

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

STATE OF FLORIDA,

Plaintiff,

vs.

VOLUME XVII

CURTIS J. REEVES,

Defendant.

_____ /

PROCEEDINGS: STAND YOUR GROUND MOTION

DATE: March 1, 2017

BEFORE: HONORABLE SUSAN BARTHLE
CIRCUIT COURT JUDGE

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

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

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VOLUME 17

THE COURT: All right. Are we ready to pick up where we left off?

MRS. SUMNER: Yes, Your Honor.

MR. ESCOBAR: Yes, Your Honor.

THE COURT: All right. State?

MRS. SUMNER: Your Honor, at this time the State of Florida would call Craig Deyoung.
(Whereupon, the witness was sworn.)

THE COURT: Go ahead, Mrs. Sumner.

MR. MARTIN: Thank you. May it please the Court, Defense counsel?

CRAIG DEYOUNG,

Thereupon, the witness herein, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MRS. SUMNER:

Q. Good afternoon, sir. Please state your name for the record.

A. Craig Deyoung.

Q. What is your profession, Mr. Deyoung?

A. I'm a driver, engineer, paramedic with Pasco County Fire Rescue.

Q. How long have you been in that profession?

A. I've been with the County for just over

1 eight years.

2 Q. What training did you go through to enable
3 you to be licensed to be a driver, engineer,
4 paramedic?

5 A. I have an EMT license through the State of
6 Florida. I have firefighter certificates one and
7 two with the State of Florida, and a paramedic
8 license with the State of Florida.

9 Q. When did you obtain your firefighter one
10 and two?

11 A. That was -- I finished in October of 2007.

12 Q. And then your paramedic?

13 A. In December of 2008.

14 Q. And your EMT?

15 A. In December of 2006.

16 Q. And so you started with EMT, then you went
17 for firefighter one and two and then paramedic?

18 A. Yes, ma'am.

19 Q. Prior to being hired with Pasco County
20 Fire Rescue, were you working anywhere else?

21 A. I worked part-time for Trans-Care as an
22 EMT for roughly a year.

23 Q. Anything else in the healthcare field?

24 A. No.

25 Q. What station are you normally assigned?

1 A. Station 16 in Zephyrhills.

2 Q. And where is that located in Zephyrhills?

3 A. It's on State Road 54 between Dean Dairy
4 and Eland.

5 Q. Were you working in your capacity as a
6 driver, engineer and paramedic on January 13th of
7 2014?

8 A. I was.

9 Q. Were you working there at that particular
10 Station 16 on 54 in Zephyrhills?

11 A. Yes, ma'am.

12 Q. Did you all respond to a 911 call at the
13 Cobb Theater over on Oakley Grove in Wesley Chapel?

14 A. We did. We were on the road when we heard
15 it come out as a gunshot wound to the Cobb Theater.
16 So we started making our way that way in case we
17 would be needed.

18 And then when dispatch changed it to -- or
19 upgraded it to a possible active shooter with
20 multiple victims, we were added to the call.

21 Q. When you say we were added to the call,
22 describe to the Court how -- how logistically you
23 all respond to a shooting caller, or active shooter
24 call, or anything where you might be in harm's way.

25 A. We would stage to the scene. We would

1 respond to the scene and then stage away for law
2 enforcement to clear it as safe before we would head
3 in.

4 Q. When you use the term, stage, what do you
5 commonly refer to that as?

6 A. You park somewhere at a distance away
7 where you're not in any danger and you wait for law
8 enforcement to give you the okay to go in.

9 Q. Were you actually the driver of that
10 engine on that particular day?

11 A. Yes, I was.

12 Q. So do you recall where you actually staged
13 at that point?

14 A. By the time we had arrived, the scene was
15 already safe, so we pulled around to the back of the
16 theater where the other units were.

17 Q. And when you say the back of the theater,
18 you drove around behind the theater?

19 A. Yes. To the left behind the theater where
20 all the rear exterior doors are.

21 Q. Who did you meet with back there?

22 A. Engine 13 and Rescue 13 were already
23 there, and maybe Rescue 26 also, by the time we got
24 there. So we parked there and made our way into the
25 theater.

1 Q. Do you recall what time it was in
2 conjunction with the 911 call that you arrived on
3 scene and actually got out of the engine?

4 A. The call came out around 1330 and it
5 probably took us 10 minutes to get there, maybe 10
6 or 15 minutes.

7 Q. So you got out. Did you -- were you
8 tasked with doing any particular tasks on scene?

9 A. I mean, not directly. We put on our
10 medical gloves and made our way into the theater to
11 see what we could do to help.

12 Q. Where did you go inside the theater?

13 A. I walked in the rear, the exterior door,
14 that leads into the theater. The theater screen was
15 to the right. Mr. Oulsen was on the ground being
16 secured to a long spine board and to the stretcher,
17 being attended to by three or four fire rescue
18 personnel.

19 I looked up and saw Mrs. Olson somewhere
20 up in the theater being tended to by two fire rescue
21 personnel, I think.

22 Q. And these would have been some that were
23 on the rescue -- on the rescue units, right?

24 A. Between the engine and the rescues. Yes,
25 ma'am.

1 Q. And the rescues are commonly referred to
2 as what?

3 A. Ambulances.

4 Q. Okay. And you're the actual big fire
5 truck?

6 A. Fire engine. Yes.

7 Q. And so at that point there is nobody else
8 to tend to at that point?

9 A. Right. Those are the only two patients
10 that we knew of.

11 Q. Okay. Were you asked to tend to someone
12 who later became known to you as Curtis Reeves?

13 A. Yes, I was.

14 Q. Okay. Who asked you to do that?

15 A. I was making some smalltalk with my
16 captain and chief when a law enforcement officer
17 came over and said something to the effect of, this
18 guy's asking to have his eyes flushed out. He
19 thinks he might have popcorn in his left eye.

20 Q. Did you then make contact with someone who
21 was identified to you as Curtis Reeves?

22 A. Yes, ma'am. I went and grabbed the
23 medical bag and went over to the squad car that he
24 was being detained in.

25 Q. And that was back out in the parking lot?

1 A. Uh-huh.

2 Q. Is that a yes?

3 A. Yes, ma'am.

4 Q. So what would be the course of treatment
5 if someone believes they have something in their
6 eye?

7 A. Flushing it with sterile water. I took a
8 bottle of sterile water from our medical bag. I
9 punctured a hole in the cap with my pug knife to
10 make it easier to squirt, and I had him tilt his
11 head to the left and squirt it from the bridge of
12 his nose.

13 Q. Let's back up.

14 A. Okay.

15 Q. So you said the course of treatment would
16 be to rinse it out with sterile water?

17 A. Yes, ma'am.

18 Q. Have you done that in the past?

19 A. I can't think of specifically, but I might
20 have.

21 Q. And you've been in this field for over
22 seven years, right?

23 A. Yes, ma'am.

24 Q. So you made contact with someone who was
25 identified as Curtis Reeves. Do you see him in the

1 courtroom today?

2 A. Yes, I do.

3 Q. Could you point him out and describe what
4 he's wearing, please, sir?

5 MR. ESCOBAR: We stipulate to ID.

6 THE COURT: They'll stipulate.

7 THE WITNESS: He's behind --

8 MRS. SUMNER: That's fine.

9 BY MRS. SUMNER:

10 Q. So when you made contact with him, did you
11 make any observations of his face?

12 A. Yes.

13 Q. Okay. And could you tell if he was
14 wearing glasses?

15 A. He was wearing prescription glasses.

16 Q. Okay. And what did you do with regard to
17 the prescription glasses?

18 A. I removed them from his head and put them
19 on the trunk of the police car.

20 Q. So you would be able to rinse his eye out?

21 A. Correct.

22 Q. All right. So now you had indicated that
23 you sprayed it from -- and I cut you off there. Can
24 you describe --

25 A. From the bridge of the nose downward

1 through the left eye.

2 Q. Okay. How many times did you do that?

3 A. Two or three times.

4 Q. And when you were doing that, did you see
5 any cuts to either his cheek -- let's start there.

6 Did you see any cuts to his cheek?

7 A. Not that I can recall.

8 Q. Did you see any cuts to his eyebrow area?

9 A. Not that I can recall.

10 Q. Did you see any cuts to his nose?

11 A. Not that I can recall.

12 Q. Did you see any cuts to -- behind his
13 ears?

14 A. Not that I can recall. I don't think I
15 assessed --

16 Q. I didn't hear what you said.

17 A. I said, I didn't really assess his ears.

18 Q. And did he complain of anything to you?

19 A. No. Not other than the left eye. No.

20 Q. And you rinsed that out one time. Did you
21 do it multiple times?

22 A. Two or three times. Yes.

23 MRS. SUMNER: Judge, if I can approach?

24 THE COURT: You, may.

25 BY MRS. SUMNER:

1 Q. And Paramedic DeYoung, I'm showing what's
2 been previously entered into evidence as State's
3 Exhibit 3. I would specifically draw your attention
4 to Numbers 21166376, 6652 and 6649 ask if you would
5 take a look at those. Do you recognize the person
6 depicted in these photographs?

7 A. Yes.

8 Q. And do you see any injuries to him on
9 these photographs?

10 MR. SHAH: Objection, Your Honor. I
11 believe he already testified. At this point
12 it's just asking for a lay opinion of a
13 picture, which you can look at.

14 MRS. SUMNER: I would -- I don't believe
15 it's a lay opinion. He's a paramedic. He's
16 been dealing with patients for a number of
17 years. But in any event.

18 BY MRS. SUMNER:

19 Q. Did you see --

20 MR. SHAH: Objection, Your Honor.

21 THE COURT: Yeah.

22 MRS. SUMNER: That's fine. That's fine.

23 I'll go on.

24 THE COURT: I'll sustain.

25 BY MRS. SUMNER:

1 Q. You indicated that you did not see any
2 injuries to him when you made contact with him
3 shortly after 1:30 on January 13th of 2014?

4 A. That's correct.

5 MRS. SUMNER: Nothing further, Your Honor.
6 I tender the witness.

7 MR. SHAH: No questions, Your Honor.

8 THE COURT: Thank you. May this witness
9 be released or do you want him to remain under
10 subpoena?

11 MRS. SUMNER: If he could just remain
12 under subpoena, but we'll contact him.

13 THE COURT: All right. You're released.
14 Should you be needed, you may be required to
15 come back. You're still under subpoena, but
16 you're free to go today.

17 THE WITNESS: Thank you.

18 THE COURT: Thank you.

19 Who's next?

20 MR. GARCIA: Your Honor, the State would
21 call Sergeant Allen Hamilton.

22 (Whereupon, the witness was sworn.)

23 THE COURT: Mr. Garcia?

24 MR. GARCIA: Thank you, Your Honor. May
25 it please the Court, Counsel?

1 ALLEN HAMILTON,
2 Thereupon, the witness herein, being first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. GARCIA:

6 Q. Mr. Hamilton, good afternoon, sir.

7 A. Good afternoon.

8 Q. Mr. Hamilton, I'm going to ask that you
9 speak loudly and clearly into that microphone so
10 that everyone can hear you, please.

11 A. Okay.

12 Q. If you would, please, can you state your
13 name?

14 A. Allen Lee Hamilton, Senior.

15 Q. And your profession?

16 A. I'm a sergeant with the Sumter County
17 Sheriff's Department.

18 Q. And how long employed with the Sumter
19 County Sheriff's Department?

20 A. Fourteen-and-a-half years.

21 Q. What are your duties with the Sumter
22 County Sheriff's office?

23 A. I'm a road patrol supervisor.

24 Q. And if you would, please, can you share
25 with us your education and training as far as your

1 law enforcement experience?

2 A. I have an Associate's in criminology and a
3 Bachelor's in occupational safety.

4 Q. Okay. Are you married, sir?

5 A. Yes, sir.

6 Q. To whom?

7 A. Angela Hamilton.

8 Q. And how long have you been married, sir?

9 A. Seven years.

10 Q. Sergeant Hamilton, directing your
11 attention to January 13th of 2014, do you recall
12 that date?

13 A. Yes, sir.

14 Q. Did you and your wife plan on having a
15 date?

16 A. Yes, sir.

17 Q. Were you going to go to the Cobb Movie
18 Theater?

19 A. Yes, sir.

20 Q. Had you picked out a movie?

21 A. Not initially. But we just kind of agreed
22 on it -- you know, when we got here, we just kind of
23 agreed on it.

24 Q. Okay. Did you agree on the Lone Survivor?

25 A. Absolutely. Yes, sir.

1 Q. What time did you arrive at the Cobb
2 Theater?

3 A. Just before -- which would be 13:00, 1:00.

4 Q. All right. And do you remember what time
5 you purchased your tickets?

6 A. Around 12:45, best I recall.

7 Q. Okay. And do you remember what time the
8 movie was going to start?

9 A. Just a little after 1:00, I believe.

10 Q. All right. And when you entered the movie
11 theater, did you go to the concession stand?

12 A. Yes, sir. I did.

13 Q. Did you purchase any items?

14 A. Yes, sir.

15 Q. And if you would, would you share with us
16 what you purchased?

17 A. I purchased the water, some nachos and
18 popcorn.

19 Q. Okay. And let me ask you this, Sergeant
20 Hamilton. Prior to January 13th, 2014, did you know
21 Mr. Reeves?

22 A. No, sir.

23 Q. Did you know his wife, Vivian Reeves?

24 A. No, sir.

25 Q. Did you know Chad Oulsen or Nicole Oulsen?

1 A. No, sir.

2 Q. Never met them before, right?

3 A. No, sir.

4 Q. Had you ever seen them before?

5 A. No, sir.

6 Q. Never?

7 A. Never.

8 Q. All right. You purchased the bottle of
9 water and the bag of popcorn. You enter the movie
10 theater?

11 A. Yes, sir.

12 Q. Can you tell us where you were sitting?
13 Where did you select your seats?

14 A. Initially we were going to sit to the top
15 left-hand side. We moved a little bit closer in
16 from where we initially had decided at the very top.
17 If we went any higher, we would have been in the
18 bistro.

19 Q. All right. So were you in Row A then, the
20 back row up against the wall, prior to getting to
21 the bistro?

22 A. Yes, sir. That's correct.

23 Q. And when you entered the movie theater,
24 were the previews playing yet?

25 A. No, sir.

1 Q. What were the lighting conditions in
2 there?

3 A. They were low.

4 Q. Okay. Could you see, though?

5 A. Yes, sir.

6 Q. Now, could you see five seats away from
7 you?

8 A. Yes, sir.

9 Q. Ten seats away?

10 A. Yes, sir.

11 Q. Could you hear conversations?

12 A. Yes, sir.

13 Q. Could you see people walking in?

14 A. Yes, sir.

15 Q. Walking out?

16 A. Yes, sir.

17 Q. Could you see people maybe taking a drink
18 from their soda?

19 A. Yes, sir.

20 Q. Eating popcorn?

21 A. Yes, sir.

22 Q. So it was dim, but you could still see,
23 right?

24 A. Right.

25 Q. Now, when the previews came on were they

1 loud?

2 A. Yeah, somewhat. I mean, for, you know, a
3 theater. But, I mean, it wasn't as loud as what the
4 movie would have been.

5 Q. Okay. Could you hear conversations while
6 the previews were going on?

7 A. Yes, sir.

8 Q. And do you know what row Mr. and
9 Mrs. Reeves were in?

10 A. They were sitting in the same row to my
11 right.

12 Q. Okay. So it would be the back row up
13 against the wall, Row A?

14 A. Yes, sir.

15 Q. And are you aware, were there any other
16 patrons between you and Mr. and Mrs. Reeves?

17 A. Yes, sir. There was an older couple, an
18 older white male and female.

19 Q. Sitting in between y'all?

20 A. Yes, sir.

21 Q. All right. Did you see Mr. and Mr.
22 Oulsen?

23 A. No.

24 Q. While the previews are playing, did
25 something draw your attention to kind of the center

1 of the movie theater?

2 A. My wife, she tapped me on the shoulder and
3 say, hey, you may want to pay attention to this.

4 Q. Okay.

5 A. So, you know, I leaned up and I could
6 hear, you know, a lower tone. You know, initially
7 before I leaned up, and I could hear a lower-toned
8 conversation, just a little bit lower than what
9 the -- you know, what the previews were.

10 Q. Right. So you would -- is it fair to say,
11 you said you were on the same row as Mr. Reeves,
12 right?

13 A. Yes, sir.

14 Q. Back row?

15 A. Yes, sir.

16 Q. Were you sitting next to the aisle or
17 where exactly were you and where was your wife?

18 A. I believe we were a couple seats in from
19 the aisle.

20 Q. Okay. And would she be the first one?

21 A. No.

22 Q. It would have been you?

23 A. It would have been me.

24 Q. Okay. So as -- and so you're sitting in
25 that back row, right? You're sitting -- your wife

1 is to your right?

2 A. Yes, sir.

3 Q. And you said you leaned, correct?

4 A. Yes, sir.

5 Q. Did you lean this way towards your right
6 looking --

7 A. Yes, sir.

8 Q. All right. And when you looked in that
9 direction, did you see someone --

10 A. Yes, sir.

11 Q. -- or hear someone?

12 A. I could see and hear what now I know is
13 Mr. Oulsen.

14 Q. Okay. Did you hear what Mr. Oulsen was
15 saying?

16 A. He said something to the effect about, I
17 was just trying to text my, and he used the F word
18 in there at some point, do you mind.

19 Q. Okay. And it's okay to say it. So, I
20 mean, just so we're clear. He said, I was texting
21 my --

22 A. Fucking daughter. Do you mind.

23 Q. Do you mind. Can you demonstrate for
24 Judge Barthle how and what position he was in when
25 you heard this statement?

1 A. Yes, sir.

2 MR. GARCIA: Judge, may he step down for
3 demonstrational purposes, please?

4 THE COURT: Certainly.

5 BY MR. GARCIA:

6 Q. Sergeant Hamilton, if you would please,
7 I'm going to give the chair to you and I want you to
8 demonstrate for the Judge what you observed back on
9 January 13th of 2014.

10 A. Mr --

11 Q. Make-believe that that's, you know, a
12 theater chair, so place it however you need to.

13 A. Keep in mind, those chairs can either be,
14 you know, this way or they can be this way. I
15 can't -- I couldn't tell that from where I was at.

16 Q. Okay.

17 A. But if you're utilizing the chair -- let
18 me move it before I fall on my face. Utilizing the
19 chair, he was bent at the hips. And if I'm kneeling
20 it, he was bent this way.

21 Q. Okay.

22 A. Kind of propped up, you know, in the chair
23 or, you know, if he was standing up -- I mean, you
24 know, I could make a couple assumptions the way he
25 was. But he was propped up, basically, in the chair

1 bent at the hips.

2 Q. Did you ever see his body come into this
3 section?

4 A. No, sir.

5 Q. You never saw that?

6 A. I never seen him breach the chair.

7 Q. Okay. If you can retake your seat. So as
8 you're observing Mr. Oulsen in this position, and I
9 think you had indicated he had just said, I was
10 texting my fucking daughter; do you mind. What
11 happens?

12 A. I see a -- and as I used as a flick of
13 popcorn or a burst of popcorn, and then I see the
14 muzzle blast and I hear a gunshot.

15 Q. Was it almost instantaneously?

16 A. It's all one big, big ball. Yes, sir.

17 Q. Did -- after you heard the bang and the
18 flash, did Mr. Oulsen say anything?

19 A. I can't -- I don't -- it was something to
20 the effect -- like I said, I'm not verbatim. I
21 can't believe he shot me, something to that effect.

22 Q. Okay. Was he doing any gestures when he
23 made that comment?

24 A. He had his hands up on his chest and like,
25 again, I said, I could see people and the outline of

1 his person, you know, what I seen was, you know, it
2 was like this.

3 Q. Okay. In the position that he was in
4 when -- you indicated that he was leaning. After he
5 stood up, could you tell, or did he appear to you,
6 to be a lot taller than --

7 A. Yes, sir.

8 Q. Did you draw any conclusions from that?

9 A. That he was a pretty tall individual. You
10 know, that he was, you know, at least over six-foot.

11 Q. Okay. Could you tell if this popcorn had
12 hit Mr. Reeves?

13 A. No, sir.

14 Q. Could you see the gun in Mr. Reeves'
15 hands?

16 A. No, sir.

17 Q. Now, you indicate you saw a flicking
18 motion, right, in the popcorn?

19 A. Yes, sir.

20 Q. Did you ever see Mr. Oulsen throw a cell
21 phone?

22 A. No, sir.

23 Q. Did you ever see Mr. Oulsen throw a punch?

24 A. No, sir.

25 Q. Did you ever see Mr. Oulsen climb over the

1 chair and try and get at Mr. Reeves?

2 A. I did not see that. No, sir.

3 Q. It didn't happen, did it?

4 MR. ESCOBAR: Objection. That's leading.

5 Direct examination --

6 THE COURT: It's leading. Rephrase.

7 BY MR. GARCIA:

8 Q. Did it happen?

9 A. I didn't see it.

10 Q. Okay. As a law enforcement officer, what
11 did you do having just observed this?

12 A. I got up and as, you know, the aisles were
13 pretty close, you know, you can't run down. And I'm
14 not 110 pounds. I'm scooting down trying to make
15 sure where this came from, because I'm not sure who
16 or, you know, what. You know, like I said, it was a
17 very quick thing between the -- you know, whatever
18 would have been an argument, to the popcorn flying,
19 to the shot. And I moved down towards the area of
20 where -- you know, what I felt was, you know, the
21 area that was going to be the shooter or wherever
22 that shot came from.

