

1 STATE OF NEW YORK  
2 MONROE COUNTY GRAND JURY

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4  
5 Investigation into the death of Daniel T. Prude

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8 Transcript of the Proceedings held before  
9 the Attorney General of New York State before the  
10 Monroe County Grand Jury, at the Monroe County, Hall  
11 of Justice, 99 Exchange Blvd., Rochester, New York,  
12 14614, on October 28th, 2020.

13

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16 Appearing for the People  
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1 (Proceedings commenced.)

2 MS. SOMMERS: Okay. We are officially on  
3 the record in a matter that will be captioned, an  
4 investigation into the death of Daniel Prude.

5 So, before I go any further, the first thing  
6 I would like to do is note on the record the court  
7 reporter, [REDACTED], was just sworn by Judge  
8 Turner, who is the Judge presiding over this Grand  
9 Jury.

10 The following oath was provided by Judge  
11 Turner: Do you solemnly swear that you shall well and  
12 truly transcribe the Grand Jury proceedings involving  
13 the investigation into the death of Daniel Prude to  
14 the best of your ability, so help you God? And, our  
15 court reporter answered that she could.

16 That's just a formality that we just place  
17 on the record.

18 So, good morning. I think, last time we  
19 were here, none of you have ever been on a Grand Jury  
20 before, is that accurate?

21 GRAND JURY POOL: (All indicating a positive  
22 response.)

23 MS. SOMMERS: And, for the record, nobody  
24 raised their hands. I think nobody's been on a Grand  
25 Jury before.

1           Grand Jury is different than a trial jury.  
2       So, when you watch Law and Order or those types of  
3       things, I think that's kind of the jury that most  
4       people are familiar with.

5           Grand Jury is very important though, but  
6       serves a different function that we're going to get  
7       into a little bit.

8           The thing that's going to make this Grand  
9       Jury different than most Grand Juries, is most Grand  
10      Juries sit for a period of time and they hear a little  
11      bit about a lot of cases. You were impaneled for the  
12      specific reason of investigating, looking at a lot,  
13      about one particular case. So -- and, that is the  
14      case of Daniel Prude, which we will get into a little  
15      bit more shortly.

16           So, I want to talk about scheduling first.  
17      When you were impaneled, you were told you won't be  
18      here more than two days a week. We really think it's  
19      probably going to be more like one day a week, so I  
20      don't know if that will help with your scheduling or  
21      not, but Wednesdays, we can pretty reasonably predict  
22      you will be here on Wednesdays.

23           If it became necessary to ask you to come in  
24      a second day of the week, we would prefer it to be  
25      Tuesday or Thursday. So, it's Tuesday, Wednesday, or

1 Wednesday, Thursday. And, we just wanted to kind of  
2 leave this first thing maybe up to you. Is there  
3 anybody here who has a strong dis-preference, right,  
4 who would strongly prefer it not to be on a Tuesday or  
5 a Thursday. They know that, like, that is just, like,  
6 off limits for me, I can't do that day. Anybody?

7 Okay. So, for the record --

8 A JUROR: I kind of have an issue with that.  
9 Not a big deal, but some days I might not be able to.

10 MS. SOMMERS: Okay. Is there one day that  
11 is better or worse?

12 A JUROR: Both Tuesday and Thursday.

13 MS. SOMMERS: Both Tuesday and Thursday.  
14 Okay. So, this is -- and, like I just said, we really  
15 think that we are going to be able to hopefully just  
16 convene on Wednesdays. But -- so, it's kind of, like,  
17 if it was absolutely necessary. So, hopefully, this  
18 won't become an issue because we really are going to  
19 try to keep it to Wednesdays.

20 A JUROR: If it's not every Tuesday, I don't  
21 have an issue.

22 MS. SOMMERS: It won't be every week. In  
23 fact, we're hoping it's not any week.

24 MR. SMITH: It's the kind of thing that we  
25 would hope to give some advanced notice of.

1 MS. SOMMERS: Oh, yeah.

2 MR. SMITH: If one week we're going to come  
3 in here, the next week it's going to be two days,  
4 we'll give you guys notice of that.

5 MS. SOMMERS: Yeah.

6 MR. SMITH: So, we'll discuss beforehand,  
7 but not that week.

8 MS. SOMMERS: Exactly.

9 All right. In terms of how long you're  
10 going to be here. So, your impanelment day was a -- a  
11 grand master, I guess. It took a long time. We don't  
12 anticipate going that long ever. We wouldn't be here  
13 'till 6:00 o'clock at night.

14 If we are going to be here for more than  
15 three hours, which will probably happen most days, we  
16 will always break for lunch. So, we're going to start  
17 at 9:30. If you're ever going to be here more than  
18 three hours, you're gonna get a lunch break, and then  
19 we'll keep going in the afternoon, probably not more  
20 than a couple hours. We're trying to accommodate, you  
21 know, I know the first day the impaneling was very  
22 lengthy and uncomfortable. We will try to be a little  
23 less imposing than that.

24 In terms of lunch, you can eat in this room,  
25 but you have to be very, very careful, right, like, no

1 messing stuff up. You're also welcome to leave, and  
2 it might be nice to get out of this windowless room.  
3 Totally up to you. You can go down to the  
4 Commissioner of Jurors Office, where they have the  
5 vending machines and the microwaves. You can take a  
6 walk outside, there are some local places. Yeah, it's  
7 going to be -- generally, be an hour. If you know,  
8 that you actually wanted to sit down somewhere and you  
9 said to us, can we take a little bit of an extra time  
10 at lunch, we would be happy to try to accommodate you.  
11 So, everyday when we break for lunch, we could kind of  
12 go over that.

13 We're always going to be in this room, so  
14 don't ever go anywhere other than this room. And, I  
15 was so happy that all of you made it to the right  
16 room. So, thank you.

17 Okay. So, as I mentioned before, Grand  
18 Juries and juries are different. The purpose of a  
19 Grand Jury is not to determine whether or not someone  
20 is guilty of a crime. That is what petty juries or  
21 trial juries do. And, everybody kind of knows the  
22 standard for that, right? It's proof beyond a  
23 reasonable doubt. That is the standard to convict  
24 someone. That is what a jury must find in order to  
25 convict someone of a crime. The standard for a Grand

1 Jury to charge somebody with a crime is less than  
2 that. Okay. It's a reasonable cause. So, it's just  
3 a different standard. If you are asked to consider  
4 crimes against individuals, that is the standard that  
5 is used. So, it's not proof beyond a reasonable  
6 doubt. And, if we get to that point, we will define  
7 that again. Judge Turner defined it when she  
8 impaneled you. I just wanted to kind of flag it for  
9 you and tell you that we will be talking about that  
10 more.

11 Okay. 23 of you have been seated here in  
12 this Grand Jury. 16 of you must be present for us to  
13 do anything. So, if there are 15 people here and the  
14 witness shows up and the court reporter is here and  
15 we're ready to go, we can't take any testimony. There  
16 have to be 16. Okay? We would obviously prefer that  
17 everybody be here everyday. This is a significant  
18 case, right? So, as you already heard, normally,  
19 Grand Juries hear a little about a lot. You've been  
20 impaneled to examine one case very closely. And, the  
21 -- the standard to be able to vote on an action in a  
22 case, is that you have heard all of the essential  
23 evidence and critical evidence in the matter, and if  
24 you haven't, then you're not able to vote, right? So,  
25 if you miss a day, there's -- in a case like this, you



1 probably are going to miss some of that critical and  
2 essential evidence, and it would -- you wouldn't be  
3 able to vote. So, it's so important that you make  
4 every effort to be here.

5 That said, right, we understand there's a  
6 pandemic going on. If someone in your family is sick  
7 or you're not feeling well, everyone needs to be  
8 honest about it. And -- and, you know, that is kind  
9 of the world that we're living in at the moment. But,  
10 I cannot underscore enough, really, other than, you  
11 know, COVID concerns, it's really important that you  
12 be here.

13 So, 16 people have to be here for you to do  
14 anything. 12 people have to agree before you can  
15 actually do anything formal, like, vote on something,  
16 right? So, 12 of you have to agree if -- if we were  
17 to present charges to you. 12 of you would have to  
18 agree that there was reasonable cause to indict  
19 someone. 12 of you would have to agree that there  
20 wasn't, right? And, if you can't get to the number 12  
21 on either side, then there's no final finding, right?  
22 There's nothing in that respect.

23 And, let me step back a second. This is an  
24 investigation. An investigation is what it sounds  
25 like. You're going to be investigating. And, at the

1 end of that investigation, we will make determinations  
2 as to whether or not certain charges might be  
3 appropriate against certain individuals. If we make  
4 that legal determination to provide you with the  
5 opportunity to vote on charges, that would be up to  
6 you. You -- it's completely up to you as to how to  
7 vote. But -- but, I don't want you to go into this  
8 automatically with a preordained vision, right? This  
9 is an investigation. When it's done and you've heard  
10 the evidence, we may or may not be asking you to vote  
11 on charges.

12 So, let's see. Specific to this case, as  
13 you know, it's the investigation into the death of  
14 Daniel Prude after an interaction with members of the  
15 Rochester Police Department. So, at the end of the  
16 investigation, again, subject to change, we may be  
17 asking you to determine whether there is legally  
18 sufficient evidence to believe that a crime or crimes  
19 were committed relative to Mr. Prude, by members of  
20 the Rochester Police Department, and whether there's  
21 reasonable cause to believe that members of the  
22 Rochester Police Department committed those crimes  
23 maybe.

24 These are all things I just want you to kind  
25 of be thinking about as we go through this. And,

1 again, reasonable cause is not proof beyond a  
2 reasonable doubt. That is the standard for a trial  
3 jury.

4 Judge Turner, who impaneled you, and  
5 Mr. Smith and I are the only people who can advise you  
6 about the legal things, about the law. So, please  
7 don't go home tonight and start Googling things that  
8 you think might -- you know, that are interesting and  
9 legal stuff, and you kind of heard things at the Grand  
10 Jury this morning and now you're interested. That's  
11 great, but don't do it. And, for that matter, and  
12 Judge Turner covered this a lot in impanelment, but  
13 don't Google anything about this case, right? The  
14 facts that you're going to hear, upon which you may or  
15 may not be asked to vote in the future, have to be  
16 based on what you hear in this room, right, and the  
17 evidence that comes out of this proceeding, not from  
18 what you read on the internet. So, please don't do  
19 that. Don't talk to your family members about the  
20 law. We're -- we're actually going to get into  
21 talking about people a little more. So, if you have  
22 an uncle or and aunt who's a lawyer or a judge, don't  
23 go home and, like, start kind of sharing your legal  
24 prowess with that person because we are the only ones,  
25 and Judge Turner to advise you about the law here.

1           MR. SMITH: And, one other thing on that I'm  
2 going to mention. Just, you know, it's one thing also  
3 to actively go out and seek this information like Ms.  
4 Summers said. But, also, we understand on a case like  
5 this, you may be watching the news, you may pick up a  
6 paper and see something related, you know, we  
7 understand you can't erase your mind. But, we're  
8 asking just to sort of change the channel, kind of put  
9 down that paper as quick as you can. Do the best to  
10 avoid that stuff and to the extent that you passively  
11 come across it, again, ignore it and base your  
12 decisions on the evidence in this room.

13           MS. SOMMERS: Yeah, definitely. Thank you.

14           So, we are the legal people. We are the  
15 legal advisors. You, and you alone are the judges of  
16 the facts. So, don't ask Mr. Smith or me what we  
17 think about certain facts. Don't assume that you know  
18 what we think about certain facts. Even if you did  
19 know, which we're asking you to please not form any  
20 opinions about what we think, you need to put that out  
21 of your mind. The facts and how they -- how they  
22 should be applied to the law in this case, that is up  
23 to up you. You, as members of the community, have  
24 been asked to come in, view something and possibly  
25 make some determinations. So, please, don't speculate

1 as to how we feel about facts. That is your exclusive  
2 role, not ours.

3 So, how do you know do that, like, as grand  
4 juror, you know, how do you -- what does that mean,  
5 like, you're the exclusive judges of the facts. Well,  
6 the facts in terms of the Grand Jury are going to be  
7 testimony that's going to come in from the witness  
8 chair, and items of evidence, right, like, video,  
9 audio, that types of things. So, what do you do with  
10 that? And, I guess this is the same skills that you  
11 use in your everyday life, right? You don't leave  
12 them outside in the hallway, you bring them into here,  
13 right, your common sense.

14 So, if you're judging credibility, for  
15 instance, you would, you know, kind of be thinking  
16 about, does this witness have a motive to testify  
17 truthfully or falsely? What's the witness's interest  
18 in the case? Do they have an interest in the case?  
19 Just kind of observing their manner while they  
20 testify, they're attitude about the case, whether  
21 their testimony -- whether what they're telling you is  
22 supported by other evidence in this case, or whether  
23 it contradicts other evidence in this case. These are  
24 kind of all the same skills that you use in your  
25 regular life. And, I always like to say, anybody who

1 has had the experience of raising a teenager is really  
2 good at this stuff, right, like, comparing what you're  
3 told. So, anyway, you know what I'm talking about.  
4 So, don't leave your common sense outside the door.

5 And, one other thing about the evidence.  
6 You -- once something is in evidence, and Mr. Smith  
7 and I will always note for the record, such and such  
8 is now admitted into evidence and the secretary -- the  
9 recording secretary will write it on a sheet. Once  
10 something is in evidence, you can see it as much as  
11 you'd like. You can look at it, you can ask that it  
12 be re-played, reviewed, whatever, as much as you would  
13 like. And, that goes for testimony as well. So, our  
14 court reporter, who is now sworn, is taking down --  
15 will be taking down all of the testimony of all the  
16 witnesses. If there's something that you want re-read  
17 -- this is going to be a bit of a lengthy case, right?  
18 It's going to extend for a few weeks. If there's  
19 something you want re-read any time, just let us know,  
20 and we will have the court reporter re-read that for  
21 you.

22 There's some kind of clunky, I guess,  
23 evidence issues that just -- I kind of like to  
24 highlight ahead of time because you will probably hear  
25 Mr. Smith or I make reference to hearsay every once in

1 a while. Just on the record, we'll say, that's  
2 hearsay but, blah, blah, blah. So, just a very quick  
3 thing about hearsay. And, I don't want to get too  
4 into the weeds because we spent a lot of time in law  
5 school talking about it and people still fail their  
6 exam about it. But, hearsay is something that is said  
7 outside of this Grand Jury room that is offered inside  
8 the Grand Jury room to prove a relevant fact in the  
9 case. So, for instance, if you guys were all  
10 impaneled to investigate an arson, like, a fire case,  
11 a case about who set the fire. And, let's say, Jane  
12 Doe gets up in the witness stand and says, well, Jen  
13 Summers told me that Mike Smith set the fire. That  
14 would be classic hearsay, right? Because we're trying  
15 to prove here, we're trying to learn who set the fire  
16 and Jen Summers needs to come in and say why she  
17 thinks that Mike Smith set the fire, it can't be that  
18 someone else told her. Does that make sense? I mean,  
19 I'm trying to -- okay.

20 So, having said that, there are some, sort  
21 of exceptions that are -- they get very legal ease and  
22 stuff. There are some instances where you may hear,  
23 so and so told me this, and that's when you're likely  
24 to hear us say, well, that is hearsay, but we're  
25 offering it for a reason other than the relevant fact.

1 So, for instance, someone got on the stand and said,  
2 Jen Summers said she saw the fire, but it was offered  
3 to show why -- so, maybe it was -- maybe it was given  
4 by the Fire Marshall, right? And, it wasn't offered  
5 to show that I saw the fire, it was offered to show  
6 why the Fire Marshall responded to the fire, right?  
7 Like, how he got there that morning. That's sort of  
8 an example of that, but I don't want to get too, like,  
9 bogged down on that. But, I just wanted to flag it  
10 for you because you'll probably hear that a few times  
11 as we go through there.

12 The other thing I wanted to say is,  
13 sometimes some of -- some of the records that get  
14 admitted into evidence -- and, again, once they're  
15 admitted, you can look at them, we can put them up on  
16 the screen, there are foundational requirements kind  
17 of questions that need to be asked before being put  
18 into evidence. They are sort of formal questions and  
19 stuff. So, if you wonder, like, why are they asking  
20 these questions, that's why. There are certain legal  
21 requirements that need to be met.

22 Okay. I can't stress this next part enough.  
23 Everything that happens in this room is secret, okay?  
24 So, you cannot leave here and talk to people -- your  
25 -- about what's going on in this room. For all



1 intents and purposes, the only people can leave a  
2 Grand Jury room and talk about what happened here are  
3 witnesses. So, a witness who comes in -- so, let's  
4 say it's our Fire -- Fire Marshall. He can leave, or  
5 she can leave, and she can hold a press conference and  
6 say, I was a witness, and this is what I said, or they  
7 can leave and say nothing. The witnesses are the only  
8 ones, right? So, it is -- in New York State it's a  
9 crime. It's a crime if you leave the Grand Jury and  
10 talk about what you saw here, it's a crime if the  
11 court reporter leaves and talks about what she saw  
12 here, and it's a crime if Mr. Smith and I leave and  
13 talk about what happened here. There are no friends  
14 and family discount, right, there's no friends and  
15 family exception. So, that means, as awkward and  
16 uncomfortable as this is, you cannot leave here and be  
17 sharing with your friends and family what happened.

18 And, I think, like, history kind of shows  
19 that's when most people end up getting in trouble.  
20 Because they leave, they share with someone, trusted  
21 person, you know, something, and it ends up being a  
22 little bit unfortunate for them. So, just please  
23 don't do that.

