

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

STATE OF FLORIDA,

Plaintiff,

vs.

VOLUME XIV

CURTIS J. REEVES,

Defendant.

_____ /

PROCEEDINGS: Stand Your Ground Motion

DATE: February 28, 2017

BEFORE: The Honorable Susan Barthle
Circuit Court Judge

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

REPORTED BY: Charlene M. Eannel, RPR
Court Reporter
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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Good morning, everybody.

3 MR. MICHAELS: Good morning, Your Honor.

4 MR. MARTIN: Good morning.

5 THE COURT: Welcome back. It feels like we
6 never left.

7 All right. Mr. Escobar?

8 MR. ESCOBAR: It's Mr. Michaels this morning.

9 MR. MICHAELS: Good morning, Judge.

10 THE COURT: Good morning.

11 MR. MICHAELS: Defense calls Dr. Philip Hayden.

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

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

18 THE COURT: You may proceed, Counselor.

19 DIRECT EXAMINATION

20 BY MR. MICHAELS:

21 Q. Please state your name, spelling your first and
22 last name for the court reporter and the Judge, please.

23 A. My name is Philip Hayden. First name Philip,
24 P-H-I-L-I-P, last name Hayden, H-A-Y-D-E-N.

25 Q. And before we start, I'm going to give you an

1 exhibit. It's Exhibit 111. That's the Defense's number.

2 MR. MICHAELS: If I may approach, Your Honor?

3 THE COURT: Uh-huh.

4 BY MR. MICHAELS:

5 Q. That's a copy of your CV to help you if you need
6 to remember some of the many things you've done in your
7 past, in your educational and professional background.
8 Okay?

9 A. Okay.

10 Q. So let's talk about first, what is your
11 occupation?

12 A. Right now I'm a law enforcement consultant, and
13 I also have a company that's an investigative company.

14 Q. When you say, "law enforcement consultant,"
15 explain to us what it is that you and your company does.

16 A. As a law enforcement consultant, I'm available
17 to law enforcement if they need help, but I also work as
18 an expert witness, in that for both the plaintiff and the
19 defense.

20 Q. Have you also provided consultation and expert
21 witness services to state attorneys and U.S. Attorneys'
22 offices?

23 A. Yes, I have.

24 Q. Give the court some examples of the offices you
25 provided these services for.

1 A. The Department of Justice in Washington D.C.,
2 the Department of Justice in Iowa, Department of Justice
3 in California, so several U.S. Department of Justice
4 offices. State's attorneys have been in Birmingham, in
5 Chicago, Des Moines, Iowa.

6 Q. Sarasota?

7 A. Sarasota.

8 Q. Miami Dade?

9 A. Miami Dade, yes.

10 Q. Feel free to look at your CV if you need to,
11 Dr. Hayden.

12 A. Okay.

13 Q. What are some of the state and city attorneys'
14 offices you've consulted and provided expert witness
15 services for?

16 A. Here in the United States Attorney's office in
17 New York City, Western District of New York, District of
18 New Jersey, Washington, D.C., El Paso, Texas, Portland,
19 Oregon, Alexandria, Virginia, Eastern District of
20 Pennsylvania, and State and County Attorneys' offices,
21 Delaware, County Attorney's Office for Prince George's
22 County, Maryland, Connecticut, and defense and plaintiff
23 attorneys in Richmond, Virginia, Washington D.C.,
24 Baltimore, Maryland, Las Vegas, Nevada, Denver, Colorado,
25 Kansas City, Pasedena, Texas, Birmingham, Alabama, and the

1 Swedish Defense Ministry.

2 Q. Now, have you ever been qualified in state court
3 to render an expert opinion?

4 A. Yes, I have.

5 Q. In what field?

6 A. In use of force and also in police policies and
7 procedures.

8 Q. In federal court?

9 A. In federal court, the same.

10 Q. Now, before we get to your services in this
11 particular case and your opinion in this particular case
12 and what you've done in this particular case, let's talk a
13 little bit about your background.

14 I understand that you're a veteran of the U.S.
15 Army?

16 A. That's correct.

17 Q. And from what year to what year?

18 A. 1964 to 1968.

19 Q. And you entered as a private?

20 A. That's correct.

21 Q. What was your rank when you separated?

22 A. I was a captain.

23 Q. Why did you separate from the armed services?

24 A. I was on physical disability. I got shot up
25 pretty bad in Vietnam and retired out of the military.

1 Q. And so when you were in Vietnam, you received
2 certain honors; did you not?

3 A. Yes, I did.

4 Q. The Purple Heart?

5 A. Yes, I did.

6 Q. The Vietnamese Cross of Gallantry?

7 A. Yes, I did.

8 Q. Conspicuous Service Cross?

9 A. Yes, I did.

10 Q. The Army Commendation for Valor?

11 A. Yes.

12 Q. Bronze Star for Valor?

13 A. Yes, I did.

14 Q. And also the Distinguished Service Cross?

15 A. That's correct.

16 Q. Now, before we get to your FBI service and your
17 experience in the Federal Bureau of Investigations, let's
18 talk a little bit about your educational background.
19 Okay?

20 A. Okay.

21 Q. I called you Doctor when you came in. Let's
22 talk about bachelor's. Where did you get your bachelor's
23 and when?

24 A. From Adelphi University. I received that in
25 1972.

1 Q. And what is your bachelor's in?

2 A. It's in accounting and business.

3 Q. And you have a master's?

4 A. I have a master's degree I received in 1980.

5 Q. From what school?

6 A. Adelphi University.

7 Q. What is the master's in?

8 A. In accounting.

9 Q. Let's talk about your doctorate. From what
10 school?

11 A. From Nova Southeastern in Fort Lauderdale.

12 Q. What year?

13 A. In 1977.

14 Q. What is your doctorate in?

15 A. In education.

16 Q. It's in education. How does that relate to your
17 current work as an expert in -- consultant in the field of
18 use of force?

19 A. As an educator, what I had to do is understand
20 how people learn; how people transfer that information
21 that they see, they hear, and how do they interpret that
22 to, they actually use those types of skills that we're
23 trying to teach.

24 Q. And specifically, did that concept and those
25 ideas apply to the training of law enforcement officers?

1 A. Yes, specifically to that, yes.

2 Q. That's a program that you developed?

3 A. That's correct.

4 Q. And that's training for use of force and things
5 in that realm; is that fair to say?

6 A. That's correct.

7 Q. Now, let's talk about your career in the FBI.
8 When did you join the FBI?

9 A. I joined the FBI in 1973.

10 Q. How many years were you with the FBI?

11 A. Twenty-six.

12 Q. Before we go into some of your training and
13 experience in the FBI, let's talk a little bit about what
14 your various assignments are. So when you start the FBI,
15 I imagine you go to an academy?

16 A. Yes, that's correct.

17 Q. Where is that?

18 A. That's in Quantico, Virginia.

19 Q. And what sort of training do you receive at that
20 point?

21 A. We receive sixteen weeks of training which
22 involved all the investigations that you might do in the
23 federal realm, and at that time there was like 350
24 different types of investigations; criminal, intelligence
25 work, counterintelligence. So you receive training in all

1 those different areas and you received firearms training,
2 defensive tactics, physical fitness, investigations,
3 interviewing.

4 Q. Are you also schooled in the concept of use of
5 force?

6 A. Absolutely, yes.

7 Q. And that would mean when it's appropriate,
8 correct?

9 A. When it's appropriate and what force you should
10 be able to use.

11 Q. And do you also learn at a very early time the
12 various cues and things you should look for when deciding
13 when and if to apply force?

14 A. Yes, that's a critical factor in learning that,
15 yes.

16 Q. And how much force to apply?

17 A. That's correct.

18 Q. Now, as an FBI agent, do you go in -- you go to
19 Quantico, you go to the academy. What's your first
20 assignment?

21 A. After I get out of Quantico I go to Chicago, and
22 in Chicago I was assigned to the theft of interstate
23 shipment.

24 Q. How long is that assignment for?

25 A. I was in Chicago for just about three years.

1 Q. And tell the Court what it is that you did in
2 that particular assignment. In other words, what do you
3 do when you're assigned to, you said theft of
4 interstate --

5 A. Shipment.

6 Q. -- shipment.

7 A. Basically, truck highjacking, things like that
8 that cross the state lines, and investigating those crimes
9 and conducting the arrest on individuals that you're able
10 to identify.

11 Q. Okay. So you would be involved in the
12 investigation?

13 A. That's correct.

14 Q. And also the apprehension of the individuals
15 that where being investigated?

16 A. That's correct, and all of paperwork that goes
17 with it.

18 Q. Okay. What's your next assignment?

19 A. I worked in counterintelligence and I worked in
20 Polish intelligence, dealing with the individuals at the
21 Polish Embassy.

22 Q. What years are we talking about?

23 A. This is from 1973 through 1976.

24 Q. Before the wall came down?

25 A. Before the wall came down, yes.

1 Q. What did you do in that particular assignment?

2 A. I worked pretty much undercover, and did just --
3 following the different individuals that they had in the
4 Polish Embassy that we were interested in.

5 Q. Next assignment?

6 A. Next assignment, I was in Chicago, and they move
7 you around a bit so you get a different experiences, and I
8 worked bank robberies, fugitives, and that was my last
9 assignment in Chicago.

10 Q. What does that particular work involve?

11 A. Here again, investigations. Investigations in
12 bank robberies, doing interviews, doing the investigation,
13 then conducting the arrest.

14 The others are fugitives that -- you might have
15 a fugitive, as identified through the federal system,
16 that there's a warrant for that person, and you try to
17 find that person and make the arrest.

18 Q. And does that particular assignment put you in
19 contact directly with violent and potentially -- and
20 potentially violent individuals?

21 A. Absolutely, it does.

22 Q. And what's your next assignment after that?

23 A. I was transferred to New York City.

24 Q. What did you do there?

25 A. When I first arrived there, I worked in

1 counterintelligence in the Russian Squad.

2 Q. What year are we talking about?

3 A. That was 1976 to probably 1977, early '78.

4 Q. And so there you are doing similar work
5 regarding the Russian Embassy as you did in Chicago with
6 the Polish embassy? Is that fair to say?

7 A. That's correct.

8 Q. How long do you do that for?

9 A. Just about a year a year and a half.

10 Q. What's your next assignment?

11 A. Next assignment, I ended up going to one of the
12 organized crime squads. And on the organized crime squad
13 I was one of four different individuals that was assigned
14 to that squad to set up and develop plans and do the
15 arrest of individuals that we identified.

16 Q. So you weren't actually involved in the
17 undercover work itself?

18 A. I wasn't involved in any undercover work in
19 that, no.

20 Q. But you were involved in the arrest?

21 A. That's correct.

22 Q. So, again, placing you potentially in direct
23 contact with violent or potentially violent individuals?

24 A. That's correct.

25 Q. Next assignment?

1 A. Next assignment, I worked on a squad that did go
2 undercover. I worked undercover in identifying different
3 criminal aspects, both in a criminal side and on
4 counterintelligence, and we worked to help identify those
5 people and to make the arrests of those people.

6 Q. And any sort of segment that was targeted?

7 A. No, it's what they requested from the different
8 squads within the division I was assigned to that if they
9 needed help in certain -- identifying or arresting certain
10 people, then they brought us in to assist them.

11 Q. Okay. Again, in contact with dangerous and
12 potentially dangerous individuals?

13 A. That's correct.

14 And we were working on -- or we were working
15 with task forces from the New York City Police Department
16 also that was involved in this.

17 Q. Okay. Next assignment?

18 A. Next assignment after I left Chicago, I went to
19 Quantico, Virginia.

20 Q. You mean after you left New York?

21 A. After I left New York. I'm sorry, yes.

22 Q. What year are we at now?

23 A. When I went to Quantico, it was 1983.

24 Q. And at that point are you a supervisory special
25 agent?

1 A. That's correct.

2 Q. What is the purpose of you going to Quantico?

3 A. I was asked to go to Quantico to work on the
4 SWAT program and the different aspects of SWAT, sniper
5 training, defensive tactics, firearms.

6 Q. And does part of that have to do with your
7 military background?

8 A. Yes, it did.

9 Q. What sort of training did you receive in the
10 military?

11 A. Well, I went through the basic training of
12 combat infantry, I went through officer candidate school.
13 I went through airborne school, ranger school, pathfinder
14 school, demolition -- part of a demolition school. I
15 trained for two and a half years.

16 Q. Okay. Now, when you go to Quantico, is it to be
17 part of the squad team or is to help develop it or both?

18 A. When I went to Quantico, the unit was called the
19 Special Operations and Research Unit, which was designed
20 to work with the SWAT teams throughout the United States
21 or FBI SWAT teams, and we did the training for them,
22 getting equipment for them and assisting them if they
23 needed our assistance in setting up posts and things like
24 that.

25 Q. So is it fair to say, that in 1983 began your

1 career where, specifically, you're training other law
2 enforcement personnel, special agents, local police,
3 et cetera?

4 A. That's when the large portion of my training
5 began. We did do training back in New York, and I was a
6 firearms instructor there, defensive tactics instructor,
7 and sometimes we worked with local police as well as FBI
8 agents.

9 Q. But you were also involved in training other
10 people then at that point?

11 A. That's correct.

12 Q. In 1993?

13 A. 1983.

14 Q. In 1983.

15 A. Right.

16 Q. Now, during that time period -- what is it, '83
17 to '99? Is that fair to say?

18 A. '83 to '90 I was in the source unit.

19 Q. And actually training individuals, that goes all
20 the way out to '99, right?

21 A. Yes, that's correct.

22 Q. In terms of with the FBI?

23 A. That's correct.

24 Q. During that time period, what sort of areas are
25 you training officers and special agents in?

1 A. We're training them in the tactics of officer
2 sound -- sound tactics. How do you go into a situation
3 and do it in a way that's conducive to your own safety and
4 to the safety of other individuals?

5 We dealt with all of those tactics dealing with
6 firearms, defensive tactical, hands-on arrest techniques
7 and then also planning, how to plan for an arrest and how
8 to actually take it down.

9 Q. During that time period, give the Court an
10 estimate of how many law enforcement personnel, special
11 agents, and local and state law enforcement that you were
12 involved in training. How many people?

