

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY
CRC14-00216CFAES

STATE OF FLORIDA

V.

CURTIS J. REEVES

**STATE'S SECOND MOTION IN LIMINE TO
EXCLUDE EVIDENCE GENERATED BY MICHAEL KNOX**

COMES NOW, BERNIE McCABE, State Attorney for the Sixth Judicial Circuit in and for Pasco County, Florida, by and through the undersigned Assistant State Attorney, hereby respectfully request this Honorable Court to enter an order excluding evidence generated by Michael Knox and as good cause would show:

State's Position

- The photographic demonstrative aids created by Mr. Knox of the lighting conditions in the theater seating area where the shooting took place at various theater lighting settings does not fairly and accurately representation the lighting at time of the shooting. Brown v. St., 550 So.2d 527, 528 (Fla. 1st DCA 1989)
- The various lighting scenarios of the demonstrative aids will not be helpful to the trier of fact in understanding or determining a material issue or fact. Pierce v. St., 718 So.2d 806, 809 (Fla. 4th DCA 1997)
- The various lighting scenarios of the demonstrative aids will lead only to a confusion of the issue and mislead the jury. The probative value of the demonstrative aids is substantially outweighed by the danger of unfair prejudice. *Id.* at 809, F.S.A. §90.403.
- Mr. Knox's testimony and opinions fail to meet the Daubert standard for admissibility. Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786 (1993)
- Mr. Knox's crime scene photographs, frames 65-69 and 155-185 will not aid or assist the fact-finder in understanding or determining a material issue or fact. Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786 (1993)
- The content of Mr. Knox's crime scene photographs, frames 65-69 and 155-185 is based

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Pasco County, Florida

on reasoning and methodology that cannot be properly applied to the facts in issue. Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786 (1993) A photograph taken with a camera lens cannot substantially depict the amount of light that a human eye can detect and translate into sight.

Factual Background

Excerpts from deposition of Michael Knox, September 30, 2016, pages 60 – 85. (See Exhibit # 1, Deposition Transcript) (See, Exhibit #2, photographs, frames 65-69 and 155-185, attached.)

The State will rely on all exhibits attached to the State's previously filed Motion In Limine To Exclude Evidence Generated by Michael Knox.

Evidence Code: F.S.A. §90.701 & §90.702

§ 90.701 Opinion testimony of lay witnesses

If a witness is not testifying as an expert, the witness's testimony about what he or she perceived may be in the form of inference and opinion when:

(1) The witness cannot readily, and with equal accuracy and adequacy, communicate what he or she has perceived to the trier of fact without testifying in terms of inferences or opinions and the witness's use of inferences or opinions will not mislead the trier of fact to the prejudice of the objecting party; and

(2) The opinions and inferences do not require a special knowledge, skill, experience, or training. FLA. STAT. § 90.701 (2015)

90.702. Testimony by experts

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:

(1) The testimony is based upon sufficient facts or data;

(2) The testimony is the product of reliable principles and methods; and

(3) The witness has applied the principles and methods reliably to the facts of the case. FLA. STAT. § 90.702 (2015)

The Evidence Code may be applicable in hearings under the “Stand Your Ground” Act in criminal cases. See, McDaniel v. State, 24 So.3d 654 (Fla. 2d DCA 2009); See generally, Dennis v. State, 51 So.3d 456 (Fla. 2010).

Daubert Issue

Can a camera lens duplicate what two human eyes can collectively gather, interpret & translate into what we see in any given lighting situation?

Daubert Standard

Prior to 2013 the admissibility of scientific testimony and opinions was governed the *Fye* standard. In July, 2013 the Florida Legislature enacted 90.702, FSS setting forth the Daubert standard to govern the admissibility of both expert scientific testimony and opinions and lay opinions. F.S.A. Section 90.702, Amended by Laws 2013, c. 2013-107, Section 1, eff. July 1, 2013.

The federal courts have long used the Daubert standard to govern the admissibility of scientific testimony and opinions. In federal Court, Federal Rule of Evidence 702 governs the admissibility of expert testimony in federal courts. Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786 (1993); Kumho Tire Co., Ltd. V. Carmichael, 526 U.S. 137, 119 S.Ct. 1167 (1999). Under Daubert, a federal district court applying Rule 702 is charged with the gate-keeping role of ensuring that scientific evidence is both relevant and reliable. 509 U.S. at 589-95. The objective of the screening is to ensure that expert testimony, in order to be admissible, must be “not only relevant, but reliable”. 509 U.S. at 589. “Rule 702 further requires that the evidence or testimony “assist the trier of fact to understand the evidence or to determine a fact in issue. This condition goes primarily to relevance”. 509 U.S. at 591. Relevancy is found when the expert’s theory is tied sufficiently to the facts of the case and the expert’s testimony assists the trier in resolving a factual dispute. 509 U.S. at 591-92. The helpfulness standard requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility. 509 U.S. at 591-92. Thus if the proposed scientific evidence is not helpful in that the proposed science does not advance the inquiry in question, then the evidence does not meet the helpfulness

standard. Reliability, on the other hand is grounded in the methods and procedures of science. 509 U.S. at 590.

