

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

STATE OF FLORIDA

V.

CURTIS J. REEVES

Filed For Record
Pasco County, Florida
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HIMM A. PIERCE SOWERS
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STATE'S DAUBERT MOTION TO EXCLUDE THE TESTIMONY AND EVIDENCE OF DEFENSE EXPERT MICHAEL KNOX

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

For the purpose of this motion the State adopts the objections and the legal argument of the State's Motion In Limine To Exclude Evidence Generated by Michael Knox and the State's Second Motion In Limine To Exclude Evidence Generated by Michael Knox.

In addition to the State's initial objections to Mr. Knox's testimony and evidence, the State objects to his testimony, opinions and evidence in the immunity hearing in the above-styled case. The summary of the State's position regarding her opinion includes the following.

Summary State's Position

- ***Mr. Knox's testimony and opinions fail to meet the Daubert standard for admissibility.***

Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579, 589, 113 S.Ct. 2786 (1993) (The objective of the gatekeeping role is to ensure that expert testimony, in order to be admissible, must not only be relevant, but reliable.)

The trial judge is to consider "whether the reasoning or methodology underlying the testimony is scientifically valid" and "whether that reasoning or methodology properly can be applied to the facts in issue." Id. at 592-93.

Kumho Tire Co., Ltd v. Carmichael, 526 U.S. 137, 1195 S. Ct. 1167 (1999) (Daubert's general principles apply to expert testimony based on specialized knowledge, training or experience.)

Rule 90.702 (Requires that the evidence or testimony assist the trier of fact to understand the evidence or to determine a fact in issue.)

[Further argument on this issue is on pages 10-14, below.]

- ***Mr. Knox's testimony and opinions is based on unreliable reasoning and methodology.***

Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579, 589 113 S.Ct. 2786 (1993) (The objective of the screening is to ensure that testing, in order to be admissible, must not only be relevant, but reliable.)

Rule 90.702 (The testimony is the product of reliable principles and methods; and the witness has applied the principles and methods reliably to the facts of the case.)

[Further argument on this issue is on pages 14-22, below.]

- ***Assuming Mr. Knox is qualified to testify in the area of "shooting reconstruction", he may only testify about matters within the scope of his expertise.***

See, City of Tuscaloosa v. Harcros Chems., Inc., 158 F.3d 548, 562 (11th Cir. 1998) (explaining "the expert [must be] qualified to testify competently regarding the matters he intends to address" (alteration added; citations omitted))

[Further argument on this issue is on page 13, below.]

- ***Mr. Knox's testimony and opinions is only connected to the data he reviewed by the ipse dixit of his own testimony.***

Kemp v. State, 280 So.2d 81, 89 (Fla. 4th DCA 2019) (A court

may conclude that there is simple too great an analytical gap between the data and the opinion offered.)

[Further argument on this issue is on pages 14-15, below.]

- **Mr. Knox's testimony regarding his interpretation of the content of the surveillance video is not admissible.**

Seymour v. State, 187 So.3d 356, 358 (Fla. 4th DCA 2016) (The officer's observations were limited to what was captured on video—the same video that was available for the jury to watch. There was no record evidence that indicated the officer was in a better position than the jury to view the video and determine whether the object was a firearm. The officer was not qualified as a certified forensic technician or a witness that was proficient in the acquisition, production, and presentation of video evidence in court. He did not testify to any specialized training in video identification. As such, the officer's testimony constituted impermissible lay opinion that invaded the province of the jury to interpret the video.")

[Further argument on this issue is on pages 22-24, below.]

Summary of State's Argument

Re: Interpretation of the Video

The opinion by Knox that he does not see the reflection of the pattern on the Defendant's shoe in the video is not admissible. There is no evidence in the record that indicates Knox was in a better position than the jury to make such a determination. There is not testimony in the record that his "specialized knowledge" includes training as to whether the reflection of an object will emit a reflection in the exact shape of the reflective object or that he has any specialized training to determine the shape or pattern of an object emitting a particular reflective shape. As such Knox's testimony regarding his interpretation of the video constitutes an impermissible lay opinion that invades the province of the jury. Further, the testimony exceeds the scope of his expertise.

Re: Photographs Depicting the Effect of "Backlighting"

The evidence generated by Knox consisting of photographs taken for the purpose of fairly and accurately depicting the various lighting levels in the theater and the photographs of the mannequins in various positions in the theater taken for the purpose of fairly and accurately depicting the effect of "backlighting" on a human figure is based on unreliable reasoning and methodology. The testimony, though disingenuous at times, clearly indicates the photographs were taken for the purpose of proving a material fact in issue, what the Defendant could see contemporaneous with the shooting.

The "fair and accurate" predicate for the relevancy of the photographs rises or falls on the scientific hypothesis that a camera lens can accurately depict what the human eye can see. The photographic evidence is simply a snapshot in time taken by a 55mm camera lens that was adjusted manually to a static exposure time in order to capture light¹.

The focus of the human eye is much wider than a 35mm camera with a 55mm lens. The human eye has the ability to capture peripheral ambient light and constantly make adjustments to the available light.

The ability for the camera to accurately capture an image (based on its setting) is not the issue. If the photographs at issue were offered as a demonstrative aid in a photography class they would be an accurate representation of "backlighting". The students would get a clear understanding of the phenomena so it could be avoided in order to capture as much detail as possible or purposely used as an artistic expression. Such photographs are appropriate in a Forensic Photography class to explain the importance of being aware of the back light when photographing evidence or a crime scene. The relevancy of the photographs would be to alert the student forensic technician to the phenomena so it could be avoid.

That is not the case here. The issue here is the combination of science associated with the human eye and the technology and science associated with a 35mm camera being reliable applied to the facts of this case. The photographic evidence is offered as substantive evidence to prove the effect of "backlight" on an object based on the amount of light a human eye can detect. A Daubert inquiry includes a determination of

¹ Nikon D800, 35mm camera, 55mm lens, manual settings: 0.5 sec. exposure time, 2.8 f-stop, 400 ISO, 36.2 field of view, 1/60's shutter speed.

whether the expert witness is reliably applying principles and methods to the facts of the case. Here, the facts of the case that the photographic evidence is being applied is the ability of the Defendant's eyes to capture light in a given situation and based on the amount of light a human eye can capture to what extent does the phenomena of "backlighting" impact the Defendant's ability to "see" details of the object he is focusing on at a given point in time.

Because the photographs are based on unproven, unreliable scientific principles, the photographs depicting lighting conditions inside the theater and the photographs of the mannequins depicting the effect of "backlighting" fail to meet the Daubert standard for admissibility.

A Daubert inquiry includes a determination by the court that the proffered evidence will aid the jury. Because the photographs is offered for a specific purpose, which Knox concedes cannot be duplicated the photographs will only confuse and mislead the jury.

[Further argument on this issue is on pages *****, below.]

Re: Opinion Regarding Path of Bullet

The opinion by Knox, based on a post-mortem photograph of Oulson's wrist that the path of the bullet was traveling upward at the time it struck Oulson's wrist is outside the scope of his expertise.

Daubert "Gatekeeping" Inquiry

The Daubert "gatekeeping" inquiry requires the court to make the following factual determinations.

- That the expert's opinion will assist the trier of fact through specialized expertise to determine a fact in issue.
- The expert is qualified to testify competently regarding the matters he/she intends to address.
- The expert may only testify about matters within the scope of his/her expertise.

- The opinion is based on sufficient facts and data.
- Whether the reasoning and methodology underlying the testimony is scientifically valid and whether the reasoning or methodology properly can be applied to the facts in issue.
 - Whether the scientific method can be or has been tested
 - Whether the theory or technique has been subject to peer review and publication
 - The known or potential rate of error
 - General acceptance in the relevant scientific community

It is the proponent of the expert that has the burden to explain how the expert's experience led to the conclusion he/she reached, why that experience was sufficient basis for the particular opinion(s) and just how that experience was reliably applied to the facts of the case. Kemp v. State, 280 So.3d 81, 90 (Fla. 4th DCA 2019)

Factual Summary

This offense occurred on January 13, 2014 inside Theater #10 at the Cobb Grove 16 Movie Theatres, 6333 Wesley Grove Blvd, Wesley Chapel, Pasco, FL.

The Defendant is charged by Information with Murder in the second degree and Aggravated Battery.

The State took the deposition of defense expert Michael Knox on April 7, 2016. **In the Matter Of: State of Florida VS Curtis Reeves, Sworn Deposition of Michael Knox, April 7, 2016. (Depo April 7. Pg. ____)** and on September 30, 2016. **In the Matter Of: State of Florida VS Curtis Reeves, Sworn Deposition of Michael Knox, September 30, 2016. (Depo September 30. Pg. ____)**

Prior to the immunity hearing, the State filed its Motion In Limine To Exclude Evidence Generated By Michael Knox and its Second Motion in Limine To Exclude Evidence Generated By Michael Knox. The defense responded to said motions. The Court has not previously ruled on the State's motions. (Pgs. 1410, 1461) The State's initial and second motion to exclude evidence generated by Michael Knox was based on his sworn deposition.

At the Defendant's immunity hearing on February 20, 2017, the Defendant claimed self-defense pursuant to FSS 776.012.

The Defendant called Michael Knox as a shooting reconstruction expert. Defense counsel proffered Knox as a "major case crime scene detective who has to know the issues of use of force in an effort to be able to document, in an effort to be able to capture and question proper pieces of evidence in order to determine whether or not the perception of Mr. Reeves at the time of the shooting was reasonable". (Pg. 1420-21) His testimony included analysis of the theater video, police interview techniques, evidence collection techniques. He took measurements of the interior of the theater, photographs of the interior of the theater, made muzzle to target distance determinations, opined on the path of bullet through Oulson's wrist, and took photographs depicting the various lighting conditions in the theater and photographs of mannequins at various locations and lighting conditions.

During his testimony the State made various objections to his testimony regarding his interpretation of the video, and to the photographs depicting interior lighting conditions and "backlighting" of the mannequins. Regarding the photographs depicting lighting conditions and "backlight", the Court reserved ruling on the State's motion to exclude and accepted the testimony as a proffer. Pgs. 1410, 1461.

The trial in the above-styled cause is scheduled to begin on October 19, 2020.

The State reasonable anticipates the Defendant will continue to claim self-defense and will call Michael Knox as a shooting reconstruction expert. See, Exhibit 4 (C.V.), attached to the State's previously filed motion in limine to exclude evidence generated by Michael Knox. Michael Knox testified at the immunity hearing. See, Exhibit 1, attached. (Immunity Hearing Transcript, Volume 12, pages 1372-1552, Volume 13, pages 1553-1568) (Pg.(s). _____ Ln. _____)

Based on the facts of the case, the State anticipates that the Court will give the 2014 Standard Jury Instruction on Justified Use of Force, 3.6(f) which will include the following two excerpts.

1. A person is justified in using deadly force if he reasonably believes that such force is necessary to

prevent imminent death or great bodily harm to himself or another.

2. In deciding whether defendant was justified in the use of deadly force, you must judge him by the circumstances by which he was surrounded at the time the force was used. The danger facing the defendant need not be actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoid only through the use of that force. Based upon appearances, the defendant must have actually believed that the danger was real.

This case will turn entirely on how the jury will evaluate the testimony of the Defendant (post-Miranda statement) and various theater patron eyewitnesses to the shooting.)

The State objects to Knox's testimony and evidence, specifically including the below testimony and evidence offered at the immunity hearing.

Mr. Knox's interpretation/opinion regarding his belief as to the object that is emitting a bright light/reflection in the video.

The State objected to defense counsel's question "[A]nd had you reviewed that video in order to determine not only the - what appeared to be an emanating light from an object as well as the reflective appearance of that shoe as Mr. Reeves -" Counsel agreed to rephrase the question and asked ... "tell me what items you reviewed in the form of video and photographs and the actual shoes prior to going to the Cobb Theater that first time?" Pg. 1452 Ln 3-5.

In response to the above-rephrased question Knox responded [W]ell, I had reviewed the surveillance video, and there was some other information that I'd been provided as well² as having had the opportunity to actually examine and photograph the shoe. ... "Because in the video, there was a - there are a couple

² The State reasonable assumes the additional information is from defense counsel and a review of enhanced videos produced by Bek-Tek. The State's assumption is supported by the Defendant's multiple motions to dismiss based on statutory immunity and the testimony of Bek-Tek expert Mr. Koenig.

different places were there's some sort of a bright light or reflection of some type that's present during the video, some of which appears to be attributed to the shoe and some of it is in question, whether it's attributable to the shoe or to something else." Pg. 1452 Ln 3-20.

In response to questions regarding his examination of the reflective pattern on the Defendant's shoe he testified no to the question - are you seeing stripped characteristics in the video? Pg. 1459 Ln. 6-25 through Pg. 1460 Ln. 1-3.

Mr. Knox's testimony and evidence regarding the photograph of mannequins to depict the effect of "backlighting" on the human form.

After the parties agreed that the Court is going to reserve ruling on the "lighting" issues raised by the State's motion in limine, testimony ensued from Knox regarding the reasoning, methodology and purpose for taking photographs of mannequins in various lighting situations and locations. The testimony included a 40 slide PowerPoint presentation which contained many of the 88 photos taken of mannequins. (See previously filed, Exhibit #5 of State's Motion In Limine To Exclude Evidence Generated by Michael Knox.) The testimony was accepted by the Court as a proffer. The State objects to the entire line of questioning and exhibits. Pgs. 1502 - 1512.

At the conclusion of the above-described testimony, Knox responded yes to the question "Was this all in an effort to show relevant evidence that would certainly be important in Mr. Reeves' perspective as he sat in that seat on January 13th of 2013 and he had to fire the fatal shot? Pg. 1512 Ln. 20-24.

Mr. Knox testified that in his opinion the bullet was traveling "upward" when it struck Olson's right wrist.

During the course of his testimony Knox was asked by defense counsel to examine a post-mortem photograph of Oulson's right wrist and asked if that particular photo gave him any information as to how the bullet grazed that particular wrist. Pg. 1488 Ln. 12-14.

In response to the above-question Knox responded "... You can see that the bottom of the wound where the bullet first made

contact traveled across in the photograph, and it would be traveling upward in the photograph which would mean that it was traveling toward the anterior side of his wrist." Pg. 1488 Ln. 15-20.

Major Opinions

Opinion #1

He did not see a bright light/reflection in the video that matched the pattern of the reflective material on the Defendant's shoes.

Opinion #2

The photographic evidence of mannequins taken at various locations and under various lighting conditions fairly and accurately depicts what the Defendant could see from his seat at times contemporaneous with the shooting event.

Opinion #3

The path of the bullet was traveling "upward" when it struck Oulson's right wrist.

Argument

Daubert Standard

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

Florida Courts have recognized that The Federal Rules of Evidence may provide persuasive authority for interpreting the counterpart provisions of the Florida Evidence Code. See *Sikes v. Seaboard Coast Line R.R.*, 429 So.2d 1216, 1221 (Fla. 1st DCA 1983) (citing Charles W. Ehrhardt, *A Look at Florida's Proposed Code of Evidence*, 2 Fla. St. U.L.Rev. 681, 682-83 (1974)). *Yisrael v. State*, 993 So.2d 952, n.7 (Fla. 2008)

The federal courts have long used the Daubert standard to govern the admissibility of scientific testimony and opinions. In federal Court, Federal Rule of Evidence 702 governs the admissibility of expert testimony in federal courts. *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786

(1993): Kumho Tire Co., Ltd. V. Carmichael, 256 U.S. 137, 119 S.Ct. 1167 (1999). Under Daubert, a federal district court applying Rule 702 is charged with the gate-keeping role of ensuring that scientific evidence is both relevant and reliable. 509 U.S. at 589-95.

Rule 702 further requires that the evidence or testimony assist the trier of fact to understand the evidence or to determine a fact in issue.

Assisting the trier of fact goes primarily to relevance. 509 U.S. at 591. Relevancy is found when the expert's theory is tied sufficiently to the facts of the case and the expert's testimony assists the trier in resolving a factual dispute. 509 U.S. at 591-92.

The helpfulness standard requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility. 509 U.S. at 591-92. Thus if the proposed scientific evidence is not helpful in that the proposed science does not advance the inquiry in question, then the evidence does not meet the helpfulness standard. Reliability, on the other hand is grounded in the methods and procedures of science. 509 U.S. at 590.

The trial judge is to consider "whether the reasoning or methodology underlying the testimony is scientifically valid" and "whether that reasoning or methodology properly can be applied to the facts in issue." *Id.* at 592-93. In making this determination, the following factors are considered: (1) "whether it can be (and has been) tested," (2) "whether the theory or technique has been subjected to peer review and publication," (3) "the known or potential rate of error," and (4) "general acceptance" in the "relevant scientific community." *Id.* at 593-94. Although this is a flexible inquiry, the trial judge's focus "must be solely on principles and methodology, not on the conclusions that they generate." *Id.* at 594-95. When determining the admissibility of expert testimony, "[t]he district court is not obligated to hold a **Daubert** hearing." Clay v. Ford Motor Co., 215 F.3d 663, 667 (6th Cir.2000).

The Proponent of expert testimony has the burden to prove the foundation by *preponderance of the evidence*. 509 U.S. at 592, n.10.

The Legislature's adoption of the *Daubert* standard reflected its intent to **prohibit "pure opinion testimony"**, as

provided in *Marsh v. Valyou*, 977 So.2d 543 (Fla.2007)[.]” Ch. 13-107, § 1, Laws of Fla; see Charles W. Ehrhardt, 1 Fla. Prac., Evidence § 702.3 (2014 ed.) (“In adopting the amendment to section 90.702, the legislature specifically stated its intent that the Daubert standard was applicable to all expert testimony, including that in the form of pure opinion.”) (footnote omitted). Booker v. Sumter County Sheriff’s Office/North American Risk Services, 166 So.3d 189, 191 (Fla. 1st DCA 2015) § 90.702, Fla. Stat.

Florida Evidence Code

Rule 402 Relevancy

“To be legally relevant, evidence must pass the tests of materiality (bearing on a fact to be proved), competency (being testified to by one in a position to know), and legal relevancy (having a tendency to make the fact more or less probable) and must not be excluded for other countervailing reasons. Pearson, *Ungarbling Relevancy*, Fla.Bar J. 45 (1990).” Sims v. Brown, 574 So.2d 131, 134 (Fla. 1991)

Rule 702

90.702. Testimony by experts

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

- (1) The testimony is based upon sufficient facts or data;
- (2) The testimony is the product of reliable principles and methods; and
- (3) The witness has applied the principles and methods reliably to the facts of the case. § 90.702 (2015) Fla. Stat.

In 2019, the Florida Supreme Court adopted Ch. 2013-107, § 1, Law of Fla. (2013), which amended sections 90.702 (Testimony by experts) and 90.704 (Basis of opinion testimony by experts), Florida Statutes, of the Florida Evidence Code to replace the Frye¹ standard for admitting certain expert testimony with the

*Daubert*² standard, the standard for expert testimony found in Federal Rule of Evidence 702. In re Amendments to Florida Evidence Code, 278 So.3d 551, 552 (2019) (footnotes omitted)

As in the federal courts, in fulfilling the gate-keeping function the trial judge must make a factual determination that the expert's opinion will assist the trier of fact in understanding or determining a fact or issue. In addition, the court must find that the opinion is based on sufficient facts and data, the opinion is the product of reliable principles and methods, and the witness is reliably applying those principles and methods to the facts of the case.

Expert testimony is admissible only if the testimony is given by "[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education." Perez v. City of Sweetwater, No. 16-24267-CIV-ATTONAGA/Goodman, 2017 WL 8231079 (USDC S.D. Florida 2017) (Order signed by Cecilia M. Altonaga, US District Judge on 7/14/17) (pg. 2)

"Assuming an expert is qualified to testify, the expert may testify only about matters within the scope of his or her expertise. See *City of Tuscaloosa v. Harcros Chems., Inc.*, 158 F.3d 548, 562 (11th Cir. 1998) (explaining "the expert [must be] qualified to testify competently regarding the matters he intends to address" (alteration added; citations omitted)); *Feliciano v. City of Miami Beach*, 844 F. Supp. 2d 1258, 1262 (S.D. Fla. 2012) ("Determining whether a witness is qualified to testify as an expert requires the trial court to examine the credentials of the proposed expert in light of the subject matter of the proposed testimony." (internal quotation marks and citations omitted)). The inquiry is not stringent; "so long as the expert is minimally qualified, objections to the level of the expert's expertise go to credibility and weight, not admissibility." *Pleasant Valley Biofuels, LLC v. Sanchez-Medina*, No. 13-23046-CIV, 2014 WL 2855062, at *2 (S.D. Fla. June 23, 2014) (internal quotation marks and citation omitted). *Id.* at 2.

Even though an expert witness is qualified under section 90.702 other evidentiary rules are applicable. Unless an expert's testimony is **relevant** to a fact or issue, it is not admissible. Sunbeam Television Corp. v. Mitzel, 83 So.3d 865, 876 (Fla 3d DCA 2012)

The witness must possess **specialized knowledge** concerning the discrete subject related to the expert opinion to be presented. ... The expert must have adequate experience with the subject matter. Chavez v. State, 12 So.3d 199, 205-6 (Fla., 2009)

"The Court of Appeals for the Eleventh Circuit has set forth a three-prong inquiry encompassing the requirements of Daubert and its progeny and Rule 702. Under the three-prong inquiry, a court determining the admissibility of expert testimony must consider whether

(1) the expert is qualified to testify competently regarding the matters he intends to address; (2) the methodology by which the expert reaches his conclusions is sufficiently reliable as determined by the sort of inquiry mandated in Daubert; and (3) the testimony assists the trier of fact, through the application of scientific, technical, or specialized expertise, to understand the evidence or to determine a fact in issue." Frazier, 387 F.3d at 1260 (citations omitted).

"[I]f the witness is relying solely or primarily on experience, then the witness must explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts.'" Frazier, 387 F.3d at 1261.

"Method" Under Daubert and Rule 90.702

The Court's inquiry under Rule 702 must focus on the **methodology**, not the conclusions, but the Court is not required to admit opinion testimony only connected to existing data by an expert's unsupported assertion. See Daubert, 509 U.S. at 595.; Gen. Elec. Co. v. Joiner, 522 U.S. 136, 146 118 S.Ct. 512, 139 L.Ed.2d 508 (1997).

"[T]he test under Daubert is not the correctness of the expert's conclusions but the soundness of his methodology." Daubert v. Merrell Dow Pharm., Inc., 43 F.3d 1311, 1318 (9th Cir. 1995) ("Daubert II"). However, an expert's opinion must be based upon "knowledge," not merely "subjective belief or unsupported speculation." Daubert, 509 U.S. at 590, 113 S.Ct.

2786. Nothing in *Daubert* requires a court "to admit opinion evidence that is connected to existing data only by the **ipse dixit** of the expert," and "[a] court may conclude that there is simply too great an analytical gap between the data and the opinion proffered." *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146, 118 S.Ct. 512, 139 L.Ed.2d 508 (1997). *Kemp v. State*, 280 So.3d 81, 89(Fla. 4th DCA 2019)

"There are four requirements for deciding the admissibility of expert testimony:

(1) that the opinion evidence be helpful to the trier of fact; (2) that the witness be qualified as an expert; (3) that the opinion evidence can be applied to evidence offered at trial; and (4) that evidence, although technically relevant, must not present a substantial danger of unfair prejudice that outweighs its probative value."

Anderson v. State, 786 So.2d 6, 8 (Fla. 4th DCA 2000) (quoting *Holiday Inns, Inc. v. Shelburne*, 576 So.2d 322, 335 (Fla. 4th DCA 1991)) (footnote omitted). In order to be helpful to the trier of fact, expert testimony must concern a subject which is beyond the common understanding of the average person. *State v. Nieto*, 761 So.2d 467, 468 (Fla. 3d DCA 2000). Expert testimony should be excluded where the facts testified to be of such a nature as not to require any special knowledge or experience in order for the jury to form conclusions from the facts. *Johnson v. State*, 393 So.2d 1069, 1072 (Fla.1980). "*Mitchell v. State*, 965 So.2d 246, 251 (Fla. 2007)(... the court correctly excluded "expert" testimony that the defendant could have considered himself under attack at the time of the murder, as the subject was not beyond the jury's common experience.)

Here, Knox was qualified as a shooting reconstruction expert and identified by defense counsel as a major case crime scene detective. He was asked to determine, in his opinion, what was the object making the reflections in the video, to proffer evidence consisting of photographs of mannequins in various lighting situations and locations and to opine on the path of the bullet as it struck the right wrist of Oulson. At the immunity hearing and during his deposition he explained the reasoning and method he used to come to his conclusions.

Re: Interpretation of the Video

Here, Knox was qualified as a shooting reconstruction expert. He was asked to determine, in his opinion, if the reflective pattern on the Defendant's shoes can be seen in the surveillance video. He was also asked if an "object" was emitting a reflection in the video. Knox stated he was provided additional information about an object in the video and determined through his examination of the defendant's shoes there was reflective material on the shoes. (Pgs. 1451-52) Knox testified that he did not see in the video a reflection that was consistent with the pattern of the reflective material on the Defendant's shoes (Pgs. 1459-60)

At the immunity hearing he was not asked nor did he offer the reasoning or the methodology he used to make such a determination. Nor did he ever testify to any specialized knowledge, training, or experience that allowed him to determine if a specific reflective pattern is responsible for a reflection depicted in a video.

At most his method and reasoning is based on the following:

- His determination that there is reflective material in a particular pattern on the Defendant's shoes. Pgs. 1450-52.
- His review of the theater surveillance video. Pg. 1451.

Re: Simulation of "Backlighting" On the Mannequins

Here, Knox was qualified as a shooting reconstruction expert. He testified that he took a course on optics, lighting and visibility where the topic of "backlighting" was addressed. (Pg. 1504 Ln. 1-6) At the immunity hearing he testified as to his reasoning and the method he used to photograph mannequins for the purpose of depicting the effect of "backlighting" on a human figure.

- Had the theater lighting set to the same lighting setting at the time of the shooting, Mid-1. Pg. 1502 Ln 14-25 through Pg. 1503 Ln. 1-11.
- Used mannequins to move them in different position to show and assess the net effect of the lighting conditions when you move the mannequins. Pg. 1503 Ln. 12-19.
- Not trying to portray what the Defendant saw that would be impossible. Pg. 1504 Ln. 20-25

- Not going to be a replication of what the [Defendant] saw, but going to represent the effect of these different variables as you move figures in place as you have different lighting on the screen. Pg. 1505 Ln. 9-12.

During his deposition Knox testified regarding his reasoning and method in taking the photographs of the mannequins. See, Exhibit #2, attached.

- Used a Nikon D800, 35mm camera with a 55mm lens. Depo., April 7, pg. 192.
- The camera settings were manually set as follows: Exposure time - 0.5 sec., f-Stop - 2.8, Program - manual, ISO - 400, Exposure - 0, Focal Length - 55mm, Field of View - 36.2, Shutter Speed - 1/60's, Flash - off. (Meta data for all 88 photographs provided by Knox after his deposition)
- The purpose of the photographs is to give a sense to the viewers what the lighting conditions would appear to the Defendant. Depo., April 7, pg. 204.
- Not pick locations of mannequins based on the facts of the case, not able to do that. Depo., April 7, pg. 207.
- Doing a simulation, not a representation of what [Defendant] saw. Depo., April 7, pg. 207.
- Representing various possibilities and various different configurations to give a sense of what that lighting is like as far as what a person can see. Depo., April 7, pg. 207.
- Get some sense what it would be like - what the Defendant would see. Depo., April 7, pg. 207.
- A representation of what it looks like when you have a person [in that location]. Depo., April 7, pg. 207.
- What the lighting conditions appear like to a person who is sitting in that seat. Depo., April 7, pg. 207.
- Meant to give a sense of what lighting looks like to a person in that position. Depo., April 7, pg. 209.
- Used to demonstrate what the Defendant would be able to see and perceive in this situation. Depo., April 7, pg. 213.
- Represents a fair and accurate representation of what the lighting conditions would appear to be, the silhouetting of a human figure. Depo., April 7, pg. 214.
- Not a representation of what [Defendant] actually saw. But what it looks like when you have a human figure in this location, with this lighting. Depo., April 7, pg. 214.

Re: Path of the Bullet Through Oulson's Wrist

Here, Knox was qualified as a shooting reconstruction expert. There is no evidence that Knox has specialized knowledge, training or experience that allows him to form an opinion as to the path of a bullet through human flesh.

"Helpfulness" Under Daubert and Rule 90.702

"Expert testimony is admissible only if 'the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.'" FED. R. EVID. 702(a). Expert testimony is helpful if it "concerns matters that are beyond the understanding of the average lay person," but expert testimony generally is not helpful "when it offers nothing more than what lawyers for the parties can argue in closing arguments." *Frazier*, 387 F.3d at 1262-63 (citations omitted). Thus, while "[a]n expert may testify as to his opinion on an ultimate issue of fact[,] ... [a]n expert may not ... merely tell the jury what result to reach." *Montgomery v. Aetna Cas. & Sur. Co.*, 898 F.2d 1537, 1541 (11th Cir. 1990) (alterations added; citations omitted). Similarly, an expert "may not testify to the legal implications of conduct; the court must be the jury's only source of law." *Id.* (citations omitted).

Expert opinion testimony is admissible under section 90.702 F.S. only when it will assist the trier of fact in understanding the evidence or in determining a fact in issue. Subject matter must be of a nature of which the jury does not have basic knowledge. See, State Farm Mut. Auto Ins. Co. v. Bowling, 81 So.3d 538, 540 (Fla. 2nd DCA 2012)

Knox's opinions are not helpful to the jury because he is not qualified to render an opinion as to what object is responsible for a reflection in a video and to opine on the path of a bullet through human flesh. The photographic evidence of the mannequins in various locations and lighting conditions is based on unreliable reasoning and scientific method, therefore not helpful to the jury.

Rule 90.403 Exclusion On Grounds Of Prejudice Or Confusion

As with other evidence, expert testimony is subject to a

section 90.403 balancing. Sunbeam Television Corp. v. Mitzel, 83 So.3d 865, 876 (Fla 3d DCA 2012) (The district court excluded this testimony of industry discrimination as irrelevant and prejudicial stating that "the conclusion by [Plaintiff's expert] of institutionalized discrimination in the United States concert promotion industry is not relevant to the issues in Plaintiff's case and would only serve 'to interject substantial unfair prejudice into the case' and confuse the jury by directing its attention from the issues in this case.")

In addition to determining the reliability of the proposed testimony, Daubert instructs that Rule 702 requires the Court to determine whether the evidence or testimony assists the trier of fact in understanding the evidence or determining a fact in issue. See, Daubert 509 U.S. at 591. This consideration focuses on the relevance of the proffered expert testimony or evidence. The Court explained that to satisfy this relevance requirement, the expert testimony must be "relevant to the task at hand. Daubert, 509 U.S. at 591.

"Despite logically relevant evidence being admissible under Section 90.402, and not being excluded under any of the exclusionary rules in the Code, it is inadmissible under section 90.403 when its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or needless presentation of cumulative evidence." Charles W. Ehrhardt, *Florida Evidence* § 403.1, pg.229 (2019 ed.)

Exclusion of relevant evidence

"[P]roper application of section 90.403 requires a balancing test by the trial judge. Only when the unfair prejudice substantially outweighs the probative value of the evidence must the evidence be excluded." *Alston v. State*, 723 So.2d 148, 156 (Fla.1998).

"Unfair prejudice" has been described as "an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." *Brown v. State*, 719 So.2d 882, 885 (Fla.1998) (quoting *Old Chief v. United States*, 519 U.S. 172, 180, 117 S.Ct. 644, 136 L.Ed.2d 574 (1997)). This rule of exclusion "is directed at evidence which inflames the jury or appeals improperly to the jury's emotions." *Steverson v. State*, 695 So.2d 687, 688-89 (Fla.1997). In performing the balancing test to determine if the

unfair prejudice outweighs the probative value of the evidence, the trial court should consider the need for the evidence, the tendency of the evidence to suggest an emotional basis for the verdict, the chain of inference from the evidence necessary to establish the material fact, and the effectiveness of a limiting instruction. *Taylor v. State*, 855 So.2d 1, 22 (Fla.2003). The trial court is obligated to exclude evidence in which unfair prejudice outweighs the probative value in order to avoid the danger that a jury will convict a defendant based upon reasons other than evidence establishing his guilt." McDuffie v. State, 970 So.2d 312, 326-27 (Fla. 2007)

Testimony And Opinion Relating To The Photographic Presentation to Illustrate The Concept of "Backlighting"

Knox's photographic "simulation" requires the same predicate as a video "simulation" The only difference between the two presentations is a video is fluid and a photograph is static.

