that, I don't have hobbles. I don't carry it, and so I  
10 just kind of made a plan to secure his legs with Officer  
11 Ford.

12 Q. And have you ever used hobbles before?

13 A. I've never.

14 Q. Okay. And where is Officer Ford, then, if you  
15 remember?

16 A. I think he was maybe a couple paces in front of me.

17 Q. Okay.

18 A. But I got caught up to him pretty quick.

19 Q. What's he starting to do?

20 A. I think at this point in time, Officer Collins  
21 transitioned to his left leg and I helped hold Ellis's right  
22 leg so that Officer Ford could also get down in the prone  
23 position and secure his right leg.

24 Q. Okay. And where are you at this point in relation?

25 A. I'm still behind Mr. Ellis, like by his waist.



1 Q. Okay. And we're talking about this now, but how --  
2 I mean, how quickly are these things occurring?

3 A. Fast.

4 Q. Okay. And what if anything was kind of unsettling  
5 about seeing Officer Collins and Officer Burbank struggling  
6 with Mr. Ellis?

7 A. Well, one, Officer Burbank is -- you know, he was  
8 my training officer, so like Ford said, both of them are,  
9 like, the go-to, two-man car in the south. Everyone wanted  
10 to be like them. So when me and Ford partnered up, we tried  
11 to mimic ourselves as best we could to them because it was --  
12 Officer Ford said it correctly. There was nothing they  
13 couldn't do. They handled every single call very well, very  
14 professional, you know, like, it just dawned on me when  
15 Officer Collins was testifying, I've never heard Officer  
16 Burbank actually curse. I think that's quite remarkable.

17 You know, I know Officer Burbank and Collins, we  
18 connected on the military front just because we all were in  
19 the military, we all did very similar jobs, so that's  
20 something we definitely connected on.

21 I know Officer Burbank has told me when he was in  
22 the military, all the stuff he did, and he was put in for  
23 the bronze heart of valor. That's not something that --

24 MS. EAKES: Your Honor, I'm going to object to the  
25 hearsay and relevance.

1 THE COURT: Your objection comes pretty late.  
2 I'll let the answer continue, but let's move on to a new  
3 question.

4 MR. CONRAD: Understood.

5 Q. (By Mr. Conrad) So seeing them, these experienced  
6 officers, struggling with Mr. Ellis obviously plays a factor  
7 in what you're seeing?

8 A. Yes.

9 Q. So you were talking about Officer Ford being on one  
10 of Mr. Ellis's legs and Officer Collins, is he on the other  
11 leg as well?

12 A. He -- Officer Collins is on the left leg, Officer  
13 Ford's on the right leg.

14 Q. Okay. And what are you doing at that point?

15 A. After it's -- after we -- I helped secure both  
16 legs, I was on the right side of Mr. Ellis. The way he was  
17 thrashing about with Officer Collins and Officer Burbank, it  
18 did not appear to me at all that he was handcuffed. So the  
19 first thing I thought about was we got to get this guy in  
20 cuffs. So as I transitioned up his body, I started off kind  
21 of working up his leg to where his hands are, and that's when  
22 I noticed that he was actually handcuffed. And right below  
23 his handcuffed, kind by his waistline area was a Glock  
24 magazine. Being around a little bit of firearms, you can  
25 identify a Glock magazine pretty easily.

1 Q. And you talk about that in your statement with  
2 detectives; right?

3 A. I did.

4 Q. Why did you mention that?

5 A. I was concerned. We didn't know who it belonged  
6 to. It was just kind of laying by where his hands are where  
7 he's handcuffed, so we don't know if Mr. Ellis was armed at  
8 that time.

9 Q. Okay. And so you noticed that Mr. Ellis was  
10 handcuffed at that point in time and so what do you remember  
11 doing then?

12 A. Yes. At that time I was -- I made sure that --  
13 because he was handcuffed, I wanted to make sure that he  
14 wasn't going to break out of his cuffs or just make sure that  
15 they were double-locked. With handcuffs, you double-lock  
16 them so they don't cinch down on people. It also gives it,  
17 like, just some extra security so they won't come apart, and  
18 as I was doing that, Officer Ford grabbed the Glock magazine  
19 and just yelled out, Whose magazine is this? And no one  
20 responded. And then I just saw him throw it off to the side.

21 Q. And what do you remember Burbank doing, if  
22 anything?

23 A. Officer Burbank was asking for help at that point  
24 in time.

25 Q. And what did you do in response to that?

1           A.    I told him that, I'm on my way up, or, I got you.

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

3           A.    When I started helping Officer Burbank, I kind of  
4   situated myself on the right side of his torso.  I think I  
5   had just placed my right knee under his right shoulder, I  
6   formulated a plan with Officer Burbank that I was going to  
7   take the right side of his body, of Ellis's torso, and  
8   Officer Burbank was going to take the left side of Mr.  
9   Ellis's torso.

10          Q.    And is it just the four of you there on scene at  
11   this point?

12          A.    Yes.

13          Q.    Okay.

14          A.    I think Sergeant Lim gets there pretty quick after.

15          Q.    And so do you know whether officers are on their  
16   way?  Can you hear --

17          A.    I can hear the sirens.

18          Q.    Okay.  And so what's the goal in, I guess, taking  
19   those points of contact with Mr. Ellis?

20          A.    I think in my head I was just trying to think of  
21   how is the best way to control Mr. Ellis when he's thrashing  
22   around like the way he was as kind of just splitting his body  
23   into four different parts and holding four different points  
24   on him.

25          Q.    Okay.  And what happens to -- what do you remember

1           happening to Officer Burbank at that point?

2           A.     Right after we made our plan, Officer Burbank, I  
3           see him start to get off Mr. Ellis like the way he was  
4           positioned on Mr. Ellis and then I see Mr. Ellis just kind of  
5           buck his chest up and then next thing I see is Officer  
6           Burbank goes tumbling into the street, like just front and  
7           left side of Mr. Ellis, and that's at the point in time where  
8           I had to move myself on top of Mr. Ellis.

9           Q.     And is that what you're describing in your report  
10          there?

11          A.     Yes.

12          Q.     Or I guess in your interview?

13          A.     Yes.

14          Q.     And so tell us about kind of your positioning at  
15          that point and what your goal is.

16          A.     So when I just watched Officer Burbank get bucked  
17          off, the only thing I think in my statement, I say I just  
18          jumped on top of him and placed both my knees, basically,  
19          centerline of his back, so on the spine one, my left knee on  
20          his lower back, my right knee in between the shoulder blade.  
21          I think I was more specific about it in my statement saying  
22          it was like his spine base of his neck area, and I also  
23          describe it as moving all my weight, but I don't think you  
24          can move on your weight with multiple points of contact on  
25          the ground.

1 Q. And what -- what's your concern about Officer  
2 Burbank getting bucked off of him?

3 A. Just how strong Mr. Ellis was to just simply kind  
4 of jerk his chest off the ground and buck an officer off of  
5 him.

6 Q. Did you think that Mr. Ellis was going to get up?

7 A. There was a -- there was a fear that he was going  
8 to get up.

9 Q. Okay.

10 THE COURT: We're going to break now.

11 MR. CONRAD: Sure.

12 THE COURT: Mr. Fricke got a call he's got to make  
13 here, it's about 2 minutes to noon, so we'll take our break  
14 now.

15 So ladies and gentlemen, please do not discuss the  
16 case amongst yourselves or with anyone else. Please do not  
17 allow anyone to discuss the case with you or in your  
18 presence and please do not watch any media or news reports  
19 about the trial. We'll see you back at 1:15.

20 (The jury left the courtroom.)

21 (Luncheon recess.)  
22  
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# COURT TRANSCRIPTS

TIMOTHY RANKINE



# TAB 1



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BE IT REMEMBERED that on Tuesday, December 5, 2023, the above-captioned cause came on duly for hearing before the **HONORABLE BRYAN E. CHUSHCOFF**, Judge of the Superior Court in and for the County of Pierce, State of Washington; the following proceedings were had, to wit:

<<<<<< >>>>>>  
**I N D E X**  
**12/5/2023**

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1 THE COURT: Good morning, everyone. Welcome.  
2 Please be seated. Well, it's my understanding we are  
3 still missing a juror, so we can't get started yet. But I  
4 thought maybe we could take the time to talk about these  
5 medical records exhibits. Have you guys made any progress  
6 about this conversation?

7 MR. CONRAD: Some progress. At least I think  
8 we know where we disagree and -- well, where we disagree.

9 THE COURT: Keep talking. Is there anything  
10 you agree on? Maybe let's start there. How's that?

11 MR. CONRAD: I don't know. I think that's a  
12 question better suited for the State, because the State  
13 knows what I'm proposing. I don't think -- in all  
14 honesty, I'm not sure, Judge. I don't think there's a  
15 single record that they're agreeing to, but maybe I'm  
16 wrong.

17 MS. NICOLAVO: I think a little bit more  
18 accurate description would be that the State understands  
19 the purpose for which the Defense wants them in. The  
20 State will continue with a standing objection to that  
21 purpose. But recognizing the Court's prior comments on  
22 the records, we are prepared to discuss what would be  
23 admissible based on the Court's prior comments. And with  
24 that, when Mr. Conrad was before the Court last time, and  
25 I had the transcript from that, he indicated that the

1 highlighted versions were what he wanted in.

2 When we met yesterday, he told me, well, those  
3 were the important parts, but he wants more in than what's  
4 highlighted. So when I had initially gone through it, I  
5 went through it with the understanding that the highlighting  
6 is what he wanted in and what our objection would be to that  
7 but what we anticipate the Court's ruling would be on it.  
8 And after last night's meeting, it looks like he wants more  
9 than that in.

10 There's a couple of things that the State would  
11 want to add to a few of the records, and I think Mr. Conrad,  
12 for the most part, agrees to those few paragraphs. But from  
13 the State's perspective, Your Honor, I recognize he wants in  
14 the auditory hallucinations, the methamphetamine use, some  
15 of the chest pain, and some of the schizophrenia, and, you  
16 know, he has multiple exhibits addressing those issues, and  
17 I don't understand why we can't have two or three which  
18 address that. And it provides for the corroborating of the  
19 Defense theory, and it satisfies what's been requested.

20 And as the Court noted, the more and more you keep  
21 going through the same thing here, it does get to be  
22 cumulative. I recognize that you said that wasn't the  
23 proper objection that you would likely rule it under, but  
24 how many times do we have to hear that he's been using meth  
25 since he was, you know, a teenager and that he used it

1 routinely?

2 He has the records from 2019. Well, first, I  
3 think we could exclude 2004. The Court specifically said on  
4 the record last time that you didn't see any relevance to  
5 that one. Defense didn't have the transcript, but it's on  
6 page 7 --

7 THE COURT: Which exhibit number?

8 MS. NICOLAVO: 2004. I guess it would be 2004A,  
9 on page 17 of your transcript. You had gone through it and  
10 said you didn't see any relevance to it, which the State  
11 agrees with.

12 THE COURT: There was this business here about him  
13 having a foot injury. A gunshot wound, I guess, to his foot  
14 or to his leg. It wasn't clear what that was all about.

15 MR. CONRAD: I'm fine with redacting that.

16 THE COURT: She wants to eliminate. Is there  
17 something in it that you wanted?

18 MR. CONRAD: Yes, Your Honor.

19 THE COURT: What is it that you want?

20 MR. CONRAD: It's on Bates stamp Rankine Medical  
21 Expert 4429. It says, Manuel Elijah Ellis --

22 THE COURT: Wait a minute. Hold on. Okay. 4429,  
23 uh-huh.

24 MR. CONRAD: That last paragraph there.

25 THE COURT: What do you want about this, the

1 auditory hallucinations?

2 MR. CONRAD: Yeah. And that it's tied to  
3 methamphetamine use.

4 THE COURT: Then what about the rest of that  
5 paragraph?

6 MR. CONRAD: There's one other thing within this,  
7 4433.

8 THE COURT: You're moving to another page. What  
9 about the rest of that paragraph that we were just looking  
10 at, 4429?

11 MR. CONRAD: I mean, if the State wants to redact  
12 that his foot's swollen and red and all that stuff, I don't  
13 have any objection to that.

14 MS. NICOLAVO: And Your Honor, from the State's  
15 position, there hasn't been any testimony regarding this.  
16 This is from July 25th of 2015. There's -- it's documented  
17 in records later, which have similar information which we've  
18 actually heard testimony from, and when he goes to the  
19 uncontrolled hypertension, again, there hasn't been any  
20 testimony regarding that that ties it to anything. It's  
21 just putting records in front of the jury without it  
22 being --

23 MR. CONRAD: That's not true.

24 THE COURT: What about the 4433? That's what you  
25 want, the uncontrolled hypertension?

1 MR. CONRAD: Yeah.

2 MS. NICOLAVO: I believe that's what he wants.

3 MR. CONRAD: I ended cross-examination, I think,  
4 with the majority of their experts by saying, Mr. Ellis had  
5 uncontrolled hypertension; correct? And they'd say yes.  
6 And I'd say, Do you see people die with uncontrolled  
7 hypertension? They'd say yes. He had cardiomyopathy? Yes.  
8 Do you see people die with cardiomyopathy? Yes.

9 MS. NICOLAVO: I don't believe this record was  
10 utilized for that, but I could be mistaken on that. But  
11 even if it was, he has that in the record and nobody  
12 disputed it.

13 MR. CONRAD: But you said no one disputed it.

14 MS. NICOLAVO: Well, uncontrolled hypertension.

15 THE COURT: We could spend five hours going  
16 through it at this pace.

17 MR. CONRAD: I mean, the State could waive it, but  
18 I've given notice of these records a long time ago.  
19 Pursuant to the statute, the State waives any objection that  
20 they have to them, to the admissibility of them. So it  
21 really should just be a discussion between the Court and  
22 the Defense at this point, but the State keeps interjecting  
23 themselves into the conversation, which I understand.