13 A. In the combined of the source unit and when I
14 went over to the practical applications unit and then to
15 the law enforcement training for safety and survival, the
16 SWAT was probably 1,500 or so people.

17 We went into the other areas of the task force
18 training, probably another 4,000, 4,500 people, both --
19 and that was both federal agents. It could be from DEA,
20 FBI, a lot of different federal organizations, and the
21 task forces were also combined of federal and local,
22 state, county police officers.

23 Q. Did you also train law enforcement entities in
24 other countries?

25 A. Yes, we did.

1 Q. Give the Court some examples.

2 A. We went to Russia on five different occasions.
3 We went to the Ukraine. We went to Uzbekistan. We went
4 to several countries over in the Eastern Bloc countries.
5 We went to Jordan. We went to Egypt; and what we did
6 there was train our police officers in the program that
7 was developed for the law enforcement training for safety
8 and SWAT.

9 Q. And did you help create a law enforcement
10 training for safety and survival?

11 A. Yes, I did.

12 Q. When did you do that?

13 A. I was asked to do that in 1992 for the Violent
14 Crimes Task Forces.

15 Q. And that's after you had already been training
16 individuals for nine years or so?

17 A. Yes, that's correct.

18 Q. Let's talk about while you were with the FBI,
19 some of the lesson plans you designed.

20 First tell the Court what a lesson plan is.

21 A. Lesson plans were developed to help our students
22 have the guideline for what they're going to be instructed
23 in and take them through the stages of what the first step
24 would be all the way through that training process.

25 Q. And what areas are we talking about?

1 A. We are talking about several different areas. I
2 had them written down here. I can't see it right here.
3 Oh, here we go.

4 Some of these lesson plans that we did were:
5 making arrests and handling subjects, preparation for an
6 arrest, arrest and search warrants, side surveys, law
7 enforcement operations orders for arrest and search
8 plans. Approaching an entry point. Conventional room
9 entry. Techniques for room clearing. Procedures and
10 equipment for room clearing. Clearing hallways, interior
11 movement, stairways, attics, roofs, crawl spaces, vehicle
12 stops, quick entries, which is sometimes referred to as
13 dynamic entry, use of ballistic shields, entries and
14 vehicle clearing, mechanical breaching, tactical
15 operations and repel master instructor.

16 Q. So what happens with those lesson plans? You
17 write them up and it's FBI property, or explain how that
18 works.

19 A. These lesson plans, they had -- the original
20 lesson plans were there. They were not in very good order
21 nor in detail, so I was asked to rewrite these for the new
22 programs and --

23 Q. Who is it that asked you to do that?

24 A. The supervisors within the FBI at Quantico --

25 Q. Okay.

1 A. -- asked me to do that.

2 Q. And you also wrote some articles for the FBI?

3 A. That's correct.

4 Q. What do you mean by articles written for the
5 FBI?

6 A. They asked me to write different articles on the
7 use of force, how to arrest an individual in a safe
8 manner, how officers can be protected and do their job in
9 a way that is more safe and conducive to safety, and so
10 these articles were written for their benefit.

11 Q. And in addition to your vast experience, what
12 other information did you use to write those articles and
13 to create those lessons plans you talked about?

14 A. At the FBI academy they have a legal library,
15 and in that legal library they have thousands of books
16 dealing with different police topics. I spent many, many,
17 many hours in that library going through different
18 research material, trying to find people that had written
19 different articles, see if it was peer reviewed, and if
20 it's things that we could actually use.

21 Once I pulled it out and we thought we could
22 use it, then we mixed it within our own group of about
23 twelve different individuals.

24 Q. Did you also incorporate the training that you
25 had received?

1 A. Oh, absolutely.

2 Q. And the experience that you had in your various
3 assignments during your tenure in the FBI?

4 A. I did that for myself, but I also did it for
5 other agents that were there that we all had an input into
6 if we thought that process was a good process or not.

7 Q. You also helped to produce a video or videos for
8 the FBI?

9 A. That's correct.

10 Q. Now, when you were on the FBI, were you on any
11 special units? You mentioned SWAT. Were you a member of
12 the SWAT unit?

13 A. Yes, I was.

14 Q. What other units?

15 A. I was also an aviator. I flew aircraft for the
16 FBI.

17 Q. So you were an FBI pilot is what you're telling
18 us?

19 A. Right.

20 Q. Were you a member of the FBI Shooting Board?

21 A. Yes, I was.

22 Q. Tell the Court what that is.

23 A. The Shooting Review Board is held at the
24 headquarters in Washington, D.C., and that board is made
25 up of about twelve different individuals that some of them

1 have tactical background, some of them have a legal
2 background, some have an administrative background, and
3 every shooting that an FBI agent is involved in or every
4 time that an FBI agent discharges a weapon outside of the
5 training area, it could be an accidental discharge, it
6 could be something -- he's cleaning his weapon at home and
7 it goes off. Anytime an FBI agent is involved with a
8 weapon that is fired outside of training that comes to the
9 Shooting Review Board, and the Shooting Review Board
10 analyzes everything that's done for the report that was
11 given.

12 Q. And that means that if an agent -- special agent
13 fires his weapon and actually shoots somebody, that's
14 included within that review board?

15 A. Absolutely.

16 Q. As well as dropping the weapon at home and then
17 discharging it?

18 A. That's correct.

19 Q. And nationally, every single special agent of
20 the FBI or any FBI personnel who's involved in any sort of
21 shooting, that review board that you were a part of
22 reviewed that shooting; is that fair to say?

23 A. That's correct.

24 Q. Okay. Now, you did that for how long?

25 A. I did that for about seven years.

1 Q. And did you always -- was your opinion always
2 that the shooting is justified?

3 A. No, it was not.

4 Q. Now, during your tenure with the FBI, did you
5 have occasion to interview agents or other police officers
6 postshootings? In other words, police officers, agents
7 involved in a shooting, were you involved in the interview
8 of any of those individuals?

9 A. Yes, I was.

10 Q. How many occasions, do you think?

11 A. Well over 200, 200 to 300. I would have to look
12 exactly, but it was well over 200, probably closer to 300.

13 Q. Now, in this case you were hired by my firm?

14 A. That's correct.

15 Q. Escobar & Associates, correct?

16 A. That's correct.

17 Q. And you're being paid for your services?

18 A. That's correct.

19 Q. Now, in this particular case what sort of
20 materials were you provided to review to formulate your
21 opinion?

22 A. I was given 137 different documents from your
23 association to review, and I have a list of that if you'd
24 like to see that list.

25 Q. Why don't you tell us what is on that list or

1 read it if you need to.

2 A. Well, there's depositions, over twenty
3 depositions, statements. There are police reports, there
4 are officers' statements of interviews that they did, a
5 lot of statements many, many, many statements.

6 Q. Did you look at some photographs as well?

7 A. I looked at photographs.

8 Q. Autopsy report?

9 A. Autopsy report.

10 Q. Did you listen to the recorded statement of Mr.
11 Reeves?

12 A. I listened to the recorded statement of
13 Mr. Reeves.

14 Q. Did you get a big, thick police report as well?

15 A. Yes, I did.

16 Q. And what else did you do in terms of your
17 investigation?

18 A. Well, I reviewed all of that material, and then
19 I --

20 Q. How many hours do you think you've spent
21 reviewing the materials and formulating an opinion in this
22 case?

23 A. Probably -- the material that you sent, probably
24 well over 50, 55, 60 hours, then reviewing materials, my
25 own material, probably another 30 hours.

1 Q. Okay. At some point did you come down to
2 Tampa --

3 A. Yes, I did.

4 Q. -- as part of your investigation in this case?

5 A. That's correct.

6 Q. Did you actually go to the Cobb Movie Theater?

7 A. Yes, I did.

8 Q. Tell us about that. You went there. Who did
9 you go with?

10 A. I went with Mr. Escobar.

11 Q. All right. And where did you go?

12 A. We went to the Cobb Theater. We went inside. A
13 manager opened it up for us. It was not open at the time.
14 We went into Theater 10.

15 Q. All right. And that's the theater that's in
16 question in this particular case?

17 A. That's correct.

18 Q. And you knew about that before you went into
19 Theater 10?

20 A. That's correct.

21 Q. All right. Tell me what happens when you get
22 into Theater 10.

23 A. I went in there, and we looked at the different
24 seating arrangements they had back there. We went over to
25 the seating that Mr. Reeves was sitting in. I sat in that

1 chair. I went to where Mr. Oulson --

2 Q. Let's talk about that.

3 So you went into the theater. You sat in the
4 chair that Mr. Reeves was in. How did you know that was
5 the chair that Mr. Reeves was in?

6 A. From the videos and from the reports.

7 Q. And did Mr. Escobar also indicate to you that
8 that was the seat?

9 A. Yes, he did.

10 Q. Tell me what happens. Do you actually sit in
11 the seat?

12 A. Yes, I do.

13 Q. What is the lighting -- what are the lighting
14 conditions in the theater?

15 A. Well, at the time Mr. Escobar and I are talking
16 and it's just a -- opened up the lighting that they had in
17 there, the actual lighting, and after we got done talking
18 the manager turned on the sound.

19 Q. We're going to get there.

20 A. Okay.

21 Q. So when you go in, the theater is not dark; is
22 that what you're telling the Court?

23 A. That's correct.

24 Q. And I know it's a relative term because you
25 probably don't know what the settings were and all of

1 that, but it was not a darkened theater; that's what
2 you're telling us?

3 A. That's correct.

4 Q. So you sit in the seat, and what is your purpose
5 of sitting in the seat? What are you doing there?

6 A. What I'm trying to do, I'm trying see what
7 Mr. Reeves, how he was sitting in that seat, how he felt
8 in that seat.

9 Q. Agree or disagree: You're trying to evaluate
10 what the environment is, at least as it's concerning the
11 physical constraints of the seat, if you will?

12 A. That's correct.

13 Q. And so when you sit in that seat, what do you
14 notice in terms of the seat itself? For instance, are
15 there arms side to side or no arms?

16 A. Arms.

17 Q. And what does that do in terms of restricting
18 your movement or do you even try to move?

19 A. No, I definitely tried to move within that seat,
20 and I tried to move around. I tried to move to the left,
21 to the right, how I would have to stand up in there, how
22 close it is to the seat in front of me, so I'm moving
23 around there, seeing what the restrictions might be.

24 Q. We're going to talk about that.

25 So you're in the seat, and how much do you

1 weigh?

2 A. I weigh about 250 pounds.

3 Q. Okay. And so did you find it easy to move
4 around in that seat?

5 A. Not easy to move very far. I could kind of move
6 my body around in there, you know, trying to get in a
7 comfortable position, but there wasn't much room to move
8 to the left or right.

9 Q. Now, in terms of the seat in front of you,
10 initially, when you sat down, was that seat leaned back or
11 just left in the position with nobody sitting there?

12 A. It was left in the position of nobody sitting
13 there.

14 Q. And tell me what observations you made
15 concerning that seat in terms of distance from where your
16 knees were.

17 A. Well, from the photographs that the crime scene
18 photographers had done, I saw that they had a measuring
19 tape. It was about eighteen inches from the front of the
20 seat that I was sitting in to the back of the seat with
21 just sitting straight up. From where Mr. Reeves was was
22 about 36 inches from his seat to where Mr. Oulson was.

23 Q. Okay. But without getting into measurements, I
24 want to know what you observed, because certainly you were
25 not there with a tape measure.

1 A. No, I was not.

2 Q. So when you were seated there, could you easily
3 reach up and touch the seat in front of you?

4 A. Yes, I could.

5 Q. You said you tried to get up. Tell the Court
6 how it is that you tried to get up.

7 A. Well, when you're standing up there, I wanted to
8 see just how easy it would be to stand up from that
9 position.

10 When you see, because of the seats and the way
11 they're developed, you have to lean forward quite a bit
12 in order to be able to stand up, and because my back is
13 also messed up, I had used the hand rest to kind of push
14 myself up.

15 Q. And what did you observe when you tried to push
16 yourself up? And specifically, I'm talking about what did
17 you observe in terms of your proximity to the row in front
18 of you?

19 In other words, as you were pushing up, did you
20 get closer to the row or did you get further back?

21 A. When I was pushing up, I was right to the back
22 of the row, so I was all the way forward.

23 Q. When you pushed yourself up, where was your head
24 positioned in relation to that seatback?

25 A. Just about where the seatback was.

1 Q. Now, in that initial seat, what else did you do?
2 Did you try moving around?

3 You saw on the video, because you said you
4 looked at the video, Mr. Reeves sticking out his leg. Did
5 you try to move around at all?

6 A. Yes. Mr. Reeves said that he had slid down in
7 the seat, so the back of the seat -- so I wanted to see
8 how that would be, and I tried to do the exact same thing.

9 Q. And were you able to?

10 A. Yes, I was.

11 Q. Now, from that back row did you try leaning the
12 seat back at all of the back row seat?

13 A. Of the back row seat, trying to lift --

14 Q. Lean it back. Did it lean back at all?

15 A. No, not really, because there's a wall back
16 there. It leans back very little.

17 Q. Okay. Now, what's the next thing that you did?
18 Now you sat in that seat. What do you do next?

19 A. Mr. Escobar was over where Mr. Oulson was, and
20 we were kind of interacting, pushing the seat back to see
21 how close we could be to -- if he could reach me, if he
22 couldn't reach me, and then --

23 Q. Okay. Now, Mr. Escobar is not six-four. We can
24 agree with that, I'm sure.

25 A. Absolutely.

1 Q. So tell me what your experience was then with
2 Mr. Escobar, at least, leaning on the seat. Was he able
3 to reach you?

4 A. Yes, he was.

5 Q. What area of your body did he reach to?

6 A. He was able to reach, right, basically almost to
7 my chest by leaning over the seat.

8 Q. And was he pressing on the seat so it was
9 leaning back?

10 A. Yes.

11 Q. Could you tell?

12 A. Yeah, it appeared that's what he was doing.

13 Q. Did you see where his legs or knee was?

14 A. No, I couldn't see from there, but he tried in
15 different positions, and he's leaning back in the chair.
16 He did not try to stand up in the chair, but he was
17 kneeling in the chair on one occasion.

