

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

STATE OF FLORIDA

V.

CURTIS J. REEVES

**Filed in Open Court**

This 15 day of Dec., 2021

Nikki Alvarez-Sowles, Esq., Clerk & Comptroller  
Pasco County, Florida

By: [REDACTED] Deputy Clerk

**STATE'S DAUBERT MOTION TO EXCLUDE  
THE TESTIMONY OF DEFENSE EXPERT DR. ROY BEDARD, PH.D.**

COMES NOW, BRUCE BARTLETT, State Attorney for the Sixth Judicial Circuit in and for Pasco County, Florida, by and through the undersigned Assistant State Attorney, hereby respectfully request this Honorable Court to enter an order excluding the testimony and opinions of Dr. Roy Bedard, Ph.D. (Bedard) and as good cause would show:

**Summary of State's Position**

Generally, the State objects to a use of force expert in a case involving a claim of self-Defense.

In Thompson v. City of Chicago, 472 F.3d 444 (7<sup>th</sup> Cir. 2006) the survivors of suspect who died following his arrest sued city and police officers alleging that the city and the officers, in both their individual and official capacities, had violated suspect's Fourth and Fourteenth Amendment rights when denying him equal protection and due process with the use of excessive force while taking him into custody.

**Holdings:** The Court of Appeals, Coffey, Circuit Judge, held that:

[1] police department's general order regarding use of force was not relevant to the issue of whether police officer violated suspect's Fourth Amendment rights by using excessive force in apprehending him;

[2] any probative value of evidence of police department's general orders concerning the use of force was substantially outweighed by the potential for unfair prejudice for purposes of Illinois

wrongful death claim; and

[3] probative value of testimony by experts regarding whether police officer violated the Fourth Amendment by using excessive force when apprehending suspect was substantially outweighed by the potential for undue prejudice.

...  
"On appeal, the Thompsons argue that the CPD's General Orders were relevant under Federal Rule of Evidence 401, because the Orders would have given the jury an objective criteria with which to judge the officer's action and that the introduction of such evidence actually would have allayed rather than perpetuated jury confusion under Rule 403. We disagree." Id. at 453

...  
"The fact that excessive force is "not capable of precise definition" necessarily means that, while the CPD's General Order may give police administration a framework whereby commanders may evaluate officer conduct and job performance, it sheds no light on what may or may not be considered "objectively reasonable" under the Fourth Amendment given the infinite set of disparate circumstances which officers might encounter. Indeed, the CPD's General Orders state that they are intended merely to "provide members guidance on the reasonableness of a particular response option," when taking a suspect into custody." Id. at 454

...  
"As referred to above, the question of whether a police officer has used excessive force in arresting a suspect is a fact-intensive inquiry turning on the reasonableness of the particular officer's actions in light of the particular facts and circumstances of the situation faced. See, e.g., *DeLuna*, 447 F.3d at 1010. What is reasonable under any particular set of facts is "not capable of precise definition or mechanical application." *Abdullahi*, 423 F.3d at 768. Accordingly, whatever insight Inspector Lukas and Sgt. Campbell might have had into whether or why Officer Hespe used excessive force would have been of little value except as to possibly causing confusion and bore a substantial risk of prejudice. The jury, after having heard all of the evidence presented, was in as good a position as the experts to judge whether the force used by the officers to subdue Thompson was objectively reasonable given the circumstances in this case. Introducing two experts to

testify that Officer Hespe used excessive force would have induced the jurors to substitute their own independent conclusions for that of the experts. In other words, they would have been "induced to decide the case on an improper basis ... rather than on the evidence presented ...," which is precisely why the evidence should have been excluded.<sup>27</sup> *Connelly*, 874 F.2d at 418." Id. at 458

In *State v. Salazar*, 182 Ariz. 604, 610 (1995) the court held "[M]oreover, this issue is generally not a proper subject for expert testimony because 'the question of reasonableness is quintessentially a matter of applying the common sense and the community sense of the jury to a particular set of facts and, thus, it represents a community judgment.'" *Wells v. Smith*, 778 F.Supp. 7, 8 (D.Md.1991). Because jurors are capable of determining whether use of force in self-defense is reasonable, expert testimony bearing on that issue is generally inadmissible."

In *Mitchell v. State*, 965 So.2d. 246, 251 (Fla. 4<sup>th</sup> DCA 2007) the court found "[D]r. Edney's proffered testimony boils down to a statement that, based upon what Mitchell told him, Mitchell reasonably believed that he had to defend himself or be killed. There is nothing in his testimony which concerns a subject beyond the common understanding of the average person. If the jury believed Mitchell, then it would find that he acted in self-defense. Thus, the issue is not one on which expert testimony should be permitted. It merely allowed an expert witness to bolster Mitchell's credibility which is improper. *Acosta v. State*, 798 So.2d 809, 810 (Fla. 4<sup>th</sup> DCA 2001). And it improperly introduces Mitchell's self-serving statements which are otherwise inadmissible hearsay. See *Lott v. State*, 695 So.2d 1239, 1243 (Fla.1997)."

In *State v. Andrews*, 820 So.2d 1016, 1025 (Fla. 4<sup>th</sup> DCA 2002) the court found "[T]he State relied upon State Attorney Barry Krischer's expert testimony that the officer's actions were appropriate, and his use of force was justified. ... Whether Officer MacVane was standing in harm's way and therefore was justified in discharging his firearm in defending himself from the oncoming vehicle was for the jury to determine.<sup>3</sup> This determination could have been made from the testimony of Officer MacVane, Andrews, Tyra Drummer, and the expert's testimony on the physical evidence. There was no basis for the State Attorney to give his opinion on the matter."

## Specifically

- ***Dr. Bedard's testimony and opinions relating to whether the use-of-force was justified impinges on the province of the jury because here, the jury's decision turns on the credibility of the witnesses.***

Salomon v. State, 267 So.3d 25, 31 (Fla. 4<sup>th</sup> DCA 2019) (The experts reviewed witness statements and other evidence in the case, personally interviewed some witnesses, and essentially opined on the issue of whether the use of deadly force was reasonable, and therefore justifiable under the law. ... Whether self-defense applies in a given case is a classic question that jurors are well equipped to handle. Expert opinion inadmissible)

County of Volusia v. Kemp, 764 So.2d 770, 773 (Fla. 5<sup>th</sup> DCA 2000) (Expert opinion inadmissible ... must assist trier of fact in understanding the evidence or in determining a fact in issue. If expert testimony merely relays matters that are within the common understanding of the jury or tells the jury how to decide the case it should not be admitted.)

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

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

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

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

- ***Dr. Bedard's testimony and opinions will not aid or assist the factfinder in understanding or determining a material issue or fact.***

Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579,



113 S.Ct. 2786 (1993) (Relevancy is found where the expert's theory is tied sufficiently to the facts of the case and the expert's testimony assists the trier in resolving a factual dispute.)

Kumho Tire Co., Ltd v. Carmichael, 526 U.S. 137, 156 1195 S. Ct. 1167 (1999) (The trial court had to decide whether this particular expert had sufficient specialized knowledge to assist the jurors "in deciding the particular issues in the case." 4 J. McLaughlin, Weinstein's Federal Evidence ¶ 702.05[1], p. 702-33 (2d ed.1998))

Salomon v. State, 267 So.3d 25, 31 (Fla. 4<sup>th</sup> DCA 2019) (Whether self-defense applies in a given case is a classic question that jurors are well equipped to handle. Expert opinion inadmissible)

County of Volusia v. Kemp, 764 So.2d 770, 773 (Fla. 5<sup>th</sup> DCA 2000) (Expert opinion inadmissible. ... must assist trier of fact in understanding the evidence or in determining a fact in issue. If expert testimony merely relays matters that are within the common understanding of the jury or tells the jury how to decide the case it should not be admitted.)

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

Rule 90.403 (Because Bedard's opinions are based on inadmissible and generally does not aid the jury in deciding a factual dispute, the probative value of his opinions and related testimony is outweighed by danger of unfair prejudice.

- ***Dr. Bedard's testimony and opinions are not beyond the common understanding of the average person.***

Salomon v. State, 267 So.3d 25, 31 (Fla. 4<sup>th</sup> DCA 2019) (Whether self-defense applies in a given case is a classic question that jurors are well equipped to handle.)

Mills v. Redwing Carriers, Inc., 127 So. 2d 453, 456 (Fla. 2d DCA 1961) (Consequently the opinion of an expert should be excluded where the facts testified to are of a kind that do not require any special knowledge or experience in order to form a conclusion or are of such character that they may be

presumed to be within the common experience of all men moving in ordinary walks of life.)

Mitchell v. State, 965 So. 2d 246, 251 (Fla. 4th DCA 2007) (In order to be helpful to the trier of fact, expert testimony must concern a subject which is beyond the common understanding of the average person. Expert testimony should be excluded where the facts testified to are such a nature as not to require any special knowledge or experience in order for the jury to form conclusions from the facts. ... the court correctly excluded "expert" testimony that the defendant could have considered himself under attack at the time of the murder, as the subject was not beyond the jury's common experience.)

County of Volusia v. Kemp, 764 So.2d 770, 773 (Fla. 5th DCA 2000) (Expert opinion inadmissible. ... must assist trier of fact in understanding the evidence or in determining a fact in issue. If expert testimony merely relays matters that are within the common understanding of the jury or tells the jury how to decide the case it should not be admitted.)

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

- ***Dr. Bedard's testimony and opinions is based on facts that are of such nature as not to require any special knowledge or experience for the jury to form its conclusions.***

Salomon v. State, 267 So.3d 25, 31 (Fla. 4th DCA 2019) (Whether self-defense applies in a given case is a classic question that jurors are well equipped to handle.),

Frances v. State, 970 So. 2d 806, 814 (Fla. 2007) (Expert testimony should be excluded when the facts testified to are such nature as not require any special knowledge or experience in order for the jury to form its conclusion.)

V.C. v. State, 63 So. 3d 831, 832-33 (Fla. 3d DCA 2011) (We briefly address V.C.'s first two arguments. Section 90.704, Florida Statutes (2009), provides that an expert may base his or her opinion on facts made known to him or her at or before trial. And although the statute specifically authorizes opinions based on evidence the expert did not personally observe, see *Dorbad \*833 v. State*, 12 So.3d 255, 257 (Fla.

1st DCA 2009), such testimony "should be excluded when the facts testified to are of such nature as not to require any special knowledge or experience in order for the jury to form its conclusions." *Id.* at 258 (quoting *Boyer v. State*, 825 So.2d 418, 419-20 (Fla. 1st DCA 2002)).

- ***Dr. Bedard's testimony and opinions is based on unreliable methodology.***

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

Kumho Tire Co., Ltd v. Carmichael, 526 U.S. 137, 1195 S. Ct. 1167 (1999)

Salomon v. State, 267 So.3d 25, 31-32 (Fla. 4<sup>th</sup> DCA 2019) (The experts reviewed witness statements and other evidence in the case, personally interviewed some witnesses, and essentially opined on the issue of whether the use of deadly force was reasonable, and therefore justifiable under the law. ... The State expert testified his method was he evaluated what the witnesses said. He evaluated the facts of the case. He looks at the perspective of the Defendant, the perspective of the witnesses ... then look at implicit biases ... biases within people ... look at independent witnesses and look at what are the facts. "It is all a part of the totality of the circumstances when we look, and we evaluate what the witnesses are telling us." Method not reliable.)

Kemp v. State, 280 So.3d 81, 89 (Fla. 4<sup>th</sup> DCA 2019) (The expert testified his method was eyeballing the shape of the crash damage on a vehicle to determine if the vehicle that made the impact was breaking. "[Expert's] repeated invocation of the magic words "training and experience" was insufficient, without more to establish the reliability of his opinion under Daubert." )

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

- ***Dr. Bedard's testimony and opinions is based on reasoning and methodology that cannot be properly applied to the facts in***

***issue because his testimony goes to credibility of the witnesses and will not aid the jury in deciding a material fact.***

Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579, 592-93 113 S.Ct. 2786 (1993) (Trial judge is to consider whether the reasoning or methodology properly can be applied to the facts in issue.)

Salomon v. State, 267 So.3d 25, 31 (Fla. 4<sup>th</sup> DCA 2019) (Whether self-defense applies in a given case is a classic question that jurors are well equipped to handle. Expert opinion inadmissible)

County of Volusia v. Kemp, 764 So.2d 770, 773 (Fla. 5<sup>th</sup> DCA 2000) (Expert opinion inadmissible. ... must assist trier of fact in understanding the evidence or in determining a fact in issue. If expert testimony merely relays matters that are within the common understanding of the jury or tells the jury how to decide the case it should not be admitted.)

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

Rule 90.403 (Because Bedard's opinions are based on inadmissible and generally does not aid the jury in deciding a factual dispute, the probative value of his opinions and related testimony is outweighed by danger of unfair prejudice.

- ***Dr. Bedard's testimony and opinions are based solely on the self-serving statements of Mr. Reeves therefore is not admissible to bolster his claim of self-defense.***

Mitchell v. State, 965 So. 2d 246, 251 (Fla. 4<sup>th</sup> DCA 2007) (Expert's proffered opinion testimony boils down to a statement that based upon which Mitchell told him, Mitchell reasonably believed that he had to defend himself or be killed.)

Linn v. Fossum, 946 So.2d 1032, 1033 (Fla. 2007) (Expert on direct examination cannot testify he/she relied on consultations with colleagues or other experts in forming his or her opinion.)

- ***Dr. Bedard's testimony and opinions is simply a conduit for inadmissible evidence.***

Linn v. Fossum, 946 So.2d 1032, 1037-38 (Fla. 2007) ("Florida courts have routinely recognized that an expert's testimony "may not merely be \*1038 used as a conduit for the introduction of the otherwise inadmissible evidence." Erwin v. Todd, 699 So.2d 275, 277 (Fla. 5th DCA 1997); see also Riggins v. Mariner Boat Works, Inc., 545 So.2d 430, 432 (Fla. 2d DCA 1989) (recognizing a line of cases that "prohibits the use of expert testimony merely to serve as a conduit to place otherwise inadmissible evidence before a jury").

- ***Dr. Bedard's testimony regarding the prior consistent statements of the Defendant is not admissible.***

Rodriguez v. State, 609 So.2d 493, 500 (Fla. 1992) ("We take this opportunity to caution trial courts to guard against allowing the jury to hear prior consistent statement which are not properly admissible. Particular care must be taken to avoid such testimony by law enforcement officers.")

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

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

- ***Dr. Bedard's testimony bolster or vouching for the credibility of the Defendant is not admissible.***

Geissler v. State, 90 So.3d 941, 947 (Fla. 2<sup>nd</sup> DCA 2012) (As a general rule, "it is not proper to allow an expert to vouch for the truthfulness or credibility of a witness." Frances v. State, 970 So.2d 806, 814 (Fla.2007) (citing Feller v. State, 637 So.2d 911, 915 (Fla.1994), and State v. Townsend, 635

So.2d 949, 958 (Fla.1994)...( Even if the expert does not comment directly on the child victim's credibility, expert testimony is improper if the juxtaposition of the questions propounded to the expert gives the jury the clear impression that the expert believed that the child victim was telling the truth.)

Salomon v. State, 267 So.3d 25, 31-32 (Fla. 4<sup>th</sup> DCA 2019) (Expert witnesses expressing an opinion whether the use of force was justified in a self-defense case is not proper, because when the jury's decision turns on the credibility of witnesses the expert's testimony impinges on the province of the jury. An opinion under these circumstances turns on an evaluation of the credibility of witnesses, which is up to the jury, not experts.)

- ***Dr. Bedard's testimony regarding training police officers receive is not relevant and would only confuse or mislead the jury. Rule 401, 402 and 403.***

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

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

## **Summary of State's Argument**

Bedard's expert testimony does not assist the trier of fact in understanding the evidence or in determining a fact in issue. His testimony merely relays information that are within the common understanding of the jury or tells the jury how to decide the case.

Legal conclusions are not proper subject matter for an expert.

The methods he used to derive his conclusions or opinions do not meet Daubert standards. The conclusions or opinions are not reliable, based on self-serving statements of Reeves, cannot be applied to the facts of the case, are not beyond the common understanding of the jury, and do not aid the jury in deciding a material issue of fact.

### **Daubert "Gatekeeping" Inquiry**

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

- That the expert's opinion will assist the trier of fact through specialized expertise to determine a fact in issue.
- The expert is qualified to testify competently regarding the matters he/she intends to address.
- The expert may only testify about matters within the scope of his expertise.
- The opinion is based on sufficient facts and data.
- The opinion is a product of reliable principles and methods.
- The expert is reliably applying those principles and methods to the facts of the case.

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

### **Factual History**

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

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

At the Defendant's immunity hearing on February 20, 2017, the

Defendant claimed self-defense pursuant to FSS 776.012.

On May 26, 2021 Dr. Roy Bedard, Ph.D. was listed by the defense as their second use of force expert. Dr. Bedard did not write a report. On October 12 and November 19, 2021, the State deposed Dr. Bedard.

## **Factual Summary**

The facts viewed in light most favorable to the State are as follows: The Defendant and Chad Oulson were with their respective wives. The Defendant and his wife were seated in the middle of the last row and the Oulson's seated directly in front of the Reeves in the middle of the next to last row. The previews were playing, the theater light was at mid-level and the request to not use one's cellphone had been played on the screen. The light from the screen of Oulson's cellphone was visible to the Defendant. The Defendant took exception to Oulson looking at the screen of his cellphone, had verbal contact with Oulson on several occasions after which he left the theater to complain to the manager. The Defendant returned to the theater and while walking to his seat made a comment to Oulson. Oulson's responded to the Defendant's comment using profanity. After returning to his seat the Defendant took a bag of popcorn from his wife and placed it on his thigh. The Defendant contacted Oulson and again had verbal interaction. Very shortly thereafter, Oulson stood up, leaned over his seat, grabbed the popcorn bag from the Defendant's thigh and tossed the popcorn bag towards the Defendant. After tossing the popcorn bag, Oulson retreats to his side of the seat as the Defendant draws a pistol from his pants pocket and fires one shot, striking Nicole Oulson in the left hand and Oulson in the upper chest. Three eyewitnesses hear the Defendant say, contemporaneous with the shooting words to the affect "throw popcorn in my face will ya".

Based on the testimony and evidence presented by the defense at the immunity hearing the State expects the defense would add the following facts: After the Defendant returned from complaining to the manager the Defendant and Oulson exchanged words, which included profanity by Oulson. Shortly thereafter Oulson threw his cellphone at the Defendant or hit him with the cellphone on the left temple, which left him dazed. Oulson then leaned over his seat in a threatening manner, yelling profanities. The Defendant perceived that Oulson's wife is trying to hold him back. Oulson continued to use profanity towards the Defendant and hit him in the face with his fist, skewing his eyeglasses on his face. The Defendant believing, he had nowhere to go, shot Oulson while Oulson



was leaned over the seatback, almost in the Defendant's lap. [The Defendant stated post-Miranda the trajectory of the bullet should be upward.]

The State anticipates the defense will call their second use of force expert at trial.

Dr. Bedard is prepared to offer the jury his interpretation of the video, using the "null hypothesis" test that he modified his analysis of various factual segment of this case, using the self-report method to appraise coping his analysis how Reeves' knowledge of his self-efficacy influenced his decision making at the time of the incident, how the exposure to stress creates "artifacts" that may influence performance, how threat assessment and human factors associated with the general topic of situational awareness may influence various physical and cognitive functions, the force matrix or force continuum used as a teaching tool for law enforcement is applicable and will aid the jury in determining "objective reasonableness" and that the Defendant was justified in the shooting of Chad Oulson. See, Exhibit #1, attached. (Deposition Transcript dated October 12, 2021 cited as Depo 1, Pg. \_\_\_\_ Ln. \_\_\_\_ ) Exhibit #2, attached. (Deposition Transcript dated November 19, 2021 cited as Depo 2, Pg. \_\_\_\_ Ln. \_\_\_\_ )

The trial in the above-styled cause is scheduled to begin on February 7, 2022.

The State reasonable anticipates the Defendant will continue to claim self-defense and will call Dr. Phillip Hayden, Ph.D. as a use of force expert at trial. The State reasonable anticipates the Defendant will call at trial Dr. Roy Bedard, Ph.D. as their second use of force. There is a pending Daubert motion seeking to exclude the testimony of Dr. Phillip Hayden, Ph.D.

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

1. A person is justified in using deadly force if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another.
2. In deciding whether defendant was justified in the use of deadly force, you must judge him by the circumstances by which he was surrounded at the time the force was used. The danger facing the defendant need not be actual; however, to justify the use of deadly force, the appearance

of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoid only through the use of that force. Based upon appearances, the defendant must have actually believed that the danger was real.

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

The major facts that are in dispute are:

- Was Reeves hit with a blunt object or fist in the face by Oulson before Oulson reached from the popcorn bag on the Reeves' lap, grabbing the bag and then tossing it on Reeves.
- Was Mrs. Oulson holding Oulson back when he (Oulson) was shot.
- Did Reeves shoot Oulson in retaliation for tossing a bag of popcorn on him, evidence by witnesses hearing Reeves say contemporaneous with the shooting words to the effect "Throw popcorn on me..."

**The State specifically objects to Bedard's testimony in the below areas.**

## **VIDEO**

During his depositions Mr. Bedard stated, if asked his potential testimony at trial would include his interpretation of the video as the basis for various conclusions and opinions.

### **Interpretation of the content of the video.**

The State objects to all interpretation of the content of the Video by Mr. Bedard. See examples below:

Able to see arm grab popcorn, toss it back ... Depo 1 Pg. 66, Ln 1-5, Pg. 67, Ln 1-24

Mr. and Mrs. Reeves walking in taking their seats. Depo 1 Pgs. 69-70

Mr. Reeves' hand comes up as he is shooting. Depo 1 Pg. 88, Ln. 5-18

The grabbing and tossing of the popcorn bag. Depo 1 Pg. 102, Ln. 7-18

Mr. Oulson is leaning over the seat. Depo 2 Pg. 58, Ln. 19-25, Pg. 59, Ln. 1-25. Depo 2 Pg. 61 Ln. 21-25, Depo 2 Pg. 62 1-25

No adjusting of his (Reeves) eyeglasses. Depo 2. Pg. 62, Ln. 1-16

Reeves adjusting his eyeglasses have shooting. Depo 2. Pg. 63, Ln. 20-25, Pg. 64, Ln. 1-9  
Spatial relationship between Reeves and Oulson. Video shows movement similar to a "counter-punch" by Oulson. Depo 1. Pg. 84, Ln. 6-25.

Able to see in video at the time of the shooting he (Oulson) was within ... estimate three feet ... supported with stippling ... found Oulson's wrist. Depo 1. Pg. 85, Ln. 1-5

The above testimony impinges on the province of the jury, is inadmissible interpretation of the content of a video and serves only as a conduit for inadmissible evidence.

### **Interpretation Of The Video As Support For His Conclusions Regarding Specific "Points of Interest"**

The State objects to all interpretation of the content of the Video by Mr. Bedard. See examples below:

All conclusions and opinions regarding major points of interest are based solely or in part by his interpretation of the video.

#### **Major Point of Interest**

##### **Point #1**

Whether Reeves was hit with an object prior to Oulson tossing popcorn at him.

##### **Point #2**

The spital relationship between Reeves and Oulson contemporaneous with the shooting.

**Point #3**

The number of attacks Reeves sustained prior to the shooting.

**Point #4**

Mrs. Oulson holding Oulson back at the time of the shooting?

**Point #5**

Was Oulson leaning or standing over Reeves when he (Oulson) was shot?

**Point #6**

Did Reeves utter words to the effect "Throw popcorn on me..." contemporaneous with the shooting of Oulson?

The above testimony impinges on the province of the jury, is inadmissible interpretation of the content of a video.

**Determination by using the "slider" on his video viewing application there are frames missing from the video.**

State and defense video experts have identified the frames missing from the video.

Admits the equipment he is using stop the video is crude.  
Depo 2 Pg. 60 Ln. 17-20

Missing frames. Depo 1 Pg. 64, Ln. 13-18

Missing frames. Depo 1 Pg. 65, Ln. 5-25

Missing frames. Depo 1 Pg. 68, Ln. 1-25

The above testimony is outside the scope of his expertise.

**Compares Defendant's Statement To Law Enforcement With What Defendant Told Him (Prior Consistent Statement)**

The State objects to all interpretation of the content of the Video by Mr. Bedard. See examples below:

His interpretation of the video would be most consistent with what story Reeves has been telling. Depo 2 Pg. 64, Ln. 5-9

The above testimony fails to meet the Daubert standard for admissibility, is based on unreliable reasoning or methodology, the reasoning or methodology cannot be properly applied to the facts in dispute, is based on self-serving statements of the Defendant, constitutes inadmissible prior consistent statement testimony used to bolster the credibility of the Defendant and serves only as a conduit for inadmissible evidence.

### **Interpretation As To What He Does Not See On Video**

The State objects to all interpretation of the content of the Video by Mr. Bedard. See examples below:

I learned that there's a lot we can't see, so it's hard to validate what Mr. Reeves says or invalidate what he says. Depo 1 Pg. 10, Ln 12-12.

Oulson standing up then striking Reeves with something, perhaps a fist with a phone in it. ... We can't see any of that, ... Depo 1 Pg. 64, Ln 19-20 through Pg. 65, Ln. 1-2

At the immunity hearing Reeves identifies the video segment where he his first hit. Not able to see Oulson's relationship to Defendant. Depo 1 Pg. 68, Ln. 1-10

### **8 second gap in video before toss of popcorn and shooting**

A I don't think so. I would have, again, some of what's missing is the initial attack that Mr. Reeves describes. That would have been a point of interest, it's still a point of interest, but it seems to be not captured. It seems to have happened with within that almost that eight seconds of missing video between where I can see Mr. Reeves kind of lean forward and motion to his right, which is where Mr. Oulson is sitting. Don't know what he says, don't know if they're even talking at that point, but I can see that, and then there's eight seconds missing, and then Mr. Olsen's clearly there cause he grabs the popcorn, holds it and throws it out, so that's a point of interest that I looked for, wasn't able to find, at first I thought, perhaps, there were more camera angles, I guess we're lucky to have this one, I understand it's the only theater that had a camera in it besides the food area, but it didn't do much for me establishing the antecedent to the use of force we can see. Depo 1, Pg. 89, Ln. 4-25. Additional cites Pg. 107, Ln 21-25, Pg. 108, Ln 1-3, Depo 2 Pg. 60, Ln. 1-25, Depo 2 Pg. 62 Ln. 4-9, Depo 2 Pg. 63, Ln. 1-25

The above-testimony impinges on the province of the jury, will not aid or assist the fact finder, fails to meet the Daubert standard for admissibility, is based on unreliable reasoning or methodology, the reasoning or methodology cannot be properly applied to the facts in dispute, is based on self-serving statements of the Defendant, constitutes inadmissible prior consistent statement testimony used to bolster the credibility of the Defendant and serves only as a conduit for inadmissible evidence.

The above testimony reads like a closing argument complete with all the inferences, assumptions, and speculation an attorney can argue before the jury.

The above testimony fails to meet the Daubert standard for admissibility, will not aid or assist the fact finder, is not relevant, would only confuse or mislead the jury and serves only as a conduit for inadmissible evidence.

## METHODS

During his depositions Mr. Bedard stated the method he used to formulate all his opinions and conclusion based on his assessment of reviewed material was the "Null Hypothesis".

To assess coping based on Reeves self-efficacy he had Reeves reconstruct his stressful encounter with Oulson and describe what he thought, felt, and did. Although this method comes with its faults, it is one method used in research about appraisal, stress and emotion, and coping. Lazarus & Folkman, *Stress, Appraisal, and Coping* 321 (1984). However, as discussed below in the topic **DECISION MAKING**, the father of naturalistic decision-making, Gary Klein does not describe his research as classic science and candidly admits he cannot verify his test data, calling into question the reliability of his results.

For reasons set forth below both methods, as applied in this case fail to meet the Daubert standard for admissibility.

### The Null Hypothesis Test

Description of how he conducted his analysis to determine various point of interest. Depo 1. Pgs. 75-83

Description of how he conducts all of his analysis. It's sort of a **scientific method**. You're trying to falsify what people are telling you. Depo 2. Pg. 65, Ln 23-25, Pg. 66, Ln 1

List of all material he reviewed, considered, and applied to the null hypothesis:

- Police reports (reports, witness interviews, Reeves's interview Depo 1. Pg. 57
- Immunity hearing transcripts, video segments and still frames Depo 1. Pg. 60

In the below testimony he specifically describes the **scientific method** he used to arrive at all his opinions and conclusions. Depo 2. Pgs. 66-68.

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Q. You made a statement, and I just want to follow-up on it because I guess I may have to talk about this later. I don't know. You mention scientifically must try to falsify what a person told you. What does that mean?

A. So scientific method -- you know, and I think it helps having had gone to graduate school because it helps me understand this a little bit better. But I think the same rules apply, as a matter of fact I know they apply, when you're doing any type of forensic evaluation, or for that matter even an investigation. And what you're constantly trying to do is decide that something is, in the words of the law, beyond a reasonable doubt. And that is exactly the same standard that science uses, it tries to conclude things beyond a reasonable doubt. And when you conclude things beyond a reasonable doubt it is because you have been able to eliminate other possibilities. And the only way you can eliminate other

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possibilities is you do that through falsification. You take a look at what's being offered and then you try to figure out if your hypothesis has another explanation. And so you come up with a variety of different conflications perhaps that have caused this effect, and then you one by one you eliminate them. You falsify them. So that the only possible reason that this is happening when we show correlation, and this is how, you know, SPFS and other types of statistical programs work, the only possible conclusion from the study is that the dependent variable is being affected by this identified

independent theory. And so in science of course that's the whole process. But in social studies, for example, things like by police investigations, we should be applying that same standard, which means that if somebody tells you something it may not be true and you should not assign credibility of how you feel about it or what you think about that person, but rather what you are able to determine through falsification. And if you can't falsify the statement then it's assumed to be true. If you can't falsify the evidence it's assumed to be related. Things like that. So that's kind of what I mean when I talk

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about falsification. Or when you look at a case like this you're not able to, or we are not able to falsify. There's nothing to suggest that Mr. Reeves isn't telling the truth. And I would look for that. If he claimed something and all of a sudden we found out, well okay, well the evidence shows that couldn't be the forensic evidence. That could be for one of two reasons. One, because of, what I know you spoke with Knox about. And we didn't spend a whole lot of time talking about it. Could be perceptual distortion. Somebody made us feel something that isn't quite accurate because of stress related issues. Or generally it could be a lie, absolute. So I think that has to be taken into consideration. But in this particular case I find nothing that Reeves has said to be demonstrably untrue, with the exception of perhaps being suspect of him giving self-serving statements, I find nothing to be demonstrably untrue. And I think to the original point, if I can circle around now and kind of conclude what I'm saying. When you talk about redness to the eye, that suggested he's telling us the truth, that there's something that made contact with his eye.

Q Okay.

In the below testimony he acknowledged the "scientific method" is known as the **null hypothesis**. Below is the discussion the State had with Bedard regarding his application of the **null hypothesis** to the facts of this case and how said application allowed him to arrive at the various opinions and conclusions. Depo 2. Pgs. 69-73



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Q And where are you getting this method that -- what's this method called? Is it a method or something you made up or what? A No, no. Scientific method, I mean, is very well known.

Q What is it?

A It's in the literature. I just explained it to you.

Q Okay. What's the name of it?

A The Scientific method.

Q Yeah. What's the name of it?

A That's what it's called.

Q Scientific method?

A Yeah. Yes. Who's on first. That's what it's called. And if you want to be more specific to really sort of get in the, I guess the crevice of the Scientific method, it would be the process of falsification. That's what that's known as. But mostly what I spoke to. I mean, there are other methods when you're doing science. But it is the Scientific method.

Q Is it also known as the null hypothesis?

A Yes, the **null hypothesis**.

Q Why can't we just say that? You make me pull

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it out of you. Come on now.

A Well the null hypothesis is part of the Scientific method.

Q All right. And is that, in fact, what you're using here, what you just described, is the null hypothesis?

A I mean, in a general way. **Again, this was not a scientific study. I mean, this is just basically using the same logical sequencing that you would if you were doing scientific study. If you could actually have some controls and, you know, manipulate variables you would use the same process.** That's kind of how my brain works. So, it's natural for me that when I get something I'm skeptical. I'm automatically skeptical. I think that's the nature of any scientist is skepticism. So, my first question is how do I eliminate what's being told to me. How do I show that that's false? And if I can't show that it's false then I deem it to be true.

Q And that's the Scientific method known as the null hypothesis, correct?

A Well the null hypothesis would be the area of falsification. So yes, the assumption that a hypothesis

is not true, that's the null hypothesis, is

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where we begin. And then we go about conducting our experiment to disprove the null hypothesis. And that's essentially what we're doing, is everybody doing things in reverse. This is exactly the opposite of what's called confirmation bias. And confirmation bias is the idea that we're basically looking for facts included to support an opinion that we already hold. We're not, in the language of bias, we're not following the clues to a conclusion. We have the conclusion, now we're just collective to support it. And I deal with that all the time in cases where people -- especially law enforcement officers. I have a case right now that that's one of the things that I've written into my report, that there seems to be a lot of confirmation by associated with the investigation. So, we know it happens a lot. There's a lot of literature on that warning law enforcement officers, because we all have biases. Many times, we don't even know we have them. I think implicit biases is the catch phrase that everyone is using today to sort of reflect on the idea that our brains work in a certain way that we may not be consciously aware of. And that we are supposed to be paying attention to these biases. And so, the best way to prevent confirmation

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bias is by using a null hypothesis, to assume that what you're being told or what you're seeing or what you're observing, in the words of science, is not true. And now let's go about figuring out if we can falsify the belief that it's not true. Because if we can falsify the belief that it's not true then it turns out it is true.

Q Okay. See if you agree with this example, okay?

A Okay.

Q Back centuries ago the general accepted fact was the Earth was flat. In order to convince people of that time that the World was not flat, there was an alternative theory that the Earth was in fact round. Using the null hypothesis, your accepted fact back then would be that the World is flat. The alternative hypothesis would be that the Earth is round. Someone then set sail and circumvented the World and came back and was able to present objective data, I circumvented the World, I

didn't fall off, therefore, proving the accepted fact was false. Therefore, you accept the alternative hypothesis. Now people, because of that, believe the World is round. Is that the proper use of the null hypothesis?

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A Yes.

Q Okay. And is that what you're doing here when you're conducting your analysis to determine whether or not specific events actually occurred? You're postulating an accepted fact, stating alternative, and then looking for data that proves your accepted fact is, in fact, false so that your alternative data will be accepted. Is that what you're doing here?

A That's generally a description of the Scientific method. Again--

Q Is that what you're doing here in the Reeves case?

A That's what I always do. I try to have some sort of evidence to show that whatever -- the story is on both sides, by the way, because there's always two different sides to these stories. Um, whatever I'm being told is not true and I have to then falsify that. And if I can't do it then I have to accept it as true.

The null hypothesis results in the **probability or likelihood** that there is a significant correlation such that one would accept one hypothesis over another. Depo 2. Pg. 74, Ln. 10-14

The data Bedard used to test a hypothesis (Example: Reeves was hit in the face with Oulson's cell phone before Oulson tossed the popcorn on him) or an alternative hypothesis (Example: Reeves was **NOT** hit in the face with Oulson's cell phone before Oulson tossed the popcorn on him) included police reports and witnesses' statements. Depo 2. Pg. 75, Ln. 1-4. And used the video, which was very helpful. Depo 2. Pg. 76, Ln 1-4

Bedard's use of the null hypothesis in this case involved an observational study, not empirical testing. Depo 2. Pg. 75, Ln. 13-19

Below is Bedard's description how he used the **null hypothesis** to arrive at all of his conclusions and opinions in the Reeves case. Depo 2. Pgs. 75-84

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A Well, I told you. So particularly in the Reeves case -- first of all, let me just get clear on one thing. I mean, you mentioned an experimental analysis. You have somebody board a ship and go around the World. That was an experiment to see where they ended up.

Q Yes.

A Understand the Reeves case is a single trial. You can't repeat it, right. So we have to deal with what's called observational studies. Observational studies are a little bit different than empirical testing, which is kind of how you summed up the Scientific method. And you're not wrong, it's just not complete. So, in any kind of case like this for-- and certainly it's captured on video, and I like it when it's captured on video. Other times I'm basically just dealing with eyewitness statements, which you know are terribly unreliable. And, um, you know, conclusions perhaps that the police department has

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made and things like that. It's just more challenging. But when you have the video it's very very helpful so that you at least know generally what has happened. So, when I look at the Reeves case, I'm not able to experiment to see whether or not it's true or not, but I am able to apply observational studies. So, Reeves said he's attacked by Mr. Oulson. So, let's assume that's not true, that Reeves is lying to us. Well, I would go about looking at the video and I would see a person that's standing in front of Reeves. I would read the witness statements, who all-- and I say all and I don't mean every person in the theater, but I sent you a list of them, who see him standing up and facing the opposite direction. I hear the report from Reeves that this is over a point of conflict, over the cellphone being lit up and him going to the manager. All of that corroborates. This is a guy who's upset, comes out of his seat, he turns around and he's now facing Reeves. All that corroborates Reeves' statement. I can't falsify that Reeves is not under attack. I'm not able to do that. On the contrary, if we don't have the video there it's a little bit harder because maybe Reeves is telling us a lie.

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So, then I would look at things like, well okay, this guy is shot in the chest. Alright, how can that happen. Well, it can only happen if they're facing each other. And all the witnesses say that Reeves never gets up. So, then I would draw the conclusion that he's facing Reeves, even though I can't see it on the video, which I can't. So that corroborates that evidence as well. So, here's what we know. Reeves is being attacked by Oulson. This is a self-defense case. That's how I concluded this. This is a self-defense case. I just don't think any reasonable person won't think it's self-defense. But there's a second part to this, and that's whether or not the response was reasonable. And of course, that's an ultimate opinion that I don't plan to offer. That's up for the jury to decide whether or not shooting somebody who is attacking you is appropriate. I mean, as that was the Rittenhouse case, and not to bring that in, but we're seeing people think strange things about this. One of the prosecutors there is saying basically you're supposed to take a beating. He has said that. It's unbelievable to me. That said, I now have to determine whether or not the use of force is accepted, whether or not it's

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appropriate or reasonable, objective reasonable as I understand the term, not in a courtroom setting but in a police training setting as you presented it to me from FDLE's own book. So, I turned to the models. I turned to the force continuum. I turned to threat analysis, what we talked about last time that you and I, I guess got hung up on the construct of situational awareness. And I take a look at whether or not those things in a given environment, inserting all of the facts that we know about Reeves about his self-efficacy. He's an old man. He's eaten up with arthritis. He is severely overweight. He is sitting in a movie theater with his back against the wall. It's very poor lighting. He has his wife who is sitting next to him, which I'm sure he feels he needs to protect her as well. Who is being confronted by, who he perceives is a much younger man. I think he said 35 to 40. Who is six foot four, who is standing in front of a lit screen silhouetted. He can't make a lot of detail out. He tells me this when I talk to him, by the way. He

can't make a lot of detail out. Somebody gets hit in the face and knocks his glasses sideways. His self-efficacy is now even further deteriorated because now he doesn't have clarity of vision. Not only is he

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an old man who has difficulty getting out the chair, because he said he tries to do that, but he can't even push himself out of the chair that quickly. Not only is he an old man with arthritis, with a bad back who can't push himself out of the chair who is severely overweight, now he can't see. He gets hit in the face with something and immediately he sees the individual coming back towards him. Now, you have to question motivation. You and I talked about ability, opportunity, and jeopardy. What a reasonable person thinks that someone who stood up in a movie theater to confront an old man physically was motivated to do great harm. And I think a reasonable person would think that probably the best way to predict the future, which is what this is all about, anticipating what comes next, is to look at the past. And the past is completely unreasonable. It's unreasonable for any person to do that. No person would think that it's okay to settle a score in a movie theater, certainly when you are the cause of the problem with your cellphone on. So, I think a reasonable person would then believe bad things are going to continue to happen because they are happening. He fires a shot, according to what he says, and I have no reason to

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dispute it, I wish the video captured it, the second time that Mr. Oulson reaches for him. The first time he gets hit in the face he thinks he's punched or hit with a cellphone, but he doesn't know what. Now that arm comes back out. The video picks it up. And that's where we're invited to see what happened on video. The second time that arm comes back he grabs the popcorn. All Reeves can see is he's still coming after me. He decides, I'm in great danger, reaches for his firearm. He's got about two hundred milliseconds to cancel that. He gets hit in the face with the popcorn. He tells me he doesn't know it's even popcorn, he just knows he's under attack and he fires the shot. Does he believe that he is in imminent danger of death or great bodily harm, I think from a

reasonable perspective if I were judging a police officer in this case with the same facts and circumstances, I would conclude internally, if I were an internal affairs investigator, this was a reasonable shot. It's not a police officer on duty but I use the same standards. If you look at the subject factors between the two of them, the circumstances, the motivation that we are aware of, things that I

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can't falsify, things that I'm not able to say Oulson did not do those things that Reeves said that he did, then maybe my opinions change. But I think the very best witness to this is Reeves, and there's no reason to not believe him. There's been no evidence to not believe Reeves. The only reason we're not believing Reeves is because we think that he's self-serving in his statements, and of course he is, especially if he did it right. If he did it right it would be self-serving for him to tell the truth. So that kind of is where my opinion leans is that as I apply the Scientific method, as I refer to it, I'm not able to say what Reeves said didn't happen. And I have worked many cases where individuals have said things that have happened and there is no corroboration, and there often times is even contrary evidence. This is not one of those cases.

Q And that's based on your interpretation of the evidence that you just described on the record, correct?

A Well all of my opinions are based on that.

Q All your opinions are based on what, your interpretation of the evidence?

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Well, my conclusions looking at the evidence. Call it interpretation if you will. I think at some level they are my conclusions based on looking at the evidence, based on what I actually know.

Q Okay.

A I know that Reeves said he was hit in the face by something. I know that. I can't say that he wasn't hit in the face by something. And, by the way, there's a great corroboration. There's a cellphone laying at his feet. He claims to have seen a flash of the screen. Who doesn't really get better corroboration than that when it's laying at his feet?

Q Well Mr. Oulson was holding the phone when he was shot. When he got shot he released the phone and it fell at his feet. That's an alternative explanation, isn't it?

A But why would Reeves say that in the back of a patrol car. He doesn't know that.

Q But is that an alternate explanation?

A I don't think it's a reasonably alternate explanation because of the timing that Reeves describes.

Q Mr. Oulson is holding his phone. He's shot in the chest. He drops his phone at the feet. When you get shot in the chest, would you not agree, that

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it would be reasonable for you to drop whatever you had in your hand?

A I don't know. I've never been shot in the chest. I really wouldn't know that.

Q Oh, come on now, Mr. Bedard. You've laid out your conclusions for the last five minutes regarding how you believe Mr. Reeves. Why can't you answer that question for me?

A If you take a look at a case, I'm looking working on now in Los Angeles on Tony McBride who shoots a guy holding a knife in his hand six times, he dies with the knife in his hand. He doesn't drop it. I mean, I don't really know how to predict what somebody will do when they're shot. And he takes a couple in the chest I might add. They were pretty similar in that respect. He dies with the knife clutched in his hand. It was not for certain. And again, I think you're drawing conclusions based on no evidence at all. But I do have evidence that there's a phone laying at Mr. Reeves' feet that is consistent with his story of being hit in the face by the cellphone.

Q Is it also consistent with it being dropped by someone who is shot?

A Well nobody says that.

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I'm just asking is that also consistent. I didn't say anyone said that.

A Okay. Yeah. Could it have happened, the probability is much lower.

Q Alright, and why do you say the probability is much lower?



**A Because it's inconsistent with the story that Reeves tells.**

Bedard high-jacked a scientific method known as "null hypothesis" used in empirical studies, modified the data component by substituting subjective data for objective data and attempts to apply the test in a non-scientific manner where there are no controls, the test is not repeatable, and where this is no known error rate. The application of the method in a social science arena where the only data available for consideration is self-serving, subject of individualized interpretation, speculation, inferences, and assumptions does not meet Daubert standards for admissibility in a criminal trial. The results of his analysis using this method is nothing more than his own personal lay opinion.

The above-described analysis reads like a closing argument with interpretations (scene and video), assumptions, inferences, conclusion, speculation (Activity that was not captured on video), assigning weight and credibility to various witnesses, including Reeves and factual arguments for a particular position. The analysis uses the same facts the jury will be privy to, the facts are not ambiguous or beyond the common understanding of the jury, the analysis does not aid the jury, and invades the province of the jury.

The above testimony fails to meet the Daubert standard for admissibility, will not aid or assist the fact finder, is not relevant, would only confuse or mislead the jury and serves only as a conduit for inadmissible evidence.

### **The Self-Report Method To Appraise Coping**

To assess Reeves's ability to cope with his contact with Oulson he reviewed Reeves's statement to law enforcement, his immunity hearing transcript and conducted his own interview.

From these three sources, all self-reported by Reeves he noted where Reeves identified his physical limitations, recognized disadvantage environmental factors such as at one point his glasses became skewed, it was "dark", subject differences between himself and Oulson (age, size), ques he took as a treat such as Oulson's demeanor of anger and being unreasonably, his fear level, and how he coped with the situation.

After gathering the above information, he made the following assumptions

- Reeves' physical limitations can be verified, therefore will accept as true. Depo 2. Pg. 99, Ln 14-16
- Because he has no reason to doubt Reeves about how he feels about his debilitation, he accepts Reeve's self-report as true. Depo 2. Pg. 99, Ln 17-19

Based on that information he has accepted as true he makes inferences about how Reeves' decision making was influenced by his decision on how to cope with the situation based on his knowledge of his own self-efficacy.

From the inferences he formulates two opinions.

- First, that this is a self-defense case. Depo 2. Pg. 95, Ln. 9-12
- Second, because of his self-efficacy he has a justification to use deadly force because he was left with no other reasonable alternative. Depo 2. Pg. 99. Ln. 10-13

Bedard admits there has been a lot of criticism since Bandura first introduced self-efficacy and the various modes of treatment that improves self-efficacy. He attributed the criticism "as the nature of science". Depo 2. Pg. 25, Ln. 17-25, Page 26, Ln. 1-4

Bedard admitted his studies revealed criticism in the studies of self-efficacy like the criticism found in Eastman, C., Marzillier, J.S. Theoretical and methodological difficulties in Bandura's self-efficacy theory. *Cogn Ther Res* **8**, 213-229 (1984) Depo 2. Pg. 26, Ln. 5-25, Pg. 27, Ln. 1-5. He stated that he did not agree with the criticism. Depo 2. Pg. 27, Ln. 7-8.

The content of the Abstract of the above article was read to Bedard and he agreed, with the caveat that he would like to read the entire article, to interpretate the Abstract. Depo 2. Pg. 28, Ln. 1-8.

Bedard interpreted the Abstract as follows:

But what I gathered from what you told me in that paragraph, is that it doesn't seem to be generalizable, and it doesn't seem to be so significantly different from an outcome-oriented theory. And that may, in fact, be true. I mean, this is sort of a term that's coined by

Bandura.

But in a more practical sense I think all of us recognize that that's sort of the more common-sense level even, that we all have limitations. And so self-efficacy theory deals with the idea of what are your limitations. By the way, sometimes they're real; sometimes they're imagined. And from a psychology perspective it's the imagined ones that we try to deal with. It's not that we can't deal with real ones as well. For example, I mean, if you're born with a particular handicap, there are modes of-- um, modes of psychological correction that can lend itself to you performing better. This is a human performance issue. And what I think Bandura has done is to grab a lot of previous research regarding limitations on it. I hate to use the word self-efficacy. I just don't have a better word for it. But limitations on self-efficacy.

Why does it exist and what to do about it and has coined it under his own sort of description, and not only in a book but in several books on the topic.

And I think some researchers, you know, don't like that. I think they think perhaps he's done some, I don't know, mission creed of some type as a researcher and had drawn in some ideas and ideology that are still not disproven but really have been almost like globed on by Bandura.

It sounds to me like that's what that conclusion of your paragraph is. But I don't know that they're saying that self-efficacy doesn't exist, but perhaps Bandura's description of the modes of intervention probably deserves more scientific attention than they feel that Bandura has given them.

Q Do you feel that, and of course, again, you and I are talking about a conclusionary statement, okay? Would it be -- well let me ask you it this way. Do you agree or disagree that their criticism was whether or not his studies relating to self-efficacy can actually explain and, quote, "predict" psychological changes? And it's the predict that I'm really interested in your opinion on.

A **Yes, I think that is what they said.** And remember, they're talking about treatment. So, you're talking

about, first of all, self-efficacy as the thing exists. I think they would have to concede to that, the idea that we all feel about yourselves in a certain way. But the treatment is what they're questioning. What Bandura has recommended is various forms of treatment to improve self-efficacy.

Q Do you agree or disagree that it is common knowledge among adults, if you will, who have certain life experience, that in making a decision that they will weigh their individual limitations in making the decision on how to complete a specific task? That's pretty common knowledge to everyone, isn't it?

A **Yeah, I think so.** Depo 2. Pgs. 28-30

Lazarus & Folkman in their book *Stress, Appraisal, and Coping* (1984), authors Bedard recognizes as authoritative (Depo 2. Pg. 19, Ln. 19-25) discussed methodological issues associated with the method Bedard used to come to his ultimate opinions.

#### *"The Problem of Method Variance"*

One cannot obtain observations on stress, coping, and adaptation without having to face the ubiquitous and vexing problem of method variance. Strictly speaking, method variance refers to the dilemma that how one measures a phenomenon affect the content of the observed variance and the findings of research. On consequence is that, as often as not, the findings, and the inferences drawn from them about relationships and processes, do not extend to other methods of measuring the same concepts or relationships (cites omitted. As applied to personality research). This commonly produces a tight system of deductions and induction that woks only as long as one uses that one method. Thus, self-report measures may not correlate with projective measures, or with the variables that projective measures are correlated with; experimental models fail to accord with correlational ones (cites omitted), or they yield different conclusions. Interindividual analyses of a phenomenon produce a different set of relationships than intraindividual analyses of the same phenomenon (which also invites the interpretation that these two perspectives address different questions (cites omitted). Often too, method variance is over-looked because of the absence of research that replicates

important findings.

Because subjective reports are the primary source of data about appraisal, stress and emotions, and coping, this method of measurement with all its virtues and faults carries the brunt of the issue of method variance. Most researchers in the life sciences have long been aware of the limitations and disadvantages of self-report data, which were alluded to above: the problems of memory, the desire of subjects to present themselves in a positive light, language ambiguity, and the use of verbal reports as an ego defense. This is a familiar litany. The controls and checks that have been generated to cope with these problems, including measures of subject's tendency to engage in in favorable self-presentations (cites omitted), and the use of physiological and behavioral measures to verify self-report-based inferences, do not seem to help much." Id. at 321.

Bedard failed to consider the limitations and disadvantages of self-report data that researchers in life sciences have long known. The validity of the self-report data is contingent on the motivations of the subject to provide the data. Bedard completely ignores a criminal defendant's motivation to present themselves in a positive light that is consistent with their defense in the case, regardless of the truth. Ironically, there is really nothing Bedard could have done to control or detect this limitation. As Lazarus & Folkman point out "[T]he controls and checks that have been generated to cope with these problems, including measures of subject's tendency to engage in in favorable self-presentations (cites omitted), and the use of physiological and behavioral measures to verify self-report-based inferences, do not seem to help much." Id. at 321

Bedard unilaterally accepting as true Reeves's self-report feelings about his debilitation goes to Daubert's reliability standard. (Reliability, on the other hand is grounded in the methods and procedures of science. 509 U.S. at 590.)

The self-report method to appraise coping is not scientific valid because (1) it cannot be tested or verified, (2) the theory or technique has been subjected to peer review and publication and the above identified limitations and disadvantages are known, (3) because the data is self-reported and subjective, the known or potential rate of error can never be determined, and (4) while it may have gain general acceptance by researches in life sciences,

its acceptance comes with the knowledge of its limitations in providing accurate, reliable results in the research scientific community.

Bedard candidly admits it is common knowledge among adults, who have certain life experience, that in making a decision they will weigh their individual limitations in making the decision on how to complete a specific task.

Simply put, because of the inherent limitations and disadvantages of self-report data and the fact the controls and checks that have been generated to cope with these problems, including measures of subject's tendency to engage in in favorable self-presentations, and the use of physiological and behavioral measures to verify self-report-based inferences, do not seem to help much, the self-report method to appraise coping will never meet Daubert standards of reliability for admissibility in a criminal trial. Further, the decision-making process based on self-efficacy is of common understanding among adults, therefor Bedard's testimony will not aid the jury.

The above testimony fails to meet the Daubert standard for admissibility, will not aid or assist the fact finder, is not relevant, would only confuse or mislead the jury and serves only as a conduit for inadmissible evidence.

## **POINTS OF INTEREST**

During his deposition Mr. Bedard stated he identified several points of interest that if asked he would provide the jury with his interpretation of the specific event in question. He stated his interpretation of the event is based solely on his interpretation of what he can and cannot see in the video and his "analysis" of various data (police reports, witnesses' statements, Defendant's statements, photographs, and physical evidence) using the "Null Hypothesis" test.

Bedard's analysis of points 1 and 2 using the null hypothesis test is fulling documented in this motion to support the State's argument that his analysis uses the same data available to the jury, the data is not complex or beyond the understanding of the jury, there is no application of a specialized knowledge or training used to conduct the analysis, because the jury is capable of conducting their own analysis by determining what facts are credible, assigning weight to the evidence and witness testimony

and making their own interpretation of the evidence (video) Bedard's analysis of any of his "points of interest" does not aid the jury and invades the province of the jury.

This type of expert testimony is nothing more than a lay opinion based on his own subjective adversarial bias interpretation of the facts, therefore not admissible. Bedard ignored or minimized relevant data and merely stacked supposition upon supposition. Moreover, expertise was not involved in reaching his conclusions.

## Major Points of Interest

### Point #1

Whether Reeves was hit with an object prior to Oulson tossing popcorn at him. Depo 1. Pgs. 75-84 (Bedard's analysis of Point #1 was used in this motion, pages 20-28 to discuss how he conducts his factual analysis using the null hypothesis test.

### Point #2

The spital relationship between Reeves and Oulson contemporaneous with the shooting.

Bedard conducted an analysis to determine how close Oulson was to Reeves when he (Oulson) was shot. The initial discuss is set forth below. Depo 1. Pgs. 84-88 For additional discussion on this matter see Depo 2. Pgs. 55-58 (Use of measurements by defense expert Knox)

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Q All right. Any other point of interest?

A It was difficult to know exactly where Mr. Oulson was because you can only see essentially his arm and perhaps a little bit of his shoulder come into the frame.

Q Uh-huh.

A But I did study that to try to figure out how close he was.

Q And what did you study?

A On a two-dimensional screen the approximation of his arm being able to strike Reeves, both as he threw the popcorn at him and secondly, as he retracted. There was a moment where you can see the hand and the flash of the gun. So, they're close enough in the frame that you can actually see how close he is. It appears to be similar to a counter punch where he

throws the hand, draws back, the gun follows the hand, and the shot is fired. I could see that in the frame, and I think that's important when you're talking about relative positioning and reactionary gap. And so, I'm

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able to see that at the time of the shooting, he was within, I think it's been estimated, two to three feet, and I think that also is supported with the stippling that's found on his wrist and even on the wrist of his wife, Nicole, which was another point of interest.

Q Okay.

A Nowhere in the police --

Q I apologize. Let me --

A Yeah.

Q The point of interest we just talked about, your source of information?

A Was the video.

Q Anything else other than the video?

A I did rely on some of the testimony as to what people said they saw in terms of his relationship to him, but obviously that can't gauge distance for me as well as the visuals.

Q Who did you rely on?

A All of them referred to the fact that he had got up and was leaning over the seat.

Q Who's all of them?

A I think all of the witnesses who said that they saw what happened, not just the ones that heard it, but said that they saw it, recounted that he was standing over Mr. Reeves and kind of leaning forward.

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Q Who particularly, do you remember?

A I didn't write it down, but I'm happy to do that, go back and look at that specifically. I gathered from reading all of their statements, not realizing I needed to tell you every name of a person that said that they saw the proximity of him to Reeves, but what most helpful for me, really, was not only the perception of the observers, but also as I said, that particular frame where I could see how close Reeves' arm and Olsen's arm were together, so I know that they were very, very close proximity at the time of the shot.

Q All right. But right now, you can't tell me what witnesses said that he was leaning over, and I'm not 14 gonna use that word because you didn't use it. That he was leaning over Mr.



Reeves? That's what you said.

A I can tell you that, but I have to go through and find those. I didn't jot them down. They're here, they're in the report.

Q I'm just gonna make a note next time

As the modified method used by Bedard to conduct his analysis of points 1 & 2 above was fully presented, the State provides only selected excerpts and the cites for the remaining points of interest. The State's argument is the same as stated above for the remaining points. All such testimony is not admissible.

### Point #3

The number of attacks Reeves sustained prior to the shooting.

Two attacks. First when hit with cell phone or a fist and the second attack where the arm grabs the popcorn, ... throws it at him and then withdraw. Depo 1. Pgs. 89-90  
Pg. 89

Q Based on your review of the material, how many attacks were there?

A On my review of the material? Two.

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Okay. What were they?

A My understanding is the first attack is when either a fist or a phone or a fist with a phone strikes Mr. Reeves.

Q Okay.

A And this is coming from testimony, Mr. Reeves' testimony. And what I can see is the second attack where the arm grabs the popcorn, withdraws it, oh, I'm sorry, throws it at him and then it's withdrawn.

### Point #4

Mrs. Oulson holding Oulson back at the time of the shooting?

A Well, in relationship to the fact that he's standing in front of Mr. Reeves. There's one shot fired; it strikes her in the finger before hitting him in the chest. So, her hand is in front of him. So, there's an inference that perhaps she's holding him back. Depo 1. Pg. 91, Ln. 1-6

## Point #5

Was Oulson leaning or standing over Reeves when he (Oulson) was shot? Depo 1. Pgs. 87-88

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Q So before my next question, is there anymore that you want to add to that as far as the point of interest and you were looking -- I don't know if you had a chance to about the individuals who said that Mr. Oulson was leaning over.

A Yeah. I don't know the if word is leaning, standing over, things like that. I don't remember what it was, but the image that I got from the testimony, it said people saw him standing at Mr. Reeves' chair, and I saw a couple that said he was standing, one said he was leaning, but I'll come back with a complete list for you when I have further time to really analyze the whole thing.

Q And was that standing or leaning consistent with Mr. Reeves' statement to law enforcement, or inconsistent with it?

A He said that he was coming over the seat. So, I

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think that is subject to interpretation as to what he meant, but certainly standing and leaning would involve, or I should say coming over the seats would involve standing and leaning.

Q Well, Mr. Reeves indicated to law enforcement that Mr. Oulson came over the seat as he extended his left hand and actually touched his chest and was yelling, whoa, whoa, whoa when he shot him. Is that what you're saying the witnesses saw?

A I don't know if the witnesses saw -- No, the witnesses did not see that. They did not say they saw that. And I'm not able to see that either.

## Point #6

Did Reeves utter words to the effect "Throw popcorn on me..." contemporaneous with the shooting of Oulson?

During the immunity hearing Charles Cummings testified Reeves said **DO THAT TO MY FACE OR "something along the line of "THROW POPCORN IN MY FACE"** (Immunity Transcript: Vol. 18, pgs. 2343 - 44, 2431.) Derek Friedhoff testified Reeves said: **"SHOW YOU" OR "TEACH YOU" FOLLOWED BY THE WORDS, "THROW POPCORN AT ME"**. (Immunity Transcript: Vol. 18, pg. 2431, Vol 19, pg. 2452, 2453, 2455 (**"Throw popcorn in my face"**), 2457, 2459) Mark Turner testified: As the

popcorn flew Reeves almost simultaneously with the gunshot said: **"THROW YOUR POPCORN IN MY FACE."** Immunity Hearing Transcript: Vol. 19, pg. 2468.

Reeves told Bedard during his interview he heard patrons say words to the effect "throw popcorn on me". Reeves said he did not utter those words. Reeves was not asked, nor did he volunteer during his testimony at the immunity that he did not utter words to the effect "throw popcorn on me".

Bedard's analysis of this point of issue is documented below.  
Depo 2. Pgs. 39-41

Pg. 39

Q Well, let's go ahead and start with those words being uttered by Mr. Reeves contemporaneous with the firing of his firearm. What is the significance, if at all, in any opinion regarding the reasonableness of Mr. Reeves shooting Mr. Oulson?

A Assuming that he said that?

Q Well, we have three people under oath that said he did. So, are you contesting whether or not those words were in fact said?

A You know, what I read was that they heard him say that and then he fired a shot.

Q Yes.

A If you look at the video I think a reasonable person will see that the timing of the shot in relationship to the popcorn throwing occurs so quickly that that sentence probably could not have come out before the shot is fired. That's what strikes me

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first of all. And I think that should be pointed out to a jury. We can't see or-- I'm sorry, there's no audio on the video. But I think the jury would agree that that entire sentence probably could not fit in the timeframe between when the popcorn is thrown and the follow up shot, it happened so quickly. That said, something very interesting happened when I did interview Mr. Reeves -- and I know you want to talk about that. Reeves said to me he heard that also. And I thought that was very interesting because I hadn't considered the idea that someone perhaps in the theater, someone else may have said that. And I tried to think about why somebody might have said that. And it occurred to me that, you know,

somebody who is watching this on the outside, a highly stressful event, may have engaged in a moment of levity. By the way, I'm completely speculating as to why that would happen. But I think we're also speculating about who said it. Because even though people said they heard it said, remember, it's a dark movie theater. I'm not sure that anybody -- and they may go up there and say, no, that's absolutely him. But I don't know that it was because Reeves tells me he heard somebody else say something like that.

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So, I thought that was quite interesting, when I thought that it sort of changed my perspective a little bit about why that would have been said when I found out that perhaps somebody else said it.

Q So let's assume that the words were said by Mr. Reeves contemporaneous with the firing, either immediately before; immediately after, but contemporaneous with the firing of the firearm. What significance do you put on that statement as it relates to the reasonableness of shooting Mr. Oulson?

