

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

STATE OF FLORIDA,

Plaintiff,

vs.

VOLUME XVIII

CURTIS J. REEVES,

Defendant.

PROCEEDINGS: Stand Your Ground Motion

DATE: March 2, 2017

BEFORE: The Honorable Susan Barthle
Circuit Court Judge

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

REPORTED BY: Charlene M. Eannel, RPR
Court Reporter
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A-P-P-E-A-R-A-N-C-E-S

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	INDEX OF PROCEEDINGS	
		PAGE
1		
2		
3	WITNESSES BY STATE	
4	Aaron Smith	
	Direct Examination by Mr. Martin	2272
5		
	CHARLES CUMMINGS	
6	Direct Examination by Ms. Sumner	2336
	Cross-Examination by Mr. Michaels	2351
7	Redirect Examination by Ms. Sumner	2371
	Recross-Examination by Mr. Michaels	2376
8		
	JANE ROY	
9	Direct Examination by Ms. Sumner	2379
	Cross-Examination by Mr. Escobar	2393
10		
	DEREK FRIEDHOFF	
11	Direct Examination by Mr. Garcia	2422
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF EXHIBITS

EXHIBIT #	DESCRIPTION	PAGE REC'D
14	Photographs	2271
34	Interview	2334

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

MR. MARTIN: Judge, yesterday we had some testimony regarding the Lecia machine and the 3D scanning. May I approach, Judge?

THE COURT: You may.

MR. MARTIN: Judge, last night with the assistance of the Lecia Corporation, they provided me a list of the cases where the Lecia scanning device had been admitted into court.

Unfortunately, most of those cases are unreported. They are, like, at the local trial level or district court level. Off the Internet, I was able to pull one order dealing with the first case on that list where a Daubert hearing was held, and after the Daubert hearing, the use of the Lecia machine as substantive evidence was, in fact, used.

Now, I give that to the Court to show the Court my good faith basis in putting that testimony on yesterday. I had every expectation that it would be admitted. However, since an issue has been raised and when I began this endeavor the Florida Supreme Court hadn't told us yes or no on Daubert, but I think there's an issue that I do not want to have in this case.

So with that understanding knowing at least

1 that I -- I had my good faith basis to offer that,
2 I'm not going to ask the Court to rule on that.

3 THE COURT: Okay.

4 MR. MARTIN: I do not want that to be an issue
5 for the Court having to decide in this case, especially
6 with the flux of whether or not we are a Daubert
7 State or a Frey State, I just do not want that.

8 However, I am not abandoning it at trial. We
9 will have necessary -- whatever it is going to take
10 in order to get this admitted whether we are a Frey
11 State or a Daubert State or because of all of the
12 cases that I can compile that we don't have to have
13 a hearing because it's already been resolved.

14 But I don't want it to be an issue today, so I
15 do not want the Court to rule on that.

16 THE COURT: Okay.

17 MR. MARTIN: The other issue, Judge, is that we
18 have an attempt to have this hearing within the time
19 constraints that the Court placed on us. We have
20 significantly pared down our presentation. It is the
21 Defense's burden in this case. We are not
22 complaining of the time that it took, he took the
23 time that he needed in order to make his
24 presentation. It is his burden.

25 We are simply rebuttal, so we are going to --

1 we have pared it down. We want to finish today. We
2 have our witnesses lined up to finish today. And
3 with that, we would like to do oral arguments
4 tomorrow, and have the Court rule.

5 That was our original game plan. And the State
6 has done, I think, what it needs to do in order to
7 accomplish that so that by Friday this case can be
8 resolved.

9 So that's the intention of the State today. So
10 even if we have to go to 6:00 or 7, we have all the
11 witnesses that we needed to so we have no witnesses
12 tomorrow. We have one that has a doctor's
13 appointment that can't be here until 2. But we've
14 rearranged everything we can so we want to finish
15 today.

16 THE COURT: All right.

17 MR. MARTIN: That's our game plan.

18 THE COURT: I am open to that. Mr. Escobar.

19 MR. ESCOBAR: Your Honor, we are happy to have
20 oral arguments tomorrow as well. However, we are
21 going to be preparing a memorandum based upon all of
22 the evidence that was introduced in this case from
23 beginning to end, we've been, as the Court can see,
24 we've been taking -- Mr. Shah with our office has
25 been taking very copious notes, and so we intend to

1 do a lengthy memorandum concerning all of the
2 evidence that was presented, how that factors into
3 our particular motion.

4 So we are going to be asking the Court, after
5 tomorrow, to give us two weeks in order to present
6 that written argument concerning the evidence so
7 that we can then, with legal arguments, as well as
8 the case law is concerned, so that we could then
9 hopefully outline for the Court what we believe
10 supports our position.

11 THE COURT: Response.

12 MR. MARTIN: If you do that, it's almost like an
13 appellate brief and response. And if he has two
14 weeks to do it, then, because you know, I'm the
15 respondent, I get, you know, 10 days to respond and
16 we're into March. I just don't think that's
17 reasonable.

18 THE COURT: No.

19 MR. MARTIN: We've had two weeks of testimony.
20 The Court is the trier of fact. The Court, I'm sure,
21 has done all the research it needs to do and knows
22 the law before coming into the courtroom. All of the
23 lawyers here know that.

24 So I don't see any reason for written
25 arguments, written memorandum. That's just going to

1 extend things. Let's do the oral arguments
2 tomorrow. If the Court feels there's sufficient
3 information for you to rule, rule tomorrow. We
4 don't need this lengthy process.

5 THE COURT: I tend to agree. We don't -- I will
6 give you -- I said I would review all -- everything,
7 give you a little time, you know. I would take the
8 time to review, but I've sat through every minute of
9 this two-week hearing and it is not my practice,
10 typically, to take things under advisement, you know.

11 Because no matter what, that's still taking
12 time of mine at some point. Whatever all three of
13 you - plus in your office compile some lengthy thing,
14 it's still only me that has to -- and I've got, you
15 know, I've got a regular calendar everywhere else.
16 It's not like I'm just sitting around waiting for
17 briefs to come.

18 So that means at least another week of my time
19 out away from my family, after hours, weekends that
20 I'm going to have to be dealing with that. And
21 quite frankly, I've already, you know -- I've got
22 it. I've been sitting here. There's nothing
23 that -- you know, nothing more. This is it. This
24 is our time.

25 I'm well aware of the law, the case law. I've

1 done these hearings numerous times before, you know.
2 I've got it. The evidence all came before me. I am
3 not interested in a very lengthy memorandum. And I
4 would prefer to rule tomorrow, but I will at
5 least -- I will -- because I don't have any trials
6 next week, I will take some time and go through
7 everything and prepare a written order, but I will
8 be entering an order in this case no later than next
9 Friday.

10 I'm not going -- as Mr. Martin indicated, you
11 know, if you guys submit some lengthy thing, then
12 he's got to submit some lengthy thing, and I'm just
13 about, you know -- we're done. I've heard two weeks
14 of testimony and seen two weeks worth of evidence.
15 There is no -- nothing else.

16 All the case law and memoranda in the world,
17 you know, isn't going to help anymore. We've gone
18 over this from every single angle and what's in is
19 in, it's here, it's been submitted. Everyone has
20 had their day in court and that's the way I do
21 things.

