

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF
THE STATE FLORIDA, IN AND FOR PASCO COUNTY
CASE NO. CRC14-0216CFAES

STATE OF FLORIDA,

Plaintiff,

vs.

VOLUME VII

CURTIS J. REEVES,

Defendant.

PROCEEDINGS: Stand Your Ground Motion

DATE: February 23, 2017

BEFORE: The Honorable Susan Barthle
Circuit Court Judge

PLACE: Robert D. Sumner Judicial Center
38053 Live Oak Avenue
Dade City, Florida 33523

REPORTED BY: Charlene M. Eannel, RPR
Court Reporter
PAGES 781 -

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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Good morning.

3 MR. ESCOBAR: Good morning, Your Honor.

4 MR. GARCIA: Good morning, Judge.

5 Judge, Mr. Martin should be here any minute.

6 THE COURT: Okay.

7 MR. GARCIA: There's a few things we were doing
8 this morning.

9 THE COURT: I'm sure you were.

10 Is your first witness here, Mr. Michaels?

11 MR. MICHAELS: Yes, Your Honor.

12 MR. ESCOBAR: As soon as Mr. Martin gets
13 settled, if we could approach the bench?

14 THE COURT: Is there something that we will
15 have to approach on?

16 MR. ESCOBAR: I would think so.

17 MR. MARTIN: Good morning. There's two motions
18 on the desk that I just saw. So I'm going to need a
19 few minutes to read before we approach.

20 Is that acceptable to the Court?

21 MR. ESCOBAR: Judge, those are the motions that
22 we normally would make orally before calling the
23 witness. We thought it would be prudent to do a
24 written motion with some memoranda so that everybody
25 could read our arguments.

1 THE COURT: All right.

2 MR. MARTIN: Well, great. Because we weren't
3 put on notice, so I haven't done the research. I
4 haven't read the arguments. I haven't read the
5 cases. There you go. So I really can't even
6 respond so I could make an informed decision.

7 THE COURT: So you will need some time?

8 MR. ESCOBAR: Judge, these are issues that we
9 deal with every day in trial. This is an adverse
10 issue of an adverse party, and whether the witness
11 is associated with that adverse party. It is a
12 pretty basic thing that we've done in trials, and
13 I'm sure Mr. Martin has handled that numerous times.

14 Like I said, most of the time we saw them as an
15 adverse party to begin with, just do it orally.
16 Because of that, we wanted to make sure that we had
17 a written memorandum so that everybody was clear.

18 Mr. Martin?

19 MR. MARTIN: Judge, I want to read what he had
20 written.

21 THE COURT: Certainly. That is understandable.
22 Why wasn't this brought up before today?

23 MR. ESCOBAR: We just did it orally. We just
24 finished this morning, but we wanted to have
25 something in the Court's hand. It's not a lengthy

1 memo. I think it is three pages. The same thing.

2 THE COURT: Clearly, there's -- I would not
3 think it would be unanticipated. It is not a novel
4 concept.

5 Is this going to impact your order of --

6 MR. ESCOBAR: First witness will be Nicole
7 Oulson.

8 Judge, we actually did this to save time
9 because we have, sometimes, these protracted
10 arguments before the Court. We figured if we would
11 just put something in writing before the Court,
12 everybody could read it and then it would be a basis
13 for our request. We would not have to have, you
14 know, lengthy arguments on the issue. I think the
15 case law is pretty solid.

16 THE COURT: How do you wish to proceed,
17 Mr. Martin?

18 MR. MARTIN: I would like ten minutes to read
19 the pleading. Then I will discuss it with the
20 Court.

21 Is that acceptable?

22 THE COURT: That seems reasonable.

23 MR. MARTIN: May I step outside so I may read
24 the document?

25 THE COURT: Yeah. And I'll exit too. No sense

1 in everybody just standing --

2 MR. ESCOBAR: Judge, before we do that, can we
3 approach on one matter?

4 THE COURT: Yes.

5 MR. ESCOBAR: Judge, last time it came to light
6 that you had told us in preparation for trial that
7 you take your grandchild to school in the morning,
8 and so we had set that up for 8:30.

9 THE COURT: That's fine. That's okay.

10 MR. ESCOBAR: I'm sure that we can do it at 9.

11 THE COURT: No, we're good.

12 MR. ESCOBAR: That was my --

13 THE COURT: I got it covered already, so...

14 MR. ESCOBAR: I just thought about that last
15 night. So I figured he did --

16 THE COURT: He will tonight to have this early
17 tomorrow.

18 All right. Let's go ahead, take a ten-minute
19 recess.

20 (Recess.)

21 THE BAILIFF: You may be seated. Thank you.

22 THE COURT: Mr. Martin, did you have an
23 opportunity to review the motions?

24 MR. MARTIN: I have.

25 THE COURT: All right. Argument?

1 MR. MARTIN: It's his motion.

2 MR. ESCOBAR: Judge, I'm going to rely,
3 obviously, on my memorandum concerning the law, but
4 let me give the Court a little bit of background. I
5 think a little bit of foundation why we think this
6 way is important.

7 As the Court knows, where Officer -- or Deputy
8 Gillotte -- Corporal Gillotte back then at the
9 Sheriff's Office -- when she transferred over to
10 PTD, we thought that was enough separation not to
11 ask for this particular type of process of an
12 adverse party.

13 However, the -- certainly all -- the majority
14 of the officers that are going to be testifying in
15 this case work for Sheriff Nocco.

16 If the Court remembers, when this case first
17 came up, Sheriff Nocco had, I believe, multiple
18 press conferences voicing his opinion as to why he
19 had arrested Mr. Reeves, what evidence he thought
20 was the factual basis for the arrest of Mr. Reeves.

21 And even as late as of yesterday when I made my
22 statement here that I believed that the
23 investigation in this particular case was flawed, if
24 you read the article from Channel 13, you will see
25 that he responded immediately. He must be watching

1 live stream this particular hearing, but he
2 responded immediately.

3 And his statement was -- and I'm going to read
4 it for the Court. His statement was, "It's
5 disappointing that the Defense Attorney is
6 discrediting the professionalism of our outstanding
7 members to deflect attention from the legal issue at
8 hand."

9 And so as you can see, he is making that
10 statement to all of his officers that are employed
11 below him. And so all of my reasons for wanting to
12 make the officers adverse parties, I think, dovetail
13 into these particular foundations.

14 It is very, very common, as the Court knows,
15 when there's an officer that's part of the
16 investigative team, the prosecution team, that the
17 Courts often allow the Defense Attorneys to use
18 leading questions, and do, in fact, find that the
19 officers are an adverse party.

20 These officers are associated, obviously, with
21 Sheriff Nocco. He employs them. He is going to
22 probably be watching their testimony here, because
23 obviously he was very quick to comment yesterday on
24 my statement.

25 THE COURT: Response?

1 MR. MARTIN: First motion I would like to deal
2 with, Judge, is the Motion to Declare the Police
3 Officers as A Hostile Witness.

4 Let me direct your attention to the pleading
5 itself. Motion to designate Anthony Bossone and
6 each and every listed witness employed by the Pasco
7 County Sheriff's Office as a witness identified with
8 an adverse party under 90.6123, and to allow the
9 Defense to interrogate each witness -- interrogate
10 each of them with leading questions.

11 If you go to page 2 of 4, the first paragraph
12 reads, "After amendments were implemented, once a
13 witness is identified with an adverse party, leading
14 questions are automatically permitted during direct
15 examination.""

16 And he quotes Ehrhardt, page 728. Ehrhardt at
17 page 728 states -- Section 90.612(3) provides that,
18 "a hostile witness may be examined with leading
19 questions on direct examination since they are" --
20 "since they are necessary. Hostility is determined
21 at the time the witness testifies and is not
22 presumed."

23 That's not in his motion. This isn't
24 automatic. It is not presumed.

25 Now, let me talk about the cases that were

1 cited by the Defense. They have to show that
2 there's a relationship in which there would be a
3 situation where the party would have an interest in
4 not cooperating with the examinations by the
5 attorney.

6 One of the examples that Ehrhardt points out is
7 when a defendant police officer, that his attorney
8 wants to call fellow officers of that defendant
9 police officer, former police officer, and, of
10 course, suggested that that relationship was a
11 relationship that was close enough where they could
12 be declared to be hostile.

13 Now, what we have here, Judge, is we have Mr.
14 Reeves. He has no relationship with the Pasco
15 County Sheriff's Office, none of the officers or
16 former officers of the Pasco County Sheriff's
17 Office.

18 This is not a civil case. This is a criminal
19 case. This is a case where you have police officers
20 that have written reports. This is a case where we
21 have police officers that have been deposed ad
22 nauseam for days at times. They are locked in to
23 everything that they're going to say in the
24 deposition.

25 Mr. Escobar has that. He can question them.

1 If they divert from the deposition and they don't
2 have a reasonable explanation as to why they're
3 diverting from the deposition, then they'll probably
4 be impeached by their deposition.

5 So there are tools and safeguards that are out
6 there that are at the disposal of Mr. Escobar. You
7 can't presume that the police officers are going to
8 come in and testify just because Mr. Escobar asks
9 the questions as opposed to me asking the questions.
10 It cannot be presumed.

11 So you can't -- he cannot establish a
12 relationship automatically. Now, during the course
13 of the examination, if things take place where it's
14 apparent to the Court that the officers are not
15 forthwith like they would be with any other person
16 asking them questions, then maybe at that time is
17 when it's right to have this inquiry to determine
18 whether or not they're going to be declared hostile
19 witnesses. But we can't presume automatically that
20 they're hostile just because they work for the
21 Sheriff's Office.

22 So that's the first part. The second --

23 MR. ESCOBAR: Judge, may I respond to that one,
24 so that you keep them apart? Because Mr. Michaels
25 is going to be arguing the one on Ms. Oulson.

1 THE COURT: Are you going to take the second
2 part with Ms. Oulson?

3 MR. MARTIN: Yes, but however the Court wants
4 to proceed, I'm in --

5 THE COURT: Go ahead. Respond to that.

6 MR. ESCOBAR: Judge, I assume that Mr. Martin
7 is just confused concerning this particular section,
8 because what he failed to do is to read the next
9 sentence. At no point in time in my motion do you
10 see the word "hostility."

11 My motion says "adverse party." And so let
12 me -- let me read to you the next sentence in
13 Ehrhardt that he failed to read to you. And I am
14 sure that that was just inadvertent on his part.

15 The next sentence says, "Leading questions may
16 be used during direct examination of an adverse
17 party. An inherent incentive exists in an adverse
18 party to provide self-serving testimony by avoiding
19 the question or slanting the answer."

20 Section 90.612(3) also provides that "leading
21 questions can be used during the direct examination
22 of a witness identified with an adverse party, being
23 a former or present employee, a coworker, a
24 relative, or having a romantic interest in an
25 adverse party, is sufficient to find that a witness

1 is identified with the adverse party, and leading
2 questions are automatically permitted during the
3 direct examination.

4 So to an officer, director, or managing agent
5 of a public or private corporation, or a partnership
6 or association who is an adverse party, or witnesses
7 identified with an adverse party under this
8 particular section."

9 So he's mixing apples and oranges. This is not
10 hostility. This is merely an adverse party, which
11 is proper under the rule.

12 MR. MARTIN: All the cases cited by Defense
13 Counsel deals with civil cases where you do have
14 adverse parties. That's why I started out this is a
15 criminal case. And we cannot presume that the
16 police officers are going to testify any
17 differently, depending on who they're called -- and,
18 again, I'd point out that as Mr. Escobar tried to
19 already point out to the Court, officer Gillotte
20 testified. He didn't declare her a hostile witness.
21 He said, "Oh, the separation is there. She's a
22 police officer listed by the State."

23 I find that a somewhat disingenuous argument,
24 because he says this police officer is okay, but
25 this one is not.

1 When we go back and look at the cases that are
2 cited, one of the cases that is cited is where the
3 prosecutor is allowed to lead a friend of the
4 defendant, who also participated in the crime.

5 Well, that's not what we have here. We don't
6 have officers who participated in the crime and are
7 equally culpable for the actions on Mr. Reeves.

8 So the cases that have been cited are not on
9 point where you have officers who just conducted an
10 investigation to be automatically declared adverse
11 parties pursuant to that rule so that leading
12 questions can be asked.

13 So I would suggest to the Court that we are
14 talking apples and oranges as far as the federal
15 cases that have been cited. And in this particular
16 case, we do not have what the rules contemplated as
17 an adverse party in a criminal case when the Defense
18 elects to call in their case officers who
19 investigated the crime. That is not what the rule
20 anticipated. And you cannot presume that they're
21 going to act any differently if they were called by
22 either party.

23 I don't have anything else, Judge. I think
24 you've read the cases. You've read Ehrhardt.

25 THE COURT: All right.

1 MR. MARTIN: It is what it is.

2 THE COURT: All right. My only -- the only
3 question left in my mind is as to Mr. Martin's
4 argument is incorrect, everybody has been deposed.

5 Does that have any bearing on --

6 MR. ESCOBAR: I don't believe, Your Honor. I
7 think -- I think the whole premise before adverse
8 party is that -- so that the litigants can have a
9 free-flowing smooth presentation of the evidence.

10 And because of the fact that these officers do
11 have an interest, and they have a boss that's
12 looking over this case with a magnifying glass.
13 That puts us in a predicament where, you know, we're
14 not going to have a free-flowing information unless
15 we are allowed to lead.

16 Obviously, these are experienced officers. If
17 I ask a leading question and that leading question
18 is not correct, they're going to be, you know,
19 well-versed to be able to say, "No, Mr. Escobar,
20 that's not correct. Let me tell you what it is."

21 But we've never had -- in 34 years of my
22 practice, I've never had a problem, you know,
23 calling a police officer an adverse party and have
24 this sort of litigation. Because it's very common
25 in litigation, criminal, civil, wherever it is.

1 It's part of the reason that the rules have been
2 formulated, is to allow that free flow of
3 presentation.

4 MR. MARTIN: Judge, I've been practicing for 34
5 years, too. This is the first time I've ever had a
6 Defense Attorney file a Motion to Declare a Police
7 Officer Adverse. So, no, it's not prevalent, it
8 doesn't happen all the time. It might be Mr.
9 Escobar's way of doing things, but, no, it's not.

10 And you've had police officers testify in your
11 court over and over called by the Defense. They
12 testify. It happens. So, no, this isn't automatic.
13 This isn't just, this is the way it always happened
14 and always should be done. You cannot presume that
15 they're going to testify any differently.

16 I think what -- and if I could humbly suggest
17 to the Court, respectfully suggest to the Court --
18 the Court wait to see how the flow goes.

19 If it's like Mr. Escobar says where they're
20 dodging the question, they're being evasive, then I
21 think that's the time for maybe the Court to make a
22 determination. But it can't be presumed in this
23 case.

24 MR. ESCOBAR: I just want to remind the Court
25 of what I've just read from Channel 13. I mean,

1 that is loud and clear to every officer in Pasco
2 County from their boss. And this is a very, very
3 serious trial where I've got someone's life in my
4 hands. And we can't just take chances and say,
5 "Well, let's see how it goes."

6 This is a -- this is a very, very serious
7 matter. I think the sheriff, you know, did enforce
8 yesterday when he made that particular statement. I
9 think he has put, you know, the pressure that he
10 wants to exert on his officers, and I think it's
11 unfair.

12 THE COURT: All right. There is no question
13 that, typically, law enforcement is called by the
14 State as witnesses. This type of hearing is, as we
15 all know -- kind of does a flip-side with the burden
16 on the Defense, so the Defense is the one calling
17 the witnesses in this case. And I also have the
18 ultimate authority to regulate the examination of
19 witnesses.

20 So in an abundance of caution and in order to
21 just move this along, I'm going to grant the
22 Defense's motions. There's no question that
23 they're -- because of the adversarial nature of our
24 justice system, the law enforcement officers'
25 interests are certainly typically at odds with that

1 of the defendant. I don't think I'm misstating
2 anything there. And in the case of Mrs. Oulson,
3 there's clearly been an identification with the
4 prosecution in this instance, not surprisingly so.

5 So I'm going to grant defense's motions on
6 that.

7 MR. ESCOBAR: Thank you, Your Honor.

8 THE COURT: Who is your first witness?

9 MR. MICHAELS: Defense calls Nicole Oulson.

10 THE BAILIFF: Step this way, stand right here.
11 Face the clerk, raise your right hand to be sworn.
12 (Thereupon, the witness was duly sworn on oath.)