23 Q. Okay. So you walked down row A, or that
24 aisle, right?

25 A. Correct.

1 Q. Did you come to a person who later became
2 known to you as Mr. Reeves?

3 A. Yes, sir.

4 Q. Did you observe Mr. Reeves?

5 A. Yes, sir.

6 Q. Did you observe a firearm?

7 A. Yes, sir.

8 Q. Where was the firearm?

9 A. On his left knee.

10 Q. Okay. And upon observing that, what did
11 you do?

12 A. I identified myself as a deputy to him.
13 And just to make sure he wasn't going to -- again, I
14 don't know him, don't know what he's capable of. I
15 put my hand at his chest and reached down and
16 grabbed the firearm.

17 Q. Did you show him your badge?

18 A. Yes, sir.

19 Q. Show him your credentials?

20 A. Yes, sir -- no. I didn't show him my
21 credentials. I showed him my badge.

22 Q. You just showed him your badge?

23 A. Right. Correct.

24 Q. Did you pick up the firearm?

25 A. (Nods head.)

1 Q. Did you touch the barrel of the firearm?

2 A. Yes, sir.

3 Q. Was it warm?

4 A. Yes, sir.

5 Q. What did that indicate to you?

6 A. That weapon had just been fired.

7 Q. Did you take the magazine out of the
8 firearm?

9 A. Yes, I did.

10 Q. Did you clear the chamber?

11 A. I attempted to clear the chamber.

12 Q. Sergeant Hamilton, you were off duty that
13 day, right?

14 A. Yes. That's correct.

15 Q. Were you carrying your off-duty weapon or
16 your firearm with you?

17 A. I had it with me, but not on me whenever I
18 confronted Mr. Reeves.

19 Q. Okay. Do you have any trouble seeing
20 Mr. Reeves at this point?

21 A. No, sir.

22 Q. When you walked up to him, were his
23 glasses askew or cockeyed or tilted in any way?

24 A. No, sir.

25 Q. Did you give Mr. Reeves any instructions

1 as you're standing there with him?

2 A. Yes, sir. I told him to stay seated and
3 that, you know, we're going to make sure nobody else
4 gets shot and nobody else gets killed, because I
5 knew that law enforcement or somebody was going to
6 call them and they were going to be coming in there
7 and, you know, try to make sure -- you know,
8 apprehend whoever had done that. So I just didn't
9 want to see him or anybody else get hurt.

10 Q. You were concerned for your safety and
11 his, right?

12 A. Absolutely.

13 Q. Did Mr. Reeves make any statements to you?

14 A. He initially had said he had been hit with
15 something and for me to inspect him and to look at
16 him.

17 Q. Did you do that?

18 A. Yes, sir. I did.

19 Q. Did you observe any injuries on
20 Mr. Reeves?

21 A. No, sir. I didn't see anything on him at
22 the time.

23 Q. Did he have any cuts?

24 A. No, sir.

25 Q. Any bruises?

1 A. No, sir.

2 Q. Was he bleeding?

3 A. No, sir.

4 Q. Nothing?

5 A. I didn't see any of that. No, sir.

6 Q. Did Mr. Reeves tell you he needed to
7 leave?

8 A. Yes, sir. At one point he said, I need to
9 leave. And again, I reiterated that he needed to
10 stay where he was at until we figured out what was
11 going on.

12 Q. Did Mr. Reeves say anything to you about
13 what had just occurred?

14 A. He said he couldn't believe what he had
15 done.

16 Q. Sergeant Hamilton, were you going to stay
17 with Mr. Reeves until law enforcement arrived --

18 A. Yes, sir.

19 Q. -- in the movie theater?

20 A. Yes, sir.

21 Q. What was -- what happened to Mr. Oulsen
22 after he was shot?

23 A. I lost sight of Mr. Oulsen initially
24 and -- because I was more concentrated on, you know,
25 where this shot came from. And then later on, you

1 know, they had pulled the lights up a little bit and
2 I seen Mr. Oulsen's face. He was laying on his back
3 and I could tell that there was other people -- I
4 don't know who they were -- were attempting to give
5 him CPR.

6 Q. Did you hear gurgling sounds coming from
7 Mr. Oulsen?

8 A. Yes, sir. I did.

9 Q. And what did you refer those sounds as?

10 A. As I said -- there's a medical term for
11 it. I haven't looked it up. But we, in law
12 enforcement, call it the death rattle. It's
13 basically the last minutes of your life or seconds,
14 whatever that may be.

15 And again, you know, I'm not -- that's
16 normally what we call it and what we hear. We know
17 that, basically, that individual is no longer going
18 to make it.

19 Q. It's not good?

20 A. It's not good.

21 Q. In your career as a law enforcement
22 officer have you heard this death rattle before?

23 A. Yes, sir. I have.

24 Q. On how many occasions?

25 A. Too many.

1 Q. After having heard this, did you make any
2 statements or comments to Mr. Reeves?

3 A. Yes, sir. I did. I turned to him and
4 told him, I said, that's -- that doesn't sound good.
5 And I told him, I said, you know what that is.

6 Q. Did he respond to you?

7 A. Yes, sir. He leaned back and he said, I
8 can't believe what I've done.

9 Q. Well, that wasn't exactly what he said,
10 right?

11 A. No.

12 MR. ESCOBAR: Objection, Your Honor,
13 leading.

14 THE COURT: Sustained as to leading.
15 Rephrase.

16 BY MR. GARCIA:

17 Q. What were his -- what were Mr. Reeves'
18 exact words?

19 A. He said, I can't believe what I just
20 fucking done.

21 Q. As you are standing there, did you hear a
22 conversation between Mr. and Mrs. Reeves?

23 A. Yes, I did. Yes, sir.

24 Q. Did you hear Mrs. Reeves make a statement
25 to Mr. Reeves?

1 A. Yes, sir.

2 Q. What was that statement?

3 A. That was no cause to shoot that man.

4 Q. Did Mr. Reeves respond?

5 A. Yes, sir. He responded. He turned
6 quickly to her, she was to his right, pointed his
7 finger at her and told her to shut her mouth and not
8 say another word.

9 Q. Well --

10 A. Basically, not to say another fucking
11 word.

12 Q. Mr. Hamilton, would you tell the Court his
13 exact words, please?

14 A. He pointed his finger at her and told her
15 to shut her mouth and not to say another fucking
16 word.

17 Q. Okay. What did Mrs. Reeves do?

18 A. She got up out of her chair, moved one or
19 two seats down from him and turned. And she -- the
20 way she postured, she crossed her legs and crossed
21 her arms and just stared back at him.

22 Q. Did Mr. and Mrs. Reeves have any further
23 conversations after that?

24 A. No, sir. Not that I know of.

25 Q. Did you have any conversations with

1 Mr. Reeves, any further conversations?

2 A. No, sir. If it was, it was brief. Just
3 about, you know, I didn't know if it was going to be
4 Pasco County SWAT or, you know, if they had a
5 certain team or whatever. Just a -- you know, we're
6 going to maintain what we've got. And that was -- I
7 briefly kept reiterating that to him.

8 Q. Basically, don't do anything crazy, right?
9 I don't want to get shot and I don't want you to get
10 shot, right?

11 A. Correct.

12 Q. Sergeant Hamilton, do you know how long it
13 took for the Pasco County Sheriff's office to
14 arrive?

15 A. No, sir. I can't put a time frame on it.
16 At the time, it seemed like forever.

17 Q. Seemed like an eternity?

18 A. Yes, sir.

19 Q. Did you come in contact with a sergeant
20 from the Pasco County Sheriff's office who later
21 became known to you as Sergeant Rhymer?

22 A. Yes, sir.

23 Q. Did he, along with two other deputies,
24 arrest Mr. Reeves?

25 A. Yes, sir.

1 Q. Did you see that?

2 A. Yes, sir. They placed him in handcuffs.

3 Q. Was Mr. Reeves sitting in his chair the
4 whole entire time that you were next to him?

5 A. Yes, sir.

6 Q. Did you observe anything at Mr. Reeves'
7 feet?

8 A. It was a cell phone.

9 Q. Notice anything else?

10 A. The debris, popcorn debris. I mean, there
11 was --

12 Q. Did Mr. Reeves at any time try and pick up
13 those items that were on the floor?

14 A. He tried to pick up the cell phone. I
15 don't know why, but I told him not to touch
16 anything, to leave everything where it was at.

17 Q. So you never allowed him to touch any of
18 those items?

19 A. No, sir.

20 Q. After Mr. Reeves was taken out by Sergeant
21 Rhymer and two other deputies, what did you and your
22 wife do?

23 A. I just maintained where I was at and then,
24 you know, some deputies started flowing in, or
25 detectives, whatever they were, and requested we,

1 you know, stay where we were at until they get
2 things situated and start filling out some statement
3 forms.

4 Q. Okay. You've been in law enforcement many
5 years now, right?

6 A. Yes, sir.

7 Q. Do you know what witness contamination is?

8 A. Yes, sir.

9 Q. While you were waiting for law enforcement
10 to arrive, did you see or hear anyone talking about
11 this case?

12 A. No, sir. I didn't hear or see any of
13 that. I was doing what I was supposed to be doing.

14 Q. Did you observe anybody that appeared to
15 be talking about the case?

16 A. Again, I was doing my thing of what they
17 requested us to do. I wasn't paying attention to
18 anybody else. I was trying to maintain and take
19 care of my wife.

20 Q. Sergeant Hamilton, was your wife pretty
21 upset?

22 A. Yes, sir. Very much.

23 Q. Crying?

24 A. Yes, sir.

25 Q. Traumatic experience for you and her?

1 A. Absolutely.

2 Q. Did you fill out a written statement in
3 this case?

4 A. Yes, sir. I did.

5 Q. Okay. And in that written statement did
6 you document or memorialize every single thing that
7 happened on that day, January 13th, 2014?

8 A. No, sir. Preliminarily, I wrote down a
9 short synopsis of, you know, what -- you know, what
10 had occurred just to kind of get a basis for it and
11 so I could, you know, move along.

12 Q. Okay. Did you come in contact with a
13 detective who later became known to you as Detective
14 Proctor?

15 A. Yes, sir. I did.

16 Q. Did he conduct a taped interview of you?

17 A. Yes, sir. He did.

18 Q. Do you have any idea how long that taped
19 interview was?

20 A. It was short, five or six minutes, I
21 believe, is what I've seen.

22 Q. Okay. And in that interview did you give
23 him a detailed account of everything that happened
24 in that movie theater?

25 A. No, sir. I didn't.

1 Q. Why not?

2 A. My belief is what we were doing was to
3 establish -- and, again, this is not my case.

4 Q. Right.

5 A. I just happened to be in the wrong place,
6 wrong time. Was to establish a probable cause, give
7 a preliminary statement of what went on, and then
8 the agency could, you know, expound on that at a
9 later date, you know, whatever they needed, whatever
10 the evidence brought forth that they needed to ask
11 questions about.

12 Q. So you thought they would come back and do
13 a lengthy, detailed interview, right?

14 A. That's what I thought.

15 Q. Recording, videotape, the whole works?

16 A. Yes, sir.

17 Q. Have you worked homicide cases before in
18 Sumter County?

19 A. Yes, sir.

20 Q. Is that normal for a detective to take
21 basically of -- or conduct a very short interview?

22 MR. ESCOBAR: Objection, Your Honor.

23 We're talking about a completely different
24 county and the policies of the Pasco County
25 Sheriff's office and the policies of this

1 particular office. There's no proper predicate
2 for that opinion.

3 MR. GARCIA: Judge, he's a law enforcement
4 officer. He can testify to what the protocol
5 is and what --

6 THE COURT: I'm going to overrule. He can
7 testify as to what he does. I get it. He's
8 Sumter County. He certainly -- you're not
9 asking him what Pasco County does?

10 MR. GARCIA: No.

11 THE COURT: All right. I'll overrule.

12 THE WITNESS: Well, let me put it this
13 way. I've worked for two different agencies
14 and it's normal to get a, especially in those
15 situations, if there's some type of trauma or
16 an event that people are not going to be as
17 clear at first, we give them a statement form,
18 give them some type -- it's a preliminary
19 statement that just gives the basic facts of
20 what -- just boils down to what happened.

21 Then we, if we feel necessary of what the
22 evidence, we have different things going as we
23 do interviews. We pull them back in and do an
24 audio and video interview with them and expound
25 on what they said from the initial time, so

1 giving us more information on specifics.

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

3 THE COURT: You may.

4 MR. GARCIA: Judge, I would pass the
5 witness. Thank you.

6 THE COURT: Cross?

7 MR. ESCOBAR: Your Honor, if we could just
8 have second to set up?

9 THE COURT: You may.

10 MR. ESCOBAR: Your Honor, just so that we
11 can start. We have stipulated to the
12 introduction of Item 2-AP. And it looks like
13 the date and time was 01/24/14 or 1455 hours.

14 May I have that marked as an exhibit that
15 had been introduced into evidence, Madam Clerk?
16 It's the interview of Sergeant Hamilton.

17 THE COURT: Any objection?

18 MR. MARTIN: Well, right now we don't know
19 what he's going to do with it, so he's just
20 having it marked.

21 MR. ESCOBAR: At some point in time I'm
22 going to play it.

23 THE COURT: Well, if it's going to be
24 marked, it's coming in.

25 MR. MARTIN: Well, I think before -- it's

1 not my witness. I shouldn't be talking.

2 MR. GARCIA: Judge, may it please the
3 Court? I mean, it's going to depend. I don't
4 think the whole interview is going to come in.

5 MR. ESCOBAR: Judge --

6 MR. GARCIA: If he plans on -- or try to
7 impeach him, he may play certain portions of
8 it.

9 MR. ESCOBAR: Judge, Mr. Martin and I had
10 agreed, both on Mr. Reeves and all the other
11 witnesses that had taped statements, that we
12 would able to use those taped statements freely
13 in cross-examination. That's why we had the
14 stipulation for the introduction of those
15 particular CDs.

16 MR. MARTIN: If there's inconsistencies.
17 Now I'm addressing the stipulation. The
18 stipulation was, in the event that -- and we're
19 apples and oranges a little bit.

20 With Mr. Reeves, we're talking about a
21 defendant's statement where, potentially, if
22 I'm using it against him, then the rules are
23 different.

24 When we're talking about an inconsistent
25 statement, the agreement was that we wouldn't

1 have to authenticate it. I gave him a
2 transcript. If there's something inconsistent
3 and he wants to use the transcript.

4 But I never agreed he was just going to
5 play the whole thing. I mean, he can use it.
6 If there's inconsistencies, he knows where they
7 are and he can show the Court where there's
8 inconsistencies, then we're not going to object
9 to any type of authenticity or what was said,
10 but he still has to lay the predicate.

11 MR. ESCOBAR: Judge, I will tell you that
12 you don't have to impeach a witness. This was
13 his interview. He was there. He's subject to
14 both direct and cross-examinations. It's not
15 hearsay. It's part of the process that took
16 place in the investigation.

17 I can have him play the entire tape and
18 listen to it and question him about every
19 single statement that he made in that tape, and
20 that's going to be my position.

21 The Court will have to rule. But this is
22 not a hearsay statement. This is a statement
23 where actually he gave a statement to Detective
24 Proctor and he's going to be able to talk about
25 every single thing he said in that statement.

1 You don't have to bring as a form of
2 impeachment at this point in time.

3 MR. GARCIA: Judge, it's an out-of-court
4 statement that's being offered for the truth of
5 the matter asserted. It's clearly hearsay.

6 Just because somebody's audiotaped doesn't
7 mean you can play it in court. That's no
8 different than me having a State witness and I
9 go, Judge, Mrs. Smith gave us a taped
10 interview. I want to play it for you and the
11 members of this jury. You can't do that.

12 MR. ESCOBAR: Judge, it is not hearsay.

13 THE COURT: Why is it not hearsay?

14 MR. ESCOBAR: Because you have a witness
15 that's able to be directed and cross-examined.

16 The whole purpose of hearsay, and the
17 reason that hearsay is not allowed in, is
18 because you have a lack of a confrontation.

19 Here, the prosecution has a confrontation.
20 The Defense has a confrontation. It's a piece
21 of evidence. It is not hearsay, by any stretch
22 of the imagination.

23 THE COURT: To me, it's similar to
24 bringing in a police report --

25 MR. ESCOBAR: No.

1 THE COURT: -- when you've got the officer
2 sitting right here who testifies live as to
3 what is going on. You don't --

4 MR. ESCOBAR: The only reason that it's
5 not allowed, Your Honor, in certain
6 circumstances is if it's self-serving.

7 Here, this is not a self-serving type of
8 document. It is an interview by a detective
9 over an alleged witness. And he's here subject
10 to cross-examination and subject to direct
11 examination.

12 It's actually their witness. They've
13 seen -- they have listened to this tape. It's
14 not something that they haven't seen, touched
15 and heard.

16 MR. GARCIA: Judge, I would invite the
17 Court to look at the definition of hearsay.
18 And you're going to see that it's an
19 out-of-court statement being offered for the
20 truth of the matter asserted, which that's
21 exactly what Mr. Escobar is doing. And it's
22 not admissible, Judge.

23 THE COURT: Hearsay is a statement other
24 than one made by the declarant while testifying
25 at the trial or hearing offered in evidence to

1 prove the truth of the matter asserted.

2 A statement is not hearsay if the
3 declarant testifies at the trial or hearing and
4 is subject to cross-examination concerning the
5 statement and the statement is A, inconsistent;
6 or B, consistent with the declarant's
7 testimony, isn't offered to rebut an expressed
8 or implied charge against the declarant of
9 improper influence, motive or recent
10 fabrication; C, one of identification of a
11 person made after perceiving the person.

12 MR. ESCOBAR: Exactly.

13 THE COURT: Which one is it?

14 MR. ESCOBAR: B.

15 THE COURT: What --

16 MR. ESCOBAR: At this point in time I can
17 use it for A and B. I can use it as an
18 inconsistent statement --

19 THE COURT: He hasn't -- well, you've got
20 to point it out.

21 MR. ESCOBAR: Judge, we're going to use it
22 for both purposes. It's not --

23 THE COURT: Well, hold on.

24 MR. ESCOBAR: Okay.

25 THE COURT: Inconsistent statement. What

1 statement are you alleging is inconsistent?

2 MR. ESCOBAR: Well, we're going to be --
3 at some point in time he's going to make a
4 statement and I can use it if this is
5 inconsistent with it.

6 THE COURT: No. That's not the way it
7 works. You don't play that and then ask him
8 questions --

9 MR. ESCOBAR: No. No.

10 THE COURT: -- and see if it's
11 inconsistent.

12 MR. ESCOBAR: No. No. A, absolutely. On
13 A I have to have the inconsistent statement
14 before I play it; but not for B.

15 THE COURT: B has to be consistent --

16 MR. ESCOBAR: That's correct.

17 THE COURT: -- and is offered to rebut --

18 MR. ESCOBAR: That's correct.

19 THE COURT: -- an expressed or implied
20 charge against the declarant of improper
21 influence, motive or recent fabrication.

22 MR. ESCOBAR: And that's the prosecutor's
23 opinion. When he's saying, hey, listen, you
24 know, the only thing I did in that particular
25 statement is I only gave him a little glimpse

1 of what I knew. It wasn't the whole thing that
2 I gave him. It was just a little glimpse of
3 what I knew, because I expected at some point
4 in time that a detective was going to come and
5 interview me and get a more thorough statement.

6 MR. GARCIA: Well, then how does that go
7 to impeach him, Judge.

8 MR. ESCOBAR: It goes to impeach him on
9 his bias, on his bias. That's perfectly --

10 THE COURT: No. No. That's not --

11 MR. GARCIA: What bias?

12 THE COURT: -- where --

13 MR. ESCOBAR: Judge, listen, I can make my
14 argument. That's my argument. If the Court
15 feels that that argument is not correct, then
16 the Court can make its ruling. We've got a
17 good record on it. We've got the tape here.

18 But I certainly am going to, at certain
19 times, try to introduce that statement and the
20 Court can rule as the Court feels is
21 appropriate. I'll respect whatever the Court
22 decides to do on this matter.

23 THE COURT: If it's --

24 MR. ESCOBAR: We've got a record.

25 THE COURT: If it's inconsistent, just as

1 Mr. Garcia indicated at the beginning of this
2 argument, it can be offered for impeachment.
3 And if it's -- I'm just -- you haven't even
4 asked him a single question yet and you're --
5 you're --

6 MR. ESCOBAR: Judge, I wasn't going to
7 play it right now.

8 THE COURT: Hang on.

9 MR. ESCOBAR: I just told you.

10 THE COURT: All right. All right.

11 MR. ESCOBAR: When he asked, what are you
12 going to do with it, I told the Court I'm going
13 to play it.

14 THE COURT: Right.

15 MR. ESCOBAR: But I'm not going to play it
16 right now.

17 THE COURT: But it's offered to rebut an
18 expressed or implied charge against the
19 declarant of improper influence, motive or
20 recent fabrication.

21 MR. ESCOBAR: Motive. What he just
22 testified to was, you know, a lot of things
23 aren't going to be in this particular tape
24 because, you know, I only give them a little
25 bit because I expect at some point in time that

1 someone -- some detective is going to come back
2 later and is going to now give me the
3 opportunity to give him the entire stuff.

4 That is to show his bad motive. That tape
5 --

6 THE COURT: How is that a bad motive?

7 MR. ESCOBAR: Because the detective is
8 asking him, tell me everything you know.

9 MR. GARCIA: Judge, Detective Proctor did
10 not say, tell me everything you know.
11 Detective Proctor says, tell me what happened.
12 He didn't say, tell me everything you know.

