

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF
THE STATE FLORIDA, IN AND FOR PASCO COUNTY
CASE NO. CRC14-00216CFAES

STATE OF FLORIDA,

Plaintiff,

vs.

CURTIS J. REEVES,

Defendant.

PROCEEDINGS: Stand Your Ground Motion
State's Closing Argument

DATE: March 3, 2017

BEFORE: The Honorable Susan Barthle
Circuit Court Judge

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

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

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

2 THE COURT: Thank you, Mr. Escobar.

3 Mr. Martin?

4 MR. MARTIN: No, Your Honor. Trish needs to
5 come help me get my TV hooked up, my computer hooked
6 up, so we will need 15 minutes and I will get
7 everything hooked up and we can go straight forward.

8 THE COURT: Okay. That would be fine.

9 MR. MARTIN: Thank you, ma'am.

10 (Recess taken.)

11 THE COURT: Whenever you're ready, Mr. Martin.

12 MR. MARTIN: Thank you. Your Honor, Counsel.

13 One word. One word that sums up the events on
14 January 13, 2014. One word: Retaliation.
15 Retaliation. The action of harming someone because
16 they have harmed oneself. One word, retaliation.
17 Throw popcorn on me, will you? Bang. Retaliation.

18 In the State of Florida, we have what's commonly
19 known as the Stand Your Ground Law. That's the
20 vernacular for it. Mr. Escobar summed it up at the
21 end of his closing; however, a person is justified in
22 the use of deadly force and does not have a duty to
23 retreat if: He or she reasonably believes that such
24 force is necessary to prevent imminent death or great
25 bodily harm to himself or herself or another, or to

1 prevent the imminent commission of a forcible felony.

2 In Florida, it's the Defense that has the burden
3 of going forward and proving by a preponderance of
4 the evidence that Mr. Reeves is entitled to immunity
5 for the shooting and killing of Chad Oulson.

6 It's an affirmative defense. It's not meant by,
7 "What if we had this?" "What if we had this?"
8 Speculating that if we had certain evidence, it would
9 prove this. They have to meet the burden with the
10 facts that are, in fact, available.

11 This is not a trial. This is not casting
12 reasonable doubt on the State's case as it would if
13 the State had the burden to prove its case beyond and
14 to the exclusion of every reasonable doubt.

15 This is an opportunity for Mr. Reeves, through
16 his counsel, to come in and prove affirmatively by a
17 preponderance of the evidence, "I am entitled to
18 immunity."

19 So what is the issue before the Court? The
20 Court, in making its decision, it is an objective
21 standard. The standard requires the Court to
22 determine whether based on circumstances as they
23 appeared to the Defendant when he or she acted, a
24 reasonable and prudent person situated in the same
25 circumstances and knowing what the Defendant knew

1 would have used the same force as did the Defendant.

2 So what did Mr. Reeves believe was about to
3 happen that was so undesirable that it required the
4 use of deadly force to prevent?

5 Now, Judge, in conducting the analysis whether
6 Mr. Reeves killed Mr. Oulson to prevent his own death
7 or great bodily harm, or to prevent a forcible felony
8 doesn't matter, the analysis is the same. What was
9 the undesirable event that was about to happen that
10 Mr. Reeves reasonably believed it required the use of
11 deadly force to stop?

12 To answer that question, Judge, I suggest that
13 you have to look and examine the facts as testified
14 to by the witnesses, the evidence collected from the
15 scene, and Mr. Reeves' various statements. And we
16 start with: What do we know that is absolute?

17 One, is that Mr. Chad Oulson is dead. We don't
18 have to go any further than that. That's an
19 absolute.

20 But there are two other facts that are extremely
21 important to this Court's consideration that requires
22 no analysis whatsoever. We know, absolutely, we know
23 that Mr. Oulson had a bag of popcorn. We know that
24 Mr. Reeves had a pistol. There is no question about
25 it.

1 We know that the popcorn bag was tossed by Mr.
2 Oulson. We know that Mr. Reeves pulled his firearm
3 and shot Mr. Oulson. Those are the facts that are
4 undisputed. There's no question about that. We
5 don't have to go any further than that analysis.

6 The other issues take a little more looking
7 into, a little more analysis. And what I would like
8 to do, Judge, is I would like to go through those
9 salient issues that the State feels that the Court
10 should consider in determining whether or not
11 Mr. Reeves was, in fact, reasonable.

12 And let me first just list them out for you so
13 you kind of get an idea where I'm going, and then
14 we're going to talk about each one individually.
15 What started the conflict between Mr. Reeves and Mr.
16 Oulson? And, more importantly, who kept it going?

17 The next one, was a cell phone used by Mr.
18 Oulson as a blunt object to cause harm to Mr. Reeves?

19 The next one, was Mr. Reeves hit in the face by
20 Mr. Oulson with his fist?

21 The next one, was Nicole Oulson trying or
22 failing to restrain her husband, Chad Oulson?

23 The next one, was there an escalating pattern of
24 violence by Mr. Oulson against Mr. Reeves?

25 The next one, was Mr. Reeves' eyeglasses knocked

1 askew on his face?

2 The next one, was Mr. Oulson over his seat back
3 when Mr. Reeves shot him?

4 The next one, what was the conduct of Mr. Oulson
5 after the toss of the popcorn?

6 The next one, what was Mr. Oulson's body
7 position when he was shot?

8 And, finally, Judge, I'm suggesting the Court
9 has to consider, what was Mr. Reeves' state of mind
10 when he shot Mr. Oulson?

11 Over the next hour or so we're going to explore
12 each of those factual issues, and then I'm going to
13 combine them for the Court and put together the
14 analysis to assist the Court in making its own
15 determination as to whether or not Mr. Reeves was
16 justified in shooting Mr. Oulson.

17 Now, what I would like to do is first start with
18 who started -- well, I'm sorry -- what started the
19 conflict between Mr. Reeves and Mr. Oulson, and who
20 kept it going?

21 Now, we've had testimony about where everybody
22 was sitting. Mr. Oulson is just to the row in front
23 and to Mr. Reeves' right. Mr. Reeves' wife, Vivian,
24 is sitting right behind Mr. Oulson. Mrs. Oulson is
25 sitting right in front of Mr. Reeves.

1 We know where the players were, but what was
2 going on after Mr. Reeves sat down with his popcorn?

3 The previews were playing. The lights had been
4 dimmed. People were still allowed by Cobb Theater to
5 come into the theater while the previews were going.
6 People were allowed to talk, but there was an
7 announcement, Hey, put away your cell phones.

8 Now, Mr. Reeves took it upon himself the very
9 first time to make contact with Mr. Oulson. Before
10 that time, Mr. Oulson and Mr. Reeves had no
11 relationship whatsoever. They didn't know each
12 other. They just happened to be within three feet of
13 each other in a movie theater, but it's Mr. Reeves
14 who began to change the environment that he found
15 himself in.

16 He contacted Mr. Oulson, and regardless of what
17 the words are -- I'm not going to split hairs --
18 "Would you please turn it off," in a very cuddly
19 fashion or a demanding "turn it off" and he was rude,
20 it doesn't matter.

21 What matters for this analysis is that upon that
22 initial contact Mr. Oulson made it known to Mr.
23 Reeves under no certain terms, "Leave me alone."
24 Without going into all of the language that we heard,
25 "Leave me alone. Don't bother me. Do not bother

1 me."

2 So what did Mr. Reeves do? Do you remember
3 Mr. Escobar said -- and I've read it, knowing what
4 the Defendant knew at the time. Well, now he knew
5 that Mr. Oulson was not the friendly type. He didn't
6 want his attention. He was rude. He was even
7 hostile.

8 At that point there wasn't words of threat like,
9 "I'm going to stab you in the heart," you know what I
10 mean. There was some cussing. Clearly letting
11 Mr. Reeves know that maybe this guy doesn't want my
12 attention.

13 Now, Mr. Reeves, wanting to have the movie
14 experience of the trailers that he paid for, took it
15 upon himself knowing that Mr. Oulson was still
16 messaging around with his phone, whatever he was doing,
17 it was so bothersome to Mr. Reeves that he would
18 interrupt his viewing pleasure of the previews in
19 order to take advantage of confronting Mr. Oulson,
20 "Please turn off your phone. Please turn off your
21 phone. Do I have to get the manager? I'm going to
22 go out to the movie manager. I'm going to come back
23 in. I'm going to sit back down. And all of those
24 previews are so important to me, I just wasted four
25 minutes of preview watching time," but that's what he

1 did. And that was his explanation, "I wanted that
2 movie experience. Those previews were important."

