

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

STATE OF FLORIDA,

Plaintiff,

vs.

VOLUME IX

CURTIS J. REEVES,

Defendant.

\_\_\_\_\_ /

PROCEEDINGS: STAND YOUR GROUND MOTION

DATE: February 24, 2017

BEFORE: HONORABLE SUSAN BARTHLE  
CIRCUIT COURT JUDGE

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

REPORTED BY: Dana L. Stockton, RPR  
Notary Public  
State of Florida, at Large

PAGES 1014 - 1213

VERBATIM PROFESSIONAL REPORTING, INC.  
601 Cleveland Street, Suite 380,  
Clearwater, Florida 33755  
(727) 442-72828

1 APPEARANCES:

2 APPEARING ON BEHALF OF THE  
3 STATE OF FLORIDA

4  
5 GLENN L. MARTIN, JR., ESQ  
6 STACY SUMNER, ESQ  
7 MANNY GARCIA, ESQ

8 Assistant State Attorneys  
9 Office of Bernie McCabe, State Attorney  
10 Robert D. Sumner Judicial Center  
11 38053 Live Oak Avenue  
12 Dade City, FL 33523

13 APPEARING ON BEHALF OF  
14 THE DEFENDANT - CURTIS REEVES

15 RICHARD ESCOBAR, ESQ  
16 DINO MICHAELS, ESQ  
17 RUPAK SHAH, ESQ  
18 ESCOBAR & ASSOCIATES  
19 2917 West Kennedy Boulevard  
20 Suite 100  
21 Tampa, Florida 33609  
22  
23  
24  
25

1	INDEX TO PROCEEDINGS	
2		PAGE
3	PROCEEDINGS TAKEN AT COBB THEATER	1017
4	JEFFREY T. HUNTER, JR.	
5	Direct Examination	1037, 1043
6		
7	OPEN COURT PROCEEDINGS	1048
8	DEFENDANT'S CASE	
9	VERNARD ADAMS, M.D.	
10	Direct Examination	1050
11	Cross-Examination	1108
12	Redirect Examination	1122
13	Recross-Examination	1123
14		
15	ALLEN PROCTOR	
16	Direct Examination	1125
17		
18		
19		
20	EXHIBITS	
21	DEFENSE NO. 30	1058
22	DEFENSE NO. 101	1060
23	DEFENSE NO. 99	1076
24	DEFENSE NO. 34	1173
25	DEFENSE NO. 35	1176

## VOLUME IX

(Whereupon, these proceedings were stenographically recorded at Cobb Theater, Wesley Chapel, Florida.)

THE COURT: All right. Counsel, let's stand over by her.

All right. Good morning. Present we have Mr. Martin, Mr. Garcia, Mrs. Sumner for the State.

Mr. Thompson, Mr. Robert Kelly, Mr. Escobar, Mr. Michaels and Mr. Shah.

MR. ESCOBAR: Stephanie, she's our paralegal.

THE COURT: You've been doing a good job, by the way.

And we've all had the opportunity to know, first of all, that the Times filed the Motion to Intervene yesterday late, 5:00.

And has all counsel -- I know Defense, obviously, has had the opportunity to review that, since I'm holding a response in my hand.

You guys, Mr. Martin, Mr. Garcia, have you seen it?

MR. MARTIN: We don't have a dog in this. We're out.

THE COURT: That's true. You don't care.

1 MR. MARTIN: So we're not saying a word.

2 THE COURT: Okay. And I have had the  
3 opportunity to review the -- briefly, the  
4 Defense's response.

5 Who wants to argue the response?

6 MR. ESCOBAR: Your Honor, we're going to  
7 base our argument strictly on what's written.  
8 I think it's a pretty clear memorandum. This  
9 is a private entity, a private place, and they  
10 have limited the media from being able to come  
11 in here. So we agree with that and support  
12 that.

13 THE COURT: All right. Is there any way  
14 that we can allow the same restrictions, the  
15 same scenario, as we do in the courtroom with  
16 the media? One camera, no electronics, other  
17 than that? Any way possible?

18 MR. MARTIN: Your Honor -- for the record,  
19 Robert Kelly. I'm here for Cobb Theaters  
20 today.

21 We have a real problem. As Your Honor's  
22 aware, there's a pending civil lawsuit going  
23 on. Until Your Honor just handed me the motion  
24 this morning we have never had an opportunity  
25 to be heard on this.

1           We certainly wanted to make the theater  
2           available for Your Honor and for the court  
3           personnel as part of Your Honor's hearing, the  
4           stand your ground matter.

5           But we certainly have not had an  
6           opportunity to brief any of this, to file any  
7           objections. This was more of a courtesy  
8           requested by the Defense we wanted to extend  
9           need of court intervention.

10          But if we had known it was going to be  
11          this kind of commotion for the press, we  
12          certainly would have objected to this without a  
13          hearing well in advance of this visit.

14          THE COURT: All right. And that kind of  
15          covers a lot of my other questions about, you  
16          know, I wish we would have had this ironed out  
17          way before today.

18          I am hesitant to proceed without giving  
19          the Times an opportunity to be heard. If, you  
20          know -- I know, Mr. Kelly, that obviously your  
21          interest -- just as you just said, you haven't  
22          had the opportunity to be heard or argue or  
23          anything.

24          Here's -- here's typically how I envision  
25          this unfolding. We've got several options. I

1       can proceed today with the viewing, exclude the  
2       media.

3               I think -- well, I'm not going to do that.  
4       I honestly believe that that is not the correct  
5       way to proceed. I'm not a big fan of skipping  
6       overdue process in any shape, form or fashion,  
7       and I am not going to just blow them off.

8               I read their motion and they -- the media  
9       has a lot of success in these types of  
10       scenarios. It's part of our basic  
11       Constitutional rights and threads as a country  
12       that everything's in the open and everybody has  
13       access to everything nowadays.

14              And I do feel that this is clearly an  
15       evidentiary proceeding. Initially it seemed,  
16       you know, well, maybe not. But it is. It is.  
17       There's no question.

18              So the Defense's options at that point, if  
19       I cancel the viewing today, because I'm not  
20       going to exclude the media entirely, and we'll  
21       do this quickly is -- you know, I don't want to  
22       get ugly right off the bat.

23              But if they sincerely need the movie  
24       theater's cooperation, they can certainly list  
25       the movie theater as a witness and file a

1 motion to compel. And we could hear that  
2 quickly, as well as the Times' motion and, you  
3 know, go from there.

4 MR. ESCOBAR: Your Honor, as the Court  
5 well knows, what's paramount to, certainly from  
6 my position, is my client's due process rights  
7 and my client's proper presentation of a  
8 defense in this particular case.

9 I certainly appreciate the media wanting  
10 to be here. That's their job and their  
11 business. And I know that there are certainly  
12 Constitutional issues that play a role here;  
13 however, there is a balancing test.

14 And what I don't want to happen is what I  
15 explained to the Court I didn't want to happen  
16 yesterday, and that is, that because of the  
17 media and because of their insistence to be  
18 here, it's a private location, privately owned,  
19 that those owners can exclude the media  
20 regardless of the Constitutional issues, that  
21 my client will be left out in the verge in a  
22 case that is so important to him and a  
23 presentation that's so important to him. And I  
24 think that presentation is going to be  
25 important to everyone in this community.



1           So I am really, really concerned about  
2           that particular issue. I don't think that they  
3           have to have a camera in here, first of all.

4           You know, this is not something that, I  
5           think, if they want to maybe come in -- and I  
6           haven't spoken to Mr. Kelly, so I don't want to  
7           step on anybody's toes, but I'm just talking  
8           here. You know, there may be, you know, some  
9           middle ground as to maybe having, you know, one  
10          or two of the individuals from the media, you  
11          know, attend personally.

12          But I can tell you in Federal court there  
13          are no cameras, absolutely no cameras. And so  
14          if in Federal court -- we go into Federal court  
15          and there are no cameras of any kind, video or  
16          otherwise, I am really at odds here as to why  
17          we think that in State court that there's some  
18          different standard that they get the benefit  
19          of.

20          And so I don't want to step on Mr. Kelly's  
21          toes, because he has been very gracious in  
22          going and jumping through a lot of hoops, you  
23          know, for the Defense and for us to be here.  
24          But this camera and their insistence that they  
25          think they can bring a camera into every

1 proceeding is absolutely ludicrous.

2 So I agree that, you know -- as much as I  
3 hate to say this, strictly for the benefit of  
4 my client. I agree that the Court should, at  
5 the very least, listen to the media.

6 But I would like to do it today. I would  
7 like to do it this morning. I would like to do  
8 it right here so that we can get on with this  
9 presentation, because we set this presentation  
10 in this location of our witnesses for a reason.  
11 And we can't, you know, at this point in time,  
12 start changing that process because it really  
13 destroys our presentation.

14 And I know the Court's bending over  
15 backwards for us, as well, and I appreciate  
16 that. I don't want the Court to think I'm not  
17 appreciative of any of that.

18 And I think you can understand where we're  
19 coming from. And that, you know, in the State  
20 system, for whatever reason, we seem to think  
21 that the media can bring in, not only one  
22 camera, but 12 cameras. You know, we stop, you  
23 know, for every one of their whims. And they  
24 don't do that in Federal court. I think the  
25 Court knows that.

1           I go into Federal court and there's not a  
2           single camera, there's not a single video.  
3           There's nothing in Federal court. And it's  
4           controlled and it's Constitutional and  
5           everybody has their rights.

6           They can do sketches. They've got sketch  
7           artists that are very, very good in Federal  
8           court. That's what they do, they just sketch  
9           away.

10          That's what I'm going to be asking the  
11          Court today. To bring cameras in here would  
12          create a circus.

13          THE COURT: All right.

14          MR. KELLY: Judge, if I may? Just one  
15          other opportunity?

16          THE COURT: Yes.

17          MR. KELLY: In this particular matter my  
18          client does not own the land on which this  
19          theater sits. There is a landlord. And from  
20          the get-go of this instance the media has been  
21          relegated to a staging area that is now  
22          occupied where Chucky E. Cheese and the Dollar  
23          General area are.

24          So I also feel uncomfortable without  
25          having the landlord have an opportunity to be

1 present in this issue, as well, because we do  
2 have media now coming onto their property.

3 You know, my client was under the  
4 impression yesterday afternoon that there would  
5 not be media, so we didn't feel a need to have  
6 to address that.

7 If they would prefer none at all, maybe  
8 someone has to come in and they don't want to  
9 have a full camera set up of what's going on or  
10 a reporter feels -- if Your Honor feels that a  
11 reporter needs to be here, that's certainly  
12 fine.

13 But they certainly did not want cameras,  
14 based upon the landlord's insistence and their  
15 corporate position of having a media staging  
16 area, and not have the media into the lobby and  
17 into the theater without the presence in this  
18 fashion.

19 MR. THOMPSON: If I might interject?

20 THE COURT: Yes.

21 MR. THOMPSON: Just to draw a distinction  
22 between the Federal system and the State  
23 system. According to Florida Rule of Judicial  
24 Administration 2.450, the media is allowed to  
25 have one pool videographer and one pool digital

1           photographer in a courtroom proceeding.

2           THE COURT: Yeah, I mean, we're not in the  
3           Federal system so that -- I understand the  
4           argument. But we're not dealing with that and  
5           I'm not going to obviously address that at this  
6           time.

7           What if I entered an order, or we had some  
8           sort of a stipulation of whatever? I can order  
9           that any -- if a camera was brought in, nothing  
10          could be used in the civil suit without a  
11          hearing.

12          And that's -- you know, I know that's the  
13          procedure anyways. I'm sure there's been  
14          requests already, or if not, I don't know where  
15          you're at in the discovery process on that.  
16          But typically that comes and you have a  
17          couple-hour hearing on, you know, weighing the  
18          interest on that.

19          So that that -- obviously I was thinking  
20          about that yesterday, you know, how can I just  
21          let the media come in here with that pending.  
22          I totally understand.

23          I have to balance the media's right, if  
24          you will, to be present under the Rules with  
25          primarily Cobb Theater's private interest.

1           So if we have to have a hearing on it, I  
2           will give -- we'll have a hearing no later than  
3           Tuesday. But I -- you know, this is -- I can't  
4           help snags that develop in the Defense's case.  
5           I'm sure these three prosecutors can tell you,  
6           it happens. It happens all the time. And you  
7           have to -- you have to recover however you can.

8           And that -- you know, I just can't get in  
9           the middle of that. It's not -- this isn't  
10          something that -- I mean, certainly you can put  
11          on your case without the theater. Obviously  
12          you want that. But I can't just order people  
13          to do things. I can't just disregard the  
14          media. I just can't. I'm a public servant and  
15          I have to follow the law.

16          MR. ESCOBAR: Judge, if we have to wait  
17          until Tuesday. One of the issues that I wanted  
18          to address is this administrative rule that  
19          supposedly, you know, we think may carry weight  
20          over Constitutional issues.

21          And I think that could be certainly  
22          researched relatively quickly and let this  
23          media then, you know, have a hearing before the  
24          Court some time, hopefully today, if need be,  
25          so that we could, you know, get this issue

1 resolved and get this presentation done and  
2 then get, you know, the order of my witnesses  
3 aligned, you know, with that.

4 I think that to wait until Tuesday to  
5 decide this issue is, for my preference, very  
6 late.

7 THE COURT: Well, my -- I don't care. I'm  
8 not having to prepare the briefs and prepare  
9 the arguments. But, you know, I'm not going  
10 to -- we all know due process, I mean, those  
11 who are going to have to prepare the briefs and  
12 do the argument and get someone up here to  
13 argue it, are liable to be screaming about  
14 that.

15 And I'm sure Mr. Kelly would like to  
16 prepare something, as well. Obviously any  
17 decision I make is going to impact the theater,  
18 potentially. So, you know --

19 MR. ESCOBAR: Your Honor, may I have some  
20 discussions with Mr. Kelly and see what his  
21 feelings are?

22 THE COURT: Sure.

23 THE COURT REPORTER: What is your name?

24 MR. THOMPSON: I'm Stephen, S-T-E-P-H-E-N,  
25 Thompson, T-H-O-M-P-S-O-N.

1 THE COURT REPORTER: Who do you represent?

2 MR. THOMPSON: I'm the public information  
3 officer for the Sixth Circuit.

4 MR. ESCOBAR: Your Honor, I've spoken to  
5 Mr. Kelly. And Mr. Kelly, please correct me if  
6 I say something that's not correct. You know,  
7 I would like to propose that we contact the  
8 media for a compromise of them being able to  
9 come in but without cameras.

10 And, you know, that may be a compromise  
11 they're willing to accept; otherwise, we're  
12 going to have a full-blown battle on this and  
13 they may not be able to be in here at all. So  
14 we're willing to -- correct, Mr. Kelly?

15 MR. KELLY: Correct. And that was my  
16 client's main concern was having the full video  
17 feed.

18 Obviously, Judge, we feel that there's no  
19 need for a reporter to be here. If Your Honor  
20 weighs that balancing test differently, we  
21 certainly understand. But we would request  
22 that a reporter could be here on behalf of the  
23 press and need not have a full video link of  
24 everything going on.

25 THE COURT: Can we call?



1           MR. THOMPSON: I think what we would have  
2 to do with the television stations is now alert  
3 them as to what's going to happen and give them  
4 an opportunity to respond.

5           Thus far, the only media entity that has  
6 objected is the Tampa Bay Times. But when the  
7 Tampa Bay Times did that, I'm sure they meant  
8 to include their photographer on that.

9           THE COURT: Well, right now we only have  
10 --

11          MR. ESCOBAR: St. Pete Times.

12          THE COURT: Right.

13          MR. THOMPSON: I mean, typically if this  
14 were to go down it would be one -- and I know  
15 this doesn't jibe with what you want -- but it  
16 would be one pool videographer and that's it.  
17 There wouldn't be five or six or the balance.  
18 There would be one.

19          There would be one digital photographer,  
20 two people in the back corner and one or two  
21 fellows with notebooks and pads and that would  
22 be it.

23          MR. ESCOBAR: Judge, the only issue before  
24 the Court today is the St. Pete Times. We're  
25 not -- in fact, I can tell you that Good

1 Morning America approached me yesterday and  
2 said, Rich, we just wanted to let you know,  
3 we're going to reach out to our lawyers. I  
4 don't know what we're going to do but, you  
5 know, we may be filing a motion. They  
6 obviously have not.

7 The only one that has filed a motion is  
8 the St. Pete Times. And the St. Pete Times  
9 doesn't come in here, okay, with videos. They  
10 may come in here with a camera.

11 But I am sure that if we contact the St.  
12 Pete Times, which is the only issue right now,  
13 those people over there, they have not objected  
14 to the issue.

15 My suggestion would be, let's not go ahead  
16 and start inviting everyone that's out there  
17 now to write their own motions and their own  
18 litigation when it's not at issue here. That  
19 would be horrible to do.

20 If the St. Pete Times has filed a motion.  
21 We could call the St. Pete Times and say, they  
22 can come in. They can come in and sit in the  
23 auditorium without a camera and without a  
24 photo. That's it.

25 MR. THOMPSON: Here's the thing. When

1           this motion was filed, I alerted all the media  
2           organizations as to what was going to happen  
3           today, because they're all interested in it.

4           So I told them that there would be a  
5           decision this morning as to whether Cobb  
6           Theater would let folks in and then there would  
7           be a hearing if Cobb denied them.

8           MR. MARTIN: Is the St. Pete Times lawyer  
9           here?

10          THE COURT: No.

11          MR. KELLY: Judge, I'm -- not to be  
12          disrespectful, I am trying to e-mail and text  
13          my client. They are willing to offer a  
14          compromised position of the press coming in  
15          with no cameras, no cell phone, video, but they  
16          can attend. They just don't want to -- their  
17          real problem is the actual video recordings  
18          that are of concern.

19          THE COURT: Okay. Let's see if they'll  
20          accept that.

21          MR. THOMPSON: I can call Allison Steel --

22          THE COURT: Yeah, call Allison Steel.

23          MR. THOMPSON: -- and say Bob is willing  
24          to have one guy with a notebook and a pen and  
25          no photographer.

1           MR. ESCOBAR: Your Honor, I don't think  
2           that's what Bob -- is that what you're saying?  
3           The media can come in, just without cameras?

4           THE COURT: Right. Well, don't limit it  
5           to one but, I mean, we don't want 50. We could  
6           have a representative.

7           MR. THOMPSON: Is it okay with you if the  
8           media comes in --

9           MR. ESCOBAR: Without cameras, without  
10          photos, without anything that memorializes it,  
11          other than their pen and pencils.

12          THE COURT: Right. No electronics. See  
13          if they'll accept that.

14          MR. THOMPSON: All right. What I'll do is  
15          first I'll call Allison Steel --

16          MR. ESCOBAR: And tell her that we're all  
17          trying to be very, very accommodating.

18          MR. THOMPSON: Okay. I'll call Allison  
19          Steel. No cameras, no videographer and I'll  
20          get an okay from her and then I'll drive over  
21          there and let them know.

22          THE COURT: All right.

23          MR. THOMPSON: If you can give me 10  
24          minutes.

25          MR. ESCOBAR: Can I drive over there with

1           you?

2           MR. THOMPSON: I have a Honda Civic.

3           MR. ESCOBAR: Okay. I can drive over  
4           there.

5           Your Honor, can I be excused?

6           THE COURT: Sure. Thanks, Mr. Kelly.

7           MR. ESCOBAR: Your Honor, we have agreed  
8           with the media. Can you hear me?

9           THE MEDIA: Yes.

10          MR. ESCOBAR: We've agreed with the media  
11          that there will be one photographer, who is  
12          standing there, that will take five photos of  
13          you as you're seated in seat Number 9 in the  
14          very back row, which is the seat that  
15          Mr. Reeves was seated in.

16          After those five photos are taken, he will  
17          leave the premises. He will put a camera and  
18          any recording equipment in his car. He will be  
19          allowed to come back in.

20          None of the rest of the reporting group  
21          will have anything other than their pens and  
22          their pads in order to memorialize the event.  
23          They will not have cameras and they can't take  
24          any still shots or video of any sort.

25          They have agreed to that and we're

1       appreciative for the media reaching a meeting  
2       of the minds in this particular case.

3               THE COURT: Absolutely. All right. While  
4       we're here on the record, we have everybody  
5       present again. Mr. Kelly from the Cobb --  
6       represents the Cobb Theater, the prosecutors,  
7       the Defense team.

8               We're all going to go inside. This is a  
9       view. There's not going to be any argument  
10      or -- you know, we're going to view and be on  
11      our way. We really need to be mindful of the  
12      theater's time, as well.

13              MR. ESCOBAR: Judge, the only thing we're  
14      going to have to do, Mr. Martin and I are going  
15      to go up to the area where they're going to be  
16      setting up the lighting and setting up the  
17      volume level for the previews.

18              Once that is done and the disk has been  
19      given to the individual that's going to play  
20      it, then we will come back down. I believe --  
21      Steve, we were talking about where they're  
22      going to be sitting. We talked about that.

23              The reporters are going to be seated at  
24      the very back of the theater, but not in the  
25      center section. They're going to be seated to

1           the right and to the left in that very back row  
2           so that they don't disturb anything that's  
3           happening with the Court and the Court's  
4           viewing of the previews.

5           THE COURT: All right. And so  
6           procedure-wise, we're going to go in. Am I  
7           going to go directly to the seat or --

8           MR. ESCOBAR: Yes. Mr. Michaels will  
9           direct you to that. Mr. Martin will then, when  
10          we come back down, verify that he agrees that  
11          that is the seat that Mr. Reeves was seated in.  
12          So we'll put that on the record so that we have  
13          a record that everybody's in position and ready  
14          to go.

15          THE COURT: All right. So the only real  
16          issues we're going to have on the record is  
17          going to be that indication that I'm seated in  
18          the same seat. And does -- you know, while we  
19          don't have anybody to talk about the lighting  
20          but you're going to have --

21          MR. ESCOBAR: We're going to memorialize  
22          that with the court reporter upstairs.

23          THE COURT: All right. So let's keep, you  
24          know, all our discussions to a minimum. We can  
25          argue and talk and elaborate once we get back

1 in the courtroom. But just a minimal for  
2 direction and, you know, being where we're  
3 supposed to be.

4 MR. ESCOBAR: Thank you, Your Honor, for  
5 waiting for us and having this.

6 THE COURT: Thank you for arranging  
7 everything. I really appreciate the Cobb  
8 Theater hosting this -- not hosting it, but  
9 allowing us.

10 MR. KELLY: Thank you, Judge.

11 THE COURT: And the media, as well.

12 All right. Let's get it done.

13 MR. ESCOBAR: Okay. We're back on the  
14 record.

15 (Whereupon, this testimony was taken in the  
16 projection booth for Auditorium Number 10.)

17 JEFFREY THOMAS HUNTER, JUNIOR,  
18 Thereupon, the witness herein, being first duly  
19 sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. ESCOBAR:

22 Q. Please state your full name.

23 A. Jeffrey Thomas Hunter, Junior.

24 Q. And Mr. Hunter, can you tell us just  
25 briefly what your position is here with Cobb



1 Theater?

2 A. I'm the field service technician for Cobb  
3 Theaters.

4 Q. Okay. We are going to now be setting the  
5 lighting in the -- in the numerical or numbered  
6 order that it is set for previews at the Cobb  
7 Theater, the same one that it would have been set  
8 for January 13th of 2014. What level is that?

9 A. That is called mid-one.

10 Q. Okay. And how is it that we set mid-one  
11 on your system?

12 A. Right here we have a control panel. You  
13 can see it's labeled. The second button from the  
14 top is mid-one.

15 At that point you can see lights are  
16 dimming inside the auditorium. The two -- I should  
17 say the three relevant zones would be the wall  
18 sconces on the -- that are mounted on the side of  
19 the wall, those are set to 60 percent.

20 You have the high ceiling lights, which  
21 are the ceiling can lights that are located above  
22 the lower level seats, and that is set at also a  
23 60 percent.

24 And then finally you have the low ceiling  
25 lights, which are the lights located in the center

1 bistro above those seats, and those are set at  
2 60 percent.

3 Q. The noise level of the previews  
4 themselves.

5 A. Okay. The previews --

6 Q. I call it noise level. I probably should  
7 call it volume.

8 A. Volume. Over there we have our digital  
9 cinema processor. It is a Dolby CP650. During the  
10 trailers it is - the input format is set to U-1 and  
11 the volume level is set to 4.5. That is on a scale  
12 of 10.

13 MR. SHAH: That's Umbrella 1?

14 THE WITNESS: Yes. U-1.

15 BY MR. ESCOBAR:

16 Q. Can you go ahead and set that now?

17 A. I can.

18 MR. ESCOBAR: Okay. Just for the record,  
19 he has pressed U-1 and the reading on the Dolby  
20 system reads 4.5.

21 Do you agree, Mr. Martin?

22 MR. MARTIN: I agree that's what it says.

23 MR. ESCOBAR: And just for the record, I  
24 see that on the level -- lighting level the  
25 mid-one is, in fact, pressed.