24 THE COURT: Well, I'm going to let them do that  
25 for a while longer. Maybe until the case is over.



1 MS. NICOLAVO: Your Honor, I guess from the  
2 State's perspective also, and as I mentioned earlier, there  
3 are records that are more recent that contain similar  
4 information. I mean, if you look at Exhibit 984, for  
5 example, where it goes through his schizoaffective disorder  
6 and again, recognizing the State has a standing objection,  
7 I'm just going through it for the purpose of trying to get  
8 there.

9 THE COURT: I understand.

10 MS. NICOLAVO: You look at this and he wants dim  
11 3, and, you know, that's going to be consistent with what  
12 the Court previously stated is going to be admissible.

13 The State's position is the first paragraph should  
14 be redacted for dim 1, dim 2 should be added, dim 3 Defense  
15 gets. Which --

16 THE COURT: I mean, I --

17 MS. NICOLAVO: -- could ask --

18 THE COURT: I --

19 MS. NICOLAVO: When you --

20 THE COURT: You're looking -- I don't have 984,  
21 so.

22 MS. NICOLAVO: Maybe it's 984A.

23 THE COURT: 984A. Okay.

24 MS. NICOLAVO: I apologize. I have these listed  
25 based on what was sent.

1                   So he's -- essentially, it's giving him the  
2 information that he wants regarding the meth use, the  
3 psychosis.

4                   MR. CONRAD: But the difference is, is that we're  
5 talking about this being a recurrent issue over a period of  
6 time, and that's why the State doesn't want the multiple  
7 instances of it that show this is a recurrent, ongoing  
8 issue. Because then they're able to argue, oh, because it  
9 happens on this one time as if it's some unexpected  
10 instance, when we know this is an ongoing issue since --  
11 dating back to 2015.

12                  THE COURT: Well, I think I know how I'm going to  
13 resolve this.

14                  MR. CONRAD: Okay.

15                  THE COURT: You already know from our last  
16 conversation that there's several items in here that need to  
17 be redacted further.

18                  MR. CONRAD: Correct.

19                  THE COURT: Make those redactions.

20                  MR. CONRAD: Yes, Your Honor.

21                  THE COURT: You, on the other hand, need to make  
22 whatever redactions you think are important, and then I'll  
23 choose.

24                  MS. NICOLAVO: Sounds good, Your Honor, thank you.

25                  MR. CONRAD: Okay.

1 THE COURT: Okay. Thanks. That'll speed things  
2 up a bit.

3 MS. NICOLAVO: Your Honor, I did provide defense  
4 counsel -- we went through them yesterday and this morning,  
5 exactly what areas were being redacted, so we'll do the full  
6 redactions for the Court. Do you want them marked so you  
7 can see what we're redacting, or do you want them blacked  
8 out? I guess my point is, when the Court reviews it, do you  
9 want to be able to see what our proposal is for what we're  
10 taking out versus you're getting it like this and you don't  
11 know what it is?

12 THE COURT: Well, presumably, I've got this, and  
13 if they haven't blacked it out, then I can compare it with  
14 that. So that should make your job a little easier.

15 MS. NICOLAVO: Great. Thank you.

16 MR. CONRAD: Understood.

17 THE COURT: Okay.

18 Well, I'm not sure if we got our last juror here  
19 yet, but before we get started with that, there's a couple  
20 of things, or at least a thing, I want to talk about. We've  
21 had a conversation a little bit about courtroom decorum and  
22 so on from time to time during the course of this trial. It  
23 does seem to me that people are letting their impulses get  
24 the best of them. I'm increasingly hearing little murmurs  
25 or whatever, based on one thing or another that's either

1 testified to or a ruling from me or otherwise. And I don't  
2 much mind that, particularly if there's no jury present,  
3 because I can take whatever criticisms are of me and I'm  
4 going to ignore whatever cheerleading there might be for one  
5 side or the other, although it certainly looks bad no matter  
6 what.

7 But if the jurors can hear these remarks, it's  
8 potentially affecting their deliberations and their outcome  
9 and their decision-making, and that's a problem. So we've  
10 got to keep it to yourselves. If you've got a problem about  
11 that, well, I'm sorry. If it continues, we may have to  
12 remove people from the courtroom. That's not the thing I  
13 want to do, so fair warning. One.

14 Number two, it's come to me, some information,  
15 that there has been some emotional feelings outside the  
16 courtroom in between people and people letting their  
17 emotions run on this. And I've had too many times where  
18 people get angry about something and words go back and forth  
19 between people and the next thing you know, egos get in the  
20 way and nobody wants to back down, and the next thing you  
21 know, this thing escalates into something really serious and  
22 somebody gets hurt.

23 Obviously, I can't control your behavior outside  
24 the courtroom. But I do want everybody to stay safe. And I  
25 can imagine, too, that anything that's said outside the

1 courtroom can be brought into this courtroom in the sense of  
2 the emotions of it and so on. And we don't need any more of  
3 that than we have already.

4 So I would urge you all to be circumspect of what  
5 you say, you know, cautious, keep it to yourself. If you  
6 have emotions about this thing, you may express them  
7 elsewhere but not in the presence of the folks who are going  
8 to potentially take offense at it. And that goes for both  
9 sides. So -- because it just wrangles people up and the  
10 next thing you know, we have another tragic event, which I  
11 say we don't need. So hopefully, that will be taken to  
12 heart and we won't have additional problems with it.

13 Did you send Hannah to go check on the jury?

14 THE CLERK: She was going to and then deliver  
15 paperwork from something this morning. And here she is.  
16 Are they all here?

17 THE COURT: We're still missing a juror?

18 MS. HANNAH: Yes.

19 THE COURT: Mrs. Winnie, make an inquiry. I think  
20 you know who that might be. See what you can do and find  
21 out what the status is on the jury.

22 So we'll be at break until at least -- at least  
23 for a few more minutes until we figure out what's going on  
24 with the other juror. Thank you.

25 (Recess.)

1 THE COURT: Okay. Welcome back, everybody.  
2 Please be seated. I believe our juror is here now, so we  
3 can resume.

4 MR. AUSSERER: Can Officer Collins retake the  
5 stand, Judge?

6 THE COURT: Yes. I believe it's Mr. Purtzer or  
7 Mr. Fricke's examination.

8 MR. PURTZER: Yes, Judge.

9 (The witness resumed the stand.)

10 (The jury entered the courtroom.)

11 THE COURT: Okay. Welcome back, everybody.  
12 Please be seated. Okay. Cross-examine. Mr. Purtzer, when  
13 you're ready.

14 MR. PURTZER: Your Honor, thank you. Cue up  
15 Exhibit 440, please.

16 CROSS-EXAMINATION

17 BY MR. PURTZER:

18 Q. Officer, good morning. How are you?

19 A. Good morning, sir.

20 Q. We want to take a look at Exhibit 440, which is the  
21 first McDowell video, and just had a couple of questions  
22 regarding that.

23 A. Yes, sir.

24 MR. PURTZER: If you could roll this until we see  
25 the flash next to the police car. Go back to where you see

1 the first flash about two seconds in.

2 THE COURT: Flash? Are you talking about the  
3 police light? What kind of -- flash from what?

4 MR. PURTZER: We're going to get to that, Judge.

5 THE COURT: Well, where is that -- where in the --  
6 where would we be looking for this thing?

7 MR. PURTZER: If you could go up, just forward  
8 just a tad from that section. Right there.

9 Q. (By Mr. Purtzer) Officer, that is what, depicted  
10 in the video?

11 A. Well --

12 THE COURT: Are you talking about the sort of  
13 light there in the middle of the picture?

14 MR. PURTZER: Correct.

15 Q. (By Mr. Purtzer) The light right there.

16 A. It's hard to tell here whether it's a hand or a  
17 hand and a Taser, but I know from -- I think further in this  
18 video, you can clearly see a Taser out.

19 Q. You were asked yesterday -- well, you were  
20 suggested to that Officer Burbank attacked Mr. Ellis;  
21 correct?

22 A. Correct.

23 Q. Based upon the training that you've received and  
24 that Officer Burbank has received, would that have been  
25 appropriate to attack a person with a Taser in your hand?

1           A.    No, sir.

2           Q.    Why is that?

3           A.    So in Taser training, you have to gain distance to  
4 pull the Taser out.  It's kind of like how I talked about  
5 with your firearm.  Because it's mine from this distance, but  
6 once we're close, wrestling, and I take it out, it's ours.

7                    So in our Taser training in Tacoma, if -- we're  
8 taught if somebody gets control of your Taser, you're to  
9 lethally engage them through firearms, because now they can  
10 make you incapacitated with your Taser, essentially, grab  
11 your firearm, and now they're a threat to the public.

12                   So in our training, if somebody gets our Taser, we  
13 have to engage with them with the firearm.  So absolutely  
14 not.  You have to have distance before you use a tool like  
15 that.

16           Q.    All right.  And shortly after, in this video, we  
17 actually see Officer Burbank using the Taser on Mr. Ellis;  
18 correct?

19           A.    Yes, sir.

20                   MR. PURTZER:  Thank you.  That's all the questions  
21 I have.

22                   MR. CONRAD:  I don't have any questions, Judge.

23                   THE COURT:  Any redirect?

24                   MR. AUSSERER:  I have some questions, Judge.

25                   THE COURT:  Go ahead, Mr. Ausserer.



1 REDIRECT EXAMINATION

2 BY MR. AUSSERER:

3 Q. Good morning, Officer Collins. How are you?

4 A. Good morning, Mr. Ausserer. I'm all right.

5 Q. I want to work back from Ms. Eakes'  
6 cross-examination yesterday through some areas that she  
7 touched on; okay?

8 A. Okay.

9 Q. So she left off yesterday with Exhibit 77, and with  
10 the Court's permission, I'm going to approach you with  
11 Exhibit 77; okay?

12 MR. AUSSERER: Is that okay, Judge?

13 THE COURT: Yes.

14 Q. (By Mr. Ausserer) What's 77?

15 A. 77 is the incident report from the St. James  
16 Apartments that we talked about.

17 Q. And Ms. Eakes yesterday had you look through 77 to  
18 address the weight of Philman Shark; do you remember that?

19 A. I do, yes, sir.

20 Q. Because your testimony yesterday was that he was  
21 about 150 pounds, and in the document it says 200 pounds; do  
22 you remember that line of questioning?

23 A. I do.

24 Q. All right. At the bottom of Exhibit 77, are there  
25 Bates stamps?

1           A.     There is.

2           Q.     Do you know what a Bates stamp is?

3           A.     Yes, sir, I do.

4           Q.     What's a Bates stamp?

5           A.     It's a cataloging system for documents so that you  
6 know you have the complete issue of the documents.

7           Q.     And what's the Bates stamp on Exhibit 77?

8           A.     Washington Attorney -- and so it's WAAG 0036296.

9           Q.     And do you know what WAAG stands for?

10          A.     Washington Assistant Attorney General.

11          Q.     Do you know how those numbers are put on there and  
12 why they're put on there?

13          A.     They're put on when you request documents from the  
14 Attorney General's Office. So they stamp them so you know  
15 you're getting the completion of what they have.

16          Q.     So that means that was provided to us from  
17 Ms. Eakes; right?

18          A.     Yes, sir.

19          Q.     Is that the entirety of the incident report in 77  
20 related to this incident?

21          A.     It is not.

22          Q.     How many pages is Exhibit 77?

23          A.     So what I have goes through the last three of 296  
24 up until 307.

25          Q.     All right. Is 77 the DOT 1 report that you

1 created?

2 A. It is.

3 Q. What's a DOT 1 report?

4 A. So any -- any incident where you have multiple  
5 officers, the lead officer, whoever is taking control of the  
6 case, will have the DOT 1. It's like the main report. And  
7 anyone else who's writing has DOT 2s, 3s, 4s, whatever is  
8 next. So Burbank and I would switch off, and whatever -- if  
9 the call was that I would -- just me in charge of it, then I  
10 would kind of cover the main probable cause for arrest and so  
11 on.

12 Q. All right. And how many pages is your DOT 1  
13 report?

14 A. The actual -- without the CAD information or from  
15 the whole thing?

16 Q. Just 77 that Ms. Eakes decided she was going to  
17 show you.

18 A. So again, she gave me last three of 296 through  
19 307.

20 Q. And is that the 12 pages that are associated with  
21 your DOT 1 report only?

22 A. Yes.

23 Q. Are there other reports associated, documenting  
24 your interaction with Mr. Shark?

25 A. Yes, sir.

1 Q. Were you provided those by Ms. Eakes?

2 A. No, sir.

3 Q. Why not?

4 A. I do not know.

5 MS. EAKES: Your Honor, I'm going to object.

6 THE COURT: Sustained.

7 Q. (By Mr. Ausserer) Well, with the Court's  
8 permission, I'm going to hand you what's been marked as 2755.

9 THE COURT: Proceed.

10 Q. (By Mr. Ausserer) What's 2755, Officer Collins?

11 A. So this looks like the full incident report that  
12 includes my report. So it goes through, again, 296 in the  
13 beginning through 320 at the end.

14 Q. And are those all Bates stamps and provided by the  
15 Washington Attorney General's Office?

16 A. Yes, sir, they are.

17 Q. Are they sequential from Exhibit 77 through the  
18 rest of the reports associated with the contact with  
19 Mr. Shark?

20 A. They are sequential, but they stop -- they stop,  
21 basically, where the CAD incident inquiry picks up.

22 Q. What else is included in 2755 other than 77, which  
23 was provided by Ms. Eakes?

24 A. So again, it's got the CAD incident inquiry. It's  
25 got my report -- or Officer Burbank's report, I mean. And

1 it's got a use of force supervisor report.

