

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, STATE OF FLORIDA
CRIMINAL FELONY DIVISION

STATE OF FLORIDA,
Plaintiff,

Case No.: CRC-1400216FAES

v.

Division: 1

CURTIS J. REEVES,
Defendant.

**DEFENDANT’S RESPONSE TO STATE’S *DAUBERT* MOTION TO
EXCLUDE THE TESTIMONY OF DEFENSE EXPERT DR. PHILIP
HAYDEN, PH.D.**

COMES NOW, the Defendant, CURTIS J. REEVES, by and through his undersigned counsel, submits the following response to State’s *Daubert* Motion to Exclude the Testimony of Defense Expert Dr. Philip Hayden, Ph.D., (“State’s Motion”) and as good cause would show:

Dr. Hayden’s testimony is relevant, reliable, sufficiently tied to the facts of the case, and helpful to the jury and is therefore admissible. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Dr. Hayden’s testimony is critical for the jury, in its duty to weigh the evidence, in order to understand the circumstances that led the Defendant to invoke his statutory right to self-defense and apply the justifiable use of deadly force to avoid the imminent threat of great bodily harm or death that was perpetrated upon him. Dr. Hayden’s testimony is crucial to

the Defendant's case and his Constitutional right to a receive a fair trial. U.S. Const. Amend. VI., Fla. Const. Art. 1 Sect. 22.

JUSTIFIABLE USE OF DEADLY FORCE—EXPERT TESTIMONY

In the United States, it is universally understood that all persons have the right to protect themselves against an imminent threat of great bodily harm or death. In Florida, this right is codified in Florida Statutes §776.012(2) and §782.02.

Fla. Stat. 776.012(2)

Use or threatened use of force in defense of person—A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be. (emphasis added)

Fla. Stat. 782.02

Justifiable use of deadly force—The use of deadly force is justifiable when a person is resisting any attempt to murder such person or to commit any felony upon him or her or upon or in any dwelling house in which such person shall be. (emphasis added)

The use of force statutes clearly authorizes a person to use deadly force to prevent imminent death or great bodily harm from ever happening. The Florida Legislature did not intend that a person wait to be harmed before acting in his or her own defense. Specifically, the clear language of Fla. Stat. 782.02 legally authorizes

a person to use deadly force in order to prevent any felony from being perpetrated against him or her.

Several factors are taken into consideration when analyzing whether a person has acted reasonably in his or her belief that deadly force was necessary. Courts will look at who was the initial aggressor, *See Craven v. State*, 285 So.3d 365 (Fla. 1st DCA 2019), *see also D.M.L. v. State*, 773 So.2d 1216 (Fla. 3d DCA 2000) (distinguished on other grounds by *K.S.H. v. State*, 56 So.3d 122 (Fla. 3d DCA 2011)), whether there were overt acts which reasonably indicated a need for a defendant to take action, *see Wilson v. State*, 971 So.2d 963 (Fla. 4th DCA 2008) and state of mind of the defendant. *Robbins v. State*, 891 So.2d 1102,1108 (Fla. 5th DCA 2004) (reversible error for due process denial of expert witness to opine on defendant's state of mind; "perception and state of mind at the time he shot the victim are the foundation of his theory of self-defense") (distinguished on other grounds by *Diaz v. State*, 958 So.2d 377 (Fla. 3d DCA 2007)).

For the jury to determine the reasonableness element of the Defendant's use of force to prevent the commission of a felony upon his person, the jury must understand what was reasonable to a person "*situated as [the Defendant] was and knowing what he knew.*" *See Toledo v. State*, 452 So.2d 661, 662-63 (Fla. 3d DCA 1984) *quoting People v. Moody*, 62 Cal.App.2d 18 (1943). Dr. Hayden will explain that as a trained law enforcement officer, the Defendant was extensively trained in

the cues of predictability and indicators of threat of harm or death. It is unjust and contrary to law for the jury to disregard or not have information that the Defendant was trained in the use of force. To not allow expert testimony regarding Defendant's training as it goes to his state of mind when assessing a threat would be patently unfair and a denial of Due Process. *See Robbins* 891 So.2d at 1104.

Expert testimony is routinely employed in the legal system where a determination turns on understanding an issue or fact outside the realm of understanding of the average juror. As the State pointed out, the Federal Rules of Evidence and interpretations provide persuasive authority for interpreting the counterpart provisions of the Florida Evidence Code. See State's Motion at 26. *Citing Sikes v. Seaboard Coast Line R. Co.*, 429 So.2d 1216, 1221 (Fla. 1st DCA 1983).

Federal courts have upheld expert testimony on the use of force. The Eleventh Circuit Court of Appeals held no error of expert testimony that included the witness's opinion that a person in a hypothetical question reacted reasonably and in line with the prevailing standards of law enforcement. *See Samples v. U.S.*, 916 F.2d 1548, 1551 (11th Cir. 1990) The Fourth Circuit Court of Appeals ruled it was abuse of discretion not to allow expert testimony in a use of force case and stated that the proper determination is whether the testimony will assist the jury:

“The facts of every case will determine whether expert testimony would assist the jury. Where force is reduced to its most primitive form—the

bare hands—expert testimony might not be helpful. Add handcuffs, a gun, a slapjack, mace, or some other tool, and the jury may start to ask itself: what is mace? **what is an officer's training on using a gun?** how much damage can a slapjack do? Answering these questions may often be assisted by expert testimony." (emphasis added)

Kopf v. Skyrms, 993 F.2d 374, 378-79 (4th Cir. 1993).

In an excessive use of force case, the United States District Court for the Northern District of Illinois answered the “more difficult question [of] whether the defense experts in this case ought to be allowed to testify that a defendant acted ‘reasonably’ and ‘appropriately’”. *Richman v. Sheahan*, 415 F.Supp. 2d 929, 946 (N.D. Ill. 2006). In determining that the expert’s opinions that “the defendant’s ‘used only that force that was reasonably necessary’” the court held that “his opinion on this ultimate issue is precisely the kind that Rule 704 allows. The opinion that the defendants used reasonable force is not, under the circumstances of this case, an impermissible legal conclusion.” *Id.* at 949. The United States District Court for the Western District of Missouri, similarly held that expert testimony on “unreasonableness” and the conclusion that the action in question was “excessive force” was acceptable and “[did] not constitute an impermissible legal conclusion” and the court denied a motion to strike the testimony. *Cothran v. Russell*, No. 2:17-cv-04012, 2019 WL 913119 (W.D. MO. Feb. 25, 2019).

The United States Court of Appeals for the Seventh Circuit held that the district court did not abuse its discretion in admitting what the appellant called “an

opinion on the ultimate issue of reasonable force.” *Cacciola v. McFall*, 561 Fed. Appx. 535 (7th Cir. 2014). “[Appellant] is incorrect. First, ‘[a]n opinion is not objectionable just because it embraces an ultimate issue’ to be decided by the jury. Fed. R. Evid. 704(a)” *Id.* at 538.

Testimony as to the use of force has been upheld on appeal in Florida courts as well. In a second-degree murder case, the Fourth District Court held that testimony from a law enforcement officer was admissible where the witness's testimony specifically regarded his use of force investigation and reasonableness of the amount of force used. *Fuentes v. State*, 613 So.2d 481 (Fla. 4th DCA 1992) ("The investigating officer's testimony, however, was limited to his investigation and to the reasonableness of the amount of force used during the arrest."). In another case of second-degree murder, the Fifth District Court of Appeal reversed and remanded for a new trial where a defendant was denied an expert to determine his state of mind at the time of the offense, stating that “perception and state of mind at the time [the defendant] shot the victim are the foundation of his theory of self-defense.” *Robbins*, 891 So.2d at 1108. (“[Defendant] never denied that he shot the victim; his entire defense was that he did so out of necessity in order to preserve his own life or to prevent great bodily harm to himself”).

The average juror is unfamiliar with the cues and predictability indicators employed in law enforcement use-of-force training nationwide. It is imperative that

the jury hear Dr. Hayden's testimony to understand the Defendant's state of mind and thereby properly assess the reasonableness of his actions in order for the Defendant to receive a fair trial.

EVENTS OF JANUARY 13, 2014

The Defendant, Curtis Reeves aged seventy-one (71), and his wife, Vivian Reeves aged sixty-seven (67), decided to see a mid-day matinee movie on January 13, 2014. They went to the Cobb Grove 16 cineplex in Wesley Chapel, Pasco County, Florida with the intention of meeting their son, Matthew Reeves. The family had planned to see the film *Lone Survivor*. Mr. Reeves purchased tickets for his wife and himself and the couple then proceeded to the snack counter where Mr. Reeves purchased a bag of popcorn and a beverage.

Mr. and Mrs. Reeves arrived before Matthew. After purchasing snacks and a stop at the restroom, the couple then proceeded to Theater 10. Looking for an unoccupied area that could accommodate the family of three, the couple decided on the last row of the bottom section of the theater. Behind this last row is a wall that serves as the base for the next tier of seats. The couple sat in the middle of this last row, Mr. Reeves seated on the left and Mrs. Reeves at his right. Mr. Reeves quickly sent out a text message to the couple's son to let him know where they were located inside Theater 10.

In the row directly in front of Mr. and Mrs. Reeves sat Chad Oulson and his wife Nicole Oulson. Mr. Oulson was forty-three years old (43), six foot four inches (6'4") tall and weighed over two hundred pounds. Mr. Oulson was much younger than the then seventy-one-year-old (71) Mr. Reeves and was also much taller than Mr. Reeves.

The Oulsons were strangers to Mr. and Mrs. Reeves. They had never met nor spoken before January 13, 2014. Mr. Oulson was in the seat directly in front of Mrs. Reeves and Mrs. Oulson was directly in front of Mr. Reeves.

After Mr. and Mrs. Reeves sat down and Mr. Reeves had texted his son and put his phone away, the lights were dimmed, causing the interior of the theater to become dark. The announcement asking patrons to refrain from using their electronic devices was clearly displayed on the theater screen. Signs asking patrons not to use their phones during the movie were also prominently displayed throughout the theater lobby.

While Mr. Reeves watched the previews, he noticed a light shining in his face. That light was emanating from Mr. Oulson's cell phone. Mr. Reeves then politely asked Mr. Oulson to put his phone away. Mr. Oulson's response to this reasonable request was to begin hurling obscenities at the elderly Mr. Reeves.

Mr. Reeves decided he would inform a theater employee about the aggressive theater patron's furious and erratic response to the request to put away his phone.

Mr. Reeves stood, handed his popcorn to his wife, and proceeded down the row, through the aisle, and exited the theater. Once he reached the service desk, Mr. Reeves patiently waited while another theater patron finished speaking to the attending theater employee. When they were finished speaking, Mr. Reeves calmly and respectfully relayed to the employee the events that had just transpired: the man seated in front of him had loudly berated him with obscenities for his simple request to put his phone away. Mr. Reeves displayed no signs of irritability or anger while speaking to the employee. After informing the employee about the irrationally irate and belligerent patron, Mr. Reeves walked back toward Theater 10. As he walked down the row of the theater, he had to place his hands on the theater chair backs to steady himself and maintain his balance. Mr. Reeves was respectful and polite to the other seated patrons as he passed in front of them.

When he reached the last row, Mr. Reeves could no longer see a light coming from Mr. Oulson's phone. Mr. Reeves took his seat, retrieved his popcorn from his wife, and settling in to watch the film. Immediately after Mr. Reeves returned, Mr. Oulson stood and turned around to face Mr. Reeves. Mr. Oulson loomed over Mr. Reeves and again screamed a barrage of obscenities, including threats to harm the elderly Mr. Reeves. Mr. Oulson had assumed an aggressive posture as the six-foot four-inch-tall (6'4") man leaned over the back of his seat as he aggressively came toward Mr. Reeves. Mr. Reeves remained in his seat and as such had to look up at

Mr. Oulson. Mr. Reeves leaned back in his seat in an effort to distance himself from Mr. Oulson who was screaming in his face.

Mr. Oulson then escalated his already irrational behavior into a violent attack. Mr. Reeves saw the blur of light and immediately felt a blunt object forcefully hit his face. Mr. Reeves was unsure if he was hit in the face with Mr. Oulson's phone or with his fist. Mr. Reeves's glasses were knocked to one side of his face. The elderly Mr. Reeves was instantly stunned by the impact and experienced sharp pain from the blow. Mr. Reeves was instantaneously filled with intense fear at Mr. Oulson's savage and irrational assault. In an attempt to protect himself and distance himself from the threat of further injury, Mr. Reeves pushed himself back in his seat with his arms and his feet as Mr. Oulson continued his barrage of obscenities and threats.

During this time, movie trailers were playing loudly in surround sound. The Defendant's investigation determined that movie trailers for the films *Sabotage* and *Robocop* were aired during this time. *Sabotage* is rated "R" by the Motion Picture Association for, among other things, "strong bloody violence". www.imdb.com/title/tt1742334. A New York Times movie review of *Sabotage* was titled, "Carnage and Chaos, Heavy on the Gore." Manohla Dargis, The New York Times, Carnage and Chaos, Heavy on the Gore, March 27, 2014, <https://www.nytimes.com/2014/03/28/movies/arnold-schwarzenegger-is-back-in->

sabotage.html. *Robocop* earned a “PG-13” rating for, among other things, "intense sequences of action including frenetic gun violence throughout." Filmratings.com, <https://www.filmratings.com/Search?filmTitle=robocop&x=0&y=0> (last visited August 25, 2020). Mr. Oulson's tirade of obscenities and threats could be heard by theater patrons over these movie trailers.

The theater was dark with the only light coming from the movie screen. Mr. Reeves had no way to retreat as there was a retainer style wall directly behind his seat and to get up would necessarily mean coming closer to his attacker.

Mr. Reeves could not and did not understand why the taller, younger Mr. Oulson was verbally and physically attacking him in an explosive manner. Mr. Reeves, who was seventy-one at the time, had attended movie theater shows since his youth in the 1940's and had never encountered someone who acted so erratically and violently towards anyone in what is typically a peaceful setting. Mr. Oulson was out of control. This experience was terrifying and nonsensical that a complete stranger would attack an elderly man both verbally and physically over the request to put away a phone.

Over the next few seconds, Mr. Oulson continued his attack on Mr. Reeves, and continued to lean over his seat. Mr. Reeves could see that Mrs. Oulson was struggling to restrain her husband, to no avail, as Mr. Oulson continued to advance on the elderly Mr. Reeves. Mr. Reeves perceived Mr. Oulson's arm extend into Mr.

Reeves's space. Certain that he was about to be physically attacked again and fearing the irrationally escalating situation would result in serious bodily injury or even death, Mr. Reeves's training kicked in and he swiftly retrieved his legal firearm from his right front pants pocket. He fired a single shot.

That single shot penetrated Mr. Oulson's chest and he died instantly. Before entering Mr. Oulson's chest, however, the bullet first grazed Mr. Oulson's wrist then hit Mrs. Oulson's finger as she likely still had her hand on Mr. Oulson's chest in her attempt to hold her uncontrollable husband back. The medical examiner later concluded that Mr. Oulson's hand was in front of his thorax (chest) at the time it was grazed. The back of Mr. Oulson's hand had stippling on it, which indicated it was close to the barrel of the gun when it was fired. This is consistent with Mr. Reeves account that Mr. Oulson was reaching out towards him in what Mr. Reeves reasonably perceived as an imminent threat of great bodily harm or death in the form of Mr. Oulson's fist coming toward him.

APPLICABLE LAW

In Florida, the “[e]xclusion of witness testimony...is a **drastic remedy that should be invoked only under the most compelling circumstances.**” *Rojas v. Rodriguez*, 185 So.3d 710, 711 (Fla. 3d DCA 2016) (emphasis added) citing *Clair v. Perry*, 66 So.3d 1078, 1080 (Fla. 4th DCA 2011), *see also In re Amends. to Fla. Evidence Code*, 210 So. 3d 1231, 1242-43 (Fla. 2017) (“[a] review of the caselaw

after *Daubert* shows that the **rejection of expert testimony is the exception rather than the rule.**”) (Polston, J. concurring in part and dissenting in part) (citing Fed. Rule 702 Advisory Committee Notes, 2000 Amendments) (superseded by Rule in *In re Amendments to Florida Evidence Code*, 278 So.3d 551 (Fla. 2019)). As such, the gatekeeping function of the court “is not intended to serve as a replacement for the adversary system: ‘vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.’” *United States v. 14.38 Acres of Land, More or Less Sit. In Leflore County, Miss.*, 80 F.3d 1074, 1078 (5th Cir. 1996) (quoting *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 596 (1993)). Therefore, even in situations with questionably admissible evidence, the court is not to extend its role as gatekeeper and usurp the trial process.

In 2019, the Florida Supreme Court adopted the *Daubert* standard to govern the admissibility of expert testimony, thereby amending Florida Rules of Evidence §90.402 (testimony by experts) and §90.704 (basis of opinion testimony by experts). *In re: Amendments to the Florida Evidence Code*, 278 So.3d 551 (Fla. 2019), *see also Daubert*, 509 U.S. 579. The Court in *Daubert* overruled the use of the “generally accepted” (*Frye*) standard for admitting expert scientific testimony in a federal trial. *Daubert* at 579. The Court reasoned that the former antiquated standard was too strict and “a rigid ‘general acceptance’ requirement would be at odds with

the ‘liberal thrust’ of the Federal Rules and their ‘general approach of relaxing the traditional barriers to ‘opinion’ testimony.” *Id* at 588. The amended Florida Rules of Evidence read as follows:

Florida Rule of Evidence 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.

Florida Rule of Evidence 90.704

Basis of opinion testimony by experts—The facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, the expert at or before trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence. Facts or data that are otherwise inadmissible may not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert’s opinion substantially outweighs their prejudicial effect.

The preliminary inquiries into expert testimony begin with the witness and the subject matter. Rule “[90.702] requires the court to make two preliminary determinations: (1) whether the subject matter will assist the trier of fact in understanding the evidence or in determining a disputed fact[] and (2) whether the

witness is adequately qualified to express an opinion on the matter.” *State Farm Mut. Auto. Ins. v. Bowling*, 81 So.3d 538 (Fla. 2d DCA 2012) *quoting Chavez v. State*, 12 So.3d 199, 205 (Fla. 2009). An expert witness must be “qualified as an expert by knowledge, skill, experience, training, or education” in order to testify and if not met, the inquiry would necessarily stop there. *See Fla. R. Evid. 90.702*. A witness need not be certified in their respective field of expertise. *Anderson v. State*, 220 So. 3d 1133, 1143 (Fla. 2017). Nor is an expert required to be licensed, if applicable, in their respective field. *Vega v. State Farm Mut. Auto.*, 45 So.3d 43, 44 (Fla. 5th DCA 2010).

The Court in *Daubert* made clear that the primary objective of the court in its gatekeeping function regarding expert testimony is to ensure that admitted evidence is “not only relevant but reliable.” *Daubert*, at 589. Assisting the trier of fact in understanding the evidence or in determining a fact in issue “goes primarily to relevance.” *Id.* at 590. This concept of “helpfulness” in the relevancy inquiry includes determining that evidence is “sufficiently tied to the facts of the case.” *Id.* at 591, *quoting United States v. Downing*, 753 F.2d 1224, 1242 (3d Cir. 1985). In other words, the consideration is one of “fit” and “connection.” *Id.* at 591-92.

The inquiry into reliability necessarily “entails a preliminary assessment” of whether the reasoning or methodology behind the testimony is valid and of whether it can be properly applied to the facts in issue. *Daubert*, at 592-93. The Court gave

some general guidelines but stopped short of establishing any bright-line rules regarding this determination. *Id.* at 593. The factors, as delineated by the Fourth District Court of Appeal are as follows: 1) Whether the theory can be or 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 of a particular scientific technique, as well as the existence of standards controlling the technique's operation; 4) General acceptance in the scientific community *Kemp v. State*, 280 So.3d 81, 89 (Fla. 4th DCA 2019). The Court specifically stated that these factors are not requirements but rather "general observations." *Daubert.* at 593, *See also Kemp*, at 89. The Court also noted that the inquiry is a "flexible one" and is to be focused "solely on principles and methodology, not on the conclusions that they generate." *Id.* at 594-95.

Four years after *Daubert*, the issue of expert testimony reliability was before the Court in *Gen. Elec. Co. v. Joiner*. 522 U.S. 136 (1997). The Court, in applying an abuse of discretion standard, held that the District Court did not err in excluding the testimony of experts whose opinions regarding causation of cancer relied on animal studies that "were so dissimilar to the facts presented" to the court. *Id.* at 144. The Court further explained: "...[W]hether animal studies can ever be the foundation for an expert's opinion was not the issue. The issue was whether *these* experts' opinions were sufficiently supported by the animal studies on which they purported

to rely.” *Id.* This determination was made on the grounds that “no study demonstrated that adult mice developed cancer after being exposed to PCB’s. One of the experts admitted that no study had demonstrated that PCB’s led to cancer in any other species.” *Id.* at 144.

A little over a year later, *Daubert* and its application were again before the Court. The Court held that *Daubert* applied not just to the reliability of scientific evidence, but to *all* expert testimony. *Kumho Tire Co., Ltd. V. Carmichael*, 526 U.S. 137, 147 (1999). “The language [of Rule 702] makes no relevant distinction between “scientific” knowledge and “technical” or “other specialized” knowledge. It makes clear that any such knowledge might become the subject of expert testimony.” *Id.*

MR. REEVE'S LAW ENFORCEMENT TRAINING AND KNOWLEDGE

During Mr. Reeve's twenty-seven years of service with the Tampa Police Department, he learned of and became fluent with the principles of officer safety and survival and the use of force. He was first introduced to these principles and protocols in the 1960's, when he attended the police academy. While there, he received hundreds of hours of instruction and hands-on training in a wide range of topics including threat assessment, officer safety and survival, and the use of force. Later, Mr. Reeve's began pursuing and attending specialized law enforcement training exercises and seminars across the country. Many of these seminars and training programs were operated by governmental agencies such as the United States

Army, Federal Bureau of Investigation (“FBI”), and the Florida Department of Law Enforcement. He also conducted research and independently studied law enforcement-related issues. These training programs and his independent studies enabled Mr. Reeves to both improve his ability to serve as a law enforcement officer and to bring home the information and training he learned to his fellow officers at the Tampa Police Department.

Mr. Reeves was a founding member of the Tampa Police Department's tactical response team ("TRT/SWAT team"). The TRT/SWAT team focused on recognizing imminent danger and responding appropriately while implementing the use of force protocols. The Defendant attended countless hours of specialized training courses in his development of the TRT/SWAT team, many of which specifically dealt with the skills necessary to recognize imminent danger of death or serious bodily injury in the line of duty and on the use of necessary force and officer survival. The Defendant learned to recognize factors that could impact a tactical response, such as lighting and noise conditions, physical abilities, facial expressions and body language, proximity, and reaction time. He served as co-commander of the TRT/SWAT team from 1976 to the early 1980's, and then served as sole Commander until 1991. In implementing and supervising the TRT/SWAT team, the Defendant devoted himself to learning about issues relevant to tactical responses by attending specialized law

enforcement training opportunities across the country as well as pursuing self-study in related fields.

Over his career, Mr. Reeves taught a broad range of subjects, but among the most important were those pertaining to officer safety and survival. These classes and training exercises related to identifying signs of danger, proper tactical responses, and close quarters physical confrontations. The officer safety and survival courses that Mr. Reeves taught highlighted the fact that violent suspects frequently use "personal weapons" against the officers: hands, feet, their head, or other body parts. By 1976, when Mr. Reeves assumed command of the TRT/SWAT team and was teaching at the police academy, he had personally investigated hundreds of violent crimes that were committed with "personal weapons." The injuries that he personally observed included a wide range of what one human being can do to another with their hands, fists, feet and other body parts, including, broken noses, black eyes, retinal detachments, contusions, orbital fractures, groin injuries appendage fractures, internal bleeding, concussions, and even death.

From 1983 to 1993, Mr. Reeves was extremely familiar with and personally trained in the procedures of use of force that were employed by law enforcement agencies across the country. After his retirement from the Tampa Police Department, Mr. Reeves went to work at Busch Gardens Tampa Bay theme park where he was hired as the Director of Security. He employed the same principles from his law

enforcement background and continued his studies concerning safety, implementing them in the area of public relations and theme park management.

Dr. Hayden is Qualified to Testify as an Expert Witness

Dr. Hayden is qualified to testify as an expert witness in the use of force. It is the proponent's burden to elicit the background that qualifies the expert. *See GIW Southern Valve Co. v. Smith*, 471 So.2d 81, 83 (Fla. 2d DCA 1985), *see also Crump v. State*, 622 So.2d 963, 968 (Fla. 1993) (distinguished on other grounds by *Smithers v. State*, 826 So.2d 916 (Fla. 2002)).

Dr. Hayden holds the following opinions and is prepared to testify to:

- 1) The “Officer Safety/Survival” and “Use of Force” principles and protocols taught to federal, state, county, and municipal law enforcement officer attendees of the FBI Academy and the Law Enforcement Training for Safety and Survival Program (“Safety and Survival Program”) from 1983 to 1993; and
- 2) The “Officer Safety/Survival” and “Use of Force” principles and protocols were utilized and employed by law enforcement agencies throughout the United States from 1983 to 1993; and
- 3) Given the totality of the circumstances at the time of the January 13, 2014 shooting, a law enforcement officer situated in Mr. Reeves’ shoes,

knowing what he knew, would have been justified in using deadly force against Chad Oulsen.

According to Dr. Hayden's curriculum vitae, attached to this Motion as Exhibit A, he has been testifying and consulting in the field of Force Science as an expert witness since 1999. Exhibit A at pg. 1. In the past twenty years, Dr. Hayden has been qualified to testify as an expert witness in the following jurisdictions:

"I have served as a consultant and expert witness on cases with the following: United States Attorney's Office in New York City and the Western District of New York, New York; District of New Jersey; Washington D.C.; El Paso, Texas; Portland, Oregon; Alexandria, Virginia; and Eastern District of Pennsylvania; State, County and City Attorneys' Offices for the cities of Lafayette, Louisiana; Miami - Dade, & Sarasota, Florida; Wilmington, Delaware; and County Attorney's Office for Prince Georges County, Maryland; City Attorney's Office for Trumbull, Connecticut and Defense and Plaintiff Attorneys in Richmond, Virginia; Washington D.C.; Baltimore, Maryland; Las Vegas, Nevada; Denver, Colorado; Kansas City, Kansas; Pasadena, Texas; Birmingham, Alabama; and the Swedish Defense Ministry in Stockholm, Sweden."

See Exhibit A at 1.

Dr. Hayden began his law enforcement career in 1973 as a Special Agent with the FBI. For the next ten years, then-Special Agent Hayden investigated and conducted arrests in violent crime, organized crime, and foreign counterintelligence cases. He personally participated in several hundred arrests of both violent and non-violent criminals.

Both before and after becoming a Special Agent with the FBI, Dr. Hayden underwent extensive training on issues pertaining to officer safety and survival, tactical concepts for law enforcement officers, defensive tactics, and other related issues. He personally employed the principles of officer safety and survival and use of force that he testifies about.

In 1983, Dr. Hayden was both promoted to Supervisory Special Agent with the FBI and transferred to the FBI academy where he dedicated the next sixteen years to both researching and teaching the principles of officer safety and survival and use of force to other FBI agents and officers. During this time, Dr. Hayden was involved in the training of approximately 6,000 federal, state, and local law enforcement officers. As a testament of his stature, experience, and knowledge in the field of law enforcement training, Dr. Hayden was appointed to co-found and co-create the Safety and Survival program for the FBI. Although Dr. Hayden eventually retired in 1999, law enforcement officers around the country continue to enroll and participate in the FBI's Safety and Survival Program to train to protect themselves and others from violent individuals.

During his time with the FBI, Dr. Hayden was also a member of the Shooting Review Board for approximately seven years. The Board investigates every firearm discharge that an FBI agent is involved in, whether it involves shooting a person or

an accidental discharge. The Review Board analyzes the situation and generates a report giving an opinion of whether or not the shooting was justified.

At both the FBI Academy and in the FBI Safety and Survival Program, Dr. Hayden instructed law enforcement officers on the circumstances surrounding situations where force must be used in order to protect oneself and others from great bodily harm or death. He taught trainees the factors an officer must consider and take into account in assessing the danger that a suspect poses. These factors included, but were not limited to: the distance between the officer and the suspect; the perceived behavior of the suspect such as the observed commission of prior acts of violence, tone of voice, words uttered, inflection and pitch, physical gestures and body posture, indications of intoxication and/or impairment, and other non-verbal factors; physical features of the suspect, such as age, height, weight; relative physical features of the officer in comparison to the suspect; environmental conditions, such as lighting, noise level, location, and terrain, as well as other factors.

Officers in the program were warned and instructed to always be alert when a suspect is engaging in aggressive and menacing behavior and to respond accordingly. Paying attention and responding properly and promptly meant the difference between life and death for a law enforcement officer.

The FBI Academy and Safety and Survival Program attendees were also instructed that the actual commitment either to use or not use deadly force should be

based upon the totality of the officer's knowledge of the critical situation, including but not limited to, the limitation and extent of the officer's powers, the risks involved, and the existence of possible alternatives to use of force. Only if an officer can maintain his/her safety and protection should the officer pursue a non-physical response. The training curriculum made at both the FBI Academy and Safety and Survival Program made clear to all attendees, however, that officer safety was paramount. If a suspect becomes violent, the officer's response must be rapid, swift, and sufficient to disable the aggressive individual. Otherwise, the violent suspect may inflict great bodily harm or death upon the officer or another person.

In addition to Dr. Hayden's creation of the Safety and Survival Program, he served as an instructor on SWAT team programs at the FBI Academy and commanded an FBI SWAT team. He developed the curricula for the New Agent Program and later became the Program Manager, which entailed training of over 1,500 new agents on matters that involved officer survival/safety, arrest, investigations, and other topics.

Dr. Hayden: knows the procedures used by the FBI and other non-federal law enforcement agencies respecting use of force from 1983 to 1993, knows that those procedures were acceptable in the field and actually used by agencies throughout the United States, and had extensive personal experience using those procedures both as a Special Agent in the field and as a Supervisory Special Agent at the FBI Academy.

His vast knowledge and experience regarding these matters makes him qualified to opine as to when, and under what circumstances a law enforcement officer's use of deadly force is appropriate. See Fla. R. Evid. 90.702 (... “a witness qualified as an expert by knowledge, skill, experience, training, or education”) *See also Chavez*, 12 So.3d at 205-06. (“The witness must possess specialized knowledge concerning the discrete subject related to the expert opinion to be presented.”)

Dr. Hayden’s Testimony Is Relevant and Helpful to the Jury

Expert testimony is admissible under 90.702 only where the testimony will “assist the trier of fact in understanding the evidence or in determining a fact in issue.” *Bowling*, 81 So.3d at 540. *See also Boyer v. State*, 825 So.2d 418, 419 (Fla. 1st DCA 2002) (Abuse of discretion to exclude expert testimony regarding the false confession phenomenon on basis that it would not assist the jury in understanding any facts at issue). The Defendant has asserted an affirmative defense of self-defense under Florida Statute §776.012 and §782.02. Florida standard jury instruction 3.6(f) provides in part:

3.6(f) JUSTIFIABLE USE OF DEADLY FORCE

The use of deadly force is justifiable if the defendant reasonably believed that the force was necessary to prevent imminent death or great bodily harm to [himself] [herself] while resisting:

1. another’s attempt to murder [him] [her], or

2. any attempt to commit (applicable felony) upon [him] [her], or
3. any attempt to commit (applicable felony) upon or in any dwelling occupied by [him] [her].

The jury, therefore, must determine whether the Defendant's actions were reasonable considering all the circumstances. The Defendant is a veteran of Tampa Police Department with extensive training in use of force procedures and direct application of force through hands-on training. To understand whether the Defendant acted reasonably, the jury must necessarily understand what a trained law enforcement officer in the Defendant's situation would reasonably do under the circumstances. *See Graham v. Connor*, 490 U.S. 386, 396-97 (1989) ("The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation").

In *Mobley v. State*, 132 So.3d 1160, 1164-65 (Fla. 3d DCA 2014) (distinguished on other grounds by *Viera v. State*, 163 So.3d 602 (Fla. 3d DCA 2015)), the Third District Court of Appeal stated:

"An objective standard is applied to determine whether the immunity provided by these provisions attaches. *See Montanez v. State*, 24 So.3d 799, 803 (Fla. 2d DCA 2010) (confirming that in determining whether

the immunity accorded by section 776.032 attaches, “the objective, reasonable person standard by which claims of justifiable use of deadly force are measured” should be applied). That standard requires the court to determine whether, based on circumstances as they appeared to the defendant when he or she acted, **a reasonable and prudent person situated in the same circumstances and knowing what the defendant knew** would have used the same force as did the defendant. *See Toledo v. State*, 452 So.2d 661, 663 (Fla. 3d DCA 1984) (“[A] person in the exercise of his right of self-defense may use ‘only such force as a reasonable person, **situated as he was and knowing what he knew**, would have used under like circumstances.’” (quoting *People v. Moody*, 62 Cal.App.2d 18, 143 P.2d 978, 980 (1943))); *see also Chaffin v. State*, 121 So.3d 608 (Fla. 4th DCA 2013) (confirming that the standard to be applied for determining whether a person is justified in using deadly force in self-defense is not a subjective standard as to the defendant's state of mind, but an objective standard as to a reasonably prudent person's state of mind); *Price v. Gray's Guard Service, Inc.*, 298 So.2d 461, 464 (Fla. 1st DCA 1974) (“The conduct of a person acting in self-defense is measured by an objective standard, **but the standard must be applied to the facts and circumstances as they appeared at the time of the altercation to the one acting in self-defense.**”) (emphasis added).

In order for the jury to know what the defendant knew and to understand what a “person situated in the same circumstances” would have done, they absolutely must be educated on the Defendant’s background and training in threat perceptions and reaction. Without such education, the jury has no way to properly apply the reasonableness standard to the facts and circumstances as they appeared to *this Defendant* acting in self-defense. That necessarily makes Dr. Hayden’s testimony

both relevant and helpful to the jury. There is nothing in Dr. Hayden's testimony that is misleading or confusing.

The State cites several cases purportedly in support of its assertion that Dr. Hayden's testimony and opinions are based on facts that are of such a nature as not to require any special knowledge or experiences in order for the jury to form its conclusions. However, the State fails to apply the facts from those cases to this case. In *Salomon v. State*, 267 So.3d 25 (Fla. 4th DCA 2019), the court points out that "[t]he witnesses to the shooting and the events leading up to it were all civilians. Law enforcement did not become involved until after the shooting occurred." *Id.* at 28. This is important to the analysis of whether the Dr. Hayden's testimony will assist the jury as the very reason his testimony is necessary is because the Defendant was a trained law enforcement officer. In *Salomon*, the facts of the case are that it involved only civilians in a familial domestic violence situation that was not outside the common understanding of the average juror. This case, on the other hand, involves the Defendant who is a trained and experienced former law enforcement officer, and it is this very issue that separates him from the average juror and which necessitates Dr. Hayden's expert testimony.

The State also cites *Frances v. State*, 970 So.2d 806 (Fla. 2007) (distinguished on other grounds by *Scott v. State*, 66 So.3d 923 (Fla. 2011)). In *Frances*, the trial court was held not to have erred in excluding mental health expert testimony

regarding the fact that Frances had “street smarts.” *Id.* This is exactly the type of testimony that courts have indicated does not require an expert and is within the common understanding of the jury. This reasoning does not apply to facts before this court where the average juror is not aware of the extensive reactionary training received by law enforcement as directly applied to threatening situations such as that experienced by the Defendant on January 13, 2014.

In *County of Volusia v. Kemp*, 764 So.2d 770, 773-74 (Fla. 5th DCA 2000), the Fifth District Court of Appeal held, in pertinent part, in a §1983 malicious prosecution case that, "the expert was allowed to inject his own interpretation of the reports, depositions, and trial testimony of the defendants in the criminal trial and based his ultimate opinion on those findings. This testimony did not assist the jury in deciding the issues in the case because the jury was fully capable of determining for itself what the reports meant and whether there were discrepancies between the reports and between the reports and the testimony presented during the criminal trial." The jurors here will not be tasked with side by side comparison of reports and testimony from one case to the present case and thus *Kemp* does not stand for the proposition that Dr. Hayden's testimony will not assist the jury.

The State also cites to *Mills v. Redwing Carriers, Inc.*, 127 So.2d 453 (Fla. 2d DCA 1961). In *Mills*, the trial court erred in allowing an “expert” witness to testify to the point of impact where that witness was deemed not to have been qualified and

point of impact was a determination that the jury could readily determine on its own, being an occurrence that is within the common understanding of the average person. What the average juror does not know or understand without being educated is the Defendant's background as a trained law enforcement officer.

Not cited in the State's Motion but helpful to this Court to consider whether Dr. Hayden's testimony is helpful to the jury and not something that the average juror would understand is a recent ruling from the Fifth District Court of Appeal wherein the court held that expert testimony regarding human trafficking and sex work subculture was admissible in a criminal case to "assist the trier of fact". *Poole v. State*, 284 So.3d 604 (Fla. 5th DCA 2019). The court stated:

"[We] hold that expert opinion on human trafficking and the sex worker subculture can assist the trier of fact on **subjects not within an ordinary juror's understanding or experience**. See *United States v. Evans*, 272 F.3d 1069, 1094 (8th Cir. 2001) (finding no abuse of discretion in allowing an officer to present expert testimony "regarding the operation of a prostitution ring, including [the] recruitment of prostitutes and the relationship between pimps and prostitutes, and regarding jargon used in such rings"); see also *United States v. Lewis*, 762 F. App'x 786, 797 (11th Cir. 2019); *United States v. Brinson*, 772 F.3d 1314, 1319 (10th Cir. 2014); *United States v. Anderson*, 560 F.3d 275, 281–82 (5th Cir. 2009); *United States v. Taylor*, 239 F.3d 994, 998 (9th Cir. 2001).¹ **Not only are jurors generally unfamiliar with the realities of human trafficking, see *Taylor*, 239 F.3d at 998, but a juror's only exposure to this subject may be confined to brief references gleaned from popular media outlets or fictionalized accounts. See Danica Baird, Changing the Narrative: Sex Trafficking and Its Victims, 33 BYU J. Pub. L. 321, 343, 353 (2019). This only**

underscores the importance of expert testimony to aid the juror in understanding the complexities surrounding human trafficking and the sex worker subculture in today's society." (emphasis added)

Id. at 607. Jurors here will similarly not be familiar with the realities of the knowledge and survival training associated with being a former law enforcement officer. So too are juror's limited experiences confined to what they see on fictional television shows and movies, thereby "underscor[ing] the importance of expert testimony to aid the juror in understanding" the Defendant's situation. *Id.*

The State has failed to show this court how and why Dr. Hayden's testimony is not relevant, not helpful, or otherwise of a subject that is within the common experience of the average juror.

Dr. Hayden's Testimony Does Not Invade the Province of the Jury

Florida Statute 90.703 deals with opinions on the ultimate issue. It states as follows:

Florida Rule of Evidence 90.703

Opinion on Ultimate Issue —Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it includes an ultimate issue to be decided by the trier of fact.

In other words, an opinion is not inadmissible just because it includes an ultimate issue that is to be decided by the trier of fact. Florida Statute 90.703 applies to expert as well as lay witness opinion. *Fino v. Nodine*, 646 So.2d 746, 749 (Fla. 4th DCA 1994).

Inadmissible ultimate opinions are those opinions that tell the jury how to decide a case. *Id.* The jury here will be tasked with deciding the Defendant's guilt or innocence. In making that decision, the jury must make a determination as to the element of reasonableness. Dr. Hayden's testimony will assist the jury in determining the reasonableness element for this specific Defendant in these circumstances to be applied to the ultimate determination of guilt or innocence. What Dr. Hayden's testimony does not do is tell the jury how to decide the case.

"Whether the testimony of the expert is a *permissible factual conclusion* or the impermissible application of a legal standard or definition to a set of facts is sometimes a fine distinction involving a large measure of discretion in the trial judge." Ehrhardt, *Florida Evidence* (2019) at 902. It is crucial to understand this distinction. Reasonableness of the Defendant's actions is not a legal conclusion but rather an issue of fact as to be determined by the jury through the application of the specific facts of this case.

The State cites to *Mootry v. Bethune—Cookman University, Inc.*, 186 So.3d 15, 21 (Fla. 5th DCA 2016). In *Mootry*, the court determined that the expert witness was erroneously allowed to tell the jury how to decide the case by stating that the two issues to be determined should be decided adversely to the Plaintiff. *Id.* *Mootry* can be distinguished from this case in that Dr. Hayden's testimony does not tell the jury how to decide the case, i.e., guilt or innocence as that is the ultimate

determination the jury will be called upon to decide. Dr. Hayden's testimony merely assists the jury in determining one element; reasonableness. He does this by bringing necessary background information regarding indicators of imminent threat of harm or death that relates to the state of mind of this particular Defendant.

In *Fuentes v. Sandel, Inc.*, 189 So.3d 928 (Fla. 3d DCA 2016), the court held that an architect's affidavit was properly excluded wherein he stated that a party was "liable under the South Florida Building Code." *Id.* at 943-35. *See also Kayfetz v. A.M. Best Roofing, Inc.*, 832 So.2d 784 (Fla. 3d DCA 2002). As liability was the only issue to be determined, the witness's affidavit would have directly told the jury how to decide the case. *Fuentes*, at 935. That would be akin to Dr. Hayden telling the jury that Defendant was not guilty. Counsel has never elicited and Dr. Hayden has never testified as to the Defendant's guilt or innocence as it would be a legal conclusion that is exclusively for the jury to decide. Dr. Hayden's testimony is limited to educating the jury as to the type of training Defendant received in order to apply that information to the Defendant's situation. The jury is tasked with determining the reasonableness of the Defendant's actions according to *a reasonable person situated in the same circumstances and knowing what the defendant knew* and whether that person would have used the same force as the defendant did. *Toledo*, 452 So.2d at 662-63. Compare *Estate of Murray ex rel. Murray v. Delta Health Group, Inc.*, 30 So.3d 576, 578-79 (Fla. 2d DCA 2010) (In wrongful death

action against nursing home, error to permit decedent's treating physician to express opinion that defendant was negligent. "Delta could have offered Dr. Desai's opinion that the nursing home did not breach the standard of care but not his opinion that the nursing home was not negligent.") *with Government Employees Ins. Co. v. Grounds*, 311 So.2d 164 (Fla. 1st DCA 1975) (No error to admit testimony of expert attorneys regarding standard of care in bad faith suit against carrier). A reasonableness determination in light of the situation of the Defendant's unique experiences is no different than opining on breach of the standard of care in a civil suit.

This is the very distinction, contemplated inversely in *Town of Palm Beach v. Palm Beach County*, 460 So.2d 879, 882 (Fla. 1984) that is cited to in State's Motion but not analyzed. State's Motion at 39. The Florida Supreme Court in *Town of Palm Beach* stated:

“Although the expert may testify to whether certain benefits were received by the municipality, and may, within his expertise, testify to the importance of potential or unquantified benefits, he is precluded from opining whether a particular benefit is or is not “real and substantial” within the meaning of *Briley, Wild*. An illustration of this principle is found in *Gifford v. Galaxie Homes, Inc.*, 223 So.2d 108, 111 (Fla. 2d DCA 1969). In *Gifford*, an action for negligent construction, it was held proper for the duly qualified expert to respond when asked whether the premises were “constructed and maintained according to reasonably safe construction and engineering standards.” *Id. See also, Millar v. Tropical Gables Corp.*, 99 So.2d 589 (Fla. 3d DCA 1958). However, it would have been improper for the expert to assert to the trier of fact that the premises were “negligently constructed.” While this is to some degree a matter of semantics, we

find the distinction necessary. *See Ehrhardt on Evidence*, § 90.703 at 451 (West 1977). Otherwise, the trier of fact is being directed to arrive at a conclusion which it should be free to determine independently from the facts presented. We do not think that section 90.703 was intended to be so broad. *See e.g., Ehrhardt*, § 90.703; *Feldman v. Department of Transportation*, 389 So.2d 692, 694 (Fla. 4th DCA 1980).”

Town of Palm Beach, 460 So.2d at 879, 882.

"[A]n expert may lead a jury to the precipice of a verdict, but she may not instruct them to leap." *In re Methyl Tertiary Butyl Ether (MTBE) Products Liability Litigation*, 643 F. Supp 2d 482, 505 (S.D. N.Y. 2009). Dr. Hayden's testimony does just that; assists the jury in deciding the facts and elements in order to reach its ultimate conclusion.

The State also alleges that Dr. Hayden's interpretation of what he sees and does not see on the video is impermissible and cites two cases. State's Motion at 54. In *Seymour v. State*, 187 So.3d 356 (Fla. 4th DCA 2016), the court held it was error to allow lay witness testimony regarding a video recording wherein the witness speculated that the Defendant in the video was concealing a firearm under his shirt and where the jury could watch the video and make this determination. Not only does *Seymour* interpret the testimony's admissibility under Rule 90.701—Opinion testimony of lay witnesses, the witness's testimony told the jury something that could not be depicted in the video, a concealed object hidden under clothing and as such was held to be mere speculation on behalf of the witness.

Similarly, in *Lee v. Anderson*, 616 F.3d 803, 809 (8th Cir. 2010), the expert manipulated a video in order to clarify the images and opined that there was no gun in the hand of an individual. The court held that the expert testimony was not helpful to the jury as they could determine what they could see and not see in the video. Here, Dr. Hayden did not alter the video nor does his testimony interpret the video for the jury but rather narrated what could readily be seen by jurors. *See U.S. v. Torralba-Mendia*, 784 F.3d 652 (9th Cir. 2015) (Immigration and Customs Enforcement officer did not invade the province of the jury when he narrated the video) (distinguished on other grounds by *U.S. v. Sun*, 673 Fed. Appx. 729 (9th Cir. 2016)); *see also Cuzick v. Commonwealth of Kentucky*, 276 S.W.3d 260 (KY 2009) (“No error to allow officer’s lay testimony narrative testimony of video”) (distinguished on other grounds by *Rogers v. Commonwealth of Kentucky*, 315 S.W.3d 303 (KY 2010). This is an important distinction. Dr. Hayden will relay what can readily be seen in the video as the basis for his opinion. *See Fla. R. Evid. 90.704*, *see also USA v. Garcia-Zarate*, 419 F.Supp.3d 1176 (N.D. Cal. 2020) (“witnesses may narrate and describe events in a video based on their perceptions”).

Dr. Hayden’s testimony is helpful to the jury and does not impermissibly invade the province of the jury.

Dr. Hayden’s Opinions Are Reliable

The State asserts that “Dr. Hayden’s testimony and opinions are based on unreliable methodology.” State’s Motion at 4. It is Defendant’s position that the State has not sufficiently pled this claim as the State has merely made assertions that Dr. Hayden’s opinions are based upon improper methodology, cited the holdings and quoted rules from several cases, then reiterated its assertion that the opinions are not reliable. *See Booker v. Sumpter Co. Sheriff’s Office/North America Risk Services*, 166 So.3d 189 (Fla. 1st DCA 2015) (“Depending on the specific basis for the challenge, the objection should include, for instance, citation to ‘conflicting medical literature and expert testimony.’”) quoting *Tanner v. Westbrook*, 174 F.3d 542, 546 (5th Cir. 1999) (superseded in part by rule on other grounds in *Mathis v. Exxon Corp.* 302 F.3d 448, 459 n. 16 (5th Cir. 2002)). “A Daubert objection must set forth the specific defects in the expert’s opinion. **When the motion is vague and conclusory** and not accompanied by expert depositions or reports, professional articles or other materials raising a significant issue concerning the relevancy or reliability of the testimony, a hearing will not be necessary.” Ehrhardt, *Florida Evidence* (2019) at 849 (emphasis added).

The State’s Motion is insufficiently pled and fails to put the Defendant on notice in order to address alleged defects in Dr. Hayden’s testimony. *See Booker*, 166 So.3d 189. The State has failed to sufficiently plead to this Court reasons to

exclude expert testimony and has further failed to show why this most extreme measure should be applied to Dr. Hayden's expert testimony.

Not only has the State failed to properly plead the assertion that Dr. Hayden's testimony and opinions are unreliable, the State has misrepresented the caselaw to this court. Page 4 of the State's Motion involves the interpretation of *Salomon v. State*, 267 So.3d 25 (Fla. 4th DCA 2019) wherein the State says "Method not reliable" within its parenthetical breakdown of the case, implying this is the holding of the case. The *Salomon* court never discussed the methodology or reliability of the witnesses' testimony, merely restated the witness's testimony as it related to the discussion of improper bolstering. *Salomon* 267 So. 3d at 31-33. The only discussion or holding regarding the witness's testimony was that the expert testimony was improper as it "demeaned appellant's credibility concerning whether the victim may have been armed by pointing out 'no one says that except for [Appellant].'" *Id.* at 32. The State repeats the misrepresentation on pg. 34 of State's Motion where it says, "The method described by Hayden is the same method used by the experts in Salomon and the Kemp cases, which was rejected by the courts as unreliable."

The State also cites *Kemp v. State*, 280 So.3d 81 (Fla. 4th DCA 2019), as it deals with the reliability and/or methodology of an expert witness. However, the State has failed to show how this case would relate to the present case. In *Kemp*, the court determined that the expert used a method of "eyeballing the shape of the crash

damage on a vehicle to determine if the vehicle that made the impact was braking” and his “repeated invocation of the magic words ‘training and experience’ was insufficient, without more, to establish the reliability of his opinion under *Daubert*.” *Id.* at 89.

Dr. Hayden has extensive training and experience in the use of force, See Exhibit A, and relied upon extensive evidence as pointed out by the State. State’s Motion at 33. Not only did Dr. Hayden design and implement the FBI’s Safety and Survival program, he served on the FBI’s Safety Review Board, determining whether officer shootings were justified. Dr. Hayden commanded an FBI SWAT team and was also an instructor of SWAT team programs for other agents. He developed the curriculum for the New Agent Program. Dr. Hayden was actively involved as an agent employing use of force as well as an instructor of these principles to others.

The State has alleged that Dr. Hayden’s testimony is unreliable and therefore inadmissible under 90.704 which reads as follows:

Florida Rule of Evidence 90.704

Basis of Opinion Testimony by Experts—The facts or data upon which and expert bases an opinion or inference may be those perceived by, or made known to, the expert at or before that trial. If the facts or data are of a type reasonably relied upon by experts in the subject the opinion expressed, the facts or data need not be admissible in evidence. Facts or data that are otherwise inadmissible may not be disclosed to the jury by the proponent of the opinion or inference unless the court determines

that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

The State has failed to sufficiently plead the claim that Dr. Hayden's testimony and opinions are inadmissible as unreliable and based on improper methods. As such the State has failed to put the Defendant on notice and therefore this claim should be struck in its entirety.

Dr. Hayden's Opinions and Testimony Are Not Merely a
Conduit for Inadmissible Evidence

The remainder of the State's claims assert that varying statements and opinions of Dr. Hayden's are inadmissible in one regard or another. The Defendant will address these claims below.

- Comments on Credibility of Witnesses

The State asserts that Dr. Hayden improperly comments on the credibility of witnesses. In relaying the information that he did and did not rely upon in forming his opinion, Dr. Hayden stated that he did not consider the testimony of theater patrons who had not been separated from each other before giving their statements to law enforcement. For support of its contention that this is somehow improper, the State cites to *Linn v. Fossum*, 946 So.2d 1032 (Fla. 2006). In *Linn*, the expert witness improperly stated that she relied on the hearsay opinions of other experts who had no first-hand knowledge of the case in forming her opinion and thereby impermissibly bolstered her own credibility to the jury. *Id.* The expert testimony

“indicate[d] a group consensus based on hearsay that would not be conveyed by testimony that the experts relied on records, tests, or reports from the patient or other medical providers directly involved in the diagnosis or treatment of the patient.” *Id.* at 1039. The court “conclude[d] that referring to consultations with other experts creates a danger of bolstering the credibility of the testifying expert’s opinion without providing the opposing party the ability to effectively cross-examine the expert as to the basis for the opinion.” *Id.*

Here, the theater patrons, assuming they are called by the State in its case in chief, will be cross examined on the fact that their statements were contaminated by conversing with each and not being separated from each other before speaking to law enforcement. Several of the theater patrons readily admitted speaking to each other and indicated that there were large groups that had formed where people were talking about the events. This was before they gave their statements to law enforcement. It is imperative in any investigation to separate witnesses so that you get their actual perception of events without filling in any gaps in their recollection. According to Dr. Hayden, “people have a tendency to want to fill blanks, and when they hear what other people have to say, they have a tendency to put that in their statement, thinking that that’s what they did see or hear.” (Immunity Hr’g Vol. XIV 1675:8-11.) (Tr. attached hereto as Exhibit C.) This information will already have been elicited and before the jury for its consideration as to the weight of the evidence.

As this information will be in evidence, the jury will then have to decide whether they agree with Dr. Hayden's decision not to rely on their testimony in forming his opinion, which goes to the weight and not the admissibility of the testimony.

The State also cites to *Geissler v. State*, 90 So.3d 941 (Fla. 2d DCA 2012) wherein a State witness in a child sexual abuse case erroneously testified that a child was testifying truthfully in the absence of physical proof based upon the child victim's statements alone. *Geisler* was distinguished by *Scott v. State*, 218 So.3d 476 (Fla. 3d DCA 2017), a factually similar case to *Geissler* involving a child protection service counselor recommendation that the child receive therapy. *Scott* 218 So.3d at 479. The court said, "this statement did not leave the jury with the clear impression that [the witness] believed that [the victim] was telling the truth. The facts in this case substantially differ from the facts in *Ramayo* and *Geissler*, where the expert witnesses expressly stated that they believed that the victim had been abused based on nothing more than the victim's own statements. Just as in *Scott*, Dr. Hayden's testimony does not tell the jury his opinion of the witness's truthfulness or lack thereof. Dr. Hayden's testimony involves the improper investigation by law enforcement in not separating witnesses, merely tells the jury why he chose not to consider that evidence in rendering his opinion, facts that will already have been elicited and in evidence.

- Self-Serving Statements

The State claims that Dr. Hayden's testimony and opinions are based only on the Defendant's self-serving statements. For support of this claim, the State cites to *Mitchell v. State*, 965 So.2d 246 (Fla. 4th DCA 2007) where a defendant wanted to enter the report of a mental health expert who had examined him for competency and merely restated the defendant's version of the events for no other purpose than to bolster the defendant's self-defense claim. In context, Dr. Hayden's statements regarding the Defendant's statements were made to establish part of the information he used to make his ultimate opinions. Experts are allowed to base their opinions on the "general acceptance of the defendant's version of the [events]...It is precisely because experts are prohibited from resolving these conflicts-the very rule contended for the plaintiff-that the expert's opinions necessarily must be based on someone's version of the incident." *Richman*, 415 F.Supp.2d at 942.

- Prior Consistent Statements

The rule pertaining to prior consistent statements, 90.614, involves the statements made by the witness. The State's claim appears to revolve around the defendant's statements and not those of Dr. Hayden. The cases cited by the State involve the same, prior consistent statements of the declaring witness. Dr. Hayden's statements relating to the Defendant's statements are merely an explanation of the evidence he relied upon to form his opinion that will undoubtedly already be in evidence.

Conclusion

The State has asked this court to exclude the testimony of defense expert Dr. Hayden in its entirety. The State also seeks an order from this court instructing counsel for the Defendant not to refer to any of the facts mentioned in State's Motion without first obtaining this court's permission. The State has failed to show why the court should take these drastic measures. As shown by this response, Dr. Hayden's expert testimony is relevant, reliable, assists the trier of fact and is not otherwise inadmissible and as such the State's Motion should be denied.

WHEREFORE, the defense respectfully requests this court to deny the State's *Daubert* Motion to Exclude the Testimony of Defense Expert Dr. Philip Hayden, Ph.D. in its entirety.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of this has been furnished by Electronic Submission and United States Postal Service to: the Office of the State Attorney for the Sixth Judicial Circuit, P.O. Box 5028, Clearwater, Florida 33758, this 17th day of September, 2020.

/s/ Richard Escobar

Richard Escobar, Esquire
Escobar and Associates, P.A.
2917 W. Kennedy Boulevard, Suite 100
Tampa, Florida 33609
Tel: (813) 875-5100
Fax: (813) 877-6590
rescobar@escobarlaw.com
Florida Bar No. 375179
Attorney for Defendant

/s/ Dino M. Michaels

Dino M. Michaels, Esquire
Escobar and Associates, P.A.
2917 W. Kennedy Boulevard, Suite 100
Tampa, Florida 33609
Tel: (813) 875-5100
Fax: (813) 877-6590
dmichaels@escobarlaw.com
Florida Bar No. 526290
Attorney for Defendant

/s/ Jami L. Chalgren

Jami L. Chalgren, Esquire
Escobar and Associates, P.A.
2917 W. Kennedy Boulevard, Suite 100
Tampa, Florida 33609
Tel: (813) 875-5100
Fax: (813) 877-6590
jchalgren@escobarlaw.com
Florida Bar No. 122231
Attorney for Defendant

CURRICULUM VITAE
PHILIP P. HAYDEN, Ed.D.
RETIRED SPECIAL AGENT – FBI
LAW ENFORCEMENT CONSULTANT

DATE: May 1, 2015

ADDRESS: Philip Hayden & Assoc.
11602 Stonewall Jackson Dr.
Spotsylvania, Virginia 22551
phil@haydenasc.com

TELEPHONE: (540) 972-7658

EDUCATION: 1997, Ed.D. Nova Southeastern University, Adult Education
1980, M.S., Adelphi University, Management/Accounting
1972, B.S., Adelphi University, Business Administration

PROFESSIONAL EXPERIENCE :

Consultant/Expert Witness, Court Certified - January 1999 - Present

- Certified by the Force Science Institute on the mix of human dynamics involved in the complicated, confusing, and controversial uses of force by police (2014)
- Certified Litigation Specialist conferred by the Americans for Effective Law Enforcement (AELE) in 2010
- Electronic Control Device (ECD) Forensic Analyst conferred by the Institute for the Prevention of In-Custody Deaths, Inc. in 2010
- Consultant/Expert Witness in the areas of Law Enforcement Use of Force, Police Tactical Training in Firearms, High Risk Arrests, Use of Electronic Control Devices, Tactical Rappelling and Helicopter Tactical Operations.
- I have testified as an expert witness in Federal, State, County and District courts and have been deposed in both criminal and civil cases for both plaintiff and defense.
- I have served as a consultant and expert witness on cases with the following: **United States Attorney's Office** in New York City and the Western District of New York, New York; District of New Jersey; Washington D.C.; El Paso, Texas; Portland, Oregon; Alexandria, Virginia; and Eastern District of Pennsylvania; **State, County and City Attorneys' Offices** for the cities of Lafayette, Louisiana; Miami - Dade, & Sarasota, Florida; Wilmington, Delaware; and County Attorney's Office for Prince Georges County, Maryland; City Attorney's Office for Trumbull, Connecticut and **Defense and Plaintiff Attorneys** in Richmond, Virginia; Washington D.C.; Baltimore, Maryland; Las Vegas, Nevada; Denver, Colorado; Kansas City, Kansas; Pasadena, Texas; Birmingham, Alabama; and the Swedish Defense Ministry in Stockholm, Sweden

National Advisory Board - May 2002 - Present

- Force Science Research Center – Minnesota State University
The NAB board members are responsible for reviewing policy, procedures and research regarding police "Use of Force" during arrest procedures, vehicle stops etc.

CEO & President - January 2006 – Present

- Concepts and Tactics for Survival Inc. - Fredericksburg, Virginia
Police training for US law enforcement officers
- International Training and Assistance Inc. – Fredericksburg, Virginia
International police training

Board Member and Consultant - January 1999 - 2009

- Secredo Inc. International – Consultant & Security Specialist
Conduct security, leadership and management seminars for large European corporations as well as table top exercises to enhance productivity during a critical incident

Private Consultant - January 1999 – December 2005

- Communication Resource Inc. (CRI) – Consultant & Security Specialist
Conduct security assessments, design security analysis programs, conduct crisis management exercises for the United States Department of Agriculture
- Kroll and Associates - Consultant & Security Specialist
Conduct security assessments and design security analysis programs for large corporations.
- McKinsey and Company - Consultant
Developed behavior modification techniques designed to enhance performance for high level executives
- Safeboard Body Armor Company – Consultant & North American Representative
Body armor product development and sales
- Volvo Car Special Vehicles Division – Senior Consultant & Product Design Specialist
Research and design for Volvo's North American prototype police vehicle

Supervisory Special Agent - Federal Bureau of Investigation - FBI Academy, August 1983 - January 1999
June 1992 - January 1999: Program Manager for the Law Enforcement Training for Safety and Survival Sub-Unit

- Created and instituted the Law Enforcement Training for Safety and Survival Program. This program taught law enforcement officers how to conduct arrests of potentially violent subjects in a way that was conducive to their safety as well as the safety of innocent persons and the subject involved
- Conducted training for over 6,000 federal, state, city and local police officers throughout the United States and 2,000 foreign police officers throughout the world
- Created and instituted the Tactical Instructor Program for the Federal Bureau of Investigation. This program trained over 350 FBI and police tactical instructors throughout the United States, Canada and Sweden

June 1990 - June 1992: Program Manager for the Tactical Instructor Program for New Agent Training

- Developed the tactical curricula for New Agent training. Taught over 1500 new Agents principles of arrest techniques, firearms, planning concepts and investigative techniques.

August 1983 - June 1990: Special Operations and Research Unit

- Created and instituted the Tactical Air Operations, and Rappel Master Instructor Programs, developed the training curricula for SWAT tactical and rescue rappelling, helicopter tactical operations to include insertions via rappelling, sniper, and crisis management
- Primary instructor for SWAT, Tactical Firearms, Tactical Air Operation, Rappel Master and Sniper Programs

Lesson Plans Designed, Developed, and Implemented for the Federal Bureau of Investigation

- Making Arrests and Handling Subjects; Preparation for Arrest and Search Warrants; Site Survey; Law Enforcement Operation Order for Arrest and Search Plans; Approaching an Entry Point; Conventional Room Entry; Techniques for Room Clearing; Procedures, and Equipment for Room Clearing; Clearing Hallways; Interior Movement: Stairways, Attics, Roofs, and Crawl Spaces; Vehicle Stops; Quick Entries; Use of Ballistic Shields in Entries and Vehicle Clearing; Mechanical Breaching; Tactical Air Operations; and Rappel Master Instructor

Articles Written for the Federal Bureau of Investigation

- Redesigning the Curriculum of a Survival Awareness Course for Law Enforcement Officers; An Evaluation of the Adequacy of Basic Training for the Safe Apprehension of Dangerous Criminals by Violent Crimes Task Forces; A Comparison of Personality Factors of Law Enforcement Officers Related to Safely Executing Arrest Warrants; Development of a Curriculum for Teaching the FBI Deadly Force Policy to All Federal Violent Crimes Task Forces; Development of a Training Program for Teaching FBI Task Force Members How to Properly Prepare for Conducting High Risk Arrests; Comparison of the Performance of Three Types of Ammunition for Use by the Federal Bureau of Investigation

Videos Produced for the Federal Bureau of Investigation

- Approaching an Entry Point; Clearing Stairways; Conventional Room Entry; Planning an Arrest or Search Warrant; Techniques Outside an Entry Point; Clearing a Hallway

Featured in a Made for TV Documentary on the Survival Mind Set for Police Officers

- Inside the FBI: SURVIVING THE STREET. Printz Production, Distributed by Chevron Publishing

Special Agent - Federal Bureau of Investigation in New York and Chicago Offices, August 1973 - August 1983

- Investigated and conducted arrests in criminal cases, organized crime and foreign counterintelligence
- Participated in several hundred arrests of violent and non-violent criminals.
- Certified by the FBI as an instructor in the following areas: tactical concepts for law enforcement officers; defensive tactics; special weapons and tactics (SWAT); crisis management; firearms; sniper; rappelling; helicopter tactical operations; hostage negotiations; bomb investigations; and pilot in command for fixed winged aircraft

Professional Memberships and Certifications

- Private Investigator: Certified by the State of Virginia
- Federal Bureau of Investigation Agents Association
- Society of Former Special Agents of the Federal Bureau of Investigation
- New Jersey State Law Enforcement Officers Association
- International Association of Chiefs of Police
- International Society of Law Enforcement Trainers
- Tactical Officers Association
- International Society of the 173rd Airborne Brigade

MILITARY EXPERIENCE:

Service

- Entered the U.S. Army as a Private in 1964 and retired on a disability as a Captain in 1968 due to wounds received while serving with the 173rd Airborne Brigade in Vietnam
- Training Received
- Advanced Infantry and Demolitions Training, Non-Commissioned and Officers Candidate, Airborne, Ranger, Pathfinder, Jungle and Sniper Schools

Awards Received

- Purple Heart, Vietnamese Cross of Gallantry, Conspicuous Service Cross, Army Commendation for Valor, Bronze Star for Valor, and the Distinguished Service Cross

In The Matter Of:

State of Florida v.