For a video reenactment to be admitted for demonstrative purposes, the proponent must meet three conditions. First the exhibit needs to be relevant to an issue present in the case. State v. Duncan, 894 So.2d 817, 829 (Fla. 2004) (quoting Brown v. State, 550 So.2d 527 (Fla. 1st DCA 1989)

In *Brown v. State*, 550 So.2d 527 (Fla. 1st DCA 1989), the First District Court of Appeal held:

Demonstrative exhibits to aid the jury's understanding may be utilized when relevant to the issues in the case, but only if the exhibits constitute an accurate and reasonable reproduction of the object involved. The determination as to whether to allow the use of a demonstrative exhibit is a matter within the trial court's discretion.

Id. at 528 (citations omitted); see also *Harris v. State*, 843 So.2d 856, 864 (Fla.2003). Second, the reenactment video must be substantially similar to the event it is portraying, meaning it is an accurate and reasonable reproduction of what occurred. Duncan, 894 So.2d at 829. Third, the video also needs to pass of Rule 90.403 balancing test.

In this case, the photographic evidence is not being used as a demonstrative exhibit, but as substantive evidence presented by an expert. This is evident by defense counsel's question - At the conclusion of the above-described testimony, Knox responded yes to the question "Was this all in an effort to show relevant evidence that would certainly be important in Mr. Reeves' perspective as he sat in that seat on January 13th of 2013 and he had to fire the fatal shot? Pg. 1512 Ln. 20-24. It is clear from defense counsels question the defense is offering the photographs as relevant evidence, i.e. to prove a material fact.

The expert is offering scientific testimony, i.e. the scientific principles associated with a camera lens and a human eye. The photographic evidence is being used as substantive evidence to prove a material fact in issue. What could the Defendant see at the time of the shooting. Because Knox's testimony includes scientific testimony the Daubert standards govern the admissibility of the photographic evidence. In addition to the Daubert factors, the photographic evidence must be substantially similar to the original event. Finally, the Court must determine if the probative value is outweighed by the danger of unfair prejudice. The Court is charged with the gate-keeping role of ensuring that scientific evidence is both relevant and reliable. Daubert, 509 U.S. at 589.

Knox's reasoning and method in generating the photographic evidence is not "scientifically valid." Knox admits that a camera cannot duplicate what the human eye can see at any given time. The purpose of the photographic evidence is to resolve a disputed fact, what could the Defendant see at the time of the shooting. Even if the Court should find Knox's reasoning and methodology is reliable, and the photographic evidence is substantially similar, the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues and misleading the jury. The jury is lead to believe that the images in the photographic evidence are what the Defendant was able to see during the entire event.. That simply is not the case.

The photograph is a snap-shot in time, a static representation of a very brief moment in time. The human eye is constantly focusing in different areas and at different differences. The human eye has the ability to gather ambient light through peripheral vision and very quickly make adjustments based on the total available light. "Peripheral

vision is that part of our vision that is outside the center of our gaze, and it is the largest portion of our visual field. A normal visual field is approximately 170 degrees around, with 100 degrees comprising the peripheral vision." Dr. William Goldstein, *A Guide to Understanding Your Peripheral Vision* (2016) (www.eyehhealthweb.com/peripheral-vision/) The meta data provided by Knox indicated his camera was manually set at a field of view of 36.2 degrees. If the method of comparing the field of view setting of a camera with the field of view of a human eye is scientifically reliable, and I'm not sure if it is or is not, but if you make that comparison the camera only captured approximately one-half of the field of view of a human eye, minus peripheral vision. If one considers the entire field of view for a human eye, the camera only captured approximately 22% of what the human eye could capture.

If the above-analysis is accepted as scientifically reliable, then the reasoning and method employed by Knox in photographing the mannequins for the purpose of showing what the Defendant could see at the time leading up to the shooting and at the time the shot was fired is unreliable, has not been applied reliably to the facts of the case, is not substantially similar to the event, does not aid the jury in deciding a material fact in issue, i.e. what could the Defendant see at the time of the shooting and it is inadmissible under section 90.403 because its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues and misleading to the jury.

Clearly, the photographic evidence presentation by defense expert Knox will have an undue tendency to suggest a decision based on an improper basis, i.e. an unreliable application of scientific concepts to a material fact in dispute.

It is the proponent of the evidence to prove Knox's reasoning and method is scientifically reliable, has been applied reliably to the facts of the case, is substantially similar, aids the jury in deciding a material fact and its probative value is not substantially outweighed by the danger of unfair prejudice, confusion of the issues or is misleading to the jury. Daubert, 509 U.S. at 592, n.10.

Interpretation of Video

Knox's interpretations of the content of the surveillance video are not admissible because it will not aid the jury and he

lacks qualification to do so. Any testimony on Knox's observations from the surveillance video would not assist the trier of fact because the jury is competent to view the video and decide what it shows for themselves, and there is nothing about Knox's training or experience that makes him more capable than the jury in viewing the video and deciding what it shows.

Knox's conclusion that the video does not depict the reflection from the Defendant's shoes is nothing more than a general description of what Knox believes he saw on the video.

In Seymour, ... "the State played the surveillance recording for the jury, one of the officers testified that the video showed Appellant "running with a firearm that was being concealed under his shirt." Seymour v. State, 187 So.3d 356, 358 (Fla. 4th DCA 2016)

The Seymour court reasoned

"In this case, it is impossible to definitively identify what Appellant is holding in the video played for the jury. The officer's observations were limited to what was captured on video—the same video that was available for the jury to watch. There was no record evidence that indicated the officer was in a better position than the jury to view the video and determine whether the object was a firearm. The officer was not qualified as a certified forensic technician or a witness that was proficient in the acquisition, production, and presentation of video evidence in court. He did not testify to any specialized training in video identification. As such, the officer's testimony constituted impermissible lay opinion that invaded the province of the jury to interpret the video." Id. at 359.

In Lee, ... "Three school surveillance cameras captured parts of the incident. Video from camera 1 shows the bicyclists approach the school, the squad car approaches the bicyclists, and Fong Lee drops his bicycle. Video from camera 2 shows part of the foot chase, with Fong Lee in the lead followed by Andersen and Benz. Video from camera 3 captured the end of the chase, including images of Andersen with his gun drawn, Fong Lee's body, and the squad cars arriving approximately two minutes after the chase ended." Lee v. Anderson, 616 F.3d 803, 807 (8th Cir. 2010)

The Lee court reasoned

"Federal Rule of Evidence 702 permits a qualified expert to give opinion testimony if the expert's specialized knowledge would allow the jury to better understand the evidence or decide a fact in issue. *United States v. Arenal*, 768 F.2d 263, 269 (8th Cir.1985). "The touchstone for the admissibility of expert testimony is whether it will assist or be helpful to the trier of fact." *McKnight*, 36 F.3d at 1408. Rule 704(a) provides that expert evidence is not inadmissible because it embraces an *809 ultimate issue to be decided by the jury. If the subject matter is within the jury's knowledge or experience, however, the expert testimony remains subject to exclusion "because the testimony does not then meet the helpfulness criterion of Rule 702." *Arenal*, 768 F.2d at 269. Opinions that "merely tell the jury what result to reach" are not admissible. Fed.R.Evid. 704 advisory committee's note." *Id.* at 808-809.

Conclusion

The court's gatekeeping role ensures the reliability and relevance of the expert's testimony offered into evidence.

- Mr. Knox's testimony and evidence regarding "backlighting" offered for the purpose of proving what the Defendant could see at the time of the shooting is based on unreliable reasoning and scientific method. The testimony cannot reliably be applied to the facts of the case, resulting in the testimony and evidence not being an aid to the jury, but would only create confusion and mislead the jury.
- Mr. Knox's testimony and opinion regarding his interpretation of the content of the video invades the province of the jury and is beyond his expertise.
- Mr. Knox's testimony and opinion regarding the path of the bullet through human flesh is beyond the scope of his expertise.

WHEREFORE, the State of Florida respectfully requests the Court to enter its Order excluding any and all testimony of Mr.

Michael Knox regarding his interpretation of the content of the video, his opinion as to the path of a bullet through human flesh and all testimony and evidence relating to "backlighting" and to instruct the attorney for the Defendant, and any witnesses, not to mention or refer, or interrogate concerning, or attempt to convey to the jury in any manner either direct or indirect, any of the above mentioned facts without first obtaining permission of the Court outside the presence and hearing of the jury.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing State's Daubert Motion To Exclude The Testimony and Evidence of Defense Expert Michael Knox was furnished to Richard Escobar, Esq., Attorney for the Defendant, at 2917 West Kennedy Blvd., Suite 100, Tampa, FL 33609-3163, by U.S. Mail or Personal Service this 24th day of June, 2020.

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Sixth Judicial Circuit of Florida

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EXHIBIT #1

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 XII,

CURTIS J. REEVES,

Defendant.

PROCEEDINGS: Stand Your Ground Motion

DATE: February 27, 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 1372 - 1552

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THE COURT: All right. Any matters we need to address before we get started again?

MR. ESCOBAR: None from Defense, Your Honor.

MR. MARTIN: No.

THE COURT: Okay. Mr. Escobar?

MR. ESCOBAR: Your Honor, Defense would call Michael Knox.

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

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

THE COURT: You may proceed, Counselor.

DIRECT EXAMINATION

BY MR. ESCOBAR:

Q. Good afternoon, Mr. Knox.

A. Good afternoon.

Q. Mr. Knox, would you please state your full name and spell your last name?

A. My name is Michael Knox, K-N-O-X.

Q. Mr. Knox, were you retained by Escobar & Associates in order to assist them in the reconstruction of this shooting incident?

1 A. Yes.

2 Q. Let's go over a little bit of your background.
3 Would you please tell the Court a little bit
4 about your educational background?

5 A. Well, I have a -- started off -- I actually got
6 two associates degrees, one in just general ed and one in
7 criminal justice. Followed that with a bachelor's degree
8 in mechanical engineering from the University of North
9 Florida, and then followed that with a master's degree in
10 forensic science from the University of Florida.

11 Then I completed all of the doctorate course
12 work, and I'm currently working on my dissertation for a
13 Ph.D. in criminal justice with a concentration in
14 behavioral science from Nova Southeastern University.

15 MR. ESCOBAR: May I approach the witness, Your
16 Honor?

17 THE COURT: You may.

18 BY MR. ESCOBAR:

19 Q. Mr. Knox, I'm going to show you what's been
20 marked as Defense Exhibit number 88 and ask you to review
21 that document in its entirety and tell me if, in fact, you
22 recognize that particular document.

23 A. I do recognize it.

24 Q. Okay. What is that a document of?

25 A. This is my CV, or this is at least my CV as of

1 July 23, 2014.

2 Q. Okay. Is it true and accurate?

3 A. It is, yes.

4 MR. ESCOBAR: We would move Mr. Knox's CV into
5 evidence.

6 MR. MARTIN: No objection.

7 THE COURT: That's Number 36. Thank you. It
8 will be admitted as 36.

9 (Whereupon, Defense Exhibit 36 for
10 identification was received in evidence by the
11 Court.)

12 MR. ESCOBAR: Thank you, Your Honor.

13 THE COURT: Mr. Escobar, I just noticed
14 Mr. Michaels is not present. Is that okay?

15 MR. ESCOBAR: That's okay, yeah. We talked
16 about it.

17 BY MR. ESCOBAR:

18 Q. Mr. Knox, I'm going to approach you now with
19 Defendant's Exhibit Number 36 that has been introduced
20 into evidence. We're going to talk a little bit about
21 your CV, if you don't mind.

22 A. Okay.

23 Q. Your next area of your CV is your accreditation
24 and certification. What is that?

25 A. Well, I hold a couple of certifications. I

1 primarily -- relevant to this, I'm certified as a crime
2 scene reconstructionist by the International Association
3 for Identification, which is a larger forensic body. It
4 started off with people doing fingerprinting, and it grew
5 into an organization that deals with all aspects of
6 forensic science, but they have the only national
7 certification program for crime scene reconstruction.

8 Q. And you are also accredited as a traffic
9 accident reconstructionist; is that correct?

10 A. I was up until April of last year. In my
11 business, I sort of stopped taking traffic accident cases.
12 I've been concentrating more on crime scene stuff.

13 Q. You're also certified by Glock Armor; is that
14 right?

15 A. That's right.

16 Q. Explain that to the Court a bit.

17 A. Well, I've been through the training with Glock,
18 which is the company that manufactured a pretty popular
19 pistol model, but I've also trained as an armor, meaning,
20 that I've been through manufacturer's training to be able
21 to disassemble a pistol, take all the parts out of it,
22 replace the parts, diagnose problems with it, things like
23 that.

24 Q. Are you member of some professional
25 associations?

1 A. Yes.

2 Q. What are those?

3 A. Well, most notably, the Association for Crime
4 Scene Reconstruction, which is also known as ACSR, which
5 is the only national organization that deals specifically
6 with crime scene reconstruction.

7 I'm also a member of the International
8 Association for Identification, which is the organization
9 where I have my certification, and I'm member of a couple
10 of other organizations, the American Society of Mechanical
11 Engineers and just one or two others.

12 Q. Okay. What are the areas of study and research
13 within your profession?

14 A. Well, mainly my areas of study and research are
15 in firearm ballistics and shooting incident
16 reconstruction, crime scene reconstruction. More broadly,
17 I tend to focus more on shooting cases, and I've done a
18 good bit of study in the areas of human factors related to
19 shooting incidents as well as my dissertation topic is in
20 crime scene behaviors of school rampage shooters, so kind
21 of a broad aspect of things relating to shooting
22 incidents.

23 Q. Now, have you done anything with photogrammetry?

24 A. Yes.

25 Q. What is that?

1 A. Photogrammetry is the science of obtaining
2 measurements from photographs, so it's -- you know,
3 whether you take a camera or take photographs and use that
4 to measure, or whether you are take an unknown photograph
5 somewhere taken with an unknown camera and then using
6 control points to be able to measure things within the
7 photographs.

8 Q. What about image and video and audio analysis as
9 well as enhancing?

10 A. I do quite a bit of that. I mean, obviously
11 when you're dealing with reconstructing crime scenes and
12 shooting incidents, there are a fair number of
13 opportunities, increasingly so, where there's some type of
14 video or audio recording that is related to the -- that
15 event, and so I do a fair bit of work with using the video
16 to be able to get things like timelines and trying to
17 determine what events may have taken place.

18 Q. Now, you have a great deal of professional
19 training in these areas. I don't want to go through any
20 of them. I believe you've spoken about the Glock advanced
21 armor course; is that correct?

22 A. That's right.

23 Q. I believe that was back in 2011?

24 A. That's correct, yes.

25 Q. Now, you've also taken a street survival seminar

1 in Myrtle Beach in 2011 as well?

2 A. That's correct.

3 Q. What was that about?

4 A. That's put on a by company called Caliber Press.
5 That's a publisher of books for law enforcement. Their
6 primary focus is on tactical things and training police
7 officers how to deal with armed encounters and
8 use-of-force episodes, stuff like this, but they have a
9 seminar where they travel around and present it in
10 different locations.

11 Q. Optics, Lighting, Visibility for The Forensic
12 Investigator, that was, I believe, also in 2011?

13 A. That's correct.

14 Q. What was that about?

15 A. That course dealt mainly with photography and
16 documentation of lighting and visibility issues, so where
17 there are issues with regard to what somebody could see.
18 The course basically got into how you would appropriately
19 document that and you would be able to provide some
20 assessment of that.

21 Q. We've talked about Glock. I guess there were
22 two Glocks. One was a professional course, and you took
23 another one. I believe you've already talked about it.
24 That's the one where you were learning the intricacies of
25 actually the makeup up of the gun itself?

1 A. Right. The first course that I took, which was
2 a Glock armor's course, which is a one-day course, and
3 then the second one was the advanced armor. Advanced
4 armor gets more into diagnosing problems with a pistol.

5 You do a number of scenarios where they give you
6 pistols that are broken or something's wrong with it and
7 you have to diagnose it.

8 Q. Homicide investigation, you've taken a course
9 concerning homicide investigation?

10 A. That's correct.

11 Q. Okay. And just to name a few of them, Advanced
12 Blood Stain Pattern Analysis, Crime Scene Reconstruction
13 of Shooting Incidents, Firearm Instructions and Digital
14 Photography For Law Enforcement?

15 A. That's correct.

16 Q. That was all as a basis for your training?

17 A. Right. Right.

18 Q. Scene Mapping, Using Speed Laser, what is that
19 all about?

20 A. That is using laser mapping equipment to obtain
21 measurements. So oftentimes in our scenes, we use laser
22 mapping equipment or a -- what's called total station.
23 It's similar to what you'd see a surveyor use on the side
24 of the road. We use that type of equipment to be able to
25 obtain measurements at a scene, and it allows us to get

1 more detailed measurements and get them more accurately,
2 more rapidly.

3 Q. I see you're taken quite a few courses in
4 traffic accident and traffic accident homicide
5 investigation. Did those courses deal with the human
6 factor as well?

7 A. Yes.

8 Q. Explain to the Court how that correlates also
9 within that body of knowledge.

10 A. Well, obviously in a traffic accident case,
11 perception, reaction time and visibility and those types
12 of factors are important because you're often assessing
13 issues about whether or not a person, a driver could see
14 something, how quickly they could respond to something and
15 that sort of thing.

16 Q. Dealing with perception?

17 A. That's right.

18 Q. Have you authored any peer-reviewed articles and
19 technical papers?

20 A. I have, yes.

21 Q. Explain those to the Court, if you can.

22 A. Well, I've done actually five different papers
23 that were conference papers presented at the conference
24 for the American Society of Mechanical Engineers. Among
25 those, one was on applying engineering methods in crime

1 scene reconstruction. One was on the analysis of a
2 firearm discharge due to a blow to the hammer for an
3 accidental discharge.

4 One was on ejected cartridge case patterns. And
5 one was on reconstructing long-range shootings, and then
6 one was related to traffic accidents.

7 Q. And have you written any books or have you
8 contributed to the writing or the publishing of books?

9 A. I have, yes.

10 Q. And explain those.

11 A. Well, the main one that I was involved with was
12 an associate of mine had written a crime scene processing
13 manual that's intended to be a how-to manual for crime
14 scene investigators. And then in his second edition, we
15 decided to turn it into a multi-media platform, so it's
16 more of you put the disk in the computer and it has texts
17 and videos and a lot of photos, things like that, to sort
18 of guide people through processing crime scenes.

19 I also wrote a book based upon the evidence from
20 the George Zimmerman, Trayvon Martin case.

21 Q. Now, you've also made some presentations and you
22 have some teaching experience as well; is that correct?

23 A. That's right, yes.

24 Q. First of all, let's talk about your position
25 with the University of North Florida.

1 A. Well, I'm an adjunct instructor for the
2 Institute of Police Technology and Management, which is a
3 training arm for the University of North Florida.

4 At IPTM, we train police officers from all over
5 the country, even internationally. We get some from other
6 countries that come in. And my particular role with IPTM
7 is that I'm the lead instructor for all of the shooting
8 incident reconstruction training.

9 Q. Okay. Now, in some of your courses and lectures
10 that you have done, some of them have actually been
11 lectures of human factors in crime scene reconstruction,
12 and that was in 2013 in Georgia?

13 A. That's right. That was for the Association of
14 Crime Scene Reconstruction at their annual conference.

15 Q. And the crime scene reconstruction and shooting
16 incidents, I guess that was in 2012?

17 A. Right. That was one of the IPTM courses. I
18 teach that course annually in Jacksonville and then also
19 sometimes on the road in other states.

20 Q. Shots Fired, Reconstruction of Police-Involved
21 Shootings in 2012 in Washington, D.C.?

22 A. Right.

23 Q. What was that about?

24 A. That was a presentation to the International
25 Municipal Lawyers Association, which obviously there

1 you're getting a lot of attorneys that represent
2 municipalities and police officers and police agencies
3 that are involved in litigation arising out of a shooting.

4 Q. Crime Scene Reconstruction Evidence Collected
5 Versus Evidence Presented, that was in 2011. Do you
6 remember that one?

7 A. Yes.

8 Q. What was that about?

9 A. That was a presentation to the Florida
10 Association of Public Defenders where I was presented to
11 their investigators about, you know, issues between not
12 just collecting the evidence, but then taking that to
13 trial, being able to interpret it and use it and present
14 what it means.

15 Q. Basically, the reconstruction process to present
16 to a court?

17 A. That's right.

18 Q. The Evaluating Accuracy, Precision and
19 Uncertainty in Crime Scene Reconstruction, that was in
20 Panama Beach, Florida. Explain that one.

21 A. That was for the joint training conference
22 between the Florida Division of the International
23 Association for Identification and the Georgia division,
24 which annually they do a joint training conference, and my
25 particular presentation there was on issues relating to

1 uncertainty and precision and accuracy, things like that,
2 so how do you determine if you're making accurate
3 measurements or precise measurements, and how do you deal
4 with the inherent uncertainty involved in any type of
5 measurement.

6 Q. I see you took a number -- or you taught a
7 number of courses on the fundamentals of crime scene
8 technology and the scenario-based crime scene processing
9 exercise, correct?

10 A. That's right, yes.

11 Q. What do those involve?

12 A. Well, I've done some training in the
13 fundamentals of crime scene technology, I was doing
14 training for a company called Searching Fingerprint
15 Laboratories, which is a company that manufactured
16 forensic equipment, the type of stuff that the crime scene
17 investigators use. And they sent me to United Arab
18 Emirates in Dubai, and I taught a 40-hour course in Dubai
19 on generally all aspects of crime scene investigation as
20 sort of a broad crime scene course.

21 Then I also taught the same course twice in Peru
22 to their -- I think it's their interior ministry, which
23 is -- it was teaching prosecutors and medical examiners
24 about crime scene processing.

25 Q. I'm not going go through the rest of them. I

1 know there are quite a bit of them, but they're all listed
2 in your CV; are they not?

3 A. Yes, they are.

4 Q. Now, let's talk a little bit about your
5 employment and how your employment started in the field of
6 law enforcement.

7 A. Okay.

8 Q. Let's take you back to 1994 through 2010. How
9 were you employed?

10 A. Well, starting in December of 1994, I went to
11 work for the Jacksonville Sheriff's Office as a police
12 officer. I worked in uniform and patrol and DUI
13 enforcement for about five-and-a-half years, and then in
14 2000 I transferred to the crime scene unit. I worked as a
15 crime scene investigator for seven years.

16 While I was there, I was a major case crime
17 scene investigator, meaning that I worked all of the major
18 crimes, homicides, police-involved shootings, things like
19 that. And then also for, I think, about the last four
20 years that I was in the unit, I was the training
21 coordinator for the unit.

22 Then I spent three years in the traffic homicide
23 unit before I took an early retirement and left the
24 Sheriff's Office.

25 Q. So did you start your business of Knox &

1 Associates prior to leaving the Jacksonville Police
2 Department?

3 A. I did, yes.

4 Q. Was that on a part-time basis?

5 A. Yes.

6 Q. Was that in 2008?

7 A. That's correct.

8 Q. Why did you leave the Jacksonville Police
9 Department?

10 A. I found myself working two full-time jobs. I
11 started getting so busy with my consulting work that I was
12 working, you know, five, six, seven hours of that each
13 day, then going to work and working ten-hour shifts, so it
14 kind of became an easy decision to make. I moved on and
15 went into my business full time.

16 Q. What sort of individuals do you work for;
17 defense lawyers, prosecutors?

18 A. Whomever calls. So basically, you know, I'll
19 get a call and it will be an attorney representing some
20 particular individual. It might be a criminal defense
21 attorney calls me, I get calls from prosecutors. I get a
22 fair number of civil cases as well.

23 You know, what we're doing is mostly physical
24 reconstruction aspects for a case that they may have,
25 whether it be a criminal case that's involving a shooting

1 or some type of crime scene, or on the civil side we get a
2 lot of police-involved shooting cases, and I work on both
3 sides, some plaintiff cases, some defense cases.

4 I also do some product liability cases where a
5 defective firearm issue is brought up and have to do an
6 analysis of that for reverse engineering, things like
7 that.

8 Q. Have you been qualified in the past on issues of
9 crime scene reconstruction, shooting incident
10 reconstruction, firearms, ballistics, human factors as an
11 expert in any court?

12 A. Yes.

13 Q. And how many times, would you say?

14 A. It would be several dozen, probably approaching
15 about a hundred times. I don't have an exact count right
16 now, but it's a considerable number of times.

17 Q. Okay. Mr. Knox, what's a shooting incident
18 reconstruction or, for that matter, any reconstruction?

19 A. Well, basically when you're reconstructing any
20 type of crime scene, and certainly with shootings, what
21 you're doing is taking the pieces of the puzzle and
22 assembling them such that you can get a picture of what
23 took place.

24 So you're applying various different items of
25 physical evidence and sometimes testimonial evidence,

1 sometimes video or audio recordings or various different
2 things, and trying to assemble everything into a cogent
3 representation of what took place as closely as you can,
4 obviously.

5 I mean, the fact that you're looking back at
6 something that occurred in the past, but you're assembling
7 that to try to create a picture that you can see today
8 that would give you some understanding of what took place.

9 Q. Is it important to start off by determining kind
10 of what happened, getting a general feel about what
11 happened?

12 A. Yes.

13 Q. How do you go about doing that?

14 A. Well, generally the process, the way I teach it
15 and the way I practice it, is that, you know, first you
16 have to start collecting information. You start
17 collecting data about what took place, and then that's
18 going to occur in multiple forms. The crime scene
19 investigator is going to be looking at the physical
20 evidence and figuring out what is there and what is
21 indicated by the physical evidence, what is present.

22 Then you'll also have a -- typically some
23 detectives that will be doing interviews and talking to
24 people and trying to get information from them about what
25 took place, which will guide the direction that you're

1 going in terms of how you process the crime scene, how you
2 obtain information, what you are looking for, basically.
3 And so that process sort of builds until you've gathered
4 all of the information that you needed. Then you start
5 analyzing individual pieces of it.

6 Q. Well, let's stop there at the very first start.

7 You come up to a scene and someone has been
8 shot, and some of that basic information that you need to
9 first find out is: Well, we've got someone that shot
10 someone. For example, in this case, we know that
11 Mr. Reeves without question shot Mr. Oulson.

12 A. Yes.

13 Q. That's not a contested matter in this case,
14 correct?

15 A. That's correct.

16 Q. Sometimes the issue is who did it, right?

17 A. That's correct.

18 Q. Sometimes it's not who did it?

19 A. That's correct.

20 Q. Sometimes it's: Is it a homicide or is it
21 self-defense?

22 A. That's correct.

23 Q. And it's very important, is it not, to initially
24 at least embark upon that particular issue?

25 A. That's right.

1 Q. Why?

2 A. Well, the processing that you go through in a
3 crime scene is very different depending on what the issue
4 is, because in a homicide where you clearly have a
5 homicide that's taken place, the question is: Who did it?

6 You might find that the case where you have a
7 body that's found, the person obviously has been shot and
8 you don't know who did it. Then a lot of your processing
9 will then focus on that type of evidence that would be
10 associative, that would tend to associate a particular
11 individual to that crime scene in some way.

12 When you have a case where you have, say, a
13 shooting and you know who was involved, then there is no
14 real need for looking for associative evidence. What
15 you're looking at more there is evidence that's going to
16 tend to show what took place, and that's the important
17 part for reconstructing, when you have an issue of whether
18 or not it's even criminal or whether, you know, it could
19 fall in different categories.

20 Q. Now, let's talk about this reconstruction
21 process because I don't want to get too far afield.

22 Is this reconstruction process what you did as
23 the major case crime scene detective with the Jacksonville
24 Sheriff's Office?

25 A. Yes.

1 Q. Is this what a crime scene detective does?

2 A. Yes.

3 Q. And so what you've just told me is that: Hey,
4 in a case where it's not who did it, it's a case where --

5 MR. MARTIN: Your Honor, I object to the summing
6 up. It seems to be a style of Mr. Escobar's. I
7 object to the summing up in the form of the question.
8 It's not laying predicate or going somewhere else.
9 He just wants to sum it up.

10 MR. ESCOBAR: Your Honor, I agree that was a
11 summing up and I will respectfully move on.

12 THE COURT: Thank you. Sustained. Thanks.

13 BY MR. ESCOBAR:

14 Q. So now when you're dealing with this
15 self-defense issue, specifically the self-defense because
16 that's what this case involved, correct?

17 A. That's right.

18 Q. How do you go about it in that reconstruction?
19 What do you do? What are your first steps that you are
20 going to engage in in order to reconstruct that shooting
21 incident?

22 A. Well, you first have to start looking for
23 evidence that would tend to help indicate what took place.
24 I mean, that's the real focus, so you'd be looking to
25 identify in terms of physical evidence what might be

1 there.

2 You would have certain items that might have
3 relevance to the shooting and then give some indication
4 about where people were, what events took place, what
5 things may have happened, and then you want to look also
6 for evidence that might suggest or provide some more
7 information.

8 Now, in one form, it's going to be interviewing
9 of witnesses because obviously they can provide some
10 information to you, and then also looking for other
11 things. I mean, you know, we're now in an age where video
12 is ubiquitous. It's pretty much everywhere, so the
13 likelihood that you have some type of video recording of
14 an incident is pretty significant, and that's information
15 that will help you to fill in those blanks about what
16 happened.

17 Q. Well, let's talk about your -- with your
18 experience in going out to the scene and doing these
19 reconstructions, even as a police officer, major crime
20 scene detective with the Sheriff's Office, when you get to
21 the scene initially, what would you think the most
22 important aspect of your job would be in reference to
23 witnesses?

24 A. Well, with witnesses, the biggest thing is that
25 you need to get accurate statements from what they recall.

1 So probably the first and foremost issue is you've got to
2 make sure that you separate people and that you're able to
3 start at least getting preliminary statements from people
4 individually based on their own recollection.

5 Q. So what do you do if you go to a scene and your
6 witnesses are grouped together? You're a major case crime
7 scene detective. You've arrived at the scene and you've
8 got groups of witnesses that are supposed to be
9 eyewitnesses, and now they've been grouped together and
10 they're talking. What do you do as a crime scene
11 detective?

12 A. Well, you're typically going to coordinate with
13 the detectives that are responding as well as patrol,
14 depending obviously on how many people you have and what
15 kind of manpower issues, but you need to start separating
16 people because you need to be able to get statements from
17 them that are not influenced by things that they may have
18 heard or communicated with somebody else, with another
19 witness to the incident. So you want to be able to get
20 what each person recalls individually.

21 So the first thing, you've got to get them
22 separated where they're not communicating with one
23 another, they're not talking to each other, and then begin
24 to get statements from them.

25 Q. You've heard of the word "contamination,"

1 witness contamination?

2 A. Oh, yes.

3 Q. Explain to the Court what that means.

4 A. Well, the biggest thing with witness
5 contamination is that you don't want to have witnesses who
6 have parts of an event that they recall who then hear
7 other parts from other witnesses who then -- they start to
8 fill in the blanks in their own mind. Things that they
9 heard start to become things that they remember or that
10 they believe they remember, and so obviously you want to
11 get each person's own recollection without having to
12 filter out what they got from somebody else versus what
13 they actually saw or perceived or experienced in some way.

14 Q. Is it even possible after someone has been
15 contaminated by the opinions of other witnesses -- is it
16 even possible to determine what is an independent
17 self-recollection versus a contaminated version by some
18 other witness?

19 A. Not if you have no real recording or way of
20 discerning what they heard from other people. So if you
21 just had a group of witnesses that are all grouped
22 together and there was nobody monitoring them and there's
23 nobody that's recorded the conversations, there's no way
24 of knowing specifically what was said from what person to
25 what person, then you pretty much aren't going to have any

1 way to tell the difference between what they heard versus
2 what they actually recall.