2 Q. All associated with the contact with Mr. Shark in  
3 2017?

4 A. Yes, sir.

5 Q. Yesterday, Ms. Eakes suggested that your testimony  
6 that he weighed 150 pounds was not accurate because of the  
7 entry in page 2 of your report. Can you tell us how you got  
8 that information for page 2 of your report?

9 A. Yeah. So again, that's -- you know, when all of us  
10 get our driver's license, they ask you for your weight and  
11 everything, and that's what the weight is by the DOL. We  
12 don't actually weigh people when we arrest them. So whether  
13 or not they weigh exactly what their DOL says is dependent on  
14 a lot of things.

15 Q. All right. And in your report, the 77 that  
16 Ms. Eakes showed you yesterday, was there any documentation  
17 that Mr. Shark appeared to be under the influence of any sort  
18 of narcotic?

19 A. In what she gave me yesterday?

20 Q. Yes.

21 A. Yes. So I talked about his behavior, and then he  
22 was also found with heroin and other, I think, drug needles  
23 maybe, possibly. He had a kit with a bunch of stuff in it.

24 Q. With your training and experience, does the use of  
25 heroin affect an individual's weight?

1           A.     It does.

2           Q.     How so?

3           A.     Well, I mean, they don't take care of themselves.  
4     They don't eat properly, and they tend to get very skinny,  
5     emaciated.

6           Q.     All right.  And did Mr. Shark appear to be under  
7     the influence of heroin when you contacted him?

8           A.     Not when I contacted him, he didn't.

9           Q.     Ms. Eakes suggested in Exhibit 77 that there's no  
10    documentation that Mr. Shark whispered anything towards you  
11    and Mr. Burbank.  Do you remember that line of questioning?

12           MS. EAKES:  Your Honor, I'm going to object that  
13    that misstates the questions that I had asked.

14           THE COURT:  I think it was having to do with  
15    whispering a death threat.

16           Q.     (By Mr. Ausserer)  Did you -- does your 77 that she  
17    provided you document that he whispered threats towards you  
18    and Officer Burbank?

19           A.     May I refer to it?

20           Q.     Sure.  If it would refresh your memory.

21           A.     So your question, again, was directly, does my  
22    report reference threats to me?  Is that what you asked me?

23           Q.     Right.  So Ms. Eakes suggested that you didn't  
24    document these threats that you testified to.  Does your  
25    report actually document those threats?

1           A.     It does.

2           Q.     And can you read those to the jury, please.

3           A.     Okay.  So starting in the middle of the last  
4 paragraph on 306.  It was right after noticing this that  
5 Arrestee 1 Shark became assaultive, while standing up into us  
6 and attempting to pull his arms downward towards the  
7 waistline, while driving his weight towards us.  All the  
8 while, Arrestee 1 Shark was staring at me with the same  
9 distant and calm glance and began to whisper to me, Hey, is  
10 your partner a rookie?  He feels like it.  Shark then said,  
11 You know how easily I could hurt you guys?  At this point, I  
12 had control of A1 Shark's arm to stop me --

13          Q.     Well, go ahead and stop right there.

14                    So there was a couple of things that you put in  
15 quotation marks in your report.  Why did you do that?

16          A.     Because that's directly what the subject said.

17          Q.     All right.  And so what were the quotes that you  
18 attributed to Mr. Shark?

19          A.     You know how easily I could hurt you guys, and I  
20 think that might be the only one.

21          Q.     All right.  And in the DOT 2 report authored by  
22 your partner at the time, Officer Burbank, does he put in  
23 quotes things that were whispered, threats towards you from  
24 Mr. Shark?  I'll direct your attention to page 405, Bates  
25 stamp 36319, from the Washington Attorney General's Office.

1           A.     Give me one second, please.

2           Q.     Of course.

3           A.     Yes.  At the bottom of --

4           Q.     First off, before you read it, does it indicate  
5           that he's whispering these threats to you as you testified to  
6           yesterday?

7           A.     Yes, sir.

8           Q.     What does he whisper to you and Officer Burbank?

9           A.     How close he is to killing us and wanted to be sure  
10          we were ready to die.

11          Q.     Consistent with what you told the jury on direct  
12          examination?

13          A.     I believe so, yes.

14          Q.     Yesterday, Ms. Eakes questioned you about the  
15          number of times you reported Mr. Ellis being tased when you  
16          were interviewed by Sergeant Brockway on March 9th of 2020;  
17          do you remember that line of questioning?

18          A.     I do.

19          Q.     With the Court's permission, I'm going to hand you  
20          what's been marked as Plaintiff's 59A.

21                   THE COURT:  Proceed.

22          Q.     (By Mr. Ausserer)  What's 59A?

23          A.     59A is that transcript of the meeting with Pierce  
24          County Sheriff's Office.

25          Q.     If I can have you turn to page 10 of 59A.



1           A.     Okay.

2           Q.     And start at line 25 at the bottom. Do you see  
3 that?

4           A.     Yes.

5           Q.     Turn to page 11. Through line 14, read that to  
6 yourself real quick. Do you recall Ms. Eakes asking you  
7 portions of those paragraphs yesterday?

8           A.     I do.

9           Q.     Was that the entirety of your statement that she  
10 asked you about yesterday about how many times the Taser was  
11 applied in this case?

12          A.     No.

13          Q.     Why don't you go ahead and read from page 10, line  
14 25, through page 11, line 14, for us.

15          A.     So at that point I came off the LVNR. I push him  
16 down, facedown, and I move to his left arm. And I tell  
17 Shane, Grab his right arm. So Shane goes to the right arm.  
18 But at this point, you feel the Taser -- we tried to cuff him  
19 under power, but you feel the Taser lose that effect and the  
20 guy comes back to. And he starts growling again and his  
21 hands start kind of hulking away from us. So at this point,  
22 my entire body is around -- I have both arms wrapped around  
23 his arm, and I'm just clenched on his arm, trying to move it  
24 to his back, and he's fighting us. And I feel Shane give him  
25 another round from the Taser. So there's another cycle of

1 the Taser that happens. His body locks up, we start to move  
2 in, and eventually, we get him into handcuffs from here.

3 Q. At any point during your statement, did you  
4 indicate that there was one or two Taser applications?

5 A. It sounds like I said there was two.

6 Q. Did you say eventually you were able to control him  
7 after the Taser applications?

8 A. I did.

9 Q. All right. Consistent with what you told us on  
10 direct examination?

11 A. Yes.

12 Q. Do you recall the line of questioning yesterday  
13 when Ms. Eakes suggested that you could have gotten out of  
14 the car as Mr. Ellis was in the intersection?

15 A. I do.

16 Q. Would you ever get out of the car and walk into the  
17 intersection in that circumstance?

18 A. In that particular circumstance, no.

19 Q. Why not?

20 A. Because I didn't really have anything, again, and  
21 so he might have just run off. And there was just no reason  
22 for me to get out at that point.

23 Q. Would you ever leave your car in the middle of an  
24 intersection while you're out of the vehicle?

25 A. Not unless it was an emergency.

1 MS. EAKES: Objection, leading.

2 THE COURT: It is leading, Counsel.

3 Q. (By Mr. Ausserer) Is there -- well, have you ever  
4 left your car in that situation?

5 A. Not that I recall.

6 Q. Is there a reason you wouldn't do that?

7 A. Well, first of all, it's just blocking traffic.  
8 Again, it's unnecessary. It's creating another hazard for  
9 other pedestrians. But it just doesn't make any sense to do  
10 that.

11 Q. Understood. Yesterday, Ms. Eakes questioned you  
12 during that same line of questioning why you didn't activate  
13 your emergency lights in that situation; do you remember that  
14 line of questioning?

15 A. I do.

16 Q. Is that appropriate at all?

17 A. Not at all.

18 Q. Why not?

19 A. That's an illegal seizure.

20 Q. Why is it illegal?

21 A. Because I didn't have a crime. I mean, you --  
22 once -- like I was explaining yesterday, once you activate  
23 the lights to a citizen, if they start -- you're telling them  
24 they're understood arrest. So you have to have a lawful  
25 arrest reason to do that at that point.

1 Q. What would happen if you had performed that illegal  
2 procedure as Ms. Eakes suggested?

3 MS. EAKES: Your Honor, I'm going to object. It's  
4 argumentative.

5 THE COURT: Overruled.

6 MS. EAKES: And speculation.

7 THE COURT: I'll allow this.

8 A. How so?

9 Q. (By Mr. Ausserer) Well, can you just perform  
10 illegal maneuvers whenever you want because the prosecutor  
11 suggests it's an option?

12 A. Absolutely not.

13 MS. EAKES: Object, misleading and argumentative.

14 THE COURT: I'll allow it to stand.

15 A. I wouldn't deserve to be a police officer. I  
16 wouldn't want to be abusing my power.

17 Q. (By Mr. Ausserer) Yet, yesterday, Ms. Eakes  
18 suggested that you told Sergeant Brockway, in this line of  
19 questioning about activating your lights, that there was a  
20 carjacking; right? Do you remember that?

21 A. Yes.

22 Q. Turn to page 7 of 59A, please. And I want you to  
23 review lines 12 through the bottom of page 7 and the first  
24 line on page 8.

25 A. Okay.

1           Q.     Is that the area of the interview with Sergeant  
2 Brockway on March 9th where you're discussing what you think  
3 you're seeing in the intersection before you have contact  
4 with Mr. Ellis?

5           A.     It is.

6           Q.     All right. And why don't you go ahead and read  
7 lines 12 through the first line of page 8.

8           A.     Okay. So once we came to the stoplight, I was  
9 stopped, facing westbound. And I looked over and there was  
10 some sort of disturbance happening where there was a black  
11 male in the center of the intersection. His back was faced  
12 to me, and there was a vehicle turning west onto 96th Street  
13 from Ainsworth. And he was at the passenger door, working  
14 the handle, and the vehicle was kind of trying to turn left.  
15 It slowly moved around him without hitting him, and then it  
16 took off.

17                     So at this point, I didn't know what we were  
18 doing. I didn't know if this was a domestic violence thing,  
19 maybe this guy got kicked out of a car, maybe he was trying  
20 to car jack it, I don't know. I didn't know. But at this  
21 point, now this gentleman is just standing in the middle of  
22 the intersection and just right out in the middle.

23           Q.     All right. Kind of three times that you said you  
24 don't know what was happening out in that intersection; is  
25 that right?

1           A.     That's right.

2           Q.     And if you don't know what's happening out in the  
3 intersection, what are your limitations as an officer at that  
4 point?

5           A.     Well, I mean, I have to know what I'm looking at,  
6 what -- if I'm dealing with a crime or not.

7           Q.     Okay. And is that consistent with what you told  
8 the jury on direct examination yesterday about --

9           MS. EAKES: Your Honor, I'm going to object as  
10 argumentative.

11          THE COURT: Sustained.

12          MS. EAKES: Move to strike counsel's comment.

13          THE COURT: I've sustained the objection.

14          Q.     (By Mr. Ausserer) So if you didn't know what was  
15 happening out in the intersection, it is appropriate to  
16 activate your emergency lights?

17          A.     No, sir.

18          Q.     Yesterday, Ms. Eakes challenged your testimony  
19 about clearing the previous stop at 96th and A; do you  
20 remember that line of questioning?

21          A.     I do.

22          Q.     And she suggested that you didn't articulate that  
23 in your March 9th interview with Detective Brockway; is that  
24 right?

25          A.     That's right.

1 Q. Did you have any idea at the time you made the  
2 statement that that was an issue in this case?

3 A. No, I did not.

4 Q. Did you have any idea that the State would suggest  
5 that it limited the time you would have interacted with  
6 Mr. Ellis?

7 MS. EAKES: Your Honor, I'm going to object --

8 A. Certainly not.

9 MS. EAKES: -- as to leading and argumentative.

10 THE COURT: Sustained as to leading.

11 Q. (By Mr. Ausserer) Was that of any significance at  
12 the time that you gave this interview on March 9th?

13 A. It was not.

14 Q. Did anybody ask you about where you cleared the  
15 stop on March 9th?

16 A. They did not.

17 Q. Did anybody ask you how you cleared the stop?

18 A. No, sir.

19 Q. If they had, would you have explained it to them?

20 A. Yes.

21 Q. Is that your practice?

22 A. Yes.

23 Q. At the time you gave this statement, had you  
24 received any materials from Mr. Fredericks limiting the time  
25 frame?

1           A.     No, I did not.

2           MS. EAKES:  I'm going to object -- withdraw.

3           THE COURT:  Answer stands.

4           Q.     (By Mr. Ausserer)  Yesterday, Ms. Eakes challenged  
5 your use of the LVNR under the use-of-force policy by the  
6 Tacoma Police Department; do you remember that line of  
7 questioning?

8           A.     Yes, sir, I do.

9           MR. AUSSERER:  Can we pull up Exhibit 301, please.  
10 May I approach the witness with the hard copy of 301.

11          THE COURT:  Yes.

12          Q.     (By Mr. Ausserer)  Officer Collins, what's 301 --

13          A.     301 is our Tacoma Police Department procedural  
14 manual on the use of force.

15          Q.     All right.  Yesterday, Ms. Eakes said that TPD  
16 doesn't authorize an LVNR; is that accurate?

17          MS. EAKES:  Your Honor, I'm going to object that  
18 that misstates the question that I asked.  I asked whether  
19 it referenced it.

20          THE COURT:  I'll allow the question to stand.

21          Q.     (By Mr. Ausserer)  Do you remember that line of  
22 questioning?

23          A.     I do.

24          Q.     And she, Ms. Eakes, suggested it's not referenced  
25 in your use of force; right?



1           A.     Correct.

2           Q.     And not allowable under TPD policy; right?

3           MS. EAKES: Your Honor, I'm going to object again.  
4     That's a mischaracterization of what I asked, and it's  
5     argumentative.