Curtis J. Reeves

Dr. Philip Hayden

January 27, 2017

Commonwealth Court Reporters, Inc

Min-U-Script® with Word Index

EXHIBIT B

STATE OF FLORIDA)
)
 v.)
)
 CURTIS J. REEVES,) Case No:
) CRC14-00216 CFAES
 Defendant.)
)
)

DEPOSITION UPON ORAL EXAMINATION OF
DR. PHILIP HAYDEN
TAKEN ON BEHALF OF THE STATE
FREDERICKSBURG, VIRGINIA
JANUARY 27, 2017

1 Appearances:

2
3 STATE ATTORNEY, SIXTH JUDICIAL CIRCUIT
4 BY: GLENN L. MARTIN, JR., ASSISTANT STATE ATTORNEY
5 14250 49TH STREET NORTH
6 ROOM 1000
7 CLEARWATER, FLORIDA 33762
8 (727) 464-6218

9 Counsel for the State of Florida

10 ESCOBAR & ASSOCIATES
11 BY: RICHARD ESCOBAR, ESQUIRE
12 DINO MICHAELS, ESQUIRE
13 2917 WEST KENNEDY BOULEVARD
14 SUITE 100
15 TAMPA, FLORIDA 33609
16 (813) 875-5100
17 rescobar@escobarlaw.com
18 dmichaels@escobarlaw.com

19 Counsel for the Defendant
20
21
22

C-O-N-T-E-N-T-S

WITNESS: DR. PHILIP HAYDEN

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EXAMINATION BY:

Mr. Martin

4

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1 Deposition upon oral examination of
2 DR. PHILIP HAYDEN, taken on behalf of the State,
3 before Deanna A. Arend, Registered Professional
4 Reporter, a Notary Public for the Commonwealth of
5 Virginia at large, taken pursuant to notice,
6 commencing at 8:33 a.m., on January 27, 2017, at the
7 Fredericksburg Hospitality House & Business Center,
8 2801 Plank Road, Virginia.

9
10 DR. PHILIP HAYDEN was sworn and deposed on
11 behalf of the State as follows:

12 EXAMINATION

13 BY MR. MARTIN:

14 Q Dr. Hayden, would you state your name for
15 the record, please, sir?

16 A Philip P. Hayden. One L in Philip.
17 P-h-i-l-i-p. H-a-y-d-e-n.

18 Q Dr. Hayden, my name is Glenn Martin, and
19 I'm an Assistant State Attorney out of Pinellas
20 County, for the Sixth Judicial Circuit. It's my
21 understanding that this is a continuation of your
22 deposition that we began in March of 2016, in the

1 case of State versus Curtis Reeves.

2 Is that your understanding?

3 A Yes, it is.

4 Q All right, sir. What I would like to do is
5 go ahead and begin the deposition. We've had about
6 four hours to talk with each other back in March.
7 I'm not going to go over that material again. We've
8 already covered that. We may be referring back to
9 add to what we're going to talk about, but we're not
10 going to go and rehash any of that material.

11 Basically today we're going to be talking about the
12 facts of the case and your opinion. Fair enough?

13 A That's fine.

14 Q All right. What I'd like to do to begin
15 the deposition before we start delving into the
16 facts -- as you did not do a report in this
17 particular case, so I don't know exactly what your
18 opinions are. I did my best guess. So I'm going to
19 ask a series of questions regarding your opinions in
20 this case. And once we develop at least a baseline
21 of what your opinions may be in this particular case,
22 then that would assist me in the rest of the depo,

1 how we're going to go through the facts. Okay?

2 A That's fine. Yes.

3 Q All right. So regarding your potential
4 opinions and, of course, this is my guessing as to
5 what they may be, if you were asked and allowed by
6 the Court to render an opinion, have you derived any
7 conclusions or opinions regarding whether or not
8 Mr. Reeves was justified in the shooting of
9 Mr. Oulson under the totality of the circumstances as
10 you know them to be?

11 A Yes, I have.

12 Q And what is that opinion, sir?

13 A I believe he was justified in his actions.

14 Q If you are asked and allowed by the Court
15 to render an opinion, have you derived any
16 conclusions or opinions regarding whether or not it
17 was necessary the Defendant to use deadly force
18 against Mr. Oulson?

19 A Yes, I have.

20 Q All right. And what is that opinion?

21 A I believe he was justified.

22 Q Well, my question to you, sir -- and not to

1 nitpick, but I understand you indicated he was
2 justified. My question was, do you have an opinion
3 as to whether or not it was necessary for Mr. Reeves
4 to use deadly force against Mr. Oulson?

5 (Interruption)

6 BY MR. MARTIN:

7 Q We're back on the record after a brief
8 moment off the record as maintenance tended to our
9 comfort. Let me ask you the question that we were
10 talking again. All right, sir?

11 A Sure.

12 Q If asked and allowed by the Court to render
13 an opinion, have you derived any conclusions or
14 opinions regarding whether or not it was necessary
15 for Mr. Reeves to use deadly force against
16 Mr. Oulson?

17 A Yes, I have.

18 Q And what is that opinion?

19 A I believe it was necessary.

20 Q If asked and allowed by the Court to render
21 an opinion, have you derived any conclusions or
22 opinions regarding whether or not it was reasonable

1 for Mr. Reeves to believe that Mr. Oulson was going
2 to attack him after he tossed the popcorn on him?

3 A Yes, I am.

4 Q And what is that opinion?

5 A I believe he was reasonable.

6 Q And if asked and allowed by the Court to
7 render an opinion, based on the facts and
8 circumstances as you know them to be as to whether or
9 not there was conduct by Mr. Oulson immediately prior
10 to Mr. Reeves firing the pistol that rose to a level
11 constituting an imminent event justifying the use of
12 deadly force?

13 A Yes, I am.

14 Q And what is that opinion?

15 A That I believe the threat was imminent.

16 Q And if asked and allowed by the Court to
17 render an opinion, have you derived any conclusions
18 or opinions based on the facts and circumstances as
19 you know them to be under Florida Law what forcible
20 felony was prevented by Mr. Reeves shooting
21 Mr. Oulson?

22 A I believe all of those forcible felonies,

1 as you say, were laid out by Mr. Escobar in his
2 report and memorandum.

3 Q I understand that, sir, and I've read that
4 pleading. So my question to you -- and this is what
5 this opinion is going to. Based on the facts and
6 circumstances as you know them under Florida Law,
7 what forcible felony was prevented by Mr. Reeves
8 shooting Mr. Oulson?

9 A Well, I've read -- I've read the document,
10 and there are several things in there, so if there is
11 something that you want to show me in that document,
12 I would be glad opine on any one of the comments.
13 But there's nothing in that document that I saw that
14 I did not believe was correct.

15 Q We're going to go through that document,
16 and I'm just making a note here that we're going to
17 come back to that at the appropriate time.

18 A That's fine.

19 Q If asked and allowed by the Court to render
20 an opinion, have you derived any conclusions or
21 opinions under the facts and circumstances as you
22 know them to be whether or not Mr. Oulson used an

1 object as a deadly weapon against Mr. Reeves?

2 A Yes, I do have an opinion on that.

3 Q All right. And what is that opinion?

4 A That he did use a deadly object.

5 Q And what was that object?

6 A His fist, number one; his hands, and
7 possibly his cell phone.

8 Q If asked and allowed by the Court to render
9 an opinion, have you derived any conclusions or
10 opinions based on the facts and circumstances as you
11 know them to be whether or not at any time did
12 Mr. Oulson verbally make any threats to do violence
13 or physical harm to Mr. Reeves?

14 A Yes, I do.

15 Q And what is that opinion?

16 A I do believe he made threats towards
17 Mr. Reeves.

18 Q If asked and allowed by the Court to render
19 an opinion, have you derived any conclusions or
20 opinions regarding whether or not at any time
21 Mr. Oulson hit Mr. Reeves with his fist?

22 A Yes, I do have an opinion on that.

1 Q And what is that?

2 A I believe there was a good possibility that
3 he did.

4 Q If asked and allowed by the Court to render
5 an opinion, have you derived any conclusions or
6 opinions regarding whether or not at any time did
7 Mr. Oulson hit Mr. Reeves in the face with an object
8 other than a popcorn bag filled with popcorn?

9 A I do have an opinion on that.

10 Q All right. And what is that opinion, sir?

11 A I believe there was a possibility that he
12 did.

13 Q And what would that object be?

14 A Possibly a cell phone.

15 Q If asked and allowed by the Court to render
16 an opinion, have you derived any conclusions or
17 opinions based on the facts and circumstances as you
18 know them whether or not at any time did Mr. Oulson
19 use any object as a deadly weapon against Mr. Reeves?

20 A Yes, I do have an opinion on that.

21 Q All right. And what is that opinion, sir?

22 A I believe he used a cell phone. Possibly

1 used a cell phone.

2 Q If asked and allowed by the Court to render
3 an opinion, have you derived any conclusions or
4 opinions regarding whether or not Mrs. Oulson, Nicole
5 Oulson, was struggling to restrain her husband at any
6 time they both were shot?

7 A I do have an opinion on that.

8 Q And what is that, sir?

9 A I believe she was trying to restrain him.

10 Q I was provided a list of documents that was
11 provided to you by the defense team prior to the
12 March 2016 deposition. Have you been provided any
13 other documents in any form since our March 2016
14 deposition?

15 A Yes, I have.

16 Q And what items have you been provided since
17 March?

18 A The deposition of the Turners.

19 Q Okay.

20 A And the police report. I don't know what
21 that date would be. It's 131 pages of all of the
22 documents, I believe.

1 MR. ESCOBAR: It's the updated one.

2 THE WITNESS: The updated one.

3 MR. MARTIN: The 12th?

4 MR. ESCOBAR: The one that you gave me, the
5 recent updated one. You know how we repaginate
6 these?

7 MR. MARTIN: Yeah. So that would be --

8 MR. ESCOBAR: Because we gave him the
9 police report from the very beginning, but when you
10 repaginated, we --

11 MR. MARTIN: Yeah, we need to talk about
12 which one we're actually going to be referring to.
13 All of my notes are on the January 25th one.

14 MR. ESCOBAR: I'm not sure that any of us
15 know.

16 MR. MARTIN: I know. All right. So I am
17 familiar with that.

18 BY MR. MARTIN:

19 Q Anything else?

20 A And also lab reports dealing with the DNA
21 on the phone.

22 Q All right. And anything else?

1 A I cannot think of anything right now.

2 Q Let's talk briefly about the lab reports
3 from the DNA. What did you learn from those reports?
4 I think there's just one report. Right?

5 A There is two different reports. I think
6 they were done a year apart from each other.

7 Q All right, sir. What did you learn from
8 the DNA reports?

9 A That Mr. Reeves' DNA could not be excluded
10 from the DNA on the phone.

11 Q Is that the salient feature that is
12 important to you?

13 A I'm not a technician, and I'm not a lab
14 person, so I don't understand everything that's in
15 that lab report. I just tried to gather as much
16 information.

17 Q The bottom line?

18 A The bottom line, yes.

19 Q The bottom line, that is the fact that is
20 significant to your analysis?

21 A It's just part of my analysis.

22 Q Correct. It's part of it?

1 A Yeah.

2 Q Okay. And the depo of the Turners, what
3 did you learn from those depos?

4 A I read their depos, as I read every depo
5 that was given to me, and the problem with that depo,
6 as well as every one of them, they're all extremely
7 contaminated. So I had a hard time using much of the
8 information in any one of them.

9 Q Would you explain to me what you mean by
10 contaminated?

11 A After the shooting, there was a half an
12 hour, an hour, an hour-and-a-half before people were
13 even -- put down their statement. They were talking
14 to people down there. They were all gathered in the
15 same location, sitting at the same table and
16 discussing what had actually happened.

17 Q You mean the patrons? The witnesses?

18 A The witnesses.

19 Q And what is your source of information that
20 the patrons were all sitting around talking to one
21 another?

22 A Reading the depositions. They admitted to

1 that.

2 Q Okay. And in what way did that -- we're
3 going to talk about this generally, and then we'll
4 talk about the Turners.

5 A Sure.

6 Q Generally, in what way did that contaminate
7 the information they provided during their
8 depositions?

9 A Well, as an FBI agent many years ago, I
10 learned the first thing you do is separate witnesses,
11 because witnesses begin to talk, and then they start
12 taking on each other's story. So as -- you, as an
13 attorney, that's probably a basic thing that you
14 learn also. You have to separate witnesses, because
15 if you don't, they will take on each other's story.
16 They'll start adding to things, because people have a
17 tendency to want to fill in the blanks. And so when
18 you have people that are talking to each other -- and
19 I don't know who was talking to, but I know a lot of
20 people said that people were just talking down there.
21 And once that contamination occurs, none of it's
22 worth much at all.

1 Q Having said that, regarding any of the
2 information in the depositions or the police reports
3 or the recorded statements or the handwritten
4 statements of any of the witnesses, did you totally
5 disregard all of that and set that aside and not use
6 that in any fashion to derive your conclusions and
7 opinions in this case?

8 A No, I think as a professional, as I look at
9 this, I have to look at everything that's out there.
10 You know, the things are contaminated and the things
11 that aren't contaminated.

12 Q Okay.

13 A It's my obligation to look at everything.

14 Q And were you able to discern from your
15 analysis of the witnesses' depositions or statements
16 or police reports that you believe were contaminated
17 and compare that with items that you believe were not
18 contaminated, were you able to ferret out anything
19 from any of the witnesses' depositions that you're
20 going to rely on as being uncontaminated?

21 A No. If you put it like that, I'd have to
22 say every -- every deposition or every statement that

1 was made down in -- at that point was contaminated,
2 because people talked to each other. Now, when you
3 have that contamination, I still look at trying to
4 figure out is there anything that's going on? You
5 know, from that it's obvious that there was an
6 argument of some type or some yelling. And that's,
7 you know -- so those are facts from Mr. Reeves, from
8 Ms. Oulson, from other witnesses that -- that were
9 there. But, you know, when you put it together, I
10 don't know what was said, exactly what was said by
11 any of them, because that's contaminated. I just
12 know something did happen.

13 Q Okay. So I want to ask you specifically
14 then if you are asked, what facts support a
15 particular opinion? And we'll go over that later.
16 Are you going to include any of the facts contained
17 in the depositions or written statements of any of
18 the witnesses as support of your opinions?

19 A No, I think everything -- as I said,
20 they're so contaminated I cannot think of anything
21 right now that I would be using that's not based on
22 some other fact.

1 Q Okay. Just so I understand and I'm
2 clear --

3 A Sure.

4 Q Because with that statement we're going to
5 save about an hour's worth of time.

6 A Good.

7 Q But I want to make sure that I understand
8 exactly what you're explaining to me. As an example,
9 I asked you your opinion as to whether or not at any
10 time did Mr. Oulson verbally -- and that's the
11 keyword -- verbally make any threats to do violence
12 or physical harm to Mr. Reeves? You answered yes.
13 So if I ask you what supports that, are you going to
14 refer back to any witness that was in that theater
15 and attribute any statement that they believe they
16 heard in that theater in support of that particular
17 opinion?

18 A As you ask me that question, if you were to
19 ask me did a certain person say something, I'm
20 prepared -- and I understand, I read all of the
21 depositions, and I know things that were said. But
22 with the threats that were made is what Mr. Reeves

1 stated in his statement and corroborated by a lot of
2 other facts of the case.

3 Q I want to go into those facts a little bit
4 later.

5 A Sure.

6 Q But I'm trying to make sure that I
7 understand where you're going with the witnesses'
8 depositions, all of the patrons that were in there.
9 Because I don't want to be caught in the courtroom if
10 you're asked what supports -- specifically when -- if
11 it's an opinion regarding verbal threats. So you're
12 going to rely on Mr. Reeves. Well, that's fine. But
13 are you going to say that witness A, B or C heard
14 this? Or attribute a particular statement to
15 Mr. Reeves or Mr. Oulson in support of an opinion
16 based on whether or not verbal threats were made?
17 See how specific that is?

18 A Yes.

19 Q So that's why I'm pinning you down,
20 because --

21 A Sure.

22 Q -- I want to know are you going to say any

1 of the patrons -- attribute anything to them
2 regarding a verbal threat, as an example?

3 A I cannot think of any deposition that I
4 would look at and say I'm going to use that
5 particular deposition, so I cannot think of anything
6 right now that would be. If the question is asked of
7 me, I'm going to have to answer you the best I
8 possibly can. So that's all I'm saying.

9 Q Well, the question would be, what are you
10 using? I'm not going to give you any facts --

11 A Sure.

12 Q -- because it doesn't matter to me what my
13 opinion is. We're trying to figure out the basis of
14 your opinions. So my question is, are you going to
15 say Mark Turner or the Cummings or the Hamiltons said
16 this? Are you going to specifically refer to anyone
17 -- of any of the depositions that you have? Because
18 right now you've discounted basically everything that
19 they said, and you've set it aside. Is that what
20 you've done?

21 A Well, no, I have not set it aside. It's
22 there. I'm not relying on it, because it's too

1 contaminated. However, there are the Hamiltons --
2 Corporal Hamilton that was there and that he
3 assisted. You know, I believe his testimony is also
4 contaminated, because I don't know who he talked to.
5 I know he and his wife were talking. And his wife
6 had said a few things. So I'd probably rely on them
7 a little bit more than I would rely on any other
8 statement that was made. But, here again, every
9 statement -- every witness statement, I believe, has
10 a certain part of contamination. And once it's
11 contaminated, you know, I don't know how much you can
12 rely on.

13 Q I don't have that comfortable feeling. I
14 want it black or white. Are you going to use it or
15 not? And I get the impression that you are using it.
16 You are using the facts that are related by the
17 patrons in the depositions.

18 A No, I don't have to use it. I think
19 there's enough facts in this case that lead me to my
20 opinions, and that Mr. Reeves was justified, it was
21 necessary for him to do what he did to protect
22 himself.

1 Q Okay.

2 A So...

3 Q I'll just continue on, and we'll just see
4 how things go. We might have to come back to that.

5 A Sure.

6 Q There's a report by a Dr. Cotton from Rose
7 Radiology and X-rays and the MRIs that were done on
8 Mr. Reeves. Did you look at that at all?

9 A I don't remember looking at that, no.

10 Q All right. Did you talk to a Dr. Foley?
11 He's their forensic radiologist.

12 A No, I did not.

13 Q Either prior to the March 2016 depo or up
14 until today, have you sat down and interviewed
15 Mr. Reeves?

16 A Yes, I have.

17 Q Okay. Why don't we go ahead and just get
18 that out of the way. And if you would start with
19 when it took place, where it took place, and then if
20 you would just go through everything that you asked
21 him and his response. I'm just going to let you run
22 with it. I'm not going to try to interrupt with you,

1 so you'll just have your stream of thoughts, put it
2 down on the record, and then I'll come back with
3 follow-up questions. Fair enough?

4 A That's fine.

5 Q All right. When did that interview take
6 place?

7 A God, I'd have to look at my calendar. I'm
8 not positive exactly when it took place. I mean, I
9 can look right now on my phone, but it was about a
10 month ago in Tampa, at Mr. Escobar's office.

11 Q Was it after Christmas or before Christmas?

12 A After Christmas.

13 Q Okay.

14 A You know, it was -- I don't --

15 Q That's fine.

16 A God, I don't know. My mind must be
17 slipping on that. I don't remember exactly. I think
18 it was about a month ago I was down there.

19 Q Okay. And other than Mr. Reeves, who else
20 was present?

21 A Mr. Escobar was present. There was another
22 attorney that was in and out, but I don't remember

1 what his name was.

2 Q All right. Did you tape record it?

3 A I did not.

4 Q Did you take notes?

5 A I did not.

6 Q If notes were taken by anyone else, did you
7 review those notes before coming to the depo today?

8 A I don't believe any notes were taken by
9 anybody else, but I'm not sure.

10 Q So you haven't reviewed any notes --

11 A I have not reviewed any of the notes.

12 Q All right. And if you would, start from
13 the very beginning, how you set it up, what you said
14 to him, and then go through question and answer,
15 question and answer, and then I'll follow up with my
16 questions.

17 A When I was down there, I met Mr. Reeves in
18 the office, and it was a cordial meeting, and we
19 talked about how he was doing at that time, and if he
20 was okay, and if he felt comfortable talking to me.
21 And he was very willing to talk to me.

22 What I did was asked him to explain to me

1 in his words what had happened, but where I differ is
2 in Detective Proctor's 30-minute -- I wouldn't call
3 it an interview. I would call it a listening to
4 Mr. Reeves talk. I had listened to that. I had read
5 his statement. And what I did was ask a lot of
6 questions why. Why did you do the things? Why did
7 you think the way you thought? In the English
8 language, one of the best words there is is why.

9 During the time that Mr. Reeves was talking
10 to Detective Proctor, Detective Proctor hardly ever
11 asked him why he did certain things and why he
12 reacted in certain ways, which surprised me very,
13 very much.

14 So what I did is I asked him what exactly
15 had happened, and he said he went into the theater --
16 well, bought his tickets, he and his wife. They end
17 up going into the theater. And I'm just giving you a
18 quick overshoot of this. Went into the theater and
19 they sat down, and they were sitting there, and
20 Mr. Oulson was in front of them, and he was talking
21 on his phone. He had his phone on, and Mr. Reeves
22 bent over to him and asked him if he'd turn off his

1 phone. I asked him if he did it in a way that was
2 aggressive or could be construed as nasty, and he
3 said not as far as he was concerned he didn't. He
4 said he just bent over and asked would you please
5 turn off your phone? At which time Mr. Oulson made
6 some comments to him, and Mr. Reeves sat back and
7 just kind of let it go.

8 When Mr. Oulson did not turn off his phone
9 and was still doing whatever he was doing on his
10 phone, Mr. Reeves got up, walked out, walked down the
11 stairs, walked to the lobby and went to the manager
12 or somebody he thought was in charge. And he waited
13 there while the manager was talking to somebody. He
14 waited there patiently. After about a minute or so
15 he had an opportunity to talk to the manager, and he
16 told the manager there's this individual that's
17 sitting in front of me that won't turn off his phone.
18 So he made a complaint to the manager, and as far as
19 he was concerned, it was done. He came back up,
20 walked back in to his seat, sat down, grabbed his
21 popcorn, sat back in the chair, ready to enjoy the
22 movie. And he says he believes he said something to

1 Mr. Oulson like, you know, if I -- if you would have
2 turned -- if I would have known you were turning your
3 phone off, I wouldn't have said anything to the
4 manager. At which time Mr. Oulson started saying,
5 It's none of your fucking business what I'm doing.
6 Things of that effect. You know, I was texting my
7 daughter. Those kind of comments. Got very
8 aggressive about that. Which at this time Mr. Reeves
9 said he was really taken back by that, because the
10 only dealing, in his opinion, with this guy turning
11 off his cell phone, and he said this guy was totally
12 out of character for anybody in a theater or anybody
13 in that kind of environment that would be standing up
14 saying, Fuck this, fuck that, and being very
15 aggressive towards him. And he said he was shocked.
16 He was -- he didn't know what to think about it.
17 What kind of person am I dealing with here?

18 And that's when he told me -- he says, you
19 know, I've been dealing -- I've been working as a
20 police officer or in law enforcement for most of my
21 life, and he said, I never had anybody in all of that
22 time get into my face like Mr. Oulson did. And he

1 says it really took him back, and he was shocked.

2 So I asked him what he did. Did he say
3 anything back to him or anything else? And he said
4 he was just sitting there and not doing anything and
5 just trying to figure out what is going on? What is
6 this guy doing? Is he crazy? Or what is he doing?
7 So that's when he started coming over the chair, and
8 that's when Mr. Reeves said, I felt like something
9 hit me in the head. He says, I didn't know. I
10 thought he hit me with his fist. And I says, Well,
11 why do you think he hit you with something? He said,
12 Because it knocked my glasses sideways, and he says,
13 I felt like I was hit in the head with something,
14 something hard. And he said, It stunned me. And he
15 says, I was stunned. I didn't know what would
16 happen. He says, I just know I had been attacked by
17 somebody that I could not figure out why this guy is
18 doing what he's doing. And he said, It scared the
19 shit out of me. He says, I was scared. He says, In
20 all my time in law enforcement, he says, I don't ever
21 remember being scared like that.

22 And then he's trying to recompose himself,

1 and he's trying to figure out what is going on. And
2 I'm saying, Well, why were you thinking what's going
3 on? He says, Well, as I said, this guy seemed like
4 he was crazy. And he said, And I was sitting there
5 and then all of the sudden this hand comes in, and I
6 said, I don't know, I says, I don't know. He says, I
7 put my left up. And he says, I don't know if I
8 grabbed his chest, his arm or what, but something hit
9 my left arm, and I was trying to protect myself. And
10 then the next thing, his hand's coming in, and he
11 says, I felt like my life was over if I didn't do
12 something. And he says, I knew I couldn't take a
13 beating. He says, I know how bad physically I am.
14 He says arthritis and all kinds of problems with his
15 back, with his arms, with his hands, with his
16 shoulder. And he says, I knew I couldn't take any
17 kind of a beating. And he says, I thought this guy
18 was going to come in and kill me. He said, I didn't
19 know what he was going to do, but he says, I was
20 scared to death. And he said, He had made threats
21 towards me. And he says, I responded. He says,
22 That's when I pulled my weapon, and I shot for center

1 of mass. And after I shot and the threat was no
2 longer there -- because Mr. Oulson backed up at that
3 time -- he says, I took my -- my weapon and I put it
4 on my knee, and I sat there. And he says, A
5 gentleman came over. And he says, I found out later
6 he was a police officer or a deputy, and he took
7 charge of my weapon. And he says, I sat there. And
8 he says, And I complied at that point. But he said
9 he was -- he was scared and just felt like he had to
10 do something to defend himself.

11 That's a conversation that took place over
12 about an hour, and we just talked about it in about
13 ten minutes, so I'm not repeating every exact word he
14 said. I'm giving you the concept of what he talked
15 about.

16 I had read many of the reports or all of
17 the reports at that time. I had a good idea what had
18 happened and what he had said, what other people had
19 said, so I just wanted to make sure I understood in
20 my own mind why he did the things he did. And then I
21 did ask him about the interview that he had with --
22 here again, I can't call it an interview. The

1 conversation that he had with Detective Proctor. And
2 he said he explained all of this to Detective
3 Proctor. And that was pretty much it.

4 Q Are you familiar with a concept of a
5 cognitive interview?

6 A In what terms are you talking about?

7 Q Like explained at the Force Science
8 Institute, the classes that you've been to.

9 A The cognitive interview, I mean, is an
10 interview that should be very comprehensive.

11 Q Okay. What is your understanding of how to
12 conduct one?

13 A Well, in order to explain that, let me give
14 you a little bit of background why I'm giving you the
15 answer I'm giving you.

16 Q Fair enough.

17 A Back when I began in the FBI in 1973, we
18 went through training and in that was -- one of the
19 major blocks of instruction was doing an interview,
20 because that's where you get all of your information
21 when you're talking to a subject.

22 Q Okay.

1 A Through my years in the street working
2 violent crimes, working other type of matters, I had
3 to interview many, many people, and I developed my
4 skill as an interviewer; however, where my skills
5 really got to a point where I understood what an
6 interview should be is when I got to the FBI Academy
7 and was dealing with a lot of different units
8 throughout the FBI Academy, because we were dealing
9 -- I was dealing pretty much in the beginning with
10 SWAT. And the question is: How do you get the
11 information you need through an interview? One of
12 the ways to do it is as Detective Proctor did, was
13 ask what happened, and just listen to them, and
14 that's fine. But the problem is you have to go back
15 and dissect every one of those answers. Why did you
16 feel the way you did? Why do you think this
17 happened? Getting the person's opinion and
18 understanding, because then you totally understand
19 what's going on. And if you don't do that, then
20 you're not getting a comprehensive interview.

21 When I was at the FBI Academy, and
22 especially working in the field that I was working

1 in, I spent hundreds, maybe thousands of hours
2 interviewing officers and agents who had been in
3 life-threatening situations that have been in gun
4 fights, had been shot, had shot other people, and my
5 intention at that was to find out everything that was
6 going through their mind, not just what they did and
7 how they did it, but why they did. And, as I said,
8 that word why is a very important word.

9 Why did they do the things they did? And
10 how could you be better prepared in asking their
11 opinions? So in my understanding, an interview has
12 to be fully -- fully worked from the beginning to the
13 end. And I've had a lot of experience in doing that.

14 And when I looked at what Detective Proctor
15 did with Mr. Reeves, I was appalled that a decision
16 was made at that point based on that one
17 conversation. So interviewing to me is
18 comprehensive.

19 Q My question to you was, are you familiar
20 with the term cognitive interview as it is explained
21 and taught at the Force Science Institute?

22 A Well, I have gone through the Force Science

1 Institute. I'm a member of the Board of the Force
2 Science Institute, and I don't remember that being
3 brought up as a subject in the Force Science
4 Institute.

5 They're not -- there are people on the
6 Board -- Alex Artwhol, I believe her name is, that
7 was a psychologist who has written on different
8 interviewing techniques and memory. And, you know, a
9 lot of those things have come out. But I don't
10 remember that actually being taught at the class that
11 I went to or any of the understandings that I've had
12 with any of the classes that are being taught to
13 anybody, because his whole concept is not on how you
14 interview people, it's how a law enforcement officer
15 maintains his own safety.

16 Q When you discussed with Mr. Reeves -- once
17 he entered the theater and took his seat, you
18 indicated that he indicated that Mr. Oulson was
19 talking on the phone. Did you ask Mr. Reeves what he
20 was thinking?

21 MR. ESCOBAR: I'm going to object. I don't
22 think he said talking.

1 MR. MARTIN: He did.

2 MR. ESCOBAR: He said using the phone.

3 MR. MARTIN: No. Read it back, right at
4 the very beginning.

5 (Off-the-record discussion)

6 (Whereupon, the Court Reporter read back
7 the requested answer as follows: "Went into the
8 theater and they sat down, and they were sitting
9 there, and Mr. Oulson was in front of them, and he
10 was talking on his phone. He had his phone on, and
11 Mr. Reeves bent over to him and asked him if he'd
12 turn off his phone."

13 MR. MARTIN: All right. Thank you.

14 BY MR. MARTIN:

15 Q When you indicated that Mr. Reeves said he
16 came in and sat down for the very first time, that he
17 saw Mr. Oulson talking on the phone, my question to
18 you is, did you ask him what he was thinking at that
19 point? What was Mr. Reeves thinking?

20 A Okay. So just to clarify this -- and I
21 might have said talking. I'm sure I did, but I don't
22 think Mr. Reeves at that time knew exactly what he

1 was doing, because Mr. Oulson was talking about I'm
2 texting my fucking daughter, those kind of things.
3 So whatever he was doing on his phone, you know, I
4 wasn't that concerned when I talked to Mr. Reeves
5 about that. So it wasn't that important to me if he
6 was talking on his phone or texting on his phone, so
7 that I just kind of passed over. So what was the
8 rest of your question?

9 Q My question is when you indicated to me
10 that Mr. Oulson was talking on his phone -- that's
11 what you said Mr. Reeves said. My question to you,
12 did you follow up on that at some point and ask him
13 what he was thinking at the time that he made that
14 observation?

15 A I did ask him what was going on at that
16 time, and he said he was doing whatever he was doing
17 with his phone, and I'm not sure exactly what the
18 wording was, talking, texting, doing something on his
19 phone. My concern at that point was, you know, what
20 was bothering you? He said, The light. The light
21 and he was just, you know, being annoying.

22 Q So when you asked him what was his thought

1 process of what was going on in his head when he made
2 this observation, you've told me that he was being --
3 he was being annoyed, and the light was bothering
4 him?

5 A Yeah, he says it was -- he was -- he had
6 the light -- the light was bothering him. He was
7 talking on the phone, and he came there to watch the
8 movie. And that's when he said to him, Do you mind
9 turning off your cell phone?

10 Q When he told you that he made that decision
11 to ask Mr. Oulson to turn off his cell phone, did you
12 ask him what was his thought process as to why he did
13 that? Other than it was annoying and bothering him,
14 did you ask him what in his mind made it appropriate
15 or gave him the right to confront Mr. Oulson and ask
16 him to turn off the phone? Did you ask him that?

17 A No, I didn't ask him that.

18 Q Is that important what his thought process
19 was as far as under what moral code, conduct, whether
20 it was appropriate to confront someone and ask him to
21 turn off the phone? Basically a nonconsensual
22 meeting of two people? Did you ask him about that?

1 A I didn't really feel like I needed to ask
2 him why he felt like he needed to tell him to turn
3 the cell phone off. I've been to hundreds of movies
4 myself. And, you know, if the heading comes up on
5 the screen please turn off your cell phones, I've
6 done it many, many times, so I understand. I
7 understand what the protocol is in a theater. So I
8 didn't have any problem with him saying to somebody
9 in front of him would you mind turning off your cell
10 phone.

11 Q I appreciate what you feel. My question to
12 you, Dr. Philips -- I'm sorry, Dr. Hayden, is
13 Mr. Reeves' thought process. Did you ask him in his
14 mind -- and I'll use the term right. But what gave
15 him a right to have a nonconsensual contact with
16 someone in the theater and ask them to turn off the
17 phone? Did you ask him that thought process?

18 A I did not ask him, and I don't feel like I
19 have the knowledge to answer for him what gave him
20 the right. I think that --

21 Q No, what --

22 A -- anybody would have the right. So you

1 asked me -- you asked me a question, and I tried to
2 answer that question. I did not ask him why he felt
3 like he had the right to ask him. It's an assumption
4 that I have, because I've been in many theaters
5 myself, that people should not be on their cell
6 phones. So I could understand somebody not wanting
7 somebody to talk in front of him, so that's pretty
8 simple.

9 Q I want to make sure that you understand why
10 I'm asking the questions, because you spent about
11 five minutes of explaining to me how important it is
12 to keep asking why, why and what was going through
13 someone's mind. You indicated to me that you've
14 developed this interview technique over many, many
15 years of interviewing police officers who have been
16 involved in a shooting and other individuals. So as
17 I go through your interview, which took, you said,
18 about an hour, you gave me about ten minutes' worth.
19 I'm going to go through and ask at every point did
20 you follow up on why? So that's why I'm asking the
21 question. I don't care what you think was
22 appropriate or not. I want to know did you ask the

1 follow-up questions like you told me that you're
2 trained and it's your habit to do. Okay? That's the
3 reason for the question.

4 A I understand. I understand that.

5 Q All right. So my question to you is -- and
6 you already told me -- we're done with the last
7 question.

8 A Okay.

9 Q You already explained that you did not ask
10 him about that. Factually, did Mr. Reeves tell you
11 how many times he had this nonconsensual contact with
12 Mr. Oulson before he got up and left for the manager?

13 MR. ESCOBAR: I'm going to object to
14 presuming on the question that anything was
15 nonconsensual, but go ahead, you can answer that
16 Mr. Hayden.

17 THE WITNESS: I believe he asked him one
18 time. I don't know if he asked him twice or not.
19 I'm not sure. I don't remember that.

20 BY MR. MARTIN:

21 Q Did you ask him how many times?

22 A Did I ask him how many times? I don't know

1 if I asked that question or not.

2 Q Is it important to you in your analysis of
3 this particular case the number of times that
4 Mr. Reeves had nonconsensual contact with Mr. Oulson
5 before going and complaining to the manager?

6 A I didn't really concern myself that much
7 with how many times he did it, because I thought in
8 my process that he had a right to do what he did, and
9 he didn't do anything that was abnormal, that was out
10 of line, so there wasn't any reason for me to ask him
11 and stay on that.

12 Q All right. So based on your perception of
13 what should or should not be allowed in the theater,
14 you didn't follow up on questions, because you just
15 relied on your own personal opinion and life
16 experience --

17 A No, it's not --

18 Q -- of what Mr. Reeves did was appropriate?

19 A It is not my own personal opinion. You
20 know, I -- I don't really know how to answer your
21 question, because it's an appropriate action in a
22 theater that people don't do things like that. So is

1 it just my opinion? No, I've heard it from many
2 other people. I've read it on the screen. I've
3 dealt with that. So, you know, I didn't feel like I
4 had to pursue that with him.

5 Q All right. And I asked you did you ask him
6 how many times he made contact with Mr. Oulson, and
7 you indicated that you didn't follow up on that
8 question, right?

9 A No. How many times he made contact with
10 Mr. Oulson, he gave me the opinion that he asked
11 Mr. Oulson the one time, and that was it. And
12 Mr. Oulson didn't do it, he said something --
13 Mr. Oulson said something to him, and he just went
14 back to doing whatever he was doing on the phone.
15 And that's when Mr. Reeves got up and left and went
16 out to see the manager.

17 Q Would it make any difference to you in your
18 analysis as to whether or not Mr. Reeves had one, two
19 or three contacts with Mr. Oulson before he left for
20 the manager?

21 A No, it doesn't matter to me.

22 Q Based on your conversation with Mr. Reeves,

1 is it your understanding that by Mr. Reeves' own
2 words, that he initiated the contact with Mr. Oulson?
3 He was the first one to reach out, if you will, and
4 make contact with Mr. Oulson, as opposed to
5 Mr. Oulson first time contacting him? Do you see
6 what I'm trying to get at?

7 A Yes.

8 Q Okay.

9 A Mr. Oulson told me that he --

10 Q Mr. Reeves or Mr. Oulson?

11 A Mr. Reeves, Mr. Reeves. Mr. Reeves bent
12 over and told Mr. Oulson, you know, would you please
13 turn off your cell phone?

14 Q All right.

15 A At that point when Mr. Oulson started
16 saying things to him, Mr. Reeves told me, he said,
17 you know, I just saw this was going to be an
18 argument, and I didn't want to get into an argument
19 with him, and that's why I decided just to go to the
20 manager. So that's why I didn't feel like any other
21 questions were necessary on that.

22 Q Based on that statement, there was no

1 reason for you to follow up if he just felt it was an
2 argument as to whether or not he may contact him
3 once, twice or three times?

4 A As I said, you know, maybe I come from a
5 different background where I tell my child to do
6 something once, I don't think I should tell him, two,
7 three, four, five times. I'm sure Mr. Reeves, as a
8 police officer, is used to telling people things and
9 expecting some kind of response. When he got a
10 negative response, he knew enough. I wasn't going to
11 have anymore conversation with him, because this was
12 going to go nowhere. Just let management take it.

13 Q You mentioned that Mr. Reeves indicated
14 that after Mr. Oulson made the comments that you've
15 just described that he sat back and let it go. When
16 you use the words "let it go," are you describing
17 what Mr. Reeves' thought process, or was that what he
18 said?

19 A No, it's what his thought process was. He
20 said, you know, that I made the comment to him will
21 you please turn off your phone, he says, I sat back,
22 and he says, I just -- I made my comment to him, and

1 he said, I didn't want to take it any further than
2 that. And then he starts making all of these
3 comments to me. I'm texting my fucking daughter.
4 You know, I'm texting my -- if not my fucking
5 daughter, whatever fuck I'm doing. He used fuck
6 several times, he said. And he said, you know, at
7 that point in time I just knew this was not good.
8 From his experience and his background, he knew that
9 this was not going to go good if he kept on talking
10 to him, and no sense in making it worse.

11 Q Did he say that? Or is that what he told
12 you his thought process was?

13 A He was explaining to me he did not want it
14 to go any further. He just wanted him to put his
15 phone down so he could enjoy the movie, and that's
16 where he was at that point in his thinking. He
17 didn't want it to go any further, and he did tell me
18 that. He says, you know, as far as I was concerned,
19 I told him, I thought he'd do it, and then he started
20 making these comments, and that's when I started
21 wondering what is going on in this guy's mind?

22 Q All right. So when he explained his

1 thought processes -- thought process at that point in
2 the scenario that this wasn't going good, he didn't
3 want it to go any further, I'm guessing here -- and
4 correct me if I'm wrong. Is that where you made the
5 assumption that he'd just let it go and had no
6 further contact with Mr. Oulson?

7 A No, no, I did not say that. And if I led
8 you to believe that --

9 Q Okay.

10 A Not that he let it go and just completely
11 forgot about the whole thing. He just backed off and
12 he said, you know, I didn't want a conflict with him,
13 and so I just wanted to back off and, you know, just
14 let it -- let it end right there.

15 Q Okay.

16 A And then when he did not put his cell phone
17 down and he made those comments, that's when he
18 decided to go see the manager.

19 Q So according to Mr. Reeves, Mr. Oulson made
20 the comments after -- according to Mr. Reeves -- he
21 said, Would you please turn off your cell phone? Is
22 that the sequence of events as related by Mr. Reeves?

1 A After he asked him to turn off his cell
2 phone, that's when made the comments, yes.

3 Q And, therefore, the sequence of events is
4 after Mr. Oulson made those comments that in
5 Mr. Reeves' mind this isn't going anyplace good, I'm
6 just going to let it go?

7 A No, I'm not going to -- it's not going
8 anyplace good.

9 Q No, letting it as far as contact?

10 A I'm just not going to confront him anymore.
11 I'm going to go see the manager.

12 Q When Mr. Reeves explained to you that at
13 this point in the sequence of events that he went to
14 the manager, did you ask him why he went to the
15 manager? Did you ask him what was the purpose of
16 going? What was he trying to accomplish?

17 A Yes, I did.

18 Q All right. What did he say?

19 A He said, I didn't want to get in a
20 confrontation with this man. And he said, I just
21 thought, hey, let management take care of it.

22 Q You continued your interview with

1 Mr. Reeves, and you indicated that Mr. Reeves
2 indicated to you that he came back into the theater
3 and went and sat down in his seat. Do you remember
4 that part of the interview?

5 A That's correct.

6 Q Did you ask Mr. Reeves as he related to you
7 that he was walking down his aisle to get back to his
8 seat what his thought process was as far as the
9 events that had transpired thus far? What was going
10 through his head as he was walking down the aisle to
11 take his seat back? Did you ask him that?

12 A I did ask him that.

13 Q And what did he say?

14 A And he said, I felt like it was taken care
15 of. I went down, told the manager. I was coming
16 back to enjoy the movie. I walked in, went to my
17 seat. Took my popcorn in my hand, and he says, As
18 far as I was concerned, it was all over at that time.

19 Q All right. Did you ask Mr. Reeves whether
20 or not Mr. Reeves had noticed that Mr. Oulson had
21 either put his phone away or the phone was turned off
22 as he was walking back?

1 A Yes, I did.

2 Q And what did Mr. Reeves say about that?

3 A He said he noticed that the phone -- he was
4 not on the phone. And when he sat down, he said to
5 him, you know, in a way that -- as Mr. Reeves
6 explained to me -- was almost like an apology. If I
7 would have known you were putting your phone away, I
8 would not have gone to the manager. And he felt like
9 it was in a way that -- it was almost an apologetic
10 way of saying, Hey, you know, I'm glad you put your
11 phone away. And this is what he's explaining to me.
12 But that's when Mr. Oulson, he said, kind of started
13 going crazy.

14 Q As soon as he made the statement to you I
15 wouldn't have reported you to the manager if I knew
16 you were going to put the phone away, at that
17 particular point, immediately that's when Mr. Oulson
18 began to do what, according to Mr. Reeves?

19 A According to Mr. Reeves, he sat back and
20 was getting ready to enjoy the movie.

21 Q All right. And this is after he, again,
22 had contact with Mr. Oulson, saying to him if I had

1 known you were going to put the phone away, I
2 wouldn't have reported you to the manager?

3 A He came in, and I don't know if he actually
4 made that comment as he was walking back -- and he
5 couldn't remember exactly -- or if it was right when
6 he sat down. But he made that comment in a way that
7 he thought was kind of an apologetic thing, and that
8 was the end of it for him, he thought.

9 Q My question to you is, immediately after
10 that, what happened?

11 A And immediately, you know, within seconds,
12 that's when Mr. Oulson started saying a lot of things
13 to him and threatening him, and he felt very
14 threatened at that time.

15 Q And did you ask him specifically what
16 threats were made?

17 A I did. And he could not tell me exactly
18 what threats were made, but he says, I felt as though
19 he was making threats towards me that he was going to
20 kick my ass, and he was going to do something to me
21 physically. And he said, I really felt very
22 threatened at that time. And I asked him, Well, did

1 he say he was going to kill you? Did he say he was
2 going to kick your ass? And he says, Well, I don't
3 exactly remember those words, but he says, I remember
4 -- he says, In all my times as a police officer that
5 I never felt that way, somebody was in my face that
6 much, and I felt very threatened, and I felt -- and I
7 had that feeling he was going to do something
8 physically to me.

9 Q Did you follow up at all in order to try to
10 ferret out, if you will, exactly what the basis of
11 his feelings were?

12 A Yes, I did.

13 Q And what did you ask him, and what did he
14 say?

15 A This might take a little bit of time, but I
16 will give you the best answer I can. He said, as his
17 experience as a police officer, he said, I started my
18 police work, and he says, I worked, you know, violent
19 crimes. He says, I worked a lot of dangerous people.
20 He ended up going all through his program, and he
21 went through a lot of training. He did a lot of
22 training, and he went through a lot of training.

1 He began to develop himself as a really
2 very highly trained police officer. And he says,
3 What was going through my mind is that me, as a
4 police officer, with all of this experience, I'm
5 sitting here thinking this guy is coming after me.
6 Why am I thinking this? What is it that's making me
7 feel this? He says, It's all of the experiences I
8 had over all of the time that I was on the
9 department. All my training that I did, all of the
10 training that I received was giving me indicators
11 that this individual was a threat, that he was
12 physically a threat to me. And he was totally out of
13 character for everything that he was doing, and he
14 said, I could not imagine somebody in this
15 environment doing what he was doing. And he said,
16 That's what really scared me. He said, But my
17 background and experience and everything that I was
18 doing and everything that I was prepared for, he
19 said, I just put it all together, and he says, I just
20 -- I had this feeling this guy was coming after me.

21 Q Did you follow up and ask him specifically
22 what were the indicators that was going through my

1 mind that he was considering in making his --
2 informing his belief that he was -- that Mr. Oulson
3 was a threat? Did you ask him specifically --

4 A Yes, I did.

5 Q -- what those indicators were?

6 A Yes, I did.

7 Q And what was that?

8 A He said it was just the look on his face.
9 He says he was coming over the seat. And he says
10 there's a crack between the seats, and I felt like
11 he's coming right over the seats after me. And he
12 says it was his body language, his demeanor, the way
13 he was talking, using the word -- he said when people
14 start cursing like fuck, fuck, fuck and saying it, he
15 said that's kind of an indicator -- and from my
16 background and training, I understand that that's an
17 indicator that something -- the person is totally out
18 of control, out of character, and he's coming after
19 him.

20 And he said those were the things. His
21 body language, his wording, the way his voice was
22 deflecting, his look on his face. He said from what

1 I could see -- and he says the theater was darkened,
2 it was loud in there. So he says, I'm trying to put
3 all of this together. And he said, I put what I
4 could together, and that's what I believed at that
5 time.

6 Q One of the indicators you just explained to
7 me that Mr. Reeves told you was that he was coming
8 over the seat. Putting that in sequence, when did
9 coming over the seat take place? Because we were
10 talking about him saying please turn off your phone,
11 sitting back in the seat, and then you indicated that
12 Mr. Oulson started cussing at him. So, I mean, I'm
13 at that point in the sequence as to what was his
14 thought process. What made him think at that point
15 in time as to why Mr. Oulson was a threat? Is coming
16 over the seat in that sequence?

17 A Mr. Reeves, after he made that comment, sat
18 back with his popcorn in hand, ready to enjoy the
19 theater, and he said at that time that's when Oulson
20 turned around, was facing him, making these comments,
21 and he felt like he was coming over the seat. He
22 says he was coming in between the cracks of the seat,

1 and I felt like he was coming over, and that's when
2 he said, I felt a blow to my head, and there was kind
3 of a blur, something, you know, coming in after me.
4 I didn't know what was happening, but I thought he
5 was coming over after me.

6 Q All right. So just so I get the sequence
7 right according to Mr. Reeves, according to
8 Mr. Reeves' statement to you during your interview,
9 as soon as he says I see that you turned off the
10 phone or I wouldn't have reported you to the manager
11 if I'd known you were going to turn off the phone,
12 according to Mr. Reeves at that point is when he felt
13 that Mr. Oulson was coming after him, and that's when
14 he felt the blow to his face? Is that the sequence
15 of events?

16 A Not quite in the way you're putting it.
17 What he felt in the sequence of events is after he
18 said that and he sat back, Mr. Oulson at that point
19 is standing up, and he's turning around, and when
20 he's looking at all of this like what's going on, and
21 it started getting more and more aggressive towards
22 him, that's when he turned around, and he was saying

1 the words he was saying, and he felt like he's coming
2 over the seat, and that's when he felt the blow to
3 his head and thought he had hit him with his fist,
4 because he felt like he was that far over the seat.

5 Q Did you ask Mr. Reeves what his thought
6 process was when he explained to you that he believed
7 he was hit possibly with Mr. Oulson's fist?

8 A When I was asking him what was going on in
9 his mind at that time -- and I did ask him that -- he
10 said it was moving very fast. It was out of con --
11 you know, concept that he understood, you know,
12 people would react to something that he said, he
13 couldn't believe somebody was reacting like that.

14 He said, I'm in a darkened theater, and you
15 know a lot of loud music and everything is playing,
16 and he said, I'm sitting in a seat that I'm right
17 behind him. He says, There's nowhere I can really
18 go. He says, It's very close. He says, I'm
19 realizing at that time, he says, you know, physically
20 I'm not the person I was when I was 40. He says, I
21 realize that I don't have any fight in me. I can't
22 fight this guy. You know, this guy is a 6-foot 200

1 and -- 200-plus pounds guy. And from his autopsy
2 photos it shows that he's in pretty good shape. And
3 with all of the problems that Mr. Reeves had, and he
4 sees Mr. Oulson coming after him, he said, That's why
5 I was scared. He said, I knew I couldn't fight him.
6 I couldn't do anything physically to ward him off.
7 And this guy is coming over the seat after me. And
8 he said, When I felt like I got hit by this fist, and
9 he said, I didn't know what it was. He said, I saw
10 this blur, and then I felt like I got hit with
11 something. And he says, The only thing I could think
12 of I got hit with his fist. And later he said, you
13 know, it's probably his phone. I saw his phone down
14 between my feet.

15 And he says, And while all of this is going
16 on, he says, his wife is there trying to restrain
17 him, and she is trying to hold him back. And he
18 says, And that scared me, because now here you have
19 your wife trying to restrain him. He's coming over
20 the seat after me. And he says, you know, then I get
21 hit. He says, It was frightening, very, very
22 frightening.

1 Q Did you ask Mr. Reeves what his response
2 was to his belief that he was either hit with a fist
3 or possibly with a cell phone? Did you ask him
4 specifically what his response was to that contact?

5 A Yes, I did.

6 Q And what did he say?

7 A He said when I got hit with whatever it is
8 I got hit with, he says, I was stunned. He says, It
9 hurt, and he says, I felt dazed. And he said, I went
10 back into my seat trying to get away from this guy.
11 And he says, I was scooted way back in my seat, and I
12 didn't know what was happening at that time. He said
13 it was a confusing time for him, because he felt like
14 he had been hit. This guy's coming over after him.
15 His wife is trying to restrain him. And he just
16 thinks at that point in time that he has an
17 out-of-control person that's going to do some great
18 physical harm to him, if not kill him.

19 Q You just made the statement that he went
20 back into his seat. Is that what Mr. Reeves said?

21 A Yeah, he said he scooted back in. And I
22 forget exactly how he said it, but he was, you know,

1 demonstrating it. Slid back on his left side, and he
2 says he was just trying to get back. And so his wife
3 was to his right. He was scooting back over to the
4 left.

5 Q Okay.

6 A And almost kind of -- not laying down but
7 scooting way back in his seat.

8 Q All right. Did he tell you why he was
9 scooting way back in his seat? Here, let me just
10 make sure that you and I are on the same page.

11 A Sure.

12 Q Because when you made the statement went
13 back into his seat, my visual impression of those
14 words that right after he got hit, that he either
15 stood up or did something, and then he sat back down.
16 So that was my visual when you said those words. And
17 I assume from your explanation that is incorrect.

18 A That's correct.

19 Q Okay.

20 A That's correct, it's incorrect.

21 Q Right, I got it.

22 A Okay.

1 Q So I just want to make sure that that is --

2 A No, he said he was sitting in his seat.

3 And he said, I realized -- he said, I couldn't get
4 up. He said, I couldn't get out of there, because in
5 his training, as he told me, and as I know from a
6 trainer myself, that if he would have stood up, he
7 would have been getting into a much closer proximity
8 with the threat. So he said his thought at that
9 point, he says, I was stunned. He said, I felt like
10 I had been hit, this guy's coming after me, and I was
11 trying to get as far away from him as I could. I
12 wanted distance between me and him. And so he said
13 that's when he just kind of scooted back, took his
14 rear end and kind of slid it back towards the front
15 of the seat and leaned back a bit to get away from
16 Mr. Oulson.

17 Q Did you ask Mr. Reeves while he was -- you
18 used the term scooted back, but I took that to mean
19 that he took his buttocks from the rear of the seat
20 and kind of slid forward to the front of the seat
21 back. Is that what you're talking about?

22 A That sounds like a pretty good explanation

1 of what I'm trying to say, yes.

2 Q All right. Did you ask him what he was
3 doing at that time while he was scooting back?

4 A He said, I'm scooting back. And he said, I
5 was just kind of leaning back, trying to get away
6 from him. He said, That's what my thought process
7 was. I need distance between me and Mr. Oulson. So
8 that's what his thought process was at that time. I
9 just want to get further away from this individual.

10 Q All right. Did you take that to the next
11 sequence as Mr. Reeves has scooted in his chair so
12 that he's leaning back with his buttocks from the
13 rear of the seat bottom to the front of the seat
14 bottom, in the sequence of events did you ask him
15 what he did next?

16 A Yes, I did.

17 Q And what did he say?

18 A He says, I'm sitting there. He says, I'm
19 scooted back. And he said, you know, I -- he said, I
20 had -- still had the popcorn in my hand, and he says,
21 and all of the sudden something is coming in. And he
22 said, I don't know what it was. And he says, I put

1 my arm up. And he said, I don't know what I made
2 contact with at that time. With his arm, his chest
3 or something, but I made contact with him. And he
4 said -- and that was pretty much what was going on at
5 that exact second. Just making contact with him,
6 trying to defend himself the best he could. And he
7 says, At that time I knew at that time this guy is
8 crazy. He's coming over, and he's going to kill me.

9 Q Did you follow up on that with Mr. Reeves
10 and ask him to sequence the events? After Mr. Reeves
11 explained that he put his arm up to defend himself
12 and make distance, did you sequence the events after
13 that? What did Mr. Reeves tell you that he did after
14 he did that?

15 A Yes, he said he -- he said, I put my hand
16 up to defend myself. And he says, It was just kind
17 of reaction, because I had already been hit in the
18 head. He said, I have problems with right eye, and
19 all of the sudden my left eye -- I feel like
20 something's in it.

21 Q He had problems with the right eye?

22 A He says he has problems -- he has problems

1 of some type, and I don't know what those problems
2 were -- I didn't pursue that -- with his right eye.
3 And he said, All of the sudden I'm hit in my left
4 eye. And he said, I'm just -- don't know what's
5 going on at that time. And he says, And that's when
6 I see something else coming in on top of me. And he
7 says, That's when I had my pistol, and I shot him at
8 that point in time.

9 Q Did you follow up with that in sequencing
10 events as to -- in relation to Mr. Reeves having his
11 left hand up and scooting to the front of the bottom
12 of his seat and defending himself specifically when
13 he began the process of drawing the pistol from his
14 pants pocket? Did you ask him that?

15 A I don't understand your question.

16 Q Did you ask him when he started to draw his
17 gun? That's as simple as I can make it.

18 A Okay, yeah, I understand it. Because your
19 voice got up there, so I understand you now.

20 Q All right.

21 A Okay.

22 Q Go ahead.

1 A Did I ask him? Yes, I did ask him. When
2 did you start going for your gun?

3 Q All right.

4 A And he says, I don't know.

5 Q All right. Did you ask him how he started
6 to go for his gun? It's in his right pants pocket.
7 Did you ask him to explain how he got it out of his
8 right pants pocket?

9 A I did. I asked him all of those questions
10 about how he got the gun out? Why, you know, he had
11 it in his pants pocket? Why didn't he carry it in
12 something else? And he said, I just -- he said, We
13 had just come back from hunting. And he said, I had
14 it, you know, on my chair I guess in his house.
15 Didn't want to leave it there, and he just put it in
16 his pants pocket. And he said, I don't remember when
17 I took it out or how I took it out. But he says, I
18 knew I was scooted back in. He said, My right leg
19 was extended. And he said, I was extended back. And
20 he said, I don't know. He said, I -- he said, I
21 can't tell you. I don't know.

22 Q Did he tell you that -- as sequencing the

1 event, that it was while he was scooted forward and
2 leaning back, and as you indicated he said he was
3 defending himself with his left hand by putting it
4 out, did you specifically ask him at that point is
5 that when you began to draw your gun?

6 MR. ESCOBAR: I think -- I'm going to
7 object. Asked and answered. He already said that
8 Mr. Reeves told him he does not know when or how he
9 took it out.

10 BY MR. MARTIN:

11 Q You can answer it.

12 A And that's what I said before. Mr. Reeves
13 does not know when he took it out or how he actually
14 took it out. He said, I was scooted back, and he
15 said, And my right leg was stretched out. And he
16 said, After I got hit with a fist, what I thought was
17 a fist, he said, I knew this was going bad when he's
18 coming over. And he says, I was scared for my life
19 at that point in time. And I asked him a couple of
20 times, in your own thinking, can you think back at
21 all when you took it out of your pocket? When your
22 thought process was to take it out? And he says, I

1 don't remember.

2 Q In sequencing the events with Mr. Reeves --
3 just so I get the sequence of events clear in my
4 head -- the best Mr. Reeves could tell you is that he
5 began drawing his weapon -- his pistol from his pants
6 after he was hit with either the fist or the cell
7 phone?

8 MR. ESCOBAR: I'm going --

9 A No --

10 MR. ESCOBAR: I'm going to object. He's
11 already answered the question about drawing the
12 pistol, and you're trying to put words in his mouth
13 that -- you know, that are inappropriate. He's given
14 you the -- asked and answered how many times now?
15 Three times.

16 BY MR. MARTIN:

17 Q Answer the question.

18 A He does not remember when he started going
19 for that pistol. He does not remember. He doesn't
20 remember in the sequence of when he started going for
21 that pistol.

22 Q When is it in the sequence? That's what

1 I'm asking.

2 A When is it in the sequence? He doesn't
3 know when it was, and that's what I'm trying to
4 explain.

5 Q Okay. Well, let me follow up on --

6 A From the very beginning to the end, he does
7 not know when he drew it.

8 Q Is that something that's important to your
9 analysis to know at what point a person decides that
10 deadly force is necessary? In that little snippet of
11 time, is it important to know at what point the
12 person decides I have to use deadly force?

13 A Yes, I did want to know that, and that's
14 why I asked him.

15 Q But is it important? That was the
16 question.

17 A Is it important?

18 MR. ESCOBAR: I'm going to object to that,
19 because you're assuming that taking out the pistol is
20 using deadly force, and that's not the case. It's
21 when you pull the trigger that it's deadly force.

22 MR. MARTIN: Thank you for your comments.

1 BY MR. MARTIN:

2 Q My question to you, Dr. Hayden -- and I'm
3 sure you're an intelligent man, and you can
4 understand my questions. My question to you: Is it
5 important in your analysis to know when a person
6 decides that deadly force is necessary in the
7 sequence of events? Is that important?

8 A Every aspect of this investigation is
9 important to me. That's just one more. But when my
10 experience in asking those kind of questions to
11 officers who have been in gunfights who have shot
12 somebody, I try to understand when their thought
13 process was, when did you believe a threat was there?
14 When did you believe you needed to draw your weapon?
15 And when you draw your weapon, why did you believe
16 you needed to pull the trigger? I have asked that
17 question to well over 200 -- probably 400 police
18 officers and agents that have been in gunfights.

19 My question to Mr. Reeves was asking the
20 same thing. I wanted to know what his thought
21 process was. Why he thought he had to do that, and
22 when he thought he had to do it. I wanted to know

1 all of those things. But, you know, if it's not
2 there, it's not there.

3 Now, as you read many articles on memory
4 under stress, people do not always remember every
5 little detail. Many officers never remember drawing
6 their weapon, can't tell you exactly what happened
7 right before or even right after. It's a part of
8 understanding how people's minds work. They do not
9 remember every little detail. I understand that, and
10 all of the people who have written articles on it
11 seem to understand that. And that's what I'm trying
12 to explain to you here. I believe Mr. Reeves was in
13 that, that he just doesn't remember.

14 Q Would you not agree that in determining
15 whether or not it was necessary to use deadly force
16 to prevent a threat in order to determine the
17 necessity part, you have to identify the threat and
18 when it's taking place?

19 A Yes, you need to understand the threat.
20 You need to understand that. You know, and I looked
21 at it as a -- as the Supreme Court has basically laid
22 out in Graham versus Connor, from the perspective of

1 an officer on the scene. And I'm trying to
2 understand it. Without any hindsight, trying to
3 understand what's going in his mind, and that's what
4 I want to understand. What is going on in his mind
5 at that exact moment? I do want to understand that,
6 because I want to understand when did he feel
7 threatened? When did he feel like he needed to use
8 some force? And when did it get to the point where
9 he felt like he needed to use force that could cause
10 death? And I was trying to get to that. And I
11 understand how the memory works, and I understood he
12 could not answer every one of those questions. But
13 he told me very, very clearly that when he had -- was
14 dealing with Mr. Oulson in the beginning he realized
15 this was not a rational man. And after he made that
16 comment to him, you know, I see you turned off your
17 cell phone, and he started coming around using the
18 words he was using, he turned around, that he was
19 coming through the seats, that his wife was trying to
20 restrain him, he said at that point, he said, I knew
21 if I didn't do something -- if this guy didn't stop
22 and if I didn't do something, you know, my life was

1 going to be altered forever, if not death.

2 Q In trying to determine the sequence of
3 events and putting what you just told me in a
4 sequence of events, is what you just told me that
5 Mr. Reeves explained to you, was that before or after
6 Mr. Oulson grabbed the popcorn and tossed it at him?

7 A He never told me that Mr. Oulson grabbed
8 the popcorn and tossed it at him. He told me that he
9 had the popcorn in his hand, and he doesn't really
10 know how that popcorn -- he just knows that the
11 popcorn was on the floor afterwards. So he doesn't
12 remember him grabbing the popcorn and throwing it at
13 him. He sees him coming in, and he sees a fast
14 movement coming in on top of him, knowing at that
15 point this guy is coming back after him, and then
16 another one immediately, immediately within a half a
17 second about he's coming back in with that second
18 blow.

19 Q And did you ask him his thought process
20 when he says he saw him coming in with his second
21 blow, what did he feel like he needed to do? Did you
22 ask him that?

1 A Yes, I did.

2 Q And what did he say?

3 A He said, At that time, he said, I knew this
4 was a deadly attack on me. And he said, I knew I
5 couldn't fend him off in any other way. And he said,
6 If he hit me in the head -- and as law enforcement
7 officers have been taught right from the very
8 beginning of their training -- and I think most
9 people understand this. And there are many
10 situations where we understand that hands, fists can
11 kill. You hit somebody in the head, the head is a
12 part of your body, that if you destroy the brainstem,
13 you can kill somebody very easily. You can do all
14 kinds of damage by -- to their face, their eyes. It
15 doesn't take much. I have talked to many officers
16 who have been in bad fights. A good friend of mine
17 was confronting somebody, thinking he had things
18 under control, and the guy almost beat him to death,
19 and he spent over a month in intensive care just
20 because the guy hit him with his hands. No other
21 tool. Hit him with his hands.

22 So Mr. Reeves has told me -- he said, We

1 taught that. We understood that. He said, I know
2 hands can kill. And he said, And here comes this guy
3 after me. And he said, I know he's going to punch
4 me. He says, He's a big guy, he looks like he can do
5 this damage to me. And he said, I was scared for my
6 life at that point in time.

7 Q In your review of the material that was
8 provided to you by the defense, did you review the
9 Tampa PD personnel file on Mr. Reeves?

10 A Yes, I did.

11 Q All right.

12 MR. MARTIN: Would you mark this as State's
13 Exhibit Number 1, please?

14 (Whereupon, the Employee Performance
15 Evaluation was marked as State's Exhibit
16 Number 1 for identification.)

17 MR. MARTIN: Richard, let me just cut to
18 the chase --

19 MR. ESCOBAR: Okay.

20 MR. MARTIN: -- so we don't spend a lot of
21 time (indicating document.)

22 MR. ESCOBAR: Okay.

1 MR. MARTIN: This paragraph (indicating.)

2 MR. ESCOBAR: I want him to read the entire
3 exhibit, though, before he comments on any part of
4 it.

5 BY MR. MARTIN:

6 Q Let me show you what's been marked as
7 State's Exhibit Number 1, which is one of the
8 documents provided by the defense as one document
9 from the Tampa Police Department personnel file of
10 Mr. Reeves (tenders document.)

11 (Whereupon, the witness reads the
12 document.)