24 Another thing, kind of, when you're outside  
25 of this room, if you see witnesses or anything, don't

1 interact with them. I don't think that'll happen too  
2 much in this case, I think they'll pretty much be in  
3 and out.

4 But, one thing -- and, obviously, want you  
5 to interact with each other, you're going to be  
6 spending a lot of time together over the next few  
7 weeks, don't talk to each other about this case until  
8 it's -- until we've -- we've asked you to perhaps  
9 deliberate about something. I only say that because  
10 what tends to happen, I think -- and, take it out of  
11 the spectrum of Grand Jury, just in everyday life,  
12 what tends to happen with people, is that they -- once  
13 you put an opinion out into the world, right, what  
14 happens? You become less resistant to changing it,  
15 right, and, we want everyone to have an open mind. We  
16 want everybody to hear everything before possibly  
17 being asked to -- to vote on something as significant  
18 as this. This is a significant case. So, please  
19 don't discuss it with each other until you're asked to  
20 discuss it with each other.

21 So, just a couple other super legally  
22 things. Immunity. Every witness that comes into a  
23 Grand Jury, in this case and in every case in New  
24 York, gets immunity. So, in my arson example, going  
25 back. Let's say that we -- we call the witness and we

1 thought the witness was going to say, John Doe did it  
2 or Mike Smith did it, and instead, the witness says, I  
3 did it. The practical reality would be, that person  
4 could never be charged with arson because that person  
5 has immunity. Immunity means they cannot be -- they  
6 could not be charged with any crime other than perjury  
7 if they lied on the stand. But, that's the way that  
8 -- that Grand Jury works. So, any person that we  
9 bring before the Grand Jury, we issue a subpoena to,  
10 they come in, they have to come in, and they  
11 automatically receive immunity. So, anybody that we  
12 present to you as a witness, we -- we have made a  
13 determination that we don't reasonably foresee the  
14 possibility of criminal charges against those persons,  
15 right?

16 So, we would not be subpoenaing in to a  
17 Grand Jury potentially targets of the investigation,  
18 right? We would not be telling them you have to come  
19 and say whatever it is. However, potential targets of  
20 a Grand Jury investigation -- so, let's, in my arson  
21 example, let's say that I knew that the Grand Jury was  
22 meeting and they were thinking about charges against  
23 me. If I knew that, I could say that I want to come  
24 in and talk to the Grand Jury. And, that's fine. If  
25 that happens, those people have to waive immunity,

1 right? So, it's a process. It's defined in the  
2 Criminal Procedural Law and I'm not saying that you  
3 will or won't see this, I just -- I want you to be  
4 aware of kind of the grand scheme of the Grand Jury  
5 process. I also want to stress here, nobody has to do  
6 that. Targets of a presentation or potential targets  
7 of a presentation do not have to come in and waive  
8 immunity, it's totally up to them. If they do come in  
9 and waive immunity, they have a right to have their  
10 attorney with them. The attorney can't take part in  
11 the proceedings, they can't interrupt, they can't do  
12 anything. It's very hard for an attorney. They have  
13 to sit silent. So -- but, they are able to be there  
14 with their client, and, you know, yeah. So, they can  
15 advise in a quiet, confidential way, but they can't  
16 say anything on the record.

17 Again, you might not even see this. I just  
18 -- we're trying to present as much ahead of time so  
19 that you might have some idea of the process and some  
20 of these processes before we start.

21 Okay. Questions by you guys, the Grand  
22 Jurors. Go ahead, yes?

23 A JUROR: You mean questions in general  
24 or --

25 MS. SOMMERS: Nope. Oh, no, I was going to

1 talk about questions.

2 A JUROR: Go ahead.

3 MS. SOMMERS: Yeah. We'll get to that. All  
4 right. So, let's say that a witness is on the stand  
5 and you have thought of something that you wished that  
6 we had asked and didn't. This is one area that Grand  
7 Juries different -- one of many areas from a regular  
8 jury because you are actually allowed to ask  
9 questions.

10 So, what happens, the procedure is, the --  
11 the witness will -- we'll finish with the witness and  
12 then we'll ask that witness to step outside, and then  
13 we'll say, do any of the Grand Jurors have any  
14 questions that they would like to ask of that witness?  
15 Nobody has to ask questions, right? This is a may,  
16 not must. But, if there was something that you were  
17 interested in, you would say it on the record, and we  
18 would then purpose it to the witness when they come  
19 back in. So, number one, they don't know which Grand  
20 Juror is asking the question.

21 Every once in a while, the Grand Jurors will  
22 ask questions that are just not legally permitted.  
23 So, if -- if -- if you ask a question, and we  
24 determine that legally it's -- it's not permitted, or  
25 not relevant, please don't be mad at us. We're not

1     trying to, like -- there might be other, you know --  
2     but, please -- so, just -- or, we might work to  
3     rephrase it a little bit, or, you know, something  
4     along those lines.

5             MR. SMITH:  And, that's where -- what she  
6     said before, your answer may call for hearsay.  It  
7     might call for speculation.

8             MS. SOMMERS:  Exactly.

9             MR. SMITH:  Otherwise, being improper, we  
10    can't ask it.

11            MS. SOMMERS:  Right.

12            Notes.  All right.  So, you guys have your  
13    note taking ability.  You can totally take notes if  
14    you want.  I want to mention just one thing -- well, a  
15    couple things.  We have the best note taker right  
16    here, to my left.  So -- and, as I mentioned, she will  
17    read any -- re-read any testimony that you want.  
18    Having said that, you know, you're totally free to  
19    take notes.  And, this is going to be a lengthy  
20    presentation, even if you may be, you know, just --  
21    you want to just write down the witnesses' names and  
22    just a little blurb about where they worked or  
23    something.

24            Although, the recording secretary is also  
25    going to have a record of that, I'm not telling you

1 how to take notes, I'm not telling you you should take  
2 notes. I just wanted to mention that we do have a  
3 really good note taker, and that you are more than  
4 welcome to take notes, if you want. However, because  
5 this is a secret proceeding, everyday, at the end of  
6 the day, we will be collecting your notes, keeping  
7 them here and then giving them back to you the next  
8 time that we meet.

9           The next time that we do meet is next  
10 Wednesday. So, we are meeting next Wednesday. I  
11 can't say yet -- I don't know for sure if it will be a  
12 day that we will need you for the whole day, i.e.; I  
13 don't know if it's going to last more than three  
14 hours, it may be a halfday. So, maybe plan for the  
15 worst, but it could be shorter. But, you will  
16 definitely be here next Wednesday, which is the day  
17 after the election day.

18           The following week, I believe, we will  
19 probably have off because Wednesday falls on a State  
20 holiday, Veteran's Day. The Court's are closed. And,  
21 as I said, we're -- we're really have kind of moved,  
22 trying to make this as predictable as possible. So,  
23 we've really kind of tried to go with Wednesdays. So,  
24 you're going to be here today, next Wednesday. I  
25 believe we will confirm when you come next Wednesday,

1 that you will have the following Wednesday off.

2 MR. SMITH: One more thing about the notes I  
3 think Jen started to say. You can't take them home,  
4 they're confidential, which is why we provided  
5 everybody with the red well folders. So, at the end  
6 of the day, everybody could take their notes and the  
7 clipboard, you know, pen if you want to take your pen  
8 home or leave the pen here.

9 And then, put in the red wells and we'll  
10 collect those folders, and the red wells, and then  
11 hand them back the next time. If you want to put your  
12 initials on the outside or your last name somehow to  
13 mark them -- somehow identify yourself, please --  
14 please do that so we know who they belong to and  
15 nobody else sees those notes and they will remain  
16 confidential.

17 MS. SOMMERS: Right. And, I can guarantee  
18 you that we will not be going through your folders to  
19 read through your notes.

20 A JUROR: You don't have enough time to do  
21 that?

22 MS. SOMMERS: Exactly. Right. So, that's  
23 it. But, I think you're going to say some other  
24 things about --

25 MR. SMITH: Yeah. I just wanted to say one



1 other thing, ladies and gentlemen. As Ms. Sommers  
2 said, this Grand Jury's been impaneled to investigate  
3 the death of Daniel Prude, and we're going to ask you  
4 to keep on open mind and to examine all the evidence.  
5 And, at the end of this case, the end of the proof, we  
6 may ask you to consider charges, and we may not ask  
7 you to consider charges, again relating to acts and  
8 omissions related to the death of Mr. Prude. I will  
9 say this -- and, because of that, it would be  
10 inappropriate to start reading charges before we even  
11 started the proof. We don't know what the charges  
12 would be. But, I want to give you a little bit of a  
13 -- of a preview on a criminal charge.

14 All criminal charges are made up of two  
15 elements, a state of mind and the actual act -- the  
16 actual act. To use Ms. Sommers' example with a --  
17 with arson, for example, the actual lighting of the  
18 fire, that causes the fire, that's the act. So -- so,  
19 to prove -- to charge somebody of that, or to prove  
20 somebody guilty of that, that would be one thing you  
21 have to establish. The other, is the state of mind.  
22 The fire could have been started accidentally, could  
23 have been started intentionally, it could have been  
24 started recklessly, it could have been started  
25 negligently, at least, as determined by the law. So,

1 each -- each crime is going to have an act, but also a  
2 mental state or a state of mind. And, I think it's  
3 important before you start hearing proof, to  
4 understand what those states of minds are in the event  
5 that we do ask you to consider a charge, just sort of  
6 have that in the back of your head as you listen to  
7 the proof, you kind of know where it's going.

8 And, so, at this time, ladies and gentlemen,  
9 I do want to read you the culpable mental states.  
10 And, again, the states of mind we may ask you to  
11 consider as part of the crimes at the end -- at the  
12 end of the proof.

13 The first one I'm going to read for you,  
14 ladies and gentlemen, is intentionally.

15 A person acts intentionally with respect to  
16 a result, or to conduct described by a statute  
17 defining an offense, when his or her conscious  
18 objective is to cause such result or to engage in such  
19 conduct. So, that is intentionally. That's the  
20 definition of intentionally.

21 I'm going to define knowingly now. A person  
22 acts knowingly, with respect to conduct or to a  
23 circumstance described by a statute defining an  
24 offense, when he or she is aware that his or her  
25 conduct is of such a nature, or such circumstance

1 exists. So, that's knowingly.

2 I'm going to read recklessly now. This is  
3 the definition of recklessly. A person acts  
4 recklessly with respect to a result or to a  
5 circumstance described by a statute defining an  
6 offense when he is aware of and consciously disregards  
7 a substantial and unjustifiable risk, that such result  
8 will occur or that such circumstance exists. The risk  
9 must be of such nature and degree that disregard  
10 thereof, constitutes a gross deviation from the  
11 standard of conduct that a reasonable person would  
12 observe in the situation.

13 A person who creates such a risk, but is  
14 unaware thereof, solely by reason of voluntary  
15 intoxication also acts recklessly with respect  
16 thereto.

17 I'm going to read you criminal negligence  
18 now. Finally, again, the definition of criminal  
19 negligence.

20 A person acts with criminal negligence with  
21 respect to a result or to a circumstance described by  
22 a statute defining an offense when he fails to  
23 perceive a substantial and unjustifiable risk that  
24 such result will occur, or that such circumstance  
25 exists. The risk must be of such nature and degree,

1 that the failure to perceive it constitutes a gross  
2 deviation from the standard of care that a reasonable  
3 person would observe in the situation.

4 So, again, ladies and gentlemen, if there  
5 comes a point of your conclusion of the proof, I'm  
6 going to ask you to consider charges. It won't just  
7 be an act, it will be an act and a state of mind.  
8 And, those are the states of minds that are described  
9 by the New York State Penal Law.

10 MS. SOMMERS: Okay. So, we're going to  
11 start the case now. But -- well, we're going to take  
12 a 15 -- 10 to 15 minute break.

13 A JUROR: I have one question.

14 MS. SOMMERS: I apologize, yes.

15 A JUROR: So, not knowing --

16 MS. SOMMERS: Yes.

17 A JUROR: But, assuming the seriousness of  
18 the case and us meeting one day a week and then having  
19 -- it looks like we might be off the week of Veteran's  
20 Day and then, Thanksgiving and Christmas. We were  
21 slated to be done by the end of January. What is the  
22 likelihood that this -- our responsibility will be  
23 done by then or we will be asked to serve longer?

24 MS. SOMMERS: We do have the ability to  
25 extend. But, we would like to be done and plan to be

1 done by --

2 A JUROR: I'm not worried about February,  
3 but I have a family commitment --

4 MS. SOMMERS: Yeah.

5 A JUROR: Like, in May or April.

6 MS. SOMMERS: Yeah. No. We -- we would  
7 like to be done. We would actually -- would prefer to  
8 be done before the holiday.

9 A JUROR: I'm good with that answer.

10 MS. SOMMERS: Right.

11 A JUROR: Because, you know, when we first  
12 were --

13 MS. SOMMERS: Yep.

14 A JUROR: -- impaneled, we were asked about  
15 being able to serve --

16 MS. SOMMERS: Yes.

17 A JUROR: -- and, I don't have any issues,  
18 but come April, I might.

19 MS. SOMMERS: Understood. No. That would  
20 not be necessary.

21 A JUROR: Okay.

22 MS. SOMMERS: I can't see a world where that  
23 happens.

24 MR. SMITH: We appreciate that, sir. We are  
25 sort of in a new world with COVID and things

1       happening, you know, it's kind of why we -- we had an  
2       end date that was out in January. And, again, we hate  
3       to say that we expect to be done before and anticipate  
4       or hope to, or we expect to be done.

5               A JUROR: I respect that.

6               MR. SMITH: And, again, things happen. So,  
7       don't hold us to it, but that's our intention.

8               A JUROR: Fair enough.

9               MS. SOMMERS: I'm glad you brought it up.  
10       Thank you. Anybody else? Yes?

11              A JUROR: Don't know if this changes or not,  
12       but in my mindset, how in the world does this girl  
13       taking all these notes know where -- what to go back  
14       to? How do we ask?

15              MS. SOMMERS: So, if you current -- oh,  
16       believe me. So, I -- I have to answer because she --  
17       so, if, for instance, you got to a point where you  
18       said, we would like to, you know, have so and so's  
19       testimony, did -- did that person say something about  
20       -- if it was the arson, did the Fire Marshall say  
21       something about what was going on when -- when she  
22       arrived on scene. The court reporter has the ability  
23       to search through her transcript by -- by ways that  
24       are magic to all of us, but to her, makes perfect  
25       sense and would find that.

1           So, the other thing I did want to mention, I  
2 apologize, I forgot. So, because this is a bit of a  
3 lengthy case, it may be that you'll be hearing from  
4 the same person on more than one day. So, we may get  
5 to the end, and there might be a witness that  
6 testified in the beginning, today maybe, who knows.  
7 That for various reasons, you would like to hear from  
8 -- again, maybe you have questions. These are just --  
9 I'm not suggesting today's witnesses, anything special  
10 about that, I'm just saying, there may be witnesses  
11 you want to hear from again. You have the right to  
12 ask to recall them.

13           This is really -- Grand Jury is a much  
14 different process. Especially, a Grand Jury that's  
15 been impaneled to examine and investigate one case.  
16 So, keep -- keep all of that in mind. Yes?

17           A JUROR: Is once a week usually how you  
18 guys do it, or is that because of COVID?

19           MS. SOMMERS: So, normal Grand Juries, the  
20 ones that meet normally in Monroe County, they're  
21 generally seated for about a month, and they come  
22 three days a week and they hear a whole bunch of stuff  
23 -- I'm sorry, a little about a whole bunch of cases.  
24 This is -- this, as I mentioned, this is different.  
25 It's just so much. So, our schedule is somewhat

1 because of COVID, but it's just that this is just such  
2 a different beast, I guess, than -- than a normal  
3 Grand Jury. You're going to have this experience, and  
4 if you ever then get called for Grand Jury duty in the  
5 future, you're going to be like, wow, this is totally  
6 different than what I experienced previously.

7 Anybody else have any questions before we  
8 take a break? Yes?

9 A JUROR: This might sound weird. Are we  
10 going to be hearing anything just from witnesses? Or  
11 also people that may possibly be indicted.

12 MS. SOMMERS: So, what I was talking about  
13 before with -- with -- we don't, by law, people --  
14 people who you say may be indicted, we would tend to  
15 call individuals who could potentially be subject to  
16 charges, targets. And, I used air quotes for that.  
17 But, a person against whom a charge is possible, we  
18 would not be calling them as a witness, because if we  
19 did, we would be giving them immunity. So -- so, we  
20 don't -- we don't call targets into a Grand Jury.

21 But, as I mentioned, targets will  
22 occasionally request to come into the Grand Jury. I  
23 -- I have no idea if that is going to happen in this  
24 case, and I don't want anybody to have any type of  
25 expectation because targets are not required to -- to



1 testify in front of a Grand Jury. If they do, they  
2 waive immunity, and that's what I discussed earlier  
3 about that process, and they have their attorney with  
4 them. So, that's -- that's the way that works.

5 A JUROR: Okay.

6 MS. SOMMERS: I know it's a little bit  
7 confusing. It's -- it's like a whole new language  
8 that everybody's learning.

9 Anybody else? All right. So, I think it's  
10 about 25 of 11:00, or 10:35. How about we break until  
11 between quarter and ten of. Ten of, we'll go to the  
12 -- to the outer edges. Then, we're going to call the  
13 first witness, and then we'll take lunch, because I  
14 think we'll be almost about noon at that point. All  
15 right. Thank you all very much.