13 THE BAILIFF: Come have a seat up here. Adjust
14 the mic. Speak in a loud and clear voice for the
15 Court.

16 THE COURT: You may proceed, Counselor.

17 DIRECT EXAMINATION

18 BY MR. MICHAELS:

19 Q. Good morning, Ms. Oulson.

20 A. Good morning.

21 Q. Please state your name for the Court reporter,
22 spelling your first and your last name.

23 A. Nicole Oulson, O-U-L-S-O-N.

24 Q. Let's talk about January 13th of 2014, okay?

25 A. Yes.

1 Q. On that day, you went to the theater with Mr.
2 Oulson?

3 A. Yes.

4 Q. You went to the Cobb theater in Wesley Chapel?

5 A. Yes.

6 Q. You went to see Lone Survivor for a matinee
7 showing?

8 A. Correct.

9 Q. You got there early?

10 A. Yes.

11 Q. And you sat in the upper section?

12 A. Yes.

13 Q. You sat one row from the very back row of
14 seats?

15 A. That's correct.

16 Q. Somewhere towards the middle?

17 A. Yes.

18 Q. And when you got there, it wasn't very busy?

19 A. Not at all.

20 Q. You were one of early ones to arrive?

21 A. Correct.

22 Q. There was a gentleman sitting in front of you
23 by himself?

24 A. Yes.

25 Q. And he had a brief conversation with Mr.

1 Oulson?

2 A. A friendly conversation, yes.

3 Q. Innocuous, about movies or something like that?

4 A. That's correct.

5 Q. A very friendly conversation?

6 A. Uh-huh.

7 Q. Is that "yes" for the Court reporter?

8 A. Yes.

9 Q. Okay.

10 MR. ESCOBAR: Your Honor, if we could have her
11 pull the mic down? There you go.

12 Thank you, Ms. Oulson.

13 BY MR. MICHAELS:

14 Q. Now, at some point, Mr. Oulson was on his
15 telephone during that early period?

16 A. Yes.

17 Q. And you weren't involved with that, except he
18 showed it to you briefly as a joke or of some sort?

19 A. Correct.

20 Q. And at some point, Mr. Oulson gets up to go
21 back to the refreshment stand to get some additional
22 snacks, some Twizzlers?

23 A. Yes.

24 Q. Before that, on the way in, you got some
25 popcorn and a Coca-Cola?

1 A. On our initial entrance after buying the
2 tickets, yes.

3 Q. Right. When you first got in?

4 A. Uh-huh.

5 Q. I left that out.

6 Now, in terms of when Mr. Oulson came back from
7 getting the Twizzlers, there was something on the screen,
8 but you don't remember what was playing?

9 A. Correct.

10 Q. You had a discussion -- or you didn't have a
11 discussion. You don't remember whether you discussed
12 anything with him at that point?

13 A. The only discussion we had, that I recall at
14 that point, was with a gentleman in front of us, and over
15 the -- the phone that he showed me before, some item we
16 were joking and laughing at.

17 Q. When Mr. Oulson gets back, he has his
18 Twizzlers, you don't know whether or not he was also
19 holding his phone?

20 A. No.

21 Q. At some point, because you were sharing the
22 popcorn, Mr. Oulson finishes some of the popcorn and
23 hands you a bag with some of the popcorn left?

24 A. Yes.

25 Q. And that popcorn you put to your left side on

1 the floor, eventually?

2 A. Down by my purse, yes.

3 Q. By -- I'm sorry?

4 A. Down to my left, by my purse, yes.

5 Q. And I didn't say this before, but when you were
6 in the theater as you face the screen, Mr. Oulson was on
7 your right?

8 A. Correct.

9 Q. Now, right around that time or close in time to
10 that, you pick up the armrest?

11 A. I can't say that, no.

12 Q. And you snuggled with Mr. Oulson?

13 A. I cannot say that at that specific time I
14 picked up the armrest, no.

15 Q. At some point, you pick up the armrest and you
16 cuddle with him?

17 A. The armrest could have been moved throughout
18 the time that we were there, yes.

19 Q. So do you remember lifting up the armrest?

20 A. I can't recall, no.

21 Q. Okay. Do you remember taking a deposition?

22 A. Yes.

23 Q. Okay. Let me show you something.

24 Now, I say "deposition" as if you know what
25 that means. Do you know what a deposition is?

1 A. Yes, I do.

2 Q. All right. Do you remember taking that right
3 here in this building?

4 A. Yes.

5 Q. On Monday, June 15 --

6 A. Yes.

7 Q. -- 2015?

8 A. Okay.

9 MR. MARTIN: Your Honor, I'm going to ask for a
10 page and line.

11 MR. MICHAELS: I'll give him the page and line
12 as soon as I get there.

13 MR. MARTIN: Your Honor, I'm going to ask for a
14 page number before he begins his questioning and
15 allow me time to read it, so I can put it in context
16 before he asks the questions because I may have an
17 objection.

18 MR. MICHAELS: I know Mr. Martin didn't hear
19 me.

20 As soon as I get to that page number, I'll give
21 it to him.

22 THE COURT: Correct.

23 MR. MICHAELS: Thank you.

24 Okay. It's page 125, lines 12 through 16.

25 I'll give Mr. Martin a chance to look at that.

1 THE COURT: Thank you.

2 MR. MICHAELS: Actually, we'll start on line
3 10. That puts it more in context.

4 "Question: You had a" --

5 MR. MARTIN: Excuse me, Judge.

6 THE COURT: Hang on.

7 Is there any objection?

8 MR. MARTIN: Yes, there is an objection. I
9 recall her statement, and I read her depo. I do not
10 believe it's inconsistent.

11 And I also object to the manner in which we're
12 attempting to use the depo. Because first you give
13 the witness an opportunity to read the deposition
14 where he wants it. Then you ask, "Having read the
15 deposition, do you recall this and this happened?"
16 "Yes."

17 We can't use the deposition as substantive
18 evidence and to start reading it into the record.
19 That is the proper way to attempt to use the
20 deposition, to either refresh or impeach.

21 Because right now, this is not inconsistent
22 with her testimony. It's worded a little bit
23 different, but it's not inconsistent. And that's
24 the trouble you have with just reading page after
25 page of deposition.

1 So I believe that is the proper procedure.
2 Allow her to read it. He then re-asks the question,
3 "Is that what you said?" "Yes."

4 And then if she says, "No, no, that's not,"
5 then you can read the deposition into the record.

6 That is the proper way to do it.

7 MR. MICHAELS: Judge, I disagree with that
8 tutorial. If I were to attempt to refresh a
9 witness' recollection, then I would tend to agree
10 with Mr. Martin.

11 However, in terms of impeaching, certainly I'm
12 not introducing evidence, as Mr. Martin knows and
13 the Court knows, you know, the information that is
14 published in the process of impeachment is for the
15 Court's consideration as to whether or not the
16 individual is being truthful. It's nothing -- we're
17 not introducing that statement as truth. And I
18 think Mr. Martin knows this.

19 If I may proceed?

20 THE COURT: Hang on.

21 The key to the impeachment is substantially
22 inconsistent. I'm not privy to the depo, so I
23 don't -- and that's often the point of contention.
24 What one person thinks is substantially inconsistent
25 is often not what I think is substantially

1 inconsistent.

2 So I'll need to see myself before I find that
3 it's proper impeachment. Somebody show me. But you
4 can read it. It's me.

5 MR. MICHAELS: You said show it, so...

6 THE COURT: Typically, we have a jury, so. But
7 we don't.

8 MR. MICHAELS: "Question: You had a cup holder
9 on your left?

10 "Answer: Yeah, I believe they're on every
11 aisle.

12 "Question: But you had raised one of them
13 between you and him?

14 "Answer: At some point, yes. I can't promise
15 it wasn't down to begin with when we were eating,
16 but when we snuggled, I would have lifted it up,
17 yeah."

18 MR. MARTIN: She doesn't remember the time she
19 did it. She didn't say it didn't happen. She just
20 can't put it in the sequence. And that's the
21 nitpicky part of when you're trying to use a
22 deposition. It has to be --

23 THE COURT: Substantially inconsistent.

24 MR. MARTIN: Exactly.

25 THE COURT: I'm going to --

1 MR. MARTIN: So that's --

2 MR. MICHAELS: Judge, but I don't agree with
3 the characterization. I don't believe her answer
4 was that, "I don't remember at which point." I
5 believe I asked her at any point if she lifted it
6 up, and I believe her answer was that she didn't
7 remember.

8 THE COURT: Well, in there she indicated she
9 didn't know if it was up to begin with. So it
10 wouldn't be completely inconsistent if she said she
11 didn't lift it up.

12 I'm going to sustain the objection.

13 BY MR. MICHAELS:

14 Q. At some point, the armrest between you and Mr.
15 Oulson was up, right?

16 A. It wouldn't be unusual throughout any movie we
17 go to for it to be up or down depending on what we were
18 doing at the time.

19 Q. And I understand, Ms. Oulson. And believe me
20 when I tell you that I'm not here to nitpick or harass
21 you, but it's important to be able to understand even
22 some of the details, so please bear with me.

23 At that particular movie at some point, was the
24 armrest up and were you snuggling with Mr. Oulson?

25 A. Yes.

1 Q. Okay, thank you.

2 Now, at some point, Mr. Oulson gets back on his
3 phone?

4 A. Correct.

5 Q. And we can agree that you don't know if he was
6 texting or looking through the Internet, you don't know
7 what he was doing because you weren't paying attention to
8 that?

9 A. Correct.

10 Q. And while that's going on -- and we're taking
11 it step by step -- there's something playing on the
12 screen, but we can agree you don't remember what was
13 playing on the screen?

14 A. That's correct.

15 Q. Now, at some point, close in time to that,
16 somebody sits behind you, right? A couple sits behind
17 you?

18 A. Yes. I don't recall seeing them come in or
19 specifically sit behind me, but, yes.

20 Q. Okay.

21 A. They did end up there.

22 Q. And you know that because at some point, you
23 were leaning against your husband and watching the screen
24 when somebody said something from the row behind you?

25 A. Correct.

1 Q. Now, what that person said, we can agree that
2 you don't remember what the exact words were?

3 A. I don't remember the exact words, but I
4 remember the message, yes.

5 Q. Okay. And the message had to do with something
6 to the effect of, "Either turn your phone off or put it
7 away"?

8 A. Correct.

9 Q. Now, you characterized that, or in your own
10 mind you thought that it was rude, right?

11 A. It was very rude, yes.

12 Q. But you can agree with me, you also thought
13 that in a way, it was kind of to the fact, that it was
14 just matter-of-fact in the way it was said?

15 A. It felt demanding and like an order, yes.

16 Q. Well, but you also agreed that it also sounded
17 just matter of fact --

18 A. Correct.

19 Q. -- right?

20 A. Yes. It wasn't a friendly, ask please, or can
21 you, or do you mind. It's just, "turn your phone off or
22 put that phone away," very demanding and very abrupt.

23 Q. But again, we can agree with this, I think,
24 that that was one interpretation, but you also saw it as
25 being very matter of fact, and not, for instance, you

1 know, kind of the way that you described it, so --

2 MR. MARTIN: Excuse me, Judge. I object. It's
3 been asked and answered. Now it's becoming
4 argumentative because he didn't like the answer.

5 MR. MICHAELS: Well, Judge, I disagree. If we
6 can just ask -- let me just ask Ms. Oulson one time,
7 just to clarify to see what the answer is.

8 BY MR. MICHAELS:

9 Q. You agree with me that you considered it, in
10 addition to the way you just described, as just a
11 matter-of-fact way of asking as well, right?

12 A. Yes. In addition to those other things, yes.

13 Q. Thank you.

14 Now, at that point, Mr. Oulson is still facing
15 forward and he has his phone out. But we can agree, you
16 don't know where his phone is at that point?

17 A. Correct.

18 Q. Now, Mr. Oulson responds, saying -- and again,
19 you don't remember the exact words; correct?

20 A. Just the message, but not the exact words,
21 right.

22 Q. Something to the effect of, "What is your
23 problem?"

24 A. He's still facing forward, not giving any
25 attention to the man. And he just kind of blows him off,

1 and says, "What's your problem? The movie hasn't even
2 started yet."

3 Q. And he may have --

4 A. "I'll be done shortly," I believe.

5 Q. I'm sorry?

6 A. "I'll be done shortly," or --

7 Q. Something to the effect of -- the effect of,
8 "Mind your own business"?

9 A. That was the second part. After Mr. Reeves had
10 approached him again in that same mean and demanding
11 manner, "Do it now," or, "Turn it off now."

12 Q. So Mr. Oulson says, "What is your problem?"
13 And he follows it up by saying after what you said, "Mind
14 your own business"?

15 A. Right. There was contact by Mr. Reeves in
16 between the two statements, yes.

17 Q. And Mr. Oulson said it in an annoying tone?

18 A. I feel like he was just blowing him off, yes.

19 Q. But Mr. Oulson was annoyed?

20 A. That would be my assumption, yes.

21 Q. He sounded annoyed to you?

22 A. To me, yes.

23 Q. And the response to that annoyed response was,
24 by Mr. Reeves, "Do I need to go get a manager?"

25 Is that what you remember?

1 A. Yes.

2 Q. Now, you agree with me that Mr. Reeves' voice
3 was not loud at that point?

4 A. Not loud, no. Let me clarify. In a movie
5 theater, to me a whisper is appropriate. So it was not a
6 whisper. It was probably talking in a normal
7 conversation.

8 Q. Well, but you agree it wasn't loud?

9 A. Correct. It was not yelling or screaming, yes.

10 Q. Okay. It was a loud enough conversational tone
11 so that one person can communicate to another person,
12 right?

13 A. Correct.

14 Q. And the other person could hear the person
15 that's communicating?

16 A. Right. Same as Chad's voice, yes.

17 Q. Except it didn't sound annoyed like Chad's
18 voice. We can agree with that?

19 A. No. It sounded angry and rude and demanding.

20 Q. And how did it sound angry if it wasn't loud?

21 A. Just the whole demeanor, that he's in our
22 space, that he -- most people would ask politely, "Would
23 you mind turning your phone off?" It wasn't like that.
24 His whole demeanor, the whole presence, the whole tone,
25 his -- everything about him just did not sound friendly.

1 Q. It wasn't loud. We agree with that?

2 A. I agree with that.

3 Q. Mr. Reeves certainly didn't curse?

4 A. No.

5 Q. You said he got in your space, but you never
6 turned around at that point; correct?

7 A. I had mentioned that I did glance out of my
8 peripheral vision and see him. But no, I did not turn
9 and specifically look to see more details or features of
10 him.

11 Q. Right. And we can agree, I'm looking at you,
12 but peripherally, I can see the clerk if the clerk moves
13 around.

14 So that's what we're talking about here, right?

15 A. Okay. Correct.

16 Q. And again, Mr. Oulson says something to the
17 effect of, "Do what you need to do"?

18 A. Correct.

19 Q. And we agree, in terms of the exact words in
20 that conversation, you don't remember the exact words?

21 A. No. No. There could be a very slight
22 difference of words, but the meaning was exactly the
23 same.

24 Q. Well, okay. But, you know how words are and
25 meanings. People can listen to a word and hear a

1 different meaning. So it's important that when I ask you
2 if you remember the exact words, if you do, and if you
3 don't, please let us know. So we can agree, at least in
4 that conversation, that in terms of the exact words, you
5 can't say what they were?

6 A. Right. And when I say -- just to clarify, just
7 so we're clear, "Do what you need to do," or, "You can do
8 what you need to do." We're talking that slight of a
9 difference. But, yes, they're not exact.

10 Q. That's what you mean by something to the effect
11 of?

12 A. Right.

13 Q. It's the impression, kind of, that you get?

14 A. Right.

15 Q. Right?

16 A. Okay.

17 Q. Okay. Now, at this point you don't notice any
18 curse words or any foul language?

19 A. I did not, no.

20 Q. Now, at some point, Mr. Reeves leaves the
21 theater; is that correct?

22 A. That's correct.

23 Q. But you don't actually see him walk down his
24 aisle, correct?

25 A. No. You sense him. You can feel his presence,

1 you know, but I did not actually see him until he was on
2 the stairwell.

3 Q. Well, let's talk about that.

4 Mr. Reeves didn't touch you?

5 A. No.

6 Q. He didn't touch your seat?

7 A. No.

8 Q. He didn't lean over the top of you?

9 A. Not at that time, no.

10 Q. Okay. He didn't lean over the top -- we're
11 talking about when he's leaving the theater to speak to
12 management. He didn't lean over you at that time, right?