18 Q. Okay. And that's the seat that's not in front
19 of you but the one that would be to your right?

20 A. To the front right, yes.

21 Q. So he's not actually coming between the seats,
22 but he's manipulating the seat to the right?

23 A. He moved over in-between the two seats also.

24 Q. When he moved over between the two seats, was he
25 closer to you when he reached over?

1 A. He was close to me when he came over that second
2 time, when he came through the crack of the seat,
3 basically, and it appeared that he could almost be right
4 on top of me.

5 Q. Okay. Now, from there, what's the next thing
6 that you do in the theater?

7 A. Well, I ended up sitting where Mr. Oulson was.

8 Q. Let's talk about that.

9 So now you change positions, you sit in the seat
10 that Mr. Escobar was near?

11 A. Yes, that's correct.

12 Q. That would be the seat that as you're looking
13 forward, if you're sitting in Mr. Reeves' seat, it would
14 be the seat to the right?

15 A. That's correct.

16 Q. So what did you do in that seat?

17 A. I did the same type of things that Mr. Escobar
18 did. Mr. Escobar was sitting in Mr. Reeves' seat.

19 Q. Okay. So tell me what it is that you did. Now,
20 you're there. Is the seat bottom up or down?

21 A. The seat was down. I was sitting in it. When I
22 stood up, the seat came up and I was leaning back in the
23 seat.

24 Q. When you were sitting in the seat, did you try
25 to reach back at all?

1 A. Yes, I did.

2 Q. Were you able to?

3 A. When I was sitting in the seat?

4 Q. Yes.

5 A. Not when I was not sitting in the seat I didn't
6 try to reach back.

7 Q. Okay. When did you try to reach back?

8 A. When I turned around.

9 Q. So tell us about that. You turned around?

10 A. I turned around, I stood up and turned around
11 and I reached back.

12 Q. All right. And the seat bottom is up or down?

13 A. Up.

14 Q. And your knees are where? Against the seat
15 bottom?

16 A. Basically right against the seat. They were
17 in -- the upper part of the seat is where it comes up, and
18 that's about where my knee is.

19 Q. All right. So you're not kneeling on the seat?

20 A. My knee is there, but I wouldn't say I was
21 kneeling on the seat.

22 Q. You're not kneeling on the seat when it's down?

23 A. No, I'm not.

24 Q. The seat is folded up?

25 A. That's correct.

1 Q. And your knee is contacting the seat --

2 MR. MARTIN: Leading, Judge.

3 BY MR. MICHAELS:

4 Q. I'm trying to understand. Do you agree with me
5 or disagree with me that your knee was touching the bottom
6 of the seat as the seat was in the up position?

7 A. That's correct.

8 Q. So you agree with me?

9 A. Yes, I do.

10 Q. All right. Now, when you're in that position,
11 are you right in front of the seat or over to the side?

12 A. I was -- I did both. I was right in front of
13 the seat and moved over to the side.

14 Q. Tell us about right in front of the seat,
15 what -- you reached over?

16 A. I reached over, and I couldn't get as close as I
17 could when I moved over.

18 Q. When you say as close, how close did you get
19 from the position where you're in front of the seat?

20 A. When I was standing right in front of the seat,
21 I could probably reach over and just about touch it, but
22 not quite.

23 Q. Okay. And touch Mr. Escobar?

24 A. Yes, that's correct.

25 Q. We can agree, not only is he not six-four but he

1 doesn't weigh 250 pounds?

2 A. That's correct.

3 Q. And so when you reach over, you can almost touch
4 him, you say. How tall are you?

5 A. Six foot.

6 Q. Okay. You're not six-four?

7 A. No, I'm not.

8 Q. Now, when you reach over, are you -- is your
9 hand on the back of the chair? By that I mean the part
10 you lean back in --

11 A. Yes.

12 Q. -- or where is your hand?

13 A. My hand was on the back of seat.

14 Q. When you say you're reaching over, you're
15 reaching over with your right or your left hand?

16 A. I'm reaching over with my right hand.

17 Q. Now, you said you had a bad back. How were you
18 able to balance yourself? Tell me -- explain to us what
19 it is that you were doing to accomplish that sort of
20 position.

21 A. Well, in order to accomplish that, my knee was
22 on the back of the seat. My hand was on the back of the
23 seat. My knee was on the back of the seating part, and I
24 was pushing over and trying to reach over with my hand to
25 see how far I could go.

1 Q. So you were pushing on the back of the seat that
2 actually moves a little bit; is that what you are
3 explaining?

4 A. Yes, that's correct.

5 Q. Now, after you do that in front of the seat,
6 what's the very next thing that you do?

7 A. Well, the next thing we did, we had the manager
8 turn on the sound.

9 Q. Did you move towards the -- in-between the
10 seats?

11 A. Yes, I did move in-between the seats, yes.

12 Q. What did you do -- what did you do once you were
13 in-between the seats?

14 A. I did the same thing. I tried to move over
15 toward Mr. Escobar to see how much I could reach over.

16 Q. Were you able to get close or not?

17 A. Yes. Closer, yes.

18 Q. Were you able to touch him?

19 A. Yes.

20 Q. In what area?

21 A. I could touch him in his -- pretty much his --
22 where he's sitting back where his hands are, in that area.

23 Q. And -- well, I'm not sure --

24 A. Right around the chest area. I could get in
25 that close.

1 Q. Okay. What's the next thing that happened in
2 the movie theater?

3 A. We had the manager turn the sound on and then
4 the preview, and I don't remember which one it was, and
5 turn the lights the way the lights would have been at that
6 time.

7 Q. Okay. And in terms of how the lights really
8 were on the day this all happened -- agree or disagree --
9 you don't really know what it's like -- what the lights
10 were physically like on the day this happened?

11 A. Right. No, just what the manager said, this is
12 what it would have been on that day.

13 Q. Okay. And so you're there. The lights are,
14 according to the manager anyway, at preview level, and
15 you're watching some preview but we don't know which one,
16 right?

17 A. That's correct.

18 Q. What do you do -- where are you when you're
19 watching that?

20 A. We do the same thing for Mr. Reeves' seat to
21 Mr. Oulson's seat. We kind of moved around. Mr. Escobar
22 was moving back and forth to see how much I could see of
23 him when he was moving around. It was just the two of us,
24 so I could follow him okay.

25 Q. Okay. So the purpose of that, from sitting in

1 Mr. Reeves' seat, was what?

2 A. At that time, to see with the lights down, to
3 see how clearly I could see Mr. Escobar.

4 Q. Okay. And agree or disagree with me: You also
5 did that to get some idea of Mr. Reeves' perspective.
6 Agree or disagree?

7 A. I agree.

8 Q. Now, part of what you did in this case, you
9 talked about the materials that you looked at. Let's talk
10 a little bit about those materials.

11 You said you looked at the depositions. Would
12 that be depositions of both laypeople or patrons and law
13 enforcement as well?

14 A. That's correct.

15 Q. And did you review statements by laypeople or
16 the patrons in the movie theater?

17 A. Yes, I did.

18 Q. And did you consider those statements in
19 formulating your opinion in this case?

20 A. No, I read through all of them, but I did not
21 use it because I thought it was really contaminated at
22 that point.

23 Q. Let's talk a little bit about that.

24 As an FBI agent, from the very time you began in
25 Quantico, tell us about your training in interviewing

1 large groups of people?

2 A. One thing that's pointed out, it was pointed out
3 very clearly, right from the very beginning is that you
4 have to separate witnesses in order to make sure that you
5 get statements that is in their mind, not words from
6 somebody else.

7 Q. Why is that a big deal?

8 A. Because people have a tendency to want to fill
9 blanks, and when they hear what other people have to say,
10 they have a tendency to put that in their statement,
11 thinking that that's what they did see or hear.

12 Q. So what does your training tell you in terms of
13 considering statements that have been subject to this
14 contamination?

15 A. Well, what it says is that you have to request
16 everything and be as thorough as you possibly can when you
17 read any of these documents, so whether or not it's
18 contaminated or not, to see if there's some kind of
19 consistency.

20 So I did. I did read them, but when I formed
21 my opinion, my opinion was not based on much of what they
22 said at all.

23 Q. And what is it that gave you the idea, or why
24 are you of the opinion that these statements are
25 contaminated witness statements here?

1 A. Because several of the witnesses within their
2 depositions stated that they had talked to other people.
3 They had talked to each other. They had talked to
4 spouses, you know, before they made their statements, and
5 that large groups of people were standing around talking
6 about what happened, discussing the case.

7 Q. Okay. So they overheard other people talking
8 about it?

9 A. They overheard other people talking and were
10 involved in some of the discussions of what happened.

11 Q. So you actually went to the movie theater.
12 There was a video in this case. Certainly you've had a
13 chance to review the video?

14 A. Yes, I have.

15 Q. And several clips?

16 A. Yes, I have.

17 Q. And several versions of the video?

18 A. Yes, I have.

19 Q. Mr. Martin showed you a video during your
20 deposition?

21 A. That's correct.

22 Q. Clips and all of that? Do you recall that?

23 A. Yes, I do.

24 Q. So it would be fair to say, that you had a
25 chance to review the video in this case?

1 A. Yes, I did.

2 Q. Now, did you use your review of the video as
3 part of your formulation of your opinion in this case?

4 A. Yes, I did.

5 Q. What else did you do in this case?

6 A. Well, I -- after reviewing all of the material,
7 the videos, the photographs.

8 Q. The reports?

9 A. The reports, everything that was -- that was
10 given to me by you in looking at my background, my past
11 experience.

12 Q. Well, did you also interview Mr. Reeves?

13 A. Yes, I did.

14 Q. Well, when you came down to the movie theater,
15 you interviewed Mr. Reeves, right?

16 A. That's correct.

17 Q. All right. Tell us about that. Where was the
18 interview conducted?

19 A. At Mr. Escobar's office.

20 Q. How long did that interview last?

21 A. Probably no more than an hour.

22 Q. All right. Now, did you take notes?

23 A. No, I did not.

24 Q. Did you record the interview?

25 A. No, I did not.

1 Q. What was the purpose of interviewing Mr. Reeves?

2 A. I already read all the statements and had a very
3 good understanding of what he said, and what I wanted to
4 do was clarify in my own thinking some of the questions
5 that I had about his statements and things he had said, so
6 I just wanted to talk to him about that.

7 Q. Okay. And had you, before this, before you
8 interviewed Mr. Reeves, in addition to all of the
9 material, did you actually listen to the interview
10 Mr. Reeves gave Detective Proctor and Koenig at the scene?

11 A. Yes, I listened to that twice.

12 Q. Okay. Now, tell me about the interview with
13 Mr. Reeves. What does he tell you?

14 A. There was nothing really different from what his
15 statement was, that his oral statement said, and so when I
16 talked to him, I really didn't see much difference. I
17 just got more clarification about his fear and things like
18 that.

19 Q. And tell the Court, what sort of clarification
20 did you get concerning Mr. Reeves' fear?

21 A. Well, he said in his statement that he was
22 scared shitless, that he was really scared.

23 Q. Now you're talking about what he said in his
24 statement to whom?

25 A. To Detective Proctor.

1 Q. Okay.

2 A. So I asked him about that, "What do you mean?
3 Why would -- were you scared? What was it that scared
4 you?

5 And he explained to me that he was scared from
6 the demeanor, the words, the actions of this individual,
7 was totally out of context of anybody being in a theater,
8 and he was explaining that to me, why he felt that fear.

9 Q. Well, let's look at Mr. Reeves' statement that
10 you have there in front of you?

11 A. I have a statement.

12 Q. Again, I'm talking about the statement he gave
13 to law enforcement that day.

14 A. That's correct.

15 Q. Now, Mr. Reeves says to Proctor, and it's on
16 page 79 of the report, it's line 34 of the transcription
17 that we were provided from the State, Mr. Reeves says to
18 tell you the -- it says, "Damn," there. I believe the
19 recording accurately says, "Dang, I hate to be here. This
20 is crazy. It was absurd. I tell retired cops that you
21 don't do this."

22 What did Mr. Reeves mean by that? Did you talk
23 to him?

24 A. I did talk to him about --

25 Q. Did you talk to him about that particular line?

1 A. Not exactly about that particular line.

2 Q. So then let's talk about this.

3 Tell me what it is regarding law enforcement --
4 law enforcement officer involved in a shooting, a
5 justified shooting. In your interview, how does that law
6 enforcement officer feel?

7 A. It's probably one of the worst experiences that
8 you'll have, taking another individual's life, and every
9 police officer I talk to basically said that, that it's
10 not something that you ever want to be involved in.

11 Q. Okay. And so that's a possible explanation,
12 even though you didn't ask --

13 MR. MARTIN: Your Honor, I'm going to object.
14 That calls for speculation.

15 MR. MICHAELS: I'll move on, Judge. He's right.

16

17 BY MR. MICHAELS:

18 Q. Let me ask you this:

19 Mr. Reeves says "But I've never had anybody jump
20 on my ass like that."

21 MR. MARTIN: Page and line, please?

22 MR. MICHAELS: Line 35, same page.

23 MR. MARTIN: What page are you on there?

24 MR. MICHAELS: It's the printed-out transcript.

25 Let me get you a copy of it, if I may.

1 May I approach, Judge? I'll show Mr. Martin.

2 THE COURT: You may.

3 MR. MICHAELS: This way we can be, literally on
4 the same page.

5 BY MR. MICHAELS:

6 Q. All right, Doctor?

7 A. Okay.

8 Q. Okay. Now, I know I asked you before if that's
9 how Mr. Reeves felt and, of course, you can't say that he
10 felt that, you know, he said this for that reason, but let
11 me ask you this:

12 Would that sort of statement be consistent with
13 that sort of sentiment that you described regarding law
14 enforcement postshooting?

15 A. Yes, it would be.

16 Q. Now, let's talk about the next line down which
17 is starting on 35, "I've never had any" --

18 A. What page are you on?

19 Q. Same page 3. I'm sorry, 3, line 35. Do you see
20 the little number? There you go. Page 3, line 35. Okay.
21 All right.

