

1 STATE OF NEW YORK
2 MONROE COUNTY GRAND JURY

3

4 DAY 4:

5

6 Investigation into the death of Daniel T. Prude

7

8

9 Transcript of the Proceedings held before
10 the Monroe County Grand Jury, at the Monroe County,
11 Hall of Justice, 99 Exchange Blvd., Rochester, New
12 York, 14614, on December 9th, 2020.

13

14 APPEARANCES: Letitia James, ESQ.

15 New York State Attorney General

16 Appearing for the People

17 BY: JENNIFER SOMMERS, ESQ.

18 Deputy Chief of Special Investigations

19 BY: MICHAEL SMITH, ESQ.

20 NYS Office of the Attorney General

21

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1 (Proceeding reconvened.)

2 MS. SOMMERS: Good morning, everyone. For
3 the record, how many people are here?

4 MR. SMITH 21. Wait, no. We have -- [REDACTED]
5 [REDACTED] is not here, right? [REDACTED]? So, we have
6 20 people. We're missing three.

7 MS. SOMMERS: Okay. So, we're permanently
8 going to be missing one, because, as you know now, [REDACTED]
9 [REDACTED] So, we do have a new
10 foreperson. Maybe at the break, you can determine
11 who's now going to move into the foreperson and
12 waiting.

13 JURY FOREPERSON: [REDACTED]

14 MS. SOMMERS: We're not counting on
15 anything, but just in case, we would like to have a
16 backup ready.

17 So, we're working with 22 to begin with, and
18 we're grateful that everyone is here and healthy
19 today. It's wonderful. So, but right now, we have
20 20. We'll see if that changes.

21 A couple of things, order. So, as we have
22 kind of gone through this, I think our hope would have
23 been to do this completely chronologically with, like,
24 a very logical order and we have tried to do that to
25 the extent that we could. There were some maybe

1 witnesses that we wish we could have called a little
2 earlier that we couldn't. And, we're going to start
3 today with a witness that we would have preferred to
4 have come earlier, but for various reasons that are
5 unrelated to anything that you need to determine was
6 not possible to do that.

7 Our second witness is somebody that we would
8 prefer to call at the later portions. It's sometimes
9 necessary because, again, it's things beyond our
10 control to call people in order that we would prefer
11 not to.

12 So, our first couple of witnesses today are
13 not necessarily in an order that we would have
14 normally have chosen. If we could have written a
15 script that directed human behavior, in the course of
16 things, but that's just not the way it worked out.

17 So, I don't know if there's anything else to
18 add.

19 All right. So, it's going to be a very full
20 day today, I will tell you that right now. We'll give
21 you a break in the middle of the day. Depending on
22 how the morning goes, will kind of depend on -- will
23 determine how long that break is. But, like, hunker
24 down, it's going to be a day.

25 So, very glad to have you guys back and I

1 think that's all I have to say.

2 One other thing, what Exhibit Number are we
3 up to?

4 JURY SECRETARY: 34.

5 MS. SOMMERS: Before the -- before the
6 witness comes in, I am moving into evidence a
7 certified medical record related to Daniel Prude from
8 Strong Memorial Hospital. The first page of the
9 Exhibit contains the certification necessary for its
10 admission before the Grand Jury. And, the first
11 witness will be testifying relative to some of the
12 information contained within the first pages.

13 So, at this time, I'm moving the medical
14 records into evidence.

15 (Whereupon, Grand Jury Exhibit Number 35,
16 was then received into evidence.)

17

18

19

20

21

22

23

24

25

1 (Whereupon, the witness entered the Grand
2 Jury room at a time of 9:38 a.m.)

3

4

D O C T O R [REDACTED] [REDACTED] [REDACTED]

5

[REDACTED] after being duly called and sworn, testified
6 as follows:

7

8

EXAMINATION BY MS. SOMMERS:

9

Q. Good morning.

10

A. Good morning.

11

Q. So, this is a big room and there's people seated
12 all around, so if it's possible to make sure that your
13 voice is picked up by the mic, that would be great.
14 So, let's start. Could you please state and spell
15 your name?

16

A. My name is [REDACTED]
17 space, [REDACTED], space [REDACTED].

18

Q. Thank you. What is your occupation?

19

A. I'm a physician.

20

Q. Where?

21

A. I work at the Strong Memorial Hospital in CPEP.

22

Q. We'll get to what that is in a moment. Could you
23 please explain for the Grand Jury your educational
24 background?

25

A. I went to medical school at Medical University of

1 the Americas. Then, I did a residency program in
2 child and adolescent psychiatry fellowship program.

3 Q. And, when did you graduate from medical school?

4 A. In 2010.

5 Q. When did you complete your residency?

6 A. 2015.

7 Q. Where did you complete your residency?

8 A. Brookdale University of -- Brookdale University
9 Hospital in Brooklyn, New York.

10 Q. Okay. Do you, as a physician, have a specialty?

11 A. Yes.

12 Q. And, what is that?

13 A. Psychiatry.

14 Q. Are you a licensed Psychiatrist?

15 A. Yes.

16 Q. Thank you. Does Strong Hospital contain what you
17 just referred to as a CPEP?

18 A. Yes.

19 Q. Could you please explain for the Grand Jury what
20 CPEP stands for, what do the letters correspond to?

21 A. CPEP is an acronym for Comprehensive Emergency
22 Psychiatry Program.

23 Q. What is the purpose of the Comprehensive
24 Psychiatric Emergency Program?

25 A. To evaluate the patients for psychiatric

1 disorders in the Emergency.

2 Q. And, what determination is made at the conclusion
3 of that evaluation?

4 A. After our evaluations, the patients are either
5 admitted to the hospital, which is the Psychiatric
6 Unit or discharged from hospital.

7 Q. All right. Does the Psychiatric Emergency
8 Program receive individuals both voluntarily and
9 involuntarily?

10 A. Yes.

11 Q. How might a person, just over all, in general,
12 come to be at CPEP, what are the various -- some of
13 the various ways that they end up in that program, or
14 in that -- yes, in CPEP?

15 A. They can walk in.

16 Q. Okay.

17 A. They can be brought by police, they can be
18 brought by EMS, they can be brought by their family or
19 friends.

20 Q. Okay. What is the relationship of CPEP? So,
21 like, the Psychiatric Emergency to just the regular
22 general Emergency Room?

23 A. It is part of Emergency Room; but, specifically,
24 it is for psychiatric patients.

25 Q. Do individuals who come in with a psychiatric

1 issue of some sort, are those individuals also seen at
2 the regular Emergency Room?

3 A. Could you please repeat one more time?

4 Q. Sure. Are -- individuals who come through CPEP,
5 do those individuals also go to -- are those
6 individuals also seen by physicians or personnel of
7 the regular Emergency Room?

8 A. Yes.

9 Q. Okay. When does that happen?

10 A. All patients, including coming to ER voluntarily
11 and involuntary or brought by police or EMS or
12 families, they all come to ER first, then the
13 determination is made to be sent to CPEP.

14 Q. Does everyone who presents to CPEP ultimately get
15 admitted to the Psychiatric Unit?

16 A. No.

17 Q. All right. What are the criteria that allow for
18 admission to the Psychiatric Unit?

19 A. Either being danger to themselves or to others,
20 or unable to take care of themselves due to a mental
21 illness, and the conditions that patients have that we
22 can treat in the in-patient unit.

23 Q. Okay. Could you give an example of that -- of a
24 type of condition that could be treated in the
25 in-patient unit would be?

1 A. It could be severe depression, schizophrenia,
2 bi-polar disorder, any type of psychosis, anxiety.

3 Q. Do you have -- outside of those criteria, do you
4 have the authority to keep individuals in the
5 in-patient unit or at Strong Hospital if those
6 criteria are not met?

7 A. No.

8 Q. If an individual is under the influence of a drug
9 and -- I'd like to withdraw that. Do you have the
10 authority to keep someone in the hospital based on a
11 prediction that they might take drugs in the future?

12 A. No.

13 Q. Do you have the authority to direct that
14 individuals seek and obtain or go straight to rehab?

15 A. We do make recommendations.

16 Q. Recommendations, yes. But, I'm asking if you
17 have the authority to enforce the recommendation?

18 A. No.

19 Q. Okay. Is there anybody in the -- who does have
20 the authority, based on your experiences, to -- to
21 require someone to attend or submit someone to rehab?

22 A. The court system.

23 Q. And, by rehab, what is your definition of rehab?
24 I should have clarified that.

25 A. It is chemical dependency treatment. It could be

1 any type of chemical dependence, such as alcohol,
2 nicotine, hallucinogens, stimulants, sedatives.

3 Q. Okay. Do you see people on a regular basis who
4 are under the influence of intoxicating substances?

5 A. In CPEP, yes.

6 Q. Okay. How common is that?

7 A. Very common.

8 Q. Okay. If an individual is no longer displaying
9 signs of intoxication, do you have the authority to
10 keep that person or admit them if they are not
11 exhibiting the criteria that you previously discussed?

12 A. No.

13 Q. I'd like to talk to you about an individual by
14 the name of Daniel Prude. And, first of all, note for
15 the record, you do have some records in front of you,
16 correct?

17 A. Yes.

18 Q. Okay. And, are those taken from the actual
19 medical record related to Mr. Prude?

20 A. Yes.

21 Q. Okay. Thank you. Dr. [REDACTED], what time did
22 Daniel Prude arrive at Strong Hospital on March 22nd?

23 A. 7:38 p.m.

24 Q. Thank you. How did Mr. Prude get to Strong
25 Hospital?

1 A. Via EMS.

2 Q. And, would that be an ambulance?

3 A. Yes.

4 Q. Thank you. Was Mr. Prude seen in the Emergency
5 Room?

6 A. Yes.

7 Q. And, do the records indicate that he was seen by
8 a physician or a physician's assistant or nurse or any
9 combination?

10 A. Yes, he was seen by a doctor, a physician.

11 Q. Okay. All right. And, pursuant to the medical
12 records, at the time that Mr. Prude presented at the
13 Emergency Room, was he exhibiting any type of suicidal
14 or homicidal ideation?

15 A. No.

16 Q. Was Mr. Prude physically assessed in the
17 Emergency Room?

18 A. Yes.

19 Q. Was his -- how, if at all, was his physical
20 assessment? Was it remarkable for anything?

21 A. He had small abrasions, which didn't require any
22 medical treatment.

23 Q. Okay. Let me stop you for a moment. Just for
24 the benefit of people that might not know. What are
25 abrasions?

- 1 A. Scratches.
- 2 Q. Okay. Anything else? Thank you.
- 3 A. When he first came to ER his heart rate was 112
- 4 per minute.
- 5 Q. Is that normal?
- 6 A. Slightly higher.
- 7 Q. Okay. So, what would a normal heart rate be for
- 8 an individual approximately Mr. Prude's age?
- 9 A. Up to a hundred.
- 10 Q. Okay. All right. So, this is when he is
- 11 initially at the Emergency Room?
- 12 A. Yes.
- 13 Q. Okay. Anything else, other than the heart rate
- 14 and the abrasions that appeared unusual?
- 15 A. No.
- 16 Q. Okay. Do the records in the Emergency Room
- 17 indicate whether or not Mr. Prude appeared agitated?
- 18 A. No.
- 19 Q. No, they don't indicate it, or they indicate that
- 20 he was not?
- 21 A. They indicated that he was not.
- 22 Q. Okay. What do the records of the Emergency Room
- 23 indicate, relative to Mr. Prude's affect?
- 24 A. I believe the affect was flat.
- 25 Q. Was he -- let me ask it this way. Did he appear

1 to be, based on the records, belligerent at all?

2 A. No.

3 Q. Animated?

4 A. No.

5 Q. Does there come a point in time when Mr. Prude is
6 moved from the Emergency Room to the actual CPEP?

7 A. Yes.

8 Q. Approximately what time does he enter CPEP?

9 A. He arrived to CPEP at 9:52 p.m.

10 Q. And so, approximately how long after arriving at
11 the Emergency Room -- so, by this time, how long has
12 he been at the hospital?

13 A. About two hours, little over two hours.

14 Q. Okay. Who does Mr. Prude interact with upon
15 arrival at CPEP?

16 A. By triage nurse.

17 Q. And, do the triage notes indicate how Mr. Prude
18 was feeling at that time?

19 A. He reported he's feeling better.

20 Q. Okay. And, what, if anything, was done relative
21 to screening for suicidal or homicidal thoughts?

22 A. Yes, he was screened for suicidal and homicidal
23 thoughts.

24 Q. And, what was his -- what was the result of the
25 screen process?

1 A. He denied being suicidal or homicidal.

2 Q. Okay. Was -- while Mr. Prude was in CPEP, were
3 any -- I'd like to withdraw that. Can you explain to
4 the Grand Jury the steps that CPEP takes relative to
5 before an individual is released? Can you just, kind
6 of, in broad strokes go through what those procedures
7 are?

8 A. The person that arrives to CPEP is immediately
9 seen by the triage nurse, assessed for medical needs,
10 assessed for being if they are a danger to themselves
11 or not so we can keep them safe if they are. Their
12 vital signs are taken, which means blood pressure,
13 heart rate, temperature, oxygen situation, sometimes
14 weight and height also are taken. If there's any
15 abnormality, triage nurse immediately informs the
16 doctor. If there's no abnormal vital signs, if
17 there's no concern for psychosis, suicidal ideation,
18 homicidal ideations, patients are seated. They are
19 comforted with sometimes food, drinks. If they ask
20 for medication, they are provided if they are already
21 on those medications.

22 CPEP is a place that is a very large ER type
23 of room. The doctor, nurses, technicians, are seated
24 in the middle and around the area, the whole area is
25 covered with glass, so the patients are constantly

1 observed by the technicians, nurses, even doctors.

2 Q. Okay. Is that what happened in this case with
3 Mr. Prude?

4 A. Yes.

5 Q. Okay. At any time did anyone observe any erratic
6 behavior on the part of Mr. Prude?

7 A. No.

8 Q. Did anyone at CPEP endeavor to reach out to Mr.
9 Prude's family?

10 A. Yes.

11 Q. And was that successful?

12 A. Yes.

13 Q. What was the result of that?

14 A. Social worker reached to his brother, I believe
15 [REDACTED] and --

16 Q. Go ahead.

17 A. And, his psychiatric medical condition was
18 discussed with him.

19 Q. And, what, if anything, did Mr. Prude's brother,
20 [REDACTED], say relative to Daniel Prude's prior
21 psychiatric history?

22 A. He didn't have any psychiatric history.

23 Q. Is that consistent with what Daniel Prude said?

24 A. Yes.

25 Q. Okay. Did [REDACTED]'s brother indicate anything

1 regarding Daniel Prude's substance abuse history?

2 A. Yes.

3 Q. And, what was that?

4 A. He reported that his brother uses PCP and he has
5 several arrests such as --

6 Q. Let me stop you right there.

7 A. Okay.

8 Q. So, his brother indicated that he uses PCP?

9 A. Yes, and alcohol.

10 Q. And, alcohol. All right. Was that consistent
11 with what Daniel Prude indicated to you?

12 A. Yes.

13 Q. All right. Well, let me fast forward a little
14 bit and come back again. Did there come a point in
15 time when you saw Mr. Prude, Daniel Prude?

16 A. Pardon me?

17 Q. Did there come a time when you were able to
18 actually interact with Daniel Prude in the Emergency
19 Room, in the CPEP on March 22nd?

20 A. Yes.

21 Q. All right. Can you just briefly tell the Grand
22 Jury, before you met with him, what types of
23 interventions or what had occurred before he got to
24 you?

25 A. He was definitely seen by the triage nurse and

1 the social worker. Social worker makes an extensive
2 evaluation of the patient. And, he reported to me
3 about the patient. We discussed the patient.

4 Q. Okay.

5 A. We discussed what he found out from his brother.
6 We discussed what the circumstances he was brought to
7 CPEP, ER and CPEP.

8 Q. Okay. And, are you also able to review the
9 records relative to the symptoms that -- or signs or
10 conditions that Mr. Prude was exhibiting before he
11 gets to you?

12 A. Some of the records.

13 Q. Okay. The records that you reviewed, is there
14 any indication from the time that Mr. Prude got to
15 Strong Hospital until you're -- you were speaking with
16 him, that he was delusional?

17 A. He was.

18 Q. He was delusional?

19 A. Some of the reports said that he was.

20 Q. Which ones?

21 A. Per police report.

22 Q. Okay.

23 A. He reported that he saw Jesus.

24 Q. Okay. So, is that prior to him coming to the
25 Emergency Room, or is that while he's in the Emergency

1 Room?

2 A. Much before he came to Emergency Room.

3 Q. Okay. From the time that he got to the Emergency
4 Room onward, did he appear to be also having those
5 same types of delusional issues?

6 A. No.

7 Q. Was Mr. Prude's brother able to shed any light on
8 Mr. -- on Daniel Prude's condition when he's not using
9 substances?

10 A. Per his brother, he had no psychosis if he didn't
11 use substances.

12 Q. Did Mr. Daniel Prude acknowledge using any
13 intoxicating substances that day?

14 A. He told me using cannabis and alcohol.

15 Q. And, does Strong Hospital provide any type of a
16 panel screening relative to individuals that come in
17 for -- for intoxicating substances?

18 A. Yes.

19 Q. Was one done in this case on Mr. Prude?

20 A. Yes.

21 Q. What, if anything, were the results of the
22 screening test?

23 A. His alcohol was less than ten, which is negative.

24 Q. Okay.

25 A. Not intoxicated. And, his urine toxicity showed

1 cannabis.

2 Q. Okay. Was that consistent with the history that
3 he gave?

4 A. Yes.

5 Q. Did Mr. Prude indicate anything to you regarding
6 the use of PCP?

7 A. Yes.

8 Q. What, if anything, did he say?

9 A. He said he uses a lot of PCP. Last used was
10 five, six days ago.

11 Q. All right. Does the panel test that Strong uses
12 capture or test for PCP?

13 A. No.

14 Q. Is PCP a substance that is seen regularly at CPEP
15 or in the Emergency Department at Strong?

16 A. No.

17 Q. Have you ever, since being at Strong Hospital,
18 observed an individual who is intoxicated by PCP?

19 A. At Strong, no.

20 Q. Okay. Prior to coming to Strong Hospital, have
21 you had the occasion to view or observe an individual
22 or individuals who have been intoxicated acutely by
23 the use of PCP?

24 A. Yes.

25 Q. Can you explain what sort of behaviors you have

1 observed?

2 A. They were -- excuse me. They were very
3 belligerent, very assaultive, threatening to kill
4 themselves, kill others, they were extremely agitated,
5 punching, kicking, swearing, yelling, shouting.

6 Q. Okay. Based on your prior observations of
7 individuals who are acutely intoxicated by PCP, did
8 you form an opinion as to whether or not Mr. Prude was
9 exhibiting signs of acute PCP intoxication at the time
10 that you're dealing with him?

11 A. No.

12 Q. No, you didn't form an opinion, or yes, you did
13 and it was that he was not?

14 A. I had an opinion, but my opinion was that he was
15 not intoxicated.

16 Q. Okay. What was Mr. Prude's affective behavior as
17 you're speaking to him at 10:45 in the evening?

18 A. He was very calm, cooperative, polite, pleasant.
19 He answered all questions appropriately.

20 Q. Can I ask you to stop there for a moment? When
21 you say answering questions appropriately, what is the
22 significance of that? Is that a significant factor?

23 A. Yes.

24 Q. Why?

25 A. Answering questions appropriately indicates to me

1 that the person is not intoxicated, not psychotic. A
2 person, the ones that I see intoxicated with alcohol,
3 PCP, or any substances -- maybe, except caffeine,
4 nicotine, they could be -- you answer them a question,
5 they answer something else. They might be laughing,
6 crying, giggling. They are just inappropriate to the
7 situation.

8 Q. Did you observe any of this relative to Daniel
9 Prude?

10 A. No.

11 Q. At any time during your interaction with Mr.
12 Prude, did he reference, I'm using a quote, Jesus
13 Christ, or any type of higher power, any -- anything
14 like that?

15 A. No.

16 Q. Upon meeting with Mr. Prude and hearing the
17 history, did you form an opinion as to what would be
18 an appropriate place for him going forward?

19 A. Yes.

20 Q. And, what was that?

21 A. It was chemical dependency treatment.

22 Q. Okay.

23 A. Common language, rehab.

24 Q. Okay. Did you explain to Mr. Prude what your
25 recommendation was?

1 A. Yes.

2 Q. And, what was his response?

3 A. He declined.

4 Q. Do you, as a physician in CPEP, have the
5 authority -- I'd like to withdraw that. Did you have
6 the authority to direct Mr. Prude to go to rehab?

7 A. No.

8 Q. Did there come a point in time when you
9 authorized Mr. Prude's release?

10 A. Yes.

11 Q. And, could you explain to the Grand Jury why you
12 determined that Mr. Prude should be released?

13 A. After discussing the case with the social worker
14 and with his brother, we determined that he didn't
15 need or require emergency psychiatric admission
16 because he denied all safety concerns, including being
17 suicidal or homicidal. He was not intoxicated. He
18 was definitely not psychotic, and he wanted to be also
19 discharged.

20 Q. Did the social worker discuss a safety plan with
21 Mr. Prude's brother?

22 A. Yes.

23 Q. And, what, just in sum, what was that?

24 A. He discussed about having access to firearms,
25 which [REDACTED], indicated that they had no

1 firearms. Social worker also discussed that [REDACTED]
2 locks, secure all sharps and medications at home so
3 Mr. Daniel Prude wouldn't have access to them.

4 Q. Did Mr. -- did [REDACTED] indicate they he had any
5 issues with Mr. Daniel Prude coming home?

6 A. No.

7 Q. By home, I mean, [REDACTED] home?

8 A. No.

9 Q. Okay. Dr. [REDACTED], since meeting with Daniel Prude
10 on March 22nd, have you had the opportunity to see
11 video tape of him from before you met with him, and
12 after you met with him?

13 A. Yes.

14 Q. Okay. First of all, when you meet with
15 individuals in CPEP, are you given access to, for
16 instance, police body worn camera footage as to how
17 they were behaving before they came to the hospital?

18 A. No.

19 Q. Was Mr. Prude exhibiting any of the signs and
20 symptoms that you observed on the video at the time
21 that you dealt with him and spoke with him in CPEP?

22 A. Could you please rephrase or repeat the question?

23 Q. Yes. Sure. At the time that you dealt with, and
24 by dealt with, I mean interacted with Mr. Prude and
25 determined whether or not he should be released, was

1 Mr. Prude presenting with any of the symptoms or signs
2 or behavioral characteristics that you could see on
3 the video that you were -- ultimately were able to
4 review?

5 A. No.

6 Q. If Mr. Prude had been -- well, actually, I'd like
7 to withdraw that. Can you give -- what do you mean by
8 that? What types of things could you see on the video
9 that he did not present with when you met with him?

10 A. In the video that I saw before he was brought to
11 CPEP, he was standing, somewhat loud and claiming to
12 see Jesus, claiming his brother wanted to kill him,
13 something in that line.

14 Q. Okay. Was he saying any of those things when you
15 interacted with him?

16 A. No.

17 Q. Was he -- was his behavioral affect that type
18 when you were interacting with him?

19 A. No.

20 Q. If Mr. Prude had been behaving that way, had been
21 saying those types of things in CPEP, would you have
22 made the decision to release him when you did?

23 A. Not at that moment.

24 Q. Okay. I want you to explain that. When you say
25 not at that moment, what do you mean?

1 A. If he demonstrated any of those behaviors and
2 delusional statements, we could have kept him in the
3 hospital longer until he is no longer intoxicated.

4 Q. Okay. Are you permitted to keep an individual or
5 admit an individual once they have become not
6 intoxicated based on a risk that they may go out and
7 become intoxicated again?

8 A. No.

9 Q. I don't think we covered, just one thing I wanted
10 to ask. What is a DIRA. D-I-R-A.

11 A. It is the safety assessment of the patient for
12 suicidal risk, homicidal risk, violence risk.

13 Q. Okay. And, was that -- is that performed on any
14 individual who is released from CPEP?

15 A. Yes.

16 Q. Was it performed in the case of Mr. Prude?

17 A. Yes.

18 Q. What was the result of the risk assessment?

19 A. Low. No risk.

20 MS. SOMMERS: So, I'm not going to have
21 Dr. [REDACTED] leave. I'm going to ask if you have
22 questions and I'll screen them, and I will ask them.
23 Yes.

24 A JUROR: Based on the Doctor's observation
25 of the videos and then her seeing him in person, is

1 there a medical explanation why the behavior would be
2 a certain way, then calm down, and then, again, flare
3 up again?

4 BY MS. SOMMERS:

5 Q. So, I'm not sure if you heard the question; but,
6 based upon your review of the video, and then what was
7 observed and documented in the hospital, are you able
8 to form an opinion, based on your history and training
9 and observations of other individuals, as to why a
10 person might present one way and then another way when
11 they are seen?

12 A. Yes, I do have an opinion.

13 Q. Okay. What was that -- what is that?

14 A. I feel that Mr. Prude probably used some
15 substances before coming to hospital. He admitted to
16 me that he used cannabis and alcohol. It is possible
17 that he used some PCP as well, but I don't know
18 because he denied that. However, both alcohol and
19 cannabis intoxication was affecting him while he was
20 at home, but by the time he came to ER, he was already
21 clearing up and by the time we saw him, he was
22 completely out of the substances that were affecting
23 him.

24 Q. Did you form an opinion then, upon seeing the
25 videos, that what you observed on the video, was

1 caused simply by cannabis and alcohol?

2 A. It could be. Also, it could be part of the PCP
3 intoxication. I don't know.

4 Q. So, just to be clear, Strong does not test for
5 PCP, correct?

6 A. No.

7 Q. All right. Is it uncommon for people to behave
8 one way when they are intoxicated, and then a
9 different way as that drug is removed from their body?

10 A. Absolutely.

11 Q. Okay.

12 A JUROR: The rest of his question is, how
13 did you explain the subsequent behavior, post
14 hospital?

15 BY MS. SOMMERS:

16 Q. So, again, if you see somebody who is -- I'll
17 rephrase that. You've had the opportunity to witness
18 videos of Mr. Prude, both before and after you saw
19 him, correct?

20 A. Yes.

21 Q. And, if I understand your testimony, had the
22 behavior he exhibited, kind of, in the middle, so
23 during the time that he was at the hospital, was not
24 the behavior that was seen in those videos, is that
25 correct?

1 A. Right.

2 Q. I want to make sure I'm not mis-stating anything.
3 Is that -- am I accurately presenting that?

4 A. Yes.

5 Q. What would be a reason why somebody might act one
6 way, and by act, I mean, have behavioral
7 characteristics, after a time that they had been, kind
8 of, not displaying those behaviors?

9 A. He probably went home and used more substances.

10 Q. So, I'll only give a caution that there may be
11 some testimony about what -- what, if anything, was --
12 Mr. Prude may have been -- may have been in his drug
13 screen at a later time. So, you don't know that,
14 correct?

15 A. I don't know.

16 Q. Okay. And, you're only asking a question based
17 on, kind of, speculation, but nothing in terms of hard
18 facts?

19 A. I'm stating only with the -- my trained guess.

20 Q. All right. Thank you.

21 A JUROR: Is it -- along the same lines. Is
22 it possible, based on the Doctor's experience, and
23 previous -- are people previously intoxicated by PCP,
24 that the behavior that Daniel displayed after she met
25 with him, was the result of a relapse without having

1 ingested more drugs?

2 THE WITNESS: If I -- I think what you're
3 asking me is that his behavior is not re-use of
4 substances, but his behavior is as a result of
5 previous ingestion of substances?

6 A JUROR: Correct.

7 THE WITNESS: That, I don't know.

8 A JUROR: Okay.

9 MS. SOMMERS: Yes?

10 A JUROR: So, earlier she stated that -- so,
11 he entered the CPEP at around 9:52, and then he was
12 screened for suicidal or homicidal thoughts. So, my
13 question is -- well, before I ask the question, he
14 denied being either, right?