1 Do you agree with that, Mr. Martin?

2 MR. MARTIN: It is pressed.

3 MR. ESCOBAR: And both of us saw him  
4 actually use the other apparatus, which is  
5 called --

6 THE WITNESS: That is a Lutron GRAFIK eye.

7 MR. ESCOBAR: To set it at the appropriate  
8 settings; is that correct, Mr. Martin?

9 MR. MARTIN: He used the device.

10 BY MR. ESCOBAR:

11 Q. So the next step is just to place the DVD  
12 into the system and play. If you could wait on  
13 that.

14 A. Okay.

15 MR. ESCOBAR: Mr. Shah will be here during  
16 that process. Someone can step into the  
17 CineBistro area and ask us when we're ready,  
18 and I will go down to general.

19 I would imagine Mr. Martin would want to  
20 come with me to general, as well as the court  
21 reporter.

22 This ends the proceedings for the -- what  
23 room is this called?

24 THE WITNESS: This is the projection booth  
25 for Auditorium Number 10.

1           MR. ESCOBAR: Okay. So we are now leaving  
2           the projection room for Auditorium Number 10.

3           AUDITORIUM NUMBER 10

4           MR. ESCOBAR: Just our stipulation that  
5           it's the ninth seat. Do you want to count  
6           them?

7           MR. MARTIN: I have it at -- A, B, C, D,  
8           E, F, G, H, I -- yeah.

9           MR. ESCOBAR: Okay. I have to do the same  
10          thing. Okay. Back on the record.

11          Mr. Martin and myself, Richard Escobar,  
12          Glenn Martin and Rick Escobar, are stipulating  
13          to the fact that the Honorable Judge Barthle is  
14          seated in Seat 9, which would have been the  
15          seat that Mr. Reeves was seated in on  
16          January 13th of 2014 at the time of this  
17          incident.

18          Do you agree with that, Mr. Martin?

19          MR. MARTIN: Yes.

20          THE COURT: One other thing. Right now I  
21          am assuming these lights are as bright as they  
22          get?

23          MR. MARTIN: I wouldn't assume that.

24          MR. ESCOBAR: No. I wouldn't assume that.  
25          But they're going to do the -- they're going to

1 put on the preview lights.

2 THE COURT: Okay. But this is not how the  
3 lights were at the time --

4 MR. ESCOBAR: No. No.

5 MR. MARTIN: No. It was not.

6 MR. ESCOBAR: No. When the actual preview  
7 starts, that is when you'll be able to  
8 experience that lighting. And you'll see that  
9 on -- there's going to be sconces here. There  
10 are sconces here that are not on. And you'll  
11 see that some of that will be going on.

12 You'll see the camera up there. And  
13 there's another camera right up there in  
14 between the --

15 THE COURT: Oh, okay.

16 MR. ESCOBAR: -- two speakers.

17 THE COURT: Okay.

18 MR. ESCOBAR: That is what we refer to as  
19 camera number 12. This is what we refer to as  
20 camera number 11.

21 THE COURT: Okay. Got it.

22 MR. ESCOBAR: Okay. We're going to go up  
23 and re-document the lighting and then we'll  
24 come down again.

25 PROJECTION BOOTH AUDITORIUM 10

1                   JEFFERY THOMAS HUNTER, JUNIOR,  
2   Thereupon, the witness herein, being first duly  
3   sworn, was examined and testified as follows:

4                   DIRECT EXAMINATION

5   BY MR. ESCOBAR:

6           Q.   Full name for the record.

7           A.   My name is Jeffery Thomas Hunter, Junior.

8           Q.   And Mr. Hunter, what is your position here  
9   with Cobb Theaters?

10          A.   I am the field service technician.

11          Q.   Would you please place the lighting level  
12   in the lighting level that would be on during the  
13   previews on January 13th, 2014.

14                   For the record, he is pressing a button on  
15   an item that's called mid-one; is that correct?

16          A.   That is correct.

17          Q.   Would you then press whatever other  
18   controls you press after pressing mid-one in order  
19   to make the adjustments to have the same experience  
20   as January 13, 2014?

21          A.   That is already in place. If you would  
22   like me to, I can reverify the light levels.

23          Q.   Please reverify.

24          A.   Okay. There are three lights right now  
25   that are on. Three different zones that are on

1     inside the auditorium.

2             The first are the wall sconces. Those are  
3     the lights that are mounted on the side wall of the  
4     auditorium. Those are set at 60 percent.

5             Then you have the high ceiling can lights.  
6     Those are located above the lower level seats.  
7     Those are set at 60 percent.

8             And finally, you have the low ceiling can  
9     lights that are located above the CineBistro  
10    seating, and those are also set at 60 percent.

11            MR. ESCOBAR: Let the record reflect that  
12    he has pressed all three of those buttons in  
13    order to reflect his testimony here today.

14            Do you agree with that, Mr. Martin?

15            MR. MARTIN: Yes.

16            MR. ESCOBAR: That he pressed mid-one and  
17    the remaining buttons in order to make happen  
18    what he's just indicated on the record.

19            MR. MARTIN: Yes.

20    BY MR. ESCOBAR:

21            Q.    Okay. What about the volume level of the  
22    previews?

23            A.    That is a Dolby CP650. It is our sound  
24    processor. During the trailers, during the  
25    previews, it is set to U-1, and the volume level is

1 set to 4.5, that is out of temp.

2 Q. And you have set that and it is in place?

3 A. Yes.

4 MR. ESCOBAR: Is that correct, Mr. Martin?

5 MR. MARTIN: Yes.

6 MR. ESCOBAR: Can we stipulate that it's  
7 all in place; is that correct?

8 MR. MARTIN: That's correct.

9 MR. ESCOBAR: Okay.

10 BY MR. ESCOBAR:

11 Q. Is that all that we need to do, other than  
12 placing the actual disk in your disk player, your  
13 DVD?

14 A. Yes.

15 Q. That's it. Okay. We are going to leave  
16 you --

17 A. Well, if you want, I can turn on the  
18 projector lamp. Is that necessary?

19 MR. MARTIN: You've got to have it on to  
20 play the CD, do you?

21 BY MR. ESCOBAR:

22 Q. Yeah. Can you do it right now?

23 A. Yeah, I didn't know if that needed to be  
24 on the record or not. That's just a button being  
25 pressed here.



1           Q.    Okay.  Go ahead and do whatever you  
2 normally do.

3           A.    This turns on the lamp.

4           Q.    Is it on now?

5           A.    It is currently on right now.

6           Q.    I see the light lit up in green.

7           A.    This is the light lit up in green.  And  
8 then this right here that says douser.  This is a  
9 metal plate inside of the projector that blocks the  
10 light from reaching the back of the lens.

11                   I'm now going to press that button.  And  
12 now a light is going through the lens onto the  
13 screen.

14           Q.    Okay.  The remaining process is just to  
15 put the DVD in?

16           A.    The remaining process is just to put the  
17 DVD in and to switch the projector over to button  
18 number seven.  This is different from how it would  
19 have been on the day of the incident.

20           Q.    Because of the digital issue?

21           A.    Yeah, because of the digital issue.

22                   MR. ESCOBAR:  Okay.  We're out of here.

23                   Thank you very much.  I appreciate your time.

24           AUDITORIUM 10

25                   MR. MARTIN:  The stenographer, she doesn't

1           have to take down the audio of the trailers and  
2           all that stuff?

3           MR. ESCOBAR: No. She does not. And  
4           we'll stipulate --

5           MR. MARTIN: And would you put on the  
6           record what exhibit number we're going to play  
7           or whatever it is?

8           MR. ESCOBAR: Exhibit Number 6. And we  
9           are about to play it. I believe they're giving  
10          us about five minutes for that process.

11          And, no, you do not have to -- if the  
12          Court is okay with it --

13          THE COURT: I'm fine.

14          MR. ESCOBAR: -- you do not have to record  
15          on your stenographer machine the process.

16          (Whereupon, it was stipulated that the previews  
17          would not be stenographically recorded.)

18          MR. ESCOBAR: For the record, the previews  
19          were played in their entirety. Do you agree,  
20          Mr. Martin?

21          MR. MARTIN: Yes.

22          THE COURT: All right. We're on the  
23          record. Quick question. Is that the door that  
24          Mrs. Turner held open in the back, anybody?  
25          Mr. Michaels, is that the exit door down there?

1           MR. MICHAELS: This is the exit door.  
2           That's the one that she indicated on the  
3           photograph.

4           THE COURT: Okay. And ex-boyfriend jumped  
5           from where, somewhere down here?

6           MR. MICHAELS: Somewhere down there.

7           THE COURT: Okay. And that's the yellow  
8           rails we saw in the pictures. And the  
9           witnesses were put in these seats over here,  
10          correct? I'm pointing to the left side of the  
11          theater.

12          MR. MICHAELS: Yes, Your Honor.

13          THE COURT: All right. Anybody else have  
14          anything? All right. I think we are good.  
15          Let's get back to the courthouse.

16          (Whereupon, the portions taken at the movie theater  
17          have been concluded.)

18          RECESS

19          OPEN COURT

20          THE COURT: Good afternoon, everybody.

21          MR. MARTIN: Judge, just one quick  
22          announcement.

23          THE COURT: Okay.

24          MR. MARTIN: I've had discussions with Mr.  
25          Escobar. Apparently, during the testimony of

1 Dr. Adams there may be some demonstrative aids  
2 used to assist in his testimony.

3 We've agreed that I could preserve his  
4 demonstrative aid as it changes with the  
5 mannequin with my camera so I can discuss it  
6 with my Medical Examiner.

7 So with the Court's permission, if I may  
8 do that, there will be no flash. I will not  
9 disrupt the flow. It will be upon me to stay  
10 out of the way and do what I need to do. But  
11 with the Court's permission, if I can do that,  
12 I would appreciate it.

13 THE COURT: That's just fine, Mr. Martin.  
14 I don't care about cameras in here. I think  
15 somebody else makes those rules.

16 MR. MARTIN: Just to let you know what we  
17 were doing. Of course, if Mr. Escobar wants to  
18 say anything.

19 MR. ESCOBAR: Judge, he can also get it on  
20 YouTube probably tomorrow, because every day's  
21 on YouTube.

22 THE COURT: I'm glad to know that.

23 MR. MARTIN: So if it's on the Internet,  
24 it has to be true, right?

25 THE COURT: Absolutely. All right. Let's

1 get started then.

2 MR. MICHAELS: Judge, can I just have one  
3 minute? I'm struggling with a piece of  
4 evidence. I didn't know it was several pieces.

5 THE COURT: Oh, that's always nice to find  
6 out.

7 MR. MICHAELS: Maybe I can have my  
8 colleague, Mr. Shah. He's younger than me and  
9 more technically savvy.

10 THE COURT: He's been the whiz. He's got  
11 to hold the evidence and be in charge of that  
12 earlier and manages to get things bugged in and  
13 running when they need to be.

14 MR. MICHAELS: In that case, we'll call  
15 Dr. Vernard Adams. Defense calls Dr. Adams.

16 THE COURT: All right.

17 (Whereupon, the witness was sworn.)

18 THE COURT: Good afternoon.

19 THE WITNESS: Good afternoon, Judge.

20 VERNARD ADAMS,  
21 Thereupon, the witness herein, being first duly  
22 sworn, was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MICHAELS:

25 Q. Good afternoon, Dr. Adams. Please state

1 your name for the record.

2 A. My name is Vernard Adams.

3 MR. MICHAELS: The court reporter already  
4 has his spelling from earlier.

5 Your Honor, may I approach the witness?

6 THE COURT: You may.

7 MR. MICHAELS: And I'm handing the witness  
8 what is at this point is the Defense's Exhibit  
9 104, which is Dr. Adams' CV. It's been  
10 stipulated to with the entering of it into  
11 evidence.

12 But while I begin my direct examination, I  
13 would like for him to have it in case he has to  
14 reference it at any point.

15 THE COURT: Okay.

16 BY MR. MICHAELS:

17 Q. Dr. Adams, how are you employed?

18 A. I'm self-employed as a consultant.

19 Q. And what sort of consultant are you?

20 A. I'm a consultant to litigation attorneys  
21 and I appear as an expert witness when that's  
22 required.

23 Q. And what is your profession?

24 A. I'm a forensic pathologist.

25 Q. And is that your field of expertise in

1 terms of your consulting business?

2 A. Yes, it is.

3 Q. Let's talk about your education. What is  
4 your undergraduate degree in?

5 A. My undergraduate degree was from the  
6 University of Maine at Orono, and it's a Bachelor's  
7 degree in chemistry.

8 Q. And did you receive any honors as a result  
9 of obtaining that undergraduate degree?

10 A. Yes. And here I'm going to have to refer  
11 to the CV because it's been a while.

12 Q. 1975?

13 A. Yes. Highest distinction and High Honors  
14 and Phi Beta Kappa and Phi Kappa Phi.

15 Q. Where did you go to medical school?

16 A. Tufts in Boston.

17 Q. What year did you graduate medical school?

18 A. 1979.

19 Q. Tell the Court about your residency and  
20 your fellowship training.

21 A. After medical school I trained in  
22 pathology for six years. The first year was in  
23 anatomic and clinical pathology at the New England  
24 Medical Center in Boston, which is now known as the  
25 Tuft's Medical Center.

1           And then I went to Minnesota and spent  
2   four years at the Mayo Clinic in Rochester, trained  
3   in anatomical and clinical pathology, two years  
4   each.

5           And then the final year was in forensic  
6   pathology at the Dade County Medical Examiner's  
7   office in Miami, in conjunction with the University  
8   of Miami.

9           Q.   Tell the Court about your work history, if  
10   you would, please.

11          A.   After I finished training, I went to work  
12   for the Commonwealth of Massachusetts, and I did  
13   that for two years working principally at Worcester  
14   based at the University of Massachusetts with some  
15   occasional work in Boston. So my title was Medical  
16   Examiner, and I had an academic appointment at the  
17   University of Massachusetts.

18          After that I went to Suffolk County, which  
19   is eastern, three quarters of Long Island, New York,  
20   and was a Deputy Medical Examiner there for just  
21   under two years. And I followed my boss, at that  
22   time, Dr. Charles Hirsch, into New York City when he  
23   took the chief job there when Elliot Gross left that  
24   chief job. And I spent a little over two-and-a-half  
25   years helping Dr. Hirsch get that office started.



1           And then I went to Tampa to become the  
2 Chief Medical Examiner in 1991. I did that for 21  
3 years. And then I got a call from a woman that I  
4 trained with at Mayo, way back, and she asked if I  
5 was ready for a change.

6           And so I was a professor for three years  
7 at West Virginia University in Morgantown and taught  
8 residents how to do autopsies and write their  
9 reports, trained pathologist assistant students and  
10 gave them medical student lectures in cardiovascular  
11 pathology.

12           And at the conclusion of those three  
13 years, I returned to Tampa in 2015 and ramped up my  
14 consulting practice. I had always done some  
15 consulting on the side, as far as back as 1989.

16           Q. And have you held any teaching positions?

17           A. Yes.

18           Q. Would you tell the Court about some of  
19 those?

20           A. Well, I mentioned the one in  
21 Massachusetts. And Long Island, I had an  
22 appointment at Stonybrook State University at  
23 Stonybrook. All the Medical Examiner's offices had  
24 academic affiliations.

25           In New York City it was New York

1 University. And then in Tampa at the University of  
2 South Florida.

3 And in Tampa I established a training  
4 program, which initially was sponsored by  
5 Hillsborough County. And then in the late '90s the  
6 sponsorship was taken over by the University of  
7 South Florida, so we were training one forensic  
8 pathologist per year. And that program is still  
9 ongoing.

10 And at this time I have no academic  
11 appointments. The last one was full professor at  
12 WVU.

13 Q. And do you have any board certifications?

14 A. Yes.

15 Q. What are those?

16 A. In anatomic and clinical pathology and  
17 forensic pathology.

18 Q. And are you currently licensed to practice  
19 medicine here in the State of Florida?

20 A. Yes.

21 Q. Have you been published? Have you  
22 written, for instance, chapters in books that are  
23 peer reviewed?

24 A. Yes.

25 Q. Approximately, how many publications?

1           A.    A little over 20 articles, book chapters.  
2   Let's see.  Okay.  Articles would be about 25; book  
3   chapters, 11.  And then there were four educational  
4   publications and then some miscellaneous  
5   publications, including practice guidelines for  
6   Florida Medical Examiners.  I was involved with that  
7   from the inception and right through the last  
8   iteration in 2010.

9           Q.    Tell us about the practice guidelines for  
10   Medical Examiner's, what is that?

11          A.    They're an extension of the Florida  
12   Administrative Code, because the Florida Medical  
13   Examiner's Commission has adopted them and  
14   incorporated them by reference into the code.  So  
15   they form an extension to the Medical Examiner's Act  
16   Chapter 406 and Chapter 11G of the Florida  
17   Administrative Code.  And they further delineate  
18   what the acceptable practice guidelines are for  
19   forensic pathologists working as Medical Examiners  
20   in Florida.

21          Q.    And now as a Medical Examiner -- an  
22   Assistant Medical Examiner, how many autopsies do  
23   you think you've performed in your career?

24          A.    Well, over the course of years, including  
25   cases I did when I was a trainee, it's 6,800.

1           Q.    And of those, what percentage would be  
2 homicides, if you know or if you can approximate?

3           A.    In Hillsborough County, it would have been  
4 about 10 percent. In New York City, probably  
5 30 percent. So overall, I'm going to guess about  
6 10 percent.

7           Q.    So about 10 percent of 6,800?

8           A.    Ten percent, 15 percent, somewhere in  
9 there. Yes.

10          Q.    So over 500, at the very least?

11          A.    Somewhere around there.

12          Q.    And of those homicides, what percentage  
13 could you approximate would be of gunshot wounds?

14          A.    The majority.

15          Q.    And have you ever been qualified to  
16 testify -- I know it sounds like a funny -- a silly  
17 question, but have you ever been qualified to  
18 testify as an expert in the field of pathology in a  
19 court of law?

20          A.    Yes.

21          Q.    And approximately how many times?

22          A.    I don't keep track, but I consistently  
23 give an estimate of about 300 times.

24          Q.    And is that in State court?

25          A.    State court and Federal court.

1           MR. MICHAELS: Judge, at this point I  
2 would tender Dr. Adams as an expert, a medical  
3 doctor, in forensic pathology.

4           THE COURT: Any objection?

5           MR. MARTIN: Court's discretion.

6           THE COURT: All right. I'll allow him to  
7 testify about the subject that he's here to  
8 testify about.

9           MR. MICHAELS: Your Honor, may I approach  
10 the witness?

11          THE COURT: You may.

12          MR. MICHAELS: At this time I would move  
13 into evidence what's marked as Defense Exhibit  
14 104, and it's Court Exhibit Number 30.

15 (Whereupon, Defense Exhibit 30 was admitted.)

16 BY MR. MICHAELS:

17          Q. Now, you were hired as a consultant by  
18 Escobar and Associates in this particular case; is  
19 that true?

20          A. Yes.

21          Q. And what sort of information -- what  
22 materials were provided to you?

23          A. I had the autopsy report on Mr. Oulsen.

24          Q. Is that an autopsy report that was  
25 authored by Dr. Thogmartin in Pinellas/Pasco County?

1           A.    Yes, it is.  I had the records of Pasco  
2   Fire Rescue, some reports and notes from the Florida  
3   Department of Law Enforcement crime laboratory.

4           Q.    And are those ballistic reports that  
5   you're speaking of?

6           A.    Yes.  There was also some inventory of  
7   evidence.  And I had the deposition transcript of  
8   Dr. Thogmartin.

9           Q.    Did you also review photographs?

10          A.    I reviewed photographs from the autopsy  
11   and photographs taken of Mrs. Oulsen.

12          Q.    Of her hand?

13          A.    Yes.

14          Q.    Okay.  Any other materials that you  
15   reviewed in preparation for your testimony?

16          A.    I don't think so.

17          Q.    Okay.  Now, let's talk about Dr.  
18   Thogmartin's report.  Do you agree or disagree with  
19   him, in terms of what the manner of death is?

20          A.    I agree.

21          Q.    Now, let's look at, if we can -- Mr. Shah?

22                MR. MICHAELS:  Your Honor, may I approach?

23                THE COURT:  You may.

24   BY MR. MICHAELS:

25          Q.    Dr. Adams, I'm showing you what has been

1 marked for Defense Exhibit purposes as Exhibit 101.

2 Are you familiar with those photographs?

3 A. Yes.

4 Q. And is that part of the group of materials  
5 you described that you used in your preparation for  
6 today's testimony and your preparation in terms of  
7 being able to render an opinion to this Court?

8 A. Yes.

9 MR. MICHAELS: Your Honor, at this time I  
10 would move in -- I know the State doesn't have  
11 an objection to evidence, Defense Exhibit 101,  
12 for purposes of the record. And I'll get a  
13 sticker, if I may bring it back to Mr. Shah so  
14 we can publish it.

15 (Whereupon, Defense Exhibit Number 101 was  
16 admitted.)

17 THE COURT: These are photos?

18 MR. MICHAELS: These are the photographs  
19 that are on the thumb drive, as we've done with  
20 all of them.

21 May I approach the witness?

22 THE COURT: You may.

23 MR. MICHAELS: Thank you.

24 MR. MARTIN: What's the amended evidence  
25 number, Judge?

1 THE COURT: Thirty-one.

2 MR. MICHAELS: Thirty-one. So the  
3 previous one was 30?

4 THE COURT: Yes, sir.

5 MR. MARTIN: I heard 37, for some reason.

6 THE CLERK: It's 30.

7 MR. MARTIN: Thank you, Madam Clerk.

8 THE CLERK: You're welcome.

9 BY MR. MICHAELS:

10 Q. This is JPEG Number 17. Do you recognize  
11 that photo? It's up there on the screen.

12 A. Okay.

13 MR. MICHAELS: Can we zoom that in at all,  
14 Mr. Shah? Okay. Hold on. Move back a little  
15 bit, please. Okay.

16 Your Honor, may I have the doctor step  
17 down?

18 THE COURT: You may.

19 BY MR. MICHAELS:

20 Q. Doctor, I see we have two wounds. Let's  
21 talk about the top one. Tell the Court what you can  
22 tell the Court about the top wound. What are we  
23 looking at there?

24 A. It might be better if we start with the  
25 other photograph that shows the location of these.



1           Q.    Okay.  Move that, please.

2           A.    All right.  So this is more of a  
3   bird's-eye view of the same wounds.  And this is  
4   showing the chest, the shoulders and the upper  
5   extremities from the front.  And the photograph that  
6   was first displayed is just a closeup of these two  
7   wounds.

8                   The upper wound is an abrasion.  That is a  
9   scraping.  This is not a gunshot wound.  It's just a  
10   scrape.  And it's dark like that because the ooze  
11   that has come out of it has dried and when it dries  
12   it turns dark.  This wound, the one that's closest  
13   to the ruler --

14          Q.    Now before we get to that, that second  
15   wound, Doctor --

16          A.    Sure.

17          Q.    -- the top wound, what is -- can you  
18   determine what the cause of that particular wound  
19   is?

20          A.    It was caused by impact with a blunt  
21   object.

22          Q.    All right.  And I think Dr. Thogmartin had  
23   the opinion that --

24                   MR. MARTIN:  Excuse me, Judge.  That is  
25   not proper Cross, pinning one expert against

1 another. He can ask his opinion. And that's  
2 an inappropriate cross to say Dr. Thogmartin  
3 had this opinion, what do you think about that.

4 MR. MICHAELS: Judge, I think he's putting  
5 the cart before the horse. Dr. Adams agrees  
6 with Dr. Thogmartin.

7 MR. MARTIN: It doesn't matter. That's  
8 not the way we do -- that's not the way we use  
9 another expert's report.

10 THE COURT: All right. Let's just stick  
11 to the questions. Thank you.

12 BY MR. MICHAELS:

13 Q. What is your opinion in terms of what may  
14 have caused that?

15 A. You mean more specifically than a blunt  
16 object?

17 Q. Yes.

18 A. It could be a secondary missile, a piece  
19 of lead that's shaved off the bullet that produced  
20 this wound. It could have been a button. It could  
21 be from somehow connected with resuscitation  
22 efforts.

23 Q. Okay. So that wound didn't affect the  
24 manner of death; can we agree or disagree?

25 A. I agree with that.

1           Q.    Okay.  Now, you want to speak of the  
2           second wound.  Let's talk that.

3           A.    The other wound, the one that's more red  
4           here and close to the ruler, is a gunshot wound  
5           entrance.  And the hair has been shaved for the  
6           purposes of photography, I assume by the Medical  
7           Examiner, although it's possible that it was shaved  
8           during life.  I don't know.  But it's shaved.