22 Mr. Reeves says "But I've never had anybody jump
23 on my ass like that."

24 Let's talk about that. Is that consistent with
25 the statements that he made to you during your interview?

1 A. Yes, it is.

2 Q. Tell us about that. What do you know factually
3 about, "Never having anybody jump on my ass like that"?

4 A. Well, I asked him about that and he said in 27
5 years being a police officer he never had anybody get up
6 into his face like that, and he said it was frightening.
7 It was very frightening that somebody did that. He said,
8 "It totally took me by surprise."

9 Q. Okay. Let's go to page 5 --

10 MR. MARTIN: Excuse me, Mr. Michaels.

11 Judge, would you like a copy of this transcript
12 so can you follow along?

13 MR. ESCOBAR: I think she's got one.

14 THE COURT: I did have one but it's in my
15 office. Sorry. If you've got an extra one, I'd
16 appreciate it. Thank you.

17 BY MR. MICHAELS:

18 Q. Page 5, line 4, Mr. Reeves tells Detective
19 Proctor, "He kept on hollering. I'm not sure what he
20 said, to be honest with you."

21 Do you have any kind of proof that you can point
22 to that Mr. Oulson kept on hollering?

23 A. No, I have no proof that he kept on hollering
24 except from what Mr. Reeves said.

25 Q. And certainly the video does not have any sort

1 of audio.

2 A. That's correct.

3 Q. Is there anything that you see in the video that
4 may be indicative of somebody being angry and that sort of
5 behavior?

6 A. I see different movements from the row that Mr.
7 Oulson was in.

8 Q. Okay. Again, page -- line 5 and 6, same page,
9 "Not sure what he said, to be honest with you. He said
10 something, and that led me to believe he was going to kick
11 my ass."

12 Now, again, is that consistent with Mr. Reeves'
13 statement to you?

14 A. Yes, it is.

15 Q. And the previous statement that we talked about
16 in terms of he had never been in that situation before?

17 A. That's correct.

18 Q. Is there anything that you can point out in the
19 video that says, "Oh, that is where he's saying it"?

20 A. Yes.

21 Q. Is there is anywhere on the video that you can
22 point and say, "Yeah, I see where Mr. Oulson is saying
23 it"?

24 A. No, not where I can see it, no.

25 Q. So, again, you're basing your belief on what

1 Mr. Reeves says?

2 A. What he says and the video.

3 Q. And the video which you talked about earlier
4 where you see that movement towards Mr. Reeves?

5 A. That's correct.

6 Q. So looking briefly, line 7, "I know I can't get
7 anywhere," so what evidence do you have or what backs up
8 that statement that Mr. Reeves is making to Detective
9 Proctor?

10 A. I sat in that chair in the theater, and I knew
11 it was extremely difficult to go anywhere.

12 Q. Did you all observe or not observe the distance
13 between Mr. Reeves' chair and the chair in the very front?

14 A. Yes, I did.

15 Q. Is that part of your analysis in determining
16 that that's a truthful statement and that could be backed
17 up with physical evidence?

18 A. Yes.

19 Q. And did you have any reason to disbelieve
20 Mr. Reeves on any of these statements?

21 A. No, I didn't.

22 Q. Now, Mr. Reeves says, "So I'm leaning all the
23 way back in my chair." Again, is that something that we
24 see on the video?

25 A. Yes.

1 Q. Now, line 13 of the same page, Mr. Reeves says,
2 "My left arm is out in front of me." Now, let's talk a
3 little bit about that.

4 When you interviewed Mr. Reeves in Tampa the day
5 you came down to the movie theater, does Mr. Reeves tell
6 you that same thing?

7 A. No, I really didn't ask him about that.

8 Q. Did -- can you see that in the video at all?

9 A. I do not see that in the video.

10 Q. Now, is that what a trained police officer would
11 do, put his hand down in front?

12 A. If -- the trained police officer would probably
13 put his hand up to block whatever strike is coming in at
14 him.

15 Q. If a police officer was in danger of great
16 bodily harm or death, is a police officer going to put his
17 hand in front before he draws his pistol?

18 MR. MARTIN: Judge, I'm going to object. That
19 calls for speculation. We're talking about every
20 police officer. There are so many variables in the
21 situation.

22 BY MR. MICHAELS:

23 Q. In your training in your --

24 MR. MARTIN: Judge, I have an objection.

25 MR. MICHAELS: I'm sorry. I was moving on.

1 THE COURT: Sustained.

2 Rephrase.

3 MR. MICHAELS: She sustained it, I thought.

4 THE COURT: Uh-huh.

5 BY MR. MICHAELS:

6 Q. So in your vast experience of being trained and
7 training, is it your experience that police officers are
8 trained to put their hand in front of them if they're
9 about to discharge their firearm?

10 A. No -- well, no, it isn't.

11 Q. Now, Mr. Reeves says, line 15, starting at the
12 end of 14, "Suddenly my head was to the right, so he hit
13 me with something. I assumed it was his fist, but I don't
14 know."

15 Did you -- could you see anything in the video
16 where you can identify a hundred percent sure that
17 Mr. Reeves is getting hit with something?

18 A. Not a hundred percent sure, no.

19 Q. Now, what sort of evidence do you have, whether
20 it's interview, photographs, or other evidence, that
21 Mr. Reeves may have been hit with something other than a
22 fist?

23 A. Yes.

24 Q. What evidence is it that you can point to that
25 would suggest that?

1 A. Two things: That there is a photograph of the
2 cell phone between Mr. Reeves' feet. So we know that that
3 cell phone ended up there, and in the video I saw an arm
4 coming in. I saw a light. I don't know what that light
5 was, but something happened at that point in time.

6 Q. Did Mr. Reeves also tell you same thing in your
7 interview of him in Tampa when you came down to go to the
8 movie theater?

9 A. Yes, he did.

10 Q. Line, starting at 16, "Something was wrong with
11 my left eye. I had them wash it out for me, so he hit me
12 with his fist or something. I think he had a cell phone
13 in his hand because I saw the -- I saw the -- the -- the
14 blur of the screen."

15 Again, are we talking about evidence to back
16 that up, the same sort of thing you just talked about, the
17 photograph?

18 A. That is correct.

19 Q. Video?

20 A. Yes, that's correct.

21 Q. Mr. Reeves' statement.

22 A. That's correct.

23 Q. Again, with the left hand, we already talked
24 about that. "Hit me in the face, knocks my glasses
25 sideways."

1 Do you see anything in the video or have any
2 evidence that his glasses were knocked sideways?

3 A. No, I don't. Just his statement.

4 Q. Okay. And, again, there are witnesses that
5 you've discounted because of contamination, so they're not
6 in this mix; is that fair to say?

7 A. That's correct.

8 Q. Page 6, line 5, Reeves says, "But, uh, and I,
9 and good heavens, I didn't mean to do that. That was
10 just -- I had to say that I've counseled cops for" --

11 "Question: How many rounds did you shoot?"

12 "One. I guess you could say I was scared
13 shitless."

14 So did you question Mr. Reeves, specifically on
15 what he meant by the phrase at the end of that first
16 sentence, "I didn't mean to do that"?

17 A. I didn't ask him specifically that.

18 Q. Okay. Certainly the last part of it that seems
19 to be a continuation of the sentence that he was scared
20 shitless, you talked to Mr. Reeves about that?

21 A. Yes, I did.

22 Q. And was that consistent with his statement to
23 you?

24 A. Yes, it was.

25 Q. Was that also consistent with anything else that

1 you did? For instance, your theater visit, that someone
2 would be scared?

3 MR. MARTIN: Your Honor, I object. That calls
4 for speculation.

5 THE COURT: Sustained.

6 MR. MICHAELS: Well, Judge, I think --

7 MR. MARTIN: Judge, that calls for speculation.
8 If he's trying to equate that with Mr. Reeves or if
9 someone else would be scared, there's too many
10 variables.

11 MR. MICHAELS: Judge, he made an evaluation in
12 this case, and he's going to formulate an opinion
13 about whether the use of force here was justified.
14 Certainly when we talk about whether or not someone
15 is scared, we have to consider certain factors.

16 Obviously we can't cut their brain open and look
17 at the scary part and see if that's been affected,
18 but certainly we can say, Well, he's telling me this,
19 I saw the video, I see this individual coming over on
20 three occasions, and by sitting in the chair and
21 seeing the close proximity I can understand why he's
22 scared.

23 It is the same thing that any investigator would
24 do and certainly an expert in formulating an opinion
25 by putting himself in the place, I think he can

1 explain that and make a determination as to whether
2 or not he used that fear in his formulation of his
3 professional opinion.

4 THE COURT: All right. I will overrule.

5 MR. MICHAELS: Okay.

6 BY MR. MICHAELS:

7 Q. Anything else aside from Mr. Reeves telling you?

8 A. No, just from what Mr. Reeves is telling me and
9 what I see in the video.

10 Q. Okay. And what about being in the theater?

11 A. Being in the theater. I sat in his position. I
12 had the lights down. Mr. Escobar was interacting with me
13 at that point, and I was trying to look at this in an
14 objectively, reasonable way to understand what anybody
15 with his background and experience would feel in that I
16 have many of the same things that Mr. Reeves has; bad
17 back, bad knees, bad elbows --

18 MR. MARTIN: Excuse me, Judge. I'm going to
19 object to this line of questioning and the response.

20 He's saying, "I'm just like Mr. Reeves, so if I
21 was scared, he's scared." I object to that. That's
22 pure speculation. The way he's answering the
23 question is pure speculation.

24 MR. MICHAELS: Judge, again, an expert can base
25 their opinion on not only education, not only

1 provocation but certainly their own personal
2 experience, professional experience as well, so he's
3 just answering the question. I'll move on, but he
4 just answered the question.

5 THE COURT: I'm going to sustain as to that one.
6 Move on.

7 MR. MICHAELS: All right.

8 BY MR. MICHAELS:

9 Q. Now, Mr. Reeves tells you, line 13 of the same
10 page, "As you get older, you find out you're a physical
11 wreck," right?

12 A. That's correct.

13 Q. Did you look at any x-rays or radiology reports?

14 A. I did not.

15 Q. Can you even read those?

16 A. I can not.

17 Q. Did you have any reason to believe Mr. Reeves in
18 that statement?

19 A. I just know that physiologically that when you
20 get older, things don't really work the way it was when
21 you were thirty years old, so, yeah, I have reason to
22 believe that could happen.

23 Q. And as part of that, did you actually delve and
24 look at your own personal experience?

25 A. Yes, I did.

1 Q. Page 6, line 34 -- line 33, I will start there:

2 "Proctor: I hear you. Did, um, your wife
3 where -- where was your wife at?"

4 "Reeves: She was sitting on the right-hand side
5 of -- if she's paying attention, and bless her heart,
6 she's -- you know, there's no justification for what
7 happened in there."

8 And so did you ask Mr. Reeves specifically,
9 about that statement?

10 A. No, I did not.

11 Q. Page 7, line 19.

12 "Reeves: His wife was talking. Whoever was
13 with him was trying to hold him back."

14 Do you see any evidence of that in the video?

15 A. From what Mr. Reeves was saying is the -- really
16 the only thing that I see, that somebody was trying to
17 hold somebody back.

18 Q. What about any physical evidence in terms of
19 autopsy or other medical reports that you received?

20 A. What I did see in the autopsy is that where he
21 was shot in the chest, that Mrs. Oulson was also shot in
22 the hand -- in the left hand would be consistent with her
23 putting her hand up in front of his chest in the bullet
24 path.

25 Q. So, because you saw -- you actually -- did you

1 see photographs of Mrs. Oulson's hand?

2 A. Yes, I did.

3 Q. Line 22 -- page 7, line 25.

4 "I think when I leaned over and asked him to
5 turn his cell phone off, he told me to get the "F" out of
6 his face, so I knew right away that" --

7 What about that? Mr. Reeves is saying that he
8 leaned over and asked Mr. Oulson. Does that -- what Mr.
9 Reeves told you in his interview, is that consistent?

10 A. Yes, it is.

11 Q. Is there anything on the video that would
12 indicate or make you think that that's a true statement?

13 A. Yes, there is.

14 Q. What is it that you observed on the video.

15 A. I see him move forward in his seat three times.
16 I don't know what he's doing at that time, but I see him
17 moving in his seat, and it looks like he appears to go
18 forward.

19 Q. Is that the time period before he goes to the
20 manager?

21 A. That's correct.

22 Q. Page 7, line 34, Reeves says "It was enough for
23 me to try to look for a way out, and my wife was saying
24 when I got up to go tell the manager. He says, 'Why don't
25 we' -- we should have just moved is what we should have

1 done, and she said that after the shooting, I think."

2 Did you ask Mr. Reeves specifically, about that
3 statement?

4 A. I did ask him about that.

5 Q. And what did he tell you?

6 A. He basically told me that at that point he
7 believed that Mr. Oulson was just being mouthy and there
8 wasn't a problem. He was just going to go to the manager
9 and resolve it, come back in, sit down, and enjoy the
10 movie. He thought that was it, so he didn't feel like he
11 really needed to move.

12 Q. Reeves tells Proctor, page 88, that's page 10 as
13 it's printed, line 27:

14 "If I had thought that I wasn't going to get
15 beat up, it would have never happened. I was -- I was
16 pretty confident after being hit one time that he wasn't
17 going to stop."

18 Again, is that consistent with your interview
19 with Mr. Reeves?

20 A. Yes, it is.

21 Q. Did you see anything in the video to back up
22 that statement?

23 A. Yes, I did.

24 Q. What do you see?

25 A. I see in the video that arm appears -- arm and

1 part of the body coming in and that light coming across,
2 and that's when Mr. Reeves said he was hit, at that point
3 in time.

4 Q. Okay. Then do you see a second time an arm
5 coming across?

6 A. In about eleven seconds later I see an arm
7 coming across, and then that's when the popcorn comes out
8 of his hand and then an arm comes back in a third time.

9 Q. Page 10, line 35, Reeves says, "No, you got to
10 know, the lady that was sitting one seat away from me, she
11 should have seen everything."

12 Did you talk to Mr. Reeves about that?

13 A. I didn't really ask him about that.

14 Q. Okay. Now, there had been some suggestion that,
15 you know, Mr. Reeves made this up because he's a law
16 enforcement officer and had time to think.