6           THE COURT: I'll allow the question.

7           Q.     (By Mr. Ausserer) Why don't you read for us  
8     paragraphs 2 and 3 on page 2 of 13 of Exhibit 301?

9           A.     2 and 3?

10          Q.     Yes, please.

11          A.     Members of the department must generally employ the  
12     tools, tactics, and timing of force application consistent  
13     with the models, direction, and departmental training  
14     modules. This model, while requiring the officers to  
15     maintain controlled superiority over a subject, supports the  
16     practice of progressive application of force as part of the  
17     continuous risk assessment process.

18                 Risk is assessed objectively based on the on-scene  
19     reasonable officer's perspective, taking into account the  
20     facts and circumstances of the particular situation that are  
21     known to the officer.

22                 Due to the fact that the officer/citizen  
23     confrontations occur in environments that are potentially  
24     unpredictable and are tense, uncertain, and rapidly  
25     evolving, officers may use tools and tactics outside the

1 parameters of departmental training. All such applications  
2 of force shall meet the same standard of reasonableness as  
3 those which have been previously identified and approved.  
4 No distinction shall be made relative to the age of a  
5 suspect regarding the use of force. Reasonable timing and  
6 tactics shall be the determining factors.

7 Q. So does the policy explicitly allow you to go  
8 outside of TPD training?

9 A. It does.

10 Q. And your training with respect to the LVNR, was  
11 that outside the scope of TPD?

12 A. It was.

13 Q. And did you think that was reasonable given what  
14 you were faced with with Mr. Ellis?

15 A. Absolutely.

16 Q. Consistent with this policy?

17 A. Yes, sir.

18 Q. Yesterday, Ms. Eakes asked you many, many questions  
19 about failing to report hearing Mr. Ellis say he can't  
20 breathe; do you remember those questions?

21 A. I do.

22 Q. Did you hear Mr. Ellis say he couldn't breathe?

23 A. I did not.

24 Q. How are you supposed to report something that you  
25 didn't hear?

1 MS. EAKES: Your Honor, I'm going to object.  
2 That's argumentative.

3 THE COURT: Sustained.

4 Q. (By Mr. Ausserer) How would you report something  
5 if you couldn't hear what something was said?

6 MS. EAKES: Same objection, Your Honor.

7 THE COURT: Sustained.

8 Q. (By Mr. Ausserer) Can you report something you  
9 didn't hear?

10 MS. EAKES: Same objection, Your Honor.

11 THE COURT: Sustained.

12 MR. AUSSERER: Understood.

13 THE COURT: Let's move on.

14 Q. (By Mr. Ausserer) Ms. Eakes asked you questions  
15 about independently calling for medical aid based on  
16 statements from Mr. Ellis that you said you didn't hear; do  
17 you remember that line of questioning?

18 A. Yes, sir.

19 Q. Under what circumstance would you independently  
20 call for aid when your sergeant is on scene and already  
21 contacted for aid?

22 A. If I was not aware that Fire was en route already,  
23 then that would be a reason.

24 Q. And Ms. Eakes asked you about not reporting that  
25 Mr. Ellis said he couldn't breathe; do you remember that line

1 of questioning?

2 A. I do.

3 Q. Did you report whether or not you heard Mr. Ellis  
4 say, Try it again?

5 A. No, I did not.

6 Q. Why did you not report that?

7 A. I don't remember him saying that.

8 Q. Did you report that you told Mr. Ellis to put his  
9 hands behind his back four times without compliance?

10 A. I did not.

11 Q. Why did you not report that?

12 A. I don't remember saying that either.

13 Q. Did you report hearing Sarah McDowell screaming on  
14 scene?

15 A. I didn't hear her.

16 Q. So you didn't report that either?

17 A. No, sir.

18 Q. So did you report only the things that you recalled  
19 and heard?

20 A. Yes.

21 Q. Ms. Eakes suggested you didn't report to Fire your  
22 concerns about excited delirium; do you remember her asking  
23 those questions?

24 A. Yes.

25 Q. Turn to page 13.

1 MS. EAKES: Your Honor, I'm going to object to  
2 that misstates the questions that I asked him. I asked him  
3 about other people there, not about Fire.

4 THE COURT: Well, that's not true, Judge.

5 MS. EAKES: Well, I have the transcript.

6 THE COURT: I'll let the question stand.

7 Q. (By Mr. Ausserer) Do you remember that line of  
8 questioning about filling out the report, excited delirium?

9 A. Yes, sir, I do.

10 Q. Turn to page 13 of 59A, please.

11 A. I'm there.

12 Q. Lines 5 through 12.

13 A. Would you like me to read it out loud?

14 Q. Sure. Is that what you said to Sergeant Brockway  
15 on March 9th shortly after this incident?

16 A. Yes.

17 Q. Go ahead and read it.

18 A. When Fire arrived, I went up to the guys to give  
19 them a rundown and just said, you know, that I had time to  
20 kind of process what had just happened by then and I said,  
21 Hey, this is -- I don't know what's going on, but I think  
22 this guy might be excited delirium. Like, he's just kind of  
23 freakish strength and he wasn't speaking to us. He wasn't --  
24 he was just out of control. That's what I told them.

25 Q. Are you referring in your interview with Sergeant

1 Brockway what you told Lieutenant Wilson on the scene?

2 A. I believe it was who's now Lieutenant Wilson, yes.  
3 He wasn't a lieutenant then.

4 Q. Had you heard Mr. Ellis say, I can't breathe, as  
5 suggested by Ms. Eakes, would it have changed how you handled  
6 restraining and controlling him?

7 A. No, I couldn't have changed that.

8 Q. Why?

9 A. Because, again, I mean, it goes back to our whole  
10 discussion yesterday, but we have to restrain him first. And  
11 if he's now in this state of mind and is standing up with  
12 handcuffs instead of a disadvantaged position, we have to  
13 keep him down on the ground. So at that point, we can either  
14 put a bunch of officers on top of him to keep him down or we  
15 can place him in hobbles so he can't stand up, so...

16 Q. Had you heard him say, I can't breathe, when would  
17 have been the appropriate time to do something about it?

18 A. I mean, right away.

19 Q. Once he's hobbled?

20 A. Yes.

21 Q. And in your interview on the 9th, didn't you report  
22 that as soon as he was hobbled, someone said turn him on --  
23 recovery position?

24 MS. EAKES: Your Honor, I'm going to object again  
25 to leading.

1 THE COURT: I'll permit this. Overruled.

2 A. Yeah. I believe Officer Burbank instructed people  
3 to put him on his side.

4 Q. (By Mr. Ausserer) And did you report that on  
5 March 9th?

6 A. I did.

7 Q. Yesterday, Ms. Eakes had you refer to 18A. With  
8 the Court's permission, I'm going to hand you back 18A. Do  
9 you remember what 18A is?

10 A. Yeah. That's the audio transcript from their audio  
11 expert.

12 Q. And Ms. Eakes asked you specifically about the time  
13 frames in which it references where Officer -- according to  
14 this document, Officer said, Shut the fuck up, man. Do you  
15 see that on page 4 of 6?

16 A. Yes.

17 Q. And what time, at least according to this document  
18 that was used for illustrative purposes only, does it  
19 indicate that that was said?

20 A. 23:23 and 42 seconds.

21 Q. All right. And Ms. Eakes suggested that was  
22 related to Mr. Ellis saying he can't breathe. On page 3 of  
23 6, what time does it document that Mr. Ellis said he can't  
24 breathe?

25 A. 23:23:28.

1 Q. So how long after Mr. Ellis says he can't breathe  
2 is the statement, Shut the fuck up, man?

3 A. From 23:23:28 to 42. I'll let you do the math on  
4 that.

5 Q. So at least 14 seconds?

6 A. Yes, sir.

7 Q. Between the "I can't breathe" and "Shut the fuck  
8 up," how many unintelligibles are attributed to Mr. Ellis?

9 A. Sorry. I'm getting lost here.

10 Q. That's okay.

11 A. How many unintelligibles? You've got one, two,  
12 three.

13 Q. Any idea -- any recollection as you sit here what  
14 shut the F up was relative to?

15 A. No, I don't remember saying that.

16 Q. Lastly, Ms. Eakes asked you, and I wrote it down,  
17 quote, "You were praised in your review when discussing  
18 proactive policing." Do you remember that line of  
19 questioning?

20 A. I do.

21 Q. That is not all you were praised in, is it?

22 A. No, sir.

23 Q. Have you had accommodations and praise for your use  
24 of force as an officer?

25 A. Yes.



1 MS. EAKES: Your Honor, I'm going to object that  
2 this is not relevant and outside the -- I asked him only  
3 about the proactive policing.

4 MR. AUSSERER: She's opened the door by asking him  
5 about his praise.

6 MS. EAKES: Your Honor, this obviously was related  
7 to the proactive policing. It's not relevant as to other  
8 things.

9 THE COURT: Overruled. You may proceed.

10 Q. (By Mr. Ausserer) Have you been praised for your  
11 police work at TPD?

12 A. Yes, sir, I have.

13 Q. How many commendations have you received for your  
14 work at TPD?

15 A. I'm not sure.

16 Q. How many related to de-escalation and use of force?

17 A. I know one for certain, but I'm not sure of any  
18 other.

19 Q. Did you receive the Medal of Merit?

20 A. I did.

21 MS. EAKES: Your Honor, I'm going to object. This  
22 isn't relevant, and it's outside the scope.

23 MR. AUSSERER: She opened the door, Judge.

24 THE COURT: We'll excuse the jury and have a  
25 conversation about this. Ladies and gentlemen, please do

1 not discuss the case.

2 (The jury left the courtroom.)

3 MS. EAKES: Your Honor, my objection --

4 THE COURT: Everybody can be seated.

5 MS. EAKES: Yesterday, I asked one question about  
6 whether or not it was true that he was praised in his  
7 performance evaluation for his proactive policing. It was  
8 discrete to that issue. The idea that Mr. Ausserer can say,  
9 Well, you used the word praise and you talked about and you  
10 asked about a specific thing, that somehow opens the door to  
11 all his other commendations is simply -- it's not relevant  
12 and it's not accurate. And it's -- certainly, I didn't open  
13 the door with respect to any of his other things.

14 I also do have one other issue I want to raise  
15 about 18A and the way that it's being used in light of the  
16 way the Court reconfigured it.

17 THE COURT: I'm sorry?

18 MS. EAKES: I have another issue with respect to  
19 18A that I want to raise also.

20 THE COURT: Okay.

21 MR. AUSSERER: Judge, she chose to ask about  
22 praise related to on-work duty in a fashion that fit her  
23 theory of the case. She doesn't get to limit his praise and  
24 commendations by saying it was only with respect to  
25 proactive policing. I asked those things on direct

1 examination. Ms. Eakes objected, then went into it on her  
2 own. She chose to do that. I now get to follow up on his  
3 praise for that limited scope as she suggested, because  
4 that's not accurate. And I might say --

5 THE COURT: What you're saying is that she --  
6 you're claiming that she suggested that he would have been  
7 more zealous for proactive policing because he was rewarded  
8 for it?

9 MR. AUSSERER: That's what the suggestion is,  
10 Judge.

11 THE COURT: And you're saying there's more to it  
12 than that?

13 MR. AUSSERER: It's not just proactive policing.  
14 In fact, the Medal of Merit, I think the Court probably  
15 knows based on argument, was in fact awarded for  
16 de-escalation of somebody who comes at somebody with a knife  
17 that Officer Collins disarms and de-escalates. So that's  
18 exactly consistent with what I just asked him, that the  
19 State tried to limit in the use of their questions.

20 THE COURT: I think you tried to go into it on  
21 direct and I wouldn't let you do it.

22 MR. AUSSERER: Correct. Because the State  
23 objected to it.

24 MS. EAKES: Your Honor, I mean, it's apples and  
25 oranges. I mean, the issue of whether or not he was praised

1 for proactive policing, and that's all I asked him about, is  
2 not related to whether or not he received commendations for  
3 some other de-escalation. There's no connection between  
4 those two things.

5 Proactive policing is simply going out and causing  
6 things to happen by making contacts with people and  
7 developing criminal activity as a result of it. That's what  
8 the testimony has been, and that's what proactive policing  
9 is about.

10 THE COURT: Right. But when you tie it to the  
11 idea that he's received benefit from doing that, you're  
12 saying that he had an incentive to be aggressive about that.  
13 And what Mr. Ausserer is suggesting is he also had an  
14 incentive to de-escalate problems and so on because he got  
15 praised for that and awarded for that. And so that counters  
16 this idea that the only thing he would get praised for is  
17 being an aggressive officer.

18 MS. EAKES: Well, that wasn't -- what I was  
19 suggesting in terms of the proactive policing was that he  
20 had been recognized for that, that he was being proactive.

21 THE COURT: Right. But the point is, though, it  
22 leaves -- whether that was your intention or not, it leaves  
23 the jury with that potential inference.

24 MS. EAKES: This is just character evidence. But  
25 I understand that the Court is going to let it in with

1 respect to Officer Collins. But, I mean, I just note  
2 that -- I mean, it's --

3 THE COURT: The reason you understand that now is  
4 because now you -- the logic of it has certainly been made  
5 apparent.

6 MS. EAKES: I would disagree. I believe and I'm  
7 very practical about where the Court's going, and I can -- I  
8 hear what the Court's saying about it.

9 THE COURT: You're announcing these rulings before  
10 I make them.

11 MS. EAKES: Well, you pretty much just said how  
12 you're going to rule, so maybe I was jumping ahead to  
13 what --

14 THE COURT: I didn't say that. What I do, if you  
15 haven't caught on by now, is I -- there's a kind of devil's  
16 advocate thing here. I mean, I try to say, well, here's the  
17 argument that's being made, show me where it's wrong. And  
18 when you do, then you win; right? But if you don't, then  
19 you've got a problem. So we have to -- so we go through  
20 that, and I do that to both sides.