22 You know, you have your hearing. Everyone gets
23 their due process and I rule. I don't want to deal
24 with this for another six months.

25 MR. ESCOBAR: Well, it wouldn't take six months.

1 I was intending to have a very short period of time
2 to do a written memorandum. I certainly understand
3 the Court's ruling.

4 If the Court, you know, prefers not to do that,
5 then we will certainly abide by the Court's request.

6 THE COURT: All right.

7 MR. ESCOBAR: I will tell the Court, though, I
8 promised the Court yesterday that I was going to have
9 a motion and memorandum this morning. We are about
10 three-quarters of the way finished. We will have
11 that filed first thing tomorrow morning.

12 It is an obligation of the Defense when we
13 believe that there may have been an error in the
14 Court's decision to allow the Court time to change
15 that particular error, that's a rule that we are
16 required to do in preserving the record. So that's
17 what we are doing so.

18 THE COURT: Well, typically, you make your
19 contemporaneous objections and I rule and it is
20 preserved.

21 MR. ESCOBAR: Judge, we're just providing some
22 case law to the Court. That's the only issue.

23 THE COURT: What issue is that on?

24 MR. ESCOBAR: On the Hamilton cross-examination.

25 THE COURT: Right. What exactly? Which issue?

1 MR. ESCOBAR: It is issue of the Court limiting
2 Defense Counsel's cross-examination of Hamilton and
3 we've got all the points --

4 THE COURT: Limiting it on the basis that it was
5 hearsay?

6 MR. ESCOBAR: On the basis that it was hearsay.
7 On the basis that it was not impeachment. On the
8 basis that we could not introduce it for his effect
9 on bias or emotion. There is a variety of points.

10 We are just doing a memorandum so that we could
11 have the Court review it and then the Court makes,
12 you know, whatever decision you feel is appropriate.

13 THE COURT: And I presume you will submit a
14 response?

15 MR. MARTIN: No.

16 THE COURT: All right. Are we ready, then?

17 MR. MARTIN: We are.

18 THE COURT: Who do you got?

19 MR. MARTIN: Well, the first is Mr. Michaels and
20 I have agreed on a stipulation regarding the first
21 witness.

22 THE COURT: Okay.

23 MR. MARTIN: The State was going to call Nicole
24 Oulson. There's a photograph of Mr. and Mrs. Oulson
25 on the beach standing side by side. Mr. Michaels and

1 I have stipulated that State's Exhibit -- or marked
2 for identification Q may be admitted by stipulation.
3 That the photograph fairly and accurately represents
4 the heighth difference between Chad Oulson and Nicole
5 Oulson.

6 That is the purpose of the photograph. So that
7 you could readily see the height difference between
8 the two. That's relevant to the State's argument in
9 this particular case.

10 So with that stipulation being agreed to, at
11 this time, the State would move State's Exhibit
12 marked for identification Q into evidence as State's
13 next in order.

14 And if Madam Clerk would describe the
15 photograph as the beach photograph.

16 THE COURT: Which one is this?

17 MR. MARTIN: I've lost track now.

18 MS. SUMNER: I think it is 14.

19 THE COURT: I think your right. Is that
20 correct, Madam Clerk?

21 THE CLERK: Yes, ma'am.

22 MR. MARTIN: Judge, we don't need to publish it
23 now, but may I just provide it to the Court so you can
24 look at it before the clerk puts it away, since you
25 are the trier of fact?

1 THE COURT: Thank you.

2 MR. MICHAELS: For the record, so stipulated by
3 the Defense.

4 THE COURT: Thank you, Mr. Michaels.

5 MR. MARTIN: The State calls Aaron Smith.

6 THE COURT: All right.

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

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

13 THE COURT: You may proceed, Counselor.

14 DIRECT EXAMINATION

15 BY MR. MARTIN:

16 Q. Good morning. State your name for the record
17 and spell your last name.

18 A. Detective Aaron Smith, S-M-I-T-H.

19 MR. MARTIN: And Judge, do you need me to advise
20 him he is still under oath or did we take care of it?

21 THE COURT: He just got sworn in again.

22 MR. MARTIN: Okay.

23 THE COURT: So now he's really double under
24 oath.

25 BY MR. MARTIN:

1 Q. And what is your occupation?

2 A. I'm a detective with the Pasco County Sheriff's
3 Office.

4 Q. And how long have you been so employed?

5 A. Approximately seven years.

6 Q. All right. You've already testified once in
7 this case. We know your background regarding your
8 employment previous to the Pasco Sheriff's Office, right?

9 A. Yes, sir.

10 Q. What is your current assignment?

11 A. My current assignment is a major crimes
12 detective.

13 Q. All right. Are you associated with a particular
14 team known as a DIVERT team?

15 A. Yes, sir. I'm what's considered a task force
16 officer with the Federal Bureau of Investigation, and I'm
17 also trained as a DIVERT detective, which is the digital
18 image and video recovery team.

19 Q. All right. Explain the purpose of that team.

20 A. DIVERT was created just to provide training to
21 law enforcement on the proper recovery of digital video in
22 the field and any type of criminal case, mass event, just
23 to ensure that the video was collected properly and that
24 we could then edit it for time, get it to media to
25 generate leads and submit it as evidentiary copies when

1 needed.

2 Q. When did you begin your involvement with the
3 DIVERT team?

4 A. It would have been in approximately April of
5 2014.

6 Q. You told us a little bit about the purpose, but
7 specifically as a DIVERT team member, what would your
8 specific duties be?

9 A. Generally speaking, if there's either a mass
10 event with a lot of video or a technically difficult
11 system, we would be called out just to evaluate the system
12 to figure out how to best deal with the DVR and get the
13 proper copies of video off of it.

14 If you have an owner of the DVR system that may
15 not understand how to run it and the detective who was on
16 scene couldn't figure it out, then they would call us in
17 to assist.

18 Q. All right. And what training did you receive in
19 order to be a member of the DIVERT team and to carry out
20 those duties?

21 A. The FBI has a DIVERT training program that
22 travels throughout the country, and I trained here at the
23 Tampa FBI office for that class. It's not a true
24 certification. It is a familiarization and training
25 class.

1 Q. All right. And how many hours did you spend in
2 training?

3 A. It's approximately a four-day course.

4 Q. Okay. And what topics did they cover?

5 A. We cover the basics of digital video to get an
6 understanding of how it works, and then we have a hands-on
7 portion of the class which involves multiple brands and
8 types of DVRs to learn how to work with them, because each
9 could be very different from the other.

10 And then we learn basic digital editing
11 techniques so that we can then put these videos out for
12 social media release to the public for law enforcement
13 release for identification purposes.

14 MR. ESCOBAR: Judge, may I object at this point
15 in time. If he's going to be offering an opinion as
16 to the proper way of recovering that, if the Court
17 rules when Mr. Koenig was here, I tried to elicit
18 that particular information from Mr. Koenig as to how
19 they were to recover similar digital media and his
20 work with the FBI. The Court had ruled that that was
21 not relevant, and so we stayed away from it.

22 So if he's going to come in now and start
23 talking about, you know, post this particular
24 incident how the federal system works in preserving
25 digital evidence, I think that's highly unfair in

1 that I was not given that opportunity to do then to
2 refute what he's going to be saying.