Daubert set forth a non-exclusive list of factors to guide the reliability inquiry: (1) whether the scientific theory or technique can or has been tested; (2) whether the scientific theory or technique has been subjected to peer review and publication; (3) in the case of a particular scientific technique, the known or potential rate of error; and (4) whether the theory or technique has gained general acceptance in the scientific community. 509 U.S. at 593-95. In *Kumho Tire*, 526 U.S. 137, 119 S.Ct. 1167 (1999), the Supreme Court further held that gate-keeping obligation extends not just to scientific testimony, but also to technical or other specialized knowledge, including testimony based on an expert's own experience. 526 U.S. at 141. The *Kumho Tire* court applied Daubert to scientific evidence and to evidence based on technical or other specialized knowledge. 526 U.S. at 151. Therefore, Daubert applies to skill or experience-based observations.

The Supreme Court has repeatedly emphasized that Rule 702 inquiry is "flexible". Daubert, 509 U.S. at 594; *Kumho Tire*, 526 U.S. at 150. "Not only must the trial court be given broad discretion to decide whether to admit expert testimony, it must have the same kind of latitude in deciding how to test an expert's reliability." *United States v. Hankey*, 203 F.3d 1160, 1168 (9th Cir. 2000) (citation omitted). Thus, a district court's decision to admit or exclude testimony may be reversed only for abuse of discretion. *Kumho Tire*, 526 U.S. at 142 (citation omitted).

A district court may, but is not required to hold a pre-trial hearing to determine admissibility of expert testimony. *United States v. Alatorre*, 222 F.3d 1098, 1099 (9th Cir. 2000). As an alternative to a pre-trial hearing, admissibility determination may be made during trial. *Id.* The question of admissibility may be raised by the court sua sponte. See *Kirsteig v. Parks Corp.*, 159 F.3d 1065, 1067 (7th Cir. 1998) ("We have not required that the Daubert inquiry take any specific form and have, in fact, upheld a judge's sua sponte consideration of the admissibility of expert testimony")

Conclusion

The demonstrative aid, consisting of crime scene photographs, frames 65-69 and 155-185 failure to show the lighting conditions that actually existed or depict lighting conditions that in

his opinion is substantially similar to the lighting conditions at the time of the shooting event. Collectively, the crime scene photographs, frames 65-69 and 155-185 represent a plethora of lighting scenarios that may or may not have existed at the time of the shooting event. The trier of fact viewing the crime scene photographs, frames 65-69 and 155-185 has no better understanding of the lighting conditions at the time of the shooting event than if there were no photographs at all.

The lack of specificity or even substantial specificity can only lead to confusion and misunderstanding by the trier of fact.

Although the lighting condition at the time of the shooting is of a material interest and evidence depicting lighting at substantially the same level is relevant, the probative value of the demonstrative aid, consisting of the crime scene photographs, frames 65-69 and 155-185 taken by Mr. Knox, is substantially outweighed by the danger of unfair prejudice, confusion of the issue and misleading of the trier of fact.

As previously stated, the lighting at the time of the shooting event is a relevant issue in this case. Mr. Knox's methodology and reasoning to use a camera lens to capture the lighting condition in the theater at a given moment cannot be applied properly to the issue of what was the lighting condition at the time the Defendant made his observations leading up to his decision to shoot Mr. Oulson.

"Our eyes are able to look around a scene and dynamically adjust based on subject matter, whereas camera capture a single still image. This trait accounts for many of our commonly understood advantages over cameras. For example, our eyes can compensate as we focus on regions of varying brightness, can look around to encompass a broader angle of view, or can alternately focus on objects at a variety of distances. ... What we really see is our mind's reconstruction of objects based on input provided by the eyes – not the actual light received by our eyes." *Cameras v. The Human Eye*, www.cambridgeincolour.com/tutorials/cameras-vs-human-eye.htm. See, Exhibit #1, attached to previously filed motion in limine.

Because the methodology used by Mr. Knox cannot be properly applied to the factual issue of "lighting conditions", the crime scene photographs, frames 65-69 and 155-185 will not aid or

assist the fact-finder in understanding or determining that particular factual issue.