13 MR. ESCOBAR: Glenn, can we have that --
14 what's the date of that? Is that on the record?

15 MR. MARTIN: It's in the thing. It's --

16 MR. ESCOBAR: I think it's 1979 or
17 something.

18 MR. MARTIN: No, it's August 5th, 1980.

19 MR. ESCOBAR: 1980.

20 THE WITNESS: Yes, this appears to be one
21 of the documents, yes.

22 BY MR. MARTIN:

1 Q All right.

2 A August '79 to August '80.

3 Q Right. It's an Employee Performance
4 Evaluation for Curtis J. Reeves, Tampa Police
5 Department, Uniform District II. At the time he is a
6 Police Lieutenant, and the evaluation period is from
7 5 August '79 to 5 August 1980. Correct?

8 A Yes.

9 Q Okay. What I'd like to do is direct your
10 attention to the second page, the second paragraph.
11 Paragraph number 9, note the employee's strong
12 points. And it's written: Lieutenant Reeves'
13 strongest quality lies in his keeping abreast of
14 current information that pertains to his position as
15 Field Commander and TRT member, and his forceful
16 personality. These qualities have shown to be assets
17 to his performance. And driver's license and all
18 department equipment checked. Personnel check has
19 been purged.

20 A Uh-huh, okay.

21 Q All right. The observation, at least back
22 in 1980 when Mr. Reeves is a police officer, a fellow

1 police officer indicated his strongest point or his
2 strongest strength -- that doesn't make any sense.
3 What does it say?

4 MR. MICHAELS: It doesn't say spectral.

5 A Strongest quality lies in keeping --

6 Q Yeah, strongest quality is his forceful
7 personality. Do you see that written there?

8 A I see that part of that. Keeping abreast
9 of current information that pertains to his position
10 as Field Commander and his forceful personality.
11 Yes, I do see that.

12 Q And that's not unusual for a police officer
13 to have a forceful personality. There's nothing
14 wrong with that as a police officer, is there?

15 A There's nothing wrong with that as a police
16 officer. I wouldn't say all officers have a forceful
17 personality, but it's not -- it's good, it's not bad.

18 Q But a colleague of his, a fellow police
19 officer who was doing the evaluation at least opined
20 in that person's opinion that that was a quality that
21 was one of Mr. Reeves' strongest qualities, his
22 forceful personality, right? In 1980?

1 A That's the terminology that he used, yes.

2 Q Let me have that back.

3 A (Tenders document)

4 Q Thank you.

5 (Whereupon, Mr. Martin tenders document to

6 Mr. Escobar.)

7 MR. ESCOBAR: What Exhibit Number?

8 MR. MARTIN: Exhibit Number 2.

9 (Whereupon, 2005 Florida Session Law Chapter
10 2005-27 was marked as Deposition Exhibit
11 Number 2 for identification.)

12 BY MR. MARTIN:

13 Q Let me show you what's been marked for this
14 deposition as State's Exhibit Number 2. It is titled
15 2005 Florida Session Law Chapter 2005-27, Florida
16 2005 Session Law Service. Specifically it relates to
17 Florida State Statute 776.012, which became effective
18 October 1 of 2005. That's the document that I'm
19 handing to you (tenders document.) I'll give you a
20 moment just to read it, and then I have some
21 questions for you.

22 (Whereupon, the witness reads the

1 document.)

2 A Okay.

3 Q Prior to coming in the courtroom today, had
4 you ever read Florida State Statute 776.012?

5 A Yes, I have read this before.

6 Q Okay. This was the statute in effect at
7 the time of this particular incident on January 13th,
8 2014. Other than reading the words in the statute,
9 did you do any research regarding this particular
10 statute as far as attempting to determine how the
11 Florida courts have interpreted this particular
12 statute?

13 A As an expert witness in this case, I didn't
14 believe it was my duty as an expert, not an attorney,
15 to opine on anything that was legally in Florida
16 state law at that time. I read this as a law
17 enforcement trainer, as a law enforcement expert in
18 understanding how a law enforcement officer would
19 look at this. And by looking at this, I would say I
20 can't understand why charges were brought against
21 him. If you --

22 Q Well, thank you for that gratuitous comment

1 but --

2 A You're welcome.

3 Q -- why don't we just wait until I ask a
4 question. Statute 776.012, use of force in defense
5 of person, which is the State's Exhibit Number 2 for
6 this deposition: A person is justified in using
7 force, except deadly force, against another when and
8 to the extent that the person reasonably believes
9 that such conduct is necessary to defend himself or
10 herself or another against the other's imminent use
11 of unlawful force. However, a person is justified in
12 the use of deadly force and does not have a duty to
13 retreat if: He or she reasonably believes that such
14 force is necessary to prevent imminent death or great
15 bodily harm to himself or herself or another or to
16 prevent the imminent commission of a forcible felony.

17 What I'd like to do is go through with you
18 your understanding of Florida State Statute and how
19 it relates to this particular case. Before we do
20 that I need to kind of get a feel for how you define,
21 if you will, in your own mind the terms used in the
22 statute. That will help me.

1 A Well, are you asking my opinion on this?

2 Q No, there is no opinion here.

3 A You just asked me what then? Explain to me
4 what you're asking me then.

5 Q I am. One of the concepts that has to be
6 considered -- and I know we take this in total, but
7 to discuss them, we can't just jump around and talk
8 to them in total. We have to talk about them one at
9 a time.

10 So one of the concepts is imminent danger.
11 Tell me your understanding of imminent danger. What
12 is that?

13 A Well, imminent -- imminent is a term --
14 basically it's used as in elastic. It's not
15 immediate, it can occur at any time.

16 Q And what do you mean can occur at any time?
17 What does that mean?

18 A Imminent, it's not immediate. It can occur
19 within a few seconds, a few minutes. It's a good
20 chance it's going to occur. And it's elastic, so
21 it's one of those things that it's very hard to put
22 an absolute definition on imminent. It's kind of

1 elastic, and I think the courts put it that way so it
2 is elastic.

3 Q Based on your training and experience and
4 the doctoral thesis that you wrote, are you aware of
5 -- I'm going to use the term concept, because I can't
6 think of another word right now. The concept of
7 certain criteria making up -- or let me start over,
8 because that didn't come out right at all.

9 You know what? We're going to take our
10 break now, because I need to walk around.

11 (Whereupon, the deposition recessed at
12 10:26 a.m. and resumed at 10:40 a.m.)

13 (Whereupon, the DVDs were marked as
14 State's Exhibit Numbers 3 & 4 for
15 identification.)

16 BY MR. MARTIN:

17 Q We're back on the record after our
18 midmorning break. We're going to start going through
19 the factual basis of this particular case. What I'd
20 like to do before we do that, I want to take the time
21 to have you watch two of the videos so you have it
22 fresh in your mind when you go through this, and

1 we'll be going back and forth and referring to the
2 videos as we go through the material.

3 The first one would be State's Exhibit
4 Number 3. It is a DVD produced by the FBI under Case
5 Number 356E-TP4392101, Cobb Movie Theatre. It is
6 further described as 1/13/14, Theater Camera 11 and
7 12, paren, 13:14-13:26, full frame, hyphen, realtime,
8 paren, blue. And we had testimony yesterday from the
9 FBI that this is the raw footage off the EXE
10 proprietary DVR. The blue screens are where there's
11 no recording. So the only thing he's done to it,
12 according to his testimony yesterday, is in the blue
13 sheet he just put no recording so we know what the
14 blue screens are.

15 A Okay.

16 Q The next one I'm going to show you will be
17 State's Exhibit Number 4. It is the FBI DVD, the
18 same case number, Cobb Movie Theatre. It was
19 produced during exam number 2 by the FBI. It is
20 Cameras 11 and 12. It is an enhanced video. It's
21 further described as 1/13/14, 13:14:42 to 13:26:56,
22 resized 170 percent, color removed, brightness

1 enhanced. We had testimony yesterday from the FBI
2 this is an enhanced video. It is a little bit bigger
3 than the raw one. And he did insert the black screen
4 where there is no recording in videotape. So if
5 you'll accept that as what you're looking at when you
6 see the black and blue, and that was the testimony we
7 had yesterday. All right, sir?

8 A Okay.

9 Q So what I'm going to do, these will be
10 attached to the depo. I have them on my computer.
11 The quick time features work a lot quicker if I use
12 it off the hard drive, so we're going to play it off
13 the hard drive, but these are going into evidence.

14 So what I'd like to do is play State's
15 Exhibit Number 3. It is realtime. It's about
16 20 minutes, but I want you to see exactly what is
17 recorded, not recorded, and the sequence of events
18 that's actually recorded.

19 A Okay.

20 Q All right, sir?

21 A Uh-huh.

22 Q So right now we're going to play State's

1 Exhibit Number 3 attached for the depo. I'm not
2 going to comment or anything. I just want you to --

3 A Once you start playing, can I pull it
4 closer to me?

5 Q I'm going to make it bigger, and, yes, you
6 can pull it closer, but let me get it started.

7 (Whereupon, Mr. Martin plays the video.)

8 MR. ESCOBAR: I just want to make one
9 objection for the record, in that you're showing a
10 recording of both Camera 11 and 12 playing at the
11 same time, which is very difficult for the human eye
12 to focus on any one of the cameras.

13 (Whereupon, Mr. Michaels leaves the room.)

14 MR. ESCOBAR: Glenn, 11 is on the left and
15 12 on the right?

16 MR. MARTIN: Correct.

17 MR. ESCOBAR: So 11 would be on the -- as
18 you're facing the screen, on the right-hand side of
19 the theater?

20 MR. MARTIN: Correct.

21 MR. ESCOBAR: And 12 would be as you're
22 facing the screen on the left side of the theater?

1 MR. MARTIN: Correct.

2 THE WITNESS: So far the FBI did a great
3 job.

4 MR. ESCOBAR: Two blue screens?

5 THE WITNESS: Two blue screens with
6 numbers.

7 (Whereupon, Mr. Michaels enters the room.)

8 BY MR. MARTIN:

9 Q What I'm going to do now, Dr. Hayden, is
10 play State's Exhibit Number 4, which would be the
11 enhanced video. As I indicated, this is the one
12 produced by the FBI. It's not the raw data with the
13 blue screen, so where you see the black it was
14 inserted by the FBI. There are some places that are
15 some gaps, and I'll point those out to you that the
16 black was not inserted, but when that becomes an
17 issue, I'll point that out to you so you're well
18 aware of it. That was the reason I wanted you to
19 watch State's Exhibit Number 3, so you could see
20 exactly where the blue screens come in. If there's
21 any issue about whether or not there's a gap in the
22 recording, we can always go back to Exhibit Number 3.

1 All right, sir?

2 A Okay.

3 Q All right.

4 (Whereupon, Mr. Martin plays the video.)

5 (Whereupon, Mr. Michaels leaves the room.)

6 BY MR. MARTIN:

7 Q Dr. Hayden, we took a few moments to -- I
8 gave you an opportunity to review State's Exhibit
9 Number 3 and State's Exhibit Number 4, videos
10 provided to the State by the FBI that we recovered
11 from Cobb Theatre at the -- of the night of the
12 shooting.

13 What I would like to do is first ask you,
14 did you ever sit down with Mr. Reeves and play any of
15 the videos and ask him to sequence the events for
16 you, and explain to you at this part in the video
17 exactly what I was doing, what was going on?

18 A You know, I don't -- I don't remember if we
19 did or not, because I did not -- I don't remember
20 going over it in detail with him, looking at the
21 video at all, no.

22 Q For me it kind of begs the question, I

1 don't know if that's a yes or a no. Can you just --

2 A I don't know if it's a yes or a no either.
3 I don't remember --

4 MR. ESCOBAR: Glenn, if it will help you
5 and help him, we didn't do that.

6 THE WITNESS: Yeah, I don't remember
7 looking at the video at all.

8 MR. ESCOBAR: With him?

9 THE WITNESS: With him, with him, yes.

10 MR. MARTIN: That's what I'm talking about.

11 MR. ESCOBAR: Yeah, no, no, we didn't do
12 that. So just to let you know that -- that didn't
13 happen.

14 BY MR. MARTIN:

15 Q All right. After you conducted the
16 interview with Mr. Reeves, the one that we went over
17 for almost an hour, without Mr. Reeves there, did you
18 attempt to go back and look at the video to determine
19 whether or not any of the video is consistent or
20 inconsistent with the statement that Mr. Reeves made
21 to you?

22 A Yes, I did.

1 Q All right. And how long after the
2 interview of Mr. Reeves did you do that?

3 A I had -- I had several of the videos, and I
4 got more videos from Mr. Escobar, and I went over it,
5 spent a lot of time frame by frame by frame by frame,
6 and not just watching the video as it plays, because
7 it's very difficult to pick up, because it is so
8 fast. When I went frame by frame, I could pick up
9 everything that I saw, and that confirmed what
10 Mr. Reeves was saying to me was consistent.

11 Q We're going to start going through the
12 facts. The way we're going to do this is by -- I'm
13 going to use the defense pleading for the immunity as
14 kind of an outline and go through those facts with
15 you. That way it's structured and organized, and we
16 can take it fact by fact?

17 A Okay.

18 Q Let me go ahead and put on the record what
19 I'm talking about. It is the Defendant's Motion to
20 Dismiss based on statutory immunity pursuant to
21 Sections 776.032, paren, 1, comma, 776.013, paren, 3,
22 comma, and 776.012, paren, 1, closed paren, hyphen,

1 paren, 2, closed paren, comma, Florida Statute 213.
2 This particular defense pleading is filed in the case
3 of State of Florida versus Curtis Reeves,
4 CRC-1400216FAES, with the Clerk of Court in Dade
5 City, Florida. It was E-Filed. The filing number
6 34188502, and it was E-Filed on 11/6/2015. The date
7 stamp -- I'm sorry, the timestamp is 04:35:40 p.m.
8 (tenders document.)

9 We're going to start on Page 23 of --

10 A Are you marking this as an exhibit?

11 Q No. We're going to start on Page 23. It
12 will be the third paragraph down. Mr. Oulson was
13 43 years old, 6 foot 4 inches tall and weighed over
14 200 pounds.

15 Do you see where that is?

16 A Yes, I do.

17 Q All right. And are you aware of any facts
18 in this case that supports that statement?

19 A Yes.

20 Q And what is that?

21 A I believe it was in the autopsy they talk
22 about his size. His size has been talked about

1 several times, but I believe they weighed him out and
2 everything, if I remember that correctly. I'm not
3 sure. But I remember it was 6 foot 4, 200 pounds or
4 205. Somewhere in there.

5 Q All right. To your knowledge, based on any
6 of the facts or circumstances that you have on
7 January 13th, 2014, did Mr. Reeves know that
8 information?

9 A Mr. Reeves, as a professional law
10 enforcement officer, would have made an assessment at
11 that time what kind of size this individual is.

12 Q Did you ask him specifically? That's what
13 I want to know. Did Mr. Reeves have that
14 information?

15 A I don't -- he did not say 6 foot 4. He did
16 not say 200 pounds. He said that he was a big guy.

17 Q All right. The next paragraph on Page 23,
18 I think it's the second sentence. The chairs in
19 which Mr. and Mrs. Oulson were seated substantially
20 reclined backwards upon application of pressure.

21 Based on your knowledge of the case, is
22 there any facts that you are aware of that support

1 that statement?

2 A I don't know what the definition of
3 substantially is, but they do recline backwards when
4 you put pressure on it.

5 Q Do you know how far?

6 A I sat in the chair, and a few inches back.
7 I don't know exactly. I sat in the chair and leaned
8 back in it.

9 Q All right. And when did you do that?

10 A When I went to Tampa to talk to Mr. Reeves.

11 Q You went to Cobb Theatre?

12 A Yes, I did.

13 Q All right. Well, let's digress a little
14 bit. Was that about a month ago, the same time as
15 you interviewed Mr. Reeves?

16 A The same day, yes.

17 Q The same day? Did you buy a ticket to get
18 in?

19 A I did not.

20 Q What arrangements did you make to get into
21 the theater without buying a ticket?

22 A I was with Mr. Escobar, who made

1 arrangements with the management.

2 Q And which theater did you go into?

3 A Theatre 10, I believe it was. The same one
4 that this incident occurred in.

5 Q What time of day was this?

6 A It was in the morning. No, wait, was it in
7 the morning? I had just got there, so maybe it was
8 midday.

9 Q Was Cobb Theatre open for business?

10 A No. I did not see anybody there.

11 Q Was there a Cobb representative with you at
12 all times while you were there?

13 A Not at all times, but he was with us, yes.

14 Q Do you know who that person was?

15 A I do not.

16 Q The person that was with you, other than
17 allowing you entrance, did that person perform any
18 other task while he was with you, relating to you
19 viewing the theater?

20 A Yes, he did.

21 Q And what task did he perform?

22 A He put the lighting on in the theater as it

1 would have been and put previews on.

2 Q And what is the lighting setting as it
3 would have been?

4 A It was diminished lighting. It was not
5 dark, but it was not light in there. That's the
6 setting that they would have had during previews.

7 Q And do you know what that setting is?

8 A I do not know.

9 Q And did you provide any information to that
10 Cobb representative about what setting to set the
11 lights?

12 A I did not.

13 Q Do you know what the setting was? I know
14 you've described what it looked like, but do you know
15 the setting?

16 A I do not, no.

17 Q You indicated that one of the tasks of the
18 employee was to play previews. What preview was
19 playing?

20 A I don't remember what the previews were.
21 It was just put on the previews. And I'm not sure
22 what the previews were.

1 Q How many previews were played, or was just
2 one played over and over?

3 A I don't remember. I just know he played
4 it, and it wasn't on all of the time.

5 Q You indicated that you sat in the chair.
6 What chair did you sit it in?

7 A I sat in several of the chairs.

8 (Whereupon, Mr. Michaels enters the room.)

9 Q Were you able to identify the seat that
10 Mr. Reeves was seated in at the time of this event?

11 A Yes, it was pointed out. And I forget
12 which one it was. Eight or nine on the back row. I
13 forget which one it was, but it was the seat that he
14 was in.

15 Q Did you sit in that seat while the lights
16 were adjusted, as you described, and the previews
17 played?

18 A Yes, I did.

19 Q And during that time period that you were
20 seated in the seat that Mr. Reeves was in at the time
21 of this event and the previews were playing, and the
22 light was adjusted as you described, what

1 observations did you make?

2 A It was limited light in the theater. It
3 was noisy. Mr. Escobar and I were in there, and we
4 were talking, and it was more difficult to understand
5 and hear what he was saying and to see everything in
6 the theater at that time.

7 Q I apologize to you. When you say "noisy,"
8 you were talking and then you trailed off, and I just
9 didn't catch what you said. I apologize.

10 A Okay. We were talking, and I was sitting
11 in the chair. Mr. Escobar was in the row ahead of
12 me, and we were talking. We were moving around in
13 different chairs. I was trying to understand just
14 how difficult it would be to hear in there and how
15 noisy it was, and how the lighting condition was.
16 And as I, myself, looking at it, how did it appear to
17 me? And it was diminished lighting, and the sound
18 from the previews made it louder in there and more
19 difficult to talk.

20 Q Were you able to sit in any of the seats of
21 any of the patrons who reported to law enforcement
22 that they saw certain segments of this event?

1 A I sat in several of the different seats
2 while I was there.

3 Q And what seat did you sit in? What
4 patron's seat?

5 A I can't tell you. I went to the left. I
6 went to the right. I went up and sat in Mr. Oulson's
7 chair, in that area.

8 Q And did you take any photograph to
9 memorialize your being at the theater on that day?

10 A I did not.

11 Q Did you take any notes?

12 A I did not.

13 Q You indicated that you wanted to understand
14 that environment, the way it was set up, too. You
15 indicated how noisy it was. It was hard to hear and
16 hard to see; is that correct?

17 A It wasn't hard to see. It wasn't hard to
18 hear everything. I mean, I could hear the previews
19 going on. I could see Mr. Escobar. I could see
20 other things in the theater. So when you say "hard
21 to see," it was diminished lighting so I didn't feel
22 like I had enough that I could see every little

1 detail in the theater, nor could I hear everything
2 that was going on. We were able to talk. And we
3 were able to talk, but it wasn't as if we were
4 sitting here like right now.

5 Q Were there other individuals, such as the
6 Cobb employee that was moving around the theater
7 while you were in there sitting in any of the seats?

8 A I don't remember him moving around in
9 there. He came in to see if everything was okay and
10 if we needed anything else, but I don't remember him
11 standing in there while we were doing any of this.

12 Q Did you sit in Angela and Corporal
13 Hamilton's seat?

14 A I don't remember if I sat -- I don't
15 believe -- no, I didn't. I can say I didn't sit in
16 their seat, no.

17 Q Did you sit in Mark Turner's seat?

18 A In Turner's seat, I sat down at the end, so
19 it might have been the first or second, third seat in
20 there.

21 Q Did you sit in the Cummings' seat, which
22 would be the same row as Mr. Oulson?

1 A Here again, I don't remember exactly what
2 seats I sat in. I know I sat in Mr. Reeves, in
3 Mrs. Reeves' seat in that back row, and at the end,
4 whether it was the first, second or third seat, I
5 don't remember, in Mr. Oulson's seat. They were the
6 only seats I can say I actually remember sitting in.
7 I know I sat in a couple of others. I have a bad
8 back, too, so I prefer to sit sometimes instead of
9 standing, so I just sat down while we were talking.

10 Q From Mr. Oulson's seat did you attempt to
11 reach over and recreate grabbing the popcorn or
12 striking someone in the seat?

13 A Yes. As I sat in that seat, I did stand
14 up, turned around, tried to see how far back I could
15 go and, you know, what you would need to do in order
16 to get back to there. And, yes, I did do that.

17 Q Explain to me then, take me step by step.
18 As you sat in the seat, what did you recreate?
19 You're sitting there, just take me through step by
20 step.

21 A Mr. Escobar and I were in there. And if I
22 was sitting in Mr. Oulson's seat, Mr. Escobar was

1 back in Mr. Reeves' seat. And I stood up and at that
2 point just tried to lean back in the seat to see how
3 much, you know, I could lean back. And I --

4 Q When you say lean back, I'm --

5 A Pitched over the back of the seat, the back
6 of the seat. Leaning over the seat.

7 Q Okay. When I think lean back, I think --

8 A Yes, over the top of the seat.

9 Q And did --

10 A And then with Mr. Reeves, I sat in
11 Mr. Reeves' seat, and Mr. Escobar was up there in
12 Mr. Oulson's, and we kind of just went back and
13 forth, sitting down in different seats there and just
14 doing different things to see what it looked like.

15 Q When you stood up and attempted to lean
16 over the seat, tell me how you did that.

17 A Stood up.

18 Q Uh-huh.

19 A Turned, leaned.

20 Q All right.

21 A I don't know how else -- what else you're
22 expecting.

1 Q Sure. Let me go through some scenarios for
2 you, because I don't know exactly what you did.

3 A Okay.

4 Q The seat bottoms come up, do they not?

5 A Yes, they do.

6 Q So my question to you, with that
7 understanding: When you attempted to lean over, were
8 your shin bones or your thigh up against a down seat
9 bottom, and you tried to lean over? Was that your
10 scenario?

11 A I stood up and I turned around, and I had
12 the seat down to see what that would be like. And
13 then the seat went back up, and I went back into the
14 seat more, which would have been my -- I guess my
15 knee area more on the seat in that area but not
16 kneeling on the seat, but standing there with my knee
17 kind of back on the seat leaning back over the top of
18 the chair, trying to see just what I could do on
19 that.

20 Q All right. And you're talking about your
21 knee in the seat bottom of Mr. Oulson?

22 A Not in the seat bottom, no. The seat is

1 lifted up, so my knee is back against the seat as
2 it's --

3 Q So your feet are on the floor? Both feet
4 are on --

5 A My feet are on the floor, yes. With it
6 folded.

7 Q So with the seat bottom up, both feet on
8 the floor and whatever distance that is, your knees
9 were touching the seat -- metal part bottom we'll
10 call it, not the cushion part because it's up, right?

11 A Right.

12 Q And with your feet on the ground, did you
13 attempt to lean over?

14 A Yes.

15 Q And were you able to -- in that position --
16 lean far enough for your right hand to come in
17 contact with whoever was sitting in Mr. Reeves' seat,
18 the left thigh?

19 A I know I could get back far enough. I
20 don't believe I could have at that point reached the
21 back of the seat where his head might have been.

22 Q Did you attempt to do the lean with the

1 seat bottom down and one of your knees in the seat,
2 and using your left hand to prop yourself up against
3 the back of the seat back and reach over and either
4 get close enough to hit someone in the face or to
5 grab the popcorn off the left thigh?

6 A As you, I have bad back problems, so I
7 didn't want to stand on the seat and think I'm going
8 to fall. I just don't feel steady anymore, so I did
9 not do that. I'm six foot, though, and my wingspan
10 is about a six-foot wingspan so...

11 Q Well, the terminology -- we have to make
12 sure we're both on the same page.

13 A Sure.

14 Q When I think of standing on the seat
15 bottom, I think of two feet on the seat standing up,
16 like I'm trying to change a light bulb.

17 My question to you was, did you put your
18 left or right knee on the seat and use that to kneel
19 and lean over? So both feet would not be on the
20 floor. Just a knee in the seat, and one wherever it
21 hangs.

22 A I don't remember trying that, no.

1 Q Okay. Do you recall the bond hearing
2 testimony of Corporal Hamilton when he described what
3 he saw Mr. Oulson doing when he reached for the
4 popcorn?

5 A What he said from what I remember, that he
6 was leaning back over the seat, and that's what he
7 described. Now, I don't remember it in any greater
8 detail than that, but he leaned back over the seat.

9 Q All right. Do you recall any statement
10 about being -- having a knee in the seat?

11 A I don't remember that.

12 Q Do you recall Mr. Hamilton at the bond
13 hearing indicating that after Mr. Reeves -- I'm
14 sorry, after Mr. Oulson was shot, he stood up?

15 A I do remember that being said. I'm not
16 sure if it was Corporal Hamilton that said that or
17 not. I don't know. But I remember that being said
18 somewhere.

19 Q Extrapolating a little bit, but after
20 shots, stood up, that begs the question as to the
21 position of Mr. Oulson when he was shot, other than
22 standing. I mean, is that what we can conclude from

1 that statement? That's what I'm asking you.

2 MR. ESCOBAR: Glenn, can you clarify? Who
3 stood up?

4 MR. MARTIN: Mr. Oulson.

5 MR. ESCOBAR: Stood up after the shot?

6 MR. MARTIN: Yeah.

7 BY MR. MARTIN:

8 Q Do you remember that testimony from
9 Mr. Hamilton at the bond hearing?

10 A I don't remember that exact words, no.

11 Q What words do you remember?

12 A I remember, as I said, that he leaned back
13 over the seat, and I think he said he grabbed the
14 popcorn.

15 Q All right. Did you ever take up the seat
16 of Mr. Reeves while you were in the theater and have
17 some other staff member or someone else present there
18 lean over so that you could -- in an attempt to get
19 Mr. Reeves' perspective of what he could see?

20 A Yes, I did.

21 Q All right. You're sitting in the seat, and
22 tell me what happened. I'm going to break this down.

1 Here's where I want to go with it: I first want you
2 to explain to me as you're sitting there what the
3 other person was doing. Just describe -- and if it
4 was a couple of scenarios, we'll go through each one.
5 And once you're done with that, then we're going to
6 go to, did you attempt to do anything in response
7 consistent with Mr. Reeves? And then I'm going to
8 switch them together. So what I'm saying is, did you
9 attempt to do the dance, if you will, where someone's
10 coming over, and you reacted like Mr. Reeves
11 described, so you could attempt to see what he saw?

12 A Yes, I did.

13 Q All right. So let's -- we have to break it
14 down, because otherwise --

15 A Sure, absolutely.

16 Q All right. So let's break it down. You're
17 sitting in the seat, all right, and there's another
18 individual who is leaning over the back of
19 Mr. Oulson's seat back. So just one scenario, tell
20 me how that person started and how that person ended
21 up?

22 A I was sitting in Mr. Reeves' seat, and

1 Mr. Escobar was in Mr. Oulson's position, and he
2 turned around and made a motion back towards me, and
3 I leaned back in the seat to see just what it would
4 have been, or if I was just sitting there without
5 leaning back. And then I leaned back to see just how
6 it felt. You know, what he was seeing at that time.

7 Q All right. And I need to -- I'm really
8 trying to fine-tune exactly what the actor was doing
9 and so that you could have that observation.

10 You indicated that the person turned around
11 and made a motion. So you need to describe that a
12 little bit better, because it doesn't give me in an
13 XY axis exactly where the person was. So standing,
14 sitting, kneeling? Doing handstands? Do you see
15 what I'm saying? So describe it for me.

16 It begins with two people sitting in the
17 seat with their back to the seat facing the screen,
18 or does it start with Mr. Oulson already -- you know,
19 the actor already standing? See what I want to do?

20 A Right.

21 Q So take me from the very beginning, please,
22 sir.

1 MR. ESCOBAR: Glenn, just to save you time,
2 we didn't try to recreate this.

3 MR. MARTIN: I'm just asking what he saw.

4 MR. ESCOBAR: Okay.

5 BY MR. MARTIN:

6 Q So what did the, quote, actor do that was
7 recreating -- well, that was -- I'm going to use
8 that. I understand.

9 MR. ESCOBAR: Yeah.

10 MR. MARTIN: You weren't recreating. I
11 understand that.

12 MR. ESCOBAR: No, okay.

13 BY MR. MARTIN:

14 Q That was providing you movement so that
15 from your position you could see what that looked
16 like? Is that fair enough?

17 A He was standing there, he had turned around
18 and leaning back in the seat, and he made a gesture
19 towards me like he's reaching (indicating), like we
20 saw that the -- in the video that was done by
21 Mr. Oulson. Where he comes out and he reaches like
22 that (indicating.) I just wanted to kind of see now.

1 Q And was that reach towards your face,
2 towards your thigh? Do you know?

3 A Basically towards my hand area where I was
4 sitting there. And then I leaned back to see just --

5 Q Wait, wait a minute. Your hand area?

6 A My hand. I'm sitting here like I'm sitting
7 in the chair.

8 Q So are your hands on thighs, or they're up
9 on your shoulder? How --

10 A I believe my hands were right about on the
11 armrest area.

12 Q Okay.

13 A And Mr. Escobar -- he and I were talking.
14 He had stood up, and he's facing me, and he's
15 talking, and then what he does is make a movement in
16 towards me, and I'm sitting there, and he basically
17 could come in, and he could grab my hand. So I
18 basically decide to sit back to see and -- you know,
19 how far away I would be.

20 Q All right. And was there any type of video
21 of that or photographs of that?

22 A No, there was not.

1 Q Of those movements?

2 A No, there was not.

3 Q All right. And when you made the movement
4 -- I'm going to call it scooch. Is that the term
5 that you used before?

6 A I don't remember if that's the term I used,
7 but it's a good term.

8 Q All right. You took your buttocks and slid
9 it towards the front of the bottom of the seat,
10 right?

11 A Yes.

12 Q And leaned back?

13 A Yes, a little bit, yes.

14 Q All right. And what observations did you
15 make when the actor moved the hand towards you and
16 you moved your buttocks from the rear to the front of
17 the seat bottom?

18 A Well, the observation I made in there --
19 while I was sitting in there that I'm in a confined
20 area. I'm in a seat that doesn't give me a whole lot
21 of latitude to scoot way out away. And I'm in a
22 confined area, in a darkened theater, loud noises,

1 and all of the things that are going on. So my
2 assessment of that was I'm in a bad position at that
3 point if somebody in Mr. Oulson's seat had decided to
4 come over after me.

5 Q Was there any observations made with an
6 actor portraying Nicole Oulson as far as in her seat
7 and what Mr. Reeves could see from his seat? See
8 what I'm saying?

9 A Well, I remember sitting in her position
10 and turning my body as she said she turned her body
11 and also as Mr. Reeves suggested she did, just to see
12 how that would be and how she could have done that.

13 Q And how did she describe she turned her
14 body? Tell me exactly what that is.

15 A She doesn't remember if she used her right
16 hand to kind of boost herself up. She didn't know if
17 she was standing. She didn't know if she was kind of
18 sitting in a sitting motion, but she remembers
19 putting her hand up and -- somewhere around his chest
20 area she remembers putting that hand up. And that
21 would have been the left hand. So she felt that she
22 was -- might be, you know, standing up and putting

1 her hand there. And when I did that, I realized she
2 had to be turning somewhat in order to do that.

3 Q All right. It's a little bit of
4 re-creation here, so let's just talk about that a few
5 minutes. What is your factual basis that she doesn't
6 recall if she's standing up or not? Where did you
7 get that?

8 A Her statement.

9 Q Which one?

10 A The deposition.

11 Q All right. Did you sit in any of the
12 patrons' seats and -- while two actors made movements
13 in the area of Mr. Reeves' and Mr. Oulson's seat to
14 determine exactly to what detail you could see?

15 A No, I did not.

16 Q And were these actors making these
17 movements during the time that the lighting was
18 whatever it was set by the Cobb employee and the
19 previews were running?

20 A It was just myself and Mr. Escobar, and we
21 were doing it while the previews were on, and then
22 when the lights came back on, and we were sitting in

1 there and standing in there moving around and
2 talking. So it was during both times, if I remember
3 correctly.

4 Q So lights -- I'm going to call it fully on,
5 but house lights?

6 A Yes.

7 Q And then whatever lights were set for you
8 for the previews?

9 A That's correct.

10 Q So both?

11 A Yes.

12 Q Did you do anything else while you were
13 there?

14 A No, not that I can remember.

15 Q Lawyers hate that. It always comes back to
16 bite them.

17 A What's that? "Not that I can remember"?

18 Q Not that I can remember.

19 A I hate to give you that, but I just don't
20 -- I don't remember anything more that was done. We
21 said goodbye, and we left.

22 Q How long were you in there?

1 A I wasn't timing it, but I think we were in
2 there probably a half an hour or 45 minutes maybe. I
3 don't think it was an hour, but it could have been.

4 Q Continuing on Page 23: After Mr. and Mrs.
5 Reeves sat down, the lights were either completely
6 turned off or substantially dimmed, causing the
7 interior of the Movie Theater 10 to become dark.

8 Now, you indicated you were in there with
9 the house lights. My first question, are you aware
10 of any facts based on witness testimony or your own
11 observations there during your time at the theater
12 that the theater was, quote, dark?

13 A I was not in the theater when it was
14 completely dark, nor do I remember anything in any
15 statement that people said that it was completely
16 dark.

17 Q But whatever the house light settings were,
18 you were able to see people coming up and down the
19 stairs on each side of the seating area?

20 A As the previews were playing and the
21 lighting was at, yeah, you could see. You could see,
22 not clearly, but you could see.

1 Q You could make out their human bodies, you
2 could make out the difference between hands and feet
3 and head?

4 A Yes.

5 Q As far as being able to see other patrons
6 sitting in the seat, you could see that, too?

7 A You could see probably figures sitting in
8 the seat.

9 Q So you know they were humans and not dogs,
10 right?

11 A It would be most likely, yes.

12 Q And you were able to see movements? You
13 could see hand movements? You could see whatever was
14 visible, whatever wasn't blocked, you could see --
15 you could see movements? You could see turning of
16 heads, shifting in the seats?

17 A The way you're saying that makes a certain
18 assumption. When you say could see, I can see you
19 right now, but in a darkened area, I can still see
20 you, but I don't see the details. So in the darkened
21 theater where it was more dark, the visibility is not
22 as good, so, therefore, I can't see all detail, nor

1 do I believe anybody else could see all detail in
2 there. You'd see a body. You might not be able to
3 see details of what's actually -- what they're doing.

4 Q Could you see movement of shoulders,
5 movement of hands? Movements like this (indicating)?

6 A Well, if it's right close to you, yes,
7 you'd be able to see it. Probably further away, you
8 might be able to see movements of hands, throwing it
9 up and stuff like that.

10 Q But if the hand went up, you wouldn't be
11 able to discern if there was a ring on it or what?

12 A That's correct.

13 Q That's the kind of detail you're talking
14 about?

15 A Not only that detail, but, you know, how
16 far did the hand go up, what would actually happen?
17 Diminished vision at that point in time. Eighty
18 percent of our knowledge through gathering
19 information comes visually, and a little bit more
20 from hearing. So when lights are turned down and
21 diminished, you lose a lot of that ability to gather
22 information. And the brain, when it doesn't see

1 everything, doesn't register all of the detail you
2 might want to see.

3 Q And where does that information come from?

4 A From years and years of research, starting
5 back in 1965, I guess, when I was going through a lot
6 of military training on vision and working in
7 darkened areas and things like that.

8 Q And who taught you that?

9 A I can go back to several things. I went
10 through several different trainings with the
11 military. I had a lot of specialized training, and
12 we worked with a special unit that we received a lot
13 of specialized training, and we worked in the dark a
14 lot. In Vietnam, a lot of our operations -- most of
15 our operations were at nighttime. So vision was
16 something that was very important to us, and so a lot
17 -- I didn't do the research at that time, but I was
18 being told.

19 When I got out of the military and I went
20 into the FBI, I realized when we're going into make
21 an arrest of somebody, we better be able to see as
22 much as we possibly can. If we're going into an area

1 that has diminished lighting, that really hampers
2 your ability to register everything you need.

3 So from that point on, I started doing an
4 extensive amount of research on how much information
5 you can gather and what kind of time period you can
6 gather and how much light you really need.

7 The research I did, I did for the FBI and
8 only reported that back to the FBI. But I got a lot
9 of that information from experts who are out there.
10 Hal Breedlove from Virginia Beach. There is a
11 Rosenblum, a Stolovitch, a Kroger (phonetic), I
12 believe his name is, that did a lot of research on
13 ability to gather information from different areas,
14 and they did research -- I believe that they --
15 Rosenblum, if I remember him -- his name right, did
16 some research out in California with -- I don't know
17 if it's the sheriff's department, but he had several
18 cadets where they put them in lighted areas and had
19 the lights dim -- interior power from a .04 to a .45
20 candlepower, however that's registered. And there
21 was 48 items they had to look at, and how much could
22 you register? And in a very diminished light, out of

1 48, I think it was 4 that they could register. In a
2 light of .45, they were able to get something like
3 11. So it just shows that as you get more light, you
4 can register more information.

5 So the research that I did, the research
6 that all of these other people did, it all comes
7 together, and nobody's really saying anything
8 different. It's just how we register that now.

9 So I know when Mr. Reeves was in there,
10 being at the age he's at, your eyes start to
11 diminish, research says, at age 40, which I found out
12 personally to be true. And you start losing your
13 ability to gather as much light. And so in that
14 situation, you don't register -- and what I'm trying
15 to say when you say see, I don't want you to believe
16 that to be, yes, I see everything clearly. It
17 depends on the light.

18 And when you gather that information, it's
19 basically registered by lighting and contrast. Those
20 are the two things that really bring it out. So if
21 you don't have all of the light, but you have more
22 contrast, if you have bigger figures, color all of

1 that, stuff registers in different ways. So it's
2 just hard to register everything that is going on in
3 a darkened theater. It's not completely dark, but
4 it's darkened.

5 Q On Page 24 of the first full paragraph:
6 While Mr. Reeves watched the previews, he noticed a
7 light was shining in his face. The light was from
8 Mr. Oulson's cellular phone.

9 What facts are you aware of in this
10 particular case that would support that statement?

11 A Well, Mrs. Oulson. She said that he was --
12 had his phone out. Mr. Reeves said he saw the light
13 from the phone. And I've seen several phones in
14 darkened areas that are turned on, and it's quite
15 bright. So that's the two sources basically.

16 Q Same paragraph, second sentence:
17 Mr. Reeves politely asked Mr. Oulson to stop using
18 his cell phone. The 43-year-old Mr. Oulson responded
19 by yelling loud obscenities at the 71-year-old
20 Mr. Reeves.

21 And are you aware of any facts in this
22 particular case to support that statement?

1 A Again, Mr. Reeves' statement that he leaned
2 forward and -- he believed that it was politely --
3 asked Mr. Oulson to turn his phone off. And then he
4 said he started using obscenities at him at that
5 point.

6 Q Any other source of information?

7 A Just that, you know, there are many
8 comments that people said they heard loud talking.

9 Q Are you talking about patrons?

10 A Patrons.

11 Q When you say loud talking --

12 A Loud talking, yelling, obscenities. People
13 said different things. But here again, as I
14 mentioned, you have to be very suspect of any of
15 these witness statements because of the contamination
16 of those statements. But when they're all saying I
17 heard loud noises, I heard loud talking, I heard
18 people saying things, other people saying, you know,
19 he says fuck several times, I mean, all of those
20 sources are saying the same thing. Was it one person
21 that heard it, and everybody else is copying that? I
22 don't know. That's why I say you have to be very

1 suspect of that. But that comment has come out by
2 many of the patrons.

3 Q Now, you indicated that Mr. Reeves told you
4 in his statement to you that he leaned -- well, that
5 he made contact with Mr. Oulson and, in his belief,
6 politely asked Mr. Oulson to turn off the phone. And
7 there was some questioning that I had of you as far
8 as the sequence of events, and how many times did
9 Mr. Reeves make that nonconsensual contact with
10 Mr. Oulson. Remember that question?

11 A Yes, I do remember that, yes.

12 Q Okay. Now, having -- and we're going to
13 go through it, but I just want to know before we
14 start playing the videos. Do you know how many times
15 Mr. Reeves actually made contact with Mr. Oulson
16 before he left and went and complained to the
17 manager?

18 A In watching the videos, I don't know. I
19 see movement there, and I don't know if comments are
20 made or not, because there is no audio. So I don't
21 know how many times comments were made, but I do see
22 movement.

1 Q Okay. We're going to view State's Exhibit
2 Number 4, which is the enhanced black and white one.
3 We'll bring it up to a bigger frame in a minute, but
4 I just want to get to the section. All right. We're
5 going to begin at 13:22:25.646. And I'm going to
6 take it frame by frame. We're not going to play it
7 at speed.

8 A Okay.

9 Q If it's all right with you, we'll put it
10 there, and can I stand next to you?

11 A You absolutely can, yeah.

12 Q All right. Thank you.

13 (Whereupon, Mr. Martin played State's
14 Exhibit Number 4.)

15 Q At 13:22:25.646 we're going to start
16 bringing it forward frame by frame. And at
17 13:22:26.012, do you see the body movement of
18 Mr. Reeves?

19 A Yes, I do.

20 Q And do you see his right hand?

21 A Yes, I do.

22 Q And did you see it reach forward?

1 A I saw it going towards the back of the
2 seat, yes.

3 Q All right. At 13:22:26.379, do you see the
4 continued movement of Mr. Reeves forward towards the
5 movie screen?

6 A Yes, I do.

7 Q And the same with his right hand moving
8 forward towards the movie screen?

9 A I don't know if his right is moving towards
10 the movie screen or just moving along the back of the
11 chair. I don't know. I can't tell.

12 Q All right. And that would be Mr. Oulson's
13 back of the chair?

14 A Yes.

15 Q At 13:22 point 20 -- I'm sorry, at
16 13:22:26.646, Mr. Reeves continues to lean forward
17 towards the movie screen?

18 A That's correct.

19 Q Okay. At 13:22:26.812, Mr. Reeves
20 continues towards -- leaning forward towards the
21 movie screen?

22 A That's correct.

1 Q And is he much closer to the movie -- not
2 much closer. Is he closer to the movie screen now
3 than when we started the sequence?

4 A Yes, he is.

5 Q All right. And you were sitting there in
6 that seat, and you had those observations. Is
7 Mr. Reeves' head in close proximity to the back of
8 the seat of Mr. Oulson's seat?

9 MR. ESCOBAR: Objection, improper predicate
10 and calls for speculation. You can answer it.

11 THE WITNESS: He's leaning forward. It
12 would appear to me that he's getting closer to the
13 seat, yes.

14 BY MR. MARTIN:

15 Q And do you know how many inches it is
16 between the front of the seat bottom of Mr. Reeves'
17 seat and the back of the seat of Mr. Oulson?

18 A I believe that the measurement that I saw
19 was, I think, 18 inches.

20 Q And that's from Mr. Knox? Mr. Knox's depo?

21 A No, from the crime scene photographs.

22 Q All right.

1 A Eighteen or twenty inches. I don't know
2 exactly, because it had kind of a weird measurement.

3 Q All right. Now, at 13:22:27.079,
4 Mr. Reeves continues to lean forward and now even
5 closer to the movie screen?

6 A That appears to be, yes.

7 Q All right. And, again, it would be even
8 closer than to the seat back of Mr. Oulson, if not
9 right at it?

10 A It appears to be, yes.

11 Q All right. And at 13:22:27.246, Mr. Reeves
12 continues to lean forward towards the movie screen?

13 A I don't know how much more. A hundredth of
14 an inch or what, I don't know. But it appears that
15 there was a little movement there, so I don't know
16 how much it is.

17 Q We're continuing forward --

18 A Because I believe this is in hundredths of
19 seconds, right? So you're talking about how long did
20 it take him to go from sitting down to leaning
21 forward?

22 Q That wasn't my question. We were just

1 talking about movements, but I appreciate --

2 A And I'm trying to explain I don't know.
3 You know, you keep on saying is he moving closer?
4 Yeah, in that fraction of a second, yes, it appears
5 that he is.

6 Q We're going to continue forward in the
7 sequence. We're going frame by frame now. I have
8 stopped at 13:22:28.679. Was there any discernable
9 movement that you can see in the video by Mr. Reeves?

10 A I didn't see anything.

11 Q All right. He's in that same position
12 then, leaned forward with his head towards the movie
13 screen?

14 A It appears to be, yes.

15 Q If not at, close to the seat back of
16 Mr. Oulson continued there?

17 A Yes.

18 Q And continuing to go frame by frame, at
19 13:22:31.012, do we see movement by Mr. Reeves?

20 A Yes.

21 Q Now, the frame before that when we saw the
22 movement of Mr. Reeves, that frame is 13:22:30.179.

1 Now, the frame that we saw the first movement that
2 you indicated that he did is at 13:22:31.012. There
3 is some nonrecording between those two frames.

4 A Okay.

5 Q Okay? Do you see the difference in the
6 frames?

7 A Yes.

8 Q Okay. I told you I would point that out to
9 you --

10 A Right.

11 Q -- in fairness to you. So at this point at
12 13:22:31.012 is a frame that we see the first
13 movement as we go forward and play the frames, and
14 I'll stop it at 13:22:31.169.

15 A .679.

16 Q I apologize, .679. Do you see the movement
17 of Mr. Reeves?

18 A Yes, I do.

19 Q And is it backwards towards the Bistro
20 area, as opposed to the movie screen?

21 A That's correct.

22 Q Okay. Oops, I went the wrong way. I

1 apologize. All right. Now, at 13:22:32.112, does
2 Mr. Reeves continue to move towards the Bistro while
3 settling back in his seat?

4 A It appears to be, yes.

5 Q And you can clearly see his right hand?

6 A Yes.

7 Q And his arm?

8 A Yes.

9 Q And his elbow?

10 A I can't quite see his elbow. I know where
11 it is, though.

12 Q You know where his head is?

13 A Yes.

14 Q Now, I stopped it at 13:22:32.946. From
15 that frame and watching the movement of Mr. Reeves,
16 it appears he's settled back in his seat with his
17 back against his seat back?

18 A That's correct.

19 Q And watching that in sequence, knowing that
20 there is a break there, what you just watched, does
21 that appear to be one contact with -- at least in the
22 area of Mr. Oulson, leaning forward?

1 A It appears it could be, yes.

2 Q It's one?

3 A I'm not saying it's a contact. It appears
4 it could be. But I know that myself with a bad back,
5 sometimes I'm in a seat, and I'll be moving forward
6 just trying to stretch my back out. So I can't say.
7 I don't see him talking to anyone, but it appears
8 that he does go forward, and he could be.

9 Q We're going to continue at 13:22:32.946 and
10 go forward. And at 13:22:34.246, do you see movement
11 of Mr. Reeves?

12 A Yes, I do.

13 Q All right. And is it leaning forward
14 towards the movie screen?

15 A Yes, it is.

16 Q At 13:22:34.712, Mr. Reeves continues to
17 lean forward towards the movie screen?

18 A Pretty much in the same position, but he
19 seems to be forward, yes.

20 Q Continuing frame by frame. Now I've
21 stopped it at 13:22:46.646. Is that the first frame
22 where you see Mr. Reeves begin the process of leaning

1 back towards his seat?

2 A He's starting to lean back towards his
3 seat, it appears, yes.

4 Q And you can see his right arm?

5 A Yes.

6 Q All right.

7 A Part of his right arm. Not the whole arm.

8 Q But it is extended forward towards the
9 movie screen, correct?

10 A That's correct.

11 Q Now, at 13:22:47.012, you continue to see
12 Mr. Reeves leaning back towards the Bistro into his
13 seat?

14 A That's correct.

15 Q Can you see his right arm?

16 A I can see most of his right arm, yes.

17 Q And at 13:22:47.812, does it appear at that
18 point that Mr. Reeves has settled back into his seat?

19 A Yes, it does.

20 Q All right. Would that be the second
21 contact with Mr. Oulson?

22 A I don't know if it's that first, second

1 contact with Mr. Oulson. I know he did move in the
2 seat. There's no audio, so I can't say he made
3 contact with him. I just see the movement of
4 Mr. Oulson.

5 Q In your discussion with Mr. Reeves, how
6 many times did he indicate he had contact with
7 Mr. Oulson before he left for the manager?

8 A Mr. Reeves -- from what he told me, I
9 believe it was one time that he believed he made the
10 contact with Mr. Oulson. The movement in the seats,
11 I don't know. I know from myself -- and I don't know
12 like to use myself, but I move around in a seat quite
13 a bit just to get comfortable. And I know he has a
14 lot of back problems also. So, you know, I didn't
15 take any concern of this when I saw this video, that
16 he's moving there.

17 Q All right. We're going to continue
18 forward. I told you when I would tell you when
19 there's a break. At 13:22:50.912, we have a frame.

20 A Right.

21 Q And then there will be a break, and the
22 next frame is 13:23:00.279, correct?

1 A Okay.

2 Q So there is a break in the recording there.
3 All right?

4 A Okay, uh-huh.

5 Q I have stopped the video at 13:23:19.879.
6 There's been no break in the video from the point
7 that I mentioned the last break, right?

8 A Okay.

9 Q All right. At 13:23:19.879, does that
10 frame -- a first depiction of Mr. Reeves, at least
11 you can see his head?

12 A Yes.

13 Q Now, at 13:23:20.446, is Mr. Reeves leaning
14 forward towards the movie screen?

15 A It appears to be, yes.

16 Q Okay. At 13:23:20.979, does Mr. Reeves
17 continue to lean forward towards the movie screen?

18 A It appears to be, yes.

19 Q Now, we're looking at Camera 11. That's
20 what we've been looking at, and we'll go to 12 in
21 just a second. But on Camera 11 at 13:23:22.146,
22 Mr. Reeves hasn't moved since the last frame we

1 talked about?

2 A It doesn't appear he has, no.

3 Q Okay. Still leaning forward towards the
4 movie screen?

5 A It appears to be, yes.

6 Q All right. At 13:23:22.179 on Camera 11
7 and at 13:23:22.169 on Camera 12, do you see
8 Mr. Reeves?

9 A Yes.

10 Q All right. On Camera 12, do you see
11 Mr. Reeves?

12 A Yes.

13 Q All right. And he is leaning forward
14 towards the movie screen?

15 A It appears to be leaning forward, yes.

16 Q All right. Now, is that the third contact
17 with Mr. Oulson?

18 A I don't know what contact it is. I don't
19 know if he's talking to him or not. Again, there's
20 no audio. I don't see him talking to him. You only
21 can see part of the picture there, so I don't know
22 what contact he's making. I know he's moving around

1 in his seat, I will say that, yes.

2 Q And would you agree that he's a lot closer
3 to Mr. Oulson than if he was seated back in his seat
4 with his back on his seat back?

5 A Well, it depends at that time where
6 Mr. Oulson is.

7 Q Seated in his seat.

8 MR. ESCOBAR: Objection. You can't say
9 just say that --

10 MR. MARTIN: Hey --

11 MR. ESCOBAR: -- Mr. Oulson is sitting in
12 the seat. You can't just make that assumption.

13 BY MR. MARTIN:

14 Q Assume that he's seated in his seat.

15 MR. ESCOBAR: We object.

16 MR. MARTIN: Well, fine, object. Answer
17 the question.

18 MR. ESCOBAR: That's not visible in the
19 picture, and you can't say that.

20 BY MR. MARTIN:

21 Q Now, Camera 11 at 13:23:23.379, Camera 12
22 13:23:23.369. Camera 11, Mr. Reeves is leaned over

1 towards the movie screen?

2 A It appears at this point that he's moving
3 forward with his upper body but appears to be trying
4 to stand up at that point.

5 Q Okay. In fact, when we play to Camera 11
6 13:23:24.546, Camera 12 13:23:24.569, do you see
7 Mr. Reeves stand up?

8 A Yes, I do.

9 Q All right. Now, in your discussion with
10 Mr. Reeves, when in time did Mr. Reeves get up to go
11 to the manager after he asked Mr. Oulson to turn off
12 the phone? And we're talking time. One second, five
13 second, one minute, two minutes? Do you know? Did
14 you ask him? Two questions. So let's first, do you
15 know?

16 A I don't remember telling him at the exact
17 time, because when he told me he told Mr. Oulson --
18 asked Mr. Oulson if he could turn off his phone, and
19 he said when it's apparent to him that he wasn't
20 going to do it, that's when he got up and moved.

21 Q Okay.

22 A And when I was saying how long was that, he

1 says, I don't know how long it was. It was just
2 apparent to me he wasn't going to do it, so I decided
3 to go talk to the management.

4 Q All right. Now, you mentioned to me that
5 when you interviewed Mr. Reeves at Mr. Escobar's
6 office, he explained to you that when he asked
7 Mr. Oulson to turn off the phone, that Mr. Oulson
8 used foul language and made whatever statements to
9 Mr. Reeves. Do remember that?

10 A Yes.

11 Q All right. And then you explained to me
12 the thought process of Mr. Reeves that -- I'm going
13 to use the term he didn't want anything to do with
14 it, meaning that he wasn't going to mess with
15 Mr. Oulson anymore. He was going to sit back in his
16 seat, right?

17 A What he said was that when his response to
18 him was apparent to him that he wasn't going to do --
19 you know, turn his phone off, and he was just going
20 to get into an argument with him, and he didn't want
21 that to happen, so that's when he got up.

22 Q All right. But we see from the video --

1 for whatever reason -- he leans forward in his seat
2 three times towards the movie screen, right?

3 A No. The third time it's leaning forward to
4 get up out of the chair.

5 Q Still leaning forward towards the movie
6 screen?

7 A Oh, God, you'd have to. I don't know how
8 you can get out of those chairs without leaning
9 forward. I couldn't when I was there, and nobody
10 else was there. So, yeah, you'd have to lean forward
11 a bit. And as I mentioned before, he's moving in the
12 chair. That's the only thing I can say at that time.
13 Because I know sitting down sometimes it's very --
14 not comfortable, you have to find that comfortable
15 position. So I don't know what he was doing when he
16 was moving forward, but he did say he did ask him to
17 turn off the phone.

18 Q Well --

19 MR. ESCOBAR: Let the record reflect that
20 Mr. Martin has stood up and sat down because he has a
21 bad back today and has been moving around the entire
22 deposition in order to relieve his bad back.

1 MR. MARTIN: Thank you. I'll let you pay
2 for that part of the depo.

3 MR. ESCOBAR: Okay. Gladly.
4 BY MR. MARTIN:

5 Q Did you ask Mr. Reeves how -- and not how
6 like words, but what was the mechanism that occurred
7 when he asked Mr. Oulson to turn off the phone?
8 Here's where I'm getting at, Dr. Hayden: Was he
9 sitting back in his seat with Mr. Oulson there going,
10 Hey, turn off the seat (sic)? Did he lean forward
11 and whisper in his ear, Hey, would you mind turning
12 off the seat (sic)? Did he get halfway and talk
13 normally, Hey, would you turn off the seat (sic)?
14 What was Mr. -- how did Mr. Reeves communicate that
15 request to Mr. Oulson? Did you ask him that?

16 A I don't know if I asked him exactly what
17 his body position was when he asked Mr. Oulson. He
18 said -- and I believe he said he leaned forward and
19 politely asked him to turn off the phone, but I -- I
20 can't be held to that, because I don't remember if he
21 said actually leaned forward, but that's the
22 impression I got. That he leaned forward to tell him

1 to turn off the phone. Whether he leaned an inch
2 into him or five inches into him, I don't know. I
3 didn't get into that specific.

4 Q All right. But you've watched the video
5 and we've gone through the video?

6 A Yes.

7 Q Right?

8 A Yes.

9 Q And you made the statement before that
10 after interviewing Mr. Reeves that you watched the
11 video and everything was consistent with what
12 Mr. Reeves said, correct?

13 A That's correct.

14 Q All right. And the frames that I've just
15 played for you on Camera 11 and Camera 12 off of
16 State's Exhibit Number 4, are you telling me that the
17 frames that you watched and that we just went over is
18 consistent with the statements that Mr. Reeves made
19 to you in Mr. Escobar's office?

20 A Yes, it is.

21 Q And your explanation for the movement of
22 Mr. Reeves is, well, maybe he had a bad back, but you

1 don't know that, right?

2 A My explanation is that people move around
3 in a seat to get comfortable in the beginning.

4 Q All right.

5 A And he -- after he talked to Mr. Oulson, I
6 don't know what his movement was at that time, but it
7 was obvious that he -- he had his popcorn in his
8 hand, and he moves back into his seat, and that's it.
9 So I don't know why he's moving around in the seat.

10 Q That's the bottom line, you don't know why
11 he's moving?

12 A No, I don't know. No, I don't.

13 Q And you didn't think to ask Mr. Reeves why?
14 After you looked at the video, go back to him and
15 say, Hey, I see two movements here. Can you explain
16 this to me? Was it a bad back, or were you talking
17 to Mr. Oulson again?

18 A When I talked to Mr. Reeves, I had not
19 looked at the video this closely until after the
20 fact, after I came back and, you know, where it --
21 and was able to get the more enhanced ones. And then
22 I was able to see it in more detail. But I did not

1 look at the video just prior to talking to
2 Mr. Reeves, so, no, I didn't bring that up.

3 Q Well, afterwards, did you have an
4 opportunity to speak with Mr. Reeves and say, Hey,
5 can you clear this up for me?

6 A No, I did not.

7 Q But you could have done that?

8 A I could have done that, and I imagine if
9 Mr. Escobar would have agreed to it, I could have.

10 Q All right. And how important is it in your
11 analysis of the number of times that Mr. Reeves had
12 contact with Mr. Oulson before he went to complain to
13 the management?

14 A When we're talking about this whole
15 situation, how many times he talked to him and asked
16 him to turn off the phone is really irrelevant,
17 because the situation occurred that Mr. Oulson became
18 very outraged and animated in his approach and
19 aggression towards Mr. Reeves. This is what this is
20 about. Not how many times he asked him to turn off
21 the phone. If he asked him once, if he asked him
22 twice, it really doesn't matter. And was he rude?

1 That really doesn't matter either. Does that give
2 anybody the right, especially a younger man standing
3 up cursing at an older man and threatening him? So
4 to me it doesn't really matter that much if he told
5 him one time or two times. So, I mean, we're
6 spending a lot of time on this, but it really doesn't
7 matter to me. And I don't know what he was doing
8 when he was moving around in those seats and exactly
9 how close he was to Mr. Oulson when he said that to
10 him.

11 Q Well, when we talk about this sequence of
12 events, and we're looking at that pleading where the
13 facts are that Mr. Reeves politely asked Mr. Oulson
14 to turn off the phone, and he responded, as
15 Mr. Reeves told you, in a weird way, maybe something
16 that he didn't see coming, is it important to know
17 all of the sequence of events to try to understand
18 why Mr. Oulson reacted the way he did?

19 A It's important as an investigator to go in
20 and try to understand every detail you can possibly
21 understand to find out why something occurred and why
22 the reactions were the way they were. As I explained

1 before, with the background and experience that
2 Mr. Reeves had, is that he was analyzing the problem
3 as it's going on and realizing it's totally out of
4 character, this is getting bad. I'm just -- need to
5 go talk to the manager. When he comes back, he
6 thinks he can resolve it by saying if I -- if I knew
7 you were going to have the phone off, I wouldn't have
8 said anything to the manager, and not realizing that
9 made it worse, and that's when Mr. Oulson started
10 going crazy, and that's when Mr. Reeves realized he
11 was in a terrible situation.

12 Q All right. But we're talking about the
13 sequence of events before Mr. Reeves goes off and
14 complains to the manager. That's what we're focusing
15 on. So would you not agree that multiple contacts
16 with Mr. Oulson could just as well be the reason for
17 his response to Mr. Reeves, Hey, fuck off, leave me
18 alone?

19 A To me, if he said it once, twice, three
20 times, Mr. Oulson's reactions is totally
21 inappropriate, and I couldn't begin to imagine
22 anybody going off like that in a theater when

1 somebody asks you to turn the cell phone off, unless
2 there was some kind of a mental problem. I don't
3 know.

4 Q The manner in which someone asks you to do
5 something, does that change as to how someone should
6 react?

7 A You're asking me to say how somebody would
8 react. People react in different ways to different
9 stimuli.

10 Q Okay.

11 A And, you know, how Mr. Reeves spoke to
12 Mr. Oulson is nice to know. Was he polite, or wasn't
13 he polite? If he was polite, you know, that makes it
14 worse. If he wasn't polite, okay, so Mr. Oulson
15 might have a reaction to that. But not to the
16 response that he had, which was totally outrageous.
17 So, you know, yes, you're looking at every detail,
18 and you're trying to get the totality of the whole
19 situation, everything that occurred that led up to
20 this, and trying to understand why Mr. Reeves had to
21 react in the way he did.

22 There is no explanation that I can come up

1 with that Mr. Oulson had a right, a -- whatever you
2 want to call it, to react in the way he reacted.
3 Even his wife knew he was overreacting when she tries
4 to stop him.

5 Q Now, wait a minute. We're talking about
6 the sequence of events before he leaves to complain
7 to the manager. That's what we're focusing on. We
8 have to take this baby steps. You're putting
9 everything together. I told you what we were going
10 to do. So please keep your comments to what your
11 answer is relevant to the sequence of events before
12 Mr. Reeves gets up and walks and complains to the
13 manager. So please continue. Because we know --

14 MR. ESCOBAR: Have you got a question?

15 MR. MARTIN: Yes.

16 BY MR. MARTIN:

17 Q We know that Nicole did not stand up before
18 Mr. Reeves left for the theater. So would you please
19 continue with your answer, and keeping that in mind?

20 A Okay. I'll go back to what I said before.
21 And the only thing I can do, Mr. Martin, is repeat
22 what I said before. Whether he said it one time or

1 two times or three times to ask him to turn off the
2 phone, that's not a request that's a bad request.
3 And if he did it in a polite way, that's nice. If he
4 didn't do it in so much of a polite way, okay, that's
5 not that nice. But there is no indication that I
6 could see that it was done in a bad way. Just from
7 the body movements and everything that we see in the
8 video of Mr. Reeves moving forward, he moved forward,
9 and did he use one of those opportunities when he
10 moved forward to say to Mr. Oulson would you please
11 turn off your phone? I don't know. There is no
12 video.

13 So I think I've answered this the best I
14 possibly can. I don't know what else you're looking
15 for.

16 MR. MARTIN: Good time to break for lunch.

17 (Whereupon, the deposition recessed at
18 12:16 p.m. and resumed at 1:03 p.m.)

19 BY MR. MARTIN:

20 Q We're back from our lunch break, and thank
21 you for everyone returning at the appropriate time.
22 I appreciate that.

1 We're going to continue with our looking at
2 the facts and how they relate to the facts as alleged
3 in the immunity pleading that we put on the record
4 before the lunch break.

5 I'd like for you to go to Page Number 25.
6 We're going to continue that discussion. We talked
7 about the contact that Mr. Reeves had with Mr. Oulson
8 before leaving to go complain to the manager. In the
9 sequence of events what I want to discuss with you,
10 Mr. Reeves has left the theater, and is at the
11 manager's place.

12 A Okay.

13 Q I'm not going to go into all of that. Now
14 he's coming back, and he's walking down the aisle.
15 That's where I want to pick up the sequence of
16 events. There's no need for me to go into what was
17 done out there. You already told me your rendition
18 of it. Fair enough?

19 A Fair enough.

20 Q So that's where we're going to begin, and
21 that's where -- on the second paragraph on Page 25:
22 When he reached the last row, Mr. Reeves could no

1 longer see a light coming from Oulson's cell phone.
2 Upon reaching his seat, Mr. Reeves took a bag of
3 popcorn from his wife and sat down.

4 Before I ask you any questions, I want to
5 show you State's Exhibit Number 4, beginning at frame
6 -- Camera 11 13:26:16.012, Camera 12 13:26:16.003.
7 All right. Now, I've stopped it on frame -- Camera
8 11 13:26:23.379. Camera 12, of course, went blank
9 just a frame before that. Do you see Mr. Reeves
10 sitting down in the seat?

11 A I do.

12 Q Now, my question to you is: In your
13 discussion with Mr. Reeves as far as when he made the
14 statement that he admits to making to Mr. Oulson, if
15 I had known you were going to turn off your phone, I
16 wouldn't have told the manager, words to that effect.

17 A Right.

18 Q Did you follow up with Mr. Reeves as to
19 when he said that? Was it walking down the aisle, or
20 when he was in his seat?