3 MR. MARTIN: The reason you didn't let him do it
4 is because Mr. Koenig didn't have the training and
5 experience as a DIVERT team. Back when Mr. Koenig
6 was with the FBI, they did not have a DIVERT team
7 task force, so his training and experience did not
8 lend itself to provide that information to the Court.

9 Mr. Koenig was simply offered as an ex-FBI
10 laboratory agent at the time, because they were
11 agents at the time, familiar enough with the editing
12 of the video, not the collection and preserving. So
13 he did not have the life experience and training to
14 allow him to offer that type of information.

15 Now -- and there's no way Mr. Escobar can
16 correct that. You can't undo his life experience.
17 It never occurred, therefore, he'll never have it.
18 So even calling Mr. Koenig back, he can't have the
19 same life experience and training that is going on
20 since, you know, he left the bureau many, many years
21 ago.

22 So, you know, to come in and say, well, we
23 didn't have that opportunity to develop Mr. Koenig,
24 it's really true because they couldn't. He never
25 had the life experience. What we're doing with

1 Detective Smith is explaining how things are done
2 now. Because when Mr. Koenig was with the FBI, it
3 was all analog. It wasn't until after he left it
4 became digital. Now we're in digital world. We
5 have DVR. So it's apples and oranges.

6 Mr -- Detective Smith will provide information
7 about the training that he has received, and it is
8 post incident; however, but once you hear that, the
9 Court can make its own determination of whether or
10 not the way in which the evidence was collected on
11 the 14th -- I mean, on January 13, 2014, was anyway
12 consistent with what's done today in this day and
13 time.

14 And that's the reason it's being offered,
15 because no matter what we do, there's going to be
16 some type of argument about the collection process.
17 Even though it's been -- chain of custody has been
18 stipulated to and it's been stipulated to
19 authenticity, we're just trying to give the Court a
20 basis for the way things occurred -- are supposed to
21 be done today.

22 MR. ESCOBAR: Your Honor, just very briefly, I
23 disagree. I think the record speaks for itself. We
24 were about to lay the proper predicate with Mr.
25 Koenig, and this particular area was excluded

1 altogether because the Court, I believe -- and I
2 don't want to put words in the Court's mouth -- but
3 something to the effect that Mr. Koenig's experience
4 in doing that was not relevant to how the Sheriff's
5 Office did it on that particular day.

6 And so now what Counsel here is saying is,
7 well, listen, you know, now we've taken some courses
8 after and somehow that's relevant to what was done
9 on the day of this incident, and I would
10 respectfully disagree, but I think we've got
11 certainly a record concerning Mr. Koenig's
12 situation.

13 THE COURT: All right. Mr. Koenig was very
14 learned in many areas. I had to review my notes and
15 see exactly on what basis, if it was closer to
16 Mr. Martin's indication or Mr. Escobar's, but, you
17 know, in the grand scheme of things, is there some
18 indication that the videos that I have seen are
19 somehow altered or not proper or not good or somehow
20 tampered with? Is there some indication of that?

21 I have not heard that yet. So does it really
22 matter how it got to be here? I don't -- you know,
23 that doesn't -- doesn't do much for me if it's going
24 to take hours or even, you know, a whole lot of the
25 Court's time that we've already gone over. I don't

1 really care how we got it as long as it was lawful
2 and it wasn't tampered with.

3 I've seen many, many, many snippets and pieces
4 of the video, none of which are overly, you know,
5 wonderful. But as long as there's not some question
6 that I need to be aware of as to that what I've been
7 seeing isn't real or isn't, you know, even close to
8 the original or that it has been tampered with, I
9 don't really care how it was obtained. I really
10 don't.

11 MR. MARTIN: Well, I don't know what Mr. Escobar
12 is going to argue. I've been surprised by some of
13 the arguments based on the stipulation. But one of
14 the things that Mr. Escobar has indicated, and even
15 through Mr. Koenig, you might recall that they relied
16 on what they referred to as Q6.

17 Q6 for Mr. Koenig was the hard drive that was
18 in the plantar box that was locked up, and he
19 indicated that he did not want to use his Q3, which
20 was the thumb drives that Eric Andrews downloaded
21 onto the computer at Cobb Theater onto a thumb drive
22 and Myers -- Fred Myers provided to Detective Smith.

23 He made the statement without explaining it
24 because those thumb drives were encoded that he did
25 not want to use them.

1 Now, the inference is there's something wrong
2 with, quote, "those thumb drives being encoded."
3 Now, the only way that I can attempt, so that's not
4 lingering out there, whatever argument Mr. Escobar
5 is going to make, I need to deal with that issue,
6 and the only way I can deal with that is to go
7 through this type of testimony and get to the point
8 of how things are exported, exactly what encoding
9 and decoding mean, exactly what a codec is, because
10 they've made the statement to you that what we have
11 as LAWS when it came to them was encoded, and
12 therefore, there was something wrong with it.

13 I don't know what arguments he's going to make.
14 Now, if he'll stand up here and say, Judge, that's
15 absolutely not an issue, there won't be any argument
16 about it whatsoever, I can save about 15 minutes.
17 But I can't take that risk because they've put that
18 out through their expert. I have to deal with it
19 and I need time to deal with it and develop his
20 knowledge so that you can then rely on him as to
21 what encoding decoding and a codec means in the
22 digital world.

23 And that's -- the whole purpose of that is
24 because of Koenig's testimony. They didn't want to
25 use Q3, they totally set it aside. Q6 is the best

1 evidence, and that's -- we are going to refute that.
2 And that's the problem. I don't know what his
3 argument is going to be.

4 MR. ESCOBAR: Judge, I think if you look at the
5 stipulations, we've stipulated to the thumb drive not
6 having any tampering, any issues with the thumb drive
7 whatsoever. I think if you remember Mr. Koenig's
8 testimony, his position was that he wanted to deal
9 with actually hard drives because that thumb drive
10 had been done by someone else, and he wanted to look
11 at the raw material and he wanted to develop the raw
12 material.

13 At no point in time have we said that that
14 thumb drive -- we looked at the thumb drive to make
15 sure whether there was any alterations or any
16 deletions or any manipulation of that thumb drive.

17 I would have never stipulated to the thumb
18 drive coming in if we had any idea that it was
19 manipulated. So that's -- that's pretty clear. So
20 I don't know if that's what he was under the
21 impression that somehow we were going to say that
22 the thumb drive is a faulty type of demoralization
23 of the video.

24 It wasn't our position and it hasn't been our
25 position. We attacked the investigation for other

1 reasons, and I think the Court -- we've argued that.

2 THE COURT: Uh-huh.

3 MR. ESCOBAR: Because everything is important
4 when you're doing an investigation.

5 THE COURT: Now, the second part of my concern
6 is also brought up by Mr. Escobar. How -- if he's
7 had all this training afterwards, how is it relevant?
8 Was this done, you know, his -- his extraction of
9 whatever video or material he did, was what done
10 after his training?

11 MR. MARTIN: No, Judge. Everything that
12 occurred on January 13, 2014 occurred before his
13 training. On January 13, 2014, he didn't know he was
14 doing it right, but now he has the knowledge to
15 explain that, look, I took all this training and we
16 did do it right, and now I know that what the
17 encoding and everything is.