21 That's my style. Sometimes lawyers don't like it  
22 because they sometimes think I'm being aggressive towards  
23 them personally, and I'm not. I'm trying to get at the  
24 ideas or the principles which they're trying to advance.  
25 And sometimes they advance principles that are not really

1 consistent with logic or rules of evidence or otherwise, and  
2 sometimes they do. And I've got to sort that out.

3 So yeah, I tend to think that under the  
4 circumstances, he's entitled to go there. So you said you  
5 had another issue with respect to 18A.

6 MS. EAKES: I do. And You know, Your Honor, this  
7 has been the issue from the beginning with the way the Court  
8 decided to limit what was on a 18A. Counsel's now using 18A  
9 to basically say that Mr. Ellis didn't say he can't breathe,  
10 when he knows -- right before the "shut the fuck up." When  
11 he knows that the evidence and what the transcript said, it  
12 said 23:23:41, Mr. Ellis, and you made us change it to  
13 Unintelligible, said, Can't breathe. And that's what I  
14 played yesterday. And then comes the comment of shut the  
15 fuck up.

16 Now he's using this to say, well, these are just  
17 unintelligible, and the time he said shut the fuck up was  
18 from a previous time. And I just think that that's  
19 deceptive in light of what the Court did in terms of  
20 changing the transcript. Obviously, if the Court said at  
21 the time --

22 THE COURT: I don't have 18A. Can you get it?

23 MR. AUSSERER: Hand that to the judge, please.

24 THE COURT: Thank you.

25 MS. EAKES: You recall at this time that the Court

1 said we're not going to allow it in the transcript because  
2 you couldn't hear it sufficiently or there was dispute about  
3 whether or not how strongly Mr. Hallimore could do it, and  
4 so you made us change that one comment to "unintelligible"  
5 even though 18, which I'm happy to show the Court, showed  
6 that he had made the comment about he can't breathe.

7 MR. AUSSERER: Well, the context that Ms. Eakes  
8 fails to point out to the Court is that that was  
9 corresponding to the e-mail from Mr. Hallimore saying, I  
10 can't understand what it is, but if your office agrees to  
11 what it says, I'll add it in there. And then the Court  
12 said, Yeah, we're not doing that because I can't hear it.  
13 And he played it for you 30 times in the court and you still  
14 couldn't hear it. It says "unintelligible" according to the  
15 Court, so what I did was actually consistent with the  
16 Court's ruling and the finding and not disingenuous or  
17 misleading.

18 MS. EAKES: Your Honor, there was obviously  
19 dispute as to whether or not that was said. I can't find  
20 the first binder, but I'll hand up to the Court what we have  
21 marked as 18. And I think that, you know, 18, obviously,  
22 the comment was in there --

23 THE COURT: Was that the little clip that you  
24 played yesterday?

25 MR. AUSSERER: Repeatedly. No, that's --

1 MS. EAKES: One of the clips I played yesterday.

2 MR. AUSSERER: Where you could hear "breathe" is  
3 what the actual testimony was. Or "please."

4 THE COURT: Well, there was one that was really  
5 short and I questioned for a moment whether it had been  
6 admitted or not.

7 MS. EAKES: No. That was 659. That was the  
8 dispatch that you also took out, which was at the  
9 following -- that was at 23:25:21.

10 THE COURT: Well, that's after this, anyway.

11 MS. EAKES: Correct. It was after that.

12 THE COURT: So we have the 23:23:28. I guess I'll  
13 just use the last two numbers. 28, which is "can't  
14 breathe." Then we've got Mr. Ellis at 31, which is three  
15 seconds later. And are you talking about that one or are  
16 you talking about the next one?

17 MS. EAKES: No, I'm talking about the next one,  
18 right above "shut the fuck up, man." 23:23:41.

19 THE COURT: Okay. And you played that one  
20 yesterday, too?

21 MR. AUSSERER: She did, repeatedly.

22 MS. EAKES: I played all of that sequence. That  
23 was Exhibit 612.

24 THE COURT: I don't know what to tell you except  
25 you can use cross-examination. I mean, your expert couldn't



1 tell after going over it and going over it and going over it  
2 and going over it. And I couldn't tell.

3 MS. EAKES: Well, I think that the record is --

4 THE COURT: You may be able to say, Listen, ladies  
5 and gentlemen, it's there. Listen to it. And one might  
6 even come back and say, It's so difficult to hear. How can  
7 you say that that's what he's responding to, even if it's  
8 true? As opposed to the fact that he's saying something  
9 when he's now engaged in a conversation with Mr. Haze, or at  
10 least somebody is, because it says, Mr. Haze, do you guys  
11 need some help? Officer at 37 seconds. 39 seconds,  
12 Officer -- doesn't say which one, Oh, we got somebody  
13 coming. 41, another two seconds later, unintelligible. And  
14 42, we have the "shut the fuck up, man" statement by an  
15 officer that Mr. Collins is saying is probably him.

16 MS. EAKES: Again, I just think that -- well, the  
17 Court's not going to do anything about it. I just think  
18 it's not fair to use that when he knows what it said and  
19 that it was taken out and changed by the Court to  
20 "unintelligible."

21 MR. AUSSERER: She knows what it said.

22 (Multiple speakers.)

23 THE REPORTER: I can't take more than two speakers  
24 at once.

25 THE COURT: When he knows it's not true is I think

1 your point. And I guess I would say I don't know that  
2 anybody knows whether it's true or not. The jury can make  
3 their own determination. You can say, Hey, listen, he says  
4 it here. And of course they could still believe, well, even  
5 if he did, it could have been just -- from the point of view  
6 of the officer when he said it, it could have been just  
7 noise or he could have said that and was telling him, as  
8 your position is, that he was telling him to shut up about  
9 that. Or it could be that it was just like a noise that he  
10 couldn't hear or you thought maybe he was making noise so he  
11 couldn't hear Mr. Haze. Again, I don't know. It's all kind  
12 of possibilities there, and you're certainly entitled to ask  
13 the jury, isn't it true that if you listen to this, you can  
14 hear that he's saying that and then he immediately afterward  
15 says, Shut the fuck up, man. But whether or not that was --  
16 I think we're all agreed that it's Mr. Ellis's voice. What  
17 he said at that point in time is in dispute, and it could be  
18 you're right and it could be you're not. So I don't know  
19 that that makes much difference.

20 So here's 18A back. And as I say, when you go on  
21 redirect -- or recross, you can ask him about it again if  
22 you want. All right. Let's have the jury back.

23 (The jury entered the courtroom.)

24 THE COURT: Okay. Welcome back, everybody.

25 Please be seated. Okay. Objection is overruled. You may

1 continue.

2 Q. (By Mr. Ausserer) Before we excused the jury, I  
3 asked you about receiving the Medal of Merit. When did you  
4 receive the Medal of Merit?

5 A. I don't recall the day. I think it was around  
6 2018, '17.

7 Q. What's the Medal of Merit?

8 A. It's a commendation for police officers that falls  
9 somewhere under the -- it's the -- I think the third highest.  
10 Medal of Honor, Medal of Valor, Medal of Merit.

11 Q. What did you receive the Medal of Merit for in this  
12 case?

13 A. Officer Burbank and I were responding to a  
14 strong-arm robbery at the 76 station on 84th and Hosmer  
15 street. And in that scenario, the clerk -- guy jumped over  
16 the counter and beat him up and then had taken cigarettes and  
17 some money, I think, and then the guy left. So we were there  
18 taking the report, and while we were there, Officer Burbank  
19 kind of was walking to the back of the store while he was  
20 talking to dispatch, running records. I was interviewing the  
21 clerk, and the assailant came back. And now he was armed  
22 with a 15-inch butcher knife. He had it raised over his  
23 head, and he was coming at me, telling me to kill him.

24 Q. So what did you do?

25 A. We were able to basically -- at the end of the

1 story, we were able, when he turned his back, to get him  
2 safely in custody without hurting him.

3 Q. And did both you and Officer Burbank receive the  
4 Medal of Merit for de-escalating that circumstance?

5 A. We did.

6 MR. AUSSERER: Thank you. That's all I have,  
7 Judge.

8 THE COURT: Recross?

9 MS. EAKES: Just a couple of questions.

10 RECCROSS-EXAMINATION

11 BY MS. EAKES:

12 Q. Officer Collins, is it your testimony that it's  
13 lawful for a pedestrian to be out in the middle of an  
14 intersection in the middle of the night?

15 A. It depends on the circumstances. I mean, they  
16 could be crossing the road, but not just standing there.

17 Q. It wouldn't be; correct?

18 A. No. But it's not a seizable offense. I couldn't  
19 just go run out and arrest someone for that.

20 Q. And it's your testimony that it's to a seizure just  
21 to put on your lights; is that right?

22 A. It can be, yes, ma'am.

23 Q. And you were asked about the St. James report. Do  
24 you recall yesterday when you testified, you explained to the  
25 jury that that St. James incident is the reason why you knew

1 you had to use an LVNR against Mr. Ellis; correct?

2 A. That is correct.

3 Q. And you explained that the individual in St. James  
4 was out of control; correct?

5 A. Yes.

6 Q. And that you had to punch him multiple times. And  
7 you realized that you could just keep punching him, but you  
8 weren't going to get him to stop; correct?

9 A. I'm not sure punching, but striking him, because I  
10 know I did other strikes, yes.

11 Q. Okay. And you also said that you then kneed him in  
12 the groin as hard as you possibly could; correct?

13 A. Yes, ma'am.

14 Q. And you've looked at the report from St. James;  
15 correct?

16 A. The specific parts that I've been asked about.

17 Q. You didn't review the rest of it?

18 A. I didn't read it all.

19 Q. There's actually no reference in that report at all  
20 to you striking Mr. Shark, is there?

21 A. I don't know if there is or not.

22 Q. Why don't I show it to you again.

23 A. Okay.

24 Q. Handing you what's been marked as Defense 2755.

25 A. A second to read through it, ma'am.

1                   It's not specifically referenced, no.

2           Q.     There's no reference at all to you striking  
3 Mr. Shark; correct?

4           A.     There is not.

5           Q.     And there's no reference in that report to you  
6 kneeling Mr. Shark in the groin as hard as you could?

7           A.     That would be the same as striking. No.

8           Q.     There's no mention of you striking him or kneeling  
9 him in the groin; correct?

10          A.     No, ma'am.

11                   MS. EAKES: If I could have just a moment.

12                   That's all I have. Thank you.

13                   THE COURT: Mr. Purtzer?

14                   MR. PURTZER: Yes, thank you, Judge.

15                                   REXCROSS-EXAMINATION

16                   BY MR. PURTZER:

17           Q.     Officer, some more questions regarding the event  
18 there at the apartments. You talked earlier in both your  
19 direct examination and cross-examination regarding various  
20 levels of uses of force; correct?

21           A.     Yes, sir.

22           Q.     And striking a person is a use of force; correct?

23           A.     It is.

24           Q.     And you use your elbows, you use fists, you've  
25 kneed persons. And that is a level of use of force?

1           A.    It is.

2           Q.    All right.  Taser is a level of use of force as  
3 well, is it not?

4           A.    It is.

5           Q.    Where is the Taser in relation to the strikes?

6           A.    It's lower than strikes.

7           Q.    So strikes is higher than Taser?

8           A.    Strikes, you deal with assaultive subjects, so  
9 that's a step up.  Taser, in Tacoma's use of force, is  
10 actively resisting, so it's a step down.

11          Q.    So you had struck the person, it didn't work;  
12 correct?

13          A.    Yes, sir.

14          Q.    And he was responding, apparently, to the strikes  
15 he's receiving?

16          A.    Yes.

17          Q.    How was he responding?

18          A.    By telling us to do it more and laughing and  
19 threatening us.

20          Q.    You did ultimately tase him, though; correct?

21          A.    I did.

22          Q.    How many times did you tase the individual?

23          A.    I think three times.

24          Q.    Why don't you take a look at Exhibit 77 on the last  
25 page, pages 11 and 12.

1           A.    Does it specifically say here or do I need to --

2           Q.    Well, take a look at the last paragraph --  
3 actually, the last four lines of page 11 and the top part of  
4 page 12. And I need to ask you a couple of questions  
5 regarding that.

6           THE COURT: This is the incident at the apartment  
7 complex with Mr. Shark?

8           MR. PURTZER: Yes. Exhibit 77.

9           A.    Okay.

10          Q.    (By Mr. Purtzer) So does that refresh your memory  
11 about the number of times you tased Mr. Shark?

12          A.    Yes.

13          Q.    How many times did you tase him?

14          A.    Three times.

15          Q.    Well, doesn't it reference that you tased him twice  
16 and then you hit him with the ARC switch three separate  
17 times?

18          A.    Yeah. I mean, it depends on how you're asking  
19 about it. So in this sense, because we were in such a close  
20 fight, I did what's called a staple. So you can fire your  
21 Taser cartridge and then fire a second Taser cartridge to  
22 make your spread, and then hit the Arc button on your Taser  
23 to actually tase. So if you ask me maybe how many times I  
24 tased.

25          Q.    Okay. So how many times did you tase him?



1           A.     So it says here three times, until he finally  
2 dropped to the floor.

3           Q.     What was the response that he gave to you upon  
4 being tased?

5           A.     He said, Oh, yeah, that feels good.

6           Q.     Ultimately, though, you were able to cuff him?

7           A.     Yes, sir.

8           Q.     How was he cuffed?

9           A.     How was he cuffed?

10          Q.     Yes.

11          A.     So this was another -- so it says after getting him  
12 to the floor, we finally placed him in handcuffs.  Soon after  
13 dropping to the floor, additional officers arrived at the  
14 scene to assist in detention.  This was another incident,  
15 much like the night of Manny Ellis's incident, where we were  
16 fighting for over six minutes at this point.  So by the time  
17 the officers relieved us, we literally just rolled out and  
18 there was, like, five or six officers involved at that point.