16 (Proceedings adjourned.)

17 (Proceedings reconvened.)

18 MR. SMITH: Okay. The first witness. The  
19 People call [REDACTED].

20 A JUROR: We're missing one.

21 MR. SMITH: All right. Sorry, it looks like  
22 we're missing one of the grand jurors.

23 (Grand juror enters the room.)

24 MS. SOMMERS: All right. I think, are we  
25 all back?

1 MR. SMITH: Looks like we got all 22 grand  
2 jurors back in the room and present. So, with that in  
3 mind, I am going to call [REDACTED].

4

5 (Whereupon, the witness entered the Grand  
6 Jury room at a time of 10:47 a.m.)

7

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

10

11 **EXAMINATION BY MR. SMITH:**

12 Q. Good morning, Mr. [REDACTED].

13 A. Good morning.

14 Q. Could you -- could you state and spell your name  
15 for the record, please, sir?

16 A. [REDACTED].

17 Q. Thank you, sir. How old are you, Mr. [REDACTED]?

18 A. [REDACTED].

19 Q. And, where did you grow up?

20 A. Chicago, Illinois.

21 Q. And, who did you grow up with, Mr. [REDACTED]?

22 A. My siblings, [REDACTED], Daniel, [REDACTED] and [REDACTED].

23 Q. Five siblings total, counting yourself, sir?

24 A. Yes.

25 Q. And, you grew up in Chicago?

1 A. Yes, I did.

2 Q. I want to ask you some questions about your  
3 brother Daniel?

4 A. I know.

5 Q. Was Daniel older or younger than you, sir?

6 A. Younger than me.

7 Q. When were you born, Mr. [REDACTED]?

8 A. [REDACTED].

9 Q. And, when was Daniel born?

10 A. 1978.

11 Q. And, did -- did you and those siblings all grow  
12 up in Chicago?

13 A. Yes, we did.

14 Q. And, you and Daniel do the kind of things  
15 brothers did growing up in Chicago, Mr. [REDACTED]?

16 A. Yes, we did.

17 Q. Did there come a point, sir, when you -- when you  
18 left Chicago?

19 A. Mm-hmm.

20 Q. And, about what year was that, if you could tell  
21 us, Mr. [REDACTED]?

22 A. I start coming over here from, like, late '97. I  
23 made Rochester my home in '99.

24 Q. So, in 1999 you moved permanently to Rochester?

25 A. Yes, I did.

1 Q. And, sir, since 1999, have you been living in  
2 Rochester?

3 A. Yes, I have.

4 Q. And, during that time, Daniel stayed in Chicago  
5 and still living in Chicago?

6 A. Yes, he had.

7 Q. So, where do you -- where do you live in  
8 Rochester? What street do you live on?

9 A. [REDACTED] Child Street.

10 Q. And, who do you live with at [REDACTED] Child, sir?

11 A. My wife and my stepson.

12 Q. What's your wife's name?

13 A. [REDACTED].

14 THE STENOGRAPHER: Can you repeat that?

15 THE WITNESS: [REDACTED].

16 Q. And, I know it's hard, Mr. [REDACTED], but to the  
17 extent that you can speak up, I'm going to try and do  
18 the same thing. She's got to take everything down.  
19 I'm going to ask you some questions about February of  
20 this year, 2020, Mr. [REDACTED]. Did there come a point --  
21 well, let me ask you this, were you living at [REDACTED] Child  
22 in February, 2020?

23 A. Yes, I was.

24 Q. And, was Daniel living in Chicago, beginning of  
25 February, 2020?

1 A. Yes, he was.

2 Q. Did there come a point, sir, in February, 2020,  
3 when Daniel came to Rochester to visit you?

4 A. Yes.

5 Q. What was the purpose of the visit?

6 A. He just came to visit, spend some time with me.

7 Q. And, how long was he here for?

8 A. I want to say a good two and a half weeks.

9 Q. How did he get here?

10 A. On the train.

11 Q. What kind of things did you guys do when he was  
12 here for those two and a half weeks?

13 A. First thing we did was get on the basketball  
14 court and try to out grill me and, you know, and just  
15 -- just being competitive as he was when we was a kid.

16 Q. Did he beat you in basketball?

17 A. No.

18 Q. Did he out grill you?

19 A. What? No.

20 Q. Did you guys have a good time?

21 A. Yes, we did.

22 Q. Was it a good trip?

23 A. Yes, it was.

24 Q. How did -- how was Daniel's demeanor? How did he  
25 seem during that two and a half week visit?

- 1 A. He was really just -- just ordinary and himself.
- 2 Q. Was he happy?
- 3 A. Yeah.
- 4 Q. Did you have any concerns about Daniel during
- 5 that two and a half --
- 6 A. No, I did not.
- 7 Q. -- weeks? Any concerns about drug use?
- 8 A. No, I did not.
- 9 Q. Did you see any drug use?
- 10 A. No, I did not.
- 11 Q. Any concerns about mental health issues?
- 12 A. No, I did not.
- 13 Q. Did you observe any mental health issues, sir in
- 14 those --
- 15 A. Nope.
- 16 Q. -- two and a half weeks? Okay. Was he violent
- 17 at all during those --
- 18 A. No, he wasn't.
- 19 Q. -- two and a half weeks? Good visit?
- 20 A. Yeah. He didn't want to go home.
- 21 Q. And, did there come a point, sir, at the end of
- 22 February, when he went back to Chicago?
- 23 A. Yes.
- 24 Q. Okay. And, who -- who was he living with?
- 25 A. My sister, [REDACTED].

1 Q. So, Daniel was living with [REDACTED] in Chicago?

2 A. Yes.

3 Q. So, at the end of February, when he left  
4 Rochester, did he go back to living with her?

5 A. Yes, he did.

6 Q. Did you -- does your sister have a nickname, sir?

7 A. [REDACTED].

8 Q. You call her [REDACTED]? I want to now draw your  
9 attention to mid March of this year, mid March, 2020.  
10 Did you have a conversation or opportunity to have a  
11 conversation about Daniel at that time?

12 A. Yes, I did.

13 Q. And, did -- did [REDACTED] express some concern about  
14 Daniel?

15 A. Yes, she did.

16 Q. What was -- without -- without telling us what  
17 she said, sir, what was the sort of nature of the  
18 concern?

19 A. That he's -- his behavior pattern wasn't  
20 accurately -- it wasn't like it used to be so it was  
21 kind of throwing her off, making her nervous. She  
22 didn't want to deal with it.

23 Q. She noticed a change in his behavior and --

24 A. Yes, she did.

25 Q. -- she wanted you to be aware of it?

1 A. Yes, she put me on point about it.

2 Q. So, again, it's severe enough that she thought  
3 that she should contact you?

4 A. Yes, indeed.

5 Q. Did she have any belief, sir, about what caused  
6 the change of behavior?

7 A. From my knowledge, you know, it was like, she  
8 said that she sort of overheard that he using this  
9 with a the few friends, and whatever. And, I was,  
10 like, well, you know, I never seen him do that. So,  
11 I'm pretty good, just get him over here to me, I'll  
12 get him some help.

13 Q. What was it specifically that she thought he was  
14 using?

15 A. PCP.

16 Q. Okay. You have never seen him use that?

17 A. No, I haven't.

18 Q. Okay. So, again, what was your -- tell us again,  
19 sir, your response to [REDACTED]?

20 A. Well, basically, like, I was telling her, if he  
21 ain't acting right, I got to get him over here to try  
22 to, at least, try to see if I can get him some  
23 professional help because I never dealt with no  
24 situation like that. So, when I got him here, it was  
25 more or less because he got kicked off the train. I



1 don't know what he was behind.

2 Q. Let me stop you right there, and we'll break that  
3 down for --

4 A. Okay.

5 Q. -- you, Mr. [REDACTED]. At some point between you and  
6 your sister [REDACTED], was there a decision made that  
7 Daniel should come back to Rochester and stay with  
8 you?

9 A. Yes.

10 Q. And, on February -- I'm sorry, on March 21st of  
11 2020, was it your understanding, sir, that Daniel, in  
12 fact, got on an Amtrak train in Chicago?

13 A. Yes.

14 Q. And, was he supposed to come to Rochester?

15 A. Yes.

16 Q. And, sir, do you know when that train was  
17 scheduled to arrive in Rochester?

18 A. I think it was supposed to been here at 10 --  
19 10:00 o'clock in the morning on the 22nd.

20 Q. 22nd of March 2020?

21 A. Yes.

22 Q. Okay. Did you have an indication that Daniel  
23 actually got on that train, sir?

24 A. Well, actually, I guess, he swore near Face-time  
25 and I think, one of my nephews at that time.

1 Q. I guess my question for you, sir, is did you have  
2 any conversations with Daniel while he was on the  
3 train?

4 A. No, I did not.

5 Q. Okay. But, you had some indication to believe he  
6 was on that train?

7 A. Yes.

8 Q. And, on the morning of March 22nd, sir, did you  
9 go to the train station in Rochester?

10 A. Yes, I did.

11 Q. Do you know about what time you went?

12 A. I went like five minutes before 10:00.

13 Q. And, was the train there that Daniel was supposed  
14 to be on?

15 A. The train had came and left.

16 Q. You found out the train had came and left?

17 A. Yes.

18 Q. And, was Daniel at the train station?

19 A. No.

20 Q. Did you have any indication of whether Daniel got  
21 off the train in Rochester?

22 A. No, I did not.

23 Q. What's the first indication that -- or, contact  
24 that you got about Daniel that morning?

25 A. What made me kind of skeptical about the

1 situation, when I arrived there, I went to the teller  
2 window, and I was, like, did the train come here from  
3 Chicago, and did everybody get off that's supposed to  
4 got off at the right stop, and the woman told me yes,  
5 and I'm looking around for my brother and he's nowhere  
6 to be seen. So, my own thought was, I gotta start to  
7 find out what do I do, where he at, don't know where  
8 he at, don't know who to call. And, I called my wife  
9 and she said a woman -- some woman's name popped up on  
10 our Facebook messenger and I told her to try to get in  
11 contact with her but the woman wouldn't answer the  
12 phone, she just said your brother got kicked off the  
13 train.

14 Q. So, you received information from a stranger --

15 A. Yes, I did.

16 Q. -- that Daniel got kicked off the train?

17 A. Yes.

18 Q. Do you where that had happened, was there any  
19 indication --

20 A. Depew.

21 Q. -- where that had happened?

22 A. She said he got kicked off in Depew, New York?

23 Q. Depew, New York?

24 A. Yes.

25 Q. Did you know where that was, sir?

- 1 A. No, I didn't.
- 2 Q. Did you eventually learn where that was?
- 3 A. Yes, I did.
- 4 Q. Where is that?
- 5 A. In Buffalo.
- 6 Q. Suburb of Buffalo?
- 7 A. Yes.
- 8 Q. Did you then contact the Depew Police?
- 9 A. Yes, I did.
- 10 Q. Did you find out whether or not they had had any
- 11 contact with Daniel?
- 12 A. Yes, I found out.
- 13 Q. Did you learn that Daniel, in fact, had gotten
- 14 off of the train in Depew?
- 15 A. Yes, I did.
- 16 Q. Sir, I'm going to draw your attention to a couple
- 17 hours later, a little after noon, the same date, March
- 18 22nd, did you receive some information a little bit
- 19 after noon on Daniel's whereabouts?
- 20 A. Yes, I did.
- 21 Q. And, who did you receive that from?
- 22 A. I think it was the Lancaster Police Station and
- 23 told me that they had placed him in the Harbor House
- 24 out there until I'm able to come out there and get him
- 25 --

1 THE STENOGRAPHER: Can you repeat that?

2 THE WITNESS: They admitted him into the  
3 Harbor House until I was able to come out there and  
4 pick him up.

5 Q. So, a police agency in Buffalo let you know that  
6 they had dropped off your brother at the Harbor House?

7 A. Yes.

8 Q. Did they tell you what the Harbor House was?

9 A. Yeah, it was a shelter.

10 Q. Did they tell you why they did that?

11 A. Nope.

12 Q. Based on that conversation, did you get in the  
13 car and travel to the Harbor House?

14 A. Yes, I did.

15 Q. Did you travel alone, or did you have somebody  
16 with you?

17 A. I had my wife's nephew and a cousin take that  
18 ride with me.

19 Q. How long did it take to get there, sir?

20 A. Approximately, like, a hour and a half.

21 Q. Did there come a point, mid afternoon, where you  
22 arrived at the Harbor House in Buffalo?

23 A. Yes.

24 Q. And, was Daniel there when you arrived?

25 A. Yes.

1 Q. Where was he, how did you see Daniel?

2 A. When -- before I pulled in front of the Harbor  
3 House, I had called 'em to let 'em know I was outside,  
4 out front to pick up my brother. By the time I got  
5 out the car, my brother was coming down the stairs to  
6 meet me.

7 Q. Did you enter into that Harbor House, sir?

8 A. All I did was went past the doors.

9 Q. When you got there, did you see Daniel?

10 A. Yes, I did.

11 Q. How did Daniel look?

12 A. Not him.

13 Q. Can you tell us what you mean by that, sir?

14 A. He didn't look like my brother that left me the  
15 first time.

16 Q. So, the Daniel that had left a couple weeks  
17 before --

18 A. That wasn't him.

19 Q. His demeanor was different, sir?

20 A. Yes.

21 Q. Again, can you tell us how to the best you can,  
22 how it was different?

23 A. You know how you can be sitting in a dark room  
24 and a bullet of light just flash past you, that's how  
25 my brother look when he came down them stairs. It was

1     like a blink of bright light, then it just got black,  
2     like a shadow.

3     Q.    Was he saying anything that concerned you, sir,  
4     or was it just most his effect and demeanor.

5     A.    What started concerning me is when he got in the  
6     car.

7     Q.    Tell me about that, what happened in the car?

8     A.    It -- it -- the words and everything that he was  
9     phrasing really didn't add up to me. I didn't  
10    understand why he was talking like that.

11    Q.    What was he talking about?

12    A.    God and the devil.

13    Q.    He was talking about God and the devil?

14    A.    Yes.

15    Q.    What, specifically, was he saying, if you recall,  
16    sir?

17    A.    Just saying chants -- he was chanting that night,  
18    please, Lord, save me, in the name of Jesus and all of  
19    that. It's lucifer, he's trying to kill me.

20           MR. SMITH: I caution the grand jurors about  
21    what we had talked about before. Technically, the  
22    testimony about what Daniel said is hearsay, but it's  
23    being offered here, ladies and gentlemen, under --  
24    under exception, under present sense -- under present  
25    sense impression exception and Mr. [REDACTED] is testifying

1 of his present sense of impression of his brother.

2 Q. So, [REDACTED], this was out of character for your  
3 brother?

4 A. Yes, it was.

5 Q. Your brother wasn't acting like this a couple  
6 weeks beforehand?

7 A. No, he hadn't.

8 Q. It sort of seemed consistent with [REDACTED]  
9 concerns about --

10 A. Yes.

11 Q. -- your brother? Did he kind of keep that up the  
12 whole way to your house?

13 A. No. He start going in and out. He start  
14 rapping, and twenty minutes later, he would say this  
15 and say that, and he would get back to God and the  
16 devil.

17 Q. Did you have any conversation with your brother  
18 about what happened?

19 A. He wouldn't tell me nothing.

20 Q. Did he have anything with him, sir, when he left  
21 the Harbor House?

22 A. Yeah, only his bag.

23 Q. Did he have a phone anymore?

24 A. Nope.

25 Q. Okay. Did you -- did you return to [REDACTED] Child from



1 Harbor House, sir?

2 A. Yes, we did.

3 Q. Who was present at Child when you got to back  
4 there with Daniel?

5 A. Me, my wife, Daniel, my stepson, and my wife  
6 nephew, and then, my wife niece.

7 Q. Do you know about what time that was, sir, if you  
8 recall?

9 A. In between, like, maybe like 3:00 3:30-ish, close  
10 for 4:00.

11 Q. And, what did -- what was going on in the house  
12 after you returned? What, specifically, with Daniel?  
13 What were you and Daniel doing after you returned to  
14 ■ Child from the Harbor House?

15 A. Well, actually, I tried to get him to sit at the  
16 table to me and talk to me and explain to me what he  
17 was feeling and why he was feeling the way he was  
18 feeling. And, why he was saying some of the things he  
19 was saying. He still wouldn't -- he wouldn't sit  
20 down, he wouldn't tell me nothing. Went in the  
21 bathroom, came out the bathroom, went in the living  
22 room, came back in the kitchen. And, he kept quoting  
23 God and the Bible and the devil and I'm, like --

24 Q. Is this raising your concerns, Mr. ■?

25 A. Yes.

1 Q. Okay. What happens after that?

2 A. Well, actually, he sat down and he dozed off a  
3 little bit, and I don't know what made him jump up and  
4 that's when he start acting crazy. All there, right  
5 there in front of me, you know, and that moment right  
6 there, you know what I mean, it scared me so bad that  
7 I couldn't keep up and tell my wife to call them  
8 people. I need some help, because I can't do nothing  
9 for him.

