
In Re: City of Oakland Arbitration V5 6-10-11

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CONDENSED TRANSCRIPT AND CONCORDANCE
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ARBITRATION PROCEEDINGS

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**IN RE: CITY OF OAKLAND AND
OAKLAND POLICE OFFICERS
ASSOCIATION, RICARDO OROZCO
AND CHRISTOPHER MUFARREH**

/

**ARBITRATION
BEFORE ARBITRATOR PAUL GREENBERG
VOLUME V**

Taken before KATHERINE J. KIRBY, RMR, CRR
CSR No. 6418
June 10, 2011

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PROCEEDINGS

BE IT REMEMBERED, that pursuant to Notice, and on the 10th day of June 2011, commencing at the hour of 11:12 a.m., in the offices of Aiken Welch, One Kaiser Plaza, Suite 505, Oakland, California, before me, KATHERINE J. KIRBY, a Certified Shorthand Reporter, the following proceedings were held in said cause.

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APPEARANCES:

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Ricardo Orozco, Grievant
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PROCEEDINGS

--o0o--

ARBITRATOR GREENBERG: We're on the record. I want to welcome everyday. Today a June 10th. Although the time now is 11:12 by the arbitrator's watch, the arbitrator and the parties and the grievants have been here since 9 o'clock. We've listened earlier this morning to an audio-recording of the statement that Lieutenant Mufarreh gave to the Internal Affairs Division.

MS. SNELL: Actually, Mr. Greenberg, that's a mistake on the transcript. It was to the Criminal Investigation Division, and Sergeant Cruz is one of the CID investigators.

ARBITRATOR GREENBERG: Thank you for pointing that out. I was a little surprised by that. So it was a CID interview.

We do have elsewhere in the record an interview that was given to Internal Affairs. The CID interview, which Ms. Snell has indicated is misidentified on the documents, is found in two pieces in terms of the documentary evidence. It is found behind Joint Exhibit 25 and also a second portion of the interview transcript is found in Joint Exhibit 27.

With that, it is my understanding that the City

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has rested its case in chief.

Is that correct, Ms. Wagner?

MS. SNELL: Yes, it is.

ARBITRATOR GREENBERG: Ms. Snell, thank you very much.

We are now ready to begin with the Union's case in chief. We have a witness who has joined us here.

KEVIN KANEY,

sworn as a witness,

testified as follows:

ARBITRATOR GREENBERG: Please state your name and your position with the City.

THE WITNESS: Kevin Kaney, K-e-v-i-n, K-a-n-e-y. I'm a police officer with the City of Oakland.

ARBITRATOR GREENBERG: We're going to start with direct examination by Mr. Rains and then Ms. Snell is going to cross-examine.

MS. SNELL: That's correct.

DIRECT EXAMINATION BY MR. RAINS:

Q. Officer Kaney, good morning.

A. Good morning.

Q. How long have you been with the Oakland Police Department?

A. Since January '99.

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Q. What's your current assignment?

A. I work in the gang and gun investigation task force.

Q. You wanted to bring to our attention that your current appearance is a result of an undercover assignment.

A. Yes.

Q. Officer Kaney, I'm going to bring you up to March 21st of 2009.

Were you on duty that day?

A. No. I mean, I did later but originally I wasn't.

Q. Originally you were not on duty?

A. No.

Q. What caused you to come on duty that day?

A. I received a phone call of officers being shot and I responded.

Q. What was your regular assignment on Saturday, March 21st?

A. Like I said, I was off. But normally, I was just assigned to the gang and investigation.

Q. So you were on that task force on that date?

A. Yes, when I responded.

ARBITRATOR GREENBERG: Officer Kaney, I'm going to ask you to push back away's. I'm having some

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problems hearing, as is the court reporter.

BY MR. RAINS:

Q. I'm sorry, you said you got a phone call and you responded after the phone call?

A. Correct.

Q. Do you remember who called you?

A. I believe I got a call from Sean Knight.

ARBITRATOR GREENBERG: If I can -- I'm sorry to interrupt. Now that Officer Kaney has pushed back, I see he has some papers in his hands and I'm going to -- thank you.

Let me just say if at some point -- I don't know whether the papers are relevant to your testimony. If they're needed, that's fine. But as Mr. Rains will coordinate this, if there is something you're looking at during the hearing, we will have to introduce it as an exhibit.

THE WITNESS: Okay.

BY MR. RAINS:

Q. So after you got -- who was Sean Knight?

A. He was my sergeant at the time.

Q. Did Sergeant Knight ask you to respond?

A. He did.

Q. Where did you go to?

A. I went to 73rd and MacArthur.

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- (1) Q. Was there any particular reason you went to
(2) that location?
(3) A. I was informed that's where the general
(4) location where the shooting had occurred.
(5) Q. Once you got there, what did you do?
(6) A. Right when I got there is when Sean Knight
(7) drove up in -- we have an ESU, electronic surveillance
(8) unit van. And Officer Crum, I believe, pulled up at the
(9) same time.
(10) Q. Officer Crum?
(11) A. Yes.
(12) Q. About what time was that, if you have an idea?
(13) A. That's a correct record of the time
(14) (indicating)?
(15) Q. Yeah, I think that's a purge record of some of
(16) the events.
(17) A. I would say probably around 13:45, between
(18) there and 2 o'clock, I think.
(19) Q. So if the original shooting of the motor
(20) officers would have occurred some time around 1:15, you
(21) would have been there roughly a half hour later?
(22) A. Approximately, yeah.
(23) Q. You said that the electronic surveillance van
(24) had arrived?
(25) A. Yeah. They arrived shortly after me, I

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- (1) believe.
(2) Q. Who was driving that, if you know?
(3) A. I believe it was Sean Knight, but it might have
(4) been Officer Crum, I'm not sure.
(5) Q. Once the van got there, did you have some
(6) activity that was associated with the arrival of that
(7) van?
(8) A. Yes. I was -- Sergeant Knight and Officer Crum
(9) are the primary guys that used the van at the time. So
(10) I became kind of a gofer or a runner for them.
(11) Q. As a runner for them, what did you do?
(12) A. I tried to collect information in regards to
(13) the suspect in the case to try and identify him and see
(14) if we could find locations -- well, correction. To help
(15) Sean Knight and Officer Crum find locations that the
(16) suspect might be at, pictures and anything that would
(17) help us find him.
(18) Q. Did you obtain some information after your
(19) arrival concerning the identity of the suspect?
(20) A. I believe we got information off of a driver's
(21) license originally that was later found to be false.
(22) And then I also obtained I believe it was a name and
(23) birth date of Mixon, which I provided to Sean Knight and
(24) Officer Crum.
(25) Q. Do you recall how you got the name and birth

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- (1) date of Mr. Mixon?
(2) A. I believe it was over the radio. I think that
(3) it was Sergeant Covington had provided me with it. I
(4) don't know if he was giving it directly to me or if I
(5) was just on the radio and I heard it. But I remember
(6) hearing his voice.
(7) Q. So your recollection is Sergeant Covington gave
(8) you the name of Mixon and it was either over the radio
(9) or he was talking to you?
(10) A. No, it was over the radio. But I don't know if
(11) he was talking directly to me on the radio or if I was
(12) just on the channel and I heard it.
(13) Q. So we're clear on that part of it, Officer
(14) Kaney, there is what's called the main channel; is that
(15) true?
(16) A. Yes.
(17) Q. Is that the radio channel where broadcasts can
(18) occur and everybody that's on the main channel will
(19) monitor those?
(20) A. Yes.
(21) Q. Might there be other alternative channels where
(22) individuals can talk to one another?
(23) A. Yes.
(24) Q. In order to do that, you have to what, switch
(25) your radio to this other channel?

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- (1) A. Correct.
(2) Q. So is it your testimony, as you think about it,
(3) that the information you got from Sergeant Covington
(4) could have either been over the main channel or it could
(5) have been on one of these alternative channels?
(6) A. Yes. I do not recall which channel I was on at
(7) the time.
(8) Q. So you get his name. Did you say you got his
(9) date of birth as well?
(10) A. I believe so, but I'm not 100 percent sure.
(11) Q. What did you do with that once you got it?
(12) A. I provided it to Omega Crum and Sergeant Knight
(13) so, like I said, they could start building information
(14) on it.
(15) Q. Were they inside this van?
(16) A. Yes.
(17) Q. And then what's the next thing you remember
(18) happening after you gave them the information you got
(19) from Sergeant Covington?
(20) A. They found a photo of him, of Mixon, and
(21) started to print them on the printer in the van.
(22) Q. So through the van they had the ability to pull
(23) up a photo of Mixon?
(24) A. Yes.
(25) Q. And they also had equipment in the van to print

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- (1) that photo?
- (2) **A. Yes.**
- (3) **Q.** Do you know if they printed one copy of Nixon's
- (4) photo or more?
- (5) **A. It was multiple copies.**
- (6) **Q.** When you say "multiple," how many? Estimate?
- (7) **A. I know they were running the printer I believe**
- (8) **continuously but it was a slow color printer. So the**
- (9) **first batch they gave me was probably less than five.**
- (10) **Q.** When they gave you this batch of what you think
- (11) was less than five photographs of Nixon, what did you do
- (12) with them?
- (13) **A. That's when I started to go out and pass out**
- (14) **the photos to different people on the scene.**
- (15) **Q.** Who do you recall giving copies of the photo
- (16) that was printed out to?
- (17) **A. The only one I specifically remember -- I gave**
- (18) **it to multiple people, but the only one I specifically**
- (19) **remember is Drennon Lindsey. And then on 74th and**
- (20) **MacArthur there was a group of commanders and sergeants**
- (21) **and I remember giving it to that group. I don't**
- (22) **remember specifically who. Then there was people,**
- (23) **officers, I believe on 74th and I gave them a couple of**
- (24) **the photos also.**
- (25) **ARBITRATOR GREENBERG:** We were talking about

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- (1) officers on 74th. We've had testimony that there were a
- (2) group of officers toward the middle of the block near
- (3) the -- in the vicinity of the apartment where ultimately
- (4) the entry and the homicide took place.
- (5) Is that the group of officers that you're
- (6) referring to? Did you go to that site near the
- (7) apartment building?
- (8) **THE WITNESS:** I believe I went down 74th near
- (9) the apartment where it all happened in the end. I don't
- (10) know, because I only had not very many photos, I don't
- (11) know if I just showed it to them or if I actually handed
- (12) it to them, the photos.
- (13) **ARBITRATOR GREENBERG:** Just in terms of a
- (14) timeline, do you have a sense as to roughly when you
- (15) were distributing these photos? And that can be either
- (16) in terms of how long it took after you arrived at the
- (17) site or how shortly before the entry it may have been.
- (18) **MR. RAINS:** You're stealing my fun but that's
- (19) okay.
- (20) **THE WITNESS:** See, before the second shooting,
- (21) I would say 15 minutes or so approximately, because at
- (22) the time of the shooting I had returned to the van and I
- (23) was in the van when I heard the shots fired. I believe
- (24) they were getting more information which I was waiting
- (25) for and I was waiting for the printer to print more

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- (1) photos.
- (2) **ARBITRATOR GREENBERG:** Thank you. And I
- (3) apologize for stepping on your examination, Mr. Rains.
- (4) **MR. RAINS:** No, that's quite all right.
- (5) Can I show the witness Exhibit 7. I'll let the
- (6) arbitrator find Exhibit 7.
- (7) **BY MR. RAINS:**
- (8) **Q.** I have Exhibit 7 here, Page 45. We're going to
- (9) be looking at the bottom of Page 45.
- (10) Officer Kaney, looking at the bottom of Page
- (11) 45, and this is, I'll represent to you, a chart of some
- (12) radio transmissions that were occurring during the
- (13) course of the events on March 21st.
- (14) At 14:57 there appears to be the name Sergeant
- (15) Covington and then it says P-4.
- (16) Do you see that?
- (17) **A. I do.**
- (18) **Q.** Does that have any significance to you, that
- (19) is, the P-4?
- (20) **A. It appears that somebody was requesting**
- (21) **Sergeant Covington to switch to Patrol 4.**
- (22) **Q.** Then the next entry says "switching."
- (23) Is that correct?
- (24) **A. That would be his response saying I'm going**
- (25) **there.**

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- (1) **Q.** Let's go then to the top of Page 46. Do you
- (2) see a transmission that appears to occur at 14:57?
- (3) **A. Yes.**
- (4) **Q.** According to what we see here, it says, "Patrol
- (5) 4 traffic between Sergeant Covington and unknown."
- (6) **A. Okay.**
- (7) **Q.** If you want to just look at what that
- (8) transmission is.
- (9) **A. Okay.**
- (10) **Q.** Is it possible that that transmission that's
- (11) occurring there at the top of Page 46 is you and
- (12) Covington?
- (13) **A. It very well might be. I don't recall though.**
- (14) **It sounds familiar, but I'm not 100 percent.**
- (15) **Q.** I'm just trying to get -- again, we're showing
- (16) the time frame as best we can. You would agree that it
- (17) was some time after you talked to Sergeant Covington
- (18) that the photo of Nixon that you got was printed out?
- (19) **A. Yes, because we didn't know who he was until**
- (20) **after I got the information.**
- (21) **Q.** Then after the photo was printed out, you
- (22) distributed it in the manner that you described?
- (23) **A. Correct.**
- (24) **Q.** You said that you gave a copy to Lieutenant
- (25) Drennon Lindsey?

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- (1) **A. Yes.**
- (2) **Q. Where was she in relation to whether you were?**
- (3) **A. I believe she was on MacArthur just east of**
- (4) **74th on the south side -- in the street on the south**
- (5) **side of the street, I believe.**
- (6) **Q. Why did you give a copy of the photograph to**
- (7) **Lieutenant Lindsey?**
- (8) **A. I believe -- I started giving them to the**
- (9) **commanders. I figured I'll give it to them and they can**
- (10) **disseminate the information as they see fit.**
- (11) **MR. RAINS: If I can have a photograph marked**
- (12) **as our next in order. I think this is 4.**
- (13) **ARBITRATOR GREENBERG: Union Exhibit 4.**
- (14) **MR. RAINS: Right.**
- (15) **(Union Exhibit No. 4 marked for**
- (16) **identification.)**
- (17) **MR. RAINS: I'll represent this is one of the**
- (18) **exhibits to the Internal Affairs investigation.**
- (19) **BY MR. RAINS:**
- (20) **Q. Officer Kaney, the photograph that was printed**
- (21) **out by either Officer Crum or Sergeant Knight in the van**
- (22) **that you referred to -- let me lay a foundation.**
- (23) **Are you aware of some system called CABS?**
- (24) **A. Yes.**
- (25) **Q. What's CABS, if you know?**

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- (1) **A. Consolidated Arrest something System. I forget**
- (2) **what the B stands for. But it's Alameda County's --**
- (3) **where they put arrests into the system.**
- (4) **Q. It's an Alameda County system?**
- (5) **A. Yes.**
- (6) **Q. Are you aware of the technical capabilities of**
- (7) **the van that Sergeant Knight and Officer Crum were in,**
- (8) **whether it has access to the CABS system? If you**
- (9) **aren't, that's fine.**
- (10) **A. I don't know.**
- (11) **Q. The photo that has been marked as Union**
- (12) **Exhibit 4, if you look at that, do you recognize that as**
- (13) **the photo you got from either Sergeant Knight or Officer**
- (14) **Crum?**
- (15) **A. I believe so. It's a picture of Mixon, but I**
- (16) **don't recall 100 percent.**
- (17) **Q. The CABS photo has in the lower right-hand**
- (18) **corner, it says, "Printed on March 21, 2009, 13:55."**
- (19) **Do you see that?**
- (20) **A. Yes.**
- (21) **Q. That would be 1:55 p.m.?**
- (22) **A. Correct.**
- (23) **Q. In your testimony, does that sound a little bit**
- (24) **early for you to have received this photo?**
- (25) **A. You know --**

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- (1) **ARBITRATOR GREENBERG: Just to help the witness**
- (2) **out a little bit, the entry was a few minutes after**
- (3) **3 o'clock in the afternoon.**
- (4) **THE WITNESS: Okay.**
- (5) **ARBITRATOR GREENBERG: So 1:55 would have been**
- (6) **slightly more than an hour before the entry.**
- (7) **THE WITNESS: It might be a little early. It's**
- (8) **hard to remember the exact time frame.**
- (9) **BY MR. RAINS:**
- (10) **Q. Certainly if that radio conversation we just**
- (11) **heard between you and Sergeant Covington would have**
- (12) **occurred at 2:57 I think it was, 14:56, 14:57, then you**
- (13) **could not have had a photograph printed out at 1:55?**
- (14) **A. Not from me, no.**
- (15) **MS. SNELL: Objection. Leading.**
- (16) **ARBITRATOR GREENBERG: I'll allow the question.**
- (17) **THE WITNESS: That's correct.**
- (18) **BY MR. RAINS:**
- (19) **Q. Now, when you gave a copy of the photograph**
- (20) **that was printed out to Lieutenant Lindsey, did she --**
- (21) **first of all, did you have any conversation with her?**
- (22) **A. I remember her being kind of busy running the**
- (23) **scene so I remember telling her this is the person we**
- (24) **believe is the shooter and not much more than that.**
- (25) **Q. Did she direct you, give you specific verbal**

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- (1) **directions to distribute these photographs to others?**
- (2) **A. I don't recall if she did or not. That was my**
- (3) **plan already, so I don't know if she gave me -- I don't**
- (4) **recall.**
- (5) **Q. You don't recall?**
- (6) **A. I don't recall.**
- (7) **Q. And then you had taken the photographs to the**
- (8) **people you said you did. You apparently got rid of all**
- (9) **of the ones that had been printed up to that time and**
- (10) **went back to the van?**
- (11) **A. Yes.**
- (12) **Q. Your recollection is you were at the van when**
- (13) **you heard shots?**
- (14) **A. Yes.**
- (15) **Q. How long had you been returned back to the van**
- (16) **when the shots went off, if you recall?**
- (17) **A. I don't recall because I remember I think I had**
- (18) **gone -- I had done several runs back and forth, not just**
- (19) **for pictures but like obtaining information so I had**
- (20) **gone back and forth several times. But I don't recall**
- (21) **the time. The times are hard at this point.**
- (22) **MR. RAINS: Thank you. I think that's all I**
- (23) **have with this witness.**
- (24) **ARBITRATOR GREENBERG: Okay. Ms. Snell, any**
- (25) **cross-examination?**

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- (1) **MS. SNELL:** Yes.
- (2) **CROSS-EXAMINATION BY MS. SNELL:**
- (3) **Q.** Officer Kaney, we've never met before, have we?
- (4) **A.** No.
- (5) **Q.** My name is Karen Snell. You gave an interview
- (6) to Tom Leary on February 17, 2010; is that right?
- (7) **A.** Yes.
- (8) **Q.** You recall that interview?
- (9) **A.** Yes.
- (10) **Q.** At that point you told him that you had been
- (11) called in to work at approximately 1:40 p.m., which is
- (12) consistent with your testimony today?
- (13) **A.** Yes.
- (14) **Q.** You were not certain of the exact time; right?
- (15) **A.** No. Like I said, that would be my estimate.
- (16) **Q.** And in fact today, in order to determine the
- (17) times, you've been looking at what we have marked as
- (18) Exhibit 66; right?
- (19) **A.** Yes.
- (20) **Q.** Now, after you got the call from your sergeant,
- (21) you drove straight to the scene; correct?
- (22) **A.** Yes.
- (23) **Q.** And when you arrived, you did not log on with
- (24) the dispatcher so there's no actual record of the
- (25) specific time you arrived; correct?

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- (1) **A.** Correct.
- (2) **Q.** Do you have a specific recollection of the time
- (3) you arrived on the scene?
- (4) **A.** No.
- (5) **Q.** You mentioned that Sean Knight was your
- (6) supervisor at the time?
- (7) **A.** He was.
- (8) **Q.** When you arrived at the scene, he was the first
- (9) one you spoke to?
- (10) **A.** I believe so, yes.
- (11) **Q.** While he began powering up the computers, you
- (12) made contact with one of the evidence techs that was on
- (13) the scene?
- (14) **A.** Yes.
- (15) **Q.** And that was the scene of the shooting of the
- (16) two motorcycle officers?
- (17) **A.** Correct.
- (18) **Q.** And the tech read you information on the fake
- (19) California driver's license which you had then gave to
- (20) Sean; right?
- (21) **A.** That's correct.
- (22) **Q.** Eventually, someone located parole paperwork
- (23) from which they had obtained Lovelle Mixon's name; is
- (24) that right?
- (25) **A.** I believe the CDC number or something along

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- (1) those lines.
- (2) **Q.** And you provided that information to Sean?
- (3) **A.** I did provide him with the information, yes.
- (4) **Q.** He was then able to locate information relating
- (5) to Mixon including a color photograph?
- (6) **A.** Yes.
- (7) **Q.** And he and Omega Crum proceeded to print that
- (8) out?
- (9) **A.** Yes.
- (10) **Q.** You knew that at that time another officer was
- (11) also printing out photos of Mixon at the Eastmont Mall
- (12) substation; right?
- (13) **A.** No. I mean, I think I had heard somebody had
- (14) gone over there to try and get photos but I don't know
- (15) if they had or not.
- (16) **Q.** Do you recall telling Mr. Leary that you knew
- (17) that at the time?
- (18) **A.** I don't, no.
- (19) **Q.** First of all, where exactly was the van that
- (20) Sean and Omega were in parked? Do you recognize the
- (21) green dot?
- (22) **A.** Yes.
- (23) **Q.** Was it near there?
- (24) **A.** No.
- (25) **Q.** Where was it?

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- (1) **A.** It was on MacArthur between 73rd and 74th.
- (2) **Q.** So somewhere in this block here that I'm
- (3) pointing to on Exhibit --
- (4) **A.** Correct.
- (5) **Q.** -- 5?
- (6) **ARBITRATOR GREENBERG:** And let the record show
- (7) that Ms. Snell is showing the witness the block on
- (8) MacArthur between what is clearly marked as 73rd Avenue
- (9) and what is marked as 74th Avenue.
- (10) **BY MS. SNELL:**
- (11) **Q.** Do you recall about where in that block?
- (12) **A.** I would say closer to 74th -- yeah, closer to
- (13) 74th, the building on the corner there with the red
- (14) partial roof. It would be north of there and slightly
- (15) back towards 73rd.
- (16) **Q.** Can you see this building that's kind of peach
- (17) colored?
- (18) **A.** Yes.
- (19) **Q.** Was it near there?
- (20) **A.** I know we moved at one point and then they
- (21) had -- we were, I think, closer to 74th.
- (22) **Q.** Now, was there someone at Eastmont Mall that
- (23) also was printing photos, to your knowledge?
- (24) **A.** I remembered hearing somebody saying on the
- (25) radio that they were going to go over there and try and

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- (1) obtain photos or do stuff there. I think that's when I
 (2) heard the name from Sergeant Covington or got the
 (3) information from Sergeant Covington that allowed Omega
 (4) Crum and Sergeant Knight to do that same information in
 (5) the van.
 (6) **Q.** You mentioned that the printer in the van was
 (7) slow.
 (8) **A.** Yes.
 (9) **Q.** So you left to distribute copies with only
 (10) approximately five?
 (11) **A.** Five or less, yeah.
 (12) **Q.** And you did that at the direction of Sean
 (13) Knight?
 (14) **A.** Yes.
 (15) **Q.** What specifically did he tell you to do?
 (16) **A.** It was mostly just go -- first in the very
 (17) beginning, get information. And then after we obtained
 (18) the information was to distribute those to the people on
 (19) the scene. And that's when Larry said I passed out the
 (20) ones I had and I showed to the patrol guy, physically
 (21) showed them the picture.
 (22) **Q.** Now, when you left to distribute the pictures,
 (23) did you know where the command post was?
 (24) **A.** No. Like I said, I saw a group of commanders
 (25) or people with rank so I figured that was maybe where it

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- (1) was.
 (2) **Q.** But you didn't know for sure?
 (3) **A.** No.
 (4) **Q.** Had you been on tactical call-outs before?
 (5) **A.** Yes.
 (6) **Q.** Had you seen command posts before?
 (7) **A.** Yes.
 (8) **Q.** Did you see what you would expect to see in
 (9) terms of a command post on March 21st?
 (10) **A.** No.
 (11) **Q.** Now, you said you saw a group of command
 (12) officers standing together at MacArthur and 74th?
 (13) **A.** Yes.
 (14) **Q.** Did you know whether one of those was the
 (15) incident commander?
 (16) **A.** No.
 (17) **Q.** Did you know who the incident commander was?
 (18) **A.** I did not.
 (19) **Q.** If you had known who the incident commander
 (20) was, would you have made sure that you gave one of those
 (21) pictures to them?
 (22) **A.** Not necessarily just because a lot of times
 (23) that person would be kind of overwhelmed and have a lot
 (24) going on. So I would hand it to somebody with them who
 (25) could pass it on to make sure that it was given to them

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- (1) or, you know -- because I wasn't sticking around. I was
 (2) just giving it to them and I went back to get the photos
 (3) out. That person would be with them and when there's a
 (4) good time he would pass it off.
 (5) **Q.** Were you able to do that on March 21st?
 (6) **A.** Yes.
 (7) **Q.** You were? You knew that you were giving it to
 (8) someone who would give it to the incident commander?
 (9) **A.** That's what I felt, yes.
 (10) **Q.** In what way?
 (11) **A.** Well, the huddle, or what you want to call it,
 (12) of the commanders was, like I said, on 74th and
 (13) MacArthur. And I remember giving it to that group. I
 (14) don't specifically remember who I gave it to. And then
 (15) that's when I -- I figured that huddle was there trying
 (16) to figure out the next system or what to do next and
 (17) that would be information they would want.
 (18) **Q.** Now, you mentioned you gave one to Drennon
 (19) Lindsey and then you gave another to someone in that
 (20) group of commanders?
 (21) **A.** I believe so, yeah.
 (22) **Q.** Who was in that group of commanders?
 (23) **ARBITRATOR GREENBERG:** As best you recall.
 (24) **THE WITNESS:** It's hard to remember. There's
 (25) only a couple of people that I recognized. I believe

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- (1) Sergeant Reilly was there and I believe -- I'm trying to
 (2) remember. I think Kozicki was there. I don't remember
 (3) because I had ran past them many times so I don't
 (4) remember if it was when I gave them the photo or if it
 (5) was they showed up after I gave the photo. But I
 (6) remember some of those people were there.
 (7) **BY MS. SNELL:**
 (8) **Q.** My directions aren't clear. I know Oakland
 (9) Police Department has an east/west that might not be the
 (10) same as other people's.
 (11) **A.** Uh-huh.
 (12) **Q.** So when you described where Drennon Lindsey
 (13) was, can you just tell me was she at this yellow dot?
 (14) **A.** Not when I gave her the photo.
 (15) **Q.** Where was she when you gave her the photo?
 (16) **A.** She was more near the purple walking around
 (17) there, that location.
 (18) **MS. WAGNER:** When you say "purple," do you do
 (19) mean the dark purple?
 (20) **THE WITNESS:** Yes.
 (21) **BY MS. SNELL:**
 (22) **Q.** The purple that's on MacArthur?
 (23) **A.** Yes.
 (24) **Q.** Where was the group of commanders that you gave
 (25) a copy to?

