

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CASE NO. 2014-CF-000216-CFAXES-SECTION 1

STATE OF FLORIDA

vs.

CURTIS JUDSON REEVES

Defendant.

TAKEN BY: State Attorney's Office
DATE: November 19, 2021
TIME: 9:00 a.m. - 1:00 p.m.
PLACE: Criminal Justice Center
14250 - 49th Street North
Clearwater, Florida
REPORTED BY: Sharon K. Allbritton
Shorthand Reporter
Notary Public
State of Florida at Large

UNSWORN TELEPHONIC
STATEMENT OF
ROY BEDARD

PAGES 1-162

APPEARANCE: GLENN MARTIN, ESQ.
Assistant State Attorney
14250 - 49th Street North
Clearwater, FL 33762

TELEPHONIC: DINO MICHAELS, ESQ.
Escobar & Associates
2917 West Kennedy Boulevard
Suite 100
Tampa, FL 33609
Counsel for the Defendant

P R O C E E D I N G S

WHEREUPON,

ROY BEDARD

the witness herein, was examined and testified
telephonically as follows:

DIRECT EXAMINATION

BY MR. MARTIN:

Q Mr. Bedard, would you state your name for the
record, please?

A Yes. Roy Bedard.

Q Mr. Bedard, this is a telephonic statement
that we're taking today. It's the continuation of
your deposition on October 12, 2021.

Do you agree to take this telephonic
statement in lieu of a deposition?

A Yes.

MR. MARTIN: Mr. Michaels, do you also agree?

MR. MICHAELS: I do.

Q (By Mr. Martin). All right. Pursuant to
Rule 3.220(h)(8) you will not be placed under oath.
And the Rule also specifies that the telephonic
statement be recorded, which it is by the court
reporter.

So, Mr. Bedard, do you understand and agree

1 that this recorded statement may be used for
2 impeachment at trial as a prior inconsistent statement
3 pursuant to the Florida Evidence Code?

4 A I do.

5 MR. MARTIN: And Mr. Michaels, do you also
6 agree and understand?

7 MR. MICHAELS: I do.

8 MR. MARTIN: Thank you, gentlemen.

9 Q (By Mr. Martin). Mr. Bedard, I've attempted
10 to structure this deposition so that we can go through
11 specific topics. It will be similar to the structure
12 that we used during your deposition. And what I'd
13 like to do is begin with the areas that we kind of
14 saved for the second deposition that was mentioned in
15 your deposition in October. I sent you a letter I
16 believe outlining those particular areas. You've
17 complied with some of the request, but you are
18 familiar with the letter and are you familiar with the
19 topics that we saved for later based on that
20 communication?

21 A Yes.

22 Q Okay. What I would like to do is, one of the
23 things that I requested that you complied with, is
24 providing me with a list of authoritative sources that
25 you plan to use to support any conclusions or opinions

1 that you may have in this matter. So I'd like to go
2 over those quickly with you, alright, sir?

3 A Yes.

4 Q What I'm going to do is I'm just gonna list,
5 or recite it to the record, the title of the article,
6 and then I have some brief questions about it,
7 alright, sir?

8 A Yes.

9 Q The first one is Event-related potentials and
10 the decision to shoot: The role of threat perception
11 and cognitive control. You provided me with that as
12 one of your authoritative sources.

13 And what area do you believe that the
14 information in that article supports any type of
15 conclusions or opinions in this case?

16 A Let me preface, I think probably the next
17 several questions you have for me by saying, that this
18 is really somewhat of a continuation of my deposition
19 where I did talk to you about some features of what I
20 would testify to if I were asked questions about it.

21 Q That is correct.

22 A And I mentioned to you some very specific
23 areas, and one of them I think was this Event-related
24 potentials area that suggests that decisions are often
25 times made long before we're consciously aware of it,

1 and that we had an opportunity of a very very short
2 period of time, less than two hundred milliseconds, to
3 actually cancel that order. So if a decision is made
4 and it gets into the nervous system and the motor
5 action begins, we only have about two hundred
6 milliseconds to change our mind, and even if we do
7 change our mind after that two hundred milliseconds,
8 the motor action will often times still be carried
9 out. For example, if you are deciding to shoot or
10 don't shoot. If your first thought is to shoot
11 because you believe that you are in great danger and
12 then suddenly something happens within that two
13 hundred milliseconds and you realize this is not a
14 shoot situation. For example, most of the studies
15 that I've dealt with have been law enforcement
16 related. You see somebody pull something out of their
17 pocket after you've ordered them to show their hands,
18 and for a moment you're not sure what it is but it's
19 black and it resembled perhaps a weapon, so with your
20 finger on the trigger you decide that you're going to
21 shoot. Suddenly you realize it's a cellphone, and it
22 happens within two hundred milliseconds, you can
23 withdraw the decision to shoot and the weapon won't
24 fire. However, if it takes more than two hundred
25 milliseconds to distinguish the difference between

1 that black object as being a cellphone or a firearm,
2 even if you realize that this is a cellphone, but it
3 has taken more than two hundred milliseconds to
4 discover that, you will then continue to fire.

5 And I think I described it to you in terms of
6 a car door last time, that, you know, we all suffer
7 from this problem of being able to veto decisions that
8 are made regarding motor actions.

9 So this is an article that really talks about
10 that. And I provided that more as a backdrop I guess
11 to a conversation we previously had, like most of the
12 articles that I put in here.

13 That's the reason that I sent that to you.

14 Q In reviewing that article did you do any
15 other inquiry into that article as it relates to the
16 methodology that was used by the authors of that
17 article and evaluating the data and coming to the
18 conclusions? Do you know how they did that?

19 A I do. I don't recall off the top of my head.
20 I mean, these are mostly articles that I actually used
21 for my dissertation. I was quite familiar with them
22 several years ago. I understand the constructs of the
23 articles, and they come to mind when I'm formulating
24 opinions.

25 I will admit that I had not gone back and

1 looked at the researched design and the, scrutinized
2 perhaps even their findings. But what I spoke to
3 earlier, the findings of this particular research, it
4 appears this comes from a peer review article out of
5 the Journal of Experimental Social Psychology. So
6 it's gone through the riggers of peer review and so I
7 find it reliable.

8 Q When we talk about peer review regarding the
9 journal, is that individuals that are employed by the
10 journal that review it to determine whether or not
11 it's appropriate for the journal, or is it individuals
12 independent of the journal that make the review, and
13 how is that information related to the journal that
14 it's appropriate?

15 A So I don't know every one of these journals
16 and how they select their review boards. I have been
17 on boards before where I've been selected. Mostly
18 what happens is they find individuals who are in this
19 particular field and this particular area of study
20 that are not employed by the journal, most of the
21 time, and they coordinate with those individuals.
22 They either have a call list or they have somebody
23 that perhaps even refers someone who's an expert in
24 this particular area, and they will coordinate with
25 them as a journal reviewer. And usually there's a

1 panel of them. There can be, you know, often times
2 like five.

3 And then those reviewers will take the
4 article in its raw form and they will review it. They
5 will make suggestions and recommendations for
6 improvement. If they find error in the research
7 they'll certainly note that. Then they send it back
8 to the original authors who will once again go through
9 the article and make changes as requested by the
10 reviewers before they publish their final versions.
11 So that's usually the way it is done.

12 It's very rear that, for example, the Journal
13 of Experimental Social Psychology would have a board
14 of people that review that. Reviewers are essentially
15 I guess hired, for lack of a better word, or consulted
16 by these journals who are peers in the field, not
17 employed by the journal itself.

18 Q That's your understanding how it should be
19 done maybe or normally it's done. Do you know how it
20 was done at the Journal of Experimental Social
21 Psychology?

22 A If I did know that I don't know it now.
23 Again, I didn't find it that important to go back and
24 scrutinize who these reviewers were. Like so many
25 articles I've read, I don't know, hundreds of them,

1 perhaps more than a thousand throughout my studies, it
2 would be just a tiny pursuit. That I'd have to at
3 some point rely on if it is a peer reviewed article
4 that, um -- and if I find something wrong with the
5 data or find something wrong with the conclusions
6 based on the data, I wouldn't generally drill down
7 deeper to answer the questions that you're asking me.

8 Q All right. In reviewing the article
9 Event-related potentials and the decision to shoot,
10 did you find any articles, peer review articles, that
11 criticized the finding of the authors of that journal
12 article?

13 A No, I don't recall finding anything --

14 Q Did you look?

15 A -- or look for criticism. I mean, the
16 nature of science is that people do reexamine and
17 retest, and perhaps there's something out there. But
18 I don't recall this being a finding that was hotly
19 contested or greatly debated within my field.

20 Q Okay. And refresh the reader's memory. What
21 is your field? We're talking about your dissertation.
22 That's where you used this article, right?

23 A Right. So my educational background again is
24 I have both a masters and a PhD in Educational
25 Psychology. And to refresh you again on educational

1 psychology, unlike a clinical psychologist, and this
2 is I think the most safe way of saying it; unlike a
3 clinical psychologist who generally deals with people
4 who are not well, that have some type of disorder, a
5 educational psychologist covers the other side of the
6 scale as well, which are people who are not only well
7 but often times very very well. For example, my major
8 was sports psychology. I think I told you that during
9 the deposition. And the sports psychologist deals
10 often times with athletes who are in performance
11 sports who deal with anxiety issues that need to be
12 resolved through, you know, the help of an external
13 counselor. So that is typically how a sports
14 psychologist perform.

15 I don't really focus on the sports side of
16 it. So my major encompasses three areas: Sport,
17 exercise and performance. I focus mostly on
18 performance because my studies were all dealing with
19 mostly law enforcement officers. As a matter of fact,
20 my dissertation was directed specifically to law
21 enforcement officers.

22 And as I described to you last time, the
23 reason that's-- how that ties back to educational
24 psychology, and perhaps more importantly sports
25 psychology, is because in sports psychology that's

1 where we find the data of stress where we actually
2 have the ability in a controlled environment to
3 empirically test stress and how it affects human
4 performance and human psychology.

5 So taking what we know about stressful events
6 that occur in high stress competition, we apply that
7 to law enforcement to see if there are any findings on
8 that world that can bleed over into the law
9 enforcement world.

10 And I think -- I don't know if we spoke about
11 this. I speak about it all the time. But it's very
12 difficult to empirically test law enforcement officers
13 in the field because, first of all, we never know when
14 a stress related event is going to occur. Secondly,
15 if they're in a stress related event it's often too
16 dangerous for a researcher to be out there with law
17 enforcement. So we find ourselves just simply doing a
18 lot of self reporting from law enforcement, unlike in
19 the sports world where we can actually set up an
20 empirical test and manipulate variables to see how
21 individuals perform, and those variables are
22 manipulated.

23 So that's kind of the bridge from the
24 sporting world to the performance world in which we
25 have, you know, real life performance oriented issues

1 that call back to the research that we discovered in
2 the sporting world.

3 Q Alright, sir. Regarding the same article,
4 did the authors of that article in their final
5 conclusion offer any caveats to their study or
6 indicate that further study was necessary in order to
7 verify any of their results?

8 A Most likely. I mean, that's the nature of
9 science. You usually have, after your findings,
10 you'll have a paragraph of all future directions. And
11 I think most scientists realize that we are all
12 building on each others' findings over long periods of
13 time.

14 So there's gonna be a literature review of
15 data that has come before the publication of this
16 article. Then there's gonna be a description and the
17 research method that were used in this particular
18 article. And then generally at the end of a lot of
19 these articles -- and I can't think of this one. And
20 I'm sorry, I didn't bring the articles with me. I can
21 probably pull them up. But I don't recall whether or
22 not there is a area of future directions that would
23 encourage somebody to not only reexamine past findings
24 of these authors but maybe point out some areas where
25 there is some question as to the ability to manipulate

1 or control variables. Sometimes there's limitations.
2 There's also an area usually in these articles called
3 limitations. There's just certain things that you
4 can't control and manipulate that have also been
5 pointed out.

6 So without knowing specifically about the
7 Event-related potentials and the decision to shoot
8 article, without looking at it, having it in front of
9 me, I can't tell you absolutely if those things are
10 there. But I can tell you that they most of the time
11 are when you're looking at peer review articles.

12 Q All right. Part of the question that you did
13 not address was whether or not the authors of that
14 article placed any caveats on the use of their
15 findings by individuals who are reading the article.

16 Was there anything that they said, you know,
17 we're not quite sure about this. There may be a
18 correlation but we haven't proved the causation so
19 don't take it to mean A, B or C.

20 Was there anything like that in their
21 article?

22 A I think it's mostly understood. First of
23 all, I very rarely, if anything, causative. Almost
24 everything is correlation. And I think it's
25 understood that when you're reading the data that they

1 don't need to put a biline in like you just framed.
2 That when you take a look at the numbers, the actual
3 data, you're looking at correlations. They can be
4 strong correlations. They can be no correlations.
5 But you're looking at correlations. Causation is a
6 very very difficult thing to prove in any respect.

7 So I don't believe there's a caveat like that
8 in this article. I think that on the surface reading
9 through the article it would be up to the reader to
10 sort of glean that idea that of course this is not an
11 absolute finding but rather there are some -- the
12 variables need to be strongly correlated with respect
13 to the research.

14 Q In order to save some time, okay, regarding
15 all of the articles that we're gonna go through, if I
16 ask you exactly the same questions that I did with
17 this first article, would your response be basically
18 the same?

19 A It would. And I think because article
20 writing is generally similar across domain, it's done
21 essentially the same way. I mean, there's courses
22 about how to read articles because they are formatted
23 in a certain way. But I think that there would be
24 very little deviation in any of these articles.

25 There are some, like for example, the next

1 one, FLETC. I'm not sure if that was a peer review
2 article or not.

3 Q No. It's a training manual from the U.S.
4 Department of Homeland Security. We're going to get
5 into that one a little bit more.

6 A Yeah. So there may be some on here that are
7 slightly different. But if they're peer review
8 articles, they're generally formatted approximately
9 the same. And so I think my answer to those, again,
10 not having these articles laid out in front of me,
11 would be approximately the same.

12 Q And for each of the articles, the very last
13 thing we spoke about as far as caveats and warnings by
14 the authors of the articles, the reader who is
15 attempting to use the findings in the article
16 understands that what they found was not an absolute
17 finding, they are simply a correlation and to what
18 degree it correlated was within the article.

19 A Right. And you should also recall, I mean,
20 during the research methods you have to-- you know,
21 the ultimate goal of all of these articles is to
22 generalize. But sometimes you can't do that. For
23 example, if you don't have a random study. And a lot
24 of the articles I read are not random studies. We
25 select law enforcement officers. I mean, it's random

1 within the field of law enforcement but they don't
2 generalize to everyone, right.

3 So the generalized ability of these articles
4 is partly based on the research design. And I believe
5 for most of these, like for example, the Johnson &
6 Raab article Take the First, this is a generalizable
7 study. It wasn't selecting a particular occupation of
8 individuals, but basically looking at how human beings
9 think under pressure. How they make decisions under
10 pressure.

11 Klein, a lot of his studies tend to be a
12 little less generalized but because he very
13 specifically looks at, for example, firefighters and
14 law enforcement officers. So I recognize that in all
15 of these articles.

16 The Lazarus article that you'll ask me about
17 is really about human beings. It does generalize.
18 It's how we appraise and develop coping mechanisms for
19 dealing with stress and so on and so on.

20 So, you know, there's several answers I think
21 to your question, one is in the research design, the
22 other will be in the limitations that may be stated at
23 the end of the article. All of those would point out
24 to the reader the caveats that you eluded to. And of
25 course if you're reading the whole article those are

1 the things that you would pick up on.

2 Q Here's what I'd like to do with the rest of
3 the articles. There's three areas that we're going to
4 discuss in a little bit: Self-efficacy, the various
5 artifacts that we discussed at the last deposition,
6 and threat assessment. Using those as very broad
7 topics. The, Take the First: Option generation and
8 resulting choices, which one of those three topics
9 would that fall under?

10 A That would be broadly under decision making.
11 And, I'm sorry, Mr. Martin, I did not write down the
12 three categories you gave me.

13 Q Sure. Let me do it again for you. We're
14 gonna talk about self-efficacy.

15 A Yup.

16 Q The various artifacts that you talked about:
17 Fragment memory, tunnel vision, auditory dissociation.
18 You know, all those things that we talked about.
19 Broadly you refer to all of those as artifacts.

20 A Yup.

21 Q Okay. And then threat assessment. Those are
22 the three topics we discussed at your previous
23 deposition. If we use those as the broad topics, the
24 question is the article Take the First, what topic
25 would that fall under?

1 A Let me just add the last one if it's okay.

2 Q Sure.

3 A I think threat assessment deserves a second
4 description, which would be decision making. Because
5 threat assessment leads to the decision that you'll
6 make.

7 Q Okay.

8 A So to be clear on that. It's not a different
9 topic but it would be threat assessment/decision
10 making, okay. So we can talk about how you would
11 evaluate an environmental stimulus and you decide what
12 you're going to do. And I would say in this case,
13 Take the First would fit under that category.

14 Q All right. Sources of Power: How People
15 make Decisions by Mr. Klein.

16 A As well it would fit under threat assessment
17 and decision making.

18 Q Stress, Appraisal and Coping.

19 A This would have a little bit to do with
20 self-efficacy. It kind of bleeds over into
21 self-efficacy. And then also threat assessment and
22 decision making because Lazarus & Folkman recognize
23 that everyone's different. Everyone has their
24 limitations and everyone views the world in a
25 different way. So that would be the self-efficacy

1 component. But the threat assessment is a continuum
2 that they would argue is consistent from person to
3 person. In other words, when you hit the threshold of
4 a challenge and it moves past your coping mechanisms
5 it becomes a threat. So it kind of bleeds over into
6 that.

7 Q All right. Information Processing in Motor
8 Skills.

9 A Decision making. You're talking about
10 Martuniak, right?

11 Q Yes. Shoot or Don't Shoot? Why Police
12 Officers Are More Inclined to Shoot When They Are
13 Anxious.

14 A You know, I don't remember if Nieuwenhuys--
15 he does talk about self-efficacy issues, but I think
16 this article is specifically about threat assessment.

17 Q Sitting Duck or Scaredy-cat?

18 A Likewise, this is gonna be threat assessment
19 and decision making.

20 Q The Tactical Edge.

21 A The Tactical Edge I'm sure you're familiar
22 with having been in law enforcement yourself, was
23 mostly a book on police tactics and how law
24 enforcement officers manage threats in the
25 environment. So this would be threat assessment as

1 well.

2 There are some areas of self-efficacy. They
3 talk about coping mechanisms but not using that
4 language. They talk about, you know, being prepared
5 with proper weaponry and things like that. So I think
6 it's a bleed over into self-efficacy as well with some
7 of what I read in the Tactical Edge. And, by the way,
8 this is not a peer review journal. This is literally
9 a text book I guess that law enforcement officers have
10 used since the mid 80s with respect to officer safety
11 skills.

12 Q Performing under Pressure: Gaze control,
13 decision making and shooting performance.

14 A This is going to be mostly -- there is a
15 discussion within here in particular, and also John
16 Vickers does talk about the artifacts that we often
17 times see when stress is introduced. Gaze control
18 would be an example of that. Attenuating stimulus in
19 the environment that are not critical at that moment
20 and attending to those things that are critical. This
21 article talks a little bit about that. But more
22 importantly it compares the elite police officer to
23 the rookie officer showing that a elite officer can
24 actually improve on the skills of attendance by
25 attending to the important things.

1 And I thought this was important in this
2 particular case based on Mr. Reeves' background, that
3 he would be-- I don't know that he'd consider himself
4 an elite police officer at the time of the shooting,
5 but he certainly has the background and experience and
6 education to qualify as an elite officer.

7 Q So his ability to overcome the artifacts
8 would be at a heightened level and you would expect
9 him to be able, at least to some level, to overcome
10 those artifacts; is that what you're telling me?

11 A Yeah, I think he would, you know, over a, for
12 example, an untrained person. It's not really -- the
13 artifacts remember are things that are left over in
14 the hindsight. So when we talk about artifacts we are
15 really talking about stress related performance. And
16 then from the stress related performance you leave
17 artifacts.

