

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

STATE OF FLORIDA,

Plaintiff,

vs.

VOLUME II

CURTIS J. REEVES,

Defendant.

_____/

PROCEEDINGS: TESTIMONY OF ROY BEDARD

DATE: December 15, 2021

BEFORE: The Honorable Kemba Lewis
Circuit Court Judge

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

REPORTED BY: Charlene M. Eannel, RPR
Court Reporter

Pages **146 - 227**

A-P-P-E-A-R-A-N-C-E-S

APPEARING ON BEHALF OF
THE STATE OF FLORIDA:

Glenn Martin, Assistant State Attorney
Office of Bernie McCabe, State Attorney
Pinellas County Judicial Center
14250-49th Street North
Clearwater, Florida 33762

APPEARING ON BEHALF OF
THE DEFENDANT: CURTIS REEVES
Richard Escobar, Esquire
Dino Michaels, Esquire
Matthew Funderburk, Esquire

ESCOBAR & ASSOCIATES
2917 W. Kennedy Blvd.
Suite 100
Tampa, Florida

INDEX OF PROCEEDINGS

PAGE

ROY BEDARD

Direct Examination by Mr. Michaels	4
------------------------------------	---

Cross-Examination by Mr. Martin	78
---------------------------------	----

Certificate of Reporter	227
-------------------------	-----

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

2 BY MR. MARTIN:

3 Q. Dr. Bedard, when we broke for lunch, you and I
4 were having a discussion about the null hypothesis, how
5 you use that to conduct your analysis. I asked you
6 questions regarding the points of interest and we were
7 using point number one as an example, whether or not
8 Mr. Reeves was hit in the face prior to the top -- the
9 toss of the popcorn.

10 Do you remember that?

11 A. I do.

12 Q. Okay. And then I asked you a specific question
13 regarding whether or not the jury would make the same --
14 or arrive at the same conclusion or judgment that you did.

15 Do you remember that?

16 A. Yes.

17 Q. And at that point, I asked the court reporter or
18 asked the Judge permission to read -- for the court
19 reporter to read back your answer.

20 A. Yes.

21 MR. MARTIN: Judge, I believe the court reporter
22 is prepared to do that.

23 THE COURT: You may, ma'am.

24 (Court reporter read back the requested record.)

25 THE COURT: Do you want any additional readback,

1 sir?

2 MR. MARTIN: No, that was -- that was his
3 acknowledgement.

4 BY MR. MARTIN:

5 Q. The remainder of the points of interest -- and
6 the Judge has the benefit of them being laid out in the
7 motion, and so I'm not going to go through every one.

8 A. Okay.

9 Q. But what I would like to do is discuss with you
10 generally all of the topics that you and I discussed,
11 those, quote, points of interest.

12 You used the same analysis as you did when you
13 explained how you conducted your analysis for point
14 number one, correct?

15 A. Yes.

16 Q. And then following up and concluding that
17 discussion, let's just ask a few more questions, then
18 we'll move on to another topic.

19 When you indicated that the method that you used
20 for all of the other points of interest, your conclusions
21 and your interpretations of that evidence -- the
22 conclusions and interpretation of that evidence is based
23 on your personal interpretation of the evidence?

24 A. Yes. And, again, that's all that I have, is my
25 personal interpretation.

1 Q. Okay.

2 A. I didn't consult with anyone, if that's the
3 question.

4 Q. Okay. We're still talking and dealing with the
5 methodology used by an individual -- by an expert who has
6 specialized training and knowledge under the Daubert
7 standard. We're still talking about the methodology.

8 Along with the points of interests where you
9 used the null hypothesis as part of your basis, if you
10 will, not all of it in drawing your conclusions, there was
11 another method that you used, which I refer to as the
12 "self-report method" to appraise coping, dealing with
13 self-efficacy.

14 Is that a fair characterization of that?

15 A. Yes.

16 Q. And when we talk about self-report, we talk
17 about a subject who is brought in by a researcher, and the
18 subject is asked certain questions about how they feel and
19 why you responded that way.

20 That information is passed on to the researcher
21 who compiles it, and then derives at whatever
22 correlations, conclusions that that researcher wants to
23 do?

24 A. In some cases, like clinical cases, yes.

25 Q. Okay. But you are referring -- you are relying

1 on clinical cases, are you not, in justifying your method
2 of using the self-report method in order to appraise the
3 coping mechanisms of Mr. Reeves?

4 A. I'm using the construct of self-efficacy as
5 Bandura laid out in the '70s. As you know, we discussed
6 that it has been advanced upon many different ways.

7 But when Bandura discussed it, he discussed it
8 in a clinical setting, which was, How do we improve
9 someone's self-efficacy? What modes of therapy can be
10 applied to someone who demonstrates low self-efficacy to
11 raise that standard?

12 I'm not talking about self-efficacy in terms of
13 trying to improve Mr. Reeves' standard of efficacy. I'm
14 talking about it as an analysis of his perceptions based
15 on how he felt about himself and his efficacy in dealing
16 with that kind of problem.

17 Q. His decision-making process?

18 A. His decision-making process based upon a
19 self-efficacy, not to get into the weeds with the clinical
20 interpretation of self-efficacy and how it's treated.

21 Q. Yeah. We're not talking about treatment.

22 A. Okay.

23 Q. You want to bring it into the courtroom and use
24 it forensically as a prediction as to how one would
25 respond under a stressful situation based on the

1 self-limitations that individual has?

2 A. Well, what the reasonable response would be, not
3 necessarily -- I think everyone can respond differently,
4 of course. There's tremendous variability in the way that
5 people perceive circumstances, perceive threats, for
6 example, and respond to them.

7 But in this particular case, we know what the
8 defendant has said about his self-efficacy. And I think,
9 to my analysis, it goes to reasonableness, not necessarily
10 predictive. But it sounds reasonable to me that somebody
11 with low self-efficacy wouldn't want to engage somebody in
12 a fisticuffs, for example.

13 Q. Okay. So when we talk about the reasonableness
14 of it, that ties into the decision-making process. What
15 you want to do is explain his -- and I'm going to refer to
16 it as a coping mechanism.

17 A. Okay.

18 Q. -- how he made that decision to respond to a
19 situation based on his known limitations, and he responded
20 in a certain way, and you want to tell the jury that's
21 reasonable.

22 Is that what you want to do?

23 A. I don't want to do anything. I'll answer
24 questions that are asked of me. If the question of
25 self-efficacy comes up from you or from counsel on the

1 other side, I'll be happy to answer that. But, again, I'm
2 not going to offer a dissertation in defense of my
3 opinions.

4 Q. Well, that's what the Daubert hearing is all
5 about, Dr. Bedard, is I have a right to delve into your
6 methodology and what you use in support of your
7 conclusions and opinions. So that's why I'm asking the
8 questions. So please bear with me --

9 A. I'm not faulting you --

10 Q. -- as we go through that.

11 A. I'm not faulting you for asking the question.
12 I'm answering your question about what I want to tell the
13 jury. I don't want to tell them anything except what I am
14 asked to tell them. That's all.

15 Q. You are prepared to answer that question?

16 A. I am prepared, yes.

17 Q. And prepared to answer the question in the form
18 that because of the self-efficacy of Mr. Reeves, that
19 impacted his decision-making process, quote, his coping
20 skills, to the point where, in your opinion, it was
21 reasonable for him to respond the way that he did.

22 That's what you're prepared to testify to?

23 A. Yes, I would be prepared to testify to that.

24 Q. Okay. So when we talk about that particular
25 type of testimony, we're talking about the research not

1 only into the area of self-efficacy, but we're also
2 looking into the research of decision-making under
3 stressful situations; are we not?

4 A. Yes.

5 Q. All right. So it's a two-prong analysis, as far
6 as your method, and that's what I'm trying to go through.

7 Fair enough?

8 A. Yes, I think that's fair.

9 Q. Okay. When we talk -- and we're going to talk
10 about self-efficacy first.

11 A. Okay.

12 Q. And you mentioned the researcher Bandura?

13 A. Yes.

14 Q. B-A-N-D-U-R-A?

15 A. Yes.

16 Q. Is that correct?

17 A. Yes.

18 Q. I'm doing that for the court reporter.

19 Okay. And you indicated that that was one of
20 the researchers that -- in his research that you would be
21 relying on as far as self-efficacy?

22 A. Yes, it's my -- it's my training and my
23 education in that particular area of --

24 Q. Okay.

25 A. -- of Bandura's proposal of self-efficacy models

1 under what's called social cognitive theory.

2 Q. Okay. In doing your research, in order to not
3 only prepare for this case, but any other case when you're
4 going to discuss that topic, dealing with self-efficacy,
5 there has been a lot of criticism regarding the research
6 of Bandura?

7 A. I think about the modes of the treatment more
8 than the idea that self-efficacy exists. But, certainly,
9 Bandura wanted to have an unifying theory of
10 self-efficacy, and I think that had -- people had been
11 critical about that, that perhaps there are modes of
12 treatment that can't explain everything. But, once again,
13 that's a clinical question.

14 But I use the term "self-efficacy" based on a
15 description of how a person views their ability to cope
16 with a situation. And if the coping mechanisms are not
17 adequate -- and we talked a little bit about Lazarus and
18 Folkman's distinction --

19 Q. We'll get to that.

20 A. -- between challenge and threat. If the coping
21 mechanisms aren't adequate, then they tend to practice
22 avoidance behavior. And that's what I saw in this case,
23 was an avoidance behavior, an avoidance in going to
24 fisticuffs, which I think even the detective who conducted
25 the initial investigation suggested, perhaps, that's

1 something that Mr. Reeves should have done.

2 Q. And when we talk about the self-efficacy, we're
3 talking about how an individual handles a stressful
4 situation, and because it's stressful and the person might
5 be limited in ability, they will respond in a particular
6 way?