15 MS. SOMMERS: Well, I'll ask her.

16 A JUROR: Okay. So, my question is, was
17 there some type of questions that -- did they just
18 determine that, based on what his answer was, or did
19 they have some type of questions that they asked and
20 maybe, based on his answers, because him saying that
21 he was not suicidal or homicidal, was it determined
22 off that?

23 BY MS. SOMMERS:

24 Q. Dr. [REDACTED], was Mr. Prude screened for homicidal
25 and suicidal ideations once or more than once during

1 this time at Strong?

2 A. He was assessed for that in ER Triage by ER
3 Doctor, CPEP Triage, social worker and I. Five times.

4 Q. Okay. And, can you explain -- what does that
5 entail? Is it -- is it asking someone, do you want to
6 kill yourself. I'm not trying to say that. I'm just
7 asking, how is that -- how is that assessed?

8 A. Actually, I'd like to go back to DIRA that you
9 asked me.

10 Q. Absolutely.

11 A. In DIRA, which is the assessment of safety for
12 persons for themselves or risk of danger to themselves
13 and others, there's a battery of questions, including
14 the Columbia Suicidal Risk Assessment that is given to
15 the patient. Those questions are asked. Those
16 questions are, like, past suicidal behavior, past
17 suicidal ideations, past suicidal attempts, family
18 history of suicides, current suicidal ideations and
19 homicidal ideations in this case that you're asking.
20 Patient's engagement with the providers, including the
21 social worker and nurses, the doctors, patient's
22 overall mental health, patient's overall
23 presentations, patient's future hopes, plans, goals in
24 life, protective factors, risk factors. They are all
25 asked and put in the formulation. That's what DIRA

1 does.

2 MS. SOMMERS: Okay. Does that answer your
3 question?

4 A JUROR: Yes.

5 BY MS. SOMMERS:

6 Q. So, just to take an example, did Mr. Prude have,
7 for instance, goals?

8 A. Yes, he wanted to go back to Chicago. He was
9 working man. He had family, grandchild, grandmother.
10 He valued all the family. He was very family
11 orientated person. So, he wanted to go back and be
12 with his family.

13 Q. And, he -- this is what he indicated while he was
14 being assessed?

15 A. Yes.

16 Q. Okay.

17 MS. SOMMERS: Does that answer the question?

18 A JUROR: Yes.

19 MS. SOMMERS: Does anyone else have a
20 question?

21 A JUROR: Is there any consideration of the
22 possibility that it was something other than
23 intoxication or is that a forgone conclusion?

24 MS. SOMMERS: When you say it, what do you
25 mean?

1 A JUROR: Of his behavior.

2 BY MS. SOMMERS:

3 Q. So, the behavior that you witnessed on the
4 videos, both before and after, would intoxication, by
5 some substance, be the only thing that could bring
6 about behavior like that?

7 A. Patients who are psychotic in nature without the
8 intoxication of drugs, including schizophrenia,
9 sometimes bipolar disorder, sometimes simple
10 depression or anxiety, their symptoms are not
11 intermittent, like, on and off. Most of the time --
12 let me take it back. They could be intermittent, but
13 not, like, within a few hours. For example, if a
14 schizophrenic patient is demonstrating severe
15 agitation, of what we call psychotic agitation, and
16 they are psychotic, it doesn't stop in a few hours and
17 they cannot keep themselves calm and cooperative,
18 pleasant, completely normal for, like, several hours
19 that Mr. Prude has been in CPEP, and then go back and
20 immediately start acting psychotic.

21 So, that is the one reason that my educated
22 trained guess was that he was using substances in
23 between.

24 MS. SOMMERS: Does anyone have --

25 A JUROR: I'm just wondering about the

1 timeline clarity on that. So, when we see Daniel
2 being escorted by the police, by the ambulance, he's
3 fluently psychotic, from what it appears, he's in the
4 throws. How long does it take to drive from -- from
5 the time that he was put in the ambulance in that
6 state and arrived at the ED, where it seems, according
7 to what we're hearing, there was no symptoms.

8 MS. SOMMERS: So, I don't know that this
9 witness would be able to answer that. But, I --
10 before the case is all over, we could definitely
11 reassess the timeline. So, I agree with your
12 question. But, maybe this witness is not the one to
13 answer it.

14 BY MS. SOMMERS:

15 Q. Do the records indicate, I just want to
16 reiterate, what time it was that he physically came to
17 the -- to the Emergency Room?

18 A. He came to Emergency Room at 7:38 p.m.

19 Q. All right. And we can --

20 A JUROR: About twenty minutes --

21 MS. SOMMERS: And, again, I do want to say
22 there will be, I think, testimony this morning about
23 whether or not any substances actually were found on
24 the screen.

25 A JUROR: Asking her experience, in

1 retrospect, because she saw the film of what he was
2 like before he got to the hospital. Would -- in her
3 experience, would she know, would they have given him
4 anything in the ambulance to try to calm him down or
5 would they not? I know this is all hypothetical, but
6 does she know?

7 BY MS. SOMMERS:

8 Q. Are the ambulance records, in fact, part of the
9 hospital records?

10 A. Yes.

11 Q. All right. Were you able to review the ambulance
12 records to see if any -- actually, I'll rephrase that.
13 Were any substances given to Mr. Prude from the
14 ambulance to his discharge?

15 A. Mr. Prude was not given any substances,
16 medications to calm him down either in ambulance or ER
17 or in CPEP. As a matter of fact, according to
18 ambulance report, he never said that he was -- he was
19 never agitated, so there was no need of medication.
20 He was alert and oriented.

21 Q. If I -- based on the ambulance records that have
22 come in, he also, in the ambulance record though, does
23 indicate things about Jesus Christ. Is that -- am I
24 -- and, again, it's based on the records here, I'm not
25 trying put words in your mouth.

1 A. Am I allowed to read the EMS report?

2 Q. It's in evidence so, yes.

3 A. EMS 741 states, EMS 741 is cleared by RPD.

4 Patient is laying on his stomach with his hands cuffed
5 behind his back. RPD and family report that the
6 patient was making suicidal statements, took PCP and
7 has been drinking liquor. Patient is assisted to the
8 standing position and starts making suicidal
9 statements, patient admits to PCP, drinking liquor and
10 smoking marijuana, and then continues.

11 Q. So -- but, within the actual text of what was
12 said within the ambulance, does Mr. Prude make any
13 comments about, for instance, Jesus or God?

14 A. I don't see about Jesus or God. Oh, I'm sorry.
15 Let me see. Yes, there is. Stating during transport
16 that he is Jesus and he is sorry, patient then starts
17 saying Jesus is good and wants to see his grandson.

18 MS. SOMMERS: Okay.

19 A JUROR: So, to further understand then.
20 So, in your training as a Psychiatrist, any
21 explanation you might think why he would so quickly go
22 from so extreme to demere?

23 THE WITNESS: Again, my guess is he was
24 already clearing up by the time the police came, but
25 gradually, he cleared up and by the time I saw him

1 four or five hours later, he was completely cleared.
2 But, even in ER, he seemed to be just normal, I guess.

3 MS. SOMMERS: Yes?

4 A JUROR: Is there a test for PCP?

5 MS. SOMMERS: We will get into that, I
6 think, with the next witness. I believe you indicated
7 that at Strong, there is no screening test, is that
8 correct?

9 THE WITNESS: We don't do that usually.

10 MS. SOMMERS: Yeah.

11 THE WITNESS: If you have to order it
12 specially, it can be done, but we don't have in
13 regular tests.

14 MS. SOMMERS: Anything else? Yes?

15 A JUROR: So, if -- I'm assuming that the
16 video was seen after Daniel had been admitted, the
17 video she's talking about?

18 BY MS. SOMMERS:

19 Q. Did you see the video of Mr. Prude before and
20 after you dealt with him at a later date?

21 A. Yes.

22 A JUROR: So, she's going by what the
23 ambulance records and the police department had said
24 regarding why he was being brought in in the first
25 place?

1 A JUROR: From the report.

2 MS. SOMMERS: So, I'll rephrase it.

3 BY MS. SOMMERS:

4 Q. I think we said previously, you're not -- are you
5 privy, are you able to review, like, for instance, a
6 body worn camera in your capacity as a CPEP
7 Psychiatrist?

8 A. No.

9 Q. Okay. In terms of reviewing and determining why
10 you're interacting and dealing with an individual, are
11 you able to review the ambulance report?

12 A. At that time, I did not review the ambulance
13 report because it came much after.

14 Q. Okay. What were you basing your review on?

15 A. There was MHA report.

16 Q. Okay. And, is that completely by the Rochester
17 Police Department?

18 A. Yes.

19 Q. Okay. And did the MHA report indicate that Mr.
20 Prude had consumed -- there was a suspicion that Mr.
21 Prude had consumed PCP?

22 A. Yes, it did.

23 Q. Okay. I want to be clear here. If an individual
24 appears to be under the influence of an intoxicating
25 substance, do you have the authority to -- to admit

1 that person in-patient?

2 A. No.

3 Q. Okay. What do you have the authority to do?

4 A. If they are intoxicated, I have the authority to
5 keep them until their intoxication is over.

6 Q. Okay.

7 A. And, after that, especially, if they want to be
8 discharged, I discharge them.

9 Q. Did Mr. Prude wish to be discharged?

10 A. Yes.

11 Q. Okay.

12 A JUROR: So, one other question to follow
13 up. Does Mr. Prude, in his medical records chart,
14 does he have a history with Strong or hospitalization
15 that you could go back and review prior to seeing him?

16 A JUROR: That's a good question.

17 BY MS. SOMMERS:

18 Q. Was there any indication in the medical
19 records -- is there any indication that Mr. Prude had
20 ever been at Strong Hospital before?

21 A. No, he's never been before.

22 A JUROR: Two parts and then I'm done. Did
23 she have any access to any previous mental health
24 arrests; and, if he had no symptoms of being
25 homicidal, suicidal and she had no idea or anything

1 else, mental health wise, why was the family involved
2 with the social worker about not having firearms and
3 guns in the house, knives in the house, if he showed
4 no symptoms of being suicidal homicidal?

5 BY MS. SOMMERS:

6 Q. So, did you have any access or indication that
7 Mr. Prude had ever experienced a mental health arrest
8 previously?

9 A. He denied, his brother denied.

10 Q. So, both he and his brother?

11 A. Yes.

12 Q. Okay. And, was there any evidence in the Strong
13 Hospital records that Mr. Prude had ever been brought
14 to the hospital before on a mental health arrest, or
15 mental hygiene arrest?

16 A. He had no records.

17 Q. Okay. The grand juror had asked if -- can you
18 explain why Mr. Prude's brother was contacted?

19 A. To get information on the -- on Mr. Daniel
20 Prude's medical history, psychiatric history,
21 substance abuse history, how he was behaving and to
22 keep the house safe.

23 MS. SOMMERS: I don't know if I asked it
24 exactly. So, did that answer your question?

25 A JUROR: Well, who released him? Did this

1 physician release him or was it the hospital?

2 BY MS. SOMMERS:

3 Q. So, who authorized Mr. Prude's release?

4 A. Eventually, I do. It's a team work but the
5 social worker, nurses and me, but I do release him. I
6 can comment on why we had to ask his brother about
7 securing the guns, knives, sharps, medication. It is
8 our discharge planning that anybody who comes to CPEP
9 with any thoughts of suicidal ideation, it is part of
10 the discharge plan that we make sure that they don't
11 have access to guns or weapons and any -- if there are
12 any sharp objects, like, large swords, knives, and
13 medication should be secured until, like, the patient
14 -- it is part of the safety planning. I don't know if
15 that answers your question.

16 MS. SOMMERS: Does that answer your
17 question?

18 A JUROR: Yep. Thank you.

19 MS. SOMMERS: Anyone else? Yes?

20 A JUROR: I think I recall [REDACTED], he
21 stated that he didn't -- no one informed him of Daniel
22 being released. I wanted to ask.

23 BY MS. SOMMERS:

24 Q. So, do the medical records indicate whether or
25 not -- whether or not [REDACTED] knew his brother would

1 be coming home?

2 A. When he was contacted by the social worker, his
3 discharge plan was discussed with him and documented
4 along with the safety plan.

5 Q. How do individuals leave Strong Hospital when
6 they're discharged?

7 A. We make sure that they have transportation. It
8 could be a cab, it could be bus passes. Sometimes
9 families offer to come and pick the patients up from
10 CPEP.

11 Q. Are you able to say, based on review of the
12 medical records, which one happened in this case?

13 A. He was given a cab.

14 Q. Okay.

15 MS. SOMMERS: Yes?

16 A JUROR: Was COVID part of the decision to
17 discharge him? This was right at the beginning of the
18 lock downs of hospitals. Was that part of the
19 decision to discharge him?

20 BY MS. SOMMERS:

21 Q. Did the fact that COVID -- the pandemic was sort
22 of in the early stages, did that impact your decision?

23 A. Absolutely not. Actually, during the worst part
24 of the COVID pandemic, I don't know if we are even
25 getting closer, but we never closed. CPEP was fully

1 functioning.

2 A JUROR: Just a reminder. When was he
3 actually discharged? What time?

4 BY MS. SOMMERS:

5 Q. What time was Mr. Prude discharged?

6 A. Actual getting into a cab, that I don't know.
7 But, at 10:55 p.m., patient's brother was notified by
8 phone of discharge and given a watch of cab to his
9 brother's home. That's what I have. But, this is
10 written in the medical records, I don't know.

11 MS. SOMMERS: So, that is based on the
12 records in front of the Grand Jury in Grand Jury
13 Exhibit Number 35.

14 A JUROR: Ask, when did you release him from
15 CPEP.

16 THE WITNESS: Actually, he was there until
17 he went to cab. He was in CPEP until he got into cab.

18 MS. SOMMERS: Anyone else? Okay.

19 Dr. [REDACTED], thank you very much. I appreciate it.

20 (Whereupon the witness left the Grand Jury
21 room at a time of 10:38 a.m.)

22

23

24

25

1 MS. SOMMERS: Okay. We're going to call our
2 next witness and then have a break. So, if anyone
3 really needs a break, go out the back door super
4 quick.

5
6 (Whereupon the witness entered the Grand
7 Jury room at a time of 10:45 a.m.)

8
9 MR. SMITH: At this time, we're going to
10 call [REDACTED].

11
12 **D O C T O R** [REDACTED] [REDACTED],
13 after being duly called and sworn, testified as
14 follows:

15
16 **EXAMINATION BY MR SMITH:**

17 Q. Good morning, Dr. [REDACTED]

18 A. Good morning.

19 Q. Could you state and spell your first and last
20 names for the record?

21 A. Sure. I'm [REDACTED]. [REDACTED].
22 [REDACTED].

23 Q. What is your current position, Dr. [REDACTED]

24 A. I am the Medical Examiner for the Monroe County
25 Office of the Medical Examiner.

1 Q. Dr. [REDACTED], how long have you been the Medical
2 Examiner for Monroe County?

3 A. Since 2016.

4 Q. And, how long -- let me ask you this. Prior to
5 being the Medical Examiner, were you employed by the
6 Monroe County Office of the Medical Examiner?

7 A. I was. I joined the office in July of 2011.

8 Q. How long in total then with the office?

9 A. Nine years.

10 Q. How long again as the Medical Examiner?

11 A. Four years.

12 Q. And, Doctor, what is the occupation of a Medical
13 Examiner?

14 A. A Medical Examiner is typically a Forensic
15 Pathologist, and a Medical Examiner is responsible for
16 examining cases of sudden non-expected deaths that
17 fall under the jurisdiction as assigned by New York
18 State law.

19 Q. Dr. [REDACTED], can you describe your education and
20 training to be a Forensic Pathologist for the Grand
21 Jury?

22 A. Sure. After four years of high school, I did
23 four years of college level work at Brooklyn College.
24 I graduated with a Bachelor of Science in Biology. I
25 then moved on to SUNY downstate, where I did a

1 Doctorate in Medicine. I moved up to the University
2 of Rochester, where I did a four year residency
3 program in anatomic and clinical pathology. During
4 that time period, I took and passed the last examine
5 required for licensing and practice of medicine. I
6 obtained a New York State Medical License, which is
7 still valid. Following a residency, I took and passed
8 the board certifying exam to practice both anatomic
9 and clinical pathology. I then moved to the
10 University of New Mexico, where I did a one year
11 fellowship in forensic pathology. I then took and
12 passed the board certifying exam to practice forensic
13 pathology. And, within the last couple of months, I
14 took and passed my ten year recertification exam, so I
15 am now a lifetime board certified physician.

16 Q. So, in fact, Dr. [REDACTED], you are a medical
17 doctor?

18 A. I am.

19 Q. And, you are board certified?

20 A. I am.

21 Q. As you just mentioned.

22 A. Yes.

23 Q. And, in what area are you board certified?

24 A. In anatomic, clinical and forensic pathology.

25 Q. Dr. [REDACTED] can you just explain right now for

1 the Grand Jurors what forensic pathology is?

2 A. Sure. Forensic pathology is a subheading of
3 anatomic pathology, which deals with the investigation
4 and examination of cases of sudden and non-expected
5 deaths.

6 They fall under four different categories.
7 One of them is a natural manner of death, and those
8 cases are cases where either the person has no known
9 medical history, or there is medical history, but the
10 circumstances of the death don't match the medical
11 history that we're aware of. Suicidal deaths, so an
12 intent to harm oneself. Those can be drug overdoses,
13 gunshot wounds, sharp forced injuries, falls from
14 heights. Any accidental deaths. So, again, drug
15 overdoses, car accidents, falls, very, very rarely
16 gunshot wounds, and any death at the hands of another.
17 And, when we assign a case, based on the death of the
18 hands of another, we usually use the term homicide.

19 Q. Doctor, those designations that you just
20 described, are those manners of deaths?

21 A. They are.

22 Q. That's part of what a Forensic Pathologist does?

23 A. That is correct.

24 Q. Dr. [REDACTED], specifically, with the Monroe County
25 Office of the Medical Examiner, what's the

1 jurisdiction of that office?

2 A. So, we cover Monroe County and nine to twelve
3 counties surrounding Monroe County.

4 Q. And, obviously, that would include unattended
5 deaths, unexpected, unattended deaths in the City of
6 Rochester?

7 A. Yes.

8 Q. Now, Dr. [REDACTED], what are some of the duties and
9 responsibilities, just generally, of the role of the
10 Medical Examiner of the Monroe County Office of the
11 Medical Examiner?

12 A. Sure. So, in addition to the administrative
13 responsibilities, including supervision of staff and
14 budget and regular standards of operating procedures,
15 I'm also responsible for performing autopsies to help
16 determine the cause of death in those four categories.

17 Q. Doctor, I am going to talk a little bit, just
18 generally, about autopsies now. And, can you just,
19 sort of, explain for the Grand Jurors what is an
20 autopsy?

21 A. Sure. So, an autopsy is broken down into two
22 main categories. There is an external examination and
23 an internal examination. The external examination
24 really is a naked eye view of the body. It is the
25 documentation of the body as it is presented to us.

1 So, we are documenting everything from the clothing an
2 individual is wearing, to any identifying features.
3 So, the length and color of the hair and eyes, any
4 tattoos, any scars. We're looking for evidence of a
5 natural disease. So, is there evidence of some kind
6 of cancer, or do we see changes on the outside of the
7 body that are consistent with diseases that we
8 associate with something internal.

9 We're also looking for medical intervention
10 because you never want to associate something done at
11 the time of resuscitative efforts or in an effort to
12 save an individual, you don't want to mistake that for
13 evidence of trauma. And, finally, we're looking for
14 evidence of trauma.

15 We then move on to the internal examination
16 and, depending on the type of case we're dealing with,
17 what category, or what manner of death we're dealing
18 with, we can either do a full internal examination,
19 which is an organ by organ examination and then a
20 description or write-up, or we may do parts of the
21 body and exclude others.

22 Depending on the circumstances of the case,
23 between the external and internal examination, we may
24 also take imaging X-rays looking for corresponding
25 injuries from what we see externally, or from what we

1 would expect based on the circumstances. And, when we
2 do our internal examination, again, depending on the
3 circumstances of the case, we may take samples for
4 toxicology, we may take samples for microscopy, so to
5 look at under the microscope. We may take little
6 samples looking for infections, because those are not
7 always very visible with the naked eye.

8 So, depending on the circumstances of the
9 case, there are a lot of little components that go
10 into what an overall autopsy is.

11 Q. Following up on the toxicology, Dr. [REDACTED] can
12 you sort of explain that a little further, more
13 further in depth of what that is?

14 A. Sure. So, toxicology is the examination of
15 samples from the body, specimens from the body. And,
16 it can be anything from fluid specimens, like, urine
17 and blood, the fluid in the eyes. Or, it could even
18 be pieces of tissue, liver, muscle. And, those are
19 sent off to a toxicology lab and that lab is then --
20 uses those samples to determine whether or not there
21 are any medications, illicit drugs, or any other
22 substances that may be in the body that may contribute
23 to the death.

24 Q. And, why is that important when understanding the
25 cause and manner of death?

1 A. Because you want to have as much information
2 about your case to be able to put the pieces together
3 to determine what the cause is of that death.

4 Q. Following up on that, Dr. [REDACTED] if there were,
5 and this is a hypothetical, if there were underlying
6 medical records, hospitalization records, for a
7 decedent, is that something that you would want to
8 review as part of the autopsy process?

9 A. Yes. You want as much information as you can
10 get.

11 Q. I'll ask you the same question. But, if there
12 were photographs or videos depicting an incident that
13 lead to somebody's death, would that be important to
14 review for the autopsy purpose?

15 A. Yes.

16 Q. And, again, just why, Doctor?

17 A. Because, again, you want to make sure that you
18 have the entire picture before you make a
19 determination as to the cause of death.

20 Q. And, Doctor, I think we did sort of touch on
21 this, but, just generally, what is the purpose of the
22 autopsy?

23 A. So, the autopsy is to determine the cause of
24 death.

25 Q. And, Doctor, when you're doing the autopsy, do

1 you document the findings that you just sort of
2 described as you're doing the internal and external
3 examinations as you go?

4 A. Yes, I do.

5 Q. And, at the Monroe County Office of the Medical
6 Examiner, is the case of each unique decedent assigned
7 a unique case number?

8 A. Yes, it is.

9 Q. Dr. [REDACTED], at the conclusion of the process, do
10 you issue an autopsy report at the end containing your
11 findings?

12 A. Yes, I do.

13 Q. Again, that would be after reviewing all of the
14 information that you just discussed?

15 A. All of the available information, correct.

16 Q. And, that autopsy report would include cause and
17 manner of death?

18 A. Correct.

19 Q. I'm going to just ask again, Doctor, and I know
20 we kind of touched on that a little bit, but, briefly,
21 about cause and manner of death. When you refer to
22 cause of death in an autopsy report or, first, a cause
23 of death, what specifically, are you meaning, Dr.

24 [REDACTED]?

25 A. So, that is the reason that someone died. It's

1 the autopsy findings in light with all of the
2 ancillary testing that goes along. So, we put all of
3 that information together to determine what is the
4 most specific cause of death, or the most specific
5 events that led to that individual's death.

6 Q. And, Dr. [REDACTED], are you always able to
7 determine the exact mechanism or acute cause of death?

8 A. No.

9 Q. And, Doctor, is it possible for there to be one
10 or more findings that contribute to cause of death?

11 A. Yes.

12 Q. And just, again, Doctor, you touched on this
13 briefly, but how is cause different than manner?

14 A. So, the manner of death is based on the
15 circumstances of the death, and the four manners are
16 what I described earlier, the natural, accidental,
17 suicidal and death at the hands of another, or
18 homicide. And, the cause of death is more about the
19 findings, the changes in the body that are resulting
20 in the death.

21 Q. And, I want to just specifically ask about that
22 homicide designation, Doctor. Does a homicide
23 designation mean that a crime was committed?

24 A. No.

25 Q. Does it necessarily mean that a law was violated?

1 A. No.

2 Q. Specifically, then, what does it mean to have a
3 manner of death be designated as a homicide?

4 A. So, a manner of death is -- it really is a health
5 determination of a forensic pathology determination.
6 I can give an example if you'd like?

7 Q. Could you, Doctor?

8 A. Sure. So, if an individual is running at top
9 speed down the road and they -- their heart goes into
10 arrhythmia and they fall over and they die and they
11 have no injuries, then this would be a natural death.
12 If they're running down the road and they trip over a
13 rock that's in the middle of the road, and they fall,
14 they bump their head, and they end up with a head
15 bleed, then that's an accidental death.

16 If they're running down the road, and they
17 bump into someone and trip and fall over, then that
18 may be an accidental death. But, if they're running
19 down the road and somebody sticks their leg out and
20 they trip over that individual's leg, then that's a
21 homicide because that person -- there was an
22 interaction between the two individuals that resulted
23 in the death.

24 So, it's not a matter of who was involved.
25 We have had cases where a father has attempted to

1 restrain a son to prevent him from drinking more
2 alcohol after he was highly intoxicated and fighting,
3 and the son died, and that was a homicide.

4 There are cases where individuals have been
5 pushed to prevent them from attacking an individual,
6 and they've fallen and injured their head, and that's
7 considered a homicide.

8 So, it's not about a legal definition. It
9 is not about a criminal definition. This is basically
10 about forensic pathology.

11 Q. So, those examples you just gave, Doctor, they
12 may or may not have been crimes, but that's not your
13 determination?

14 A. Correct.

15 Q. Doctor, I -- briefly, before we get into the
16 specific autopsy here of Daniel Prude, I just want to
17 ask you some general questions about specific terms
18 that are going to come up and used in that autopsy
19 report, Doctor. The first one, asphyxia. I want to
20 ask you, Doctor, What does asphyxia mean?

21 A. So, asphyxia really is the condition that results
22 from a decrease in oxygen or a depriving of oxygen to
23 the body.

24 Q. Are there different types of asphyxia?

25 A. Absolutely. Asphyxia can result from anything,

1 from hangings, strangulation, choking. It can occur
2 as a result of someone inhaling a gas. It can occur
3 from somebody placing a bag over their head, someone
4 sitting on someone's chest. So, there are a number of
5 different ways you can cause asphyxia in the body.

6 Q. Physiologically, Doctor, in the body, what's
7 happening when someone is asphyxiated or experiencing
8 asphyxia?

9 A. So, there are a couple of different ways that you
10 can have physiological changes as a result of the
11 scenarios I described earlier. You can either have a
12 reduction of oxygen going into the lungs, and then
13 into the blood, or you could have a reduction in blood
14 flow that reduces the amount of oxygen going to the
15 organs, because the oxygen is carried in the blood.

16 So, you can either have an effect directly
17 on the blood, whereas the blood stops flowing, or you
18 can have an effect on the lungs, where the oxygen is
19 not getting into the body.

20 Q. Dr. [REDACTED], what is the result when that's
21 happening?

22 A. Typically, the result is directly on the brain.
23 So, the brain requires a lot of oxygen for it to
24 function; and, if it doesn't get the oxygen it needs,
25 then it begins to shut down and begins to get damaged.

1 And, our brain controls the rest of our body. So, the
2 more damage to the brain, the less our body is going
3 to function the way we want it to. The more likely
4 you are to die from a scenario like that.

5 Q. Can your brain survive without oxygen?

6 A. No.

7 Q. I want to ask you about another term, Doctor,
8 just sort of, generally, excited delirium. Can you
9 explain for the Grand Jury what excited delirium is?