19          Q.     What did those officers do when they arrived?

20          A.     They hobbled him, from what I understand.

21          Q.     So he was not only cuffed, but he was hobbled?

22          A.     That's what I understand.

23          Q.     Consistent with respect to what Mr. Ellis --

24          A.     Yes, sir.

25          Q.     And then after he was actually taken away to the

1 jail, are you aware of how Mr. Shark responded once he was  
2 there at the jail?

3 A. Yes.

4 Q. How did he respond once he was at the jail?

5 A. Yeah. It was bizarre. So as soon as we finally  
6 got him hobbled and then he calmed down. So then the hobbles  
7 were removed. We placed him in our car, and he wouldn't say  
8 a word to us. We took him to the jail. And I remember we  
9 asked for additional corrections officers because we had just  
10 been in this huge fight with him, and he's just totally calm,  
11 won't say a word to us. And he gets to the booking table at  
12 the jail, and as soon as those cuffs come off, he starts  
13 fighting the entire jail staff. And I think it took -- I  
14 mean, there was at least five correctional officers and  
15 people were tasing and it was wild. But we were out of it by  
16 then.

17 Q. All right. And you testified yesterday about the  
18 reason why a person remains cuffed at the scene; correct?

19 A. I believe so, yes.

20 Q. To control the individual?

21 A. Yes.

22 Q. Once the cuffs are removed, the individual is no  
23 longer in control?

24 A. Absolutely, yes.

25 Q. Is this an example of an individual who is in

1 perfect harmony with the officers but then becomes uncuffed  
2 and is completely chaotic?

3 A. Absolutely.

4 Q. And is that why you have did what you did with  
5 respect to Mr. Ellis?

6 A. Yes, sir.

7 MR. PURTZER: Thank you. Nothing further.

8 MR. CONRAD: I have a couple brief follow-up, Your  
9 Honor.

10 THE COURT: Go ahead, Mr. Conrad.

11 RECROSS-EXAMINATION

12 BY MR. CONRAD:

13 Q. So about this incident with Mr. Shark, the initial  
14 call came out from Shirley; is that right?

15 A. That's what it looks like, sir.

16 Q. I'm not going to try and pronounce her last name.  
17 But she is 68 years old, it indicates here. She lived in  
18 that apartment complex?

19 A. Yes, sir.

20 Q. And according to DOL, she weighed about 100 pounds;  
21 is that right?

22 A. Yes, sir.

23 Q. She said that she woke up at 2:00 in the morning  
24 and heard her front door -- someone at her front door; is  
25 that right?

1           A.     That's right.

2           Q.     And said she looked through her peephole and she  
3     didn't recognize the person that was standing at her front  
4     door, and the person was jiggling the door handle at that  
5     point?

6           A.     That's correct.

7           Q.     And that was Mr. Shark at her door, trying to get  
8     in --

9           A.     That is right.

10          Q.     -- at 2:00 in the morning for this lady living at  
11     that apartment?

12          A.     Yes, sir.

13          Q.     And then about -- well, 911 had responded, but he  
14     had left the -- Mr. Shark had left the location?

15          A.     Yes.

16          Q.     And about an hour later, at 3:00, he returned to  
17     her door; is that right?

18          A.     That's right.

19          Q.     Okay. And then he started walking through the  
20     hallway, and he fit through an 18-x-18-inch metal door mail  
21     slot; is that right?

22          A.     That's what I was trying to explain about those old  
23     school, little box slots on the bottom of the St. James'  
24     apartment doors.

25          Q.     And he was able to crawl through that mail slot

1 into that vacant apartment down the hallway?

2 A. Yes, sir.

3 Q. And then you guys actually found the mail slot  
4 inside with him when you guys went in there?

5 A. Yes, sir.

6 Q. And when you made contact with him, you said that  
7 he -- right away you indicate in your report that he appeared  
8 to be under the influence of some type of narcotic; right?

9 A. Yes.

10 Q. I mean, that's what you write in your report back  
11 in 2017?

12 A. Yes, sir.

13 Q. And that he's just staring at you with this blank  
14 look on his face is what you also write?

15 A. That's correct.

16 Q. And he says to you all, What are you doing here?

17 A. Yes.

18 Q. And he started to grow in aggression towards you  
19 all, and then you discuss, again, trying to detain him in  
20 handcuffs. And he kept that distant stare towards you  
21 throughout that time period, you indicate in your report?

22 A. That's right.

23 Q. And one of the things that you also noticed during  
24 this is that he had a black weapons holster sticking out  
25 underneath?

1           A.    Yes.

2           Q.    Why did you include that in your report?

3           A.    Because once that struggle is happening, we have to  
4 assume he's going for a firearm that's in that holster.

5           Q.    Okay.  You later learn that actually, he didn't  
6 have a firearm on him.  There was like some USB charger or  
7 something like that?

8           A.    Correct.

9           Q.    But you took that into account during your struggle  
10 with him?

11          A.    Yes.

12          Q.    You even discussed being unable to just -- you're  
13 grabbing one of his arms and being unable to hold on to even  
14 just one of his arms, you yourself?

15          A.    Yes.

16          Q.    All right.  And in this report, you actually quote  
17 Mr. Shark as saying after you -- after you used a Taser on  
18 him, you quote him as saying, Oh, yeah, that feels good, and  
19 explanation points after your case note?

20          A.    Yes, sir.

21          Q.    Okay.  And in Mr. Burbank's report, he includes a  
22 couple of additional details as well; right?

23          A.    He does.

24          Q.    And he says that also, Mr. Shark is saying, when  
25 you guys are trying to take him into custody and he's being

1 tased, he says, Keep doing it, you'll love it, and other  
2 oddities is how he explains it; is that right?

3 A. That's correct.

4 Q. You talked about this Rolodex of experiences that  
5 you've had as a police officer that inform your training and  
6 experience, and this is one of them; is that right?

7 A. This was a pivotal one, yes.

8 Q. I wonder what would have happened to that lady that  
9 lived in that apartment had Mr. Shark --

10 THE COURT: Hold on. Hold on. Is there a  
11 question here instead of a comment?

12 MR. CONRAD: I don't have any other questions.

13 THE COURT: Okay. Mr. Ausserer?

14 MR. AUSSERER: Nothing further. Thank you, Judge.

15 THE COURT: Ms. Eakes?

16 MS. EAKES: Nothing further.

17 THE COURT: Mr. Purtzer?

18 MR. PURTZER: No. Thank you, Judge.

19 THE COURT: You may step down.

20 (The witness left the stand.)

21 THE COURT: Thank you. Okay. We'll take our  
22 morning recess now for 15 minutes. Ladies and gentlemen,  
23 please do not discuss the case among yourselves or with  
24 anyone else, and please avoid any reports in the media,  
25 social or otherwise, on the subject of this trial.

1 (The jury left the courtroom.)

2 MR. FRICKE: Your Honor, I just want to make sure  
3 if we could make -- if the Court could break, like, right at  
4 12:00, because I arranged to have a phone court hearing in  
5 Alaska, which they set over the noon hour so that we didn't  
6 interrupt the court proceedings here. So it's at 12:15 and  
7 I need to get back to my office.

8 THE COURT: We'll try to do that.

9 MS. EAKES: Can we ask who's coming next?

10 THE COURT: You can ask. Is there another  
11 non-defendant witness in the area?

12 MR. CONRAD: No, Judge.

13 MS. EAKES: Okay. Thanks.

14 THE COURT: That should be a clue. All right.  
15 We're at break.

16 (Recess.)

17 THE COURT: Welcome back, everybody. Before we  
18 proceed, we have another issue that came up that I want to  
19 talk to you about. One of the jurors informed our staff  
20 that he had inadvertently heard something on the news and/or  
21 saw something on the news, also heard, I think, anyway,  
22 about this case; that it only lasted for a few moments  
23 before it went to a commercial, wanted to let us know about  
24 it.

25 I asked Mrs. Winnie to inquire more specifically



1 about it, and I believe he thought it was on KIRO  
2 television, and my understanding is that he did hear  
3 something about the trial. I got the impression it wasn't  
4 much, but some.

5 I don't know if you want to inquire of this juror  
6 anything more about it than that. I don't know whether it  
7 impacts their view of the case in any way, but we can have  
8 them come out. And I did have Mrs. Winnie inform the juror,  
9 you know, we want to make sure that you don't say anything  
10 to any of the other jurors, and this juror informed us that  
11 that had not happened and would not happen, so that was  
12 good.

13 I also had Mrs. Winnie inform him that we may want  
14 to talk with him about this. So he's prepared for that if  
15 it happens. Anybody want to question the juror?

16 Mr. Fricke.

17 MR. FRICKE: I think certainly we need to know,  
18 however you do it, that he could set whatever he heard aside  
19 and reach a decision. That's the only issue as far as I'm  
20 concerned.

21 THE COURT: Sure. It's an issue you want me to  
22 bring him out to find that out?

23 MR. AUSSERER: I don't, Judge. The fact that he  
24 self-reported this and complied with the request from the  
25 Court gave me assurance he's going to do what the

1 instructions tell him to do.

2 THE COURT: How does the State feel?

3 MS. EAKES: If the Defense doesn't think it's  
4 necessary then we don't think it's necessary.

5 THE COURT: Mr. Fricke, what do you -- you  
6 really -- so do you want me to bring him out or not?

7 MR. FRICKE: No, I said I don't really care how  
8 you do it, but, you know --

9 THE COURT: Well, by --

10 MR. FRICKE: -- I'm always cautious when it comes  
11 to those things. Obviously, I've always taken a position  
12 that to know is better than not to know.

13 THE COURT: Well, by saying I don't care how you  
14 do it suggests that you want me to do something to find out  
15 whether or not, in my view, it impacts his view of the  
16 trial, and I don't know that that's an appropriate rule for  
17 me, so I guess the question is, if you want me to bring the  
18 juror out, I'll do it. If you don't --

19 MR. FRICKE: I don't have any desire to ask him  
20 questions specifically.

21 THE COURT: Well, I can ask the questions if  
22 that's what you're concerned about. And usually, what I  
23 would do is ask the questions and then ask counsel if they  
24 have any questions after I've completed mine. But you may  
25 not want me to ask him anything so. Everybody so far says

1 no except you, Mr. Fricke --

2 MR. FRICKE: I know, and I --

3 THE COURT: -- and I respect that. It's -- I  
4 don't -- I give you the tyranny of the majority, but you can  
5 go your own way. What do you want to do?

6 MR. FRICKE: I've certainly been consistent in my  
7 positions on it and they have as well, so I guess I'll  
8 remain consistent and just ask that you ask the question can  
9 you set it aside and leave it at that. I'm assuming he's  
10 going to say yes, or she, whoever it is, and --

11 THE COURT: So you do want me to bring the juror  
12 out?

13 MR. FRICKE: For that very limited purpose.

14 THE COURT: I will ask a number of questions.  
15 After I do so, I'll ask each party, starting with the State,  
16 whether they have any questions for the juror as well. And  
17 so I don't know where this might go.

18 MS. EAKES: What other questions is the Court  
19 intending to ask?

20 THE COURT: Basically confirming what we already  
21 know, to some extent, which is you did self-report that  
22 there was an issue, that you heard something on the news,  
23 confirm what the source of the news was, as I said, my  
24 understanding is Channel 7, but he might tell me something  
25 else. Ask him if what he learned -- you know, I'm sure

1 trying to get some idea how much information, how long the  
2 duration of the report was that he heard or saw, and ask him  
3 certainly to what extent he thinks it would impact his  
4 ability to be an impartial juror here and influence his  
5 decision, if at all, and confirm that he hasn't talked to  
6 other jurors about it.

7 MS. EAKES: Is the Court then intending to ask him  
8 about the content of what he heard?

9 THE COURT: I wasn't going to. Does anybody want  
10 me to?

11 MS. BREMNER: No, Your Honor.

12 MS. EAKES: If the Defense doesn't want to. I'm  
13 trying to get the parameters of what the Court's going to  
14 ask so that we're clear. If the defense doesn't want that.

15 THE COURT: Well, somebody else could ask it,  
16 conceivably. As I say, once I am finished with my  
17 questions, I'll ask counsel if they want to ask any  
18 particular questions that might be raised by the answers  
19 that have been given, and if they do, I'm not going to  
20 necessarily have carte blanche of everything you might ask,  
21 but chances are you will ask something that will be fine and  
22 then who knows where it will go?

23 MR. FRICKE: I don't think we have any intention  
24 of asking that question.

25 THE COURT: Okay. Well, all right. My

1 understanding is this is Juror No. 12, so would you have the  
2 Juror come in.

3 (Discussion held off the record.)

4 (Juror 12 entered the courtroom.)

5 THE COURT: Welcome back. Please be seated,  
6 everyone. Juror 12, welcome. First of all, you're not in  
7 trouble. It probably feels a little like going to the  
8 principal's office. Don't feel that way.

9 You reported to our staff that you heard something  
10 on the news report on the subject of this trial, and first  
11 of all, I want to let you know reporting that to us was the  
12 right thing to do, so by definition, you're not in trouble.  
13 So I want to discuss just a couple of questions about that.

14 First of all, what was the source of the news  
15 story that you --

16 JUROR 12: The source of the news?

17 THE COURT: Yeah. Was it a television, newspaper?

18 JUROR 12: It was KIRO Channel 7, TV.

19 THE COURT: Television. Now did it happen that  
20 this happened that you happened to hear this report?

21 JUROR 12: I turned on the TV and it was on. It  
22 was on, that was the first thing that came on. I was  
23 watching football. I -- the only thing I -- I was watching  
24 football the day before, and when I turned it on it was on,  
25 and I was just going to the Monday Night Football game and I

1 caught the end of the report.