A I think it's for a jury to decide. I think it's inconsistent with his later statements where he tells us he didn't even know the popcorn was grabbed. He said he didn't know if it was knocked out of his hands or he dropped it. So, he seems to be a little bit in the dark of even how the popcorn gets spilled. So, it would be really weird for him to have said, "throw popcorn at me, will you," knowing full well the popcorn is being thrown at him and then later to come back and say he didn't know that was the case. And he said it I believe in his first interview. So, I don't know that he necessarily would have calculated that he should say he didn't know anything about the popcorn. It just seemed like a very honest answer when they asked him about it.

The above analysis clearly shows how Bedard's use of the modified null hypothesis test does not prevent "confirmational bias". For the first time Reeves states patrons in the theater uttered the words in question, not him. Bedard believe Reeves over the three patrons who testified it was Reeves who made the statement. Bedard believes Reeves when he says he did not know the popcorn was thrown at him, drawing the inference that if he did not know the popcorn was tossed, it would be inconsistent for Reeves to utter the words in question. From his analysis he dismisses the significance of the words in question being uttered at all.

The above analysis is a clear example of how Bedard's modified null hypothesis test using subjective data results in a conclusion or opinion that reflects nothing more than adversarial bias. As repeatedly argued above his analysis uses the same data available to the jury, the data is not complex or beyond the understanding of the jury, there is no application of a specialized knowledge or training used to conduct the analysis, because the jury is capable of conducting their own analysis by determining what facts are credible, assigning weight to the evidence and witness testimony and making their own interpretation of the evidence (video) Bedard's analysis of any of his "points of interest" does not aid the jury and invades the province of the jury.

This type of expert testimony is nothing more than lay opinion based on his own subjective adversarial bias interpretation of the facts, therefore not admissible.

The above testimony fails to meet the Daubert standard for admissibility, will not aid or assist the fact finder, is not relevant, would only confuse or mislead the jury and serves only as a conduit for inadmissible evidence.

## **BELIEVES DEFENDANT'S STATEMENT**

During his deposition Mr. Bedard stated he reviewed the Defendant's state to law enforcement, his immunity hearing testimony and conducted his own interview of the Defendant finding the Defendant's prior statements consistent with each other and with the physical evidence.

Bedard interviewed Reeves for the purpose of criminal litigation. The interview was not memorialized in any way. Depo 2. Pg. 122, Ln. 17-23 He did take notes. Depo 2. Pg. 122, Ln. 24-25 During his deposition he testified from his notes the questions he asked and the answers he received. Depo 2. Pgs. 121-149.

The entire statement to Bedard is not admissible at trial. The statement is hearsay that is not being offered against the defendant. Rule 90.803(18)

### **Believes Defendant's Statement To Law Enforcement Is Truthful**

But, you know, when he describes the story it is remarkably

the same as he tells law enforcement after it happened, which, by the way, is also a bit surprising because when you have artifacts like that you have fragmented memory. These initial reports to law enforcement officers often don't recall the detail that you will later see in court. But I think it was remarkably unwavering from what he originally said, and when I spoke to him as well. He's sure on his story. Depo 2. Pg. 122, Ln. 7-16

So, I really just went back through what happened. I matched it to the story as I understood it that was given both in the immunity hearing as well as his statement to law enforcement officers. Depo 2. Pg. 123, Ln. 14-17

Well he told me that again. And I may have asked him about that as I went through-- because I actually had his statement, or I was looking at it and sort of talking to him about it and examining his responses. Like I said, it was remarkably similar. Depo 2. Pg. 131, Ln. 15-22

The above testimony impinges on the province of the jury, fails to meet the Daubert standard for admissibility, will not aid or assist the factfinder, not beyond the common understanding of the average person, is based on facts that are of such a nature as not to require any special knowledge or experience in order for the jury to form its conclusion, improperly bolster or vouches for the credibility of the Defendant and serves only as a conduit for inadmissible evidence.

## **PATRONS UNIDENTIFIED HEARSAY**

During his deposition Mr. Bedard stated he identified several theater patrons he heard various statements during this event. The statements support his conclusions and opinions.

The State objects to any hearsay statements that cannot be attributed to a particular declarant. See examples below.

Couple of reference of get out of my face just before the gun shot. Depo 1, Pg. 76, Ln. 12-19

Assumes statement get out of my face by Reeves. Depo 1. Pg. 76, Ln. 20-25, Pg. 77, Ln. 1-2

Thomas Kitchen says he heard a male voice behind him yell, get out of my face. He said a couple seconds later he heard one loud boom. I believe that's from the police reports. Depo 1. Pg. 77, Ln. 3-6

David Schneck hears somebody say get out of my fucking face. Depo 1. Pg. 77, Ln. 8-9

Jayce Mickley heard something like, don't fucking touch me, or something similar. He described the tone of voice as being aggressive, then he heard the shot. Depo 1. Pg. 77, Ln. 10-12

James Summer heard, you touch me again and I'll kill you. That comes from page sixteen. It would be the police reports, one of the investigator reports. Depo 1. Pg. 77, Ln. 14-16

Kelly McDonald hears, get your hand out of my face, Page 148 of the police reports. Depo 1. Pg. 77, Ln. 18-19

Luis Perez says, I heard someone say, get out of my face, then a shot, Page 171. I think that's both in the police report verbatim as well as in the statement. Depo 1. Pg. 78, Ln. 3-5

Gladys Perez, I don't know if she heard her husband say that, she says exactly the same thing. I heard someone say, get out of my face, then a shot. Same page, 171. Depo 1. Pg. 78, Ln. 6-8

Sylvia Kerr hears someone say, you're not going toll hit me in the face again, Page 32, police report. Depo 1. Pg. 78, Ln. 11

The declarant is not identified. Without knowing the declarant, a non-hearsay exception such as the effect on the hearer is not possible. The hearsay statements are not admissible. Rule 803. When the hearsay statements were made is not known. Because the declarant is not known and the timing of the statements in relation to the various contact between Reeves and Oulson there is no legitimate reason to include them in an analysis as to events transpired. The statements have no relevancy. Rule 401. Rule 402. Also, said statements would only mislead and confuse the jury. Rule 403.

The above testimony fails to meet the Daubert standard for admissibility, will not aid or assist the fact finder, is not relevant, would only confuse or mislead the jury and serves only as a conduit for inadmissible evidence.

## SELF-EFFICACY

During his deposition Mr. Bedard explained his understanding of the concept of "self-efficacy" (knowing your own limitations) and how that knowledge may impact on ones decision-making process. From various statement of the Defendant, he identified statements which reflect the Defendant's awareness of his limitations and because of those known limitation why he took the action he did. Depo 1. Pg. 92, Ln 9-12

Bedard identified the below statements by Reeves that he believes touches on the concept of "self-efficacy".

### Personal Limitations

- 71 yoa. Depo 1. Pg. 158, Ln. 15
- Lack of dexterity. Depo 1. Pg. 158, Ln 18
- Something wrong with left eye. Depo 1. Pg. 159, Ln.6
- Dazed. Depo 1. Pg. 159, Ln. 20
- Arthritis both hands. Depo 1. Pg. 161, Ln. 19
- Back wrecked. Depo. 1 Pg. 161, Ln. 20
- Gained 30 lbs. Depo 1. Pg. 163, Ln. 15

### Subject Difference

- Oulson tall, angry, and unreasonable. Depo 1. Pg. 158, Ln 9-10

### Environmental

- Eyeglasses skewed. Depo 1. Pg. 159, Ln. 18-20
- Theatre dark. Depo 1. Pg. 160, Ln. 5

### Threat Assessment Ques

- Aggravated position. Depo 1. Pg. 163, Ln. 2
- Contorted face. Depo 1. Pg. 163, Ln. 3
- Cursing. Depo 1. Pg. 163, Ln. 3

### Cognitive self-report - fear

- Gonna get ass kicked. Depo 1. Pg.159, Ln. 1-2
- Scared shitless. Depo 1. Pg. 161, Ln. 16
- Don't need ass whooping. Depo 1. Pg. 162, Ln. 13



- Thought guy fixin to beat the shit out of me. Depo 1. Pg. 162, Ln. 24.

Bedard explained the above information as follows.

And so, I pulled that out of what he said because it seemed that that was his analysis of what was going on about his ability to deal with the threat, or more importantly, his inability to deal with the threat. And this was a motivating factor for him, in part, to use the kind of force that he used. Depo 1. Pg. 164, Ln 12-17

And these are the things that tell us how he perceives himself. This is his subject factor; I think his subject -- Depo 1. Pg. 157, Ln. 18-21

So, I think these would describe his imbalance about himself. Depo 1. Pg. 158, Ln. 5-6.

I think, once again, going back to self-efficacy just from a reasonable man perspective, I don't think there's so many people that will think that Mr. Reeves, who is elderly, who is there with his wife at a movie theater who claims to be, and probably can provide records, I don't know, of having arthritis, a bad back, he's clearly overweight, he is definitely much older than Mr. Oulson, you know, that he can't defend himself properly in a fist to cuffs with Mr. Oulson. I think a reasonable person will agree with that. Depo 2. Pg. 46, Ln 15-25

I think the description of, you know, what Mr. Reeves is, what he claims to be and who he believes he is, and what his potential abilities are, and I think it's very sensible to me. Again, I find no reason to think that Mr. Reeves is making these medical claims up. Depo 2. Pg. 47, Ln. 6-11

But for me talking about use of force transaction, which is essentially what I've been hired to do, I'm gonna go in there assuming that the jury knows that Mr. Reeves is elderly and is in many ways debilitated by his own admission, and perhaps, like I said, by medical records as well. I don't know. And take it from there. Depo 2. Pg. 50, Ln. 13-25

**What Bedard Would Tell A Jury About Self-efficacy.**

Depo 2. Pgs. 95-100

Citizens don't typically have authority to make arrest. They

don't have the authority to take someone into custody. They don't have the authority often times even to exert any type of force, with one exception, and that would be self-defense that's protected by law. So, if we can cross the bridge and say, okay, something is self-defense, and I think we can do that in this case. I think it would be harder to argue it's not a self-defense case. I mean, you have, again, a six foot four male younger than Mr. Reeves jumping out of his chair acting very bizarre. I mean, making a big issue about Mr. Reeves telling the manager about his cellphone being on. Very unpredictable. And so, Reeves was forced to defend himself against that self-defense part. Now when it gets to the second part, did the survivor take bifurcated equation, as we spoke about earlier, which is how that force can be used, now we get into self-efficacy. What does Mr. Reeves think he can do. So, a reasonable person who would be trying to use a minimum amount of force or try to create the least harm.

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Had the roles been reversed and Mr. Reeves was the younger and the bigger and perhaps the more agile and the better equipped, this may have ended as Mr. Reeves said with a wrestling match in the movie theater. But that's not what happened. In this case Mr. Reeves is a 71-year-old, and I'll paraphrase it, broken down old man. He's defined even by law as being somebody that can't be battered. It's an aggravated battery if you hit him. But he truly has debilitating physical features. He's full of arthritis. He has a bad back. He's overweight. And he has an imposition in that he's sitting against the wall. He can't go anywhere. He can't even get out of his seat. So, his motivation to struggle with Mr. Oulson is very very low because he doesn't have the self-efficacy or the coping mechanisms to deal with what's happening to him at that moment. Now, under the circumstances Mr. Reeves has brought something with him which the law protects under the concealed carry permit, that once again mitigates the differences between Mr. Oulson who's much younger, probably much stronger, certainly more agile and threatening, in comparison to Mr. Reeves' diminished state because of his age and because of his

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injuries, and his arthritis, his condition, and that something is a firearm. So, it's reasonable if exceeded by the challenge of Mr. Oulson that you would feel threatened.

That's how Lazarus and Folkman defined a threat. When your challenges are exceeded, your ability to cope with the challenge is exceeded, you are no longer being challenged, you're being threatened. And I think that the evidence shows, based on self-efficacy, that a reasonable person would conclude that Mr. Reeves is being threatened. So how does he mitigate that. Well, at first, he doesn't just pull out a gun and shoot him when he's challenged. He tries to lean far away. He tries to stay away from him. He says I'm still trying to figure out what's going on. It's so unusual. It's never happened to me before. I don't have a blueprint on what to do. So, I'm pulling myself back in the chair as far as I can. I'm trying to avoid him. And all of a sudden, I get hit in the side of the face. Well, his existing self-efficacy is not to fight Mr. Oulson already, now he has further diminished capacity because he can't see. And we are visual creatures. He says my glasses turned sideways on my head. I have

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potentially a blur in front of me. I can no longer make out detail, which was hard to do in a dark theater. He can of course see Mr. Oulson who is six foot four. He's got the ability, even through blurred lenses, because the focal point had been adjusted, to see Mr. Oulson still coming at him after being hit. Really the only appropriate coping mechanism at this point is to take the only tool that he has on him, and that is his firearm, to protect himself. I think reasonable people will believe under the circumstances that Mr. Reeves, who says in his interview, man, if I get hit it takes me two months to heal. Or something like that. Two months for a bruise to heal. That's how he feels about himself. He then says, I don't need another ass whipping. I think that's verbatim what he says. Or I don't need an ass whipping. And he says a lot of things like that. I didn't think that I could take him. No, I can't take anybody. Stuff like that. So, it would be reasonable if your self-efficacy is that low in that compressed timeframe where you can't sit around and contemplate the possibility, that you would take the very first thing that comes to mind as a solution to a quickly rapidly unfolding, diminishing problem, which is that he might

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in the very next millisecond be severely injured or killed, and that is he reaches for his firearm. And in the fog of the

attack where everything is happening very rapidly, he does get hit again a second time. We know this by popcorn. You can see it. He tells me he doesn't know he's hit by popcorn. He knows he's hit. He can see Mr. Oulson coming at him and he decides to put a stop to it by firing a shot and that's what he does. So, because of his self-efficacy, I think to answer your question, he has a justification to use deadly force because he was left with no other reasonable alternative. So, then we have to go back and decide, okay, is all of this true what I just told you. Is he really 71 years old? The answer is he is. Is he really debilitated, and to what degree? And more importantly, how does he feel about his debilitation. He tells us that. There's no reason to doubt him. So that's what I would tell a jury, is that the subject factors matter. And part of the subject factors is how you reasonably believe various coping situation that is rapidly unfolding and a threat to your safety. And again, I don't know that jury necessarily

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know that. It's the same -- you know, unfortunately news media, the television shows teach people who make up juries strange things. You know, like for example, every time you shoot somebody in the back it's a bad shooting. You know that's not true. Sometimes that happens in the course of shooting at somebody they twist away in the course of being hit in the chest the first time, they catch one in the back. That doesn't nullify the shooting and make it a bad shooting. **So, we have these sort of fixed rules in law enforcement that the public thinks they know and they're just not true.** And so, they might think, for example, you shouldn't shoot somebody -- this is I'm referring to the Rittenhouse case right now. You should have taken the beating. You should go fist to cuffs because that's what people do. That's what brave people do. They fight back using their fists, not guns. That's excessive. And that's not always true. It would depend on the self-efficacy of the individual. If he didn't think his fists could work, he wouldn't attempt to use them. Who would? It would be unreasonable to do that. So, I think that's probably the answer to your question as to what I would tell a jury about self-efficacy.

Bedard's potential testimony to the jury about self-efficacy is based on the self-report method to appraise coping which does not meet Daubert standards.

Subjective self-report is the primary source of data about stress, appraisal, emotion, and coping and carries the brunt of the task of assessing the relevant variables. Lazarus & Folkman, *Stress, Appraisal, and Coping* 327 (1984)

The use solely of self-report data in research is inherently unreliable because the researcher does not know if the information from the research subjects is true, calling into question the reliability of all inferences, correlations, conclusions, and opinions. Bedard characterized Klein's results as "decision making idea". It's the State's position the admitted unreliability of Klein's research would also include an "idea" derived from his research. See, Klein, *Sources of Power How People Make Decisions* 290-291 (1998)

As stated above, because of the inherent limitations and disadvantages of self-report data and the fact the controls and checks that have been generated to cope with these problems, including measures of subject's tendency to engage in in favorable self-presentations, and the use of physiological and behavioral measures to verify self-report-based inferences, do not seem to help much, the self-report method to appraise coping will never meet Daubert standards of reliability for admissibility in a criminal trial.

As with the analysis of various facts using the null hypothesis test method, the analysis using the self-report method to appraise coping reads like a closing argument with interpretations, assumptions, inferences, conclusion, speculation, all based solely on the assumed credibility of Reeves. The analysis uses the same facts the jury will be privy to, the facts are not ambiguous or beyond the common understanding of the jury, the analysis does not aid the jury, and invades the province of the jury.

## **HUMAN FACTORS ARTIFACTS AS A RESULT OF STRESS**

Bedard stated that under stress various "artifacts" can be seen which may confirm the subject was under stress or a high state of anxiety at the time of the incident. Bedard explained psychology human factors can be influenced by stress. Depo. 1. Pg. 109, Ln. 24-25

Stress related artifacts can occur in reaction to a stressful

situation. Depo 1., Pg. 114, Ln. 15-17 The existence of artifacts suggest the subject was under stress or afraid at the time of the incident. Depo 1. Pg. 110, Ln. 10-12

- Reaction Time. Depo 1. Pg. 110, Ln. 1-10. Pg. 119, Ln. 25, Pg. 120, Ln. 1-25
  - o Studies have addressed the question once voluntary motor action begins can it be stopped or vetoed. The Studies suggest voluntary motor actions can be stopped if the decision occurs within two hundred milliseconds of when the thought is made to start the voluntary motor action. Depo 1. Pg. 122, Ln. 16-20
- Difference Perceptions. Depo 1. Pg. 111, Ln. 9-19
- Cognitive Perceptual Difference. Depo 1. Pg. 111, Lin. 20-25
- Tunnel Vision. Depo 1. Pg. 112, Ln. 8
- Narrowing of Attention. Depo 1. Pg. 112, Ln. 8-9
- Auditory Exclusions. Depo 1. Pg. 112, Ln. 20-23
- Vasodilation. Depo 1. Pg. 112, Ln. 23-25
- Fragmented Memory. Depo 1. Pg. 113, Ln. 3-25. Pg. 114, Ln. 1-7
- Time Distortion. Depo 1. Pg. 114, Ln. 22
- Fear. Depo 1. Pg. 123, Ln. 11-17

The influence the above artifacts will have varies from person to person. In any give situation we don't know what affect any of these artifacts will have. Further, no everyone will respond the same. Depo 1. Pg. 116, Ln. 9-24, Pg. 117, Ln. 1-3

Candidly, Bedard stated he did not find salient artifacts that would influence Reeves' motor skills or cognitive abilities. Depo 2. Pg. 104, Ln. 1-3

Bedard stated

**I don't see a lot of this. As a matter of fact, the only thing I do see is some memory issues, and I think that demonstrates**

that at some level, you know, fragmented memory also occurs when you're under high arousal. Depo 2. Pg. 104, Ln. 21-25. So, the memory issues can happen, you know, to anyone who is facing a situation like that. And that's what I saw in the police reports. But otherwise, he's pretty well composed. Depo 2. Pg. 105, Ln. 7-10

Like I said, in this case I think it's because it's on video and because we do know what happened I think a reasonable person would say, okay, yeah, had that been me I would have been afraid too. So, it's not that important. The distortions are not that important to me. Depo 2. Pg. 110, Ln. 12-17

Bedard explained the type of case when the above analysis and testimony would be relevant.

They're usually just when you have, for example, one living witness and that's the guy that's in defense of himself. I've got to sit here and say, okay, were you afraid, afraid enough to use deadly force. Because I don't have any video on it. It's just what he's saying. And that's when those memory distortions and perceptual distortions are most salient. Because then I can say this guy thinks that the really only people in great fear say. Depo 2. Pg. 110, Ln. 17-25, Pg. 111, Ln. 1

Testimony relating to reaction time and the ability to stop voluntary motor action is independently not admissible. Here, Reeves has consistently maintained that he intentionally killed Oulson in self-defense. He has never taken the position he waived from that thought process prior to the shot was fired. The testimony does not relate to the facts in the case; therefore, it is not relevant and inadmissible.

As Bedard candidly pointed out he did not find the artifacts manifested under stress that had a negative impact on his physical or cognitive performance. Bedard opined Reeves performed well under stress. Bedard stated that this case is not the normal case where such testimony would be needed because from the video the jury can concluded it was a stressful incident.

The above testimony fails to meet the Daubert standard for admissibility, will not aid or assist the fact finder, is not relevant, would only confuse or mislead the jury and serves only as a conduit for inadmissible evidence.

## **Situational Awareness**

Bedard is prepared to explain to the jury the concept of situational awareness. It's being aware of the situation that you're in. You're analyzing what's meaningful in the environment. You're anticipating what comes next, so from all of the environment, the totality of the circumstances, you're trying to analyze what comes next. And you are flexible, cognitively flexible to know that if something changes in the environment, it will alter your anticipation. And so, your anticipation is going to lead to what do I do now. Depo 1. Pg. 142, Ln. 3-16

Bedard will explain vision has a significant role in situational awareness. It's the first part of decision making. If you don't see it in your environment, you don't know it's there, it won't calculate into your decision. So, the idea is to train the eyes to be able to properly analyze what's known as a useful field of vision. Whatever your eyes are capable of seeing to be able to discriminate the environment, to decide what's important and to make sense of it. Depo 1. Pg. 142, Ln. 22-25, Pg. 143, Ln. 1-4

Other factors associated with situational awareness include

### **Human Factors** Depo 1. Pgs. 143-144

- Reaction time.
- Reactionary distance or gap.
- Relative positioning.
- Defensive Posturing

### **Threat Assessment** Depo 1. Pgs. 146-151

- Observing the environment what is targeting on you, who are you trying to protect.
- Subject factors - age, size, skills, weapon.
- Behavioral or postural cues - various manifestations of aggression, hand gestures, facial and verbal expressions

Bedard admits there are variances among individual as to how they respond to information gathered during "situational awareness"

Q Can some people be more sensitive to 10 some of these cues as opposed to others?



A Sure. There's variance. There's always variance.

Q That's why I guess what I'm saying. There is variance?

A With everything there's variance. There's not a fixed threshold for human beings on anything that I'm aware of.

Q There's no way to quantify it or quality it in any way that person is gonna respond this way, person B this way?

A No, but if somebody tells you something that they, for example, this is how I reacted and why I reacted, you can go back to is that the way people react in this circumstances, and then you can draw those comparisons, and then, of course, it comes down to veracity, and that's what juries are all about is deciding whether or not he's telling the truth about it ... " Depo 1. Pg. 152, Ln. 7-25

After educating the jury, Bedard is prepared to tell the jury how Reeves used the above concepts in making his decision to shoot Oulson.

So, when you're anticipating something, you're anticipating it based on things that have already happened, and you're trying to find things that haven't happened yet. So, like I said, that's a predictor of future behaviors is gonna be past behavior. And the past behavior that Reeves is observing, and we can also observe on video, now, you know, in hindsight, is that Oulson is acting completely unreasonable. He's got his cellphone on. He's got a guy in the movie theater who has paid for his ticket who tells him, look, turn your cellphone off. And in response to that he gets up, makes a physical challenge, and then physically attacks Mr. Reeves. That's completely unreasonable. And, by the way, had he not been shot he would have been arrested I'm sure for battery. So, I mean, he's committing a crime. He would have probably been arrested for aggravated battery because of Mr. Reeves' ago. So, we know he's committing a crime. He's in the process of doing that.

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And so, Reeves has to anticipate is this crime going to be terminal to me. Is he going to cause me lifelong injury or death? He doesn't know that because if he did know that it would have already happened. So, the threat assessment is there. It's at that point of anticipation. What do I think is

going to happen next? That he's relying on what's happening now or what just happened in the past. And how this just unfolded in the most bizarre way. So, I would add that to the situational awareness that I described which is where you're taking information and you are trying to discriminate the information out to what you should attend to, what should be attenuated and so on and so on to come up with an understanding of the environment that you're in. Now you're working towards what do I think is gonna happen next and then you come back to what are my coping mechanisms to deal with that. If your coping mechanisms can manage what you think is going to happen next, then you say no shoot. If your coping mechanisms are heated by what's gonna happen next, then it would move into the area of deadly force because you are no longer challenged, you are threatened. So maybe that's a good summary of what I think we talked about with the addition of how important anticipation is. Depo 2. Pgs. 112-113

The above testimony regarding how he believes Reeves used situational awareness and all its components in his decision-making process is mere assumption, speculation, and inferences upon inferences. Bedard cannot possibly know exactly what Reeves was thinking during his encounter with Oulson. As a criminal defendant, Reeves's will be given an opportunity to testify if he so chooses.

Again, the above testimony reads like a closing argument complete with all the inferences, assumptions, and speculation an attorney can argue before the jury.

The above testimony fails to meet the Daubert standard for admissibility, will not aid or assist the fact finder, is not relevant, would only confuse or mislead the jury and serves only as a conduit for inadmissible evidence.

## **DECISION MAKING PROCESS**

Above, the State set forth its arguments against the admissibility of Bedard's testimony on the topics of Self-Efficacy and Situational Awareness. A major component of Bedard's testimony is how Self-Efficacy and the various components of Situation Awareness influenced Reeves' decision-making process under the stressful, time constrained contact with Oulson. Bedard's testimony on the above topics without the content of Reeves' decision-making process, cannot be applied to the facts of this case, therefore not relevant.

Bedard identified Gary Klein as an authoritative source in support of his expert testimony on the topic of decision-making under stress or time constraints as it relates to **threat assessment** and **self-efficacy**. He described Klein's studies produce "a decision-making idea. He identified two books authored by Klein he will rely on. Sources of Power *How People Make Decisions* and Taking the First. Depo 1. Pg. 137, Ln. 18-23, Depo 2. Pg. 17, Ln. 11-15, Pg. 19, Ln. 14-20.

The following is an excerpt from Sources of Power *How People Make Decisions*

"The basic question of the book is, How do people make decisions and solve problems under natural conditions? The book describes the studies and efforts made to provide some answers. We can distinguish between a few different kinds of inquiry. A philosophical inquiry uses rules of logic to draw conclusions. A scientific inquiry uses carefully controlled and repeatable investigations. A pseudo-scientific inquiry pretends to conduct rigorous studies but does not, and it produces findings that are unreliable. What kind of an inquiry has this been? Clearly it is not philosophical. In some ways it seems scientific, but the studies have weaknesses. That is one reason I spent so much time describing how we ran the studies, to allow you to judge for yourself how much confidence to have in the findings.

The studies I have described are not classical science.

...

What are the criteria for doing scientific piece of research? Simply, that the data are collected so that others can repeat the study and that the inquiry depends on evidence and data rather than argument.

...

Regarding the nature of our data, one weakness of our work is that most of the studies relied on interviews rather than formal experiments to vary one thing at a time and see its effect. There are sciences that do not manipulate variables, such as geology or astronomy or anthropology. Naturalistic decision-making research may be closer to anthropology than psychology. Sometimes we observe decision makers in action, but we rely on introspection in nearly all our studies. We ask people to describe what they are thinking, and we analyze their responses. We do not know if the things they are telling us are true, or maybe just some ideas they are making

up. We can repeat the studies or, better yet, other investigators can repeat the studies to see if they get the same results. Nevertheless, no one can confidently believe what the decision makers say.

The use of introspection raises question about how much to trust the findings and studies. ... Klein, Sources of Power How People Make Decisions 290-291 (1998)

Klein describes his research analogist to anthropology. "Anthropology is the systematic study of humanity, with the goal of understanding our evolutionary origins, our distinctiveness as a species, and the great diversity in our forms of social existence across the world and through time. The focus of Anthropology is on understanding both our shared humanity and diversity and engaging with diverse ways of being in the world.

<https://anthropology.ucdavis.edu/undergraduate/what-is-anthropology>

Bedard relies in whole or in part of Klein's studies and others like it. Klein, the researcher of naturalistic decision making candidly admits the method used in his research raises questions about how much to trust his research findings and studies. He admits the trust worthiness of his data from self-reporting research subjects cannot be verified. He admits he does not know if the research subjects are telling the truth.

Klein's research on naturalistic decision-making does not meet the Daubert standard for "reliability". Bedard's use of research that does not meet the Daubert standard of "reliability" makes all his testimony relying on such research not admissible.

## **IS REEVES TO BE JUDGED AS AN OFFICER OR A CIVILIAN?**

### **THE DEFENDANT'S LAW ENFORCEMENT TRAINING**

Bedard's position is Reeves' law enforcement background and training is his schema for use of force decision making. Depo 1. Pg.124, Ln. 14-25.

Bedard believes psychologically Reeves' mind analyzes threats

based on previous law enforcement training relating to situational awareness and threat assessment. Depo 1. Pg. 127, Ln. 8-14

Bedard is prepared to discuss what Reeves should know with prior law enforcement training. To speak about Reeves "as if he thinks like a police officer". Depo 1. Pg. 128, Ln. 9-12

Bedard admits he does not know the law enforcement curriculum Reeves received at the Tampa Police Department. Depo 1. Pg. 133, Ln. 18-20. Specifically, he does not know the curriculum Reeves received involving use of force or threat analysis. Depo 1. Pg. 133, Ln. 21-25. Bedard acknowledges in the 1970's when Reeves received his law enforcement training a standard curriculum was only in the developmental stages and academies were free to develop their own curriculum. Depo 1. Pg. 134, Ln. 1-9. Bedard finally admits he does not know the specifics of Reeves' law enforcement training. Depo 1. Pg. 134, Ln. 15-19. In response to not knowing the specific of Reeves' training he stated if Reeves was an instructor, he would know the material he was teaching in the 1990's and 2000's. Depo 1. Pg. 135, Ln. 7-11. **It should be noted Reeves testified at his immunity hearing he retired from the Tampa Police Department in 1993.** Immunity Hearing Transcript, Volume 14, pg. 1783.

Bedard's testimony regarding Reeves' law enforcement background is merely assumption, speculation, and inference upon inference. His testimony cannot be applied to the facts of this case.

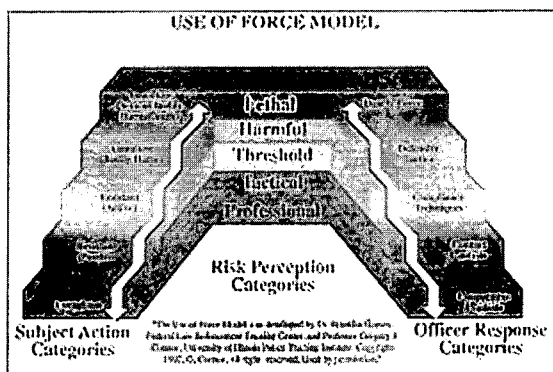
The above testimony fails to meet the Daubert standard for admissibility, will not aid or assist the fact finder, is not relevant, would only confuse or mislead the jury and serves only as a conduit for inadmissible evidence.

## FORCE MATRIX MODELS

During his deposition Mr. Bedard stated, if asked he would explain to the jury how the force matrix and the force continuum models used by law enforcement are the appropriate response to a given adverse or threatening situation and the use of the continuum's identified appropriate force is "objectively reasonable.

Below is a sample of the many visual representations of force matrix models used by police academies and agencies for training

purposes.



The force continuum purports to provide a mechanical application when officers should be making a subjective threat assessment.

(Use-of-Force Policies and Training: A Reasoned Approach. (Part One) by Thomas D. Petrowski, J.D. (FBI Law Enforcement Bulletin, October 2002) (Special Agent Petrowski is a legal instructor at the FBI Academy.))

Constitutional use of force is driven by the Fourth Amendment when it comes to deciding whether force is appropriate. Dep 1. Pg. 7, Ln. 3-5, Pg. 15, Ln. 1-4

Bedard stated [So] the force continuum is the model of proportionately. When you analyze a threat, knowing what level of force you are permitted to use that's agreed upon as the appropriate level of force to counter that threat.

Q Okay. Is that something that's taught in the police academy?  
A The force continuum? So, it was until 2007. 2007 we took it out. It is still a chart or a model or a matrix endorsed by FDLE, but it's not taught at the basic recruit level anymore, but it was for decades. Depo 1. Pg. 14, Ln. 9-20

Bedard stated the force matrix models is based on the "objective reasonableness" standard set forth in Graham v. Connor, 109 S.Ct. 1865 (1985) Depo 1. Pg. 15, Ln. 3-11

The significance of the statement is the Graham court stated

Our Fourth Amendment jurisprudence **\*\*1872** has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. See Terry v. Ohio, 392 U.S., at 22-27, 88 S.Ct., at 1880-1883. Because "[t]he test of reasonableness under the Fourth Amendment is not capable

of precise definition or **mechanical application**," *Bell v. Wolfish*, 441 U.S. 520, 559, 99 S.Ct. 1861, 1884, 60 L.Ed.2d 447 (1979), however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. *Id.* at 1871-1872.

What Bedard is advocating is the **mechanical application** of objective reasonableness using force matrix models.

Bedard believes because there is no standard use of force matrix models for civilians, it is appropriate to use the force matrix models designed as a teaching tool for law enforcement officers. He believes civilians must find approved models and the law enforcement modes bridge that gap. Depo 1. Pg. 18, Ln. 20-25, Pg. 19, Ln. 1-7

So, because of stand your ground, a civilian has precisely the same criteria as a law enforcement officer does in being able to protect themselves if they perceive a threat of some level based on described levels of harm, then there would be a proportional and appropriate response that would be described for the purpose of establishing objective reasonableness. Depo 1. Pg. 12, Ln. 12-18.

Bedard stated he would use almost exclusively use the concepts of the force matrix and force continuum models to explain objective reasonableness to the jury.

Almost completely. So what makes something objective is that there are **rules** in place when the event happens, right. So, I would rely obviously a

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little bit on statute that allows people to defend themselves. And then I would break it down into the force matrix and the force continuum and talk about how threats are a theft [?] and how they are responded to based on a scale that has been approved in court many times by law enforcement and by others to evaluate the appropriateness of response to perceived threat. And that would make it objective. It's devoid of emotion. It's devoid of all the things that happen when you're the subject of an attack. So that would be the objective

reasonableness claim. I would also probably be asked, I assume, about the subjectivity of it. And of course, the one that can answer that question would be Reeves. I'm aware of what Reeves said. So, taken Reeves as true I would be able to comment on the subjectivity of it and put these behaviors of Mr. Oulson in categories of threat and show the straight-line appropriate response. And that would be going back to the objectivity in hindsight. Depo 2. Pgs. 153-154

Here, Bedard attempts to justify the use of the force matrix, a law enforcement teaching aid as "objective" information and appropriate for jury consideration because the use of the matrix is devoid of emotion.

Bedard is correct, as an adjective "objective" means personal judgement not influenced by personal feelings or opinions in considering and representing facts. In the legal realm of criminal law its meaning and importance is viewed differently. **Objective evidence** means information that can be proved to be true, based on facts obtained through observation, measurement, testing or any other means; **Objective evidence** means evidence that is verifiable by means other than a person's own statements.

Law Insider. *Objective Evidence Definition*

<https://www.lawinsider.com/dictionary/objective-evidence>

When Bedard says "put these behaviors of Mr. Oulson in categories of threat and show the straight-line appropriate response" he is referring to the force matrix models shown above.

Use of force matrix models may have some benefit instructing students who are looking from some source of guidance for the use of deadly force. A CCW holder may want to be told what may be considered a proportional response because they are devoid of life experiences that would allow for them to make that determination for themselves.

In a criminal trial involving a self-defense claim, where the jury is responsible for measuring a self-defense claim, it is the jury from the facts they deem to be credible to answer the legal test questions resulting in a determination of justification.

The use of any type of use of force matrix models are not admissible in a criminal trial involving a claim of self-defense.

As an example, in Thompson v. City of Chicago, 472 F.3d 444 (7<sup>th</sup> Cir. 2006) the survivors of suspect who died following his arrest brought a \$1983 suit against city and police officers



alleging that the city and the officers, in both their individual and official capacities, had violated suspect's Fourth and Fourteenth Amendment rights when denying him equal protection and due process with the use of excessive force while taking him into custody.

...  
"Prior to trial, the remaining defendants filed a number of motions *in limine*. Two of which were companion motions seeking to bar the plaintiffs from introducing: (1) the opinion testimony of officers from the CPD's Office of Professional Standards concerning their investigation into Thompson's death; and (2) the CPD's General Orders, practices, and policies (or the officer's failure to act in accordance with those orders, practices, and policies). The district judge granted the motions, and the trial began on July 12, 2004." *Id.* at 447

...  
"On appeal, the Thompsons argue that the CPD's General Orders were relevant under Federal Rule of Evidence 401, because the Orders would have given the jury an objective criteria with which to judge the officer's action and that the introduction of such evidence actually would have allayed rather than perpetuated jury confusion under Rule 403. We disagree." *Id.* at 453

...  
"The fact that excessive force is "not capable of precise definition" necessarily means that, while the CPD's General Order may give police administration a framework whereby commanders may evaluate officer conduct and job performance, it sheds no light on what may or may not be considered "objectively reasonable" under the Fourth Amendment given the infinite set of disparate circumstances which officers might encounter. Indeed, the CPD's General Orders state that they are intended merely to "provide members guidance on the reasonableness of a particular response option," when taking a suspect into custody." *Id.* at 454

It appears Bedard also wants to use the force matrix models to convince the jury Reeves' subjective perceptions of the incident and his response was reasonable. The use of a force matrix model, of unknown authorship and content, mechanically decides one of the legal tests questions the jury is charged with answering. Such evidence and testimony do not aid the jury. The standard jury

instructions on justified use of deadly force provide all the guidance needed to come to a just and fair determination of a self-defense claim. Such testimony and evidence would be in direct conflict with said jury instructions, misleading the jury and creating confusion.

The above testimony fails to meet the Daubert standard for admissibility, will not aid or assist the fact finder, is not relevant, would only confuse or mislead the jury and serves only as a conduit for inadmissible evidence.

## OBJECTIVE REASONABLENESS

During his deposition Mr. Bedard stated, if asked he would provide the jury with his interpretation of "objective reasonableness". Bedard stated he would use almost exclusively use the concepts of the force matrix and force continuum models to explain objective reasonableness to the jury.

For all the reasons stated above, a force matrix model it sheds no light on what may or may not be considered "objectively reasonable" under the Fourth Amendment given the infinite set of disparate circumstances which officers might encounter.

Bedard stated he is qualified to instruct the jury on the tope of "objective reasonableness" based on his experience by instruction on the topic at the police academy. Depo 1. Pgs. 4-5

Bedard explained "objective reasonableness" is a term of art.

Well, it's a term of art. I know that it's also understood to be a term in the court that the jury has purview over deciding, but in law enforcement, we talk about objective reasonableness as opposed to subjectiveness, reasonable behaviors with modeling that describes when force is appropriate. And so essentially from a training perspective, objective, reasonableness is understood before the fight actually happens versus where the jury would decide if force was objectively reasonable after the fight had happened. Depo 1. Pg. 6, Ln. 10-19

Bedard stated that he did not know the reasonable man standard, tongue in cheek saying, "I can't find that guy". Depo 1. Pg. 154, Ln. 14-18.

Bedard believes that as an expert he can explain "objective reasonableness" to the jury and tell them if a particular response is appropriate. Depo 1. Pg. 156, Ln. 1

Q So when we talk about educating the jury, it's the jury that decides, does it not, whether or not the subjective perception is objectively reasonable based on the reasonable man standard, that's --

A In the courtroom, yes, but we do teach objective reasonableness as you know.

Q Yes.

A We teach the standard, and so I think for the expert to go in and educate the jury, it's what is the standard, what would be considered an appropriate use of force. Depo 1. Pg. 155, Ln. 6-16

When Bedard stated "we do teach objective reasonableness as you know" the State knew that he was referring to teaching in a police academy or agency in-service setting.

Bedard believes when a use of force expert educates the jury on the topic of objective reasonableness, he's allowed to tell the jury what level of force is appropriate for a particular level of threat. Depo 1. Pg. 156, Ln 1-3

### **Standard Jury Instruction 3.6(f) Justifiable Use of Deadly Force**

*Give if applicable Section 776.012*

A person is justified in using deadly force if [he][she] **reasonably** believes that such force is **necessary to prevent**

1. **Imminent** death or great bodily harm to [himself][herself] or another, or
2. The **imminent** commission of (applicable forcible felony) against [himself][herself] or another

...

*Read in all cases*

In deciding whether defendant was justified in the use of deadly force, you must judge [him][her] by the circumstances by which [he][she] was surrounded at the time the force was used.

(Subjective) The danger facing the defendant need not have been actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoid only through the use of that force.

(Objective) Based upon appearances, the defendant must have **actually believed** that the danger was real.

The above jury instruction excerpts contain the legal test questions (**in bold**) for deciding a claim of justified use of deadly force. Each legal test question is factual based.

In a criminal trial the courts are clear, it is the **objective, reasonable man standard** by which claims of justifiable use of force are measured.

"The determination of whether the use of force is justified under section 776.012(2) is to be made "in accord with the objective, reasonable person standard by which claims of justifiable use of deadly force are measured." Montanez v. State, 24 So. 3d 799, 803 (Fla. 2d DCA 2010); see also Fla. Std. Jury Instr. (Crim) 3.6(f). The question under this objective evaluation of a defendant's conduct is whether, based on the circumstances as they appeared to the defendant at the time of the altercation, a reasonable and prudent person in the same position as the defendant would believe that the use of deadly force is necessary to prevent imminent death or great bodily harm or the imminent commission of a forcible felony. See Garcia, 286 So.3d 348; see also Mobley v. State, 132 So. 3d 1160, 1164-65 (Fla. 3d DCA 2014)." Bouie v. State, 292 So.3d 471, 481 (Fla 2<sup>nd</sup> DCS 2020)

The circumstances are the defendant's subjective interpretation of his surroundings and his life experience knowledge that led to his acknowledge perception of the altercation at the time of the shooting. The defendant can tell the jury his state of mind, what he was thinking, this decision-making process, why particular alternatives were rejected, his reasoning for the final choice to use deadly force.

They jury decides if the subjective beliefs of the defendant that forms the basis for his decision to use deadly for is objectively reasonable based on the circumstances as they appeared to the defendant at the time of the altercation. The objective reasonableness test is that of a reasonable and prudent person.

They jury instruction on justified use of deadly force using legal test question provides the jury with the criteria to determine the claim of self-defense.

The standard jury instruction 3.6(f) Justified Use of Deadly Force provides all the guidance the law requires for the jury to decide the claim of self-defense.

The jury answers the legal test questions by applying the facts as **they** find them to be. How the legal test questions are answered predicts the outcome on the self-defense claim.

The exposure of a use of force matrix, of unknown content and authorship would mislead, confuse and be in direct conflict with the Court's instruction on the law in a self-defense case.

Bedard's own argument supports the exclusion of use of force matrix models in a criminal case. Bedard stated "And so essentially from a training perspective, objective, reasonableness is understood **before the fight** actually happens versus where the jury would decide if force was objectively reasonable after the fight had happened". In a criminal case involving a claim of self-defense it is the jury who decides the objective reasonableness of the defendant's subject perceptions formulated before the fight and it's the jury who decides the objective reasonableness of shooting of Oulson based on how they answer the legal test questions of Reeves' actual belief of the danger, the necessity for shooting Oulson and immediacy of the threat.

The use of a force matrix model to mechanically decide one of the legal test questions for the jury is no more admissible than allowing Bedard to sum up the facts of the case and then opine as to the appropriateness of the response. His explanation of objective reasonableness using a force matrix model, taking away from the jury to determine for themselves if Reeves' actions before firing the shot killing Oulson, would only mislead and confuse the jury as to their overall obligations is to determine the justification of Reeves' action in accord with the objective, reasonable person standard by which claims of justifiable use of deadly force are measured.

The above testimony fails to meet the Daubert standard for admissibility, will not aid or assist the fact finder, is not relevant, would only confuse or mislead the jury and serves only as a conduit for inadmissible evidence.

An expert is not permitted to explain or define a legal term for the jury.

## **ULTIMATE OPINIONS**

During his deposition Mr. Bedard offered the opinion that the shooting of Mr. Oulson by the Defendant was justified.

The State objects to any questioning by the defense which directly or indirectly asks for an opinion regarding the justification of Defendant's use of force. Any such questioning impinges on the province of the jury, will not aid, or assist the factfinder, is not beyond the common understanding of the average person, and would be based on facts that are of such a nature as not to require any special knowledge or experience in order for the jury to form its conclusion. [Salomon, City of Volusia v. Kemp, Mitchell, Rule 90.702, 90.703, 90.704, 90.403]

## **Major Opinions**

### **Opinion #1**

Q Based on your interview with Mr. Reeves, do you believe that Mr. Reeves actually believed that he was in imminent danger of death or great bodily harm necessitating the use of deadly force? A Yes. Depo 2. Pg. 148, Ln. 7-11

### **Opinion #2**

Q And do you believe after interviewing Mr. Reeves regarding the danger as he perceived it, that he actually believed that the danger was so real that under the circumstances the only way he could avoid the danger was through the use of deadly force?

A Well he told me that. And I have no reason to dispute what he told me. I think he does believe that. And I have a whole list of reasons why it would be reasonable to believe that but those are of course my opinions, not what he said.

Q Well I'm asking you, once that you spoke with him do you believe that he actually believes that?

A Right, and that would be an opinion of mine. And my opinion is he actually believes that. Depo 2. Pg. 148, Ln. 12-21

### **Opinion #3**

Q And based on your interview of Mr. Reeves do you believe that Mr. Reeves actually believes it was necessary to use deadly force and/or to prevent what he perceived to be as an imminent threat of death or great bodily harm?

A I think you just asked me that question in a different way.

Q I did.

A Yeah, I believe that Mr. Reeves believes that the moment he fired the shot he was in imminent danger of death or great bodily harm. Depo 2. Pg. 149, Ln. 1-11

#### Opinion #4

Q And based on your analysis of this particular case, do you have an opinion as to whether or not Mr. Reeves was justified in the use of deadly force as you know the facts to be?

A **My opinion was that the use of deadly force by Mr. Reeves was justified based on the facts as I understand them.** Depo 2. Pg. 149, Ln. 12-18

The above-opinions impinges on the province of the jury, fails to meet the Daubert standard for admissibility, will not aid or assist the fact-finder, not beyond the common understanding of the average person, is based on facts that are of such a nature as not to require any special knowledge or experience in order for the jury to form its conclusion, is based on unreliable reasoning or methodology, the reasoning or methodology cannot be properly applied to the facts in dispute, is based on self-serving statements of the Defendant, improperly bolster or vouches for the credibility of the Defendant and serves only as a conduit for inadmissible evidence. [Salomon, City of Volusia v. Kemp, Mitchell, Rule 90.702, 90.703, 90.704, 90.403]

## Argument

### Daubert Standard

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

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

The federal courts have long used the Daubert standard to govern the admissibility of scientific testimony and opinions. In federal Court, Federal Rule of Evidence 702 governs the admissibility of expert testimony in federal courts. Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786 (1993); Kumho Tire Co., Ltd. V. Carmichael, 256 U.S. 137, 119 S.Ct. 1167 (1999). Under Daubert, a federal district court applying Rule

702 is charged with the gate-keeping role of ensuring that scientific evidence is both relevant and reliable. 509 U.S. at 589-95.

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

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

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

Here, Bedard will rely on his specialized knowledge, training, and experience to conduct his analysis of the data/facts and to subsequently render his opinions. The "gatekeeping" function identified in Daubert applies equally to expert opinions based on specialized knowledge, training, and experience. 509 US at 589.

In Kumho Tire, the Supreme Court further held that gate-keeping obligation extends not just to scientific testimony, but also to technical or other specialized knowledge, including testimony base on an expert's own experience. Kumho Tire Company, LTD, 526 U.S. 137, 149 119 S.Ct. 1167 (1999)

"In *Daubert*, this Court held that Federal Rule of Evidence 702 imposes a special obligation upon a trial judge to "ensure



that any and all scientific testimony ... is not only relevant, but reliable." 509 U.S., at 589, 113 S.Ct. 2786. The initial question before us is whether this basic gatekeeping obligation applies only to "scientific" testimony or to all expert testimony.

...

For one thing, Rule 702 itself says:

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

This language 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. In *Daubert*, the Court specified that it is the Rule's word "knowledge," not the words (like "scientific") that modify that word, that "establishes a standard of evidentiary reliability." 509 U.S., at 589-590, 113 S.Ct. 2786. Hence, as a matter of language, the Rule applies its reliability standard to all "scientific," "technical," or "other specialized" matters within its scope. We concede that the Court in *Daubert* referred only to "scientific" knowledge. But as the Court there said, it referred to "scientific" \*148 testimony "because that [w]as the nature of the expertise" at issue. *Id.*, at 590, n. 8, 113 S.Ct. 2786. 526 U.S. at 147-48.

"Neither is the evidentiary rationale that underlay the Court's basic *Daubert* "gatekeeping" determination limited to "scientific" knowledge. *Daubert* pointed out that Federal Rules 702 and 703 grant expert witnesses testimonial latitude unavailable to other witnesses on the "assumption that the expert's opinion will have a reliable basis in the knowledge and experience of his discipline." *Id.*, at 592, 113 S.Ct. 2786 (pointing out that experts may testify to opinions, including those that are not based on firsthand knowledge or observation). The Rules grant that latitude to all experts, not just to "scientific" ones." 526 U.S. at 147.

"We conclude that *Daubert's* general principles apply to the expert matters described in Rule 702. The Rule, in respect to all such matters, "establishes a standard of evidentiary reliability." 509 U.S., at 590, 113 S.Ct. 2786. It "requires a valid ... connection to the pertinent inquiry as a precondition to admissibility." *Id.*, at 592, 113 S.Ct. 2786. And where such testimony's factual basis, data, principles, methods, or their application are called sufficiently into question, see Part III, *infra*, the trial judge must determine whether the testimony has "a reliable basis in the knowledge and experience of [the relevant] discipline." 509 U.S., at 592, 113 S.Ct. 2786." U.S. at 149.

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

## **Florida Evidence Code**

### **Rule 402 Relevancy**

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

### **Rule 702**

90.702. Testimony by experts

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

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

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

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

In 2019, the Florida Supreme Court adopted Ch. 2013-107, § 1, Law of Fla. (2013), which amended sections 90.702 (Testimony by experts) and 90.704 (Basis of opinion testimony by experts), Florida Statutes, of the Florida Evidence Code to replace the *Frye*<sup>1</sup> standard for admitting certain expert testimony with the *Daubert*<sup>2</sup> standard, the standard for expert testimony found in Federal Rule of Evidence 702. In re Amendments to Florida Evidence Code, 278 So.3d 551, 552 (2019) (footnotes omitted)

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

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

"Assuming an expert is qualified to testify, the expert may testify only about matters within the scope of his or her expertise. See *City of Tuscaloosa v. Harcros Chems., Inc.*, 158 F.3d 548, 562 (11th Cir. 1998) (explaining "the expert [must be] qualified to testify competently regarding the matters he intends to address" (alteration added; citations omitted) ); *Feliciano v. City of Miami Beach*, 844 F. Supp. 2d 1258, 1262 (S.D. Fla. 2012) ("Determining whether a witness is qualified to testify as an expert requires the trial court to examine the credentials of the proposed expert in light of the subject matter of the proposed testimony." (internal quotation marks and citations omitted)). The inquiry is not stringent; "so long as the expert is minimally qualified, objections to the level of the

expert's expertise go to credibility and weight, not admissibility." *Pleasant Valley Biofuels, LLC v. Sanchez-Medina*, No. 13-23046-CIV, 2014 WL 2855062, at \*2 (S.D. Fla. June 23, 2014) (internal quotation marks and citation omitted). *Id.* at 2.

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

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

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

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

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

### "Method" Under Daubert and Rule 90.702

The Court's inquiry under Rule 702 must focus on the **methodology**, not the conclusions, but the Court is not required to

admit opinion testimony only connected to existing data by an expert's unsupported assertion. See Daubert, 509 U.S. at 595.; Gen. Elec. Co. v. Joiner, 522 U.S. 136, 146 118 S.Ct. 512, 139 L.Ed.2d 508 (1997).

"[T]he test under *Daubert* is not the correctness of the expert's conclusions but the soundness of his methodology." *Daubert v. Merrell Dow Pharm., Inc.*, 43 F.3d 1311, 1318 (9th Cir. 1995) ("*Daubert II*"). However, an expert's opinion must be based upon "knowledge," not merely "subjective belief or unsupported speculation." *Daubert*, 509 U.S. at 590, 113 S.Ct. 2786. Nothing in *Daubert* requires a court "to admit opinion evidence that is connected to existing data only by the ***ipse dixit*** of the expert," and "[a] court may conclude that there is simply too great an analytical gap between the data and the opinion proffered." *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146, 118 S.Ct. 512, 139 L.Ed.2d 508 (1997). *Kemp v. State*, 280 So.3d 81, 89 (Fla. 4<sup>th</sup> DCA 2019)

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

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

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

Here, Bedard is offered by the defense as a use of force

expert. He was tasked with determining if Reeves actions were reasonable. At his depositions he listed the material he reviewed and the method he used to come to his conclusions.

He stated he reviewed the following material:

- Reviewed surveillance video. Depo 1. Pg. 60-61
- Reviewed statements of patrons. Depo 1. Pg. 57
- Reviewed Pasco Sheriff Office reports. Depo 1. Pg. 58
- Reviewed Immunity Hearing transcripts. Depo 1. Pg. 59-60
- Reviewed the Autopsy report. Depo 2. Pg. 64
- Reviewed Photographs taken by Knox. Depo 2. Pg. 54
- Reviewed crime scene photos. Depo 2. Pg. 65
- Reviewed photos of Reeves taken at theater. Depo. 2 Pg. 65
- Interviewed the Defendant. Depo 2. Pg. 40
- Reviewed recorded Defendant's post-Miranda statement to law enforcement. Depo 1. Pg. 58

Bedard's deposition testimony regarding how he uses the "null hypothesis" in arriving at his conclusions is outlined above. (Depo 1. Pgs. 75-84)

The method he described is the "null hypothesis" test used in empirical studies, which he modified by substituting subjective data for objective data and the inappropriately attempted to apply the method in a social science arena. Because the method was used in an "observational study", involving a onetime past event, there are no scientific controls, the test is not repeatable and there never can be known an error rate. In effect what Bedard is doing is using a statistically significant test on a non-statistical hypothesis to determine the "true reality".

Every hypothesis test requires preparation of a null hypothesis ( $H_0$ ) and an alternative hypothesis ( $H_a$ ). If one hypothesis is true, the other must be false and vice versa. Example: ( $H_0$ ) Are teens better at math than adults? ( $H_a$ ) (The null hypothesis) Age has no effect on mathematical ability. Whether the test is applied to a statistical hypothesis or a non-statistical hypothesis for the result to have any resemblance of accuracy or "reality" the data used in the test must come from an objective source, not subject to inferences, assumptions, or speculation. Regardless how Bedard frames the hypothesis,

The null hypothesis test as modified by Bedard and applied to

the facts in this case does just that. The "observable data" available to Bedard includes the same material available to the jury, such as witness statements, various statements by Reeves, physical evidence located at the scene, injuries to the Oulsons, and the physical limitations of Reeves. The factual material Bedard used to validate or invalidate a particular set of facts was subjected to his own adversarial bias when he interpreted the facts, made inferences, assumptions, speculation, and assigned weight and credibility to physical evidence (video) and witness testimony, including Reeves'.

The method as he adapted it is offered by Bedard to prevent "confirmational bias" sometimes found in a factual analysis identifies his adversarial bias.

His adversarial bias impacted on his interpretation of the evidence and his acceptance of one inference over another.

It is for the jury to interpret the evidence and to determine the weight and credibility of the evidence.

Bedard wants to play detective and juror. Bedard is in no better position to analyze the factual material than the jury. His analysis is of the same factual material available to the jury. The factual material is not ambiguous, complex, scientific, or any way beyond the understanding of the jury. He was not an eyewitness to the incident. Specialized training and knowledge are not necessary to analyze the factual material in this case to determine the merit of Reeves' self-defense claim.

Bedard weighed the evidence, assign credibility to the witnesses, decided what evidence and testimony he will rely on and which he will ignore, answered the legal test questions, and made his personal determination of justification on Reeves's self-defense claim.

The use of the null hypothesis, **as modified (the substitution of subjective data for objective data)** and used to evaluate the "reality" of the facts in this case and the legal issues decide does not meet Daubert standard as applied. The quantum of evidence used to disprove the accepted fact is subjective requiring no special knowledge or training and is not beyond the understanding of the jury. The quantum of proof used by Bedard is not subject to peer review scrutiny or independent verification. There is no known error rate nor can there ever be regarding the results (conclusions / opinions) Bedard obtained by using subjective data as opposed objective data.

Saying he used a "scientific method" in his analysis of the facts of this case is a ruse attempting to assign admissibility to an otherwise inadmissible lay opinion.

The method described by Bedard is the same method used by the experts in Salomon and the Kemp cases, which was rejected by the courts as unreliable.

In Salomon, [T]he experts reviewed witness statements and other evidence in the case, personally interviewed some witnesses, and essentially opined on the issue of whether the use of deadly force was reasonable, and therefore justifiable under the law. ... The State expert testified his method was he evaluated what the witnesses said. He evaluated the facts of the case. He looks at the perspective of the Defendant, the perspective of the witnesses ... then look at implicit biases ... biases within people ... look at independent witnesses and look at what are the facts. "It is all a part of the totality of the circumstances when we look and we evaluate what the witnesses are telling us." Salomon v. State, 267 So.3d 25, 31-32 (Fla. 4<sup>th</sup> DCA 2019)

The State expert in Salomon "demeaned appellant's credibility concerning whether the victim may have been armed by pointing out "no one says that except for [Appellant]." He bolstered the credibility of a witness favorable to the state by describing her as a "totally independent witness that has no connection to either party.... One witness is independent in my opinion ... it just adds more credence to somebody that does not have a connection." This witness's independence made the location of the victim's hands at a crucial time in the incident "apparent" to the expert. Concerning a witness who did not testify at trial, the expert described what her testimony would have been and then concluded that it was "consistent with everyone except for the Defendant." In rendering an opinion that the use of deadly force was not reasonable, the state expert said "we really have to look at what the witnesses say, every single one of them, except for our Defendant, has the hands to the front." Id. at 32.

In Kemp, "The expert was then allowed to testify at length concerning the findings he made from his review of all of these records. During parts of his testimony, he either repeated what the records stated, recounted what he remembered reading in them, revealed what he "gleaned" from them, or stated his understanding of what the records revealed. During other parts of his testimony, he was permitted to give his interpretation of what he thought portions of the reports and documents meant and on other occasions, he was allowed to speculate or infer what they might mean to



others. He was also allowed to give his opinion that from the records he reviewed, he observed "not one shred of evidence" of criminal activity by Kemp." County of Volusia v. Kemp, 764 So.2d 770, 772 (Fla. 5<sup>th</sup> DCA 2000)

In Kemp, [T]he expert testified his method was eyeballing the shape of the crash damage on a vehicle to determine if the vehicle that made the impact was breaking. "[Expert's] repeated invocation of the magic words "training and experience" was insufficient, without more to establish the reliability of his opinion under Daubert." Kemp v. State, 280 So.3d 81, 89 (Fla. 4<sup>th</sup> DCA 2019)

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

"The Florida Supreme Court has squarely condemned the type of credibility bolstering that occurred here. In Calloway v. State, the Court wrote:

[I]t is erroneous to permit a witness to comment on the credibility of another witness because the jury alone determines the credibility of witnesses. Testimony from a police officer about the credibility of another witness may be particularly harmful because a jury may grant greater credibility to the officer.

210 So.3d 1160, 1189 (Fla. 2017) (internal citations omitted). To the same effect, Tumblin v. State, focused on the abundant case law holding that a law enforcement officer's testimony about another witness's credibility is especially harmful:

"[A]llowing one witness to offer a personal view on the credibility of a fellow witness is an invasion of the province of the jury to determine a witness's credibility." Seibert v. State, 923 So.2d 460, 472 (Fla.2006) (quoting Knowles v. State, 632 So.2d 62, 65-66 (Fla.1993) ). "It is clearly error for one witness to testify as to the credibility of another witness." Acosta v. State, 798 So.2d 809, 810 (Fla. 4<sup>th</sup> DCA 2001). Moreover, "[i]t is especially harmful for a police witness to give his opinion of a witnesses' [sic] credibility because of the great weight afforded an officer's testimony." Seibert, 923 So.2d at 472 (quoting Page v. State, 733 So.2d 1079, 1081 (Fla. 4<sup>th</sup> DCA 1999) ); see also Acosta, 798 So.2d at 810. "Police officers, by virtue of their positions, rightfully bring with their testimony an air of authority and legitimacy. A

jury is inclined to give great weight to their opinions...." *Bowles v. State*, 381 So.2d 326, 328 (Fla. 5th DCA 1980); see also *Lee v. State*, 873 So.2d 582, 583 (Fla. 3d DCA 2004) (holding police officer's comment that witness was credible and positive in her pretrial lineup identification was error requiring new trial); *Olsen v. State*, 778 So.2d 422, 423 (Fla. 5th DCA 2001) ("[I]t is considered especially harmful for a police officer to give his or her opinion of a witness' credibility because of the great weight afforded an officer's testimony."); cf. *Perez v. State*, 595 So.2d 1096, 1097 (Fla. 3d DCA 1992) (stating that improper admission of police officer's testimony to bolster \*33 the credibility of a witness cannot be deemed harmless). *Salomon*, 267 So.3d at 32-33.

### **"Helpfulness" Under Daubert and Rule 90.702**

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

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

If a fact is so basic and so well known that the expert opinion would not aid the jury in its deliberation, the expert testimony is not admissible. *Jordan v. State*, 694 So.2d 708, 717 (Fla 1997) (That an "elderly woman approached in public by a man with a gun will be terrified" is not a proper subject for expert

testimony since it is a subject persons know as a result of their "common experience".), Florida Power Corp. v. Barron, 481 So. 2d 1309, 1310 (Fla 2<sup>nd</sup> DCA 1986) (Reversible error to admit human factor expert's testimony where there were no unusual circumstances in the case; "Because the importance and validity of the testimony of an expert witness are increased in the mind of the jury, allowing an expert witness to testify to matters of common understanding creates the possibility that the jury will foregoing independent analysis of the facts when it does not need assistance in making that analysis. This is particularly true when there are not unusual or complicated circumstances surround the incident about which the expert testifies"), Mitchell v. State, 965 So. 2d 246, 251 (Fla. 4<sup>th</sup> DCA 2007) (Opinion that defendant reasonably believed that he had to defend himself or be killed which was based entirely on defendant's self-serving statements was inadmissible because "there is nothing in his testimony which concerns a subject beyond the common understanding of the average person".)