18 And when I mentioned this to you in
19 deposition, I said a lot of times when I interview
20 individuals that's what I'm looking for. I'm trying
21 to find out if somebody is just giving me a line about
22 how afraid they were or if they were really afraid.
23 Because fear generates these stress related
24 performance problems and it leaves artifacts, right.
25 So, for example, if somebody says, man, I never saw

1 that. I was standing right there. I never saw it.
2 That might be an indication of tunnel vision. Or a
3 person says, you know, gosh, the guy was shooting at
4 me and I only heard the first shot and I started
5 shooting. I didn't hear my gun shoot back. And
6 they're telling me that. That's an artifact of
7 stress, meaning that they were probably motivated by
8 fear at that time. That's when it happens.

9 So just to be clear with artifacts, I should
10 probably add to that category as well and include
11 stress related performance.

12 And I would say that to your question, yes,
13 stress related performance can be improved on through
14 training and through-- well, first of all,
15 understanding what happens to us when we get stressed,
16 but secondly, practicing under conditions and
17 circumstances that someone inoculate us to the stress
18 related performance issues.

19 And I would think that, uh -- and I do, even
20 after hearing the first interview from Reeves, that he
21 was able to, to not enter into stress related
22 performance problems in the way that perhaps somebody
23 without his training would have.

24 Q Then we have -- I don't know if this -- I
25 think this is a book. Self-Efficacy by B-a-n-d-u-r-a.

1 A It is a book. And there's a lot here, Mr.
2 Martin. And the reason that I included this is
3 because I think I specifically mentioned it during --

4 Q You did.

5 A -- our conversation during the last
6 deposition. Bandura is, I don't know, he's probably
7 credited as being, I think the father of is probably
8 too great of a title. But really one of the -- one of
9 the original researchers that dealt specifically with
10 self-efficacy issues. So this book would fall mostly
11 under self-efficacy and how individuals would define
12 their beliefs about their capabilities to exercise,
13 you know, control over themselves during various parts
14 of their life, and this could be low stress or high
15 stress. He's not specific to law enforcement. Or,
16 for that matter, he's not even specific to high stress
17 related events. He's just specific to individuals and
18 how we view ourselves in terms of what we're capable
19 of doing. And that is something that is referred to
20 as self-efficacy.

21 Q I'm going to ask you if you agree or disagree
22 with this statement, okay?

23 A Yup.

24 Q "Perceived self-efficacy was introduced by
25 Bandura (1977) as an integrated theoretical framework

1 to explain and predict psychological changes achieved
2 by different modes of treatment."

3 A Yes, I agree with that.

4 Q Since 1997, and of course we have this book
5 in 1994, are you aware of any articles or research
6 that have criticized the conceptual and the
7 methodological way in which he performed his tests and
8 gathered his data?

9 A Not specifically. I know that the field of
10 self-efficacy has evolved quite a bit, and often times
11 when that happens it's because people are critical of
12 what you have originally wrote. So I can't point to
13 an article specifically that broke down his research
14 methods and were critical to the point where they
15 said, okay, this is not true. This whole construct of
16 self-efficacy is not holding up.

17 But yes, in the 70s the construct of
18 self-efficacy has evolved significantly. And many
19 many other people-- I think, for example, if you were
20 to type in, and I'm sure you've probably already done
21 this with Bandura, you'll see a whole lot of other
22 authors that are weighing in on the construct of
23 self-efficacy and what affects it.

24 So I would say to your question, yes, there
25 has been a lot of criticism which is the nature of

1 science. It's constantly evolving. There has been a
2 lot of criticism since Bandura first introduced
3 self-efficacy and the various modes of treatment that
4 improves self-efficacy.

5 Q Are you familiar with an article by Eastman
6 and Marzillier, M-a-r-z-i-l-l-i-e-r, title Theoretical
7 and Methodological Difficulties in Bandura's
8 Self-Efficacy Theory?

9 A I can't say that I know that article, no.

10 Q I'm gonna read you a statement out of that
11 article, and I'm gonna ask you if agree or disagree
12 with the statement, okay?

13 A Okay.

14 Q "We conclude that self-efficacy theory is
15 conceptually problematic, and in particular, that the
16 central concept of efficacy expectations is not
17 unambiguously differentiated from outcome expectations
18 despite Bandura's claim to the contrary. Similarly we
19 suggest that what is actually being assessed in the
20 empirical studies is unclear. We conclude that the
21 empirical findings are less impressive when the
22 circumscribed nature of the behavioral task is
23 recognized. Finally, we suggest that resolutions are
24 both the conceptual and methodological difficulties
25 are necessary before Bandura's claim that

1 self-efficacy is a unifying construct can be properly
2 evaluated."

3 Have you come across that type of criticism
4 in your studies of self-efficacy?

5 A Yes.

6 Q Okay.

7 A I can't say I agree with the article. I'm
8 not conceding to that. I'd like you to send it to me.
9 I'd like to read it. But yes, I have--

10 Q Well I wish I could but I'm not paying thirty
11 five dollars for the article.

12 A If you send me the title I still have a
13 professorship at two different colleges. I can get on
14 the university's library and pull it down. As a
15 matter of fact, I'd be happy to do that and send it to
16 you for free.

17 Q Well I'll tell you what, I have a note here
18 to send it to you, okay?

19 A Okay.

20 Q All right. Explain to me what they were
21 saying?

22 A I'm sorry?

23 Q Explain to me what was the criticism of
24 Bandura-- how do you pronounce his name?

25 A Bandura.

1 Q What was the criticism of Bandura's studies,
2 what were they referring to?

3 A You know, from what you read me it's very
4 hard to say because you sort of read me a conclusory
5 statement.

6 Q I did.

7 A Yeah, I don't really know what their study
8 was that allowed for that kind of criticism. But what
9 I gathered from what you told me in that paragraph, is
10 that it doesn't seem to be generalizable and it
11 doesn't seem to be so significantly different from an
12 outcome oriented theory. And that may, in fact, be
13 true. I mean, this is sort of a term that's coined by
14 Bandura.

15 But in a more practical sense I think all of
16 us recognize that that's sort of the more common sense
17 level even, that we all have limitations. And so
18 self-efficacy theory deals with the idea of what are
19 your limitations. By the way, sometime they're real;
20 sometimes they're imagined. And from a psychology
21 perspective it's the imagined ones that we try to deal
22 with. It's not that we can't deal with real ones as
23 well. For example, I mean, if you're born with a
24 particular handicap, there are modes of-- um, modes of
25 psychological correction that can lend itself to you

1 performing better. This is a human performance issue.
2 And what I think Bandura has done is to grab a lot of
3 previous research regarding limitations on it. I hate
4 to use the word self-efficacy. I just don't have a
5 better word for it. But limitations on self-efficacy.
6 Why does it exist and what to do about it, and has
7 coined it under his own sort of description, and not
8 only in a book but in several books on the topic.

9 And I think some researchers, you know, don't
10 like that. I think they think perhaps he's done some,
11 I don't know, mission creed of some type as a
12 researcher and had drawn in some ideas and ideology
13 that are still not disproven but really have been
14 almost like globed on by Bandura.

15 It sounds to me like that's what that
16 conclusion of your paragraph is. But I don't know
17 that they're saying that self-efficacy doesn't exist,
18 but perhaps Bandura's description of the modes of
19 intervention probably deserve more scientific
20 attention than they feel that Bandura has given them.

21 Q Do you feel that, and of course, again, you
22 and I are talking about a conclusionary statement,
23 okay? Would it be -- well let me ask you it this way.

24 Do you agree or disagree that their criticism
25 was whether or not his studies relating to

1 self-efficacy can actually explain and, quote,
2 "predict" psychological changes? And it's the predict
3 that I'm really interested in your opinion on.

4 A Yes, I think that is what they said. And,
5 remember, they're talking about treatment. So you're
6 talking about, first of all, self-efficacy as the
7 thing exists. I think they would have to concede to
8 that, the idea that we all feel about yourselves in a
9 certain way. But the treatment is what they're
10 questioning. What Bandura has recommended is various
11 forms of treatment to improve self-efficacy.

12 Q Do you agree or disagree that it is common
13 knowledge among adults, if you will, who have certain
14 life experience, that in making a decision that they
15 will weigh their individual limitations in making the
16 decision on how to complete a specific task? That's
17 pretty common knowledge to everyone, isn't it?

18 A Yeah, I think so. I mean, you packaged a lot
19 in that statement. But yes, I mean, sometimes
20 avoidance is what adults practice and that's not
21 generally considered a good method for dealing with
22 life problems. But it is certainly one method that
23 many adults choose. For example, when you get back up
24 to the Lazarus theory to their coping mechanism.
25 Because the challenge has exceeded their ability to

1 manage it so they just simply depart. And it covers a
2 full array of possibilities from under reacting to
3 over reacting. How's that.

4 Q Okay. One of the topics and issues that was
5 discussed at your previous deposition was the reaction
6 time principle. You mentioned an author Shultz. I
7 believe it's S-h-u-l-t-z. What is the first name of
8 Shultz?

9 A Let me see if I can pull that up for you.

10 Q Is it Wolfram? A German guy.

11 A Well it's definitely a German guy with the
12 name Shultz. But I don't recall what the first name
13 is. Did I give you the name of that article?

14 Q You did not. You just mentioned an article
15 by him. And it's on page 38 of your deposition. You
16 refer to it as decision making, ability to change mind
17 in the midst of an event. And you just said there's
18 an article by Shultz and some type of scientific study
19 that he did.

20 A Yeah. Let me --

21 Q And I wasn't able to find that.

22 A I'll find it and I'll actually send that to
23 you as well.

24 Q All right. Well, if you're gonna do that
25 then we'll just move on, okay?

1 A Yup.

2 Q I'll just put a note here, will send.
3 Because there's no use talking about it if we don't
4 have it. And I can read it and then we'll just go
5 from there.

6 A All right. Just to frame it out for you real
7 quickly so you know where the context is with that
8 article. That's also about this veto. As a matter of
9 fact, that was the primary article I was talking about
10 with this ability to veto when you're talking about
11 these event related potentials. So that one would be
12 coupled with the first one that we spoke about which
13 is the Corell and Urland article that I sent you.

14 Q Yeah.

15 A That would be within that world. And it's a
16 later article. I think it's around 2018, something
17 like that.

18 Q All right. And the same questions that I
19 asked you about the Corell article, all those
20 questions, peer review and method and how they did it,
21 your answers would be generally the same as you
22 indicated from when we spoke more specifically?

23 A Yeah. As we sit here today, again, I don't
24 have a fresh memory of all the details of how the
25 article is written. But I certainly would not play

1 high ball with you on that. I'll send you the article
2 and you can see for yourself what the criticisms are.

3 Q We're now going to go down the list of the
4 specific things that we said we're going to discuss in
5 the second deposition. And I'm doing them in the
6 order that I have in that letter that I sent to you.

7 A Okay.

8 Q So here we go. What is the number of times,
9 and if you know the case name, in which you were
10 accepted as an expert in any type of video
11 interpretation, videology, photo interpretation?

12 A So it's only happened one time. And I don't
13 know if you have a list of my cases. It's the case --
14 it was in federal court and it's a case in
15 Connecticut. I think it's the only one I've done.

16 Q Where you were actually accepted as an expert
17 in video interpretation?

18 A Yes. Correct, and the use of force. I was
19 called there as a use of force expert. It was in the
20 process of giving testimony. There was a question
21 about the video. Essentially the opposing counsel was
22 declaring that the frame rate of, something like this,
23 the frame rate of 15 frames per minute meant that
24 there were seconds that were being lost. And this was
25 just simply a misunderstanding about the way the frame

1 rates are compressed.

2 And so I offered testimony after being
3 qualified as an expert in video with my background
4 working with television productions and doing video
5 editing of my own, the Court thought that I had enough
6 experience to speak openly about it. And so I offered
7 some testimony about the way that video sequences are
8 built, how they're just a series of frames, and that
9 compression rates can change between them but we don't
10 end up losing time. For example, you know, in
11 realtime with NTFT video, realtime is about 29.97
12 seconds per-- I'm sorry, frame per second. 29.97
13 frames per second. Or let's just say 30 frames per
14 second. If you have that compared to with how
15 (phonetic) that has a lower frame rate, it doesn't
16 mean that you're getting rid of things that happened,
17 it just simply means that there's a different
18 compression standard and the frames themselves are
19 essentially longer to go up that seconds. But the
20 information is there.

21 And in this particular case it was a case of
22 where the correctional officers, they said that the
23 inmates were throwing a stick at them, and no where on
24 video does it show that. And they said, oh, well
25 that's because this has been highly compressed. And

1 so that incident that probably took several seconds,
2 was just simply compressed out, that's why you don't
3 see it. So that's what I spoke about.

4 Q So now I reviewed your CV. Nothing stuck out
5 that would qualify you as an expert as you just
6 described, in particular, video interpretation as to
7 what you see. Is there something in your video, in
8 your educational background or something that I missed
9 because I didn't see that?

10 A No, you didn't miss it. It has to do mostly
11 with my experience. And it's not generally an area
12 that I even care to testify about. It just so
13 happened that in this particular case that became the
14 issue as it related to use of force, and why there
15 would be force, or at least a description of force
16 that was missing.

17 But it's not something I ever plan to get on
18 the stand. I don't hold myself out generally speaking
19 as an expert. I don't advertise that I have been
20 qualified as an expert. You know, it's not-- I don't
21 look for cases that are video related. There's people
22 out there that certainly do that. I don't.

23 So my emphasis when I'm hired is to be hired
24 as a use of force and defensive tactics expert. So,
25 you know, I haven't put anything in my resume about

1 that particular case or about any of my experience
2 working with -- actually there is something in there.
3 I think there are some notes about me working with a
4 couple of companies in Los Angeles but they're not
5 very descript that I actually did participate in some
6 editing and things like that because it's just not
7 important to me.

8 Q If you were asked and the Court allows you to
9 testify, is there anything in the Reeves case in
10 reviewing the video that you would be pointing out
11 relating to frames missing, compressed frames, whether
12 or not content is missing from the video; anything
13 like that, that you're going to rely on your, quote,
14 "expertise" as a videographer?

15 A No. There's very clearly stuff missing. I
16 don't think it requires an expert to tell you that.
17 And obviously I would address that issue. We spoke
18 about the missing 10 seconds, if you will, between, I
19 don't know, frame number 26, source second number 26
20 and second number, I don't know, 35. I don't remember
21 the numbers exactly. There's clearly frames missing.
22 We can't see what happens during that time period.
23 And I would comment on that because I think that is
24 important. But, again, that's not an expert's
25 opinion. That's just a statement of fact. If you

1 look at the video there is no frames before that 34
2 frame except the one that said 26. So we know that
3 there is seconds missing between those. I think we
4 calculated it to be around 10 seconds. And that is
5 important, by the way.

6 But I don't think that a jury needs me to
7 explain to them why that happened or how that happened
8 or -- but rather why it's important that we, you know,
9 that we aren't able to see certain things when we're
10 trying to draw conclusions about what actually
11 happened on that day.

12 Q Do you know why frames are missing?

13 A I really don't, no. I just know that they
14 are.

15 Q Do you know anything about the surveillance
16 equipment that was in the theater at the time?

17 A I saw pictures of it. I did see where it is
18 on the walls. I did not go back and -- it wouldn't be
19 important for me to do this, to research any of the
20 specs on those cameras or how video is recorded or,
21 you know, what the lighting requirements are. No, I
22 have not done that.

23 Q The next question, the same line. The number
24 of times and the cases, if you can remember, where you
25 were accepted as an expert in crime scene

1 investigation?

2 A Never. I don't hold myself out as a crime
3 scene investigator.

4 Q Same question. Interview or interrogation
5 techniques?

6 A I don't believe that I've ever been accepted.
7 I have talked about it in use before but not as an
8 expert but rather as a descriptive to leading up to
9 use of force and respecting stand your ground cases,
10 you know, where law enforcement officers have drawn
11 certain conclusions that sometimes might be
12 inconsistent with what I discovered in reviewing the
13 case. I would talk about those kind of things, but
14 not from the perspective of an expert here's what
15 should have been done.

16 Q Okay. Page 93 of your deposition is where
17 I'm picking up on our next discussion. Discuss what
18 impact, if any, the previous testimony of witnesses
19 who heard Mr. Reeves say the words to the effect,
20 "Throw popcorn on me," has on any aspect of your
21 potential testimony, including, but not limited to
22 human factors, self-efficacy, objective
23 reasonableness, or any opinion or conclusion?

24 And you recall in the letter I provided you
25 the names of the individuals and their sworn testimony

1 where they swore to those facts.

2 Did you have a chance to review the immunity
3 testimony of those individuals or their deposition?

4 A I did.

5 Q Okay. Are you prepared to discuss that topic
6 then with me?

7 A Yeah, I think so.

8 Q Well, let's go ahead and start with those
9 words being uttered by Mr. Reeves contemporaneous with
10 the firing of his firearm.

11 What is the significance, if at all, in any
12 opinion regarding the reasonableness of Mr. Reeves
13 shooting Mr. Oulson?

14 A Assuming that he said that?

15 Q Well, we have three people under oath that
16 said he did. So are you contesting whether or not
17 those words were in fact said?

18 A You know, what I read was that they heard him
19 say that and then he fired a shot.

20 Q Yes.

21 A If you look at the video I think a reasonable
22 person will see that the timing of the shot in
23 relationship to the popcorn throwing occurs so quickly
24 that that sentence probably could not have come out
25 before the shot is fired. That's what strikes me

1 first of all. And I think that should be pointed out
2 to a jury. We can't see or-- I'm sorry, there's no
3 audio on the video. But I think the jury would agree
4 that that entire sentence probably could not fit in
5 the timeframe between when the popcorn is thrown and
6 the followup shot, it happened so quickly.

7 That said, something very interesting
8 happened when I did interview Mr. Reeves -- and I know
9 you want to talk about that. Reeves said to me he
10 heard that also. And I thought that was very
11 interesting because I hadn't considered the idea that
12 someone perhaps in the theater, someone else may have
13 said that. And I tried to think about why somebody
14 might have said that. And it occurred to me that, you
15 know, somebody who is watching this on the outside, a
16 highly stressful event, may have engaged in a moment
17 of levity. By the way, I'm completely speculating as
18 to why that would happen.

19 But I think we're also speculating about who
20 said it. Because even though people said they heard
21 it said, remember, it's a dark movie theater. I'm not
22 sure that anybody -- and they may go up there and say,
23 no, that's absolutely him. But I don't know that it
24 was because Reeves tells me he heard somebody else say
25 something like that.

1 So I thought that was quite interesting, when
2 I thought that it sort of changed my perspective a
3 little bit about why that would have been said when I
4 found out that perhaps somebody else said it.

5 Q So let's assume that the words were said by
6 Mr. Reeves contemporaneous with the firing, either
7 immediately before; immediately after, but
8 contemporaneous with the firing of the firearm. What
9 significance do you put on that statement as it
10 relates to the reasonableness of shooting Mr. Oulson?

11 A I think it's for a jury to decide. I think
12 it's inconsistent with his later statements where he
13 tells us he didn't even know the popcorn was grabbed.
14 He said he didn't know if it was knocked out of his
15 hands or he dropped it. So he seems to be a little
16 bit in the dark of even how the popcorn gets spilled.
17 So it would be really weird for him to have said,
18 "throw popcorn at me, will you," knowing full well the
19 popcorn is being throw at him and then later to come
20 back and say he didn't know that was the case.

21 And he said it I believe in his first
22 interview. So I don't know that he necessarily would
23 have calculated that he should say he didn't know
24 anything about the popcorn. It just seemed like a
25 very honest answer when they asked him about it.

1 So I don't know that it has any effect at all
2 on my overall opinion that he was under attack. It
3 was a continuous attack by a fairly large person. And
4 based on the self-efficacy issues that I have read to
5 you I think -- did we read those on the record last
6 time? I don't remember if you let me do that or not.
7 That he had a reasonable belief that he was, at the
8 time that the popcorn was thrown, not because the
9 popcorn was thrown, but at the time the popcorn was
10 thrown he had reasonable belief that he was in
11 imminent danger of being significantly injured or
12 killed.

13 So that's sort of my opinion still even
14 having gone back and looked at that statement.

15 Q All right. We're going to continue this
16 discussion, but I want to direct your attention so you
17 know the source. I want to direct your attention back
18 to the basic recruit manuals that were published by
19 the Florida Department of Law Enforcement,
20 specifically Chapter 4 dealing with defense tactics
21 which you previously indicated that you in the past
22 have had some input as to the material in that
23 chapter.

24 A Right.

25 Q Do you recall in the section dealing with

1 objective reasonableness that the recruits are -- it
2 is explained to the recruits that ability, opportunity
3 and jeopardy/intent are factors that are determined --
4 or can be used to determine reasonableness of their
5 actions.

