

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

STATE OF FLORIDA,

Plaintiff,

vs.

VOLUME V

CURTIS J. REEVES,

Defendant.

PROCEEDINGS: Stand Your Ground Motion

DATE: February 22, 2017

BEFORE: The Honorable Susan Barthle
Circuit Court Judge

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

REPORTED BY: Charlene M. Eannel, RPR
Court Reporter

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(727) 442-7288

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A-P-P-E-A-R-A-N-C-E-S

APPEARING ON BEHALF OF
THE STATE OF FLORIDA:

Glenn Martin, Assistant State Attorney
Office of Bernie McCabe, State Attorney
Pinellas County Judicial Center
14250-49th Street North
Clearwater, Florida 33762

Manny Garcia, Assistant State Attorney
Stacy Sumner, Assistant State Attorney
Robert D. Sumner Judicial Center
38053 Live Oak Avenue
Dade City, Florida 33523

APPEARING ON BEHALF OF
THE DEFENDANT: CURTIS REEVES

Richard Escobar, Esquire
Dino Michaels, Esquire
Rupak Shah, Esquire
ESCOBAR & ASSOCIATES
2917 W. Kennedy Blvd.
Suite 100
Tampa, Florida

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

MR. MARTIN: Good morning, Judge.

THE COURT: Are there any matters we need to address that we haven't already?

MR. ESCOBAR: Your Honor, I believe there's none for Defense.

MR. MARTIN: No, Your Honor.

THE COURT: Is it all right to proceed without Ms. Sumner this morning?

MR. GARCIA: She will be back briefly. Yes, we could go ahead and get started.

THE COURT: Then we can pick up where we left off. Who is your next witness?

MR. ESCOBAR: Your Honor, the Defense would call Thomas Peck.

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

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

THE COURT: You may proceed, Counselor.

DIRECT EXAMINATION

BY MR. ESCOBAR:

Q. Good morning, Mr. Peck.

1 A. Good morning.

2 Q. Mr. Peck, tell me a little bit about yourself.
3 What is your educational background?

4 A. I'm a graduate of the Culinary Institute of
5 America as a chef. I've been in this business, in the
6 food and beverage, for 20, 30-plus years now.

7 Q. Okay. And give me a little bit about -- tell
8 me a little bit about your employment history, if you
9 can?

10 A. I worked at many companies, starting out with
11 smaller mom and pop places, moving up to major companies
12 like Walt Disney World and the Seminole Hard Rock Hotel
13 and Casino.

14 Q. And what sort of position did you hold at those
15 particular companies?

16 A. Everything from executive chef to food and
17 beverage operations manager.

18 Q. And are you employed by the Cobb Theater?

19 A. Yes, I am.

20 Q. And how long have you been employed by the Cobb
21 Theater?

22 A. Going on eight years now.

23 Q. Okay. In 2013, what was your position there at
24 the Cobb Theater?

25 A. I was originally general manager for the

1 CineBistro, then promoted to general manager for the
2 CineBistro, in the Cobb Groves 16 Theater.

3 Q. So on January the 13th of 2014 you were the
4 general manager, not only for the CineBistro area of Cobb
5 Theater, but also for the general?

6 A. That's correct.

7 Q. Okay. And what does that job or occupation
8 entail?

9 A. Overall operations of running -- basically
10 running both upstairs and downstairs management teams in
11 both areas, basically just managing the areas.

12 I couldn't tell you the day-to-day operations
13 because they vary every day.

14 Q. So you are actually also managing other
15 managers?

16 A. This is correct.

17 Q. Would you tell the Court, if you can for me,
18 how many managers you manage?

19 A. Currently, I manage five downstairs and four
20 upstairs, so nine managers.

21 Q. If you could give the Court a little bit of the
22 layout of the Cobb Theater, as far as the different
23 offices, the different theaters and how the CineBistro
24 and the general layout or the general theater are
25 situated.

1 A. We have offices upstairs and a full kitchen, a
2 full operational kitchen upstairs in the CineBistro area.

3 We also have offices downstairs, guest service
4 desk, a safe area, of course, the general manager's
5 office. And the CineBistro is tied into the general
6 theater. We have six auditoriums that are tied into
7 the -- to six of the auditoriums in the Grove 16
8 downstairs, as well.

9 Q. And employees, what are the different types of
10 employees that you have there at the Cobb Theater?

11 A. I have a maintenance person. I have an IT tech
12 office person, which would be like a projectionist type
13 ops. I have assistant managers, hourly managers,
14 supervisors, ushers, concession area, cashiers.

15 I have servers, bartenders, what we call
16 runners, people that run the food out into the
17 CineBistro. Kitchen staff, including the executive chef,
18 cooks, line cooks, prep cooks, dishwasher help.

19 Q. How do you handle security issues there within
20 the Cobb Theater?

21 A. A case-by-case basis, depending on the
22 situation. It's a case by case.

23 Q. Meaning case by case, is that something that
24 you would handle yourself? Is that something that the
25 ushers would handle? How does that security measure get

1 enforced?

2 A. It's something that our ushers would handle
3 depending on the situation, along with the managers as
4 well. You know, up -- accelerating up to possibly
5 outside -- outside forces as well, like, a police force
6 or something like that.

7 Q. Okay. At times, you actually hire off-duty
8 police officers?

9 A. That's correct.

10 Q. Is that primarily on the weekends?

11 A. Correct.

12 Q. Now, in order to get into the CineBistro area
13 of that theater, what would you have to do? The
14 CineBistro area?

15 A. When you come in the main doors, there's a
16 stairway to the left, and there's also an elevator that
17 would bring you up to the CineBistro area.

18 Q. Okay. So that is a separate and distinct area
19 from the general area where the general population would
20 go to watch a movie?

21 A. That's correct.

22 Q. I guess I'm calling it general. What do you
23 call that?

24 A. Well, we have CineBistro guests, and I guess
25 you would call them the general population.

1 Q. The guests on my part.

2 Okay. Now, in that theater, we're going to
3 talk about, obviously, Theater 10, because that's the
4 focus of this particular case.

5 In Theater 10, are there security cameras?

6 A. Yes, there is, upstairs in CineBistro only.

7 Q. So if I'm seated in the general section of the
8 theater and I am looking at the screen, where would the
9 cameras be?

10 A. If you're sitting -- I'm sorry?

11 Q. If I'm seated in the general area.

12 A. The general area?

13 Q. I know there's one up high --

14 A. It would be behind you.

15 Q. -- and another one up high to the left; is that
16 correct?

17 A. That would be up behind you to the left and
18 right, correct.

19 Q. Now, those cameras carry or cover predominantly
20 the CineBistro area; is that correct?

21 A. Those cameras in general, yes.

22 Q. But they do cover some of the general areas as
23 well?

24 A. Yes. Yeah. There's some limited view as well.

25 Q. Now, other than knowing that those cameras are

1 there, do you have a room there in your complex --

2 A. Yeah, we do.

3 Q. -- that allows you to record what's taking
4 place in those particular cameras onto a DVR and allows
5 you to obviously go and manage that as well?

6 A. Yes, we do.

7 Q. I'm going to show you what's been marked as
8 Defense Exhibit Number 46. I'm going to take you through
9 a series of photos that I'd like you to look at and see
10 if they fairly and accurately depict that room.

11 What do you call that room, the room with the
12 DVRs?

13 A. The projection IT office.

14 Q. The projection IT office. Okay.

15 Let's start off with CE3A5620JPEG.

16 Do you recognize that particular photo?

17 A. Yes, that's -- that is the projection IT
18 office.

19 Q. And does that fairly and accurately depict that
20 office as it appeared in January -- specifically, January
21 13th of 2014?

22 A. There maybe new carpeting on the floor, but,
23 yes.

24 Q. Okay. CE3A5621JPEG, take a look at that
25 particular photo. Does that fairly and accurately depict

1 that particular room?

2 A. Yes.

3 Q. Okay. And so since that is your projection IT
4 office, does that particular room and that equipment that
5 you see in that particular room allow you to go into that
6 room and view what is being captured on the cameras in
7 the individual theaters?

8 A. Yes.

9 Q. Okay. And please explain to the Court how that
10 takes place.

11 A. Well, we can go into that room and we can look
12 at live video, live video feeds of the certain areas
13 and/or we can also look at recorded video feeds. And
14 obviously we can look at different speeds of it as well.
15 We can speed it up, slow it down, still frame it to get
16 to what we're looking for.

17 Q. So how would you do that, if you had a
18 particular time sequence that you wanted to view, for
19 example, in Theater 10?

20 A. We would go back and look in the log, and in
21 the log we would have time stamps next to it, and it
22 would give us a general idea of what we can slip on look
23 at it and say: "Okay. We're going to look at this
24 stamp."

25 Q. So you can pull up that particular time stamp

1 and you can look at the video as it plays? You can slow
2 down the video to a slower playing speed, you said, and
3 then you can look at individual images?

4 A. That's correct.

5 Q. And tell the Court how is it and why you're
6 able to do this? What's the function of that?

7 A. It could be -- again, with security, in a
8 case-by-base basis, if we were looking for something
9 possibly, you know, somebody taking a popcorn, or
10 something like that, we can go back look at it.

11 If we're looking at an unruly guest, or
12 anything along those lines, we can look at the video and
13 determine what's going on, if we're looking for somebody
14 possibly recording a movie as well.

15 Q. And do you use that process often there at
16 your --

17 A. Yeah. I mean, we use it, you know, frequently.

18 Q. Okay. Now, you have the ability to do the same
19 thing that you can do in this particular room elsewhere
20 as well, correct?

21 A. Correct, in the general manager's office.

22 Q. Please tell the Court where the general
23 manager's office is, and how it is that you're able to do
24 that from that office as well?

25 A. It's downstairs in the main theater off to one

1 of the hallway sides, and we have a PC there that's
2 linked up to it as well, so that way we can pull up the
3 live feed, as well as the recordings of it.

4 Q. So if someone came up to you and you were
5 downstairs working --

6 A. Uh-huh.

7 Q. -- either at the front counter, or what have
8 you, and they asked you, "Mr. Peck, you know, I'd like to
9 see some video of a particular time and a particular
10 theater," could you do that?

11 A. Yes. I mean, to clarify, just some random
12 person off the street, no, I would not, but --

13 Q. A law enforcement officer?

14 A. Yes.

15 Q. Okay. That's -- that's an easy answer,
16 correct?

17 A. Yes.

18 Q. Okay. CE3A5622, is that the same room?

19 A. Yes, it is.

20 Q. Does it fairly and accurately depict what that
21 room looked like on January 13th of 2014?

22 A. Yes.

23 Q. CE3A5623, the same question?

24 A. Yes.

25 Q. The same answer?

1 A. Yes.

2 Q. CE3A5624, the same question?

3 A. Yes.

4 Q. The same answer?

5 A. Yes.

6 Q. Does it fairly and accurately depict what it
7 looked like on January 13th of 2014?

8 A. Yes, sir.

9 Q. CE3A5625?

10 A. The same, yes.

11 Q. CE3A5626?

12 A. Yes, sir.

13 Q. Fairly and accurately depicts.
14 CE3A5627?

15 A. Yes, sir.

16 Q. And CE3A5628?

17 A. Yes, sir.

18 Q. Okay. Now, in addition to you being able to
19 view the videos both upstairs and now downstairs as well,
20 is there another office or another entity within the Cobb
21 Theater enterprise that is able to do the same offsite?

22 A. Our corporate office can as well, IT
23 department.

24 Q. Okay. And would you tell the Court where your
25 corporate office is at?

1 A. Our corporate office is located in Alabama.

2 Q. So how is it that they can view what you can
3 view there at the Cobb Theater?

4 A. They could dial in remotely.

5 Q. Okay. And that's something that they can do
6 remotely as well as you can?

7 A. Yes.

8 Q. Okay.

9 A. I can't dial in from outside the company, but
10 they can.

11 Q. But they can?

12 A. Correct.

13 Q. Okay. Now, let's give the Court a little bit
14 of an idea of how the movie theater itself runs in
15 reference to commercials, previews and then the actual
16 movie.

17 A. Okay.

18 Q. How is the commercial part of it -- when you
19 first go into a theater and the previews are not yet
20 playing, but the commercials are, how does that operate
21 within your system there at the Cobb Theater?

22 A. We would have 30 minutes prior to show time.
23 Let's say show time was 1:30 or 2:00, so at 1:00 or 1:30
24 that NCM, which is National Cinema Media Marketing, would
25 take over and they'd have commercial advertisements up on

1 the screen. They can run anywhere from 20 to 30 minutes
2 in length, but basically the entire 30 minutes is NCM
3 commercials.

4 Q. So they're controlling that?

5 A. Correct.

6 Q. You're not controlling that?

7 A. No, we are not.

8 Q. So tell me what the lighting conditions are for
9 the commercial.

10 A. They're not -- I mean, our full lights, what we
11 call the usher lights, which are basically fluorescent
12 lights on, they're basally our house lights or less than
13 house lights which is just a little dimmer than the
14 normal lighting.

15 Q. Okay. And so you're sitting there and you're
16 watching the commercials.

17 A. Uh-huh.

18 Q. What happens after the commercials are
19 completed?

20 A. After the commercials are completed, we'll have
21 a couple of PSI -- PSAs, public service announcements,
22 that will come up on the screen, including a "Don't
23 record" one to prevent people from recording movies.
24 Basically it says something along the lines of: This
25 is -- this is annoying -- showing somebody on a cell

1 phone. This is this, showing somebody doing something
2 else. Then this is illegal, showing somebody trying to
3 record a movie.

4 After that, we'll have another PSA, which will
5 go into -- it could be an advertisement for CineBistro or
6 something like that, but then we'll go into another PSA.
7 The last PSA we'll show before the movie Cobb Theater
8 logo, no cell phones, would you please put away cell
9 phones and discontinue texting.

10 Q. Now, that portion of discontinue cell phone
11 use, no texting, that takes about how many seconds to
12 play?

13 A. About 30 seconds. 20 or 30 seconds.

14 Q. Okay. And when that's played on your screen,
15 is it pretty clear to everyone what your policy is at
16 that point in time?

17 A. Yes. If they're in the theater at the time,
18 yes, it should be.

19 Q. Why is that a policy that is obviously enforced
20 there at the Cobb Theater?

21 A. It's something we want to do to provide a great
22 experience. I mean, we want to prevent, you know,
23 interference from the outside. We want to prevent any
24 other noises. We just want to provide a wholesome
25 experience.

1 Q. To whom?

2 A. To our guests.

3 Q. To your guests. Okay.

4 So you try to make that very clear from the
5 very beginning before the previews?

6 A. Correct.

7 Q. Okay. Now, tell the Court what sort of
8 enforcement process you use in an effort to make sure
9 that now this policy that you've made clear to everyone
10 is going to be adhered to?

11 A. We would have an usher go around do theater
12 checks throughout the auditorium at different times.
13 They would be -- they would have an usher schedule. They
14 look it over, see what time the movie is starting, and
15 they would walk up and down in the theater doing theater
16 checks to prevent that.

17 Q. So what is the policy there at the Cobb Theater
18 if someone is, for example, have their phone in their
19 hands and it's on?

20 A. We would politely ask them to put it away, an
21 usher would.

22 Q. Okay. So the usher would then go to that
23 particular patron directly and converse with him about
24 the fact that he had his phone on?