7 A. Well, a -- right, a reasonable way. Perhaps at
8 the clinical level, a predictive way.

9 Q. Well, that was my next question.

10 As I -- and that's what Bandura's research is
11 all about, is whether or not one's behavior, based on a
12 stressful situation, based on the self-efficacy of that
13 individual that he knows of, the behavior can be
14 predicted. And that's the criticisms of his research, is
15 it not?

16 A. Yes, and I would agree with that.

17 Q. Okay. So you're taking Bandura's research
18 and -- let me just see if you can -- you can either agree
19 or disagree.

20 You're taking Bandura's research and modifying
21 it, taking out the word "predictability" and inserting the
22 word that you want to use as being reasonable?

23 A. I disagree.

24 Q. Okay. Why do you disagree with that?

25 A. Because it is a voluminous theory that doesn't

1 just involve predictability. It also involves a
2 description of how we determine self-efficacy or how a
3 person would determine their own self-efficacy. I think
4 Bandura was on target.

5 And I mentioned originally four, and then I said
6 now there are really five, features of self-efficacy that
7 involve personal experience, vicarious learning through
8 others, stories and reading, and external information.
9 And the motive quality, which is something that we can't
10 ignore, which is how emotions affect self-efficacy in a
11 moment, or, perhaps, if it's not acute, perhaps, if it is
12 a long-term emotion, how it would affect them also.

13 And then I mentioned on the fifth element, that
14 there's also the idea of imagination that can affect where
15 we run through scenarios in our head, and we say, How
16 would I do this if this were to happen to me? Something
17 that most of us engage in in different parts of our life.

18 And I think Bandura was very clear on that. I
19 think it's a good foundational model for which to draw my
20 opinions based on Bandura's work. But in terms of
21 predictability, I wasn't asked to predict future behavior
22 of Mr. Reeves, but rather to evaluate behavior that had
23 already been conducted.

24 Q. Right. You used the term "reasonable," right?

25 A. Yes.

1 Q. All right. And that's important to you because,
2 in a criminal case, the legal test question of
3 reasonableness permeates throughout the jury instructions
4 and what the jury is supposed to weigh and consider,
5 right?

6 A. Yes.

7 Q. Okay. Now, in this particular case -- well, no,
8 we're going to stick with the theory itself.

9 So we're dealing with the self -- self-efficacy,
10 and you want to come in and say what he said when he said
11 "I was scared," to whatever degree he said he was, or "I'm
12 not as young as I used to be," you know, things like that
13 that percolate through his statements in the immunity
14 hearing.

15 Do you remember those? That's what we're
16 talking about?

17 A. Yes. Yes.

18 Q. Okay. And he's relayed all of that to the
19 jury -- or to law enforcement, and it will be played so
20 the jury gets to hear it, right?

21 A. Yes.

22 Q. Then at the immunity hearing and also during the
23 law enforcement statement, you are aware that he explained
24 that because of those things that he recognized, he acted
25 a certain way. "I did this, I did that." He told the

1 jury that, right?

2 A. Yes.

3 Q. Okay. And the jury is going to get to hear
4 that, right?

5 A. I would assume so, if you asked those questions.

6 Q. And then the jury can decide whether or not
7 that's reasonable or not, right?

8 A. They can hear what he has to say. Whether or
9 not it's reasonable, may have to involve, again, some
10 guidance as --

11 Q. But what kind of guidance would you give the
12 jury? We're talking about a legal test question of
13 reasonableness that's going to be given by the Court to
14 the jury to say, This is what you have to determine.

15 You are going to tell them what reasonableness
16 is and how to decide that? What guidance are you going to
17 give them?

18 A. I think if you portray Mr. Reeves as being a
19 40-year veteran of law enforcement with an extensive
20 history on the SWAT Team, he may be perceived as Superman,
21 and that's always a danger, because, at the time that he
22 got involved in the shooting, he wasn't a superman. He
23 was a debilitated old man.

24 And I think it's important for a jury to
25 understand that there are these effects that influence

1 self-efficacy. So they're competing effects, of course.

2 I think Mr. Reeves retains much, if not all, the
3 knowledge of a law enforcement officer. I told you I
4 think he was a special case for me to review because of
5 that, but his physical condition is a mitigating factor in
6 his image of being Superman.

7 And I think a jury may not be able to understand
8 that unless it's brought specifically to their attention
9 about human performance and how self-efficacy affects
10 human performance based on these types of factors.

11 Q. Well, I was going to save this to the other part
12 of our discussion about self-efficacy, but I asked you
13 regarding the self-efficacy and the deterioration of
14 humans and how humans -- and you might recall the
15 questions, sir, in the depositions about how humans have
16 an understanding that they make decisions based on their
17 own limitations, whether it be mental, physical, or
18 skill-wise.

19 And I asked you, Don't you think that's common
20 knowledge, and you said, Yes.

21 A. I think it's common knowledge, but I think it
22 has to be, also, couched in the proper context. In other
23 words, his knowledge as a law enforcement officer does not
24 outweigh his physical condition in the middle of a fight.

25 Q. Well, how does his knowledge of being a law

1 enforcement officer anyway have any bearing whatsoever on
2 self-efficacy?

3 A. Because if you know what you're supposed to do,
4 but you're unable to do it physically, it's going to
5 compromise what, perhaps, a jury might think he should
6 have done based on his training. And I think that's
7 critically important to know -- and I think I said this
8 earlier -- the first question is: What should you do?

9 And the second question is: Can you do it?

10 And I think his self-efficacy, based on his
11 physical condition, is a mitigating factor to perhaps him
12 standing up, as the investigator suggested, and getting in
13 a fistfight with Mr. Oulson because maybe that's what that
14 investigator would have done, but he was in no condition
15 to do that.

16 Q. Well, he said he wasn't in any condition to do
17 that and the jury is going to hear that.

18 A. And I think that that will be a validating
19 statement on the part of Mr. Reeves to my conclusion that,
20 not choosing to fight, but to utilize the firearm as the
21 proper coping mechanism would be proper.

22 Q. So that would be coming in and telling the jury
23 and bolstering the credibility of Mr. Reeves about why he
24 chose a particular action in response to a threat, and,
25 basically, vouching for Mr. Reeves' decision to do that?

1 That's what you're doing in front of the jury,
2 aren't you?

3 A. No.

4 Q. You don't think that's what the effect is?

5 A. No. I talk to people all the time who don't get
6 use of force. My mother is one of them. She doesn't
7 think anyone should ever be shot. And --

8 Q. That's -- wait a minute, wait a minute. I have
9 to stop you, because we have to stay on point with my --
10 with my question.

11 My question was: When we're talking about you
12 coming in and saying, Well, I'm going to agree with
13 Mr. Reeves that what he did was appropriate, is, in fact,
14 bolstering the credibility of Reeves in front of the jury;
15 isn't that the effect?

16 A. It may. That's not my intent. My intent is
17 to -- is to portray a model of appropriate response to a
18 perceived threat, and that codified in what we talked
19 about earlier; the force continuum, and I would allow the
20 jury to plug in those factors as they see fit.

21 But I would say as a professional who deals with
22 subject, officer factors; subject, subject factors, that
23 there are things that are not common knowledge.

24 Like, for example, your overall knowledge does
25 not supercede your physical state in the ability to carry

1 out a proper defense against an ongoing threat. And I
2 would submit to you that not everybody knows that.

3 Q. Well, in order for you to come in and make those
4 opinions, you're going to have to apply your specialized
5 training and experience with the facts of the case.

6 So please tell me, in dealing with the
7 storytelling, the motive, the injury, the litany of things
8 that you talked about about self-efficacy, how does that
9 apply to the facts of this case?

10 A. Because they're all there. All those facts are
11 there and they may be --

12 Q. Where?

13 A. They may -- it's in the testimony. It's in the
14 statements.

15 Q. Whose testimony?

16 A. Mr. Reeves' testimony.

17 Q. Okay.

18 A. About testimony --

19 Q. About what storytelling? Where is it?

20 A. Storytelling is something that I think is my
21 description of portraying events as I understand them. So
22 I have to tell a story about my analysis. It has to have
23 probably a beginning, a middle, and an end like any story.
24 And so --

25 Q. And he did that.

1 A. What's that?

2 Q. He did that in his statement, he told a story.
3 He said, This is what happened.

4 A. I know, but -- I'm not sure where you pulled
5 this construct of storytelling out of my -- I remember
6 saying it from my perspective. I was the storyteller.
7 Not from his perspective.

8 I was the one that had to explain to the jury my
9 findings and it would be in -- in a story form where I
10 would talk about how I understood what unfolded. That's
11 what I meant when I was talking about storytelling.

12 Unless I said something else that you can point
13 to, I think that's the -- that's what I meant by
14 "storytelling." It was in relationship to my analysis and
15 my description to the jury of what I believe happened
16 based on the evidence that was presented to me.

17 Q. And dealing with the self-efficacy when we were
18 talking about it and we were just -- we dovetailed into
19 it, you made the statement that, There's nothing I found
20 not to believe Mr. Reeves regarding the self-efficacy.

21 Is that what you said?

22 A. I think we were talking about whether or not he
23 got hit in the face with a --

24 Q. No.

25 A. -- with something before.

1 Q. No. We were talking about the self-efficacy
2 because he says, I'm an old man. I'm wrecked. My back
3 hurts. And then you came and said, Well, that's
4 verifiable because we're going to have a radiology person
5 testify, and we're going to have other witnesses.

6 Do you remember that conversation? That --

7 A. You're talking about -- you're talking about our
8 deposition?

9 Q. Yes.

10 A. I thought you were talking about what we talked
11 about today. I'm sorry.

12 Q. I apologize.

13 A. Yes, in our deposition, we had that conversation
14 and I -- I stand by that. I think that his level of
15 self-efficacy is not only stated, but I think it is
16 verifiable through his medical records.

17 Q. And I anticipate -- I can't speak for the
18 Defense, but I believe the same radiologist will come in
19 and we're going to have all sorts of show and tell with
20 X-rays of Mr. Reeves. So, potentially, that's going to be
21 in front of the jury, right?