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- (1) **A. My recollection is the yellow dot but a little**
(2) **bit more down 74th but that's in the general location.**
(3) **Q. Did you see Captain Orozco?**
(4) **A. I'm not 100 percent sure. I don't recall.**
(5) **Q. Did you see Lieutenant Mufarreh?**
(6) **A. I believe so, but again, I'm not 100 percent.**
(7) **Q. Do you recall where you saw him?**
(8) **A. I believe it was where the yellow dot is, where**
(9) **the commanders were.**
(10) **Q. So he was in the group that you gave a copy of**
(11) **the photo to?**
(12) **A. Again, I believe so. But I was going back and**
(13) **forth many times so I don't know at that time if he was**
(14) **there.**
(15) **Q. Now, you mentioned you saw Sergeant Reilly at**
(16) **the scene. Did you know that the tactical team had been**
(17) **called out?**
(18) **A. I believe so, yeah.**
(19) **Q. Did you know who the tactical commander was?**
(20) **A. No. But if I may add, I wasn't too focussed --**
(21) **I wasn't listening a lot to the radio unless I needed**
(22) **something. I was more just doing my mission and doing**
(23) **what I was trying to do so they may have said it on the**
(24) **radio, I don't know.**
(25) **Q. But you didn't think your mission included**

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- (1) finding out who the tactical commander was and making
(2) sure that they got one of the pictures?
(3) **A. No. I figured -- I knew where the commanders**
(4) **were and I knew one of them was so I figured that was**
(5) **the place to go.**
(6) **Q. And Lieutenant Mufarreh was in that group?**
(7) **A. Again, at one point. I don't know if it was --**
(8) **like I said, I walked past it several times.**
(9) **Q. Mr. Rains asked you about the timestamp on the**
(10) **photo that says 1:55, the photo in front of you; do you**
(11) **see that?**
(12) **A. I do.**
(13) **Q. You had told him that it was hard to remember**
(14) **the exact time frame; right?**
(15) **A. It was. I don't know if that time is the**
(16) **correct time or not.**
(17) **Q. In fact, when you were interviewed by Mr.**
(18) **Leary, you told him that you had no reason to believe**
(19) **that the timestamp of 13:55 hours on the photo was**
(20) **inaccurate; right?**
(21) **A. That's correct.**
(22) **Q. You mentioned that you were back at the van**
(23) **when the entry was made; is that right?**
(24) **A. That is.**
(25) **Q. Were you aware that an entry was going to be**

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- (1) made before it was made?
(2) **A. The only thing I remember hearing over the**
(3) **radio is I thought somebody said something about some**
(4) **bean bags were going to be shot, because I remember**
(5) **being behind Officer Crum and Sergeant Knight at the**
(6) **side entry to the van when I heard the gunshots. And**
(7) **Officer Crum said, What was that?**
(8) **And I responded to him, It's just bean bags,**
(9) **which from my experience on the tactical team wouldn't**
(10) **be that uncommon to shoot at a window to get somebody's**
(11) **attention or let them know we're not leaving, that kind**
(12) **of thing.**
(13) **Q. Did it come as a surprise to you when you**
(14) **learned that the SWAT team had actually entered the**
(15) **apartment?**
(16) **A. Yes.**
(17) **Q. When the shots were fired, did you think the**
(18) **suspect was on the run?**
(19) **A. I did.**
(20) **Q. And were officers running in different**
(21) **directions?**
(22) **A. Yes.**
(23) **Q. Did you, in fact, run and take up a position**
(24) **behind a vehicle parked on 73rd?**
(25) **A. I did.**

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- (1) **MS. SNELL:** Thank you. I don't have anything
(2) further.
(3) **ARBITRATOR GREENBERG:** Anything else, Mr.
(4) Rains?
(5) REDIRECT EXAMINATION BY MR. RAINS:
(6) **Q. Just so I'm clear on this, as you think about**
(7) **either showing the photograph you showed of Mixon or**
(8) **giving it to somebody the two names, two faces that kind**
(9) **of stick out to you are either Sergeant Reilly or Deputy**
(10) **Chief Kozicki?**
(11) **A. I don't believe I gave it to either of them. I**
(12) **just remember seeing them in the group. But I don't**
(13) **believe I gave it to them because like I said, they**
(14) **would be -- Sergeant Reilly I know would be very**
(15) **involved in the entry of it just from knowing him as an**
(16) **entry sergeant and Kozicki being Deputy Chief.**
(17) **Q. For the record, that's Sergeant Mike Reilly?**
(18) **A. Correct. Yes.**
(19) **MR. RAINS:** Thank you. That's all.
(20) **MS. SNELL:** Nothing further.
(21) **ARBITRATOR GREENBERG:** I have a few questions.
(22) One is just going back to this full question about the
(23) timing on the photograph. We have heard representations
(24) that the computer system that generated the photograph
(25) and would have generated the timestamp on the photograph

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- (1) was a computer system that had not been adjusted for
(2) daylight savings time; and therefore, although it
(3) suggests that the photograph was printed up at 1:55 p.m.
(4) per the timestamp on the photograph, that it may have
(5) actually been printed up at 2:55 p.m.
(6) If that was the case, would 2:55 be more
(7) consistent with your recollection of when you received
(8) the photograph?
(9) **THE WITNESS:** I'm sorry, what time did you say
(10) they did the entry at?
(11) **ARBITRATOR GREENBERG:** About 10 after 3.
(12) **MR. RAINS:** It was probably about 3:04,
(13) somewhere between 3:02 and 3:04.
(14) **THE WITNESS:** My recollection is if I had those
(15) two times to pick between, I would believe it was the
(16) earlier.
(17) **ARBITRATOR GREENBERG:** So you believe you had a
(18) photograph and you've testified that you're not sure
(19) whether or not this is the photograph.
(20) **THE WITNESS:** I'm not sure. I'm pretty
(21) confident that our photo was the very first one there
(22) and that I'm 100 percent that I gave it to Lieutenant
(23) Drennon Lindsey. But I'm not 100 percent -- I don't
(24) remember if this is the photo. This is the picture that
(25) I had, but I don't know if it was a CABS photo or -- we

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- (1) have multiple systems that would have the same exact
(2) picture. But this is from CABS, not KRIMS. Even though
(3) they both have the same picture, they look different
(4) when they're printed.
(5) **ARBITRATOR GREENBERG:** So I can ask the picture
(6) a little bit differently. If the entry was at 3:04 and
(7) if, for example, this photograph was printed up at 2:55,
(8) only 9 minutes before, am I correct in thinking that you
(9) would not have had enough time to receive the
(10) photograph, take a copy to Lindsey, take a copy to the
(11) command huddle, whoever you gave it to, and also walk
(12) down 74th Avenue to the cluster of officers who were
(13) outside the apartment building and then get back to your
(14) communications van? That would have taken more than 9
(15) minutes?
(16) **THE WITNESS:** I'm fairly confident that yes,
(17) that would be the case, that it was printed before
(18) 14:55.
(19) **ARBITRATOR GREENBERG:** I also want to follow up
(20) with the question about the command post. Recognizing
(21) that what happened on March 21st was a very
(22) extraordinary event, you testified that you got a call
(23) from one of your colleagues and I'm forgetting who.
(24) **THE WITNESS:** Sean Knight.
(25) **ARBITRATOR GREENBERG:** From Knight saying

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- (1) there's been an officer shooting and we need to get to
(2) the site.
(3) Did anybody tell you where the command post was
(4) supposed to be set up?
(5) **THE WITNESS:** Sean Knight told me to respond to
(6) 7300 block of MacArthur. I don't believe he used the
(7) command post is there, but that's where he told me to
(8) respond to.
(9) **ARBITRATOR GREENBERG:** My understanding is --
(10) isn't 73rd and MacArthur also the location of the old
(11) Eastmont station?
(12) **THE WITNESS:** Yes. It's on the other side, the
(13) 7200 block would be MacArthur.
(14) **ARBITRATOR GREENBERG:** Did you think that the
(15) command post was going to be over by Eastmont station or
(16) did you really just not think about it?
(17) **THE WITNESS:** To be honest, my thinking was
(18) that we were going to go find out who this person is and
(19) go find him. It was more like I was responding to the
(20) scene of a shooting, not to we have another incident
(21) still going on. I thought this was over and now we have
(22) to find out what's going on and we're going to go find
(23) this person.
(24) From all the time I've been with the
(25) department, if somebody shoots at the police they leave,

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- (1) they're gone. So we have to go find them. So I didn't
(2) really know if there was a command post because I didn't
(3) think there was an active incident still going on. Does
(4) that make sense? I didn't know anything about this,
(5) that apartment. I thought that we were just at the
(6) scene of the shooting.
(7) **ARBITRATOR GREENBERG:** Your testimony is that
(8) you were really not expecting to find a traditional
(9) command post there.
(10) **THE WITNESS:** Correct. It's more of like a
(11) crime scene than we actively still have something, not
(12) realistically like something happening.
(13) **ARBITRATOR GREENBERG:** So the fact that there
(14) wasn't a command post for you to check in at was not
(15) surprising to you.
(16) **THE WITNESS:** Correct.
(17) **ARBITRATOR GREENBERG:** That concludes my
(18) questions.
(19) Does that prompt anything further from you, Mr.
(20) Rains.
(21) **MR. RAINS:** No.
(22) **ARBITRATOR GREENBERG:** Ms. Snell?
(23) **MS. SNELL:** No.
(24) **ARBITRATOR GREENBERG:** Mr. Kaney, thank you
(25) very much for your testimony. I would simply ask that

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- (1) you not speak with anybody about your testimony until
(2) after this proceeding is finished, which is likely to be
(3) some time next week.
(4) **THE WITNESS:** Okay.
(5) **ARBITRATOR GREENBERG:** Off the record.
(6) **(Recess taken.)**
(7) **ARBITRATOR GREENBERG:** We took a short break
(8) for personal matters. We're ready to resume with our
(9) next witness who is with us.
(10) DONALD COVINGTON,
(11) sworn as a witness,
(12) testified as follows:
(13) **ARBITRATOR GREENBERG:** Please state your name
(14) and your position with the police department.
(15) **THE WITNESS:** My name is Donald Covington.
(16) Last name is spelled C-o-v-i-n-g-t-o-n. I'm a sergeant
(17) of police with the Oakland Police Department.
(18) **ARBITRATOR GREENBERG:** We're going to start
(19) with direct examination by Mr. Rains and then Ms. Wagner
(20) will cross-examine.
(21) **DIRECT EXAMINATION BY MR. RAINS:**
(22) **Q.** Sergeant Covington, good morning.
(23) **A.** Good morning.
(24) **Q.** Sergeant Covington, how long have you been on
(25) the Oakland Police Department?

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- (1) **A.** Since November 1978.
(2) **Q.** I'm going to ask you if you were on duty on
(3) March 21st of 2009.
(4) **A.** Yes, I was.
(5) **Q.** Were you a sergeant of police on that day?
(6) **A.** Yes, I was.
(7) **Q.** What was your assignment on that date?
(8) **A.** On that day, as I recall, I believe I was -- I
(9) haven't looked at my notes. I believe I was working 1-L
(10) 74th. I was working a half a shift that day. I was
(11) assigned to District 4, I believe that day. Might have
(12) been District because I haven't seen my detail so -- but
(13) I know I was working detail.
(14) **Q.** Would that be Area 3?
(15) **A.** That's Area 3, yes.
(16) **Q.** That was a uniform assignment?
(17) **A.** That's correct.
(18) **Q.** Would that have made you a patrol supervisor?
(19) **A.** That's correct.
(20) **Q.** Do you recall on that date some time around
(21) 1:15 a call being broadcast about a 940B?
(22) **A.** Yes, I heard the call come out.
(23) **Q.** 940B is what?
(24) **A.** That's officer that needs immediate help,
(25) attention.

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- (1) **Q.** Do you remember where you were when you heard
(2) that call?
(3) **A.** When I first heard that call, I was about 73rd
(4) and Bancroft. I was about ready to make a shift -- I
(5) was splitting a shift with another supervisor that day.
(6) I was supposed to be getting off I think it was right
(7) around 9 o'clock. I was heading in towards the Eastmont
(8) station, finishing up few things that I had to take care
(9) of before the end of the day.
(10) **Q.** So after hearing the call that you described,
(11) where did you go?
(12) **A.** I continued up 73rd Avenue and I made a right
(13) turn onto MacArthur turning eastbound and pulled up to
(14) the scene there where the incident had occurred, where
(15) the shooting had occurred.
(16) **Q.** Can you give us an idea about how much was the
(17) driving time from the point you heard the broadcast to
(18) the time you arrived approximately?
(19) **A.** It was probably a minute, maybe 30 seconds or
(20) so at the most.
(21) **Q.** Pretty quick?
(22) **A.** It was very quick.
(23) **Q.** Can you give us an estimate as -- first of all,
(24) were there any other police units aside from the
(25) motorcycles, were there any other police cars on the

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- (1) scene when you arrived if you remember?
(2) **A.** There was one other unit on the scene.
(3) **Q.** You were the second?
(4) **A.** I was the second. It was the Adam car as I
(5) recall, there was an Adam car, there was two officers
(6) out there and then there was two motorcycle units.
(7) **Q.** After you arrived and saw what you saw, what
(8) did you do?
(9) **A.** When I arrived, I saw that there was one
(10) officer that was cradling one of the officers. I think
(11) it was Officer Hege. And then there was another officer
(12) that was with Dunakin. I just tried to see about
(13) getting first aid there kind of controlling -- there was
(14) a crowd of people that had started to come tried to sort
(15) of sort things out.
(16) **We started to set up a perimeter around the**
(17) **area, tried to contain the witnesses that were there and**
(18) **just trying to see how long it was going to be before**
(19) **the medical units arrived on the scene and the fire**
(20) **department.**
(21) **Q.** After medical units arrived, Sergeant Dunakin
(22) and Officer Hege were taken from that location, did you
(23) remain there for a period of time?
(24) **A.** I remained in that location there for the
(25) entire time that I was there on the scene between 74th

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(1) and about 75th and MacArthur. Most of the time that I
(2) was out there, that was about the only area that I was.

(3) Q. Were you directed to stay in that area or did
(4) you just stay there thinking that was a place you should
(5) stay?

(6) A. I was directed to stay there as I recall.

(7) Lieutenant Lindsey was the commander on the scene at
(8) that time. What I was ordered to do was basically
(9) control that scene there setting up the perimeter,
(10) containing the -- making sure they had someone there to
(11) watch the vehicle that was out there, just making sure
(12) that no one had entered the crime scene, taping off the
(13) area, various things like that.

(14) Q. Just because we've heard so much testimony in
(15) this case about a perimeter, when you use the term
(16) perimeter, is that a perimeter around the crime scene
(17) itself?

(18) A. Basically the perimeter that I was dealing with
(19) was the perimeter around the crime scene. There was a
(20) large perimeter that was set up in the entire area
(21) there. However, in the immediate area where the
(22) incident had occurred where there was the motorcycles
(23) that were there, the vehicle was there, there was a
(24) scene there and there was a lot of people who had
(25) started moving into the area, and we were trying to keep

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(1) that scene contained right there.

(2) Q. About how long was it, Sergeant Covington,
(3) before you were relieved or you left for the day?

(4) A. I stayed there until, as I recall, until around
(5) about 5:30 in the evening.

(6) Q. At some point after you arrived there, was
(7) there some effort being done to try to identify who they
(8) believed the individual was who shot the two motor
(9) officers?

(10) A. That was done. I don't know who was
(11) coordinating that. I do know that there was efforts and
(12) there was talk amongst the officers there that there was
(13) a suspect that they had to get an idea who he was
(14) because I remember in the van there that -- was it a
(15) van? No, it wasn't a van. There was a vehicle that the
(16) suspect was driving. There was an I.D. that was found
(17) in the vehicle.

(18) I remember looking at the I.D., and we were
(19) trying to determine if this was the person that was
(20) actually on the I.D. We started running the I.D. and we
(21) couldn't get a hit on the I.D. We finally determined
(22) that it was a fake I.D.

(23) Q. When you say "we were running the I.D.," is it
(24) more than one person doing that?

(25) A. Yeah. I can't remember who I got that I.D.

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(1) from but I got the identification from somebody. And it
(2) had a name on it and it wasn't the correct name. It was
(3) Officer Kaney, I believe was the officer that was just
(4) in here. He said that there was a van that he had come
(5) in. And I think that when searching the vehicle, they
(6) found a CDC number in the vehicle.

(7) They were playing with that CDC number. They
(8) had me run out the California driver's license that they
(9) found in the vehicle. And I couldn't find a match on
(10) it. It was coming back that it was not on file. And
(11) that didn't make sense because it looked like it was a
(12) good idea.

(13) I played with that thing maybe about 10,
(14) 15 minutes or so just going through KRIMS and going
(15) through FBI trying to find out some information,
(16) warrants and so forth, and I couldn't get anything. I
(17) believe it was that Kaney said either he had gotten a
(18) hold of a CDC number, and they had ran it out and that's
(19) when they came up with the name of Lovelle Mixon.

(20) Q. Do you recall a radio transmission with Officer
(21) Kaney concerning the identity of Lovelle Mixon having
(22) one out there?

(23) A. I don't remember a radio transmission.

(24) Q. There's a binder right in front of you. We
(25) have an exhibit that we refer to as Exhibit 7 in this

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(1) case. I'm just going to direct your attention to Page
(2) 45 of this. At the bottom of Page 45 -- I'll tell you
(3) that this is sort of a summary of some of the radio
(4) transmissions that occurred on March 21st.

(5) There appears to be here, it says at 14:57, it
(6) says, "Sergeant Covington P-4"; do you see that?

(7) A. Yes.

(8) Q. And then you apparently switch. What does that
(9) mean to you when you see that?

(10) A. Normally what happens is someone wants to
(11) engage in some sort of conversation with you, what they
(12) usually do is rather than go over the main channel, the
(13) primary channel, what they'll do is have you switch over
(14) to 4, then it can be a little more detail. It can be a
(15) very short conversation or it can be a longer
(16) conversation, but it's just normally a means of getting
(17) you off the primary channel so they can either give you
(18) a message or talk to you.

(19) Q. I'll turn the page. Take a look at the
(20) discussion that is, at least reflected here, at 14:57.
(21) And it says -- it looks like it's you saying you're on
(22) 4, "Covington on 4."

(23) Is that it?

(24) A. That's what it says, right.

(25) Q. Then it says, "Hey, Sarge, you got a CDC number

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- (1) or something for this guy?"
- (2) And then it says, "I'm sorry, go again."
- (3) "Someone -- I'm being told you have a CDC
- (4) number or something for this guy."
- (5) And then it says, "Yeah, you want it, call me
- (6) on my cell phone." There's a number there.
- (7) Is that your cell phone number there that's
- (8) reflected?
- (9) **A. That's my cell phone number, yes.**
- (10) **Q.** Do you remember when that call was made to you
- (11) that you had Mixon's number?
- (12) **A. I don't have an independent recollection of**
- (13) **that transmission there. The only thing I could do is**
- (14) **speculate when that may have occurred because the only**
- (15) **time I was talking about either CDC number or driver's**
- (16) **license was probably within a half an hour after the**
- (17) **scene had occurred.**
- (18) **Q.** After it had occurred?
- (19) **A. After the initial shooting had occurred with**
- (20) **Dunakin and Officer Hege.**
- (21) **Q.** So you think it was about a half hour after?
- (22) **A. Within that time frame. I'd say probably it**
- (23) **might have been less than that. But that's the only**
- (24) **time I remember discussing about the identity of that**
- (25) **time.**

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- (1) **Q.** When you say you were discussing it, I want to
- (2) make sure I'm clear. Does that mean you were trying to
- (3) find the identity?
- (4) **A. We were trying to establish the identification**
- (5) **of the person that was driving that vehicle that we had**
- (6) **the driver's license. And right after the driver's**
- (7) **license was found, I remember shortly after that they**
- (8) **found the CDC number. I don't know if it was on a card**
- (9) **or something in the vehicle there with that CDC number**
- (10) **and they were trying to run that number out.**
- (11) **Q.** At least looking at that radio transmission we
- (12) just did, it would suggest to me anyway that you had the
- (13) CDC number at that time?
- (14) **MS. WAGNER:** Objection. Leading.
- (15) **ARBITRATOR GREENBERG:** Overruled. Again,
- (16) Sergeant Covington, to some extent we recognize that
- (17) we're sort of asking -- we're mostly asking what you
- (18) actually remember, but to some extent we're sort of
- (19) merging what you remember with what you're able to see
- (20) here to see if it jogs your memory. I'm going to allow
- (21) the question.
- (22) Could you repeat the question?
- (23) **MR. RAINS:** Sure. I'll try to do it more
- (24) clear.
- (25) **BY MR. RAINS:**

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- (1) **Q.** You've seen that radio transmission reflected
- (2) there.
- (3) **A. Right.**
- (4) **Q.** Do you have any independent recollection of
- (5) actually getting the CDC number at some point in time?
- (6) **A. I did not get the CDC number. I had the**
- (7) **license. I do know that I had the license. I don't**
- (8) **remember exactly who I received the license from, but I**
- (9) **did have hold of the license for a short period of time.**
- (10) **I never did get the CDC number because as I remember, I**
- (11) **thought it was Kaney that had the CDC number.**
- (12) **I don't know where it came from. I never did**
- (13) **get it and I don't remember running out the CDC number.**
- (14) **I do remember playing with the driver's license. But I**
- (15) **think after I got the CDC number -- someone may have**
- (16) **thought because I was out there asking questions maybe**
- (17) **about the driver's license I may have had the CDC**
- (18) **number. But I don't remember having that CDC number.**
- (19) **Q.** Now, you were working under the direction of
- (20) Lieutenant Lindsey?
- (21) **A. Yes, that day I was. She was the lieutenant in**
- (22) **command that day, yes.**
- (23) **Q.** You said you left I think you said around
- (24) 5-something?
- (25) **A. Probably around 5 or 5:30. I remember I stayed**

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- (1) **there pretty late in the evening after the incident**
- (2) **occurred.**
- (3) **Q.** Do you know if Lieutenant Lindsey was still on
- (4) the scene, that is, the initial crime scene where
- (5) Dunakin and Hege were shot, or had they left?
- (6) **A. I don't recall. I think she was still there.**
- (7) **I think most of the people -- there was still quite a**
- (8) **few people on the scene there when I left. I was**
- (9) **supposed to leave earlier that day but I didn't. I had**
- (10) **stayed longer. But as I recall, I think Lieutenant**
- (11) **Lindsey was still on the scene.**
- (12) **Q.** Did you have verbal contact with her from the
- (13) time of your initial arrival through the time you left?
- (14) **A. I.D. I had quite a bit of contact with her.**
- (15) **Q.** Conversations back and forth?
- (16) **A. Correct.**
- (17) **Q.** In any of those conversations, did she tell you
- (18) that she had specific information exactly where the
- (19) suspect was?
- (20) **A. No. She never did tell me that she had**
- (21) **specific information of where the suspect was, no.**
- (22) **Q.** Did it come to your attention at some point in
- (23) time that there was a woman out there standing somewhere
- (24) near the crime scene who wanted to talk to Lieutenant
- (25) Lindsey?

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- (1) **A.** There was a lady that was out there. For some
 (2) reason, my attention goes back to this one particular
 (3) woman that was acting a little bit strange out there.
 (4) She was on the south side of the street, I think,
 (5) between 74th and 75th and she was kind of like pacing
 (6) back and forth. She wanted to talk to Lieutenant
 (7) Lindsey. I have no idea what it was because she
 (8) wouldn't say.
 (9) **Q.** She wouldn't tell you?
 (10) **A.** She wouldn't tell me, no.
 (11) **Q.** You asked her?
 (12) **A.** No. I was concerned about her because of her
 (13) behavior. She might have sensed that. I didn't like
 (14) the idea that she was there, but there really was not a
 (15) whole lot I could do about her being there but she was
 (16) just acting kind of weird. I thought that this was kind
 (17) of an emotional situation we were dealing with.
 (18) For some reason, my attention was drawn toward
 (19) her. I think it was because of her behavior. I didn't
 (20) say anything rude to her and I didn't act unpleasant
 (21) toward her. For some reason, she might have sensed that
 (22) maybe I didn't like her actions or her behavior.
 (23) **Q.** At some point in time you talked to Tom Leary
 (24) about some of the things I'm asking you here today; do
 (25) you remember doing that?

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- (1) **A.** I remember talking to somebody, but it's been a
 (2) while ago so I can't remember all the conversation.
 (3) This is the first day I met Tom, so I didn't know who I
 (4) was talking with. I know I talked with somebody about
 (5) this case.
 (6) **Q.** This is over the phone?
 (7) **A.** Over the phone.
 (8) **Q.** Do you remember telling the person you talked
 (9) to that she was kind of acting what you call 5150?
 (10) **A.** I don't remember telling them that, but it
 (11) doesn't surprise me. I think if she was acting strange,
 (12) I don't know if I'd say 5150. If I did, I didn't mean
 (13) it in a rude term. I just meant her behavior was a
 (14) little unusual, seemed to me as though she might have
 (15) been having some sort of problem. I don't know whether
 (16) she was intoxicated or whether or not she had been what
 (17) I say is touched.
 (18) **Q.** For the record, 5150 is a number of the Health
 (19) and Safety Code in California that means that somebody
 (20) is perhaps mentally unstable?
 (21) **A.** Yes.
 (22) **Q.** Did you ever, so to speak, hook her up with
 (23) Lieutenant Lindsey?
 (24) **A.** No. I didn't hook her up. I don't know how
 (25) she -- she kept asking about Lieutenant Lindsey and she

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- (1) wanted to talk to Lieutenant Lindsey but she wouldn't
 (2) tell me what she was wanting to talk to her about. She
 (3) was just saying that she wanted to talk with Lieutenant
 (4) Lindsey. I do remember that.
 (5) **Q.** Did you ever see her actually talking to
 (6) Lieutenant Lindsey?
 (7) **A.** It seemed like I did see her talking to
 (8) Lieutenant Lindsey from time to time when I was out
 (9) there on the scene. I saw Lieutenant Lindsey talking
 (10) with several people out there.
 (11) When I think about her, she was the only one
 (12) out there that was directly asking for Lieutenant
 (13) Lindsey because she had something she wanted to talk to
 (14) her about.
 (15) **MR. RAINS:** I think that's all the questions I
 (16) have. Thank you.
 (17) **ARBITRATOR GREENBERG:** Let me just interject.
 (18) Do you recall any of the clothing that this woman was
 (19) wearing?
 (20) **THE WITNESS:** Not really. I didn't feel that
 (21) she was dressed inappropriately. There was nothing
 (22) about her dress that stands out in my mind.
 (23) **ARBITRATOR GREENBERG:** Was she wearing a pink
 (24) hat, if you recall?
 (25) **THE WITNESS:** I don't recall.

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- (1) **ARBITRATOR GREENBERG:** Thank you.
 (2) **CROSS-EXAMINATION BY MS. WAGNER:**
 (3) **Q.** Good afternoon. My name is Rachel Wagner.
 (4) Thank you for coming. I have some follow-up questions.
 (5) Let's start with where Mr. Rains left off.
 (6) You recall giving a statement to Internal
 (7) Affairs at some point, an interview, if you will?
 (8) **A.** I'm sorry to say I don't remember that either.
 (9) That's what happens when you get old.
 (10) **Q.** Thanks for the heads up.
 (11) It's fine. I'll ask you from your independent
 (12) recollection here today.
 (13) **A.** Okay.
 (14) **Q.** Do you recall when you arrived at the scene you
 (15) said it was within a minute or so of the 940B?
 (16) **A.** I arrived on the scene -- I'm not so sure if it
 (17) was a minute or so for the 940B. I remember hearing the
 (18) 40B come out. I know I was a short distance a way, so I
 (19) would think it would have taken me about from where I
 (20) was after I heard the 40B come up, maybe about a minute
 (21) and a half or so at the most.
 (22) **Q.** Now, when you got there, you already saw police
 (23) units there?
 (24) **A.** There was one unit there as I recall. There
 (25) was an Adam unit that was there.

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- (1) **Q.** Was Lieutenant Lindsey on the scene already?
- (2) **A.** No, she didn't come yet.
- (3) **Q.** There were officers on the scene by the time
- (4) you got there, a couple; is that right?
- (5) **A.** Yes.
- (6) **Q.** When you were on the scene at that early point,
- (7) you were aware there was several potential witnesses;
- (8) right?
- (9) **A.** No. I didn't know exactly -- wait a minute,
- (10) there was one guy there at the scene there who said that
- (11) he had seen a guy run across the street from the
- (12) shooting and he said he was driving down the street and
- (13) he sees this guy cut across MacArthur in a southbound
- (14) direction and he had a handgun.
- (15) **Q.** Can I had stop you just for a moment because we
- (16) have -- do you know recognize this as a picture of that
- (17) area?
- (18) **A.** Um-hum.
- (19) **Q.** I'm just going to ask you about what directions
- (20) you just used. So you remember a guy, a witness that
- (21) is, saying that he had seeing a suspect flee with a
- (22) handgun and go across the street and left on 74th?
- (23) **A.** Right, because he said he was going eastbound
- (24) and he saw the guy run across the street with a handgun
- (25) and he ran up 74th Avenue, I think it was.

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- (1) **Q.** Do you remember yourself that you talked to a
- (2) different female witness who had seen the suspect
- (3) carrying a gun and fleeing southbound on 74th Avenue,
- (4) that you said yourself talked to such a witness?
- (5) **A.** That was a male. It wasn't a female.
- (6) **Q.** Do you remember handing off the witness to
- (7) another officer? Was it that male witness?
- (8) **A.** He was there. And I remember that I had
- (9) someone probably because I wouldn't have taken a
- (10) statement myself. I would have had someone else take a
- (11) statement. And I remember asking someone to hold on to
- (12) him and to keep him there, either get a statement from
- (13) him. I can't remember exactly who the officer was at
- (14) the time.
- (15) **Q.** I want to show you a summary of your Internal
- (16) Affairs statement, see if it jogs your recollection.
- (17) It's Exhibit 1. I'm going to show you Page 219.
- (18) You see your name appears in bold?
- (19) **A.** Right.
- (20) **Q.** It indicates where your name is that you gave
- (21) them a digitally-recorded statement on or about
- (22) July 2nd, '09.
- (23) Do you ever remember giving a statement with
- (24) Sergeant Moss present or Sergeant Shaver?
- (25) **A.** Okay, now I remember that. Over at IAD?