13 A. Correct.

14 Q. He doesn't yell or blow in your hair or
15 anything like that?

16 A. No.

17 Q. Okay. So -- and, again, I'm just trying to --
18 to say "presence," so it's kind of an intuition, a
19 feeling you're getting? You can feel him, but you don't
20 see him?

21 A. Right. I feel he's angry, and you just sense
22 that. You just are aware of it because you're there and
23 you've experienced what has happened before that. So
24 you're aware that he's standing up, and that he's there.

25 Q. All right. So you don't see him, right?

1 A. Not at that time.

2 Q. You don't see him stand up?

3 A. Right.

4 Q. You don't hear him say anything, right?

5 A. Right.

6 Q. At that point?

7 A. Right.

8 Q. He doesn't touch you or your seat, right?

9 A. No.

10 Q. And -- but somehow you feel his presence get
11 up; is that correct?

12 A. Yes.

13 Q. Do I have that right?

14 A. You hear it, you sense it, yes.

15 Q. Well, now you say you hear it. What did you
16 hear?

17 A. Well, you hear movement. Because I can't
18 recall I heard a specific thing, but you just sense it.

19 Q. Okay. Was there something on the movie screen
20 playing?

21 A. I'm sure there was.

22 Q. And, again, you don't recall what was
23 playing --

24 A. No.

25 Q. -- right?

1 A. Right.

2 Q. And so you feel the presence of Mr. Reeves get
3 up. And, again, you don't see him walking down the
4 aisle. The first time you actually see him is when he's
5 on the steps going down, right?

6 A. Correct.

7 Q. So again, do you sense his presence walking
8 down the aisle as well?

9 A. I would think I knew what he was doing, yes.

10 Q. So now you sense his presence walking down his
11 row, I should say, and then as he goes down the stairs,
12 again, that would be your peripheral vision that kicks
13 in?

14 A. Right.

15 Q. And we can agree that Mr. Reeves is not making
16 any kind of stomping noises that you could hear on the
17 stairs?

18 A. Not that I could hear, no.

19 Q. He's not walking down rapidly or, you know,
20 kind of running down the stairs, that sort of thing?

21 A. Not running, no.

22 Q. Pardon me?

23 A. Not running, no.

24 Q. Not walking rapidly.

25 A. It seemed like a normal walk to me, like a

1 normal person would do.

2 Q. Okay. Now, at some point, Mr. Reeves comes
3 back in the theater; correct?

4 A. Correct. And just so we're clear, you said out
5 of my peripheral. I did actually turn and watch him go
6 down the stairs. It wasn't just in my peripheral. I did
7 watch him, yeah.

8 Q. And I appreciate that.

9 A. Okay.

10 Q. So let me back up a little bit.

11 You're sitting there, and so peripherally you
12 can see this movement on the stairs. And then you turn,
13 and then you watch --

14 A. I did look.

15 Q. -- Mr. Reeves --

16 A. Yeah.

17 Q. -- walk down the stairs --

18 A. I did look.

19 Q. -- is that fair to say?

20 A. Yes.

21 Q. So you have a good look at Mr. Reeves. And to
22 you, he walks normally down the stairs like a normal
23 person would?

24 A. Correct.

25 Q. Now, Mr. Reeves at some point, comes back to

1 the movie theater; correct?

2 A. Correct.

3 Q. Now, at that point, Mr. Oulson is no longer
4 using his phone?

5 A. That's correct.

6 Q. Is that what you recall?

7 A. Yes.

8 Q. And Mr. Reeves says something to Mr. Oulson?

9 A. That's correct.

10 Q. Okay. And what do you remember Mr. Reeves
11 saying to Mr. Oulson?

12 A. To the effect of, "You've put your phone away
13 now, I see."

14 Q. Okay. And so, again, not the exact words?

15 A. Right. I'm sorry.

16 "I see you've put your phone away now that I
17 went to get management," yeah.

18 Q. But, again, in terms of the exact words --

19 A. Right.

20 Q. -- you cannot be sure?

21 A. Right.

22 Q. And, again, Mr. Reeves isn't yelling at Mr.
23 Oulson?

24 A. No.

25 Q. Again, his voice is in a normal speaking voice?

1 A. Yes.

2 Q. You can agree with that?

3 A. Uh-huh.

4 Q. What's the next thing that happens?

5 A. I remember feeling, this should have been over.
6 He's got what he wanted. Why is he still doing that, "Ha
7 ha. You did what I told you. I won."

8 That's kind of how it felt to me.

9 Q. But, again, let's talk about that --

10 A. Uh-huh.

11 Q. -- and we'll get to where you want to go.

12 Mr. Reeves never said, "Ha ha"?

13 A. No.

14 Q. Again, that's what you sense?

15 A. That was my feeling, yes, is that that was his
16 intent of saying what he said was not a polite, "Oh,
17 thank you for putting it away now. We're all good."

18 It was to keep nagging at Chad, to keep the
19 argument going, is how I felt.

20 Q. All right. And again, you know, this is what
21 you're speculating what was in Mr. Reeves' mind. We can
22 agree with that; correct?

23 A. That was my interpretation of it, yes.

24 Q. But, again, you don't know what was in his
25 mind?

1 A. No.

2 Q. And you're kind of using your intuitive powers,
3 or your powers of understanding presence of people to
4 kind of tell us what you're feeling about it. These are
5 your feelings that we're talking about now, right?

6 A. Yes.

7 Q. Okay. Now, what's the very next thing that
8 happens?

9 A. So we're to the point where Reeves makes his
10 comments, and that's where Chad mentions again, "What is
11 your problem?" He said something to the effect of, "I
12 was checking on a message from my daughter."

13 And during that -- some time during -- as to
14 the conversation he was having, he stood up and turned
15 around to face Mr. Reeves.

16 Q. And we can agree that Mr. Oulson stood up
17 quickly and turned around?

18 A. Yeah. The chair pops up so you have to be
19 careful, you know, to allow the chair to kind of come up
20 behind you, or your legs and your butt.

21 But, yes, he stood up.

22 Q. Okay. In fact, it happened -- in your mind,
23 everything happened very quickly at that point?

24 A. Yes, I agree.

25 Q. Including your husband getting up? Mr. Oulson

1 getting up?

2 A. He stood up like anybody would stand up to go
3 and get popcorn, stand up to leave the theater. He stood
4 up like anybody normally would.

5 Q. But in this case, he's standing up to turn
6 around and confront Mr. Reeves; correct?

7 A. Yes.

8 Q. Now, at some point, Mr. Oulson says something
9 to the effect of, "What's your problem," or something to
10 that effect; correct?

11 A. Correct.

12 Q. Again, we don't know what the exact words were,
13 right?

14 A. Pretty close to that, yes.

15 Q. And at that point, Mr. Oulson is pretty angry,
16 right?

17 A. Mad. Angry. Yes. And I would have to
18 clarify.

19 I think we can all agree that you can be angry,
20 not like something, and mumble something under your
21 breath, and then there's the other extreme of being angry
22 or mad where you're exploding and you're having road
23 rage.

24 So I want to make sure it's clear that my
25 intent of when I say he was angry, yeah, he was probably

1 frustrated. He was probably a little upset that this guy
2 continued on and on and on --

3 Q. Well, he was angry --

4 A. -- and didn't appear to be stopping.

5 Q. He was angry and mad and saying, "What's your
6 problem?"

7 A. Right.

8 Q. And as he's doing that, this is happening
9 either while he's standing up, right, or on the way up?
10 You're not sure exactly when it happened?

11 A. Right.

12 Q. Because it happened pretty quickly.

13 A. Yes.

14 Q. Now, tell me what happens next.

15 A. I noticed Chad stand up, and it drew my
16 attention. I thought, "This is so silly at this point,
17 that it's gotten to this point where these two men are
18 going to start bickering, causing a commotion, drawing
19 attention of other patrons."

20 And so at that point, that's when I started to
21 stand up in order to tap Chad.

22 Q. Okay. Now, we can agree that in your mind,
23 that is when the shot happened; correct? As you start to
24 stand up?

25 A. As I start -- right when I start to stand up,

1 yes.

2 Q. So I can understand the sequence of events, Mr.
3 Reeves says something, and we've already discussed what,
4 to Mr. Oulson?

5 A. Uh-huh.

6 Q. Mr. Oulson is standing up, responding to Mr.
7 Reeves?

8 A. Correct.

9 Q. You very quickly are trying to maybe stop an
10 argument, right?

11 A. I was trying get his attention, yes.

12 Q. Trying get Mr. Oulson's attention?

13 A. Right.

14 Q. And what do you do to get his attention?

15 A. I go to tap him. So I reach out to tap him,
16 just to try to -- I'm not going to yell or scream at him.
17 That's what I'm trying to avoid him from doing, so I
18 guess my natural reaction would be to tap him.

19 Q. And so you reach up to tap him, but you don't
20 know whether you were standing or sitting?

21 A. I can tell you that I was in the process of
22 getting out of my seat when I tapped him. But I was
23 not -- it happened so fast, I didn't even get fully
24 standing.

25 Q. And so you don't see Mr. Oulson at any point

1 reach across the seat to Mr. Reeves; correct?

2 A. No, I did not.

3 Q. All right. And you don't see Mr. Oulson, seven
4 seconds later, reach again to Mr. Reeves?

5 MR. MARTIN: Your Honor, I object as far as
6 giving time frames and suggesting seven seconds.
7 How can this witness possibly answer that? He can
8 ask her how long it was. But for him to do that,
9 that's improper.

10 MR. MICHAELS: Well, I think he's right --

11 MR. MARTIN: And it's argumentative. And it's
12 not even facts that are in evidence --

13 MR. MICHAELS: Judge, I'm going to ask --

14 MR. MARTIN: -- at that time.

15 MR. MICHAELS: I agree with Mr. Martin. I
16 think that's a better question.

17 BY MR. MICHAELS:

18 Q. So you don't see your husband reach over
19 towards Mr. Reeves --

20 A. No.

21 Q. -- at any time?

22 A. No.

23 Q. And you don't see your husband reach a second
24 time over towards Mr. Reeves at any time?

25 A. No.

1 Q. And you don't see your husband grab anything
2 from Mr. Reeves?

3 A. No.

4 Q. You don't see your husband pull his hand back?

5 A. No.

6 Q. You don't see your husband's hand come forward
7 again towards Mr. Reeves?

8 A. No.

9 Q. In terms of a message from your daughter, you
10 never received any message from your daughter?

11 A. I did not, no.

12 Q. And Mr. Oulson didn't, as far as you're aware?

13 A. No.

14 Q. Now, when Mr. Oulson stood up as you described,
15 we can agree that you don't remember hearing any
16 profanity?

17 A. I do not.

18 Q. It's possible, but you don't remember?

19 A. It's possible.

20 Q. Is that fair?

21 A. Yes. And I will say that although we did not
22 use profanity on a regular basis in our household, it
23 would not be shocking or anything that would necessarily
24 stand out to me as frightening, or anything to draw my
25 attention to it. But I did not hear it, no.

1 Q. Because you've heard him curse before?

2 A. Yes.

3 Q. Now, let me show you some images.

4 MR. MICHAELS: And may I approach the clerk?

5 THE COURT: You may.

6 BY MR. MICHAELS:

7 Q. By that, I mean photographs. And maybe -- this
8 is composite Exhibit Number 26. And I'm going to show
9 you JPEG 2060495.

10 Before we get there, you know that day Mr.
11 Oulson had an iPhone?

12 A. Yes.

13 Q. And he had it in a black case?

14 A. Yes.

15 Q. And you know it was a white phone in a black
16 case, right?

17 A. Yes.

18 Q. Okay. Now, let me show you this exhibit. Keep
19 it right there, please, Mr. -- no, no. Yeah, that's
20 fine.

21 All right. Do you know what we're looking at
22 here?

23 A. Yes.

24 Q. All right. And so this area would be where
25 Mr. and Mrs. Reeves are, right?

1 A. Correct.

2 Q. And this is the iPhone.

3 Could you zoom in on that, Mr. Shah, please, on
4 the phone?

5 All right. That's your husband's phone?

6 A. Appears to be.

7 Q. Could you zoom out, please?

8 Let's go into this next row, please, Mr. Shah.
9 The row in front. A little too close.

10 MR. SHAH: It sure is.

11 MR. MICHAELS: Zoom out a little bit, please.

12 Okay. Stop there, please. All right.

13 BY MR. MICHAELS:

14 Q. Now, this is where you were seated; correct?

15 A. Yes.

16 Q. And you recognize the tissues because you use
17 tissues when you eat popcorn?

18 A. Yes.

19 Q. And this is where Mr. Oulson was seated?

20 A. Correct.

21 Q. Now, we'll notice that this is a popcorn bag
22 here to the left where you said you placed it, right?

23 A. Yes.

24 Q. So that's consistent.

25 We also see here the armrest isn't up, but it's

1 down.

2 You'll agree with me on that?

3 A. Yes.

4 Q. Now, let me show you Exhibit Number 13, if I
5 could.

6 MR. MICHAELS: And, Your Honor, this exhibit
7 was in the form of -- oh, this one is all right.
8 This one's a disc. We have a duplicate of the disc.

9 THE COURT: Okay.

10 MR. MICHAELS: Do you want me to use the one
11 here? I would be happy to.

12 THE COURT: Which number is that, 13?

13 MR. MICHAELS: This is Exhibit Number 13.

14 MR. MARTIN: Is that the timeline?

15 MR. MICHAELS: No. It's 400 percent loop.
16 It's the true loop. It's just the same thing over
17 and over again.

18 MR. MARTIN: Yeah, we'll get to that.

19 MR. MICHAELS: Back and forth.

20 BY MR. MICHAELS:

21 Q. And I know you've been sitting here for days,
22 and I know you've seen these before. I would just like
23 to have you look at these again a little closer.

24 So your testimony is that you never saw Mr.
25 Oulson reach over at any point; correct?

1 MR. MARTIN: Your Honor, I object to his
2 interpretation of what's seen on the video. And him
3 implying to certain content on the video which
4 includes him reaching over.

5 So I object to the form of the question and him
6 testifying as to what he perceives on the video.

7 MR. MICHAELS: I didn't say that was on the
8 video, Judge.

9 THE COURT: Yeah, I'm going to overrule.

10 MR. MARTIN: The content of the question is
11 absolutely clear, Judge. So let's not split hairs.
12 We know what he was saying.

13 THE COURT: It's a fair question.

14 Overruled.

15 BY MR. MICHAELS:

16 Q. So we can agree, you never saw your husband
17 reach over?

18 A. I did not.

19 Q. I'd like to show you what's been marked as
20 Exhibit Number 12.

21 MR. MICHAELS: These are the bitmaps, but I had
22 them downloaded because it takes so long to load up.

23 MR. MARTIN: No. 13?

24 MR. MICHAELS: Of No. 12.

25 MR. MARTIN: No. No. 12 was bitmaps of No. 13?

1 MR. MICHAELS: Yes. Well, 12 is bitmaps of the
2 (inaudible) whole sequence. But we'll show the
3 second part.

4 BY MR. MICHAELS:

5 Q. Mrs. Oulson, I know these are tiny. I don't
6 know if you can see what's going on there. If you want,
7 with the Court's permission, you can stand up and get
8 closer. It's up to you, Mrs. Oulson.

9 If not, as we get to different images, I can
10 blow them up.

11 A. As you ask your questions, I may take a closer
12 look.

13 Q. I appreciate it.

14 MR. MICHAELS: Judge, could we have Mrs. Oulson
15 step down?

16 THE COURT: If she wishes.

17 THE WITNESS: If I need to, depending on what
18 his question is.

19 BY MR. MICHAELS:

20 Q. Let's just take a look, going through it, and
21 then I might have a few questions, okay, if you would,
22 please? Thank you.

23 MR. MICHAELS: May I, Judge, approach the
24 witness?

25 THE COURT: Uh-huh.

1 BY MR. MICHAELS:

2 Q. Okay. Go ahead. Oh, I'm sorry.

3 A. So we are doing this frame by frame? Is that
4 what I'm going to be seeing?

5 Q. What you're going to see is -- it is, but we're
6 going to do it kind of in sequence so that you can see
7 it. Go ahead, please.

8 A. I'm sorry. At what point in time are we at?
9 When he's coming back from telling management, or?

10 Q. You'll see.

11 A. Okay.

12 Q. Okay, thank you.

13 For the record, those are -- the bitmap numbers
14 of the individual images are from 697 through 731. Mr.
15 Shah reminded me.