22 A. I don't know what's going to be in front of the
23 jury. I mean, you're asking me --

24 Q. It was put on last time. Maybe it will be this
25 time --

1 A. You're asking me to speculate.

2 Q. I know. I know.

3 A. I don't know.

4 Q. I'm just going on the same thing.

5 A. I don't know.

6 Q. Okay.

7 A. I think it does reinforce -- it certainly would
8 reinforce, if it is put on the stand, I -- I think it
9 deserves to be there, but I don't know what -- how that's
10 going to play out.

11 Q. And I didn't check it off, so I'm just going
12 to -- I believe I asked you that, as far as self-efficacy
13 and limitations, that it's common knowledge among adults,
14 certain life experiences, they make decisions based on
15 their own limits.

16 We talked about that?

17 A. Yeah, for themselves, but --

18 Q. Yeah.

19 A. -- for others, it may have to be pointed out.

20 Q. But you did agree with that?

21 A. Yeah, I did agree with that, yes.

22 Q. All right. Now, in dealing with the methodology
23 as it relates to self-efficacy, there are concerns dealing
24 with that research along the lines of method variance; is
25 there not?

1 A. Yes. I mean, this was a -- this originally was
2 proposed by Bandura, I think, in '77. So we've got a
3 full, almost 50 years of examination and reexamination
4 in -- in the scientific field. So there has been some
5 challenges to his original theory.

6 Q. Yeah. But the problem with method variance goes
7 to the fact that if -- you could only verify Bandura's
8 work if he -- if you use his method because there's no
9 other method out there that can be used to verify his
10 work.

11 A. Clinical --

12 Q. That's the critical -- but, yes, clinically.
13 Yeah, clinical.

14 A. You're asking me clinical questions. I'm not
15 sure the relevance of that.

16 Q. Well, that's -- well, I appreciate that.

17 A. I don't know how to answer the question.

18 Q. But -- so that's the criticism, right?

19 A. Yeah, there's criticism on his clinical method.

20 Q. Right. Because there is no other method out
21 there that can verify his results.

22 A. The results of his clinical methodology, yes,
23 that's true.

24 Q. Okay. And we talked about that through the --
25 was it Lazarro?

1 A. Lazarus.

2 Q. Lazarus. Yeah. Okay.

3 And when we spoke about the problem of method
4 variance with Lazarus --

5 A. With Lazarus or Bandura?

6 Q. L-A-Z -- well, no. Yeah, Lazarus and Folkman.

7 A. Did we talk about method variance with them?

8 Q. Well, yeah, that's where it comes up.

9 A. I thought you were talking about Bandura.

10 Q. They were commenting on Bandura's work.

11 A. Right.

12 Q. All right.

13 A. Lazarus and Folkman were?

14 Q. Yeah.

15 A. Oh, I don't know about that.

16 Q. Well, that's what we talked about. In fact, you
17 gave me the book to go read.

18 A. That they were commenting on Bandura's work,
19 specifically?

20 Q. Uh-huh.

21 A. I don't recall that. They were somewhat
22 pioneers on stress --

23 Q. Stress, appraisal, and coping.

24 A. -- appraisal, and coping. Yes, that's correct.

25 Q. Yeah. That's a -- that's a book you told me to

1 go read, right?

2 A. Did you read it?

3 Q. Yes.

4 A. Okay.

5 Q. Yes, sir, I did.

6 A. It's a good book, but I don't specifically
7 remember that Bandura's question came up in that book. I
8 don't know. You could be right. I'm not arguing the
9 point, and it wouldn't surprise me, but I don't -- I don't
10 know that I can comment on it, because I can't even recall
11 them being critical of Bandura.

12 I know others have been. I've looked at some
13 papers. You had sent me an abstract --

14 Q. Right.

15 A. -- that I wasn't able to put down paper, by the
16 way. I did --

17 Q. Yeah, I wasn't either.

18 A. -- I would have sent it to you. But that was
19 about, once again, clinical modes of treating low
20 self-efficacy, and I didn't find it relevant for what I
21 was talking about.

22 Q. They were talking about the methodological
23 issues dealing with -- research dealing with the behavior
24 in response to stress?

25 A. Yes.

1 Q. Okay. Which is what Bandura is, because
2 self-efficacy, the coping mechanism rise during levels of
3 stress.

4 A. It is related, but --

5 Q. It is related.

6 A. -- but they don't mention Bandura in the book,
7 do they?

8 Q. No, they do not.

9 A. Okay.

10 Q. No, they do not.

11 A. I think you said they did and I didn't recall
12 that.

13 Q. No. It's the research on the stress and the
14 coping mechanisms.

15 A. Right.

16 Q. Okay. And in what you and I talked about
17 before -- and this is the book that you --

18 A. That's it.

19 Q. -- relied on --

20 A. Yes.

21 Q. -- for Stress, Appraisal, and Coping?

22 A. Right.

23 Q. Lazarus and Folkman?

24 A. Lazarus and Folkman.

25 Q. Lazarus and Folkman, 1984?

1 A. Yes.

2 Q. All right. On page 321: Because subjective
3 reports are the primary source of data about appraisal,
4 stress, and emotion, and coping, this method of
5 measurement, with all its virtues and faults, carries the
6 brunt of the issue of method variance.

7 A. Okay.

8 Q. Right? Method variance being, there's only one
9 way to do it, and that's what Bandura says, right?

10 A. He was trying to create a unifying theory. And
11 method variance does not mean there's only one way. It
12 means that there's variance in the methods.

13 Q. Method variance means that there's only one way
14 to verify a particular method.

15 A. To validate, that's correct.

16 Q. That is correct.

17 A. Yes, that's correct.

18 Q. Okay. And so that's the problem with Bandura's
19 work, right?

20 A. I don't find a problem with Bandura's work. I
21 find a problem --

22 Q. That is the criticism.

23 A. The criticism of his modes of treatment to raise
24 self-efficacy has been going on for 50 years.

25 Q. The question is: That is the criticism of his

1 research, is that there's no way other than his own
2 proprietary method to verify his work?

3 A. I don't know if that's true or not.

4 Q. Well, it goes on to say: Most researchers and
5 life sciences have long been aware of the limitations and
6 disadvantages of self-report data, which we allude to
7 above. The problems of memory, the desire of subjects to
8 present themselves in a positive light, language
9 ambiguity, and the use of verbal reports as an ego
10 defense.

11 A. The self-reporting is always -- always suffers,
12 I think, in the scientific realm because of things like
13 that.

14 Q. And that's what we have here. We have the
15 self-report by Mr. Reeves, right?

16 A. Supported by documentation of injury.

17 Q. Of injury of what?

18 A. I think his lower back or arthritis, all kinds
19 of different problems.

20 Q. Given that, the control -- and this -- still on
21 page 321: The controls and checks that have been
22 generated to cope with these problems include measures of
23 subject's tendency to engage in favorable
24 self-representation, and the use of psychological and
25 behavioral measures to verify self-report-based inferences

1 do not seem to help much.

2 So even if we go back and you try to use any
3 type of objective instrument in order to verify in each
4 type of self-report, it just doesn't help much, right?
5 That's the problem with this type of research?

6 A. It absolutely helps. If you have somebody who
7 says, My back is hurting, and it turns out that they have
8 a history of a broken back, that's an external control
9 that validates and verifies self-reporting.

10 What they're talking about in the book is
11 self-reporting that is uncorroborated. And by the way, a
12 lot of science is conducted that way. We do a lot of that
13 in sports psychology. How did you feel when you scored
14 the goal, and somebody tells you that.

15 Those kinds of things are self-reports that
16 don't have corroborating evidence. It's a feeling and
17 emotion that somebody reports. That's what they're
18 talking about.

19 Not something like, I didn't think I could fight
20 the guy that was in my face because I have arthritis in my
21 hands, my back is hurt, my knees are bad, or whatever the
22 medical reports corroborate. And, in this case, we have
23 corroboration of that.

24 Q. In looking at the use of the data in trying to
25 figure out exactly how it's reliable, I would point out

1 that emotions reveal the person's most important agendas
2 and how well the person thinks he or she is faring in
3 relation to these agendas. They can help pinpoint what is
4 taking place that is creating malfunctioning or distress.
5 The person may tend to appraise threat inappropriately and
6 not appraise threat when it is appropriate or the deficit
7 may have to do primarily with coping.

8 Right? That's the problem, is people's own
9 individuality results in how they can -- or what decisions
10 they will make, correct?

11 A. No. I mean, you keep saying there's a problem.
12 There's not problem with individuals feeling differently
13 about themselves. There's huge variance in self-efficacy
14 for the kind of reasons that we've discussed.

15 Q. And --

16 A. And that is --

17 Q. -- that is the point, there is huge variance,
18 right?

19 A. There is, but we're not looking at a cross
20 section of individuals. We're looking at a single
21 individual who is self-reporting and his self-reporting is
22 validated, it is reliable, it can't be falsified because
23 there is a medical record out there that supports
24 everything he says.

25 Q. Okay. There's is medical record out there --

1 and I apologize, Judge, in advance, but this is a quote
2 from Mr. Reeves. That I was scared shitless.

3 A. Yes.

4 Q. That's validated medically? Some record
5 someplace?

6 A. No, I think that is within --

7 Q. That's what I'm talking about is those kind of
8 statements, I never been so scared in my life.

9 Is that validated?

10 A. I think if -- those are questions of whether or
11 not it is reasonable to be afraid, if your self-efficacy
12 is so low, but I think --

13 Q. Mr. Bedard, my question was --

14 MR. ESCOBAR: Objection. He keeps interrupting
15 the doctor when he's trying to answer. This record
16 is going to be a nightmare if we -- if we keep doing
17 that.

18 MR. MARTIN: Judge, this witness will not answer
19 the questions. The only way I can control him is to
20 stop him and get him back on point.

21 THE COURT: Okay. Your objection is noted.

22 Dr. Bedard, please try to answer the question
23 that is being asked of you.

24 THE WITNESS: Okay.

25 THE COURT: Not (indiscernible) it is not

1 responsive, then he is stopping you anyway. So try
2 to do the best you can to answer the question.