17 Is there anything in that statement that would,
18 in your opinion, would be indicative of just the opposite?

19 A. He's pretty consistent with what he's saying in
20 his statement and what I talked to him about, and as a law
21 enforcement officer, once he was handcuffed and put in the
22 car, he should have known at that time not to speak to
23 anybody, at that time. That's what he should have done.

24 Q. Does it seem here like he's trying to hopefully
25 get the police to talk to somebody so they could verify

1 what he's telling them?

2 A. Yes. What he told me about talking, he said, "I
3 wanted them to understand what happened," because he says,
4 "I felt like I was the person being assaulted here. I
5 wanted them to understand" --

6 MR. MARTIN: Excuse me, Judge. That's
7 nonresponsive to the question. We're talking about
8 whether or not he was suggesting to the police you go
9 talk to this lady, and all of a sudden we have an
10 answer that's out of the blue that's totally not
11 responsive to that question. I don't know where it
12 came from.

13 The question was about talking -- going and
14 talking to the lady, and then he never responded. I
15 don't know what he's talking about.

16 MR. MICHAELS: He's in the middle of responding
17 and he got cut off, so I'm not sure what the response
18 was going to be.

19 MR. MARTIN: Well, the response would have kept
20 going, was that he was sitting in the car and he
21 shouldn't have spoke and that sort of thing, and it
22 was nothing about going to talk to the lady,
23 because -- not Mr. Knox, Mr. Knox; I apologize --
24 Dr. Hayden has already indicated he didn't talk to
25 him about that.

1 Now he's asking him to speculate what he meant
2 by that, so it's speculation and it's nonresponsive.
3 That's my legal objection.

4 THE COURT: All right.

5 MR. MICHAELS: Part of the problem, there's been
6 a suggestion here that Mr. Reeves fabricated this and
7 has these, quote/unquote, self-serving statements, so
8 since we are going to be talking about those, this is
9 a statement that appears on the face of it --
10 certainly the suggestion of it not to be self-serving
11 at all: Go talk to somebody else, please, because
12 they must have seen it, and everything is going to be
13 all right if you talk to them.

14 THE COURT: Okay. I got that question, and
15 Mr. Martin is right. I don't recall hearing -- all I
16 recall hearing is that he didn't really ask him about
17 that statement, so let's move on.

18 MR. MICHAELS: All right.

19 BY MR. MICHAELS:

20 Q. Now, you didn't ask Mr. Reeves about that
21 statement, but let me ask you: Would you consider such a
22 statement in formulating your opinion in this particular
23 matter?

24 A. The statement you're talking about --

25 Q. That Mr. Reeves made, where he's saying, you

1 know, "You've got to know the lady that was sitting one
2 seat away from me. She should have seen everything."

3 Does that help you determine whether or not
4 Mr. Reeves is being truthful in your interview with him?

5 A. Yes, it does.

6 Q. How is that?

7 A. Because he wants the police to go talk to other
8 people in there. Somebody should have seen what was going
9 on. "They would be able to tell you what I'm saying is
10 truthful."

11 Q. Now, tell us regarding your training what's
12 important if an adversary has a size advantage. Why are
13 you looking at size?

14 A. Well, size -- every police officer is trained to
15 evaluate when they go into a situation. Size is a
16 consideration; is that person a large person or a small
17 person? You know, what is that person doing? You're
18 evaluating everything, and size is one of those things
19 you're going to evaluate.

20 Q. Does that help an individual, a trained police
21 officer make a determination in assessing the potential
22 danger of the individual? Yes or no?

23 A. A police officer is going to do that, yes.

24 Q. Now, in terms of age, again, assessment of
25 danger and of threat, does an age difference play into

1 that sort of assessment, in police training?

2 A. Absolutely.

3 Q. Tell us about that.

4 A. If you're going up against a younger individual
5 and you're an older police officer, you don't have the
6 skills that maybe you had when you were younger.

7 Q. What about this: What if you're a younger
8 police officer and you're going against a
9 seventy-year-old?

10 A. If you're a younger police officer going against
11 a seventy-year-old, you probably have an advantage.

12 Q. Now, let's talk about confined space. You
13 described you went to the theater. You sat in the chair.
14 How does that play into the assessment of what a person is
15 able to do and a trained police officer not able to do in
16 terms of gauging what their -- the proper reaction is?

17 A. Well, when you're sitting in that seat, you're
18 trying to figure out, at that point, is there a way to get
19 out of that seat? Is there a way that you could flee the
20 area and get out of it?

21 I didn't believe that there was any kind of a
22 way that he could have gotten out of that situation as it
23 occurred that fast.

24 Q. You know that, why?

25 A. I was sitting in that position.

1 Q. Could you get out of the seat without coming
2 towards where the threat was coming from?

3 A. I could not.

4 Q. Could you go to the side somehow?

5 A. I could not.

6 Q. Could you go back at all?

7 A. No, I could not.

8 Q. Language, use of language, how does that play
9 into the whole idea of assessing what a threat is and what
10 the proper response of that threat is?

11 A. Police officers are taught from the very
12 beginning: You have to assess a person by everything that
13 you're seeing; the body language, the actual physical
14 language, a person threatening you. What is that person
15 doing? You're assessing all of those things that are
16 going on.

17 Q. What about the idea of, you know, as far as your
18 training and -- both training you received and training
19 you imparted to others, tell us about the idea of time and
20 place. In other words, because this was happening in a
21 movie theater, does that make a difference?

22 A. Yes, it does.

23 Q. Why is that?

24 A. Well, you're dealing in a different environment.
25 It's a darkened area. It's loud noises. There's other

1 people in the theater. You're not able to gather all of
2 the information by visual.

3 Q. What about the idea that this whole behavior is
4 out of place in a movie theater?

5 A. Absolutely. It's not characteristic of what
6 would be happening.

7 Q. What about unexpected movements? For instance,
8 a hypothetical:

9 An individual is sitting in a movie theater,
10 he's a trained police officer, and now all of a sudden
11 somebody in front of him or a little off to his right
12 suddenly jumps up and starts cussing. Should that officer
13 be alarmed and be on alert at that point?

14 A. He better be.

15 Q. And if that individual actually moves over now,
16 does that make the threat even greater?

17 A. Yes, it does.

18 Q. And if that police officer is confined to a
19 small space, again, does that make the threat greater?

20 A. Yes, it does.

21 Q. If that individual on the other side is actually
22 moving over with hands or whatever, does that make the
23 threat greater?

24 A. Yes, it does.

25 Q. Now, let's talk about hands and feet as weapons.

1 Are you aware that hands and fists are
2 weapons -- because it doesn't appear to be any feet
3 involved here; at least there are no allegations of
4 that -- tell me about what your experience is with hands
5 and fists. Have you seen hands and fists used as weapons
6 in your time in the military in Vietnam?

7 A. Yes, I have.

8 Q. What sort of damage could hands and fists cause?

9 A. It can do great bodily harm to you. It can kill
10 somebody.

11 Q. What about cut somebody open?

12 A. Yes.

13 Q. So that they need stitches?

14 A. Yes.

15 Q. What about fracture of the eye socket?

16 A. Yes.

17 Q. What about the little bone around the temple?

18 A. There's several bones in your face that can be
19 broken very easily by being hit.

20 Q. In your experience as a special agent for the
21 FBI and a supervisory special agent, have you also
22 witnessed that in personal experience with injuries,
23 serious injuries and even death caused by hands or fists?

24 A. Yes, I have.

25 Q. Just once or twice?

1 A. Several times.

2 Q. Now, let's talk about objects to the head. Tell
3 us about the FBI policy regarding use of nonlethal force,
4 fists, asps, batons if they're applied to the head and
5 neck area?

6 A. The one thing that's taught when you're doing
7 defensive tactics and you're learning about use of force,
8 deadly force, you have the head -- if you go to the head
9 with any kind of a hard object, it could be your fist, it
10 could be anything else, it's considered deadly force at
11 that point in time.

12 Q. Okay. Now, in this case have you formulated an
13 opinion as to whether or not Curtis Reeves reasonably
14 believed that his actions were necessary on that day in
15 the theater to prevent imminent great bodily harm or
16 death?

17 A. I have.

18 Q. What is your opinion?

19 A. My opinion is that he believed that there was
20 going to be imminent harm or danger to him, great bodily
21 harm or he could be killed, and I believe he honestly
22 believed that, in what his perception was.

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

24 THE COURT: This would be a good time for a
25 break.

1 MR. MARTIN: That would be good, Judge, because
2 I need to set up my computer and get some technical
3 things done. Can we get 15 minutes?

4 THE COURT: All right. Let's take 15 minutes.

5 Dr. Hayden, you're free to take a break as well,
6 but you can't discuss your testimony with anyone at
7 this point. And here's your copy back. Thank you.
8 I got mine out of my office, of the transcript.
9 Thank you.

10 (Recess taken.)

11 CROSS-EXAMINATION

12 BY MR. MARTIN:

13 Q. Good morning.

14 A. Good morning.

15 Q. During the course of the conversation that you
16 had with Mr. Michaels -- let me start over.

17 What I will try to do, I want to go through
18 certain topics with you. I'm going to jump around a
19 little bit, but what I plan to do is tell you when I
20 change from topic to topic so that you and I can talk
21 about the same thing. Fair enough?

22 A. That's fine.

23 Q. When you say, "You had a conversation with,"
24 we're changing topics and moving on. All right?

25 You had a conversation with Mr. Michaels during

1 direct examination where you indicated that you were going
2 through Mr. Reeves' statement that you saw, at least in
3 your mind, in the video Mr. Oulson engage in certain
4 conduct by turning in his seat or whatever he did. There
5 was a lighted object. Do you remember that conversation?

6 A. That's correct.

7 Q. All right. And you said that that is where
8 Mr. Reeves says he was hit. Do you remember that?

9 A. That's correct.

10 Q. All right. Then you had another conversation
11 with Mr. Michaels dealing with reaching in towards
12 Mr. Reeves. Do you remember that conversation?

13 A. That's correct.

14 Q. All right. Now, Mr. Reeves told you that he
15 believed that he was hit with a fist?

16 A. He said a fist. It could have been a fist. He
17 didn't necessarily know it was a fist or not, but he said
18 it could have been.

19 Q. All right. In fact, from his statement you know
20 that he said that he was hit with such force that he was
21 dazed. Do you remember that in his statement?

22 A. Yes, I do.

23 Q. You'll have to speak up just a little bit.

24 A. I'm not close to -- I could get closer.

25 Q. There you go. I appreciate that.

1 A. Thank you.

2 Q. He also indicated that when he was hit, that his
3 glasses became askewed on his face. I know he didn't use
4 the word "askewed," but they were not knocked off but
5 they've become not adjusted correctly on his face. Do you
6 remember that?

7 A. Yes, I do.

8 Q. All right. You also indicated to Mr. Michaels
9 that you took it upon yourself to discount the patrons'
10 statements because, in your opinion, you believed they
11 were contaminated, not worthy of your consideration,
12 right?

13 A. Not quite in those words, no.

14 Q. All right. You did not factor those into your
15 opinion, correct?

16 A. That's correct.

17 Q. All right. What you relied on, you relied on
18 the statement of Mr. Reeves along with your perceptions of
19 what occurred in the video, correct?

20 A. That's correct.

21 Q. All right. Now, in making a determination as to
22 what information you're going to use in order to form a
23 basis of your opinion, you would want to make sure that
24 that information is accurate, true, and correct?

25 A. That's correct.

1 Q. You know as a law enforcement officer that an
2 individual who is a suspect in a crime that's been taken
3 into custody has the motive to not be quite truthful with
4 the person conducting the interview, right? You've had
5 that occasion?

6 A. It depends on the individual. I can't say.

7 Q. But it does happen, right?

8 A. I'm sure it does.

9 Q. And you have to take into consideration whether,
10 you know, it did or did not happen that an individual
11 who's trying to explain a situation so that he can go home
12 to his wife and children has a motive to either embellish
13 or misdirect the officer in the attempt for that goal, "I
14 want to go home." You have to take that into
15 consideration, don't you?

16 A. I try to take into consideration the facts of
17 the case, what I read, and try to understand it from a
18 reasonable standpoint.

19 Q. That wasn't my question. I appreciate your
20 answer.

21 My question to you was in determining the
22 credibility of the information that you received, you have
23 to take into consideration that a person who is -- who's
24 arrested has a motive to lie, right?

25 A. I take a lot of things into consideration and

1 being not truthful might be one of those things, is he
2 truthful or not, and I don't know.

3 Q. You don't know that?

4 A. I don't know until I go through the facts of the
5 case.

6 Q. Now, Dr. Hayden, you've come in here and you
7 told us that you're an experienced federal agent. You've
8 been to numerous places. Are you telling me that it's
9 your life experience that individuals who have been
10 arrested don't have a motive to lie?

11 A. Not always. I don't know what branch you're
12 looking at, but in my experience some people that come in
13 are very honest with you. Some people are not telling you
14 the truth. Some people are way out in left field
15 someplace.

16 Q. All right. Now, having said that, my question
17 to you in determining the credibility of Mr. Reeves, you
18 had to take into consideration whether or not he was being
19 truthful to you. Based on your life experience some
20 people lie and some people don't when they're in custody,
21 right?

22 A. Yes.

23 Q. All right. And you indicated that you
24 determined the credibility of Mr. Reeves by watching the
25 video and going to Cobb Theater and making a determination

1 of certain facts that he said. We're going to go into the
2 facts, but very generally that's what you did, right?

3 A. Yes.

4 MR. MICHAELS: Objection. That wasn't what the
5 testimony was, Your Honor. That's an improper
6 characterization of the testimony. The testimony
7 was --

8 MR. MARTIN: Excuse me. He just said yes, it
9 was. Now he's trying to explain the answer of his
10 witness?

11 THE COURT: Hold on. One at a time.

12 MR. MICHAELS: Judge, I didn't yell over the
13 prosecutor and I don't expect him to yell over me.

14 MR. MARTIN: But what we have is Mr. Escobar and
15 Mr. Michaels constantly interrupting so that they're
16 teaching their witness what to say. That's been
17 going on for days and days.