18 So you have -- you have to acquire the
19 knowledge somehow, so whether you acquire it before
20 or after, you have to show when it occurred, you
21 know, the knowledge, and that the knowledge is
22 accurate so it can be applied to facts.

23 Now, whether or not you acquire the knowledge
24 before or after the facts, I think is immaterial as
25 long as you can explain what the facts are and

1 relate your knowledge back to the facts.

2 THE COURT: Well --

3 MR. MARTIN: But it's up to you on what -- I
4 mean, if the Court is comfortable and if the Court is
5 comfortable with Mr. Escobar's explanation, you can
6 understand why I had some concern with Mr. Koenig
7 saying, oh, we just tossed that aside. It was
8 encoded.

9 THE COURT: I remember his testimony and I have
10 understood his reasoning clearly as being called as
11 an expert. You have to do everything, you know, that
12 you need to do.

13 MR. MARTIN: Well, see, that's the problem. He
14 said we wanted to do everything right so we did it
15 from the hard drive. The implication is everything
16 that the FBI did was wrong because they did it from
17 the thumb drive. See the inference that you can --
18 you can get, and I just didn't want that to be
19 hanging out there.

20 THE COURT: I didn't get that impression. Quite
21 candidly, I got the impression that he wanted to use
22 something that had not been touched by anyone else,
23 you know, start from fresh. But I've gone many years
24 without having to learn about encoding and encryption
25 and all of the fine workings of computers and DVRs.

1 I know how to turn them on, I know how to use them
2 and I know how to print.

3 I don't think this is going to help me. Quite
4 frankly, as long as it has not been tampered with
5 and, you know, as long as what I'm seeing on that
6 DVR or on that TV is -- was lawfully obtained and
7 hasn't been tampered with, I'm not -- it's just not
8 going to make my brain feel any better if I have to
9 learn how it was obtained and under, you know, what
10 kind of coding and what things you had to do. It's
11 not going to help me.

12 MR. MARTIN: It's my opinion, based on the
13 stipulations, that the content is exactly the same.
14 It's just the bucket that it came in. You know, the
15 content is the same but you've got to put it in a
16 different bucket for it to be played here and there.
17 That's -- that's what we're talking about.

18 THE COURT: I'm sure that's right but...

19 MR. MARTIN: But I just wanted to -- I had to
20 cover all bases. So if you want me to move on and if
21 that's the understanding --

22 THE COURT: Yeah, go ahead.

23 MR. MARTIN: -- I can -- I mean, I can just --
24 I'm not going to go through this. I mean if
25 that's --

1 THE COURT: Right.

2 MR. MARTIN: -- if we all have an understanding
3 that my impression maybe was overconservative, and as
4 you can imagine why it might be, then I'm going to go
5 to another topic and we're going to move on.

6 THE COURT: Okay.

7 MR. MARTIN: Is that --

8 THE COURT: That's fine with me. I'm -- I am
9 satisfied that --

10 MR. MARTIN: As long as we don't have that
11 argument that I've just --

12 THE COURT: All right. Well, if we do, I'll --
13 I remember what Mr. Koenig said, and I've, you know,
14 been sitting through everything and I think I've got
15 a pretty good grasp on that as much as I need to
16 have.

17 MR. MARTIN: All right, Your Honor. Then, if I
18 could just have a few minutes so that we can go right
19 to the case and put this evidence in.

20 THE COURT: Okay.

21 MR. MARTIN: Let me just reconfigure my
22 computer, please.

23 THE COURT: All right.

24 BY MR. MARTIN:

25 Q. All right. Detective, based on the

1 conversations with the Court and Mr. Escobar, we're going
2 to move on to what you did in this particular case. All
3 right?

4 A. Yes, sir.

5 Q. Let me take you back to January 15, 2014. Did
6 you have an occasion to return to Cobb Theater?

7 A. Yes, I did. And --

8 Q. Go ahead.

9 A. -- I'd been contacted by one of the other
10 detectives who was at the theater the evening before, on
11 the 14th, and they informed me that the video backup was
12 complete and that they were just looking for me to
13 retrieve it and bring them a letterhead request.

14 Q. All right. And did you, in fact, obtain a
15 letterhead request requesting specific backups of specific
16 cameras?

17 A. We had requested the day of the incident that
18 they back up all of the cameras, I believe it was for
19 either an hour or two hours before the event because we
20 didn't know what we were going to find on the video. So
21 my request was very general, just for all of the video
22 they had backed up for us.

23 Q. When you went to Cobb Theater on January 15th,
24 2014, who did you meet with?

25 A. I met with Tom Peck, the general manager; and

1 also Fred Meyers, who was the operations manager for Cobb.

2 Q. Where did they take you within Cobb Theater?

3 A. We went upstairs to -- I guess you'd call it the
4 server room and the projector room above the theater that
5 contained some of the video equipment up there.

6 Q. Okay. Were you able to have a phone conference
7 with Eric Andrew?

8 A. Yes. When we were up in that office or on our
9 way up there, I believe Mr. Meyers called him by cell
10 phone and put him on speaker phone. He identified him as
11 the IT director for Cobb.

12 Q. While in the server room with Mr. Meyers and
13 yourself, was Eric Andrew on the phone participating in
14 the conversation between the three of you?

15 A. Yes, he was.

16 Q. While in the server room, did Eric Andrew
17 offsite play anything for you on the monitor at the Cobb
18 Theater on January 15, 2014?

19 MR. ESCOBAR: Judge, I'm going to object to that
20 with improper predicate. He wasn't there. He was
21 offsite in Alabama. If he could rephrase it, I think
22 it will come in.

23 BY MR. MARTIN:

24 Q. Did an individual on the phone who identified
25 himself as Eric Andrew, even though he was not there,

1 provide you with videos to view on the monitor at Cobb
2 Theater?

3 A. Yes. When we came into the office, Mr. Meyers
4 explained who Mr. Andrew was and that he would be remotely
5 controlling the DVR from where he was.

6 Q. And because no one else was touching the keys,
7 can you tell from the monitor when someone is remotely
8 having access to the computer?

9 A. Yes. As you're watching it, obviously the
10 playback is as if someone had been using the computer
11 there.

12 Q. You see the mouse going around and --

13 MR. ESCOBAR: Judge, we will stipulate that they
14 were doing that remotely. He doesn't have to go
15 through that process.

16 THE COURT: Okay. Thank you.

17 BY MR. MARTIN:

18 Q. Were you able to watch five video clips
19 prepared -- your understanding -- prepared by Eric Andrew?

20 A. Yes. Mr. Andrew said that he had been
21 reviewing --

22 MR. ESCOBAR: Objection, Your Honor. Hearsay.
23 That is different.

24 MR. MARTIN: Well, Judge, it doesn't go for the
25 truth of whether or not he prepared them, but it goes

1 for as the effect on Mr. Smith that he was viewing
2 something that was being provided pursuant to his
3 letter, and that he would rely on that to go back and
4 view, not only the monitor, but the eventual thumb
5 drive.

6 MR. ESCOBAR: We will stipulate to that.

7 THE COURT: Yeah. Move on.

8 MR. ESCOBAR: And we'll stipulate to all that,
9 Judge. He can -- that he viewed it, that he looked
10 at it, all of that kind of good stuff.