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: Thank you so much. All right. Your
5 objection is noted, okay.

6 MR. ESCOBAR: Thank you.

7 BY MR. MARTIN:

8 Q. Dr. Bedard, Mr. Reeves' statement that, I've
9 never been so scared in my life, not verifiable, correct?

10 A. No, no. It can't be verifiable. That's his
11 opinion of how he felt.

12 Q. All of these statements by Mr. Reeves relating
13 to his state of mind cannot be verified, correct?

14 A. That's not true.

15 Q. His state of mind saying that, I can't do
16 something because -- and I'll just use -- my back hurts.

17 A. And there's a record of him having a bad back,
18 that's verifiable.

19 Q. But his statement, "I can't do it," is not
20 verifiable, is it?

21 A. Well, I think it's supposed to be his perception
22 that I'm weighing in on. His perception is reasonable.
23 If he has a bad back and he says, I can't do it because my
24 back is bad, and there's a document that supports that,
25 it's validated.

1 Q. Okay. Now, Dr. Bedard, we know that from the
2 jury instruction 3.6(f) the perception is perception of
3 the event. It's not perception of whether or not his
4 state of mind, correct?

5 A. His perception of his own state of mine, or
6 mine?

7 Q. His. That's what you said, Well, that's his own
8 perception that he can't do something. That may be true,
9 but it's not verifiable?

10 A. It is verifiable. It's avoiding behavior. He
11 is trying to -- his state of mind is dealing with future
12 events that haven't occurred yet, and he is perceiving his
13 ability to cope with that future event, and he decides,
14 based on his physical state, that he can't do it. I think
15 that's perfectly verifiable through the medical record
16 that his perception is accurate.

17 By the way, the only way to know if it isn't
18 accurate is to have him fistfight Mr. Oulson and find out
19 how he prevails.

20 Q. Well, that wasn't my example.

21 A. But that would be the alternative to disprove
22 his perception. If he prevailed, you would say, Well, I
23 was wrong, but that's quite a price to pay if he was
24 right.

25 Q. He also made the statement about he has so much

1 arthritis in his hand that shooting the firearm was very
2 difficult for him.

3 Do you remember that in his statement?

4 A. Yes.

5 Q. He shot the firearm, didn't he?

6 A. Yes.

7 Q. I think we've discussed ad nauseam all the
8 points of interest. We are going to move on to something
9 else. There's a couple things before we get into force
10 matrix and objective reasonableness. Let's kind of handle
11 some easy things first.

12 You made some statements about your personal
13 belief that Mr. Reeves was truthful in particular
14 situations, as far as his statements.

15 Do you remember that line of questioning that
16 you and I went through?

17 A. Yes. I don't try to assign credibility. I try
18 to falsify statements and, if I can't, then I accept them
19 as true.

20 Q. Well, you indicated that you believe that the
21 defendant's statement to law enforcement was truthful; do
22 you remember telling me that?

23 A. His account of what happened and his description
24 of how he felt and all of that was truthful, I have no
25 reason to dispute those features of his testimony -- his

1 statement, I'm sorry.

2 Q. And you were comparing that with the statement
3 that he gave you. That was the line of questioning. What
4 he told you was consistent with what he told law
5 enforcement; do you remember that?

6 A. Yes.

7 Q. Okay. And just so I don't misquote you, at the
8 depo you said remarkably similar, not exact or consistent?

9 A. Of course.

10 Q. That was your statement, "remarkably similar"?

11 A. Yes.

12 Q. And you did that by comparing the interview you
13 did with Mr. Reeves with that of the law enforcement
14 statement coming to the conclusion it is remarkably
15 similar?

16 A. Yes.

17 Q. We also had a discussion during the deposition
18 about patrons' unidentified hearsay; do you remember that?
19 Get out of my face kind of comments? And you were going
20 to provide me with a list of witnesses who made certain
21 statements --

22 A. Yes.

23 Q. -- along those lines?

24 A. And I did, right.

25 Q. Then we discussed it in the second depo?

1 A. Yes.

2 Q. That's what I want to talk about.

3 A. Okay.

4 Q. You identified the individuals -- and that will
5 be in your depo and the Court has a copy of that, but I
6 just want to put on the record the flavor of what they
7 said and then we will discuss it, okay, without going
8 through everybody's name?

9 A. Okay.

10 Q. But there was a reference of, "Get out of my
11 face," before the gunshot. There was a reference, "Get
12 out of my face." There was a reference of male voice,
13 "Get out of my face." Someone saying, "Get out of my
14 F-ing face. Don't F-ing touch me. Test me again, and
15 I'll kill you. Get your hand out of my face. Get out of
16 my face." Words to the effect, "Don't hit me in the face
17 again," something like that. Okay.

18 Now, those are patrons that were in the theater
19 that you went through the police report and you and I
20 discussed the patrons and what they said; do you remember
21 that?

22 A. I do.

23 Q. Okay. Now, none of those patrons were able to
24 identify the person who made the statement, correct?

25 A. I don't believe so. I think they just simply

1 heard the male voice say that.

2 Q. All right. And some of the patrons said the
3 words, "Get out of my face," but there's no time frame or
4 sequence from any of the witnesses as to when that
5 occurred?

6 A. That is correct.

7 Q. The only reference we have from Mr. Reeves in
8 the law enforcement statement where he says Mr. Oulson
9 told him, "Get out of my face"?

10 A. Yes, he did say that.

11 Q. That's the only person that can attribute "get
12 out of my face," is Mr. Reeves in the law enforcement
13 statement?

14 A. You mean specifically as to who said it?

15 Q. Yeah.

16 A. That's true, I think. Again, I don't recall all
17 the statements that you read where somebody said they
18 heard one or the other, but I do think that no one was
19 able to attribute it to a specific person.

20 Q. Or when it occurred or the sequence of events?

21 A. It was within the time frame of the shooting --

22 Q. Which is a broad parameter?

23 A. It's not on video. I mean, we can't go back and
24 time line it.

25 Q. But you found those statements important?

1 A. I thought they were important, yes.

2 Q. Okay. And they're important even though you
3 don't know who said the statement or when it was said,
4 correct?

5 A. I think so. Again, I think a jury is going to
6 have to decide who said that --

7 Q. Well, they'll never hear it.

8 A. I tend to think that it would be an unusual
9 circumstance for Oulson to get up and get in Mr. Reeves'
10 face to say, Get out of my face. So it seemed to me that
11 whoever is saying, Get out of my face, would be the person
12 who was the recipient of someone in their face, and, in
13 this particular case, that would be Mr. Reeves.

14 Q. But Mr. Reeves said it was Mr. Oulson who said
15 that. So now that's one occasion where you don't believe
16 Mr. Reeves?

17 A. No. It sounds to me like a speech pattern that
18 when he was relaying to the police officers, in his
19 muddled memory of what actually occurred, that he used the
20 words, "Get out of my face," because I think that's what
21 he says. And I think he attributed that -- and I'm not
22 sure, and I won't draw an opinion on what, but it is
23 something that is certainly within the realm of
24 probability, but this is his speech pattern.

25 And further almost confirms that it was

1 Mr. Reeves who says, Get out of my face. I doubt they're
2 both saying, Get out of my face. I find that surprising
3 in this kind of encounter.

4 Q. But Mr. Reeves said Mr. Oulson said that to him,
5 get --

6 A. I know what he said, and I don't know if that
7 was a muddy recall of what he actually heard or said. I
8 really don't know.

9 Q. All right. So based on speculation of
10 something, muddy recall, you think it's still important
11 that whoever said, Get out of my face, is important to
12 your analysis based on the assumptions and the
13 speculations that you've just provided to this Court?

14 A. Well, these are corroborated --

15 Q. Corroborated?

16 A. -- assumption -- yes. It is, indeed, Mr. Oulson
17 who has gotten out of his seat, turned around, and got in
18 the face of Mr. Reeves. Mr. Reeves didn't do that. I can
19 see that on the video. It is Mr. Oulson who is in the
20 face of Mr. Reeves. That is a -- that is a visual
21 corroboration.

22 Q. So from that, you think that it's unlikely or
23 improbable that Mr. Oulson would say that based on your
24 interpretation of the video, which is inconsistent with
25 the statement by Mr. Reeves post-Miranda that it was

1 Oulson who said, Get out of my face?

2 A. What I know is that Mr. Oulson was in
3 Mr. Reeves' face. I can see that. I will leave it to a
4 jury to decide who uttered those words in the theater.

5 Q. It's important to me that this Court has a full
6 understanding of your potential testimony whether I agree
7 with it or not, but she is going to have to decide.

8 So I want to go through a couple of things that
9 you said in the depo dealing with self-efficacy, which I
10 documented in my motion on page 44 for the Court's
11 benefit.

12 But when we talk about self-efficacy, we talked
13 about personal limitations, which includes 71 years old,
14 lack of dexterity, something wrong with left eye, dazed,
15 arthritis, both hands, back wrecked, gained 30 pounds; do
16 you remember telling me that?

17 A. Yes. I think also there was a moment --

18 Q. I'm going to go through a lot of them.

19 A. Okay.

20 Q. Then we talked about subject difference. Oulson
21 tall, angry, unreasonable?

22 A. Yes.

23 Q. Then we talk about environmental. Eyeglasses
24 skewed, theater dark?

25 A. Yes.

1 Q. Threat assessment cues: Aggravated position,
2 contorted face, cursing?

3 A. Yes.

4 Q. Okay. Cognitive self-report. Fear. Going to
5 get ass kicked. Scared, whatever. Don't need an ass
6 whooping. Thought the guy was going to beat the blank out
7 of me?

8 A. Yes.

9 Q. Do you remember that?

10 A. Yes.

11 Q. Now, as far as the facts in this case, that is
12 what applies here, right? Those are the facts, basically,
13 dealing with this case?

14 A. Yes.

15 Q. When we deal with self-efficacy?

16 A. Yes.

17 Q. And you believe that the jury should know those
18 facts so that they can make a determination of whether or
19 not his coping skills was, in fact, reasonable, right?