13 THE COURT: This is -- on scene this took
14 place?

15 MR. ESCOBAR: On scene. On scene.
16 Anything else you can tell me, anything else
17 that you can tell me. I've got the transcript
18 right here. Anything else that you can tell
19 me. That's what Detective Proctor is telling
20 this particular witness.

21 THE COURT: All right. Here -- this --
22 I'm beginning to think that this is the same as
23 I kept saying yesterday, what you think is
24 inconsistent often is not what I think is
25 inconsistent. I'm thinking this is -- we're

1 going to go along those lines somehow.

2 I'm going to sustain the objection at this
3 point. But you weren't going to play it right
4 now anyways.

5 MR. ESCOBAR: I wasn't going to play it
6 right now. I was just giving the Court a heads
7 up, just like they asked, how are you going to
8 use it. I gave the Court the heads up.

9 THE COURT: All right. Then we'll come to
10 it when the time comes. Oh, well, that's the
11 second part of this.

12 MR. ESCOBAR: They have stipulated to the
13 admissibility of that particular, for certain
14 purposes that are going to be allowed or
15 disallowed by the Court.

16 THE COURT: All right. Well, it's going
17 to be proffered anyways, I'm guessing.

18 MR. ESCOBAR: It will be.

19 THE COURT: So we'll go ahead and mark it.

20 Third possibility -- do you have an
21 objection to it coming in during your case in
22 chief, if you will?

23 MR. ESCOBAR: Judge, we had stipulated
24 that it could be used within our case in chief.
25 Either. In other words, he used it and he was

1 going to use it with Mr. Reeves. And so we had
2 this to facilitate the whole process.

3 MR. MARTIN: What the stipulation was
4 that, it in the event that it became relevant,
5 for some legal reason, then we would not object
6 to either using the transcript, if that was
7 more convenient, like I did with Mr. Reeves, or
8 play it.

9 But when I played it for Mr. Reeves, that
10 was being offered for a totally different
11 purpose. Now we're having it for the
12 inconsistent part, and he's got to lay the
13 predicate.

14 THE COURT: All right. I get that.

15 MR. MARTIN: Okay.

16 THE COURT: But my only question now is,
17 typically I don't -- I don't care when a piece
18 of item of evidence comes in. But typically
19 there's an objection from one side or the other
20 if it's not being introduced during their case
21 in chief.

22 MR. MARTIN: Well --

23 THE COURT: Do you have an objection to it
24 being entered at this point?

25 MR. MARTIN: No. Because it really

1 doesn't matter anymore --

2 THE COURT: All right. That's --

3 MR. MARTIN: -- because you don't lose an
4 opening and close, like several years ago.
5 That was the big deal.

6 THE COURT: That's what I figured.

7 MR. WOODLIFF: Right.

8 THE COURT: I don't care, but --

9 MR. MARTIN: That rule's changed.

10 THE COURT: -- if there's an objection, I
11 have to address it and I'm not going to let it
12 come in without having it addressed.

13 MR. MARTIN: If you let them use it, then
14 it needs to come in, right?

15 THE COURT: All right. It will be
16 admitted with the reservations that I've
17 indicated.

18 MR. MARTIN: Well, right now it's just
19 marked for identification.

20 THE COURT: Right. Well --

21 MR. MARTIN: Until he plans to use it.

22 THE COURT: When it's not -- then she's
23 not marking it. If it's marked by your
24 identification, that's fine. But when she
25 marks it, it comes in and she holds it.

1 MR. MARTIN: Well, I don't know what she's
2 done yet. But right now I thought it was just
3 marked for identification.

4 THE COURT: Well, she doesn't mark it for
5 identification, you do.

6 MR. ESCOBAR: Judge, we're asking at this
7 point in time, pursuant to our stipulation --
8 because it's got to be proffered anyway -- that
9 we have it introduced into evidence.

10 THE COURT: All right. So it will be --

11 THE CLERK: Defendant's 49.

12 THE COURT: -- Defendant's 49. You're
13 offering it. It will be with your number.

14 MR. ESCOBAR: Thank you, Your Honor.

15 (Whereupon, Defense Exhibit Number 39 was admitted.)

16 MR. ESCOBAR: Thank you, Madam Clerk.

17 CROSS-EXAMINATION

18 BY MR. ESCOBAR:

19 Q. Good afternoon, Sergeant Hamilton.

20 A. Good afternoon, sir.

21 Q. Sergeant, you started your law enforcement
22 career at the detention facility at -- was it
23 Brooksville?

24 A. Brooksville. Yes, sir.

25 Q. How long were you in that capacity?

1 A. A little over four years, I believe.

2 Q. Okay. And then you moved where?

3 A. To the Brooksville Police Department.

4 Q. Okay. And how long were you there?

5 A. Just short of five years, I believe.

6 Q. And then you went to Sumter?

7 A. Yes, sir.

8 Q. Now, you talked a little bit on direct
9 examination concerning your education. You received
10 an Associate's of Science degree?

11 A. Yes, sir.

12 Q. And where was that from?

13 A. Columbia Southern University.

14 Q. Okay. And was that an online education or
15 was that attending classes?

16 A. No, sir. Online.

17 Q. Okay. And then you also got a Bachelor's
18 of Art; is that correct?

19 A. Yes, sir.

20 Q. From what institution?

21 A. Columbia Southern.

22 Q. Okay. And where is Columbia Southern?

23 A. It's in Alabama.

24 Q. Okay. And so your Bachelors of Art was
25 also an online, not attending actual courses in

1 person?

2 A. That's correct.

3 Q. Okay. Now, when you started with Sumter,
4 you started as a patrol deputy for about a year and
5 a half?

6 A. That's correct.

7 Q. And then you moved to a school resource
8 officer for another four or five years?

9 A. Yes, sir.

10 Q. And then you had some time with the
11 property detective division, correct?

12 A. That's correct. Yes, sir.

13 Q. And then your position was that you were
14 drowning, so you decided that you wanted to go back
15 to patrol?

16 A. That's correct.

17 Q. Okay. And when this particular event
18 happened, you were a corporal with Sumter County; is
19 that correct?

20 A. The event we're talking about here, right?

21 Q. The shooting incident. Yes.

22 A. Yes. I was a corporal.

23 Q. Okay. Now, before we get started your
24 position is that you don't think that anybody can be
25 100 percent sure of anything?

1 A. Not all the time.

2 Q. Well, no, you're saying -- your position
3 is that no one can be 100 percent sure of anything?

4 A. A hundred percent sure of anything?

5 Q. Yeah.

6 A. I'm 100 percent sure I'm sitting here.

7 Q. Okay. Well, have you ever had that
8 feeling that you can't be 100 percent sure of
9 anything?

10 MR. GARCIA: Judge, I'm going to object as
11 to relevancy. Have you ever had that feeling
12 that you can't be 100 percent sure.

13 BY MR. ESCOBAR:

14 Q. Yeah, has that been your position ever
15 before as a law enforcement?

16 THE COURT: Hold on. There's an objection
17 on the table.

18 Argument?

19 MR. ESCOBAR: It's very relevant. That's
20 his stance. His stance is that he doesn't
21 believe that he can ever -- that anyone can be
22 100 percent sure.

23 THE COURT: I'll overrule for now.

24 BY MR. ESCOBAR:

25 Q. Is that correct?

1 A. 100 percent sure, a 100 percent of the
2 time, no.

3 Q. And you believe that certain individuals
4 are influenced by their experiences?

5 A. Influenced by their experiences?

6 Q. Yeah. Influenced by their experiences.
7 In other words, people's experiences or perceptions
8 can color what they see as 100 percent?

9 A. I'm not tracking on that.

10 Q. Okay. Page 18, Lines --

11 MR. GARCIA: Is this his deposition, Mr.
12 Escobar?

13 MR. ESCOBAR: It is. It's his deposition.
14 The deposition that I took of him. And the
15 date of that, Mr. Garcia, is March 20th of
16 2015.

17 MR. GARCIA: Yes, sir. You said Page 18?

18 MR. ESCOBAR: Page 18, Lines 17 through
19 22.

20 BY MR. ESCOBAR:

21 Q. Do you remember the following questions --
22 well, first of all, do you remember the deposition I
23 took of you --

24 A. Yes. Absolutely.

25 Q. -- is that correct?

1 A. Yes, sir.

2 Q. And you remember by being sworn to tell
3 the truth and nothing but the truth in that
4 deposition?

5 A. That's correct. Yes, sir.

6 Q. And you remember me asking the following
7 questions. Okay. So can we agree that people's
8 experiences or their perceptions can color what they
9 see as 100 percent. Answer: Sure. I mean, you
10 know, I'm glad you didn't do this depo with me and
11 my wife. It would have took us four hours to do
12 this.

13 MR. GARCIA: Objection as to relevancy,
14 Judge. What does that have to do with this
15 hearing?

16 MR. ESCOBAR: He said, sure. Absolutely.
17 That perceptions and his expectations, okay,
18 can influence what he believes. That was his
19 answer.

20 THE COURT: All right.

21 MR. GARCIA: No.

22 MR. ESCOBAR: He changed --

23 THE COURT: Hold on. Hold on.

24 MR. GARCIA: No. Judge, he's asking him a
25 question. He's the one posing the question.

1 You can't take it out of context. He asked the
2 question.

3 MR. ESCOBAR: Judge, I'm even going to go
4 further so the Court can see --

5 THE COURT: Wait a minute.

6 MR. ESCOBAR: -- that that's what it was.

7 THE COURT: Wait a minute. Stop. One at
8 a time, first of all. And I think I've been
9 over this procedure a couple of times.

10 If you're using it as an inconsistent
11 statement --

12 MR. ESCOBAR: Uh-huh.

13 THE COURT: -- then it better be
14 inconsistent.

15 MR. ESCOBAR: Well --

16 THE COURT: And Mr. Garcia, is it
17 inconsistent?

18 MR. GARCIA: Judge, just so the Court is
19 aware. Mr. Escobar or Mr. Michaels poses this
20 question. Okay. So we can agree then that
21 people's experience or their perceptions can
22 color what they see as 100 percent.

23 MR. ESCOBAR: And he says sure.

24 MR. GARCIA: And his answer is, sure. I
25 mean -- I mean, we -- I'm glad you didn't do

1 this depo with me and my wife. It would have
2 took us four hours to do this.

3 So in what context? You know, he asks
4 that question. But in what context? I don't
5 see how this is impeachment. What does this go
6 to?

7 MR. ESCOBAR: I asked him that same
8 question and he said, no. And so now I ask him
9 that same question and, sure, under oath.

10 MR. GARCIA: Judge, the problem is this --
11 is it's on a collateral matter. What does it
12 go to?

13 THE COURT: Where are you going with this?

14 MR. ESCOBAR: Judge, because everything
15 here is going to be concerning his perception.
16 This whole thing is his perception. He was in
17 the theater.

18 THE COURT: All right. I'm going to allow
19 it. Overruled.

20 BY MR. ESCOBAR:

21 Q. Now, when you went into that theater you
22 wanted to sit at the highest level, right --

23 A. Yes, sir.

24 Q. -- as part of what you do?

25 A. Yes, sir.

1 Q. Why is it that you do that?

2 A. I always take the higher ground. It gives
3 you a better vantage point of anything. And that's
4 just -- that's the law enforcement in you. That's
5 nothing else.

6 Q. Okay. And so you did that as part of what
7 you do in your daily life?

8 A. Yes, sir.

9 Q. You take the high ground?

10 A. Yes, sir.

11 Q. Okay. And so you believe that you sat in
12 row A?

13 A. Yes, sir.

14 Q. That's what you testified on direct; is
15 that correct?

16 A. Yes, sir.

17 Q. And you believe that you were five to six
18 chairs from Mr. Reeves?

19 A. Somewhere in that area. Yes, sir.

20 Q. Well, could it have been seven?

21 A. I believe it was five or six -- six seats
22 in there.

23 Q. Okay. Well, could it have been seven?

24 A. No.

25 Q. And it couldn't have been eight?

1 A. No.

2 Q. Well, let's try to examine that, if we can
3 a little bit.

4 A. Okay.

5 Q. You're seated looking at the screen,
6 correct?

7 A. Yes, sir.

8 Q. And your wife's to your right?

9 A. Yes, sir.

10 Q. So let's make your seat number one. Okay?

11 A. Okay.

12 Q. And as we go to the right, we'll figure
13 out how many seats. Seat number two was your wife?

14 A. That's correct.

15 Q. So now you're right next to your wife to
16 the left. And we're going to count how many seats
17 between you and Mr. Reeves. We've only got one now,
18 because this is your wife.

19 And so if you're looking to the screen
20 there are three to four empty seats between your
21 wife and an older couple. So if we add four --
22 three or four. So your wife being one --

23 MR. GARCIA: Judge, I'm going to object.

24 Is this a question or what?

25 MR. ESCOBAR: Yes. I'm going to ask him a

1 question.

2 BY MR. ESCOBAR:

3 Q. Your wife being one, and your statement,
4 you agree, three to four between your wife and the
5 older couple, correct?

6 A. Could be. Yes, sir.

7 Q. So now that's five. We'll keep a running
8 total here if we can. Okay?

9 A. (Nods head.)

10 Q. Now. There's an older couple. Couple,
11 meaning two seats, correct?

12 A. That's correct.

13 Q. So let's add those two. So we add five
14 and two. Now seven, correct?

15 A. Yes, sir.

16 Q. And you indicated that this older couple,
17 they were in their 60s maybe, correct?

18 A. Yes, sir.

19 Q. And then there is one to two seats between
20 the older couple and Mr. Reeves. So two seats. So
21 now we've got five, seven -- nine seats between you
22 and Mr. Reeves. So what is it, five or nine?
23 Because you just said a few seconds ago it couldn't
24 be more than five.

25 A. It could have been -- it could have been

1 in that area. I mean, you didn't give me the
2 benefit of the doubt. You took one seat away from
3 me because you said it could be one or two. So I
4 don't know.

5 Q. I'm trying to get your testimony and see
6 if, in fact, it's either five or nine or telling me,
7 Rick, I have no idea how many seats.

8 A. It could be within that realm. I mean, a
9 lot was going on that day.

10 Q. Now, you believe you got to the theater
11 actually at 1:30, isn't that not correct?

12 A. That's correct.

13 Q. 1:30?

14 A. 1:30.

15 Q. Okay. And then you got there shortly
16 before the movie started. In fact, the previews
17 were playing, correct?

18 A. There was no previews playing when I got
19 there.

20 Q. Was the movie playing?

21 A. No. There was no movie playing.

22 MR. GARCIA: Judge, I'm going to object.
23 The testimony was he arrived at 12:45.

24 MR. ESCOBAR: Judge, that was on direct.
25 He says now at 1:30, and I've got him here in

1 the deposition at 1:30. And so he agreed with
2 me, 1:30.

3 He may not like that statement, but that's
4 what he said and that's what's in my depo.

5 MR. GARCIA: But in what context, though,
6 Judge? He may be saying he arrived -- he got
7 into the movie theater.

8 MR. ESCOBAR: Judge, whether he got into
9 the actual Theater 10, or whether he got into
10 the Cobb Theater, I'll take both of those.

11 THE COURT: What's the objection?

12 MR. GARCIA: I'll withdraw it for now,
13 Judge.

14 THE COURT: Thank you.

15 BY MR. ESCOBAR:

16 Q. When you sat down, the previews were
17 already playing, correct? You know what previews
18 are, trailers? Sitcoms, I think you called it.
19 Sitcoms.

20 A. No. They were not already playing. They
21 came on after I sat down.

22 Q. Well, how much after?

23 A. I don't know.

24 Q. Now, you wear glasses?

25 A. Yes, sir.

1 Q. You didn't have your glasses on that
2 matinee movie, did you?

3 A. I probably had contacts at the time.

4 Q. Okay. You probably had contacts or you
5 just weren't wearing anything?

6 A. No. I would have had contacts in.

7 Q. Okay. And so the way you wear contacts
8 is, you wear one contact of a particular kind and
9 another contact of another particular kind, right?

10 A. Right. I'm farsighted.

11 Q. And so do you know what correction you
12 have -- which eye are you farsighted in?

13 A. I don't know.

14 Q. But you wear different strength of
15 contacts, one on one eye, right, to see up close;
16 the other eye to see distance?

17 A. Not to see distance, no. It corrects the
18 other one and pulls it into allowing me to see up
19 close.

20 Q. Well, I realize that one of those contacts
21 allows you to see up close. But if you put another
22 contact in your eye, what does that do?

23 A. That allows me to see correctly what I --

24 Q. Distance?

25 A. Distance and up close.

1 Q. Now, your position is, is it not, that
2 during the previews that they drop down the lighting
3 and that day it was, quote, very low?

4 A. Very low. Yes, sir.

5 Q. And, in fact, your position also is that
6 what they were playing on the screen was loud, and
7 the reason that people like to go to the theater is
8 because they can listen to that loud stuff?

9 A. That's correct.

10 Q. And you certainly, when you go into the
11 theater, you turn your phone off because it
12 distracts people?

13 A. That's correct.

14 Q. And when you're seated in the chair to the
15 theater, you're not seated upright, you're kind of
16 lounging back?

17 A. That's correct.

18 Q. Is that correct?

19 A. Yes, sir.

20 Q. And your wife's here to your right?

21 A. Uh-huh.

22 Q. And it was your wife that nudged you; is
23 that correct?

24 A. Yes, sir.

25 Q. To get your attention because you were

1 focusing on the previews?

2 A. That's correct.

3 Q. And it was about that time that you even
4 independently heard loud conversation, correct?

5 A. Right.

6 Q. And that conversation that you heard was
7 kind of blending with the noise from the previews,
8 correct?

9 A. I believe I used the word, muttered.

10 Q. Okay. But you know one thing, someone was
11 talking even louder than the previews, one person.

12 A. Not louder than the previews.

13 MR. ESCOBAR: Page 45, Mr. Garcia,
14 starting on Line 12 all the way through 25. So
15 we can have a doctrine of completeness.

16 BY MR. ESCOBAR:

17 Q. You say --

18 THE COURT: Hang on. Let him read it. If
19 it's not inconsistent, then that's not how we
20 proceed.

21 MR. ESCOBAR: Okay.

22 MR. GARCIA: Judge, I'm going to object.
23 This is consistent with what he testified to.

24 MR. ESCOBAR: Judge, he said it was not
25 louder.

1 THE COURT: May I see it, please?

2 MR. ESCOBAR: Sure.

3 THE COURT: Sustained.

4 MR. ESCOBAR: Judge --

5 MR. GARCIA: I'm sorry. Sustained?

6 THE COURT: Sustained.

7 MR. ESCOBAR: Judge, just so that we can
8 proffer this for the record. He initially said
9 that it was not louder. And on Page 45, we'll
10 put this in the record, at some point on -- I'm
11 on Page 45, Lines --

12 THE COURT: Nowhere in there that I just
13 read does it say, he said it was louder than
14 the previews. That was your question.

15 MR. ESCOBAR: Judge, he's talking about
16 the muttering. This --

17 THE COURT: Muttering. Someone said
18 something a little louder than just muttering,
19 not louder than the previews. That's what I
20 just read.

21 MR. ESCOBAR: Judge, it --

22 THE COURT: Go ahead.

23 MR. ESCOBAR: This section is talking
24 about the previews. But I won't --

25 THE COURT: Go ahead and read it into the

1 record.

2 MR. ESCOBAR: Well, I'm going to --

3 THE COURT: Or proffer.

4 MR. ESCOBAR: I'm going to give a page
5 number so that we can -- we'll put it in the
6 record.

7 Page 45 of his deposition taken on
8 May 20th, 2015, Lines 12 through 25.

9 BY MR. ESCOBAR:

10 Q. Now, once your wife nudges you, you look
11 to your right; is that correct?

12 A. Yes, sir.

13 Q. And is your wife sitting up, as well?

14 A. No, sir.

15 Q. She's leaned back?

16 A. She's sitting basically like I am, enough
17 for me to see around her.

18 Q. And as you looked there you're seeing --
19 the only thing you see was one person standing up,
20 correct?

21 A. That's correct.

22 Q. And what you're really seeing is that
23 person's shadow, correct?

24 A. I'm seeing a human being standing up.
25 Yes, sir.

1 Q. But in a shadow form?

2 A. Right. Not like you're standing there
3 that I see all of you.

4 Q. You're seeing a shadow?

5 A. Right. Silhouette.

6 Q. And you realize that that's a pretty tall
7 guy, right?

8 A. Not at the time. No.

9 Q. You didn't realize he was tall?

10 A. (Shakes head.)

11 Q. But you saw that he was standing?

12 A. He was -- yes, sir.

13 Q. In fact, your position is that you had a
14 very odd view. You could only see the side of this
15 person?

16 A. That's correct.

17 Q. Basically, you're only seeing half of him
18 from the waist up?

19 A. Yes, sir.

20 Q. Really only to the waist, from the waist
21 to the shoulders?

22 A. Yeah.

23 Q. And you certainly didn't see who he was
24 loud to, correct?

25 A. No, sir.

1 Q. Certainly you did not hear Mr. Reeves
2 saying anything, correct?

3 A. No, sir.

4 Q. You were trying to evaluate what was going
5 on over there, right? It was kind of odd to you?

6 A. Yes, sir.

7 Q. You wanted to find out, quote, who was
8 raising hell?

9 A. That's correct.

10 Q. You don't know how long -- before your
11 first observation of Mr. Oulsen, you don't know how
12 long Mr. Oulsen was speaking loudly to the people
13 behind him, correct?