9                    So you can see a little bit of stubble.  
10          The red part here is subcutaneous collagen.  That is  
11          the dermis, and subcutaneous fat stained with blood.

12                   And along the margin of the wound is a  
13          darker red area here, here and here, and that is  
14          abraded skin, that's the margin of abrasion or  
15          abrasion collar, which is typical of a gunshot wound  
16          entrance.

17                   Over here are a couple red dots, and I'm  
18          pointing to the left side of the photograph, the  
19          right side of the decedent.  That could be  
20          artifactor shaving, or it could be a couple of  
21          stipples from gunpowder flakes that made it through  
22          the clothing.  I don't have an opinion on that.

23          Q.    Why is the wound in a triangular shape;  
24          what would cause that?

25          A.    If you look between those tags of abraded

1 skin here -- for instance, over here there's no  
2 abrasion, and that's where a micro-tear, a little  
3 laceration occurred. The skin tore right between  
4 the abraded sections. So it made the wound gape  
5 open larger than the hole produced by the bullet.

6 And that accounts also for the roughly  
7 triangular shape of the wound, because there are a  
8 couple of other small lacerations. There's one  
9 here. There's one here at about 3:00 and 4:00.

10 Q. And what are we looking at there, Doctor?

11 A. This is a closeup photograph of the same  
12 gunshot wound, and it shows a little bit of that  
13 nondescriptive abrasion. So can you more clearly  
14 see these areas where the skin is abraded on the  
15 edge here at 5:00, 4:00 and from 12:00, to say,  
16 2:00 and a little bit down by 7:00.

17 In this area here, in your mind's eye, if  
18 you re-approximate those two skin margins and close  
19 the wound up, it becomes smaller and it's no longer  
20 triangular. And there's a little tear, a tiny  
21 little tear, there are tiny little tears here and  
22 here.

23 And then in the middle this beveled look  
24 and dark red area down here, that's the depth of the  
25 wound as far as the camera can see or the eye can

1 see.

2 Q. And that's the entry point of the  
3 projectile?

4 A. Yes. This is an entrance gunshot wound.

5 Q. What happened once the projectile entered  
6 the body at that point?

7 A. It went through the left fourth rib and  
8 the fourth intercostal space, which is between the  
9 fourth and fifth ribs. It then perforated the  
10 pericardial sac, which is the sac that encloses the  
11 heart.

12 It then perforated the heart, going  
13 through the right ventricle and the right atrium.

14 And the last part of the wound path was  
15 the lower lobe of the right lung.

16 Q. So in layman's terms, demonstrating on me,  
17 where did the bullet go in?

18 A. To the left of the anterior midline over  
19 the fourth rib, and then it's going through the  
20 heart and it's going front to back and it's going a  
21 little bit from left to right and ending up in the  
22 lower lobe of the right lung.

23 Q. Okay. Mr. Shah reminded me, this is JPEG  
24 18. Okay. What are we looking at here, Doctor?

25 A. This is the right hand and wrist of

1 Mr. Oulsen. And this red divot on the wrist is a  
2 gunshot wound, a grazing gunshot wound. And all  
3 these purple and red and dark purple dots comprise  
4 gunpowder stippling.

5 So this grazing wound is on the radial  
6 aspect of the wrist, which means it's the side of  
7 the wrist that has the base of the thumb. And the  
8 wound direction is clearly indicated by the  
9 gunpowder stippling as coming from your side to  
10 behind the screen. So this part that you see is the  
11 entrance part of this trough-like or gutter-like  
12 wound.

13 And all these stipels, these red marks,  
14 are little divots that are made in the skin by  
15 flakes of unburned or partially burned gunpowder.  
16 Some of them no longer have the flakes. Those would  
17 be the red ones. And the ones that look dark purple  
18 with black surrounded by a violet color, those are  
19 probably flakes of gunpowder that did not wash out.  
20 They often fall out -- they easily fall out during  
21 transport, but some of them stayed in, I think.

22 So this is a medium-density pattern of  
23 gunpowder stippling.

24 Q. And what does that mean? Before we get  
25 there, in your career certainly you've had an

1 opportunity to observe stippling?

2 A. Yes.

3 Q. And stippling patterns?

4 A. Yes.

5 Q. And have you rendered opinions regarding  
6 the distance of muzzle to target in cases involving  
7 stippling?

8 A. Yes.

9 Q. And in your opinion what distance are we  
10 talking about in this particular case with this  
11 particular hand?

12 A. Outside limits would be more than  
13 two inches and up to 15 inches. But because this is  
14 medium density and not sparse, it's probably not up  
15 near 15 inches. It's probably less than 10.

16 And because the FDLE report indicated that  
17 soot went out to six inches, and there's no soot on  
18 the hand, this is more than two inches and it might  
19 be well more than two inches.

20 So it's in the range of intermediate range  
21 or close range. It's the same term. Two terms of  
22 same thing. This is somewhere in the middle. It's  
23 not so close to two inches and it's not close to 15.  
24 It's somewhere in the middle. Less than the length  
25 of an arm.

1           Q.    Now, Doctor, let me ask you -- by the way,  
2   is that photograph better for you to indicate these  
3   on or are you okay here?

4           A.    This is fine.

5           Q.    Okay.  Now, I noticed that the pattern of  
6   stippling that you described is concentrated towards  
7   the low -- the hand that -- on the side of the small  
8   finger, the pinkie finger.  What is that indicative  
9   of to you?

10          A.    If you could put your right hand up here  
11   horizontally, and I'm going to rotate your arm a bit  
12   like this.  So now you still have the bullet grazing  
13   across the radial part of the wrist.

14          Q.    Let's do it this way so the Judge can see  
15   it.

16                THE COURT:  I can see it.

17                THE WITNESS:  I was trying to line it up  
18   with the photograph.

19                If you had turned your hand completely  
20   this way, all that gunpowder would be striking  
21   the ulnar edge of the hand, not the radial  
22   edge.

23                If he had turned this way, all the  
24   gunpowder would be striking the radial aspect,  
25   basically the thumb.



1           If it's up and down like this, you would  
2           expect a uniform pattern over the back of the  
3           hand. But As he pointed out, it's a little bit  
4           more dense down here, down here at the base of  
5           the little finger. And you can account for  
6           that simply by rotating the hand with respect  
7           to the trajectory of the bullet.

8   BY MR. MICHAELS:

9           Q.    Now, I noticed there's some darker areas  
10           here within that area that you indicated was  
11           stippling. What is that?

12           A.   Most likely the dark dots represent flakes  
13           of gunpowder that are still under the epidermis.

14           Q.    And the wound that's indicated here, the  
15           trenching or gutter wound, is that all skin, is that  
16           what we're talking about, all flesh through there?  
17           Does it appear to have struck any bones that you can  
18           see?

19           A.    According to Dr. Thogmartin, it grazed  
20           across an extensor tendon supplying the index  
21           finger, but it did not penetrate any bones. It just  
22           went through soft-tissue skin and subcutaneous soft  
23           tissue.

24           Q.    As we look closely here on the fingers, at  
25           least the two that we can see that are towards the

1 area of the hand that has the stippling, I don't see  
2 any stippling there. What would that be indicative  
3 of --

4 A. Having no stippling on the fingers would  
5 indicate that the fingers are either curled out of  
6 the way when the muzzle is discharged or that  
7 there's something blocking or capturing the  
8 gunpowder, a shadow effect.

9 Q. In your opinion, do you agree or disagree  
10 that what we see here is indicative of --  
11 potentially is indicative of an individual making a  
12 fist?

13 A. It's consistent with that.

14 Q. Okay. I'm sorry. I didn't give you that  
15 number either, Judge. It's JPEG 24. We just looked  
16 at.

17 The next one is 32, same hand. We get a  
18 better look at the fingers that I talked about. How  
19 is this photograph useful in your analysis, Doctor?

20 A. In this photo you can appreciate the  
21 trough-like nature of this grazing wound because the  
22 wrist and hand are aligned so that the wound is  
23 actually lined up so that the camera lens is  
24 mimicking the position of the muzzle.

25 And that means that this hand and wrist

1 are rotated enough to make this trough-like  
2 appearance accentuated, and so it's also bringing  
3 the -- rotating the hand, just like I did with  
4 Mr. Michaels' hand, to bring the hand up and show  
5 how the stippling is concentrated more up on this  
6 part of the hand.

7 Q. Now, based on this injury, as well as the  
8 entry wound, how would they have to line up? What  
9 sort of position would the hand have to be in, the  
10 front of thorax, in other words, or where?

11 A. Right. The right hand would have to be in  
12 front of the chest. If you have the entrance wound  
13 on the left fourth intercostal space, left fourth  
14 rib, then the hand has to be in front. And if you  
15 vary the distance, then you're going to vary the  
16 density of stippling. The density becomes greater  
17 and the extent of stippling is narrower. As it's  
18 closer to the muzzle, it gets sparser and more  
19 widely distributed as it's closer to the chest.

20 So it's going to be somewhere in front of  
21 the chest with the back of the hand presenting  
22 toward the muzzle.

23 Q. Okay. If you could turn towards me.  
24 Please show me that position again where you just  
25 indicated to the Court where the hand would have to

1 be. Now, you have your fingers out, which is  
2 probably not likely in this scenario. Would you  
3 agree with me?

4 A. Well, they could be out, if they're  
5 shadowed with something. If they're not blocked,  
6 then the fingers would wrapping around the fist.

7 Q. Now, the individual -- the muzzle of the  
8 firearm would have to be where? If the muzzle of  
9 the firearm is -- we're going -- this is called the  
10 standard anatomical position, except you don't have  
11 your hands down, right?

12 A. Right. What he's referring to, the  
13 standard anatomical position, is an anatomical  
14 reference system which comes in hand in forensic  
15 pathology, because we don't know the position of  
16 shooters and victims so we just use a standard  
17 model. It's on our body diagrams. It's a person  
18 standing straight up with the arms down at the sides  
19 and the palms facing forward. It's a little bit of  
20 an artificial position.

21 Q. So if the individual is in that artificial  
22 position and then the hand is moved to accommodate  
23 the projectile that's traversing that wrist and  
24 going into the chest, where would the hand be if the  
25 firearm is straight out?

1           A.    Well, if we're both standing up and your  
2   finger was the gun, then the hand is in front of the  
3   chest, as I indicated before.

4           Q.    Okay.  So it would have to line up that  
5   way?

6           A.    Yes.

7           Q.    Now, if an individual, for instance --

8           MR. MICHAELS:  May I?  All right.

9           Can you see, Judge?

10          THE COURT:  Yes.

11   BY MR. MICHAELS:

12          Q.    Okay.  If an individual is seated that  
13   way, could we still get that same sort of line, that  
14   same sort of trajectory, that traverses the wrist  
15   and enters the chest in a way that the autopsy  
16   suggests?

17          A.    Yes.  Because the wound path through the  
18   torso, with respect to the standard anatomic  
19   position, did not have any upward or downward  
20   deviation.

21                If the muzzle is low like that, you simply  
22   adjust the torso and lean it forward a little bit so  
23   that the wound track, which is horizontal in the  
24   standard position, is now not horizontal with  
25   respect to the floor.

1                   And then to accommodate the slight  
2 deviation from the left side of the body to the  
3 right you simply rotate the torso a little bit so  
4 that the left shoulder is more forward than the  
5 right.

6                   And to complete the scenario, you bring  
7 the right hand in front like this at some  
8 undetermined distance.

9           Q.     Okay. Thank you.

10           MR. MICHAELS: You can have a seat,  
11 Doctor.

12           Judge, may I approach the witness?

13           THE COURT: You may.

14 BY MR. MICHAELS:

15           Q.     Let me show you what's been marked for  
16 Defense purposes as Exhibit 99. Look those over,  
17 please, if you would, Doctor. Do you recognize  
18 those photos?

19           A.     Excuse me?

20           Q.     Recognize those photos?

21           A.     I do.

22           Q.     And you've used those to render an opinion  
23 in this particular matter?

24           A.     I will. Yes.

25           Q.     Okay. And they have helped you form an

1 opinion up to today coming in here to testify about  
2 your opinion?

3 A. Yes.

4 MR. MICHAELS: All right. Your Honor, may  
5 I approach the clerk?

6 THE COURT: You may.

7 MR. MICHAELS: At this time the Defense  
8 moves into evidence Defense Exhibit Number 99.

9 THE COURT: It will be admitted.

10 (Whereupon, Defense Exhibit Number 99 was admitted.)

11 MR. MICHAELS: Permission to publish?

12 THE COURT: Yes.

13 BY MR. MICHAELS:

14 Q. Okay. Next photo, please. Okay. JPEG  
15 305, tell us what you can about this particular  
16 photograph. What are we looking at in the terms of  
17 the injury, Doctor?

18 A. This is the left hand of Mrs. Oulsen and  
19 it shows a gunshot wound involving the fourth and  
20 fifth fingers.

21 Q. Can I get you to step down, please, again?

22 A. Sure.

23 Q. And so tell me what we're looking at. I  
24 see on -- in layman's terms, the pinkie finger,  
25 there appears to be an abrasion. Tell me about

1     that.

2           A.     Here on the fifth finger the skin is  
3     abraded and contused a little bit. You can see it  
4     here and down here, closer to the tip of the finger,  
5     there's a shallow, small laceration or tear of the  
6     skin. So this is a surface wound. It doesn't  
7     perforate the finger here.

8           Q.     And does this photograph help you at all  
9     to describe this wound or do we need to get to  
10    another one?

11          A.     If you want to actually see the laceration  
12    and the abrasion and contusion, a closeup might be  
13    better, but this is adequate for my purposes.

14          Q.     What are we looking at in terms of these  
15    spots here?

16          A.     The spots on the back of the hand are  
17    gunpowder stippling, just as we saw before.

18          Q.     And again, I noticed that we don't see  
19    stippling on the lower part of the hand, the hand  
20    that's on the side of the small finger, pinkie; is  
21    that correct?

22          A.     Right. Yes.

23          Q.     And it's difficult to tell, it looks like  
24    the fingers have some sparse stippling; would you  
25    agree with that?



1           A.    The index finger has one or two; and the  
2   third finger has one.

3           Q.    On the thumb there appears to be some.  
4   Can you tell from that photograph what that is?

5           A.    They're a little bit shadow, so they could  
6   be freckles.  I don't know.

7           Q.    And what can you say about this particular  
8   wound?

9           A.    This is another trough-like wound.  It  
10   doesn't have an entrance and a discreet exit.  It's  
11   one gutter-like, trough-like wound going from this  
12   side to this side.  That is the side next to the  
13   third finger out to the side next to the fifth  
14   finger.  And it's rubbing the skin as it goes and  
15   creating a trough and creating lacerations or tears  
16   that on other photographs you'll see radiate out  
17   toward the direction of the fifth finger.

18          Q.    This is 308.  What are we looking at  
19   there, just kind of a --

20          A.    This doesn't provide any additional  
21   information.  It's the same hand, basically the same  
22   view, from a little bit farther back.

23          Q.    Okay.  Stop there.  What are we looking at  
24   here, Doctor?

25          A.    This also shows the hand and the camera

1 angle is different. So if you're looking -- so you  
2 can see that the fingernails look large and the rest  
3 of the hand recedes in the background, so it gives  
4 you an indication of the camera angle. And you can  
5 better see the lacerations and the abrasion and  
6 contusion on the fifth finger.

7 And you're now seeing the wound on the  
8 fourth finger from a different angle, so now you can  
9 see that there's a skin flap created by the bullet  
10 going under and tearing around it.

11 Q. So the bullet is actually traveling this  
12 path?

13 A. Yes.

14 Q. Towards the small finger?

15 A. Yes.

16 Q. And in terms of the injury on the small  
17 finger, do you have any opinion as to how that  
18 abrasion or injury was caused?

19 A. It's caused by the bullet going by.

20 Q. All right. So in terms of -- there's no  
21 breaking of the skin; can we agree with that?

22 A. Well, no. I mentioned there's a shallow  
23 laceration here.

24 Q. Okay. Thank you. Is this helpful at all?

25 A. Sure. This is the palmar aspect of the

1 same hand. And you can see the exit end of the  
2 gunshot wound of the fourth finger here. It's  
3 swollen and the skin is moist because it had been  
4 bandaged for a couple of days. And you can see some  
5 of those lacerations radiating out from the end of  
6 the wound path.

7 So this photograph principally shows the  
8 swelling and the radiated lacerations.

9 Q. That was 323. Next. 326, similar  
10 photograph.

11 A. But closer.

12 Q. Next. Next. This is 332.

13 A. This is a photograph where the camera is  
14 viewing the finger's edge on. And the fifth finger  
15 is flexed a little bit so that you can see the side  
16 of the fifth finger and the side of the fourth  
17 finger. So you can see almost the entire extent of  
18 the gunshot wound of the fourth finger here and that  
19 flap of somewhat contracted whitened skin there.

20 Q. This is Number 344.

21 A. This is another one from an oblique angle  
22 showing the dorsal part of the hand and the fingers,  
23 and it shows a stippling. And it shows the wound of  
24 the fourth finger and a little bit on the fifth  
25 finger.

1           Of all the photographs we've seen on this  
2 hand, this is the one so far that aligns with the  
3 camera that's most closely approximated to where the  
4 muzzle was.

5           Q.    Can you tell the Judge what you mean by  
6 that?

7           A.    This is the view that the bullet and the  
8 gunpowder would have had, not exactly, but it's  
9 closer than any of the other photographs.

10          Q.    And why do you say that?

11          A.    Because you can see the concentration of  
12 the gunpowder here, but not in parts of the hand  
13 that are not in the photograph. You can see the  
14 entrance part of the gunshot wound in the fourth  
15 finger, but not on the exit part.

16          Q.    You can also see stippling on the finger  
17 with the entrance wound?

18          A.    Yes.

19          Q.    Now, when you look at the stippling, how  
20 would you describe that pattern?

21          A.    That's a sparse pattern.

22          Q.    And in terms of distance, do you have an  
23 opinion as to the distance?

24          A.    This would be closer to the maximum range  
25 for intermediate range.

1 Q. And what is that number?

2 A. Closer to the 15 to 18-inch standard  
3 maximum for a standard hypothetical handgun.

4 Q. And that's from the muzzle?

5 A. Yes. From the muzzle.

6 Q. Now, we talked about the entry wound to  
7 the chest. Do you have any way to tell whether the  
8 hand that we're looking at is actually contacting  
9 the chest that received the projectile?

10 A. No.

11 Q. Do you have any idea of what the position  
12 of that hand would be in relation to the muzzle of  
13 the firearm?

14 A. Well, I'm assuming, once again, that  
15 there's one bullet. And I haven't heard anything to  
16 the contrary. Then the left hand of Mrs. Oulsen is  
17 closer to Mr. Oulson's chest than his right hand.

18 Q. And in terms of position, again, if we go  
19 the standard anatomical position straight on, how  
20 would that hand have to be positioned?

21 A. It's the left hand. And I want to make  
22 this so the Judge can see. The bullet is passing,  
23 grazing the dorsal surface of the fourth finger and  
24 then dinging the fifth finger. So it's trying to do  
25 this. It might actually be forcibly pushing the

1 fifth finger to the side. It might be slid to begin  
2 with and just sliding in between.

3 Q. And in terms of the actual positioning of  
4 the hand, can you give an opinion to a reasonable  
5 degree of medical certainty exactly what the  
6 positioning of the hand was? In other words, if you  
7 had your pinkie spread out. We'll start there.

8 A. Well, I've given you the position of the  
9 hand with respect to the muzzle.

10 Q. I understand.

11 A. And beyond that, I can say that the hand  
12 is attached to the wrist and the wrist to the arm.  
13 As you get up each sequential joint to the torso,  
14 there's lesser certainty. You would have to ask the  
15 witnesses.

16 The most comfortable position to do that  
17 is this way. If you have the muzzle, that's the  
18 easiest way to do it. If I turn around and do this,  
19 it's more awkward, but it's not impossible.

20 Q. Okay. You can have a seat, Doctor. And  
21 again, we talked about standard anatomical position  
22 straight up and down. Similar to what you testified  
23 earlier concerning the injuries that we observed to  
24 Mr. Oulsen, the hand injuries to Mrs. Oulson,  
25 likewise, can they be oriented so that if, for

1 instance, Mrs. Oulsen is -- has her hand in front of  
2 a torso that's tilted down and the muzzle of the  
3 firearm is low, can we still get that sort of  
4 straight trajectory that goes through the fleshy  
5 part of the wrist, through the finger into the  
6 chest?

7 A. Yes.

8 Q. And so again, it's all with orientation.  
9 If somebody is bending over and the shooter is  
10 slightly up, we're going to get that straight  
11 trajectory that we're looking for?

12 A. Right.

13 Q. To line everything up?

14 A. Right.

15 Q. Let's talk about -- let's talk about  
16 vulnerability in terms of one's body. What is the  
17 most vulnerable part of the human body?

18 A. Well, there are a couple in terms of  
19 physical trauma, I assume you're asking.

20 Q. Yes. Physical trauma.

21 A. All right. Well, the head has a thin --  
22 the squamous portion of the temporal bone is so thin  
23 that it has different characteristics for gunshot  
24 wounds.

25 Q. Doctor, let me ask you this. Would it

1 help if you were to use a demonstrative aid?

2 A. Sure.

3 MR. MICHAELS: May I, Judge?

4 THE COURT: You may.

5 MR. MICHAELS: Judge, where do you want me  
6 to position this?

7 THE COURT: Probably right in front of the  
8 screen is good.

9 MR. MICHAELS: Okay.

10 THE WITNESS: Shall I step down?

11 MR. MICHAELS: If you would, please.

12 THE WITNESS: I'm not sure this is close  
13 enough to be effective for the Judge.

14 MR. MICHAELS: Okay. All right. Judge,  
15 if we could move a little closer?

16 THE COURT: That's good.

17 BY MR. MICHAELS:

18 Q. Feel more comfortable?

19 A. It's up to the judge.

20 THE COURT: That's pretty good.

21 BY MR. MICHAELS:

22 Q. Okay. Now, you indicated the head was the  
23 most vulnerable. Let's talk about that. Why is  
24 that?

25 A. This portion of the skull right here in



1 the temple, this particular bone is the squamous  
2 portion of the temporal bone. It's thin. And a  
3 blow here can easily fracture or distort the bone.

4 Q. And you're talking about a blow by a fist,  
5 a bat or anything?

6 A. Anything. Could be a skier going into a  
7 tree, could be what you said. When that thin bone  
8 fractures, there are some arteries that travel on  
9 the inside of the skull between the skull and the  
10 dura mater. The dura mater being the tough lining  
11 of the skull.

12 Can I step toward it?

13 THE COURT: Yes.

14 THE WITNESS: On this model, Your Honor,  
15 you can see some grooves here. This is not  
16 real bone. This is a plastic model. Those  
17 grooves are for the arteries. One of them is  
18 the middle meningeal artery. And if there's a  
19 fracture in that thin portion -- and this is  
20 not sufficiently thin. It's not completely  
21 true.

22 If there's a fracture there that runs  
23 across one of those arteries, the artery gets  
24 torn, it then bleeds. And under arterial  
25 brochure the blood then strips the dura off the

1 skull, creates a lump that keeps getting bigger  
2 and bigger and it pushes the brain. The brain  
3 gets pushed to the side. The brain swells.  
4 And then it's a neurosurgical emergency.

5 BY MR. MICHAELS:

6 Q. Is the potential for that injury -- let me  
7 ask you. Is it possible for a fist to cause that  
8 injury?

9 A. Yes.

10 Q. What about an object?

11 A. Yes.

12 Q. Let me show you what's been marked by the  
13 State as AP-13.

14 MR. MARTIN: All the markings need to go  
15 on the back.

16 MR. MICHAELS: Do you have any objection  
17 to stipulated to --

18 MR. MARTIN: No.

19 MR. MICHAELS: I'll bring the bag for  
20 Madam Clerk, but I just need the exhibit --  
21 next exhibit number.

22 THE COURT: Thirty-three.

23 BY MR. MICHAELS:

24 Q. Let me show you what's been marked as  
25 Defense Exhibit 33 -- I'm sorry. Court's Exhibit

1 33, so we don't get confused. Hold that, if you  
2 will.

3 Now, that particular object, could that  
4 cause an injury if you were to strike the skull such  
5 as you described to the Judge?

6 A. If it hits edge on, or particularly corner  
7 on, yes. Because the amount of kinetic energy in an  
8 object that's in motion is proportional to the mass  
9 of the object, weight, for practical purposes. And  
10 it's proportional to the square of the velocity.

11 So a small object traveling very fast can  
12 have a huge amount of kinetic energy. A bullet  
13 being a prime example. A cell phone, or something  
14 of similar size, if it's thrown fast enough can be  
15 injurious.

16 But here we have an irregular shape. And  
17 one of the characteristics of injury is that tissue  
18 injury is caused by sheer stress focused on tissue.  
19 And the amount of stress is inversely proportional  
20 to the time over which it's inflicted and the  
21 surface area over which it's inflicted.