25 A. Yes. That's correct.

1 Q. Because that was a violation of your policy?

2 A. Correct.

3 Q. And a violation of making sure that the
4 experience for everyone is great?

5 A. Correct.

6 Q. Okay. What if an individual has a phone and
7 they're actually texting?

8 A. It doesn't make a difference whether the phone
9 is out, we would ask them to please put their phone away
10 at that time.

11 Q. Okay. For the same reason?

12 A. Correct.

13 Q. What if the individual says, "I'm not going to
14 do it"?

15 A. At that point, the usher would call for a
16 manager, and a manager would go in and ascertain the
17 situation and then do the same approach.

18 Q. Okay. What if you come in and they say,
19 "Sorry"?

20 A. We would ask the guest to leave. And if they
21 refuse to leave, then we would contact the authorities.

22 Q. To remove them physically?

23 A. Correct.

24 Q. And that's your policy there at the Cobb
25 Theater?

1 A. Yes, we have a very strict policy on that,
2 absolutely.

3 Q. How long had that policy been in place?

4 A. For years. I mean, as long as I've been there.

5 Q. As long as you've been there?

6 A. Correct.

7 Q. Is that an important policy for the Cobb
8 Theater?

9 A. Absolutely, yes.

10 Q. Now. What if a patron comes to you and says
11 someone's using the phone? Would you tell that patron,
12 "Hey, just move"?

13 A. No.

14 Q. And why not?

15 A. The patron has every right to the seat they
16 chose, that they chose in there for their experience. I
17 mean, if they chose a certain seat, it's their right to
18 sit there.

19 Q. You want that patron to have the same great
20 experience?

21 A. Yes.

22 Q. So you would not tell that patron, "Hey, just
23 move"?

24 A. No.

25 Q. And I would imagine you train your employees

1 not to tell the patrons, "Just move"?

2 A. Exactly. Yes.

3 Q. Are your employees trained on these policies
4 independently from someone else, or are you the one
5 that's providing the training, as well, for all your
6 employees?

7 A. They're provided training from my management
8 team.

9 Q. From the management team?

10 A. Correct.

11 Q. So obviously you've trained your management
12 team and your management team trains them?

13 A. That's correct.

14 Q. So really all of your employees know these
15 rules. They're not rules that they're not familiar with?

16 A. Correct.

17 Q. Everybody is familiar with these rules?

18 A. Yes.

19 Q. On January 13th of 2014, that mid afternoon,
20 1:20 period, what movie was playing in Theater 10?

21 A. Lone Survivor.

22 Q. What is that showing normally called?

23 A. A matinee.

24 Q. And what is a matinee?

25 A. A matinee is prior to 4:00 and earlier. It's

1 usually a slower show, less guests.

2 Q. Okay. Are normally those guests there at the
3 Cobb Theater, at that matinee, normally older
4 individuals?

5 A. It varies. It varies depending on the time of
6 year, the day, the weekends, et cetera.

7 Q. And so Lone Survivor was playing, and where
8 would you be positioned that day at about 1:20 plus?

9 A. I probably would have been at the guest
10 services desk.

11 Q. I'm going to show you what's been marked as
12 Defense Exhibit Number 45 and ask you to take a look at
13 this particular exhibit that's showing -- it has a date
14 of 1/13/2014, time, 13:25:49, and it has a BTS number of
15 011V08, and ask you if you recognize that particular
16 exhibit.

17 A. Yes, I do.

18 Q. And does that exhibit reflect a time and date
19 of January 13th of 2014, when you were at the front
20 counter of the CineBistro?

21 A. Yes, it does.

22 Q. Does it fairly and accurately --

23 A. Excuse me. I'm sorry. Not the CineBistro.
24 The Cobb Theater.

25 Q. Excuse me. The Cobb Theater?

1 A. Correct.

2 Q. Does that fairly and accurately reflect that?

3 A. Yes, it does.

4 Q. Now, at that time, that matinee time, was the
5 CineBistro open or closed?

6 A. It would have been closed.

7 Q. Okay. And so if you can identify for me the
8 individuals that you see in those particular photos.

9 A. The female guest was a guest I was interacting
10 with at the time, talking to her about -- I think she
11 wants some movie posters or something.

12 Q. For her children?

13 A. Yes, I assume so.

14 Q. Did you ask her there, during that
15 conversation, to give you a list of the photos or the
16 posters that she wanted?

17 A. I probably would have, yes.

18 Q. Okay. How long was that conversation between
19 you and this young lady?

20 A. It was, I would say, more than a minute, almost
21 two minutes, maybe three minutes, maybe more.

22 Q. Okay. And during that particular time that you
23 were conversing with her, do you recognize the gentleman
24 that is to the far right in that particular photo?

25 A. I do now, yes.

1 Q. Who is that gentleman?

2 A. I believe Curtis Reeves.

3 Q. Okay. And was Mr. Reeves there at the counter
4 waiting for you to finish your conversation with this
5 young lady?

6 A. I assume so.

7 Q. Okay. You weren't paying attention to him?

8 A. Correct.

9 Q. You were focusing on your -- on your
10 conversation?

11 A. Yes, I was.

12 Q. At any point in time, did Mr. Reeves, while you
13 were conversing with this young lady, at any point in
14 time, did he interrupt you?

15 A. Not that I recall.

16 Q. Okay. Did you see anything in reference to Mr.
17 Reeves that day at that counter that caused you any
18 concern concerning his emotional being, his -- was he
19 mad? Was he -- anything of that sort?

20 A. Not that I recall.

21 Q. Okay. Let's go to the next one.

22 I'm going to show you now, again, another
23 photo, 1/13/2014 at 13:26:07 with a BTS Number of 011VOB
24 and ask you if you recognize that particular photo.

25 A. Yes, I do.

1 Q. And what is that a photo of?

2 A. It appears to be a photo of me sitting at the
3 desk and, I assume, paying attention to Mr. Reeves.

4 Q. And this young lady has now moved a little bit
5 further to the right?

6 A. To my left, her right, yes.

7 Q. Yeah. And was she writing down the posters
8 that she wanted you to try to seek for her?

9 A. I assume so.

10 Q. So that fairly and accurately depicts what was
11 taking place there at the CineBistro somewhere post 1:20
12 that day?

13 A. Yes. That's the guest services desk at the
14 Grove 16. Yes, that depicts it.

15 MR. ESCOBAR: Your Honor, at this point in
16 time, I'd like to introduce both Defense Exhibit
17 Number 45 and Defense Exhibit Number 46.

18 MR. GARCIA: Judge, we have no objection.

19 THE COURT: All right. What are we on, 23 and
20 24?

21 MR. ESCOBAR: 46 would be first. 45 would be
22 second.

23 Can I keep going while she's doing that?

24 THE COURT: What's depicted on that?

25 MR. ESCOBAR: 46 was the DVR room. 45 was

1 these pictures right here that the Court has seen.

2 THE COURT: Okay. Thank you.

3 (Whereupon, Defense Exhibits 45 and 46 for
4 identification were received in evidence by the
5 Court.)

6 BY MR. ESCOBAR:

7 Q. Now, tell the Court what you remember of the
8 conversation that you had with Curtis Reeves there at the
9 counter.

10 A. I don't recall anything.

11 Q. Do you recall any anxiety or any concern on
12 your part that Mr. Reeves may have been mad or anything?

13 A. Not that I recall.

14 Q. And so what happens after Mr. Reeves comes and
15 leaves?

16 A. It seemed like a brief time after that somebody
17 comes running out of Auditorium 10 and screams, "Call
18 911. He shot someone. He shot someone."

19 Q. Okay. Now, Mr. Peck, tell me what you do at
20 this moment?

21 A. At this moment, I'm trying to dial 911 on the
22 landline. I'm not having success. It just keeps ringing
23 and ringing. It felt like forever.

24 Then I also realized that I needed to move
25 around, I could not be landlocked down to a landline, so

1 I grabbed my cell phone and decided to call 911 from my
2 cell phone.

3 Q. And did you?

4 A. Yes, I did.

5 Q. Were you able to reach 911?

6 A. Yes, I was.

7 Q. What are you doing with your phone as you're
8 calling 911? Are you still stationary there at the front
9 desk or are you moving somewhere else?

10 A. I'm starting to move towards Auditorium 10.
11 Guests at this time are leaving the theater. Some are
12 running around the concession area, some are upset, some
13 are panicked, and they're heading towards the exit. Some
14 are sitting down.

15 I'm trying to calm guests down and walking
16 through the crowd, trying to calm them down.

17 Q. Now, you go into the Theater 10. Please
18 describe to the Court where you go.

19 A. I walk into the auditorium, and there's two
20 ways you can go. You can go straight in or you can go to
21 the left around the other side of the auditorium. I go
22 straight in the auditorium, head towards the screen, take
23 a left, I take another left to go up the stairs.

24 Q. So if you're looking at the screen of the
25 theater --

1 A. Uh-huh.

2 Q. -- you would be going up the stairs that are to
3 your right?

4 A. If I'm looking at the screen, they would be the
5 stairs to my -- yes, the furthest to the right, correct.

6 Q. The furthest to the right?

7 A. Yes.

8 Q. So you go up those stairs?

9 A. Correct.

10 Q. And where do you go?

11 A. I go up the stairs towards the top.

12 Q. Okay. And as you're going up the stairs, what
13 are you able to see?

14 A. I could see a person laying on the floor. I
15 could see my maintenance person, James Redfern (phonetic)
16 over the top of him, along with somebody else, performing
17 CPR. I see a gentleman sitting up in the back row with
18 another gentleman with his hand on his shoulder.

19 Q. Okay. And the gentleman that you saw seated in
20 that back row, do you see that gentleman here today?

21 A. Yes, I do.

22 Q. And who is that gentleman?

23 A. Curtis Reeves.

24 Q. Okay. Do you notice anything about Mr. Reeves
25 other than he was seated there quietly?

1 A. At one point it looked like, when I was up
2 there on the phone, he was wiping his brow, but just
3 sitting there.

4 Q. When you're saying, "Wiping his brow," you mean
5 his hand --

6 A. Yes.

7 Q. -- was --

8 A. Yeah, wiping his forehead, brow.

9 Q. Okay. So what do you do at this point in time?
10 You still have the cell phone in your hand?

11 A. I still have the cell phone.

12 Q. Tell me what you do.

13 A. I'm still talking to 911. They're asking me to
14 ascertain the situation. They're asking me if the gun
15 has been detained. Asking, you know, if the shooter
16 and/or the gun has been detained. Somebody screams out
17 that it has been.

18 Then I'm just sitting there watching and
19 talking to 911 at the same time. They ask me if the
20 shooter is still there. And I say something along the
21 lines, "The assailant's still here," or something like
22 that.

23 Q. Okay. And when you said to 911, "The assailant
24 is still here," what happens?

25 A. Mr. Reeves says something along the lines of,

1 "I'm not the assailant," or, "Watch who you're calling
2 the assailant. I'm not the bad guy," something along
3 those lines. I don't recall exactly.

4 MR. GARCIA: Objection as to hearsay, Judge.

5 MR. ESCOBAR: It's an excited utterance.

6 MR. GARCIA: Judge, we -- can we approach?

7 THE COURT: Do we need to or --

8 MR. GARCIA: Well, it's the Defendant's
9 statement, number one. It's being offered for the
10 truth of the matter asserted, number two. It's not
11 admissible, Judge, unless the Defendant testifies,
12 and the Defendant can testify and testify to his
13 statement himself.

14 MR. ESCOBAR: Judge, it is classic excited
15 utterance. What Mr. Garcia doesn't realize is an
16 excited utterance doesn't have to happen immediately
17 when the startling event takes place. In fact,
18 there's case law that says an excited utterance
19 could be introduced far beyond -- actually beyond
20 the excited event. And clearly, that's what
21 happening here.

22 Everybody's excited. He talks about everybody
23 being excited. People are yelling out, "We've got
24 the gun." He comes into the theater and he makes
25 this statement, and Mr. Reeves says, "I'm not the

1 assailant. I'm not the bad guy here." That's
2 classic.

3 THE COURT: Response?

4 MR. GARCIA: Judge, I disagree. I mean, the
5 thing is, if he had said it immediately, some time
6 has already passed by. Now he's saying, "I'm not
7 the assailant; I'm the victim"?

8 MR. ESCOBAR: Judge, I can cite Harmon versus
9 State, --

10 THE COURT: I'm aware of the case law.

11 MR. ESCOBAR: Okay.

12 THE COURT: An excited utterance can occur at
13 some time after the event, not typically a long time
14 after the event, but this is still within the realm
15 of the scene and I'm going to overrule it.

16 MR. GARCIA: Judge, I'm going to object to
17 improper predicate. He hasn't laid a predicate to
18 get that statement in. We don't know how much time
19 elapsed. We don't know when it was said. He needs
20 to lay a proper predicate if he's intending to
21 introduce this statement.

22 THE COURT: This witness has indicated that
23 he's on the telephone with 911. I'm assuming that
24 that's very close in time still.

25 MR. GARCIA: Judge, with all due respect to the

1 Court, I wouldn't assume anything in this case.

2 THE COURT: All right. I'll grant you that
3 one, State.

4 MR. ESCOBAR: Judge, I've laid the predicate.
5 He's talked about someone coming and running out
6 immediately --

7 THE COURT: Let's try to get an exact estimate
8 of time, seconds, minutes.

9 MR. ESCOBAR: Okay.

10 BY MR. ESCOBAR:

11 Q. Mr. Peck, how much time elapsed between the
12 time that Mr. Reeves left your front office or front desk
13 there and the time that you first hear someone coming out
14 saying he shot someone?

15 A. Unfortunately, I don't recall the exact timing.
16 I'm sorry.

17 Q. Well, are we talking about minutes? Are we
18 talking about hours?

19 A. It wasn't hours. It was minutes.

20 Q. Okay. And so the minute that you hear someone
21 saying, "He shot someone," do you quickly go into that
22 theater?

23 A. After I was at the guest service desk calling
24 911, I couldn't get through, I hung up the phone, and
25 went there as quickly as I can between talking to guests

1 on the way through.

2 Q. Short number of minutes?

3 A. I would be guessing, but, yeah, I guess.

4 Q. I mean, you're not going to be waiting there at
5 the desk --

6 MR. GARCIA: Objection as to leading.

7 BY MR. ESCOBAR:

8 Q. Are you going to be waiting there at the desk
9 for a long period of time?

10 A. No, I'm not.

11 Q. So you went into the theater with phone in hand
12 talking to 911?

13 MR. GARCIA: Objection as to leading, Judge.

14 MR. ESCOBAR: He's already testified to that,
15 though, you know.

16 THE COURT: Rephrase.

17 BY MR. ESCOBAR:

18 Q. Did you go into the theater with your phone?

19 A. I left the desk and I went to the theater
20 talking to guests and ascertaining the situation on the
21 way.

22 Q. And who were you talking to on the phone?

23 A. 911.

24 Q. 911. Did you stop anywhere to go to an office
25 or the bathroom or anything, or did you go straight into

1 the theater?

2 A. No. I mean, I was stopping, interacting with
3 some of the patrons on the way in, but not -- I wouldn't
4 say for an extended period of time, I wasn't stopping.

5 Q. Okay. You went into the theater. You went
6 upstairs?

7 A. Yes.

8 Q. And that's when you had this conversation?

9 A. Yes.

10 THE COURT: Good enough.

11 MR. ESCOBAR: Okay.

12 BY MR. ESCOBAR:

13 Q. Now, so Mr. Reeves makes this statement,
14 either, "I'm not the assailant," or, "I'm not the bad
15 guy," something to that effect?