6 Do you recall that in the material?

7 A Yes.

8 Q Do you believe that to be true?

9 A Yes.

10 Q All right. Do you also believe that if any
11 one of those negate reasonableness then a conclusion
12 can be made that the actions were not reasonable.

13 Would you agree with that?

14 A So again, we're talking about two different
15 types of reasonableness. When you're formulating
16 opinions of course they're subjective. When you
17 evaluate the opinion after the fact it's objective.

18 So what I mean to say by that is that if
19 Reeves believed that in this case Mr. Oulson had the
20 ability to do him great harm, he had the opportunity
21 to do him great harm, and he was -- his motivation or
22 intent was to do him great harm, that is a sufficient
23 use of force. It would be up to a jury of course to
24 decide objectively whether or not the ability,
25 opportunity and the intent existed, or jeopardy

1 existed. And of course we don't know that yet.

2 Q All right. And --

3 A So usually in the hindsight-- I'm sorry.

4 Q No, go ahead, Mr. Bedard.

5 A Usually the objective evaluation of decision
6 making is done in the hindsight of an event. When law
7 enforcement basic recruit officers are instructed in
8 objective reasonableness, they're told this is the
9 yard stick by which you will be measured. It's not
10 intended to be all inclusive and to make decisions for
11 them before they leave the academy. That's not the
12 point of objective reasonable trait. It is simply to
13 describe to the police officers the yard stick by
14 which they will be measured. And I think that it is
15 most certainly in deadly force cases something that I
16 always look at to also objectively decide or evaluate
17 and opine as to whether or not something was
18 objectively reasonable.

19 But it is not a standard that you can apply
20 when you are the subject of force, which in this case
21 Mr. Reeves was. But he has made it clear to me that
22 he believed that Mr. Oulson had the ability, had the
23 opportunity, and he was in great jeopardy. And I have
24 no reason to dispute that.

25 Q In looking at the factor jeopardy/intent,

1 would you not agree that if Mr. Reeves did in fact say
2 the words "Throw popcorn in my face," that that would
3 indicate in his mind that the threat was not a threat
4 necessitating deadly force, and that his intent as the
5 victim was not to use deadly force or commit great
6 bodily harm against Mr. Reeves?

7 Would you agree with that?

8 A I think so. But let me state that you can't
9 shoot somebody for throwing popcorn at you.

10 Q Well we can all agree on that, Mr. Bedard.
11 So let me make a big note of that.

12 A Yeah, I think that that's correct. If you
13 get popcorn thrown at you that's not a grounds for
14 deadly force. And you know you have popcorn being
15 thrown at you. That's not grounds for deadly force.

16 I'm not sure that that's the bridge that
17 we're able to cross with Mr. Reeves. I don't know
18 what he said. Like I said, he claims to have heard it
19 himself, that there was another voice in the theater
20 that said that.

21 But I think that's what this case has
22 devolved to. I think, you know, partly through the
23 media that this is a case of a man shooting somebody
24 over having popcorn thrown at him. I don't see it
25 that way when I go back and look at the actual

1 evidence of the case. But it seems to me that that's
2 the part we're trying here.

3 Q We'll cover that more in your final
4 conclusions. So I'm gonna move on to the next topic.

5 In your depo page 98 through 99, what facts,
6 if any, from defense expert Cohen's potential
7 testimony will you use in any way, including in your
8 explanation of subjective facts?

9 I think there was discussion about well maybe
10 she has some scientific basis that correlate with
11 self-efficacy.

12 Do you recall that conversation we had?

13 A I do. You know, I don't intend to really
14 rely on Cohen's testimony. I don't think it's
15 necessary. I think, once again, going back to
16 self-efficacy just from a reasonable man perspective,
17 I don't think there's so many people that will think
18 that Mr. Reeves, who is elderly, who is there with his
19 wife at a movie theater who claims to be, and probably
20 can provide records, I don't know, of having
21 arthritis, a bad back, he's clearly overweight, he is
22 definitely much older than Mr. Oulson, you know, that
23 he can't defend himself properly in a fist to cuffs
24 with Mr. Oulson. I think a reasonable person will
25 agree with that.

1 So I don't know that we need to get into the
2 science of how your body deteriorates as you age.
3 Most of us know that too. Certainly if you are an
4 older person you know there are things today that you
5 couldn't do years ago, in most cases.

6 So I think I'll leave it at that. I think
7 the description of, you know, what Mr. Reeves is, what
8 he claims to be and who he believes he is, and what
9 his potential abilities are, and I think it's very
10 sensible to me. Again, I find no reason to think that
11 Mr. Reeves is making these medical claims up.

12 Again, he immediately starts saying, man, I
13 couldn't do anything. You know, if I was 20 years
14 younger, he says. He says, I'm so full of arthritis I
15 didn't even know if I could shoot the gun. He says,
16 you know, basically I can't take anybody anymore. He
17 makes the suggestion that he should have I guess got
18 out of the chair and went fist to cuffs with the much
19 younger six foot four assailant.

20 So I don't think that I have -- there's not a
21 lot of work there for me to I think to convince a jury
22 that he did not have a sense of self that was adequate
23 to do a -- to try to hold off Oulson's attack with the
24 use of bare hands. And I'll leave it at that.

25 Q So you believe the members of the jury, based

1 on their life experience, that they will know that
2 themselves and recognize in themselves. Dr. Cohen
3 doesn't need to tell them that. That's pretty much
4 common knowledge for them?

5 A I think they'll know when you age -- I don't
6 know what Dr. Cohen is going to tell them. But, you
7 know, when you age your body does break down. And I
8 know the Court demands those levels of scientific
9 analysis, and there's nothing wrong with that.
10 There's nothing wrong with telling somebody that
11 rather than making assumptions.

12 But my flight is the primary to talk about
13 the use of force. So if Ms. Cohen goes in and offers
14 that testimony and explains why your body breaks down
15 as you age, to me that's sufficient. I think the jury
16 is ready to hear now about a use of force transaction
17 with somebody doing-- when we have officer subject
18 factors, as we call them, in the academy. In this
19 case we have a subject -- subject factor. It's the
20 same basic theory. You've got one individual who has
21 a particular capability and competency. You got
22 another individual who has a particular capability and
23 competency. And one of those capabilities is gonna
24 have everything to do with your age and your physical
25 fitness level.

1 And I can start there. I don't need to
2 explain why Oulson is more equipped for a fist fight
3 than Mr. Reeves. I don't think I have to do that.

4 But I wouldn't sit here and tell you that
5 Cohen's testimony is not necessary, it's just not
6 necessary for me.

7 Q And would you not agree that the members of
8 the jury, the adults based on their life experience
9 and having made decisions based on their own
10 limitations, would know that people make decisions to
11 complete a particular task based on their known
12 limitations; they know that, right?

13 A You know, I don't know. I don't know what
14 people know about that. But to me it seems common
15 sense that if we're specifically talking about age
16 related debilitation of people, if you are old, and I
17 don't even know who's gonna be sitting on the jury,
18 would know that. I do know, you know, if you're
19 younger you may have a different perspective. And if
20 you're sitting on the jury you perhaps need to hear
21 what happens when you get older.

22 But if you're old, I think yes, your life
23 experience will tell you that depending, you know,
24 when we get past, for example, 30, I mean, there are
25 physiological changes that Cohen can talk about. For

1 example, with men there's a drop in testosterone,
2 which is gonna lead to, you know, lower bone density.

3 And again, I'm not testifying here. That's
4 not an area that I need to testify about. But she
5 could certainly do that. And she can talk about
6 perhaps even reaction time and why that would slow
7 down.

8 So if you're a young person perhaps you need
9 to hear that. Your opinion is just as valid as the
10 old person sitting next to you when you go into the
11 jury room.

12 So I think that Cohen's testimony, once
13 again, may be important to lay a foundation. But for
14 me talking about use of force transaction, which is
15 essentially what I've been hired to do, I'm gonna go
16 in there assuming that the jury knows that Mr. Reeves
17 is elderly and is in many ways debilitated by his own
18 admission, and perhaps, like I said, by medical
19 records as well. I don't know. And take it from
20 there.

21 Q And based on the jury's life experience,
22 would you not agree that they're well aware that
23 limitations dictate how you decide to complete a
24 particular task; they know that, right?

25 A Yeah. I wouldn't know what the jury knows.

1 I mean--

2 Q You would expect them to know that because
3 they've gone through life making decisions like that,
4 right?

5 A Well I'm sure that you've heard of the Darwin
6 Awards. This is sort of a humorous way of looking at
7 removing people from the gene pool who don't know
8 their limitations. And so there are some people I
9 guess who just don't know that. I can't say what the
10 jury experience is.

11 Q Would you expect that when the jury hears,
12 and I'm gonna use an example, information that a man
13 missing a leg using crutches made the decision to use
14 the elevator as apposed to the stairs, it would be
15 reasonable for them to conclude that that decision was
16 based on his limitations and they don't need anyone to
17 tell them that, right?

18 A I'm not sure that's true, Mr. Martin. I
19 think, you know, there are many many people who -- for
20 example, one of the things that I learned at the
21 academy when we were talking about cultural diversity
22 is to be very careful on how you treat people that
23 have obvious limitations. For example, if you have
24 somebody who, I don't know, perhaps has one arm, to
25 run in front of them and pull the door open, they

1 would be very insulted because it suggests to them
2 that you're not capable so I better do it for you.

3 So I think a lot of people using your example
4 may, in fact, want to try to challenge themselves to
5 go up a flight of stairs to prove to themselves that
6 they are capable of doing things that perhaps other
7 people think they aren't capable of doing.

8 And I think that's the whole notion of
9 Special Olympics, is that --

10 Q Alright, Mr. Bedard, I'm gonna stop you
11 because you went away from my question. So let me
12 rephrase it just a little bit for you so you can help
13 me understand where you're coming from, okay?

14 And I apologize for interrupting but you just
15 weren't answering my question. So let me rephrase it.

16 You have that same scenario. And the issue
17 is, was it reasonable for the man without a leg using
18 crutches to use the elevator?

19 Would the jury be able to conclude without
20 any assistance whatsoever that of course it was
21 reasonable for a man with one leg using crutches to
22 use the elevator? They don't need anyone to tell them
23 it's reasonable or not reasonable.

24 A Well I can tell you I don't have crutches and
25 I use the elevator all the time. And I don't think

1 that's unreasonable either. So I don't know. I don't
2 know how to answer your question. And I think I was
3 answering your question before. I think you didn't
4 like how I answered it.

5 But the facts are people are motivated by
6 different things. And this is a whole area. It's a
7 whole field of study on motivation. And for me to
8 decide what a jury, which is a very abstract/
9 construct anyway.

10 Q Okay.

11 A Now if it was about motivation and what
12 causes people to get on elevators with one leg, I just
13 can't do that. I don't think you can either. Because
14 it's not unreasonable, agree, for a person with one
15 leg and crutches to get on an elevator. But it's also
16 not unreasonable for me who is fit and has two legs to
17 get on an elevator.

18 So I guess I don't know how to answer that.

19 Q And you don't need anyone to tell you that
20 either, do you, because you know that?

21 A To tell me what?

22 Q Whether or not it's reasonable/unreasonable.
23 You can make that decision for yourself, can you not,
24 like you just did?

25 A I think it's reasonable for a person with one

1 leg or two legs, or in some strange case maybe even
2 three legs get on an elevator.

3 Q So you can make that decision yourself
4 without any assistance from anyone, right?

5 A I don't know that I'd be presented with that
6 question. But yeah, I don't think I would find it
7 unreasonable for a person with one leg to get on an
8 elevator, if that's the contrarian answer to what
9 you're asking me.

10 Q All right. We're going to move on to another
11 topic. Thank you for being patient with me.

12 There was some information that was provided
13 to you after the first deposition, some of it we knew
14 was going to be provided and then Mr. Michaels sent me
15 a list of additional material. So I want to go
16 through that real quick.

17 Did you review the additional material that
18 Mr. Michaels sent you?

19 A I did.

20 Q All right. He sent you Mr. Knox' deposition
21 and photos. And I asked you in your deposition on
22 page 100, what measurements, if any, taken by defense
23 expert Knox will you use in any way to support any
24 opinion or conclusion.

25 So after reviewing his deposition and photos,

1 are you going to use anything from Mr. Knox' potential
2 testimony?

3 A I don't think so. Again, I think a large
4 part of the deposition you took with him had a lot to
5 do with use of force issues, and I questioned that,
6 why that was the case. I'm certainly not gonna rely
7 on him. To be honest with you, I think he wasn't
8 correct in a lot of what he answered about, for
9 example, reaction time and things like that.

10 But even the measurements are sort of
11 unknown. I mean, even after he did a workup on the
12 theater itself. I mean, I know that there's a foot
13 and a half between the back of one seat and the front
14 of another. I mean, I may rely on that. I don't
15 know. I don't know how helpful that will be.

16 But because there's so much of Mr. Oulson you
17 cannot see as he exits the scene after throwing the
18 popcorn and is finally fatally shot, there's a lot of
19 guesswork here even for the crime scene analyst.

20 So it wasn't terribly helpful to me because
21 we're speculating about distances. It wouldn't be
22 Knox' deposition except that he mentions, you know,
23 the stippling, for example, in Mr. Oulson's hand. I
24 mean, that would be kind of important because it shows
25 that he is still close enough to, to Mr. Reeves to,

1 we'll say, reach out and touch him.

2 But I didn't find anything that was terribly
3 helpful for my use of force analysis that Knox gave.
4 The pictures are probably the best thing about it for
5 me because it really sort of -- they took so many
6 pictures of the inside of the theater. And I know it
7 doesn't look like that anymore. But that was a little
8 bit helpful to help me kind of put myself in that
9 place at that time.

10 Q How is it helpful in that respect?

11 A Just because I could clear the image up from
12 the grainy video that I had been looking at. I mean,
13 I can see the theater. It was black and white. You
14 know, it was shadowy. It was grainy. Obviously it
15 was broken. But the Knox photo gave me an opportunity
16 to just stare at the video in it's full color. I
17 thought they were very well done by the way. I
18 thought that the lighting was brought up well enough
19 so that you could make out the details and the
20 relative distances from seat to seat, and how wide the
21 theater was, and where the cameras were and things
22 like that.

23 Again, I don't plan to offer any testimony,
24 which I think is your question, about anything in
25 there. But I will tell you after having looked at

1 those photos, those were helpful for me to just get a
2 better picture of the scene.

3 Q Well the question was, are you going to use
4 any of his testimony as far as measurements to support
5 any of your conclusions, not whether or not you're
6 going to testify like he did, but whether or not
7 you're gonna use any of that data; data A supports my
8 opinion B?

9 A The only thing that I may possibly cite would
10 be the foot and a half distance between seats. That's
11 the only thing I gleaned out of there that I didn't
12 actually know because I didn't take measurements.

13 Q And how is that significant to you?

14 A Just because it shows proximity. And I think
15 when you're talking about use of force and you're
16 talking about allegations of where Mr. Oulson was and
17 why Mr. Reeves would perceive him as a threat, um, 18
18 inches, if he is leaning over the seat, and it looks
19 to me in the video like he is, is awful close. It's
20 certainly within an arm's length. And it's certainly
21 within the quarter second timing that we try to avoid
22 using both relative position and reactionary gap.

23 So Mr. Reeves is kind of trapped in an area
24 where he can't go any further. He's got a wall to his
25 back. He's got a person that's within that striking

1 distance that can very quickly throw a very serious
2 blow at him. And now we have the measurement of it
3 being approximately 18 inches between the front of his
4 seat and the back of Mr. Oulson's. It's pretty close
5 in a fighting perspective. Of course, we would never
6 teach someone to stand that close to an individual
7 unless they were in control of the situation. For
8 example, if they were handcuffing or something like
9 that or were clearly dominating the situation.

10 But from a defensive perspective we would be
11 trying to create distance. That's an awful close
12 area. So I may cite that on the stand if I'm asked a
13 question about it. And I image perhaps you will ask
14 me a question about that because distances do matter
15 in use of force transactions.

16 And so that's the only real measurement
17 information that I gathered from the Knox deposition
18 that I think may somehow perhaps support my opinions.

19 Q I want to go ahead and touch on one statement
20 that you made during this discussion. You indicate,
21 when we were talking about the close distance, you
22 made a statement, looks like he's leaning over the
23 seat to me.

24 Do you remember making that statement?

25 A Yes.

1 Q And what are you referencing when you made
2 that statement? What material are you using to make
3 that statement?

4 A Just the video.

5 Q All right. And do you know specifically
6 where in the video that, quote, "It looks like he's
7 leaning over the seat to me"?

8 A Well, in anticipation of these kind of
9 questions I've actually got this on my screen. So let
10 me wheel back a little bit. And it looks like the
11 first frame that I have is -- do you have your pen
12 out?

13 Q Yes.

14 A Is 132636.366.

15 Q Okay.

16 A Okay?

17 Q Yes.

18 A And that goes on for a little while, by the
19 way. He doesn't recoil from leaning over the seat
20 until about, I don't know .733. Now there's a caveat
21 to that.

22 Q Well you're gonna have to do the whole frame
23 number for me.

24 A So it will be 132636.733, where I can still
25 kind of see his face.

1 Q And those are the frames where we see the
2 grabbing and tossing of the popcorn, right?

3 A Yes.

4 Q Okay.

5 A Now, the caveat to that is that this first
6 frame that I gave you, this .366 frame, is the first
7 that you can even see Mr. Oulson. So I have to assume
8 that he's there before this frame because when it
9 opens he's there. So I don't know if he's there for
10 10 seconds, because there's a blank spot there. I
11 don't know if he's there for four seconds. I just
12 know he's there before this frame opens. So I don't
13 want to leave the impression that he's there for a
14 millisecond, or a few milliseconds because I don't
15 know. I can only see his face in that .366 frame.

16 Q Okay.

17 A And that's the frame that I'm able to stop
18 with my crude equipment. I'm able to stop this and
19 actually look on a freeze frame. That's the first
20 earliest frame that I can see.

21 Q I'm familiar with that part of the video.
22 Any other parts of the video where it looks like, to
23 you, he's leaning over the seat other than the
24 information you already gave me?

25 A I think -- let me go back to the second 26.

1 Hold on one second. Because I think there's a moment
2 there where he's also leaning over the seat. I'm not
3 sure that he's in a standing position but I think you
4 can certainly see that there's a person that is coming
5 over the back seat, you know, perhaps twisted in the
6 chair or something like that. So give me just a
7 second. Yeah, so --

8 Q Give me the frame number.

9 A Yeah. It's 132626. And I'm at .189. But
10 just before that, and tinkering around again with my
11 crude Apple laptop, I can't quite catch that
12 millisecond frame, but there's definitely somebody
13 that's leaning over the seat towards Mr. Reeves. And
14 it almost looks as if there's an argument. And the
15 reason I say that is because Reeves actually leans
16 forward towards him. And now remember this is about
17 10 seconds earlier than the last frame that I told
18 you. So it looks like this is kind of where the
19 verbal exchange is starting between the two of them.
20 Perhaps Mr. Reeves is turned around-- I'm sorry, Mr.
21 Oulson is turned around in his chair. Perhaps he
22 slung an arm over the back seat. So that would be
23 coming over the chair as well, at least part of his
24 body would.

25 But I see that as not the moment where the

1 cellphone is alleged to have been thrown and his
2 glasses are knocked off. And I tell you why I say
3 that, because at the conclusion of this when Reeves
4 recoiled back into the seat, I noticed that he makes
5 no adjustment to his glasses. And he tells me when he
6 gets hit in the face by this or cellphone or whatever
7 it might have been, that the first thing he does is
8 kind of bring his hand up to put his glasses back on
9 after the shot. So he's kind of working blind.

10 But that 10 seconds later, it doesn't happen
11 here. So I don't think that this is where the actual
12 or initial exchange of the cellphone striking him.
13 And we do know the cellphone is at his feet. So
14 somehow it ends up over the back. But I don't think
15 we can see that. I think that's the part that's in
16 the blackend frames.

17 Q What blackend frames, the eight seconds?

18 A Yeah, eight or however many seconds. In
19 between 26, and what did I say the other frame was,
20 36?

21 Q You believe that's when the cellphone was
22 thrown?

23 A Yes.

24 Q In the eight second gap before the toss of
25 the popcorn?

1 A Yup. And, by the way, I did see the
2 luminescence that everyone is talking about as well.
3 I don't know what it is. I don't think anyone knows
4 what it was. If I were picking a side, I would pick
5 the side of saying that's probably the shoe. That's
6 what I would say from my observation. It looks to me
7 like it's over in a different section. It doesn't
8 look like it's where the phone is found over in
9 Reeves' section. So, and it's only there for a flash.