10 A. Sure. Excited delirium is a constellation of
11 findings. It is typically associated with psychiatric
12 illness, use of psychotropic or psychiatric drugs, and
13 use of some illicit substances. So, it's more
14 commonly associated with cocaine and methamphetamine
15 use. It is also seen with phencyclidine or PCP use.
16 In some cases, it's associate with alcohol, and what
17 we see in the body is a chemical release that causes
18 changes to the body function. There is an increase in
19 heart rate. There is an increase in breathing. There
20 is an increase in the requirement of oxygen. So, the
21 body needs more oxygen than it typically does in a
22 relaxed state. We also see increased cardiac rates.
23 So, increased heart rates.

24 On the outside -- sorry, there is one more
25 thing on the inside. You tend to see increase in body

1 temperatures.

2 On the outside, there is an association with
3 bizarre behavior, paranoia, psychotic episodes. There
4 is usually some level of aggression or violence; and,
5 in a lot of cases, people have described super human
6 strength.

7 Q. Dr. [REDACTED], is there any clear cut cause of
8 excited delirium?

9 A. There is not.

10 Q. I think you mentioned this. Is it your
11 understanding that there are some interactions with
12 drugs that can exacerbate that condition?

13 A. Yes.

14 Q. And, again, is PCP one of those drugs?

15 A. Yes, it is.

16 Q. Doctor, is -- somebody, an individual who is
17 experiencing excited delirium, are they more
18 vulnerable from a physiological standpoint?

19 A. Yes.

20 Q. Can you explain, I think you kind of touched on
21 that, Doctor, but can you explain specifically, why
22 that is?

23 A. Sure. So, it is about the -- the chemical
24 imbalance that goes on within the body during the
25 process of excited delirium. There is -- the chemical

1 in the body that helps to control a lot of our
2 physiologic functions starts to go abnormal. The
3 production rate increases the way that it's processed
4 becomes abnormal; and, as a result, you end up with
5 the things that I described before. So, the increase
6 in body temperature, increase in heart rate, increase
7 in breathing, the increased requirement for oxygen.
8 There is an increase in oxygen demand because of the
9 hyperactive state that the body tends to go into in
10 the midst of an episode of excited delirium.

11 Q. Dr. [REDACTED], those characteristics that you just
12 described, physiologically, could those symptoms cause
13 death in an individual experiencing excited delirium?

14 A. Yes, they can.

15 Q. Does somebody experiencing excited delirium
16 always die?

17 A. No.

18 Q. And, Dr. [REDACTED], in your time as a Forensic
19 Pathologist and the Medical Examiner here in Monroe
20 County, have you had other cases or seen other cases
21 involving excited delirium?

22 A. Yes, both in my fellowship period and in my time
23 as a Medical Examiner.

24 Q. And, in some of those instances, Dr. [REDACTED], did
25 death result?

1 A. Unfortunately, in my business, death always
2 occurs.

3 Q. That makes sense, Doctor. I want to ask you, Dr.
4 [REDACTED], specifically, about the Daniel Prude autopsy,
5 about this case here, this investigation?

6 A. Sure.

7 Q. Did there come a point on March 31st of this
8 year, 2020, when you had an opportunity to perform an
9 autopsy on the decedent name Daniel T. Prude?

10 A. I did.

11 Q. Was that a full autopsy, the process that you
12 just described, Dr. [REDACTED]?

13 A. Yes, it was.

14 Q. Was that investigation or case assigned Monroe
15 County Medical Examiner, case number 20-00902?

16 A. Yes, it was.

17 Q. Dr. [REDACTED], would it be helpful to have a copy
18 of your case summary report and autopsy report to aid
19 in your testimony?

20 A. Absolutely.

21 MR. SMITH: At this point, I'm going to have
22 Dr. [REDACTED]'s case summary report and autopsy report
23 marked as Grand Jury Exhibit 36-A for ID.

24 (Whereupon, Grand Jury Exhibit Number 36-A,
25 was then marked for identification.)

1 BY MR. SMITH:

2 Q. Dr. [REDACTED], I'll give you Grand Jury 36-A for
3 ID. Is that your case summary report and autopsy
4 report, Dr. [REDACTED]?

5 A. So, this is a copy of my autopsy report, the
6 toxicology report, a copy of the notes taken at the
7 time of autopsy, and an identification photograph of
8 Mr. Prude.

9 Q. Thank you, Dr. [REDACTED]. Before we get into the
10 specific steps of the autopsy, I just want to ask you
11 some questions about the police involvement -- the
12 involvement with the RPD in this case?

13 A. Sure.

14 Q. Before you began your autopsy, Dr. [REDACTED], were
15 you aware or were you made aware that Mr. Prude had
16 been in an encounter with members of the Rochester
17 Police Department immediately prior to his
18 hospitalization?

19 A. I was.

20 Q. Do you -- as the Medical Examiner for the Monroe
21 County Medical Examiner's Office, do you work for the
22 City of Rochester?

23 A. I don't.

24 Q. Do you work for the Rochester Police Department?

25 A. I don't.

1 Q. Doctor, were you also made aware that there was a
2 video, specifically, body worn camera from the
3 officers at the scene of that encounter that existed?

4 A. I was.

5 Q. And, Doctor, did you make a decision or decide
6 whether or not you should review that body worn camera
7 video for part of the autopsy process here?

8 A. I did.

9 Q. What is that decision?

10 A. That I would like to see the video.

11 Q. Why was that, Doctor?

12 A. Again, as I mentioned before, when you're making
13 a determination of the cause and manner of death, you
14 want to have all of the information that is available
15 to make that decision.

16 Q. And, Dr. [REDACTED], did you review that body worn
17 camera video before or after you did the internal and
18 external examinations?

19 A. I reviewed the video after I did my autopsy.

20 Q. Why was that?

21 A. There are cases where -- depending on the
22 circumstances, where you don't necessarily want to be
23 influenced by the information that is being presented
24 to you. You want to have an open mind when you're
25 going into a case. And, there are other cases where

1 the information that is provided to you can help focus
2 on your autopsy.

3 In this particular case, I made the decision
4 that, since I was already aware of the circumstances
5 of the death, and I had already reviewed the medical
6 records coming out of his hospitalization, that the
7 video was not necessary prior to my examination of the
8 body and could be reviewed after the examination to
9 help me solidify my manner of death.

10 Q. And, Dr. [REDACTED], regarding your awareness of the
11 circumstances of the death you just described, was
12 that based on some conversation you had with members
13 of the Rochester Police Department?

14 A. That is correct.

15 Q. And, Dr. [REDACTED], was there anything about that
16 conversation or the fact that this case involved
17 members of the Rochester Police Department that
18 affected your opinion in any way?

19 A. No.

20 Q. And, Doctor, did you also become aware on whether
21 or not there was some, I think you referenced this,
22 there was some records from Strong Memorial Hospital?

23 A. Yes.

24 Q. Did you obtain those records?

25 A. We did.

1 Q. Were there any notable findings or notable things
2 in those medical records, Dr. [REDACTED], that impacted
3 your autopsy findings?

4 A. Yes. Within the hospital records, they
5 documented findings that were associated with hypoxic
6 ischemic changes in the brain tissue. And, when we
7 have cases where an individual goes into the hospital
8 with those findings, we expect the brain to continue
9 to react and change as they are hospitalized, and I
10 was able to see the sequelae, or the -- the changes
11 that I would anticipate at the time of autopsy.

12 There was also documentation of chemical
13 changes within the body that were associated with his
14 respiratory failure. And, there was also
15 documentation of behavioral changes that were observed
16 during his previous hospitalization that are
17 associated with excited delirium.

18 Q. So, what was contained in the medical records,
19 from your review, Dr. [REDACTED], was consistent with
20 excited delirium?

21 A. Correct.

22 Q. And, you talked about hypoxic ischemic changes of
23 the brain, Dr. [REDACTED], could you just talk about what
24 hypoxia ischemia is for the Grand Jury?

25 A. Sure. So, hypoxia is a lack of oxygen. Ischemia

1 is a reduction or a loss of blood. So, the changes
2 that were present in the brain, could be associated
3 with either a reduction in the oxygen flow or a
4 reduction in the blood flow.

5 Q. And, the same question about the chemical changes
6 that you saw, Dr. [REDACTED], are consistent with the
7 reduction in oxygen?

8 A. Yes.

9 Q. Doctor, did you -- when you proceeded to the
10 autopsy, did you do the external examination first as
11 you described for the Grand Jurors?

12 A. I did.

13 Q. And, as part of that process, Dr. [REDACTED], before
14 you started, did you obtain a date of birth for Mr.
15 Prude?

16 A. I did.

17 Q. What is his date of birth?

18 A. So, his date of birth, according to my records,
19 are 09 -- so, September 20th of 1978.

20 Q. Dr. [REDACTED], when you performed that initial
21 internal examination, did Mr. Prude's general physical
22 appearance appear consistent with his given age of 41
23 years?

24 A. Yes, it did.

25 Q. And, Dr. [REDACTED], did you observe some evidence

1 of recent medical intervention?

2 A. I did.

3 Q. What is that?

4 A. There were a couple of tubes used for blood
5 exchange, and there were a couple of incised wounds
6 that we associated with his donation. He went for a
7 donation of his liver and one of his kidneys.

8 Q. And, Doctor, did any of those injuries or any of
9 that -- those observations cause to contribute to Mr.
10 Prude's death in any way?

11 A. They did not.

12 Q. Consistent with recent hospitalization?

13 A. Yes.

14 Q. Consistent to save his life?

15 A. Yes.

16 Q. Did you observe any injury -- any evidence of
17 injury or recent trauma, Dr. [REDACTED]?

18 A. I did.

19 Q. What was that?

20 A. So, he did have some bruises, some scrapes, just
21 abrasions, breaking of the superficial surface of the
22 skin on his forehead, his cheeks, his back and his
23 upper and lower extremities, so his arms and his legs.

24 Q. Can you just briefly explain what an abrasion is
25 for the Grand Jury?

1 A. Sure. So, an abrasion is the forensic term that
2 is used for a scrape. So, just damaged -- superficial
3 damage to the surface of the skin.

4 Q. Those injuries that you just described that you
5 noted on the external examination as superficial?

6 A. Yes.

7 Q. Did they individually contribute to Mr. Prude's
8 death?

9 A. They did not.

10 Q. Collectively, do they combined to contribute or
11 cause his death in any way?

12 A. They did not. I forgot to mention, he also had a
13 bruise to one of his heels; but, again, the bruise to
14 the heel didn't contribute to his death either.

15 Q. Thank you. Doctor, after that external
16 examination, did you perform an internal -- I'm sorry,
17 internal examination as you described?

18 A. I did.

19 Q. Did you start with the cardiovascular system?

20 A. I did.

21 Q. Could you describe for the Grand Jurors what the
22 cardiovascular system is, Dr. [REDACTED]?

23 A. So, the cardiovascular system is the heart and
24 the vessels associated with circulation of blood to
25 and from the heart.

1 Q. Any notable injuries there?

2 A. No.

3 Q. What about the respiratory system, can you
4 explain for the Grand Jury what that is?

5 A. Sure. The respiratory system are the bilateral
6 lungs, so the lungs on either side of the body, right
7 and left, and the airway that is used to take air in
8 and out of the body.

9 Q. Any notable injuries, Dr. [REDACTED]?

10 A. No injuries.

11 Q. Was there a toxicology done, Dr. [REDACTED]?

12 A. There was.

13 Q. Is that done in-house or sent to a private lab?

14 A. That was actually sent out to a private lab.

15 Q. Were there positive findings?

16 A. May I review my notes?

17 Q. Please.

18 A. Yes, there were.

19 Q. What were those positive findings, Dr. [REDACTED]?

20 A. So, Mr. Prude's blood was positive for caffeine,
21 which is associated with coffee, cotinine, which can
22 be found in nicotine or in teas as well.
23 Phencyclidine, which is PCP and products that are
24 associated with marijuana.

25 Q. Dr. [REDACTED], are you familiar with the effects of

1 PCP on the body?

2 A. Yes.

3 Q. What are some of those effects?

4 A. So, PCP with respect to the brain can cause
5 hallucinations, both visual and auditory, and with
6 respect to the remainder of the body can cause changes
7 to the heart. So, it can cause increased heart rates,
8 it can cause irregular heart rates. It can cause
9 increased blood pressure.

10 Q. We'll come back to that, Doctor. Did you find
11 that to be notable and contributory in the autopsy,
12 the PCP intoxication?

13 A. I did.

14 Q. And, we'll get back to that. I want to, just
15 real quickly, now, Doctor, talk about your review of
16 that body worn camera video. Again, after your
17 examination, did you review some Rochester Police body
18 worn camera of the incident?

19 A. I did.

20 Q. And, again, it was prior to making any
21 conclusions or final opinions?

22 A. That is correct.

23 Q. And, why is that?

24 A. As I mentioned before, you want to have all of
25 the information that you can before you make a

1 determination as to the cause and manner of death.

2 Q. Did you observe officers restrain Mr. Prude in
3 the video?

4 A. I did.

5 Q. Were you told who those officers were?

6 A. No.

7 Q. Watching the video, did you recognize or know who
8 they are, Dr. [REDACTED]?

9 A. No, I did not.

10 Q. Generally, could you just describe what you saw
11 when you watched the video?

12 A. Sure. I observed Mr. Prude. There were signs of
13 excited delirium. There was an altered mental status.
14 There was the lack of clothing, which was
15 inappropriate for the weather. And then, there was
16 the interaction with law enforcement, where he was
17 placed on the ground and he was restrained. There was
18 an officer who was restraining his torso, his back and
19 there was an officer who was restraining his head.

20 Q. Was the lack of clothing notable to you, Dr.
21 [REDACTED]?

22 A. Again, it is behavior that I associate with the
23 condition of excited delirium.

24 Q. Why? What specifically about it?

25 A. Because it -- the -- the clothing is

1 inappropriate for the weather. So, someone in their
2 right mind, you would expect them, especially on a
3 snowy day, to be wearing a lot more clothing than he
4 was.

5 Q. On the video that you observed, Dr. [REDACTED], you
6 were able to observe the signs of excited delirium of
7 Mr. Prude?

8 A. I was able -- I was able to identify some of the
9 signs that I associate with excited delirium.

10 Q. In addition to the lack of clothing, is there
11 something else that sticks out, Dr. [REDACTED]?

12 A. The -- the interaction with Mr. Prude, in some
13 cases, there was a lack of coherence. There was some
14 babbling. Some, I'll say inappropriate interactions,
15 but I don't mean inappropriate, like, inappropriate
16 language, I mean that the -- the question and answer
17 responses were not normal.

18 Q. Understood. I want to move on, Dr. [REDACTED], and
19 just talk about your findings and opinions; and ask,
20 if following the completion of that autopsy process,
21 and reviewing everything that we've just discussed
22 here in the Grand Jury about, did you document your
23 final findings, Dr. [REDACTED]?

24 A. I did.

25 Q. Can you talk about what the final findings were?

1 A. Sure. So, during the autopsy, we identified that
2 Mr. Prude's lungs were pretty heavy; and, in taking
3 sections and looking at them under the microscope, I
4 was able to identify that he did have pneumonia. The
5 heart section that we took and looked at under the
6 microscope showed evidence of inflammatory cells. So,
7 white blood cells going into the heart, and we see
8 that in cases of viral infection but we also see it in
9 cases of where the heart is beginning to die. And, I
10 did see changes that were consistent with herniation
11 of the brain.

12 Now, herniation of the brain is a
13 consequence of the brain continuing to react to that
14 loss of oxygen or blood that actually resulted in Mr.
15 Prude being in the hospital. The brain, in response,
16 starts to swell, and because the skull is an affixed
17 structure, after a while that brain, which is soft,
18 has nowhere to go within that skull structure so it
19 starts to find a way to expand; and, in doing so, it
20 starts to push its way into that hole that separates
21 and allows the brain to go through the rest of the
22 body, through the spinal cord. So, it actually starts
23 to force its way down through that hole, and those
24 changes I was able to see at the time of autopsy.

25 Q. And, Dr. [REDACTED] talking about the pneumonia,

1 the myocarditis and the brain injury, what causes
2 those injuries, Dr. [REDACTED]?

3 A. So, those are all complications of the asphyxial
4 event that put Mr. Prude into the hospital.

5 Q. And, are they consistent with the lack of oxygen?

6 A. They're consistent with changes that are
7 occurring after a lack of oxygen.

8 Q. Were there other findings, Dr. [REDACTED]?

9 A. Yes. So, there were findings of excited
10 delirium. Those were based on, not only the body cam
11 video, but also the medical records that were
12 presented to us. And, there was the acute
13 phencyclidine intoxication that we were able to
14 identify based on the toxicology studies that we did
15 from the autopsy.

16 Q. And, how did the excite -- how did the excited
17 delirium play a role here?

18 A. So, as I mentioned before, excited delirium can
19 result from intoxications with drugs, psychiatric
20 illnesses, and in the presence of those drugs, as I
21 described them earlier, psychiatric illness or in some
22 medications that are used for psychiatric disease or
23 psychotic episodes, there is that paranoia, the -- the
24 suicidal ideations. You can have hallucinations,
25 agitation, aggression. And, again, with the -- the

1 body changes that you would associate with excited
2 delirium, you have increases in blood pressure,
3 increases in your respiratory rate, and changes to the
4 heart. Now, obviously, I'm not going to see those at
5 the time of autopsy. But, is what I see from the
6 medical records is his presentation and his behavior
7 during his previous hospitalization, and then, again,
8 on the video.

9 Q. And, you also mentioned PCP intoxication, Dr.

10

11 A. That is correct.

12 Q. Again, sort of, what is the role the PCP
13 intoxication played here?

14 A. So, the PCP is documented in the toxicology
15 findings. And, again, as I described earlier, PCP is
16 one of the illicit drugs that is associated with the
17 development and the presentation of excited delirium.

18 Q. Now, Dr. [REDACTED] did you form an opinion as to
19 the cause of Mr. Prude's death?

20 A. I did.

21 Q. What was the cause of his death?

22 A. So, the cause of death is complications of
23 asphyxia in the setting of physical restraint due to
24 excited delirium, due to acute phencyclidine
25 intoxication.

1 Q. So, Dr. [REDACTED] were you able to determine,
2 specifically, an exact mechanism of death in this
3 case?

4 A. No.

5 Q. It was a combination of all three things: The
6 complications from the asphyxia that was due to the
7 excited delirium, that was due to the PCP
8 intoxication?

9 A. That is correct.

10 Q. Okay. Again, not one single one of those things
11 on its own caused Mr. Prude's death?

12 A. It is the combination that is resulting in his
13 death.

14 Q. Dr. [REDACTED] is it possible for a person to be
15 experiencing excited delirium and die?

16 A. Yes.

17 Q. Is it possible for a person to experience excited
18 delirium and not die?

19 A. Yes.

20 Q. Dr. [REDACTED], is it possible for a person to be
21 intoxicated by PCP and die?

22 A. Yes.

23 Q. Is it possible for another person to be
24 intoxicated by that same amount of PCP and not die?

25 A. That is correct.

1 Q. And, is it possible for a person to be restrained
2 and die, Dr. [REDACTED]

3 A. Yes, it is.

4 Q. And, is it possible for a person to be restrained
5 and not die?

6 A. Yes, that's true.

7 Q. Did Mr. Prude die in this case, solely as a
8 result of asphyxia?

9 A. Mr. Prude died from a complication of the
10 asphyxial event.

11 Q. And, those complications are from the excited
12 delirium and the PCP?

13 A. Correct. And, again, and the restraint. So,
14 it's everything together as I mentioned. All of the
15 factors are contributing to the death.

16 Q. Focusing on the restraint and the asphyxia,
17 specifically, Dr. [REDACTED] were you able to say
18 whether or not Mr. Prude was asphyxiated specifically
19 by the actions of the officers at a head -- the
20 officer at the head?

21 A. I could not tell.

22 Q. And, were you able to tell from the video,
23 whether or not Mr. Prude's airways were occluded?

24 A. I could not tell. I could see that there was an
25 officer that was compressing his torso, which would

1 have prevented the expansion and contraction of his
2 lungs, which would reduce the amount of oxygen going
3 into his airway. However, in a case of excited
4 delirium, with the hyperactivity that goes along and
5 the stress that goes along with the conditions that I
6 described earlier, restraint of the head, and the
7 inability to move the head, could also have
8 contributed to the stress that was on his body and on
9 his heart.

10 Q. So, with that in mind, focusing on the back and
11 torso, Doctor, are you able to say Mr. Prude was
12 specifically asphyxiated by those actions alone?

13 A. I could not.

14 Q. Again, a combination of all three things?

15 A. That is correct.

16 Q. Dr. [REDACTED], since you issued your autopsy report
17 in this case, did you have the opportunity to review a
18 few minutes of a Facebook live video that a civilian
19 took of Mr. Prude prior to his interaction with the
20 police?

21 A. Only with you this morning.

22 MR. SMITH: Just for the record for the
23 Grand Jury, that video is in evidence, Grand Jury
24 Exhibit Number 22.

25 BY MR. SMITH:

1 Q. Doctor, is it fair to say that the few minutes of
2 video that you watched, that there's a period of time
3 that Mr. Prude is running on and off?

4 A. That is correct.

5 Q. Dr. [REDACTED] can you just tell us what kind of
6 effect that type of exercise would have on the human
7 body?

8 A. Sure. So, depending on the fitness of the
9 individual, the condition that the individual is in,
10 and the condition of his heart, that type of exercise
11 will cause increases in heart rate and increases in
12 oxygen demand.

13 Q. And, Dr. [REDACTED], in a person that's already
14 intoxicated by PCP and experiencing excited delirium,
15 sort of, would that have more of an effect or less of
16 an effect?

17 A. I would say more of an effect.

18 Q. How and why?

19 A. Again, you're piling things on. So, we already
20 talked about all of the factors that are already
21 contributing to his death. If you are already
22 stressing his heart out with the -- the type of
23 activity that he was involved in before with the
24 running, then again, your body is not at rest. It is
25 not in the normal relaxed state. So, you are already

1 stressing the heart with the increased demand to
2 produce, not only for an individual who's running, but
3 an individual who is going to require increased oxygen
4 because you require increased oxygen when you're
5 exercising. So, that increased demand for oxygen, the
6 increased stress on the heart, in addition to the
7 effects of the PCP, and then you put all that together
8 with the excited delirium, the changes that are
9 associated with the excited delirium, and then you
10 pile the restraint on top of that. Again, it's the
11 combination that's contributing to his death.

12 Q. A potential that Mr. Prude would have been more
13 vulnerable as a result of the activity?

14 A. Yes.

15 Q. Dr. [REDACTED], I guess, finally, did you form an
16 opinion as to the manner of Mr. Prude's death?

17 A. I did.

18 Q. What was the manner?

19 A. The manner of death is homicide.

20 Q. Why was that?

21 A. Because his hands -- his death occurred at the
22 hands of another.

23 Q. Does that homicide designation, Dr. [REDACTED],
24 imply that a crime was or was not committed?

25 A. It doesn't.

1 Q. Okay. Finally, Dr. [REDACTED] you're here
2 testifying today and I thank you. Dr. [REDACTED] is
3 part of the reason you're here testifying this morning
4 because, for reasons totally unrelated to this case
5 and this investigation, you're unavailable to testify
6 for the next few weeks in the foreseeable future?

7 A. That is correct.

8 Q. Thank you, Dr. [REDACTED] Doctor, I do have one or
9 two more questions.

10 A. Sure.

11 Q. I want to ask you, Dr. [REDACTED] does everybody
12 who consumes PCP, cocaine, one of those stimulants
13 that you referenced, experience excited delirium?

14 A. No.

15 Q. Why is that?

16 A. No one knows. There are -- there are a lot of
17 studies out there trying to understand why some
18 individuals will experience excited delirium versus
19 not. There are studies out there trying see whether
20 it is related to the amount of drugs that's in the
21 system or whether or not the individual has a
22 predisposition in terms of a psychiatric illness.
23 But, no one truly knows. There are individuals who
24 use cocaine on a regular basis and don't always
25 experience excited delirium. So, it's not necessarily

1 a person to person difference. It could be a
2 particular time in an individual. Just, you know,
3 they use today and they're fine, they use tomorrow,
4 and they're bouncing off the walls and pulling the
5 paintings down and shoving their furniture around. No
6 one truly knows why it happens in one scenario and not
7 in another.

8 Q. So, is there one clear cause of excited delirium,
9 Dr. [REDACTED]?

10 A. There is not.

11 Q. Is one of the symptoms, or one of the
12 manifestations for excited delirium, intolerance to
13 pain, Dr. [REDACTED]?

14 A. Yes. There are descriptions of intolerance to
15 pain.

16 MR. SMITH: I have no further questions for
17 Dr. [REDACTED] Do any of the Grand Jurors have any
18 questions?

19 So, I've got four questions so far from the
20 Grand Jurors. I'll ask the four questions and see if
21 there is anything else.

22 BY MR. SMITH:

23 Q. Dr. [REDACTED], one of the Grand Jurors -- well, two
24 of the Grand Jurors asked if you could elaborate on
25 your findings of pneumonia; and, specifically, Dr.

1 [REDACTED], if you were able to determine whether or not
2 that was something that was pre-existing to the police
3 encounter, or if that was something that was caused by
4 the injuries in the hospitalization?

5 A. So, there is no way for us to determine exactly
6 when that pneumonia started. What I can say, is that
7 individuals who are hospitalized, particularly,
8 individuals who are on respirators, are more
9 susceptible to developing a significant pneumonia.
10 So, the presence of the pneumonia could very well be
11 specifically, from the fact that he was in the
12 hospital on the respirator. But, there's no way for
13 me to tell whether or not that was a condition started
14 prior to him being there.

15 MR. SMITH: Does that answer your question,
16 ma'am?

17 A JUROR: Sort of.

18 MR. SMITH: Another question.

19 A JUROR: I'm just wondering if the extent
20 of the pneumonia would have made his breathing
21 difficult; and, to what extent, during his encounter
22 and his running and being on the ground, et cetera.

23 MR. SMITH: I think that would be assuming
24 that pneumonia was present before.

25 A JUROR: Correct.

1 THE WITNESS: Correct. So, in his previous
2 hospitalization and in his initial hospitalization,
3 they don't really describe findings that are
4 consistent with the extent of pneumonia that I saw at
5 the time of autopsy. So, I don't think that the --
6 the amount of pneumonia that I saw at autopsy was
7 present prior to his hospitalization. Could it have
8 been that there was an early pneumonia that was, you
9 know, in his airway and involving only part of the
10 lung, that I can't answer because, as I mentioned,
11 this type of pneumonia, this level of pneumonia, can
12 develop from him being in the hospital.

13 A JUROR: I understand, thank you.

14 THE WITNESS: You're welcome.

15 BY MR. SMITH:

16 Q. Dr. [REDACTED] one of the Grand Jurors has another
17 question very similar only about the heart when you
18 testified about some myocarditis and changes of the
19 heart, and one Grand Jurors wants to know, Dr.

20 [REDACTED], if you're able to tell whether or not that
21 was a pre-existing condition; or, again, if that's
22 something that was developed and was caused by the
23 injuries Mr. Prude sustained?

24 A. I'll take a quick look at my histology. That
25 would be the tissue that I looked at under the

1 microscope. So, I'm going to say no. The -- the
2 myocarditis that I saw at autopsy was scattered; and
3 that, again, is more consistent with him being in the
4 hospital and being as a consequence of his -- the
5 changes to his brain tissue and his body beginning to
6 shut down.

7 MR. SMITH: Did that answer your question,
8 ma'am?

9 A JUROR: Kind of.

10 MR. SMITH: Is there a follow up?

11 A JUROR: I'm just wondering, in having the
12 heart issue, along with the pneumonia causes would
13 have contributed to the lack of oxygen. Is that all
14 connected? Is that why that caused the lack of
15 oxygen.

16 THE WITNESS: So, it appears the -- the
17 changes that I see in his heart appear more as a
18 consequence of the asphyxia, and not causing the
19 asphyxia. Does that answer the question?