"To be admissible, expert testimony must "assist the trier of fact in understanding the evidence or in determining a fact in issue ...." § 90.702, Fla. Stat (2017). We have also described this quality of expert testimony as being "helpful to the trier of fact." Anderson v. State, 786 So.2d 6, 8 (Fla. 4<sup>th</sup> DCA 2000) (quoting Holiday Inns, Inc. v. Shelburne, 576 So.2d 322, 335 (Fla. 4<sup>th</sup> DCA 1991) ). Whether self-defense applies in a given case is a classic question that jurors are well equipped to handle. As we wrote in Mitchell v. State:

In order to be helpful to the trier of fact, expert testimony must concern a subject which is beyond the common understanding of the average person. Expert testimony should be excluded where the facts testified to are of such a nature as not to require any special knowledge or experience in order for the jury to form conclusions from the facts.

965 So.2d 246, 251 (Fla. 4<sup>th</sup> DCA 2007) (internal citation omitted).

Here, the experts' opinions on the viability of self-defense necessarily involved their estimation of the credibility of the competing witnesses, a determination squarely within the wheelhouse of the jury as the finder of fact." Salomon v. State, 267 So.3d 25, 31 (Fla. 4<sup>th</sup> DCA 2019)

This case is not sufficiently technical in nature that an expert could assist or aid the jury. The shooting was captured on video, which the jury can interpret the content without the aid of an expert's testimony. The Defendant made post-Miranda statements, which the jury is quite capable of determining the "truthfulness" of the statements. The scene of the shooting was photographed, which the jury is quite capable of associating the evidence at the scene with the Defendant's statement and various other witnesses in the theater at the time of the shooting and making their own determination as to the justification of the use of force.

Here, the Daubert issue is twofold. First is the method reliable as applied and second does the conclusions and opinions derived from the use of the method aid the jury in deciding a material fact in dispute. The first issue as argued above is answered in the negative. The second issue is also answered in the negative.

Bedard's conclusions and opinions resulting from the application of the modified "null hypothesis" test is based on his subjective interpretation of the evidence or witness statements where accepts one inference over another and assigns weight to conflict evidence or testimony. He then uses his own quantification standard to determine if a particular set of facts is valid or invalid.

There is no way to objectively test Bedard's "technique" or approach because it is merely his own subjective conclusory opinions. Such an approach cannot be tested for reliability. Bedard's testimony is simply his opinions reached solely for the purpose of testifying in this case.

It is the jury's province to make such determinations. In the criminal justice system, it is the jury, not an expert, who determines what facts are credible, the weight the credible facts are given and whether the credible facts or lack of credible facts supports a guilty or not guilty verdict. Only when the facts are beyond their understanding will may an expert aid the jury by using his/her specialized knowledge or training to help the jury understand the facts before them. That is not the case here.

The modified method used by Bedard to determine the reality of specific issues in the case and his conclusions do not aid the jury and invades the province of the jury to be the sole determiners of the facts.

The above testimony fails to meet the Daubert standard for admissibility, will not aid or assist the fact finder, is not relevant, would only confuse or mislead the jury and serves only as a conduit for inadmissible evidence.

### **Rule 90.703 Opinion On Ultimate Issue**

Witnesses will be prevented from expressing their conclusions when the opinion only tells the jury how to decide the case and does not help the jury to determine what occurred.

In Mootry the court held that it was error to admit opinion testimony of outside counsel that BCU had cause to terminate plaintiff's employment, that plaintiff had due process, and there was no legal requirement that plaintiff was entitled to confront his accusers.) Mootry v. Bethune-Cookman University, Inc., 186 So.3d 15, 21 (Fla. 5<sup>th</sup> DCA 2016)

In Edwards the court held it was error to permit detective to opinion that someone who is being deceptive will avoid eye contact and look down, or bury his face, cross his arms to create a barrier, conceal his mouth, or look away before playing a video interrogation of the defendant. The detective's opinion invaded the province of the jury and was an impermissible comment on credibility. Edwards v. State, 248 So.3d 166, 169 (Fla 4<sup>th</sup> DCA 2018)

In Hill the court held it was plain error to admit FBI agent's expert testimony concerning the lack of credibility of defendant's statements during interview with law enforcement. See, U.S. v. Hill, 749 F.3d 1250, 1258-59 (10<sup>th</sup> Cir. 2014)

In Fuentes the court held it was proper to exclude architect's testimony regarding whether a duty was owed to the plaintiff under the South Florida Building Code and whether the duty had been breached because it expressed a legal conclusion. Fuentes v. Sandel, Inc., 189 So.3d 928, 934-35 (Fla. 3 DCA 2016)

In Kayfetz the court held it was error to permit expert to testify "as to his opinion of Plaintiff's responsibilities under the South Florida Building Code ... Defendant's expert should not have been permitted to instruct the jury as to how the rules set out in the code applied to the facts before them". Kayfetz v. A.M. Best Roofing, Inc., 832 So.2d 784, 786 (Fla. 3d DCA 2002)

"The trial court has broad discretion in determining the subject on which an expert may testify. See Town of Palm Beach v. Palm Beach County, 460 So.2d 879, 882 (Fla.1984). An expert may render an opinion regarding an ultimate issue in a case, but he or she is not permitted to render an opinion that applies a legal standard to a set of facts. See id.; Ruth v. State, 610 So.2d 9, 11 (Fla. 2d DCA 1992); County of Volusia v. Kemp, 764 So.2d 770, 773 (Fla. 5th DCA 2000) ("If expert testimony ... tells the jury how to decide the case, it should not be admitted."). An expert should not be permitted to testify regarding a legal conclusion that the jury should be free to reach independently from the facts presented to it. See Town of Palm Beach, 460 So.2d at 882. Here, Dr. Desai's deposition testimony included opinions that improperly applied the legal standard of negligence to the facts of the case and that told the jury how to decide the case. 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. See id. (noting that the distinction is to some degree a matter of semantics but that it is a necessary distinction nonetheless)." Estate of Murry ex rel. Murray v. Delta Health Group, Inc., 30 So.3d 576, 578 (Fla. 2d DCA 2010)

Smith is an appeal from a final judgment in which the jury found appellant to be grossly negligent when he ran over a co-worker in the employer's truck. ... The trial court erroneously admitted the conclusory opinion testimony of appellee's expert attributing gross negligence to appellant. "This was a question clearly for the jury, not for an expert's opinion, as proscribed by Town of Palm Beach v. Palm Beach County, 460 So.2d 879 (Fla.1984)." Smith v. Martin, 707 So.2d 924, 925 (Fla. 4<sup>th</sup> DCA 1998)

"The Florida Supreme Court has recognized that the danger of admitting this type of expert testimony is that "the jury may forego independent analysis of the facts and bow too readily to the opinion of and (sic) expert." Angrand v. Key, 657 So.2d 1146 (Fla.1995). Where the jury was faced with the difficult issue of determining a distinction between negligence and gross negligence, the error of admitting the expert's opinion on what facts established gross negligence was particularly likely to influence the juries' decision." Id. at 925

In Shaver, over the Appellant's objections, a trooper who assisted in the accident investigation was permitted to testify that Shaver violated Carpenter's right-of-way and that Carpenter did not violate Shaver's right-of-way. This was error. Shaver v. Carpenter, 157 So.3d 305, 307 (Fla. 2<sup>nd</sup> DCA 2014)

"In Hernandez v. State Farm Fire & Casualty Co., 700 So.2d 451 (Fla. 4th DCA 1997), the circuit court allowed an officer who had been at the scene of the accident to testify at trial that Hernandez violated the other driver's right-of-way. The Fourth District held that jurors "should not be informed of the investigating officer's determination of who caused the accident and who was cited." *Id.* at 452; see also Galgano v. Buchanan, 783 So.2d 302, 304 (Fla. 4th DCA 2001) (holding that a party was deprived of a fair trial when the investigating officer was allowed to testify that he issued a citation for violation of the right-of-way and the party paid the citation); Albertson v. Stark, 294 So.2d 698, 699 (Fla. 4th DCA 1974) (remarking that, to the average juror, the investigating officer's decision whether to charge one driver or the other with a traffic violation "is very material to, if not wholly dispositive of, that juror's determination of fault on the part of the respective drivers").

In Hernandez, as in this case, the law enforcement officer did not testify whether any citations were issued or not issued. But that is of no import when the officer's testimony clearly suggests who would have been cited and who would not have been. See 700 So.2d at 452; see also Spanagel v. Love, 585 So.2d 317, 318 (Fla. 5th DCA 1991) (stating that while neither side asked the officer whether a party had been charged in connection with the accident, the officer's testimony that the party had not engaged in any improper driving would cause any reasonable person to believe he had not been).

The trial court in this case erred in allowing the officer to testify that Shaver violated the right-of-way, and that Carpenter did not. We reverse the judgment in favor of the Carpenters and remand for a new trial." *Id.* at 307

Here, Bedard is simply telling the jury how to determine Reeves' self-defense claim.

## **Rule 90.704 Reliance on Inadmissible Evidence.**

Under section 90.704, an expert may rely on facts or data that have not been admitted, or are not even admissible, when those underlying facts are of a type reasonably relied upon by experts in the subject to support the opinions expressed.

In Mitchell the court found that Dr. Edney's proffered testimony boils down to a statement that, based upon what Mitchell told him, Mitchell reasonably believed that he had to defend himself or be killed. There is nothing in his testimony which concerns a subject beyond the common understanding of the average person. If the jury believed Mitchell, then it would find that he acted in self-defense. Thus, the issue is not one on which expert testimony should be permitted. It merely allowed an expert witness to bolster Mitchell's credibility which is improper. Acosta v. State, 798 So.2d 809, 810 (Fla. 4th DCA 2001). And it improperly introduces Mitchell's self-serving statements which are otherwise inadmissible hearsay. See Lott v. State, 695 So.2d 1239, 1243 (Fla.1997). Mitchell v. State, 965 So.2d 246, 251 (Fla. 4<sup>th</sup> DCA 2007)

## **Rule 90.403 Exclusion On Grounds Of Prejudice Or Confusion**

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

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



An expert opinion based exclusively on hearsay or other inadmissible evidence is generally excluded under section 90.403 because its probative value is outweighed by the danger of unfair prejudice. Linn v. Fossum, 946 So. 2d 1032 (Fla. 2006); Doctors Co. v. State, Dept. of Ins., 940 So. 2d 466, 470 (Fla. 1st DCA 2006) (No abuse of discretion to exclude testimony of insurance expert based on conversations with party's attorney and actuary. The opinion, "if allowed, would have been based on inadmissible hearsay.")

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

#### *Exclusion of relevant evidence*

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

"Unfair prejudice" has been described as "an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." Brown v. State, 719 So.2d 882, 885 (Fla.1998) (quoting Old Chief v. United States, 519 U.S. 172, 180, 117 S.Ct. 644, 136 L.Ed.2d 574 (1997)). This rule of exclusion "is directed at evidence which inflames the jury or appeals improperly to the jury's emotions." Steverson v. State, 695 So.2d 687, 688-89 (Fla.1997). In performing the balancing test to determine if the unfair prejudice outweighs the probative value of the evidence, the trial court should consider the need for the evidence, the tendency of the evidence to suggest an emotional basis for the verdict, the chain of inference from the evidence necessary to establish the material fact, and the effectiveness of a limiting instruction. Taylor v. State, 855 So.2d 1, 22 (Fla.2003). The trial court is obligated to exclude evidence in which unfair prejudice outweighs the probative value in order to avoid the danger that a jury will convict a defendant based upon

reasons other than evidence establishing his guilt."  
McDuffie v. State, 970 So.2d 312, 326-27 (Fla. 2007)

## **Opinion Relating To The Reasonableness of Defendant's Belief Deadly Force Was Objectively Reasonable**

At trial, the State anticipates the Defendant will continue to claim he acted in self-defense and that the killing of Chad Oulson was justified. The jury will decide if the Defendant's use of deadly force was justified by determining if a reasonable cautious and prudent person under the same circumstances by which the Defendant was surrounded at the time the force was use would have formed the same subjective belief that the danger posed by Chad Oulson could be avoided only using deadly force. While it is true that the danger need not have been actual; to justify the use of deadly force, the appearance still must be one a reasonable cautious and prudent person would have.

In a criminal trial the courts are clear, it is the **objective, reasonable man standard** by which claims of justifiable use of force are measured.

"The determination of whether the use of force is justified under section 776.012(2) is to be made "in accord with the objective, reasonable person standard by which claims of justifiable use of deadly force are measured." Montanez v. State, 24 So. 3d 799, 803 (Fla. 2d DCA 2010); see also Fla. Std. Jury Instr. (Crim) 3.6(f). The question under this objective evaluation of a defendant's conduct is whether, based on the circumstances as they appeared to the defendant at the time of the altercation, a reasonable and prudent person in the same position as the defendant would believe that the use of deadly force is necessary to prevent imminent death or great bodily harm or the imminent commission of a forcible felony. See Garcia, 286 So.3d 348; see also Mobley v. State, 132 So. 3d 1160, 1164-65 (Fla. 3d DCA 2014)." Bouie v. State, 292 So.3d 471, 481 (Fla 2<sup>nd</sup> DCS 2020)

The "reasonableness" analysis required under Florida Statute 776.012 (Use of force in defense of person) and Standard Jury Instruction 3.6(f) (Justifiable Use of Deadly Force) is fact driven. Generally stating one is in "fear"<sup>1</sup> is not sufficient. The

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<sup>1</sup> Fear - Apprehension of harm; dread; consciousness of

facts which caused the emotional experience of "fear" must be articulated so the jury can decide if a reasonable cautious and prudent person under the same circumstances by which the Defendant was surrounded at the time the force was use would have formed the same subjective belief that the danger posed by Chad Oulson could be avoided only using deadly force.

To determine the "reasonableness" of the conduct in using deadly force, the relevant inquiry is into the state of mind of the individual using the deadly force.

The courts have rejected expert opinions regarding the "reasonableness" of the defendant's conduct in the use of deadly force. See, Mitchell v. State, 965 So.2d 246, 251 (Fla. 2007) (Third, the court correctly excluded "expert" testimony that the defendant could have considered himself under attack at the time of the murder, as the subject was not beyond the jury's common experience.), Salomon v. State, 267 So.3d 25, 32 (Fla. 4<sup>th</sup> DCA 2019) (Expert witnesses expressing an opinion whether the use of force was justified in a self-defense case is not proper, because when the jury's decision turns on the credibility of witnesses the expert's testimony impinges on the province of the jury. An opinion under these circumstances turns on an evaluation of the credibility of witnesses, which is up to the jury, not experts.)

### **Invades The Province of The Jury**

"According to section 90.702, Florida Statutes (1997), the purpose of expert testimony is to "assist the trier of fact in understanding the evidence or in determining a fact in issue." The expert's opinion must concern a subject which is "beyond the common understanding of the average layman and is such as will probably aid the triers of fact in their search for truth." La Villarena, Inc. v. Acosta, 597 So.3d 336, 339 (Fla. 3d DCA 1992). ... See Republic Nat'l Life Ins. Co. v. Valdes, 348 So.2d 566, 569 (Fla. 3d DCA 1977) (jury resolves conflicting evidence as to whether insured fatally shot in altercation was "aggressor" within terms of insurance policy exclusion); Forshee v. Peninsular Life Ins. Co., 370 So.2d 842, 845 (Fla. 3d DCA 1979) (in civil action to recover accidental death benefits, "[t]he question of whether a death is accidental or

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approaching danger. Mental response to threat. H. Black, Black's Law Dictionary (5<sup>th</sup> Ed. 1979)

whether the decedent was the aggressor or committing an assault at the time of his death is, by its very nature a question of fact [for the jury]"); *Jenkins v. State*, 349 So.2d 1191, 1192 (Fla. 4th DCA 1977) (resolution of conflicting testimony concerning identity of aggressor in fight was question for jury)." *Smith v. Hooligan's Pub & Oyster Bar, LTD*, 753 So.2d 596, 601 (Fla. 3<sup>rd</sup> DCA 2000)

In *Kemp*, "the trial court accepted the witness as an expert in this area, the expert proceeded to outline \*772 certain constitutional principles from which standards have been adopted that govern the conduct of law enforcement officers in the exercise of their official duties<sup>2</sup>. For example, he testified that an investigator or police officer would not be permitted to: (1) exaggerate findings for the purpose of securing an arrest; (2) falsify facts for the purpose of securing an investigation or indictment; (3) hide or delete exculpatory information for the purpose of securing an investigation or indictment; or (4) inject their opinion or conclusions with regard to their observations. He also testified that the purpose of a supervisor is to review the work including reports produced by police officers to ensure that these standards have been complied with and to specifically ensure that ambiguous information is not included in police reports for the purpose of suggesting criminal activity." *County of Volusia v. Kemp*, 764 So.2d 770, 771-72 (Fla. 5<sup>th</sup> DCA 2000)

The *Kemp* court held that "an expert should not be allowed to render an opinion which applies a legal standard to a set of facts. See *Town of Palm Beach; Gurganus v. State*, 451 So.2d 817 (Fla.1984); *Smith v. Martin*, 707 So.2d 924 (Fla. 4th DCA 1998); *Christian v. State*, 693 So.2d 990 (Fla. 1st DCA 1996), *quashed on other grounds*, 692 So.2d 889 (Fla.1997); *Gulley v. Pierce*, 625 So.2d 45 (Fla. 1st DCA 1993); *Shaw v. State*, 557 So.2d 77 (Fla. 1st DCA 1990); *cf. Brescher v. Pirez*, 696 So.2d 370, 374 n. 2 (Fla. 4th DCA 1997) ("The appellee asserts that ... the court and the jury were entitled to rely on the testimony of a former police chief who rendered an 'expert' opinion that the officers did not have probable cause to believe that a felony was

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<sup>2</sup> Which we do not have in this case.

being committed. As we note, the existence of probable cause is an issue of law for the court, not for expert witnesses, to decide.") (citation omitted). In addition, expert testimony should be precluded if its probative value is outweighed by the danger of unfair prejudice. See § 90.403, Fla. Stat. (1999); *Zecchino v. State*, 691 So.2d 1197 (Fla. 4th DCA 1997); see also *LaVillarena, Inc. v. Acosta*, 597 So.2d 336 (Fla. 3d DCA 1992). County of Volusia v. Kemp, 764 So.2d 770, 773 (Fla. 5<sup>th</sup> DCA 2000)

"Similarly, in the instant case, the expert witness rendered an opinion which applied a legal standard to a set of facts when he told the jury that the defendant's conduct was unconstitutional. This is clearly a question for the jury to resolve, not an expert witness. Furthermore, 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. Thus, allowing the expert witness to give his opinion regarding what he thought were conflicts in the reports and testimony invaded the province of the jury. Furthermore, this testimony was highly prejudicial and certainly unduly influenced the jury in arriving at its verdict. In essence, the expert witness directed the jury to render a conclusion that it should have been free to arrive at independent from his interpretations of the reports and testimony of the defendants and his opinion whether their conduct in the investigation was unconstitutional." County of Volusia v. Kemp, 764 So.2d 770, 773-74 (Fla. 5<sup>th</sup> DCA 2000)

### **Bedard's Opinion(s) Do Not Aid The Jury**

"In order to be admissible, expert testimony must concern a subject which is beyond the common understanding of the average layman and is such as will probably aid the triers of fact in their search for truth. *Buchman v. Seaboard Coast Line Railroad*, 381 So.2d 229 (Fla.1980); *Mills v. Redwing Carriers, Inc.*,

127 So.2d 453, 456 (Fla. 2d DCA 1961) (Consequently the opinion of an expert should be excluded where the facts testified to are of a kind that do not require any special knowledge or experience in order to form a conclusion, or are of such character that they may be presumed to be within the common experience of all men moving in ordinary walks of life.)" Florida Power Corporation v. Barron, 481 SO.2d 1309, 1310 (Fla. 2<sup>nd</sup> DCA 1986)

In Barron the court found "[t]here were no unusual circumstances in the instant case; in fact, when asked, "Are you telling me that there is something complicated about this case and how it happened that they [the jurors] are not capable of understanding themselves?," Gloyd responded, "No, I don't think there is." Furthermore, Gloyd's disputed testimony did not consist of the application of expert knowledge to the circumstances of this case in order to explain the human response thereto. Rather, it merely consisted of a statement of a fact which we believe is within the common understanding of the jury." Id. at 1310.

The Barron court reasoned that "[b]ecause the importance and validity of the testimony of an expert witness are increased in the mind of the jury, allowing \*1311 an expert witness to testify to matters of common understanding creates the possibility that the jury will forego independent analysis of the facts when it does not need assistance in making that analysis. This is particularly true when there are no unusual or complicated circumstances surrounding the incident about which the expert testifies." Id. at 1311.

### **Bedard's Testimony Vouches for Credibility of The Defendant**

As a rule, "it is not proper to allow an expert to vouch for the truthfulness or credibility of a witness." *Frances v. State*, 970 So.2d 806, 814 (Fla.2007) (citing *Feller v. State*, 637 So.2d 911, 915 (Fla.1994), and *State v. Townsend*, 635 So.2d 949, 958 (Fla.1994)). The general rule applies to prohibit an expert witness from testifying concerning the truthfulness or credibility of the victim in child sexual abuse cases. *Tingle v. State*, 536 So.2d 202, 205 (Fla.1988); *Weatherford v. State*, 561

So.2d 629, 634 (Fla. 1st DCA 1990). Of course, a nurse practitioner such as Ms. Nadkarni may testify to the physical findings observed on examination of a child victim. See *State v. Gerry*, 855 So.2d 157, 160 (Fla. 5th DCA 2003). It is also proper for such a nurse practitioner to explain why, given the nature of the abuse alleged, physical injury may not be observed on examination.

...

Even if the expert does not comment directly on the child victim's credibility, expert testimony is improper if the juxtaposition of the questions propounded to the expert gives the jury the clear impression that the expert believed that the child victim was telling the truth. *Hitchcock v. State*, 636 So.2d 572, 575 (Fla. 4th DCA 1994); *Price v. State*, 627 So.2d 64, 66 (Fla. 5th DCA 1993). Here, Ms. Nadkarni did not opine directly on M.D.'s credibility. Nevertheless, Ms. Nadkarni's testimony concerning her "medical assessment" that sexual abuse had occurred was based entirely on the history of sexual abuse reported by the child. This testimony left the jury with the unmistakable impression that Ms. Nadkarni's opinion—supported as it was by her impressive credentials—was that M.D.'s account of the sexual abuse was truthful. The admission of this opinion testimony—especially in a case where the child has testified that she fabricated her story about the sexual abuse for an ulterior motive—was error. See *Feller v. State*, 637 So.2d 911, 915 (Fla.1994). *Geissler v. State* 90 So.3d 941, 947 (Fla 2 DCA 2012)

In *Salomon*, the facts involved a shooting outside of an apartment house. Appellant lived in Apartment B with his girlfriend Briana Wilson, two children and Briana's grandmother. Briana's mother lived in Apartment D with her boyfriend, the victim Jonathan Maciel, and one other person. The 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. The case turned on the credibility of witnesses—which witnesses the finders of fact believed would determine the outcome. *Salomon v. State*, 267 So.3d 25, 28 (Fla. 4<sup>th</sup> DCA 2019)

Expert witnesses expressing an opinion whether the use of force was justified in a self-defense case is not proper, because when the jury's decision turns on the credibility of witnesses the expert's testimony impinges on the province of the jury. An opinion

under these circumstances turns on an evaluation of the credibility of witnesses, which is up to the jury, not experts. Id. at 31.

Here, three witnesses heard the Defendant say words to the affect say, "Throw popcorn on me will ya". Other witnesses will testify to the interactions of the Defendant and Oulson at various times just prior to the shooting. In the Defendant's post-Miranda statement, he relies on his perceptions to justify his use of deadly force. As in Salomon, this case will turn entirely on how the jury evaluates the testimony of various civilian eyewitnesses to the shooting and the post-Miranda statement of the Defendant.

Bedard's testimony regarding the credibility of the Defendant and witnesses is not admissible.

## **Prior Consistent Statement**

Prior consistent statements are generally inadmissible to support or bolster the credibility of a witness. Rodriguez v. State, 609 So.2d 493, 500 (Fla. 1992) ("We take this opportunity to caution trial courts to guard against allowing the jury to hear prior consistent statements which are not properly admissible. Particular care must be taken to avoid such testimony by law enforcement officers."); Perez v. State, 371 So.2d 714, 716-17 (Fla. 2d DCA 1979) ("A witness's prior consistent statement may not be used to bolster his trial testimony ... The rationale prohibiting the use of prior consistent statements is to prevent putting a cloak of credibility on the witness's testimony."); Jenkins v. State, 547 So.2d 1017, 1020 (Fla. 1st DCA 1989) (Error to admit prior consistent statement where not explicit or implicit charge of recent fabrication, improper influence, or motive to falsify. General attack on credibility is not sufficient.)

Bedard stated several times he believed Reeves's statement to law enforcement, immunity hearing testimony and his individual interview are so like one another that he believes Reeves.

## **Interpretation of Video**

Bedard's interpretations of the surveillance video are not admissible because it will not aid the jury and he lacks the qualification to do so. Any testimony of Bedard's observations from the surveillance video would not assist the trier of fact because the jury is competent to view the video and decide what it shows for themselves. There is nothing about Bedard's training or



experience that makes him more capable than the jury in viewing the video and deciding what it shows.

As an example, Reeves adjusting his eyeglasses have shooting. Depo 2. Pg. 63, Ln. 20-25, Pg. 64, Ln. 1-9

This conclusion is nothing more than a general description of what Bedard believes he saw on the video.

Each of Bedard's opinions on Defendant's alleged conduct on the video suffers from the same infirmity - a lack of expert analysis that would assist the trier of fact in determining exactly what the video shows.

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

The Seymour court reasoned

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

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

The Lee court reasoned

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

### **Bedard's Testimony Regarding The Training Law Enforcement Officers Receive Is Not Relevant**

Bedard's testimony regarding the training police officers receive and comparing that training to the Defendant's action at the time of the shooting is not relevant.

In 1993, the Defendant retired from the Tampa Police Department with the rank of Captain. While a certified police officer, the Defendant's conduct was held to prevailing law enforcement standards.

In a Sec. 1983 civil suit, the reasonableness of the officer's conduct is judged against the prevailing law enforcement standards and his agency's general orders, agency policies or standard operating procedures.

In a criminal case involving self-defense, the reasonableness of the defendant's conduct is judge by the reasonable man standard.

Bedard's testimony comparing the standards of police training with the Defendant's conduct at the time of the shooting is misleading. Potentially the jury is confused as to the standard of review that is appropriate. The jury could improperly conclude

that if the Defendant's conduct was consistent with generally accepted police standards, they would be foregoing their analysis to determine if the Defendant's conduct meet the reasonable man standard found in the standard self-defense jury instruction.

Additionally, Bedard admits he does not know the law enforcement curriculum Reeves received at the Tampa Police Department. Depo 1. Pg. 133, Ln. 18-20. Specifically, he does not know the curriculum Reeves received involving use of force or threat analysis. Depo 1. Pg. 133, Ln. 21-25. Bedard acknowledges in the 1970's when Reeves received his law enforcement training a standard curriculum was only in the developmental stages and academies were free to develop their own curriculum. Depo 1. Pg. 134, Ln. 1-9. Bedard finally admits he does not know the specifics of Reeves' law enforcement training. Depo 1. Pg. 134, Ln. 15-19. In response to not knowing the specific of Reeves' training he stated if Reeves was an instructor, he would know the material he was teaching in the 1990's and 2000's. Depo 1. Pg. 135, Ln. 7-11. **It should be noted Reeves testified at his immunity hearing he retired from the Tampa Police Department in 1993.** Immunity Hearing Transcript, Volume 14, pg. 1783.

Bedard's testimony regarding Reeves' law enforcement background is merely assumption, speculation, and inference upon inference. His testimony cannot be applied to the facts of this case.

Bedard's testimony regarding police training is not relevant because it does not make a fact more or less probable and its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. Rule 401, 402, 403.

## **There Is No "Industry Standard For" Civilian Use of Force**

### **Let's Bridge The Gap Using Law Enforcement Use of Force Matrix Models**

In a \$1983 civil suit brought by individuals on behalf of a person injured by police officer a use of force expert can testify as to the prevailing standards in the field of law enforcement. Samples v. City of Atlanta, 916 F.2d 1548, 1551 (11<sup>th</sup> Cir. 1990)

As a use of force expert, Bedard usually testifies to police practices, i.e., does the use of force exceeded prevailing law enforcement standards. He opinions whether the force applied was

"reasonable" considering prevailing national standards governing police officers. The courts have allowed this type of testimony because lay witnesses are not necessarily familiar with police standards governing use of force. The expert is only allowed to indicate if the officer's conduct was reasonable as it relates to police standards, not if the conduct was reasonable as contemplated by the legal concept of "justifiable".

As an example, in Patrick the U.S. District Court Judge allowed Hayden to opine that the Officer Defendants' multiple use of Taser guns against a "passive resister" like Mr. Patrick, who was showing signs of excited delirium or sudden death syndrome, was in violation of their training on the standards applicable to the deployment of such weapons. The court found two published Eleventh Circuit opinions in which the district court's decision to admit testimony on the prevailing standards in the field of law enforcement from a "use of force" witness at trial was upheld. See, e.g., *Samples v. City of Atlanta*, 916 F.2d 1548, 1551 (11th Cir.1990) ("We find, however, that the questions leading up to this testimony, and the manner in which the expert answered the question, properly informed the jury that the expert was testifying regarding prevailing standards in the field of law enforcement."); *United States v. Myers*, 972 F.2d 1566, 1577 (11th Cir.1992) ("In light of the questioning and answers given, we find that, as with the testimony in *Samples*, Baker properly framed his opinion in accordance with prevailing police standards."). Patrick v. City of Birmingham, Case No. 2:09-CV-1835-VEH, 2012 WL 3775865, pg. 10 (USDC, N.D. Alabama, Southern Division 2012) (Order signed by District Judge Hopkins on Aug. 29, 2012)

Here, Bedard cannot testify that the Defendant's conduct was justified under prevailing use of force standards for law enforcement. Although he is a retired police officer, at the time of the shooting he was not a certified law enforcement officer whose conduct can be scrutinized against prevailing national and local standards of police conduct. As a retired police officer, the Defendant's conduct is judge based on current state law involving self-defense, F.S. 776.012 and standard jury instruction 3.6(f). Judging the Defendant's conduct will be based on the law given by the court, which is not beyond the understanding of the jury and does not take any specialized knowledge to apply the legal concepts to the facts of this case.

Bedard did not rely on any specialized knowledge, training, or experience, he simply compared his interpretation of the video to Def. various statements, along with observations at the theater and developed an opinion that clearly is not useful to the jury in

determining any material fact in dispute and invades the province of the jury.

The reasoning in Thompson explains why bridging the gap for civilians making a self-defense claim using law enforcement use of force matrix models is not appropriate and will only mislead and confuse the jury.

"The fact that excessive force is "not capable of precise definition" necessarily means that, while the CPD's General Order may give police administration a framework whereby commanders may evaluate officer conduct and job performance, it sheds no light on what may or may not be considered "objectively reasonable" under the Fourth Amendment given the infinite set of disparate circumstances which officers might encounter. Indeed, the CPD's General Orders state that they are intended merely to "provide members guidance on the reasonableness of a particular response option," when taking a suspect into custody." Thompson, 472 F.3d at 454.

## Conclusion

"In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, the Supreme Court concluded that the Federal Rules of Evidence contemplated some degree of regulation of expert testimony. 509 U.S. at 589-590. Accordingly, the current version of Federal Rule of Evidence 702 dictates: If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto 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." *Clark v. Takata Corp.*, 192 F.3d 750, 757 n. 3 (7th Cir.1999), citing *Daubert*, 509 U.S. at 593-94; see also *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147-150, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999).

"The Court of Appeals for the Seventh Circuit has found that "expert intuition" is insufficient, noting:

A witness who invokes "my expertise" rather than analytic strategies widely used by specialists is not an expert as Rule 702 defines that term. [The expert] may be the world's leading student of [a topic], but if he could or would not explain how his conclusions met the Rule's requirements, he was not entitled to give expert testimony. As we so often reiterate: "An expert who supplies nothing but a bottom-line supplies nothing of value to the judicial process." Zenith Electronics Corp. v. WH-TV Broadcasting Corp., 395 F.3d 416, 419 (7th Cir.2005) (quoting Mid-State Fertilizer Co. v. Exchange National Bank of Chicago, 877 F.2d 1333, 1339 (7th Cir.1989)).

Expert testimony is admissible only when it will assist the trier of fact, and fact-intensive findings, such as whether there was deliberate indifference or excessive force, are within lay competence and are the prerogative of the jury.

In Thompson the court held "whatever insight Inspector Lukas and Sgt. Campbell might have had into whether or why Officer Hespe used excessive force would have been of little value except as to possibly causing confusion and bore a substantial risk of prejudice. The jury, after having heard all the evidence presented, was in as good a position as the experts to judge whether the force used by the officers to subdue Thompson was objectively reasonable given the circumstances in this case. Introducing two experts to testify that Officer Hespe used excessive force would have induced the jurors to substitute their own independent conclusions for that of the experts. In other words, they would have been "induced to decide the case on an improper basis ... rather than on the evidence presented ....," which is precisely why the evidence should have been excluded." Thompson v. City of Chicago, 472 F.3d 444, 455-458 (7th Cir.2006)

The court's gatekeeping role ensures the reliability and relevance of the expert's testimony offered into evidence. The below evidence is not admissible

#### **Interpretation of the content or lack of content of the video.**

The above testimony impinges on the province of the jury, is inadmissible interpretation of the content of a video and serves

only as a conduit for inadmissible evidence.

**The null hypothesis test and the self-report method to appraise coping.**

Both methods, as applied in this case fail to meet the Daubert standard for admissibility.

**His interpretation of the specific events he identified as points of interest.**

Interpretation using the null hypothesis method does not meet Daubert standards for admissibility, the data used is the same data available by the jury, no application of specialized knowledge or training, inadmissible interpretation of the video, does not aid the jury and invades the province of the jury.

**Believes the Defendant's statements**

Improperly bolster or vouches for the credibility of the Defendant and serves only as a conduit for inadmissible evidence.

**Patrons unidentified hearsay**

Inadmissible hearsay

**Self-Efficacy influence on Reeves' actions**

The analysis uses the same facts the jury will be privy to, the facts are not ambiguous or beyond the common understanding of the jury, the analysis does not aid the jury, and invades the province of the jury.

**Artifacts as a result of stress**

Failure to find the artifacts manifested under stress that had a negative impact on his physical or cognitive performance. Testimony cannot be applied to the facts of the case and does not aid the jury.

**Situation awareness and related concepts**

The testimony fails to meet the Daubert standard for admissibility, will not aid or assist the fact finder, is not relevant, would only confuse or mislead the jury and serves only as a conduit for inadmissible evidence.

## **Decision Making**

As explained by Gary Klein, an authoritative source Bedard relies on, his research does not meet Daubert standards.

## **Defendant's law enforcement training**

The specific training is unknown. The testimony regarding Reeves' law enforcement background is merely assumption, speculation, and inference upon inference. His testimony cannot be applied to the facts of this case.

## **Using law enforcement use of force models to bridge the gap to civilians**

The testimony fails to meet the Daubert standard for admissibility, will not aid or assist the fact finder, is not relevant, invades the province of the jury and would only confuse or mislead the jury and serves only as a conduit for inadmissible evidence.

## **Objective reasonableness**

The testimony on objective reasonableness using a force matrix model, takes away from the jury to determine for themselves if Reeves' actions before firing the shot killing Oulson, would only mislead and confuse the jury as to their overall obligations is to determine the justification of Reeves' action in accord with the objective, reasonable person standard by which claims of justifiable use of deadly force are measured.

## **Ultimate opinions**

The opinions impinge on the province of the jury.

For all reasons previously stated, testimony on the above topics by Bedard is not admissible.

**WHEREFORE**, the State of Florida respectfully requests the Court to enter its Order excluding the above-described testify of Dr. Roy Bedard, Ph.D. and to instruct the attorney for the Defendant, and any witnesses, not to mention or refer, or interrogate concerning, or attempt to convey to the jury in any manner either direct or indirect, any of the above-mentioned facts without first obtaining permission of the Court outside the



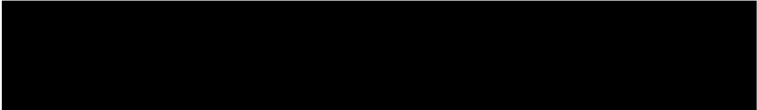
presence and hearing of the jury.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing State's Daubert Motion To Exclude The Testimony Of Defense Expert Dr. Roy Bedard, Ph.D. was furnished to Richard Escobar, Esq., Attorney for the Defendant, at 2917 West Kennedy Blvd., Suite 100, Tampa, FL 33609-3163, by U.S. Mail, Personal Service or Email at rescobar@escobarlaw.com this 12th day of December 2021.

BRUCE BARTLETT, State Attorney  
Sixth Judicial Circuit of Florida

By:

  
Glenn L. Martin Jr.  
Assistant State Attorney  
Bar No. 435988

**EXHIBIT #1**

THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY

2014CF000216CFAXES-SECTION 1

STATE OF FLORIDA,

v

CURTIS JUDSON REEVES,

THE DEPOSITION OF

ROY BEDARD

REPORTED BY:

PATRICIA KILGORE, RMR

In the Office of:

ASSOCIATED COURT REPORTERS

101 West Fulton Street

Sanford, Florida

October 12, 2021

At 9:00 a.m.

APPEARANCES:

BRUCE BARTLETT, State Attorney  
Sixth Judicial Circuit of Florida  
P.O. Box 17500  
Clearwater, Florida 33762-0500  
BY: GLENN LAIR MARTIN, ESQUIRE

ESCOBAR & ASSOCIATES  
2917 West Kennedy Blouvard, Suite 100  
Tampa, Florida 33609  
Attorneys for Defendant  
BY: DINO M. MICHAELS, ESQUIRE

## I N D E X

## TRANSCRIPT OF PROCEEDINGS

Deposition held October 12, 2021

## TESTIMONY OF ROY BEDARD

Direct Examination by Mr. Martin 3

CERTIFICATE OF OATH 166

CERTIFICATE OF REPORTER 167

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## 1 P R O C E E D I N G

2 ROY BEDARD

3 having been first duly sworn, was examined and deposed  
4 as follows:

## 5 DIRECT EXAMINATION

6 BY MR. MARTIN:

7 Q State your name for the record.

8 A Roy, last name Bedard. B-E-D-A-R-D.

9 Q Mr. Bedard, how are you employed?

10 A I'm self-employed.

11 Q Do you have a particular company, business?

12 A Yes. My business is RRB Systems International.

13 That is actually a DBA under Florida Division of  
14 Corporations. It's listed as Rapid Rotation Baton,  
15 Incorporated.

16 Q Through that business, what services do you provide  
17 to the defendant?

18 A So I make products, defensive gear that is geared  
19 towards batons, handcuffs, various belt systems that  
20 officers use to defend themselves.

21 I provide training through the corporation as well  
22 for those products as well as other areas of law  
23 enforcement, and I also provide consulting and expert  
24 services, I guess.

25 Q Other than training for the products that you

1 produce, what type of training do you provide?

2 A Besides the ones I produce?

3 Q Yes, sir.

4 A I produce -- Well, I produce, as I said, handcuffs  
5 and batons, so that would be the limitation of my  
6 training of my products, but I also do ground defense  
7 courses, I teach arrest techniques, I teach areas of  
8 patrol procedures. Of course, I teach at the academy as  
9 well as I teach the entire curriculum block.

10 Q The entire block?

11 A I teach the legal component of that block. I teach  
12 from that block -- Excuse me. I teach the legal  
13 component, I teach tactics, I've taught patrol  
14 procedures, report writing, communications. Just a  
15 variety of areas.

16 I'm qualified to teach that block. I usually get  
17 called whenever they have shortages from staffing.

18 Q All right. Are you qualified to teach defensive  
19 driving?

20 A No.

21 Q Are you qualified to teach the first aid part?

22 A No.

23 Q When you say you cover the legal powers, is that in  
24 general or liability?

25 A It is in general.

1       Q   And when you say the legal part, specifically what  
2   areas in the, quote, legal area and the basic recruit  
3   training program manual that you teach?

4       A   Some just changed this year, 2021, that is mostly  
5   court structure. It has to do with constitutional  
6   review for basic recruit officers as of last year.

7           What I was teaching included statutory elements,  
8   juvenile law, they pulled that out and moved into a  
9   different chapter, Chapter 776.032, which I still teach,  
10   but that's not part of the legal block anymore.

11       Q   In what areas of liability do you teach?

12       A   Defensive tactics and use of force.

13       Q   Is use of force incorporated in defensive tactics,  
14   or is it spread and distinct?

15       A   It's taught during the same block. It is very  
16   separate in the state, it's a different thing.

17       Q   I know it's a different thing, but is it within  
18   defensive tactics or another chapter, another unit?

19       A   It's both. It's in legal. We talked about use of  
20   force, and there's a small component of use of force in  
21   the legal block, and then it's more responsive in the  
22   defense tactics.

23       Q   How is it more responsive in the legal tactic?

24       A   Tennessee versus Garner, Terry versus Ohio for  
25   reasons to stop and then a defensive tactics block. It

1 is expansive to the force, what used to be called the  
2 force matrix. It's still called the force matrix, it's  
3 just not secret anymore, but it gets into various types  
4 of force modeling. We talk about different types of  
5 resistance, different types of response, things of that  
6 nature. And really the construct, I guess, of objective  
7 reasonableness. I guess it's more flushed out in the  
8 defensive tactics portion.

9 Q Objective reasonableness as it pertains to what?

10 A Well, it's a term of art. I know that it's also  
11 understood to be a term in the court that the jury has  
12 purview over deciding, but in law enforcement, we talk  
13 about objective reasonableness as opposed to  
14 subjectiveness, reasonable behaviors with modeling that  
15 describes when force is appropriate. And so essentially  
16 from a training perspective, objective, reasonableness  
17 is understood before the fight actually happens versus  
18 where the jury would decide if force was objectively  
19 reasonable after the fight had happened.

20 Q All right. And this is to law enforcement cadets?

21 A Many law enforcement and corrections, yes.

22 Q Is there a different standard between law  
23 enforcement and corrections?

24 A That's a complex question. In the curriculum there  
25 is a number of different techniques that are used.



1 Q I'm talking about the cost of the use of force and  
2 constitutional.

3 A A little bit, so use of force is driven by Eighth  
4 Amendment, by Fourth Amendment when it comes to deciding  
5 whether or not force is appropriate.

6 Q Is there any particular statute, Florida Statute  
7 that you've become familiar with in teaching that  
8 curriculum?

9 A In the curriculum it's along 776.05 and 776.051,  
10 that's the law enforcement standards. 901, which, of  
11 course, gives law enforcement officers authority and  
12 describes what their practice is and permissions are as  
13 law enforcement officers under color of law.

14 We do talk about stand your ground, the other  
15 particular 776.032, 776.013, Castle Doctrine, and  
16 776.032, which discusses how to investigate use of force  
17 cases.

18 Q Let's talk about that one first.

19 A Uh-huh.

20 Q What is it about 776.032 that you instruct recruits  
21 on how to investigate use of force cases?

22 A So use of force cases --

23 Q Let me ask you this: Is this use of force cases  
24 where law enforcement is involved, or when a civilian is  
25 involved?

1 A Civilian.

2 Q All right, sir. Go ahead.

3 A So I think to lay a predicate for what I'm about to  
4 tell you, of course you know this, stand your ground law  
5 is a fairly new construct. Florida was the first state  
6 to enact a stand your ground statute, other states have  
7 subsequently modeled it.

8 Q Excuse me just a second. I'm gonna ask a favor of  
9 you.

10 A Sure.

11 Q I have a lot of ringing in this ear.

12 A Okay.

13 Q Could you just talk up just a little bit for me?

14 A I thought my voice carried. Okay, I will.

15 Q That's perfect.

16 A All right.

17 Q I'm just --

18 A You're gonna exhaust me if I do this for eight  
19 hours, but --

20 Q Well, we're gonna take a break every fifty minutes.  
21 We'll be good.

22 A Okay.

23 Q Thank you.

24 A So 776.032 came about as a statute after  
25 self-defense law was changed in Florida in 2005. It

1 took many years and several iterations to bring us to  
2 where we are today.

3 It has an interesting component to it that I think  
4 law enforcement officers are not well trained in, and  
5 defensive tactics seems to be our best opportunity to  
6 update officers in the nuance of those investigations.

7 First of all, the burden of proving that a claim of  
8 self-defense is not self-defense is on the state.  
9 That's an unusual circumstance for law enforcement  
10 officers to be in because it requires, when they're  
11 conducting investigations, to find out why force was  
12 used. It can be the simplest force, for example,  
13 battery, to the most extreme force.

14 Q Can you do me a favor? I apologize for it.

15 Would you go back, because maybe I missed it. It  
16 has an interesting component because?

17 A The requirement for making an arrest really falls  
18 on law enforcement to prove that a claim of self-defense  
19 is not self-defense. And this is a unique area of  
20 investigation under all law enforcement investigative  
21 conduct.

22 Law enforcement officers are generally  
23 investigating crimes based on did it happen, and who did  
24 it.

25 This type of crime is investigated based -- It's

1 almost an affirmative claim in some cases where a person  
2 says, I did it, but the question is why did you do it.  
3 There's very few -- There's very few criminal defenses  
4 that we care why someone did it. This is one of them.

5 So 776.03 describes that. It tells officers that  
6 as part of their investigation, they must determine  
7 whether or not it was, in fact, an act of self-defense,  
8 the use of force itself. And that is a fairly new  
9 construct.

10 I know 2005 was a long time ago, but it's taken a  
11 long time for it to work its way through the courts and  
12 have case law weigh in on what it actually all means.

13 Q Okay. So we have the situation where you're  
14 instructing officers how to conduct an investigation  
15 based on 776.03?

16 A .032.

17 Q 032?

18 A Yes.

19 Q Okay. And in your instruction with LEOs, is there  
20 any difference between 776.012 and 775.05?

21 A 012?

22 Q 012.

23 A Yeah. 05 is for law enforcement officers  
24 specifically.

25 Q I know.

1       A   And 012 is broader.  It would include law  
2 enforcement officers but includes everyone.

3       Q   Okay.  Is there any difference between the two that  
4 you instruct law enforcement about?

5       A   Well, they're different statutes.  I'm not sure  
6 what you --

7       Q   I understand.

8       A   Language is different, but in terms of -- I guess I  
9 don't understand your question, is there any difference.

10      Q   Okay.  What authority does law enforcement have  
11 under 776.05?

12      A   Well, they have the authority to use force.

13      Q   Uh-huh.

14      A   And generally for three different reasons.

15      Q   Uh-huh.

16      A   They can use force to make arrests, they can use  
17 force to prevent escapes, and they can use force to  
18 defend themselves or others.

19      Q   All right.

20      A   And in that respect, there's a nuanced difference  
21 in 012 and 013.  It doesn't address making arrests or  
22 preventing escapes.  It deals mostly with self-defense.

23      Q   Okay.  Is there a different standard between  
24 civilians and law enforcement as far as whether or not a  
25 particular use of force or a level of use of force is

1 appropriate?

2 A Yes.

3 Q Could you explain that for me, please?

4 A Sure. Law enforcement officers have authority to  
5 make arrests where civilians don't.

6 So, when they're analyzing the threats, the threat  
7 for a law enforcement officer can include taking someone  
8 into custody, and it can include preventing that person  
9 from escaping.

10 As we start getting to the threat of personal  
11 injury, the standards become the same.

12 So, because of stand your ground, a civilian has  
13 precisely the same criteria as a law enforcement officer  
14 does in being able to protect themselves if they  
15 perceive a threat of some level based on described  
16 levels of harm, then there would be a proportional and  
17 appropriate response that would be described for the  
18 purpose of establishing objective reasonableness.

19 Q I'm gonna paraphrase a little bit.

20 Are we talking about a proportional response?

21 A We are talking about a proportional response and  
22 escalation and deescalation, so the response has to  
23 coordinate with the threat as the threat increases or  
24 decreases, and it has to remain proportional.

25 Q To the threat?

1 A To the threat as it's perceived.

2 Q What other training do you provide through your  
3 company?

4 A I do training at a lot of conferences. I do  
5 decision making training.

6 Q What kind of conferences?

7 A Law enforcement mostly.

8 Q Break that down just a little bit specificity.

9 A Like what conferences specifically?

10 Q ILEFTI?

11 A Not ILEFTI, ILETTA.

12 Q ILETTA?

13 A I do it for FCC. I've trained at -- the old days  
14 ASLET, if you remember ASLET. American Society of Law  
15 Enforcement Trainers, I think that was what we liked to  
16 call the original ILETTA. Most everyone went to ILETTA  
17 after that.

18 I've done it at the Florida Sheriff's Association.  
19 I mean, we're talking thirty years ago, so I don't know  
20 if I can recall them all.

21 Q Any civilian conferences?

22 A I've done some teachers conferences or a teacher  
23 conference, actually.

24 Q What was that topic on?

25 A Use of force in the schools and appropriate

1 response to force.

2 Q Are we talking about teachers armed with firearms  
3 on the school campuses or --

4 A No.

5 Q I'm trying to get the content.

6 A Yeah, yeah. It was really about force continuum.  
7 Teaching --

8 Q What is that?

9 A So the force continuum is the model of  
10 proportionately. When you analyze a threat, knowing  
11 what level of force you are permitted to use that's  
12 agreed upon as the appropriate level of force to counter  
13 that threat.

14 Q Okay. Is that something that's taught in the  
15 police academy?

16 A The force continuum?

17 So it was until 2007. 2007 we took it out. It is  
18 still a chart or a model or a matrix endorsed by FDLE,  
19 but it's not taught at the basic recruit level anymore,  
20 but it was for decades.

21 Q Do you know how that force continuum came about?

22 A I do. It has roots back to the military. It was  
23 basically the idea that the military had certain  
24 requirements when it was facing threats, and their  
25 administration decided that, you know, there was a lot



1 of international rules involving this as well, that  
2 there was an appropriate response to a level of threat.

3 Law enforcement, mostly of after the Graham  
4 decision, not that some of the military folks who had  
5 retired and filtered into law enforcement hadn't carried  
6 these ideas with them already, but it really got  
7 codified after Graham versus Connor where the court  
8 imposed the requirement to be objectively reasonable  
9 when we move from an Eighth Amendment standard to a  
10 Fourth Amendment standard. Actually that happened, I  
11 guess, with Tennessee vs Garner about --

12 Q We went from an Eighth Amendment standard, you  
13 said?

14 A Yes. Under Tennessee versus Garner, it was the  
15 first time that we went in law enforcement from an  
16 Eighth Amendment standard of cruel and unusual  
17 punishment as a review -- it was Johnson versus Glick,  
18 1963. Johnson versus Glick imposed four criteria for  
19 deciding whether force was appropriate when used by law  
20 enforcement and/or corrections.

21 And in 1984, Tennessee versus Garner was ruled on  
22 by the Supreme Court, and the court imposed a Fourth  
23 Amendment standard and decided that force, deadly force  
24 in particular should be weighed with respect to  
25 reasonableness, whether or not it was reasonable, a

1 Fourth Amendment criteria, and they moved away from the  
2 Eighth Amendment standard.

3 Q To?

4 A To the Fourth Amendment standard. And then in 1989  
5 in Graham versus Connor, that Fourth Amendment standard  
6 was applied to all use of force that law enforcement  
7 officers would engage in expanding it from just the  
8 deadly force review to a complete force, complete use of  
9 force review, all levels of force.

10 Q Okay. Based on your understanding of  
11 constitutional law, does the Fourth Amendment, seizure  
12 aspect of the Fourth Amendment, does that apply to  
13 civilians?

14 A Ah, no.

15 Q Okay.

16 A But I have an exception. There are some  
17 exceptions, for example, when you're dealing with retail  
18 threat. It would be permitted in the State of Florida  
19 for a civilian loss prevention officer to seize somebody  
20 for retail theft, but the statute would allow that, so  
21 there are some exceptions to it.

22 Q That's the legislative fiat that's been created.

23 A It's a fiat. It's generally not a civilian concern  
24 when you're talking about the right to seize someone.  
25 That is based on that components of use of force that is

1 arrest oriented.

2 Q They determine that arrest was a seizure, is that  
3 what we're talking about?

4 A Yes. I mean, generally the seizures as it's stated  
5 in the constitution, as we understand it in the police  
6 training, there's two seizures. There's the custodial  
7 stop, and they have different, of course, criteria. I  
8 don't believe the constitution mentions arrest anywhere.

9 Q Okay. Generally speaking, I say generally  
10 speaking, civilians do not have a statutory authority  
11 for arrest?

12 A That's correct. There may be a common law.

13 Q I preface it.

14 A Yes. But there is no statutory right to make an  
15 arrest as a civilian with the exception of the fiats.

16 Q Right. They are legislative and not  
17 constitutionally about.

18 A That's is it exactly. Exactly.

19 Q Okay. Are you familiar with the concept of  
20 qualified immunity?

21 A Yes.

22 Q Historically, do you know the reasons why the  
23 courts created qualified immunity?

24 A It was really a reduction in immunity. For the  
25 longest time law enforcement officers enjoyed sovereign

1 immunity, which came down through common law that  
2 applied to governments based on the idea that under  
3 common law, the king could do no wrong. That construct  
4 evolved into, I think, the idea that the government  
5 could do no wrong. And it was assumed that the  
6 government's agents could do no wrong.

7 I think the disrupting case was Monroe versus Pate,  
8 as I recall, in which there was an egregious act done by  
9 thirteen law enforcement officers in Chicago and the  
10 question of whether or not that should be permitted  
11 under sovereign immunity was challenged, and since that  
12 time, it's been greatly restricted so that the  
13 government still enjoys sovereign immunity but the  
14 agents of the government enjoy qualified immunity,  
15 meaning that their immunity is contingent on whether or  
16 not they knowingly violated a constitutional right of an  
17 individual that had been understood and known for a  
18 period of time. Well established is the term that's  
19 used in Harlow versus Fitzgerald.

20 Q Do you believe that the general concepts set forth  
21 by the U.S. Supreme Court in Graham versus Connor and  
22 Tennessee versus Garner apply to civilians?

23 A That was not the intent, I don't think of the  
24 Supreme Court, but I think when civilians are left with  
25 no models, they have to find approved models, and the

1 models that have evolved from Tennessee versus Garner as  
2 to when it's appropriate to use deadly force and Graham  
3 versus Connor, which really talks about in more detail  
4 the reasonableness of force and not being able to view  
5 it in hindsight and recognize that incidents occur  
6 rapidly and they unfold oftentimes in milliseconds.

7 Those concepts are easily bridged to, I'm sorry, to  
8 a civilian audience. And so when we apply objectively  
9 reasonable standards, what is reasonable for law  
10 enforcement officers in a self-defense scenario must be  
11 reasonable for civilian audiences as well.

12 In other words, law enforcement officers do not  
13 enjoy more rights to protect themselves than civilians  
14 do.

15 Q Generally speaking, does law enforcement have a  
16 fiduciary responsibility to go into harm's way and to  
17 take action on behalf of the community?

18 A Federally, no. There is no duty to protect.  
19 DeShaney versus Winnebago, I think is the --

20 Q I said individual person.

21 A Do you mean as an agency?

22 Q I understand that there's no duty to protect an  
23 individual. I'm talking about the community itself.

24 Let's go back to the park shooting at the school.  
25 We had an officer out there who allegedly didn't perform

1 his duty, and he's been charged with a crime.

2 A You're talking about Parkland.

3 Q Parkland. So my question to you is generally  
4 speaking under 776.05 where it indicates that an officer  
5 has no duty to retreat in attempting to make an arrest,  
6 is there a general fiduciary duty for an officer to go  
7 into harm's way and to do his job to protect the  
8 community?

9 A No.

10 Q Talking about federally or state?

11 A Both. I don't know if there's new case law on  
12 that, what's gonna come out of the Parkland shooting. I  
13 think that is one of the questions that the court has in  
14 front of it.

15 Q But you do agree that 776.05 does have the language  
16 that the officer need not retreat --

17 A Yes.

18 Q -- in making an arrest?

19 A Or desist, yes.

20 Q Under 776.012, a civilian does not have that same  
21 obligation as an officer, would you agree?

22 A An obligation to what, to not retreat?

23 Q Yeah. To not retreat, to do your job, make the  
24 arrest.

25 A No. As it's related to a duty, the answer is no.

1 But a citizen is not required to retreat under 776.

2 They can stand their ground thus the term.

3 Q And the language of 776.012, there's no duty to  
4 retreat before the use of force, including deadly force?

5 A There is no duty to retreat.

6 Q Okay.

7 A So long as you're in a place you have a lawful  
8 right to be and then you're not committing a crime.

9 Q Now, prior to 2005 there was a duty to retreat, was  
10 there not?

11 A Yes.

12 Q And, in fact, that duty to retreat was one of the  
13 first things that was looked at. If you didn't retreat,  
14 you had a duty to retreat and you could do it safely,  
15 then your use of force was not reasonable, is that your  
16 understanding?

17 A Yes. That is correct. I think that's been the  
18 common law for six hundred years, yes.

19 Q Okay. So since 2005, we have no duty to retreat  
20 for a civilian under 776.012, right?

21 A Yes.

22 Q But whether or not retreat could be done or was  
23 feasible or could be done safely, that can still be used  
24 to determine the reasonableness of the person's conduct,  
25 even though they don't have a duty to retreat,

1 especially when we bring in the concepts of  
2 proportionality, right?

3 A Yes. I think that's for a jury to answer. I mean,  
4 each case will be reviewed on a case by case basis.

5 Q That's one thing they can consider is whether or  
6 not --

7 A Absolutely. They consider the totality of the  
8 circumstances.

9 Q Right. Whether or not a person moved or didn't  
10 move or could retreat safely or anything like that?

11 A Yes.

12 Q Even though there's no duty?

13 A Well, there's no legal obligation.

14 Q There's no legal obligation.

15 A Yes.

16 Q Okay. All right. Here's what we're gonna do for  
17 the rest of the deposition. I can kind of give you an  
18 outline of how I'm going to proceed.

19 You've been listed as a witness in State versus  
20 Curtis Reeves in Case Number CRC1400216CAES.

21 You've been listed by the Defense according to the  
22 Defendant's seventh notice of additional witnesses. The  
23 Defendant expects to call the following expert witnesses  
24 in the areas of use of force, defensive tactics and  
25 human factors at trial or hearing.



1           That's your understanding?

2           A   Yes.

3           Q   Okay.  Those are three areas that take a different  
4   type of analysis to get through them, and it may take  
5   the same information to do analysis say with human  
6   factors, may take the same information to discuss  
7   briefly what you perceive to be under defensive tactics  
8   and use of force, so I have to do it like that.

9           I'm gonna take each one of those sections, we're  
10   gonna apply the facts and just talk about it so that the  
11   reader's not confused about what we're talking about, so  
12   we're gonna talk about human factors, we're gonna talk  
13   about those aspects of defensive tactics, then we're  
14   gonna talk about use of force, and then we're gonna sum  
15   it up at the end what all this means to you?

16          A   Understood.

17          Q   I think that's a good road map way to do it.

18                So having said that, I did receive a CV, and I'm  
19   going to go ahead and mark that as Exhibit Number One  
20   for the depo.

21                Would you go ahead and look at that, make sure  
22   that's the current one?  I have gone through it, I have  
23   some brief questions on it, but I want to make sure that  
24   that is the most recent one and it's one I can rely on.  
25   So if you'd just take a moment to do that, please.

1       A   Where did you get this?

2       Q   Mr. Escobar's office sent it to me.

3       A   Seems like it's not the most recent one, but let's  
4 see here.

5       Q   Well, do you have the most recent one?

6       A   I do. Let me see if I can pull it up real quick.  
7 As you know, it's a work in progress.

8       Q   Well, I understand.

9       A   It changes all the time.

10      Q   And maybe changes since Mr. Escobar sent it to me,  
11 I understand. So that's why I need to ask.

12      A   Yeah. This looks like mostly what changes is the  
13 international and consulting instruction, and this one  
14 ends at 2014 for some reason, that's an old one, but  
15 I've got one that goes all the way up to 2021.

16      Q   On what page?

17      A   On your page it would be page five, but on my page  
18 it would be -- Well, page five as well. It's just  
19 there's an addition of some consultation and  
20 presentation.

21      Q   Okay.

22      A   I can send it to you.

23      Q   Nope. Here's what we're gonna do. Like I said,  
24 I've reviewed it and I need to know if I can rely on it.  
25 So what we're just gonna go do is we're just gonna go

1 through each section. If there's anything you need to  
2 add, we'll mark the one or two things that need to  
3 added, and then we'll go from there.

4 A Glad one of this review gets done.

5 Q Please. Hang on to that.

6 MR. MICHAELS: Glenn, I have a copy. I didn't  
7 know which one you got.

8 MR. MARTIN: I don't know. They all start to  
9 look the same.

10 MR. MICHAELS: I know. Here, this is the one  
11 that I think Roy is looking at on his --

12 MR. MARTIN: Okay. Well, we'll just fix it.

13 Thank you, though, Dino.

14 BY MR. MARTIN:

15 Q All right. As far as education, anything that's  
16 changed there?

17 A Well, I guess it's that --

18 Q Other than the fact that you received --

19 A I'm no longer in the doctoral program.

20 Q I understand that.

21 A I received a Ph.D.

22 Q Correct.

23 A The rest is correct.

24 Q All right. From Florida State University your  
25 degrees, that's all consistent in there, right?

1       A   Yes, sir.

2       Q   From Lively Law Enforcement Academy, are there any  
3 other areas that you instruct in other than what's on  
4 that CV?

5       A   No.  Those are actually blocks of study, not areas  
6 I've instructed, and Lively doesn't actually exist  
7 anymore.

8       Q   All right.  So that is blocks of study?

9       A   Right.

10      Q   What does that mean?

11      A   This is my academy training.  And -- I'm sorry,  
12 this is not my academy training.  This is my post  
13 academy training where I went back to receive  
14 certifications and whatnot in these various areas.