16 A. Something along that line, yes.

17 Q. Okay. Do you notice anything about his facial
18 expressions that gave you any concern?

19 A. No, he was just sitting there.

20 Q. He was just sitting there. Did he say anything
21 else?

22 A. Not that I could hear.

23 Q. So what do you do now? You're there. You've
24 got your phone in your hand. You've spoken to 911.
25 Where do you go from there?

1 A. I'm still with 911 back and forth, talking to
2 them about the victim in this case and their well-being.
3 I'm not knowing what it is at that time. I'm moving down
4 the stairs. I'm walking around the theater, the
5 auditorium.

6 And then once I see that the local authorities
7 have taken over, I kind of just move out towards the
8 lobby area.

9 Q. Okay. Now, let's talk a little bit about the
10 lobby area. There were patrons inside the theater that
11 day. Have some of those patrons come outside the
12 theater?

13 A. Yes, some are sitting out in the concession
14 area at the cafe tables.

15 Q. Describe to the Court what you mean by the
16 concession area and the cafe tables.

17 A. When you exit one of our auditoriums, you go
18 towards the center part of the theater area, there's a
19 concession area where we serve popcorn and drinks. There
20 are some small tables there as well where the people sit
21 and can enjoy their time before they leave or come in,
22 either way.

23 Q. And what's your estimate of the number of
24 people that were there?

25 A. Not to be vague, but a lot. I mean, 30, 40,

1 50, I would assume, somewhere around there.

2 Q. What were those people doing as they were there
3 in the concession area?

4 A. Some were just sitting around. Some were
5 just -- it sounds like they were talking to each other,
6 and some were just panicked, some are upset, some are
7 crying, for obvious reasons, and they were just -- I had
8 my employees handing out drinks and popcorn to try to
9 console and calm people down as well.

10 Q. Were any police officers there at the time?

11 A. Yes, there was.

12 Q. Okay. Who was there? Do you know who? I'm
13 talking about the concession stand, the concession area.

14 A. Right. There was a mixture of in-uniform and
15 out-of-uniform police officers.

16 Q. Okay. Now, did you hear any of those police
17 officers make any statement to this group to not discuss
18 what they had seen in Theater 10 amongst themselves?

19 A. Not that I recall hearing.

20 Q. Did any police officer give you any
21 instructions to give others not to discuss their
22 testimony with anyone else there in that theater?

23 A. Not that I can recall.

24 Q. Now, did you ever have a conversation with any
25 law enforcement officer concerning your video

1 surveillance system?

2 A. Can you clarify?

3 Q. Yeah, that day.

4 A. That day?

5 Q. That day. Once the officers were there, did
6 you have a conversation that day with officers concerning
7 your video surveillance system and what was on it?

8 A. I don't think I had anything directly with
9 anybody, just outside of a couple of my employees asking
10 me that people were asking around about video, and I
11 said, "Yeah, we would have video available."

12 Q. And those employees, would those have been
13 James Redford and Melvin Baez (phonetic)?

14 A. Correct. His last name is Redfern, F-E-R-N.

15 Q. I've done that before.

16 So you told your employees -- I imagine they
17 would know as well -- "Hey, we've got, you know, some
18 video," right?

19 A. Correct.

20 MR. GARCIA: Your Honor, I'm going to object as
21 to leading.

22 THE COURT: Sustained.

23 BY MR. ESCOBAR:

24 Q. Did any police officer come to you and say, "I
25 want you to take me and show me the video in Theater 10"?

1 A. Not that I recall, no.

2 Q. Had an officer come to you and said, "I want to
3 see the video that you have in Theater 10," what would
4 you have done?

5 A. I would probably -- depending on what I was
6 doing at the time, I would contact my corporate office
7 and make sure we could allow the video to be seen and
8 release it.

9 Q. Okay. And so how would you go about doing
10 that? Would you go up to your DVR room?

11 A. Yes. Correct.

12 Q. And you would find the time log?

13 A. Correct.

14 Q. Then what would you do?

15 A. We would review the -- based on the camera,
16 what we want to look at, what the person would directly
17 want to see.

18 Q. And if that police officer wanted to have a
19 thumb drive to keep it, could you do that?

20 A. I don't know. I honestly don't know. I don't
21 know if I could record directly off my PC.

22 Q. Okay. Is your PC a regular PC?

23 A. Well, the one upstairs, I've never actually
24 tried to record off a thumb drive, so I couldn't tell
25 you.

1 Q. Okay. So you don't know if it has a thumb
2 drive slot?

3 A. It does, I assume, but, yeah.

4 Q. Okay. Could you have done the same thing from
5 your office downstairs?

6 A. Viewed it, yes, and the pass (indiscernible) as
7 well.

8 Q. So if they would have made this request,
9 certainly you would have made the request to your office,
10 is what you're saying, your corporate office?

11 A. Correct.

12 Q. Now, were you having conversations with your
13 corporate office during this time period?

14 A. Yes. I was in and out of touch with my
15 corporate office, with various people, talking about the
16 situation, letting them know what was going on on the
17 scene at the time, depending on the time of where I was,
18 et cetera.

19 Q. And were they accessing your DVR system?

20 A. Yes. One of our IT people was accessing it,
21 Eric Andrew.

22 Q. And the fact that someone was accessing your
23 DVR system, would that have prevented you from going
24 upstairs and viewing these videos?

25 A. No, that wouldn't have prevented me from, no.

1 Q. Would that have prevented you from going into
2 the downstairs office and viewing this video?

3 A. I don't believe so, no.

4 Q. Now, did you ever tell law enforcement that --
5 by the way, who interviewed you? Which law enforcement
6 officer interviewed you? Let's go there first.

7 A. I don't recall.

8 Q. Was it a long interview or was it a brief
9 interview?

10 A. There was a lot going on that day. I really
11 don't recall. There was -- talking to people left and
12 right and trying to ascertain the situation, trying to
13 keep people calm, moving people down, people asking me to
14 use rooms. I don't recall who was who. I'm sorry.

15 Q. Okay. Did you ever explain to law enforcement
16 that day that Mr. Reeves had come to your front desk and
17 had a discussion with you?

18 A. Not that I recall.

19 Q. Okay. Will you tell the Court why you didn't
20 tell law enforcement?

21 A. At the time when I -- there was a lot going on
22 that morning. I had a conversation going on with one of
23 our linen companies about them saying that our doors were
24 left unlocked from the cleaning crew the night before,
25 when they weren't.

1 I had a maintenance issue with my -- James
2 Redfern. He had a sink that he was trying to replace the
3 spigot on. I remember I was involved in that
4 conversation, which was an extended period conversation,
5 as well as the woman who came up to the counter and asked
6 me about posters.

7 I was basically involved with all of those
8 other conversations and the interaction I really just
9 don't recall happening.

10 Q. So the interaction you're saying with
11 Mr. Reeves was not significant enough where you
12 remembered it?

13 A. No, it wasn't. In fact, I didn't realize I had
14 an interaction until I was shown it later.

15 Q. When you went into the theater and you saw
16 Mr. Reeves sitting there, had you described Mr. Reeves as
17 an older man?

18 A. Yes.

19 Q. When you saw Mr. Reeves there, you didn't know
20 his name at the time when you went upstairs, correct?

21 A. That's correct.

22 Q. So when you saw this older man sitting there in
23 the chair who made that statement to you when you said,
24 "The assailant is here," did you even recognize that that
25 was an individual that had just been earlier to your desk

1 to discuss this issue?

2 A. No, because I didn't recall the interaction.

3 Q. Now, who flew in that night from your corporate
4 office?

5 A. That would be Fred Meyers.

6 Q. And do you recall when it was that law
7 enforcement was given a copy of the video or at least a
8 portion of the video from the camera from Theater 10?

9 A. The exact timing, no, I do not.

10 Q. Certainly not on January 13th of 2014?

11 A. I don't assume they were, no.

12 Q. You believe it happened sometime thereafter?

13 A. I assume so, yes.

14 Q. And do you know how long thereafter?

15 A. No, I don't. It would have to be while Fred
16 was there.

17 Q. How long was Fred there?

18 A. I believe he was there five to seven days,
19 somewhere; almost a week.

20 Q. Now, the following day, which would have
21 been -- what day would the 14th have been?

22 A. The day of the week?

23 Q. Yeah.

24 A. I don't know.

25 Q. Did you open that next day?

1 A. We did not open the next day, no.

2 Q. You did not open the next day?

3 A. No.

4 Q. The next day the doors were closed because of
5 this incident?

6 A. Uh-huh.

7 Q. So if law enforcement wanted to be there, you
8 would have allowed law enforcement to be there to do
9 their job?

10 A. Correct.

11 MR. ESCOBAR: May I have a moment, Your Honor?

12 THE COURT: You may.

13 MR. ESCOBAR: I will pass the witness.

14 THE COURT: You may cross-examine.

15 MR. GARCIA: Thank you, Your Honor. May it
16 please the Court, Counsel.

17 CROSS-EXAMINATION

18 BY MR. GARCIA:

19 Q. Mr. Peck, good morning, sir.

20 A. Good morning.

21 Q. Mr. Peck, you would agree with me, would you
22 not, that January 13th of 2014, that specific day
23 impacted your life, didn't it?

24 A. Yes, sir.

25 Q. In fact, it was very traumatic for you, wasn't

1 it?

2 A. Yes, sir.

3 Q. Mr. Oulson lost his life, correct?

4 A. Yes, sir.

5 Q. Nicole Oulson was shot in her hand?

6 A. Yes, sir.

7 Q. Mr. Reeves was arrested for second-degree
8 murder?

9 A. Yes, sir.

10 Q. Those are very significant events; wouldn't you
11 agree with me?

12 A. Yes, sir.

13 Q. And you indicate that on January 13th of 2014,
14 you were at the guest services desk, correct?

15 A. Correct.

16 Q. And that Mr. Reeves came up to you, correct?

17 A. Correct.

18 Q. You would agree with me that because of these
19 events, you would have memorialized this, correct?

20 A. The events, yes.

21 Q. Did you write notes?

22 A. No.

23 Q. You didn't write any notes?

24 A. No.

25 Q. Prior to today you reviewed that video, though,

1 didn't you?

2 A. Once or twice.

3 Q. Okay. And you were able to identify Mr.
4 Reeves, right, even though you had never seen him before,
5 correct?

6 A. I identified him by name.

7 Q. You identified him in the video and said,
8 "Yeah, that's Mr. Reeves," and then in Court today you
9 were able to identify him and point him out and go,
10 "Yeah, that's Mr. Reeves" --

11 A. Correct.

12 Q. -- right?

13 And is it your testimony that you don't recall
14 what Mr. Reeves told you when he came to the desk?

15 A. Yes, sir.

16 Q. You have no independent recollection of that?

17 A. Not that I recall, sir.

18 Q. Well, isn't it true that he didn't tell you,
19 "I'm in fear," did he?

20 A. I don't recall what he said, sir.

21 Q. Did he tell you, "I'm afraid"?

22 A. Again, I would be speculating to answer.

23 Q. Okay. Did he tell you, "Call the police. I've
24 been assaulted"?

25 MR. ESCOBAR: Your Honor, I'm going to object.

1 He's already said that he doesn't remember anything.
2 I think, at this point in time, it's really
3 badgering this witness who obviously has had a hard
4 time with this incident.

5 MR. GARCIA: Judge, I need to explore this and
6 I need to see what he remembers because other things
7 he remembers clearly, but when you get to the
8 specific conversation with Mr. Reeves, he has no
9 recollection at all.

10 MR. ESCOBAR: Judge, exploring is one thing.
11 Badgering this witness is a completely different
12 thing. That is totally inappropriate.

13 THE COURT: I'll allow it. I'll overrule.

14 BY MR. GARCIA:

15 Q. Mr. Peck, did Mr. Reeves tell you, "Call the
16 police. Things are really getting bad in the theater"?

17 A. Not that I recall. If somebody would have said
18 something like that, I probably would have reacted --

19 Q. But he didn't, right?

20 A. Not that I recall.

21 Q. Did he say that the gentleman that was in the
22 theater was cursing at him?

23 A. Not that I recall.

24 Q. Did he say that the gentleman in the theater
25 had come and climbed over the seats towards him?

1 A. Not that I recall.

2 Q. In fact, after you had this conversation with
3 him he went back into the theater, didn't he?

4 A. Yes.

5 Q. Did you ever see Mr. Reeves at that front desk
6 with his wife? Did he take his wife with him?

7 A. No, sir.

8 Q. Did you even know his wife was there?

9 A. No, sir.

10 Q. Okay. Now, you indicated that you were very
11 forthright and forthcoming with law enforcement, correct?

12 A. Yes.

13 Q. Did you ever tell them that they could view the
14 video that day?

15 A. I really don't recall. I'm sorry.

16 Q. You don't recall that?

17 A. Right.

18 Q. Do you recall being spoken to by Detective
19 Bossone?

20 Mr. Peck, isn't it a fact that Detective
21 Bossone asked you, "Can we please see the videos?"

22 A. I don't know.

23 Q. Do you remember that conversation you had with
24 Detective Bossone?

25 A. No, I don't. I'm not trying to be evasive. I

1 just don't recall. There was a lot going on that day.

2 Q. Isn't it true that you told Detective Bossone
3 that, "We're already in contact with the technical
4 department and we're in the process of downloading all of
5 the footage"?

6 You further stated that there was a digital
7 video recording system. It was an extremely large amount
8 of data and would take several hours to complete, and
9 that you would contact him directly when the download was
10 completed.

11 You have no independent recollection of that?

12 A. No, sir.

13 Q. Did you tell Detective Bossone that there was a
14 room downstairs where you could watch these videos?

15 A. Not that I recall.

16 Q. Did you tell him there was a room upstairs that
17 they could watch these videos?

18 A. Not that I recall.

19 Q. So you have no independent recollection of
20 telling him any of this?

21 A. No, sir.

22 Q. So are you saying that you never had this
23 conversation with Detective Bossone or you just don't
24 recall this conversation?

25 A. You're asking me if I had the conversation. I

1 don't recall the conversation, sir. It could have
2 happened. Yes, sir, it could have happened. Could it
3 not have happened? Yes, sir. I don't know.

4 Q. You know that law enforcement wanted to see the
5 videos, though, right? They asked you, "We want to see
6 the video"?

7 MR. ESCOBAR: Judge, I'm going to object.

8 Asked and answered.

9 THE WITNESS: I don't recall, sir.

10 THE COURT: Sustained.

11 BY MR. GARCIA:

12 Q. Mr. Peck, you would agree with me, would you
13 not, that you have been named in a lawsuit, haven't you?

14 A. Yes, sir.

15 Q. In fact, you are being sued, correct?

16 A. Yes, sir.

17 Q. You along with the Cobb Theater?

18 A. Yes, sir.

19 Q. You're being represented by Mr. Kelly?

20 A. Yes, sir.

21 Q. He's your attorney, correct?

22 A. Yes, sir.

23 Q. Did you ever tell Detective Bossone that you
24 could speed up the video, slow down the video, and if it
25 was time marked, you could go directly to that portion of

1 the video?