20 A JUROR: Okay.

21 BY MR. SMITH:

22 Q. Thank you. Dr. [REDACTED] two of the Grand Jurors,
23 Dr. [REDACTED] want to know about the toxicology levels
24 and, specifically, as it relates to PCP. Dr. [REDACTED]
25 are you able to state whether or not that level of PCP

1 was necessarily fatal?

2 A. No. I can't comment on whether or not that level
3 was fatal.

4 Q. What was the level, Dr. [REDACTED] Could you --
5 could you refer?

6 A. Sure. So, the phencyclidine level was 18
7 nanograms per milliliter. So, that phencyclidine
8 level is relatively low to some of the levels I have
9 seen in the past. However, there is -- that I'm aware
10 of, there's no documentation of tolerance to
11 phencyclidine as a drug. There are some drugs where
12 the more you use, the more your body becomes
13 accustomed to it the more you need.

14 But, things like cocaine, and phencyclidine
15 and methamphetamines can cause changes to the body,
16 whether or not your body is accustomed to it or not.
17 And, the level of those drugs in the system are not
18 always associated with the same findings in different
19 individuals. So, there is a person who might have a
20 sky high level of cocaine and be walking down the road
21 or driving that 18 wheeler next to you, and there is
22 somebody who has a small amount of cocaine that has
23 significant heart disease who could be lying on my
24 table back in the Medical Examiner's Office.

25 So, there is no -- for a lot of the illicit

1 drugs that we see, there is not always a correlation
2 between level and effect.

3 MR. SMITH: Does that answer the question?

4 A JUROR: Yes.

5 BY MR. SMITH:

6 Q. On a related note, Doctor, and I guess, for the
7 record, are you a Chemist?

8 A. I'm not.

9 Q. Dr. [REDACTED] are you able to tell from that
10 level, the 18 nanograms per milliliter, that last time
11 Mr. Prude used the phencyclidine?

12 A. No, I can't.

13 Q. And, I guess, Dr. [REDACTED], as a final follow up,
14 is 18 nanograms per milliliter in your experience, to
15 your knowledge, a sufficient amount to produce some of
16 the psychiatric symptoms you described?

17 A. Yes.

18 MR. SMITH: I ask if any of the other Grand
19 Jurors have any other questions? I see one.

20 BY MR. SMITH:

21 Q. One of the Grand Jurors, again, on a related
22 note, Dr. [REDACTED] wants to know whether or not if you
23 are aware or able to state whether or not, based on
24 that level, 18 nanograms per milliliter at the time
25 that you took Mr. Prude's blood, if it was potentially

1 higher earlier, that level?

2 A. I can't answer that question.

3 Q. That's a half life question?

4 A. No. It's a -- there are a number of factors that
5 will determine the rate of which the -- the level
6 falls within the body and that's completely outside of
7 my purview.

8 MR. SMITH: Any other questions?

9 BY MR. SMITH:

10 Q. Other than what you previously described, Dr.

11 [REDACTED] were there any other bruises that you noted
12 on the external examination?

13 A. There were no other bruises on the external
14 examination.

15 Q. Doctor, was a total body X-ray taken?

16 A. Yes.

17 Q. Were there any fractures noted on the X-ray?

18 A. There were no fractures or other evidence of
19 trauma.

20 MR. SMITH: Any other Grand Jurors have any
21 other questions? Seeing as there are none, you are
22 excused.

23 THE WITNESS: Thank you.

24 MR. SMITH: Thank you.

25 MS. SOMMERS: So, real quick, we're going to

1 take a ten minute break, and we'll call one more
2 witness. I believe this will be a quicker witness
3 before lunch. So, ten minutes. Thank you.

4 (Whereupon, the witness left the Grand Jury
5 room at a time of 11:47 a.m.)

6 (Whereupon, there was a short break off the
7 record.)

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1 (Proceeding reconvened.)

2 (Whereupon, the witness entered the Grand
3 Jury room at a time of 12:04 p.m.)

4

5 **S E R G E A N T** [REDACTED] [REDACTED]

6 [REDACTED] after being duly called and sworn, testified as
7 follows:

8 EXAMINATION BY MS. SOMMERS:

9 Q. Good morning.

10 A. Hello.

11 Q. Could you please -- could you please state your
12 name and spell both your first and last names?

13 A. Yes. [REDACTED]

14 [REDACTED] Last name is [REDACTED] [REDACTED], as in
15 [REDACTED]

16 Q. Thank you. Where do you work?

17 A. I work for the Rochester Police Department.

18 Q. In what capacity?

19 A. I'm a Sergeant assigned to the Major Crimes Unit.

20 Q. Thank you. How long have you been involved in
21 law enforcement?

22 A. For just over 26 years.

23 Q. Always at the Rochester Police Department?

24 A. No.

25 Q. Where did you begin your career?

1 A. I worked for the Stewart Florida Police
2 Department in South Florida from 1995 through 2003 and
3 then relocated back to Rochester to work for the RPD.

4 Q. Have you been continuously employed at the
5 Rochester Police Department since that time?

6 A. Yes, for just over 17 and a half years now.

7 Q. How long have you been a Sergeant?

8 A. I've been a Sergeant since June of 2009.

9 Q. How long have you been a sergeant in the Major
10 Crimes Unit?

11 A. I've been in the Major Crimes Unit for almost
12 five years.

13 Q. Thank you. Was the Major Crimes Unit involved in
14 the investigation into the death of Daniel Prude?

15 A. Yes.

16 Q. When did you become a Sergeant in the Major
17 Crimes unit involved in that?

18 A. On March 23rd, about a little after 9:00 a.m., I
19 was advised by my supervisor that myself and two
20 investigators would be assigned to the investigation.

21 Q. And, why was the Major Crimes involved? Had Mr.
22 Prude -- was Mr. Prude still alive at that time?

23 A. Yes, he was.

24 Q. And, why was Major Crimes involved?

25 A. Because of the nature of the investigation and

1 the incident where a person is in the hospital
2 unconscious, that has police interaction, which rises
3 to the level of investigation handled by the Major
4 Crimes Unit, a critical type incident.

5 Q. Thank you. Did you undertake just any --
6 initially, any steps to determine what the weather had
7 been like the previous -- well, I guess, earlier that
8 morning?

9 A. Yes, I did.

10 Q. And, during the time of approximately 3:00 to
11 4:00 in the morning, what was the -- what were the
12 weather conditions and the temperature in Rochester?

13 A. The temperature was approximately 32 to 33
14 degrees around 3:00 a.m., and there was precipitation,
15 a mix of snow, or wet snow, and rain at the time.

16 Q. Thank you. Did you direct that a video canvas
17 occur relative to this event?

18 A. Yes, I did.

19 Q. And, could you just explain what that means, what
20 is a video canvas?

21 A. Yes. So, we -- I assigned Investigators and
22 technicians to help recover any video surveillance
23 from surrounding businesses or residences; and, as
24 part of that, I looked at a map that we -- the Police
25 Department keeps, which has known locations of video

1 sources from prior investigations. So, we use that as
2 a source of information to track down videos we can
3 obtain through our technicians. And, I also assigned
4 Investigators to canvas or drive the area looking for
5 video sources on businesses or residences along the
6 path of this incident.

7 Q. Okay. Thank you. And, did this also include
8 review of what are called blue light cameras?

9 A. Yes.

10 Q. What are blue light cameras?

11 A. The blue light cameras are dozens of cameras
12 maintained by the City of Rochester. They're
13 typically mounted on a pole at a street corner
14 intersection. Many of them have a blue light that
15 flashes underneath them to be obvious that it's a
16 recording system that has -- some of the cameras have
17 a sticker that says Rochester Police or something to
18 that effect on the side. And, those videos are
19 maintained and operated by the Police Department.

20 Q. Okay. And, are you actually, in your capacity as
21 a Major Crimes Unit Sergeant, able to access to review
22 blue light camera?

23 A. Yes, I am.

24 Q. Are you able to extract footage?

25 A. Yes.

1 Q. Are you able to change or alter the footage?

2 A. No.

3 Q. Were you actually able to identify and isolate
4 some footage that was relevant to this incident?

5 A. Yes.

6 Q. From how many locations?

7 A. From two blue light camera fixed positions.

8 Q. Okay. Thank you.

9 MS. SOMMERS: I'm going to put Grand Jury
10 Exhibit Number 13 up on the screen. It's already been
11 admitted.

12 BY MS. SOMMERS:


13 Q. Have you seen this map before?

14 A. Yes, I have.

15 Q. Do you -- first of all, do you recognize the
16 address where Mr. Prude allegedly or you had been
17 advised left a residence?

18 A. Yes.

19 Q. And, where is that, if you're able to just kind
20 of point it out for the record?

21 A. Yes. It is in the upper left portion of the
22 screen, the red dot and the -- the words, the numbers
23  and Child Street written up in the left corner.

24 Q. Thank you.

25 MS. SOMMERS: I'm just going to ask the

1 foreperson. Are you able to see okay?

2 JURY FOREPERSON: Yes.

3 BY MS. SOMMERS:

4 Q. Can you explain for the Grand Jury where you were
5 able to locate the blue light camera footage?

6 A. Yes. At the intersection of Danforth and Child
7 Streets, which is below the red dot, there's a number
8 one on this map. There's a blue light camera that's
9 fixed to a pole at that intersection, and it's -- I
10 can point a little closer. I just have to move a
11 little closer if that's easier.

12 Q. Yeah. That's fine. Please.

13 A. It would be in this position is where the camera
14 is located.

15 Q. Okay.

16 MS. SOMMERS: So, for the record, the
17 witness just pointed to a square that says one, and
18 it's located all the way to the left of the Exhibit.

19 BY MS. SOMMERS:

20 Q. Could I just ask you where within that
21 intersection is the blue light camera located?

22 A. The camera is located on a pole on the south side
23 of Danforth Street, right at a intersection of Child
24 Street. So, the camera can swivel, but it's located
25 on a pole right at that intersection.

1 Q. Okay. And, where was the second place you were
2 able to locate and identify some relevant blue light
3 camera footage?

4 A. It would be at the intersection of West Main
5 Street, which is this portion labeled West Main
6 Street, at the corner of Henion Street, where there's
7 a number two on this map.

8 Q. Okay. And, just for the record, you're pointing
9 at on Grand Jury Exhibit 13, the number two, did I
10 accurately describe that?

11 A. Yes.

12 Q. Okay. And, where exactly relative to the
13 intersection is that camera located?

14 A. The camera is located on the corner of West Main
15 and Henion Streets, would be on the southeast
16 corner -- I'm sorry, yes. It's the -- get my
17 bearings, I'm sorry. It's on the corner -- so, it'd
18 be on the southeast corner of the intersection right
19 here. It's on a swivel, so the camera could be moved.

20 Q. Okay. Thank you. All right. I'm going to
21 approach with what has been marked for identification
22 as Grand Jury Exhibit Number 37, do you recognize what
23 I just handed you?

24 A. Yes, I do.

25 Q. And, what is it that I just handed you?

1 A. It's a DVD disc labeled Child/Danforth. It's a
2 disc that I made, which contains video footage from
3 that camera.

4 Q. And, how do you know that that's the video -- how
5 do you know that that disc contains what you just
6 discussed?

7 A. It's my handwriting, which I recognize on the
8 disc, and it contains my initials FZ, and my ID number
9 1543, as well the date that I created the disc.

10 Q. Thank you. I'll take it back. Does what's
11 contained on Grand Jury Exhibit Number 37, is it an
12 accurate duplication of the blue light camera that you
13 extracted relative to the intersection of Child and
14 Danforth Streets?

15 A. Yes. It does.

16 Q. Okay. Thank you. Now, I'm going to hand you 38
17 for identification. Could you describe what is on
18 that Exhibit?

19 A. Yes. It is the DVD disc, which contains blue
20 light footage, video footage, from the camera at West
21 Main Street at Henion Street. I downloaded it to this
22 disc.

23 Q. Okay. And, again, does it bear the markings that
24 would assure that that disc contains what you just
25 said it contains?

1 A. Yes. I recognize my handwriting and I also
2 placed my initials, FZ and the ID number 1543, as well
3 as the date that I made this disc on here.

4 Q. Thank you. Is the -- are the contents of the
5 disc, Grand Jury Exhibit 38 for identification, fair
6 and accurate duplications of the blue light camera
7 footage that you extracted?

8 A. Yes.

9 Q. Thank you.

10 MS. SOMMERS: At this time, I'll move 37 and
11 38 into evidence.

12 (Whereupon, Grand Jury Exhibit Numbers 37
13 and 38 were then received into evidence.)

14 MS. SOMMERS: All right. For the record,
15 we're going to put Grand Jury Exhibit Number 37 into
16 play.

17 (Whereupon, Grand Jury Exhibit Number 37 was
18 then played for the Grand Jury.)

19 BY MS. SOMMERS:

20 Q. Okay. So, for the record, did you download an
21 extended time period relative to the time at issue?

22 A. Yes, I did.

23 Q. Okay. What is -- what street is the Grand Jury
24 looking at right now?

25 A. The street directly in view here is Danforth

1 Street.

2 Q. Okay. And, I'm going to approach. So, just for
3 the record, there's a street that's running from, kind
4 of, bottom to top, have I described that accurately?

5 A. Yes.

6 Q. And, is that what you were referring to as
7 Danforth Street?

8 A. Yes, it was.

9 Q. I see, sort of, in the top third, running what
10 appears to be somewhat parallel to this -- to the top,
11 another street that's running toward Danforth Street.
12 Did I describe accurately what I'm pointing to?

13 A. Yes.

14 Q. What street is that?

15 A. That is York Street.

16 Q. Okay. Thank you. What just crossed the road, if
17 you know?

18 A. It was either a cat or a raccoon.

19 Q. Okay. Does that happen a lot?

20 A. Yes.

21 MS. SOMMERS: Can you switch back to the
22 map?

23 (Whereupon, Grand Jury Exhibit 13 was put up
24 on the screen.)

25 BY MS. SOMMERS:

1 Q. So, just to orient [REDACTED] Child Street, do you see
2 York Street and -- well, I'm sorry. Do you see the
3 area that you just referred to on Grand Jury Exhibit
4 13?

5 A. Yes, I do.

6 Q. Okay. So, I'm pointing or circling, like, an
7 intersection where it appears that Danforth and York
8 come together, is that accurate?

9 A. Yes, it is.

10 Q. Okay. Thank you.

11 MS. SOMMERS: You can switch back.

12 (Whereupon, Grand Jury Exhibit 37 was then
13 played again for the Grand Jury.)

14 BY MS. SOMMERS:

15 Q. Sergeant, there is a red dot on one of -- on a
16 portion of that video, can you explain what that is?

17 A. Yes. That is a bookmark. It's a -- it's a
18 notation that can be made on a timeline on the video
19 system when it's in live view mode of something of
20 note, like, a cat going across the street or a
21 specific vehicle or a specific person, and you can
22 make a bookmark to note it so you can reference the
23 time instead of watching the whole ream of the video.
24 The bookmark is to help with the timeline.

25 Q. Okay. And, just for the record, at this point,

1 the video is at 2:33 approximately in the morning,
2 correct?

3 A. Yes, it is.

4 Q. All right. The -- the bookmark, the red mark
5 that's in there, what does that bookmark pertain to in
6 this case?

7 A. That pertains to a time on the video when I
8 observed an individual, in the upper portion of the
9 video, crossing York and Danforth Streets.

10 Q. Okay.

11 MS. SOMMERS: At this time, I'm going to ask
12 to fast forward the video, just before the red mark.
13 Can you pause it for one moment?

14 BY MS. SOMMERS:

15 Q. First of all, according to what we're watching on
16 the video, has the weather changed at all?

17 A. Yes, the weather changed.

18 MS. SOMMERS: All right. Go ahead and press
19 play, please. Okay.

20 (Whereupon, the video continued to play into
21 the record for the Grand Jury.)

22 BY MS. SOMMERS:

23 Q. So, at 2:56 -- I'm sorry, 2:57:12 or so is when
24 we're re-starting the video, is that correct?

25 A. Yes.

1 Q. All right.

2 (Whereupon, the video continued to play for
3 the Grand Jury.)

4

5 BY MS. SOMMERS:

6 Q. All right. So, I just paused -- I just asked my
7 colleague to pause it at about 2:57:13. Can you begin
8 to see what drew your attention?

9 A. Yes.

10 Q. And, can you just -- would you mind standing up
11 and pointing it out for the Grand Jury before the
12 video continues to play?

13 A. Yes. It's an individual wearing at least a white
14 colored top is observed in the video on York Street,
15 moving from north to south coming out to Danforth
16 Street at about the time 2:57:13, it's noted on the
17 video.

18 Q. Thank you.

19 MS. SOMMERS: And, for the record, the
20 witness pointed to something in the upper third of the
21 video and, sort of, in the middle.

22 (Whereupon, the video continued to play for
23 the Grand Jury.)

24 MS. SOMMERS: Okay. And for the record,
25 we're going to stop the video now at approximately,

1 after about ten seconds.

2 BY MS. SOMMERS:

3 Q. Is the -- is the individual visible for longer
4 than approximately just a few seconds?

5 A. No.

6 Q. Okay. Did you -- were you able to find
7 additional body worn camera -- I'm sorry, blue light
8 camera footage of an individual from that evening?

9 A. Yes.

10 MS. SOMMERS: And, for the record, I'm
11 putting Grand Jury Exhibit 38 into the player.

12 BY MS. SOMMERS:

13 Q. And, where was -- can you just rewind for the
14 Grand Jury, where was the second place that you were
15 able to isolate footage from?

16 A. It was from the blue light camera. It was at the
17 intersection of West Main Street and Henion Street.

18 MS. SOMMERS: So, we're going to go ahead
19 and play that.

20 (Whereupon, Grand Jury Exhibit 38 was then
21 played for the Grand Jury.)

22 BY MS. SOMMERS:

23 Q. Okay. So, just again, for the record, I believe
24 you indicated previously that Grand Jury Exhibit 38
25 corresponded with the number two on Grand Jury Exhibit

1 13. Is that correct?

2 A. Yes.

3 Q. Okay.

4 (Whereupon, the video continued to play for
5 the Grand Jury.)

6 BY MS. SOMMERS:

7 Q. So, for the record, the video is playing again,
8 is this for an extended period of time?

9 A. Yes, it is.

10 Q. Thank you. And, what direction is the camera
11 facing?

12 A. The camera is facing south and slated east from
13 the corner of West Main and Henion Streets.

14 Q. Thank you. And, what street is visual all the
15 way on the right?

16 A. That is Henion Street.

17 Q. Thank you. Does this video also contain a
18 bookmark?

19 A. Yes, it does.

20 Q. And, what does that bookmark relate to?

21 A. It notes an observation of an individual wearing
22 a white t-shirt and dark colored pants that comes into
23 view from the bottom corner of the screen into this
24 parking lot.

25 Q. Okay. Thank you.

1 MS. SOMMERS: At this point, we're going to
2 fast forward to approximately 3:00 o'clock. So, for
3 the record, we're at 3:00 o'clock and about 25
4 seconds.

5 (Whereupon, the video continued to play for
6 the Grand Jury.)

7 BY MS. SOMMERS:

8 Q. And, the video is playing. And, if you could
9 just reference when you see the person that you
10 noticed?

11 A. On the bottom right corner of the screen, an
12 individual wearing a white t-shirt comes into view.

13 Q. Okay. And, is that at about 3:00 o'clock and 45
14 seconds?

15 A. Yes.

16 Q. Okay. Thank you.

17 (Whereupon, the video continued to play for
18 the Grand Jury.)

19 MS. SOMMERS: Okay. And, for the record,
20 we're going to stop the video at about 3:01:29.

21 BY MS. SOMMERS:

22 Q. Sergeant [REDACTED] using all of the video that
23 you were able to obtain and review, were you able to
24 develop a general idea of the path that Mr. Prude
25 took, the -- the distance that he covered that

1 evening?

2 A. Yes.

3 Q. Okay. Approaching with what's been marked for
4 identification, Grand Jury Exhibit Number 38, have you
5 see that before?

6 A. Yes, I have.

7 Q. And, what is on -- what is Grand Jury Exhibit 38?

8 A. It's an overview map of the general area of Child
9 Street to West Main Street to Jefferson Avenue in the
10 City of Rochester, and it's also a key with certain
11 indicators on the map.

12 Q. Okay. Does the actual general vicinity that is
13 captured in Grand Jury Exhibit 38, does it fairly and
14 accurately depict that portion of the City?

15 A. Yes, it does.

16 Q. Thank you.

17 MR. SMITH: 39.

18 MS. SOMMERS: 39. I'm sorry.

19 BY MS. SOMMERS:

20 Q. So, what I was asking you previously -- I should
21 have said 39.

22 MS. SOMMERS: At this time, I'm going to
23 move 39 subject to some connection that we're going to
24 get into in just a moment. Thank you.

25 (Whereupon, Grand Jury Exhibit Number 38 was

1 then received into evidence.)

2 MS. SOMMERS: Okay. I'm placing Grand Jury
3 Exhibit 39 up on the Elmo.

4 BY MS. SOMMERS:

5 Q. Okay. First of all, is [REDACTED] Child Street, or the
6 beginning of -- well, I'd like to withdraw that. Is
7 the location of [REDACTED] Child Street shown on the map?

8 A. Yes.

9 Q. And, where is that, if you're able to just say
10 what is associated with that point on the map?

11 A. Yes. It is the red dot in the upper left
12 portion. When you're looking at a screen, there's a
13 red dot to signify the approximate location of [REDACTED]
14 Child Street.

15 Q. And, is the approximate location of where Mr.
16 Prude was taken into custody, restrained, is that
17 location shown on the map?

18 A. Yes, it is.

19 Q. And, just if you could point that out?

20 A. Yes. It's in the lower right corner of the map
21 when you're looking at the screen, and it's the green
22 colored diamond at the end of a red line and it says
23 route ends.

24 Q. Okay. Were you able to, based on the video that
25 -- that was accumulated, know certain places where Mr.

1 Prude actually did travel?

2 A. Yes.

3 Q. And, where -- how is that depicted on the map?

4 A. The solid red line on the map indicates where we
5 have a video source and are relatively certain of his
6 travels.

7 Q. Okay. Are there other places where you are
8 making assumptions as to how Mr. Prude got from point
9 A to point B?

10 A. Yes.

11 Q. And, what is that noted by on the map?

12 A. It's a dotted line on the map and it's labeled as
13 assumed path.

14 Q. Okay. And, from -- from the amount of -- from
15 the distance covered between [REDACTED] Child Street until
16 that very first piece of video, do you have any
17 knowledge of how he was able to travel in that span of
18 time?

19 A. No, other than what's noted on the map.

20 Q. Okay. Were you able to learn where the tow truck
21 driver, [REDACTED], encountered Mr. Prude?

22 A. Yes.

23 Q. And, is that noted on the map?

24 A. Yes, it is.

25 Q. And, where is that?

1 A. It's on the right side of the screen of the map,
2 rather, towards the top. A little bit below that
3 yellow sticker, there's a blue diamond and it's the
4 corner of Jefferson Avenue and Lappy Alley in the City
5 of Rochester.

6 Q. Are the Valero and Metro Computer Stores
7 designated on Grand Jury Exhibit Number 39?

8 A. Yes.

9 Q. How?

10 A. They're marked with a -- the Valero is marked
11 with a black box on the map and the word Valero, it's
12 a gas station, and the Metro PCS Store is to the right
13 of that black box with a lighter colored star on it
14 and it says Metro PCS.

15 Q. Were you also able to review a Facebook live
16 video taken by an individual by the name of [REDACTED]
17 [REDACTED] as a part of this?

18 A. Yes.

19 Q. Were you able to, based on your review of the
20 video, determine where that video began?

21 A. Yes.

22 Q. Where did the video begin?

23 A. It began on Troop Street near Jefferson Avenue.

24 Q. So, let me, just for the record here -- I'm
25 coming. So, is this Troop Street? And, for the

1 record, I'm kind of, going from the extreme right of
2 the Exhibit in. Is that Troop Street?

3 A. Yes.

4 Q. Okay. And, does the video indicate that
5 [REDACTED] turns when you watch the video on Jefferson
6 Avenue?

7 A. Yes.

8 Q. Does he turn south or north?

9 A. South.

10 Q. Okay. And, how is [REDACTED]'s video captured on
11 the map?

12 A. On the map, it's depicted by a blue line, which
13 is right next to the red line on the right side of the
14 screen from the rough area of Troop Street and
15 Jefferson Avenue down to, roughly, the 400 block of
16 Jefferson Avenue.

17 Q. Thank you. Collectively, using the places where
18 Mr. Prude was actually visually located on the video
19 until the approximate location where the route ends,
20 were you able to determine approximately the distance
21 that was covered?

22 A. Yes.

23 Q. And, approximately how long -- what was the
24 distance of the route?

25 A. Just under a mile, about .95.

1 Q. Okay. And, were you also able to review body
2 worn camera footage in this case?

3 A. Yes.

4 Q. Who was the first officer who encountered Mr.
5 Prude and took him into custody?

6 A. Officer [REDACTED].

7 Q. And, were you able to see on Mr. -- on Officer
8 [REDACTED]'s body worn camera footage approximately what
9 time he was taken into custody?

10 A. Approximately 3:16 a.m.

11 Q. So, what was the total amount of time between the
12 first time that Mr. Prude is captured on video at the
13 corner of Child and Danforth until he was restrained
14 on Jefferson Avenue, what was the total amount of
15 time?

16 A. It was approximately 19 minutes.

17 Q. And, you indicated that the distance was
18 approximately .95 miles?

19 A. Yes.

20 MS. SOMMERS: Does anyone have any questions
21 for this witness?

22 GRAND JURY POOL: (All jurors indicating a
23 negative response.)

24 MS. SOMMERS: You appear to be all set.

25 THE WITNESS: Thank you.

1 MS. SOMMERS: Thank you very much.

2 (Whereupon, the witness left the Grand Jury
3 room at a time of 12:34 p.m.)

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1 MS. SOMMERS: So, it's with the long day
2 we're thinking about a shorter lunch. So, is 45
3 minutes enough time?

4 GRAND JURY POOL: (All jurors indicating a
5 positive response.)

6 MS. SOMMERS: All right. Plan on being back
7 here at 1:15 or 1:20. It's about 12:35 now. Thank
8 you very much.

9
10 (Whereupon, the Grand Jury broke for lunch.)

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1 (Proceeding reconvened.)

2 (Whereupon, the witness entered the Grand
3 Jury room at a time of 1:24 p.m.)

4

5 [REDACTED] [REDACTED] after having
6 been duly called and sworn, testified as follows:

7

8 **EXAMINATION BY MS. SOMMERS:**

9 Q. Thank you. Can you please state and spell your
10 full name?

11 A. My name is [REDACTED]

12 [REDACTED].

13 Q. Thank you. Where do you work?

14 A. I work for the Rochester Police Department in the
15 Public Safety Building.

16 Q. What is your title?

17 A. I'm the Digital Media Specialist.

18 Q. Thank you. Is that what's called a civilian job?

19 A. Yes. I'm a non-sworn employee of the RPD.

20 Q. Thank you. Could you just briefly explain your
21 educational background?

22 A. I went to film school in California and got a
23 Degree in media and film and video.

24 Q. Did you work in -- at any other -- in any other
25 jobs or capacities before coming to the Rochester

1 Police Department?

2 A. Yes. I was a video editor for various
3 advertising agencies in this area, as well as New York
4 City.

5 Q. How long have you worked at the Rochester Police
6 Department?

7 A. Four years.

8 Q. Can you explain, just briefly, what are your
9 major job duties at the Rochester Police Department?

10 A. My major roles include redacting FOIL requests so
11 that they are presentable to the public, basically
12 redacting.

13 Q. Let me stop you for a second.

14 A. I'm sorry.

15 Q. You said FOIL requests. What is a FOIL request?

16 A. Freedom Of Information Law requests from the
17 public to see body worn camera footage. I work in the
18 body worn camera unit of the RPD.