21 MR. ESCOBAR: Objection, asked and
22 answered, but go ahead, you can answer it.

1 THE WITNESS: From what I understand from
2 what Mr. Reeves told me, he said he came back, sat
3 down and mentioned it to him at that time.

4 BY MR. MARTIN:

5 Q And the same mechanics. How did he mention
6 it to him? Did he lean forward? Did he lean back?
7 Did he go, Hey, sorry, about that? You know, what --
8 how did he communicate that? What was his body
9 position when he communicated that?

10 A I don't remember exactly what his body
11 position was, but he said to him in not a loud voice,
12 from what he's telling me. So he had to be close
13 enough to Mr. Oulson so Mr. Oulson could hear him.

14 Q Okay. On Page 25 of the immunity pleading,
15 very next paragraph. And just so the record's clear,
16 the paragraph before is what we just talked about.
17 When he reached the last row, Mr. Reeves could no
18 longer see a light coming from Oulson's cell phone.
19 Upon reaching his seat, Mr. Reeves took a bag of
20 popcorn from his wife and sat down.

21 The paragraph I want to talk to you about
22 is the very next one. Mr. Oulson then stood up,

1 turned to face Mr. Reeves, and for the second time
2 hurled a barrage of loud obscenities and threats to
3 cause bodily harm at the 71-year-old, period.

4 Now, in your discussion with Mr. Reeves,
5 did you ask him the time period between the time that
6 he made that comment to Mr. Oulson and Mr. Oulson
7 stood up?

8 A No, I did not really ask him the time on
9 that.

10 Q Do you think that's important?

11 A When he came back and he said to
12 Mr. Oulson, you know, he didn't have to -- I'm sorry,
13 you know, whatever it was with his phone, that to him
14 he made the comment and then sat down. And it
15 sounded like for me that he saw it as just one
16 continuous movement to when he sat down, period.

17 Q What do you mean he saw it as one
18 continuous movement?

19 A Well, he came in, and whether or not he
20 said something to him as he's coming by or he was
21 sitting down, he says he remembers saying to him at
22 that point in time, you know, if I would have known

1 you were going to turn off your phone, I wouldn't
2 have said anything to the manager.

3 And whether or not he was moving by him
4 when he said that or if he was sitting down, it
5 really didn't matter to me, because he said it in a
6 way that it wasn't yelling or screaming. Just told
7 him that, you know, that message, and that was it.

8 Q My question to you was, did Mr. Reeves tell
9 you a timeframe between the time he made that comment
10 and Mr. Oulson stood up? That's my question.

11 A And my answer to you is no.

12 Q All right. And then my next question to
13 you was, is that important? The timeframe between
14 those two events? Mr. Reeves making that statement
15 and Mr. Oulson standing up. Is that important?

16 A Well, when you're talking about timeframe,
17 was it one second or one minute or what? I mean,
18 it's a timeframe that's there. So it doesn't matter
19 that much when you're talking a few seconds.

20 Q Okay. The same paragraph, second sentence,
21 Page 25: While he subjected Mr. Reeves to this
22 second torrent of vulgarities, Mr. Oulson had assumed

1 an aggressive posture and his face was contorted in
2 anger.

3 Now, in your discussion with Mr. Reeves
4 during your interview, when Mr. Reeves indicated to
5 you stood up, did you ask Mr. Reeves exactly what
6 Mr. Oulson's posture was?

7 A Yes.

8 Q And what did he say?

9 A He said he was standing up, turning around,
10 and at that point coming at him in a more aggressive
11 manner, and using a lot of obscenities.

12 Q All right. Standing up, turning around,
13 coming at him.

14 A Felt like he was coming at him.

15 Q Well, what does that mean? Felt like
16 coming at him?

17 A It's a feeling that you get that somebody
18 is invading your space.

19 Q All right. Stands up? He sees him stand
20 up?

21 A He knows that he's standing at that point.

22 Q All right, he knows that he's standing.

1 Knows that he's turned around facing him?

2 A He's turning around, yes.

3 Q All right. And he knows he's coming at
4 him?

5 A As I said, it's the sense that he had that
6 he was coming at him.

7 Q How did he explain that sense to you? What
8 was the movement of Mr. Oulson that gave him the
9 sense that he was coming at him? The outward
10 manifestations that you're going to see to make that
11 belief?

12 A As I said before, that Mr. Oulson was
13 leaning back over the top of the chair in an
14 aggressive manner and that made Mr. Reeves feel like
15 he was coming at him at that point.

16 Q Did those three body movements by
17 Mr. Oulson occur contemporaneous with one another
18 without any break? What I'm saying, he's sitting so
19 he stands, he turns, and he leans with no hesitation
20 whatsoever? Is that what Mr. Reeves related to you?

21 A That's my understanding. When he came in
22 and he sat down and took his popcorn, so it -- there

1 was a break right there. Took his popcorn and sat
2 down, and that's when it all started at that point in
3 time. So, you know, whether a second break or a
4 two-second break in there, I don't know.

5 Q Okay. What I'd like to do before we
6 continue the conversation, I want you to have the
7 benefit of the video. I'm going to -- beginning at
8 frame -- I'm sorry, this is State's Exhibit Number 4,
9 and it's Camera Number 11. We're going to start at
10 frame 13:26:23.379. Camera 12 shows at this point
11 video not recording. What I'm going to do is I'm
12 going to play it straight through until the gun is
13 fired, and then I'm going to have some questions for
14 you. All right, sir?

15 A Sure, uh-huh.

16 Q All right. There we go. I'm going to
17 start it over since we didn't have the -- I didn't
18 have it full frame. Why is it doing that? Okay.
19 Now we're back at 13:26:22.512 is full frame. And
20 now we'll go ahead and play it forward.

21 (Whereupon, Mr. Martin plays the video.)

22 Q And the gun has been fired, and we're going

1 to stop at Camera 11 at 13:26:44.246, Camera 12
2 13:26:44.269.

3 Now, I know it was real fast, but I wanted
4 you to see it in realtime. And now we're going to go
5 through it. And with your permission, I'd like to
6 come back around --

7 A Sure.

8 Q -- and work the computer for you. All
9 right, sir?

10 A Absolutely.

11 Q Okay. We're looking at State's Exhibit
12 Number 4, Camera 11 at frame 13:26:22.546 is where
13 we're beginning our discussion.

14 A Okay.

15 Q You indicated to me that after Mr. Reeves
16 came and sat down, he picked up his popcorn and sat
17 in his seat, right?

18 A That's correct.

19 Q All right. And based on the frame that
20 you're looking at, do you know where Mr. Reeves is
21 sitting?

22 A Sitting in the seat that he was sitting in

1 before.

2 Q All right. And do you see the popcorn in
3 his hand?

4 A It appears to be the popcorn in his hand,
5 yes.

6 Q So this is the timeframe we're talking
7 about. He sits down right after returning from the
8 manager, right?

9 A Okay.

10 Q Now, you indicated that Mr. Reeves
11 indicated that once he sat down, regardless of when
12 he made the statement, that Mr. Oulson then stood up,
13 turned, and he felt he was coming after him. Do you
14 remember that?

15 A Yes.

16 Q Okay. Now, I'm going to go forward with
17 the frames. Camera 11 is still in play, and we're
18 going forward, and I'm going to stop it here at frame
19 13:26:23.379. We see no discernable movement by
20 Mr. Reeves, correct?

21 A That's correct.

22 Q Okay, sir. I'm going to continue to go

1 forward. Now, I stopped it at 13:26:24.712. Again,
2 from the timeframe that we've been talking about,
3 there's no discernable movement by Mr. Reeves,
4 correct?

5 A That's correct.

6 Q And, of course, the frame does not show at
7 all the activity of Mr. Oulson?

8 A That's correct.

9 Q All right. Now I'm going to go to the next
10 frame, and, of course, we have video not recorded on
11 -- Camera 11 we still have video recorded not on --
12 I'm sorry, on Camera 12, correct?

13 A That's correct.

14 Q I'm going to go forward until we see video
15 recorded on Camera 11. Now we've gone forward in
16 time, and the first frame we see when video resumes
17 is at frame 13:26:25.346, correct?

18 A That's correct.

19 Q Okay. Now, in that particular frame are
20 you able to identify any of the participants in this
21 event?

22 A Well, at this point in time, the only thing

1 I see is a light right there (indicating.)

2 Q Okay. That's the only thing you see?

3 A A reflection of some type. That's -- I see
4 Mr. Oulson sitting there. And if you can go back a
5 couple of frames and then go forward a couple of
6 frames, I might be able -- in a still motion, it
7 looks --

8 Q When I go back, there's no recording.

9 A Okay.

10 Q I can go forward for you.

11 A Okay, go forward.

12 Q All right. So we're going to go forward.
13 We're going to start at 13:26:25.346, and that's
14 where you say you see a light, and you see
15 Mr. Oulson?

16 A That's correct.

17 Q All right. We're going to go forward, and
18 you tell me when to stop. All right?

19 A Okay.

20 (Whereupon, Mr. Martin plays the video.)

21 A Okay.

22 Q All right. You've asked me to stop the

1 Camera Number 11 at frame 13:26:27.879. Now, you
2 asked me to stop at that point. You want to tell me
3 what your observation was? Why did you want me to
4 stop?

5 A The problem is, you start at 13:26:25.346.
6 The frames prior to that, I believe, when you see --
7 before you see that light, you see an arm, a hand or
8 something coming in, and you don't have that
9 recorded. But when you see that light come acrossed,
10 you see Mr. Oulson come forward, and then he goes
11 back, and he gets --

12 Q How about if I play it like that for you?
13 Kind of remind you of the BEK TEK loop?

14 A The what loop?

15 Q BEK TEK. The one with Mr. Oulson in that
16 position where they loop it over and over, and you
17 see it over and over again. You saw that, right?

18 A Well, I -- what I saw and what I'm
19 trying to --

20 Q Right, Mr. Hayden? Dr. Hayden. I
21 apologize. If you could just answer that question,
22 and then I'll let you embellish on it, but would you

1 answer my question first?

2 A I don't know the question -- really how
3 you're asking that question, I don't know how to
4 answer.

5 Q Did you review a video -- and I apologize
6 for standing close to you. Did you review a video
7 produced by BEK TEK that is very pixilated, green in
8 color, that is looped with several frames where you
9 see motion over and over again? Did you see that
10 video?

11 A Yes, I did.

12 Q Is that the video that you're referring to
13 where you say I don't have it recorded, but you saw
14 something with his hand shoving forward? Is that
15 what you're referring to?

16 A I don't believe that's the one I'm
17 referring to, no.

18 Q What are you referring to then, sir, that
19 you saw that I don't have recorded?

20 A It was as you have right here, still
21 frames, going forward by a hundredth of a second. I
22 saw a frame before that when -- it would be right

1 when you see the light, I believe was a hand coming
2 in at that time, and then you see that light. And
3 that's the movement that -- I believe that was the
4 time that Mr. Reeves believes he was hit in the head.

5 Q All right. Well, let's stop just for a
6 second. I'm at 13:26:25.346. The frame before that
7 there is no recording.

8 MR. ESCOBAR: Well, there is no recording
9 in what you're showing him right there.

10 THE WITNESS: No.

11 MR. MARTIN: There is no recording on
12 Camera 11 or Camera 12.

13 MR. ESCOBAR: That's what you're showing
14 him right there, there is no recording?

15 MR. MARTIN: That is true, there is no
16 recording.

17 MR. ESCOBAR: On that exhibit?

18 MR. MARTIN: On that exhibit, nor any other
19 exhibit, and you know that to be the case. So you're
20 putting --

21 MR. ESCOBAR: Okay. Well, we'll see.

22 MR. MARTIN: -- all of these gratuitous

1 comments on here.

2 MR. ESCOBAR: No, no, we'll see what --

3 BY MR. MARTIN:

4 Q Dr. Hayden, do you know what you were
5 looking at when you made that comment that some hand
6 stuck out?

7 A What I'm saying to you -- and I can't say
8 it any clearer, is that same video -- type video that
9 you're showing with a hundredth of seconds, still
10 frames, where you're able to jump forward like that,
11 I saw a video -- and I don't know which one it was.
12 I have it. Where the hand --

13 Q Do you have it with you?

14 A I don't have it with me, no. I see a hand
15 or it looks like -- appears to be a hand and an arm
16 come through, and then it comes back almost
17 immediately, and that's when I see the light. So
18 you're starting it at the light. Right before that
19 is when I believe that Mr. Reeves believes he was
20 hit, and that's when the assault began.

21 Q I'm going to ask you to do me a favor,
22 Dr. Hayden. Would you mind just standing up and just

1 walking over there? I want Richard to come over, and
2 I want to show him something before I ask you any
3 questions. Fair enough?

4 A Sure.

5 MR. MARTIN: Richard, come here, please.

6 MR. ESCOBAR: Yeah.

7 MR. MARTIN: I hope one of these plays.

8 MR. ESCOBAR: What are you trying to do?

9 MR. MARTIN: Play the BEK TEK. I didn't
10 put it on a disk.

11 MR. ESCOBAR: You can't do that. You've
12 got -- if you've got the disk, play the disk. He
13 doesn't know which video at this point.

14 MR. MARTIN: I'm going to show him. He can
15 recognize it.

16 MR. ESCOBAR: But he doesn't have numbers
17 to the videos and stuff like that. If you have the
18 -- you know, the -- all of the videos that were
19 produced in this case, then go through all of them,
20 and then we can figure out --

21 MR. MARTIN: No, we don't have to go
22 through all of them.

1 MR. ESCOBAR: Okay.

2 THE WITNESS: Okay to come back?

3 MR. MARTIN: No.

4 MR. ESCOBAR: No, no, it's not okay. He
5 doesn't want you back.

6 THE WITNESS: Oh, okay.

7 MR. MARTIN: That's what I'm going to show
8 him.

9 MR. ESCOBAR: Okay.

10 (Mr. Martin plays video for Mr. Escobar,
11 with witness not viewing.)

12 MR. ESCOBAR: What is it you're going to
13 identify? Because what he has seen may be completely
14 different from that.

15 MR. MARTIN: Well, it might be.

16 MR. ESCOBAR: Okay. Because he's
17 describing still frames. He's not describing a
18 video. He's describing still frames on the record,
19 and you're trying to show him a video.

20 MR. MARTIN: Is that what you said? Still
21 frames?

22 THE WITNESS: Yes.

1 MR. MARTIN: You watched a group of still
2 frames?

3 THE WITNESS: That's correct.

4 MR. MARTIN: Oh, all right. I can do that.
5 No, I can't do that. All I have is the video. All
6 right. Well, we're going to go back to State's
7 Exhibit Number 4.

8 BY MR. MARTIN:

9 Q We're going to go back to 13:26:24.512, on
10 Camera Number 11, on State's Exhibit Number 4. And
11 as we go through the first frame we -- I've got to go
12 back so I can get the number. The first frame we see
13 where you say there is the white light is at
14 13:26:25.346.

15 A That's correct.

16 Q Now, you believe you've seen a frame that
17 is before that?

18 A That's correct.

19 Q Okay. And where did you get these frames
20 from?

21 A Mr. Escobar.

22 Q Okay. Now, you mentioned that at

1 13:26:25.346 is -- you believe that's when the
2 assault started, correct?

3 A Right around that point. It's right before
4 that is when the assault really began. What you see
5 there is a light. I don't know what exactly that
6 light is.

7 Q Well, okay. But you do identify Mr. Oulson
8 in that frame?

9 A Where Mr. Oulson was, you can't really see
10 him that well there. But, yes, he appears to be
11 right there.

12 Q You indicate that Mr. Reeves said after he
13 sat down with his popcorn that Mr. Oulson stood up at
14 that point? Is that the point?

15 A No, it is not. It's before that.

16 Q It's before that? Okay. I'm at frame
17 13:26:24.712, which is the frame before there's no
18 recording. There's no recording between those two
19 frames. Are you telling me that's where Mr. Oulson
20 stood up?

21 A No, I'm not. I'm saying when he came up,
22 and he sat down, whatever that frame was, I saw the

1 stop -- still photos, and I saw this hand come
2 through. And it's right before that is when
3 Mr. Oulson stood up, and he turned around and in an
4 aggressive nature started yelling and screaming at
5 him and started coming over the back of the chair at
6 him, and that's when he felt like he got punched. So
7 it was right around that point, that 46 that you're
8 showing me, where he feels like he got punched. And
9 there was action right before that.

10 Q I've got to go further forward. We're
11 looking at State's Exhibit Number 3, Cameras 11 and
12 12. You recall that we had testimony yesterday that
13 State's Exhibit Number 3 is the raw footage from
14 Cameras 11 and 12, have not been enhanced, and the
15 blue screens were put in there by the DVR recorders?
16 Do you remember that testimony?

17 MR. ESCOBAR: I would object, because he
18 wasn't here yesterday so there's --

19 MR. MARTIN: I understand that.

20 MR. ESCOBAR: -- been no testimony to that
21 with him.

22 MR. MARTIN: That's true.

1 MR. ESCOBAR: Well, you can't -- you can't
2 be putting things --

3 MR. MARTIN: Hey, this is my depo. Don't
4 interrupt me.

5 MR. ESCOBAR: You can't be telling him do
6 you remember that when he wasn't here.

7 MR. MARTIN: Yeah, he was here when I
8 explained it to him when I first did the video.

9 MR. ESCOBAR: He was here yesterday?

10 MR. MARTIN: I explained it to him when he
11 was here.

12 MR. ESCOBAR: He wasn't here yesterday.

13 BY MR. MARTIN:

14 Q My question to you was --

15 MR. ESCOBAR: Do you want her to read it
16 back?

17 MR. MARTIN: I do.

18 MR. ESCOBAR: He wasn't here yesterday.

19 MR. MARTIN: My question to him was, does
20 he remember me telling him that today that we had
21 testimony yesterday? Listen to my question.

22 MR. ESCOBAR: He wasn't here yesterday.

1 BY MR. MARTIN:

2 Q Now, as I explained to you when we started
3 looking at these videos that yesterday we had
4 testimony from the FBI that State's Exhibit Number 4
5 was the raw data that has not been enhanced or
6 anything, and the blue screens are there by the DVR
7 itself in its settings. Do you remember me telling
8 you that this morning before lunch, before you looked
9 at the videos?

10 A Yes, I do.

11 Q All right. And that's what we're looking
12 at now is State's Exhibit Number 4. And we're at
13 frame -- Camera 11 13:26:16.912, Camera 12
14 13:26:16.887. And would you agree, because we just
15 looked at it, that that's where Mr. Reeves was
16 sitting down after he came back from the manager,
17 right?

18 A That's correct.

19 Q Okay. Now we're going to go forward. Now,
20 on Camera 12 at 13:26:20.621, we have the blue
21 screen, no recording.

22 A Uh-huh.

1 Q Correct?

2 A Okay.

3 Q But we still have recording on Camera 11 at
4 13:26:20.612?

5 A That's correct.

6 Q All right. We're going to go forward.
7 Now, at 13:26:24.712, Mr. Reeves has been continually
8 settled in his seat, right?

9 A Appears to be, yes.

10 Q No discernable movement, right?

11 A That's correct.

12 Q All right. Now, the very next frame we
13 have the blue at 13:26:24.746, correct?

14 A That's correct.

15 Q All right. Now, you believe that at
16 13:26:24.712, before we see the blue screen, that
17 you've seen a frame with Mr. Oulson reaching towards
18 him?

19 A Not before you see the blue screen. It was
20 someplace between then and the 13:26:25.346. I saw
21 it, and I can't tell you exactly which video it was,
22 but I know it was done by the FBI.

1 Q It was done by the FBI?

2 A Yes, it's the same one that you have right
3 here.

4 Q Well, I'm trying to find it for you so be
5 patient with me. I want you to explain to me exactly
6 what you saw. We see at 13:26:24.712, right?

7 A Uh-huh, yes.

8 Q And then we have a blue screen?

9 A That's correct.

10 Q And I'm going to go up until the blue
11 screen comes off, and I'll get the frame number,
12 okay? Now, the first frame after the no recording is
13 frame 13:26:25.346, correct?

14 A Okay.

15 Q All right. Now, where is it that you saw
16 this hand coming in on a still frame?

17 A I did not see it on your video. I'm saying
18 that I saw a video, the same -- not the video, but
19 the still shots, and I was able to see that hand come
20 in.

21 Q All right. Now, at 13:26:25.346, you've
22 already indicated to me that you see a light, and you

1 see Mr. Oulson, correct? Not a light, but it's a
2 dot?

3 A A dot, yes.

4 Q All right. I'm going to go back so it's a
5 little bit bigger, I'm going to go back to the same
6 frame in State's Exhibit Number 4, so we have a
7 larger picture to look at. All right, sir?

8 A Okay, okay.

9 Q Now, we're on State's Exhibit Number 4,
10 Camera Number 11 at 13:26:25.346, correct?

11 A That's correct.

12 Q And that's the same frame we were looking
13 at on State's Exhibit Number 3, right?

14 A That's correct.

15 Q Now, at this point, before we got into the
16 discussion about this frame that you saw, you
17 indicated to me that at this point is when something
18 happened that Mr. Reeves explained to you. Would you
19 just pick it up from there? What happens at this
20 point?

21 A At this point Mr. Reeves believes he has
22 been assaulted and hit in the head.

1 Q With what?

2 A He believes it's Oulson's fist.

3 Q All right. So at 13:26:25.346, beginning
4 with that frame, to 13:26:25.712, between those
5 frames is when it happened? That's what I'm trying
6 to figure out.

7 A No, I did not say that.

8 Q Well, tell me what you --

9 A Okay, let me tell you again.

10 Q All right.

11 A At 13:26:25.346, you see the light,
12 whatever that light might be.

13 Q Yeah.

14 A The hand, when the arm coming through, you
15 see prior to that 13:26:25.346, so it has to be
16 someplace within that blue, and I did not see it on
17 your screen. I saw it on the computer. I did not
18 see it here.

19 Q All right. A still frame, not a video?

20 A I saw it in still frames. There might be a
21 video. I don't remember, but I saw it in the still
22 frames. Just like you're doing, advancing one by

1 one.

2 Q And it was a video produced by the FBI?
3 That's what you're telling me?

4 A From what I understand, that's correct.
5 It's the same exact thing that you have right here,
6 working exactly the same way, with the exact same
7 numbers.

8 Q It's just I don't have that frame on there
9 that you saw?

10 A I guess you don't.

11 Q At 13:26:25.346, according to the sequence
12 of events related to you by Mr. Reeves, is that when
13 Mr. Oulson stood up?

14 A Again, that is not what I understand that's
15 when he stood up. That's when the assault began. He
16 stood up prior to that.

17 MR. ESCOBAR: Glenn, I'm going to object.
18 This is the third time he tells you that, and you
19 keep asking him the same question all over again.
20 This has gone beyond being realistic.

21 BY MR. MARTIN:

22 Q Now, at this particular frame is it your

1 testimony that because you don't see the frame or the
2 -- that you saw the hand at this point, Mr. Oulson is
3 already standing?

4 A At this point --

5 Q At this time?

6 A At this point it appears that Mr. Oulson is
7 probably standing, because what we saw before that
8 was the hand come through, and then you see the
9 light. So it is Mr. Reeves' belief -- and I believe
10 that the video establishes this -- that he was
11 standing at that time.

12 Q And when you say "at that time," we're
13 talking about this particular frame he was already
14 standing?

15 A At that particular frame the punch has been
16 thrown, and Mr. Reeves is -- just been hit in the
17 head or about to be hit in the head, if that's
18 something else, a flying object.

19 Q All right. So now we have Mr. Reeves
20 punched in the head, right? And something thrown at
21 him?

22 A Hit in the head.

1 Q Hit in the head?

2 A And maybe the something that's thrown at
3 him is the hit that he felt. He doesn't know.

4 Q And sequencing the events related to you by
5 Mr. Reeves, it's at that point he becomes dazed?

6 A At that point he gets hit in the head, and
7 he feels something is happening, and he's dazed at
8 that point.

9 Q All right. And does he indicate to you how
10 he responds physically to the -- being hit in the
11 head? What is his body movements? Does he explain
12 to you what he does in response to being hit in the
13 head with something?

14 A What he explained to me is that when he got
15 hit in the head, he was dazed, and he doesn't
16 remember any other movements he made at that point,
17 except sliding back in his chair.

18 Q Okay. So we're going to go forward from
19 frame 13:26:25.346 on Camera Number 11, State's
20 Exhibit Number 4, and I'm going to stop it at
21 13:26:26.346. Do you see Mr. Reeves?

22 A Yes, I do.

1 Q And he's leaning forward towards the movie
2 screen, is he not?

3 A Yes, he is.

4 Q Now, at frame 13:26:25.879, can you discern
5 Mr. Reeves' left arm or hand?

6 A At that point, no.

7 Q How about at 13:26:26.046?

8 A Can I see his left arm?

9 Q Yes.

10 A No.

11 Q At 13:26:26.546, Mr. Reeves continues to
12 lean forward?

13 A That's correct.

14 Q Towards the movie screen?

15 A That's correct.

16 Q All right. And at 13:26:27.746, Mr. Reeves
17 has leaned back and settled back in his seat,
18 correct?

19 A He has leaned back in his seat. I don't
20 know if he's settled back in his seat. He has leaned
21 back in his seat.

22 Q All right. To the point where we just see

1 the -- a little bit of his head, right?

2 A That's correct.

3 Q Now, when you reviewed the video after
4 interviewing Mr. Reeves and saw the frames that we
5 just discussed where Mr. Reeves leans forward and
6 leans back after you're telling me that he was --
7 that Mr. Reeves indicated he was hit in the head and
8 dazed, did you have an occasion after reviewing the
9 video to go back and discuss with Mr. Reeves, hey,
10 explain to me what you were doing leaning forward?
11 Did you do that?

12 A I did not.

13 Q Don't you think that was important?

14 A When I talked to Mr. Reeves, he explained
15 to me thoroughly -- understanding in a stressed
16 situation what happens to you mentally and things you
17 might forget and the order you might not remember, it
18 fit completely with what he was saying. So did I
19 expect him to remember he actually moved forward? He
20 was dazed. You're talking about a second right here.
21 And he was dazed, and he moved forward as he's
22 stunned, and then he realizes he's hit, and he moves

1 back.

2 Q Does he say that he grabbed his face or
3 said owie or, boy, this hurt? Does he indicate --
4 how did he react to the blunt trauma?

5 A He said it knocked his glasses sideways.

6 Q Uh-huh.

7 A So he knew he knocked his glasses sideways
8 on that, and that's when he moved back in his seat.

9 Q All right. So while we see him leaning
10 forward, based on the sequence of events that
11 Mr. Reeves related to you, he was leaning forward
12 with his glasses knocked sideways?

13 A I imagine it would have been, but I can't
14 see it in this detail.

15 Q All right. I'm going to go forward with
16 the frames. We're going to start at 13:26:27.746,
17 and I'm going forward. Now, at 13:26:30.912 is the
18 last frame that we see before -- and they're
19 indicating there's no recording, correct?

20 A Correct.

21 Q All right. And from the time period that
22 you and I have been discussing that he's back in his

1 seat up until that particular frame, there is no
2 discernable movement by Mr. Reeves, correct?

3 A That is correct.

4 Q And, of course, the camera frame doesn't
5 pick up anything else. We don't see Mr. Oulson, or
6 we have no idea where he is or what he's doing in
7 that frame, right?

8 A That's correct.

9 Q All right. Before that time period,
10 Mr. Reeves is in his seat and at least we can't
11 discern any type of significant movement that the
12 camera would pick up during that timeframe?

13 A That's what it appears.

14 Q The next frame is going to be blank, video
15 not recorded. And I'm going to go forward until we
16 see the recording, and then I'll put that frame on
17 the record. The first frame that we see after video
18 not recorded is frame 13:26:35.779. Almost five
19 seconds later, right?

20 A Thirty-five? I think the first one is 25,
21 yeah. It's -- I mean, it's seconds later, yes.

22 Q Well, five seconds. Not just a couple of

1 seconds, five seconds.

2 A Twenty-five seconds is when it was before?
3 13:26:25.346 and --

4 Q No --

5 A -- now it's 13:26:36?

6 Q No, I don't want to mislead you. So --

7 A Yeah, please don't.

8 Q No, I'm not. I wouldn't do that. The last
9 frame before no --

10 A Oh, the frame before that, yes. Okay, that
11 frame, yes.

12 Q All right.

13 A Okay.

14 Q See, I didn't want to mislead you.

15 A Oh, no, you did a good job.

16 Q All right. So about five seconds?

17 A About five seconds, yes.

18 Q Now we go back to the frame where we first
19 see recording. And, again, it's at 13:26:35.779,
20 correct?

21 A That's correct.

22 Q Now, are you aware how long it is between

1 the time that we saw the frame where you said there's
2 a white object? You know, we had the discussion
3 about whether or not we saw a hand or not?

4 A That's correct.

5 Q Until this point right here at frame
6 13:26:35.779?

7 A And your question?

8 Q How many seconds that's --

9 A About ten seconds.

10 Q Okay. Now, in that ten-second period --
11 and that's roughly ten seconds. The events that
12 you're describing that Mr. Reeves described to you
13 taking place is that something has hit him in the
14 head, his glasses is askew, sideways, and he's dazed,
15 right?

16 A That's correct.

17 Q And possibly this is when the cell phone is
18 thrown?

19 A No, the cell phone was thrown up in
20 13:25:26. That point when the light --

21 Q Very first?

22 A Yeah, the fist or the light, that's when he

1 believes he was hit with something.

2 (Whereupon, Mr. Michaels leaves the room.)

3 Q Okay. And you know that cell phone was
4 located or at least it was recovered -- that's the
5 best I'd say. It was recovered in Mr. Reeves' aisle,
6 very near where his feet were?

7 A That's correct.

8 Q Okay. Did Mr. Reeves ever indicate to you
9 that Mr. Oulson attempted to recover his cell phone,
10 if it was thrown at him?

11 A No, there's no mention of that.

12 Q And in your critical review of the video
13 frames of that ten-second period that we've been
14 looking at, did you identify any -- at any time
15 Mr. Oulson's attempt to recover his phone?

16 A I did not.

17 Q Do you know how much the phone cost?

18 A I do.

19 Q What's your best guess? I'll keep it as a
20 guess. I'm not going to hold you to it. It's an
21 iPhone 5.

22 A Well, I can tell you it depends what kind

1 of deal you get with the --

2 Q With the phone company?

3 A With the phone company. But they can go up
4 to \$600, down to -- they can get them for a hundred
5 dollars. So...

6 Q And do you know what information was on
7 that phone?

8 A I do not know everything that was on his
9 phone.

10 Q All right. Do you know the number of
11 contacts he had?

12 A I do not know that.

13 Q The number of applications that he had on
14 it?

15 A I do not know that.

16 Q Number of photographs that he had on it?

17 A I do not know that.

18 MR. ESCOBAR: Be careful with those
19 photographs.

20 MR. MARTIN: Still not relevant.

21 MR. ESCOBAR: You've opened the door.

22 MR. MARTIN: Might be.

1 BY MR. MARTIN:

2 Q You don't know how important that phone was
3 to Mr. Oulson, do you?

4 A I do not know how important it was to him,
5 no.

6 Q So according to Mr. Reeves, possibly an
7 iPhone belonging to Mr. Oulson was hurled in his
8 direction, and he was hit by it, right?

9 A He says that's a possibility, yes.

10 (Whereupon, Mr. Michaels enters the room.)

11 Q Okay. And this was some ten seconds before
12 the frame that we see right here at 13:26:35.779?

13 A That's correct.

14 Q Now, do you see Mr. Oulson in that
15 particular frame?

16 A Not really, no.

17 Q I'm going to go forward.

18 A Okay.

19 Q I'm going to go forward to 13:26:36.512.
20 The reason I did that -- I want you to look at that,
21 and then we're going to play it backwards until we go
22 to black. Now at 13:26:35.779. Now that you've seen

1 the movement that we see in the frames, do you know
2 where Mr. Wilson (sic) is in that particular reason?

3 MR. ESCOBAR: Is there another character,
4 Mr. Wilson, around here?

5 MR. MARTIN: I'm sorry, Mr. Oulson.

6 THE WITNESS: Mr. Oulson?

7 MR. MARTIN: Yeah, you're right.

8 MR. ESCOBAR: Let's not bring another
9 character in.

10 THE WITNESS: Just play it forward again.
11 Let me see.

12 MR. MARTIN: Sure.

13 THE WITNESS: You can see part of
14 Mr. Oulson right in there.

15 BY MR. MARTIN:

16 Q All right. At 13:26:35.779, now that
17 you've -- you know, looked at frame -- orientated
18 yourself and we worked backwards, do you know where
19 Mr. Oulson is in the frame?

20 A It appears Mr. Oulson is almost right on
21 top of him, which would put him just about over the
22 top of his wife's seat.

1 Q How do you know that?

2 A It just appears that way in the video.

3 Q But he's on top of him?

4 A He's on top of what?

5 Q He's on top of him? That's what you said?

6 A No, he's coming in towards him. You can
7 see the -- you can see the body of Mr. Oulson right
8 there, and you can see Mr. Reeves right there. And
9 the seats are such that he has to be over the --
10 almost over the top of the seats at that point.

11 Q All right. And do you know the position of
12 Mr. Oulson, based on the facts and circumstances as
13 you know them?

14 A Do I know the position of Mr. Oulson?

15 Q Yeah, at that point. Is he standing with
16 both feet on the floor? Does he have his knee in the
17 seat? Does he have both feet in the seat? Do you
18 know -- that's what I'm talking about, position.

19 A I do not know the actual position of
20 Mr. Oulson on that chair, just that he's coming over
21 the back of the top of that chair at that time. He
22 could be standing, kneeling. I don't know at that

1 point.

2 Q But Mr. Reeves indicated that he was
3 pushing on the back of his seat, correct?

4 A He was coming over the top of the back of
5 his seat, Mr. Oulson was.

6 Q Well, correct me if I'm wrong, my question
7 to you is did Mr. Reeves tell you that he was pushing
8 on the back of his seat? Mr. Oulson was pushing on
9 the back of his seat?

10 A Mr. Oulson was pushing on the back of
11 Mr. Oulson's seat?

12 Q Yeah. Did Mr. Reeves say that to you?

13 A I don't know if he actually said that to
14 me. He said he was coming -- he felt like he was
15 coming over the top of the seat towards him. I don't
16 remember him saying the word pushing on the back of
17 his seat.

18 Q All right. And I'm just talking about the
19 interview that you had with him, not the interview he
20 had with law enforcement. Yours.

21 A That's correct.

22 Q Okay. Now, at frame 13:26:25.779, you

1 indicated that you see Mr. Oulson, and you indicated
2 you don't know if he's standing fully erect, he's
3 standing up in the seat or whatever, correct? You
4 don't know his position?

5 A That's correct.

6 Q Okay. Now, when you and Mr. Escobar were
7 in Cobb Theatre, and you had the actors playing or
8 providing you the movements of Mr. Oulson so you
9 could see what it looked like while you were sitting
10 in Mr. Reeves' seat, did any of those -- did the
11 actor hold onto the back of the seat or not hold?
12 How did the actor lean over so the actor wouldn't
13 fall over into Mr. Reeves' aisle?

14 MR. ESCOBAR: You know, Glenn, I'm going to
15 let you get into this, but I want to make an
16 objection that this is work product, but I've let you
17 get into that because --

18 MR. MARTIN: Work product?

19 MR. ESCOBAR: Yeah.

20 MR. MARTIN: He's relying on it.

21 MR. ESCOBAR: No, no. No, no. He went
22 through that process to have the experience of it.

1 But, you know, he and I were interacting, and we were
2 interacting in different positions, and that's work
3 product. But I'm --

4 MR. MARTIN: No.

5 MR. ESCOBAR: It is, but I'm going to let
6 you get by a little bit more, but, you know, you've
7 gone over this quite a few times already.

8 BY MR. MARTIN:

9 Q My question to you is, the person providing
10 you the movements so you could have the life
11 experience, if you will, in Cobb Theatre, how did
12 that person providing the movement of Mr. Oulson lean
13 over the seat so that person didn't fall into the
14 aisle of Mr. Reeves?

15 A Well, I hate to say it this way, but
16 Mr. Escobar's not 6 foot 4, so it's --

17 Q Well, look, that doesn't matter.

18 A You're asking me a question, so let me
19 answer the question.

20 Q Okay.

21 A You're asking if he -- pushing over the
22 seat, Mr. Escobar was standing where I thought that

1 Mr. Oulson is and he's coming over the top of the
2 seat, and it appears like he's coming over. Is he
3 kneeling on it? I don't know. Was Mr. Escobar
4 standing there? He was coming over, and I don't know
5 exactly where he had his hand. I just remember that
6 one hand came in towards me.

7 Q All right. So my question to you -- and
8 this is what I want the answer to. If you don't
9 know, tell me you don't know, and we're going to move
10 on. I don't need a long narration. Do you know how
11 the person providing the movements leaned over and
12 was able to extend that hand out in front of you
13 while leaning over and do so without falling into the
14 aisle where you were sitting? Do you know how that
15 took place?

16 A No, I don't.

17 Q Now, you went and stood there and did the
18 same thing, you did that movement?

19 A Yeah.

20 Q Tell me how you reached over with your
21 right hand and didn't fall into the aisle. What did
22 you do to prevent that?

1 A I believe at that time I was holding onto
2 the seat -- the back of the seat with my left hand,
3 just because my back is so screwed up. And that's
4 what happens --

5 Q Well, even if your back wasn't screwed
6 up --

7 A I can't tell you. My back is screwed up,
8 so I'm --

9 Q Okay.

10 A -- telling you how I leaned. That's what
11 -- the question --

12 Q All right, fine.

13 A -- you asked and the answer to it.

14 Q Wait a minute. No, we're -- my question to
15 you is, if you did not have your hand there, would
16 you have fallen over into the aisle?

17 A I don't think I would have.

18 Q All right. And how far did you reach
19 towards the other person sitting in the other seat?

20 A Just reached back to see how hard it would
21 be to reach back.

22 Q So my question was -- and please listen --

1 how far did you reach?

2 A And my answer would be I don't know
3 exactly. In inches, if you're asking, I don't know
4 exactly how many inches I reached back. With my arm
5 length, whatever that is.

6 Q Were you able to touch the seat bottom of
7 the seat in the aisle across from you when you
8 reached over?

9 A I didn't try to touch the seat bottom.

10 Q Did you try to touch the arm?

11 A I did not try to touch it. I tried to
12 touch where it would be where somebody would be there
13 if I was going to grab something.

14 Q And where would that be?

15 A It would be somewhere around the armrest,
16 somewhere around the armrest.

17 Q And you did that?

18 A And I did that, yes.

19 Q All right. So in reaching that far, my
20 question to you is, could you have done that without
21 falling over without your left hand on the seat?

22 A And my answer would be the same. I think I

1 could. I don't -- I didn't try it that way.

2 Q All right. But what you did do is you put
3 your hand on the seat?

4 A I believe I put my hand on the seat.

5 Q All right. Now, at frame 13:26:35.779, can
6 you discern whether or not Mr. Oulson has his hand on
7 the seat back? His left hand?

8 A I can't tell.

9 Q Okay. I'm going to play it forward. We're
10 at frame 13:26:36.312. I'm going to play it forward.
11 Camera Number 11, State's Exhibit Number 4. I want
12 to go back, I'm sorry. Now, I'll play it again. I'm
13 going to start over. I apologize to you. We're at
14 13:26:36.112. I want to play it forward. Now, at
15 frame 13:26:36.312, do you know where Vivian Reeves
16 was seated in relationship -- in relation to her
17 husband at the time of the event?

18 A Seated to the right.

19 Q All right. And based on that knowledge,
20 can you tell whether or not in this particular frame
21 you see Vivian Reeves?

22 A It appears to be her, yes.

1 Q And she is beginning to lean forward?

2 A That's correct.

3 Q All right. I'm going to move it forward.

4 The next frame is 13:26:36.346. At that point do you
5 discern movement from Mr. Oulson?

6 A Yes, I see a hand coming in.

7 Q All right. Now, I'm just going to toggle
8 one, two; one, two; one, two; one, two. I'm just
9 toggling it back and forth.

10 A Okay.

11 Q And ask you is that the frames that you saw
12 when you thought about there was a hand coming in?

13 A It is not.

14 Q All right, sir. I'm going to go forward
15 from 13:26:36.346 to 13:26:36.579. Now, I can play
16 it over and over again for you, but at that point can
17 you tell whether or not Mr. Oulson has the bag of
18 popcorn in his hand?

19 A It appears he grabbed the bag of popcorn at
20 that point in time.

21 Q Okay. I'm going backwards. All right?
22 I'm going back forward. At 13:26:36.679, can you

1 discern whether or not Mr. Oulson is moving his hand
2 back with the bag of popcorn?

3 A It appears he is.

4 Q All right. Now, according to Mr. Reeves'
5 statement to you, the events that we see here,
6 Mr. Oulson grabbing the popcorn and bringing it back,
7 occurred some 10 or 11 seconds now after something
8 hit him that dazed him and dislodged his glasses,
9 right?

10 A That is correct.

11 Q So at this point -- and it's not where
12 Mr. Reeves is saying that he was hit with a fist or
13 the cell phone?

14 A That's correct.

15 Q Okay. It was some now 11 seconds before
16 that?

17 A That's correct.

18 Q I'm going forward on Camera 11, State's
19 Exhibit Number 4, 13:26:36.712 to 13:26:37.046. In
20 those frames can you discern whether or not
21 Mr. Oulson is in the process of tossing the popcorn
22 bag?

1 A It appears his hand is coming back in, so
2 it appears he is, yes.

3 Q And he has the popcorn bag in his hand?

4 A It appears he does, yes.

5 Q I'm going to go forward at 13:26:37.112.
6 Can you discern whether or not the popcorn bag has
7 now left Mr. Oulson's hand?

8 A It looks like it still might be in his hand
9 at that point in time.

10 Q Next frame, 13:26:37.146, has it left his
11 hand?

12 A It appears it has, yes.

13 Q At this point can you discern whether or
14 not there's anything else in Mr. Oulson's hand at
15 this particular frame, or is his hand empty?

16 A From this video, it doesn't appear. I
17 can't tell.

18 Q But the bag came out of that hand, and it
19 left, right?

20 A It appears it has, yes.

21 Q We'll continue forward at 13:26:37.146.
22 I'm just playing it back and forth to 13:26:37.412.

1 Now, you mentioned to me that Mr. Reeves
2 told you that upon being struck with whatever, a fist
3 or the cell phone, that his reaction was that he
4 scooted his buttocks from the back to the front
5 bottom of his seat, and he stretched out trying to
6 create distance, correct?

7 A That's correct.

8 Q All right. Now, some now almost 12 seconds
9 later, we see the toss of the popcorn. Back -- and
10 I'm going to go back, because I don't want to mislead
11 you. Now we're at 13:26:25.346, State's Exhibit
12 Number 4, Camera 11, where -- based on your critical
13 review of the video and Mr. Reeves' statement to you
14 in Mr. Escobar's office, is when he was struck with
15 whatever object it was, he was dazed, glasses off,
16 and he began to scoot back --

17 MR. ESCOBAR: Not glasses off. Glasses --

18 MR. MARTIN: You're right, you're right.

19 BY MR. MARTIN:

20 Q His glasses ascured (phonetic.) Is that
21 the word? They weren't off his face, but they were
22 on one ear or something.

1 MR. ESCOBAR: No, they weren't off his
2 face.

3 MR. MICHAELS: Askewed, askewed.

4 BY MR. MARTIN:

5 Q Askewed. Yeah, his glasses were askewed.
6 Thank you. Correct?

7 A Yes.

8 Q All right.

9 A If you're asking me, yes.

10 Q Now, at this point in frame 13:26:25.346,
11 when that occurred you indicated he was dazed, and he
12 began to scoot his buttocks from the rear to the
13 front of the seat. Is that what we see up until
14 13:26:27.779?

15 A What I said is that that's what he believed
16 he did.

17 Q That's what he said?

18 A That's what he believed he did, yes.

19 Q So my question to you is, do we see that in
20 the video?

21 A No, you don't see that.

22 Q All right. After you interviewed

1 Mr. Reeves and had a chance to look at the video in
2 greater detail, did you, in fact, notice that at the
3 time that Mr. Reeves indicated that he was struck
4 with the blunt object, that the video does not
5 support that he scooted his buttocks forward?

6 MR. ESCOBAR: And, Glenn, can we just put
7 the time period that you're --

8 MR. MARTIN: Yeah.

9 MR. ESCOBAR: -- saying that he did scoot
10 his buttocks? But you've got to put that 13:26 --

11 MR. MARTIN: Yeah, okay, okay, Richard,
12 I've got it. Hang on a second. Hang on.

13 MR. ESCOBAR: You've got to give him the
14 parameters.

15 MR. MARTIN: Hang on, hang on, hang on,
16 hang on.

17 MR. ESCOBAR: Because his head evaporates.

18 MR. MARTIN: Hang on, hang on, hang on.

19 MR. ESCOBAR: Reeves' head.

20 MR. MARTIN: All right. 13:26:25.379 to
21 13:26:28.046.

22 MR. ESCOBAR: You've got to go further

1 back, because you'll see his head continues to
2 evaporate, Mr. Reeves' head. Go as far back as you
3 can.

4 MR. MARTIN: I'm not going back. I'm going
5 forward.

6 MR. ESCOBAR: No, I say -- I mean forward
7 meaning that keep going on the film.

8 MR. MARTIN: All right. We'll go all the
9 way up to 13:26:28.912.

10 MR. ESCOBAR: Exactly.

11 BY MR. MARTIN:

12 Q All right. Now, can you discern Mr. Reeves
13 scooting his buttocks forward from the back of the
14 seat to the front of the seat during the time of
15 those frames? Between those frames?

16 A From the video, no.

17 Q Okay. Once you had a chance to conduct a
18 critical review of the video, knowing what Mr. Reeves
19 told you, did you have an occasion to go back and
20 discuss with Mr. Reeves, Look, I've seen this in the
21 video, can you explain this to me so I understand it?
22 Did you do that?

1 A I did not, and I explained that to you
2 before, why I did not.

3 Q All right. Well, in this particular case,
4 why did you not for this sequence?

5 A And it would be the same answer.

6 Q Okay. What is it?

7 A Is that I have extensive experience in
8 people that have been involved in critical
9 life-threatening situations and situations that they
10 consider to be extremely dangerous, and their mind
11 does not capture everything that's going on. So just
12 because you don't do a certain movement, or they do a
13 certain movement, doesn't mean they're lying. It
14 just means they just didn't remember doing that.

15 Q Now, the concept that you just explained to
16 me, that is a concept that is taught at Force Science
17 Institute, is it not?

18 A I'd have to go back and think about that,
19 if it's taught at Force Science. I know it's taught
20 in the FBI. I know it's taught in many police
21 departments all across the country. So I don't know
22 if it's taught in Force Science or not. I just don't

1 remember that.

2 Q Well, let me see if this jogs your memory.
3 Do you recall during the Force Science Institute
4 Seminar instruction to the effect that when you have
5 a person's statement that appears to be inconsistent
6 with other evidence because of the concept that
7 you've just explained to me about a high stress
8 situation and a person's memory, that you cannot
9 automatically assume that the person is lying, that
10 you have to go and look at all of the extrinsic
11 evidence to determine whether or not it is memory or
12 it's lie. Do you remember that type of instruction?

13 A I do.

14 Q All right. Is that correct?

15 A And that is correct.

16 Q And so what did you do to go and look and
17 make a determination as to the extrinsic evidence
18 that's out there to make a determination is
19 Mr. Reeves lying, or is it based on -- on memory
20 based on stress? Did you conduct that analysis?

21 A Did I conduct that analysis? I looked at
22 the video. I looked at everything that happened.

1 Everything was pretty consistent with everything that
2 I understood, and I didn't see it as a problem
3 because of his actions. I did not see that.

4 Q And how many times did Mr. Reeves tell you
5 that he stretched out?

6 A He told me several times that he had
7 stretched out. Several times.

8 Q I phrased that question inartfully. May I
9 start over, please?

10 A Sure.

11 Q Okay. My question is: Did Mr. Reeves tell
12 you how many times he stretched out? Not how many
13 times did Mr. Reeves tell you he stretched out. Do
14 you see the difference?

15 A Yes.

16 Q Okay. I apologize for that. So could you
17 answer that question, please?

18 A Mr. Reeves said that he wanted to get
19 distance, and that's when he stretched out at that
20 point to get that distance. So it was at that point
21 in time that he believed he stretched out.

22 Q Okay. We're just going to stay on State's

1 Exhibit Number 4, Camera Number 11. I'm going back
2 to our discussion at frame 13:26:37.146, where you
3 indicated to me that it appeared that the popcorn bag
4 has left his hand, right?

5 A That's correct.

6 Q So now I want to start from there. Okay?

7 A Okay.

8 Q So we're going to go forward with the
9 video. I'm just playing it back and forth for you,
10 and I'm stopping at 13:26:37.479. So we're just
11 going to go back and forth. I want you to see it
12 frame by frame. We are stopped at 13:26:37.479.
13 I've played that over and over for you again so you
14 could see the movement, because I want you to have
15 that in your head, so I can ask you these questions.

16 In the frames that we reviewed from the
17 time that you can discern that the popcorn apparently
18 left his hand until we at least see just a little bit
19 of Mr. Oulson's hand, if you will, in the frame,
20 correct?

21 A Okay.

22 Q All right. Now, you indicated that

1 Mr. Reeves told you during his interview that he
2 stretched out in his seat to get distance, right?

3 A That's correct.

4 Q Were you able to discern that in the video?

5 A It appeared he did, yes.

6 Q And what is it about the video? What are
7 your cues when you look at that critically? What are
8 your cues that lead you to believe at that point he's
9 stretching out? And we can toggle back and forth, or
10 you can do it, if you want to.

11 A Let's get the thing stretching out. He was
12 not laying down. He was moved back in the seat.

13 Q Right.

14 A He couldn't lay down. He's moved back in
15 the seat. And it appears that's what he did. He
16 said he did that, and I see nothing in the video to
17 say he did not do that.

18 Q I'm just asking you to identify the cues
19 that you can see so I can look at those cues. Can
20 you do that for me?

21 A I don't know if I can. I don't know with
22 the question you're asking, what cues are you talking

1 about?

2 Q Well, I don't know. That's why I was
3 asking you. You indicated that at that point you
4 believe that Mr. Reeves was stretched out. All I'm
5 asking is you to look at the video and say, Glenn, at
6 this point I see this, at this point I see this, at
7 this point I see this, and based on those three
8 things, I believe he was stretched out. I don't know
9 what the cues are. They are in your head.

10 A Okay. Go back, if you would.

11 Q I'll let you toggle back and forth so you
12 can do it.

13 A You're going to let me toggle back and
14 forth?

15 Q Yeah.

16 A Thank you.

17 Q Go ahead, you can't hurt nothing. Just let
18 me know.

19 A Okay. Right at this point you see the hand
20 coming in there, and he grabs the popcorn.

21 Q Now, I'm going to have to help you with the
22 frame numbers --

1 A Sure.

2 Q -- so the record's good. Now, I'll let
3 you narrate, though, all right?

4 A Sure, absolutely.

5 Q At 13:26:36.479, correct?

6 A Yes.

7 Q All right. Now, what takes place? What
8 are you telling me?

9 A Okay. He grabs the popcorn.

10 Q Yeah.

11 A It should be noticed at this time, too,
12 Mr. Reeves, when he talked to me, did not know he
13 grabbed the popcorn. Alls he knows is that a
14 movement was coming in towards him. Now you see the
15 hand is back, all the way back at this point.

16 Q All right. Wait a minute. "This point"
17 you're referring to frame 13:26:36.912, correct?

18 A That's correct.

19 Q Go ahead.

20 A And then you see the hand come forward, and
21 it appears that that's where the popcorn is -- leaves
22 Mr. Oulson's hand.

1 Q All right. And that's at frame
2 13:26:37.146. And at what point -- the question is:
3 Where is he --

4 A I believe he's back. I believe he's been
5 laying back there. Let me go all the way back here.
6 Okay. I believe he's laying back at that point.
7 He's back as far as he can really go. And his wife
8 at that point -- he's kind of moving. She knows
9 something's going on, and she just wants to get out
10 of the way. And the popcorn is grabbed, and then it
11 comes back, and then it comes forward, and Mr. Reeves
12 believes at that point in time --

13 Q All right, stop right there. When you say
14 "that point in time" 13:26:37.212. You believe at
15 that point that he's stretched out?

16 A I believe he's stretched out as much as he
17 can be stretched out at that point. Laid back in his
18 seat more.

19 Q Now, Mr. Reeves explained to you that when
20 he was in that stretched out position that his left
21 hand was out in front of him defending himself. Do
22 you remember him telling you that?

1 A Yes, he did.

2 Q And you can use the toggles. If you would
3 just toggle forward and stop it where you see
4 Mr. Reeves' left hand extending out in defense, in a
5 defensive manner.

6 A Okay. Right about there. If anything, he
7 might have his hand up at that point.

8 Q What is the visual cue in the video that
9 you're relying on at this point his left hand is up?

10 A I see movement right about there. If you
11 see a little bit of movement right there, that
12 appears that -- it was coming across and it appears
13 that it might be something that he's hitting at that
14 point.

15 Q All right. Go back to that frame, please.
16 And you're telling me at frame 13:26:37.112, you've
17 discerned from the cues that you see in the video
18 that Mr. Reeves' left arm is extended out in front of
19 him in a defensive manner to ward off Mr. Reeves? Is
20 that your testimony?

21 A That's what it appears that it could be. I
22 don't know, because unless you really enhance this

1 video and brought it up where you could see it, I
2 can't tell you for sure.

3 Q All right. Well, keep going forward.

4 A You can see his hand at that point. Do you
5 see it?

6 Q All right. Where is his hand?

7 A His hand is down at that point. It's
8 coming up right there.

9 Q Uh-huh.

10 A His hand is up more.

11 Q All right. Now, Mr. Reeves explained to
12 you that he reached out, and he came in contact with
13 something. He didn't know if it was the shoulder or
14 chest, and he was going -- whatever his thought
15 process was. I don't remember --

16 A He didn't know what it was. An arm, a
17 hand, a chest. He didn't know. He felt like he --

18 Q He'd grabbed ahold of something?

19 A He didn't grab ahold of something. He put
20 his --

21 Q He touched something?

22 A He felt like he touched something, yes.

1 Q All right. So my question to you -- and
2 use the toggles. Go ahead and stop the frame for the
3 video that supports Mr. Reeves' statement that he
4 reached out and actually touched Mr. Oulson.

5 A As I showed you, it looked like it might be
6 a hand coming up at that point in time.

7 Q Just stop it, and I will put the frame on
8 the record.

9 A I stopped it.

10 Q Okay, I apologize. 13:26:37.346 is where
11 you believe that Mr. -- according to Mr. Reeves'
12 statement, in an attempt to support his statement by
13 the video that Mr. Reeves came in contact with
14 Mr. Oulson?

15 A It goes back to exactly what I said before,
16 and I'm not giving you any long dissertation. It's
17 the same answer. When people are in stressful
18 situations, they don't get every detail of what
19 actually happened. Sometimes they put things in
20 there that didn't happen, and other times they omit
21 things. It's just because when you're under stress,
22 your mind does not capture every piece. That is --

1 research has gone back many, many years, and a lot of
2 research was done in the FBI on that.

3 Q Now, your answer kind of begs the question,
4 why did you tell me that if you did not believe that
5 the video supported the fact that Mr. Reeves' hand
6 went out and touched Mr. Oulson?

7 MR. ESCOBAR: I'm going to object. I
8 believe he told you that. You're being
9 argumentative.

10 BY MR. MARTIN:

11 Q Are you going to answer the question?

12 A I don't know. I don't understand your
13 question.

14 Q Well, you just told me that -- again,
15 reiterated, without giving a long dissertation, that
16 people don't remember everything, right?

17 A That's correct.

18 Q That's what you said?

19 A That's correct.

20 Q So you made that statement right after you
21 looked at the video, and I asked you where Mr. Reeves
22 touched Mr. Oulson. And so when I heard that answer

1 I want to know why you gave me that answer. Is it
2 because the video doesn't support it, or it's just
3 gratuitous on your part?

4 A I don't see anything on Mr. Reeves going up
5 and grabbing his chest or his shoulder or anything.
6 I see a movement. It could be his hand. And he
7 might believe that he grabbed -- he might believe in
8 his mind that he grabbed something. That's what I'm
9 saying, is that he might believe that's exactly what
10 he did. And I can see some movement in there, so I
11 can -- I can look at this, and I can understand
12 that's a -- possible. Yes.

13 Q So when we get back to what we talked about
14 the memory and the ability to perceive and to
15 accurately record memory under high stress
16 situations, we talked about in order to determine
17 whether or not the person is lying or just doesn't
18 remember because of the high stress, you have to look
19 at the extraneous evidence to make that
20 determination, right?

21 A You have to look at the totality of
22 everything.

1 Q Okay.

2 A So you're looking at everything, yes.

3 Q All right. Now, you're a police officer?

4 A I am not.

5 Q You -- well, you were with the FBI.

6 A I am -- I was with the FBI.

7 Q You were with the FBI?

8 A That's correct.

9 Q You went to firearm training?

10 A That's correct.

11 Q I don't know -- well, let me just ask you.

12 Now in your career do you carry a firearm, or do you
13 have any type of license to carry a firearm?

14 A I have every license that Virginia offers.
15 Protection specialist to a private to a 218. I have
16 every license there is.

17 Q All right. So you have a 218. So every
18 year you have to go and take a 40-hour -- I mean a
19 40-round course to maintain your H.R. 218?

20 A I fire every year to qualify, yes.

21 Q Yeah. Until you get your card, right?

22 A Yes.

1 Q Well, let's just stick with that life
2 experience and your live experience as a police
3 officer.

4 A I wasn't a police officer.

5 Q I'm sorry, a special agent.

6 A Yes.

7 Q I apologize to you. Thank you. I want to
8 ask what you do, and then I'll follow up with some
9 questions. All right? And it's regarding the use of
10 a firearm.

11 A Okay.

12 Q You're on the range. You've got your
13 H.R. 218 that's got to be renewed, so you're going to
14 go through the 40-round course. You're up there,
15 stage 1. All right. Now, is stage 1 still the hip
16 draw, or did they change that?

17 A Oh, God, I don't remember. It's a
18 ridiculous course.

19 Q It is a ridiculous course, but I didn't
20 want to use stage 1 if this is -- let's go back to
21 stage 2 where you're at the 7 yard line, all right?

22 A Right.

1 Q And you have to draw and fire two-handed?

2 A I can't tell you the exact --

3 Q Wait a minute. I just --

4 A Okay, go ahead, go ahead.

5 Q All right. And then there's a part of the
6 stage where you have to fire weak hand and support
7 hand, correct?

8 A That's correct.

9 Q Now, here's my question to you: When you
10 draw your firearm and you know you're going to draw
11 -- fire either weak hand or strong hand, what do you
12 do with the hand that is not going to support the
13 firearm? What is your practice?

14 A What is my practice when I draw?

15 Q Uh-huh.

16 A When I draw the weapon, my hand is probably
17 somewhere around my front area, right in the middle.

18 Q Okay. Do you bring it to your chest? Say,
19 you draw right-handed. I don't know what hand. When
20 you draw, do you bring your hand close to your chest?

21 A I do not.

22 Q You stick it out here (indicating)?

1 A I do not.

2 Q Where do you put it?

3 A As I said, I bring it around, and it's
4 probably somewhere in the middle of my body
5 (indicating.) And they teach -- if that's what
6 you're getting at -- to put the hand up on the chest.

7 Q All right. Now, Mr. Reeves is a police
8 officer or was many years?

9 A Yes.

10 Q SWAT? All right. And he has an H.R. 218,
11 correct?

12 A That's correct.

13 Q He also has a concealed weapon?

14 A That's correct.

15 Q And every year with an H.R. 218 -- his is
16 no different than yours -- he has to go through the
17 40-round course?

18 A That's correct.

19 Q It is a nationally recognized course, and
20 everyone does the same thing?

21 A That's correct. They're supposed to do the
22 same thing.

1 Q All right. Would it surprise you that in
2 Mr. Reeves' training that he was taught the same
3 thing as you, to get your hand out of the way when
4 you draw a gun and go to shoot it one-handed?

5 A That would not surprise me at all.

6 Q Because that's what --

7 A Yes.

8 Q All right. If you're proficient with a
9 firearm and you're serious about the training, you
10 get your hand out of the way, right?

11 A That's correct.

12 Q And it becomes memory, doesn't it? I mean,
13 you do it over and over, so you don't have to think
14 about it?

15 A H.R. 218 is a 40-round course. I would not
16 consider doing that over and over and over again.

17 Q I understand.

18 A You know, when you're firing thousands of
19 rounds every year in different courses, you're going
20 to get it into muscle memory.

21 Q All right. That's what I'm getting to, is
22 the muscle memory. And once you have that muscle

1 memory, it's kind of tough to get rid of that muscle
2 memory, isn't it?

3 A It's like riding a bike. You kind of have
4 it, but you might not be good with it.

5 Q True. And it would not surprise you that
6 if Mr. Reeves fired -- pulls his weapon and is going
7 to shoot it one-handed, he would bring his left hand
8 to his chest, would it? Just out of pure muscle
9 memory, don't even have to think about it. Right?

10 A No.

11 Q That would not surprise you if he would do
12 that?

13 A It would surprise me if he did that.

14 Q Why would it surprise you if he did that?

15 A When you're under a stressful situation,
16 unless you've been trained and trained and trained
17 and you're current in your training, you're going to
18 respond in a way that you feel is going to protect
19 yourself. So if a person draws his weapon, he might
20 not have his hand back. He might have his hand out
21 in front, at the same time hoping to hold the person
22 off that he's shooting at.

1 Q Okay. I know that you have some criticism
2 on Mr. Proctor's interview of Mr. Reeves, but in
3 reviewing the law enforcement interview of
4 Mr. Reeves, do you recall Mr. Reeves indicating to
5 Detective Proctor that when he drew his weapon, he
6 had his left hand out in front of him and, in
7 retrospect, he was surprised that he didn't shoot his
8 hand?

9 A That's correct.

10 Q Now, having that statement out there in the
11 air, does the video support Mr. Reeves' statement
12 that his hand was out in front of him when he fired
13 his weapon, therefore, he would be surprised that he
14 didn't shoot his hand?

15 A It's another extremity that's flying out
16 there, and you don't know exactly where it is, so it
17 does not surprise me. And I don't know what he did
18 with that hand, but it doesn't surprise me. I do not
19 see it on the video that his hand stood out in front
20 and that he thinks it is.

21 Q And, again, we go back to the same thing
22 when we talk about trying to determine whether or not

1 it's a lie, or is it just unrecorded or
2 misinterpretation due to high stress as far as
3 someone's memory, you have to go and look at the
4 extraneous evidence to make that determination,
5 right?

6 A You have to look at everything, yes.

7 Q And did you do that in this particular
8 case? Attempt to determine whether or not the
9 statements by Mr. Reeves regarding where his left
10 hand was, whether it was touching Mr. Oulson or so
11 far out front that he was in retrospect concerned
12 that he would have shot himself is a lie, or is it
13 just because of the high stress situation his memory
14 is not accurate?

15 A I believe his memory is not completely
16 accurate. But in that same context, if he said his
17 hand was out front, he's surprised he didn't shoot
18 it, that does not surprise me, because you're
19 trained, as you said, to put that hand up on your
20 chest, he didn't do that. And he says, I'm surprised
21 I didn't shoot my hand, my own hand. So to me that
22 kind of showed he's telling the truth here, because

1 it's not what he's been trained to do.

2 Q Okay. Are you sure he didn't bring his
3 hand to his chest?

4 A I don't know. I don't see it in the chest.
5 I don't see his chest, so I can't tell you.

6 Q You could not discern from the video his
7 left hand going to his chest?

8 A I did not see that, no.

9 Q Now, on frame 13:26 -- I'm at like two
10 hours, so I promised everybody we would stop. So I'm
11 going to stop here. Let's take a 10-minute break,
12 and then we'll come back and finish this up.

13 (Whereupon, the deposition recessed at 2:30
14 p.m. and resumed at 2:43 p.m.)

15 (Whereupon, the photographs were marked
16 as State's Exhibit Number 5 for
17 identification.)

18 BY MR. MARTIN:

19 Q We're back on the record after our
20 midafternoon break. Thank you for everyone coming
21 back on time. I appreciate it. We're going to
22 continue our discussion and looking at State's

1 Exhibit Number 4, which is the enhanced video of
2 Cameras 11 and 12 in Theater Number 10.

3 Now, we've been discussing the movements of
4 Mr. Oulson and where Mr. Reeves was scooching back,
5 if you will. We've had those discussions.

6 (Whereupon, Mr. Michaels leaves the room.)

7 Q And we've had discussion about where
8 Mr. Reeves' left hand was at the time he was bringing
9 the gun forward and then firing the gun, right?

10 A Right.

11 Q We've covered all of that?

12 A That's correct.

13 Q To cover the next part I need to go back,
14 we're going to have to look at the same frames again,
15 but it's going to be different questions. All right?