10 Q. Had you ever seen your brother, Daniel like that  
11 before, Mr. [REDACTED]?

12 A. No, I hadn't.

13 Q. So, it concerned you, the love that you had, you  
14 had [REDACTED] call 911?

15 A. Yes, I did.

16 Q. Is that a little bit before 7:00 o'clock on March  
17 22nd?

18 A. Yes, it was.

19 Q. And did [REDACTED], in fact then, call 911?

20 A. Yes, she did.

21 Q. And, did she tell 911 what was going on with  
22 Daniel?

23 A. Yes, she did.

24 Q. And, were you also, kind of relaying information,  
25 sir --

1 A. Yes.

2 Q. -- to the call? Okay. Did it seem obvious that  
3 the dispatcher could even hear Daniel?

4 A. Yes.

5 Q. And, sir, did some RPD Officers eventually  
6 respond a little after 7:00 o'clock in response to  
7 that call?

8 A. Yes, they did. They showed up and walked in my  
9 house and met me and my brother in the kitchen by the  
10 stove.

11 Q. Do you know about how many of them showed up, Mr.  
12 [REDACTED]?

13 A. About six or eight.

14 Q. Okay. And, did -- did an ambulance eventually  
15 respond?

16 A. Yes.

17 Q. Ambulance personnel respond too?

18 A. Yes.

19 Q. And, did they take Daniel into custody?

20 A. Yes, they did.

21 Q. Was Daniel taken to the ambulance?

22 A. Yes, he was.

23 Q. Did you watch that happen, sir?

24 A. I walked with him.

25 Q. Do you know where they were going to take Daniel?

1 A. They said they was taking him to Strong, get him  
2 evaluated in the Mental Health Department.

3 Q. And, is that, in fact, what you wanted, sir?

4 A. Yes.

5 Q. Is that the reason you called 911?

6 A. Yes.

7 Q. And, did, in fact, watch the ambulance leave the  
8 vicinity of [REDACTED] Child Street?

9 A. Yes, I did. I did not leave the front porch  
10 'till he was gone.

11 Q. After the ambulance left, sir, were you contacted  
12 by Strong about Daniel?

13 A. No, I haven't.

14 Q. Did you get contacted by Strong about Daniel  
15 being discharged?

16 A. No, I didn't.

17 Q. At some point, sir, did you receive some  
18 information, or did you become aware that Daniel was  
19 discharged from Strong that night?

20 A. Yeah, when he showed up at my door in a back seat  
21 of a Medicab.

22 Q. So, the next contact after the ambulance left  
23 that you received about Daniel was Daniel back at your  
24 door?

25 A. Yes, indeed.

- 1 Q. Do you recall about what time that was, sir?
- 2 A. Around 11:00.
- 3 Q. Do you know how Daniel got to your house?
- 4 A. Medicab.
- 5 Q. What was Daniel wearing?
- 6 A. Hospital scrubs.
- 7 Q. Did he have any paperwork or anything with him?
- 8 A. No, he did not. Just a medical band around his
- 9 wrist.
- 10 Q. How did he appear, his demeanor?
- 11 A. He appeared to me, like, the first time he came
- 12 over with me.
- 13 Q. As in a few weeks ago?
- 14 A. Yes.
- 15 Q. Not saying Bible verses anymore?
- 16 A. Nope.
- 17 Q. Not the same -- you didn't have the same concerns
- 18 as you did when you saw him at the Harbor House?
- 19 A. No, I did not.
- 20 Q. Sir, I'm just going to go back a second. I meant
- 21 to ask you that. The time you returned to ■ Child at
- 22 3:00, or 4:00 in the afternoon --
- 23 A. Yes.
- 24 Q. -- until 7:00 o'clock, right before 7:00, when
- 25 911 was called, was Daniel in ■ Child the whole time?

- 1 A. Yes.
- 2 Q. Did you ever see him leave?
- 3 A. He never left my house, I wouldn't let him leave.
- 4 Q. Did you ever see him take any drugs?
- 5 A. He wouldn't take nothing but a cigarette from me.
- 6 Q. And, you gave him a cigarette?
- 7 A. Yes.
- 8 Q. And, what kind of cigarette was that, sir?
- 9 A. Regular Newport.
- 10 Q. That was the only thing he smoked?
- 11 A. That's it.
- 12 Q. So, jump -- jump back to 11:00 o'clock, sir, he's
- 13 back and he appears to -- to not be suffering, making
- 14 the same statements as he was before. What do you and
- 15 Daniel do at that point?
- 16 A. We sat down and had a long talk about our past
- 17 until now.
- 18 Q. Did he seem lucid to you?
- 19 A. No, he did not.
- 20 Q. So, at some point, from when he got home, did his
- 21 demeanor change again?
- 22 A. It started -- I sensed it when I got up because I
- 23 got him a glass of milk. Got him a glass of milk and
- 24 he said that didn't do enough for him, so I told him
- 25 I'm gonna run a faucet, get you some water out the

1 sink, and that's when I noticed he wasn't himself  
2 because he wasn't drinking the water, he was spilling  
3 the water on himself.

4 Q. What do you mean by that, sir?

5 A. Instead of drinking out of the cup, he was  
6 pouring -- he started drinking, and he was actually  
7 wasting on him.

8 Q. He was bringing it up to his mouth --

9 A. Yes.

10 Q. -- and, pouring it on himself?

11 A. Yes.

12 Q. Did you ever see Daniel do that before?

13 A. Nope.

14 Q. Was that some indication, again, sir, that --

15 A. Yes.

16 Q. -- something was wrong?

17 A. Yup.

18 Q. It's after 11:00, now?

19 A. Yes, it is.

20 Q. Was everybody else in bed?

21 A. Yup.

22 Q. Okay. And, at any point, do you and Daniel go to  
23 bed, or do you stay up?

24 A. Nope. I stay up the whole entire time.

25 Q. Does he ever fall asleep?

1 A. Nope.

2 Q. Did you ever see him leave [REDACTED] Child during that  
3 period of time?

4 A. Not one time. He wouldn't step out the house.

5 Q. Do you ever see him do any drugs during that  
6 period of time?

7 A. No, sir.

8 Q. Does he smoke a cigarette at all during that  
9 period of time?

10 A. No, sir. He asked me for a cigarette in between  
11 the cup -- in between that and spilling the water on  
12 him, that's when he jetted out my back door.

13 Q. Okay. Let's get to that. So, there comes a  
14 point where he does jet out your back door?

15 A. Yes.

16 Q. Is that a little before 3:00 o'clock in the  
17 morning, sir?

18 A. Yes, it was.

19 Q. Tell us how that happened?

20 A. Well, like I said, you know, I've been processing  
21 him spilling the water on himself. He sat down with  
22 me at the kitchen table, you know, we continue to  
23 talk, like, you know, reminiscing.

24 Q. Was he -- was he saying the Bible verses during  
25 the conversation?



1 A. Nope.

2 Q. Okay.

3 A. And, we continued reminiscing about playing ball,  
4 being competitive with each other and the reaction  
5 that he gave me, he got a little hostile with me  
6 asking for a cigarette. I'm like, man, calm down,  
7 I'll get you a damn cigarette, just calm down. And  
8 then, I'm, like, man, something not right, he's not  
9 right, he's not right. By the time I got from the  
10 living room to my room, that's when I heard by back  
11 door slam. So, basically, he tricked me to go get a  
12 cigarette so he could run out.

13 Q. Did you see him run out the back door, Mr. [REDACTED]?

14 A. Yes, I did.

15 Q. Do you know which direction he went?

16 A. No, I did not, because by the time I got out the  
17 back door, he was already gone.

18 Q. 3:00 o'clock in the morning, was it dark out?

19 A. Yes, it was.

20 Q. What was your brother wearing?

21 A. Tank top and long johns.

22 Q. How was the weather at 3:00 o'clock in the  
23 morning on March 22nd?

24 A. Brutal.

25 Q. It was cold?

- 1 A. Yes.
- 2 Q. Did you know what he was doing?
- 3 A. No, I did not.
- 4 Q. Did you know where he was going?
- 5 A. No, I did not.
- 6 Q. What did you do after that, sir?
- 7 A. I jumped in my car, rode around looking for him.
- 8 Q. What was your concerns, Mr. [REDACTED]?
- 9 A. That he didn't get hurt by nobody, you know, ran  
10 in front of a car and got his damn self hurt.
- 11 Q. Did you call 911?
- 12 A. Yes, I do. In the process of me driving.
- 13 Q. You called 911 as you're driving around looking  
14 for your brother?
- 15 A. Yes, I did.
- 16 Q. Do you tell 911 about the earlier mental health  
17 arrest?
- 18 A. Yes, I did.
- 19 Q. Mental hygiene arrest, I'm sorry.
- 20 A. Yes.
- 21 Q. Did you tell them he ran out the back door?
- 22 A. Yes, I did.
- 23 Q. Eventually, do some officers respond, Mr. [REDACTED]?
- 24 A. Yes.
- 25 Q. And, do some officers respond while you're still

1 outside of [REDACTED] Child?

2 A. Yeah. They responded while I'm circling around  
3 my neighborhood, blocked me off. Tried to lock me up  
4 for looking for my brother.

5 Q. The officers did?

6 A. Yes.

7 Q. They were in patrol cars?

8 A. Yes, they were.

9 Q. Were you in your car still, sir?

10 A. Yes.

11 Q. And, did you sort of relay any of the information  
12 to them about your brother in the street?

13 A. Basically, telling I admitted him earlier for a  
14 hygiene arrest, and I think he's had another relapse,  
15 whatever the case may be, he's gone again.

16 Q. Did it appear to you, sir, that those officers  
17 that you had the conversation in the street, that they  
18 were responding in response to your 911 call?

19 A. From my knowledge, yes.

20 Q. They were looking for your brother?

21 A. Yes.

22 Q. Did they tell you to go back up to your house?

23 A. Yes.

24 Q. Do you eventually go back into [REDACTED] Child?

25 A. Yes, I did.

1 Q. Does a separate -- another Officer then respond  
2 to [REDACTED] Child?

3 A. Yes, he did.

4 Q. Does that Officer sort of take a report from you,  
5 sir, and asked you about Daniel and what happened?

6 A. Yes. He basically asked me what was going on,  
7 and he asked me for a description of my brother.

8 Q. Did you provide the description, sir?

9 A. Yes, I gave it to him.

10 Q. Now, while you're having the conversation with  
11 the Officer, is that on the porch, inside of your  
12 house?

13 A. Yeah. Inside my porch, like, you can walk in,  
14 and I got an inside porch.

15 Q. Is there any information relayed, sir, during  
16 that time, or something come to your attention, that  
17 perhaps Daniel's been located?

18 A. I heard it, that they found a 41 year old man,  
19 stark naked running down Jefferson Avenue.

20 Q. How did you hear that, sir?

21 A. I heard it through the Officer's walkie-talkie.

22 Q. The Officer that you're having a conversation  
23 with?

24 A. Yes.

25 Q. Does that sound like your brother to you?

- 1 A. Yes, it was.
- 2 Q. Did you tell the Officer that?
- 3 A. Yes, I did.
- 4 Q. Okay. And, does that Officer then leave to  
5 respond?
- 6 A. On his way down my stairs, before I shut my door,  
7 yes.
- 8 Q. Okay. Sir, following that interaction, did you  
9 learn what happened with Daniel?
- 10 A. Well, in the process before the Officer left off  
11 my stairs, and me closing the door, I told the Officer  
12 my brother ain't no harm to nobody but himself, don't  
13 kill my brother. And, that Officer -- which I found  
14 out whatever his name was, said we got him. We just  
15 gonna make sure he okay, [REDACTED]. And, he left.
- 16 Q. I want to ask you something right here, Mr.  
17 [REDACTED], going back to the first 911 call and the period  
18 of time from the Harbor House until you made the first  
19 911 call, was your brother ever violent?
- 20 A. No, he was not.
- 21 Q. Was he ever -- did you ever think he was a threat  
22 to harm other people?
- 23 A. No, I did not.
- 24 Q. Or himself?
- 25 A. Just himself.

1 Q. How about that second period of time, between  
2 Strong and when he runs out the back of your house, a  
3 little before 3:00, was he violent at all during that  
4 period?

5 A. No, he was not.

6 Q. Did you ever consider him a threat?

7 A. No, I did not.

8 Q. Okay. So, how -- when is it, sir, do you  
9 eventually learn that Daniel was located?

10 A. When Investigator [REDACTED] showed up and the  
11 Officer that I talked to, that I told my brother ain't  
12 no threat to nobody, don't kill my brother. They both  
13 show back up at my door.

14 Q. Do you know about what time that was, Mr. [REDACTED]?

15 A. Not offhand, I don't. I know it was after --

16 Q. Some point after 3:00 o'clock in the morning?

17 A. Yes.

18 Q. And, sir, is this the first indication that you  
19 have that there's something wrong, that there was a  
20 problem with Daniel?

21 A. Yes, I did.

22 Q. What specifically did he relay to you?

23 A. Well, [REDACTED] told me -- well, he started off  
24 the question, like, well, I see you admitted him  
25 earlier, I said, yes. And, he was, like, I seen that

1 they released him within three hours, and I said, yes,  
2 I normally thought they just want to hold you like 72  
3 hours or 24 hours, I didn't know. And, he went on,  
4 like, yeah, you know, we got him, but your brother  
5 stopped breathing, he regurgitated in the street.  
6 Right then and there, I knew they killed my brother.

7 MR. SMITH: Ladies and gentlemen, I'd just  
8 caution, that technically, the testimony from Mr.  
9 [REDACTED] of statements from Investigator [REDACTED] are  
10 hearsay. However, they're being offered under the  
11 exception -- I'm sorry, they're not being offered for  
12 the truth of the matter asserted, they're being  
13 offered to show the effect on the listener and to --  
14 the steps that Mr. [REDACTED] took in response.

15 Q. So, do you learn that your brother is  
16 hospitalized?

17 A. Yes.

18 Q. Do you learn his condition?

19 A. No.

20 Q. Do you eventually learn that he is at Strong?

21 A. Yes.

22 Q. Did you have some contact with Strong?

23 A. No, I did not.

24 Q. Eventually, do you have contact with Strong?

25 A. Yeah, when it was time to pull the cord on him.

1 Q. Let me back up then. Sir, did you receive some  
2 information that your brother was unconscious?

3 A. Like, four hours before it was time to pull the  
4 cord on him.

5 Q. That's the first time you found out?

6 A. Yes.

7 Q. Were you able to see him during the time he was  
8 at Strong?

9 A. When it was time to pull the cord on him.

10 Q. Not before that?

11 A. For me to come up and sign the papers then to  
12 stop the life support.

13 Q. Did you try to go see him sooner, sir?

14 A. Yes, I did.

15 Q. Because of COVID?

16 A. Yes, I did.

17 Q. So, is it fair to say, that you weren't able to  
18 go see your brother until March 30th?

19 A. That's it.

20 Q. So, about a week after the incident?

21 A. Yes.

22 Q. And, at that point, sir, did you observe your  
23 brother?

24 A. That's when I was there with my brother, that was  
25 not my brother in that bed.



1 Q. Unconscious?

2 A. Lifeless.

3 Q. And, sir, at that point, a decision was made to  
4 take your brother off life support?

5 A. I made them give me some time 'till I talk to my  
6 grandmother.

7 Q. Sure. Sure. But, that day, the decision was  
8 made on the 30th?

9 A. Yes.

10 Q. And, while you were there, did you take a couple  
11 photographs of your brother?

12 A. Yes, I did.

13 Q. Take a short video of your brother?

14 A. Yes, I did.

15 Q. In the hospital bed?

16 A. Yes, I did.

17 Q. Mr. [REDACTED], I'm showing you what's been marked as  
18 Grand Jury Exhibit 1, I'm going to ask if you  
19 recognize that, sir?

20 A. Yes, that's the photograph I took.

21 Q. And, is that a photograph taken from the video  
22 that you took of your brother Daniel?

23 A. Yes, indeed.

24 Q. Is that your brother Daniel at Strong Memorial  
25 Hospital March 30th?

1 A. Yes, indeed.

2 Q. And, Mr. [REDACTED], does that photograph fairly and  
3 accurately depict how your brother appeared on March  
4 30th at Strong Memorial Hospital?

5 A. Yes, it does.

6 MR. SMITH: Thank you, Mr. [REDACTED]. At this  
7 time, I'm going to offer Grand Jury Exhibit 1 into  
8 evidence.

9 (Whereupon, Grand Jury Exhibit 1,  
10 photograph, was then received into evidence.)

11 MR. SMITH: Ladies and gentlemen, Grand  
12 Jury, Exhibit 1 is in evidence. You'll be able to  
13 review that as soon as the testimony is over.

14 BY MR. SMITH:

15 Q. Was your brother taken off life support on that  
16 day, Mr. [REDACTED]?

17 A. Yes, at 10:00 o'clock -- 10:00 p.m.

18 Q. Did you have a chance to say goodbye to Daniel?

19 A. No, I didn't.

20 Q. How -- how old was Daniel when he died?

21 A. 41.

22 Q. 41?

23 A. 41.

24 Q. Just a couple final questions, Mr. [REDACTED]. Did  
25 you have any nicknames that you used for Daniel?

1 A. Yeah, Rell. R-E-L-L.

2 Q. What's that short for?

3 A. Terrell.

4 Q. That was his middle name?

5 A. Yes.

6 Q. What about you? Did Daniel call you any  
7 nickname?

8 A. [REDACTED].

9 Q. [REDACTED]?

10 A. Mm-hmm.

11 Q. [REDACTED], from the time Daniel got back from  
12 Harbor House to [REDACTED] Child, from the time he ran out the  
13 back door just before 3:00 o'clock in the morning on  
14 the 23rd of March, just before 3:00 o'clock in the  
15 morning, did he ever hurt himself at all, sir?

16 A. Not to my knowledge, he didn't.

17 Q. You never considered him a threat to anybody  
18 else?

19 A. Nobody but himself.

20 MR. SMITH: I have no further questions for  
21 Mr. [REDACTED]. At this time, I'm going to excuse Mr.  
22 [REDACTED] and ask the grand jurors if they have any  
23 questions. You're excused, sir.