11 THE COURT: Okay. Thank you.

12 BY MR. MARTIN:

13 Q. Did you, in fact, view five video clips?

14 A. Yes.

15 Q. Did you view those five video clips in their
16 entirety?

17 A. Yes.

18 Q. The five video clips that you viewed, did the
19 entire video clip contain video footage of interest or was
20 there more than what was of interest?

21 A. In those five video clips, there was more of the
22 incident -- I'm sorry, the clips of interest from the time
23 period.

24 Q. But it contained other matter, too?

25 A. I received more than one thumb drive. Some of

1 them contained other cameras throughout the building that
2 were back hallways, kitchen, things like that, not
3 necessarily of interest with the five clips we're speaking
4 of that were identified as areas that we were concerned
5 with.

6 Q. All right. Once you viewed the five video
7 clips, did you believe that those five video clips had
8 video footage of interest that would be relevant to the
9 case?

10 A. Yes.

11 Q. And after you viewed those five clips, did you
12 receive anything from Mr. Meyers?

13 A. After reviewing the clips, I received copies on
14 three separate thumb drives of the video that we viewed
15 upstairs, and then received those via one of our property
16 receipts that I had him sign.

17 Q. Okay. And what did you do with those thumb
18 drives that you now had in your hand?

19 A. Once I had the thumb drives, I viewed the video
20 on the thumb drives to make sure it was consistent with
21 what I had seen at the theater, and then made a working
22 copy of those so that they could be played for the State
23 Attorney's Office and other investigators.

24 MR. ESCOBAR: Judge, we'll stipulate to all
25 this -- all this chain just so that if Mr. Martin

1 wants -- he may want to go through it, but I just
2 want to let the Court know we'll stipulate to that
3 whole chain of custody. We've already done that.

4 THE COURT: All right. I thought that was the
5 case.

6 MR. MARTIN: I appreciate that, but I need to
7 lay a little bit of a record. So we're only talking
8 about another five minutes here.

9 THE COURT: That's fine.

10 BY MR. MARTIN:

11 Q. All right. Once you made a working copy onto
12 your computer, was there a bond hearing scheduled
13 immediately after that day?

14 A. There was a bond hearing scheduled very quickly
15 after that, but then it had been continued to -- I believe
16 it was a couple of weeks down the road.

17 Q. All right. When did you place the three thumb
18 drives into evidence?

19 A. Originally, I maintained custody of the thumb
20 drives to come up to the State Attorney's Office for the
21 invest. I was asked by the State Attorney to retain
22 custody just because the bond hearing was supposed to be
23 coming up quickly. Once I was notified of the
24 continuation, then those three thumb drives were placed
25 into sheriff's office evidence.

1 Q. All right. Now, subsequent to placing them into
2 evidence, was there a bond hearing scheduled?

3 A. Yes.

4 Q. Was there a request by the defense team for a
5 copy of the surveillance video?

6 A. Yes. Sometime during that continuation period,
7 they had asked for copies.

8 Q. Now, did you place a working copy of all three
9 thumb drives onto your computer?

10 A. Yes. I copied them onto my own portable hard
11 drive.

12 Q. All right. And can you tell me whether or not
13 you gave the defense team an option of either copying the
14 original thumb drives out of property -- evidence or
15 obtained the copies off your hard drive?

16 A. Yes. I was contacted by the State Attorney's
17 Office who said the defense had made a request for video.
18 I informed him that I had the working copy of the video
19 readily available, if that's what they wanted, and made
20 copies of that.

21 Q. All right. And did someone from the defense
22 team then come with an external hard drive to get the
23 copies off your computer?

24 A. Yes. I don't remember the gentleman's name. I
25 believe it was a private investigator that met me at our

1 district office and I made the copies for them.

2 Q. The thumb drives that you received that had the
3 files involving the video, the files on the thumb drives,
4 are they executable files or non-executable files?

5 A. They are executable files that the DVR outputs
6 for playback in any computer system.

7 Q. So if you have the right codec on your camera or
8 video drive, you can -- it will find whatever media player
9 is on your computer and it will play?

10 A. Yes, sir. They included a copy of the codec for
11 the player with the files, that way they can -- it could
12 be installed on any machine, and then your default media
13 player that you have in your computer will play the
14 videos.

15 MR. MARTIN: Approach?

16 THE COURT: Yes.

17 BY MR. MARTIN:

18 Q. Let me show you what's been marked for
19 identification as State's Exhibit C. Go ahead and look at
20 that, please.

21 A. These are the three thumb drives that I
22 collected from Mr. Meyers.

23 Q. Okay. And that is marked, as far as your item
24 number, as 1AWS, 2AWS and 3AWS?

25 A. That's correct.

1 Q. The video that is contained on those hard
2 drives -- I'm sorry, on those thumb drives, they were
3 exported from the GeoVision system?

4 A. Yes, sir.

5 Q. Right off the hard drives?

6 A. Yes, sir. They were exported using the
7 (inaudible) that the DVR comes with.

8 Q. Any enhancement on those at all?

9 A. There's no enhancement of these files. They are
10 as I received them.

11 Q. It's just the raw video?

12 A. It is.

13 Q. Nothing done to them?

14 A. It's -- other than -- it's the video in the
15 state it came out of the DVR in, yes, sir.

16 Q. Okay.

17 MR. MARTIN: Your Honor, at this time, I would
18 move into evidence State's Exhibit C marked for
19 identification into evidence next in order.

20 MR. ESCOBAR: We had an order for the Court
21 already on that issue. We've stipulated to it.

22 THE COURT: Okay. Then it will be admitted.
23 Fourteen?

24 THE CLERK: Fifteen.

25 MS. SUMNER: Fifteen.

1 THE COURT: Thank you.

2 MR. MARTIN: Judge, at this time, so the Court
3 can have the benefit of what the raw video looks
4 like, there are five clips on the thumb drive 1AWS.
5 I would like to publish those for the Court so you
6 can see whatever you perceive as the difference
7 between the absolute raw video and any of the
8 enhancements.

9 I will only play up until the critical, you
10 know, events, and because there's a lot of stuff
11 after it we'd be here forever. But I think it would
12 be helpful for the Court to see what the raw video
13 looks like.

14 So if we could ask Mr. Smith to step down, he
15 can then do it appropriately on my computer so that
16 we don't damage these hard drives.

17 THE COURT: All right.

18 BY MR. MARTIN:

19 Q. Detective Smith, would you step down with the
20 equipment that you need in hand with Exhibit -- with thumb
21 drive 1AWS. And if you'll take a few moments to place
22 that in the -- in my computer. While you're doing that,
23 I'll...

24 MR. ESCOBAR: Your Honor, may I move?

25 THE COURT: You may, please.

1 MR. MARTIN: We are getting everything warmed up
2 here ready to go. We will play them through with a
3 little bit of an explanation as to how it's loading.
4 I think that's important.