22 So a small, hard object is more injurious  
23 than a big, flat object. And a blast injury is more  
24 injurious than an injury produced by a vice, for  
25 instance, where it's slow compression.

1           So if a corner hits, the energy's  
2           concentrated in a small area and the stress is  
3           increased. The faster the thing flies, the more  
4           injurious it is, because the stress proportional to  
5           the energy, which is proportional to the square of  
6           the velocity.

7           MR. MICHAELS: Your Honor, this exhibit  
8           has been stipulated to as the phone belonging  
9           to Chad Oulsen recovered from the scene.

10          BY MR. MICHAELS:

11          Q. Now, you were explaining to the Court  
12          about the various vulnerable areas. And we're  
13          talking about the head. And you described to the  
14          Judge the anterior of the skull.

15          Let me talk about the brain. As people  
16          age, does that affect the size of their brain?

17          A. Yes. The brain actually loses volume with  
18          age and this creates -- or actually increases the  
19          amount of space between the brain and the skull, the  
20          subdural space.

21          Q. And using the model, if you will -- here's  
22          the other part of it, if you need it. Show the  
23          Court why that's important to know when we're  
24          considering the vulnerability of that area for  
25          somebody who is aging.

1           A.     If I can step over?

2           THE COURT:   You may.

3           THE WITNESS:   I'm showing you the inside  
4           of the top part of the skull.   And from the  
5           middle of the brain, the top part, veins drain  
6           into the veins in the dura, essentially skull  
7           veins, if you will, by perpendicular veins that  
8           go straight up all along this area here.

9           And if the brain -- when the brain  
10          shrinks, those veins have to traverse a longer  
11          area.   Most subdural hemorrhages are caused by  
12          lacerations of those bridging veins.   And the  
13          smaller the brain relative to the skull, the  
14          longer the vein and the more stress is put on  
15          that vein if the brain moves with respect to  
16          the skull.

17          And if the head is in rotation and  
18          suddenly stops, the brain will continue to  
19          rotate while the skull becomes stationary.  
20          This is what happens when a person falls and  
21          strikes the back of the head on the floor or  
22          the pavement, the brain keeps rotating.

23          And then those bridging veins, one of  
24          them, at least, lacerates.   Blood, venous  
25          blood, then accumulates in the subdural space

1 over a period of 15 minutes or more, and this  
2 becomes a neurosurgical emergency. And if it's  
3 enough, it has to be drained neuro-surgically  
4 and the person becomes neurologically impaired.

5 And if I can bring out that easel, I'll  
6 just sketch the concept a little bit. Consider  
7 this thing a cross-section through the head,  
8 and we'll make it a coronal section, which  
9 means it's from left to right and it's  
10 vertical.

11 So this is one side of the head. This is  
12 the other side. And this is the top. And the  
13 blue line is a vein that's draining from here  
14 into this dura sinus, which is a big tough wall  
15 vein, but then eventually makes -- the blood  
16 makes its way to the jugular vein in the neck.

17 I've indicated a fairly long vein here.  
18 In a child -- I went and used it up -- the  
19 brain tends to tightly fill the cranium, so  
20 that bridging vein is going to be short.

21 So the older the person, the smaller the  
22 brain, the longer that bridging vein and the  
23 greater the risk of a subdural hemorrhage or  
24 subdural hematoma from a fall.

25 BY MR. MICHAELS:

1           Q.    Can that also be caused by a strike of  
2   some sort?

3           A.    It can be caused by a strike, particularly  
4   if the strike knocks the person down.  It's more  
5   close -- this is more classically associated with a  
6   moving head striking a fixed object, a fixed object  
7   striking a stationary head.  But, of course, heads  
8   are never completely stationary, unless they're  
9   locked in a device and that doesn't really happen.  
10   If a head gets hit with a baseball bat, it's going  
11   to move.

12          Q.    Or with a punch and hit an object that's  
13   fixed behind it?

14          A.    Yes.

15          Q.    What about the face, what particular areas  
16   of the face are vulnerable to serious injury, to  
17   bone fractures and that sort of thing?

18          A.    The whole structure of the face is a  
19   series of thin bones separated by air-filled spaces.  
20   The air-filled spaces are sinuses, technically known  
21   as paranasal sinus.  And then another thing that  
22   fills the space is the eyeballs and the fat around  
23   them.

24                    You can see the cheekbone here,  
25   technically known as the zygomatic bone or zygomatic

1 process. And then this vertical strut around the  
2 orbit, which is the socket for the eye, that's the  
3 orbital bone. These are thin, strut-like bones, and  
4 they can be easily fractured with a fist blow.

5 The nose has a bit of a bony anchor here,  
6 part of the nose is cartilaginous and part of it is  
7 just soft tissue. A blow to the nose can fracture  
8 this, and it can actually shove a -- I don't know if  
9 you can see a nasal bone in there, that can be  
10 shoved up toward the brain.

11 A blow that hits the jaw on the side can  
12 break these thin condyles. A blow to the front can  
13 fracture the maxillary bone, which is the support of  
14 the upper teeth. A blow to the lower jaw can  
15 fracture the lower jaw.

16 Fractures of the jaw are more apt to  
17 happen in a person who has bone loss, which is one  
18 of the things that's associated with gum recession,  
19 more common in older people.

20 An impact to the face can not only affect  
21 the bones that I named and mentioned that are on the  
22 surface, but it can also fracture the deep part of  
23 the facial bony structure.

24 Q. And those sort of injuries, is it possible  
25 that they can being caused by an iPhone, like the



1 one you are holding that's in the evidence at this  
2 time?

3 A. An iPhone could make an orbital fracture  
4 or a zygomatic fracture or a nasal fracture. It's  
5 probably not going to make a maxillary fracture or a  
6 mandibular fracture, unless those bones were to be  
7 very, very osteopenic.

8 Q. Now, certainly the face is covered with  
9 skin?

10 A. Yes.

11 Q. What sort of lacerations -- let me ask you  
12 this question. What areas of the face are more  
13 susceptible to lacerations?

14 A. The areas where skin is fairly tightly  
15 stretched over bone, which would be the forehead and  
16 over the cheekbone.

17 Q. And again, a strike by an iPhone?

18 A. It could make a small laceration. Yes.

19 Q. All right. Let's work our way down. I  
20 don't know if we're going to be able to put this on.  
21 I have a pin for that. Let's work our way down. Do  
22 you need this still, Doctor?

23 A. Just for the moment.

24 Q. Okay.

25 A. The junction of the skull and the cervical

1 spine is a weak point. The mammals, in particularly  
2 humans, have a unique first cervical vertebrae that  
3 permits a lot of rotation.

4 Humans can turn their heads, like I'm  
5 doing now, without turning the torso. Reptiles  
6 can't do that. Alligators, when they run, the head  
7 moves with the shoulders and they look funny, if  
8 you're in a safe place and it's not scary.

9 Humans have a more elegant look, but it's  
10 at a cost. The cranial cervical junction is more at  
11 risk of injury. About 40 percent of the rotational  
12 capacity of the cervical spine is in that one area.  
13 And I'm going to tip this forward a little bit.

14 You can see that the first cervical  
15 vertebra is like a washer around a bolt, and that  
16 bolt is the odontoid process or dens, because  
17 somebody thought it looked like a tooth, that's  
18 sticking up towards the skull. So it's like a  
19 washer around a bolt.

20 And you can see these holes here. It's  
21 called a transverse foramen on each side, and  
22 there's a series of them down the vertebrae. The  
23 vertebral artery, the left and right vertebral  
24 arteries, goes through those holes. And then when  
25 they enter the skull they merge to form the basilar

1 artery.

2 A blow to the junction of the head and the  
3 neck, particularly from the side toward the back --  
4 in other words, behind the ear -- can result in an  
5 injury where those vertebral arteries are -- get a  
6 small laceration.

7 One of the vertebral arteries or one of  
8 the branches can get a small laceration from the  
9 transient dislocation of this bone causing a  
10 traumatic subarachnoid hemorrhage, which is  
11 virtually indistinguishable from the subarachnoid  
12 hemorrhage caused by the rupture of an aneurysm of a  
13 brain artery.

14 And that is a true neurological emergency  
15 that can produce sudden death. It could produce  
16 stroke and certainly debility.

17 While we have the skull off, the hyoid  
18 bone here lies between the larynx in the front of  
19 the neck and the tongue. You can think of the hyoid  
20 bone as being the skeletal for the tongue. It's at  
21 the base of the tongue. And this can be fractured  
22 with a chop to the throat.

23 The larynx can be fractured with a chop to  
24 the throat. The larynx in younger people is made of  
25 cartilage. In older people, it becomes too

1 osteophyte and more closely approximately to bone  
2 and it's easier to fracture.

3           So if the larynx becomes fractured it can  
4 collapse and a person can be partially suffocated  
5 and not get enough air to live.

6           I think that finishes with susceptible  
7 areas of the head and neck.

8           Q.   Now, let's go to the torso, if you would,  
9 Doctor.

10          A.   On the torso, on this model, you can see  
11 that the ribs mostly are on this hard white  
12 substance. But in the front it looks like they ran  
13 out of material and used some kind of translucent  
14 playdough. This is not by accident. The  
15 posterolateral and anterolateral aspects of the ribs  
16 are made of bone.

17               In a young person, this portion, which  
18 connects to the sternum is made of cartilage. This  
19 confers flexibility and elasticity to the bony  
20 thorax. These cartilages tend to become calcified  
21 or even osteophyte with advancing age, which makes  
22 the thorax less flexible. And so it makes more  
23 susceptible to rib fractures when a blow is directed  
24 at the thorax.

25          Q.   In terms of -- go ahead, Doctor.

1           A.     Moving on to the abdomen. During  
2     inspiration, the diaphragm descends and the liver and  
3     the spleen descend with it.

4           So a blow to an unguarded abdomen or an  
5     abdomen with a thin, aging abdominal muscular wall  
6     can result in laceration or tearing of the spleen or  
7     laceration or tearing of the liver, with a slow  
8     accumulation of venous blood which would cause it  
9     to -- a medical emergency after some passage of  
10    time.

11          Q.     In terms of laceration of the liver, have  
12    you seen specific instances of that happening and  
13    can you give the Judge some specific incidents?

14          A.     It's not an uncommon complication of  
15    cardiopulmonary resuscitation. Although the liver  
16    is in the peritoneal cavity, the dome of the liver  
17    is actually partially protected by the ribcage,  
18    because the diaphragm domes up here.

19                 And so the chest compressions can actually  
20    produce lacerations of the liver that typically are  
21    right in the front and next to the falciform  
22    ligament that runs to the sternum.

23                 They're usually small lacerations, but  
24    they can produce some bleeding. And when it's  
25    misinterpreted at autopsy, it causes legal problems.

1 CPR is more widely known to commonly produce  
2 fractures of the ribs and those fractures are  
3 typically in the front and those are only rarely  
4 misconstrued.

5 Q. Now, in terms of protecting the liver and  
6 the spleen, would you agree or disagree with me that  
7 the body depends on the abdominal muscles?

8 A. A person in a situation will -- where  
9 there's some reasonable expectation of a blow to the  
10 abdomen would tense those abdominal muscles to  
11 protect. Yes. And if they can't see the threat  
12 coming to the abdominal muscles, or don't have  
13 decent muscles, then they're not going to be able to  
14 afford themselves that protection.

15 Q. And what is your experience in terms of  
16 observations of the aging when it comes to abdominal  
17 musculature?

18 A. It's like the musculature, in general.  
19 The muscle mass is reduced. In advanced age the  
20 muscle loss is really advanced. We have 95 year  
21 olds in nursing homes who have so much sarcopenia,  
22 that is muscle loss, that they no longer are able to  
23 withstand gravity and are in wheelchairs simply  
24 because they don't exercise enough to maintain  
25 muscle mass in the antigravity muscles.

1           Q.   And in terms of structure of the bones in  
2 the aged, do you find the bones you also talking --  
3 you already talked about ossification in the  
4 ribcage. But what do we see in the skeletal  
5 structure in terms of an aging individual?

6           A.   In the true bones the calcium, the mineral  
7 content, decreases. So they're osteopenic and they  
8 have less strength to withstand fractures. At the  
9 same time, the elastic tissue in the bone -- bones  
10 are not just mineral, they also have elastic tissue  
11 to afford some flexibility and some collagen,  
12 essentially gristle, to provide some more tensile  
13 strength. The elastic tissue goes down.

14               Bones of older persons are not as elastic,  
15 so they don't -- they don't bend as much when  
16 they're impacted. They're more at that point to  
17 fracture.

18           Q.   Let's talk about the anatomy of the hands.  
19 And again, this is an accurate model of the human  
20 skeletal system; would you agree with that?

21           A.   It's accurate. When you get down to the  
22 hands, everything here is strung together with wire  
23 and springs, so we really can't bend these  
24 approximate hand bones, but we can actually talk  
25 about the hand without using the skeleton because

1 the hands and feet are essentially bones covered  
2 with skin with some nerves and vessels. There  
3 aren't any organs in there.

4 Q. What happens to the hand when one makes a  
5 fist?

6 A. In a fist the fingers are curled in and  
7 then the thumb is brought across the middle bones of  
8 the index and middle fingers. There has been some  
9 scientific work that mark that this provides  
10 buttressing. So not only does the fist provide --  
11 make a smaller object than an open hand, thereby  
12 concentrating the force and increasing the stress  
13 for a given amount of force, the buttressing from  
14 the thumb allows the fist to absorb more energy than  
15 an open hand.

16 It allows the energy to be transmitted  
17 through the hand and up through the wrist so that  
18 the fist can deliver a -- although the fist and the  
19 open hand deliver the same amount of force, force  
20 being measured in pounds, it's -- the fist is a more  
21 efficient weapon because it concentrates the force  
22 in space and in time, because the jerk or the  
23 acceleration is greater with the fist.

24 Q. Now, can a fist cause laceration of the  
25 skin over the bony areas of the face that you



1 described?

2 A. Oh, yes.

3 Q. Can a fist cause a nose fracture?

4 A. Yes.

5 Q. Or a tooth fracture?

6 A. Yes.

7 Q. Or a fracture of the squamous part of the  
8 skull?

9 A. Yes.

10 Q. Laceration of the meningeal artery?

11 A. Yes.

12 Q. The epidural hemorrhage -- can it cause  
13 epidural hemorrhage?

14 A. Yes.

15 Q. What about cause a brain contusion, a rib  
16 fracture?

17 A. A fist with a good blow can cause a rib  
18 fracture, especially in an elderly person. And a  
19 fist can actually push the person down so they fall  
20 and hit the back of the head and get a subdural  
21 hemorrhage.

22 And then you mentioned a brain contusion.  
23 A blow to the head can cause the skull to -- a skull  
24 has a little bit of elastic, and so whether or not  
25 there's a fracture, and there's more likely to be

1 one in an older person, the inwardly bending bone  
2 will slap the brain and can cause a contusion;  
3 however, most brain contusions are contrecoup  
4 contusions that are caused when the blow is to the  
5 opposite side of the head from the contusion, most  
6 often from a fall to the back of the head.

7 Q. You can have a seat, Doctor, if you would,  
8 please.

9 A. I haven't finished with the lower part of  
10 the torso.

11 Q. Oh, I apologize.

12 A. In a male, the gonads are outside the  
13 body, the testees. And they are richly innovated,  
14 supplied with nerves, very sensitive to pain. And a  
15 sharp blow to the testees will cause pain. And in a  
16 person with heart disease that will -- the pain will  
17 raise the tone in the sympathetic arm of the  
18 autonomic nervous system which makes the heart more  
19 likely to have an arhythmia, such as ventricular  
20 fibrillation or flatline asystole.

21 If the heart is diseased, that is much  
22 more likely to happen. So in a person with an  
23 elderly or diseased heart, who has a blow to the  
24 testees, can have instant death, with nothing to  
25 show for it at autopsy but a contusion of the

1     testees, and a heart that might be enlarged or has  
2     some old chronic disease.

3           Q.     Now, when you talked about the fist.  You  
4     talked about less area and, therefore, a more  
5     concentrated delivery mechanism to actually deliver  
6     a blow to parts of the body, correct?

7           A.     Yes.

8           Q.     And would you agree with me that part of  
9     that concentrated delivery system are these  
10    knuckles?

11          A.     The knuckles and also the first bone or  
12    proximal phalanx of the hand.  In some cultures the  
13    blows are delivered with the knuckle between the  
14    proximal and middle bone; and western cultures it's  
15    usually tightly-closed fist with the blow delivered  
16    by the proximal knuckles, as you indicated.

17          Q.     You can have a seat, please.  Are you --  
18    are you familiar with the phenomenon of a one-punch  
19    homicide?

20          A.     Yes.

21          Q.     Can you tell us about that?

22          A.     From my experience with it, it has largely  
23    been with a conto-stylis lesion, which I alluded to  
24    earlier, with a blow to the side and back of the  
25    head that causes a laceration of a vertebral artery.

1 People tend to think of these deaths as freak  
2 occurrences, but they're easily explained by the  
3 arrangement of the human anatomy.

4 A one-punch homicide could result in a  
5 more -- not immediate death, but a delayed death,  
6 simply by punching a person and having them fall  
7 down and get a subdural hemorrhage.

8 One punch to the right part of the skull,  
9 the temple area, could produce the epidural  
10 hemorrhage from the lacerated meningeal artery. And  
11 almost any form of head trauma can be complicated by  
12 pneumonia, once a person is the hospital, or brain  
13 swelling, which if not controlled can lead to brain  
14 death.

15 MR. MICHAELS: Can I have a moment, Judge?

16 THE COURT: You may.

17 BY MR. MICHAELS:

18 Q. Is there a reason why aging people break  
19 their hips?

20 A. Yes.

21 Q. What is that?

22 A. Many of them have osteoporosis. Their  
23 bones are under-mineralized and then their balance  
24 isn't so good and their antigravity muscles aren't  
25 so good. They tend not to pick their feet up as

1 much and they trip. And when they fall and impact  
2 the hip, that greater trochanter, that part of the  
3 hip that sticks out on the side, takes the impact.

4 And then the neck of the femur, which is  
5 the part of the thigh bone between the part sticking  
6 out to the side and the round ball that goes into  
7 the hip joint, that is the most common place to get  
8 a fracture of the femur, which is commonly called a  
9 hip fracture.

10 Q. And does that have anything to do with the  
11 degeneration of the bones or is it just because old  
12 people fall?

13 A. It has to do with the degeneration of the  
14 bones, the loss of calcium and elasticity. It has  
15 to do with the greater propensity to fall because  
16 the balance isn't as good and the antigravity  
17 muscles aren't maintained, as well.

18 Q. What do you mean by antigravity muscles?

19 A. The muscles that allow us, not only to  
20 stand up, but also to walk. A normal gait will have  
21 a certain portion during the cycle of the gait where  
22 only one foot is in contact with the ground. And  
23 particularly going up and down stairs where there's  
24 only one foot in contact with the ground.

25 We have antigravity muscles. The abductor

1 muscles, the abductor muscles, the hamstrings, the  
2 quadriceps, they're all working to maintain posture.  
3 And we don't think about it, but that's kind of a --  
4 that's a real stunt to be able to go up and down  
5 stairs and be balanced on one foot and not fall  
6 down. We almost all do it. The elder can sometimes  
7 get to a point where they can't manage it.

8 But in a situation that's not going up and  
9 down stairs or just walking, sometimes the balance  
10 isn't so great because those situations aren't  
11 practiced and trained. Most elderly people aren't  
12 going to want to stand up, pick up one foot and tie  
13 their shoe. They're going to sit down to tie the  
14 lace on the shoe.

15 Q. And are all your opinions that you've made  
16 today within a reasonable degree of medical  
17 certainty?

18 A. Yes.

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

20 THE COURT: You may.

21 MR. MICHAELS: I don't have anything  
22 further. But before the State proceeds, let me  
23 properly mark the cell phone, if I may?

24 THE COURT: Thank you.

25 MR. MARTIN: While he's doing that, may I

1           get some of the exhibits that I need?

2           THE COURT:   You may.

3           MR. MARTIN:   Can we put Sammy the Skeleton  
4           back in his closet over there and take the  
5           easel down so I can talk.

6           May I proceed, Your Honor?

7           THE COURT:   You may.

8                       CROSS-EXAMINATION

9   BY MR. MARTIN:

10          Q.    Good afternoon.

11          A.    Good afternoon.

12          Q.    One of the first things that Mr. Michaels  
13               asked you about is whether or not you agreed with  
14               Dr. Thogmartin's manner of death; do you remember  
15               that?

16          A.    Yes.

17          Q.    The manner of death in this case is  
18               homicide?

19          A.    Yes.

20          Q.    The cause of death is gunshot wound?

21          A.    Yes.

22          Q.    In your discussion with Mr. Michaels you  
23               indicated to us that there's, I'll call it, either  
24               intermediate or intervening objects in front of Mr.  
25               Oulson's chest, that being Nicole Oulson's left hand

1 and his right wrist, correct?

2 A. Yes.

3 Q. All right. And you demonstrated for us  
4 the possibility of positioning of the human body, if  
5 you will, in order for the gutter wound, if you will  
6 call it, of the wrist, right?

7 A. Yes.

8 Q. And the fingers -- and I can't bend it  
9 because I'm standing here -- but of the fourth and  
10 fifth finger of Mrs. Oulsen and the wound to the  
11 chest, and you indicated it was front to back, a  
12 little bit left to right?

13 A. Yes.

14 Q. All right. And because we're such a close  
15 distance of muzzle to initial target, that's a  
16 pretty straight line; would you not agree?

17 A. I didn't understand the question.

18 Q. Sure. I'll start over.

19 A. Sure.

20 Q. Because the wrist to muzzle distance is  
21 relatively short -- you said a couple inches to  
22 maybe out to 10, and you gave the parameters of why  
23 you said 10 and not 50, right?

24 A. Yes.

25 Q. So with that distance from the wrist and



1 then the distance, if you will, from the gutter  
2 wound of his wrist through the hand of Mrs. Oulsen  
3 to his chest is a relative short distance. We're  
4 talking probably less than two feet, right?

5 A. Probably, yeah, less than the length of a  
6 person's arm extended.

7 Q. Yeah. So this would be the maximum.  
8 Well, you have to get it. So it's like here, right?

9 A. Oh, yeah, the actual arm.

10 Q. Yeah, the actual --

11 A. But I often give approximations of inches.  
12 I don't give exact measurements, and oftentimes  
13 juries are happy to hear, it's less than the length  
14 of a person's arm.

15 Q. Right. But in this particular case that  
16 would be true, but you have to bend the arm to make  
17 it less than the length of a person's arm, right?

18 A. We'll just bring in a third arm to do the  
19 measurement.

20 Q. There you go. Let's not get hung up with  
21 how far, but what we're talking about. We're  
22 talking about a straight line, right?

23 A. Yes. That's right.

24 Q. And you would -- if you would just kind of  
25 take my pen, if you will, and put it approximately

1     where the wound on Mr. Oulsen is as you move,  
2     Mr. Wilson, around to whatever position the muzzle  
3     has to track, because we're in a straight line;  
4     would you agree?

5             A.     Yes.

6             Q.     Okay.  In fact, when we're talking about  
7     positions of individuals who were shot and based on  
8     path of a wound, a Medical Examiner is constrained,  
9     if you will, or limited by the known circumstances  
10    of surrounding the shooting and what other people  
11    say; would you agree with that?

12            A.     Yes.

13            Q.     Okay.  And some of the known circumstances  
14    in this case is we have a wound to Mr. Oulsen's  
15    chest, correct?

16            A.     Yes.

17            Q.     We have the wound to Mrs. Oulsen's hand,  
18    right?

19            A.     Yes.

20            Q.     We have the wound to Mr. Oulsen's wrist?

21            A.     Yes.

22            Q.     We have the trajectory or path of the  
23    bullet, basically front to back, a little bit left  
24    to right, correct?

25            A.     Yes.

1           Q.    We have an approximate muzzle to target,  
2   the initial target, the wrist, distance of somewhere  
3   two-inches to 10 inches, correct?

4           A.    Yes.

5           Q.    Okay.  We have not only the injury of Mrs.  
6   Oulsen's hand but the position of her hand, like you  
7   indicated, would be the backside of her hand towards  
8   the muscle and the palm towards Mr. Oulsen's chest?

9           A.    Yes.

10          Q.    Okay.  And then you have witness  
11   testimony, such as Mrs. Oulson's testimony, that I'm  
12   sure you've read.  Corporal Hamilton's testimony  
13   that I'm sure you've read, correct?  So we have  
14   witness testimony.