18 MR. ESCOBAR: Objection. I will object.

19 THE COURT: Hold it. Stop.

20 MR. MARTIN: He's teaching witnesses.

21 THE COURT: Do you this think this poor young
22 lady is a magician? One at a time, gentlemen. You
23 know the rules.

24 MR. MICHAELS: Thank you, Judge.

25 THE COURT: Mr. Michaels, you start.

1 MR. MICHAELS: I appreciate that.

2 My objection is it is improper characterization
3 of prior testimony. I think that the Court has
4 notes, and my recollection is the prior testimony was
5 not that Dr. Hayden relied solely on the evidence
6 that he saw. He relied on his personal experience.

7 There are a lot of things he relied on to make
8 his determination as to whether Mr. Reeves is telling
9 the truth, not only what he saw in the video, so I
10 think it's improper characterization of what his
11 testimony was.

12 So, you know, if the question is to tell the
13 prosecutor what it is that he considered, if he has
14 any specific questions regarding specific areas of
15 what Mr. -- of what Dr. Hayden used in his
16 examination of the interview that he did with
17 Mr. Reeves, then I think that's fair, but
18 characterizing it as, you know, strictly going by the
19 video, I don't think that is -- that's not accurate.

20 THE COURT: Response?

21 MR. MARTIN: Judge, my question was: You used
22 the content of the video and your experience at Cobb
23 Theater in order to corroborate Mr. Reeves. That's
24 what I said. And he said, "Yes," because that is
25 true, because do you remember the questions: "I sat

1 in the seat. I couldn't get up. I couldn't move to
2 the left or right," and he said, "Yes."

3 THE COURT: All right. I'll overrule. You can
4 redirect if you wish, and I'm taking notes, so go
5 ahead.

6 MR. MICHAELS: I know you are, Judge.

7 THE COURT: Go ahead, Mr. Martin.

8 MR. MARTIN: May I have just a moment, Judge?

9 THE COURT: Uh-huh.

10 BY MR. MARTIN:

11 Q. My question to you, Dr. Hayden, was in
12 determining the credibility of Mr. Reeves you relied on
13 your interpretation of the content of the video and your
14 experience at Cobb Theater when you went in there with
15 Mr. Escobar, correct?

16 A. I said I relied on a lot of things, not only
17 being in the theater but talking to Mr. Reeves, to
18 interacting and looking at the video, a lot of things.

19 Q. Those were two of the things; was it not?

20 A. It was two of the things, yes.

21 Q. Okay. Thank you.

22 Determining the credibility of Mr. Reeves is
23 very important to you as an individual who's going to come
24 in and opine whether or not his conduct was reasonable in
25 our particular circumstances, right?

1 A. Not just what he says but a lot of things,
2 whether it's reasonable or not.

3 Q. I appreciate that, Dr. Hayden. My question to
4 you was in determining the -- determining the credibility
5 of Mr. Reeves is very important to you.

6 A. It's one of the factors.

7 Q. The credibility of Mr. Reeves is very important
8 to you if you're going to rely on his statements to you as
9 one of the bases of formulating your opinion?

10 A. If it was the only thing, it would be very
11 heavy, but if it's not the only thing, then it's not.
12 This is a consideration.

13 Q. I'm going to ask that question one more time.
14 Now, please allow me to do that.

15 MR. MICHAELS: Judge, (indiscernible) asked and
16 answered.

17 MR. MARTIN: No. No. No.

18 THE COURT: Overruled.

19 BY MR. MARTIN:

20 Q. Determining the credibility of Mr. Reeves is
21 very important to you as one of the factors that you're
22 going to use in formulating your opinion; is it not?

23 A. It's a factor, yes.

24 Q. In your discussions with Mr. Michael you
25 indicated that you wanted to sit down and speak about

1 Mr. Reeves and ask him the "why" questions, how he was
2 feeling, his perceptions. Do you remember that line of
3 questioning?

4 A. That's correct. I do.

5 Q. Do you remember the line of questioning when he
6 was going through the statement of Mr. Reeves to law
7 enforcement and what he said to you? He kept asking you:
8 "Is that consistent with what he told you?" Do you
9 remember responding that way?

10 A. I do remember that, yes.

11 Q. The conversation continues between you and
12 Mr. Michaels regarding, "You can't really look into
13 someone's head," and as Mr. Michaels indicated, you can't
14 look at that scary part in the head and determine it was
15 activated. Do you remember that conversation?

16 A. I remember that conversation.

17 Q. And that's true. When someone's telling you
18 what they felt or what they perceived, first of all, you
19 have to take what they say at face value and then try to
20 corroborate it, right?

21 A. You do, yes.

22 Q. But feelings and perceptions very difficult to
23 corroborate; are they not, if not impossible?

24 A. I wouldn't say impossible. They -- you have to
25 look at all of the different factors, and then you would

1 be able to give an opinion on that, yes.

2 Q. As to whether or not someone is afraid?

3 A. Yes.

4 Q. Of what their intent was?

5 A. Yes.

6 Q. What their motive was? You can do that by
7 talking to someone?

8 A. I'm not saying I can do that. I am saying
9 that's a factor that you have to look at in trying to
10 understand fear. If you look at fear, you try to
11 understand why fear occurs and what happens to the
12 individual.

13 Q. I understand that, but we're talking about
14 Mr. Reeves, and your final opinion you said that he
15 honestly believed that it was necessary to shoot Mr.
16 Oulson. I know that's not your exact words, but that's
17 the bottom line of your testimony, right?

18 A. That's correct.

19 Q. All right. And that's what I'm trying to go
20 into is the underlying factors that led you to that
21 conclusion, and what I'm asking you is, or discussing with
22 you is when we talk about someone relating their
23 perceptions as far as feelings and state of mind and
24 emotions. You first have to take their words at face
25 value and then see if there's any facts to back it up,

1 right?

2 A. Well, I don't take their words at face value,
3 but I do try to back it up with other things that might be
4 there.

5 Q. And you don't take it at face value, especially
6 with someone who's been arrested and may have the motive
7 to embellish or lie about what took place in order to
8 achieve a self-serving goal, right?

9 A. I don't know what their emotion -- the emotion
10 is at that time. What I'm trying to do is I'm trying to
11 understand, so I try to look at everything in a reasonable
12 fashion in trying to understand without -- with being
13 objective about it.

14 Q. Did you understand my question? I don't mean to
15 be argumentative --

16 A. I guess I didn't, because I think I'm answering
17 your question.

18 Q. In determining the credibility of information
19 provided by an individual that cannot be corroborated, one
20 of the things that you can look at is verifying whether or
21 not those things that can be corroborated were, in fact,
22 true. That's one way to determine: Are you going to
23 believe what we can't corroborate if he was truthful about
24 other things, right?

25 A. That's part of it, yes.

1 Q. All right. As a very simple example, a suspect
2 says, "I was hit and, therefore, I had to engage in
3 conduct A." Would you determine that that person wasn't
4 hit?

5 You take that into consideration as to whether
6 or not his conduct A, was, in fact, reasonable since he
7 wasn't hit. That's the analysis that you go through,
8 right?

9 A. That's part of the analysis that you go through,
10 trying to look at all the facts and trying to balance it
11 out.

12 Q. But that is one of them?

13 A. That's basically one, yes.

14 Q. And in this particular case if it was shown that
15 a cell phone was not thrown at Mr. Reeves and he was not
16 hit with a cell phone and he was not hit with a fist, your
17 opinion in this case would be different, wouldn't it?

18 A. If it could be factually documented that that
19 did not happen, then my opinion might change. I'd have to
20 look at the rest of the situation.

21 Q. How might it change?

22 A. It depends on everything else that occurred.

23 Q. There would be no escalating of violence, would
24 there?

25 A. I don't know if there would be or not. Just the

1 punch that you're saying is not the only one factor.

2 There are several different factors that you have to look
3 at.

4 Q. But it sure would call it into question, your
5 opinion, wouldn't it?

6 A. What you're looking at is perception. What does
7 he actually believe? So would it affect my opinion?

8 Q. Dr. Hayden, did you understand my question?

9 A. I just -- Mr. Martin, I did understand your
10 question.

11 Q. Well, my question was --

12 THE COURT: One at a time, please.

13 BY MR. MARTIN:

14 Q. My question to you was, in the event that it was
15 shown that Mr. Reeves was not hit with a fist or the cell
16 phone was not thrown, then that would definitely call into
17 question your opinion; yes or no? Then you can explain
18 it, but first yes or no.

19 A. There's -- not everything is an easy yes or no.

20 Q. You can explain it. Yes or no?

21 A. When --

22 MR. MARTIN: Judge, I'm asking the Court to
23 instruct the witness to answer the question. He can
24 explain it all he wants, but I want a simple one-word
25 answer to that question, and I'm entitled to that.

1 He can explain it later.

2 THE COURT: All right. With the ability to
3 explain, you can answer.

4 BY MR. MARTIN:

5 Q. Yes or no?

6 A. Just ask the question again, please.

7 Q. If it was shown that the cell phone was not
8 thrown at Mr. Reeves and he was hit in the head with it to
9 the extent that he was dazed or that he was hit with a
10 fist in his face to the extent that he was dazed, if those
11 things were shown not to happen, it would seriously call
12 into question your opinion in this case; yes or no?

13 A. When you put one word there, I would have to say
14 no.

15 Q. Okay. Why is it "No" when those things no
16 longer exist?

17 A. Because you're saying seriously consider it's a
18 factor because you're looking at the perception of what he
19 believes at that time. Does he believe he got actually
20 hit in the head or not? So it's perception at that time.
21 It might not be exactly what happened, but it's a
22 perception.

23 Q. So you're telling me that perception, getting
24 hit in the head with a fist, if it didn't occur, you could
25 perceive that pain? Is that what you're telling this

1 Court?

2 A. I'm not telling the Court that at all.

3 Q. Well, that's what you said, is it is perception
4 as to whether or not he was hit or not. So you're telling
5 me that you could perceive pain and that's a viable mental
6 state that, "I was hit in the head," justifying shooting
7 somebody?

8 A. I did not say that.

9 Q. You're either hit or you weren't. There's no
10 perception about it, correct?

11 A. Yes, there is a perception. Perception a lot of
12 times depends on what's going on in your mind, what you
13 believe. If you believe you're being attacked, there is
14 people that believe they've been hit. I don't know at
15 that time. I'd have to look at everything else, not just
16 one factor.

17 MR. MARTIN: Defense Exhibit -- is this yours,
18 Madam Clerk up here?

19 THE CLERK: The blue one?

20 BY MR. MARTIN:

21 Q. Defense Exhibit 27, the picture's been passed
22 around. Many people have looked at it.

23 One of the things that you would consider is
24 whether or not there's any injuries about the face of Mr.
25 Reeves consistent with a punch to the face or being hit

1 with a cell phone. That's one thing that you would
2 consider, right?

3 A. If I saw damage, yes, it would be one thing that
4 would be another consideration.

5 Q. And you don't see any damage there, do you?

6 A. I'm not a doctor, but looking at this, I don't
7 see any damage, no.

8 Q. You went through several of these statements of
9 Mr. Reeves and said, "Yes, I looked at the video and I saw
10 that," or, "I didn't see that." Do you remember that line
11 of questioning?

12 A. (No response.)

13 Q. Where you went through with Mr. Michaels?

14 A. Yes.

15 Q. And do you remember the discussion with
16 Mr. Michaels where it was asked whether or not when
17 Mr. Reeves was stretched fully out, he had his left hand
18 extended, there was a discussion about that's what
19 somebody would do if they're trying to ward off an
20 attacker. Do you remember that?

21 A. Yes.

22 Q. And you said you looked at the video?

23 A. That's correct.

24 Q. And you saw that?

25 A. I did not see that.

1 Q. Do you recall Mr. Reeves' statement to law
2 enforcement, he further explained to law enforcement that
3 when he had his hand out, he was either touching the
4 shoulder or the clothes or the chest of Mr. Oulson. Do
5 you remember that in the statement?

6 A. That's correct.

7 Q. You didn't see that in the video, either, did
8 you?

9 A. I did not.

10 Q. Do you recall in his statement to Detective
11 Proctor that he indicated he was fully stretched out and
12 that he shot and, of course, he probably described it in
13 an audio statement -- we don't have the benefit of that --
14 but he shot basically stretched out and, therefore, it had
15 to be an upward trajectory. Do you remember that?

16 A. Yes, I do.

17 Q. He said he indicated he shot while he was fully
18 stretched out. Do you remember that?

19 A. I remember that.

20 Q. You didn't see that in the video, either, did
21 you?

22 A. I did not.

23 Q. You indicated there's a part in the video where
24 you believe that some body part of Mr. Oulson came over
25 the seat and you said you saw a light. Do you remember

1 that?

2 A. That's correct.

3 Q. And you indicated that that's where Mr. Reeves
4 believes he was hit, right?

5 A. That's correct.

6 Q. Some eleven seconds before the shooting I
7 believe was your testimony?

8 A. That's correct.

9 Q. And in looking in that video at that particular
10 time after you see what you said was Mr. Oulson with some
11 type of body part extended over the seat, immediately
12 after that you see Mr. Reeves lean forward towards
13 Mr. Oulson, correct?

14 A. That's correct.

15 Q. You did not see Mr. Reeves in that video grab
16 his face like he'd just been hit with a fast pitch from a
17 baseball, right?

18 A. I didn't see that in that video, no.

19 Q. In fact, when you said you see that light and
20 that's where Mr. Reeves said he was hit, after he leaned
21 forward he then leaned back and settled back into his
22 seat; did he not?

23 A. He moved back into his seat, yes.

24 Q. He didn't get up and go attempt to get any
25 medical attention, right? He didn't stand up at that

1 point?

2 A. At that point in time, I don't believe he wanted
3 to stand up because he thought it would put him in more
4 danger.

5 Q. As you mentioned after looking at that
6 photograph, you didn't see any injuries on his face,
7 right?

8 A. I didn't see any injuries, no.

9 Q. And those are the type of things that the tryer
10 of fact can look at in determining the credibility of
11 Mr. Reeves as far as his statement, correct?

12 A. That's part of the factors, yes.

13 Q. And the reason it's important is because
14 Mr. Reeves is describing conduct that we cannot see in the
15 video, right?