16 And again, your testimony is that you didn't
17 see Mr. Oulson at any point reach over towards Mr.
18 Reeves --

19 A. I did not.

20 Q. -- a second time?

21 A. Not a first time, so definitely not a second
22 time.

23 Q. Or bring his hand back or put popcorn forward?

24 A. I think I've answered that. No.

25 MR. MICHAELS: Okay. Give me one moment,

1 please. May I, Judge?

2 THE COURT: Uh-huh.

3 MR. MICHAELS: Thank you. I don't have
4 anything else. Thank you.

5 THE COURT: Thank you, Mr. Michaels.

6 Cross?

7 MR. MARTIN: Judge, if I could have a brief
8 moment with Mr. Shah before I begin my cross?

9 THE COURT: Okay.

10 MR. MARTIN: Judge, may we have a ten-minute
11 break so I can set up my equipment?

12 THE COURT: Sure. How long do you need? Ten?

13 MR. MARTIN: Yes, just -- I just want to make
14 sure my computer will play Mr. Escobar's exhibit.

15 THE COURT: Okay. Let's take a ten-minute
16 recess.

17 MR. MARTIN: Thank you.

18 THE COURT: Ms. Oulson, you can take a break as
19 well.

20 (Recess.)

21 CROSS-EXAMINATION

22 BY MR. MARTIN:

23 Q. Ms. Oulson, I want to take you back to a point
24 in time on direct examination where you were discussing
25 with Mr. Michaels that Mr. Reeves stood up, walked down

1 the aisle, you saw him go down the stairs, and then he
2 returned, okay? That's the segment that I want to talk
3 about now.

4 Now, when Mr. Reeves stood up after telling
5 your husband that he was going to go and talk to the
6 manager and you explained to us your husband's response,
7 "Do what you have to do," words to that effect?

8 A. Uh-huh.

9 Q. You indicated to us that Mr. Reeves walked off
10 down the aisle, right?

11 A. Yes.

12 Q. As Mr. Reeves was walking down the aisle, your
13 husband never turned to you and had any more comments
14 about Mr. Reeves, did he?

15 A. Not a word.

16 Q. He didn't say anything about, "If that guy
17 brings back the manager, I'm going to kick his butt," or
18 anything like that, right?

19 A. Absolutely not.

20 Q. Based on your observations of Mr. Oulson, your
21 husband, as Mr. Reeves was walking down the aisle, would
22 you agree that he just ignored him?

23 A. Absolutely.

24 Q. Now, while Mr. Reeves was gone, did your
25 husband ever turn around and have any comments with Mrs.

1 Reeves?

2 A. No.

3 Q. He never turned around and talked to her at
4 all?

5 A. No.

6 Q. You indicated -- and we're in the same segment
7 that Mr. Reeves returned, and he makes a comment, words
8 to the effect, "I see you put your phone away now. I
9 wouldn't have reported you to the manager." That's the
10 segment I want to talk about, all right?

11 So now he's gone, and you don't know if he --
12 Mr. Reeves said that -- if he was sitting or standing,
13 right?

14 A. I don't recall.

15 Q. But after he made that comment, your husband
16 turned in his seat and said something to Mr. Reeves?

17 A. Correct.

18 Q. All right. And after he says something to Mr.
19 Reeves, you explained that your husband stood up?

20 A. Yes.

21 Q. Now, I want to talk about "stood up."

22 When we talk about you said your husband stood
23 up and was standing, you mean he was out of his seat?

24 A. He was out of his seat, yes.

25 Q. I'm going to take you segment by segment. You

1 already told us that you did not witness your husband
2 reaching and grabbing a popcorn, tossing his popcorn,
3 right?

4 A. I did not.

5 Q. So it begs the question, then, you would agree
6 that if you didn't see that, you don't know your
7 husband's position when he did that? You don't know if
8 he was standing straight up? He's what, 6'?

9 A. Approximately, yes.

10 Q. You don't know if he was crouched down, right?

11 A. No.

12 Q. You don't know if he had a knee in the seat?

13 A. No.

14 Q. You don't know how he did it, what his body
15 position was when that occurred?

16 A. That's correct.

17 Q. So when you say he stood up and he was
18 standing, what you're telling us, he was not sitting in
19 his seat?

20 A. He was not sitting in his seat; correct?

21 Q. You're not implying that the entire time that
22 he was standing fully upright, six foot four, plus
23 whatever his shoes are?

24 A. That is correct.

25 Q. Now, I want to talk about your intentions, as

1 far as reaching and touching your husband, okay?

2 A. Okay.

3 Q. Now, you had that discussion with Mr. Michaels,
4 and you indicated that your intention was to reach over
5 and touch him, right?

6 A. Yes.

7 Q. And you did that with your left hand, did you
8 not?

9 A. I did, yes.

10 Q. And you reached straight across your body with
11 your left hand, did you not?

12 A. I did.

13 Q. Okay. Just like you just showed us, your hand
14 kind of parallel to the floor?

15 A. That's correct.

16 Q. And you did this as your buttocks was coming
17 out of your seat?

18 A. Yes.

19 Q. So it was a fluid motion, you're coming out of
20 your seat and you're reaching over?

21 A. Correct.

22 Q. Now, as you were doing that, you don't know
23 your husband's position as you were reaching over, right,
24 other than he was out of his seat?

25 A. He was out of his seat and facing --

1 Q. You have no idea, like we said, he's down low,
2 knee in the seat, his body up against the chair, you
3 don't know his position from here to here?

4 A. No, I don't.

5 Q. The only thing that you know is when you
6 reached over and the shot was fired, you were struck with
7 the same bullet that went into his chest and killed him,
8 right?

9 A. Yes.

10 MR. MARTIN: No further questions. Thank you.

11 THE COURT: Thank you.

12 MR. MICHAELS: May I, Judge?

13 THE COURT: You may.

14 REDIRECT EXAMINATION

15 BY MR. MICHAELS:

16 Q. We can agree that currently you have a civil
17 suit pending against Cobb Theater?

18 A. Yes.

19 MR. MICHAELS: Thank you.

20 Nothing else, Judge.

21 THE COURT: May this witness be released?

22 MR. MARTIN: No, Your Honor. She will remain
23 under State subpoena.

24 MR. ESCOBAR: The same with Defense subpoena.

25 THE COURT: All right. She is welcome to

1 remain in the Courtroom as before; correct?

2 MR. ESCOBAR: Yeah, we waived that.

3 THE COURT: All right. Ms. Oulson, you're free
4 to have a seat. You're still under subpoena.

5 Who is next?

6 MR. MICHAELS: The Defense calls Mr. Wolfe.

7 It's Allen, Judge. I apologize. Mr. Escobar
8 reminded me. It's been a long week. Allen Wolfe.
9 Defense calls Allen Wolfe.

10 I'm sure that's not new information that it's
11 been a long week, I'm sure.

12 THE COURT: Uh-huh.

13 THE BAILIFF: Step this way, stand right here.
14 Face the clerk, raise your right hand to be sworn.
15 (Thereupon, the witness was duly sworn on oath.)

16 THE BAILIFF: Come have a seat up here. Adjust
17 the mic. Speak in a loud and clear voice for the
18 Court.

19 THE COURT: You may proceed, Counselor.

20 MR. MICHAELS: Thank you, your Honor.

21 DIRECT EXAMINATION

22 BY MR. MICHAELS:

23 Q. Please say your name.

24 A. My name is Allen Wayne Wolfe.

25 Q. And could you spell your first and your last

1 name for the Court reporter, please.

2 A. A-L-L-E-N, W-O-L-F-E.

3 Q. All right. Now, you're going to have to speak
4 up. I know that the prosecutor has had some problems
5 hearing some of the witnesses, and so have we, frankly.
6 So sit close to the microphone or pull the microphone a
7 little closer, but not too close, because people have
8 been breathing in it, and that's kind of difficult to
9 listen to as well.

10 Now, what do you do for a living, Mr. Wolfe?

11 A. I cook for a living.

12 Q. Okay. Where are you a cook at?

13 A. I currently work at IHOP in Dade City.

14 Q. And you graduated from high school?

15 A. Yes.

16 Q. Now, let's go right to the movie theater on
17 January 13th of 2014, okay?

18 A. Okay.

19 Q. Now, did you go to see a matinee that day?

20 A. Yes.

21 Q. And what movie was playing?

22 A. Lone Survivor.

23 Q. Now, are you the kind of guy that likes to get
24 to the theater early or do you get in at the last minute?

25 A. I usually go early.

1 Q. So tell me what happened when you got to the
2 theater that day. You buy your ticket and what do you do
3 next?

4 A. I go to the concession stand, get a drink, some
5 nachos.

6 Q. Okay. So this day, you chose to get nachos and
7 a cold drink, right?

8 A. Yes.

9 Q. And then you go where?

10 A. I go to my theater, pick my seats`-- my seat.

11 Q. Okay. Now, through this whole thing, you got
12 to know who Mr. and Mrs. Oulson are, right?

13 A. Yes.

14 Q. And so in relation to them, where were you
15 sitting?

16 A. I am diagonal to them. I was, like, one row
17 below, though.

18 Q. Okay. So you're the next row down, right?

19 A. Yeah.

20 Q. And you're saying diagonal. So what, over your
21 right shoulder?

22 A. Yes.

23 Q. And who is over your right shoulder, Mr. or
24 Mrs. Oulson?

25 A. Mrs. Oulson first.

1 Q. And do you talk to them at all?

2 A. Yes.

3 Q. You strike up a conversation?

4 A. Yeah. Idle chat.

5 Q. When you get to the movie theater, is there
6 anything playing on the screen?

7 A. There's some music going right now at the time.
8 And then they have these little First Take, I think,
9 comes on after that for awhile.

10 Q. What is that, like, an advertisement?

11 A. Yeah.

12 Q. And at some point, after your conversation, do
13 the previews start?

14 A. Yes.

15 Q. And tell me what it's like when the previews
16 are on? What's the lighting like, is it dark?

17 A. It was still light. The light was still on on
18 it. It had not started going down yet.

19 Q. So it's not total dark, so there's some
20 lighting?

21 A. Yes.

22 Q. Do you remember what preview was playing?

23 A. Not really.

24 Q. All right. Was it loud?

25 A. Not really.

1 Q. Well, it's a preview?

2 A. Yeah. It was to me -- it was about average to
3 me.

4 Q. Like, an average preview?

5 A. Yes.

6 Q. Okay. But louder than I'm talking, for
7 instance?

8 A. Yes.

9 Q. And that's why you go to the movie, probably,
10 to hear things loudly. Would you agree with that --

11 A. Yes.

12 Q. -- or disagree? Okay.

13 Now, at some point, in this whole thing, you
14 get up and go back to the concession stand; is that true?

15 A. Yes, to get something to drink.

16 Q. Because you have one of those refillable giant
17 cups?

18 A. Yes.

19 Q. All right. And when you come back, tell me
20 about that. You walk down the aisle?

21 A. I walk down the aisle, I hear people talking.

22 Q. And do you see anybody using their phone?

23 A. Oh, yes.

24 Q. Okay. Do you see Mr. and Mrs. Oulson using
25 their phone?

1 A. At the time, yes.

2 Q. Okay. And now, once you sit down, did you hear
3 anything unusual, any loud voices?

4 A. Not at that moment, no.

5 Q. All right. So when you sit down initially,
6 everything is normal?

7 A. Yeah.

8 Q. And the previews start to play?

9 A. Yes.

10 Q. And then, do you hear a loud voice?

11 A. Yes.

12 Q. Tell us about that.

13 A. I hear somebody yelling in the background, you
14 know, getting louder.

15 Q. Could you tell who was saying that?

16 A. No. Somebody older than me at the time.

17 Q. Okay. And was it Mr. Oulson, or who was it?

18 A. Mr. Oulson.

19 Q. Okay. And how do you know it was Mr. Oulson
20 that was saying those loud words?

21 A. It was just -- I turned and looked where it was
22 going, and I could hear him yelling.

23 Q. And why did you turn to look?

24 A. When I hear somebody say cuss words, usually I
25 turn.

1 Q. And I know you're in court. I can tell by the
2 way you say cuss words, you probably don't use them like
3 I do. But it's important that you tell the --

4 A. Yes.

5 Q. -- Court, tell the Judge, what it is you heard.
6 So to the best of your recollection, tell us
7 what you heard.

8 A. "I said shut the fuck up. I'm trying to text
9 my daughter."

10 Q. Okay. Now, at that point, are you facing the
11 screen?

12 A. Oh, no. I'm turned.

13 Q. You're what?

14 A. I'm turned, like this, getting ready to go up,
15 to stand up.

16 Q. And why are you getting ready to go up?

17 A. Well, you can hear people begin to start
18 yelling, you know something is brewing.

19 Q. Okay. But you said people.

20 Do you only hear one voice?

21 A. Multiple people are talking.

22 Q. But you only hear one person yelling?

23 A. Yeah.

24 Q. Is that what you're describing?

25 A. Yes.

1 Q. And so what do you do next?

2 A. I sat in my seat for a little bit, then I
3 started getting ready to get up.

4 Q. And when you get up, do you see anybody
5 standing in the theater when you start to get up?

6 A. Oh, yes. Mr. Oulson was standing.

7 Q. And which way was Mr. Oulson facing?

8 A. Towards -- turned around in his seat. You know
9 how you turn around in your -- you get up and turn around
10 and face somebody.

11 Q. And it's hard to -- because this lady here in
12 front of you --

13 A. Sorry.

14 Q. You've been doing a wonderful job. The lady in
15 front of you is taking down every word on that little
16 machine.

17 So when you make the hand motion, it's
18 difficult.

19 A. Basically, somebody getting up and turning
20 around and confronting somebody.

21 Q. So -- and that person was who?

22 A. Mr. Oulson.

23 Q. So Mr. Oulson was standing up and you say
24 turned around.

25 Is he turned all the way around facing the back

1 wall?

2 A. Yes.

3 Q. And do you hear Mr. Oulson say anything?

4 A. Repeated the same statement, cuss words. Kept
5 on repeating the same phrase.

6 Q. Could you hear anybody from the row behind Mr.
7 Oulson saying anything?

8 A. Not audibly. But I know somebody was talking
9 to him.

10 Q. And how do you know what?

11 A. I could hear phrases, like, "Put the phone
12 down," or something like that.

13 Q. Okay. Now, do you remember giving a
14 deposition? In other words, coming in with a court
15 reporter?

16 A. Yes.

17 Q. And do you remember you swore to tell the
18 truth?

19 A. Yes.

20 Q. And the date of that was -- let me see -- March
21 23rd of 2014?

22 A. Yep. The day after my dad's birthday.

23 Q. Do you remember that?

24 A. Yep.

25 Q. Do you remember I spoke to you?

1 A. Yes.

2 Q. Ad I told you, "When I ask you questions, if
3 you're not 100 percent sure, don't answer the question"?

4 A. Yes.

5 Q. Do you remember that conversation?

6 A. Yes.

7 MR. MARTIN: Judge, I'd like to have an
8 opportunity to view that deposition, make sure
9 whether or not -- if he's trying to impeach him, see
10 whether the statement is consistent or inconsistent.

11 THE COURT: Okay. You'll get the opportunity.
12 I'm sure he's about to announce where he's at.

13 MR. GARCIA: We don't have the deposition,
14 though, Judge.

15 THE COURT: Oh. Well --

16 MR. MICHAELS: I'll show them the page, Your
17 Honor. It's page 41, lines 6 through 9.

18 MR. MARTIN: I would like to see the page.

19 MR. MICHAELS: I'm going to show you.

20 BY MR. MICHAELS:

21 Q. I asked you the following questions: "Could
22 you hear the gentleman behind him?"

23 And do you remember at that point we were
24 talking about --

25 A. Yes.

1 Q. -- Mr. Oulson, right?

2 A. Yes.

3 Q. And I was talking about the fellow in the back
4 row --

5 A. Oh, yeah.

6 Q. -- Mr. Reeves?

7 "Answer: That part I didn't hear because Mr.
8 Oulson was getting loud."

9 A. Yes, that's true.

10 Q. Okay. So do you agree with that as being the
11 truth, then?

12 A. Yes.

13 Q. That you didn't hear the fellow in the back
14 row --

15 MR. GARCIA: Judge, I'm going to object to
16 leading.

17 BY MR. MICHAELS:

18 Q. Do you agree that that's the truth?

19 A. Yes.

20 Q. And so that -- the statement you made in court
21 here previously, that was a misrecollection?

22 A. Yes.

23 Q. Now, at that point, can you see Mrs. Oulson?

24 A. Yes.

25 Q. And what is she doing?

1 A. Basically trying to -- she had her hands kind
2 of like, you know, trying to calm people -- calm her
3 husband down. I'm not sure what position her hands were.
4 I don't know if she had her hands like -- like this,
5 like, holding her hands up in the air, is on the body
6 part, going towards the chest, probably. I'm not sure.