15          A.    No.  I have not read that.

16          Q.    Have not read Mrs. Oulson's?

17          A.    No.

18          Q.    Or Corporal Hamilton?

19          A.    No.

20          Q.    All right.  One of the things that we can  
21   look at in attempting to determine, like you said,  
22   what's happening beyond the wrist, the arm and the  
23   shoulder back -- once you get past the shoulder gets  
24   really fuzzy -- for a Medical Examiner to say where  
25   the position of a body is; is that right?  Like for

1 Mrs. Oulson.

2 A. That's basically what I said. Yeah, you  
3 can feed me a scenario and I can say whether the  
4 findings are consistent with it.

5 Q. And that was my going to be my next  
6 question. That's what we do with a Medical  
7 Examiner, we feed a hypothetical or scenario and you  
8 can say yea or nay?

9 A. Yes.

10 Q. All right. Just like you did with  
11 Mr. Michaels?

12 A. Yes.

13 Q. Okay. And I believe you indicated with  
14 Mr. Michaels that a scenario that is consistent,  
15 that you would say yea to, is that Mrs. Oulson with  
16 her left arm across her body, correct, with her hand  
17 horizontal or parallel to the ground?

18 A. Yes.

19 Q. Okay. And you twisted the hand a little  
20 bit, but basically this would be her arm position?

21 A. Yes.

22 Q. Okay. And you indicated that the position  
23 potential, consistent with, on Mr. Oulsen at the  
24 time he was shot, you indicated that if the gun was  
25 low he potentially could have been leaned over a

1 little bit. And I'm not trying to say how far you  
2 leaned, but you know what I'm talking about, this  
3 lean?

4 A. Yes.

5 Q. All right. Now, we also -- if the gun is  
6 low and there's no angle to the gun, he can flex his  
7 hips and knees, can't he, and kind of shrink like an  
8 accordion this way?

9 A. Yes.

10 Q. Okay. And when we talk about known  
11 circumstances, artifacts within the theater would  
12 also be known circumstances, like the back of a  
13 chair. If there's no gun -- if there's not a hole  
14 caused by a bullet through the back of the chair, we  
15 can logically assume that the bullet flew over the  
16 back of the chair, right?

17 A. Yes.

18 Q. Okay. So when we talk about constraints  
19 and when -- where the bullet passed especially in  
20 this case, since we don't have a bullet through the  
21 hole in the chair, we can assume then based on  
22 whatever position we put Mr. Oulson and Mrs. Oulson  
23 as whatever, as the chair being an obstacle, the  
24 bullet has to come across the chair. So we are  
25 bound by a certain area that doesn't go below the

1 top of the chair?

2 A. Yes.

3 Q. Because there's no bullet hole.

4 A. Right.

5 Q. Okay. We talked about stippling and how  
6 stippling -- you talked about sparse and dense  
7 stippling. I think those are the two terms you  
8 used, if I remember right.

9 A. Yes.

10 Q. All right. And basically what we're  
11 talking about, as the muzzle gets closer to the  
12 initial target -- I'll call it the cone of the  
13 stippling -- further away is wider, and as you get  
14 closer it becomes more concentrated and gets tighter  
15 as a group, correct?

16 A. Yes.

17 Q. Now, when you talked about the stippling  
18 and Mr. Michaels asked you, is the stippling on Mr.  
19 Oulsen's back of his hand consistent with a fist.  
20 Do remember that discussion you had?

21 A. Yes.

22 Q. All right. It's also consistent with the  
23 muzzle being at such a distance from the wrist that  
24 the cone is so small in diameter that it just didn't  
25 cover past the knuckles, correct? His fingers could

1 have been out and the stippling just didn't make it  
2 that far because it's so close?

3 A. Yes.

4 Q. Okay. And you can't say to any degree of  
5 medical certainty which one of those is correct?

6 A. That's right.

7 Q. All right. That's one of those yea or  
8 nays consistent with?

9 A. Yes.

10 Q. Okay. We had some discussions about the  
11 cell phone and injuries that could be caused by the  
12 cell phone and what could have happened if someone  
13 is struck by a cell phone. Do you remember that  
14 conversation with Mr. Michaels?

15 A. Yes.

16 Q. Okay. Let me show you what's been  
17 introduced into evidence by the Defense as -- this  
18 is yours down here, right, that blue one and that's  
19 his.

20 It's been introduced into evidence as  
21 Defense Exhibit Number 27.

22 MR. MARTIN: May I approach, Judge?

23 THE COURT: You may.

24 BY MR. MARTIN:

25 Q. I'm just going to give you a chance to

1 look at that. Have you seen that picture before?

2 A. Yes.

3 Q. I showed it to you when I took your  
4 deposition, right?

5 A. Yes.

6 Q. We've had some discussion about it  
7 already?

8 A. Yes.

9 Q. Okay. And you talked about the cell  
10 phone, and if it's thrown real hard to the temporal  
11 area, it could cause significant damage and injury  
12 to the body, correct?

13 A. Yes.

14 Q. By that photograph, and I believe that we  
15 have a little bit of an area of left and right  
16 temple in that picture, is there any injury like  
17 that to Mr. Reeves?

18 A. There's no fracture of the temporal bone.  
19 But that wouldn't show in the photograph because  
20 there's no break in the skin. But as far as I know,  
21 there is no such injury.

22 Q. All right. You also talked about the  
23 bones in the face. Again, as far as what you would  
24 expect from blunt trauma of a cell phone being  
25 thrown, as Mr. Michaels said at a high rate of



1 speed, whatever that is, we just have force and  
2 velocity, like you explained to us. Is there any  
3 injury to his nose that would be consistent with  
4 being hit with a blunt object, like an iPhone,  
5 thrown from a distance of approximately, you know,  
6 20 to 30 feet away?

7 A. No.

8 Q. How about to the orbital sockets of his  
9 eyes?

10 A. No.

11 Q. To his forehead?

12 A. No.

13 Q. To his cheeks, left or right?

14 A. No.

15 Q. To his chin?

16 A. No.

17 Q. To his neck? Well, does the picture go  
18 down that far?

19 A. It shows a little bit of the throat. And  
20 the answer's no.

21 Q. Okay. In the event that -- and you see  
22 Mr. Reeves is wearing glasses in that picture?

23 A. Yes.

24 Q. In the event that a blunt object was  
25 either thrown at Mr. Reeves and hit his glasses,

1 would you not expect to find some type of abrasions  
2 or lacerations as the glasses are forced up against  
3 the skin of Mr. Reeves' face?

4 A. There might be or there might not.

5 Q. How about abrasions or lacerations on his  
6 nose based on the nosepieces of his glasses?

7 A. There might be or there might not.

8 Q. The only reason I bring this up is because  
9 you and I have discussed it before.

10 MR. MARTIN: May I approach the witness?

11 THE COURT: You may.

12 BY MR. MARTIN:

13 Q. When you and I talked before you pointed  
14 out to me, and I'm pointing to an area behind his  
15 glasses, a red area. Do you remember our  
16 conversation about that?

17 A. Yes. The left upper eyelid has a red  
18 area.

19 Q. Okay. Now, the eyelid is a very fragile  
20 part of the human body, isn't it? I mean, it's  
21 very, very thin.

22 A. Oh, the skin is skin.

23 Q. Yeah.

24 A. Certainly not like the sole of the foot.

25 Q. Correct. And there's tiny -- I don't want

1 to miss -- what's in there that gets the blood  
2 around, the vessels?

3 A. Blood vessels.

4 Q. Blood vessels. Okay. And any type of  
5 manual rubbing or manipulation can cause a redness  
6 on the eyelids like we see on Mr. Reeves; can it  
7 not?

8 A. It can.

9 Q. Okay. Now, if a blunt object was, in  
10 fact, thrown or even -- we talked about a fist being  
11 punched -- and it hit Mr. Reeves in the area -- we  
12 see the redness of his eyes -- would you not expect  
13 to see some sort of corresponding damage,  
14 lacerations of the glasses, since we see right  
15 behind his eyeglasses is the eyelid and the red  
16 area. You would expect to see some type of markings  
17 on his face, right?

18 A. You might. You might not. You might have  
19 an impact if the eyeglasses are knocked askew and  
20 then there's this wheel-and-flare reaction in the  
21 mild confusion.

22 Q. Wait a minute. Excuse me. A wheel and --

23 A. Wheel-and-flare reaction.

24 Q. Explain that to me. I didn't know what  
25 that is.

1           A.    If you take your fingernail and rub it  
2 along your skin --

3           Q.    Okay.

4           A.    -- you'll get a raised white area and it  
5 will also be red at some point.  It's called a wheel  
6 and flare.  It depends on nerves and it goes away  
7 quite rapidly.

8           Q.    All right.  With that little red area  
9 right there, that's somewhat inconsistent with that  
10 iPhone being thrown at a high rate of speed, because  
11 you talked about if you got hit by the edge, it's  
12 small, and there's more force because it's small.  
13 You would expect much more damage to the face than  
14 that little red area behind the glasses; would you  
15 not?

16          A.    It depends on how hard it's thrown.  It's  
17 consistent with an iPhone being thrown.  It's  
18 consistent with other things, too.  It's  
19 nonspecific.

20          Q.    Consistent with just constant rubbing?

21          A.    Yes.

22          Q.    So you can't say to any reasonable degree  
23 of medical certainty that what we see behind his  
24 glasses, that red area, is, in fact, blunt trauma?

25          A.    That's right.  I have no opinion.

1           MR. MARTIN: May I have a moment with  
2 counsel, Judge?

3           THE COURT: You may.

4           MR. MARTIN: If I may retrieve the  
5 exhibit?

6           THE COURT: You may.

7           MR. MARTIN: Thank you, Dr. Adams.

8           Thank you, Judge. I have no further  
9 questions.

10          Madam Clerk, here's your exhibit back.

11          THE COURT: Thank you.

12          Redirect?

13                       REDIRECT EXAMINATION

14 BY MR. MICHAELS:

15          Q. I know you testified that the redness you  
16 see is consistent with being hit by an iPhone, but  
17 you can't give an opinion within a reasonable degree  
18 of medical certainty, correct?

19          A. That's right.

20          Q. And as far as rubbing the eyelid, can you  
21 give any opinion within a reasonable degree of  
22 medical certainty that that redness is caused by  
23 rubbing the eye?

24          A. No. I can't.

25          MR. MICHAELS: Thank you.

1 THE COURT: May this witness be released?

2 MR. MARTIN: May I -- may I just follow up  
3 on that, Judge?

4 RECROSS-EXAMINATION

5 BY MR. MARTIN:

6 Q. We talked about the positioning on the  
7 body and that Medical Examiners --

8 MR. MARTIN: And I'm just laying a  
9 predicate, Judge. I'm not going there. I'm  
10 just trying to lay the predicate.

11 BY MR. MARTIN:

12 Q. We talked about the Medical Examiners are  
13 constrained or limited by the known circumstances  
14 and witness testimony, right; do you remember that?  
15 We talked about it.

16 A. We did.

17 Q. Okay. Now, in regarding Mr. Michaels'  
18 question, and as far as any degree of medical  
19 certainty whether or not it's caused by rubbing, can  
20 we not, just like in the body position, rely on  
21 witness testimony as to what they observed and as a  
22 hypothetical? If someone saw him rubbing his eyes  
23 then we can say, okay, it may or may not be, right?

24 I mean, we can do the same analysis with  
25 the injuries. We can rely on the known

1     circumstances and witness testimony to try to give  
2     meaning and content to the injuries we see, just  
3     like we discussed about the body position, right?

4           A.     Sure.  You can evaluate the witness  
5     information as to how reliable it is.  That's a  
6     matter for the Judge.

7           Q.     Right.  And once that's done, either  
8     accept or reject, apply it to the injuries that we  
9     see, and it either corroborates or doesn't  
10    corroborate the testimony, right?

11          A.     Yes.

12                 MR. MARTIN:  All right.  Thank you.  No  
13     further questions.

14                 THE COURT:  Thank you.

15                 MR. MICHAELS:  He may be released, subject  
16     to recall.  We'll keep him under subpoena.

17                 THE COURT:  Okay.  Doctor, you're free to  
18     go, particularly for today.  It's a slim  
19     possibility that you may be recalled for  
20     something.  You'll get plenty of advanced  
21     notice.  I'm certain on that.  But probably  
22     you're good to go.  But you'll still remain  
23     under subpoena.

24                 THE WITNESS:  Okay.  Travel's not a  
25     problem.

1 THE COURT: All right. Thank you.

2 THE WITNESS: Thank you.

3 THE COURT: We're going to take a short  
4 recess, maybe 15 minutes, and we'll be back  
5 following that.

6 RECESS

7 OPEN COURT

8 THE COURT: Mr. Escobar?

9 MR. ESCOBAR: Good afternoon, Your Honor.  
10 Again, the Defense would call Detective Allen  
11 Proctor.

12 THE COURT: All right.

13 (Whereupon, the witness was sworn.)

14 ALLEN PROCTOR,  
15 Thereupon, the witness herein, being first duly  
16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. ESCOBAR:

19 Q. Good afternoon, Detective Proctor.

20 A. Yes, sir. Good afternoon.

21 Q. Would you please state your full name and  
22 please spell your last name?

23 A. Allen, A-L-L-E-N, middle initial W, last  
24 name Proctor, P-R-O-C-T-O-R.

25 Q. Mr. Proctor, would you please tell the



1 Court your educational background?

2 A. I graduated from Grandridge High School in  
3 1979. I started attending Hillsborough Community  
4 College in January of 1985 as a Department of  
5 Corrections -- Department of Corrections trainee.

6 I then started at Hillsborough Community  
7 College in 1987 and I took a law enforcement academy  
8 class. I graduated from St. Leo University in 2003  
9 with a Bachelor's degree in criminology.

10 Q. Okay. What is your current occupation?

11 A. I'm retired.

12 Q. What was your former occupation?

13 A. I was a deputy sheriff for Pasco County  
14 Sheriff's office.

15 Q. Okay.

16 A. And counselor, too, I am a part-time  
17 electrician now also, so part-time.

18 Q. A lot less stress?

19 A. Yes, sir.

20 Q. I will continue to call you detective,  
21 just out of respect.

22 A. Well, there's no need for that, sir, but  
23 whatever you feel more comfortable with.

24 Q. I will call you Mr. Proctor.

25 A. That will be -- whatever.

1           Q.    Mr. Proctor, you started your career in  
2 law enforcement at the Zephyrhills Correctional  
3 Institution in 1985; is that correct?

4           A.    That's correct.

5           Q.    And what was your position back in 1985  
6 with that particular outfit?

7           A.    I was a correctional officer.

8           Q.    Okay. And at a jail, at a prison?

9           A.    At a prison, Florida Department of  
10 Corrections Zephyrhills Institution.

11          Q.    Okay. And in 1988 you became a sheriff  
12 with the Pasco Sheriff's department?

13          A.    That's correct. August of 1988.

14          Q.    And it looks like you completed your  
15 academy the latter part of 1987; is that correct?

16          A.    That's correct. My law enforcement  
17 academy.

18          Q.    Okay. Now, when you started with the  
19 Pasco Sheriff's department, you worked patrol for  
20 about five years; is that correct?

21          A.    Yes, sir.

22          Q.    And then in 1993 you became a detective in  
23 property crimes?

24          A.    That's correct.

25          Q.    And what does a detective in property

1 crimes do?

2 A. We attempt to investigate crimes involving  
3 property; burglaries, grand thefts, things like  
4 that.

5 Q. Not homicides?

6 A. That's correct.

7 Q. Okay.

8 A. Not normally. There were some involvement  
9 even back in that day.

10 Q. Like support?

11 A. That's correct.

12 Q. Okay. Now, did you ever go into a  
13 division called the division of crimes against  
14 persons?

15 A. Yes, sir. I did.

16 Q. And what was the division of crimes  
17 against persons?

18 A. That was crimes against a person; robbery,  
19 battery, sexual battery, and death.

20 Q. Okay. Did the name or title to that  
21 particular division at some point in time change?  
22 Was there like a restructuring of the Pasco  
23 Sheriff's office in name and title?

24 A. Yes, sir.

25 Q. Okay. And you were in that crimes against

1 persons, I guess, until the change occurred in '03,  
2 '04?

3 A. Something like that. Yes, sir.

4 Q. How long were you in that division of  
5 crimes against persons?

6 A. Until I retired.

7 Q. Okay. But when you started, do you know  
8 what year you started?

9 A. In crimes against persons?

10 Q. Yes.

11 A. In January of 1995.

12 Q. So from '95 to 2003, 2004 it was called  
13 crimes against persons?

14 A. About that. I'm not for sure exactly when  
15 we made the change over to major crime.

16 Q. Okay. And then the name changed to major  
17 crime?

18 A. That's correct.

19 Q. Okay. And so somewhere around 2003, 2004  
20 you are now in major crimes and you are still  
21 investigating crimes against persons in that  
22 particular division, as well as homicides?

23 A. That's correct.

24 Q. Okay. Now, in all of your career as a  
25 detective you have been asked to be the lead

1 homicide detective in three cases; is that correct?

2 A. No, sir.

3 Q. Okay.

4 A. I was the lead detective and probably,  
5 there again, I sort of lost track, probably about  
6 35.

7 Q. Thirty-five?

8 A. As the lead detective.

9 Q. In what kind of cases?

10 A. Homicides.

11 Q. In homicides. Page 27, Lines 24 through  
12 25; Page 28, Lines 1 to 6. Do you remember me  
13 taking a depo of you back in March of 2015?

14 A. Yes, sir.

15 Q. Do you remember me asking you the  
16 following questions.

17 Question: How many homicides would you  
18 say you were assigned as a lead detective at this  
19 point. And Mrs. Sumner says, in all of his career.  
20 I said, uh-huh. And you said, I really don't know,  
21 probably three.

22 A. That's not what I recall saying, sir.

23 Q. Do you want to --

24 A. Maybe that's what it says there, but I  
25 don't believe that's what I said. I recall -- or I

1 have worked approximately 35 homicides as the lead  
2 detective.

3 Q. Going to the same deposition, do you  
4 remember me taking that same deposition on Friday  
5 March 27th of 2015?

6 A. I don't remember the date, sir. I think  
7 I've had two occurrences to be in front of you in  
8 deposition.

9 Q. Page 25, Lines 15 through 25. Okay. And  
10 so how many homicides would you say between 1995 and  
11 '03 you were the lead detective. Well -- you say, I  
12 have no idea. Question: In excess of 10. Answer:  
13 '95 to '03? Yes.

14 So in excess of 10?

15 A. Yes, sir.

16 Q. Today you're saying 35?

17 A. Over my career, from January of 1995 until  
18 May of 2016, I believe, sir. And, there again, 35,  
19 it might be 34. It could be 32. But it's -- I  
20 would believe it's up in the 30s.

21 Q. Okay. Now, out of the cases that you've  
22 been assigned as a homicide detective you've only  
23 dealt with one case that dealt with the issues  
24 involving self-defense?

25 A. There's only one case that I can recall

1 off the top of my head. Yes, sir.

2 Q. And do you know if that case was before or  
3 subsequent to the shooting incident there at the  
4 Cobb Theater?

5 A. I think it was before.

6 Q. And was that a burglary of a home and the  
7 owner or occupant of the home fired upon the  
8 intruder?

9 A. It wasn't the burglary of a home.

10 Q. What was it?

11 A. Burglary of an auto.

12 Q. Burglary of an auto?

13 A. Yes, sir.

14 Q. Okay. And the owner of the auto fired  
15 upon the intruder?

16 A. That's correct.

17 Q. Okay. Now, Detective, you've never taken  
18 any courses dealing with the issue of self-defense;  
19 is that correct?

20 A. I've had some training in it. I do not  
21 recall, probably in an in-service maybe -- or at --  
22 or back then our monthly, weekly major crimes  
23 meetings we'd talk about that briefly.

24 Q. Well, I'm not talking about the  
25 discussions. I'm talking about an actual course on

1 self-defense and the investigation of homicides  
2 dealing with self-defense.

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

4 Q. In fact, you're only familiar with the law  
5 of self-defense to some degree?

6 A. I don't know everything there is to know  
7 about that law. That's correct.

8 Q. In fact, you have only read the law of  
9 self-defense and the use of deadly force to a  
10 limited degree?

11 A. That's correct.

12 Q. Now, on the afternoon of January 13th,  
13 2014, Mr. Proctor, would you tell us where you were?  
14 Detective Proctor, I feel more comfortable --

15 A. That's fine.

16 Q. -- since I took a depo of you saying  
17 detective, I'm going to continue.

18 A. I was -- I was working that day as a  
19 detective in the major crimes unit.

20 Q. Okay. And you had someone else there in  
21 major crimes that had recently come into that  
22 division, an individual by the name of Aaron Smith;  
23 is that correct?

24 A. I don't know. I don't recall how long he  
25 had been in that unit, our unit.



1           Q.   Well, you would agree that it was very  
2           shortly before this incident, correct?

3           A.   There again, sir, I don't recall how long  
4           it was before he was in our unit.

5           Q.   Well, he was an individual that was  
6           shadowing you when he first came into the unit,  
7           correct?

8           A.   He did shadow me.  Yes, sir.

9           Q.   What -- when someone like Mr. Smith comes  
10          into that unit, major crimes, can you tell the Court  
11          what formal training is given to that individual in  
12          order for him to competently perform his duties as a  
13          homicide detective?

14          A.   Normally they are not the lead detectives  
15          on homicides until after they have had some  
16          experience working death cases.

17          Q.   Well, I want to know, first of all, the  
18          formal training.  Is there like a class that they go  
19          to for four to six weeks and, you know, start  
20          learning the ins and outs of homicide investigations  
21          or is this more of a shadowing-type of, hey, let me  
22          see how Detective Proctor does it and then I can  
23          learn from that process?

24          A.   No, sir.  There is formal training before  
25          normally you are assigned a -- as the lead on a

1 homicide. There is training that they send us away  
2 to receive.

3 Q. Okay. Do you know if by January the 13th  
4 of 2014 Mr. Proctor (sic) had achieved going to the  
5 homicide investigative course? That's what it's  
6 called, correct?

7 A. Mr. Proctor had been. That's me.

8 Q. Excuse me. Mr. Smith.

9 A. Sir?

10 Q. Mr. Smith.

11 A. Do what?

12 Q. Had he gone to the initial homicide  
13 investigative course by January 13th, 2014?

14 A. I don't recall, sir.

15 Q. But you agree he was shadowing you  
16 initially when he came in?

17 A. He was shadowing me originally when he  
18 came in, but I'm unsure as to whether or not he was  
19 shadowing me at that time or not.

20 Q. Now, you get to the Cobb Theater the day  
21 of January 13th, 2014 at about 2:15; is that  
22 correct?

23 A. Can I review my report, sir?

24 Q. Any time you need to, please feel free to.  
25 Just let me know where you're referring to. If

1     there's something that refreshes your recollection,  
2     I'm certainly going to give you the opportunity.

3           A.     I have my supplement here on Page 76 of  
4     this report.

5           Q.     Is 2:15, correct?

6           A.     That's correct. I arrived on scene at  
7     2:15.

8           Q.     Okay. And this case originally was  
9     assigned to some other homicide detective, not  
10    yourself, correct, a Detective Soto?

11          A.     I believe originally they were going to  
12    give him this case, but he was on the west side of  
13    the county.

14          Q.     Okay. And that was going to take some  
15    time to get him there?

16          A.     That's correct.

17          Q.     Now, when you get to the scene of this  
18    particular theater at 2:15, did anyone -- anybody  
19    tell you exactly what time the incident occurred,  
20    the shooting incident?

21          A.     No, sir. I don't recall them giving me a  
22    direct time. I knew that it had probably been  
23    within the last 45 minutes of me arriving on scene.

24          Q.     Okay. And did you meet with anyone in  
25    order to develop a game plan as to how you were

1 going to investigate this particular incident?

2 A. I think the majority of us in the  
3 Sheriff's office who were trained on how to  
4 investigate these type scenes. I spoke to acting  
5 Sergeant Tim Harrison on the scene and Major John  
6 Corbin, received a briefing from them as to what  
7 occurred. There might have even been additional  
8 people there. And Major Corbin asked that I take  
9 over the lead as the lead detective in this case.

10 Q. Okay. So you had a conversation, but  
11 nobody really directed you as to what to do. You  
12 knew how to do it?

13 A. Yes, sir.

14 Q. Okay. And so what was your game plan?  
15 Since this plan was really your plan, what was your  
16 game plan in the investigation of this particular  
17 shooting incident?

18 A. I was aware that witnesses were there.  
19 They were in the process of being interviewed. I  
20 was directed to the Sumter County deputy, a Corporal  
21 Hamilton, and I conducted those interviews with  
22 them.

23 Q. Well, you were aware that officers were  
24 interviewing witnesses. Do you know what officers  
25 were -- had been assigned to interview witnesses

1     when you first got there?

2           A.     I knew there were several other detectives  
3     there.  I'm not aware of which ones were doing  
4     interviews and which one -- I wasn't aware, but I  
5     knew there were other interviews being conducted as  
6     I interviewed the Hamiltons.