3 How many times did Mr. Reeves contact
4 Mr. Oulson? Not once, not twice, but three times.

5 The second time he clearly knew that Mr. Oulson
6 did not want his contact. The third time he really
7 should have known that Mr. Oulson did not want his
8 contact.

9 Now, what I would like to do, Judge, is begin my
10 analysis and as we go through this -- all right.
11 Each point that I want to make, I'm going to be
12 referring to certain segments of the video. I kind
13 of know where the breaks are. You do, too. And
14 there are some significant breaks. We are all
15 familiar with where they are, but I want to show you
16 what we can see in the video.

17 I'm not going to play it straight through. I
18 want to point out those salient features of the video
19 that you can then use in your analysis, but first of
20 all I want to discuss with you the number of times
21 that Mr. Reeves made contact with Mr. Oulson.

22 At 13:22:25, we see Mr. Reeves reaching towards
23 the back seat of Mr. Oulson. I want you to pay
24 specific attention to his right hand. You can see
25 it -- as I back it up and forward, you can see where

1 his hand is.

2 And as he extends that right hand forward on
3 that first contact, he continues to lean over,
4 continues until his head is almost out of the frame.

5 Now, please remember that, because we're going
6 to go back and I'm going to refer to that when Mr.
7 Oulson is seen -- right before the popcorn is tossed,
8 and I will reference that to where you see his head,
9 you know, halfway in that frame.

10 Just to give you a reference point, that's how
11 far in Mr. Reeves encroaches upon the space of Mr.
12 Oulson.

13 The significance of that, Judge, is when you
14 compare that with the amount of encroachment you see
15 when Mr. Oulson tosses the popcorn is like night and
16 day. Who is invading whose space? That is Mr.
17 Reeves on the first contact.

18 Now, I want you to watch again right down here
19 his right hand where I have the cursor. You see his
20 elbow is bent, and as he leans back, does he push off
21 the back of the seat of Mr. Oulson? That's for your
22 determination. I just point it out to you so you can
23 make your own determination.

24 But that is the first contact with Mr. Oulson
25 that begins the environment that Mr. Reeves created.

1 He settles back into his seat. And there is a little
2 bit of a gap here and there, but the next contact, he
3 leans in not quite as far -- we're at 13:22:35 on the
4 second contact -- and if you would look again right
5 where I have the cursor, look at his right hand.

6 Again, for your own determination, is Mr. Reeves
7 pushing off on the back of the seat of Mr. Oulson?
8 That's for your determination, Judge.

9 He settles back into his seat, and we know the
10 dialogue. It's been testified to. Mr. Escobar went
11 over it. Remember he put his popcorn down? "Do I
12 have to go get the manager?" And he gets up and
13 leaves.

14 Now, what was said, we've had the testimony.
15 Some people call it a rude manner, "Turn it off."
16 Some people said it was a pleasant manner, "Would you
17 please turn it off?" But whatever it was, Mr. Oulson
18 made it absolutely clear that he didn't want any
19 contact with Mr. Reeves.

20 Mr. Reeves left that theater with that
21 knowledge, knowing that he left an individual there
22 that he had contact with three times that was a
23 little bit agitated and now he's going to go complain
24 to the manager. And that's important because we talk
25 about what was Mr. Reeves' conduct when he came back?

1 When he came back.

2 The testimony of Mr. Reeves when he came back
3 goes straight to his credibility and at the end I
4 will go over the credibility issues with you with Mr.
5 Reeves, but we begin with this statement that when he
6 returned, as he was coming back through the aisle,
7 for the very first time ever, we hear from Mr. Reeves
8 that Mr. Oulson gave him -- I believe his words were
9 "an agitated stare."

10 Was that provided during his statement to law
11 enforcement? No, it was not, but what is more
12 important, Judge, is that when he does return -- I
13 will speed it up. When he does return, by his own
14 admission, the cell phone had been put away.
15 Whatever environment that he created when he left had
16 resolved itself. It was over.

17 But what did he do? As he walked by, either as
18 he walked by or just as he was sitting down, words to
19 the effect, "Hey, I see you put your phone away."

20 Now, there's been various variations of how it
21 was said, what manner it was said, whether or not
22 there was a "please" or not, but the fact remains
23 when he walked by, he knew that the event that he was
24 complaining of was over. It had resolved itself.
25 Mr. and Mrs. Oulson were sitting there cuddled up

1 watching the movie. They were having their own movie
2 experience.

3 But what does he do? He rekindles the hostility
4 flames between himself and Mr. Oulson. There was no
5 reason for him whatsoever, at that point, to have any
6 contact with Mr. Oulson.

7 Now, we might surmise: Well, in this day and
8 age, is it okay to have contact, Would you please do
9 this? One contact, maybe we can see. But two or
10 three knowing, "Leave me alone, leave me alone,"
11 coming back, and now the situation is over, what does
12 he do? "I see you put the phone away."

13 Needling a little bit? That's for your
14 determination, Judge. But what happens? He
15 rekindles the flames of hostility between the two.
16 It was over.

17 Now Mr. Reeves has placed himself back in harm's
18 way again by his own conduct. But you know the
19 difference, at that moment in time, between
20 Mr. Reeves and Mr. Oulson and that rekindled, hostile
21 environment is that Mr. Reeves had a pistol in his
22 pocket. The great compensator. The great equalizer.
23 That was the knowledge that Mr. Reeves had as he
24 walked past and sat down.

25 The next issue, Judge, for your consideration:

1 Was a cell phone used by Mr. Oulson as a blunt object
2 to cause harm to Mr. Reeves?

3 Now, at this point, we need to go through the
4 analysis and, yes, I'm going to play some videos back
5 and forth, but we're just going to the segments that,
6 if you would take the appropriate notes and I will
7 give you the frame numbers, that you can use to go
8 back and make that determination for yourself.

9 But one of the things that has come up is
10 whether or not Mr. Reeves' shoes have a reflective
11 material. And even Mr. Escobar in his closing
12 argument acknowledged that there is some reflectivity
13 to Mr. Reeves' shoes; and whether or not at the time
14 he crosses his legs, are we seeing the reflectivity
15 of the shoes, or are we seeing the cell phone?

16 But I can't argue -- I can't do the analysis of
17 both of those issues at one time, so I have to pull
18 them apart.

19 So let's just first start with the reflectivity
20 of the shoes, and then I'll deal with the cell phone.
21 And then I think you will see when we put it together
22 a cell phone was never thrown.

23 So if we could, Judge, let me take you back
24 earlier when Mr. Reeves came into the theater. Now,
25 it's approximately 13:19:45. Now, Mr. Reeves had

1 just picked up his popcorn from his wife.

2 Now, what I want you to do is I want you to
3 concentrate where my cursor is. This is what is
4 called "critical viewing." You have to be able not
5 to look at something frame by frame, because a movie
6 or a video, the purpose of it is movement gives the
7 individual frames content.

8 Do you remember the example I did? If I'm just
9 standing there with a baseball glove and a baseball,
10 if I'm just standing there, what am I doing? But if
11 you see a bunch of frames, I could be throwing.
12 Well, that's what this is.

13 So you have to be able to tie the two together
14 and you have to be able to do the analysis to track
15 movement, along with artifacts within the frame, so
16 that you can put content, if you will, to what you're
17 seeing.

18 So if you would look to where the cursor is, and
19 there's a lot of movement. Now, right here, Judge, I
20 want you to consider, as part of your analysis, as
21 whether or not this -- you see right here -- is it,
22 in fact, the Defendant's knee moving up. And then I
23 want you to watch right here because we know the
24 knee, the ankle, and the foot.

25 If you saw right here -- and I'm going to play

1 it back and forth and it's important that we do
2 that -- you will see there's no little white dot and
3 a white dot, and no little white dot and a white dot.

4 Now, what I would like for you to do, Judge, is
5 continue to focus on that. As the frames progress,
6 I'm suggesting to you that you will see that become
7 brighter, but that's for your own determination. As
8 we go frame by frame by frame by frame, you take that
9 increased brightness with the elevation, if you have
10 considered that to be his knee.

11 And I'll go back down for you and back up. Back
12 down and back up. Then the final cross where you see
13 the remarks.

14 Now, Mr. Escobar pointed out that on the inside
15 of the shoe there is no reflective material, but what
16 is on that side of the shoe are the two white bars at
17 the heel, which are rectangular.