7 Q. So you have her hands going where?

8 A. Trying to position myself.

9 Q. Yes. Okay, let's say that --

10 A. Kind of like --

11 MR. MICHAELS: May I, Judge? Just to help him
12 out a little bit?

13 THE COURT: You may.

14 BY MR. MICHAELS:

15 Q. Come on down here a second, if you would,
16 please.

17 A. Okay.

18 Q. That's okay. Just stand over here. All right.
19 Now, you're Mrs. Oulson, okay? We'll get you a chair.
20 Go ahead and sit down.

21 A. All right.

22 Q. And where is Mr. Oulson standing at this point?

23 A. Right here, like --

24 Q. He is on this side?

25 A. Yes. It would be like --

1 Q. Okay. And what is she doing?

2 A. Like this. (Indicating.)

3 Q. Okay.

4 A. Like, you know when you try to calm someone
5 down?

6 Q. Okay. Now, was your attention at that point --
7 Where was your attention? Let me ask you the
8 other way.

9 A. Pretty much on Mr. Oulson, just --

10 Q. Well, pretty much or everything?

11 A. Everything on him.

12 Q. Now, at some point, do you actually stand up?

13 A. Yes.

14 Q. And what do you do?

15 A. Pretty much I stand up, I start walking towards
16 where Mr. Oulson -- where he was standing up, and that's
17 when the shots fired and then I saw --

18 Q. And why did you stand up?

19 A. Fight's getting ready to break out. I wanted
20 to try to break it up, like most anybody else would.

21 Q. And was it something in Mr. Oulson's voice that
22 made you think he was about to fight?

23 MR. GARCIA: Objection, Judge. Calls for
24 speculation on the part of this witness.

25 THE COURT: I'll sustain.

1 You can rephrase.

2 BY MR. MICHAELS:

3 Q. Was Mr. Oulson's voice loud or soft?

4 A. Oh, he's loud.

5 Q. And was he cussing?

6 A. Yes.

7 Q. More than once?

8 A. Yes.

9 Q. And did he continue to be loud?

10 A. Yes.

11 Q. Did that make you think that a fight was about
12 to start?

13 A. Yes.

14 Q. Now, at some point, the police got there. And
15 did they hand you a form and tell you to write down what
16 you knew?

17 A. Yes.

18 Q. And did that first police officer tell you not
19 to talk to anyone?

20 A. Not that I'm aware of.

21 Q. Okay. Later on did somebody tell you that?

22 A. Yes.

23 Q. But initially when you had the form, they
24 didn't tell you that, did they?

25 A. No.

1 Q. Now, let me show you something. At this point
2 it will be a demonstrative aid. I'll show Mr. Garcia.

3 Now, that day you said you got a voluntary
4 statement form, I guess it's called, right?

5 A. Yes.

6 Q. And you already testified that the police
7 officer asked you to fill it out.

8 Did you do that?

9 A. Yes.

10 Q. Did you sign it?

11 A. Yes.

12 Q. Let me show you something that is titled,
13 Voluntary Statement Form. Take a look -- I'm sorry, I
14 didn't ask. May I approach? I'm here already.

15 All right. Take a look at that, Mr. Wolfe.

16 Do you recognize that?

17 A. Yes.

18 Q. Read it over if you would, please. Is that
19 your signature at the bottom?

20 A. Yes, it is.

21 Q. Read it over. Take a second.

22 MR. GARCIA: Judge, I'm going to object to this
23 line of questioning. Reason being, Mr. Wolfe has
24 already identified when he was speaking of "the old
25 guy." He said it was Chad Oulson -- referring to

1 Chad -- apparently to him, Chad was older than him.

2 So by showing him the written statement, the
3 written statement is not in evidence. He's already
4 clarified it. So I don't understand, what are we
5 trying to accomplish here by this line of
6 questioning?

7 MR. MICHAELS: Well, Judge, I didn't know the
8 State was going to agree to accept that without
9 further explanation. So at this point, I'll reserve
10 any further taking of testimony depending on what
11 the State's cross is.

12 THE COURT: All right.

13 BY MR. MICHAELS:

14 Q. You had a chance to read it?

15 A. Yes, sir.

16 Q. Okay. The guy that you're talking about in
17 that statement, who is that?

18 A. Mr. Oulson.

19 MR. MICHAELS: Okay. That's all that I have,
20 Judge. Thank you.

21 MR. MARTIN: May I have just a moment, Your
22 Honor?

23 THE COURT: You may.

24 CROSS-EXAMINATION

25 BY MR. GARCIA:

1 Q. May it please the Court, counsel. Mr. Wolfe,
2 good morning, sir.

3 A. Good morning, sir.

4 Q. On January 13th of 2014, you went to the Cobb
5 Theater?

6 A. Yes, sir.

7 Q. In fact, you went there to watch the Lone
8 Survivor; correct?

9 A. Yes, sir.

10 Q. Do you know what time you arrived?

11 A. Not really sure. I'm not sure.

12 Q. Okay. Were you with anyone?

13 A. No. I was by myself.

14 Q. Do you know what time you purchased the
15 tickets?

16 A. It was definitely at least a half hour or more
17 earlier.

18 Q. Okay. And do you recall what time the show was
19 starting?

20 A. I think 11:30. I'm not really sure.

21 Q. Okay. You're not sure -- you're not sure about
22 the times?

23 A. No.

24 Q. Can you tell us what you did once you got to
25 the theater? You said you went to the concession stand;

1 correct?

2 A. Yes.

3 Q. And you got a coke?

4 A. I got a root beer -- large root beer and
5 nachos.

6 Q. Okay. And when you arrived in the movie
7 theater, was there a lot of patrons there?

8 A. Yes, there's some patrons.

9 Q. Okay. Was it full? Was it -- how many do you
10 believe?

11 A. In the theater itself, or inside the --

12 Q. In the theater itself.

13 A. Not much.

14 Q. Okay. When you walked in to the movie theater,
15 was Mr. and Mrs. Oulson already sitting there?

16 A. No.

17 Q. Do you know if Mr. Reeves and his wife,
18 Mrs. Reeves, were already sitting there?

19 A. No.

20 Q. They were not there?

21 A. No. I was one of the first people there.

22 Q. Okay. Did you notice when Mr. and Mrs. Oulson
23 got into the movie theater?

24 A. Yes.

25 Q. And do you know how long after you were in the

1 movie theater that they arrived?

2 A. Maybe 10 or 15 minutes. I'm not really sure.

3 Q. What were the lighting conditions when you were
4 sitting there?

5 A. Pretty bright.

6 Q. Were the previews on?

7 A. No. There was --

8 Q. Okay.

9 A. -- music playing.

10 Q. So the previews hadn't even started?

11 A. Yeah.

12 Q. So Mr. and Mrs. Oulson walk in. And they sit
13 directly behind you; correct?

14 A. Yeah. One row behind me.

15 Q. And did you see when Mr. and Mrs. Reeves walked
16 in to the movie theater?

17 A. Yes. That's when the theater was starting to
18 fill up.

19 Q. And you would agree with me, would you not,
20 that at this point in time, the lights -- you can see
21 people, right? You can see people walking in, you can
22 see people moving around, you can see people drinking
23 their sodas?

24 A. Yes.

25 Q. Eating popcorn, so on and so forth, right?

1 A. Yes.

2 Q. Do you remember exactly what row you were in?

3 A. Third row from the top -- well, from the wall,
4 go down to the third row from the top.

5 Q. Okay. Were you sitting on the end, or where
6 were you in that row?

7 A. Towards the middle.

8 Q. Towards the middle.

9 And then Mr. and Mrs. Oulson would have been
10 directly behind you; correct?

11 A. A couple seats down, but, yes, they were behind
12 me.

13 Q. Okay. And then did you see where Mr. and
14 Mrs. Reeves were in relation to the Oulsons?

15 A. Yes. They were right behind them.

16 Q. At some point in time, you struck up a
17 conversation with Mr. Oulson; correct?

18 A. Yes.

19 Q. Do you remember what you were talking about?

20 A. The weather, the movie.

21 Q. Just making small talk, right?

22 A. Small talk mostly.

23 Q. Did Mr. Oulson have his phone out?

24 A. Yes.

25 Q. Were the previews on when he had the phone out?

1 A. No.

2 Q. So the previews hadn't even started?

3 A. No.

4 Q. And how do you know -- I mean, did you see him
5 with the phone, or?

6 A. I just happen -- he had his hand on -- a cell
7 phone in his hand.

8 Q. Could you tell what he was doing with the
9 phone?

10 A. Texting. Mostly texting.

11 Q. You think he was texting, right?

12 A. Yes.

13 Q. You're not absolutely positive, though?

14 A. Not 100 percent.

15 Q. At some point in time, the previews start;
16 correct?

17 A. Yes.

18 Q. Did the lights get a little dim?

19 A. At that moment, no.

20 Q. So you could still see -- as the previews are
21 on, you can still see in the movie theater, right?

22 A. Yes.

23 Q. Could you see the person sitting next to you,
24 if there was a person there?

25 A. Oh, yes.

1 Q. How about five seats away from you?

2 A. Yes.

3 Q. Ten seats away from you?

4 A. Yes.

5 Q. Could you see people walking up the stairs?

6 A. Yes.

7 Q. Could you see people drinking, eating?

8 A. Yeah.

9 Q. Okay. Are there people talking during the
10 previews?

11 A. Yes.

12 Q. So there's small talk going on, right?

13 A. Yes.

14 Q. And you can hear them?

15 A. Yes.

16 Q. Above the previews, you can hear people
17 talking --

18 A. Like --

19 Q. -- right?

20 A. -- allegedly, I can hear people talking, yes.

21 Q. You may not understand or hear what they are
22 saying, right?

23 A. Yes.

24 Q. But you can hear what's going on?

25 A. Yes.

1 Q. And if you would, please, would you tell us
2 when did you notice that there was a problem?

3 Because I think at some point in time, you got
4 up to go to the concession stand; correct?

5 A. Yes.

6 Q. And there was also a point in time, did you
7 ever see Mr. Reeves get up and walk out of the theater?

8 A. No, I did not.

9 Q. Do you believe you had gone out of the theater
10 at the same time?

11 A. I believe so.

12 Q. When you got back from, I guess, getting your
13 refill, you sat down; correct?

14 A. Yes.

15 Q. And as you're sitting there, you heard -- I
16 believe what you said was Mr. Oulson?

17 A. Yes.

18 Q. Prior to that, had you heard Mr. Reeves saying
19 anything to Mr. Oulson?

20 A. I'm not sure.

21 Q. All right. Isn't it true you heard him saying
22 something to the effect, "Put the phone away," or, "You
23 need to put the phone away"?

24 A. Yes.

25 MR. MICHAELS: Objection. He said he's not

1 sure.

2 MR. GARCIA: Judge, this is cross-examination.

3 THE COURT: I'll allow it.

4 BY MR. GARCIA:

5 Q. Did he not tell him, "Put the phone away"?

6 A. I did hear somebody say, "Put the phone away."

7 Q. And it wasn't in a nice manner, right, it was
8 in a rude manner? You thought he was rude, didn't you?

9 A. Oh, yeah.

10 Q. So Mr. Reeves was being rude to Mr. Oulson;
11 correct? Correct?

12 A. Yes.

13 Q. You heard him more than once say, "Put the
14 phone away," correct?

15 A. Yes.

16 MR. MICHAELS: Judge, objection. This witness
17 testified earlier that the truth was that he did not
18 hear Mr. Reeves say anything. And so now what we
19 have is, we have the prosecutor harassing this
20 individual. Look at him. The prosecutor is
21 harassing this individual, getting him to say what
22 he wants him to say.

23 He may have gotten away with that with
24 Mr. Peck, but Judge, we can't allow him to do that
25 with this individual. He testified that he couldn't

1 hear Mr. Reeves. He said it under oath in
2 deposition, he said it under oath here.

3 MR. GARCIA: Judge, I appreciate Mr. Michael's
4 objection. However, this is cross-examination,
5 Judge, and there's wide latitude.

6 And just because he asked him on direct and
7 said, "Are you telling the truth? Is this the whole
8 truth?" I'm entitled to go into this, Judge.

9 THE COURT: Overruled.

10 MR. MICHAELS: The question has been asked and
11 answered. That's my objection at this point, Judge.

12 MR. GARCIA: I asked him if he heard Mr. Reeves
13 telling him a second time, "You need to put the
14 phone away," and he said, "Yes.

15 THE COURT: All right. Overruled.

16 Move on.

17 BY MR. GARCIA:

18 Q. And Mr. Reeves was being rude, wasn't he?

19 A. Yes.

20 MR. MICHAELS: Judge, objection. He answered
21 first, "No." Now he asked him again. He's getting
22 this poor guy to say yes now.

23 THE COURT: Overruled.

24 He said yes the first time.

25 BY MR. GARCIA:

1 Q. And it wasn't until Mr. Reeves kept badgering
2 Mr. Oulson that Mr. Oulson --

3 MR. MICHAELS: Objection to the
4 characterization of badgering. There's been no
5 testimony.

6 MR. GARCIA: Judge, this is cross-examination.
7 I am entitled to ask my questions the way I deem
8 fit. I didn't interrupt Mr. Michaels constantly.

9 THE COURT: Overruled.

10 You'll have a chance to redirect.

11 BY MR. GARCIA:

12 Q. Mr. Wolfe, it wasn't until Mr. Reeves kept
13 badgering Mr. Oulson that he finally stood up; correct?

14 A. I don't know.

15 Q. Okay.

16 A. He could have.

17 Q. Okay. At some point in time, Mr. Oulson stood
18 up, right?

19 A. Yes.

20 Q. Was it after you had heard Mr. Reeves telling
21 him, "Put the phone away. Put the phone away"?

22 A. No. I know he stood up and he was cussing.

23 Q. Okay. But when he stood up, was that after Mr.
24 Reeves had confronted him about putting the phone away?

25 A. Yes. Possibility, yes.

1 Q. Okay. Isn't it true that you saw Mr. Oulson
2 throw popcorn at Mr. Reeves?

3 A. Yes.

4 Q. Okay. Isn't it also true you never saw Mr.
5 Oulson strike Mr. Reeves?

6 A. True.

7 Q. Never punched him; correct?

8 A. Yes.

9 Q. Never hit him?

10 A. Yes.

11 Q. Never climbed over the chairs?

12 A. Yes.

13 Q. And immediately after the popcorn is thrown,
14 Mr. Reeves pulls out his gun and shoots him; correct?

15 A. Yes.

16 Q. As this sequence of events is transpiring, you
17 indicated that when Mr. Oulson stood up and was cursing;
18 correct?

19 A. Yes.

20 Q. That Ms. Oulson was in the process of getting
21 up, right?

22 A. Yes.

23 Q. And you indicated for the record that she had
24 put her hand on his chest; correct?

25 A. Yes.

1 Q. You never saw Mr. Oulson climbing over the
2 seats trying to get at Mr. Reeves, did you?

3 A. No.

4 Q. That never happened, did it?

5 A. No.

6 Q. And when you indicated to the Court that you
7 were watching these events, if you were in the third row,
8 you would agree with me that you would have been -- and
9 tell me if this is an accurate representation.

10 You would have been roughly towards the middle;
11 correct?

12 A. Yes.

13 Q. Mr. and Mrs. Oulson would have been roughly
14 here?

15 A. Yep.

16 Q. Right?

17 A. Right.

18 Q. And then in the back row, up against the wall,
19 would have been Mr. and Mrs. Reeves; correct?

20 A. Yes.

21 Q. So when you're standing up and you're watching
22 these events, you would have been standing here facing --
23 and you said you were facing them, right?

24 A. Yes.

25 Q. So you stood up and you're facing directly

1 towards Mr. and Mrs. Oulson and Mr. Reeves; correct?

2 A. Yes.

3 Q. How far would you say you were from Mr. and
4 Mrs. Oulson?

5 A. About eight to ten feet.

6 Q. And Mr. and Mrs. Reeves?

7 A. Maybe twelve. I'm not very sure.

8 Q. You were close.

9 You didn't have any difficulty hearing what was
10 being said between Mr. Reeves and Mr. Oulson; correct?

11 A. Mr. Oulson, yes, I could hear him really good.
12 Mr. -- sorry. Mr. Oulson I could hear really good. Mr.
13 Reeves, I heard him saying stuff, but I could not hear
14 the exact words at that point.