16 A Okay.

17 Q We're going to start with State's Exhibit
18 Number 4. We're going to start at frame
19 13:26:25.346. We've had previous discussions as to
20 trying to put in sequence Mr. Reeves' interview --
21 I'm sorry, Mr. Reeves' statement to you during his
22 interview about when things took place.

1 A Uh-huh.

2 Q Now, one of the things that I'd like to try
3 to put in sequence is when Mr. Reeves said to you
4 that he saw Nicole Oulson and her activity. I want
5 to try to put that into sequence now.

6 A Okay.

7 Q All right? So that's why we're going all
8 the way back. So we're going to start at frame
9 13:26:25.346. Now, we've already had discussion
10 about there's a frame that you've seen that I don't
11 have, but that's what I have, so we're going to start
12 with that. Did Mr. Reeves tell you when he saw or
13 made the observation that Nicole Oulson was
14 interacting in some way with her husband during this
15 event? Other than, you know, the phone stuff. You
16 know, talking on the phone. Okay?

17 A Okay. Mr. -- or Ms. Oulson, according to
18 Mr. Reeves, at that time when he was hit in the head,
19 it was right before then when he saw the other hand
20 come in, and he felt like he got hit, he said that's
21 when his wife was trying to restrain him, as he was
22 coming up over the back of the chair.

1 Q All right. Now, we're at frame
2 13:26:25.346. Is that the time period that we're
3 looking at as far as when Mr. Reeves said that
4 Ms. Oulson was trying -- or interacting with her
5 husband?

6 A Well, she was interacting with her husband
7 at that time, and she was -- at that time she was not
8 trying to pull him back.

9 Q What was she doing, according to
10 Mr. Reeves?

11 A Well, according to Mr. Reeves -- I forget
12 what Mr. Reeves said. She was -- in her statement I
13 forget exactly what she was saying, but she was not
14 liking the argument that was going on at that point
15 in time. And so at that point in time when he feels
16 like he gets hit in the head, and he feels like
17 Oulson is right over the top of him --

18 Q Well, wait, let me stop you there, because
19 I'm a little confused. And just help me with my
20 confusion.

21 A Okay.

22 Q He got hit in the head and over the top of

1 him. When you say "over the top of him," are you
2 describing what we see in frame 13:26:25.346? Or are
3 we talking about when the popcorn is grabbed?

4 A When the popcorn is grabbed is when she's
5 trying to restrain him at that point in time.

6 Q Okay. Well, that just takes care of a lot
7 of questions then.

8 A Okay, good. We just cut out some time.
9 Great.

10 (Whereupon, Mr. Michaels enters the room.)

11 Q Yeah. All right. So it's at the time the
12 popcorn is grabbed that he makes the observations
13 that Mrs. Oulson is interacting with her husband?

14 A That's correct.

15 Q Let's go to that part then. So at that
16 point he's already been hit, his glasses are already
17 askewed, and he's dazed, right?

18 A Right, correct.

19 Q So we're going to go forward, what, now
20 almost 11 seconds from that, correct?

21 A Right.

22 Q All right. So we're going to go -- we're

1 at Camera Number 11, State's Exhibit Number 4, frame
2 13:26:35.779. You've already explained to me after
3 we've done the reverse -- looking at -- you know,
4 playing the frames in forward and reverse, that you
5 know where Mr. Oulson is in that particular frame,
6 right?

7 A Yes.

8 Q Now, what I'm going to do is I'm going to
9 play forward from 13:26:35.779 through the grabbing
10 of the popcorn, the tossing of the popcorn and the
11 last time we -- right before -- you see Mr. Oulson's
12 hands going out of frame?

13 A Right.

14 Q So what I want to do is I want to stop it
15 right as his hand's in that frame.

16 A Okay.

17 Q Which is 13:26:37.602.

18 A Right.

19 Q Now, in that time period when is
20 Ms. Oulson, quote, attempting to restrain her
21 husband?

22 A Ms. Oulson, herself, said she's putting her

1 hand up, and she's touching his chest, trying to calm
2 him down, I believe, or something like that she said.
3 Trying to restrain him. Mr. Reeves --

4 Q Now, wait a minute, wait a minute.
5 Ms. Oulson said she's trying to restrain him?

6 A No, she didn't. She said she was putting
7 her hand up. I think she said something -- you know,
8 trying to calm down the situation. Mr. Reeves is the
9 one that said she was trying to restrain him by
10 putting her hand up.

11 Q Okay. Does Mr. Reeves, according to the
12 statement he made to you, make this observation at
13 the times that Mr. Oulson -- and I'm going to go
14 through the sequence. First stands up, reaches out
15 to grab, comes back to toss, toss, and then comes
16 back. Now, one of those events --

17 MR. ESCOBAR: I'm --

18 MR. MARTIN: Wait a minute, Rick.

19 MR. ESCOBAR: You're asking him to make a
20 judgment. You need to ask him what Mr. Reeves -- if
21 Mr. Reeves told him at what moment Mrs. Oulson was
22 actually being restrained. That's the problem. But

1 you're trying to pin him down to a particular segment
2 of the video, and you're trying to give him the
3 opinion. He wasn't there.

4 MR. MARTIN: All right. Are you done?

5 MR. ESCOBAR: I am.

6 MR. MARTIN: All right. Then I'm going to
7 continue.

8 BY MR. MARTIN:

9 Q My question to you is --

10 MR. ESCOBAR: Objection.

11 Q -- did Mr. Reeves tell you at what point in
12 the process of Mr. Oulson, as we see in the video,
13 standing, reaching, coming back with the popcorn,
14 tossing the popcorn and hand coming back, that
15 sequence, those frames. At what point in time did he
16 first see Ms. Oulson interacting with her husband by
17 placing her left hand in his area?

18 A I don't know an exact timeframe that she --
19 he said she put her hand up. He said after he was
20 hit, Mr. Oulson was standing there facing him, using
21 loud obscenities, and he felt like he was coming
22 over, and he felt at that point in time Ms. Oulson

1 was trying to restrain him. So somewhere within that
2 10-second period, probably towards the last 5 seconds
3 he felt like she was trying to restrain him.

4 Q When the film is playing?

5 A No, before -- yeah, where I guess it's
6 playing, before the popcorn was thrown.

7 Q All right.

8 A But at that time the popcorn is thrown she
9 feels -- he feels like she has her hand up, trying to
10 restrain him. And the ballistics and the evidence
11 shows that her hand was up there.

12 Q When she was shot.

13 A When she was shot, yes.

14 Q And, of course, we know that looking at the
15 film 13:26:37.612, the popcorn toss has taken place,
16 the hand's back, but the gun still hasn't been fired,
17 right?

18 A That's correct.

19 Q In fact, the gun is not fired until
20 13:26:37.846, correct?

21 A That's correct.

22 Q And of course just -- if she's shot and

1 he's shot with one bullet at the time the gun's
2 fired, that's when she had her hand in front of the
3 chest, right? I mean, there's no doubt about that?

4 A That is one point in time when she had her
5 hand --

6 Q One point in time we can all agree?

7 A Yes, right.

8 Q So the question becomes, you indicated that
9 Mr. Reeves says she was still interacting -- we have
10 the grab, we have the toss, coming back, and, of
11 course, then we see the first part of the gun,
12 correct?

13 A Right.

14 Q At frame 13:26:37.746, right?

15 A Right.

16 Q Now, she is shot in the left hand, right?

17 A Correct.

18 Q And you're saying that Mr. Reeves told you
19 that at the time of this popcorn toss event --
20 sequence event was taking place, she was interacting
21 with her hand in front of his chest?

22 A Yes, that's what he remembers at that point

1 in time.

2 Q All right. Is that possible?

3 A I think it shows in the evidence.

4 Q No, what shows is she got shot when the gun
5 was fired?

6 A She got shot. Her hand was there. There's
7 one bullet. It goes through his forearm. It goes
8 through her finger, and it goes through his chest.
9 So they're all lined up. That's pretty easy to line
10 it up.

11 Q My question to you is: During the sequence
12 of events of grabbing the popcorn, bringing it back,
13 tossing it, and his hand coming back -- because we
14 can see the hand is coming back before we see the gun
15 fired, right?

16 A Right.

17 Q So before the gunfire, you indicated that
18 Mr. Reeves indicated to you that Ms. Oulson was
19 interacting with her husband with her left hand or --

20 A Yes.

21 Q All right.

22 A That's what it appears, yes.

1 Q So my question to you, during that
2 sequence, before the gun is fired, is that possible?

3 MR. ESCOBAR: I'm going to object.
4 Improper predicate for this person. He is not an
5 accident reconstruction or shooting reconstruction
6 expert. He's a use of force expert. You've got to
7 lay a proper predicate if you want someone of that
8 particular caliber to give you that opinion. So
9 that's my objection. You can answer the question,
10 Mr. Hayden --

11 MR. MARTIN: Doctor.

12 MR. ESCOBAR: -- if, in fact, you know,
13 you're giving a lay opinion. But other than that,
14 you know, I don't think he's qualified to be able to
15 give the reconstruction like that.

16 MR. MICHAELS: My objection is it calls for
17 speculation.

18 BY MR. MARTIN:

19 Q Go ahead and answer the question.

20 A I absolutely do think it's possible.

21 Q Okay. Now, according to Mr. Reeves, how
22 far over the chair did Mr. Oulson come?

1 A Again, I don't know in inches. He felt
2 like he was coming over the chair. He actually made
3 contact with him when he grabbed the popcorn, so he
4 knew he was coming over the chair at least that far.
5 He thought he was being attacked at that point in
6 time. So how far in inches, I can't give that to
7 you. I don't know.

8 Q Okay. In the sequence of frames that we've
9 been discussing where Mr. Oulson is seen in the frame
10 in the process of grabbing and tossing the popcorn,
11 do you see Mrs. Oulson in any of those frames?

12 A I do not.

13 Q Now, you were at Cobb Theatre, and you had
14 a chance to be in Mr. Oulson's seat and turn around
15 and, as you indicated, this bottom seat was up and
16 your knees were against the seat was one scenario
17 that you did, and you leaned over. Do you remember
18 that?

19 A That's correct.

20 Q Now, having that life experience, when you
21 leaned over and reached towards the seat where
22 Mr. Reeves -- at the point that you were leaned over,

1 was there any other actor or anything that placed a
2 hand in front of your chest at that point?

3 A No.

4 Q Based on that life experience of Cobb
5 Theatre, if a person had placed their hand there,
6 would that restrict your movement in any way as far
7 as leaning forward?

8 MR. ESCOBAR: Objection, calls for
9 speculation.

10 MR. MARTIN: He has a life experience at
11 Cobb Theatre. He knows what was there.

12 MR. ESCOBAR: Objection, speculation.
13 BY MR. MARTIN:

14 Q You can answer the question, you were
15 there.

16 A Does it? I don't think it really does. I
17 mean, somebody can try, but that doesn't mean it's
18 going to actually work.

19 Q What?

20 A You're talking about restraining?

21 Q No. No. I said -- not restraining. Does
22 it restrict the movement? Could Mr. Oulson have

1 moved as far forward as he did in the frame with her
2 hand there?

3 MR. ESCOBAR: Objection. Calls for
4 speculation. Again, improper predicate for someone
5 like this to give a -- certainly an expert opinion.
6 Are you looking for a lay opinion?

7 MR. MARTIN: I'm looking for his life
8 experience at Cobb Theatre, whether or not based on
9 that life experience he feels that's possible.

10 MR. ESCOBAR: So you're looking for a lay
11 opinion?

12 BY MR. MARTIN:

13 Q Do you want to answer the question?

14 A I do believe it's possible, yes.

15 Q We've talked for a while about something
16 hitting Mr. Reeves in the area of the face. Some
17 object, a fist or cell phone or something. Do you
18 remember that conversation?

19 A Yes, I do.

20 Q Did Mr. Reeves describe the injuries that
21 he sustained to his face based on that?

22 A Just that he thought he had something in

1 his eye, and that's pretty much it.

2 Q As a special agent with the FBI and also
3 you were in the military, right?

4 A That's correct.

5 Q Have you ever been in a fistfight?

6 A I have.

7 Q Had your face hit with a fist?

8 A I have.

9 Q Hit with something other than a fist? A
10 blunt object?

11 A I have.

12 Q Do you know what a contusion is?

13 A I do.

14 Q All right. Do you know what abrasions are?

15 A I do.

16 Q Okay. Your life experience when you were
17 hit with some type of fist or blunt object, did it
18 result in an abrasion or contusion?

19 A At times it did, yes.

20 Q All right. At times were you dazed?

21 A Yes, I was.

22 Q I'm trying to get your life experience so I

1 can ask these questions. All right?

2 A Yes.

3 Q Okay. Did Mr. Reeves indicate anything
4 other than he felt he had something in his eye, such
5 as an abrasion or a contusion about his face?

6 A He just felt like he'd been hit in the
7 head, knocked his glasses off, and he felt like his
8 eye was affected. And that's basically what he said.

9 Q He said he had something in his eye?

10 A Something in -- he didn't know if something
11 was in his eye or not.

12 Q Did he describe any injuries to his face as
13 a result of his glasses being askewed on his face?
14 Like something hit his glasses, and his glasses was a
15 secondary blunt object into his face? Do you know
16 what I'm talking about?

17 A Right. He didn't know. He knew his
18 glasses got, you know, knocked sideways, and he got
19 hit in the head. That was it.

20 Q He didn't describe any injuries associated
21 with his glasses being askewed?

22 A He did not.

1 Q Have you been provided any pictures of
2 Mr. Reeves taken on January 13th, 2014, of his face?

3 A Yes.

4 Q Let me see State's Exhibit Number 5. Other
5 than pictures taken on January 13th, 2014, have you
6 been shown any other photographs of Mr. Reeves' face
7 taken on any other date?

8 A I don't know if I did or not. I don't -- I
9 can't answer that.

10 Q Okay.

11 (Whereupon, Mr. Martin tenders document to
12 Mr. Escobar.)

13 BY MR. MARTIN:

14 Q Let me show you State's Exhibit Number 5
15 (tenders document.) Have you seen those photographs
16 before?

17 A I have.

18 Q And are they photographs of Mr. Reeves'
19 head area, chest area, extremities, his arms?

20 A Partially, yes.

21 Q And regarding his -- I'm going to do this
22 so we just have this for the record. I just labeled

1 three of them A, B and C. So when I say look at A or
2 B or C, the record will reflect. Okay?

3 A Okay.

4 MR. ESCOBAR: I'm going to object to these
5 pictures as not being glossy pictures; to them being
6 wallet-size pictures instead of at least eight by ten
7 pictures. And certainly the ones that we were --
8 made available to us we can make into eight by ten
9 pictures. So that's the first objection. We'll see
10 what your question is.

11 BY MR. MARTIN:

12 Q Have you seen these pictures before?

13 A I don't remember seeing a page like this.
14 I do remember --

15 Q I understand that, but did you -- have you
16 seen the pictures depicted in there?

17 A I remember seeing pictures. I can't say
18 they were exactly these pictures, but I did see other
19 pictures besides this.

20 Q Other pictures that were taken on
21 January 13th, 2014?

22 A I don't know if it was taken January 13th,

1 2014.

2 Q You can see Mr. Reeves appears to be still
3 in the theater?

4 A Appears to be, yes.

5 Q Did you see any pictures other than what --
6 Mr. Reeves appears to be in the theater?

7 A I can't tell that Mr. Reeves is in the
8 theater in these pictures. But because he's
9 handcuffed, I believe he's probably in the theater
10 when the pictures were taken. I don't know where
11 these pictures were taken. I'm saying I've seen
12 pictures like this. I don't know if it's exactly the
13 same pictures, but I saw another picture of
14 Mr. Reeves with a side view like B.

15 Q Okay. And from the picture B that you see
16 in State's Exhibit Number 5, can you discern any
17 injuries that amount to a contusion or an abrasion?

18 MR. ESCOBAR: Objection, improper predicate
19 for this layperson to give any opinions concerning
20 injuries that he's viewing from a picture on the
21 human body. And, therefore, he's not competent to
22 answer that particular question, and it calls for

1 extreme speculation.

2 BY MR. MARTIN:

3 Q You can answer the question.

4 A I'm not a medical doctor, and I look at
5 these pictures, and they look like normal pictures
6 taken -- mug shot pictures.

7 Q Okay. If you go to the immunity pleading,
8 go to Page 27, please, second paragraph. Just let me
9 know when you're there.

10 A Okay.

11 Q The second paragraph: The bullet grazed
12 Mr. Oulson's right fist. The medical examiner later
13 concluded that Mr. Oulson's right fist was in front
14 of his thorax at the time it was grazed by the
15 bullet. The back of Mr. Oulson's hand had stippling
16 on it, comma, indicating that it was in close
17 proximity to the barrel of the firearm when it was
18 discharged, period. This was consistent with
19 Mr. Oulson attempting a third punch at Mr. Reeves.

20 Do you see that in the pleading?

21 A Yes, I do.

22 Q First question is: What facts are you

1 aware of that Mr. Oulson's hand was in the shape of a
2 fist at the time that he was shot? What facts do you
3 have to support that?

4 A So the photograph of that where the bullet
5 had come through his wrist area and the stippling on
6 the back of his hand, I didn't see stippling, you
7 know, all the way out. I saw it on the back of his
8 hand, which would make it -- it was in a fist.

9 Q Would the lack of the stippling -- well,
10 since you've made that opinion, let me go ahead and
11 ask you this question. The lack of stippling as you
12 described in the photographs that you saw which led
13 you to the conclusion that Mr. Oulson's hand was in
14 fist, do you know if that was because his hand was in
15 his fist or because the gun was in such close
16 proximity on Mr. Oulson's hand that the spread of the
17 powder and the particulates when it was fired would
18 only encompass up to that point? Do you know?

19 MR. ESCOBAR: Objection, improper predicate
20 for this witness to opine on an expert opinion like
21 that. If you're asking for his lay opinion, then
22 certainly he'll be more than glad to give you his lay

1 opinion. But, again, he is not an expert in that
2 particular field, and you're asking a question that
3 requires predicate and certain expertise concerning
4 stippling.

5 BY MR. MARTIN:

6 Q Answer the question.

7 A I can't give --

8 MR. ESCOBAR: It calls for speculation as
9 well.

10 A I can't give you the exact spread of the
11 stippling, especially from a .380. I know that the
12 closer it is, the closer the stippling is going to
13 be. The further away, the further away the stippling
14 is going to be.

15 Q When you say a closer and further, we're
16 talking?

17 A The weapon itself. The fire -- when the
18 fire comes out of the barrel, the powder that's
19 behind the round is coming out, and sometimes you'll
20 pick up stippling three feet away, but it's usually
21 within about the 18-inch period is that you --
22 18-inch distance is where you get, you know,

1 stippling, a lot of stippling. This seemed like
2 there was a lot of stippling on the back of his hand,
3 which made me believe it was probably closer than
4 that when he fired.

5 Q Well, my question to you is because you
6 indicated that you believe that the fact that
7 supports that Mr. Oulson's right hand was in a fist
8 was the lack of stippling from the knuckles towards
9 the tip of his fingers. Remember you telling me
10 that?

11 A I didn't say that, no.

12 MR. MARTIN: Would you read that back,
13 please? The first time I said fist.

14 (Whereupon, the Court Reporter read back
15 the following Answer: "So the photograph of that
16 where the bullet had come through his wrist area and
17 the stippling on the back of his hand, I didn't see
18 stippling, you know, all the way out. I saw it on
19 the back of his hand, which would make it -- it was
20 in a fist.")

21 BY MR. MARTIN:

22 Q Do you remember that testimony?

1 A I remember that. I did not say knuckles to
2 the tips of his fingers.

3 Q Same area, right?

4 A Same area we're talking about, yes.

5 Q So my question to you is: Do you know
6 whether or not the lack of stippling from the
7 knuckles to the end of his fingertips --

8 MR. ESCOBAR: Objection. Same objection as
9 before.

10 BY MR. MARTIN:

11 Q Which you indicated that that's what you
12 were talking about. The lack of it, is it because
13 his hand was in a fist or because the firearm was so
14 close, the spread of the particulates were so tight
15 that it did not encompass that area? Do you know if
16 it's one or the other?

17 A I don't have an expertise in that, so I
18 really can't answer that, no.

19 Q So it kind of begs the question, what are
20 you relying on as for your life experience, if you're
21 not an expert, to indicate to me that the lack of
22 stippling from his knuckles to the end of his

1 fingertips supports the fact that his right hand was
2 in a fist?

3 A Stippling will cover whatever is in front
4 of it. And if you don't -- if you don't have that in
5 front of it, then it wouldn't be there. So that's
6 the only thing I'm saying. I don't know any more
7 about stippling than what I've explained to you here.
8 I saw it on the back of his hand. I don't remember
9 seeing it on the fingers. It could be on the
10 fingers. I don't remember seeing it in the picture.
11 So that's what I'm saying. I don't know. I'm not an
12 expert in that area, so I really can't opine on, you
13 know, exactly what the deal is with stippling. I
14 know stippling comes out in different distances and
15 it dissipates.

16 Q My question to you is: What facts are you
17 aware of that support that Mr. Oulson's right hand
18 was in a fist? If this discussion we had about
19 stippling isn't one of them, what else do you have?

20 A Well, that's the only thing I have, that I
21 came by, and I don't know the position of his hand at
22 that point in time.

1 Q The last sentence that was read: This was
2 consistent with Mr. Oulson attempting a third punch
3 at Mr. Reeves. Do you see that?

4 A Yes, I do.

5 Q Okay. We're going to start at frame
6 13:26:35.779.

7 A Okay.

8 Q Okay? Now, I'm going to play the video
9 forward. The popcorn is tossed, and we're back to
10 where we were when you just see the right hand in the
11 frame at 13:26:37.612, right?

12 A Right, I can.

13 Q Now, between the sequence of events and the
14 frames, those frames, can you discern and corroborate
15 Mr. Reeves' statement that there was a third punch
16 coming?

17 MR. ESCOBAR: I'm going to object. There's
18 been no statement by Mr. Reeves that there was a
19 third punch coming. And this is -- you read the
20 sentence that's in the motion, and then if you want
21 to ask him a question concerning that sentence, you
22 can, but you can't be putting in facts that are

1 nowhere in evidence in this record.

2 MR. MARTIN: Are you sure two weeks is
3 going to be long enough for this hearing?

4 MR. ESCOBAR: That was awfully sneaky, but
5 not sneaky enough.

6 MR. MARTIN: Nothing sneaky going on.

7 MR. ESCOBAR: Oh, very sneaky. That was
8 totally intentional. I was born at night, not last
9 night.

10 BY MR. MARTIN:

11 Q We're looking at State's Exhibit Number 4,
12 Camera 11, frame 13:26:37.612. I'm going to play it
13 one frame forward, one frame forward, one frame
14 forward, one forward. At 13:26:37.746, I want you to
15 concentrate there.

16 A Uh-huh.

17 Q I'm going to go up to where the gun is
18 fired at 13:26:37.846.

19 A Okay.

20 Q Knowing that the gun is fired there, we're
21 going to play it backwards. One frame, two frames,
22 three frames, four, go up one at 13:26:37.746, can

1 you discern where the gun is doing that analysis?
2 Seeing where the gun is and reversing it back?

3 A It's somewhere down at his side.

4 Q Well, do you see where it is?

5 A Yeah, yeah, I see it down.

6 Q Right?

7 A Yeah, uh-huh.

8 Q Okay. So I toggled back and forth, and
9 doing that reverse critical review you can discern
10 where the gun is at that point in time?

11 A That's correct.

12 Q All right. Which is less than a second
13 before the gun is fired, right?

14 A Yes, appears to be, yes.

15 Q At that point in time, what did Mr. Reeves
16 tell you that he was trying to prevent?

17 A He was trying to save his life at that
18 time. He said he felt very threatened. He felt like
19 this guy was going to come over after him, and he
20 just felt like his life was definitely in danger, and
21 he was going to be beaten badly or killed.

22 Q What did he say the outward manifestations

1 of Mr. Oulson was that led him to the belief that
2 when we see -- at frame 13:26:37.746, when we see
3 that gun just seconds before it's fired --

4 MR. ESCOBAR: Objection.

5 Q -- what does he see Mr. Oulson doing that
6 led him to that conclusion?

7 MR. ESCOBAR: Objection to limiting him to
8 that particular frame, because there were two punches
9 that were -- or arms that appeared to be coming into
10 Mr. Reeves' face immediately before that. And we're
11 talking about fractions of a second. And so you're
12 trying to limit him to one frame. We object.

13 BY MR. MARTIN:

14 Q What was he trying to prevent? What was he
15 seeing from Mr. Oulson that he was trying to prevent?

16 A And I apologized for this earlier, but this
17 is one of those questions you can't answer directly
18 like that. It would be more of a dissertation on
19 this, is why does a person feel threatened? And it
20 goes all the way back to the beginning when he
21 started to have interaction with him -- and I'm going
22 to make very quick. An interaction with him --

1 Q No, I know. It's no problem. I'm
2 listening.

3 A -- to where he feels like this guy is
4 totally out of control to the point he gets hit in
5 the face, and now he really believes this guy is
6 going to make a major assault on him, and then he
7 starts coming over the seat. And at that point he
8 doesn't realize his popcorn's being stolen from him,
9 he thinks a fist coming in and then a fist coming
10 back again, and all of this, going through all of the
11 training and everything he had, he realized at that
12 time if I don't do something right now to protect my
13 life, I could be dead. And the only recourse he had
14 at that point was to use his firearm.

15 So it goes back not into a one-second, you
16 know, picture that you have here, but it goes back
17 into the totality of the whole situation, is what
18 went on in his mind. His fear was being built the
19 entire time. So that's the best I can answer it for
20 you.

21 Q State's Exhibit Number 2 that we briefly
22 discussed, paragraph A, 776.012, He or she reasonably

1 believes that such force is necessary to prevent
2 imminent death or great bodily harm to himself or
3 herself or another or to prevent the imminent
4 commission of a forcible felony.

5 So my question to you is: When that gun is
6 out and before it's fired, at frame 13:26:37.745,
7 what conduct of Mr. Oulson was Mr. Reeves trying to
8 prevent that would be construed as being able to --
9 in an imminent manner -- cause death or great bodily
10 harm?

11 MR. ESCOBAR: Objection. Again, you're
12 asking him to interpret a statute. He does not have
13 a law degree. There's an improper predicate for him
14 to interpret that statute and to apply the facts.
15 He's already given you his opinion concerning
16 Mr. Reeves' reasonable belief that he was going to be
17 seriously hurt or killed factually. That's all he
18 can do. So we would object. It's beyond the scope
19 of his ability as an expert in this case, because
20 he's not a lawyer. That's for the trier of fact.

21 BY MR. MARTIN:

22 Q You indicated to me in the beginning of

1 this deposition this morning that you had an opinion
2 as to whether or not there was -- in fact, let me
3 just read the question to you.

4 MR. ESCOBAR: He can give you a lay
5 opinion, if you want it.

6 MR. MARTIN: I'm just asking him the
7 question. I don't care if it's lay or expert.

8 MR. ESCOBAR: Okay. Well, as long as it's
9 a lay opinion, you can ask that, but we've got to
10 clarify it on the record, because he's not a lawyer
11 to interpret the statute.

12 BY MR. MARTIN:

13 Q I asked you under the facts and
14 circumstances as you know them, was there conduct by
15 the victim immediately prior to the Defendant or
16 Mr. Reeves firing his pistol that rose to a level
17 constituting an imminent event justifying the use of
18 deadly force, and you indicated yes.

19 A That's correct.

20 Q Okay. I'm trying to put that in a
21 sequence. At what point does that take place in the
22 sequence of events? Can we use Mr. Reeves'

1 statement? Can we use a patron's statement? Can we
2 use the video? Where do we put our finger on the
3 facts that someone can use that as a factor to
4 determine the reasonableness of Mr. Reeves' actions?
5 That's what I'm asking. So is it in the video?

6 A We're looking at the video, you -- the
7 video goes right along with what Mr. Reeves is
8 saying. I don't see a contradiction at all. There
9 are statements made by many of the patrons that there
10 was an argument going on, so we know that there is an
11 argument. Even Mr. Oulson's own wife is saying that
12 he's saying some things. And he stands up, people
13 had seen that, and Mr. Reeves believes he's coming
14 over. And he believes that all of the actions of
15 this guy, why -- anybody ever believe that a
16 reasonable person would reach over towards a
17 71-year-old man and throw popcorn at him? It's hard
18 to imagine. So I believe Mr. Reeves truly,
19 100 percent believed that he was in imminent danger
20 of death or great bodily harm.

21 Q All right. Now, we've already had
22 discussions that -- by the time the gun's fired,

1 we're almost 13 seconds out from the time that you
2 explained to me and showed me on the video where you
3 believed Mr. Oulson was standing and threw the cell
4 phone. Do you remember that?

5 A Yes.

6 Q All right. Or was hit with a fist, right?

7 A That's correct.

8 Q Now, these aren't tongue-in-cheek, and I
9 know it may sound that way, but I don't mean it to be
10 that way. But the bottom line is that event was over
11 13 seconds ago, right?

12 A That's correct.

13 Q Before the gun was fired?

14 A That's correct.

15 Q So firing the gun could not have prevented
16 those two acts, right? I mean, it's 13 seconds
17 later.

18 A No, you can't separate them like you're
19 trying to separate them. The assault began when he
20 felt like he got hit by a fist, and everything that
21 was going on at that time was building up to that one
22 point in time where they came in and got the popcorn

1 and threw it at him and he shot. So all of those
2 things that are happening in between, he has ten
3 seconds where he's being threatened by this
4 individual in some way, shape or form, and he feels
5 threatened at that time. He feels like this guy is
6 crazy. He's totally out of control. This guy is
7 going to kill me.

8 Q You would agree that the reasonableness of
9 a person's action when it comes to self-defense is to
10 prevent something, so whether it be use of a firearm
11 or punching someone in the nose --

12 MR. ESCOBAR: I'm going to object as
13 leading.

14 MR. MARTIN: Just let me ask the question.
15 And I can lead during a depo.

16 MR. ESCOBAR: You're testifying is what
17 you're doing. It's more than leading.

18 MR. MARTIN: I'm giving him a factual
19 scenario so he can respond to it. Let me ask the
20 question. When I'm done with the question, you can
21 make your objection.

22 MR. ESCOBAR: It's not a question. You're

1 testifying.

2 MR. MARTIN: Well, don't interrupt me while
3 I'm asking a question.

4 MR. ESCOBAR: You're asking him to adopt
5 your testimony.

6 BY MR. MARTIN:

7 Q Now, my question to you is: Would you not
8 agree that in order for the immunity statute to apply
9 one has to be in the process of preventing an event
10 that would be -- that is imminent, that would cause
11 death or great bodily harm or to prevent the imminent
12 commission of a forcible felony?

13 A You're asking me a legal question. I'm not
14 a legal expert and so I really can't answer that.

15 Q Well, when we talk -- I'm not asking for
16 your legal opinion. You indicated that you felt his
17 conduct was reasonable. So the reasonableness --
18 that opinion, you have to prevent something, correct?
19 You would agree with that, right?

20 A The reasonableness, you're trying to avoid
21 something. No.

22 Q To prevent. That's what the statute says.

1 Prevent.

2 A Well, I'm saying I am not an attorney. I'm
3 not going to deal with the statute as a legal term.
4 I can't deal with that. I'm not a legal expert, and
5 I don't want to opine on something that you're asking
6 me about a legal opinion. And I can't give you a
7 legal opinion. If you're asking a layman's person
8 about how a person is defending himself, how a person
9 is going to react to a situation, I can tell you
10 that, and we can spend the next five minutes or the
11 next five hours talking about that, if you'd like.

12 Q In your opinion that Mr. Reeves' actions
13 was justifiable or was reasonable in shooting
14 Mr. Oulson, does it include the fact that it was
15 necessary to prevent great bodily harm or death or to
16 prevent a forcible felony?

17 A I believe Mr. Reeves believed that, and I
18 believe that the actions that were there by
19 Mr. Oulson shows why he would believe something like
20 that, and I think it's reasonable. And what we're
21 talking about the reasonableness factor, you're
22 talking about, you know, a reasonable person on the

1 scene at that point in time. Not 20/20 hindsight,
2 which it sounds like a lot of this is coming in. But
3 would a person actually feel threatened at that time?
4 I'm saying, yes, he would feel threatened, and I can
5 understand him being totally threatened and feeling
6 like this individual is going to do great bodily harm
7 to him.

8 Q At the very beginning of this depo you
9 indicated to me -- and I went through your -- the
10 opinions the best I could guess as to what they would
11 be. What I'm trying to figure out now is the facts
12 that we've gone over since you gave me those
13 opinions, how important some of these facts are to
14 you in your opinion, and if it was proven that those
15 facts did not exist, would it change your opinion?
16 That's the line of questioning we're going to go
17 through. Okay?

18 A Okay.

19 Q Okay. The iPhone being thrown and hitting
20 Mr. Reeves. Is that important to you in your overall
21 opinion that Mr. Reeves' actions were reasonable;
22 therefore, his conduct was justifiable?

1 A I don't know and have any proof that the
2 iPhone is the object that hit him.

3 Q That kind of begs the question, do -- well,
4 we'll just keep going. And we've had some discussion
5 regarding the length of time, and you've shown me on
6 the frames that you believe Mr. Oulson was standing
7 and facing Mr. Reeves before the shooting, which,
8 based on the frames, we've been using about 13
9 seconds from the time we see that until the gun is
10 fired, right?

11 A Okay. Approximately, yes.

12 Q Yeah, approximately, of course. Is the
13 length of time that Mr. Oulson was standing facing
14 the Defendant before the shooting, is that important
15 in your overall opinion that Mr. Reeves' actions were
16 reasonable and justifiable?

17 A It's all important. I can't take one thing
18 and separate it. Yes, the time is important, and
19 other things that happened in there are important to
20 me when I look at the totality of the circumstances.

21 Q If it was shown that Mr. Oulson was only
22 turned and facing Mr. Reeves for a matter of three to

1 five seconds, would that make a difference?

2 A I can't really break it down into seconds.
3 You know, three or five seconds, eight seconds, nine
4 seconds. The point of the matter is do I feel that
5 Mr. Reeves would have been threatened? Yes, I do.
6 So you're saying three seconds, five seconds. I
7 don't know how many seconds. We know from looking at
8 the tape here that we have twelve, thirteen second
9 line -- frame in there somewhere. Things were
10 happening during that period of time.

11 Q Well, let me just narrow it down to just
12 one question then. If it was shown that the iPhone
13 was not thrown at Mr. Reeves, if it was shown that
14 Mr. Reeves was not hit in the face with a fist, if it
15 was only shown that the popcorn was grabbed and
16 tossed in his face prior to the shooting, would that
17 make a difference? Would that change your opinion in
18 this case?

19 A If a lot of these other factors changed and
20 Mr. Oulson was not yelling at him and wasn't doing
21 the things he was doing, and he just threw popcorn,
22 yeah, that would make a big difference.

1 Q In what way would it -- if he just threw
2 popcorn would that make a difference?

3 A Well, if he just threw popcorn, and he
4 threw popcorn, who did he throw popcorn at? What was
5 his intentions? I don't know. You're taking a
6 scenario and you're breaking down -- what I'm opining
7 on is the use of force. Was he justified in using
8 force in this situation? We can talk about a lot of
9 other type of situations where force wouldn't be
10 necessary. We can talk about other situations where
11 more force, I mean, a lot of force would be
12 necessary. This is the situation I'm talking about.
13 This is the one I've been asked to come and opine on.
14 And this is what I'm opining on, is that I believe
15 from everything that happened, the totality of the
16 whole circumstances led up to Mr. Reeves believing he
17 was threatened, his life was threatened. And if he
18 wasn't going to be killed, he was going to have great
19 bodily harm. And he defended himself the only way he
20 could at that point in time, and that was to use his
21 weapon.

22 Q So based on your first comment before that

1 if he just tossed popcorn on him, then he wouldn't be
2 justified, right?

3 MR. ESCOBAR: If the record is saying the
4 only thing that we have is tossed popcorn and
5 Mr. Reeves understood that popcorn was being just
6 tossed against him, is that your question? Because
7 if we're going to put the facts, okay, for this
8 expert, put the facts crystal clear, and eliminate
9 everything else that happened in that theater.
10 Because what you're asking him to do is totally
11 unfair.

12 MR. MARTIN: Okay.

13 MR. ESCOBAR: And I know exactly what
14 you're trying to do.

15 MR. MARTIN: Well, you might.

16 BY MR. MARTIN:

17 Q You told me this morning that you -- all of
18 the patrons' testimony, you've just discarded them,
19 because they're contaminated.

20 A I did not discard them. I said they're
21 contaminated. I still looked at everything. I tried
22 to make sense out of what was being said and what was

1 being done in there.

2 As I mentioned later on, is that many of
3 the patrons said they heard loud voices. They heard
4 arguing. They heard curse words. A lot of people
5 said different things. So I get from that that
6 something was going on, and it wasn't Mr. Reeves just
7 making up a story. It was something that was going
8 on, and enough patrons in there were saying different
9 things.

10 I'm saying their testimony is contaminated,
11 because we don't know who they talked to and know
12 what was going on. So I can't take everything
13 they're saying and say this is what happened. This
14 is what X person said that he was doing. I can't do
15 that, because it's too contaminated. It would be
16 totally unfair to you, and it would be totally unfair
17 to everybody.

18 Q All right. So we have two guys in a
19 theater. One guy gets upset with the other and
20 starts cussing at him. Anything more than cussing?

21 A For what? They're just having an argument?

22 Q Yeah, Mr. Oulson, who -- you said you're

1 going to look at all of the witness statements.
2 Anymore than cussing? Get out of my face, get out of
3 my fucking face. I was texting my daughter. That's
4 what all of the witnesses said, right?

5 A Yeah, a lot of witnesses said different
6 things, not all of the same thing. Some
7 contradicting each other.

8 Q But there was no threats, I'm going to kill
9 you, you told me that. There was no threats I'm
10 going to kill you or anything like that, right?

11 A I don't remember if anybody said that or
12 not.

13 Q So what we have is just cussing. Get the
14 fuck out of my face, leave me alone. Raising voices.
15 Stop it, get out of my face. That's the type of
16 stuff we're hearing, right?

17 A That's a lot of the stuff we're hearing.
18 We're hearing stuff like that, yes. I don't know
19 what else they heard, but that's some of the things,
20 yes.

21 Q All right. You didn't -- can you hang your
22 hat on anyone that said I'm going to kill you?

1 A I cannot.

2 Q All right. So when we're talking about
3 verbal threats of violence, there ain't none hanging
4 out there that you're aware of?

5 MR. ESCOBAR: I'm going to object. You're
6 defining verbal threats of violence in your manner,
7 and it may be completely different in this expert's
8 manner, and it may be completely different in
9 Mr. Reeves' manner. You just can't throw these terms
10 out there without a definition.

11 BY MR. MARTIN:

12 Q Get out of my face. Does that mean I'm
13 going to kick your ass?

14 A You know, the way you say it right now, I
15 wouldn't take it as a threat. But, you know, I don't
16 know at that point in time who's saying what, what's
17 being done. So threats, it's not just verbal. It's
18 gestures. It's a lot of different things. And you
19 take that into consideration. Especially somebody
20 who has been on the street, been a police officer for
21 30 years, has read thousands and thousands of
22 situations and knows when you have somebody that's

1 totally out of control.

2 So, yeah, that's what he's reading. So did
3 he have to say I'm going to kill you? No, I don't
4 think he had to.

5 Q What was the gestures that Mr. Reeves
6 related to you?

7 A Oh, just what Mr. Reeves said. He had this
8 face all contorted. He was -- he was, you know,
9 looking very aggressive, coming towards him, and that
10 would be threatening. That would be very
11 threatening.

12 Q All right. So when we couple the cussing
13 and get out of my face, plus with the gestures like
14 the contorted face, tossing of the popcorn, so we're
15 going to shoot him? Is that reasonable?

16 MR. ESCOBAR: I'm going to object again,
17 because you're perceiving that Mr. Reeves believed
18 that popcorn was being tossed against him, and you're
19 not putting the facts in that Mr. Reeves saw two
20 hands coming at him at a very rapid pace near his
21 face. So get your facts straight as to factually
22 what is being seen on the video.

1 BY MR. MARTIN:

2 Q And what Mr. Escobar just so eloquently put
3 on the record all had occurred and was over with when
4 Mr. Reeves shot Mr. Oulson, right?

5 MR. ESCOBAR: That all depends -- again,
6 I'm going to object to the record --

7 MR. MARTIN: Let Mr. Hayden answer the
8 question.

9 MR. ESCOBAR: But you're saying over --

10 BY MR. MARTIN:

11 Q Answer the question.

12 MR. ESCOBAR: Objection.

13 A When it occurred, it's one fluid motion
14 starting from the beginning to the end. It doesn't
15 end at an absolute second at the firing of the shot.
16 There's a lot of things going on in your mind, in
17 your brain, so it just doesn't stop. The threat is
18 coming. It's still coming. Fists are being thrown.
19 I don't know if you've ever had fists --

20 MR. MARTIN: Fists have been thrown? Where
21 is that in record?

22 THE WITNESS: That's what I'm saying is

1 possible. It's possible fists are being thrown --

2 BY MR. MARTIN:

3 Q Thirteen seconds before the shooting of the
4 gun, that's when you told me it happened.

5 A He sees a -- he sees a hand --

6 MR. ESCOBAR: I'm going to object --

7 MR. MARTIN: Be quiet.

8 MR. ESCOBAR: -- because you're saying --
9 no, I'm not going to be quiet. You're saying fists
10 are not being thrown. Hands are being thrown. Can
11 you tell whether it's a fist or not?

12 BY MR. MARTIN:

13 Q Answer the question.

14 MR. ESCOBAR: Can you tell whether it's a
15 fist or not?

16 Q As soon as he stops talking, you can answer
17 the question.

18 A Twice he comes in very fast. Whether or
19 not it's a fist or a hand, it's coming in. He comes
20 in, and he grabs it -- and let me finish -- and
21 another hand comes back in. To me, I'm looking at
22 this thing whether you're coming in with your hands

1 straight out -- most people are going to come with
2 their hands closed. So, you know, the hands are
3 coming in. It's a threatening movement at that time.
4 And that's what Mr. Reeves is seeing, this
5 threatening movement. He doesn't see popcorn being
6 thrown at him. He doesn't even mention that. He
7 doesn't even know what happened to his popcorn until
8 later. That's not the question. The question is:
9 Does he feel threatened because he sees these hands
10 coming in at him quick? If you've had that situation
11 before, you know what that kind of threat is like.
12 And he's protecting himself at that point. It's just
13 one fluid motion that's going through this whole
14 thing.

15 Q And at that point it's over when he shoots
16 Mr. Oulson?

17 A When he shoots him, at that point he sees
18 that Mr. Oulson has stopped at that point, and it was
19 over for him, yes.

20 Q So he shoots him?

21 A No. After he shot him, he saw it stopped
22 at that point, and that's when he put his gun down on

1 his lap.

2 Q Before he shot him, Mr. Oulson was bringing
3 his hand back just like we saw on the video, right?
4 We saw it in the video, right?

5 A What did we see in the video? He's
6 bringing his hand --

7 Q He's bringing his hand back as the gun's
8 coming forward.

9 A I saw that hand coming forward at least
10 twice in there. And then the gun came up almost
11 simultaneously as that, and that's when he shot.
12 Feeling like he's being attacked at that point, that
13 the attack is coming over the top of the chairs, and
14 he's going to be seriously injured. At that point in
15 time he defends himself the best way he can, and
16 that's using his firearm. So it all happens at one
17 time.

18 After he shoots, he sees Mr. Oulson, stops,
19 he stops, he sits back, and he puts the gun down on
20 his knee. Showing that there is no more aggression.
21 He's trying to defend himself. There's nothing more
22 to defend himself, because Mr. Oulson now has backed

1 off.

2 Q You did see in the video -- and we went
3 over this over and over, and I guess we're just going
4 to have to play it again. Mr. Oulson's hand is
5 coming back towards him as Mr. Reeves is bringing the
6 firearm up towards Mr. Oulson, correct?

7 A Correct.

8 Q All right. And Mr. Oulson's hand then goes
9 out of frame about two frames before the gun is
10 fired, right?

11 A That's correct.

12 Q And at the time the gun is fired,
13 Mr. Oulson is not over the chair, is he?

14 MR. ESCOBAR: Let's play that, because how
15 can you tell he's over the chair or not?

16 MR. MARTIN: Because we know when he was
17 over the chair he grabbed the popcorn.

18 MR. ESCOBAR: How do you know? How do you
19 know he's not over a chair? Let's play it for him.
20 Let's not give him little -- you know, little tidbits
21 of your opinion. Let's play it for him.

22 BY MR. MARTIN:

1 Q Isn't that correct? He's done. You can
2 answer the question. Do you want to see the video?

3 A Okay, we're going to have to go in to do
4 this, because it's the only way you're going to
5 understand it. And I can explain it over and over
6 again, but let me make this very, very clear how the
7 mind works. When you see a threat coming towards
8 you, it takes at least a third of a second for you to
9 understand what's even happening. Somewhere in about
10 a half a second you understand there's a threat
11 towards you, and you have to react. There's time
12 that's in there, and there's lag time to when I see a
13 threat coming at me, by the time I act, the threat
14 might be over with at that point in time, and the
15 shot is fired. But in the mind of the person that
16 fires and takes care of that threat, the threat is
17 still going on. So there's a lapse of time in that
18 period right there.

19 You're trying to put this like there is no
20 lapse of time. There is a definite lapse of time
21 from the time you see something to the time you react
22 until the time things are happening. It doesn't

1 happen like in the movies. It's -- our minds are
2 different. And some people are slower than other
3 people. Some people are faster. Mr. Reeves has had
4 a lot of experience in the past. He's had a lot of
5 training, and he realizes the threat is coming, and
6 he's had to make that decision that he has to defend
7 himself, and that's what he did at that point in
8 time. So you're trying to make the point because the
9 arm is coming back, and Mr. Oulson is done. Maybe
10 the arm coming back, and he's getting ready to throw
11 another arm in there. I don't know. You don't know.
12 So I can't speculate towards that, nor should you.
13 Because I think we're trying to come to a point of
14 what really happened here? And who -- was he
15 justified or not? I'm saying without any doubt he
16 was totally justified in defending his life and
17 believing that he was being threatened at that time.

18 Q Anything else?

19 A No. Hopefully I explained it to you so we
20 don't have to ask the same question over and over
21 again, but if we do, we do.

22 MR. MARTIN: All right. I'm done. You

1 guys have a nice flight. Dr. Hayden, I'll see you in
2 court.

3 MR. ESCOBAR: He'll read.

4 (Whereupon, the deposition concluded at
5 3:50 p.m.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 I, Deanna A. Arend, the officer before whom the
3 foregoing deposition was taken, do hereby certify
4 that the witness was duly sworn by me; that the
5 testimony of said witness was taken by me in
6 stenotype and thereafter reduced to typewritten form
7 under my supervision; that said deposition is a true
8 record of the testimony given by said witness; that I
9 am neither counsel for, related to, nor employed by
10 any of the parties to the action in which this
11 deposition was taken, and further that I am not a
12 relative or employee of any attorney or counsel
13 employed by the parties thereto, nor financially or
14 otherwise interested in the outcome of the action.

15
16 _____
17 Deanna A. Arend, RPR
18 Notary Public, State of
19 Virginia at Large. My
20 Commission expires June 30, 2020
21 Notary Number: 131169
22

AFFIDAVIT OF DEPONENT

I have read the foregoing deposition which contains a correct transcription of the answers given by me to the questions therein recorded, except as to errors which may be indicated on any attached errata sheet.

Subscribed and sworn to before me this ____ day of _____, 2017, in _____.

Notary Public

My Commission Expires:

_____, 20____

1 ERRATA SHEET

2 Case Name: Florida v. Curtis Reeves

3 Witness Name: Dr. Philip Hayden

4 Deposition Date: 01/27/2017

5 Page No. Line No. Change

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1 Dr. Philip Hayden
2 c/o Richard Escobar, Esquire
3 Escobar & Associates
4 2917 W. Kennedy Boulevard
Suite 100
Tampa, Florida 33609

5 IN RE: Florida v. Curtis Reeves

6 Dear Dr. Hayden:

7 Enclosed for review is your condensed copy of
8 the above-referenced deposition. Please read the
9 copy of the transcript and sign the enclosed
certificate.

10 Also enclosed is an errata sheet which you
11 should use to note corrections and the reasons for
such corrections. This and any additional errata
sheets should be signed and dated by you.

12 You have thirty (30) days in which to read and
13 sign the transcript. After you have reviewed the
14 copy of the transcript, please return the certificate
of deponent and any errata sheets to Commonwealth
Court Reporters, Inc., P.O. Box 116, Fredericksburg,
15 Virginia 22404.

16 Sincerely,

17 Deanna Arend
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In The Matter Of:

State of Florida v.

Curtis J. Reeves

Philip P. Hayden, M.D.

March 28, 2016

Commonwealth Court Reporters, Inc

1 IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
2 IN AND FOR PASCO COUNTY, STATE OF FLORIDA
3 CRIMINAL DIVISION

4 STATE OF FLORIDA,

5 vs.

Case No.: CRC-1400216FAES

6 CURTIS J. REEVES,

Division: 1

7 Defendant.

8 _____ /

9 Monday, March 28, 2016

10
11 The deposition of PHILIP P. HAYDEN, a witness,
12 called for examination by counsel for the State of
13 Florida at the Fredericksburg Hospitality House and
14 Conference Center, 2801 Plank Road, Fredericksburg,
15 Virginia before Mary McCarty, Registered Diplomate
16 Reporter and notary public in and for the Commonwealth
17 of Virginia commencing at 8:53 A.M., when were present
18 on behalf of the respective parties:
19
20
21
22

A P P E A R A N C E S

On Behalf of the State of Florida:

GLENN L. MARTIN, JR., ESQUIRE
Assistant State Attorney
Sixth Judicial Circuit
Pasco and Pinellas Counties
P.O. Box 5028
Clearwater, Florida 33758
(727) 464-6221

On Behalf of the Defendant:

RICHARD ESCOBAR, ESQUIRE
DINO MICHAELS, ESQUIRE
Escobar & Associates
2917 W. Kennedy Boulevard, Suite 100
Tampa, Florida 33609
8138755100
rescobar@escobarlaw.com
dmichaels@escobarlaw.com

I-N-D-E-X

WITNESS

PAGE

Philip P. Hayden

Examination by:

Mr. Martin

4

E-X-H-I-B-I-T-S

Hayden Deposition Exhibit No. 1

4

1 (Hayden Deposition Exhibit No. 1
2 was marked for identification.)

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

4 Whereupon

5 PHILIP P. HAYDEN

6 a witness, called for examination by counsel for the
7 State, and, after having been sworn by the notary, was
8 examined and testified as follows:

9 EXAMINATION BY COUNSEL FOR THE STATE OF FLORIDA

10 BY MR. MARTIN:

11 Q Would you state your name for the record,
12 please, sir?

13 A Philip P. Hayden.

14 Q Mr. Hayden, my name is Glenn Martin. I'm an
15 assistant state attorney out of Pinellas County in
16 Florida.

17 We're here to take your deposition in the
18 case of State of Florida v. Curtis Reeves. The Pasco
19 County case number is CRC1400216A -- I'm sorry, FAES.
20 Mr. Reeves is charged with second degree murder and agg
21 battery involving a shooting at a theater in Pasco
22 County on January 13th, 2014.

1 Mr. Hayden, you have been listed as a defense
2 expert by Mr. Reeves' defense attorneys, Mr. Escobar
3 and Mr. Michaels, and the reason that you're here today
4 is for me to take your deposition to find out
5 everything that you know about this particular case and
6 to determine what if any opinions, if you are asked and
7 allowed to render such an opinion by the court, you
8 would render in this case. Is that your understanding
9 of why you are here, sir?

10 A Yes, it is.

11 Q All right, sir. What I'd like to do is I
12 have marked as deposition -- Deposition Exhibit No. 1
13 is the -- your curriculum vitae. Would you just look
14 at that and -- is there any additions, corrections,
15 deletions or anything on that CV?

16 A This one I have not updated since -- I don't
17 know what date it was we put it in there but it hasn't
18 been updated in a couple of years.

19 Q All right.

20 A And -- yeah.

21 Q What is missing off that CV, then?

22 A The Force of Science course that was taken

1 last year. I don't believe that's in here. I'm just
2 looking.

3 Q And that's the one at Quantico?

4 A No, that's at -- in Minnesota.

5 Q Okay. And that was in 2015?

6 A I would say it was probably two thousand --
7 late 2014.

8 Q Okay.

9 A But I'm not positive about that date.

10 Q Now, you took the class or were you an
11 instructor?

12 A I took the class.

13 Q All right. Anything else?

14 A There's several other courses that I've
15 taken: American for Effective Law Enforcement and
16 in-custody death classes that were held in Las Vegas.
17 I don't see those here. But basically, besides the
18 courses I've taken, the other things, my background,
19 all that is correct.

20 Q All right. So the three additions would be
21 the Force of Science Institute course and a course on
22 American for Effective Law Enforcement?

1 A No, I went to several courses taught by
2 them.

3 Q Taught by -- who is "them"?

4 A By the Americans for Effective Law
5 Enforcement, AELE.

6 Q All right. And you went through several
7 courses?

8 A Yes.

9 Q And do you know what those courses were?

10 A I couldn't tell you offhand, no.

11 Q Do any --

12 A But --

13 Q -- of them relate to the concept of use of
14 force?

15 A All of them do.

16 Q When did those courses take place?

17 A Took place over the last four years.

18 Q Even though you may not know the title of the
19 course, can you give me the content? If you want to
20 lump them all together since they all apply to use of
21 force and that concept, what do the courses -- what was
22 the content of the courses?

1 A They all refer to the use of force concepts
2 and the use of force that policemen use and the use of
3 force used against police.

4 Q Was it similar to the Force of Science
5 Institute two-week course?

6 A No, it was not.

7 Q In what regard was it different? We're going
8 to get into the Force of Science manual and the last
9 class that they put on in 2015 and the course material
10 a little bit later, but can you go ahead and let me
11 know the courses by the Americans for Effective Law
12 Enforcement, what was different? What's new?

13 A They're taught by several different
14 instructors that come in that have backgrounds in use
15 of force: Police officers; heads of departments; we
16 had a couple chiefs there; we have attorneys there that
17 deal with the legal aspect of use of force; we deal
18 with the psychological aspects of use of force and also
19 the -- the backgrounds of police officers that are
20 injured in cases because they haven't used use of --
21 used the force properly, and it's hour courses and they
22 go --

1 Q It's what kind?

2 A Hour, one-hour courses, that go through the
3 day and it lasts for a three-day period or a four-day
4 period, depending what course you sign up for.

5 Q For each hour, then, you would have a
6 different topic --

7 A Yes. That's correct.

8 Q All right. And who were some instructors?

9 A Judge Pitt from the Baltimore area, not --
10 Hanson or Henson. I can't think of his name right now.
11 I can't think of the names of all the different
12 instructors.

13 Q For those classes that you took -- I'm going
14 to lump them all together --

15 A Sure.

16 Q -- was there course material provided to
17 you?

18 A Yes, there was.

19 Q And do you still have that course material?

20 A I might have it somewhere.

21 Q All right. And would you be willing to
22 provide that to me?

1 A If I have it, I'd have no problems providing
2 it.

3 Q Other than Judge Pitt, were there any other
4 instructors which you consider to be authoritative in
5 nature that go around and teach concepts of use of
6 force?

7 A Probably just about every instructor they
8 have there.

9 Q And who would they be?

10 A And as I said before, I don't remember their
11 names.

12 Q Would that be on the course material?

13 A Yes, it would be.

14 Q Is the effective law enforcement -- or
15 America for Effective Law Enforcement, do they have a
16 website?

17 A I believe they do.

18 Q Is their course material on the website?

19 A I don't believe the course material is on the
20 website but a lot of reference material is on the
21 website.

22 Q The American for Effective Law Enforcement,

1 is that -- I'll call it an institution because the
2 Force of Science hangs "institute" on the back of their
3 name. How are they set up? Is there a board of
4 governors? Are there people that run the business and
5 go from place to place? Is it a company? How does
6 that organization work?

7 A I can only tell you what I understand; it
8 might not be factual but there are two -- there's a
9 couple different owners and they're out of Henderson,
10 Nevada, and the one owner is a psychologist and I don't
11 remember what the other guy is because he's not there
12 that much, but their backgrounds are -- are in the
13 psychological and also in the law enforcement
14 background and the legal background, so they have all
15 those different areas.

16 Q Okay. As far as the psychological
17 background, did those individuals do their own
18 independent studies regarding the human factors
19 involved in a high-risk situation?

20 A From what I understand from the instructors
21 that have been introduced and have been used out there,
22 they have done their own independent studies,

1 especially getting their doctorate and doing
2 independent studies afterwards, and work with other
3 organizations all throughout the world.

4 Q And to your knowledge did the course material
5 include any of their papers, abstracts, writings, FBI
6 bulletins that they authored, newspaper articles,
7 magazine articles, anything that they had written?

8 A I can't tell you if it did or did not. I
9 don't believe it did, though.

10 Q All right. As far as the individuals who are
11 the psychologists, you indicated they also have a
12 background in law enforcement. What would -- what was
13 their background in law enforcement, other than their
14 independent studies?

15 A Well, the one individual that I'm talking
16 about that is a psychologist, he was a deputy sheriff,
17 I believe, and -- while he was working his way through
18 school and he worked as a deputy sheriff and that was
19 his background.

20 Q And how many courses were there? You
21 indicated that the course is one-hour blocks of
22 individual instruction. How many different courses did

1 you go to?

2 A They have the courses a couple times a
3 year.

4 Q Yes, sir.

5 A And sometimes they give a little bit
6 different variation of the courses they -- they're
7 giving and so they'll send out a pamphlet telling you
8 the different courses that are there and they try to
9 change it up enough so that each session that they give
10 is different enough to bring people back. So sometimes
11 it's a repeat; sometimes it's recapping some
12 information; other times it's new information. And,
13 like I said, they give them -- I don't know how many
14 times a year but I know it's at least two times a year,
15 and they've been doing it for probably 15 years or
16 so.

17 Q Do you get some type of certificate
18 indicating a completion of any of those courses?

19 A You get one certificate -- well, you get a
20 certificate for completing the course. It's just you
21 completed the course. If you go through four of the
22 courses, then you get a certificate that says

1 litigation specialist.

2 Q And did you obtain such a certificate?

3 A Yes, I did.

4 Q And do you have a copy of that?

5 A Not with me but I do have a copy of it, here
6 again, somewhere. I don't -- I don't worry about those
7 things that much so I don't always keep them where I
8 need to get them right away.

9 Q And would you be willing to provide me a copy
10 of that?

11 A That'd be fine.

12 Q You also indicated that not on your CV is
13 investigating -- I'm sorry, in-custody death
14 investigations. Tell me about that course.

15 A Well, it's a lot of the same people that are
16 involved in that and it's just kind of a different
17 branch of their whole program. Even though they're two
18 separate entities, the way I understand it, one deals
19 with more situations, jailing situations, where they
20 would have jailers come to it, guards, things like
21 that, and they teach courses of how do you deal with
22 subjects that are out in the field and deal with them

1 in a way that is safety -- your safety -- protects you
2 and them.

3 Q You used the term "they" and "them." Are you
4 referring back to the people who run the American for
5 Effective Law Enforcement?

6 A Well, when I'm referring to any of that, it
7 goes back to law enforcement in general and accepted
8 principles that we -- when I say "we," that myself, the
9 other professionals in this area, have accepted as, you
10 know, leading principles.

11 Q You -- I believe either -- I believe you
12 misunderstood my question.

13 A I probably did if you didn't like the
14 answer.

15 Q That's okay. I'm trying to find out who's
16 involved in the program that teaches in-custody death
17 investigation. Is that the same group of people that
18 own and operate American for Effective Law
19 Enforcement?

20 A I'm not sure of that. I couldn't answer that
21 question honestly.

22 Q And did you receive course material in that

1 particular --

2 A Yes, I believe I did in that, yes.

3 Q And do you still have it?

4 A I would have to look but I think I probably
5 still do have it.

6 Q And would you be willing to provide that to
7 me?

8 A Yes, I would.

9 Q How many hours was the in-custody death
10 investigation?

11 A That was, here again, run very much like the
12 other course, is that one-hour blocks and some were
13 two-hour blocks, they'd have a break in between, and
14 they went for two or three days also. And they were
15 also given out of Nevada.

16 Q And did you obtain a certificate?

17 A You obtain certificates for attending those
18 courses and --

19 Q Just for attending?

20 A But that would be it.

21 Q Okay. Would the certificate indicate the
22 days that you did it, the number of hours that are

1 involved?

2 A I don't know about the number of hours but it
3 would definitely give the date.

4 Q All right. And do you have that
5 certificate?

6 A Here again, I don't really worry about those
7 things too much so I'm not sure if I have them but I
8 most likely do have them.

9 Q And would you be willing to provide a copy?

10 A I would be willing.

11 Q I'm going to save the Force of Science
12 seminar that you went to for just a little bit later.
13 Let me get some basic information from you and then
14 we're going to jump into that, okay?

15 A That's fine.

16 Q I didn't want you to think I forgot about it.

17 A Well, I wouldn't think that.

18 Q The education that's listed on the CV as far
19 as obtaining your BS degree, your master's degree and
20 your doctoral and education, is that -- all that
21 correct?

22 A That's correct.

1 Q Are there any current associations that you
2 belong to, whether it be associations which I refer to
3 as vanity -- you just pay a dues and you're a member --
4 or, because of coursework, you've actually done some
5 studies and then you're a part of that association?

6 A No, the only associations I belong to are
7 associations such as the International Association of
8 Chief of Police, the instructor courses, the IOFA, I
9 think it is, and those type of courses. I'm members of
10 different police boards but just as a, as you called
11 it, a vanity member.

12 Q Okay. What is the instructor course, IOFA?

13 A Well, it's courses that -- you belong to the
14 association and in that association they have meetings
15 and sometimes they give courses and it might deal with
16 different aspects of -- of law enforcement, and I have
17 instructed in that and I've also taken some courses in
18 it, but not recently.

19 Q Okay. Can you give me a list of courses that
20 you in fact took as a student?

21 A No, I cannot.

22 Q Can you give me the courses that you taught

1 as an instructor?

2 A The only -- I could not give you the name of
3 the course as I named it but it was when I was working
4 on my doctorate itself, and that was in the adult
5 education dealing with survival awareness and how you
6 teach those courses.

7 Q And the concept of survival awareness, would
8 you explain to me what that is, please?

9 A Survival awareness is the mental mindset that
10 a -- and we're talking about police officers here
11 that -- I'm talking about police officers -- the
12 mindset that an officer goes through when he is
13 involved in a critical life-threatening situation.
14 It's also the tactical responses that that officer
15 might have in dealing with that same life-threatening
16 situation.

17 So survival awareness is being aware of what
18 it's going to take to survive that situation: You
19 survive it, all your fellow officers survive it,
20 innocent people survive it, and also the individual, if
21 at all possible, might survive it.

22 Q Okay. You indicated that you taught that

1 class while you were obtaining your doctorate. Was
2 your doctoral thesis on this subject or --

3 A Yes, it was. It was on that subject.

4 Q All right. And was your doctoral thesis
5 published?

6 A No.

7 Q You still have a copy of it?

8 A I probably do. It's one of those things you
9 bury after you finish.

10 Q I understand. If you do have a copy, would
11 you be willing to give me a copy of your doctoral
12 thesis?

13 A Only if you promise to read it. How's that?
14 I can't get that promise out of you, I'd still give it
15 to you.

16 Q You do have that promise from me, sir.

17 A Okay.

18 Q How many times did you teach survival
19 awareness? I'm breaking this up a little bit.

20 A In the --

21 Q I want to know number of times, who the
22 students were, you know, so I'll --

1 A In the instructor course I just talked
2 about --

3 Q Yes, sir.

4 A -- I only did that, I think it was, twice.

5 Q Okay.

6 A And the first time I got a mug and the second
7 time I got a "thank you." I could not tell you --

8 Q Apparently you did better on the second time
9 around.

10 A No, they just -- they run out of money and so
11 they don't -- they had to cut back on the mugs.

12 The students -- the students would be a
13 variety of students from all different backgrounds,
14 mostly students within the police ranks, sheriff's
15 ranks, that type.

16 Q All right.

17 A And every now and then you'd have some
18 federal people in there too.

19 Q And do you still have your course outline or
20 the material you provided to the students?

21 A No, I -- I doubt very much if I still have
22 that.

1 Q In your CV you talked about being a board
2 member and a consultant for Seccred, S-e-c-c-r-e-d-o,
3 Incorporated International. Are you still a board
4 member of that company?

5 A I'm no longer a board member of that
6 company.

7 Q Just kind of to narrow it down, did your
8 position as a board member with that company in any way
9 relate to how you acquired your knowledge regarding
10 high-risk situations or use of force situations, or was
11 it a private sector thing?

12 A No, I was a board member on that because of
13 my background in law enforcement, my specialty in the
14 whole survival awareness concept.

15 Q Okay. It indicated in the CV that you
16 conduct security seminars so I want to go ahead and ask
17 you that. What was the content of the security
18 seminars?