19 Q. Okay. Now, is what you're here to testify to
20 today related to that work?

21 A. No. I also work with the Major Crimes Unit to
22 put together video timelines of investigations that
23 they are working on.

24 Q. Okay. Thank you. So, does your training and
25 programing resources permit you to combined multiple

1 videos into one video?

2 A. Yes.

3 Q. Can you describe just an overview of that
4 process?

5 A. When asked by a Sergeant or Investigator at RPD
6 to create a video timeline, I have access to a hard
7 drive, the Major Crimes Unit hard drive, and they give
8 me a Microsoft Word Document listing what footage they
9 would like and in what order, and I proceed to take
10 the various video clips, bring them all together in a
11 software called Adobe Premiere; and, in that timeline
12 sequence, I put them together and export them as one
13 video.

14 Q. Were you asked to do that in this case?

15 A. Yes.

16 Q. Relative to the surveillance and blue light
17 camera footage, as well as a Facebook live video, were
18 you asked to combine those into one chronological
19 video?

20 A. Yes.

21 Q. Who were you asked to do that by?

22 A. Originally by Sergeant [REDACTED], and then
23 recently by yourself.

24 Q. By me?

25 A. Yes.

1 Q. Okay.

2 MS. SOMMERS: So, just a couple of things.
3 I'm going to note for the record here, that we're
4 going to -- I'm going to -- as the witness is talking,
5 I'm also going to be referencing what's already before
6 you into evidence. In evidence, being film clips,
7 okay? Does everyone understand that?

8 GRAND JURY POOL: (All jurors indicating a
9 positive response.)

10 MS. SOMMERS: Okay. So, before we get to
11 that, I'm just going put up on the screen, what's been
12 marked for identification and received as Grand Jury
13 Exhibit 13.

14 BY MS. SOMMERS:

15 Q. You've seen that map before?

16 A. Yes.

17 Q. Okay. Are the locations of the clips that you
18 combined to make one video contained within Grand Jury
19 Exhibit Number 13?

20 A. Yes.

21 Q. Thank you. Could you please -- actually, just
22 one moment. Could you please reference for the Grand
23 Jury what video clip is referenced by the number one
24 on Grand Jury Exhibit Number 13?

25 A. That is a police surveillance camera, known as a

1 blue light camera, on the corner of Danforth and Child
2 Streets.

3 Q. Thank you.

4 MS. SOMMERS: And, for the record, I'm just
5 going to note for the Grand Jury, that clip is before
6 you in evidence as Grand Jury Exhibit Number 37.

7 BY MS. SOMMERS:

8 Q. What is reflected by the number two on that map?

9 A. That is also an RPD blue light camera on the
10 corner of West Main and Henion -- Henion Street.

11 Q. Okay.

12 MS. SOMMERS: And, I'm going to note for the
13 record that that is before the Grand Jury, the clip,
14 as Grand Jury Exhibit Number 38.

15 BY MS. SOMMERS:

16 Q. What is depicted on the map as Grand Jury -- I'm
17 sorry, as the number three?

18 A. That is a civilian surveillance camera at 799
19 West Main Street.

20 Q. Thank you.

21 MS. SOMMERS: And, for the record, the
22 associated footage is before the Grand Jury in Exhibit
23 Number 23.

24 BY MS. SOMMERS:

25 Q. What is depicted on the map at -- under the

1 number four?

2 A. Civilian security footage at 781 West Main
3 Street.

4 Q. Thank you.

5 MS. SOMMERS: For the record, that footage
6 is before the Grand Jury in evidence as Grand Jury
7 Exhibit 24.

8 BY MS. SOMMERS:

9 Q. What is depicted in the map by the number five?

10 A. Surveillance -- civilian surveillance camera at
11 715 West Main Street.

12 Q. Thank you.

13 MS. SOMMERS: For the record, that footage
14 is before the Grand Jury, contained in Grand Jury
15 Exhibit Number 29.

16 BY MS. SOMMERS:

17 Q. What is depicted on the map as the number six?

18 A. That's the surveillance footage from 613 West
19 Main Street.

20 Q. Thank you.

21 MS. SOMMERS: For the record, the footage
22 from that location is contained before the Grand Jury
23 contained on Grand Jury Exhibit Number 30.

24 BY MS. SOMMERS:

25 Q. Number seven on the map, could you tell the Grand

1 Jury what is contained on the map?

2 A. Surveillance footage at 259 Jefferson Avenue.

3 Q. Thank you.

4 MS. SOMMERS: For the record, the footage
5 from that is contained in Grand Jury Exhibit Number 31
6 in evidence.

7 BY MS. SOMMERS:

8 Q. And, what is depicted on the map as number eight?

9 A. That's the camera footage from 422 Jefferson
10 Avenue.

11 Q. Thank you.

12 MS. SOMMERS: For the record, that footage
13 is independently before the Grand Jury and admitted as
14 Exhibit Number 29.

15 BY MS. SOMMERS:

16 Q. Mr. [REDACTED], in addition to the blue light camera
17 footage and surveillance camera video footage, were
18 you also provided with a Facebook live video?

19 A. Yes.

20 MS. SOMMERS: And, for the record, that
21 video is independently before the Grand Jury as Grand
22 Jury Exhibit Number 22.

23 BY MS. SOMMERS:

24 Q. Were you also able to make that a part of the
25 completed video that you put together?

1 A. Yes, I did.

2 Q. Thank you. As the video is played, can you just
3 explain, prior to each piece of individual -- I'd like
4 to withdraw that. Prior to each bit of footage from
5 an individual location, so prior to each individual
6 location, is there any type of a description card in
7 the video?

8 A. Yes. Before each clip of footage, I would put a
9 description card.

10 Q. And, could you explain for the Grand Jury, before
11 they see this video, what is contained on that?

12 A. The title of the overall piece, the location of
13 the camera, the direction the camera is facing, and
14 the system time of the camera. So, basically, the
15 time on the footage, if it is not correct, I would put
16 an adjusted time, which would be determined by RPD
17 technical officers as to what the offset is between
18 the system time displayed on the screen and what the
19 estimated actual time would be.

20 Q. And, I imagine in your position, you've had the
21 opportunity to review surveillance cameras quite a bit
22 -- surveillance camera footages quite a bit, is that
23 correct?

24 A. Yes. A lot of consumer grade surveillance camera
25 equipment at various places across town.

1 Q. Is it unusual that the system time on the
2 surveillance camera does not match the actual time
3 that it is during the day?

4 A. It is not unusual to have the incorrect time,
5 sometimes as much as 12 to a day off with this
6 consumer grade equipment.

7 Q. All right. Relative to the video that -- that
8 we'll get to in a moment. If there is no adjusted
9 time, so if the system time actually matches what the
10 time was, what color is that referenced in the video?

11 A. I was told to put a black letter label on those.

12 Q. By whom?

13 A. The text would be black.

14 Q. Okay. And, if there is no -- if there was an
15 adjustment, was the system time or the adjusted time
16 placed in black?

17 A. The adjusted time.

18 Q. Thank you. So, referring again, to Grand Jury
19 Exhibit Number 13, is that also -- did that also
20 become a part of -- did a copy of that also become a
21 part of the video?

22 A. Yes.

23 Q. Can you explain how?

24 A. Each new camera angle would also be accompanied
25 by the entire map, and then I would zoom in to the

1 portion of the map, where you're about to see the
2 video playing.

3 Q. Okay. Thank you. And, did you make up the map?

4 A. No, it was provided to me.

5 Q. Okay. And, when we go through it, is there --
6 although, the map is chronological from one to eight,
7 are two of the numbers reversed in terms of the way
8 that the video is shown?

9 A. Yes, cameras two and three do not appear
10 chronological in the video.

11 Q. Okay. Thank you. I am approaching with what has
12 been marked for identification Grand Jury Exhibit
13 Number 40, have you seen this before?

14 A. Yes.

15 Q. And, how do you know you've seen it before?

16 A. I was shown it just now and looked at -- this is
17 the DVD of the video that I created.

18 Q. And, does it bear any markings that indicate that
19 it's the one that you reviewed before you came in
20 here?

21 A. I signed and dated the disc copy.

22 Q. Is the copy that's contained on Grand Jury
23 Exhibit Number 40 an exact duplication of the video
24 that you created based on the clips and the evidence
25 that I previously referenced?

1 A. Yes, it is.

2 Q. Thank you.

3 MS. SOMMERS: I'll move to admit 40, please.

4 (Whereupon, Grand Jury Exhibit Number 40 was
5 then received into evidence.)

6 MS. SOMMERS: Okay. For the record, we're
7 going to play Exhibit 40. But, I'm going to stop it a
8 couple of times just in the beginning to sort of frame
9 things.

10 Actually -- so, for the record, we're just
11 going to take a five minute break. But, nobody's
12 going to -- if it's okay with everyone. Well, let's
13 see.

14 THE WITNESS: If you right click on the
15 file, if it gives you the option to play in Windows
16 Media, you should be able to play it.

17 MS. SOMMERS: Okay. It doesn't give the
18 option. I'll grab my computer.

19 Okay. So, for the record, the video is
20 actually playing.

21 (Whereupon, the video played for the Grand
22 Jury.)

23 MS. SOMMERS: So, is this what you referred
24 to earlier -- and, for the record, we're about 11
25 seconds in.

1 BY MS. SOMMERS:

2 Q. Is this what you referred to earlier as the
3 description card?

4 A. Yes.

5 Q. And, what is -- is the system time depicted in
6 black as you -- as you had previously indicated?

7 A. Yes, it is.

8 Q. All right. Thank you.

9 (Whereupon, the video continued to play for
10 the Grand Jury.)

11 MS. SOMMERS: Press pause.

12 BY MS. SOMMERS:

13 Q. And, just so -- is this what you referred to
14 relative to using the map in the video?

15 A. Yes.

16 Q. So, we're about 18 seconds in. And, what's about
17 to happen on the video?

18 A. We're going to zoom into the first location of
19 the first video clip.

20 Q. Okay. Thank you.

21 MS. SOMMERS: Can everyone see?

22 GRAND JURY POOL: (All jurors indicating a
23 positive response.)

24 (Whereupon, the video continued to play for
25 the Grand Jury.)

1 BY MS. SOMMERS:

2 Q. So, just to be clear, this is the one that's
3 flipped, correct?

4 A. Yeah. This is the third video in the -- on the
5 map, it's listed as the third video, but we're seeing
6 it as the second video.

7 MS. SOMMERS: Perfect. And, we're at a time
8 of 47 seconds for the record. Thank you.

9 (Whereupon, the video continued to play for
10 the Grand Jury.)

11 A JUROR: Excuse me?

12 MS. SOMMERS: Can you press pause?

13 (Whereupon, the video was paused.)

14 A JUROR: In the video, it looked like he
15 put on some shoes.

16 MS. SOMMERS: So, I don't know if this
17 witness could really speak to that. Did you --

18 A JUROR: Just asking.

19 MS. SOMMERS: So, did you want me to review
20 -- did you want the video reviewed?

21 A JUROR: I'm not sure what he was doing,
22 but he picked up his foot and he appeared to be
23 putting on slip-on shoes. I don't know.

24 MS. SOMMERS: We can keep playing the video
25 and if you want to come back to that. But, I don't

1 know if this video can speak to the actual content as
2 opposed to this version.

3 Go ahead, thank you.

4 (Whereupon, the video continued to play for
5 the Grand Jury.)

6 (Whereupon, the video ended due to technical
7 issues.)

8 MS. SOMMERS: So, just for the record, we're
9 having play back issues. I'm going to -- we're going
10 to take a five minute break. Does anyone have to get
11 up? I'm going to get my computer.

12 Actually, would you mind stepping out?
13 We're going to take a five minute break and I'll get
14 my computer and we'll continue. Okay. Thank you.

15 (Whereupon the witness left the Grand Jury
16 room during a short break at a time of 1:50 p.m.)

17 (Whereupon, there was a short break off the
18 record.)

19 (Proceeding reconvened.)

20 MS. SOMMERS: So, just real quickly on the
21 record, we're just having some technical difficulties.
22 So, what we're going to do is take a break from
23 [REDACTED] [REDACTED]' testimony, fix that technical
24 difficulty.

25 But, in the meantime, we're going to call a

1 different witness. So, we're hoping to be able to
2 bring him back and finish with him today. But, in the
3 meantime we're going to pivot. So, we apologize for
4 that.

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1 (Whereupon, the witness entered the Grand
2 Jury room at a time of 2:07 p.m.)

3

4 MR. SMITH: At this time, we'll call Officer
5 [REDACTED].

6

7 **O F F I C E R** [REDACTED] [REDACTED],
8 after being duly called and sworn, testified as
9 follows:

10

11 **EXAMINATION BY MR. SMITH:**

12 Q. Good afternoon, sir.

13 A. Good afternoon.

14 Q. Can you state and spell your first and last names
15 for the record, please?

16 A. [REDACTED].

17 Q. And, how are you employed, sir?

18 A. I'm employed as a Police Officer with the City of
19 Rochester.

20 Q. And, how long have you been employed as a Police
21 Officer with the City of Rochester?

22 A. Approximately eight years.

23 Q. Has your entire law enforcement career been with
24 the Rochester Police Department?

25 A. Yes.

1 Q. What's your current assignment, Officer [REDACTED]?

2 A. So, I'm currently assigned to the Genesee Section
3 and patrol and I'm assigned to the first platoon,
4 which is commonly referred to as the overnight
5 position.

6 Q. What are the hours of that overnight shift?

7 A. So, the hours is from 23 hundred hours, or 11:00
8 p.m. the night prior, going into the next day at 7:15.

9 Q. And, Officer [REDACTED], have you worked in the
10 Genesee Section for your entire career?

11 A. Yes, after I received my permanent assignment,
12 following my field training.

13 Q. And, Officer [REDACTED], patrol officers that are
14 assigned to the Genesee Section working the overnight
15 shift, are you usually assigned a single car, single
16 officer to a car?

17 A. Yes, that's correct.

18 Q. You don't ride with partners?

19 A. Correct.

20 Q. I'm going to draw your attention, sir, to March
21 23rd of this year, 2020, were you working as a patrol
22 officer with the Rochester Police Department on that
23 date?

24 A. Yes, I was.

25 Q. And, were you working the overnight, 11:00 to

1 7:00 in the morning shift, that you just discussed?

2 A. Yes, I was.

3 Q. And, Officer [REDACTED], were you wearing a body worn
4 camera during that shift?

5 A. Yes.

6 Q. I want to draw your attention to a little bit
7 before 3:00 o'clock in the morning on that date,
8 again, March 23rd, sir. Did you become aware of a
9 call from [REDACTED] Child Street in the City of Rochester?

10 A. Yes.

11 Q. How did you become aware of that call?

12 A. I received that call over my radio dispatch.

13 Q. And, Officer [REDACTED], what was the nature of that
14 dispatch call?

15 A. So, the call came in with a person who had left
16 the house. It sounded like it had the undertone of a
17 possibly missing person. Someone had left the house
18 that might have been a mental health issue, or
19 something to that effect.

20 Q. And, Officer [REDACTED] at that time, did you
21 initially start to respond to [REDACTED] Child Street?

22 A. Yes, I did.

23 Q. Again, you're in your patrol car by yourself?

24 A. Correct.

25 Q. Did you make it to [REDACTED] Child Street?

1 A. I never actually physically made it to [REDACTED] Child
2 Street.

3 Q. Why not, Officer [REDACTED]

4 A. Because another call came in over dispatch for a
5 burglary.

6 Q. Where was that call from?

7 A. That call came in from dispatch for West Main
8 Street, a cellphone store on West Main Street.

9 Q. 767 West Main Street?

10 A. Yes.

11 Q. Was there any indication, initially, sir, that
12 those two calls were related?

13 A. No.

14 Q. Did you then proceed to the cellphone store at
15 767 in response to that burglar alarm call?

16 A. Yes, I did.

17 Q. Did you make it to that location?

18 A. Yes, I did.

19 Q. Were there any suspects present at that location?

20 A. No.

21 Q. Other officers there already?

22 A. Yes, there were other officers there.

23 Q. Did you make any observations about the business
24 located at 767?

25 A. There was a broken window on the west side of the

1 store.

2 Q. And, when you're on scene there, sir, at 767 West
3 Main, did any other calls come in?

4 A. Yes, another call came in as well.

5 Q. What was that call?

6 A. That call came in for a tow truck driver in the
7 area of West Main and Jefferson Avenue of a person who
8 was running around, like, disrobed saying they had
9 COVID-19.

10 Q. That information came in over the radio?

11 A. That's correct.

12 Q. Sir, how far from 767 West Main is the
13 intersection of Jefferson?

14 A. I would saw maybe 400 yards at max.

15 Q. Did you start proceeding your patrol car to that
16 direction?

17 A. Yes.

18 Q. Did you observe anything at that corner?

19 A. No, I didn't.

20 Q. Was there any information, any updates come in
21 over the radio as you were responding to that
22 intersection, sir?

23 A. Yeah. So, I continued to receive updates about a
24 male -- male involved and possibly seen running
25 southbound on Jefferson Avenue.

1 Q. Did any -- did any information about -- from any
2 officers get put over the radio?

3 A. Yes, there was other information of officers
4 saying that the male who may be involved, initially,
5 from [REDACTED] Child Street, may be under the influence of
6 some type of drugs or substance.

7 Q. And, that came over the radio?

8 A. That's correct.

9 Q. Do you recall, Officer [REDACTED] if it was a
10 specific drug or substance?

11 A. At that particular time, might have been PCP, was
12 what was relayed.

13 Q. Officer [REDACTED] just generally, right now, can
14 you state for the Grand Jurors whether you've had any
15 previous experience dealing with individuals who are
16 on PCP?

17 A. Yes. At the time, we didn't know it exactly, but
18 afterwards, when people had completed their medical
19 findings, then we were told that this person had been
20 under the influence of PCP.

21 Q. Any characteristics that stood out to you, any
22 behavior, sir?

23 A. Yep. Some is violent behavior, erratic behavior,
24 things like that.

25 Q. Was that a concern at all when you heard that

1 over the radio that the individual might be an PCP?

2 A. Yes, absolutely.

3 Q. And, at that point, sir, is there any indication
4 that these three calls are related necessarily?

5 A. So, not necessarily at that particular point.

6 Q. Do you start to proceed in another direction,
7 sir?

8 A. Yeah. So, while I was at the intersection of
9 West Main Street and Jefferson Avenue, I continued
10 eastbound on West Main Street, and then I continued
11 southbound on Reynolds Street.

12 Q. And, does Reynolds run parallel to Jefferson
13 Avenue?

14 A. Yes, it does.

15 Q. When you were on Reynolds Street, did you have
16 the opportunity to engage with any civilian?

17 A. Yes. So, in the area of, roughly, Reynolds
18 Street and Clifford -- or Clifton, rather, I
19 interacted with a female and, basically, asked her if
20 she had seen anyone in the immediate vicinity that was
21 running around or may have been naked or possibly
22 disrobed or having only a limited amount of clothing
23 on.

24 Q. Do you know who this individual was that you were
25 speaking to?

1 A. No. Just a random individual that was on the
2 street.

3 Q. Someone that was outside?

4 A. That's correct.

5 Q. Male or female?

6 A. Female.

7 Q. Did that female indicate whether she had seen the
8 person that you described?

9 A. She did indicate that and then pointed me in the
10 direction that was generally south of where I was
11 currently located at the time.

12 Q. Did you proceed south, sir?

13 A. Yes, I did.

14 Q. When you were proceeding south on Reynolds, did
15 any other calls come in?

16 A. Yes. So, when I was proceeding south on
17 Reynolds, I actually received, again, information over
18 my radio that an officer had saw the male they
19 believed was involved from [REDACTED] Child Street.

20 Q. And, where was that?

21 A. That was at the intersection of Jefferson Avenue
22 and Dr. Samuel McCree Way.

23 Q. Did you know who that officer was that put that
24 out?

25 A. Yes. That was Officer [REDACTED].

1 Q. And, what was the exact information that he put
2 out?

3 A. That he had a male fitting that description. He
4 was located in the area of Dr. Samuel McCree Way and
5 Jefferson Avenue.

6 Q. Was it clear to you from that dispatch, whether
7 or not the individual was in custody, Officer [REDACTED]
8 had the individual in custody?

9 A. So, at the time he was not in custody when he
10 originally relayed that information over the radio.

11 Q. Did you proceed in that direction though, sir?

12 A. Yes, I did.

13 Q. About how long did that take you to get there?

14 A. I would say maybe 12 to 15 seconds.

15 Q. And, eventually, did you then respond to that
16 area?

17 A. Yes.

18 Q. What did you observe --

19 (Whereupon, there was a interruption by
20 cellphone from the Grand Jury.)

21 A. I'm sorry. I didn't hear the last question. I
22 apologize.

23 Q. When you stopped your patrol car, Officer [REDACTED]
24 do you know about, sort of, where you were on
25 Jefferson Avenue?

1 A. So, I was on Jefferson avenue, facing southbound
2 between Dr. Samuel McCree and Cady Street in the
3 southbound lane.

4 Q. What did you observe when you exited your patrol
5 car?

6 A. So, when I exited my patrol car, there was two
7 other officers there, and there was a male, black,
8 later identified as Daniel Prude laying naked in the
9 street.

10 Q. Who were the two officers you observed?

11 A. Officer [REDACTED] and Officer [REDACTED].

12 Q. Was there an ambulance on scene?

13 A. I'm sorry. Was there?

14 Q. An ambulance on scene, Officer [REDACTED]

15 A. No, sir, there wasn't.

16 Q. Was Officer [REDACTED] on scene?

17 A. Yes, he was.

18 Q. Where was he located?

19 A. So, when I directly exited my vehicle, he was
20 actually walking back towards his vehicle at the time.

21 Q. Where was the individual who was later identified
22 as Mr. Prude?

23 A. He was laying in the street. I would estimate
24 approximately 20 to 25 feet from where I parked my
25 vehicle or exited my vehicle.

1 Q. Were there any officers in the vicinity of Mr.
2 Prude?

3 A. Yes. Directly next to Mr. Prude was Officer
4 [REDACTED] and Officer [REDACTED].

5 Q. Did you make any observations of Mr. Prude at
6 that time, Officer [REDACTED]

7 A. Yes. Like I previously mentioned, he was
8 disrobed, but he also had blood in different spots
9 across his entire body. So, like, his legs and wrists
10 area. Some abrasions on his knees and his upper body
11 as well. So, he had some blood all over him and he
12 was also wet as well, because the ground was wet. I
13 believe it was raining at the time.

14 Q. Officer [REDACTED], when you say he's disrobed, was
15 he naked?

16 A. He was completely naked.

17 Q. Was he handcuffed?

18 A. He was handcuffed.

19 Q. How was he handcuffed?

20 A. He was handcuffed with his two hands behind his
21 back.

22 Q. How was he positioned on the ground?

23 A. So, he was laying down at the time that I exited
24 my vehicle.

25 Q. Laying down on his back or on his stomach?

1 A. At the time he was laying on his, like, stomach
2 area, tilted towards the side.

3 Q. Were you able to see where he was bleeding from
4 Officer [REDACTED]

5 A. Like I said, he was bleeding from his feet, his
6 arms, his wrists area, different parts on, like, his
7 forearm area, as well as different spots, basically,
8 from almost head to toe.

9 Q. Was it cold outside, Officer [REDACTED] at about
10 3:00 in the morning, about quarter after 3:00 in the
11 morning on March 23rd?

12 A. Yes, it was.

13 Q. Okay. Was there some mixed precipitation coming
14 down?

15 A. Yes, I believe it was, like, wet snow.

16 Q. Initially, when you arrived at the scene, did Mr.
17 Prude ever complain about being cold?

18 A. No, he did not.

19 Q. Was he saying anything?

20 A. No.

21 Q. Did he eventually start saying things when you
22 were on scene, Officer [REDACTED]

23 A. Yes. So, he eventually started saying a lot of
24 stuff that didn't, what I would say, didn't make sense
25 or have any context or logic behind it. He was

1 screaming different names, he was mentioning about
2 someone owing him money. He mentioned about someone
3 named Scoot. He also mentioned that he wanted
4 officers' guns. He also mentioned he wanted officers'
5 pepper spray. He also mentioned stuff about suing
6 police as well.

7 Q. Did you, sort of, have any context about what he
8 was speaking about, Officer [REDACTED]

9 A. No. There was no logic behind what he was saying
10 as far as I'm concerned.

11 Q. These observations that you made, specifically,
12 the fact that Mr. Prude was naked at this time of day
13 and the statements he was making, Officer [REDACTED], did
14 you draw any conclusions?

15 A. My conclusion was that he was under the influence
16 of some type of substance.

17 Q. Again, was there any kind of concern with that
18 conclusion?

19 A. Yes.

20 Q. What was your concern?

21 A. My concern was that, if he was under the
22 influence of some type of substance, again, his --
23 his behavior could be extremely erratic. And then,
24 also, as he was talking, he would go from, what I
25 would describe as a more aggressive or agitated

1 position or -- or speech, and then he would, kind of,
2 go back down to a more calm state as well. But, he
3 kept going back and forth throughout the entire
4 duration as well.

5 Q. And, Officer [REDACTED] you mentioned that Mr. Prude
6 was asking officers for their guns, is that true?

7 A. Yes, that's correct.

8 Q. Did he appear to be directing that at any
9 specific officer or was he saying that generally.

10 A. Just generally speaking.

11 Q. And, at the time he's making these comments, sir,
12 what are the officers doing?

13 A. So, what we did, the officers and myself, we were
14 essentially, kind of, setting up a loose perimeter
15 around him, so that way he didn't get up off the
16 floor, or off the ground, more appropriately, or move
17 or try to get back into ongoing traffic or anything
18 else. We were, kind of, just setting a perimeter up
19 to contain him to a certain spot.

20 Q. What was the purpose of that?

21 A. For his safety and the officers' safety.

22 Q. What was that concern regarding the safety of the
23 officers or Mr. Prude?

24 A. Because he made mention about guns and things
25 like that. His behavior, again, was erratic. We

1 didn't want it to lead to anything that it didn't need
2 to lead to, the use of force or anything like that or
3 any other violent behavior towards us or any potential
4 citizens that may or may not have been around at the
5 time.

6 Q. And, Officer [REDACTED] when you're setting up the
7 perimeter that you just discussed, how many officers
8 are on scene at that point?

9 A. So, directly near him, there was about four
10 officers.

11 Q. Who were the four officers?

12 A. That was myself, Officer [REDACTED], Officer [REDACTED]
13 and Officer [REDACTED].

14 Q. Initially, Officer [REDACTED] do any of the officers
15 make any physical contact with Mr. Prude?

16 A. So, initially, no.

17 Q. Initially, did he appear compliant with your
18 commands and instructions?

19 A. So, at times initially, yes, he would listen. He
20 tried to get up off the floor -- or, off the ground a
21 few times, and we would say, you know, stay on the
22 ground and he would comply. And, the other times, he
23 would continue to move.

24 Q. Did you, in fact, give him some instructions,
25 Officer [REDACTED]

1 A. Yes, I did.

2 Q. What were some of the instructions that you were
3 giving?

4 A. In sum and substance, was to stay on the ground,
5 to remain on the ground, not to get up. Again, in sum
6 and substance.

7 Q. At least, initially, Officer [REDACTED], was Mr.
8 Prude complying with those -- those commands?

9 A. Yes.

10 Q. Now, at some point, Officer [REDACTED], was the
11 decision made to place a spit sock hood on Mr. Prude?

12 A. Yes.

13 Q. Why was that decision made?

14 A. Because he had spit multiple times. And, again,
15 at the time, number one -- you know, any time the
16 person is spitting, there's always a concern of, you
17 know, possible contamination, things like that. But
18 then, specifically, with the COVID-19 virus. Again,
19 this individual had mentioned that he may have
20 COVID-19. So, there was a lot of uncertainty with
21 exactly what that virus meant. At the time, it was
22 kind of my understanding that, essentially, if you've
23 got it, you died or you came very close to it. So,
24 him spitting was a huge concern of mine.