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- (1) **Q.** Right.
- (2) **A.** Right, I remember giving a statement.
- (3) **Q.** This purports to be a summary, not your entire
- (4) statement. I just want to turn you to the middle of
- (5) Page 220 where it says, if you look to the third
- (6) paragraph, "Covington stated that Lieutenant Lindsey
- (7) began initiating containment of the scene and requested
- (8) that officers begin canvassing for witnesses."
- (9) I'll give you a moment just to read that
- (10) paragraph and the one after to see if it refreshes your
- (11) recollection about witnesses you may have interacted
- (12) with in addition to the male you've described.
- (13) You recall speaking with the male witness;
- (14) right?
- (15) **A.** Yes.
- (16) **Q.** About the direction of flight.
- (17) Is this discussion on Page 220, this summary,
- (18) is that about the male witness who described the
- (19) direction of flight with the suspect with a handgun?
- (20) **A.** Right.
- (21) **Q.** Were you aware that other female witnesses were
- (22) on the scene and handled by other officers in addition
- (23) to the one that you've described in your direction
- (24) examination?
- (25) **A.** That there were other female witnesses? No.

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- (1) The only other person I was thinking of that might have
- (2) been a witness might have been that female that wanted
- (3) to talk to Lieutenant Lindsey.
- (4) **Q.** She didn't want to talk to you, she wanted to
- (5) talk to Lieutenant Lindsey; right?
- (6) **A.** Right.
- (7) **Q.** In fact, did you have any conversation with
- (8) that witness about her information?
- (9) **A.** No, not really. Seemed like she approached me
- (10) and she was asking for Lieutenant Lindsey.
- (11) **Q.** Did you ever see that witness, the one who was
- (12) looking for Lieutenant Lindsey, interact with Sergeant
- (13) Tony Jones?
- (14) **A.** No, I didn't see that.
- (15) **Q.** Did you have any interaction with Sergeant
- (16) Jones at the scene?
- (17) **A.** I remember Tony came to the scene, but it was
- (18) later on in that afternoon.
- (19) **Q.** But did you have any direct one-on-one
- (20) interaction?
- (21) **A.** No, other than maybe I might have said hello.
- (22) But other than that, because I know Tony, but I didn't
- (23) engage in any type of conversation.
- (24) **Q.** You were doing your own work and he is was
- (25) doing his; right?

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- (1) **A. Right.**
- (2) **Q.** Did you have any direct interaction one-on-one
- (3) with Sergeant Van Sloten of homicide?
- (4) **A. No.**
- (5) **Q.** Did you have any direct interaction one-on-one
- (6) with Sergeant Lou Cruz on the site?
- (7) **A. No.**
- (8) **Q.** Are you aware those three homicide
- (9) investigators were on the scene?
- (10) **A. No.**
- (11) **Q.** Did you even know which homicide investigators
- (12) were on duty?
- (13) **A. I remember Tony being out there. I can't**
- (14) **remember who he was working with at that time.**
- (15) **Q.** So in terms of who they were working with in
- (16) terms of witnesses, they could have met with that woman,
- (17) that is, Sergeant Jones or Sergeant Van Sloten or
- (18) Sergeant Cruz could have met with the woman you've
- (19) described and gotten her information, that's not
- (20) something you would know, would it?
- (21) **A. I wouldn't know that. I wasn't paying any**
- (22) **attention.**
- (23) **Q.** In terms of Lieutenant Lindsey, for example,
- (24) you described her as giving you instructions; right?
- (25) **A. Yes.**

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- (1) **Q.** Did you see her giving other sergeants
- (2) assignments as well while she was on the crime scene?
- (3) **A. I saw her. Sergeant Peterson was out there.**
- (4) **Basically it seemed like there was a couple of other**
- (5) **sergeants that may have come up.**
- (6) **What she was doing is basically containing that**
- (7) **scene right there on MacArthur giving us direction as to**
- (8) **what she wanted us to do and how she wanted us to -- she**
- (9) **was very adamant about containing that scene, keeping**
- (10) **people out of there that didn't belong in there, not**
- (11) **letting people go near the vehicle, stuff like that.**
- (12) **Q.** If you flip back to the first page of your
- (13) interview, see at the bottom, it says, second sentence
- (14) from the bottom of Page 219, "Covington stated that
- (15) Lieutenant Lindsey did a good job managing the scene
- (16) under the circumstances and described the scene as
- (17) chaotic."
- (18) Sitting here today, do you still recall that
- (19) your belief was Lieutenant Lindsey was doing a good job
- (20) managing the crime scene?
- (21) **A. I think that as I recall, Lieutenant Lindsey**
- (22) **was a new lieutenant at the time. I don't remember her**
- (23) **-- I don't know whether she was inside, had been working**
- (24) **in CID before she came out there. I do know that she**
- (25) **was new.**

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- (1) **To be thrown in a situation like that, I**
- (2) **thought she did a very good job personally because what**
- (3) **she was doing, she was focusing in on trying to contain**
- (4) **that scene there, looking for the witnesses, canvassing**
- (5) **the area. And things were, like I said, were very**
- (6) **chaotic.**
- (7) **When we first got there, we didn't have any**
- (8) **information where the suspect was or where he had gone.**
- (9) **We didn't have any of that information. It wasn't until**
- (10) **later that there was information about, as far as I**
- (11) **know, where the witness was. I thought bringing this**
- (12) **thing together and getting things contained quickly I**
- (13) **thought she did a good job.**
- (14) **Q.** Speaking of what you knew while you were out
- (15) there, I'd like to ask you to not think about what you
- (16) might have known or learned later.
- (17) While you're doing your job out there, did you
- (18) have any interaction with commanders who were in the
- (19) vicinity of 74th and MacArthur, that intersection?
- (20) **A. I didn't have any interaction with any**
- (21) **commanders. I don't think that the commanders started**
- (22) **arriving there, other than Lieutenant Lindsey, until**
- (23) **after a while. As time went on, the commanders started**
- (24) **arriving. But I didn't really have any interaction with**
- (25) **any of the commanders there.**

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- (1) **Q.** As time went on and commanders started
- (2) arriving, I know you were doing your job, but did you
- (3) see them in the area of 74th and MacArthur?
- (4) **A. I didn't really notice them there. They were**
- (5) **kind of like, as far as I remember, on 74th Avenue.**
- (6) **They were kind of like -- there were two scenes there**
- (7) **because there was a group of officers over on 74th just**
- (8) **south of MacArthur.**
- (9) **Q.** This area (indicating)?
- (10) **A. Right.**
- (11) **Q.** On Exhibit 5.
- (12) **A. South of that area there.**
- (13) **Q.** South of the yellow dot, okay.
- (14) **A. There were a group of officers over there. I**
- (15) **never did go around there. I never did get over there.**
- (16) **I know there were a group of officers there. I don't**
- (17) **know what the conversation was about, I don't know what**
- (18) **they were talking about because I never did go around**
- (19) **there.**
- (20) **Q.** That was one scene and the other scene was the
- (21) crime scene that you were in?
- (22) **A. I'm talking about 74th up to about two blocks**
- (23) **there, and that was the area that I was focusing in on.**
- (24) **Q.** When you say that was the area, you're
- (25) referring to the actual inner perimeter of the crime

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- (1) scene, if you will, where the officers were killed?
- (2) **A. You see where that yellow dot is on the**
- (3) **intersection there just east of that location between**
- (4) **the purple and the yellow dot, that area there back up**
- (5) **to where it says MacArthur, right through there was the**
- (6) **entire area that I was focusing in on.**
- (7) **Q. Do you consider that the crime scene of the**
- (8) **initial shooting?**
- (9) **A. That was the crime scene because the incident**
- (10) **occurred on the north side of the street there near**
- (11) **where the red dot is.**
- (12) **Q. In terms of anything that was going on with**
- (13) **commanders at 74th and MacArthur, you don't know**
- (14) **anything about that?**
- (15) **A. I didn't even realize that the commanders were**
- (16) **out there until later. I never did -- I just knew**
- (17) **something was going on around there. I was not involved**
- (18) **in it.**
- (19) **Q. And you didn't have any interaction with**
- (20) **Lieutenant Ersie Joyner before the shooting, the second**
- (21) **shooting?**
- (22) **A. I didn't see Officer Joyner until late that**
- (23) **afternoon. It was later in the day. I think that he**
- (24) **may have came there to the scene. I saw him -- seemed,**
- (25) **as I recall, he was walking around through the scene**

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- (1) **there but I didn't have any interaction with him.**
- (2) **Q. Let me make my question more clear. Before the**
- (3) **entry into the apartment and the shooting, did you have**
- (4) **any conversation with Lieutenant Joyner?**
- (5) **A. Seemed like he came there after that, after**
- (6) **the --**
- (7) **Q. As far as you knew, you only saw him after the**
- (8) **shooting?**
- (9) **A. After everything, after all four of the**
- (10) **officers had been shot.**
- (11) **Q. Now, in your statement, you said you were aware**
- (12) **of activity on 74th Avenue, and you thought it related**
- (13) **to the suspect but you didn't know anything more; is**
- (14) **that right?**
- (15) **A. I didn't know what was going on around there.**
- (16) **If I said it was a suspect, in my mind I didn't know**
- (17) **what they were but I knew something was going on around**
- (18) **there.**
- (19) **Q. You didn't know what it was?**
- (20) **A. I didn't know what it was.**
- (21) **Q. That wasn't part of your mission there that**
- (22) **day?**
- (23) **A. Right.**
- (24) **Q. I want to bring you down to the bottom of Page**
- (25) **220, the last sentence. I just want to see if you're**

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- (1) comfortable with that today.
- (2) The very last sentence of Page 220 of Exhibit 1
- (3) says, quote, Covington was not sure of what was going on
- (4) at the second scene, 74th Avenue.
- (5) **A. I'm sorry, where is that at?**
- (6) **Q. Right here.**
- (7) **A. Okay.**
- (8) **Q. It says, quote, Covington was not sure what was**
- (9) **going on at the second scene, 74th Avenue, but thought**
- (10) **there might have been a suspect in the area.**
- (11) You didn't have any personal knowledge of what
- (12) was going on at 74th; is that right? 74th and Mac.
- (13) **A. Right now as I'm sitting here, I can't**
- (14) **remember -- I know that there was something they were**
- (15) **focusing on something at that time. I don't know what**
- (16) **it was. If I said this in the beginning, maybe at that**
- (17) **time that's what was in my mind.**
- (18) **Q. You may have had some vague information there**
- (19) **was a location of interest over there but you weren't a**
- (20) **part of it?**
- (21) **A. That's the impression that I got because there**
- (22) **was a couple of sergeants over there. And as I recall,**
- (23) **there was a couple of commanders over there and then**
- (24) **were communicating amongst themselves.**
- (25) **Q. Do you remember seeing Lieutenant Mufarreh or**

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- (1) Captain Orozco over there?
- (2) **A. I didn't even realize Captain Mufarreh was even**
- (3) **at the scene. I didn't even notice he was there. I**
- (4) **remember seeing --**
- (5) **Q. You can just use last names for now. Who do**
- (6) **you remember seeing?**
- (7) **A. I remember Rick, Captain Orozco. I remember**
- (8) **him being there because I saw him there and I heard him**
- (9) **on the radio, as I recall.**
- (10) **Q. According to your interview, you didn't hear**
- (11) **Lieutenant Joyner broadcast on the radio before the**
- (12) **shooting, did you?**
- (13) **A. I don't remember hearing Captain Joyner on the**
- (14) **radio at all.**
- (15) **Q. So in terms of any address or suspect**
- (16) **information that Ersie Joyner broadcast, you don't**
- (17) **remember hearing it?**
- (18) **A. I don't remember Captain Joyner on the radio at**
- (19) **all.**
- (20) **Q. In terms of a location on 74th Avenue, that is**
- (21) **around the corner, you didn't know there were guns**
- (22) **trained on an apartment building, for example?**
- (23) **A. No.**
- (24) **Q. You didn't know there was a DAT, a Designated**
- (25) **Arrest Team, for a certain address?**

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- (1) **A. I didn't know that because I had seen the**
 (2) **members of the entry team had come. When I first**
 (3) **noticed them, they were up on 75th where that orange dot**
 (4) **is in that little area there. They were up in there.**
 (5) **There was a few of them up in there. They were staging**
 (6) **there.**
 (7) **Q. That was later right?**
 (8) **A. No, that was before the shooting, before the**
 (9) **entry into the apartment there. But that was for a**
 (10) **short period of time. I don't know how long they were**
 (11) **there and I don't know why they were there, but I do**
 (12) **remember a few being there.**
 (13) **Q. Do you remember the names of anyone you noticed**
 (14) **there for a short period of time?**
 (15) **A. The only one that seems to stand out in my mind**
 (16) **was -- and I'm not ensure of his name.**
 (17) **Q. Do you remember his face?**
 (18) **A. Yes. Tall, dark-skinned brother with glasses.**
 (19) **Q. You had no interaction with anyone --**
 (20) **A. No.**
 (21) **Q. Let me finish. She gets mad, the court**
 (22) **reporter.**
 (23) **A. You're right.**
 (24) **Q. During the short time you saw entry team**
 (25) **members on 75th, you didn't talk to any of them, have**

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- (1) any contact, did you?
 (2) **A. No.**
 (3) **Q. That wasn't part of your mission; right?**
 (4) **A. I saw them there and I noticed them, but I**
 (5) **wasn't involved in that.**
 (6) **Q. You said you didn't hear a fair amount of**
 (7) **information about 74th on the radio, right or you didn't**
 (8) **see it either; right?**
 (9) **A. No.**
 (10) **Q. You also didn't hear any radio announcement**
 (11) **regarding the entry before it occurred, did you?**
 (12) **A. Actually, I did.**
 (13) **Q. What did you hear on the radio just before the**
 (14) **entry occurred?**
 (15) **A. The first entry occurred, as I remember, and I**
 (16) **might be wrong, I thought it was Captain Orozco advising**
 (17) **the troops that they were going to make an entry to the**
 (18) **residence. And they wanted us to be aware of that**
 (19) **because there was a lot of officers out there. As I**
 (20) **recall, he said that there was going to be -- we might**
 (21) **hear some flash bangs or some shooting or something like**
 (22) **that.**
 (23) **Q. You think that was all on the radio?**
 (24) **A. As I remember it was.**
 (25) **Q. Let me take you to Page 221, which is the very**

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- (1) next page. I'm just bringing you down near the bottom
 (2) of that page. On Page 221 of Exhibit 1, it starts with
 (3) "during the incident." Do you see that?
 (4) You don't mind reading that paragraph that
 (5) starts, "During the incident, Covington was aware" and
 (6) the paragraph right after it about six lines.
 (7) **A. I read it.**
 (8) **Q. I know it's been a long time, but you didn't**
 (9) **hear any announcement of flash bangs on the radio, did**
 (10) **you?**
 (11) **A. Seems like I did.**
 (12) **Q. That's what you remember?**
 (13) **A. Yes.**
 (14) **Q. Since it's not a memory test at this late date,**
 (15) **let me take you to Tab 7 in that same book. I'm going**
 (16) **to take you to a particular page near the end. It's**
 (17) **Page 46. If you look at the bottom, you'll see the page**
 (18) **numbers. If you'd look at 15:02, this is an entry at**
 (19) **the bottom of Page 46.**
 (20) Do you see where it says 15:02 at the
 (21) bottom?
 (22) **A. Yes.**
 (23) **Q. Do you see where, at least this document**
 (24) **indicates, that Captain Orozco call sign 2-L-92 is on**
 (25) **the air?**

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- (1) **A. I see.**
 (2) **Q. Is that the radio announcement regarding the**
 (3) **entry that you're referring to recalling that Captain**
 (4) **Orozco was on the air regarding the entry before it**
 (5) **occurred?**
 (6) **A. That seems to be the conversation. I remember**
 (7) **that. That's what I was speaking of that I heard.**
 (8) **Q. That stands out in your mind, that radio**
 (9) **announcement?**
 (10) **A. Right.**
 (11) **Q. Before you heard that announcement, did you**
 (12) **have any idea that the tactical team was going to be**
 (13) **entering that apartment on 74th?**
 (14) **A. No.**
 (15) **MS. WAGNER: I have no other questions.**
 (16) **REDIRECT EXAMINATION BY MR. RAINS:**
 (17) **Q. Just by way of a refresher, Sergeant Covington,**
 (18) **on Page 222 of that IA summary at the very top of the**
 (19) **page.**
 (20) Do you have that?
 (21) **A. Is that the one where it says "Karla Rush"?**
 (22) **Q. Just above that. That's still a continuation**
 (23) **of your interview.**
 (24) **A. Okay.**
 (25) **Q. Reading there it says, "Covington did not hear**

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- (1) Lieutenant Lindsey tell anyone that she knew of a
(2) suspect location on 74th Avenue."
(3) Do you see that?
(4) **A. Yes, I see that.**
(5) **Q.** Is that consistent with your memory today as
(6) well?
(7) **A. I don't remember Lieutenant Lindsey saying**
(8) **anything about the suspect.**
(9) **Q.** And she didn't say anything to you?
(10) **A. She never did tell me about it, no.**
(11) **MR. RAINS:** Thank you, sir. That's all.
(12) **MS. WAGNER:** That's all I have.
(13) **ARBITRATOR GREENBERG:** And the arbitrator
(14) doesn't have any questions.
(15) Thank you very much for your testimony,
(16) Sergeant Covington.
(17) I would simply ask that you not speak with
(18) anybody about your testimony until after we've wrapped
(19) up, which is likely to be next week.
(20) **THE WITNESS:** Okay.
(21) **ARBITRATOR GREENBERG:** Off the record.
(22) **(Brief recess taken.)**
(23) **ARBITRATOR GREENBERG:** We took a short break
(24) for personal matters and also to call in the next
(25) witness who has arrived.

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- (1) **DAVE BURKE,**
(2) sworn as a witness,
(3) testified as follows:
(4) **ARBITRATOR GREENBERG:** Please state your name
(5) and your position with the police department.
(6) **THE WITNESS:** Dave Burke, police officer.
(7) **ARBITRATOR GREENBERG:** We're going to start
(8) with direct examination by Mr. Rains and then Ms. Wagner
(9) is going to cross-examine you.
(10) **DIRECT EXAMINATION BY MR. RAINS:**
(11) **Q.** Officer Burke, good morning.
(12) **A. Good morning.**
(13) **Q.** How long have you been at the Oakland Police
(14) Department?
(15) **A. Ten years with the Oakland Police Department.**
(16) **Q.** What's your current assignment?
(17) **A. Assigned to the IT section.**
(18) **Q.** What do you do in the IT section?
(19) **A. Various jobs. In the IT section I'm actually**
(20) **in charge of all of our operations for IE, FBR, the new**
(21) **camera program and several other ancillary jobs. So**
(22) **anything from testing, evaluating new equipment, new**
(23) **software for the department.**
(24) **Q.** You mentioned FBR. What's that?
(25) **A. Field-based reporting system. I'm actually one**

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- (1) **of the administrators.**
(2) **Q.** What is the field-based reporting system in
(3) Oakland?
(4) **A. It's a computer aided program to help officers**
(5) **write reports and also linked into our report management**
(6) **system where all reports are then stored and compiled**
(7) **for courts and other reasons, various reasons.**
(8) **Q.** Are you aware of a department policy that says
(9) the department personnel are supposed to prepare their
(10) reports on the FBR system?
(11) **A. Yes.**
(12) **Q.** Would that be, for the record, General Order
(13) I-14?
(14) **A. Yes.**
(15) **Q.** Does that policy say the MDT, or an authorized
(16) departmental computer, shall be used as the primary
(17) method of drafting an electronic report using FBR
(18) software?
(19) **A. Yes.**
(20) **Q.** I want to show you a report here that has been
(21) marked as Union Exhibit No. 1 and see if you recognize
(22) that?
(23) **A. I do.**
(24) **Q.** Does that appear to be a police report?
(25) **A. Yes.**

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- (1) **Q.** From reading the first page of that, can you
(2) tell which officer may have prepared that?
(3) **A. Officer Steve Toribio.**
(4) **Q.** Have you had the occasion to make a
(5) determination as to when this police report was
(6) approved?
(7) **A. Yes.**
(8) **Q.** Officer Burke, what does it mean that a police
(9) report is approved?
(10) **A. The approval process happens after the officer**
(11) **completes the report and goes through all the edit**
(12) **checks. And then he submits the report up on the**
(13) **server, on the FBR server, for the supervisor. Then**
(14) **he'll go back and review it for accuracy and make a**
(15) **determination. And the supervisor approves it after**
(16) **that.**
(17) **Q.** So the approval, so to speak, occurs by a
(18) supervisor?
(19) **A. Yes.**
(20) **Q.** Some time after the report has been completed
(21) and presumably submitted by the officer?
(22) **A. Correct.**
(23) **Q.** And the FBR system gives -- does it provide
(24) some indication as to when the approval occurred if you
(25) do a check?

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- (1) **A. Yes.**
- (2) **Q.** So you can actually check the system to see
- (3) when the approval occurred?
- (4) **A. Yes, you can.**
- (5) **Q.** Have you made a determination as to when this
- (6) particular police report was approved?
- (7) **A. Yes, I did.**
- (8) **Q.** Can you tell us when this police report was
- (9) approved?
- (10) **A. It was approved on the 22nd of March at**
- (11) **02:50 in the morning.**
- (12) **Q.** 22nd of March at 02:50?
- (13) **A. Or 2:50 a.m.**
- (14) **Q.** I don't know if you have the record with you.
- (15) Does the system also indicate the name or the identity
- (16) of the sergeant who approved the report?
- (17) **A. It does.**
- (18) **Q.** Do you recall who the supervisor was?
- (19) **A. It's actually on the report. The reviewer is**
- (20) **actually Sergeant Van Sloten.**
- (21) **Q.** So she approved it on the 22nd at what time,
- (22) 2:50?
- (23) **A. 2:50 a.m.**
- (24) **Q.** Directing your attention to an exhibit that has
- (25) been marked here 57. I'll keep Union Exhibit No. 1 in

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- (1) front of you.
- (2) Before I ask you a question about Exhibit 57,
- (3) looking at Union Exhibit No. 1, the Toribio report you
- (4) just testified to, because of your position in the
- (5) department are you able to look at that report and
- (6) determine if that report is written in the FBR system or
- (7) not?
- (8) **A. Yes.**
- (9) **Q.** Does Union Exhibit 1 to you appear to be
- (10) written in the FBR system?
- (11) **A. Yes.**
- (12) **Q.** What is the identifier to you that you can tell
- (13) Union 1 is written in the FBR system?
- (14) **A. Just the generated computer format that's on**
- (15) **here and has the preprinted reviewer's signature on the**
- (16) **bottom.**
- (17) **Q.** Turning your attention to Exhibit 57 and
- (18) looking at that report, can you tell us whether that is
- (19) written in the FBR system?
- (20) **A. It's not.**
- (21) **Q.** How are you able to make that determination?
- (22) **A. It has the training form number on the bottom,**
- (23) **which was our standard report prior to FBR and just a**
- (24) **printed format on the top. And then obviously the**
- (25) **letters, everything is outside the margin on the box on**

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- (1) **the report itself.**
- (2) **Q.** You mentioned something about a system before
- (3) FBR.
- (4) Does this appear to you to be written in the
- (5) system that was in existence before FBR?
- (6) **A. Right. Prior to FBR, we had the preprinted**
- (7) **forms. This was just a form that was created, generated**
- (8) **on the computer from this format where everything is**
- (9) **outside the margins set on here, and it's a preprinted**
- (10) **form. You see the training number on the bottom, the**
- (11) **536, the 937 which was approved on 1 of 97. That was**
- (12) **our standard form.**
- (13) **Q.** When did the FBR system come into existence?
- (14) **MS. WAGNER:** When did it start being used?
- (15) **MR. RAINS:** Sure. That's a good question.
- (16) **THE WITNESS:** I don't remember. I was in
- (17) patrol at the time so it had to be '04 or so.
- (18) **BY MR. RAINS:**
- (19) **Q.** Around '04?
- (20) **A. Right.**
- (21) **Q.** That officers started to use FBR to prepare
- (22) reports?
- (23) **A. Correct.**
- (24) **Q.** I'm just trying to get an understanding. For
- (25) an officer to use the system that you see Exhibit 57,

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- (1) would they actually get this form somewhere and then
- (2) type the report on it?
- (3) **A. Several templates were made and distributed**
- (4) **throughout the department. So on some computers in the**
- (5) **department you actually have this format on it on the**
- (6) **computers. This was actually readily available to**
- (7) **anybody in case FBR was down at the time or you needed**
- (8) **to write additional or supplemental, this is what --**
- (9) **this is a supplemental report or additional information**
- (10) **page. This is available to anyone in the department.**
- (11) **Q.** So if FBR is down, someone could find this
- (12) template?
- (13) **A. Correct.**
- (14) **Q.** But the fact that we have Exhibit Union No. 1
- (15) from March 21st of 2009, would that be an indication to
- (16) you that FBR was not down?
- (17) **A. Correct.**
- (18) **Q.** To your knowledge, did officers sometimes adopt
- (19) the template that you're referring to on their own
- (20) computers?
- (21) **A. Yes.**
- (22) **Q.** They're able to do that?
- (23) **A. Yes.**
- (24) **Q.** Like if they have a laptop, they could take
- (25) that laptop home and type it at home?