15      Q   Okay.  All right.  Well, let's just look at them  
16 real quick.

17           Are you still certified as a use of force and  
18 defensive tactic instructor?

19      A   Yes.

20      Q   Are you still certified to teach as general topic?

21      A   Yes.

22      Q   Are you still a firearm instructor?

23      A   No.

24      Q   Okay.  Let me ask you this:  What is advanced  
25 weapon craft, what is that?

1       A   It's a course, a firearms course by Bill Rogers,  
2       Rogers Shooting School.

3       Q   All right. And can you give me the agenda of the  
4       course outline for that? Not the details, just the  
5       bullets. What were you taught?

6       A   You'll understand this, you talked about it at the  
7       hearing, the construct of index shooting that was  
8       argued, it was instinctual shooting what Rogers likes to  
9       call point shooting, being able to bring your weapon up  
10      on target in a short amount of time and hit it without  
11      taking the time to focus on front sight, rear sight and  
12      peer control.

13           The entire course was designed to improve your  
14      response to a stimulus. And it was done handguns,  
15      shotguns.

16      Q   Are there any courses on -- in that section that  
17      you're going to rely on this case as part of your  
18      background to formulate any conclusions or opinions,  
19      just like some of them, even diverse before instructor.  
20      I assume that's not gonna apply. So, is there anything  
21      there?

22      A   I don't think so. I mean, unless somebody ask me a  
23      question about firearms, sometimes that happens and I'm  
24      sure at some point these courses will have been part of  
25      my collective understanding of firearms. But I don't

1 plan to offer opinions about whether or not the weapon  
2 was properly shot, properly held.

3 There may be an issue of reflexive timing, but it  
4 will be more on the side of Mr. Olsen's threat than it  
5 will be on Mr. Reeves' response.

6 Q Let's go to the employment background.

7 A Okay.

8 Q Is there -- Everything there is correct as your  
9 employment background? I'm not saying you're still with  
10 them, but that's what you've done in the past?

11 A That's true. I've subsequently been hired by  
12 Seminole State College as an adjunct professor since I  
13 moved here, which is about a year ago. I started with  
14 them, I don't know, a couple of months ago.

15 Q Okay. And what do you teach at Seminole State  
16 College?

17 A I think the same list that I gave you, the same one  
18 I teach at Pat Thomas Law Enforcement Academy, basic  
19 recruit force, advanced studies, defensive tactics.

20 Q All right. So Seminole State College has a basic  
21 recruit training program?

22 A They do.

23 Q Okay. Let's go down to memberships?

24 A Okay.

25 Q Is that all current and correct?

1       A   Let me get down there.

2           Okay.   First Society for Police and Criminal  
3   Psychology.   Do you have that?

4       Q   No.   Tell it to me again.

5       A   It's called Society for Police and Criminal  
6   Psychology.   That is current.

7           Association of Applied Support Psychology, current.

8           American Society for Industrial Security, current.

9   National Sheriff's Association is current.   IACP,  
10   International Association Chiefs of Police is current.  
11   NRA, current.   National Tactical Officers Association is  
12   current.   Police Executive Research Forum, I don't think  
13   is current.   I don't remember the last time I've paid my  
14   dues.   Tallahassee Committee of Ninety-nine, current.

15          By the way, that is a law enforcement organization  
16   that supports Tallahassee police.

17          ILEETA, current.   And, of course, the World Karate  
18   Team no longer current.   Last time I was on that was  
19   1996.

20       Q   Do you know what a Vanity Association or a Vanity  
21   Membership refers to?

22       A   I mean, I can make sense of it, but I don't know  
23   that I've ever heard it called that.

24       Q   All right.   These memberships -- These memberships,  
25   do you register and pay your dues --

1 A Yes.

2 Q -- in order to belong to them?

3 A Yes.

4 Q All right. Is there any type of requirement where  
5 you submit written documents, have recommendations from  
6 your peers, you do course work and you take a test in  
7 order to be a member?

8 A Don't know. Some of those I had to demonstrate  
9 that I was a law enforcement officer. I had to send in  
10 my law enforcement certification, my license. My --

11 Q Well, there's no test involved in that other than  
12 the shooting test?

13 A No. No, there's not. No. I don't think any of  
14 these require a test. If the question is do they  
15 require a test, the answer is no.

16 Q Okay. So these are associations that you become a  
17 member because of your education and training and  
18 background, you pay your dues and you can participate  
19 with other members who have similar interests and  
20 educational background?

21 A Right. I use it for resources.

22 Q Okay. What areas have you been previously  
23 qualified as expert?

24 A Use of force, defensive tactics, you know, I don't  
25 even know all of them because I usually -- I don't



1 usually review what their approvals are, but I know it  
2 has been strange things like clutch reflex. Often  
3 happens in accidental discharges. I had a case  
4 involving that.

5 Q How about Human Behavior and distress?

6 A I don't know that it was called that. Survival  
7 stress is what I refer to it as. I believe that I --  
8 that's how I refer to it. I've testified to that.

9 Q Okay. Psychological and physiological responses  
10 stress?

11 A Yes.

12 Q Use of force decision making?

13 A Yes.

14 Q Combat stress survival?

15 A Yes.

16 Q Self-defense?

17 A Yes.

18 Q Applied defense tactics?

19 A Yes.

20 Q Visual perception?

21 A Yes?

22 Q Objective recognition?

23 A Object recognition.

24 Q I'm sorry, object. Yes?

25 A Yes.

1 Q Okay. What is object recognition?

2 A Being able to discern visually what the stimulus is  
3 usually under time pressure constraints.

4 Q Visual perception, what is that?

5 A Visual perception means that -- Well, it's really  
6 what my dissertation was about. Your ability to  
7 perceive situational awareness, like taking into account  
8 visually the cues in the environment.

9 Q Okay. Applied defensive tactics, what is that?

10 A So defensive tactics are skills, and how we apply  
11 them both in a law enforcement and civilian environment.

12 Q Self-defense, what is that?

13 A Self-defense is the allowances and permissions of  
14 law enforcement officers and civilians to respond to  
15 threats to personal safety.

16 Q Is there a difference?

17 A Between?

18 Q Law enforcement and civilian?

19 A Yes.

20 Q What is that difference?

21 A One has arrest powers, the other doesn't.

22 There is no differences when it comes to, for  
23 example, deadly force.

24 Q We've talked a little bit about 776.05.

25 Now, the language in that particular statute, do

1 you recall it to be that the use of force is authorized  
2 when making an arrest?

3 A Yes.

4 Q Of course we talked about with civilians.  
5 Statutorily, they don't have the authority to make an  
6 arrest?

7 A That's correct.

8 Q Okay. So there is a difference between the two?

9 A Yeah. There are nuanced differences, yes.  
10 Remember, that's one of the three reasons I believe that  
11 05 mentions.

12 Q What do you mean?

13 A Making arrests is one of the criteria for the  
14 allowance to use force, the other is preventing escapes  
15 and the third is self-defense or defending yourself and  
16 others.

17 Q Right. While making an arrest, all three of them?

18 A I think period.

19 Q What do you mean period?

20 A I think law enforcement officers --

21 Q I'm not sure what period means.

22 A If an officer is ambushed, he has a right to use  
23 force, whether he's making an arrest or not.

24 Q Do you believe that's under 776.05?

25 A I would say I don't know the case law on that.

1 Q All right.

2 A Certainly if you shoot somebody, I would say you've  
3 made an arrest, but I don't think it's in the process of  
4 arresting that you have to shoot somebody. So I think  
5 that's a very nuanced question.

6 Q All right. Are there any articles, abstracts,  
7 papers, books, FBI bulletins, magazine articles,  
8 scientific studies that you're going to rely on in  
9 support of any of your opinions?

10 A I don't have any listed. I wasn't asked to write a  
11 report. That's where I generally pull out all my  
12 citations and list them for you to be able to quiz me  
13 on.

14 Q Well, if you had wrote a report, what would be in  
15 that list?

16 A I would talk about the use of force matrix, and I  
17 think that Mr. Reeves represents an interesting client  
18 because he's trained in law enforcement, though I  
19 realize he wasn't an acting law enforcement officer at  
20 that time, but I think we can rely on his law  
21 enforcement training, of which I have an abundance of  
22 resources.

23 Q Abundance of resources from where?

24 A From FDLE, for example. I mean, you can go back to  
25 the most basic recruit training.

1 I would rely on --

2 Q Wait a minute. You have abundance of resources of  
3 law enforcement training of?

4 A Use of force.

5 Q Use of force?

6 A Appropriate use of force.

7 Q Of?

8 A I'm not sure I understand.

9 Q Well, that's why I didn't understand your question,  
10 I mean your response.

11 You indicated use of force and that matrix, and I'm  
12 paraphrasing that Mr. Reeves has a law enforcement  
13 background, and then you went on to say that I have  
14 lottery sources law enforcement, so I'm not referring --  
15 Are you talking about you as far as your knowledge, or  
16 these resources?

17 A Things that I might rely on I think is what you  
18 asked me.

19 Q Correct.

20 A Then for example, it would be helpful, I think, to  
21 understand -- for a jury to understand our use of force  
22 matrix and our recommended response to resistance,  
23 because that's, I think, how Mr. Reeves views the world  
24 with his background.

25 Q Okay. What we're gonna do, we're gonna table that

1 cause that will be the last little topic we're gonna  
2 talk about.

3 A Okay.

4 Q Okay. So you have that concept, but what articles?  
5 Where are you getting that information? What are you  
6 relying on? What do you deem to be authoritative so  
7 that this is what I rely on?

8 A Well, I mean, I'm gonna talk a little bit about  
9 self efficacy.

10 There are books and articles, of course, I don't  
11 have the citations, by Bandura, for example -- Books and  
12 articles by Bandura, B-A-N-D-U-R-A that I think speak to  
13 the construct of self efficacy, how people feel about  
14 themselves and their ability to accomplish tasks.

15 Q Okay. Is this an author, or is this a publisher?

16 A This is an author.

17 Q Okay. And the first name, do you know? It's okay  
18 if you don't.

19 A Antonio.

20 Q I don't know.

21 A I think. I'm -- You're asking me --

22 Q Okay.

23 A -- about first names. I think it's Antonio.

24 Q All right. Any other books, articles, scientific  
25 studies, anything that you're going to rely on?

1       A   I think another, again, I don't recall the author  
2 of this. I think another thing that I can talk about is  
3 the idea of heuristics. There's an article called  
4 Taking the First, I believe written by Klein.

5       Q   Okay. Is this an abstract article or a book?

6       A   It's an article.

7       Q   Where does it appear?

8       A   I don't recall. Maybe I have it.

9       Q   Is Klein a law enforcement or psychologist,  
10 psychiatrist?

11      A   He's a psychologist.

12      Q   So would it be in one of his publications as  
13 opposed to a law enforcement publication?

14      A   It would be in a referee journal.

15      Q   A what?

16      A   A referee journal, but again, I don't recall  
17 exactly which one.

18      Q   All right. It's called Taking the First by Klein?

19      A   I think it's by Klein.

20      Q   And what is that about?

21      A   What happens in the way that we think when we're  
22 dealing with time pressure constraints. It's a decision  
23 making idea.

24      Q   Okay. All right. Anything else? Any other books,  
25 articles?

1       A   I think on the human factor side, Reaction Time  
2 Principles.

3       Q   All right. Where are you getting that?

4       A   I believe it's Shultz.

5       Q   Who's that?

6       A   Also a referee journal author.

7       Q   Any particular article, any particular study?

8       A   It talks about, once again, decision making and the  
9 ability to change your mind in the midst of -- in the  
10 midst of an event, an ongoing event, I should say.

11      Q   Would this be a scientific study, would it be --

12      A   Scientific study.

13      Q   Okay. Anything else that if you had written a  
14 report would be on your list?

15      A   I'm just thinking about the things that I thought  
16 about with respect to what I can talk about.

17      Q   Sure.

18      A   I think much of it will be on the police related  
19 side. I don't know if you still want to talk about that  
20 last.

21      Q   Well, go ahead. We'll just --

22      A   About when it comes to defensive tactics, theories  
23 of reactionary gap, which is the space between two  
24 individuals who are in conflict.

25      Q   Okay.



1       A   Relative positioning, which has to do with the  
2   relationship between -- the spacial relationship between  
3   individuals and conflict.

4       Q   And your source of information on this?

5       A   It would be mostly special knowledge in the area of  
6   law enforcement.

7       Q   And how did you acquire that special knowledge?

8       A   Through my law enforcement background.  These are  
9   ideas that are well documented in police training here  
10   in the State of Florida under the Criminal Justice  
11   Standards and Training Commission.

12      Q   All right.  So where would that information be?  
13   What article, what book?

14      A   The High Liability Training Manual for basic  
15   recruits.  That would probably be the best source of it  
16   from FDLE.

17      Q   And what is -- Are you familiar with the source of  
18   information, how this information came into that  
19   particular training manual?

20      A   How it came in?  Huh.  It was there when I started  
21   so.

22      Q   When you have a training book --

23      A   Yep.

24      Q   -- and it goes through and it says a lot of things,  
25   sometimes there's not a lot of reference.  There's no,

1 you know, at the end of the chapter the source is this,  
2 this, and this study. I'm just trying to figure out in  
3 this particular --

4 A I understand.

5 Q -- BRT where did FDLE get this information?

6 A So it's been in there probably forty years.

7 Q Forty years?

8 A I would say forty years since these ideas were put  
9 in. Like I said, they come from multiple sources. I  
10 think they came --

11 Q Let me just -- Hang on just a second.

12 A Okay.

13 Q The police academy, as we know it now, with the  
14 basic recruit training program, which before that was  
15 CMS, that's only be for the last fifteen or twenty  
16 years. So when you say forty years, takes me back a  
17 little bit. There was no standard police academy forty  
18 years ago?

19 A These ideals that FDLE had --

20 Q FDLE wasn't involved in police academy forty years  
21 ago.

22 A So around '89 is when I remember the formalized  
23 training. The ideals were there before this. They were  
24 done locally at the academies. So '89, '99, 2009, 2019,  
25 that's forty years, and it was about then when FDLE

1 formulated its police officer standards in training. So  
2 I think I'm correct in that. And I was around for the  
3 CMS. I wrote part of that curriculum, and I remember  
4 that we borrowed from an older curriculum to bring us to  
5 the CMS level, and then later to what we call CMS Two or  
6 post CMS, which is what we have now. They still call it  
7 CMS. It's a very different model than the original CMS  
8 which was overly burdensome in the way that it was  
9 written and taught. So they --

10 Q So they say you wrote some of the CMS. What do you  
11 mean?

12 A When the CMS -- So FDLE sent a crew out of all  
13 places to Canada to learn the curricula management  
14 system. They came back to Tallahassee to describe the  
15 process of reformulating the, I guess the present  
16 curriculum that was being used into a CMS model.

17 I went to presentations on how these courses were  
18 going to be formulated. I could tell you about that if  
19 you want.

20 Q Nope.

21 A I don't think if it's important.

22 Q Nope.

23 A So then I was tasked with sitting on the defensive  
24 tactics committee to write the defensive tactics and use  
25 of force block under CMS. In 2007, we scrapped the

1 original CMS. I mean, we overhauled it and went from a  
2 curriculum literally as long as this table in  
3 documentation to what you refer to as the general and  
4 high liability of textbooks. We reduced it, boiled it  
5 down into a much more manageable program. That happened  
6 in 2007.

7 The next overall comes this year, 2021, and it is  
8 still borrowing from ideas that were there before CMS.

9 Q So what's being overhauled in 2021?

10 A I can tell you the defensive tactics portion in  
11 particular. Well, let's start with legal, because I  
12 just got done teaching it. They pulled all of the  
13 statutory stuff out.

14 Do you teach legal? I'm sorry. It belongs on  
15 record, but if you know the legal block, it was full of  
16 understanding the constitution, understanding court  
17 structure. It talked a little bit about -- Actually, I  
18 think the original program didn't talk so much about  
19 this, the new one does about what is a subpoena, what is  
20 a deposition. Those things were absent in the original  
21 legal. It was full of statutory elements. We taught  
22 the elements of crime.

23 That has been pulled out, so that's different now.  
24 It's in a different chapter, it's still there.

25 The defensive tactics block has moved in many ways

1 away from what I think, and this is my opinion, a strict  
2 law enforcement course to probably the influence being  
3 more resilient jiu jitsu. I think that's where the  
4 minds of the present curriculum writers were, and so  
5 you're seeing a lot of ground techniques that weren't  
6 included in the 2007 version. So there's been pretty  
7 dramatic changes.

8 Q Other than physical skill and defensive tactics  
9 like ground techniques, is there anything else that is  
10 taught in defensive tactics?

11 A Yes. The use of force and applied use of force.

12 Q Okay. Any other books, articles or anything that  
13 you will rely on?

14 A If I'm asked, and I think I still have to talk with  
15 defense attorneys about this, about the stress related  
16 features.

17 There are some resources about fire fights in  
18 particular that I would rely on some citable article,  
19 for example, by Alexis Artwohl who speaks about  
20 perceptual distortions, fragmented memories that occur  
21 essentially when the sympathetic nervous system becomes  
22 engaged, which happens in fight, flight scenarios.

23 And the reason I say I don't know if they want me  
24 to speak to that is I noticed in Mr. Reeves' testimony  
25 during the stand your ground hearing that he spoke -- He

1 didn't directly speak about it, but several things that  
2 he said called to the idea of stress and the impact that  
3 it had at the time that he fired his shot.

4 Q Have you attended any of the For Science seminars?

5 A No. I'm very familiar with them, but I have not  
6 gone to any seminars. I read all their publications, I  
7 get all of them.

8 Q Well, that was one of the things I was asking  
9 about, any scientific studies, magazine articles.

10 A I mean, I think that For Science has dealt with  
11 issues like reaction time. They've dealt with firearm,  
12 or I should say weapon handling, bullet placement on  
13 target, and some of science behind that.

14 They've also discussed quite often these stress  
15 related features. So there may be some articles there  
16 that I rely on if I'm asked to do that.

17 Q Do you know what those articles are?

18 A They would be For Science related articles. I  
19 don't know who the authors of them are specifically. I  
20 have a collective understanding of what they have been  
21 doing over the years, but --

22 Q Do you have topics other than reaction time,  
23 weapons as you say retention, or weapon --

24 A Weapon handling.

25 Q Weapon handling?

1       A   No.   And then what I often refer to as survival  
2 stress or combat stress.   I think there's quite a bit of  
3 information For Science has out on that area.

4               MR. MARTIN:   We've been going for about an  
5 hour, so the court reporter, every hour we get a  
6 ten minute break for her.

7               MR. BEDARD:   Okay.   Why thank you.

8               MR. MARTIN:   So let's be back in ten if y'all  
9 don't mind.

10              MR. BEDARD:   Okay.

11              MR. MARTIN:   And just give our court reporter  
12 a break.   Thank you.

13              (A recess was had.   After which, the  
14 proceedings resumed as follows:)

15   BY MR. MARTIN:

16       Q   All right.   We're back on record after a few  
17 minutes break, and we were discussing articles and  
18 magazines that you might be relying on.

19              Before we move on to the next topic, is there  
20 anything else that over the break you thought of that if  
21 you had done a report would have been on your list that  
22 you would have reviewed?

23       A   Nothing comes to mind.

24       Q   In the past, can you tell me where you've been  
25 qualified as an expert and in what areas?

1 A I think I have those on my --

2 Q Okay. Is that current because I have the --

3 A Do you have the cases that I've done?

4 Q I do not, but you can -- because I don't think that  
5 was on your CV. I just have your circuits, the Second,  
6 Seventh.

7 A You're right. It's not on the CV. It's a  
8 different sheet.

9 Q Yeah.

10 A Do you want me to go down the list?

11 Q Well, is it something that you can PDF and email to  
12 me later?

13 A Yeah. I can do it.

14 Q All right.

15 MR. MARTIN: Mr. Michaels, is that okay with  
16 you, sir?

17 MR. MICHAELS: Yeah. That's fine.

18 MR. MARTIN: And would you send -- You would  
19 want a copy, too, wouldn't you?

20 MR. MICHAELS: I have a copy of it.

21 MR. MARTIN: Oh, okay. So list of cases. I'm  
22 just gonna put a note, will send, and what I'll do  
23 is when I get back to the office, if it's all  
24 right, I'll just email you.

25 MR. MICHAELS: Yes.



1 MR. MARTIN: And there might be a couple of  
2 other things throughout the day that --

3 MR. MICHAELS: Okay.

4 MR. MARTIN: And just remind.

5 BY MR. MARTIN:

6 Q So in the email you want me to refer to it as list  
7 of cases?

8 A Yes. I have it. It's entitled cases of Roy R.  
9 Bedard, but list of cases is fine.

10 Q All right. Without knowing what they are, how many  
11 of those cases involve civilian, not law enforce but not  
12 federal 1983 cases, civilians.

13 A All right. I'll count them. One, two, three,  
14 four, five, six, seven, eight, nine. I have one here,  
15 but it was not -- it was an arrest case, not a use of  
16 force case. You want me to count that?

17 Q No. Now, what I'd like for you to do just so when  
18 I get the list, if you'll just give me State versus. I  
19 don't need the State versus, but whatever the last name  
20 is and whether or not you were deposed and testified.  
21 So I'll just put D slash T or something just so when I  
22 get your list I'll know what I'm talking about.

23 So the first one, last name?

24 A First one last name is State of Florida versus Clay  
25 Anthony Kurtsinger, K-U-R-T-S-I-N-G-E-R.

1 Q Depo?

2 A It was, I believe, a stand your ground hearing.

3 No, wait. This was a trial.

4 Q You did testify at trial?

5 A I started to testify, they asked me a question  
6 about going to speak to him, and apparently the defense  
7 attorney did not notify them that I had spoken to him.  
8 They stopped the trial on the prosecutor's request, and  
9 I have not been back to it. This was maybe, I don't  
10 know, a year-and-a-half ago. So I don't know -- I think  
11 it's been resolved.

12 Q Okay. Next one?

13 A State of Florida versus Michael John Morrison.

14 Q M-O-R-R?

15 A I-S-O-N.

16 Q Uh-huh.

17 A Trial.

18 Q Was there a depo?

19 A I don't think so.

20 Q Okay. So trial?

21 A Uh-huh.

22 Q You testified?

23 A Yes.

24 Q All right. And the area that you were qualified  
25 as?

1       A   Civilian self-defense, stand your ground, defensive  
2   tactics, use of force.

3       Q   Okay.

4       A   And again, I'm not sure because I don't  
5   generally -- I wouldn't even know how to know that. I  
6   mean, when they're questioning me, I'm not putting in my  
7   mind what they're qualifying me as, if we're doing, for  
8   example, a Daubert or some other type of voir dire, but  
9   this is the things I talked about. So when I write  
10  these down, these are the things I spoke about at his  
11  trial.

12      Q   Al right. So at trial now in Morrison, were you  
13  State or Defense?

14      A   I was on behalf of the Defense.

15      Q   And on Kurtsinger?

16      A   Defense.

17      Q   Okay. The third one, please?

18      A   This is an appeals case. Paul Miller versus the  
19  State of Florida.

20      Q   What do you mean appeals case, what is that?

21      A   It was an appellate hearing. This case went up on  
22  appeal and I testified on behalf of Paul Miller, who was  
23  in this case the appellant.

24      Q   You testified at the -- in an appellate court --

25      A   Yeah.

1 Q -- or a trial court?

2 A It was an appellate court.

3 Q Okay. State or Defense?

4 A The appellant. I mean, he would be the defendant  
5 in a use of force stand your ground case.

6 Q So you had three judges sitting up there and you  
7 testified --

8 A I'm sorry. Then it was a trial court, it was not  
9 three judges. I mean, yes, it was a judge, but it was an  
10 appeals case. It had been reversed on appeal and it was  
11 retried. That's what it was. I have in here appeal.  
12 Sorry about that. I'm testing my memory.

13 Q So it was a trial?

14 A Yes, it was a trial that had come back from appeal.

15 Q Okay.

16 A Because I'm looking at this Paul Miller versus  
17 State of Florida and trying to remember, and I'm  
18 thinking that does not sound like a state case.

19 Q And you testified in that case?

20 A Yes.

21 Q All right. So next one, number four?

22 A State of Florida versus Michael Drejka,  
23 D-R-E-J-K-A. You know this case.

24 Q All right. State or Defense?

25 A For the State.

1 Q Trial?

2 A Trial.

3 Q All right. Number five?

4 A State of Florida versus Michael Mason.

5 Q Okay.

6 A Trial.

7 Q State or Defense?

8 A Defense.

9 Q And again, was this a stand your ground,  
10 self-defense?

11 A This was a stand your ground, self-defense,  
12 defensive tactics, use of force.

13 Q And you were allowed to testify?

14 A Yes.

15 Q All right. Your next one?

16 A These are the ones that are not use of force.  
17 Let's see.

18 State of Florida versus Albert Damelio,  
19 D-A-M-E-L-I-O. Stand your ground, self-defense on  
20 behalf of the defendant.

21 Q Okay.

22 A State of Kansas versus Scott Michael Weigel,  
23 W-E-I-G-E-L. This was a clutch reflex case. It was a  
24 shooting in which he claimed it was unintentional.

25 Q Yeah. That doesn't really have anything to do with

1 this case, does it?

2 A It was a use of force case and why was he pointing  
3 a gun at him and all that type thing.

4 Q Yeah, but the clutch reflex was your big thing,  
5 right?

6 A Yes.

7 Q We don't have that here?

8 A No.

9 Q All right. So that will be five minutes I don't  
10 have to waste my time on.

11 A Okay.

12 Q Next one.

13 A State of New Mexico versus David C. Venie,  
14 V-E-N-I-E, also stand your ground case on behalf of the  
15 Defendant.

16 Q Was it an immunity hearing or was it a trial?

17 A It was a hearing.

18 Q Immunity hearing?

19 A I think so. No. I did it over the phone. I think  
20 it was an immunity hearing.

21 Q All right. And what was the issue there?

22 A Stand your ground, self-defense.

23 Q All right. And number nine?

24 A State of Oregon versus Robert Jermaine Richardson.

25 Q Uh-huh.

1       A   Self-defense, stand your ground.

2       Q   Trial or hearing?

3       A   Trial.

4       Q   State or defense?

5       A   Defense.

6       Q   Okay. Any others? That would just help me when I  
7 go through your s list.

8       A   State of Oregon versus Dreion Dearing,  
9 D-E-A-R-I-N-G.

10      Q   Okay.

11      A   On behalf of the defense.

12      Q   Okay.

13      A   It was a use of force, defensive tactics case.

14      Q   Trial, immunity hearing?

15      A   Trial.

16      Q   All right.

17      A   Let's see here.

18      Q   Now, so far, one through ten except for I don't  
19 care about the clutch reflex, but you were allowed to  
20 testify in all those cases?

21      A   Yes.

22      Q   Okay.

23      A   These are the court cases. I mean, I've obviously  
24 been involved in many other cases that aren't on this  
25 list.

1 Q Any others?

2 A That are civilian cases?

3 Q Civilian.

4 A State of Florida versus Augustine Wiley. I  
5 actually think this is the first stand your ground case  
6 in Florida, and I was on behalf of the Defendant.

7 Q Uh-huh.

8 A Civilian self-defense, stand your ground, defensive  
9 tactics.

10 Q Was that an immunity hearing or trial?

11 A It was an immunity hearing.

12 Q Did you go back and testify at a trial?

13 A He got immunity granted. It was over.

14 Q Okay.

15 A State of Florida versus Amanda Arruda, A-R-R-U-D-A.

16 Q Okay.

17 A On behalf of the Defendant. It was an immunity  
18 hearing.

19 Q Okay.

20 A Civilian self-defense, stand your ground, defensive  
21 tactics, use of force.

22 Q Okay.

23 A State of Florida versus Allen Wayne Rice. It was  
24 civilian self-defense, stand your ground on behalf of  
25 the Defendant.



1 Q Immunity or trial?

2 A This was a trial.

3 Q All right, sir. By the defense?

4 A By the defense.

5 Q All right, sir.

6 A State of Florida versus Yan or Jan Patrick Squire.

7 Q All right.

8 A I actually think this is a police procedures case,  
9 but on behalf of the defense.

10 Q Okay.

11 A I don't remember all the details.

12 Q All right. Any others?

13 A I think that's it.

14 Q Okay. In all of these cases, did you render a  
15 report for the defense team? Did you write a report?

16 A I don't recall. Some of them I did. I don't know  
17 if I did in all of them.

18 Q But you have written reports in the past?

19 A Yes. Sometimes I'm asked to, sometimes I'm not.

20 Q Do you have any cases in federal court that  
21 involves civilian, not law enforcement, but civilians?

22 A No.

23 Q Let me get a little bit of a background in this  
24 case, and we're gonna start with your fees. Your fees  
25 in this particular case that you're charging the

1 Defense?

2 A Ah, three hundred dollars an hour.

3 Q You're charging the Defense three hundred dollars  
4 an hour?

5 A Right. And I have a retainer for fifteen hours.  
6 That's what I've been paid so far.

7 Q Fifteen hours?

8 A Uh-huh. My deposition and trial rates are day  
9 rates.

10 Q I don't know. What does that mean?

11 A It means it's a fixed fee of eighteen hundred  
12 dollars for deposition and twenty-one hundred dollars  
13 for trial.

14 Q Approximately how many hours have you worked on  
15 this case so far, State versus Reeves?

16 A Probably nine or ten.

17 Q Does that include interviewing Mr. Reeves?

18 A No.

19 Q Have you interviewed Mr. Reeves?

20 A I have not.

21 Q Do you plan on interviewing Mr. Reeves?

22 A I would like to.

23 Q Have you made that request to interview Mr. Reeves?

24 A Quite recently, but yes.

25 MR. MARTIN: Let's go off the record just a

1 minute.

2 (Discussion had off record. After which, the  
3 proceedings resumed as follows:)

4 MR. MARTIN: Okay. Let's go back on the  
5 record.

6 BY MR. MARTIN:

7 Q What I'd like to do now is go through the material  
8 that you've reviewed in order to begin your analysis of  
9 the events that took place in this particular case. So  
10 I kind of need a list. We're not gonna go into detail  
11 what's the significance, just give me the list right  
12 now, and then we'll go back and try to parcel it out.

13 In order to speed this up, I'm just gonna rattle a  
14 bunch of stuff off, and I'm just gonna check it and you  
15 either looked at it or you didn't.

16 A Okay.

17 Q We'll get to it that way and then way an then we'll  
18 go back. Fair enough?

19 A It may be faster if I give you my list, cause I  
20 have about nine items. I don't know how many you have.

21 Q I got a lot more than that.

22 A That's what I thought. Some of these items are  
23 packaged. There is -- I received -- I'll tell what you  
24 I received. I received a PDF package of a hundred and  
25 seventy-three pages called police reports, and that's

1 exactly what it is. These are all of what looks like  
2 the Pasco County Sheriff's Office reports and interview,  
3 roadside interview with Mr. Reeves. There are, I  
4 believe, property receipts in here. There is statement  
5 forms, actual copies of the statement forms from  
6 witnesses.

7 Q Okay.

8 A And I'm happy to surrender it to you if you wish.  
9 I have highlighted areas that I thought were germane to  
10 what I -- to my investigation into this, and that's  
11 about it.

12 Q All right. Now, what's gonna help me is as this  
13 case progress, we printed those police reports numerous  
14 times.

15 A Okay.

16 Q So on the very first page up top on the right  
17 there's a print date?

18 A Yep?

19 Q And I have all the different ones I've sent, it  
20 will just help me hone in on what you've got.

21 A Where is the print date? Okay. On the bottom  
22 right?

23 Q Yeah. What does it say?

24 A 1-27, 2014.

25 Q 1-27-14 was the print date?

1 A Uh-huh.

2 Q Hang on a second.

3 Okay. My computer must have shut down.

4 Well, quite frankly, you might not have all the  
5 reports. The reports that we've been -- package we've  
6 been dealing with is printed 1-25-16.

7 A Well, we can talk about it next time, I guess, but  
8 it sounds to me like I'm two years behind.

9 Q All right.

10 MR. MARTIN: So, Dino, is it okay with you if  
11 I just send him those reports?

12 MR. MICHAELS: Yeah, that's fine, just send me  
13 a copy of what you sent him.

14 MR. MARTIN: Yeah. Is that all right?

15 MR. MICHAELS: Yes.

16 BY MR. MARTIN:

17 Q I just want to make sure you have everything.

18 A I appreciate that. I want to have everything.

19 Q Okay. What else did you receive?

20 A I received multiple files on the stand your ground  
21 hearing, and then I have seen those together, if you  
22 care, under a file called Reeves full stand your ground.  
23 It is all of the -- I think you can only, for whatever  
24 reason, print up to 2000 or I don't remember how many  
25 pages, but all of those are seamed together.

1 Q Okay. What kind of files?

2 A PDF files.

3 Q Okay.

4 A Stand your ground.

5 Q Okay. The content of the files. They have a name,  
6 they have it's purple flowers, red socks, what is the  
7 content of it?

8 A Stand your ground motion, February 20th, 2017.

9 Q February 20th?

10 A 2017.

11 Q Okay.

12 A In front of the Honorable Susan Barthle, is that  
13 it, Barthle?

14 Q Is that transcripts of the immunity hearing?

15 A These are transcripts of the immunity hearing.

16 Q Gotcha. Okay.

17 A And then I have volumes that goes from volume one  
18 to volume nineteen.

19 Q Okay.

20 A And those are all seamed together in one file.

21 Q Yep. All right. Got it.

22 What else you got?

23 A And then I have nothing more than video and still  
24 frames. So I have video segments, and I don't know if  
25 these exhibits will mean anything to you, but I received

1    them in files known as Exhibit 24, Exhibit 25, Exhibit  
2    32, Exhibit 35, and Exhibit 36. And I think in Exhibit  
3    36 is where the still frames are, and everything else is  
4    video. And there are a lot of still frames.

5       Q   These are all still frames?

6       A   Yep. In 36.

7       Q   Still frames in 36?

8       A   Uh-huh.

9       Q   Still frames of what?

10      A   Of multiple segments. They're actually of the  
11   video segments.

12      Q   I know this is gonna sound weird, but are they in  
13   black and white or green?

14      A   Well, I don't know. That's what they are. So what  
15   color is that?

16      Q   Okay. I know what you're talking about.

17      A   Okay.

18      Q   All right. So is in PDF form?

19      A   BMP.

20      Q   BMP.

21      A   Uh-huh.

22      Q   Do you know if it's raw data or enhanced? Has it  
23   been resized?

24      A   I think it's been enhanced.

25      Q   Do you know who it's been enhanced by?

1       A I don't. It wasn't included in any of them. At  
2       least I didn't find it. I don't know if I could find  
3       it.

4       Q Okay. As far as the still frames, were you -- Was  
5       a point of interest identified to you?

6       A A few.

7       Q Okay. What is the point of interest that was  
8       identified?

9       A Sorry. A section here called notes. Just give me  
10      a minute to pull that up.

11      Okay. Something funny happens on BLC when you're  
12      scrolling with the bar. It jumps. This is gonna sound  
13      weird. It jumps over to like 48 minutes, which is I  
14      found the point of interest.

15      When you release the bar from scrolling, it goes  
16      back down to like 21.21 something. I don't remember  
17      what.

18      So I've indicated on Exhibit 32 on a file called  
19      BTS-01-4.BOB, and I believe the enhanced version of that  
20      same stretch is Exhibit 35 with the same file name and  
21      at the same 48 minute mark.

22      Q Okay.

23      A And from that forward, there -- I noted that there  
24      were segments that we can see, and certainly segments in  
25      between that we can't see.



1 Q Okay. So my question to you, what was the point of  
2 interest that was identified to you?

3 MR. MICHAELS: I'm gonna object as to work  
4 product, form of the question.

5 MR. MARTIN: That's not work product.

6 MR. MICHAELS: I'm gonna instruct him not to  
7 answer that unless you want to just change the  
8 question so, I mean, we can certify the question.

9 MR. MARTIN: Well, you can certify the  
10 question. I'm asking what was the point of  
11 interest. I'm not asking what he saw, I'm not  
12 asking what he was told.

13 BY MR. MARTIN:

14 Q You looked at it for a particular purpose. For  
15 what purpose did you review that video?

16 A Trying to understand the events that occurred  
17 within the movie theater during the time, before, during  
18 and after the time of shooting.

19 MR. MARTIN: All right. Did you certify that  
20 question? Because I want the judge to answer --

21 MR. MICHAELS: No, I didn't have any problem  
22 the way you asked that question.

23 When you said indicated, I thought that it  
24 seemed to ask a question whether we indicated to  
25 him what was the point of interest.

1           You're asking it sort of -- I understand your  
2           question now --

3           MR. MARTIN:   Okay.

4           MR. MICHAELS:  -- you rephrased it, so that  
5           question you just asked, I'm not certifying it.

6           MR. MARTIN:   Okay.   Very good.

7   BY MR. MARTIN:

8       Q   And upon viewing that particular video segment, the  
9       purpose was try to learn.   What did you learn?

10      A   I learned that there's a lot we can't see, so it's  
11      hard to valid date what Mr. Reeves says or invalidate  
12      what he says.

13           I've indicated that there's video missing  
14      between -- And this is based on my slider, there could  
15      be a couple frames earlier, I don't know, but  
16      approximately 132627.924.   132627.924 and 132635.765,  
17      which I estimated to be about 7.841 seconds if we're  
18      dealing with milliseconds.

19      Q   All right.   And what is occurring before and after  
20      what you described as missing?

21      A   As far as I can tell, this is the time when  
22      Mr. Oulson has initiated standing up turning,  
23      encroaching upon Mr. Reeves and according to Mr. Reeves,  
24      striking him with something, perhaps a fist, perhaps a  
25      fist with a phone in it, perhaps just a phone.   We can't

1 see any of that, and then it cuts on as if he reaches  
2 out again and grasps the popcorn. Almost at the moment  
3 he starts to extend his arm to grab the popcorn, that's  
4 what we can start to see. And that becomes the story is  
5 that this is the attack by popcorn. I believe there's  
6 something, that 7.841 seconds antecedents that I can't  
7 see.

8       Within there, there are also slides missing within  
9 that framework. I'm sorry, after that framework at  
10 35.865, which is a hundred milliseconds after that  
11 segment I noticed that was all missing, there is a  
12 slide, maybe several slides, but it's about a hundred  
13 milliseconds missing. And then at 36.266 there are  
14 slides missing that account for about four milliseconds  
15 point four oh one milliseconds.

16       And then there's a sequence that occurs at 36.333  
17 in which we're missing about -- I have point six seven  
18 milliseconds.

19       Q In between the areas that you believe is missing,  
20 what is the content of the video that is a point of  
21 interview to you?

22       A Well, a point of interest is not only what I'm  
23 seeing, what I'm not seeing, because it's got to match  
24 up with what Mr. Reeves says and I can't see it.

25       Q Tell me what you're seeing and then tell me what

1 you believe you're not seeing.

2 A What I'm able to see on the video is an arm extend  
3 into the frame, grab Mr. Reeves' popcorn, toss it back  
4 into his face, and within the timing of the recoil  
5 Mr. Reeves fires one shot.

6 Q Well, I'm sorry. You used the term that I just  
7 didn't have a vision for.

8 A Okay.

9 Q In the time of the recoil, recoil of what? When I  
10 think of recoil, I think of a firearm. Sorry.

11 A Making the assumption that it is Mr. Olsen's arm, I  
12 think we can do that, I can't see him, I see an arm, but  
13 the recoil of Mr. Olsen's arm pulling back.

14 Q Okay.

15 A Within a very close range there's an extension of  
16 Mr. Reeves' weapon, and you can see the muzzle flash.

17 Q Okay.

18 A I noted after that happened, he kind of pulled back  
19 into the chair and immediately grabbed the left side of  
20 his face, that's viewable, raised his elbow, kept it on  
21 his face for a while, and then I also noted, I guess  
22 it's the Sumter County deputy stand up, walk towards him  
23 and take the weapon from his left knee, and Mr. Reeves  
24 gave no apparent resistance, or as a matter of fact, I  
25 don't even think he straightened up. I think he just

1 stayed slumped in the chair. And I can see that.

2 Previous to that --

3 Q Wait a minute. Previous to that?

4 A Previous to that segment. That was an important  
5 point of interest.

6 Q Okay. I've got to get where the segment is. Is  
7 the segment at the time that the popcorn is grabbed, is  
8 it at the time of the recoil of the arm? See, I need to  
9 know what segment.

10 A All of that was a segment. All of what I just  
11 said, you can actually see all of that in continuity.

12 Q Where he grabs the --

13 A Grabs the popcorn.

14 Q All right.

15 A Grabs the popcorn, hits and draws it back, gets  
16 shot upon.

17 Q When you say hits him, the popcorn?

18 A I can't tell if it hits him, but, I mean, it's a  
19 two dimensional screen, but I see popcorn flying  
20 forward.

21 Q So prior to the initial reaching out grabbing the  
22 popcorn?

23 A Prior to that.

24 Q Okay.

25 A I know in the immunity hearing that Mr. Reeves says

1 at 35.2625, he says it's when he is hit for the first  
2 time.

3 What I see him do is sit up in the chair and almost  
4 kind of lean forward.

5 He claims that he was going to stand up there. I  
6 have no ability to see Mr. Oulson or his relationship to  
7 Mr. Reeves. I don't know if it happened at that moment.  
8 I don't know if he knows that it happened at that moment  
9 because there's a segment missing between point two five  
10 and point three -- I'm sorry. Between point two seven  
11 and point three five that we've lost.

12 So I don't know Mr. Olsen's relationship to  
13 Mr. Reeves at this point, but I did take that as point  
14 of interest because he testified to it.

15 Q Okay. So that's Exhibits 32 and 35e and 36 all  
16 clumped together as a point of interest for you?

17 A Yes. 32, I believe, is the raw video. I believe  
18 35 is the enhanced video, and then I think 36 is the  
19 still frames.

20 Q Okay. When you say enhanced, is it bigger?

21 A Yes.

22 Q So it's been resized?

23 A It's resized.

24 Q Okay. So what is 24 and 25?

25 A 24 and 25 on my exhibits?

1 Q Yes, sir, that you were provided.

2 A They're also video segments. I don't know if I  
3 chose 35 or 38 or whatever I told you because they were  
4 clear to me on those, because it is also -- I lost it.  
5 Okay. So 24, I don't recall what's on these. I mean, I  
6 can watch them again, but I didn't find them as useful  
7 as the other ones.

8 Q There's a time code on the very first frame, say  
9 it's 13-14-3. Just give me the first frame in your  
10 Exhibit 24. We'll use that as a reference point.

11 A Okay. Exhibit 24, right?

12 Q Yes, sir, please.

13 A This is -- Well, it tells me. It's says timed  
14 adjusted to black frames inserted for unrecorded  
15 segments to approximate realtime, embedded time captions  
16 overlaid across the bottom of the frame. This is camera  
17 eleven.

18 Q Okay.

19 A It's ticking down. I'll do that first for you just  
20 a second. This says direct video copy of 121442.046  
21 through 132707.998. And then it says, on the date of  
22 the incident.

23 Q All right. And did you indicate a point of  
24 interest in that segment?

25 A I did not in my notes. I don't think I indicated

1 anything that was helpful to me. I think I could see  
2 perhaps this might be where Mr. Reeves gets up and walks  
3 out to tell the management. I don't know the video's  
4 helpful for that. I think that's a matter of record  
5 that several people have testified to. I don't dispute  
6 that's what he did.

7 Q Exhibit Number 25, let's just do the same thing,  
8 the first -- We'll call it a frame number of time or  
9 whatever.

10 A Okay. This is camera twelve, once again, so you  
11 don't have to write it all down.

12 It says the same time, time adjusted with black  
13 frames inserted from recorded segments, blah, blah,  
14 blah. This is 1314.39.610 through 132707.264. I think  
15 this might be the one where they're coming in for the  
16 first time and sitting down, choosing their seats.  
17 Again, I don't remember. Again, that wasn't terribly  
18 helpful to me as an analysis. There's no disputing that  
19 he was in there.

20 Q Any other video sequence?

21 A No. The ones I give you are the ones that I  
22 focused on in terms of use of force.

23 Q Okay. And all of these are bit filed, BMP files?

24 A No. Only the last one I gave you was a BMP. These  
25 are still frames.



1 Q Okay.

2 A These are gonna be VOB files. These are -- look  
3 like they're pulled from a DVD. I don't know how the  
4 original copies were, but my estimation is that there's  
5 a software that runs these individually that you can  
6 click on channel one, channel two, whatever, but I'm  
7 looking at the raw VOB file.

8 Q Okay. You indicated that you got a video other  
9 than the segments. Did you get that, or did I just  
10 mistaken?

11 A I think you misunderstood.

12 Q So these are the only video sections that you  
13 received?

14 A No. You want to -- You asked me about 24 and 25.

15 Q And we covered 24, 25, 32, 35 and 36.

16 A That's what I got.

17 Q Okay. Did you receive a copy of the raw video  
18 where --

19 A In its entirety?

20 Q In its entirety.

21 A I did not.

22 Q Is that something that you're gonna review prior to  
23 your testimony?

24 A If it's given to me. I didn't know that it was  
25 available. I don't even know if I can. I don't know

1    how it's been pulled down, if it's on a special  
2    software.

3        Q    Did you receive any videos for your review that was  
4    either a loop or a bounce?    You know what that is?

5        A    Yes.    I did know.    I know that there was some  
6    because I saw the reference to it in the court, in the  
7    transcript.

8        Q    Have you looked at those?

9        A    No.

10       Q    All right.    What other package did you get?

11       A    That's it.    I got the video, I got the police  
12    reports and I got the transcript.

13       Q    Of the immunity hearing?

14       A    Of the immunity hearing.

15       Q    Did you read the -- You got the transcripts of the  
16    immunity hearing?

17       A    Yes.

18       Q    Police reports?

19       A    Yes.

20       Q    And those video clips?

21       A    Yes.

22       Q    Did you view any photographs at all?

23       A    Uhm, only the photos that I told you about that  
24    came from the video.    I didn't see any autopsy photos, I  
25    didn't see any crime scene photos, anything like that.

1       Q Is any of that important in formulating any  
2 opinions that if you were asked and the court allowed  
3 you would give?

4       A I'd rather have them than not have them, but I  
5 don't think they interfere with my analysis by not  
6 having them.

7       Q Have you made the request for them?

8       A I have not.

9       Q But you don't think it would be helpful?

10      A No, I think it would be helpful if I had them. I  
11 think you can't send me too much information. But I  
12 thought that this is typically the kind of stuff I rely  
13 on when I'm drawing opinions.

14      Q All right. You had a meeting with Mr. Escobar on  
15 9-16-21. Were you provided any additional documents at  
16 that time?

17      A You said 9-16?

18      Q Yes.

19      A No.

20      Q No other material?

21      A No.

22      Q Okay. In the packet that you indicated that you  
23 did receive, you received police reports and you  
24 received the immunity hearing?

25      A Right. To be clear, the police reports included

1 the other things that I said to you, the statements, and  
2 the property receipts and things like that.

3 Q Paramedic reports, tech reports, interviews by  
4 witnesses?

5 A Yes.

6 Q Okay. All right. Let's delve into those just a  
7 little bit.

8 Are you familiar with the potential testimony of  
9 Angela Hamilton? She was seated in the back row along  
10 with Mr. Reeves. Do you remember her?

11 A I do.

12 Q Her husband is the corporal?

13 A Yes, I do remember her. I don't remember exactly  
14 what she said.

15 Q Okay.

16 A I pulled some things out of here that were cited.

17 One of the things I was curious about was whether  
18 or not Mr. Reeves was struck in the face before the  
19 shooting as he claimed, and so I didn't have that on  
20 video, so I relied on some statements that were made.

21 Q All right. Well, let's just ferret that out while  
22 we have it, and then we'll just go through the rest of  
23 it.

24 One of your, I'm gonna call it points of interest  
25 in your review, whether or not Mr. Reeves was struck in

1 the face prior to his shooting?

2 A Yes.

3 Q How did you conduct that investigation or analysis?

4 A I started with the video, see if I could see it.

5 Q And?

6 A And I can't. Now, when I say struck in the face, I  
7 mean independent of the popcorn.

8 Q Yes, sir. I understand.

9 A Just like he struck him. So he claims it to be the  
10 first time he's struck in the face, the popcorn is the  
11 second time, to be clear.

12 Q Yes, sir.

13 A I can't see the first time.

14 Q Okay.

15 A It occurs to me that that would occur during that  
16 period where right before the fight naturally, see the  
17 popcorn being grabbed, so I can't see that. So I relied  
18 on witness testimony to establish whether other folks  
19 heard or saw something that would be reference to being  
20 struck in the face, and I came up with --

21 Q What did you come up with?

22 A Quite a few comments.

23 Q Absent the Defendant.

24 A Absent the Defendant.

25 Q All right.

1       A   Quite a few comments.

2       Q   Here's what I'm gonna ask you to do just so when we  
3 go back and read this, we can figure out where  
4 everything is.  If you would give me the person.

5       A   Yep.

6       Q   And whether or not the information is coming from  
7 the police report, written statement or immunity  
8 hearing, the best you can.

9       Now, if you didn't -- You know what I'm saying?

10      A   I know.

11      Q   So do what you can for me.

12      A   So there is a couple references to get out of my  
13 face.  One of them is from the Defendant.  He claims  
14 that Mr. Oulson says this to him as he first tells him  
15 to turn off his cell phone.

16      The statements I took were the ones where the  
17 witnesses said they heard very loudly something to the  
18 fact of, get out of my face, and immediately it followed  
19 with a gunshot.

20      So my assumption is those were stated by Mr.  
21 Reeves.  I can't imagine Mr. Oulson advancing on  
22 Mr. Reeves telling him to get out of my face.

23      So I'm assuming that these references are all  
24 coming from Mr. Reeves, which suggests that he was --  
25 somehow something either hit him in the face or he was

1 in his face or touched his face or something, so I'll  
2 tell you those.

3 Thomas Kitchen says he heard a male voice behind  
4 him yell, get out of my face. He said a couple seconds  
5 later he heard one loud boom. I believe that's from the  
6 police reports.

7 Q Okay.

8 A David Schneck hears somebody say get out of my  
9 fucking face.

10 Jayce Mickley heard something like, don't fucking  
11 touch me, or something similar. He described the tone  
12 of voice as being aggressive, then he heard the shot.

13 Q Okay.

14 A James Summer heard, you touch me again and I'll  
15 kill you. That comes from page sixteen. It would be  
16 the police reports, one of the investigator reports.

17 Q Uh-huh.

18 A Kelly McDonald hears, get your hand out of my face,  
19 Page 148 of the police reports.

20 Q Uh-huh.

21 A Joanna Turner says I saw, I couldn't tell the word  
22 the -- I'm sorry. This is from a statement. It was  
23 handwritten, that's why I couldn't tell.

24 I saw the something trying to throw his cup, then  
25 throw the popcorn at the man. So it would suggest that

1 there was two movements, something was being thrown at  
2 him, then the popcorn was thrown.

3 Luis Perez says, I heard someone say, get out of my  
4 face, then a shot, Page 171. I think that's both in the  
5 police report verbatim as well as in the statement.

6 Gladys Perez, I don't know if she heard her husband  
7 say that, she says exactly the same thing. I heard  
8 someone say, get out of my face, then a shot. Same  
9 page, 171.

10 Sylvia Kerr hears someone say, you're not going to  
11 hit me in the face again, Page 32, police report.

12 The Defendant's wife, Vivian Reeves says that  
13 immediately after the shooting Curtis turned to her and  
14 told her he had been hit in the face, so I guess that's  
15 a hearsay from him. She remembered immediately hearing  
16 Curtis say something hit him the face, but she did not  
17 see anything or know what it was.

18 Do you not want me to talk about the Defendant's  
19 comments?

20 Q Yeah. Go ahead. We'll get her done.

21 A Okay. You said absent the Defendant, so I didn't  
22 know if that was --

23 Q Right.

24 A -- I mean, we obviously know what he said. He says  
25 I got hit in the left side of my face and my temple, got



1 my glasses knocked off. This is from the interview of  
2 the police report, Page 83.

3 Q Uh-huh.

4 A He says, and usually something builds, then  
5 something explodes in your face, Page 82.

6 Q Something builds?

7 A Usually something builds, like builds, then  
8 something explodes in your face trying to recount his  
9 impressions.

10 He says, after he hit me, my face went sideways, my  
11 glasses came partially off. That's on Page 73.

12 Q Uh-huh.

13 A He says, and I'm holding, I'm whoa, whoa, whoa, or  
14 no, no, no, one or the other, and then I'm hit in the  
15 face and hit had to be him. Did it? And I think he had  
16 the cell phone when he turned away from me. I looked  
17 down, and his cell phone was laying at his feet, so I  
18 think that's what he hit me in the face with, Page 70.

19 Q Okay.

20 A He says, suddenly my head was to the right. So he  
21 hit me with something and I, I assumed was his fist,  
22 Page 69. He says, so he hit me with his fist or  
23 something. I think he had a cell phone in his hand  
24 because I saw the, I saw the blur of the screen.

25 Q Okay.

1       A   Page 69.  I got my left hand out in front of me and  
2   ah, ah, ah, hit, he hits me in the face and knocks my  
3   glasses sideways, Page 69.

4       Q   Okay.

5       A   Now Reeves also says, and I think this is language  
6   Reeves used, which is what I think he says, I don't  
7   think he knows exactly what Oulson said to him, I don't  
8   know.  This is the part where he says when he got up he  
9   said --

10      Q   Who's "he"?

11      A   Reeves got up, and I think was going to tell the  
12   management.  Oulson says to him, you stay the hell out  
13   of my face.  And then I put parenthetically, does this  
14   reflect Reeves manner of speaking, so I don't know if  
15   it's Reeves that's shouting, get out of my face, and  
16   then when he's retelling the story and attributing  
17   language to Oulson, that he uses that same language, get  
18   out of my face.

19      Q   And where did you find this?

20      A   Page 68 and Page 71.

21      Q   Of?

22      A   The police reports.  It would be the interview.

23      Q   Okay.

24      A   Angela Hamilton.  You asked me about her.  She  
25   stated that she heard the older man rubbing his face,

1 eyes, and head, that doesn't necessarily mean he got hit  
2 in the face, but it could. Page 63.

3 Q Okay.

4 A Charles Cummings says, less than twenty seconds  
5 later, the suspect shot the victim in the chest and  
6 stated, do that to my face. Page 56.

7 Q Hang on just a second.

8 A Okay.

9 Q Okay. What did you say Charles Cummings said?

10 A Less than twenty seconds later, the suspect shot  
11 the victim in the chest and stated, do that to my face,  
12 Page 56 of the police reports.

13 Q Okay. What else?

14 A Mark Turner. Right before he shot the shooter  
15 said, throw your popcorn in my face, will you, Page 40.

16 Q Uh-huh.

17 A I indicated after the video Reeves was seen turning  
18 his head to the right lifting his left hand and placing  
19 it over his face. He drops back into the seat, elbow  
20 seen moving up and down suggesting rubbing of the face  
21 as witnesses described, so you could see the arm  
22 actually doing this.

23 Q All right. Give me your frame numbers start and  
24 beginning where you saw that.

25 A I'd have to go back.

1 Q All right. Describe what you saw again for me.

2 A Right after the shooting, I saw Reeves withdraw  
3 into the seat, turn his head to the right, and then with  
4 his left hand bring it up to his face and you could  
5 actually see the lifting of the elbow, he goes tracking  
6 the elbow, and the elbow is actually moving up and down  
7 as if he's rubbing his face, which would be consistent  
8 with what was described.

9 Matthew Reeves, when he shows up, recalls seeing  
10 his father in the chair holding his face. This comes  
11 from the transcript on Page 112.

12 When Reeves was interviewed, he immediately told  
13 the Sumter deputy who took the weapon from his lap that  
14 he was hit with something and asked the deputy to  
15 inspect him. This is Page 2103 of the transcript.

16 Q And that would be corporal?

17 A Yes.

18 Q And the Defendant says what to him?

19 A That he was hit with something, and he asked the  
20 deputy to inspect him.

21 Q Okay.

22 A And then on Page 709 of the transcript when his  
23 wife is testifying she says, in quotes, that Reeves told  
24 her he hit me in the face, like immediately after the  
25 shooting.

1 Q Okay.

2 A And that's all I have pulled out of the transcripts  
3 and the police reports.

4 Q All right. Did you -- All right. Let's do this  
5 this way. That was one point of interest for you?

6 A Yep.

7 Q Whether or not he was struck in the face prior to  
8 getting the popcorn tossed at him.

9 Was there another point of interest that you  
10 conducted an analysis or review?

11 A One that would be difficult to see on video, but I  
12 collected information again from statements, mostly by  
13 Reeves about his self efficacy because, of course, in  
14 the use of force evaluation, we're interested in  
15 perception. All use of force has to be objectively  
16 reasonable but you also have to consider the subject to  
17 the other.

18 Q Okay.

19 A So there were --

20 Q Let me -- I'm gonna make a note here, next time.  
21 Because I want to take --

22 A Okay.

23 Q I want to take your human factors, your defensive  
24 tactics, your use of force and do that one time so  
25 it's --

1 A Okay.

2 Q It's there. So that's the point of interest that  
3 we're gonna have to talk about after you interview  
4 Mr. Reeves.

5 A Okay.

6 Q All right. Any other point of interest?

7 A It was difficult to know exactly where Mr. Oulson  
8 was because you can only see essentially his arm and  
9 perhaps a little bit of his shoulder come into the  
10 frame.

11 Q Uh-huh.

12 A But I did study that to try to figure out how close  
13 he was.

14 Q And what did you study?

15 A On a two dimensional screen the approximation of  
16 his arm being able to strike Reeves, both as he threw  
17 the popcorn at him and secondly, as he retracted.

18 There was a moment where you can see the hand and  
19 the flash of the gun. So they're close enough in the  
20 frame that you can actually see how close he is. It  
21 appears to be similar to a counter punch where he throws  
22 the hand, draws back, the gun follows the hand and the  
23 shot is fired. I could see that in the frame, and I  
24 think that's important when you're talking about  
25 relative positioning and reactionary gap. And so I'm

1 able to see that at the time of the shooting, he was  
2 within, I think it's been estimated, two to three feet,  
3 and I think that also is supported with the stippling  
4 that's found on his wrist and even on the wrist of his  
5 wife, Nicole, which was another point of interest.

6 Q Okay.

7 A Nowhere in the police --

8 Q I apologize. Let me --

9 A Yeah.

10 Q The point of interest we just talked about, your  
11 source of information?

12 A Was the video.

13 Q Anything else other than the video?

14 A I did rely on some of the testimony as to what  
15 people said they saw in terms of his relationship to  
16 him, but obviously that can't gauge distance for me as  
17 well as the visuals.

18 Q Who did you rely on?

19 A All of them referred to the fact that he had got up  
20 and was leaning over the seat.

21 Q Who's all of them?

22 A I think all of the witnesses who said that they saw  
23 what happened, not just the ones that heard it, but said  
24 that they saw it, recounted that he was standing over  
25 Mr. Reeves and kind of leaning forward.

1 Q Who particularly, do you remember?

2 A I didn't write it down, but I'm happy to do that,  
3 go back and look at that specifically. I gathered from  
4 reading all of their statements, not realizing I needed  
5 to tell you every name of a person that said that they  
6 saw the proximity of him to Reeves, but what most  
7 helpful for me, really, was not only the perception of  
8 the observers, but also as I said, that particular frame  
9 where I could see how close Reeves' arm and Olsen's arm  
10 were together, so I know that they were very, very close  
11 proximity at the time of the shot.

12 Q All right. But right now you can't tell me what  
13 witnesses said that he was leaning over, and I'm not  
14 gonna use that word because you didn't use it. That he  
15 was leaning over Mr. Reeves? That's what you said.

16 A I can tell you that, but I have to go through and  
17 find those. I didn't jot them down. They're here,  
18 they're in the report.

19 Q I'm just gonna make a note next time.

20 A Okay. And I'll do the same.

21 MR. MARTIN: Okay. Time flies. We've been at  
22 it for an hour. Madam court reporter, you get  
23 another five minutes.

24 (Recess had. After which, the proceedings  
25 resumed as follows:)



1 MR. MARTIN: All right. We're back on the  
2 record after our ten minute break.

3 BY MR. MARTIN:

4 Q We were talking about points of interests. We had  
5 discussed the video and we had been talking about the  
6 relationship of Mr. Reeves and Mr. Oulson.

7 You mentioned the term reactionary gap, two to  
8 three feet. That's kind of where we broke.

9 So before my next question, is there any more that  
10 you want to add to that as far as the point of interest  
11 and you were looking -- I don't know if you had a chance  
12 to about the individuals who said that Mr. Oulson was  
13 leaning over.

14 A Yeah. I don't know the if word is leaning,  
15 standing over, things like that. I don't remember what  
16 it was, but the image that I got from the testimony, it  
17 said people saw him standing at Mr. Reeves' chair, and I  
18 saw a couple that said he was standing, one said he was  
19 leaning, but I'll come back with a complete list for you  
20 when I have further time to really analyze the whole  
21 thing.

22 Q And was that standing or leaning consistent with  
23 Mr. Reeves' statement to law enforcement, or  
24 inconsistent with it?

25 A He said that he was coming over the seat. So I

1 think that is subject to interpretation as to what he  
2 meant, but certainly standing and leaning would involve,  
3 or I should say coming over the seats would involve  
4 standing and leaning.

5 Q Well, mr. Reeves indicated to law enforcement that  
6 Mr. Oulson came over the seat as he extended his left  
7 hand and actually touched his chest and was yelling,  
8 whoa, whoa, whoa when he shot him. Is that what you're  
9 saying the witnesses saw?

10 A I don't know if the witnesses saw -- No, the  
11 witnesses did not see that. They did not say they saw  
12 that. And I'm not able to see that either. I am able  
13 to see his left arm come up, but again, it's a two  
14 dimensional video, so I don't know if --

15 Q You saw Mr. Reeves' left arm come up?

16 A I believe so, yeah, right around the time he's  
17 shooting. I believe I actually saw his hand for a  
18 moment come up, his left hand.

19 Q Okay. So we'll figure out those witnesses and once  
20 you identify them, then we can go back and we can read  
21 what they say.

22 A And I'll stop -- I'll try to pull a frame rate on  
23 where I thought it's his arm coming up.

24 Q All right. Any other points of interest when  
25 you're reviewing material, that's what we've been

1 calling it, point of interest that you wanted to hone  
2 into when you reviewed the packets of material that you  
3 were provided?