WHEREFORE, the State respectfully requests this Honorable Court to enter an order excluding the above-described photographs generated by Michael Knox.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the State's Second Motion In Limine To Exclude Evidence Generated by Michael Knox was furnished to Richard Escobar, Esq., Escobar & Associates, P.A., 2917 West Kennedy Blvd., Ste 100, Tampa, FL 33609, Attorney for the Defendant by U.S. Mail / Hand / Facsimile this 14th day of February, 2017

BERNIE McCABE, State Attorney
Sixth Judicial Circuit of Florida

By 

Glenn L. Martin, Jr.
Assistant State Attorney

EXHIBIT #1

1 IN THE CIRCUIT COURT OF THE
2 SIXTH JUDICIAL CIRCUIT, IN
AND FOR PASCO COUNTY, FLORIDA

3 CASE NO: CRC1400216CFAES

4

5 STATE OF FLORIDA

6 -vs-

7 CURTIS JUDSON REEVES,

8 Defendant.

9 -----

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11 STATE OF FLORIDA)

12 COUNTY OF DUVAL)

13

14 Deposition of MICHAEL KNOX, a witness on behalf of
15 the State of Florida, taken at Official Reporters,
16 Inc., 421 West Church Street, Suite 701, Jacksonville,
17 Duval County, Florida, on Friday, September 30, 2016,
18 commencing at 8:53 a.m., before Karen Waugerman, a
19 Notary Public in and for the State of Florida at Large
20 and Registered Professional Reporter.

21

22

23 OFFICIAL REPORTERS, INC.
24 421 WEST CHURCH STREET, SUITE 430
JACKSONVILLE, FL 32202
(904) 358-2090

25

1 APPEARANCES:

2

3 GLENN L. MARTIN, JR., Esquire, Assistant State
4 Attorney, appearing on behalf of the State of Florida.

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6 RICHARD ESCOBAR, Esquire, appearing on behalf of
7 the Defendant.

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1	INDEX	
2	WITNESS	PAGE
3	MICHAEL KNOX	
4	DIRECT EXAMINATION BY MR. MARTIN	4
5		
6	CERTIFICATE OF REPORTER	119
7	CERTIFICATE OF OATH	120
8	ERRATA SHEET	121
9		
10	- - -	
11		
12	E X H I B I T S	
13	Number	For Identification
14	State's Exhibit No. 1	40
15	State's Composite Exhibit No. 2	65
16	State's Composite Exhibit No. 3	73
17	State's Composite Exhibit No. 4	75
18	State's Composite Exhibit No. 5	76
19	State's Composite Exhibit No. 6	77
20	State's Composite Exhibit No. 7	78
21	State's Composite Exhibit No. 8	104
22	State's Composite Exhibit No. 9	111
23	State's Exhibit No. 10	111
24	State's Exhibit No. 11	113
25	State's Exhibit No. 12	114

1 time. What I want to do is start on your
2 Photograph 155. Actually, we're going to start on 154,
3 which is the last time that you used the full lighting
4 in the -- in the theater, and then we're going to go to
5 155. If you can get that pulled up, please.

6 A Okay.

7 MR. ESCOBAR: Are those the measurement
8 photographs?

9 MR. MARTIN: What's that?

10 MR. ESCOBAR: Is that are those the
11 measurement photographs? Because that's
12 where supposedly we were starting.

13 MR. MARTIN: Correct.

14 MR. ESCOBAR: I've got it here. It
15 says, I still have all the measurement
16 photographs to go through.

17 MR. MARTIN: Right.

18 MR. ESCOBAR: Is that what -- where
19 we're starting?

20 MR. MARTIN: No.

21 MR. ESCOBAR: Measurements?

22 MR. MARTIN: No. We're going to start
23 in the lighting.

24 MR. ESCOBAR: Is this where you're going
25 to do the metadata stuff?

1 MR. MARTIN: Yeah. Well, I never got to
2 these photographs.

3 MR. ESCOBAR: Oh.

4 MR. MARTIN: We only went to Photograph,
5 like, 80. There's 185.

6 MR. ESCOBAR: Okay.

7 MR. MARTIN: All right?

8 MR. ESCOBAR: Yeah.

9 MR. MARTIN: All right.

10 BY MR. MARTIN:

11 Q I'll try to make this easy for you. I have a
12 copy of the metadata that we can read. Depending on
13 what we need, I may or may not put it in, unless you
14 have it in some form.

15 A I have it. I have it.

16 Q Because the form that I have it on the
17 computer you can't read worth nothing.

18 A Yeah. I --

19 Q It came in a note form. Do you have it?

20 A Well, I've got it that way, and I've got
21 it -- I've got the individual pictures so I can pull it
22 up on the pictures themselves.

23 Q All right. Good. Well, then we'll just see
24 what we need then.

25 Okay. Do you have Photograph 154 up there?

1 A I do.

2 Q Okay. Now, Photograph 154, if you would look
3 at the metadata for that. All right? It's on
4 Page 564, at least the way I have it printed out.