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- (1) **A. Correct.**
- (2) **Q.** Even though the policy says you're supposed to
- (3) use the FBR system?
- (4) **A. That's correct.**
- (5) **MR. RAINS:** Thank you. That's all.
- (6) **MS. WAGNER:** Mr. Rains, is the policy you're
- (7) referring to in evidence anywhere?
- (8) **MR. RAINS:** No, I just read it.
- (9) **MS. WAGNER:** I want to make a motion to strike
- (10) any representations. Put the policy in evidence.
- (11) **MR. RAINS:** I'll be happy to. I figured you'd
- (12) yell and scream about that.
- (13) **MS. WAGNER:** The policy doesn't bother me.
- (14) It's new exhibits that are created by counsel.
- (15) **MR. RAINS:** Okay.
- (16) **MS. WAGNER:** Thank you.
- (17) **MR. RAINS:** Let's put it in.
- (18) **ARBITRATOR GREENBERG:** This is going to be
- (19) Union Exhibit 5.
- (20) **MR. RAINS:** Right.
- (21) **(Union Exhibit No. 5 marked for**
- (22) **identification.)**
- (23) **MS. WAGNER:** I don't know that the witness had
- (24) a chance to see the policy so I just want to show you
- (25) the first page. We're not going to go through it page

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- (1) by page. We'll get you out of here, Officer Burke.
- (2) **CROSS-EXAMINATION BY MS. WAGNER:**
- (3) **Q.** My name is Rachel Wagner. It's my turn to ask
- (4) you some follow-up questions. Looking at the policy on
- (5) the top right-hand corner, it says, "Effective date 27
- (6) October '06."
- (7) To your recollection, was that approximately
- (8) when use of the FBR system was mandated or do you know?
- (9) **A. I don't know.**
- (10) **Q.** In terms of the report in Exhibit 57, that's
- (11) the report on the old form; right?
- (12) **A. Um-hum.**
- (13) **Q.** That was a form that was commonly available to
- (14) all police officers; is that right?
- (15) **A. Correct.**
- (16) **Q.** Did some police officers still use it back in
- (17) 2008/2009 on occasion?
- (18) **A. Speaking for myself, I didn't use it so I don't**
- (19) **know.**
- (20) **Q.** Had you seen reports that were on the old form?
- (21) **A. No, I haven't.**
- (22) **Q.** Is it part of your job to look at reports and
- (23) either approve them or supervise them? That's not part
- (24) of your job, is it?
- (25) **A. It was if I was in the acting sergeant**

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- (1) **capacity.**
- (2) **Q.** But as someone in IT, you don't sit and look at
- (3) the contents of the reports on a daily basis and look at
- (4) the contents, do you?
- (5) **A. I didn't start IT until last year so I don't**
- (6) **know.**
- (7) **Q.** In terms of this report, all you can tell us is
- (8) that it was on the old form; right?
- (9) **A. Right.**
- (10) **Q.** That form was available on many computers in
- (11) the police department; right?
- (12) **A. Correct.**
- (13) **Q.** I wanted to point you to Exhibit 1, the one
- (14) that says "Oakland Police Department" at the top, Crime
- (15) Report and it's Officer Steve Toribio on the corner.
- (16) **A. Um-hum.**
- (17) **Q.** If you'd go to Page 32 of that report, I just
- (18) have one question. Directing your attention about
- (19) three-quarters of the way down on this xerox copy
- (20) there's a line.
- (21) Do you see where that line is on the page?
- (22) **A. I see it.**
- (23) **Q.** Underneath that it says, Supplementals by
- (24) Officers A. Tedesco and M. Batty and Lieutenant D.
- (25) Lindsey have not been completed/approved at the time of

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- (1) this report."
- (2) Do you see that?
- (3) **A. I see it.**
- (4) **Q.** To your memory, were there other officers
- (5) besides Lieutenant Lindsey who had not yet submitted
- (6) their supplementals?
- (7) **A. I have no knowledge.**
- (8) **Q.** And you have no knowledge about any of those
- (9) officers or other officers who might have not included
- (10) in their reports submitted by Officer Steve Toribio;
- (11) right?
- (12) **A. No.**
- (13) **MS. WAGNER:** Thank you. I have no further
- (14) questions.
- (15) **ARBITRATOR GREENBERG:** I have just a couple of
- (16) follow-ups for clarity for my benefit.
- (17) Again, I understood, Officer Burke, that your
- (18) testimony was as a general policy pursuant to the
- (19) General Order that the department was directing people
- (20) ordinarily to use the FBR system for generating reports.
- (21) But you've testified that the old template was readily
- (22) available within the department; is that correct?
- (23) **THE WITNESS:** Correct.
- (24) **ARBITRATOR GREENBERG:** Do you have any basis
- (25) for knowing how common it was in early 2009 for officers

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- (1) to use the old template rather than using the FBR?
- (2) **THE WITNESS:** It wasn't common because FBR was
- (3) the main mechanism because once in awhile, once you do
- (4) this paper report, it doesn't get reconciled in the
- (5) records. It sits dormant on the shelf somewhere. All
- (6) the information is gleaned from FBR as far as tracking
- (7) the reports and everything else.
- (8) If you do a paper report like this, it's not
- (9) mirrored up to the main report for some time later as
- (10) far as the records go.
- (11) If you go on the records section and you're
- (12) looking for a report, it was common to find in a stack
- (13) of paper a supplemental that was done on just the old
- (14) reporting system just sitting on the shelf somewhere.
- (15) You actually have to dig through that shelf to find it
- (16) in stacks so it was uncommon.
- (17) **ARBITRATOR GREENBERG:** I realize that from a
- (18) recordkeeping standpoint -- obviously the department had
- (19) decided to automate this and make it electronic. If
- (20) someone was using the old report and are printing up a
- (21) hard copy that it was not readily accessible, and
- (22) therefore, might or might not have limited use.
- (23) My question was, do you know, notwithstanding
- (24) the fact that the department preferred the FBR approach
- (25) and the FBR approach would be more than useful to the

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- (1) department in terms of maintaining records, do you know
- (2) how common it was for officers to continue to use the
- (3) old report even though it was less desirable?
- (4) **THE WITNESS:** I don't know.
- (5) **ARBITRATOR GREENBERG:** The other question that
- (6) I have, and this is based upon a brief mention that you
- (7) made in your testimony and I just didn't catch it, when
- (8) you were talking about the FBR versus the old reports,
- (9) the old Word processed reports that would be printed up,
- (10) you made a brief mention of supplemental reports.
- (11) I was just not sure, was it more likely that if
- (12) somebody decided to use the old template, that they
- (13) would be doing that in connection with a supplemental
- (14) report that they were generating or did I get that
- (15) wrong?
- (16) **THE WITNESS:** This is considered supplemental.
- (17) The main report is done by the main officer. All other
- (18) reports are supplementals.
- (19) **MS. WAGNER:** All the other reports?
- (20) **THE WITNESS:** Are considered supplementals.
- (21) **ARBITRATOR GREENBERG:** So the prime report, the
- (22) prime crime report, am I correct in thinking, that that
- (23) always would have been done on the FBR?
- (24) **THE WITNESS:** Correct.
- (25) **ARBITRATOR GREENBERG:** Because that's being

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- (1) done by staff whose principal task is to generate these
- (2) reports and they know that they have to use the
- (3) department's special computer program for this.
- (4) **THE WITNESS:** Correct.
- (5) **ARBITRATOR GREENBERG:** So if there was going to
- (6) be a report that was generated outside the FBR, it
- (7) almost invariably would be a supplemental report?
- (8) **THE WITNESS:** It would be done in FBR also as a
- (9) supplemental report.
- (10) **ARBITRATOR GREENBERG:** It would be done or did
- (11) it have to be done in FBR?
- (12) **THE WITNESS:** Right. The format for doing any
- (13) supplementals or any report is always FBR. It's been
- (14) FBR for years. This is a choice. If you go outside the
- (15) FBR system, No. 1, maybe you're not familiar with the
- (16) FBR how to do it in FBR, but everything is linked up in
- (17) FBR. All reports are driven by the FBR system, not
- (18) handwritten supplementals. It's actually forbidden to
- (19) do handwritten supplementals or anything else outside
- (20) FBR unless FBR is down.
- (21) **ARBITRATOR GREENBERG:** Looking at Joint
- (22) Exhibit 57, which is the supplemental report that we've
- (23) seen that was authored by Lieutenant Lindsey, is it your
- (24) testimony that it was inconsistent with department
- (25) policy for this report to be generated in this form?

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- (1) **THE WITNESS:** Yes.
- (2) **ARBITRATOR GREENBERG:** Mr. Rains, does that
- (3) prompt any further questions from you?
- (4) REDIRECT EXAMINATION BY MR. RAINS:
- (5) **Q.** I guess the only other question I have, Officer
- (6) Burke, if so, your detectives -- I assume detectives
- (7) from your own knowledge might make supplemental reports
- (8) based on information they gather in an investigation; is
- (9) that right?
- (10) **A. Correct.**
- (11) **Q.** And are they also required to use FBR for their
- (12) supplemental reports unless FBR is down?
- (13) **A. In the case notes -- they generate case notes**
- (14) **that are separate from the actual report itself.**
- (15) **Q.** That's case notes?
- (16) **A. Correct.**
- (17) **Q.** But if they would cut a supplemental -- I don't
- (18) know enough about the process obviously myself -- if
- (19) they would cut a supplemental, would that be an FBR?
- (20) **A. Yes, they would want to put it in FBR.**
- (21) **MR. RAINS:** Thank you. That's all.
- (22) **ARBITRATOR GREENBERG:** Ms. Wagner?
- (23) **MS. WAGNER:** I have no further questions.
- (24) **ARBITRATOR GREENBERG:** We're done. Thank you
- (25) very much for your testimony.

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- (1) I would ask that you not speak with anybody
(2) about your testimony until after we've concluded our
(3) proceeding, which is some time next week.
(4) Off the record.
(5) **(Lunch recess taken.)**
(6) **ARBITRATOR GREENBERG:** We're back on the
(7) record. We took a break for lunch. We have a new
(8) witness.
(9) SEAN KNIGHT,
(10) sworn as a witness,
(11) testified as follows:
(12) **ARBITRATOR GREENBERG:** Please state your name
(13) and your position with the City.
(14) **THE WITNESS:** Sean Knight. And I'm with the
(15) County DA's office as an inspector.
(16) **ARBITRATOR GREENBERG:** That's Alameda County?
(17) **THE WITNESS:** Yes, sir.
(18) **ARBITRATOR GREENBERG:** We're going to start
(19) with direct examination by Mr. Rains and Ms. Snell is
(20) going to cross-examine you.
(21) **DIRECT EXAMINATION BY MR. RAINS:**
(22) **Q.** Mr. Knight, good afternoon.
(23) **A.** Good afternoon, sir.
(24) **Q.** Inspector Knight, isn't it?
(25) **A.** Yes.

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- (1) **Q.** How long have you been with the Alameda County
(2) DA's office?
(3) **A.** Approximately eight months.
(4) **Q.** Generally, what does an inspector do with the
(5) DA's office?
(6) **A.** We help the DA deputy district attorneys
(7) process their evidence, whether that's grabbing CDs or
(8) any evidence from the surrounding cities. They put in a
(9) request for us, we either go get it or it's delivered to
(10) us. We make copies for them.
(11) In addition to that, we serve subpoenas if a DA
(12) is involved or sometimes we'll make arrests in regards
(13) to witnesses who don't want to come in.
(14) We process the 911 CAD information for Oakland.
(15) We process that ourselves. Other than that, we pick it
(16) up from our departments because they do their own
(17) processing.
(18) **Q.** Now prior to becoming an inspector with the
(19) Alameda County DA's office, what was your employment?
(20) **A.** I was with the Oakland Police Department.
(21) **Q.** For how long?
(22) **A.** 20 years.
(23) **Q.** 20 years?
(24) **A.** Yes, sir.
(25) **Q.** When you left OPD to go to Alameda County, what

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- (1) was your rank?
(2) **A.** Sergeant.
(3) **Q.** I'm going to be asking you some questions about
(4) the events that occurred in the city of Oakland on
(5) March 21, 2009.
(6) Did you go to the area of 74th and MacArthur at
(7) some point on March 21st of 2009?
(8) **A.** Yes, sir.
(9) **Q.** Were you a sergeant on that date?
(10) **A.** Yes, sir.
(11) **Q.** What was your assignment, your normal
(12) assignment on that date?
(13) **A.** I was assigned to the SWAT team. Prior to that
(14) I had 13 years on entry -- actually, 12 years on
(15) actually making entries. I took myself off that six
(16) months prior to this event. I thought there was more of
(17) a focus on electronic surveillance -- the pulling of
(18) electronic surveillance equipment for the department and
(19) also tactical situations. And I started the process of
(20) trying to obtain additional equipment to better equip
(21) the SWAT team.
(22) **Q.** On this occasion, what resulted in you going
(23) out to the area of 74th and MacArthur? How did you come
(24) to go out there?
(25) **A.** I was called. I was actually here in Oakland

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- (1) actually having lunch with my wife and kids when I got a
(2) call from Captain Toll informing me of the motor
(3) officers that had at that time just been shot. So he
(4) directed me to go to the department, grab the van that
(5) we use, that ESU uses, and actually started notifying
(6) the Target Enforcement Task Force personnel to deploy to
(7) the scene.
(8) **Q.** You said a couple of things there. First of
(9) all, you said you got a call from Captain Toll?
(10) **A.** Yes, sir.
(11) **Q.** Who is Captain Toll?
(12) **A.** CID commander at the time.
(13) **Q.** Were you working under him?
(14) **A.** Yes, sir.
(15) **Q.** You mentioned something about the ESU?
(16) **A.** That's the term, Electronic Surveillance Unit.
(17) It's never really a unit -- there was never really a
(18) unit that they form, but the equipment that we had and
(19) the equipment that I started running for the department
(20) we just call it the ESU stuff. Anything referring to
(21) whether it's wiretap to doing phone work we call it ESU.
(22) **Q.** You also mentioned I think TETF?
(23) **A.** Yes, Target Enforcement Task Force.
(24) **Q.** Is that what you were assigned to?
(25) **A.** Kind of yes and no. I was brought up earlier

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- (1) at that time when the Target Enforcement Task Force had
 (2) a wiretap operation. I was brought up as a patrol
 (3) sergeant to run the wiretap equipment. So I specialize
 (4) in that.
- (5) After that operation, I just stayed and
 (6) remained up in CID running the equipment for any of the
 (7) other operations that we'd have.
- (8) Q. There is, as I understand it, an ESU van that
 (9) you were directed to get into and go out to the area of
 (10) 74th and MacArthur?
- (11) A. Yes.
- (12) Q. Where was that van located?
- (13) A. At the police department.
- (14) Q. Down on 7th Street?
- (15) A. Yes.
- (16) Q. By the way, what time did Captain Toll call you
 (17) approximately, if you know?
- (18) A. It was noontime, lunchtime. We just sat down
 (19) to have lunch. I don't know exact time.
- (20) Q. So you go over to the police department. I
 (21) take it you got in the van?
- (22) A. Yes, sir.
- (23) Q. Did you drive in the van to the area of 74th
 (24) and MacArthur?
- (25) A. Yes, sir.

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- (1) Q. Were you in the van by yourself or was anyone
 (2) else with you?
- (3) A. At that time I was still by myself.
- (4) Q. When Captain Toll said get in the van and go
 (5) out there, did he tell you specifically where you were
 (6) to go?
- (7) A. I don't recall if he did. He must have given a
 (8) location. I definitely turned on the radio so I think I
 (9) got it from the radio exactly at least where to head to,
 (10) which was the 7300 block of MacArthur.
- (11) Q. What was your understanding as to why you were
 (12) being sent to the 7300 block of MacArthur?
- (13) A. Just our system in trying to track down who's
 (14) responsible for the killings.
- (15) Q. Had you deployed the ESU van previously, on
 (16) shall we say, critical incidents or call-outs?
- (17) A. Yes.
- (18) Q. Typically when you would deploy the van, would
 (19) there be a command post usually somewhere?
- (20) A. Yes, sir.
- (21) Q. And where would the van normally be deployed in
 (22) relation to the command post?
- (23) A. Normally we try to position ourselves closest
 (24) to the command post itself.
- (25) Q. So you drive the van out to the 7300 block of

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- (1) MacArthur. I take it you stopped it at some point in
 (2) time?
- (3) A. Yes, sir.
- (4) Q. Do you recall where exactly on MacArthur you
 (5) stopped the van?
- (6) A. We were just west of 74th Avenue.
- (7) Q. You see that photo that we have up there?
- (8) A. Yes, sir.
- (9) Q. With relation to, shall we say, the yellow dot
 (10) on Exhibit 5, where would the van be parked?
- (11) A. Do you want me to point to it?
- (12) Q. If you can.
- (13) A. Approximately right there right in that area
 (14) right there.
- (15) Q. You're pointing to, what appears to be on this
 (16) photo anyway, the area of the white pickup truck?
- (17) A. Yeah. If I recall, we were probably one car
 (18) length out, one lane out.
- (19) Q. This is an aerial photo taken that day. Would
 (20) this, in fact, be your van sitting there?
- (21) A. No, our van is green -- in fact, that looks
 (22) like the van right there.
- (23) Q. Get your readers on.
- (24) A. No, I don't think that is. No, that's not the
 (25) van. We were over here (indicating). I remember being

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- (1) a little closer to the corner.
- (2) Q. I asked you about when you got called to begin
 (3) with.
- (4) Do you have any idea what time you would have
 (5) arrived at the location you did, you just pointed out,
 (6) with the van?
- (7) A. No, I don't know the time. It was quick
 (8) though. It was probably within 20 minutes of the call.
 (9) It was pretty quick because I don't think I was one of
 (10) the first tactical people there. I don't remember
 (11) seeing a whole lot of people there just yet SWAT-wise.
- (12) Q. When you got to that scene, do you have any
 (13) recollection of seeing Lieutenant Mufarreh there?
- (14) A. Yeah, I remember seeing Lieutenant Mufarreh.
- (15) Q. Do you recall seeing Captain Orozco?
- (16) A. I vaguely do. I'm not sure. Sorry.
- (17) Q. That's okay. Do you recall seeing Deputy Chief
 (18) Kozicki? I'm talking about when you first arrived.
- (19) A. I don't know when. I remember seeing him
 (20) there. I don't know if it was when I first arrived.
- (21) Q. Do you recall seeing -- again, this is when you
 (22) first arrive on the scene -- Lieutenant Drennon Lindsey?
- (23) A. I recall seeing her there.
- (24) Q. When you got there and stopped the van --
- (25) MS. SNELL: I'm sorry, I didn't get the answer.

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- (1) You did or you didn't?
- (2) **THE WITNESS:** I do recall seeing her.
- (3) **ARBITRATOR GREENBERG:** Just to close the loop
- (4) on this, you saw Lieutenant Lindsey when you first
- (5) arrived on the scene and fairly quickly thereafter?
- (6) **THE WITNESS:** Yes, sir.
- (7) **ARBITRATOR GREENBERG:** Did you see Lieutenant
- (8) Mufarreh fairly quickly after you arrived at the site?
- (9) **THE WITNESS:** Yes, sir. I think I saw
- (10) Lieutenant Mufarreh first.
- (11) **BY MR. RAINS:**
- (12) **Q.** So you stopped the van. What do you remember
- (13) doing?
- (14) **A.** I remember we positioned up there because I
- (15) forget we did move it. That was the final landing
- (16) place. But I think there was some talk about okay, now
- (17) position the van, back it up a little bit. So we got
- (18) stationary there. Then I made contact, I think, with
- (19) Captain Joyner. I don't know if it was him or somebody
- (20) else provided me with the CDL numbers and the name of
- (21) who they believed was responsible for the shooting.
- (22) **Q.** When you say "CDL," you mean California
- (23) Driver's License?
- (24) **A.** Yes, sir.
- (25) **Q.** Did you then do something with that CDL number

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- (1) using equipment in your van?
- (2) **A.** Yes, sir. That van was also equipped with
- (3) Vision Tech. That's basically the commission system
- (4) that the Oakland Police Department uses in their patrol
- (5) cars. So I don't recall if I ran it out on the CDL or
- (6) went to Cal Photo.
- (7) I remember doing it the first time and it came
- (8) back it wasn't a good number, wasn't a good number or
- (9) name. After that, I think I tried to do some -- I might
- (10) have tried to play with the name in some other systems.
- (11) I wasn't coming up with anything.
- (12) **Q.** At some point in time -- do you know who
- (13) Officer Crum was?
- (14) **A.** Yes, sir.
- (15) **Q.** Who was Officer Crum?
- (16) **A.** He's also a Target Enforcement Task Force
- (17) member. He's probably the first one I called to the
- (18) scene also. He was there quick.
- (19) **Q.** So he would have arrived there shortly after
- (20) you?
- (21) **A.** Yes.
- (22) **Q.** What was he doing then while you were trying to
- (23) run information out?
- (24) **A.** He might have been also trying to do that. I
- (25) don't recall exactly.

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- (1) **Q.** So he was inside the van with you?
- (2) **A.** In and out, yes. In and out of the van.
- (3) **Q.** Did you know Officer Kevin Kaney?
- (4) **A.** Yes, I called him also.
- (5) **Q.** You called Kaney?
- (6) **A.** I'm pretty sure I did.
- (7) **Q.** Was Kaney there then at some point in time
- (8) after you?
- (9) **A.** Yes, sir.
- (10) **Q.** Was Kaney assisting you in some way with what
- (11) you were doing?
- (12) **A.** Yes, sir. Eventually I got a call and I
- (13) thought it was Captain Joyner for a long time but it
- (14) might have been T. Jones or somebody else. Someone
- (15) called me and said this is the guy's real name.
- (16) I'm not sure -- I think they must have just
- (17) give me the name or something because then I was able to
- (18) bring it up in the system. Then I started printing out
- (19) some pictures, CDL pictures. That's when Kaney came in
- (20) because I gave those to Kaney.
- (21) **Q.** At some point in time you got the name Mixon?
- (22) **A.** Yes.
- (23) **Q.** Did you get a CDC number?
- (24) **A.** No.
- (25) **Q.** You just remember getting the name?

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- (1) **A.** The name. I believe it was just the name.
- (2) **Q.** When you got the name mentioned Mixon, did you
- (3) get a first name as well?
- (4) **A.** Lovelle. I had his full name.
- (5) **Q.** You had his full name?
- (6) **A.** Yes.
- (7) **Q.** With that, that is the full name, you're able
- (8) to use this equipment in the van to ultimately get a
- (9) photo printed?
- (10) **A.** Yes, sir.
- (11) **Q.** Are you familiar with a system called CABS?
- (12) **A.** Yes, sir.
- (13) **Q.** We had I think earlier definition of what that
- (14) means by Officer Kaney. Do you know what CABS stands
- (15) for?
- (16) **A.** Is it Consolidated Arrest Booking System? I
- (17) think so.
- (18) **Q.** Is that an Alameda County system?
- (19) **A.** Alameda County and -- yes, sir.
- (20) **Q.** Did you have the ability inside the van you
- (21) were in to access CABS?
- (22) **A.** No.
- (23) **Q.** Did you have the ability, from using equipment
- (24) in that van, to access some other systems that would
- (25) result in the printout of a photograph?

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- (1) **A. Cal Photo is part of Vision Tech.**
 (2) **Q. Cal Photo?**
 (3) **A. Yes, sir.**
 (4) **Q. So once you got the name Lovelle Mixon, you say**
 (5) **you printed out a photo?**
 (6) **A. Yes, sir.**
 (7) **Q. That would have been out of Cal Photo?**
 (8) **A. Yes, sir.**
 (9) **Q. You said you got some printouts of that?**
 (10) **A. Yes, sir.**
 (11) **Q. You were able to print that photo out inside**
 (12) **the van?**
 (13) **A. Yes, sir.**
 (14) **Q. Once you printed out the photo, what did you do**
 (15) **-- or the copies of the photo -- what did you do with**
 (16) **them?**
 (17) **A. It was either I gave two to three pictures to**
 (18) **Kaney. It's a slow printer so I gave them to Kaney to**
 (19) **pass them out.**
 (20) **Q. You give two or three photos to Kaney and you**
 (21) **tell him to go pass them out?**
 (22) **A. Yes, sir.**
 (23) **Q. I take it he then left?**
 (24) **A. Yes.**
 (25) **Q. What did you do at that point in time when he**

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- (1) **walked away?**
 (2) **A. Probably still trying to do research.**
 (3) **Q. Get more information?**
 (4) **A. More information, start really working up the**
 (5) **name and everything.**
 (6) **Q. By the way, in your duties as an Oakland police**
 (7) **officer, had you used electronic equipment to track**
 (8) **suspects who were suspected of committing violent**
 (9) **offenses?**
 (10) **A. Yes, sir. That's our job.**
 (11) **Q. How long had you been doing that?**
 (12) **A. Probably a good -- at that time a couple years.**
 (13) **Q. So would those duties involve situations where,**
 (14) **say, a suspect commits a murder at 74th and MacArthur,**
 (15) **for instance, and you now know that person and you need**
 (16) **to track them, I take it that might involve trying to**
 (17) **locate a cell phone number and figure out where he's**
 (18) **going by tracking the cell phone; right?**
 (19) **A. Yes, sir.**
 (20) **Q. I'm sure there's other ways to try to track**
 (21) **people; right?**
 (22) **A. Yes, sir.**
 (23) **Q. In your experience doing these kinds of what**
 (24) **I'm going to call electronic tracks, had it been your**
 (25) **experience that suspects who commit violent offenses**

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- (1) **typically will stay close by after committing an**
 (2) **offense, say, maybe run down the street 50, a hundred**
 (3) **yards and hide in a building?**
 (4) **A. No, not normally. I don't think I've ever had**
 (5) **one stay like that, that close after doing something,**
 (6) **unless he had already been caught in the perimeter or**
 (7) **something.**
 (8) **Q. If they get caught in the perimeter they'll be**
 (9) **there?**
 (10) **A. Yes. But normally they've gone, they've**
 (11) **already moved when we start tracking.**
 (12) **Q. So on this occasion, you pull up the photo that**
 (13) **you do on Mixon. You give several to Kaney.**
 (14) **Do you recall at any time while you were in the**
 (15) **van becoming aware of shots being fired?**
 (16) **A. Yes, sir, I heard the shots.**
 (17) **Q. You heard the shots?**
 (18) **A. Yes, sir.**
 (19) **Q. Can you try to give us an idea of when you gave**
 (20) **the two or three photos you say you gave to Kaney in**
 (21) **relation to hearing the shots fired?**
 (22) **A. Seemed like it was -- I thought it was a good 5**
 (23) **to 10 minutes.**
 (24) **Q. 5 to 10 minutes?**
 (25) **A. Yeah, 5 to 10 minutes it seemed like.**

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- (1) **Q. Do you recall when the shots were fired that**
 (2) **Kaney had then returned back to the van? Was he at the**
 (3) **van or inside the van, to your knowledge?**
 (4) **A. No, I don't think he was in the van.**
 (5) **Q. Were you aware if he was outside the van?**
 (6) **A. I think he was outside.**
 (7) **Q. So either he had not departed from the van to**
 (8) **begin with with photos, or he had given the two or three**
 (9) **out and came back?**
 (10) **A. I don't think he came back for more photos or**
 (11) **anything. I recall seeing him run past the van**
 (12) **westbound on MacArthur. I do recall that. That was**
 (13) **after the shots because I remember hearing people**
 (14) **yelling like he's trying to break the perimeter or**
 (15) **something.**
 (16) **Q. So you think that you had these in Kaney's**
 (17) **hands 5 or 10 minutes before the shooting?**
 (18) **A. Seemed like that, yes.**
 (19) **Q. I'm going to show you an exhibit here which has**
 (20) **been marked as Union Exhibit No. 4. So you know, this**
 (21) **is a document that is part of the Internal Affairs**
 (22) **investigation of this matter.**
 (23) **You see this appears to have the name Lovelle**
 (24) **Mixon on it?**
 (25) **A. Um-hum.**

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- (1) Q. It has what's called a PFN number on it.
 (2) A. Yes, sir.
 (3) Q. What's a PFN number?
 (4) A. I haven't dealt with PFN numbers in 20 years.
 (5) I don't know.
 (6) Q. It's a number that's assigned to somebody?
 (7) A. Yes. I've been dealing with PFN numbers for
 (8) 20 years, yes.
 (9) Q. I don't know either. It's personal file number
 (10) or something.
 (11) This photo of Nixon has at the lower left-hand
 (12) corner, it says "CABS 298"; do you see that?
 (13) A. Yes, sir.
 (14) Q. What significance does that entry have to you?
 (15) A. I have never really noticed that. I'd have to
 (16) say that was when the photo was taken but that's a good
 (17) guess. No, I don't think so. That's not going to be it
 (18) either. I don't know. Don't know.
 (19) Q. What about CABS, what does that mean to you?
 (20) A. That's the Consolidated Arrest Booking System,
 (21) I believe.
 (22) Q. Does this appear to be a photo that would have
 (23) been printed out in some way from the CABS system?
 (24) A. Yeah, it looks like it because I do that quite
 (25) a bit now.

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- (1) Q. You have testified that you did not have CABS
 (2) inside the van?
 (3) A. I'm pretty sure we did not have it.
 (4) Q. And you believe your photo that was printed out
 (5) was Cal I.D.?
 (6) A. Yes, sir.
 (7) Q. You are pretty clear in your mind that the Cal
 (8) I.D. photo you printed out of the van and gave to Kaney
 (9) occurred 5 to 10 minutes before the shots?
 (10) A. It seemed like it, yes, sir.
 (11) ARBITRATOR GREENBERG: Just so we can be clear,
 (12) my notes suggest that the database was Cal Photo.
 (13) THE WITNESS: Yeah, I'm sorry, Cal Photo.
 (14) MR. RAINS: I said Cal I.D. I'm sorry.
 (15) BY MR. RAINS:
 (16) Q. It's Cal Photo?
 (17) A. Yes, Cal Photo.
 (18) Q. Is that also called KRIMS?
 (19) A. No, that's a different system.
 (20) Q. I ask that because I've heard several terms.
 (21) I've heard CABS, KRIMS and I heard Cal I.D. But it's
 (22) Cal Photo?
 (23) A. Yes, sir.
 (24) Q. You are pretty confident that the photo you
 (25) printed out for Kaney was Cal Photo?

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- (1) A. Yes, sir.
 (2) MR. RAINS: Thank you. I think that's all the
 (3) questions I have.
 (4) ARBITRATOR GREENBERG: Ms. Snell?
 (5) CROSS-EXAMINATION BY MS. SNELL:
 (6) Q. Inspector Knight, in March 2009 you indicated
 (7) you were on the tactical team?
 (8) A. Yes, ma'am.
 (9) Q. And you did electronic surveillance for the
 (10) tactical team?
 (11) A. Yes, ma'am.
 (12) Q. From the minute you heard about the incident,
 (13) your goal was to identify the suspect and pull up
 (14) whatever information you could about him on the
 (15) computer; right?
 (16) A. Yes, ma'am.
 (17) Q. You were off duty and you headed immediately to
 (18) the police administration building to pick up the task
 (19) force van and then head immediately to the scene; right?
 (20) A. Yes, ma'am.
 (21) Q. You were already on the scene when you got the
 (22) tactical team call-out page; right?
 (23) A. Yes.
 (24) Q. You indicate the van is equipped with computers
 (25) and other equipment?