19 A I conducted security seminars in several
20 different parts of the world dealing with -- number
21 one, like in Sweden, I went to Volvo, went to their
22 truck division of Volvo, the automotive part of Volvo,

1 dealing with their executives and dealing with their --
2 mostly management personnel in what happens within an
3 organization and in the individual's mind when a
4 high-risk situation occurs, dealing with terrorism,
5 dealing with an individual coming in to the facility,
6 dealing with blackmail, dealing with the concept of
7 stalking, all those kind of things. We dealt with
8 those aspects.

9 We also dealt with doing an assessment of the
10 facility to find out if there's better security that
11 they could provide for themselves.

12 Q Okay. Well, let me go ahead and jump ahead a
13 little bit. You mentioned the Volvo Car Specialty
14 Vehicles Division. You were a senior consultant and
15 product design specialist?

16 A Yes.

17 Q What product design?

18 A It was based on the V80 frame and was going
19 to be the first Volvo police car designed for the
20 United States -- for North America, Canada and the
21 United States.

22 Q Okay. You mentioned some of your duties and

1 responsibilities already. Regarding the Volvo, other
2 than what you previously mentioned, how did that relate
3 to the concept of -- I'm sorry. How did that relate to
4 you acquiring knowledge as to the concepts involved in
5 use of force investigation and determinations?

6 A Well, we're designing a police car, so how
7 could police officers be in that vehicle, perform their
8 duties in a safer, better environment.

9 Q In this particular case, of course, we're
10 dealing with a shooting, so if we can set the police
11 car aspect of it aside with Volvo, is there anything in
12 that life experience that you will bring to the table
13 in this particular case as far as doing your analysis
14 of whether or not Mr. Reeves was in fact reasonable in
15 his conduct in shooting the victim?

16 A Not dealing with Mr. Reeves but shootings
17 were a part of that whole concept within the Volvo
18 police car: How do you get in and out of the car? How
19 do you do that?

20 Q All right. You mention from 2002, January
21 2002 to December of 2006, your CV indicates that you're
22 Vice-President Client Relations with M. Morgan Cherry

1 and Associates.

2 A That's correct.

3 Q What were your duties and responsibilities?

4 A I was consulting them on investigations.

5 It's an investigative company --

6 Q Okay.

7 A -- and -- and my responsibility was designing
8 investigative techniques to go out and do an
9 investigation, mostly in Latin America.

10 Q And is there anything about that life
11 experience that you're going to bring to bear in our
12 discussion of Mr. Reeves' case?

13 A When you look at life experiences, my life
14 experiences is involved in all of these different
15 situations and my background, my knowledge, the
16 research I've done into so many different things.

17 When I was dealing with M. Morgan Cherry,
18 we're dealing with: How do you do an investigation?
19 But investigations can be done very -- can be done in a
20 way that's not safe for the individual doing that
21 investigation, so what we do teach is how do you do --
22 and how do you approach people in safer, better manners

1 and getting more information? So a lot of other things
2 are involved besides that but that is an aspect of it.

3 Q Regard to the investigation and how you
4 conduct the investigation, is there anything about that
5 life experience that you anticipate that you will use
6 in our analysis in this particular case? I'm talking
7 about the investigation itself.

8 A Well, when you do an investigation, you're
9 doing an analysis on what kind of individual you're
10 investigating, what kind of person you're approaching.
11 When you approach an individual, how is that person's
12 behavior?

13 And so we teach not only to take a look at
14 how you approach that individual and do it safely, but
15 what is the assessment that you're putting forward? Is
16 this person a threat to you or isn't a threat to you?
17 Do you need more people there? That kind of thing.

18 Q All right. And how does that life experience
19 relate to the factual scenario as you know it in the
20 Reeves case?

21 A Well, in the Reeves case, what you had, you
22 had to do a threat assessment. Mr. Reeves had to do a

1 threat assessment of his environment, his abilities,
2 his surroundings, what his other alternatives were. He
3 had to do all that. And it's the same thing that they
4 do in an investigation. You still do the same thing
5 when you do an investigation. A police officer or
6 these investigators, who were mostly police officers,
7 you're always connecting with people. That's what your
8 job is. So you always have to be aware of what science
9 might be there to see if there's a problem that you
10 have to identify.

11 Q All right. You indicated that as a private
12 consultant between 1999 and 2005 in your CV you were
13 with Communication Resources, Incorporated, a
14 consultant and security specialist. What were your
15 duties and responsibilities there?

16 A Which one is that?

17 Q It's where you talk about --

18 A Oh. I haven't dealt with that in a long time
19 so I forgot what that one was. It's a communication --
20 it's a company out of England.

21 Q Well, let me ask you this: Is that life
22 experience in any way going to bear on your analysis of

1 this particular case? If not, we'll move on.

2 A Well, we can -- we can move on or we could
3 stay with this because, as I said before, everything
4 that I'm doing here relates to my life experiences that
5 I've had, my educational background, my research I've
6 done, it all relates in some way, shape or form.

7 Q Okay. Well, let's go through it, then.

8 A Okay.

9 Q What were your duties and responsibilities
10 with that company?

11 A Basically just taking a look at what their
12 program was to see if it fit into the parameters of
13 safety for their individuals that were involved.

14 Q What kind of safety?

15 A Safety -- their own physical safety when
16 they're going out, doing their jobs.

17 Q Okay. Safety as far as terrorist
18 threat/kidnapping/ransom or safety because of their
19 environment and you don't want to step on a shovel?
20 I --

21 A You've answered every one of them.

22 Q Okay. On your CV, Kroll, K-r-o-l-l, and

1 Associates, consultant and security specialist.

2 A Kroll and Associates was a company that was
3 out of New York, was the headquarters, and they asked
4 me to come in and work with them and it's a larger
5 security company and what I was doing was security
6 surveys. I was consulting on different programs that
7 they had within their organization and the -- the
8 president of Kroll, when I was working for them, was
9 the number two man for Louis Freeh, the director of the
10 FBI. When he got out, he basically got involved in
11 that organization. So I was doing that as a -- as an
12 individual that had the experiences that I said
13 before.

14 Q You indicated in the CV that you developed
15 behavior modification techniques designed to enhance
16 performance for high-level executives.

17 A Yes.

18 Q Would you explain that to me, please.

19 A In my dissertation, in dealing with adult
20 education, what we're dealing with there is the
21 psychology of behavioral development, behavior
22 modification: How do I have to change the behavior of

1 an individual to get them to learn or to get them to
2 apply principles of safety on themselves or principles
3 whatever they might be? How do I get that individual
4 to -- to begin to change? How do you begin to make
5 change? So -- and that's what the thing is I'm talking
6 about, developed behavior modification techniques.

7 Q Same time period, January 1999 to December
8 2005, you indicated you were at the Safeboard Body
9 Armor Company.

10 A Yes.

11 Q Again, what were your duties and
12 responsibilities?

13 A What we're doing is developing body armor for
14 law enforcement officers and the type of body armor
15 that they would wear and that would be protecting in a
16 3A level.

17 Q Which level?

18 A A 3A.

19 Q Would you explain that, please?

20 A 2A is a bullet -- a bullet-proof vest, or
21 whatever better words you want to use than that --

22 Q Sure.

1 A -- that protects you against rounds such as a
2 .38 caliber.

3 When you get to a 3A, it protects you against
4 the higher calibers: The .44s, the .45s, the 40 mil,
5 the mags -- .357 mags. It protects you against that.

6 Q Okay.

7 A So there are assaults on police officers. We
8 wanted to make sure they're protected the best they
9 possibly could from those type of rounds. So what my
10 job was there is to try to help develop that program
11 and then get it -- basically selling it within this
12 country.

13 Q All right. I'd like to go back now to the
14 Force of Science Institute --

15 A Okay.

16 Q -- and discuss that --

17 A Sure.

18 Q -- in a little more detail.

19 You indicated previously that you took that
20 course in late 2014. How long was the course?

21 A It was a one-week course.

22 Q That would be 40 hours?

1 A Yes. Probably more like 45 to maybe even 50
2 hours.

3 Q Okay. And did you obtain a certificate --
4 certification of completion or certificate of
5 completion?

6 A Yes, I did.

7 Q Do you still have that?

8 A I'm sure I do.

9 Q Would you be willing to provide me a copy?

10 A I would be.

11 Q Regarding that particular organization, you
12 indicated that, in your CV, May 2002 to present you're
13 on the national advisory board for the Force Science
14 Research Center.

15 A That's correct.

16 Q Okay. Is the Force Science Research Center
17 the same as the Force of Science Institute or are they
18 two separate entities?

19 A When they first started -- when Bill Lewinski
20 first started that program, he was associated with the
21 Minnesota State University, I believe it was, and they
22 had the one name from that, and then when he wasn't

1 able to get all the funding and everything he needed
2 and the controls he wanted from the university, he
3 stepped out from the university and that's when that
4 changed up a little bit. So it's the same
5 organization.

6 Q Okay. You indicated in the CV that you're
7 responsible for reviewing policy, procedures and
8 research regarding police use of force during arrest
9 procedures -- during arrest procedures, vehicle stops,
10 et cetera. As far as -- I want to concentrate on the
11 research regarding police use of force. You indicated
12 when we were going through some of the companies that
13 you were working with, you indicated several times
14 about the research that you have done, so let's start
15 with that. What research have you done as relates to
16 use of force, you personally?

17 A When I came to the FBI academy -- or before I
18 came to the FBI academy -- we'd have to step back into
19 my military experience -- and what -- trying to
20 understand what it is an individual has to do. I went
21 through several courses, and after going through those
22 several courses I began to realize that I had to find

1 out why -- this is my nature -- why individuals were
2 teaching what they were teaching in that and what --
3 what basis they were using for teaching it. So I did
4 my own personal research -- and it wasn't in-depth --
5 my own personal research in why courses were being
6 taught the way they were, and what I was learning, was
7 it correct?

8 Q I'm sorry. Wasn't or was correct?

9 A Was correct.

10 Q Okay.

11 A And then --

12 Q Let me just stop you there --

13 A Sure.

14 Q -- because I want to talk about the research
15 you did.

16 When you did that research, were you doing
17 any type of independent clinical studies where, like a
18 psychologist would with a group of individuals, having
19 a control group and another group and doing that type
20 of analysis, or were you simply going through the
21 material and reading everything that you could find and
22 read?

1 A Going through the material and reading not
2 everything but reading a lot of the things --

3 Q Okay.

4 A -- yes. That was it.

5 Q All right. And how did that research relate,
6 then, to your duties and responsibilities on the
7 national advisory board for the Force Science Research
8 Center?

9 A Well, I don't know if he asked me to come
10 over there because of any of that background. My
11 military background was a military background that
12 showed that I had been in life-threatening situations
13 in combat and that I had survived those situations, and
14 if somebody wanted to read it, I guess they could read
15 it. So I don't know if that had any reason for being
16 elect -- brought to the board or not.

17 Q One of the questions that I've -- I noted is
18 the purpose of the research, and you indicated already
19 that it was for you to verify that whatever some of the
20 instructors that you had been exposed to was in fact
21 teaching you concepts that is generally accepted within
22 that particular field. That was the purpose of the

1 research?

2 A Yes.

3 Q Was there any other purpose involved?

4 A I just wanted to know more -- more that I
5 could know, the better I thought it was going to be.
6 Going to combat, I just really wanted to understand
7 it.

8 Q And how did you use that research?

9 A For my own knowledge.

10 Q Did you impart it to anyone while you were an
11 instructor any place?

12 A Yes.

13 Q Other than what we talked about with the IOFA
14 and that course, where were you an instructor where the
15 research came to bear as far as what you taught your
16 students?

17 A In the FBI academy.

18 Q Okay. Any other place?

19 A In courses I taught all throughout the world
20 as a private individual after the FBI.

21 Q Were you associated with any particular
22 association, group, organization, institute, or was

1 this just as a private individual, you alone?

2 A As a private individual. That was pretty
3 much it. And the other -- and before that was with the
4 FBI.

5 Q Were you ever an instructor for the Force of
6 Science Institute?

7 A No.

8 Q In your research, did you identify any one or
9 several individuals that you felt were authorative
10 [sic], if you will, in the field that you were
11 researching? Is there any --

12 A Many.

13 Q -- individuals that stood out?

14 A Many. And I can't give you their names but
15 they were sergeants and officers that taught in the
16 schools that I went through, things that they said that
17 just stuck in my head and -- and everything that I read
18 after that validated everything they ever taught. So
19 it was just many, many instructors.

20 Q The research you did, was that involved in
21 police shootings or police high-risk situations?

22 A No. What I was involved with in the military

1 was basically military operations.

2 Q Okay. The research that you did that you and
3 I have been discussing as far as for the Force Science
4 Research Center and the Force Science Institute where
5 you wanted to acquire all the knowledge and learn if
6 what you're being taught is correct, did that mostly
7 involve police shootings?

8 A Okay. You're confusing the two.

9 Q Okay.

10 A The military is what I wanted to learn
11 everything I could learn to survive and understand, you
12 know, what I was getting involved in. That was back --
13 I was young. I was in the military. And when I took
14 that into law enforcement it was the same thing, but
15 that's not where I was applying it when we talked
16 before. I wanted to learn when I was in law
17 enforcement everything I could possibly learn to
18 understand what police officers, what law enforcement
19 officers throughout the country, throughout the world,
20 were involved with in order to survive any kind of a
21 violent confrontation.

22 Q So after you got out of the military -- am I

1 understanding correct? -- then you did research
2 involving police officers in high-risk situations
3 and/or shooting situations.

4 A Several years after I got out of the military
5 and I went into the FBI.

6 Q All right.

7 A I didn't start that until I went into the
8 FBI.

9 Q Well, let's set the military aside.

10 A Okay.

11 Q We were talking about in your CV, under Force
12 Science Research Center, you did research regarding
13 police use of force. That's your language --

14 A That's correct.

15 Q -- in the CV.

16 A That's correct.

17 Q So have we touched upon that, the research
18 that you did?

19 A No.

20 Q Okay. What research that you did regarding
21 police use of force that you've identified in the CV?

22 A Police use of force that we're talking about,

1 as I've identified here in the CV, deals with all the
2 research I did in the FBI as a FBI agent, as a SWAT
3 agent, as an investigator in the field, and my research
4 there was trying to understand as much as I could
5 possibly understand about any of those concepts.

6 When I got into the in-depth research is when
7 I got to the FBI academy and became an instructor in
8 the SOARS unit, which is the Special Operations and
9 Research Staff, which dealt with all tactical
10 situations for SWAT, the Special Weapons and Tactics.

11 There, we dealt with the mindset, the
12 physical aspect and the -- and the ability of officers
13 to survive and to overcome any kind of conflict they
14 might be involved in. Now, that's where I did --
15 started doing a lot of my heavier research.

16 Q Okay. And that research, did that include
17 searching whatever database, metadata mining, whatever,
18 to read everything that you could get your hands on, or
19 did it also include any independent clinical studies
20 involving test subjects and control subjects?

21 A When I first started this, computers were not
22 my friend so I didn't get a lot into computers. We had

1 the library at -- the legal library at the FBI academy
2 which has thousands of books on police science.

3 I -- in that research that I did, I did a lot
4 of studying on certain research that was done by
5 experts in the fields, that were considered experts
6 within their field, explaining the psychological aspect
7 of what an officer might go through, deciding, you
8 know, when to react to -- in certain ways, what the
9 subject that you're going after, what his psychological
10 behavior might be and why they would act like that and
11 what the response might be.

12 So we got into the very heavy ends of all
13 that, and I read hundreds of documents, journals,
14 books, and then I got into my doctoral work, which I
15 got into this even deeper.

16 Q All right. And we've already discussed that.

17 In relating to that research regarding use of
18 force in police shootings or high-risk situations, how
19 does that transfer over to civilians, nonpolice
20 officers, involved in shootings? How does that
21 research transfer over, or does it?

22 A Well, what you have to take a look at is,

1 who's a police officer? Because we don't have Robocop.
2 So Robocop doesn't exist. We have police officers who
3 are human beings and are part of society but they've
4 been trained in different ways to confront a violent
5 confrontation, to resolve that confrontation. So the
6 only difference is, is that a police officer usually
7 has higher training than a civilian might have but
8 you're going through a lot of the same psychological
9 aspects, the same problems that they go through, the
10 physiological aspects that an individual might go
11 through would be the same as a police officer, but a
12 police officer hopefully is more controlled.

13 Q Is a police officer held at a different
14 standard because of the higher training than a civilian
15 involved in a shooting?

16 A Yes, they are.

17 Q And would you explain the difference, then?
18 What would be the difference between the standard with
19 a police officer and a civilian shooting?

20 A Well, I think you'd have to take a look at
21 the type of training an individual might have. If you
22 had an individual that was injured on the street and

1 the civilian came up, was trying to help him versus a
2 doctor trying to help him, would that doctor be held to
3 a higher standard? Yes, because of the knowledge he
4 has and the expertise he has, the experience he has.
5 So he would be held to a higher standard.

6 Same thing with a police officer. The police
7 officer has gone through more training, usually; they
8 have been certified in a certain areas, usually,
9 depending upon what their specialty is. So any
10 individual that has that experience would be held to a
11 higher standard, but police officers are usually held
12 to a higher standard because they have a lot more
13 training.

14 Q The higher standard, how does that higher
15 standard affect the determination of whether or not a
16 shooting is justified or reasonable in a particular
17 situation?

18 A Well, the only thing I can say in that is
19 that -- I'm not talking about the legal aspect; I'm
20 talking about the -- what a police officer sees when he
21 enters into a violent confrontation. He has to be able
22 to assess that threat. He has to be able to have a

1 knowledge of what he's going into, know his
2 environment. What's his environment like? Is it dark?
3 Is it cloudy? Is it rainy? Is it -- what is it? Is
4 there a light shining on the individual? You know,
5 what that -- is that whole environment about? Does he
6 have a way of escaping or doesn't he have a way of
7 escaping?

8 And then you have to look at what kind of
9 ability I might have as a police officer. Do I have an
10 ability to run and get behind cover and protect myself
11 and protect other people or am I in a situation I don't
12 have any means of escape? Are there people going to be
13 injured? And then, you know, what are my alternatives,
14 you know, fight, flight or freeze, the same thing you
15 were talking about before, is that, you know, what are
16 my alternatives?

17 So when a police officer goes through that,
18 he's usually trained, and there's almost 700,000 law
19 enforcement officers across the United States and I've
20 trained many thousands of law enforcement officers
21 within the United States, I've dealt with hundreds of
22 different police departments, and within that you don't

1 see much of a difference in their training. It's just
2 a little bit of a difference in how they might train.

3 But we're all trained pretty much the same
4 way and that same standard would apply, is that they're
5 taught how to use a firearm; they're taught defensive
6 tactics; they're taught physical fitness, why physical
7 fitness is important to them. They're taught with all
8 the gear that they carry, how to use all that gear,
9 whether it be a stun gun, whether it be a caps gun,
10 whether it is a firearm, whether it be a baton,
11 handcuffs. They're taught with all those different
12 things.

13 A civilian doesn't have that capability.
14 They aren't taught with those things. A police officer
15 is. So what's at his disposal?

16 And then when he goes from that point, you
17 know, what force does he have to use to stop a threat
18 against him? These are the -- all the threat
19 assessment that an officer has to look at much more
20 than a civilian would look at.

21 Q Would the trained police officer also have
22 the background or life experience of how to deal with

1 the public and to gain control of the situation without
2 resorting to violence? Are they taught that?

3 A Police officers in general are taught that.
4 I can't speak for all police officers out there but I
5 know police officers, in the courses that they're
6 taught, are to -- how to analyze the best they can in a
7 nonclinical way, the best they can, the individual that
8 they're confronting. What kind of a person is this?
9 What kind of a threat does he bring to the table here?
10 You know, will he carry through with the threat? All
11 those type of things are things that we -- we as law
12 enforcement -- I say "we," just -- I was law
13 enforcement so I use that term, but as law enforcement
14 is taught to gather as much information as you can so
15 you can make a good decision when you have to make that
16 decision.

17 Q Would those same officers, based on their
18 training, also be taught how to deal and respond when a
19 high-risk situation de-escalates and maybe just goes
20 away? Are they taught how to turn it off, if you
21 will?

22 A You're referring to all law enforcement. I

1 can't speak for all law enforcement.

2 Q I'm just -- based on your research, your
3 studies --

4 A Yeah, my research, my studies and all the
5 training that we did, yes, is that you have to look at
6 a situation and when it de-escalates, you stop.

7 Q I want to touch base again with the Force
8 Science Institute. You've already indicated you're
9 familiar with Mr. Lewinski --

10 A Yes.

11 Q -- correct?

12 And how did you become -- I'm going to start
13 that question over, okay?

14 A You can start it wherever you'd like to.

15 Q All right. How were you introduced to
16 Mr. Lewinski and if you did work with him, how did that
17 come about?

18 A I first met Mr. Lewinski -- and I can't tell
19 you the year or the date I met him -- but he was
20 dealing with a program, the -- oh, God. It escapes my
21 mind right now. It's a program that was out that
22 thousands of police officers took. It was the Caliper

1 Press course on -- I forget what the name of it is but
2 it was Caliper Press that taught it. Bill Lewinski was
3 one of the instructors.

4 Q What did he teach?

5 A What he taught was officer survival and what
6 he taught was use of force and it was all done in
7 the -- an auditorium where he and another instructor
8 were on the stage and they taught. They used a lot of
9 videos. They used a lot of different things like that
10 to help you understand.

11 I took three of my people with me and -- my
12 people that were working for me -- and I took them to
13 the course just to see what was being taught, to see
14 anything that we could use in that that would help our
15 own instruction, and that's where I met Bill
16 Lewinski.

17 Q The very last Force Science Institute course
18 that you took, was he an instructor?

19 A He was the primary instructor.

20 Q Okay. I'm going to spell the last name.

21 A Good.

22 Q Dr. S-z-t-a-n-j-n-k-r-y-c-e-r.

1 A Okay. You spelled it and I can't pronounce
2 it either.

3 Q See? In the very last Force of Science
4 Institute seminar, she's a medical doctor. She taught
5 Understanding and Leveraging the Psychology of
6 Emotional Intensity. Does that sound familiar to
7 you?

8 A There was a course that sounds familiar to
9 me. It was something like that.

10 Q All right. Now, she has done some
11 independent studies regarding the aspects of law
12 enforcement including survival and the interactions
13 with survival stress and tactics. Are you familiar
14 with her?

15 A I'm -- I -- you couldn't spell the name and I
16 can't recall her name, so

17 Q All right. Do you have any such formal
18 medical training as she would as far as understanding
19 the human physiology and how the human physiology
20 reacts to stress?

21 A I do not.

22 Q Do you feel that based on the research that

1 you have done that you would be able or qualified to
2 discuss the human -- I'm going to start that one over
3 too.

4 Based on the life experience you've -- we've
5 been discussing and the research you have done, do you
6 feel that you're qualified to discuss in a general way
7 how the human body, from a physiological standpoint,
8 reacts to high-risk situations or stress?

9 A Well, I'm not a medical doctor and I can't
10 refer to it as -- in those terms. I can refer to it in
11 terms of the studying that I have done, the
12 understanding of the lectures I've gone through, the
13 books I've read, the research I've done on what happens
14 to individuals, and my experience is, the physical
15 experience that I've had with individuals who have been
16 in those situations in interviewing them and trying to
17 understand why they did what they did and what they did
18 do.

19 Q Do you feel based on your research and your
20 life experience that you're able to discuss how
21 particularly the brain functions and what if any
22 changes may or may not occur relating to stress and

1 fear in high-risk situations?

2 A The only thing I can refer to --

3 Q Let me just -- not the outward manifestations
4 but how the brain --

5 A Okay.

6 Q -- actually responds.

7 A The only thing I can refer to in that is what
8 the other experts have said that I've been able to
9 read and been able to try to understand the best I can,
10 and from that I try to relate that to the students. So
11 I would not consider myself an expert in the way the
12 brain works but I would consider myself a person who's
13 done a lot of research on why the body responds in
14 certain ways when the brain starts changing.

15 Q Do you know Dr. Artwohl, A-r-t-w-o-h-l?

16 A Yeah. Alexis Artwohl. Yes.

17 Q Okay. How do you know her?

18 A Through Force Science. She's on the board
19 also.

20 Q All right.

21 A I don't know her well but I -- I do know
22 her.

1 Q And she is a psychologist?

2 A From what I understand, yes.

3 Q And you have no formal training as -- being a
4 clinical psychologist or psychiatrist?

5 A I do not.

6 Q And based on just your life experience and
7 the research you've done, do you feel that you're
8 qualified to discuss how the brain functions as it
9 relates to memory when stress and fear are
10 introduced?

11 A And here again, it's not a trained
12 psychologist, but in the research that I've done, the
13 information I've acquired, the classes I've sat
14 through, I feel like I have an understanding of how
15 that works and I try to relay that on to my students.

16 Q But you don't feel you're an expert in that
17 field.

18 A I would not be an expert in that field.
19 That's more of a psychological technical expert in
20 that.

21 Q Do you know Mr. Chris Lawrence?

22 A That does not sound familiar to me.

1 Q He's done some studies involving sensation
2 and perception responses relating to time and stress in
3 high-risk situations. Are you familiar with any of his
4 work?

5 A I can't say -- I've read so many different
6 works and so many different authors that I can't say
7 I'm -- I -- that name pops out at me, but this -- the
8 area that you're talking about, yes, I've done a lot of
9 research myself and read a lot of material on that.

10 Q He has coined a phrase and has taught the
11 concept known as "the Hick's law." Do you know what
12 that is?

13 A I've heard it referred to, yes.

14 Q What is it, please?

15 A I can't explain to you right now what it was
16 but I remember the Hick's law is -- Lewinski's course
17 brought that up too and I can't just -- it's not there
18 right now. You were talking about memory before?
19 Yeah, I just had a lapse of memory.

20 Q He also discusses another concept called the
21 Fitt's law, F-i-t-t apostrophe S law. Do you know what
22 that is?

1 A I remember that -- a lot of that was brought
2 out in Bill Lewinski's course and I can't recall
3 exactly what that was either.

4 Q I want to talk about the research that you've
5 done, okay?

6 A Okay.

7 Q Are there any articles, abstracts, papers,
8 books, FBI bulletins, magazine articles, scientific
9 studies, that you're going to rely upon in support of
10 any opinion that you may render in this case? And give
11 me a list.

12 A The only documents or things that I wrote was
13 for the FBI and I don't know where they sit as far as
14 availability, but in that a lot of my research was
15 given to them on why I'm doing certain things, and
16 usually it was because I was trying to increase the
17 program and to get more funding for the program and get
18 more support for the program so I showed the research
19 that I was doing and why I was doing that and how we
20 felt it helped law enforcement officers.

21 Q When you say "showed the research," by what
22 media did you provide that information?

1 A Written documents. Written documents.

2 Q Okay. Would that be in the form of FBI
3 bulletins that are published or written documents that
4 would be internal letters, memorandums, abstracts, that
5 you simply submitted for their review?

6 A Written documents.

7 Q And do you still have those written
8 documents?

9 A No. They're FBI material and I don't have
10 them.

11 Q Who did you provide them to? What part of
12 FBI, what --

13 A Different management within the FBI.

14 Q And those documents, you didn't keep a copy
15 for your own personal file?

16 A No, you're not supposed to and I didn't.

17 Q Why are you not supposed to?

18 A You don't keep documents -- I mean, when I --
19 I had them when I was an FBI agent, but when you're --
20 you get out, you're not supposed to take those
21 documents with you -- they're FBI property -- so I
22 never took them.

1 Q Was the -- did the FBI consider your research
2 at that time being their intellectual property and not
3 yours?

4 A The FBI, I don't think, considers anything
5 their own intellectual property. They are willing to
6 give their documents or their material out to a lot of
7 different departments.

8 Internal documents, I can't speak to that.
9 That's FBI policy and I can't speak to that.

10 Q So the documents that you wrote would be
11 internal documents?

12 A They'd all be internal documents, yes.

13 Q And can you give me the general topic, scope
14 or content of those documents in a general fashion?

15 A In a general fashion, they were all documents
16 dealing with the behavior of law enforcement officers,
17 of individuals that are involved in violent crimes, how
18 these individuals would respond to different stimuli.
19 It would be dealing with officers' ability to shoot in
20 high-risk situations and how we can bring that into a
21 better control and better understanding so police
22 officers shoot better in those crisis situations. It

1 dealt with the physical fitness. It dealt with the
2 ability to defend one's self physically with hands
3 only, with different weapons such as batons and
4 material like that, and went all the way up into the --
5 dealing with time lag, time -- dealing with the ability
6 to respond to a situation in a certain period of time
7 and --

8 Q When you say "respond," you're talking about
9 responding by a cruiser or responding if you and I were
10 face to face and responding to a situation? What are
11 we talking about?

12 A Well, most of the times it would be when you
13 and I are face to face, what is my reaction time?

14 Q Okay.

15 A What is my reaction time to a stimuli that I
16 see that's coming towards me, how much time do I have?
17 How much time does it take for me to process that
18 information and to be able to take that information and
19 apply it physically and -- so that I can respond with
20 something to stop that threat? It went to the ability
21 of individuals; it went to the ability of organizations
22 because what we dealt -- were dealing with mostly was

1 the violent crimes task forces within the FBI and -- so
2 it dealt with all the aspects of how do you survive a
3 violent confrontation? How do you complete your work
4 you're trying to do in the safest, best way possible
5 for you and everyone else concerned?

6 Q Of course my follow-up question as far as the
7 research that you're going to rely on, is there
8 anything other than what we've just discussed that
9 you've turned over to the FBI that you have personally
10 written -- any articles, abstracts, papers, books,
11 magazine articles, scientific studies -- that you're
12 going to rely on, other than what we've already
13 discussed?

14 A You say that I'm going to rely on. The only
15 thing -- everything that I've done is in my background,
16 my experience, and I rely on all that.

17 I did write an article for -- maybe it was
18 two articles for this one magazine. It was a law
19 enforcement magazine. And I think that was the only
20 thing I published. I wasn't interested in publishing
21 anything, but

22 Q And do you know -- or do you recall what

1 magazine?

2 A I don't recall what magazine but I know I do
3 have those copies.

4 Q And would you be willing to provide a copy to
5 me?

6 A I would be willing to provide a copy to you,
7 yes.

8 Q I'm going to change topics just a little bit.
9 I want to talk about your FBI background --

10 A Okay.

11 Q -- in a little more detail.

12 All right. Let's start from the beginning.
13 August 1973 to August of 1983, ten years as a field
14 agent, Chicago and New York.

15 A Right.

16 Q All right. You indicated -- and I'm picking
17 this up from your CV -- you were certified by the FBI
18 as an instructor in the following areas: Tactical
19 concepts for law enforcement officers. What was your
20 certification? What does that mean in that particular
21 area?

22 A Where are you right now?

1 Q Well, it's probably --

2 A Right under Federal Bureau of Investigation?

3 Q Yeah, probably.

4 A Creating and -- okay. Okay. That's all the
5 things I created. Where are the things that you're
6 talking about?

7 Q I believe I -- I'm taking this a little bit
8 out of order --

9 A Okay.

10 Q -- on your CV. It's almost to the
11 next-to-the-last page.

12 A Only have three pages, so the middle page?

13 Q Yeah.

14 A The special agent, New York, Chicago offices?

15 Q Yes.

16 A Okay.

17 Q So you see where it says "certified by"?

18 A Right.

19 Q Tell me about that certification.

20 A Every one of those certifications are courses
21 that I took through the FBI that I had to complete
22 and complete satisfactorily.

1 Q Your CV says that you were certified as an
2 instructor. So you took a course. You were certified
3 as an instructor at that point. What were you
4 certified to teach?

5 A Well, what I was instructed to teach was the
6 things I was certified as, like, for instance, a
7 firearms instructor. I was certified at that time to
8 be a firearms instructor and to teach firearms to other
9 FBI agents.

10 Q Let's go back to the first one, the tactical
11 concepts for law enforcement officers. You were an
12 instructor for that particular -- I'll call it course
13 concept. What is that? Explain that to me.

14 A That -- that is a course that basically I
15 developed and that I developed a standard that had to
16 be met in order to be certified on concepts of law
17 enforcement, tactical concepts. It was dealing with
18 the whole area of pre-SWAT, in between just being a
19 regular agent and being a tactical agent, per se. So I
20 put that course together and the certification that I
21 received is the certification that I had developed.

22 Q Okay. And what were the topics or subtopics

1 of that?

2 A All dealing with the whole mental mindset,
3 the physical mindset, the physical abilities, the
4 tactical abilities of an individual to use, in order
5 for his -- to maintain his own safety and the safety of
6 other officers and innocent parties.

7 Q Your CV indicates that after that, in August
8 of 1983, you went to the Special Operations and
9 Research unit. My question is: What were your duties
10 and responsibilities in regard to research?

11 A In the -- which one was that? The --

12 Q It's -- it comes before the one we just
13 talked about.

14 A Okay. Participated in arrest of violence and
15 investigated and conducted areas --

16 Q No.

17 A -- of criminal cases, certified --

18 Q No, sir.

19 A -- by the FBI as an instructor in the
20 following areas: Defensive tactics, special weapons,
21 crisis management, firearms, snipers --

22 Q Mr. Hayden, let me stop you. I'm looking

1 for --

2 A Okay.

3 Q -- the whole topic that says Special
4 Operations and Research unit.

5 A Okay.

6 Q August 1983 to June 1990?

7 A Okay. I have you there.

8 Q All right, sir. My specific question to you
9 is regarding the research unit. What research did you
10 do?

11 A The name of the organization is the Special
12 Operations and Research unit.

13 Q Yes, sir.

14 A What we did was research as much information
15 as we could on tactical responses by teams,
16 specifically SWAT teams, within the FBI and within law
17 enforcement that we were working with. So the research
18 that we did is how can we better train these
19 individuals to do their job in a safer and better way?

20 Q Okay. Your CV indicates that you were
21 eventually elevated to the position of supervisory
22 special agent, FBI academy, 1983, January 1999. How

1 were you associated with the FBI academy?

2 A I was brought back to the FBI academy to be a
3 part of the Special Operations and Research unit.

4 Q Okay. So we've already discussed that.

5 A Yes.

6 Q During that same time period, June of 1992
7 through January 1999, you indicated that you were
8 program manager for the law enforcement training for
9 safety and survival subunit. What is that?

10 A I developed the program Law Enforcement
11 Training for Safety and Survival. It's called the
12 LETSS program, L-E-T-S-S, LETSS program, and in that I
13 put together a program for the violent crimes task
14 forces within the FBI and I started my research on that
15 and I developed this course.

16 Q And what were some of the topics, then? Can
17 you pull them out for me or list them?

18 A We went from everything dealing with the
19 physical aspect of tactics: How to deal with a
20 firearm, both handguns and long rifles, shoulder
21 weapons; how to shoot under crisis and when your heart
22 rate is higher, when you're dealing with a lot of

1 stress; how do you deal with an individual when you
2 don't have a weapon on them and it's just hands, how do
3 you deal with that; going on to different situations of
4 how would you get involved in an operation that is a
5 high-threat situation and realizing how many people do
6 I need to take care of this situation?

7 So all the things that dealing with basically
8 the SWAT concept, the team concept, goes through
9 individuals up to a couple men on the team to the whole
10 team of how do you operate in a safer, better
11 environment.

12 Q Your CV indicates additional subunits while
13 you were at the FBI academy included conducted training
14 for over 6,000 federal and state, city, local officers;
15 created and instituted the tactical instruction program
16 for the FBI; you developed a tactical curriculum for
17 new agent training. And all that was up until 1999.

18 A Yes.

19 Q All right. In 1999, did you retire?

20 A Yes, I did.

21 Q We're now 17 years down the road.

22 A Is it that long?

1 Q Yes, sir.

2 A Oh, God.

3 Q In those 17 years since you've taught at the
4 academy, what has changed regarding human physiology as
5 it relates to high-risk situations and use of force,
6 officer shootings? What has changed in the last 17
7 years?

8 A If you could explain to me. What do you mean
9 what has changed? You mean what has changed in the
10 world or what has changed in me? What is it you're
11 asking?

12 Q I appreciate that. The concepts that were
13 associated in the 1990s --

14 A Yes.

15 Q -- those concepts associated with human
16 factors of individuals involved in high-risk situations
17 or use of force or shootings, have those concepts or
18 those understanding, has that changed in 2000, 2016,
19 the last 17 years? Is there anything new?

20 A As far as techniques, I don't believe there
21 is anything really new.

22 As far as equipment, there's a lot more

1 better equipment.

2 As far as training, there's been a lot more
3 training within that period of time.

4 Q Let me stop you there. I want to shorten
5 this up a little bit.

6 A Sure.

7 Q I'd like for you to focus on the human
8 physiology, the human factors.

9 A Okay.

10 Q And people's understanding of how humans or
11 individuals react in high-stress or use-of-force
12 situations. Has any of the understanding of those
13 concepts back in the 1990s, has that changed over the
14 last 17 years?

15 A The only thing I could say about that in the
16 readings that I've done over the past 17 years, it
17 doesn't appear that anything has changed, but I can't
18 speak in a clinical sense to that. I don't know if
19 anything really has changed. But as far as I
20 understand, as far as the readings that I've had,
21 nothing has changed in that.

22 Q Having that in mind, during the last 17 years

1 have you taken the opportunity to keep abreast of the
2 research and the studies that have taken place
3 involving human physiology, how the human mind and body
4 responds to high-stress situations? Have you kept
5 abreast of new trends, new concepts, over the last 17
6 years?

7 A When you say I've kept abreast, I don't know
8 if I've kept abreast of a certain standard that you're
9 looking for but I have read different articles; I've
10 talked to different instructors; I've talked with
11 individuals who have done research; I was a member of
12 the board on Force Science; I've talked to Bill
13 Lewinski several times to find out what research he's
14 done and what his results are of that research. So in
15 that way I have kept abreast the best I knew how and --
16 and that pretty well sums it up.

17 Q What I'd like to do is go through some of
18 those concepts with you and kind of ferret out exactly
19 what your current understanding is regarding human
20 physiology and how the human body and mind responds to
21 high-risk situations and shootings, okay?

22 A Okay.

1 Q The concept of fear, a human emotion. As it
2 relates to high-stress situations or use-of-force
3 situations, what would be your definition of fear in
4 that context?

5 A The high state of arousal that basically
6 leads to the fight, flee or freeze. Dr. Roger Solomon
7 is the one that basically started dealing with the
8 whole concept of arousal -- high state of arousal.
9 I've known him for 30 years. I've dealt with him. I
10 haven't talked to him in the last several years but he
11 was the one that was doing a lot of the initial
12 research on that and how fear affects police work.

13 Q Okay. As far as that high arousal state,
14 what is your understanding how that affects the
15 cognitive functions, how your brain receives,
16 perceives, processes, information during a high-risk
17 situation?

18 A From the research that I did with hundreds of
19 law enforcement officers out there that the have been
20 in high-risk situations and what they tell me that they
21 have gone through and the understanding that I have
22 from the experts who have been out there, what happens

1 is that your brain receives this information and from
2 that your brain goes into a survival mode and basically
3 starts dumping different natural chemicals into your
4 body, hormones and things like that, that will
5 basically slow up your brain, speed up your brain,
6 your capillaries begin to shut down or you begin to get
7 more blood flow into certain parts of your body and you
8 lose your ability to function with fine motor skills
9 and you only really have the ability to function in
10 larger motor skills like your legs and things like
11 that.

12 So that's what my understanding of it is, and
13 my understanding comes from the research that I've
14 done, all the officers I've talked to that are other
15 law enforcement instructors and the experts that are
16 out there that have done this research.

17 Q The emotional state of fear, or, as you put
18 it, a high arousal state, how if anything does that
19 affect one's performance during a high-risk
20 situation?

21 A It affects your performance differently for
22 different individuals. An individual that's not been

1 trained very well will react differently than an
2 individual who's been trained in a -- trained a lot in
3 that area.

4 A person that has been trained properly, you
5 begin to realize: I'm in trouble. I begin to get to
6 that point where it's: What am I going to do? I ask
7 myself the, What am I going to do? and then I begin to
8 get to resolve, and resolve How am I going to get
9 myself out of this? and begin putting all the knowledge
10 that you have in survival of how you resolve. Do you
11 get to a point where you're able to respond and you
12 react physically, emotionally, psychologically the way
13 you need to react in order to get through that
14 situation? So it takes you through a whole gamut of
15 different areas.

16 Q In relation to the human body and how the
17 brain processes information, as far as one's attention
18 during high-risk situations, how if anything does fear
19 or high arousal state affect attention?

20 A Here again, I can only answer it in the
21 aspect of myself as an instructor who's dealt with
22 hundreds of law enforcement personnel throughout the

1 country -- thousands of law enforcement personnel, the
2 research that other people have done, that when your
3 brain gets to a certain area of fear, there's a lot of
4 things that can happen to you. Tunnel vision is one of
5 those things where the only thing -- instead of going
6 from a wide angle I go down to a very narrow angle and
7 I see the threat that's coming at me. So your brain
8 and your memory and your recall might be different when
9 that's going through your head at that point because
10 you're processing this information. And here again,
11 not in a clinical sense other than what I've studied
12 from the other clinical psychologists.

13 Q Along the same lines as attention, I guess
14 also comes perceptions.

15 A Okay.

16 Q So if you're attentive then you're able to
17 perceive, in a very general sense. And what is your
18 understanding as to how the emotion of fear or high
19 arousal state affects one's perception?

20 A Here again, it goes back to all the other
21 things I was saying: When you're dealing with fear,
22 you're dealing with that high arousal -- state of

1 arousal. A lot of different things are happening to
2 your body at that time and your brain, and what happens
3 is that you see things, you perceive things, as a
4 trained officer would, or if the person's not trained,
5 they're going to perceive things in a different way. A
6 trained officer is going to perceive things and try to
7 analyze, do a threat assessment: What is going on
8 here? How do I perceive this? Is it a threat towards
9 me or isn't it a threat towards me?

10 Q We talked a couple times, or you have, about
11 a trained officer and we've discussed a little bit how
12 maybe the training of an officer and how that officer
13 responds to a given high-risk situation might be
14 somewhat different than a civilian with a lack of
15 training. Is the training that an officer receives, is
16 that a diminishing skill over time, 15, 16, 20 years
17 after any type of formal training?

18 A Any skill that we're dealing with is going to
19 be a diminishing skill. How much it falls off depends
20 upon the individual and what his desires are. If the
21 individual has gone through a lot of training, done a
22 lot of things and has a very high skill level, he might

1 still, in that point, do things that try to keep his
2 skill level up higher so it might not fall off as much.

3 And, as you said before, it would be
4 different than a civilian. I don't know what a
5 civilian's background might be. It can be the whole
6 gamut again. Same thing with a police officer: It
7 could be the whole gamut of very unskilled to very
8 skilled.

9 So what I'm looking at here is somebody
10 that's been skilled, as we would look at in law
11 enforcement, saying that's the kind of skill that
12 we want in the police officer at this level and that's
13 what I'm looking at. So, yeah, skills can fall off
14 unless you maintain it by thinking about, you know,
15 what you have to go through and what your mind, body is
16 going through.

17 Q We talked a little bit about perception, and
18 what is your understanding of any perceptual changes
19 that may take place during high-risk situations as far
20 as eyes, nose, ears, you know, your senses, how your
21 brain assimilates the information in front of it?

22 A Well, as an individual that is trying to

1 perceive what is going on, a lot of information, almost
2 80 percent of your information, is observed -- absorbed
3 into your brain visually. You also take it from the
4 auditory, and the kinetic is that you learn it in many
5 different ways. Smell. Certain smells will trigger --
6 trigger a response that this isn't a good smell.

7 So there's a lot of different senses that you
8 have that would contribute to your perception of what
9 is going on. How you see things. If you're --
10 never -- you had 20/20 vision and now your eyesight's
11 going on you, you're not going to see exactly the same
12 thing when you had 20/20 maybe. If it's dark in an
13 area, if it's, you know, the weather is really bad, if
14 there's light shining at you, there's different things
15 happening around there, a lot of those things are going
16 to change your perception of what's actually
17 happening.

18 Q Still in the same area but changing the topic
19 just a little bit, I want talk about memory. You've
20 touched upon it but I want to discuss it with you a
21 little bit more as being a cognitive function of the
22 human body within your brain. What is your

1 understanding of any changes, if any, that occur as far
2 as memory in a high-risk situation or a shooting
3 situation, in that particular context?

4 A Well, memory is one of those things that you
5 build on. As you have more life experiences, you have
6 more training, you learn more and more and more, and
7 then you go through situations and you have
8 experiences. That gets instilled into your memory. So
9 as you progress through life, you have many more
10 memories and some of those memories are good, some of
11 the memories are bad, but the memories are there and
12 they keep on growing. And then sometimes we just
13 forget about things and we put it in the back shelf.

14 Q Okay. Well, when we deal with memory as far
15 as being able to account accurately one's involvement
16 in a high-risk situation, is that something that
17 changes at all?

18 A Well, the research done through law
19 enforcement that I've been involved in reading,
20 studying, trying to understand, is that people have
21 different recalls of different situations in high-risk
22 situations. And it's not so much the memory; it's the

1 ability to gather that information. So when you see
2 something that's occurring, you look at it, you believe
3 that's what's happening, and that's what you remember.
4 And it might be a little bit off; it might be right.
5 But that's what your memory is of the situation. So
6 your memory of the situation does not necessarily say
7 that is the absolute truth; it's what you remember.

8 Q Does memory become more detailed or more
9 disorganized and fragmented with an individual,
10 generally speaking?

11 A Generally --

12 Q In a high-risk situation.

13 A Generally speaking, it can go both ways
14 because the high-risk situation, a lot of things are
15 happening to you, as we talked before. And so a lot of
16 those things are happening. It can really scramble the
17 brain in some people's heads and other people gather
18 that information, just bring it in, and are able to
19 deal with it much better. So I can't say from the
20 research that I've done and everything that I've read
21 that, you know, I see something I can actually put my
22 finger on and say absolutely this is what happens every

1 time, but in a trained law enforcement officer, usually
2 the memory is -- is better because they're looking for
3 facts.

4 Q As an investigator who is trying to determine
5 whether or not a particular shooting was justified,
6 what if anything should the investigator keep in mind
7 as far as an individual's memory and how fear and
8 eyesight in a high-risk situation involves or affects
9 or impacts memory?

10 A Well, as any investigator -- hopefully, you
11 know, we're dealing with somebody who is very
12 professional, keeps a very open mind and doesn't go
13 into a situation and have a predisposed idea of what it
14 is and he's going to try to prove it, but he goes in
15 with an open mind and tries to understand what that
16 individual is going through. Unless that person --
17 even if that person was a trained psychologist, that
18 doesn't necessarily mean he's going to be able to put
19 his finger on exactly what happened in that person's
20 mind, but he has to listen to that person and hear what
21 that person has to say and is it something that is
22 realistic in his mind? Is it something that could have

1 happened, in his mind?

2 Q As an investigator in attempting to determine
3 whether or not the individual involved in a shooting is
4 providing accurate information, what would be some of
5 the sources of information that, as an investigator,
6 one should go to and try to resolve any type of
7 conflicts between the shooter's account and other
8 evidence in the case? What would you look at?

9 A Well, what an investigator is going to do,
10 he's going to talk to as many people as he can,
11 eyewitnesses; however, eyewitnesses' accounts are not
12 always as reliable as we'd like them to be because
13 you'll get several different people saying different
14 things, so then as an investigator you have to be able
15 to take all that information, put it together, and if
16 you have any physical information, is there anything
17 physically there that we can look at and see, that we
18 can put our finger on and say, This is what did happen?
19 And an investigator should, as I said before, keep a
20 very open mind and try to gather as much information as
21 they can.

22 Q When you talk about reliable physical

1 information, would that include photographs?

2 A Yes. Anything that you can get that --

3 Q Surveillance video?

4 A Surveillance video, photographs.

5 Q Because the officer or a civilian involved in
6 a high-risk situation or a deadly -- or a use-of-force
7 situation memory might be affected adversely, like you
8 and I have just talked about, does that, in your mind,
9 mean that that person should just have carte blanche
10 and get away with whatever that person did, or do you
11 go and try to determine the credible facts and
12 determine whether or not the conduct is justified?

13 A You're always, as a good investigator, always
14 going to try to gather all the facts you possibly can
15 and not rely on one simple -- one specific thing.

16 Q If the credible facts suggest that a
17 particular event occurred in a particular way, which,
18 in some aspects, might be inconsistent with the
19 shooter's account of what occurred, can a thorough
20 investigation still be conducted which would result in
21 a finding that the shooting was not justified?

22 A Well, a thorough investigation is done, the

1 facts are given to whoever is going to be the
2 responsible person in that and you make a decision on
3 that: Is it something we would want to proceed? Now
4 it goes to court and the court decides at that point, a
5 jury decides. So --

6 Q Okay.

7 A -- you look at the facts the best you
8 possibly can, you put the facts out there, and that's
9 really the only thing you can do at this point in
10 time.

11 Q In about another ten minutes we're going to
12 take a break, okay, because I'll be done with --

13 A Okay.

14 Q -- with your CV. There's a couple aspects --

15 A You're still on my CV? Okay.

16 Q Yes, sir.

17 You mentioned in your CV that you work with
18 state attorney's office and with defense attorneys.
19 Specifically you mentioned in your CV that you've
20 worked out of Miami-Dade and Sarasota, Florida.

21 A Yes.

22 Q All right. What cases did you do in

1 Miami-Dade?

2 A Oh, God. I couldn't tell you the cases. I
3 can tell you the -- the attorney was John Hanley.

4 Q Okay.

5 A I don't know if you know him or not but --

6 Q John Hanley?

7 A John Hanley.

8 Q And he's out of Dade?

9 A He was out of Dade County at the time, I
10 believe, and I think he switched over to another place
11 and I did several cases with him.

12 Q Okay. What year? Nineties? Two thousand?

13 A Well --

14 Q 2010?

15 A You know, probably -- probably -- probably
16 ten years. I'm trying to think --

17 Q Was it after 9/11? I'm trying to give you
18 some time frames here.

19 A Yeah. It was -- it was probably after 9/11.
20 I was in my other house at the time, so, yeah, you're
21 talking about eight, ten -- ten years or so.

22 Q Were you deposed in any of those cases?

1 A I was not deposed.

2 Q I'm talking about the --

3 A No.

4 Q Did it go to trial or any type of hearing?

5 A No.

6 Q Were you simply a consultant for Mr. Hanley?

7 A Well, as an expert in that and reviewing
8 material, looking at it, and then he ended up writing
9 all the reports on it with my comments in it. So I
10 never had to write any long reports on any of it.

11 Q Was --

12 A So more of a consultant, I would have to
13 say.

14 Q All right. Was the cases you were involved
15 in investigations that normally a state attorney would
16 be involved in, such as a police shooting involving
17 death?

18 A It was arrest. I don't think there was any
19 death.

20 Q Arrest?

21 A Yeah, it wasn't any death involved. It was
22 arrests and how they --

1 Q Excessive force?

2 A -- excessive force, yes.

3 Q All right, sir. Did all the cases that you
4 were involved with with Mr. Hanley involve allegations
5 of excessive force during an arrest?

6 A Yes.

7 Q No shootings.

8 A No shootings, no.

9 Q How about Sarasota? Same questions. Just --
10 give it to me.

11 A It was involved in a shooting -- involved in
12 a shooting where a police officer shot at a individual
13 in a car as he tried to run him over.

14 Q Do you recall the prosecutor?

15 A I don't.

16 Q Do you recall the year?

17 A Year? Again, I don't. I don't remember when
18 it was. I haven't dealt with a case in Florida in a
19 few years.

20 Q Were you deposed?

21 A No, I was not.

22 Q So I -- did it go to trial, any type of

1 hearing?

2 A Not that I know of, it did not.

3 Q Did you write my reports?

4 A I did not.

5 Q Do you recall the facts enough to give me a
6 broad general outline of what information you provided
7 that prosecutor regarding a police officer shooting and
8 a car that was trying to run him over?

9 A I can give you the basic facts on it, yes.

10 Q Would you do that, please, sir?

11 A It was an arrest team; they had an arrest for
12 an individual. I do not remember what the arrest was
13 for. They approached his residence in a tactical
14 vehicle, which was a van, I believe, and then they were
15 able to sneak up on the residence and the individual
16 came out, jumped in the vehicle and took off across his
17 lawn.

18 The police officer -- one police officer was
19 basically just nicked by the car and the other police
20 officer jumped out of the way, and as he jumped out of
21 the way, he shot the individual and I believe he did
22 kill the individual in that one.

1 Q And what information, opinions, thoughts, did
2 you provide the prosecutor in that case?

3 A The question that came out of this was were
4 the police officers in the right position and what did
5 they do, what could they have done different, and my
6 opinion in that is that there was a videotape of the
7 area -- or a video camera of the area up on a pole and
8 I wanted to know what that videotape showed and they
9 didn't have it and never provided it to me and -- but
10 basically came down to was he justified and I said at
11 that point in time he was not justified in shooting.

12 Q And would you go with -- through the facts of
13 the case? Just kind of outline them for me that led to
14 the conclusion that he was not justified.

15 A The reason I said he was not justified is
16 because this individual -- I forget -- it was a drug
17 warrant, I believe, for this individual. He -- when he
18 got into his vehicle, a lot of police training is
19 taught not to fire at moving vehicles because it puts
20 too many people in danger. You had a cross-fire
21 situation where two officers right across from each
22 other and you had this individual fleeing, and under

1 the Tennessee v. Garner, I believe, you know, it
2 basically says that unless this person is a dangerous
3 person to society, you would not be justified in
4 shooting, or if he -- but they said that because he
5 tried to run him over in a car that he became a danger
6 to the police officers and that he could have done more
7 damage.

8 My opinion was, in the situation he was in
9 and where the police officers were, the police officers
10 were not in a danger of them running over. They could
11 get out of the way very easy. And that's basically all
12 I remember of the case.

13 Q All right, sir. As far as the defense
14 attorneys, you indicated in Richmond, Virginia;
15 Baltimore; Prince George County, Maryland; Las Vegas,
16 Nevada. What cases were you involved in? Do you
17 recall?

18 A I can recall some of the cases I was involved
19 in. You mentioned the Richmond case, the defense. It
20 was a SWAT team that approached this crack house,
21 surrounded the crack house and shots were fired from
22 inside the house towards the police officer. One of

1 the police officers was holding a shield and the shield
2 was hit with this round so it was close to where the
3 police officers were.

4 One of the police officers returned -- you
5 know, returned fire. Nobody was hit but he decided to
6 go into the house. He used a shotgun breach, blew out
7 the door knob and the round from that breach, which was
8 not a typical shotgun round but it was for breaching
9 doors, came through and hit this lady and killed her.

10 Q A lady that I'll call --

11 A Was part --

12 Q -- an innocent or --

13 A They said she was innocent but she was in the
14 crack house because she knew her daughter was over
15 there and she went to go get her daughter and the story
16 goes on and on and on.

17 Q I understand. All right. And did that go to
18 trial? Were you deposed?

19 A No, it did not to trial. I did write a
20 report on that and I was not deposed.

21 Q How long ago was that?

22 A I'm thinking that was probably 10, 11 years

1 ago.

2 Q Do you know the defense attorney that was
3 involved?

4 A I do not.

5 Q In that report, did you render any type of
6 conclusion or opinions in that report for the defense
7 attorney?

8 A Yes, I did.

9 Q And what was your conclusions or --

10 A My conclusion from that, if I remember
11 correctly, is that they were justified in making entry
12 into the house. The type of breaching that was done
13 was a breaching that was considered by law enforcement
14 in general as a legitimate type of breaching round and
15 that it blew the -- blew the door knob off and the lady
16 was close enough -- they didn't have any idea she was
17 there and it blew the door knob off and the door knob,
18 I think, is what hit her and killed her. And so I said
19 it was -- they were justified in doing what they did.

20 Q Was that a civil or a criminal case?

21 A I believe it was a civil case. Well, it was
22 a civil case.

1 Q Again, there was no trial in the civil
2 case?

3 A Not that I know of.

4 Q Baltimore: Do you remember any of the facts
5 of that?

6 A The Baltimore case was an FBI case where an
7 FBI task force, a violent crimes task force, had a
8 surveillance out looking for this one particular bank
9 robber. The bank robber was supposedly going to meet
10 an individual at a 7-Eleven and the individual they
11 were going to meet was a source for the police that
12 were working with this task force.

13 The -- as happens so many times, nothing went
14 the way they wanted it to go. The individual that was
15 supposed to call the police, his cell phone died, so he
16 tried to use the cell phone or the phone of the
17 7-Eleven after the individual came out and he was going
18 to call the police officer but he couldn't. He had to
19 call the department. The department finally put it out
20 over the radio, came out a lot later, and what it came
21 down to, the individual that came out -- and the police
22 and the FBI thought that he was the bank robber because

1 he met the description of what they thought he was
2 going to be. They followed the car and then one of the
3 agents decided to force the -- force the issue, tried
4 to talk the team leader into doing a car stop.

5 They did a car stop. The one agent came
6 around the car. He had an M16 in his hand and he ended
7 up shooting the passenger, who they thought was a bank
8 robber, in the face with that, and -- and that was
9 basically the facts of the case.

10 Q Did that go to trial?

11 A It did not go to trial.

12 Q Let me ask you this: In -- since 1999, have
13 you testified in any trial or hearing in either state
14 or federal court in which you've been qualified as a
15 witness?

16 A Yes.

17 Q All right. And what cases would that be?

18 A Oh, God. I couldn't tell you all the cases
19 that --

20 Q The reason I ask, because you specifically
21 mention these in your CV.

22 A Mm-hmm.

1 Q So I'm trying to ferret out exactly where
2 you've actually testified as an expert. So let's start
3 with state court.

4 A State court, I believe it was in Chicago,
5 Texas, and I -- I'd have to pull these cases out to
6 take a look at it exactly where they were, what the
7 cases were --

8 Q Well, that's my next question.

9 A Yeah. I --

10 Q Did you keep a list of the cases?

11 A I do keep a list of the cases.

12 Q All right. And would you be willing to
13 provide that to me?

14 A The list of the cases?

15 Q Yes, sir.

16 A Yes, I can do that.

17 Q Without going -- and I'll get the list of
18 cases from you. In those -- state court, any in
19 Florida?

20 A No.

21 Q Okay. In what field were you qualified as an
22 expert?

1 A Use of force, police procedures.

2 Q And were you allowed to render any specific
3 opinions regarding use of force?

4 A Yes.

5 Q And what opinions were you allowed to
6 render?

7 A Within my specialty, the reports that I could
8 render an opinion on were, was the force excessive or
9 was it within line of police procedures and accepted
10 principles.

11 Q So basically looking at the SOP or the policy
12 of a particular agency, determine whether or not it was
13 excessive?

14 A No.

15 Q From a legal standpoint --

16 A No.

17 Q -- whether it was --

18 A No. The only thing the policies and
19 procedures show you is whether or not, within their own
20 department policies and procedures, if that police
21 officer was within his bounds of doing what he did or
22 not.

1 Q So explain to me the excessive and police
2 procedure. That's what I picked up on: Procedure.

3 A Procedures. If the police were authorized to
4 act in a certain way when they made an arrest by
5 throwing an individual over a hood of a car, by
6 throwing him down, by throwing him in the back of the
7 car, whatever it might be, is that a procedure or
8 policy that the department allows you to perform.

9 Q Okay.

10 A And if it isn't, then they're not within the
11 policy and procedures, but that's not the legal aspect
12 of it.

13 Q Okay. As far as the legal aspect, were you
14 ever, in state court, allowed to testify as to whether
15 or not a particular individual involved in a shooting
16 was justified in the shooting?

17 A Yes.

18 Q You were allowed to testify to that legal
19 procedure.

20 A Yes.

21 Q And where was that?

22 A Oh, I have to think where that one was.

1 Yeah, you're going to have to let me dig that one out.
2 I forget where it was. I don't -- I don't do this
3 expert witness work as a full line of work. It's one
4 of those things that I do because I believe in the
5 cases I take that are important.

6 Q I'm just trying to determine exactly --

7 A I'm sure you are.

8 Q -- what you have and have not been allowed to
9 do as far as the legal concept of justification, though
10 you -- your memory is that you've been allowed to
11 render opinion as to whether or not a particular
12 individual involved in a shooting was justified.

13 A Was justified. I'm not talking about the
14 legal. I'm not an attorney so I don't talk about
15 the -- so much the legal aspect, except as we have been
16 taught within law enforcement and as I have taught in
17 law enforcement, if a person is justified under certain
18 parameters of the court, what they have --

19 Q What parameters? What do you mean?

20 A The parameters of the court. You're taking a
21 look at *Graham v. Connor*, you know, it's the one -- the
22 big one, the reasonableness factor, you know, was an

1 officer reasonable in what he did in making that
2 arrest; under Tennessee v. Garner was he legal in
3 shooting the individual as he ran from the scene?

4 Those type of things were -- are the basic
5 court cases that law enforcement are taught in order to
6 develop and understand their own deadly force policy
7 and nondeadly force policy, and so that's the
8 parameters that which I teach it and which I learned it
9 and which I understand other departments all throughout
10 the United States do it.

11 Q Now, you've mentioned Tennessee v. Garner and
12 Graham v. Connor. Are you talking about those court
13 cases and whether or not a particular police agency's
14 policy adopted those cases and then whether or not they
15 were justified under the, you know, police agency's
16 policy?

17 A I'm not looking under the police agency
18 policy. When you're talking about policy and
19 procedures, it's usually physical things and what
20 they -- the police are supposed to be able to do. I
21 haven't found anything in any department I've ever
22 looked at where the police are -- have a free reign to

1 do whatever they want. A lot more restrictive.

2 The FBI is probably more liberal than a lot
3 of police departments in the way they approach things,
4 but it all comes under the Supreme Court. We, within
5 the United States, are all governed by those laws. So
6 every department in the United States, all 700,000 law
7 enforcement officers, are governed under the Supreme
8 Court rulings and court cases within their state.

9 So this is what we look at was an officer
10 justified in how he handled the situation and was he
11 justified in the force he used.

12 Q Of course, if an individual is not a police
13 officer, a civilian, you're not able to look at whether
14 or not the policies of a particular agency are in line
15 with those two U.S. Supreme Court cases --

16 A Not the policy of the agencies but was this
17 person -- was he also covered under the law? The law,
18 from the way I understand it, you know, basically
19 covers citizens of the United States.

20 Q But the -- specifically those two U.S.
21 Supreme Court cases talk about police officers.

22 A That's correct.

1 Q Doesn't have anything to do with civilians as
2 far as the -- within the four corners of those two
3 opinions.

4 A I would agree with that, yes.

5 Q All right. Were you allowed to render
6 opinion regarding the legal concept of necessity under
7 the totality of the circumstances as to whether or not
8 a particular shooting was necessary to prevent death or
9 great bodily harm?

10 A And here again, not in the legal concept as
11 an attorney but under a legal concept as a law
12 enforcement trainer in those situations, you know, did
13 he fall within the parameters of doing it the way he
14 was supposed to do, or she was --

15 Q Pursuant to police policy.

16 A Police policy and the law as we, in law
17 enforcement, have taught it and understand it.

18 Q Okay. And you're going back to the same two
19 cases of Graham and Tennessee v. Garner.

20 A Basically they're the two major cases that
21 govern the use of force within -- and deadly force
22 especially.

1 Q And in this particular case we have a
2 civilian: Mr. Reeves.

3 A In this case you have a civilian, yes.

4 Q All right. Were you allowed to render
5 opinion regarding whether or not, under the totality of
6 the circumstances, a threat was immediate or
7 imminent?

8 A Yes.

9 Q Okay. Explain that circumstance.

10 A In that situation was an individual was
11 coming out of a shedded area and the police officer, at
12 that point, fell back, was tripping, and this
13 individual was coming out and he didn't know what was
14 going to happen at any point in time. He didn't know
15 if it was going to be exactly right at that moment when
16 that guy came out but he knew it was going to happen
17 some time and that's when he backed up and he fell,
18 so

19 Q And that was a police officer involved in
20 that?

21 A Yes.

22 Q Have you been involved in any case, criminal

1 or civil, involving a civilian shooter where the court
2 has allowed you to render opinion as we just discussed
3 regarding justification, necessity, or threat?

4 A Never testified in any court case on that,
5 no.

6 Q When a civilian's involved.

7 A Right.

8 MR. MARTIN: I did go a little bit past my
9 ten minutes.

10 THE WITNESS: You did. I was timing you.

11 MR. MARTIN: I know you were. But I think
12 this is a good time to take a break. It is now 950
13 hours. The court reporter has been going for almost
14 two hours. We're going to leave your CV and we're
15 going to start talking about the facts of this case
16 when we get back from break, okay, sir?

17 THE WITNESS: Okay.

18 MR. MARTIN: Is 10, 15 minutes -- what would
19 you like guys like?

20 MR. ESCOBAR: Yeah, 15 minutes is good.
21 That'll give us some time to call the office and --

22 MR. MARTIN: Madam Court Reporter, is 15 okay

1 with you?

2 (A recess was taken.)

3 MR. MARTIN: We have returned from our break.
4 It's about 1110 hours. What I propose is that we go
5 till about 12:30, we take our lunch break and then come
6 back.

7 BY MR. MARTIN:

8 Q I indicated before the break that we have
9 concluded reviewing your CV and I'd like to go ahead
10 and start talking about the facts of this particular
11 case.