3 Q. Is what they hear always accurate?

4 A. Oh, no. No. Definitely not.

5 Q. Why is that?

6 A. Well, you know, anybody that's done law
7 enforcement investigations or anything in that field for
8 even a fairly short period of time knows that, you know,
9 you can go to a shooting and you could have five or six
10 different witnesses and you could ask them the same set of
11 questions and you're going to get five or six different
12 answers.

13 MR. MARTIN: Your Honor, I'm going to object on
14 this line of questioning. This is right along with
15 the eyewitness identification and what they heard,
16 and we know that that's been ruled inadmissible in
17 Court.

18 There has not been a proper foundation laid and
19 this is nothing but speculation on his part that this
20 occurred, so I'm going to object on those two
21 grounds.

22 MR. ESCOBAR: Judge, these are tools that he
23 uses as a crime scene investigator that he has to be
24 aware of because if he's not aware of it, if he
25 doesn't use it in the proper manner, then his entire

1 reconstruction becomes flawed. And so, no, he's got
2 to be aware of these issues. He's got to be able to
3 deal those particular issues, and he's got to know
4 when to set those issues aside and not consider those
5 issues. So this is very relevant to our shooting
6 incident reconstruction.

7 MR. MARTIN: Well, it would be relevant if we
8 had some evidence other than the two witness
9 statements that the witnesses didn't come in and
10 explain while the words were exactly right, that we
11 do have, in fact, witness contamination. We haven't
12 had any testimony of that by any of the civilians
13 that have come in and said, "I heard this," or, "I
14 heard that."

15 Now, what we did hear is people upset, all the
16 afternoon is ruined over popcorn. Well, that's not
17 discussing the case. No one has come in and said, "I
18 discussed with so-and-so and this is -- you know,
19 this is what I heard from it." Nobody.

20 So I mean, we're just -- it's not only
21 irrelevant because we don't have those facts; he
22 didn't lay a predicate. He didn't put on any
23 witnesses that have come in and said, "I talked to
24 so-and-so. I heard this from so-and-so," or, "I even
25 heard," so I'm going to object to this line of

1 questioning as being deemed not relevant because it's
2 not pertinent to the facts of this case.

3 MR. ESCOBAR: Your Honor, he's just testified
4 that's not the way it happens. In fact, witnesses
5 that are contaminated believe that that testimony is
6 coming from themselves. That's what he has to deal
7 with.

8 This is not something where someone is
9 contaminated. They all come in and say, "I've been
10 contaminated." That doesn't happen this way. He's
11 got these particular tools that he has to deal with
12 in an incident reconstruction, and one of the major
13 dangers, as he's testified, is witness contamination
14 by the mere fact that they're grouped together and
15 they're allowed to converse among each other without
16 any proper supervision, without any proper
17 instructions.

18 So we've certainly had that sort of testimony,
19 including from one of their own officers, which is a
20 very experienced Deputy Demas, who came in here and
21 testified, if the Court recalls -- that said, "Oh,
22 no, they teach witness contamination from the
23 academy, and once a witness is contaminated, you
24 can't undo it."

25 And she said that she was very concerned over

1 the fact that there were groups of individuals that,
2 you know, were grouped together, and she wasn't aware
3 of any officer that came in and told that group,
4 "You're not to talk about your testimony. You're not
5 allowed to converse with anybody else concerning what
6 you saw."

7 And I beg to differ. I believe that some of the
8 witnesses here, including Mr. Friedhoff's 's
9 girlfriend that indicated, no, her boyfriend was
10 talking about what he had perceived with that
11 particular group, if the Court recalls, or -- the
12 name slips my mind, but it was Mr. Friedhoff's
13 girlfriend who is no longer --

14 THE COURT: Ex-girlfriend.

15 MR. ESCOBAR: -- who admitted to that, and I
16 believe we've got a couple more that had testified
17 that indicated that, yes, you know, there are
18 individuals in the concession area and they were
19 talking about the particular happening and what they
20 remember from the particular happening.

21 So this is a technique. This is something that,
22 you know, experts like Mr. Knox need to have at their
23 disposal so that when they're doing an accident or an
24 incident reconstruction, they're doing it properly.

25 THE COURT: I'm going to overrule. There has

1 been testimony that there's been groups of people
2 talking, and the -- I'm assuming he's just giving his
3 opinion as to how that bears out.

4 MR. ESCOBAR: He's going to be giving his
5 opinion as to how you work with that in a crime scene
6 of this manner, absolutely.

7 THE COURT: All right. I will overrule that.

8 BY MR. ESCOBAR:

9 Q. Now, because this is a self-defense case, is the
10 issue of perception at the forefront of your crime scene
11 investigation?

12 A. Yes.

13 Q. And would you tell the Court why the issue of
14 perception is at the forefront of a shooting incident
15 reconstruction like this one?

16 A. Well, when you have any type of a shooting where
17 there's potentially some type of legal justification --
18 and most often, we get this when it's police-involved
19 cases and we're investigating or reconstructing a shooting
20 that officers have been involved in. But in any case
21 where you have any potential for self-defense or something
22 like that, then the issue that you have to really focus on
23 with reconstruction is showing what that person, the
24 person that actually pulled the trigger, perceived.
25 Because often, you will get things like witnesses who

1 might see or not see certain events, but then when you
2 reconstruct, you determine they're in a different position
3 so they have a different line of sight. They have a
4 different viewpoint than what the person that actually
5 fired the shots, you know, had.

6 Sometimes with video -- also you'll have a
7 video, but the video is recorded from a different
8 location, and there could be various factors why it's not
9 showing the same things that that person that actually
10 fired the shot saw, so you need to document things like
11 where they were located and what they can see and various,
12 you know, distances and measurements of where things are
13 located relative to that person so that you can get a
14 better understanding of what they would actually perceive
15 during the course of this event.

16 Q. Before I let the video issues go, I might as
17 well tackle it right now because you've mentioned it.

18 In a theater like this where we have video, is
19 the video important in possibly contributing to the issue
20 of perception?

21 A. Yes.

22 Q. Is the video all-inclusive, meaning once you
23 have a video, you don't even have to worry about the
24 perception of the individual and where he was at and what
25 he was confronted with and the decisions that he made?

1 A. No, no. Not at all. Video inherently can be
2 misleading because it's not from the same perspective.
3 You're not videotaping what that person saw. The video is
4 from a camera that is located somewhere else.

5 There are a lot of other factors that affect a
6 video. I mean, the quality of it, the distance, the way
7 that the camera is, you know, if it's a wide-angle lens
8 that's taking in a gross view of everything and not
9 showing the details of what that person could see.

10 So video helps you to locate where things were,
11 where people were, helps you put a timeline to what took
12 place, but it does not show for you what that person
13 experienced or anything related to what they experienced.

14 Q. So you're aware of the video cameras, are you
15 not, that were present in the Cobb Theater on January 13th
16 of 2014?

17 A. Yes.

18 Q. Were you aware of where they were located?

19 A. Yes.

20 Q. 35 feet up in each side of that theater?

21 A. That's right.

22 Q. A video camera that is taping an incident 35
23 feet away, is that giving you an accurate perception of
24 what the shooter of the incident that is seated in chair
25 number 9 in the Cobb Theater is experiencing?

1 A. No.

2 MR. MARTIN: Your Honor, I'm going to object to
3 that question. There hasn't been a predicate laid
4 for him to render such an opinion in this case.

5 MR. ESCOBAR: I think he just did. I think he
6 just said in his answer --

7 MR. MARTIN: Well, he may have just --

8 MR. ESCOBAR: Before. Before.

9 MR. MARTIN: -- before I could object.

10 MR. ESCOBAR: No, no. This is before. The
11 answer that he gave before about the fact that video
12 is different because, in fact, it's in a different
13 location and it's not giving you the actual
14 perception because you're not -- you're not putting
15 the video in Mr. Reeves' eyes, and he is actually
16 videotaping what's coming from a different place.
17 It's coming from a different angle. It's coming from
18 a different height.

19 He gave that whole foundation. In the answer
20 before, that was not objected to.

21 MR. MARTIN: True, because I was seeing exactly
22 where they were going with it, and they have not laid
23 the predicate for his expertise and training in that
24 particular field.

25 Now, they've listed some of the things and

1 courses that he's been to, but that wasn't one.
2 Videography wasn't one of them. Photogrammetry, he
3 talked about measuring things and photographs or
4 images or even video, but when we're talking about
5 perception and angles and what you can and can't see,
6 then the proper predicate hasn't been laid.

7 MR. ESCOBAR: Judge, Your Honor, there was two
8 things that he mentioned. One was the image video
9 and audio analysis and enhancement, and there's
10 another one called the mobile videotaping instructor
11 course. We've laid that foundation concerning the
12 video, in particular.

13 MR. MARTIN: Do we know what that is? He never
14 went into it. That's what I'm saying. You can't
15 rattle off titles --

16 THE COURT: As far as the predicate of whether
17 or not he's qualified to testify about that
18 particular question, quite frankly, I don't think
19 this is -- you know, that's something that a lay
20 person can determine, in all candor, whether or not a
21 camera that is 35 feet away or 40 feet away and up in
22 the air has got the same view as someone sitting down
23 in the seat. You don't need an expert to tell you
24 that that's going to be different.

25 So as far as that particular question, I'm going

1 to overrule, but if we're going to get into more
2 detailed opinions as to that aspect, then I'll--
3 Mr. Martin has objected and you'll need to expound a
4 little bit on that.

5 MR. ESCOBAR: Judge, let's go ahead and get it
6 over with. There's going to be a lot here, so I
7 might as well put it on.

8 BY MR. ESCOBAR:

9 Q. Mr. Knox, please explain to the Court your
10 experience in video equipment and video recording and the
11 problems with using those particular items solely for
12 examining the perception of one that is in a shooting
13 incident like this.

14 A. Well, my -- I guess my first real training and
15 experience with any type of videotaping was back in the
16 '90s -- actually, when I was sent to a mobile video
17 operator's course. And then later on a mobile video
18 instructor course, and for two years when I was assigned
19 to the DUI unit, I had a video camera in my car that
20 videotaped all the encounters that I had.

21 I've also taken a digital imaging course that's
22 dealing with -- predominantly with still photography and
23 dealing with most of the concepts that apply to video,
24 video being just multiple pictures that are played rapidly
25 enough that appear to be a moving image.

1 I've also used video quite extensively
2 throughout the entire time that I've done both private
3 consulting and even prior to that when I did cases for law
4 enforcement, both in -- as a traffic homicide investigator
5 where I've used a lot of videos for reconstruction of
6 traffic accidents, and then also prior to that using video
7 with -- when it was available in crime scene cases.

8 Q. And have you been taught concepts concerning the
9 techniques necessary for accuracy, not only in the
10 capturing of the evidence but also in the presentation?

11 A. Yes.

12 Q. Now --

13 MR. MARTIN: Judge, I'm still going to object.
14 All he said was, "I've used it."

15 I have filed a motion, a valid motion, and he
16 used his camera. He used it to capture what he
17 perceived to be the lighting. I have an extensive
18 brief on it, so you can understand my objection when
19 he tells us, a very dogmatic statement, "I've used
20 it, therefore, I know what's going on," but I'm not
21 going to take that for face value. Just saying, "I
22 used it," that doesn't mean anything.

23 MR. ESCOBAR: Judge, you know, Mr. Martin
24 selects little tiny bits and pieces of testimony in
25 order to make his arguments. He's not -- in other

1 words, you know, in our area of practice, it's called
2 the doctrine of completeness. He doesn't use the
3 doctrine of completeness.

4 He testified about the courses that he took, the
5 courses that were taught to him in order to have a
6 solid foundation in the issues -- with the issues of
7 the video, how to make precise video and how to, you
8 know, determine that the video that you're taking is,
9 in fact, of evidentiary value.

10 For Mr. Martin to say, "Oh, well, he just used
11 video," that's not being genuine. That's just not
12 being genuine. That's not the record here, and I'm
13 going to rely not only on the record but if the Court
14 remembers, we also filed a response to his motion in
15 this particular case, and so we would also rely
16 obviously on our motion and memorandum of law.

17 THE COURT: All right. And as you both know,
18 I'm reserving those on the motion and the response,
19 so shall we consider this as the proffer at this
20 point?

21 MR. ESCOBAR: Your Honor, he's going to proffer
22 it on the stand because, yes, in all of our segments
23 we have to have a record.

24 THE COURT: Right.

25 MR. ESCOBAR: So we've -- I've got my memo, he's

1 got his argument and we're ready to move on.

2 THE COURT: All right. Very good. I'll take --

3 MR. MARTIN: We agreed that would be the
4 procedure.

5 THE COURT: Under advisement, correct.

6 Go ahead.

7 BY MR. ESCOBAR:

8 Q. Now, Mr. Knox, in the reconstruction of a
9 shooting incident process, what does it mean by
10 considering the environment?

11 A. Well, you have to take into account where a
12 shooting took place to be able to fully reconstruct it.
13 By that, I mean you need to know geometrically what that
14 scene is; so where are things, you know, how are things
15 positioned, what are the distances. You need to
16 understand lighting conditions and visibility, line of
17 sight.

18 You need to be aware of obstructions or things
19 that would be in the way of how somebody would respond or
20 how physical evidence would be deposited, and you need to
21 have a thorough understanding of basically what all is
22 there at that location that could have an influencing
23 factor on what took place.

24 Q. When you have a location like a theater and it
25 has seats, are you interested in where the witnesses were

1 seated?

2 A. Yes.

3 Q. Tell the Court how you would go about -- when
4 you would arrive at the scene as a major case crime scene
5 detective, how you would go about in making sure that you
6 identify the witnesses and where they were seated.

7 A. Well, typically what I would want to do is
8 whenever you have a witness that you would, you know,
9 probably have a detective interviewing or perhaps a patrol
10 officer -- depending on how involved that witness is, as a
11 crime scene investigator, I'd want to find out from
12 whoever is interviewing these people where they were
13 located.

14 So I could document that, but you also want to
15 be able to document from their location what they could
16 see and perceive, line of sight, lighting and visibility
17 factors, things like that to be able to show, you know,
18 what would be visible and not visible. Because it's not
19 uncommon with witness testimony that somebody will
20 describe something, but then when you evaluate it from the
21 standpoint of where they were, look at the distances and
22 line-of-sight issues, that some of what's described may
23 not have been visible to them or may not have been visible
24 completely. So, you know, part of gathering the
25 information is to assess, you know, what is there to be

1 able to confirm what somebody tells you in terms of their
2 interview.

3 Q. So if this witness says, "Okay, I was on the
4 third row. I can't tell you exactly what seat on the
5 third row, but somewhere on the third row," what do you do
6 as an experienced crime scene detective?

7 A. Well, what you typically want to do if the
8 person can't tell you an exact seat -- and most people are
9 not going to be able to tell you, "I was in this many
10 seats over from this aisle," or things like that -- is you
11 bring them back in and have them show you.

12 Q. You bring them back in where?

13 A. Into the theater. You walk them back over and
14 you'd say, "Okay, can you show me the seat that you were
15 sitting at," because hopefully their recollection of the
16 seating and they'll remember, "I think I was right here,
17 right by this seat," or, "I was sitting right here. I
18 remember."

19 So anything that you could do that would kind of
20 help you -- their memory so they can recall where they
21 were sitting and get you narrowed down as to where they
22 were would be something that you would undertake.

23 Q. Now, is there some big, huge no-no that under
24 your supervision as a crime scene detective, that you
25 can't bring a witness into the shooting incident scene and

1 walk over to a seat with him?

2 A. No. Once you've figured out the extent of where
3 your physical evidence is which, you know, in a typical
4 shooting where you don't have people chasing one another
5 around in a movie theater, where it's something like this
6 where it's isolated to a few seats in a couple of rows,
7 that's really the area that you need to be worried about
8 securing. The rest of the theater, you don't need to
9 worry about that there's going to be any evidence that's
10 going to be trampled on or things that are going to be
11 lost or things like that.

12 So obviously you're not going to bring the
13 person in and have them walk over stuff until you had
14 searched it, processed it and made sure there's not
15 anything there of particular value. But at that point,
16 you can bring them in and have them walk over to a seat
17 and, you know, show in an interview where they were and
18 things like that.

19 Q. What happens if you don't do it right then and
20 there at the scene but you wait weeks, months, years?

21 A. Well, you know, obviously you want to try to
22 narrow the stuff down as quickly as you can. The longer
23 the time period goes, the greater the chance that people
24 are not going to recall.

25 I mean, you know, if I had just been in a movie

1 theater within the last hour or two, I would be a lot more
2 likely to remember the seat than if you asked me six
3 months down the road, "What seat were you sitting in?"

4 So, you know, it's just sort of a common sense
5 thing; you want to get that information as quickly as you
6 can as close to the time of the incident that you can.

7 Q. How does the identification of a particular seat
8 that a witness may be in -- how does that help you in the
9 correlation of other evidence, especially when this scene
10 may be a darkened scene like a movie theater with
11 previews?

12 A. Well, what's key to understanding where a person
13 was is understanding what they could see, what kind of
14 line-of-sight they would have because, you know, if you
15 have an incident where a person is doing something, that
16 person might, you know, you -- it could be a variety of
17 particular things in a shooting. It may be a person
18 brandishing a weapon. It might be pulling out an object
19 that was interpreted to be a weapon.

20 Obviously if a witness is in a location where
21 they have a direct line of sight of what that person was
22 doing, they're going to be able to explain things better
23 than a person who was behind them and doesn't have a
24 direct line of sight. That person's body maybe in the way
25 or something else and then they're not going to be able to

1 see the same detail.

2 Sometimes that's important with witnesses to
3 understand not only what they saw but also what they
4 didn't see, so that you understand why somebody did not
5 see something that may be another person saw or that a
6 person involved in the shooting saw or described.

7 Q. Does that become even more important when you
8 have a scene that obviously is low lighting and relatively
9 high noise?

10 A. Yes.

11 Q. Why?

12 A. Well, you know, obviously it's much more
13 difficult to see things when the lighting is low than it
14 is when you have a nice lighted room. So when you're in a
15 setting like a movie theater where the lights are dimmed,
16 you have lights reflecting from a movie screen that is
17 changing, you know, often quite rapidly and you have a
18 considerable amount of noise going on, which is going to
19 affect what a person can perceive and see and what they
20 can make out in terms of any verbal altercation going on,
21 again, these are all factors that you have to consider.

22 Q. Let's talk about some additional environmental
23 factors. We've talked about light. We've talked about
24 noise. We've talked about location, theater, seating. Is
25 it important to measure in a scene like this?

1 A. Yes.

2 Q. And tell the Court why it's important to
3 measure.

4 A. Well, that's the documentation that you're going
5 to, you know, obtain a number of different types of
6 measurements, geometric measurements in terms of the space
7 involved and also trying to measure things like the light
8 levels, sound levels, things that would affect what's
9 taking place.

10 Q. How could you measure, in your forensic world as
11 a major case crime scene detective, light levels?

12 A. Using a light meter. You can do it in a number
13 of different ways. I mean, you can even use a camera and
14 use the meter, the light meter that is built into the
15 camera to get a reflection off of a gray card and be able
16 to figure out what the camera settings are, and you can
17 transfer the tables that will translate that to other
18 units of measuring light, but there is just a number of
19 different ways to do that with some type of light meter.

20 Q. What about noise meters?

21 A. The same thing. There are sound level meters
22 that will measure how loud particular sounds are. I've
23 used them. I used them recently to measure how loud a
24 woman's scream was to compare that with someone who
25 supposedly heard it from another location. So it's just a

1 matter of having the equipment and taking those
2 measurements.

3 Q. So in a case like this where you have the movie
4 theater there and the ability to play those previews,
5 again, is that something that as a crime scene detective
6 you would do?

7 A. Yes. I mean, you need to document it in some
8 fashion as far as what all was taking place and what the
9 environment is like, because obviously when you're talking
10 about sound levels, it affects what somebody could hear.
11 So if there's an issue of things being said back and forth
12 to one another, what may have been said, also what other
13 people could have heard, which may explain why maybe
14 people that didn't hear something said and somebody else
15 states was said, you know, things like that.

16 We deal with that kind of issue in
17 police-involved shootings, when you're dealing with
18 whether or not somebody could have heard commands being
19 given by a police officer. So you test that.

20 You know, it may be a matter of measuring the
21 sound levels. It may be a matter of testing it in various
22 fashions depending on what the particular circumstances
23 are.

24 Q. What about the distance between -- we talked
25 about the distance of the items and the chairs and what

1 have you, but what about the distance between the shooter
2 and the deceased? Is that an important distance to take?

3 A. Oh, yeah. Absolutely, yes.

4 Q. So I would imagine you would have to know that
5 while you were there at the scene, especially if it's not
6 a whodunit, right?

7 A. Right.

8 Q. If it's a self-defense case, you would want to
9 know where the shooter was seated.

10 A. Yes.

11 Q. That's of great importance to you?

12 A. Yes.

13 Q. And you would want to know where the decedent
14 was seated, correct?

15 MR. MARTIN: Your Honor, I'm going to object.

16 He's been leading for the last three questions.

17 BY MR. ESCOBAR:

18 Q. Would you want to know where the decedent was
19 seated?

20 THE COURT: Sustained.

21 MR. ESCOBAR: That's harmless leading, but I
22 acknowledge it.

23 THE WITNESS: Yes, you would.

24 BY MR. ESCOBAR:

25 Q. And would you tell the Court why?

1 A. Well, that's the whole issue. When you're
2 talking about reconstructing a shooting for the purpose of
3 figuring out what happened, you need to document the
4 relative positioning between the people that are involved.
5 So between the person firing the shot and the person that
6 was shot, what kind of distance that you're talking about,
7 especially if you're talking about a self-defense issue
8 where the distance can make all the difference between
9 whether it is or is not a legitimate self-defense claim.

10 Q. Why can distance make a difference?

11 A. Well, if you have, you know, cases where --

12 MR. MARTIN: Excuse me, Judge. He's been
13 qualified as an reconstruction expert, not use of
14 force. If we want to hear this from Mr. Hayden, then
15 maybe I won't have an objection, but he -- and when I
16 took his depo, Mr. Escobar told me after I finished
17 and I went through all of this with him, that he's
18 not being offered for that.

19 That's what Hayden's for, so I object to this
20 line of questioning. He's not a use-of-force expert,
21 and that's what distance is all about.

22 MR. ESCOBAR: No, Judge. That's just the
23 opposite. He is being brought in as a major case
24 crime scene detective who has to know the issues of
25 use of force in an effort to be able to document, in

1 an effort to be able to capture and question proper
2 pieces of evidence in order to determine whether or
3 not the perception of Mr. Reeves at the time of the
4 shooting was reasonable.

5 This is not a go into the crime scene, you see a
6 bunch of things on the floor, you collect them, you
7 put a ruler as to where they were found and you go
8 home and you let somebody else decide that. He will
9 tell you and he will testify that -- absolutely not.
10 If a crime scene detective comes into that scene and
11 he doesn't have the body of knowledge in a
12 self-defense case, especially in a self-defense case,
13 to have that background, then he needs to go and get
14 someone who does have that background so that that
15 crime scene is properly preserved and properly
16 carried out for the future.

17 MR. MARTIN: Judge, if that was the case --
18 we've only been around this over and over. New
19 reports, right? I go into a depo with a fishing
20 expedition. I'm bobbing for apples. I am told in
21 the depo he's not being offered as a use-of-force
22 expert. Okay. That may be true.

23 Now we're in here and we're back-dooring some of
24 the information that I would have gone into at the
25 depo, so I object to it. He's a reconstruction

1 expert, and I will assure you that if we get to a
2 point where he attempts to offer an opinion as to
3 whether or not his perception was reasonable, that is
4 not what he has been tendered for, so those are the
5 two issues that are coming up, but --

6 MR. ESCOBAR: Judge, I'm not going to ask him --

7 MR. MARTIN: I would have gone more and more
8 into the depo but for the fact that that was the
9 representation. Mr. Hayden is going to testify to
10 that.

11 MR. ESCOBAR: I'm not going to ask him whether
12 Mr. Reeves' perception was reasonable, but I am going
13 to take him through the entire process of what you do
14 even when you have a video and you have certain shots
15 in the video, certain snapshots in the video and
16 those are timed, because you do that as a crime scene
17 detective. You have to look at the video. You have
18 to look at the timing between the sequence of events.
19 You've got to be able to make determinations of when
20 someone is pulling a firearm. That's all crime
21 scene. That's not -- that's not necessarily all
22 Dr. Hayden. That's a crime scene detective that's
23 doing that with the physical evidence, the video and
24 what he found there at the particular scene.

25 He went there to the Cobb Theater twice, once to

1 try to recreate something that he couldn't recreate
2 because the Cobb Theater had changed their entire
3 surveillance system. It would have been a wonderful
4 experiment that we could have conducted that he
5 wasn't able to do. So, no, that's exactly what a
6 crime scene detective does.

7 Now, this crime scene detective from the Pasco
8 County Sheriff's Office may not have done that, but
9 as we know, he had the capability because he
10 testified that every year he gets those use-of-force
11 type of instructions in order to preserve his own
12 life. So for him to say that a crime scene detective
13 shouldn't have that body of knowledge is just not
14 being genuine with the Court.

15 THE COURT: That's a rather lengthy way to get
16 to a response, but as long as we're not getting into
17 the area that Mr. Martin objected to to a significant
18 degree as an expert in that, then I will overrule.
19 But if that's where you're going, then we're going to
20 move into --

21 MR. ESCOBAR: Judge, I'm not going to ask him
22 that ultimate question. I am absolutely not going to
23 ask him that ultimate question, but I want the Court
24 to know I'm being honest with the Court, that he will
25 testify that this is what a crime scene detective

1 does and this is what a crime scene detective should
2 do. If their crime scene detective didn't do that, I
3 understand that, but this is what a crime scene
4 detective does. He teaches that all over the
5 country.

6 THE COURT: All right.

7 BY MR. ESCOBAR:

8 Q. So early on in the process of crime scene
9 reconstruction, is it necessary to find the location of
10 the individuals that were involved?

11 A. Yes.

12 Q. And how do you go about doing that?

13 A. Well, you could do a couple of things.
14 Sometimes the physical evidence will tell you. Sometimes
15 you just get that from asking people, you know, in the
16 interviews of people who were involved in finding out
17 where they were seated, you know, so that you know where
18 people were, where they were seated, where it began and
19 where things ended up and how did it take place, in terms
20 of the location and movement of people.

21 Q. And so is this a similar project like, "Hey,
22 there's a witness outside that was seated right next to
23 Mr. Reeves. Let's bring that witness in and have that
24 witness point out where Mr. Reeves was seated"?

25 A. Yes. Yes, you could do that, yes.

1 Q. Or any other witnesses as well?

2 A. That's correct, yes.

3 Q. Now, is the size, age, or disability of the
4 parties important in your reconstruction?

5 MR. MARTIN: Judge, again, I'm going to object.
6 I know this area. I'm not testifying, but I know
7 everything that they're going through, and this is
8 not shooting reconstruction. I have to know this in
9 order to determine where a chair is, where people are
10 seated, who can see what, what the lighting condition
11 is.

12 It's not his job to determine whether or not
13 what Mr. Reeves did was reasonable, and that's what
14 we're doing, and I know the areas. I know them like
15 the back of my hand. I'll handle it with Mr. Hayden
16 but not with Mr. Knox. He's here to give us the
17 artifacts of the people that were in there; what
18 could be seen, what couldn't be seen, what were the
19 obstructions, what were the lights, how does that
20 affect the human factors? I let that go, but not
21 this use-of-force. He does not have the background.
22 He wasn't qualified as an expert, and I was totally
23 misled at depo or I would have covered it, and you
24 know that.

25 MR. ESCOBAR: Judge, he was never misled at

1 depo, and in fact, if you read the CV, you would have
2 seen that all of that was in there, including the
3 use-of-force.

4 THE COURT: He told me he was not going to be
5 offered for the use of --

6 MR. ESCOBAR: Judge, I have never told him that,
7 never told him that. He had -- he had two days of
8 deposing this man. I think it was probably over six
9 hours.

10 THE COURT: I don't care. Where is the
11 relevance?

12 MR. ESCOBAR: It's the relevance of what a
13 homicide -- a major case crime scene detective does.
14 He's got to know the size of the individuals because
15 he is doing measurements, not only with the chair,
16 but he's doing --

17 THE COURT: All right. All right. All right.
18 I got the size part.

19 MR. ESCOBAR: Right.

20 THE COURT: What else?

21 MR. ESCOBAR: Age, because he is going to, at
22 some point in time, talk about the relative movement
23 of individuals in reference to other activities, and
24 that is part of his testimony and part of his crime
25 scene because it's human factors.

1 THE COURT: All right. What else? Anything
2 else that's going to --

3 MR. ESCOBAR: Disability, again, as a human
4 factor issue. It's a human factor issue. It bears
5 upon how people are going --

6 THE COURT: Okay. I get it. I know what
7 disability means. What does -- how does that impact
8 his measurements?

9 MR. ESCOBAR: He is recreating the events. How
10 can you recreate the events without having those
11 aspects --

12 THE COURT: Okay.

13 MR. ESCOBAR: -- of the parties?

14 THE COURT: So are you talking about someone who
15 is either in a wheelchair or has amputations, or are
16 you talking about him talking to someone and asking
17 him, "How frail are you?"

18 MR. ESCOBAR: Oh, absolutely.

19 THE COURT: Where are you going?

20 MR. ESCOBAR: Oh, absolutely. Part of the
21 process that takes place in an interview is a
22 structured interview of the individual that was
23 involved in the shooting.

24 THE COURT: So it's self-reported.

25 MR. ESCOBAR: Well, part of it is

1 self-reporting, but his part is the corroboration.
2 He's got to get that information and take it back to
3 the crime scene, and then he's got to evaluate it and
4 remember what he said from the very beginning. This
5 is a perception case, and so as a crime scene
6 detective, he has got to take those particular
7 puzzles and see what puzzles fit and what puzzles
8 don't fit.

9 THE COURT: I know that. I got that in the
10 beginning. I don't need -- we don't need to go over
11 everything over and over, but I'd like to -- just
12 short, concise answers would be great.

13 All right. So disabilities to the extent that
14 it's self-reported?

15 MR. ESCOBAR: Oh, absolutely, and he's going to
16 look at the relevant -- yeah.

17 THE COURT: Okay. All right. And all of that
18 is relevant to his reconstruction?

19 MR. ESCOBAR: Absolutely, because at the end of
20 the case -- and I'm going to tell the Court what he's
21 going to do.

22 THE COURT: Okay. I get it. I get it.

23 MR. ESCOBAR: Okay.

24 THE COURT: I know you will. I know you will
25 tell me probably 10 more times, but not right now.

1 MR. ESCOBAR: Okay.

2 THE COURT: Okay. All right. I'm going to
3 overrule.

4 BY MR. ESCOBAR:

5 Q. Size, age, disability of the parties, how does
6 that work in the process -- in the shooter, as well as in
7 the person that's now deceased?

8 A. Well, when you're looking at certain things in
9 relation to, you know, where people are in relation to one
10 another, and then you look at things like wound path
11 evidence and then correlate that back to where a person
12 was seated, you know, to the extent that anything that --
13 about a person affects how they could have been
14 positioned, where they could be seated, how they could be
15 holding a firearm and those sorts of things, then, yes,
16 that's information that is important to know because, you
17 know, you need to know which hand a person held a firearm
18 in. You need to know, is there something about how they
19 held the firearm that may have been unusual because of
20 some type of disability.

21 I mean, there are -- I know a police officer who
22 lost his index finger and shoots his gun now using his
23 middle finger to operate it. Well, those are things that
24 you would need to know in order to be able to understand
25 the positioning to reconstruct where they were and what

1 was taking place.

2 Q. Okay. And would you do that through structured
3 interviews as well?

4 A. Yes. Typically, what's going to happen with the
5 crime scene stuff is, you know, if I'm the crime scene
6 investigator there and I'm communicating with the
7 detective and, you know, you have a person that's involved
8 in a shooting -- so there's obviously going to be a
9 detective that's going to interview that person and there
10 needs to be communication back and forth, so I can
11 communicate to the detective what I see at the crime
12 scene, and they're going to then interview that person and
13 get certain information.

14 What would typically be happening is they might,
15 you know, get to a certain point in the interview, stop,
16 come communicate with me. I'm going to say, "Okay, well,
17 I've seen this, this or this. Can you ask him about
18 that?" and then, you know, sharing that information back
19 and forth.