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- (1) A. Yes, ma'am.
 (2) Q. It also has an OPD radio?
 (3) A. Yes, ma'am.
 (4) Q. You've indicated you parked near 74th Avenue on
 (5) MacArthur?
 (6) A. Yes.
 (7) Q. Once you got to the scene, you received the
 (8) information from the fake CDL and tried to run it but
 (9) didn't come up with anything; right?
 (10) A. Yes, ma'am.
 (11) Q. Now, when you did not find a match, you spoke
 (12) to Lieutenant Joyner and asked him if he knew the
 (13) location of the suspect; right?
 (14) A. It was -- might have been -- could have been
 (15) prior to that I talked to Captain -- was he lieutenant
 (16) at the time? Anyway, Joyner -- Yeah, he had mentioned
 (17) that there was a possibility the guy is down the street.
 (18) Q. In fact, when you were interviewed -- you were
 (19) interviewed by Internal Affairs after this incident,
 (20) were you not?
 (21) A. Yes.
 (22) Q. And that was closer in time to the incident
 (23) than today; correct?
 (24) A. Yes.
 (25) ARBITRATOR GREENBERG: If I can interrupt, can

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- (1) we get some clarity about how you came to have a
(2) conversation with Joyner?
(3) **THE WITNESS:** I had made contact at the scene
(4) with him. It was at the scene that I talked to him.
(5) **ARBITRATOR GREENBERG:** Did you call him?
(6) **THE WITNESS:** No.
(7) **ARBITRATOR GREENBERG:** He physically was at the
(8) van?
(9) **THE WITNESS:** Actually, I think I was out of
(10) the van when I was talking to him.
(11) **ARBITRATOR GREENBERG:** And he passed by the
(12) van?
(13) **THE WITNESS:** Either I made contact with him at
(14) the van or within close proximity.
(15) **ARBITRATOR GREENBERG:** Okay. So you simply saw
(16) him and you engaged in conversation.
(17) **THE WITNESS:** Yes, sir.
(18) **ARBITRATOR GREENBERG:** At this point he shared
(19) this information --
(20) **THE WITNESS:** I remember, yes.
(21) **ARBITRATOR GREENBERG:** -- that there may be
(22) some indication of the direction of where the suspect
(23) had fled?
(24) **THE WITNESS:** Yes, sir.
(25) **BY MS. SNELL:**

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- (1) **Q.** Actually, when you were interviewed by Internal
(2) Affairs was your memory of that conversation clearer
(3) than it is today?
(4) **A.** Could be.
(5) **Q.** Do you recall telling Internal Affairs that
(6) Lieutenant Joyner told you, Yeah, we think he's in a
(7) building?
(8) **A.** Yes.
(9) **Q.** He told you that he had a CI who told him the
(10) suspect was in or was possibly in an apartment building;
(11) right?
(12) **A.** I got a call, and I always thought it was
(13) Captain Joyner.
(14) It might have been Sergeant T. Jones but
(15) somebody called me and said this is where the right
(16) person is. We have CI information, and we should be
(17) getting his phone number, too, some time soon.
(18) But I got a call. Since then, I've talked to
(19) Joyner and he said, It was not me. So I don't recall
(20) exactly who called me and provided me with that
(21) information of the real name. It was somebody at the
(22) scene either at the car or digging through the car
(23) whatever they found. I don't remember who exactly it
(24) was.
(25) **Q.** You did have a conversation with Joyner?

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- (1) **A.** I did prior, yes.
(2) **Q.** Regarding his CI?
(3) **A.** I think so, yes.
(4) **Q.** Would it refresh your recollection to look at
(5) the summary of your Internal Affairs --
(6) **A.** Sure.
(7) **Q.** If you could turn in this binder behind Tab 1
(8) to Page 239. If I could direct your attention to the
(9) last paragraph on Page 239.
(10) **A.** That's what I recall.
(11) **Q.** So you recall him telling you he had a CI who
(12) told him the suspect was possibly in an apartment
(13) building; right?
(14) **A.** Yes.
(15) **Q.** You thought that Lieutenant Joyner thought that
(16) the suspect was inside the apartment; right?
(17) **A.** Yes, ma'am.
(18) **Q.** Based on your conversation with Lieutenant
(19) Joyner, you thought there was a good chance the suspect
(20) was inside the apartment; right?
(21) **A.** That's what -- yeah, what Lieutenant Joyner had
(22) said, I believe.
(23) **Q.** You mentioned once you got Lovelle Mixon's
(24) name, you started printing out photographs of him;
(25) right?

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- (1) **A.** Yes, ma'am.
(2) **Q.** You were doing that to give out to officers on
(3) the scene; right?
(4) **A.** Yes, ma'am.
(5) **ARBITRATOR GREENBERG:** If I can interject, the
(6) next paragraph in the report indicates that Inspector
(7) Knight received the name of the suspect from Lieutenant
(8) Joyner.
(9) **BY MS. SNELL:**
(10) **Q.** Does that fit your recollection?
(11) **A.** Yes. All that time I always thought it was
(12) Lieutenant Joyner who called me and provided me with the
(13) name.
(14) **Q.** So if he remembers something different more
(15) recently, your memory is still that you got the name
(16) from him?
(17) **A.** I still thought it was from him.
(18) **Q.** You printed out you said two or three copies of
(19) the photo?
(20) **A.** Yes, ma'am.
(21) **Q.** And gave them to Kevin Kaney?
(22) **A.** Yes.
(23) **Q.** Now, did you know who the incident commander
(24) was?
(25) **A.** I'm trying to think if I remember seeing

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- (1) **Kozicki there. Throughout the incident, I assumed**
 (2) **Deputy Chief Kozicki because he was on the scene.**
 (3) **Q. Was he there when you had the pictures?**
 (4) **A. I believe when I started printing them, I saw**
 (5) **him there.**
 (6) **Q. When you were printing out the pictures, was**
 (7) **that before or after this had gone tactical?**
 (8) **A. Good question. I don't recall. I remember**
 (9) **getting a page, but I was already on the scene. I don't**
 (10) **know.**
 (11) **Q. Did you know who the tactical commander was on**
 (12) **the scene?**
 (13) **A. No.**
 (14) **Q. Did you tell Kevin Kaney to give a copy of the**
 (15) **picture to Kozicki?**
 (16) **A. I don't recall.**
 (17) **Q. Did you see a command post?**
 (18) **A. We were pretty much set up at the command post**
 (19) **because not everybody had gotten there yet. But that**
 (20) **command post was too close, but it was being formed**
 (21) **right there. That's when they stopped the van.**
 (22) **Q. Right where you were?**
 (23) **A. Yes. I think it might have been off to the**
 (24) **left, too. I don't know. Our van, when I sit in it,**
 (25) **it's blacked out so I don't see anything outside the**

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- (1) **van. So literally, I'm in my little world when we're**
 (2) **doing that.**
 (3) **Q. So when you say the command post was set up**
 (4) **maybe too close to the scene, what do you mean?**
 (5) **A. Oh, just because we should have been back**
 (6) **probably a little further just looking retrospect.**
 (7) **Q. Are you saying that you were the command post**
 (8) **or you were at the command post or was there something**
 (9) **else you're referring to as the command post?**
 (10) **A. The command post was pretty much set up right**
 (11) **in that area.**
 (12) **Q. When you say "set up," what do you mean?**
 (13) **A. There was other vehicles sitting there. I**
 (14) **don't recall the exact vehicles or anything.**
 (15) **Q. Do you remember any of the vehicles?**
 (16) **A. No, not really.**
 (17) **Q. Was the TOST vehicle there?**
 (18) **A. I don't think they were even there yet.**
 (19) **Q. When we were talking about "yet," and not**
 (20) **everyone being there, are we talking about at the point**
 (21) **which you printed out the photos?**
 (22) **A. Yes.**
 (23) **Q. Based on your testimony, was that less than ten**
 (24) **minutes before the entry was made?**
 (25) **A. Yes. When I printed out the photos? Yes.**

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- (1) **Q. What elements of the tactical team do you**
 (2) **recall not having arrived yet?**
 (3) **A. Jake's SWAT van wasn't there. I don't think**
 (4) **the Bearcat was there yet. Sniper vans weren't there**
 (5) **yet.**
 (6) **Q. Did you see Lieutenant Mufarreh?**
 (7) **A. Yes.**
 (8) **Q. Where was he when you saw him?**
 (9) **A. I think when I first got to the scene I kind of**
 (10) **ran into him. He was right in the vicinity of 74th and**
 (11) **MacArthur.**
 (12) **Q. Did you see Lieutenant Lindsey?**
 (13) **A. I recall seeing her there, too.**
 (14) **Q. Where was she?**
 (15) **A. Within the vicinity. I don't know exactly.**
 (16) **Q. Did you understand which one of those**
 (17) **lieutenants was in charge of the search for the suspect?**
 (18) **A. No, I didn't know.**
 (19) **Q. Now, you did speak to Lieutenant Mufarreh on**
 (20) **the scene; correct?**
 (21) **A. Yes.**
 (22) **Q. Can you please tell me what you recall about**
 (23) **that conversation?**
 (24) **A. Nothing. I don't remember what was said.**
 (25) **Q. Did he ask you if you were having any luck**

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- (1) **identifying the suspect or getting the photo of the**
 (2) **suspect?**
 (3) **A. I don't know. I don't recall.**
 (4) **Q. At any time do you recall him or anyone on his**
 (5) **behalf coming to the van and asking you for updated**
 (6) **information about the suspect?**
 (7) **A. I don't recall.**
 (8) **Q. Did you make sure that one of the photos was**
 (9) **given to him?**
 (10) **A. No.**
 (11) **Q. Why not?**
 (12) **A. Because I just gave them to Kaney to have him**
 (13) **start passing them out.**
 (14) **Q. How did you learn that the entry team was going**
 (15) **to actually make entry into the apartment?**
 (16) **A. From the gunshots.**
 (17) **Q. You testified earlier that in your experience,**
 (18) **suspects did not normally hide nearby unless they got**
 (19) **caught in the perimeter; right?**
 (20) **A. Yes, ma'am.**
 (21) **Q. But in this case you learned that Ersie Joyner**
 (22) **believed the suspect had in fact gone to ground not too**
 (23) **far from the incident of the murder of the officers;**
 (24) **right?**
 (25) **A. Yes, I believed that, ma'am, that he could**

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- (1) possibly be in the apartment building.
- (2) Q. So while that might not have been your normal
- (3) experience, in this case you heard there was information
- (4) that is exactly what happened; right?
- (5) A. Yeah, information -- he had gotten that
- (6) information. But in the past, a lot of times we have
- (7) gotten that information and we've negotiated with empty
- (8) houses and gassed empty houses. We've never had it like
- (9) that where he actually was there.
- (10) Q. You knew that Ersie Joyner believed that he was
- (11) there; right?
- (12) A. He believed it, yes.
- (13) Q. What's your experience in terms of working with
- (14) Ersie Joyner?
- (15) A. Outstanding officer.
- (16) MS. SNELL: Thank you. That's all I have.
- (17) MR. RAINS: I don't think I have any questions.
- (18) ARBITRATOR GREENBERG: The arbitrator doesn't
- (19) have any questions.
- (20) Mr. Knight, thank you very much for your
- (21) testimony. My one request is that you not speak with
- (22) anybody about your testimony until after we've finished
- (23) our proceeding, which will probably be next week.
- (24) THE WITNESS: Yes, sir.
- (25) ARBITRATOR GREENBERG: We're off the record.

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- (1) (Recess taken.)
- (2) ARBITRATOR GREENBERG: We took a short break
- (3) for personal matters. We are ready to resume with the
- (4) grievants's next witness.
- (5) LOUIS CRUZ,
- (6) sworn as a witness,
- (7) testified as follows:
- (8) ARBITRATOR GREENBERG: Please state your name
- (9) and, as I understand it, your former position with the
- (10) Oakland Police Department.
- (11) THE WITNESS: Louis Cruz. Louis is L-o-u-i-s.
- (12) Cruz, C-r-u-z. I was a Sergeant of police with the City
- (13) of Oakland Police Department. And my final position was
- (14) assigned to the homicide section.
- (15) ARBITRATOR GREENBERG: We're going to begin
- (16) with direct examination by Mr. Rains and then we'll have
- (17) cross-examination by Ms. Wagner.
- (18) DIRECT EXAMINATION BY MR. RAINS:
- (19) Q. Sir, good afternoon.
- (20) A. Good afternoon.
- (21) Q. Could you tell us what your current occupation
- (22) is?
- (23) A. Currently I'm an inspector with the Alameda
- (24) County District Attorney's office.
- (25) Q. How long have you been an inspector with the

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- (1) DA's office?
- (2) A. Since December 14, 2009.
- (3) Q. Prior to that, you held employment with the
- (4) Oakland Police Department?
- (5) A. Yes, I did.
- (6) Q. How long were you with the Oakland Police
- (7) Department?
- (8) A. From the 24th of May 1982 to December 14, 2009.
- (9) Q. When you left the Oakland Police Department, I
- (10) think you said you were a sergeant of police assigned to
- (11) the homicide section?
- (12) A. Yes, sir.
- (13) Q. How long had you been assigned to the homicide
- (14) section in your career as an Oakland police officer?
- (15) A. From May 1998 to December 14, 2009.
- (16) Q. So 11 years, roughly a little over 11 years?
- (17) A. Yes, sir.
- (18) Q. I thought you could only do ten years in the
- (19) homicide before you --
- (20) A. They needed people.
- (21) Q. You had the occasion to become involved in
- (22) investigation relating to the death of four Oakland
- (23) police officers on March 21, 2009; is that correct?
- (24) A. Yes.
- (25) Q. What was your assigned role in that matter?

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- (1) A. I was assigned as the primary investigator in
- (2) the case.
- (3) Q. Who assigned you?
- (4) A. Lieutenant Medeiros.
- (5) Q. When did he assign you to that role?
- (6) A. When I arrived at the scene.
- (7) Q. Can you tell us approximately when you arrived
- (8) at the scene?
- (9) A. It was 2:25 p.m.
- (10) Q. How do you know that?
- (11) A. Because I was keeping a log. As the primary
- (12) investigator, I knew the importance of times.
- (13) Q. How is it that you came out to that scene?
- (14) What alerted you to the fact that there had been a
- (15) shooting?
- (16) A. I was called at home by Sergeant Jones,
- (17) Sergeant Rachel Van Sloten and by Lieutenant Medeiros.
- (18) All of them called me and all of them work at the
- (19) homicide section and advised me of this incident.
- (20) Q. When you got to the scene at 2:25, do you
- (21) recall what you did?
- (22) A. Yes. I arrived at the scene. I walked into
- (23) the crime scene. The crime scene revolved around a 1995
- (24) Buick Park Avenue, red in color -- maroon, and the two
- (25) motorcycles parked behind it. There was different items

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- (1) of uniform on the ground, casings on the ground and
(2) other evidence items.
(3) So I walked into that scene and made a quick
(4) scan of that scene and met with Medeiros, Jones and Van
(5) Sloten.
(6) Q. Did you have the occasion after entering that
(7) scene -- we're describing it as a scene -- we're talking
(8) about a crime scene; correct?
(9) A. Yes, sir.
(10) Q. When you got there, was there evidence tape up?
(11) A. Yes.
(12) Q. When you say "crime scene," are you describing
(13) the area located inside of that crime tape?
(14) A. Yes. I'm describing -- basically it would be
(15) 7400 MacArthur just east of 74th Avenue near a pharmacy.
(16) The second incident, of course, had not occurred yet so
(17) it was still just one crime scene.
(18) As far as my homicide investigation is
(19) concerned, of course there was an outer perimeter and
(20) inner perimeter and all that jazz going on as the
(21) manhunt is going on.
(22) Q. When you went to the crime scene, did you have
(23) the occasion to see Lieutenant Drennon Lindsey?
(24) A. I saw her.
(25) Q. Did you talk to her?

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- (1) A. She talked among me. In other words, what I'm
(2) saying is I'm there, Jones is there, she's talking with
(3) Jones. I don't remember talking directly to her at the
(4) crime scene. I'm listening mainly to Jones who had a
(5) lot of knowledge about the car and some subsequent
(6) suspect information that was being developed.
(7) Q. What knowledge do you recall Jones having about
(8) the car?
(9) A. Well, it wasn't just Jones but I also talked
(10) with the techs who were actually sharing with me things
(11) that they were doing. There was a Tech Hamon was
(12) working on a cell phone. It was a cell phone that was
(13) left in the car obviously by the suspect. So there's a
(14) cell phone in the car, there's keys still in the car.
(15) Jones knew different specifics such as the
(16) officers, Sergeant Dunakin and Officer Hege, both had
(17) their firearms still holstered, so that was important.
(18) I saw where both officers had lain before they were
(19) taken to the hospital. Also information was being
(20) developed as far as direction of flight of the suspect
(21) and where the suspect was believed to be.
(22) By the time I arrived, the officers had already
(23) surrounded 2755 74th Avenue. There was a book in the
(24) car, a book of photos. The book of photos had Mixon's
(25) CDC number, his California Department of Corrections

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- (1) number on it and his photo in there. So there was a
(2) false I.D. I know I'm giving a narrative now. But
(3) there was a false I.D. at the scene. We knew it to be a
(4) false I.D. because Mixon's picture was on the I.D., on
(5) this California driver's license. And yet, it said Ali.
(6) The driver's license said Ali.
(7) The CDC photo, which was of the person in the
(8) driver's license photo, said Mixon. With the CDC number
(9) attached to the photo book, I believed that more than I
(10) believed the driver's license that said Ali.
(11) Already pictures of Mixon were circulating.
(12) There were -- I think it was Dutton. Dutton had some
(13) kind of picture of Mixon. We were starting to focus on
(14) Mixon as the potential suspect.
(15) Q. Let me just stop you real quick. You said you
(16) arrived at the scene at 2:25?
(17) A. 2:25.
(18) Q. You drove in in a police department car?
(19) A. Yes. I was on-call. In fact, we had just --
(20) by "we," Sergeant Van Sloten and I, had finished
(21) handling a call-out, a murder. I believe I had just
(22) arrived home.
(23) Q. I take it when you got back in your car to
(24) drive to the location, you turned the radio on in your
(25) car?

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- (1) A. No, I did not.
(2) Q. You didn't?
(3) A. No, I did not.
(4) Q. So it's fair to say you never heard of radio
(5) transmission from an officer reporting that there was
(6) movement or persons seen moving at the window at 2755
(7) 74th? You didn't hear that transmission?
(8) A. No, sir, I did not hear that in realtime. I
(9) heard that during the process of investigation, but I
(10) did not hear that in realtime.
(11) Q. You didn't hear if, say, Lieutenant Joyner made
(12) a broadcast talking about a suspect possibly being
(13) there, you wouldn't have heard that either?
(14) A. No, sir, I did not hear that.
(15) Q. You say Officer Dutton was developing, you
(16) think he developed or got a photograph?
(17) A. Yes. I remembered him having a photograph.
(18) There were other officers who had a photograph. Those
(19) photographs were being used to compare against the false
(20) I.D. and against the photographs in the car, the
(21) photograph that Mixon had of his jail photos.
(22) Q. Let me ask you if you remember this: Dutton
(23) was seated inside a patrol car where he pulled up a
(24) photograph of Mixon on the screen in the patrol car.
(25) Were you there when that happened?

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- (1) **A. He was seated in a patrol car when I saw him**
(2) **with the picture. He was seated in a patrol car.**
(3) **Q. Do you remember that being a patrol car**
(4) **assigned to Jimmy Wong?**
(5) **A. No, that, sir, I don't know.**
(6) **Q. As you were seated in that patrol car, is it**
(7) **your testimony he printed out a photograph inside the**
(8) **patrol car?**
(9) **A. No, sir, I don't know that he printed out this**
(10) **picture. I know that eventually he had a hard copy.**
(11) **I'm not sure how he ended up with these hard copies. I**
(12) **do remember him sitting in a car with a picture. There**
(13) **were other hard copies, and those were used to reference**
(14) **again the photos that were in the car against the fake**
(15) **driver's license of Mr. Ali.**
(16) **Q. Now, at some point in time while you were out**
(17) **at the scene, did you become aware or hear gunshots?**
(18) **A. Yes.**
(19) **Q. We all know the gunshots occurred somewhere**
(20) **around 2:04 -- 3:04, I'm sorry. So you would have been**
(21) **on the scene by that time what, about 35 minutes,**
(22) **40 minutes, something like that?**
(23) **A. Yes, sir, about 35 minutes when the entry was**
(24) **made just after 35 minutes, about 36 minutes and**
(25) **40 minutes by the time everything was completed.**

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- (1) **Q. In the period of time that you were out in the**
(2) **crime scene in that area, had you seen Lieutenant Chris**
(3) **Mufarreh between the time of your arrival and the time**
(4) **of the gunshots?**
(5) **A. Yes, I did.**
(6) **Q. Did you see Captain Rick Orozco?**
(7) **A. Yes, I did.**
(8) **Q. Did you see Deputy Chief Dave Kozicki?**
(9) **A. Yes, I did.**
(10) **Q. Do you recall seeing any other what I'm going**
(11) **to call OPD command people, and by that I'll say**
(12) **captains or above, out there other than those three that**
(13) **you named?**
(14) **A. Yes, I did see others.**
(15) **Q. Who do you remember seeing?**
(16) **A. Captain Rachal, Captain Breshears, later on I**
(17) **saw Chief Israel. By "later on" I mean it was just**
(18) **after the gunshots so I'm not sure if he was there**
(19) **before the gunshots or not.**
(20) **But after the gunshots, I saw Israel. Those**
(21) **are the command officers that I remember seeing along**
(22) **with, of course, Brian Medeiros who's a Lieutenant and**
(23) **Drennon Lindsey.**
(24) **Q. Just so we're clear on this, you recall seeing**
(25) **Captain Rachal as well as Captain Breshears before the**

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- (1) **gunshots?**
(2) **A. Yes.**
(3) **Q. Do you know what role Captain Breshears was**
(4) **occupying out there?**
(5) **A. No. At the time of the gunshots, he was**
(6) **standing maybe five or six feet to my left. I remember**
(7) **us looking at each other and making eye contact. I**
(8) **don't know what role he was in.**
(9) **Q. At the time of the gunshots he was where you**
(10) **were?**
(11) **A. Yes.**
(12) **Q. Could you tell us where you were, looking at**
(13) **this photo up there that's Exhibit 5, at the time that**
(14) **the gunshots went off? Maybe just see if any of these**
(15) **colored circles will help orient you.**
(16) **A. I can't see from here.**
(17) **There is the house that Nixon or the apartment**
(18) **that Nixon pulled up in (indicating). That's the blue.**
(19) **ARBITRATOR GREENBERG: In each instance, if you**
(20) **could describe either the color of the dot that you're**
(21) **pointing to or the relation in the street to one of the**
(22) **dots.**
(23) **THE WITNESS: It's the blue dot. 2755 74th**
(24) **Avenue is the blue dot. The red dot would be the car**
(25) **stop, the initial traffic stop by the motorcycle**

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- (1) **officers.**
(2) **When I saw kind of a commotion, this is when I**
(3) **first realized some type of police action was being**
(4) **taken with the apartment complex. I saw some SWAT team**
(5) **members starting to stack up on 74th Avenue. So I**
(6) **started to move towards this crosswalk ahead of the**
(7) **purple.**
(8) **ARBITRATOR GREENBERG: Between the purple and**
(9) **the yellow dot?**
(10) **THE WITNESS: Yes, at the time of the gunshots.**
(11) **That's approximately where I was. Sergeant Jones and**
(12) **Captain Breshears were with me. Those were the people**
(13) **standing closest to me. Medeiros and Van Sloten were**
(14) **also in that general area.**
(15) **BY MR. RAINS:**
(16) **Q. Was it the movement of those officers -- you**
(17) **said they looked like they were going to stack up. Was**
(18) **that what caused you to move in the direction you did?**
(19) **A. Yeah. That's when I realized something is**
(20) **happening that I'm not privy to.**
(21) **Q. Did you have a portable radio with you that**
(22) **day?**
(23) **A. No, I did not.**
(24) **Q. You didn't hear a radio transmission saying**
(25) **there's going to be an entry made and a Code 33?**

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- (1) **A. No, I did not. However, when I saw the**
 (2) **officers starting to move and stack, I was listening to**
 (3) **some loud radios and I did hear faintly something about**
 (4) **the ambulance, and entry was being made at that point.**
 (5) **Q. I know this goes without saying, but before**
 (6) **March 21st of 2009, you had been on the scene of**
 (7) **probably a number of homicides, correct, that had just**
 (8) **been committed?**
 (9) **A. I investigated well over a hundred as the**
 (10) **primary investigator. And I was on the scene as the**
 (11) **second investigator of another couple, 300.**
 (12) **Q. I assume some of those scenes you've been on**
 (13) **would have involved a situation where there was the**
 (14) **homicide scene and perhaps some kind of a tactical**
 (15) **operation happening either nearby or maybe somewhere**
 (16) **remote?**
 (17) **A. That did happen a few times in particular. I**
 (18) **can remember a couple of officer-involved shootings**
 (19) **where the suspect hold up in some yards.**
 (20) **Q. Of course you know today that that's kind of**
 (21) **the situation we had there, we had the crime scene and**
 (22) **then we had a tactical operation happening nearby;**
 (23) **right?**
 (24) **A. Yes, sir.**
 (25) **Q. Had you ever had the occasion to be on crime**

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- (1) **scenes and deal with Dave Kozicki in his capacity as a**
 (2) **tactical guy?**
 (3) **A. Yes, I've been on different scenes with Dave**
 (4) **Kozicki.**
 (5) **Q. There's been testimony in this case that**
 (6) **typically in a situation where homicide is involved in**
 (7) **an investigation looking for a suspect and suspect**
 (8) **information, and there may be a tactical operation**
 (9) **associated with the homicide, that there is information**
 (10) **sharing that typically will go on between homicide and**
 (11) **the tactical team; is that true?**
 (12) **A. That is true.**
 (13) **Q. That's something that happens or usually**
 (14) **happens or should happen?**
 (15) **A. All of those things.**
 (16) **Q. Had you been on scenes before where Dave**
 (17) **Kozicki was the incident commander where that type of**
 (18) **sharing had occurred?**
 (19) **A. Yes.**
 (20) **Q. Did you consider to be Deputy Chief Kozicki to**
 (21) **be knowledgeable in tactical operations?**
 (22) **A. Yes.**
 (23) **Q. You say that with some amount of, I don't know,**
 (24) **enthusiasm. What did you think about his capabilities**
 (25) **as a tactical team leader or commander?**

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- (1) **MS. WAGNER:** Lacks foundation.
 (2) **ARBITRATOR GREENBERG:** I think there's
 (3) sufficient foundation.
 (4) Go ahead and answer the question.
 (5) **THE WITNESS:** I think Chief Kozicki was a very
 (6) competent commander in many respects, including tactical
 (7) commander.
 (8) **BY MR. RAINS:**
 (9) **Q. So your experience, if I'm correct, with him**
 (10) **running these types of I'm going to call them**
 (11) **operations, for lack of a better word, is that there**
 (12) **would be an effort made by him perhaps, or somebody at**
 (13) **his direction, to seek out information that you may be**
 (14) **developing related to the homicide?**
 (15) **A. Yes. If not him, it would be somebody else**
 (16) **involved in the operation. I've talked to Tracey**
 (17) **before, I've talked to Poirier before, I've talked to**
 (18) **fire team leaders before -- I was in the military --**
 (19) **entry team leaders, not fire teams, entry team leaders**
 (20) **before.**
 (21) **In particular, I can only remember meeting with**
 (22) **Kozicki himself a couple of times; once when he trumped**
 (23) **my opinion and decided that it was an entry team level**
 (24) **call-out to be made and he was correct.**
 (25) **MS. WAGNER:** You're talking about other

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- (1) instances?
 (2) **THE WITNESS:** Another incidence. Just
 (3) different incidents I've had with Dave. But there would
 (4) always be a representative, whether it be an entry team
 (5) leader, a high-ranking sergeant or one of the
 (6) lieutenants, that we would talk with regarding what
 (7) evidence could be in there, regarding who could be in
 (8) there, regarding how many people could be in there,
 (9) regarding if we have information about the layout. A
 (10) lot of things.
 (11) **BY MR. RAINS:**
 (12) **Q. You say that this had occurred -- you**
 (13) **remembered incidents where this kind of**
 (14) **information-sharing things had occurred where Dave**
 (15) **Kozicki was in charge of the tactical side of the case?**
 (16) **A. Yes. In particular, there was a murder I**
 (17) **investigated where the suspect was in the house and**
 (18) **eventually put himself in the garage and shot himself in**
 (19) **the head after a tactical team call-out. And he was the**
 (20) **incident commander.**
 (21) **Q. You mentioned Tracey being another person you**
 (22) **had worked with.**
 (23) **A. Yes.**
 (24) **Q. And had this kind of information sharing with;**
 (25) **is that right?**

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- (1) **A. Yes.**
- (2) **Q. Is that Ed Tracey?**
- (3) **A. Yes.**
- (4) **Q. His name has come up in this. I want to make**
- (5) **sure we're talking about the same person.**
- (6) **A. Yes, he was a Lieutenant the couple of times**
- (7) **that I dealt with him. He's a captain now.**
- (8) **Q. And you mentioned Poirier?**
- (9) **A. Poirier. He's a Lieutenant now. He was an**
- (10) **entry team leader for a long time.**
- (11) **When I talked to him in different incidents, he**
- (12) **was what I consider kind of a high-ranking sergeant**
- (13) **entry team leader who is considered very competent.**
- (14) **Q. So there had been information-sharing you can**
- (15) **recall with Poirier prior to the tactical team**
- (16) **operations, as you recall; is that right?**
- (17) **A. Yes. In fact, I've sat with Poirier with CI's,**
- (18) **with confidential informants.**
- (19) **Q. Prior to March 21st of 2009, can you recall any**
- (20) **instances of these same sorts of things, the homicide**
- (21) **scene, tactical operation developing somewhere either**
- (22) **close by or somewhere away where Rick Orozco was either**
- (23) **tactical team leader or incident commander?**
- (24) **A. No, I cannot.**
- (25) **Q. Same question with regard to Chris Mufarreh.**