20 A. Yes.

21 Q. But you also want to take it a step further and
22 say, Well, I'm going to tell you that it's reasonable.
23 That's what you are prepared to do, correct?

24 A. I'm prepared to compare Mr. Reeves' behavior
25 based on the factors that constitute his coping mechanisms

1 and his self-efficacy so that the jury is prepared to plug
2 that into an objective model and draw their own decision
3 on his level of reasonableness. That's what I am prepared
4 on do.

5 I don't want to tell them anything --

6 Q. You are prepared to use the term "reasonable."
7 That's what we've been talking about. You're going to
8 tell them that, based on that self-efficacy that I just
9 put on the record, it was reasonable for Mr. Reeves to
10 cope in the manner he did by shooting Mr. Oulson?

11 That's what you want to tell the jury?

12 A. Based on the modeling used by my profession, it
13 is --

14 Q. Law enforcement?

15 A. -- it is reasonable. Well, we also use it in
16 civilian analysis, remember? We investigate crimes --

17 Q. Well, we're going to debate that.

18 A. Okay.

19 Q. Okay. And the reason I keep bringing up the
20 term "reasonable," because in discussing with it -- and
21 this is on page 46, line 15 through 25 of your depo, you
22 keep saying, I think, once again, going back to
23 self-efficacy just from a reasonable man perspective.

24 That's how you're going to couch it in front of
25 the jury, right?

1 A. If I'm asked a question as to the reasonableness
2 of it --

3 Q. That's what you're prepared to say?

4 A. That's what I'm prepared to talk about, how we
5 evaluate force objectively.

6 Q. Using the reasonable man perspective?

7 A. That's generally how it's done.

8 Q. And based on the facts that I put on the record,
9 which you explained in this case, actually, applied
10 regarding self-efficacy, don't you agree that the jury can
11 make that same determination based on those facts as to
12 whether or not it was reasonable?

13 A. As opposed -- that the jury can make a
14 determination of what?

15 Q. That it was reasonable for Mr. Reeves to quote,
16 cope in the manner he did by shooting Mr. Reeves?

17 A. That is the ultimate question.

18 Q. And the jury can make that determination on
19 their own, right?

20 A. No, I don't believe they can. I believe that
21 they must be subject to what we spent the last four hours
22 talking about, which is the modeling of appropriateness
23 that would be known, certainly, by a veteran police
24 officer and the coping mechanisms that are part of subject
25 factors.

1 And I think a jury who is not privy to that
2 information, which is being taught in academies throughout
3 the country, doesn't have benefit of allowing that to
4 guide their evaluation to an objective standard.

5 Q. All right. But Mr. Reeves, as we sit here
6 today, is not a police officer?

7 A. He's not a police officer today, that's correct.

8 Q. No. And because he's not a police officer, he
9 cannot be sued under Section 1983 in federal court for
10 violating one's constitutional rights, can he?

11 A. No.

12 Q. Okay.

13 A. He can be sued in state court, but...

14 Q. I know. We will get there.

15 But what you want this Court to accept is that
16 the standards that is used in civil court and a federal
17 case to determine whether or not a constitutional
18 violation has occurred, you want to tell that to the jury
19 and have them use that basis to determine the
20 reasonableness of Mr. Reeves?

21 A. No.

22 Q. You just said that you have to go through and go
23 through the matrix and what Mr. Reeves knows and law
24 enforcement, so why is that a no?

25 A. I'm not here to talk about Mr. Oulson's

1 constitutional rights -- I'm here to --

2 Q. Oulson?

3 A. Yes.

4 Q. I'm talking about Mr. Reeves. He can't be sued
5 because he's not a law enforcement officer?

6 A. For violating Mr. Oulson's constitutional
7 rights, isn't that the question?

8 Q. Right. He can't, because he's not a law
9 enforcement officer.

10 A. So let me repeat, I'm not here to talk about
11 Mr. Oulson's constitutional rights. I'm here to talk
12 about threat, threat assessment, response to threat,
13 appropriateness based on objective analysis,
14 proportionality, escalation, deescalation, self-efficacy,
15 things like that that all play into decision-making and
16 whether or not there's an objective decision that can be
17 properly evaluated by a jury who is not privy to any of
18 this stuff because they have not been trained in these
19 areas.

20 Q. And what you said was the jury is not aware of
21 how law enforcement officers are trained, that's why you
22 want to come in and tell them how law enforcement officers
23 are trained, right?

24 A. If I'm asked the question on how law enforcement
25 officers are trained and where our modeling comes from,

1 I'll answer that. I'm prepared to answer that, yes.

2 Q. And modeling comes from, for law enforcement,
3 from all of the federal civil case law Section 1983 cases,
4 starting with Tennessee versus Garner and Graham, as far
5 as the standard to judge a police officer whether or not
6 that police officer has violated a constitutional
7 provision; that's where your law enforcement modeling
8 comes from, correct?

9 A. But it doesn't stop there. You're a prosecutor,
10 you should know that --

11 Q. Is that where your model comes from?

12 THE COURT: Excuse me. I'm so sorry. I don't
13 mean to speak over you. Let's stop this. We are not
14 going to do this anymore, all right. You are to
15 answer the question that's asked of you.

16 THE WITNESS: Okay.

17 THE COURT: You are not to ask Counsel questions
18 or respond with your own question to him, okay?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: You are to answer the question
21 directly, okay?

22 THE WITNESS: Yes, ma'am.

23 MR. MARTIN: I apologize for raising my voice.

24 THE COURT: It's okay. We're actually -- I'm
25 going to allow you to finish, but we are kind of like

1 that one-hour break after lunch, I was thinking that
2 we can take a little break. The court reporter will
3 probably be happy with me if I did that.

4 MR. MARTIN: Yes, Your Honor.

5 THE COURT: You may continue.

6 MR. MARTIN: I've probably got another hour,
7 maybe 45 minutes.

8 THE COURT: I understand. I was going to let
9 you finish this line of questioning, then we will
10 take a break.

11 MR. MARTIN: Yes, ma'am. I misunderstood. I'm
12 sorry.

13 THE COURT: No problem.

14 THE WITNESS: Can I finish my answer to that?

15 BY MR. MARTIN:

16 Q. It wasn't responsive to my question, so I'm
17 going to object to him making any further comments.

18 THE COURT: Doctor, just answer the question
19 that is asked of you, okay? Thank you.

20 You may continue.

21 THE WITNESS: Continue with my answer?

22 THE COURT: No. Mr. Martin may ask his
23 question.

24 MR. MARTIN: Judge, I'm ready to move on to
25 another topic, so if you want to stop now, that's

1 fine.

2 THE COURT: Yes. It's 2:15. We've been going
3 about an hour. Let's take a 10-minute break.

4 (Break taken.)

5 THE COURT: Thank you. If you are ready, you
6 can proceed.

7 MR. MARTIN: Thank you, Your Honor.

8 BY MR. MARTIN:

9 Q. Mr. Bedard, I'm going to go to another topic.
10 This is one that we dealt with in the deposition and we
11 kind of decided how to phrase it.

12 We talked about human factors, artifacts as a
13 result of stress.

14 Do you remember that discussion that we had?

15 A. Yes.

16 Q. All right. Because I'm going to take this in
17 stages. We are going to talk about that. Then
18 situational awareness, then threat assessment because it
19 all flows together, right? I will talk about one at a
20 time.

21 A. Yes.

22 Q. Okay. One of the things that you wanted to do
23 in between the first and second deposition is to interview
24 Mr. Reeves, correct?

25 A. That is correct.

1 Q. And you did, in fact, conduct that interview?

2 A. Yes.

3 Q. And one of the things that you were trying to
4 ferret out, if you will, is to what extent his performance
5 was negligently impacted by stress.

6 A. Negatively impacted?

7 Q. Yes. Thank you for correcting me.

8 A. Yes. I would have -- most of the time when I'm
9 dealing with stand your ground cases, that is one of the
10 methods that I use is to determine what, perhaps, the
11 stress level was through statements given by individuals
12 and by personal interviews.

13 Q. Okay. And again, for the Court's benefit, on
14 page 50, but I want to make sure that the Court has kind
15 of a bullet list to consider.

16 When we talk about artifacts that you, in your
17 profession, can identify by interviewing someone -- and
18 this is the list that you gave me, as far as reaction
19 time, which you and Mr. Michaels talked about, correct?

20 A. Yes.

21 Q. Different perceptions, correct?

22 A. Perceptual distortions, yes.

23 Q. Okay. Cognitive perceptual differences?

24 A. Yes.

25 Q. Tunnel vision?

1 A. I'm sorry?

2 Q. Tunnel vision?

3 A. Tunnel vision, yes.

4 Q. Narrowing of attention?

5 A. Yes.

6 Q. Auditory exclusions?

7 A. Yes.

8 Q. Vasodilation?

9 A. Vasodilation.

10 Q. Yes. What is that? Just for the Court?

11 A. It is going to be where certain blood
12 capillaries, arteries, and veins are changing shape under
13 stress to shunt blood to various parts of the body.

14 Q. Time distortion?

15 A. Yes.

16 Q. All right. Fear?

17 A. Yes.

18 Q. Okay.

19 A. I think collectively the point of all of that is
20 to establish if they were in fear.

21 Q. That they were in fear.

22 And when we had that discussion, you also agreed
23 that an individual in any one of those artifacts, if we
24 can use that term, the significance of the effect can vary
25 from individual to individual?

1 A. Yes.

2 Q. In fact, some may not have any of it.

3 A. Yes.

4 Q. Okay. And that was the case with Mr. Reeves?

5 A. I think I mentioned to you some fragmented
6 memory issues that --

7 Q. Right?

8 A. -- perhaps --

9 Q. Perhaps?

10 A. -- noticed, but he clear -- he did not have a
11 clear memory of some things for sure. Why that happened,
12 I don't know, but that would be an artifact that would
13 normally be --

14 Q. Of the stress?

15 A. -- stress-related, that's right.

16 Q. But it did not impact on his performance at the
17 theater, correct?

18 A. What didn't, the fragmented memory?

19 Q. Yeah.

20 A. No.

21 Q. Okay. But all of the other ones potentially
22 have some type of influence on him physically at the
23 theater, right?