2 A. I don't recall the conversation with
3 Mr. Bossone, so I don't know.

4 Q. Now, you said that this could have been done
5 back on January 13th of 2014, correct?

6 A. Yes, it could have been.

7 Q. The viewing -- who would have been responsible
8 to show law enforcement the video and the segments of
9 that video? You?

10 A. It could be. It could have been my projection
11 tech. It could have been anyone that had access to it.

12 Q. Okay. So it could have been you, right?
13 Thomas Peck?

14 A. It could have been.

15 MR. ESCOBAR: I'm going to object. He said him
16 and his tech. How many more times do we have to ask
17 the same question?

18 MR. GARCIA: Judge, I'm going through it. I
19 want to find out him, being Thomas Peck, and then
20 I'm going to ask him who the tech is so we can get
21 these names.

22 THE COURT: Fair enough. Proceed.

23 BY MR. GARCIA:

24 Q. So it's you, right, Mr. Peck?

25 A. Myself or Seth Gordon.

1 Q. And obviously you were available, right?

2 A. Somewhat, yes.

3 Q. Seth Gordon was available, correct?

4 A. I assume, yes. He was there.

5 Q. Well, what do you mean, you assume? You were
6 there, weren't you?

7 A. Yes, sir. I was there.

8 Q. Well, was Mr. Gordon there or not?

9 A. Yes, sir, he was.

10 Q. You indicated that at some point during the
11 previews that there's a -- I guess an announcement, no
12 cell phones, and it runs for 20 to 30 seconds, and that's
13 to enforce the no-cell-phone policy and for the guests to
14 have a good experience, correct?

15 A. Correct.

16 Q. Is that no-cell-phone policy enforced during
17 the previews?

18 A. During the previews?

19 Q. Yes.

20 A. We will ascertain a walk-through, but it's not,
21 like, strictly enforced. We're more interested in the
22 movies.

23 Q. Okay. So if somebody is -- has their phone out
24 during a preview and they're scrolling or they're looking
25 on the phone, would one of the ushers come up to them and

1 say, "Hey, you need to put that phone away"?

2 A. They'll ask them to, yes.

3 Q. You just said it wasn't strictly enforced
4 during the previews. Now, is it or isn't it?

5 A. We'll give them a warning.

6 Q. Okay. So are they checking during the previews
7 or not?

8 A. They try to. Yes, sir.

9 Q. So if somebody has their phone out during the
10 previews, they give them a warning?

11 A. Yes, sir.

12 Q. Now, is that discretionary with the usher or is
13 that policy? Is that your policy?

14 A. It's supposed to be policy, yes, sir.

15 Q. And I think that you indicated that it --
16 should they not put their phone away, then obviously the
17 usher would go to management and then would you address
18 the issue?

19 A. That's correct.

20 Q. Now, if somebody did not put their phone away
21 during the previews, and it's during the previews, are
22 you going to escort them or tell them you need to leave
23 the theater now?

24 A. We'll warn them again and we'll ask them to
25 please put their phone away still.

1 Q. And if they don't put the phone away and it's
2 still during the previews, are you going to escort them
3 out and tell them to leave?

4 A. We may ask them to step out in the hallway and
5 talk to them and explain to them why.

6 Q. When you walked in the theater and you
7 indicated that you had seen, I believe, Mr. Reeves or you
8 recognized him?

9 A. I didn't recognize him.

10 Q. Did you recognize him?

11 A. No.

12 Q. At what point in time did you associate
13 Mr. Reeves with the individual who had walked up to the
14 counter?

15 A. Not until when I seen the video after the fact.

16 Q. Okay. At that point in time, you realized that
17 the gentleman that had been at the counter is the one
18 that was involved in this incident, correct?

19 A. That's correct.

20 Q. Okay. Did you memorialize that anywhere? Did
21 you write it down? Did you --

22 A. No.

23 Q. Did you write an incident report about this?

24 A. I think we did do an incident report, yeah.

25 Q. Did you do an incident report?

1 A. I don't recall. I really don't.

2 Q. Well, you just said, "We did an incident
3 report," so either you did or you didn't.

4 A. I don't recall if I did the incident report.
5 No, I do not.

6 Q. Okay. Was there any other members of your
7 staff that wrote down an incident report?

8 A. Not that I'm aware of.

9 Q. You remember seeing Mr. Reeves and he was
10 wiping his brow, correct?

11 A. Yes.

12 Q. Was there a young lady that was sitting next to
13 him?

14 A. I didn't see anybody sitting there.

15 Q. You indicated that there was an individual that
16 had their hands on his shoulders. Did you find out who
17 that individual was?

18 A. No.

19 Q. You would agree with me, would you not, that
20 you were having a lot of conversations with the corporate
21 office, correct?

22 A. Yes.

23 Q. And did they put limitations on you, as far as
24 cooperating with law enforcement?

25 A. No.

1 Q. You had to check with them, didn't you?

2 A. Well, yeah. I checked with them to make
3 sure -- you know, they just basically asked me what was
4 going on with the situation, and I told them that the
5 officers were in there. They said, "All right. Well,
6 just do whatever you can."

7 Q. Did you ever tell Detective Bossone or
8 Detective Smith that your corporate office could access
9 that video as well?

10 A. I don't recall.

11 Q. You recall being interviewed by law
12 enforcement, though, correct?

13 A. I remember being talked to, yeah. I don't know
14 if I was interviewed officially. I don't know.

15 Q. And is it your testimony that you were
16 distracted because there was a problem with the sink and
17 there was a problem with linens, and you were more
18 focused on that than you were about the issue with Mr.
19 Reeves and what had just transpired in your Theater 10?

20 A. No, that's not what I said.

21 Q. That's not what you said?

22 A. No. You asked me what I recalled in the
23 conversations, and I recall the conversation prior to the
24 incident. I don't recall much after the incident because
25 I wasn't -- I had never been a part of it. It was

1 surreal. It was --

2 Q. Do you remember having conversations with Fred
3 Meyers?

4 A. I remember speaking with him, yes.

5 Q. Who is Fred Meyers?

6 A. At the time, he was our director of operations.

7 Q. He was in charge of you, right?

8 A. Yes.

9 Q. And do you remember speaking to Mr. Wellman
10 (phonetic)?

11 A. Yes.

12 Q. Who is Mr. Wellman?

13 A. At the time he was our COO.

14 Q. Okay. Do you remember telling Fred Meyers that
15 Mr. Reeves was a rude old man?

16 A. No, I don't recall that.

17 Q. You don't recall saying that to him?

18 A. No.

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

20 THE COURT: You may.

21 BY MR. GARCIA:

22 Q. Mr. Andrews was in the process of downloading
23 the videos, correct?

24 A. Yes.

25 Q. Were you told by your corporate office not to

1 let anybody get hands on those videos until they were
2 downloaded?

3 A. I'm assuming that I would have said something
4 along those lines, yeah. Stop me, or whatever.

5 Q. So you agree you were instructed by the
6 corporate office not to let law enforcement get those
7 videos, then, correct?

8 A. They might have, yeah.

9 Q. Well, Mr. Peck, either they did or they didn't.
10 Were you instructed not to let law enforcement get their
11 hands on the video?

12 A. What you're asking me, is you're asking me to
13 communicate clearly what I knew at the time. At the
14 time, sir, I was a little bit out of sorts in my mind. I
15 don't recall everything from the situation.

16 It is now three years removed, I'm trying to
17 forget the situation, so I don't recall exact
18 conversations. And I apologize for that, I'm not trying
19 to be evasive.

20 Q. Well, you clearly remember certain aspects of
21 it, and you're not having any difficulties remembering
22 it.

23 Were you instructed by corporate not to give
24 law enforcement the videos?

25 A. If you say so, yes, sir.

1 Q. I'm not saying so. I'm asking you.

2 A. Yes, sir.

3 MR. GARCIA: I have no further questions,
4 Judge.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION

7 BY MR. ESCOBAR:

8 Q. Mr. Peck, are you a law enforcement officer?

9 A. No, sir.

10 MR. GARCIA: Outside the scope of cross.

11 MR. ESCOBAR: Oh, no. I think it's very much
12 inside the scope of cross, because he's indicated
13 that this individual had control of things in that
14 particular theater and I'm going to tie it up.

15 THE COURT: I'll overrule.

16 BY MR. ESCOBAR:

17 Q. Have you had any training in law enforcement?

18 A. No, sir.

19 Q. Were you investigating this particular
20 incident?

21 A. No, sir.

22 Q. Were you the individual that was responsible
23 for preserving the evidence in this case?

24 A. No, sir.

25 Q. Did you do anything, anything -- did you tell

1 any police officer, "You're not to go into this room"?

2 A. No, sir.

3 Q. Did you tell any police officer, "You're not to
4 go to the IT office"?

5 A. No, sir.

6 Q. Did you tell any police officer, "You're not to
7 go to my office and touch my computer"?

8 A. No, sir. Not that I recall.

9 Q. Did you impede law enforcement in any way, in
10 this particular case, for them to do their job?

11 A. No, sir.

12 Q. They had full access of your entire theater; is
13 that not correct?

14 MR. GARCIA: Objection to leading, Judge.

15 BY MR. ESCOBAR:

16 Q. Did they have full access of your entire
17 theater?

18 A. Absolutely.

19 Q. Mr. Peck, are you lying today because you are
20 being sued?

21 MR. GARCIA: Objection, Judge. Objection.

22 That's an improper question, Judge, and Mr. Escobar
23 knows that.

24 THE COURT: Sustained.

25

1 BY MR. ESCOBAR:

2 Q. Does the fact that you are being sued today,
3 does that influence your testimony in any way?

4 A. No, sir.

5 MR. ESCOBAR: No further questions.

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

7 THE COURT: You may.

8 MR. GARCIA: I don't have any further questions
9 of Mr. Peck.

10 THE COURT: May this witness be released?

11 MR. ESCOBAR: We will keep him under subpoena
12 but released for now.

13 THE COURT: Mr. Peck, you still are subject to
14 recall, so please answer your calls or return any
15 calls that you get from either of the lawyers, and
16 otherwise, you're free to go for today, correct?

17 THE WITNESS: I'll be out of the country
18 starting this weekend.

19 THE COURT: This coming weekend?

20 THE WITNESS: Yes, ma'am.

21 MR. ESCOBAR: I'm aware of that, Your Honor.

22 THE COURT: All right.

23 Thank you, Mr. Peck. You're free to go.

24 (Witness excused.)

25 THE COURT: Who's our next witness going to be?

1 MR. ESCOBAR: Your Honor, the Defense calls
2 Michelle Simpson.

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

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

9 THE COURT: You may proceed, Counselor.

10 DIRECT EXAMINATION

11 BY MR. ESCOBAR:

12 Q. Good morning, Ms. Simpson.

13 A. Good morning.

14 Q. Ms. Simpson, please tell us your full name.

15 A. Dawn Michelle Simpson.

16 Q. Ms. Simpson, how are you employed?

17 A. I work for Centennial Bank.

18 Q. What do you do for that bank?

19 A. I'm a teller supervisor.

20 Q. Okay. How long have you had that occupation?

21 A. In banking, 26 years.

22 Q. Okay. Give us a little bit of history
23 concerning your banking employment for those 26 years.

24 A. I started as a teller. I moved -- then I moved
25 on to operations. My bank was -- I was laid off because

1 my bank was bought out.

2 So I then went on to Bay City Bank and was a
3 teller there and then became a teller supervisor. Went
4 back to operations again, and now I'm back as a teller
5 supervisor. Our bank was purchased by Centennial.

6 Q. Okay. Do you live here in this community?

7 A. I live in the Lutz/Land O' Lakes area.

8 Q. Okay. I'm going to direct your attention to
9 January 13th of 2014, and I'm going to show you initially
10 some photos and I'd like you to take a look at these
11 photos and see if you recognize them.

12 The photos are, first of all, Defendant's
13 Exhibit Number 24 that has been introduced into evidence.
14 I want you to take a look at this particular photo and
15 the time stamp at the bottom is 1/13/2014, 1345:49.

16 Can you recognize that particular photo?

17 A. Yes.

18 Q. Does that fairly and accurately depict for you
19 that time sequence there at the Cobb Theater in this
20 county?

21 A. Yes.

22 Q. Okay. Do you remember that?

23 A. Yes.

24 Q. Okay. Would you tell the Court what you were
25 doing at the Cobb Theater on January 13th of 2014?

1 A. I stopped there to look for movie posters, to
2 see if they had movie posters for my daughter's TV room.
3 She was doing a movie theme and I was looking for
4 posters.

5 Q. Okay. So you went to that counter to speak to
6 that particular gentleman?

7 A. Yes.

8 Q. Did you know that gentleman before?

9 A. No.

10 Q. So did you have a conversation with that
11 gentleman?

12 A. Yeah. A short conversation.

13 Q. What did you tell that gentleman?

14 A. Just that I was looking for movie posters, and
15 he asked that I make a list of which particular movies I
16 was looking for.

17 Q. The photo that we're seeing now, is that a
18 photo that's depicting your conversations with that
19 gentleman?

20 A. Yes.

21 Q. Okay. As you were having that conversation
22 with that gentleman, did you notice someone else coming
23 to the counter?

24 A. I noticed someone walking up, yes.

25 Q. Okay. And do you see that particular

1 individual in the court today?

2 A. Yes.

3 Q. Okay. Could you please point him out?

4 A. Right there.

5 Q. Is he the gentleman with the maroon tie and the
6 dark blazer, an older gentleman?

7 A. Yes.

8 Q. And is that the same gentleman that you see in
9 the photo depicted up on the screen at this point in
10 time?

11 A. Yes.

12 Q. Now, you finished your conversation?

13 A. Uh-huh.

14 Q. Do you know how long your conversation was with
15 Mr. Peck?

16 A. Not very long. Just a couple minutes. Not
17 very long.

18 Q. Okay. And during that time did Mr. Reeves wait
19 patiently for you to finish your conversation?

20 A. Yes.

21 Q. Okay. Did you notice anything that would have
22 caused you any alarm about Mr. Reeves being there at that
23 counter with you at that time?

24 A. No.

25 Q. Now, we're going to show you another picture.

1 Do you recognize that picture? And that picture is at
2 1/13/2014 at 13:26:07, and that has a VTS number of
3 VTS011VOB.

4 Do you recognize that photo?

5 A. Yes, that's when I moved to the side.

6 Q. Would you tell the Court why it was that you
7 moved to the side at that time?

8 A. I had a piece of paper, and then he asked that
9 I make a list of what particular movie posters I was
10 looking for.

11 Q. So that you could give that list to him and he
12 could act accordingly, trying to get those posters for
13 you?

14 A. Yes.

15 Q. Okay. Now, during that period of time did you
16 notice whether or not there was a conversation between
17 Mr. Reeves and the gentleman there at the counter,
18 Mr. Peck?

19 A. When I stepped aside to start making the list,
20 then he started to speak.

21 Q. Do you know what the conversation was about?

22 A. Yes.

23 MS. SUMNER: Objection. Calls for hearsay.

24 MR. ESCOBAR: I'm not going to go there.

25

1 BY MR. ESCOBAR:

2 Q. Was there anything about that conversation that
3 alarmed you?

4 A. No.

5 Q. Can you tell the Court what the appearance of
6 Mr. Reeves was as he was having that conversation? Was
7 he calm? Was he agitated? Was he mad? What?