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- (1) Do you recall any situations like this ever happening
- (2) where Chris Mufarreh was in charge in some way of the
- (3) tactical team or its operation?
- (4) **A. No. He's an operator. I've seen him as an**
- (5) **operator. But I've never seen him as a commander in**
- (6) **charge of the operation.**
- (7) **Q. Not putting words in your mouth, when you heard**
- (8) **the gunshots going off, were you surprised that no one**
- (9) **had sought you out to ask the information that you may**
- (10) **have been able to develop in the half-hour or so you had**
- (11) **been there?**
- (12) **A. I was surprised on many levels, not just the**
- (13) **few things you said.**
- (14) **ARBITRATOR GREENBERG:** We need to get an answer
- (15) to the specific question that he asked, which was when
- (16) you heard the gunshots, were you surprised that, to the
- (17) best of your knowledge, no one from homicide had been
- (18) consulted?
- (19) **THE WITNESS:** I knew that I had not been
- (20) consulted. I did not know if no one had been consulted.
- (21) So yes, I was surprised as the primary investigator that
- (22) I was not consulted.
- (23) **BY MR. RAINS:**
- (24) **Q. I think you said this, you had been consulted**
- (25) **sometimes prior to an entry team going in by entry team**

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- (1) members themselves or leaders?
- (2) **A. When I was the primary investigator in the case**
- (3) **where the suspect is in my case, yes.**
- (4) **Q. Had you seen any of the entry team leaders that**
- (5) **you recognize as entry team leaders between the time of**
- (6) **your arrival and the time entry was made and the shots**
- (7) **occurred?**
- (8) **A. Yes.**
- (9) **Q. Who did you see by name, if you remember?**
- (10) **A. Sergeant Sakai was at 75th and MacArthur. He**
- (11) **became upset with Tony Jones and I because we were**
- (12) **looking in the car because he wanted to do a track.**
- (13) **That's my last interaction with Sergeant Sakai.**
- (14) **Q. When that interaction occurred, did you explain**
- (15) **to Sakai you were trying to develop information that was**
- (16) **inside the car? Did you make that clear to him?**
- (17) **A. Yes. We had a brief conversation. Jones and I**
- (18) **were wearing gloves, and I told him we're just looking**
- (19) **at these photos, we're not looking at anything else,**
- (20) **we're not taking anything else, we're not touching**
- (21) **anything else, but we need to look at these photos to**
- (22) **make sure this is Mixon.**
- (23) **So Sakai said, Okay. He still wasn't the most**
- (24) **cool with it but he said okay. And he went back with**
- (25) **his fellows there at 75th and MacArthur. I ended up**

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- (1) **seeing Reilly, I saw Sergeant Beaver, Pat Gonzalez.**
- (2) **Q. Did any of those guys ask you if you had**
- (3) **developed any information concerning the identity of the**
- (4) **suspect?**
- (5) **A. No.**
- (6) **Q. Could you consider that to be an appropriate**
- (7) **thing for them or something that they might be**
- (8) **interested in as entry team members?**
- (9) **A. Yes.**
- (10) **Q. Sergeant Cruz, can we look at the exhibit**
- (11) **binder. I'm going to direct your attention to Exhibit**
- (12) **No. 7. I just don't know what page yet because Mr.**
- (13) **Leary is going to help me with that I think in a**
- (14) **minute.**
- (15) I'm sorry, we don't have a record that I wanted
- (16) to direct your attention to so we won't go there.
- (17) Did you ever hear Sergeant Sakai, you may not
- (18) have because you didn't have a radio, are you aware of
- (19) Sergeant Sakai attempting to run the fake name, that is,
- (20) Jabar Ali, over the radio some time around 2:50 p.m.?
- (21) **A. No, I'm not aware of that.**
- (22) **Q. What's the best recollection -- I think you**
- (23) **said you saw a photograph in this car that Dutton was**
- (24) **in, in relation to when the entry occurred and the shots**
- (25) **were fired, how much before that did you see the**

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- (1) photograph of Mixon?
- (2) **A. It wasn't very long, sir. Ten minutes,**
- (3) **15 minutes.**
- (4) **Q.** After your participation in the investigation
- (5) that day, your investigation that occurred that day, did
- (6) you do a series of follow-up interviews with the
- (7) officers that were out there?
- (8) **A. Yes.**
- (9) **Q.** And that occurred, I take it, over a period of
- (10) some time that you were doing follow-up interviews?
- (11) **A. Yes. It took a while. There was a lot of**
- (12) **officers to interview.**
- (13) **Q.** In connection with your investigation, did you
- (14) interview Lieutenant Drennon Lindsey?
- (15) **A. Yes.**
- (16) **Q.** Do you recall when you interviewed Lieutenant
- (17) Lindsey?
- (18) **A. No, I don't remember the exact day. I know it**
- (19) **was in some proximity to March 21st, but I don't**
- (20) **remember the exact day, sir.**
- (21) **Q.** Turn to Exhibit 2. Maybe we can pin down the
- (22) date of your interview.
- (23) Do you recognize Exhibit 2 as a report you
- (24) prepared?
- (25) **A. Yes, it is.**

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- (1) **Q.** Would your summary of an interview you did of
- (2) Lieutenant Lindsey be in here somewhere?
- (3) **A. Yes.**
- (4) **Q.** Just simply to refresh your memory about the
- (5) date you had interviewed --
- (6) **A. Shall I look at the report?**
- (7) **Q.** Can you, please.
- (8) **MS. WAGNER:** I think it's April 1st.
- (9) **MR. RAINS:** I think it is. It's April 1st.
- (10) **THE WITNESS:** Thank you, Ms. Wagner.
- (11) **BY MR. RAINS:**
- (12) **Q.** We'll find it and identify the page number in
- (13) your report. Turn to Page 66.
- (14) **A. All right. I've located it.**
- (15) **Q.** Do you have a summary of the interview you did
- (16) of Lieutenant Lindsey starting on Page 66 and going on
- (17) to looks like Page 68 of this exhibit?
- (18) **A. Yes, sir.**
- (19) **Q.** Just looking briefly at Page 67 -- strike that.
- (20) If you can answer by memory, I rather have you do that.
- (21) Do you recall during your interview of
- (22) Lieutenant Lindsey that she said she briefed Lieutenant
- (23) Mufarreh, Kozicki, Captain Rachal and Captain Orozco
- (24) telling each of them there was a strong possibility the
- (25) suspect was inside the residence?

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- (1) **A. Yes, she did say that.**
- (2) **Q.** Did you have the occasion during your
- (3) investigation to interview each of those individuals I
- (4) just named?
- (5) **A. I don't think all of them.**
- (6) **Q.** I'm talking about Mufarreh, Kozicki --
- (7) **A. Mufarreh, yes, Kozicki yes.**
- (8) **Q.** Rachal?
- (9) **A. No, I don't recall interviewing Captain Rachal.**
- (10) **Q.** What about Captain Orozco?
- (11) **A. Yes, I did interview Captain Orozco.**
- (12) **Q.** Again, based on your recollection, did
- (13) Mufarreh, Kozicki or Orozco agree that she had
- (14) communicated this information to them that there was a
- (15) strong possibility that the suspect was inside the
- (16) residence before entry was made?
- (17) **A. No. They disagreed with that.**
- (18) **Q.** What level of disagreement, from your recall,
- (19) did they express?
- (20) **MS. WAGNER:** Objection. Vague and ambiguous.
- (21) What level of disagreement did they express?
- (22) **ARBITRATOR GREENBERG:** First there were several
- (23) individuals that we're talking about who indicated that
- (24) they had not been briefed.
- (25) **THE WITNESS:** Yes.

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- (1) **ARBITRATOR GREENBERG:** Or had not heard the
- (2) information. Looking at each of them, if you recall,
- (3) describe the level of their disagreement, either that
- (4) they did not recall or if they were certain it had not
- (5) occurred, there being a distinction. Do you follow me?
- (6) **THE WITNESS:** Yes, sir.
- (7) **ARBITRATOR GREENBERG:** Do you have a
- (8) recollection of the clarity with which they felt that
- (9) they had not been briefed?
- (10) **THE WITNESS:** For most of them, sir. However,
- (11) Chief Kozicki, his statement became convoluted in my
- (12) mind. I don't remember what level of disagreement he
- (13) gave.
- (14) I do recall Captain Orozco was adamant it did
- (15) not occur, that he did not receive that information from
- (16) her.
- (17) Lieutenant Mufarreh was adamant he didn't
- (18) receive that information.
- (19) Captain Kozicki, I don't remember how he worded
- (20) it -- or Chief Kozicki. I don't remember how he worded
- (21) it.
- (22) **ARBITRATOR GREENBERG:** Thank you. Does that
- (23) clarify, Ms. Wagner?
- (24) **MS. WAGNER:** Yes, thank you.
- (25) **BY MR. RAINS:**

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- (1) Q. I have to have you look at another exhibit,
 (2) Inspector Cruz, 57, which is going to be in this binder.
 (3) You have Exhibit 57 in front of you now?
 (4) A. Yes, sir.
 (5) Q. Do you recognize the supplemental report that
 (6) is Exhibit 57?
 (7) A. Yes.
 (8) Q. Does this appear to you to be a supplemental
 (9) that was prepared by Lieutenant Drennon Lindsey?
 (10) A. Yes.
 (11) Q. Do you recall seeing this report before you
 (12) interviewed her on April 1st?
 (13) A. Yes.
 (14) Q. Tell me when you first saw this report, that
 (15) is, you saw a supplemental report -- well, the one
 (16) that's represented here?
 (17) A. A few days, three or four days after the 21st
 (18) of March.
 (19) Q. I want to back up from there, inspector, and
 (20) ask you this: After the 21st of March, did Lieutenant
 (21) Lindsey deliver to you a sealed envelope at some point
 (22) in time after March 21st?
 (23) A. Yes, I received a sealed envelope from her that
 (24) had -- I don't remember how I could tell but I could
 (25) tell it was the supplemental report sealed in the

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- (1) envelope. That was very shortly after March 21st, maybe
 (2) a day.
 (3) Q. Maybe a day after the 21st so it would be like
 (4) the 22nd?
 (5) A. It would be like the 22nd.
 (6) Q. Something on the envelope alerted you to the
 (7) fact that it was a supplemental report?
 (8) A. Yes. I don't remember how I could tell, sir,
 (9) but I could tell that it was her supplemental police
 (10) report.
 (11) Q. Is it your recollection that she actually gave
 (12) that or handed it to you?
 (13) A. I don't remember how on that particular day it
 (14) got on my desk. I don't remember if she handed it to me
 (15) or how it appeared on my desk.
 (16) Q. You say it was sealed in an envelope?
 (17) A. It was sealed.
 (18) Q. In all of your years as a homicide
 (19) investigator, some 11 years, had you ever received a
 (20) supplemental report from a member of the police
 (21) department in a sealed envelope?
 (22) A. Supplemental report?
 (23) Q. A supplemental.
 (24) A. Not a supplemental report, no.
 (25) Q. So you get the sealed envelope you think a day

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- (1) later like the 22nd. Did something happened after that,
 (2) relative to the report?
 (3) A. Yes. I don't remember exactly when, it was a
 (4) couple, three days after I received that report,
 (5) Lieutenant Lindsey came and she had another sealed
 (6) report in an envelope. She took back the other sealed
 (7) envelope that I had not opened yet and said that she had
 (8) to make changes to her supplemental and this was now the
 (9) correct supplemental and that supplemental was also
 (10) sealed.
 (11) ARBITRATOR GREENBERG: I just want to make sure
 (12) that I understand this. About a day after the incident
 (13) on the 21st, you somehow receive a sealed envelope from
 (14) Lieutenant Lindsey which you are aware is her
 (15) supplemental statement but you do not open.
 (16) THE WITNESS: No, sir, I did not open it.
 (17) ARBITRATOR GREENBERG: Why?
 (18) THE WITNESS: Because at the time that I
 (19) received that supplemental, sir, we were intensely
 (20) conducting interviews everyday, everyday, interview,
 (21) interview, interview. And those interviews were taking
 (22) such a predominant part of my time. They took up my
 (23) time. There's no other way of putting it. That's what
 (24) I was doing initially, getting these interviews
 (25) completed. And there became timeline issues regarding

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- (1) the interviews.
 (2) Shortly after March 21st, officers were killed
 (3) in Pittsburg. Now I had a situation where officers who
 (4) were involved in the March 21st incident were flying to
 (5) Pittsburg or going to fly to Pittsburg, wanted to fly to
 (6) Pittsburg to be there for that funeral of those police
 (7) officers who were killed in the line of duty.
 (8) That incident -- in fact, I think even Chief
 (9) Kozicki went to that funeral, and that became an issue
 (10) of what time I could interview him.
 (11) The interviews, sir, became such a central
 (12) point of the investigation that her supplemental at that
 (13) point, one day after the incident, I didn't look at it.
 (14) ARBITRATOR GREENBERG: If I can continue.
 (15) MR. RAINS: Sure.
 (16) ARBITRATOR GREENBERG: Obviously, as you know,
 (17) because you've been very involved with this matter for a
 (18) long time now, there subsequently arose a number of
 (19) issues in terms of what Lieutenant Lindsey knew and to
 (20) whom she communicated that information.
 (21) But thinking back to March 22nd, the day after
 (22) the incident and perhaps the 23rd and the 24th between
 (23) the time you received the first sealed envelope and the
 (24) time that a second revised statement was given to you,
 (25) were you aware -- was it your perception that Lieutenant

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- (1) Lindsey's version of events would prove to be a
(2) significant issue in the investigation?

(3) **THE WITNESS:** Your Word "perception," sir, is
(4) accurate. Nobody came to me and said anything. But
(5) there was tension. I could feel tension even at wakes,
(6) police officer wakes.

(7) My perception was yes, issues were arising and
(8) issues were arising quickly. And issues were arising
(9) that were dividing police officers in groups among
(10) lines, including Lieutenant Lindsey. And a decision
(11) became made that Lieutenant Lindsey would be interviewed
(12) also with the other officers, even though she hadn't
(13) been involved in the entry and hadn't fired a weapon.

(14) **ARBITRATOR GREENBERG:** Although it may be too
(15) much to say that there was finger-pointing already, your
(16) perception was that a number of members of the force,
(17) including senior officers, already were beginning to
(18) feel that there was some level of culpability in the
(19) incident because of what information had or had not been
(20) shared?

(21) **THE WITNESS:** Not just that, sir, but that
(22) would an element. But the actual entry itself, the
(23) makeup of that entry, everything, everything involved
(24) with March 21st, became part of that recipe of division
(25) and tension. As I said, sir, I felt it even at wakes.

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(1) **ARBITRATOR GREENBERG:** And the reason I'm
(2) asking the question is, just frankly, I've heard your
(3) testimony that during these first few days you had a
(4) tremendous amount that you needed to do. But I guess
(5) I'm -- let me just ask: How many supplemental reports
(6) were you receiving from officers and officers who had
(7) been involved there the incident?

(8) **THE WITNESS:** A lot. The crime of course is
(9) huge in this case, sir. I don't remember exactly how
(10) many pages but it's huge. And a large amount of that
(11) crime report would be the supplemental reports by
(12) officers who were there at that scene.

(13) In addition to the supplemental reports,
(14) obviously the interviews that have to occur. And as I
(15) said, it was just a quick timeline.

(16) And at the same time, there were a lot of other
(17) things going on, sir, including looking for possible
(18) additional suspects who may have helped Nixon get into
(19) the house, getting him the gun, where he got the guns
(20) from, how many guns he actually had, whether or not he
(21) had guns in a different place, how he got the fake
(22) driver's license, where he got that fake driver's
(23) license, which was pristine, excellent fake driver's
(24) license. In fact, Dunakin didn't even recognize it as a
(25) fake driver's license until he was told that that number

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- (1) did not come back to a driver's license.

(2) So there were a lot of things going on
(3) regarding this investigation at that point one, two,
(4) three days afterwards.

(5) **ARBITRATOR GREENBERG:** So the fact that
(6) Lieutenant Lindsey's supplemental statement sat unread
(7) during that period was not unusual because there was a
(8) lot that was sitting still unread at that point?

(9) **THE WITNESS:** That's true, sir. In the context
(10) of this particular incident, it would not be unusual,
(11) no.

(12) **ARBITRATOR GREENBERG:** I'm sorry that I
(13) interrupted, Mr. Rains, but I was perplexed by this and
(14) the witness' testimony has been helpful.

(15) **MR. RAINS:** I understand.

(16) **BY MR. RAINS:**

(17) **Q.** As I understand, Inspector Cruz, the fact that
(18) you did not open and read the initial sealed document in
(19) the sealed envelope was really just sort of more your
(20) time management, time function of duties that you needed
(21) to do?

(22) **A. Yes, sir.**

(23) **Q.** I think you've said it but I need to ask it the
(24) way I ask it. Am I right, are you saying that by maybe
(25) a day or two later when you were attending these wakes,

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- (1) you're already sensing what I'm going to call the blame
(2) game was starting to happen in the OPD?

(3) **MS. WAGNER:** Leading.

(4) **MR. RAINS:** I'm trying to understand.

(5) **BY MR. RAINS:**

(6) **Q.** In your opinion, was the blame game starting?

(7) **A. Sir, I don't want to use the name "blame game."
(8) My perception is that there were divisions among the
(9) police department as to how that incident was handled,
(10) and people felt that some people were more responsible
(11) than others. And it was obvious to me that a lot of
(12) folks felt that jobs were not completed correctly.**

(13) **I just don't want to attach verbiage as simple
(14) as blame game to something as complex as to what
(15) occurred on the 21st of March.**

(16) **Q.** Lieutenant Lindsey comes and gets her report
(17) back, the initial envelope?

(18) **A. Yeah. She took back the original envelope that
(19) I had received with her supplemental, and she gave me
(20) another supplemental and said that she had made changes
(21) to the supplemental and this was her supplemental.**

(22) **Q.** So she actually told you, when she gave you the
(23) new supplemental, that she made changes in her original
(24) document?

(25) **A. Yes.**

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- (1) Q. And this was how many days after she took back
(2) the first one?
(3) A. It's when she took back the first one that I
(4) received this one. She appeared in person, took back
(5) the original and gave me another supplemental saying
(6) that she had made changes to the supplemental. I don't
(7) remember how I got the original supplemental, but I
(8) remember her being there to take back the other one.
(9) Q. Actually, being there in front of you and doing
(10) this?
(11) A. Yes, she was in front of me, she took back the
(12) other one and gave me this one.
(13) Q. And told you she made changes to the original
(14) one she had given you?
(15) A. Yes, sir, as an explanation for the change.
(16) Q. Did she tell you what the changes consisted of?
(17) A. No, sir.
(18) Q. Did you question her at that time what the
(19) changes consisted of?
(20) A. No, sir, I did not.
(21) Q. Am I clear that second then supplemental she
(22) gives you is also in a sealed envelope?
(23) A. Yes, it is.
(24) Q. Did you open that envelope at some point in
(25) time?

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- (1) A. Yes.
(2) Q. How soon after she gave you that one did you
(3) open that one?
(4) A. I opened that one up either that day or right
(5) away. It was fairly quickly.
(6) Q. Is that, what I'm going to call the second
(7) envelope, did that contain the report to the best of
(8) your knowledge that is now marked as Exhibit 57?
(9) A. Yes, sir.
(10) Q. So I'm clear on this, at the time she delivered
(11) the first sealed envelope with that first supplemental
(12) report in it, did you know that she was claiming on that
(13) day, the next day, the 22nd, did you know that day that
(14) she was claiming she shared information concerning the
(15) certainty of the suspect's whereabouts with Kozicki,
(16) Orozco, Mufarreh and Rachal before entry was made? Did
(17) you know that day that she was claiming that?
(18) A. Sir, I don't remember the exact day. I know it
(19) was fairly quickly after March 21st that I became aware
(20) that Lieutenant Joyner and Lieutenant Lindsey were both
(21) becoming very adamant that they had shared that
(22) information.
(23) Now, how clear that was a day after, sir, I'm
(24) not certain. But I know it was fairly quickly that I
(25) had became aware from Joyner himself and later on

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- (1) Lindsey that they had shared this, that they said they
(2) shared this information.
(3) Q. You're not clear as to when you became aware
(4) Lindsey was making this claim?
(5) A. No, sir, I'm not clear as to that. I just knew
(6) that there were -- the issues were starting to rise.
(7) Very quickly I knew that issues were starting to rise,
(8) but I still was not clear as to what those issues were.
(9) Q. When you interviewed Lieutenant Lindsey on
(10) April 1st, were those issues more prevalent or do you
(11) remember?
(12) A. No, they were becoming more prevalent, sir.
(13) Q. During the course of your interview on
(14) April 1st, did you ask Lieutenant Lindsey about her
(15) giving you the supplemental report in a sealed envelope?
(16) A. Yes, I did.
(17) Q. Do you recall what her answer was?
(18) A. I recall, sir, that it was something to the
(19) effect regarding the security of the supplemental report
(20) to ensure that it got to me or ensure that it was in my
(21) possession.
(22) Q. Didn't she say she didn't want it tampered
(23) with, something like that?
(24) A. I would have to review the transcript of her
(25) statement to be able to see if she actually used those

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- (1) words, sir.
(2) Q. I know we have the transcript.
(3) What's that homicide transcript?
(4) MS. WAGNER: No. 44.
(5) BY MR. RAINS:
(6) Q. Could you turn to Tab 44?
(7) MS. WAGNER: Mr. Arbitrator I'm going to remind
(8) you that although it says "Internal Affairs Division" at
(9) the top, that some of these interviews that were done by
(10) Sergeant Cruz, who was definitely only in homicide only
(11) in CID, were mislabeled. But it's happened this morning
(12) you may recall.
(13) MR. RAINS: What's that?
(14) MS. WAGNER: That the top of the document may
(15) say "Internal Affairs Division." But where Sergeant
(16) Cruz is there, then it's CID or homicide. We were
(17) talking about that this morning.
(18) ARBITRATOR GREENBERG: I don't think anybody is
(19) going to have any concerns about that representation.
(20) But in terms of the errors in the document, do we know
(21) how that error crept into the documents?
(22) For example, I am looking down at the footer on
(23) the document that seems to suggest that this document
(24) was produced by IAD.
(25) MS. WAGNER: I think that the top and the

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(1) bottom were mislabeled in only a very few interviews.
 (2) We can probably even agree, Mr. Rains and I, when the
 (3) arbitration is over, very few. But they're important
 (4) interviews. They're of the grievants. They're of
 (5) Lindsey. But it's very few because we know who's
 (6) associated with IAD so it's only in the labeling. We
 (7) don't know how that happened.

(8) **MS. SNELL:** I actually think I do know. The
 (9) interviews were transcribed at the request of the IAD
 (10) investigators. They collected the homicide interviews
 (11) to review as part of their investigation and they were
 (12) done by an outside agency. So I think that the agency
 (13) thought -- a contract agency. I think they thought
 (14) since they came from IAD, they had were IAD interviews.

(15) **ARBITRATOR GREENBERG:** That's very helpful.
 (16) Again, it's at best a clerical error, I think we
 (17) understand that. But it's useful for me to have a
 (18) little bit of a clue as to where that might have come
 (19) in. I think it's not harmful to have that on the record
 (20) as well.

(21) Shall we go off the record for a moment? We've
 (22) been at this for a while.

(23) **(Recess taken.)**

(24) **ARBITRATOR GREENBERG:** We're back on the
 (25) record. We took a break for personal matters. We're

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(1) resuming the examination of Mr. Cruz. We were looking
 (2) at Joint Exhibit 44.

(3) **BY MR. RAINS:**

(4) **Q.** Yes. Thank you.

(5) Inspector Cruz, if you'll look at the Joint
 (6) Exhibit 44. I think I directed you to Page 44.

(7) Do you see the question you asked Lieutenant
 (8) Lindsey concerning your supplemental report?

(9) **A. Yes, sir.**

(10) **Q.** The answer I think probably speaks for itself
 (11) starting at Page 44, Line 17.

(12) Do you see that?

(13) **A. Yes, sir.**

(14) **Q.** She did mention that she did not want anyone to
 (15) tamper with the report?

(16) **A. Yes, she did.**

(17) **Q.** Then you ask her a question. Your question
 (18) was -- we might as well cover this now -- at Line 22:
 (19) "Are you concerned the way that incident unfolded on the
 (20) 21st of March 2009 outside of the fact, of course, that
 (21) four policemen died," it looks like it says "and the
 (22) suspect."

(23) And then she says, "Am I concerned for myself?"

(24) You said, "No, concerned about how that
 (25) incident unfolded. Do you think it unfolded in a manner

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(1) pursuant to the best police practices?"

(2) And she said, "No, I don't."

(3) Right?

(4) **A. Yes, that's correct.**

(5) **Q.** And then following that, you did not ask the
 (6) question but it looks like Lieutenant Medeiros did;
 (7) right?

(8) **A. He did. It was more of a statement than a
 (9) question.**

(10) **Q.** He says, "Let me just lead that to why."

(11) And then she starts out saying, "Because I
 (12) thought the incident was rushed."

(13) And she goes on from Line 45 through Line 6
 (14) through Line 18 essentially giving her opinion about
 (15) that incident that day that resulted in the entry team
 (16) going on; correct?

(17) **A. Yes.**

(18) **Q.** In fact, during that narration, she says, for
 (19) instance, and I'm looking at Line 15 where she says,
 (20) "They didn't even have medical stage. And I told them,
 (21) I remember telling them, because I was upset about that,
 (22) that we did not have medical staged."

(23) And then she goes down on Line 23 and responds
 (24) to a question by Lieutenant Medeiros saying that before
 (25) the entry was made, she had told Kozicki, Mufarreh,

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(1) Orozco and Rachal that they should stage medical;
 (2) correct?

(3) **A. Yes, sir. She says that she said that before
 (4) the entry.**

(5) **Q.** To the best of your memory, Inspector Cruz, was
 (6) the April 1, 2009 interview of Lieutenant Lindsey the
 (7) only interview you conducted of her?

(8) **A. Yes.**

(9) **Q.** About March 21st obviously.

(10) **A. Yes.**

(11) **Q.** You took no role in any interviews that
 (12) Internal Affairs did; would that be accurate?

(13) **A. That is accurate. I did no Internal Affairs
 (14) interviews.**

(15) **MR. RAINS:** I think that's all the questions I
 (16) have. Thank you.

(17) **CROSS-EXAMINATION BY MS. WAGNER:**

(18) **Q.** Inspector Cruz it is; right?

(19) **A. Yes.**

(20) **Q.** I apologize if I call you a sergeant. I
 (21) understand you were a sergeant for a long time.

(22) My name is Rachel Wagner. Thanks for coming.

(23) You mentioned that you had been on over 100
 (24) murder scenes as a primary and handled, maybe caught two
 (25) to three hundred as a secondary; is that right?