7           Q.     Did you give any instructions to those  
8     detectives that were conducting interviews as to how  
9     you wanted those interviews to be conducted?

10          A.     No, sir.  They're trained in that aspect.

11          Q.     Well, can you tell me if all those  
12     individuals that were conducting interviews were  
13     homicide detectives?

14          A.     Probably not originally, but as it  
15     progressed, the majority of the interviews were  
16     conducted by homicide detectives.

17          Q.     Well, did you get a list from anyone to  
18     find out, hey, give me the running list of who's,  
19     you know, conducting interviews and where those  
20     individuals are?

21          A.     At that particular time, sir, I was not  
22     aware of that.

23          Q.     Okay.

24          A.     I was doing the interviews of the  
25     Hamiltons.

1 Q. Well, we're not there yet.

2 A. Okay.

3 Q. I'm taking you baby steps.

4 A. Okay.

5 Q. We're going to take you baby steps all the  
6 way through. Okay?

7 A. Okay.

8 Q. Now, before doing any interviews with -- I  
9 guess your first ones were the Hamiltons. Did you  
10 bother going into the Theater 10 in order to get a  
11 layout of the actual theater?

12 A. I did not go into Theater 10 at that time.  
13 No, sir.

14 Q. And why not?

15 A. I had been in those theaters before,  
16 several times in the past. I knew the general  
17 layout of the theaters. I was told that this  
18 occurred on the back row, in the row immediately in  
19 front of it. I didn't feel the need to do it at  
20 that time. We had people already securing the -- it  
21 was already secured.

22 Q. Well, but in addition to the general  
23 layout of the theater, you may have physical  
24 evidence there at the scene that you may want to  
25 take a look at, the locations, so that when you

1     conduct interviews you may be able to reference some  
2     of that physical evidence and start tying together  
3     the sequence of events, right?

4           A.     In this particular case, sir, I did not  
5     feel the need to do that.

6           Q.     Why not?

7           A.     I knew that it occurred on the back row.  
8     I knew that I had competent people there. And I  
9     knew that as the interviews progressed, that I would  
10    get a complete briefing as to what had occurred.

11          Q.     Who was the competent person that was in  
12    charge of the crime scene for this particular case?

13          A.     Aaron Smith was. He was the detective  
14    assigned to the crime scene.

15          Q.     You're talking about the Detective Aaron  
16    Smith that had just joined your major crimes unit in  
17    December of 2013?

18          A.     Sir, I don't remember when he joined the  
19    unit. I knew that he was a sharp deputy. He knew  
20    how to work a case.

21          Q.     Well, let me ask you. How many times  
22    since you were there -- and you're the responsible  
23    party when you're the lead detective, correct?

24          A.     Ultimately, yes, sir.

25          Q.     And so tell me how many times prior to

1     this particular incident you were aware that  
2     Detective Aaron Smith had been assigned the lead  
3     crime scene detective of a homicide.

4             A.     I don't know if he was.

5             Q.     So this could have been his first  
6     assignment of that sort?

7             A.     On a homicide, that's correct. I don't  
8     recall any -- if he had been the lead on it or not.  
9     I know that he had worked several scenes. I had  
10    worked several scenes with him. And he knew how to  
11    work a scene.

12            Q.     Well, the scenes that you had worked with  
13    him in the past were interviewing witnesses, right?

14            A.     No, sir.

15            Q.     So what had he done at these other scenes?  
16    And if you can give me a date, that would be great.  
17    Tell me what he's done at other homicide scenes when  
18    you were there.

19            A.     I'm not talking about homicide scenes,  
20    sir, I'm talking about death scenes.

21            Q.     Okay. Well, death scenes.

22            A.     I don't recall. I know that I have been  
23    on scenes with him in the past reference to death.  
24    That's been several years ago. He was very  
25    competent.



1           Q.   Well, let me ask you a question.  
2   Certainly the lead detective of the crime scene is a  
3   very, very important position?

4           A.   As all -- everything is important.

5           Q.   I'm not discussing other ones.  We'll  
6   discuss other ones in particular.  But that position  
7   is a very important position?

8           A.   Yes, sir.

9           Q.   Now, you don't believe you've ever been in  
10   Theater 10 before this, correct?

11          A.   I don't recall being in Theater 10, sir.  
12   There again, I might have been.  But I have been in  
13   that theater on occasion and I can't remember which  
14   theater I had went into.

15          Q.   In fact, the last time you remember going  
16   into the Cobb Theater prior to January the 13th of  
17   2014 was at least a year before?

18          A.   Possibly, sir.

19          Q.   Now, when you first arrived did you  
20   realize that someone had been placed into custody?

21          A.   Yes, sir.

22          Q.   And did you realize that the person that  
23   had been placed into custody was a 27-year veteran  
24   law enforcement officer, along with 12 years as the  
25   head of security for Busch Gardens?

1           A.    I wasn't aware of all that information.  I  
2   knew that he was a retired TPD employee.

3           Q.    Employee.  Like a --

4           A.    Law enforcement patrolman.  I might have  
5   been told that he was captain.  I don't recall at  
6   that time.  But I knew that he was ex-TPD.

7           Q.    Was that issue important to you at all?

8           A.    No, sir.

9           Q.    It wasn't.  His training, his background,  
10   none of that really was important to you in an  
11   investigation like this where there's a shooting and  
12   a possible self-defense issue?

13          A.    Like I said earlier, everything's  
14   important.  But there again, him being ex-TPD had  
15   nothing to do with the way I conducted that  
16   interview.

17          Q.    Well, I'm not talking about the employment  
18   address that he enjoyed for 27 years.  I'm talking  
19   about the experience that you gain while you're a  
20   police officer for 27 years.

21          A.    Yes, sir.

22          Q.    That was important, right?  Are you having  
23   a difficult time with that question?

24          A.    I don't understand what you mean about it  
25   being important.

1           Q.    Well, when you've worked 27 years in law  
2 enforcement, especially if you ask that individual  
3 the number of courses that they've taken, the kind  
4 of training, the kind of position, the kind of  
5 experience throughout all those years, that may make  
6 it rather important, correct?

7           A.    It could have.  Yes, sir.

8           Q.    So instead of going into the theater and  
9 looking for whatever evidence was there in the  
10 theater, you decided that you were going to go and  
11 interview an individual by the name of Corporal  
12 Hamilton?

13          A.    That's correct.

14          Q.    And so when you do these interviews, you  
15 would agree that taking a tape recorder with you is  
16 important?

17          A.    In this particular case I felt the need to  
18 do that.

19          Q.    It's important in a homicide, slash,  
20 shooting incident, right?

21          A.    That's correct.

22          Q.    Okay.  And so what you want to do when  
23 you're interviewing individuals, any individual, is  
24 that you want to make sure that when you go in there  
25 that you have that recorder on when you go in there.

1 And the beauty of Florida law is that you don't even  
2 have to tell the individual that you're recording  
3 him, right, because you're a police officer?

4 A. Yes, sir.

5 Q. Because you want to try to capture every  
6 single word that that witness exchanges with you,  
7 correct?

8 A. In this particular case I felt the need to  
9 do that.

10 Q. Okay. And so --

11 A. I did. I felt the need to do that. But I  
12 haven't always done it in all homicides that I've  
13 conducted interviews with -- conducted interviews.

14 Q. Okay. So was this a unique one that you  
15 felt the need to do that?

16 A. The reason I did this was because I knew  
17 that I was going to be super busy and I wanted to  
18 make sure that everything I had was memorialized on  
19 tape.

20 Q. Okay. And so you go in to interview  
21 Corporal Hamilton, but when you start the interview  
22 process with Corporal Hamilton you don't turn on  
23 your tape?

24 A. I do turn on my tape.

25 Q. Immediately?

1           A.    Right.  Yes, sir.  The minute we walked  
2   into that room.

3           Q.    So you're telling me under oath today that  
4   you did not have about five minutes of conversations  
5   with Corporal Hamilton, is that what you're telling  
6   me today under oath?

7           A.    There again, sir, I did not listen to it.

8           Q.    Page 94 --

9           A.    There's a possibility.  And there again, I  
10   did not listen to the CD that I might have conducted  
11   a brief interview with him off tape.

12          Q.    Why would you conduct any interview with a  
13   witness off tape?

14          A.    I wanted to make sure I knew what he was  
15   going to tell me.

16          Q.    Why would you need to know and make sure  
17   what he was going to tell you?  Whatever he tells  
18   you concerning the incident is relevant, correct?

19          A.    I wanted to make sure that he was of the  
20   right mind to be able to talk to me at that time.

21          Q.    What do you mean the right mind?  Do you  
22   have a psychology degree?

23          A.    No, sir.

24          Q.    Do you have some special knowledge that  
25   you can tell when someone is thinking clearly or not

1 thinking clearly based upon the events that they  
2 have witnessed?

3 A. Yes, sir.

4 Q. You do? Tell me how that works.

5 A. Well, I can tell if somebody is able to  
6 communicate with me in such a way that I would be  
7 able to understand them.

8 Q. Did you think that Corporal Hamilton,  
9 which you knew was a police officer, was not going  
10 to be able to communicate with you?

11 A. There again, sir, we all handle stress, we  
12 all handle these incidents in a different way.

13 Q. So was Corporal Hamilton getting some  
14 special treatment --

15 A. No, sir.

16 Q. -- because he was a corporal in another  
17 department?

18 A. No, sir.

19 Q. But you did and remember talking to him  
20 for about five minutes before you even decided to  
21 turn on your tape?

22 A. There again, sir, I don't remember if I  
23 had an off-taped conversation with him or not. The  
24 tape stands for itself.

25 MR. MARTIN: Your Honor, at this time I'm

1 going to make an objection to the line of  
2 questioning. It's the same objection I've made  
3 with other witnesses dealing with relevancy as  
4 far as the, I'll call it, the attacking of the  
5 investigation in an immunity hearing.

6 I'll rely on all my previous arguments for  
7 the Court. But in order to preserve and be  
8 consistent, I'd like to make that objection  
9 now. And I already know what the Court's  
10 ruling is, but I think I need to preserve that  
11 for this witness.

12 THE COURT: Thank you.

13 BY MR. ESCOBAR:

14 Q. Page 94 --

15 THE COURT: So noted. Overruled.

16 MR. MARTIN: Yes.

17 BY MR. ESCOBAR:

18 Q. Page 94, Lines 22 to 25. How long was the  
19 tape. 1432 to 1438, six minutes; does that sound  
20 right?

21 A. If that's what it says there, sir.

22 Q. Do you want to check and see if you've got  
23 your notes?

24 A. I don't have those notes. The only thing  
25 I have is the written report. I don't have copies

1 of the property receipt.

2 Q. Six minutes on tape, five minutes off  
3 tape. You say, that's correct?

4 A. All right, sir. I stand corrected. I  
5 didn't recall that.

6 Q. Well, did you take notes of the  
7 conversations that you had with Corporal Hamilton  
8 prior to turning on the tape?

9 A. Yes, sir.

10 Q. Where are they?

11 A. I destroyed them. I used those notes to  
12 interview him on tape.

13 Q. Now, in addition to interviewing Corporal  
14 Hamilton, I would imagine that when you initially  
15 interviewed him that you did so in a location away  
16 from other people?

17 A. I did.

18 Q. Okay. And would you tell the Court where  
19 that was?

20 A. I believe they called it the party room  
21 there at the theater.

22 Q. And who was present in that party room at  
23 the time that you interviewed Corporal Hamilton?

24 A. Just he and I.

25 Q. Now, you are certainly familiar with the



1 word witness contamination?

2 A. Yes, sir.

3 Q. You've learned of that process as early as  
4 the academy, don't interview witnesses together,  
5 right?

6 A. That is part of the training that I have  
7 been taught in the past.

8 Q. Including as early as your initial  
9 training in the police academy?

10 A. We do our best to try to separate  
11 witnesses when we do the interviews.

12 Q. Because if you don't and they start  
13 listening to somebody else's testimony, they may  
14 actually adopt that testimony as their own and  
15 actually believe that it's their own testimony,  
16 correct?

17 A. Anything's possible, sir. Yes, sir.

18 Q. And then once they're contaminated, it's  
19 impossible to tell what testimony is the product of  
20 their own or what testimony is the product of  
21 someone else, right?

22 A. There are ways to make sure that what  
23 they're telling me is what they actually saw. It's  
24 nothing that they had heard, but they actually  
25 witnessed it their selves.

1           Q.    And police officers, if you're going to  
2 interview police officers, you don't do it together  
3 either, do you? There's no exception -- the  
4 contamination rule doesn't have an exception for  
5 police officers.

6           A.    I'm not quite sure I follow you, sir.

7           Q.    If you're going to interview two police  
8 officers, or a police officer and another witness,  
9 you don't interview them together.

10          A.    That's correct.

11          Q.    However, in this case, you violated that  
12 very Golden Rule, didn't you?

13          A.    I did allow Mr. Hamilton -- or Corporal  
14 Hamilton to sit in with his wife during that  
15 interview.

16          Q.    Is there some exception that we have in  
17 our training to say, just five seconds ago said, no,  
18 I can't interview a police officer and a layperson.  
19 That's a big no-no. Why the exception in one of the  
20 most high-profile shooting incidents that Pasco  
21 County has ever had?

22          A.    The reason I allowed Corporal Hamilton to  
23 be there with her?

24          Q.    Yeah.

25          A.    Was because she was very upset. I felt

1     like she would do better with him there. Corporal  
2     Hamilton did not ask her any questions, make any  
3     statements during that interview. He was simply  
4     there to be with her.

5           Q.     And Corporal Hamilton could have adopted  
6     now her particular statements as his own at some  
7     point in time. It's contamination.

8           A.     I've got him on tape as to his statement.

9           Q.     How long was his taped interview? You're  
10    not talking about a thorough interview of Corporal  
11    Hamilton, are you?

12          A.     I'm talking about a six-minute interview  
13    where I got the majority of the information that I  
14    needed for this case.

15          Q.     You think that a six-minute interview in a  
16    shooting incident is a thorough interview, is that  
17    what you call a thorough interview?

18          A.     No, sir.

19               MR. MARTIN: Your Honor, this has become  
20    badgering and argumentative.

21               THE COURT: Let's move on.

22    BY MR. ESCOBAR:

23          Q.     And when you interviewed Mrs. Hamilton you  
24    likewise gave her the Corporal Hamilton,  
25    five-minute, we're not going to turn the recorder

1 on, right?

2 A. Let me recall. Let me see if I can find  
3 that, sir. That's correct.

4 Q. Do you have a reason for that?

5 A. No, sir. I wanted to make sure that she  
6 was able to communicate everything that I needed.

7 Q. What made you think that she wasn't going  
8 to communicate? Did she appear to be a full-bodied,  
9 able person?

10 A. She was upset. I wanted to make sure that  
11 I understood what she was going to tell me when I  
12 put it on tape.

13 Q. So let's assume that she's upset and she  
14 tells you on tape everything that's on her mind.  
15 What's the problem with that?

16 A. I had taken notes during the original  
17 interview. I used those notes to go off of -- to  
18 conduct the tape.

19 Q. Detective, you are aware, are you not,  
20 that a person's -- a person being upset, maybe  
21 crying, may be relevant both to the prosecution and  
22 to the Defense to memorialize that activity so that  
23 we can determine whether she's under stress,  
24 anxiety, all those things. You're not just  
25 capturing words. You're capturing her being at that

1 point in time. That's the reason that you record it  
2 from the very beginning; isn't that the truth?  
3 Haven't you been trained on that?

4 A. I'm not for sure if I understand the  
5 question, sir.

6 Q. That you want to record people from the  
7 very beginning so that you don't miss anything,  
8 including whether they're fearful, including whether  
9 they're anxious, including whether they're crying.  
10 You want to -- you want to capture that individual  
11 as you first see it?

12 A. I didn't do that in this case, sir. I  
13 didn't feel the need to do that.

14 Q. You also shredded your notes of the  
15 five-minute interview of Mrs. Hamilton, as well,  
16 correct?

17 A. That's correct.

18 Q. Now, after the interview of Corporal  
19 Hamilton you were pretty well aware that there were  
20 some cuss words that had taken place in the theater  
21 shortly before the shooting incident, correct?

22 A. That's correct.

23 Q. But the one area that you forgot to ask  
24 these witnesses was, demonstrate for me how loud  
25 those cuss words were, right?

1           A.    I did not ask them that question.

2           Q.    You would agree that if someone's  
3 aggressive and loud, that has an impact on someone  
4 else, correct?

5           A.    It could be.  Yes, sir.

6           Q.    And in self-defense issues it's very  
7 important.

8           A.    It could be, sir.

9           Q.    Were you in a hurry?

10          A.    No, sir.

11          Q.    Because her interview only took five  
12 minutes, as well?

13               MR. MARTIN:  Argumentative, Judge.

14               THE COURT:  I'll overrule.

15               BY MR. ESCOBAR:

16          Q.    It only took five minutes, right?

17          A.    I don't recall the exact time without the  
18 proper property receipt.  That's correct.

19          Q.    Two supposed eyewitnesses to a shooting  
20 incident and you spent five minutes with them?

21          A.    Yes, sir.  Five minutes on tape.

22          Q.    Oh, five minutes and five minutes off.  So  
23 10 -- 10 minutes?

24          A.    Yes, sir.

25          Q.    Is that what you would consider a thorough

1 interview?

2 A. At the time, sir, I thought that I had  
3 conducted a thorough interview with them.

4 Q. You agree, would you not, that your  
5 responsibility as the lead homicide detective is to  
6 gather every bit of information from those  
7 witnesses, every bit on tape, not only for the  
8 benefit of the prosecution, but just as well for the  
9 benefit of the Defense, correct?

10 A. I took a taped statement from them. I  
11 interviewed them each approximately 10 minutes each.

12 Q. You would agree that your obligation is to  
13 do it very thoroughly, not only for the prosecution  
14 but also for the Defense?

15 A. At the time, sir, I thought that was a  
16 thorough interview.

17 Q. So is your statement, yes, that's your  
18 responsibility to do a thorough interview of the  
19 witness for the benefit of the prosecution and the  
20 Defense?

21 MR. MARTIN: He's answered the question.

22 MR. ESCOBAR: No, he has not. He has not  
23 answered that question.

24 MR. MARTIN: He indicated he did a  
25 thorough interview.

1           THE COURT: It's a two-part question.

2           Break it down, rephrase.

3           BY MR. ESCOBAR:

4           Q.    Is it your responsibility to conduct  
5           thorough interviews of witnesses that are  
6           eyewitnesses to an incident?

7           A.    It depends on what your terminology in  
8           thorough means, what you would consider thorough.  
9           They told me what they saw. They explained to me,  
10          to the best of their knowledge, what had occurred.

11          Q.    You didn't ask them any questions, did  
12          you? It was more like, just tell me what you know?

13          A.    Yes, sir.

14          Q.    Because your style is, you expect people  
15          to just kind of volunteer things that they may think  
16          you know, or want to hear, right? That's your style  
17          of interviewing. Just tell me what you know and  
18          then you pack it up and you go away?

19          A.    I -- in these interviews that I did, I was  
20          not confrontational. I tried to do my best as to  
21          let them tell me what had occurred.

22          Q.    You think confrontation equals asking  
23          questions?

24          A.    I believe I did ask questions.

25          Q.    Do you think that confrontational equals



1 asking questions?

2 A. No, sir.

3 Q. You would agree that if you would have  
4 asked at the very least how loud, how loud was  
5 Mr. Oulsen cursing. That that would have given you  
6 a better understanding of what took place in that  
7 theater, correct?

8 A. Yes, sir, maybe.

9 Q. That could have given you a better  
10 understanding of what this gentleman right here at  
11 71 years old was feeling, correct, Detective?

12 A. That could have given me an understanding.  
13 Yes, sir.

14 Q. It would allow you to assess fear,  
15 correct, Detective?

16 A. It might have, sir. Yes, sir.

17 Q. And fear is an absolute very important  
18 aspect of self-defense?

19 MR. MARTIN: Judge, that's going to call  
20 for a legal conclusion on his part.

21 MR. ESCOBAR: It's an investigative --

22 MR. MARTIN: No.

23 MR. ESCOBAR: It's a factual investigative  
24 conclusion. It's not a legal conclusion.

25 MR. MARTIN: That's a legal conclusion and

1           it's in the terms.

2           THE COURT: I'm going to sustain.

3 BY MR. ESCOBAR:

4           Q. You finished those two witnesses and both  
5 of them indicated to you hand movement from the  
6 lower row to the upper row, correct, hand movement?

7           A. There again, their taped interviews stand.  
8 I don't recall if they mentioned hand movement.  
9 They did talk about some hand movement. That's  
10 correct.

11          Q. And hand movement is very important in  
12 your analysis of what we call a threat assessment,  
13 correct?

14          MR. MARTIN: Your Honor, I'm going to  
15 object to that. There hasn't been any  
16 predicate that he even knows what a threat  
17 assessment is. So that's a term of art from  
18 Dr. Cohen. So let's --

19          MR. ESCOBAR: From only Dr. Cohen or from  
20 half the experts around the nation?

21          MR. MARTIN: Only Dr. Cohen in this  
22 courtroom.

23          THE COURT: Let's not argue, gentlemen.

24               I'm going to sustain.

25 BY MR. ESCOBAR:

1 Q. Do you know what a threat assessment is?

2 A. No, sir.

3 Q. You have no --

4 A. I've heard of threat assessments before.

5 But to have the terminology, I don't recall.

6 Q. Have you ever taken any courses yourself  
7 within your department on threat assessment and how  
8 to evaluate individuals that are about to attack  
9 police officers and what to look for and distance  
10 and creating distance? That's a subject that you've  
11 never --

12 A. Yes, sir. In that aspect, I have been  
13 trained to some degree with that.

14 Q. And as a police officer, you do that every  
15 day out on the streets; do you not? When someone is  
16 about to attack you, or to certainly exert some  
17 force on you, you've got to be able to assess that  
18 threat and act accordingly?

19 A. Yes, sir.

20 Q. Because if you don't properly assess that  
21 threat and act accordingly, as a police officer on  
22 the street, you could die?

23 A. It could happen. Yes, sir.

24 Q. So you do know what the word threat  
25 assessment is?

1           A.    In that terminology.  Yes, sir.

2           Q.    And certainly hand movements are very  
3 important to the issue of threat assessment?

4           A.    Yes, sir.  Could be.

5           Q.    Now, you were aware, were you not, that  
6 both of Hamiltons indicated to you that Mr. Reeves,  
7 immediately after firing the shot, put that gun  
8 right on his knees and removed his hands from that  
9 weapon?

10          A.    I don't remember if he had his hand or not  
11 on the gun when the corporal removed it.  He,  
12 according to this, sir, he had laid the gun down,  
13 apparently on his knee.

14          Q.    Did you evaluate that during your  
15 discussions with Corporal Hamilton?

16          A.    I don't recall, sir.  I'm sorry?  Did I  
17 evaluate that with Corporal Hamilton?

18          Q.    Did you evaluate that statement that  
19 Corporal Hamilton gave you that Mr. Reeves,  
20 immediately after the shooting, had placed that  
21 weapon on his knee and took his hands off it?

22          A.    I don't recall talking to him about that,  
23 sir.

24               MR. MARTIN:  Your Honor, at this time I'm  
25 going to object to this line of questioning.  I

1       can understand the line of questioning we've  
2       been talking about witness contamination, how  
3       that might play. But whether or not how he  
4       evaluated the testimony of Mr. and  
5       Mrs. Hamilton -- this isn't a bond hearing.  
6       This isn't a motion to suppress on PC of arrest  
7       and the exclusion of evidence. That's where we  
8       get this type of testimony.

9               This is an immunity hearing. So I can  
10      understand why you would want to hear about  
11      witnesses maybe being together. But how he  
12      evaluated certain witness's testimony, that's  
13      not the purpose here. The purpose is to  
14      determine whether or not Mr. Reeves was  
15      reasonable in this particular case. And  
16      that's -- that's not Mr. Proctor's job. That's  
17      your job. So for the purposes of an immunity  
18      hearing, this isn't relevant, Judge.

19             THE COURT: Response?

20             MR. MARTIN: So I object to this line of  
21      questioning. It's not relevant.

22             MR. ESCOBAR: Judge, his investigation and  
23      how he conducted his investigation and every  
24      aspect of how he conducted his investigation is  
25      extremely important and critical, and your

1 analysis of credibility and competency in this  
2 particular case.

3 It affects every witness. How he did it.  
4 How he didn't do it. How he collected the  
5 evidence. How he didn't collect the evidence.  
6 Because you'll see next week, they've got 18  
7 witnesses that they intend to introduce here.

8 This is my opportunity to be able to focus  
9 on how they came about in this investigation,  
10 what they did, what they didn't do, so that you  
11 can evaluate them properly.

12 They want us to be in a vacuum so that you  
13 can think, well, you know, the prosecution put  
14 all those witnesses in and all this evidence in  
15 and just consider the evidence that they found  
16 on the ground, just consider the evidence that,  
17 you know, they interviewed this particular  
18 witness.