5 BY MR. MARTIN:

6 Q. Okay. Do you have it installed?

7 A. Yes, sir.

8 Q. Before you do that, go ahead and make sure it
9 works before we load it up on the screen.

10 A. (Witness complies.)

11 MR. MARTIN: Just making sure everything works,
12 Judge. Just give us a second.

13 THE COURT: No problem.

14 MR. MARTIN: Would it be all right if Detective
15 Smith stood by the computer and manipulated the
16 computer for me?

17 THE COURT: Yes.

18 MR. MARTIN: And, with your permission, I'd like
19 to be able to just ask him a few questions to set up
20 each one.

21 THE COURT: Go ahead.

22 MR. MARTIN: All right.

23 BY MR. MARTIN:

24 Q. Now, what have you placed now on the -- on the
25 computer?

1 A. This is the original thumb drive that I received
2 from Cobb Theater. It's been inserted with what we call a
3 right blocking device. That just ensures there's no
4 changes made to the drive. It can't delete files, things
5 like that. So it's just a pass-through device. I've just
6 opened the folder or opened the drive itself that shows
7 the video files on the drive.

8 Q. The five files that we see up on the screen, are
9 those the five files that you reviewed at Cobb Theater?

10 A. Yes, sir.

11 Q. Now, if would you go ahead and begin the process
12 of opening up the first file.

13 A. Each of the files have an extraction process
14 that it goes through when you open it. This is a process
15 that an executable file that's inserted by the DVR when
16 you export it. So each one of these will run through this
17 process when you open it just so the file is viewable with
18 the metadata.

19 Q. And what is the computer doing when it opens the
20 file? Where is it placing the content of the file?

21 A. The way this particular system works, Your
22 Honor, is this is commonly referred to as a ZIP file.
23 Information is compressed. It extracts it and it puts the
24 actual playable files on your computer hard drive in your
25 windows temporary folder, and then it plays the file from

1 there just so it plays more smoothly.

2 THE COURT: I've got it on my screen too, here.

3 MR. MARTIN: Oh, I didn't know that.

4 THE COURT: I know how to push those buttons.

5 MR. MARTIN: Well, I don't know the resolution
6 of that screen either compared to what's in front of
7 you.

8 BY MR. MARTIN:

9 Q. Would you go back to its small state? Just so
10 the record is clear, open it up to just normal -- no,
11 right there. Right there. Step around here.

12 Just so the record is clear, we're looking at
13 the thumb drive 1AWS. The number went away. Back it up.
14 I'm sorry, I need to get this number on the -- in the
15 record. Go back. Stop it. Stop it. All right. Come
16 back around here.

17 This number right here, what is that number?

18 A. It's file 20140113132009.

19 Q. So on the thumb drive, that is the file number
20 that we're watching?

21 A. Yes, sir.

22 Q. Okay. And the numbers that we see right here?

23 A. That is what we refer to as metadata that the
24 DVR applies over the top -- well, the player applies.
25 It's included with the DVR export. That includes the

1 time, the date, and the frame numbers.

2 Q. And the numbers down here?

3 A. That is a time and date stamp included by the
4 DVR that it overlays in the video.

5 Q. All right. And who named the file folders on
6 here?

7 A. That would have been Mr. Andrews.

8 Q. And this is customer service?

9 A. Yes, sir.

10 MR. MARTIN: All right. Judge, may we just go
11 ahead and play the video through?

12 THE COURT: Uh-huh.

13 MR. MARTIN: And we'll stop it after the point
14 of interest is over with, so we don't waste time.

15 THE COURT: Okay.

16 BY MR. MARTIN:

17 Q. You can stop it there as the point of interest
18 has expired. And if you would go to the next file,
19 please, sir.

20 A. (Witness complies.)

21 Q. Now, before you go, the next file is labeled
22 what?

23 A. This is Entrance 10.

24 Q. All right. And can you drag it so we can get
25 the file number off of it, the file number? All right.

1 So we'll get it off the frame. Would you go ahead and
2 begin the process?

3 Now, you explained to us that during this
4 process, the file is being placed in the temporary file
5 within the hard drive of that computer?

6 A. Yes, sir.

7 Q. Now, from the temporary file, can that file be
8 played?

9 A. Yes, sir. You could navigate to that folder and
10 play it from there.

11 Q. And if you look and a string comes up, stop it
12 so we can get the file number off for the record.

13 A. Yes, sir.

14 Q. All right. Detective, if you would place the
15 file number on the record, please?

16 A. The file number is -- that is going to be file
17 20140113132122.

18 Q. All right. Go ahead and play.

19 A. (Witness complies.)

20 Q. Thank you, Detective. The point of interest has
21 expired.

22 What's the title of the next video clip?

23 A. The next one is labeled "Right Side Customer
24 Service."

25 Q. All right. If you would go ahead and begin the

1 process of extracting that video.

2 MR. ESCOBAR: Your Honor, may I take a picture?

3 THE COURT: Sure.

4 BY MR. MARTIN:

5 Q. File number on the record, please?

6 A. File 20140113125908.

7 Q. If you would play the video?

8 A. (Witness complies.)

9 Q. Can you stop the video as the points of interest
10 have expired.

11 The next file was labeled as what?

12 A. Theater 10 and a Number 1 next to it.

13 Q. Paren 1?

14 A. Yes.

15 Q. All right. If you would go ahead and begin the
16 extraction process.

17 A. (Witness complies.)

18 Q. If you will stop it, so we could get the file
19 number.

20 A. It is file 20140113130012.

21 Q. And based on your familiarity with this case, is
22 that the view we've been referring to as Camera 12?

23 A. Yes.

24 Q. Okay. If you could go ahead and play the video?

25 A. (Witness complies.)

1 Q. All right. Detective, you can stop the video.
2 The next file on 1AWS?

3 A. It's Theater 10, left side.

4 Q. If you would go ahead and begin extraction
5 process.

6 And would you please place the file number that
7 we're going to view on the record?

8 A. It's file 20140113131442.

9 Q. And based on your familiarity with this case, is
10 this the view from the camera we've been referring to as
11 Camera Number 11?

12 A. Yes.

13 Q. All right. Would you go ahead and play the
14 video. Stop the video now.

15 The five video clips that we just reviewed, is
16 that the five video clips that you received from
17 Fred Meyers after they were downloaded by Eric Andrew on
18 January 15, 2014?

19 A. Yes, sir.

20 Q. And that -- those five video were in their raw
21 state?

22 A. They're in the state that they were extracted
23 from the DVR, yes.

24 MR. MARTIN: Your Honor, before you can see the
25 lengthy extraction process of these videos, when the

1 extraction took place, as you heard Detective Smith
2 explained, the files were placed in the temporary
3 folder on my computer. It would be my intention
4 tomorrow at closing, so I don't have to go through
5 the extraction process since they were downloaded in
6 open court in front of all of the parties and Court,
7 I will be using the temporary files on the computer,
8 so I don't have to go through the extraction process
9 and have those delays tomorrow, as opposed to playing
10 them off the thumb drive.

11 THE COURT: Any objection to that?

12 MR. ESCOBAR: No.

13 MR. MARTIN: All right.

14 THE COURT: That's not going to change them any.
15 It would be what we just saw?

16 MR. MARTIN: You saw how long the extraction is.
17 I don't want to hold things up and be waiting around.
18 That's all.

19 THE COURT: That's fine.

20 MR. MARTIN: All right. With that, Judge, I
21 have no further questioning of this witness. If you
22 could give us a moment, we will put everything back
23 where it belongs.

24 THE COURT: That's fine.

25 MR. MARTIN: Thank you. Judge I removed all my

1 equipment.