25 Q. Was this, sort of, in the beginning of the

1 pandemic, Officer [REDACTED] the middle, the end, if you
2 recall?

3 A. This was right at a beginning of it where things
4 were going bad.

5 Q. And, who -- who made the decision to place the
6 spit sock hood on Mr. Prude?

7 A. So, at some point, I made the decision to
8 actually get a spit sock, but I didn't actually place
9 the spit sock on Mr. Prude's head.

10 Q. Who placed that spit sock on Mr. Prude's head?

11 A. Officer [REDACTED].

12 Q. Are the spit socks issued by the Rochester Police
13 Department?

14 A. Yes. It's part of our standard issued equipment.

15 Q. Did all the officers appear in agreement that
16 that was appropriate, Officer [REDACTED]

17 A. Yes, they did.

18 Q. And, was the spit sock eventually placed on Mr.
19 Prude?

20 A. Yes, that's correct.

21 Q. Was there any concerns with -- with touching Mr.
22 Prude, Officer [REDACTED]

23 A. Yes. Quite frankly, I didn't want to touch him,
24 again, because of the blood that he had on him, the
25 fact, again, about COVID-19. So, my concern was I was

1 trying to not touch him as much as possible.

2 Q. Did Mr. Prude's behavior, demeanor, appear to
3 change after the spit sock that was placed on his
4 head?

5 A. Yes.

6 Q. In what way?

7 A. So, he physically began to make movements to
8 actually put himself in an, like, an upright position,
9 or a seated position, and try to actually, what I
10 would describe, as place his feet underneath him to
11 get up off of the ground. And then, also, his
12 behavior became, what I would describe, as a little
13 more aggressive, more agitated.

14 Q. Was he saying anything after the spit sock went
15 on his head?

16 A. So, the same thing that he had mentioned before.
17 That he wanted the officers' guns, that he was going
18 to take the officers' guns. Again, in sum and
19 substance, just repeated some of the same stuff as
20 before.

21 Q. Officer [REDACTED], when that spit sock was placed on
22 his head, how was Mr. Prude situated on the ground?

23 A. So, at the time, he was -- he was seated, again,
24 still handcuffed with his hands behind his back.

25 Q. With his butt on the ground?

1 A. Yes.

2 Q. And, when you say he attempted to get up what,
3 specifically, did he do, sir?

4 A. So, I'm trying to describe -- so, he began to
5 lean forward, and then place his -- or, bend his legs,
6 his lower part, his feet, underneath his body in a way
7 that you would be able to support your physical weight
8 underneath a person.

9 Q. And, those movements indicated to you, Officer
10 [REDACTED], that this individual is attempting to get up?

11 A. That is correct, yes.

12 Q. At that point, Officer [REDACTED] did some officers
13 go hands on with Mr. Prude?

14 A. Yes.

15 Q. And, which officers went hands on with Mr. Prude?

16 A. Initially, it was Officer [REDACTED] that initiated
17 the contact with -- with Mr. Prude.

18 Q. And, where did he make contact with Mr. Prude?

19 A. In his -- on his head, or head/face area.

20 Q. And, how is Mr. Prude positioned at that time?

21 A. So, at the time, he was with his stomach or chest
22 on the ground, face down, with his head laying on the
23 ground to either side.

24 Q. And, eventually, did other officers join in?

25 A. Yes.

1 Q. Who else made contact with Mr. Prude?

2 A. Officer [REDACTED].

3 Q. How did he make contact with Mr. Prude?

4 A. So, he was positioned and made contact with Mr.
5 Prude's, like, lower back area, hip area. In that --
6 that position, that region.

7 Q. What, specifically, was he doing?

8 A. He was doing another ground stabilization
9 technique, which we describe as knee on top.

10 Q. You were familiar with what you were seeing
11 Officer [REDACTED] do.

12 A. Yes.

13 Q. Is that a technique that you had been trained?

14 A. Yes. This is a technique that we're trained as a
15 part of the defensive tactics program.

16 Q. What's known as ground stabilization, Officer

17 [REDACTED]

18 A. That's correct.

19 Q. And, what -- did Officer [REDACTED], what he was
20 doing, did that appear to be consistent with that
21 technique?

22 A. Yes, it did.

23 Q. What about Officer [REDACTED], do you know what he
24 was doing?

25 A. Yes. He was doing what's referred to as

1 segmenting.

2 Q. Is that a technique that you were taught?

3 A. It is.

4 Q. Okay. And, did he appear to be doing that
5 properly?

6 A. Yes, he did.

7 Q. Did Mr. Prude continue to be verbal during --
8 during that portion of the encounter?

9 A. Yes. He continued to make statements, again,
10 about a gun, and then some other stuff that was just
11 in-articulable.

12 Q. Did he continue to move?

13 A. Yes, he did.

14 Q. And, while the officers were restraining Mr.
15 Prude, did you continue to give him instructions?

16 A. Yes.

17 Q. Okay. Did a third officer go hands on at some
18 point?

19 A. Yes.

20 Q. And, who was that?

21 A. That was Officer [REDACTED]

22 Q. What happened prior to Officer [REDACTED] going
23 hands on?

24 A. So, Mr. Prude still wasn't completely controlled
25 and he was still acting in an aggressive manner, what

1 I would describe as an assaultive manner. And then,
2 that dictated the need for Officer [REDACTED] or another
3 officer to assist with controlling Mr. Prude.

4 Q. So, where does Officer [REDACTED] make contact with
5 Mr. Prude?

6 A. So, Officer [REDACTED] was at the lowest part of
7 Mr. Prude's extremity, between his knees and feet,
8 like, that area.

9 Q. Did you ever go hands on, Officer [REDACTED]?

10 A. No, I did not.

11 Q. Why not?

12 A. Because at the time, there was two officers there
13 and a third officer had engaged and there just wasn't
14 a need at that point to engage any further.

15 Q. If one of those three officers didn't engage,
16 would you have engaged, Officer [REDACTED]?

17 A. Absolutely.

18 Q. And, why is that?

19 A. Because Mr. Prude needed to be controlled and if
20 another officer didn't engage then I had fully made up
21 my mind that I would also assist in making sure he was
22 controlled.

23 Q. At some point during the restraining, Officer
24 [REDACTED] were you alerted to a change in Mr. Prude's
25 condition?

1 A. Yes.

2 Q. Who alerted you to that change? How did you
3 become aware of that?

4 A. So, eventually, Mr. Prude was controlled and
5 Officer [REDACTED] had checked, kind of, checked on him
6 saying, hey, are you okay, and at that point, Mr.
7 Prude -- it appeared like his breathing might have
8 become labored, or his position, kind of, changed a
9 little bit.

10 Q. Were you then made aware that he may have
11 vomited?

12 A. Yes. So, while he was laying on the ground,
13 there was some clear liquid that appeared to come out
14 of Mr. Prude's mouth that I did observe.

15 Q. And, did that occur with the officers still hands
16 on at that point, Officer [REDACTED]

17 A. Yes.

18 Q. Was the ambulance on scene at that point?

19 A. I do not recall if the ambulance was on scene at
20 that point. I don't believe they were, though.

21 Q. Did the ambulance show up pretty quickly
22 thereafter if they weren't on scene?

23 A. Yes.

24 Q. And, what did you do, sir?

25 A. In regards to what?

1 Q. What did you do next, after the ambulance
2 arrived?

3 A. Okay. So, after they ambulance arrived, they
4 began to provide medical treatment to Mr. Prude and
5 then I ended up leaving the scene and going to another
6 priority job involving someone with a knife, a
7 possible menacing, is how the job came in.

8 Q. And, when Mr. Prude gets rolled over on the
9 stretcher, are you still present, Officer [REDACTED]

10 A. No.

11 Q. And, eventually, after you respond to the other
12 call, do you come back to that scene at Jefferson --
13 the vicinity of Jefferson and Cady or Samuel McCree
14 Way?

15 A. Yes, I did.

16 Q. About how much later?

17 A. It was probably about 10 to 12 minutes or so that
18 I returned back to that original scene.

19 Q. Let me back up for a second, Officer [REDACTED]
20 When you went to leave the scene to go to the other
21 call, was your patrol car in the same spot that you
22 parked it?

23 A. No, it was not.

24 Q. Do you know what had happened?

25 A. So, at that time, I did not know, but my Sergeant

1 had moved my patrol car so the ambulance could have a
2 clear path to get to the scene.

3 Q. Okay. You learned that after the fact?

4 A. Yes.

5 Q. So, you returned to the scene 15 minutes later?

6 A. Approximately.

7 Q. Was the ambulance still on scene, Officer [REDACTED]

8 A. Yes.

9 Q. Do you know what was happening with Mr. Prude, if
10 he was present?

11 A. So, at that time, Mr. Prude was in the ambulance;
12 and, again, medical treatment was being provided to
13 Mr. Prude. Then, I ended up following the ambulance
14 and Mr. Prude to Strong Memorial Hospital.

15 Q. When you returned back, he was transported to
16 Strong in the ambulance?

17 A. Yes, that's correct.

18 Q. You followed in the patrol car?

19 A. Yes, I did.

20 Q. Did you stay with Mr. Prude for any period of
21 time at Strong Memorial Hospital?

22 A. Yes.

23 Q. For how long?

24 A. From the time that I arrived at Strong I stayed
25 with Mr. Prude, I would say, approximately six hours

1 or so until I was released by my supervisor.

2 Q. During that time, did Mr. Prude's a condition
3 ever change?

4 A. So, when I left the hospital, Mr. Prude's
5 condition was listed as critical at the time.

6 Q. Was he unconscious at the time?


7 A. Yes.

8 Q. Did you take some photos at the hospital, Officer
9 

10 A. Yes, I did. While at the trauma bay, I did take
11 some photos of some injuries that Mr. Prude had on his
12 body.

13 Q. What was the purpose of that?

14 A. Just part of our standard procedure documenting
15 some of the listed injuries that he -- that he had.

16 Q. And, after you left Strong Memorial that morning,
17 Officer  did that essentially end your
18 involvement in this case?

19 A. Yes, it did.

20 Q. And, since that date, have you reviewed your body
21 worn camera footage?

22 A. Yes, I have.

23 Q. I'm going to show you, sir, what's been marked as
24 Grand Jury Exhibit 41, and I'm going to ask if you
25 recognize that Exhibit, sir?

1 A. Yes.

2 Q. How do you recognize it?

3 A. This is a DVD of my body worn camera footage that
4 I signed and initialed.

5 Q. How do you know that's what that is, sir?

6 A. Because I signed it. This is my handwriting, my
7 initials and I dated it as well.

8 Q. Did you do that after you reviewed it?

9 A. Yes.

10 Q. Sir, was that footage that's contained on Grand
11 Jury Exhibit 41 a fair and accurate copy of your body
12 worn camera footage from the early morning hours of
13 March 23rd, 2020?

14 A. Yes, it is.

15 MR. SMITH: At this is time, I'm going to
16 offer Grand Jury 41 into evidence.

17 (Whereupon, Grand Jury Exhibit Number 41 was
18 then received into evidence.)

19 MR. SMITH: Ladies and gentlemen, at this
20 time, we're going to play Grand Jury Exhibit Number
21 41, Officer [REDACTED] body worn camera video.

22 I'm going to stop a few times at the
23 beginning and ask a few questions. I'm going to try
24 to play it.

25 (Whereupon, the video was then played for

1 the Grand Jury.)

2 MR. SMITH: Pausing the video at the 50
3 second marker.

4 BY MR. SMITH:

5 Q. Officer [REDACTED] the building we saw on the right,
6 when the video started, what was that location?

7 A. That was the cellphone building where the
8 burglary alarm came in.

9 Q. 767 West Main?

10 A. Yes.

11 Q. And, is this patrol -- whose patrol car is that,
12 Officer [REDACTED]

13 A. That is my car.

14 Q. Is there other patrol cars beyond your car?

15 A. Yes.

16 Q. Who are the officers that are on scene?

17 A. At the time, at the scene there, it was Officer
18 [REDACTED], Officer [REDACTED], and I think Officer [REDACTED]
19 might even have been there too.

20 MR. SMITH: We're going to keep playing from
21 the five second mark.

22 (Whereupon, the video continued to play for
23 the Grand Jury.)

24 BY MR. SMITH:

25 Q. Officer [REDACTED] pausing the video at the 2 minute

1 15 second marker, was that conversation that we just
2 heard on the video with the civilian that you
3 described?

4 A. Yes.

5 Q. And, that individual gave you the potential path
6 of travel or the direction of travel for the
7 individual that she observed?

8 A. That's correct.

9 (Whereupon, the video continued to play for
10 the Grand Jury.)

11 BY MR. SMITH:

12 Q. Who is that, Officer [REDACTED]?

13 A. That was Officer [REDACTED].

14 Q. Is that the indication that he had the individual
15 in custody?

16 A. That he could physically see the male.

17 Q. Okay. Thank you.

18 (Whereupon, the video continued to play for
19 the Grand Jury.)

20 BY MR. SMITH:

21 Q. Officer [REDACTED], can you just describe the scene
22 that we're seeing at the 3 minute and 20 second marker
23 as you exited your patrol car?

24 A. This is me facing southbound on Jefferson Avenue,
25 just south of Dr. Samuel McCree Way. And, this is two

1 other officers, Officer [REDACTED] and Officer [REDACTED],
2 in the southbound lane and that is Mr. Prude lying on
3 the ground.

4 Q. And, Mr. Prude is handcuffed at this point?

5 A. Yes, he is.

6 Q. Is he lying on his stomach?

7 A. Yes.

8 Q. And, the officer to the -- on the right of the
9 screen, by -- at this point, standing near where it
10 looks to be Mr. Prudes's head, who is that officer?

11 A. That is Officer [REDACTED].

12 Q. And the other officer?

13 A. Is Officer [REDACTED].

14 Q. And, at this point in time, Officer [REDACTED] is
15 Officer [REDACTED] on scene?

16 A. Yes.

17 Q. And, where's Officer [REDACTED] right now?

18 A. So, based on here, he would be essentially to my
19 west, and to my north. So, I walked past him as I got
20 out of the vehicle.

21 Q. Understood.

22 (Whereupon, the video continued to play for
23 the Grand Jury.)

24 BY MR. SMITH:

25 Q. Was that somebody confirming Mr. Prude's

1 identification?

2 A. Yes. That was Officer [REDACTED].

3 Q. Okay. Thank you.

4 (Whereupon, the video continued to play for
5 the Grand Jury.)

6 BY MR. SMITH:

7 Q. Did you hear that reference that was just made by
8 Mr. Prude on the video, Officer [REDACTED]

9 A. Yes.

10 Q. What was he saying?

11 A. Let me eat some shit.

12 Q. Did you hear him saying that during your time at
13 the scene?

14 A. Yes.

15 Q. Did you know specifically, what he was referring
16 to, Officer [REDACTED]?

17 A. Yes.

18 Q. What was he referring to?

19 A. That there was feces on his hands from him
20 putting his finger in his anus.

21 Q. Is that something you were able to see?

22 A. Yes.

23 (Whereupon, the video continued to play for
24 the Grand Jury.)

25 BY MR. SMITH:

1 Q. Whose voice did we just hear, Officer [REDACTED]?

2 A. That was me.

3 Q. What -- what were you saying?

4 A. I was telling Mr. Prude to stop spitting.

5 Q. Was it you that was suggesting the spit sock?

6 A. Yes, it was.

7 (Whereupon, the video continued to play for
8 the Grand Jury.)

9 BY MR. SMITH:

10 Q. Are the statements that were made by Mr. Prude
11 part of what you were referring to, Officer [REDACTED]?

12 A. Yes.

13 Q. And, what was he asking for at that time?

14 A. For officers' guns.

15 Q. Okay.

16 (Whereupon, the video continued to play for
17 the Grand Jury.)

18 BY MR. SMITH:

19 Q. What's happening right now, Officer [REDACTED]

20 A. So, at this point, I was, basically, trying to
21 get a spit sock for Officer [REDACTED].

22 Q. Is it clear from the video that Officer [REDACTED]
23 has the spit sock?

24 A. Yes.

25 Q. Does he eventually put that spit sock on?

1 A. Yes, he does.

2 Q. We'll see that in the video, Officer [REDACTED]

3 A. Yes.

4 MR. SMITH: Keep playing.

5 (Whereupon, the video continued to play for
6 the Grand Jury.)

7 BY MR. SMITH:

8 Q. Officer [REDACTED] is that you giving the commands
9 to Mr. Prude?

10 A. Yes, it is.

11 Q. Officer [REDACTED] what are you saying?

12 A. I'm telling him to not get up off the ground.

13 Q. What is causing you to say that?

14 A. Because at the time, he started, again, moving
15 his body to, what I interpret as being an upward
16 position or him trying to stand up and get off the
17 ground, and I didn't want that to happen.

18 Q. Why did you not want that to happen?

19 A. For his safety and the safety of the officers so
20 he doesn't go anywhere else or the officers don't have
21 to put ourselves at any other unnecessary risk.

22 Q. And, you had, sort of, made that command a couple
23 of times, Officer [REDACTED]

24 A. Yes, that's correct.

25 Q. And, at this point, does Mr. Prude continue to

1 comply? Does he stay on the ground?

2 A. So, he does stay on the ground at the time, yes.

3 MR. SMITH: Keep playing from the 5:42
4 marker.

5 (Whereupon, the video continued to play for
6 the Grand Jury.)

7 BY MR. SMITH:

8 Q. What was happening right there, Officer [REDACTED]
9 Pausing at the 6:45.

10 A. So, he was getting more and more agitated. And
11 then he began to spit and spit with the spit sock on
12 his head.

13 MR. SMITH: Okay. Keep playing.

14 (Whereupon, the video continued to play for
15 the Grand Jury.)

16 BY MR. SMITH:

17 Q. Officer [REDACTED] I'm pausing at the 7 minute 10
18 second marker. Fair to say we can't see the officers
19 or Mr. Prude in the frame of the video at this time?

20 A. Yes.

21 Q. Is this when the officers go hand on, Officer
22 [REDACTED]

23 A. Yes, mm-hmm.

24 Q. And, what had happened, since we can't see, what
25 had happened right before that?

1 A. So, Mr. Prude continued to try to stand up and
2 get up off the ground, after again, continued to not
3 comply with officers directions. And so, at that
4 particular point, officers end up going hands on with
5 him to restrain him.

6 MR. SMITH: Keep playing from the 7:10 mark.

7 (Whereupon, the video continued to play for
8 the Grand Jury.)

9 BY MR. SMITH:

10 Q. Officer [REDACTED] do you know, specifically, who
11 those officers were?

12 A. Officer [REDACTED] initially and then Officer [REDACTED]
13 followed by eventually Officer [REDACTED].

14 (Whereupon, the video continued to play for
15 the Grand Jury.)

16 BY MR. SMITH:

17 Q. Officer [REDACTED], pausing at the 7 minute and 30
18 second mark, is it clear that the ambulance is
19 arriving, if not already arrived?

20 A. Yeah. So, at that particular point, the
21 ambulance was maybe 75 yards north of my location at
22 that point.

23 Q. Thank you.

24 MR. SMITH: Keep playing.

25 (Whereupon, the video continued to play for

1 the Grand Jury.)

2 BY MR. SMITH:

3 Q. Officer [REDACTED], did you hear the -- pausing at
4 the 7 minute and 49 second mark, did you hear the
5 reference to a taser?

6 A. Yes.

7 Q. Calm down, dude?

8 A. Yes.

9 Q. Who made those comments?

10 A. That was me.

11 Q. When you said, you're going to get tased, what
12 were you referring to?

13 A. That I would possibly tase Mr. Prude if he did
14 not comply with officers. Then, he continued to
15 exhibit assaultive or aggressive behavior towards
16 officers.

17 (Whereupon, the video continued to play for
18 the Grand Jury.)

19 BY MR. SMITH:

20 Q. Did you hear a female voice, Officer [REDACTED]

21 A. Yes.

22 Q. Who was that?

23 A. That was one of the Paramedics or EMTs.

24 Q. So, at this point, it's 8 minutes and 1 second,
25 are EMTs and Paramedics on scene?

1 A. Yes.

2 Q. And, are Officer [REDACTED] and Officer [REDACTED] still
3 hands on with Mr. Prude?

4 A. Yes.

5 Q. Is this Officer [REDACTED]?

6 A. Yes, it is.

7 Q. And, at this point, has he gone hands on yet?

8 A. No.

9 Q. Okay.

10 MR. SMITH: Keep playing.

11 (Whereupon, the video continued to play for
12 the Grand Jury.)

13 BY MR. SMITH:

14 Q. Officer [REDACTED] sounds like a plan, who said
15 that?

16 A. That was me.

17 Q. What were you referring to?

18 A. To the statement the Paramedic just made that she
19 was going to give Mr. Prude, essentially, some
20 sedative so he would calm down.

21 (Whereupon, the video continued to play for
22 the Grand Jury.)

23 BY MR. SMITH:

24 Q. This is the last time I'm going to pause it. At
25 the 8 minute and 13 second mark, does it appear to

1 you, after that conversation about the plan, as though
2 Mr. Prude is at least still verbal?

3 A. Yes.

4 MR. SMITH: Keep playing.

5 (Whereupon, the video continued to play for
6 the Grand Jury.)

7 BY MR. SMITH:

8 Q. Pausing one more time at 8 minutes and 33
9 seconds. Is Officer [REDACTED] now hands on?

10 A. Yes, he is.

11 Q. And, where is he engaging Mr. Prude?

12 A. So, he's on his lower extremities, like, from the
13 knee to the -- like, the ankles or foot area, the
14 lower portion.

15 Q. Officer [REDACTED] the last question I paused for
16 previously, you made a reference to Mr. Prude
17 continuing his assaultive behavior on the officers?

18 A. Yes.

19 Q. I guess I want to ask specifically, what was that
20 behavior?

21 A. So, he was still gyrating, still kicking his
22 feet, still had movement in his lower extremities and
23 that's what prompted Officer [REDACTED] to begin to --
24 to try to control his lower extremities.

25 Q. At this point, 8 minutes and 33 seconds, was it

1 you -- did you observe Mr. Prude to still be moving?

2 A. Yes.

3 (Whereupon, the video continued to play for
4 the Grand Jury.)

5 BY MR. SMITH:

6 Q. Now, Officer [REDACTED] at this point, 9 minutes and
7 23 seconds, does there appear to have been a change in
8 Mr. Prude's condition?

9 A. Yes.

10 Q. How did you become aware of that?

11 A. So, this is what I was referring to earlier when
12 he began puking at that point.

13 Q. Were you able to observe that, Officer [REDACTED]?

14 A. Yes.

15 Q. What -- what did you see?

16 A. So, I saw, like, a clear liquid. It looked like,
17 what I would describe as water coming out of Mr.
18 Prude's mouth.

19 Q. Who turned him over?

20 A. Officer [REDACTED].

21 MR. SMITH: Keep playing.

22 (Whereupon, the video continued to play for
23 the Grand Jury.)

24 BY MR. SMITH:

25 Q. Now, Officer [REDACTED] the body video just -- just

1 ended. At that point, did you turn your camera off?

2 A. Yes.

3 Q. Is that because you were leaving for the other
4 dispatch that we heard?

5 A. That's correct.

6 Q. And, you made a statement at the end about your
7 car, is that what you were referring to when your
8 Sergeant moved your car?

9 A. Yes.

10 Q. Finally, Officer [REDACTED] did you ever -- at that
11 scene of Jefferson and Cady and later at Strong
12 Memorial, did you ever make physical contact with Mr.
13 Prude?

14 A. No.

15 MR. SMITH: I have no further questions for
16 Officer [REDACTED]. Do any jurors have questions?

17 A JUROR: I have a question.

18 MR. SMITH: Let me ask first and make sure
19 it's okay for you to answer, please.

20 THE WITNESS: Okay.

21 A JUROR: So, I have a question because when
22 the Medical Examiner was here, she said nothing was
23 ever administered to Daniel. I want to know the
24 little bit of time that he had left and the female
25 came from the ambulance, did he actually see anything

1 go into Daniel?

2 BY MR. SMITH:

3 Q. Officer [REDACTED], you can answer. Did you see that
4 female administer -- the ambulance personnel
5 administer anything to Mr. Prude?

6 A JUROR: She said she was going to give him
7 a sedative.

8 THE WITNESS: No. I didn't see her give him
9 anything.

10 A JUROR: Okay.

11 A JUROR: Was he on the stretcher when he
12 was puking, or on the ground?

13 THE WITNESS: He was laying on the ground
14 still.

15 A JUROR: How could you -- did he still have
16 the mask on?

17 THE WITNESS: Yes.

18 A JUROR: But you could see his mouth?

19 THE WITNESS: The side of his face, yes.

20 BY MR. SMITH:

21 Q. And, why is that, Officer [REDACTED] Is the spit
22 sock trans -- translucent, is it solid?

23 A. So, you can see through it. It's, like, a meshy
24 type of material. So, you can see through it. So, if
25 I put a spit sock on my head now, you can tell that

1 it's me still. So, I don't know if that --
2 translucent, I guess. It's almost see-through.

3 MR. SMITH: And, for the Grand Jurors, I
4 think there will be other witnesses that we can ask
5 the spit sock questions to.

6 A JUROR: Okay.

7 A JUROR: Was he still verbal after he
8 started puking.

9 THE WITNESS: So -- no, I didn't -- after he
10 started puking, I didn't hear him make any other
11 verbal statements or any commentary or anything.

12 A JUROR: I think he would know the answer
13 to this question. Is the sock a plastic or nylon or
14 is it wool or, like, actual sock like cotton?

15 MR. SMITH: Again, if you're aware, Officer
16 [REDACTED]. I will let the Grand Jurors know that they'll
17 be able to see that sock eventually.

18 MS. SOMMERS: Not that one.

19 MR. SMITH: A similar sock. But, Officer
20 [REDACTED] if you can answer if you know the material.

21 THE WITNESS: I don't know the actual
22 material, but it's a -- what I would describe as like
23 a mesh, nylon material. But, I'm not sure of the
24 actual manufacturers material that it consists of.

25 A JUROR: When he left that scene, when

1 Daniel Prude left that scene, was he still breathing?
2 When they pulled him off in the ambulance, was he
3 still breathing?

4 BY MR. SMITH:

5 Q. Do you know, Officer [REDACTED], do you have
6 firsthand knowledge of whether or not, when you were
7 following the ambulance to Strong, whether or not Mr.
8 Prude was breathing or whether or not he regained a
9 pulse?

10 A. No, I didn't know Mr. Prude's condition at that
11 point.

12 MR. SMITH: Any other questions for Officer

13 [REDACTED]

14 A JUROR: During your training as a police
15 officer, how do you -- are you taught to discern
16 between somebody arriving in pain or arriving in
17 discomfort versus making assaultive actions because of
18 laying on the ground moving their legs?

19 THE WITNESS: So, in our specific training,
20 we're taught to, essentially, look at behavior. So,
21 what drives that behavior. I'm not aware of whether
22 or not it's due to pain necessarily or assaultive.
23 The only thing I can do is interpret the actual
24 behavior.

25 BY MR. SMITH:

1 Q. I guess, a brief follow up to that, Officer
2 [REDACTED], the whole time that you observed Mr. Prude in
3 the street, making reference to using assaultive
4 behavior, was he handcuffed behind his back?

5 A. Yes, he was.

6 MR. SMITH: Any other questions?

7 A JUROR: I have one. I was thinking
8 earlier. I think you answered it, but -- so, you said
9 you guys were, like, in a protective circle, like,
10 when you were standing around?

11 THE WITNESS: So, not protective. I said
12 perimeter.

13 A JUROR: Okay. So, basically, it was to
14 protect the officers and him, right?

15 THE WITNESS: That's correct.

16 A JUROR: So, when you said he was trying to
17 -- trying to get up possibly, is that an easy position
18 for someone to just stand up or get up from?