5 A Okay.

6 Q You got it?

7 A Yep.

8 Q We already discussed the type of camera you
9 have, but let's just get this on the record so we have
10 everything done. The camera you were using?

11 A Nikon D800.

12 Q All right. It is a 35-millimeter body?

13 A Yes.

14 Q The lens that you used at the theater to take
15 a photograph of 154, what millimeter lens was it?

16 A 28-millimeter lens.

17 Q Is it a fixed lens or can you zoom the lens?

18 A No. It's a prime lens.

19 Q Again, we're still talking about
20 Photograph 154. If you would go ahead and tell me the
21 exposure time for that?

22 A 1/40 of a second.

23 Q Your f-number?

24 A 2.8.

25 Q Exposure program?

1 A Manual.

2 Q ISO?

3 A 6400?

4 Q Exposure compensation?

5 A Let's see. It should have been set to 0.

6 Yeah, 0.

7 Q You correct me if I'm wrong, but in looking

8 at all the metadata for the theater settings up to

9 Photograph 154, those were the settings that you used.

10 A I believe so. I took exposure reading and I

11 used the same settings for all those photographs

12 because the lighting wasn't changing.

13 Q All right. And what was your exposure

14 reading?

15 A Well --

16 Q It had a meter, right?

17 A Right. It comes out to, at those settings,

18 ISO 6400 and f/2.8. That came out to 1/40 of a second,

19 was the reading from the matrix meter in the camera.

20 Q You used the meter in camera. You didn't

21 have a handheld?

22 A I do have a handheld and I probably used the

23 handheld as well for incident reading. But what I came

24 up with from using both meters is f/2.8 at 1/40 of

25 second, ISO 6400.

1 Q What is the handheld meter that you have?

2 A It's a Sekonic. I don't have it in front of
3 me to give you the model number, but it's one of the
4 Sekonic, which for the court reporter, that's
5 S-E-K-O-N-I-C.

6 Q You relied on the metering of the camera then
7 for the setting that you just put on the record as far
8 as the exposure time, 1/40, 2.8 and 6400 ISO?

9 A Basically. I mean, usually what I do is get
10 a reading of both, so I would get the incident meter
11 reading from the handheld meter because the camera once
12 are won't give me an incident reading.

13 Q What is an incident reading?

14 A That's where it's reading how much light is
15 falling on the subject versus what the camera is
16 reading as a reflective light reading. So it's reading
17 how much light is being reflected back toward the
18 camera, which depending on what subject matter is, they
19 can be grossly different or they could be very similar.

20 Q What was the subject matter then on
21 Photograph 154?

22 A The movie theater. I mean, the seats and
23 stuff. So you have sort of mid-range color tones and
24 stuff, moderate reflectants, which means the incident
25 reading and the matrix meter reading are roughly the

1 same.

2 Q All right. Let's start delving into the
3 pictures dealing with the lighting. If we go to
4 Photograph 155?

5 A Okay.

6 MR. MARTIN: Madam Court Reporter, if
7 you'll mark this next in order. I think it's
8 No. 2. Be a composite, Photographs 155, 56
9 and 57.

10 (The item last above referred to was marked
11 for identification as State's Composite Exhibit
12 No. 2.)

13 BY MR. MARTIN:

14 Q (Tendered to the witness.)

15 Let's start out with 155. And just as a
16 layperson looking at the picture, it appears that there
17 has been a significant change in the lighting from when
18 you were trying to document the scene with your rulers
19 and measures.

20 A Yes.

21 Q With your rulers and taking measurements.

22 So beginning on 155, what was the house
23 setting, Photograph 155?

24 A That was the first dimming, if memory serves
25 me, and it's been months and months since I did this.

1 But I think he -- the manager that had shown -- was
2 there that day and showed us how the lighting worked,
3 that there's full house lighting, which is what was on
4 for the pictures up through 154. Then there is a --
5 there's two stages of lighting coming down as the movie
6 progresses, begins -- previews and stuff begin until
7 they finally get to the third setting, which is where
8 there's a complete absence of light other than just a
9 couple of little ones that are on in the movie theater.

10 So this is the setting -- I think this is
11 the -- this is the setting that the theater would be at
12 when people -- when patrons are coming in. What I had
13 him do is originally, we had everything turned on,
14 which included the fluorescent lights that they only
15 turn on when -- when it's just staff in there cleaning
16 and things like that. This, I believe, is the level
17 that was -- would be the house lights as patrons are
18 entering the movie theater.

19 And then as you see, the pictures get
20 progressively darker. It steps down to the previews
21 level and then to the movie level.

22 Q All right. If you would look at the metadata
23 then for that particular photograph, which is on
24 Page 568, at least the way I have it organized. We
25 have the setting as the same. However, we now have

1 a -- we have a different exposure time of 1/20.