10 But I don't think this is the moment of
11 changing hands, this 26 and 27 second moment. I don't
12 think that's where the fight starts. That's what my
13 conclusion is in looking at this. I think this fight
14 starts in the darkness before second 36, I think is
15 the frame I gave you, that we can't see, where he's
16 now standing there. So I think he gets hit by the
17 phone and within a second or two reaches over, that
18 follows up with the popcorn in the face. And we can't
19 see that. We can only see the popcorn to the face.

20 Because as I mentioned to you, and I know
21 you'll ask me about this, then you see Reeves drop
22 back into the seat, bring his hand up to his face.
23 And he tells me this is where he adjusts his glasses.
24 He also tells me at this point he feels the sting that
25 he's been hit in his left eye. And I mentioned to you

1 during deposition, you can actually see his elbow come
2 up and kind of move up and down. He's kind of rubbing
3 that area. And of course there are other witnesses
4 that I sent you that saw that as well.

5 So my conclusion in looking at this is that
6 this fight is occurring at probably second 33, 34,
7 something like that, that we can't see, that's not on
8 video. That would be most consistent with what story
9 Reeves has been telling.

10 Q Okay.

11 A I'm trying to stitch together 26 and 36. I'm
12 just not seeing this as being the active fight
13 sequence.

14 Q Okay. One of the things we talked about in
15 your deposition on page 72 and 73 was the autopsy
16 report. I sent you the autopsy report. You mentioned
17 that you had a question about trajectory.

18 A Yeah.

19 Q Did you have a chance to review the autopsy
20 report?

21 A I did.

22 Q And what, if anything, in the autopsy report
23 supports any opinions or conclusions that you have in
24 this case?

25 A Just that the location of impact and the

1 trajectory suggest that-- I think what we can actually
2 see in the video is that it's being fired upwards,
3 meaning that Mr. Reeves is at a lower position than
4 Mr. Oulson when the shot is fired. And also most
5 importantly, Oulson is virtually facing him. So he is
6 turned and facing him. He's not shot in the back or
7 even in the side. He's shot right in the chest. And
8 this would be consistent with a threat, right, that
9 squares to a target. So I think that's relevant.

10 Q All right. On page 72 of your depo I
11 discussed whether or not you saw any crime scene
12 photos, including photos of Mr. Reeves. We've
13 discussed the crime scene photos. The photos of Mr.
14 Reeves, and specifically I guess I'm referring to the
15 photos taken in the theater where he's sitting there
16 and there's the redness of his eyelid.

17 A Yup.

18 Q All right. Any of that information are you
19 gonna use to support any opinion or conclusion in this
20 case?

21 A I mean, only that it's forensic and it seems
22 to support his version of events that something hit
23 him in the face. Again, you know, when you do these
24 analysis you look for reasons to doubt. It's sort of
25 a scientific method. You're trying to falsify what

1 people are telling you. This is very much in support
2 of his version of events. I mean, it's helpful to see
3 something has happened to his eye. I don't know what.
4 But it certainly is not inconsistent with his
5 statements about what happened to him moments before.

6 Q You made a statement, and I just want to
7 followup on it because I guess I may have to talk
8 about this later. I don't know.

9 You mention scientifically must try to
10 falsify what a person told you. What does that mean?

11 A So scientific method -- you know, and I think
12 it helps having had gone to graduate school because it
13 helps me understand this a little bit better. But I
14 think the same rules apply, as a matter of fact I know
15 they apply, when you're doing any type of forensic
16 evaluation, or for that matter even an investigation.

17 And what you're constantly trying to do is
18 decide that something is, in the words of the law,
19 beyond a reasonable doubt. And that is exactly the
20 same standard that science uses, it tries to conclude
21 things beyond a reasonable doubt. And when you
22 conclude things beyond a reasonable doubt it is
23 because you have been able to eliminate other
24 possibilities.

25 And the only way you can eliminate other

1 possibilities is you do that through falsification.
2 You take a look at what's being offered and then you
3 try to figure out if your hypothesis has another
4 explanation. And so you come up with a variety of
5 different conflixtions perhaps that have caused this
6 effect, and then you one by one you eliminate them.
7 You falsify them. So that the only possible reason
8 that this is happening when we show correlation, and
9 this is how, you know, SPFS and other types of
10 statistical programs work, the only possible
11 conclusion from the study is that the dependant
12 variable is being affected by this identified
13 independent theory. And so in science of course
14 that's the whole process.

15 But in social studies, for example, things
16 like by police investigations, we should be applying
17 that same standard, which means that if somebody tells
18 you something it may not be true and you should not
19 assign credibility of how you feel about it or what
20 you think about that person, but rather what you are
21 able to determine through falsification. And if you
22 can't falsify the statement then it's assumed to be
23 true. If you can't falsify the evidence it's assumed
24 to be related. Things like that.

25 So that's kind of what I mean when I talk

1 about falsification. Or when you look at a case like
2 this you're not able to, or we are not able to
3 falsify. There's nothing to suggest that Mr. Reeves
4 isn't telling the truth. And I would look for that.
5 If he claimed something and all of a sudden we found
6 out, well okay, well the evidence shows that couldn't
7 be the forensic evidence. That could be for one of
8 two reasons. One, because of, what I know you spoke
9 with Knox about. And we didn't spend a whole lot of
10 time talking about it. Could be perceptual
11 distortion. Somebody made us feel something that
12 isn't quite accurate because of stress related issues.
13 Or generally it could be a lie, absolute. So I think
14 that has to be taken into consideration.

15 But in this particular case I find nothing
16 that Reeves has said to be demonstrably untrue, with
17 the exception of perhaps being suspect of him giving
18 self serving statements, I find nothing to be
19 demonstrably untrue.

20 And I think to the original point, if I can
21 circle around now and kind of conclude what I'm
22 saying. When you talk about redness to the eye, that
23 suggested he's telling us the truth, that there's
24 something that made contact with his eye.

25 Q Okay.

1 A Like he says.

2 Q And where are you getting this method that --
3 what's this method called? Is it a method or
4 something you made up or what?

5 A No, no. Scientific method, I mean, is very
6 well known.

7 Q What is it?

8 A It's in the literature. I just explained it
9 to you.

10 Q Okay. What's the name of it?

11 A The Scientific method.

12 Q Yeah. What's the name of it?

13 A That's what it's called.

14 Q Scientific method?

15 A Yeah. Yes. Who's on first. That's what
16 it's called. And if you want to be more specific to
17 really sort of get in the, I guess the crevice of the
18 Scientific method, it would be the process of
19 falsification. That's what that's known as. But
20 mostly what I spoke to. I mean, there are other
21 methods when you're doing science. But it is the
22 Scientific method.

23 Q Is it also known as the null hypothesis?

24 A Yes, the null hypothesis.

25 Q Why can't we just say that? You make me pull

1 it out of you. Come on now.

2 A Well the null hypothesis is part of the
3 Scientific method.

4 Q All right. And is that, in fact, what you're
5 using here, what you just described, is the null
6 hypothesis?

7 A I mean, in a general way. Again, this was
8 not a scientific study. I mean, this is just
9 basically using the same logical sequencing that you
10 would if you were doing scientific study. If you
11 could actually have some controls and, you know,
12 manipulate variables you would use the same process.
13 That's kind of how my brain works. So it's natural
14 for me that when I get something I'm skeptical. I'm
15 automatically skeptical. I think that's the nature of
16 any scientist is skepticism.

17 So my first question is how do I eliminate
18 what's being told to me. How do I show that that's
19 false. And if I can't show that it's false then I
20 deem it to be true.

21 Q And that's the Scientific method known as the
22 null hypothesis, correct?

23 A Well the null hypothesis would be the area of
24 falsification. So yes, the assumption that a
25 hypothesis is not true, that's the null hypothesis, is

1 where we begin. And then we go about conducting our
2 experiment to disprove the null hypothesis. And
3 that's essentially what we're doing, is everybody
4 doing things in reverse. This is exactly the opposite
5 of what's called confirmation bias. And confirmation
6 bias is the idea that we're basically looking for
7 facts included to support an opinion that we already
8 hold. We're not, in the language of bias, we're not
9 following the clues to a conclusion. We have the
10 conclusion, now we're just collective to support it.

11 And I deal with that all the time in cases
12 where people -- especially law enforcement officers.
13 I have a case right now that that's one of the things
14 that I've written into my report, that there seems to
15 be a lot of confirmation by associated with the
16 investigation. So we know it happens a lot.

17 There's a lot of literature on that warning
18 law enforcement officers, because we all have biases.
19 Many times we don't even know we have them. I think
20 implicit biases is the catch phrase that everyone is
21 using today to sort of reflect on the idea that our
22 brains work in a certain way that we may not be
23 consciously aware of. And that we are supposed to be
24 paying attention to these biases.

25 And so the best way to prevent confirmation

1 bias is by using a null hypothesis, to assume that
2 what you're being told or what you're seeing or what
3 you're observing, in the words of science, is not
4 true. And now let's go about figuring out if we can
5 falsify the belief that it's not true. Because if we
6 can falsify the belief that it's not true then it
7 turns out it is true.

8 Q Okay. See if you agree with this example,
9 okay?

10 A Okay.

11 Q Back centuries ago the general accepted fact
12 was the Earth was flat. In order to convince people
13 of that time that the World was not flat, there was an
14 alternative theory that the Earth was in fact round.
15 Using the null hypothesis, your accepted fact back
16 then would be that the World is flat. The alternative
17 hypothesis would be that the Earth is round. Someone
18 then set sail and circumvented the World and came back
19 and was able to present objective data, I circumvented
20 the World, I didn't fall off, therefore, proving the
21 accepted fact was false. Therefore, you accept the
22 alternative hypothesis. Now people, because of that,
23 believe the World is round.

24 Is that the proper use of the null
25 hypothesis?

1 A Yes.

2 Q Okay. And is that what you're doing here
3 when you're conducting your analysis to determine
4 whether or not specific events actually occurred?

5 You're postulating an accepted fact, stating
6 alternative, and then looking for data that proves
7 your accepted fact is, in fact, false so that your
8 alternative data will be accepted.

9 Is that what you're doing here?

10 A That's generally a description of the
11 Scientific method. Again--

12 Q Is that what you're doing here in the Reeves
13 case?

14 A That's what I always do. I try to have some
15 sort of evidence to show that whatever -- the story is
16 on both sides, by the way, because there's always two
17 different sides to these stories. Um, whatever I'm
18 being told is not true and I have to then falsify
19 that. And if I can't do it then I have to accept it
20 as true.

21 Q I want to further discuss this method and
22 then we're gonna move on. And in this method that
23 you're using to test and accept as fact, because
24 that's the way you constructed the null hypothesis,
25 there's an accepted fact and there's an alternative

1 explanation. In fact, in science the null hypothesis,
2 you don't even have to believe that the accepted fact
3 is true, you're just trying to figure out whether or
4 not the alternative is more logical, right?

5 A Yes.

6 Q Okay. So in --

7 A That's why, to your point earlier, that is
8 why mostly everything is based on probability. We
9 talked about that previously.

10 Q Right. We're talking about probability,
11 likelihood, and whether or not there is such a
12 significant correlation that one would accept one
13 alternative hypothesis over another, correct?

14 A Yes.

15 Q All right. Now getting back to my example
16 about the World is flat and the World is round. We
17 had the individual who circumvented the World in a
18 boat, whatever, proving that it was round.

19 I want to talk about the, and not
20 specifically, just generically, what in the Reeves
21 case when you used the null hypothesis to try to
22 determine reality, if you will, what facts in the
23 Reeves case are you using to make that determination,
24 whether or not you can nullify or invalidate your
25 hypothesis that is the accepted fact?

1 Just generically what is the data that you're
2 using: Police reports, witness statements. You know,
3 just generically tell me what you're using.

4 A Yes, using all of that.

5 Q Tell me what all of that is?

6 A Well, I told you. So particularly in the
7 Reeves case -- first of all, let me just get clear on
8 one thing. I mean, you mentioned an experimental
9 analysis. You have somebody board a ship and go
10 around the World. That was an experiment to see where
11 they ended up.

12 Q Yes.

13 A Understand the Reeves case is a single trial.
14 You can't repeat it, right. So we have to deal with
15 what's called observational studies. Observational
16 studies are a little bit different than empirical
17 testing, which is kind of how you summed up the
18 Scientific method. And you're not wrong, it's just
19 not complete.

20 So in any kind of case like this for-- and
21 certainly it's captured on video, and I like it when
22 it's captured on video. Other times I'm basically
23 just dealing with eye witness statements, which you
24 know are terribly unreliable. And, um, you know,
25 conclusions perhaps that the police department has

1 made and things like that. It's just more
2 challenging. But when you have the video it's very
3 very helpful so that you at least know generally what
4 has happened.

5 So when I look at the Reeves case I'm not
6 able to experiment to see whether or not it's true or
7 not, but I am able to apply observational studies. So
8 Reeves said he's attacked by Mr. Oulson. So let's
9 assume that's not true, that Reeves is lying to us.
10 Well, I would go about looking at the video and I
11 would see a person that's standing in front of Reeves.
12 I would read the witness statements, who all-- and I
13 say all and I don't mean every person in the theater,
14 but I sent you a list of them, who see him standing up
15 and facing the opposite direction. I hear the report
16 from Reeves that this is over a point of conflict,
17 over the cellphone being lit up and him going to the
18 manager. All of that corroborates.

19 This is a guy who's upset, comes out of his
20 seat, he turns around and he's now facing Reeves. All
21 that corroborates Reeves' statement. I can't falsify
22 that Reeves is not under attack. I'm not able to do
23 that. On the contrary, if we don't have the video
24 there it's a little bit harder because maybe Reeves is
25 telling us a lie.

1 So then I would look at things like, well
2 okay, this guy is shot in the chest. Alright, how can
3 that happen. Well it can only happen if they're
4 facing each other. And all the witnesses say that
5 Reeves never gets up. So then I would draw the
6 conclusion that he's facing Reeves, even though I
7 can't see it on the video, which I can't. So that
8 corroborates that evidence as well.

9 So here's what we know. Reeves is being a
10 attacked by Oulson. This is a self-defense case.
11 That's how I concluded this. This is a self-defense
12 case. I just don't think any reasonable person won't
13 think it's self-defense. But there's a second part to
14 this, and that's whether or not the response was
15 reasonable. And of course that's an ultimate opinion
16 that I don't plan to offer. That's up for the jury to
17 decide whether or not shooting somebody who is
18 attacking you is appropriate.

19 I mean, as that was the Rittenhouse case, and
20 not to bring that in, but we're seeing people think
21 strange things about this. One of the prosecutors
22 there is saying basically you're supposed to take a
23 beating. He has said that. It's unbelievable to me.

24 That said, I now have to determine whether or
25 not the use of force is accepted, whether or not it's

1 appropriate or reasonable, objective reasonable as I
2 understand the term, not in a courtroom setting but in
3 a police training setting as you presented it to me
4 from FDLE's own book.

5 So I turned to the models. I turned to the
6 force continuum. I turned to threat analysis, what we
7 talked about last time that you and I, I guess got
8 hung up on the construct of situational awareness.
9 And I take a look at whether or not those things in a
10 given environment, inserting all of the facts that we
11 know about Reeves about his self-efficacy. He's an
12 old man. He's eaten up with arthritis. He is
13 severely overweight. He is sitting in a movie theater
14 with his back against the wall. It's very poor
15 lighting. He has his wife who is sitting next to him,
16 which I'm sure he feels he needs to protect her as
17 well. Who is being confronted by, who he perceives is
18 a much younger man. I think he said 35 to 40. Who is
19 six foot four, who is standing in front of a lit
20 screen silhouetted. He can't make a lot of detail
21 out. He tells me this when I talk to him, by the way.
22 He can't make a lot of detail out. Somebody gets hit
23 in the face and knocks his glasses sideways. His
24 self-efficacy is now even further deteriorated because
25 now he doesn't have clarity of vision. Not only is he

1 an old man who has difficulty getting out the chair,
2 because he said he tries to do that but he can't even
3 push himself out of the chair that quickly. Not only
4 is he an old man with arthritis, with a bad back who
5 can't push himself out of the chair who is severely
6 overweight, now he can't see. He gets hit in the face
7 with something and immediately he sees the individual
8 coming back towards him.

9 Now, you have to question motivation. You
10 and I talked about ability, opportunity and jeopardy.
11 What a reasonable person thinks, that someone who
12 stood up in a movie theater to confront an old man
13 physically was motivated to do great harm. And I
14 think a reasonable person would think that probably
15 the best way to predict the future, which is what this
16 is all about, anticipating what comes next, is to look
17 at the past. And the past is completely unreasonable.
18 It's unreasonable for any person to do that. No
19 person would think that it's okay to settle a score in
20 a movie theater, certainly when you are the cause of
21 the problem with your cellphone on.

22 So I think a reasonable person would then
23 believe bad things are going to continue to happen
24 because they are happening. He fires a shot,
25 according to what he says, and I have no reason to

1 dispute it, I wish the video captured it, the second
2 time that Mr. Oulson reaches for him.

3 The first time he gets hit in the face he
4 thinks he's punched or hit with a cellphone but he
5 doesn't know what. Now that arm comes back out. The
6 video picks it up. And that's where we're invited to
7 see what happened on video.

8 The second time that arm comes back he grabs
9 the popcorn. All Reeves can see is he's still coming
10 after me. He decides, I'm in great danger, reaches
11 for his firearm. He's got about two hundred
12 milliseconds to cancel that. He gets hit in the face
13 with the popcorn. He tells me he doesn't know it's
14 even popcorn, he just knows he's under attack and he
15 fires the shot. Does he believe that he is in
16 imminent danger of death or great bodily harm, I think
17 from a reasonable perspective if I were judging a
18 police officer in this case with the same facts and
19 circumstances, I would conclude internally, if I were
20 an internal affairs investigator, this was a
21 reasonable shot.

22 It's not a police officer on duty but I use
23 the same standards. If you look at the subject
24 factors between the two of them, the circumstances,
25 the motivation that we are aware of, things that I

1 can't falsify, things that I'm not able to say Oulson
2 did not do those things that Reeves said that he did,
3 then maybe my opinions change.

4 But I think the very best witness to this is
5 Reeves, and there's no reason to not believe him.
6 There's been no evidence to not believe Reeves. The
7 only reason we're not believing Reeves is because we
8 think that he's self serving in his statements, and of
9 course he is, especially if he did it right. If he
10 did it right it would be self serving for him to tell
11 the truth.

12 So that kind of is where my opinion lies is
13 that as I apply the Scientific method, as I refer to
14 it, I'm not able to say what Reeves said didn't
15 happen. And I have worked many cases where
16 individuals have said things that have happened and
17 there is no corroboration, and there often times is
18 even contrary evidence. This is not one of those
19 cases.

20 Q And that's based on your interpretation of
21 the evidence that you just described on the record,
22 correct?

23 A Well all of my opinions are based on that.

24 Q All your opinions are based on what, your
25 interpretation of the evidence?

1 A Well my conclusions looking at the evidence.
2 Call it interpretation if you will. I think at some
3 level they are my conclusions based on looking at the
4 evidence, based on what I actually know.

5 Q Okay.

6 A I know that Reeves said he was hit in the
7 face by something. I know that. I can't say that he
8 wasn't hit in the face by something. And, by the way,
9 there's a great corroboration. There's a cellphone
10 laying at his feet. He claims to have seen a flash of
11 the screen. Who doesn't really get better
12 corroboration than that when it's laying at his feet.

13 Q Well Mr. Oulson was holding the phone when he
14 was shot. When he got shot he released the phone and
15 it fell at his feet. That's an alternative
16 explanation, isn't it?

17 A But why would Reeves says that in the back of
18 a patrol car. He doesn't know that.

19 Q But is that an alternate explanation?

20 A I don't think it's a reasonably alternate
21 explanation because of the timing that Reeves
22 describes.

23 Q Mr. Oulson is holding his phone. He's shot
24 in the chest. He drops his phone at the feet. When
25 you get shot in the chest, would you not agree, that

1 it would be reasonable for you to drop whatever you
2 had in your hand?