20 So I'm collecting and focusing on the
21 information at the crime scene. They're focusing on
22 getting the information from the individuals. Then we're
23 bringing that back and forth so that we can start putting
24 everything together.

25 Q. So you're making a request as well of the

1 individuals that are interviewing witnesses in a case?

2 A. Yes.

3 Q. Because you're needing to get that information?

4 A. Yes, because obviously, you know, physical
5 evidence will give me certain information, but a lot of
6 times in a shooting there is an absence of certain -- of
7 physical evidence.

8 Where you have a case like this, where you have
9 one shot fired, you have a gunshot wound to an individual,
10 there's nothing in the physical evidence that will answer
11 certain questions like exactly where a person was
12 positioned or where they were seated or what was going on.
13 Because from the physical evidence at a scene like this, I
14 wouldn't know if Curtis Reeves was seated in the seat when
15 he fired, if he stood up and fired, if he got out of his
16 seat, moved somewhere and fired, and that's information
17 that's only going to come from me either through the
18 interview process with him and with the other witnesses or
19 through the use of surveillance video that can help answer
20 those questions.

21 Q. Now, I think we've gone through the environment
22 with one exception. You've got video surveillance in this
23 particular theater, which is part of the environment.

24 A. Right.

25 Q. What do you do when you see cameras on the

1 wall --

2 A. That's --

3 Q. -- as a crime scene detective?

4 A. That's part of your physical evidence, so it's
5 important, then, to document. First, you need to get
6 ahold of this video and you need to find out what's been
7 recorded on it and be able to get, obviously, an
8 uncorrupted copy of it that you can take into evidence.

9 It's not uncommon -- you know, I've been to
10 crime scenes where we've actually viewed it in a short
11 time after the crime occurred to see what it showed, and
12 sometimes that helps with your processing. It helps you
13 to know where people may be and where to look for
14 evidence. It helps you to understand what took place.
15 But that is most certainly part of your evidence for the
16 case.

17 Q. It being part of your evidence for the case, is
18 that something that you would control yourself?

19 A. Yes. You need to, because multiple issues -- I
20 mean, from a crime scene investigator's standpoint, my
21 first thought when I think of video is chain of custody,
22 that I need to get it into law enforcement custody so that
23 we have control and ability to say that this is
24 unadulterated video. Nothing's been done to change it, no
25 tampering or anything has taken place. So that's usually

1 the first and foremost concern, but also just making sure
2 that you get it and have access to it.

3 Relying on others to provide it is inherently
4 dangerous. We had a case where I was in Jacksonville
5 where we had a school bus involved in an accident, and the
6 school board didn't want to hand over the video. The
7 investigator trusted that the school board, a government
8 agency, would be willing to give them the video, and we
9 ended up having to fight over it and get a court order and
10 everything else to try to get it.

11 So, you know, you don't want to go through that
12 situation. You want to be able to obtain that video and
13 get it under law enforcement control as soon as possible.

14 Q. Is there something special about video
15 surveillance equipment that a law enforcement agency can't
16 properly secure the image and control?

17 MR. MARTIN: Your Honor, I'm going to object.
18 There have been no qualifications whatsoever
19 regarding his knowledge, use, systems of CCTV or any
20 type of surveillance system, how the system works,
21 any type of schooling he's gone to. There's
22 absolutely nothing.

23 He has -- we haven't even laid a predicate about
24 all the different softwares out there, so there's
25 just this big general, you know: Okay, it's out

1 there, so law enforcement should just be going to get
2 it. There's no training. There's nothing.

3 He's not a detective that goes out, like we had
4 with the mass shooting, and goes out and knows all
5 the problems in dealing with all of those systems.
6 We just don't have that.

7 He has no experience to come in here and say law
8 enforcement should take that video and go and sit
9 down and manipulate software that they know nothing
10 about, that they don't own. That's not what he's
11 being offered for.

12 MR. ESCOBAR: Judge, first of all, that's what
13 he's done for all of the years that he's been a law
14 enforcement officer as a major case crime scene
15 detective, and I think he's assuming certain things
16 that haven't been presented yet, and he will be
17 testifying that -- obviously if he recognizes that he
18 can do it, he'll do it. If not, there's the Florida
19 Department of Law Enforcement, there's the FBI.
20 There are agencies that are very, very well qualified
21 to go in there and to seize a system and not disturb
22 it and not corrupt it and not tamper with it in any
23 way.

24 That's part of his work. That's what he does.
25 That's what crime scene detectives do.

1 MR. MARTIN: We're talking apples and oranges.
2 This isn't a dash cam on a bus or cruiser. It's a
3 network of surveillance cameras that is fed out
4 through all of Cobb Theaters all over, wherever they
5 go, to one IT individual, that he has no experience
6 in that type of system.

7 So to come in and say, "This is what the police
8 should have done," he does not have the experience so
9 I object to it.

10 MR. ESCOBAR: Judge, I want -- I've got to
11 respond to this because I will tell you that I will
12 bring John Silis back who's the guy that not only
13 maintained this, but the guy that replaced this that
14 will tell you that that was one of the most basic and
15 uncomplicated systems that he has ever worked on.

16 This is not a sophisticated -- just because we
17 have Cobb, you can't presume that Cobb was
18 sophisticated in any of their surveillance. In fact,
19 we know just the opposite, because the surveillance
20 equipment was very poor quality.

21 So this is not a sophisticated statement. He's
22 trying to give you the impression you've got this
23 big, corporate giant out there and they have this
24 incredible surveillance. We would have much better
25 video if that were the case.

1 MR. MARTIN: Judge, I never said they had an
2 incredible surveillance system. What I said was they
3 don't know how to operate it. It's a GeoVision
4 system. There's a lot of parameters that you go
5 through in order to do things properly so things
6 don't get corrupted, so things are done right.

7 Mr. Knox cannot come in -- he has no experience
8 whatsoever to say that the law enforcement always has
9 to go out and sit there and manipulate property that
10 doesn't belong to them when they don't know anything
11 about it. He doesn't have that experience.

12 MR. ESCOBAR: Judge, do you remember who imaged
13 these hard drives? Detective Bossone imaged these
14 hard drives. So if it was so sophisticated that we
15 needed to have someone else image these hard drives,
16 they went to the cyber crimes unit to the detective
17 that was there to begin with that and could have
18 imaged those hard drives that day.

19 They went to that same detective and said, "Hey,
20 by the way, we've gone to Alabama and now we've
21 gotten the hard drives. Can you come over here and
22 can you image those same hard drives?" That's what
23 they've done.

24 This is disingenuous for him to tell you that
25 there is something sophisticated about this issue.

1 It's not.

2 MR. MARTIN: It is, because you can't just plug
3 the hard drives into a PC computer. It has to go
4 back into the DVR in which it was built, and if you
5 don't do it correctly, you wipe out the whole hard
6 drive. He has no life experience about this.

7 This is apples and oranges. He cannot explain
8 all of the ramifications and problems with doing what
9 Mr. Knox says. You just don't go in and snap the
10 hard drives.

11 THE COURT: To the extent that he has an
12 opinion, I'm going to let him testify about that.
13 With those obvious objections in mind, I'm going to
14 overrule for now.

15 MR. ESCOBAR: Thank you, Your Honor.

16 BY MR. ESCOBAR:

17 Q. Mr. Knox, when you have a video surveillance
18 system in a shooting incident, as a major crime scene
19 detective, what do you do?

20 A. Well, I mean, the first thing to do is secure
21 the system in some way and make sure nobody else is able
22 to tamper with it or do anything. But I think where
23 Mr. Martin has gone astray in his argument here is I'm not
24 testifying that I would go into the system and I would
25 start touching stuff and manipulating software. I would

1 not touch anything that I didn't know how to operate.

2 But that's not the point. As a crime scene
3 investigator, I'm not expected to know how to do
4 everything and collect every piece of evidence and deal
5 with everything that could come up in a crime scene, but I
6 should have enough knowledge to recognize that something
7 is evidence, that something needs to be secured and that
8 there are people out there available to me who can manage
9 that.

10 So, you know, that's the issue. It's not that
11 I'm going to go in and do it, but I do need to recognize
12 there is surveillance video there. Number 1, we need to
13 see this video as soon as we can, and number 2, we need to
14 make sure we get the video secured and in law enforcement
15 custody as soon as we can.

16 That's generally not going to be done by just
17 asking somebody and saying, "Here, can you get me a copy
18 of this?" That generally means you have to call out to
19 the Florida Department of Law Enforcement and have their
20 people come to the movie theater and secure equipment if
21 it means --

22 MR. MARTIN: Now we're into speculation about
23 what should be done and who should be called and they
24 could be called out. There is no indication that the
25 FDLE is any more competent than even Mr. Knox about

1 these particular systems.

2 It's apples and oranges. Are we talking about
3 the hard drives? And that's what Detective Bossone
4 was talking about, was about the hard drives. That's
5 not the case. He doesn't have the life experience to
6 come in and say what they did was wrong.

7 MR. ESCOBAR: So the FDLE doesn't have the
8 largest cyber crime units in Florida, and the FBI
9 doesn't have a department to deal with cyber crimes?
10 Bossone told you, "Listen, it's easy enough. I'll go
11 to FDLE and they'll come and help me," or, "I'll go
12 to the FBI," which is exactly what Mr. Knox is
13 telling you.

14 He wants you to disregard his own detectives
15 that have come in here and told you the very same
16 thing that Mr. Knox is telling you.

17 THE COURT: All right. Overruled.

18 BY MR. ESCOBAR:

19 Q. If you needed to get the FBI, would you get the
20 FBI?

21 A. Absolutely, yes.

22 Q. Is it that important?

23 A. It is, because that's -- that video is going to
24 provide you with potentially some of the best evidence
25 that you're going to have of what took place.

1 Q. Now, we've talked about the environment. Let's
2 jump over now to the segment of your reconstruction which
3 is interviews.

4 We've talked a little bit about the interview.
5 Is it important to determine who the person that your
6 interviewing is?

7 A. Yes.

8 Q. And why?

9 A. Well, I mean, you need to know and understand
10 what could be influencing their perception. So if you're
11 talking -- for example, if you're interviewing the person
12 that actually fired the shot, you need to understand what
13 they know. What's their knowledge of firearms? What's
14 their experience with firearms? What particular knowledge
15 do they have or what are they going to understand about
16 what took place? What did they not understand? You know,
17 there is -- you want to find out as many factors as you
18 can.

19 It would be no different than in a traffic
20 accident case. You want to make sure that person you're
21 talking to that's driving a car, they actually know how to
22 drive a car and they have experience on roadways, things
23 like that. It's just a matter of just understanding where
24 that person is coming from and what they would perceive
25 and what could affect their decision-making.

1 Q. Now, is it also important to determine if, at
2 the time of the incident, they were under any medication?

3 A. Yes.

4 Q. Or intoxication?

5 A. Yes.

6 Q. So is that a question that you routinely ask?

7 A. Yes.

8 Q. Whether or not you perceive any type of loss of
9 faculties?

10 A. Right. You can ask it just as a routine
11 question to make sure -- you know, not only that, but I
12 mean, you will ask questions like, "Do you know how to
13 read and write? What's your highest education level?"
14 because it goes to what is the person going to understand,
15 you know.

16 So certain background questions like that are
17 commonly asked. Whether there's reason to ask it or not,
18 it's just a standard type of question.

19 Q. Would you ask them about disabilities that they
20 may have?

21 A. Oh, yes, absolutely. If you're talking, like,
22 about a witness to something, I mean, you need to know
23 what can they actually see. I've had a case where the
24 victim in a crime ID'd somebody while sitting in a police
25 car. The person is about 10 or 15 feet away, and then

1 later came to the deposition and said they couldn't see
2 more than six feet away from them. But the question was
3 never asked of him at the time that he's making this
4 identification, so those are questions that you would want
5 to ask.

6 Q. I would imagine that includes both vision and
7 hearing?

8 A. Absolutely. If there are things that a person
9 heard or may not have heard, then you would want to know
10 whether or not their hearing contributed to whether they
11 could hear it or not hear it as well as vision, whether or
12 not they could see the distances that they need to be able
13 to see to perceive the things that they saw or didn't see.

14 Q. What about the disability of the shooter
15 himself? Are those questions that are proper?

16 A. Yes. Absolutely.

17 Q. Why would they be proper in reference to the
18 shooter?

19 A. Well, the thing is -- again, if you're
20 reconstructing, you're trying to figure out what's taking
21 place, you need to know what limitations that person may
22 have had.

23 If I'm going to try to document vision, for
24 example, I mean, I need to know something. Does he have
25 impaired night vision? Do they have -- you know, are they

1 color blind, are there things that could affect what they
2 would perceive because I might have to adjust -- you know,
3 if I take photographs of a scene and I find an individual
4 is color blind, then I probably need to produce some black
5 and white photographs to represent what's there.

6 You know, I need to find out if they have
7 reduced night vision. They may not be able to see as well
8 as I can see when I'm examining the lighting conditions.
9 Those are obviously all factors that you would need to
10 consider.

11 Q. I think we've talked about the individual
12 witnesses' location within the scene. What about their
13 emotion about the happening itself?

14 A. I mean, emotion obviously is an important aspect
15 to -- you know, one, you document it because you're
16 looking at the condition that a person is in emotionally
17 and how are they affected by what took place. But also
18 sometimes when it comes to interviewing people, if
19 somebody is in an extremely emotional state, it's much
20 more difficult to interview them than it is perhaps to
21 wait a little while or do something to try to calm that
22 individual before you begin to get into greater detail
23 with them about things so that they can relate it to you
24 better and not be so overwhelmed by the emotions.

25 Q. In these investigations, these crime scene

1 investigations, is there any need for speed?

2 A. No. The only time that speed is ever an issue,
3 sometimes when you have an outdoor scene, you know, you
4 have inclement weather that's coming. And a scene like
5 this where you're inside, you secure the scene and you
6 take as long as you need to to process it.

7 I've done crime scene investigations where we've
8 held the location for five days, you know, and we're
9 processing in there for the period of that time or even
10 held it longer than that where once we were done with the
11 crime scene processing, we still posted a patrol officer
12 to secure the location for an extended period of time past
13 that to make sure there were no other unanswered questions
14 that we needed to go back and obtain evidence. There's
15 never any hurry with it when you're working a crime scene.

16 Q. What is the definition of a witness's contextual
17 versus thematic perception?

18 A. Well, when you're doing reconstruction and
19 you're considering the statements that people give you,
20 obviously you have no way other than the physical evidence
21 that's available to know the accuracy of anything that
22 people are telling you.

23 Of course, if you have multiple witnesses and
24 they give differing accounts, then you have to come up
25 with some way to figure out what's relevant information

1 that you can use.

2 So from a reconstruction standpoint, we look at
3 contextual information that they could provide, which is,
4 you know, filling in the holes to the extent that we can't
5 fill in those holes otherwise.

6 Like, for example: What seat was each person
7 in? That would be contextual information that they could
8 provide that is likely to be reasonably accurate, and we
9 can probably rely on it, especially if we have multiple
10 people giving us similar accounts, or thematic statements
11 where we have multiple people that are giving the same or
12 very similar accounts of certain things.

13 You know, shootings, we often get the case that
14 you ask one person, "How many shots did you hear?" and
15 they say, "I heard four or five," and another person says,
16 "I heard five or six." Another person says, "I think I
17 heard five."

18 Well, then thematically you're looking at a
19 range of four to six shots being reasonable, and you can
20 process your scene and operate on that. But that's how
21 you have to kind of go about interpreting the interview
22 information to apply it to reconstruction.

23 Q. So what happens if you're getting this thematic
24 perspective but also have evidence of contamination? How
25 do you deal with that?

1 A. Well, that's the problem. Thematic means that
2 I'm hearing the same thing from multiple people or similar
3 accounts from multiple people. Well, the problem is if
4 there's contamination, then you don't really know whether
5 they're all giving you their own independent recollection
6 of things or whether what you're getting from some, if not
7 all of them, is a recitation of what they've heard.

8 So that's the problem with the witness
9 contamination, is that you really can't use thematic
10 testimony in a reconstruction if you can't ensure that
11 these people are giving you their own individual
12 recollections of what took place.

13 Q. Physical evidence -- okay. So now we're at
14 stage number three, physical evidence there at the scene.
15 How do we deal with the physical evidence at the scene?

16 A. Well, the physical evidence, what you want to
17 do -- I mean, obviously you've got to locate what's there
18 and identify that this is, in fact, physical evidence and
19 it is probably relevant to this case.

20 But you need to also have some understanding of
21 how that physical evidence may have played a role, what it
22 is and what role could it have played, because that's
23 going to affect what type of processing I decide to do
24 with it, whether I'm sampling it for DNA or fingerprints
25 or whether I'm looking at other aspects of a particular

1 physical evidence.

2 So I need to know what it is, and I need to have
3 some understanding of how it may have played a role in
4 this particular event.

5 Q. Can some evidence be seen with the naked eye and
6 some evidence not be seen with the naked eye?

7 A. Absolutely, yes.

8 Q. How do we deal with that very difficult aspect?

9 A. Well, that's part of -- if you understand what
10 you're looking for -- so if you take an object that may
11 have been used in some type of an event and you want to
12 determine whether it came into contact with somebody, then
13 you might be looking at fingerprint evidence. You might
14 be looking at DNA evidence.

15 Those are things, obviously, that are not going
16 to be visible without having done some type of processing.
17 So you have to then handle the evidence appropriately as
18 to those types of processing.

19 If I'm going to sample for DNA, then I need to
20 make sure that I handle that object appropriately, that I
21 don't touch it with bare hands, that I don't do anything
22 that would potentially deposit any additional DNA, that I
23 would go through the proper processes to sample that DNA
24 and be able to collect it and submit that.

25 If I'm going to do fingerprinting, similarly I

1 need to make sure that I'm appropriately preserving that
2 item and then decide on an appropriate process.

3 A lot of times, you have to understand the
4 sequence that you want to do things in. If you're going
5 to do DNA and fingerprints, for example, you would want to
6 do the DNA sampling first and then the fingerprint
7 processing afterwards so that you don't contaminate items
8 or inadvertently destroy any DNA that's there.

9 That's why you need to have some understanding
10 not just that it's there, but what role does it have in
11 this particular case.

12 Q. Is your role in doing an incident -- shooting
13 reconstruction any different now after the fact than it
14 would have been for the major case crime scene detectives
15 on the day of the shooting?

16 A. It's different in that I'm not the person that
17 comes in and documents and collects the stuff. It's there
18 because I don't have access to the crime scene at the time
19 that the evidence is still in place, and I'm obviously not
20 going to be involved in that process.

21 So as the crime scene investigator when I worked
22 in law enforcement, I would be the person who would
23 document and collect everything, so I would be starting
24 and collecting all that information myself.

25 Now what I do coming in after the fact is I'm

1 relying upon the information that they collected and
2 documented as input information into my reconstruction.
3 Then I can obtain additional information that may be
4 available, and do other things to put that together in
5 reconstruction, but I don't have any way of collecting
6 anything that wasn't already done or handled.

7 Q. What if the crime scene detective that worked
8 the case did not do things properly? How does that affect
9 your work?

10 A. Well, the old adage of garbage in, garbage out,
11 is what sort of applies to crime scene reconstruction.
12 The quality of the crime scene reconstruction on the
13 output end is dependent very largely on input information
14 that comes in.

15 So if it's properly documented, if evidence is
16 properly collected and processed and all the information
17 is there, then it doesn't have any effect. I can go off
18 of what they gave me.

19 But to the extent that things are not collected
20 or processed or documented properly, then it's going to
21 reduce the amount of input information that I have to put
22 into a reconstruction to be able to get the end result.

23 Q. So let's talk about what you did in this case
24 when you began your work.

25 Tell the Court what it is that we first did in

1 this case when you began your work.

2 A. Well, typically, what we did here is the first
3 thing is to get some of the documentation that was
4 produced, so the crime scene photographs, autopsy report,
5 photographs, you know, crime lab reports that are present,
6 you know, things like that, so that we can review it and
7 get some familiarity with what took place and what
8 evidence is there.

9 Then shortly after that, we actually traveled,
10 and I went to the Cobb Theater, went inside, examined the
11 theater, obtained some measurements, took different
12 photographs, had the opportunity to have the management
13 there demonstrate different lighting settings and so
14 forth.

15 Then after that I received some additional
16 documentation. I think I even received some blueprints
17 from the theater and the various things like that, and
18 then eventually went back to the theater with the intent
19 of doing some reconstruction work in the movie theater.

20 MR. ESCOBAR: May I approach, Your Honor?

21 THE COURT: You may.

22 MR. ESCOBAR: May I approach?

23 THE COURT: Uh-huh.

24 BY MR. ESCOBAR:

25 Q. Now, Mr. Knox, an issue came up in this

1 particular case concerning Mr. Reeves' shoes that he was
2 wearing the day of this incident, correct?

3 A. That's correct.

4 Q. And one of the issues was the reflective
5 character of some of the areas of Mr. Reeves' shoes; is
6 that correct?

7 A. Yes.

8 Q. By the time that we went to the theater with
9 this shoe, I would imagine that you had also reviewed the
10 video that had been produced by the video surveillance
11 system of the Cobb Theater?

12 A. Yes.

13 Q. And had you reviewed that video in order to
14 determine not only the -- what appeared to be an emanating
15 light from an object as well as the reflective appearance
16 of that shoe as Mr. Reeves --

17 MR. MARTIN: Your Honor, I'm going object to
18 that line of questioning because that was very
19 gratuitous on what he perceived. He said
20 "illuminating light" and "reflecting off his shoes."
21 We have no testimony whatsoever. He's just leading
22 this witness down the path that he wants.

23 THE COURT: Objection to leading or --

24 MR. MARTIN: Yes, ma'am, based on that question.

25 MR. ESCOBAR: I'll rephrase.

1 THE COURT: Thank you. Rephrase.

2 BY MR. ESCOBAR:

3 Q. Mr. Knox, tell me what items you reviewed in the
4 form of video and photographs and the actual shoes prior
5 to going to the Cobb Theater that first time.

6 A. Well, I had reviewed the surveillance video, and
7 there was some other information that I'd been provided as
8 well as having had the opportunity to actually examine and
9 photograph the shoe.

10 But the particular issue that I was interested
11 in looking at was the reflective characteristic of this
12 shoe and the surveillance video, so the way that the
13 surveillance video would capture reflection from this
14 shoe.

15 Because in the video, there was a -- there are a
16 couple different places where there's some sort of a bright
17 light or reflection of some type that's present during the
18 video, some of which appears to be attributable to the
19 shoe and some of it is in question, whether it's
20 attributable to the shoe or to something else.

21 So that was the idea, to go to the theater with
22 the shoe and test to see if we could make that
23 determination.

24 Q. Was that on your first or second visit to the
25 theater?

1 A. That was on the second visit to the theater.

2 Q. And during this second visit to the theater, did
3 we have an exact replica of the phone that Mr. Oulson at
4 the time was possessing in that theater?

5 A. Yes.

6 Q. Okay. And so we went to the theater with those
7 items for what purpose?

8 A. In order to test. Because the two possible
9 sources for those areas of light that appear in the video
10 would be either the shoe or the phone, and so what I
11 wanted to be able to do was to test that.

12 And the way to test it would be to take it back
13 into the theater and move the different items -- put them
14 in different locations similar to where they would have
15 been in the course of this shooting and in the course of
16 the actual video, and then compare that to the video that
17 we would have created in the movie theater doing the
18 testing, so that we can try to make some determination, if
19 possible, to distinguish between the two.

20 Q. So the first time you went to video was just
21 basically measuring, documenting, photographing, that sort
22 of stuff?

23 A. That's right.

24 Q. In this particular trip, you were going to
25 handle this particular experiment? Is that what we should

1 call it?

2 A. Experiment or testing, yes.

3 Q. Okay. And were you also going to be doing some
4 analysis concerning the perspective that Mr. Reeves would
5 have perceived there in the theater during the time of the
6 shooting?

7 A. Yes.

8 Q. And what were you going to be doing that with?

9 A. Well, there were two phases to doing that. One
10 was that -- again, we were looking -- hoping to do was to
11 be able to get some -- a much more accurate perspective on
12 where Mr. Reeves was, where he was positioned, where
13 Mr. Oulson was and where he was positioned based on what's
14 shown in the video by duplicating it.

15 So, in other words, if you're trying to figure
16 out the positioning that somebody may have been in in the
17 actual video, then you would attempt to duplicate that and
18 then compare the two, because clearly we have, you know,
19 surveillance video.

20 The camera is about almost 35 feet away looking
21 down, so the only real way to do it would be to duplicate
22 it and make comparisons to figure out what matches, but
23 that was the first aspect of it.

24 Then the second was actually to take photographs
25 from Mr. Reeves' perspective from the seat that he's

1 sitting in to render images that would reflect how the
2 different lighting factors affect what somebody could see.

3 Q. Okay. So let's take it one step at a time.

4 When you went that second time, were there other
5 experts that came along?

6 A. Yes.

7 Q. And were those Mr. Koenig and Doug Lacey?

8 A. Yes, that's correct.

9 Q. Okay. And what aspect of this process were they
10 going to be in control of?

11 A. They were going to handle the video aspect. So
12 what they were going to do was they were going to
13 basically tap into the video system so that they could
14 obtain these recordings, and we were going to get video
15 through the system, through the actual cameras, so that we
16 could then compare that video to the actual incident
17 video.

18 Then what we would do is reconstruct certain
19 things in the movie theater and then use the video of the
20 reconstruction that surveillance video captured, and then
21 compare that to the actual surveillance video.

22 Q. Were we able -- we did that at what time? The
23 middle of the night?

24 A. Middle of the night, yes.

25 Q. Were we able to do that?

1 A. No.

2 Q. And why not?

3 A. Well, as it was communicated to me, they were
4 not able to -- there had been changes to the system and
5 they were not able to access the system and rerun the
6 system under the same conditions as it was at the time of
7 the shooting.

8 Q. Well, do you need the system in the same
9 condition as it was filming on the day of the incident in
10 order to have any sort of reliable forensic analysis?

11 A. Yes, you do. I mean, from the standpoint of
12 recreating the positioning and stuff, you need the camera
13 that you're using to have to be unaltered. It needs to be
14 in the position that it's in, because any changes in that,
15 you're not going to be able to match up the images.

16 So if I reconstruct something, I position myself
17 or some other person in a location and put, you know, an
18 arm reaching in a particular location or a person seated
19 in a particular position and try to match that to the
20 video. That's not going to match because it's a different
21 camera angle, so you have to be able to reconstruct those
22 camera angles.

23 In this particular case, the segment of the
24 video where everything is taking place is a very small
25 portion of the actual overall coverage of the camera, so

1 what that means is that any slight changes in measurement
2 become large in terms of the effect that it has on what
3 you're measuring and what your outcome is going to be.

4 Because you're basically taking -- if I were to
5 use something small up here as a scale for this whole
6 room, if that scale is slightly off and I want to use it
7 to measure the length of this entire room, then a small
8 change over here becomes a huge change over here.

9 What you're doing in this surveillance video is
10 reversing that process that the slight change over here,
11 it's going to affect in terms of inches if not even into
12 the feet mark of where you're trying to reconstruct, and
13 that's too large of an uncertainty.

14 You're trying to put things back within inches,
15 and we need to be able to be that accurate, and you're not
16 going to do that if the camera's been altered.

17 Q. Had that camera, that system, not been altered,
18 do you feel like you could have been able to answer that
19 very important question in this case?

20 A. Oh, absolutely. If I'd had access to the system
21 in the same condition that it was in on the day of the
22 shooting when the actual surveillance video was done, that
23 you could figure out everything that you see on the video
24 in terms of positioning, you could recreate -- you could
25 figure out what's the actual positioning, because you do

1 it through what's called reverse projection
2 photogrammetry.

3 You recreate it and project that onto the actual
4 image, and where they match, then you know that you
5 recreated it, and then you measure the location of the
6 item that you're using to recreate it, and now you know
7 where the item that was recorded in the original
8 surveillance video was located.

9 Q. So you could recreate many of the things that we
10 see in the video itself, not just the light?

11 A. That's correct.

12 Q. You could recreate, you know, bodies that
13 possibly are moving in the video?

14 A. Yes.

15 Q. Is that something that you've actually done
16 before?

17 A. Yes.

18 Q. Is that something that you would have wanted to
19 do had you been the major case crime scene detective in
20 this case?

21 A. Yes.

22 Q. Right then and there?

23 A. Yes. I mean, you would -- I would want to
24 maintain control of the video system long enough to be
25 able to accomplish that, so you want to make sure that

1 nothing got changed, nothing got altered, that you had
2 time to be able to do that.

3 Q. So that aspect of the test did not work, meaning
4 we couldn't even start it?

5 A. That's right. That's correct.

6 Q. Before we leave that particular item, I want you
7 to show the Court the areas of that shoe that have a
8 reflective characteristic, and if you could just point to
9 the Court, that would be great.

10 A. Well, mostly in this silver striping in here
11 there are some various places that have some reflective
12 characteristics to them. So there's just various
13 different areas here that would actually reflect
14 something.

15 Q. Now, as we're looking at the video, are you
16 seeing -- are you seeing striped characteristics in the
17 video? In other words, are you seeing this detail here in
18 the video?

19 A. No.

20 Q. Well, are you seeing one, two, three, four dots
21 in the video?

22 A. No.

23 Q. Well, are you seeing a long, slender bar in the
24 back or in the video?

25 A. No.

1 Q. What about this nice little logo here that looks
2 like a Solomon logo? Do you see that in the video?

3 A. No.

4 Q. Well, let's talk about the second process that
5 you did there at the Cobb Theater that day.

6 MR. MARTIN: Excuse me, Judge. If I could,
7 we've been going almost two hours, and I could really
8 use a break --

9 THE COURT: Yes, I could, too. I was just
10 thinking the same thing.

11 MR. MARTIN: -- since we're changing topics.

12 THE COURT: Yeah, we're going to go through more
13 exhibits.

14 Let's take about a -- well, let's be back at
15 3:00, almost a fifteen-minute break.

16 (Recess taken.)

17 BY MR. ESCOBAR:

18 Q. Mr. Knox, I'm going to show you --

19 MR. ESCOBAR: May I approach, Your Honor?

20 THE COURT: You may.

21 BY MR. ESCOBAR:

22 Q. I'm going to show you what's been marked as
23 Defense Exhibit Number 79 and ask you if you are aware of
24 that particular exhibit.

25 A. Yes.

1 Q. Is that an exhibit of what?

2 A. It's a PowerPoint slide presentation that I
3 prepared.

4 Q. Is that of some of the work that you did in this
5 particular case?

6 A. Yes.

7 Q. More importantly, of the work that you did in
8 this case in order to show the lighting effect within the
9 Cobb Theater on January 13th of 2014?

10 A. Yes.

11 MR. ESCOBAR: Your Honor, at this point in time,
12 we would introduce this into evidence. I will tell
13 you that the entire presentation, with the exception
14 of the mannequin photos that are contained within
15 this exhibit, has been stipulated to.

16 There is a memo, I believe, on the mannequin
17 photos that I know the Court will consider both the
18 government's motion as well as the Defense's motion,
19 and whether you will be using those in your analysis
20 in this case.

21 MR. MARTIN: Judge, that's not entirely correct.
22 I also filed a separate Daubert motion regarding the
23 photographs of the general seating area without the
24 mannequin in it dealing with the lighting issue, and
25 that's also on Your Honor's desk, and a copy has been

1 provided to Mr. Escobar.

2 MR. ESCOBAR: I'm not sure that these contain
3 those, but I'm sure that counsel will certainly alert
4 the Court if, in fact, some of those photos are
5 contained within his objection to his motion.

6 MR. MARTIN: The only thing that I would ask is
7 that -- this is where we've agreed that you've got to
8 hear it anyway --

9 THE COURT: Yes.

10 MR. MARTIN: -- so I will go ahead and make my
11 motion now regarding the Daubert issue on the
12 lighting conditions that I thoroughly briefed and
13 provided to the Court with attachments.

14 THE COURT: Uh-huh.

15 MR. MARTIN: So when we come to the mannequins,
16 if it's all right with the Judge, or with the
17 specific photographs dealing with lighting in the
18 general area, I will just -- if it's all right, I'll
19 just stand and say, "That would reference one of my
20 Daubert motions," and then I'll sit down, and that
21 way you can mark in your notes exactly what we're
22 talking about.