15 Q. Okay.

16 A. From that point, he was standing up and it was
17 pretty much (inaudible).

18 Q. After the shot rang out, isn't it true you
19 observed Mrs. Oulson holding her hand?

20 A. Yes.

21 Q. Did you realize that she had been shot as well?

22 A. Yeah.

23 Q. Okay.

24 A. More like she's been injured. I'm not --

25 Q. She had been shot in the hand; correct?

1 A. Yes.

2 Q. You never saw Mr. Oulson throw a cell phone at
3 Mr. Reeves, did you?

4 A. No, I did not.

5 Q. It didn't happen, did it?

6 A. I didn't see anything.

7 Q. You didn't see it, right?

8 A. No.

9 Q. And you had stood up and you were looking
10 directly at them, right?

11 A. Yeah.

12 Q. After the events that you testified to
13 happened, what did you do? Where did you go?

14 A. I walked over to where Mr. Oulson collapsed. I
15 was still in my row. I could see him laying there. Some
16 gentleman I saw came behind me, started going over seats
17 trying get there. There was the two gentlemen that were
18 there. Then eventually somebody came in. I'm not sure
19 if it was management -- asked somebody to go open the
20 back door for an ambulance.

21 That's where I went to.

22 Q. While you were standing there, you were able to
23 see Mr. Reeves, weren't you?

24 A. Yes.

25 Q. In fact, he wasn't doing anything, just sitting

1 in his chair, wasn't he?

2 A. Yes.

3 Q. You didn't see any injuries on him, did you?

4 A. Nope, I didn't see anything --

5 Q. He wasn't bleeding, right?

6 A. No.

7 MR. GARCIA: May I have a moment, Judge?

8 THE COURT: You may.

9 MR. GARCIA: Thank you, Mr. Wolfe.

10 Thank you, Your Honor. I have no further
11 questions.

12 THE COURT: Thank you.

13 Redirect?

14 MR. MICHAELS: Thank you.

15 REDIRECT EXAMINATION

16 BY MR. MICHAELS:

17 Q. Mr. Wolfe?

18 A. Hello, sir.

19 Q. Do you remember that deposition we talked about
20 earlier?

21 A. Yes, sir.

22 Q. You came in and swore to tell the truth?

23 A. Yes, sir.

24 Q. 100 percent accurate?

25 A. Yes, sir.

1 Q. Now, that happened in March of 2015. Do you
2 remember that?

3 A. Yeah. Because it was the day after my dad's
4 birthday.

5 Q. Okay. So it was a little more than a year,
6 would you agree, after the Lone Survivor movie that you
7 were talking about?

8 A. Yes.

9 Q. So would you agree or disagree with me that
10 your memory was fresher then?

11 A. Yes.

12 Q. Would you agree or disagree with me that you
13 never told me that you heard Mr. Reeves say anything
14 then?

15 MR. GARCIA: Judge, I'm going to object to the
16 form of the question. And I'd ask Counsel to refer
17 to the line and page that he is referring to in the
18 deposition. And I don't -- is this impeachment, or
19 what is this?

20 THE COURT: Where are we going with this?

21 MR. MICHAELS: Your Honor, I'm questioning him
22 on redirect. I'm just asking him if he remembers.
23 And we can see if he has a memory of it or not.

24 MR. GARCIA: As to what, though, Judge? I
25 mean --

1 MR. MICHAELS: If you let me ask -- if the
2 prosecutor lets me ask the questions, we can find
3 out why.

4 THE COURT: All right. Finish the question.

5 MR. MICHAELS: Thank you.

6 BY MR. MICHAELS:

7 Q. Do you remember whether or not you told me that
8 Mr. Reeves said anything?

9 A. Yes, I did.

10 Q. Okay. And you told me that you couldn't hear
11 Mr. Reeves, right?

12 A. Yes.

13 MR. GARCIA: Judge, I'm going to object to the
14 leading nature of these questions.

15 BY MR. MICHAELS:

16 Q. Now, we can -- do you agree or disagree with me
17 that you can't -- you don't know any words that Mr.
18 Reeves said?

19 MR. GARCIA: Object to leading.

20 Just because he prefaces it with, "Do you agree
21 or disagree," and then he tells him --

22 MR. MICHAELS: Your Honor, this is the same
23 prosecutor yesterday who said that he can ask a
24 question that's not leading if you just ask for a
25 yes-or-no answer.

1 So agree or disagree might be a little more
2 stylistic way of asking a question that begs a yes
3 or no.

4 So I agreed with the prosecutor yesterday. I
5 don't think I agree with him this morning, unless we
6 take --

7 THE COURT: Say the question again.

8 MR. MICHAELS: I wish I could remember it,
9 Judge. Give me a second, please.

10 THE COURT: Okay.

11 BY MR. MICHAELS:

12 Q. Now, you said that -- you testified to the
13 prosecutor, answering his questions, that Mr. Reeves was
14 rude.

15 Can you point to one single word -- you're
16 saying you don't remember any words. Tell me a word that
17 Mr. Reeves said that made you say he was rude.

18 Are there any?

19 A. I heard, "Put the phone away."

20 Q. Okay. But what is rude about, "Put the phone
21 away"?

22 A. No previews going on, everybody is talking. I
23 mean, that First Take thing is going on. People could
24 consider that a preview.

25 Q. All right. But were there any cuss words or

1 any kind of --

2 A. No.

3 Q. So if I understand you right, you're saying it
4 was rude because the request was made before the previews
5 came on?

6 A. Yeah.

7 MR. MICHAELS: I don't have anything else.

8 Thank you.

9 THE COURT: Anything further?

10 MR. GARCIA: Briefly, Judge.

11 RECROSS-EXAMINATION

12 BY MR. GARCIA:

13 Q. Mr. Wolfe, you would agree with me it was the
14 manner in which Mr. Reeves told Mr. Oulson to put the
15 phone away; correct?

16 A. Yes.

17 Q. That it was rude?

18 MR. MICHAELS: Judge, that's been asked and
19 answered.

20 MR. GARCIA: Judge, he went into this on
21 redirect. I'm entitled to go into it again.

22 MR. MICHAELS: Judge, now we're getting into --
23 now we're getting into this whole harassment thing
24 again. The witness answered the question that he
25 couldn't point to anything that he thought was rude

1 because of the timing of the request.

2 And so now the prosecutor is attempting to
3 harass this witness and bully him into getting him
4 to say something he wants him to say.

5 MR. GARCIA: Judge, I am going to object to
6 Mr. Michaels' characterizations of the prosecutor
7 bullying this witness.

8 I'd like the record to reflect, Judge, I
9 haven't bullied this witness. I'm doing my
10 cross-examination. He doesn't like the answers that
11 he's getting.

12 THE COURT: All right. I'm going to overrule.

13 You did go into that very subject. The
14 prosecutor is entitled to cross on that. And
15 there -- I do not find that he is bullying or
16 harassing. He is talking in a loud voice.

17 BY MR. GARCIA:

18 Q. Mr. Wolfe, you would agree with me when you
19 told Mr. Michaels that he told him to put the phone away;
20 correct?

21 A. Yes.

22 Q. It was the manner in which Mr. Reeves was
23 talking to Mr. Oulson that you thought was rude, right?

24 A. Yes.

25 Q. And, in fact, you said it was in a commanding

1 voice, like telling him, "Mr. Oulson, put the phone
2 away," correct?

3 A. Yes.

4 MR. GARCIA: I have no further questions.

5 THE COURT: Anything further?

6 REDIRECT EXAMINATION

7 BY MR. MICHAELS:

8 Q. I know this seems -- this must seem tedious to
9 you, Mr. Wolfe, but my problem is that, frankly, you've
10 given the same answer --

11 MR. GARCIA: Judge, I'm going --

12 BY MR. MICHAELS:

13 Q. -- back and forth.

14 MR. GARCIA: -- to object to what his problem
15 is, and editorializing this in front of the witness.
16 He needs to ask a question.

17 THE COURT: He is allowed to sum up what he's
18 getting at. He's been doing -- everyone's been
19 doing that, so I'm not going to --

20 MR. GARCIA: But he's putting himself into it
21 when he says "my problem."

22 THE COURT: Rephrase.

23 BY MR. MICHAELS:

24 Q. Can you point to anything that Mr. Reeves did
25 that we can all --

1 MR. GARCIA: Objection. Asked and answered.

2 BY MR. MICHAELS:

3 Q. -- that we can all look at to say he is rude?

4 MR. GARCIA: Objection. Asked and answered.

5 He already answered that, Judge.

6 MR. MICHAELS: Well, Your Honor, frankly, the
7 problem we have here is, you know, whoever goes last
8 is going to get whatever answer they want from this
9 witness --

10 THE COURT: And it has been asked and answered.

11 MR. MICHAELS: -- it seems like.

12 THE COURT: It has been asked and answered.

13 MR. MICHAELS: So have all the questions on
14 cross and recross, Judge.

15 THE COURT: Correct. So --

16 MR. MICHAELS: Well, at this point, I'll leave
17 it as the ping-pong match it appears to be, and I'll
18 sit down, Judge.

19 No further questions.

20 THE COURT: Thank you. I believe we are done
21 with this witness?

22 MR. MICHAELS: Yes, Your Honor.

23 THE COURT: May he be released, or is he still
24 under subpoena?

25 MR. MICHAELS: We need him still under

1 subpoena, Your Honor.

2 THE COURT: All right. Mr. Wolfe, you're free
3 to go today. You are still under subpoena, which
4 means you could possibly be recalled at some point,.
5 I'm assuming the attorneys have your cell phone
6 number. Please, if they request you to come back,
7 they'll give you, certainly, enough time to get back
8 in a efficient manner.

9 But just make sure you answer the call.

10 THE WITNESS: My work already knows I'm in -- I
11 get -- they know I'm here.

12 THE COURT: Very good. Fortunately, the IHOP
13 is not too far away.

14 Thank you, Mr. Wolfe.

15 Who is next?

16 MR. ESCOBAR: Your Honor, Defense would call
17 Ms. Abrew.

18 THE BAILIFF: Step this way, stand right here.
19 Face the clerk, raise your right hand to be sworn.
20 (Thereupon, the witness was duly sworn on oath.)

21 THE BAILIFF: Come have a seat up here. Adjust
22 the mic. Speak in a loud and clear voice for the
23 Court.

24 THE COURT: You may proceed, Counselor.

25 DIRECT EXAMINATION

1 BY MR. ESCOBAR:

2 Q. Good morning, Ms. Abrew.

3 A. Good morning.

4 Q. How are you doing today?

5 A. I'm okay.

6 Q. Would you please state your full name for the
7 record.

8 A. My name is Marida Abrew (phonetic).

9 Q. Okay. And where do you reside? And you don't
10 have to give me the physical address, but do you reside
11 in --

12 A. Land O' Lakes.

13 Q. In Land O' Lakes?

14 A. Yes.

15 Q. And do you have an occupation, or are you
16 retired?

17 A. I'm retired.

18 Q. And what was your previous occupation before
19 retirement?

20 A. I was, like, a customer service.

21 Q. Okay. How long did you do customer service?

22 A. On and off, 15 years.

23 Q. Okay. When did you retire?

24 A. 2004.

25 Q. Okay. Ms. Abrew, I'm going to take you to

1 January the 13th of 2014, and ask you if you went to the
2 Cobb Theater that day to see Lone Survivor?

3 A. Yes, I did.

4 Q. And did you go by yourself, or did you go with
5 others?

6 A. No, I had two friends.

7 Q. Okay. Do you know about what time you got to
8 the Cobb Theater?

9 A. It must have been, like, maybe 12:30, quarter
10 to 1.

11 Q. Okay. Did you get to the Cobb Theater before
12 or after the previews started playing?

13 A. Oh, before.

14 Q. Before. Okay. So you get to the Cobb Theater
15 with your friends. What do you do?

16 A. We're talking to each other and looking at the
17 previews.

18 Q. So you all go in to theater 10?

19 A. Yeah.

20 Q. All together?

21 A. Yes.

22 Q. Would you tell the Court exactly where you
23 believe you were seated.

24 And let's picture -- let's picture that that
25 wall right there is the very back of the theater and that

1 wall right there is the screen of the movie theater.

2 A. Uh-huh.

3 Q. So describe to the Court, if you can, where you
4 remember being seated.

5 A. Okay. As you're coming up the stairs, maybe
6 the third or fourth row --

7 Q. Okay.

8 A. -- right in the middle.

9 Q. Right in the middle?

10 A. Yeah.

11 Q. And you all sat together?

12 A. Yes.

13 Q. So you're there. Previews had not started; is
14 that correct?

15 A. No, they were going on.

16 Q. The previews?

17 A. Yeah. There was so many of them.

18 Q. So when you came in, the previews were going?

19 A. I believe so.

20 Q. Okay.

21 A. Or if not, music. I don't remember right now.

22 Q. Do you remember there being a wall behind you?

23 A. Yes.

24 Q. Okay. Now, when the previews started, was the
25 theater dark or light?

1 A. It was -- it was lighter. It was, like, a
2 dimmish -- it had been dimmed down, but you could see
3 still see light.

4 Q. So the lights had dimmed down somewhat?

5 A. Yes.

6 Q. And the previews, were they loud?

7 A. Pretty loud, yes.

8 Q. And do you remember what type of previews were
9 on?

10 A. Most of them were action, you know, movies
11 coming on.

12 Q. Shoot 'em up?

13 A. Yeah. Very loud.

14 Q. Okay. Before you saw those previews come on,
15 did you -- do you remember seeing the announcement on the
16 screen about cellphones?

17 A. Yes.

18 Q. Would you tell the Court what you remember the
19 announcement saying?

20 A. To make sure that you put off your cell phones.

21 Q. And did you do that?

22 A. Yes.

23 Q. Did your group do that?

24 A. Yes.

25 Q. Was that announcement pretty clear to everyone?

1 A. Well, it was to me --

2 Q. Okay.

3 A. -- and my friends.

4 Q. Now, you're there watching the previews with
5 your friends.

6 Tell me what happens.

7 A. We're watching -- we're still talking to one
8 another very quietly. And then looking at the previews
9 and mentioning maybe we're going to go see that movie,
10 making plans. And then I heard the --

11 MR. GARCIA: Objection. Hearsay.

12 MR. ESCOBAR: Not offered for the truth of
13 matter asserted, number one.

14 MR. GARCIA: It is offered for the truth of
15 matter asserted.

16 MR. ESCOBAR: It's not. And I can tell you
17 why. I can tell you what the word is, and excuse my
18 language. The word is "motherfucker." And so it is
19 not being offered for the truth of that particular
20 statement. In fact, that is really not a statement.
21 It's a phrase. It's an expression.

22 MR. GARCIA: Judge -- it's an assertion, Judge.
23 And I would rely on the case that I previously cited
24 yesterday. It's not an excited utterance. It's not
25 a spontaneous statement.

1 And the other problem that we have is,
2 Ms. Abrew can't identify the declarant, the one that
3 made that statement. Therefore, it's not relevant.

4 MR. ESCOBAR: Judge, I don't think we need to
5 go to Hargrove. But if you would like, I studied
6 Hargrove. And so I can have a lengthy argument on
7 Hargrove today, because Hargrove didn't apply
8 yesterday and Hargrove doesn't apply today either.

9 And I've dissected that particular case, and
10 I'd be more than glad to do it. Hargrove is a
11 foundation case. What the Court found there was
12 that the attorneys failed to lay a foundation in
13 order to be able to give some confidence in the --
14 in the declarant's statement. But this is not a
15 hearsay. This is not a statement like it was
16 yesterday.

17 I would agree that yesterday's statement, okay,
18 would have been a hearsay statement. And so we
19 would have had to have carved that out into an
20 excited utterance or a spontaneous statement.

21 This is a phrase. And if the Court remembers,
22 one of the things that's very important -- because
23 they tend to forget this -- we have already
24 introduced a plethora of evidence, including
25 Mrs. Reeves saying that Mr. Oulson was using that

1 "F" word repeatedly.

2 Now we've got, okay, the gentleman that just
3 left the stand here, which is Mr. Wolfe, that said
4 that he remembered, you know, that "F" word as well.

5 And so those are particular statements that are
6 going to be important circumstantially in order for
7 the Court to assess the actual fear that Mr. Reeves
8 had, and the aggression that was being exerted
9 towards Mr. Reeves.