3 A I don't know. I've never been shot in the
4 chest. I really wouldn't know that.

5 Q Oh, come on now, Mr. Bedard. You've laid out
6 your conclusions for the last five minutes regarding
7 how you believe Mr. Reeves. Why can't you answer that
8 question for me?

9 A If you take a look at a case I'm looking
10 working on now in Los Angeles on Tony McBride who
11 shoots a guy holding a knife in his hand six times, he
12 dies with the knife in his hand. He doesn't drop it.
13 I mean, I don't really know how to predict what
14 somebody will do when they're shot. And he takes a
15 couple in the chest I might add. They were pretty
16 similar in that respect. He dies with the knife
17 clutched in his hand. It was not for certain.

18 And again, I think you're drawing conclusions
19 based on no evidence at all. But I do have evidence
20 that there's a phone laying at Mr. Reeves' feet that
21 is consistent with his story of being hit in the face
22 by the cellphone.

23 Q Is it also consistent with it being dropped
24 by someone who is shot?

25 A Well nobody says that.

1 Q I'm just asking is that also consistent. I
2 didn't say anyone said that.

3 A Okay. Yeah. Could it have happened, the
4 probability is much lower.

5 Q Alright, and why do you say the probability
6 is much lower?

7 A Because it's inconsistent with the story that
8 Reeves tells.

9 Q Okay. Okay. One of the things that we
10 talked about -- you did send me the list of the
11 individuals, and I appreciate that, thank you, that
12 testified in some fashion that you're relying on that
13 Mr. Oulson was leaning or standing over Mr. Reeves. I
14 have those. I have those cites. I have read them.
15 We've already had the discussion about the
16 significance so we don't need to do that.

17 We've already discussed a little bit about
18 Mr. Reeves' arm coming up and rubbing his face after
19 he shot. You sent me those frames. Thank you.

20 A Did you review that?

21 Q I did review those frames, yes.

22 A Okay, you don't want to answer the question.

23 Q It's not my depo.

24 A Understood.

25 Q So here's where we're at. We've been going

1 for two hours. We have completed a good chunk of,
2 because we've gone off on tangents. And I'm not being
3 critical. It's just it's come up so we covered it.

4 So I would like, if it's alright, to take a
5 10 minute break for the court reporter to relax for a
6 few minutes. And when we come back I want to go
7 through the defendant's statements and how you have
8 picked out through the various statements those
9 artifacts that we talked about that are left over
10 based on being in a stressful situation, and those
11 statements that indicate to you some type of self
12 awareness or self-efficacy of some sort of limitation
13 that is important to you.

14 And so what we'll do is we'll go through the
15 law enforcement statement first, we'll then go through
16 his immunity hearing testimony, and then fully you'll
17 relate his statement to you, and then we'll go back
18 and -- well, we'll figure out how we're gonna do that
19 because I don't want to waste your time going back
20 again.

21 So that's what we're going to do. Is that
22 okay with everyone?

23 A It's okay with me.

24 Q Okay.

25 MR. MARTIN: Now, Mr. Michaels, are you good

1 with that?

2 MR. MICHAELS: Sounds good.

3 MR. MARTIN: All right. Would you like to
4 hang up at this time and me call you back or do you
5 want to stay on the line? What's everyone's
6 preference?

7 MR. MICHAELS: I'd like to hang up and have
8 you call me back on the office phone.

9 MR. MARTIN: Okay. Give me the number.

10 MR. MICHAELS: 813-875-5100

11 MR. MARTIN: 5100.

12 MR. MICHAELS: Yep.

13 MR. MARTIN: And Mr. Bedard, call you back at
14 the same number?

15 MR. BEDARD: Yes, that would be fine.

16 MR. MARTIN: Okay. I have it's 11 o'clock so
17 back at 11:10 or do you want 11:15? What would you
18 like?

19 MR. BEDARD: I don't care. Whenever you wrap
20 up with what you're doing call me back and I will be
21 sitting by the phone.

22 MR. MARTIN: All right. We'll let the court
23 reporter decide. So as soon as she's ready to get
24 back I'll give you guys a call, how's that?

25 MR. BEDARD: Perfect.

1 MR. MARTIN: All right. We're gonna hang up
2 and I'll call you back. Thank you.

3 (Break)

4 MR. MARTIN: Mr. Michaels, are you on?

5 MR. MICHAELS: I am.

6 MR. MARTIN: Mr. Bedard, are you on, sir?

7 MR. BEDARD: I am.

8 MR. MARTIN: Alright, gentlemen, we're on the
9 record. We're in the same room. And it's just me and
10 the court reporter and my door is shut. Ready to go?

11 MR. BEDARD: I'm ready.

12 Q (By Mr. Martin). What I would like to do,
13 Mr. Bedard, I made a request of you to, in dealing
14 with the defendant's statement to law enforcement, to
15 use the police report that was printed on January 25
16 '16 as far as making reference to any pages. Were you
17 able to do that for me?

18 A About the self-efficacy issues or--

19 Q We're gonna go through the statement to law
20 enforcement, and we're gonna talk about the
21 self-efficacy, and we're gonna talk about the
22 artifacts that you felt were residual to Mr. Reeves
23 being involved in a stressful situation. That's what
24 we're gonna go through.

25 A Right. Okay.

1 Q Because in your first depo we used a
2 different report. But throughout this case we've been
3 using the report printed 1/25/16 and all previous
4 pleadings and discussions. So I appreciate you doing
5 that. And I did convert the page numbers in your
6 first depo over just in pencil.

7 So that's what I'd like to start with is Mr.
8 Reeves' statement to law enforcement.

9 Do you have that in front of you?

10 A I'm trying to pull it up right now. Give me
11 a second.

12 Q Alright, sir. Let me know when you're ready,
13 please.

14 A So I don't get this confused, I do have a
15 police report pulled up.

16 Q Look at the very top. It's either gonna be
17 top right or top left. It will say printed. Very
18 first page.

19 A 1/27/2014?

20 Q No, not that one.

21 A Let me keep moving. 1/25/2016?

22 Q Yes, sir. That's the one.

23 A Okay.

24 Q All right. Mr. Reeves' statement to law
25 enforcement begins on page 75 of that report.

1 A Let me get to it.

2 Q Thank you.

3 A It looks to me like it's on page 76; is that
4 right?

5 Q Well, actually it's --

6 A At least on mine. On page 75 it looks like
7 we're still talking to Angela Hamilton.

8 Q Yeah. Keep scrolling down and you'll see it
9 will start printed out like a transcript.

10 A I see. Yes. Okay. So it starts with yup,
11 right?

12 Q Correct, sir.

13 A Okay. I'm there.

14 Q Alright, sir. In the depo in October
15 beginning on page 161, right at the end you authored
16 up several areas in Mr. Reeves' statement to law
17 enforcement that suggests to you his self-awareness of
18 his limitations, if you will, the self-efficacy.
19 Whatever we're gonna talk about. What do you want to
20 call that, self-awareness? I don't know.

21 A Self-efficacy.

22 Q Self-efficacy. All right. In order to save
23 some time I've reviewed those. I get it. Is there
24 anything else in his statement involving that issue
25 that you need to add that you didn't cover in the

1 first depo?

2 A I don't think so. I'm just going through
3 this latest one here. Let me see if I highlighted
4 anything.

5 Q We began that discussion in your depo on page
6 161 through pages 164.

7 A Right. I mean, trying to just-- I think what
8 I have given you is a pretty good accounting of
9 Reeves' description of his self-efficacy. He talks
10 about his shoulder and how sore it is. And I think I
11 covered that with you. Again, I'd have to almost do a
12 side-by-side comparison.

13 Q Yeah. On page 164 of your depo, and this is
14 the reason I'm asking the question, you indicate,
15 "That's it. That's what I'd written down from the
16 notes took." So if that is correctly stated, I'm
17 assuming that everything that you had noted you told
18 me. Would that be a correct assumption on my part?

19 A Yes.

20 Q Okay. Let me just followup then on that, not
21 what you identified but the significance of the
22 self-efficacy in this particular case.

23 Are you suggesting by those examples that Mr.
24 Reeves' actions are predictable based on those
25 statements by him that you have indicated show

1 self-efficacy?

2 A Yes. I don't know that I would frame it that
3 way but--

4 Q How would you frame it?

5 A That the decision -- the decision making
6 model involves self-efficacy and understanding your
7 limitation and coping mechanisms for a different
8 situation.

9 I think actually the way you said it is fine.
10 I think, yes, I think we can boil it down to
11 predictability. In other words, if you were to take a
12 different person, not Mr. Reeves, give him the same
13 ailments and the same level of self-efficacy, I think
14 you'd get the same result.

15 So I think predictability is not badly
16 framed.

17 Q If you were in the courtroom and you had gone
18 through those areas in the statement Mr. Reeves made
19 to law enforcement indicating self-efficacy, and if
20 you were asked and the Court allowed you to testify,
21 what would you tell the jury is the significance of
22 those observations that you made to this case?

23 A Okay. So typically it's not within the
24 expert's purview to try to get into somebody's head.
25 But every now and then somebody allows us to get in

1 their head --

2 Q Yeah, I know.

3 A -- when they make statements of the type that
4 Mr. Reeves makes. He talks about himself. He talks
5 about what he was thinking when this event was going
6 on. He talks about what he knows about himself. So
7 it's fairly easy. It's an open door for anyone to
8 look at what was going on in his head at the time that
9 this event took place. So I think I can comment on
10 that because I would simply be using his words. I'm
11 not trying to offer opinions about things which I
12 couldn't know.

13 So when you're making decisions, decision
14 making begins with data collection, right. So that's
15 problematic obviously for everyone, not just a 71 year
16 old man. But sitting in a dark movie theater you're
17 very very limited in the amount of information you can
18 gather because things are dark.

19 And as human beings most of the information
20 that we gather is visual. This is what my
21 dissertation was about, by the way. I think we talked
22 about this in my deposition previously.

23 Visual information tells us about the
24 environment. It tells us what's out there. It tells
25 us what's important. It tells us what is just noise.

1 And it gives us the construct and situational
2 awareness that you and I spoke about.

3 Situational awareness means that you're
4 gathering data and you're discriminating that data.
5 So you're attenuating some information and you're
6 attending to other information. That's the beginning
7 of decision making. And you're doing that based on
8 importance. What's important for the moment.

9 When you're talking about combat and survival
10 techniques you're looking for the most dangerous
11 aspects of environmental information, and those are
12 the things you're going to attend to.

13 But you also have to compare it with your
14 coping mechanisms, which I spoke to previously. Your
15 coping mechanisms are going to be, quote,
16 "psychological" as well as "physiological."

17 So, for example, law enforcement officers who
18 are sent to calls, we don't ever pick them based on
19 their size, we pick them based on their proximity to
20 the crime. And so sometimes very small officers get
21 sent to incidents involving very large offenders, or
22 sometimes very armed offenders. And we know that
23 there's a natural imbalance between law enforcement
24 officers and yet they go. And the reason they go is
25 because they're equipped with training and they're

1 equipped with various tools to be able to accomplish
2 goals. They're equal based on the fact that we issue
3 them a belt system that has, depending on the agency,
4 pepper spray perhaps, Taser perhaps, baton perhaps.
5 And using those tools they can mitigate the
6 differential between let's say, for example, their
7 small size or perhaps even gender, and the person that
8 may be challenging them. So they're motivated to take
9 control. And so law enforcement officers essentially
10 don't run from fights, not that it's never happened,
11 but they certainly wouldn't be a good law enforcement
12 officer if they did. They would have to deal with the
13 circumstance because we give them the tools and
14 training to deal with it. So their self-efficacy is
15 very high. They would wonder into what we would call
16 harms way with a high motivation because they know
17 that they're equipped to handle it.

18 To the contrary, if you were to take the same
19 circumstance and send somebody, for example, very
20 small or perhaps a particular gender, into a situation
21 and not properly equip them with coping mechanisms for
22 what they come up against, they would have a very low
23 motivation to go to that particular area and inject
24 themselves in a situation that could be harmful to
25 them. So we don't ask them to do that.

1 When you're dealing with citizen fight,
2 coping mechanisms are limited in the fact that, A,
3 citizens don't typically have authority to make
4 arrest. They don't have the authority to take someone
5 into custody. They don't have the authority often
6 times even to exert any type of force, with one
7 exception, and that would be self-defense that's
8 protected by law.

9 So if we can cross the bridge and say, okay,
10 something is self-defense, and I think we can do that
11 in this case. I think it would be harder to argue
12 it's not a self-defense case. I mean, you have,
13 again, a six foot four male younger than Mr. Reeves
14 jumping out of his chair acting very bizarre. I mean,
15 making a big issue about Mr. Reeves telling the
16 manager about his cellphone being on. Very
17 unpredictable. And so Reeves was forced to defend
18 himself against that self-defense part.

19 Now when it gets to the second part, did the
20 survivor take bifurcated equation, as we spoke about
21 earlier, which is how that force can be used, now we
22 get into self-efficacy. What does Mr. Reeves think he
23 can do. So a reasonable person who would be trying to
24 use a minimum amount of force or try to create the
25 least harm.

1 Had the roles been reversed and Mr. Reeves
2 was the younger and the bigger and perhaps the more
3 agile and the better equipped, this may have ended as
4 Mr. Reeves said with a wrestling match in the movie
5 theater. But that's not what happened. In this case
6 Mr. Reeves is a 71 year old, and I'll paraphrase it,
7 broken down old man. He's defined even by law as
8 being somebody that can't be battered. It's an
9 aggravated battery if you hit him.

10 But he truly has debilitating physical
11 features. He's full of arthritis. He has a bad back.
12 He's overweight. And he has an imposition in that
13 he's sitting against the wall. He can't go anywhere.
14 He can't even get out of his seat. So his motivation
15 to struggle with Mr. Oulson is very very low because
16 he doesn't have the self-efficacy or the coping
17 mechanisms to deal with what's happening to him at
18 that moment.

19 Now, under the circumstances Mr. Reeves has
20 brought something with him which the law protects
21 under the concealed carry permit, that once again
22 mitigates the differences between Mr. Oulson who's
23 much younger, probably much stronger, certainly more
24 agile and threatening, in comparison to Mr. Reeves'
25 diminished state because of his age and because of his

1 injuries, and his arthritis, his condition, and that
2 something is a firearm.

3 So it's reasonable if exceeded by the
4 challenge of Mr. Oulson that you would feel
5 threatened. That's how Lazarus and Folkman defined a
6 threat. When your challenges are exceeded, your
7 ability to cope with the challenge is exceeded, you
8 are no longer being challenged, you're being
9 threatened.

10 And I think that the evidence shows, based on
11 self-efficacy, that a reasonable person would conclude
12 that Mr. Reeves is being threatened.

13 So how does he mitigate that. Well, at first
14 he doesn't just pull out a gun and shoot him when he's
15 challenged. He tries to lean far away. He tries to
16 stay away from him. He says I'm still trying to
17 figure out what's going on. It's so unusual. It's
18 never happened to me before. I don't have a blueprint
19 on what to do. So I'm pulling myself back in the
20 chair as far as I can. I'm trying to avoid him. And
21 all of a sudden I get hit in the side of the face.
22 Well, his existing self-efficacy is not to fight Mr.
23 Oulson already, now he has further diminished capacity
24 because he can't see. And we are visual creatures.
25 He says my glasses turned sideways on my head. I have

1 potentially a blur in front of me. I can no longer
2 make out detail, which was hard to do in a dark
3 theater. He can of course see Mr. Oulson who is six
4 foot four. He's got the ability, even through blurred
5 lenses, because the focal point had been adjusted, to
6 see Mr. Oulson still coming at him after being hit.
7 Really the only appropriate coping mechanism at this
8 point is to take the only tool that he has on him, and
9 that is his firearm, to protect himself.

10 I think reasonable people will believe under
11 the circumstances that Mr. Reeves, who says in his
12 interview, man, if I get hit it takes me two months to
13 heal. Or something like that. Two months for a
14 bruise to heal. That's how he feels about himself.
15 He then says, I don't need another ass whipping. I
16 think that's verbatim what he says. Or, I don't need
17 an ass whipping. And he says a lot of things like
18 that. I didn't think that I could take him. No, I
19 can't take anybody. Stuff like that.

20 So it would be reasonable if your
21 self-efficacy is that low in that compressed timeframe
22 where you can't sit around and contemplate the
23 possibility, that you would take the very first thing
24 that comes to mind as a solution to a quickly rapidly
25 unfolding, diminishing problem, which is that he might

1 in the very next millisecond be severely injured or
2 killed, and that is he reaches for his firearm.

3 And in the fog of the attack where everything
4 is happening very rapidly, he does get hit again a
5 second time. We know this by popcorn. You can see
6 it. He tells me he doesn't know he's hit by popcorn.
7 He knows he's hit. He can see Mr. Oulson coming at
8 him and he decides to put a stop to it by firing a
9 shot and that's what he does.

10 So because of his self-efficacy, I think to
11 answer your question, he has a justification to use
12 deadly force because he was left with no other
13 reasonable alternative.

14 So then we have to go back and decide, okay,
15 is all of this true what I just told you. Is he
16 really 71 years old. The answer is he is. Is he
17 really debilitated, and to what degree. And more
18 importantly, how does he feel about his debilitation.
19 He tells us that. There's no reason to doubt him.

20 So that's what I would tell a jury, is that
21 the subject factors matter. And part of the subject
22 factors is how you reasonably believe various coping
23 situation that is rapidly unfolding and a threat to
24 your safety.

25 And again, I don't know that jury necessarily

1 know that. It's the same -- you know, unfortunately
2 news media, the television shows teach people who make
3 up juries strange things. You know, like for example,
4 every time you shoot somebody in the back it's a bad
5 shooting. You know that's not true. Sometimes that
6 happens in the course of shooting at somebody they
7 twist away in the course of being hit in the chest the
8 first time, they catch one in the back. That doesn't
9 nullify the shooting and make it a bad shooting.

10 So we have these sort of fixed rules in law
11 enforcement that the public thinks they know and
12 they're just not true. And so they might think, for
13 example, you shouldn't shoot somebody -- this is I'm
14 referring to the Rittenhouse case right now. You
15 should have taken the beating. You should go fist to
16 cuffs because that's what people do. That's what
17 brave people do. They fight back using their fists,
18 not guns. That's excessive. And that's not always
19 true. It would depend on the self-efficacy of the
20 individual. If he didn't think his fists could work
21 he wouldn't attempt to use them. Who would. It would
22 be unreasonable to do that.

23 So I think that's probably the answer to your
24 question as to what I would tell a jury about
25 self-efficacy.

1 Q Okay. Given the factual situation that you
2 just gave me, if the jury were to conclude that Mr.
3 Reeves was not hit by the cellphone, would you agree
4 that the shooting of Mr. Oulson for tossing popcorn at
5 Mr. Reeves would be disproportional to the threat?

6 A It would be a hindsight analysis after the
7 jury weighed in on that. I don't know that I've
8 always agreed with juries, by the way.

9 Q Well this is a hypothetical--

10 A I know.

11 Q -- where the phone is out. He was not hit
12 with the phone. He was tossed popcorn in his face and
13 he shot Mr. Oulson. Is the shooting of Mr. Oulson for
14 tossing popcorn a proportional response?

15 A Yeah, let's not mince words. And I'll just
16 be clear and I'll answer it succinctly.

17 Q Thank you.

18 A As I think it should be answered. You can't
19 shoot somebody for throwing popcorn in your face.
20 How's that.

21 Q Okay.

22 A And, by the way, I would think perhaps even a
23 caveat to that is I think about police officers that
24 shoot folks with cellphones. Sometimes that happens
25 because the officer believes that it's something else.

1 And I don't think that Reeves ever said he doesn't
2 think he's hit by popcorn. To the alternative he
3 doesn't even know he's hit by popcorn until he's being
4 interviewed by law enforcement. He says, I don't know
5 what happened. I just saw it on the floor after it
6 was all over.

7 So he doesn't claim to do what -- in the
8 literature it's called a mistake of fact. That's not
9 what he's claiming. But to your question I think it
10 is a hypothetical so it's generalized. It is possible
11 somebody could be throwing popcorn and somebody on the
12 receiving would think it's something else and have
13 justification for thinking that and fire a shot. So I
14 can imagine a scenario where that could happen.

15 But let me redefine my answer or narrow my
16 answer. If somebody is throwing popcorn in your face
17 and you know it's popcorn, you can't shoot them. I
18 think that's more accurate.