4 A I don't think so. I would have, again, some of  
5 what's missing is the initial attack that Mr. Reeves  
6 describes. That would have been a point of interest,  
7 it's still a point of interest, but it seems to be not  
8 captured. It seems to have happened with within that  
9 almost that eight seconds of missing video between where  
10 I can see Mr. Reeves kind of lean forward and motion to  
11 his right, which is where Mr. Oulson is sitting. Don't  
12 know what he says, don't know if they're even talking at  
13 that point, but I can see that, and then there's eight  
14 seconds missing, and then Mr. Olsen's clearly there  
15 cause he grabs the popcorn, holds it and throws it out,  
16 so that's a point of interest that I looked for, wasn't  
17 able to find, at first I thought, perhaps, there were  
18 more camera angles, I guess we're lucky to have this  
19 one, I understand it's the only theater that had a  
20 camera in it besides the food area, but it didn't do  
21 much for me establishing the antecedent to the use of  
22 force we can see.

23 Q Based on your review of the material, how many  
24 attacks were there?

25 A On my review of the material? Two.

1 Q Okay. What were they?

2 A My understanding is the first attack is when either  
3 a fist or a phone or a fist with a phone strikes Mr.  
4 Reeves.

5 Q Okay.

6 A And this is coming from testimony, Mr. Reeves'  
7 testimony. And what I can see is the second attack  
8 where the arm grabs the popcorn, withdraws it, oh, I'm  
9 sorry, throws it at him and then it's withdrawn.

10 Q Anything else?

11 A Uhm --

12 Q As far as I'm just saying two attacks, those are  
13 the two?

14 A Again, there's another point of interest that I  
15 can't see but I'm told exist, and that is what  
16 Mrs. Oulson is doing. And I found it interesting that  
17 in none of the police reports do they mention that, at  
18 least none that I have. You may send me police reports  
19 that explain why she was shot. My understanding is that  
20 she was holding him back. But that doesn't seem to have  
21 come into the investigation. There's just no questions  
22 asked of her about that, there's no documentation of why  
23 her hand would be where it was.

24 Q Okay. And what is the source of information that  
25 Mrs. Oulson was, quote, holding him back?

1       A Well, in relationship to the fact that he's  
2 standing in front of Mr. Reeves. There's one shot  
3 fired, it strikes her in the finger before hitting him  
4 in the chest. So her hand is in front of him. So  
5 there's an inference that perhaps she's holding him  
6 back. Reeves says she's holding him back.

7       If I were the investigator, I would have asked that  
8 question, but I can't find it in the record anywhere to  
9 where they interviewed her, did they even ask her how  
10 did you get shot. So there's an absence of information  
11 from an investigatory perspective I found troubling.

12       Q What's your source of information that Mr. Oulson  
13 was standing when he was shot?

14       A There's a couple of people that say that.

15       Q Okay. Who?

16       A Again, we're not there, that's the one we're gonna  
17 talk about next time.

18       Q Okay. So --

19       A Mr. Reeves says that. He is shot in the chest.  
20 He's in a row in front of them.

21       Q Uh-huh.

22       A I don't know how this trajectory plays out. I  
23 didn't see any trajectory analysis.

24       Q Well, you have the autopsy report.

25       A I don't have it.

1 Q Oh, you didn't have that?

2 A No.

3 Q Oh, okay. My list of next time is growing.

4 Any other points of interest?

5 A On the video?

6 Q Well, I mean, we're just talking about your review  
7 of all the material. These are the points of interests  
8 that you honed in on to formulate your opinion.

9 A So to be clear on the record, I think you want to  
10 talk about this next time, because I haven't interviewed  
11 him, but there's a lot of information that he gives that  
12 allows me to establish his self efficacy.

13 So in use of force reviews, you want to look at  
14 subject factors, how big is one, how tall is one, how  
15 young is one, how old is one --

16 Q Yep. We'll get into that.

17 A -- all that kind of stuff. So that was a  
18 significant point of interest that I also read for in  
19 the reports. I look for that.

20 Q We'll get to that one, you're correct.

21 Anything else other than that I haven't marked down  
22 here?

23 A I think that's it.

24 Q Okay. Were you aware of the testimony from Charles  
25 Cummings and Dietrich Theordorf and Mark Turner words to

1 the effect, throw your popcorn in my face. Do that to  
2 my face, or something along the line of throw popcorn in  
3 my face, teach you followed by the words, throw popcorn  
4 at my face.

5 Were you familiar with those?

6 A I think I read those two.

7 Q Okay. No, you only mentioned one of them, that's  
8 why I was asking about all three?

9 A I must have missed those. Nope.

10 Q Okay. Well, what I'll give you the Charles  
11 Cummings immunity transcript, it's Volumn 18, Pages  
12 2343-44 and 2431.

13 Mr. Theordorf's immunity transcript is pages 1431  
14 Volume 19, Page 252, 253, 2455, so if you want to look  
15 those up, we'll talk about it next time.

16 A I will. Does he say -- When does he say this is  
17 said, after the shooting or --

18 Q I'm just gonna let you read the immunity hearing  
19 transcripts and you and I will discuss that next time.

20 A Okay.

21 Q Fair enough?

22 A Yes.

23 Q All right. That works for me.

24 In your review, did you read the FDLE reports  
25 regarding the DNA analysis on the iPhone or the firearm

1 examination of the Kel tec .380?

2 A No.

3 Q Is any of that information, would that be germane  
4 to your analysis?

5 A Uhm, I think I don't need the DNA analysis. I  
6 think it's understood the detective, and again, I don't  
7 know why this happened after the arrest, is sent to go  
8 look at the phone to see whose it is. That's really  
9 critical to this analysis. Was Mr. Reeves hit with a  
10 cell phone.

11 I think the detective says he pulls up and sees  
12 Oulson's family on the screen. So I don't need DNA to  
13 tell me who's it is, I know whose it is. That part is  
14 important to me. I don't know that DNA matters on the  
15 cell phone, and then the second one you asked me about  
16 was -- I'm sorry?

17 Q As far as Miss Jennifer Clark and her examination  
18 of the kel tec and the distance. There's stipulations  
19 to both their testimony.

20 Were you a believe to look and read the  
21 stipulations?

22 A No. I understand what I gathered was that the, and  
23 I could see it, that he's very close when he's shooting.  
24 I think it's estimated to be about two to three feet,  
25 within two to three feet. So, and I seem to recall that



1 the weapon was -- had a partially ejected round in it.

2 Q It's still fight.

3 A It's still fight. So I know that. I don't know  
4 that I need a forensic analysis to tell me that.  
5 Otherwise I think it functioned as it was supposed to,  
6 at least during the first shot.

7 Q Do you know whether or not Mr. Reeves DNA was found  
8 on the cell phone?

9 A I do not know that, no.

10 Q Did you read paramedic Craig DeJuan's report  
11 regarding his treatment of Mr. Reeves' eye, him rubbing  
12 his eye, washing out his eye?

13 A I don't remember. I do remember people saying he  
14 was rubbing his eye and his eye was washed out. I do  
15 remember that, but I don't remember exactly who said  
16 that.

17 Q You view any photographs of Mr. Reeves at the  
18 theater regarding the alleged injury to his eye?

19 A No.

20 Q Did you look at any photographs of Mr -- Mr --  
21 Mrs. Olsen's hand?

22 A The only one that I saw, I went on to her Facebook  
23 during that date to see if I could find anything,  
24 because there were no photographs in my list, and I saw  
25 a picture of her finger after, or at least in the

1 process of healing, and that's the only photo that I've  
2 seen.

3 Q Okay.

4 A I saw that it was to the ring finger on her left  
5 hand?

6 Q Let's talk about some of the defense experts.

7 Did you interview any of the defense experts that's  
8 been listed for Mr. Reeves?

9 A No.

10 Q Did you read any of their transcripts as far as the  
11 immunity hearing as far as Michael Knox, or Dr. Vernon  
12 Adams, Bruce, Koenig, K-O-E-N-I-G?

13 A I did.

14 Q You read his?

15 A I read -- I believe I read them all. It's been a  
16 long time when I first got them.

17 Q All right. What was the purpose of you reading  
18 their testimony?

19 A I read the whole immunity hearing, 2500 pages.

20 Q Okay.

21 A Skimmed some of it, but, I mean, read all of it.

22 Q Okay. So the purpose of reading it as far as the  
23 experts was of some particular expert that you were more  
24 concerned with than the other, is there a particular  
25 expert that testimony or analysis that you used to help

1 formulate any conclusions or opinions?

2 A No.

3 Q Okay. Those experts are Mr -- Dr. Adams, he's a  
4 forensic pathologist. Nothing in his testimony that  
5 helped you?

6 A I remember him talking about the stippling on the  
7 arm, and I think I referred to that today when we were  
8 talking about distances.

9 Again, I couldn't tell -- I couldn't recall his  
10 name had you not told me that, but I do remember him  
11 saying that.

12 Q Is that the only testimony that would be relevant  
13 or germane to your ultimate conclusions or opinions?

14 A Of the experts?

15 Q No, of Dr. Adams that you just told me about the  
16 stippling.

17 A He also talks about some stippling on her arm that,  
18 once again, suggests that she was between -- her arm was  
19 between her husband and Mr. Reeves. And I think that  
20 becomes germane as well as to whether or not she's  
21 trying to hold him back.

22 Q Okay. Dr. Cohen from University of South Florida  
23 on aging and threat awareness or threat assessments.  
24 Did you read her immunity?

25 A So, I think it speaks for itself, she's speaking

1 very generally about aging and how it affects self  
2 efficacy. I do want to talk about self efficacy. I  
3 don't know that I'd be terribly reliant on what she says  
4 because she has a different course of study, she's, I  
5 think, clinical psychologist, I'm not.

6 Q Is there anything in there that you're gonna rely  
7 on? Are you gonna rely on your own education --

8 A I may.

9 Q -- and specific knowledge?

10 A I may rely on some of it.

11 Q Do you know what?

12 A In particular when you're talking about self  
13 efficacy, that as people age, they become less confident  
14 in themselves. I think this is, perhaps, generally  
15 understood, maybe just in my world, but I think that she  
16 states it very nicely when she explains why that  
17 happens.

18 Q Anything else?

19 A She has a whole section on deterioration, on how  
20 people deteriorate as they age, and I think that's gonna  
21 be part -- when I'm comparing what Reeves tells me why  
22 he would say that going back to the science of elderly  
23 people in general.

24 I think I can draw some comparisons between how we  
25 should anticipate an elderly person would react in a

1 situation like this and what Reeves says that caused him  
2 to react in a situation like this, what his perceptions  
3 are.

4 So, I don't have any specific citations from her,  
5 but do think all that could be helpful to add a  
6 scientific citation to some of the opinions about why  
7 this subject factor, in particular, age, mattered.

8 Q I'm gonna put a little note, next time, short  
9 version, see if we could ferret that out anymore.

10 A It will all kind of be included in what we already  
11 talked about.

12 Q Well, the reason I'm asking each one because I have  
13 filed motion in limines, so I need to kind of figure out  
14 what you're gonna rely on and I'll cross reference that.

15 A The hard part for me is having not done a report, I  
16 don't know what you're gonna -- what anyone is gonna ask  
17 me, so, I mean, I'm prepared to offer opinions in all  
18 these areas, but because I haven't put something down on  
19 paper with a citable source, I don't even know that I'll  
20 cite to her, for example, when you're asking me about  
21 self efficacy.

22 Q Dr. Foley is a forensic radiologist. He came in  
23 with a bunch of x-rays, MRIs, talking about his physical  
24 well being. Did you read that?

25 A Yes.

1 Q And are you going to rely on any of that in your  
2 opinions and conclusions?

3 A I don't know that I recall anything being terribly  
4 helpful to me in my use of force analysis.

5 Q Michael Knox is a forensic consulting individual,  
6 testify seeing police stuff.

7 Did you read his testimony?

8 A Yes.

9 Q Is there anything in there that you're going to  
10 rely on?

11 A I think he does some measurements. I don't recall,  
12 and that may be some of what I go back and look at.

13 Q Okay. Mr. Knox had an occasion to go to the scene  
14 and do certain things. Of course, now it's under new  
15 management, been remodeled so.

16 MR. MICHAELS: It's not the same.

17 Q As far as I can tell, it's not. Have you been  
18 there?

19 A No, I have not.

20 Q So regarding --

21 A And I'm assuming it won't help. I would go there,  
22 but I assume it won't help me. I mean, if it's not the  
23 same scene.

24 Q It's -- A theater is a theater.

25 A Well, I may rely on his reporting, his measurements

1 more than I would have had I gone there myself.

2 Q All right. He also took some photographs using  
3 mannequins and different light sources.

4 Did you review those?

5 A I didn't see those.

6 Q You have Mr. Keonig from Bek Tek, he did the video  
7 enhancements.

8 Are you aware of any video enhancements that you've  
9 looked at from back there? It would be kind of --

10 A I know they exist, they start off by saying Bek  
11 Tek.

12 Q Yeah.

13 A So I have them.

14 Q Okay. Which ones do you have?

15 A Oh. I have to go through them.

16 Q Well, we talked about the loop and the bounce and  
17 all that.

18 A I don't have those.

19 Q Don't have. All right.

20 A But almost all of these begin with a Bek Tek splash  
21 screen, so I know that they've gone through him.

22 Q Okay. And they were enhanced by him?

23 A Some. I'm assuming the enhancements were by him.  
24 I think I viewed what you call residing, for example.

25 Q All right. So have you looked at Bek Tek videos

1 that have been resized?

2 A Yes.

3 Q All right. Color adjusted?

4 A Honestly --

5 Q Contrast adjusted?

6 A I don't recall, but probably.

7 Q In looking at any of the Bek Tek videos, was there  
8 any point of interest that you focused on that you're  
9 going to rely on in formulating your opinions?

10 A On the enhancements in particular?

11 Q From Bek Tek?

12 A I think that Exhibit 36 is the clearer version.

13 Q Clearer version of?

14 A Of that popcorn grabbing and throwing moment I  
15 described previously where the hand comes out, recoils,  
16 the shot is made. I think that's the clearest video  
17 that -- I determined to be the clearest video for me to  
18 understand what happened in Exhibit 36, I think.

19 Q Well, when you say you determined it to be the  
20 clearest video, what did you compare that to?

21 A The other videos.

22 Q What other videos, FBI?

23 A I'm sorry?

24 Q FBI videos?

25 A I didn't see the FBI videos.



1 Q What other video? That's what I'm trying to figure  
2 out.

3 A I think Exhibit 32 is a more impoverished video.

4 Q Hang on just a second so Miss Kilgore doesn't get  
5 upset with me.

6 A Okay.

7 Q Cause I spoke over you and I apologize.

8 The FBI conducted their own examination, did  
9 enhancements resizing. Bek Tek did enhancement and  
10 resizing. Methods were used for each one.

11 So my question to you is with the Bek Tek, did you  
12 view videos for Bek Tek that have been resized?

13 A To your question knowing there's a second tampering  
14 with the videos, I can't tell you who did it.

15 Q Well, what's the second tampering of the video?

16 A The FBI. I didn't know that the FBI and Bek Tek  
17 were two different groups working on the same video. I  
18 didn't know that. I knew Bek Tek because I saw the  
19 splash screens.

20 Q Well, why did you use the word tampering?

21 A Because they're altered. They're not original,  
22 they're not raw.

23 Q Who is?

24 A The video. The videos that are not straight out of  
25 the camera that have been enhanced have been tampered

1 with.

2 Q Okay. So has Bek Tek videos been tampered with?

3 A I think so. Again, I don't -- I was looking  
4 strictly at the video, not who produced them or the  
5 methods that they used. I wouldn't know nothing about  
6 that anyway.

7 Q Do you equate tampered with and enhanced as being  
8 the same?

9 A Maybe the language that I'm using. Whenever you,  
10 in my vocabulary, whenever you alter something, you  
11 tamper with it.

12 Q Okay.

13 A I don't mean that in the pejorative, that it's a  
14 bad thing, but it's definitely not the raw video.  
15 Someone has done something do it.

16 Q Okay. And the Bek Tek videos, they all have been,  
17 I'm gonna use the word enhancement because that's the --  
18 Well, that's the term I'm gonna use.

19 A Understood.

20 Q All right. Have they all been enhanced in some  
21 way, either been resized, made bigger, whatever you want  
22 to call it?

23 A I don't recall. I don't recall after looking at  
24 all the video segments that I had, all of them have been  
25 enhanced. I don't recall.

1 Q Have they been enlarged to the point where you can  
2 almost see the individual pictures from Bek Tek?

3 A Again, I don't know if Bek Tek did it, but I have  
4 seen enlarged video.

5 Q Where you can almost see the pixels?

6 A Yes.

7 Q Which particular video clips did you see what you  
8 perceived to be the actual pixels of the video?

9 A The -- I don't remember which ones they were, but I  
10 saw resized video where I could see pixillation. I  
11 don't know who did it. I don't remember what number --

12 Q What was the content?

13 A It was the popcorn throwing and shooting moment.

14 Q Any other segment?

15 A Don't recall.

16 Q Okay. Do you those on your computer?

17 A Yeah. I mean, I have all the video that I was  
18 given on my computer.

19 Q I don't care to look at them, just give me a  
20 descriptive list, which ones that you have of the videos  
21 where you could see the pixels, other than grabbing of  
22 the popcorn.

23 Is there anything else?

24 A You want me to go through them real quickly?

25 Q Well, you can go look at them real quick. I mean,

1 you have them titled. Once you give me the title, I  
2 have them, too, I can just go look at them myself.

3 A I don't know that I was prepared for this question  
4 to write these down for you. I can tell you all the  
5 video I have and you can figure out yourself what's on  
6 there. It may take me a moment to go through every one  
7 of these to figure out what's enhanced.

8 MR. MARTIN: Go off the record just a minute.

9 (A discussion was had off record. After  
10 which, the deposition resumed as follows:)

11 BY MR. MARTIN:

12 Q Well, I'm not sure what the content is. We have  
13 the grabbing of the popcorn.

14 A That's what I'm saying. I can send you all the  
15 videos and you can see what I looked at.

16 I mean, I see him -- There's a segment in one of  
17 these videos, the multiple videos I have where you can  
18 see him coming in the theater and sit down. The segment  
19 where you can see him get up, go apparently to report to  
20 management. There's a segment where he sits kind of  
21 forward in his chair for a second and then it goes black  
22 and then there's a segment of the video grabbing, I'm  
23 sorry, the popcorn grabbing and throwing and shooting,  
24 and then there's a segment, I think of, actually it's a  
25 part of that same segment that goes on for a bit of the

1 Sumter County deputy coming over and taking the weapon  
2 from him.

3 So, I've seen all that.

4 Q Do you have a video clip where it's been alleged  
5 that the cell phone was thrown?

6 A I can't see it.

7 Q That wasn't my question.

8 A I don't know. I don't see it, so I can't tell if I  
9 have it or not. If it's on there and I'm not seeing it,  
10 then I'm not seeing it. If I don't have that clip,  
11 clearly I wouldn't see it.

12 I know there's a discussion of a light, whether it  
13 be a tennis shoe or a cell phone. I read that, I looked  
14 for that it, I don't exactly know because I wasn't there  
15 in the immunity hearing for Mr. Reeves to point that out  
16 where on the video he's talking about.

17 I see a couple of pixels that are brighter at times  
18 than others. I don't exactly know what the reference  
19 point is for the cell phone. I may have it. Don't  
20 know.

21 Q Okay. Well, let me just follow up on this then.

22 Based on those statements, do you have a video clip  
23 that you believe Mr. Reeves was hit in the face with  
24 either a fist or a cell phone?

25 A I think it happened -- No. The answer is no. I

1 think that's the part that happened before the popcorn  
2 throwing. And I think that's within that eight seconds  
3 that we don't have any video of it.

4 Q Did you review the immunity testimony of the  
5 Defense civilian witnesses, Jennifer Shaw, Matthew  
6 Reeves, Vivian Reeves?

7 A Yes.

8 Q Okay. And any point of interest as far as you're  
9 concerned in your potential testimony to the testimony  
10 of Jennifer Shaw?

11 A I don't recall.

12 Q Okay. How about Matthew Reeves, that's his son.

13 A Yeah, I know. I think I read to you a line where I  
14 pulled out where he said he saw his dad rubbing his face  
15 when he first walked in. That was a point of interest  
16 to demonstrate that perhaps he was struck.

17 Q Okay.

18 A I mean, he talks about his dad's background and he  
19 talks about his capabilities. I think those are all  
20 interesting. I don't know that they have anything to do  
21 with the use of force except going back to the issue of  
22 his level of self efficacy.

23 Q Okay. Let's go on to another topic.

24 This is where we're just gonna get if you are asked  
25 and the court allows you to educate the jury regarding

1 human factors and how it relates to a stressful  
2 situation. That's what we're gonna talk about now.

3 A Okay.

4 Q Then we'll do defensive tactics, and then we'll do  
5 use of force.

6 A Okay.

7 Q Okay. Let's talk about human factors. What is  
8 that?

9 A Well, in its original definition, it's about  
10 ergonomics. I think human factors experts are normally  
11 used for design.

12 Q Can't hear.

13 A Okay.

14 Q The trailing off.

15 A Did you hear what I said so far?

16 Q Yes. I think so.

17 A I think human factors experts are typically sourced  
18 for design, for ergonomic design.

19 Q What does that mean?

20 A Trying to create objects that are compatible with  
21 the human form. For example, chairs, sofas, textiles  
22 and so on and so on.

23 So these are typical humans factors experts.

24 When you talk about psychology of human factors,  
25 you start getting into areas of, for example,

1    reactionary time.  What we now know about evoked  
2    readiness potentials or RPEs that we can see on -- we  
3    can actually see from fMRI, which are functional MRIs  
4    that sit on your head.  You can see readiness potentials  
5    that occur before actions take place, things that prompt  
6    actions, things that I told you about, reaction time as  
7    it goes to being able to recognize a threat, but also  
8    response time, which is the time that it takes to be  
9    able to, after you recognize it, to be able to do  
10   something about it.

11           So these are typical human factors that I'm more  
12   interested in than, for example, the shape of your body  
13   and how weight bearing is best accommodated by some  
14   prosthetic or things like that.

15       Q   Okay.  Anything else?

16       A   That's a big question.  So --

17       Q   Yeah, I know.

18       A   I think it's the best explanation I can give you  
19   based on the question.

20       Q   As it related to this particular case, and we're  
21   gonna talk about how you relate it to material, but just  
22   as you walk in, you got a pile of paper and you go start  
23   your review and you have this knowledge in your head.

24           What are some of the human factors that are  
25   relevant and remain --



1 A To this case?

2 Q -- to a use of force?

3 A I apologize. I thought you were talking generally.

4 Q We are, but we're just not going to apply it to  
5 Mr. Reeves until we get all the information from him.

6 A I think one of the factors is the influence of  
7 stress on performance.

8 Q Okay. Tell me about that.

9 A So you're going to have different perceptions when  
10 your arousal level elevates. You'll have different  
11 competencies throughout an arousal level, you'll become  
12 typically more competent as you are becoming aroused.  
13 Then you'll hit a point of optimal functioning, and then  
14 you'll drop off dramatically. This is psychological  
15 now.

16 Q Uh-huh.

17 A You'll drop off dramatically when you reach the  
18 threshold of your optimal function, and you'll start  
19 dysfunctioning.

20 There are cognitive perceptual differences. You'll  
21 see things differently.

22 Q Hang on a second. We're gonna take one just a  
23 little bit at a time. We're talking about influence of  
24 stress.

25 A This is influence of stress.

1 Q Yeah. Oh, the cognitive?

2 A Yes.

3 Q Okay. Let me know when you stop that. Then I'll  
4 have some follow up.

5 A Okay. This is still under stress.

6 Q Got it. Go ahead.

7 A So cognitive perceptual changes. You'll have  
8 issues, for example, tunnel vision, narrowing of  
9 attention under stress. It is a physiological response.  
10 You're -- Not only do you narrow your attention  
11 generally, but you narrow it visually.

12 You will have people that are not able to see  
13 depending on how much anxiety they have really.

14 When I use the word stress, I think I mean anxiety.  
15 Stress is a more general term, but anxiety.

16 When the anxiety level is high enough, the  
17 attention will narrow, and visually you won't see  
18 certain things outside of a very small area. You'll  
19 tend to focus on the threat.

20 Auditory exclusion, these are areas of not being  
21 able to hear certain things. Your ears seem to shut  
22 down.

23 You have different sensations that occur from the  
24 change in blood being shunted to different areas of your  
25 body. Vasodilation, for example, would dilate certain

1 capillaries in your system to move the blood around.

2 That will happen under stress.

3       You will have fragmented memory oftentimes in the  
4 hindsight of an event, not being able to recall  
5 precisely what happened.

6       One of big problems we have with testimony given  
7 right after an event is that the memories have not  
8 properly consolidated.

9       We tend to think because you haven't had sufficient  
10 sleep, usually you've had no sleep and we go right from  
11 the shooting to the interview room. By the way, police  
12 officers don't typically do that to each other, they  
13 give each other twenty-four to seventy-two hours after  
14 police involved shooting before they interview them.  
15 That's been a message of mine as I've traveled around  
16 saying that that seems to be unfair that we interview  
17 civilians immediately after shootings, and that's what  
18 happened in this case.

19       So we'll bad information, and we know we'll get bad  
20 information. Law enforcement's aware of that.

21       Q Well, that information or --

22       A Bad.

23       Q Oh, sorry.

24       A And the reason it's bad information is because the  
25 consolidation of memories is not complete, and humans

1 tend to try to fill in the blanks with what they think  
2 happened. There are not certain because they have no  
3 memory of it, but they assume certain things that may  
4 not be accurate. They're not being dishonest, they're  
5 often telling you a perception that is not in memory.

6 Q Okay.

7 A So a lot of times during, and it does happen in  
8 Reeves' interview, he says, I don't remember a couple of  
9 times he says that.

10 Q We'll get to that. Let me get --

11 A That was my example. I don't mean to use him as an  
12 example.

13 Q I understand, but we'll going to take that the next  
14 time. I want everything --

15 A So that's a stress -- Those are stress related  
16 features or what I like to call stress related  
17 artifacts.

18 Q All right. Let's talk about those just for a  
19 minute, okay?

20 A I have just a couple more.

21 Q I apologize. Please, keep going.

22 A And so you have time distortions.

23 Q Very good. Okay.

24 A Thing may appear to have occurred longer for some  
25 and oftentimes shorter for others. We often, for

1 example, hear people say, it seemed like an eternity,  
2 but I know it happened in a few seconds, and to many  
3 people under distress, that's exactly how they perceive  
4 it.

5 Q Okay.

6 A And I think my final one I'll give you and I'll  
7 shut up is the distance distortions. Things can appear  
8 closer than they are or farther than they are often, and  
9 these are the perceptual distortions.

10 When you start getting aroused, people recall  
11 something that happened within three feet, and it could  
12 be thirty feet or vise versa.

13 Q Okay.

14 A So that's the stress related stuff.

15 Q Is stress synonymous with anxiety?

16 A It is when we talk about survival stress and combat  
17 stress. Stress just simply means you're applying a load  
18 to something. There's various types of stress.  
19 Engineering uses the term very differently, obviously,  
20 but when you're talking about psychology, the stress is  
21 anxiety.

22 Q Okay. Is it also synonymous with fear?

23 A It -- Not necessarily. It can be -- It can invoke  
24 fear, but a lot of times anxiety, may be, for example --  
25 So anxiety, let me give you the layman's --

1       Q   How about stress?  I'm going stress, is it  
2 synonymous?

3       A   All right.  So stress is, as far as  
4 psychologically, stress and anxiety are the same thing.

5       Q   Okay.

6       A   Okay?

7       Q   Have the same impact on a human being?

8       A   Ah --

9       Q   You're saying they're the same thing.

10      A   They're variances.  There's variances, yes.  
11 Everyone when they reach a stress threshold will behave  
12 approximately the same.  However, the variance is when  
13 do we reach that threshold.

14      Q   And that will differ from person to person?

15      A   Yes.

16      Q   And, of course, in any given situation, we don't  
17 know what affect any of these, I'm gonna use your term  
18 artifact is being or having an influence on that  
19 individual as that event is being perceived?

20      A   That's why we use -- That's why I refer to them as  
21 artifacts, because they are to one area it seems that we  
22 can draw conclusions that somebody was under a  
23 tremendous amount of stress, right, or that they were,  
24 in fact, in fear.

25      Q   Why is that?  When you say they're -- Why we call

1    them artifacts.  Are you telling me everyone is going to  
2    respond the same?

3       A  No, but if you see an artifact, a fragmented  
4    memory, you can assume there's fear involved and that is  
5    because I was talking about if I can compare stress and  
6    anxiety and use anxiety properly, anxiety, the layman's  
7    definition as I teach to my classes, is that it's a  
8    healthy respect for the unknown.

9       So anxiety -- Human beings are always thinking what  
10   comes next.  What happens next.  And they do that in the  
11   course of seconds, minutes, days, weeks, months.  And so  
12   those are anxiety causing events that motivate us to  
13   action.

14       So when you're talking about the healthy respect  
15   for the unknown, it's trying to anticipate always what  
16   what's coming next.  The general model of decision  
17   making assumes that we have, with clarity of thought,  
18   you have alternative choices, and being an economic  
19   model in its original form, you pick the one that has  
20   the best return on investment.  That's the original  
21   decision making model.

22       Under stress, because attention narrows, you don't  
23   have command of the alternatives often, and this is -- I  
24   referred to an article as take the first when we first  
25   started talking.  This is what client talks about.

1 Under stress, we tend to not go through a mental  
2 evaluation of optimum choices and pick the best one. We  
3 think what will solve this problem, and the first thing  
4 that comes to mind is what we tend to select.

5 So it's not contemplated, it's heuristic. It's a  
6 snap decision. And this is -- This happens because of  
7 time and pressure. When you have a tremendous amount of  
8 pressure, for example, if you think I'm gonna be hurt or  
9 killed, that's a lot of pressure, and if you don't have  
10 a lot of time to work it out, you will have high levels  
11 of arousal, then you'll turn to heuristic thinking.

12 So if you see, for example, in an interview where  
13 somebody says I should know this but I don't remember  
14 that, that's an artifact of stress because often the  
15 events that I review are things you would think people  
16 could never forget. And yet here they are moments later  
17 with no memory of these things.

18 So, I look for things like that. I like  
19 interviews, attorneys hate them, but for me, for  
20 example, in this first case I mentioned to you with  
21 Augustine Wiley, another things that happens under  
22 distress you tend to evacuate your bowels if you're  
23 stressing enough.

24 It turns out in this interview, Wiley says during  
25 the interview, what is that smell, and then says, I



1 think I shit myself. Had no idea. That's an artifact  
2 of stress. That's not normal, rational, adult behavior.

3 And, so, there's a physiological reason for that  
4 happening, and it's typically the activation of the  
5 sympathetic nervous system, or another example would be  
6 after an event when the arousal is very high, I see a  
7 lot of times these people get arrested and they fall  
8 asleep in the back of the police car after a seriously  
9 traumatic life threatening event.

10 That's unusual, you would think that people  
11 wouldn't do that, and yet it happens all the time, and  
12 that's because the parasympathetic nervous system has  
13 been evacuated of energy and is trying to recover.

14 So those are things people don't tend to lie about,  
15 they can't lie about, those are artifacts. It's not  
16 whether I believe you or I don't believe you, its an  
17 artifact of stress that's calming, and that's why I try  
18 to use the word artifact, cause it's there for us to  
19 look at.

20 Q Anything else under human factors just because I'm  
21 not familiar with the topic that you need to tell me  
22 about that may apply in this case? We'll apply it to  
23 the facts later, but just the general concept.

24 A So I think there's two things that i contemplated  
25 when I was looking at this. One of those is reaction

1 time or reaction response time.

2 Q Uh-huh?

3 A This is the amount of time it takes us to be able  
4 to recognize a threat, analyze a threat, decide what to  
5 do about it and initiate what we call motor action,  
6 which is of the behavioral response, the muscular  
7 response, motor action.

8 So those are four things that your brain has to go  
9 through every time a stimulus is presented, and that  
10 takes time. It's generally understood, and I'll keep  
11 the number really simple, to be about a quarter second.  
12 So by the time that the car in front of you puts on his  
13 brakes and the brake lights come on, it will take you  
14 one quarter second to realize they're on and to get your  
15 foot on the brake so you don't run into the back end of  
16 them.

17 So that's a reaction time principle.

18 Now, the actual time to conduct the lifting of the  
19 foot and put it on the brake, that's response time.  
20 That also takes time.

21 So when you're talking about a reaction to a  
22 threat, there's always a time gap. You can't be at the  
23 olympics, athletics always are on the blocks for  
24 milliseconds after the shot rings out, always, because  
25 they have to recognize that it's a shot, they have to

1 analyze what it means, they have to plan their first  
2 response, and then they have to initiate motor movement.  
3 And so that reaction response time, it happens within  
4 milliseconds, typically a quarter second, so that's one  
5 thing I think is relevant because of the close  
6 proximity.

7       When I was a U.S. karate team competitor, I had to  
8 learn to punch people in a quarter second. If it took  
9 me longer than that, they would block it. So the first  
10 recognition of the punch being thrown had to be the  
11 actually being hit. And I trained and trained and  
12 trained for quarter second punching. I think there's  
13 some references to me on the Internet doing that. That  
14 becomes importance in any self-defense scenario when  
15 you're talking about proximity, what we refer to as  
16 relative positioning and reactionary gap. Its called  
17 the reactionary gap because there's a reaction time  
18 that's associated with distance.

19       Q Okay. Anything else under the human factor thing  
20 that --

21       A The second thing.

22       Q Okay.

23       A The second thing actually comes from an article  
24 that's called The Point of No Return. I think I  
25 referenced this by Shultz.

1 Q I don't remember that one. I remember Shultz.

2 A I don't remember if I --

3 Q Yeah. Okay. You say Point of No Return?

4 A So basically with FMRI, these are functional  
5 magnetic resonance imaging, I believe everyone knows  
6 what an MRI is. I think we can now actually look at  
7 what's going on in your head in vitro. We can see what  
8 you're going to do before you do it because you have  
9 these, what are known as evoke readiness potentials, and  
10 it shows that before you have a conscious knowledge of  
11 doing something. A lot of times a whole second will  
12 pass in your brain.

13 So there's a time gap on the ERP before you have a  
14 thought and you actually are committing to an action.  
15 And it's very testable.

16 Within that time frame, the motor action is sent  
17 along the central nervous system to do something, and  
18 it's understood that if you don't veto that motor action  
19 within about two hundred milliseconds, you'll carry out  
20 the command, whether you want to or not.

21 So, for example, if I feel threatened and I have a  
22 weapon in my hand, and at the very last moment the  
23 subject seems to retreat, but I've already decided to  
24 pull the trigger because I think I'm still being  
25 advanced on, if I notice the retreat, my finger will

1 still pull the trigger because I don't have control of  
2 it because of the response potential that has been  
3 basically the signal that has been sent to the trigger  
4 finger to conduct that motor action, and I won't be able  
5 to stop it. And that may have something to do with this  
6 case as well to the degree I'm not sure.

7 I did notice that Mr -- I won't talk about  
8 Mr. Reeves. When you ask me about him I'll apply it.

9 Q Yep. We'll ferret all that out at the end. Okay.  
10 So there's two. Anything else on the human factor?

11 A You mentioned fear. I think fear is a huge part of  
12 human factor, why that happens, how the amygdala  
13 analyzes threats in the environment. That he says  
14 dozens of times how afraid he is and for what reason  
15 he's afraid, but again, that may be best saved for next  
16 time, but I think fear is a human factor that I don't  
17 want to miss.

18 Q How about panic?

19 A Panic is that drop off point. If you look at  
20 what's called the yerkes dotson curve, it's an inverted  
21 U, you can see it where arousal brings us to a optimum  
22 level of functioning, and then it drops off.

23 The drop off is, according to the yerkes dotson  
24 curve, it's been around since 1908, is a gradual drop  
25 off, but subsequent science has shown that it's more

1 radical than that, and so today it's called the  
2 catastrophic model where you see a very gradual lift to  
3 the optimal zone of functioning, and a dramatic change in  
4 performance to the negative. And so that would be  
5 panic. That would be essentially a description of where  
6 the panic occurs.

7 Q Anything else?

8 A I think that's it.

9 Q Let's talk a little bit about defensive tactics.  
10 What I'd like to do is cover those areas that are  
11 exclusive to defensive tactics and not human factors.

12 A Okay.

13 Q So again, not knowing exactly what that is, give me  
14 a brief overview of what it is, and then we can start a  
15 discussion about it.

16 A So I'll describe it from a special knowledge.

17 Q And I'm not talking about grappling and punches.

18 A Punch, no.

19 Q Okay.

20 A I'll describe it broadly from a defensive tactics  
21 perspective as it applies to probably the most codified  
22 area of the topic, which will be law enforcement. I  
23 think he'd write a lot about this.

24 Q Do that again for me. Explain what you're gonna  
25 do? Because we have a civilian case, and you're gonna

1 talk about how it relates to law enforcement.

2 A But you don't have a civilian case. You have a law  
3 enforcement case of a retired law enforcement officer.  
4 In other words, he doesn't get untrained when he  
5 retires. His whole life has been based on a type of  
6 training.

7 Q He's been retired for twenty years from the police  
8 department.

9 A It doesn't matter. I think his schema, what  
10 happens in life when we learn things, like, for example,  
11 to ride a bike, they say you never forget that, that's  
12 because you develop a mental schema. It's true, twenty  
13 years after not getting on a bike you can still do it.

14 Law enforcement officers, and I think looking at  
15 his background, that's his first experience of use of  
16 force. He doesn't come from the martial arts world,  
17 he's not a former golden gloves boxer, his schema of use  
18 of force and defensive tactics is forty years of law  
19 enforcement. So I think --

20 Q Is that a perishable skill as far as recognizing --

21 A Defensive tactics or use of force?

22 Q Well, defensive tactics. We're talking about his  
23 schema.

24 A Uh-huh.

25 Q Is that knowledge and ability to apply it, is that

1 a perishable skill?

2 A Defensive tactics, the physical manifestation of  
3 use of force, the skill, they are perishable skills.  
4 The use of force model that is driving the use of  
5 defensive tactics could be perishable, of course, but I  
6 don't know that that was the case when I read his  
7 interview. He seemed to have an intact understanding of  
8 use of force. I didn't notice that he was suffering  
9 from dementia, the kind of things that you could  
10 otherwise expect impoverished schemas. That wasn't  
11 something that was part of my analysis, but I do think,  
12 and I said to you in the beginning, this is an  
13 interesting case because usually I'm trying to apply law  
14 enforcement standards because I think it's the model  
15 that has been court tested so often to civilians.

16 In this case, I'm not sure that's a wise thing to  
17 do. I think I should apply law enforcement standards to  
18 who I perceive as being a law enforcement decision  
19 maker.

20 Q He's not a law enforcement, though.

21 A He's not -- He's no longer employed, but his brain  
22 is law enforcement, the way he thinks about things are  
23 law enforcement.

24 Q But he's out in the theater as a civilian, so he's  
25 under the civilian rules, correct, under 776.012?



1 A Yes.

2 Q That's where he lives?

3 A That's right.

4 Q He no longer lives under 776.05.

5 A That's true.

6 Q As far as determining whether or not his behavior  
7 is reasonable and justified.

8 A So if you're asking a legal question, you're  
9 correct. If you're asking me a psychological question,  
10 I think you're incorrect. I think he is still living in  
11 the mind of a police officer. He still analyzes his  
12 situational awareness, threat analysis, I think, is the  
13 same. I don't think -- I had somebody say in high  
14 school one time, I was a champion martial artist, I'll  
15 fight you, but you can't use your karate. And I  
16 thought, what an odd thing to say, because that's all I  
17 actually know.

18 It's not the kind of -- You don't turn off  
19 situational awareness when you retire. You don't turn  
20 off what you've learned about threat assessment when you  
21 retire.

22 Q Okay.

23 A You don't turn off action, reaction principles when  
24 you retire. Those are indelibly imprinted on your mind  
25 and your nervous system, and if they are perishable,

1 they're perishable in terms of aging, dementia, other  
2 types of brain disorders, things like that, but I don't  
3 think he has a different schema for use of force than  
4 the one he not only learned, but taught for those forty  
5 years.

6 So, I think for me it's an easier case cause I can  
7 tell you what Reeves should know and where he was  
8 operating from because it's so well documented. I'm  
9 usually in court with you saying, well, he's not a cop,  
10 is he? And most of my stand your ground cases, but in  
11 this case, I think I enjoy the opportunity to speak  
12 about him as if he thinks like a police officer.

13 Q Do you know when he began his swat training, what  
14 year?

15 A I want to say '70 -- what, the swat trainer or  
16 police work?

17 Q Well, let's go back to police work.

18 A I don't recall exactly, in the '70s.

19 Q All right. Swat training?

20 A So he did swat training while he was at the Tampa  
21 Police Department, they call it tactical apprehension.

22 Q Sure. What years?

23 A I don't recall. I want to say maybe the '80s,  
24 perhaps late '70s.

25 Q Okay. When do you go through the police academy?

1 A 1986.

2 Q Do you know the training that he received in the --  
3 whenever he started at the police academy?

4 A So when he started it, it would have been regional  
5 or local. I don't know what academy he said he went to,  
6 I guess it was Hillsborough or something.

7 Q I'm talking about the training curriculum.

8 A It wasn't formalized, so I certainly wouldn't have  
9 a copy of it from the '70s, but it was not formalized as  
10 it is today.

11 Q In fact, the cases that we've been discussing  
12 hadn't even taken place yet, right?

13 A Which cases are you talking about?

14 Q Tennessee and Graham.

15 A Well, Tennessee took --

16 Q They're all in '85 and '89.

17 A Well, right.

18 Q Yeah. So 1970 --

19 A Well, Tennessee happened in the '70s, it happened  
20 in '74, but it was ruled upon in the '85 by the Supreme  
21 Court.

22 Q That's true.

23 A You said they hadn't happened, so let me be clear,  
24 they did not.

25 Q The ruling hadn't happened.

1       A Yes, that's right. So in '80, Tennessee versus  
2       Garner was 1985 and Graham versus Conner was '89 and  
3       they had not happened when he was there. When he first  
4       learned. Sorry.

5       Q All right. So back then, we have no idea what  
6       training he received almost in-house from the Tampa  
7       Police Department?

8       A No.

9       Q All right. And, of course, back then the concepts  
10      of threat awareness and threat assessment had not been  
11      explored in detail as it is today?

12      A I don't think that's true. I think threat  
13      awareness and threat assessment have been explored for  
14      hundreds of years.

15      Q All right.

16      A I think most of it comes from the military.

17      Q All right. And do you know whether or not he  
18      received training, threat assessment, threat awareness  
19      in the police academy?

20      A I don't know what he received, so I can't answer  
21      that. I can tell you when I went through in '86, I  
22      received it, and it was -- it was not groundbreaking.

23             My understanding from the people who taught it to  
24      me went through in the '70s, they understood it as well,  
25      so it wasn't new.

1 Q Really? In the '70s?

2 A My instructors, sure.

3 Q You actually received training on threat arrests --  
4 threat assessment and threat awareness in the police  
5 academy in the '70s?

6 A No, no. I wasn't there in the '70s. I said the  
7 people who taught me must have went through in the '70s,  
8 they were ten years older than I was.

9 Q They had aware of it when they taught you. Do you  
10 know whether or not they had aware of it in the '70s?

11 A Threat assessment, I don't know. I don't know any  
12 of their curriculum --

13 Q Okay.

14 A -- but I can tell you threat assessment and threat  
15 awareness is not a new concept in combat. It's been  
16 around for hundreds and hundred of years.

17 Q The question is is it a new -- In the '70s, was it  
18 even taught?

19 A In policing?

20 Q Yes.

21 A I would say it was, but I'm guessing.

22 Q You don't know?

23 A Neither do you?

24 Q Yes, I do.

25 A It wasn't taught?

1 Q No.

2 A By any agency in the United States, in Florida?

3 You know that?

4 Q Florida.

5 A You know that?

6 Q Yeah.

7 A Okay.

8 Q All right. So let's talk about when he went to  
9 SWAT.

10 A I got to ask you how you would know every where  
11 every curriculum in the State of Florida wasn't unified.  
12 I just have to know that.

13 Q Because I went to the police academy in the early  
14 '70s.

15 A Which academy?

16 Q Votech in Pinellas Park.

17 A What were they teaching in Tallahassee, same thing?

18 Q There was no standard anything.

19 A That's right, but you don't know they weren't  
20 teaching it.

21 Q There was no standard anywhere.

22 A You don't know that they weren't teaching it.

23 Q Let's move on.

24 A I'm the expert in this area, so, I mean, I'm  
25 telling you that I don't believe you know it.

1 Q Haha. We'll see.

2 A I know what happened in every academy in the state.  
3 That's not true.

4 Q All right. Let's talk about when he went to the --  
5 was teaching SWAT. Do you know what years he was doing  
6 that?

7 A I don't recall. I think it was the '80s, but I  
8 don't recall.

9 Q And do you know what the curriculum was then?

10 A I mean, it's evolved since then, I'm up to speed on  
11 it now, but I don't really know what it was then.

12 Q You have no idea?

13 A There was two schools of thought. There was an  
14 east coast version and a west coast version when it  
15 started mostly in Los Angeles, of course, under Daryl  
16 Gates, and that was sort of the going curriculum at that  
17 time, but I wasn't involved in.

18 Q The Tampa Police Department, do you know the  
19 curriculum of Mr. Reeves?

20 A I don't.

21 Q And throughout the time that he was in SWAT, do you  
22 know the curriculum of Mr. Reeves as far as it relates  
23 to use of force, threat analysis?

24 A I feel comfortable in saying I don't know any of  
25 the curriculum that he went through, because I haven't

1     been presented with it.

2       Q   Okay.  And as you mentioned, there was no  
3     standardized curriculum back then, so everyone was free  
4     to do whatever they wanted.

5       A   There was standards that were developing, for  
6     example, through caliber press.

7       Q   Right.  Do you know whether or not Mr. Reeves had  
8     the benefit of that education?

9       A   I don't know.  Once again, I would assume that he  
10    probably did because this is where officer safety, and  
11    we lost a lot of police officers in the '70s, you were  
12    there, you tell me, and we started developing officer  
13    safety standards.  They're not legislative, they're not  
14    constitutional, all that.

15      Q   I appreciate that.  The question is --

16      A   This was very popular.

17      Q   -- what did Mr. Reeves know?  What was his  
18    education?

19      A   I don't know exactly.

20      Q   You are aware that the jury instruction as far as  
21    self-defense is what he knew at the time?

22      A   At the time of the shooting.

23      Q   Yeah.

24      A   Yes.

25      Q   So you can't tell me what training he had at the



1 police academy or during SWAT or while he was a captain  
2 or even while he was at Bush Gardens. You have no idea  
3 what training he had, do you?

4 A My understanding is he was an instructor after FDLE  
5 codified under a state standard.

6 Q Do you know what it was?

7 A I can tell you what he knew as he was teaching  
8 throughout the '90s and in the 2000s.

9 Q How do you know he was teaching in the '90s and  
10 2000s?

11 A I think he said he was.

12 Q Okay.

13 A And he would be following a state curriculum.

14 Q Do you have to follow the state curriculum when you  
15 teach at the police academy?

16 A Well, you don't have -- It depends. If you're  
17 teaching the basic recruit level, yes, you do. If  
18 you're teaching advanced or specialized, well, advanced,  
19 yes, you do. Specialized, no, you don't. So there's  
20 multiple answers to that question.

21 Q Okay. Let's talk about the defense tactics that  
22 you feel may come into play. We're talking about  
23 generally.

24 If you were asked and you were allowed to testify  
25 in front of the jury about defense tactics in general,

1 tell me what you would tell them?

2 A The defensive tactics is not common knowledge,  
3 that's why law enforcement officers go through 66 hours  
4 of training when they go through the police academy.  
5 That most defensive tactic --

6 Q Well, let me stop you there. 66 hours of training  
7 at the police academy for what?

8 A For that block, defensive tactics block.

9 Q And how many of those hours is actually skills?

10 A Depends. It's gonna be -- I know some academies  
11 will do the use of force section two hours, some will do  
12 it in eight. It will be somewhere in the neighborhood  
13 of 60 of actual skill based training.

14 Q All right. So when you say 66 hours of defensive  
15 tactics, what we were talking about, we're talking about  
16 two to six hours of training?

17 A Huh? Of what kind of training? Wait. I'm sorry,  
18 I didn't understand.

19 Q Not skill, but just the -- I call it book work.

20 A The use of force?

21 Q Yeah, book work.

22 A I would say that probable yes, you're about right,  
23 two to eight hours.

24 Q That's what I have, two to eight hours. I think I  
25 said six, but two to eight hours?

1       A   Uh-huh.

2       Q   All right.  Everything else is grappling on the  
3   mats and --

4       A   Skill based.

5       Q   Skill based?

6       A   Yep.

7       Q   All right.  During that two to eight hours, tell me  
8   about defensive tactics, and I'll call it the book work  
9   part.  I don't know what else to call it.

10      A   Right.  So a large part of the basic recruit course  
11   now we're talking about, not advanced or specialized,  
12   but the basic recruit course is based on understanding  
13   the construct of an objective reasonableness.  We talk  
14   about case law.  We talk about, I think in some -- I  
15   certainly do, I give a departure from Eighth Amendment  
16   standards to Fourth Amendment standards when I'm talking  
17   to law enforcement.  It breaths life into the case law,  
18   it powers it.

19           Then we move into an understanding of what  
20   reasonableness is, the difference between objective  
21   reasonableness is that generally culminates in the force  
22   graphs, or the use of force decision models, the graph  
23   of the matrix.

24           We describe how proportionality is pre decided.  We  
25   talk about theories of escalation and deescalation.  We

1 refer to it as a sliding scale.

2 We talk about threat assessment. We discuss  
3 situational awareness.

4 Q Okay.

5 A We discuss stress and how it impacts performance.

6 Q We talked about a little bit of that when we were  
7 back here. It would be the same?

8 A Yes. Well, I wrote the section for the state, so  
9 it's not huge, but it culminates -- I probably told you  
10 more than I think the students may learn about it, but  
11 that stress affect performance, and we talk a little bit  
12 about what they can reasonably anticipate if they are  
13 aroused to a certain degree.

14 Q All right. But we don't need to cover it again  
15 because you already told me everything.

16 A Yes. I'm sorry, I'm trying to give you a rundown  
17 of my basic recruit course.

18 Q I got it. All right. And next? Remember my  
19 question was if you were asked and the court allowed you  
20 to, how would you educate the jury, what would you tell  
21 them about --

22 A Well, these are about defensive tactics --

23 Q I know, but that's --

24 A -- which includes use of force.

25 Q Yes.

1       A   This is the use of force.

2           Then you asked me about the lecture, which is use  
3 of force, not a defensive tactic, so, I mean, I think  
4 you broke your question in two parts.

5       Q   I'm trying to, yes.

6       A   Okay. Defensive tactics is skilled based. Use of  
7 force is the underlying, underpinning philosophy of when  
8 to use those skills and how to make judgments about  
9 threats.

10      Q   All right. Let me try to make sure I understand.  
11 Under defensive tactics, say defensive tactics is the  
12 chapter. Unit one would be stress performance, unit two  
13 would be use of force, unit three would be skill based.

14           You're telling me all this is under the, quote,  
15 defensive tactics?

16      A   Yes.

17      Q   Okay. That's -- So let's go ahead and lump it  
18 together, because I did break it out like that.

19      A   I know. I tease it apart because I think it's  
20 important as an expert to do that.

21      Q   Well, then, let's take it apart.

22      A   To say that use of force is one thing, defensive  
23 tactics is another, they're obviously very closely  
24 related.

25      Q   All right.

1       A   But the book work, as you called it, is use of  
2       force. Under the defensive tactics umbrella, it is use  
3       of force. Once we get you done with that, we move you  
4       to the mats, and on the mats we start teaching --

5       Q   Well, what is threat assessments, is that book  
6       work?

7       A   That's book work, yeah.

8       Q   Okay. Well, let's keep going with that. I get it  
9       now.

10      A   And let's see. Then we, of course, cover statute,  
11      we cover 776.05, 776.051.

12           We covered use of force, I covered stand your  
13      ground. I don't know how many -- I don't know if that's  
14      an academy requirement these days, but I told you it's  
15      an opportunity for us to --

16      Q   Let me go back. I'm sorry. 776.01?

17      A   051.

18      Q   Oh, 051.

19      A   Yeah.

20      Q   Oh, I'm sorry.

21      A   05 and 051.

22      Q   Got it.

23      A   We may cover 901, which is, of course, the umbrella  
24      statute for law enforcement and corrections.

25      Q   Or corrections?

1       A   Corrections, sorry.  That's the last class I did.  
2   Traffic would be the law enforcement escapes me at the  
3   moment.

4       Q   All right.  Anything else?

5       A   No.

6       Q   Cause I want to talk about each of these real  
7   quick.

8       A   Okay.  And I think that's the preparatory use of  
9   force component, and then we send them on to the mats  
10   for the skill based.

11      Q   All right.  And we've already talked about  
12   reactionary time and reactionary gap cause that would be  
13   a section --

14      A   Yes.  A lot of that is done on the mats, because we  
15   show them.

16      Q   Right, but there is a section on Chapter Four,  
17   right?

18      A   Yes.

19      Q   All right.  Let's talk about those just a little  
20   bit.

21      A   Okay.

22      Q   If you're going to explain to a jury, I want to  
23   start kind of backwards.

24           If you were asked and the court allows you to  
25   explain to the jury generally what situational awareness

1 is, how would you explain it to them?

2 A Well, I think it's self described. It's being  
3 aware of the situation that you're in.

4 Q Okay.

5 A So you're paying attention to stimulus in the  
6 environment. You are analyzing what's meaningful, like  
7 this is what I did in my dissertation on this, this is a  
8 long answer.

9 You're analyzing what's meaningful in the  
10 environment. You're anticipating what comes next, so  
11 from all of the environment, the totality of the  
12 circumstances, you're trying to analyze what comes next.  
13 And you are flexible, cognitively flexible to know that  
14 if something changes in the environment, it will alter  
15 your anticipation. And so your anticipation is going to  
16 lead to what do I do now.

17 Q Okay. Are there certain factors that come into  
18 play?

19 A Vision is a huge factor. As a matter of fact, I  
20 have proposed during my dissertation if we can  
21 strengthen vision, we'll get better decisions because  
22 it's the first part of decision making.

23 If you don't see it in your environment, you don't  
24 know it's there, it won't calculate into your decision.  
25 So the idea is to train the eyes to be able to properly



1 analyze what's known as a useful field of vision.  
2 Whatever your eyes are capable of seeing to be able to  
3 discriminate the environment, to decide what's important  
4 and to make sense of it.

5 Q Any other factors that come into situational  
6 awareness?

7 A Yes. I think we talked about reaction time, so  
8 proximity to individuals would matter. As you know, law  
9 enforcement are -- law enforcement officers are taught  
10 to keep an appropriate distance, a reactionary distance  
11 or reactionary gap between themselves and others.

12 Q Uh-huh.

13 A That would be a human factor. Relative positioning  
14 would be a human factor. This is the area, if you think  
15 about it, from the perspective of --

16 Q This is under situational awareness, right?

17 A Yes.

18 Q Okay.

19 A If you think about it from the perspective of a  
20 clock system, we don't use a clock system, but I think  
21 it makes it easier for laymen to understand.

22 If you you're standing at twelve o'clock, or one  
23 o'clock or four o'clock in relationship to the person,  
24 it's because you're anticipating to do something in  
25 relationship to them.

1           For example, interview position would be somewhere  
2 in the neighborhood of seven or eight o'clock if they're  
3 facing six o'clock. You'd be standing off to the  
4 corners.

5           The escort position would be three or nine o'clock  
6 if you're standing to the side of them. We say the  
7 superior position would be twelve o'clock, so as you  
8 move an officer around an individual, they're  
9 preplanning what they're about to do, to interview them,  
10 to take them into custody, perhaps to be there to  
11 prevent them from running away, things like that.

12       Q All right.

13           MR. MARTIN: We've gone an hour and ten  
14 minutes, so I think this will be our last break, I  
15 think I can finish up in an hour, so let's take a  
16 ten minute and the only thing we've got to cover is  
17 a little bit of use of force.

18           (A recess was had. After which, the  
19 deposition resumed as follows:)

20           MR. MARTIN: Ready?

21           MR. BEDARD: I'm ready.

22           MR. MARTIN: Ready, Dino?

23           MR. MICHAELS: Yes, I'm ready.

24           MR. MARTIN: Madam court reporter?

25           THE COURT REPORTER: Uh-huh.

1 BY MR. MARTIN:

2 Q We were talking about defensive tactics and as it  
3 relates to a use of force case.

4 Let me go back over some of the things that you  
5 mentioned to me.

6 We were talking about situational awareness, we  
7 were talking about factors that may come into play that  
8 would be important and being aware of your situation.

9 Are there any others factors other than vision,  
10 proximity?

11 A I don't know if you -- I would not include this,  
12 but you may be including this in your statement about  
13 situational awareness, threat assessment, I think, is a  
14 human factor as well.

15 Q We'll go -- That's a separate one I'm gonna cover.

16 A It's a separate one, okay. Yes.

17 Q Yeah. I'm just talking about situational  
18 awareness.

19 A Okay. Proximity, we talked about distance.

20 Q We did relative proximity, yes.

21 A Perhaps defensive posture might be included in  
22 that.

23 Q Posturing or defense --

24 A Posturing is a little bit different than defensive  
25 posture. Defensive posture as I stated would be, for

1 example, do you have a weapon in your hand, do you have  
2 your hands up, do you have your hands in your pocket,  
3 you know, whatever the actual physical posture is.

4 Q Okay.

5 A But threat displays are part of posturing.

6 Q Let's go talk about threat assessment then. That  
7 seems to be where we're going.

8 A They're a little bit different, though. I mean,  
9 threat displays and threat assessment are not the same.

10 Q First tell me what the difference is and then we'll  
11 talk about it.

12 A Okay. Threat displays are generally what all  
13 animals do to avoid combat. And you have deimatic  
14 threat displays, D-E-I-M-A-T-I-C, and you have  
15 aposematic threat displays. A-P-O-S-E-M-A-T-I-C.

16 These threat displays are designed to intimidate a  
17 rival. So the deimatic versus the aposematic means in  
18 one case you have a false threat display, for example, a  
19 puffer fish who gets larger, can't do anymore, but he  
20 frightens his opponent because he gets larger, or  
21 turning color red, for example, as humans do when they  
22 get angry and all the blood goes to their face.

23 Those are one type of threat display. Another type  
24 of threat display would be, for example, a rattle snake  
25 who rattles his tail, but, indeed, can cause great harm

1 if you continue to advance on him, or a person who  
2 points a gun at you in an attempt to ward you off, but  
3 you continue advance, and so he fires. So these are  
4 real threat displays, but they're basically understood  
5 to be bluffs, to a degree. And if they're aposematic,  
6 they're actually intended to be just warnings, just pre  
7 warnings, but both of them are intended to stop the  
8 fight, to ward off the fight.

9 Q Okay.

10 A And the anticipated reaction of that would be the  
11 human factor.

12 Q And how would that come into play?

13 A So, for example, if I point a gun at you, my  
14 rationale is to get you to stop doing what you're doing,  
15 to no longer advance on me, for example, my rationale. I  
16 mean, that may not happen, but that's my bluff, that's  
17 what I'm gambling, and if you don't advance on me, then  
18 I won't shoot, I'll reholster. Police use these all the  
19 time.

20 Q So let's go ahead and talk about threat assessment,  
21 which is different than situational awareness.

22 A It's a component of situational awareness, but it  
23 is different.

24 Situational awareness, as I said, is really sort of  
25 observing the environment, discriminating what's

1 important, and anticipating what comes next. That's  
2 basically situational awareness.

3 Q How is threat assessment?

4 A Threat assessment is targeting in on things that  
5 are threatening to you and why they would be  
6 threatening, and it might include specifically what  
7 you're looking at, but could also include environmental  
8 factors.

9 Q Like?

10 A Like if I'm fighting you on the roof top, it would  
11 be different than fighting you on the ground because the  
12 threat of you throwing me off the roof exist on the roof  
13 top and it doesn't exist on the ground.

14 But threat assessment also has to do with more  
15 direct analysis, and these are where we start talking  
16 about things like subject factors.

17 Q What is that?

18 A How big is the subject. How --

19 Q Oh, subject as applies a person?

20 A The subjective factors. Well, your subject versus  
21 my subject. So we both have factors. Are you bigger  
22 than me, are you older than me, do you appear to be  
23 skilled in the martial arts, do you have a weapon.  
24 Those are all subject factor.

25 Q Got it. Okay.

1       A   And that's part of threat assessment.

2       Q   All right.

3       A   And then another part of threat assessment has to  
4 do, and I guess this is more environmental with the  
5 component of self defense that includes protecting  
6 others.

7           So, for example, where it may be wise to retreat,  
8 if you're in the protection of another person, you can't  
9 retreat. And that has to figure into your threat  
10 assessment as well. So, in other words, your options  
11 are limited. For example, if you're protecting your  
12 child and a pit bull comes, your natural instinct would  
13 be to run, but you can't because you have a child there,  
14 so you have to do something else.

15       Q   You could pick up the child and run?

16       A   You could. That could be one thing.

17       Q   There you go.

18       A   You could fight the dog, hit him with a stick, I  
19 mean, those are what we talked about in terms of  
20 alternatives. If you turn suddenly and the pit bull was  
21 on your child, you would start fighting, cause that  
22 would be the heuristic, so those kind of factors also  
23 would figure into threat assessment.

24       Q   Are there any behavioral clues that fit into either  
25 threat assessment or situational awareness?

1 A There are.

2 Q What are they?

3 A Behavioral clues would -- Do you want to ask me  
4 specifically, or do you want me to just elaborate.

5 Q Just rattle them off. We want to get out of here  
6 at two.

7 A Okay. So one of them would be postural cues. That  
8 seems to be one of the strongest indicators of, for  
9 example, shootings. The belief that somebody is  
10 assuming a posture that is dangerous or deadly in  
11 nature. Somebody stops and points their finger at you  
12 or their wallet at you or their cell phone at you or  
13 their gun at you, you would interpret generally all  
14 those the same because the body position is the same,  
15 which is why we end up with mistakes of fact where we  
16 get police officers, for example, that shoot people that  
17 are holding wallets because their postural cues are  
18 representative of how the officer makes the analysis of  
19 the threat.