16 A. That's correct.

17 Q. So in order to believe Mr. Reeves' statement
18 about what we cannot see, it would be very helpful for us
19 to believe what we can see; would you not agree?

20 A. That's just a factor. You're putting it all
21 together.

22 Q. Now, we've gone through several items where
23 Mr. Reeves has made a statement to law enforcement about
24 what occurred that we do not see in the video. Do you
25 remember that? We just had that conversation, right?

1 A. That's correct.

2 Q. Some of those statements that we cannot see in
3 the video, and I'm going to point out two of them, all
4 right, that would be a factor in considering whether or
5 not his actions were reasonable, and I'm going to go
6 through the first one and then the second one.

7 The first one is when he said he had his hand
8 out and he was touching Mr. Oulson's chest or shoulder,
9 "And he was virtually on top of me," and he shot him,
10 right? That's what he told law enforcement, right?

11 A. Yes.

12 Q. Well, that's not what happened in the video, was
13 it?

14 A. That's not what happened, no.

15 Q. But that particular statement is very weighty as
16 to the close proximity of Mr. Oulson and what Mr. Oulson
17 was doing and how imminent the threat was, correct?

18 A. So many other things to take into consideration,
19 not just what you see.

20 Q. I'm asking you a specific question, Dr. Hayden.
21 That particular statement to law enforcement about
22 Mr. Reeves being so close that he can reach out his hand
23 and either touch his shoulder or his chest, and he was
24 stretched out and he had to shoot Mr. Oulson in that
25 location, that is some very weighty evidence about whether

1 or not his actions were reasonable because the threat is
2 very imminent if it's in his lap, his shoulder, hand on
3 his shoulder. He's got to shoot while he's straightened
4 out, right?

5 A. No, it isn't.

6 Q. No, it's not?

7 A. That's correct.

8 Q. If you saw that in the video, would we even be
9 in the courtroom here today?

10 A. I don't know what you would do if you brought it
11 in the courtroom or not, but there are so many other
12 factors that you don't want to include in this that are
13 essential that you include.

14 Q. Well, right now I get to ask you questions and
15 you get to answer them. Okay?

16 A. Sure.

17 Q. And if someone else wants to talk to you about
18 them, I'm sure they will, but please answer my questions.

19 MR. MICHAELS: Judge, could you please instruct
20 the prosecutor not to admonish the witness? He's
21 been asking question after question, but it's
22 improper for him to lecture the witness on answering
23 a question or not answering the question.

24 MR. MARTIN: Not when Mr. Hayden has been as
25 nonresponsive that he's been for the last twenty

1 minutes to my question.

2 THE COURT: All right.

3 MR. MICHAELS: That's the Court's job, Your
4 Honor.

5 THE COURT: Let's just move on. I'll do the
6 directing of it. Thank you.

7 BY MR. MARTIN:

8 Q. In fact, Mr. Reeves in that segment about his
9 hand being forward, wanted to so convince Detective
10 Proctor that that was true that he explained, as a police
11 officer, "We never put our hand in front of the muzzle,
12 and I thought I could have shot my hand."

13 Do you remember that?

14 A. I do remember that.

15 Q. Another attempt by Mr. Reeves to get Detective
16 Proctor to believe -- to believe how imminent that threat
17 was, but that's not what we see on the video, is it?

18 A. That's not what you see in the video, no.

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

20 THE COURT: Yes.

21 MR. MARTIN: Thank you for the time, Judge.

22 THE COURT: Uh-huh.

23 MR. MARTIN: I don't have any further questions.

24 THE COURT: Thank you, Mr. Martin.

25 Redirect?

1 MR. MICHAELS: Thank you, Judge.

2 MR. MARTIN: Thank you, Mr. Michaels.

3 REDIRECT EXAMINATION

4 BY MR. MICHAELS:

5 Q. Now, I know the prosecutor talked to you a
6 little bit about what you didn't see. You definitely saw
7 Mr. Oulson coming over the aisle and a lighted object
8 appear to be moving in some fashion, right?

9 A. Yes, sir.

10 MR. MARTIN: Your Honor, I object. That wasn't
11 his testimony during direct. He just saw a lighted
12 object. Otherwise I would have gone into it a lot
13 more if he said anything different.

14 THE COURT: Rephrase.

15 MR. MICHAELS: Okay.

16 BY MR. MICHAELS:

17 Q. One of the things that you saw definitely on
18 that video is Mr. Oulson and what appears to be his hand,
19 arm and body -- right?

20 A. That's correct.

21 Q. -- reaching over his row towards Mr. Reeves?

22 A. That's correct.

23 Q. And there is some appearance of something
24 lighted or a light area in the video coincidentally at
25 that same time?

1 A. That's correct.

2 Q. You saw crime scene photos and you noticed a
3 phone, a hundred percent you saw between Mr. Reeves' feet?

4 A. I did.

5 Q. You are aware of DNA evidence in this case? You
6 got a report to review?

7 A. Yes.

8 Q. And in terms of the outside case of the phone,
9 could the FDLE, could they exclude Mr. Reeves as a
10 possible contributor to DNA on that phone?

11 MR. MARTIN: Your Honor, I object.

12 MR. ESCOBAR: (Indiscernible).

13 MR. MARTIN: No. No. No. No.

14 MR. ESCOBAR: Yes, they have.

15 MR. MARTIN: No, we need to approach.

16 (Sidebar conference was held at the bench.)

17 THE COURT: State, before argument I will let
18 you refresh your memory about the stipulation.

19 MR. MARTIN: The question by Mr. Michaels was
20 after reviewing the DNA report, Mr. Reeves could not
21 be excluded from a particular area on the DNA.

22 That's not what it says. There was one area where
23 it's uninterpretable. That doesn't mean he could be
24 excluded. That means it's uninterpretable.

25 Where we do have the DNA, we have Chad Oulson

1 being included and Mr. Reeves being excluded. So
2 just because it's uninterpretable doesn't mean that
3 he was excluded. So that's why I brought it up.
4 That's not what the stipulation says.

5 MR. MICHAELS: Judge, that's --

6 MR. ESCOBAR: That's exactly what it says. It
7 definitely found a mixture of three individuals.
8 That's without question. That's without question.
9 They found a mixture of DNA by three individuals.
10 They could not exclude anybody from it because it was
11 not interpretable, but that's what they found.

12 It's not like they found, "Oh, you know, it's
13 three individuals --

14 THE COURT: Well --

15 MR. ESCOBAR: No, no. That's different. Look
16 at the screen. No, no. Judge, that's different.
17 Look, let me -- because he had the same problem
18 initially --

19 MR. MARTIN: No, there are two individuals. One
20 is on outterbox and one on the screen. There are two
21 different areas --

22 MR. ESCOBAR: So if you look at -- I'll give you
23 the first paragraph. The first paragraph right here
24 says a P13 black case. Okay. That black case also
25 has a screen, a clear screen. So in the black case

1 they found the mixture, okay, of at least three
2 individuals, not that this is just found, a mixture
3 and they couldn't tell how many individuals. It was
4 a mixture of three individuals, and they couldn't
5 exclude Mr. Reeves because it was not interpretable.

6 Now, if you look -- Mr. Martin, would you please
7 have the courtesy --

8 MR. MARTIN: I didn't say a word.

9 THE COURT: No, no.

10 MR. ESCOBAR: Then if you look at Number 4, you
11 will see that it says Exhibit AP13 screen -- get the
12 phone, so we can see.

13 THE COURT: I got it. I got it. I got it.
14 This is --

15 MR. ESCOBAR: So that was -- and listen, this is
16 the same problem. He'll tell you that when he first
17 read the report, he didn't read it that way when we
18 came back, and I said, "No, look," this is what it
19 says."

20 We drafted the stipulation, so I know the
21 stipulation like the back of my hand.

22 MR. MARTIN: Well, I know it, too, and that's
23 exactly word-for-word from the DNA. It's
24 uninterpretable. That doesn't mean he was not
25 excluded? That's not the way it's reported out, and

1 you can't follow that conclusion.

2 MR. ESCOBAR: Could not be excluded, could not,
3 could not. It's not interpretable.

4 MR. MARTIN: No.

5 THE COURT: All right. I'm the trier of fact
6 here. I get it. We're -- I'm going to allow the
7 question.

8 MR. ESCOBAR: Judge, it's important. So the
9 Court knows, I'm just trying to be -- (indiscernible)
10 three individuals were found, the DNA of three
11 individuals.

12 (End sidebar conference.)

13 BY MR. MICHAELS:

14 Q. So you're able to look at the DNA report
15 provided to you by us, those that were provided to us by
16 the State.

17 A. That's correct.

18 Q. And in terms of the case, what is the long and
19 the short of it? What conclusions did you get, in terms
20 of the outer part of the case, as it relates to Mr.
21 Reeves?

22 A. What I understood --

23 MR. MARTIN: Judge, I'm going to object to that
24 question. How he interpreted the report is not
25 relevant. If he wants to read the report word for

1 word, but his interpretation -- he is not a DNA
2 expert. He hasn't been qualified for that. He
3 doesn't know how to make those interpretations.

4 MR. ESCOBAR: Could we just read the
5 stipulation? It's as simple as that. I don't have a
6 problem with that.

7 THE COURT: You either have to lay a foundation
8 or --

9 MR. MICHAELS: The Court read the stipulation
10 in. In terms of the case, due to the limited nature
11 of the DNA results obtained from the iPhone's black
12 case screen, the data is insufficient for inclusion
13 purposes, but may be suitable for inclusion.

14 I'm sorry. I read it out of order.

15 Number 1: The DNA obtained from the iPhone
16 black case, AP13, black case, demonstrated the
17 presence of a mixture of at least three individuals.
18 Due to the complexity of the mixture obtained from
19 the iPhone black case, Exhibit AP13 case, this data
20 was not interpretable.

21 Paragraph 2: Due to the limited nature of the
22 DNA results obtained from the iPhone's black case
23 screen, Exhibit AP13, screen, this data is
24 insufficient for inclusion purposes and may be
25 suitable for exclusion.

1 Due to the limited nature of the results
2 obtained, Chad Oulson could be neither included nor
3 excluded as a contributor to the iPhone's black case
4 screen.

5 Curtis Reeves, Exhibit AP13 screen, is excluded
6 as a source of the limited DNA source obtained from
7 the iPhone black case screen.

8 BY MR. MICHAELS:

9 Q. Now, there was a phone in the video where we
10 can't see -- you see movement about eleven, twelve seconds
11 later, correct?

12 A. That's, correct?

13 Q. By Mr. Oulson towards Mr. Reeves?

14 A. That's correct.

15 Q. You see Mr. Oulson's hand come out?

16 A. On the second occasion or the first one?

17 Q. The second.

18 A. The second occasion, yes, I do.

19 Q. We are already past the first one. You see the
20 hand go back?

21 A. Yes, I do.

22 Q. The hand come back out?

23 A. That's correct.

24 Q. In between there's popcorn grabbed?

25 A. That's correct.

1 Q. Did Mr. Reeves at any time tell you that
2 Mr. Oulson told him or indicated in any fashion that,
3 "Hey, Mr. Reeves, I'm going to take your popcorn"?

4 A. No.

5 Q. So in terms of perception at that point, what is
6 an individual seated in the seat in that sort of theater
7 and that sort of setting, what sort of perception is
8 reasonable at that point? What are you looking at?

9 MR. MARTIN: Your Honor, I'm going to object at
10 that point as far as his expertise as far as
11 determining that particular question, you know, what
12 is reasonable or not reasonable, sitting in that
13 location.

14 He's already rendered his opinion. He believes
15 Mr. Reeves was honest in his belief that he had to
16 shoot Mr. Oulson. Now, whether or not Mr. -- I
17 apologize -- Dr. Hayden, you know, now we come in and
18 we do this reconstruction that we heard about that's
19 kind of interesting, he can't answer that question.

20 MR. MICHAELS: Judge, I'm going to object to
21 those gratuitous comments, number one. I appreciate
22 that the prosecutor finds it interesting. I only
23 wish that the police found it interesting enough to
24 try it themselves before they even arrested
25 Mr. Reeves, but that's another matter.

1 Nonetheless, Your Honor, I'm just asking what
2 the perspective was in terms of what's reasonable for
3 an individual in that particular environment to
4 perceive. In other words, is that person perceiving
5 that the individual who's been cussing and had come
6 over the aisle before is now going to grab the
7 popcorn, or is it reasonable to perceive it as a
8 threat?

9 THE COURT: I will overrule.

10 BY MR. MICHAELS:

11 Q. Is it reasonable to perceive that motion that we
12 see twelve seconds later after the first throwing motion
13 as a threat?

14 A. Yes, absolutely.

15 Q. And as the hand comes back and goes forward
16 again, would it be reasonable to perceive that particular
17 second motion as a second threat?

18 A. Absolutely.

19 Q. Or a continuing threat?

20 A. Yes.

21 Q. All right. This is Exhibit 27. I know the
22 prosecutor showed it to you. You looked at it.

23 I know you're not a doctor, but do you agree or
24 disagree with me when you look at what would be
25 Mr. Reeves' left eyelid --

1 MR. MARTIN: Judge, I'm going to object. I
2 mean, I don't care about agree or disagree.

3 When you're pointing at something, he's already
4 looked at the picture and said, "I saw nothing."
5 Now, if that's not totally suggesting the answer, I
6 don't know what is. When you point at a red mark and
7 say, "Would you agree or disagree," when he already
8 had an opportunity -- fair opportunity to look at the
9 picture, that's absolutely leading.

10 MR. MICHAELS: Judge, I'm not leading. I'm
11 indicating the area that I want to draw his attention
12 to.

13 THE COURT: All right. I've been sitting
14 here --

15 MR. ESCOBAR: Judge, I don't want to interject,
16 but he said "damage" in the question to Mr. Hayden.
17 He did not say anything. He said "damage," and the
18 use of the word is very important.

19 THE COURT: All right.

20 MR. MICHAELS: At any rate --

21 THE COURT: I'm sure it is.

22 I heard the prior testimony. I get it. I
23 figured this was coming.

24 I think it's absolutely leading to some extent,
25 but then again, I guess you're entitled to direct him

1 to certain areas of the photographs, so...