23 THE COURT: All right. So you're going to
24 reference that specifically when we come to it,
25 right?

1 MR. MARTIN: I will, so I'm going to object to
2 the introduction of this particular exhibit --

3 THE COURT: Okay.

4 MR. MARTIN: -- based on the -- my two Daubert
5 motions. When we come to that point, that will be
6 considered as a proffer, like the Court said, and
7 then you will either accept or reject the proffer and
8 use the information or not. I believe that was our
9 agreement.

10 THE COURT: Very good. So this will be admitted
11 over objection for proffer purposes and perhaps
12 others afterwards. And shall we give it the same
13 numbering, I guess, 37?

14 MR. MARTIN: I would, but may I suggest to the
15 Court that -- that you're going to reserve ruling on
16 the exhibit --

17 THE COURT: I am.

18 MR. MARTIN: -- and just leave it at that. Then
19 at that point -- I know the ones that are coming in,
20 all the measurements and everything that are coming
21 in, but I think the record is cleaner that way.
22 You're either to accept it in total or reject it in
23 total.

24 THE COURT: Okay. I'll do that.

25 MR. MARTIN: That way the appellate record is

1 very clear that I objected to this and you're
2 reserving on the admissibility of that entire thing
3 until the proffer is over and you've had a chance to
4 review the memorandum.

5 THE COURT: All right. So that's 37?

6 THE CLERK: Yes.

7 MR. ESCOBAR: Yes, it's 37.

8 THE COURT: Under those parameters, all right.

9 (Whereupon, Defense Exhibit 37 for
10 identification was received in evidence by the
11 Court.)

12 BY MR. ESCOBAR:

13 Q. Mr. Knox, I'm going to show you what has been
14 marked as, now, Defense Exhibit Number 37, that there has
15 been a reserved ruling by the Court as to certain segments
16 of this particular exhibit.

17 Tell me what that exhibit is.

18 A. Well, this is a slide presentation that I've
19 prepared.

20 Q. Okay. Let's go to the next slide. What is this
21 a picture of?

22 A. This is just a general reference photograph.
23 This is outside of the Cobb Theater showing the front
24 entrance of the theater.

25 Q. Okay. And 4 of 40. I'm going to actually have

1 some reference with them, so the easy thing to do, at the
2 very bottom of this photo there's a numerical, 4 of 40.
3 I'm going to, just for the record, indicate what photo you
4 are now looking at, and that is 4 of 40; is that correct?

5 A. That's correct.

6 Q. What is 4 of 40?

7 A. This is an orientation photograph inside just to
8 show where the actual theater was. It's the one with the
9 Number 10, Lone Survivor. You would go in to the left and
10 enter the theater.

11 Q. Next one, this is 5 of 40. What is 5 of 40
12 depicting?

13 MR. ESCOBAR: And, Mr. Shah, could you please
14 maybe zoom it up a little bit so that we could --
15 okay. That's good.

16 THE WITNESS: This photograph is just an overall
17 showing most of the seating, and then it's showing
18 the yellow circle in the middle, pointing out where
19 the actual shooting took place.

20 BY MR. ESCOBAR:

21 Q. And 6 of 40, what is this photo depicting?

22 A. This is just a cropped photo, I think, from the
23 earlier one, just a little bit closer view to be able to
24 point out the seats where Curtis Reeves was seated and
25 where Chad Oulson was seated.

1 Q. 7 of 40, what does this photo now depict?

2 A. This is the photograph that shows the actual
3 seats. Looking down on the seats, it shows the
4 positioning of where Curtis Reeves, Vivian Reeves, Chad
5 Oulson and Nicole Oulson were seated.

6 MR. ESCOBAR: Mr. Martin, if you at any point in
7 time -- if you have an objection over the photo, if
8 we could put on the record the number of that photo
9 that you have an objection for so that we have an
10 accurate record of what photos you object to and what
11 photos you don't?

12 MR. MARTIN: I appreciate that. I have reviewed
13 the presentation prior to coming into the court, and
14 it's the last section, "Perspective," and I forget
15 the number of it.

16 MR. ESCOBAR: When you come to it, if we can do
17 it --

18 MR. MARTIN: When you get to "Perspective,"
19 that's when I'll have my objection.

20 THE COURT: Okay.

21 MR. ESCOBAR: Because these have all been
22 stipulated to, Judge.

23 BY MR. ESCOBAR:

24 Q. The next one -- oh, let's go back to that last
25 one. I want to --

1 MR. MARTIN: Well, excuse me, Mr. Escobar. Just
2 so the record is clear, the photographs have been
3 stipulated to. I'm not necessarily agreeing with
4 what's been populated in the photograph by Mr. Knox,
5 but what the photograph is, we have stipulated to.

6 THE COURT: Fair enough. Very good.

7 BY MR. ESCOBAR:

8 Q. Do you see the phone in that particular photo?

9 A. Yes.

10 Q. Does that appear to be one and the same photo as
11 shown on Exhibit Number 33?

12 MR. MARTIN: Judge, we'll stipulate it's in the
13 photo. Just -- we'll stipulate to every item that's
14 in there as -- whatever.

15 MR. ESCOBAR: Okay.

16 BY MR. ESCOBAR:

17 Q. What's the relationship to that photo to the
18 seat that Mr. Reeves was seated in?

19 A. Well, his seat is the bottom center of the
20 photograph, and then the location of the phone would be on
21 the floor, basically where his feet would be, right at the
22 back of the seat in front, which would be the seat where
23 Nicole Oulson was sitting.

24 MR. ESCOBAR: Next photo.

25

1 BY MR. ESCOBAR:

2 Q. What does 8 of 40 reflect?

3 A. Showing measurement from -- if you measure from
4 the armrest between the seats and then measure to the back
5 of the seat in front of it, this is what the seats in
6 their resting position -- meaning nobody's seated in it,
7 it's just the way it would rest if nobody was actually
8 sitting in the seat -- and that measurement is one foot,
9 seven inches between the cup holder and the back of the
10 seats.

11 MR. ESCOBAR: Okay. Next photo.

12 BY MR. ESCOBAR:

13 Q. What is that measurement?

14 A. This is showing with the seat, if you press it
15 all the way back so that the seat back reclines to a
16 certain extent. So what we've done here is pressed the
17 seat back as far as back as it will go and took the same
18 measurements between the cup holder and the back of the
19 seat, and it reduces the measurement to one foot, three
20 inches.

21 Q. Okay. 10 of 40?

22 A. This is showing a measurement from the top of
23 the seat, which would be the seat that Curtis Reeves was
24 sitting in, to the top back of the seat in front of it
25 measured on a diagonal, and that total distance is three

1 feet, eight inches.

2 Q. Now, the ruler that you are showing there
3 appears to be a, what we call a common tape-type ruler?

4 A. Right.

5 Q. Would you please tell the Court what exercise
6 you went through in order to determine that that tape
7 ruler was, in fact, accurate?

8 A. Well, what I did was any measuring device that I
9 would use, I have reference standards. I've got some
10 pretty accurate woodworking rulers that are graded to a
11 very fine grade and, you know, made to pretty high
12 accuracy.

13 So I always check my measuring devices against
14 them to make sure it's within a reasonable tolerance, and
15 that's usually -- within 5 percent of the measurements
16 would be considered acceptable, and that's how I would
17 test the tape to make sure it's useable.

18 Q. Are these forensic rulers that you have that you
19 compare these rulers against?

20 A. Right. Right. What I actually use, it's like
21 an engineering-grade type ruler where you have very fine
22 and accurate, you know, divisions on them, so they're
23 divided up into 64ths of an inch. And then I'm able to
24 compare whatever tape measure or other measuring device
25 and I can use those as a reference standpoint.

1 Q. Do you do that for a reason?

2 A. Well, just to ensure that I'm getting precise
3 measurements and measurements that are as accurate as
4 possible.

5 The precision is the repeatability of
6 measurements, so if you happen to use more than one tape,
7 you want to make sure that they're within a close enough
8 (indiscernible), so if I measure something with one tape
9 and then turn around and measure something with another
10 tape, there's not going to be enough difference in them
11 for it to matter.

12 So like I said, within a 5 percent tolerance is
13 usually considered acceptable.

14 Q. Okay. Now, that's 3.8.

15 11, what is that?

16 A. This is measuring, similarly, from the top back
17 of the seat in front and then back to the actual seat
18 back, Curtis Reeves' seat. So here this one is being
19 measured not on a diagonal, but straight back to the seat
20 back to show that the distance in between them is three
21 feet, two-and-a-half inches.

22 Q. 12? What are we seeing here?

23 A. 12, we're looking down. You see the seat, which
24 we've pressed the seat all the way down because, just like
25 the seat back, the seat bottoms also -- they have some

1 flex in them so when you sit down, it pushes the seat
2 bottom down.

3 So with it pushed all the way down, I took a
4 measurement, and you can see that the actual length of the
5 seat bottom is one foot, five-and-a-half inches. And then
6 the distance between the front of the seat and the back of
7 the seat in front of it is one foot, three-and-a-half
8 inches.

9 So that total distance, then, from the back of
10 the seat to where your knees would be at the seat in front
11 of it is two feet, nine inches.

12 Q. Next?

13 A. This one is showing the width of one of the seat
14 backs. That's one foot, eight inches across at its widest
15 point, which is right up near the top of the seat.

16 Q. Next?

17 A. This is a measurement showing the distance in
18 between the two armrests, which is one foot, ten inches.

19 Q. I want to go back to a couple of them. Could we
20 go back a couple of them? I want to take a look at this
21 one.

22 Why would you both measure from the back of the
23 seat to the front of the seat as well as from the front of
24 the seat to the back of the seat in front?

25 A. Well, what you're looking at is measuring how

1 much actual seating area -- so if you're seated on it, how
2 much room do you have to be seated on that seat, and then
3 measuring how much room there is between the seat and the
4 seat in front of it.

5 So that's the room where your legs could be,
6 your knees could be, as well as when you stand up, what
7 amount of distance you would have between the two seats.

8 Q. So what this is reflecting is that from the edge
9 of the seat to the back of the seat in front, you would
10 only have how much?

11 A. One foot, three-and-a-half inches.

12 Q. Next -- let's go through the next two, so keep
13 going.

14 Now, 14, what does that reflect?

15 A. That's the -- the distance between the two
16 armrests across the seat is one foot, ten inches.

17 Q. Now, Mr. Knox, are these measurements important?
18 And if they are, why are they important?

19 A. Well, it's important because, one, it's a
20 confined space. There's restraints in terms of where a
21 person could be where they can move, because obviously we
22 know that Mr. Reeves is seated in the seat in some
23 fashion. He's not sitting up on the armrest or standing
24 on top of the seat.

25 It's pretty clear from the video that he's

1 actually seated. It's important to know where he would be
2 and what constraints he would have in terms of movement in
3 the positions that he would be in.

4 Q. Now, these seats have these armrests that are on
5 each side; is that correct?

6 A. That's correct.

7 Q. And does that prohibit the human body from
8 sliding over to the other side where those armrests are
9 down?

10 A. Yes.

11 MR. ESCOBAR: Next.

12 BY MR. ESCOBAR:

13 Q. Photo Number 15, what does that reflect?

14 A. It shows the height from the floor up to the top
15 of the armrest, which is two feet and one-half inch.

16 Q. And why is that measurement an important
17 measurement?

18 A. Well, that in particular, the -- from the video,
19 it's quite clear that where Mr. Reeves is holding the gun
20 is somewhere above the armrest, because he had -- his arm
21 is raised right above that, no higher than what his
22 shoulder height is, so somewhere within that particular
23 range.

24 So you need to know what's the bottom end, which
25 means it's obviously two feet, one-half inch, would be his

1 arm resting on the armrest. So we need to know that
2 parameter. That's what we call a boundary value. It's a
3 lower value.

4 Q. 16, what does this reflect?

5 A. This is showing the height of the seat above the
6 floor with the seat pressed down. So if somebody were
7 sitting in this seat, this is how high the actual seat
8 bottom would be from the floor, which is one foot, four
9 inches.

10 Q. So if someone sits in that seat or pushes down
11 with their rear end on that seat, that whole seat actually
12 decreases in the height from the floor?

13 A. Right, right.

14 Q. Is there a cushion aspect as well on the
15 individual that is seated in that seat? In other words,
16 does it appear to be cushions?

17 To me -- would there be a cushion factor that
18 you would have to consider in addition to the pushing down
19 of the seat itself?

20 A. There would probably be some compression of the
21 seat cushion, and that would be dependent on how much a
22 person weighs and how much -- how the load is distributed
23 in the seat.

24 Q. Certainly how much a person weighed, not today,
25 but on January 13th of 2014?

1 A. That's right.

2 Q. Is that one of the reasons that you were not
3 able to calculate that extra step, is because some time
4 passed before Mr. Reeves was able to sit down in that
5 seat?

6 A. Right. Right.

7 Q. Next.

8 What I'm getting at, Mr. Knox, is he was in jail
9 for a period of time?

10 A. That's correct.

11 Q. 17, what is that?

12 A. This is showing the difference between the seat
13 bottom where you would be sitting, again with the seat
14 pressed all the way down and the armrest. It's
15 eight-and-a-half inches from the seat bottom up to the
16 armrest.

17 Q. Now, that individual that is holding the seat
18 down, who is that individual?

19 A. That's -- actually, his name was Mike LaForte.
20 He's an associate that works with me.

21 Q. Was he also a major crime scene detective back
22 in the day when you were with the Sheriff's Office?

23 A. He's the guy that trained me when I went to the
24 crime scene unit.

25 MR. ESCOBAR: Okay. Next.

1 BY MR. ESCOBAR:

2 Q. What does number 18 depict?

3 A. This is showing the seat. This is the seat that
4 Curtis Reeves was in, and you can see that there's a wall
5 behind that, the seat that goes up, for some distance
6 behind the seat.

7 Q. So that's measuring both the top width of the
8 seat as well as it's measuring from the top of the seat up
9 to the top railing of the wall behind the seat?

10 A. Right.

11 Q. Next?

12 A. In this photograph, it's just showing -- this is
13 measuring from the floor up to the top of that wall, and
14 that wall is five feet, two inches high.

15 Q. Next.

16 A. This is one of the actual photographs that was
17 taken at the shooting scene looking down the aisle. You
18 can see the popcorn bag stuff on the floor, which is right
19 in front of where Mr. Reeves was seated.

20 Q. Is that number 20?

21 A. That's correct.

22 Q. Next? Number 21, I think we've probably seen
23 this one once before. What is this depicting?

24 A. This is just pointing out the location of where
25 the popcorn bag and the popcorn on the floor are.

1 Q. Okay. Next?

2 A. Then this one --

3 Q. 22?

4 A. -- which is number 22 is showing the location of
5 the phone which is sort of in between where the popcorn is
6 and the bag.

7 Q. Next. That is 23?

8 A. 23. This is just a different angle, a little
9 bit closer view of showing the phone.

10 Q. Next?

11 A. Number 24, this is showing the location of the
12 fired cartridge case which is on the floor, kind of in the
13 middle area of the seat to the left of where Mr. Reeves
14 was seated.

15 Q. I'm going to show you what has been marked as
16 Number 495040, and it's Item Number AP01, and ask you to
17 take a look at it and see if you've seen that exhibit
18 before.

19 A. I have seen it, yes.

20 Q. And what is what an exhibit of?

21 A. This is the pistol that was used in the
22 shooting.

23 MR. ESCOBAR: Your Honor, we would move this
24 particular item into evidence, and we are going to
25 further display this firearm.

1 THE COURT: Deputy, you verified that firearm?

2 THE BAILIFF: Yes.

3 THE COURT: Any objection?

4 MR. MARTIN: No, stip.

5 THE COURT: Okay.

6 MR. MARTIN: So 38?

7 THE COURT: Yes.

8 BY MR. ESCOBAR:

9 Q. Mr. Knox, I'm going to take this particular
10 exhibit out of the case, and I'm going to have you talk
11 about some of characteristics that you found in the case
12 once you first examined it. And even though it's not
13 loaded, please do not point it at anybody.

14 Let's talk about what type of weapon that is,
15 first of all.

16 A. Well, this is a Kel-Tec pistol, model number
17 P3AT, and this particular pistol is made with a polymer
18 receiver similar to a Glock. And there are a number of
19 others that have made the same type of design, and Glock
20 sort of originated that design.

21 This particular one, it's in a .380 auto
22 caliber, so it's a fairly small cartridge which allows the
23 pistol to be a fairly -- very small receiver and an
24 overall size, so that -- the idea behind a pistol like
25 this is typically for it to be compact and easy for

1 somebody to carry in a pocket or carry, you know, in a
2 purse or anything like that.

3 Q. Okay. All right.

4 The design of this particular pistol -- does the
5 design of it lend itself to it snagging anywhere in your
6 pocket or anything of that sort when you're trying to
7 retrieve that firearm from your pocket?

8 A. It's designed to be -- I won't say snag-proof --
9 that might be a term that they use, but I would say snag
10 resistant in terms of you don't -- when the action is
11 closed, the side is all the way forward, you don't have
12 any kind of sharp edges that would tend to catch on
13 things. You don't have anything, you know, along the
14 sides of it that would tend to catch or hang on to any
15 type of clothing.

16 The sights are very low profile, again, so it
17 reduces the chance that it actually would snag or catch or
18 anything. So I can sit here, run my finger over the sight
19 quite easily and it doesn't grab at my finger or anything
20 like that. So it's made to be compact and reasonably snag
21 resistant.

22 Q. Now, this particular weapon is a small weapon.
23 Would you tell the Court, how many bullets does it carry?

24 A. I believe that one could be loaded to six
25 rounds, capacity of six rounds.

1 Q. And certainly it's, frankly, smaller than my
2 hand?

3 A. Yes.

4 Q. Detective, did you examine any of the bullet
5 types that were used in this particular case?

6 A. Yes.

7 Q. Okay. And without me having to remove all of
8 this, why don't you tell the Court exactly what you
9 remember the bullet types were that were used in this case
10 unless you want to see it.

11 I'm going to show you what's marked AP03 for
12 purposes of identification and will have you -- if you
13 want to open it, I can get you scissors to do that.

14 A. Yeah, that would be good for me to review it.
15 This is the magazine here.

16 Q. If you can just -- I'll do it in a place where
17 it hasn't been done before.

18 I'm going to show you now what's been marked as
19 APO3.

20 A. Okay.

21 Q. Okay. And so you're able to at least identify,
22 now, some of the casings that were contained within that
23 firearm?

24 A. Yes.

25 Q. And what type of bullets were those?

1 A. This is Corbon ammunition. Corbon is a company
2 that made its .380 auto caliber, and you have the
3 cartridge case here. And these had a lead-filled jacketed
4 bullet so it's not a hollow point, but what it has is an
5 open point that has a filling in it, a lead filling in it.

6 Q. And what does that mean?

7 A. Well, there are different types of bullet
8 designs. Like, you have full metal jacket bullets, for
9 example, that are -- there's copper that completely
10 encases the bullet with this type of a design, similar to
11 a hollow-point design.

12 By having an open jacket at the nose and having
13 it filled, when that bullet comes in contact with some
14 type of fluid -- and that includes human tissue coming
15 into contact with a body -- it causes the bullet to
16 expand, and that expansion causes the bullet to slow down
17 more rapidly than it would if it didn't expand, the idea
18 being is that you're exchanging more energy and slowing
19 the bullet down, primarily to reduce how much penetration.

20 Because what you don't want to have is a bullet
21 that -- if you are using it for self-defense, law
22 enforcement purposes and things like that, you don't want
23 to have one that's going to go through and come out the
24 other side and still be going fast enough that it can
25 actually wound another individual that might be standing

1 behind the person who gets shot.

2 Q. So to a certain extent, it may have some safety
3 features?

4 A. Right. I mean, the generally-accepted reason
5 for using -- I mean, you know, for example, just about
6 every law enforcement agency I've lived in in the U.S.
7 that I've encountered, officers carry hollow-point
8 ammunition, or something very similar to, because of that
9 exact reason.

10 You do not want to have over-penetration and
11 have the potential that if you're shooting somebody in an
12 uncontrolled environment where there might be another
13 individual behind them, that you end up wounding an
14 additional person by having a bullet that perforates them
15 and then continues on.

16 Q. Okay. Let's put that back in there and we
17 will --

18 MR. ESCOBAR: Your Honor, we would move 04 and
19 AP03 into evidence.

20 MR. MARTIN: Stipulation.

21 THE COURT: What are they?

22 MR. ESCOBAR: These are the bullets that he
23 just -- it's four Corbon .380 auto bullets removed
24 from AP03.

25 THE COURT: Okay. And the other one is?

1 MR. ESCOBAR: That's coming now.

2 THE COURT: The magazine?

3 MR. ESCOBAR: Yes. That's coming now.

4 BY MR. ESCOBAR:

5 Q. I'm showing you what's been marked as AP03. I
6 believe you looked at this already; is that correct?

7 A. Yes.

8 Q. Is that the magazine that belonged to the
9 weapon?

10 A. Yes, it is.

11 MR. ESCOBAR: Your Honor, we would introduce
12 AP03 as the magazine that belongs to the weapon.

13 THE COURT: These were taken apart, I guess?

14 MR. ESCOBAR: There was some --

15 THE COURT: There's nothing inside? They're
16 empty casings?

17 MR. ESCOBAR: -- Casings.

18 THE COURT: All right.

19 MR. MARTIN: They were found at the scene.

20 THE COURT: One was found at the scene and the
21 rest were in the magazine. I don't see all of the
22 live ones. That one is the only one that I see.

23 MR. ESCOBAR: Your Honor, I believe some of them
24 were used for test firing for the actual -- we will
25 be stipulating to, at some point, in time the

1 ballistics on those.

2 MR. MARTIN: Yes.

3 THE COURT: All right, because there's not four.
4 Okay. All right. Then for what it's worth, that one
5 is 39, the jackets, and remnants, and this one is --

6 MR. ESCOBAR: The magazine.

7 THE COURT: That would be -- 40 is the magazine.

8 MR. ESCOBAR: Last but not least.

9 (Whereupon, Defense Exhibits 39 and 40 for
10 identification was received in evidence by the
11 Court.)

12 BY MR. ESCOBAR:

13 Q. I'm going to show you what's been marked as 1AP,
14 black holster, again, PR Number 49607, and see if you
15 recognize that.

16 A. Yes, I do.

17 Q. And what is this an exhibit of?

18 A. This is the holster that went with the pistol.
19 That is just a slip-type holster for it.

20 Q. Do you know what this is made of?

21 A. It might be some type of a neoprene or some type
22 of rubber material that's sort of like composite material
23 in it.

24 MR. ESCOBAR: We've stipulated to this as well,
25 Your Honor. Would you like to see it?

1 THE COURT: Yes, thank you.

2 MR. ESCOBAR: Your Honor, we would like to
3 introduce this into evidence as well.

4 THE COURT: Is that number 41?

5 THE CLERK: Yes, ma'am.

6 (Whereupon, Defense Exhibit 41 for
7 identification was received in evidence by the
8 Court.)

9 BY MR. ESCOBAR:

10 Q. Now, we left off with the fired cartridge case.
11 I haven't forgotten about that.

12 Tell the Court how it is that a cartridge case
13 is ejected, for lack of a better word -- you may have a
14 more forensic scientific word -- but how is it ejected
15 from a pistol that we've just seen?

16 A. Well, what you have is a semi-automatic pistol
17 which means it's an auto-loading pistol, so you have a
18 magazine. The magazine carries a certain number of
19 cartridges that are stacked one above the other.

20 Every time that the arm action itself -- the
21 slide is brought back and then brought back forward again,
22 it picks up the round at the top of the magazine chambers.
23 And then when it's brought back again, it has an extractor
24 that pulls that fired cartridge case out of the chamber,
25 pulls it back to it, engages an ejector, then the ejector

1 basically flips it out of an open ejection port then it
2 comes to rest at some location nearby in the firearm.

3 Q. Can we tell anything about the location of the
4 fired cartridge case and mechanism that rejects this
5 particular cartridge case once a gun is fired?

6 A. You can sometimes tell certain things, but
7 generally when you have just one fired cartridge case, all
8 you know is that it has to be within a reasonable
9 proximity of the firearm. But that doesn't give you much
10 information about where firearm was at the time.

11 Q. Why is that?

12 A. Well, first, there's a great degree of
13 randomness in how they're ejected, so they're not ejected
14 into one nice, tiny little pile. There will be a certain
15 amount of randomness.

16 In cases like this where you have only one,
17 there's, you know, always a good chance that it came to
18 rest in a different spot than where you find it because
19 it's been kicked or moved or it could have landed on
20 somebody's clothing and then falls to the floor when that
21 person stands up.

22 So there could be a lot of reasons why it could
23 be in the location where it's in that don't have anything
24 to do with where it was ejected from.

25 Q. Okay. Next photo.

1 What is 26?

2 A. That's just a closer view showing the location
3 of the fired cartridge case that was on the floor of
4 the -- again, the seat that you see in front of it is the
5 seat to the left of where Curtis Reeves was seated.

6 Q. 27? What are we seeing in 28?

7 A. 28, that's showing the entrance gunshot wound
8 that was in Chad Oulson's chest.

9 Q. Is that important in reconstruction?

10 A. Yes.

11 Q. And why is that important to see the entry
12 wound?

13 A. Well, what you're looking at with gunshot wounds
14 from a reconstruction standpoint is, one, you would look
15 for any type of gunshot residue and things like that. But
16 of course, if there's clothing over that gunshot residue,
17 it could be on clothing instead.

18 But more importantly, you want to look at the
19 wound path, so the actual path that it took through the
20 body, because then you try to correlate that to the firing
21 position to figure out what position that that person was
22 in when they were shot.

23 Q. How do you try to find out what the wound path
24 is?

25 A. Well, mostly from the documentation from the

1 medical examiner. So that they would generally give some
2 description of that in the autopsy report as well as the
3 photographs that they take of the wounds and the wound
4 location and so forth.

5 Q. Did you have an opportunity to read in this case
6 the autopsy report?

7 A. Yes.

8 Q. Next photo.

9 What does 29 depict?

10 A. That is a gunshot wound to Chad Oulson's right
11 wrist.

12 Q. Okay. And is there anything about that
13 particular photo that gives you any information as to how
14 the bullet grazed that particular wrist?

15 A. It does, because you can -- you can look at it
16 and you can see the direction. You can see that the
17 bottom of the wound where the bullet first made contact
18 traveled across in the photograph, and it would be
19 traveling upward in the photograph which would mean that
20 it was traveling toward the anterior side of his wrist.

21 Then also -- you will see it better in the next
22 photograph, but there's an amount of stippling or pattern
23 tattooing on the wrist in the hand area just beneath the
24 wound.

25 Q. Next, what does that show?

1 A. This is slide 30. It shows the more complete
2 view of showing that stippling or powder tattooing that's
3 associated with that wound.

4 Q. Now, have you had any courses, any instructions,
5 any teachings concerning what you've just described as
6 stippling or tattooing?

7 A. Yes, absolutely.

8 Q. Describe to the Court, you know, your knowledge
9 in this particular area and how your knowledge was gained.

10 A. Well, it's a topic that comes up a lot in very
11 specific crime scene courses, homicide investigations,
12 shooting reconstructions, but I also took a graduate
13 course in forensic medicine and there's a topic on gunshot
14 wounds.

15 In there, we talk about that sort of stuff in
16 that class, and I teach it. Every time I teach shooting
17 reconstruction I cover the topic, but basically what you
18 have is what is broadly characterized as stippling, which
19 is that you have particles of unburnt or partially burned
20 gunpowder that comes out of the muzzle of the firearm and
21 make contact with the skin.

22 Then it can do two different things. It can
23 create what are called punctate abrasions, so you get red
24 marks where it basically makes a small abrasion in the
25 skin, and then you also get what's referred to as powder

1 tattooing, where you get particles of powder that actually
2 embed themselves in the skin.

3 So if you look, you'll see red marks and you'll
4 see also the darker ones, and that's what you're seeing
5 is -- either it's an abrasion from being struck with it or
6 there's the actual powder particles that's embedded in the
7 skin.

8 Q. Do those particles give you any guidance in
9 reference to opinions concerning the muzzle to target
10 distance?

11 A. Yes.

12 Q. How is it that it does that?

13 A. Well, what happens is that the powder comes out
14 of the muzzle in generally a cone shape, so as you get
15 further away from the muzzle it spreads out. Of course,
16 as it spreads out, that means the density gets less and
17 less.

18 So when it strikes, whether it be talking about
19 skin or clothing or anything, the greater the distance was
20 between the muzzle, the firearm, and whatever it struck --
21 in this case, skin -- then the more spread out or the less
22 dense that pattern will be.

23 So the way that you generally assess it, you
24 would do test firing, which in this case the Florida
25 Department of Law Enforcement did, and then assess the

1 density of the various test fires from the various known
2 distances to the pattern that you see in your actual
3 evidence item, being -- here, being the skin.

4 Q. Did you get the opportunity to actually view the
5 FDLE test firings of this particular gun with its
6 ammunition?

7 A. Yes.

8 Q. Okay. And did you review those and study those?

9 A. I did, yes.

10 Q. And did you use those in an effort to render an
11 opinion concerning muzzle-to-target distance of this
12 particular hand?

13 MR. MARTIN: Your Honor, I'm going to object.

14 That is a mischaracterization of the FDLE report.

15 She specifically testified that she could only
16 do it with the clothing. She had no opinions
17 whatsoever as far as the skin. She cannot do testing
18 on skin. She cannot determine what was the
19 particulate. She constantly referred to the Medical
20 Examiner's Office, and they have to do that.

21 Her distance determination was based on her
22 examination of Mr. Oulson's clothing, so to
23 characterize the statement that Mr. Escobar just did,
24 muzzle-to-target, her determination is not based on
25 the wound to the hand but to his chest. So it's

1 misleading to the trier of fact and for this witness
2 to say just muzzle-to-target determination and then
3 point to the hand.

4 MR. ESCOBAR: Judge, I think he's jumping the
5 gun here. I said muzzle-to-target. He was going to
6 explain exactly what FDLE did with reference to what
7 that target was. He's way too anxious. It's coming,
8 but I'll lay the predicate because I know how to do
9 that.

10 THE COURT: I will overrule for now. So noted,
11 though.

12 BY MR. ESCOBAR:

13 Q. The analysis that was done by FDLE, was it an
14 analysis on skin?

15 A. Well, what they did is test fired into cloth
16 samples.

17 Q. Why don't they test fire into skin?

18 A. Well, obviously you're not going to be able to
19 shoot a person --

20 MR. MARTIN: Your Honor, at this time, I'm going
21 to object, because the FDLE report is, in fact,
22 hearsay.

23 What we have stipulated to -- if he wants to
24 read the stipulation that we have, then that's what
25 we have, but it is, in fact, hearsay, and there's

1 been no indication that he has the training to
2 interpret the notes or the report of an FDLE agent
3 who has been qualified and trained as a ballistic
4 expert.

5 So I object to him just trying his own way to
6 interpret a very technical report, and it is, in
7 fact, hearsay.

8 If he wants to read the stipulation that we've
9 agreed to, that's why we did it. I did not agree to
10 put that report into evidence, so I will object to
11 this line of questioning.

12 MR. ESCOBAR: Your Honor, I think Mr. Martin,
13 practicing as long as he's practiced, understands
14 that experts can testify about other documents that
15 they considered in rendering their opinion, including
16 hearsay.

17 Because let's face it, all the police reports
18 and everything else that they received is also
19 hearsay. That is classic.

20 What he is doing is nothing different than what
21 every expert does in this particular line. In fact,
22 he and I had that conversation just a few days ago
23 where he admitted to me, "Yeah, you're right. He's
24 going to be able to consider that report and render
25 his own opinion."

1 Did we not, Mr. Martin?

2 MR. MARTIN: We did, not that we're going to
3 regurgitate it inside the courtroom. He indicated,
4 "I reviewed the report, and my opinion is this," but
5 we're not going to go through the report and have him
6 critique and make his own interpretation of the notes
7 in the report for his own purpose as he sits there on
8 the stand.

9 MR. ESCOBAR: You see --

10 MR. MARTIN: That's why we entered into the
11 stipulation. That's why I did not agree for the
12 report to come in. You need that person to come in
13 and say exactly what was in her mind when she wrote
14 down the documents.