8 A. No. He was very calm, polite. He waited for
9 me to step aside, and then had his conversation with the
10 manager.

11 Q. Okay. Did you think anything of it at that
12 point in time?

13 A. No.

14 Q. Just a normal conversation?

15 A. He wasn't upset.

16 Q. Okay. And what did you do then?

17 A. I don't recall how much longer I was there. It
18 was only, really, a minute or two. I knew they weren't
19 going to have the movies that we were looking for, so I
20 decided to leave and come back at later date.

21 Q. Okay. And so what happens later that day?

22 A. After I left the theater?

23 Q. Yeah.

24 A. I walked to my car and proceeded to drive up to
25 State Road 54 to head home. As soon as I got to 54, I

1 guess it was a few seconds, maybe a minute or so, either
2 a Pasco County deputy or a trooper, I don't recall, came
3 by and passed me. And then a few seconds later another
4 deputy drove past me at a pretty high rate of speed.

5 So I thought to myself, something has happened
6 in the area. I didn't know if it was a bank robbery or
7 something.

8 Q. Working for a bank?

9 A. Right. I knew it wasn't --

10 Q. Right.

11 A. -- normal speed for police officers.

12 Q. Now, at some point in time later that day did
13 you figure out that an incident had happened, a shooting
14 incident had happened at the Cobb Theater?

15 A. Yes. I got home maybe ten minutes later and I
16 turned on the TV, and the bulletin was just going off.
17 And so I got on my computer, and that's when I -- I
18 believe my home page was Bay News 9, and that's when I
19 saw the caption, what it had said.

20 Q. Okay. Now, at some point in time, did you
21 communicate with someone else concerning the fact that
22 you were there at that theater shortly before the
23 incident?

24 A. Well, I had called my mom to tell her that I
25 was just there. And she told me that I should call the

1 police. I was like, "I wasn't in the theater," but she
2 said, "You should anyway." So I did. I called 911 and
3 gave them my information.

4 Q. Okay. And at some point in time thereafter, do
5 you get interviewed by a law enforcement officer?

6 A. Yes.

7 Q. Okay. And where does that interview take
8 place?

9 A. It was over the phone.

10 Q. It was over the phone?

11 A. Uh-huh.

12 Q. Do you recall the name of that officer that
13 interviewed you over the phone?

14 A. I don't.

15 Q. Do you know how long or how short that
16 interview was?

17 A. Just a few minutes.

18 Q. Okay. Do you recall what may have been asked
19 of you?

20 A. Just what had happened, what I heard.

21 Q. Okay. And did you tell them or tell that
22 gentleman what you've told us here today?

23 A. Yes.

24 MR. ESCOBAR: No further questions.

25 THE COURT: Cross?

1 MS. SUMNER: Yes, Your Honor.

2 May it please the Court, Mr. Escobar.

3 CROSS-EXAMINATION

4 BY MS. SUMNER:

5 Q. Good morning, Ms. Simpson. How are you?

6 A. Good.

7 Q. Now, isn't it true that you never observed
8 Mr. Reeves indicate any kind of urgency in this matter?

9 A. I'm not sure what you mean.

10 Q. When you saw him -- let me ask you this: When
11 you saw him walk up, did he have any problems walking?

12 A. I didn't see him walk up. I just felt somebody
13 walk up to the counter. I could see out of my peripheral
14 vision, but I didn't see him actually walk up.

15 Q. And you overheard this conversation?

16 A. Part of it, yes.

17 Q. Did he report any urgency in trying to get the
18 general manager to go in right then and take care of this
19 problem?

20 A. No, he was calm, and he just said, there's
21 someone in the theater --

22 Q. I don't want you to say what he said, but he
23 was calm when he reported to the general manager is your
24 testimony?

25 A. Yes.

1 Q. He never reported that he felt threatened by
2 this person, did he?

3 A. No.

4 MR. ESCOBAR: Judge, I'm going to -- she's
5 opening the door at that point in time. She can't
6 have her cake and eat it, too.

7 THE COURT: We're getting close.

8 MR. ESCOBAR: She's asking for an opinion on a
9 conversation that she's saying is hearsay.

10 MS. SUMNER: What's his objection?

11 MR. GARCIA: What's the objection.

12 MR. ESCOBAR: That's the objection. It's
13 hearsay. If it's hearsay on direct, it's hearsay on
14 cross.

15 MS. SUMNER: I'm not asking for what he said,
16 but just how she took what he said to the general
17 manager.

18 THE COURT: All right. You could ask,
19 obviously, about his physical mannerisms, but if
20 you're asking questions that are going to directly
21 call for a hearsay response, then I will have to
22 sustain it.

23 You can rephrase.

24 MR. ESCOBAR: Judge, if she wants the entire
25 conversation, I'm more than glad for her to say it.

1 I'm not objecting to the hearsay. What I'm
2 objecting to is the fact if they object, we get the
3 same rules.

4 BY MS. SUMNER:

5 Q. How long was Mr. Reeves there at that counter,
6 ma'am?

7 A. I'm not really sure. I left, so I don't know
8 if he was still at the counter or not when I left. I
9 didn't pay attention to that.

10 Q. And you indicated that you did not actually
11 hand the piece of paper in to the general manager at that
12 point?

13 A. No.

14 Q. And you didn't think anything of the
15 conversation at that point when you got to 54 and saw two
16 law enforcement cars driving quickly with their lights
17 on?

18 A. No.

19 MS. SUMNER: I have nothing further, Your
20 Honor.

21 THE COURT: Any redirect?

22 MR. ESCOBAR: No need for redirect.

23 THE COURT: May this witness be released?

24 MR. ESCOBAR: This witness may be released.

25 THE COURT: Ms. Simpson, you're free to go.

1 Thank you. We're going to take a break.

2 MR. ESCOBAR: Thank you, Your Honor.

3 THE COURT: We'll go ahead and take a
4 ten-minute recess and resume at that point.

5 (Recess taken.)

6 MR. MICHAELS: Defense calls Jessica Gillotte.

7 THE COURT: Can you have her spell it, right?

8 MR. MICHAELS: Yes, Judge.

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

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

15 THE COURT: You may proceed, Counselor.

16 DIRECT EXAMINATION

17 BY MR. MICHAELS:

18 Q. Officer Gillotte, good morning.

19 Please state your full name and spell your last
20 name for the court reporter.

21 A. My name is Jessica Gillotte, G-I-L-L-O-T-T-E.

22 Q. I see by your uniform you're with the Tampa
23 Police Department?

24 A. Yes, sir.

25 Q. And how long have you been with the Tampa

1 Police Department?

2 A. About a year-and-a-half.

3 Q. And what is your current assignment there?

4 A. I'm road patrol.

5 Q. Let me talk a little bit about your law
6 enforcement career.

7 How long have you been in law enforcement,
8 total?

9 A. Seventeen years.

10 Q. Where did you start your career in law
11 enforcement?

12 A. Pasco County Sheriff's Office.

13 Q. And tell me about some of the various
14 assignments you had for those -- what -- 14, 15 years --

15 A. Yes.

16 Q. -- in law enforcement for Pasco?

17 A. I worked as a road patrol, school resource
18 officer. I was a detective. I did some undercover work
19 in the street crimes unit. I was a corporal on the
20 street, so acting supervisor from time to time.

21 Q. In fact, when this incident took place on
22 January 13th of 2014, indeed, you were a corporal at that
23 point, correct?

24 A. Yes, sir.

25 Q. As a corporal, tell me what your duties would

1 be.

2 A. If the sergeant was there, which on that
3 particular day he was, my job is just to provide
4 assistance to him with anything he needs, basically, like
5 an assistant manager.

6 Q. If not, you would be in a supervisory role; is
7 that fair to say?

8 A. Correct. Yes, sir.

9 Q. Now, you also worked as a detective?

10 A. Yes.

11 Q. So certainly you've had training in interview
12 techniques?

13 A. Yes, sir.

14 Q. Tell the Court a little bit about your
15 training.

16 A. Well, I've had advanced interview techniques.
17 I've had several interview classes. I can't remember the
18 name of them off the top of my head, but I've had
19 probably three weeks' worth of interview training.

20 Q. And would you agree or disagree that during
21 your many years in law enforcement, you've had occasion
22 to take statements from witnesses or people that
23 potentially could be witnesses to various crimes?

24 A. Yes, sir.

25 Q. Both serious crimes, right --

1 A. Yes.

2 Q. -- and maybe something that might be termed
3 more petty crimes?

4 A. Yes, sir.

5 Q. Have you had occasion to interview or be in a
6 scene where you're going to interview multiple potential
7 witnesses?

8 A. Yes, sir.

9 Q. So you're certainly aware of the different
10 techniques that you should use when dealing with a large
11 crowd of witnesses?

12 A. Yes.

13 Q. Is it fair to say, too, in your career that
14 you've dealt with situations that might be traumatic for
15 potential witnesses?

16 A. Yes, I have.

17 Q. Now, let's talk a little bit about January 13th
18 of 2014. What was your assignment at that point?

19 A. I was working road patrol in the Wesley Chapel
20 area.

21 Q. As a corporal?

22 A. Yes, sir.

23 Q. How did you become involved in the call to the
24 Cobb Theater at Wesley Chapel?

25 A. I heard a call for a possible active shooter at

1 the theater.

2 Q. And when you hear that sort of call, what is
3 the protocol? How are you to respond there?

4 A. Go directly to the scene, and if it's still
5 active, run to the sound of the gunfire and stop the
6 threat.

7 Q. Okay. And is it fair to say that you went as
8 quickly as you could?

9 A. Yes.

10 Q. In fact, would you agree or disagree that you
11 headed there so fast, it smelled like your car was
12 burning up?

13 A. That's correct.

14 Q. Before we talk a little bit more about the
15 theater, why did you leave Pasco County and why are you
16 working for the Tampa Police Department?

17 A. Tampa has a larger tax base, so there's a lot
18 more opportunities for advancement and there are more
19 people working there, so you have more help.

20 It's just -- for me it was a career move to
21 broaden my horizons, make more money, have more backup,
22 things like that.

23 Q. So do you agree or disagree that it was a
24 choice that you made?

25 A. Yes, sir.

1 Q. Would you agree or disagree with me that as a
2 professional law enforcement, it was your opinion --

3 MS. SUMNER: I'm going to object. That's
4 obviously leading. He's been doing it, and I
5 decided not to let it go.

6 MR. MICHAELS: I said: Would you agree or
7 disagree?

8 MS. SUMNER: He needs to reform his question,
9 Judge.

10 MR. MICHAELS: Well, leading is you, and then I
11 leave it open. If I say agree or disagree,
12 certainly it doesn't beg the answer or suggest an
13 answer.

14 MS. SUMNER: This is direct examination. This
15 is for him to get information from the witness, not
16 to feed information to the witness and determine
17 whether or not she agrees or disagrees.

18 MR. MICHAELS: I appreciate it.

19 MS. SUMNER: He's testifying for her.

20 MR. MICHAELS: Judge, I appreciate that the
21 prosecutor may have a different stylistic approach
22 to her direct examinations; however, it's proper
23 under the rules for me to ask a question that does
24 not suggest an answer. It gives her a choice of yes
25 or no. There's nothing wrong with that.

1 THE COURT: As long as it doesn't suggest the
2 answer within the question as well, I'll allow it.

3 MR. MICHAELS: Okay.

4 BY MR. MICHAELS:

5 Q. Do you agree or disagree with me that as a
6 professional law enforcement officer, you felt that the
7 Pasco County Sheriff's Office was understaffed at the
8 time?

9 A. On patrol, yes.

10 Q. So, therefore, one of the reasons for your --
11 well, is it true that one of the reasons for your
12 transfer was because of that?

13 MS. SUMNER: Objection to relevance, Judge.

14 MR. MICHAELS: Well, Judge, I don't want the
15 prosecutor to get up here and attack her motive for
16 testifying, now that she's with a different Police
17 Department, about what went on in the theater,
18 frankly, that the subject matter deals with a
19 witness contamination and how part of it has to do
20 with the understaffing problem that the department
21 had, so I think it's relevant in this case.

22 THE COURT: I'm going to overrule it.

23 BY MR. MICHAELS:

24 Q. Okay. You can answer the question.

25 A. Can you ask it again? I apologize.

1 Q. One of the reasons that you chose -- is it true
2 that one of the reasons you chose to leave the
3 department, Pasco County, and go to Tampa Police
4 Department is because you felt they were understaffed?

5 A. One of many reasons, but, yes.

6 Q. Now, let's talk about the Cobb Theater. Back
7 on January 13th you get the call. You're in what sort of
8 vehicle?

9 A. A marked patrol car.

10 Q. Are you in uniform?

11 A. Yes, sir.

12 Q. What do you do when you get to the theater?

13 A. When I was arriving on scene at the theater, I
14 can see people flagging me down from the back, so I went
15 to the back of the theater. I knew the other units had
16 gone in through the front.

17 Q. So you were not the first law enforcement unit
18 to arrive?

19 A. No, sir.

20 Q. Do you know who else was there when you
21 arrived?

22 A. Deputy Frederico, Sergeant Greiner, Deputy
23 Robarts and Deputy Bunner.

24 Q. Okay. And later on, did you learn whether or
25 not those individuals were actually the entry team?

1 A. Yes. Later on I learned -- I don't believe
2 Frederico was part of the entry team. I think he stayed
3 out front, but the other three were.

4 Q. So were you -- to your understanding, were you
5 or were you not one of the first non-initial entry team
6 responders to arrive at the theater?

7 A. Correct.

8 Q. And you were describing that you drove -- you
9 talked about emergency exits. Are we talking about the
10 rear part of the theater?

11 A. Yes, sir.

12 Q. When you got there, you just described that
13 people were flagging you down?

14 A. Right.

15 Q. What did you do?

16 A. I went in through the back of the theater.
17 Fire rescue was coming, so I went and got them.

18 When I looked in the theater, I saw they were
19 taking him into custody and it was safe for fire rescue
20 to come in.

21 Q. Okay.

22 A. I went and flagged down fire rescue and brought
23 them in.

24 Q. So I can understand, I want to take you step by
25 step. When you get there, people are flagging you down,

1 right?

2 A. Uh-huh.

3 Q. And what do you do? Do you park your vehicle?

4 A. Yes.

5 Q. You get out?

6 A. Uh-huh.

7 Q. And then what do you do? Go into --

8 A. I walk into the rear entrance to the theater.

9 Q. That's one of the fire exits?

10 A. Yes.

11 Q. Would the exit that you walk into be, as I'm
12 facing the screen, on the right or on the left?

13 A. It would be on the right.

14 Q. Okay. When you go into the theater, you
15 described that they were taking Mr. Reeves away?

16 A. Yes, they had gotten him in custody. They were
17 moving him through the aisles, I remember.

18 Q. And did you make any observations about -- of
19 Mr. Reeves at that time?

20 A. He said it was hurting him to move and the way
21 that they were moving him because of the seats.

22 MS. SUMNER: Judge, I'm going to object as
23 non-responsive. The question was, "Did you make any
24 observations," not, "What did the Defendant say?" I
25 would ask that it be stricken.

1 MR. ESCOBAR: Well, the observation she made
2 was exactly that. He was saying these things.
3 That's not offered --

4 MS. SUMNER: That's a statement. That's not an
5 observation.

6 THE COURT: All right. It was hearsay. I'm
7 not hearing any exception, and I will disregard it.

8 MR. MICHAELS: Okay.

9 BY MR. MICHAELS:

10 Q. Let me ask it to you this way:

11 When you arrived, were you aware that -- when
12 the entry team had arrived; in other words, had the entry
13 team arrived shortly -- very shortly before you got
14 there?