19 Q And if the jury believes the three witnesses
20 that it was Mr. Reeves that said the words to the
21 effect, "toss popcorn on me, will you,"
22 contemporaneous with the shooting, would the shooting
23 be disproportional to the threat?

24 A Not as I've analyzed it. I mean, the jury's
25 opinion is not gonna change my analysis.

1 Q This is a hypothetical. We're not talking
2 about what the jury, I'm asking you.

3 A You said if the jury believes. That's how
4 this question started.

5 Q I apologize. The hypothetical is that he was
6 not hit with the phone and he did say the words "throw
7 popcorn on me, will you," as he fires the shot. Would
8 the shooting of Mr. Oulson for tossing popcorn be
9 disproportional to the threat?

10 A I would say asked and answered. You can't
11 shoot somebody for throwing popcorn if they know it's
12 popcorn.

13 Q Okay. In his statement to you law
14 enforcement -- I want to turn to the residual
15 artifacts that we've been talking about that are there
16 because of the way you explain an individual being in
17 a stressful situation. Without going through the
18 statement itself, and let's assume that there are
19 some, go through with me just like you did with the
20 self-efficacy. I think that's the quickest way to get
21 the material in front of me.

22 What is the significance of any of the
23 artifacts that you found in Mr. Reeves' statement to
24 law enforcement in this case; what is the significance
25 to you?

1 A So artifacts when I usually look for them--
2 and let me preface my answer by saying I didn't find a
3 whole lot of artifacts and I guess I wasn't surprised.
4 And that's partly I think during the deposition why I
5 wanted to interview him, because obviously we don't
6 ask certain-- law enforcement doesn't ask certain
7 questions to draw those artifacts out.

8 Here's the problem with Reeves, and I can
9 see. He knows about all these things. I mean, if he
10 wanted to fake it, he's aware of tunnel vision. He's
11 aware of auditory exclusion. He's aware of
12 vasodilation and vasoconstriction and all the things I
13 often talk about when I'm dealing with people who are
14 not, you know, former SWAT team members. I mean,
15 these are ideas that are openly discussed in law
16 enforcement. Very few police officers have learned
17 this at the academy level.

18 So I was very very cautious when I spoke to
19 him to not even talk about that because I didn't want
20 to prompt him to give me self-serving answers. So I
21 tried to ask roundabout kind of questions. I don't
22 see a lot of this. As a matter of fact, the only
23 thing I do see is some memory issues, and I think that
24 demonstrates that at some level, you know, fragmented
25 memory also occurs when you're under high arousal.

1 And I think there's no question. I think again it's
2 reasonable to understand if you're sitting in a movie
3 theater and you get attacked in the dark, you're gonna
4 be aroused by that. You're going to have a lot of
5 anxiety about that. I think normal people will
6 believe that that's true.

7 So the memory issues can happen, you know, to
8 anyone who is facing a situation like that. And
9 that's what I saw in the police reports. But
10 otherwise he's pretty well composed.

11 I mean, a lot of times when I look at stand
12 your ground cases the individual, providing they give
13 a statement to law enforcement, I can just pull
14 artifacts out of it. They're saying, man, I didn't
15 see this. I didn't hear this. I mean, just all these
16 different artifacts. I don't see a tone of that with
17 Mr. Reeves. So when I went and spoke with him --

18 Are you going to talk with me separately
19 about my interview with him?

20 Q Yes, sir.

21 A I thought you might. But if you don't mind
22 me bleeding over to that. The only time with the
23 issue of artifact that I actually saw something that
24 perhaps I recognized, is there's two things that I
25 wrote down. And mind you, I didn't write down very

1 much because he just basically affirmed everything
2 that I had already read. And I spoke to him for over
3 two hours. But it was really just stuff that he had
4 already said to law enforcement. He's unwavering in
5 his description of things. And, by the way, I think
6 that's a good thing, for him anyway.

7 But he did mention that-- I said to him that
8 there was some rumor that Mrs. Oulson had stood up and
9 tried to hold her husband back. He claims that. And
10 he had very little memory of where exactly she was or
11 how she was standing and all that kind of stuff. He
12 said he remembered when it first happened that she--
13 before he realized what kind of danger he was in, that
14 she was already starting to try to hold him back. But
15 at the moment that he fired the shot he didn't know
16 where she was. That could suggest some type of tunnel
17 vision. And I would submit to that that probably did
18 happen when you're firing a bullet certainly in a
19 public place of a person.

20 And then the only second thing is I asked
21 him, I said, was it loud? He said, I don't remember
22 the shot at all. I don't remember hearing it at all.
23 And that would indicate of course the auditory
24 exclusion.

25 On of the two areas really of the artifacts

1 that may be relevant -- I can't tell you whether or
2 not they're relevant at all, and I don't know that I
3 need them to describe the fact that he should have
4 been reasonably anxious about what was about to happen
5 because it was somewhat unusual that a person would
6 attack him sitting in a movie theater.

7 Usually when I talk about artifacts it's to
8 demonstrate I guess what you would call Mens rea,
9 right, the guilty mind. If somebody is a cold blooded
10 killer and is trying to sell this as self-defense, a
11 lot of times that's revealed in the statement to
12 police because there's no artifacts there. And, you
13 know, typically when you don't have artifacts it's
14 because something is calculated, right. I mean,
15 artifacts happen under anxiety, arousal and fear.

16 So, for example, Ted Bundy probably didn't
17 show a lot of artifacts because he generally was in
18 charge of the situation and that's why we think it
19 happened. If you know how a situation is going to end
20 your arousal level doesn't get very high because
21 you're in control of the situation. It's when you
22 don't know how something is going to end. You don't
23 know if you're going to be hurt, you don't know if
24 you're going to be killed, that you tend to reach the
25 higher level.

1 I would submit to you had Mr. Reeves not
2 carried a concealed weapon he would have given a very
3 different interview because I think I would have seen
4 those artifacts because he would not have had the
5 coping mechanisms to know how this ended. And he
6 probably would have hit those high levels of arousal.
7 But I think being a trained law enforcement officer
8 with the coping mechanism in his pocket he was capable
9 of dealing with this with relative poise like you
10 would expect a police officer.

11 So I don't see a lot of that, to your
12 question.

13 Q You talked a little bit about memory
14 fragmentation and memory distortion. Did you, in your
15 opinion, find any of those, quote, "artifacts" in the
16 statement to law enforcement by Mr. Reeves?

17 A I think a couple of times he says I don't
18 remember, but nothing really significant. I've worked
19 cases where there's entire minutes of an event that
20 are missing. They just simply don't have them in
21 their head. And, by the way, these are usually
22 events like this one that you think no one could ever
23 forget and yet they have no memory of it.

24 Again, I didn't see a whole lot of what we
25 call critical infantile amnesia occurring with Mr.

1 Reeves. I think that he did not get to that highest
2 arousal level. I think he was scared but I think that
3 he always knew that he had an ability to mitigate his
4 advantage as a result of having that 380 Kel Tec in
5 his pocket. So I think that he remained somewhat in
6 control, as he should have under the circumstances.

7 Q What about memory distortion?

8 A I don't recall during the interview if he had
9 a distorted memory that was obvious to me.

10 Q We're talking about the interview to law
11 enforcement, not your interview. Just so the record's
12 clear.

13 A No. In reading the interview with law
14 enforcement, nothing stood out to me as being a memory
15 distortion. Let me flip through this real quick and
16 see if I have anything highlighted.

17 He said something about, you know, this one
18 section where he says after getting hit before
19 shooting he fires a shot, and he's surprised he didn't
20 shoot himself in the left hand. I looked at that
21 scene over and over. I don't see his left hand up.
22 Now I don't know if it was up previous to this and he
23 has a recollection of that or what. But he says his
24 left hand is out in front of him. I can't see it on
25 the video. So if that is a factual statement and he

1 in his mind's eye can actually see his left hand out
2 in front of him, that would be probably memory
3 distortion, at least within the time sequence in which
4 he offers it.

5 Q Are you able to discern -- we're back to Mens
6 rea, okay. Are you able to discern based on that
7 statement whether or not it's memory distortion or
8 just a lie?

9 A No, I can't. I actually can never tell that.
10 I mean, once again, that's obviously in your head. I
11 think artifacts just help us-- help lead us to the
12 idea that somebody's afraid. Like I said, in this
13 case I think it's because it's on video and because we
14 do know what happened I think a reasonable person
15 would say, okay, yeah, had that been me I would have
16 been afraid too. So it's not that important. The
17 distortions are not that important to me. They're
18 usually just when you have, for example, one living
19 witness and that's the guy that's in defense of
20 himself. I've got to sit here and say, okay, were you
21 afraid, afraid enough to use deadly force. Because I
22 don't have any video on it. It's just what he's
23 saying. And that's when those memory distortions and
24 perceptual distortions are most salient. Because
25 then I can say this guy thinks that the really only

1 people in great fear say. And I don't know that I
2 even give -- I don't even know that I feel comfortable
3 saying that about Reeves because he's schooled in this
4 stuff. I mean, if he was going out here going, man, I
5 had wicked tunnel vision. I didn't hear a thing. I
6 would think he was just going down a list. He doesn't
7 do that, by the way. He never offers that.

8 So I was careful in how I approached it
9 because I didn't want to, for example, get him
10 recalling the last training manual he read. And he's
11 read many of them. I think he's even written them.
12 So I didn't dig too deep there. And he doesn't offer
13 this to law enforcement, which of course he could have
14 if he was really trying to pad this to his favor. But
15 I don't see any of that stuff.

16 Q I believe you covered the topic of threat
17 assessment when you talked about the self-efficacy, am
18 I correct in that assumption? I was listening to you
19 and I believe you started out with that being in the
20 environment, gathering information and then coping and
21 how you cope with the information you gathered.

22 That pretty much covered threat assessment or
23 is there more to it than?

24 A Well threat assessment really deals with the
25 part that I didn't spend a lot of time talking about,

1 and that's going to be anticipation, right.

2 Q Okay.

3 A So threat assessment leads us up to forever
4 trying to know what happens next, and that's what we
5 call anticipation. So when you're anticipating
6 something you're anticipating it based on things that
7 have already happened, and you're trying to find
8 things that haven't happened yet.

9 So, like I said, that's a predictor of future
10 behaviors is gonna be past behavior. And the past
11 behavior that Reeves is observing, and we can also
12 observe on video, now, you know, in hindsight, is that
13 Oulson is acting completely unreasonable. He's got
14 his cellphone on. He's got a guy in the movie theater
15 who has paid for his ticket who tells him, look, turn
16 your cellphone off. And in response to that he gets
17 up, makes a physical challenge and then physically
18 attacks Mr. Reeves. That's completely unreasonable.
19 And, by the way, had he not been shot he would have
20 been arrested I'm sure for battery. So, I mean, he's
21 committing a crime. He would have probably been
22 arrested for aggravated battery because of Mr. Reeves'
23 ago. So we know he's committing a crime. He's in the
24 process of doing that.

25 And so Reeves has to anticipate is this crime

1 going to be terminal to me. Is he going to cause me
2 lifelong injury or death. He doesn't know that
3 because if he did know that it would have already
4 happened.

5 So the threat assessment is there. It's at
6 that point of anticipation. What do I think is going
7 to happen next. That he's relying on what's happening
8 now or what just happened in the past. And how this
9 just unfolded in the most bizarre way.

10 So I would add that to the situational
11 awareness that I described which is where you're
12 taking information and you are trying to discriminate
13 the information out to what you should attend to, what
14 should be attenuated and so on and so on to come up
15 with an understanding of the environment that you're
16 in. Now you're working towards what do I think is
17 gonna happen next and then you come back to what are
18 my coping mechanisms to deal with that. If your
19 coping mechanisms can manage what you think is going
20 to happen next then you say no shoot. If your coping
21 mechanisms are heated by what's gonna happen next,
22 then it would move into the area of deadly force
23 because you are no longer challenged, you are
24 threatened.

25 So maybe that's a good summary of what I

1 think we talked about with the addition of how
2 important anticipation is.

3 Q In your opinion, did you find anything in Mr.
4 Reeves' statements to law enforcement that suggested
5 to you that his decision making process was adversely
6 affected by the artifacts of being in a stressful
7 situation?

8 A No, with the exception of I would -- I think
9 his decision making had more to do with his
10 self-efficacy, and that's why I raised that with you
11 in deposition, more so than trying to say he was
12 afraid. Because I think that's on the table as a
13 reasonable person seeing this video would also be
14 afraid for him. Or not even just seeing the video
15 because the video doesn't capture it all. But if you
16 take the things that are probably happening during
17 those dark frames you would be afraid.

18 So again, those artifacts, those stress
19 artifacts, I don't think that Mr. Reeves overreacted
20 to this. And a lot of times when we're trying to
21 identify why, you know, why something isn't exactly as
22 the law says it should be is because of the emotional
23 context of it, right.

24 So, for example, I testify in cases a lot of
25 times where law enforcement officers shoot at motor

1 vehicles that are coming at them, but then they
2 continue to shoot as they go by. How do I explain
3 that. Well I have to get into the emotional component
4 of it, right. I have to talk about the fact that the
5 fear doesn't just turn off when the vehicle passes.
6 So sometimes they get them inside of the car,
7 sometimes they get them through the back window. And
8 that does happen in the course of the original
9 decision that your life is in danger.

10 But that's not this case here. This is a
11 single shot that was calculated from the perspective
12 that a reasonable person, a certainly subjectively
13 reasonable person, according to Mr. Reeves, believed
14 that his -- that he was in imminent danger of great
15 bodily harm or death. And the artifacts that would
16 have otherwise showed up would have been perhaps
17 important had my analysis concluded that he
18 overreacted. But under the circumstances, providing
19 you believe that he got hit in the face and was still
20 under continuous attack, he did not overreact. I
21 mean, that would be a justifiable use of deadly force
22 as I understand it.

23 A jury is going to have to decide ultimately
24 if that's justifiable. But as I understand it as an
25 expert offering an opinion, that would be considered a

1 justifiable use of deadly force under the
2 circumstances that I detailed now I guess at nauseam.

3 Q Going back to the method that you used, that
4 you described you used in all cases in analyzing use
5 of force, which encompass the use of the null
6 hypothesis to test the reality of certain data that
7 you're reviewing, how did you go about making the
8 determination, the ultimate determination that Mr.
9 Reeves did not overreact and that the shooting was
10 justified?

11 Tell me your thought process. What did you
12 go through? What did you look at? How did you use
13 the null hypothesis to give credence or support to
14 your conclusions?

15 A So you start off with Mr. Reeves' statement
16 and then you say, well none of that happened. That's
17 how it begins. You start off with the statement. You
18 look at what he says. You say, well he's just lying
19 about everything. Then you go back and you take a
20 look at the video. Then you go back and take a look
21 at the witness statements. You go back and take a
22 look at the crime scene information. And as you start
23 to do that you start to go, oh, he's not lying about
24 that. That's corroborated.

25 So when you say testing, I suppose it's a

1 test but it's really an observational study, like I
2 mentioned earlier. It's not an empirical test because
3 this is a single trial. We can't, you know, suddenly
4 recreate the event, put another person there and see
5 what he would do. That's what you would do if you had
6 a control. You would take a 71 year old person. You
7 take a 30 year old person. You run the same scenario.
8 You see if they acted the same. And then my opinion
9 could be validated or invalidated, that this is how
10 people with low self-efficacy because of their age and
11 because of their injuries behaved. But that's not how
12 this is particularly done in use of force studies
13 because they're all single trial. Obviously the
14 outcome isn't something that's capable of being
15 tested.

16 So it lends itself to an observational study.
17 I think a good comparison to this when you talk about
18 the inability to do empirical testing, is I think most
19 people think that smoking causes cancer but there's no
20 actual evidence of that. There seems to be a
21 correlation because people who smoke die of cancer a
22 lot, but we can't actually test it. We can't hand a
23 bunch of people cigarettes and say, here, smoke these.
24 Let's see if you die. So no one's ever done a
25 controlled study on smoking, yet we believe that

1 smoking causes cancer. I think across the board most
2 people think that's a reasonable conclusion without an
3 empirical examination. This is one of those kind of
4 things.

5 So as I do an observational study I have to
6 observe what's given to me, and what's been given to
7 me is the video, which I've looked at many many times.
8 I can see Mr. Oulson standing there. I can see him
9 facing Mr. Reeves. I know that Mr. Reeves perceives
10 that he is being, at least at the moment when the
11 video opens, challenged. He's being challenged by Mr.
12 Oulson. This is I guess the second 26 if we go back
13 to that previous one that I said I don't think the
14 fight actually started then. It seems to me that he's
15 arguing with Mr. Oulson, which is consistent with the
16 story. I can't falsify that. He says they're
17 arguing. He says the guy says, I'm texting my fucking
18 daughter, or something like that. It seems to me that
19 that's probably true based on what we can see on that
20 second 26.

21 But then it goes blank and it shows back up
22 and there's Mr. Oulson. He's standing up in front of
23 Reeves and he's -- I think I can even see, I can't say
24 this absolutely, his leg in between the seats. There
25 is some body part that gets retracted at about the arm

1 level of the chair while Mr. Reeves is pressing his
2 gun forward and firing that shot. It looks like his
3 leg is propped up between the seats to me. That's
4 what Reeves says. I can't falsify that. The video
5 seems to confirm that.

6 So I know that there is now a case of him not
7 only challenging Mr. Reeves but he's out of his seat
8 now. Now we go back to everything I told you about
9 self-efficacy. What do I know about Reeves. I looked
10 at all that. Oh, he's 71 years old. He says he's
11 full of arthritis. I have no reason to dispute that.
12 He says that he doesn't think he can take him. He
13 says he can't even get out of the chair. Perhaps he's
14 lying. I mean, you can figure that out. That's
15 something that you can flush out on the stand. But I
16 don't need to think he's lying. I'll take him at his
17 word for it. So there's no way for me to disprove how
18 he felt about himself.

19 That said, when Oulson is standing there and
20 he has low self-efficacy, he's no longer being
21 challenged, he's being threatened. Now we're in a
22 case of self-defense because he's being threatened. I
23 think reasonable minds will agree that he's being
24 threatened and this is a case of self-defense.

25 Now we've got to get to the firearm. Without

1 coming off of self-efficacy, the reasonable belief
2 that Mr. Reeves, as he says he's afraid, and
3 reasonable minds would agree he probably should be
4 under the circumstances, what can he do about it.
5 Well, with self-efficacy, under thinks this entire
6 conversation. He can't fight him. He doesn't think
7 he can take him. He doesn't need a lesson to know it.
8 I mean, no one would do that. But he does have a
9 firearm in his pocket. That's a fact. We have it.
10 It's, you know, in evidence.

11 So he decides to Take the First, which is one
12 of the articles that I sent you. He goes to really a
13 heuristic analysis of the situation in that compressed
14 timeframe and thinks, what can I do now. And the only
15 reasonable response to a threat that in the next
16 moment may result in permanent harm or death to Mr.
17 Reeves, is the firearm. That's why he has a concealed
18 carry permit, if not for this case what case scenario
19 does he carry the concealed weapon for. So he decides
20 to pull the weapon. I mean, that's a -- it matches
21 what he said, and at the timeframe that he says it.
22 He doesn't get up and start shooting Mr. Oulson
23 because Oulson tells him to fuck off, which he says
24 happens earlier in the conversation. He does it when
25 he's under attack.

1 So if I'm falsifying his statement what's
2 happening is the null hypothesis is slowly being
3 eliminated and I have to start accepting the
4 alternative hypothesis which is that Mr. Reeves is
5 telling the truth.

6 So that was my thought process as I went
7 through this, to your question.

8 Q Did you read the transcript of Mr. Reeves'
9 direct testimony in the immunity hearing?

10 A Yes.

11 Q Is there anything in that immunity hearing
12 transcript that is so significantly different than
13 what he told law enforcement that your explanation,
14 like the one that you just gave me, and the
15 self-efficacy and the artifacts, if you will, is gonna
16 be any different?

17 Do we need to go through the transcript or is
18 it basically the same? I can go through the
19 transcript if you want.

20 A If you want to go through and ask me
21 questions about it I'll be happy to comment on it.
22 But I don't think that -- like I said, he's somewhat
23 unwavering. There may be, you know, some variable,
24 but I don't think anyone ever tells a story the same
25 way twice, exactly the same way twice. But if you

1 were to look at the pillars of the foundation of the
2 story, I don't think that changes at all while he's on
3 the stand. I don't know how many pages I read about
4 his background and what he did. It seemed like a lot
5 of it was about that.