18 So you can see when you do that analysis, and
19 you do that critical view and you track the movement
20 of the white object with the movement of Mr. Reeves'
21 leg, he is bringing -- for your determination, he is
22 bringing up his right leg to cross.

23 Judge, I did that for you so that then you can
24 go to where we talk about the cell phone. Let me get
25 right to the spot. Here we go. I will go right to

1 the spot. There you go.

2 Now, I need to back it up because I need to make
3 sure the Court recalls there is a five-minute gap
4 between what we see here and what we see here, if the
5 Court recalls that. So I didn't want to mislead the
6 Court in any way. It's not fluid. There is a gap
7 there. But there is a gap, and then in the next
8 frame you will see for your consideration, Mr.
9 Oulson. And again, I will refer you to the white
10 mark.

11 Now, what was going through that five-second
12 gap? We can't tell from the video. You are going to
13 have to rely either on the witness' statements or Mr.
14 Reeves. But right now let's just do the analysis
15 with the video.

16 We have Mr. Oulson in that position. You can
17 make your own determination what that position is,
18 but you recall the testimony of Mr. Reeves to
19 Detective Proctor that, After I came and sat down, he
20 mentioned, "I see you turned off the cell phone."
21 What did Mr. Reeves say? He turned in his seat and
22 said -- do you remember that? I only point that out
23 for your own consideration as to whether or not
24 exactly what position Mr. Oulson is in.

25 But we're going to do the same analysis, Judge,

1 with the white mark. And if we place movement along
2 with each frame, you could see it's visible and then
3 it's not. It's visible and then it's not.

4 As we come down a frame, another frame, a frame,
5 you have to take into consideration everything that
6 you are viewing including whether or not you believe
7 that this area right there is Mr. Reeves' knee, and
8 that's for your determination, Judge. You can make
9 your own. I'm just pointing out where you should
10 look.

11 You see the white reflection now comes back.
12 And again, the analysis on the first one was lighter,
13 brighter, brighter and brightest. This one is going
14 down, so what do you expect to see? Brighter, not so
15 bright, not so bright as it comes down.

16 So when you take into consideration and you
17 track the movement of what you can determine for
18 yourself whether or not that is the leg of Mr. Reeves
19 as he uncrosses his legs, because if you -- if your
20 legs are crossed and you're going to lean forward,
21 you can't lean forward to the extent that you did
22 unless you put your legs back down on the floor.

23 Then what does he do? We're at 13:26:26. As
24 Mr. Escobar pointed out, we don't see a throwing
25 motion. And that doesn't mean it didn't occur

1 because we have the five-second gap. Well, let's
2 talk about common sense now. Just good old common
3 sense.

4 It is alleged -- and this is approximately 12
5 seconds before Mr. Reeves pulls his pistol and shoots
6 Mr. Oulson. 12 seconds. Mr. Oulson has an iPhone 5.
7 I'm not sure if it's an S or not. It has value,
8 hundreds of dollars back in 2014. It has your
9 personal data on it. It's how you communicate. It's
10 almost like our own little mini-computer in our back
11 pocket nowadays.

12 Common sense: Are you going to take that cell
13 phone that you walk around with in your hand all the
14 time that is precious to you, that means something to
15 you, and then toss it towards another individual that
16 you do not know that is hostile towards you? Would
17 you? Would you expect to get it back?

18 Holy moley. Here, have my phone. I don't care.
19 Common sense. Are you going to throw your cell phone
20 that means so much to you, to an individual who says,
21 Thank you -- possibly -- thank you. You ain't
22 getting it back. You abandoned your property. It's
23 now mine. Are you going to take that risk? Common
24 sense? No.

25 What was the explanation given by Mr. Reeves as

1 to his conduct at this point? Why was he leaning
2 forward? It's Mr. Reeves' contention that he was hit
3 with a cell phone. So he is taught that he should
4 not close the distance between himself and someone
5 that is hostile.

6 So what does he do? We are within 18 inches of
7 Mr. Oulson. He leans forward closing the distance.
8 The explanation is: "Well, I was getting up. I was
9 leaning forward and I decided it was a bad idea."

10 Judge, you might consider that if you find that
11 a cell phone was thrown. If you don't find that a
12 cell phone was thrown, then what is the other
13 explanation? Mr. Reeves, who had had three previous
14 contacts with Mr. Oulson which he knew he was rude,
15 had a fourth contact when he sat back down, now he is
16 leaning in for his fifth contact with an individual
17 that he knew was very rude to him.

18 I'm going to play this just back and forth so
19 that you can -- you have to consider the movement.
20 If he was hit with a cell phone, what would you
21 expect to see? And I asked that as a rhetorical
22 question.

23 When someone is hit in the face, it's painful.
24 It's almost like, you know, do you remember when
25 you're kids and you were in school and they come up

1 behind you and they flick you in the ear? You can't
2 help but grab your ear. You just can't help it.

3 When you get hit in the face with a cell phone,
4 what are you going to do? You're going to -- you're
5 going to do some sort of movement to your face,
6 something, because you just can't help it. It's a
7 natural reaction. We don't see that with Mr. Reeves.
8 We don't see that at all.

9 You could see down here he still has his popcorn
10 in his hand. Both his hands are down. He never
11 raises his hand up to his face as if he was hit in
12 the face with a blunt object, the weight of a cue
13 ball, or the weight of a baseball. We don't see
14 that.

15 There's got to be some pain involved. He had to
16 know that he was hit, but we don't see that reaction.

17 I mention to you that Mr. Reeves indicated that,
18 at that point where the Defense team is alleging that
19 a cell phone was thrown, that Mr. Reeves, on page 80
20 of his statement, tells Detective Proctor, He turns
21 around in his seat and he says, "I was texting my
22 daughter," or something like that.

23 Well, that's what we have. We have a situation
24 where he confronts. At that point he said, "I see
25 you turned off the cell phone." He sits back in his

1 seat. Mr. Oulson turns around, just like Mr. Reeves
2 said, "Hey, I was texting my daughter." That's where
3 that took place, not the throwing of a cell phone.
4 So we're settled back in our seat.

5 If a cell phone was thrown, it was thrown 12
6 seconds before the shooting. And I want the Court to
7 go ahead and make a note because it is when Mr.
8 Reeves says that he was hit with either a fist or a
9 cell phone, his glasses were askewed. Glasses were
10 askewed.

11 If we believe Mr. Reeves, and that here at
12 13:26:25, there was a cell phone thrown, he not only
13 doesn't go for his face like he's in pain, he leans
14 all the way in, does whatever he has to do with his
15 glasses somewhere askewed on his face, and he sits
16 like this for another seven seconds until Mr. Oulson,
17 stands up, reaches for the popcorn, tosses the
18 popcorn.

19 He draws his gun. He fires his gun and it's not
20 to Mr. Reeves. He sits back down in his seat. Puts
21 the gun on his lap, that he then takes his glasses
22 and straightens them. Twelve seconds with his
23 glasses askewed. I'll let you decide if that makes
24 sense.

25 Sometimes it's better just to see things -- do

1 you want to move?

2 MR. ESCOBAR: Yes.

3 MR. MARTIN: I'll wait for you.

4 Sometimes it's just helpful to -- once you've
5 had the analysis to kind of put it side by side.

6 If you look at 13:19, and that's where the first
7 movement of his foot takes place, you can see right
8 here -- and that's where it's in the position, and
9 then this is where his legs are crossed.

10 If you go down to where they say the cell phone
11 was thrown, if you look at the position at 13:19 and
12 then at 13:26, once you do that frame comparison and
13 do that critical viewing by looking at the video, you
14 can make the determination that when it's down, down.
15 That's when it's crossed and when it's crossed.

16 Are we looking at his shoe? Are we looking at a
17 thrown cell phone?

18 Now, I mentioned to you, Judge, that I had to
19 separate whether or not the shoe reflection we see is
20 the cell phone or not, but let's assume for a moment
21 that it's not. Then was he hit by the cell phone?
22 What evidence do we have that he was, in fact, struck
23 with the cell phone?

24 It's important that we know where everybody is.
25 So let me go back to 13:26:25. Now, I know we're

1 looking at the same frames again, but the point,
2 Judge, is the orientation of Mr. Reeves and Mr.
3 Oulson, because it is alleged that, at this point, a
4 cell phone is thrown and we see the white there.

5 Now, let's just consider that for a second. We
6 don't know, because there's a five-second gap, where
7 Mr. Reeves was when it was thrown. But what did he
8 say on the second taped statement that Proctor took
9 of Mr. Reeves?