15 A. Correct.

16 Q. And when you got to the theater, were the
17 emergency vehicles even there yet?

18 A. The patrol cars?

19 Q. Emergency vehicles? Fire engines.

20 A. So you're speaking of Fire Rescue --

21 Q. Yes.

22 A. -- there's different kinds, so I wanted to
23 clarify.

24 Fire rescue was not there yet.

25 Q. Okay. So you beat Fire Rescue?

1 A. Yes.

2 Q. You just testified you were the first
3 individual on the scene?

4 MS. SUMNER: Objection. Asked and answered.

5 MR. MICHAELS: I'm laying a predicate for
6 excited utterance, Judge. He just got arrested, so
7 his excited utterance or spontaneous statement has
8 to do with the arrest. That's the event that he's
9 commenting on, saying that his shoulder is hurting.

10 THE COURT: Where are we at here? I mean, I
11 didn't hear any objection as to hearsay again.

12 MS. SUMNER: I'm objecting that it is not --

13 THE COURT: Asked and answered is what I heard.

14 MS. SUMNER: I'm just trying to lay a predicate
15 for this, whether it's an excited utterance.

16 Now, it's quite some time afterwards that they
17 arrested him. And it's not about the event, it's
18 them trying to back door some issue regarding his
19 arthritis, I'm assuming, which is irrelevant, at
20 this point, with this witness.

21 MR. MICHAELS: Judge --

22 MS. SUMNER: So it's not a statement about the
23 event. It's a statement about his medical
24 condition, which they've already provided evidence
25 to.

1 MR. MICHAELS: Well, Judge --

2 MS. SUMNER: So I'm going to object to her
3 testifying to this because it's hearsay. I don't
4 believe that that is what the excited utterance
5 exception to 803 was all about, so --

6 THE COURT: All right. So where are you?
7 Where are you headed with this?

8 First of all, you asked her -- you indicated
9 she was the first -- you were the first responder on
10 the scene, correct? And --

11 MR. MICHAELS: Well, because I did ask her the
12 question, I was trying to lay a predicate.

13 Let me say this about what the State says in
14 their comments. I -- the statement that Mr. Reeves
15 makes concerning his pain certainly fits under
16 then-existing mental, emotional, or physical
17 conditions, Section 90.803(3). He's describing a
18 physical sensation --

19 MS. SUMNER: Judge, I think all we know is that
20 that is when we're trying to elicit that testimony
21 from a medical professional that the Defendant, or
22 whatever witness, has sought out for treatment for a
23 condition.

24 We can come in, we can have the doctor testify
25 that he said he was experiencing these types of

1 issues, not for a hearsay statement that happened as
2 they're trying to elicit.

3 I object. It is hearsay. It is not an
4 exception to any of these situations they're trying
5 to bring out. It's not an excited utterance. It's
6 not a then-existing medical condition because that
7 is not what that exception was crafted for, not for
8 a deputy or an officer to come in and testify to
9 what the Defendant might have said when he was being
10 handcuffed or walked away.

11 MR. MICHAELS: Judge --

12 MS. SUMNER: I object.

13 MR. MICHAELS: Judge, I appreciate that. If
14 we're going to talk about what rules are crafted,
15 the hearsay rule is crafted to try to weed out
16 statements that are going to be unreliable because
17 of certain circumstances.

18 For instance, if somebody has enough time to
19 make something up, it's going to be hearsay. I
20 mean, that's the gut reaction part of it.

21 So in this kind of a case where as he's
22 passing, Mr. Reeves has no reason to make up that,
23 "Oh, I'm in pain." You know, "You're hurting me."

24 There is no reason for him to have fabricated
25 this previously and just have spouted that as he's

1 passing then Corporal Gillotte, so any kind of
2 indicia of unreliability is not present in this
3 situation.

4 THE COURT: All right. We can spend more time
5 arguing about it. Obviously I've already heard what
6 we're trying to keep out. I need to know, though,
7 for procedural purposes where she -- there is a lack
8 in predicate.

9 From what I heard, she's just walked in the
10 back door, and I know now where the back door must
11 be, way down here, and Mr. Reeves was sitting in his
12 seat way up here. So did he shout that or was she
13 up there? I need a predicate.

14 I'm going to overrule for the moment based on
15 the hearsay exception of the then-existing medical
16 condition. I know she's not the first responder, as
17 far as medical staff goes, but I'm going to overrule
18 for other reasons.

19 As Mr. Michaels indicated, the -- I'm not
20 concerned that this is going to be a faulty
21 statement or misconstrued or somehow unreliable, so
22 set the predicate.

23 BY MR. MICHAELS:

24 Q. Let me show -- if I may, let me show you,
25 Officer, what's been marked as Court Exhibit Number 7.

1 It's a photograph. It's a picture of the inside of the
2 theater, Officer. It's been entered into evidence. We
3 can take a look at it and help understand where you were
4 and where you saw Mr. Reeves.

5 That's JPEG 2081418. All right.

6 Looking at the photograph that's been entered
7 into evidence, do you recognize that photograph, the area
8 it depicts?

9 A. Yes, sir.

10 Q. Is that a fair and accurate depiction of what
11 Theater 10 looked like the day of January 13th, 2014?

12 A. Yes, it is.

13 Q. Now, if you could, I know we don't see the exit
14 doors but --

15 MR. MICHAELS: Judge, may I have the officer
16 step down, please?

17 THE COURT: You may.

18 MR. MICHAELS: If you would step down, please.

19

20 BY MR. MICHAELS:

21 Q. -- and point out to the Court where the exit
22 door was, approximately, that you entered the heater?

23 A. It would have been over here.

24 Q. Okay. So we're looking towards the back of the
25 theater, and you're indicating with your left arm kind of

1 the left side; is that right?

2 A. Yes.

3 Q. Once you entered through that door, what did
4 you do? Did you look around the theater? Or tell me how
5 you proceeded.

6 A. I didn't go very far because I was hollering
7 out to another deputy coming out to go get fire rescue,
8 and then he wanted to go in, and I had seen him. I had
9 seen that they were bringing out Mr. Reeves this way.
10 They kept him here, and I was at the entrance, that back
11 entrance, and then I left again to go get fire rescue,
12 bring them in.

13 Q. Where did you hear Mr. Reeves make the comment
14 that you testified to earlier?

15 A. He was being brought out right around here.
16 You know, there's some issue with seating and stuff, you
17 know, being brought out backwards, so --

18 Q. All right. So --

19 A. -- he had some discomfort.

20 Q. Would you sit down, please?

21 A. (Witness complies.)

22 Q. So describe to us what you saw. You're at the
23 bottom of the theater. You're looking up. You see that
24 Mr. Reeves is in custody as you described.

25 Describe how Mr. Reeves was being pulled out of

1 the back row.

2 A. Awkwardly. I mean, it's difficult because he's
3 a large guy. The deputies were all large guys, so
4 everybody was just trying to get him out of there, and I
5 remember he was making some noise to the effect of that
6 it was uncomfortable for him. I remember that.

7 Q. So they were sounds that made you -- gave you
8 the impression that he was in pain? I'm speaking of
9 Mr. Reeves.

10 A. Yes.

11 Q. Now, when you say the officers are large, I
12 remember Sergeant Greiner. How tall is Sergeant Greiner?

13 A. Oh, 6'7", maybe. He's a big guy.

14 Q. And that was one of the officers you described
15 who had hands on Mr. Reeves?

16 A. Yes.

17 Q. At that point could you see if Mr. Reeves was
18 handcuffed or not?

19 A. He was.

20 Q. And where was he handcuffed?

21 MS. SUMNER: Your Honor, I'm going to object to
22 the relevance of all of this.

23 MR. MICHAELS: She asked me to lay a predicate,
24 Judge.

25 MS. SUMNER: For time purposes, not the size of

1 the officer and where he was handcuffed, things of
2 that nature.

3 MR. MICHAELS: Judge, it's relevant because
4 certain patrons had made comments that they observed
5 certain expressions on Mr. Reeves' face and, you
6 know, part of this testimony is so that if we do get
7 that testimony, if that's what the government
8 chooses to present, then certainly now we have
9 somebody who's going to explain what they may see as
10 a grimace or a mean look or an angry look with
11 somebody who's yelling because they're being dragged
12 out by a 6'7" police officer as a 71-year-old.

13 THE COURT: I will overrule.

14 MR. MICHAELS: Okay.

15 BY MR. MICHAELS:

16 Q. So describe that. You said they had Mr. Reeves
17 handcuffed behind his back?

18 A. Yes, sir.

19 Q. Okay. And that's procedure?

20 A. Right.

21 Q. Now, tell me, were they behind Mr. Reeves? How
22 were they getting him out of the aisle?

23 A. It was difficult to remember. In all fairness,
24 I was more worried about the victim at that point once I
25 knew he was secured, so I really wanted to get fire

1 rescue.

2 Q. I understand, but you observed that Mr. Reeves
3 was being pulled out backwards through the aisle?

4 MS. SUMNER: Objection, asked and answered.

5 THE COURT: I didn't hear the answer.

6 BY MR. MICHAELS:

7 Q. He was being pulled out backward?

8 A. Either backwards or sideways. It looked
9 like -- I remember he yelled something to the effect that
10 it was uncomfortable for him.

11 Q. Now, your main concern, of course, is Mr.
12 Oulson now?

13 A. Yes, sir.

14 Q. And so you described you want to get fire
15 rescue there. What did you do to make that happen?

16 A. I got back in my car, threw it in reverse and
17 flagged them down and brought them back.

18 Q. Now, when you first got in the theater, I
19 understand there's a lot going on because the call was a
20 hot call?

21 A. Yes, sir.

22 Q. You're seeing somebody being arrested and you
23 see somebody that's obviously injured.

24 Do you have a chance to notice whether or not
25 there are any patrons around, civilians?

1 A. They were people in the theater.

2 Q. At that point could you estimate how many you
3 saw?

4 A. Ten or eleven that I can think of. I mean,
5 that's just a guesstimation.

6 Q. When you got to the theater and walked inside
7 initially, do you remember what the lighting was like?

8 A. I don't.

9 Q. Was it pitch black or were you able to see
10 someone?

11 A. No, because that back door was open. I
12 remember that created some light, and I'm not sure if
13 they had turned the theater lights on yet at that point
14 or not.

15 Q. Now, you flagged down the emergency personnel,
16 the medical personnel. What is the next thing that you
17 do?

18 A. I went inside, basically just surveyed the
19 scene to try to figure out where it actually happened at
20 within the theater.

21 Q. Survey that -- I know what it means if you're
22 looking at landlines and all of that, but what do you
23 mean when you talk about surveying the scene at this
24 point?

25 A. Taking it all in, like looking at the whole

1 scene, trying to understand: What do I have? Where did
2 it happen?

3 Q. What is your vantage point of this surveying of
4 the scene?

5 A. From -- first from the bottom of the scene, you
6 know, looking up at all of the chairs, and then I believe
7 I went up around the right side, because I knew things
8 had happened somewhere near the left or at least the
9 Defendant had been walked through in the area.

10 Q. What was the purpose of going up the right side
11 and not going right through where everyone was coming?

12 A. Because that's where everybody was coming.

13 Q. Did you also do it -- you can answer yes or no;
14 I don't know the answer -- did you also do it to preserve
15 the potential crime scene?

16 A. Yes, sir.

17 Q. Because you know that's very important?

18 A. It is, yes.

19 Q. Now you've done your survey. You've called for
20 medical personnel. Are there still people in the theater
21 at this point?

22 A. Yes.

23 Q. So what do you do?

24 A. I move them to the lower level. Everybody had
25 kind of moved anyway because fire rescue had come and the

1 Defendant was being taken out, so everybody sort of
2 congregated on what would be facing this picture, our
3 right side by the yellow handrails there.

4 Q. If you don't mind, I hate to make you get up
5 and down, but if you could --

6 MR. MICHAELS: May she, Judge?

7 THE COURT: Uh-huh.

8 BY MR. MICHAELS:

9 Q. If you would show the Court what area you're
10 talking about.

11 A. Right around here everybody was gathered, and
12 here.

13 Q. Now, had those people gathered there on their
14 own, or had you provided some instruction to go over
15 there?

16 A. A little of both. I'm sure that I wanted to
17 get everyone together.

18 Q. What was the purpose of doing that?

19 A. I wanted to actually get them all together so
20 that I could get them separated.

21 Q. Okay.

22 A. I wanted to hand out statements and get them
23 busy.

24 Q. Okay. And that's interesting that you would
25 say that. You said you put them together so that you

1 could get them separated.

2 A. I had to get everybody together to explain to
3 them, "I'm going to give you guys statements. I know
4 you've been through a really traumatic event. Please
5 stay separated," and then I can get to work on this crime
6 scene.

7 Q. Can you remember how many people were there?

8 A. I don't. Like I said, there was maybe ten or
9 eleven or more.

10 Q. Does the number 15 or 20 sound unbelievable?

11 A. That's absolutely possible.

12 Q. Now, when you say you put them in a section
13 together, show us the section you put them in.

14 A. Well, I knew it had happened over here. There
15 was stuff I had seen on the ground.

16 Q. That's the left side of the theater as you're
17 looking to the back wall?

18 A. Yeah, so I wanted to rope this all off. I
19 would prefer to have just kept them out of this entire
20 theater, but there was nowhere else for me to put them
21 because the movie theater itself had not been evacuated,
22 so the best I could do, with this whole thing being mine
23 at that moment, was put them in here writing statements
24 where I could watch them and still put up crime scene
25 tape and look at what I actually had.

1 Q. All right. So you're showing us you wanted to
2 keep them out of that top section because that's where,
3 apparently, it took place, the event, right?

4 A. Yes, sir.

5 Q. You showed us as we're looking towards the back
6 of the theater in the lower right quadrant, kind of --

7 A. Here.

8 Q. Yes.

9 A. Okay.

10 Q. Is that where you put them?

11 A. Here, like here.

12 Q. The last three rows or so?

13 A. Yeah, closer to the yellow bars. I didn't want
14 them too far from me, but I wanted them to be separated
15 in seats and writing and busy.

16 Q. Okay. You can have a seat, please.

17 A. (Witness complies.)

18 Q. Now, you said, you testified that the scene was
19 all yours. What do you mean by that?

20 A. At the moment the entry team had taken the
21 suspect. There were officers who had gone with the
22 victim. I did have a couple other deputies come in and
23 help me out by getting pens or more statements, but for
24 the most part I was in control of Theater 10 until all of
25 the detectives arrived.

1 Q. So you're in control of the crime scene, are
2 you?

3 A. Yes, sir.

4 Q. You're in control of the potential witnesses,
5 are you?

6 A. Yes.

7 Q. You're in control of making sure or trying to
8 make sure that nobody comes in or goes out without you
9 knowing it?

10 A. Right. That was covered by Deputy Bunner and,
11 I believe, Deputy Gene Smith. Deputy Bunner was at the
12 front. I couldn't see him, and Gene Smith would have
13 been in the back.

14 Q. Okay. Now, you hand these individuals
15 testimony -- voluntary statement forms, I think they're
16 called, right?

17 A. Yes, sir.

18 Q. And you tell them what?

19 A. "Fill out the statement to the best of your
20 ability, what you saw and what you heard."

21 Q. Okay. Agree or disagree: There was nobody to
22 watch these people to see whether they talked to each
23 other or not?