14 A. No, sir.

15 Q. You don't know what was being said before
16 you even looked over at that darkened silhouette of
17 Mr. Oulsen, correct?

18 A. No, sir.

19 Q. You weren't paying attention to any of
20 that until your wife nudged you?

21 A. That's correct.

22 Q. So you have no idea whether Mr. Oulsen was
23 trying to come over his chair before you even put
24 eyes on him, correct?

25 A. That's correct.

1 Q. You couldn't see any facial features of
2 Mr. Oulsen, could you?

3 A. No, sir.

4 Q. Because it was too dark.

5 A. That's correct. The light was lower.

6 Q. Now, you mentioned on direct examination
7 that Mr. Oulsen was saying in a very loud voice, I'm
8 texting my fucking daughter?

9 A. Yes, sir.

10 Q. You certainly don't know if those were the
11 exact words that were being used, correct?

12 A. It was on that -- in that term. Yes, sir.

13 Q. Well, what does, in that term, mean?

14 A. It was something to that effect.

15 Q. Something to that effect. Well, let's try
16 to explore that a little bit. What does something
17 to that effect mean? You certainly heard the word,
18 pardon me, fuck?

19 A. Yes, sir.

20 Q. That is without question?

21 A. That's correct.

22 Q. You knew the F bomb had come out, correct?

23 A. That's correct.

24 Q. And when that F bomb came out, he was
25 facing that back row; was he not?

1 A. Yes, sir.

2 Q. You were literally hunting in the dark;
3 were you not?

4 A. At that point, no.

5 MR. GARCIA: Judge, I'm going to object.
6 First of all, object to the form of the
7 question, hunting in the dark. What is that
8 referring to? How is that relevant? In what
9 context?

10 THE COURT: Sustained.

11 MR. GARCIA: I mean, I could go on and on
12 and on. You're hunting in the dark?

13 THE COURT: Sustained. Rephrase.

14 BY MR. ESCOBAR:

15 Q. You were doing the best you could trying
16 to see what little you could see?

17 A. Right.

18 Q. Now, the first thing that you see, even
19 before the F bomb, the first thing that you see, you
20 see Mr. Oulsen when he stands up and he is leaning
21 over the back of his seat. Mr. Oulsen, correct,
22 leaning over the back of his seat?

23 A. No, sir.

24 Q. 2-5-14, the bond hearing that took place
25 very early on in this case, Page 344, Lines 23

1 through 25 and Page 345, Lines 1.

2 BY MR. ESCOBAR:

3 Q. Do you remember the following questions
4 and answers --

5 THE COURT: Hang on a minute.

6 MR. GARCIA: Judge, he's going Page 344.
7 I mean, he's got to give me a chance to get
8 there.

9 MR. ESCOBAR: I'll let him get there. My
10 apologies.

11 MR. GARCIA: Page 344 --

12 MR. ESCOBAR: Lines 23 through 25, Page
13 345, Lines 1.

14 MR. GARCIA: Judge, I'm going to object.
15 This is taken out of context. If you go
16 further on in the bond hearing, I have Sergeant
17 Hamilton step down and demonstrate for the
18 sitting judge, Judge Siracusa, and he
19 demonstrated exactly what he demonstrated here
20 today.

21 MR. ESCOBAR: Judge, I'm going to go
22 through that whole line of questioning.

23 MR. GARCIA: He never says that he was
24 leaning over. And he gives a demonstration,
25 Judge.

1 Mr. Escobar takes bits and pieces of what,
2 you know, he wants and then he leaves the other
3 stuff out.

4 MR. ESCOBAR: No. Judge, that's not
5 correct. His -- the question and the answer is
6 right there. It ends on Page 1 of 345. And
7 then we actually talk starting about the issue
8 of propping, and that's going to come next.

9 MR. GARCIA: Judge, I would assume if you
10 ask Mr. Escobar further on in that bond
11 hearing, Sergeant Hamilton stepped down and
12 literally demonstrated for the Court how Mr.
13 Oulsen was back on January 13th of 2014. And
14 he never says that he was leaning over the
15 chair.

16 MR. ESCOBAR: Judge, he says it under oath
17 in this particular document. Do you want to
18 read it? I can show it to you.

19 THE COURT: Let me see it.

20 MR. ESCOBAR: 344, starting on Line 23.
21 345, that's the additional answer, and then we
22 go into what propping is.

23 THE COURT: And it appears the question, I
24 guess by you said, he's leaning significantly
25 over his seat. And he doesn't say yes. He

1 said, he's propped.

2 MR. ESCOBAR: Judge, here, it's my
3 question. Okay. And so the first thing that
4 you hear and see is Mr. Oulsen when he stands
5 up and he is leaning over the back of his seat,
6 Mr. Oulsen does.

7 THE COURT: Right. He's shown that
8 already.

9 MR. ESCOBAR: And he says, correct. Yes,
10 sir.

11 THE COURT: Right. He already showed
12 what -- exactly what Mr. Garcia said --

13 MR. ESCOBAR: He just said that he wasn't
14 leaning over his seat.

15 MR. GARCIA: Judge, I would invite the
16 Court's attention to Page 351, Line 7. He was
17 leaning over into Mr. Reeves' face, correct.
18 Answer: No, sir. And then there's a
19 demonstration. He was in a propped position.

20 Like I said, you cannot take these
21 transcripts out of context. You can't take the
22 bits and pieces that help you and leave the
23 other stuff out.

24 THE COURT: It's not a significant
25 inconsistency. I'm going to sustain the

1 objection.

2 BY MR. ESCOBAR:

3 Q. Now, propped, that's what you said on
4 direct, right?

5 A. Yes, sir.

6 Q. Well, if you didn't see from the waist
7 down, what was he propping on?

8 A. I don't know.

9 Q. Well, but if you say he's propped, what is
10 he propped on, if you can't see from the waist down?

11 A. He could have had his hand out at a lower
12 spot. He could have had just his knee. I mean --

13 Q. What would -- if --

14 A. -- I found out later on he's a tall guy, I
15 mean.

16 Q. But if you don't see that --

17 MR. GARCIA: Judge, I'm going to object.
18 It's asked and answered. He just gave an
19 explanation. Mr. Escobar doesn't like it so he
20 wants to keep asking him.

21 MR. ESCOBAR: No, Judge. I like his
22 answer because he can't tell us what he's
23 propped on.

24 BY MR. ESCOBAR:

25 Q. What's he propped on?

1 A. I don't know. I'm just telling you he was
2 propped.

3 THE COURT: Sustained. Move on.

4 BY MR. ESCOBAR:

5 Q. Certainly at that point in time you could
6 see Mr. Oulsen was a tall gentleman?

7 MR. GARCIA: At what point in time, Judge?
8 I'm going to object.

9 BY MR. ESCOBAR:

10 Q. At that point in time when -- at that
11 point in time when he's propped. When he's propped.

12 A. When he's propped?

13 Q. Yeah.

14 A. No. I don't see that he's a tall
15 gentleman at that time.

16 Q. Page 345, Lines 8 right -- two sentences
17 after he's propped. 345, Lines 8 all the way
18 through 25.

19 MR. GARCIA: I'm going to object. You've
20 got to put it in context.

21 THE COURT: Who says he was tall when he
22 was propped? Is it the question -- the way the
23 question was asked.

24 MR. GARCIA: No, Judge. The question
25 is --

1 MR. ESCOBAR: Judge, I --

2 MR. GARCIA: -- as you can see Mr. Oulsen
3 there, he's a tall gentleman, correct. Yes,
4 sir. At what point in time -- at what point in
5 time. That's what you have to reference.

6 THE COURT: He's already said earlier,
7 yes, at some point he saw he was a tall
8 gentleman.

9 MR. ESCOBAR: No, Judge. This is at this
10 point. If I can just -- I'll give you the
11 sentences.

12 THE COURT: What's the relevance?

13 MR. ESCOBAR: The relevance is he's making
14 an assumption at this point in time that he's
15 propped and he can't even see what he's propped
16 on.

17 But what he can tell is, he can tell that
18 it's a tall gentleman. And what that tells you
19 is that he's not propped at all.

20 THE COURT: Let me see. Let me see that.
21 Let me see where he says he could tell he was
22 tall when he was propped.

23 MR. ESCOBAR: It starts here, right here
24 from 2.

25 THE COURT: It says, you could see Mr.

1 Oulsen there. He's a tall gentleman. It
2 doesn't say he's a tall gentleman when he's
3 propped.

4 MR. ESCOBAR: Judge, the first three
5 sentences are about being propped. He says, he
6 was propped. And I go into, you could see that
7 he was a tall gentleman.

8 THE COURT: Finish the questioning. You
9 may expound. It is not impeachment. Ask him
10 the question. And he's already said he doesn't
11 know what he was propped on, so move on from
12 there.

13 BY MR. ESCOBAR:

14 Q. Was he a tall gentleman?

15 A. I found out later on, yes, sir, he was a
16 tall gentleman.

17 Q. So later on is when you found that out.
18 How did you find that out later on, since this
19 gentleman was on the floor when you got to
20 Mr. Reeves?

21 A. When -- after he was shot, he stood up
22 from that propped position and then his body
23 elevated from there, and that let me know that he
24 was a tall individual due to the size of the chairs.

25 Q. That's when you first determined that he

1 was tall?

2 A. Yes, sir.

3 Q. Now, you're still seeing initially when
4 he's, quote, propped, the silhouette that we talked
5 about before?

6 A. Yes, sir.

7 THE COURT: Hold on a minute, Mr. Escobar.
8 Is there a problem?

9 MRS. SUMNER: No, Your Honor.

10 THE COURT: Go ahead.

11 BY MR. ESCOBAR:

12 Q. When you heard the F bombs, did you expect
13 to hear that in a theater?

14 A. No, sir.

15 Q. Just the loudness alarmed you?

16 A. The tone and the word itself. Yes, sir.

17 Q. And again, you only were hearing Mr.
18 Oulsen, correct?

19 A. That's correct. Yes, sir.

20 Q. You never saw, at that moment, Mr. Oulsen
21 with a phone in hand, did you?

22 A. No, sir.

23 Q. You didn't even see Mr. Oulsen's hand
24 reaching into Mr. Reeves' person, correct?

25 A. No, sir.

1 Q. Why couldn't you see that?

2 A. I don't know. I mean, maybe it didn't
3 happen.

4 Q. You didn't see it once, you didn't see it
5 twice?

6 A. I didn't see it.

7 Q. Everything happened pretty quickly?

8 A. Yes, sir.

9 Q. Did you see the muzzle flash?

10 A. Yes, sir.

11 Q. But you didn't see the gun?

12 A. No, sir.

13 Q. Why was that?

14 A. It's a black gun.

15 Q. Because of the darkness?

16 A. Darkness, small gun.

17 Q. Now, you got up from your seat, correct?

18 A. Yes, sir.

19 Q. And even before getting up from your seat,
20 you never saw Mrs. Oulsen, did you?

21 A. No, sir.

22 Q. And you still hadn't seen Mr. Reeves?

23 A. No, sir.

24 Q. Because it was dark.

25 A. He was sitting down.

1 Q. No. Because it was dark.

2 A. No. Because he was sitting down.

3 Q. Just because he was sitting down?

4 A. I couldn't see him. I couldn't see the
5 rest of the people in that row because they were
6 sitting down.

7 Q. What about Mrs. Oulsen?

8 A. Mrs. Oulsen? No.

9 Q. Because it was dark?

10 A. No.

11 MR. GARCIA: Judge, I'm going to object.
12 Asked and answered. He's already answered the
13 question three times.

14 THE COURT: Move on.

15 BY MR. ESCOBAR:

16 Q. Now, you go over to Mr. Reeves, correct?

17 A. Yes, sir.

18 Q. And when you get there Mr. Reeves is
19 seated?

20 A. That's correct.

21 Q. Correct?

22 A. Yes, sir.

23 Q. And the firearm is on his left knee?

24 A. That's correct.

25 Q. His hands are away from the firearm?

1 A. His hands were either retreating or going
2 forward. And I believe I said that I wasn't paying
3 attention to that. But they were not up here.

4 Q. No. I know. But they certainly weren't
5 on the gun?

6 A. No.

7 Q. And I believe you, yourself, indicated
8 that you very quickly, once you were able to get the
9 gun, you wanted to put that gun out of sight?

10 A. That's correct.

11 Q. Because you didn't want someone seeing you
12 there in plain clothes, correct --

13 A. That's right.

14 Q. -- with a gun in your hand --

15 A. Yes.

16 Q. -- in a dark theater?

17 A. That's correct.

18 Q. That's not a good situation?

19 A. No, sir.

20 Q. They may misconstrue you as being someone
21 that's being aggressive?

22 A. That's correct.

23 Q. And that's even before police come in,
24 talking about general population there.

25 A. Yes, sir.

1 Q. You've certainly been trained on those
2 issues; have you not?

3 A. On --

4 Q. Making sure that, hey, if you're in a
5 place and you've got a gun, put that gun away so
6 nobody realizes that you're -- or mistakes that
7 you're a threat?

8 A. I've had no training on hiding guns to
9 keep people from knowing what I am.

10 Q. Just common sense?

11 A. Just common sense.

12 Q. Okay. Now, you never told Proctor, did
13 you, that Mr. Reeves wanted to leave?

14 A. I don't recall whether I did or did not.

15 Q. You remember Mr. Reeves saying he wanted
16 to get up?

17 A. That's correct.

18 Q. As Mr. Reeves was seated there, did you
19 see him put his hands to his head?

20 A. Yes, sir.

21 Q. Would you describe to the Court what you
22 saw?

23 A. He -- when I approached him, and me and
24 him understood that, you know, I was law a
25 enforcement officer, I'm there to, you know, make

1 sure we keep everything under control from there, he
2 reached back and pushed his glasses up over his brow
3 and asked me if I -- he was hit. Did I see
4 anything. And he said he had something in his eye.
5 And I believe I said, well -- because he had his
6 finger here, and I said, well, that's your finger in
7 your eye.

8 Q. He had his right finger in his eye?

9 A. He had a finger in his eye. I don't know
10 which finger it was.

11 Q. Well, what eye?

12 A. It would have been his right eye.

13 Q. His right eye?

14 A. Or left eye. Excuse me.

15 Q. How long did it take you to get from your
16 position -- you were seated when the gun went off?

17 A. Yes.

18 Q. And so since we have a camera, we have the
19 benefit of having some timestamps, right?

20 A. That's right.

21 Q. Now, you didn't know that there was a
22 camera in that theater that day at all?

23 A. No, sir.

24 Q. Even when you gave your statement, you had
25 no idea?

1 A. Not a clue.

2 Q. And so you had to get up from a seated
3 position, correct?

4 A. Yes, sir.

5 Q. And you had to get up and then you had to
6 make your way to Mr. Reeves. So do you know how
7 long it took you to finally get to Mr. Reeves?

8 A. No, sir. I don't.

9 Q. And you don't know what Mr. Reeves was
10 doing from the time that you decided to get up, to
11 the time that you reached him?

12 A. No, sir.

13 Q. You certainly didn't think that Mr. Reeves
14 wanted to flee?

15 MR. GARCIA: Objection, calls for
16 speculation. He has no idea what was in his
17 mind.

18 MR. ESCOBAR: I think he just answered no,
19 with his head, at least.

20 MR. GARCIA: I'm objecting. It calls for
21 speculation, Judge, whether he answered or not.

22 THE COURT: Sustained.

23 BY MR. ESCOBAR:

24 Q. One thing's for sure, the minute that you
25 got there -- and when I'm saying you got there,

1 we're talking about, you got there to Mr. Reeves.
2 One thing's for sure is that you looked down in
3 between his legs, you saw that phone?

4 A. I don't know if it's that phone or it was
5 a cell phone.

6 Q. It was a cell phone?

7 A. (Nods head.)

8 Q. Dark in color?

9 A. I don't know if it was -- it's dark in
10 that area. It was in between his seat and my feet,
11 so I can't tell you if that's the actual phone.

12 Q. So because of the darkness that we had in
13 that theater, and you were standing right next to
14 Mr. Reeves and you were looking down and you just
15 you couldn't tell what color it was?

16 A. No, sir. I mean, since you're pulling
17 that out of an evidence bag, I would assume that
18 that's --

19 Q. Well, we certainly can't assume in these
20 cases. You just didn't know what the color was?

21 A. Right. Exactly.

22 Q. Now, when you introduced yourself to
23 Mr. Reeves, he likewise indicated to you, hey, I
24 know, I'm a former law enforcement officer, right?

25 A. Yes, sir.

1 Q. And you certainly did not have to handcuff
2 him there, correct?

3 A. No, sir.

4 Q. He sat there quietly?

5 A. Yes, sir.

6 Q. And he asked you, told you, he had been
7 hit, correct?

8 A. Yes, sir.

9 Q. And so certainly, if you couldn't see a
10 cell phone a mere few feet from your person, because
11 of the lighting, right?

12 A. That's correct.

13 Q. Could you tell the Court what lighting, if
14 anything, you used when you were trying to examine
15 whether Mr. Reeves was injured in any way?

16 A. Well, there was a pretty significant
17 difference between the floor and me standing within,
18 you know, this proximity of Mr. Reeves. I mean --

19 Q. So -- so from here --

20 MR. GARCIA: Judge, I'm going to object.

21 MR. ESCOBAR: I'm asking him a question.

22 MR. GARCIA: Mr. Escobar is not even
23 letting him answer the question. He interrupts
24 him when he goes to answer and then he wants to
25 ask him another question. I'd ask him to at

1 least extend the courtesy of the witness to let
2 him finish his answer.

3 THE COURT: Let him finish.

4 THE WITNESS: A little bit of difference
5 in the lighting, quite a bit of difference from
6 down there, in the dark, underneath the seat,
7 in the seating area. His legs were shadowing,
8 my body's shadowing that. So where the light
9 is up here is significantly better than what it
10 is on the floor.

11 BY MR. ESCOBAR:

12 Q. So what did you do -- what did you do in
13 checking Mr. Reeves? What did you do, did you use a
14 flashlight?

15 A. No, sir.

16 Q. Okay. Well, tell me physically what you
17 did in order to check whether -- did you get down
18 real close to him and look at his head?

19 MR. GARCIA: Judge, I'm going to object to
20 Mr. Escobar being a foot away from the witness.
21 I don't know if he's trying to intimidate him.

22 MR. ESCOBAR: Oh, my God.

23 MR. GARCIA: I'd ask him to move back to
24 the podium.

25 MR. ESCOBAR: I'm talking very low.

1 BY MR. ESCOBAR:

2 Q. Did you get real close to him?

3 A. No, sir. I didn't even -- I wasn't
4 looking for, you know, whether he had, you know, a
5 needle-size -- I'm looking for any significant
6 injury, bruises, gashes. He's got a red mark inside
7 of his eye that -- you know what I mean?

8 Q. Yeah. You're looking for something
9 significant.

10 A. Right. And I'm not seeing any of that.

11 Q. Okay. Now, again, you were concerned --
12 one of your concerns right there was, hey, listen,
13 at some point in time officers are going to be
14 coming through that door and they're going to be
15 coming maybe guns blazing and that can be a pretty
16 dangerous situation.

17 A. There was a number of things on my mind,
18 yes, sir, during that period of time that would have
19 affected me and him.

20 Q. But that would have been one?

21 A. That's one.

22 Q. And you remember Mr. Reeves' son coming up
23 and chatting with you, as well?

24 A. Yes, sir.

25 Q. Now, while you were there, you really

1 didn't want to talk to Mr. Reeves, did you?

2 A. Which one?

3 Q. Not the son. I'm talking about --

4 A. Mr. Reeves?

5 Q. Yes.

6 A. Not really. No, sir.

7 Q. Now, you indicated that there was a
8 conversation that you heard between Mr. Reeves and
9 his wife?

10 A. That's correct.

11 Q. And you said here in direct examination
12 that Mr. Reeves said something to the effect of,
13 shut your fucking mouth? Or was it, shut your
14 fucking mouth? Was it something to the effect of,
15 shut your fucking mouth, or was it, shut your
16 fucking mouth?

17 A. It was, shut your fucking mouth.

18 Q. It was, shut your fucking mouth. So it
19 wasn't, there was no cause to shoot the man. Don't
20 say another word. That wasn't it?

21 A. No. You asked me what he said. That's
22 not what he said. That's what his wife said.

23 Q. Okay. Well, I'm worried right now about
24 the, shut your fucking mouth. Who said that?

25 A. Mr. Reeves did.

1 Q. Okay. Well, did Mr. Reeves say, shut your
2 fucking mouth or did he say, don't say another word?

3 A. He said, shut your --

4 MR. GARCIA: Objection. He's asked and
5 answered that already.

6 THE COURT: Which -- are those exclusive
7 of one another or --

8 MR. ESCOBAR: They're different.

9 MR. GARCIA: No, Judge. It's the whole
10 same phrase. He testifies he said, shut your
11 fucking mouth and don't say another word.

12 THE WITNESS: (Nods head.)

13 BY MR. ESCOBAR:

14 Q. So it's both, shut your fucking mouth and
15 don't say another word?

16 A. No, sir. He said, shut your fucking mouth
17 and don't say another word, and he had his finger,
18 his index finger pointed at her.