2 BY MR. MICHAELS:

3 Q. Well, let's look at this photograph, Exhibit 27,
4 okay. Now, look closely. Take your time, please. I know
5 you're not a doctor.

6 Direct first your attention, if you would, to
7 the right eyelid, and then work yourself across the face
8 to what would be Mr. Reeves' left eyelid and your right.
9 Okay?

10 A. Okay.

11 Q. All right. Can you see this all right?

12 A. Yes, I can.

13 Q. All right. Do you see anything that appears to
14 be any redness on either eyelid?

15 A. He said --

16 MR. MARTIN: Give me a break.

17 THE WITNESS: Yes, I do. I see the redness on
18 his left eye.

19 BY MR. MICHAELS:

20 Q. Okay. And would that be consistent with
21 somebody getting hit in the eye?

22 MR. MARTIN: Judge, that calls for speculation.

23 MR. MICHAELS: Well, Judge, the prosecutor asked
24 the question.

25 THE COURT: I will allow it.

1 BY MR. MICHAELS:

2 Q. Is that consistent?

3 A. It would be consistent with him having his eye
4 affected somehow.

5 Q. It would be consistent with having his glasses
6 knocked to the side?

7 A. Yes, it would be.

8 Q. Now, as a special agent in training police
9 officers, are there certain techniques and interrogation
10 techniques on a suspect or a subject that is willing to
11 talk, that you use to try to get information out of?

12 A. Yes.

13 Q. And is that -- are those technique used to try
14 to ferret out the truth the best that you can?

15 A. It's called cognitive interviewing techniques.
16 It is to get to the facts of what actually happened, what
17 he believes happened, not to trip anybody up, to try to
18 get as many facts as you can.

19 Q. And in terms of as a police officer, are you
20 aware that individuals that are arrested have the right,
21 absolutely, not to speak to you?

22 A. Absolutely.

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

24 THE COURT: Uh-huh.

25 MR. MICHAELS: That's all I have. Thank you.

1 THE COURT: May this witness be released?

2 MR. ESCOBAR: We're going keep him under
3 subpoena but most probably will not have to recall
4 him.

5 THE COURT: All right.

6 MR. MICHAELS: He can go back to Virginia for
7 now.

8 THE COURT: He'll be on standby. Dr. Hayden,
9 you are free to go today. You will still be under
10 subpoena, but hopefully they won't be calling you
11 back. If someone does have to call you back, I'm
12 certain they'll give you plenty of advanced notice.

13 Thank you, sir.

14 THE WITNESS: Thank you very much, Judge.

15 THE COURT: All right. 11:20.

16 MR. ESCOBAR: I think it's early lunch. The
17 last thing I want to do is break up my presentation
18 of Mr. Reeves, so we will have to take lunch sooner
19 or later.

20 THE COURT: I will give you that option. It is
21 a pretty early lunch, but if obviously -- I'm
22 guessing we will not finish Mr. Reeves tomorrow
23 before 12:00.

24 MR. ESCOBAR: I think that's -- especially with
25 me doing the questioning, I would think not.

1 THE COURT: All right. If you're requesting not
2 to break up his testimony, then I'll oblige and we'll
3 go ahead and take an early lunch.

4 MR. ESCOBAR: Thank you, Your Honor.

5 THE COURT: What do we need, an hour, hour and
6 fifteen minutes, say 12:30? Would that be enough
7 time?

8 MR. ESCOBAR: Yes.

9 THE COURT: All right. That's a little over an
10 hour. We will reconvene at 12:30 and be in recess
11 until then.

12 (Recess taken.)

13 THE COURT: You may be seated. Thank you.

14 All right. Are we ready to begin?

15 Defense is ready, Mr. Escobar?

16 MR. ESCOBAR: Your Honor, the Defense would call
17 Curtis Judson Reeves.

18 THE BAILIFF: Step this way, stand right here.

19 Face the clerk, raise your right hand to be sworn.

20 (Thereupon, the witness was duly sworn on oath.)

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

24 THE COURT: You may proceed, Counselor.

25 DIRECT EXAMINATION

1 BY MR. ESCOBAR:

2 Q. Good afternoon, Mr. Reeves.

3 A. Good afternoon, sir.

4 Q. Mr. Reeves, would you please state your full
5 name for the record and spell it?

6 A. Curtis Judson Reeves, R-E-E-V-E-S, Jr.

7 Q. Mr. Reeves, are you married?

8 A. Yes, sir, I am.

9 Q. And to whom are you married?

10 A. Vivian Reeves.

11 Q. And when did you get married?

12 A. October of 1967.

13 Q. Do you have children?

14 A. Yes, sir, I do. I have a son and a daughter.

15 Q. What are their names and what are their
16 occupations?

17 A. Matthew is a police officer in Tampa, and my
18 daughter is -- works for the bank here in Dade City.

19 Q. Mr. Reeves, I'm going to first start focusing on
20 some of your education. Please tell the Court, did you
21 graduate from high school?

22 A. Yes, sir, I did, in 1961.

23 Q. What high school did you graduate from?

24 A. I went to Hillsborough High School.

25 Q. While attending Hillsborough High School, did

1 you develop an area of interest to possibly pursue post
2 your high school diploma?

3 A. Yes, sir, I did. I joined the Naval Reserve in
4 my -- between my junior and my senior year I joined the
5 Naval Reserve in Tampa.

6 Q. What's the Naval Reserve?

7 A. Well, it's a six-year program that you go into.
8 You do two years of active duty and six years' obligation.
9 That's a military obligation.

10 Q. Okay. And did you start that program while you
11 were still in high school?

12 A. Yes, sir, I did.

13 Q. Explain to the Court how that took place.

14 A. I joined the Naval Reserve between my junior and
15 my senior year. I went to boot camp. Then as soon as I
16 got out of high school, I went to submarine school in
17 Connecticut.

18 Q. Now, submarine school, meaning that you were
19 going to be working the submarines?

20 A. Yes, sir, submarine service.

21 Q. Now, when you graduated from high school, what
22 did you do then?

23 A. I went into the Navy for two years. I spent two
24 years on a submarine in the U.S. Navy, and at the end of
25 that time, then I reverted to my Reserve time.

1 Q. Okay. What was your position there in the Navy
2 on the submarines?

3 A. I was a leading seaman for probably about a
4 year-and-a-half or so, two years. Then I took the test
5 for promotions, so as I got out I was a Machinist's Mate,
6 Third Class.

7 Q. Now, you get out of the Navy. You're still in
8 the Reserves. You still have to participate in the --

9 A. That's --

10 Q. -- to be active?

11 A. Yes, it's monthly meetings, then two weeks
12 active duty each year.

13 Q. Okay. Your choice of going into the military
14 right after high school, did that play a role in you
15 wanting to have a further education?

16 A. Yes, sir. I was interested in the GI Bill. I
17 didn't think I would be able to afford college, so I
18 wanted to get the GI bill, which was part of the military
19 program.

20 Q. Now, after you got out of the military, after
21 that two-year period, did you begin to work?

22 A. Yes, sir. I did.

23 Q. And what did -- what occupation or what job did
24 you first obtain?

25 A. I was hired by General Telephone at the time,

1 GTE. I was ultimately designated as a heavy construction
2 lineman.

3 Q. What is a heavy construction lineman?

4 A. We put in -- we replaced what used to be called
5 open water leads, which was -- if you were remember all
6 the cross arms that used to be up there with all the
7 wires, we replaced those with cables. It was running
8 cables in the neighborhoods, running cables between
9 different offices. Just expanding the telephone service,
10 in general.

11 Q. How long did you do that for?

12 A. About two years, sir.

13 Q. And then what happened?

14 A. At the end of that two-year period, I took a --
15 I applied, I think, about that same time for the
16 Hillsborough County Sheriff's Office and Tampa PD.

17 Q. Why were you choosing a law enforcement career
18 now?

19 A. I guess I was -- in the service, so to speak, I
20 was kind of accustomed to the regimen of the life. I saw
21 law enforcement as an opportunity to serve the community.

22 Q. So you applied to both of these particular
23 outfits and who do you get a call from first?

24 A. Tampa PD. They both interviewed me. Tampa PD
25 called with a job offer first.

1 Q. What year was that?

2 A. That was in 1966.

3 Q. Let's talk a little bit about your initial years
4 there with TPD. Did you go to the academy?

5 A. Yes, sir. I did.

6 Q. How did that process work, initially?

7 A. Initially, they hired you, and I spent about a
8 week or two on the street with a corporal. And then the
9 academy started. So then I went to the academy which was
10 there at the police department in those days. I graduated
11 before Christmas in 1966.

12 Q. Okay. And once you graduated -- let's talk a
13 little bit about your time there with the academy.

14 The academy lasts for how many weeks, you said?

15 A. I think it was like 300-and-something hours, if
16 I remember correctly.

17 Q. And were you selected for a particular position,
18 as part of your academy class?

19 A. Well, I was vice president of the class. Yes,
20 sir.

21 Q. Were you given any awards as a result of your
22 participation there at the academy?

23 A. I was given an award called -- I think it was
24 called an Award of Achievement, which was a kind of the
25 best all-around performer during the academy, I suppose.

1 Q. Did that particular award, at some point in
2 time, become even more special to you?

3 A. I'm not sure of the exact time frame, but my son
4 has been in law enforcement for about 12 to 13 years and
5 he got the same award.

6 Q. You finish the academy. Do you start your
7 service to the community?

8 A. Yes, sir.

9 Q. And what position do you first occupy as a law
10 enforcement officer with TPD?

11 A. The first year a probationary officer. So you
12 ride with a field training officer -- in those days it was
13 a corporal. So you're assigned with a corporal. And I
14 think the probationary period is, like, four to six
15 months, something like that.

16 Q. So you're working patrol?

17 A. Yes, sir.

18 Q. How old are you at this point in time,
19 Mr. Reeves?

20 A. I'm probably about 24 -- 23, 24.

21 Q. Okay. Now, going into the community and serving
22 the public, tell the Court about your experiences working
23 as a patrol officer in the streets of Tampa back then.

24 A. It was quite an experience. I never realized
25 how much -- how much -- how many problems were in the

1 community. I mean, you're constantly going from call to
2 call with high activity levels of all sorts of activities
3 that require police presence.

4 Q. And the activities that you're talking about,
5 are they activities that sometimes result in serious
6 injuries?

7 A. Absolutely. Very high percentage of injuries,
8 fights, thefts.

9 Q. Robberies?

10 A. Yes, sir, thefts.

11 Q. Thefts?

12 A. Murders, I guess you could say. Well, I know
13 you could. I've responded to a couple of those as a young
14 officer. A lot of domestic disputes, such as -- that was
15 one of the calls in those days.

16 Q. In experiencing your first couple of years as a
17 law enforcement officer, did you have an opportunity to
18 see individuals that were seriously injured as a result of
19 someone else's hands?

20 A. Oh, yes, sir. Absolutely. That was a -- I
21 guess you could say that was a daily occurrence. There
22 was always somebody hurt by someone for something.

23 Q. Did you ever respond to domestic violence calls?

24 A. Rather frequently, yes, sir.

25 Q. And did you see the injuries that had been

1 perpetrated between one individual and another in domestic
2 violence?

3 A. Yes, sir, I did.

4 Q. With their hands?

5 A. With their hands and every tool imaginable.

6 Q. Did you see injuries such as a broken orbital
7 bones?

8 A. I did see a lot of eye injuries, yes, sir.

9 Q. Broken jaws?

10 A. Oh, yeah. Yes, sir.

11 Q. Broken noses?

12 A. Yes, sir.

13 Q. Facial lacerations?

14 A. Yes, sir. One of the responsibilities for the
15 zone that I worked at was Tampa General Hospital, so you
16 got to see a lot of the injuries that came there from
17 other zones around the city, so...

18 Q. Back in that period of time, was it just -- was
19 it just going to the person's house and seeing the
20 injuries on their person, or was it a follow-up also in
21 going to the hospital?

22 A. Well, you -- if you -- if you were available and
23 it was a serious enough offense, you followed it up at the
24 hospital. If not, then someone else could follow it up.

25 At one point in time, we actually ended up with

1 what we call a -- hospital man that was there all the
2 time. But in those early years you followed up on your
3 own, and if somebody was coming from the hospitals from
4 somewhere else in the city, then you could be dispatched
5 there to deal with their victim.

6 Q. Prior to starting your career in law
7 enforcement, had you ever experienced anything like that
8 on a daily basis, seeing some of those tragedies that
9 occur day in and day out?

10 A. It was an absolute eye opener. And the answer
11 is, no, nobody can have that kind of experience. The only
12 way that you would have that kind of experience is if
13 you're in law enforcement.

14 Q. Now, you married Mrs. Reeves, I think you told
15 me, in October of 1967?

16 A. Yes, sir.

17 Q. Okay. In 1968, did you apply for a promotion?

18 A. Yes, sir. There was a -- I think it was called
19 a Selective Enforcement Unit, it had an opening. The
20 corporal that -- that was my field training officer was in
21 that unit and he let me know about it, so I applied for
22 it. Yes, sir.

23 Q. And by that time, I guess, you had only been on
24 the force for just a couple of years?

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

1 Q. Okay. And describe to the Court what this
2 Selective Enforcement Unit was all about.

3 A. Well, a Selective Enforcement Unit was a small
4 group of officers working plainclothes, unmarked cars. We
5 attacked high-crime grid areas. We called them "grids."
6 We attacked the high -- we targeted crimes that were
7 high-activity crimes that were going on in particular
8 neighborhoods and areas. We worked a lot of stakeouts,
9 that sort of thing.

10 Q. Were those dangerous assignments with the
11 selective unit?

12 A. It was pretty dangerous, yes, sir. We did a lot
13 of stakeouts. We did a lot of -- we were able to do a lot
14 of crime -- come across crimes in progress. We would do
15 stakeouts, that sort of thing.

16 Q. Far greater danger?

17 A. Yes, sir.

18 Q. Far greater responsibility?

19 A. Yes, sir.

20 Q. And more training in order to handle those
21 things?

22 A. Yes, sir.

23 Q. How long did you work in that particular unit?

24 A. I was in with that unit for about two years.

25 Q. Now, working those types of high-risk crimes,