20 And then other behavioral cues would be things like  
21 aggression. Aggression comes in many different forms.  
22 They can come in elevating your position, standing up,  
23 inflating your chest, turning red.

24 We usually say, to sum it up, you get bigger, you  
25 get louder, you turn colors. Those are the three big



1 ones. But it may also have to do with hand gestures.  
2 There are expressions, some of them are micro  
3 expressions that are being analyzed.

4 Q All right. Let me just stop you there.

5 Expressions as far as verbal, expressions as far as  
6 facial?

7 A Facial. That's what I'm talking about right now.  
8 Verbal will come next. But verbal expressions and some  
9 of them I mean when I say micro expressions, we're very  
10 tuned into human faces as a part of our brain that  
11 actually only understands the human face and tries to  
12 collect information from the way that the face is  
13 moving, the squint of the eyes, the lifting of the lips,  
14 the flaring of the nostrils, those kind of things. And  
15 oftentimes danger is calculated in a way that we don't  
16 consciously understand.

17 Q Explain that to me.

18 A So depending on our evolution, right. There are  
19 certain features that will engage the fight/flight  
20 response that we oftentimes can't describe why we were  
21 scared, we were just scared, and we believe that a lot  
22 those come from, for example, micro expressions.  
23 Somebody has turned their face a certain way to make us  
24 feel as if they were being deceptive or they were being  
25 a direct danger and it frightens us by the way they

1 look, and yet we may not be conscious of it until after  
2 the fact, and that guy just scared me, those kind of  
3 things. So we know that that's calculated into threat  
4 assessment as well.

5 Q Are all these factors universal and can affect the  
6 person the same, or can --

7 A They are universal. They actually are universal  
8 culturally as well.

9 Q All right. Can some people be more sensitive to  
10 some of these cues as opposed to others?

11 A Sure. There's variance. There's always variance.

12 Q That's why I guess what I'm saying. There is  
13 variance?

14 A With everything there's variance. There's not a  
15 fixed threshold for human beings on anything that I'm  
16 aware of.

17 Q There's no way to quantify it or quality it in any  
18 way that person A is gonna respond this way, person B  
19 this way?

20 A No, but if somebody tells you something that they,  
21 for example, this is how I reacted and why I reacted,  
22 you can go back to is that the way people react in this  
23 circumstances, and then you can draw those comparisons,  
24 and then, of course, it comes down to veracity, and  
25 that's what juries are all about is deciding whether or

1 not he's telling the truth about it, but I'm if  
2 somebody's saying --

3 Q Well, I'm thinking about people who have a fear of  
4 dogs or cats, elevators, innate objects that --

5 A Phobias.

6 Q Yeah.

7 A Some people are phobics, some are not. I mean,  
8 there's -- We think that there's some common phobias  
9 that people have.

10 Once again, I'm sure there's variance here, but we  
11 tend to think that people have -- The natural phobias  
12 are often cited as being dark and elevational. Some  
13 would argue that's because of our earliest days a  
14 primates, being in the trees and, of course, falling out  
15 and being attacked particularly by snakes in the dark  
16 that you can't see.

17 Q Can people just overreact?

18 A Can they overreact? Sure. People overreact all  
19 the time, I think, but the overreaction is oftentimes a  
20 conclusion, so, for example, somebody who is acting at  
21 that time based on their perceptions may be deemed to  
22 have overreacted. I don't think that they're  
23 consciously aware based on their perceptions that they  
24 overacted at the time that they used force, for example,  
25 and that's the test. How did they perceive things at

1     that time.

2         Q   Is it?

3         A   Yeah.  There's a huge subjective factor to use of  
4     force.

5         Q   Subjective?

6         A   Yes.  You have to consider subjective factors when  
7     you're talking about use of force.

8         Q   And then what does the jury think then?

9         A   I think it's both, both subjective and objective  
10    factors.

11        Q   They have to determine whether or not a subjective  
12    perception was reasonable?

13        A   Was reasonable, that's right.

14        Q   Objectively reasonable based on the reasonable man  
15    standard, correct?

16        A   Yes.  That's what the law says.  I'm not sure what  
17    the reasonable man standard.  I can't find that guy is  
18    what I'm saying, but --

19        Q   He's all around.

20        A   Yeah.  The reasonable man standard I describe as a  
21    model, not a definition.

22        Q   But that's what the jury instruction is based on?

23        A   That's what they are, and that's what the jury has  
24    to work with.

25        Q   Yes.

1       A   And by the way, you may have some people on the  
2       jury that apply their own phobias to a particular  
3       circumstance.

4       Q   That's always a possibility?

5       A   So, I mean, it's -- There, again, there's variance.

6       Q   So when we talk about educating the jury, it's the  
7       jury that decides, does it not, whether or not the  
8       subjective perception is objectively reasonable based on  
9       the reasonable man standard, that's --

10      A   In the courtroom, yes, but we do teach objective  
11      reasonableness as you know.

12      Q   Yes.

13      A   We teach the standard, and so I think for the  
14      expert to go in and educate the jury, it's what is the  
15      standard, what would be considered an appropriate use of  
16      force. I mean --

17      Q   Is the reasonable man standard in a civil jury  
18      trial. In a --

19      A   Exactly.

20      Q   Okay.

21      A   So, I mean, you may have somebody on the jury who  
22      has the notion going in, we don't ever shoot anyone, I  
23      don't care what they do, you should never shoot someone.  
24      I've heard that before. My mother likes to say that.  
25      But that's not the standard, the objective standard, so

1 I think the expert educates in that area.

2 When you're facing this kind of threat, what would  
3 be proportional to that.

4 Q Do you believe that someone who honestly believed  
5 they perceived a perception --

6 A They perceived a perception?

7 Q Yeah. I'm gonna start over, okay?

8 A Please.

9 MR. MARTIN: Now you got the court reporter;  
10 laughing at me.

11 THE COURT REPORTER: I'm sorry.

12 MR. MARTIN: That's all right. I can take it.

13 BY MR. MARTIN:

14 Q Can an honestly believed perception be objectively  
15 unreasonable?

16 A An honestly believed perception?

17 Q No. An honestly believed perception be objectively  
18 unreasonable?

19 A Yes.

20 Q Okay.

21 MR. MARTIN: Okay. I think this is where I  
22 want to stop because we're going to take everything  
23 that we just discussed, we're going to talk about  
24 the Defendant's statement to law enforcement, the  
25 immunity hearing and hopefully you get to interview

1 him because I can't take the depo until you  
2 interview him because there may be differences in  
3 what he says in all three of those.

4 MR. BEDARD: I understand.

5 MR. MARTIN: So then I'm gonna ask you to go  
6 through what we talked about here today and what is  
7 it about any of those statements where you  
8 identified the artifacts that we have been talking  
9 about, and then we'll go through your potential  
10 final conclusions in this case.

11 MR. BEDARD: Okay. So I don't want to just  
12 talk about the artifacts, but I talked about self  
13 efficacy, and I think you stalled me till now and  
14 why, what I gathered from his statements, not only  
15 to law enforcement, but also during the stand your  
16 ground.

17 BY MR. MARTIN:

18 Q Well, go ahead and tell me, then we'll cover it a  
19 little bit.

20 A And these are the things that tell us how he  
21 perceives himself. This is his subject factor, I think  
22 his subject --

23 Q Wait a minute. You got a couple of things. How he  
24 perceived his self and his subject factor.

25 A These are his -- He is the subject. Do you

1 remember when I was talking about subject factors?

2 Q Yes.

3 A I said you're a subject, I'm a subject, we compare  
4 those things, like are we well matched, or is there an  
5 imbalance. So I think these would describe his  
6 imbalance about himself.

7 As I recall, the only --

8 Q All right.

9 A -- the only thing that he says about Mr. Oulson is  
10 he's angry, he's unreasonable and he's tall. That's  
11 pretty much his description.

12 So those would be sort of the subject factors he  
13 describes of chattels. To himself he attributes the  
14 following.

15 He says, I'm seventy-one years old, shit, I can't  
16 get through there. And I think they're trying to seat  
17 him down or something like that, and he immediately  
18 says, I don't have the dexterity to do it.

19 Do you want these page numbers to cross reference  
20 this, or do you care? Okay.

21 Q I do care but --

22 A I don't mean do you not care, I mean do you want  
23 them now to review what I'm telling you.

24 Q No. I'm pretty familiar with his statement to law  
25 enforcement.



1       A   Okay.  He says that led me to believe he was gonna  
2 kick my ass.

3       Q   You can just give the page number and we're good.

4       A   Page 69.

5       Q   There you go.

6       A   Something was wrong with my left eye.  In other  
7 words, so I should also say that the subjective factors  
8 are temporal, and of course, when we teach law  
9 enforcement, for example, if you're very fit and very  
10 strong and very young, and yet you chase somebody, twist  
11 your angle, fall down in the street and they attack you,  
12 your subject factors are much different than they were  
13 before the chase started.  So the fact that he says he's  
14 got something in his eye, that will affect his  
15 perspective of himself and his capability to deal with  
16 the threat.

17           He says, they, parenthetically I put the glasses,  
18 they weren't off and they were partially off, and I  
19 fixed them where they fit my head again, and for a  
20 while, I was kind of dazed.

21           And what I know about being a glasses wearer, I  
22 know I've had Lasik, but I wore them most of my life, is  
23 that if your glasses, prescription glasses angle on your  
24 face, the focal point changes, and it causes a very  
25 distressing visual moment because everything is just

1 sort of out of whack until you get them back on.

2 He says that a couple times, so I can relate to  
3 that.

4 He says, again, I felt like I had something in my  
5 eye, he says it's dark in there.

6 That would be an environmental factor. Obviously  
7 when the lights go down, you're not able to see as  
8 clearly.

9 Q Do you know the lighting conditions in there?

10 A Yes.. Dark.

11 Q What does dark mean?

12 A I don't know. Not light. I didn't have a light  
13 meter, and I don't think anyone did.

14 Q Dark so you can't see the hand in front of your  
15 face? Dark so you can't see a person two feet in front  
16 of you?

17 A I think there's a variable there, too. Maybe you  
18 can't see it, I can. I don't know. It was not  
19 daylight. He -- It doesn't matter what I think.

20 Q Have you been in a movie theater?

21 A What's that?

22 Q Have you been in a movie theater?

23 A Sure. I have been when the lights are on, lights  
24 were off, the preview was on.

25 Q Have you been in there where there's different

1 levels of light in there?

2 A Yes.

3 Q And do you know the light level at the time of this  
4 incident?

5 A It doesn't matter.

6 Q It doesn't? He says it was dark.

7 A I'll tell you why, cause it doesn't matter what I  
8 think. He says it's dark in there. He thinks it's  
9 dark.

10 Q Okay.

11 A He's noticed it.

12 Q But it's dark?

13 A It affects his analysis cause he's noticed that  
14 it's dark. That's what matters. I guess you could say  
15 I was -- By the way, that was Page 69.

16 I guess you could say I was scared shitless, Page  
17 70.

18 So he discusses his fear level.

19 Page 70 he says I've got arthritis in both hands.  
20 My back's a friggin' wreck.

21 So he talks about his physical limitations.

22 He says to the officer, and as you get older, you  
23 find you're a physical wreck. Page 70.

24 I didn't know exactly what he meant, but he said, I  
25 just been whipped because I couldn't do anything. He

1 says that at one point and I don't know if that meant  
2 right after he alleges the first 'strike or what he's  
3 talking about, but I took to it mean that he was saying  
4 that he just got basically punched in the face. He says  
5 I just been whipped and I couldn't do anything. Page  
6 71.

7 He says when he jumped on the seat and came over  
8 the in between the crack between the two seats, that's  
9 when he scared me. Page 72.

10 So he's talking about proximity now.

11 As soon as I pulled the trigger, I said, oh, shit,  
12 this is stupid, but again, I don't -- I'm 71 years old,  
13 I don't need an ass whooping from a younger man. So he  
14 sort of expresses that he knew if he were to fight this  
15 guy, he would not prevail.

16 When he started for me and started yelling, that  
17 scared the crap out of me. I'm thinking, holy crap.  
18 What's going on here, so once again, he cites to his  
19 fear level at that moment.

20 I'm thinking this guy's fixing to do to me -- do me  
21 some bad stuff. Page 73.

22 Well, guess it scared the hell out of me. Page 73.  
23 Talks about being afraid.

24 I thought the guy was fixing to beat the shit out  
25 of me. Page 73. Fear level.

1           Something had led me to believe, and when the guy  
2 starts coming at you with, with the aggravated position,  
3 the contorted face, the fuck yous and stuff like that,  
4 ah, I don't think I've ever had anybody get in my face  
5 like that, and it scared the crap out of me. If I was  
6 fifty, twenty years younger, something like that, I  
7 might have just wrestled it out with him, but all that  
8 agility and shit is gone.

9           So this is a really good sort of analysis of how he  
10 feels about his physical ability.

11           I couldn't hardly shoot. I had much arthritis in  
12 my hand. Page 74.

13           I'm shit, I can't fight. I'm 71 years old, I  
14 don't, ah, I couldn't take that guy. I couldn't take  
15 anybody, not anymore. I retired. I've gained twenty to  
16 thirty pounds. I've got arthritis in my back, my knees,  
17 my hands, nah, I couldn't take anybody. Page 74.

18           If I thought that I wasn't gonna get beat up, it  
19 would have never happened. I was pretty confident after  
20 being hit one time that he wasn't going to stop. Page  
21 75.

22           If I wasn't afraid of getting hurt or beaten up, it  
23 would have never -- I would have never pulled the pistol  
24 first of all. Page 75.

25           So we're a bunch of cripples now, I guess you could

1 say. We laugh when we call each other that. Page 75.  
2 I mean, I get a bruise on my arm it takes, shit, two  
3 month to heal. I couldn't take an ass whooping. I got  
4 a problem with my right eye. The guy hit me in the left  
5 side, and I'm thinking, oh, shit, I don't want to be  
6 blind. I don't want to be any of those things as I get  
7 older. Page 77.

8 This guy scared the shit out of me. Page 77.

9 I in all my of law enforcement career, I don't  
10 think I've ever been that scared that quick.

11 Does that make sense to you? Page 82.

12 And so I pulled that out of what he said because it  
13 seemed that that was his analysis of what was going on  
14 about his ability to deal with the threat, or more  
15 importantly, his inability to deal with the threat. And  
16 this was a motivating factor for him, in part, to use  
17 the kind of force that he used.

18 Q Okay.

19 A That's it. That's what I'd written down from the  
20 notes took.

21 MR. MARTIN: Cool. All right. We'll delve  
22 into that when we try to take all three statements  
23 and try to figure out exactly what's going on.

24 So that's where we're at, okay? I have some  
25 notes I'll email, I'll always copy you in the

1 emails I send to him, Dino, as far as things that  
2 you're going to do.

3 You were going to get a list to Dino. Dino  
4 will get it to me. And we'll just get those,  
5 hopefully we can get that done this week.

6 MR. MICHAELS: Okay.

7 MR. MARTIN: At least by the end of next week.  
8 You think that's good?

9 MR. MICHAELS: Uh-huh.

10 MR. MARTIN: And then -- Okay. I don't have  
11 any further questions at this point.

12 Dino, do you have any questions?

13 MR. MICHAELS: I don't have any questions.

14 MR. MARTIN: Fine. Let's go off the record  
15 then, madam court reporter.

16 (The deponent reserved the right to read the  
17 deposition.)

18 (The foregoing proceedings were terminated at 1:31  
19 p.m.)

20

21

22

23

24

25


CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF SEMINOLE

I, the undersigned authority, certify that  
ROY BEDARD personally appeared before me  
and was duly sworn.

Witness my hand and official seal this \_22nd day  
of \_October, 2021.

  
PATRICIA KILGORE, RMR  
NOTARY PUBLIC - STATE OF FLORIDA  
My Commission No. GG941448  
Expires: April 19, 2024



1  
2 CERTIFICATE OF REPORTER  
3


4 STATE OF FLORIDA

5 COUNTY OF SEMINOLE  
6  
7

8 I, PATRICIA KILGORE, Registered Merit Reporter, certify  
9 that I was authorized to and did stenographically report the  
10 deposition of ROY BEDARD; that a review of the transcript  
11 was requested; and that the transcript is a true and  
12 complete record of my stenographic notes.

13 I FURTHER CERTIFY that I am not a relative, employee,  
14 attorney, or counsel of any of the parties, nor am I a  
15 relative or employee of any of the parties' attorney or  
16 counsel connected with the action, nor am I financially  
17 interested in the action.

18 Dated this the 22nd day of October, 2021.  
19  
20  
21  
22  
23  
24  
25

  
PATRICIA KILGORE, RMR

## ERRATA SHEET

IN RE: STATE OF FLORIDA V CURTIS REEVES  
CASE NO: 2014CF000216C  
DEPOSITION TAKEN: October 12, 2021

I, Roy Bedard, do hereby declare that I have read the foregoing transcript of my deposition, and that the transcription is in conformity with my testimony with the exception of the following corrections, if any:

Page Line	Reason for Change
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\_\_\_\_\_  
ROY BEDARD

\_\_\_\_\_  
DATE

**EXHIBIT #2**

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PASCO COUNTY, FLORIDA  
CASE NO. 2014-CF-000216-CFAXES-SECTION 1

-----  
STATE OF FLORIDA

vs.

CURTIS JUDSON REEVES

Defendant.  
-----

TAKEN BY: State Attorney's Office  
DATE: November 19, 2021  
TIME: 9:00 a.m. - 1:00 p.m.  
PLACE: Criminal Justice Center  
14250 - 49th Street North  
Clearwater, Florida  
REPORTED BY: Sharon K. Allbritton  
Shorthand Reporter  
Notary Public  
State of Florida at Large

-----  
UNSWORN TELEPHONIC  
STATEMENT OF  
ROY BEDARD  
-----

PAGES 1-162

## APPEARANCE:

GLENN MARTIN, ESQ.  
Assistant State Attorney  
14250 - 49th Street North  
Clearwater, FL 33762

## TELEPHONIC:

DINO MICHAELS, ESQ.  
Escobar & Associates  
2917 West Kennedy Boulevard  
Suite 100  
Tampa, FL 33609  
Counsel for the Defendant

P R O C E E D I N G S

WHEREUPON,

ROY BEDARD

the witness herein, was examined and testified  
telephonically as follows:

DIRECT EXAMINATION

BY MR. MARTIN:

Q Mr. Bedard, would you state your name for the  
record, please?

A Yes. Roy Bedard.

Q Mr. Bedard, this is a telephonic statement  
that we're taking today. It's the continuation of  
your deposition on October 12, 2021.

Do you agree to take this telephonic  
statement in lieu of a deposition?

A Yes.

MR. MARTIN: Mr. Michaels, do you also agree?

MR. MICHAELS: I do.

Q (By Mr. Martin). All right. Pursuant to  
Rule 3.220(h)(8) you will not be placed under oath.  
And the Rule also specifies that the telephonic  
statement be recorded, which it is by the court  
reporter.

So, Mr. Bedard, do you understand and agree

1       that this recorded statement may be used for  
2       impeachment at trial as a prior inconsistent statement  
3       pursuant to the Florida Evidence Code?

4           A       I do.

5           MR. MARTIN:   And Mr. Michaels, do you also  
6       agree and understand?

7           MR. MICHAELS:   I do.

8           MR. MARTIN:   Thank you, gentlemen.

9           Q       (By Mr. Martin).   Mr. Bedard, I've attempted  
10      to structure this deposition so that we can go through  
11      specific topics.   It will be similar to the structure  
12      that we used during your deposition.   And what I'd  
13      like to do is begin with the areas that we kind of  
14      saved for the second deposition that was mentioned in  
15      your deposition in October.   I sent you a letter I  
16      believe outlining those particular areas.   You've  
17      complied with some of the request, but you are  
18      familiar with the letter and are you familiar with the  
19      topics that we saved for later based on that  
20      communication?

21          A       Yes.

22          Q       Okay.   What I would like to do is, one of the  
23      things that I requested that you complied with, is  
24      providing me with a list of authoritative sources that  
25      you plan to use to support any conclusions or opinions

1       that you may have in this matter. So I'd like to go  
2       over those quickly with you, alright, sir?

3           A       Yes.

4           Q       What I'm going to do is I'm just gonna list,  
5       or recite it to the record, the title of the article,  
6       and then I have some brief questions about it,  
7       alright, sir?

8           A       Yes.

9           Q       The first one is Event-related potentials and  
10      the decision to shoot: The role of threat perception  
11      and cognitive control. You provided me with that as  
12      one of your authoritative sources.

13                   And what area do you believe that the  
14      information in that article supports any type of  
15      conclusions or opinions in this case?

16           A       Let me preface, I think probably the next  
17      several questions you have for me by saying, that this  
18      is really somewhat of a continuation of my deposition  
19      where I did talk to you about some features of what I  
20      would testify to if I were asked questions about it.

21           Q       That is correct.

22           A       And I mentioned to you some very specific  
23      areas, and one of them I think was this Event-related  
24      potentials area that suggests that decisions are often  
25      times made long before we're consciously aware of it,



1 and that we had an opportunity of a very very short  
2 period of time, less than two hundred milliseconds, to  
3 actually cancel that order. So if a decision is made  
4 and it gets into the nervous system and the motor  
5 action begins, we only have about two hundred  
6 milliseconds to change our mind, and even if we do  
7 change our mind after that two hundred milliseconds,  
8 the motor action will often times still be carried  
9 out. For example, if you are deciding to shoot or  
10 don't shoot. If your first thought is to shoot  
11 because you believe that you are in great danger and  
12 then suddenly something happens within that two  
13 hundred milliseconds and you realize this is not a  
14 shoot situation. For example, most of the studies  
15 that I've dealt with have been law enforcement  
16 related. You see somebody pull something out of their  
17 pocket after you've ordered them to show their hands,  
18 and for a moment you're not sure what it is but it's  
19 black and it resembled perhaps a weapon, so with your  
20 finger on the trigger you decide that you're going to  
21 shoot. Suddenly you realize it's a cellphone, and it  
22 happens within two hundred milliseconds, you can  
23 withdraw the decision to shoot and the weapon won't  
24 fire. However, if it takes more than two hundred  
25 milliseconds to distinguish the difference between

1     that black object as being a cellphone or a firearm,  
2     even if you realize that this is a cellphone, but it  
3     has taken more than two hundred milliseconds to  
4     discover that, you will then continue to fire.

5             And I think I described it to you in terms of  
6     a car door last time, that, you know, we all suffer  
7     from this problem of being able to veto decisions that  
8     are made regarding motor actions.

9             So this is an article that really talks about  
10    that. And I provided that more as a backdrop I guess  
11    to a conversation we previously had, like most of the  
12    articles that I put in here.

13            That's the reason that I sent that to you.

14            Q     In reviewing that article did you do any  
15    other inquiry into that article as it relates to the  
16    methodology that was used by the authors of that  
17    article and evaluating the data and coming to the  
18    conclusions? Do you know how they did that?

19            A     I do. I don't recall off the top of my head.  
20    I mean, these are mostly articles that I actually used  
21    for my dissertation. I was quite familiar with them  
22    several years ago. I understand the constructs of the  
23    articles, and they come to mind when I'm formulating  
24    opinions.

25            I will admit that I had not gone back and

1 looked at the researched design and the, scrutinized  
2 perhaps even their findings. But what I spoke to  
3 earlier, the findings of this particular research, it  
4 appears this comes from a peer review article out of  
5 the Journal of Experimental Social Psychology. So  
6 it's gone through the riggers of peer review and so I  
7 find it reliable.

8 Q When we talk about peer review regarding the  
9 journal, is that individuals that are employed by the  
10 journal that review it to determine whether or not  
11 it's appropriate for the journal, or is it individuals  
12 independent of the journal that make the review, and  
13 how is that information related to the journal that  
14 it's appropriate?

15 A So I don't know every one of these journals  
16 and how they select their review boards. I have been  
17 on boards before where I've been selected. Mostly  
18 what happens is they find individuals who are in this  
19 particular field and this particular area of study  
20 that are not employed by the journal, most of the  
21 time, and they coordinate with those individuals.  
22 They either have a call list or they have somebody  
23 that perhaps even refers someone who's an expert in  
24 this particular area, and they will coordinate with  
25 them as a journal reviewer. And usually there's a

1 panel of them. There can be, you know, often times  
2 like five.

3 And then those reviewers will take the  
4 article in its raw form and they will review it. They  
5 will make suggestions and recommendations for  
6 improvement. If they find error in the research  
7 they'll certainly note that. Then they send it back  
8 to the original authors who will once again go through  
9 the article and make changes as requested by the  
10 reviewers before they publish their final versions.  
11 So that's usually the way it is done.

12 It's very rear that, for example, the Journal  
13 of Experimental Social Psychology would have a board  
14 of people that review that. Reviewers are essentially  
15 I guess hired, for lack of a better word, or consulted  
16 by these journals who are peers in the field, not  
17 employed by the journal itself.

18 Q That's your understanding how it should be  
19 done maybe or normally it's done. Do you know how it  
20 was done at the Journal of Experimental Social  
21 Psychology?

22 A If I did know that I don't know it now.  
23 Again, I didn't find it that important to go back and  
24 scrutinize who these reviewers were. Like so many  
25 articles I've read, I don't know, hundreds of them,

1 perhaps more than a thousand throughout my studies, it  
2 would be just a tiny pursuit. That I'd have to at  
3 some point rely on if it is a peer reviewed article  
4 that, um -- and if I find something wrong with the  
5 data or find something wrong with the conclusions  
6 based on the data, I wouldn't generally drill down  
7 deeper to answer the questions that you're asking me.

8 Q All right. In reviewing the article  
9 Event-related potentials and the decision to shoot,  
10 did you find any articles, peer review articles, that  
11 criticized the finding of the authors of that journal  
12 article?

13 A No, I don't recall finding anything --

14 Q Did you look?

15 A -- or look for criticism. I mean, the  
16 nature of science is that people do reexamine and  
17 retest, and perhaps there's something out there. But  
18 I don't recall this being a finding that was hotly  
19 contested or greatly debated within my field.

20 Q Okay. And refresh the reader's memory. What  
21 is your field? We're talking about your dissertation.  
22 That's where you used this article, right?

23 A Right. So my educational background again is  
24 I have both a masters and a PhD in Educational  
25 Psychology. And to refresh you again on educational

1 psychology, unlike a clinical psychologist, and this  
2 is I think the most safe way of saying it; unlike a  
3 clinical psychologist who generally deals with people  
4 who are not well, that have some type of disorder, a  
5 educational psychologist covers the other side of the  
6 scale as well, which are people who are not only well  
7 but often times very very well. For example, my major  
8 was sports psychology. I think I told you that during  
9 the deposition. And the sports psychologist deals  
10 often times with athletes who are in performance  
11 sports who deal with anxiety issues that need to be  
12 resolved through, you know, the help of an external  
13 counselor. So that is typically how a sports  
14 psychologist perform.

15 I don't really focus on the sports side of  
16 it. So my major encompasses three areas: Sport,  
17 exercise and performance. I focus mostly on  
18 performance because my studies were all dealing with  
19 mostly law enforcement officers. As a matter of fact,  
20 my dissertation was directed specifically to law  
21 enforcement officers.

22 And as I described to you last time, the  
23 reason that's-- how that ties back to educational  
24 psychology, and perhaps more importantly sports  
25 psychology, is because in sports psychology that's

1 where we find the data of stress where we actually  
2 have the ability in a controlled environment to  
3 empirically test stress and how it affects human  
4 performance and human psychology.

5 So taking what we know about stressful events  
6 that occur in high stress competition, we apply that  
7 to law enforcement to see if there are any findings on  
8 that world that can bleed over into the law  
9 enforcement world.

10 And I think -- I don't know if we spoke about  
11 this. I speak about it all the time. But it's very  
12 difficult to empirically test law enforcement officers  
13 in the field because, first of all, we never know when  
14 a stress related event is going to occur. Secondly,  
15 if they're in a stress related event it's often too  
16 dangerous for a researcher to be out there with law  
17 enforcement. So we find ourselves just simply doing a  
18 lot of self reporting from law enforcement, unlike in  
19 the sports world where we can actually set up an  
20 empirical test and manipulate variables to see how  
21 individuals perform, and those variables are  
22 manipulated.

23 So that's kind of the bridge from the  
24 sporting world to the performance world in which we  
25 have, you know, real life performance oriented issues

1       that call back to the research that we discovered in  
2       the sporting world.

3           Q       Alright, sir. Regarding the same article,  
4       did the authors of that article in their final  
5       conclusion offer any caveats to their study or  
6       indicate that further study was necessary in order to  
7       verify any of their results?

8           A       Most likely. I mean, that's the nature of  
9       science. You usually have, after your findings,  
10      you'll have a paragraph of all future directions. And  
11      I think most scientists realize that we are all  
12      building on each others' findings over long periods of  
13      time.

14                 So there's gonna be a literature review of  
15      data that has come before the publication of this  
16      article. Then there's gonna be a description and the  
17      research method that were used in this particular  
18      article. And then generally at the end of a lot of  
19      these articles -- and I can't think of this one. And  
20      I'm sorry, I didn't bring the articles with me. I can  
21      probably pull them up. But I don't recall whether or  
22      not there is a area of future directions that would  
23      encourage somebody to not only reexamine past findings  
24      of these authors but maybe point out some areas where  
25      there is some question as to the ability to manipulate



1 or control variables. Sometimes there's limitations.  
2 There's also an area usually in these articles called  
3 limitations. There's just certain things that you  
4 can't control and manipulate that have also been  
5 pointed out.

6 So without knowing specifically about the  
7 Event-related potentials and the decision to shoot  
8 article, without looking at it, having it in front of  
9 me, I can't tell you absolutely if those things are  
10 there. But I can tell you that they most of the time  
11 are when you're looking at peer review articles.

12 Q All right. Part of the question that you did  
13 not address was whether or not the authors of that  
14 article placed any caveats on the use of their  
15 findings by individuals who are reading the article.

16 Was there anything that they said, you know,  
17 we're not quite sure about this. There may be a  
18 correlation but we haven't proved the causation so  
19 don't take it to mean A, B or C.

20 Was there anything like that in their  
21 article?

22 A I think it's mostly understood. First of  
23 all, I very rarely, if anything, causative. Almost  
24 everything is correlation. And I think it's  
25 understood that when you're reading the data that they

1 don't need to put a biline in like you just framed.  
2 That when you take a look at the numbers, the actual  
3 data, you're looking at correlations. They can be  
4 strong correlations. They can be no correlations.  
5 But you're looking at correlations. Causation is a  
6 very very difficult thing to prove in any respect.

7           So I don't believe there's a caveat like that  
8 in this article. I think that on the surface reading  
9 through the article it would be up to the reader to  
10 sort of glean that idea that of course this is not an  
11 absolute finding but rather there are some -- the  
12 variables need to be strongly correlated with respect  
13 to the research.

14           Q     In order to save some time, okay, regarding  
15 all of the articles that we're gonna go through, if I  
16 ask you exactly the same questions that I did with  
17 this first article, would your response be basically  
18 the same?

19           A     It would. And I think because article  
20 writing is generally similar across domain, it's done  
21 essentially the same way. I mean, there's courses  
22 about how to read articles because they are formatted  
23 in a certain way. But I think that there would be  
24 very little deviation in any of these articles.

25                   There are some, like for example, the next

1 one, FLETC. I'm not sure if that was a peer review  
2 article or not.

3 Q No. It's a training manual from the U.S.  
4 Department of Homeland Security. We're going to get  
5 into that one a little bit more.

6 A Yeah. So there may be some on here that are  
7 slightly different. But if they're peer review  
8 articles, they're generally formatted approximately  
9 the same. And so I think my answer to those, again,  
10 not having these articles laid out in front of me,  
11 would be approximately the same.

12 Q And for each of the articles, the very last  
13 thing we spoke about as far as caveats and warnings by  
14 the authors of the articles, the reader who is  
15 attempting to use the findings in the article  
16 understands that what they found was not an absolute  
17 finding, they are simply a correlation and to what  
18 degree it correlated was within the article.

19 A Right. And you should also recall, I mean,  
20 during the research methods you have to-- you know,  
21 the ultimate goal of all of these articles is to  
22 generalize. But sometimes you can't do that. For  
23 example, if you don't have a random study. And a lot  
24 of the articles I read are not random studies. We  
25 select law enforcement officers. I mean, it's random

1 within the field of law enforcement but they don't  
2 generalize to everyone, right.

3 So the generalized ability of these articles  
4 is partly based on the research design. And I believe  
5 for most of these, like for example, the Johnson &  
6 Raab article Take the First, this is a generalizable  
7 study. It wasn't selecting a particular occupation of  
8 individuals, but basically looking at how human beings  
9 think under pressure. How they make decisions under  
10 pressure.

11 Klein, a lot of his studies tend to be a  
12 little less generalized but because he very  
13 specifically looks at, for example, firefighters and  
14 law enforcement officers. So I recognize that in all  
15 of these articles.

16 The Lazarus article that you'll ask me about  
17 is really about human beings. It does generalize.  
18 It's how we appraise and develop coping mechanisms for  
19 dealing with stress and so on and so on.

20 So, you know, there's several answers I think  
21 to your question, one is in the research design, the  
22 other will be in the limitations that may be stated at  
23 the end of the article. All of those would point out  
24 to the reader the caveats that you eluded to. And of  
25 course if you're reading the whole article those are

1 the things that you would pick up on.

2 Q Here's what I'd like to do with the rest of  
3 the articles. There's three areas that we're going to  
4 discuss in a little bit: Self-efficacy, the various  
5 artifacts that we discussed at the last deposition,  
6 and threat assessment. Using those as very broad  
7 topics. The, Take the First: Option generation and  
8 resulting choices, which one of those three topics  
9 would that fall under?

10 A That would be broadly under decision making.  
11 And, I'm sorry, Mr. Martin, I did not write down the  
12 three categories you gave me.

13 Q Sure. Let me do it again for you. We're  
14 gonna talk about self-efficacy.

15 A Yup.

16 Q The various artifacts that you talked about:  
17 Fragment memory, tunnel vision, auditory dissociation.  
18 You know, all those things that we talked about.  
19 Broadly you refer to all of those as artifacts.

20 A Yup.

21 Q Okay. And then threat assessment. Those are  
22 the three topics we discussed at your previous  
23 deposition. If we use those as the broad topics, the  
24 question is the article Take the First, what topic  
25 would that fall under?

1           A     Let me just add the last one if it's okay.

2           Q     Sure.

3           A     I think threat assessment deserves a second  
4     description, which would be decision making. Because  
5     threat assessment leads to the decision that you'll  
6     make.

7           Q     Okay.

8           A     So to be clear on that. It's not a different  
9     topic but it would be threat assessment/decision  
10    making, okay. So we can talk about how you would  
11    evaluate an environmental stimulus and you decide what  
12    you're going to do. And I would say in this case,  
13    Take the First would fit under that category.

14          Q     All right. Sources of Power: How People  
15    make Decisions by Mr. Klein.

16          A     As well it would fit under threat assessment  
17    and decision making.

18          Q     Stress, Appraisal and Coping.

19          A     This would have a little bit to do with  
20    self-efficacy. It kind of bleeds over into  
21    self-efficacy. And then also threat assessment and  
22    decision making because Lazarus & Folkman recognize  
23    that everyone's different. Everyone has their  
24    limitations and everyone views the world in a  
25    different way. So that would be the self-efficacy

1 component. But the threat assessment is a continuum  
2 that they would argue is consistent from person to  
3 person. In other words, when you hit the threshold of  
4 a challenge and it moves past your coping mechanisms  
5 it becomes a threat. So it kind of bleeds over into  
6 that.

7 Q All right. Information Processing in Motor  
8 Skills.

9 A Decision making. You're talking about  
10 Martuniak, right?

11 Q Yes. Shoot or Don't Shoot? Why Police  
12 Officers Are More Inclined to Shoot When They Are  
13 Anxious.

14 A You know, I don't remember if Nieuwenhuys--  
15 he does talk about self-efficacy issues, but I think  
16 this article is specifically about threat assessment.

17 Q Sitting Duck or Scaredy-cat?

18 A Likewise, this is gonna be threat assessment  
19 and decision making.

20 Q The Tactical Edge.

21 A The Tactical Edge I'm sure you're familiar  
22 with having been in law enforcement yourself, was  
23 mostly a book on police tactics and how law  
24 enforcement officers manage threats in the  
25 environment. So this would be threat assessment as

1 well.

2           There are some areas of self-efficacy. They  
3 talk about coping mechanisms but not using that  
4 language. They talk about, you know, being prepared  
5 with proper weaponry and things like that. So I think  
6 it's a bleed over into self-efficacy as well with some  
7 of what I read in the Tactical Edge. And, by the way,  
8 this is not a peer review journal. This is literally  
9 a text book I guess that law enforcement officers have  
10 used since the mid 80s with respect to officer safety  
11 skills.

12           Q     Performing under Pressure: Gaze control,  
13 decision making and shooting performance.

14           A     This is going to be mostly -- there is a  
15 discussion within here in particular, and also John  
16 Vickers does talk about the artifacts that we often  
17 times see when stress is introduced. Gaze control  
18 would be an example of that. Attenuating stimulus in  
19 the environment that are not critical at that moment  
20 and attending to those things that are critical. This  
21 article talks a little bit about that. But more  
22 importantly it compares the elite police officer to  
23 the rookie officer showing that a elite officer can  
24 actually improve on the skills of attendance by  
25 attending to the important things.



1           And I thought this was important in this  
2           particular case based on Mr. Reeves' background, that  
3           he would be-- I don't know that he'd consider himself  
4           an elite police officer at the time of the shooting,  
5           but he certainly has the background and experience and  
6           education to qualify as an elite officer.

7           Q       So his ability to overcome the artifacts  
8           would be at a heightened level and you would expect  
9           him to be able, at least to some level, to overcome  
10          those artifacts; is that what you're telling me?

11          A       Yeah, I think he would, you know, over a, for  
12          example, an untrained person. It's not really -- the  
13          artifacts remember are things that are left over in  
14          the hindsight. So when we talk about artifacts we are  
15          really talking about stress related performance. And  
16          then from the stress related performance you leave  
17          artifacts.

18                 And when I mentioned this to you in  
19          deposition, I said a lot of times when I interview  
20          individuals that's what I'm looking for. I'm trying  
21          to find out if somebody is just giving me a line about  
22          how afraid they were or if they were really afraid.  
23          Because fear generates these stress related  
24          performance problems and it leaves artifacts, right.  
25          So, for example, if somebody says, man, I never saw

1       that. I was standing right there. I never saw it.  
2       That might be an indication of tunnel vision. Or a  
3       person says, you know, gosh, the guy was shooting at  
4       me and I only heard the first shot and I started  
5       shooting. I didn't hear my gun shoot back. And  
6       they're telling me that. That's an artifact of  
7       stress, meaning that they were probably motivated by  
8       fear at that time. That's when it happens.

9               So just to be clear with artifacts, I should  
10       probably add to that category as well and include  
11       stress related performance.

12              And I would say that to your question, yes,  
13       stress related performance can be improved on through  
14       training and through-- well, first of all,  
15       understanding what happens to us when we get stressed,  
16       but secondly, practicing under conditions and  
17       circumstances that someone inoculate us to the stress  
18       related performance issues.

19              And I would think that, uh -- and I do, even  
20       after hearing the first interview from Reeves, that he  
21       was able to, to not enter into stress related  
22       performance problems in the way that perhaps somebody  
23       without his training would have.

24              Q       Then we have -- I don't know if this -- I  
25       think this is a book. Self-Efficacy by B-a-n-d-u-r-a.

1           A     It is a book. And there's a lot here, Mr.  
2     Martin. And the reason that I included this is  
3     because I think I specifically mentioned it during --

4           Q     You did.

5           A     -- our conversation during the last  
6     deposition. Bandura is, I don't know, he's probably  
7     credited as being, I think the father of is probably  
8     too great of a title. But really one of the -- one of  
9     the original researchers that dealt specifically with  
10    self-efficacy issues. So this book would fall mostly  
11    under self-efficacy and how individuals would define  
12    their beliefs about their capabilities to exercise,  
13    you know, control over themselves during various parts  
14    of their life, and this could be low stress or high  
15    stress. He's not specific to law enforcement. Or,  
16    for that matter, he's not even specific to high stress  
17    related events. He's just specific to individuals and  
18    how we view ourselves in terms of what we're capable  
19    of doing. And that is something that is referred to  
20    as self-efficacy.

21          Q     I'm going to ask you if you agree or disagree  
22    with this statement, okay?

23          A     Yup.

24          Q     "Perceived self-efficacy was introduced by  
25    Bandura (1977) as an integrated theoretical framework

1 to explain and predict psychological changes achieved  
2 by different modes of treatment."

3 A Yes, I agree with that.

4 Q Since 1997, and of course we have this book  
5 in 1994, are you aware of any articles or research  
6 that have criticized the conceptual and the  
7 methodological way in which he performed his tests and  
8 gathered his data?

9 A Not specifically. I know that the field of  
10 self-efficacy has evolved quite a bit, and often times  
11 when that happens it's because people are critical of  
12 what you have originally wrote. So I can't point to  
13 an article specifically that broke down his research  
14 methods and were critical to the point where they  
15 said, okay, this is not true. This whole construct of  
16 self-efficacy is not holding up.

17 But yes, in the 70s the construct of  
18 self-efficacy has evolved significantly. And many  
19 many other people-- I think, for example, if you were  
20 to type in, and I'm sure you've probably already done  
21 this with Bandura, you'll see a whole lot of other  
22 authors that are weighing in on the construct of  
23 self-efficacy and what affects it.

24 So I would say to your question, yes, there  
25 has been a lot of criticism which is the nature of

1 science. It's constantly evolving. There has been a  
2 lot of criticism since Bandura first introduced  
3 self-efficacy and the various modes of treatment that  
4 improves self-efficacy.

5 Q Are you familiar with an article by Eastman  
6 and Marzillier, M-a-r-z-i-l-l-i-e-r, title Theoretical  
7 and Methodological Difficulties in Bandura's  
8 Self-Efficacy Theory?

9 A I can't say that I know that article, no.

10 Q I'm gonna read you a statement out of that  
11 article, and I'm gonna ask you if agree or disagree  
12 with the statement, okay?

13 A Okay.

14 Q "We conclude that self-efficacy theory is  
15 conceptually problematic, and in particular, that the  
16 central concept of efficacy expectations is not  
17 unambiguously differentiated from outcome expectations  
18 despite Bandura's claim to the contrary. Similarly we  
19 suggest that what is actually being assessed in the  
20 empirical studies is unclear. We conclude that the  
21 empirical findings are less impressive when the  
22 circumscribed nature of the behavioral task is  
23 recognized. Finally, we suggest that resolutions are  
24 both the conceptual and methodological difficulties  
25 are necessary before Bandura's claim that

1 self-efficacy is a unifying construct can be properly  
2 evaluated."

3 Have you come across that type of criticism  
4 in your studies of self-efficacy?

5 A Yes.

6 Q Okay.

7 A I can't say I agree with the article. I'm  
8 not conceding to that. I'd like you to send it to me.  
9 I'd like to read it. But yes, I have--

10 Q Well I wish I could but I'm not paying thirty  
11 five dollars for the article.

12 A If you send me the title I still have a  
13 professorship at two different colleges. I can get on  
14 the university's library and pull it down. As a  
15 matter of fact, I'd be happy to do that and send it to  
16 you for free.

17 Q Well I'll tell you what, I have a note here  
18 to send it to you, okay?

19 A Okay.

20 Q All right. Explain to me what they were  
21 saying?

22 A I'm sorry?

23 Q Explain to me what was the criticism of  
24 Bandura-- how do you pronounce his name?

25 A Bandura.

1           Q     What was the criticism of Bandura's studies,  
2     what were they referring to?

3           A     You know, from what you read me it's very  
4     hard to say because you sort of read me a conclusory  
5     statement.

6           Q     I did.

7           A     Yeah, I don't really know what their study  
8     was that allowed for that kind of criticism. But what  
9     I gathered from what you told me in that paragraph, is  
10    that it doesn't seem to be generalizable and it  
11    doesn't seem to be so significantly different from an  
12    outcome oriented theory. And that may, in fact, be  
13    true. I mean, this is sort of a term that's coined by  
14    Bandura.

15                But in a more practical sense I think all of  
16    us recognize that that's sort of the more common sense  
17    level even, that we all have limitations. And so  
18    self-efficacy theory deals with the idea of what are  
19    your limitations. By the way, sometime they're real;  
20    sometimes they're imagined. And from a psychology  
21    perspective it's the imagined ones that we try to deal  
22    with. It's not that we can't deal with real ones as  
23    well. For example, I mean, if you're born with a  
24    particular handicap, there are modes of-- um, modes of  
25    psychological correction that can lend itself to you

1 performing better. This is a human performance issue.  
2 And what I think Bandura has done is to grab a lot of  
3 previous research regarding limitations on it. I hate  
4 to use the word self-efficacy. I just don't have a  
5 better word for it. But limitations on self-efficacy.  
6 Why does it exist and what to do about it, and has  
7 coined it under his own sort of description, and not  
8 only in a book but in several books on the topic.

9 And I think some researchers, you know, don't  
10 like that. I think they think perhaps he's done some,  
11 I don't know, mission creed of some type as a  
12 researcher and had drawn in some ideas and ideology  
13 that are still not disproven but really have been  
14 almost like globed on by Bandura.

15 It sounds to me like that's what that  
16 conclusion of your paragraph is. But I don't know  
17 that they're saying that self-efficacy doesn't exist,  
18 but perhaps Bandura's description of the modes of  
19 intervention probably deserve more scientific  
20 attention than they feel that Bandura has given them.

21 Q Do you feel that, and of course, again, you  
22 and I are talking about a conclusionary statement,  
23 okay? Would it be -- well let me ask you it this way.

24 Do you agree or disagree that their criticism  
25 was whether or not his studies relating to



1 self-efficacy can actually explain and, quote,  
2 "predict" psychological changes? And it's the predict  
3 that I'm really interested in your opinion on.

4 A Yes, I think that is what they said. And,  
5 remember, they're talking about treatment. So you're  
6 talking about, first of all, self-efficacy as the  
7 thing exists. I think they would have to concede to  
8 that, the idea that we all feel about yourselves in a  
9 certain way. But the treatment is what they're  
10 questioning. What Bandura has recommended is various  
11 forms of treatment to improve self-efficacy.

12 Q Do you agree or disagree that it is common  
13 knowledge among adults, if you will, who have certain  
14 life experience, that in making a decision that they  
15 will weigh their individual limitations in making the  
16 decision on how to complete a specific task? That's  
17 pretty common knowledge to everyone, isn't it?

18 A Yeah, I think so. I mean, you packaged a lot  
19 in that statement. But yes, I mean, sometimes  
20 avoidance is what adults practice and that's not  
21 generally considered a good method for dealing with  
22 life problems. But it is certainly one method that  
23 many adults choose. For example, when you get back up  
24 to the Lazarus theory to their coping mechanism.  
25 Because the challenge has exceeded their ability to

1 manage it so they just simply depart. And it covers a  
2 full array of possibilities from under reacting to  
3 over reacting. How's that.

4 Q Okay. One of the topics and issues that was  
5 discussed at your previous deposition was the reaction  
6 time principle. You mentioned an author Shultz. I  
7 believe it's S-h-u-l-t-z. What is the first name of  
8 Shultz?

9 A Let me see if I can pull that up for you.

10 Q Is it Wolfram? A German guy.

11 A Well it's definitely a German guy with the  
12 name Shultz. But I don't recall what the first name  
13 is. Did I give you the name of that article?

14 Q You did not. You just mentioned an article  
15 by him. And it's on page 38 of your deposition. You  
16 refer to it as decision making, ability to change mind  
17 in the midst of an event. And you just said there's  
18 an article by Shultz and some type of scientific study  
19 that he did.

20 A Yeah. Let me --

21 Q And I wasn't able to find that.

22 A I'll find it and I'll actually send that to,  
23 you as well.

24 Q All right. Well, if you're gonna do that  
25 then we'll just move on, okay?

1           A     Yup.

2           Q     I'll just put a note here, will send.

3       Because there's no use talking about it if we don't  
4       have it. And I can read it and then we'll just go  
5       from there.

6           A     All right. Just to frame it out for you real  
7       quickly so you know where the context is with that  
8       article. That's also about this veto. As a matter of  
9       fact, that was the primary article I was talking about  
10      with this ability to veto when you're talking about  
11      these event related potentials. So that one would be  
12      coupled with the first one that we spoke about which  
13      is the Corell and Urland article that I sent you.

14          Q     Yeah.

15          A     That would be within that world. And it's a  
16      later article. I think it's around 2018, something  
17      like that.

18          Q     All right. And the same questions that I  
19      asked you about the Corell article, all those  
20      questions, peer review and method and how they did it,  
21      your answers would be generally the same as you  
22      indicated from when we spoke more specifically?

23          A     Yeah. As we sit here today, again, I don't  
24      have a fresh memory of all the details of how the  
25      article is written. But I certainly would not play

1 high ball with you on that. I'll send you the article  
2 and you can see for yourself what the criticisms are.

3 Q We're now going to go down the list of the  
4 specific things that we said we're going to discuss in  
5 the second deposition. And I'm doing them in the  
6 order that I have in that letter that I sent to you.

7 A Okay.

8 Q So here we go. What is the number of times,  
9 and if you know the case name, in which you were  
10 accepted as an expert in any type of video  
11 interpretation, videology, photo interpretation?

12 A So it's only happened one time. And I don't  
13 know if you have a list of my cases. It's the case --  
14 it was in federal court and it's a case in  
15 Connecticut. I think it's the only one I've done.

16 Q Where you were actually accepted as an expert  
17 in video interpretation?

18 A Yes. Correct, and the use of force. I was  
19 called there as a use of force expert. It was in the  
20 process of giving testimony. There was a question  
21 about the video. Essentially the opposing counsel was  
22 declaring that the frame rate of, something like this,  
23 the frame rate of 15 frames per minute meant that  
24 there were seconds that were being lost. And this was  
25 just simply a misunderstanding about the way the frame

1 rates are compressed.

2 And so I offered testimony after being  
3 qualified as an expert in video with my background  
4 working with television productions and doing video  
5 editing of my own, the Court thought that I had enough  
6 experience to speak openly about it. And so I offered  
7 some testimony about the way that video sequences are  
8 built, how they're just a series of frames, and that  
9 compression rates can change between them but we don't  
10 end up losing time. For example, you know, in  
11 realtime with NTFT video, realtime is about 29.97  
12 seconds per-- I'm sorry, frame per second. 29.97  
13 frames per second. Or let's just say 30 frames per  
14 second. If you have that compared to with how  
15 (phonetic) that has a lower frame rate, it doesn't  
16 mean that you're getting rid of things that happened,  
17 it just simply means that there's a different  
18 compression standard and the frames themselves are  
19 essentially longer to go up that seconds. But the  
20 information is there.

21 And in this particular case it was a case of  
22 where the correctional officers, they said that the  
23 inmates were throwing a stick at them, and no where on  
24 video does it show that. And they said, oh, well  
25 that's because this has been highly compressed. And

1       so that incident that probably took several seconds,  
2       was just simply compressed out, that's why you don't  
3       see it. So that's what I spoke about.

4           Q       So now I reviewed your CV. Nothing stuck out  
5       that would qualify you as an expert as you just  
6       described, in particular, video interpretation as to  
7       what you see. Is there something in your video, in  
8       your educational background or something that I missed  
9       because I didn't see that?

10          A       No, you didn't miss it. It has to do mostly  
11       with my experience. And it's not generally an area  
12       that I even care to testify about. It just so  
13       happened that in this particular case that became the  
14       issue as it related to use of force, and why there  
15       would be force, or at least a description of force  
16       that was missing.

17                 But it's not something I ever plan to get on  
18       the stand. I don't hold myself out generally speaking  
19       as an expert. I don't advertise that I have been  
20       qualified as an expert. You know, it's not-- I don't  
21       look for cases that are video related. There's people  
22       out there that certainly do that. I don't.

23                 So my emphasis when I'm hired is to be hired  
24       as a use of force and defensive tactics expert. So,  
25       you know, I haven't put anything in my resume about

1     that particular case or about any of my experience  
2     working with -- actually there is something in there.  
3     I think there are some notes about me working with a  
4     couple of companies in Los Angeles but they're not  
5     very descript that I actually did participate in some  
6     editing and things like that because it's just not  
7     important to me.

8           Q     If you were asked and the Court allows you to  
9     testify, is there anything in the Reeves case in  
10    reviewing the video that you would be pointing out  
11    relating to frames missing, compressed frames, whether  
12    or not content is missing from the video; anything  
13    like that, that you're going to rely on your, quote,  
14    "expertise" as a videographer?

15          A     No. There's very clearly stuff missing. I  
16    don't think it requires an expert to tell you that.  
17    And obviously I would address that issue. We spoke  
18    about the missing 10 seconds, if you will, between, I  
19    don't know, frame number 26, source second number 26  
20    and second number, I don't know, 35. I don't remember  
21    the numbers exactly. There's clearly frames missing.  
22    We can't see what happens during that time period.  
23    And I would comment on that because I think that is  
24    important. But, again, that's not an expert's  
25    opinion. That's just a statement of fact. If you

1 look at the video there is no frames before that 34  
2 frame except the one that said 26. So we know that  
3 there is seconds missing between those. I think we  
4 calculated it to be around 10 seconds. And that is  
5 important, by the way.

6 But I don't think that a jury needs me to  
7 explain to them why that happened or how that happened  
8 or -- but rather why it's important that we, you know,  
9 that we aren't able to see certain things when we're  
10 trying to draw conclusions about what actually  
11 happened on that day.

12 Q Do you know why frames are missing?

13 A I really don't, no. I just know that they  
14 are.

15 Q Do you know anything about the surveillance  
16 equipment that was in the theater at the time?

17 A I saw pictures of it. I did see where it is  
18 on the walls. I did not go back and -- it wouldn't be  
19 important for me to do this, to research any of the  
20 specs on those cameras or how video is recorded or,  
21 you know, what the lighting requirements are. No, I  
22 have not done that.

23 Q The next question, the same line. The number  
24 of times and the cases, if you can remember, where you  
25 were accepted as an expert in crime scene



1 investigation?

2 A Never. I don't hold myself out as a crime  
3 scene investigator.

4 Q Same question. Interview or interrogation  
5 techniques?

6 A I don't believe that I've ever been accepted.  
7 I have talked about it in use before but not as an  
8 expert but rather as a descriptive to leading up to  
9 use of force and respecting stand your ground cases,  
10 you know, where law enforcement officers have drawn  
11 certain conclusions that sometimes might be  
12 inconsistent with what I discovered in reviewing the  
13 case. I would talk about those kind of things, but  
14 not from the perspective of an expert here's what  
15 should have been done.

16 Q Okay. Page 93 of your deposition is where  
17 I'm picking up on our next discussion. Discuss what  
18 impact, if any, the previous testimony of witnesses  
19 who heard Mr. Reeves say the words to the effect,  
20 "Throw popcorn on me," has on any aspect of your  
21 potential testimony, including, but not limited to  
22 human factors, self-efficacy, objective  
23 reasonableness, or any opinion or conclusion?

24 And you recall in the letter I provided you  
25 the names of the individuals and their sworn testimony

1       where they swore to those facts.

2               Did you have a chance to review the immunity  
3       testimony of those individuals or their deposition?

4           A       I did.

5           Q       Okay. Are you prepared to discuss that topic  
6       then with me?

7           A       Yeah, I think so.

8           Q       Well, let's go ahead and start with those  
9       words being uttered by Mr. Reeves contemporaneous with  
10      the firing of his firearm.

11               What is the significance, if at all, in any  
12      opinion regarding the reasonableness of Mr. Reeves  
13      shooting Mr. Oulson?

14          A       Assuming that he said that?

15          Q       Well, we have three people under oath that  
16      said he did. So are you contesting whether or not  
17      those words were in fact said?

18          A       You know, what I read was that they heard him  
19      say that and then he fired a shot.

20          Q       Yes.

21          A       If you look at the video I think a reasonable  
22      person will see that the timing of the shot in  
23      relationship to the popcorn throwing occurs so quickly  
24      that that sentence probably could not have come out  
25      before the shot is fired. That's what strikes me

1 first of all. And I think that should be pointed out  
2 to a jury. We can't see or-- I'm sorry, there's no  
3 audio on the video. But I think the jury would agree  
4 that that entire sentence probably could not fit in  
5 the timeframe between when the popcorn is thrown and  
6 the followup shot, it happened so quickly.

7 That said, something very interesting  
8 happened when I did interview Mr. Reeves -- and I know  
9 you want to talk about that. Reeves said to me he  
10 heard that also. And I thought that was very  
11 interesting because I hadn't considered the idea that  
12 someone perhaps in the theater, someone else may have  
13 said that. And I tried to think about why somebody  
14 might have said that. And it occurred to me that, you  
15 know, somebody who is watching this on the outside, a  
16 highly stressful event, may have engaged in a moment  
17 of levity. By the way, I'm completely speculating as  
18 to why that would happen.

19 But I think we're also speculating about who  
20 said it. Because even though people said they heard  
21 it said, remember, it's a dark movie theater. I'm not  
22 sure that anybody -- and they may go up there and say,  
23 no, that's absolutely him. But I don't know that it  
24 was because Reeves tells me he heard somebody else say  
25 something like that.

1           So I thought that was quite interesting, when  
2           I thought that it sort of changed my perspective a  
3           little bit about why that would have been said when I  
4           found out that perhaps somebody else said it.

5           Q       So let's assume that the words were said by  
6           Mr. Reeves contemporaneous with the firing, either  
7           immediately before; immediately after, but  
8           contemporaneous with the firing of the firearm. What  
9           significance do you put on that statement as it  
10          relates to the reasonableness of shooting Mr. Oulson?

11          A       I think it's for a jury to decide. I think  
12          it's inconsistent with his later statements where he  
13          tells us he didn't even know the popcorn was grabbed.  
14          He said he didn't know if it was knocked out of his  
15          hands or he dropped it. So he seems to be a little  
16          bit in the dark of even how the popcorn gets spilled.  
17          So it would be really weird for him to have said,  
18          "throw popcorn at me, will you," knowing full well the  
19          popcorn is being throw at him and then later to come  
20          back and say he didn't know that was the case.

21                 And he said it I believe in his first  
22          interview. So I don't know that he necessarily would  
23          have calculated that he should say he didn't know  
24          anything about the popcorn. It just seemed like a  
25          very honest answer when they asked him about it.

1           So I don't know that it has any effect at all  
2       on my overall opinion that he was under attack. It  
3       was a continuous attack by a fairly large person. And  
4       based on the self-efficacy issues that I have read to  
5       you I think -- did we read those on the record last  
6       time? I don't remember if you let me do that or not.  
7       That he had a reasonable belief that he was, at the  
8       time that the popcorn was thrown, not because the  
9       popcorn was thrown, but at the time the popcorn was  
10      thrown he had reasonable belief that he was in  
11      imminent danger of being significantly injured or  
12      killed.

13           So that's sort of my opinion still even  
14      having gone back and looked at that statement.

15           Q     All right. We're going to continue this  
16      discussion, but I want to direct your attention so you  
17      know the source. I want to direct your attention back  
18      to the basic recruit manuals that were published by  
19      the Florida Department of Law Enforcement,  
20      specifically Chapter 4 dealing with defense tactics  
21      which you previously indicated that you in the past  
22      have had some input as to the material in that  
23      chapter.

24           A     Right.

25           Q     Do you recall in the section dealing with

1 objective reasonableness that the recruits are -- it  
2 is explained to the recruits that ability, opportunity  
3 and jeopardy/intent are factors that are determined --  
4 or can be used to determine reasonableness of their  
5 actions.

6 Do you recall that in the material?

7 A Yes.

8 Q Do you believe that to be true?

9 A Yes.

10 Q All right. Do you also believe that if any  
11 one of those negate reasonableness then a conclusion  
12 can be made that the actions were not reasonable.

13 Would you agree with that?

14 A So again, we're talking about two different  
15 types of reasonableness. When you're formulating  
16 opinions of course they're subjective. When you  
17 evaluate the opinion after the fact it's objective.

18 So what I mean to say by that is that if  
19 Reeves believed that in this case Mr. Oulson had the  
20 ability to do him great harm, he had the opportunity  
21 to do him great harm, and he was -- his motivation or  
22 intent was to do him great harm, that is a sufficient  
23 use of force. It would be up to a jury of course to  
24 decide objectively whether or not the ability,  
25 opportunity and the intent existed, or jeopardy

1       existed. And of course we don't know that yet.

2       Q       All right. And --

3       A       So usually in the hindsight-- I'm sorry.

4       Q       No, go ahead, Mr. Bedard.

5       A       Usually the objective evaluation of decision  
6       making is done in the hindsight of an event. When law  
7       enforcement basic recruit officers are instructed in  
8       objective reasonableness, they're told this is the  
9       yard stick by which you will be measured. It's not  
10      intended to be all inclusive and to make decisions for  
11      them before they leave the academy. That's not the  
12      point of objective reasonable trait. It is simply to  
13      describe to the police officers the yard stick by  
14      which they will be measured. And I think that it is  
15      most certainly in deadly force cases something that I  
16      always look at to also objectively decide or evaluate  
17      and opine as to whether or not something was  
18      objectively reasonable.

19             But it is not a standard that you can apply  
20      when you are the subject of force, which in this case  
21      Mr. Reeves was. But he has made it clear to me that  
22      he believed that Mr. Oulson had the ability, had the  
23      opportunity, and he was in great jeopardy. And I have  
24      no reason to dispute that.

25      Q       In looking at the factor jeopardy/intent,

1 would you not agree that if Mr. Reeves did in fact say  
2 the words "Throw popcorn in my face," that that would  
3 indicate in his mind that the threat was not a threat  
4 necessitating deadly force, and that his intent as the  
5 victim was not to use deadly force or commit great  
6 bodily harm against Mr. Reeves?

7 Would you agree with that?

8 A I think so. But let me state that you can't  
9 shoot somebody for throwing popcorn at you.

10 Q Well we can all agree on that, Mr. Bedard.  
11 So let me make a big note of that.

12 A Yeah, I think that that's correct. If you  
13 get popcorn thrown at you that's not a grounds for  
14 deadly force. And you know you have popcorn being  
15 thrown at you. That's not grounds for deadly force.