6 Q Yeah, it's a lot.

7 A Yeah. But, you know, when he describes the
8 story it is remarkably the same as he tells law
9 enforcement after it happened, which, by the way, is
10 also a bit surprising because when you have artifacts
11 like that you have fragmented memory. These initial
12 reports to law enforcement officers often don't recall
13 the detail that you will later see in court. But I
14 think it was remarkably unwavering from what he
15 originally said, and when I spoke to him as well.
16 He's sure on his story.

17 Q You mentioned that you had an interview with
18 Mr. Reeves and it lasted for two hours.

19 A Right.

20 Q Was that interview tape recorded?

21 A No.

22 Q Was it video taped?

23 A No.

24 Q Did you take notes?

25 A I did.

1 Q In order to recall specific statements by Mr.
2 Reeves are you going to need to refer to those notes?

3 A I don't think so. It really turned into like
4 more of an affirmation interview as I spoke to about
5 earlier. It really just sort of confirmed things I
6 already knew. I tried to say things to him that might
7 compel him to give me some information of the
8 artifacts I knew that you were interested in and I
9 knew you were going to ask me about it. But I didn't
10 want to be blatant and come right out and say, hey,
11 did you experience tunnel vision. Because I think any
12 statement with his background would be self-serving
13 and I think rightly so. He is educated in this area.

14 So I really just went back through what
15 happened. I matched it to the story as I understood
16 it that was given both in the immunity hearing as well
17 as his statement to law enforcement officers. There
18 are still some things I think that he said that he was
19 unclear about. There were things that he was clear
20 about. You know, he didn't exactly know what hit him
21 in the head still. He said I think it was the phone.
22 He said, I'm not sure if he threw it at me or punched
23 me and dropped it in the course of being punched
24 because I don't know. But I remember seeing the blue
25 of the screen. He goes, but I'm not really sure. But

1 I just know that when it was over I looked down and
2 there's a cellphone at me feet, and I thought maybe it
3 was even mine. He said, but, you know, I understand
4 now that it makes sense with what I recall at that
5 moment when I was hit.

6 So he hasn't grasped the hindsight
7 information and said, oh, I was hit by a cellphone.
8 It's at me feet. He didn't do any of that. So he's
9 really just telling me I think, as much as I could
10 tell, how he thought about things at that moment. And
11 so I don't have a whole lot of notes on it because
12 most of it is contained in the statements that I read.

13 Q Let me break it down just a little bit.
14 We're gonna talk about different segments.

15 A Okay.

16 Q And you might want to just go ahead and put
17 your visualization skills to use about the video
18 because that's what I'm doing.

19 As he walks into the theater with his wife
20 and sits down, at that point did you have a discussion
21 with him about his observations of Mr. And Mrs.
22 Oulson, what he saw them doing? Did you talk about
23 that?

24 A I don't believe so. No, not specifically
25 about what Mr. And Mrs. Oulson were doing when he

1 walked in. I think our conversation really started
2 when he attended to what Mr. Oulson was doing, which
3 was of course being on his cellphone and annoying. He
4 said he held the phone in his left hand. He said the
5 light was, you know, basically coming right into his
6 face. And that's I think where our conversation kind
7 of started. I didn't really see the relevancy of
8 asking him about--

9 Q Okay, well I had to start somewhere so let's
10 start there.

11 A Yeah.

12 MR. MARTIN: I'm sorry. Mr. Michaels?

13 A Did he drop off?

14 MR. MARTIN: I don't know.

15 MR. MICHAELS: No, I'm here.

16 MR. MARTIN: Oh. I thought I heard you. I'm
17 sorry.

18 MR. MICHAELS: I didn't say anything. I had
19 my mic muted so you wouldn't hear background noises.

20 Q (By Mr. Martin). Okay. Did you discuss with
21 Mr. Reeves the first time that he observed something,
22 some activity on Mr. Oulson that he felt was
23 inappropriate in the movie theater; did you discuss
24 that with him?

25 A Yes.

1 Q What did he tell you?

2 A What I just told you. He said he was
3 watching the previews. And he said the person in
4 front of him to his right was on the phone. He said
5 it was a bright screen. It was held in his left hand.
6 He remembered that. And it called attention to Mr.
7 Oulson, as I understand it, for the first time where
8 he actually attended to Oulson.

9 Q How did he respond to that activity of Mr.
10 Oulson; what did he say?

11 A He said that he asked him to put his phone
12 away because it was bothering him. He said it was
13 actually shown in his eyes. And he said he was met
14 with an abrupt-- he said he didn't remember exactly
15 what he said because he thought it was along the lines
16 of go fuck yourself, or fuck you or something like
17 that.

18 And I guess I'll stop there and let you ask
19 the next question.

20 Q Did you ask Mr. Reeves how many times he made
21 contact with Mr. Oulson regarding his use of the phone
22 before he left the theater to complain to the manager?

23 A He didn't volunteer making contact with him
24 more than once. I think he said after he got that
25 curt response he felt it was best to get a manager.

1 And that was the whole purpose of getting the manager
2 because he felt that there was no point in revisiting
3 his conversation with essentially an unreasonable
4 individual.

5 Q Did you have a discussion with Mr. Reeves as
6 to why he went to the manager to complain; what was
7 the purpose?

8 A You know, we did talk about that. And it had
9 a lot to do with his I guess Busch Gardens experience.
10 He brought this up. He said that, you know, I'm well
11 trained in customer service and I'm trained at
12 defusing a problem. And I know that at Busch Gardens,
13 you know, if we have a problem people will typically
14 come to me and ask me to resolve it, if it's a
15 problem. He says, we train our folks to have an up
16 line. And he said, you know, being a chain of command
17 guy that's just kind of how he thinks. And he said
18 that his natural reaction, as a natural now, meaning
19 that he's been doing this a long time as a police
20 officer and now as a customer service person whose job
21 it is at some point to not upset people, he thought
22 the right thing to do was to get up and talk to the
23 manager. And so that's what he did. Or at least
24 that's what he told me he did. And that's why he said
25 he did it, because he felt like that was the proper

1 thing to do.

2 Q Did you have a discussion with Mr. Reeves
3 about his observations when he was returning to his
4 seat from complaining to the manager as he was walking
5 down the isle to his seat?

6 A Yes.

7 Q What did he say?

8 A He said when he came back he noticed that Mr.
9 Oulson had his phone off. And he said to him
10 something to the effect of, I see your cellphone is
11 off. I'm sorry I had to involve the manager. I asked
12 him if he said that in a snarky way, meaning if he did
13 it almost like an agitated sort of way. He said, I
14 don't know how he took it but that's not what I said.
15 I was being a bit apologetic for involving the
16 manager for something that resolved itself at the time
17 I was gone.

18 Q Did you ask him why he made that statement to
19 Mr. Oulson?

20 A I did.

21 Q What did he say?

22 A That was the whole snarky conversation. He
23 said that he felt that it probably was more of a
24 customer service training that he had. That he wanted
25 to, you know, basically resolve any bad feelings with

1 the guy in front of him who was sitting there with his
2 phone on. And clearly he went up and told the
3 manager. He said, I wanted to apologize and let him
4 know that everything is fine now. And so that's kind
5 of how he described it to me.

6 Q Did you discuss with Mr. Reeves his
7 observations of Mr. Oulson after he returned to his
8 seat, sat down and placed the popcorn on his left
9 thigh? Did you ask him what observations he made of
10 Mr. Oulson at that point in time?

11 A Yes.

12 Q What did he say?

13 A He said this is the point where Oulson turned
14 to him and said something to the effect of, I was
15 texting my fucking daughter. And I said, did you
16 respond to that? And he said to me, I don't really
17 remember if I did or not. He said, but he made it
18 very clear. And then he said almost immediately after
19 that he stood up. He said, when he stood up, and I
20 wrote this down, I thought he was leaving the theater.
21 We thought he was standing up to leave the theater.
22 He said, then he turned around. And he said, and then
23 suddenly without warning he was in my face.

24 So that timeframe was very compressed from
25 the time that Oulson reinitiated a verbal contact with

1 him and the time that he actually stood on his feet
2 and turned around and was suddenly, in the words of
3 Mr. Reeves, in my face.

4 Q Did you ask Mr. Reeves what he meant by he
5 was in his face?

6 A That he was being challenged. Yeah. That
7 this was now a situation in which he was being
8 challenged by the guy in front of him.

9 Q Did Mr. Reeves tell you that Mr. Oulson said
10 to him, get out of my face?

11 A I'm sorry, say that question again.

12 Q Did Mr. Reeves tell you that Mr. Oulson said
13 to him, get out of my face?

14 A I don't think he said that. I think I read
15 that. But I don't think he said that to me in my
16 interview.

17 Q After --

18 A And I think what I read, Mr. Martin, is that
19 somebody said that. And it would strike me as odd
20 that if Mr. Oulson had made the effort to get out of
21 his seat, turn around and challenge Mr. Reeves, that
22 he would be the one saying get out of my face. That
23 just seems counterintuitive to me. Perhaps he said
24 it. I don't know. But I do remember reading somebody
25 hearing that that was said.

1 Q Hang on a second.

2 A Mr. Martin?

3 Q Yes.

4 A Let me add something here. I'm looking at
5 the bottom page of my note. I don't know if we
6 circled back around to that. But I wrote down here,
7 doesn't recall what he said but said something. He
8 thinks it might be, get the fuck out of my face. So
9 that's not in the sequence as I wrote my notes. But
10 it looks like he-- I might have come back to that
11 question later on. So I do have a note on that. He
12 said that he hears him say something that he thinks
13 might be, get the fuck out of my face, or something
14 like that.

15 Q Well that's what he tells law enforcement on
16 page 84 line -- well I don't know what line it is. On
17 page 84.

18 A Well he told me that again. And I may have
19 asked him about that as I went through-- because I
20 actually had his statement, or I was looking at it and
21 sort of talking to him about it and examining his
22 responses. Like I said, it was remarkably similar.
23 But somehow this ends up at the last -- my last note
24 actually in the notes that I took, and I don't have
25 many of them. So he does say that.

1 Q Okay. Did he tell you when Mr. Oulson said
2 that?

3 A I didn't write it down unfortunately. But he
4 does remember saying that. And I think it, like I
5 said, it seemed counterintuitive to me that had this
6 happen when Oulson got out of his chair and stood up
7 and turned around that he would have said that. And
8 that may have been why I questioned him about it.

9 Q And did you question him about it?

10 A I did, because I made a note of it.

11 Q And what did he say?

12 A I read it to you. He said he doesn't recall
13 what he said, but he said something. He thinks it
14 might be, get -- in quotes, "get the fuck out of my
15 face."

16 Q And when did Mr. Reeves say that Mr. Oulson
17 made that statement?

18 A I believe this is when he was telling him
19 that he was just texting his daughter. That he had
20 kind of like turned around and said -- I wrote that
21 down. He says-- he said, who the fuck do you think
22 you are? In quotes, "I was texting my daughter." And
23 I think it happened during that same time. Get the
24 fuck out of my face. That kind of thing.

25 Q Once Mr. Reeves told you that Mr. Oulson was

1 standing, did you ask Mr. Reeves what his next
2 observations of the behavior of Mr. Oulson was?

3 A He said to me he threw the phone at me. And
4 I remember this conversation. He elaborated by saying
5 he wasn't sure if the phone was in his hand and he got
6 hit with a fist. He said, suddenly my face turned to
7 the right. My face got knocked kind of to the right.
8 He said, my glasses went cockeyed and I remember
9 seeing a flash of the phone. I don't know exactly
10 what he hit me with, if it was his fist holding the
11 phone or if he actually threw it at me. He said, but
12 I remember it hit me. It hurt me. It turned my face
13 to the right. And then suddenly my vision was
14 obscured because my glasses were cockeyed. And that
15 was the next thing he recalled. Well, I shouldn't say
16 that. He actually said that he was coming over the
17 seat, or coming -- so there's obviously space between
18 the seats. He sees him kind of prop up and he
19 declares that he's coming over the seat. He said he's
20 got a leg in there. He's kind of coming through the
21 side of the seat and over the top of the seat. That's
22 what he says. And then he says he gets hit in the
23 face.

24 Q With the cellphone?

25 A That's what he said, yes. He said-- I wrote

1 down, he threw the phone at me. But then he went on
2 to elaborate that he wasn't sure if it was thrown or
3 if it was in his hand when he got punched. He still
4 doesn't know. That's what I'm saying. He's still
5 kind of unclear on what hit him and how it hit him
6 even. I think he knows it's a cellphone that hit him,
7 he just doesn't know how it hit him, if it was
8 launched or if it was actually held in his hand.

9 Q Did you ask Mr. Reeves how long after he
10 believes he was hit with the cellphone that the
11 popcorn was tossed in his face?

12 A Yeah, I did ask him about that. And I said,
13 you know, I've read some things and I've read some
14 depositions of people in this case who think that
15 maybe you got hit in the face because of the
16 mysterious luminous object 10 seconds earlier. Is
17 that the case? He goes, I don't really know. He
18 says, it happened very very quickly. I don't have a
19 full understanding of the timeframe. But he said, I
20 got hit in the face. He says, my glasses went
21 sideways. The next thing I know he's still coming at
22 me. I'm pressed back in the seat. So it sounded like
23 it was very close to when the popcorn was thrown,
24 which is why I concluded based on Reeves' statement,
25 that it probably happened during that timeframe that

1 we can't see, during those black frames. And
2 concluded that that 10 seconds earlier where we have a
3 very brief picture of Oulson turned in his chair,
4 Reeves kind of leaning forward, that that's probably
5 not where it occurs.

6 And the reason I said that, and I'll say it
7 again, is because when Reeves sits back from that he
8 does not gravitate, he doesn't try to adjust his
9 glasses, which one would expect if he just got hit in
10 the face with a cellphone.

11 I'm sorry?

12 Q I'm thinking. I thought you were moving on
13 because you were saying it didn't happen here so it
14 happened here. And I was waiting for you to finish
15 your answer.

16 A I don't think anyone could say actually where
17 it happened, but I think we are more able to say where
18 it probably didn't happen, and that is at second 26.
19 Because, like I said, there's no -- there's no --
20 there's nothing that you would expect in Reeves'
21 behavior to show that he's been struck at that moment.
22 He just sits back in the chair. I think he actually
23 grabbed the popcorn and sets it on his thigh. I mean,
24 he doesn't-- he looks like he's exchanging words
25 perhaps. And I do remember that Reeves said to me he

1 was trying to be quiet to not disturb everyone in the
2 theater. That's probably why he leans forward towards
3 Oulson and says something. I said, what did you say
4 to him. He said, I don't remember. He said, if I
5 said anything at all I don't know. He may have been
6 leaning forward to listen to him. He doesn't recall
7 exactly what happened at that moment.

8 But he seems to think that he gets struck in
9 the face, either punched or hit by a cellphone,
10 moments before Oulson then reaches across, grabbed his
11 popcorn and hits him now for a second time. And he
12 says what he remembers is him coming at him. And as I
13 told you previously he's been very clear about this.
14 He said this to law enforcement and he repeated it to
15 me. He goes, I didn't know he grabbed my popcorn. He
16 says, when it was all over and I sat back, I looked
17 down and my popcorn was scattered. And I still don't
18 know-- I still don't have a memory, I'm sorry, of that
19 happening. I originally thought maybe he knocked it
20 out of my hand or perhaps I dropped it. He says, I
21 now know that he grabbed it and threw it. He says, at
22 that time I didn't know that at all.

23 So what he does recall is the board lumbering
24 of Oulson probably when he's grabbing his popcorn, but
25 he perceived it as a direct attack on him. As the

1 distance is closing he does not have a full sight
2 picture but he knows that he is still being assailed.
3 That's how he explained it to me.

4 Q Did you ask Mr. Reeves whether or not he made
5 the statement, words to the effect, throw popcorn on
6 me, will you?

7 A Yes, I did. And I told you what he told me.
8 He said, no, I heard that also. Somebody said that,
9 he said, in the theater. I said, why would they say
10 that? He goes, I really don't know. He says, but I
11 heard it. So I'm speculating here. But I could see
12 somebody in a moment of levity after what just
13 happened saying something, I'll teach you to throw
14 popcorn on me. Something like that. I mean, that's
15 my kind of sense of humor. That's the kind of stuff I
16 would say. So if somebody else said it then somebody
17 else said it. If Reeves said it, Reeves said it. I
18 don't know. But he says, I didn't say it but I did
19 hear it. So I know somebody in the theater said that.

20 Q Did you ask Mr. Reeves what it was about the
21 behavior of Mr. Oulson that he felt it was necessary
22 to respond with deadly force?

23 A Yes.

24 Q What did he say?

25 A He said kind of what I have summarized for

1 you, which is that he thought that Oulson's behavior
2 was bizarre and unpredictable. He said he'd never
3 faced anything like that before, somebody that had
4 been so, I think he used the word again, in his face.
5 He said he-- he repeated the word I was scared
6 shitless. He said that he believed that, especially
7 when he was trying to make his assessment, when he was
8 trying to analyze what was actually happening, that it
9 happened very rapidly, and that he felt as if he had
10 been already hit once and he was about to be hit
11 again, and didn't know when the beating would stop and
12 he needed to put an end to it.

13 So he felt that he was in imminent danger of
14 serious bodily harm or worse. And he didn't say
15 necessarily that he felt like he was gonna die. And I
16 don't think I asked him that. I don't think that
17 anyone could answer that question with any degree of
18 certainty, even Reeves. But he said that he knew that
19 he was not going to prevail in a fist to cuffs with
20 this guy. And he felt like he was going to be
21 seriously injured or worse, is kind of what he told
22 me. So I took that to mean that perhaps even killed.

23 Q Did you have a discussion with Mr. Reeves as
24 to when he made the decision to begin the process of
25 drawing his firearm from his pants pocket?

1 A I did. And he said to me that it was a
2 bit -- it was a little bit about his positioning as
3 much as it was about his analysis of what was actually
4 happening to him. He was thinking to himself he had
5 no where to go. He mentioned to me he had the wall
6 behind him. And I think we even had a moment of
7 discussion about, you know how cops do that. You
8 know, we sit with our back to the wall. We try to
9 observe, blah, blah, blah. He goes, it put me in an
10 unattainable predicament. I couldn't really go
11 anywhere. I was completely stretched out, I think is
12 the word he used. He said, and if you were to see the
13 pants that I wear, he said, I had my little Kel Tec in
14 my pocket, he said, and it's pretty tight in there. I
15 wouldn't have been able to get it when I was sitting
16 down, he said. But because I was stretched out, he
17 said, I actually could get my hand in my pocket and
18 get it out. So that was occurring to him based on the
19 position that he took, he told me, of the consequence
20 of the ongoing attack by Oulson. That he just pushed
21 far away to the left. Kind of a little bit drawn away
22 from his wife and at the same time to not get hit
23 again. And he said, that is the moment where I
24 realized I could get my hand in my pocket. So that's
25 when he started to formulate what his response would

1 be. And he said, he told me when he did put his hand
2 in his pocket it went right into the weapon and came
3 right out. So it wasn't a matter of pause or him, I
4 don't know, putting it in his seat. I asked him about
5 that. Did you have it out? Did you have it on your
6 leg? Did you think that you might end up in this
7 situation? No, no, no. I reached in my pocket as I
8 was being attacked, drew the weapon, and then when I
9 had the weapon in my hand I started to sit back up and
10 I fired the shot. That's what he told me.

11 Q I got the impression from your statement that
12 Mr. Reeves told you that he made the decision to draw
13 his firearm after the popcorn was tossed, the second
14 attack; is that a correct assumption? Do I have it
15 right?

16 A No, I don't think that's right. I think that
17 he -- as the popcorn is being tossed --

18 Q Wait a minute. I appreciate what you're
19 saying and I'll get to that in a minute. I want to
20 know what Mr. Reeves said.

21 A I did not get the same impression you did
22 from what I just said. I mean, when he told me that I
23 just relayed it to you. You formed the impression.
24 My impression was formed differently. My impression
25 is when he first got hit, or as he was being hit,

1 somewhere in that neighborhood, the first attack--
2 we'll call it the first attack, assuming there was two
3 attacks.

4 The first attack is when he gets pressed back
5 in the seat. At that point he can still see the
6 figure, can't make out detail, his glasses are
7 sideways, you got -- I think he even mentioned that
8 Oulson was backlit. He does not have a clear picture
9 of what's happening, he just knows that this figure is
10 still coming at him. So this is before the popcorn.