19 Q. Now, you've been a police officer for how
20 long?

21 A. For 20 years.

22 Q. Okay. And you certainly realize the
23 importance when a police officer is going to
24 interview you --

25 A. Uh-huh.

1 Q. -- with a recorded statement?

2 A. That's correct.

3 Q. The whole purpose of the recording is to
4 memorialize your recollection as close as possible
5 to the event?

6 A. That's correct.

7 Q. And you certainly, being a police officer,
8 recognize that certainly someone saying, shut your
9 fucking mouth is pretty important?

10 A. That's correct.

11 Q. The fact is a crime, tampering with a
12 witness, right?

13 A. That's correct.

14 Q. And so if you're going to be interviewed
15 by a detective, you want to be 100 percent truthful,
16 right?

17 A. That's correct.

18 Q. Especially if that is going to be
19 recorded, and if the detective was trying to find
20 everything that he can about the case, is asking you
21 tell me everything you know?

22 A. Right.

23 Q. And you remember Detective Proctor telling
24 you just that?

25 A. I don't recall him telling me everything,

1 you know.

2 Q. Well, did he tell you at the end of your
3 statement, anything else you can tell me?

4 A. I can read it off that now and tell you,
5 okay, that's probably what he said. But I'm just
6 telling you, I don't recall him making that comment
7 at that time.

8 Q. Well, would you like to hear it on tape?

9 A. No. I don't need to hear it. I'm sure I
10 said it or he said. I mean, it's on there. I mean,
11 I'm not going to deny or --

12 Q. So when he told you that, was this just
13 insignificant enough that you just, I'm just not
14 going to tell him about it?

15 A. No, sir. That's not it at all.

16 Q. Well, there's another document that's very
17 important. And this is even before you get to
18 Detective Proctor, correct? It's called a voluntary
19 statement form.

20 A. Uh-huh.

21 Q. I'm going to show you what's been marked
22 as Defendant's Exhibit Number 215.

23 MR. MARTIN: I've got it.

24 MR. ESCOBAR: May I approach, Your Honor?

25 THE COURT: You may.

1 BY MR. ESCOBAR:

2 Q. I'm going to ask you if you recognize that
3 document?

4 A. Yes, sir. I do.

5 Q. Now, when you wrote that document, how
6 long had you been in law enforcement?

7 A. About 17 years.

8 Q. You're a corporal at that time?

9 A. That's correct.

10 Q. And you realize that the purpose of that
11 document is that you're trying to give certainly
12 truthful information, right?

13 A. That's correct.

14 Q. And you're trying to give important
15 information --

16 A. That's correct.

17 Q. -- concerning what you know about the
18 incident?

19 A. That's correct.

20 Q. And certainly what you know about the
21 person that's being accused of shooting, right?

22 A. That's correct.

23 Q. And now you've just admitted also that,
24 hey, the statement, shut your fucking mouth, is
25 pretty important?

1 A. That's correct.

2 Q. In fact, you've admitted today it is a
3 crime?

4 A. That's correct.

5 Q. But you never put it in that statement,
6 did you?

7 A. No, sir. I can explain that, if you want.

8 Q. Please.

9 A. Okay. We, meaning me and my wife, had
10 just got through with a pretty significant incident.
11 We were given pens and a piece of paper and asked to
12 fill out a statement on the carpet. So when we're
13 doing that, I'm taking, I'm going to give them
14 everything that I know right now and sign it so that
15 we have some account of this and that was it. And
16 what I said earlier is preliminary. This gets the
17 detective or whomever's going to work the case the
18 evidence enough to establish probable cause to
19 arrest whomever the shooter was --

20 Q. Okay. So --

21 A. -- so --

22 Q. -- this was done on carpet?

23 A. Uh-huh.

24 Q. It's pretty neat writing, correct?

25 A. (Nods head.) Yeah.

1 Q. If I was to -- if I was to put this down
2 here on carpet --

3 MR. GARCIA: Judge, I'm going to object to
4 the relevancy of Mr. Escobar putting it down on
5 carpet. He's already testified he wrote it on
6 the carpet.

7 BY MR. ESCOBAR:

8 Q. So you and your wife were on the floor on
9 the carpet writing this down?

10 A. We had been on the carpet. We had been on
11 a railing. Wherever we could find. There was
12 numbers of people in there trying to fill out
13 statement forms.

14 Q. So are you blaming on the carpet that you
15 just didn't put it down?

16 A. No.

17 MR. GARCIA: Objection, Judge,
18 argumentative.

19 THE COURT: Sustained. Move on.

20 BY MR. ESCOBAR:

21 Q. You just have no reason?

22 THE COURT: Or rephrase.

23 BY MR. ESCOBAR:

24 Q. You have no reason for not putting it
25 down?

1 A. I don't think that's my --

2 MR. GARCIA: Objection, Judge. He's
3 already answered that.

4 THE COURT: I heard him answer that. He
5 said, let me explain. So I think that was the
6 answer. Let's move on, please. Sustained.

7 BY MR. ESCOBAR:

8 Q. Now, you just told me that you and your
9 wife were very emotional about this case, correct?

10 A. Yes, sir.

11 Q. You're emotional there at the scene?

12 A. No. I don't believe so.

13 Q. So you weren't?

14 A. No. Not at the time.

15 Q. So did you get emotional after you left
16 the scene?

17 A. I have my mixed feelings that I was trying
18 to hold it together for my wife, because she was
19 extremely upset. She doesn't -- you know, what she
20 does for a living she's not, you know, around that
21 particular type of stuff. So, yeah, it -- it's
22 taken a toll on her.

23 Q. Okay. But I'm saying at the scene y'all
24 weren't emotional, is what you were telling the
25 Court?

1 A. She was. I wasn't.

2 Q. You weren't. Now, do you remember there
3 at the scene, when you were there right beside
4 Mr. Reeves, you telling your wife to back off?

5 A. Yes, sir.

6 Q. And you believe at that point in time you
7 were rude?

8 A. From what I was hearing and what I was
9 seeing, if I had to be rude with her to let her know
10 that she didn't need to be on my back, to protect my
11 back, yes, sir. That's what -- there's a whole
12 different context there.

13 Q. Well, do you agree that it was a stressful
14 situation for everyone?

15 A. Absolutely.

16 Q. And you're the kind of person that talks
17 with your hands, as well?

18 A. Yes, sir.

19 Q. And you agree that at that point in time
20 still the law enforcement officer had not come
21 through the front door?

22 A. That's correct.

23 Q. And so you were worried about that?

24 MR. GARCIA: Objection. Asked and
25 answered. That was asked 10 questions ago.

1 THE COURT: I'll overrule. I'm sure
2 you're getting to a point that you haven't
3 already asked.

4 BY MR. ESCOBAR:

5 Q. Officers come in?

6 A. Yes, sir.

7 Q. Mr. Reeves is very cooperative?

8 A. Yes, sir.

9 Q. And before they took Mr. Reeves away, were
10 you a little confused about what had just happened?

11 A. About them handcuffing him and taking him
12 away?

13 Q. No. The whole process. You coming up to
14 Mr. Reeves, seeing the gun on his knee, his verbal
15 interaction with you and his verbal interaction with
16 his wife?

17 A. I don't think I was confused. I don't
18 think you can use confused.

19 Q. Well, were you sure about what was being
20 exchanged between all the parties, as far as verbal,
21 or were you just kind of saying, well, I kind of
22 had, you know, an idea of what was being exchanged
23 but I can't tell you verbatim of what was being
24 exchanged?

25 A. I didn't have any thought process like

1 that.

2 Q. Were you 100 percent sure of what
3 Mr. Reeves told his wife?

4 A. Yes, sir.

5 Q. Page 116, Lines 4 through 18 --

6 MR. ESCOBAR: Judge, would you like to see
7 it?

8 THE COURT: Let the prosecutor have a
9 chance to read it first.

10 Is there an objection?

11 MR. GARCIA: Yes, Judge. It's consistent
12 with what he's already previously testified to.

13 MR. ESCOBAR: Judge, I want you to read
14 it.

15 THE COURT: Let me see it.

16 MR. ESCOBAR: Page 116, Lines 4 through
17 18.

18 THE COURT: I'll overrule at this time.

19 BY MR. ESCOBAR:

20 Q. Now, Detective, we're talking about
21 obviously that conversation that you allegedly
22 overheard of Mr. Reeves telling his wife, shut the
23 fuck up. Do you remember the deposition that I took
24 of you on --

25 MR. GARCIA: March 20th, 2015.

1 BY MR. ESCOBAR:

2 Q. -- March 20th, 2015?

3 A. Yes, sir.

4 Q. Do you remember being placed under oath?

5 A. Yes, sir.

6 Q. Do you remember me asking you the
7 following questions and you making the following
8 answers? Question: Do you remember 100 percent of
9 what he said to her. Answer: Again, we were --
10 when we are playing with the "the's" and the I's and
11 the "those" and "ins and outs", it was within the
12 realm of basically, hush your mouth, don't say
13 another word or shut up, don't say another word.
14 It's basically telling her, you don't need to open
15 your mouth no more. I don't need you in this any
16 longer. So whatever context that may have been, or
17 whatever, you know, how word, by word, by word, I
18 can't say, but he scolded her. If we had a, you
19 know, a recording on it, yeah, I could tell you,
20 yeah, that's what she said. But it was -- it was a
21 stern scold.

22 You said that under oath, right?

23 A. That's correct.

24 Q. And this was closer in time to the event
25 than today?

1 A. That's correct.

2 Q. And you're telling me the truth when we
3 took this deposition, correct?

4 A. That's correct.

5 Q. Now, you were armed that day yourself,
6 correct?

7 A. I had a weapon with me, not on me.

8 Q. Meaning that, when you went over to
9 Mr. Reeves, you didn't have a weapon on you?

10 A. Yes, sir.

11 Q. That was in your wife's purse back at the
12 scene?

13 A. Yes, sir.

14 Q. And does she have a concealed weapons
15 permit?

16 A. No, sir.

17 Q. And so you went in that day with a
18 firearm, despite the fact that --

19 MR. GARCIA: Objection as to relevancy,
20 Judge.

21 MR. ESCOBAR: They brought it out during
22 Mrs. Reeves about the little signs that say,
23 don't bring your weapons in.

24 THE COURT: I'll overrule.

25 BY MR. ESCOBAR:

1 Q. You brought your weapon in, despite the
2 fact that there were these little signs that
3 supposedly say, can't bring a weapon in to the Cobb
4 Theater?

5 A. That's right.

6 Q. Now, one of the things that happened
7 immediately, immediately when the officers came to
8 arrest Mr. Reeves, is that you told the officers,
9 hey, I want to let you know, there's a cell phone
10 right here between his legs, correct?

11 A. That's correct.

12 Q. Because you realized that that was a
13 potential piece of evidence?

14 A. Yes, sir.

15 Q. And you wanted them to make sure that they
16 could secure that?

17 A. Yes, sir.

18 Q. Right away?

19 A. (Nods head.) Yes, sir.

20 Q. Now, Detective, you seem a little
21 emotional here today. Are you still emotional about
22 this case?

23 A. I didn't think I was emotional today.

24 Q. But you actually cried at the depo I took
25 of you?

1 A. That's correct.

2 MR. GARCIA: Judge, how is this relevant,
3 as far as his emotions go?

4 MR. ESCOBAR: Because emotions affect
5 testimony, Your Honor.

6 MR. GARCIA: Really, Judge?

7 MR. ESCOBAR: Oh, yes. Really.

8 MR. GARCIA: Does he really want to get
9 into this?

10 MR. ESCOBAR: Really, it does.

11 THE COURT: All right.

12 MR. GARCIA: Then Judge, if he wants to
13 get into that, then let's have Mr. Hamilton
14 explain why he was so emotional.

15 THE COURT: I'm going to --

16 MR. GARCIA: No. Judge, I want him -- no.
17 He's opened it up.

18 THE COURT: I'm going to overrule the
19 objection. He can get into emotion, to some
20 extent.

21 But I do want the record to reflect, Mr.
22 Escobar, you just said, you appear to be very
23 emotional here today.

24 MR. ESCOBAR: And he said no.

25 THE COURT: And he did say no. And I want

1 the record to reflect that I don't see any
2 visible signs of emotion.

3 MR. ESCOBAR: Okay.

4 THE COURT: Proceed. And you can bring
5 out whatever the door has been opened to you.

6 MR. GARCIA: Okay. I intend to, Judge,
7 because --

8 THE COURT: Enough.

9 BY MR. ESCOBAR:

10 Q. Did the officers pick up that phone?

11 A. I don't know.

12 Q. Now, after Mr. Reeves was taken away, the
13 officers moved you to another location, correct?

14 A. Yes, sir. Eventually.

15 Q. In fact, moved all the witnesses?

16 A. I don't know where they went.

17 Q. Well, didn't the officers have all the
18 witnesses in the theater sit in a certain area?

19 A. I don't know. I didn't orchestrate that,
20 so I don't know where they sat.

21 Q. Page 127, starting on Line 18 through 25.
22 We're going to direct your attention to the area
23 that you were seated on the floor with your wife.

24 A. Okay. In the theater?

25 Q. In the theater.

1 A. Okay.

2 Q. Were you seated on the floor with your
3 wife?

4 A. Yes, sir. At some point in time.

5 Q. Okay. Had law enforcement come up to you
6 and told you, Corporal Hamilton, you're not supposed
7 to speak to anyone about what you had seen in the
8 theater to anyone else?

9 A. I don't remember them saying that.

10 Q. Okay. Did you see any of the officers
11 there speak to any group of people and tell them,
12 you're not to speak to anyone about what you have
13 seen in the theater?

14 A. I didn't hear that.

15 Q. So how long did it take you to write that
16 statement?

17 A. I can't be exact how long it took.

18 Q. But when you finished that, you and your
19 wife were requested to go and have an interview?

20 A. Yes, sir. That's correct.

21 Q. Page 138 is coming. Your wife went with
22 you?

23 A. That's correct.

24 Q. She went in the room with you?

25 A. Best I remember. Yes, sir.

1 Q. While you were being interviewed?

2 A. Best I can remember. Yes, sir.

3 Q. Well, let me ask you a question. Do you
4 normally interview individuals, two individuals, at
5 the same time in the presence of each other that
6 have witnessed an event?

7 A. I don't.

8 Q. Because you realize, do you not, that
9 there's a great danger with the issue of witness
10 contamination?

11 A. Well, I sleep with this witness.

12 Q. Oh, so is that different. So you can't
13 contaminate a witness you sleep with?

14 MR. GARCIA: Judge, I'm going to object.
15 He's being argumentative with this witness.

16 MR. ESCOBAR: Judge, he just said he
17 sleeps with her, as a roving question.

18 THE WITNESS: I mean, whenever we were
19 talking he was, I think, trying to accommodate
20 us. But when you're asking me what they do
21 with their policies and procedures, I don't
22 know. If you're asking me, would I do that
23 personally in a law enforcement capacity while
24 I'm working? No, sir. I would not.

25 BY MR. ESCOBAR:

1 Q. Okay. Because of contamination.

2 A. Could be.

3 Q. Now, let's talk a little bit about that
4 recorded interview, because you realized it was
5 going to be recorded, right?

6 A. With the detective?

7 Q. Yes, sir.

8 A. I'm sorry?

9 Q. Yes, sir.

10 A. Yes, sir.

11 Q. Now, I believe you already testified that
12 the vulgar statement that you had attributed to Mr.
13 Oulsen -- excuse me, Mr. Reeves, telling
14 Mrs. Reeves, you believe that that was an important
15 statement for you to share with Proctor?

16 A. That's correct.

17 Q. And as you sit here, you really can't
18 imagine any scenario as to why you wouldn't have
19 told him that?

20 A. I mean, I asked the questions that --
21 answered the questions that he was asking.

22 Q. Listen to my question. It's a yes-or-no
23 question. So as you sit here today you can't
24 imagine any scenario why you wouldn't have told him
25 that?

1 A. No, sir.

2 Q. But you didn't?

3 A. No. I didn't.

4 Q. And you didn't put it in your voluntary
5 statement form?

6 A. No, sir. I didn't.

7 MR. GARCIA: Asked and answered, Judge.

8 THE COURT: Sustained.

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

11 THE COURT: You may.

12 MR. ESCOBAR: Your Honor, we'll supply the
13 proffered pages to the Court as soon as we pull
14 them and copy them.

15 THE COURT: Thank you.

16 Redirect?

17 MR. GARCIA: Yes, Judge. May it please
18 the Court, Counsel?

19 REDIRECT EXAMINATION

20 BY MR. GARCIA:

21 Q. Sergeant Hamilton, have you had an
22 opportunity to view the video in this case?

23 A. Yes, sir.

24 Q. And immediately after the shooting there's
25 a person who walks over to Mr. Reeves, right --

1 A. Yes, sir.

2 Q. -- in that video? Can you tell the Court
3 who that person is?

4 A. Me.

5 Q. It's you, right?

6 A. Yes, sir.

7 Q. So immediately after the shooting you walk
8 over to Mr. Reeves and he has the gun on his left
9 knee?

10 A. Yes, sir.

11 Q. And you take it from him, right?

12 A. Yes, sir.

13 Q. So clearly when Mr. Escobar on
14 cross-examination asked you what time you got into
15 the movie theater, or question to that effect and
16 you said 1:30, that was not right, correct?

17 A. That's correct. I have notes to say
18 different. I was incorrect in that statement.

19 Q. Okay. Because clearly that's you on the
20 video, right?

21 A. Yes, sir.

22 Q. And the person that had this knee on his
23 gun, do you -- or the gun on his knee, do you see
24 him in the courtroom?

25 A. Yes, sir.

1 Q. Can you point him out and describe?

2 A. Yes, sir. He's here in the dark blue,
3 one-piece suit.

4 Q. Okay. In the middle?

5 A. Yes, sir. In the middle.

6 MR. GARCIA: Judge, I would ask the record
7 reflect that Sergeant Hamilton has identified
8 the defendant in this case.

9 THE COURT: It will so reflect.

10 BY MR. GARCIA:

11 Q. And the things in which you've testified
12 to here this afternoon, did you actually see those
13 events?

14 A. Yes, sir.

15 Q. Nothing obstructed your view, right?

16 A. No, sir.

17 Q. Sergeant Hamilton, do you recall
18 testifying at the bond hearing back on -- between
19 February 5th and February 6th of 2014?

20 A. Yes, sir. I do.

21 Q. And did you testify in that hearing?

22 A. Yes, sir.

23 MR. GARCIA: Judge, I would invite
24 counsel's attention to Page 334, Line 1 of the
25 bond hearing.

1 THE COURT: What are we doing?

2 MR. GARCIA: 334, the bond hearing, Judge.
3 This is a consistent statement. It's being
4 offered as a consistent statement.

5 He has attacked him. He's attacked him as
6 far as what he said. And this goes to show
7 that he -- this is a consistent statement that
8 he stated back on that date, that Mrs. Reeves
9 indicated or stated to Mr. Reeves, that was no
10 cause to shoot anyone. And then he leaned back
11 around and stuck his finger out, you know, as
12 to, you know, scold her and said, you shut your
13 fucking mouth and don't say another word.

14 BY MR. GARCIA:

15 Q. Sergeant Hamilton, would you agree with me
16 that February 5th and 6th of 2000 --

17 MR. ESCOBAR: Judge, that's leading.

18 THE COURT: You're right.

19 MR. GARCIA: I'll rephrase.

20 THE COURT: Sustained.

21 BY MR. GARCIA:

22 Q. February 5th and 6th of 2014, does that
23 come before March 20th of 2015?

24 A. Yes, sir.

25 Q. So the bond hearing would have been closer

1 in time to this event, right?

2 A. That's correct.

3 Q. And Sergeant Hamilton, just because you
4 didn't put it in your written statement and you
5 didn't put it in your taped statement, doesn't mean
6 that it wasn't said and it didn't happen?

7 MR. ESCOBAR: Objection, Your Honor. It's
8 leading.

9 THE COURT: Sustained. Rephrase.

10 BY MR. GARCIA:

11 Q. In your deposition you did not use the
12 exact words, right?

13 MR. ESCOBAR: Objection, leading.

14 BY MR. GARCIA:

15 Q. Did you use the exact words in your
16 deposition?

17 A. No.

18 Q. I'm sorry?

19 A. No. In my deposition?

20 Q. In your deposition.

21 A. No.

22 Q. Why?

23 A. You know, I mean, I had two attorneys
24 firing at me from -- one from one area and one from
25 the next. I mean, it's kind of hard to keep up at

1 that pace. You know, you're going to make a mistake
2 somewhere in there. You're going to make that
3 wrong, you know, wrong thing. And there's no sense
4 in backing up out of that. You just kind of keep
5 moving forward, two against one.

6 Q. Let me ask you this, Sergeant. Was there
7 a lady present in the room?

8 A. Yes.

9 Q. Do you normally speak like that? Do you
10 normally say those words?

11 A. No, sir.

12 Q. Was it hard for you here today to say
13 those words?

14 A. Yeah. For the second time, yes, sir.
15 Again, from the first time that all this was on the
16 news and it got kind of caught and scolded in
17 reference to it.