16 I'm not sure that that's the bridge that  
17 we're able to cross with Mr. Reeves. I don't know  
18 what he said. Like I said, he claims to have heard it  
19 himself, that there was another voice in the theater  
20 that said that.

21 But I think that's what this case has  
22 devolved to. I think, you know, partly through the  
23 media that this is a case of a man shooting somebody  
24 over having popcorn thrown at him. I don't see it  
25 that way when I go back and look at the actual



1 evidence of the case. But it seems to me that that's  
2 the part we're trying here.

3 Q We'll cover that more in your final  
4 conclusions. So I'm gonna move on to the next topic.

5 In your depo page 98 through 99, what facts,  
6 if any, from defense expert Cohen's potential  
7 testimony will you use in any way, including in your  
8 explanation of subjective facts?

9 I think there was discussion about well maybe  
10 she has some scientific basis that correlate with  
11 self-efficacy.

12 Do you recall that conversation we had?

13 A I do. You know, I don't intend to really  
14 rely on Cohen's testimony. I don't think it's  
15 necessary. I think, once again, going back to  
16 self-efficacy just from a reasonable man perspective,  
17 I don't think there's so many people that will think  
18 that Mr. Reeves, who is elderly, who is there with his  
19 wife at a movie theater who claims to be, and probably  
20 can provide records, I don't know, of having  
21 arthritis, a bad back, he's clearly overweight, he is  
22 definitely much older than Mr. Oulson, you know, that  
23 he can't defend himself properly in a fist to cuffs  
24 with Mr. Oulson. I think a reasonable person will  
25 agree with that.

1           So I don't know that we need to get into the  
2 science of how your body deteriorates as you age.  
3 Most of us know that too. Certainly if you are an  
4 older person you know there are things today that you  
5 couldn't do years ago, in most cases.

6           So I think I'll leave it at that. I think  
7 the description of, you know, what Mr. Reeves is, what  
8 he claims to be and who he believes he is, and what  
9 his potential abilities are, and I think it's very  
10 sensible to me. Again, I find no reason to think that  
11 Mr. Reeves is making these medical claims up.

12           Again, he immediately starts saying, man, I  
13 couldn't do anything. You know, if I was 20 years  
14 younger, he says. He says, I'm so full of arthritis I  
15 didn't even know if I could shoot the gun. He says,  
16 you know, basically I can't take anybody anymore. He  
17 makes the suggestion that he should have I guess got  
18 out of the chair and went fist to cuffs with the much  
19 younger six foot four assailant.

20           So I don't think that I have -- there's not a  
21 lot of work there for me to I think to convince a jury  
22 that he did not have a sense of self that was adequate  
23 to do a -- to try to hold off Oulson's attack with the  
24 use of bare hands. And I'll leave it at that.

25           Q     So you believe the members of the jury, based

1 on their life experience, that they will know that  
2 themselves and recognize in themselves. Dr. Cohen  
3 doesn't need to tell them that. That's pretty much  
4 common knowledge for them?

5 A I think they'll know when you age -- I don't  
6 know what Dr. Cohen is going to tell them. But, you  
7 know, when you age your body does break down. And I  
8 know the Court demands those levels of scientific  
9 analysis, and there's nothing wrong with that.  
10 There's nothing wrong with telling somebody that  
11 rather than making assumptions.

12 But my flight is the primary to talk about  
13 the use of force. So if Ms. Cohen goes in and offers  
14 that testimony and explains why your body breaks down  
15 as you age, to me that's sufficient. I think the jury  
16 is ready to hear now about a use of force transaction  
17 with somebody doing-- when we have officer subject  
18 factors, as we call them, in the academy. In this  
19 case we have a subject -- subject factor. It's the  
20 same basic theory. You've got one individual who has  
21 a particular capability and competency. You got  
22 another individual who has a particular capability and  
23 competency. And one of those capabilities is gonna  
24 have everything to do with your age and your physical  
25 fitness level.

1           And I can start there. I don't need to  
2 explain why Oulson is more equipped for a fist fight  
3 than Mr. Reeves. I don't think I have to do that.

4           But I wouldn't sit here and tell you that  
5 Cohen's testimony is not necessary, it's just not  
6 necessary for me.

7           Q     And would you not agree that the members of  
8 the jury, the adults based on their life experience  
9 and having made decisions based on their own  
10 limitations, would know that people make decisions to  
11 complete a particular task based on their known  
12 limitations; they know that, right?

13          A     You know, I don't know. I don't know what  
14 people know about that. But to me it seems common  
15 sense that if we're specifically talking about age  
16 related debilitation of people, if you are old, and I  
17 don't even know who's gonna be sitting on the jury,  
18 would know that. I do know, you know, if you're  
19 younger you may have a different perspective. And if  
20 you're sitting on the jury you perhaps need to hear  
21 what happens when you get older.

22                But if you're old, I think yes, your life  
23 experience will tell you that depending, you know,  
24 when we get past, for example, 30, I mean, there are  
25 physiological changes that Cohen can talk about. For

1       example, with men there's a drop in testosterone,  
2       which is gonna lead to, you know, lower bone density.

3               And again, I'm not testifying here. That's  
4       not an area that I need to testify about. But she  
5       could certainly do that. And she can talk about  
6       perhaps even reaction time and why that would slow  
7       down.

8               So if you're a young person perhaps you need  
9       to hear that. Your opinion is just as valid as the  
10      old person sitting next to you when you go into the  
11      jury room.

12              So I think that Cohen's testimony, once  
13      again, may be important to lay a foundation. But for  
14      me talking about use of force transaction, which is  
15      essentially what I've been hired to do, I'm gonna go  
16      in there assuming that the jury knows that Mr. Reeves  
17      is elderly and is in many ways debilitated by his own  
18      admission, and perhaps, like I said, by medical  
19      records as well. I don't know. And take it from  
20      there.

21              Q       And based on the jury's life experience,  
22      would you not agree that they're well aware that  
23      limitations dictate how you decide to complete a  
24      particular task; they know that, right?

25              A       Yeah. I wouldn't know what the jury knows.

1 I mean--

2 Q You would expect them to know that because  
3 they've gone through life making decisions like that,  
4 right?

5 A Well I'm sure that you've heard of the Darwin  
6 Awards. This is sort of a humorous way of looking at  
7 removing people from the gene pool who don't know  
8 their limitations. And so there are some people I  
9 guess who just don't know that. I can't say what the  
10 jury experience is.

11 Q Would you expect that when the jury hears,  
12 and I'm gonna use an example, information that a man  
13 missing a leg using crutches made the decision to use  
14 the elevator as apposed to the stairs, it would be  
15 reasonable for them to conclude that that decision was  
16 based on his limitations and they don't need anyone to  
17 tell them that, right?

18 A I'm not sure that's true, Mr. Martin. I  
19 think, you know, there are many many people who -- for  
20 example, one of the things that I learned at the  
21 academy when we were talking about cultural diversity  
22 is to be very careful on how you treat people that  
23 have obvious limitations. For example, if you have  
24 somebody who, I don't know, perhaps has one arm, to  
25 run in front of them and pull the door open, they

1 would be very insulted because it suggests to them  
2 that you're not capable so I better do it for you.

3 So I think a lot of people using your example  
4 may, in fact, want to try to challenge themselves to  
5 go up a flight of stairs to prove to themselves that  
6 they are capable of doing things that perhaps other  
7 people think they aren't capable of doing.

8 And I think that's the whole notion of  
9 Special Olympics, is that --

10 Q Alright, Mr. Bedard, I'm gonna stop you  
11 because you went away from my question. So let me  
12 rephrase it just a little bit for you so you can help  
13 me understand where you're coming from, okay?

14 And I apologize for interrupting but you just  
15 weren't answering my question. So let me rephrase it.

16 You have that same scenario. And the issue  
17 is, was it reasonable for the man without a leg using  
18 crutches to use the elevator?

19 Would the jury be able to conclude without  
20 any assistance whatsoever that of course it was  
21 reasonable for a man with one leg using crutches to  
22 use the elevator? They don't need anyone to tell them  
23 it's reasonable or not reasonable.

24 A Well I can tell you I don't have crutches and  
25 I use the elevator all the time. And I don't think

1       that's unreasonable either. So I don't know. I don't  
2       know how to answer your question. And I think I was  
3       answering your question before. I think you didn't  
4       like how I answered it.

5               But the facts are people are motivated by  
6       different things. And this is a whole area. It's a  
7       whole field of study on motivation. And for me to  
8       decide what a jury, which is a very abstract/  
9       construct anyway.

10       Q       Okay.

11       A       Now if it was about motivation and what  
12       causes people to get on elevators with one leg, I just  
13       can't do that. I don't think you can either. Because  
14       it's not unreasonable, agree, for a person with one  
15       leg and crutches to get on an elevator. But it's also  
16       not unreasonable for me who is fit and has two legs to  
17       get on an elevator.

18               So I guess I don't know how to answer that.

19       Q       And you don't need anyone to tell you that  
20       either, do you, because you know that?

21       A       To tell me what?

22       Q       Whether or not it's reasonable/unreasonable.  
23       You can make that decision for yourself, can you not,  
24       like you just did?

25       A       I think it's reasonable for a person with one



1 leg or two legs, or in some strange case maybe even  
2 three legs get on an elevator.

3 Q So you can make that decision yourself  
4 without any assistance from anyone, right?

5 A I don't know that I'd be presented with that  
6 question. But yeah, I don't think I would find it  
7 unreasonable for a person with one leg to get on an  
8 elevator, if that's the contrarian answer to what  
9 you're asking me.

10 Q All right. We're going to move on to another  
11 topic. Thank you for being patient with me.

12 There was some information that was provided  
13 to you after the first deposition, some of it we knew  
14 was going to be provided and then Mr. Michaels sent me  
15 a list of additional material. So I want to go  
16 through that real quick.

17 Did you review the additional material that  
18 Mr. Michaels sent you?

19 A I did.

20 Q All right. He sent you Mr. Knox' deposition  
21 and photos. And I asked you in your deposition on  
22 page 100, what measurements, if any, taken by defense  
23 expert Knox will you use in any way to support any  
24 opinion or conclusion.

25 So after reviewing his deposition and photos,

1 are you going to use anything from Mr. Knox' potential  
2 testimony?

3 A I don't think so. Again, I think a large  
4 part of the deposition you took with him had a lot to  
5 do with use of force issues, and I questioned that,  
6 why that was the case. I'm certainly not gonna rely  
7 on him. To be honest with you, I think he wasn't  
8 correct in a lot of what he answered about, for  
9 example, reaction time and things like that.

10 But even the measurements are sort of  
11 unknown. I mean, even after he did a workup on the  
12 theater itself. I mean, I know that there's a foot  
13 and a half between the back of one seat and the front  
14 of another. I mean, I may rely on that. I don't  
15 know. I don't know how helpful that will be.

16 But because there's so much of Mr. Oulson you  
17 cannot see as he exits the scene after throwing the  
18 popcorn and is finally fatally shot, there's a lot of  
19 guesswork here even for the crime scene analyst.

20 So it wasn't terribly helpful to me because  
21 we're speculating about distances. It wouldn't be  
22 Knox' deposition except that he mentions, you know,  
23 the stippling, for example, in Mr. Oulson's hand. I  
24 mean, that would be kind of important because it shows  
25 that he is still close enough to, to Mr. Reeves to,

1 we'll say, reach out and touch him.

2 But I didn't find anything that was terribly  
3 helpful for my use of force analysis that Knox gave.  
4 The pictures are probably the best thing about it for  
5 me because it really sort of -- they took so many  
6 pictures of the inside of the theater. And I know it  
7 doesn't look like that anymore. But that was a little  
8 bit helpful to help me kind of put myself in that  
9 place at that time.

10 Q How is it helpful in that respect?

11 A Just because I could clear the image up from  
12 the grainy video that I had been looking at. I mean,  
13 I can see the theater. It was black and white. You  
14 know, it was shadowy. It was grainy. Obviously it  
15 was broken. But the Knox photo gave me an opportunity  
16 to just stare at the video in it's full color. I  
17 thought they were very well done by the way. I  
18 thought that the lighting was brought up well enough  
19 so that you could make out the details and the  
20 relative distances from seat to seat, and how wide the  
21 theater was, and where the cameras were and things  
22 like that.

23 Again, I don't plan to offer any testimony,  
24 which I think is your question, about anything in  
25 there. But I will tell you after having looked at

1       those photos, those were helpful for me to just get a  
2       better picture of the scene.

3           Q       Well the question was, are you going to use  
4       any of his testimony as far as measurements to support  
5       any of your conclusions, not whether or not you're  
6       going to testify like he did, but whether or not  
7       you're gonna use any of that data; data A supports my  
8       opinion B?

9           A       The only thing that I may possibly cite would  
10      be the foot and a half distance between seats. That's  
11      the only thing I gleaned out of there that I didn't  
12      actually know because I didn't take measurements.

13          Q       And how is that significant to you?

14          A       Just because it shows proximity. And I think  
15      when you're talking about use of force and you're  
16      talking about allegations of where Mr. Oulson was and  
17      why Mr. Reeves would perceive him as a threat, um, 18  
18      inches, if he is leaning over the seat, and it looks  
19      to me in the video like he is, is awful close. It's  
20      certainly within an arm's length. And it's certainly  
21      within the quarter second timing that we try to avoid  
22      using both relative position and reactionary gap.

23                 So Mr. Reeves is kind of trapped in an area  
24      where he can't go any further. He's got a wall to his  
25      back. He's got a person that's within that striking

1 distance that can very quickly throw a very serious  
2 blow at him. And now we have the measurement of it  
3 being approximately 18 inches between the front of his  
4 seat and the back of Mr. Oulson's. It's pretty close  
5 in a fighting perspective. Of course, we would never  
6 teach someone to stand that close to an individual  
7 unless they were in control of the situation. For  
8 example, if they were handcuffing or something like  
9 that or were clearly dominating the situation.

10 But from a defensive perspective we would be  
11 trying to create distance. That's an awful close  
12 area. So I may cite that on the stand if I'm asked a  
13 question about it. And I image perhaps you will ask  
14 me a question about that because distances do matter  
15 in use of force transactions.

16 And so that's the only real measurement  
17 information that I gathered from the Knox deposition  
18 that I think may somehow perhaps support my opinions.

19 Q I want to go ahead and touch on one statement  
20 that you made during this discussion. You indicate,  
21 when we were talking about the close distance, you  
22 made a statement, looks like he's leaning over the  
23 seat to me.

24 Do you remember making that statement?

25 A Yes.

1           Q     And what are you referencing when you made  
2     that statement? What material are you using to make  
3     that statement?

4           A     Just the video.

5           Q     All right. And do you know specifically  
6     where in the video that, quote, "It looks like he's  
7     leaning over the seat to me"?

8           A     Well, in anticipation of these kind of  
9     questions I've actually got this on my screen. So let  
10    me wheel back a little bit. And it looks like the  
11    first frame that I have is -- do you have your pen  
12    out?

13          Q     Yes.

14          A     Is 132636.366.

15          Q     Okay.

16          A     Okay?

17          Q     Yes.

18          A     And that goes on for a little while, by the  
19    way. He doesn't recoil from leaning over the seat  
20    until about, I don't know .733. Now there's a caveat  
21    to that.

22          Q     Well you're gonna have to do the whole frame  
23    number for me.

24          A     So it will be 132636.733, where I can still  
25    kind of see his face.

1           Q     And those are the frames where we see the  
2 grabbing and tossing of the popcorn, right?

3           A     Yes.

4           Q     Okay.

5           A     Now, the caveat to that is that this first  
6 frame that I gave you, this .366 frame, is the first  
7 that you can even see Mr. Oulson. So I have to assume  
8 that he's there before this frame because when it  
9 opens he's there. So I don't know if he's there for  
10 10 seconds, because there's a blank spot there. I  
11 don't know if he's there for four seconds. I just  
12 know he's there before this frame opens. So I don't  
13 want to leave the impression that he's there for a  
14 millisecond, or a few milliseconds because I don't  
15 know. I can only see his face in that .366 frame.

16          Q     Okay.

17          A     And that's the frame that I'm able to stop  
18 with my crude equipment. I'm able to stop this and  
19 actually look on a freeze frame. That's the first  
20 earliest frame that I can see.

21          Q     I'm familiar with that part of the video.  
22 Any other parts of the video where it looks like, to  
23 you, he's leaning over the seat other than the  
24 information you already gave me?

25          A     I think -- let me go back to the second 26.

1     Hold on one second. Because I think there's a moment  
2     there where he's also leaning over the seat. I'm not  
3     sure that he's in a standing position but I think you  
4     can certainly see that there's a person that is coming  
5     over the back seat, you know, perhaps twisted in the  
6     chair or something like that. So give me just a  
7     second. Yeah, so --

8           Q     Give me the frame number.

9           A     Yeah. It's 132626. And I'm at .189. But  
10    just before that, and tinkering around again with my  
11    crude Apple laptop, I can't quite catch that  
12    millisecond frame, but there's definitely somebody  
13    that's leaning over the seat towards Mr. Reeves. And  
14    it almost looks as if there's an argument. And the  
15    reason I say that is because Reeves actually leans  
16    forward towards him. And now remember this is about  
17    10 seconds earlier than the last frame that I told  
18    you. So it looks like this is kind of where the  
19    verbal exchange is starting between the two of them.  
20    Perhaps Mr. Reeves is turned around-- I'm sorry, Mr.  
21    Oulson is turned around in his chair. Perhaps he  
22    slung an arm over the back seat. So that would be  
23    coming over the chair as well, at least part of his  
24    body would.

25                   But I see that as not the moment where the



1 cellphone is alleged to have been thrown and his  
2 glasses are knocked off. And I tell you why I say  
3 that, because at the conclusion of this when Reeves  
4 recoiled back into the seat, I noticed that he makes  
5 no adjustment to his glasses. And he tells me when he  
6 gets hit in the face by this or cellphone or whatever  
7 it might have been, that the first thing he does is  
8 kind of bring his hand up to put his glasses back on  
9 after the shot. So he's kind of working blind.

10 But that 10 seconds later, it doesn't happen  
11 here. So I don't think that this is where the actual  
12 or initial exchange of the cellphone striking him.  
13 And we do know the cellphone is at his feet. So  
14 somehow it ends up over the back. But I don't think  
15 we can see that. I think that's the part that's in  
16 the blackend frames.

17 Q What blackend frames, the eight seconds?

18 A Yeah, eight or however many seconds. In  
19 between 26, and what did I say the other frame was,  
20 36?

21 Q You believe that's when the cellphone was  
22 thrown?

23 A Yes.

24 Q In the eight second gap before the toss of  
25 the popcorn?

1           A       Yup. And, by the way, I did see the  
2 luminescence that everyone is talking about as well.  
3 I don't know what it is. I don't think anyone knows  
4 what it was. If I were picking a side, I would pick  
5 the side of saying that's probably the shoe. That's  
6 what I would say from my observation. It looks to me  
7 like it's over in a different section. It doesn't  
8 look like it's where the phone is found over in  
9 Reeves' section. So, and it's only there for a flash.

10               But I don't think this is the moment of  
11 changing hands, this 26 and 27 second moment. I don't  
12 think that's where the fight starts. That's what my  
13 conclusion is in looking at this. I think this fight  
14 starts in the darkness before second 36, I think is  
15 the frame I gave you, that we can't see, where he's  
16 now standing there. So I think he gets hit by the  
17 phone and within a second or two reaches over, that  
18 follows up with the popcorn in the face. And we can't  
19 see that. We can only see the popcorn to the face.

20               Because as I mentioned to you, and I know  
21 you'll ask me about this, then you see Reeves drop  
22 back into the seat, bring his hand up to his face.  
23 And he tells me this is where he adjusts his glasses.  
24 He also tells me at this point he feels the sting that  
25 he's been hit in his left eye. And I mentioned to you

1 during deposition, you can actually see his elbow come  
2 up and kind of move up and down. He's kind of rubbing  
3 that area. And of course there are other witnesses  
4 that I sent you that saw that as well.

5 So my conclusion in looking at this is that  
6 this fight is occurring at probably second 33, 34,  
7 something like that, that we can't see, that's not on  
8 video. That would be most consistent with what story  
9 Reeves has been telling.

10 Q Okay.

11 A I'm trying to stitch together 26 and 36. I'm  
12 just not seeing this as being the active fight  
13 sequence.

14 Q Okay. One of the things we talked about in  
15 your deposition on page 72 and 73 was the autopsy  
16 report. I sent you the autopsy report. You mentioned  
17 that you had a question about trajectory.

18 A Yeah.

19 Q Did you have a chance to review the autopsy  
20 report?

21 A I did.

22 Q And what, if anything, in the autopsy report  
23 supports any opinions or conclusions that you have in  
24 this case?

25 A Just that the location of impact and the

1 trajectory suggest that-- I think what we can actually  
2 see in the video is that it's being fired upwards,  
3 meaning that Mr. Reeves is at a lower position than  
4 Mr. Oulson when the shot is fired. And also most  
5 importantly, Oulson is virtually facing him. So he is  
6 turned and facing him. He's not shot in the back or  
7 even in the side. He's shot right in the chest. And  
8 this would be consistent with a threat, right, that  
9 squares to a target. So I think that's relevant.

10 Q All right. On page 72 of your depo I  
11 discussed whether or not you saw any crime scene  
12 photos, including photos of Mr. Reeves. We've  
13 discussed the crime scene photos. The photos of Mr.  
14 Reeves, and specifically I guess I'm referring to the  
15 photos taken in the theater where he's sitting there  
16 and there's the redness of his eyelid.

17 A Yup.

18 Q All right. Any of that information are you  
19 gonna use to support any opinion or conclusion in this  
20 case?

21 A I mean, only that it's forensic and it seems  
22 to support his version of events that something hit  
23 him in the face. Again, you know, when you do these  
24 analysis you look for reasons to doubt. It's sort of  
25 a scientific method. You're trying to falsify what

1 people are telling you. This is very much in support  
2 of his version of events. I mean, it's helpful to see  
3 something has happened to his eye. I don't know what.  
4 But it certainly is not inconsistent with his  
5 statements about what happened to him moments before.

6 Q You made a statement, and I just want to  
7 followup on it because I guess I may have to talk  
8 about this later. I don't know.

9 You mention scientifically must try to  
10 falsify what a person told you. What does that mean?

11 A So scientific method -- you know, and I think  
12 it helps having had gone to graduate school because it  
13 helps me understand this a little bit better. But I  
14 think the same rules apply, as a matter of fact I know  
15 they apply, when you're doing any type of forensic  
16 evaluation, or for that matter even an investigation.

17 And what you're constantly trying to do is  
18 decide that something is, in the words of the law,  
19 beyond a reasonable doubt. And that is exactly the  
20 same standard that science uses, it tries to conclude  
21 things beyond a reasonable doubt. And when you  
22 conclude things beyond a reasonable doubt it is  
23 because you have been able to eliminate other  
24 possibilities.

25 And the only way you can eliminate other

1 possibilities is you do that through falsification.  
2 You take a look at what's being offered and then you  
3 try to figure out if your hypothesis has another  
4 explanation. And so you come up with a variety of  
5 different conflictions perhaps that have caused this  
6 effect, and then you one by one you eliminate them.  
7 You falsify them. So that the only possible reason  
8 that this is happening when we show correlation, and  
9 this is how, you know, SPFS and other types of  
10 statistical programs work, the only possible  
11 conclusion from the study is that the dependant  
12 variable is being affected by this identified  
13 independent theory. And so in science of course  
14 that's the whole process.

15 But in social studies, for example, things  
16 like by police investigations, we should be applying  
17 that same standard, which means that if somebody tells  
18 you something it may not be true and you should not  
19 assign credibility of how you feel about it or what  
20 you think about that person, but rather what you are  
21 able to determine through falsification. And if you  
22 can't falsify the statement then it's assumed to be  
23 true. If you can't falsify the evidence it's assumed  
24 to be related. Things like that.

25 So that's kind of what I mean when I talk

1 about falsification. Or when you look at a case like  
2 this you're not able to, or we are not able to  
3 falsify. There's nothing to suggest that Mr. Reeves  
4 isn't telling the truth. And I would look for that.  
5 If he claimed something and all of a sudden we found  
6 out, well okay, well the evidence shows that couldn't  
7 be the forensic evidence. That could be for one of  
8 two reasons. One, because of, what I know you spoke  
9 with Knox about. And we didn't spend a whole lot of  
10 time talking about it. Could be perceptual  
11 distortion. Somebody made us feel something that  
12 isn't quite accurate because of stress related issues.  
13 Or generally it could be a lie, absolute. So I think  
14 that has to be taken into consideration.

15 But in this particular case I find nothing  
16 that Reeves has said to be demonstrably untrue, with  
17 the exception of perhaps being suspect of him giving  
18 self serving statements, I find nothing to be  
19 demonstrably untrue.

20 And I think to the original point, if I can  
21 circle around now and kind of conclude what I'm  
22 saying. When you talk about redness to the eye, that  
23 suggested he's telling us the truth, that there's  
24 something that made contact with his eye.

25 Q Okay.

1           A     Like he says.

2           Q     And where are you getting this method that --  
3     what's this method called? Is it a method or  
4     something you made up or what?

5           A     No, no. Scientific method, I mean, is very  
6     well known.

7           Q     What is it?

8           A     It's in the literature. I just explained it  
9     to you.

10          Q     Okay. What's the name of it?

11          A     The Scientific method.

12          Q     Yeah. What's the name of it?

13          A     That's what it's called.

14          Q     Scientific method?

15          A     Yeah. Yes. Who's on first. That's what  
16     it's called. And if you want to be more specific to  
17     really sort of get in the, I guess the crevice of the  
18     Scientific method, it would be the process of  
19     falsification. That's what that's known as. But  
20     mostly what I spoke to. I mean, there are other  
21     methods when you're doing science. But it is the  
22     Scientific method.

23          Q     Is it also known as the null hypothesis?

24          A     Yes, the null hypothesis.

25          Q     Why can't we just say that? You make me pull



1       it out of you. Come on now.

2           A       Well the null hypothesis is part of the  
3       Scientific method.

4           Q       All right. And is that, in fact, what you're  
5       using here, what you just described, is the null  
6       hypothesis?

7           A       I mean, in a general way. Again, this was  
8       not a scientific study. I mean, this is just  
9       basically using the same logical sequencing that you  
10      would if you were doing scientific study. If you  
11      could actually have some controls and, you know,  
12      manipulate variables you would use the same process.  
13      That's kind of how my brain works. So it's natural  
14      for me that when I get something I'm skeptical. I'm  
15      automatically skeptical. I think that's the nature of  
16      any scientist is skepticism.

17                 So my first question is how do I eliminate  
18      what's being told to me. How do I show that that's  
19      false. And if I can't show that it's false then I  
20      deem it to be true.

21           Q       And that's the Scientific method known as the  
22      null hypothesis, correct?

23           A       Well the null hypothesis would be the area of  
24      falsification. So yes, the assumption that a  
25      hypothesis is not true, that's the null hypothesis, is

1     where we begin. And then we go about conducting our  
2     experiment to disprove the null hypothesis. And  
3     that's essentially what we're doing, is everybody  
4     doing things in reverse. This is exactly the opposite  
5     of what's called confirmation bias. And confirmation  
6     bias is the idea that we're basically looking for  
7     facts included to support an opinion that we already  
8     hold. We're not, in the language of bias, we're not  
9     following the clues to a conclusion. We have the  
10    conclusion, now we're just collective to support it.

11           And I deal with that all the time in cases  
12    where people -- especially law enforcement officers.  
13    I have a case right now that that's one of the things  
14    that I've written into my report, that there seems to  
15    be a lot of confirmation by associated with the  
16    investigation. So we know it happens a lot.

17           There's a lot of literature on that warning  
18    law enforcement officers, because we all have biases.  
19    Many times we don't even know we have them. I think  
20    implicit biases is the catch phrase that everyone is  
21    using today to sort of reflect on the idea that our  
22    brains work in a certain way that we may not be  
23    consciously aware of. And that we are supposed to be  
24    paying attention to these biases.

25           And so the best way to prevent confirmation

1 bias is by using a null hypothesis, to assume that  
2 what you're being told or what you're seeing or what  
3 you're observing, in the words of science, is not  
4 true. And now let's go about figuring out if we can  
5 falsify the belief that it's not true. Because if we  
6 can falsify the belief that it's not true then it  
7 turns out it is true.

8 Q Okay. See if you agree with this example,  
9 okay?

10 A Okay.

11 Q Back centuries ago the general accepted fact  
12 was the Earth was flat. In order to convince people  
13 of that time that the World was not flat, there was an  
14 alternative theory that the Earth was in fact round.  
15 Using the null hypothesis, your accepted fact back  
16 then would be that the World is flat. The alternative  
17 hypothesis would be that the Earth is round. Someone  
18 then set sail and circumvented the World and came back  
19 and was able to present objective data, I circumvented  
20 the World, I didn't fall off, therefore, proving the  
21 accepted fact was false. Therefore, you accept the  
22 alternative hypothesis. Now people, because of that,  
23 believe the World is round.

24 Is that the proper use of the null  
25 hypothesis?

1           A     Yes.

2           Q     Okay. And is that what you're doing here  
3 when you're conducting your analysis to determine  
4 whether or not specific events actually occurred?

5                 You're postulating an accepted fact, stating  
6 alternative, and then looking for data that proves  
7 your accepted fact is, in fact, false so that your  
8 alternative data will be accepted.

9                 Is that what you're doing here?

10          A     That's generally a description of the  
11 Scientific method. Again--

12          Q     Is that what you're doing here in the Reeves  
13 case?

14          A     That's what I always do. I try to have some  
15 sort of evidence to show that whatever -- the story is  
16 on both sides, by the way, because there's always two  
17 different sides to these stories. Um, whatever I'm  
18 being told is not true and I have to then falsify  
19 that. And if I can't do it then I have to accept it  
20 as true.

21          Q     I want to further discuss this method and  
22 then we're gonna move on. And in this method that  
23 you're using to test and accept as fact, because  
24 that's the way you constructed the null hypothesis,  
25 there's an accepted fact and there's an alternative

1 explanation. In fact, in science the null hypothesis,  
2 you don't even have to believe that the accepted fact  
3 is true, you're just trying to figure out whether or  
4 not the alternative is more logical, right?

5 A Yes.

6 Q Okay. So in --

7 A That's why, to your point earlier, that is  
8 why mostly everything is based on probability. We  
9 talked about that previously.

10 Q Right. We're talking about probability,  
11 likelihood, and whether or not there is such a  
12 significant correlation that one would accept one  
13 alternative hypothesis over another, correct?

14 A Yes.

15 Q All right. Now getting back to my example  
16 about the World is flat and the World is round. We  
17 had the individual who circumvented the World in a  
18 boat, whatever, proving that it was round.

19 I want to talk about the, and not  
20 specifically, just generically, what in the Reeves  
21 case when you used the null hypothesis to try to  
22 determine reality, if you will, what facts in the  
23 Reeves case are you using to make that determination,  
24 whether or not you can nullify or invalidate your  
25 hypothesis that is the accepted fact?

1           Just generically what is the data that you're  
2   using: Police reports, witness statements. You know,  
3   just generically tell me what you're using.

4           A     Yes, using all of that.

5           Q     Tell me what all of that is?

6           A     Well, I told you. So particularly in the  
7   Reeves case -- first of all, let me just get clear on  
8   one thing. I mean, you mentioned an experimental  
9   analysis. You have somebody board a ship and go  
10  around the World. That was an experiment to see where  
11  they ended up.

12          Q     Yes.

13          A     Understand the Reeves case is a single trial.  
14  You can't repeat it, right. So we have to deal with  
15  what's called observational studies. Observational  
16  studies are a little bit different than empirical  
17  testing, which is kind of how you summed up the  
18  Scientific method. And you're not wrong, it's just  
19  not complete.

20                So in any kind of case like this for-- and  
21  certainly it's captured on video, and I like it when  
22  it's captured on video. Other times I'm basically  
23  just dealing with eye witness statements, which you  
24  know are terribly unreliable. And, um, you know,  
25  conclusions perhaps that the police department has

1     made and things like that. It's just more  
2     challenging. But when you have the video it's very  
3     very helpful so that you at least know generally what  
4     has happened.

5             So when I look at the Reeves case I'm not  
6     able to experiment to see whether or not it's true or  
7     not, but I am able to apply observational studies. So  
8     Reeves said he's attacked by Mr. Oulson. So let's  
9     assume that's not true, that Reeves is lying to us.  
10    Well, I would go about looking at the video and I  
11    would see a person that's standing in front of Reeves.  
12    I would read the witness statements, who all-- and I  
13    say all and I don't mean every person in the theater,  
14    but I sent you a list of them, who see him standing up  
15    and facing the opposite direction. I hear the report  
16    from Reeves that this is over a point of conflict,  
17    over the cellphone being lit up and him going to the  
18    manager. All of that corroborates.

19            This is a guy who's upset, comes out of his  
20    seat, he turns around and he's now facing Reeves. All  
21    that corroborates Reeves' statement. I can't falsify  
22    that Reeves is not under attack. I'm not able to do  
23    that. On the contrary, if we don't have the video  
24    there it's a little bit harder because maybe Reeves is  
25    telling us a lie.

1           So then I would look at things like, well  
2       okay, this guy is shot in the chest. Alright, how can  
3       that happen. Well it can only happen if they're  
4       facing each other. And all the witnesses say that  
5       Reeves never gets up. So then I would draw the  
6       conclusion that he's facing Reeves, even though I  
7       can't see it on the video, which I can't. So that  
8       corroborates that evidence as well.

9           So here's what we know. Reeves is being a  
10      attacked by Oulson. This is a self-defense case.  
11      That's how I concluded this. This is a self-defense  
12      case. I just don't think any reasonable person won't  
13      think it's self-defense. But there's a second part to  
14      this, and that's whether or not the response was  
15      reasonable. And of course that's an ultimate opinion  
16      that I don't plan to offer. That's up for the jury to  
17      decide whether or not shooting somebody who is  
18      attacking you is appropriate.

19           I mean, as that was the Rittenhouse case, and  
20      not to bring that in, but we're seeing people think  
21      strange things about this. One of the prosecutors  
22      there is saying basically you're supposed to take a  
23      beating. He has said that. It's unbelievable to me.

24           That said, I now have to determine whether or  
25      not the use of force is accepted, whether or not it's



1 appropriate or reasonable, objective reasonable as I  
2 understand the term, not in a courtroom setting but in  
3 a police training setting as you presented it to me  
4 from FDLE's own book.

5 So I turned to the models. I turned to the  
6 force continuum. I turned to threat analysis, what we  
7 talked about last time that you and I, I guess got  
8 hung up on the construct of situational awareness.  
9 And I take a look at whether or not those things in a  
10 given environment, inserting all of the facts that we  
11 know about Reeves about his self-efficacy. He's an  
12 old man. He's eaten up with arthritis. He is  
13 severely overweight. He is sitting in a movie theater  
14 with his back against the wall. It's very poor  
15 lighting. He has his wife who is sitting next to him,  
16 which I'm sure he feels he needs to protect her as  
17 well. Who is being confronted by, who he perceives is  
18 a much younger man. I think he said 35 to 40. Who is  
19 six foot four, who is standing in front of a lit  
20 screen silhouetted. He can't make a lot of detail  
21 out. He tells me this when I talk to him, by the way.  
22 He can't make a lot of detail out. Somebody gets hit  
23 in the face and knocks his glasses sideways. His  
24 self-efficacy is now even further deteriorated because  
25 now he doesn't have clarity of vision. Not only is he

1 an old man who has difficulty getting out the chair,  
2 because he said he tries to do that but he can't even  
3 push himself out of the chair that quickly. Not only  
4 is he an old man with arthritis, with a bad back who  
5 can't push himself out of the chair who is severely  
6 overweight, now he can't see. He gets hit in the face  
7 with something and immediately he sees the individual  
8 coming back towards him.

9 Now, you have to question motivation. You  
10 and I talked about ability, opportunity and jeopardy.  
11 What a reasonable person thinks, that someone who  
12 stood up in a movie theater to confront an old man  
13 physically was motivated to do great harm. And I  
14 think a reasonable person would think that probably  
15 the best way to predict the future, which is what this  
16 is all about, anticipating what comes next, is to look  
17 at the past. And the past is completely unreasonable.  
18 It's unreasonable for any person to do that. No  
19 person would think that it's okay to settle a score in  
20 a movie theater, certainly when you are the cause of  
21 the problem with your cellphone on.

22 So I think a reasonable person would then  
23 believe bad things are going to continue to happen  
24 because they are happening. He fires a shot,  
25 according to what he says, and I have no reason to

1     dispute it, I wish the video captured it, the second  
2     time that Mr. Oulson reaches for him.

3             The first time he gets hit in the face he  
4     thinks he's punched or hit with a cellphone but he  
5     doesn't know what. Now that arm comes back out. The  
6     video picks it up. And that's where we're invited to  
7     see what happened on video.

8             The second time that arm comes back he grabs  
9     the popcorn. All Reeves can see is he's still coming  
10    after me. He decides, I'm in great danger, reaches  
11    for his firearm. He's got about two hundred  
12    milliseconds to cancel that. He gets hit in the face  
13    with the popcorn. He tells me he doesn't know it's  
14    even popcorn, he just knows he's under attack and he  
15    fires the shot. Does he believe that he is in  
16    imminent danger of death or great bodily harm, I think  
17    from a reasonable perspective if I were judging a  
18    police officer in this case with the same facts and  
19    circumstances, I would conclude internally, if I were  
20    an internal affairs investigator, this was a  
21    reasonable shot.

22            It's not a police officer on duty but I use  
23    the same standards. If you look at the subject  
24    factors between the two of them, the circumstances,  
25    the motivation that we are aware of, things that I

1 can't falsify, things that I'm not able to say Oulson  
2 did not do those things that Reeves said that he did,  
3 then maybe my opinions change.

4 But I think the very best witness to this is  
5 Reeves, and there's no reason to not believe him.  
6 There's been no evidence to not believe Reeves. The  
7 only reason we're not believing Reeves is because we  
8 think that he's self serving in his statements, and of  
9 course he is, especially if he did it right. If he  
10 did it right it would be self serving for him to tell  
11 the truth.

12 So that kind of is where my opinion leans is  
13 that as I apply the Scientific method, as I refer to  
14 it, I'm not able to say what Reeves said didn't  
15 happen. And I have worked many cases where  
16 individuals have said things that have happened and  
17 there is no corroboration, and there often times is  
18 even contrary evidence. This is not one of those  
19 cases.

20 Q And that's based on your interpretation of  
21 the evidence that you just described on the record,  
22 correct?

23 A Well all of my opinions are based on that.

24 Q All your opinions are based on what, your  
25 interpretation of the evidence?

1           A     Well my conclusions looking at the evidence.  
2     Call it interpretation if you will. I think at some  
3     level they are my conclusions based on looking at the  
4     evidence, based on what I actually know.

5           Q     Okay.

6           A     I know that Reeves said he was hit in the  
7     face by something. I know that. I can't say that he  
8     wasn't hit in the face by something. And, by the way,  
9     there's a great corroboration. There's a cellphone  
10    laying at his feet. He claims to have seen a flash of  
11    the screen. Who doesn't really get better  
12    corroboration than that when it's laying at his feet.

13          Q     Well Mr. Oulson was holding the phone when he  
14    was shot. When he got shot he released the phone and  
15    it fell at his feet. That's an alternative  
16    explanation, isn't it?

17          A     But why would Reeves says that in the back of  
18    a patrol car. He doesn't know that.

19          Q     But is that an alternate explanation?

20          A     I don't think it's a reasonably alternate  
21    explanation because of the timing that Reeves  
22    describes.

23          Q     Mr. Oulson is holding his phone. He's shot  
24    in the chest. He drops his phone at the feet. When  
25    you get shot in the chest, would you not agree, that

1       it would be reasonable for you to drop whatever you  
2       had in your hand?

3           A       I don't know. I've never been shot in the  
4       chest. I really wouldn't know that.

5           Q       Oh, come on now, Mr. Bedard. You've laid out  
6       your conclusions for the last five minutes regarding  
7       how you believe Mr. Reeves. Why can't you answer that  
8       question for me?

9           A       If you take a look at a case I'm looking  
10      working on now in Los Angeles on Tony McBride who  
11      shoots a guy holding a knife in his hand six times, he  
12      dies with the knife in his hand. He doesn't drop it.  
13      I mean, I don't really know how to predict what  
14      somebody will do when they're shot. And he takes a  
15      couple in the chest I might add. They were pretty  
16      similar in that respect. He dies with the knife  
17      clutched in his hand. It was not for certain.

18                  And again, I think you're drawing conclusions  
19      based on no evidence at all. But I do have evidence  
20      that there's a phone laying at Mr. Reeves' feet that  
21      is consistent with his story of being hit in the face  
22      by the cellphone.

23           Q       Is it also consistent with it being dropped  
24      by someone who is shot?

25           A       Well nobody says that.

1           Q     I'm just asking is that also consistent. I  
2     didn't say anyone said that.

3           A     Okay. Yeah. Could it have happened, the  
4     probability is much lower.

5           Q     Alright, and why do you say the probability  
6     is much lower?

7           A     Because it's inconsistent with the story that  
8     Reeves tells.

9           Q     Okay. Okay. One of the things that we  
10    talked about -- you did send me the list of the  
11    individuals, and I appreciate that, thank you, that  
12    testified in some fashion that you're relying on that  
13    Mr. Oulson was leaning or standing over Mr. Reeves. I  
14    have those. I have those cites. I have read them.  
15    We've already had the discussion about the  
16    significance so we don't need to do that.

17                   We've already discussed a little bit about  
18    Mr. Reeves' arm coming up and rubbing his face after  
19    he shot. You sent me those frames. Thank you.

20          A     Did you review that?

21          Q     I did review those frames, yes.

22          A     Okay, you don't want to answer the question.

23          Q     It's not my depo.

24          A     Understood.

25          Q     So here's where we're at. We've been going

1 for two hours. We have completed a good chunk of,  
2 because we've gone off on tangents. And I'm not being  
3 critical. It's just it's come up so we covered it.

4 So I would like, if it's alright, to take a  
5 10 minute break for the court reporter to relax for a  
6 few minutes. And when we come back I want to go  
7 through the defendant's statements and how you have  
8 picked out through the various statements those  
9 artifacts that we talked about that are left over  
10 based on being in a stressful situation, and those  
11 statements that indicate to you some type of self  
12 awareness or self-efficacy of some sort of limitation  
13 that is important to you.

14 And so what we'll do is we'll go through the  
15 law enforcement statement first, we'll then go through  
16 his immunity hearing testimony, and then fully you'll  
17 relate his statement to you, and then we'll go back  
18 and -- well, we'll figure out how we're gonna do that  
19 because I don't want to waste your time going back  
20 again.

21 So that's what we're going to do. Is that  
22 okay with everyone?

23 A It's okay with me.

24 Q Okay.

25 MR. MARTIN: Now, Mr. Michaels, are you good



1 with that?

2 MR. MICHAELS: Sounds good.

3 MR. MARTIN: All right. Would you like to  
4 hang up at this time and me call you back or do you  
5 want to stay on the line? What's everyone's  
6 preference?

7 MR. MICHAELS: I'd like to hang up and have  
8 you call me back on the office phone.

9 MR. MARTIN: Okay. Give me the number.

10 MR. MICHAELS: 813-875-5100

11 MR. MARTIN: 5100.

12 MR. MICHAELS: Yep.

13 MR. MARTIN: And Mr. Bedard, call you back at  
14 the same number?

15 MR. BEDARD: Yes, that would be fine.

16 MR. MARTIN: Okay. I have it's 11 o'clock so  
17 back at 11:10 or do you want 11:15? What would you  
18 like?

19 MR. BEDARD: I don't care. Whenever you wrap  
20 up with what you're doing call me back and I will be  
21 sitting by the phone.

22 MR. MARTIN: All right. We'll let the court  
23 reporter decide. So as soon as she's ready to get  
24 back I'll give you guys a call, how's that?

25 MR. BEDARD: Perfect.

1 MR. MARTIN: All right. We're gonna hang up  
2 and I'll call you back. Thank you.

3 (Break)

4 MR. MARTIN: Mr. Michaels, are you on?

5 MR. MICHAELS: I am.

6 MR. MARTIN: Mr. Bedard, are you on, sir?

7 MR. BEDARD: I am.

8 MR. MARTIN: Alright, gentlemen, we're on the  
9 record. We're in the same room. And it's just me and  
10 the court reporter and my door is shut. Ready to go?

11 MR. BEDARD: I'm ready.

12 Q (By Mr. Martin). What I would like to do,  
13 Mr. Bedard, I made a request of you to, in dealing  
14 with the defendant's statement to law enforcement, to  
15 use the police report that was printed on January 25  
16 '16 as far as making reference to any pages. Were you  
17 able to do that for me?

18 A About the self-efficacy issues or--

19 Q We're gonna go through the statement to law  
20 enforcement, and we're gonna talk about the  
21 self-efficacy, and we're gonna talk about the  
22 artifacts that you felt were residual to Mr. Reeves  
23 being involved in a stressful situation. That's what  
24 we're gonna go through.

25 A Right. Okay.

1           Q     Because in your first depo we used a  
2     different report. But throughout this case we've been  
3     using the report printed 1/25/16 and all previous  
4     pleadings and discussions. So I appreciate you doing  
5     that. And I did convert the page numbers in your  
6     first depo over just in pencil.

7                     So that's what I'd like to start with is Mr.  
8     Reeves' statement to law enforcement.

9                     Do you have that in front of you?

10          A     I'm trying to pull it up right now. Give me  
11     a second.

12          Q     Alright, sir. Let me know when you're ready,  
13     please.

14          A     So I don't get this confused, I do have a  
15     police report pulled up.

16          Q     Look at the very top. It's either gonna be  
17     top right or top left. It will say printed. Very  
18     first page.

19          A     1/27/2014?

20          Q     No, not that one.

21          A     Let me keep moving. 1/25/2016?

22          Q     Yes, sir. That's the one.

23          A     Okay.

24          Q     All right. Mr. Reeves' statement to law  
25     enforcement begins on page 75 of that report.

1           A     Let me get to it.

2           Q     Thank you.

3           A     It looks to me like it's on page 76; is that  
4     right?

5           Q     Well, actually it's --

6           A     At least on mine. On page 75 it looks like  
7     we're still talking to Angela Hamilton.

8           Q     Yeah. Keep scrolling down and you'll see it  
9     will start printed out like a transcript.

10          A     I see. Yes. Okay. So it starts with yup,  
11     right?

12          Q     Correct, sir.

13          A     Okay. I'm there.

14          Q     Alright, sir. In the depo in October  
15     beginning on page 161, right at the end you authored  
16     up several areas in Mr. Reeves' statement to law  
17     enforcement that suggests to you his self-awareness of  
18     his limitations, if you will, the self-efficacy.  
19     Whatever we're gonna talk about. What do you want to  
20     call that, self-awareness? I don't know.

21          A     Self-efficacy.

22          Q     Self-efficacy. All right. In order to save  
23     some time I've reviewed those. I get it. Is there  
24     anything else in his statement involving that issue  
25     that you need to add that you didn't cover in the

1 first depo?

2 A I don't think so. I'm just going through  
3 this latest one here. Let me see if I highlighted  
4 anything.

5 Q We began that discussion in your depo on page  
6 161 through pages 164.

7 A Right. I mean, trying to just-- I think what  
8 I have given you is a pretty good accounting of  
9 Reeves' description of his self-efficacy. He talks  
10 about his shoulder and how sore it is. And I think I  
11 covered that with you. Again, I'd have to almost do a  
12 side-by-side comparison.

13 Q Yeah. On page 164 of your depo, and this is  
14 the reason I'm asking the question, you indicate,  
15 "That's it. That's what I'd written down from the  
16 notes took." So if that is correctly stated, I'm  
17 assuming that everything that you had noted you told  
18 me. Would that be a correct assumption on my part?

19 A Yes.

20 Q Okay. Let me just followup then on that, not  
21 what you identified but the significance of the  
22 self-efficacy in this particular case.

23 Are you suggesting by those examples that Mr.  
24 Reeves' actions are predictable based on those  
25 statements by him that you have indicated show

1 self-efficacy?

2 A Yes. I don't know that I would frame it that  
3 way but--

4 Q How would you frame it?

5 A That the decision -- the decision making  
6 model involves self-efficacy and understanding your  
7 limitation and coping mechanisms for a different  
8 situation.

9 I think actually the way you said it is fine.  
10 I think, yes, I think we can boil it down to  
11 predictability. In other words, if you were to take a  
12 different person, not Mr. Reeves, give him the same  
13 ailments and the same level of self-efficacy, I think  
14 you'd get the same result.

15 So I think predictability is not badly  
16 framed.

17 Q If you were in the courtroom and you had gone  
18 through those areas in the statement Mr. Reeves made  
19 to law enforcement indicating self-efficacy, and if  
20 you were asked and the Court allowed you to testify,  
21 what would you tell the jury is the significance of  
22 those observations that you made to this case?

23 A Okay. So typically it's not within the  
24 expert's purview to try to get into somebody's head.  
25 But every now and then somebody allows us to get in

1       their head --

2           Q       Yeah, I know.

3           A       -- when they make statements of the type that  
4       Mr. Reeves makes. He talks about himself. He talks  
5       about what he was thinking when this event was going  
6       on. He talks about what he knows about himself. So  
7       it's fairly easy. It's an open door for anyone to  
8       look at what was going on in his head at the time that  
9       this event took place. So I think I can comment on  
10      that because I would simply be using his words. I'm  
11      not trying to offer opinions about things which I  
12      couldn't know.

13                 So when you're making decisions, decision  
14      making begins with data collection, right. So that's  
15      problematic obviously for everyone, not just a 71 year  
16      old man. But sitting in a dark movie theater you're  
17      very very limited in the amount of information you can  
18      gather because things are dark.

19                 And as human beings most of the information  
20      that we gather is visual. This is what my  
21      dissertation was about, by the way. I think we talked  
22      about this in my deposition previously.

23                 Visual information tells us about the  
24      environment. It tells us what's out there. It tells  
25      us what's important. It tells us what is just noise.

1 And it gives us the construct and situational  
2 awareness that you and I spoke about.

3 Situational awareness means that you're  
4 gathering data and you're discriminating that data.  
5 So you're attenuating some information and you're  
6 attending to other information. That's the beginning  
7 of decision making. And you're doing that based on  
8 importance. What's important for the moment.

9 When you're talking about combat and survival  
10 techniques you're looking for the most dangerous  
11 aspects of environmental information, and those are  
12 the things you're going to attend to.

13 But you also have to compare it with your  
14 coping mechanisms, which I spoke to previously. Your  
15 coping mechanisms are going to be, quote,  
16 "psychological" as well as "physiological."

17 So, for example, law enforcement officers who  
18 are sent to calls, we don't ever pick them based on  
19 their size, we pick them based on their proximity to  
20 the crime. And so sometimes very small officers get  
21 sent to incidents involving very large offenders, or  
22 sometimes very armed offenders. And we know that  
23 there's a natural imbalance between law enforcement  
24 officers and yet they go. And the reason they go is  
25 because they're equipped with training and they're



1 equipped with various tools to be able to accomplish  
2 goals. They're equal based on the fact that we issue  
3 them a belt system that has, depending on the agency,  
4 pepper spray perhaps, Taser perhaps, baton perhaps.  
5 And using those tools they can mitigate the  
6 differential between let's say, for example, their  
7 small size or perhaps even gender, and the person that  
8 may be challenging them. So they're motivated to take  
9 control. And so law enforcement officers essentially  
10 don't run from fights, not that it's never happened,  
11 but they certainly wouldn't be a good law enforcement  
12 officer if they did. They would have to deal with the  
13 circumstance because we give them the tools and  
14 training to deal with it. So their self-efficacy is  
15 very high. They would wonder into what we would call  
16 harms way with a high motivation because they know  
17 that they're equipped to handle it.

18 To the contrary, if you were to take the same  
19 circumstance and send somebody, for example, very  
20 small or perhaps a particular gender, into a situation  
21 and not properly equip them with coping mechanisms for  
22 what they come up against, they would have a very low  
23 motivation to go to that particular area and inject  
24 themselves in a situation that could be harmful to  
25 them. So we don't ask them to do that.

1           When you're dealing with citizen fight,  
2       coping mechanisms are limited in the fact that, A,  
3       citizens don't typically have authority to make  
4       arrest. They don't have the authority to take someone  
5       into custody. They don't have the authority often  
6       times even to exert any type of force, with one  
7       exception, and that would be self-defense that's  
8       protected by law.

9           So if we can cross the bridge and say, okay,  
10      something is self-defense, and I think we can do that  
11      in this case. I think it would be harder to argue  
12      it's not a self-defense case. I mean, you have,  
13      again, a six foot four male younger than Mr. Reeves  
14      jumping out of his chair acting very bizarre. I mean,  
15      making a big issue about Mr. Reeves telling the  
16      manager about his cellphone being on. Very  
17      unpredictable. And so Reeves was forced to defend  
18      himself against that self-defense part.

19          Now when it gets to the second part, did the  
20      survivor take bifurcated equation, as we spoke about  
21      earlier, which is how that force can be used, now we  
22      get into self-efficacy. What does Mr. Reeves think he  
23      can do. So a reasonable person who would be trying to  
24      use a minimum amount of force or try to create the  
25      least harm.

1           Had the roles been reversed and Mr. Reeves  
2       was the younger and the bigger and perhaps the more  
3       agile and the better equipped, this may have ended as  
4       Mr. Reeves said with a wrestling match in the movie  
5       theater. But that's not what happened. In this case  
6       Mr. Reeves is a 71 year old, and I'll paraphrase it,  
7       broken down old man. He's defined even by law as  
8       being somebody that can't be battered. It's an  
9       aggravated battery if you hit him.

10           But he truly has debilitating physical  
11       features. He's full of arthritis. He has a bad back.  
12       He's overweight. And he has an imposition in that  
13       he's sitting against the wall. He can't go anywhere.  
14       He can't even get out of his seat. So his motivation  
15       to struggle with Mr. Oulson is very very low because  
16       he doesn't have the self-efficacy or the coping  
17       mechanisms to deal with what's happening to him at  
18       that moment.

19           Now, under the circumstances Mr. Reeves has  
20       brought something with him which the law protects  
21       under the concealed carry permit, that once again  
22       mitigates the differences between Mr. Oulson who's  
23       much younger, probably much stronger, certainly more  
24       agile and threatening, in comparison to Mr. Reeves'  
25       diminished state because of his age and because of his

1 injuries, and his arthritis, his condition, and that  
2 something is a firearm.

3 So it's reasonable if exceeded by the  
4 challenge of Mr. Oulson that you would feel  
5 threatened. That's how Lazarus and Folkman defined a  
6 threat. When your challenges are exceeded, your  
7 ability to cope with the challenge is exceeded, you  
8 are no longer being challenged, you're being  
9 threatened.

10 And I think that the evidence shows, based on  
11 self-efficacy, that a reasonable person would conclude  
12 that Mr. Reeves is being threatened.

13 So how does he mitigate that. Well, at first  
14 he doesn't just pull out a gun and shoot him when he's  
15 challenged. He tries to lean far away. He tries to  
16 stay away from him. He says I'm still trying to  
17 figure out what's going on. It's so unusual. It's  
18 never happened to me before. I don't have a blueprint  
19 on what to do. So I'm pulling myself back in the  
20 chair as far as I can. I'm trying to avoid him. And  
21 all of a sudden I get hit in the side of the face.  
22 Well, his existing self-efficacy is not to fight Mr.  
23 Oulson already, now he has further diminished capacity  
24 because he can't see. And we are visual creatures.  
25 He says my glasses turned sideways on my head. I have

1 potentially a blur in front of me. I can no longer  
2 make out detail, which was hard to do in a dark  
3 theater. He can of course see Mr. Oulson who is six  
4 foot four. He's got the ability, even through blurred  
5 lenses, because the focal point had been adjusted, to  
6 see Mr. Oulson still coming at him after being hit.  
7 Really the only appropriate coping mechanism at this  
8 point is to take the only tool that he has on him, and  
9 that is his firearm, to protect himself.

10 I think reasonable people will believe under  
11 the circumstances that Mr. Reeves, who says in his  
12 interview, man, if I get hit it takes me two months to  
13 heal. Or something like that. Two months for a  
14 bruise to heal. That's how he feels about himself.  
15 He then says, I don't need another ass whipping. I  
16 think that's verbatim what he says. Or, I don't need  
17 an ass whipping. And he says a lot of things like  
18 that. I didn't think that I could take him. No, I  
19 can't take anybody. Stuff like that.

20 So it would be reasonable if your  
21 self-efficacy is that low in that compressed timeframe  
22 where you can't sit around and contemplate the  
23 possibility, that you would take the very first thing  
24 that comes to mind as a solution to a quickly rapidly  
25 unfolding, diminishing problem, which is that he might

1 in the very next millisecond be severely injured or  
2 killed, and that is he reaches for his firearm.

3 And in the fog of the attack where everything  
4 is happening very rapidly, he does get hit again a  
5 second time. We know this by popcorn. You can see  
6 it. He tells me he doesn't know he's hit by popcorn.  
7 He knows he's hit. He can see Mr. Oulson coming at  
8 him and he decides to put a stop to it by firing a  
9 shot and that's what he does.

10 So because of his self-efficacy, I think to  
11 answer your question, he has a justification to use  
12 deadly force because he was left with no other  
13 reasonable alternative.

14 So then we have to go back and decide, okay,  
15 is all of this true what I just told you. Is he  
16 really 71 years old. The answer is he is. Is he  
17 really debilitated, and to what degree. And more  
18 importantly, how does he feel about his debilitation.  
19 He tells us that. There's no reason to doubt him.

20 So that's what I would tell a jury, is that  
21 the subject factors matter. And part of the subject  
22 factors is how you reasonably believe various coping  
23 situation that is rapidly unfolding and a threat to  
24 your safety.

25 And again, I don't know that jury necessarily

1 know that. It's the same -- you know, unfortunately  
2 news media, the television shows teach people who make  
3 up juries strange things. You know, like for example,  
4 every time you shoot somebody in the back it's a bad  
5 shooting. You know that's not true. Sometimes that  
6 happens in the course of shooting at somebody they  
7 twist away in the course of being hit in the chest the  
8 first time, they catch one in the back. That doesn't  
9 nullify the shooting and make it a bad shooting.

10 So we have these sort of fixed rules in law  
11 enforcement that the public thinks they know and  
12 they're just not true. And so they might think, for  
13 example, you shouldn't shoot somebody -- this is I'm  
14 referring to the Rittenhouse case right now. You  
15 should have taken the beating. You should go fist to  
16 cuffs because that's what people do. That's what  
17 brave people do. They fight back using their fists,  
18 not guns. That's excessive. And that's not always  
19 true. It would depend on the self-efficacy of the  
20 individual. If he didn't think his fists could work  
21 he wouldn't attempt to use them. Who would. It would  
22 be unreasonable to do that.

23 So I think that's probably the answer to your  
24 question as to what I would tell a jury about  
25 self-efficacy.

1           Q     Okay. Given the factual situation that you  
2     just gave me, if the jury were to conclude that Mr.  
3     Reeves was not hit by the cellphone, would you agree  
4     that the shooting of Mr. Oulson for tossing popcorn at  
5     Mr. Reeves would be disproportional to the threat?

6           A     It would be a hindsight analysis after the  
7     jury weighed in on that. I don't know that I've  
8     always agreed with juries, by the way.

9           Q     Well this is a hypothetical--

10          A     I know.

11          Q     -- where the phone is out. He was not hit  
12     with the phone. He was tossed popcorn in his face and  
13     he shot Mr. Oulson. Is the shooting of Mr. Oulson for  
14     tossing popcorn a proportional response?

15          A     Yeah, let's not mince words. And I'll just  
16     be clear and I'll answer it succinctly.

17          Q     Thank you.

18          A     As I think it should be answered. You can't  
19     shoot somebody for throwing popcorn in your face.  
20     How's that.

21          Q     Okay.

22          A     And, by the way, I would think perhaps even a  
23     caveat to that is I think about police officers that  
24     shoot folks with cellphones. Sometimes that happens  
25     because the officer believes that it's something else.



1 And I don't think that Reeves ever said he doesn't  
2 think he's hit by popcorn. To the alternative he  
3 doesn't even know he's hit by popcorn until he's being  
4 interviewed by law enforcement. He says, I don't know  
5 what happened. I just saw it on the floor after it  
6 was all over.

7 So he doesn't claim to do what -- in the  
8 literature it's called a mistake of fact. That's not  
9 what he's claiming. But to your question I think it  
10 is a hypothetical so it's generalized. It is possible  
11 somebody could be throwing popcorn and somebody on the  
12 receiving would think it's something else and have  
13 justification for thinking that and fire a shot. So I  
14 can imagine a scenario where that could happen.

15 But let me redefine my answer or narrow my  
16 answer. If somebody is throwing popcorn in your face  
17 and you know it's popcorn, you can't shoot them. I  
18 think that's more accurate.

19 Q And if the jury believes the three witnesses  
20 that it was Mr. Reeves that said the words to the  
21 effect, "toss popcorn on me, will you,"  
22 contemporaneous with the shooting, would the shooting  
23 be disproportional to the threat?

24 A Not as I've analyzed it. I mean, the jury's  
25 opinion is not gonna change my analysis.

1           Q     This is a hypothetical. We're not talking  
2     about what the jury, I'm asking you.

3           A     You said if the jury believes. That's how  
4     this question started.

5           Q     I apologize. The hypothetical is that he was  
6     not hit with the phone and he did say the words "throw  
7     popcorn on me, will you," as he fires the shot. Would  
8     the shooting of Mr. Oulson for tossing popcorn be  
9     disproportional to the threat?

10          A     I would say asked and answered. You can't  
11     shoot somebody for throwing popcorn if they know it's  
12     popcorn.

13          Q     Okay. In his statement to you law  
14     enforcement -- I want to turn to the residual  
15     artifacts that we've been talking about that are there  
16     because of the way you explain an individual being in  
17     a stressful situation. Without going through the  
18     statement itself, and let's assume that there are  
19     some, go through with me just like you did with the  
20     self-efficacy. I think that's the quickest way to get  
21     the material in front of me.

22                     What is the significance of any of the  
23     artifacts that you found in Mr. Reeves' statement to  
24     law enforcement in this case; what is the significance  
25     to you?