24 A. The entire time?

25 Q. Yes.

1 A. No.

2 Q. And so do you know whether people talked to one
3 another while they were filling out their forms?

4 A. I thought I was doing an excellent job of
5 keeping them from talking to each other until I collected
6 the statements.

7 Q. So tell me about that. What about collecting
8 the statements makes you say that you thought you were
9 doing a great job when you weren't?

10 A. A married couple had the exact same written
11 statement.

12 Q. I'm approaching you with what's been marked as
13 Defense Exhibit Number 50.

14 MR. MICHAELS: May I, Your Honor?

15 THE COURT: You may.

16 BY MR. MICHAELS:

17 Q. I want you to take a look at that, if you
18 could.

19 A. Uh-huh.

20 Q. Do you recognize those two statement forms?

21 A. I do, yes.

22 Q. Is that a fair and accurate representation of
23 what you saw on that day?

24 A. Yes, sir.

25 MR. MICHAELS: Judge, at this time, I would

1 move Defense Exhibit Number 50 into evidence.

2 THE COURT: Any objection?

3 MR. MARTIN: A moment, Your Honor.

4 MR. MICHAELS: May I approach the clerk?

5 THE COURT: Yes.

6 (Whereupon State's Exhibit 50 for
7 identification was received in evidence by the
8 Court.)

9 MR. MICHAELS: This one is Number 25, please,
10 Defense Exhibit 25.

11 THE COURT: Is that a composite?

12 MR. MICHAELS: Yes. May I approach the
13 witness?

14 THE COURT: You may.

15 BY MR. MICHAELS:

16 Q. All right. You have this Number 25. That's a
17 composite.

18 There are two voluntary statement forms. The
19 one on top has whose name on it?

20 A. Louis Perez.

21 Q. What's the statement that's written on that
22 form?

23 A. I heard someone say 'Get out of my face,' then
24 a shot.

25 Q. And can you read the signature at the bottom?

1 A. I can see the printed name of Louis Perez.

2 Q. Okay. And is there a second form as part of
3 that exhibit?

4 A. Yes.

5 Q. Is that also the Pasco County Sheriff's Office
6 voluntary statement form?

7 A. Yes, it is.

8 Q. And are those two the forms that you handed out
9 that day in the theater?

10 A. Yes, copies of them.

11 Q. I'm sorry?

12 A. Copies of them, yes.

13 Q. Copies. And what does that statement say?

14 A. You want me to read it?

15 MS. SUMNER: I'm going to object to relevance.

16 THE COURT: Hang on just a moment.

17 MS. SUMNER: We object to relevance. We did
18 not object to these composite statements coming in
19 because we know they're trying to argue
20 contamination. This is hearsay.

21 They can't then try to come in and have us
22 believe that this is for the truth of the matter
23 asserted. We object to any line -- we let it in.
24 It speaks for itself. There's no need for him to
25 cross-examine what's on the statement itself.

1 He can ask about the logistics of how she came
2 in possession of it --

3 THE COURT: Right.

4 MS. SUMNER: -- but the similarities, and all
5 of that, they speak for themselves.

6 MR. MICHAELS: Judge, if they speak for
7 themselves, there shouldn't be any problem with this
8 witness testifying about it, and certainly they
9 didn't object to it coming into evidence, so I'm
10 having her describe the evidence that came in for
11 the Court. Simply read the form.

12 There's -- I haven't heard a legal objection --
13 it's not relevant? They didn't object to it coming
14 into evidence.

15 MS. SUMNER: It's not relevant under the
16 purposes which he's arguing, Judge. We're asking
17 for you to make a ruling that this is for the
18 limited purpose of contamination only. The facts of
19 what's on that is irrelevant with this witness.

20 MR. MICHAELS: The fact of what's on them is
21 relevant for exactly the point that the State is
22 saying I'm trying to make, which is that there is
23 witness contamination.

24 MS. SUMNER: He's trying to back door this
25 statement, which is something that cannot be

1 attributed to the speaker at this point, so this is
2 not the correct witness which for him to do this.

3 MR. MICHAELS: Well, it sounds like an
4 objection to them being entered. They didn't
5 object, Judge, so I think the horse is out of the
6 barn on that one.

7 THE COURT: All right. They have been entered.
8 There was no limitations put on these admissions. I
9 understand clearly the argument, at this point, as
10 far as the content of the statement themselves --

11 MR. MICHAELS: But, again, Judge if we're
12 talking about witness contamination, you know, the
13 content of the statement may very well be relevant
14 at a later point in time. They're definitely
15 relevant now because we're talking about two people
16 making the same statement, so we have to know what
17 the statements are to determine whether they're the
18 same or not.

19 THE COURT: There's no question that the
20 content is hearsay, but, obviously, the argument is
21 it came in to show that they were the same
22 statement.

23 As far as direct examination as to the content,
24 I'm going to -- obviously they're in. I'm going to
25 see them, so I don't know that it matters

1 significantly other than there's no real purpose to
2 continue with the line of questioning as to what
3 they said other than to prove that they were the
4 same, so I will sustain to some extent, and overrule
5 to some extent, as well, to that, with that
6 explanation.

7 MR. MICHAELS: All right. Your Honor, may I
8 approach the witness just so I can go over the
9 statement form with her?

10 THE COURT: You may.

11 MR. MICHAELS: Thank you.

12 BY MR. MICHAELS:

13 Q. Okay. Officer, let's look at -- I'm going to
14 separate them briefly with the Court's permission and --
15 I will restaple them, and I'm going to put both
16 statements side by side for you. On your left is at the
17 very top --

18 MS. SUMNER: Objection to him testifying,
19 Judge. He can ask the witness what one's on the
20 left.

21 MR. MICHAELS: Judge, it's a long-winded
22 question I'm about to ask, but I have to set up my
23 question.

24 THE COURT: Go ahead.

25 I'll overrule you.

1 BY MR. MICHAELS:

2 Q. The one at the left at the very top, there's a
3 name. What is that name?

4 A. Louis Perez.

5 Q. At the very top of the one on your right,
6 there's a name, and what is that name?

7 A. Gladys Perez.

8 Q. Now, I don't know whether you're a handwriting
9 expert or not. Let me ask you: Are you?

10 A. No.

11 Q. But in your eye, as a regular person, does the
12 handwriting look the same for both of those?

13 A. Yes.

14 MS. SUMNER: I'm going to object to him asking
15 her that.

16 THE COURT: I'll overrule that.

17 MR. MICHAELS: Lay people can testify to that.

18 BY MR. MICHAELS:

19 Q. Now, let's look at the first word. Without
20 saying it, is the first word the same on Louis's form and
21 on Gladys's form?

22 A. Yes.

23 Q. Okay. The second word, is it the same on
24 Louis's form and Gladys's form?

25 A. Yes.

1 Q. And I forgot to ask you about the handwriting
2 for the first word. Is that the same on both forms?

3 A. Yes.

4 Q. The same for the second word: The same on both
5 forms?

6 A. Yes.

7 Q. The third word, is that the same on Louis's
8 form as it is on Gladys's form?

9 A. Yes.

10 Q. Again, the handwriting, does it look similar to
11 you?

12 A. It does.

13 Q. Or identical to you?

14 A. It's similar, yes.

15 Q. Okay. Now, this is the fourth word. Is it the
16 same?

17 A. Yes.

18 Q. Again, the handwriting, is it similar or the
19 same?

20 A. Similar.

21 Q. The next word?

22 A. Yes.

23 Q. The same?

24 A. Yes.

25 Q. And also looks similar or identical?

1 A. Yes.

2 Q. The very next word, the same?

3 A. Yes.

4 Q. Both in the actual word itself and how it's
5 written?

6 A. Uh-huh.

7 Q. The next word?

8 A. Uh-huh.

9 Q. The same, right?

10 A. The same, right.

11 Q. Handwriting, how it's written?

12 A. Uh-huh.

13 Q. And what it says?

14 A. Yes.

15 Q. The next word, the same?

16 A. Yes.

17 Q. The following word, the same?

18 A. Yes.

19 Q. Both of those are similar handwriting; would
20 you agree with me?

21 A. Yes.

22 Q. Okay. The very next word, the same?

23 A. Yes.

24 Q. And again, a very unusual "T." That's the same
25 in both words. You would agree with me on that, that

1 they're similar whether it's unusual or not?

2 A. I suppose.

3 Q. The next word, the same?

4 A. Yes.

5 Q. Written in a similar fashion?

6 A. Yes, sir.

7 Q. The same with the last word?

8 A. Yes.

9 Q. Now, there's an address written down that's the
10 same address on both forms. Again, that address is
11 written in the same or substantially similar handwriting;
12 would you agree --

13 A. Yes.

14 Q. -- or disagree?

15 Okay. And the same with the telephone number?

16 A. Yes.

17 Q. Okay. Now, you testified earlier that you
18 thought you did a good job until you saw, essentially,
19 that form; is that right?

20 A. That's right.

21 Q. Tell me why that caused you concern.

22 A. It frustrated me, because that meant that she
23 or one of them had filled out the statement for the
24 other.

25 Q. And so what did that tell you? Would you agree

1 or disagree with me that that's symptomatic of something
2 larger which is witness contamination?

3 MS. SUMNER: I'm going to object to
4 speculation.

5 MR. MICHAELS: Judge, she's testified to her
6 training and certainly --

7 THE COURT: I will overrule that.

8 MR. MICHAELS: Okay.

9 BY MR. MICHAELS:

10 Q. Would you agree or disagree that that's
11 symptomatic of potential witness contamination?

12 A. You would have to ask them specifically only
13 because I've had both situations where maybe somebody
14 said, "Here, just fill this out," without necessarily
15 discussing the incident.

16 Q. Okay.

17 A. So you would have to ask them specifically. I
18 can't answer for them on that.

19 Q. But certainly you had concern for that issue
20 after seeing this?

21 A. Yes.

22 Q. You would depend upon the detective, or whoever
23 you handed it off to, to make inquiries into that issue,
24 right?

25 A. Yes.

1 Q. And did this also not tell you that really you
2 weren't exactly supervising them because you didn't see
3 this, did you?

4 A. Right. I can't, unfortunately, watch 15 people
5 write a statement at the same time.

6 Q. Would you agree or disagree that scene was kind
7 of chaotic because of lack of people that responded
8 initially?

9 A. It was chaotic because it was such a large
10 scene.

11 Q. Now, at some point, did you contact Detective
12 Short to talk to him about perhaps moving some witnesses?

13 A. I don't remember if I contacted him, or I
14 believe he might have come to me. Detectives started
15 flooding in, all kinds of people came, and the
16 detectives, like in any case, will take over your scene.

17 Q. Okay. And what was the purpose of moving
18 people? Is that to separate them?

19 A. Just to maintain the crime scene even better.

20 Q. Okay.

21 A. And possibly -- you would have to ask Detective
22 Short, but I know our main concern was getting them out
23 of that theater initially, Theater 10.

24 Q. And do you agree or disagree with me that
25 ideally it would be advantageous to separate potential

1 witnesses to a criminal event?

2 A. Yes, very much.

3 Q. To a potential criminal event?

4 A. Yes, sir.

5 Q. And that is so that they don't talk to each
6 other; is that correct?

7 A. Correct.

8 Q. And why is it important that individuals not
9 speak to each other concerning what they think they saw
10 or what they heard or think they heard?

11 A. Because they can change each other's mind on
12 what they saw or heard.

13 Q. And in your experience is that any more acute
14 in a situation where people have witnessed a dramatic or
15 traumatic kind of a scene?

16 A. That I can't answer to. I'm not sure.

17 Q. Were they upset when you got to the theater?

18 A. They were.

19 MR. MICHAELS: May I have a moment?

20 THE COURT: You may.

21 BY MR. MICHAELS:

22 Q. Now, once you finished in the theater, what was
23 your next action? What were your next duties at the
24 movie theater?

25 A. I took Deputy Bunner's spot at the front door

1 of Theater 10 from inside the theater.

2 Q. What were you doing there?

3 A. Just maintaining the crime scene log.

4 Q. Let's talk a little bit about that.

5 When you got there, you said -- is it
6 Lieutenant Bunner?

7 A. I don't know if he's a lieutenant now or deputy
8 I believe at that time.

9 Q. Okay, Deputy Bunner -- was maintaining the
10 crime scene log?

11 A. Yes, sir.

12 Q. And what is that? How is that done?

13 A. It's a log. It says the case number and the
14 date and time and the names of the people who entered and
15 exited the scene.

16 Q. Let me show you what's been marked as Defense
17 Exhibit Number 49, if I may.

18 Take a look at that, please.

19 MS. SUMNER: If we can see that, please.

20 MR. MICHAELS: Oh, I apologize.

21 MS. SUMNER: Judge, I'm going to object to the
22 relevance of this crime scene log at this point.
23 She already indicated that she maintained a crime
24 scene log. That document that they had, had other
25 crime scene logs of other officers, so he has

1 omitted those pictures.

2 At this point, there's no relevance to the
3 crime scene log, and there is no exception to the
4 hearsay rule. It's hearsay. It's things that are
5 written down for the truth of the matter asserted.

6 THE COURT: Response?

7 MR. MICHAELS: Your Honor, the crime scene log
8 has to do with work that the then corporal performed
9 at the scene. The testimony that we expect to
10 elicit from the corporal is that she got there, that
11 this other officer was keeping a crime log, that it
12 was kind of sloppy, so she had -- you know, there
13 was a lot of time she was sitting there. She
14 rewrote it and threw the original crime log away.

15 Certainly we're not trying to reflect poorly on
16 this officer, but in terms of the overall
17 investigation it has a lot to do with how the
18 investigation was handled, so --

19 MS. SUMNER: Judge, that's our objection. The
20 purpose of this hearing is to determine whether or
21 not Mr. Reeves was reasonable in his actions on that
22 day. With regard to this investigation, something
23 that happened after the shooting is irrelevant for
24 your purposes. We object and we want it kept out.

25 MR. MICHAELS: Judge, if we had a beautiful HD

1 video, which we wish we did in this case, then we
2 wouldn't be here having this hearing.

3 Part of the hearing is we bear the burden of
4 proving it at this point, not that I think that
5 that's proper, but that's what the law is now and I
6 understand that, so we should be afforded every
7 opportunity to prove our burden.

8 So one of the issues is how the crime scene was
9 handled, and it's important because we have to see
10 what evidence was preserved and potentially what
11 evidence was lost, and certainly the Court can
12 consider that when the Court considers testimony
13 from individuals who gathered certain evidence and
14 certain evidence that may have been present that we
15 don't have or potential witness statements that
16 weren't captured properly.

17 So all of that is food for the Court's thought
18 on what kind of evidence was gathered and,
19 therefore, what kind of evidence the Court should
20 consider.

21 We have our own crime scene investigator coming
22 up, an expert in the field, and so I think those
23 things are important to get the overall picture to
24 determine, yeah, one side is Mr. Reeves and his
25 perception. The other side, though, is what else --

1 what else do we have out there?

2 So for that reason it's relevant, and I think
3 that she should be able to testify -- the officer
4 should be able to testify, and I think it comes in
5 as evidence.

6 MS. SUMNER: Judge, that's the problem with it.
7 I agree it's their burden of proof. This -- what
8 the argument that he's making, he's trying to prove
9 something with a negative.