2 THE COURT: Cross?

3 MR. ESCOBAR: No questions.

4 THE COURT: Thank you. May this witness be
5 released?

6 MR. MARTIN: No ma'am.

7 THE COURT: You have to stay under subpoena you
8 may get called back and you may not thank you
9 detective.

10 THE WITNESS: Thanks.

11 THE COURT: Who is going to be your next
12 witness?

13 MS. SUMNER: Your Honor, at this time, the State
14 of Florida would like to publish the interview of
15 Curtis Reeves with Detective Proctor and Detective
16 Koenig. It's about 20 minutes.

17 THE COURT: Twenty minutes. Do we want -- does
18 anybody need a break? Madam Court reporter?

19 THE COURT REPORTER: No, I'm good.

20 MR. MARTIN: We're fine.

21 (Video played for the Court.)

22 Q Curtis, how tall are you?

23 A. About six-one, six-two.

24 Q. What do you weigh?

25 A. I weigh about 270.

1 Q. You got to tell me -- Look, is there anything
2 else you want to tell me?

3 A. Yeah, I don't think there's anything else to say
4 while I'm sitting back here second guessing myself.

5 MS. SUMNER: Judge, this is -- Judge, this is
6 the second one. Do you have another one? Do you
7 have another one of these? Judge, if we could take a
8 break. Apparently this is interview two, I believe.
9 Do you have the other interview?

10 MR. ESCOBAR: We never opened it. I thought
11 those were the same.

12 MS. SUMNER: Do you have two interviews?

13 MR. ESCOBAR: There's two interview.

14 MS. SUMNER: Okay.

15 MR. ESCOBAR: There should be two CDs.

16 MS. SUMNER: There's got to be two.

17 MR. ESCOBAR: There should -- we never opened
18 it. You were the first one to open.

19 MS. SUMNER: Okay.

20 MR. ESCOBAR: If not, we've got a -- we've got
21 tons of copies. He's got a copy and I've got a copy.

22 MS. SUMNER: I have another copy.

23 MR. ESCOBAR: You're going to play them both,
24 though, right?

25 MS. SUMNER: Do you want me to play them both?

1 MR. ESCOBAR: Yes. Just for the Doctrine of
2 Completeness.

3 MS. SUMNER: He invoked; I wasn't going to play
4 through the end.

5 MR. ESCOBAR: Okay.

6 MS. SUMNER: I'll play them both, but I'm going
7 to play them in the correct order, Judge.

8 THE COURT: Okay.

9 MS. SUMNER: I was misled on...

10 (video playing)

11 Q. Fifteen ten, yes. How are you doing, Curtis?

12 A. (Inaudible.)

13 Q. Are you all right, Curtis?

14 A. (Inaudible.)

15 Q. Can you get out of there, man?

16 A. (Inaudible.)

17 Q. All right, all right. There you go. Come on,
18 Curtis. My name's Allen Proctor. Let's step over here to
19 my car. Are you all right?

20 A. (No response.)

21 Q. Sit here in the front seat. Go ahead.

22 A. Okay.

23 Q. You want to cuff him in the front? All right.

24 Curtis, you don't have anything else on you,
25 sir, do you, Mr. Reeves?

1 A. I have no idea, my friend.

2 Q. Do you want to double check, see if he's got
3 anything else on him?

4 A. I think they stripped me.

5 Q. Yeah, they --

6 A. At least three times, maybe four.

7 Q. Okay. Cool.

8 A. That was one of the reasons I wanted the
9 handcuffs loosened.

10 Q. Turn around and face me. Just sit kind of
11 straight back.

12 Curtis, my name's Allen Proctor. I'm a
13 detective with the Sheriff's Office. This is Todd.
14 We're here investigating this shooting that occurred
15 here. I understand that you are a retired TPD cop.

16 A. Yeah.

17 Q. I want to make sure that everything is okay here
18 and you know the spiel, you know -- well, I've got to
19 Mirandize you, okay? You have the right -- you know what
20 your Miranda warnings are. You have the right to remain
21 silent.

22 Anything you say can and will be used against
23 you in a court of law. You have the right to talk to a
24 lawyer and have him or her present with you while you are
25 being questioned.

1 If you cannot afford to hire a lawyer, one
2 would be appointed to represent you before any
3 questioning if you wish. You can decide at any time to
4 exercise these rights or not answer any questions or make
5 any statements.

6 Do you understand each of those rights that
7 I've explained to you?

8 A. Yes.

9 Q. Having those rights in mind, do you want to talk
10 to me about what occurred here?

11 A. Yeah, I guess.

12 Q. Okay. Cool. What happened?

13 A. Can I get something -- you've got something to
14 drink, anything?

15 Q. Ah...

16 A. My throat is -- my throat is dry, as dry as can
17 be.

18 Q. Yes, sir.

19 A. I really didn't get to move that left shoulder
20 in here. Well, I do hope the folks on either side of me
21 are okay --

22 Q. Want to tell -- what movie were you watching?

23 A. Well, we were watching the previews.

24 Q. Watching the previews?

25 A. Yeah. I didn't-- didn't get started.

1 Q. Okay.

2 A. (Inaudible.) All the and previews.

3 Q. And how long had the lights been down?

4 A. I have no idea.

5 Q. A couple of minutes?

6 A. Yeah. Well, the lights had been down for quite
7 a while because they go through all that stuff about
8 turning off your cell phone and, you know, the concession
9 stand and all that stuff.

10 Q. Right.

11 A. So I have no idea on concept of time, but I
12 would imagine --

13 Q. Hey, they're going to go get something to drink.

14 A. I'm not trying to do anything other than get the
15 feeling back in my shoulders back.

16 Q. That's all right. That's all right. How long
17 have you been retired?

18 A. Twenty years.

19 Q. Wow. You started as a young man, then?

20 A. Yeah, I did. I spent -- let's see. I went on
21 in October of 1966.

22 Q. Wow.

23 A. I was 27 there. I was in for (inaudible) 12
24 years and I've been trying to retire and enjoy my
25 retirement for about nine years.

1 Q. I understand. Well, he's going to bring you
2 some water.

3 A. I don't care if it is cold as long as it's wet.

4 Q. All right, sir. I've got some here but you
5 probably don't want to drink after me because I've got all
6 of -- probably all kinds of -- well, we're going to get
7 you some fresh water.

8 A. Are you full of disease?

9 Q. Well, I'm not saying that, but I've been a cop
10 almost 30 years myself, so.

11 A. I understand (inaudible.)

12 Q. And I hate to talk to you about all of this.

13 A. Well, I'll tell you the same truth. I hate to
14 be here. This is crazy. It was absurd. I tell retired
15 cops that you don't do this, but I've never had anybody
16 jump on my ass like that.

17 Q. Right.

18 A. That was crazy. It really was, and it was
19 completely uncalled for.

20 Q. I understand. So the lights had been down.
21 What happens?

22 A. Well, I -- the guy was playing with his cell
23 phone so I asked him to turn his cell phone off.

24 Q. Right.

25 A. And he told me to fuck off or something like

1 that. So I leaned back and he kept on doing it so I got
2 up and I went and told the manager upfront. I said, look,
3 I said -- I said I asked him to turn his cell phone off
4 and he keeps playing with it and he told me to fuck off so
5 I said I'd appreciate if you guys would take care of it.