11 He reaches his hand into his pocket because
12 he knows that he's got to get Oulson off of him, and
13 that's the time this happens. And then the popcorn I
14 think is grabbed, and about exactly the same moment as
15 the weapons comes out and is introduced. And I think
16 the video picks up from there. We can see that. So
17 we can see as the popcorn is tossed in the same
18 timing, in the millisecond that it takes for Mr.
19 Reeves to retract his arm, the weapon follows the arm.
20 It's coming out and then he fires the shot. So it's
21 happening almost simultaneously to the popcorn being
22 thrown.

23 But it appears to me, and I think this is the
24 only way you can figure it -- do you want me to
25 comment on what I think as an opinion or--

1 Q No, because I want to followup. Is what you
2 just said what Mr. Reeves told you, or your conclusion
3 is based on what he said?

4 A Well I suppose it takes a little of both. I
5 mean, I'm interpreting what he's telling me. But
6 that's what he said to me. He said that when he was
7 splayed out, when he got hit in the face and he pushed
8 back -- no, I'm sorry. Let me go back. As Mr. Oulson
9 was coming over the seat he splayed out. He got hit
10 in the face. That's the time where he's got the
11 ability to get the firearm. And he tells me that's
12 where he sticks his hand in his pocket and is able to
13 get it. And then goes on about, he breaks there and
14 says, you should see his pants. If I was sitting up
15 straight there's no way I could have got the gun out.
16 It was pushed down in a deep cargo pocket, or however
17 he explained it, and I couldn't have got it. But
18 because of the position he had forced me into I was
19 able to get the weapon out. So that's what he tells
20 me.

21 Q Did Mr. Reeves make any other statements to
22 you or did you discuss any other aspects of the
23 shooting with him that we haven't already covered?

24 A We talked about post shooting, what he did.
25 He mentioned that after it was over he didn't want

1 anybody in the theater to be afraid that he was a
2 homicidal maniac, so he said that I put the weapon on
3 my thigh. And he said, by the way, when I put it on
4 my thigh it was in full battery. He said, then the
5 Sumpter County deputy walked over and grabbed it, he
6 said. And I'm sure he stove piped it, is what he
7 said.

8 Q Well, wait a minute.

9 A That's what he told me. He says-- I wrote
10 down, it was in full battery when he set it on his
11 leg.

12 Q Okay. You and I are gonna have this
13 discussion. You know that the shot was fired, right?

14 A Yup.

15 Q And you know that there was one casing found
16 on the floor, correct?

17 A Yes.

18 Q And it's a semiautomatic pistol, correct?

19 A Yes.

20 Q Okay. And then you know as a firearm
21 instructor, how does a semiautomatic pistol become in
22 a phase 2 malfunction, which is a stovepipe; how does
23 that occur?

24 A The casing doesn't properly eject.

25 Q Correct. Now, do you really think that

1 happened, that Corporal Hamilton racked that firearm
2 and stove piped it, do you believe that?

3 A I don't believe there was an empty casing
4 there --

5 Q There was an empty casing on the floor.

6 A No, I'm talking about the conventional
7 stovepipe where you have an empty casing trapped
8 inside the mechanism of the weapon. But it was -- I
9 don't know if it double bent. But I think the battery
10 of it was out of battery. I think I even saw I think
11 a picture of it. So it's not a true stovepipe. But
12 it's jammed. He thinks -- he tells me -- here's what
13 he said. I wrote it down. The Sumpter County deputy
14 stove piped the weapon when unloading it. He said it
15 was in full battery when he set it on his leg. That's
16 what he said. So he felt confident that when he set
17 it down it was still very serviceable. And of course
18 how would he know. He didn't inspect the weapon after
19 the shooting. But he believes that the problem with
20 the weapon that was identified during evidence
21 collection was not of his doing. It was not because
22 of a malfunction of the weapon. It was because the
23 Sumpter County deputy did not properly clear the
24 weapon. That's what he told me.

25 Q All right.

1 A He used the word stovepipe. But you are
2 correct, that stove piping involves an empty casing.
3 But double feeding, for example, does not. You may
4 end up with the battery that's pushed back because you
5 got two rounds trying to get into the chamber. That's
6 more likely what happens. But he used the word
7 stovepipe because I wrote it down.

8 Q Anything else that he said that we haven't
9 covered?

10 A Let's see.

11 Q I mean, about his statement to you. We're at
12 the post incident.

13 A No, I think that's it.

14 Q Did you ask him about any statements he made
15 to his wife or any statements the wife made to him
16 after the incident?

17 A No. I mean, a lot of that I found in the
18 reporting. I have Ms. Reeves saying what she said;
19 what he said.

20 Q Anything that Mrs. Reeves said about the
21 incident, does that play into any opinions or
22 conclusions that you've made?

23 A Yes, one thing, and I think I put it on the
24 list. She is one of the people who said he turned to
25 her and said he hit me in the face. So this is his

1 very first initial reaction. After the shot is fired
2 he turns to his wife and said he hit me in the face.
3 So I felt that was interesting because of the timing
4 of it. He hadn't been sitting down and conjuring a
5 plan on how to cover his faulty shooting. He very
6 quickly turns to her and says he hit me in the face.
7 And she recounts that. I think that's important.

8 Q And do you know whether or not being hit in
9 the face, was he saying I was hit in the face with a
10 cellphone or I was hit in the face with popcorn?

11 A I think she recounts that he tells her I was
12 hit in the face. He doesn't say by any particular
13 thing. I don't think at that time -- in his statement
14 he says I don't know what I was hit in the face by.
15 He says that. But he believes it's a cellphone
16 because he sees sort of this blur of a bright screen
17 for a minute as he's getting struck.

18 Q But the statement by Mrs. Reeves in and of
19 itself neither confirms or invalidates whether or not
20 Mr. Reeves was hit with a cellphone, does it?

21 A No. I mean, he said I was hit in the face.

22 Q Any other statements post Miranda (sic) or
23 any other discussions you had with Mr. Reeves?

24 A What do you mean post Miranda?

25 Q Did I say post Miranda? I meant to say post

1 incident. I apologize. Thank you for correcting me
2 on that.

3 A Okay. I mean, we talked. Most of it turned
4 to more of a casual conversation just learning more
5 about him and even him learning a little bit about me,
6 what I did and that kind of stuff.

7 But in relationship to this event, I think
8 when I finally got through this and finished taking
9 notes, we kind of stopped at the post shooting what
10 did you do then. And then he went with the Sumpter
11 deputy and blah, blah, blah.

12 And I did ask him -- I did ask him, I said,
13 why did you give a statement? And he said -- I wrote
14 this in quotes. "I gave them a statement because I
15 confident of self-defense." That's what he said. So
16 somewhere towards the end of this conversation he
17 tells me that he gives a statement to police because
18 he's confident that it's self-defense. And I think
19 even during his interview that I listened to he says,
20 if you guys start scaring the shit out of me I'm gonna
21 have to get an attorney. That's what he says.

22 So I think, once again, that kind of confirms
23 the fact that he believes that he's telling a cohesive
24 story of what happened and he's telling it because he
25 is confident it's self-defense.

1 And a guy like him, by the way, I would
2 reasonably anticipate he knows the rules of engagement
3 and would be able to draw that kind of conclusion
4 about what just happened. So that was just sort of my
5 analysis of it. So he was confident that it was self-
6 defense. And he tells that to law enforcement.

7 Q Based on your interview with Mr. Reeves, do
8 you believe that Mr. Reeves actually believed that he
9 was in imminent danger of death or great bodily harm
10 necessitating the use to use deadly force?

11 A Yes.

12 Q And do you believe after interviewing Mr.
13 Reeves regarding the danger as he perceived it, that
14 he actually believed that the danger was so real that
15 under the circumstances the only way he could avoid
16 the danger was through the use of deadly force?

17 A Well he told me that. And I have no reason
18 to dispute what he told me. I think he does believe
19 that. And I have a whole list of reasons why it would
20 be reasonable to believe that but those are of course
21 my opinions, not what he said.

22 Q Well I'm asking you, once that you spoke with
23 him do you believe that he actually believes that?

24 A Right, and that would be an opinion of mine.
25 And my opinion is he actually believes that.

1 Q And based on your interview of Mr. Reeves do
2 you believe that Mr. Reeves actually believes it was
3 necessary to use deadly force and/or to prevent what
4 he perceived to be as an imminent threat of death or
5 great bodily harm?

6 A I think you just asked me that question in a
7 different way.

8 Q I did.

9 A Yeah, I believe that Mr. Reeves believes that
10 the moment he fired the shot he was in imminent danger
11 of death or great bodily harm.

12 Q And based on your analysis of this particular
13 case, do you have an opinion as to whether or not Mr.
14 Reeves was justified in the use of deadly force as you
15 know the facts to be?

16 A My opinion was that the use of deadly force
17 by Mr. Reeves was justified based on the facts as I
18 understand them.

19 Q All right. And would you just go ahead and
20 bullet out for me those facts.

21 A In the last four hours I've been doing that
22 but I'll try to summarize.

23 Q Just bullet fashion, A, B, C, D this is what
24 they are. Not a long narrative. Just short and
25 sweet.

1 A Okay. Mr. Oulson, his behavior was
2 unreasonable and not predictable.

3 Mr. Reeves, when faced with the challenge of
4 Mr. Oulson had a very low self-efficacy about his
5 ability to deal with him if it escalated. He provided
6 reasons why he had low self efficacy. I guess that
7 would be part two.

8 When Mr. Oulson stood up, part three, it
9 moved from a challenge where he knew he was in
10 conflict with somebody to an actual threat, in
11 particular, when Oulson encroached upon his space
12 where he, according to Reeves, was coming over the
13 seat.

14 Mr. Reeves, part four, felt as if he was
15 limited in his options. He wasn't able to run away.
16 He had a wall behind him. He wasn't even able to get
17 out of seat at that point. He wasn't equipped with a
18 utility belt to deal with him. He couldn't have
19 pepper sprayed. He didn't have any of that kind of
20 stuff. And he knew that his hands would be
21 ineffective in dealing with this threat. That would
22 be number four.

23 Number five. He then gets hit in the head
24 with something, and it further diminishes his ability
25 to be able to properly appraise the situation because

1 he can't see. And most of the information we get is
2 visual. But he is able to tell that Mr. Oulson is
3 still there and still advancing on him. That's number
4 five.

5 Number six. He feels as if, because he's
6 advancing on him and because he is unpredictable, that
7 he's anticipating he doesn't know where this is going
8 to end but it may very well end in him suffering great
9 bodily harm or death and he wants to avoid that.

10 Number seven. The coping mechanism that he
11 is equipped with is a 380 Kel Tec that's in his right
12 pocket. Due to his fading away from Mr. Oulson's
13 direct attack he finds himself in the position that he
14 can get that weapon out where he couldn't have done it
15 had he been sitting straight up. And so he reaches
16 his hand into his pocket to take out a weapon that can
17 mitigate the threat that's being posed by a younger,
18 angry, unpredictable man. Was that number seven?

19 Q Yes.

20 A After he takes the weapon out, or as he's
21 pulling the weapon out Mr. Oulson again launches a
22 hand towards him. We know by watching the video that
23 he went to grab his popcorn. Reeves doesn't know what
24 he's doing, he just knows that he's being attacked.
25 There's a forward movement of a hand coming at him.

1 He responds by deciding to use deadly force to stop
2 this attack from continuing.

3 The video picks up with him being hit with
4 popcorn. Reeves claims, I don't even know that he's
5 grabbed my popcorn, I just know that he has attacked
6 me again and so I decided to fire a shot. And I fire
7 one shot. And that stopped the problem. He doesn't
8 fire another shot.

9 And that's the summary of why this would be
10 justifiable. Because I think, and again, this is an
11 ultimate opinion of the jury, that Mr. Reeves had a
12 reason to believe, a demonstrable reason to believe
13 that he wasn't equipped to deal with the threat that
14 was being offered by Mr. Oulson. It was unreasonable.
15 It was unpredictable. It was ongoing. It was
16 physical. And he needed to put a stop to it. And
17 that meant that the only mechanism that he had under
18 his control to do that was the use of a firearm.

19 Q In this particular case, in your opinion, why
20 is it reasonable for Mr. Reeves to respond to the
21 perceived threat with deadly force, firing a firearm
22 at Mr. Oulson?

23 A Because he believed that he was gonna get
24 seriously injured if Mr. Oulson continued to do what
25 he was presently doing.

1 Q Is the fact that you could be seriously
2 injured, the use of deadly force proportional to that
3 threat?

4 A Yes. You don't have to be injured to prove
5 that you could be injured. You have to believe that
6 you could be injured. And under all the circumstances
7 that I just laid out for you, it's reasonable for
8 somebody to think a six foot four guy who's acting
9 unpredictable and unreasonable and so angry, and is
10 currently hitting you, could cause you great bodily
11 harm. That's completely reasonable. You don't have
12 to wait until you're seriously bodily harmed to say,
13 okay, now I have what I need for deadly force. The
14 law does not require that. It requires a reasonable
15 analysis of the facts to determine that you believe
16 your life is in imminent danger of death or great
17 bodily harm. That's precisely what we have here.

18 Q If you were asked and allowed to testify to
19 the Court and explain to the jury objective
20 reasonableness, to what extent would you use the
21 concepts of force continuum or force matrix in that
22 explanation to the jury?

23 A Almost completely. So what makes something
24 objective is that there are rules in place when the
25 event happens, right. So I would rely obviously a

1 little bit on statute that allows people to defend
2 themselves. And then I would break it down into the
3 force matrix and the force continuum and talk about
4 how threats are a theft and how they are responded to
5 based on a scale that has been approved in court many
6 times by law enforcement and by others to evaluate the
7 appropriateness of response to perceived threat. And
8 that would make it objective. It's devoid of emotion.
9 It's devoid of all the things that happen when you're
10 the subject of an attack. So that would be the
11 objective reasonableness claim.

12 I would also probably be asked, I assume,
13 about the subjectivity of it. And of course the one
14 that can answer that question would be Reeves. I'm
15 aware of what Reeves said. So taken Reeves as true I
16 would be able to comment on the subjectivity of it and
17 put these behaviors of Mr. Oulson in categories of
18 threat and show the straight line appropriate
19 response. And that would be going back to the
20 objectivity in hindsight.

21 Q Give me just a minute, please.

22 Mr. Bedard, I don't have any further
23 questions.

24 A Okay.

25 Q I just turned to the page with the

1 authoritative sources.

2 A Yes.

3 Q And some of them are in journals that I don't
4 have access to.

5 A If you want you can send me a list of what
6 you'd like to read and I'll pull them down for you so
7 you can take a look at them.

8 Q I appreciate that.

9 MR. MARTIN: Is that okay with you, Mr.
10 Michaels?

11 MR. MICHAELS: Yes, that's fine.

12 A And, Mr. Martin, before you continue on, with
13 respect to those sources, you'll see the last one is
14 Yerkes, Dodson. You see that?

15 Q (By Mr. Martin). Yeah. 1908.

16 A I mean, I don't know that there's a specific
17 citation for that.

18 Q What is that?

19 A It's the inverted U theory where arousal
20 affects performance. We use this a lot in sports
21 psychology.

22 Q Yes.

23 A If you have lower arousal your performance is
24 very low. And as you get some arousal, some anxiety
25 before it increases until it reaches a top point which

1 is known as the individual zone of optimal
2 functioning. But the strap exceeds that. You start
3 to have a deterioration of performance. So this is
4 typically what happens when we see in combat cases
5 where individuals may be prepared for a fight and then
6 all of a sudden start losing and their performance
7 breaks off and-- there's actually another model that
8 accompanies this since 1908 called catastrophic model.
9 They think that that rounded curve of the inverted U
10 is much more extreme. It goes from optimal
11 performance to just really degraded performance.

12 And so this is partly-- this has a lot to do
13 with the whole challenge versus threat construct that
14 I gave you. And what's happening during challenges is
15 that the arousal level is coming up, but when you hit
16 a threat, remember that I indicated to you that your
17 coping mechanisms have been exceeded, or at least you
18 believe they're exceeded. This is where you start
19 seeing these fight/flight responses and you then have
20 artifacts and things like that.

21 So I referred to the Yerkes, Dodson because
22 I've learned it in text books. I didn't have a paper
23 on it. So I just didn't want you to kind of get lost
24 on what is he talking about.

25 I think you can get online probably and look

1 at Yerkes, Dodson and it's quite-- it's been around a
2 long time and it's quite popular in the literature.
3 And I'm sure I can find some literature that is
4 authoritative that talks about it. But I could not
5 find the specific Yerkes, Dodson article from 1908.

6 Q Yeah, you're correct. There's a lot of
7 information about it on the internet both criticizing
8 it and accepting it. And, yeah, no, I don't need
9 that. I know about the upside down U and that theory.
10 I have a grasp of that.

11 A Okay.

12 Q What I will do is I'll send you a list of the
13 articles that I'd like to read that I cannot pull
14 down.

15 A Okay.

16 Q And then if you would electronically provide
17 me with those I would greatly appreciate it.

18 A Happy to do it.

19 Q There was one other thing I was supposed to
20 send you. We talked about a scientific study by
21 Shultz. You were gonna look that up for me.

22 A Yeah.

23 Q And then there was something else I was going
24 to send you.

25 A And that article was called The Point of No

1 Return. I remember that now. And that talks about
2 that two hundred millisecond veto ability. Let me see
3 if I can find it quickly.

4 Q I'll try to find it. There's so many Shultz.

5 A Write that down when you're sending your
6 list. Just write The Point of No Return so that will
7 remind me, and I'll get it over to you.

8 Q And there was one other thing. I'll find it.
9 I'll find it in my notes.

10 MR. MARTIN: Okay. Mr. Michaels, do you have
11 any questions or followups or clarification that you
12 want to do on the record?

13 MR. MICHAELS: No questions. How's that.

14 MR. MARTIN: Alright, Mr. Bedard, I don't
15 have any further questions.

16 I will of course copy Mr. Michaels with all
17 the emails that I send to you. Do you have any
18 questions of me before we leave?

19 MR. BEDARD: Yeah. I know this is not a
20 formal deposition but you did record it. Is it
21 possible to get a transcript of it so I can review
22 what we talked about today in preparation for trial?

23 MR. MARTIN: A transcript is being ordered by
24 the state.

25 MR. MICHAELS: We'll order a copy. You'll

1 get a copy, Roy.

2 MR. MARTIN: Yeah. It's just like a depo
3 only we call it a telephonic statement because the
4 court reporter doesn't place you under oath. And
5 that's how the rules refer to it.

6 But she will transcribe it and file it just
7 like a depo. So yes, you will get a copy.

8 MR. BEDARD: Just like in a deposition I will
9 say that I read. How's that.

10 MR. MARTIN: Excuse me, sir. What?

11 MR. BEDARD: I said just like in a deposition
12 I'm informing you I will read.

13 MR. MARTIN: She just put that down that you
14 will read. Of course you know that by saying that you
15 can't change sum and substance, you're just making
16 corrections that maybe words or something that she
17 didn't pick up correctly.

18 MR. BEDARD: For me it will be more of a
19 study guide of what we will probably talk about in
20 trial.

21 MR. MARTIN: Okay. If there's nothing else,
22 gentlemen, have a safe and productive weekend. And I
23 will talk to you soon. Thank you.

24 (CONCLUDED AT 1:00 P.M.)

25

CERTIFICATE OF OATH

STATE OF FLORIDA)

COUNTY OF PINELLAS)

I, the undersigned authority, certify that ROY
BEDARD, appeared TELEPHONICALLY and gave his
statement.

WITNESS my hand and official seal this 22
day of NOVEMBER, 2021.

DOES NOT APPLY

ROY BEDARD

Date: _____

CORRECTIONS

PAGE / LINE #

COMMENTS

[illegible]

1 STATE OF FLORIDA)

2 COUNTY OF PINELLAS)

3 I, SHARON K. ALLBRITTON certify that I was
4 authorized to and did stenographically report the
5 STATEMENT of ROY BEDARD; and that the transcript is a
6 true record of the testimony given by the deponent.

7 I further certify that I am not a relative,
8 employee, attorney, or counsel of any of the parties,
9 nor am I a relative or employee of any of the parties'
10 attorney or counsel connected with the action, nor am
11 I financially interested in the action.

12 Dated this 22 day of NOVEMBER, 2021.

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15 _____
16 SHARON K. ALLBRITTON
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