24 A. On his performance, yes.

25 Q. Yeah. But you -- when you interviewed

1 Mr. Reeves, you didn't find any of that?

2 A. No, I didn't, but I also didn't probe him on
3 those issues because I knew his background.

4 THE COURT: I'm sorry? You knew his?

5 THE WITNESS: I knew his background.

6 Do you want me to elaborate on that?

7 BY MR. MARTIN:

8 Q. No, because just to refresh your memory so we
9 can get the conversation going, this is what I want to
10 talk about, you indicated on depo number two, page 104, I
11 don't see a lot of this. As a matter of fact, the only
12 thing I did see is some memory stress and I think that
13 demonstrates that, at some level, you know, fragmented
14 memory also occurs when you're under high arousal?

15 A. Yes, I recall saying that.

16 Q. Okay. So all of the other things that
17 Mr. Michaels went over, as far as how a person can be
18 affected by a stressful situation, you did not find that
19 with Mr. Reeves?

20 A. I didn't really inquire into it. I just
21 listened to what he said to see if I could pick up hints
22 of those things, yes.

23 Q. And based on his statements to you, you did not
24 find those?

25 A. No.

1 Q. Okay. Moving on to a similar topic, we are
2 going to talk about situational awareness.

3 A. Okay.

4 Q. We actually had time to kind of break it down,
5 and you broke it down for me, as far as human factors.
6 Then you said threat assessment was a subcategory of
7 situational awareness; do you remember that?

8 A. That's correct.

9 Q. Okay. So when we're dealing with human factors,
10 we have reaction time, reactionary distance or gap,
11 relatively -- relative positioning and defensive posture.

12 A. I think that's what we talked about, yes.

13 Q. Yeah. Right.

14 A. Yes.

15 Q. That would be under human factors, as far as
16 situational awareness and dealing how -- in dealing how to
17 cope with a potential threatening situation as far as the
18 human being, that's something that a human may take into
19 consideration on how I'm going to respond?

20 A. Yes.

21 Q. Okay. Then we talk about the threat assessment.
22 You indicated that, observing the environment, what is
23 targeting you, who are you trying to protect, subject
24 factors, age, size, skill, weapon, behavioral or postural
25 cues, variance manifestations of aggression, hand

1 gestures, facial, and verbal expressions?

2 A. Yes.

3 Q. Those are factors that the person perceiving the
4 threat may take into consideration in developing a
5 response?

6 A. That's correct.

7 Q. Okay. Now, those particular items are not
8 unique to law enforcement, are they?

9 A. No.

10 Q. All right. They're taught in various
11 self-defense classes to civilians? I mean, right? I
12 mean, this is something that is taught --

13 A. Yes.

14 Q. -- outside of a police academy or a police
15 environment?

16 A. These are human factors.

17 Q. Yeah, human factors.

18 A. They apply to police, but they are human
19 factors.

20 Q. They may accept some of them, but citizens don't
21 have to pay to go to a police academy to get the
22 information. They can go to a dojo, a gym, some
23 professional trainers, as far as teaching defensive
24 tactics, all of those things will be explained?

25 A. I don't know that. There's a huge variance in

1 the way things are taught --

2 Q. I know --

3 A. -- but I do know what the state curriculum says
4 and that's consistent, but a dojo or self-defense or --

5 Q. When you teach outside of the police academy,
6 you bring that up, right?

7 A. Yes.

8 Q. So citizens can become aware of it?

9 A. It's possible, yes.

10 Q. But the point is, it's not unique to law
11 enforcement?

12 A. It is not unique to law enforcement.

13 Q. Okay.

14 A. Those factors, no.

15 Q. Okay. And I believe in your discussion with
16 Mr. Michaels that those factors that I just put on the
17 record, in some way or fashion, you would be able to apply
18 those to the facts in this case?

19 A. I mean, I'm always available to talk about those
20 factors and let a jury apply them as --

21 Q. You're prepared to do that?

22 A. Talk about the factors, yes.

23 Q. As it relates to the facts in this case?

24 A. As I mentioned earlier, I didn't notice a whole
25 lot of these factors in this case, so I don't know where I

1 would necessarily bring up these stress-related artifacts,
2 with respect to this case --

3 Q. Okay.

4 A. -- outside of the fragmented memory.

5 Q. Let me help you, okay. I believe you misspoke
6 and I just want the Court to have the correct information,
7 okay?

8 A. Okay.

9 Q. I was not talking about the artifacts dealing
10 with stress. I was talking about situational awareness
11 and the human factors and the threat assessment. That's a
12 different list than the artifacts --

13 A. Okay --

14 Q. -- that may form a stress.

15 A. Okay.

16 Q. So when you just answered the question, you said
17 you didn't find any artifacts, and I believe you just
18 misspoke, so may I ask the question again?

19 A. Please do.

20 Q. Okay. Under situational awareness, the human
21 factors and the threat assessment, there are facts in this
22 case that could relate to those things, right?

23 A. What human factors are you talking about?

24 Q. Well, as far as relative positioning, the
25 distance between Mr. Reeves and Mr. Oulson?

1 A. Yes.

2 Q. As far as defensive posturing --

3 A. Yes.

4 Q. -- either leaning back, getting out of the way,
5 you know --

6 A. Yes.

7 Q. That's what I mean.

8 A. Yes. I didn't know if you were still on the
9 stress-related human factors.

10 Q. No. I'm on situational awareness --

11 A. That's what I took it to mean. I apologize.

12 Q. I just didn't want to mislead you. We are on
13 situational awareness.

14 A. Yes.

15 Q. Part of the discussion that potentially, as a
16 subject matter expert in those areas, would be is to what
17 extent did those factors have a negative impact on
18 performance at the time of the incident.

19 Would you agree with that?

20 A. To what extent would they, and then you asked if
21 I would agree? They do have an effect, yes.

22 Q. Yeah. To what extent they would have influence
23 at the time of a stressful event, the decision-making
24 process would be influenced by those factors?

25 A. Yes.

1 Q. Okay. And during the deposition we talked
2 about, you know, what basis -- what authority are you
3 relying on to make the determination of whether or not a
4 particular either threat assessment or self-efficacy, how
5 do you make a determination quantitatively the effect of
6 those influences on decision-making.

7 Do you remember that discussion we had?

8 A. Yes. I don't know if we had that discussion,
9 but...

10 Q. Well, it came along with Mr. Klein and his book?

11 A. Okay. Once again in deposition, yes.

12 Q. Yes.

13 A. I'm sorry.

14 Q. That's okay. That's all right.

15 A. We spoke a lot.

16 Q. Yes, we did. All right.

17 In fact, you provided me with the information
18 regarding Mr. Klein, Sources of Power, How People Make
19 Decisions?

20 A. Yes.

21 Q. Do you remember that?

22 A. Yes.

23 Q. That's a book that you indicated you would rely
24 on?

25 A. Yes.

1 Q. Okay. One of the problems that Gary Klein, and
2 that's K-L-E-I-N, candidly admits in that particular book
3 that you provided me as a source is that any type of
4 threat assessment or self-efficacy, again, we're back to a
5 self-report data, correct?

6 A. I'm not sure of the question. He is saying that
7 threat assessment and self-efficacy is always just based
8 on self-reporting?

9 Q. No. What I am saying is that the research and
10 the findings about people who conduct that kind of
11 research, the data is based on subjects coming in and
12 self-reporting?

13 A. Yes, because it is all perceptive by the person
14 who is --

15 Q. Right.

16 A. -- offering those assessments or appraisals of
17 situational awareness and the way they feel about self.

18 Q. Okay. One of the things that Gary Klein is very
19 candid about, especially in this particular book, as far
20 as the decision-making process relating to threat
21 assessment, self-efficacy as a general being a self-report
22 database, he's basically leaving it up to the reader to
23 decide whether or not this is science.

24 Do you remember that in the book?

25 A. I don't remember him saying that.

1 Is that your appraisal --

2 MR. MARTIN: May I approach, Judge?

3 THE COURT: Yes, you may.

4 MR. MARTIN: We will just go through it
5 together.

6 THE COURT: Do you all have a copy of this?

7 Do you all have a copy of the book or have you
8 seen the book?

9 MR. MARTIN: It's in the motion and the exact
10 excerpts --

11 THE COURT: I do have it.

12 MR. MARTIN: -- are there. They can look at
13 that. We are on page 290 to 291.

14 BY MR. MARTIN:

15 Q. All right. And in there, he describes or
16 indicates that in some way it seems scientific, but the
17 studies have weaknesses, right?

18 A. That is true.

19 Q. Okay. And you indicated that in the depo that
20 we did? I mean, you recognize that?

21 A. Yeah. I think we talked about that today as
22 well.

23 Q. Right. And he also indicates that the studies
24 that he does, based on the self-report-type research,
25 consistent with threat assessment or self-efficacy,

1 they're not classical signs?

2 A. Well, yeah, they're not subject to empirical
3 examination is what we talked about previously.

4 Q. Right.

5 A. They're single trials.

6 Q. He indicates, and he points out to the reader
7 that regarding the nature of the data, One weakness of our
8 work is that most of the studies relied on interviews
9 rather than formal experiments to vary one thing at a time
10 and see its effects.

11 A. Right. You can't do a gold standard scientific
12 study of these things.

13 Q. Of the type of -- let me rephrase that. Okay.

14 The methods that you want the Court to accept as
15 being applicable to the facts of this case and reliable,
16 you cannot do the studies like in classical science to
17 determine any type of reliability, error rate, or
18 accuracy, can you?

19 A. No. But the self-reporting has been observed
20 throughout a spectrum of people in similar situations, and
21 we see the same kind of reporting coming out of
22 individuals who claim to have been in danger and have
23 responded in the ways that they had, but that's about as
24 close as we can get to it. We can't generalize it because
25 there's no control, and that's the problem.