1           A       So artifacts when I usually look for them--  
2       and let me preface my answer by saying I didn't find a  
3       whole lot of artifacts and I guess I wasn't surprised.  
4       And that's partly I think during the deposition why I  
5       wanted to interview him, because obviously we don't  
6       ask certain-- law enforcement doesn't ask certain  
7       questions to draw those artifacts out.

8                       Here's the problem with Reeves, and I can  
9       see. He knows about all these things. I mean, if he  
10      wanted to fake it, he's aware of tunnel vision. He's  
11      aware of auditory exclusion. He's aware of  
12      vasodilation and vasoconstriction and all the things I  
13      often talk about when I'm dealing with people who are  
14      not, you know, former SWAT team members. I mean,  
15      these are ideas that are openly discussed in law  
16      enforcement. Very few police officers have learned  
17      this at the academy level.

18                      So I was very very cautious when I spoke to  
19      him to not even talk about that because I didn't want  
20      to prompt him to give me self-serving answers. So I  
21      tried to ask roundabout kind of questions. I don't  
22      see a lot of this. As a matter of fact, the only  
23      thing I do see is some memory issues, and I think that  
24      demonstrates that at some level, you know, fragmented  
25      memory also occurs when you're under high arousal.

1 And I think there's no question. I think again it's  
2 reasonable to understand if you're sitting in a movie  
3 theater and you get attacked in the dark, you're gonna  
4 be aroused by that. You're going to have a lot of  
5 anxiety about that. I think normal people will  
6 believe that that's true.

7 So the memory issues can happen, you know, to  
8 anyone who is facing a situation like that. And  
9 that's what I saw in the police reports. But  
10 otherwise he's pretty well composed.

11 I mean, a lot of times when I look at stand  
12 your ground cases the individual, providing they give  
13 a statement to law enforcement, I can just pull  
14 artifacts out of it. They're saying, man, I didn't  
15 see this. I didn't hear this. I mean, just all these  
16 different artifacts. I don't see a tone of that with  
17 Mr. Reeves. So when I went and spoke with him --

18 Are you going to talk with me separately  
19 about my interview with him?

20 Q Yes, sir.

21 A I thought you might. But if you don't mind  
22 me bleeding over to that. The only time with the  
23 issue of artifact that I actually saw something that  
24 perhaps I recognized, is there's two things that I  
25 wrote down. And mind you, I didn't write down very

1 much because he just basically affirmed everything  
2 that I had already read. And I spoke to him for over  
3 two hours. But it was really just stuff that he had  
4 already said to law enforcement. He's unwavering in  
5 his description of things. And, by the way, I think  
6 that's a good thing, for him anyway.

7 But he did mention that-- I said to him that  
8 there was some rumor that Mrs. Oulson had stood up and  
9 tried to hold her husband back. He claims that. And  
10 he had very little memory of where exactly she was or  
11 how she was standing and all that kind of stuff. He  
12 said he remembered when it first happened that she--  
13 before he realized what kind of danger he was in, that  
14 she was already starting to try to hold him back. But  
15 at the moment that he fired the shot he didn't know  
16 where she was. That could suggest some type of tunnel  
17 vision. And I would submit to that that probably did  
18 happen when you're firing a bullet certainly in a  
19 public place of a person.

20 And then the only second thing is I asked  
21 him, I said, was it loud? He said, I don't remember  
22 the shot at all. I don't remember hearing it at all.  
23 And that would indicate of course the auditory  
24 exclusion.

25 On of the two areas really of the artifacts

1     that may be relevant -- I can't tell you whether or  
2     not they're relevant at all, and I don't know that I  
3     need them to describe the fact that he should have  
4     been reasonably anxious about what was about to happen  
5     because it was somewhat unusual that a person would  
6     attack him sitting in a movie theater.

7             Usually when I talk about artifacts it's to  
8     demonstrate I guess what you would call Mens rea,  
9     right, the guilty mind. If somebody is a cold blooded  
10    killer and is trying to sell this as self-defense, a  
11    lot of times that's revealed in the statement to  
12    police because there's no artifacts there. And, you  
13    know, typically when you don't have artifacts it's  
14    because something is calculated, right. I mean,  
15    artifacts happen under anxiety, arousal and fear.

16            So, for example, Ted Bundy probably didn't  
17    show a lot of artifacts because he generally was in  
18    charge of the situation and that's why we think it  
19    happened. If you know how a situation is going to end  
20    your arousal level doesn't get very high because  
21    you're in control of the situation. It's when you  
22    don't know how something is going to end. You don't  
23    know if you're going to be hurt, you don't know if  
24    you're going to be killed, that you tend to reach the  
25    higher level.

1           I would submit to you had Mr. Reeves not  
2       carried a concealed weapon he would have given a very  
3       different interview because I think I would have seen  
4       those artifacts because he would not have had the  
5       coping mechanisms to know how this ended. And he  
6       probably would have hit those high levels of arousal.  
7       But I think being a trained law enforcement officer  
8       with the coping mechanism in his pocket he was capable  
9       of dealing with this with relative poise like you  
10      would expect a police officer.

11           So I don't see a lot of that, to your  
12      question.

13           Q     You talked a little bit about memory  
14      fragmentation and memory distortion. Did you, in your  
15      opinion, find any of those, quote, "artifacts" in the  
16      statement to law enforcement by Mr. Reeves?

17           A     I think a couple of times he says I don't  
18      remember, but nothing really significant. I've worked  
19      cases where there's entire minutes of an event that  
20      are missing. They just simply don't have them in  
21      their head. And, by the way, these are usually  
22      events like this one that you think no one could ever  
23      forget and yet they have no memory of it.

24           Again, I didn't see a whole lot of what we  
25      call critical infantile amnesia occurring with Mr.

1 Reeves. I think that he did not get to that highest  
2 arousal level. I think he was scared but I think that  
3 he always knew that he had an ability to mitigate his  
4 advantage as a result of having that 380 Kel Tec in  
5 his pocket. So I think that he remained somewhat in  
6 control, as he should have under the circumstances.

7 Q What about memory distortion?

8 A I don't recall during the interview if he had  
9 a distorted memory that was obvious to me.

10 Q We're talking about the interview to law  
11 enforcement, not your interview. Just so the record's  
12 clear.

13 A No. In reading the interview with law  
14 enforcement, nothing stood out to me as being a memory  
15 distortion. Let me flip through this real quick and  
16 see if I have anything highlighted.

17 He said something about, you know, this one  
18 section where he says after getting hit before  
19 shooting he fires a shot, and he's surprised he didn't  
20 shoot himself in the left hand. I looked at that  
21 scene over and over. I don't see his left hand up.  
22 Now I don't know if it was up previous to this and he  
23 has a recollection of that or what. But he says his  
24 left hand is out in front of him. I can't see it on  
25 the video. So if that is a factual statement and he



1 in his mind's eye can actually see his left hand out  
2 in front of him, that would be probably memory  
3 distortion, at least within the time sequence in which  
4 he offers it.

5 Q Are you able to discern -- we're back to Mens  
6 rea, okay. Are you able to discern based on that  
7 statement whether or not it's memory distortion or  
8 just a lie?

9 A No, I can't. I actually can never tell that.  
10 I mean, once again, that's obviously in your head. I  
11 think artifacts just help us-- help lead us to the  
12 idea that somebody's afraid. Like I said, in this  
13 case I think it's because it's on video and because we  
14 do know what happened I think a reasonable person  
15 would say, okay, yeah, had that been me I would have  
16 been afraid too. So it's not that important. The  
17 distortions are not that important to me. They're  
18 usually just when you have, for example, one living  
19 witness and that's the guy that's in defense of  
20 himself. I've got to sit here and say, okay, were you  
21 afraid, afraid enough to use deadly force. Because I  
22 don't have any video on it. It's just what he's  
23 saying. And that's when those memory distortions and  
24 perceptual distortions are most salient. Because  
25 then I can say this guy thinks that the really only

1 people in great fear say. And I don't know that I  
2 even give -- I don't even know that I feel comfortable  
3 saying that about Reeves because he's schooled in this  
4 stuff. I mean, if he was going out here going, man, I  
5 had wicked tunnel vision. I didn't hear a thing. I  
6 would think he was just going down a list. He doesn't  
7 do that, by the way. He never offers that.

8 So I was careful in how I approached it  
9 because I didn't want to, for example, get him  
10 recalling the last training manual he read. And he's  
11 read many of them. I think he's even written them.  
12 So I didn't dig too deep there. And he doesn't offer  
13 this to law enforcement, which of course he could have  
14 if he was really trying to pad this to his favor. But  
15 I don't see any of that stuff.

16 Q I believe you covered the topic of threat  
17 assessment when you talked about the self-efficacy, am  
18 I correct in that assumption? I was listening to you  
19 and I believe you started out with that being in the  
20 environment, gathering information and then coping and  
21 how you cope with the information you gathered.

22 That pretty much covered threat assessment or  
23 is there more to it than that?

24 A Well threat assessment really deals with the  
25 part that I didn't spend a lot of time talking about,

1 and that's going to be anticipation, right.

2 Q Okay.

3 A So threat assessment leads us up to forever  
4 trying to know what happens next, and that's what we  
5 call anticipation. So when you're anticipating  
6 something you're anticipating it based on things that  
7 have already happened, and you're trying to find  
8 things that haven't happened yet.

9 So, like I said, that's a predictor of future  
10 behaviors is gonna be past behavior. And the past  
11 behavior that Reeves is observing, and we can also  
12 observe on video, now, you know, in hindsight, is that  
13 Oulson is acting completely unreasonable. He's got  
14 his cellphone on. He's got a guy in the movie theater  
15 who has paid for his ticket who tells him, look, turn  
16 your cellphone off. And in response to that he gets  
17 up, makes a physical challenge and then physically  
18 attacks Mr. Reeves. That's completely unreasonable.  
19 And, by the way, had he not been shot he would have  
20 been arrested I'm sure for battery. So, I mean, he's  
21 committing a crime. He would have probably been  
22 arrested for aggravated battery because of Mr. Reeves'  
23 ago. So we know he's committing a crime. He's in the  
24 process of doing that.

25 And so Reeves has to anticipate is this crime

1 going to be terminal to me. Is he going to cause me  
2 lifelong injury or death. He doesn't know that  
3 because if he did know that it would have already  
4 happened.

5 So the threat assessment is there. It's at  
6 that point of anticipation. What do I think is going  
7 to happen next. That he's relying on what's happening  
8 now or what just happened in the past. And how this  
9 just unfolded in the most bizarre way.

10 So I would add that to the situational  
11 awareness that I described which is where you're  
12 taking information and you are trying to discriminate  
13 the information out to what you should attend to, what  
14 should be attenuated and so on and so on to come up  
15 with an understanding of the environment that you're  
16 in. Now you're working towards what do I think is  
17 gonna happen next and then you come back to what are  
18 my coping mechanisms to deal with that. If your  
19 coping mechanisms can manage what you think is going  
20 to happen next then you say no shoot. If your coping  
21 mechanisms are heated by what's gonna happen next,  
22 then it would move into the area of deadly force  
23 because you are no longer challenged, you are  
24 threatened.

25 So maybe that's a good summary of what I

1 think we talked about with the addition of how  
2 important anticipation is.

3 Q In your opinion, did you find anything in Mr.  
4 Reeves' statements to law enforcement that suggested  
5 to you that his decision making process was adversely  
6 affected by the artifacts of being in a stressful  
7 situation?

8 A No, with the exception of I would -- I think  
9 his decision making had more to do with his  
10 self-efficacy, and that's why I raised that with you  
11 in deposition, more so than trying to say he was  
12 afraid. Because I think that's on the table as a  
13 reasonable person seeing this video would also be  
14 afraid for him. Or not even just seeing the video  
15 because the video doesn't capture it all. But if you  
16 take the things that are probably happening during  
17 those dark frames you would be afraid.

18 So again, those artifacts, those stress  
19 artifacts, I don't think that Mr. Reeves overreacted  
20 to this. And a lot of times when we're trying to  
21 identify why, you know, why something isn't exactly as  
22 the law says it should be is because of the emotional  
23 context of it, right.

24 So, for example, I testify in cases a lot of  
25 times where law enforcement officers shoot at motor

1 vehicles that are coming at them, but then they  
2 continue to shoot as they go by. How do I explain  
3 that. Well I have to get into the emotional component  
4 of it, right. I have to talk about the fact that the  
5 fear doesn't just turn off when the vehicle passes.  
6 So sometimes they get them inside of the car,  
7 sometimes they get them through the back window. And  
8 that does happen in the course of the original  
9 decision that your life is in danger.

10 But that's not this case here. This is a  
11 single shot that was calculated from the perspective  
12 that a reasonable person, a certainly subjectively  
13 reasonable person, according to Mr. Reeves, believed  
14 that his -- that he was in imminent danger of great  
15 bodily harm or death. And the artifacts that would  
16 have otherwise showed up would have been perhaps  
17 important had my analysis concluded that he  
18 overreacted. But under the circumstances, providing  
19 you believe that he got hit in the face and was still  
20 under continuous attack, he did not overreact. I  
21 mean, that would be a justifiable use of deadly force  
22 as I understand it.

23 A jury is going to have to decide ultimately  
24 if that's justifiable. But as I understand it as an  
25 expert offering an opinion, that would be considered a

1       justifiable use of deadly force under the  
2       circumstances that I detailed now I guess at nauseam.

3           Q       Going back to the method that you used, that  
4       you described you used in all cases in analyzing use  
5       of force, which encompass the use of the null  
6       hypothesis to test the reality of certain data that  
7       you're reviewing, how did you go about making the  
8       determination, the ultimate determination that Mr.  
9       Reeves did not overreact and that the shooting was  
10      justified?

11                Tell me your thought process. What did you  
12      go through? What did you look at? How did you use  
13      the null hypothesis to give credence or support to  
14      your conclusions?

15           A       So you start off with Mr. Reeves' statement  
16      and then you say, well none of that happened. That's  
17      how it begins. You start off with the statement. You  
18      look at what he says. You say, well he's just lying  
19      about everything. Then you go back and you take a  
20      look at the video. Then you go back and take a look  
21      at the witness statements. You go back and take a  
22      look at the crime scene information. And as you start  
23      to do that you start to go, oh, he's not lying about  
24      that. That's corroborated.

25                So when you say testing, I suppose it's a

1 test but it's really an observational study, like I  
2 mentioned earlier. It's not an empirical test because  
3 this is a single trial. We can't, you know, suddenly  
4 recreate the event, put another person there and see  
5 what he would do. That's what you would do if you had  
6 a control. You would take a 71 year old person. You  
7 take a 30 year old person. You run the same scenario.  
8 You see if they acted the same. And then my opinion  
9 could be validated or invalidated, that this is how  
10 people with low self-efficacy because of their age and  
11 because of their injuries behaved. But that's not how  
12 this is particularly done in use of force studies  
13 because they're all single trial. Obviously the  
14 outcome isn't something that's capable of being  
15 tested.

16 So it lends itself to an observational study.  
17 I think a good comparison to this when you talk about  
18 the inability to do empirical testing, is I think most  
19 people think that smoking causes cancer but there's no  
20 actual evidence of that. There seems to be a  
21 correlation because people who smoke die of cancer a  
22 lot, but we can't actually test it. We can't hand a  
23 bunch of people cigarettes and say, here, smoke these.  
24 Let's see if you die. So no one's ever done a  
25 controlled study on smoking, yet we believe that



1 smoking causes cancer. I think across the board most  
2 people think that's a reasonable conclusion without an  
3 empirical examination. This is one of those kind of  
4 things.

5 So as I do an observational study I have to  
6 observe what's given to me, and what's been given to  
7 me is the video, which I've looked at many many times.  
8 I can see Mr. Oulson standing there. I can see him  
9 facing Mr. Reeves. I know that Mr. Reeves perceives  
10 that he is being, at least at the moment when the  
11 video opens, challenged. He's being challenged by Mr.  
12 Oulson. This is I guess the second 26 if we go back  
13 to that previous one that I said I don't think the  
14 fight actually started then. It seems to me that he's  
15 arguing with Mr. Oulson, which is consistent with the  
16 story. I can't falsify that. He says they're  
17 arguing. He says the guy says, I'm texting my fucking  
18 daughter, or something like that. It seems to me that  
19 that's probably true based on what we can see on that  
20 second 26.

21 But then it goes blank and it shows back up  
22 and there's Mr. Oulson. He's standing up in front of  
23 Reeves and he's -- I think I can even see, I can't say  
24 this absolutely, his leg in between the seats. There  
25 is some body part that gets retracted at about the arm

1 level of the chair while Mr. Reeves is pressing his  
2 gun forward and firing that shot. It looks like his  
3 leg is propped up between the seats to me. That's  
4 what Reeves says. I can't falsify that. The video  
5 seems to confirm that.

6 So I know that there is now a case of him not  
7 only challenging Mr. Reeves but he's out of his seat  
8 now. Now we go back to everything I told you about  
9 self-efficacy. What do I know about Reeves. I looked  
10 at all that. Oh, he's 71 years old. He says he's  
11 full of arthritis. I have no reason to dispute that.  
12 He says that he doesn't think he can take him. He  
13 says he can't even get out of the chair. Perhaps he's  
14 lying. I mean, you can figure that out. That's  
15 something that you can flush out on the stand. But I  
16 don't need to think he's lying. I'll take him at his  
17 word for it. So there's no way for me to disprove how  
18 he felt about himself.

19 That said, when Oulson is standing there and  
20 he has low self-efficacy, he's no longer being  
21 challenged, he's being threatened. Now we're in a  
22 case of self-defense because he's being threatened. I  
23 think reasonable minds will agree that he's being  
24 threatened and this is a case of self-defense.

25 Now we've got to get to the firearm. Without

1 coming off of self-efficacy, the reasonable belief  
2 that Mr. Reeves, as he says he's afraid, and  
3 reasonable minds would agree he probably should be  
4 under the circumstances, what can he do about it.  
5 Well, with self-efficacy, under thinks this entire  
6 conversation. He can't fight him. He doesn't think  
7 he can take him. He doesn't need a lesson to know it.  
8 I mean, no one would do that. But he does have a  
9 firearm in his pocket. That's a fact. We have it.  
10 It's, you know, in evidence.

11 So he decides to Take the First, which is one  
12 of the articles that I sent you. He goes to really a  
13 heuristic analysis of the situation in that compressed  
14 timeframe and thinks, what can I do now. And the only  
15 reasonable response to a threat that in the next  
16 moment may result in permanent harm or death to Mr.  
17 Reeves, is the firearm. That's why he has a concealed  
18 carry permit, if not for this case what case scenario  
19 does he carry the concealed weapon for. So he decides  
20 to pull the weapon. I mean, that's a -- it matches  
21 what he said, and at the timeframe that he says it.  
22 He doesn't get up and start shooting Mr. Oulson  
23 because Oulson tells him to fuck off, which he says  
24 happens earlier in the conversation. He does it when  
25 he's under attack.

1           So if I'm falsifying his statement what's  
2           happening is the null hypothesis is slowly being  
3           eliminated and I have to start accepting the  
4           alternative hypothesis which is that Mr. Reeves is  
5           telling the truth.

6           So that was my thought process as I went  
7           through this, to your question.

8           Q     Did you read the transcript of Mr. Reeves'  
9           direct testimony in the immunity hearing?

10          A     Yes.

11          Q     Is there anything in that immunity hearing  
12          transcript that is so significantly different than  
13          what he told law enforcement that your explanation,  
14          like the one that you just gave me, and the  
15          self-efficacy and the artifacts, if you will, is gonna  
16          be any different?

17                 Do we need to go through the transcript or is  
18          it basically the same? I can go through the  
19          transcript if you want.

20          A     If you want to go through and ask me  
21          questions about it I'll be happy to comment on it.  
22          But I don't think that -- like I said, he's somewhat  
23          unwavering. There may be, you know, some variable,  
24          but I don't think anyone ever tells a story the same  
25          way twice, exactly the same way twice. But if you

1       were to look at the pillars of the foundation of the  
2       story, I don't think that changes at all while he's on  
3       the stand. I don't know how many pages I read about  
4       his background and what he did. It seemed like a lot  
5       of it was about that.

6           Q       Yeah, it's a lot.

7           A       Yeah. But, you know, when he describes the  
8       story it is remarkably the same as he tells law  
9       enforcement after it happened, which, by the way, is  
10      also a bit surprising because when you have artifacts  
11      like that you have fragmented memory. These initial  
12      reports to law enforcement officers often don't recall  
13      the detail that you will later see in court. But I  
14      think it was remarkably unwavering from what he  
15      originally said, and when I spoke to him as well.  
16      He's sure on his story.

17          Q       You mentioned that you had an interview with  
18      Mr. Reeves and it lasted for two hours.

19          A       Right.

20          Q       Was that interview tape recorded?

21          A       No.

22          Q       Was it video taped?

23          A       No.

24          Q       Did you take notes?

25          A       I did.

1           Q     In order to recall specific statements by Mr.  
2 Reeves are you going to need to refer to those notes?

3           A     I don't think so. It really turned into like  
4 more of an affirmation interview as I spoke to about  
5 earlier. It really just sort of confirmed things I  
6 already knew. I tried to say things to him that might  
7 compel him to give me some information of the  
8 artifacts I knew that you were interested in and I  
9 knew you were going to ask me about it. But I didn't  
10 want to be blatant and come right out and say, hey,  
11 did you experience tunnel vision. Because I think any  
12 statement with his background would be self-serving  
13 and I think rightly so. He is educated in this area.

14                So I really just went back through what  
15 happened. I matched it to the story as I understood  
16 it that was given both in the immunity hearing as well  
17 as his statement to law enforcement officers. There  
18 are still some things I think that he said that he was  
19 unclear about. There were things that he was clear  
20 about. You know, he didn't exactly know what hit him  
21 in the head still. He said I think it was the phone.  
22 He said, I'm not sure if he threw it at me or punched  
23 me and dropped it in the course of being punched  
24 because I don't know. But I remember seeing the blue  
25 of the screen. He goes, but I'm not really sure. But

1 I just know that when it was over I looked down and  
2 there's a cellphone at me feet, and I thought maybe it  
3 was even mine. He said, but, you know, I understand  
4 now that it makes sense with what I recall at that  
5 moment when I was hit.

6 So he hasn't grasped the hindsight  
7 information and said, oh, I was hit by a cellphone.  
8 It's at me feet. He didn't do any of that. So he's  
9 really just telling me I think, as much as I could  
10 tell, how he thought about things at that moment. And  
11 so I don't have a whole lot of notes on it because  
12 most of it is contained in the statements that I read.

13 Q Let me break it down just a little bit.  
14 We're gonna talk about different segments.

15 A Okay.

16 Q And you might want to just go ahead and put  
17 your visualization skills to use about the video  
18 because that's what I'm doing.

19 As he walks into the theater with his wife  
20 and sits down, at that point did you have a discussion  
21 with him about his observations of Mr. And Mrs.  
22 Oulson, what he saw them doing? Did you talk about  
23 that?

24 A I don't believe so. No, not specifically  
25 about what Mr. And Mrs. Oulson were doing when he

1 walked in. I think our conversation really started  
2 when he attended to what Mr. Oulson was doing, which  
3 was of course being on his cellphone and annoying. He  
4 said he held the phone in his left hand. He said the  
5 light was, you know, basically coming right into his  
6 face. And that's I think where our conversation kind  
7 of started. I didn't really see the relevancy of  
8 asking him about--

9 Q Okay, well I had to start somewhere so let's  
10 start there.

11 A Yeah.

12 MR. MARTIN: I'm sorry. Mr. Michaels?

13 A Did he drop off?

14 MR. MARTIN: I don't know.

15 MR. MICHAELS: No, I'm here.

16 MR. MARTIN: Oh. I thought I heard you. I'm  
17 sorry.

18 MR. MICHAELS: I didn't say anything. I had  
19 my mic muted so you wouldn't hear background noises.

20 Q (By Mr. Martin). Okay. Did you discuss with  
21 Mr. Reeves the first time that he observed something,  
22 some activity on Mr. Oulson that he felt was  
23 inappropriate in the movie theater; did you discuss  
24 that with him?

25 A Yes.



1 Q What did he tell you?

2 A What I just told you. He said he was  
3 watching the previews. And he said the person in  
4 front of him to his right was on the phone. He said  
5 it was a bright screen. It was held in his left hand.  
6 He remembered that. And it called attention to Mr.  
7 Oulson, as I understand it, for the first time where  
8 he actually attended to Oulson.

9 Q How did he respond to that activity of Mr.  
10 Oulson; what did he say?

11 A He said that he asked him to put his phone  
12 away because it was bothering him. He said it was  
13 actually shown in his eyes. And he said he was met  
14 with an abrupt-- he said he didn't remember exactly  
15 what he said because he thought it was along the lines  
16 of go fuck yourself, or fuck you or something like  
17 that.

18 And I guess I'll stop there and let you ask  
19 the next question.

20 Q Did you ask Mr. Reeves how many times he made  
21 contact with Mr. Oulson regarding his use of the phone  
22 before he left the theater to complain to the manager?

23 A He didn't volunteer making contact with him  
24 more than once. I think he said after he got that  
25 curt response he felt it was best to get a manager.

1 And that was the whole purpose of getting the manager  
2 because he felt that there was no point in revisiting  
3 his conversation with essentially an unreasonable  
4 individual.

5 Q Did you have a discussion with Mr. Reeves as  
6 to why he went to the manager to complain; what was  
7 the purpose?

8 A You know, we did talk about that. And it had  
9 a lot to do with his I guess Busch Gardens experience.  
10 He brought this up. He said that, you know, I'm well  
11 trained in customer service and I'm trained at  
12 defusing a problem. And I know that at Busch Gardens,  
13 you know, if we have a problem people will typically  
14 come to me and ask me to resolve it, if it's a  
15 problem. He says, we train our folks to have an up  
16 line. And he said, you know, being a chain of command  
17 guy that's just kind of how he thinks. And he said  
18 that his natural reaction, as a natural now, meaning  
19 that he's been doing this a long time as a police  
20 officer and now as a customer service person whose job  
21 it is at some point to not upset people, he thought  
22 the right thing to do was to get up and talk to the  
23 manager. And so that's what he did. Or at least  
24 that's what he told me he did. And that's why he said  
25 he did it, because he felt like that was the proper

1        thing to do.

2            Q        Did you have a discussion with Mr. Reeves  
3        about his observations when he was returning to his  
4        seat from complaining to the manager as he was walking  
5        down the isle to his seat?

6            A        Yes.

7            Q        What did he say?

8            A        He said when he came back he noticed that Mr.  
9        Oulson had his phone off. And he said to him  
10       something to the effect of, I see your cellphone is  
11       off. I'm sorry I had to involve the manager. I asked  
12       him if he said that in a snarky way, meaning if he did  
13       it almost like an agitated sort of way. He said, I  
14       don't know how he took it but that's not what I said.  
15       I was being a bit apologetic for involving the  
16       manager for something that resolved itself at the time  
17       I was gone.

18           Q        Did you ask him why he made that statement to  
19       Mr. Oulson?

20           A        I did.

21           Q        What did he say?

22           A        That was the whole snarky conversation. He  
23       said that he felt that it probably was more of a  
24       customer service training that he had. That he wanted  
25       to, you know, basically resolve any bad feelings with

1 the guy in front of him who was sitting there with his  
2 phone on. And clearly he went up and told the  
3 manager. He said, I wanted to apologize and let him  
4 know that everything is fine now. And so that's kind  
5 of how he described it to me.

6 Q Did you discuss with Mr. Reeves his  
7 observations of Mr. Oulson after he returned to his  
8 seat, sat down and placed the popcorn on his left  
9 thigh? Did you ask him what observations he made of  
10 Mr. Oulson at that point in time?

11 A Yes.

12 Q What did he say?

13 A He said this is the point where Oulson turned  
14 to him and said something to the effect of, I was  
15 texting my fucking daughter. And I said, did you  
16 respond to that? And he said to me, I don't really  
17 remember if I did or not. He said, but he made it  
18 very clear. And then he said almost immediately after  
19 that he stood up. He said, when he stood up, and I  
20 wrote this down, I thought he was leaving the theater.  
21 We thought he was standing up to leave the theater.  
22 He said, then he turned around. And he said, and then  
23 suddenly without warning he was in my face.

24 So that timeframe was very compressed from  
25 the time that Oulson reinitiated a verbal contact with

1 him and the time that he actually stood on his feet  
2 and turned around and was suddenly, in the words of  
3 Mr. Reeves, in my face.

4 Q Did you ask Mr. Reeves what he meant by he  
5 was in his face?

6 A That he was being challenged. Yeah. That  
7 this was now a situation in which he was being  
8 challenged by the guy in front of him.

9 Q Did Mr. Reeves tell you that Mr. Oulson said  
10 to him, get out of my face?

11 A I'm sorry, say that question again.

12 Q Did Mr. Reeves tell you that Mr. Oulson said  
13 to him, get out of my face?

14 A I don't think he said that. I think I read  
15 that. But I don't think he said that to me in my  
16 interview.

17 Q After --

18 A And I think what I read, Mr. Martin, is that  
19 somebody said that. And it would strike me as odd  
20 that if Mr. Oulson had made the effort to get out of  
21 his seat, turn around and challenge Mr. Reeves, that  
22 he would be the one saying get out of my face. That  
23 just seems counterintuitive to me. Perhaps he said  
24 it. I don't know. But I do remember reading somebody  
25 hearing that that was said.

1 Q Hang on a second.

2 A Mr. Martin?

3 Q Yes.

4 A Let me add something here. I'm looking at  
5 the bottom page of my note. I don't know if we  
6 circled back around to that. But I wrote down here,  
7 doesn't recall what he said but said something. He  
8 thinks it might be, get the fuck out of my face. So  
9 that's not in the sequence as I wrote my notes. But  
10 it looks like he-- I might have come back to that  
11 question later on. So I do have a note on that. He  
12 said that he hears him say something that he thinks  
13 might be, get the fuck out of my face, or something  
14 like that.

15 Q Well that's what he tells law enforcement on  
16 page 84 line -- well I don't know what line it is. On  
17 page 84.

18 A Well he told me that again. And I may have  
19 asked him about that as I went through-- because I  
20 actually had his statement, or I was looking at it and  
21 sort of talking to him about it and examining his  
22 responses. Like I said, it was remarkably similar.  
23 But somehow this ends up at the last -- my last note  
24 actually in the notes that I took, and I don't have  
25 many of them. So he does say that.

1 Q Okay. Did he tell you when Mr. Oulson said  
2 that?

3 A I didn't write it down unfortunately. But he  
4 does remember saying that. And I think it, like I  
5 said, it seemed counterintuitive to me that had this  
6 happen when Oulson got out of his chair and stood up  
7 and turned around that he would have said that. And  
8 that may have been why I questioned him about it.

9 Q And did you question him about it?

10 A I did, because I made a note of it.

11 Q And what did he say?

12 A I read it to you. He said he doesn't recall  
13 what he said, but he said something. He thinks it  
14 might be, get -- in quotes, "get the fuck out of my  
15 face."

16 Q And when did Mr. Reeves say that Mr. Oulson  
17 made that statement?

18 A I believe this is when he was telling him  
19 that he was just texting his daughter. That he had  
20 kind of like turned around and said -- I wrote that  
21 down. He says-- he said, who the fuck do you think  
22 you are? In quotes, "I was texting my daughter." And  
23 I think it happened during that same time. Get the  
24 fuck out of my face. That kind of thing.

25 Q Once Mr. Reeves told you that Mr. Oulson was

1 standing, did you ask Mr. Reeves what his next  
2 observations of the behavior of Mr. Oulson was?

3 A He said to me he threw the phone at me. And  
4 I remember this conversation. He elaborated by saying  
5 he wasn't sure if the phone was in his hand and he got  
6 hit with a fist. He said, suddenly my face turned to  
7 the right. My face got knocked kind of to the right.  
8 He said, my glasses went cockeyed and I remember  
9 seeing a flash of the phone. I don't know exactly  
10 what he hit me with, if it was his fist holding the  
11 phone or if he actually threw it at me. He said, but  
12 I remember it hit me. It hurt me. It turned my face  
13 to the right. And then suddenly my vision was  
14 obscured because my glasses were cockeyed. And that  
15 was the next thing he recalled. Well, I shouldn't say  
16 that. He actually said that he was coming over the  
17 seat, or coming -- so there's obviously space between  
18 the seats. He sees him kind of prop up and he  
19 declares that he's coming over the seat. He said he's  
20 got a leg in there. He's kind of coming through the  
21 side of the seat and over the top of the seat. That's  
22 what he says. And then he says he gets hit in the  
23 face.

24 Q With the cellphone?

25 A That's what he said, yes. He said-- I wrote



1 down, he threw the phone at me. But then he went on  
2 to elaborate that he wasn't sure if it was thrown or  
3 if it was in his hand when he got punched. He still  
4 doesn't know. That's what I'm saying. He's still  
5 kind of unclear on what hit him and how it hit him  
6 even. I think he knows it's a cellphone that hit him,  
7 he just doesn't know how it hit him, if it was  
8 launched or if it was actually held in his hand.

9 Q Did you ask Mr. Reeves how long after he  
10 believes he was hit with the cellphone that the  
11 popcorn was tossed in his face?

12 A Yeah, I did ask him about that. And I said,  
13 you know, I've read some things and I've read some  
14 depositions of people in this case who think that  
15 maybe you got hit in the face because of the  
16 mysterious luminous object 10 seconds earlier. Is  
17 that the case? He goes, I don't really know. He  
18 says, it happened very very quickly. I don't have a  
19 full understanding of the timeframe. But he said, I  
20 got hit in the face. He says, my glasses went  
21 sideways. The next thing I know he's still coming at  
22 me. I'm pressed back in the seat. So it sounded like  
23 it was very close to when the popcorn was thrown,  
24 which is why I concluded based on Reeves' statement,  
25 that it probably happened during that timeframe that

1 we can't see, during those black frames. And  
2 concluded that that 10 seconds earlier where we have a  
3 very brief picture of Oulson turned in his chair,  
4 Reeves kind of leaning forward, that that's probably  
5 not where it occurs.

6 And the reason I said that, and I'll say it  
7 again, is because when Reeves sits back from that he  
8 does not gravitate, he doesn't try to adjust his  
9 glasses, which one would expect if he just got hit in  
10 the face with a cellphone.

11 I'm sorry?

12 Q I'm thinking. I thought you were moving on  
13 because you were saying it didn't happen here so it  
14 happened here. And I was waiting for you to finish  
15 your answer.

16 A I don't think anyone could say actually where  
17 it happened, but I think we are more able to say where  
18 it probably didn't happen, and that is at second 26.  
19 Because, like I said, there's no -- there's no --  
20 there's nothing that you would expect in Reeves'  
21 behavior to show that he's been struck at that moment.  
22 He just sits back in the chair. I think he actually  
23 grabbed the popcorn and sets it on his thigh. I mean,  
24 he doesn't-- he looks like he's exchanging words  
25 perhaps. And I do remember that Reeves said to me he

1 was trying to be quiet to not disturb everyone in the  
2 theater. That's probably why he leans forward towards  
3 Oulson and says something. I said, what did you say  
4 to him. He said, I don't remember. He said, if I  
5 said anything at all I don't know. He may have been  
6 leaning forward to listen to him. He doesn't recall  
7 exactly what happened at that moment.

8 But he seems to think that he gets struck in  
9 the face, either punched or hit by a cellphone,  
10 moments before Oulson then reaches across, grabbed his  
11 popcorn and hits him now for a second time. And he  
12 says what he remembers is him coming at him. And as I  
13 told you previously he's been very clear about this.  
14 He said this to law enforcement and he repeated it to  
15 me. He goes, I didn't know he grabbed my popcorn. He  
16 says, when it was all over and I sat back, I looked  
17 down and my popcorn was scattered. And I still don't  
18 know-- I still don't have a memory, I'm sorry, of that  
19 happening. I originally thought maybe he knocked it  
20 out of my hand or perhaps I dropped it. He says, I  
21 now know that he grabbed it and threw it. He says, at  
22 that time I didn't know that at all.

23 So what he does recall is the board lumbering  
24 of Oulson probably when he's grabbing his popcorn, but  
25 he perceived it as a direct attack on him. As the

1 distance is closing he does not have a full sight  
2 picture but he knows that he is still being assailed.  
3 That's how he explained it to me.

4 Q Did you ask Mr. Reeves whether or not he made  
5 the statement, words to the effect, throw popcorn on  
6 me, will you?

7 A Yes, I did. And I told you what he told me.  
8 He said, no, I heard that also. Somebody said that,  
9 he said, in the theater. I said, why would they say  
10 that? He goes, I really don't know. He says, but I  
11 heard it. So I'm speculating here. But I could see  
12 somebody in a moment of levity after what just  
13 happened saying something, I'll teach you to throw  
14 popcorn on me. Something like that. I mean, that's  
15 my kind of sense of humor. That's the kind of stuff I  
16 would say. So if somebody else said it then somebody  
17 else said it. If Reeves said it, Reeves said it. I  
18 don't know. But he says, I didn't say it but I did  
19 hear it. So I know somebody in the theater said that.

20 Q Did you ask Mr. Reeves what it was about the  
21 behavior of Mr. Oulson that he felt it was necessary  
22 to respond with deadly force?

23 A Yes.

24 Q What did he say?

25 A He said kind of what I have summarized for

1       you, which is that he thought that Oulson's behavior  
2       was bizarre and unpredictable. He said he'd never  
3       faced anything like that before, somebody that had  
4       been so, I think he used the word again, in his face.  
5       He said he-- he repeated the word I was scared  
6       shitless. He said that he believed that, especially  
7       when he was trying to make his assessment, when he was  
8       trying to analyze what was actually happening, that it  
9       happened very rapidly, and that he felt as if he had  
10      been already hit once and he was about to be hit  
11      again, and didn't know when the beating would stop and  
12      he needed to put an end to it.

13                So he felt that he was in imminent danger of  
14      serious bodily harm or worse. And he didn't say  
15      necessarily that he felt like he was gonna die. And I  
16      don't think I asked him that. I don't think that  
17      anyone could answer that question with any degree of  
18      certainty, even Reeves. But he said that he knew that  
19      he was not going to prevail in a fist to cuffs with  
20      this guy. And he felt like he was going to be  
21      seriously injured or worse, is kind of what he told  
22      me. So I took that to mean that perhaps even killed.

23           Q       Did you have a discussion with Mr. Reeves as  
24      to when he made the decision to begin the process of  
25      drawing his firearm from his pants pocket?

1           A       I did. And he said to me that it was a  
2 bit -- it was a little bit about his positioning as  
3 much as it was about his analysis of what was actually  
4 happening to him. He was thinking to himself he had  
5 no where to go. He mentioned to me he had the wall  
6 behind him. And I think we even had a moment of  
7 discussion about, you know how cops do that. You  
8 know, we sit with our back to the wall. We try to  
9 observe, blah, blah, blah. He goes, it put me in an  
10 unattainable predicament. I couldn't really go  
11 anywhere. I was completely stretched out, I think is  
12 the word he used. He said, and if you were to see the  
13 pants that I wear, he said, I had my little Kel Tec in  
14 my pocket, he said, and it's pretty tight in there. I  
15 wouldn't have been able to get it when I was sitting  
16 down, he said. But because I was stretched out, he  
17 said, I actually could get my hand in my pocket and  
18 get it out. So that was occurring to him based on the  
19 position that he took, he told me, of the consequence  
20 of the ongoing attack by Oulson. That he just pushed  
21 far away to the left. Kind of a little bit drawn away  
22 from his wife and at the same time to not get hit  
23 again. And he said, that is the moment where I  
24 realized I could get my hand in my pocket. So that's  
25 when he started to formulate what his response would

1 be. And he said, he told me when he did put his hand  
2 in his pocket it went right into the weapon and came  
3 right out. So it wasn't a matter of pause or him, I  
4 don't know, putting it in his seat. I asked him about  
5 that. Did you have it out? Did you have it on your  
6 leg? Did you think that you might end up in this  
7 situation? No, no, no. I reached in my pocket as I  
8 was being attacked, drew the weapon, and then when I  
9 had the weapon in my hand I started to sit back up and  
10 I fired the shot. That's what he told me.

11 Q I got the impression from your statement that  
12 Mr. Reeves told you that he made the decision to draw  
13 his firearm after the popcorn was tossed, the second  
14 attack; is that a correct assumption? Do I have it  
15 right?

16 A No, I don't think that's right. I think that  
17 he -- as the popcorn is being tossed --

18 Q Wait a minute. I appreciate what you're  
19 saying and I'll get to that in a minute. I want to  
20 know what Mr. Reeves said.

21 A I did not get the same impression you did  
22 from what I just said. I mean, when he told me that I  
23 just relayed it to you. You formed the impression.  
24 My impression was formed differently. My impression  
25 is when he first got hit, or as he was being hit,

1        somewhere in that neighborhood, the first attack--  
2        we'll call it the first attack, assuming there was two  
3        attacks.

4                The first attack is when he gets pressed back  
5        in the seat. At that point he can still see the  
6        figure, can't make out detail, his glasses are  
7        sideways, you got -- I think he even mentioned that  
8        Oulson was backlit. He does not have a clear picture  
9        of what's happening, he just knows that this figure is  
10       still coming at him. So this is before the popcorn.

11               He reaches his hand into his pocket because  
12       he knows that he's got to get Oulson off of him, and  
13       that's the time this happens. And then the popcorn I  
14       think is grabbed, and about exactly the same moment as  
15       the weapons comes out and is introduced. And I think  
16       the video picks up from there. We can see that. So  
17       we can see as the popcorn is tossed in the same  
18       timing, in the millisecond that it takes for Mr.  
19       Reeves to retract his arm, the weapon follows the arm.  
20       It's coming out and then he fires the shot. So it's  
21       happening almost simultaneously to the popcorn being  
22       thrown.

23               But it appears to me, and I think this is the  
24       only way you can figure it -- do you want me to  
25       comment on what I think as an opinion or--



1           Q     No, because I want to followup. Is what you  
2     just said what Mr. Reeves told you, or your conclusion  
3     is based on what he said?

4           A     Well I suppose it takes a little of both. I  
5     mean, I'm interpreting what he's telling me. But  
6     that's what he said to me. He said that when he was  
7     splayed out, when he got hit in the face and he pushed  
8     back -- no, I'm sorry. Let me go back. As Mr. Oulson  
9     was coming over the seat he splayed out. He got hit  
10    in the face. That's the time where he's got the  
11    ability to get the firearm. And he tells me that's  
12    where he sticks his hand in his pocket and is able to  
13    get it. And then goes on about, he breaks there and  
14    says, you should see his pants. If I was sitting up  
15    straight there's no way I could have got the gun out.  
16    It was pushed down in a deep cargo pocket, or however  
17    he explained it, and I couldn't have got it. But  
18    because of the position he had forced me into I was  
19    able to get the weapon out. So that's what he tells  
20    me.

21          Q     Did Mr. Reeves make any other statements to  
22    you or did you discuss any other aspects of the  
23    shooting with him that we haven't already covered?

24          A     We talked about post shooting, what he did.  
25    He mentioned that after it was over he didn't want

1       anybody in the theater to be afraid that he was a  
2       homicidal maniac, so he said that I put the weapon on  
3       my thigh. And he said, by the way, when I put it on  
4       my thigh it was in full battery. He said, then the  
5       Sumpter County deputy walked over and grabbed it, he  
6       said. And I'm sure he stove piped it, is what he  
7       said.

8           Q       Well, wait a minute.

9           A       That's what he told me. He says-- I wrote  
10       down, it was in full battery when he set it on his  
11       leg.

12          Q       Okay. You and I are gonna have this  
13       discussion. You know that the shot was fired, right?

14          A       Yup.

15          Q       And you know that there was one casing found  
16       on the floor, correct?

17          A       Yes.

18          Q       And it's a semiautomatic pistol, correct?

19          A       Yes.

20          Q       Okay. And then you know as a firearm  
21       instructor, how does a semiautomatic pistol become in  
22       a phase 2 malfunction, which is a stovepipe; how does  
23       that occur?

24          A       The casing doesn't properly eject.

25          Q       Correct. Now, do you really think that

1       happened, that Corporal Hamilton racked that firearm  
2       and stove piped it, do you believe that?

3           A       I don't believe there was an empty casing  
4       there --

5           Q       There was an empty casing on the floor.

6           A       No, I'm talking about the conventional  
7       stovepipe where you have an empty casing trapped  
8       inside the mechanism of the weapon. But it was -- I  
9       don't know if it double bent. But I think the battery  
10      of it was out of battery. I think I even saw I think  
11      a picture of it. So it's not a true stovepipe. But  
12      it's jammed. He thinks -- he tells me -- here's what  
13      he said. I wrote it down. The Sumpter County deputy  
14      stove piped the weapon when unloading it. He said it  
15      was in full battery when he set it on his leg. That's  
16      what he said. So he felt confident that when he set  
17      it down it was still very serviceable. And of course  
18      how would he know. He didn't inspect the weapon after  
19      the shooting. But he believes that the problem with  
20      the weapon that was identified during evidence  
21      collection was not of his doing. It was not because  
22      of a malfunction of the weapon. It was because the  
23      Sumpter County deputy did not properly clear the  
24      weapon. That's what he told me.

25          Q       All right.

1           A     He used the word stovepipe. But you are  
2     correct, that stove piping involves an empty casing.  
3     But double feeding, for example, does not. You may  
4     end up with the battery that's pushed back because you  
5     got two rounds trying to get into the chamber. That's  
6     more likely what happens. But he used the word  
7     stovepipe because I wrote it down.

8           Q     Anything else that he said that we haven't  
9     covered?

10          A     Let's see.

11          Q     I mean, about his statement to you. We're at  
12     the post incident.

13          A     No, I think that's it.

14          Q     Did you ask him about any statements he made  
15     to his wife or any statements the wife made to him  
16     after the incident?

17          A     No. I mean, a lot of that I found in the  
18     reporting. I have Ms. Reeves saying what she said;  
19     what he said.

20          Q     Anything that Mrs. Reeves said about the  
21     incident, does that play into any opinions or  
22     conclusions that you've made?

23          A     Yes, one thing, and I think I put it on the  
24     list. She is one of the people who said he turned to  
25     her and said he hit me in the face. So this is his

1 very first initial reaction. After the shot is fired  
2 he turns to his wife and said he hit me in the face.  
3 So I felt that was interesting because of the timing  
4 of it. He hadn't been sitting down and conjuring a  
5 plan on how to cover his faulty shooting. He very  
6 quickly turns to her and says he hit me in the face.  
7 And she recounts that. I think that's important.

8 Q And do you know whether or not being hit in  
9 the face, was he saying I was hit in the face with a  
10 cellphone or I was hit in the face with popcorn?

11 A I think she recounts that he tells her I was  
12 hit in the face. He doesn't say by any particular  
13 thing. I don't think at that time -- in his statement  
14 he says I don't know what I was hit in the face by.  
15 He says that. But he believes it's a cellphone  
16 because he sees sort of this blur of a bright screen  
17 for a minute as he's getting struck.

18 Q But the statement by Mrs. Reeves in and of  
19 itself neither confirms or invalidates whether or not  
20 Mr. Reeves was hit with a cellphone, does it?

21 A No. I mean, he said I was hit in the face.

22 Q Any other statements post Miranda (sic) or  
23 any other discussions you had with Mr. Reeves?

24 A What do you mean post Miranda?

25 Q Did I say post Miranda? I meant to say post

1 incident. I apologize. Thank you for correcting me  
2 on that.

3 A Okay. I mean, we talked. Most of it turned  
4 to more of a casual conversation just learning more  
5 about him and even him learning a little bit about me,  
6 what I did and that kind of stuff.

7 But in relationship to this event, I think  
8 when I finally got through this and finished taking  
9 notes, we kind of stopped at the post shooting what  
10 did you do then. And then he went with the Sumpter  
11 deputy and blah, blah, blah.

12 And I did ask him -- I did ask him, I said,  
13 why did you give a statement? And he said -- I wrote  
14 this in quotes. "I gave them a statement because I  
15 confident of self-defense." That's what he said. So  
16 somewhere towards the end of this conversation he  
17 tells me that he gives a statement to police because  
18 he's confident that it's self-defense. And I think  
19 even during his interview that I listened to he says,  
20 if you guys start scaring the shit out of me I'm gonna  
21 have to get an attorney. That's what he says.

22 So I think, once again, that kind of confirms  
23 the fact that he believes that he's telling a cohesive  
24 story of what happened and he's telling it because he  
25 is confident it's self-defense.

1           And a guy like him, by the way, I would  
2 reasonably anticipate he knows the rules of engagement  
3 and would be able to draw that kind of conclusion  
4 about what just happened. So that was just sort of my  
5 analysis of it. So he was confident that it was self-  
6 defense. And he tells that to law enforcement.

7           Q     Based on your interview with Mr. Reeves, do  
8 you believe that Mr. Reeves actually believed that he  
9 was in imminent danger of death or great bodily harm  
10 necessitating the use to use deadly force?

11          A     Yes.

12          Q     And do you believe after interviewing Mr.  
13 Reeves regarding the danger as he perceived it, that  
14 he actually believed that the danger was so real that  
15 under the circumstances the only way he could avoid  
16 the danger was through the use of deadly force?

17          A     Well he told me that. And I have no reason  
18 to dispute what he told me. I think he does believe  
19 that. And I have a whole list of reasons why it would  
20 be reasonable to believe that but those are of course  
21 my opinions, not what he said.

22          Q     Well I'm asking you, once that you spoke with  
23 him do you believe that he actually believes that?

24          A     Right, and that would be an opinion of mine.  
25 And my opinion is he actually believes that.

1           Q     And based on your interview of Mr. Reeves do  
2     you believe that Mr. Reeves actually believes it was  
3     necessary to use deadly force and/or to prevent what  
4     he perceived to be as an imminent threat of death or  
5     great bodily harm?

6           A     I think you just asked me that question in a  
7     different way.

8           Q     I did.

9           A     Yeah, I believe that Mr. Reeves believes that  
10    the moment he fired the shot he was in imminent danger  
11    of death or great bodily harm.

12          Q     And based on your analysis of this particular  
13    case, do you have an opinion as to whether or not Mr.  
14    Reeves was justified in the use of deadly force as you  
15    know the facts to be?

16          A     My opinion was that the use of deadly force  
17    by Mr. Reeves was justified based on the facts as I  
18    understand them.

19          Q     All right. And would you just go ahead and  
20    bullet out for me those facts.

21          A     In the last four hours I've been doing that  
22    but I'll try to summarize.

23          Q     Just bullet fashion, A, B, C, D this is what  
24    they are. Not a long narrative. Just short and  
25    sweet.



1           A       Okay. Mr. Oulson, his behavior was  
2 unreasonable and not predictable.

3                   Mr. Reeves, when faced with the challenge of  
4 Mr. Oulson had a very low self-efficacy about his  
5 ability to deal with him if it escalated. He provided  
6 reasons why he had low self efficacy. I guess that  
7 would be part two.

8                   When Mr. Oulson stood up, part three, it  
9 moved from a challenge where he knew he was in  
10 conflict with somebody to an actual threat, in  
11 particular, when Oulson encroached upon his space  
12 where he, according to Reeves, was coming over the  
13 seat.

14                   Mr. Reeves, part four, felt as if he was  
15 limited in his options. He wasn't able to run away.  
16 He had a wall behind him. He wasn't even able to get  
17 out of seat at that point. He wasn't equipped with a  
18 utility belt to deal with him. He couldn't have  
19 pepper sprayed. He didn't have any of that kind of  
20 stuff. And he knew that his hands would be  
21 ineffective in dealing with this threat. That would  
22 be number four.

23                   Number five. He then gets hit in the head  
24 with something, and it further diminishes his ability  
25 to be able to properly appraise the situation because

1 he can't see. And most of the information we get is  
2 visual. But he is able to tell that Mr. Oulson is  
3 still there and still advancing on him. That's number  
4 five.

5 Number six. He feels as if, because he's  
6 advancing on him and because he is unpredictable, that  
7 he's anticipating he doesn't know where this is going  
8 to end but it may very well end in him suffering great  
9 bodily harm or death and he wants to avoid that.

10 Number seven. The coping mechanism that he  
11 is equipped with is a 380 Kel Tec that's in his right  
12 pocket. Due to his fading away from Mr. Oulson's  
13 direct attack he finds himself in the position that he  
14 can get that weapon out where he couldn't have done it  
15 had he been sitting straight up. And so he reaches  
16 his hand into his pocket to take out a weapon that can  
17 mitigate the threat that's being posed by a younger,  
18 angry, unpredictable man. Was that number seven?

19 Q Yes.

20 A After he takes the weapon out, or as he's  
21 pulling the weapon out Mr. Oulson again launches a  
22 hand towards him. We know by watching the video that  
23 he went to grab his popcorn. Reeves doesn't know what  
24 he's doing, he just knows that he's being attacked.  
25 There's a forward movement of a hand coming at him.

1 He responds by deciding to use deadly force to stop  
2 this attack from continuing.

3 The video picks up with him being hit with  
4 popcorn. Reeves claims, I don't even know that he's  
5 grabbed my popcorn, I just know that he has attacked  
6 me again and so I decided to fire a shot. And I fire  
7 one shot. And that stopped the problem. He doesn't  
8 fire another shot.

9 And that's the summary of why this would be  
10 justifiable. Because I think, and again, this is an  
11 ultimate opinion of the jury, that Mr. Reeves had a  
12 reason to believe, a demonstrable reason to believe  
13 that he wasn't equipped to deal with the threat that  
14 was being offered by Mr. Oulson. It was unreasonable.  
15 It was unpredictable. It was ongoing. It was  
16 physical. And he needed to put a stop to it. And  
17 that meant that the only mechanism that he had under  
18 his control to do that was the use of a firearm.

19 Q In this particular case, in your opinion, why  
20 is it reasonable for Mr. Reeves to respond to the  
21 perceived threat with deadly force, firing a firearm  
22 at Mr. Oulson?

23 A Because he believed that he was gonna get  
24 seriously injured if Mr. Oulson continued to do what  
25 he was presently doing.

1           Q     Is the fact that you could be seriously  
2     injured, the use of deadly force proportional to that  
3     threat?

4           A     Yes. You don't have to be injured to prove  
5     that you could be injured. You have to believe that  
6     you could be injured. And under all the circumstances  
7     that I just laid out for you, it's reasonable for  
8     somebody to think a six foot four guy who's acting  
9     unpredictable and unreasonable and so angry, and is  
10    currently hitting you, could cause you great bodily  
11    harm. That's completely reasonable. You don't have  
12    to wait until you're seriously bodily harmed to say,  
13    okay, now I have what I need for deadly force. The  
14    law does not require that. It requires a reasonable  
15    analysis of the facts to determine that you believe  
16    your life is in imminent danger of death or great  
17    bodily harm. That's precisely what we have here.

18          Q     If you were asked and allowed to testify to  
19    the Court and explain to the jury objective  
20    reasonableness, to what extent would you use the  
21    concepts of force continuum or force matrix in that  
22    explanation to the jury?

23          A     Almost completely. So what makes something  
24    objective is that there are rules in place when the  
25    event happens, right. So I would rely obviously a

1 little bit on statute that allows people to defend  
2 themselves. And then I would break it down into the  
3 force matrix and the force continuum and talk about  
4 how threats are a theft and how they are responded to  
5 based on a scale that has been approved in court many  
6 times by law enforcement and by others to evaluate the  
7 appropriateness of response to perceived threat. And  
8 that would make it objective. It's devoid of emotion.  
9 It's devoid of all the things that happen when you're  
10 the subject of an attack. So that would be the  
11 objective reasonableness claim.

12 I would also probably be asked, I assume,  
13 about the subjectivity of it. And of course the one  
14 that can answer that question would be Reeves. I'm  
15 aware of what Reeves said. So taken Reeves as true I  
16 would be able to comment on the subjectivity of it and  
17 put these behaviors of Mr. Oulson in categories of  
18 threat and show the straight line appropriate  
19 response. And that would be going back to the  
20 objectivity in hindsight.

21 Q Give me just a minute, please.

22 Mr. Bedard, I don't have any further  
23 questions.

24 A Okay.

25 Q I just turned to the page with the

1 authoritative sources.

2 A Yes.

3 Q And some of them are in journals that I don't  
4 have access to.

5 A If you want you can send me a list of what  
6 you'd like to read and I'll pull them down for you so  
7 you can take a look at them.

8 Q I appreciate that.

9 MR. MARTIN: Is that okay with you, Mr.  
10 Michaels?

11 MR. MICHAELS: Yes, that's fine.

12 A And, Mr. Martin, before you continue on, with  
13 respect to those sources, you'll see the last one is  
14 Yerkes, Dodson. You see that?

15 Q (By Mr. Martin). Yeah. 1908.

16 A I mean, I don't know that there's a specific  
17 citation for that.

18 Q What is that?

19 A It's the inverted U theory where arousal  
20 affects performance. We use this a lot in sports  
21 psychology.

22 Q Yes.

23 A If you have lower arousal your performance is  
24 very low. And as you get some arousal, some anxiety  
25 before it increases until it reaches a top point which

1 is known as the individual zone of optimal  
2 functioning. But the strap exceeds that. You start  
3 to have a deterioration of performance. So this is  
4 typically what happens when we see in combat cases  
5 where individuals may be prepared for a fight and then  
6 all of a sudden start losing and their performance  
7 breaks off and-- there's actually another model that  
8 accompanies this since 1908 called catastrophic model.  
9 They think that that rounded curve of the inverted U  
10 is much more extreme. It goes from optimal  
11 performance to just really degraded performance.

12 And so this is partly-- this has a lot to do  
13 with the whole challenge versus threat construct that  
14 I gave you. And what's happening during challenges is  
15 that the arousal level is coming up, but when you hit  
16 a threat, remember that I indicated to you that your  
17 coping mechanisms have been exceeded, or at least you  
18 believe they're exceeded. This is where you start  
19 seeing these fight/flight responses and you then have  
20 artifacts and things like that.

21 So I referred to the Yerkes, Dodson because  
22 I've learned it in text books. I didn't have a paper  
23 on it. So I just didn't want you to kind of get lost  
24 on what is he talking about.

25 I think you can get online probably and look

1 at Yerkes, Dodson and it's quite-- it's been around a  
2 long time and it's quite popular in the literature.  
3 And I'm sure I can find some literature that is  
4 authoritative that talks about it. But I could not  
5 find the specific Yerkes, Dodson article from 1908.

6 Q Yeah, you're correct. There's a lot of  
7 information about it on the internet both criticizing  
8 it and accepting it. And, yeah, no, I don't need  
9 that. I know about the upside down U and that theory.  
10 I have a grasp of that.

11 A Okay.

12 Q What I will do is I'll send you a list of the  
13 articles that I'd like to read that I cannot pull  
14 down.

15 A Okay.

16 Q And then if you would electronically provide  
17 me with those I would greatly appreciate it.

18 A Happy to do it.

19 Q There was one other thing I was supposed to  
20 send you. We talked about a scientific study by  
21 Shultz. You were gonna look that up for me.

22 A Yeah.

23 Q And then there was something else I was going  
24 to send you.

25 A And that article was called The Point of No



1 Return. I remember that now. And that talks about  
2 that two hundred millisecond veto ability. Let me see  
3 if I can find it quickly.

4 Q I'll try to find it. There's so many Shultz.

5 A Write that down when you're sending your  
6 list. Just write The Point of No Return so that will  
7 remind me, and I'll get it over to you.

8 Q And there was one other thing. I'll find it.  
9 I'll find it in my notes.

10 MR. MARTIN: Okay. Mr. Michaels, do you have  
11 any questions or followups or clarification that you  
12 want to do on the record?

13 MR. MICHAELS: No questions. How's that.

14 MR. MARTIN: Alright, Mr. Bedard, I don't  
15 have any further questions.

16 I will of course copy Mr. Michaels with all  
17 the emails that I send to you. Do you have any  
18 questions of me before we leave?

19 MR. BEDARD: Yeah. I know this is not a  
20 formal deposition but you did record it. Is it  
21 possible to get a transcript of it so I can review  
22 what we talked about today in preparation for trial?

23 MR. MARTIN: A transcript is being ordered by  
24 the state.

25 MR. MICHAELS: We'll order a copy. You'll

1 get a copy, Roy.

2 MR. MARTIN: Yeah. It's just like a depo  
3 only we call it a telephonic statement because the  
4 court reporter doesn't place you under oath. And  
5 that's how the rules refer to it.

6 But she will transcribe it and file it just  
7 like a depo. So yes, you will get a copy.

8 MR. BEDARD: Just like in a deposition I will  
9 say that I read. How's that.

10 MR. MARTIN: Excuse me, sir. What?

11 MR. BEDARD: I said just like in a deposition  
12 I'm informing you I will read.

13 MR. MARTIN: She just put that down that you  
14 will read. Of course you know that by saying that you  
15 can't change sum and substance, you're just making  
16 corrections that maybe words or something that she  
17 didn't pick up correctly.

18 MR. BEDARD: For me it will be more of a  
19 study guide of what we will probably talk about in  
20 trial.

21 MR. MARTIN: Okay. If there's nothing else,  
22 gentlemen, have a safe and productive weekend. And I  
23 will talk to you soon. Thank you.

24 ( CONCLUDED AT 1:00 P.M.)  
25

## CERTIFICATE OF OATH

STATE OF FLORIDA )

COUNTY OF PINELLAS )

I, the undersigned authority, certify that ROY  
BEDARD, appeared TELEPHONICALLY and gave his  
statement.

WITNESS my hand and official seal this 22  
day of NOVEMBER, 2021.

DOES NOT APPLY

1 I have read the foregoing pages, numbered 1  
 2 through 159, inclusive, and herewith subscribe to same  
 3 as a correct transcription of the answers made by me  
 4 to the questions herein recorded, subject to  
 5 corrections below.

6 ROY BEDARD

7 Date: \_\_\_\_\_

8 \*\*\*\*\*

CORRECTIONS

PAGE/LINE#

COMMENTS

9	_____	_____
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1 STATE OF FLORIDA )

2 COUNTY OF PINELLAS )

3 I, SHARON K. ALLBRITTON certify that I was  
4 authorized to and did stenographically report the  
5 STATEMENT of ROY BEDARD; and that the transcript is a  
6 true record of the testimony given by the deponent.

7 I further certify that I am not a relative,  
8 employee, attorney, or counsel of any of the parties,  
9 nor am I a relative or employee of any of the parties'  
10 attorney or counsel connected with the action, nor am  
11 I financially interested in the action.

12 Dated this 22 day of NOVEMBER, 2021.

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16 SHARON K. ALLBRITTON  
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