15 He wants to look at the raw data and say, "I
16 reviewed the raw data," without going into anything
17 that was said and say, "This was my opinion." Then
18 fine. Have at it, but we're not going to go through
19 the report page by page.

20 MR. ESCOBAR: Have I asked to go to the report,
21 Judge? This is what I'm telling you. He's just
22 being disingenuous with this Court.

23 THE COURT: Hold on.

24 Are we going to hear from the person that made
25 the report?

1 MR. MARTIN: We have entered into a stipulation
2 at some point it's going to be read.

3 THE COURT: Okay.

4 MR. ESCOBAR: Judge, let me tell you what the
5 problem is. I will tell you very easily their expert
6 had opined that this particular gunshot wound could
7 be contact, contact to 36 inches. That's what her --

8 MR. MARTIN: No, no, no. See what he does? He
9 keeps pointing at the hand and saying, "This contact
10 wound." That's not her testimony.

11 MR. ESCOBAR: No. It's a shared contact wound.

12 THE COURT: Stop.

13 Mr. Knox can testify to the extent that he
14 utilized the report and, Mr. Martin, you will have
15 ample opportunity to cross him as to how he arrived
16 at that and what he utilized. And as the trier of
17 fact, I will have to take into consideration all of
18 the testimony both from direct and cross.

19 BY MR. ESCOBAR:

20 Q. Now, Mr. Knox, did you review the report of
21 ballistics FDLE -- I believe her name was Jennifer
22 Clark -- in this particular case?

23 A. Yes.

24 Q. Okay. And why did you review that report?

25 A. Well, she carried out the actual test firing, so

1 what I'm looking at is the data of her test firing. So
2 what she did is from various different ranges, starting
3 out, I think, with the contact, then three inches and six
4 inches and so forth out at different intervals and then
5 made both notations of the observations that she made as
6 far as the density and the pattern created as well as did
7 chemical testing and produced photographs of the chemical
8 testing that shows the various different densities as they
9 correlate to the different ranges and the different
10 distances that was fired.

11 Q. In addition to reading her particular analysis,
12 were you able also to see color photographs of the density
13 pattern at the different degrees, six inches, twelve
14 inches, what have you?

15 A. Yes.

16 Q. Okay. And did you use those in formulating your
17 own independent analysis of the distance of
18 muzzle-to-target and this target being the hand? She did
19 muzzle-to-target of the shirt, correct?

20 A. That's correct.

21 Q. That's a different type of item than human skin?

22 A. That's correct.

23 Q. And I believe you testified earlier that you had
24 taken a forensic course as part of your Ph.D.; is that
25 correct?

1 A. Well, a graduate course in my forensic science
2 master's program where we did forensic medicine and dealt
3 with these issues.

4 Q. And dealt with those issues. Well, explain to
5 the Court how your course in forensic medicine dealt with
6 these issues.

7 Is there a difference between stippling patterns
8 on the human skin versus stippling patterns possibly on a
9 shirt?

10 A. There is very little difference in terms of the
11 density. What you -- you may have the -- particles on
12 clothing will tend, depending on the particular type of
13 material, to not adhere as well as it would with skin.

14 Skin, like I talked about, you're either
15 creating an injury that's never going to go away or you're
16 embedding that particle in the skin so it's not going to
17 go away, whereas in a shirt you could have some issues
18 with -- depending on how it's handled and over time, you
19 could lose some of that, but the density of the pattern is
20 the same because it's relative to distance.

21 Q. Did you take those considerations into account,
22 meaning that the shirt, you know, was worn by, you know,
23 Mr. Oulson and may have been ripped open and may have been
24 touched by paramedics and all those things put in a bag?

25 Did you take all of those into consideration

1 when you were looking at her analysis as well as the
2 analysis of what appeared to be stippling on Mr. Oulson's
3 hand?

4 A. I did, because my primary focus here is that --
5 the stippling on his hand and what was the density of that
6 pattern relative to the test firings. So I mean, I looked
7 at the shirt and gave consideration to the shirt, but what
8 I was particularly interested in was how far away the hand
9 was from the firearm at the time of discharge.

10 Q. Did you form an opinion concerning that issue?

11 A. I did.

12 Q. And what was that?

13 MR. MARTIN: I object, Judge, for the record.

14 THE COURT: Okay. So noted.

15 BY MR. ESCOBAR:

16 Q. What was that opinion?

17 A. Based upon the documentation that she provided,
18 that the density of that particular pattern and the size
19 of that particular pattern is most consistent with the
20 twelve-inch muzzle-to-target distance from her test
21 firings.

22 Q. Is that a twelve-inch a range or -- do we have a
23 range in these matters or is it just twelve inches?

24 A. It's most consistent with twelve inches, I would
25 say, based upon the densities and the patterns. Six

1 inches would be the absolute minimum, and eighteen inches
2 would be the absolute maximum, but it's most consistent
3 with twelve inches, being right in that middle range.

4 Q. Okay. Next one.

5 Number 32, what is that showing?

6 A. That is Nicole Oulson's hand. Obviously, she
7 had gunshot wounds to her left ring finger, but also
8 noteworthy is that there was some stippling on her hand as
9 well around the index finger, the middle finger and the
10 thumb area on the back of the hand.

11 Q. Now, looking at the medical examiner's report
12 and looking at Oulson's hand and the amount of stippling
13 that you were able to see on that hand as well as looking
14 at the stippling on Mr. Oulson's hand, did you form any
15 opinion concerning relative positions of Mrs. Oulson's
16 hand to that of Mr. Oulson's hand?

17 A. Yes.

18 Q. And what was that?

19 A. Well, you can see that the density of the
20 pattern on her hand is considerably less than the density
21 of the pattern that was on Chad Oulson's hand, so that
22 means that her hand would necessarily have been between
23 his hand and his chest.

24 Now, exactly where, I can't say, but it's
25 certainly not as close as his hand was, and then it could

1 be all the way back to his chest because obviously she did
2 suffer a gunshot wound. So her hand had to be in the path
3 of the bullet, so it would put it somewhere between the
4 chest and his hand.

5 Q. Next one.

6 What is this a picture of?

7 A. This is just showing a side-by-side comparison.
8 This is so you can see differences in the density of those
9 two patterns, that the amount of stippling on his hand is
10 considerably greater than on her hand. So that means his
11 hand was closer to the firearm than hers.

12 Q. Now, are there objects and things that can --
13 intermediate objects and things that can prevent
14 stippling, you know, for example in this case being on
15 Ms. Oulsen's hand?

16 A. Yes.

17 Q. And did you consider that?

18 A. Absolutely, yes.

19 Q. And tell the Court what your considerations
20 were.

21 A. Well, you know, an intermediary target can be
22 just about anything. But given the context of what you
23 have in this case, the object that's between her hand and
24 the muzzle of the firearm was Chad's hand.

25 So his hand absorbed most of that gunshot

1 residue, most of the powder particles, and so there's only
2 a small portion of that that was able to get by and then
3 strike her hand, so that's why her hand is obviously
4 between his hand and his chest, because there's just a
5 decreased density there.

6 Q. Next photo.

7 What is this photo depicting?

8 A. This is slide 34. This is just showing that the
9 bullet directions that are apparent in the wounds. So the
10 bullet direction from his hand would be coming from this
11 side of the hand and crossing towards this way, toward his
12 chest, which would put his hand out in front of his body
13 somewhere like this.

14 And then her hand is, obviously, somewhere
15 oriented so that you get the shot across the finger
16 traveling toward the small finger.

17 Q. Now, the fact that there doesn't appear to be
18 any stippling on this area of his hand, meaning what I
19 would call the fist area of the hand, what does that
20 indicate to you?

21 A. Well, it can be --

22 MR. MARTIN: Your Honor, I'm going object to the
23 characterizing of the fist area. If he wants to call
24 it fingers, that's fine, but that type of gratuitous
25 comment is not appropriate in the question.

1 MR. ESCOBAR: Fingers, fingers.

2 THE WITNESS: -- fingers, and I -- the density
3 of the pattern is such that it kind of starts back
4 here on the wrist and it runs about a
5 four-and-a-half-inch length across to about the
6 knuckle area, then there's none on the fingers.

7 So the most probable explanation of that is that
8 the fingers are not straight out like this, that the
9 fingers are curved in some way, so you're not going
10 to get powder striking those fingers because they're
11 not exposed to the gunshot.

12 BY MR. ESCOBAR:

13 Q. Next.

14 MR. ESCOBAR: I believe this is where
15 Mr. Martin --

16 MR. MARTIN: Yes, we're at the perspective.
17 From these pictures on, I ask this to be a proffer.

18 THE COURT: This is a proffer.

19 BY MR. ESCOBAR:

20 Q. Now, Mr. Knox, tell the Court what we -- what
21 you, not me -- what you were trying to do with picture 36
22 on. What were you trying to get at as part of your
23 shooting incident reconstruction?

24 A. Well, what I did is we went to the movie
25 theater. We had them set the lighting to the same

1. lighting level and we had them put on --

2. Q. Is that the Mid 1?

3. A. Mid 1 level, and we had them put on a trailer.

4. Now, the trailer that they were playing was not
5. the same one that they were playing at the time. They
6. were able to put on a different one. It was a Star Wars
7. trailer. But what I wanted to do was have lighting coming
8. off the screen at various different tones, so you would
9. have portions of that where the lighting was quite bright
10. and portions of that trailer where the lighting was quite
11. dark.

12. Then I used some mannequins to be able to move
13. them in different positions to basically show and assess
14. the net effect of when you move figures in that lighting,
15. and that lighting condition given, you know, what the
16. seating is and where the constraints would be as far as
17. where they are positioned to show what effect it has as
18. you move people around and put them in different
19. positions.

20. Q. Were you aware of this phenomenon, what happens
21. with back lighting?

22. A. On, yes.

23. Q. Tell the Court where you have become familiar
24. with this. Is this a very high-tech or unusual process
25. that you've just recently learned or anything like that?

1 A. No, no, it's not. You know, I took that course
2 on optics lighting visibility and we've dealt quite
3 extensively with this type of topic. But I've taken
4 photographs like this all the way back to where I was a
5 criminal scene investigator at the Jacksonville Sheriff's
6 Office.

7 The main thing is to show that effect, because
8 when you have back lighting like you have here -- because
9 you have a movie screen that's reflecting a good bit of
10 light -- then it causes the object that you're looking at,
11 in this case a person, to be more silhouetted.

12 So rather than seeing all the details of the
13 front of their body, what they're doing, you're seeing a
14 much more shadow area in front of them, and you're seeing
15 the outline of their body.

16 So as this lighting changes, as positions move,
17 it causes silhouetting of the fingers and causes it to
18 reduce what you can see in terms of the front of the
19 person's body.

20 Q. Now, were you trying to portray exactly what
21 Mr. Reeves saw on January 13, 2014, for the Court today?

22 A. No, no.

23 Q. Tell the Court why weren't trying to portray
24 that.

25 A. Well, there -- it would be impossible. The only

1 way to know -- I mean, there's only one person that knows
2 what Curtis Reeves could see, and that's Curtis Reeves.
3 He knows what he could see, and I can't recreate what he
4 saw, but what I'm doing is showing what's the effect of
5 this particular variable, the variable being that we're
6 moving figures, human figures, into different positions
7 with this particular lighting and showing what occurs as
8 you do that.

9 So it's not going to be a replication of what he
10 saw, but it's going to represent the effect of these
11 different variables as you move figures in place as you
12 have different lighting on the screen and so forth.

13 Q. The figures that you were using here, the male
14 mannequin, did you try to use a figure that was of similar
15 size as Chad Oulson?

16 A. As much as the mannequin represents. I mean,
17 you know, these are styrofoam and cloth mannequins.
18 They're not set to any particular size, so it's not really
19 trying to duplicate Chad Oulson or anything like that as
20 much as it is trying to just show the effect of what
21 happens with lighting, what happens in terms of how you
22 see it and perceive a person given those lighting
23 conditions.

24 Q. Okay.. Next.

25 What does 37 represent?

1 A. 37, this is just a different angle with two
2 mannequins in place, again, not trying to represent that
3 these positions mean anything in terms of representing
4 exactly the positioning that Chad Oulson was in or this --
5 that Nicole Oulson was in, but just showing again the
6 effect as you move figures in and out, what you could see
7 and, of course, you can see there's a lot of shadowing in
8 the front of their bodies, and that's the net effect.

9 Q. Now, where were these mannequins placed on the
10 date of your testing? Were they placed in what I would
11 call Row A, which is the last row, the one that Mr. Reeves
12 was seated in, or were these placed in Row B, which is the
13 row right below Mr. Reeves?

14 A. They were right below, so it would be in
15 approximately the locations of where Chad Oulson would
16 have been and Nicole Oulson. But again, I don't have any
17 way of knowing the exact position that they were standing
18 in so this is just approximate locations.

19 Q. Okay. Next one?

20 Is this further --

21 A. Yes, this one is slide 38, another view. Here
22 what obviously is done is we moved the female mannequin a
23 little bit closer to the male mannequin, and what that
24 does, it tends to block out some of the back lighting from
25 between them, so you only have some lighting behind her

1 head and over his shoulder. Again, just showing what that
2 effect is.

3 Q. Now, this TV set right here is set in a very
4 bright, luminous setting.

5 A. Right.

6 Q. I want you to take a look at the one behind you.
7 Is there a difference?

8 A. There is a difference, yes.

9 Q. Okay. And is that a product of what the TV is
10 doing or what the actual photos are doing?

11 MR. MARTIN: Your Honor, I'm going to object.
12 He has not laid the proper predicate that he can be
13 able to explain that, and I assure you I'm going to
14 cover that on cross.

15 MR. ESCOBAR: Well, I mean, I can appreciate
16 that he's going to cover that on cross, but I think
17 that is important to show the differences, even on
18 direct, of what they may appear like in two different
19 TV settings.

20 MR. MARTIN: And that is -- that is the whole
21 point of my motion. You can't recreate it, so having
22 him explain what the difference between one TV and
23 the other is, he can't explain that. There is a
24 difference.

25 MR. ESCOBAR: Did he say he was recreating? I

1 don't know what -- he said he wasn't recreating.
2 This is for the effect, purely for the effect. Did
3 you hear that?

4 MR. MARTIN: Sure, I heard it. The effect. I'm
5 looking at the effect on one screen and then on the
6 other. It is so different, it is unbelievable.

7 MR. ESCOBAR: Well --

8 MR. MARTIN: That's my personal opinion, so
9 that's the whole purpose of this proffer. So I'm
10 going -- he cannot explain what the difference is,
11 but that's the whole problem with this type of
12 evidence.

13 THE COURT: All right. I'm going to allow it to
14 the extent that he knows. I certainly haven't heard
15 a foundation that he's an expert in TVs. I didn't
16 see that one, so let me take a minute and look at it.

17 BY MR. ESCOBAR:

18 Q. Now, you're taking a look at two TVs that are
19 representing one darker, the other one lighter. How does
20 that happen?

21 A. It's differences in the settings for various
22 different monitors. If you're trying to view photographs
23 and you want to view everything accurately to the way it
24 was actually recorded, then there are monitor calibration
25 processes that can be done to be able to calibrate the

1 monitor so that you can prepare the photograph to be
2 printed and you can could print it similarly so that it's
3 calibrated and printed accurately to the way it was
4 rendered.

5 But the primary thing when it comes to rendering
6 photographs is that I actually sat there and observed it.
7 So what I do is, you take a photograph and I'm able to
8 look at the photograph and then make a determination as to
9 which one accurately represents what could be seen.

10 Obviously when you have this brighter image here
11 detail is recorded in detail. If the detail is recorded,
12 then it can be seen because the camera cannot record
13 something that cannot be seen.

14 So this monitor here, the larger monitor to my
15 right, would be much more representative of what it
16 actually looks like than the monitor behind me that's
17 obviously set to a darker setting, and it does not
18 appropriately represent it.

19 Q. Is that why we were looking at this monitor
20 during your testimony?

21 A. Yes, because this appears to be accurate to the
22 way it was when we took this photograph.

23 MR. ESCOBAR: I just want to make sure that we
24 brought that out on direct so that the Court doesn't
25 think that we're playing games.

1 THE COURT: Okay.

2 BY MR. ESCOBAR:

3 Q. Now, next photo.

4 What is that?

5 A. This one, which is 39, what that's done is
6 brought the male mannequin in close enough to where the
7 arm could reach to where the popcorn would be, so to the
8 left armrest area where the popcorn was being held by Mr.
9 Reeves.

10 Q. Okay. And measurements were taken in that
11 process?

12 A. Right. Right.

13 Q. What are you seeing on the mannequin that's
14 purported to be Mr. Oulson? Are you seeing any shadows?

15 A. There are considerable shadows because, again,
16 it's backlighted. You can see a lot of shadow in the face
17 area.

18 And, of course, I'm not representing here that
19 this is the field of vision that Mr. Reeves would have.
20 This is the field of vision that the camera has. But
21 that's just showing the effect that obviously the lighting
22 is quite subdued and that you don't see considerable
23 detail in terms of the front of this figure. You don't
24 see a lot of detail in the face and things like that that
25 we would see, for example, sitting right here in the

1 courtroom.

2 Q. Now, when you were taking these photos, you
3 indicated, I think, originally that you would take the
4 photo, you would look at the photo on your camera and
5 determine whether -- with your naked eyes whether you were
6 seeing a scene substantially similar to what you were
7 seeing on now your camera that you had captured the photo?

8 A. Right.

9 Q. Is that correct?

10 A. That's correct, yes.

11 Q. And on each one of these photos, did you opine
12 whether or not both of those were substantially similar?
13 Meaning the naked eye seeing -- sitting in Mr. Reeves'
14 seat and watching it with the naked eye as well as what
15 you were able to capture in the camera and then looking at
16 the camera, the picture you had taken, and to determine
17 whether they were substantially similar?

18 A. Yes.

19 Q. Were all of these that we've gone through so far
20 substantially similar?

21 A. Yes.

22 Q. What is 40?

23 A. 40, this is just a different view showing again
24 with the male mannequin brought in to the approximate
25 location where the (inaudible) would have to be to reach

1 the popcorn. This is just a different view. So you can
2 see the face, and then obviously you can see the casting
3 of shadows, and then you have light sources coming from
4 various different directions.

5 Q. Now, please explain to the Court where you
6 placed this camera in an effort to capture what you're
7 trying to capture here.

8 A. I actually sat in the seat that Chad Oulson had
9 been sitting in. I put the camera on the tripod and I put
10 it right in front of my face, so the camera would have
11 been basically right as I'm just seated upright, normal in
12 the seat where it's positioned directly in front of us.

13 Q. Why did you do that?

14 A. Well, I wanted to get it as close to the
15 position of being seated in the seat as possible. So
16 obviously putting it on a tripod right in front of me is
17 as close as I could get it with the film playing where the
18 camera is basically an inch or two from my face as we sit
19 there.

20 Q. Was this all in an effort to show relevant
21 evidence that would certainly be important in Mr. Reeves'
22 perspective as he sat in that seat on January 13th of 2013
23 and he had to fire the fatal shot?

24 A. Yes.

25 Q. Now, did you, in fact, also review the video

1 that had been captured by the Cobb Theater video
2 surveillance system in this case?

3 A. Yes.

4 Q. Did you provide some analysis on that particular
5 video?

6 A. Yes.

7 Q. And is that a process that is undertaken as a
8 major case crime scene detective, both in your work as a
9 detective back in Jacksonville as well as your forensic
10 work thereafter?

11 A. Yes.

12 Q. This is a common practice that someone would
13 undertake as a crime scene detective?

14 A. Yes.

15 Q. Before we get started too quickly, let's take a
16 look at some testimony of what you actually did.

17 Tell the Court, first of all, what you did in
18 analyzing this video and what were you trying to analyze?

19 MR. MARTIN: Excuse me, Your Honor.

20 What exhibit number are we looking at?

21 MR. ESCOBAR: I'm sorry. I was going to get
22 there. That's Exhibit Number 16.

23 MR. MARTIN: Yes.

24 MR. ESCOBAR: Okay.

25 MR. MARTIN: Thank you.

1 BY MR. ESCOBAR:

2 Q. Tell the Court what you were attempting to
3 accomplish and how you attempted to accomplish this.

4 A. Well, the -- anytime that you have video in a
5 shooting incident or any other similar type of thing, what
6 I'm looking to figure out is what the video could tell me
7 about where people were or what position they were in, how
8 did they move, timing of different things, stuff like
9 that.

10 So what I was looking to do was figure out, you
11 know, what is the positioning -- you know, there's --
12 there are various movements that are depicted on the video
13 so you would try to determine where these people were,
14 what's the actual positioning of these portions where
15 there's movement.

16 MR. MARTIN: Your Honor, at this time, I'm going
17 to object to the testimony. I think I've heard
18 enough that it appears that we're in the realm of
19 some type of photographic technician, some type of
20 image examiner, which he has not been qualified to
21 do.

22 He has not laid the proper predicate that he has
23 the life experience or the training to engage in the
24 critical viewing of a video that is necessary in
25 order to provide sequencing in this particular case.

1 Now, if he wants to give his lay opinion, if
2 this is just what he thinks, well, if you want to
3 allow that, that's fine. But that's not helpful to
4 the trier of fact, either, because we can all look at
5 the video and determine where the people are and what
6 movements there are.

7 We all have the ability to do that, so I'm going
8 to object to the line of testimony that he has not
9 been qualified as an expert in order to be able to do
10 that.

11 MR. ESCOBAR: Your Honor, I disagree. The
12 predicate has been laid. In fact, he'll testify that
13 this is timing, not sequencing. He's got the
14 processing wrong.

15 It is timing that he's looking at. He wants to
16 actually record the timing of certain events so that,
17 at some point in time, his opinion is going to be
18 when, in fact, he believes that, you know, Mr.
19 Reeves -- from a certain point to another point when
20 Mr. Reeves actually made the decision to pull that
21 weapon and fire it, and so it's something that crime
22 scene detectives do all the time, that competent --

23 MR. MARTIN: No, it's not.

24 MR. ESCOBAR: Crime scene directives do it all
25 the time.

1 MR. MARTIN: No, they don't. No, they don't.
2 Not in Court. They may do it out in the field in an
3 investigation to bring a case to the State Attorney's
4 Office, and then we bring it in and let the trier of
5 fact, but they don't sit in a courtroom and explain
6 what they observed.

7 It is very disingenuous for Mr. Escobar to sit
8 there and say it's about timing and not sequencing.
9 In order to get the timing down -- he has to have an
10 opinion as to context in order to get the timing,
11 because you heard what he's going to do.

12 He wants to be able to say it was between this
13 particular time based on the contents that I
14 presume -- that that's when it was reasonable for him
15 to shoot his gun. You can't do that. He's not
16 qualified to do that.

17 MR. ESCOBAR: Your Honor, he's very qualified to
18 do that. You know, maybe some of the forensic
19 detectives that work for the Pasco Sheriff's Office
20 at this time were not, but he was.

21 We've laid out all his credentials. We've laid
22 out everything. He's going to testify this is
23 exactly what he would have done if he was with the
24 Jacksonville Sheriff's Department. It is a -- it's
25 not a complicated thing. It is a very common

1 forensic thing that he is capable of doing.

2 He's going to explain to you the difference
3 between sequencing and he's going to explain to you
4 the difference between timing, and you can take it
5 under consideration.

6 If you hear his testimony and for some reason
7 the Court believes: Hey, I'm not going to consider
8 it, then, you know, I certainly respect the Court's
9 decision on that. But, you know, we've got the
10 foundation already for him to be able to do this, and
11 he's going to explain to the Court exactly what he
12 did and what he found.

13 THE COURT: What expertise is needed to do this?

14 MR. ESCOBAR: Judge, his expertise as a forensic
15 crime scene detective, he's going to talk about and
16 we are going to get into, again, some of these issues
17 dealing with response, reaction and movement that he
18 talked about early on.

19 He's taken those particular -- those particular
20 courses, and so you've got to hear that body of
21 information, obviously, before you put it all
22 together, but I am very confident that we're going to
23 put it all together and it's going to make a whole
24 lot of sense, and it's going to have a wonderful
25 foundation for his opinion.

1 THE COURT: So he's going to narrate this little
2 one-second snippet, tell me what's going on and what
3 led up to it?

4 MR. ESCOBAR: He's going to narrate time between
5 certain events and the firing of the weapon, and that
6 is very, very important to this Court because this
7 Court is going to want to, at some point in time,
8 determine when it was that Mr. Reeves decided to use
9 deadly force.

10 And it has to do to a great extent -- it has to
11 do to a great extent on his perception of the events.
12 Just like the things are happening in the video,
13 things are happening before he makes his decision to
14 actually fire that gun.

15 And this is something -- you're listening to
16 Mr. Martin who is here telling you it never happened.
17 It never happened. Let's listen to the expert who's
18 under oath that's going to tell you that it happened
19 and that he's competent to do exactly what he just
20 did for us, and he's going to be able to render an
21 opinion.

22 And, Your Honor, I am so confident that we're
23 going to lay all this foundation that once you hear
24 it all, then you can make your determination and
25 we've got a record.

1 MR. MARTIN: Judge, we've had no testimony
2 whatsoever as far as his life experience. How many
3 hours -- hours upon hours, has he set in front of a
4 video and attempted to do a critical view of a
5 surveillance? What training has he had in order to
6 do a critical view?

7 And then you heard what they want to do. He's
8 going to explain what's in Mr. Reeves' head as to
9 when he decided to use deadly force, and an expert
10 cannot testify what is in Mr. Reeves' head in the
11 video.

12 Now, if Mr. Reeves wants to take the stand and
13 narrate through the video and say, "This is what I
14 was thinking at this time," I may not have an
15 objection, but Mr. Knox can't do it.

16 MR. ESCOBAR: It's not anything about
17 Mr. Reeves' head. This is about -- this is about
18 actual activity that you're able to see, both the
19 Court, both Mr. Knox, both myself, both the
20 prosecutor throughout this video. And, Your Honor,
21 we're arguing about it. It's going to be proffered
22 anyway.

23 THE COURT: All right. I'm just a little
24 skeptical at -- unless there's another video that I
25 haven't seen yet, how that's possible.

1 MR. ESCOBAR: Okay. Well, let's --

2 THE COURT: I'm all ears. I'm going to overrule
3 that.

4 BY MR. ESCOBAR:

5 Q. Now, Mr. Knox, this whole process that you have
6 undertaken here, is this a common practice for shooting
7 incident reconstruction?

8 A. Yes.

9 Q. And tell the Court how common it is.

10 A. Well, I mean --

11 MR. MARTIN: Judge, he can't speculate how
12 common it is. He hasn't been in every courtroom in
13 the nation for every day since his career. Come on.

14 THE COURT: Sustained.

15 MR. MARTIN: Thank you.

16 THE COURT: Rephrase.

17 BY MR. ESCOBAR:

18 Q. Tell the Court how it's used, this process.

19 MR. MARTIN: Well, Judge, he can't do that.

20 MR. ESCOBAR: Judge, this is just -- he's just
21 saying that to interrupt me.

22 MR. MARTIN: He can't say what everyone else
23 does.

24 MR. ESCOBAR: You've ruled -- he's just trying
25 to interrupt. Every single time he's going to try to

1 interrupt.

2 THE COURT: Let's hear how you know where it's
3 used and by whom.

4 BY MR. ESCOBAR:

5 Q. Okay. Go ahead.

6 A. I mean, I'm not going to speak to everybody
7 who's out there that's using it, but what I can tell you
8 is I know others that use it. I use it commonly in
9 casework because obviously there's -- oftentimes there's
10 video related to a shooting.

11 I'm not coming in to narrate and say that I can
12 see a bunch of stuff in the video that you can see
13 yourself, but what we do, often you will look for certain
14 things that do show up in the video that any one of us can
15 see, look at when that occurred and then look at other
16 events that occur and then compare that.

17 In this case, I'll look to the time of when the
18 shot is actually fired, and you look at how much time has
19 elapsed, so it's just a matter of using the video -- the
20 time code that's displayed in the video and then
21 calculating what those times are.

22 BY MR. ESCOBAR:

23 Q. Now, in doing this analysis, did you even use
24 the government's FBI TIF files?

25 A. I did. I used the FBI video.

1 Q. You didn't even use ours. You used their TIF
2 files -- or native TIF files. Not the enhancer, the
3 native ones, right?

4 A. That's right. I actually used the FBI video
5 that has the time stamp, that had the time code displayed
6 on there, and I went by the time codes that are displayed
7 on that video.

8 Q. Now --

9 MR. ESCOBAR: Your Honor, these are the ones --
10 the native ones are the ones that we've stipulated to
11 for introduction in this particular case at some
12 point in the very near future.

13 Just so the Court is aware, we are not using
14 something that you will not be able to hold onto and
15 see yourself.

16 MR. MARTIN: Well, that all depends if I put
17 them into evidence.

18 MR. ESCOBAR: Well, if he doesn't, guess what,
19 we've stipulated to them and I will. The native
20 ones. Not the enhanced ones. Not the Spectra
21 highlighted or the Spectra highlights, but the native
22 ones.

23 BY MR. ESCOBAR:

24 Q. Now, please explain to the Court the process
25 that you used in order to make certain determinations.

1 A. Well, there are certain things that are shown in
2 the video that -- like I said, I think anybody who watches
3 the video can see there's a point where what is apparently
4 Chad Oulson's hand crosses into the frame and reaches down
5 to grab the popcorn, retrieves the popcorn back toward
6 him, then throws it back towards Mr. Reeves.

7 Mr. Reeves then starts to move, sits up, his arm
8 raises, and the gunshot is quite obvious in the video.

9 So all I did was take certain segments of that,
10 look at the time stamp, figure out what the timing was,
11 and then I backed up and said: Well, if we consider the
12 shot to be T-0, and then back up to see how far ahead of
13 that did these other events take place.

14 Q. So let's take the events, and please tell the
15 Court each event that you used so the Court can write the
16 Court's notes as to each event that you used in forming
17 this opinion.

18 A. Well, what I did is there's -- the first frame
19 where the hand appears that is headed in the direction of
20 the popcorn bag, then the popcorn bag that begins to move,
21 that was the next time that I recorded.

22 Q. Okay. What was that time recording between
23 those two events?

24 A. Well, the time between those two events was --

25 Q. Give the time for each event, and that way the

1 Court can always check your calculations.

2 A. Right. The time code for the hand appearing in
3 the frame as it's headed toward the popcorn is at
4 13:26:36.346.

5 Q. Could you say that again so the Court has at
6 least the time to be able to write that down?

7 A. Yeah, so 13:26 and then 36.436.

8 Q. Okay.

9 A. So I'll give the rest of code with just the
10 36-point-what-have-you, or 37-point-what-have-you.

11 Q. And the definition of that event was what? So
12 the Court can make sure that the Court has that event
13 properly memorialized?

14 A. That is the first frame where Chad Oulson's hand
15 appears in the video frame as it's moving toward the
16 popcorn bag. So that's when you first see it, and then
17 from there you see the hand move toward the popcorn bag
18 and eventually grab the bag.

19 Q. Now, this event is different from a previous
20 event where it appears that you see a body coming in
21 towards Mr. Reeves?

22 MR. MARTIN: Your Honor, I'm going to object.
23 We're talking about a specific area, and him now
24 explaining what he sees as far as whether or not a
25 body comes in or not, comes in in another area, he

1 can't testify.

2 MR. ESCOBAR: Judge, I'm just trying to give the
3 Court, you know, an absolute area that we're talking
4 about.

5 BY MR. ESCOBAR:

6 Q. We're talking about strictly the popcorn
7 incident --

8 A. Right.

9 Q. -- and then the firing of the gun.

10 A. That's correct.

11 Q. Okay.

12 THE COURT: Overruled.

13 BY MR. ESCOBAR:

14 Q. So the first -- the absolute first recording is
15 when you first see, -- and it's not on this because this is
16 a different video -- is where you first see that hand
17 coming into the video and the recorded portion of the
18 screen?

19 A. That's right.

20 Q. Okay. What is the next recorded event?

21 A. The next one that I used the time from is the
22 frame where the popcorn bag begins to move, so you can
23 actually see the popcorn bag is being pulled away from
24 Mr. Reeves.

25 Q. Okay. So what is the time stamp on the event

1 where the popcorn bag has been grabbed and it's starting
2 to be removed now from Mr. Reeves?