10 And this lady was far down, and during the loud
11 previews heard the words, "motherfucker." And she's
12 going to tell you how she felt three rows down --

13 MR. GARCIA: Judge --

14 MR. ESCOBAR: -- what it made her feel.

15 MR. GARCIA: -- may I respond?

16 THE COURT: You may.

17 MR. GARCIA: We do not know who the declarant
18 was, Judge. That does not become relevant unless
19 and until we know who the declarant was. And with
20 all due respect to the Court, I need to give you an
21 example. And, obviously, I'm going to use those
22 words, so no disrespect to the Court. And I don't
23 mean to offend anyone, but because we don't know who
24 said it, it could have been a patron, Judge, that's
25 sitting there. There's commotion going on behind

1 them or wherever, and they actually shout out or
2 say, "motherfucker," you know. "Can you-all shut up
3 or take this somewhere else?"

4 So without knowing who the declarant is, it
5 does not become relevant, Judge. It could have been
6 a patron for all we know. They can't attribute it
7 to Mr. Reeves, they can't attribute it to Mr.
8 Oulson.

9 The case is clear, Judge. I stand by that
10 case, and I'd ask this Court to stand by your
11 ruling. It's not -- there's no exception to the
12 hearsay. It's not a question about foundation.

13 MR. ESCOBAR: Judge, there's two parts to this.
14 If you find today that the words "motherfucker" is
15 hearsay, then I'll go to the next one. But it's not
16 hearsay. It's not been being offered for the truth
17 of, motherfucker.

18 It's being offered for the effect that it was
19 having in that particular theater at a very, very
20 trying time. And right after that word, there
21 was -- and she's going to testify to this -- a bang.

22 Right after that word, there was a bang. What
23 did Mrs. Reeves say? What did this gentleman here
24 say about what was happening between Mr. Oulson
25 being aggressive towards Mr. Reeves at that very

1 moment? How in the world can we not have such a
2 statement?

3 Mr. Garcia thinks that everything has to be
4 direct evidence. But circumstantial evidence
5 concerning what is taking place in that theater is
6 very relevant.

7 Now, if you're going to say that that is
8 hearsay, I'll be more than glad to argue Hargrove,
9 because I have dissected it, and I feel very
10 comfortable that the ruling in that particular case
11 was strictly because the lawyers in that case had
12 not set the foundation.

13 And you read the case as well, and I know
14 you've studied it as well. But I would like an
15 opportunity, if you're going to find that this --
16 these two words are hearsay, then I can start
17 arguing Hargrove.

18 THE COURT: All right. As always, hearsay is
19 one of the most hotly contested issues in the
20 justice system. We can all have training on it for
21 decades and still argue about it.

22 I don't find that the words uttered were to
23 somehow prove that someone was really a
24 mother-effer. But I do find that it's being offered
25 to prove the ultimate allegation that the Defense is

1 trying to prove, that there was some extreme
2 hostility being put forth. So I do find it's
3 hearsay, and we can argue Hargrove.

4 MR. ESCOBAR: Judge, just to make a mention for
5 the record, if the Court's rationale, you've just
6 said, "I'm not finding," okay, "that they're trying
7 prove the word 'motherfucker.' It's for the
8 effect," then it's not being offered for the truth
9 of the matter asserted.

10 Because if it's only for effect, it is not
11 hearsay. By its very definition, it is not hearsay
12 when you're trying to introduce that statement for
13 the effect.

14 I agree that if for some reason we were
15 litigating something, and I had to prove, you know,
16 that that person had been shown the word,
17 "motherfucker," then I would be in a different
18 situation. I'd be back to Hargrove.

19 But when you're using it for the effect on
20 someone else, then it's no longer being offered for
21 the truth of the matter asserted. So that's the
22 truth of the matter asserted. Its effect is what
23 we're trying to show.

24 And that word has been said by -- fuck word has
25 been said here by many people. I mean, it's not

1 like this is the only, you know, "F" word that we've
2 heard in this entire hearing. So I just want to
3 make that clear for the record, and make that
4 perfectly clear, that I think that even by the
5 Court's definition, we would be allowed to do this.

6 MR. GARCIA: Judge, may I respond briefly?

7 THE COURT: Yes.

8 MR. GARCIA: Again, they cannot set the scene
9 in this. They don't know who the declarant is. And
10 then the other question is, it has to be the effect
11 on the hearer or the listener. Who is the listener?
12 They can't establish that. It can't be Ms. Abrew.
13 So, therefore, it's not relevant, Judge.

14 THE COURT: All right. Which, of course, we
15 all know if the argument is that it's not offered to
16 prove the truth asserted, then what's it being
17 offered for?

18 MR. ESCOBAR: The effect of someone in a
19 theater saying -- and I'm going to say it loud, so
20 you get -- she was way down there. "Motherfucker."
21 That's going to affect people. It's going to affect
22 her, and it did. And she'll testify to that. It's
23 going to affect him. It's going to affect everybody
24 in that theater, because you know what? That
25 doesn't happen in a theater.

1 When we go to the theater, it is a time for
2 peace and quiet. It is a time of being able to have
3 that movie showing, and you feel like you're in the
4 moment. So that is what we're trying to show. It's
5 the effect.

6 And so it's no surprise to the prosecution,
7 because they've heard this time and time again, that
8 that word, "fuck, fuck, fuck," was being said by
9 Oulson, even by Mr. Wolfe, which was the last
10 witness here.

11 MR. GARCIA: Judge, it's clear, it has to be
12 the effect on the listener. If -- assuming this
13 example: If it was Mr. Oulson who had turned to
14 Mr. Reeves and said "motherfucker," then you have a
15 declarant, you have the person that's hearing it,
16 which would be Mr. Reeves. That's the effect on the
17 listener. It has to be on Mr. Reeves, not Ms.
18 Abrew, not on the patrons in the theater.

19 They haven't met their burden. They haven't
20 set up the scene. Like I said, Judge -- and I'm not
21 going to repeat it over and over again. They don't
22 know who the declarant is, they don't know who the
23 listener is. And therefore, it's not admissible,
24 and I'd ask that you stand by your ruling, stand by
25 the case. It's clear. It's inadmissible.

1 MR. ESCOBAR: Judge, we're not at the case yet.
2 We're still at the definition of whether I'm
3 introducing that for the truth of the matter
4 asserted. If, in fact, the Court finds that it's
5 hearsay, then I'll move on to Hargrove, and I'll be
6 more than glad to explain Hargrove.

7 But, listen, the one thing that we've got to
8 know -- he knows this -- the Hargrove court didn't
9 say if we don't know who the declarant is, we can't
10 get it in.

11 You don't see that anywhere in that particular
12 opinion. That's not in the holding, and how we read
13 cases is certainly not by footnotes.

14 I saw Mr. Garcia yesterday referring to a
15 footnote. We don't read cases by footnotes. We
16 read cases by the body of the case and the holding
17 of the case and the reasoning behind those
18 particular issues. And so I'll get to Hargrove if
19 the Court first rules whether that statement,
20 "motherfucker" -- if it's hearsay.

21 And the only way it can be hearsay, Your Honor,
22 is if I was using that word to prove the truth of
23 the matter asserted, those two words. And I'm not.
24 I'm using it for the effect.

25 THE COURT: Then I'm assuming if someone had

1 shouted, "Merry Christmas," you think you'd have the
2 same argument?

3 MR. ESCOBAR: If this was in a bar and, you
4 know, it was a joyous time for Christmas, I'd have a
5 problem. I'll be honest with you, I'd have a
6 problem. But you've got to take the setting.

7 In fact, one of the things that this court in
8 Hargrove talks about is, any time that a statement
9 is being introduced, you've got to view the setting
10 and the circumstances that were taking place at the
11 time that the statement was made.

12 Because if we don't allow statements like this
13 at a time -- the sequence of events, the word
14 "motherfucker" and then the shot, it's so tied
15 together. It wasn't like someone said,
16 "motherfucker" and then five minutes later you hear
17 a shot. That's not going to be her testimony. It's
18 going to be, she heard that word and the shot rang
19 out.

20 So it's circumstantial evidence, you know. She
21 couldn't see who was saying, "motherfucker," from,
22 you know -- from her seat, obviously. But it's
23 circumstantial evidence. And just like the
24 prosecution on many occasions uses circumstantial
25 evidence to prove matters, so can the Defense.

1 MR. GARCIA: May I respond, Judge?

2 Yes, you can use circumstantial evidence if it
3 is admissible. They cannot get around the fact that
4 they cannot establish that the listener was Mr.
5 Reeves. They can't do it, Judge.

6 And the only reason why they're trying to get
7 this statement in is because of its inflammatory
8 nature. It's not relevant if they cannot establish
9 that Mr. Reeves heard that statement and Mr. Oulson
10 is the person that said it. And, therefore,
11 Hargrove applies, Judge.

12 Whether you read headnote 2 or you read the
13 body of the case. If you cannot identify the
14 declarant, it does not come in.

15 THE COURT: I'm aware of the limitations of
16 that last statement. I do find it is hearsay, and I
17 am going to stand by my ruling yesterday for various
18 reasons.

19 MR. ESCOBAR: Judge, could I argue Hargrove?

20 THE COURT: Go ahead.

21 MR. ESCOBAR: Okay. Judge, first of all, when
22 we're looking at Hargrove, we have to first have the
23 basic premise that we have with all hearsay
24 statements, and then all exceptions to the hearsay
25 rule.

1 Because an excited utterance or spontaneous
2 statement, that -- those statements are excluded out
3 of the hearsay prohibition because there is a sense
4 of reliability with those particular statements.

5 And so, first of all, what we have to do, in
6 looking at the exceptions, we've got to say, "Okay.
7 Was the statement itself and were the surrounding
8 circumstances in which the statement was made --
9 does that give the statement some indicia of
10 reliability?"

11 And so when you're looking at this particular
12 case, you've got to look at all the surrounding
13 circumstances and all the surrounding evidence that
14 this Court has already heard. You've heard from
15 Mrs. Reeves where she has indicated, and testified,
16 that Mr. Oulson was repeatedly using the "F" word
17 and was extremely mad at her husband.

18 You've heard Mr. Wolfe indicate that, yes, he
19 got up. He was using the, you know, "F" word and he
20 was turned around towards Mr. Reeves.

21 And so one of the words that we're trying to
22 introduce here is that same word in that same
23 loudness in a theater that Mr. Reeves was seated at.

24 So when he is saying, "We've got to be able to
25 place the listener at the scene." Absolutely. He

1 was at that scene.

2 So let's take a look at Hargrove now and how
3 that differs. There was a fight in this case
4 between individuals by the name of Hargrove and
5 McNeal. Lawson was an individual that was there
6 during that particular fight.

7 And at the time, if the Court recalls, Lawson,
8 after the fight, was walking down the sidewalk. And
9 all of a sudden, he sees McNeal walking down the
10 sidewalk. And then there's a shooting of
11 Mr. McNeal.

12 Mr. Lawson didn't see Mr. Hargrove shoot
13 McNeal. He just knew that there was a fight and
14 that he was walking down the sidewalk and all of a
15 sudden, this gentleman is shot.

16 Now, the prosecution in that case wanted to get
17 in a statement that Lawson had heard from a general
18 crowd. That general crowd was an unidentified
19 person that had heard a statement. And we're going
20 to -- we're going to talk about what the statement
21 was. The statement was, Your Honor, "Panna did come
22 back with his shit."

23 Now, let's talk about that particular issue.
24 Because the Court says, Well, what does that mean?
25 It could mean that, you know, Panna, which was the

1 nickname for Hargrove -- it could be that Panna was
2 bringing back a gun, or brought back a gun or a
3 knife, or they said anything.

4 In fact, the lawyers in this particular case
5 had failed to lay a foundation as to whether or not
6 the people that -- or the declarant, one of those
7 people that were in that group -- whether the
8 declarant was even there before or after the
9 shooting.

10 I mean, that's what they're talking about.
11 They're saying, hey, listen, we don't even know, you
12 know, who the declarant is. And we don't even know,
13 more importantly, where the declarant was when the
14 excited utterance took place.

15 So they say the following -- and this is giving
16 the Court now some guidance. They said, "the Court
17 factors to be considered when determining whether
18 necessary state of stress or excitement is present,
19 you have to look at the age and the physical and
20 mental condition of the declarant."

21 Okay. So what have we done in an effort to lay
22 a foundation about who we believe is the declarant
23 in this particular case? Well, we've got testimony
24 from Ms. Reeves to show that at and before the time
25 of the actual shot, there was an individual, Mr.

1 Oulson, that was yelling profanities, was extremely
2 outraged and mad at Mr. Reeves, and that he used
3 that fuck word on numerous occasions. And that
4 right after the use of that "F" word (indicating),
5 there was a shot. That's one witness.

6 So now second witness, Mr. Wolfe, what does he
7 say? Very similar in that Mr. Oulson was up, he was
8 really mad, he was using "F" words. Okay? And then
9 after that process took place, what happened?

10 (Indicating) A shot.

11 Now, the Court is asking us, at this point in
12 time, that we've got to set those circumstances.
13 The Court in Hargrove not once said, "You can't
14 introduce a statement of a declarant that you don't
15 know who they are."

16 Because the Court realizes that there are
17 statements out there circumstantially that are very,
18 very important to prove, fear that Mr. Reeves was
19 feeling.

20 And remember, we've got to step in the shoes of
21 Mr. Reeves. And so if we don't allow that sort of
22 evidence in a case like this, how can we step in the
23 shoes of Mr. Reeves? Because we know that Mr.
24 Reeves was there in that theater experiencing,
25 through two independent witnesses, an "F" word.

1 And so the Court says here, "There was no
2 showing that the statement was made while the
3 Defendant was perceiving the event because they
4 didn't lay the circumstances of that, or immediately
5 thereafter, while under stress and excitement caused
6 by the event."

7 We know even by Ms. Oulson that she says, "My
8 husband was mad." We've got three witnesses now
9 that are laying the foundation under Hargrove.

10 It's very, very clear, Your Honor, that what
11 they did in Hargrove was they failed to lay the
12 foundation. And it's right in the body of the
13 opinion.

14 "There was no showing." That's how the Court
15 starts with deciding this particular case. "There
16 was no showing." "Moreover" -- "Moreover, it was
17 not established that the statement was made while
18 the declarant was perceiving the event or
19 immediately thereafter."

20 We've shown that by other witnesses concerning
21 the use of those "F" words.

22 "Or while under the stress and excitement of
23 the event. Because" -- and this is the most
24 important -- "because the record fails to support
25 the statements' admissibility as to spontaneous or

1 an excited utterance we find that the trial court
2 erred" -- in this case, the trial court had allowed
3 that in -- "in admitting that particular piece of
4 evidence."

5 We're in a different ballgame here. And we're
6 in a different ballgame -- and I say this
7 respectfully, Your Honor. I know that -- and you're
8 right. Hearsay is a problem that we all deal with
9 time and time again.

10 But in this particular case, and even before
11 yesterday, we made it a point to make sure that we
12 were laying proper foundations for everything that
13 was coming in here.

14 We've laid the proper foundation for this
15 witness. We've laid the proper foundation for
16 yesterday, and we were not prepared to argue
17 yesterday's, but we're going to come back with a
18 memorandum of law, not only with Hargrove, but we
19 intend to come back with a memorandum of law of
20 cases in other states that have applied that same
21 situation. Just so that at least, you know, we have
22 a record and an opportunity for the Court to maybe
23 reflect on your decision yesterday, and hopefully,
24 you know, consider, you know, our argument.

25 But for today, this is my argument, and I think

1 that we're on solid foundation. I mean that
2 respectfully.

3 MR. GARCIA: May I respond to that?

4 THE COURT: Briefly.

5 MR. GARCIA: I'm going to respond briefly.

6 As I indicated to the Court, the problem Mr.
7 Escobar has, he indicated in the case it says that
8 you have to consider the age and the mental
9 condition of the declarant. Their problem is they
10 cannot establish who the declarant is.

11 And through his analysis, and through the fault
12 in that analysis, what he's using is leaps of faith
13 in the evidence. What he's saying is Mr. Wolfe said
14 that Chad Oulson was cussing. Therefore, if he was
15 cussing, it must have been him that said,
16 "motherfucker."

17 Then he goes to Mrs. Reeves. Mrs. Reeves says
18 Chad Oulson was cussing. Therefore, it must have
19 been Chad that said, "motherfucker."

20 Then he uses Mrs. Oulson. Mrs. Oulson says
21 Chad was angry. Oh, well, therefore, it had to have
22 been Chad that said, "motherfucker."

23 Let me give you this example, Judge. What if
24 it was Mr. Oulson that was in the theater, and he --
25 and nobody knows, just like he had said, that it's a

1 general crowd and the person is unidentified, right?
2 So in this example, Mr. Oulson is in there and he's
3 the one that makes the statement, "Oh, my God.
4 Don't shoot me." And he can't -- nobody can
5 identify and say, "It was Mr. Oulson that made that
6 statement."