10 Let me just get this other chair, Judge.

11 He said that, "I was hit in the left eyebrow, my
12 left eye, my temple, hurt. My temple."

13 Madam Clerk, do you have the cell phone? I
14 forgot to ask that. I apologize, ma'am, to put you
15 on the spot like that.

16 THE CLERK: Here you go.

17 MR. MARTIN: All right. Thank you.

18 This cell phone, "Left temple hurt. I felt
19 pain. I felt pain here." The orientation of the
20 individuals, Mr. Oulson is to his right. This isn't
21 about the height of the chair or anything, just the
22 orientation of the people.

23 Mr. Reeves is through his -- where is his left
24 temple. If he is facing forward, it's here. His
25 left eye is here. Even if he turns this way, where

1 is his left temple? It's facing the screen.

2 If you throw the cell phone here, it's going to
3 go straight. It's only two feet. There's going to
4 be a little bit of deviation. Even if his face is
5 looking right at Mr. Oulson, his temple that he said
6 hurt so bad that he was dazed and confused is facing
7 the screen.

8 Now, I'm not going to throw the cell phone, but
9 I would bet my last dollar this is not a boomerang
10 cell phone. You can't throw it and it comes in a big
11 looping curve like this and comes back and smashes
12 you on the left side of the head. It's just not
13 going to happen.

14 Now, I will throw it, if you want, but I don't
15 think that you do. Was a cell phone thrown? No.

16 The injuries to Mr. Reeves, I direct your
17 attention to Dr. Thogmartin's testimony. And he
18 referred to this reddish mark above the eyelid, the
19 most fragile -- well, he said it was the most fragile
20 skin on the body, it's very, very thin. And that
21 redness could be caused by just constant rubbing.
22 Like Proctor said, he was just rubbing it. Before
23 the picture was taken, he was just rubbing the eye.
24 All right. He's wearing glasses.

25 What did Dr. Thogmartin say? Safety glasses.

1 They serve a purpose. If you're going to get hit in
2 the glasses or anywhere around, but if the injury is
3 right behind the glasses, how does that happen?

4 Even if the frame is bent, flexible, the glass
5 isn't. That the whole purpose. That's why he was
6 pounding on his glasses. You can't have this injury
7 if the cell phone hits those glasses. Even lightly,
8 so that no marks are caused around the face.

9 It is an inanimate object that's impenetrable.
10 It ain't going to happen. But that's what he said
11 was hit by the cell phone, his eyebrow here. His
12 temple. The glasses prevent that, and it's not a
13 boomerang phone.

14 The sequencing of this particular incident is
15 critical. We have the allegation or suggestion by
16 the Defense team that a cell phone was thrown 12 to
17 13 seconds before the shot was fired. Now, that pain
18 occurred days -- injury to the eye, glasses askewed,
19 all 12 or 13 seconds before.

20 But then they go on to say -- they, the Defense
21 team -- that if it wasn't a cell phone, then he was
22 hit with a fist, because that's what Mr. Reeves said,
23 he was hit with a fist or hit with a cell phone.

24 Very quickly, Judge, look at the frame 13:26:25.
25 I would invite your attention -- and I know that

1 there's a five-second gap. We have -- do you
2 remember Mr. Knox's photographs where he had the -- I
3 will call it the yardstick -- that went from Mr.
4 Oulson's chair all the way over, it's about three
5 feet, roughly.

6 Was he hit by a fist at this time? Is there
7 something to indicate that Mr. Oulson could reach
8 around from over here -- from here and come all the
9 way around and hit him on the temple from that
10 distance? I know Mr. Oulson was tall and had long,
11 gangly arms. No.

12 So where was he hit, if he was hit? Let me
13 invite your attention to another part of the
14 surveillance video. Now, we're going to see this
15 over and over again, but I am playing this for a
16 particular purpose. And we're on the next issue:
17 Was Mr. Reeves hit in the face by Oulson with his
18 fist?

19 If it couldn't occurred when the alleged the
20 cell phone occurred, then it must have occurred here,
21 if it did. And there is another five-second gap, do
22 you remember, Judge? And then for the first time we
23 see Mr. Reeves -- Mr. Oulson in the frame.

24 Now, the whole purpose of watching this
25 critically is to determine whether or not

1 Mr. Oulson's fist hit Mr. Reeves' face. So I would
2 direct your attention at 13:26:35 to a critical
3 review and follow the movement. The first movement
4 being right here of Mr. Oulson's hand.

5 And I will just play it back and forth so that
6 the Court can get oriented to what we are looking at.
7 And as the hand comes in, we don't see the left hand.
8 Do you remember Corporal Hamilton's statement? "He
9 was down low. I couldn't see where his feet were,
10 but he was propped."

11 So he's not using his left hand. We don't see
12 it come into the frame. So, if anything, he's going
13 to be struck with the right hand. But as I bring the
14 frames forward, we see the grabbing of the popcorn
15 and the popcorn is in his hand, at that point.

16 So at that point there was no hit to the face.
17 He has a handful of popcorn. That's all that he has.
18 He brings it back. And then his hand comes forward
19 with a critical view of each frame, you can discern
20 when the popcorn is released, and you can make a
21 determination for yourself, Judge, based on what you
22 see in the video where Mr. Oulson's hand is in
23 relation to Mr. Reeves.

24 As the popcorn bag goes forward, you make your
25 own determination, Judge, but there is nothing in his

1 hand.

2 I can toggle it back and forth. You can almost,
3 like, see a Kermit the Frog and there is nothing in
4 it. I will bring it back forward. There it is.

5 The issue: Was Mr. Reeves hit in the face by
6 Oulson with his fist? You had both Dr. Adams and
7 Dr. Thogmartin opine on that. Dr. Adams says, "Yeah,
8 that little red mark might cause that."

9 What did Dr. Thogmartin say on that issue, along
10 with the phone, too? Glasses. Hello, glasses.
11 Dr. Thogmartin also indicated that after two hours he
12 would expect to see some type of swelling on the face
13 of Mr. Reeves. He did admit, to give weight to his
14 testimony, that he does not deal with live
15 individuals, he deals with the deceased. That's
16 true, but he gave his opinion as to that there was no
17 swelling in that area.

18 The neck issue, Judge, is was Nicole Oulson
19 trying or did she fail to restrain her husband,
20 Mr. Oulson? Now, Mr. Reeves in his statement to law
21 enforcement on page 80 and on page 84 of the
22 statement, See, and his wife is holding him back, so
23 he jumps up.

24 Page 84, his wife was talking. Whoever was with
25 him was trying to hold him back.

1 But what did we hear for the first time from Mr.
2 Reeves when he testified? Nicole was standing up
3 beside her husband the whole time, almost barrel
4 hugging him, if you will, a little overexaggerating,
5 I know, but the point was that she was up and trying
6 to physically hold him for that entire 12 seconds.
7 That was his testimony.

8 And you know what else he said? They were
9 arguing. They were arguing. They had a conflict.
10 And I asked him, I pressed him with -- when he made
11 that statement to Detective Proctor, "Did you tell
12 him that?" He didn't think it was important. It's
13 important now. He told us now. Why wasn't it
14 important back then?

15 He acknowledged that he knew it and he said the
16 reason he didn't say it was because it wasn't
17 important, but now it is.

18 Judge, I'm going to go back to where we see
19 Mr. Oulson -- I'm sorry; I went the wrong way. We
20 see Mr. Oulson in the frame for the first time. You
21 can make your own determination of the position of
22 Mr. Oulson at that time, but what did Mrs. Oulson
23 say? Mrs. Oulson said she didn't see the toss of the
24 popcorn, but she was seated next to her husband -- I
25 need to unbutton my jacket -- and he was turned and

1 faced -- because she is right-handed, she is getting
2 up, so she reaches over.

3 And as she begins to lift her buttocks off the
4 chair with her hand over, she feels the hot pain.
5 She doesn't know how far she is up from the chair,
6 but she's in the process of standing. And when she
7 feels the pain of the gunshot, she continues to stand
8 and draws her hand back. At which point, her husband
9 turns towards her, makes the turn, walks and
10 collapses. That's her testimony.

11 Both Dr. Adams and Dr. Thogmartin told you that
12 that was a viable scenario. As Dr. Adams would say,
13 that was a yea or a nay. That was a yea, right
14 there, because her hand is parallel here.

15 The whole purpose -- do you want to come around,
16 Richard?

17 The whole purpose of this beach video, the only
18 purpose is to show the height disparity between
19 Mr. and Mrs. Oulson. You can make a determination
20 whether it is significant or not, but you can see the
21 difference. They're both barefooted, so it's fairly
22 accurate, not one in high heels and one not, the
23 height difference, and you can see that her shoulder
24 is almost right at his diaphragm and the wound is
25 right up here.