2 A That's right.

3 Q All right. Other than the difference in
4 exposure time, as far as the setting of your camera
5 from the previous photograph, when you had the full
6 lights on, that is the only difference.

7 A Yes.

8 Q And how -- why did you choose an exposure
9 time of f/20 -- not f/20 but 1/20?

10 A 1/20 of a second. The exposure time was
11 based upon the matrix reader reading in the camera.

12 Q And what does -- what is the difference
13 between an exposure time of 1/40 and 1/20, not in time
14 but as far as the effect on the captured object?

15 A Well, it's a one-stop difference in
16 photographic terms, which means that it's -- you're --
17 you're basically doubling the exposure. So you're
18 allowing light to come in for twice as long, which
19 means that you basically doubled the exposure.

20 Q In taking Photograph 155, what are you
21 attempting to document?

22 A Just showing what that lighting appears like
23 as you enter the movie theater under those conditions.

24 Q And how is this particular setting indicative
25 of how the human eye would envision the lighting inside

1 the theater?

2 A Well, what I do in photographic lighting
3 conditions is I'm making comparisons of how the image
4 appears on the camera's display and comparing that to
5 what my eye sees when I'm looking at it. So obviously,
6 if there are gross differences between what I see when
7 I look in the movie theater and what the camera's
8 rendering, then I would alter the exposure accordingly.

9 But what happened in this particular case is
10 the matrix meter reading made a pretty good reading
11 that rendered it to match with what I saw, so it's a
12 very close rendition of what I could see.

13 Q If you look at the bottom left corner, just
14 appears to be black. Are you indicating to me that
15 when you looked down, you couldn't see your shoes?

16 A Well, no. And, I mean, I would differ with
17 you on the representation that it just appears to be
18 black. It's quite dark and that has to do with
19 differences in the lighting between one part of the
20 theater and another part of the theater, that there's
21 less lighting falling on that area than there is
22 further up because you can see that in this particular
23 light setting, the CineBistro, which is above the level
24 of where the main seating is, that you have almost full
25 lighting. And that -- obviously because there's people

1 up there that would be eating and things like that,
2 whereas once you reach the wall between the CineBistro
3 and the main theater seating, there's considerably less
4 lighting falling directly down onto it. And as you get
5 further towards the front of the theater, then it
6 becomes less lighting, and that's what the camera
7 rendition is doing.

8 Bear in mind that no photograph will ever --
9 no single photograph will ever represent the full range
10 of dynamics that the human eye can see because the
11 camera sensor is not as sensitive to differences in
12 light intensity as the human eye is.

13 So the only way to represent that fully would
14 be through bracketed shots, and you could use HDR
15 manipulation and things like that afterwards. But I'm
16 not going to do HDR manipulation to change the
17 photograph. I'm going to give you the representation
18 of the photograph as it appears to be.

19 And my main focus in terms of lighting
20 rendition was not what was directly in front of me as
21 I'm standing here because this area where I'm standing
22 when I take the photograph is not where the shooting
23 occurred but to represent as closely as possible the
24 lighting that occurred in that area where the shooting
25 actually took place.

1 Q At the time that you took Photograph 155,
2 there was nothing playing on the screen? There was no
3 ambient light from the movie screen?

4 A That's right. At the time of -- that we did
5 these photographs, there's nothing on the screen. The
6 only lighting that you're seeing is the actual house
7 lighting.

8 Q And having that ambient light on the movie
9 screen would definitely increase the amount of light
10 that the human eye can pick up at any given time within
11 that movie theater.

12 A Right. 'Cause you're going to have the light
13 source, which depending on what's on the screen could
14 be quite intense in comparison to the other lighting,
15 or it maybe fairly subdued, depending on the -- what's
16 being played. And what that would tend to affect is --
17 the particularly closer lighting is going to see the
18 effect of that more so than the seats that are further
19 back.

20 Q As far as the camera lens.

21 A Well, both. I mean, because --

22 Q When you say "both," both what?

23 A Whether you're looking at it with the human
24 eye or whether you're looking at it from the camera
25 lens, there is a difference between how much light

1 falls closer to the screen than further away from the
2 screen. I mean, any light source, the further away you
3 get, the less intense the light will be.

4 Q As far as the human eye being able to detect
5 that light and to use that light in a three-dimensional
6 space, it's a lot different than what a camera lens
7 uses. Camera lens is two-dimensional, right?

8 A Well, dimensionally, you're correct in that
9 the camera lens is rendering a three-dimensional world
10 into a two-dimensional image. But that will affect the
11 perception of dimension, not so much a rendition of the
12 intensity of the light.

13 Q And as far as the human eye is adjusting to
14 different light sources and different intensities of
15 light, the pupil of the eye opens and closes in order
16 to gather in the light.