24 THE WITNESS: All right. Thank you.

25 (Whereupon, the witness left the Grand Jury

1 room at a time of 11:18 a.m.)

2

3

4

5 MR. SMITH: Do any of the grand jurors have  
6 questions for Mr. [REDACTED]?

7

8 A JUROR: I have one. Were the same  
9 Officers responding to the first call also responding  
10 to the second call?

11 MR. SMITH: Any other questions?

12

13 A JUROR: I guess I do have one. I didn't  
14 quite hear it, but during the -- when he was out  
15 driving around looking for his brother, and he was  
16 stopped by the police, it almost seemed to me, he said  
17 he was threatened.

18

19 MR. SMITH: What's the question, sir?

20

21 A JUROR: Was he threatened?

22

23 A JUROR: That was my question as well, and  
24 what was exactly said to him?

25

MR. SMITH: Gotcha.

1

2 A JUROR: I have a few. Kind of piggy back  
3 on that. When he was speaking with the police, he  
4 mentioned that he asked them not to kill his brother,  
5 and I was just wondering if there was some other  
6 situation surrounding why he would assume they would,

1 or why he would ask for that?

2 MR. SMITH: Just the question, why he asked  
3 that?

4 A JUROR: Yeah. And then, am I allowed to  
5 ask a question about -- so, in the media, I had heard  
6 that he might have a medical condition, schizophrenia  
7 that was -- are we allowed to ask about his medical  
8 history considering schizophrenia or past record  
9 considering, like, past assaults when it comes to  
10 considering, like, why he might think he would be a  
11 danger to other people? Sorry, that was a lot.

12 MR. SMITH: No, the questions can be -- like  
13 I said, the questions can be probing of anything and  
14 testimony that happened in this room.

15 MS. SOMMERS: So, first, just please  
16 disregard anything that you hear in the media, but we  
17 can definitely ask, did your brother have a history of  
18 mental illness to your knowledge.

19 A JUROR: Yes, perfect. Thank you.

20 A JUROR: Did he have a past record of any  
21 interactions --

22 MS. SOMMERS: You've got to speak up.

23 A JUROR: Oh, sorry. Did he have, like, a  
24 past record of any assaults or any physical encounters  
25 that would make --

1           A JUROR: Say that again?

2           A JUROR: Did Daniel have anything on his  
3 record about being an encounter that might trigger the  
4 police to think he was dangerous.

5           MS. SOMMERS: So, we're not going to ask if  
6 he had a history of assaults, because that wouldn't be  
7 relevant unless the police officers who -- so, first  
8 of all, it's speculative. And, I don't want you to  
9 assume that he did or didn't. It would only be  
10 relevant if the people interacting with him knew that.  
11 So, perhaps maybe a relevant question for this witness  
12 that we could pose is, did you advise anybody involved  
13 in this incident on this day, that there was any  
14 violence, or that he was violent. Would -- would  
15 something like that satisfy your question that you're  
16 trying to get to?

17           A JUROR: Yeah. We could scratch that.  
18 That's okay. I'm kind of wondering if police are  
19 following him, can they bring him up on their radar  
20 and say, oh, he's had past encounters?

21           MR. SMITH: So, that's probably a question  
22 that's better for a different witness.

23           A JUROR: Okay.

24           MR. SMITH: So, you're withdrawing the  
25 question based on that?

1 A JUROR: Yeah.

2 A JUROR: You mentioned him being only a --  
3 he mentions him only being a threat to himself, but  
4 that doesn't go back, is that just -- what I'd like to  
5 know, is does he have a history of that, or just  
6 recent events that --

7 MR. SMITH: What was his basis for saying  
8 that?

9 A JUROR: Yeah, the timeframe. Does he have  
10 a history of only being a threat to himself or changes  
11 that he went through were recent.

12 MR. SMITH: Okay.

13 A JUROR: I wondered if [REDACTED] has any  
14 knowledge of any medications that might have been  
15 administered to his brother when he had the mental  
16 hygiene arrest, because his demeanor seemed to be okay  
17 for a short while, then not.

18 MS. SOMMERS: One thing I will say about  
19 that is, there may be a more appropriate witness or  
20 records that might answer your questions, but we can  
21 definitely ask if he knew.

22 A JUROR: Two questions. One, does [REDACTED]  
23 know how -- you know, why was he thrown off the train?  
24 And, another question, where he was saying that he's  
25 no threat to anybody but himself, and yet, I'd like

1 further explanation, but I don't know how to ask the  
2 question. When he was talking about his brother was  
3 upset when he didn't get him the cigarette. What  
4 transpired a little bit more there, because he showed  
5 anger towards somebody else.

6 MR. SMITH: So, sort of, specifically what  
7 made him draw the conclusion that made him say that  
8 his brother was angry in that response. What made him  
9 -- how he was angry or what made him say that? Is  
10 that fair?

11 A JUROR: Yes.

12 MR. SMITH: Go ahead.

13 A JUROR: Is there any way to know -- he had  
14 referred to PCP. Is there any way of knowing how  
15 PCP -- what form it comes in, and how it's  
16 administered. And, the other thing is, I remember him  
17 mentioning something about his brother coming back to  
18 the house with him with his bag, and then he said he  
19 went into the bathroom and into the kitchen. Did he  
20 have his bag with him -- was there any reason to  
21 suspect that maybe he had something on him, went to  
22 the bathroom to take it. It just sounded like the  
23 personalities -- he had said he was fine when he came  
24 home and then he was pacing and had gone to the  
25 bathroom and into the kitchen, and then he had started



1 to get agitated again. So, it just made me wonder.

2 MR. SMITH: Is the specific question  
3 whether, ma'am, if something was in the bag or if he  
4 went to the bag?

5 A JUROR: Just wondering, yeah. He  
6 mentioned that he had his bag on him when he got to  
7 the house and then, he mentioned that he -- he said he  
8 never left the house, but he went to the bathroom and  
9 to the kitchen again, he was agitated. So, that's why  
10 I wondered, like, how does -- I don't know PCP. How  
11 does it -- what form does it take? Is there a  
12 possibility that he may have taken it after he was  
13 released from the hospital because it sounded like he  
14 was okay when he got there, but then he wasn't.

15 A JUROR: Because he said he'd never seen  
16 him take anything. But, does that mean that -- was  
17 his eye on him the whole time? Probably not.

18 A JUROR: At some point, he changed from  
19 scrubs into long johns and a tank top. So, there's a  
20 whole block of time. I'd like to know what happened  
21 there.

22 A JUROR: Was he unattended or did you see  
23 him take anything out of his bag, or take anything  
24 with him to the bathroom?

25 A JUROR: Yeah, yeah.

1           MR. SMITH: So, does that -- I want to make  
2 sure I got the articulation of the question right. Is  
3 it -- is it whether or not he -- is there separate  
4 questions? Is it whether or not he had eyes on him  
5 the entire time and then, whether or not he saw him do  
6 anything with the bag? Does that fairly answer the  
7 question or not?

8           A JUROR: Yeah. Because I mean, the  
9 behavior changes makes you wonder how -- and, I don't  
10 know the nature of, like they said, the meds that he  
11 was given at the hospital. What did he take there?  
12 Was there some sort -- I mean there's just a lot of  
13 gray area there. Did he have a chance to take PCP  
14 without being seen, or -- I don't know, the  
15 personality changes.

16           MS. SOMMERS: Do you want me to answer?

17           MR. SMITH: Yeah, please.

18           MS. SOMMERS: So, a couple things. First of  
19 all, relative to properties of PCP that's -- and  
20 whether or not there was any present in Mr. Prude is  
21 something probably beyond [REDACTED] knowledge.  
22 However, would this maybe answer part of your question  
23 if we were to ask something, or Mr. Smith were to ask  
24 something along the lines of, had you ever been  
25 advised, or known, or seen your brother consume that

1 drug, and if so, how did he consume it? Would that  
2 sort of begin to chip away at your question?

3 A JUROR: Maybe. So, I got the impression  
4 that I think he was asked that.

5 A JUROR: He was asked that.

6 A JUROR: If he ever watched his brother and  
7 he said, no.

8 A JUROR: I had made the comment --

9 THE STENOGRAPHER: One at a time.

10 MS. SOMMERS: What about adding into it?  
11 Had you ever learned or heard, you know -- kind of,  
12 what was it that you learned or heard relative to your  
13 brother's PCP use. That is technically hearsay.  
14 We're offering it -- we would be offering it to show  
15 his state of mind. Would that start to get at your  
16 question in addition to, was -- was your brother  
17 unattended at any time?

18 A JUROR: Yeah, I think so. I think that --  
19 like I said, when he -- when he came in the Medicab  
20 and he said he came into the house, [REDACTED] said that he  
21 seemed fine, he seemed himself, but then something  
22 changed, and then, all of the sudden, he was a  
23 different person. And, the only movement he made,  
24 from what I gathered is that, he had -- when he came  
25 in, he went into the bathroom and into the kitchen,

1 and then, whatever was on the record after that had  
2 transpired, he asked for a cigarette, or whatever.  
3 But, it sounded like he became agitated again.

4 MR. SMITH: I appreciate that, ma'am. And,  
5 I guess what I'm looking for is a specific question  
6 because he had said he didn't see it. So, I can ask  
7 if he was unattended, but I'm not going to ask any  
8 question that calls on him to speculate either.

9 A JUROR: Right.

10 MR. SMITH: So, if the question is there's a  
11 period I can ask him whether or not there was any  
12 period of time he was unattended. We can re-ask if he  
13 saw him do it. I'm not going to ask -- I don't intend  
14 to ask any questions that call for Mr. [REDACTED] to  
15 speculate on what could have possibly happened while  
16 Daniel was someplace else. That wouldn't be  
17 permissible. We can ask -- this answers the question.  
18 Again, we can ask, was there a period of time when he  
19 was unattended, and was that the period of time when  
20 you saw a change in his behavior?

21 A JUROR: Yeah.

22 MR. SMITH: Does that fairly encompass the  
23 concern?

24 A JUROR: I think so.

25 A JUROR: That and, was he unattended with

1 his belongings?

2 A JUROR: Well, that was one of the  
3 questions I was going to ask. Did you ever look in  
4 his bag and see if anything was ever in there,  
5 regardless of what it was?

6 MR. SMITH: Okay.

7 A JUROR: He got stopped by the police and  
8 got kicked off the train, correct?

9 MS. SOMMERS: I -- I -- so, you're the -- I  
10 can't tell you if that's correct. I believe he did  
11 testify to that effect.

12 A JUROR: Well, the police picked him up,  
13 right? And took him someplace?

14 MR. SMITH: That was the testimony, sir.

15 A JUROR: Wouldn't they have him checked,  
16 everything on him, his bag, everything on him in his  
17 pockets. I'm thinking then he didn't have any drug  
18 because they would have found it.

19 MS. SOMMERS: That would be speculation.

20 MR. SMITH: We can't ask Mr. [REDACTED] that  
21 because that would be a question that would call for  
22 speculation Mr. [REDACTED] would have --

23 A JUROR: Well, if they have a record --  
24 would the police have a record of --

25 MR. SMITH: Again, whether or not the police

1 have a record of that is also, again, something that  
2 Mr. [REDACTED] wouldn't know. And, I think -- so, at  
3 this point, I'll caution everybody again. These are  
4 all good questions. This is the first witness. There  
5 will be other witnesses. And, when you think about  
6 the kind of question, remember, think about his  
7 testimony, and his knowledge and what he would be able  
8 to answer firsthand knowledge of.

9 A JUROR: With -- with that in mind, would  
10 there be any intent in calling the Lancaster  
11 policeman?

12 MS. SOMMERS: So, we will -- he's the first  
13 witness. We will -- I think hearing about kind of  
14 what your questions are at this point. There is one  
15 other thing I want to caution you. These are  
16 excellent questions. Whether Mr. Prude was or was not  
17 on PCP, is -- may be relevant to some issues in the  
18 case. But, I just want to caution everyone that drug  
19 use, in general, is not a justification for any acts  
20 that occur, relative to somebody who is using drugs,  
21 right? So -- and, I'm not -- I'm just suggesting. It  
22 -- it -- drug use in this case, PCP in particular, may  
23 be relevant to some of the issues, some of the  
24 ultimate issues. But, I just -- I want to caution you  
25 on the first day. You haven't, you know, heard much

1 evidence, and I just want to caution you that the fact  
2 that an individual may or may not be under the  
3 influence of a drug does not justify any and all acts  
4 of -- of individuals who may be interacting with that  
5 person. You may learn more about that as we go  
6 forward.

7 A JUROR: Can you -- could you explain those  
8 interactions?

9 MS. SOMMERS: Right. I -- I didn't mean to  
10 say -- this is all very relevant. These are  
11 thoughtful and probing questions, I just feel the need  
12 to kind of put that on the record, though -- to say  
13 that. So, please, and I don't want to discourage  
14 questions either. Yes?

15 A JUROR: So during [REDACTED] testimony, he  
16 never indicated that he was imprisoning his brother  
17 between the hours of 11:00 p.m. and 3:00 a.m., what  
18 caused his brother to bolt?

19 MS. SOMMERS: Are you asking if there was an  
20 event that happened?

21 A JUROR: Why did his brother feel he had to  
22 leave the house.

23 MS. SOMMERS: Well, sir, we can ask if he  
24 knows that, right? If -- if he knows what the reason  
25 is. Does that make sense?

1           A JUROR: Maybe to, can ask his brother, did  
2 you tell your brother he couldn't leave, why did he  
3 feel, like, he had to run?

4           MS. SOMMERS: If he knows.

5           MR. SMITH: Okay. We can ask both those.

6           A JUROR: What about -- did he ever ask his  
7 brother why he got kicked off the train or was told  
8 why they kicked him off the train, or if he asked his  
9 brother, if his brother told him.

10          MR. SMITH: Okay.

11          MS. SOMMERS: And, again, you may hear more  
12 in that regard. This is the first witness. This --  
13 so, this is kind of natural, but there will be other  
14 witnesses.

15          A JUROR: One other question we might get  
16 later with the hospital, or whatever, but based off of  
17 ■■■■, his brother came back and they were talking nice  
18 after that. Did he ask his brother what they did for  
19 him in the hospital? I mean, they dropped him off and  
20 now he's back home and he's different. I would think  
21 when they were talking fine, that might have come up.  
22 What came up in that discussion?

23          MR. SMITH: Any other grand jurors have any  
24 other questions for Mr. ■■■■?

25          JURY POOL: (Indicating a negative



1 response.)

2 MS. SOMMERS: So, do you want to take a two  
3 minute break? We're going to take a two minute break  
4 off the record for someone to come in and fix the  
5 machine.

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

8 (Whereupon, the proceedings reconvened.)

9 MR. SMITH: We're going to now recall [REDACTED]  
10 [REDACTED] for the grand jurors questions.

11

12 (Whereupon, the witness re-entered the Grand  
13 Jury room at a time of 11:38 a.m.)

14

15 [REDACTED] [REDACTED], after being previously  
16 duly sworn, further testified as follows:

17

18 EXAMINATION BY MR. SMITH:

19 Q. Good morning, again, Mr. [REDACTED]. And, I remind  
20 you that you're still under oath. Some of the grand  
21 jurors have some questions for you, sir. And, I'll  
22 ask those now. The grand jurors wanted to know -- one  
23 of the grand jurors wanted to know whether the  
24 officers that responded to the first mental health  
25 call were the same officers that responded to the

1 second 911 call?

2 A. No, they wasn't.

3 Q. Separate, different officers?

4 A. Separate.

5 Q. ■■■■, you mentioned being threatened by the  
6 responding officers on the second 911 call, and the  
7 grand jurors want to know, sort of, how you were  
8 threatened by the Rochester Police Officers that  
9 responded?

10 A. Basically, this is our job, let us do our job,  
11 you keep interfering, we'll take you in too.

12 Q. ■■■■, one of the grand jurors wants to know why  
13 did you feel the need to tell the Rochester Police  
14 Officers not to kill your brother?

15 A. I don't know. It was just something just started  
16 and it was just stuck in my gut and I just said it.

17 Q. Mr. ■■■■, one of grand jurors wants to know  
18 whether or not your brother Daniel had a mental health  
19 history?

20 A. To my knowledge, no.

21 Q. The grand jurors want to know, Mr. ■■■■, what  
22 was your basis for saying that Daniel -- what was the  
23 reason for saying that Daniel was only a threat to  
24 himself and not other people?

25 A. Because Daniel didn't like fighting. Daniel

1 wasn't violent.

2 Q. Did he hurt himself at all, or attempt to hurt  
3 himself at all during that time, Mr. [REDACTED]?

4 A. No, he did not.

5 Q. Do you, sir, have any personal knowledge if --  
6 what, if any, medication was administered to your  
7 brother Daniel at Strong during that first mental  
8 health stay?

9 A. The only thing he told me they did was put an IV  
10 in his arm. They told him he was dehydrated. That's  
11 the only thing he told me.

12 Q. [REDACTED], do you have personal knowledge, or did  
13 Daniel tell you why he was thrown off the train?

14 A. He said he started getting a little beside  
15 himself because he went to sleep and woke up and  
16 somebody stole his phone. And, I know personally,  
17 that was probably the reason why he got kicked off  
18 that train.