1 She is not tall enough to take her left hand and
2 place it over his shoulder and get her hand in the
3 position that it was when she was shot. Because of
4 the heighth difference between the two, the only way
5 that Mrs. Oulson can accomplish the task of placing
6 her hand in harm's way to get shot is if Chad Oulson
7 is down somewhat and she's coming up somewhat.

8 If he's standing fully erect, she would have to
9 be all the way up here and we would be at an angle.
10 He has to be down. He has to be. He's not standing
11 fully erect. The wound has to be somewhere from the
12 top of his chair up to fully erect.

13 But as Dr. Thogmartin pointed out, it was not
14 fully erect. As she's coming up, it has to line up
15 that when he is shot, the rest her hand, the chest,
16 the chest wound, has to be in line. And the only way
17 that Chad Oulson's chest can be this far off the
18 ground is if he is significantly lower. That's the
19 reason for this photograph, so you can see that
20 that's the way it would have to occur.

21 Mrs. Oulson was not facing Mr. Reeves when she
22 was shot. She was not standing up in a bear hug
23 against -- with her husband, trying to keep him from
24 going over the seat. The evidence is consistent with
25 what Dr. Adams said yes to, and Dr. Thogmartin said

1 was consistent, at the time of the shot, his chest
2 was low, she was coming up, and her hand was over.
3 The heighth disparity between the two limits the
4 possibilities in which the shot could hit his wrist,
5 her hand, and her chest, in the manner in which we
6 find the wounds.

7 Was there an escalating pattern of violence by
8 Mr. Oulson against Mr. Reeves? There's a throwing a
9 cell phone, according by the Defense. There was a
10 reaching in and grabbing for popcorn and then
11 reaching back in.

12 Let's just assume for a minute there was an
13 escalating pattern of violence. Here is what it
14 would look like, Judge: You would have the toss of
15 the phone like a cue ball, a baseball. It's gotta
16 hurt. And you escalated that by (indicating) a paper
17 bag with fluffy popcorn in it. An escalating pattern
18 of violence, if it occurred the way the Defense team
19 suggests.

20 Was Mr. Reeves' eyeglasses knocked askewed on
21 his face? Now, I touched upon that briefly, Judge,
22 but that's kind of critical because that goes hand in
23 hand with the askewing of the eyeglasses had to occur
24 at the time that he was struck.

25 And I -- it's a little convoluted, but I've got

1 to pull them apart. It's like a stew. I've got to
2 talk about the corn before the peas. So let me talk
3 about the glasses.

4 The glasses is askewed because he was hit with
5 something. When it occurred, that's where the
6 analogy by the Defense team gets a little loosey.
7 Was it 12 seconds before? Was it when he reached in?

8 According to Mr. Reeves, if you'll recall, "I
9 was stretched fully out. He was almost on top of me.
10 I saw a blur of a phone. I got hit. My glasses were
11 askewed. I shot upward, it had to be almost a
12 contact wound." That was his statement to Detective
13 Proctor.

14 Well, just take that statement. At that time
15 it's the toss of the popcorn, if the Court recalls.
16 It's at that time and it's the only time you see from
17 the videos that Mr. Reeves is, quote, "Fully
18 stretched out," according to the Defense, trying to
19 create distance.

20 So when you couple those facts together,
21 Mr. Reeves says, When I'm fully stretched out, he
22 sees the blur of the cell phone. Well, that's eight
23 seconds after when we have the alleged throwing of
24 the cell phone. You can't have your cake and eat it,
25 too. Pick one or the other. It can't be both.

1 You can't get hit by the cell phone and lose it
2 and then all of a sudden Mr. Oulson has to retrieve
3 it. And by golly, I've got it in my hand. Now I'm
4 going to toss popcorn on you. Put the phone back in
5 my hand that I just hit you with on the side of the
6 head. It doesn't make any sense.

7 So that's where we get to the glasses. Were the
8 glasses askewed from when the cell phone boomeranged
9 around and hit him on the side of the head? If he
10 was facing forward, it would have hit him on this
11 side, so he's got to be turned. And even if he's
12 turned, he can't -- when were the glasses askewed?
13 Were they askewed at all?

14 And does it make any sense like I demonstrated,
15 for that twelve-second period we've got glasses
16 askewed. He does nothing in order to adjust his
17 glasses whatsoever for those 12 seconds. In fact, he
18 leans forward and does whatever he needs to do with
19 Mr. Oulson.

20 He comes back and he's settled in. He still
21 leaves his glasses askewed on his face. He then sees
22 Mr. Oulson, at this point, coming over the seat,
23 climbing over into his lap. He pulls his gun and
24 fired. Then he sits back down and goes, Oh, man.
25 Does that make any sense?

1 Were the glasses askewed? Well, I think we can
2 conclude that's a good possibility when the popcorn
3 bag hit the side of his face and knocked him around a
4 little bit, but that's about it.

5 I'm going through these points because I want
6 you to keep in mind that these are the Defendant's
7 statements, and whether or not his statements are
8 corroborated by the evidence or even common sense
9 goes to his credibility.

10 And please keep in mind, Judge, as I go through
11 these, that his credibility is at issue. Because
12 just like when Mr. Escobar ended with his closing
13 with Dr. Hayden, Dr. Hayden said, "I believe he was
14 reasonable." Dr. Hayden's opinion was based solely
15 on the self-serving statements of Mr. Reeves.

16 And you heard on cross I asked him if any of
17 those statements were proved to be wrong, like he was
18 hit with a cell phone or fist, that's not true, would
19 that call your opinion into question? And you recall
20 his response.

21 We get into the most contentious aspect of this
22 case, I guess. The next issue was: Was Mr. Oulson
23 over his seat back when Reeves shot him? So let me
24 start off with some concepts, because it's kind of
25 interwoven with the next couple of issues.

1 Perception disorder. We heard about that, so
2 what is it? It's how someone perceives something
3 based on their life experience, the environment they
4 find themselves in. What those conditions are? A
5 lot of things can affect one's perception of what is
6 going on and we went through all of those issues.

7 But the bottom line is, perception disorder is
8 very individually -- it is very unique to an
9 individual, all right. You have to rely on what Mr.
10 Reeves tells you is his perception.

11 And if the credibility of Mr. Reeves is called
12 into question, then you have to determine what you're
13 going to believe and what you're not going to
14 believe.

15 So let's talk about perception disorder. What I
16 would like to do is point out those things that it
17 does not involve, in my opinion, for your
18 consideration.

19 Perception disorder would not include, My
20 glasses are askewed. That's facts. It is either
21 there. He said he put them on. There is no
22 perception involved. They are askewed. I perceive
23 they are askewed, so it's not a disorder, okay.

24 Now, whether or not it occurred or not, we've
25 already discussed that and when, but that's not a

1 perception disorder.

2 The pain to the head from a fist, a cell phone.
3 You don't have phantom pain. You don't perceive
4 phantom pain. In a high-stress situation he said,
5 "Oh, my nose hurts." You either feel the pain or you
6 don't. You either feel it or you don't. That's not
7 a perception disorder in a high-stress situation
8 whether or not you feel pain.

9 Mr. Reeves testified over and over he felt pain
10 on the side of his face, the left temporal area. He
11 can't account for that as a perception disorder.
12 Either it happened or it didn't happen, and that goes
13 to his credibility.

14 Whether or not his hand was on Mr. Oulson's
15 chest or shoulder. Now, he mentioned in Detective
16 Proctor's statement that as Mr. -- in his version, as
17 Mr. Oulson came over the seat, he actually put his
18 hand out and was touching his shoulder or his chest
19 going, "Whoa, whoa, whoa, whoa," or, "No, no, no."

20 For your own consideration, Judge, a perception
21 disorder, a little too many details. "I had my hand
22 on him. I could feel it. And then I'm responding,
23 'Whoa, whoa, whoa, no, no, no.'"

24 Another thing to consider whether or not that is
25 a perception disorder, maybe it really didn't happen

1 and because of high stress maybe he just thought it
2 did. What did he say to Detective Proctor? "I had
3 my left hand out in front of me and when I pulled my
4 gun out and I was stretched out, my hand was out in
5 front, I was lucky I didn't shoot my own hand. I'm
6 taught as a law enforcement officer, Do not put my
7 hand in the muzzle -- in front of the muzzle of the
8 firearm."