18 Q. You normally don't talk in that manner, do
19 you?

20 A. No, sir. Not in public.

21 Q. And we saw that here today, right?

22 A. Yes, sir.

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

24 THE COURT: You may.

25 MR. GARCIA: I have nothing further, Your

1 Honor.

2 RECROSS-EXAMINATION

3 BY MR. ESCOBAR:

4 Q. Detective, you know that when we took your
5 depo it was recorded, correct?

6 A. Yes, sir.

7 Q. There was a tape recorder there in
8 addition to a stenographer?

9 A. That's correct.

10 Q. So we can take the oral questions, as
11 they're given to you, as well as your answers?

12 A. That's correct.

13 Q. Was there an attorney badgering you during
14 that depo?

15 A. I didn't say badgering. I just said that
16 there was two attorneys and one of me.

17 Q. Were both attorneys asking you questions
18 at the same time or one at a time?

19 A. Periodically, they were back and forth.

20 Q. You're saying that myself and Mr. Michaels
21 were asking you questions at the same time?

22 A. No. If you wanted to expound on what he
23 said, you would break in and vice versa.

24 Q. And so -- and so clearly the recording of
25 that would --

1 MR. GARCIA: Judge, I'm going to object.
2 First of all, to the relevancy of these
3 questions.

4 Second of all, he's argumentative with the
5 witness in the form of the question. I object
6 to the form of the question.

7 MR. ESCOBAR: The relevancy. He opened
8 the door. He was the one that said that the
9 reason --

10 THE COURT: Opened the door to what?

11 MR. ESCOBAR: Opened the door to the fact
12 that he's saying, well, it was just two lawyers
13 and, you know, it was such a chaotic, you know,
14 scene there at the depositions. And we've got a
15 recording of that that it wasn't chaotic at
16 all. In fact, we were very pleasant with him.

17 THE COURT: Sustained. Move on.

18 MR. ESCOBAR: No further questions, Your
19 Honor.

20 THE COURT: May this witness be released?
21 You're entitled -- it's your witness. You're
22 entitled to have the last word. Do you need
23 any more?

24 MR. GARCIA: No, Your Honor.

25 THE COURT: May this witness be released?

1 MR. GARCIA: Yes, Judge. Subject to
2 recall, if need be.

3 THE COURT: All right. You're still under
4 subpoena, Sergeant. It's not likely you'll be
5 recalled, but it's a possibility. Please make
6 yourself available, if you should get called
7 back. Hopefully you'll get plenty of advanced
8 notice. But you're free to go today. Thank
9 you, sir.

10 THE WITNESS: Thank you.

11 THE COURT: All right. We'll need a
12 break. How many more witnesses? One. Let's
13 take 10 minutes.

14 RECESS

15 OPEN COURT

16 THE COURT: Who's the next witness?

17 MR. MARTIN: Dr. John Thogmartin.

18 (Whereupon, the witness was sworn.)

19 THE COURT: Go ahead, Mr. Martin.

20 MR. MARTIN: Thank you.

21 JOHN THOGMARTIN, MD,
22 Thereupon, the witness herein, being first duly
23 sworn, was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. MARTIN:

1 Q. Good afternoon.

2 A. Good afternoon.

3 Q. Doctor, would you state your full name and
4 spell your last name for the record?

5 A. My name is John Russell Thogmartin. The
6 last name is T-H-O-G-M-A-R-T-I-N.

7 Q. Your occupation?

8 A. I'm the District VI Medical Examiner.

9 Q. And how long have you been the District VI
10 Medical Examiner?

11 A. Sixteen-and-a-half years.

12 Q. What area of Florida does District VI
13 Medical Examiner cover?

14 A. Pinellas and Pasco Counties, same as the
15 Judicial Circuit.

16 Q. The district VI Medical Examiner's office,
17 is that in an accredited Medical Examiner's office?

18 A. Yes.

19 Q. And what organization accredits your
20 office?

21 A. The National Association of Medical
22 Examiners.

23 Q. Do you also oversee a laboratory?

24 A. Yes.

25 Q. Is that laboratory accredited?

1 A. Yes.

2 Q. And what organization accredits your
3 laboratory?

4 A. The American Society of Crime Lab
5 Directors Laboratory Accreditation Board.

6 Q. And how long has your Medical Examiner's
7 office been accredited?

8 A. Since 2009.

9 Q. And what do you have to do in order to
10 achieve an accreditation from the -- from that
11 organization?

12 A. Well, the National Associate of Medical
13 Examiners puts out certain parameters that an office
14 and its staff have to comply with, and it has to do
15 with the building, the scope of the work, the level
16 of training and education of the employer. And then
17 they have an inspector come every five years, and
18 then they actually do a physical examination of the
19 office and your records and your standard operating
20 procedures.

21 Q. And have you been through that
22 examination, you called it, every five years?

23 A. Yeah. We went in '09 and then 2014. And
24 then there's an reaccreditation process every year.

25 Q. All right. And as we speak today, is your

1 Medical Examiner's office accredited?

2 A. Yes.

3 Q. And 2014 was it accredited?

4 A. Yes.

5 MR. MARTIN: Approach the witness, Judge?

6 THE COURT: You may.

7 BY MR. MARTIN:

8 Q. Let me show you what's been marked for
9 identification as State's Exhibit Number M. Do you
10 recognize that document?

11 A. Yes. That's my resume.

12 Q. Is that your current CV, hopefully?

13 A. Yes.

14 Q. All right. Very good.

15 MR. MARTIN: Your Honor, at this time we
16 would move State's Exhibit Number M, marked for
17 identification, as State's Exhibit next in
18 order.

19 MR. MICHAELS: No objection to entering it
20 into evidence at this stage.

21 MR. MARTIN: I believe Number 11.

22 THE COURT: Okay. It will be admitted as
23 Number 11.

24 (Whereupon, State's Exhibit Number 11 was admitted.)

25 MR. MARTIN: Thank you, Madam Clerk.

1 BY MR. MARTIN:

2 Q. Doctor, I'm going to put the CV back up
3 here because we're going to go through your training
4 and background, just in case you need it.

5 A. Okay.

6 Q. As the Medical Examiner for the Sixth
7 District, what training and education have you
8 received in order for you to perform those duties?

9 A. Well, I have a degree in medicine from the
10 University of Texas Health Science Center, San
11 Antonio. I got that in 1990. I did a residency in
12 anatomic and clinical pathology over five years,
13 also in San Antonio. And then I came to Florida and
14 trained at the Dade County Medical Examiner's office
15 in Miami, finished that in '96. And then, let's
16 see, I've been an Associate Medical Examiner in
17 Broward County. I've been an Associate Medical
18 Examiner in Palm Beach County. Then I was a
19 District Medical Examiner in Palm Beach County.
20 Then I came here in December of 2000 where I became
21 District Medical Examiner here.

22 And I'm board certified in anatomic,
23 clinical and forensic pathology by the American
24 Board of Pathology.

25 Q. And are you licensed to practice medicine

1 in the State of Florida?

2 A. Yes. Florida, Alabama and Texas,
3 actually.

4 Q. All right. During the years that you've
5 either worked as an Associate Medical Examiner or
6 the Medical Examiner, how many autopsies have you
7 performed?

8 A. It's got to be 5,000 by now. It has to
9 be. I don't keep an accurate tally. I'd have to
10 dig through the computer. But then there's other
11 offices, too. So 5,000 is a good bet.

12 Q. All right. And how many of those were
13 gunshot wounds?

14 A. Ooh, I didn't know there was going to be a
15 test today. Let's see. I think maybe -- it's a
16 common cause of death, so over a thousand. A
17 thousand, I guess. It's pretty common, when you
18 have homicides and suicides together.

19 Q. And how many times in either State or
20 Federal court have you testified and have been
21 allowed to render an opinion as to the cause and
22 manner of death?

23 A. Hundreds.

24 Q. And how many times have you testified in
25 court, either State or Federal, specifically allowed

1 to render an opinion cause of death involving
2 gunshot wounds?

3 A. Again, more than -- a lot. A lot.
4 Dozens, hundreds. I don't know.

5 MR. MARTIN: Your Honor, I tender Dr.
6 Thogmartin as a forensic pathologist.

7 MR. MICHAELS: No objection, Your Honor.

8 THE COURT: He'll be -- he's qualified to
9 testify about the subject matter for which he's
10 being offered.

11 BY MR. MARTIN:

12 Q. What I would like to do, Doctor, before we
13 get into your testimony, I'd like to go over some
14 terms and concepts, if you will.

15 A. Okay.

16 Q. In your profession, define an autopsy.
17 What is it?

18 A. Well, it's a medical, surgical procedure
19 where you examine the external surfaces and the
20 internal components of a body. And the word
21 actually means, to see for one's self. And the
22 purpose of it is to try to find the cause of death.

23 Q. What is a forensic pathologist?

24 A. Forensic pathologist is a -- forensic
25 pathology is a subspecialty of anatomic pathology.

1 And a forensic pathologist is someone
2 who's been trained, hopefully by an accredited
3 program, and is board certified in the field to
4 basically practice pathology and apply it to
5 nonnatural and natural causes of death and testify
6 in court.

7 Q. Are there very specific opinions that are
8 available to the Medical Examiner as to the manner
9 of death?

10 A. Oh, right. Yeah, cause of death, there
11 could be probably a billion different combinations.
12 But manner of death, it's for medical, statistical
13 purposes. It goes on a Death Certificate. There's
14 just five of them. And right now it's homicide,
15 accident, suicide, natural and they have changed
16 undetermined to cannot be determined. Vital
17 statistics changed that. So the fifth one now is
18 cannot be determined.

19 Q. I want to go through some medical terms
20 that may come up during your testimony. Explain to
21 us what a penetrating gunshot wound is.

22 A. Well, the way I use it is, penetrating
23 means it goes in and it doesn't come out. So I have
24 a bullet goes in, makes a hole, the bullet stays in.
25 That's a penetrating gunshot wound.

1 Q. Explain to us the term, intermediate range
2 grazing gunshot wound.

3 A. Okay. Okay.

4 Q. There's a lot of words there, but go
5 ahead.

6 A. Yeah, it may be a long answer. There's
7 basically three types of gunshot wounds, generally
8 speaking when a forensic pathologist describes them,
9 and it has to do with range.

10 So you can have contact range, which is
11 basically the muzzle of the gun pressed up against
12 the skin.

13 Then there's intermediate range, which is
14 anywhere from a half-inch to an inch away from the
15 skin, all the way out to the maximum range where the
16 firearm will cause powder tattooing or stippling.
17 And that range varies with the ammunition and the
18 type of gun.

19 And then you have distant or undetermined
20 range, such as a long range, you know, rifle shot,
21 where the only thing that hits the skin is the
22 bullet. There's no contact with the skin from the
23 muzzle of the gun. There's no unburned or partially
24 burned powder hitting the skin and embedding the
25 skin. It's just way far away; or you can have it

1 closer, but there's an intermediate target, such as
2 heavy clothing, a doorway, a wall.

3 So you can be within that intermediate
4 range, but you have an intermediate target, that's
5 where the undetermined comes in.

6 Now, grazed gunshot wound is the other
7 part of what you asked me and that's kind of like
8 what you see in movies where the bullet doesn't
9 perforate or penetrate, it just grazes the skin and
10 kind of cuts the skin and makes a trough.

11 Q. Okay. We talked a little bit about
12 gunshot wounds and leaving powder or unburnt powders
13 or particulates on the skin. Explain to us what
14 stippling is.

15 A. Okay. Stippling is actually not powder on
16 the skin, it's powder in the skin. So when a gun is
17 fired, typically the most common type of powder is
18 ball powder. It's shaped like little balls. And
19 when you pull the trigger, the hammer falls, the
20 firing pin impacts the primer, the primer sets off a
21 burning reaction of the powder in the case pushing
22 the bullet out. So that expanding gas pushes the
23 bullet out.

24 Well, the bullet comes out. But along
25 with the bullet, even sometimes ahead of the bullet,

1 depending on the tightness of the barrel, you'll
2 actually have little bits of partially burned or
3 unburned powder come out. And certainly after the
4 bullet, out comes flame and smoke and all these
5 sometimes unburned powder, because a gun is not
6 100 percent efficient. It's dirty.

7 So when the bullet comes out, you may have
8 a bullet hole, but here comes all the powder and it
9 embeds in the skin and it actually tattoos the skin.
10 And if you have tattooing on your hand, you'll walk
11 around with it for a couple of weeks.

12 Q. Okay. In the event that -- in your
13 profession, if you see the tattooing of the skin
14 from the unburned powder or other particulates, can
15 you use that in some manner to determine the muzzle
16 to target distance, if you will, whatever the
17 stippling took place?

18 A. In a range. Generally, my standard
19 testimony is that it's not a contact wound. It's
20 intermediate range. So based on my experience, it's
21 anywhere from an inch to 18 and sometimes 24 inches
22 away from the skin.

23 Q. Does the particulates come out of the
24 barrel and then impregnate it on the skin and on the
25 solid mass, or is it like a shotgun shell, or

1 depending on the choke on the shotgun it's either a
2 type or broad?

3 A. Right. It's kind of common sense. If you
4 have a bunch of little pellets coming out of the
5 barrel of the gun.

6 If you're closer, you're going to have a
7 tighter, more dense patter. In fact, it can look
8 like just a gray paint job on the skin, because
9 they're all so tight together it's almost a solid
10 tattoo, like a ring around the wound.

11 Then as you move away, the particles
12 spread, just like pellets out of a shotgun. And the
13 amount of spread depends on the caliber, the length
14 of the barrel, the ammunition. And it changes with
15 each different possibility.

16 And as you -- in general terms, as you get
17 further away, it comes out in a cone shape and
18 eventually becomes wide. And then as the powder --
19 as the muzzle gets further away from the skin, the
20 powder lacks sufficient energy to stick in the skin.

21 So at about 18 to 24 inches the powder
22 would just land on the skin and just fall away. So
23 that's what's the limit of the tattooing. That's
24 why there's an outer range.

25 Obviously you're not going to be able to

1 powder tattoo somebody across the room. The powder
2 doesn't have the weight and the energy to hit the
3 skin and get in.

4 Q. Okay. A couple other terms before we get
5 to your testimony. Tell us the difference between
6 anterior and posterior positions.

7 A. That's a good one. Anterior is front,
8 your face, chest, you know, front of your legs. But
9 it gets a little more complicated when you're
10 talking about the arms. The anatomic position
11 actually -- can I stand up?

12 Q. That was my next question. So cover them
13 both.

14 A. Okay. Stand up. This is the anatomic
15 position. So your palms of your hands and the front
16 part of your wrists and forearms is anterior. All
17 of this is posterior. So it gets a little confusing
18 when people are moving their arms around. It gets a
19 little weird. But that's basically it.

20 Q. Let's talk about this case. On
21 January 14th, 2014, a little after noontime, did you
22 have an occasion to conduct an autopsy on one Chad
23 Oulsen, a white male, 43 years of age?

24 A. Yes.

25 MR. ESCOBAR: Judge, we signed a

1 stipulation as to manner, cause and of the
2 identity of the individual.

3 MR. MARTIN: That's true. And at this
4 time I would like to read that stipulation,
5 with the Court's permission.

6 THE COURT: Go ahead.

7 MR. MARTIN: The undersigned counsel for
8 the respected parties herein, hereby stipulate
9 and agree that the individual who was shot on
10 January 13th, 2014, inside Theater Number 10,
11 Cobb Theater at The Grove, 6333 Wesley Grove
12 Boulevard, Wesley Chapel, Florida, is that of
13 the victim in the above-styled case, Chad Wayne
14 Oulsen, a human being, and that he is dead.
15 That is the entire stipulation.

16 THE COURT: Thank you.

17 THE BAILIFF: Do we need to make a copy of
18 that?

19 THE COURT: That's been filed, hasn't it?

20 MR. MARTIN: It's been filed.

21 MR. MICHAELS: It has, Your Honor.

22 BY MR. MARTIN:

23 Q. Was your office, the Sixth District
24 Medical Examiner's office, notified on January 13th,
25 2014 that a Chad Oulsen had been taken to the

1 emergency room at the Florida Hospital in Wesley
2 Chapel?

3 A. Yes.

4 Q. Did -- is it your practice to dispatch an
5 employee of yours to go to that location?

6 A. Most often when the body is dead at the
7 scene we definitely go. It's hit or miss when
8 they're at the hospital. But Investigator Dustin
9 Daily did go.

10 Q. And I believe then by your comment, that
11 Mr. Oulsen then was pronounced dead at the hospital?

12 A. Yes.

13 Q. By Dr. Cottrell?

14 A. Yes. That's my understanding.

15 Q. All right. Was arrangements made for Mr.
16 Oulsen's body to be transported to the Medical
17 Examiner's office?

18 A. Yes.

19 Q. Is it your practice at the Sixth District
20 Medical Examiner's office to sign -- to assign a
21 unique number to each case that comes into the
22 office?

23 A. Yes.

24 Q. And in this particular case did your
25 office assign the number of 5140066 to the case

1 involving Chad Oulsen?

2 A. Yes.

3 Q. And was that number cross-referenced with
4 Pasco Sheriff's office Number 14-001529?

5 A. Yes.

6 Q. Prior to coming in the courtroom today
7 have you had a chance to review not only your
8 autopsy report but any investigative notes and notes
9 from your autopsy?

10 A. Yes.

11 Q. Were you able to review the photographs
12 that were taken, either by your investigator at the
13 hospital or during the autopsy?

14 A. Yes.

15 Q. And do you believe that some of those
16 photographs will be helpful and aid you in
17 explaining your testimony to the Court?

18 A. Yes.

19 Q. Did you assist the prosecutor in this case
20 in selecting those photographs that you felt would
21 aid you in explaining your testimony to the Court?

22 A. Yes.

23 MR. MARTIN: Can I approach the witness,
24 Judge?

25 THE COURT: You may.

1 BY MR. MARTIN:

2 Q. Let me show you what's been marked for
3 identification purposes as State's Exhibit Number N
4 for identification and ask if you recognize those
5 photographs.

6 A. Yes. These are photographs taken at our
7 office and these are photographs from our office.

8 Q. All right. And is the unique Medical
9 Examiner's placard in all of those office
10 photographs being 5140066?

11 MR. MICHAELS: Judge, we don't have an
12 objection to having these photos introduced
13 into evidence whenever the prosecutor's ready.

14 THE COURT: Thank you.

15 MR. MARTIN: All right.

16 BY MR. MARTIN:

17 Q. Each one of those photographs has been
18 identified for discussion purposes with the Medical
19 Examiner's office number and then preceding that is
20 the frame number from the metadata that was taken
21 off the camera. You see we have 013, 017, 022 and
22 033?

23 A. Yes.

24 Q. So when we refer to the documents, if we
25 can be mindful to refer to the number on the

1 photographs so the record is clear and we can
2 cross-reference what you're talking about the
3 photograph. Fair enough?

4 A. Yes.

5 Q. Okay.

6 MR. MARTIN: Your Honor, would you mind if
7 I just stood here so we can both --

8 THE COURT: I don't mind.

9 MR. MARTIN: All right. I would greatly
10 appreciate that.

11 THE COURT: You can reposition, too,
12 Mr. Michaels, if you need to.

13 MR. MICHAELS: Thank you.

14 MR. MARTIN: Judge, we're not displaying
15 this photograph.

16 THE COURT: Thank you.

17 BY MR. MARTIN:

18 Q. What I would like to do is begin with your
19 external examination of Mr. Oulsen at the autopsy.
20 Did you weigh Mr. Oulsen?

21 A. Yes.

22 Q. And what was the weight?

23 A. We recorded his weight at 205 pounds.

24 Q. And did you determine the height?

25 A. Yes. We measured him at 76 inches.

1 Q. What I'd like to do is refer to photograph
2 013 and discuss the external examination. Regarding
3 photograph 013 and also 017, what wounds are we
4 looking at there?

5 A. There are -- there's a gunshot wound on
6 his -- a little bit to the midline -- a little bit
7 to the left of the midline of his chest. And then
8 above that and more to the midline is an abrasion
9 that's probably related to the gunshot.

10 Q. Did you take some measurements from the
11 top of his head to orientate the wound on the body?

12 A. Yes.

13 Q. And from the top of the head what is the
14 measurement to the wound?

15 A. Sixteen-and-a-half inches. It's centered
16 16-and-a-half inches below the top of the head.

17 Q. And did you make a measurement from the
18 level shoulder?

19 A. Yes. Seven and a half.

20 Q. And from the midline?

21 A. One and a half.

22 Q. And explain how you took --

23 A. One and a quarter. Excuse me. I correct
24 that.

25 Q. And explain how you took those

1 measurements.

2 A. Well, what I do is I take a straight-edge
3 ruler. And if I need -- I need a yardstick
4 sometimes. And with a gentleman this size I usually
5 need a longer ruler. And basically I just visualize
6 the distance below the top of the head. I'm not
7 using a tape measure, I'm using a hard ruler.

8 Q. And why do you take the measurements from
9 the head down?

10 A. Well, when -- my general rule of thumb is
11 if the wound is below the waist, I'll measure from
12 the heel up. If the wound is above the waist, I'll
13 measure from the head down. Generally it's easier
14 to measure a shorter distance. It's more accurate.

15 Like I can measure the length of this page
16 much easier than I can measure the length of the
17 room. So I measure the shortest distance possible.

18 And then you can always -- as long as
19 you've measured the height correctly, you can deduct
20 and figure it out from the sole of the foot or the
21 top of the head, if it's in the leg or if it's in
22 the chest.

23 Q. What I would like for you to do is
24 continue with your testimony using photographs 013,
25 017 and 018 and describe the wound for us. And from

1 your description, what can you tell us about the
2 wound?

3 A. Well, the wound is unusual, and it kind of
4 goes along with one of the opinions I gave later on
5 about the grazing wound.

6 When -- like this is a .380, my
7 understanding of the circumstances. It's a .380.
8 And if a .380 bullet travels like a very well-thrown
9 football by a professional NFL quarterback, it's
10 going to spiral perfectly, generally.