17 A That's correct.

18 Q And -- which is much broader -- I'm going to
19 use the term "broader," and you may correct me if I'm
20 wrong. But as far as the human eye, you have the
21 peripheral vision, that, you know, I can see my fingers
22 almost beyond 180 degrees, where the lens camera can't.

23 A Well, it would depend on what lens you use.
24 There are lenses that could --

25 Q Your lens was --

1 A But this lens is not going to get that much
2 of an angle, no.

3 Q No. It's a 28-millimeter lens.

4 A That's correct.

5 Q Okay. So it's not like the human eye as far
6 as being able gather in all the light from the
7 peripheral vision and then having the human brain
8 determine what it can and can't see. The lens just
9 doesn't take it in like the human eye, does it?

10 A Right. No. I mean, you know, there's -- the
11 camera is a -- a means of recording light. It is not a
12 replication of human vision.

13 Q Photograph 156, 157, the metadata indicates
14 the same -- same house setting?

15 A For 156 and 57, you're asking about?

16 Q Right. Those are the -- that's State's
17 Exhibit No. 2. Same house setting?

18 A Those are the same house setting.

19 Q Same house?

20 A Yes.

21 Q I'd like to go to 158, which is -- you have
22 some objects sitting on the seat and 158, 159, 160,
23 161, 162, 63, 64, 65, 166, 167, 168. That's it. What
24 is the purpose of the objects on the seat in taking
25 those photographs? What were you trying to depict?

1 A Those are scales that were on in previous
2 photographs to show measurement. They're really not
3 depicting anything here other than it provides location
4 of where these seats are. That's really the big thing
5 is by having the ruler in place in the photograph, you
6 can identify the seats where Mr. Reeves and his wife
7 were sitting.

8 Q What was the house settings, if we can go,
9 starting with 158 through 168?

10 A It was the same as for the prior photographs
11 for the -- starting at 155.

12 MR. MARTIN: Madam, would you make that
13 No. 3?

14 (The item last above referred to was marked
15 for identification as State's Composite Exhibit
16 No. 3.)

17 MR. MARTIN: All right. Thank you.

18 BY MR. MARTIN:

19 Q (Tendered to the witness.)

20 Beginning at Photograph 169, 70 and then I'm
21 just using, as reference, 171. What is captured by the
22 camera significantly darker to me than 170. Do we have
23 a change in house setting at 171?

24 A Yes, we do. That's when it's dropped down to
25 the next level down.

1 Q All right. So 169 and 170 are the same house
2 settings, what you indicated when people walk in?

3 A Yes. Through 170 would be the level at which
4 people would enter the theater, and then 171 is the
5 level when it begins the previews.

6 Q I want to make sure that we use the same
7 terms throughout your depo. Let me just show your
8 depo. On Page 126, we talked about the level settings?

9 A Right. There's Level 1, Mid 1 and Mid 2.

10 Q All right. So go ahead and explain to me.
11 So when we're talking about these particular
12 photographs, Level 1, Mid 1 and Mid 2, that's what the
13 settings were. What is Level 1?

14 A Level 1 would be when the -- the lighting
15 that's on at the time that people enter the movie
16 theater.

17 Q All right. And Mid 1?

18 A Mid 1 is at the time that the show begins,
19 not the feature movie but the trailers and -- and what
20 have you.

21 Q And Mid 2?

22 A Mid 2 would be when the feature starts so the
23 actual movie begins.

24 Q And based on your sequencing of the event, do
25 you know whether or not the shooting took place when

1 the lights were at Level 1, Mid 1 or Mid 2?

2 A They would have been at Mid 1.

3 Q In order to save a lot of questions, any of
4 these photographs, 155 through 188, did you take at
5 Mid 2 since it wasn't at the time of the shooting?

6 A I believe 183, 184 and 185 were taken at
7 Mid 2.

8 Q 81, 82 and 83?

9 A No, 83, 84 and 85.

10 MR. MARTIN: All right, Madam Clerk
11 [sic], would you go ahead and mark these?

12 BY MR. MARTIN:

13 Q Photograph 183, 184 and 185, correct?

14 A That's right.

15 Q Is that Mid 2?

16 A That's correct. Those are Mid 2. And you
17 can see when you look at the photographs, you can
18 barely see anything.

19 (The item last above referred to was marked
20 for identification as State's Composite Exhibit
21 No. 4.)

22 MR. MARTIN: Thank you, ma'am.

23 BY MR. MARTIN:

24 Q (Tendered to the witness.)

25 As far as Photographs 169 and 170, was that

1 at Level 1 or Mid 1?