19 Q. So, it was your understanding as the reason why?

20 A. Yes.

21 Q. And, [REDACTED], you -- during your testimony, you  
22 referenced that Daniel got upset, during the last  
23 period of time at [REDACTED] Child, Daniel got upset, kind of,  
24 with you or angry when he was asking you for the  
25 cigarette. The grand jurors want to know, kind of,

1 what you mean by that or if you could describe how he  
2 was angry?

3 A. It wasn't him being upset. You know how someone  
4 get a little too excited? He got excited, the way he  
5 was talking. He was talking aggressive. But, I'm  
6 knowing, there wasn't no danger to it.

7 Q. ■■■, the grand jurors also want to know whether  
8 or not you ever looked inside Daniel's bag to see what  
9 was in it?

10 A. Ain't nothing in there but his birth certificate  
11 and his social security card, and his ID.

12 Q. So, you did check?

13 A. Yes, I got all of it.

14 Q. You still have that stuff?

15 A. Yes, I do.

16 Q. The grand jurors also want to know, Mr. ■■■, if  
17 there was any period of time -- and, I think the basis  
18 for the question is, your testimony that Daniel went  
19 into the kitchen and into the bathroom. If there was  
20 any period of time during -- during this time at ■■■  
21 Child that Daniel was unattended?

22 A. No, there wasn't.

23 Q. You had eyes on him the whole time?

24 A. The whole time.

25 Q. And, when he went in the bathroom and the

1 kitchen, did he have his bag with him, Mr. [REDACTED]?

2 A. He didn't have the bag, I had the bag.

3 Q. Did you have the bag from when you got to [REDACTED]  
4 Child on?

5 A. When -- when I brought him from Depew, I took the  
6 bag from him because I'm, like, what you still toting  
7 this bag around, you ain't got nothing in it.

8 Q. Mr. [REDACTED], one of the grands jurors wants to know  
9 if you ever told Daniel that he couldn't leave or  
10 asked him not to leave [REDACTED] Child during those two  
11 periods of time?

12 A. No. I never told him nothing. I just wasn't  
13 letting him leave, he didn't know it.

14 Q. And, did you ever ask your brother Daniel what  
15 treatment he received at Strong Memorial on the 22nd  
16 of March?

17 A. When he came back to my home, yes. What did they  
18 do?

19 Q. And, what did he tell you, sir?

20 A. Same thing, they done put an IV in my arm talking  
21 about I was dehydrated.

22 MR. SMITH: That's it for the grand jurors'  
23 questions, Mr. [REDACTED].

24 Sir, one of the grand jurors wanted to know  
25 -- let me correct the record here. There is one more

1 question.

2 Q. One of the grand jurors wanted to know, Mr.

3 [REDACTED], what did you base your opinion on your

4 testimony that Daniel had possibly done PCP to lead to

5 this change of behavior? What was that based on?

6 A. Through my sister.

7 Q. Your sister [REDACTED]?

8 A. Yes.

9 Q. That's who he was living with in Chicago?

10 A. Yes.

11 Q. And, did you ever see him consume PCP?

12 A. No.

13 MR. SMITH: Thank you, Mr. [REDACTED]. I have no  
14 more questions for you. Those are the questions from  
15 the grand jurors. With that in mind, you're excused,  
16 sir.

17 THE WITNESS: All right. Thank you.

18 (Whereupon, the witness left the Grand Jury  
19 room at a time of 11:45 a.m.)

20

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1 MR. SMITH: At this time, ladies and  
2 gentlemen, I'm going to briefly just publish Grand  
3 Jury Exhibit 1, which is in evidence. This is  
4 identified by [REDACTED] as a photograph of his brother  
5 Daniel that he had taken from a video that Mr. [REDACTED]  
6 took of Daniel in Strong Memorial Hospital on March  
7 30th, 2020, before he was taken off life support.

8 Again, this is in evidence and you are able  
9 to review it at any time.

10 MS. SOMMERS: I'm just going to real  
11 quick -- I think we learned when we were testing out  
12 the room, that you can kind of see a little better if  
13 I turn the lights off real quick. We'll probably do  
14 this for most things that we publish. Just for a  
15 second. All set?

16 MR. SMITH: No. Actually, that was weird.  
17 No.

18 MS. SOMMERS: Oh, it didn't?

19 MR. SMITH: No. It tones down the response  
20 to the daylight. So, everyone can see that okay?

21 A JUROR: Halfway dim, it looks better.

22 MR. SMITH: That's better. And, again,  
23 ladies and gentlemen, this is -- Grand Jury Exhibit 1  
24 is in evidence and can be reviewed at this point in  
25 time.

1           A JUROR: This is back at Strong? Okay.

2           MS. SOMMERS: All right. So, for the  
3 record, I think this clock is right. Is it ten to  
4 twelve?

5           A JUROR: I think that is wrong. That is  
6 right.

7           MS. SOMMERS: I was going to say. I've been  
8 waiting for it to reach 11:00 o'clock. So, we'll meet  
9 back here at 1:00 o'clock. So, you have an hour and  
10 ten minutes. So, please go and do something.

11                   (Proceedings adjourned for lunch break.)

12                   (Proceedings reconvened.)

13           MS. SOMMERS: All right. So, we are back on  
14 the record in the investigation into the death of  
15 Daniel Prude. And, at this time, the People call

16 [REDACTED].

17

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1                   (Whereupon, the witness entered the Grand  
2 Jury room at a time of 12:58 p.m.)

3

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

6

7

**EXAMINATION BY MS. SOMMERS:**

8 Q. All right. Thank you. For the record, could you  
9 state your name and spell your last name?

10 A. [REDACTED]. My last name is [REDACTED].

11 Q. Thank you. Ms. [REDACTED], what do you do for a  
12 living? What is your job?

13 A. I'm a 911 operator.

14 Q. How long have you been a 911 operator?

15 A. About six years.

16 Q. Okay. And, what is the overall name of the place  
17 you work for?

18 A. It was referred to as the Office of Emergency  
19 Communications. It's now called the Emergency  
20 Communications Department.

21 Q. All right. Do people sometimes refer to it as  
22 OEC?

23 A. Yes.

24 Q. And, what does OEC stand for again?

25 A. Office of Emergency Communications.

1 Q. Okay. Where is that office located?

2 A. 321 West Main.

3 Q. Okay. Did there come a point in time that an  
4 additional location was set up temporarily?

5 A. We have a back-up facility.

6 Q. And, has -- has that facility been in use  
7 recently?

8 A. Yes.

9 Q. And, what was the reason for that?

10 A. Recently, with COVID, we split our staff in half  
11 to prepare.

12 Q. All right. Thank you. Could you explain what an  
13 operator at OEC does?

14 A. So, the operator is the person that is primarily  
15 the connection between the public and the responder.  
16 So, we take all of the information. We're the call  
17 takers.

18 Q. Okay. So, if -- if an individual calls 911, for  
19 instance, who will they speak with?

20 A. An operator.

21 Q. So, that would be you?

22 A. Yep.

23 Q. All right. Just overall, broadly, what happens  
24 then, once an operator receives a call?

25 A. So, after obtaining the address and the

1 information to confirm the address, a job is entered.  
2 Once you have the idea of what the call is in regards  
3 to, a job is entered. And, depending on what the  
4 nature of the call is, it's immediately sent to the  
5 dispatcher. So, whether you're calling for police,  
6 medical, or fire, it's sent immediately over.

7 Q. So, when you say the dispatcher, is that someone  
8 different than the operator?

9 A. Yes.

10 Q. Okay. And then, what does the dispatcher do?

11 A. The dispatcher give it to the appropriate agency.

12 Q. Okay. So, you indicated depending on if it's  
13 fire, ambulance or police. Are there dispatchers,  
14 specifically, assigned to -- to interface with all of  
15 those entities?

16 A. Yes.

17 Q. Okay. Thank you. While you're on the phone with  
18 someone, are you updating information?

19 A. Yes. So, the primary thing is to find out what  
20 the nature of the call is. Once you have an idea, the  
21 dispatcher takes that, gives it to the user agency,  
22 this is what you're responding for, and then you add  
23 the additional information for what's the details.

24 Q. So, is it unusual to remain on the phone for some  
25 period of time with individuals who contact 911?

1 A. It's common.

2 Q. Okay. And, as you're doing that, are you  
3 continuously updating information?

4 A. Continuously giving information over.

5 Q. Is that information captured on -- well,  
6 something called a job card?

7 A. Yes.

8 Q. Okay. I'm going to approach with Grand Jury  
9 Exhibit Number 2, and ask you just to take a look at  
10 that.

11 A. Sure.

12 Q. Do you recognize that?

13 A. I do. This is my job card.

14 Q. Okay. And, it is a job card from what date?

15 A. March 22nd.

16 Q. Of what year?

17 A. '20.

18 Q. Okay. So, does that job card contain a lot of  
19 information that you just spoke about generally?

20 A. Yes.

21 Q. Okay. Is it in the regular course of business of  
22 the Office of Emergency Communications to generate job  
23 cards?

24 A. Yes.

25 Q. And, is the data that's contained within job

1 cards, in general, and that one in particular,  
2 captured at, or right after the events that they  
3 pertain to?

4 A. Yes.

5 Q. So -- so, the -- the information is timely  
6 captured?

7 A. Yes.

8 Q. And, those records are kept -- made and kept in  
9 the regular course of business of the Office of  
10 Community -- I'm sorry, Emergency Communications?

11 A. Yes.

12 MS. SOMMERS: Okay. At this time, I'm going  
13 to offer Grand Jury 2 into evidence, and ask that it  
14 be put on the Elmo.

15 (Whereupon, Grand Jury Exhibit 2, 911 job  
16 card, was then marked and received into evidence.)

17 Q. So, let's start at the top and maybe make it  
18 bigger, if we can. All right. So, first of all, are  
19 you able to see from there?

20 A. Yes.

21 Q. Okay. Does the job card contain the date and  
22 time that -- approximately the date and approximate  
23 time that the call was received?

24 A. Yes, it does.

25 Q. Okay. And, where is that?

1 A. Right at the top, where it says received.

2 MS. SOMMERS: So, for the record, the  
3 witness just pointed to an area on the screen on the  
4 actual Exhibit that's in that upper left hand corner.

5 Q. Okay. And does the job card contain any  
6 information as to what you were told on the phone?

7 A. Yes.

8 Q. Okay. So, where did this incident take place?  
9 Where -- where were you able to determine where the  
10 location was?

11 A. [REDACTED] Child Street.

12 Q. Okay. And, does the job card contain the name of  
13 the individual who contacted 911?

14 A. [REDACTED].

15 MS. SOMMERS: Okay. And, for the record,  
16 the witness has just pointed to a couple places on the  
17 far left of the Exhibit.

18 Q. Does the job card indicate that you continued to  
19 update the information as it was provided to you?

20 A. It's referred to -- yes, as a SUPP. And, this is  
21 my IBM number, so every time it says [REDACTED] SUPP, that's  
22 my additional information.

23 Q. All right. For the record, you just pointed to  
24 spaces on the job card where it says [REDACTED] --

25 A. [REDACTED].

1 Q. -- [REDACTED] and SUPP. And, does the job card also  
2 indicate how many police officers responded?

3 A. Yes, it does.

4 Q. Okay. How many did respond?

5 A. Can you move it up a little bit.

6 MR. SMITH: This way?

7 THE WITNESS: Other way. Um, 4.

8 BY MS. SOMMERS:

9 Q. Are you able to see the names of the officers who  
10 responded to this call?

11 A. Yes.

12 Q. Could you just point out where you see that?

13 A. Um, so Patrol [REDACTED], Patrol [REDACTED], [REDACTED] and [REDACTED]. Patrol  
14 [REDACTED] is Officer [REDACTED], [REDACTED] is Officer [REDACTED], and [REDACTED]  
15 is [REDACTED] Patrol [REDACTED] is [REDACTED].

16 Q. [REDACTED]. Okay.

17 MS. SOMMERS: Were you able to hear?

18 A JUROR: I didn't hear the last one.

19 THE WITNESS: [REDACTED].

20 BY MS. SOMMERS:

21 Q. So, four officers responded?

22 A. Yes.

23 Q. Okay. Now, are you aware, when calls come into  
24 the Office of Emergency Communications, are they  
25 recorded?

- 1 A. Yes.
- 2 Q. Is every call recorded?
- 3 A. Yes.
- 4 Q. So, there's no, you know, picking and choosing,  
5 they're all recorded?
- 6 A. Yes.
- 7 Q. Okay. Was this call recorded?
- 8 A. Yes, it was.
- 9 Q. And, did you have the opportunity at some point  
10 to listen to that recording?
- 11 A. Yes.
- 12 Q. Okay. Approaching you with Grand Jury Exhibit  
13 Number 3 for identification, do you recognize this?
- 14 A. Yes.
- 15 Q. Okay. What is that?
- 16 A. That is the audio from this call.
- 17 Q. Okay. And, how do you know that that's the audio  
18 from the call?
- 19 A. The date and my initials.
- 20 Q. So, have you had the opportunity to listen to  
21 whatever is on this CD?
- 22 A. Yes.
- 23 Q. Okay. And, upon listening to it, did you date  
24 and initial it?
- 25 A. Yes, I did.



1 Q. Okay. Is what is contained on Grand Jury Exhibit  
2 Number 3, an exact duplicate recording of the  
3 conversation that you had on March 22nd, of 2020?

4 A. Yes, it is.

5 Q. Thank you.

6 MS. SOMMERS: At this point, I will offer  
7 Grand Jury 3 into evidence.

8 (Whereupon, Grand Jury Exhibit Number 3,  
9 disk of the 911 recorded phone call, was then marked  
10 and received into evidence.)

11 MS. SOMMERS: So, for the -- for the record,  
12 I'm also going to hand out a transcript of this call  
13 because it's somewhat difficult sometimes to hear.  
14 However, one thing about this type of a transcript, it  
15 wasn't taken down by a court reporter, like we have  
16 here as the call was going. This is something that  
17 was generated after the fact. And, the way that  
18 transcripts like this works is, if you hear something  
19 and you think that it's different than what's on this  
20 transcript, then you go with what you think. This is  
21 not an exact transcript by a court reporter. So, does  
22 everybody understand that?

23 JURY POOL: (All indicating a positive  
24 response.)

25 MS. SOMMERS: It's just meant to be an aid.

1 And, again, if you know you're not the type that wants  
2 a transcript, you don't have to use it. It's meant to  
3 assist. But, the actual evidence is the recording  
4 itself. Is everybody all set?

5 JURY POOL: (All indicating a positive  
6 response.)

7 MS. SOMMERS: So, just for the record, I'm  
8 going to keep a copy of the transcript as Grand Jury  
9 Exhibit 3-A, it's ID only because it's not being  
10 offered into evidence.

11 Okay. At this time, I'm going to ask that  
12 the recording be played.

13 (Whereupon, the disk of the 911 phone call  
14 was then played into the record.)

15 MS. SOMMERS: So, again, the transcript was  
16 just an aid. If you could all pass them forward,  
17 that'd be great.

18 BY MS. SOMMERS:

19 Q. Ms. [REDACTED], that conversation lasted for some  
20 period of time, correct?

21 A. Mm-hmm, yes.

22 Q. Had the -- had the response been activated before  
23 the conversation was over?

24 A. Yes.

25 Q. Okay. So, is that what you referred to in terms

1 of updating?

2 A. Yes.

3 Q. Okay. So, at the time that you finished the  
4 conversation with [REDACTED], were the police and  
5 ambulance already on the way?

6 A. Oh, yes.

7 Q. Okay. And, you indicated previously, four police  
8 officers?

9 A. Yes.

10 Q. Okay. And, how many ambulances?

11 A. One.

12 Q. And, what was the name of the ambulance company?

13 A. American Medical Response.

14 Q. Okay. Is that known as AMR, just colloquially?

15 A. Yes -- yes.

16 MS. SOMMERS: Okay, I don't have any further  
17 questions. What we're going to do is ask you to go  
18 outside, but not leave, just in case anyone has any  
19 questions.

20 THE WITNESS: Sure.

21 MS. SOMMERS: Thank you.

22 (Whereupon, the witness left the Grand Jury  
23 room at a time of 1:20 p.m.)

24

25

1 MS. SOMMERS: Okay. Does anybody have any  
2 questions that they would like us to pose to [REDACTED]  
3 [REDACTED]? All right. Could you let her know she's all  
4 set? And, could you call [REDACTED], please?  
5 Thank you.  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1                   (Whereupon, the witness entered the Grand  
2 Jury room at a time of 1:21 p.m.)

3

4

**O F F I C E R** [REDACTED] [REDACTED]

5 after being duly called and sworn, testified as  
6 follows:

7

**EXAMINATION BY MS. SOMMERS:**

8

Q. Good afternoon.

9

A. Good afternoon.

10

Q. Could you please state your name and spell your  
11 last name for the record?

12

A. [REDACTED]. Last name is [REDACTED].

13

Q. Thank you. Mr. [REDACTED], where do you work?

14

A. RPD.

15

Q. At the Rochester Police Department?

16

A. Yes.

17

Q. And, in what capacity?

18

A. As a Police Officer.

19

Q. How long have you been a Police Officer with the  
20 Rochester Police Department?

21

A. Going on seven years.

22

Q. Okay. Does the Rochester Police Department  
23 employ a body worn camera system?

24

A. Yes.

25

Q. Okay. Are Police Officers required to wear body

1 worn cameras?

2 A. Yes.

3 Q. Are they kept on at all times, or how does that  
4 work?

5 A. It's usually when you're in contact with the  
6 community.

7 Q. Okay. So, whose responsibility is it to turn the  
8 camera on?

9 A. An officer's.

10 Q. Okay. And, can you explain for the Grand Jury,  
11 how does that work? If you turn your body worn camera  
12 on, does it start recording immediately?