10 If we had a jury seated here and we were
11 looking at the standard of beyond a reasonable doubt
12 and he was trying to cast doubt on the
13 investigation, that's one thing, but all you have to
14 determine is whether or not he was reasonable in his
15 actions.

16 He can't get proof through a negative of what
17 wasn't done or what should have been done, so for
18 the purposes of this hearing, where they have the
19 burden of proof to show that Mr. Reeves' actions
20 were reasonable, this doesn't come in.

21 He can't prove -- he can't meet his burden by
22 showing negatives. That would be if we were at the
23 jury trial stage where we're looking at reasonable
24 doubt and we have a jury to consider that, so we're
25 getting far afield from what the purpose of this

1 hearing is and what the Court's role is and what the
2 Defendant's role is in this particular incident.

3 MR. MICHAELS: The big picture, Judge, here is
4 this old man sitting here, this retired police
5 captain sitting here, is the accused in this case.
6 We can never lose sight that he's the accused. He's
7 the Defendant.

8 The Government is prosecuting Mr. Reeves, and
9 so we're in some kind of a hybrid hearing where the
10 Florida State Legislature somehow decided they don't
11 have the burden that we do. We don't all of a
12 sudden lose sight of who the accused is and who gets
13 the benefit of the doubt here.

14 If the prosecutor is saying if this was a jury
15 trial, it would come in, it should come in here,
16 too, because he's also facing the same penalty he
17 would in a jury trial.

18 MR. ESCOBAR: Judge, --

19 MS. SUMNER: Judge, I'm going to object to
20 Mr. Escobar --

21 THE COURT: Hold on. Stop.

22 MR. ESCOBAR: Judge, it affects part of my
23 presentation as well as what she's doing. I'm not
24 getting involved in individual presentations because
25 I understand the Court's rule, but the minute that

1 it starts affecting my presentation, my witnesses --

2 THE COURT: All right. You'll get a minute.

3 MR. ESCOBAR: Okay.

4 THE COURT: It's Mr. Michaels who is arguing
5 this issue. We only do one at a time.

6 MR. ESCOBAR: I understand.

7 THE COURT: What I want to know -- and you're
8 welcome to confer, but we only do one at a time, and
9 right now it's Mr. Michaels and Ms. Sumner.

10 The objection on the table is as to the
11 relevance of this whole line of questioning.

12 Mr. Michaels, tell me how it's relevant to the
13 issue at hand.

14 MR. MICHAELS: It's relevant because the issue
15 at hand can only be considered by the Court based on
16 the evidence that is presented to the Court. The
17 evidence in this case is coming from a couple of
18 different places.

19 The evidence is coming to the Court is
20 evidence, number one, that is gathered by law
21 enforcement initially and later on.

22 The other evidence, that the Court has already
23 heard a bunch of it, is from expert testimony and
24 the other witnesses, both lay and law enforcement
25 witnesses.

1 So because part of the evidence that the Court
2 is to consider is coming from evidence and
3 statements and things gathered by law enforcement,
4 it's relevant to show that if law enforcement didn't
5 do a great job in preserving it, for whatever
6 reason, then that should be taken into consideration
7 when the Court hears from our experts.

8 For instance, where the Court considers the
9 credibility and reliability of the testimony of one
10 of the State's witnesses, or even one of our
11 witnesses, the reason this is important is because
12 the destroyed crime scene log wasn't contained.

13 So if, for instance, and I'm not suggesting
14 that I have any evidence of this, but if for
15 instance there was a -- you know, a handwriting
16 error or an error of an entry of some sort, and
17 certainly the State can cross-examine the officer
18 and she can say, No, I was real careful. I wrote it
19 down. I was just trying to make it neat so people
20 could read it and try and preserve evidence, okay,
21 that's what they get, and that's why it's relevant.

22 THE COURT: In a nutshell, are you saying it's
23 going to the credibility of the witnesses and the
24 evidence?

25 MR. MICHAELS: Yes, Judge.

1 THE COURT: All right. Under those
2 circumstances, it's almost always relevant. I'm
3 going to overrule with that explanation.

4 MR. MICHAELS: Okay.

5 BY MR. MICHAELS:

6 Q. Now, this is Defense Exhibit Number 50.

7 MR. MICHAELS: May I approach the witness?

8 THE COURT: Yes.

9 MR. MICHAELS: Thank you.

10 BY MR. MICHAELS:

11 Q. All right. I'm showing you what's been marked
12 for our defense identification purpose as Number 50.
13 You've already heard a lot about it, Officer. Do you
14 recognize that?

15 A. I do.

16 Q. Is that your handwriting?

17 A. Yes, sir.

18 Q. Is that a log that you created?

19 A. Yes.

20 Q. Now, were you the originator of that log?

21 A. Can you rephrase? I'm not sure I understand.

22 Q. In other words, when you took over the post to
23 keep the log, were you the first one there?

24 A. No.

25 Q. Did you start the log?

1 A. No, sir.

2 Q. So there was already an existing log?

3 A. There was.

4 Q. All right. And did you rewrite that log?

5 A. I did.

6 Q. And why did you do that?

7 A. To make it more legible.

8 Q. So the other officer had bad handwriting or not
9 as good as yours?

10 MS. SUMNER: Objection, Judge. Leading.

11 THE COURT: Sustained.

12 BY MR. MICHAELS:

13 Q. Let me ask you this: Did you preserve a copy
14 of the crime scene log that you destroyed?

15 A. No.

16 Q. Okay.

17 MR. MICHAELS: Judge, at this time, I would
18 like to move into evidence Defense -- Number 50 for
19 the defense.

20 MS. SUMNER: Objection, hearsay. There is no
21 exception.

22 THE COURT: Response?

23 MR. MICHAELS: Judge, this isn't offered --
24 this isn't being offered to prove the truth of the
25 matter asserted. This isn't being offered to prove

1 that Mr. Smith, the first responder, entered on 1340
2 and left at a different time.

3 The purpose of this is exactly what we talked
4 about because it has a bearing on the credibility of
5 witnesses and the evidence the Court is going to
6 receive.

7 You've heard the testimony. This isn't about,
8 you know, whether or not this individual entered at
9 a certain time or not. It may become -- later on
10 that may become relevant, but at this time it's
11 being offered for the statement that was presented
12 to the Court.

13 MS. SUMNER: Judge, then he needs to establish
14 which witnesses are affected by this and what
15 evidence was affected by this. He can't do that.
16 He even said that. He said, "I don't know if it
17 will become an issue," so for that purpose it's
18 irrelevant. It's hearsay, and he has not laid a
19 proper predicate for issues that he's trying to have
20 this Court to believe it to be.

21 Again, Judge. He's trying to prove a negative,
22 and we're getting far afield of what the purpose of
23 this hearing is.

24 MR. MICHAELS: Judge, in the interest of
25 streamlining things, at this time, I won't offer it

1 into evidence. The Court has heard the testimony,
2 but I will ask to staple Exhibit Number 25.

3 If I may approach the clerk.

4 THE COURT: Go ahead.

5 MS. SUMNER: To staple those two documents
6 together, that composite? Is that what he's trying
7 to do?

8 THE COURT: Yes.

9 MR. MICHAELS: Your Honor, I will show the
10 prosecutor what I'm doing.

11 May I have a moment, Your Honor?

12 THE COURT: You may.

13 MR. MICHAELS: I don't have any other
14 questions. Thank you.

15 THE COURT: Thank you.

16 Cross?

17 MS. SUMNER: One minute, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. SUMNER:

20 Q. Good afternoon, Officer Gillotte.

21 A. Good afternoon.

22 Q. So this is probably still good morning.

23 You indicated that you were with Pasco County
24 Sheriff's Office for approximately 15 years; is that
25 correct?

1 A. Yes, ma'am.

2 Q. And the reasons you left Pasco County Sheriff's
3 Office were what?

4 A. Just better pay and opportunities at Tampa.
5 More opportunities for advancement, more manpower.

6 Q. Personal reasons, right?

7 A. Uh-huh.

8 Q. Now, you indicated that you were the first
9 non-entry team officer to arrive on scene; is that
10 correct?

11 A. At the back door, yes.

12 Q. At the back door. So there were other officers
13 around. You had indicated -- correct me if I'm wrong --
14 Deputy Gondick, Sergeant Greiner, Deputy Smith, a
15 Detective Schuler, Deputy Robartz, Deputy Frederico,
16 Deputy Bunner?

17 A. Yes, ma'am. Right.

18 Q. Right? So there were a number of law
19 enforcement officers there at the time?

20 A. Right.

21 Q. Who indicated to you that you would set up the
22 crime scene?

23 A. No one.

24 Q. You took it upon yourself to do that?

25 A. Yes, ma'am.

1 Q. Were other people involved in other aspects of
2 the investigation at that point?

3 A. Correct.

4 Q. You indicated that Deputy Bunner was at the
5 front door. Are you talking about the door where the
6 patrons would enter the theater?

7 A. Yes. The entrance to Theater 10 from inside
8 the building.

9 Q. And then they would come in and pick which side
10 they wanted to go down?

11 A. Yes, ma'am.

12 Q. And you indicated Deputy Smith, at some point,
13 was at the back door?

14 A. Right.

15 Q. Are you calling that the emergency exit door?

16 A. Yes, ma'am.

17 Q. Okay. Now, you indicated that there were
18 anywhere from 10 to 15 people, patrons, in the theater
19 when you arrived?

20 A. Yes, ma'am.

21 Q. And isn't it a fact that you did tell them not
22 to discuss the case amongst themselves?

23 A. Correct.

24 Q. In fact, you indicated that you were trying to
25 keep an eye on them. We saw that picture in that area

1 where the yellow railing was, right? That was what you
2 had considered to be the crime scene. That's what you
3 cordoned off, correct?

4 A. Right. I wanted them as close to me as
5 possible without contaminating the screen scene.

6 Q. So you put them not within the crime scene but
7 on the other side of the crime scene, correct?

8 A. Correct.

9 Q. And you indicated that you tried to get them
10 seated in the first couple of rows, that bottom section
11 of the theater?

12 A. Uh-hum.

13 Q. So that they could start working, "getting
14 busy" were your words --

15 A. Right.

16 Q. -- so that they wouldn't discuss the case?

17 A. Correct. Yes, ma'am.

18 Q. And you then had your back to them or maybe you
19 were rolling tape out this way as you're watching them in
20 front of you?

21 A. Exactly.

22 Q. How long of a period do you believe that you
23 were in there with them?

24 A. If I had to guess, I would say half an hour to
25 an hour.

1 Q. And you indicated that you had to keep them in
2 that Theater 10, because, at that point, the rest of the
3 theater had not yet been evacuated, correct?

4 A. Correct.

5 Q. And you wanted to cordon off the crime scene to
6 prevent anybody else from coming in and contaminating it?

7 A. Yes, sir.

8 Q. You felt you had to do those two things at the
9 same time, simultaneously?

10 A. Correct.

11 Q. Now, you indicated that you got these
12 statements back from them, right?

13 A. Yes.

14 Q. Okay. And you looked through all the
15 statements, didn't you?

16 A. Briefly, yes.

17 Q. And are the only two statements that you saw
18 that appeared to be the same, identical or similar, were
19 the two from the Perezes?

20 A. Yes, sir.

21 Q. And isn't it true that you don't know under
22 what circumstances these two statements came to be
23 similar or the same?

24 A. Correct.

25 Q. And when you handed over these statements, to

1 whom did you hand them over?

2 A. I believe it was Detective Short.

3 Q. Detective Short?

4 A. Or possibly his sergeant, Sergeant Luby Fields.

5

6 Q. So one of those two gentlemen, you handed over
7 a pack of statements from the 10 to 15 witnesses that you
8 had just cordoned off --

9 A. Yes.

10 Q. -- and sat in those first two rows that you
11 were watching them.

12 Did you overhear any of these witnesses talking
13 amongst themselves about the events that they observed?

14 A. No.

15 Q. Did you advise either Detective Short or
16 Sergeant Luby, "Look, here's the statements. These two
17 are similar or the same"?

18 A. Yes.

19 MS. SUMNER: Nothing further, Your Honor.

20 THE COURT: Any other redirect?

21 MR. MICHAELS: Yes.

22

23 REDIRECT EXAMINATION

24 BY MR. MICHAELS:

25 Q. As you sit here today, can you give us the

1 names of all the witnesses that were there in that
2 section?

3 A. No, sir.

4 Q. Can you give me the name of five witnesses that
5 were there?

6 A. No.

7 Q. Three?

8 A. No, sir.

9 Q. Two, not counting the Perezes?

10 A. No, sir.

11 Q. Now, you said that you looked at the Perezes.
12 That's pretty obvious because they both look exactly
13 alike, right?

14 A. The Perezes look exactly alike?

15 Q. Yes, their statement forms.

16 A. Oh, I thought you meant them literally.

17 Q. No, not the people.

18 A. Yes.

19 Q. Did you do any explanation of the other
20 statements, like a kind of a spreadsheet to see this
21 person was sitting next to this person and they both said

22 A. This person was sitting next to this person and they
23 both said A. Did you do any of that sort of analysis?

24 A. I briefly looked through all the statements and
25 noticed that the Perezes' looked the same, and that was

1 it.

2 Q. Because that's pretty obvious?

3 A. Yes.

4 Q. Even a cursory review you would see that.

5 A. Right.

6 Q. But in terms of where everybody was sitting and
7 whether the guy sitting in seat number one was the same
8 as the guy sitting in seat number three in terms of his
9 statement, you have no idea about that?

10 A. Correct.

11 Q. We can agree, though, or disagree that when you
12 saw that those two were the same, that alarmed you?

13 A. Yes.

14 Q. And it caused you some concern?

15 A. Frustration, yes.

16 Q. Frustration, but concern for the integrity of
17 the witness statements; is that true?

18 A. Yes, sir.

19 Q. All right.

20 MR. MICHAELS: I have nothing else, Your Honor.

21 RE-CROSS-EXAMINATION

22 BY MS. SUMNER:

23 Q. You would agree with me that two people
24 observing the same thing could document it in the same
25 way, right?

1 MR. MICHAELS: Objection. Speculation.

2 BY MS. SUMNER:

3 Q. It doesn't mean it's contamination, right?

4 A. Correct.

5 MR. MICHAELS: Objection. Speculation.

6 THE COURT: I'll overrule it.

7 Anything further from this witness?

8 MR. MICHAELS: No, Your Honor. As far as the
9 Defense is concerned, the officer may be released.

10 THE COURT: State?

11 MS. SUMNER: We ask that she still be under
12 subpoena.

13 THE COURT: Okay. You're free to go today, and
14 there's a possibility that you may be recalled.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Thank you.

17 (Witness excused.)

18 THE COURT: Who's next?

19 MR. MICHAELS: Your Honor, our next witness we
20 would be calling is Mrs. Reeves. It's not going to
21 be a short one. It's 20 of 12:00. I'd rather not
22 be in a situation where we have her testimony broken
23 up. I don't think it's fair to Mr. Reeves. I don't
24 think it's fair to the witness, so I would ask that
25 we take an early lunch, come back and get started

1 early and proceed.

2 I also need a little time to set up a video for
3 Mrs. Reeves as well.

4 THE COURT: All right. Then we'll go ahead and
5 take a recess at this time. We'll reconvene at
6 1:00.

7 Thank you.

8 (Recess taken.)

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