3 A. That's at 36.554.

4 Q. Next event?

5 A. The next would be that the popcorn begins to
6 come back towards Mr. Reeves, so the popcorn bag is pulled
7 back and then turned around and then projected toward
8 Mr. Reeves again, and that occurs at 36.946.

9 Q. Next?

10 A. The next one would be when the popcorn actually
11 hits Mr. Reeves. That occurs at 37.146.

12 Q. So this is now the popcorn actually hitting
13 Mr. Reeves at that stamp number?

14 A. That's correct.

15 Q. That is again from the FBI native TIF files
16 which are the actual files frame by frame of the video?

17 A. Yes.

18 Q. Next?

19 A. Then next would be when Curtis Reeves begins to
20 move forward. There's a portion in there where he's kind
21 of -- he's actually out of the view of the camera, kind
22 of -- I think he's down in his seat. But as he begins to
23 appear back in the camera view, he's moving forward toward
24 the -- toward Chad Oulson. That occurs at 37.412.

25 Q. And these are the time stamps that you're

1 recording of the FBI TIF files?

2 A. That's correct.

3 Q. This is what the TIF file's seeing, the time
4 that that event took place?

5 A. That's right.

6 Q. You're not changing anything; you're just
7 getting that time stamp?

8 A. That's correct.

9 Q. Next?

10 A. Then the last one is when the shot is actually
11 fired. There's a frame in there where you can actually
12 see the muzzle flashing, and that appeared -- that is at
13 37.846.

14 Q. Now, before we go to your opinion, let's talk
15 about the human factors. You've already told us about the
16 studies that you've had. You've actually been declared an
17 expert in that particular area.

18 You talk about response reaction movement. What
19 does that mean?

20 A. Well, perception reaction time, what you're
21 basically looking at is the total time it takes for you to
22 perceive something, process what it is, make a decision,
23 how to act, and then actually implement that action.

24 So in a shooting case, what we're looking at is
25 you're starting with visual signals coming in, then the

1 time it takes to process that, and then actually start
2 implementing some motion, whatever it happens to be with
3 the particular firearm, and then carry that up to the
4 point of the shot being fired.

5 Q. Okay. And does that all take time?

6 A. Yes, it does. What you have is each different
7 component takes, you know, typically a fraction of a
8 second, but you're adding fraction of a second to another
9 fraction of a second to another fraction of a second, and,
10 as you add that up, you'll start getting into times where
11 you're reaching a full second or even greater time
12 depending on what's actually occurring.

13 Q. And so how are you using this response reaction
14 movement in an effort to analyze this video with these
15 time stamps?

16 A. Well, what I do is look at the research data
17 that's available with regard to perception reaction times
18 for shooters.

19 Q. Are these peer-reviewed research data?

20 A. Yes, there are a number of peer-reviewed journal
21 articles where there's been various different research
22 studies done.

23 Q. Okay, and so let's talk a little bit about those
24 particular studies, because the Court needs to have a
25 pretty good, you know, idea of what you're talking about

1 here.

2 So let's talk about some of these particular
3 studies and how they play a role in your analysis here.

4 A. There are a number of different studies that
5 I've looked at that I reference for perception reaction
6 times. One of them is by Jason, and that was from 2010.
7 His name is Alexander Jason, but he did a study looking at
8 various different factors related to shootings, but one of
9 the things he looked at was the times for competitive
10 shooters to draw from a holster and then fire a shot.

11 And what he found is that the average of the
12 sample that he used -- again, the sample was all
13 competitive shooters -- that on average they could draw
14 from the holster and fire the shot at 0.95 seconds, so
15 just shy of one second.

16 In that same study he also looked at a sample of
17 police officers. He actually had an age range of 23 years
18 of age to 56 years of age with an average of 37, had them
19 draw from a holster and fire, and what he found is that
20 the fastest that any of them did was .88 seconds. The
21 slowest any of them did it was 2.93 seconds, and the
22 average time was 1.52.

23 Now, this is -- in both of these cases, you're
24 talking about drawing and firing to a simple signal,
25 meaning there's no decision-making involved. It's just a

1 matter of a buzzer or a light, and then they had to carry
2 out the action, so that's the way that timing is done.

3 Lewinski and Hudson, 2003. They did a study in
4 Tempe, Arizona, where they did, similarly, making some
5 determination about how quickly police officers fire.

6 Most of the research is done with police
7 officers because, for obvious reasons, they're a lot more
8 interested in what police officers do in actual shootings,
9 but what they found is that in a high, ready position --
10 meaning that the officers have their gun out and they're
11 aimed at the target -- the only thing they have to do is
12 move their finger from outside the trigger guard, move it
13 in and then pull the trigger, and that two a simple
14 stimulus, they could respond and fire on an average at
15 about 0.31 seconds.

16 So, then that includes the decision-making part
17 as well as the movement of fingers, so that's the total of
18 when the signal is given, which in this case is a light
19 being turned on, the light goes on, and then they're told
20 to fire, so it took on average about one-third of a second
21 to be able to do that.

22 Q. That was high ready?

23 A. High ready. They're already aimed at the
24 target, and all they're doing is move their finger, you
25 know, into the trigger guard and pulling the trigger.

1 Q. And they know that the signal is coming?

2 A. They know the signal is coming. It's just a
3 matter of being on or off.

4 When they made the signal more complex, where
5 they put a bank of lights and they had to figure out, you
6 know, if a certain light comes on, then you fire; if the
7 other lights come on, then you don't fire. So they have
8 to make some recognition, in terms of what to do, then it
9 almost doubled the time that it took. So it brought it up
10 to an average .56 seconds.

11 So that's just for him to realize which light is
12 on. Okay. I've got a signal to fire, move the finger,
13 pull the trigger.

14 Blair, et al, that's a bunch of colleagues, it's
15 a whole list of people on that particular research, that's
16 from 2011, so that's not the most current research out
17 there on this topic.

18 What they found is -- in their particular study,
19 what they did is they had subjects who were playing the
20 role of being an armed individual with a gun, and then
21 they had police officers that were the reactors for the
22 study, and the police officers were told to give the
23 person a verbal command to drop the weapon, and, then, if
24 the person raised the weapon, then fires.

25 So a signal for them is when the person moved to

1 begin to raise the weapon, and then what they did was time
2 how long it would take them from when the person first
3 noticeably moves to when they're actually able to pull the
4 trigger, and they found in that case that the times were
5 between .34 and .42 seconds.

6 That's -- again, that's a simple stimulus
7 because they know what they're looking for. They know
8 what they're going to do when they see it.

9 A number of other studies that have dealt with
10 different issues related to it, Der and Peary, and that's
11 D-E-R and P-E-A-R-Y, that's a 2006 study. One of the
12 things that they address in their paper is that perception
13 reaction times are correlated to age, and what they found
14 is that perception reaction times tend to increase up to
15 about your late 20s. You get into the upper 20s, and
16 that's sort of the peak. That's as fast as you're ever
17 going to be.

18 Then from there they decline steadily until you
19 reach your 50s, and then from your 50s on it's a
20 significant decrease, so your ability to your perception
21 reaction times get considerably slower after your 50s.

22 There are couple of studies. Eckner,
23 E-C-K-N-E-R, 2010, and Welchman, W-E-L-C-H-M-A-N, 2010,
24 did just reactions to simple visual stimuli where -- what
25 they do in those tests is they take people -- these are

1 not police officer candidates.

2 These are just general people -- and have a
3 light that comes on and a button that they press to see
4 from when the light comes on to when they push the button,
5 how long did it take, and what they found in their
6 samples, it's an average of .2 to .3 seconds.

7 There's also a study, Welford, W-E-L-F-O-R-D,
8 1980, where they discuss the fact that distractions
9 increase perception reaction time, so, obviously, when
10 you're reacting to a simple stimulus, you know what you're
11 doing and you're waiting for a particular signal, you want
12 to be able to react faster than if you have -- you're
13 trying to figure out what's going on and then have to
14 process more information.

15 Welchman, which I mentioned earlier, as well as
16 Lewinski mentioned it and others have mentioned it is the
17 concept of "actor beats reactor," meaning that what they
18 found in various different studies is that if you are
19 waiting for somebody to act, then they'll be able to act
20 faster than you could react because they can formulate
21 the -- you know, process all the information and formulate
22 the intent to do what they're doing and not have to wait
23 for any particular signal, whereas, if you're waiting on
24 them to do something before you react.

25 In particular, with a lot of those studies, they

1 were looking at the gun issue person being able to pull
2 the gun up and fire it at an officer faster than they
3 could fire back.

4 And a couple of other papers that talk about the
5 perception reaction time, it increases with complexity of
6 the stimuli. So one is Luce from 1986, that's L-U-C-E, as
7 well as Brebner, B-R-E-B-N-E-R, and Welford,
8 W-E-L-F-O-R-D, from 1980.

9 Both of those talk about the fact that
10 perception reaction time increases with complexity of
11 stimuli, so, obviously, the more information that you have
12 to process, the slower you're going to be when it comes to
13 responding.

14 Q. Now, are those numbers very conservative for the
15 real world?

16 A. Yes, and that's -- that's -- the general premise
17 of a lot of the research is that, you know, what you're
18 getting is bottom line -- baseline that you can get in a
19 research setting, because obviously in a research setting
20 you can't -- you can't throw in a whole lot of variables
21 because you can't control for them.

22 So when you're doing research, you have to very
23 closely control your variables so you're going to limit
24 the stimuli that are involved.

25 You have to to be able to do appropriate

1 scientific research. So you are necessarily getting
2 conservative numbers. You're not getting real-world
3 numbers. You're getting things that are much lower than
4 that.

5 If you compare it in terms of perception
6 reaction time, there's a fair bit of study with regard to
7 traffic accidents. There's probably a lot more perception
8 reactions literature out there in traffic accidents, and
9 the long-held -- those sometimes-argued, baseline
10 perception reaction time and accident reconstruction is
11 1.6 seconds for a person to see and perceive, you know,
12 for example, encroachment by a car, you know, the light
13 just changed or whatever, and then be able to implement an
14 action, steering or hitting the brakes or things like
15 that.

16 So -- and a lot of the traffic accident stuff is
17 more -- more real-world type, because you can put somebody
18 in a stimulator and you can make a car come out in front
19 of them and you can time them, and so there's is a lot
20 more research with regard to that.

21 So the general consensus tends to be among those
22 who have studied and researched it and that, you know,
23 when you're talking about real-world response times to
24 something happening in terms of your shooting, that you're
25 looking at times that would exceed one second, that would

1 generally reach up to -- perhaps up to -- perhaps a
2 two-second range or even higher.

3 Q. And does lighting conditions and noise
4 conditions also have an impact on that perception reaction
5 time?

6 A. Yes, and lighting conditions, they haven't
7 really been studied in the shooting context, but lighting
8 conditions have been studied in the driver contexts of
9 perception reaction time, and it's been shown that, you
10 know, nighttime driving people have a slower response time
11 than they do during daytime driving and that the, you
12 know, generally accepted reason for that is that it's --
13 it takes more time to acquire the signal and be able to
14 process it because you don't have a nice clear view of
15 something. You have to acquire that visual signal and be
16 able to process it.

17 Noise also makes a difference because it goes to
18 total cognitive load, how much stuff you have to process
19 in your brain.

20 In a perfect example, when it comes to noise, if
21 you've ever been driving your car and get into heavy
22 traffic or especially if you're out of town somewhere and
23 you're not familiar with driving, and you have music
24 playing and you reach up and you turn your radio down so
25 you can concentrate on the driving -- I know I've

1 certainly done that -- and people make jokes about that
2 and say, "Oh, yeah, I have to turn the radio down to see,"
3 but it's not that it affects your vision but it affects
4 your cognitive load.

5 While that music is playing, there's stuff going
6 on in your brain that's processing all the signals, and
7 when you turn that music down and concentrate on your
8 driving, you're taking out some of that signal; it's
9 noise.

10 It's background that's not relevant to what
11 you're doing and allowing your brain to be able to
12 concentrate more on what you're doing.

13 So all the different things that are going on
14 apart from what you need to see, in other words, seeing
15 the threat or danger that you may be observing or what
16 you're perceiving to be such, all of those things, all of
17 the other information that's coming into is adding to the
18 cognitive load, and it's going to necessarily slow down
19 your reaction.

20 Q. Okay. And so did you consider all of that?

21 A. Yes.

22 Q. Now, did you form an opinion concerning the
23 firing of the weapon by Mr. Reeves in reference to those
24 other marked and timed events?

25 A. Yes.

1 Q. Would you please tell the Court what that
2 opinion is?

3 A. Well, when you look at the timing, because --
4 I'll back up here and go to -- if I describe the shot as
5 being T-0 and then the backup, the other events as T minus
6 something, the hand appearing, reaching for the popcorn,
7 initially would be --

8 Q. The first time you see the hand in the frame?

9 A. The first time you see the hand in the frame
10 would be at T minus 1.5 seconds, so you're talking -- that
11 occurred at 1.5 seconds before the shot's fired.

12 The popcorn beginning to move is occurring at T
13 minus 1.28962. The popcorn bag beginning to move back
14 towards Mr. Reeves is occurring at T minus 0.986. The
15 popcorn hitting Mr. Reeves is occurring at T minus 0.7,
16 and then Mr. Reeves beginning to move forward is occurring
17 at T minus 0.434.

18 So if you look at those times and you consider
19 the research data on perception reaction times, then it's
20 not reasonable to conclude that Mr. Reeves is reacting
21 to --

22 MR. MARTIN: Your Honor, I'm going to object now
23 because now we -- you know, what is reasonable or not
24 reasonable. He can give us the times, but he cannot
25 go into what is reasonable and not reasonable for

1 Mr. Reeves because Mr. Reeves is a unique individual
2 like we all are in this courtroom.

3 There has been no predicate laid that they have
4 any testing on Reeves that they know anything about
5 his hearing, that they know anything about his sight.
6 It's way too general.

7 He can educate us to these times, but he can't
8 apply it to Mr. Reeves without knowing the unique
9 individual, Mr. Reeves, and his own physical
10 conditions, so I object to the opinion because it's
11 an improper predicate.

12 MR. ESCOBAR: Judge, I disagree. I think this
13 is exactly -- this is the foundation that we've laid
14 along with all of the empirical studies concerning
15 human factors and action versus reaction.

16 Trust me, the opinion that he's going to give
17 you is on the very, very conservative side. We
18 believe obviously with Mr. Reeves' age, with lighting
19 conditions, with noise, it's going to be far, far
20 slower, and so we are on the very, very conservative,
21 but I think that that is important for him to explain
22 his opinion, and then the Court can make its own
23 decision as to whether you're going to accept that
24 opinion, whether you're not going to accept that
25 opinion, but that is an opinion that, you know, crime

1 scene detectives that are well versed in their field
2 are able to do day in and day out.

3 MR. MARTIN: All the studies I've heard were
4 generalizations and within ranges. How do you
5 account for that?

6 MR. ESCOBAR: The fact that one of the studies
7 indicated to you that as people grow older --
8 Mr. Reeves is on the far, far end of plus fifty --
9 that the reaction time is going to be much, much
10 slower.

11 He's also indicated and opined that in low
12 lighting situations, again, it's going to affect --

13 THE COURT: All right. All right. Hold on. My
14 question is much more specific. I got all of that,
15 and that's why I'm trying to do the math in my head.

16 So we started out with a range, and we can
17 whittle that down to however one sees fit based on
18 age, then whittle it down some more based on the
19 ranges that you have from those studies and whittle,
20 you know, tweak it a little more based on another
21 variable and somehow come up with a number.

22 MR. ESCOBAR: Well, it's a bracketed number,
23 Your Honor. It's not -- he's not going to say, you
24 know, .3166 seconds, but it's a bracketed number, and
25 what we're trying to show to the Court is that based

1 upon these studies and based upon these very solid
2 studies that Mr. Reeves made the decision to pull his
3 weapon and fire his weapon even before, way before
4 the popcorn was even grabbed from his hand.

5 This is a -- this is a conservative figure.
6 This is not a speculative figure. This is not a
7 figure that he's grabbing out of thin air. This is
8 based upon empirical studies and looking at the
9 actual film --

10 THE COURT: All right.

11 MR. ESCOBAR: -- and those particular time
12 stamps.

13 THE COURT: All right. I will overrule again as
14 to -- I can give it the weight that I think it
15 deserves and Mr. Martin can cross as well, so go
16 ahead.

17 BY MR. ESCOBAR:

18 Q. What is your opinion, Mr. Knox?

19 A. Well, basically, if you look at the times so --
20 for example, the time between when the popcorn hit
21 Mr. Reeves in the face and the time when Mr. Reeves
22 actually begins to move forward is just barely over a
23 quarter second, .266 seconds. The time from when the
24 popcorn hits Mr. Reeves to the time that the shot is fired
25 is 0.7 seconds.

1 So if you look at those numbers that I just went
2 through in the literature where you're talking about
3 simple responses and things like that, then the time,
4 certainly the quarter second between the time that
5 Mr. Reeves gets hit in the face with the popcorn to when
6 he begin to move is well below that threshold.

7 The .7 seconds would be quite fast within those
8 numbers given the fact that it is not a simple reaction
9 time. It is a complex reaction to something that's going
10 on and you're having to process that.

11 So what that tends to indicate, then, is that
12 the decision to shoot -- because remember, when we talk
13 about perception reaction, the time of the shot and the
14 time of when a person must necessarily have decided to
15 begin to implement it, they're not same. You have to have
16 the time lapse to be able to carry that out. That occurs
17 before the popcorn hit him in the face.

18 Given the fact that the hand reaches to the
19 popcorn is at T minus 1.5 seconds, it's quite likely that
20 the perception reaction is back in that range, I mean,
21 because again, we saw some of the data that shows things
22 where you're taking multiple seconds to be able to draw
23 and fire and things like that, so you're looking at --
24 that it's quite likely that the decision to fire would
25 have had to occur as far as back as when the hand first

1 appears in the frame reaching for the popcorn, if not
2 further than that, but certainly, you know, there's only a
3 second and a half for that whole process to have occurred.

4 Q. Now, this is part of your reconstruction
5 process, correct?

6 A. Yes.

7 Q. Now, we talked a little bit about the distance
8 between Mr. Reeves and Mr. Oulson as having some
9 significance in this case.

10 Explain to the Court why the distance between
11 Mr. Reeves as he was seated in Seat 9 and Mr. Oulson was a
12 significant factor for you.

13 A. Well --

14 MR. MARTIN: Your Honor, I'm going to object. I
15 mean, that's the whole point of having a
16 reconstruction expert, so he can -- like he said, he
17 can go ahead and define the confined space. That is
18 then used by the use-of-force opinion expert to
19 provide an expert opinion.

20 He's not a use-of-force expert, and I've made
21 this objection before when we talked about distance,
22 opportunity, intent. That is all Dr. Hayden, not a
23 reconstruction -- he is not offered for that.

24 He was proffered to the State as being a
25 reconstruction expert. That's how he was deposed, as

1 a reconstruction expert, to provide all the
2 measurements and space and artifacts that are there.
3 To give it to someone else to come in and give
4 whatever lay opinion the Court will allow regarding
5 use-of-force, not Mr. Knox. He is not that expert.

6 MR. ESCOBAR: Judge, it was not represented to
7 the Government that Mr. Knox was a forensic tech. It
8 was represented to the Government that he was a major
9 case detective, reconstruction of the crime scene
10 expert. It is as simple as that.

11 What he is doing right now, is he is
12 reconstructing the shooting incident. He is not one
13 of their normal techs that the Pasco County Sheriff's
14 Office uses to, you know, pick up items, not to
15 degrade what they're doing.

16 It's a very important function, picking up items
17 and making sure that it's not contaminated and
18 making, you know, measurements and what have you. He
19 is beyond that, and that was represented -- it's in
20 his CV, human factors. Human factors is not in the
21 CV.

22 He went over his CV in depo with this expert.
23 There is no surprise here. This is perfect and
24 proper direct examination of one of our experts.

25 And, Your Honor, I will tell you, he is getting

1 up in order to be an obstructionist and only an
2 obstructionist. This Court has already ruled that
3 you are going to determine what you're going to keep
4 in and what you're going to keep out.

5 The only reason he keeps jumping up is because
6 he wants to break up my direct and it's unfair. It's
7 totally unfair that he's doing what he's doing in
8 this particular case.

9 MR. MARTIN: Judge, I'm not a potted plant. You
10 may just, you know, decide on your own what you're
11 going to do, but I have a record to preserve for
12 appellate purposes, and the Court is well aware if I
13 don't make my objection contemporaneous with the
14 information that comes in, it is waived, and that is
15 the reason that I'm making the objections.

16 I'm well aware that you're going to make your
17 own independent decision, but I have to preserve the
18 record, so in the event we go to the Second DCA that
19 I've made a proper objection contemporaneous with the
20 information that came in.

21 THE COURT: All right. I don't really know
22 what's coming next, but let's keep it within the
23 realm of this -- what this witness has been offered
24 for, crime scene reconstruction.

25 BY MR. ESCOBAR:

1 Q. Mr. Knox, part of your crime scene
2 reconstruction, does it have to do with distances between
3 the shooter and the alleged victim?

4 A. Yes.

5 Q. Tell the Court why that's an important aspect of
6 crime scene reconstruction.

7 A. Well, it's important to reconstruct what those
8 distances are and be able to make the determination of
9 things like, you know, what's the reach, whether or not
10 one person could have reached the other, you know,
11 particularly where you have a shooting case that there's
12 at least a description of somebody being struck or, you
13 know, the perception of somebody coming in to strike.

14 Obviously, you want to be able to document those
15 distances to know whether or not that was a reasonable
16 perception on somebody's part; could that person actually
17 have struck them? I mean, that's sort of a basic question
18 to answer, and that is very much a reconstruction
19 question, I think.

20 Q. Is it also a reconstruction question as to
21 whether the individual that was seated in Seat 9 could
22 actually get up if he was being attacked?

23 A. Yes.

24 Q. Why is that important?

25 A. Well, I mean, with all these questions, from a

1 reconstruction standpoint, it's a matter of answering what
2 are the possibilities because -- you know, I'm not opining
3 on or making decisions about the reasonableness of
4 anything, but what I am doing is providing the information
5 or hope to be providing, and unfortunately not as able as
6 I could have, but so that those questions could be
7 answered so that, you know, that could be -- information
8 could be given to the Court.

9 It could be given to other experts who are
10 looking at use-of-force and so forth, because, I mean,
11 that's key to it, is what responses and what things could
12 Curtis Reeves have done, what things could Chad Oulson had
13 been able to do.

14 I think those are key questions that have to be
15 answered, and that from a reconstruction standpoint and
16 from the crime scene standpoint, that's my responsibility
17 to be able to provide that information.

18 Q. So are you wanting to determine -- if Mr. Reeves
19 was seated in Seat Number 9, are you wanting to determine
20 whether merely getting up would put Mr. Reeves in a
21 position closer to Mr. Oulson?

22 A. Yes.

23 Q. Would you tell the Court why that would be
24 important in a shooting incident reconstruction?

25 A. Well, I mean, that would be a factor to be

1 assessed is if a person has to move closer in, then that
2 means that the gap between them and the other person is
3 reduced, and then potentially any violent interaction that
4 might be taking place becomes increased. It's easier to
5 reach and touch somebody when they get closer to you.

6 Q. And is there -- in law enforcement circles, is
7 it ever good to decrease the distance between yourself and
8 the attacker?

9 A. No. I mean, the only time as a law enforcement
10 officer is you do it if you're actually going to take the
11 person to the ground and make an arrest, but, if you're
12 trying to protect yourself, you want to keep distance
13 between you.

14 Q. Do you also want to create distance?

15 A. Yes. Certainly, if you have somebody that's
16 becoming violent, then, yes, increasing distance is
17 preferable.

18 Q. Okay. And I think we've already talked about --
19 and obviously that was one option -- is Mr. Reeves getting
20 up from his seat, just merely getting up from his seat --
21 merely getting up would put him closer to Mr. Oulson?

22 A. It would, yes.

23 Q. I think we've already talked about the armrests
24 that were present in those particular seats. Did you take
25 that into consideration --

1 A. Yes.

2 Q. -- as far as whether Mr. Reeves could create
3 some distance from Mr. Oulson as a result of his position
4 there in the seats?

5 A. Right.

6 Q. What was your consideration with reference to
7 that issue?

8 A. Well, the armrest would preclude him from moving
9 to the side, so that's the way I'm looking at it; which
10 directions can he go? If he stood up, he's getting
11 closer. If he moves to the side, he can't because he
12 would have to go over the armrest to be able to move in
13 that direction.

14 Q. Now, in your reconstruction in this case, did
15 you consider Mr. Reeves' weight at the time of this
16 incident? What did he look like in that chair?

17 A. Yes.

18 Q. And why is that important in an incident --
19 shooting incident reconstruction? Don't be scared to call
20 him fat. I've called him fat many times.

21 A. Well, you know, one of the issues to consider
22 when you're talking about confined space is the person's
23 relative size, because you have one foot, ten inches
24 between armrests, and obviously, you know, a very small
25 person, that could be a wide seat range.

1 Somebody that's his size, that's not so wide, so
2 it's restrictive in terms of ability to move, and it's
3 restrictive in terms of where he could have been
4 positioned, so, from a reconstruction standpoint, I'm
5 looking at it -- you know, it limits the possibilities of
6 where he could have been, but it certainly -- it's -- you
7 know, it's going to be a tighter fit in that seat.

8 Q. Are these the types of things that a crime scene
9 detective should be doing in order to determine perception
10 from the view of the shooter?

11 A. Yes. I mean, you have to document these things.
12 I mean, you have to be able to know in terms of geometric
13 space where somebody could move, what they could do,
14 because, you know, you as crime scene investigator may not
15 be the one that's applying that information in terms of
16 deciding, you know, the factors with regard to the
17 shooting.

18 You're providing that information to those who
19 are making those decisions, so it is important to be able
20 to appropriately document and show, you know, things like
21 spatial factors of the constraints that somebody is under
22 and, you know, all of those types of aspects of their
23 environment to be able to provide proper information for
24 decision-making later.

25 Q. Does that include measuring Mr. Reeves right

1 there at the scene? "Forensics, come on over. We're
2 going to start measuring Mr. Reeves."

3 A. Yes, measurements of him would be important to
4 be able to reposition things and be able to figure out,
5 you know, the wound to Mr. Oulson relative to where
6 Mr. Reeves was seated, to be able to figure out
7 Mr. Oulson's position and things like that.

8 Q. During the multitude of reports that you
9 received early on in this case, did you ever see any
10 measurements of Mr. Reeves --

11 A. No.

12 Q. -- by Detective Aaron Smith or the forensic tech
13 of the Pasco County Sheriff's Office?

14 A. No.

15 Q. The forensic measurements that you saw later on,
16 were they done subsequent to our forensic measurements of
17 Mr. Reeves?

18 A. Yes.

19 Q. Let's talk about perception distortion and how
20 that plays a role in the interview process by a major case
21 crime scene detective.

22 What is perception distortion?

23 MR. MARTIN: Excuse me, Judge. Now that we're
24 entering another topic, we've been going for about
25 two hours, and I could really use a break, please.

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THE COURT: Yes, we might as well take a break.
We're going to be here a while.

Let's take 10 minutes. We'll go to 5:15.

(Recess taken.)

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 XIII

CURTIS J. REEVES,

Defendant.

PROCEEDINGS: Stand Your Ground Motion

DATE: February 27, 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 1553 - 1634

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1 A-P-P-E-A-R-A-N-C-E-S

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DEFENSE WITNESS

MICHAEL KNOX

Cross-Examination by Mr. Martin

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

1
2 MR. ESCOBAR: Sorry, Your Honor. Time got away
3 from us. I think I remember where I was.

4 BY MR. ESCOBAR:

5 Q. Mr. Knox, perception distortion, what is that
6 all about?

7 A. Well, perceptual distortion is a concept that's
8 been studied in a couple of different studies where what's
9 been found is the research that had been done with police
10 officers that had been extensively interviewed following a
11 line of duty shooting, and it's been found that a large
12 percentage of them had experienced various different
13 distortions of their perception.

14 So, for example, somewhere in the over 80
15 percent mark report experiencing tunnel vision, so not
16 being able to really see anything in their periphery but
17 being able to see only in their focal vision, directly in
18 front of them.

19 Many have reported auditory exclusion, not being
20 able to hear sounds, not being able to hear, for example,
21 their own gunshots or the gunshots of other officers being
22 fired during the course of a shooting, and numbers of
23 other distortions, distortions related to time,
24 experiencing things occurring extremely slowly or
25 occurring rapidly, distortions with regard to memory and

1 memory loss, not remembering things that occurred.

2 So it's -- there's a fair body of research from
3 one professional named David Klinger, who actually did a
4 government grant study on it, and then there's another
5 police psychologist named Alexis Artwall who has,
6 likewise, studied it, and both have published on it and
7 written books about it.

8 Q. So do you use that phenomenon in your accident
9 reconstruction in dealing with the perception distortion
10 that someone seated in Seat Number 9 may be experiencing
11 during the shooting incident?

12 A. Yes. I mean, you have to give some
13 consideration to those factors, because when you're trying
14 to represent, for example, what a person can see, and,
15 obviously, you know, as I sit here right now, I have
16 peripheral vision expanding about 180 degrees, and I can
17 see way over here to my left, way off on my right and
18 everything in between, but you would certainly not have
19 the same vision if you were experiencing a tunnel vision
20 distortion at the time.

21 The same thing with auditory exclusion. There
22 may be issues related to things that somebody doesn't hear
23 and they report not hearing something, and then auditory
24 exclusion can be the explanation for that, so it's
25 certainly something that you would want to address and

1 document and factor that into your reconstruction.

2 Q. Is this something that you would address in
3 documenting questions, you know, certainly in the
4 questioning of the shooter himself?

5 A. Yes. I mean, when you're looking at those
6 different types of factors, perceptual distortion and
7 things like that, there are no diagnostic tools for that,
8 so it's not like you can give a person a task to figure
9 out what they were experiencing, but you can certainly
10 interview the person and elicit that type of information
11 from them.

12 So you can ask them questions related to that to
13 try to get some clarification of what they could see and
14 what they couldn't see, what they could hear and what they
15 couldn't hear, and what they were experiencing during the
16 course of that event.

17 The distortions don't happen just at the moment
18 that the person is pulling the trigger. It's in the time
19 leading up to it, because that's the stress of the event
20 is what's creating that.

21 Q. We're going to get to the stress in just a
22 second and fear, but is this a process that you would
23 expect a major homicide crime scene investigator to have
24 some knowledge of in order to assist in interviewing of
25 the person that's being interrogated for the shooting on

1 the issues of self-defense and what they were able to see
2 and not able to see?

3 A. Right. Certainly, the detective or the person
4 that's doing the interviewing should have some knowledge
5 of that, because they need to be able to question and
6 elicit information with regard to whether or not the
7 person was experiencing those sorts of things.

8 It's not an issue that's uncommon to law
9 enforcement. I mean, the first time I heard about
10 perceptual distortion was when I was in the basic academy
11 becoming a police officer, so it's information that should
12 be pretty readily known by most law enforcement people,
13 because one of the reasons why it's trained to police
14 officers certainly is that you need to know to expect it
15 if you're ever involved in one of these incidents; if
16 you're involved in a shooting or something, you understand
17 what's occurring, what's taking place.

18 It also factors into the training that police
19 officers receive and how that training is disseminated,
20 the firearms training in particular that's given to police
21 officers.

22 Q. If you don't ask the proper questions in order
23 to try to determine those particular factors, what are you
24 left with?

25 A. Well, you're not going to have any way of

1 assessing or knowing whether or not the individual is
2 experiencing any of that.

3 And again, when -- your purpose in documenting,
4 reconstructing, and investigating is to figure out what
5 perception that person had of the event, you know, so it
6 it's key to being able to fully construct and understand
7 what took place.

8 Q. Fear, anxiety -- how does that play a role in
9 your interview process, especially of the individual that
10 is accused of shooting?

11 MR. MARTIN: Your Honor, I'm going to object.
12 Just like the last time we went through -- I forget
13 the topic now -- perception distortion, we never
14 linked it up to the reconstruction. He's just
15 criticizing the interview process potentially, I
16 guess, of one of the officers. That's not
17 reconstruction. What we're dealing with here is not
18 what he's been qualified to do.