1 Q. One of the problems, there are sciences that do,
2 in fact, manipulate the variables to determine whether or
3 not what they're seeing is actually true, right? That's
4 kind of like the null hypothesis?

5 A. Yes.

6 Q. Okay.

7 A. They're trying to find out if --

8 Q. In classical science?

9 A. Right. If the hypothesis holds up when you
10 manipulate the variables.

11 Q. Klein points out -- and just so to get a basis,
12 if I remember this right, Klein did the studies with
13 firefighters?

14 A. Yes.

15 Q. All right. Where the firefighters would either
16 be at a building or a brush fire or some location, he
17 would bring in the commanders and ask them to tell him how
18 they made their decisions?

19 A. Yes.

20 Q. And that's not why it's self-report?

21 A. Yes.

22 Q. And that's why I'm suggesting, and I believe you
23 agreed, that it's analogous to the threat assessment and
24 the self-efficacy, you're bringing in subject matters to
25 say why I did something under a stressful situation?

1 A. Why somebody they were observing did something
2 based on their analysis, yes.

3 Q. Yeah. Okay. But Klein points out that using
4 that particular method, sometimes we observe
5 decision-makers in action, but we rely on introspection in
6 nearly all of our studies. We ask people to describe what
7 they are thinking and we analyze their response?

8 A. That's right.

9 Q. But he very candidly points out for the reader's
10 benefit to make whatever judgments they want about his
11 research, he indicates, We do not know if the things they
12 are telling us are true?

13 A. Yes, that's the same problem I have.

14 Q. Okay. He goes on to say, Or maybe just some
15 ideas they are making up. We can repeat the studies or,
16 better yet, other investigators can repeat the studies to
17 see if they can get the same results. Nevertheless, no
18 one can confidentially -- confidentially. You ever have
19 one of those words that once you say it wrong three times,
20 you know it's not going to come out? Confidently believe
21 what decision-makers say?

22 A. I hate to have you read that to me again because
23 that stutter in between, I lost track of it.

24 Q. Well, the allergy medicine is making my mouth so
25 dry I can barely talk.

1 A. I lost track of the whole sentence.

2 Q. Yeah. He goes on to point out: Nevertheless,
3 no one can confidently --

4 A. Confidently.

5 Q. Yeah. Thank you. It's a group effort. It
6 always is -- believes what the decision-maker says is
7 true. There is no way to verify anything they're saying?

8 A. What they say is true -- I'm not sure I
9 understand the sentence.

10 Q. Let me help you.

11 MR. MARTIN: May I approach the witness?

12 THE COURT: Yes, you may.

13 MR. MARTIN: I can barely talk.

14 BY MR. MARTIN:

15 Q. All right. I mean, that's what he points out,
16 that there is no confidence at all in the research because
17 they cannot determine whether or not the information from
18 the subjects coming in is, in fact, true?

19 A. I would agree with that. That's a lie
20 detector-type argument.

21 Q. You can read along with it. The use of
22 introspection raises questions about how much to trust the
23 finding of studies.

24 A. Of studies.

25 Q. Correct?

1 A. Yes.

2 Q. And that would be the same with the studies
3 dealing with self-efficacy because it's self-reported? It
4 is analogous to those studies; is it not?

5 A. About someone's declaration --

6 Q. Uh-huh.

7 A. -- of their self-efficacy? Yes, it is always
8 subject to honesty.

9 Q. Okay. And when we talk about an expert coming
10 into court and making a determination of whether or not
11 that expert will testify, as you know, because you've been
12 through this before, is the determination by the Court of
13 whether or not the method is, in fact, reliable is one of
14 the gatekeeping functions of the Court.

15 You're familiar with that, right?

16 A. Yes.

17 Q. Okay. Are you ready to talk about some law
18 enforcement stuff?

19 A. Whenever you're ready.

20 Q. All right. One of the things that you mention
21 in this particular case that's unique for you is that
22 Mr. Reeves is a former law enforcement officer?

23 A. Yes.

24 Q. Okay. And you've already explained to the Court
25 why that's important to you.

1 Under that topic, there's three subtopics that I
2 want to discuss with you. They all interrelate, but the
3 only way to do it is to break them part.

4 A. Okay.

5 Q. So we're going to talk about Mr. Reeves' law
6 enforcement training. We're going to talk about the force
7 matrix or force continuum models. Then we're going to
8 talk about objective reasonableness.

9 A. Okay.

10 Q. That's how we're going to break it down.

11 A. Okay.

12 Q. Let's talk about Mr. Reeves' training. We had a
13 discussion with that in the deposition. We went over and
14 over about what years this occurred, what year that
15 occurred, we're not going to go through all of that.

16 A. Thank you.

17 Q. The bottom line is, once we went through all of
18 that, we knew that Mr. Reeves retired in, I believe it is,
19 either 1992 or 1993. That you did not have the benefit of
20 reviewing any type of curriculum that Mr. Reeves was
21 exposed to at Tampa Police Department, right?

22 A. As a recruit or?

23 Q. No.

24 A. Across his career?

25 Q. Throughout his career?

1 A. I have not seen any of that. No.

2 Q. Now, you may have seen some certificates saying,
3 I went to this school, but the basic in the curriculum,
4 you don't know?

5 A. No.

6 Q. You don't know any type of in-service training
7 that Tampa PD provided to Mr. Reeves during those years
8 because you've not seen any type of outline or course
9 material or handouts, correct?

10 A. When I met with him, he gave me a handout. I
11 don't remember the name of it, but it was something I
12 think he relied upon. It was a booklet, and I apologize
13 for not recalling the title of it. I didn't bring it with
14 me, but it was a tactical book. That's the only thing
15 that I've seen that had direct, perhaps, influence on his
16 training.

17 Q. We also talked about, and you agreed, that in
18 the 1970s there was no standardized training curriculum
19 like there is today? I could bring in, you know, the
20 Basic Recruit Training Book and everything, but back in
21 the '70s that didn't exist in Florida?

22 A. It was standardized locally. It was not
23 standardized statewide.

24 Q. I appreciate you making that distinction. It
25 was not standardized statewide, but now we have a test

1 that we have to -- we? That the recruit will have to
2 take.

3 When you say it was standardized locally, each
4 location was -- there was no prohibition of putting
5 together whatever curriculum they thought was appropriate.
6 It may or may not be consistent with anyone else's?

7 A. That's true.

8 Q. Okay. And so you don't know what curriculum
9 that Tampa PD put together in the '70s and '80s?

10 A. No.

11 Q. Then you mention, and I asked, you know, you
12 don't know the training that Mr. Reeves went through, but
13 you said that you do know the material that he was
14 teaching in 1990s and the 2000s.

15 Do you remember that?

16 A. I don't remember exactly that conversation, but
17 by then it was standardized, so I would be familiar with
18 it.

19 Q. That was on depo one, page 135, you specifically
20 mention in the 1990s and the new millennium that you were
21 very aware of what training Mr. Reeves received, right?
22 Because it had been standardized?

23 A. It had been standardized, yes.

24 Q. All right.

25 A. I'm familiar with that era of law enforcement

1 training statewide.

2 Q. All right. Mr. Reeves retired in 1993?

3 A. Right.

4 Q. So, potentially, throughout his entire career,
5 maybe through what you know, you might be able to get a
6 glimpse in that two-to-three-year period what he might
7 have been exposed to, and that's it?

8 A. Yes.

9 Q. So any type of testimony by you indicating that
10 Mr. Reeves received training relating to any type of force
11 matrix or objective reasonableness, as it relates to the
12 definition that came out in the Graham case, you have no
13 idea what it is?

14 A. What what is?

15 Q. What the training would have been?

16 A. I don't know what Tampa taught their officers,
17 but those were standardized during his final years, yes.

18 Q. But when you assumed that he was exposed to
19 that, that's all it is, is an assumption on your part that
20 he was exposed to it, but you have no way to verify your
21 assumptions?

22 A. There was mandatory retraining back then -- I
23 don't have a list of what it was -- by FDLE, so I think
24 there may be a record of what the standardized training
25 was in Tampa and the rest of law enforcement agencies, but

1 I don't have a record of that.

2 Q. All right. So any type of testimony on your
3 part as to what training Mr. Reeves received would be
4 nothing more than speculation and assumption on your part?

5 A. Well, he's reported what training he's received,
6 I think, in perhaps a couple of places. So it's not pure
7 speculation. I'm not just imagining the training. I
8 think he talks about the kind of training. I'm familiar
9 with his involvement with the SWAT team and some of his
10 duties as a Tampa police officer, as an investigator,
11 things like that.

12 Q. Okay.

13 A. So it's not strictly speculation.

14 Q. All right. But those are his duties and the
15 actions that he was involved in. You don't have any
16 record of any type of curriculum involving the training
17 that was provided to members of the SWAT team or to
18 Mr. Reeves or to anyone else? You just know that he was
19 in charge of it at one point in time?

20 A. I know that he was a police officer during the
21 period of what we call professionalization here in Florida
22 where we had a standard. That's all I know. I don't have
23 any curriculum from the Tampa Police Department, or any
24 file or record of training that he underwent, aside from
25 the certificates.

1 Q. Let's talk a little bit about the force matrix
2 and force continuum.

3 A. Okay.

4 Q. We've had some discussions. I'm not going to go
5 through that. But you talked about the concept of that
6 visually being linear where we have some type of behavior
7 and response; do you remember that discussion?

8 A. Yes.

9 Q. We also already had the discussion, as far as
10 Graham is concerned, that a mechanical application of
11 objective reasonableness is not appropriate because of the
12 variation, so many variations that are involved, and has
13 to be considered on a fact-to-fact basis.

14 A. Right. I think the terminology is strict
15 mechanical. I think there are mechanics to
16 decision-making, but it's certainly not pigeon-holed into
17 just a mechanistic scheme. There are other factors that
18 weigh in.