2 THE COURT: Okay. The end of the report. So that  
3 would ask my other question, is how long a period of time do  
4 you think you were able to hear the report?

5 JUROR 12: It was the very end -- it was the very  
6 end of the report and it moved on --

7 THE COURT: Sure. So did this go on for  
8 two minutes, 20 seconds?

9 JUROR 12: 20 seconds, if that.

10 THE COURT: And then it ended because it went to a  
11 commercial break or you changed the channel?

12 JUROR 12: It just ended because I think it went  
13 to another news topic but I went to watch Monday night  
14 Football after that.

15 THE COURT: Okay. Is there anything about -- I  
16 don't want you to necessarily tell us what you heard, but is  
17 there anything that you heard that you think would affect  
18 your ability to be impartial in this case?

19 JUROR 12: No.

20 THE COURT: Would you be able to disregard that  
21 report if it was somehow contrary to the evidence in our  
22 case?

23 JUROR 12: Would I be able to disregard that  
24 report if it was --

25 THE COURT: Yeah. If there's evidence in the case

1 that's different from whatever you heard on the report,  
2 would you credit just the evidence you've heard in the  
3 courtroom or would you credit this news report?

4 JUROR 12: Oh, no. Yeah. Just -- just what I  
5 hear here. That doesn't hold any weight.

6 THE COURT: Okay. So.

7 JUROR 12: So what I --

8 THE COURT: All right. Now, did you talk to any  
9 of the other jurors about what you heard?

10 JUROR 12: No.

11 THE COURT: Okay. Do any of the lawyers have a  
12 question, starting with the State? Do you have any  
13 questions for Juror 12?

14 MS. EAKES: The State doesn't have any questions.  
15 Thank you.

16 MR. FRICKE: No, Your Honor.

17 MR. AUSSERER: No, Your Honor. Thank you.

18 MS. BREMNER: No. Thank you.

19 THE COURT: All right. Juror 12, thank you very  
20 much. We're going to send you back in the jury deliberation  
21 room for a minute and then we're going to bring everybody  
22 back in. Thank you.

23 (Juror 12 left the courtroom.)

24 THE COURT: Anybody have any comment about  
25 Juror 12, whether it's appropriate to have the juror

1 continue in the case or not?

2 MR. FRICKE: No issues, Your Honor.

3 MR. AUSSERER: No objection to continuing.

4 MS. BREMNER: No issues, Your Honor.

5 THE COURT: State?

6 MS. EAKES: No concern.

7 THE COURT: Okay. So let's have the jury.

8 Who is the next witness?

9 MR. CONRAD: We'll call Officer Rankine to the  
10 stand.

11 (The jury entered the courtroom.)

12 THE COURT: Welcome back, everybody. Please be  
13 seated. Okay. The defense's next witness.

14 MR. CONRAD: We call Officer Rankine to the stand.

15 THE COURT: Please come up to right about here and  
16 raise your right hand to be sworn.

17 TIMOTHY RANKINE, having been duly sworn by the  
18 Court, testified as follows:

19 THE COURT: Thank you very much. Please have a  
20 seat right there. Please state your name and please spell  
21 your name.

22 (The witness took the stand.)

23 THE WITNESS: First name Timothy, T-I-M-O-T-H-Y,  
24 last name Rankine, R-A-N-K-I-N-E.

25 THE COURT: Thank you much. Mr. Conrad.



1 MR. CONRAD: Sure.

2 DIRECT EXAMINATION

3 BY MR. CONRAD:

4 Q. Good morning.

5 A. Good morning, sir.

6 Q. Caught you at a bad moment. Ready to go?

7 A. Good to go.

8 Q. All right. So I want to talk about some background  
9 questions first about you. So I'm going to ask you where you  
10 were originally born.

11 A. I was born in Singapore.

12 Q. Okay. And what year were you born?

13 A. 1988.

14 Q. Okay. And how long did you live in Singapore for?

15 A. Since I was born until I was about 13.

16 Q. Okay. And who -- I mean who from your family is  
17 from Singapore?

18 A. My sisters and my mom.

19 Q. Okay. And how many sisters do you have?

20 A. I have two sisters that are biological, the other  
21 two are stepsisters.

22 Q. Could you pull the microphone a little bit closer  
23 to you?

24 A. (Witness complies.)

25 Q. Okay. So how long did you live in Singapore for?

1           A.     Thirteen years.

2           Q.     So from the time you were born until you were  
3 13 years old?

4           A.     Yes, sir.

5           Q.     And what did your mom do for work?

6           A.     She was a single mom, so she did many jobs.

7           Q.     Okay. And why did you guys leave Singapore?

8           A.     My mom remarried to my stepdad and he's American,  
9 and he decided to adopt us and move to the U.S.

10          Q.     Okay. And where did you guys move to in the  
11 United States?

12          A.     The first place we lived at was Atlanta, Georgia.

13          Q.     And did you attend school in Atlanta?

14          A.     I did.

15          Q.     What grades?

16          A.     I started out in middle school, I think it was 7th  
17 grade.

18          Q.     What was it like moving from Singapore to Atlanta,  
19 Georgia?

20          A.     It definitely was quite different. I think I grew  
21 up a little bit different than most Americans did. I have --  
22 yeah. I talk differently, I dress differently when I first  
23 moved over, so I wasn't really treated super nice.

24          Q.     What about, so was English your first language?

25          A.     Kind of. Chinese and English is predominantly

1 spoken in Singapore.

2 Q. How is your Chinese?

3 A. Now? Kind of rusty.

4 Q. You still speak Chinese at home?

5 A. Yeah, at times with my family.

6 Q. With your mom?

7 A. Yes, with my mom.

8 Q. Okay. And so you're talking about being in  
9 Atlanta. Did you attend high school?

10 A. I did.

11 Q. Where did you attend high school?

12 A. That's in -- I did some years in Arizona and some  
13 years in Virginia.

14 Q. Okay. And what about any schooling after high  
15 school?

16 A. I did some college in Arizona.

17 Q. Okay. And did you finish college?

18 A. I did not.

19 Q. Why not?

20 A. I think for me, college was, I have thought, would  
21 give me purpose. I was playing a collegiate sport, but I  
22 didn't really find the purpose in it. I wanted to do  
23 something more with my life, enjoy the freedoms and rights  
24 that were given to me when I first moved over here. I was  
25 proud to be American, so I joined the military, but without

1 my parents knowing.

2 Q. Without your parents knowing?

3 A. Without my parents knowing.

4 Q. Did that get you in some trouble?

5 A. They found out when I graduated basic and I sent  
6 them an invitation card.

7 Q. Okay. How was that conversation?

8 A. I mean --

9 MS. EAKES: I'm going to object to the relevance  
10 of this.

11 THE COURT: Sustained.

12 MR. CONRAD: Okay.

13 Q. (By Mr. Conrad) So how long were you in the  
14 military for?

15 A. Just shy of six years.

16 Q. Okay. And were you honorably discharged?

17 A. Yes.

18 Q. And what brought you to Washington State?

19 A. I was stationed out here at Fort Lewis at the time  
20 in 2011 and I just stayed after I got out of the Army.

21 Q. And are you married?

22 A. I am.

23 Q. And how long have you been married for?

24 A. Just over a year.

25 Q. How long have you known her?

1           A.     I say ten years, but that might be wrong.

2           Q.     Okay.  You guys have a couple of dogs together;  
3 right?

4           A.     We do.

5           MS. EAKES:  Your Honor, I'm going to object to the  
6 relevance.

7           THE COURT:  Sustained.

8           Q.     (By Mr. Conrad)  So you were talking about being in  
9 Washington State.  I want to talk about when you first  
10 applied to become a police officer; do you remember when that  
11 was?

12          A.     I think it was back in 2018 sometime.

13          Q.     Okay.  And what brought you to apply to be a police  
14 officer?

15          A.     I think for me, it was a career change, for one,  
16 but when I was in the military out here, I spent a lot of  
17 time in Tacoma.  I lived in Tacoma when I was in the military  
18 out here, so for me, I kind of wanted to give back to the  
19 community, you know, I didn't -- being a cop, you meet people  
20 at their worst time and I also know Tacoma was full of crime  
21 and I was trying to help with mitigating crime.

22          Q.     Okay.  And do you remember how much you earned as a  
23 police officer?

24          MS. EAKES:  Objection, relevance.

25          THE COURT:  Sustained.

1 Q. (By Mr. Conrad) I want to ask you about the night  
2 of March 3, 2020.

3 How long had you been a police officer at that  
4 time?

5 A. I think just over a year.

6 Q. Okay. When did you graduate the academy?

7 A. January 2019.

8 Q. January 2019?

9 A. Yes.

10 Q. And take us -- tell the jury -- take us through  
11 kind of after graduating what the next steps are.

12 A. So with Tacoma, after you graduate from the  
13 academy, you go through a bunch of classroom portions, a  
14 bunch of trainings before you start your FTO program, which  
15 is field training officer program. That's when you start  
16 actually patrolling the streets with a training officer, and  
17 that lasts about four months or so.

18 Q. Okay. And the FTO program, is that part of that we  
19 talked -- I think you heard testimony about probationary  
20 period?

21 A. The FTO is part of it.

22 Q. Okay. And who were some of your training officers?

23 A. I had quite a few, but Officer Burbank was one of  
24 them.

25 Q. Okay. And so tell us about the probationary patrol

1 period. How long is that?

2 A. It's a year.

3 Q. And what is that?

4 A. So probation officers, when you first start out,  
5 you are put on a one-year probation period. As new officers,  
6 there's -- actually, any police officers -- it's quite a bit  
7 of a learning curve, so when you're on probation, it's for  
8 other officers to assess you and make sure you can follow the  
9 laws, do all the policies and procedures properly, and  
10 basically be a safe officer without any risks to anyone else.

11 Q. And do you remember when your probationary period  
12 ended?

13 A. I think it was January 2020.

14 Q. Okay. So about a month prior to this incident?

15 A. Yes.

16 Q. Okay. And we've heard about the area that you  
17 patrolled on the night of the incident. Is that an area that  
18 you had been patrolling for a period of time?

19 A. Not really. When I was in the FTO program with  
20 Officer Burbank, I was in the Sector 3, which is what I  
21 patrol, so only after I got off FTO I was placed in the  
22 Sector 3, so I was only there for a few months.

23 Q. In Sector 3 for a few months?

24 A. Sector 3 for a few months.

25 Q. Am I right in thinking that the area where this

1 incident happened is sector 4?

2 A. It's shared. So with Tacoma Sector 3 and Sector 4,  
3 because the crime rate we just call it the South End. Sector  
4 3 and Sector 4 officers comingle. We go to each other's  
5 calls, for the most part, so that area is -- I think it's  
6 Sector 3, to be exact.

7 Q. Okay. And so that's the area that you were  
8 patrolling on March 3, 2020?

9 A. Yes.

10 Q. Which shift were you working?

11 A. Graveyard.

12 Q. What hours is that again?

13 A. 8:00 p.m. to 6:00 a.m.

14 Q. And how long had you been working that shift for?

15 A. Few months, after I got off the FTO program.

16 Q. That's when you first started working graveyard?

17 A. Yeah.

18 Q. And did you have a partner that night?

19 A. I did.

20 Q. Was that Officer Ford?

21 A. It was.

22 Q. How long had you guys been partners at that time?

23 A. Three months so far.

24 Q. How old were you on March 3, 2020?

25 A. Thirty-one.



1           Q.     All right.  And I want to ask about kind of walking  
2 through -- the jury -- walk the jury through kind of this --  
3 this incident from telling us about this prior stop that you  
4 had backed up Officer Burbank and Officer Collins at.

5                     So can you describe to us kind of your involvement  
6 in that traffic stop?

7           A.     So that traffic stop, it's not uncommon for other  
8 officers to back officers on traffic stops.  It's quite  
9 common, especially in the south end.

10                    I think by the time we got there, I had stopped  
11 the car because I was driving that night.  I think Officer  
12 Collins was the one that gave me a thumbs up, and we  
13 stopped, and then we just kept going because they were about  
14 to clear that call.

15           Q.     Okay.  And so what did you do after you had left  
16 that scene?

17           A.     After that we start patrolling the area, so I --  
18 this was, I think, 96th and A Street, A, Adam, Street.  I  
19 started heading north on A, Adam, Street.

20           Q.     Okay.  And so we've heard about these mic clicks.  
21 Do you remember what you were doing directly prior to hearing  
22 these mic clicks?

23           A.     Yeah.  When we were on A, Adam, Street, we  
24 observed, I would say, two younger white females that were  
25 kind of standing, like, off the sidewalk.  A Street is kind

1 of a really dark street that's not really, like, any  
2 apartments. It's like the backside of all the businesses, so  
3 it's -- they were kind of out of place, but a vehicle had  
4 stopped, it was a black Mercedes with super tinted windows,  
5 the girls just kind of jumped in the car really quickly and  
6 the car took off so we just started following the car before  
7 the mic clicks started.

8 Q. What was your concern about what was going on?

9 A. We had -- I mean, we -- besides the car just  
10 speeding off on A Street, we were wondering what was going on  
11 and the two females weren't really dressed for the weather.  
12 It was 40 degrees out, windy, and they weren't wearing  
13 jackets or pants or anything of that sort, so we were trying  
14 to figure out what was going on.

15 Q. And then is it at that time that you hear these mic  
16 clicks?

17 A. I think we followed it for, like, maybe half a  
18 block before we started hearing mic clicks.

19 Q. Okay. Tell us about what you remember about first  
20 hearing these mic clicks.

21 A. So I think it's been told before that, like, the  
22 mic click is not uncommon. We call it accidental mic click.  
23 Someone accidentally hits our hand mics. We actually, like,  
24 bump it or you hit it and it will go off. So the first one  
25 usually we kind of disregard it because I think Officer Ford,

1 someone had come on the air and said, accidental, or  
2 something of that sorts, but this night the mic clicks kept  
3 going, three, four, and dispatch said 317, which is Officer  
4 Burbank and Officer Collins' call sign and just had backed  
5 them up on a traffic stop and there was no response.