13 A. So, when you initially press the button, it  
14 starts recording, but the audio -- there's no audio at  
15 first.

16 Q. So, is there actually a window that goes back?

17 A. I believe it's 30 seconds.

18 Q. So, I just want to make this clear. So, if I  
19 push the button, does the body worn camera start to  
20 collect video 30 seconds prior?

21 A. Yes.

22 Q. Okay. What about audio?

23 A. No audio.

24 Q. Okay. So, let's -- I just want to make sure  
25 everybody understands. If I click my button, as a

1 Police Officer, will there be audio for the first 30  
2 seconds of -- of what comes out of that?

3 A. No.

4 Q. Okay. And, is that because that's during the  
5 look back period, the 30 second look back?

6 A. Yes.

7 Q. So, when you're looking at a body worn camera  
8 footage, would it be safe to say that the time that  
9 you can start to hear audio is actually the time that  
10 the Officer clicks the camera on?

11 A. Basically.

12 MS. SOMMERS: Does everybody understand  
13 that?

14 JURY POOL: (All indicating a positive  
15 response.)

16 BY MS. SOMMERS:

17 Q. Okay. All right. Were you working on March  
18 22nd, of 2020?

19 A. Yes.

20 Q. What was your shift?

21 A. Third Platoon.

22 Q. And, what is Third Platoon for the benefit of the  
23 Grand Jury?

24 A. 3:00 to 11:00.

25 Q. 3:00 to 11:00. What Section were you working?

1 A. Genesee Section.

2 Q. And, does the Genesee Section cover the area of  
3 Child Street in the city of Rochester?

4 A. It does.

5 Q. Okay. Did there come a time when you received a  
6 call to -- to head over to [REDACTED] Child Street?

7 A. Yes.

8 Q. Were you the only Officer that responded to that  
9 call?

10 A. No.

11 Q. Do you recall how many other Officers responded?

12 A. I believe four.

13 Q. Four total?

14 A. Yes.

15 Q. Okay. Who was first on scene?

16 A. I was.

17 Q. Okay. When you first arrived on scene, who was  
18 the first person that you encountered?

19 A. [REDACTED].

20 Q. Okay. Do you remember her last name?

21 A. Not at this time.

22 Q. Okay. All right. And, do you recall anything  
23 about where [REDACTED] was?

24 A. When I first met her, she was in the doorway.

25 Q. Okay. Of the home?



1 A. Yes.

2 Q. And, do you recall anything about where the  
3 person was that you were there to assist with?

4 A. Yes. He was in the kitchen.

5 Q. Okay. And, where was the kitchen, relative to  
6 the front of the home?

7 A. Basically towards the back.

8 Q. Okay. Did you proceed to the back?

9 A. Yes.

10 Q. Did you interact at all with a person by the name  
11 of Daniel Prude?

12 A. I did.

13 Q. Did you take any actions with Mr. Prude relative  
14 to restraints?

15 A. Yes.

16 Q. What did you do?

17 A. I placed him in handcuffs.

18 Q. All right. And, was he compliant with that?

19 A. Yes.

20 Q. All right. And, what was your reason for that?  
21 Why did you put him in handcuffs?

22 A. He seemed under the influence of some type of  
23 drug.

24 Q. Okay. All right. And, did there come a point in  
25 time when you removed Mr. Prude from the home?

1 A. Yes.

2 Q. And, what was the reason for that?

3 A. For an MHA.

4 Q. Could you explain in just lay person's terms,  
5 what is an MHA?

6 A. Mental Hygiene Arrest. It's a -- you want me to  
7 go further?

8 Q. Sure.

9 A. When a person is experiencing either mental  
10 problems or -- it's another one that is drug or  
11 alcohol related as well.

12 Q. And, is there any sort of thing that triggers an  
13 MHA, relative to harm?

14 A. For the 941, you have to -- you want to hurt  
15 yourself, or you want to hurt another person, in that  
16 nature.

17 Q. All right. And, did you say for the 941?

18 A. Yes.

19 Q. I just want to say for the record, are you  
20 referring to Mental Hygiene Law, Section 941?

21 A. Yes.

22 Q. You don't need to -- I just wanted to clarify.

23 A. I'm sorry.

24 Q. That's okay. So, indicated a harm to yourself or  
25 harm to others. Is that what you said?

1 A. Yes.

2 Q. And, during the time that you were with Mr.  
3 Prude, did he make any comments that appeared to fit  
4 into that category?

5 A. Yes.

6 Q. And, what -- generally, what are you speaking of?

7 A. He said, don't let them kill me, I want to die.  
8 He was calling himself lucifer.

9 Q. Okay. All right. Did you -- actually, I'm  
10 approaching with Grand Jury Exhibit Number 4. Could  
11 you take a look at that and just describe what that is  
12 for the record?

13 A. It's a disc with my initials on it.

14 Q. Okay. And, do you know what's on that disc?

15 A. Yes.

16 Q. And, what is on it?

17 A. My body worn camera footage.

18 Q. Okay. All right. And, how do you know that's  
19 your footage on that disc?

20 A. I initialed this yesterday.

21 Q. Okay. So, you've reviewed this previously?

22 A. Yes.

23 Q. Okay. Is what is captured on Grand Jury Exhibit  
24 Number 4 an accurate reproduction of the body worn  
25 camerage -- I'm sorry, of the incident that you

1 experienced on March 22nd at [REDACTED] Child Street?

2 A. Yes.

3 Q. Okay. Thank you.

4 MS. SOMMERS: I'll offer it.

5 (Whereupon, Grand Jury Exhibit Number 4,  
6 body worn camera footage, was then marked and received  
7 into evidence.)

8 MS. SOMMERS: Can everyone see? Do you want  
9 us to try to dim the lights at all?

10 JURY POOL: (All indicating a positive  
11 response.)

12 MS. SOMMERS: Okay. If you change your mind  
13 during this, let us know. If anyone needs to stand or  
14 move around, please feel free to do so.

15 MR. SMITH: Can everybody see?

16 MS. SOMMERS: So, just for the record, we  
17 were maneuvering the screen a bit and we're going to  
18 now rewind and play the video.

19 (Whereupon, the body worn camera was then  
20 played into the record.)

21 MS. SOMMERS: I'm going to stop the video  
22 for a moment. And, for the record, we're about seven  
23 seconds in. It's silent. Am I mis-stating that?  
24 It's -- right now, there's no audio, correct?

25 THE WITNESS: Correct.

1 BY MS. SOMMERS:

2 Q. So, is that during the 30 second look back period  
3 that we talked about previously?

4 A. Yes.

5 Q. And, I see feet or legs on the right side of the  
6 video, who is that?

7 A. That's my initials and my IBM.

8 Q. Oh. No, I'm talking about in the upper right of  
9 the video, do you see a person?

10 A. Oh, I'm sorry. That's [REDACTED]

11 Q. Okay. All right. Thank you.

12 MS. SOMMERS: I'm not going to interrupt  
13 anymore. We can play the video.

14 (Whereupon, the body worn camera was then  
15 resumed for the Grand Jury.)

16 MS. SOMMERS: For the record, we just  
17 stopped the video.

18 BY MS. SOMMERS:

19 Q. Officer [REDACTED], at the end of the video, there  
20 appears to be conversation about smelling things. Was  
21 there a particular reason why you were discussing that  
22 at that point in time?

23 A. That day was the first day we got issued our N-95  
24 masks and, at road call, they told us we weren't  
25 supposed to be able to smell anything.

1 Q. Okay. Could you explain for the Grand Jury, when  
2 this occurred, relative to the beginning of the COVID  
3 incident or pandemic, was it months later? Was it --  
4 if you recall?

5 A. I believe it was, like, in the middle -- or, in  
6 the very beginning, but not in the beginning, if that  
7 makes sense.

8 Q. Okay. So --

9 A. So, I mean, March. So, I'd say, like, two  
10 months, three months into it.

11 Q. Okay. And, you indicated that that day was the  
12 first day that you guys -- I'm sorry. I'd like to  
13 withdraw that. Was that the first day that the  
14 Rochester Police Department issued masks?

15 A. Yes.

16 Q. Okay.

17 A. The N-95 mask.

18 Q. Okay. Previously?

19 A. We had just regular masks.

20 Q. Okay. All right. So, these were supposed to be  
21 of a higher caliber?

22 A. Yes.

23 Q. Okay. So, that's what you were referring to?

24 A. Yes.

25 Q. Okay. Thank you. Was that the conclusion -- was

1 that the end of your dealings with Mr. Prude?

2 A. Yes.

3 Q. So, you never dealt with him again?

4 A. No.

5 Q. Okay. Thank you.

6 MS. SOMMERS: What I'm going to do, is I'm  
7 going to ask you to go back out, and see if our grand  
8 jurors have any questions, and if they do, I'm going  
9 to ask you to come back in.

10 THE WITNESS: Okay.

11 MS. SOMMERS: Thank you.

12 (Whereupon, the witness left the Grand Jury  
13 room at a time of 1:44 p.m.)

14 MS. SOMMERS: Okay. Does anyone have any  
15 questions that they would like us to ask of Officer  
16 [REDACTED]? Yes?

17 A JUROR: I'd like you to ask him, and to  
18 the extent that he can, define under the influence.  
19 What was it about Mr. Prude's behavior that -- and, a  
20 lot of it was obviously manifested on the recording,  
21 but --

22 MS. SOMMERS: Okay.

23 A JUROR: Was there anything, you know --  
24 upon reviewing the recording, was there anything that  
25 the Officer sensed or perceived about Mr. Prude that

1 may have not been obvious on the recording?

2 MS. SOMMERS: Okay.

3 A JUROR: In the same --

4 THE STENOGRAPHER: I can't hear you.

5 A JUROR: In the same being, is this the  
6 kind of a routine type of call they're getting.

7 MS. SOMMERS: So, I just want to make sure.  
8 Are calls such as this routine?

9 A JUROR: Are they experienced with this  
10 type of call?

11 MS. SOMMERS: And, by this type of call, I  
12 want to make sure I'm asking the right question.

13 A JUROR: Mental health.

14 MS. SOMMERS: Mental hygiene arrest calls?

15 A JUROR: Yep.

16 MS. SOMMERS: Okay. Yes?

17 A JUROR: I don't recall, but I did see in  
18 the video there was a white person in a yellow T-shirt  
19 in the video. I don't recall if he said that there  
20 was anyone else in the house with him.

21 MS. SOMMERS: Okay. You'd like me to ask if  
22 he knew who that was?

23 A JUROR: Yeah. There was not one word, he  
24 was just kind of standing there, watching.

25 MS. SOMMERS: So, I'll ask Officer [REDACTED] if



1 he's aware of who any of the other people in the house  
2 were, other than the Police Officers?

3 A JUROR: Yes. Besides [REDACTED] -- [REDACTED],  
4 Daniel and [REDACTED]. I don't remember hearing  
5 anything.

6 A JUROR: That was [REDACTED].

7 A JUROR: Oh, that was?

8 A JUROR: I'm assuming.

9 MS. SOMMERS: Do you still want me to ask  
10 the question still?

11 A JUROR: I guess not. Unless anybody else  
12 would be interested in that.

13 MS. SOMMERS: I'll ask who else, if he  
14 knows.

15 A JUROR: This might be related to your  
16 question. The last witness, [REDACTED] kept saying  
17 [REDACTED], and I don't remember who [REDACTED] was.

18 MS. SOMMERS: Right. So, if he knows.

19 A JUROR: If he knows.

20 MS. SOMMERS: Okay. Anyone else?

21 A JUROR: Yeah. Is it standard to cuff  
22 somebody, and why would they do that on that type of  
23 call?

24 MS. SOMMERS: Okay.

25 A JUROR: And then, the other thing is, they

1 were talking about smelling something. Was it just --  
2 did they smell something that they were questioning,  
3 or just the fact that they could smell, period,  
4 through the masks.

5 MS. SOMMERS: I thought that's what I was  
6 trying to discuss with him at the end, but I can try  
7 and be more explicit.

8 A JUROR: Yeah. Because it sounded like  
9 they were questioning something that they were  
10 smelling specifically, not just cooking grease.

11 MS. SOMMERS: So, I just want to say, it's  
12 not clear to me from listening, and we'll ask him. If  
13 he was one of the ones that -- perhaps someone did  
14 mention smoke. And, it's not clear if Officer [REDACTED]  
15 was the one who did. So, I just want to just -- we  
16 can ask him what he smelled, if he did, based on the  
17 video, but not what other people smelled. We can --  
18 we can maybe ask other people that.

19 A JUROR: We can discuss things here when we  
20 see them. Like, I can say that I remember during  
21 this, that [REDACTED] was smoking a cigarette.

22 MS. SOMMERS: So, I'll tease that out a  
23 little bit. Okay. Anybody else? Okay. Thank you.

24 (Whereupon, the witness re-entered the Grand  
25 Jury room at a time of 1:48 p.m.)

1                   **O F F I C E R** [REDACTED] [REDACTED],  
2 after being previously duly sworn, further testified  
3 as follows:

4                   **EXAMINATION BY MS. SOMMERS:**

5 Q. Thank you. Officer [REDACTED], just recall that  
6 you're still under oath.

7 A. Okay.

8 Q. So, the Grand Jury has asked a few questions that  
9 I'm going to pose to you. One of them was, can you  
10 define what you mean when you say, quote, unquote,  
11 under the influence? When -- when somebody -- if Mr.  
12 Prude appeared to be, quote, unquote, under the  
13 influence and what you base that on?

14 A. When I initially saw him?

15 Q. Yes.

16 A. I mean, for me, personally, it's just, when  
17 somebody is not acting normal. Really, when -- you  
18 know, that's not normal behavior in everyday life, you  
19 know, someone is yelling, they trying to kill me,  
20 calling theirself lucifer, you know, that's the devil.  
21 It's just not normal, so -- and then, the initial call  
22 was for someone under the influence, so it just went  
23 hand in hand with each other.

24 Q. Okay. Was there anything that wasn't on the  
25 video, or not on the job card that went into your

1 consideration or were the things that you considered,  
2 the things that we could see on the video, and the  
3 things that were on the job card? That probably  
4 wasn't a great question.

5 A. Yeah.

6 Q. Did anything go into your opinion as to Mr. Prude  
7 being, quote, unquote, under the influence other than  
8 what we saw on the video, or is that what -- is what  
9 we could see what was causing you to form that  
10 opinion?

11 A. So -- so, I -- you usually -- you basically use  
12 both. So, the initial call, and then, when you get  
13 there, you obviously see someone, you know, yelling,  
14 acting erratic. So, I mean, they both went hand in  
15 hand.

16 Q. All right. Thank you. Is -- can you -- a grand  
17 juror wanted to know if mental hygiene arrests are  
18 relatively routine?

19 A. Where I work?

20 Q. Yes.

21 A. I'm usually [REDACTED]. That's usually Main Street --  
22 West Main, I'm sorry. So, I get them probably four  
23 times throughout my shift.

24 Q. Okay. So, I want to just stop you for a moment.  
25 When you say [REDACTED]?

1 A. It's the area. So, it usually covers Genesee  
2 Street, West Main Street, over to basically, Broad  
3 Street.

4 Q. Okay.

5 A. In the Genesee Section.

6 Q. Okay. And, approximately how many of these  
7 mental hygiene arrest calls would you estimate that  
8 you take on the given shift?

9 A. Between three and five a day.

10 Q. Okay.

11 A. Because of 750 West Main Street, we go there a  
12 lot for calls like this.

13 Q. Okay. So, just to be clear here, do all mental  
14 hygiene arrests involve drugs?

15 A. No.

16 Q. Okay. So, there are other mechanisms for  
17 somebody needing to be mental hygiene arrested?

18 A. Yeah.

19 Q. All right. So, the trigger is a danger to  
20 yourself or others, not the fact that somebody may or  
21 may not be consuming drugs or not?

22 A. Can you just repeat that?

23 Q. Okay. So, do all mental hygiene arrests involve  
24 drugs?

25 A. No.

1 Q. Do some mental hygiene arrests involve drugs?

2 A. Yes.

3 Q. Okay. So, it's not required that somebody be  
4 suspected of being on drugs in order for a mental  
5 hygiene arrest to happen?

6 A. No.

7 Q. Okay. Are you aware of who else was in the  
8 house, or in the kitchen area when you were there?

9 A. Are we talking about --

10 Q. Other than Officers -- I'm sorry. Again, I'm not  
11 doing great with questions here, I apologize. Other  
12 than [REDACTED], [REDACTED], and Daniel  
13 Prude, and the Officers, were any other people in the  
14 home?

15 A. There was.

16 Q. Okay. Do you know who that person was?

17 A. I did not know that person.

18 Q. Okay. Do you know who a person, either named  
19 [REDACTED], or called [REDACTED] by [REDACTED] is?

20 A. I'm guessing that's her son, possibly.

21 Q. All right. But, I want to be clear, you're  
22 guessing?

23 A. I'm guessing, so --

24 Q. So, if you don't know, I'm just going to ask you  
25 not to speculate.

1 A. Okay.

2 Q. So, do you know if there was anyone in the house  
3 that [REDACTED] calls [REDACTED]?

4 A. No.

5 Q. Okay.

6 MS. SOMMERS: I'm just going to ask, does  
7 anyone have further questions?

8 A JUROR: About handcuffs.

9 MS. SOMMERS: Yes.

10 BY MS. SOMMERS:

11 Q. Is it standard to handcuff an individual in this  
12 type of a situation?

13 A. So, it's usually up to the Officer. But, in my  
14 cases, if -- you know, mental hygiene, you're under  
15 arrest, so, either way, you're under our custody.  
16 It's just easier for me, personally, to put someone --  
17 place someone under arrest, you know, transition to  
18 the gurney. It's just an easier process.