19 Q. All right. Well, in Graham, on page 1872,
20 because you brought it up, because the test of
21 reasonableness under the Fourth Amendment is not capable
22 of precise definition of mechanical application; however,
23 its proper application requires careful attention to the
24 facts and circumstances of each particular case including
25 the severity of the crime, whether the suspect poses an

1 immediate threat to the safety of officers or others, and
2 whether he actively resisted arrest or attempted to evade
3 arrest by flight.

4 That's the original four thing, right?

5 A. And I --

6 Q. Does that language sound familiar to you now?

7 A. It does. I used the word "strict" and I think
8 you read "precise," but that's where it says --

9 Q. Well, I'm quoting from Graham.

10 A. I know. So my word was wrong, but, again, it
11 does say precise mechanistic.

12 Q. I'm going to expand on the discussion we had
13 earlier talking about how Graham started the process of
14 formulating a list of those considerations that may be
15 involved in a case that could assist in determining
16 whether or not an officer is granted immunity.

17 Do you remember those four?

18 A. Yeah. I don't agree --

19 Q. We're just going to keep going with that.

20 That's where I'm going to go.

21 A. I didn't agree with your statement, but, okay.

22 Q. You don't agree with the statement?

23 A. I don't think that started the list. I think
24 that was Johnson versus Glick in 1963 that --

25 Q. That was under a different standard.

1 A. That was under the Eighth Amendment.

2 Q. Yeah. So. You know, I appreciate that, but
3 when you just make the statement, you know, I don't agree
4 with it, but it's under a different standard --

5 A. It's still evaluated by law enforcement --

6 THE COURT: Gentlemen --

7 BY MR. MARTIN:

8 Q. It's a different standard?

9 THE COURT: Gentlemen, I'm sorry, I'm going to
10 interrupt. Now we're not asking questions any
11 longer, right? We're not asking questions.

12 MR. MARTIN: Right.

13 THE COURT: You're not answering questions.
14 We're just having dialogue back between each other,
15 but let's not do that.

16 So we're going to move on at this moment and
17 then you can reask the question or ask a question,
18 okay?

19 BY MR. MARTIN:

20 Q. Under Glick, it was a different standard,
21 correct?

22 A. Yes.

23 Q. All right. Now my question was: Under Graham
24 started the list, if you will, of objective reasonableness
25 as it relates to a constitutional violation and that's

1 where it began, correct?

2 A. Yes.

3 Q. Okay. I wanted to bring the language of Graham
4 to your attention, especially the part where it says:
5 However, its proper application requires -- you know that
6 language.

7 Is it your belief that the force matrix and the
8 force continuum is, in fact, just a -- I'll refer to it as
9 a straight line visualization of what is appropriate?

10 A. Did you say do I think that is all that it is?

11 Q. Uh-huh.

12 A. No, I think it's more than that.

13 Q. The reason I ask you that is because during our
14 discussion at the deposition you were talking about
15 Mr. Reeves and the conduct with Mr. Oulson, and you wanted
16 to categorize Mr. Oulson's behavior and show the straight
17 line appropriate response?

18 A. Right. I think that is one of the things that
19 the matrix affords us, is a straight line linear level of
20 appropriateness.

21 Q. All right. Which appears to be inconsistent
22 with the Graham's admonishment that we can't do this
23 mechanically, correct?

24 A. We can't do it precisely mechanically, but there
25 is a mechanism in place called "a continuum," and we can

1 rely on that.

2 Q. But Graham didn't start the force matrix or the
3 force continuum, did it?

4 A. I would argue they did. I would say that law
5 enforcement adopted this objective standards based on
6 Graham language, and that was sort of the genesis of the
7 force continuum.

8 Q. Well, they were forced to accept it because this
9 came from the United States Supreme Court? What you've
10 told us earlier is that --

11 MR. MICHAELS: Objection.

12 THE COURT: Just a second. I'm sorry, I did not
13 hear you.

14 MR. MICHAELS: I was going to ask the prosecutor
15 to ask a question because we're getting to that point
16 again where we are going to have a conversation
17 instead of question and answer.

18 MR. MARTIN: I thought I asked a question. If I
19 didn't, I apologize. I understand the Court's ruling
20 and, you know, I will do that.

21 THE COURT: All right. He will do that.

22 BY MR. MARTIN:

23 Q. You explained to Mr. Michaels that the concept
24 of the force matrix began many, many years ago with rules
25 engagement from the military, and then law enforcement

1 kind of morphed them and adopted from them; do you
2 remember that testimony?

3 A. Yes.

4 Q. All right. So do you believe that it was the
5 United States Supreme Court that fashioned and approved a
6 force matrix?

7 A. Fashioned and approved? No, I think it inspired
8 the force matrix for law enforcement.

9 Q. It did what?

10 A. Inspired the development of a force matrix for
11 law enforcement.

12 Q. Okay. What law enforcement attempted to do,
13 would you not agree, is to take the concepts, if you will,
14 from Graham and try to pigeon-hole them into a matrix
15 model, a force matrix model that already existed?

16 A. No.

17 Q. Okay. Why not?

18 A. The model did not exist in the law enforcement
19 context, but rather in the law -- in the military context.
20 And Graham -- well, to be fair, there were models floating
21 around that were not really codified in the state of
22 Florida. I think we both agree on that.

23 Q. Yes, we both agree on that.

24 A. So there was already thinkers out there in my
25 profession that were trying to bridge the military model

1 with law enforcement by coming up with different types of
2 models. And I mentioned to you when I began, which
3 preceding Graham, I had a five and a five response to
4 resistance and recognition of -- recognition of threat.
5 There was five categories on one side and five categories
6 on the other.

7 But that model was not being used by everyone.
8 It wasn't until Graham versus Connor came out that we
9 started to see a wide adapting of the force continuum
10 because it was informed and inspired by the notion of
11 objective reasonableness.

12 So the chart was created in an attempt to
13 develop an objective instrument by which force could be
14 measured in terms of its appropriateness, and that was the
15 inspiration for the model that we have today.

16 Q. Okay. The Courts did not create it. It was law
17 enforcement that created it for a teaching tool, correct?

18 A. Again, yes, it was. The chart was created by
19 law enforcement, but inspired by the Courts.

20 Q. Okay. When we talk about law enforcement needs
21 for some type of model, would you not agree that agencies
22 want some type of -- I'll call it rules of engagement,
23 code of conduct, so to speak, to make a determination as
24 to whether or not their officers violated any policies
25 they had, as far as use of force?

1 A. Do I agree that it is used for that purpose,
2 yes.

3 Q. All right. And that's to put the officer on
4 notice what his policies are? The officer is put on
5 notice that you're not going to kick the suspect in the
6 head, like it's right there in the SOP. That's putting on
7 notice?

8 A. That's one reason for it.

9 Q. Another reason that law enforcement wanted to do
10 that is because of the litigious society that we have in a
11 1983 action that, if you don't train the officers
12 appropriately, that certain government agencies and the
13 officers can be held accountable. So the force matrix
14 they can bring in and say, Yeah, we do do training. This
15 is part of the curriculum.

16 A. I think it's a cynic's view, but I wouldn't
17 disagree with it.

18 Q. All right. And it is also used by agencies and
19 government, again, in the civil courts under 1983, to
20 rebut whether or not there was sufficient training? They
21 come and say, Okay, here is our SOP, our force matrix.
22 This is what we do. Court, decide if this is sufficient.

23 That's what they use it for?

24 A. It's also been used for that, yes.

25 Q. As a subject matter expert in the field of use

1 of force, you are familiar with the various case law
2 surrounding that subject matter?

3 A. I mean, I don't know if I'm familiar with all of
4 it, but I know quite a bit of it, yes.

5 Q. And there's no federal case whatsoever out there
6 that has said, we're going to use a force matrix in order
7 to determine reasonableness, objective reasonableness?

8 A. No federal case out there?

9 Q. There's no federal case out there, if you do a
10 search query, Westlaw, whatever you want to do in a
11 reported decision where a federal court has said, We are
12 going to rely on a force matrix to determine objective
13 reasonableness?

14 A. It has been relied on in federal cases. I don't
15 know if it -- it definitely wasn't an order of the Court.

16 Q. It may have been relied on in a federal case,
17 but was it in a case where, like I said, it was presented
18 to show either there was training or a lack of training?
19 That's how it's relied on in federal court; is it not?

20 A. No. I've testified in federal court using a
21 force matrix to show proportionality of force.

22 Q. Yes, you have. Okay. And in that particular
23 case when you testified in federal court, and you used the
24 force matrix, you were testifying to the standards as to
25 whether or not a particular agency or officer violated

1 some sort of agency policy, correct?

2 A. No. It was a civil case. I wasn't called in
3 for administrative law. It was a civil case in which I
4 was discussing proportionality of force and what is
5 appropriate, what is objectively reasonable based on a law
6 enforcement officer's standards.

7 Q. Right. And that was in a case involving whether
8 or not there was a constitutional violation?

9 A. Yes.

10 Q. Okay. We're going to talk about objective
11 reasonableness because it appears that may be potentially
12 part of your testimony.

13 We discussed under Graham, how Graham indicated
14 that the legal test question of objective reasonableness
15 will be used in determining all use of force cases under
16 the Fourth Amendment.

17 Do you remember that conversation?

18 A. Yes, that's what Graham says.

19 Q. Okay.

20 MR. MARTIN: May I have just a moment, Your
21 Honor?

22 THE COURT: Yes, you may.

23 MR. MARTIN: I've gone through my notes. I'm at
24 the kind of end of it. I think I'm just going to
25 rely on my motion for the remainder of any type of

1 argument I make. I have no further questions of this
2 witness.
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF FLORIDA:

COUNTY OF PINELLAS:

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

I further certify that I am not a relative, employee, attorney or counsel of any of the parties nor am I a relative or counsel connected with the parties' attorneys or counsel connected with the action, nor am I financially interested in the outcome of the action.

DATED this 30th day of January, 2022.

/s/ Charlene M. Eannel, RPR

CHARLENE M. EANNEL