2 A 169 and 170, I believe, are at Level 1 'cause
3 that's when the -- the lights in the CineBistro are
4 completely on.

5 MR. MARTIN: Would you mark this one as
6 next in order, please, ma'am?

7 (The item last above referred to was marked
8 for identification as State's Composite Exhibit
9 No. 5.)

10 BY MR. MARTIN:

11 Q So State's Exhibit No. 5 will be
12 Photographs 169 and 170 at house lights Level 1.

13 A That's right.

14 Q Regarding Level 1, are the lights for the
15 stairwell on that you walk up and down?

16 A Yes. The -- for Level 1, the fluorescent
17 lights are off. The can lights and sconces are at
18 100 percent, and the emergency floor step lights are
19 on.

20 Q Is that all the lights that are on on
21 Level 1?

22 A Yes. That's what was conveyed to me by the
23 manager.

24 Q All right. As far as Mid 1, what lights are
25 on?

1 A For Mid 1, the sconces and can lights dim
2 down and everything else stays the same.

3 Q The sconces on the wall are dim?

4 A Yes, yes, the sconces and the cans.

5 Q The cans in the ceiling?

6 A Cans in the ceiling and sconces on the wall,
7 yes.

8 Q Are dim.

9 A That's right.

10 Q But everything else remains the same as in
11 Level 1.

12 A That's right. I believe that the floor
13 lights are still on at that time.

14 MR. MARTIN: No. 6.

15 (The item last above referred to was marked
16 for identification as State's Composite Exhibit
17 No. 6.)

18 BY MR. MARTIN:

19 Q All right. State's Exhibit No. 6, which is
20 Photograph 171, and 172, is that when we begin with
21 Mid 1?

22 A Yes.

23 Q And what are we attempting to depict in
24 Photographs 171 and 172, State's Exhibit No. 6?

25 A That's the Mid 1 lighting as it was set at

1 the time that I was there in the theater.

2 Q And what are you attempting to convey by that
3 photograph?

4 A I'm just documenting what the lighting
5 conditions were as -- during my examination.

6 Q With all the same parameters we previously
7 discussed between the difference between the human eye
8 and camera lens?

9 A Right.

10 MR. MARTIN: This will be State's
11 Exhibit No. 7, Photographs P173 through 179.

12 (The item last above referred to was marked
13 for identification as State's Composite Exhibit
14 No. 7.)

15 BY MR. MARTIN:

16 Q Again, we have the -- I'll call them "marker
17 scales," objects on the seats (tendered to the
18 witness), correct?

19 A That's correct.

20 Q Now, State's Exhibit No. 7 photographs, that
21 was at lighting level Mid 1?

22 A Yes.

23 Q And what are you attempting to depict?

24 A That is just showing -- again, I'm taking
25 different viewpoints and showing what the lighting was

1 like at the time that I made -- did the examination in
2 the movie theater.

3 Q Now, you were there, right?

4 A Yes.

5 Q All right. And you could see those objects
6 on the seat with your human -- with your eyes.

7 A Yes.

8 Q You could see all the seats around you?

9 A Yes.

10 Q Every one of them within your view.

11 A Well, within -- yeah, right. Within view, I
12 think you could pretty much see all the seats in the
13 theater.

14 Q All right. Now, in looking at
15 Photograph 173, looking to the far left, can -- did the
16 camera pick up all the seats that the human eye picked
17 up?

18 A Well, I'll refer to my digital photograph
19 because you can see a lot more in it than you can in
20 than that printing.

21 Q Well, I only got PDF. So you have something
22 better?

23 A Well, they came out about the same, it looks
24 like, probably.

25 Q So in the photograph, you can't see the seats

1 in the photograph that your human eye picked up,
2 correct?

3 A In that particular photograph, that's
4 correct. You can't really see it.

5 Q 174, same question. Far left, can't see the
6 seats that your human eye picked up.

7 A That's correct.

8 Q 175, you can't see all the seats that the
9 human eye picked up?

10 A You can pretty much see all the seats in 175.
11 In frame, there's only a few seats that actually come
12 in frame. In looking at the digital, I can actually
13 see it.

14 Q The top part is the wall?

15 A That's correct.

16 Q All right. Photograph 176, again, the top
17 part is the wall? That's why it's dark?

18 A That's right.

19 Q All right. Now, as far as the bottom
20 right-hand corner of Photograph 176, again, the human
21 eye can pick up the seats but in the photograph, we
22 can't?

23 A That's right.

24 Q Same question for Photograph 177. Bottom
25 right-hand corner, your human eye can pick up all those

1 seats but the lens can't.