11 Certainly, if it's a decent barrel, a
12 decent gun made by a real manufacturer, it's going
13 to fly straight and it's going to make a hole in the
14 skin.

15 If it's coming in perpendicular to the
16 skin, it's going to make a noticed punched-out hole
17 and then it's going to do whatever it does inside.

18 This entry wound is what I called
19 either -- it's triangular shape, I described it.
20 It's got an eccentric abrasion. It's kind of weird
21 shape.

22 What this is is an entry by a tumbling
23 bullet. This bullet is wobbling. It's not flying
24 straight.

25 Q. And from -- what is it about the wound,

1 other than the triangular shape, that leads you to
2 that conclusion? Is there any other tearing or
3 spreading of the skin?

4 A. There's a little bit of eccentric
5 abrasion, like you were -- if you had it like a
6 clockface, maybe at 4:00, so it's kind of abraded
7 the skin.

8 And then's an abrasion that's completely
9 separate from the wound, up a little higher, about
10 an inch and a half away and a little bit more
11 towards the midline that's probably also related to
12 gunshot wound, but maybe a piece of castoff flying
13 debris from the grazed gunshot wound that he had
14 that probably impacted his chest. Impacted -- the
15 bullet impacted before hitting his chest.

16 Q. All right. Now, once the bullet impacted
17 his chest, did you then make a determination the
18 path of the bullet inside the body?

19 A. You can use the X-ray very reliably to
20 kind of, you know, look at the path of the bullet.

21 Well, it hits his rib and then it goes --
22 pretty much goes straight back. It goes a little
23 bit to the right of the midline. So maybe it goes
24 about this far left to right and then it ends up in
25 his -- one part of it ends up in his heart and the

1 other part ends up in his lung, his right lung.

2 So it's pretty much front to back, maybe a
3 little bit of deflection or travel from the right to
4 the left.

5 Q. Now, is that from the bullet tumbling
6 hitting the rib or what -- or can we say that's the
7 direction of the bullet? Is it a deflection, is
8 what I'm getting at?

9 A. Generally, bullets will fly straight, even
10 in the body, generally. There could be one or two
11 or three degrees of deflection involving, since it
12 did hit bone. There could be a slight deflection,
13 because it hit the wrist. But we're talking, you
14 know, probably less than five degrees, certainly.

15 Q. Okay. Did you actually find pieces of the
16 bullet inside the heart?

17 A. Yes. There was -- the way I described it
18 is, it's a -- I have a yellow bullet jacket,
19 bullet -- you know, it's a -- bullets are created by
20 having a lead core wrapped in a copper jacket. And
21 most defense ammo is hollow-point bullets, so when
22 they go in they're supposed to kind of break apart.

23 So I found the jacket sometimes will
24 separate away from the core and you'll find the
25 jacket, and then deeper in you'll find the lead

1 core. And that's what happened here.

2 Q. And you indicated that the bullet traveled
3 front to back. Did you determine a distance?

4 A. Yes. Typically, what I like to do is
5 measure how deep the total wound track is, and
6 that's from the surface of the skin to where I find
7 the deepest part. It's five-and-a-half inches. So
8 in the chest, it's a pretty good distance, maybe
9 it's about this far (indicating).

10 Q. We're going to come back to these, but we
11 need to cover another topic. I want you to refer to
12 photographs 022 and 033. And first let's talk about
13 the wound on 022. Where is that wound located?

14 A. Well, it's basically on the top part of
15 where the hand meets the wrist. And it grazes right
16 across the top of his hand or wrist where I'm
17 pointing right here.

18 Q. And did you measure it?

19 A. Yes.

20 Q. What is the measurement?

21 A. I had it -- it's oval shape, and it's a
22 two-by-three-and-a-half centimeter wound.

23 Q. And is that described as a grazed gunshot
24 wound?

25 A. Yes.

1 Q. And based on the photograph -- or
2 actually, you did an examination. What is it about
3 the wound that leads to your opinion that it is a
4 grazed gunshot wound?

5 A. Well, if I was publishing a textbook, this
6 would be the picture I would use for a grazed
7 gunshot wound. It's got all the elements that --

8 Q. Tell us what they are.

9 A. Well, you have a -- it's almost common
10 sense. You can imagine a bullet flying across human
11 skin and it's going to create a cut or trough. And
12 when the skin is cut, sometimes the skin is under
13 tension in that area. So even though the bullet may
14 be .38 inches in diameter, .38 inches, the wound
15 ends up wider because the tension of skin cuts the
16 skin and kind of opened.

17 And also, the wounds -- all the
18 characteristics of a grazed gunshot wound alone, but
19 also the directionality is clear when -- if you can
20 imagine human skin being basically cut by a flying,
21 blunt bullet, there's going to be tears and tags.
22 That's what we call them.

23 The tears are going to be -- the tears in
24 the skin are going to be directed outward in the
25 direction of the bullet. The tags, like pieces of

1 skin that look like little peninsulas of skin, like
2 Floridas, little Floridas sticking in toward the
3 wound, those are called tags. They're pointing
4 where the bullet came from.

5 And he had some very, very good tears and
6 tags of the size of the wound that point in the --
7 the tags point in the direction of the bullet. The
8 tears point in the direction the bullet is going is
9 perfect.

10 Q. Now, we've had some testimony, so I want
11 you to assume for the rest of your testimony that
12 there was only one shot fired in this case.

13 A. Okay.

14 Q. And that one shot did strike Mr. Oulsen.

15 A. Okay.

16 Q. Okay. Now, in dealing with the wound, can
17 you tell us whether or not any bone was damaged or
18 perforated in the wrist area in that wound?

19 A. Not in this wound, just soft tissue.

20 Q. I just can't remember the number of the
21 picture. Why don't you refer to Picture 0333. Is
22 that a different view of Photograph 0222 where the
23 wound is?

24 A. Yes. That's the -- 33 is the posterior
25 surface of the right hand and wrist.

1 Q. Okay. And would you describe what is
2 significant to you -- when you're dealing with a
3 gunshot wound what is significant about the
4 condition of the backside of Mr. Oulsen's hand in
5 that photograph?

6 A. It has a gunshot wound stippling.

7 Q. Okay. Based on our previous conversations
8 regarding stippling -- and remember we talked about
9 the cone and how it can get tighter, closer, and it
10 comes out?

11 A. Yes.

12 Q. Is there any broad range or any range that
13 a Medical Examiner can give regarding the muzzle to
14 target distance from stippling on the skin?

15 A. Well, you can only do it based on
16 experience. Nobody is volunteering to have themselves
17 shot. And you really don't get the same kind of
18 reaction out of pig's feet or, you know, leather or
19 anything. It's got -- you know, it doesn't really
20 work.

21 You know, this is not -- this wound and
22 this stippling is not one inch away. It's not
23 two inches away. It's probably -- I mean, if you
24 were to ask me to ballpark it, I would probably go
25 with four to 15, could be anywhere in there.

1 Q. And dealing with the stippling, when you
2 conducted the external examination, did you notice
3 any stipplings from the knuckles to the fingers?

4 A. No. And the pictures shows it quite
5 nicely, too. It kind of ends on the back of the
6 hand and it ends up here a little bit on the
7 forearm, too.

8 Q. Okay.

9 A. So there's your range of stippling from
10 here to here.

11 Q. Based on the -- you gave us a very broad
12 range of determination of distance, four inches to
13 15 inches. Is there a reason that is -- let me back
14 up.

15 What could account for the lack of
16 stippling from the knuckles to the fingers, is a
17 better way to ask it?

18 A. Well, it could be the actual edges of
19 the -- you know, there's a cone of stippling that
20 occurs with these wounds. So the fingers, and then
21 also, of course, the higher forearm are out of range
22 of stippling. That could be one reasonable
23 explanation.

24 The others could be that the fingers are
25 flexed at the metacarpals like this, or that the arm

1 is at an angle where -- or the hand is at the angle
2 where these really don't have -- they're not
3 presented to the powder well enough for it to
4 impact. Something like that.

5 Q. Now, what I would like to do is combine
6 the two wounds. So let me get on the record the
7 photographs that you're going to be relying on in
8 this discussion.

9 We're going back to the photographs
10 dealing with the chest wound, which is Photographs
11 013, 017 and 018. And what I would like for you to
12 do, also using the photographs of the wrist wound
13 022 and 033, assuming the fact that there's a one
14 gunshot, can you tell us whether or not one gunshot
15 could have caused both of those wounds?

16 A. Yes. And I noted that in my autopsy
17 report, and it's consistent with one gunshot wound.
18 Particularly, the entry of the chest looks like it's
19 going through an intermediate target. And
20 intermediate target is at least this grazed gunshot
21 wound. His wrist is the intermediate target.

22 Q. When you conducted the autopsy of Chad
23 Oulsen, did you have knowledge that his wife, Nicole
24 Oulsen, had also been injured by a single gunshot?

25 A. I had heard that she had a hand wound.

1 That's it. That's all the information I had at the
2 time of the post.

3 Q. Prior to coming in the courtroom today
4 have you had an opportunity to review the
5 photographs of Mr. Oulsen's gunshot wound?

6 A. Yes.

7 Q. Let me show you what's been marked as
8 State's Exhibit O for identification, and ask if you
9 would look at these photographs and tell me whether
10 or not those are the photographs that you reviewed
11 regarding -- that was represented to you as being
12 the gunshot wound of Nicole Oulsen?

13 A. Yes. These are the photographs.

14 Q. All right. And would those photographs
15 aid you in explaining your testimony as far as how
16 Mrs. Oulsen received her wound in relation to the
17 wound on her husband's chest and wrist?

18 A. Yes.

19 Q. Okay.

20 MR. MARTIN: Your Honor, at this time I
21 would move State's Exhibit Number O for
22 identification next in order.

23 MR. MICHAELS: No objection.

24 THE COURT: Those haven't been previously
25 admitted?

1 MR. MARTIN: Those are my photographs,
2 Judge.

3 THE COURT: What are they, 12?

4 THE CLERK: Thirteen.

5 THE COURT: And how many are there? It's
6 a composite.

7 MR. MARTIN: Right. And we're not
8 displaying them.

9 THE COURT: Thank you.

10 MR. MICHAELS: Your Honor, I apologize. I
11 didn't hear the Court. Is the Court
12 recognizing some of the photos as previously
13 being entered into evidence by the Defense?

14 THE COURT: Well, it doesn't really
15 matter.

16 MR. MICHAELS: I know. I just didn't hear
17 what the Court said.

18 THE COURT: No. I forgot that they were
19 by you guys, whatever was admitted. There was
20 undoubtedly some similar, if not the same ones.
21 But this will be State's 12, right?

22 THE CLERK: The other ones of Mr. Oulsen
23 are 12.

24 THE COURT: Oh, okay. Have you admitted
25 those?

1 MR. MARTIN: Yeah, those are admitted.

2 THE CLERK: So 13.

3 THE COURT: So that is 13.

4 MR. MARTIN: Yes, ma'am.

5 THE COURT: Right. They were admitted by
6 stipulation.

7 (Whereupon, State's Exhibit Number 13 was admitted.)

8 MR. MARTIN: Okay. Thank you.

9 BY MR. MARTIN:

10 Q. Dr. Thogmartin, if you would, we're not
11 going to display all of those photographs. What I
12 would like for you to do, now that you've had a
13 chance to review them and you have the
14 characteristics of the wounds, you know, kind of in
15 your head, would you go ahead and just use your own
16 hand and explain exactly where the wound is and how
17 the wound traveled and whatever opinion you can
18 conclude as to the path of the wound through Mrs.
19 Oulsen's, I'll call it hand, but fingers?

20 A. Okay. I see the date on this. I know
21 that there -- this is a couple days old, so she's
22 got a lot of swelling from her -- from the injury.

23 Basically, in my opinion, based on --
24 she's got stippling on her. She has powder
25 tattooing on her hand, too. It's not as intense as

1 Mr. Oulsen's. She's got a bullet hole that goes
2 through her ring finger. And it looks like she's
3 got a little graze from the bullet on the top distal
4 or distant part of her pinkie finger.

5 And it looks like it goes through and
6 through the ring finger. And the stippling is on
7 this side, so I think her hand is held something
8 similar to this.

9 There's all sorts of variations, but it's
10 not like this. It's not like that. It's basically
11 like this and the pinkie's got a little grazing
12 abrasion on it, so it's coming in just about like
13 that.

14 Q. Okay. And you mentioned that she had some
15 stippling on it, but not as much as stippling on Mr.
16 Oulsen's backside of his hand.

17 A. That's correct.

18 Q. And orientating her hand in the path of
19 the bullet, would that indicate to you that her hand
20 is in front of Mr. Oulsen's wrist or in back of Mr.
21 Oulsen's wrist?

22 A. Most likely her hand hit -- his wrist is
23 very intensely tattooed. Hers is less so. So based
24 upon what we've previously discussed, it's most
25 likely that her hand is behind his wrist.

1 So he's intermediate target number one.
2 She's intermediate target number two. And then
3 there's the chest wound.

4 Q. Now, once we get past the wrist, can a
5 Medical Examiner anatomically place the rest of the
6 body in position where that hand was at the time it
7 was shot?

8 A. The only thing I can do is, I can trace a
9 reasonably straight path for the bullet. And
10 knowing that, I can place his wrist in certain areas
11 and I can place her hand in certain areas. But, you
12 know, you can use your imagination, all I've got is
13 the wrist, the hand and the chest. And any
14 combination where the stippling lines up
15 anatomically you can place them, but you do it in
16 context. There's obviously limits.

17 Mr. Oulsen's not hanging from the ceiling
18 upside down. And the shooter is not laying down on
19 the ground. You have to put it into context. But
20 there are some variations of where you can place
21 them.

22 Q. Now, based on the way the body is hinged
23 together, if you will, you talked about the
24 variations. Is the way the body joins, bends and
25 moves, does that place additional limitations on the

1 possibilities of where her body was?

2 A. To a degree. I mean, to a degree. We're
3 not -- we're not tin men from the Wizard of Oz and
4 we're all stiff. But, you know, there's some
5 flexibility. But there's certain limitations that
6 we have.

7 I can think of three to five reasonable
8 scenarios where the bullet could have traversed
9 these areas and caused the exact same wound.

10 Q. And what would those be?

11 A. Well, I think that when Mr. Oulsen was
12 shot, the bullet's flying into his chest reasonably,
13 let's say -- I already said there may be a little
14 deflection, one, two, three, certainly not more than
15 five degrees.

16 So here's the bullet. He places his wrist
17 here and her hand is somewhere in here. I can't do
18 it, because obviously I don't have the right hands,
19 right? But something to this effect. I need more
20 than one person to model it.

21 Q. Well, I'm available. Come on down.

22 A. Do you want to be the decedent?

23 Q. Sure. Would a rod help you with this?

24 A. Yes.

25 Q. Okay.

1 A. The wound is basically coming in about
2 right here. And so the bullet's generally going to
3 fly straight. This is basically where the wound is.
4 Now, bend over at the waist. This is -- wherever
5 the -- wherever his body -- lean back as far as you
6 can.

7 So that's all I can say is, this is the
8 path of the bullet. And depending on the position
9 of his torso, it changes the position of the gun.

10 Now, same thing with the wrist.

11 Q. You've got my jacket.

12 A. Sorry. So it's coming right through here.
13 But where is the hand and where is the wrist? It
14 all lines up fine, right?

15 Now, where is his wife's hand? Somewhere
16 right about here, but also it could be here,
17 anywhere along this area. But if he moves his hand
18 closer, they're really close. If he moves his hand
19 away, they could be really far away.

20 So the bullet's basically flying like --
21 we got a little off. Like this. But you can see
22 the possibilities with where his hand can be and you
23 can see the possibilities where her hand can be.
24 That's all I can do anatomically.

25 Q. Thank you. The position of her hand in

1 between Mr. Oulsen's hand and the chest, does that
2 in any way account for the amount of stippling on
3 her hand?

4 A. Well, yes. Hers is less, much, much, much
5 less than his. So I feel like her hand -- her hand
6 was behind his wrist further away from the gun
7 muzzle. I mean, I feel very comfortable saying
8 that.

9 Q. Now, we've talked about the trajectory of
10 the bullet and we used the rod as far as showing us
11 how the path as the body moves. Because it's
12 relatively short distance and straight it's going to
13 move, right?

14 A. Well, if you're wondering where the gun
15 is, the gun is upstream from the bullet path. And
16 no matter wherever you put the body, that's where
17 that gun is. So that's the position thing.

18 Is he sitting in the seat straight? The
19 gun's right there. If he's leaning back in the
20 seat, it's up here. If he's bending over at the
21 waist, it's down at the floor.

22 So if he turns his torso to the right --
23 or the left, right, it's moving -- the gun is
24 necessarily over in that area. And again, you have
25 to put it in context.

1 Q. When we talk about and ask a Medical
2 Examiner to attempt to position a body that was
3 involved in shooting, are you constrained by the --
4 I guess I'll call them the known circumstances and
5 what witnesses say? Known circumstances being, like
6 in this, this is a theater. It's a short distance.
7 There's chairs. There's artifacts in the way,
8 obstructions. That's what I mean.

9 A. Well, yeah. I mean, I can give you the
10 anatomic path of the bullet, but then you correlate
11 that with the circumstance and you narrow in the
12 possible scenarios.

13 I mean, there's -- if you have a
14 completely unknown shooting circumstance, those
15 scenarios are very large. But if you have
16 witnesses, film, a set thing where people are saying
17 what occurred, you can rule out what's not possible,
18 but then you can say, well, this situation is
19 possible. This is plausible. This is good.

20 So you're basically narrowing your focus
21 on the possible scenarios of the shooting.

22 Q. In doing that, in the event there is an
23 obstruction, like in this particular case, a seat
24 back of a chair, if there's no bullet hole through
25 the seat back and there's only one shot, would that

1 be a circumstance that could be used in an attempt
2 to determine the trajectory and where the shot came
3 from, since there was no bullet hole through the
4 solid object?

5 A. Right. That's what I like about work, a
6 lot of it's common sense. If there's an object
7 between the gun and the decedent and there's no hole
8 in the object, then the bullet traveled over, around
9 the object, not through it. So it probably came
10 over the top or it went through the crack. But,
11 generally, it didn't go through.

12 Q. Now, regarding the position of Mr. Oulsen,
13 having those same constraints that we just discussed
14 in mind, are you able to place Mr. Oulsen's body in
15 any position that is consistent with the wound
16 track, knowing the artifacts and everything that are
17 in the area?

18 A. Sure. There's a couple of possibilities.

19 Q. Would a chair and a stick and a rod, can
20 you come down and show us?

21 A. Yes.

22 Q. Let's do that. I'm going to let you
23 manipulate the rod. This is going to be a
24 one-person show. And what I would like for you to
25 do is give us the different scenarios -- and I'll

1 just step out of the way -- in which the wound track
2 would be consistent with a particular body position.

3 A. Okay. Well, it's kind of like the same
4 scenario we had before. But here's about where the
5 wound is -- would be on me on my chest. And for the
6 purpose of the model, I mean, I'm five-foot-11.
7 He's six-foot-four, so he's about five inches on me.

8 Q. Plus shoes.

9 A. Plus shoes. Well, we both have shoes, so
10 anyway.

11 Q. There you go.

12 A. I'm a little short for him, so let's move
13 the wound up to about right here, about five inches,
14 give or take. So the wound is here and it's pretty
15 much I can orient where it's front to back and
16 slightly left to right.

17 So if I'm standing up, there's the gun, if
18 the gun's in that range. If it's on the other side
19 of the seat, the gun's here, if I'm standing
20 straight.

21 If I'm bending over just slightly, you can
22 see the wound still lines up. Oh, and my wrist is
23 here and the gun makes it over the seat.

24 Now, obviously I can't be bending over
25 like this. The gun would be going through the seat.

1 Now, to give range -- give you an idea of range, I
2 could be doing this. That would work. This. I
3 could be doing this (indicating.) It would all
4 work, but there's limits.

5 I think based on the seating and
6 circumstance he's not turned this way and he's not
7 turned this way. He's probably not doing this.
8 Somewhere in here, if the gun is right at seat
9 level, I've got to be doing this or the gun's got to
10 be pointing up or I'm here. This would work.

11 And then range of fire, the gun could
12 probably be, depending on where the wrist is, the
13 wrist is here. The gun can be further back. It
14 could be closer, if the wrist is closer. Anywhere
15 along here.

16 This is what I'm dealing with, what I mean
17 anatomic findings and context. Those are the
18 possibilities, generally. Maybe there's something I
19 haven't thought of, but those are the general ones.

20 Q. Well, based on the artifacts that we see
21 and the wound track, do you have an opinion as to
22 whether or not when Mr. Oulsen was shot that he was
23 standing fully erect?

24 A. Well, if he's standing fully erect, you've
25 got the gun -- let's move up a little bit and put

1 the gun a little bit closer. If he's standing full
2 erect and somebody's sitting, depending on -- they
3 may have to be holding the gun like this to get a
4 straight shot. If he's bending over slightly,
5 you've got somebody holding it low, but pointing it
6 up.

7 But see, as I manipulate my wrist -- go
8 ahead and let go -- I can make it work. But you
9 just have to -- it depends on the manipulation of
10 the wrist and the gun.

11 When I move, the gun moves. If I move
12 closer, the gun -- this works. Even two knees in
13 the seat. My knees hurt when I kneel on this, but I
14 could be here. I could be doing this. I could be
15 doing this and anything else. But my wrist and arm
16 are here. That's where they are. And the wife of
17 the decedent's hand is somewhere in here.