7 Under his theory, that would come in. It's no
8 different, Judge. The case law is clear.

9 We have argued this to the point we can't argue
10 it anymore. Judge, you've made your decision. I'd
11 ask that you stand by your ruling. It's a sound
12 ruling. I'd ask that you not allow the statement
13 in.

14 THE COURT: The difference between the other
15 two who said he was cussing -- and I might add, none
16 of them said, "he said motherfucker." So they were
17 looking at him. They identified him. "He's the one
18 that said it."

19 In this case, there is no indication that she
20 had any idea who it might be. And I know,
21 obviously, as Mr. Garcia pointed out, you want me to
22 infer that. And I am declining to do so because
23 there could just as easily have been another person
24 tired of hearing the bickering, I don't know. No
25 one's asked, "Did anyone else say" -- "was anyone

1 else around them cussing?" I don't know that.

2 And I can't make that leap that, because
3 Mrs. Oulson said he said a cuss word, and Mr. Wolfe
4 said he said a cuss word, that automatically it's
5 inferred to be Mr. Oulson.

6 And as in my ruling yesterday, once again, the
7 highest consideration that I have to make a ruling
8 on is the indicia of reliability. And because of my
9 doubts that I've already indicated, that is my
10 number one concern and that is the reason for the
11 hearsay rules, the underlying reason. And because
12 of that, I am concerned about the reliability of
13 that statement based on no identification of the
14 declarant.

15 So that is why I'm ruling, once again, in the
16 same fashion. And my ruling of yesterday stands.
17 And as I recall, whatever statement that witness
18 said did not coincide with anything anyone else had
19 said. So for the same reasons I'm going to decline
20 to allow that.

21 MR. ESCOBAR: Judge, can I ask one question on
22 your ruling? Is the Court ruling that with an
23 unidentified declarant, that you would never be able
24 to have an excited utterance or spontaneous
25 statement? I just want to make sure that I --

1 THE COURT: No.

2 MR. ESCOBAR: -- I didn't hear that from you.

3 THE COURT: No. No, no.

4 MR. ESCOBAR: But this is just based upon these
5 facts?

6 THE COURT: Yes, based upon these facts. I
7 understand the ruling in Hargrove and the analysis
8 that was done. And in this case, I don't find it to
9 be appropriate under these facts for those reasons.
10 Primarily, my concern is about the reliability of
11 the statement, so...

12 MR. ESCOBAR: Judge, I hope you realize that --
13 and we're going to have to proffer it, obviously. I
14 hope you appreciate that.

15 THE COURT: Oh, I think it's been said plenty.
16 So one more time ain't going to hurt.

17 MR. ESCOBAR: Thank you.

18 THE COURT: Go right ahead, proffer.

19 BY MR. ESCOBAR:

20 Q. Ms. A brew, I know you've heard a lot of this.
21 Let's get back to your testimony.

22 A. Uh-huh.

23 Q. You're watching the previews, previews are
24 loud, and you hear what?

25 A. I heard the word used, "motherfucker."

1 Q. You got to say it a little louder.

2 A. I heard -- the word used was "motherfucker."

3 Q. How did it make you feel?

4 A. Well, at that point, I felt like someone was
5 mad, and I didn't have much more time to think about
6 anything else because then I heard -- I heard the shot.

7 Q. Right after?

8 A. Yes.

9 Q. Were those words coming from the previews?

10 A. I'm sorry?

11 Q. Were those words coming from the previews?

12 A. Oh, no. No. No.

13 Q. Were those words coming from anyone there in
14 front of you?

15 A. No, not that I know of. I mean, it was just --
16 it's not in our crowd. There were three of us, and
17 everybody else -- there was nobody else next to us, so.

18 Q. What did you feel those words were? Fighting
19 words?

20 A. They were -- someone was mad.

21 Q. Have you ever said that those words were
22 fighting words to you?

23 A. I guess so. Someone was mad so, you know, I
24 don't know -- maybe -- I didn't have time -- anymore time
25 to think about anything else. I just thought, you know,

1 it was a problem word.

2 MR. ESCOBAR: Judge, that ends my proffer.

3 THE COURT: Thank you.

4 BY MR. ESCOBAR:

5 Q. What did you do then?

6 A. Well, we got up and we left the theater.

7 Q. Okay. And did you see anyone in the back of
8 the theater as you were getting up and leaving?

9 A. I just happened to look back, and I saw
10 someone. It looked like a man sitting back in a chair.

11 Q. Young or old?

12 A. I couldn't -- can't remember. I don't know. I
13 just saw someone.

14 Q. Okay. Very back row?

15 A. Yes.

16 Q. Where did you go?

17 A. We went down to the lobby of the theater.

18 Q. Is that called the concession area?

19 A. Right. Yes.

20 Q. Okay. And what did you do there?

21 A. We sat down at these tables that they had.
22 They told us to sit down.

23 Q. These were people that were coming from theater
24 10?

25 A. The group, yes.

1 Q. Yes?

2 A. Yes.

3 Q. So people were coming out of theater 10, they
4 were putting them there at the concession area?

5 A. Right.

6 Q. Tell the Court how many people you saw in that
7 area.

8 A. It was quite a few people. I wouldn't say, you
9 know, a big, big crowd, but there were a few people
10 there.

11 Q. Everybody was sitting at tables?

12 A. Yes.

13 Q. Were people talking?

14 A. Yeah, I would say so.

15 Q. Were they talking about what they had witnessed
16 inside the theater?

17 A. Some were, yeah, I guess so. Yeah.

18 Q. And those conversations took place 15 to 20
19 minutes before the police got there?

20 A. About, yes.

21 Q. And then when the police got there, did anybody
22 come to you and say --

23 MR. GARCIA: Objection as to leading, Judge.

24 BY MR. ESCOBAR:

25 Q. Did any police officer --

1 THE COURT: Overruled.

2 BY MR. ESCOBAR:

3 Q. -- come to you and tell you not to talk or not
4 to discuss your observations in the theater with anybody
5 else?

6 A. I don't recall, no.

7 Q. You don't recall any officer coming to you and
8 telling you that?

9 A. No.

10 Q. You were there for how long? Please tell the
11 Court how long you were there in that concession stand
12 with that group of people.

13 A. I mean, the total before we left to go home?

14 Q. Yeah. Hours, right?

15 A. Yes.

16 Q. Two and a half hours?

17 A. About, yes.

18 Q. After all that time people are talking, right?

19 A. Yeah. I guess so, yes.

20 Q. And throughout that two and a half hours, no
21 police officer came to you and told you not to discuss
22 things with anybody else, right?

23 A. No, I don't recall that.

24 Q. Do you recall any police officer coming to
25 anyone in that group and saying, "Hey, guys, please don't

1 talk about anything"?

2 A. I was too nervous to look at anyone else or --
3 I was just nervous. I got up and I was -- got on the
4 phone with my daughter, and I wasn't really paying
5 attention to anyone else.

6 Q. You filled out your form right then in that
7 concession area, did you not?

8 A. Yes.

9 Q. Your statement form?

10 A. Yes.

11 Q. Right at the same table with everybody else
12 around you, right?

13 MR. GARCIA: Objection as to leading, Judge.
14 He's been leading for the last five minutes.

15 MR. ESCOBAR: I will rephrase that one, Mr.
16 Garcia.

17 THE COURT: Thank you.

18 BY MR. ESCOBAR:

19 Q. Where did you fill out your statement form?

20 A. We were sitting at the table.

21 Q. How many people were sitting at the table when
22 you were filling out that form?

23 A. Just my friends.

24 MR. ESCOBAR: No further questions, Your Honor.

25 THE COURT: Thank you.

1 Cross?

2 MR. GARCIA: Yes, Judge. And just so the
3 record is clear, the questions that he had
4 previously asked in reference to the statement, that
5 was for a proffer, and a proffer only; correct?

6 THE COURT: Correct.

7 CROSS-EXAMINATION

8 BY MR. GARCIA:

9 Q. Ms. Abrew -- well, while it's still morning,
10 good morning, ma'am.

11 A. Good morning.

12 Q. You would agree with me, would you not, Ms.
13 Abrew, this was a traumatic experience for you?

14 A. Very much so.

15 Q. It upset you, right?

16 A. Yes.

17 Q. Now, Mr. Escobar was asking you about people
18 and where they were sitting, and that you all were
19 sitting at a table. And he asked you, "Were people
20 talking," right?

21 A. Yes.

22 Q. Is it fair to say -- and I'm asking you, with
23 your own independent recollection, do you remember people
24 talking?

25 A. People were talking, yes.

1 Q. Okay. Is it fair to say that you do not know
2 what they were talking about?

3 A. In a way, yes. Yes. I just heard them
4 talking, but it wasn't part of my -- they weren't talking
5 to me, so --

6 Q. Right.

7 A. -- I didn't know the conversation, what they
8 were talking about directly.

9 Q. So when he asked you, they were talking about
10 what had happened in the theater, you don't know that for
11 a fact, do you?

12 A. Right.

13 Q. They could have been talking about the weather
14 for all you know, right?

15 A. Yes. I guess so.

16 Q. You have no idea what they were talking about;
17 correct?

18 A. Right.

19 Q. And you indicated that you don't recall the
20 police saying not to talk about the incident; correct?

21 A. Yes.

22 Q. Now, are you saying that they didn't?

23 A. No, I didn't -- I don't recall.

24 Q. You don't remember?

25 A. Right.

1 Q. So they could have said, "Hey, folks, please
2 don't talk about the incident," you just don't remember,
3 do you?

4 A. Right. Yes.

5 Q. And you said you were nervous when you were
6 sitting at the table; correct?

7 A. Very, yes.

8 Q. Now, you wouldn't have discussed what you saw
9 or heard with your friends, would you?

10 A. No. We were just concerned. We were concerned
11 about the amount of time before the police appeared. So
12 we had figured that -- the ambulance would usually come
13 with the police, so we were concerned about the person.

14 Q. Okay. You were -- for the record, you were
15 concerned for the person that was shot --

16 A. Yes.

17 Q. -- Mr. Oulson?

18 A. Yes.

19 Q. So you were talking about that, the response
20 time for the paramedics or the ambulance?

21 A. Right.

22 Q. But not about the events that had transpired in
23 the theater?

24 A. All three of us got up, we got on our phones
25 with our family members. So we were on the phone with

1 our -- I was on the phone with my daughter. I don't
2 know -- my friends were on the phone with family members
3 that they called.

4 Q. So you would agree with me if you're on the
5 phone with your daughter, you're really not paying
6 attention to the folks that are sitting there and what
7 they're doing or not doing or what they're talking about;
8 correct?

9 A. Yes.

10 MR. GARCIA: Could I have a moment, Judge?

11 THE COURT: You may.

12 MR. GARCIA: I don't have any further
13 questions, Judge. Thank you.

14 MR. ESCOBAR: May I, Your Honor?

15 THE COURT: You may.

16 REDIRECT EXAMINATION

17 BY MR. ESCOBAR:

18 Q. Ms. Abrew, did you just tell Mr. Garcia that --
19 that you did not hear other people in the concession
20 stand talking about what they witnessed in the theater
21 amongst themselves?

22 Is that what you told Mr. Garcia?

23 A. In a way. Like I said, it was so much
24 commotion that they might have said a word or two. I
25 don't know. I don't really remember that. I mean, that

1 was --

2 Q. Do you remember me taking a deposition of you?

3 A. Yes.

4 Q. Okay. And that deposition was taken on January
5 the 5th of 2015, at -- approximately a year after this
6 particular incident.

7 Do you remember that?

8 A. Right. Yes.

9 Q. And you would agree with me that your
10 recollection would be much better on January the 5th of
11 2015, than it is today; correct?

12 A. Yes. I don't know. I really don't know.

13 MR. ESCOBAR: Page 27, Mr. Garcia.

14 MR. GARCIA: I would like an opportunity to see
15 the page and the lines of the deposition --

16 MR. ESCOBAR: Well, come on over here and I'll
17 show it to you.

18 MR. GARCIA: If he's trying to impeach her, I
19 think this is improper impeachment. She said she
20 doesn't remember.

21 MR. ESCOBAR: Judge --

22 MR. GARCIA: So he needs to give her an
23 opportunity to read this and see if it refreshes her
24 memory prior to --

25 MR. ESCOBAR: Page 27, line 25. Page 28, lines

1 1 through 15. So we start on 27.

2 "Are people talking about what they saw?"

3 "Yes."

4 "And are they sharing that information with
5 each other?"

6 "Yeah."

7 MR. GARCIA: Okay. Well, she said she didn't
8 remember. So you can give it to her.

9 MR. ESCOBAR: I'm going to -- I'm going to
10 first ask her if she made those statements.

11 MR. GARCIA: No. That's not the way it goes,
12 Judge. She needs to be allowed an opportunity to
13 read it. Then if she says, "Yes, that refreshes my
14 memory," then he can ask the question.

15 But he can't go directly to --

16 MR. ESCOBAR: Judge, I'll do it that way, but,
17 you know, it's --

18 THE COURT: She said she didn't remember. That
19 triggers refreshing.

20 BY MR. ESCOBAR:

21 Q. Ms. Abrew, I'm going to -- can I come over next
22 to you?

23 A. Sure.

24 MR. ESCOBAR: Your Honor?

25 THE COURT: Yes.

1 MR. ESCOBAR: I asked her and not you.

2 BY MR. ESCOBAR:

3 Q. Can I put those on your lap so you can see it?

4 A. Yes.

5 Q. Okay. I'm going to direct you to read on page
6 27, to yourself first, this sentence. Okay. That's my
7 question to you.

8 A. Yes.

9 Q. Your answer?

10 A. Yes.

11 Q. Your answer?

12 A. Yes.

13 Q. Now, does that refresh your recollection?

14 A. If I said that at that time, I guess I did say
15 it. But today, I don't remember that.

16 Q. And you've already told the Court that,
17 certainly, your recollection back then would have been a
18 little bit better?

19 A. Yes.

20 Q. And so in reading that particular segment, you
21 agree that you said, yes, they were talking about what
22 they had seen in the theater amongst each other?

23 A. Right. Yes.

24 MR. ESCOBAR: No further questions, Your Honor.

25 THE COURT: Thank you.

1 May this witness be released?

2 MR. GARCIA: I have a few follow-up questions,
3 Judge, if I may.

4 RECROSS-EXAMINATION

5 BY MR. GARCIA:

6 Q. Ms. Abrew, can you tell us specifically what
7 was said about the case?

8 The people that were talking, what did you hear
9 that made you believe they were talking about the case?

10 A. They were talking about someone got shot and
11 that it was a young man.

12 Q. Well, I mean, that's generalities. I mean --

13 A. Yes.

14 Q. You would agree with me, would you not, that
15 everybody in the theater had figured out --

16 A. That's what they --

17 Q. -- someone was shot?

18 A. That's what they were talking about, yeah.

19 Q. Okay. But there were no specifics that you
20 heard, like, "I saw, you know, Mr. Reeves do this. I saw
21 Chad Oulson do that. I heard" --

22 A. No. No. No.

23 Q. "I specifically heard Mr. Oulson say this," or
24 "Mr. Reeves say that" --

25 A. No.

1 Q. -- right?

2 A. No.

3 Q. So this was just, in general, "someone was
4 shot"?

5 A. And mostly talking about the amount of time it
6 took the police to come. So those were the people I
7 was --

8 Q. To respond?

9 A. -- talking about.

10 Yes.

11 Q. Okay. Thank you.

12 MR. ESCOBAR: We're going to keep her under
13 subpoena, Judge, but I really doubt we'll
14 probably -- we're probably not going to call her
15 back.

16 Thank you, Ms. Abrew.

17 THE COURT: Thank you. You're free to go.
18 You're still under subpoena, with the possibility
19 that you could get recalled. So please, you know,
20 respond to any phone calls that you get requesting
21 you to come back. You'll certainly have ample time
22 to make arrangements to get back if you are called
23 back. Thank you. You're free to go.

24 It's a good time for a lunch break unless you
25 want to continue?

1 MR. ESCOBAR: No.

2 THE COURT: All right. Do we need any
3 additional time for any reason today?

4 MR. ESCOBAR: Judge, if we could just have,
5 like, an hour and 15 minutes? I've got about three
6 or four witnesses that will be coming up.

7 THE COURT: Okay. That sounds like a good
8 plan. Let's be back at, say, 12:20 -- I mean, 1:20.
9 That will give us an hour and 15, 18 minutes.

10 (Recess taken.)

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