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- (1) **A. Yes. By caught, I meant I went to two or three**
 (2) **hundred other murder scenes in addition to the 100.**
 (3) **Q. So in the hundreds of scenes that you've been**
 (4) **at, you've had a lot of experience, I assume, with**
 (5) **active suspects or manhunts over those years?**
 (6) **A. Yes. Those are generally with the**
 (7) **officer-involved shootings, it always seems like**
 (8) **somebody will go into the yards. Not so much with**
 (9) **homicide at the time of the homicide but generally that**
 (10) **might occur when we find out who the homicide suspect is**
 (11) **and we go after them.**
 (12) **Q. The call-out you had been on, I'm not talking**
 (13) **just murder scene, not necessarily officer-down**
 (14) **shootings, the call-outs you've been on, do they usually**
 (15) **last for hours of a murder seen?**
 (16) **A. I don't know what you mean. Do you mean am I**
 (17) **on the scene for hours? Because a call-out will last**
 (18) **until there is no further investigative leads on that**
 (19) **particular day, so at times we're up for days.**
 (20) **Q. I'll give you a perfect example. You mentioned**
 (21) **that you and Sergeant Van Sloten were partners, so to**
 (22) **speak, at that time March 21, 2009?**
 (23) **A. Yes.**
 (24) **Q. You mentioned that you had been called out on a**
 (25) **murder the night before; is that right, the day before?**

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- (1) **A. Yes.**
 (2) **Q. Had you spent more than 40 minutes at that**
 (3) **murder scene?**
 (4) **A. I don't remember because at times we're not**
 (5) **there very long.**
 (6) **Q. You can't remember as to that particular one?**
 (7) **A. No, I don't.**
 (8) **Q. You've been at other officer-down shootings,**
 (9) **those scenes?**
 (10) **A. I've been to officer-involved shootings, yes.**
 (11) **Q. Were those call-outs lengthy? Were you on the**
 (12) **scene for several hours?**
 (13) **A. Yes. Those particular call-outs can be**
 (14) **lengthy. They are lengthy.**
 (15) **ARBITRATOR GREENBERG: Just so the arbitrator**
 (16) **is clear, when you say officer-involved shootings, these**
 (17) **would be both shootings of officers as well as shootings**
 (18) **of individuals by officers.**
 (19) **THE WITNESS: Yes. Way more often it's**
 (20) **shootings by officers towards the suspect which is**
 (21) **usually the way you want it.**
 (22) **ARBITRATOR GREENBERG: Let me just ask so I**
 (23) **know procedures. You were with the homicide unit. If,**
 (24) **for example, there was a crime being committed on the**
 (25) **street and something happened and a police officer shot**

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- (1) **at a suspect and wounded the suspect who was then**
 (2) **transported to a hospital, would homicide be called out**
 (3) **to the scene even though no one had died?**
 (4) **THE WITNESS: Yes, sir. Homicide handles all**
 (5) **officer-involved shootings.**
 (6) **ARBITRATOR GREENBERG: Thank you.**
 (7) **BY MS. WAGNER:**
 (8) **Q. Have you been on scene with call-outs where**
 (9) **there was an attempt to contact a suspect location in**
 (10) **all your years as a homicide Sergeant?**
 (11) **A. Yes.**
 (12) **Q. Had you been on scenes where negotiators were**
 (13) **on the scene attempting to contact a suspect from, say,**
 (14) **the negotiation team?**
 (15) **A. Yes.**
 (16) **Q. Had you been on scene where there were surround**
 (17) **and call-out of a potential suspect?**
 (18) **A. Yes.**
 (19) **Q. In your experience as a homicide sergeant on**
 (20) **call-outs over all those years, did you have what you**
 (21) **would call a lot of experience being out on scenes when**
 (22) **various tactics or options were used in an attempt to**
 (23) **contact a suspect short of entry?**
 (24) **A. I wouldn't say a lot, Counselor. But I've seen**
 (25) **those scenes. I've been at those scenes. Oftentimes as**

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- (1) **the homicide investigator, once we saw that occurring,**
 (2) **we would leave the scene and not be part of that until**
 (3) **it was adjudicated in some way.**
 (4) **Q. Before an entry would occur while a suspect is**
 (5) **being searched for, as the homicide investigator, the**
 (6) **assigned homicide investigator, are you used to being**
 (7) **briefed by the commanders running the scene for your**
 (8) **information?**
 (9) **A. Yes. We talk to each other so it's not --**
 (10) **yeah, it's a briefing and I give a briefing. I say, you**
 (11) **know, where I think the suspect is going to be going, a**
 (12) **lot of things. And they tell me a lot of things.**
 (13) **Q. So there's an exchange of information back and**
 (14) **forth between you and the commanders running the scene**
 (15) **about intelligence?**
 (16) **A. Yes.**
 (17) **Q. Is that the usual practice before March 21,**
 (18) **2009? In your experience as a homicide investigator**
 (19) **assigned to such a scene, is that the usual practice?**
 (20) **A. Yes.**
 (21) **Q. I'm going to take you to that day, March 21st.**
 (22) **You said you were on scene about 36 minutes before**
 (23) **entry; is that right?**
 (24) **A. Yes.**
 (25) **Q. You and Sergeant Van Sloten were the homicide**

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- (1) investigators assigned to that first initial shooting;
 (2) right?
 (3) **A. Yes.**
 (4) **Q.** Taking your attention to the picture so I can
 (5) picture and we all can where you were, were you at all
 (6) times in the vicinity of the suspect's car and the
 (7) motorcycles that is the crime scene? This is before
 (8) entry.
 (9) **A. Yes, I was.**
 (10) **Q.** Did you ever, for example, walk further north
 (11) than that crosswalk that you pointed out earlier -- is
 (12) that north going up?
 (13) **A. No, that would be west.**
 (14) **Q.** I am bad with directions.
 (15) **A. I don't know what the true direction is, but in**
 (16) **Oakland Police Department directions that's west.**
 (17) **Q.** Let me rephrase my question.
 (18) **A. That's towards the mall.**
 (19) **Q.** At any time while you were out doing your work
 (20) as the homicide investigator before entry, did you ever
 (21) get further west on MacArthur Boulevard than the
 (22) crosswalk that you mentioned earlier, 74th and Mac?
 (23) **A. No.**
 (24) **Q.** Your work was concentrated at the crime scene
 (25) as the homicide investigator; right?

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- (1) **A. Yes.**
 (2) **Q.** While you were doing your work there as a
 (3) homicide investigator, did you see commanders in the
 (4) area of 74th and MacArthur west of that crosswalk?
 (5) **A. Yes.**
 (6) **Q.** Did any of the commanders in that area come
 (7) over to where you, or as far as you know your partner,
 (8) Sergeant Van Sloten was, to ask you about the
 (9) information you had gathered?
 (10) **A. No.**
 (11) **Q.** Did you expect someone to come over and ask you
 (12) for your information?
 (13) **A. Eventually, yes. I expected us to get together**
 (14) **and talk about this murder case and the information,**
 (15) **yes.**
 (16) **Q.** For you, in your experience, was it highly
 (17) unusual that no one did talk with you to get your
 (18) information before a decision was made to enter that
 (19) apartment?
 (20) **A. Yes, I think that is unusual.**
 (21) **Q.** Usually you would have the opportunity to brief
 (22) and be briefed, so to speak, with the commanders, the
 (23) ones running the scene, so to speak?
 (24) **A. Yes, because we're not just looking for the**
 (25) **suspect. We're also looking for further evidence in the**

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- (1) **case that I would be in charge of.**
 (2) **Q.** That free flow of information is critical for
 (3) identifying the suspect, finding the suspect, et cetera;
 (4) right?
 (5) **A. Yes. And there's other things, too. But those**
 (6) **things, too.**
 (7) **Q.** Including for the commanders making good
 (8) tactical decisions based on all the information
 (9) available?
 (10) **A. Yes.**
 (11) **Q.** Let's just go back to the car and the
 (12) motorcycles and the work that you were doing.
 (13) **A. Okay.**
 (14) **Q.** You saw the suspect's cell phone and keys still
 (15) in the car; right?
 (16) **A. Yes.**
 (17) **Q.** You had heard the information that the suspect
 (18) had fled on foot; right?
 (19) **A. Yes.**
 (20) **Q.** You understood that within a minute and a half
 (21) or a couple of minutes there were police officers on the
 (22) scene; right?
 (23) **A. Yes. I understood there was a very quick**
 (24) **perimeter set up.**
 (25) **Q.** In your experience and based on your

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- (1) observations at the crime scene, did you think the
 (2) suspect was nearby?
 (3) **A. Yes.**
 (4) **Q.** Why did you think that, in brief fashion?
 (5) **A. Sometimes brief doesn't contain the entire**
 (6) **truth though --**
 (7) **Q.** You can say whatever you like.
 (8) **A. -- because there's many things that were going**
 (9) **on with that car. The car was kind of a treasure trove**
 (10) **of information. The phone was in there. The keys were**
 (11) **in there. The actual car was there.**
 (12) **All those things showed that the suspect left**
 (13) **his ride, left his keys, left his phone. He had no way**
 (14) **to contact anyone. He had to be comfortable enough**
 (15) **wherever he thought he was going that he may or may not**
 (16) **need keys, probably doesn't need any keys.**
 (17) **He also had to be comfortable with I'm so close**
 (18) **to where I want to go, I don't need my car, all those**
 (19) **things, in conjunction with the information that was**
 (20) **developed that the suspect ran on to 74th Avenue and the**
 (21) **house or the apartment he was associated with was on**
 (22) **74th Avenue, all these things, and the quick perimeter,**
 (23) **all these things showed me a probability that he was**
 (24) **either in that apartment or hunkered down in the yards.**
 (25) **Q.** When you say "hunkered down in the yards" --

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- (1) **A. Hiding in the yards.**
(2) **Q.** Hiding in the yards in the immediate vicinity
(3) of 74th Avenue?
(4) **A. In the perimeter.**
(5) **Q.** Within the perimeter?
(6) **A. Within the perimeter.**
(7) **Q.** Now, you said that you had obtained Lovelle
(8) Mixon -- you had identified Lovelle Mixon by name;
(9) right?
(10) **A. Yes.**
(11) **Q.** In your best estimation, 10 to 15 minutes
(12) before the entry, something like that?
(13) **A. Yes. I think we started confirming that it was**
(14) **Lovelle Mixon about 10 or 15 minutes before that entry.**
(15) **Q.** Was that information that both Sergeant Jones
(16) and Lieutenant Medeiros had as well?
(17) **A. Yes.**
(18) **Q.** They were right with you actually, weren't
(19) they, when that information was obtained in this general
(20) area of the crime scene?
(21) **A. Yes, they were.**
(22) **Q.** Had you heard information, whether or not it
(23) was secondhand or otherwise, had you heard information
(24) that the suspect was associated with 2775 74th Avenue
(25) while you were at the crime scene?

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- (1) **A. Yes.**
(2) **Q.** To the best of your memory, what had you
(3) lettered about that? Had you heard anything about
(4) Lieutenant Joyner, for example, having a confidential
(5) informant yet?
(6) **A. Yes. Sergeant Jones, when I first arrived at**
(7) **the scene, briefed me on Joyner developing information.**
(8) **I had heard that there was another woman providing**
(9) **information. Sergeant Van Sloten started to deal with**
(10) **and interact with after Lieutenant Lindsey found her.**
(11) **Q.** So you were aware there were actually two
(12) different confidential informants associating the
(13) suspect with that address?
(14) **A. At least. And there also seemed to be all this**
(15) **second, thirdhand information that he was there at that**
(16) **address in conjunction with other information that was**
(17) **developed about a blue Volvo and a blue Volkswagen that**
(18) **was contrary.**
(19) **Q.** In your experience from your perspective, was
(20) there any urgency to developing this information and
(21) entering the apartment within the hour, say, was there
(22) any urgency to that situation from a homicide
(23) investigator's perspective?
(24) **A. No, not from a homicide investigator's**
(25) **perspective.**

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- (1) **Q.** Were you aware, while you were developing,
(2) gathering your information, that there was any decision
(3) being considered to enter that apartment?
(4) **A. No, I wasn't.**
(5) **Q.** You were aware that there was a plan of some
(6) kind to do a K-9 track from the car?
(7) **A. Yes, I was aware of the K-9 track.**
(8) **Q.** That was because Sakai wanted to make sure you
(9) didn't mess up his scent?
(10) **A. Sakai, yeah, briefed me on the K-9 track that**
(11) **was going to happen.**
(12) **Q.** Now, at the time that Sakai interacted with you
(13) when you and Tony Jones had your white gloves on and
(14) were looking in the car --
(15) **A. They weren't white. They were latex.**
(16) **Q.** A hostile witness. I'll have to do something
(17) about that.
(18) When you had your latex gloves on, you were
(19) looking in the car. Is that when you pulled out the
(20) photo album and saw the prison number?
(21) **A. Yes. Tony Jones and I were looking at it.**
(22) **Q.** So I'll represent to you that Sergeant Jones
(23) has testified about this as well, the gloves and someone
(24) telling him not to interfere with the scent.
(25) When you had your gloves on and were retrieving

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- (1) that photo album and Sergeant Jones and Sakai said this
(2) to you, you hadn't yet gotten Lovelle Mixon's name, had
(3) you? That's what you were in the process of doing;
(4) right?
(5) **A. I don't remember exactly when Mixon's name came**
(6) **into play. But in my mind, this was part of the**
(7) **confirmation that this is the person.**
(8) **Q.** The person that's going to be in that
(9) apartment?
(10) **A. Yes.**
(11) **Q.** And that's what was in your mind?
(12) **A. Yes.**
(13) **Q.** You said that you were developing a lot of
(14) information; right?
(15) **A. Yes.**
(16) **Q.** Between you and Sergeant Jones and Sergeant Van
(17) Sloten, did you believe that you had a lot of
(18) information about the suspect 10 to 15 minutes before
(19) entry was made?
(20) **MR. RAINS:** I'm going to object to the term "a
(21) lot" as being vague.
(22) **MS. WAGNER:** I'm repeating what he said on
(23) direct. I could change it.
(24) **ARBITRATOR GREENBERG:** No, no. I'm going to
(25) overrule the objection, in part, because I think the

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- (1) witness is very precise in his answers.
 (2) The question is did you have a lot of
 (3) information? What's your response to that question?
 (4) **THE WITNESS:** Yes, sir, we did.
 (5) **ARBITRATOR GREENBERG:** I guess to some extent,
 (6) if I can chime in, I think this is sort of a comparative
 (7) matter. Was this a lot of information compared to many
 (8) other homicide scenes where the suspect had fled?
 (9) **THE WITNESS:** Yes, sir, it is. It would be a
 (10) lot of information just about in any context. Even a
 (11) California Department of Corrections number. It was
 (12) very exact. There was exact information regarding the
 (13) suspect. At the point it appears it definitely appeared
 (14) that that would be also the shooter. There was no
 (15) reason to think it wasn't.
 (16) **BY MS. WAGNER:**
 (17) **Q.** Were you usually at a briefing where this
 (18) information would be exchanged, your information that
 (19) you gathered as a homicide investigator, would that
 (20) briefing occur before any decision to enter a suspect
 (21) location was made? Would that usually happen?
 (22) **A.** If it was a homicide that I was investigating
 (23) that I was the primary investigator on, it was always my
 (24) experience that I had input regarding that suspect and
 (25) the location.

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- (1) **Q.** And the information you had?
 (2) **A.** Well, yes, and the information.
 (3) **Q.** Here you were never told there might be an
 (4) entry; is that right?
 (5) **A.** No, I was not.
 (6) **Q.** Now, you said you didn't have a radio.
 (7) Sergeant Van Sloten has testified she didn't.
 (8) Homicide investigators at that time did not
 (9) carry radios with them then; is that right?
 (10) **A.** No, we did not.
 (11) **Q.** You had cell phones; right?
 (12) **A.** We had our cell phones.
 (13) **Q.** Was that common knowledge out on a murder scene
 (14) that the homicide investigator didn't have a radio?
 (15) **A.** Yes.
 (16) **Q.** And if someone wanted to contact you, would
 (17) they come over and get you or would they call you?
 (18) **A.** Both those things.
 (19) **Q.** In fact, when you realized entry was being
 (20) made, were you within several yards, say, of where those
 (21) commanders at 74th and Mac had been? Were you within
 (22) the line of sight of those commanders?
 (23) **A.** Yes.
 (24) **Q.** Generally speaking, when you were doing your
 (25) work out there, were you within line of sight of the

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- (1) people running the scene?
 (2) **A.** Yes.
 (3) **Q.** As well as your fellow homicide investigators?
 (4) **A.** Yes.
 (5) **Q.** You were only asked about Deputy Chief Kozicki
 (6) on direct a few questions.
 (7) Did you have any understanding that there was a
 (8) tactical commander on the scene while you were out there
 (9) working?
 (10) **A.** That's a difficult question to answer because
 (11) nothing was happening in a usual manner.
 (12) **Q.** Let me ask it this way --
 (13) **A.** With Kozicki being on the scene, in my mind,
 (14) Counselor, Kozicki was in charge.
 (15) **Q.** My question was, were you aware of any other
 (16) commanders being on scene that also were in charge of
 (17) various things besides Kozicki?
 (18) **A.** Well, yes.
 (19) **Q.** For example, I'm just asking, did you ever
 (20) notice that Captain Orozco was at 74th and MacArthur
 (21) before the shots rang out?
 (22) **A.** Yes.
 (23) **Q.** Did you notice Lieutenant Mufarreh at 74th and
 (24) Mac before the shots rang out at any time?
 (25) **A.** Yes.

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- (1) **Q.** Did any of those commanders, any of those
 (2) three, seek out any information, to your knowledge, from
 (3) the homicide investigators before the decision to enter
 (4) was made?
 (5) **A.** They never came to me, Counselor. They never
 (6) came to me. I don't know if they went to somebody else,
 (7) but they never came to me.
 (8) **Q.** Did you see them come to any of your other
 (9) fellow homicide investigators at the crime scene?
 (10) **A.** No.
 (11) **Q.** You mentioned that you were near Sergeant Jones
 (12) and Lieutenant Medeiros I think when the shots rang out;
 (13) is that right?
 (14) **A.** When the shots rang out, Tony Jones was
 (15) standing with me and Captain Breshears and I remember
 (16) seeing Lieutenant Medeiros and Rachel Van Sloten a
 (17) little bit. They were to my left. One was to my left
 (18) and the other to the right.
 (19) **Q.** So the same vicinity?
 (20) **A.** Yes, the same area.
 (21) **Q.** Was that a shock to you when you heard those
 (22) shots? Did you have any idea that was about to happen?
 (23) **A.** No, I did not.
 (24) **Q.** Was what happened regarding -- what happened on
 (25) March 21, 2009, regarding that entry not the way you

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- (1) usually did things?
- (2) **A. It was not the way we usually did things.**
- (3) **Q.** Did the way things went down that afternoon
- (4) seem bizarre to you?
- (5) **A. Again, the word "bizarre." It was definitely**
- (6) **contrary to standard operating procedure that I had been**
- (7) **a part of as a homicide investigator.**
- (8) **Q.** Last question: You pointed to Lieutenant
- (9) Lindsey's interview. In fact, you did a ton of
- (10) interviews; right?
- (11) **A. Yes.**
- (12) **Q.** I do have a couple of questions about
- (13) Lieutenant Lindsey to follow-up on what Mr. Rains asked.
- (14) Did you look at Lieutenant Lindsey's
- (15) supplemental before your interview with her, either one?
- (16) **A. Not the first one. I never looked at that one.**
- (17) **I looked at the second one, yes.**
- (18) **Q.** Between a supplemental report, the written
- (19) report of any of these officers and the interview you
- (20) did with them, which is more important to you?
- (21) **A. To me it is the taped interview, the**
- (22) **audio-recorded interview that I have with them.**
- (23) **Q.** Do you consider that the key statement, the
- (24) audio-recorded interview you do with them?
- (25) **A. Yes, it is.**

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- (1) **Q.** This was actually my last question before I
- (2) digressed: You also did the CID interviews of
- (3) Lieutenant Mufarreh and Captain Orozco, didn't you?
- (4) **A. Yes.**
- (5) **Q.** Just to make this easy in terms of the timing,
- (6) if you go to 24 and 25?
- (7) **A. Item 24?**
- (8) **Q.** Tab. We call them tabs.
- (9) **A. All right.**
- (10) **Q.** At the beginning of Tab 24, it says "Interview
- (11) of Captain Orozco." I'm just looking at the first page.
- (12) Do you see where it says, "Interview of Captain
- (13) Rick Orozco" on the first page of Tab 24 and it says
- (14) "Sergeant Cruz"?
- (15) **A. Yes.**
- (16) **Q.** Does that refresh your memory or do you believe
- (17) that you interviewed Captain Rick Orozco on March 25,
- (18) 2009, four days after the incident?
- (19) **A. Yes.**
- (20) **Q.** Let's just flip to Tab 25. I'll represent to
- (21) you that this is the interview of Lieutenant Mufarreh of
- (22) CID. Review the first page and I think you'll confirm
- (23) that.
- (24) **A. Yes, it is.**
- (25) **Q.** And if you look at Line 5, it says the 25th of

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- (1) March.
- (2) Did you also interview Lieutenant Mufarreh
- (3) approximately four days after the incident?
- (4) **A. Yes.**
- (5) **Q.** And you attended those interviews full length,
- (6) right, from beginning to end?
- (7) **A. Yes.**
- (8) **Q.** Now, based on your recollection, was there
- (9) anything in those interviews that justified the rush to
- (10) enter that apartment that day?
- (11) **A. Based on the entirety --**
- (12) **Q.** Of those two interviews.
- (13) **MR. RAINS:** Which interviews?
- (14) **MS. WAGNER:** You said based on your
- (15) recollection, Mr. Rains, so I'm trying the same thing.
- (16) **MR. RAINS:** Which interviews are you referring
- (17) to?
- (18) **MS. WAGNER:** The interviews of Captain Orozco
- (19) and Lieutenant Mufarreh at Tabs 24 and 25 that this
- (20) witness took.
- (21) **MR. RAINS:** That is beyond this witness'
- (22) expertise. He's not a tactical person. He's never been
- (23) on the tactical team, I don't think.
- (24) **THE WITNESS:** No.
- (25) **MS. WAGNER:** No, he hasn't.

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- (1) **BY MS. WAGNER:**
- (2) **Q.** I'm asking you for your experience out there
- (3) that day as the homicide investigator, you interviewed
- (4) two of the command officers. And based on your
- (5) recollection, was there anything in those interviews
- (6) that explained the rush to enter the apartment?
- (7) **ARBITRATOR GREENBERG:** I'm going to offer --
- (8) I'm going to restate the question.
- (9) I think you've testified already, Mr. Cruz,
- (10) that your perception on the day of the incident, and
- (11) apparently subsequently, was that normal procedures were
- (12) not followed and that you expressed some surprise that
- (13) an entry had taken place at the very least without being
- (14) consulted; is that correct?
- (15) **THE WITNESS:** Yes.
- (16) **ARBITRATOR GREENBERG:** It's also correct to say
- (17) that at the time of the entry, you had probably
- (18) relatively little knowledge of what considerations
- (19) Lieutenant Mufarreh and Captain Orozco and Deputy Chief
- (20) Kozicki had in front of them because they were getting
- (21) information from other sources, so you didn't really
- (22) know the full range of what they were thinking; is that
- (23) fair to say?
- (24) **THE WITNESS:** Yes, sir, it is. I did not
- (25) know -- yeah, I never met with them.

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- (1) **ARBITRATOR GREENBERG:** But subsequently, during
 (2) the course of your investigation, you did have an
 (3) opportunity to interview them and learn from their
 (4) perspective what their concerns were; is that correct?
 (5) **THE WITNESS:** Yes.
 (6) **ARBITRATOR GREENBERG:** I think it's based upon
 (7) that, that the question is, in your estimation, based
 (8) upon your experience as a homicide investigator and
 (9) based upon the information that you learned from the
 (10) interviewees about what they were looking at, is it your
 (11) personal view that there was a basis for conducting an
 (12) entry at the time it was ordered? And we're going to
 (13) qualify this by recognizing that you're not a tactical
 (14) operations officer.
 (15) **THE WITNESS:** Yes, sir. In the totality of the
 (16) things that I know about this murder investigation, no.
 (17) There was not a reason to enter at that time.
 (18) **MS. WAGNER:** I have no other questions.
 (19) **ARBITRATOR GREENBERG:** Mr. Rains, other
 (20) questions?
 (21) **MR. RAINS:** A few.
 (22) REDIRECT EXAMINATION BY MR. RAINS:
 (23) **Q.** Is there any doubt in your mind who was
 (24) responsible, ultimately responsible, for the decision to
 (25) enter?

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- (1) **A. Who was responsible, sir, among the command**
 (2) **officers on that scene?**
 (3) **Q.** Yes.
 (4) **A. No, there's no doubt in my mind.**
 (5) **Q.** Who was it?
 (6) **A. Deputy Chief Kozicki.**
 (7) **Q.** Let me ask you, going back in time, when you
 (8) arrived on the scene, did you have any knowledge that
 (9) earlier in the day after the shooting of Sergeant
 (10) Dunakin and Officer Hege, that Acting Lieutenant Blair
 (11) Alexander had announced over the radio that he was going
 (12) to handle perimeter duties, that Lieutenant Lindsey was
 (13) going to manage the crime scene or handle the crime
 (14) scene investigation and that Chris Mufarreh was going to
 (15) coordinate the search for the suspect? Did you know
 (16) that?
 (17) **A. No, sir. I perceived it, but I did not have --**
 (18) **nobody directly told me those things. But I saw those**
 (19) **things happen.**
 (20) **Q.** When you were out and about in what I'm going
 (21) to refer to as the crime scene, you saw Lieutenant
 (22) Lindsey, I take it, around in that area?
 (23) **A. Yes, she was near me. She was near the crime**
 (24) **scene.**
 (25) **Q.** Now, at the crime scene -- I'm not sure I know

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- (1) but I think I know -- at least in the context of this
 (2) case, that's where information might get developed about
 (3) the identity of the suspect or possibly his location
 (4) where he's travelling to; correct?
 (5) **A. Yes.**
 (6) **Q.** My question to you is, does the crime scene
 (7) patrol supervisor in this case Lieutenant Lindsey, also
 (8) have some kind of an affirmative duty to come see you or
 (9) other homicide guys along the way and say, hey Lou, what
 (10) you got cooking? You got some info on this guy? What
 (11) can you do for me? Doesn't she have an obligation to do
 (12) that?
 (13) **A. That's a difficult question, Counselor, because**
 (14) **normally that position is a sergeant, and the patrol**
 (15) **Sergeant and I may communicate. Sometimes we do,**
 (16) **sometimes we don't.**
 (17) **Difficult question. I don't feel like I could**
 (18) **answer that question even correctly if she had an**
 (19) **obligation to do that or not.**
 (20) **Q.** The follow-up question would be did she ever
 (21) come to you and say, hey, what you got cooking on this
 (22) guy, can you tell me anything?
 (23) **A. No. It was my perception that she had her own**
 (24) **thing going. She was doing things with pictures and**
 (25) **making sure people knew different things, things of that**

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- (1) **nature.**
 (2) **Q.** To your knowledge, did she go to any of your
 (3) other colleagues from homicide and ask them if they had
 (4) any information concerning this guy's identity or
 (5) whereabouts?
 (6) **A. I saw her talking with Sergeant Jones, but I**
 (7) **didn't participate in that conversation.**
 (8) **Q.** Did you ever see Lieutenant Mufarreh talking to
 (9) Sergeant Jones?
 (10) **A. I did not see Lieutenant Mufarreh talking to**
 (11) **Sergeant Jones.**
 (12) **Q.** I know you said that Sergeant Van Sloten at
 (13) some point in time dealt with a woman that was turned
 (14) over to Lieutenant Lindsey, words to that effect; is
 (15) that right?
 (16) **A. Yes.**
 (17) **Q.** Did you see what kind of interaction Sergeant
 (18) Van Sloten had with this woman?
 (19) **A. No, I did not. I just saw them by afar. I**
 (20) **would say 35, 40 feet away from me while I concentrated**
 (21) **on all the things that were going on with the motorcycle**
 (22) **and the car.**
 (23) **Q.** Prior to the entry occurring, did Sergeant Van
 (24) Sloten tell you of the information that this woman
 (25) provided to her?