2 A You can mostly -- in the digital, you can
3 mostly see those seats because there's the wall behind
4 it. So you have the seats. I can make out the seat
5 bottoms and the armrests. The row in front of it, you
6 can make out the top edges of the seats, and then
7 the -- you can see above the wall where CineBistro is.
8 So --

9 Q But the human eye can see it a lot better,
10 correct?

11 A Well, I won't categorize as a lot better.
12 The human eye can see it differently than this.

13 Q How differently? You're going to have to
14 quantify it. It's going to have to be better. It
15 can't be any worse.

16 A Well, better would be not -- that would be
17 qualitative, not quantitative. It's, I would say,
18 probably better, but that would be a qualitative
19 answer, not a quantitative one.

20 Q Photograph 178, same question. Human eye can
21 see a lot more than captured with a lens?

22 A Well, I'll qualify my answer the same way. I
23 won't say a lot more. The human eye will see it
24 differently.

25 Q And different in what way?

1 A You would probably make out more detail in
2 person than you are from this photograph.

3 Q Photograph 179, same question.

4 A Probably the same answer. I mean, this is
5 not a -- in terms of photographic representation, this
6 is not terribly far off from what it appears to be.
7 But, again, within the constraints of what a camera can
8 do, it does not have the dynamic range of the human
9 eye, so you're not going to get the same from
10 highlights to shadows that you would get with the human
11 eye.

12 Q When we talked previously about how the human
13 eye responds to light and how we can attempt to capture
14 it with the camera, do you recall your previous
15 testimony indicating that the literature seems to
16 suggest between a 43- and a 50-millimeter lens best
17 represents the human eye?

18 A Right. Oh, yes.

19 Q All right. In this particular case, you
20 stuck with a 28 prime lens.

21 A That's correct.

22 Q I know when we get to the mannequins, you at
23 least had a 55. Do you have a 50 prime lens?

24 A I have a 50 prime but it's not one that I
25 would use for forensic work. The 55 is what I normally

1 use for normal view representation.

2 Q But you did not -- you had that available and
3 you close to use and maintained to use the 28 when you
4 took all these pictures representing the lighting
5 conditions.

6 A Right. But I think you're -- you're
7 interpreting that these were meant to represent human
8 eye and they are not. I was not intending to represent
9 human vision in this particular series of photographs.
10 I'm just documenting what the theater lighting is, what
11 it looks like, not what the human eye would see sitting
12 in any particular perspective. But as I'm there
13 photographing what's there, I'm taking photographs that
14 show the theater in the various different states of
15 lighting that were demonstrated to me.

16 Q Well, you placed markers down particular
17 chairs so people looking at the photographs can have a
18 reference point as to where participants in the
19 shooting event took place. So when you tell me that
20 you're not trying to document what the human eye can
21 see, what are you trying to document, not what the
22 human eye can see?

23 A I'm documenting what the lighting conditions
24 are at the time that I did the examination at the movie
25 theater. I'm not trying to represent what anybody saw

1 because clearly, I'm walking around from different
2 perspectives and just taking various photographs. None
3 of these are taken from a particular witness vantage
4 point. None of them are taken from any of the involved
5 parties' vantage point. It's just a documentation of
6 the lighting conditions at the time that I actually
7 examined the theater.

8 The light -- the photographs that I took that
9 would be representative of lighting conditions that
10 people saw would be the ones that were taken with the
11 mannequins later.

12 Q When we talk about the lighting conditions
13 and documenting the lighting conditions, then how would
14 the photographs from 155 through 188 fairly and
15 accurately represent what a human being would perceive
16 as being the lighting conditions at the movie theater
17 at Level 1 and Mid 1 and Mid 2?

18 A Well, that's not what I'm trying to represent
19 with those.

20 Q Then why did you take the pictures?

21 A I've already asked -- answered that question.
22 I took those photographs because I had the manager show
23 me the different lighting levels. And I'm just
24 documenting my -- an examination of the movie theater
25 at that time. Just as I would if I was a crime scene

1 investigator that worked in this case, I would have
2 documented various aspects of a crime scene that are
3 not necessarily intended to represent what a person saw
4 but to represent what was there. What is this? What's
5 the difference in the lighting? I'm not trying to
6 represent it as this is -- the human being there would
7 see because I can't do that without being in a specific
8 position of a specific person under specific
9 duplication of the lighting conditions.

10 As you pointed out, I did not have the movie
11 theater -- there was nothing on the screen. This is
12 not a rendition of what anybody saw. This is just a
13 photograph documenting my examination of the movie
14 theater at that time.

15 Q All right. We're going to move on.

16 You have your metadata for the mannequins?

17 A Yes.

18 Q All right. Go ahead and get that pulled up.

19 Ready?

20 A Yes.

21 Q We're going to talk about the photographs
22 that were taken on your second visit to Cobb Theatre,
23 which involved the mannequins. Now, we previously
24 discussed some of the aspects regarding all of those
25 photographs, but now that we have the metadata, we're

EXHIBIT #2







































