9 He went on -- and I offer this for you for your
10 consideration -- he went on to explain to Detective
11 Proctor why Detective Proctor should believe that his
12 hand was up there holding Mr. Oulson off, going,
13 "whoa, whoa, whoa," explaining to him, "By golly, I
14 knew my hand was out there and I'm lucky I didn't
15 shoot it."

16 So he went into detail trying to corroborate his
17 statement to Mr. Oulson. You don't do that with a
18 perception disorder -- if you perceive something that
19 didn't really happen and you can attribute it to a
20 perception disorder. You don't go on and on trying
21 to explain it to someone so they will believe you.

22 A perception disorder does not include the body
23 position as specifically as testified by Mr. Reeves.
24 He indicated that he was fully stretched out. He was
25 leaning to his left. He drew his pistol, and while

1 he was stretched out, he fired.

2 Page 81 of Mr. Reeves' statement, I'm leaning
3 back in my chair, so he kept on hollering. And I'm
4 not sure what he said, to be honest with you. He
5 said something that led me to believe he was going to
6 kick my ass.

7 I didn't know if that's exactly how he phrased
8 it or not. So I'm looking briefly. I know I can't
9 go anywhere, so I'm leaning all the way back in my
10 chair as far as I can get away from him, and suddenly
11 he's virtually on top of me because I'm stretched
12 out.

13 Then he goes on to explain how the pants -- you
14 have got to be stretched out to get the gun out of
15 your pants. Mr. Reeves goes on to say on page 85 of
16 his statement, and I'm going to just paraphrase, but
17 you can look at the statement to see where I'm
18 getting this information.

19 Mr. Reeves said his feet were on the seat, at
20 least one of them. He was pushing back with his hand
21 and he was coming over the seat. And I'm saying,
22 "Whoa, whoa, whoa."

23 Mr. Reeves went on to explain, "I was saying,
24 'No, no, no,' or, 'Whoa, whoa, whoa.' So he's coming
25 over on me, and I got -- I'm pushing him off with my

1 left hand, and I had a hold of something. I'm
2 assuming it was probably his chest."

3 Mr. Reeves asked: "Which hand?"

4 "My left hand."

5 Mr. Reeves explained, "I made contact with
6 something, his arm, his chest or shoulder, I don't
7 know, but I'm saying, Whoa, whoa, whoa, or, No, no,
8 no."

9 Let's look at the video, because at this point
10 in time, Judge, there are no breaks in the video.
11 This is a solid video.

12 You heard what Mr. Reeves said: "I was
13 stretched fully out when I shot him."

14 The next issue, Judge, is what was the conduct
15 of Mr. Oulson after the toss of the popcorn? We are
16 going to go back to what we just witnessed on the
17 video screen for another analysis. I'm at 13:26:30,
18 and this is just before we see Mr. Oulson's head come
19 into the scene.

20 Judge, what I would like for you to do for this
21 part of the analysis, I would like to consider, if
22 you would, consider using this black line which is
23 the frame as a straight edge. And it's going to be a
24 similar analysis like they would do with a golfer,
25 you know, whether or not he's actually pivoting, and

1 it's a one swing or -- you know what I mean? So
2 that's what we're going to use it for, so we could
3 orientate body position.

4 Now, everyone agrees that we don't know exactly
5 where this line is in three-dimensional space. You
6 know, where the chair is in relation to Mr. Oulson or
7 to Mr. Reeves, but what we can tell from this frame
8 which is at 13:26:35, is the first frame that we see
9 Mr. Oulson.

10 Judge, you can look at the frame and decide for
11 yourself to what extent Mr. Oulson's head is in the
12 frame, but that is critical for the analysis that I
13 would like to go through with you.

14 Because what was said is that Mr. Oulson was
15 climbing over the seat. He was in my lap. I was so
16 afraid. He was coming over the seat and I had to --
17 I was trying to distance myself from him.

18 I want you to watch where his head is. You see
19 Vivian moving right here. You see the arm come in.
20 Now there's his head when we first see it. Now,
21 watch his head as he reaches. First reach. By the
22 time the popcorn is back by his head so he can flick
23 it. What do we see in that straight line?

24 Now, we don't know his body position in the
25 dark, but what we do know, Judge, he wasn't in the

1 frame.

2 If you look where he started at 13:26:35, I
3 would like for you to consider, Judge, in making your
4 own determination, is that the closest that Mr.
5 Oulson ever got to Mr. Reeves? I want you to watch
6 the video and watch his head. We are going to play
7 it through.

8 We have the popcorn back. We do not see his
9 head. The popcorn comes forward. All you see is
10 right above his elbow. You do not see his head. The
11 popcorn is released. You do not see his head. What
12 you see is the retreat of Mr. Oulson as he brings his
13 hand back.

14 He never closes the gap on Mr. Reeves. The
15 closest that Mr. Oulson ever got is when he first
16 stood up. In fact, he was further away from
17 Mr. Reeves when he actually grabbed the popcorn. And
18 from the time that he grabbed the popcorn, his
19 movement was backwards. And release, and out of
20 frame. Not forward, but backwards. And I offer that
21 for your consideration. You can make your own
22 determination.

23 But at that point Mr. Oulson is in retreat.
24 After doing what? The most benign thing you could do
25 is throw a fluffy bag of popcorn at somebody. He was

1 in retreat after doing that.

2 Rude and disrespectful? You bet. One guy doing
3 that to another guy. You may as well have poured a
4 good, cold beer over his head. It would have been
5 just as rude and disrespectful. That's what it was.

6 The next issue, Judge, I would like to discuss
7 with you is: What was Mr. Oulson's body position
8 when he was shot? We're going to go back to 13:26:35
9 and use those frames where there's no break. There
10 is no break whatsoever.

11 What was his body position? We already had the
12 testimony of Nicole as to where she was, and we know
13 how her hand has to be in front of his chest and he
14 has to be much lower, but what was the body position?

15 For your consideration, if you would watch
16 starting at 13:26:35, as Mr. Oulson does not increase
17 his distance, but decreases his distance from
18 Mr. Reeves as the popcorn is tossed. You can see his
19 hand.

20 Remember the testimony of Dr. Adams and
21 Dr. Thogmartin? When the shot is fired, numerous
22 things have to take place. First of all, Mr.
23 Oulson's chest has to be at a location that, based on
24 his height, would allow a much shorter Mrs. Oulson,
25 as she is coming up from her seat, to place the hand

1 in front of his chest.

2 Before the shot is fired, Mr. Oulson's body,
3 whatever he is flexing at the hips or the knees, he
4 has a knee in the seat, it doesn't matter, but it has
5 to be in a position, it has to be turned, his right
6 hand has to come -- as we see in the video frame, it
7 has to keep traveling. It has to travel. It can be
8 out here, but we see it moving. It's not shot. It's
9 not shot.

10 It has to get in its position. Simultaneously,
11 Mrs. Oulson's hand has to come up and be in position
12 to whatever it is, so when the shot is fired, you
13 have muzzle, first target, second target, chest. It
14 has to line up. Those movements have to take place
15 before the shot is fired.

16 So as we look at 13:26:35, 36, and 37, that's
17 what we see here. You see his hand coming back, and
18 as it leaves the frame, you do not see his hand
19 there.

20 I invite your attention, Judge, to this area
21 right here. I'm going to play it back just so you
22 could orientate yourself with it. The hand is right
23 there. I suggest to the Court for your own
24 determination, that is the gun drawn and being
25 pressed forward towards Mr. Oulson. One frame, two

1 frames, three frames.

2 Hand is out. One more frame. Right there is
3 the gun. It has to be. When I play it forward, you
4 will see as it comes forward one frame, two frame,
5 three frame.

6 When you do the critical view and you track what
7 you see along with movement, then the movements give
8 contact. That's why it's so important to keep these
9 still frames moving. You just can't look at one
10 frame and tell what's going on.

11 But right here we have the gun is out. The gun
12 is out. The gun is out and then it's fired. All
13 that time, Mr. Oulson is going backwards. We see
14 that clearly from the video. It is Mr. Reeves that
15 is pressing forward and increasing his distance
16 between himself and Mr. Oulson, not the other way
17 around.

18 Mr. Reeves was not in a defensive posture. He
19 was in an offensive posture. I will explain that in
20 a moment.

21 So what was his position? Both medical
22 examiners were in agreement. They were in agreement
23 that the possible body positions are limited by the
24 known circumstances and witness testimony, and those
25 known circumstances were the artifacts within the

1 theater themselves.