19 And it doesn't work that way, Your Honor.  
20 You have to assess credibility of every witness  
21 and every procedure that took place in this  
22 investigation.

23 MR. MARTIN: Judge, therein lies the  
24 problem. What Mr. Escobar wants to do is  
25 impugn the credibility of the civilian

1 witnesses with what he perceives as being the  
2 deficiencies in the investigation of the Pasco  
3 Sheriff's office. And you can't make that  
4 logical leap.

5 So, you know, that's where we're going  
6 with it and so that's why I objected. It's  
7 just not relevant to these proceedings.

8 THE COURT: I'm going to overrule.

9 MR. MARTIN: Thank you, Judge.

10 BY MR. ESCOBAR:

11 Q. Now, you remember both Mr. and  
12 Mrs. Hamilton discussing with you, or certainly  
13 Mr. Hamilton, because -- I'm not drawing them  
14 together. My fault there. Mr. Hamilton indicating  
15 to you that immediately after the shot he came over  
16 to Mr. Reeves and he looked at -- he grabbed the  
17 gun, looked down and lo and behold what did he find  
18 on the floor?

19 A. A cell phone, popcorn.

20 Q. A cell phone. So what did you think of  
21 that cell phone being in between Mr. Reeves' legs at  
22 that moment in your evaluation of facts?

23 MR. MARTIN: Your Honor, again, I'm going  
24 to have to object. It's a little bit  
25 different. It doesn't make any difference for

1           this hearing.

2           We have to -- really, I know I'm beating a  
3           dead horse, but here we're at a specific  
4           hearing, this is not a trial where he's trying  
5           to establish reasonable doubt. And that's what  
6           he's used to doing. And he can't -- he can't  
7           meet his burden by establishing in a negative.  
8           You're not going to give, quote, immunity if  
9           they can't prove it.

10          So that's why, you know, I object to this  
11          line of questioning about, well, what did that  
12          mean to you. It doesn't make any difference.

13          THE COURT: Where are you going with this?

14          MR. ESCOBAR: Judge, it's very simple. He  
15          did really nothing with this particular phone.  
16          And he's going to testify here that, you know,  
17          he thought somehow, off the top of his head,  
18          that maybe it was Mr. Reeves.

19          He did absolutely nothing to investigate  
20          this case. Not only when Corporal Hamilton  
21          showed it to him, but after Mr. Reeves had told  
22          him, hey, I think that I was -- I know I was  
23          hit in the head. I think I may have been hit  
24          in the head with a phone.

25          Oblivious to it, totally oblivious to it.



1        Didn't do anything with it. Didn't do any  
2        investigate to it. He still assumed that it  
3        was Mr. Reeves' phone that was in between his  
4        legs.

5                These are critical issues that this  
6        Court's going to have to evaluate in assessing  
7        credibility, in assessing competency of not  
8        only this detective here but every officer that  
9        played a role in this case.

10              If not, what we're doing is, let's just  
11        throw a bunch of evidence somewhere in that  
12        theater and then let's just let Mr. Reeves  
13        testify about what happened and then -- that's  
14        what he wants. Then let's have the Court  
15        determine, just based upon Mr. Reeves'  
16        testimony as to whether he acted reasonably.

17              There's a vital part here of the  
18        investigation. I'm not -- as you can see  
19        already of the testimony that we've elicited  
20        concerning, you know, Detective Proctor -- and  
21        I say this with total respect with reference to  
22        his performance -- but it's important. It's  
23        not like I am harping on things that shouldn't  
24        be harped on.

25              THE COURT: Why is it important again?

1           MR. ESCOBAR: It's because, Your Honor,  
2           you're going to have to assess the --

3           THE COURT: Why do I have to assess how he  
4           performed in his -- why do I -- I mean, I get  
5           it in the whole grand scheme of things. But  
6           are we going to go through witness by witness  
7           by witness --

8           MR. ESCOBAR: No.

9           THE COURT: -- and evidence by evidence --

10          MR. ESCOBAR: No.

11          THE COURT: -- and I'm going to have to  
12          second-guess what he did at that time?

13          MR. ESCOBAR: There's two witnesses that  
14          we're going to be going thoroughly through  
15          this, which were the two main witnesses, the  
16          two main officers, that were responsible for  
17          this investigation.

18          And absolutely, Your Honor, this Court  
19          needs to be able to assess the credibility of  
20          both of those witnesses because they're going  
21          to be testifying their opinions as to many  
22          things involving the investigation itself.

23          And if I'm not able to show this Court  
24          what they didn't do and why they didn't do  
25          those things and have the Court evaluate that,

1       then this Court's going to sit here and it's  
2       going to say, well, Detective Proctor, you  
3       know, has 35 homicides under his belt and he  
4       did an absolute wonderful job, which is not  
5       part of my main case, but it is impossible --  
6       it is impossible for you to judge his  
7       credibility unless you know what he did and how  
8       he did it in the investigation.

9               And Judge, this is -- this is my burden.  
10       But what's going to happen here is that they're  
11       going to present their testimony and they're  
12       sandbagging me at that point in time.

13              And so I don't think that what I'm doing  
14       here with Detective Proctor, and I don't think  
15       that what I'm going to do with Detective Smith,  
16       is out of line at all. It is very, very  
17       relevant.

18              THE COURT: All right.

19              MR. ESCOBAR: And it's necessary. I've  
20       got a person's life in my hands.

21              THE COURT: I've heard that before. I get  
22       that. The issue I have here is at what  
23       point -- you know, I've got a very specific job  
24       to do.

25              MR. ESCOBAR: Uh-huh.

1           THE COURT: And I don't really see myself  
2 coming to that conclusion, oh, well Detective  
3 Proctor did this, so I'm going to infer that.  
4 That's not really --

5           MR. ESCOBAR: It's not inferring.

6           THE COURT: -- my process.

7           MR. ESCOBAR: It's not inferring. It's  
8 determining.

9           THE COURT: That's what you basically just  
10 said that I'm going to do what, you know --

11          MR. ESCOBAR: You're going to assess  
12 credibility of every witness.

13          THE COURT: Of course I am.

14          MR. ESCOBAR: Because the minute someone  
15 takes the stand and --

16          THE COURT: All right. Let me just --  
17 let's just clarify. Okay. Credibility is  
18 huge.

19          MR. ESCOBAR: Uh-huh.

20          THE COURT: I've been doing this long  
21 enough to watch and listen and know what I need  
22 to look for and all the things that we're --  
23 all the guidance we're given.

24          You can point out any deficiencies you  
25 feel were done. But let's get on with it. You

1 know, I'm not in the position -- my job, as a  
2 whole, is to make a decision in this case  
3 regarding whether Mr. Reeves acted reasonably  
4 or not, in a nutshell.

5 And I don't need to know exactly what  
6 Detective Proctor thought when he was  
7 interviewing someone to determine their  
8 credibility.

9 When -- if you want to -- I'm going to  
10 give you some leeway on this, but let's --  
11 let's, you know -- that's not -- I don't want  
12 to get away from the crux of the issue here, as  
13 Mr. Martin has been objecting and objecting for  
14 the duration of this hearing.

15 Let's please, you know, get to the heart.  
16 I will allow you some leeway to show what you  
17 feel are deficiencies, but only to the extent  
18 that it impacts somebody's credibility.

19 MR. ESCOBAR: And Judge, I --  
20 respectfully, that's what I'm trying to do.  
21 I'm not trying to go outside of those bounds.  
22 And I certainly understand the Court's feelings  
23 and rulings and we will abide by them.

24 THE COURT: All right. Go ahead.

25 BY MR. ESCOBAR:

1           Q.    You then finished Mrs. Hamilton's  
2 interview, as well; is that correct?

3           A.    That's correct.

4           Q.    And the same process, five minutes off,  
5 five minutes on?

6           A.    About that.  Yes, sir.

7           Q.    And then who did you decide to interview  
8 then?

9           A.    Mr. Reeves.

10          Q.    And why Mr. Reeves at this point in time?  
11 Did you not want to go back now into the theater and  
12 try to see if, in fact, you were able to see some of  
13 the evidence that Mr. and Mrs. Hamilton had  
14 described?  I mean, they're saying there's a phone,  
15 you know, there on the floor.  Did you not want to  
16 go at this point in time, and at the very least,  
17 take a peek?

18          A.    I had -- I was aware there was a phone and  
19 popcorn there.  I'm sure I had been told that by  
20 that time, not only by the Hamiltons, but there  
21 again, I was aware that there was popcorn on the  
22 floor, as well as a phone.

23          Q.    And so you didn't feel the need to go back  
24 in, correct?

25          A.    Correct.

1           Q.    Okay.  So tell me where this interview  
2 with Mr. Reeves -- that was your next interview,  
3 correct?

4           A.    That's correct.

5           MR. ESCOBAR:  Your Honor, we've got a  
6 stipulated disk of an interview with Curtis  
7 Reeves.

8           Let me -- can I show this?  It's 141529  
9 and it's got a date of 1/24/14 on it.  Can we  
10 have it just marked at this point in time just  
11 as an exhibit without introducing or do you  
12 want me to just call it by 14 --

13          THE COURT:  It doesn't get marked by her  
14 unless it comes in.  You've got identification  
15 --

16          MR. MARTIN:  Mr. Escobar, that number is  
17 the offense number.

18          MR. ESCOBAR:  I know it is.  I'm trying to  
19 get the other one --

20          MR. MARTIN:  6-AP is his number.

21          MR. ESCOBAR:  I don't see it here.  I've  
22 got it.

23 BY MR. ESCOBAR:

24          Q.    I'm going to show you, Detective, what's  
25 called 6-AP.  It's a CD interview supposedly of

1 Curtis Reeves, and see if you recognize that.

2 A. Yes, sir. I do.

3 Q. Now, the front of that --

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

5 THE COURT: Sure.

6 BY MR. ESCOBAR:

7 Q. The front of that bag says what?

8 A. CD interview of Curtis Reeves.

9 Q. Okay.

10 A. 1643 to 1648.

11 Q. Is that your writing?

12 A. That's correct.

13 Q. Okay.

14 MR. ESCOBAR: Your Honor, we've stipulated  
15 to the introduction of this particular CD.

16 THE COURT: It will be admitted as 34.

17 (Whereupon, Defense Exhibit Number 34 was admitted.)

18 MR. ESCOBAR: And then, Your Honor, we  
19 have also agreed to the admission of a  
20 transcript that was performed by the State  
21 Attorney's office, and I'm going to mark the  
22 back of this one.

23 BY MR. ESCOBAR:

24 Q. I am going to show you what's been marked  
25 as Defense Exhibit Number 200 and ask you if you



1 listened to the CD tape and then reviewed a  
2 transcript to determine whether, in your opinion, it  
3 contained everything from that CD in the form of  
4 communication.

5 A. Might I see that bag again, sir?

6 Q. Absolutely. And we're going to show you  
7 now this bag as Defendant's Exhibit Number 34.

8 MR. MARTIN: I believe that's admitted  
9 Evidence 34.

10 MR. ESCOBAR: It is.

11 THE COURT: It is.

12 THE WITNESS: Can I look at my property  
13 receipts?

14 BY MR. ESCOBAR:

15 Q. Sure.

16 A. Do you have those?

17 Q. No. I got this from the prosecution.

18 They were the ones that indicated that on the  
19 Exhibit 200 that was something that you had reviewed  
20 and had approved.

21 A. That's correct.

22 Q. Okay. And so exhibit -- Defense Exhibit  
23 Number 200 is what you reviewed. And you determined  
24 that that was a correct transcript of what's  
25 contained --

1           MR. MARTIN: Judge, let me -- if I may  
2 just -- the transcript is within the police  
3 report itself.

4           And Mr. Escobar is correct of what I did  
5 is I took the reformatted so that it read with  
6 line numbers and a page so that individuals  
7 could refer to the page of the police report is  
8 76 and when we have a line number, it made it a  
9 lot easier.

10          We have agreed, and normally we don't do  
11 this, is to put a transcript into evidence.  
12 But it's only for the immunity hearing so that  
13 we aren't constantly trying to play and find  
14 bits and pieces on a CD to speed this up.

15          MR. ESCOBAR: This was a stipulation  
16 between the Defense and the Government just --  
17 and we're going to give the Court a copy, as  
18 well.

19          MR. MARTIN: Yeah, we have a copy for the  
20 Court. I'll supply the format, but it's just a  
21 little bit different.

22          THE COURT: Okay.

23          MR. MARTIN: That's how the transcript  
24 came about. I didn't transcribe it.

25          THE COURT: I didn't figure. I didn't

1 know that was one of your talents.

2 MR. ESCOBAR: Your Honor, we would move  
3 Defense Exhibit Number 200 into evidence as  
4 Detective Proctor's --

5 THE COURT: I remember view.

6 MR. ESCOBAR: -- transcription of the  
7 interview between Detective Proctor and Curtis  
8 Reeves.

9 THE COURT: That will be 35, transcript of  
10 interview.

11 (Whereupon, Defense Exhibit Number 35 was admitted.)

12 MR. ESCOBAR: And Your Honor, I've got a  
13 copy. We've got copies for the Court, as well.

14 MR. MARTIN: Mr. Escobar, if I could put  
15 one other thing on the record about the  
16 transcript.

17 You'll see it says revision 1/9/17. But  
18 it also, right under that, says PSO report  
19 printed 1/12/16.

20 That's important because every time you  
21 print a Pasco Sheriff's report, it repaginates  
22 everything. So if you have a police report  
23 that was printed after that date, the pages may  
24 or may not be the same.

25 So I want to make sure the record's clear

1           that we're trying to correlate the page report  
2           with a printed copy of the Pasco Sheriff's  
3           office report. And we have to refer to the  
4           printed on 1/12/16 for the pages to correspond  
5           Page 75, 76, that sort of thing.

6           THE COURT: Okay.

7           MR. MARTIN: And I know that drives us  
8           nuts, but that's just the way it works.

9           THE COURT: All right. Thank you.

10          MR. MARTIN: Thank you, Mr. Escobar.

11       BY MR. ESCOBAR:

12           Q. Okay. Let's talk about your interview of  
13       Mr. Reeves and where that took place.

14                    So you finished Mrs. Hamilton. And where  
15       do you go now?

16           A. I exit the back of the theater with  
17       Detective Koenig. I exit the theater with  
18       Detective Koenig. I drive my vehicle around back  
19       where I made contact with Deputy Gondak who has  
20       Mr. Reeves sitting in the back of his car.

21           Q. Okay. And what do you do at this point?

22           A. Mr. Reeves is removed. The defendant is  
23       removed from the back of the car. I move him to my  
24       car. We move his handcuffs from his back around to  
25       his front and I sit him -- he sits in the front of

1 my vehicle.

2 Q. Okay. And all the while that you're doing  
3 this whole process, do you have a recorder?

4 A. Yes, sir. I do.

5 Q. And are you turning the recording on  
6 immediately at the time of that interview?

7 A. Yes, sir.

8 Q. And why are you turning the recording on  
9 immediately at the interview of Mr. Reeves?

10 A. To capture what he tells me.

11 Q. So you use a different process than you  
12 used for Corporal Hamilton and Mrs. Hamilton?

13 A. He's the suspect in this case.

14 Q. And so that makes a difference?

15 A. Yes, sir.

16 Q. Okay. And so that is where the interview  
17 is conducted?

18 A. In the front of my vehicle. Yes, sir.

19 Q. And why not in some room at the Cobb  
20 Theater?

21 A. Convenience. It was just easier to sit  
22 him in the front of my car.

23 Q. Okay. Now, how long was that interview,  
24 that first interview?

25 A. 1510 is when I started. It's concluded at

1 1540.

2 Q. 1540?

3 A. That's correct.

4 Q. So about 30 minutes?

5 A. Yes, sir.

6 Q. Okay. Now, in that particular interview  
7 are you using the same procedure of just pretty much  
8 tell me what happens and you let Mr. Reeves tell you  
9 what happens?

10 A. Yes, sir. It was an interview.

11 Q. Okay. In that particular interview did  
12 Mr. Reeves tell you that he was scared of Mr. Oulsen  
13 before the shooting?

14 A. There again, the tape sort of stands for  
15 itself, but he did mention that he was scared.

16 Q. Did he indicate to you that he had been  
17 hit in the head and he believed that he had been hit  
18 in the head with a phone?

19 A. He says that he's been hit. Originally it  
20 was with possibly the fist and then the cell phone  
21 and then he just told me he didn't know what he was  
22 hit with.

23 Q. Well, but the question is did he tell you  
24 that he thought that he was possibly hit in the head  
25 with a phone?

1           A.    Yes, sir.

2           Q.    Now, did you ask him what the lighting  
3 conditions were inside the theater?

4           A.    No, sir.

5           Q.    Why not?

6           A.    Well, he said that it was dark in the  
7 theater. He volunteered that.

8           Q.    Did you get that same statement that it  
9 was dark for Mr. and Mrs. Hamilton?

10          A.    I don't recall, sir. It's on the tape, if  
11 I did.

12          Q.    Had you checked with anyone there at the  
13 Cobb Theater to determine during previews what the  
14 level of lighting was?

15          A.    No, sir. But I've been in theaters before  
16 with the previews playing.

17          Q.    And so you accepted that as being dark?

18          A.    Well, as being -- yes, sir.

19          Q.    Darker?

20          A.    Darker, than with the lights on full  
21 blast.

22          Q.    Okay. And so did that play a role in your  
23 evaluation that if it was darker you may have a bit  
24 more difficulty seeing everything clearly.

25          A.    I think -- yes, sir. Common sense would

1 dictate that. Yes, sir.

2 Q. Okay. And so when he told you, hey, I  
3 think that I may have been hit with Mr. Oulsen's  
4 cell phone, I'm sure that that rang a bell with  
5 reference to your statements that you had previously  
6 taken from Corporal Hamilton and Mrs. Hamilton.

7 A. I made that note. Yes, sir.

8 Q. Wow, he got hit with a phone and we've got  
9 a phone in between Mr. Reeves' legs. You wanted to  
10 go find that phone; did you not?

11 A. I knew the phone was there, sir.

12 Q. Well, did you want to at some point  
13 quickly try to focus on that phone and if, in fact,  
14 that was Mr. Oulsen's phone?

15 A. I did want to determine whose phone it  
16 was.

17 Q. You did what?

18 A. I did want to determine whose phone that  
19 was.

20 Q. When did you want to determine whose phone  
21 it was?

22 A. As quick as I could.

23 Q. Did you make --

24 A. As soon as --

25 Q. Did you make a determination on



1 January 13th, 2014 as to whose phone it was?

2 A. I speculated that it was Chad's phone.

3 Q. You speculated?

4 A. Yes, sir.

5 Q. That certainly would be corroborating  
6 evidence for you that Mr. Reeves was hit in the head  
7 with a phone. Mr. Reeves says, I believe I was hit  
8 in the head with a phone. Lo and behold, between  
9 his legs, immediately after the shooting there's  
10 Mr. Oulsen's phone. Corroborating evidence?

11 A. Yes, sir.

12 Q. And Mr. Reeves told you that in addition  
13 to being hit with the phone that Mr. Oulsen was  
14 cursing violently at him?

15 A. He said that Mr. Reeves --

16 Q. Mr. Oulsen.

17 A. Mr. Oulsen was cursing. Yes.

18 Q. Did you ask him how loud?

19 A. He says that it was loud. I don't think I  
20 asked him that question.

21 Q. Did you ask him how close?

22 A. He tells me that he's leaned over the  
23 chair coming at him.

24 Q. Did you know at that time how tall  
25 Mr. Oulsen was?

1           A.    No, sir.

2           Q.    Did you know how much he weighed?

3           A.    No, sir.

4           Q.    Did you know how old he was?

5           A.    No, sir.  Not the direct age.  No, sir.

6           Q.    Did you take that opportunity in talking  
7 to Mr. Reeves to discuss with him the extent of his  
8 training as a law enforcement officer for 27 years  
9 with the Tampa Police Department?

10          A.    No, sir.

11          Q.    Why not?

12          A.    I didn't feel the need to do that.

13          Q.    Why not?

14          A.    I did not -- just didn't feel the need to  
15 do that at that time.  It was not part of -- he had  
16 just shot someone.  I wanted to make sure that he  
17 told me what occurred.  I did not feel the need to  
18 discuss his history there with Tampa Police  
19 Department.

20          Q.    Well, did you want to determine how he  
21 carried out the threat assessment of Mr. Oulsen  
22 against his person?

23               MR. MARTIN:  Judge, I hate to keep  
24 standing up, but we're back to --

25               THE COURT:  Hang on a minute.

1 MR. MARTIN: So glad that's not me.

2 THE COURT: Are you objecting to no  
3 predicate?

4 MR. MARTIN: Well, I'm objecting to a 402  
5 argument. And we're back to the purpose of why  
6 we have these questions for this hearing.

7 I know the Court says -- and I was -- and  
8 I don't mean to usurp your authority to call it  
9 quits when you want to call it quits. But for  
10 me, we're back to the -- where we are.

11 It doesn't make any difference what  
12 Mr. Proctor was thinking or doing at this point  
13 in time. We've got the statement that we got.  
14 We have the evidence that we have. The  
15 witnesses are what they are. They remember  
16 what they are.

17 So again, it's almost like, Judge, the  
18 argument we have when we have hearsay. We've  
19 been arguing about, oh, it's hearsay. Well, if  
20 it's not offered for the truth of the matter  
21 asserted, it's relevant for what? I mean,  
22 that's where we're at now.

23 So if we can say, oh, we're not offering  
24 it for the truth, that's almost like the  
25 argument Mr. Escobar is making, but we're not

1       getting to the second part, what is it offered  
2       for. And it has to be relevant if it has a  
3       tendency to prove any material fact.

4               And so we have the same thing here. It  
5       doesn't make any difference what Mr. Proctor  
6       thought about what his thoughts were during the  
7       interview. We're not -- it's not a probable  
8       cause, it's not a suppress, that's not what  
9       this hearing is all about. He's already been  
10      arrested.

11             MR. ESCOBAR: Detective Proctor is  
12      interviewing Mr. Reeves to determine whether  
13      Mr. Reeves acted reasonably at that moment.  
14      That's what he's doing. He's asking him  
15      exactly, tell me what happened. Who was there.  
16      Was it loud. Was it not loud. How did you  
17      feel.

18             That's exactly what this issue is.  
19      Because this Court's going to have to make a  
20      determination in standing in Mr. Reeves' shoes  
21      whether Mr. Reeves acted reasonably on that  
22      particular day as being either in fear of  
23      imminent death or great bodily harm.

24             This goes to the crux of it. He's the guy  
25      that's getting the information for us in that

1 evaluation process.

2 MR. MARTIN: I think he just made the  
3 argument that I've been making. It doesn't  
4 make any difference whether or not Mr. Proctor,  
5 at this point in time, believes he was or was  
6 not reasonable.

7 They made a decision at the scene to  
8 arrest him. They made that decision. It  
9 doesn't make any difference to Your Honor.  
10 You're making the decision now. So what  
11 difference does it make for this hearing, for  
12 your consideration, what they thought? It  
13 doesn't make any difference.

14 THE COURT: I'm going to allow it. Just  
15 stay to the issue. Keep the --

16 MR. ESCOBAR: I'm at the interview.

17 THE COURT: All right.

18 MR. ESCOBAR: I'm dealing with the  
19 interview at this point, Judge.

20 THE COURT: Thank you.

21 MR. ESCOBAR: Madam court reporter, I've  
22 lost my train of thought on that particular --

23 THE COURT: You asked him about his threat  
24 assessment.

25 BY MR. ESCOBAR:

1           Q.    Now, you didn't ask him how loud, but he  
2 volunteered that, correct?

3           A.    That's correct.

4           Q.    And he indicated to you that he had been  
5 hit, he thought, with a phone, correct?

6           A.    A phone, a fist, something.

7           Q.    And he indicated to you that he saw  
8 Mr. Oulson coming -- his body coming over his seat  
9 and Mr. Oulsen was facing him, correct?

10          A.    That's correct.

11          Q.    And he indicated to you that he was trying  
12 to create distance as much as he could with Mr.  
13 Oulsen, correct?

14          A.    He said he sat back in the chair.

15          Q.    Is that a common police procedure,  
16 creating distance between the person that's  
17 attacking him?

18          A.    Depends on the situation.

19          Q.    Well, is it always that you want to create  
20 distance from someone that's about to attack you?

21          A.    Normally you would want to do that.  
22 That's correct.

23          Q.    You certainly don't want to shorten the  
24 distance; is that correct?

25          A.    Probably not in this situation.

1           Q.    And Mr. Reeves told you that Mr. Oulsen  
2 told him that he was going to kick his fucking ass?

3           A.    I don't recall that's the terminology, the  
4 exact terminology he used, but it was something to  
5 that effect.   Yes, sir.