6 Q. Okay. And so he kept doing it?

7 A. Uh-huh.

8 Q. What manager?

9 A. Oh, I don't know. Whoever was sitting at the
10 desk. He (inaudible) he was at the front desk.

11 (Inaudible) I assume he was the manager. (Inaudible.)

12 Q. But he was a heavy set guy?

13 A. Yeah.

14 Q. Wearing glasses?

15 A. I think so. Your powers of observation fade
16 with retirement.

17 Q. I understand. So what happens then?

18 A. I come back into the movie and the guy put his
19 phone away, and I -- I -- I said, I see you put it away.
20 I told the manager for no reason. In other words, I
21 wouldn't have ratted him out. If he was going to put it
22 away, I wouldn't have gone, you know.

23 Q. Right.

24 A. And he turns around in his seat and (inaudible)
25 and he said something about he was answering -- I forget

1 (inaudible).

2 Q. (Inaudible.)

3 A. Then he -- he said something about he was -- I
4 don't remember -- if -- if it was any of your fucking
5 business, I was texting my daughter or something like
6 that, and to stay the hell out of my face. I think that's
7 what he said. And his wife was holding him back so I had
8 sat down and I think I got the bag of popcorn from my
9 wife, and so he jumps up and he turns around and he stands
10 in his seat which was (inaudible) of me.

11 Q. Right.

12 A. So as he's pushing on the back there's a crack
13 between us, so I'm leaning back in my chair. I've got
14 nowhere to go.

15 Q. Uh-huh.

16 A. And I'm leaning back in my chair. So he kept on
17 hollering and I'm not sure what he said, to be honest with
18 you. He said something and that led me to believe he was
19 going to kick my ass. And I don't know if that's exactly
20 how he phrased it or not. So I'm looking -- briefly, I
21 know I can't go anywhere.

22 So I'm leaning all the way back in my chair as
23 far as I can to get away from him, and then suddenly
24 he's -- he's virtually on top of me. So because I'm
25 stretched out, if you will look at these pants, was in

1 the right front pocket. And if you're sitting down,
2 there is ain't no way you can get it out.

3 So I'm stretched out trying get away from him.
4 My left arm is out in front of me, and I think I'm saying
5 either "no, no, no" or "whoa, whoa, whoa," one or the
6 other, and then suddenly my head was to the right so he
7 hit me with something. And I assume it was his fist but
8 I don't know what it was either. (Inaudible) Something
9 is wrong with my left eye. So anyway, I had them wash it
10 out for me.

11 So he -- he hit me with his fist or with
12 something. I think -- I think he had his cell phone in
13 his hand because I saw the -- I saw the -- the glimmer of
14 the screen.

15 Q. Right.

16 A. And I got my left hand out in front of me and he
17 hits me in the face and knocks my glasses sideways, and it
18 was -- there was a young Sumter County deputy that came
19 over right afterward, and I have frames that don't -- you
20 can bend them all over the place -- but the left side was
21 stretched out so...

22 Q. So he knocks your glasses off?

23 A. They weren't off, they were partially off, and I
24 fixed them where they fit my head again. And -- and --
25 and for -- for a while there I was kind of dazed and it

1 had to be from the -- the strike.

2 Even if it was a grazing blow or whatever. But
3 I felt like I had something in my eye. I still do but
4 not as bad. The fire department guys rinsed it out with
5 some kind of shit.

6 Anyway I'm -- I'm leaning back, he's virtually
7 in my lap. I -- I've got contact with something with my
8 left hand. It's dark in there. I mean -- I mean,
9 something -- this happened so damn fast.

10 Q. Mm-hmm.

11 A. And the trajectory of the bullet should be
12 upward because I came out of my pocket with it and,
13 surprisingly, I didn't shoot myself in my hand.

14 Q. Uh-huh.

15 A. But -- and I -- I didn't need to do that. That
16 was just, you know. I hate to say that. I -- I've
17 counseled cops for --

18 Q. How many rounds did you shoot?

19 A. One. I guess you could say I was scared
20 shitless.

21 Q. Okay.

22 A. I got arthritis in both hands. My back's a
23 frickin' wreck. I was on SWAT for fifteen years and we
24 thought we were super men --

25 Q. Right.

1 A. -- and as you get older, you find out you're a
2 physical wreck.

3 Q. Okay. And you had that gun in your right --

4 A. It was in my right front pocket and I was
5 stretched out. And like I said, you can see the pockets
6 here.

7 Q. Mm-hmm.

8 A. And you can't get it out if you're not -- if
9 your not completely stretched out and my seat's sort of
10 like this.

11 Q. Right.

12 A. And I'm holding -- I'm whoa, whoa, whoaing or
13 no, no, -- one or the other -- and -- and I'm hit in the
14 face and it had to be done. And...

15 Q. Do you have any idea where you shot him at?

16 A. I have no idea. I heard somebody saying he was
17 shot in the chest.

18 Q. Did you see anything in his hands?

19 A. I think he had his cell phone when -- when --
20 when he turned away from me, I looked down and his cell
21 phone was laying at my feet so I think that's what he hit
22 me in the face with. I didn't see anything else. I -- I
23 don't know what you guy's got.

24 Q. I hear you. Did your wife -- where was your
25 wife at?

1 A. She was sitting on the right-hand side. If
2 she's paying, and bless her heart, she's -- you know,
3 there's no justification for what happened in there so.

4 Q. Right.

5 A. So I understand her (inaudible).

6 Q. Was -- where was your son at?

7 A. He wasn't there. We were waiting for him to get
8 there. We saved a seat for him (inaudible).

9 Q. And this guy is sitting directly in front of
10 you?

11 A. No. His wife, I think, or whoever was with him,
12 this -- this lady was sitting directly in front of me. He
13 was off to the right side of me, which makes it -- if he
14 had been sitting straight in front of me, I would have
15 just been whipped because I couldn't do anything.

16 Q. And the row in front of you, right? Right side
17 of the row in front of you?

18 A. Yes.

19 Q. Just one chair?

20 A. Yeah. What's the status on this man?

21 Q. We don't know yet. We have people down there.
22 It's not looking good.

23 A. Shit. All over a stupid cell phone.

24 Q. Yeah. Did --

25 A. His wife was trying -- whoever was with him was

1 trying to hold him back.

2 Q. Right. What is he saying to you?

3 A. Fuck off. Get out of my face. Fuck you. I'm
4 talking -- I was -- he was -- he was sitting there playing
5 with it and he -- what he said to me was that he was
6 texting his daughter. I believe he was -- he was
7 scrolling through the images. So I think when I leaned
8 over and asked him to turn his cell phone off, he told me
9 to get the fuck out of his face so I knew right away
10 that...

11 Q. What about just immediately prior to the shot,
12 what is he saying to thank you?

13 A. He's saying -- I think that's when he's talking
14 about he's texting his daughter if it was any of my --
15 there was fuck in there three or four times. I don't
16 remember. This is ain't my fucking business or I'll kick
17 your fucking ass for -- it -- it -- whatever he was saying
18 was -- was threatening. I've got to be (inaudible.)

19 Q. Okay.

20 A. It was enough for me to try to look for a way
21 out. And my wife is saying -- and when I got up to go
22 tell the manager, she said why don't we move. We should
23 have just moved is what we should have done and she said
24 that afterwards.

25 Q. Right.