19 So, you know, just to say he's this omnibus
20 crime scene reconstruction, that doesn't include
21 every gamut that we've been talking about here, so
22 I'm going to object. There has not been a proper
23 predicate that -- that he's given us information, but
24 he doesn't lead it back to the reconstruction itself,
25 so there's no relevance.

1 MR. ESCOBAR: Judge, there's incredible
2 relevance. In fact, if Mr. Martin would remember,
3 his own officer, Aaron Smith, came up here and
4 testified to all of this and said, "Look, we're
5 trained yearly on this, because these particular
6 factors, fear, tunnel vision, those types of things
7 affect us as human beings when we're out there in the
8 line of duty, and if we're not able to recognize
9 those particular things, then guess what happens,
10 okay? We die."

11 So what this expert is telling you is that:
12 Listen, this is not something that some scientist is
13 coming up with. This is back from the days of the
14 academy that officers are trained day in and day out
15 on these particular factors, so that not only do they
16 use it themselves, but when there's someone else
17 involved in a shooting incident they can elicit that
18 important information that's going to tell us what
19 that person was experiencing at the time of the
20 incident.

21 Why? Because we have to determine whether that
22 person's perception was reasonable at the time of the
23 shooting, and, if you don't ask that question right
24 then and there, it's then lost forever.

25 THE COURT: All right. So the objection is that

1 he should not be asking the question?

2 MR. MARTIN: If he can't relate it back to,
3 quote, "shooting reconstruction," then we've gone
4 afar from what he was touted as an expert, and I
5 object over and over, trying to point out examples
6 how far afield we've come with Mr. Knox.

7 THE COURT: Well, somehow, Mr. Escobar has
8 indicated that other witnesses have testified to
9 this, too, so that ought to put it within his realm.

10 I'm not going to -- we can argue about it for
11 longer than it will take for him to just testify
12 about it. I'll -- I'm just going to allow it. I'll
13 have to overrule, but let's --

14 MR. ESCOBAR: This is my last area, Judge.

15 THE COURT: Okay.

16 BY MR. ESCOBAR:

17 Q. Let's talk about fear and anxiety and what you
18 have learned to use in your interviews in shooting
19 incident reconstruction.

20 A. Well, what is known -- and again, I mean, going
21 all the way back to basic academy and then the application
22 for reconstruction is that that's the whole point, is I'm
23 trying to reconstruct what took place including
24 understanding what in this case Mr. Reeves perceived.

25 So fear leads to what's known as fight or

1 flight. Basically, a person who's under a stressful event
2 where they perceive a particular threat is going to
3 respond both psychologically and physiologically to that
4 threat; your body actually undergoes certain things. You
5 go through, you know, these things that cause perceptual
6 distortion.

7 What happens, for example, with tunnel vision is
8 what you do not need to see in your periphery when you're
9 facing a threat, so your body actually diverts resources
10 away, takes oxygen and stuff away and sends to places
11 where you need it. You need to be able to see well in
12 your focal vision. You need to be able to use your large
13 muscle groups.

14 So one of the things that occurs is you lose
15 fine motor skills. We learned that through the study of
16 various different deadly force incidents including one
17 where police officers got killed and that we used to
18 operate -- when we would work the action on our firearm,
19 we used to reach up, grab it with our thumb and our
20 forefinger, and pull it back.

21 Then we stopped doing that in training. They
22 changed the training and said, "No, reach over and use
23 your whole hand and pull it back to your shoulder." The
24 reason being is they figured out that police officers were
25 having trouble being able to do it under that stress.

1 They couldn't -- they didn't have the strength
2 in their finger -- their thumb and their finger to be able
3 to grab the slide and rack it, so they wanted to use more
4 gross motor skills.

5 You know, a number of things. The days when
6 police officers used revolvers, had to use speed loaders,
7 they found they could not load under stress in an actual
8 shooting because they had to get the fine motor skills to
9 align that speed loader into the cylinder.

10 So these things evolved to the understanding of
11 what happens to a person and when you're assessing a
12 shooting incident, and this is -- we're talking about
13 reconstruction here because we are talking about -- that's
14 the whole idea of reconstruction, to figure out what took
15 place, that you need to understand to the extent that
16 those things affected the person that was shooting.

17 MR. ESCOBAR: One last question. It departs
18 from this area. This is an area I failed to cover,
19 Your Honor, that I want to just touch upon. It will
20 take me about three minutes.

21 BY MR. ESCOBAR:

22 Q. We talked about infrared being there in the
23 movie theater; is that correct?

24 A. Yes.

25 Q. Tell the Court just briefly how infrared is able

1 to capture objects within a theater like this. What is
2 the process of infrared?

3 A. Well, infrared radiation is --

4 MR. MARTIN: I give up. Are you going to let it
5 in or do you want to hear it?

6 THE COURT: Yeah --

7 MR. MARTIN: It's the same objection. I'm going
8 to object for the record. If you want to hear it,
9 you can hear it.

10 THE COURT: At this time, I'm sure there's
11 something in his CV that talks about lighting and all
12 of that, so...

13 MR. ESCOBAR: They talked about photography
14 being his expertise --

15 THE COURT: Infrared and --

16 BY MR. ESCOBAR:

17 Q. How does that happen?

18 THE COURT: Overruled.

19 THE WITNESS: Well, you're talking about it's
20 part of the electromagnetic spectrum. It's basically
21 the same as lighting except that it's in a portion of
22 a spectrum that our eyes cannot see.

23 Forensically we use infrared for several things.
24 It's used in a lot in document analysis. I use it --
25 I have an infrared-sensitive camera that I use for

1 documenting gunshot residue patterns on clothing and
2 such.

3 BY MR. ESCOBAR:

4 Q. Why do you use it for that?

5 A. Well, because what happens is because our eyes
6 don't see it but the camera can see it, sometimes you can
7 look at an article of clothing, particularly if you have
8 an article of clothing that also has blood on it, and not
9 see any type of gunshot residue, not see the powder
10 particles, but, with the infrared camera, what happens is
11 that blood reflects a considerable amount of infrared, so
12 blood becomes very light in the photograph.

13 Conversely, the gunpowder particles absorb light
14 and so they become very dark in the photograph, so I can
15 actually take -- where with my naked eye I cannot see any
16 powder particles in this clothing with blood on it, but I
17 can take photographs with an infrared camera and be able
18 to render that.

19 So what an infrared camera is basically able to
20 do is see infrared radiation and record it where our eyes
21 can't do it, so -- a lot of times, for example, these
22 surveillance cameras use infrared because they can see in
23 the dark effectively.

24 Q. So if you have a black shirt that is being
25 captured by infrared camera and you see that black shirt

1 in the screen as being bright white, how does that work?

2 A. It means that the black material is reflecting a
3 lot of infrared.

4 Again, in a forensic context, we use light
5 energy, and I testified about the light energy application
6 course I've taken. I've used it for many, many years, but
7 you use light energy specifically to be able to do things
8 like take out background.

9 So if I have a dark substance or something
10 that's on a dark material, oftentimes, if you use things
11 like infrared, the dark material, if it reflects a
12 considerable amount of infrared, it will become light, and
13 if the material you're looking for is on it does not
14 likewise reflect it, now you get contrast. Now you have
15 dark material that basically turns white.

16 Then you have other material that remains dark,
17 and now you have contrast to see something that under
18 normal light and under -- with your naked eye you're not
19 able to see.

20 Q. Does the chemical makeup that's on shirts for
21 color and what have you sometimes allow the infrared to
22 enhance that color to like a white?

23 A. Yes.

24 Q. Tell the Court how that happens.

25 A. It just means that it's reflecting a lot of

1 infrared, so an infrared-sensitive camera sees all that
2 infrared and it records it as a light color, because,
3 typically if you're doing stuff with infrared, you're
4 looking at black and white images, but it's going to
5 record a lot of light for that which will make it render
6 as -- appear to be white or very light-colored.

7 Q. Do all black objects in an infrared look white?

8 A. No.

9 Q. And, for example, this tone right here is a
10 different makeup of material than a shirt?

11 A. That's right.

12 Q. So this phone being out there in that theater
13 could possibly not look white at all?

14 A. That's correct. It just depends how much
15 infrared that material reflects.

16 Q. Especially if we're talking about the back side
17 of the phone?

18 A. Right.

19 MR. ESCOBAR: Defense would pass the witness.

20 THE COURT: Okay. Thank you.

21 Who's doing it?

22 MR. MARTIN: I am. Just giving him a moment.

23 May it please the Court, Counsel.

24

25

EXHIBIT #2

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

CASE NO: CRC1400216CFAES

VOLUME 2 (PAGES 109 - 258)

STATE OF FLORIDA

-vs-

CURTIS JUDSON REEVES,

Defendant.

STATE OF FLORIDA)
COUNTY OF DUVAL)

Deposition of MICHAEL KNOX, a witness on behalf of
the State of Florida, taken at Official Reporters,
Inc., 421 West Church Street, Suite 430, Jacksonville,
Duval County, Florida, on Thursday, April 7, 2016,
commencing at 9:10 a.m., before Karen Waugerman, a
Notary Public in and for the State of Florida at Large
and Registered Professional Reporter.

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

1 camera -- then the use of a 50- to 60-millimeter lens
2 is generally what's accepted for rendering human
3 vision.

4 Q And where do you get that information from?

5 A Multiple sources. I mean, you see it in
6 texts on forensic photography. It's taught in courses.
7 It's taught at courses that I help teach at IPTM.
8 That's generally the framing that you want to use on
9 what's called a "crop sensor" or APSC sensor. You
10 would go with 35-millimeter to 45-millimeter range.
11 Generally 35ish is closer to human perspective, but
12 even then, it depends on exactly what you're trying to
13 render.

14 70 millimeter gets you closer to the actual
15 distance perspective, but 70 millimeter has a more
16 cropped view than obviously human vision. We have
17 wider frame of view than you have. So what is --
18 appears throughout the literature is 50 to 60
19 millimeter on a 35-millimeter frame is the lens choice
20 of option.

21 Q Other than the focal length of the lens,
22 which, when you went back in July of 2015, was
23 55 millimeters, was the camera basically the same,
24 having the same of same capabilities we previously
25 discussed?

1 A Yes.

2 Q Did you use solely a manual setting in order
3 to take the photos, or did you use any time value or
4 aperture values?

5 A Manual setting.

6 Q All right. And all that will be reflected in
7 the metadata?

8 A Yes.

9 Q As far as your light source, I assume it was
10 theater settings, what we talked about for lighting
11 and --

12 A Right. It would have been -- at the time the
13 mannequins were done, the movie -- the lights were set
14 to the Mid 1 setting, which is the middle setting.

15 Q Were all of the photographs relating to the
16 mannequins set at the Mid 1 setting by the theater
17 management?

18 A Yes.

19 Q And other than the light -- the ambient light
20 that is produced by Mid 1 setting, did you use any type
21 of artificial lighting at all as far as flash
22 photography, any light stands?

23 A No, entirely ambient light from the theater.

24 Q Once you took the photograph with the
25 mannequins, was there any type of post processing done,

1 as in enhancements or anything like that with the
2 photographs?

3 A No.

4 Q And did you treat the photographs the same as
5 you explained to me when you were at Cobb Theatre in
6 January of 2015 as far as the frame numbers and how you
7 downloaded them from your camera and how they were
8 preserved?

9 A Yes.

10 Q As far as the photographs with the
11 mannequins, all the metadata is still readily available
12 regarding those photographs?

13 A Yes.

14 Q In the photographs that were taken, a trailer
15 was played, as you previously testified, behind the
16 mannequin on the screen, which was apparently the
17 trailer for Star Wars. How was that one selected?

18 A I didn't select it. That was what the
19 theater management provided. We asked them to have
20 something playing, so they had a looping trailer that
21 was a Star Wars trailer, several minutes long.

22 Q Based on your investigation, do you know what
23 trailer was being played at the time of the shooting on
24 January 13th, 2014?

25 A Not other than it was a Star Wars trailer. I

1 don't know the differences between all of those.

2 Q In 2014, at the time of the shooting?

3 A In terms of the shooting, no. That also,
4 likewise, does not appear to be documented anywhere as
5 to what exactly the trailer was that was played.

6 Q In doing the shooting reconstruction, how
7 important is it for you to have the environment that
8 you're trying to document as similar as possible as to
9 when the actual event took place?

10 A Well, I mean, obviously, you want it to be as
11 similar as it can be. With any dissimilarities, you
12 have to assess to determine how much it affects the
13 outcome of the reconstruction.

14 Q As far as the background lighting, running
15 the Star Wars trailer looped as opposed to the actual
16 trailer that was being played at the time of the event,
17 how did that impact on your shooting reconstruction?

18 A Well, what I did with the trailer that was
19 looping is that -- and you can see from the photographs
20 that there's -- there were a number of different
21 scenes. There were darker scenes, where there's much
22 darker background. There were scenes where there's
23 bright white background. So as I shot the photographs,
24 I'd take pictures intentionally as it looped through
25 that.

1 Again, it's just sort of the same as the
2 boundary values with the measurements. What I'm doing
3 is getting photographs with a variety of different
4 background lighting to basically be able to cover the
5 gamut of what could be reasonably possible.

6 MR. MARTIN: Madam Court Reporter,
7 what's my next number, please?

8 THE REPORTER: 25.

9 (The item last above referred to was marked
10 for identification as State's Exhibit No. 25.)

11 BY MR. MARTIN:

12 Q Let me show you Depo Exhibit No. 25, which is
13 Frame No. P1, series of photographs that you gave me.
14 It appears in the review of the photographs -- and you
15 can look at the pictures that are in front of you --
16 Frames 1 through 13 are basically the mannequin in the
17 position we see in Frame No. 1 with different screen
18 backgrounds.

19 A That's right.

20 Q All right. So using Depo Exhibit No. 25,
21 Frame No. 1, what are you attempting to document with
22 the mannequin in that particular position with the
23 different screen lighting in the background? What are
24 you trying to document?

25 A Well, this is showing -- the mannequin is

1 positioned standing in front of Mr. Oulson's seat,
2 which would mean the No. 8 seat in the second to last
3 row. And then the camera is from me taking the
4 photograph while seated in Mr. Reeves' seat, which is
5 the No. 9 seat in the last row.

6 Q All right.

7 A And what I'm attempting to do here is render
8 images that will give a sense of what the visual
9 perspective is from Mr. Reeves' vantage point as he's
10 looking at Mr. Oulson, if Mr. Oulson were standing
11 there in front of his seat.

12 Q All right. Did you take any measurements of
13 Mr. Reeves?

14 A Yes.

15 Q What measurements did you take and what are
16 they?

17 A His standing height, six feet, one inches.
18 Then in the standing position, I measured to his --
19 from his shoulder seam to the tip of his middle finger,
20 which was two feet, 4.5 inches. Then the shoulder seam
21 to his elbow was ten inches. And the shoulder seam to
22 his wrist was one foot, eight inches. And then in a
23 seated position, measured from the seat up to his --
24 the top of his right shoulder, which was one foot,
25 11 inches.

1 Q Well, when you talk about the seat, we're
2 talking about the cushion part, the plastic part
3 underneath? Where was the start of the measurement?

4 A Well, this was not measured in a theater
5 seat. This was with him seating on a chair at his
6 residence, a wooden kitchen chair. All I'm trying to
7 do is get the measurement from the bottom of his body
8 in a seated position, up to the top of his shoulder in
9 a normal upright fully erect seating position.

10 Q All right. Basically from his buttocks to
11 the top of his shoulder?

12 A That's right.

13 Q Regardless of what kind of chair he's in.

14 A Right. 'Cause I'm measuring, not including
15 any -- on a wooden chair so there was no compression of
16 the chair to interfere with that.

17 Q What was that measurement?

18 A One foot, 11 inches.

19 Q Okay. What other measurements did you take?

20 A That's the measurements. That's all of them.

21 Q How did you determine the eye level of
22 Mr. Reeves in a seated position, relative to any
23 furniture that he may be in?

24 A Well, all I would be able to know in any
25 measurement of him is what's his maximum eye level. I

1 didn't know exactly what his eye level was at the time,
2 you know, because obviously, me sitting up here right
3 now, fully erect in this seat, my eye level's different
4 than if I'm leaned back relaxed in a chair. It drops
5 considerably.

6 Q That's why I'm trying to figure out is when
7 you took the photograph of Frame No. 1, Depo Exhibit
8 No. 25, you placed the lens at a particular height
9 above the floor. How did you make a determination that
10 that was Mr. Reeves' level at the time that -- we
11 haven't gotten to when this represents but at any time?

12 A Well, I don't have any way of knowing exactly
13 what his eye level was at any point given. In fact,
14 his eye level changes throughout the course of the
15 event. I mean, there are times when his head is
16 visible above the chair. There are times when it is
17 not. So there's no way to really bring that to a
18 particular eye level and say it's this level to the
19 exclusion of anything else.

20 .What I did is use me in a seated upright
21 position at my eye level. I'm a little shorter than he
22 is so that would probably -- would be something below
23 what his fully upright eye level would be and something
24 probably above what his leaning back eye level would
25 be.

1 Q Did you -- when you took the picture, did you
2 measure, as far as the center of your lens down to the
3 floor, as to what the height was at the time Frame
4 No. 1, Depo Exhibit No. 25, was taken?

5 A I don't remember measuring that. I gauged it
6 from my height in a seated, upright position. I wasn't
7 slouching or anything in the seat. I was in a fully
8 seated position just like this.

9 Q When you took the measurements that we've
10 been discussing that you did in January, you did some
11 bracket values. Did you do any such bracket valuing,
12 Frames 1 through 13, represented by Depo Exhibit
13 No. 5 -- 25, as far as different levels that you held
14 your camera to try to do a boundary -- bracket value
15 boundary? No, that's not it?

16 A Boundary value.

17 MR. MARTIN: I thought of it and still
18 screwed it up. I even took time.

19 MR. ESCOBAR: It just didn't come out.

20 BY MR. MARTIN:

21 Q All right. Start over. We discussed earlier
22 in the taking of the measurements that you bracketed
23 your measurements so that you could give a range of
24 when certain things could take place. So my question
25 to you is in July of 2015, when you were holding the

1 camera and taking the pictures of the mannequins,
2 represented by Frames 1 through 13, did you do the same
3 or similar process, where you held the camera at
4 different levels from that same position to give us a
5 boundary, if you will, a range of where Mr. Reeves'
6 level could be?

7 A No, no.

8 Q Is that something you normally do or never
9 thought of doing or doesn't matter?

10 A No. I considered that obviously because what
11 I actually did is I look at, as I would do in any case,
12 what is the affect. So I can take the camera before I
13 start taking photographs, looking through viewfinder
14 and seeing what's the effect of the photograph? Is
15 there any substantial change occurring within the frame
16 of the photograph if I move the camera down lower, if I
17 move it up higher? What I found is that there's
18 basically insignificant change in terms of what you
19 would see and the vantage point, and so I shot it from
20 my fully upright eye level. I actually had the camera
21 on a tripod directly in front of me, and I shot it from
22 that level. So basically it would be the mid point
23 between what I consider to be the boundary values for
24 his eye level.

25 Q Now, you were seated in the seat.

1 A Yes, sir.

2 Q The camera was on a tripod on the floor in
3 front of you.

4 A Right. I had to position legs where I didn't
5 have it -- like, fully open tripod. I had to basically
6 open it and lean back so that the camera was right here
7 in front of me.

8 Q What do you mean, leaned back?

9 A Well, if I were to sit in the seat right here
10 and set up a tripod, the camera would obviously be way
11 out here. What I needed is the camera to be back here
12 at my eye 'cause I want the film plane to be as close
13 to -- or sensor plane to be as close to my eye as
14 possible. So what I did is set the tripod up so that
15 the camera was leaned back, and the camera was directly
16 in front of my eye.

17 Q And how did you determine where to place the
18 mannequin representing Mr. Oulson? You had to stick
19 him in space and time three-dimensionally somehow.
20 What were the facts that you used to put him in a
21 particular position?

22 A Well, in relation to Exhibit 25 and the
23 series of photographs that are depicted in that
24 position, he is in a standing position in front of the
25 seat, just fully standing upright with the seat back

1 lifted up. And we positioned the mannequin so the top
2 of its head would be at the top of his height, which
3 was six feet, four inches is what was documented in the
4 autopsy. So that's the positioning for that.

5 And then as the series of photographs
6 progress, then I moved him to different locations to
7 show different possibilities.

8 Q We'll go over those. But representative of
9 the photographs, Frames 1 through 13, for static, we
10 just have the different backgrounds.

11 A That's right. What I did is he's positioned
12 there, and then I actually waited as the trailer went
13 through and as the background would change. Bright
14 background, I snapped a picture. Background changes
15 and then you go through that series. So you can see
16 there's probably a half dozen or so in that position
17 but with different backgrounds.

18 Q Okay. When you placed the mannequin in its
19 position, the seat back on the row below Mr. Reeves
20 where Mr. Oulson was seated you indicated was up? Is
21 that what you said?

22 A Yes, the seat back and seat bottom.

23 Q I meant the seat bottom is up.

24 A Yes.

25 Q Then you place the mannequin flush against

1 the seat?

2 A Yes, yes, basically as if he had just stood
3 up from his seat and was standing in that position.

4 Q Okay. At what point in time is Frames 1
5 through 13 supposed to represent?

6 A It doesn't represent any specific point in
7 time in the -- because we don't know from the video any
8 specific location or stance or body positioning of
9 Mr. Oulson other than the couple of times that his arm
10 reaches into the frame. What I'm doing here is just
11 took a number of different possibilities and presented
12 those to be able to give, again, a sense to the
13 viewers, to the jury, the Court or whoever may be
14 considering it, what the lighting conditions would
15 appear to be to Mr. Reeves at the time.

16 Q And regarding Depo Exhibit No. 25, Frames --
17 Frame 1 -- which we have marked as exhibit, being
18 representative of Frames 1 through 13, based on the
19 procedure that you followed in producing those
20 photographs, how it is they are a fair and accurate
21 representation of what Mr. Reeves observed at some
22 unknown time in the theater while he was seated in his
23 seat? I assume it would have to be a time when
24 Mr. Oulson is standing since you put the mannequin in
25 the standing position, which is a very limited time

1 period.

2 MR. ESCOBAR: I'm going to object to
3 that last assumption because Mr. Martin does
4 not know what that time period is.

5 BY MR. MARTIN:

6 Q Well, let start over. Mr. Knox, is there any
7 other time, any time, other than one time, that
8 Mr. Oulson stood up? Based on witness testimony,
9 anybody, video, anything, how many times did Mr. Oulson
10 stand up?

11 MR. ESCOBAR: I'm going to object. I
12 don't believe this witness can answer that
13 particular question. And you can't assume it
14 either.

15 BY MR. MARTIN:

16 Q Based on all the witness testimony, all the
17 depositions, all the police reports --

18 MR. ESCOBAR: He doesn't have all the
19 witness testimony.

20 BY MR. MARTIN:

21 Q Based on what you know of this particular
22 case, how many times did Mr. Oulson stand up?

23 A Well, I don't have any way of knowing,
24 outside of what the testimony is, which is incomplete.
25 Nobody's testimony is that he stood up at this time and

1 then got shot at this time and nothing else occurred in
2 between. But obviously, when the beginning of this
3 altercation took place, he stood up.

4 Q Who stood up?

5 A Mr. Oulson.

6 Q At what point in the altercation?

7 A Shortly after Mr. Reeves returned from
8 speaking to management, but exactly when, I don't
9 really know because it's not depicted in the video. I
10 mean, if you base it on the video, the only thing you
11 know is the two times that Mr. Oulson's arm appearing
12 within the frame. From that, I can't really discern
13 much other than that his -- he's obviously reaching in
14 the direction of Mr. Reeves.

15 Q So he'd have to be standing at that point,
16 when the popcorn was tossed?

17 A Well, he could be -- he could be standing.
18 He could be leaning over his seat. He could have a
19 knee on the seat. There's a number of possibilities
20 from that. I don't have any way of discerning that.

21 Q Well, that's what I'm trying to figure out is
22 exactly what you're trying to document in Frame No. 1
23 through 13, Depo Exhibit No. 25. You have the
24 mannequin standing. You indicated how you positioned
25 it standing, standing close with the seat -- with his

1 seat back up, and you pressed it all the way forward.
2 Now, there's something in the facts that you've
3 determined that that's the appropriate place to put
4 this mannequin and you took pictures. At what point in
5 time did that occur?

6 A Well, you've assumed that I picked that
7 location because of the facts of the case. If it were
8 relying on the facts of the case and the evidence that
9 we have, there would be no way to really know exactly
10 what position he was in at any given point within the
11 time.

12 Q So how does Frames 1 through 13, represented
13 by Depo Exhibit No. 25, fairly and accurately represent
14 what Mr. Reeves saw at any point since you don't know?

15 A Well, I don't -- you have to understand, what
16 I'm doing here is a simulation, not a representation of
17 what he saw. This is -- this is a representation of
18 what the lighting conditions are like under those
19 circumstances when you have a person that's standing or
20 in the various different positions that I had the
21 mannequins in. It's not intended to be this is what
22 Mr. Reeves saw. There's no way to duplicate that.

23 But this is what it looks like if a person is
24 standing here in this position, while you have various
25 scenes playing on the screen, and you have the house

1 lights set at the level that they were set. That's
2 what I'm representing is various possibilities and
3 various different configurations to give a sense of
4 what that lighting is like as far as what a person can
5 see. Because other than that, not being in the movie
6 theater, nobody that's reviewing this case can really
7 know or get any sense of what it would be like -- what
8 Mr. Reeves would see, apart from testimony which is
9 very difficult to describe in words to people what this
10 would look like.

11 Q Well, that's why I was asking the question
12 because you just said this is what Mr. Reeves would
13 see.

14 A Well, no. It's not what Mr. Reeves would see
15 as far as -- this is not Chad Oulson. This is not the
16 exact time, distance. You know, we don't have that
17 information. But this is a representation of what it
18 looks like if you have a person standing, who is
19 basically the size and shape of Chad Oulson, who's
20 standing in this location. You have the movie --
21 something playing, a trailer playing, on the screen,
22 and you have the house lights set at the setting that
23 they are. This is what the lighting conditions appear
24 like to a person who is sitting in that seat.

25 It is not meant to represent every detail

1 of -- accurately of what actually took place. It is
2 meant to give a sense of what that lighting looks like
3 to a person in this position.

4 (The item last above referred to was marked
5 for identification as State's Exhibit No. 26.)

6 BY MR. MARTIN:

7 Q Let me show you Depo Exhibit No. 26, Frame
8 No. 14, representing a series of photographs, Frames 14
9 through 23. The reason I grouped them together is
10 because in all those photographs, there is a red line,
11 which I believe is indicative of your interpretation of
12 the path of the bullet or trajectory. You see that in
13 the photograph?

14 A Yes.

15 Q Okay. So I guess we're going to have to
16 tackle two areas because when we were talking about
17 Depo Exhibit No. 25, you indicated that you took
18 photographs with the trailer being looped in the back
19 at different distances, right?

20 A That's right.

21 Q All right. So Depo Exhibit No. 26, Frame
22 No. 14, the distance between the lens and the mannequin
23 is either through adjustment of the lens itself or
24 physically moving the camera. It appears to be
25 different. Can you explain to me what you're trying to

1 depict as far as not the trajectory but just the
2 mannequin and the trailer that's being looped in the
3 background? What are you attempting to depict?

4 A Well, this depiction here is repositioning --
5 basically positioning him in an alignment with the
6 chest trajectory. I think there are some other ones in
7 here where we actually have the hand up and --

8 Q And we're going to get to those. What I'm
9 concerned with is does this group of photographs,
10 Frames 14 through 23, serve a purpose other than the
11 trajectory? Because you indicated when we were
12 discussing Frames 1 through 13 that you actually took
13 pictures closer. And this appears to be closer. I'm
14 just trying to determine if these series of photographs
15 have a multiple use.

16 A I -- I don't think this series actually is
17 closer. It is -- the camera has been tilted down a
18 little bit.

19 Q All right. So what are we attempting?

20 A Instead of looking -- instead of centering on
21 here, what I've I done in Exhibit 25 and the associated
22 photographs with that one is positioning frame so that
23 it's as if you're looking at his head. Mr. Oulson's
24 head or the mannequin's head would be within the frame.

25 What I've done here would be if you shifted

1 your eye. So in Exhibit 26, if you shifted you're
2 towards looking at the chest.

3 Q All right. Again, you took a series of
4 photographs with different screen backgrounds at that
5 same angle. What were you trying to document with that
6 series of photographs, 14 through 23, when we have the
7 red trajectory? Is that a laser?

8 A No. I think we did this with just a string
9 on this.

10 Q String?

11 A Yeah.

12 Q So what were you trying to document with this
13 series of photographs?

14 A This is just the same type of view but
15 showing if you moved your ey level down to looking at
16 the body. The key is with this and with several of the
17 other configurations is that as you're moving and
18 looking at different portions of the body, obviously
19 the amount of background lighting changes. Because if
20 you're looking at the torso as opposed to the head,
21 you're seeing more of the body, less of the background.

22 So that's what I'm doing is just taking
23 several different series of photographs from different
24 positionings to demonstrate what's the net effect of
25 changing eye positioning and then several that show

1 changing in position of the mannequin.

2 Q And how did taking the series of
3 photographs -- I'm going to lump them together -- Depo
4 Exhibit No. 25 and 26, Range 1 through 23, when you're
5 just changing your focal point of where you're looking
6 with the background? How did that aid in your
7 investigation as far as reconstructing of this crime?
8 What does that -- what does that go to? I'm trying to
9 figure out how you use that information.

10 A Well, what this is doing is providing some
11 representation of what that lighting would be like.

12 Q And how is that relevant to the shooting
13 reconstruction?

14 A Well, because part of reconstruction is to be
15 able to determine what Mr. Reeves would be able to see.
16 I mean, we do that all the time in officer-involved
17 shootings. You know, where a police officer on duty
18 shoots somebody, it becomes big issue as far as
19 perception. There are police-involved shootings all
20 the time where a person pulls out a fake gun or they
21 pull out a cell phone or they pull out some other
22 object, a wallet, and the police end up shooting them,
23 mistaking that object to be something different,
24 thinking it's a weapon.

25 So you document and in this similar fashion

1 to be able to show what was the officer's perspective
2 because the issue isn't whether or not it was a wallet
3 or an innocuous object or an actual weapon. The issue
4 is what did the person firing perceive it to be, and
5 how do they perceive the situation.

6 So part of reconstructing it is to be able to
7 show and demonstrate to the best of our ability what --
8 what Mr. Reeves would be able to see and perceive in
9 this situation.

10 Q I'll ask you the same question I did with
11 Depo Exhibit No. 25 with Depo Exhibit No. 26, the
12 taking of the series of photographs, Frames 14 through
13 23. Explain to me how those photographs fairly and
14 accurately then represent what Mr. Reeves saw. That's
15 what you just said was important.

16 A Well, again, with this representation --
17 which frames did you say?

18 Q Frames 14 through 23.

19 A This is giving another representation of --
20 this is -- basically the same positioning of the
21 mannequin as the first 13 frames but with the eye
22 looking downward.

23 Q All right. So --

24 A I'm giving a different possibility of what
25 could occur.

1 Q I appreciate that. My question was, explain
2 to me how that is a fair and accurate representation of
3 what Mr. Reeves saw.

4 A Because this is a fair and accurate
5 representation of what the lighting conditions would
6 appear to be, the silhouetting of a human figure and
7 things like that. It is not a representation of what
8 he actually saw. But it is a representation of what it
9 looks like when you have a human figure in this
10 location, in this theater, with this lighting.

11 Q And what was the purpose of the red string,
12 Frames 14 through 23?

13 A Well, a lot of that was for setup because we
14 wanted it to use for positioning so that we could get
15 proper alignment where Mr. Oulson's body would be when
16 the shot was fired. This is not a representation that
17 that's his positioning at the time that the shot is
18 fired because clearly, he had his hand up and things
19 like this. But what we had put the string on there to
20 be able to help with our alignment and make sure that
21 the positioning fit with the physical evidence.

22 Q Are you then suggesting that Frames 14
23 through 23, represented by Depo Exhibit No. 26, is what
24 Mr. Reeves saw at the time that the gun was fired?

25 A No.