18 So maybe it precludes him being way back
19 here with her hand reaching here. He's probably
20 much closer to the seat, maybe kneeling in the seat.

21 Q. Thank you. Take your seat. What I would
22 like to do is discuss with you the use of a blunt
23 object to cause injuries to the face.

24 A. Okay.

25 Q. That's a very broad topic. Okay.

1 MR. MARTIN: Madam Clerk, can I have that
2 cell phone?

3 BY MR. MARTIN:

4 Q. And let me show you what's been marked as
5 Exhibit Number 33 in evidence and ask you to look at
6 that. I know you haven't seen it before, so I would
7 just ask you to look at that.

8 A. Okay.

9 Q. Okay. All right. Give it back to the
10 clerk. I want to show you State's -- I'm sorry.
11 Defense Exhibit Number 27. Give you a moment to
12 look at that.

13 A. Okay.

14 Q. All right. When a blunt object strikes,
15 I'll call it the face or the head area -- let me
16 start over. I want you to assume that from
17 approximately 30 inches away that an object that
18 weighs, about like that phone that you had in your
19 hand, is thrown and it strikes the head of a human
20 being, an individual who is 70-plus years of age,
21 can't tell you how much force, how fast, but in the
22 event that an object weighted like that phone is
23 hurled from that distance, would you expect to see
24 some sort of indication that that object hit the
25 individual, especially if it hit the individual in

1 the glasses area?

2 A. Only if it was -- well, you'd have to
3 really chuck it. I mean, you could certainly hit
4 him in the glasses area and leave no mark at all
5 because you're tossing it or not throwing it with
6 sufficient force.

7 But, I mean, if you really heaved a phone,
8 you could injure somebody. You could leave a mark,
9 a welt or something.

10 Q. Right. And if you continue with the
11 factual scenario that it was reported that the force
12 was such that the person was dazed by the impact,
13 would that lead you to believe that you would see
14 some sort of injury to the face?

15 A. Maybe. I mean, dazed is a very subjective
16 term. You know, sometimes I feel dazed when I don't
17 get enough calories. But, you know, what does dazed
18 mean?

19 I'm assuming that what that means is
20 they're really getting hit. If they're really
21 getting hit, you're going to have some sort of a
22 mark probably. And it's usually when you get hit by
23 something, it's going to be on the bone. If you see
24 a mark, if you get hit in the cheek, it's kind of
25 squishy. But if you get hit in the brow or the chin

1 or the bridge of the nose, that's where you get the
2 mark because you've got skin under bone. That's
3 where you get the skin injuries that last.

4 Q. All right. I'd like to direct your
5 attention to Defense Exhibit 27, specifically to the
6 left eyelid. And what do you see there?

7 A. I don't really see -- I see maybe that
8 eyelid's a little redder than that one, but it's not
9 very impressive at all.

10 Q. Okay. How fragile is the skin of the
11 eyelid?

12 A. Well, it's about the most fragile skin of
13 your face, maybe the lining of your nose or maybe
14 your cheek, your buccal mucosa may be a little bit
15 more fragile.

16 But to give you an idea, if somebody gets
17 strangled, that tissue in there is so fragile that
18 actually the blood vessels in there break just from
19 having the venous outflow of the head occluded by
20 hands or ligatures sometimes.

21 So the eyelid, the tissue around the eye,
22 the vessels of the eye, the white of the eye, the
23 conjunctive of, they're very fragile.

24 Q. Okay. Can they -- can the eyelid be --
25 let me start over. Can an abrasion-type wound, if

1 you will, be cause of the eyelid by the constant
2 rubbing by one's finger?

3 A. Oh, sure. Yeah, you can make your eyes
4 red by rubbing them. I think that's almost -- I
5 mean, I know that from living a life of normalcy.
6 But, yeah, if you rub your eye, you can make it red.
7 You can make it bloodshot.

8 Q. How about the eyelid itself?

9 A. Sure.

10 Q. Okay. Now, Mr. Reeves, in this picture,
11 is wearing glasses, right?

12 A. Right.

13 Q. In the event that an object was thrown at
14 Mr. Reeves, and it did cause an injury behind his
15 glasses, how can you account for the glasses being
16 there and that injury being there, if that is true?

17 A. From the phone?

18 Q. Yeah.

19 A. Okay. Well, let's just say that I have a
20 phone chucked at me. Being a long-time glass
21 wearer, you know, these glasses have saved my eyes
22 numerous times. But phones flying at you with
23 sufficient force to hit you here, of all the places
24 on the face, that's least likely to be injured of
25 anyplace, nose, mouth, forehead, anything, the

1 eyelid would be the last.

2 Because, number one, it's surrounded by
3 bony tissue. And the reason it's sunken in -- our
4 eyes in our heads, instead of outside protruding
5 like a French poodle or something, is for
6 protection.

7 I also -- he has a -- I'm assuming it's a
8 plastic lens, and I'm assuming he wore it when he
9 was there, there's -- how am I getting to the eyelid
10 and not -- if I'm hitting it really hard enough
11 where I actually hit the eyelid some magical way,
12 I'm going to have bridge of the nose injury, brow
13 injury.

14 I mean, try to do that without your
15 glasses, you'd have a real hard time. I just
16 injured my eye. But with the glasses on, I don't.
17 All I did was smudge my glasses.

18 Q. What if the frames of the glasses are
19 what's known as the flexible glasses?

20 A. That would be good. They wouldn't be
21 damaged. But you would still have the other --
22 surrounding the eyes.

23 Even if you had one of those old, World
24 War II German monocles, just a one -- or, you know,
25 that you stick in your eye, your eyelid wouldn't be

1 injured. But all around your eye -- you don't even
2 have a frame, around your eye would be injured from
3 the blunt impact.

4 But of all the places on the face when
5 you're wearing glasses, that would be the least
6 likely to be injured.

7 Q. There's been testimony that that picture
8 was taken approximately two hours after the shooting
9 incident and after allegedly Mr. Reeves was struck
10 by a cell phone. After a two-hour period, what
11 would you expect to see?

12 A. It really -- again, I'm kind of -- I'm not
13 even sure there's an injury here. But let's say
14 that he didn't have his glasses on and somehow the
15 phone got there through there, or his glasses are
16 made of jello or something and there was an injury,
17 you would expect some swelling, some sort of thing?

18 When your eye gets hit, generally you're
19 going to have some swelling, purple. I'm looking at
20 this picture and I'm really not even -- I'm
21 acknowledging that maybe that -- the left eye is a
22 little redder, a tiny bit, but I don't even know if
23 I would appreciate it if I was to do an autopsy or
24 look at him medically. I don't even know if I would
25 appreciate it as an injury.

1 Q. What does that mean, you wouldn't
2 appreciate it?

3 A. Well, when you look at people, in general,
4 whether you're doing a physical exam or an autopsy,
5 there's going to be like -- one eyelid may not be
6 exactly the same color. You know, one side of the
7 face may be a little lower than the other. One eye
8 may be a little lower than the other. You know,
9 faces aren't symmetrical. They're not
10 monochromatic.

11 So I'm looking at this picture. If you
12 didn't tell me I'm looking for an injury, I wouldn't
13 even know I would see an injury.

14 Q. In this particular case -- we're going to
15 shift gears. In this particular case, do you have
16 an opinion to a reasonable degree of medical
17 certainty as to the cause o death?

18 A. Yes. Most of the time I say reasonable
19 degree of medical certainty. This one I would say,
20 absolutely certain it's a gunshot wound to the
21 chest. This is one where you don't have any doubt
22 that's what killed him. There's a hole in his
23 heart, so it's an easy one.

24 Q. And do you have an opinion to a reasonable
25 degree of medical certainty the manner of death,

1 knowing the limitations that you've already
2 explained to us?

3 A. Right. Oh, it's homicide. And it's based
4 on -- manner of death is based on circumstances.
5 And the circumstances are pretty clear. One person
6 shot another. It's a homicide.

7 MR. MARTIN: May I have a moment, Your
8 Honor?

9 THE COURT: You may.

10 MR. MARTIN: I'm going to pass the
11 witness. May I have a few minutes and I'll get
12 the exhibits back to the clerk --

13 THE COURT: Yes.

14 MR. MARTIN: -- so she feels more
15 comfortable with us walking around with them?

16 Thank you, Judge.

17 Mr. Michaels?

18 CROSS-EXAMINATION

19 BY MR. MICHAELS:

20 Q. Good afternoon, Doctor.

21 A. Good afternoon.

22 Q. Let's go back to that large photo you were
23 looking at, if we may.

24 A. Okay.

25 Q. Thank you. Let's start here and work our

1 way backwards.

2 A. Okay.

3 Q. This is Defense Exhibit 27. It's that big
4 picture you were looking at.

5 A. Yes.

6 Q. I'm sure you remember it.

7 A. Yes.

8 Q. All right. Now, first of all, if I
9 remember, this was in line from what you told us
10 when we talked to you at the deposition. Kind of
11 your bailiwick is not the living, but the deceased?

12 A. That's correct. Although sometimes people
13 show me living people, my statutory duties are
14 confined strictly to the decedents, just people that
15 die in certain circumstances. Not all decedents,
16 but just certain ones.

17 Q. And in terms of the photograph, basically
18 you see in it what anybody might see. And what I
19 mean by that is, you would depend on the
20 photographer to capture any sort of injury for you
21 to make a proper evaluation?

22 A. Right. Right. I mean, any time you have
23 a photograph, lighting, or lack thereof, angle,
24 stuff like that, it would be much better to actually
25 see them at that point, you know, and say do you see

1 an injury. It would be much superior.

2 Q. And so in terms of diagnosing an injury of
3 some sort, that would certainly be something that
4 you would do as a medical doctor in person as
5 opposed to a photograph?

6 A. Yeah. The -- my testimony was merely, if
7 you showed me this photograph and say what's wrong
8 with it, I don't think I would say, wow, his left
9 eye is injured. I don't think I would say that.
10 But it could be that it's due to -- the photograph
11 is not capturing it as well as perhaps it really
12 looks.

13 Q. Okay. So we can agree in terms of any
14 sort of medical opinion as to whether there was any
15 injury to Mr. Reeves' left eye, you can't opine as
16 to that, correct?

17 A. I can't opine. I can opine, and it's
18 based on the picture, what I see in the picture.
19 But I don't have a time machine, so obviously I
20 can't see him live. It would be better if I could
21 see him at the time.

22 Q. And certainly you didn't exam him at the
23 time?

24 A. No.

25 Q. Nor did your staff take the photographs,

1 because certainly you depend on the photographs that
2 your staff and photographs that are taken at the
3 Medical Examiner's office more so than, for
4 instance, something taken at a hospital?

5 A. Right. Well, we -- again, we actually
6 don't have authority to run around taking pictures
7 of living people.

8 Q. Right.

9 A. Unless it's pertinent to cause death --

10 Q. No. I understand.

11 A. -- then it could be. But I don't see
12 how -- you know, the specifics of the altercation
13 aren't going to alter cause and manner. So I can't
14 think of a single time where we've actually taken
15 pictures of living people that have to do with cause
16 and manner. I'd have to think about that.

17 Q. What about in terms of the bodies that you
18 examine, you would depend on your examination and
19 your photographs as opposed to a forensic
20 technician's photograph?

21 A. The photographs that we take in the office
22 are helpful and usually they're really good. And
23 obviously when I look at the body face-to-face it's
24 much better.

25 Q. Okay. So in this case, though, we agree

1 that in terms of an opinion as to whether or not
2 Mr. Reeves was truly injured, you have no medical
3 opinion as to that?

4 A. I can say based on this picture I don't
5 see a significant injury. How about that?

6 Q. We can agree with that.

7 A. Yes.

8 Q. Because you are rendering a medical
9 opinion.

10 A. I'm rendering a medical opinion about this
11 photograph right here.

12 Q. Okay. But not the individual, because you
13 haven't examined him?

14 A. Not -- let's say this. I don't really
15 know how to answer that. That's a tough one. Based
16 on the photograph only, but I would be -- it would
17 be better if I had a time machine and go back and
18 look at his eye.

19 Q. All right. Let's go to dazed. You
20 mentioned dazed. You said that's kind of a
21 subjective thing. So certainly if somebody was
22 dazed that might not show up on a photograph,
23 correct?

24 A. Right. Right. Oh, I'm not saying -- he
25 could have been hit with a cell phone, for sure, and

1 he could have been dazed. But, again, that's -- I
2 don't deal with people that are dazed. I deal with
3 people that are injured so badly that they're
4 actually not working anymore.

5 Q. Okay. That's fair enough. May I?

6 A. Sure.

7 MR. MICHAELS: May I, Judge?

8 THE COURT: Yes.

9 BY MR. MICHAELS:

10 Q. In terms of body positioning, again, you
11 know, as long as you line up everything and you can
12 configure it, then that's a -- that's a possibility
13 in terms of gun location and where the individuals
14 were, the hands, et cetera, et cetera?

15 A. Yes. It's much -- if you want to know the
16 position, just look at the anatomics. And
17 whatever -- whatever theory comes out, the anatomics
18 could refute it. But they confirm multiple
19 different other ones, too.

20 Q. Right.

21 A. There are certain things that just aren't
22 possible, based on the wound. But then there are
23 probably four or five scenarios that would probably
24 be -- line up with everything.

25 Q. Now, in this case you saw Mrs. Oulsen's

1 hand. I think the first time you saw it was
2 probably when Mr. Escobar and I showed you some
3 photographs of it in our deposition?

4 A. Yeah. I think so. I think you guys
5 showed me like the top part of the hand. I think
6 that's the first time I saw it. Yes.

7 Q. All right. And so now you've gotten an
8 opportunity to look again at photos of the hand, we
9 can agree that in terms of where the hand was
10 actually placed, you can't pinpoint where Mrs.
11 Oulsen's hand was placed in terms of whether or not
12 it was on Mr. Oulsen's chest?

13 A. No. No. I can't.

14 Q. In other words, it's possible that it was?

15 A. Sure.

16 Q. You can't say. In terms of Mr. Oulsen's
17 hand, because of the stippling and the graze wound
18 you described, you made a -- kind of a -- a hand
19 where your fingers were retracted a bit so -- and
20 that's because the lack of stippling on his fingers?

21 A. Well, his hand -- to be fair to
22 everything, his hand could have been like this. But
23 this is just the outer range of the stippling or his
24 hand's like this or his hand's in any other position
25 where his fingers are flexed.

1 Q. Okay.

2 A. And then distance, all these things are
3 possible.

4 Q. Or his hand could have been in the fist?

5 A. Could have been like that. Could have
6 been in a fist, could have been thumbs up, could
7 have been peace sign, hitchhiking. Could have been
8 almost anything.

9 Q. But it could have been in a fist?

10 A. Absolutely.

11 Q. In terms of the positioning on the chair,
12 the chair that you were provided had a seat that was
13 out. So there was a seat bottom.

14 A. Yes.

15 Q. And so that would constrain your movements
16 in terms of positioning of the firearm as it relates
17 to the chest wound?

18 A. Yes. Good point. The seats on those
19 things -- I mean, I don't know. But movie theater
20 seats sometimes flip up when you get out of them,
21 almost irritatingly, and dump your candy on the
22 floor. But that would allow him to get much closer.

23 Q. Okay.

24 A. But again, if he's -- you can't be
25 standing upright unless the person is kind of

1 shooting up. I mean, he has to be bent over or
2 the -- if he's standing up straight, you have to
3 have your gun up.

4 Q. Well, even if the individual with the
5 firearm is seated, if the angle of the firearm is
6 slightly up because it's a front-to-back wound, the
7 individual with the chest wound would have to be
8 bent over at the waist. That's what you showed us
9 earlier, right?

10 A. Correct.

11 Q. And then if there was no seat bottom, that
12 individual with the chest wound could be -- could be
13 closer?

14 A. Yes.

15 Q. And bent over at the waist?

16 A. Yes.

17 Q. So unlike where you showed where this was
18 the back of the seat before, I guess that's what it
19 was supposed to represent. You had the seat bottom
20 there and so you were motioning this way. Without
21 the seat bottom, you can get closer in lining up the
22 same way?

23 A. Yes. You can get closer. Because that
24 chair, if you fold the seat up, it would collapse.
25 So if it's a movie theater seat, if you flipped it

1 up, you could be standing. But you could be bent
2 over a little bit and gun aimed up. Sure.

3 Q. Okay. So we can agree that the wound, the
4 wound path, is -- and the stippling is consistent
5 with Mr. Oulsen closer than you showed us. It's
6 consistent with that bent over at the waist with a
7 fist?

8 A. Anatomically, yes. It's consistent with
9 that.

10 MR. MICHAELS: I don't have anything else.
11 Thank you.

12 THE COURT: Thank you. Any redirect?

13 MR. MARTIN: Yes.

14 REDIRECT EXAMINATION

15 BY MR. MARTIN:

16 Q. In dealing with the anatomical position of
17 Mr. Oulsen, you indicated to Mr. Michaels that Mr.
18 Oulsen, if he was shot standing up, then I think you
19 put your arm like this, right, the gun would have to
20 be up?

21 A. Well, if -- if he's standing straight up,
22 and I'm sitting, you'd almost have to have the gun
23 like this up, because the gun's got to be kind of
24 flat with the ground. Well, the theater's sloping.
25 But with the earth, how about that, parallel with

1 the surface of the earth?

2 But if Mr. Oulsen's bent over, you can
3 line it up, drop the hand, raise the gun and he's
4 bent over slightly, you can line it up.

5 Q. All right. Well --

6 A. He could be squatting down and the gun
7 could be straight.

8 Q. Come on back over here, please. Use me as
9 a model. What we're talking about, put my arm --

10 A. Yep.

11 Q. We're not talking about height, we're just
12 talking about how everything has to line up?

13 A. Like this. So if he's straight and I'm
14 sitting and he's standing, I'm like this -- bend
15 over a little bit. So I mean, my hand could be down
16 a little bit more. But if he's -- squat down. And
17 I'm -- this is good. It works. But stand up, I've
18 got to have the gun up more.

19 So depending on what you guys find, this
20 would -- these would be the scenarios that would fit
21 anatomically.

22 Q. Right. So in this case, particular case,
23 a scenario of sitting in a chair, shot with him like
24 this, right?

25 A. It would have to be down a little bit.

1 Q. All right. Or up like this?

2 A. I'd have to be really tall.

3 Q. All right. Or like this?

4 A. Yep.

5 Q. All right. Or like this?

6 A. Yep.

7 Q. Right?

8 A. I'd have to be -- if you're up like
9 this -- again, you line it up. You have to be bent
10 over. If the gun is pointing up, you have to be
11 bent over.

12 Q. Because you're talking about a straight
13 track, so it has to be lower?

14 A. Yeah. Raise it up a little bit more, bend
15 over a little less, squat a little bit. I mean,
16 people are so rubbery. They've got knees, hips.
17 Their back can do this. So there's so many things
18 you can do to line it up.

19 Q. All right. So go back to that position.
20 So if we're here, the person's in sitting in a
21 chair, in order to go straight in --

22 A. Yep. That would work.

23 Q. Okay. But you would see that it has to go
24 as straight as a line as it can be. It can't be at
25 a 45-degree angle either way?

1 A. No.

2 Q. Okay.

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

5 THE COURT: Thank you. May this witness
6 be released?

7 MR. MARTIN: Yes. I believe he's needed
8 elsewhere.

9 THE COURT: Yes. Later in the week, I
10 heard.

11 MR. MARTIN: Okay.

12 THE COURT: In Pinellas.

13 THE WITNESS: Yes, ma'am.

14 THE COURT: Tomorrow or the next day.

15 THE WITNESS: Thank you.

16 THE COURT: Thank you, Doc. You're free
17 to go.

18 MR. MARTIN: We have no other witnesses
19 for this evening, Judge.

20 THE COURT: I'm glad to hear that.

21 Are there any matters we need to address
22 before we adjourn?

23 MR. ESCOBAR: Judge, we're going to go get
24 those excerpts from that cross and we'll have
25 a -- the excerpts and a memorandum for the

1 Court tomorrow morning.

2 THE COURT: Okay. Mr. Martin, do you have
3 a list of witnesses?

4 MR. MARTIN: We do. But we've been
5 calling witnesses and some witnesses have had
6 doctor's appointments, because we've gone so
7 late. So we are -- hopefully, I will have that
8 on my desk. It is 6:00. I will give Mr. Shah
9 an e-mail before 7:00.

10 But I have to confirm witnesses because
11 we've just --

12 THE COURT: Okay.

13 MR. MARTIN: We're struggling to -- well,
14 we're not struggling. But, you know, we're
15 trying to get them to adjust their schedule.
16 So we'll give them a list within the hour.

17 THE COURT: Very good. All right. Then
18 we'll reconvene at 9:00?

19 MR. MARTIN: Yes, ma'am.

20 THE COURT: All right. Well done,
21 everybody. We'll be in recess until 9:00.

22 (CONTINUED IN VOLUME 18.)

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1 STATE OF FLORIDA)

2 COUNTY OF PASCO)

3
4 I, Dana L. Stockton, Registered Professional
5 Reporter, certify that I was authorized to and did
6 stenographically report the foregoing proceedings,
7 and that the transcript is a true and complete
8 record of my stenographic notes.

9
10 I FURTHER CERTIFY that I am not a relative,
11 employee, attorney or counsel of any of the parties,
12 nor am I a relative or employee of any of the
13 parties' attorney or counsel connected with the
14 action, nor am I financially interested in this
15 action.

16 Dated this 1st day of May, 2017.

17 /S Dana L. Stockton
18 DANA L. STOCKTON, RPR
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