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- (1) **A. No, I don't remember her telling me that. I**
 (2) **just knew of her existence, but I didn't know the exact**
 (3) **information she was providing. Only that it was**
 (4) **important.**
 (5) **Q. Only that it was what?**
 (6) **A. Important and had to do with that apartment.**
 (7) **Q. And did you learn that from Van Sloten or --**
 (8) **A. No. I learned that through general perception.**
 (9) **Q. You mean the buzz was out there about that**
 (10) **somehow?**
 (11) **A. Well, sir, the buzz also included the**
 (12) **surrounding of the apartment complex. Police had**
 (13) **surrounded that apartment complex at 2755.**
 (14) **Q. That created some of the buzz, too?**
 (15) **A. Yes, sir.**
 (16) **Q. I think you said 10 to 15 minutes before entry**
 (17) **was made, you thought Jones and Lieutenant Medeiros had**
 (18) **obtained the name Lovelle Mixon as the suspect?**
 (19) **A. Yes, sir. I think that's pretty much a**
 (20) **certainty. I think we knew that that was the name about**
 (21) **10 or 15 minutes before.**
 (22) **Q. I'm going to ask you this just of you because**
 (23) **we're talking about a lot of stuff in hindsight, things**
 (24) **that maybe went wrong or right that day. But I know you**
 (25) **said OPD homicide investigators did not at the time**

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- (1) carry handheld radios?
 (2) **A. No, sir, we did not.**
 (3) **Q. Did that change, to your knowledge, after**
 (4) **March 21st that they did, in fact, get handheld radios?**
 (5) **A. Yes, there's handheld radios now in the**
 (6) **homicide section to take to scenes that have tactical**
 (7) **considerations.**
 (8) **Q. In fact, those allow you to hear transmissions**
 (9) **occurring as well as to make transmissions?**
 (10) **A. Yes, sir.**
 (11) **Q. Based upon the fact that apparently at least**
 (12) **Mixon's name was known 10 to 15 minutes before the entry**
 (13) **occurred, do you think that once Medeiros or Jones had**
 (14) **Mixon's name, they knew it, if they would have had**
 (15) **radios it would have been proper for them to at least**
 (16) **get on the radio and announce that they had obtained the**
 (17) **name of a suspect and to announce it or broadcast it**
 (18) **over the radios, if they had radios?**
 (19) **A. Yes, sir, I do. Mixon also had a parole**
 (20) **violation warrant. That was a lot of reason that we**
 (21) **could have put his name out.**
 (22) **Q. Captain Breshears I know you said was near you**
 (23) **when you were walking up toward the intersection and**
 (24) **shots went off?**
 (25) **A. Yes.**

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- (1) **Q. Had you ever seen or dealt with Captain**
 (2) **Breshears in his role as a SWAT team or tactical team**
 (3) **leader?**
 (4) **A. Yes.**
 (5) **Q. By the way, he was an acting chief that day,**
 (6) **wasn't he?**
 (7) **MS. WAGNER: Objection. Misstates the**
 (8) **evidence.**
 (9) **MR. RAINS: I don't think it does.**
 (10) **BY MR. RAINS:**
 (11) **Q. Do you have knowledge of what his position in**
 (12) **the department was?**
 (13) **A. Sir, I don't remember if he was acting chief**
 (14) **then. I know he was the captain of police. I don't**
 (15) **remember if he was acting chief that day.**
 (16) **Q. He was a captain of police. Did you see him**
 (17) **taking any kind of what you would consider to be a**
 (18) **leadership role out there as a captain of police?**
 (19) **A. No. He was standing in the street, is what I**
 (20) **saw him doing. He was not with Lieutenant Mufarreh or**
 (21) **Captain Orozco and Deputy Chief Kozicki at the time of**
 (22) **the entry. He was standing near me.**
 (23) **Q. You had indicated your belief that a quick**
 (24) **perimeter had been set up after the shooting of the two**
 (25) **motor officers.**

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- (1) What's your definition of a quick perimeter?
 (2) How quick?
 (3) **A. Within a minute, sir, to two minutes. This**
 (4) **event was very close to the Eastmont Mall substation.**
 (5) **There was a lot of police in that neighborhood very**
 (6) **quickly coming from the Eastmont Mall substation as well**
 (7) **as the field. So one to two minutes would be very quick**
 (8) **in my mind, in particular with the suspect on foot.**
 (9) **Q. Do you think if it took 20 to 30 minutes to set**
 (10) **up a perimeter, would you have a different view of that?**
 (11) **A. It could be, sir. Depending on the context of**
 (12) **that setup, if that was additional work being done on a**
 (13) **perimeter that's already been established but is being**
 (14) **shored up. In other words, it would depend upon the**
 (15) **context of the 20 to 30 minutes.**
 (16) **Q. In other words, how tight the perimeter is?**
 (17) **A. Initially. And if it's being shored up later,**
 (18) **that shore-up could be shoring up, but the initial**
 (19) **perimeter would possibly be fine to contain a**
 (20) **suspect.**
 (21) **MR. RAINS: Thank you. That's all I have.**
 (22) **ARBITRATOR GREENBERG: Anything else, Ms.**
 (23) **Wagner?**
 (24) **MS. WAGNER: As usual. Just two or three**
 (25) **questions.**

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- (1) EXAMINATION BY MS. WAGNER:
- (2) Q. You can't read my writing so I'll point you to
- (3) Exhibit 25. I have a preliminary question before we go
- (4) to a certain page.
- (5) A. Okay.
- (6) Q. Your testimony I think was that Deputy Chief
- (7) Kozicki was the one ultimately responsible for that
- (8) decision out there, the tactical decision; is that
- (9) right?
- (10) A. That's my personal feeling knowing Deputy Chief
- (11) Kozicki.
- (12) Q. I meant in your own view; right?
- (13) A. Yes.
- (14) Q. One thing I want to show you is at Tab 25, Page
- (15) 26 of Lieutenant Mufarreh's interview. I just want to
- (16) read a few lines and ask you a question.
- (17) A. Okay. I'm sorry, page?
- (18) Q. Page 26. It's Line 5 where it says, "So the
- (19) decision." I'm just going to read this and then ask you
- (20) a question; okay?
- (21) A. Okay.
- (22) Q. It says, "So the decision was made between me,
- (23) Kozicki and, um, Orozco that that location needed to be
- (24) cleared because we had tracking dogs. And even though
- (25) we didn't believe the subject was there, all probability

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- (1) showed the suspect would not be there. But still, there
- (2) was a small chance he could have been there. Let's
- (3) clear it because we can't have these tracking dogs and
- (4) these teams go in all these different yards if we don't
- (5) at least secure that location first. So that's why it
- (6) was decided to clear that location and just to conduct
- (7) the searches for the dogs and, uh, the decision was
- (8) ultimately made by all three of us, um, to send the SWAT
- (9) team in."
- (10) Do you see that?
- (11) A. Yes.
- (12) Q. So put simply, after doing these interviews, is
- (13) it your understanding that Deputy Chief Kozicki was
- (14) ultimately responsible but that Lieutenant Mufarreh and
- (15) Captain Orozco participated in that decision to enter as
- (16) well?
- (17) A. Yes, in the context of Kozicki being ultimately
- (18) responsible, yes.
- (19) Q. That was my only question.
- (20) MR. RAINS: I don't have anything else.
- (21) ARBITRATOR GREENBERG: The arbitrator has a few
- (22) questions.
- (23) MS. WAGNER: This is typical, Inspector Cruz.
- (24) ARBITRATOR GREENBERG: We've heard testimony
- (25) earlier from Lieutenant Van Sloten --

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- (1) THE WITNESS: She's a sergeant.
- (2) ARBITRATOR GREENBERG: Sergeant -- indicating
- (3) that coincident with the entry into the apartment on
- (4) 74th Avenue, she was walking up to the corner, the
- (5) intersection of 74th and MacArthur intending to speak
- (6) with the commanding officers about the information that
- (7) she had received from (b)(5)(B). Apparently her
- (8) belief that this reenforced the suggestion that Mixon
- (9) was in the unit on 74th Avenue.
- (10) Were you aware that she was attempting to
- (11) report directly to the commanding officers?
- (12) THE WITNESS: No, sir, I was not.
- (13) ARBITRATOR GREENBERG: Would that have
- (14) concerned you if you knew that your partner was going to
- (15) them directly rather than coming to you first?
- (16) THE WITNESS: No, not at that scene, sir. In
- (17) other scenes perhaps. But in that scene there was so
- (18) much to be done. That wouldn't have concerned me if she
- (19) felt personally that she had to share something with
- (20) them.
- (21) ARBITRATOR GREENBERG: A few minutes ago, Ms.
- (22) Wagner asked you about the information that you had
- (23) about Mixon certainly in the half hour leading up to the
- (24) entry that you believe was important information,
- (25) particularly about both in terms of his identity and

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- (1) possible whereabouts. You sort of ran down the list of
- (2) the cell phone, the fact that the car was still there,
- (3) the keys were in the car, information that you had
- (4) gotten earlier through Joyner and Joyner's confidential
- (5) informant, et cetera.
- (6) I just want to check. If you had been
- (7) consulted by what I'll refer to as the command team,
- (8) whether it was Mufarreh or Orozco or Kozicki about -- if
- (9) they had come to you as the lead homicide investigator
- (10) on the scene for consultation before initiating a
- (11) tactical operation, is this essentially the information
- (12) that you would have conveyed to them?
- (13) THE WITNESS: Yes, sir, it is. I would have
- (14) told them that I believe the suspect is in that
- (15) apartment or in these yards.
- (16) ARBITRATOR GREENBERG: Your boss at the time
- (17) was Lieutenant Medeiros?
- (18) THE WITNESS: Yes, sir.
- (19) ARBITRATOR GREENBERG: Is it possible that they
- (20) sought out Lieutenant Medeiros for his information and
- (21) thought that they were, by doing so, consulting with
- (22) homicide?
- (23) THE WITNESS: Yes, sir, that is possible. I
- (24) don't know everything that Medeiros was doing. It's
- (25) quite possible they did either by phone or in person.

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(1) And in consulting with him, they would have felt perhaps
(2) that they were consulting with homicide.

(3) But Lieutenant Medeiros, while the commander of
(4) the homicide section, he's not the primary homicide
(5) investigator so I would have expected to be privy to
(6) something as important as an entry.

(7) **ARBITRATOR GREENBERG:** Finally, I just want to
(8) ask you about something that was not explored by either
(9) counsel in their examination. That has to do with
(10) command post.

(11) We've heard various opinions about whether or
(12) not a functioning command post was present at this
(13) particular incident. I think it's undisputed early on
(14) in the minutes after the incident when various officers
(15) were being called to the scene, including significantly
(16) Lieutenant Mufarreh, and you may not be privy to this
(17) since you weren't on the radio at the time --

(18) **THE WITNESS:** Yes, sir.

(19) **ARBITRATOR GREENBERG:** That there had been a
(20) suggestion that a command post would be established at
(21) Eastmont station, either at the existing Eastmont Mall
(22) station or perhaps at the old station where, as I
(23) understand it, the SWAT team keeps their materials.
(24) And, in fact, there's been some indication that in fact
(25) some people reported to Eastmont Mall expecting a

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(1) command post.

(2) You apparently did not go to Eastmont Mall
(3) expecting to find a command post; is that correct?

(4) **THE WITNESS:** Yes, sir. But there's a reason
(5) that I wouldn't go to the mall even if that was the
(6) command post, if I can share that with you.

(7) **ARBITRATOR GREENBERG:** Yes.

(8) **THE WITNESS:** As the homicide investigator,
(9) it's incumbent upon me to go to the crime scene, and the
(10) crime scene is there at 74th and MacArthur. Even if the
(11) command post was elsewhere, that's where I would be, at
(12) 74th and Mac.

(13) **ARBITRATOR GREENBERG:** The question that I
(14) really want to explore for just a few moments is, if
(15) there had been a traditional command post established at
(16) Eastmont Mall with the various components, the support
(17) components for a command post, what would your
(18) interaction with the command post have been over the
(19) period that you were between the time you arrived at the
(20) site and began your piece of the investigation and let's
(21) say the time of the entry? How much communication would
(22) you have been having as the lead homicide investigator
(23) with the command post?

(24) **THE WITNESS:** Initially, very little. However,
(25) if a decision was being built up leading to an entry,

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(1) when I was completed with the work I had to do at 7400
(2) MacArthur, sir, I would go to where the command post is
(3) and there we would have a small meeting.

(4) It could be me, Medeiros, other people who have
(5) information regarding the suspect and the incident and
(6) the case. And together, with the tactical and incident
(7) commander, this small meeting would occur and sharing of
(8) information would occur. But initially very little. I
(9) would be doing my thing at 7400 Mac.

(10) **ARBITRATOR GREENBERG:** Let me just ask, for
(11) example, the information this your partner had gathered
(12) from (b)(5)(B) in which Walker who apparently
(13) resided on 74th Avenue seemed to have a fair amount of
(14) knowledge about the individuals involved, Mixon, the
(15) girlfriend, et cetera, how promptly would that
(16) information have been reported to a command center? And
(17) would that have come through you as the lead homicide
(18) investigator, or would Van Sloten have reported that
(19) directly? Or would it not have been reported in
(20) realtime to the command center, but instead, kept within
(21) your unit for a while?

(22) **THE WITNESS:** Difficult question to answer,
(23) sir. That could go a lot of ways because of the cell
(24) phones. They could be called by cell phone and told
(25) this information. I myself would not make that call

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(1) doing the things that I was doing and concentrating on
(2) the things that I was concentrating on.

(3) However, there is a chance that Van Sloten
(4) would have called or there's a chance that Medeiros
(5) would call. But I would believe that in some way that
(6) information would be conveyed. And in the end,
(7) certainly conveyed before any final decision is made
(8) regarding entry on the apartment complex.

(9) **ARBITRATOR GREENBERG:** What I'm hearing then,
(10) and tell me if I'm getting this wrong, is that even when
(11) there is a typical staffed command post, I say staff,
(12) with support staff in place, one can't assume that all
(13) of this information being gathered by the homicide unit
(14) would be reported back to the command post in realtime?

(15) **THE WITNESS:** I think that's accurate, sir.
(16) That makes the necessity of either a phone call or
(17) preferably face-to-face meeting before any critical
(18) decisions were is made just to ensure that what you're
(19) saying occurs, that all information or at least a lot of
(20) the information is shared.

(21) **ARBITRATOR GREENBERG:** Let me follow-up with
(22) what will probably be my last question.

(23) In your experience, in situations where there
(24) is a command post and simultaneously a tactical
(25) operation is being planned, you've testified that in

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- (1) your experience, normally homicide is consulted during
(2) the final stages leading up to implementation of the
(3) tactical operation; is that correct?

(4) **THE WITNESS:** Yes, as a sharing of intelligence
(5) information. Not as direction as any tactical
(6) operation, but just a sharing of the intelligence.

(7) **ARBITRATOR GREENBERG:** Since you've told me
(8) that the information being gathered by homicide is not
(9) always being shared with realtime with the staff at the
(10) command post, is it typically or frequently the case
(11) that during that last briefing session, that homicide
(12) winds up giving the incident commander a significant
(13) amount of information that had not previously been known
(14) to the incident commander?

(15) **THE WITNESS:** Yes, that could happen.

(16) **ARBITRATOR GREENBERG:** Is it -- is it fair to
(17) say that's not uncommon?

(18) **THE WITNESS:** I would say not uncommon is
(19) better than frequently.

(20) **ARBITRATOR GREENBERG:** That concludes my
(21) questions.

(22) This goes back to you, Mr. Rains. Do you have
(23) any further questions?

(24) **MR. RAINS:** It does spur just a little bit
(25) here.

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(1) REDIRECT-EXAMINATION BY MR. RAINS:

(2) **Q.** Sergeant Cruz, since you did not have a
(3) handheld radio, did you know from anything you heard
(4) that the entry team was making entry into the apartment
(5) before you heard the gunshots?

(6) **A. No, sir. I saw.**

(7) **Q.** This is kind of a hypothetical, but if you
(8) would have had a handheld radio and let's say you're not
(9) in line of sight of the apartment, if you have a
(10) handheld radio, you're in possession of the information
(11) concerning Nixon that you have the keys, the cell phone,
(12) the photograph that you've seen, et cetera, and you hear
(13) over your handheld radio -- Orozco, for instance, gets
(14) on the air and broadcasts our entry team is going to
(15) enter the apartment at 2755 74th, there may be less
(16) lethal, I want you all to know that, would you have then
(17) made some effort to contact him to say wait a minute,
(18) hold up, I have some info I should share with you?

(19) **A. That's dependent, sir, on whether or not I felt**
(20) **that my interference would jeopardize anyone in the**
(21) **entry team because at that point they may be stuck right**
(22) **up in the front there. At that point when the mission**
(23) **is in progress, probably not. Probably not, because the**
(24) **mission is in progress. It's a freight train. It's**
(25) **happening, they're entering. And me saying something**

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(1) **like that on the radio could cause a problem. My answer**
(2) **would be more than likely no.**

(3) **MR. RAINS:** Thank you.

(4) **MS. WAGNER:** I have some more questions, but
(5) they're because of the arbitrator's questions.

(6) **ARBITRATOR GREENBERG:** Blame me.

(7) RECROSS-EXAMINATION BY MS. WAGNER:

(8) **Q.** Let's take Mr. Rains's hypothetical for a
(9) moment if you had a radio.

(10) **A. Yes.**

(11) **Q.** If you hear something about less lethal options
(12) or entry being made and Code 33, what does Code 33 mean
(13) to you at that point?

(14) **A. It's silence on the radio, unless you have some**
(15) **type of emergency transmission. Generally only the**
(16) **people involved in the operation could have an emergency**
(17) **at that point.**

(18) **Q.** At that point is the meeting or briefing that
(19) usually happens where you give your information --

(20) **A. That would have happened.**

(21) **Q.** So it's way too late to have that meeting at
(22) that point?

(23) **A. Yes. Yes.**

(24) **Q.** Are you aware from your homicide investigation,
(25) you may not remember, but are you aware that Lieutenant

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(1) Joyner tried to reach someone and was told by dispatch
(2) it was already Code 33 when he saw the entry team going
(3) down the street?

(4) **MR. RAINS:** That assumes facts not in evidence.
(5) Have we had testimony about this.

(6) **MS. WAGNER:** Oh, yes. Do we need to submit his
(7) transcript? I can do that, but he did a lot of these
(8) interviews and was a homicide investigator. I'm just
(9) asking if he remembers, with your hypothetical, that
(10) Lieutenant Joyner actually tried to reach someone when
(11) he saw the entry team go down the street and was told by
(12) dispatch it was Code 33.

(13) **MR. RAINS:** I don't remember that.

(14) **ARBITRATOR GREENBERG:** We had Joyner's
(15) testimony here at the hearing.

(16) **MS. WAGNER:** It's not that important because we
(17) were on a radio hypothetical, but I thought it would be
(18) an interesting question.

(19) **ARBITRATOR GREENBERG:** I understand. We got
(20) Mr. Cruz's answer as to what he would have done if he
(21) had information in a situation of a Code 33.

(22) **BY MS. WAGNER:**

(23) **Q.** I'd like to show you -- still a hypothetical
(24) but less of one, go to exhibit Tab 7. I'm going to ask
(25) you to go to Page 46. When you get to Page 46, there's

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- (1) only one thing to look at. If you go down here where it
 (2) says 15:02.
 (3) **A. 2-L-92?**
 (4) **Q.** Do you understand 2-L-92 to be Captain Orozco?
 (5) **A. Yes.**
 (6) **Q.** I'll represent to you that this is a transcript
 (7) of a radio transmission. At Page 46 at the bottom it
 (8) says, "Yeah, 92, the attack team's going to be going and
 (9) checking in the address 2755 74th Avenue. I'd like
 (10) radio silence. Sergeant Gonzalez will be leading the
 (11) team. Just advise units on the perimeter there will be
 (12) lethal possibly deployed. I want Code 33 now."
 (13) If you heard a transmission like that, would it
 (14) be too late to give your information?
 (15) **A. Yes.**
 (16) **Q.** There was a couple of questions from the
 (17) arbitrator about Lieutenant Medeiros so I'm just going
 (18) to ask a couple of follow-up ones.
 (19) **A. Okay.**
 (20) **Q.** Was Lieutenant Medeiros in your company when
 (21) you made the identification of Mixon on that car
 (22) computer when it came up? Did he see that information?
 (23) **A. I don't remember.**
 (24) **Q.** Do you remember giving him that information?
 (25) Was he in the general vicinity of where your

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- (1) investigators were?
 (2) **A. Yes, I do remember him having that information**
 (3) **and interacting with him about the information. In**
 (4) **fact, Jones was standing there, too.**
 (5) **Q.** So the three of you were in the general
 (6) vicinity again of the crime scene when you made the I.D.
 (7) of Mixon?
 (8) **A. Yes.**
 (9) **Q.** Lieutenant Medeiros was with you, wasn't he,
 (10) when you heard the gunshots?
 (11) **A. Yes.**
 (12) **Q.** And you were both shocked?
 (13) **MR. RAINS:** That calls for speculation.
 (14) **BY MS. WAGNER:**
 (15) **Q.** Do you know?
 (16) **A. I know that he was very surprised.**
 (17) **Q.** To your knowledge, do you have any information
 (18) that from the time that you were getting Mixon's I.D. to
 (19) the time that you heard those gunshots when Medeiros was
 (20) with you, whether anyone had contacted Medeiros to get a
 (21) briefing or a meeting?
 (22) **A. No, I don't know.**
 (23) **Q.** Did you ever see anyone come over to the crime
 (24) scene and talk with Lieutenant Medeiros about
 (25) information that you gathered as the lead investigator?

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- (1) **A. No, I did not.**
 (2) **Q.** Usually there's plenty of time to convey the
 (3) information you've gathered before a tactical operation
 (4) commences; right?
 (5) **A. Usually, yes.**
 (6) **Q.** A meeting usually would occur that was common
 (7) practice before any tactical decisions such as entry was
 (8) made; right?
 (9) **A. Regarding intelligence, yes.**
 (10) **Q.** To get your intelligence, right?
 (11) **A. Yes.**
 (12) **Q.** That just didn't happen here?
 (13) **A. It did not happen with me.**
 (14) **Q.** You don't know anyone it did happen with on the
 (15) homicide team?
 (16) **A. No, I don't.**
 (17) **MS. WAGNER:** That's it.
 (18) **ARBITRATOR GREENBERG:** Anything else, Mr.
 (19) Rains?
 (20) **REDIRECT EXAMINATION BY MR. RAINS:**
 (21) **Q.** Is Kozicki ultimately responsible for doing
 (22) that?
 (23) **A. For?**
 (24) **Q.** Making sure that meeting occurs.
 (25) **A. Well, sir, at this particular scene I believe**

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- (1) **Deputy Chief Kozicki was in charge so yes.**
 (2) **MR. RAINS:** Thank you. That's all.
 (3) **MS. WAGNER:** Are we done batting Inspector Cruz
 (4) around?
 (5) **ARBITRATOR GREENBERG:** We are.
 (6) Inspector Cruz, thank you very much for your
 (7) testimony.
 (8) **THE WITNESS:** Yes, sir.
 (9) **ARBITRATOR GREENBERG:** We have several more
 (10) days to go. I would ask that you not speak to anybody
 (11) about your testimony until we're finished here.
 (12) **THE WITNESS:** All right, sir.
 (13) **ARBITRATOR GREENBERG:** We're off the record.
 (14) **(Recess taken.)**
 (15) **ARBITRATOR GREENBERG:** We're back on the
 (16) record. We took a short break to coordinate about
 (17) witnesses. The next witness likely to be called is Mr.
 (18) Mufarreh. And we've decided that we will have him begin
 (19) his testimony on Monday so we are adjourning for the
 (20) day.
 (21) **MR. RAINS:** Thank you.
 (22) **ARBITRATOR GREENBERG:** Off the record.
 (23)
 (24) **(Whereupon, the proceedings were adjourned for**
 (25) **the day at 4:36 p.m.)**

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(1) STATE OF CALIFORNIA)

(2))

(3) COUNTY OF ALAMEDA)

(4)

(5) I, KATHERINE J. KIRBY, do hereby certify:

(6) That said proceedings were taken before me at said
(7) time and place, and was taken down in shorthand by me, a
(8) Certified Shorthand Reporter of the State of California,
(9) and was thereafter transcribed into typewriting, and
(10) that the foregoing transcript constitutes a full, true
(11) and correct report of said deposition and of the
(12) proceedings that took place;

(13) IN WITNESS WHEREOF, I have hereunder subscribed my
(14) hand this 28th day of June 2011.

(15)

(16)

(17)

(18)

(19)

KATHERINE J. KIRBY, CSR No. 6418

State of California

(20)

(21)

(22)

(23)

(24)

(25)

<p>Concordance Report Unique Words: 1,992 Total Occurrences: 11,636 Noise Words: 384 Total Words In File: 35,752</p> <p>Single File Concordance Case Insensitive Noise Word List(s): NOISE.NOI Cover Pages = 0 Includes ALL Text Occurrences Dates ON Includes Pure Numbers Possessive Forms ON</p> <hr/> <p>** 0 **</p> <p>02:50 [2] 73:11, 12 04 [2] 75:17, 19 06 [2] 2:16; 78:6 09 [1] 54:22</p> <hr/> <p>** 1 **</p> <p>1 [14] 54:17; 63:2; 67:2; 71:21; 73:25; 74:3, 9, 13; 75:11; 76:14; 79:13; 83:15; 107:7; 152:6 1-I [1] 38:9 10 [14] 1:20; 33:11; 43:13; 99:23, 24, 25; 100:17; 102:9; 161:11, 14; 164:18; 177:16, 21; 178:12 100 [9] 12:10; 16:14; 18:16; 29:4, 6; 33:22, 23; 152:23; 153:2 102 [1] 3:19 103 [1] 2:7 10th [2] 3:4; 5:4 11 [3] 115:16; 138:19 114 [1] 2:8 11:12 [2] 3:5; 5:5 12 [1]</p>	<p>87:14 13 [1] 87:14 13:45 [1] 9:17 13:55 [2] 18:18; 30:19 14 [3] 115:2, 8, 15 14:55 [1] 34:18 14:56 [1] 19:12 14:57 [5] 15:14; 16:2; 19:12; 44:5, 20 15 [10] 14:21; 43:14; 133:3; 151:19; 161:11, 14; 164:18; 177:16, 21; 178:12 152 [1] 2:8 15:02 [3] 67:18, 20; 193:2 17 [3] 2:15; 21:6; 150:11 173 [1] 2:8 18 [1] 151:14 181 [1] 2:8 190 [1] 2:9 191 [1] 2:9 195 [1] 2:10 1978 [1] 38:1 1982 [1] 115:8 1995 [1] 116:23 1998 [1] 115:15 1:15 [2] 9:20; 38:21 1:40 [1] 21:11 1:55 [5] 18:21; 19:5, 13; 30:10; 33:3 1st [5] 134:8, 9; 137:12; 147:10, 14</p> <hr/> <p>** 2 **</p> <p>2 [3] 9:18; 133:21, 23 2-I-92 [3] 67:24; 193:3, 4</p>	<p>20 [7] 86:22, 23; 92:8; 101:4, 8; 180:9, 15 20024 [1] 4:4 2008/2009 [1] 78:17 2009 [20] 7:9; 18:18; 38:3; 76:15; 80:25; 87:5, 7; 103:6; 115:2, 8, 15, 23; 125:6; 129:19; 150:20; 152:6; 153:22; 156:18; 168:25; 170:18 2010 [1] 21:6 2011 [3] 1:20; 3:4; 197:14 21 [7] 2:4; 18:18; 87:5; 115:23; 153:22; 156:17; 168:25 219 [2] 54:17; 58:14 21st [28] 7:9, 19; 15:13; 26:9; 27:5; 34:21; 38:3; 44:4; 76:15; 87:7; 125:6; 129:19; 133:19; 137:17, 20, 22; 138:1, 3; 139:13; 140:2, 4; 141:24; 144:15; 146:19; 150:20; 152:9; 156:21; 178:4 22 [1] 150:18 220 [4] 55:5, 17; 62:25; 63:2 221 [2] 66:25; 67:2 222 [1] 68:18 22nd [8] 73:10, 12, 21; 138:4, 5; 139:1; 140:21; 146:13 23 [1] 151:23 2300 [1] 3:23 239 [2] 107:8, 9 23rd [1] 140:22 24 [5] 170:6, 7, 10, 13; 171:19 24th [2] 115:8; 140:22 25 [7] 5:23; 170:6, 17, 20; 171:19; 181:3, 14 25th [1] 170:25</p>	<p>26 [2] 181:15, 18 27 [3] 2:16; 5:24; 78:5 2749 [1] 3:15 2755 [6] 118:23; 120:6; 123:23; 177:13; 190:15; 193:9 2775 [1] 161:24 28th [1] 197:14 298 [1] 101:12 2:04 [1] 121:20 2:25 [4] 116:9, 20; 119:16, 17 2:50 [4] 73:13, 22, 23; 132:20 2:55 [3] 33:5, 6; 34:7 2:57 [1] 19:12 2nd [1] 54:22</p> <hr/> <p>** 3 **</p> <p>3 [4] 19:3; 33:11; 38:14, 15 30 [3] 39:19; 180:9, 15 300 [1] 125:11 32 [2] 2:4; 79:17 33 [7] 124:25; 191:12; 192:2, 12, 21; 193:12 35 [4] 121:21, 23, 24; 176:20 36 [2] 121:24; 156:22 37 [1] 2:5 3:02 [1] 33:13 3:04 [4] 33:12, 13; 34:6; 121:20</p> <hr/> <p>** 4 **</p> <p>4 [12] 2:15; 15:21; 16:5; 17:12, 13, 15; 18:12; 38:11; 44:14, 22; 100:20 40 [4] 121:22, 25; 154:2; 176:20 40b [2]</p>	<p>52:18, 20 430 [1] 4:3 44 [6] 148:4, 6; 150:2, 6, 11 45 [6] 15:8, 9, 11; 44:2; 151:13 46 [7] 16:1, 11; 67:17, 19; 192:25; 193:7 4:36 [1] 196:25</p> <hr/> <p>** 5 **</p> <p>5 [15] 2:16; 24:5; 47:25; 60:11; 77:19, 21; 91:10; 99:22, 24, 25; 100:17; 102:9; 123:13; 170:25; 181:18 5-something [1] 47:24 50 [1] 99:2 500 [1] 3:23 505 [1] 3:6 5150 [3] 50:9, 12, 18 52 [1] 2:5 536 [1] 75:11 57 [10] 73:25; 74:2, 17; 75:25; 78:10; 83:22; 137:2, 3, 6; 146:8 5:30 [2] 42:5; 47:25</p> <hr/> <p>** 6 **</p> <p>6 [2] 2:4; 151:13 6418 [2] 1:19; 197:19 66 [3] 21:18; 134:13, 16 67 [1] 134:19 68 [2] 2:5; 134:17</p> <hr/> <p>** 7 **</p> <p>7 [7] 15:5, 6, 8; 43:25; 67:15; 132:12; 192:24 70 [1] 2:6 701 [1]</p>
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