12 Let's talk about your current business. What
13 is the name of your business?

14 A Well, I have three businesses.

15 Q All right. The one that relates to the
16 Reeves case, which one would it be?

17 A Phil Hayden and Associates.

18 Q And what does Hayden and Associates do?

19 A Hayden and Associates was developed a while
20 back -- I think it was 2007 I incorporated -- to do
21 anything that I wanted to get involved in. So I -- a
22 lot of that work that you saw that I did for Seccred

1 and things like that I did under Phil Hayden and
2 Associates.

3 When I decided I was going to get into
4 doing -- doing expert witness work, I decided at that
5 time that everything that I did would be done under
6 Phil Hayden and Associates.

7 Q Is that separate than Hayden and
8 Associates?

9 A It's still --

10 Q Okay.

11 A No, it's not Hayden and Associates; it's
12 Philip Hayden and Associates.

13 Q I'm sorry. All right, sir. Okay. As far as
14 expert work, what services do you provide to a
15 client?

16 A Well, the services I mostly provide are
17 expert's witness work and as much support I can give on
18 the use of force, police policies and procedures,
19 techniques of arrest, things like that.

20 Q And do you have a fee schedule that you're
21 able to provide to prospective clients?

22 A Yes.

1 Q And do you have a current one with you?

2 A I do not.

3 Q Is that something that you'd be willing to
4 provide to me?

5 A Yes, I would.

6 Q All right. For a case involving use of force
7 involving a shooting, can you tell me generally what
8 your fee is? Is it a flat fee? Hourly rate? How do
9 you break it up?

10 A I do it by hourly rate.

11 Q And what is your hourly rate?

12 A 275 an hour for -- for reviewing material.
13 When I go into court or depositions it's 350 an hour
14 with a minimum of four hours.

15 Q Let's talk about this particular case, State
16 v. Curtis Reeves. When were you first hired in this
17 particular case?

18 A I believe it was about a year ago, a little
19 over a year ago, I think it was, that Mr. Escobar first
20 contacted me.

21 Q Do you have an employee-employer contract
22 with Mr. Escobar?

1 A My contract is my fee schedule that's
2 signed.

3 Q Okay. And the fee schedule that was signed,
4 what is the fee schedule, like we just --

5 A The fee schedule that was signed. I'd have
6 to look to see if Mr. Escobar actually did sign one or
7 not, but usually I get it -- I ask for it to come back
8 and I always haven't gotten them back. I just -- I
9 don't follow through on it all the time. But the fee
10 schedule lays out all my fees: The 275 an hour, the
11 court work, the \$3,000 retainer, I think it is,
12 mileage, travel time.

13 Q Okay. In the event that you have a signed
14 one by Mr. Escobar, are you willing to provide me a
15 copy of that?

16 A I am.

17 Q To date, up until today, how many hours have
18 you worked on this case?

19 A I keep those records of how many hours I
20 worked on it and I have that back in my office. I
21 can't tell you exactly but it's been many, many hours.
22 It's probably -- probably closer to 60 hours or so,

1 more -- maybe even more.

2 Q Have you billed for all those hours or some
3 of those hours have you donated?

4 A I've billed for some of those hours.

5 Q For some.

6 A Well, I've only billed so far my invoices. I
7 haven't billed for work that I've done since the last
8 invoice.

9 Q I see. All right. But those records are
10 available?

11 A Yes, they are.

12 Q As far as the number of hours you keep
13 track --

14 A Yes.

15 Q -- the invoices?

16 And would you be willing to give me a copy of
17 those invoices?

18 A I believe I can. I don't think there's --
19 unless there's some kind of work schedule that's part
20 of the work schedule. I don't know if it is or not.
21 But if I can, I will.

22 Q Have you written a report in this case?

1 A In this case, no.

2 Q The hours that you worked, 60 hours, what
3 work have you done? What have you done to justify 60
4 hours, billing 60 hours?

5 A In -- you're saying --

6 Q Just list. Just --

7 A Okay. You're saying 60 hours like that was
8 what it was. I'm not sure what it was but I know it
9 was probably somewhere in that area right there.

10 Q I understand.

11 A In reviewing all the different material,
12 there is voluminous amount of material. I couldn't
13 even begin to tell you, but depositions, statements,
14 police reports, videos, photographs. It's just a lot
15 of material.

16 Q Other than depos, statements, videos,
17 photographs and police reports, can you think of
18 anything else?

19 A I can't think of anything right now but I'm
20 sure there's a lot of other things in there because
21 it's almost four pages I have written down of all the
22 material that I have.

1 Q All right.

2 A Just listing them down. I don't know how
3 many lines you get on a piece of paper in 12 font, but
4 four pages it almost takes up.

5 Q All right. Would you be willing to give me a
6 copy of the list of all the documents that you've
7 reviewed?

8 A I --

9 MR. ESCOBAR: I would probably object to that
10 list if it includes any work-product information that
11 was discussed between the defense and Dr. Hayden. I'll
12 have to review it myself.

13 MR. MARTIN: You can review it, sanitize it
14 for work-product and identify the work-product and then
15 we'll have a motion with the court --

16 MR. ESCOBAR: Yeah.

17 MR. MARTIN: -- and then the court can make
18 an in-camera.

19 MR. ESCOBAR: Yeah.

20 MR. MARTIN: Fair enough?

21 MR. ESCOBAR: Yeah.

22 MR. MARTIN: Okay. We got it covered.

1 THE WITNESS: Fair enough.

2 MR. MARTIN: All right.

3 BY MR. MARTIN:

4 Q In reviewing all the documents, you've
5 indicated you've made no report. Did you take notes as
6 you reviewed the documents?

7 A Yes, I did.

8 Q Are the notes typewritten? Handwritten?

9 A Typewritten.

10 Q And do the notes contain your observations
11 regarding the documents that were provided to you and
12 that you reviewed?

13 A What it -- what my notes pertain to is the
14 comments that I believe pertinent in this case that
15 I've been able to extract out of all the documents that
16 I've read and I have them footnoted to where they came
17 from.

18 Q And those particular notes that are
19 typewritten and have your comments that are pertinent
20 to this particular case, is that something that you
21 will use to refresh your memory prior to testifying at
22 any hearing or trial?

1 A Yes.

2 Q And would you be willing to give me a copy of
3 those notes?

4 MR. ESCOBAR: I would object to that. You're
5 not entitled to notes under the Florida rules of
6 discovery and so we would object and would instruct him
7 not to turn those notes over to you.

8 BY MR. MARTIN:

9 Q The typewritten notes with the comments that
10 are -- you believe are pertinent and you'll be using to
11 refresh your memory prior to trial, is that the only
12 memorialization of any of your conclusions or findings,
13 those typewritten notes, or are there other media,
14 documents, PowerPoints, spreadsheets --

15 A That I produced?

16 Q Yeah.

17 A No.

18 Q Okay. Are there any documents other than the
19 typewritten notes and those several things that you
20 indicated -- depositions, statement, videos, those sort of
21 things -- that you have gathered that you will rely on
22 when you testify? So here's where I'm kind of getting

1 at, okay, because I kind of see that deer in the
2 headlight look. That's okay.

3 A Yeah.

4 Q That's all right.

5 A Yeah.

6 Q Are there any articles or abstracts, are
7 there any photographs of a demonstrative aid, are there
8 any charts or graphs or anything like that that you've
9 gathered up that you're going to rely on when you
10 testify in court?

11 A Just documents that I -- I look at to
12 basically help me just -- the documents are my own
13 documents that I use for my own knowledge. That's
14 basically what it comes down to.

15 Q Okay. What are the documents within your
16 documents that are your own knowledge?

17 A Okay. The documents from the International
18 Associations of Chief of Police --

19 Q And what would they include?

20 A A lot of use of force cases and how they look
21 at use of force and --

22 Q Okay. And that --

1 A And --

2 Q What else?

3 A Dealing with behavioral problems of
4 subjects.

5 Q Again with the International Chief of
6 Police?

7 A With the International Chief of Police, but
8 also the Americans for Effective Law Enforcement.

9 Q All right.

10 A Articles written by different individuals
11 within the FBI and outside the FBI in law
12 enforcement.

13 Q All right.

14 A I can't think of the other documents right
15 now without having them here in front of me.

16 Q Do you have a list?

17 A Do I have a list? Yes.

18 Q All right. List of all the documents. And
19 of course you have the documents themselves.

20 A Yes.

21 Q And you will be using those as authoritative
22 in nature in the event that it's necessary to justify

1 any of your answers or in support of any of your
2 conclusions or opinions?

3 A When I review that material, I review it just
4 to make sure that what I am talking about is basically
5 peer reviewed throughout the law enforcement community
6 and that it's an accepted principle within law
7 enforcement of what -- how officers should react, the
8 problems and behavior, those type of items.

9 Q And would you be willing to provide those
10 documents that you're going to rely on?

11 A Here again, if it's not considered
12 work-product, I would have no problems.

13 Q We're here at the -- at your deposition and
14 you have no records in front of you. Did you bring any
15 of the records that you reviewed to this deposition?

16 A No. In my subpoena there was nothing
17 mentioned about bringing any records, and if I had
18 brought records, you know, I could definitely show you,
19 give them to you, but I don't have anything here, nor
20 did I put anything together. And to put some of these
21 together -- and you're asking me for a lot of different
22 documents, it's going to take me time to pull out a lot

1 of these different things.

2 Q But those things, other than what Mr. Escobar
3 talked about as potential -- involving work-product,
4 all those things are available?

5 A I don't know about all of them. A lot of the
6 things should be available but I haven't looked and I
7 don't know if they're available or not, some of the
8 documents that you asked for before.

9 Q This last set of documents that we discussed
10 from the International Chief of Police, the American
11 Effective Law Enforcement, articles from the FBI, those
12 are documents that you have readily available because
13 you're going to use those in support of any potential
14 testimony in this case.

15 A That's correct.

16 Q Okay. There was a -- through Mr. Escobar and
17 Mr. Michaels the defendant filed a motion to dismiss
18 based on statutory immunity pursuant to some Florida
19 state statutes. Have you read that pleading?

20 A Yes, I did.

21 Q Okay. I brought a courtesy copy for you
22 because over the next -- rest of the day we're going to

1 be referring to that document.

2 A Okay.

3 Q But if you would just quickly look at that
4 and make sure that that is the document that we are
5 referring to.

6 A It looks like the document. I can't say for
7 positive for sure it is unless I compare it page to
8 page but it looks like the document.

9 Q You don't have any reason to believe that I
10 would mislead you in any way, do you?

11 A No, you look like an honest guy, I think.

12 Q That didn't really answer the question.

13 A I don't believe you're trying to mislead me.
14 I would have no reason to believe that.

15 Q All right. Well, I'm going to be using the
16 same document, so

17 A Okay.

18 Q All right. When was the last time that you
19 read that document?

20 A Maybe a week ago or so.

21 Q Was that to prepare for this deposition?

22 A No. It was sent to me and I just read it for

1 my own knowledge.

2 Q How many times have you read it?

3 A Oh, God. I can't say how many times I read
4 it. I read through it. I then went back and I just
5 looked at a couple things in it and so -- I read
6 through it once, maybe went back and looked at a couple
7 things but didn't study the document.

8 Q Did you draft any portions of that
9 document?

10 A I did not.

11 Q When you read that document, were you able to
12 identify any information that you provided to defense
13 counsel that was included in that document?

14 A What I noticed in the document, a lot of
15 things that I believe are the same things that are
16 being put in here whether I provided it to him or not.
17 Mr. Escobar and I talked on several different occasions
18 so he might have used some of the things that my
19 thoughts are and these might have been totally his
20 thoughts. I don't know.

21 Q Prior to this particular document being
22 filed, did you review it and make any corrections or

1 additions before the document was filed?

2 A Not to my knowledge I didn't, no.

3 Q Did you make any suggestions as to
4 appropriate language that should be included in the
5 pleadings so that the language would be consistent with
6 your potential testimony?

7 A No.

8 Q Mr. Escobar filed a pleading with the clerk
9 of court and I received a copy of it indicating some of
10 the items that were provided to you for your review.
11 I'd like to go through a couple of those with you now,
12 okay?

13 A Okay.

14 Q One of the documents was the police report,
15 Pasco County Sheriff's police report --

16 A Right.

17 Q -- which included not only the officer's
18 report but also forensic technician reports.

19 A Yes.

20 Q The way the system is set up, pagination has
21 become somewhat of an issue. Every time they add a
22 report, pagination changes. There's no supplement

1 numbers. Okay. It's just what we have to deal with.
2 But the bottom line is, I'm trying to get a sense for
3 when you read the report so I kind of know what
4 version, if you will. Are we talking 144 pages? 159
5 pages? Because every time they print it out for us, we
6 get a new pagination. So about how long ago did you
7 read it?

8 A Oh, I really have to dig back into my memory
9 on this because it's been over the last few months that
10 I read a lot of this material and some of it was even
11 provided way earlier than that. So it's been over the
12 last year that I've gotten documents. So when I get
13 the documents, I'll read them and that's when I put
14 them into my notes. And I don't put a date on when I
15 actually read it.

16 Q All right. So when you -- in this particular
17 case, specifically the Pasco County Sheriff's police
18 reports, when you did review it, whatever comments or
19 observations that you made that may be relevant or
20 touch upon your testimony at court, you made notes.

21 A In my typewritten notes, yes.

22 Q Okay. From the police reports -- and I can

1 only do this kind of one at a time because I know when
2 you look at a lot of material, you then take everything
3 in a -- and everything's assimilated together.

4 A Right.

5 Q But we can't discuss it that way --

6 A That's --

7 Q -- in any fashion.

8 A I totally understand.

9 Q So we're just going to talk about the police
10 reports.

11 A Okay.

12 Q From reading the police reports, both the law
13 enforcement reports and the forensic science reports,
14 what facts jump out at you that are relevant and
15 material to your analysis of the conduct of Mr. Reeves
16 at the time that he shot Mr. Oulson?

17 A Just dealing with the conduct of Mr. Reeves?

18 Q Well, I'm talking about that factual
19 scenario. What was relevant and pertinent?

20 A Well, basically within his police report, if
21 I remember correctly, was his statement by -- or when
22 interviewed by -- I think it was Officer Proctor.

1 Q All right, sir.

2 A And in that interview he talked about --

3 Q "He" being Mr. Reeves?

4 A "He" being Mr. Reeves, talked about, you
5 know, what he went through mentally and physically, and
6 I believe there is another couple officers that talked
7 to him also and there's bits and pieces that didn't
8 make any sense why they would kind of scramble it
9 around the way they did, but he was talked to and I
10 believe he was.

11 Q All right. I have that to discuss with you
12 somewhat down the road here, but since you brought it
13 up let's deal with it now.

14 A Okay.

15 Q As far as the defendant's statement that was
16 made by Mr. Reeves to Detective Proctor, what salient
17 facts were recounted by Mr. Reeves that you found to be
18 relevant or material in determining whether or not
19 Mr. Reeves was reasonable in shooting Mr. Oulson?

20 A Well, you go back to the beginning of what
21 this -- this incident began is where Mr. Reeves asked
22 Mr. Oulson to turn his cell phone off.

1 Q Mm-hmm.

2 A At that time, from what Mr. Reeves was
3 saying, that Mr. Oulson was not very happy with that
4 and made some comments to him and he then, after a
5 minute or so, got up, walked out, went down to the
6 manager's office and waited there patiently where the
7 manager talked to somebody else.

8 Q Mm-hmm.

9 A Showing he wasn't upset; he wasn't irate; he
10 wasn't -- he was just doing what he would do. He would
11 talk to the manager and told the manager that he had a
12 guy up there that was -- he had his cell phone on and
13 he was being -- I think he said he was -- he said some
14 things to him, and then Mr. Reeves went back into the
15 theater.

16 Q Mm-hmm.

17 A By himself.

18 Q Mm-hmm.

19 A And he walked back, he said something to
20 Mr. Oulson like, If I would have known you were going
21 to turn the cell phone off, this wouldn't have -- you
22 know, I wouldn't have had to report you, and then sat

1 down. And the interesting thing that you looked at in
2 the video, and even in his statement, I believe he says
3 he picked up his popcorn.

4 Q Mm-hmm.

5 A And from that, I'm looking at this individual
6 saying he's not expecting anything to happen. He's
7 sitting down in the seat and he picks up the popcorn
8 and he's sitting there.

9 Q When you say "this individual," you're
10 referring to Mr. Reeves?

11 A Mr. Reeves, yes.

12 Q Okay. Go on.

13 A And then there's some insults where
14 Mr. Oulson stands up, turns around, stands up and he's
15 kind of getting up on his chair and he's coming over
16 the chair and saying some things to him and he's --
17 used the word "fuck" several times and -- which is
18 usually a pretty good indication that somebody's really
19 upset, and he's not acting -- Mr. Oulson is not acting
20 like a normal person that we would accept in this
21 society as being normal actions. He's cursing at this
22 older gentleman. He's standing there over the top of

1 him and being threatening towards him.

2 And then Mr. -- Mr. Reeves said he takes a
3 swipe at me or hits me or does something, and the
4 interesting thing in that statement, he never mentions
5 anything about him taking the popcorn from him and
6 throwing it at him. It was something that he didn't
7 even know -- he just knew he had been hit by something.
8 And he was stunned at that point, and this individual
9 now is still coming at him in a more threatening
10 manner, coming up over the seat and he says his wife's
11 holding him back, and that's when he decided his life
12 was in danger at that point where this irate individual
13 is threatening him and there's nothing he can do about
14 it.

15 Q Okay. Those are the salient facts that you
16 learned from Mr. Reeves' statement, his account --

17 A Well, it's pretty much his statement. I also
18 saw the video, and I don't think I'm bleeding one over
19 into the other. I think from his statement, his
20 interview with Detective Proctor is -- he said those
21 things, but I -- it could be some of the things came
22 out of the video also.

1 MR. ESCOBAR: Just for purposes of the record
2 so the record is clear, Mr. Hayden does not have the
3 transcript of that particular interview, nor does he
4 have a disc encompassing the video for him to answer
5 these questions prior to being asked.

6 BY MR. MARTIN:

7 Q Have you looked at the video?

8 A I've looked at several different videos.

9 Q Okay.

10 A But --

11 Q And I believe that Mr. Escobar provided you
12 the video clips that were introduced at the bond
13 hearing?

14 A I don't know about the ones introduced at the
15 bond hearing but the --

16 Q I'm just going by his pleading.

17 A Well, and I'm just stating what I know. The
18 videos I have, there's four clips on one DVD and one is
19 the throwing of something; one is the shooting, or the
20 shot. It only takes two seconds, I think, in the
21 video; and another one is a longer video -- I don't
22 know how many minutes it is -- of him walking out of

1 his seat, coming back into the seat; and the other one
2 is just a very long video that goes on watching the
3 other people out in the theater. I don't know
4 what portion that was, so --

5 Q So you've looked at the video.

6 A I've looked at those videos. I don't know --
7 when you say "that" video, I don't know about "that"
8 video. I've looked at those videos.

9 Q All right. When you looked at the smaller
10 clips, do they appear to be taken from the longer
11 video? Everything was consistent?

12 A Yes, it did.

13 Q All right. So when I ask you have you looked
14 at the video of -- the surveillance video at the
15 theater of the shooting event, you've looked at a video
16 where you see Mr. Reeves and his wife walking in the
17 first time to sit down?

18 A Yes.

19 Q All the way up to Corporal Hamilton
20 retrieving the gun from Mr. Reeves after the shooting.

21 A I think that might have been in the longer
22 video at the time.

1 Q That's what I'm --

2 A That might have been, yeah.

3 Q All right. So you've looked at the video.

4 A Yes.

5 Q Okay. How many times have you reviewed the
6 video?

7 A The shorter videos and that one that's six,
8 seven minutes long, I've probably reviewed the shorter
9 videos three or four dozen times. I've looked at the
10 longer video probably a couple dozen times. The real
11 long video I've only looked at certain portions of it,
12 period of time.

13 Q And during the times that you've watched the
14 video, did you in fact take notes like you did when you
15 reviewed the police report?

16 A I -- what I did is I put down numbers. I was
17 trying to put down numbers of what actually happened at
18 that time to see --

19 Q What do you mean numbers?

20 A Numbers of the time stamp on the bottom of
21 when actually things did occur, and -- and the other
22 things I was looking for to see if it was consistent

1 with the statements that he made that I had.

2 Q Okay. We're going to talk about the video at
3 length along with some other information. When we get
4 to that point, I'm going to play it for you.

5 A Okay.

6 Q But I want to move on right now and go
7 through the documents that were provided to you. My
8 only information as to what was provided to you was the
9 pleading that was filed by Mr. Escobar, so I want you
10 to know that's where I'm getting the information is
11 from that public document --

12 A Okay.

13 Q -- okay?

14 MR. ESCOBAR: Glenn, just so that you can
15 make arrangements on this, if you're going to be
16 providing him a video, if you're going to be providing
17 him a document, we need the video actually marked as an
18 exhibit to the deposition. We need the documents
19 marked as an exhibit to the deposition so that we have
20 a complete record of what, number one, he was seeing,
21 number two, what he was looking at. Those are
22 obviously important characteristics of a depo and so we

1 must do that to have a complete record.

2 MR. MARTIN: You will not have a video
3 attached.

4 MR. ESCOBAR: You can't show him a video --

5 MR. MARTIN: I am going to show him a
6 video -- you can object all you want, Richard, but this
7 is my deposition and you're not going to tell me how to
8 do it.

9 MR. ESCOBAR: But you can't do anything
10 outside the record and this court reporter can only
11 take things down --

12 MR. MARTIN: Yes.

13 MR. ESCOBAR: -- electronically and not
14 video-wise, so in order to preserve this record, we've
15 got to preserve it correctly.

16 MR. MARTIN: I don't have a problem with
17 that, and if you want a copy of it --

18 MR. ESCOBAR: You could have had a copy of it
19 that we could have had attached --

20 MR. MARTIN: No, I don't have to have a copy
21 of it and that's not the way it's going to happen.

22 MR. ESCOBAR: Well, it's' --

1 MR. MARTIN: Now, I'm going to conduct
2 this --

3 MR. ESCOBAR: No. No.

4 MR. MARTIN: -- this deposition the way I
5 want it. If you don't like it --

6 MR. ESCOBAR: Nope.

7 MR. MARTIN: -- you can then take it up with
8 the judge later but we're not going to have this
9 argument.

10 MR. ESCOBAR: We're not going to have a
11 deposition --

12 MR. MARTIN: We're going to play it --

13 THE COURT REPORTER: I can only take one at a
14 time.

15 MR. MARTIN: We are going to play it,
16 Richard.

17 MR. ESCOBAR: No. No, we're not. We're not
18 going to play -- if you want to make copy of it here
19 and then we can attach it to the court reporter, I am
20 happy to do that. So get a disc, make a copy of it --

21 MR. MARTIN: You can't do it.

22 MR. ESCOBAR: -- and give it to the court

1 reporter because we're not going to do it any other
2 way.

3 MR. MARTIN: Yes, we are.

4 MR. ESCOBAR: You're not going to have a
5 depo --

6 MR. MARTIN: Yes we are.

7 MR. ESCOBAR: -- without a complete record.
8 We're not going to do it.

9 MR. MARTIN: Yes, we are.

10 MR. ESCOBAR: No, we aren't.

11 MR. MARTIN: This is my depo and you're not
12 going to --

13 MR. ESCOBAR: It's your depo --

14 MR. MARTIN: -- tell me how to take it.

15 MR. ESCOBAR: -- but you're not going to
16 deviate from the appropriate protocol, period.

17 MR. MARTIN: Then file a motion with the
18 court.

19 MR. ESCOBAR: No, we're not going to allow it
20 to happen. We're going to stop it and we're not going
21 to allow it to happen. You're going to do it proper --
22 protocol. If you weren't prepared to have those

1 documents --

2 MR. MARTIN: I am prepared.

3 MR. ESCOBAR: -- then you shouldn't be taking
4 this depo.

5 MR. MARTIN: You have no idea how prepared I
6 am so don't event think that I'm not.

7 MR. ESCOBAR: Well, then you should have a
8 copy of that.

9 MR. MARTIN: No, you don't attach a depo --

10 MR. ESCOBAR: Oh, yes you do.

11 MR. MARTIN: You don't attach a video to a
12 depo.

13 MR. ESCOBAR: Anything you show a witness you
14 have to attach to the depo.

15 MR. MARTIN: No, you don't.

16 MR. ESCOBAR: Yes, you do.

17 MR. MARTIN: We can identify it in the
18 transcript. If you want a copy --

19 MR. ESCOBAR: That's in your computer and
20 that's going bye-bye somewhere and we don't have a
21 complete record. We're not going to do it that way,
22 Glenn --

1 MR. MARTIN: Yeah. It's going to happen.

2 MR. ESCOBAR: -- so get yourself a disc and
3 copy it here.

4 MR. MARTIN: Nope. It's not going to
5 happen.

6 MR. ESCOBAR: Okay.

7 BY MR. MARTIN:

8 Q Regarding Mr. Reeves' statement, other than
9 what you've provided to me, are there any other
10 material facts that you found to be relevant in your
11 analysis of Mr. Reeves' conduct at the time of the
12 shooting? Other than what you've already previously
13 told me.

14 A No, I --

15 Q Because we're going to go through it in a lot
16 more detail later, but this --

17 A Okay. I can't think of --

18 Q -- pick your brain a little bit.

19 A I can't think of anything right now.

20 Q Okay. As far as the forensic technician
21 reports that were included with the police report, what
22 else -- what about any of the documentation by the

1 forensic scientist, whether they be in reports -- and
2 we're going to get to photographs in a minute, so let's
3 just talk about what was said in the reports.

4 A On that, I -- I don't have the documents here
5 in front of me. I don't know exactly everything that
6 was in the police report and a lot of these things, as
7 you said before, kind of all come in together and I
8 don't remember exactly what was in the police report
9 nor in that document that you're talking over, this
10 scientific portion.

11 Q They're just tech reports, you know, people
12 come and gather --

13 A As I said, I don't remember exactly what was
14 said in there so I really can't comment on that.

15 Q Do you remember the evidence that was
16 collected?

17 A I remember the evidence that they talked
18 about, the phone on the floor.

19 Q Mm-hmm.

20 A I don't know if there is any other evidence
21 that they talk about in that. I just don't remember.
22 I don't have the document in front of me and without

1 that document I can't tell you exactly.

2 Q Which document, the police report?

3 A Anything within the police report.

4 Q Were you provided a copy of the police
5 report?

6 A Yes.

7 Q Other than the cell phone, is there anything
8 else that was collected as evidence that --

9 A I just -- I just don't remember. I -- you
10 know, as I said before, you know, there was nothing
11 that you requested for me to bring so therefore I
12 didn't know -- I've been to depositions where we've
13 just chatted and talked about things. I didn't know
14 what your approach was going to be, and if I would have
15 known you wanted all the documents, I would have
16 brought the documents. I would have reviewed the
17 documents beforehand.

18 Q You didn't review the documents before this
19 depo?

20 A I didn't review a lot of them, no. I didn't
21 need to. I wasn't bringing anything. I reviewed every
22 document that was sent to me and I went through it and

1 I made my notes but I did not go back to review in
2 depth every document before this deposition. No, I did
3 not.

4 Q What did you do to prepare for this
5 deposition?

6 A I spent well over 60 hours going through
7 every document --

8 Q No, to come here today. What did you do?

9 A As I said, if I could finish, I spent a lot
10 of time going through every piece of evidence that was
11 sent to me and looking at that.

12 Q Yeah.

13 A This deposition right here, I looked at my
14 notes, I looked at a few other things, and I didn't
15 spend a lot of time preparing more for this depo
16 because I didn't have the slightest idea what you
17 wanted to talk about and, as I said, I've done depos
18 where I haven't been asked to bring anything and I --
19 I've answered everything I can.

20 MR. MARTIN: This depo is going to be
21 continued at a different time. This is bullshit.

22 MR. ESCOBAR: No. You know what's bullshit?

1 You should have provided that in your notice. That's
2 what's bullshit.

3 MR. MARTIN: No.

4 MR. ESCOBAR: Every single depo --

5 MR. MARTIN: No. I've never ever had a guy
6 show up not prepared for his depo.

7 MR. ESCOBAR: No, no, no, no. He's prepared.
8 He's just not prepared for your questions. So you
9 should have done that. That's on you, on nobody else.

10 MR. MARTIN: This is done. I'll come back
11 later.

12 MR. ESCOBAR: Okay.

13 MR. MARTIN: This is absolute waste of time.

14 MR. ESCOBAR: Well, don't blame us; blame
15 you.

16 THE WITNESS: So I take it I'm dismissed?

17 MR. MARTIN: You're still under subpoena
18 until I can reschedule this deposition.

19 THE WITNESS: I'm under subpoena for today
20 only, am I not?

21 MR. ESCOBAR: Yeah, you're good to go today.
22 He's saying that you're -- that subpoena will continue

1 until --

2 THE WITNESS: Okay.

3 MR. ESCOBAR: -- the next --

4 THE COURT REPORTER: Are we off?

5 MR. MARTIN: Yep.

6 MR. ESCOBAR: Yeah.

7 (Whereupon, the deposition was continued at
8 11:45 A.M.)

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1 CERTIFICATE OF NOTARY PUBLIC

2
3 I, Mary McCarty, RDR, the officer before whom the
4 foregoing deposition was taken, do hereby certify that
5 the witness whose testimony appears in the foregoing
6 deposition was duly sworn by me; that the testimony of
7 said witness was taken by me in stenotype and
8 thereafter reduced to typewriting under my direction;
9 that said deposition is a true record of the testimony
10 given by said witness; that I am neither counsel for,
11 related to, nor employed by any of the parties to the
12 action in which this deposition was taken, and further
13 that I am not a relative or employee of any attorney or
14 counsel employed by the parties thereto, nor
15 financially or otherwise interested in the outcome of
16 the action.

17
18 _____
19 Mary McCarty, RDR
Notary Registration 7315842

20 Notary Public in and for the Commonwealth of Virginia.
21 My commission expires: November 30, 2018.
22

A C K N O W L E D G E M E N T O F D E P O N E N T

I, PHILIP HAYDEN, do hereby acknowledge I have read and examined the foregoing pages of testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any changes or corrections, if any, appear in the attached errata sheet signed by me.

Date

PHILIP HAYDEN

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E R R A T A S H E E T

Case Name: STATE OF FLORIDA v. REEVES

Witness name: PHILIP HAYDEN

Deposition Date: MARCH 28, 2016

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Signature

Date

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

THE COURT: Good morning, everybody.

MR. MICHAELS: Good morning, Your Honor.

MR. MARTIN: Good morning.

THE COURT: Welcome back. It feels like we never left.

All right. Mr. Escobar?

MR. ESCOBAR: It's Mr. Michaels this morning.

MR. MICHAELS: Good morning, Judge.

THE COURT: Good morning.

MR. MICHAELS: Defense calls Dr. Philip Hayden.

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. MICHAELS:

Q. Please state your name, spelling your first and last name for the court reporter and the Judge, please.

A. My name is Philip Hayden. First name Philip, P-H-I-L-I-P, last name Hayden, H-A-Y-D-E-N.

Q. And before we start, I'm going to give you an

1 exhibit. It's Exhibit 111. That's the Defense's number.

2 MR. MICHAELS: If I may approach, Your Honor?

3 THE COURT: Uh-huh.

4 BY MR. MICHAELS:

5 Q. That's a copy of your CV to help you if you need
6 to remember some of the many things you've done in your
7 past, in your educational and professional background.
8 Okay?

9 A. Okay.

10 Q. So let's talk about first, what is your
11 occupation?

12 A. Right now I'm a law enforcement consultant, and
13 I also have a company that's an investigative company.

14 Q. When you say, "law enforcement consultant,"
15 explain to us what it is that you and your company does.

16 A. As a law enforcement consultant, I'm available
17 to law enforcement if they need help, but I also work as
18 an expert witness, in that for both the plaintiff and the
19 defense.

20 Q. Have you also provided consultation and expert
21 witness services to state attorneys and U.S. Attorneys'
22 offices?

23 A. Yes, I have.

24 Q. Give the court some examples of the offices you
25 provided these services for.

1 A. The Department of Justice in Washington D.C.,
2 the Department of Justice in Iowa, Department of Justice
3 in California, so several U.S. Department of Justice
4 offices. State's attorneys have been in Birmingham, in
5 Chicago, Des Moines, Iowa.

6 Q. Sarasota?

7 A. Sarasota.

8 Q. Miami Dade?

9 A. Miami Dade, yes.

10 Q. Feel free to look at your CV if you need to,
11 Dr. Hayden.

12 A. Okay.

13 Q. What are some of the state and city attorneys'
14 offices you've consulted and provided expert witness
15 services for?

16 A. Here in the United States Attorney's office in
17 New York City, Western District of New York, District of
18 New Jersey, Washington, D.C., El Paso, Texas, Portland,
19 Oregon, Alexandria, Virginia, Eastern District of
20 Pennsylvania, and State and County Attorneys' offices,
21 Delaware, County Attorney's Office for Prince George's
22 County, Maryland, Connecticut, and defense and plaintiff
23 attorneys in Richmond, Virginia, Washington D.C.,
24 Baltimore, Maryland, Las Vegas, Nevada, Denver, Colorado,
25 Kansas City, Pasedena, Texas, Birmingham, Alabama, and the

1 Swedish Defense Ministry.

2 Q. Now, have you ever been qualified in state court
3 to render an expert opinion?

4 A. Yes, I have.

5 Q. In what field?

6 A. In use of force and also in police policies and
7 procedures.

8 Q. In federal court?

9 A. In federal court, the same.

10 Q. Now, before we get to your services in this
11 particular case and your opinion in this particular case
12 and what you've done in this particular case, let's talk a
13 little bit about your background.

14 I understand that you're a veteran of the U.S.
15 Army?

16 A. That's correct.

17 Q. And from what year to what year?

18 A. 1964 to 1968.

19 Q. And you entered as a private?

20 A. That's correct.

21 Q. What was your rank when you separated?

22 A. I was a captain.

23 Q. Why did you separate from the armed services?

24 A. I was on physical disability. I got shot up
25 pretty bad in Vietnam and retired out of the military.

1 Q. And so when you were in Vietnam, you received
2 certain honors; did you not?

3 A. Yes, I did.

4 Q. The Purple Heart?

5 A. Yes, I did.

6 Q. The Vietnamese Cross of Gallantry?

7 A. Yes, I did.

8 Q. Conspicuous Service Cross?

9 A. Yes, I did.

10 Q. The Army Commendation for Valor?

11 A. Yes.

12 Q. Bronze Star for Valor?

13 A. Yes, I did.

14 Q. And also the Distinguished Service Cross?

15 A. That's correct.

16 Q. Now, before we get to your FBI service and your
17 experience in the Federal Bureau of Investigations, let's
18 talk a little bit about your educational background.
19 Okay?

20 A. Okay.

21 Q. I called you Doctor when you came in. Let's
22 talk about bachelor's. Where did you get your bachelor's
23 and when?

24 A. From Adelphi University. I received that in
25 1972.

1 Q. And what is your bachelor's in?

2 A. It's in accounting and business.

3 Q. And you have a master's?

4 A. I have a master's degree I received in 1980.

5 Q. From what school?

6 A. Adelphi University.

7 Q. What is the master's in?

8 A. In accounting.

9 Q. Let's talk about your doctorate. From what
10 school?

11 A. From Nova Southeastern in Fort Lauderdale.

12 Q. What year?

13 A. In 1977.

14 Q. What is your doctorate in?

15 A. In education.

16 Q. It's in education. How does that relate to your
17 current work as an expert in -- consultant in the field of
18 use of force?

19 A. As an educator, what I had to do is understand
20 how people learn; how people transfer that information
21 that they see, they hear, and how do they interpret that
22 to, they actually use those types of skills that we're
23 trying to teach.

24 Q. And specifically, did that concept and those
25 ideas apply to the training of law enforcement officers?

1 A. Yes, specifically to that, yes.

2 Q. That's a program that you developed?

3 A. That's correct.

4 Q. And that's training for use of force and things
5 in that realm; is that fair to say?

6 A. That's correct.

7 Q. Now, let's talk about your career in the FBI.

8 When did you join the FBI?

9 A. I joined the FBI in 1973.

10 Q. How many years were you with the FBI?

11 A. Twenty-six.

12 Q. Before we go into some of your training and
13 experience in the FBI, let's talk a little bit about what
14 your various assignments are. So when you start the FBI,
15 I imagine you go to an academy?

16 A. Yes, that's correct.

17 Q. Where is that?

18 A. That's in Quantico, Virginia.

19 Q. And what sort of training do you receive at that
20 point?

21 A. We receive sixteen weeks of training which
22 involved all the investigations that you might do in the
23 federal realm, and at that time there was like 350
24 different types of investigations; criminal, intelligence
25 work, counterintelligence. So you receive training in all

1 those different areas and you received firearms training,
2 defensive tactics, physical fitness, investigations,
3 interviewing.

4 Q. Are you also schooled in the concept of use of
5 force?

6 A. Absolutely, yes.

7 Q. And that would mean when it's appropriate,
8 correct?

9 A. When it's appropriate and what force you should
10 be able to use.

11 Q. And do you also learn at a very early time the
12 various cues and things you should look for when deciding
13 when and if to apply force?

14 A. Yes, that's a critical factor in learning that,
15 yes.

16 Q. And how much force to apply?

17 A. That's correct.

18 Q. Now, as an FBI agent, do you go in -- you go to
19 Quantico, you go to the academy. What's your first
20 assignment?

21 A. After I get out of Quantico I go to Chicago, and
22 in Chicago I was assigned to the theft of interstate
23 shipment.

24 Q. How long is that assignment for?

25 A. I was in Chicago for just about three years.

1 Q. And tell the Court what it is that you did in
2 that particular assignment. In other words, what do you
3 do when you're assigned to, you said theft of
4 interstate --

5 A. Shipment.

6 Q. -- shipment.

7 A. Basically, truck highjacking, things like that
8 that cross the state lines, and investigating those crimes
9 and conducting the arrest on individuals that you're able
10 to identify.

11 Q. Okay. So you would be involved in the
12 investigation?

13 A. That's correct.

14 Q. And also the apprehension of the individuals
15 that were being investigated?

16 A. That's correct, and all of paperwork that goes
17 with it.

18 Q. Okay. What's your next assignment?

19 A. I worked in counterintelligence and I worked in
20 Polish intelligence, dealing with the individuals at the
21 Polish Embassy.

22 Q. What years are we talking about?

23 A. This is from 1973 through 1976.

24 Q. Before the wall came down?

25 A. Before the wall came down, yes.

1 Q. What did you do in that particular assignment?

2 A. I worked pretty much undercover, and did just --
3 following the different individuals that they had in the
4 Polish Embassy that we were interested in.

5 Q. Next assignment?

6 A. Next assignment, I was in Chicago, and they move
7 you around a bit so you get a different experiences, and I
8 worked bank robberies, fugitives, and that was my last
9 assignment in Chicago.

10 Q. What does that particular work involve?

11 A. Here again, investigations. Investigations in
12 bank robberies, doing interviews, doing the investigation,
13 then conducting the arrest.

14 The others are fugitives that -- you might have
15 a fugitive, as identified through the federal system,
16 that there's a warrant for that person, and you try to
17 find that person and make the arrest.

18 Q. And does that particular assignment put you in
19 contact directly with violent and potentially -- and
20 potentially violent individuals?

21 A. Absolutely, it does.

22 Q. And what's your next assignment after that?

23 A. I was transferred to New York City.

24 Q. What did you do there?

25 A. When I first arrived there, I worked in

1 counterintelligence in the Russian Squad.

2 Q. What year are we talking about?

3 A. That was 1976 to probably 1977, early '78.

4 Q. And so there you are doing similar work
5 regarding the Russian Embassy as you did in Chicago with
6 the Polish embassy? Is that fair to say?

7 A. That's correct.

8 Q. How long do you do that for?

9 A. Just about a year a year and a half.

10 Q. What's your next assignment?

11 A. Next assignment, I ended up going to one of the
12 organized crime squads. And on the organized crime squad
13 I was one of four different individuals that was assigned
14 to that squad to set up and develop plans and do the
15 arrest of individuals that we identified.

16 Q. So you weren't actually involved in the
17 undercover work itself?

18 A. I wasn't involved in any undercover work in
19 that, no.

20 Q. But you were involved in the arrest?

21 A. That's correct.

22 Q. So, again, placing you potentially in direct
23 contact with violent or potentially violent individuals?

24 A. That's correct.

25 Q. Next assignment?

1 A. Next assignment, I worked on a squad that did go
2 undercover. I worked undercover in identifying different
3 criminal aspects, both in a criminal side and on
4 counterintelligence, and we worked to help identify those
5 people and to make the arrests of those people.

6 Q. And any sort of segment that was targeted?

7 A. No, it's what they requested from the different
8 squads within the division I was assigned to that if they
9 needed help in certain -- identifying or arresting certain
10 people, then they brought us in to assist them.

11 Q. Okay. Again, in contact with dangerous and
12 potentially dangerous individuals?

13 A. That's correct.

14 And we were working on -- or we were working
15 with task forces from the New York City Police Department
16 also that was involved in this.

17 Q. Okay. Next assignment?

18 A. Next assignment after I left Chicago, I went to
19 Quantico, Virginia.

20 Q. You mean after you left New York?

21 A. After I left New York. I'm sorry, yes.

22 Q. What year are we at now?

23 A. When I went to Quantico, it was 1983.

24 Q. And at that point are you a supervisory special
25 agent?

1 A. That's correct.

2 Q. What is the purpose of you going to Quantico?

3 A. I was asked to go to Quantico to work on the
4 SWAT program and the different aspects of SWAT, sniper
5 training, defensive tactics, firearms.

6 Q. And does part of that have to do with your
7 military background?

8 A. Yes, it did.

9 Q. What sort of training did you receive in the
10 military?

11 A. Well, I went through the basic training of
12 combat infantry, I went through officer candidate school.
13 I went through airborne school, ranger school, pathfinder
14 school, demolition -- part of a demolition school. I
15 trained for two and a half years.

16 Q. Okay. Now, when you go to Quantico, is it to be
17 part of the squad team or is to help develop it or both?

18 A. When I went to Quantico, the unit was called the
19 Special Operations and Research Unit, which was designed
20 to work with the SWAT teams throughout the United States
21 or FBI SWAT teams, and we did the training for them,
22 getting equipment for them and assisting them if they
23 needed our assistance in setting up posts and things like
24 that.

25 Q. So is it fair to say, that in 1983 began your

1 career where, specifically, you're training other law
2 enforcement personnel, special agents, local police,
3 et cetera?

4 A. That's when the large portion of my training
5 began. We did do training back in New York, and I was a
6 firearms instructor there, defensive tactics instructor,
7 and sometimes we worked with local police as well as FBI
8 agents.

9 Q. But you were also involved in training other
10 people then at that point?

11 A. That's correct.

12 Q. In 1993?

13 A. 1983.

14 Q. In 1983.

15 A. Right.

16 Q. Now, during that time period -- what is it, '83
17 to '99? Is that fair to say?

18 A. '83 to '90 I was in the source unit.

19 Q. And actually training individuals, that goes all
20 the way out to '99, right?

21 A. Yes, that's correct.

22 Q. In terms of with the FBI?

23 A. That's correct.

24 Q. During that time period, what sort of areas are
25 you training officers and special agents in?

1 A. We're training them in the tactics of officer
2 sound -- sound tactics. How do you go into a situation
3 and do it in a way that's conducive to your own safety and
4 to the safety of other individuals?

5 We dealt with all of those tactics dealing with
6 firearms, defensive tactical, hands-on arrest techniques
7 and then also planning, how to plan for an arrest and how
8 to actually take it down.

9 Q. During that time period, give the Court an
10 estimate of how many law enforcement personnel, special
11 agents, and local and state law enforcement that you were
12 involved in training. How many people?

13 A. In the combined of the source unit and when I
14 went over to the practical applications unit and then to
15 the law enforcement training for safety and survival, the
16 SWAT was probably 1,500 or so people.

17 We went into the other areas of the task force
18 training, probably another 4,000, 4,500 people, both --
19 and that was both federal agents. It could be from DEA,
20 FBI, a lot of different federal organizations, and the
21 task forces were also combined of federal and local,
22 state, county police officers.

23 Q. Did you also train law enforcement entities in
24 other countries?

25 A. Yes, we did.

1 Q. Give the Court some examples.

2 A. We went to Russia on five different occasions.
3 We went to the Ukraine. We went to Uzbekistan. We went
4 to several countries over in the Eastern Bloc countries.
5 We went to Jordan. We went to Egypt; and what we did
6 there was train our police officers in the program that
7 was developed for the law enforcement training for safety
8 and SWAT.

9 Q. And did you help create a law enforcement
10 training for safety and survival?

11 A. Yes, I did.

12 Q. When did you do that?

13 A. I was asked to do that in 1992 for the Violent
14 Crimes Task Forces.

15 Q. And that's after you had already been training
16 individuals for nine years or so?

17 A. Yes, that's correct.

18 Q. Let's talk about while you were with the FBI,
19 some of the lesson plans you designed.

20 First tell the Court what a lesson plan is.

21 A. Lesson plans were developed to help our students
22 have the guideline for what they're going to be instructed
23 in and take them through the stages of what the first step
24 would be all the way through that training process.

25 Q. And what areas are we talking about?

1 A. We are talking about several different areas. I
2 had them written down here. I can't see it right here.
3 Oh, here we go.

4 Some of these lesson plans that we did were:
5 making arrests and handling subjects, preparation for an
6 arrest, arrest and search warrants, side surveys, law
7 enforcement operations orders for arrest and search
8 plans. Approaching an entry point. Conventional room
9 entry. Techniques for room clearing. Procedures and
10 equipment for room clearing. Clearing hallways, interior
11 movement, stairways, attics, roofs, crawl spaces, vehicle
12 stops, quick entries, which is sometimes referred to as
13 dynamic entry, use of ballistic shields, entries and
14 vehicle clearing, mechanical breaching, tactical
15 operations and repel master instructor.

16 Q. So what happens with those lesson plans? You
17 write them up and it's FBI property, or explain how that
18 works.

19 A. These lesson plans, they had -- the original
20 lesson plans were there. They were not in very good order
21 nor in detail, so I was asked to rewrite these for the new
22 programs and --

23 Q. Who is it that asked you to do that?

24 A. The supervisors within the FBI at Quantico --

25 Q. Okay.

1 A. -- asked me to do that.

2 Q. And you also wrote some articles for the FBI?

3 A. That's correct.

4 Q. What do you mean by articles written for the
5 FBI?

6 A. They asked me to write different articles on the
7 use of force, how to arrest an individual in a safe
8 manner, how officers can be protected and do their job in
9 a way that is more safe and conducive to safety, and so
10 these articles were written for their benefit.

11 Q. And in addition to your vast experience, what
12 other information did you use to write those articles and
13 to create those lessons plans you talked about?

14 A. At the FBI academy they have a legal library,
15 and in that legal library they have thousands of books
16 dealing with different police topics. I spent many, many,
17 many hours in that library going through different
18 research material, trying to find people that had written
19 different articles, see if it was peer reviewed, and if
20 it's things that we could actually use.

21 Once I pulled it out and we thought we could
22 use it, then we mixed it within our own group of about
23 twelve different individuals.

24 Q. Did you also incorporate the training that you
25 had received?

1 A. Oh, absolutely.

2 Q. And the experience that you had in your various
3 assignments during your tenure in the FBI?

4 A. I did that for myself, but I also did it for
5 other agents that were there that we all had an input into
6 if we thought that process was a good process or not.

7 Q. You also helped to produce a video or videos for
8 the FBI?

9 A. That's correct.

10 Q. Now, when you were on the FBI, were you on any
11 special units? You mentioned SWAT. Were you a member of
12 the SWAT unit?

13 A. Yes, I was.

14 Q. What other units?

15 A. I was also an aviator. I flew aircraft for the
16 FBI.

17 Q. So you were an FBI pilot is what you're telling
18 us?

19 A. Right.

20 Q. Were you a member of the FBI Shooting Board?

21 A. Yes, I was.

22 Q. Tell the Court what that is.

23 A. The Shooting Review Board is held at the
24 headquarters in Washington, D.C., and that board is made
25 up of about twelve different individuals that some of them

1 have tactical background, some of them have a legal
2 background, some have an administrative background, and
3 every shooting that an FBI agent is involved in or every
4 time that an FBI agent discharges a weapon outside of the
5 training area, it could be an accidental discharge, it
6 could be something -- he's cleaning his weapon at home and
7 it goes off. Anytime an FBI agent is involved with a
8 weapon that is fired outside of training that comes to the
9 Shooting Review Board, and the Shooting Review Board
10 analyzes everything that's done for the report that was
11 given.

12 Q. And that means that if an agent -- special agent
13 fires his weapon and actually shoots somebody, that's
14 included within that review board?

15 A. Absolutely.

16 Q. As well as dropping the weapon at home and then
17 discharging it?

18 A. That's correct.

19 Q. And nationally, every single special agent of
20 the FBI or any FBI personnel who's involved in any sort of
21 shooting, that review board that you were a part of
22 reviewed that shooting; is that fair to say?

23 A. That's correct.

24 Q. Okay. Now, you did that for how long?

25 A. I did that for about seven years.

1 Q. And did you always -- was your opinion always
2 that the shooting is justified?

3 A. No, it was not.

4 Q. Now, during your tenure with the FBI, did you
5 have occasion to interview agents or other police officers
6 postshootings? In other words, police officers, agents
7 involved in a shooting, were you involved in the interview
8 of any of those individuals?

9 A. Yes, I was.

10 Q. How many occasions, do you think?

11 A. Well over 200, 200 to 300. I would have to look
12 exactly, but it was well over 200, probably closer to 300.

13 Q. Now, in this case you were hired by my firm?

14 A. That's correct.

15 Q. Escobar & Associates, correct?

16 A. That's correct.

17 Q. And you're being paid for your services?

18 A. That's correct.

19 Q. Now, in this particular case what sort of
20 materials were you provided to review to formulate your
21 opinion?

22 A. I was given 137 different documents from your
23 association to review, and I have a list of that if you'd
24 like to see that list.

25 Q. Why don't you tell us what is on that list or

1 read it if you need to.

2 A. Well, there's depositions, over twenty
3 depositions, statements. There are police reports, there
4 are officers' statements of interviews that they did, a
5 lot of statements many, many, many statements.

6 Q. Did you look at some photographs as well?

7 A. I looked at photographs.

8 Q. Autopsy report?

9 A. Autopsy report.

10 Q. Did you listen to the recorded statement of Mr.
11 Reeves?

12 A. I listened to the recorded statement of
13 Mr. Reeves.

14 Q. Did you get a big, thick police report as well?

15 A. Yes, I did.

16 Q. And what else did you do in terms of your
17 investigation?

18 A. Well, I reviewed all of that material, and then
19 I --

20 Q. How many hours do you think you've spent
21 reviewing the materials and formulating an opinion in this
22 case?

23 A. Probably -- the material that you sent, probably
24 well over 50, 55, 60 hours, then reviewing materials, my
25 own material, probably another 30 hours.

1 Q. Okay. At some point did you come down to
2 Tampa --

3 A. Yes, I did.

4 Q. -- as part of your investigation in this case?

5 A. That's correct.

6 Q. Did you actually go to the Cobb Movie Theater?

7 A. Yes, I did.

8 Q. Tell us about that. You went there. Who did
9 you go with?

10 A. I went with Mr. Escobar.

11 Q. All right. And where did you go?

12 A. We went to the Cobb Theater. We went inside. A
13 manager opened it up for us. It was not open at the time.
14 We went into Theater 10.

15 Q. All right. And that's the theater that's in
16 question in this particular case?

17 A. That's correct.

18 Q. And you knew about that before you went into
19 Theater 10?

20 A. That's correct.

21 Q. All right. Tell me what happens when you get
22 into Theater 10.

23 A. I went in there, and we looked at the different
24 seating arrangements they had back there. We went over to
25 the seating that Mr. Reeves was sitting in. I sat in that

1 chair. I went to where Mr. Oulson --

2 Q. Let's talk about that.

3 So you went into the theater. You sat in the
4 chair that Mr. Reeves was in. How did you know that was
5 the chair that Mr. Reeves was in?

6 A. From the videos and from the reports.

7 Q. And did Mr. Escobar also indicate to you that
8 that was the seat?

9 A. Yes, he did.

10 Q. Tell me what happens. Do you actually sit in
11 the seat?

12 A. Yes, I do.

13 Q. What is the lighting -- what are the lighting
14 conditions in the theater?

15 A. Well, at the time Mr. Escobar and I are talking
16 and it's just a -- opened up the lighting that they had in
17 there, the actual lighting, and after we got done talking
18 the manager turned on the sound.

19 Q. We're going to get there.

20 A. Okay.

21 Q. So when you go in, the theater is not dark; is
22 that what you're telling the Court?

23 A. That's correct.

24 Q. And I know it's a relative term because you
25 probably don't know what the settings were and all of

1 that, but it was not a darkened theater; that's what
2 you're telling us?

3 A. That's correct.

4 Q. So you sit in the seat, and what is your purpose
5 of sitting in the seat? What are you doing there?

6 A. What I'm trying to do, I'm trying see what
7 Mr. Reeves, how he was sitting in that seat, how he felt
8 in that seat.

9 Q. Agree or disagree: You're trying to evaluate
10 what the environment is, at least as it's concerning the
11 physical constraints of the seat, if you will?

12 A. That's correct.

13 Q. And so when you sit in that seat, what do you
14 notice in terms of the seat itself? For instance, are
15 there arms side to side or no arms?

16 A. Arms.

17 Q. And what does that do in terms of restricting
18 your movement or do you even try to move?

19 A. No, I definitely tried to move within that seat,
20 and I tried to move around. I tried to move to the left,
21 to the right, how I would have to stand up in there, how
22 close it is to the seat in front of me, so I'm moving
23 around there, seeing what the restrictions might be.

24 Q. We're going to talk about that.

25 So you're in the seat, and how much do you

1 weigh?

2 A. I weigh about 250 pounds.

3 Q. Okay. And so did you find it easy to move
4 around in that seat?

5 A. Not easy to move very far. I could kind of move
6 my body around in there, you know, trying to get in a
7 comfortable position, but there wasn't much room to move
8 to the left or right.

9 Q. Now, in terms of the seat in front of you,
10 initially, when you sat down, was that seat leaned back or
11 just left in the position with nobody sitting there?

12 A. It was left in the position of nobody sitting
13 there.

14 Q. And tell me what observations you made
15 concerning that seat in terms of distance from where your
16 knees were.

17 A. Well, from the photographs that the crime scene
18 photographers had done, I saw that they had a measuring
19 tape. It was about eighteen inches from the front of the
20 seat that I was sitting in to the back of the seat with
21 just sitting straight up. From where Mr. Reeves was was
22 about 36 inches from his seat to where Mr. Oulson was.

23 Q. Okay. But without getting into measurements, I
24 want to know what you observed, because certainly you were
25 not there with a tape measure.

1 A. No, I was not.

2 Q. So when you were seated there, could you easily
3 reach up and touch the seat in front of you?

4 A. Yes, I could.

5 Q. You said you tried to get up. Tell the Court
6 how it is that you tried to get up.

7 A. Well, when you're standing up there, I wanted to
8 see just how easy it would be to stand up from that
9 position.

10 When you see, because of the seats and the way
11 they're developed, you have to lean forward quite a bit
12 in order to be able to stand up, and because my back is
13 also messed up, I had used the hand rest to kind of push
14 myself up.

15 Q. And what did you observe when you tried to push
16 yourself up? And specifically, I'm talking about what did
17 you observe in terms of your proximity to the row in front
18 of you?

19 In other words, as you were pushing up, did you
20 get closer to the row or did you get further back?

21 A. When I was pushing up, I was right to the back
22 of the row, so I was all the way forward.

23 Q. When you pushed yourself up, where was your head
24 positioned in relation to that seatback?

25 A. Just about where the seatback was.

1 Q. Now, in that initial seat, what else did you do?
2 Did you try moving around?

3 You saw on the video, because you said you
4 looked at the video, Mr. Reeves sticking out his leg. Did
5 you try to move around at all?

6 A. Yes. Mr. Reeves said that he had slid down in
7 the seat, so the back of the seat -- so I wanted to see
8 how that would be, and I tried to do the exact same thing.

9 Q. And were you able to?

10 A. Yes, I was.

11 Q. Now, from that back row did you try leaning the
12 seat back at all of the back row seat?

13 A. Of the back row seat, trying to lift --

14 Q. Lean it back. Did it lean back at all?

15 A. No, not really, because there's a wall back
16 there. It leans back very little.

17 Q. Okay. Now, what's the next thing that you did?
18 Now you sat in that seat. What do you do next?

19 A. Mr. Escobar was over where Mr. Oulson was, and
20 we were kind of interacting, pushing the seat back to see
21 how close we could be to -- if he could reach me, if he
22 couldn't reach me, and then --

23 Q. Okay. Now, Mr. Escobar is not six-four. We can
24 agree with that, I'm sure.

25 A. Absolutely.

1 Q. So tell me what your experience was then with
2 Mr. Escobar, at least, leaning on the seat. Was he able
3 to reach you?

4 A. Yes, he was.

5 Q. What area of your body did he reach to?

6 A. He was able to reach, right, basically almost to
7 my chest by leaning over the seat.

8 Q. And was he pressing on the seat so it was
9 leaning back?

10 A. Yes.

11 Q. Could you tell?

12 A. Yeah, it appeared that's what he was doing.

13 Q. Did you see where his legs or knee was?

14 A. No, I couldn't see from there, but he tried in
15 different positions, and he's leaning back in the chair.
16 He did not try to stand up in the chair, but he was
17 kneeling in the chair on one occasion.

18 Q. Okay. And that's the seat that's not in front
19 of you but the one that would be to your right?

20 A. To the front right, yes.

21 Q. So he's not actually coming between the seats,
22 but he's manipulating the seat to the right?

23 A. He moved over in-between the two seats also.

24 Q. When he moved over between the two seats, was he
25 closer to you when he reached over?

1 A. He was close to me when he came over that second
2 time, when he came through the crack of the seat,
3 basically, and it appeared that he could almost be right
4 on top of me.

5 Q. Okay. Now, from there, what's the next thing
6 that you do in the theater?

7 A. Well, I ended up sitting where Mr. Oulson was.

8 Q. Let's talk about that.

9 So now you change positions, you sit in the seat
10 that Mr. Escobar was near?

11 A. Yes, that's correct.

12 Q. That would be the seat that as you're looking
13 forward, if you're sitting in Mr. Reeves' seat, it would
14 be the seat to the right?

15 A. That's correct.

16 Q. So what did you do in that seat?

17 A. I did the same type of things that Mr. Escobar
18 did. Mr. Escobar was sitting in Mr. Reeves' seat.

19 Q. Okay. So tell me what it is that you did. Now,
20 you're there. Is the seat bottom up or down?

21 A. The seat was down. I was sitting in it. When I
22 stood up, the seat came up and I was leaning back in the
23 seat.

24 Q. When you were sitting in the seat, did you try
25 to reach back at all?

1 A. Yes, I did.

2 Q. Were you able to?

3 A. When I was sitting in the seat?

4 Q. Yes.

5 A. Not when I was not sitting in the seat I didn't
6 try to reach back.

7 Q. Okay. When did you try to reach back?

8 A. When I turned around.

9 Q. So tell us about that. You turned around?

10 A. I turned around, I stood up and turned around
11 and I reached back.

12 Q. All right. And the seat bottom is up or down?

13 A. Up.

14 Q. And your knees are where? Against the seat
15 bottom?

16 A. Basically right against the seat. They were
17 in -- the upper part of the seat is where it comes up, and
18 that's about where my knee is.

19 Q. All right. So you're not kneeling on the seat?

20 A. My knee is there, but I wouldn't say I was
21 kneeling on the seat.

22 Q. You're not kneeling on the seat when it's down?

23 A. No, I'm not.

24 Q. The seat is folded up?

25 A. That's correct.

1 Q. And your knee is contacting the seat --

2 MR. MARTIN: Leading, Judge.

3 BY MR. MICHAELS:

4 Q. I'm trying to understand. Do you agree with me
5 or disagree with me that your knee was touching the bottom
6 of the seat as the seat was in the up position?

7 A. That's correct.

8 Q. So you agree with me?

9 A. Yes, I do.

10 Q. All right. Now, when you're in that position,
11 are you right in front of the seat or over to the side?

12 A. I was -- I did both. I was right in front of
13 the seat and moved over to the side.

14 Q. Tell us about right in front of the seat,
15 what -- you reached over?

16 A. I reached over, and I couldn't get as close as I
17 could when I moved over.

18 Q. When you say as close, how close did you get
19 from the position where you're in front of the seat?

20 A. When I was standing right in front of the seat,
21 I could probably reach over and just about touch it, but
22 not quite.

23 Q. Okay. And touch Mr. Escobar?

24 A. Yes, that's correct.

25 Q. We can agree, not only is he not six-four but he

1 doesn't weigh 250 pounds?

2 A. That's correct.

3 Q. And so when you reach over, you can almost touch
4 him, you say. How tall are you?

5 A. Six foot.

6 Q. Okay. You're not six-four?

7 A. No, I'm not.

8 Q. Now, when you reach over, are you -- is your
9 hand on the back of the chair? By that I mean the part
10 you lean back in --

11 A. Yes.

12 Q. -- or where is your hand?

13 A. My hand was on the back of seat.

14 Q. When you say you're reaching over, you're
15 reaching over with your right or your left hand?

16 A. I'm reaching over with my right hand.

17 Q. Now, you said you had a bad back. How were you
18 able to balance yourself? Tell me -- explain to us what
19 it is that you were doing to accomplish that sort of
20 position.

21 A. Well, in order to accomplish that, my knee was
22 on the back of the seat. My hand was on the back of the
23 seat. My knee was on the back of the seating part, and I
24 was pushing over and trying to reach over with my hand to
25 see how far I could go.

1 Q. So you were pushing on the back of the seat that
2 actually moves a little bit; is that what you are
3 explaining?

4 A. Yes, that's correct.

5 Q. Now, after you do that in front of the seat,
6 what's the very next thing that you do?

7 A. Well, the next thing we did, we had the manager
8 turn on the sound.

9 Q. Did you move towards the -- in-between the
10 seats?

11 A. Yes, I did move in-between the seats, yes.

12 Q. What did you do -- what did you do once you were
13 in-between the seats?

14 A. I did the same thing. I tried to move over
15 toward Mr. Escobar to see how much I could reach over.

16 Q. Were you able to get close or not?

17 A. Yes. Closer, yes.

18 Q. Were you able to touch him?

19 A. Yes.

20 Q. In what area?

21 A. I could touch him in his -- pretty much his --
22 where he's sitting back where his hands are, in that area.

23 Q. And -- well, I'm not sure --

24 A. Right around the chest area. I could get in
25 that close.

1 Q. Okay. What's the next thing that happened in
2 the movie theater?

3 A. We had the manager turn the sound on and then
4 the preview, and I don't remember which one it was, and
5 turn the lights the way the lights would have been at that
6 time.

7 Q. Okay. And in terms of how the lights really
8 were on the day this all happened -- agree or disagree --
9 you don't really know what it's like -- what the lights
10 were physically like on the day this happened?

11 A. Right. No, just what the manager said, this is
12 what it would have been on that day.

13 Q. Okay. And so you're there. The lights are,
14 according to the manager anyway, at preview level, and
15 you're watching some preview but we don't know which one,
16 right?

17 A. That's correct.

18 Q. What do you do -- where are you when you're
19 watching that?

20 A. We do the same thing for Mr. Reeves' seat to
21 Mr. Oulson's seat. We kind of moved around. Mr. Escobar
22 was moving back and forth to see how much I could see of
23 him when he was moving around. It was just the two of us,
24 so I could follow him okay.

25 Q. Okay. So the purpose of that, from sitting in

1 Mr. Reeves' seat, was what?

2 A. At that time, to see with the lights down, to
3 see how clearly I could see Mr. Escobar.

4 Q. Okay. And agree or disagree with me: You also
5 did that to get some idea of Mr. Reeves' perspective.
6 Agree or disagree?

7 A. I agree.

8 Q. Now, part of what you did in this case, you
9 talked about the materials that you looked at. Let's talk
10 a little bit about those materials.

11 You said you looked at the depositions. Would
12 that be depositions of both laypeople or patrons and law
13 enforcement as well?

14 A. That's correct.

15 Q. And did you review statements by laypeople or
16 the patrons in the movie theater?

17 A. Yes, I did.

18 Q. And did you consider those statements in
19 formulating your opinion in this case?

20 A. No, I read through all of them, but I did not
21 use it because I thought it was really contaminated at
22 that point.

23 Q. Let's talk a little bit about that.

24 As an FBI agent, from the very time you began in
25 Quantico, tell us about your training in interviewing

1 large groups of people?

2 A. One thing that's pointed out, it was pointed out
3 very clearly, right from the very beginning is that you
4 have to separate witnesses in order to make sure that you
5 get statements that is in their mind, not words from
6 somebody else.

7 Q. Why is that a big deal?

8 A. Because people have a tendency to want to fill
9 blanks, and when they hear what other people have to say,
10 they have a tendency to put that in their statement,
11 thinking that that's what they did see or hear.