6 So at this time, I think it was maybe, you know,  
7 like five, ten miles per hour, I was going pretty slow, just  
8 because we were trying to listen to what's going on. I  
9 turned up the car radio, we each had our headset, ear piece  
10 from our radio on our heads so we could hear all of it. The  
11 mic clicks just kept going up to five or six mic clicks  
12 before dispatch asked them one more time, Henry 317, do you  
13 have traffic? And then no -- nothing came over the radio.  
14 And then finally, Officer Burbank came on the radio and just  
15 screamed out his location, 96th and Ainsworth.

16 Q. Had you ever heard Officer Burbank scream out a  
17 location like that before?

18 A. I had not.

19 Q. And had you ever Bur -- had you been working with  
20 Burbank and Collins?

21 A. I had.

22 Q. You guys had been working the graveyard shift  
23 together?

24 A. Yes.

25 Q. Had you ever heard multiple mic clicks from him

1 like that?

2 A. No. I have never heard any mic clicks like that.

3 Q. Okay. Like as a police officer's?

4 A. As in my little time as a police officer, I never  
5 heard any mic clicks like that.

6 Q. Okay. And so what is the -- I mean, what's going  
7 through your mind at that point when you're hearing that?

8 A. I think Officer Ford and I, I think we both -- you  
9 know, we knew was a physical altercation just because of the  
10 frequency of the mic clicks, how many mic clicks. To me, as  
11 a new officer, it signifies someone was trying to go for  
12 their hand mic to call something out, but they are unable to.  
13 So Officer Ford and I, we thought the worst. We thought --  
14 yeah.

15 Q. So what's your reaction?

16 A. I think at this point in time I was at South 84th  
17 Street and, like, McKinley. I made a U-turn, activating my  
18 lights and made a U-turn really quickly, and I started  
19 heading as quickly as I could to 96th and Ainsworth.

20 Q. Did you have your emergency lights going?

21 A. Yes. And sirens.

22 Q. Are you and Ford saying anything to each other on  
23 your way there?

24 A. I think there was a little bit of discussion back  
25 and forth about what's going on, but I think for the most

1 part, we were trying to keep quiet to listen to what all is  
2 happening over the radio.

3 Q. Okay. And so walk us through kind of when you get  
4 on to 96th. What's next?

5 A. Yeah. So the route we took from 86th and McKinley,  
6 I made a left-hand turn heading southbound on Pacific Avenue  
7 and a right-hand turn heading westbound on 96th.

8 From Pacific and 96th area, if you're going down  
9 towards Ainsworth, you can -- the elevation is slightly  
10 higher, so you can actually see all the way to the other  
11 intersection of 96th and Ainsworth. That's when I observed  
12 Officer Collins' car -- what I thought was Officer Collins's  
13 car.

14 Q. Okay. Where did you observe it?

15 A. It was stopped at the intersection, which is weird.  
16 That's not a good police practice that's taught to us. It's  
17 just stopped in the intersection with just its yellow ambers  
18 on.

19 Q. Is that how we've seen it in the photos?

20 A. Yes.

21 Q. So it's in that same position when you first see  
22 it?

23 A. Yes.

24 Q. Does it ever move from that position?

25 A. No.

1 Q. Okay. And so you're headed down 96th. What  
2 direction are you headed down 96th?

3 A. Westbound.

4 Q. Okay. Westbound, and you see the vehicle up ahead  
5 of you; is that right?

6 A. Right.

7 Q. And can you see anyone in the vehicle at that  
8 point?

9 A. No. I think me and Officer Ford -- I kept asking  
10 Officer Ford if he could see anyone. The whole situation is  
11 just unsettling. You don't hear mic clicks and then see a  
12 vehicle in this kind of a position in the middle of the  
13 roadway, it just doesn't make a lot of sense to us, so I  
14 just -- as we kept driving, I kept asking Officer Ford if he  
15 saw any of the officers.

16 Q. Okay. And at one point, were you able to see  
17 anyone?

18 A. I think we were, I'm guesstimating, three or four  
19 blocks or so, but I had moved, basically, closer, moved my  
20 car over closer to the curb so we both kind of had a line of  
21 sight just past the patrol vehicle. I saw three subjects.  
22 They were 10, 15 feet in front of patrol vehicle that's  
23 stopped at the intersection.

24 Q. Did you make out who was who or what positioning  
25 they were in?

1           A.    I could not at that time.

2           Q.    Okay.  And so what do you guys do next?

3           A.    I think before even the car stopped, Officer Ford  
4 kind of jumped out of the car and he started running.  I  
5 stopped the car and quickly as I could called out on my car  
6 radio that I was with Henry 317 and then I took off running  
7 after Officer Ford.

8           Q.    Okay.  And what do you see when you first get on  
9 scene?

10          A.    So when I first get on scene, what I see about 10,  
11 15 feet in front of me, is now -- well, we now know it's  
12 Manuel Ellis, so Mr. Ellis, he's facedown in the prone  
13 position.  Officer Collins is also in the prone position  
14 trying to secure his legs while he is kicking backwards at  
15 Officer Collins.  I described it as violent, but -- and then  
16 Officer Burbank is kind of over his, like, hips/butt area  
17 with his hands kind of pressing down on Mr. Ellis' back.  And  
18 I think in my statement the only way I can describe it is  
19 literally watching Mr. Ellis buck back and forth and Officer  
20 Burbank looked like he was just riding a wild horse.

21          Q.    Officer Burbank is essentially straddling Mr. Ellis  
22 at that point?

23          A.    Yes.

24          Q.    His knees on either side?

25          A.    Yes.

1 Q. And Collins is behind him holding onto his legs, is  
2 that right, or attempting to?

3 A. Yes.

4 Q. Okay. And what do you and Officer Ford do next?

5 A. As we were running up, I think I was the first one  
6 to address both the other officers. I yelled out, What do  
7 you guys need? And I know that's when Officer Collins  
8 responded on the radio, We need hobbles. And I explained to  
9 them that, I don't have hobbles. I don't carry it, and so I  
10 just kind of made a plan to secure his legs with Officer  
11 Ford.

12 Q. And have you ever used hobbles before?

13 A. I've never.

14 Q. Okay. And where is Officer Ford, then, if you  
15 remember?

16 A. I think he was maybe a couple paces in front of me.

17 Q. Okay.

18 A. But I got caught up to him pretty quick.

19 Q. What's he starting to do?

20 A. I think at this point in time, Officer Collins  
21 transitioned to his left leg and I helped hold Ellis's right  
22 leg so that Officer Ford could also get down in the prone  
23 position and secure his right leg.

24 Q. Okay. And where are you at this point in relation?

25 A. I'm still behind Mr. Ellis, like by his waist.



1           Q.     Okay.  And we're talking about this now, but how --  
2     I mean, how quickly are these things occurring?

3           A.     Fast.

4           Q.     Okay.  And what if anything was kind of unsettling  
5     about seeing Officer Collins and Officer Burbank struggling  
6     with Mr. Ellis?

7           A.     Well, one, Officer Burbank is -- you know, he was  
8     my training officer, so like Ford said, both of them are,  
9     like, the go-to, two-man car in the south.  Everyone wanted  
10    to be like them.  So when me and Ford partnered up, we tried  
11    to mimic ourselves as best we could to them because it was --  
12    Officer Ford said it correctly.  There was nothing they  
13    couldn't do.  They handled every single call very well, very  
14    professional, you know, like, it just dawned on me when  
15    Officer Collins was testifying, I've never heard Officer  
16    Burbank actually curse.  I think that's quite remarkable.

17                    You know, I know Officer Burbank and Collins, we  
18    connected on the military front just because we all were in  
19    the military, we all did very similar jobs, so that's  
20    something we definitely connected on.

21                    I know Officer Burbank has told me when he was in  
22    the military, all the stuff he did, and he was put in for  
23    the bronze heart of valor.  That's not something that --

24                    MS. EAKES:  Your Honor, I'm going to object to the  
25    hearsay and relevance.

1 THE COURT: Your objection comes pretty late.  
2 I'll let the answer continue, but let's move on to a new  
3 question.

4 MR. CONRAD: Understood.

5 Q. (By Mr. Conrad) So seeing them, these experienced  
6 officers, struggling with Mr. Ellis obviously plays a factor  
7 in what you're seeing?

8 A. Yes.

9 Q. So you were talking about Officer Ford being on one  
10 of Mr. Ellis's legs and Officer Collins, is he on the other  
11 leg as well?

12 A. He -- Officer Collins is on the left leg, Officer  
13 Ford's on the right leg.

14 Q. Okay. And what are you doing at that point?

15 A. After it's -- after we -- I helped secure both  
16 legs, I was on the right side of Mr. Ellis. The way he was  
17 thrashing about with Officer Collins and Officer Burbank, it  
18 did not appear to me at all that he was handcuffed. So the  
19 first thing I thought about was we got to get this guy in  
20 cuffs. So as I transitioned up his body, I started off kind  
21 of working up his leg to where his hands are, and that's when  
22 I noticed that he was actually handcuffed. And right below  
23 his handcuffed, kind by his waistline area was a Glock  
24 magazine. Being around a little bit of firearms, you can  
25 identify a Glock magazine pretty easily.

1 Q. And you talk about that in your statement with  
2 detectives; right?

3 A. I did.

4 Q. Why did you mention that?

5 A. I was concerned. We didn't know who it belonged  
6 to. It was just kind of laying by where his hands are where  
7 he's handcuffed, so we don't know if Mr. Ellis was armed at  
8 that time.

9 Q. Okay. And so you noticed that Mr. Ellis was  
10 handcuffed at that point in time and so what do you remember  
11 doing then?

12 A. Yes. At that time I was -- I made sure that --  
13 because he was handcuffed, I wanted to make sure that he  
14 wasn't going to break out of his cuffs or just make sure that  
15 they were double-locked. With handcuffs, you double-lock  
16 them so they don't cinch down on people. It also gives it,  
17 like, just some extra security so they won't come apart, and  
18 as I was doing that, Officer Ford grabbed the Glock magazine  
19 and just yelled out, Whose magazine is this? And no one  
20 responded. And then I just saw him throw it off to the side.

21 Q. And what do you remember Burbank doing, if  
22 anything?

23 A. Officer Burbank was asking for help at that point  
24 in time.

25 Q. And what did you do in response to that?

1           A.    I told him that, I'm on my way up, or, I got you.

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

3           A.    When I started helping Officer Burbank, I kind of  
4   situated myself on the right side of his torso.  I think I  
5   had just placed my right knee under his right shoulder, I  
6   formulated a plan with Officer Burbank that I was going to  
7   take the right side of his body, of Ellis's torso, and  
8   Officer Burbank was going to take the left side of Mr.  
9   Ellis's torso.

10          Q.    And is it just the four of you there on scene at  
11   this point?

12          A.    Yes.

13          Q.    Okay.

14          A.    I think Sergeant Lim gets there pretty quick after.

15          Q.    And so do you know whether officers are on their  
16   way?  Can you hear --

17          A.    I can hear the sirens.

18          Q.    Okay.  And so what's the goal in, I guess, taking  
19   those points of contact with Mr. Ellis?

20          A.    I think in my head I was just trying to think of  
21   how is the best way to control Mr. Ellis when he's thrashing  
22   around like the way he was as kind of just splitting his body  
23   into four different parts and holding four different points  
24   on him.

25          Q.    Okay.  And what happens to -- what do you remember

1 happening to Officer Burbank at that point?

2 A. Right after we made our plan, Officer Burbank, I  
3 see him start to get off Mr. Ellis like the way he was  
4 positioned on Mr. Ellis and then I see Mr. Ellis just kind of  
5 buck his chest up and then next thing I see is Officer  
6 Burbank goes tumbling into the street, like just front and  
7 left side of Mr. Ellis, and that's at the point in time where  
8 I had to move myself on top of Mr. Ellis.

9 Q. And is that what you're describing in your report  
10 there?

11 A. Yes.

12 Q. Or I guess in your interview?

13 A. Yes.

14 Q. And so tell us about kind of your positioning at  
15 that point and what your goal is.

16 A. So when I just watched Officer Burbank get bucked  
17 off, the only thing I think in my statement, I say I just  
18 jumped on top of him and placed both my knees, basically,  
19 centerline of his back, so on the spine one, my left knee on  
20 his lower back, my right knee in between the shoulder blade.  
21 I think I was more specific about it in my statement saying  
22 it was like his spine base of his neck area, and I also  
23 describe it as moving all my weight, but I don't think you  
24 can move on your weight with multiple points of contact on  
25 the ground.

1 Q. And what -- what's your concern about Officer  
2 Burbank getting bucked off of him?

3 A. Just how strong Mr. Ellis was to just simply kind  
4 of jerk his chest off the ground and buck an officer off of  
5 him.

6 Q. Did you think that Mr. Ellis was going to get up?

7 A. There was a -- there was a fear that he was going  
8 to get up.

9 Q. Okay.

10 THE COURT: We're going to break now.

11 MR. CONRAD: Sure.

12 THE COURT: Mr. Fricke got a call he's got to make  
13 here, it's about 2 minutes to noon, so we'll take our break  
14 now.

15 So ladies and gentlemen, please do not discuss the  
16 case amongst yourselves or with anyone else. Please do not  
17 allow anyone to discuss the case with you or in your  
18 presence and please do not watch any media or news reports  
19 about the trial. We'll see you back at 1:15.

20 (The jury left the courtroom.)

21 (Luncheon recess.)  
22  
23  
24  
25