19 Q. Okay. Why did you make the determination in this  
20 case to put Mr. Prude in handcuffs?

21 A. He seemed under the influence. We were in the  
22 kitchen, you know, that's a danger zone, they teach us  
23 that. And, it's just -- in my opinion, was a good  
24 idea.

25 Q. Okay.

1 A. At the time.

2 MS. SOMMERS: Anybody else? Okay. You're  
3 all set. Thank you.

4 (Whereupon, the witness left the Grand Jury  
5 room at a time of 1:55 p.m.)

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1 MS. SOMMERS: We're going take a five to ten  
2 minute break, and then one more witness, and then  
3 we're done. Thank you.

4 (Whereupon, a short break was taken.)

5 (Proceedings reconvened.)

6 MS. SOMMERS: We're going to go on the  
7 record really quickly. So, during the break, a grand  
8 juror had approached and indicated, or asked if there  
9 had been testimony prior about nicknames. At which  
10 point, I said, let's talk about this on the record.

11 So, I did ask the court reporter to go back  
12 in Mr. [REDACTED] testimony, if there was a question and  
13 answer about nicknames. Did you want -- would you  
14 like me to have her read it? It's up to you. Would  
15 anyone like to hear it, or -- so, I just need a yes or  
16 no.

17 A JUROR: It was my understanding that there  
18 was -- [REDACTED] mentioned the other occupants of the  
19 house.

20 MS. SOMMERS: Okay.

21 A JUROR: There was the [REDACTED], and he  
22 also made reference to a stepson.

23 MS. SOMMERS: Okay.

24 A JUROR: I don't remember the stepson's  
25 name. I don't need to know.

1 MS. SOMMERS: Okay. Understood. Okay. So,  
2 I guess, we -- we won't re-read it at this point.

3 So -- but -- if, at a later time, you would  
4 like that, this is the type of thing that we could  
5 very easily get for you, for anyone. Okay. All  
6 right. Thank you.

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1 MR. SMITH: So, with that, we'll call  
2 Officer [REDACTED].

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4 (Whereupon, the witness entered the Grand  
5 Jury room at a time of 2:03 p.m.)

6

7 O F F I C E R [REDACTED] [REDACTED],  
8 after being duly called and sworn, testified as  
9 follows:

10

**EXAMINATION BY MR. SMITH:**

11 Q. Good afternoon, Officer [REDACTED].

12 A. Good afternoon.

13 Q. Could you state and spell your first and last  
14 name for the record, please?

15 A. [REDACTED]. [REDACTED].

16 Q. Where are you employed, sir?

17 A. I work for the Rochester Police Department in the  
18 Genesee Section, Third Platoon as a Police Officer.

19 Q. Okay. And, does the Genesee Section cover [REDACTED]  
20 Child Street?

21 A. Yes.

22 Q. And, what is the third shift?

23 A. It is from 3:00 in the afternoon till 11:15 at  
24 night.

25 Q. So, what are some of the duties and

1 responsibilities of a patrol officer in the City of  
2 Rochester Police Department?

3 A. We take calls for service, that's our main focus.  
4 We also do community policing, special tensions, and  
5 proactive work.

6 Q. Sir, is one of those duties and responsibilities  
7 a so-called mental hygiene arrest?

8 A. Yes.

9 Q. Sir, could you just tell the grand jurors what a  
10 mental hygiene arrest is?

11 A. Well, there's many mental hygiene arrest types.  
12 We deal with mostly three. We have a 941, 945 and a  
13 2209. The 941 is the based on our observations, a 945  
14 is based on either a doctor's or a physician's --  
15 someone that has the authority to make one, and 2209  
16 is someone who's intoxicated.

17 Q. Sir, do those Sections refer to -- or, do those  
18 numbers refer to different Sections of the Mental  
19 Hygiene Law in New York State?

20 A. Correct.

21 Q. And, one of the things that, as a patrol officer  
22 in the City of Rochester, you're able to do, is a 941  
23 mental hygiene arrest?

24 A. Yes.

25 Q. And, sir, what is the procedure for that type of

1 arrest, sir?

2 A. Well, it's based on our observations and our  
3 training. And, it has to do with when someone is --  
4 possibly has previous or -- previous or current mental  
5 health issues, and they are acting in a manner that  
6 could hurt themselves or others.

7 Q. That's -- is that the criteria to make that  
8 arrest?

9 A. That's the basic criteria, yes.

10 Q. So, under Section 941 who gets to make that  
11 decision?

12 A. We, as Officers.

13 Q. Based on your observations?

14 A. Yes.

15 Q. Sir, I want to draw your attention to March 22nd  
16 of this year, 2020, were you working the third shift  
17 as a Patrol Officer with the City of Rochester Police  
18 Department?

19 A. Yes.

20 Q. And, I'm going to draw -- withdraw that. Sir,  
21 around 7:00 p.m., were you dispatched to ■ Child  
22 Street in the City of Rochester?

23 A. Yes.

24 Q. And, just briefly, sir, what was the nature of  
25 that call?

1 A. It was for a male who was having hallucinations  
2 due to drug use, I believe to be leaf, which was  
3 described as some type of PCP.

4 Q. Have you heard of it before, sir?

5 A. I have not heard of leaf, no. I've heard of PCP,  
6 though.

7 Q. So, on the way to the call, you have information  
8 that the individual, who is the subject of the call,  
9 is on PCP?

10 A. Yes.

11 Q. Anything else relayed in that call, sir?

12 A. Yes. It stated that the male may be violent, but  
13 did not have a weapon.

14 Q. So, based on what you're receiving from the call,  
15 sir, are you forming any opinions on what kind of  
16 arrest or what kind of a situation you might encounter  
17 when you get there?

18 A. Yes, there's always -- you know, you want to take  
19 every -- every information for every job into account.

20 Q. Did there come a point when you arrived at [REDACTED]  
21 Child Street, a little after 7:00 p.m.?

22 A. Yes.

23 Q. Was any other officers on scene at that time?

24 A. Yes, Officers [REDACTED], and Officer [REDACTED]

25 Q. Did you enter the house?

1 A. Yes.

2 Q. Were those other officers already present in the  
3 house?

4 A. Yes.

5 Q. Were there other people inside?

6 A. Yes.

7 Q. Were you able to determine, based on your own  
8 observations, Officer [REDACTED], who the subject of that  
9 911 call was?

10 A. Yes.

11 Q. How were you able to make the determination?

12 A. I spoke with the caller, who was [REDACTED].  
13 I also saw the male in the corner, who was sitting  
14 down being comforted by his brother.

15 Q. Was he saying anything?

16 A. Yes. He was repeating Bible verses, speaking  
17 about Jesus repeatedly. He was also stating that  
18 someone was out to kill him. And then, eventually he  
19 said that he'd been wanting to die, and asked us to  
20 kill him.

21 Q. Do you eventually learn the person's name?

22 A. Yes.

23 Q. Who was that?

24 A. Daniel Prude.

25 Q. Sir, based on the information that was relayed in

1 the call and your personal observations of Mr. Prude  
2 at the scene, did you make -- make any decision as to  
3 what to do with Mr. Prude?

4 A. Yes. He would be mental hygiene arrested under  
5 941.

6 Q. Is there specific criteria, sir, that you were  
7 concerned about?

8 A. His erratic behavior, his sweating, the  
9 information that he was on some type of PCP, and along  
10 with the fact that he was asking us to kill him and he  
11 wanted to die.

12 Q. Sir, is there paperwork that goes along with a  
13 mental hygiene arrest?

14 A. Yes.

15 Q. Did you fill out the paperwork?

16 A. I did.

17 Q. Did you observe Mr. Prude leave [REDACTED] Child and  
18 enter an ambulance?

19 A. Yes.

20 Q. Did you enter the ambulance with Mr. Prude, sir?

21 A. No.

22 Q. What did you do?

23 A. I followed behind in my marked patrol vehicle.

24 Q. Just you?

25 A. Yes.



1 Q. And, where did you follow the ambulance to?

2 A. Strong Memorial Hospital.

3 Q. Did you see Mr. Prude on the stretcher get taken  
4 into Strong Memorial Hospital?

5 A. Yes.

6 Q. And, what was his demeanor and his appearance at  
7 that point?

8 A. At that time, I remember him being a little more  
9 drowsy and sleepy. At some points, he would kind of  
10 wake up and mumble some random stuff again, but he was  
11 much more calm.

12 Q. And, were you with him in the hospital for any  
13 period of time, sir?

14 A. Yes, for a short period of time. I followed him  
15 and took the handcuffs off the gurney and left him  
16 with security, in their custody.

17 Q. And, at that point in time, sir -- at that point  
18 had you finished the mental hygiene paperwork?

19 A. Yes, before I entered, yes.

20 Q. And, at that point, sir, when you're done with  
21 the paperwork, and you dropped Mr. Prude off, does  
22 that essentially end your involvement in this case?

23 A. Yes.

24 Q. Officer [REDACTED], when you were inside the [REDACTED]  
25 Child Street, did you have a body worn camera on?

1 A. Yes.

2 Q. Did you activate that body worn camera when you  
3 were entering [REDACTED] Child?

4 A. Yes.

5 Q. Officer [REDACTED], I'm going to approach and show  
6 you what's been marked as Grand Jury Exhibit Number 5,  
7 and ask if you recognize that, sir?

8 A. Yes. That's the body worn camera footage that I  
9 reviewed and initialed.

10 Q. How do you recognize it to be that?

11 A. My initials and date.

12 Q. You reviewed that -- that body worn camera and --  
13 that body worn camera video in its entirety?

14 A. Yes.

15 Q. And, you initialed it after you reviewed it?

16 A. Correct.

17 Q. And, sir, is this, in fact, an exact copy of the  
18 body worn camera from inside of [REDACTED] Child Street on  
19 March 22nd?

20 A. Yes.

21 MR. SMITH: At this time, I'm going to offer  
22 Grand Jury Exhibit 5 into evidence.

23 (Whereupon, Grand Jury Exhibit Number 5,  
24 disc of body worn camera, was then entered into  
25 evidence.)

1 MR. SMITH: At this point, ladies and  
2 gentlemen, we are going to play Grand Jury Exhibit 5.

3 (Whereupon, the body worn camera was then  
4 played into the record.)

5 MR. SMITH: Officer [REDACTED], I'm stopping  
6 the video at the one minute and ten second mark,  
7 there's an individual in a yellow t-shirt to the right  
8 of the screen. Do recall that individual being  
9 present inside of [REDACTED] Child?

10 THE WITNESS: Yes.

11 MR. SMITH: Do you know who that is, sir?

12 THE WITNESS: I don't recall.

13 (Whereupon, the body worn camera video was  
14 resumed and continued to play into the record.)

15 MR. SMITH: Just a couple more questions for  
16 Officer [REDACTED]. The video is concluded.

17 BY MR. SMITH:

18 Q. Officer [REDACTED], I noticed you putting a mask on  
19 as you were walking into the house. Do you recall  
20 what part of the pandemic -- the Corona Virus pandemic  
21 that this occurred?

22 A. Towards the beginning.

23 Q. Was everybody kind of on an increased alert --  
24 increased alert about the virus?

25 A. Yes, because we were unsure exactly what we were

1 dealing with.

2 Q. And, you had your mask on inside the house?

3 A. Yes.

4 Q. Do you recall, Officer [REDACTED], if there was any  
5 unusual smells when you were inside the house?

6 A. Not that I recall.

7 Q. Any kind of unusual smoke smell?

8 A. No, not that I recall.

9 Q. And, sir, prior to this incident, had you dealt  
10 with Daniel Prude at all? Daniel Prude?

11 A. Oh, Daniel Prude, no.

12 Q. And, were you, sir, in any way involved in the --  
13 the second mental hygiene arrest that occurred in the  
14 early morning hours the next day?

15 A. No.

16 MR. SMITH: I have no further questions for  
17 Officer [REDACTED]. I'm going to excuse you at this  
18 time, Officer and see if any of the grand jurors have  
19 any questions.

20 (Whereupon the witness left the Grand Jury  
21 room at a time of 2:16 p.m.)

22 MR. SMITH: Yes, ma'am?

23 A JUROR: I noticed in the beginning of his  
24 video camera that he was putting on his mask. Was  
25 that an N-95 mask or was it a regular mask, like, the

1 regular -- like, the regular hospital mask?

2 MR. SMITH: Yes, sir?

3 A JUROR: The Officer said he was not  
4 familiar with the term leaf, but he was familiar with  
5 PCP. I'm just wondering if he's dealt with  
6 individuals specifically under the influence of PCP  
7 before?

8 MR. SMITH: Thank you, sir.

9 A JUROR: How long has he been a police  
10 officer, and how much experience has he had with the  
11 mental health arrest calls?

12 A JUROR: Same question as this gentleman.  
13 So, to add on to that, if he has dealt with someone on  
14 PCP before, is this the kind of behavior he's  
15 observed?

16 A JUROR: It sounded like they -- the  
17 Officers might have been to that house before. Are we  
18 allowed to ask if they have been to that house before?

19 MR. SMITH: Yes.

20 A JUROR: And, if so, what did that entail?

21 A JUROR: Because he did kind of hesitate  
22 when you had asked if he had experience with Daniel,  
23 but it almost sounded -- well, it left me with the  
24 impression that maybe he had had experience with the  
25 brother, [REDACTED].

1 MS. SOMMERS: So, I just -- I'm not trying  
2 -- in terms of relevance to, kind of what you're  
3 investigating with the death of Mr. Prude, I just  
4 don't know if that would meet the relevancy threshold.  
5 I understand if you know --

6 MR. SMITH: That's why I asked specific to  
7 Daniel Prude, ma'am. Whether or not they've dealt  
8 with [REDACTED] before or circumstances which are  
9 really not relevant to the circumstances of which  
10 Daniel Prude died the next day. So, we won't ask that  
11 question on the relevance ground. But, thank you.  
12 Any other questions?

13 MS. SOMMERS: Don't hold it against us.

14 MR. SMITH: Please don't.

15 MS. SOMMERS: I think this gentleman. Did,  
16 you? I'm sorry.

17 MR. SMITH: Seeing no other questions.  
18 Let's recall Officer [REDACTED].

19 (Whereupon the witness re-entered the Grand  
20 Jury room at a time of 2:19 p.m.)

21

22 **O F F I C E R** [REDACTED] [REDACTED],  
23 after being previously duly sworn, further testified  
24 as follows:

25



1 Officer?

2 A. Approximately five years.

3 Q. And, all with the Rochester Police Department?

4 A. Yes.

5 Q. And, how much experience do you have with mental  
6 hygiene arrests, sir?

7 A. I'm not sure how to answer how much experience,  
8 but I deal with it at least a few times a week. I've  
9 made many mental hygiene arrests.

10 Q. So, would you call it a routine call?

11 A. Yes.

12 Q. Several in your five year career?

13 A. Yes.

14 Q. Dozens?

15 A. Oh, yes.

16 Q. Hundreds?

17 A. Probably.

18 MR. SMITH: I think that's it, unless any of  
19 the grand jurors have any other questions to ask  
20 Officer [REDACTED]. I think we're done. You're excused,  
21 sir. Thank you.

22 THE WITNESS: Thank you.

23 (Whereupon the witness left the Grand Jury  
24 room at a time of 2:21 p.m.)

25



1           MR. SMITH:  Should we take a break since we  
2           have ten more witnesses.

3           MS. SOMMERS:  You didn't know we were  
4           comedians too.  Thank you all very much.  I did want  
5           to say one thing.  I realized after Officer [REDACTED] was  
6           done, I did neglect to ask one clarifying question of  
7           him, had to do with, kind of what they were smelling.  
8           We will have, I think another witness that could  
9           perhaps clarify that more.

10                  You will be meeting next week at 9:30.  So,  
11           please don't form any opinions about this case.  Don't  
12           talk to your friends and family -- well, about this  
13           case.  Talk to them, but not about this.  And, we will  
14           look forward to seeing you next week.  Hopefully many  
15           more of the kinks will be worked out.

16                  MR. SMITH:  If everyone --

17                  MS. SOMMERS:  Oh, sorry.  Go ahead.

18                  MR. SMITH:  Sorry.  If everybody could  
19           somehow mark those folders with your name or your  
20           initials outside of the red well folders.  And then,  
21           I'll collect those, and they actually gave me a key to  
22           the file cabinet here, so they will be under lock  
23           until next Wednesday.

24                  MS. SOMMERS:  So, is there a way -- would --  
25           would you be opposed to putting -- well, actually,

1 next week, I'm going to send out a piece of paper and  
2 it would be really great if you guys could put your  
3 e-mail address on it. I just think it would be  
4 easier, if something happened and we had to cancel a  
5 day, it's easier to send out a group e-mail than to  
6 call everybody.

7 A JUROR: Group text?

8 MS. SOMMERS: So, yeah -- right. So, next  
9 week, I'll figure out if all the numbers I have for  
10 everybody are texts or if anybody gave a landline.  
11 Did anybody here give a landline phone? All right.  
12 If you all get texts, and as long as the texts numbers  
13 that you gave are going to go to your phone and not  
14 someone else's, that problems is solved. Thank you,  
15 sir.

16 All right. So, with that, I think we're all  
17 done. Thank you all very much.

18 (Proceeding adjourned at 2:24 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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