6           Q.    And Mr. Reeves told you he had never been  
7 so scared in his life?

8           A.    He did say that.   Yes, sir.

9           Q.    And he appeared candid to you?

10          A.    He gave me a statement at the time.   I  
11 thought that -- there again, he told me that.   And I  
12 did not pick up on anything that he told me at that  
13 time that I could say, hey, look, you're lying.  
14 There again, I couldn't get inside of his head, but  
15 he told me that he was scared.

16          Q.    And, in fact, you were surprised that he  
17 was so forthcoming with everything.   In fact, you  
18 told him that.   You said, you know, I really thought  
19 you weren't going to be so forthcoming with me?

20          A.    I don't recall making that comment.

21          Q.    Were you surprised that he was so  
22 forthcoming?

23          A.    No, sir.   I mean, I think that he told me  
24 what occurred, and to his understanding what had  
25 occurred.

1           Q.    And that's what's important, right, is to  
2   try to determine from his point of view what he  
3   felt?

4           A.    It would be important for me to know what  
5   was going on there.   Yes, sir.

6           Q.    Now, in your evaluation process you're  
7   looking for -- at this point in time since he's told  
8   you that he's been hit with a phone in the head --

9                   MR. ESCOBAR:   Madam Clerk, may I have that  
10   exhibit, the phone?   Thank you.

11   BY MR. ESCOBAR:

12           Q.    He's being hit with a phone in the head,  
13   certainly that is not the common use of a phone,  
14   correct?

15           A.    That's correct.

16           Q.    And if he's being hit in the phone with  
17   the head (sic), whether it's being thrown or whether  
18   he's being hit, that phone is being used as a  
19   weapon?

20           A.    Yes, sir.

21           Q.    And so in your investigation you're  
22   determining whether that phone was being used as a  
23   deadly weapon?

24           A.    Yes, sir.

25           Q.    And you would agree that hands can kill?



1           A.     Sure.

2           Q.     And you would agree, likewise, that you  
3     can have serious and great bodily harm by someone  
4     throwing or hitting you with a phone in the head?

5           A.     You could be injured.   You could be  
6     injured.

7           Q.     Seriously injured.

8           A.     I don't quite understand how that could  
9     happen, but I guess anything is possible, sir.

10          Q.     Okay.   Well, let's try to explore it.   Did  
11     you not think that this phone could cause great  
12     bodily harm?

13          A.     If it hit him maybe in the eye or  
14     something.   I'm not a medical doctor.   But like I  
15     said, anything is possible.

16          Q.     In this case did you ever go to a  
17     professional and ask them whether this phone could  
18     cause great bodily harm?

19          A.     No, sir.

20          Q.     And you've indicated just a few seconds  
21     ago you're not a doctor.

22          A.     That's correct.

23          Q.     Throughout this 30-minute period of  
24     questioning of Mr. Reeves did you ask him how loud  
25     the surroundings were when this was happening?

1           A.    No, sir.

2           Q.    He told you it was dark?

3           A.    Yes, sir.

4           Q.    Did you ask him at all concerning any of  
5 the disabilities or frailties that he may have been  
6 experiencing in his life at that time?

7           A.    There again, the tape stands for itself,  
8 sir, but he mentions that he has arthritis.

9           Q.    My question was not whether you heard  
10 that. Did you ask him, Mr. Reeves, can you tell me  
11 the laundry list that you may be experiencing in  
12 frailties at this point in time?

13          A.    No, sir. I didn't ask that.

14          Q.    Did you not want to know what his physical  
15 condition was at the time of this particular attack?

16          A.    He was giving me the -- he gave me the  
17 information that he had arthritis, that he was in  
18 poor health.

19          Q.    He also told you he had a bad back?

20          A.    That's correct.

21          Q.    That he was a physical wreck?

22          A.    Yes, sir.

23          Q.    But you didn't ask him specifically what  
24 that meant?

25          A.    No, sir.

1           Q.    But it was important to you in your  
2 assessment in this case?

3           A.    Everything's important, sir.

4           Q.    Including that?

5           A.    (Nods head.)

6           Q.    Now, Mr. Reeves also indicated to you that  
7 his head was hurting, there was something going on  
8 with his area of the eye?

9           A.    The eye.  Yes, sir.

10          Q.    Is that correct?

11          A.    The eye.  Yes, sir.

12          Q.    Okay.  And did you ask him how it was that  
13 that happened?

14          A.    Yes, sir.

15          Q.    And what did he tell you?

16          A.    That he thought he had been hit with  
17 something.

18          Q.    Okay.  And so at that point in time you  
19 had a possible injury, correct?

20          A.    I didn't see an injury.  He said that he  
21 had an injury.

22          Q.    Did he appear to be candid with you at  
23 that time?

24          A.    Yes, sir.  He was rubbing his eye.

25          Q.    That interview took 30 minutes and you

1 then went where?

2 A. I spoke to Mrs. Reeves.

3 Q. Okay. And so where did that take place?

4 A. I believe that was also in the party room.

5 Q. Okay. And did you have a prerecording for  
6 that?

7 A. I did not.

8 Q. And why not?

9 A. She had already been interviewed.

10 Q. Okay. So why were you interviewing her  
11 then if she had already been interviewed?

12 A. To get her on tape.

13 Q. She had not been on tape before?

14 A. That's my understanding.

15 Q. Okay. And so now you were going to get  
16 her on tape?

17 A. That's correct.

18 Q. Okay. And did you do that alone or with  
19 someone else?

20 A. Detective -- at the time Detective Matt  
21 Myers was accompanying me.

22 Q. How long was that interview, by the way?

23 A. 1625 to 16 -- or 4:25 to 4:38.

24 Q. 4:25 to 4:38, so how many minutes?

25 A. Thirteen.

1           Q.   Thirteen minutes. And who did you  
2 interview next? You still haven't gone into the  
3 theater, right?

4           A.   That's correct.

5           Q.   Did you have a second interview with  
6 Mr. Reeves?

7           A.   That's correct.

8           Q.   So you still haven't gone into the  
9 theater?

10          A.   That's correct, sir.

11          Q.   So where do you go after Mrs. Reeves?

12          A.   I go back and I speak to Curtis again,  
13 Mr. Reeves, the defendant.

14          Q.   Well, did you go anywhere between the time  
15 of Mrs. Reeves and going back to speak to Curtis?

16          A.   I believe that's where I met with the  
17 command staff and we had a -- we had a meeting as to  
18 what the investigation had revealed.

19          Q.   That lasted about five minutes?

20          A.   I don't recall, sir.

21          Q.   Well, check your next interview with  
22 Mr. Reeves and see how much time lapsed between the  
23 end of Mrs. Reeves and the beginning of the second  
24 Mr. Reeves interview.

25          A.   That's correct. Five minutes.

1           Q.    So five minutes with your command staff  
2           and now you're back talking to Mr. Reeves and  
3           telling him you're going to charge him with  
4           second-degree murder?

5           A.    That's correct.

6           Q.    That was your investigation in this case?

7           A.    That's correct, sir.

8           Q.    Despite the fact that you believed that  
9           Mr. Reeves was very forthcoming with everything that  
10          you had asked?

11          A.    He gave me a story as to what had  
12          occurred.

13          Q.    He was forthcoming with everything that  
14          you had asked; is that correct?

15          A.    He gave me what he had -- his take on what  
16          had occurred there.

17          Q.    Page 165 --

18               MR. MARTIN:  Your Honor --

19               MR. ESCOBAR:  -- Line --

20               MR. MARTIN:  -- I appreciate that.  Even  
21          if those words are in there, I mean, if we're  
22          really nitpicking about what's going -- was he  
23          forthcoming.  He said everything.  I mean, is  
24          that really impeachment?  No.

25               So, you know, I hate to keep standing up.

1 THE COURT: Is he substantially  
2 inconsistent?

3 MR. ESCOBAR: Judge, he said he was  
4 very -- he was forthcoming with everything that  
5 I asked with his statement. Yes, sir.

6 MR. MARTIN: So how is that substantially  
7 different?

8 MR. ESCOBAR: Because he's avoiding the  
9 word forthcoming. That's what he's avoiding.  
10 I've asked him twice.

11 BY MR. ESCOBAR:

12 Q. Forthcoming, correct, Detective?

13 MR. MARTIN: Wait a minute. We're  
14 still -- I still have my objection.

15 THE COURT: I heard him say candid.

16 MR. MARTIN: Right.

17 MR. ESCOBAR: And forthcoming, meaning,  
18 giving as much as Mr. Reeves had.

19 THE COURT: Go ahead. I'll overrule.

20 BY MR. ESCOBAR:

21 Q. Correct, Detective?

22 A. Is that what I said in my deposition?

23 Q. That's what you said in your deposition.

24 A. I understand, sir, that he gave me a  
25 statement at that time that I believed, in his -- to

1 him he thought was true and correct.

2 Q. Now, what do you do now? Because now  
3 you've gotten his statement, correct?

4 A. Yes, sir.

5 Q. You believed his statement was  
6 straightforward and honest?

7 A. In his mind he thought -- he had sat in  
8 the back of a patrol car for a period of time and  
9 now he's telling me this story. Yes, sir.

10 Q. He appeared straightforward and honest.

11 A. He told me what had occurred. There  
12 again, I cannot get inside of his head. He's  
13 telling me that statement.

14 Q. Page 165. Question: and one of the things  
15 that you're trying to assess -- well, in this  
16 person, is he candid with me. He appeared to be  
17 honest and straightforward. Was he. Your answer:  
18 He did appear to be straightforward. Question: And  
19 honest. Answer: And honest.

20 A. All right, sir.

21 Q. Were you being truthful back then?

22 A. Yes, sir.

23 Q. Is that a truthful answer?

24 MR. MARTIN: Your Honor, I'm going to  
25 object. That depo calls for speculation. It's



1 calling for speculation now.

2 Just like Mr. Proctor said, he can't get  
3 into his head. So just because it was asked at  
4 the depo doesn't mean it's going to be admitted  
5 into court. That's not a proper question. It  
6 calls for speculation.

7 THE COURT: Yeah, I kind of thought so.  
8 But it's -- we've already had this discussion  
9 for impeachment purposes. I'll allow it. But  
10 now you want to object as to it calls for  
11 speculation, the question? Yeah, we've already  
12 gone past that. But let's just move on.

13 BY MR. ESCOBAR:

14 Q. What was your next step in this  
15 investigation? Now you've informed Mr. Reeves that  
16 he is going to be arrested.

17 A. I go into the theater.

18 Q. Okay. At what time did you first go into  
19 the theater? So you would have gone into the  
20 theater after you told Mr. Reeves that he was going  
21 to be arrested?

22 A. That's correct. I go in at 5:32.

23 Q. At 5:32?

24 A. That's correct.

25 Q. And that's approximately how many hours

1 after this incident?

2 A. Four hours.

3 Q. Now, what's your purpose now in going into  
4 the theater?

5 A. To visualize the theater. I wanted to see  
6 the area.

7 Q. Why didn't you do that before you decided  
8 to charge Mr. Reeves with second-degree murder?

9 A. I had -- I was being apprised of  
10 everything that was going on inside the theater.

11 Q. Who was apprising you of that?

12 A. Sergeant Harris -- our acting Sergeant  
13 Harris, and other deputies who were in contact with  
14 Detective Smith.

15 Q. Well, then -- and you're talking about the  
16 interviews that were taking place?

17 A. No, sir. The crime scene.

18 Q. Just the crime scene?

19 A. Yes.

20 Q. So you weren't being given any information  
21 about the interviews that were taking place by the  
22 various detectives there with the Pasco County  
23 Sheriff's office?

24 A. No, sir. I was being apprised of that  
25 also.

1 Q. Well, how were you being apprised of that?

2 A. We -- those detectives were reporting to  
3 Sergeant Sessa and Detective Harris, who was the  
4 acting sergeant.

5 Q. Well, how many -- how many summaries of  
6 their interviews did they give you before you  
7 decided to charge Mr. Reeves?

8 A. We stood there. We talked about it.

9 Q. That's a five-minute session that you had  
10 there?

11 A. Yes, sir.

12 Q. So I would suspect that no one during that  
13 five-minute session told you about Joanna Turner?

14 A. They did not mention people by name.

15 Q. Well, during that five-minute session  
16 certainly they didn't tell you about the young lady  
17 who indicated that she saw Mr. Oulsen with a dark  
18 object in her (sic) hand that she believed -- in his  
19 hand, that she believed was either a dark cup, a  
20 black cup or a thermos, making a throwing motion to  
21 the back area?

22 MR. MARTIN: I object, Judge. And you saw  
23 her actions and that's not what she did and he  
24 knows it.

25 MR. ESCOBAR: Judge, you can be the judge

1 of it, whether it was this or whether it was  
2 this.

3 MR. MARTIN: No. No.

4 MR. ESCOBAR: It's a throwing motion.

5 MR. MARTIN: No. No. That's exactly  
6 right. So I object to the whole line of  
7 questioning.

8 Again, we're going right back -- it  
9 doesn't make any difference what took place in  
10 that five minutes for you to make your  
11 decision. And this whole line of questioning  
12 is not relevant to these proceedings.

13 THE COURT: Where are you going with this?

14 MR. ESCOBAR: Judge, just the area of the  
15 decision-making process and the communication  
16 is very important.

17 MR. MARTIN: It doesn't make any --

18 MR. ESCOBAR: It's not going to take me a  
19 whole lot of time. I'm going to be off of this  
20 in a few seconds.

21 THE COURT: Go on.

22 BY MR. ESCOBAR:

23 Q. So that information was not given to you,  
24 correct, Detective?

25 A. Not about the lady who was -- observed

1     throwing an object.  No, sir.

2           Q.     Why not?

3           A.     It wasn't furnished to me at that time.

4           Q.     Well, at the very least, did you inquire  
5     of any -- of either Harris or Sessa or any other  
6     detective?  Hey, listen, Reeves told me that he got  
7     hit in the head with a phone.  We need to find out  
8     how that phone got in between his legs.  Whose phone  
9     is it.  You knew it wasn't Mr. Reeves' phone, right,  
10    is what you're telling me?

11          A.     In that meeting that we stood there, we  
12    talked about the fact that no one had saw him get  
13    hit --

14          Q.     Did the --

15          A.     -- with anything.

16          Q.     Was that odd to you in a darkened theater,  
17    people watching previews in a loud theater with  
18    previews, was that odd that people would not have  
19    clear vision of everything that went on around them?

20          A.     You know, his wife is sitting right next  
21    to him.

22          Q.     Right.

23          A.     She doesn't see that.  She doesn't see him  
24    get hit.

25          Q.     And she tells you that she was terrified

1     when Mr. Oulsen was coming over onto their seat,  
2     correct?

3           A.     I don't know if she uses the terminology  
4     terrified, but her tape stands for itself also.

5           Q.     She was scared.

6           MR. MARTIN: Your Honor, again, this is  
7     getting argumentative. He wants to say, you  
8     should have done this, this and this. This  
9     means this to him when, in fact, they took a  
10    different approach.

11           They made the arrest. They made the  
12    determination that the immunity wasn't going to  
13    apply at that initial investigation. And now  
14    it's up to you to decide on the facts in this  
15    case and this is not relevant to these  
16    proceedings.

17           MR. ESCOBAR: Judge, we cannot present our  
18    case in isolation. If that was the case, then  
19    the only one that we would present is  
20    Mr. Reeves to come in here and say, this is  
21    what I remember happening.

22           We weren't there. Remember, when law  
23    enforcement goes there to investigate a crime,  
24    the Defense is not there. And so it's their  
25    production. It is their investigation.

1           These items of evidence that you're going  
2           to see next week from the Government are going  
3           to be from individuals like this detective, and  
4           you're going to have to assess the credibility  
5           of that particular evidence and the relevancy  
6           of that particular evidence based upon his  
7           investigation.

8           I know what Mr. Martin wants. He doesn't  
9           want the people that actually --

10          MR. MARTIN: Mr. Escobar doesn't know what  
11          I want. I'm getting tired of him trying to  
12          explain to people what I think.

13          THE COURT: All right. All right. All  
14          right. It's been a long week. Listen, I do  
15          not know exactly what's coming. So in an  
16          abundance of caution, I'm going to allow this  
17          so we don't have to call everybody back.

18          Because I anticipate I'm going to hear  
19          that argument, if you would have let me delve  
20          into this area, this is exactly what I was  
21          telling you was going to come.

22          So I'm going to allow it. Just please --

23          MR. ESCOBAR: I'm trying to move along as  
24          quickly as I can.

25          THE COURT: And I'm not worried about

1           quick, just redundant or irrelevant. Just, you  
2           know, kind of keep focused.

3           MR. ESCOBAR: I am.

4           THE COURT: Thank you.

5 BY MR. ESCOBAR:

6           Q. So now you go into that scene without  
7           having the benefit of Joanna Turner, correct?

8           A. That's correct, sir.

9           Q. Why not group all the detectives that had  
10          done some interviews, and at the very least gather  
11          them up, and for yourself, figure out what they  
12          learned?

13          A. We did that.

14          Q. In that five-minute period?

15          A. No, sir. Afterwards.

16          Q. After you went into the scene?

17          A. Right.

18          Q. Okay. So we're going to get to that in  
19          just a second. So now you go into the scene and lo  
20          and behold you see the phone?

21          A. I can't remember if the phone was there or  
22          if they already collected it at that time.

23          Q. Why would they be collecting it without  
24          you having the opportunity to see it in the location  
25          of which it was found? You've got the information



1 now about that phone.

2 A. It's been photographed. It's been videoed  
3 and it's been collected.

4 Q. By that time did you know that there was a  
5 video surveillance system in that theater?

6 A. I was told there were cameras up. I did  
7 not believe that it would capture the actual event.

8 Q. And how did you make determination of  
9 that? Because you hadn't been inside the theater  
10 yet.

11 A. Oh, are you talking about -- afterwards is  
12 when --

13 Q. No. no. Before.

14 A. I misunderstood your question, Counselor.

15 Q. No. no. Before.

16 A. I'm already inside the scene.

17 Q. Let's take it right before, and then we'll  
18 see what the evaluation process is.

19 A. Okay. Go ahead.

20 Q. Did you know even know that there was a  
21 surveillance system before you go -- four hours  
22 later, before you go into the crime scene, did you  
23 even know that there was a video surveillance system  
24 at the Cobb Theater inside Theater 10?

25 A. I don't recall if they told me that or

1 not. I don't believe that I was aware of it. There  
2 again, I don't recall anybody telling me that there  
3 was a video back in the back.

4 Q. You would agree that that's -- if there is  
5 a video surveillance, that's a pretty good piece of  
6 evidence?

7 A. Yes, sir.

8 Q. And one of the reasons that you go into  
9 the scene from the very beginning is that you want  
10 to get the layout and see if, in fact, there's  
11 anything that could aid you in your investigation?

12 A. Yes, sir.

13 Q. If that phone had hit Mr. Reeves, you  
14 realize that there's a possibility that there would  
15 be DNA on that phone, correct?

16 A. Yes, sir.

17 Q. So you don't want that phone touched.  
18 There's DNA on that phone. You summons the forensic  
19 people right then and there. They can do that DNA  
20 right there on that floor. We don't do that?

21 A. (Shakes head.) No, sir.

22 Q. And why not?

23 A. It needs to be in a controlled  
24 environment.

25 Q. In a controlled environment?

1           A.     That's correct.

2           Q.     Okay. But you have forensic people to do  
3 that.

4           A.     In a controlled environment.

5           Q.     And you also have cyber crimes there,  
6 correct?

7           A.     I believe they were there. Yes, sir.

8           Q.     And so you can group up both cyber crimes  
9 and forensics to take care of just about anything  
10 with that phone?

11          A.     That's not protocol for us to process DNA  
12 on the scene involving a phone like that.

13          Q.     Do you realize that when people touch a  
14 phone that they can damage DNA, remove DNA?

15          A.     There again, they're trained in how to  
16 handle DNA touch evidence.

17          Q.     And so you didn't ever, days later,  
18 instruct Detective Smith to go into evidence and  
19 turn on that phone again to see whose phone it was?

20          A.     I did not instruct him. He was instructed  
21 to go.

22          Q.     He was instructed to do it?

23          A.     That's correct.

24          Q.     Did you know that he was instructed to go  
25 and touch that phone again before DNA even had a

1 chance to touch it?

2 A. I don't recall, sir, when I became aware  
3 of that.

4 Q. Now, the fact of a 43-year-old man  
5 attacking a 71-year-old man was of concern to you,  
6 correct?

7 A. Yes, sir.

8 Q. And the reason it was of concern to you is  
9 because you realized that people, as they age,  
10 become frail, fragile. They're more easily hurt,  
11 correct?

12 A. In some cases, that's correct.

13 Q. Mr. Reeves was an elderly man?

14 A. Seventy-one.

15 Q. And he had already told you that he had  
16 some physical problems?

17 A. That's correct.

18 Q. And Mr. Reeves told you that he believed  
19 that Mr. Oulsen was going to, quote, pardon my  
20 language, beat the shit out of him?

21 MR. MARTIN: Your Honor, asked and  
22 answered about 40 minutes ago.

23 THE COURT: Sustained. Please move on.

24 BY MR. ESCOBAR:

25 Q. Mr. Reeves had told you that Mr. Oulsen

1 was very explosive at that time?

2 A. I don't recall if he uses the terminology  
3 explosive.

4 Q. 234 --

5 A. The tape stands for itself, sir.

6 Q. You don't remember explosive?

7 A. There again, I'm not for sure if that's  
8 his exact terminology or not in this. There again,  
9 the tape stands for itself. If that's what the --

10 Q. Have you ever heard of the phrase,  
11 escalating patterns of violence?

12 A. Yes, sir.

13 Q. And where have you heard that?

14 A. I don't remember, sir.

15 Q. In your training as a law enforcement?

16 A. Yes, sir.

17 Q. And why is that assessment important for  
18 you, an escalating pattern of violence?

19 A. That's -- it's important to law  
20 enforcement to know how to -- when and what to do in  
21 certain situations.

22 Q. And if you don't correctly assess that  
23 situation, it could mean your life?

24 A. It could. Yes, sir.

25 Q. So when you went into the theater to do

1 your first assessment four hours later, there was no  
2 evidence there?

3 A. There again, I believe the popcorn might  
4 have still been on the floor and things like that.  
5 I believe that they were in the process of possibly  
6 numbering the seats at that time.

7 Q. Now, in your interview with Mrs. Reeves  
8 you indicated that you recorded her; is that  
9 correct?

10 A. That's correct.

11 Q. And you remember her telling you in that  
12 interview that immediately after the shooting  
13 Mr. Reeves had told her, Mr. Oulsen hit me in the  
14 face?

15 MR. MARTIN: Your Honor, I'm going to  
16 object. Calls for hearsay. And if it's not  
17 being offered for the truth, then we're going  
18 to have to have some type of relevancy in this  
19 particular proceeding. We can't just go  
20 through everybody's statement and get it on the  
21 record.

22 So I object to the hearsay and there's no  
23 relevancy for -- other than for the truth.

24 MR. ESCOBAR: Your Honor, I'm going to --  
25 I'm not going to ask that question. I'm going

1 to --

2 BY MR. ESCOBAR:

3 Q. So you would agree that if she made that  
4 statement --

5 THE COURT: Withdrawn.

6 BY MR. ESCOBAR:

7 Q. -- it would be on the recording?

8 A. That's correct. To me, if she had made  
9 that statement, it would have been on the  
10 statement -- it would have been on the recording.

11 Q. And if she made that statement to  
12 Detective Smith, it would have been in his notes?  
13 Because you certainly read his notes.

14 MR. MARTIN: Your Honor, that calls for  
15 speculation about what's in someone else's  
16 notes.

17 THE COURT: Yeah, rephrase.

18 MR. ESCOBAR: I will.

19 BY MR. ESCOBAR:

20 Q. Did you talk to Detective Smith about  
21 whether or not Mrs. Reeves told him that?

22 A. I do not recall, sir, if I did or not.

23 Q. But that would have been important for  
24 information for you in assessing this case, correct,  
25 whether Mr. Reeves immediately informed someone that

1 he had been hit in the face, because that statement  
2 has the indicia of reliability. It's excited  
3 utterance.

4 MR. MARTIN: Your Honor, I'm going to  
5 object to the form of the question. Again, now  
6 he's put it in the form of legal terms. And so  
7 I object to the form of the question of what  
8 he's asking.

9 MR. ESCOBAR: I won't call it an excited  
10 utterance.

11 BY MR. ESCOBAR:

12 Q. That would have been a reliable statement,  
13 correct --

14 MR. MARTIN: That calls for speculation,  
15 Judge.

16 BY MR. ESCOBAR:

17 Q. -- at the time.

18 MR. MARTIN: That calls for speculation.

19 THE COURT: All right. All right.

20 Sustained.

21 Let's rephrase or move on.

22 (CONTINUED IN VOLUME X.)  
23  
24  
25