2 The seatback was not shot. Now, I'm not 6'5.
3 I'm 6 foot, so I'm going to do like Dr. Thogmartin
4 just put it a little bit higher, about five inches.
5 We have to be in this position. Now, could we be
6 here? That will work. Can we be here? That will
7 work? Can we be here? That will work. Put the gun
8 down a little bit further. Can we be here? That
9 will work.

10 Look at the video. Now look at this position.
11 In order for the gunshot to be straight across, he
12 can be in this position. But we can also look at the
13 evidence to further restrict possibilities.

14 Look at the frame. Look at this position. Will
15 this work? Look at the frame. Look at the position.
16 The position that I just demonstrated, Judge, Dr.
17 Adams, their forensic pathologist, said yea to that
18 one.

19 Dr. Thogmartin did all his possibilities. You
20 saw him. That was one of the possibilities.

21 And you saw Corporal Hamilton. He didn't know
22 where the legs were, but he was propped up. He was
23 down, but he was propped up. Then what did he say?
24 "I don't know where his legs were. I don't know what
25 his position was, but after the shot he stood up and,

1 by golly, was he tall."

2 After Mr. Oulson was shot in that position,
3 there was no exaggerated step back over the seat like
4 we heard from Matt Reeves, suggesting that Mr. Oulson
5 was over here and somewhere, after being shot in the
6 heart came back over his seat, staggered down. That
7 didn't happen.

8 Matt Reeves said, "I heard my dad's voice, 'Get
9 out of my face.'" Mr. Reeves' statement to law
10 enforcement, Mr. Reeves said Mr. Oulson said, "Get
11 out of my face."

12 What was Mr. Reeves' state of mind when he shot
13 Mr. Oulson? That's the burning question.

14 Let's assume for a minute that you take the
15 approach that the Defense team wants: Throw out all
16 of the witnesses. Just throw them out. Let's take
17 that approach. What kind of analysis would that lead
18 you to?

19 You have the video. You would have Mr. Reeves'
20 statement both to law enforcement and on the stand,
21 and that's where we get to the credibility issues,
22 the perception. In order to give any weight to
23 Dr. Hayden's opinion, you would have to determine and
24 believe Curtis Reeves. The old adage, "Garbage in,
25 garbage out," that's what Dr. Hayden admitted.

1 The perceptions that were described to you by
2 Mr. Reeves, you would have to believe. We can't just
3 open up his head -- I forget which witness said, You
4 just can't open up the head and find the scary part,
5 you know, where it's scary. You just can't do that.

6 You have to go by what the person said. Then
7 you go back and try to corroborate the facts that
8 maybe would corroborate the perception, but that's
9 not what we have here.

10 Mr. Reeves engaged in an act of misdirection,
11 misleading, weaving, embellishments and lies into his
12 statement to law enforcement to achieve a goal. The
13 differences between his statements in Court and to
14 law enforcement cannot be accounted to a perception
15 disorder.

16 Mr. Reeves went into too many details and
17 explanation of those details that he wants now to
18 wash away under the guise of a perception disorder.

19 So let's look at some of the things we can look
20 at to determine the credibility of Mr. Reeves,
21 because that goes to his state of mind.

22 There's been testimony by Mr. Reeves that when
23 he returned from the manager, that Mr. Oulson gave
24 him an agitated stare, I believe was the term used.
25 The first time he said that was on the stand. You

1 can take that into consideration.

2 You can take into consideration the motivation
3 of a police officer who is firmly aware of "use of
4 force." He knows all the buzz words. He knows the
5 terms. He knows how to spin the web. You have to
6 take that into consideration.

7 And one way you can determine if my last
8 statement was true for your consideration is his
9 explanation about the popcorn. Page 89 of his
10 statement regarding the popcorn, "I'm not sure. I'm
11 not sure. If I dropped it or if he knocked it out of
12 my hand, I don't know."

13 Page 90 on his statement, "And then I
14 straightened out my glasses." We already covered
15 that.

16 "I saw the popcorn on the floor. I saw a cell
17 phone right in front of me. I thought it was mine,
18 but apparently it was his," and I'm thinking that's
19 kind of what hit me. Page 90 of his statement.

20 Let's analyze that just for a moment. Mr.
21 Reeves knows, and he admitted that he knew, that the
22 use of force is to prevent an imminent act that could
23 cause great bodily harm, death, or to prevent a
24 forcible felony. You've seen the video. The popcorn
25 didn't miss. It went right into his head area, went

1 down to his feet.

2 Perception disorder, so focused on Mr. Oulson
3 that he didn't know the popcorn just went down his
4 face, but instead he thought he was hit by a fist.
5 We can't wash that away by, he was so focused and
6 tunnel vision. We have Mr. Reeves who sat there for
7 a time looking down at his feet. "I see popcorn. I
8 see a cell phone."

9 What did Mr. Reeves say when he pulled his
10 pistol? What did he tell Detective Proctor? He said
11 "I was fully stretched out. I had my hand up, 'Whoa,
12 whoa, no, no.' At that point, I saw the blur of a
13 cell phone when he was stretched out." Saw the blur
14 and then he shot.

15 Do the circumstances suggest that Mr. Oulson
16 dropped his cell phone when he was shot or that 12
17 seconds earlier he threw a boomerang cell phone at
18 him and hit him in the side of the head? That's for
19 your consideration, Judge.

20 We heard for the first time -- this was not in
21 his law statement -- that Nicole was standing up the
22 whole time, and every time Mr. Oulson opened his
23 mouth, she was holding him back. Chad and Nicole
24 were arguing the whole time, having a conflict.
25 That's the first time we heard that.

1 Had to have a reason for that contact after the,
2 quote, alleged cell phone.

3 So what did he spin there? "He had an agitated
4 stare; therefore, I wanted to calm the environment.
5 I felt it necessary to make sure we all had an
6 enjoyable movie experience, to reach out to him and
7 say something to him," or was it his statement that,
8 "After I was hit with the cell phone, I was trying to
9 get up and get out of the way and found out it was a
10 bad idea?" For your consideration.

11 We've heard so much about the lighting
12 conditions over and over. Was it dark? What is
13 "dark"? Dark is a -- I'm going to suggest to the
14 Court is as subjective as the word "pretty." I don't
15 know. Dark is dark. Pretty is pretty. Everyone is
16 going to come in here, and you could no way go back
17 and recreate what their interpretation of dark was,
18 but that's what we're dealing with.

19 Was it dark? It doesn't matter. You were in
20 the theater. You saw for yourself exactly what the
21 lighting conditions were, and now you're able to
22 judge the credibility of the witnesses that were able
23 to say, "I could see. I could see. I couldn't tell
24 if it was a Rolex watch, but I could tell if it was a
25 watch. I could tell flip flops from shoes. I could

1 see people drinking. I could see people talking. I
2 could not make out the pierced earring, but I could
3 see a nose and a face."

4 See what I'm getting at, Judge? You could see
5 enough detail to interpret the conduct of
6 individuals. But I think what is most important in
7 judging the credibility of Mr. Reeves is why -- why
8 the lack of acknowledgment that popcorn was tossed in
9 his face.

10 Why the lack of acknowledgment that, "I saw a
11 hand come in. I saw a hand come in." That's not
12 what he says. He wants to embellish it. He wants to
13 embellish the conduct of Mr. Oulson and diminish his
14 conduct. He embellished the conduct of Mr. Oulson by
15 not describing the popcorn, but by describing a fist
16 or being hit with a cell phone because he knew that
17 just being hit by popcorn -- I can't believe I'm
18 going to say this -- just wouldn't fly.

19 Those are the things you can take into
20 consideration as far as the credibility, because now
21 you have to decide his perception, and what was his
22 state of mind? The statements, I suggest to the
23 Court, not only to law enforcement and to Your Honor
24 during his testimony, was very self-serving, meant to
25 mislead and misdirect the police, the Court to

1 achieve his goal, convincing not only Your Honor, but
2 the police, that the shooting was justified.

3 His training and his background allow him to
4 spin that web. Having popcorn tossed on him just did
5 not justify the shooting after the fact. He had to
6 embellish the conduct of Mr. Oulson in order to have
7 any attempt to convince anyone that he should not be
8 held liable for the murder of Chad Oulson.

9 Telling police that he was stretched out to
10 create distance between himself and Mr. Oulson was
11 one such embellishment to show that he was in such
12 dire straits that this man was virtually on top of
13 him, that he has -- his back was against the wall,
14 that he was doing all he could do as a 71-year-old
15 man to hold this 200-pound man off of him. He shot
16 him. He shot him because he was holding up a
17 200-pound man.