19 THE WITNESS: It depends on, I guess,
20 someone's mobility. So, someone who is more athletic,
21 which is what he appeared to be, as a more athletic
22 individual, it could be a very easy thing to do. But,
23 if you're a person who is, I would say, less athletic,
24 it can be more challenging for you to do.

25 A JUROR: Okay.

1 BY MR. SMITH:

2 Q. I guess, as a follow up, Officer [REDACTED], have you
3 seen individuals that were handcuffed behind their
4 back get up off the ground?

5 A. Yes, I have.

6 A JUROR: During all this time that he's
7 been exposed to the elements, did anyone thought to
8 put a blanket around him?

9 BY MR. SMITH:

10 Q. Did you ever consider putting a blanket on Mr.
11 Prude?

12 A. No.

13 Q. Why not?

14 A. Because, in my opinion, it wasn't necessary.
15 Number one, we do not have blankets, it's not
16 something that we're issued. Number two, it wouldn't
17 have been practical. It could have also induced a
18 potential dangerous situation for Mr. Prude, where he
19 could have gotten tied up in the blanket and maybe
20 hurt himself even further.

21 Q. Did Mr. Prude appear to be cold to you, Officer
22 [REDACTED]?

23 A. No, he didn't appear to be cold.

24 Q. Did he complain about being cold?

25 A. No, he did not.

1 MR. SMITH: Any other questions?

2 A JUROR: I'm kind of curious as to the --
3 when you arrived for the broken window there, those
4 two officers were at the scene before you. They must
5 have left before you. I didn't catch that part,
6 because they were down at -- where the store -- where
7 the window was broken. Those two officers were at the
8 scene before you, right? They were at the broken
9 window, the store, the cellphone store.

10 THE WITNESS: I'm sorry. Your question is
11 kind of confusing to me, can you restate it?

12 BY MR. SMITH:

13 Q. I'll take a stab, sir. In your body worn camera,
14 it appears you left 767 West Main before the other
15 officers?

16 A. Yes.

17 Q. And, it appears as though Officer [REDACTED]
18 encountered and arrived at Jefferson and Cady,
19 encountered Mr. Prude and got to Jefferson and Cady
20 before you did?

21 A. That's correct.

22 Q. Do you know how or why that happened, Officer

23 [REDACTED]

24 A. My assumption is the route that they took.

25 Q. You could have -- your assumption would be that

1 you took the longer route?

2 A. Correct.

3 Q. And, they got there quicker?

4 A. Correct.

5 A JUROR: So, they immediately handcuffed
6 him. Must be when you got there, he was already
7 handcuffed.

8 THE WITNESS: When I arrived on scene, he
9 was already handcuffed.

10 A JUROR: So, is it standard in any
11 situation like that to leave him on the ground instead
12 of maybe putting him in the police car, or was it
13 because of the circumstance with feces and the
14 spitting and those things that left him on the ground?

15 THE WITNESS: So, it's, I guess, all of the
16 above. So, when a person is mental hygiene arrested,
17 we're not authorized to transport a person inside of
18 our police vehicle. That's what an ambulance is
19 called for. So, their part is to transport --
20 transport them. So, that's another reason why he
21 wouldn't have been placed in a patrol car. But then,
22 additionally, yes, the fact that he had blood on him,
23 during the whole COVID-19 pandemic, as well as the
24 feces, that was another reason why we didn't want to
25 touch him any more than necessary. So, if we had put

1 him in a car, then we would have to, you know,
2 physically touch him again to remove him to get him to
3 go back into the ambulance, which is ultimately the
4 way he would have had to been transported.

5 A JUROR: Thank you.

6 MR. SMITH: Do anyone of the other Grand
7 Jurors have any other questions? Seeing as there are
8 none, you are excused. Thank you.

9 THE WITNESS: Thank you.

10 MS. SOMMERS: We're going to take a ten
11 minute break.

12 (Whereupon, the witness left the Grand Jury
13 room at a time of 3:02 p.m.)

14 (Whereupon, there was a short break off the
15 record.)

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1 (Proceeding reconvened.)

2 (Whereupon, the witness entered the Grand
3 Jury room at a time of 3:15 p.m.)

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5 MS. SOMMERS: For the record, we are
6 recalling [REDACTED].

7

8 [REDACTED] [REDACTED] after having
9 been previously duly sworn, testified as follows:

10

11 **EXAMINATION BY MS. SOMMERS:**

12 Q. And, sir, you're still under oath. Previously,
13 when you were sitting in that seat, we had gone
14 through a process and Grand Jury Exhibit Number 40 was
15 moved into evidence. Do you recall that process?

16 A. Yes.

17 Q. And, since that, we had some technical
18 difficulties while it was playing, is that fair and
19 accurate?

20 A. Yes.

21 Q. Did you then produce another copy of what was
22 contained on Grand Jury Exhibit Number 40 and place it
23 on a disc, or a removable disc?

24 A. Yes, a thumb drive.

25 Q. Okay. A thumb drive. Thank you. So, I'm

1 handing you what's been marked for identification
2 purposes, Grand Jury Exhibit 40.1, do you recognize
3 what's in that?

4 A. Yes, the thumb drive that I put the video on.

5 Q. Thank you. And, how do you know that's the thumb
6 drive other than looking at it and recognizing it?

7 A. It's my personal thumb drive.

8 Q. Okay. And, did you, in fact, date and initial
9 the outside of that envelope?

10 A. Yes.

11 Q. So, everything that applied to Grand Jury 40,
12 applies to Grand Jury Exhibit 40.1 in terms of how it
13 was produced and everything that we already previously
14 went through?

15 A. Correct.

16 Q. Thank you.

17 MS. SOMMERS: So, at this time, I'm going to
18 move into evidence 40.1.

19 (Whereupon, Grand Jury Exhibit Number 40.1
20 was then received into evidence.)

21 MS. SOMMERS: So, for the record, we're not
22 going to play it from the beginning since we had
23 already seen maybe the first third or so of the video.

24 (Whereupon, there was a short break off the
25 record.)

1 (Proceeding reconvened.)

2 MS. SOMMERS: All right. So, back on the
3 record at the 6:20 point in the video.

4 (Whereupon, the video played for the Grand
5 Jury.)

6 BY MS. SOMMERS:

7 Q. Okay. So, pausing the video at 9 minutes and 8
8 seconds, relative to this series of clips that we're
9 about to see, were you able to make any changes to the
10 -- to the speed at which the video was playing?

11 A. Yes. Being a civilian surveillance system,
12 consumer grade, a lot of times the playback uses a
13 software and it's proprietary and not very good, and
14 the video, when you play it back, was playing at twice
15 speed, thereabouts. So, what I did was in Adobe
16 Premium, I slowed down the video so that one second on
17 the screen translated to one second on the video, so
18 that it would be playing in regular speed.

19 Q. Thank you. So, other than slowing the video to
20 the actual second per second timing, did you alter the
21 content at all?

22 A. No, I did not alter the content.

23 Q. Thank you.

24 MS. SOMMERS: We're re-starting the video.

25 (Whereupon, the video continued to play for

1 the Grand Jury.)

2 (Whereupon, the video concluded.)

3 MS. SOMMERS: So -- okay. So, stopping the
4 video at the end. Does anyone have any questions for
5 this witness?

6 GRAND JURY POOL: (All jurors indicating a
7 negative response.)

8 MS. SOMMERS: A very, very hardy thank you.
9 You're all set.

10 (Whereupon, the witness left the Grand Jury
11 room at a time of 3:36 p.m.)

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1 (Whereupon, the witness entered the Grand
2 Jury room at a time of 3:38 p.m.)

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4 **S G T.** [REDACTED], after
5 being duly called and sworn, testified as follows:

6

7 **EXAMINATION BY MS. SOMMERS:**

8 Q. Good afternoon?

9 A. Good afternoon.

10 Q. Could you please state and spell your full name?

11 A. [REDACTED].

12 Q. Thank you. Where do you work?

13 A. The Rochester Police Department.

14 Q. What is your current position?

15 A. Sergeant.

16 Q. How long have you been a member of the Rochester
17 Police Department?

18 A. Just over 15 and a half years.

19 Q. And, how -- I apologize. How long have you been
20 a Sergeant?

21 A. January will be two years.

22 Q. Thank you. Does the Rochester Police Department
23 require in-service training to its members; do they
24 require its members to attend in-service training?

25 A. Yes, they do.

1 Q. And, approximately how many hours per year?

2 A. So, it's quarterly. So, about 32 hours.

3 Q. Do the subjects vary from year to year?

4 A. It does.

5 Q. Are you, in addition to being a general Sergeant,
6 a member of any special teams at the Rochester Police
7 Department?

8 A. I am.

9 Q. What team are you a member of?

10 A. The SWAT Team.

11 Q. For the benefit of the people -- I know we all
12 hear the word SWAT, but what does the acronym S-W-A-T,
13 what does that stand for?

14 A. Special Weapons And Tactics.

15 Q. Is membership or placement on the SWAT Team
16 automatic, like, I'd like to be on SWAT so I'm on
17 SWAT?

18 A. No.

19 Q. What is the process?

20 A. It's an application process you go through. And
21 then, they do it probably every two years, and there's
22 a tryout day, which is a physical fitness test,
23 shooting and then an interview.

24 Q. Okay. And, what types of things does the SWAT
25 Team do?

1 A. So, we're in charge of serving high risk search
2 warrants, subject apprehensions and barricaded
3 subjects.

4 Q. In addition to the general in-service training
5 that you receive as a member of the Rochester Police
6 Department, does the SWAT Team get any additional
7 required training per year?

8 A. Yes, we do.

9 Q. And, what does that consist of, just hourly?

10 A. So, it's two to three days a month and then once
11 -- and then, October is typically five days. So,
12 hourly -- I can't figure the math. So, I mean,
13 they're eight hour days each time, so typically it'd
14 be probably, like, 30 extra days a year.

15 Q. Can you explain to the Grand Jury what the phrase
16 or the term defensive tactics; what is -- what are
17 defensive tactics?

18 A. They're tactics taught to officers on ways to
19 control subjects and to protect themselves.

20 Q. And, when are most officers trained on defensive
21 tactics?

22 A. In the Police Academy.

23 Q. Is that when you were initially trained on
24 defensive tactics?

25 A. Yes, it is.

1 Q. And, after the Police Academy, is the subject of
2 defensive tactics ever refreshed at any of the
3 in-service trainings we talked about?

4 A. From time to time.

5 Q. Okay. What is the New York State Division of
6 Criminal Justice Services?

7 A. It's an organization that oversees police
8 training.

9 Q. And, to your knowledge, is that an organization,
10 a public organization?

11 A. Yes, it is.

12 Q. Located in Albany?

13 A. Yes.

14 Q. All right. Are you aware of whether or not the
15 New York State Division of Criminal Justice Services,
16 sort of, made changes to its overall defensive tactics
17 protocol within the last two to three years?

18 A. Yes, they did.

19 Q. And, just in broad strokes -- there will be other
20 witnesses to speak to this but, just in broad strokes,
21 what kind of general changes did you notice?

22 A. It went to more of a control versus a compliance
23 type techniques.

24 Q. So, can you explain what you mean by control
25 versus compliance?

1 A. So, control is just ways to control a person to
2 be the least intrusive as opposed to compliance might
3 be more, like, a joint manipulation, where it would
4 cause pain to a person.

5 Q. Okay. So, from -- so, from more pain type
6 maneuvers to more controlling type maneuvers?

7 A. Yes.

8 Q. Okay. Was this a change in -- from the defensive
9 tactics that you had learned, for instance, going
10 through the Academy?

11 A. I did not learn the new one in the Academy, no.

12 Q. So, this was in addition to what you had
13 previously learned?

14 A. Yes.

15 Q. All right. When was the first time these new
16 techniques were taught to you?

17 A. About a year and a half ago.

18 Q. And, was that as part of your general in-service
19 training, or part of SWAT Team specific training?

20 A. It was done through the SWAT Team.

21 Q. Was that the only time that you were presented
22 with the new subject management or defensive tactics
23 techniques?

24 A. No, it was not.

25 Q. When was the next time?

1 A. We had an in-service, where they did it again for
2 us.

3 Q. And, by them, who are you referring to?

4 A. Excuse me?

5 Q. By them, are you referring to the Rochester
6 Police Department?

7 A. Yes, the Rochester Police Department.

8 Q. All right. As part of that -- so -- so, you
9 actually had the opportunity to learn these new
10 techniques twice, is that accurate?

11 A. Yes.

12 Q. Okay. Was one of these techniques called
13 segmenting?

14 A. Yes, it is.

15 Q. Could you explain what you learned, relative to
16 segmenting?

17 A. When a subject's on the ground, their head's
18 turned to the side, and you place your hands on top of
19 their head, and get into, basically, a push up
20 position.

21 Q. So, in terms of -- you put their -- your hands on
22 their head, where would -- just in general, where
23 would your hands be going, like, on the top of their
24 head?

25 A. The side of their head, around the ear area, away

1 from the mouth.

2 Q. Okay. And, in addition to learning these types
3 of maneuvers and techniques, do you actually go
4 through them?

5 A. Yes, we do.

6 Q. So, in terms of what you described as a
7 segmenting technique, was that actually performed on
8 you?

9 A. Yes, it was.

10 Q. Once -- more, than once?

11 A. Multiple times.

12 Q. Multiple times. Can you explain for the Grand
13 Jury what it -- what it felt like?

14 A. It was -- it was eye opening because it was -- it
15 was different than what we learned before. Once a
16 person got in that position, moving your head around
17 and moving your shoulder, it was difficult.

18 Q. Was that something that you weren't used to with
19 the old techniques?

20 A. Yes.

21 Q. Okay. Is it still possible for a subject to move
22 his or her legs?

23 A. Yes.

24 Q. When you were in the subject's segmenting
25 position, were you able to breathe?

1 A. Yes, I was.

2 Q. Did it interfere with your airways at all?

3 A. Not at all.

4 Q. Is there any additional training or guidance
5 given in terms of other -- placement of other
6 individuals, relative to a subject's body?

7 A. Yes, there was.

8 Q. And, can you just explain, relative to this
9 incident that we're going to be discussing, where that
10 placement was preferred?

11 A. So, knee on top, which is the lower back, and
12 then the figure four, which is the legs.

13 Q. Did you say figure four?

14 A. Figure four.

15 Q. Is there any prohibition or guidance given saying
16 that these types of maneuvers should only be employed
17 before an individual is handcuffed?

18 A. No, there is not.

19 Q. Okay. Before we get to this incident, I just --
20 in general, we're going to talk about events that
21 occurred on March 23rd. Can you explain for the Grand
22 Jury, generally speaking, when this was relative to
23 the COVID pandemic?

24 A. This was right at the beginning of it.

25 Q. Okay. Were you, as a Sergeant, kind of, aware of

1 how exactly it was transmitted at the time? Was
2 everyone wearing masks at the time? I'm just
3 wondering if you could let the Grand Jury know a
4 little but about what was going on?

5 A. We did have some knowledge, a little bit of
6 knowledge, on it. We were not given any protective
7 equipment at the time or requirements or guidelines on
8 what to wear.

9 Q. Okay. Back in March, what was your shift?

10 A. I was first platoon shift, which is 11:00 at
11 night to 7:00 in the morning.

12 Q. Were you assigned to a particular Section of the
13 City of Rochester?

14 A. I was.

15 Q. What Section was that?

16 A. Genesee Section.

17 Q. Does that cover the area of [REDACTED] Child Street?

18 A. Yes, it does.

19 Q. And, does that cover the relative area of
20 Jefferson Avenue that we're going to be speaking
21 about?

22 A. Yes, it does.

23 Q. What were your duties, just all over duties as a
24 Sergeant?

25 A. So, kind of, like administrative role at times.

1 Ensure we have enough personnel to cover the shift,
2 any personnel issues that come up, you know, managing
3 calls, managing critical incidents.

4 Q. How many patrol officers were under your
5 supervision that morning?

6 A. I believe probably seven.

7 Q. Drawing your attention to approximately 3:00 in
8 the morning, thereabouts, did a series of calls begin
9 to -- start to come over the air?

10 A. Yes, there was.

11 Q. Where was the first dispatch location?

12 A. [REDACTED] Child Street.

13 Q. And, just in general, do you recall what the
14 nature of that call was?

15 A. I believe it was just a suspicious call, a guy
16 was calling on his brother.

17 Q. All right. Did you respond to the address of [REDACTED]
18 Child Street?

19 A. I did not.

20 Q. Did there come a point in time when a second
21 dispatch was received?

22 A. Yes, there was.

23 Q. What was the address of that dispatch?

24 A. I don't recall the exact address, but it was the
25 Metro PCS Store on West Main Street.

1 Q. All right. Did you respond to that location?

2 A. I did.

3 Q. Why did you respond to that location?

4 A. I was close by in the area.

5 Q. Okay. What was the nature of the actual
6 dispatch; why were officers requested to respond
7 there?

8 A. It was for a burglary alarm.

9 Q. Is it ever the case when you respond to a
10 burglary alarm that a person or a subject will
11 actually still be in the building or around the
12 building?

13 A. Yes.

14 Q. Okay. When you arrived at the Metro Computer
15 Store, were you the first RPD member of service at the
16 location?

17 A. I was not.

18 Q. Do you recall who else was there?

19 A. Officer [REDACTED], Officer [REDACTED] and Officer
20 [REDACTED].

21 Q. What happened -- I'd like to withdraw that. Does
22 there come a point in time before you get to the Metro
23 Store where you hear something broadcast over the
24 radio regarding the individual relative to [REDACTED] Child
25 Street?

1 A. Yes.

2 Q. And, what was that?

3 A. It was -- there was a tow truck driver on
4 Jefferson that called in for a male running down
5 Jefferson Avenue.

6 Q. All right. I'm going to back you up even
7 further. Was there any type of informational
8 broadcast about what this individual may have been
9 consuming?

10 A. At that time, I'm not sure.

11 Q. Okay. At some time, do you hear this?

12 A. Yes.

13 Q. And, do you recall who it was that broadcasted
14 that over the radio?

15 A. I believe it was Officer [REDACTED].

16 Q. What was it that Officer [REDACTED] placed over the
17 radio?

18 A. That the male from [REDACTED] Child Street was high on
19 PCP.

20 Q. Is -- how many years have you been in the
21 Rochester Police Department?

22 A. Just over 15 and a half.

23 Q. In the entirety of that time, had you ever dealt
24 with an individual who was suspected and confirmed to
25 be on PCP?

1 A. I had not.

2 Q. So, is this a relatively -- relatively speaking,
3 unusual drug for this City?

4 A. It is.

5 Q. Okay. We'll come back to that. Does there come
6 a point in time when you leave the Metro Computer
7 Store?

8 A. There is.

9 Q. Why?

10 A. Because the tow truck driver at Jefferson and
11 Main was calling for the guy running down Jefferson.

12 Q. Okay. Do you hear these dispatches?

13 A. I do.

14 Q. Where do you go?

15 A. I head down West Main to Reynolds Street.

16 Q. All right. I'm going to put Grand Jury Exhibit
17 13 back up. Let me just ask you to describe where is
18 Reynolds Street relative to Jefferson Avenue?

19 A. It's just one block east of Jefferson Avenue. It
20 parallels it.

21 Q. Okay. So, they run side by side?

22 A. Yes, they do.

23 Q. And, Reynolds is closer to the City, where we're
24 sitting today?

25 A. It is.

1 Q. Okay. So, you went down Reynolds?

2 A. I did.

3 Q. What -- why did you determine that you were going
4 to go down Reynolds Street as opposed to -- so, just
5 real quick. My pen is traveling down the right side,
6 is that correct, right side of the map?

7 A. Yes.

8 Q. Okay. And, is that Jefferson Avenue that I'm
9 sort of pointing to?

10 A. It is.

11 Q. Is Reynolds Street actually off the map?

12 A. It is.

13 Q. But, would it follow the general path of my pen?

14 A. Yes.

15 Q. And, for the record, I had my pen all the way off
16 to the right. Do you recall why you didn't go down
17 Jefferson Avenue?

18 A. There was already officers going down Jefferson;
19 and, if the male had run eastbound, that would have
20 been where I was going.

21 Q. Okay. Do you recall if you could see the tow
22 truck driver when you looked down -- when you looked
23 down Jefferson -- the tow truck, I'm sorry.

24 A. I could see the tow truck, yes.

25 Q. Does there come a point in time when you hear

1 that somebody has somebody in custody?

2 A. There is.

3 Q. Who was it that broadcasted that?

4 A. Officer [REDACTED].

5 Q. Where was Officer [REDACTED]?

6 A. He called out at Jefferson and Dr. Samuel McCree
7 Way.

8 Q. All right. I'm approaching with, what's been
9 marked for identification as Grand Jury Exhibit Number
10 42, have you ever seen this before, this map?

11 A. Yes.

12 Q. Is that -- can you give the intersection of
13 what's sort of in the middle of that map?

14 A. The middle is Dr. Samuel McCree Way and Jefferson
15 Avenue.

16 Q. Does that map fairly and accurately capture the
17 vicinity of that intersection and one block south and
18 maybe, like, a half block north?

19 A. Yes.

20 Q. Thank you.

21 MS. SOMMERS: I'm going to offer Grand Jury
22 Exhibit 42.

23 (Whereupon, Grand Jury Exhibit Number 42 was
24 then received into evidence.)

25 MS. SOMMERS: For the record, I'm going to

1 place 42 up on the Elmo. Okay.

2 BY MS. SOMMERS:

3 Q. Which way do you recall -- well, actually, using
4 my pen and maybe pointing a little bit, would it be
5 accurate to say that Samuel McCree and Jeff come
6 together in the middle, they intersect in the middle?

7 A. Yes.

8 Q. Where was it that you saw, approximately, Officer
9 [REDACTED] with the male?

10 A. So, it would be right outside the Abundant Life
11 Faith Center.

12 Q. So, for the record, there's something labeled
13 Abundant Life Faith Center?

14 A. Yes.

15 Q. And, is that to the left on the map of Jefferson
16 Avenue?

17 A. It is.

18 Q. And, that would be the west?

19 A. Yes.

20 Q. All right. And -- so, it would be in this
21 vicinity?

22 A. Yes.

23 Q. So, I'm circling the Ave on it, Jefferson Ave, is
24 that correct?

25 A. Correct.

1 Q. Where did you park, relative to where they were
2 located?

3 A. So, I was facing southbound on the east side of
4 the road.

5 Q. So, east would be to the right of the Jefferson
6 part?

7 A. Yes.

8 Q. Okay. Were there any vehicles behind, in front,
9 to the side of you?

10 A. There was at least two other vehicles, if I'm
11 coming down Jefferson to my right. So, the left side
12 of the road.

13 Q. So, to the -- so, that would be to the west?

14 A. Yes.

15 Q. Okay. And, what did you see when you arrived?

16 A. I saw the male in custody on the ground and a
17 couple of officers standing around him.

18 Q. Okay. Were you -- actually, I'd like to withdraw
19 that. Where was Officer [REDACTED] [REDACTED] car parked
20 relative to yours?

21 A. Just to the right of my vehicle.

22 Q. Okay. Were you aware that an ambulance was
23 coming?

24 A. I was.

25 Q. Did you know at that time whether or not the

1 ambulance was staging near by or whether it was just
2 coming from one of its primary locations?

3 A. I did not know.

4 Q. And, just for the -- real quickly, could you
5 explain to the Grand Jury what staging is?

6 A. So, during instances where a person could be
7 hostile, the ambulance would just stage nearby in a
8 close location while officers go in and secure the
9 scene.

10 Q. And, what are the ambulance members waiting for?

11 A. They're waiting for officers to call the
12 ambulance to come in.

13 Q. Okay. You didn't know at this time if they were
14 staging or not?

15 A. Correct.

16 Q. Are you aware of what ambulance company covers
17 the City of Rochester?

18 A. Yes.

19 Q. What ambulance company is that?

20 A. AMR.

21 Q. AMR?

22 A. AMR.

23 Q. If the ambulance was not staging, are you aware
24 of where the ambulance may have been coming from?

25 A. Most likely from their station.

1 Q. And, where is that located?

2 A. West Avenue.

3 Q. From AMR to this location that's up on the Elmo
4 at approximately 3:15 at night, how long would you
5 estimate it would take for the ambulance to arrive?

6 A. No longer than three minutes.

7 Q. Okay. Thank you. Do you keep blankets in your
8 car?

9 A. I do not.

10 Q. Is -- is anyone in the Rochester Police
11 Department equipped with blankets in their car?

12 A. They are not.

13 Q. Are you aware if the ambulances are equipped with
14 blankets?

15 A. Yes, they are.

16 Q. Could you explain for the Grand Jury what a spit
17 sock -- spit sock or a spit mask is?

18 A. It's basically a mesh hood to put over somebody's
19 head to prevent them from spitting on you.

20 Q. At the time that you arrived -- well, first of
21 all, let me take a step back. Did you notice anything
22 about this gentleman that was not dressed, relative to
23 any type of bodily fluids or anything like that when
24 you arrived?

25 A. He was spitting randomly. On his person, I

1 couldn't tell from my position.

2 Q. So, to be clear, were you one of the officers who
3 was in a -- a perimeter around him?

4 A. No.

5 Q. What was your purpose for being there?

6 A. My purpose for being there was just to manage it
7 and ensure if anything else was needed by the officers
8 that I can get it for them.

9 Q. Okay. Did you see the officers ultimately take
10 out and use what's called a spit sock?

11 A. Yes.

12 Q. Are these spit socks readily available to the
13 officers at the Rochester Police Department?

14 A. They are.

15 Q. Are they also contained on ambulance -- do you
16 ever see members of the ambulances also use spit
17 socks?

18 A. Yes, I do.

19 Q. I'm going to approach with what's been marked for
20 identification as Grand Jury Exhibit Number 43. Do
21 you recognize what's in Grand Jury Exhibit Number 43?

22 A. I do.

23 Q. What is in 43?

24 A. This is our spit sock.

25 Q. So, is this like in any way a special spit cock?

1 A. No, it is not.

2 Q. Okay. So, these are standard issued?

3 A. They are.

4 Q. And, does this appear to be anything other than a
5 spit sock that you would check out of the equipment at
6 RPD?

7 A. Nothing different.

8 MS. SOMMERS: Thank you. At this time I'm
9 going to offer 43.

10 (Whereupon, Grand Jury Exhibit Number 43 was
11 then received into evidence.)

12 MS. SOMMERS: All right. At this time, I'm
13 going to hand to you, and could you open it, please.
14 Okay. And, I'm going to ask you to please put your
15 hand inside and hold it up.

16 Is everyone able to see?

17 GRAND JURY POOL: (All jurors indicating a
18 positive response.)

19 BY MS. SOMMERS:

20 Q. All right. As opposed to having you describe it,
21 I'm going to let the Grand Jury handle it for
22 themselves. But, let me just ask. Have you had the
23 occasion to place spit socks on individuals
24 previously?

25 A. I have.

1 Q. Okay. Has -- I'll withdraw that. Did Mr. Prude
2 stop spitting after the spit sock was placed on his
3 head?

4 A. He did not.

5 Q. When you first arrived, what was Mr. Prude's
6 position on the roadway?

7 A. He was laying on the ground, moving around.

8 Q. Okay. Did there come a point in time when Mr.
9 Prude's position changed?

10 A. Multiple times.

11 Q. All right. And, were you concerned about him
12 getting up?

13 A. Yes, I was.

14 Q. Mr. Prude was naked, correct?

15 A. Yes, he was.

16 Q. And, his hands were behind him?

17 A. Yes, they were.

18 Q. Why were you concerned then with him getting up?

19 A. Because if he had got up, he could have taken off
20 running or tried to go after another officer.

21 Q. Let me ask you this. Have you ever had
22 situations previously, where individuals have been
23 handcuffed and have escaped from your custody?