12 Q. So what does your training tell you in terms of
13 considering statements that have been subject to this
14 contamination?

15 A. Well, what it says is that you have to request
16 everything and be as thorough as you possibly can when you
17 read any of these documents, so whether or not it's
18 contaminated or not, to see if there's some kind of
19 consistency.

20 So I did. I did read them, but when I formed
21 my opinion, my opinion was not based on much of what they
22 said at all.

23 Q. And what is it that gave you the idea, or why
24 are you of the opinion that these statements are
25 contaminated witness statements here?

1 A. Because several of the witnesses within their
2 depositions stated that they had talked to other people.
3 They had talked to each other. They had talked to
4 spouses, you know, before they made their statements, and
5 that large groups of people were standing around talking
6 about what happened, discussing the case.

7 Q. Okay. So they overheard other people talking
8 about it?

9 A. They overheard other people talking and were
10 involved in some of the discussions of what happened.

11 Q. So you actually went to the movie theater.
12 There was a video in this case. Certainly you've had a
13 chance to review the video?

14 A. Yes, I have.

15 Q. And several clips?

16 A. Yes, I have.

17 Q. And several versions of the video?

18 A. Yes, I have.

19 Q. Mr. Martin showed you a video during your
20 deposition?

21 A. That's correct.

22 Q. Clips and all of that? Do you recall that?

23 A. Yes, I do.

24 Q. So it would be fair to say, that you had a
25 chance to review the video in this case?

1 A. Yes, I did.

2 Q. Now, did you use your review of the video as
3 part of your formulation of your opinion in this case?

4 A. Yes, I did.

5 Q. What else did you do in this case?

6 A. Well, I -- after reviewing all of the material,
7 the videos, the photographs.

8 Q. The reports?

9 A. The reports, everything that was -- that was
10 given to me by you in looking at my background, my past
11 experience.

12 Q. Well, did you also interview Mr. Reeves?

13 A. Yes, I did.

14 Q. Well, when you came down to the movie theater,
15 you interviewed Mr. Reeves, right?

16 A. That's correct.

17 Q. All right. Tell us about that. Where was the
18 interview conducted?

19 A. At Mr. Escobar's office.

20 Q. How long did that interview last?

21 A. Probably no more than an hour.

22 Q. All right. Now, did you take notes?

23 A. No, I did not.

24 Q. Did you record the interview?

25 A. No, I did not.

1 Q. What was the purpose of interviewing Mr. Reeves?

2 A. I already read all the statements and had a very
3 good understanding of what he said, and what I wanted to
4 do was clarify in my own thinking some of the questions
5 that I had about his statements and things he had said, so
6 I just wanted to talk to him about that.

7 Q. Okay. And had you, before this, before you
8 interviewed Mr. Reeves, in addition to all of the
9 material, did you actually listen to the interview
10 Mr. Reeves gave Detective Proctor and Koenig at the scene?

11 A. Yes, I listened to that twice.

12 Q. Okay. Now, tell me about the interview with
13 Mr. Reeves. What does he tell you?

14 A. There was nothing really different from what his
15 statement was, that his oral statement said, and so when I
16 talked to him, I really didn't see much difference. I
17 just got more clarification about his fear and things like
18 that.

19 Q. And tell the Court, what sort of clarification
20 did you get concerning Mr. Reeves' fear?

21 A. Well, he said in his statement that he was
22 scared shitless, that he was really scared.

23 Q. Now you're talking about what he said in his
24 statement to whom?

25 A. To Detective Proctor.

1 Q. Okay.

2 A. So I asked him about that, "What do you mean?
3 Why would -- were you scared? What was it that scared
4 you?

5 And he explained to me that he was scared from
6 the demeanor, the words, the actions of this individual,
7 was totally out of context of anybody being in a theater,
8 and he was explaining that to me, why he felt that fear.

9 Q. Well, let's look at Mr. Reeves' statement that
10 you have there in front of you?

11 A. I have a statement.

12 Q. Again, I'm talking about the statement he gave
13 to law enforcement that day.

14 A. That's correct.

15 Q. Now, Mr. Reeves says to Proctor, and it's on
16 page 79 of the report, it's line 34 of the transcription
17 that we were provided from the State, Mr. Reeves says to
18 tell you the -- it says, "Damn," there. I believe the
19 recording accurately says, "Dang, I hate to be here. This
20 is crazy. It was absurd. I tell retired cops that you
21 don't do this."

22 What did Mr. Reeves mean by that? Did you talk
23 to him?

24 A. I did talk to him about --

25 Q. Did you talk to him about that particular line?

1 A. Not exactly about that particular line.

2 Q. So then let's talk about this.

3 Tell me what it is regarding law enforcement --
4 law enforcement officer involved in a shooting, a
5 justified shooting. In your interview, how does that law
6 enforcement officer feel?

7 A. It's probably one of the worst experiences that
8 you'll have, taking another individual's life, and every
9 police officer I talk to basically said that, that it's
10 not something that you ever want to be involved in.

11 Q. Okay. And so that's a possible explanation,
12 even though you didn't ask --

13 MR. MARTIN: Your Honor, I'm going to object.
14 That calls for speculation.

15 MR. MICHAELS: I'll move on, Judge. He's right.

16
17 BY MR. MICHAELS:

18 Q. Let me ask you this:

19 Mr. Reeves says "But I've never had anybody jump
20 on my ass like that."

21 MR. MARTIN: Page and line, please?

22 MR. MICHAELS: Line 35, same page.

23 MR. MARTIN: What page are you on there?

24 MR. MICHAELS: It's the printed-out transcript.

25 Let me get you a copy of it, if I may.

1 May I approach, Judge? I'll show Mr. Martin.

2 THE COURT: You may.

3 MR. MICHAELS: This way we can be, literally on
4 the same page.

5 BY MR. MICHAELS:

6 Q. All right, Doctor?

7 A. Okay.

8 Q. Okay. Now, I know I asked you before if that's
9 how Mr. Reeves felt and, of course, you can't say that he
10 felt that, you know, he said this for that reason, but let
11 me ask you this:

12 Would that sort of statement be consistent with
13 that sort of sentiment that you described regarding law
14 enforcement postshooting?

15 A. Yes, it would be.

16 Q. Now, let's talk about the next line down which
17 is starting on 35, "I've never had any" --

18 A. What page are you on?

19 Q. Same page 3. I'm sorry, 3, line 35. Do you see
20 the little number? There you go. Page 3, line 35. Okay.
21 All right.

22 Mr. Reeves says "But I've never had anybody jump
23 on my ass like that."

24 Let's talk about that. Is that consistent with
25 the statements that he made to you during your interview?

1 A. Yes, it is.

2 Q. Tell us about that. What do you know factually
3 about, "Never having anybody jump on my ass like that"?

4 A. Well, I asked him about that and he said in 27
5 years being a police officer he never had anybody get up
6 into his face like that, and he said it was frightening.
7 It was very frightening that somebody did that. He said,
8 "It totally took me by surprise."

9 Q. Okay. Let's go to page 5 --

10 MR. MARTIN: Excuse me, Mr. Michaels.

11 Judge, would you like a copy of this transcript
12 so can you follow along?

13 MR. ESCOBAR: I think she's got one.

14 THE COURT: I did have one but it's in my
15 office. Sorry. If you've got an extra one, I'd
16 appreciate it. Thank you.

17 BY MR. MICHAELS:

18 Q. Page 5, line 4, Mr. Reeves tells Detective
19 Proctor, "He kept on hollering. I'm not sure what he
20 said, to be honest with you."

21 Do you have any kind of proof that you can point
22 to that Mr. Oulson kept on hollering?

23 A. No, I have no proof that he kept on hollering
24 except from what Mr. Reeves said.

25 Q. And certainly the video does not have any sort

1 of audio.

2 A. That's correct.

3 Q. Is there anything that you see in the video that
4 may be indicative of somebody being angry and that sort of
5 behavior?

6 A. I see different movements from the row that Mr.
7 Oulson was in.

8 Q. Okay. Again, page -- line 5 and 6, same page,
9 "Not sure what he said, to be honest with you. He said
10 something, and that led me to believe he was going to kick
11 my ass."

12 Now, again, is that consistent with Mr. Reeves'
13 statement to you?

14 A. Yes, it is.

15 Q. And the previous statement that we talked about
16 in terms of he had never been in that situation before?

17 A. That's correct.

18 Q. Is there anything that you can point out in the
19 video that says, "Oh, that is where he's saying it"?

20 A. Yes.

21 Q. Is there is anywhere on the video that you can
22 point and say, "Yeah, I see where Mr. Oulson is saying
23 it"?

24 A. No, not where I can see it, no.

25 Q. So, again, you're basing your belief on what

1 Mr. Reeves says?

2 A. What he says and the video.

3 Q. And the video which you talked about earlier
4 where you see that movement towards Mr. Reeves?

5 A. That's correct.

6 Q. So looking briefly, line 7, "I know I can't get
7 anywhere," so what evidence do you have or what backs up
8 that statement that Mr. Reeves is making to Detective
9 Proctor?

10 A. I sat in that chair in the theater, and I knew
11 it was extremely difficult to go anywhere.

12 Q. Did you all observe or not observe the distance
13 between Mr. Reeves' chair and the chair in the very front?

14 A. Yes, I did.

15 Q. Is that part of your analysis in determining
16 that that's a truthful statement and that could be backed
17 up with physical evidence?

18 A. Yes.

19 Q. And did you have any reason to disbelieve
20 Mr. Reeves on any of these statements?

21 A. No, I didn't.

22 Q. Now, Mr. Reeves says, "So I'm leaning all the
23 way back in my chair." Again, is that something that we
24 see on the video?

25 A. Yes.

1 Q. Now, line 13 of the same page, Mr. Reeves says,
2 "My left arm is out in front of me." Now, let's talk a
3 little bit about that.

4 When you interviewed Mr. Reeves in Tampa the day
5 you came down to the movie theater, does Mr. Reeves tell
6 you that same thing?

7 A. No, I really didn't ask him about that.

8 Q. Did -- can you see that in the video at all?

9 A. I do not see that in the video.

10 Q. Now, is that what a trained police officer would
11 do, put his hand down in front?

12 A. If -- the trained police officer would probably
13 put his hand up to block whatever strike is coming in at
14 him.

15 Q. If a police officer was in danger of great
16 bodily harm or death, is a police officer going to put his
17 hand in front before he draws his pistol?

18 MR. MARTIN: Judge, I'm going to object. That
19 calls for speculation. We're talking about every
20 police officer. There are so many variables in the
21 situation.

22 BY MR. MICHAELS:

23 Q. In your training in your --

24 MR. MARTIN: Judge, I have an objection.

25 MR. MICHAELS: I'm sorry. I was moving on.

1 THE COURT: Sustained.

2 Rephrase.

3 MR. MICHAELS: She sustained it, I thought.

4 THE COURT: Uh-huh.

5 BY MR. MICHAELS:

6 Q. So in your vast experience of being trained and
7 training, is it your experience that police officers are
8 trained to put their hand in front of them if they're
9 about to discharge their firearm?

10 A. No -- well, no, it isn't.

11 Q. Now, Mr. Reeves says, line 15, starting at the
12 end of 14, "Suddenly my head was to the right, so he hit
13 me with something. I assumed it was his fist, but I don't
14 know."

15 Did you -- could you see anything in the video
16 where you can identify a hundred percent sure that
17 Mr. Reeves is getting hit with something?

18 A. Not a hundred percent sure, no.

19 Q. Now, what sort of evidence do you have, whether
20 it's interview, photographs, or other evidence, that
21 Mr. Reeves may have been hit with something other than a
22 fist?

23 A. Yes.

24 Q. What evidence is it that you can point to that
25 would suggest that?

1 A. Two things: That there is a photograph of the
2 cell phone between Mr. Reeves' feet. So we know that that
3 cell phone ended up there, and in the video I saw an arm
4 coming in. I saw a light. I don't know what that light
5 was, but something happened at that point in time.

6 Q. Did Mr. Reeves also tell you same thing in your
7 interview of him in Tampa when you came down to go to the
8 movie theater?

9 A. Yes, he did.

10 Q. Line, starting at 16, "Something was wrong with
11 my left eye. I had them wash it out for me, so he hit me
12 with his fist or something. I think he had a cell phone
13 in his hand because I saw the -- I saw the -- the -- the
14 blur of the screen."

15 Again, are we talking about evidence to back
16 that up, the same sort of thing you just talked about, the
17 photograph?

18 A. That is correct.

19 Q. Video?

20 A. Yes, that's correct.

21 Q. Mr. Reeves' statement.

22 A. That's correct.

23 Q. Again, with the left hand, we already talked
24 about that. "Hit me in the face, knocks my glasses
25 sideways."

1 Do you see anything in the video or have any
2 evidence that his glasses were knocked sideways?

3 A. No, I don't. Just his statement.

4 Q. Okay. And, again, there are witnesses that
5 you've discounted because of contamination, so they're not
6 in this mix; is that fair to say?

7 A. That's correct.

8 Q. Page 6, line 5, Reeves says, "But, uh, and I,
9 and good heavens, I didn't mean to do that. That was
10 just -- I had to say that I've counseled cops for" --

11 "Question: How many rounds did you shoot?"

12 "One. I guess you could say I was scared
13 shitless."

14 So did you question Mr. Reeves, specifically on
15 what he meant by the phrase at the end of that first
16 sentence, "I didn't mean to do that"?

17 A. I didn't ask him specifically that.

18 Q. Okay. Certainly the last part of it that seems
19 to be a continuation of the sentence that he was scared
20 shitless, you talked to Mr. Reeves about that?

21 A. Yes, I did.

22 Q. And was that consistent with his statement to
23 you?

24 A. Yes, it was.

25 Q. Was that also consistent with anything else that

1 you did? For instance, your theater visit, that someone
2 would be scared?

3 MR. MARTIN: Your Honor, I object. That calls
4 for speculation.

5 THE COURT: Sustained.

6 MR. MICHAELS: Well, Judge, I think --

7 MR. MARTIN: Judge, that calls for speculation.
8 If he's trying to equate that with Mr. Reeves or if
9 someone else would be scared, there's too many
10 variables.

11 MR. MICHAELS: Judge, he made an evaluation in
12 this case, and he's going to formulate an opinion
13 about whether the use of force here was justified.
14 Certainly when we talk about whether or not someone
15 is scared, we have to consider certain factors.

16 Obviously we can't cut their brain open and look
17 at the scary part and see if that's been affected,
18 but certainly we can say, Well, he's telling me this,
19 I saw the video, I see this individual coming over on
20 three occasions, and by sitting in the chair and
21 seeing the close proximity I can understand why he's
22 scared.

23 It is the same thing that any investigator would
24 do and certainly an expert in formulating an opinion
25 by putting himself in the place, I think he can

1 explain that and make a determination as to whether
2 or not he used that fear in his formulation of his
3 professional opinion.

4 THE COURT: All right. I will overrule.

5 MR. MICHAELS: Okay.

6 BY MR. MICHAELS:

7 Q. Anything else aside from Mr. Reeves telling you?

8 A. No, just from what Mr. Reeves is telling me and
9 what I see in the video.

10 Q. Okay. And what about being in the theater?

11 A. Being in the theater. I sat in his position. I
12 had the lights down. Mr. Escobar was interacting with me
13 at that point, and I was trying to look at this in an
14 objectively, reasonable way to understand what anybody
15 with his background and experience would feel in that I
16 have many of the same things that Mr. Reeves has; bad
17 back, bad knees, bad elbows --

18 MR. MARTIN: Excuse me, Judge. I'm going to
19 object to this line of questioning and the response.

20 He's saying, "I'm just like Mr. Reeves, so if I
21 was scared, he's scared." I object to that. That's
22 pure speculation. The way he's answering the
23 question is pure speculation.

24 MR. MICHAELS: Judge, again, an expert can base
25 their opinion on not only education, not only

1 provocation but certainly their own personal
2 experience, professional experience as well, so he's
3 just answering the question. I'll move on, but he
4 just answered the question.

5 THE COURT: I'm going to sustain as to that one.
6 Move on.

7 MR. MICHAELS: All right.

8 BY MR. MICHAELS:

9 Q. Now, Mr. Reeves tells you, line 13 of the same
10 page, "As you get older, you find out you're a physical
11 wreck," right?

12 A. That's correct.

13 Q. Did you look at any x-rays or radiology reports?

14 A. I did not.

15 Q. Can you even read those?

16 A. I can not.

17 Q. Did you have any reason to believe Mr. Reeves in
18 that statement?

19 A. I just know that physiologically that when you
20 get older, things don't really work the way it was when
21 you were thirty years old, so, yeah, I have reason to
22 believe that could happen.

23 Q. And as part of that, did you actually delve and
24 look at your own personal experience?

25 A. Yes, I did.

1 Q. Page 6, line 34 -- line 33, I will start there:

2 "Proctor: I hear you. Did, um, your wife
3 where -- where was your wife at?"

4 "Reeves: She was sitting on the right-hand side
5 of -- if she's paying attention, and bless her heart,
6 she's -- you know, there's no justification for what
7 happened in there."

8 And so did you ask Mr. Reeves specifically,
9 about that statement?

10 A. No, I did not.

11 Q. Page 7, line 19.

12 "Reeves: His wife was talking. Whoever was
13 with him was trying to hold him back."

14 Do you see any evidence of that in the video?

15 A. From what Mr. Reeves was saying is the -- really
16 the only thing that I see, that somebody was trying to
17 hold somebody back.

18 Q. What about any physical evidence in terms of
19 autopsy or other medical reports that you received?

20 A. What I did see in the autopsy is that where he
21 was shot in the chest, that Mrs. Oulson was also shot in
22 the hand -- in the left hand would be consistent with her
23 putting her hand up in front of his chest in the bullet
24 path.

25 Q. So, because you saw -- you actually -- did you

1 see photographs of Mrs. Oulson's hand?

2 A. Yes, I did.

3 Q. Line 22 -- page 7, line 25.

4 "I think when I leaned over and asked him to
5 turn his cell phone off, he told me to get the "F" out of
6 his face, so I knew right away that" --

7 What about that? Mr. Reeves is saying that he
8 leaned over and asked Mr. Oulson. Does that -- what Mr.
9 Reeves told you in his interview, is that consistent?

10 A. Yes, it is.

11 Q. Is there anything on the video that would
12 indicate or make you think that that's a true statement?

13 A. Yes, there is.

14 Q. What is it that you observed on the video.

15 A. I see him move forward in his seat three times.
16 I don't know what he's doing at that time, but I see him
17 moving in his seat, and it looks like he appears to go
18 forward.

19 Q. Is that the time period before he goes to the
20 manager?

21 A. That's correct.

22 Q. Page 7, line 34, Reeves says "It was enough for
23 me to try to look for a way out, and my wife was saying
24 when I got up to go tell the manager. He says, 'Why don't
25 we' -- we should have just moved is what we should have

1 done, and she said that after the shooting, I think."

2 Did you ask Mr. Reeves specifically, about that
3 statement?

4 A. I did ask him about that.

5 Q. And what did he tell you?

6 A. He basically told me that at that point he
7 believed that Mr. Oulson was just being mouthy and there
8 wasn't a problem. He was just going to go to the manager
9 and resolve it, come back in, sit down, and enjoy the
10 movie. He thought that was it, so he didn't feel like he
11 really needed to move.

12 Q. Reeves tells Proctor, page 88, that's page 10 as
13 it's printed, line 27:

14 "If I had thought that I wasn't going to get
15 beat up, it would have never happened. I was -- I was
16 pretty confident after being hit one time that he wasn't
17 going to stop."

18 Again, is that consistent with your interview
19 with Mr. Reeves?

20 A. Yes, it is.

21 Q. Did you see anything in the video to back up
22 that statement?

23 A. Yes, I did.

24 Q. What do you see?

25 A. I see in the video that arm appears -- arm and

1 part of the body coming in and that light coming across,
2 and that's when Mr. Reeves said he was hit, at that point
3 in time.

4 Q. Okay. Then do you see a second time an arm
5 coming across?

6 A. In about eleven seconds later I see an arm
7 coming across, and then that's when the popcorn comes out
8 of his hand and then an arm comes back in a third time.

9 Q. Page 10, line 35, Reeves says, "No, you got to
10 know, the lady that was sitting one seat away from me, she
11 should have seen everything."

12 Did you talk to Mr. Reeves about that?

13 A. I didn't really ask him about that.

14 Q. Okay. Now, there had been some suggestion that,
15 you know, Mr. Reeves made this up because he's a law
16 enforcement officer and had time to think.

17 Is there anything in that statement that would,
18 in your opinion, would be indicative of just the opposite?

19 A. He's pretty consistent with what he's saying in
20 his statement and what I talked to him about, and as a law
21 enforcement officer, once he was handcuffed and put in the
22 car, he should have known at that time not to speak to
23 anybody, at that time. That's what he should have done.

24 Q. Does it seem here like he's trying to hopefully
25 get the police to talk to somebody so they could verify

1 what he's telling them?

2 A. Yes. What he told me about talking, he said, "I
3 wanted them to understand what happened," because he says,
4 "I felt like I was the person being assaulted here. I
5 wanted them to understand" --

6 MR. MARTIN: Excuse me, Judge. That's
7 nonresponsive to the question. We're talking about
8 whether or not he was suggesting to the police you go
9 talk to this lady, and all of a sudden we have an
10 answer that's out of the blue that's totally not
11 responsive to that question. I don't know where it
12 came from.

13 The question was about talking -- going and
14 talking to the lady, and then he never responded. I
15 don't know what he's talking about.

16 MR. MICHAELS: He's in the middle of responding
17 and he got cut off, so I'm not sure what the response
18 was going to be.

19 MR. MARTIN: Well, the response would have kept
20 going, was that he was sitting in the car and he
21 shouldn't have spoke and that sort of thing, and it
22 was nothing about going to talk to the lady,
23 because -- not Mr. Knox, Mr. Knox; I apologize --
24 Dr. Hayden has already indicated he didn't talk to
25 him about that.

1 Now he's asking him to speculate what he meant
2 by that, so it's speculation and it's nonresponsive.
3 That's my legal objection.

4 THE COURT: All right.

5 MR. MICHAELS: Part of the problem, there's been
6 a suggestion here that Mr. Reeves fabricated this and
7 has these, quote/unquote, self-serving statements, so
8 since we are going to be talking about those, this is
9 a statement that appears on the face of it --
10 certainly the suggestion of it not to be self-serving
11 at all: Go talk to somebody else, please, because
12 they must have seen it, and everything is going to be
13 all right if you talk to them.

14 THE COURT: Okay. I got that question, and
15 Mr. Martin is right. I don't recall hearing -- all I
16 recall hearing is that he didn't really ask him about
17 that statement, so let's move on.

18 MR. MICHAELS: All right.

19 BY MR. MICHAELS:

20 Q. Now, you didn't ask Mr. Reeves about that
21 statement, but let me ask you: Would you consider such a
22 statement in formulating your opinion in this particular
23 matter?

24 A. The statement you're talking about --

25 Q. That Mr. Reeves made, where he's saying, you

1 know, "You've got to know the lady that was sitting one
2 seat away from me. She should have seen everything."

3 Does that help you determine whether or not
4 Mr. Reeves is being truthful in your interview with him?

5 A. Yes, it does.

6 Q. How is that?

7 A. Because he wants the police to go talk to other
8 people in there. Somebody should have seen what was going
9 on. "They would be able to tell you what I'm saying is
10 truthful."

11 Q. Now, tell us regarding your training what's
12 important if an adversary has a size advantage. Why are
13 you looking at size?

14 A. Well, size -- every police officer is trained to
15 evaluate when they go into a situation. Size is a
16 consideration; is that person a large person or a small
17 person? You know, what is that person doing? You're
18 evaluating everything, and size is one of those things
19 you're going to evaluate.

20 Q. Does that help an individual, a trained police
21 officer make a determination in assessing the potential
22 danger of the individual? Yes or no?

23 A. A police officer is going to do that, yes.

24 Q. Now, in terms of age, again, assessment of
25 danger and of threat, does an age difference play into

1 that sort of assessment, in police training?

2 A. Absolutely.

3 Q. Tell us about that.

4 A. If you're going up against a younger individual
5 and you're an older police officer, you don't have the
6 skills that maybe you had when you were younger.

7 Q. What about this: What if you're a younger
8 police officer and you're going against a
9 seventy-year-old?

10 A. If you're a younger police officer going against
11 a seventy-year-old, you probably have an advantage.

12 Q. Now, let's talk about confined space. You
13 described you went to the theater. You sat in the chair.
14 How does that play into the assessment of what a person is
15 able to do and a trained police officer not able to do in
16 terms of gauging what their -- the proper reaction is?

17 A. Well, when you're sitting in that seat, you're
18 trying to figure out, at that point, is there a way to get
19 out of that seat? Is there a way that you could flee the
20 area and get out of it?

21 I didn't believe that there was any kind of a
22 way that he could have gotten out of that situation as it
23 occurred that fast.

24 Q. You know that, why?

25 A. I was sitting in that position.

1 Q. Could you get out of the seat without coming
2 towards where the threat was coming from?

3 A. I could not.

4 Q. Could you go to the side somehow?

5 A. I could not.

6 Q. Could you go back at all?

7 A. No, I could not.

8 Q. Language, use of language, how does that play
9 into the whole idea of assessing what a threat is and what
10 the proper response of that threat is?

11 A. Police officers are taught from the very
12 beginning: You have to assess a person by everything that
13 you're seeing; the body language, the actual physical
14 language, a person threatening you. What is that person
15 doing? You're assessing all of those things that are
16 going on.

17 Q. What about the idea of, you know, as far as your
18 training and -- both training you received and training
19 you imparted to others, tell us about the idea of time and
20 place. In other words, because this was happening in a
21 movie theater, does that make a difference?

22 A. Yes, it does.

23 Q. Why is that?

24 A. Well, you're dealing in a different environment.
25 It's a darkened area. It's loud noises. There's other

1 people in the theater. You're not able to gather all of
2 the information by visual.

3 Q. What about the idea that this whole behavior is
4 out of place in a movie theater?

5 A. Absolutely. It's not characteristic of what
6 would be happening.

7 Q. What about unexpected movements? For instance,
8 a hypothetical:

9 An individual is sitting in a movie theater,
10 he's a trained police officer, and now all of a sudden
11 somebody in front of him or a little off to his right
12 suddenly jumps up and starts cussing. Should that officer
13 be alarmed and be on alert at that point?

14 A. He better be.

15 Q. And if that individual actually moves over now,
16 does that make the threat even greater?

17 A. Yes, it does.

18 Q. And if that police officer is confined to a
19 small space, again, does that make the threat greater?

20 A. Yes, it does.

21 Q. If that individual on the other side is actually
22 moving over with hands or whatever, does that make the
23 threat greater?

24 A. Yes, it does.

25 Q. Now, let's talk about hands and feet as weapons.

1 Are you aware that hands and fists are
2 weapons -- because it doesn't appear to be any feet
3 involved here; at least there are no allegations of
4 that -- tell me about what your experience is with hands
5 and fists. Have you seen hands and fists used as weapons
6 in your time in the military in Vietnam?

7 A. Yes, I have.

8 Q. What sort of damage could hands and fists cause?

9 A. It can do great bodily harm to you. It can kill
10 somebody.

11 Q. What about cut somebody open?

12 A. Yes.

13 Q. So that they need stitches?

14 A. Yes.

15 Q. What about fracture of the eye socket?

16 A. Yes.

17 Q. What about the little bone around the temple?

18 A. There's several bones in your face that can be
19 broken very easily by being hit.

20 Q. In your experience as a special agent for the
21 FBI and a supervisory special agent, have you also
22 witnessed that in personal experience with injuries,
23 serious injuries and even death caused by hands or fists?

24 A. Yes, I have.

25 Q. Just once or twice?

1 A. Several times.

2 Q. Now, let's talk about objects to the head. Tell
3 us about the FBI policy regarding use of nonlethal force,
4 fists, asps, batons if they're applied to the head and
5 neck area?

6 A. The one thing that's taught when you're doing
7 defensive tactics and you're learning about use of force,
8 deadly force, you have the head -- if you go to the head
9 with any kind of a hard object, it could be your fist, it
10 could be anything else, it's considered deadly force at
11 that point in time.

12 Q. Okay. Now, in this case have you formulated an
13 opinion as to whether or not Curtis Reeves reasonably
14 believed that his actions were necessary on that day in
15 the theater to prevent imminent great bodily harm or
16 death?

17 A. I have.

18 Q. What is your opinion?

19 A. My opinion is that he believed that there was
20 going to be imminent harm or danger to him, great bodily
21 harm or he could be killed, and I believe he honestly
22 believed that, in what his perception was.

23 MR. MICHAELS: May I have a moment, Judge?

24 THE COURT: This would be a good time for a
25 break.

1 MR. MARTIN: That would be good, Judge, because
2 I need to set up my computer and get some technical
3 things done. Can we get 15 minutes?

4 THE COURT: All right. Let's take 15 minutes.

5 Dr. Hayden, you're free to take a break as well,
6 but you can't discuss your testimony with anyone at
7 this point. And here's your copy back. Thank you.
8 I got mine out of my office, of the transcript.
9 Thank you.

10 (Recess taken.)

11 CROSS-EXAMINATION

12 BY MR. MARTIN:

13 Q. Good morning.

14 A. Good morning.

15 Q. During the course of the conversation that you
16 had with Mr. Michaels -- let me start over.

17 What I will try to do, I want to go through
18 certain topics with you. I'm going to jump around a
19 little bit, but what I plan to do is tell you when I
20 change from topic to topic so that you and I can talk
21 about the same thing. Fair enough?

22 A. That's fine.

23 Q. When you say, "You had a conversation with,"
24 we're changing topics and moving on. All right?

25 You had a conversation with Mr. Michaels during

1 direct examination where you indicated that you were going
2 through Mr. Reeves' statement that you saw, at least in
3 your mind, in the video Mr. Oulson engage in certain
4 conduct by turning in his seat or whatever he did. There
5 was a lighted object. Do you remember that conversation?

6 A. That's correct.

7 Q. All right. And you said that that is where
8 Mr. Reeves says he was hit. Do you remember that?

9 A. That's correct.

10 Q. All right. Then you had another conversation
11 with Mr. Michaels dealing with reaching in towards
12 Mr. Reeves. Do you remember that conversation?

13 A. That's correct.

14 Q. All right. Now, Mr. Reeves told you that he
15 believed that he was hit with a fist?

16 A. He said a fist. It could have been a fist. He
17 didn't necessarily know it was a fist or not, but he said
18 it could have been.

19 Q. All right. In fact, from his statement you know
20 that he said that he was hit with such force that he was
21 dazed. Do you remember that in his statement?

22 A. Yes, I do.

23 Q. You'll have to speak up just a little bit.

24 A. I'm not close to -- I could get closer.

25 Q. There you go. I appreciate that.

1 A. Thank you.

2 Q. He also indicated that when he was hit, that his
3 glasses became askewed on his face. I know he didn't use
4 the word "askewed," but they were not knocked off but
5 they've become not adjusted correctly on his face. Do you
6 remember that?

7 A. Yes, I do.

8 Q. All right. You also indicated to Mr. Michaels
9 that you took it upon yourself to discount the patrons'
10 statements because, in your opinion, you believed they
11 were contaminated, not worthy of your consideration,
12 right?

13 A. Not quite in those words, no.

14 Q. All right. You did not factor those into your
15 opinion, correct?

16 A. That's correct.

17 Q. All right. What you relied on, you relied on
18 the statement of Mr. Reeves along with your perceptions of
19 what occurred in the video, correct?

20 A. That's correct.

21 Q. All right. Now, in making a determination as to
22 what information you're going to use in order to form a
23 basis of your opinion, you would want to make sure that
24 that information is accurate, true, and correct?

25 A. That's correct.

1 Q. You know as a law enforcement officer that an
2 individual who is a suspect in a crime that's been taken
3 into custody has the motive to not be quite truthful with
4 the person conducting the interview, right? You've had
5 that occasion?

6 A. It depends on the individual. I can't say.

7 Q. But it does happen, right?

8 A. I'm sure it does.

9 Q. And you have to take into consideration whether,
10 you know, it did or did not happen that an individual
11 who's trying to explain a situation so that he can go home
12 to his wife and children has a motive to either embellish
13 or misdirect the officer in the attempt for that goal, "I
14 want to go home." You have to take that into
15 consideration, don't you?

16 A. I try to take into consideration the facts of
17 the case, what I read, and try to understand it from a
18 reasonable standpoint.

19 Q. That wasn't my question. I appreciate your
20 answer.

21 My question to you was in determining the
22 credibility of the information that you received, you have
23 to take into consideration that a person who is -- who's
24 arrested has a motive to lie, right?

25 A. I take a lot of things into consideration and

1 being not truthful might be one of those things, is he
2 truthful or not, and I don't know.

3 Q. You don't know that?

4 A. I don't know until I go through the facts of the
5 case.

6 Q. Now, Dr. Hayden, you've come in here and you
7 told us that you're an experienced federal agent. You've
8 been to numerous places. Are you telling me that it's
9 your life experience that individuals who have been
10 arrested don't have a motive to lie?

11 A. Not always. I don't know what branch you're
12 looking at, but in my experience some people that come in
13 are very honest with you. Some people are not telling you
14 the truth. Some people are way out in left field
15 someplace.

16 Q. All right. Now, having said that, my question
17 to you in determining the credibility of Mr. Reeves, you
18 had to take into consideration whether or not he was being
19 truthful to you. Based on your life experience some
20 people lie and some people don't when they're in custody,
21 right?

22 A. Yes.

23 Q. All right. And you indicated that you
24 determined the credibility of Mr. Reeves by watching the
25 video and going to Cobb Theater and making a determination

1 of certain facts that he said. We're going to go into the
2 facts, but very generally that's what you did, right?

3 A. Yes.

4 MR. MICHAELS: Objection. That wasn't what the
5 testimony was, Your Honor. That's an improper
6 characterization of the testimony. The testimony
7 was --

8 MR. MARTIN: Excuse me. He just said yes, it
9 was. Now he's trying to explain the answer of his
10 witness?

11 THE COURT: Hold on. One at a time.

12 MR. MICHAELS: Judge, I didn't yell over the
13 prosecutor and I don't expect him to yell over me.

14 MR. MARTIN: But what we have is Mr. Escobar and
15 Mr. Michaels constantly interrupting so that they're
16 teaching their witness what to say. That's been
17 going on for days and days.

18 MR. ESCOBAR: Objection. I will object.

19 THE COURT: Hold it. Stop.

20 MR. MARTIN: He's teaching witnesses.

21 THE COURT: Do you this think this poor young
22 lady is a magician? One at a time, gentlemen. You
23 know the rules.

24 MR. MICHAELS: Thank you, Judge.

25 THE COURT: Mr. Michaels, you start.

1 MR. MICHAELS: I appreciate that.

2 My objection is it is improper characterization
3 of prior testimony. I think that the Court has
4 notes, and my recollection is the prior testimony was
5 not that Dr. Hayden relied solely on the evidence
6 that he saw. He relied on his personal experience.

7 There are a lot of things he relied on to make
8 his determination as to whether Mr. Reeves is telling
9 the truth, not only what he saw in the video, so I
10 think it's improper characterization of what his
11 testimony was.

12 So, you know, if the question is to tell the
13 prosecutor what it is that he considered, if he has
14 any specific questions regarding specific areas of
15 what Mr. -- of what Dr. Hayden used in his
16 examination of the interview that he did with
17 Mr. Reeves, then I think that's fair, but
18 characterizing it as, you know, strictly going by the
19 video, I don't think that is -- that's not accurate.

20 THE COURT: Response?

21 MR. MARTIN: Judge, my question was: You used
22 the content of the video and your experience at Cobb
23 Theater in order to corroborate Mr. Reeves. That's
24 what I said. And he said, "Yes," because that is
25 true, because do you remember the questions: "I sat

1 in the seat. I couldn't get up. I couldn't move to
2 the left or right," and he said, "Yes."

3 THE COURT: All right. I'll overrule. You can
4 redirect if you wish, and I'm taking notes, so go
5 ahead.

6 MR. MICHAELS: I know you are, Judge.

7 THE COURT: Go ahead, Mr. Martin.

8 MR. MARTIN: May I have just a moment, Judge?

9 THE COURT: Uh-huh.

10 BY MR. MARTIN:

11 Q. My question to you, Dr. Hayden, was in
12 determining the credibility of Mr. Reeves you relied on
13 your interpretation of the content of the video and your
14 experience at Cobb Theater when you went in there with
15 Mr. Escobar, correct?

16 A. I said I relied on a lot of things, not only
17 being in the theater but talking to Mr. Reeves, to
18 interacting and looking at the video, a lot of things.

19 Q. Those were two of the things; was it not?

20 A. It was two of the things, yes.

21 Q. Okay. Thank you.

22 Determining the credibility of Mr. Reeves is
23 very important to you as an individual who's going to come
24 in and opine whether or not his conduct was reasonable in
25 our particular circumstances, right?

1 A. Not just what he says but a lot of things,
2 whether it's reasonable or not.

3 Q. I appreciate that, Dr. Hayden. My question to
4 you was in determining the -- determining the credibility
5 of Mr. Reeves is very important to you.

6 A. It's one of the factors.

7 Q. The credibility of Mr. Reeves is very important
8 to you if you're going to rely on his statements to you as
9 one of the bases of formulating your opinion?

10 A. If it was the only thing, it would be very
11 heavy, but if it's not the only thing, then it's not.
12 This is a consideration.

13 Q. I'm going to ask that question one more time.
14 Now, please allow me to do that.

15 MR. MICHAELS: Judge, (indiscernible) asked and
16 answered.

17 MR. MARTIN: No. No. No.

18 THE COURT: Overruled.

19 BY MR. MARTIN:

20 Q. Determining the credibility of Mr. Reeves is
21 very important to you as one of the factors that you're
22 going to use in formulating your opinion; is it not?

23 A. It's a factor, yes.

24 Q. In your discussions with Mr. Michael you
25 indicated that you wanted to sit down and speak about

1 Mr. Reeves and ask him the "why" questions, how he was
2 feeling, his perceptions. Do you remember that line of
3 questioning?

4 A. That's correct. I do.

5 Q. Do you remember the line of questioning when he
6 was going through the statement of Mr. Reeves to law
7 enforcement and what he said to you? He kept asking you:
8 "Is that consistent with what he told you?" Do you
9 remember responding that way?

10 A. I do remember that, yes.

11 Q. The conversation continues between you and
12 Mr. Michaels regarding, "You can't really look into
13 someone's head," and as Mr. Michaels indicated, you can't
14 look at that scary part in the head and determine it was
15 activated. Do you remember that conversation?

16 A. I remember that conversation.

17 Q. And that's true. When someone's telling you
18 what they felt or what they perceived, first of all, you
19 have to take what they say at face value and then try to
20 corroborate it, right?

21 A. You do, yes.

22 Q. But feelings and perceptions very difficult to
23 corroborate; are they not, if not impossible?

24 A. I wouldn't say impossible. They -- you have to
25 look at all of the different factors, and then you would

1 be able to give an opinion on that, yes.

2 Q. As to whether or not someone is afraid?

3 A. Yes.

4 Q. Of what their intent was?

5 A. Yes.

6 Q. What their motive was? You can do that by
7 talking to someone?

8 A. I'm not saying I can do that. I am saying
9 that's a factor that you have to look at in trying to
10 understand fear. If you look at fear, you try to
11 understand why fear occurs and what happens to the
12 individual.

13 Q. I understand that, but we're talking about
14 Mr. Reeves, and your final opinion you said that he
15 honestly believed that it was necessary to shoot Mr.
16 Oulson. I know that's not your exact words, but that's
17 the bottom line of your testimony, right?

18 A. That's correct.

19 Q. All right. And that's what I'm trying to go
20 into is the underlying factors that led you to that
21 conclusion, and what I'm asking you is, or discussing with
22 you is when we talk about someone relating their
23 perceptions as far as feelings and state of mind and
24 emotions. You first have to take their words at face
25 value and then see if there's any facts to back it up,

1 right?

2 A. Well, I don't take their words at face value,
3 but I do try to back it up with other things that might be
4 there.

5 Q. And you don't take it at face value, especially
6 with someone who's been arrested and may have the motive
7 to embellish or lie about what took place in order to
8 achieve a self-serving goal, right?

9 A. I don't know what their emotion -- the emotion
10 is at that time. What I'm trying to do is I'm trying to
11 understand, so I try to look at everything in a reasonable
12 fashion in trying to understand without -- with being
13 objective about it.

14 Q. Did you understand my question? I don't mean to
15 be argumentative --

16 A. I guess I didn't, because I think I'm answering
17 your question.

18 Q. In determining the credibility of information
19 provided by an individual that cannot be corroborated, one
20 of the things that you can look at is verifying whether or
21 not those things that can be corroborated were, in fact,
22 true. That's one way to determine: Are you going to
23 believe what we can't corroborate if he was truthful about
24 other things, right?

25 A. That's part of it, yes.

1 Q. All right. As a very simple example, a suspect
2 says, "I was hit and, therefore, I had to engage in
3 conduct A." Would you determine that that person wasn't
4 hit?

5 You take that into consideration as to whether
6 or not his conduct A, was, in fact, reasonable since he
7 wasn't hit. That's the analysis that you go through,
8 right?

9 A. That's part of the analysis that you go through,
10 trying to look at all the facts and trying to balance it
11 out.

12 Q. But that is one of them?

13 A. That's basically one, yes.

14 Q. And in this particular case if it was shown that
15 a cell phone was not thrown at Mr. Reeves and he was not
16 hit with a cell phone and he was not hit with a fist, your
17 opinion in this case would be different, wouldn't it?

18 A. If it could be factually documented that that
19 did not happen, then my opinion might change. I'd have to
20 look at the rest of the situation.

21 Q. How might it change?

22 A. It depends on everything else that occurred.

23 Q. There would be no escalating of violence, would
24 there?

25 A. I don't know if there would be or not. Just the

1 punch that you're saying is not the only one factor.

2 There are several different factors that you have to look
3 at.

4 Q. But it sure would call it into question, your
5 opinion, wouldn't it?

6 A. What you're looking at is perception. What does
7 he actually believe? So would it affect my opinion?

8 Q. Dr. Hayden, did you understand my question?

9 A. I just -- Mr. Martin, I did understand your
10 question.

11 Q. Well, my question was --

12 THE COURT: One at a time, please.

13 BY MR. MARTIN:

14 Q. My question to you was, in the event that it was
15 shown that Mr. Reeves was not hit with a fist or the cell
16 phone was not thrown, then that would definitely call into
17 question your opinion; yes or no? Then you can explain
18 it, but first yes or no.

19 A. There's -- not everything is an easy yes or no.

20 Q. You can explain it. Yes or no?

21 A. When --

22 MR. MARTIN: Judge, I'm asking the Court to
23 instruct the witness to answer the question. He can
24 explain it all he wants, but I want a simple one-word
25 answer to that question, and I'm entitled to that.

1 He can explain it later.

2 THE COURT: All right. With the ability to
3 explain, you can answer.

4 BY MR. MARTIN:

5 Q. Yes or no?

6 A. Just ask the question again, please.

7 Q. If it was shown that the cell phone was not
8 thrown at Mr. Reeves and he was hit in the head with it to
9 the extent that he was dazed or that he was hit with a
10 fist in his face to the extent that he was dazed, if those
11 things were shown not to happen, it would seriously call
12 into question your opinion in this case; yes or no?

13 A. When you put one word there, I would have to say
14 no.

15 Q. Okay. Why is it "No" when those things no
16 longer exist?

17 A. Because you're saying seriously consider it's a
18 factor because you're looking at the perception of what he
19 believes at that time. Does he believe he got actually
20 hit in the head or not? So it's perception at that time.
21 It might not be exactly what happened, but it's a
22 perception.

23 Q. So you're telling me that perception, getting
24 hit in the head with a fist, if it didn't occur, you could
25 perceive that pain? Is that what you're telling this

1 Court?

2 A. I'm not telling the Court that at all.

3 Q. Well, that's what you said, is it is perception
4 as to whether or not he was hit or not. So you're telling
5 me that you could perceive pain and that's a viable mental
6 state that, "I was hit in the head," justifying shooting
7 somebody?

8 A. I did not say that.

9 Q. You're either hit or you weren't. There's no
10 perception about it, correct?

11 A. Yes, there is a perception. Perception a lot of
12 times depends on what's going on in your mind, what you
13 believe. If you believe you're being attacked, there is
14 people that believe they've been hit. I don't know at
15 that time. I'd have to look at everything else, not just
16 one factor.

17 MR. MARTIN: Defense Exhibit -- is this yours,
18 Madam Clerk up here?

19 THE CLERK: The blue one?

20 BY MR. MARTIN:

21 Q. Defense Exhibit 27, the picture's been passed
22 around. Many people have looked at it.

23 One of the things that you would consider is
24 whether or not there's any injuries about the face of Mr.
25 Reeves consistent with a punch to the face or being hit

1 with a cell phone. That's one thing that you would
2 consider, right?

3 A. If I saw damage, yes, it would be one thing that
4 would be another consideration.

5 Q. And you don't see any damage there, do you?

6 A. I'm not a doctor, but looking at this, I don't
7 see any damage, no.

8 Q. You went through several of these statements of
9 Mr. Reeves and said, "Yes, I looked at the video and I saw
10 that," or, "I didn't see that." Do you remember that line
11 of questioning?

12 A. (No response.)

13 Q. Where you went through with Mr. Michaels?

14 A. Yes.

15 Q. And do you remember the discussion with
16 Mr. Michaels where it was asked whether or not when
17 Mr. Reeves was stretched fully out, he had his left hand
18 extended, there was a discussion about that's what
19 somebody would do if they're trying to ward off an
20 attacker. Do you remember that?

21 A. Yes.

22 Q. And you said you looked at the video?

23 A. That's correct.

24 Q. And you saw that?

25 A. I did not see that.

1 Q. Do you recall Mr. Reeves' statement to law
2 enforcement, he further explained to law enforcement that
3 when he had his hand out, he was either touching the
4 shoulder or the clothes or the chest of Mr. Oulson. Do
5 you remember that in the statement?

6 A. That's correct.

7 Q. You didn't see that in the video, either, did
8 you?

9 A. I did not.

10 Q. Do you recall in his statement to Detective
11 Proctor that he indicated he was fully stretched out and
12 that he shot and, of course, he probably described it in
13 an audio statement -- we don't have the benefit of that --
14 but he shot basically stretched out and, therefore, it had
15 to be an upward trajectory. Do you remember that?

16 A. Yes, I do.

17 Q. He said he indicated he shot while he was fully
18 stretched out. Do you remember that?

19 A. I remember that.

20 Q. You didn't see that in the video, either, did
21 you?

22 A. I did not.

23 Q. You indicated there's a part in the video where
24 you believe that some body part of Mr. Oulson came over
25 the seat and you said you saw a light. Do you remember

1 that?

2 A. That's correct.

3 Q. And you indicated that that's where Mr. Reeves
4 believes he was hit, right?

5 A. That's correct.

6 Q. Some eleven seconds before the shooting I
7 believe was your testimony?

8 A. That's correct.

9 Q. And in looking in that video at that particular
10 time after you see what you said was Mr. Oulson with some
11 type of body part extended over the seat, immediately
12 after that you see Mr. Reeves lean forward towards
13 Mr. Oulson, correct?

14 A. That's correct.

15 Q. You did not see Mr. Reeves in that video grab
16 his face like he'd just been hit with a fast pitch from a
17 baseball, right?

18 A. I didn't see that in that video, no.

19 Q. In fact, when you said you see that light and
20 that's where Mr. Reeves said he was hit, after he leaned
21 forward he then leaned back and settled back into his
22 seat; did he not?

23 A. He moved back into his seat, yes.

24 Q. He didn't get up and go attempt to get any
25 medical attention, right? He didn't stand up at that

1 point?

2 A. At that point in time, I don't believe he wanted
3 to stand up because he thought it would put him in more
4 danger.

5 Q. As you mentioned after looking at that
6 photograph, you didn't see any injuries on his face,
7 right?

8 A. I didn't see any injuries, no.

9 Q. And those are the type of things that the tryer
10 of fact can look at in determining the credibility of
11 Mr. Reeves as far as his statement, correct?

12 A. That's part of the factors, yes.

13 Q. And the reason it's important is because
14 Mr. Reeves is describing conduct that we cannot see in the
15 video, right?

16 A. That's correct.

17 Q. So in order to believe Mr. Reeves' statement
18 about what we cannot see, it would be very helpful for us
19 to believe what we can see; would you not agree?

20 A. That's just a factor. You're putting it all
21 together.

22 Q. Now, we've gone through several items where
23 Mr. Reeves has made a statement to law enforcement about
24 what occurred that we do not see in the video. Do you
25 remember that? We just had that conversation, right?

1 A. That's correct.

2 Q. Some of those statements that we cannot see in
3 the video, and I'm going to point out two of them, all
4 right, that would be a factor in considering whether or
5 not his actions were reasonable, and I'm going to go
6 through the first one and then the second one.

7 The first one is when he said he had his hand
8 out and he was touching Mr. Oulson's chest or shoulder,
9 "And he was virtually on top of me," and he shot him,
10 right? That's what he told law enforcement, right?

11 A. Yes.

12 Q. Well, that's not what happened in the video, was
13 it?

14 A. That's not what happened, no.

15 Q. But that particular statement is very weighty as
16 to the close proximity of Mr. Oulson and what Mr. Oulson
17 was doing and how imminent the threat was, correct?

18 A. So many other things to take into consideration,
19 not just what you see.

20 Q. I'm asking you a specific question, Dr. Hayden.
21 That particular statement to law enforcement about
22 Mr. Reeves being so close that he can reach out his hand
23 and either touch his shoulder or his chest, and he was
24 stretched out and he had to shoot Mr. Oulson in that
25 location, that is some very weighty evidence about whether

1 or not his actions were reasonable because the threat is
2 very imminent if it's in his lap, his shoulder, hand on
3 his shoulder. He's got to shoot while he's straightened
4 out, right?

5 A. No, it isn't.

6 Q. No, it's not?

7 A. That's correct.

8 Q. If you saw that in the video, would we even be
9 in the courtroom here today?

10 A. I don't know what you would do if you brought it
11 in the courtroom or not, but there are so many other
12 factors that you don't want to include in this that are
13 essential that you include.

14 Q. Well, right now I get to ask you questions and
15 you get to answer them. Okay?

16 A. Sure.

17 Q. And if someone else wants to talk to you about
18 them, I'm sure they will, but please answer my questions.

19 MR. MICHAELS: Judge, could you please instruct
20 the prosecutor not to admonish the witness? He's
21 been asking question after question, but it's
22 improper for him to lecture the witness on answering
23 a question or not answering the question.

24 MR. MARTIN: Not when Mr. Hayden has been as
25 nonresponsive that he's been for the last twenty

1 minutes to my question.

2 THE COURT: All right.

3 MR. MICHAELS: That's the Court's job, Your
4 Honor.

5 THE COURT: Let's just move on. I'll do the
6 directing of it. Thank you.

7 BY MR. MARTIN:

8 Q. In fact, Mr. Reeves in that segment about his
9 hand being forward, wanted to so convince Detective
10 Proctor that that was true that he explained, as a police
11 officer, "We never put our hand in front of the muzzle,
12 and I thought I could have shot my hand."

13 Do you remember that?

14 A. I do remember that.

15 Q. Another attempt by Mr. Reeves to get Detective
16 Proctor to believe -- to believe how imminent that threat
17 was, but that's not what we see on the video, is it?

18 A. That's not what you see in the video, no.

19 MR. MARTIN: May I have a moment, Judge?

20 THE COURT: Yes.

21 MR. MARTIN: Thank you for the time, Judge.

22 THE COURT: Uh-huh.

23 MR. MARTIN: I don't have any further questions.

24 THE COURT: Thank you, Mr. Martin.

25 Redirect?

1 MR. MICHAELS: Thank you, Judge.

2 MR. MARTIN: Thank you, Mr. Michaels.

3 REDIRECT EXAMINATION

4 BY MR. MICHAELS:

5 Q. Now, I know the prosecutor talked to you a
6 little bit about what you didn't see. You definitely saw
7 Mr. Oulson coming over the aisle and a lighted object
8 appear to be moving in some fashion, right?

9 A. Yes, sir.

10 MR. MARTIN: Your Honor, I object. That wasn't
11 his testimony during direct. He just saw a lighted
12 object. Otherwise I would have gone into it a lot
13 more if he said anything different.

14 THE COURT: Rephrase.

15 MR. MICHAELS: Okay.

16 BY MR. MICHAELS:

17 Q. One of the things that you saw definitely on
18 that video is Mr. Oulson and what appears to be his hand,
19 arm and body -- right?

20 A. That's correct.

21 Q. -- reaching over his row towards Mr. Reeves?

22 A. That's correct.

23 Q. And there is some appearance of something
24 lighted or a light area in the video coincidentally at
25 that same time?

1 A. That's correct.

2 Q. You saw crime scene photos and you noticed a
3 phone, a hundred percent you saw between Mr. Reeves' feet?

4 A. I did.

5 Q. You are aware of DNA evidence in this case? You
6 got a report to review?

7 A. Yes.

8 Q. And in terms of the outside case of the phone,
9 could the FDLE, could they exclude Mr. Reeves as a
10 possible contributor to DNA on that phone?

11 MR. MARTIN: Your Honor, I object.

12 MR. ESCOBAR: (Indiscernible).

13 MR. MARTIN: No. No. No. No.

14 MR. ESCOBAR: Yes, they have.

15 MR. MARTIN: No, we need to approach.

16 (Sidebar conference was held at the bench.)

17 THE COURT: State, before argument I will let
18 you refresh your memory about the stipulation.

19 MR. MARTIN: The question by Mr. Michaels was
20 after reviewing the DNA report, Mr. Reeves could not
21 be excluded from a particular area on the DNA.

22 That's not what it says. There was one area where
23 it's uninterpretable. That doesn't mean he could be
24 excluded. That means it's uninterpretable.

25 Where we do have the DNA, we have Chad Oulson

1 being included and Mr. Reeves being excluded. So
2 just because it's uninterpretable doesn't mean that
3 he was excluded. So that's why I brought it up.
4 That's not what the stipulation says.

5 MR. MICHAELS: Judge, that's --

6 MR. ESCOBAR: That's exactly what it says. It
7 definitely found a mixture of three individuals.
8 That's without question. That's without question.
9 They found a mixture of DNA by three individuals.
10 They could not exclude anybody from it because it was
11 not interpretable, but that's what they found.

12 It's not like they found, "Oh, you know, it's
13 three individuals --

14 THE COURT: Well --

15 MR. ESCOBAR: No, no. That's different. Look
16 at the screen. No, no. Judge, that's different.
17 Look, let me -- because he had the same problem
18 initially --

19 MR. MARTIN: No, there are two individuals. One
20 is on outterbox and one on the screen. There are two
21 different areas --

22 MR. ESCOBAR: So if you look at -- I'll give you
23 the first paragraph. The first paragraph right here
24 says a P13 black case. Okay. That black case also
25 has a screen, a clear screen. So in the black case

1 they found the mixture, okay, of at least three
2 individuals, not that this is just found, a mixture
3 and they couldn't tell how many individuals. It was
4 a mixture of three individuals, and they couldn't
5 exclude Mr. Reeves because it was not interpretable.

6 Now, if you look -- Mr. Martin, would you please
7 have the courtesy --

8 MR. MARTIN: I didn't say a word.

9 THE COURT: No, no.

10 MR. ESCOBAR: Then if you look at Number 4, you
11 will see that it says Exhibit AP13 screen -- get the
12 phone, so we can see.

13 THE COURT: I got it. I got it. I got it.
14 This is --

15 MR. ESCOBAR: So that was -- and listen, this is
16 the same problem. He'll tell you that when he first
17 read the report, he didn't read it that way when we
18 came back, and I said, "No, look," this is what it
19 says."

20 We drafted the stipulation, so I know the
21 stipulation like the back of my hand.

22 MR. MARTIN: Well, I know it, too, and that's
23 exactly word-for-word from the DNA. It's
24 uninterpretable. That doesn't mean he was not
25 excluded? That's not the way it's reported out, and

1 you can't follow that conclusion.

2 MR. ESCOBAR: Could not be excluded, could not,
3 could not. It's not interpretable.

4 MR. MARTIN: No.

5 THE COURT: All right. I'm the trier of fact
6 here. I get it. We're -- I'm going to allow the
7 question.

8 MR. ESCOBAR: Judge, it's important. So the
9 Court knows, I'm just trying to be -- (indiscernible)
10 three individuals were found, the DNA of three
11 individuals.

12 (End sidebar conference.)

13 BY MR. MICHAELS:

14 Q. So you're able to look at the DNA report
15 provided to you by us, those that were provided to us by
16 the State.

17 A. That's correct.

18 Q. And in terms of the case, what is the long and
19 the short of it? What conclusions did you get, in terms
20 of the outer part of the case, as it relates to Mr.
21 Reeves?

22 A. What I understood --

23 MR. MARTIN: Judge, I'm going to object to that
24 question. How he interpreted the report is not
25 relevant. If he wants to read the report word for

1 word, but his interpretation -- he is not a DNA
2 expert. He hasn't been qualified for that. He
3 doesn't know how to make those interpretations.

4 MR. ESCOBAR: Could we just read the
5 stipulation? It's as simple as that. I don't have a
6 problem with that.

7 THE COURT: You either have to lay a foundation
8 or --

9 MR. MICHAELS: The Court read the stipulation
10 in. In terms of the case, due to the limited nature
11 of the DNA results obtained from the iPhone's black
12 case screen, the data is insufficient for inclusion
13 purposes, but may be suitable for inclusion.

14 I'm sorry. I read it out of order.

15 Number 1: The DNA obtained from the iPhone
16 black case, AP13, black case, demonstrated the
17 presence of a mixture of at least three individuals.
18 Due to the complexity of the mixture obtained from
19 the iPhone black case, Exhibit AP13 case, this data
20 was not interpretable.

21 Paragraph 2: Due to the limited nature of the
22 DNA results obtained from the iPhone's black case
23 screen, Exhibit AP13, screen, this data is
24 insufficient for inclusion purposes and may be
25 suitable for exclusion.

1 Due to the limited nature of the results
2 obtained, Chad Oulson could be neither included nor
3 excluded as a contributor to the iPhone's black case
4 screen.

5 Curtis Reeves, Exhibit AP13 screen, is excluded
6 as a source of the limited DNA source obtained from
7 the iPhone black case screen.

8 BY MR. MICHAELS:

9 Q. Now, there was a phone in the video where we
10 can't see -- you see movement about eleven, twelve seconds
11 later, correct?

12 A. That's, correct?

13 Q. By Mr. Oulson towards Mr. Reeves?

14 A. That's correct.

15 Q. You see Mr. Oulson's hand come out?

16 A. On the second occasion or the first one?

17 Q. The second.

18 A. The second occasion, yes, I do.

19 Q. We are already past the first one. You see the
20 hand go back?

21 A. Yes, I do.

22 Q. The hand come back out?

23 A. That's correct.

24 Q. In between there's popcorn grabbed?

25 A. That's correct.

1 Q. Did Mr. Reeves at any time tell you that
2 Mr. Oulson told him or indicated in any fashion that,
3 "Hey, Mr. Reeves, I'm going to take your popcorn"?

4 A. No.

5 Q. So in terms of perception at that point, what is
6 an individual seated in the seat in that sort of theater
7 and that sort of setting, what sort of perception is
8 reasonable at that point? What are you looking at?

9 MR. MARTIN: Your Honor, I'm going to object at
10 that point as far as his expertise as far as
11 determining that particular question, you know, what
12 is reasonable or not reasonable, sitting in that
13 location.

14 He's already rendered his opinion. He believes
15 Mr. Reeves was honest in his belief that he had to
16 shoot Mr. Oulson. Now, whether or not Mr. -- I
17 apologize -- Dr. Hayden, you know, now we come in and
18 we do this reconstruction that we heard about that's
19 kind of interesting, he can't answer that question.

20 MR. MICHAELS: Judge, I'm going to object to
21 those gratuitous comments, number one. I appreciate
22 that the prosecutor finds it interesting. I only
23 wish that the police found it interesting enough to
24 try it themselves before they even arrested
25 Mr. Reeves, but that's another matter.

1 Nonetheless, Your Honor, I'm just asking what
2 the perspective was in terms of what's reasonable for
3 an individual in that particular environment to
4 perceive. In other words, is that person perceiving
5 that the individual who's been cussing and had come
6 over the aisle before is now going to grab the
7 popcorn, or is it reasonable to perceive it as a
8 threat?

9 THE COURT: I will overrule.

10 BY MR. MICHAELS:

11 Q. Is it reasonable to perceive that motion that we
12 see twelve seconds later after the first throwing motion
13 as a threat?

14 A. Yes, absolutely.

15 Q. And as the hand comes back and goes forward
16 again, would it be reasonable to perceive that particular
17 second motion as a second threat?

18 A. Absolutely.

19 Q. Or a continuing threat?

20 A. Yes.

21 Q. All right. This is Exhibit 27. I know the
22 prosecutor showed it to you. You looked at it.

23 I know you're not a doctor, but do you agree or
24 disagree with me when you look at what would be
25 Mr. Reeves' left eyelid --

1 MR. MARTIN: Judge, I'm going to object. I
2 mean, I don't care about agree or disagree.

3 When you're pointing at something, he's already
4 looked at the picture and said, "I saw nothing."
5 Now, if that's not totally suggesting the answer, I
6 don't know what is. When you point at a red mark and
7 say, "Would you agree or disagree," when he already
8 had an opportunity -- fair opportunity to look at the
9 picture, that's absolutely leading.

10 MR. MICHAELS: Judge, I'm not leading. I'm
11 indicating the area that I want to draw his attention
12 to.

13 THE COURT: All right. I've been sitting
14 here --

15 MR. ESCOBAR: Judge, I don't want to interject,
16 but he said "damage" in the question to Mr. Hayden.
17 He did not say anything. He said "damage," and the
18 use of the word is very important.

19 THE COURT: All right.

20 MR. MICHAELS: At any rate --

21 THE COURT: I'm sure it is.

22 I heard the prior testimony. I get it. I
23 figured this was coming.

24 I think it's absolutely leading to some extent,
25 but then again, I guess you're entitled to direct him

1 to certain areas of the photographs, so...

2 BY MR. MICHAELS:

3 Q. Well, let's look at this photograph, Exhibit 27,
4 okay. Now, look closely. Take your time, please. I know
5 you're not a doctor.

6 Direct first your attention, if you would, to
7 the right eyelid, and then work yourself across the face
8 to what would be Mr. Reeves' left eyelid and your right.
9 Okay?

10 A. Okay.

11 Q. All right. Can you see this all right?

12 A. Yes, I can.

13 Q. All right. Do you see anything that appears to
14 be any redness on either eyelid?

15 A. He said --

16 MR. MARTIN: Give me a break.

17 THE WITNESS: Yes, I do. I see the redness on
18 his left eye.

19 BY MR. MICHAELS:

20 Q. Okay. And would that be consistent with
21 somebody getting hit in the eye?

22 MR. MARTIN: Judge, that calls for speculation.

23 MR. MICHAELS: Well, Judge, the prosecutor asked
24 the question.

25 THE COURT: I will allow it.

1 BY MR. MICHAELS:

2 Q. Is that consistent?

3 A. It would be consistent with him having his eye
4 affected somehow.

5 Q. It would be consistent with having his glasses
6 knocked to the side?

7 A. Yes, it would be.

8 Q. Now, as a special agent in training police
9 officers, are there certain techniques and interrogation
10 techniques on a suspect or a subject that is willing to
11 talk, that you use to try to get information out of?

12 A. Yes.

13 Q. And is that -- are those technique used to try
14 to ferret out the truth the best that you can?

15 A. It's called cognitive interviewing techniques.
16 It is to get to the facts of what actually happened, what
17 he believes happened, not to trip anybody up, to try to
18 get as many facts as you can.

19 Q. And in terms of as a police officer, are you
20 aware that individuals that are arrested have the right,
21 absolutely, not to speak to you?

22 A. Absolutely.

23 MR. MICHAELS: May I have a moment, Judge?

24 THE COURT: Uh-huh.

25 MR. MICHAELS: That's all I have. Thank you.

1 THE COURT: May this witness be released?

2 MR. ESCOBAR: We're going keep him under
3 subpoena but most probably will not have to recall
4 him.

5 THE COURT: All right.

6 MR. MICHAELS: He can go back to Virginia for
7 now.

8 THE COURT: He'll be on standby. Dr. Hayden,
9 you are free to go today. You will still be under
10 subpoena, but hopefully they won't be calling you
11 back. If someone does have to call you back, I'm
12 certain they'll give you plenty of advanced notice.

13 Thank you, sir.

14 THE WITNESS: Thank you very much, Judge.

15 THE COURT: All right. 11:20.

16 MR. ESCOBAR: I think it's early lunch. The
17 last thing I want to do is break up my presentation
18 of Mr. Reeves, so we will have to take lunch sooner
19 or later.

20 THE COURT: I will give you that option. It is
21 a pretty early lunch, but if obviously -- I'm
22 guessing we will not finish Mr. Reeves tomorrow
23 before 12:00.

24 MR. ESCOBAR: I think that's -- especially with
25 me doing the questioning, I would think not.