18 That's the embellishment that he spun in an
19 attempt to convince authorities and this Court that
20 he is not responsible for the death of Mr. Oulson.

21 Mr. Oulson was not virtually on top of him. He
22 was not fully stretched out when he shot Mr. Oulson.
23 His gun was not up at an upward angle.

24 What did Mr. Reeves -- he and I had a discussion
25 about index shooting and instinctive shooting. Do

1 you remember that? We don't call it index. We call
2 it instinctive. Okay, that's fine. But what is it?
3 It's shooting without looking at your sights.

4 And we talked about how I place my finger at
5 that deputy's nose, and if I close my eyes, my finger
6 is just about right under his nose, and he
7 acknowledged that. That's what it is. It's just
8 being able -- here, and I can almost go like this.
9 As long as my focus is on his center mass, I'm going
10 to hit it. No question about it. I don't have to
11 look down the sights.

12 The importance of that is what did Mr. Reeves
13 do? And, of course, this is the only thing that's
14 important: This is the height of the chair. So if
15 he's here, whatever -- what did he say? He was
16 looking at center mass, and he came up, and he
17 pressed forward, and he fired.

18 Let me just show you this all goes in line of:
19 Where was Mr. Oulson? Was he in that aggressive
20 stance?

21 If you look at 13:22:35, contact with Oulson
22 before complaining to the manager, that was his
23 second time. If you look at his body position,
24 contact with Mr. Oulson after complaining to the
25 manager, that's his body position. He's talking to

1 Mr. Oulson while he's seated in the seat. When he
2 fired, that's his body position. He was looking at
3 center mass. He was instinctive shooting.

4 I will leave it for your consideration where Mr.
5 Oulson's body was, but you know where his shot was?
6 Just like Mr. Reeves agreed, the widest part of the
7 body is right below the armpit. And where was
8 Mr. Oulson shot? Right in the heart. Center mass,
9 the widest part of the body.

10 Mr. Oulson was low. He was retreating. He was
11 going backwards. The video clearly disputes whatever
12 statements by Mr. Reeves that he wants to wash away
13 under the theory of perception disorder.

14 So what are we left with? We are left where I
15 started: Retaliation. "An action of harming someone
16 because they have harmed oneself." "Throw popcorn in
17 my face, will you?" Three witnesses, by my count, I
18 will rely -- you can rely on your own recollection --
19 had statements attributable to Mr. Reeves
20 contemporaneous with the firing of the pistol,
21 whether it was right before, during, right after, it
22 was so contemporaneous, the witnesses were having a
23 hard time separating when that took place.

24 When you talk about witness contamination,
25 witness contamination adds, it doesn't subtract.

1 Witness contamination doesn't result in the lack of
2 information, it results in acquiring more
3 information. But if the information is out there, it
4 was out there, and whether it was one people, two
5 people, three people, based on the theory of witness
6 contamination, it was out there.

7 Now, all three explained where they were, what
8 they were doing, and why they made that. Now,
9 Mr. Escobar wants you to take it one step further and
10 say because some people were lamenting about being
11 upset all over popcorn, ruined my day. Mr. Cummings,
12 ruined my birthday all over popcorn.

13 He wants you to make the leap of logic that now
14 three people are going to say, "Okay. Throw popcorn
15 in my face, will you?" Well, that doesn't make any
16 sense. You can't make that leap. You can't have
17 people moaning and being upset about their day being
18 ruined all over popcorn and, therefore, we throw out
19 everyone's testimony.

20 Now, I know Mr. Escobar has a lot of other
21 theories about why there was witness contamination
22 and exactly what went on and that is for your own
23 consideration, but I'm suggesting to the Court that
24 we have three individuals who did not use the exact
25 same words, did not attribute to the exact time, but

1 the bottom line, they all attributed it to
2 Mr. Reeves, "Throw popcorn in my face, will you?"
3 Bang.

4 That, Judge, is retaliation. That is knowing
5 that that cell phone on the floor did not hit you in
6 the face. That is knowing that you were not hit in
7 the face by Mr. Oulson. That's knowing that popcorn
8 was thrown on you. Popcorn.

9 Because Mr. Oulson was in full retreat and we
10 see in the video. I mean, even at the start of the
11 toss his body is out. He's going backwards. We
12 don't know how far back, Judge, but he ain't going
13 forward. He's going backwards. No question about
14 that.

15 We know that the stippling on the hand, there
16 was many reasons for the stippling not to be from the
17 knuckles to the fingers. That was all explained, but
18 think of the logic. Think of the logic. Do you
19 remember the logic that said, Is there a pattern
20 of -- an escalating pattern of violence? I throw a
21 cell phone. Now I throw a paper bag. That doesn't
22 make any sense.

23 Think about Mr. Oulson. What did he do? He
24 chose the most benign thing to tell this gentleman,
25 "Leave me alone." He takes a bag of fluffy popcorn,

1 and tosses it in his direction and he's backing up,
2 he's done. Does it make any sense that that first
3 choice is the bag of popcorn?

4 Now he's standing back there going, "Now I'm
5 going to beat the crap out of you," when he had full
6 opportunity, you could see where his hand is, it
7 didn't take much. If he wanted to do it, he would
8 have done it at that time.

9 It doesn't make any sense -- it doesn't make any
10 sense that after tossing a bag of popcorn that
11 someone concludes that: Now you're going to get hit
12 with the fist, not when the person is backing up. It
13 just doesn't make any sense.

14 That's why Mr. Reeves had to say, "I was hit
15 with the fist." He wasn't. He knows it. He knows
16 he shot him because he felt it was disrespectful for
17 being hit with a bag of popcorn. Retaliation, the
18 action of harming someone because they have harmed
19 oneself.

20 What was harmed? His ego. Another man being
21 constantly disrespectful, refusing to yield to his
22 orders. Mr. Reeves created the hostile environment
23 he found himself in. The hostile environment had
24 dissolved by the time he returned from the manager,
25 but he kept the hostility flames burning, by the

1 unnecessary and nonconsensual contact with Mr. Oulson
2 who, by now, was a man Mr. Reeves knew wanted no
3 contact with him, but he had a gun in his pocket, the
4 great equalizer, the compensator.

5 When Mr. Reeves shot Mr. Oulson, Mr. Oulson was
6 in retreat. It was Mr. Reeves that was pressing
7 forward. There was no imminent threat. All the
8 events were over.

9 During my opening statement, I used the analogy
10 of the Goldilocks rule. When we talk about
11 self-defense, you can't be too early, you can't be
12 too late. You have to be just right. You have to be
13 just right.

14 And it's tough. I mean, anyone who carries a
15 firearm in the State of Florida, including Mr. Reeves
16 and everyone else, they all have that responsibility,
17 including Mr. Reeves, if you're going to make that
18 call, you better be right because it's a fine line,
19 sometimes. Too early? It's not imminent. Someone
20 will have to decide. Too late? You can't shoot at
21 the car driving away. It has to be just right.

22 When Mr. Oulson was in retreat, it was too late.
23 Retaliation, the action of harming someone because
24 they have harmed oneself.

25 I'm going to use a term that Mr. Reeves used.

1 He said he was scared shitless. For your
2 consideration, Judge, I submit to you that being
3 scared shitless after an event is over does not
4 justify a shooting.

5 Your Honor, I've provided one way to conduct
6 your analysis. You may choose all, you may choose
7 your own, but please conduct the analysis and look
8 and decide for yourself, and I believe that once
9 you've conducted your own analysis, either
10 independently or with the assistance of myself and
11 even Mr. Escobar, that you will find that, in this
12 particular case, the Defendant has not met his
13 burden. The Defendant has provided insufficient
14 evidence to find that he is entitled to immunity for
15 the shooting of Chad Oulson.

16 Judge, thank you for your attention.

17 THE COURT: Thank you, Mr. Martin.

18 (Proceedings concluded.)
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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)

3 COUNTY OF PINELLAS)

4 I, CHARLENE M. EANNEL, RPR, certify that I was
5 authorized to and did stenographically report the
6 foregoing proceedings; and that the transcript is a true
7 record of the proceedings.

8 I FURTHER CERTIFY that I am not a relative,
9 employee, attorney or counsel of any of the parties
10 hereto, nor am I a relative or employee of such attorney
11 or counsel, nor do I have any interest in the outcome or
12 events of this action.

13 DATED this 8th day of June, 2017.

14
15

16 /s Charlene M. Eannel

17 CHARLENE M. EANNEL, RPR

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