24 A. I've had two instances.

25 Q. Were you alone or were you with other officers?

1 A. Other officers.

2 Q. Okay. And, in the time that you had worked at
3 the Rochester Police Department, have you heard of
4 other officers encountering the same thing?

5 A. I have.

6 Q. Is it -- is it uncommon?

7 A. It is not.

8 Q. Okay. Does there come a point in time when you
9 turn your -- or, when you go to move a vehicle?

10 A. Yes, there is.

11 Q. And, why is it that you're moving the vehicle?

12 A. The roadway was blocked by the police cars and I
13 could see the ambulance coming from the north. So, I
14 moved Officer [REDACTED] car to allow the ambulance to
15 pull directly up to where the officers and the subject
16 were.

17 Q. Okay. Did you -- did Officer [REDACTED] know that
18 you were moving his car?

19 A. He did not.

20 Q. Okay. And, you indicated before that you had
21 never encountered someone, to your knowledge, that had
22 been using PCP?

23 A. Correct.

24 Q. Can you explain for the Grand Jury -- so, having
25 no firsthand experience in that, had you heard

1 anything about the effects of PCP?

2 A. I had.

3 Q. Okay.

4 MS. SOMMERS: So, what I'm going to ask
5 Sergeant [REDACTED] to describe is technically hearsay.
6 I'm not offering it for the truth. I'm offering it to
7 show what his state of mind was, relative to his
8 beliefs about that particular substance.

9 BY MS. SOMMERS:

10 Q. So, what was your understanding of PCP?

11 A. That people on PCP have extreme strength. They
12 act radically. Their behavior can change instantly.
13 Heard of instances of being infatuated with glass and
14 cutting themselves and hurting themselves and going
15 after people.

16 Q. All right. After you moved the car, Officer
17 [REDACTED] car, did you then go back to where Mr. Prude
18 was?

19 A. Yes, I did.

20 Q. Was the ambulance -- were the ambulance personnel
21 -- well, how many people -- how many people were on
22 that ambulance?

23 A. Two.

24 Q. Were they out of the vehicle?

25 A. I know at least one of them was when I came back

1 up.

2 Q. Okay. At any time, did anyone on that rig
3 indicate or voice any concerns over what they saw,
4 relative to Mr. Prude?

5 A. They did not.

6 Q. Does there come a point in time when you become
7 aware that Mr. Prude is -- is -- appears to be
8 unconscious?

9 A. There does.

10 Q. What determination is made relative to Mr. Prude
11 and what actions to take? Let me -- I'll rephrase
12 that. Was there a determination that it would be
13 appropriate to un-handcuff Mr. Prude?

14 A. There was.

15 Q. Who made that decision?

16 A. I did.

17 Q. Did -- did any of the ambulance people make that
18 decision?

19 A. They did not.

20 Q. Was there any type of a prolonged search for a
21 handcuff key?

22 A. There was not.

23 Q. Are you aware of what is, at the Rochester Police
24 Department, known as CIT?

25 A. Yes.

1 Q. What is that?

2 A. The Crisis Intervention Team?

3 Q. Okay. And, is that a team, kind of, like SWAT,
4 that people choose to be a part of?

5 A. It is.

6 Q. What does that entail being on that team, if you
7 know?

8 A. I'm not real familiar with them, but they -- they
9 respond for people with mental issues and they're
10 taught different techniques to talk to them.

11 Q. Due. Is everybody in the Rochester Police
12 Department trained relative to the techniques used by
13 members of the Critical Incident Team?

14 A. They're not.

15 Q. Have you ever, in your capacity as a patrol
16 Sergeant or member of the SWAT Team, requested
17 somebody from the Crisis Intervention Team to respond?

18 A. I have.

19 Q. Can you give an example of the type of situation
20 where you have requested that?

21 A. There's one that I can think of. There was a
22 male inside of his house. He was breaking out
23 windows, acting erratically, wouldn't come to the
24 door, was throwing stuff out of the windows at
25 officers, and we called for CIT for that.

1 Q. Okay. Were you aware -- in this case, are you
2 aware of whether any CIT trained individual was
3 actually available on patrol that night?

4 A. I was not.

5 Q. Okay. If there had been, would this be a
6 situation where you would have called them?

7 A. No, we would not.

8 Q. What were you -- what was the plan relative to
9 Mr. Prude?

10 A. To safely take him into custody and get him
11 medical help.

12 Q. Okay. And, the ambulance was on its way?

13 A. Yes.

14 Q. Okay. So, the situation that you just described,
15 relative to the man in the house, were you trying to
16 get that man out of the house?

17 A. We were trying to, yes.

18 Q. Okay. Is there also in the greater Monroe
19 County, something called FIT?

20 A. Yes, there is.

21 Q. Is that Forensic Intervention Team?

22 A. Something like that, yes.

23 Q. Okay. Are you aware of what they do?

24 A. I think they're just, like, a higher level of
25 CIT.

1 Q. Okay. At the date and time that this incident
2 occurred, are you aware of whether or not the Forensic
3 Intervention Team was operating at 3:00 o'clock in the
4 morning?

5 A. They were not.

6 Q. Okay. Were you wearing body worn camera -- a
7 body worn camera when this incident occurred?

8 A. I was.

9 Q. Did you activate it when you arrived on scene?

10 A. Shortly after, yes.

11 Q. Thank you. I'm approaching with what's been
12 marked for identification, Grand Jury Exhibit Number
13 44, have you ever seen that before?

14 A. I have.

15 Q. And, what is that?

16 A. This is my body worn camera footage.

17 Q. How do you know that that's your body worn camera
18 footage?

19 A. I initialed it.

20 Q. All right. Is what's contained on Grand Jury
21 Exhibit Number 44 an accurate copy of the footage that
22 your camera obtained that night?

23 A. It is.

24 Q. And, that footage is an accurate copy of what you
25 were -- fairly and accurately depicts what you were

1 looking at?

2 A. It is.

3 Q. Thank you.

4 MS. SOMMERS: I will offer 44 at this time.

5 (Whereupon, Grand Jury Exhibit Number 44 was
6 then received into evidence.)

7 (Whereupon, the video was played for the
8 Grand Jury.)

9 MS. SOMMERS: We're going to go ahead a
10 start now. Let me just -- when you arrived, the
11 individual was already on the ground?

12 THE WITNESS: Yes, he was.

13 MS. SOMMERS: And, just for the record,
14 we're at the 1 second mark.

15 BY MS. SOMMERS:

16 Q. Can you just explain whose back is to the Grand
17 Jury?

18 A. Officer [REDACTED]

19 Q. Who is on the far left closest to you?

20 A. Officer -- far left, Officer [REDACTED].

21 Q. Who is to the right of Officer [REDACTED] on the
22 video. So, kind of, to the -- so, it'd be to
23 Officer's [REDACTED]'s left, but on the video, going
24 right across the screen.

25 A. Officer [REDACTED].

1 Q. And then, who is the Officer on the video who is
2 the furthest to the right?

3 A. I believe Officer [REDACTED].

4 Q. Okay. Go ahead. Thank you. While the video is
5 playing, there is no audio for the first how long?

6 A. 30 seconds.

7 Q. Is that standard?

8 A. Yes, it is.

9 Q. Thank you.

10 (Whereupon, the video continued to play for
11 the Grand Jury.)

12 BY MS. SOMMERS:

13 Q. Do you recall which one of these cars is Officer
14 [REDACTED] car?

15 A. That first one right there, the [REDACTED].

16 Q. Is that the vehicle you moved when the ambulance
17 was coming?

18 A. It is.

19 Q. Thank you.

20 (Whereupon, the video continued to play for
21 the Grand Jury.)

22 BY MS. SOMMERS:

23 Q. So, just stopping the video at about 1 minute and
24 4 seconds. As your -- is your camera, kind of, seems
25 to be panning to the north, am I correct about that?

1 A. Yes, it is.

2 Q. Why is that? Why are you looking that way?

3 A. Because I'm looking for the ambulance.

4 Q. Okay. Thank you.

5 (Whereupon, the video continued to play for
6 the Grand Jury.)

7 BY MS. SOMMERS:

8 Q. Who just said hey?

9 A. I did.

10 Q. And, what -- what are you referring to?

11 A. He's starting to get more agitated and I thought
12 he was about to get up and I wanted to make sure the
13 officers were aware he didn't get up.

14 Q. Okay. For the record, if you'd just go back
15 about five seconds, did -- did Mr. Prude actually,
16 kind of, change positions?

17 (Whereupon, the video was rewound and
18 replayed for the Grand Jury.)

19 BY MS. SOMMERS:

20 Q. So, again, I stopped it. Did he actually change
21 positions and is that what -- well, did he change
22 positions?

23 A. Yes.

24 Q. Is that why you made the comment you did?

25 A. It is.

1 Q. Okay.

2 (Whereupon, the video continued to play for
3 the Grand Jury.)

4 BY MS. SOMMERS:

5 Q. All right. So, at about 3:02 you appear to be
6 walking up Jefferson Avenue, is that correct?

7 A. It is.

8 Q. And, at the same time, sort of, the officers
9 appear to be taking Mr. Prude down to the ground?

10 A. Yes.

11 Q. Did you see that part?

12 A. I did.

13 Q. Okay. And, as -- as the Sergeant there, were you
14 concerned about that?

15 A. I was not.

16 Q. Okay.

17 MS. SOMMERS: Go ahead, please.

18 (Whereupon, the video continued to play for
19 the Grand Jury.)

20 BY MS. SOMMERS:

21 Q. Do you actually see the headlights of the
22 ambulance at the 3 minute and 6 -- the 3 minute and 6
23 second mark?

24 A. I do.

25 Q. And, is that what prompted you to go to Officer

1 [REDACTED] ' car?

2 A. It was. I wanted to make sure the ambulance
3 could get all the way up there and not be blocked.

4 Q. Okay. Thank you.

5 (Whereupon, the video continued to play for
6 the Grand Jury.)

7 BY MS. SOMMERS:

8 Q. Did you hear Officer [REDACTED] in the background?

9 A. I did.

10 Q. And, was he doing?

11 A. He was checking with channel 5 again to see about
12 the ambulance and he said never mind, they're pulling
13 up.

14 Q. Okay.

15 (Whereupon, the video continued to play for
16 the Grand Jury.)

17 BY MS. SOMMERS:

18 Q. I just want to make -- it just -- can you explain
19 for the Grand Jury what was happening in your car?

20 A. So, I was pulling up the calls that were waiting
21 to see if there was anything pressing that I had to
22 get officers to attend to.

23 Q. I guess, in sort of, kind of -- did you have any
24 idea as this is happening, how this is going to end?

25 A. No, I did not.

1 Q. Okay.

2 (Whereupon, the video continued to play for
3 the Grand Jury.)

4 BY MS. SOMMERS:

5 Q. Can you hear -- sir, we're at about 4 minutes and
6 25 seconds in the video, can you hear if Mr. Prude is
7 still making noise?

8 A. I can.

9 Q. Thank you.

10 (Whereupon, the video continued to play for
11 the Grand Jury.)

12 BY MS. SOMMERS:

13 Q. Okay. So, I want to stop right there. Are you
14 able to see? I'm pointing at the bottom of the video
15 to an officer who appears to have his hands on the
16 side of Mr. Prude's head and with his legs out?

17 A. Yes.

18 Q. First of all, do you recognize who that is?

19 A. I do.

20 Q. Who is that?

21 A. Officer [REDACTED].

22 Q. And, do you recognize the stance that he is
23 taking?

24 A. I do. This is segmenting.

25 Q. Okay. Is that what you referred to previously,

1 the technique that you learned in your -- in the new
2 defensive tactics curriculum?

3 A. It is.

4 Q. Thank you.

5 (Whereupon, the video continued to play for
6 the Grand Jury.)

7 BY MS. SOMMERS:

8 Q. Does it appear, based on what you're now hearing
9 as you kind of come around the ambulance, so, we're at
10 the 4:40 mark, that the Paramedic is speaking with the
11 officers?

12 A. They are.

13 Q. Okay.

14 (Whereupon, the video continued to play for
15 the Grand Jury.)

16 BY MS. SOMMERS:

17 Q. So, I want to draw your attention to Officer
18 [REDACTED] again. This is at the -- at the 4 minute and
19 43 second mark. Does it appear that he has, at this
20 point, removed some of his weight from Mr. Prude's
21 head?

22 A. Yes, it does.

23 Q. And, how can you tell that?

24 A. Because his right leg is pulled in, you can see
25 the bottom of his foot so now he's on a knee.

1 Q. Okay. And, there's another officer you can see
2 with a leg out, do you -- do you see that?

3 A. Yes.

4 Q. And, just based on your knowledge of where
5 everyone was, whose leg is that?

6 A. Officer [REDACTED].

7 Q. Thank you.

8 (Whereupon, the video continued to play for
9 the Grand Jury.)

10 BY MS. SOMMERS:

11 Q. Okay. So, at the 5 minute and 19 second mark, is
12 this the first time that you're, sort of, hearing --
13 well, what did you hear before that; were you able to
14 hear who was speaking?

15 A. Yes.

16 Q. Okay. Who was saying what?

17 A. Officer [REDACTED] was talking to me about a job that
18 was just dispatched, and Officer [REDACTED] was talking
19 about, basically, he was puking.

20 Q. Okay. And, just shortly before that, I'm not --
21 were you able to hear somebody say something along the
22 lines of, are you good man? Are you okay?

23 A. Yes.

24 Q. Who was that?

25 A. Officer [REDACTED].

1 Q. At this point, is the -- is the gentleman who's
2 moving the gurney around, has he come to look at Mr.
3 Prude at all?

4 A. He has not.

5 Q. Thank you.

6 (Whereupon, the video continued to play for
7 the Grand Jury.)

8 BY MS. SOMMERS:

9 Q. Did you know -- okay. So, we just stopped at the
10 6 minute mark. Did you know at this point that Mr.
11 Prude had become unresponsive?

12 A. I had not.

13 Q. Okay.

14 (Whereupon, the video continued to play for
15 the Grand Jury.)

16 BY MS. SOMMERS:

17 Q. Did you hear somebody just now speaking?

18 A. I did.

19 Q. And, what was it that was said?

20 A. I missed it.

21 MS. SOMMERS: Can you go back just a hair?
22 Someone appears to say something about rolling.

23 (Whereupon, the video was rewound and
24 continued to play for the Grand Jury.)

25 BY MS. SOMMERS:

1 Q. Did you hear what I was just referring to?

2 A. Yes.

3 Q. What was said and who said it?

4 A. It was Officer [REDACTED] said, roll him over on his
5 side.

6 Q. Okay.

7 (Whereupon, the video continued to play for
8 the Grand Jury.)

9 BY MS. SOMMERS:

10 Q. Somebody just said [REDACTED], we need you. Is that
11 accurate? I don't want to mis-state.

12 A. It is.

13 Q. Who said that?

14 A. The one male Paramedic.

15 Q. Okay. And, who's [REDACTED]?

16 A. The other EMT.

17 Q. Okay.

18 (Whereupon, the video continued to play for
19 the Grand Jury.)

20 BY MS. SOMMERS:

21 Q. Okay. At 6:36, who just said un-cuff him, guys?

22 A. I did.

23 Q. Why?

24 A. To get his cuffs off so they can better work on
25 him.

1 Q. Okay.

2 (Whereupon, the video continued to play for
3 the Grand Jury.)

4 BY MS. SOMMERS:

5 Q. So, you hear the Paramedic say work on getting
6 those cuff keys, did you -- were you able to hear
7 that?

8 A. I did.

9 Q. Okay. Was the cuff key available during that
10 entire time?

11 A. It was.

12 Q. Who was holding it?

13 A. Officer [REDACTED].

14 Q. Thank you.

15 (Whereupon, the video continued to play for
16 the Grand Jury.)

17 (Whereupon, the video concluded.)

18 BY MS. SOMMERS:

19 Q. When did you turn your body cam video off?

20 A. I walked back to my patrol car, my vehicle, to
21 make note of the time.

22 Q. Okay. Sergeant [REDACTED], in your career as a
23 Rochester Police Department Officer and then Sergeant,
24 had you ever heard the term excited delirium?

25 A. I have.

1 Q. And, just -- can you give a general -- when have
2 you heard that, when did you hear that?

3 A. It was in the Academy at some point and they just
4 talked about it's the body's reaction to use of drugs.

5 Q. Was anything in the Academy taught, relative to
6 the risks that a person who is, kind of, suffering
7 from those, that constellation of the symptoms, the
8 risks to that person?

9 A. Not that I'm aware of.

10 Q. Okay. What was taught about excited delirium?

11 A. Just -- it was something that, you know, when a
12 person's on drugs, certain drugs, that, you know, they
13 could stop breathing, and they typically sweat when
14 it's cold outside and their body temperature rises.

15 Q. Were you provided with any training about the
16 proper -- or, the risks of somebody being, for
17 instance, facedown. By facedown, I mean, prone when
18 excited delirium is perhaps occurring?

19 A. No.

20 Q. Okay. During your time on that scene, did you
21 see any officer engaged in conduct or using maneuvers
22 that violate the training that you had learned?

23 A. I did not.

24 MS. SOMMERS: Any questions?

25 A JUROR: I have two questions. It wasn't

1 clear from the video when the first officer said he
2 puked, it's clear liquid. What position was Mr. Prude
3 in? Was he laying on his back, his stomach, his side?

4 THE WITNESS: He was laying on his stomach
5 with his head to the side.

6 A JUROR: Okay. And then, later on, they
7 said, roll him?

8 THE WITNESS: Yes.

9 A JUROR: Okay. Another question is, this
10 may be a little disconnected. Were you or the
11 responding officers aware that Mr. Prude had been
12 evaluated the prior afternoon, mental hygiene arrested
13 and then evaluated and released.

14 THE WITNESS: We did not.

15 BY MS. SOMMERS:

16 Q. That's a good question. So, was there any
17 information provided to you or the officers relative
18 to what may or may not have happened earlier in the
19 day or the prior day?

20 A. There was not.

21 Q. Okay. Thank you.

22 MS. SOMMERS: Yes?

23 A JUROR: I'm kind of curious as to what
24 your trainings are teaching police officers about,
25 once they have a suspect who is -- they've used

1 forceful pressure on them to keep them on the ground.
2 At what point is it okay to let go of that pressure,
3 if they don't seem to be moving, or if they don't seem
4 to be calming down? What's the rule about that
5 circumstance?

6 BY MS. SOMMERS:

7 Q. So, once -- assuming that it's appropriate to use
8 force to -- to take somebody to the ground, and tell
9 me if I'm answering this, at what point should an
10 officer, are you trained, to stop using that force?

11 A. Yeah. There's de-escalation and assessing. So,
12 like you saw in the video, when Officer [REDACTED] brings
13 his knee in, he's not feeling as much struggle, so
14 he's not using as much pressure.

15 Q. Let me just make clear, that you're assuming
16 that based on your review --

17 A. Correct.

18 Q. -- of the video --

19 A. Correct.

20 Q. -- you can't really say what Officer [REDACTED] was
21 thinking. But, is that what you're referring to?

22 A. Yes, it is.

23 Q. So, is it -- and, I don't want to -- is it, like,
24 a sliding scale?

25 A. Sliding scale. So, you know, people's behavior

1 always change. Sometimes they get better, sometimes
2 they get worse, and what the officer does will be
3 dictated by that.

4 Q. Would it be -- well, when somebody just stops
5 struggling, would it be then appropriate to, kind of,
6 hands off?

7 A. No, it's not. Not completely hands off, no.

8 Q. Okay. And, why is that?

9 A. Because even though they stop struggling and
10 fighting, they like -- so, they -- it's like a switch.
11 They can change back automatically to the other way.
12 And, if you let go completely, now you have to
13 re-engage and it can cause more damage.

14 MS. SOMMERS: Did that answer the question?

15 A JUROR: Yes.

16 MS. SOMMERS: Yes, sir?

17 A JUROR: Two things. One, it seems once
18 the police got involved, things went for the worse.
19 That's one. And, two, it seems they had him
20 handcuffed behind his back on his stomach. That's not
21 a -- that's not a normal position to be in.

22 MS. SOMMERS: Let me just stop you for a
23 moment.

24 BY MS. SOMMERS:

25 Q. So, first of all, did it -- was that position

1 that the gentleman just described, being on prone, so
2 stomach down, is that a position that is taught during
3 your defensive tactics training?

4 A. It is.

5 Q. Is it a restricted position after somebody is
6 handcuffed? Is it -- is it restricted? Are you --
7 are you not supposed to use that after somebody is
8 handcuffed?

9 A. We can.

10 Q. You're -- so it's permitted?

11 A. Yes.

12 MS. SOMMERS: I'm not trying to -- so, could
13 you maybe rephrase your question. I just want to make
14 sure we understand it.

15 A JUROR: He didn't ask a question, he made
16 a statement.

17 MS. SOMMERS: Can -- can you just -- is
18 there a way -- I just want to make sure we can answer.

19 A JUROR: I'm picturing myself laying on my
20 stomach with my hands behind my back, and you trying
21 to breathe. It can't -- it can't be a normal thing to
22 do. It takes more muscle and everything to try to
23 breathe in that position versus being on your side or
24 back or sitting up.

25 BY MS. SOMMERS:

1 Q. So, is it -- are you taught positions where an
2 individual is placed on their side or sitting up when
3 you're trying to get that person down to the -- well,
4 let me take the sitting up part out. But, what about
5 -- are you trained in, sort of, controlling people on
6 their sides?

7 A. No.

8 Q. Okay. At the time that Mr. Prude was taken to
9 the ground, where was the ambulance?

10 A. I don't know where the ambulance was.

11 Q. Well, just kind of putting together the pieces
12 here. It appeared that you turned and started walking
13 right around the time that Mr. Prude was taken to the
14 ground, is that accurate?

15 A. Yes.

16 Q. Because I do not want to lead or put words in
17 your mouth. So, I want to make clear here. Where was
18 the ambulance at a time that Mr. Prude went down to
19 the ground?

20 A. It was on Jefferson Avenue.

21 Q. Could you see it?

22 A. Yes.

23 Q. What was the plan -- what was the purpose of the
24 ambulance coming?

25 A. To get him medical help for a MHA.

1 Q. MHA, meaning?

2 A. Mental hygiene arrest.

3 Q. Why were you not concerned, as the gentleman
4 indicates that he was being restrained on his stomach
5 when he was handcuffed?

6 A. Well, the ambulance was close by at the time and
7 the officers were having to control him.

8 Q. Did you see during your time before your -- and,
9 I recognize that the camera doesn't exactly capture
10 what you're looking at. Did you see any officer
11 putting pressure directly across from Mr. Prude's
12 lungs?

13 A. I did not.

14 Q. Where was Officer [REDACTED]'s knee?

15 A. The lower back.

16 Q. Was that actually a change in the way that
17 techniques used to be taught regarding where pressure
18 could be put or should be put?

19 A. Yes.

20 Q. And, how so?

21 A. So, previously the -- the new program, there's a
22 technique called the three point landing, and that is
23 where your shin goes across the upper portion of their
24 back.

25 Q. Okay.

1 MS. SOMMERS: I don't know if that answers
2 your -- I understand, you know that --

3 A JUROR: Mm-hmm.

4 MS. SOMMERS: Does anybody else have
5 questions?

6 A JUROR: Only because I think one of the
7 last questions you asked about was that they were
8 talking about the cuff keys. Were they performing CPR
9 on him with his hands behind his back still?

10 BY MS. SOMMERS:

11 Q. Was it your understanding that they were
12 initially performing CPR with his hands cuffed behind
13 his back?

14 A. I believe chest compressions, yes.

15 Q. Or the chest compressions portion?

16 A. Yes.

17 Q. Okay. Did it appear that the Paramedic was not
18 understanding whether or not the cuff key was
19 available?

20 A. I don't know what --

21 Q. What she understood?

22 A. Correct.

23 Q. Was the cuff key available?

24 A. It was available.

25 MS. SOMMERS: I don't know if that answers

1 your question.

2 A JUROR: Yeah.

3 MS. SOMMERS: Any other questions?

4 A JUROR: I guess one, in general. It
5 didn't seem like anyone was really rushing. So, no
6 one seemed to be concerned that there was a problem?

7 MS. SOMMERS: Are you talking about the
8 Paramedic or the Police?

9 A JUROR: All of them.

10 BY MS. SOMMERS:

11 Q. Sergeant [REDACTED] have you been in positions over
12 your career where people -- was this the first time
13 that someone was taken to the ground in your presence?

14 A. No, it is not.

15 Q. Is it uncommon for people to be struggling when
16 taken into custody?

17 A. It is not uncommon, no.

18 Q. Okay. Is this the first time that somebody has
19 gone unconscious and ultimately died after a use of
20 force that you were witnessed to or involved in?

21 A. It is.

22 Q. Did you, in any way, foresee this happening?

23 A. I did not.

24 Q. Okay. So, from your perspective, the ambulance
25 was coming down Jefferson Avenue?

1 A. Correct.

2 Q. All right.

3 A JUROR: I don't know what to ask him, but
4 it didn't seem like anyone was rushing.

5 BY MS. SOMMERS:

6 Q. So, are you aware --

7 MS. SOMMERS: There may be more video that
8 maybe could kind of clarify that.

9 A JUROR: Okay.

10 BY MS. SOMMERS:

11 Q. Based upon what you observed, who was initially
12 giving the directions, relative to Mr. Prude's
13 condition and what needed to be done?

14 A. Officer [REDACTED] was giving -- letting them know
15 what was going on.

16 MS. SOMMERS: Okay. Some things are, kind
17 of, borderline statements and questions. I don't
18 really know how much further -- does anybody have any
19 other questions?

20 GRAND JURY POOL: (All jurors indicating a
21 negative response.)

22 MS. SOMMERS: All right. You're all set.

23 THE WITNESS: Thank you.

24 MS. SOMMERS: Thank you, very much.

25 I want to say -- I'm going to talk while

1 you're walking. Well, actually, I'll wait. So, thank
2 you.

3 (Whereupon, the witness left the Grand Jury
4 room at a time of 4:42 p.m.)

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1 MS. SOMMERS: We will be back next
2 Wednesday, minimally. And, it's going to be another
3 full day and we would really like to try to finish
4 next week. And, I think we think that we could do
5 that if we could get in another day.

6 The people that believe that they couldn't
7 be here next Thursday, how many are there?

8 A JUROR: I'm uncertain. I'll do my best.

9 MS. SOMMERS: So, you're going to be here on
10 Wednesday. We're trying to see if you could come on
11 Thursday.

12 Sir, are you able to be here next Wednesday
13 and Thursday?

14 A JUROR: Yeah.

15 MS. SOMMERS: Somebody else? Okay. And, I
16 want to say, if you can come on Thursday and you had
17 to leave early, like, maybe missing one witness is
18 different than missing a whole day. We'll talk to you
19 afterward.

20 So, the people that are here right now,
21 you're coming back next Wednesday and next Thursday,
22 and if anything changes, please call me. And, I'll be
23 hoping you don't call me.

24 I hope you all stay safe. I'm delighted to
25 have everyone back safe and healthy. Thank you. I

1 know today was a long, long day.

2

3 (Proceeding adjourned at 4:44 p.m.).

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1 **S T E N O G R A P H E R C E R T I F I C A T I O N**

2

3 I DO HEREBY CERTIFY as a Notary Public in and
4 for the State of New York, that I did attend and
5 report the foregoing proceeding, which was taken down
6 by me in a verbatim manner by means of machine
7 shorthand.

8 Further, that the proceeding was then
9 reduced to writing in my presence and under my
10 direction. That the proceeding was taken to be used
11 in the foregoing entitled action. That the said
12 deponent, before examination, was duly sworn to
13 testify to the truth, the whole truth, and nothing but
14 the truth, relative to said action.

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Notary Public.

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