

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 I

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 1 - 145

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

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INDEX OF PROCEEDINGS

PAGE

ROY BEDARD

Direct Examination by Mr. Michaels

4

Cross-Examination by Mr. Martin

78

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

2 (The following witness testimony was transcribed
3 per request of Counsel.)

4 * * * * *

5 MR. MARTIN: No, Your Honor. The State is ready
6 to go.

7 THE COURT: Okay. Great. You may proceed.

8 MR. MICHAELS: The Defense calls Roy Bedard.

9 (Roy Bedard was duly sworn on oath by the Clerk
10 of Court.)

11 THE BAILIFF: Follow me, please. Have a seat in
12 this chair and speak into the microphone.

13 THE COURT: You may proceed whenever you're
14 ready.

15 MR. MICHAELS: Thank you.

16 THE COURT: You can turn the podium, if you
17 would like.

18 MR. MICHAELS: Thank you.

19 THE COURT: You could adjust it in any way you
20 would like.

21 MR. MICHAELS: Thank you.

22 **DIRECT EXAMINATION**

23 BY MR. MICHAELS:

24 Q. Please state your name.

25 A. Roy Bedard.

1 Q. Please spell your name for the court reporter.

2 A. My first name is R-O-Y. My last name is
3 B-E-D-A-R-D.

4 Q. And tell me what you do for a living?

5 A. I'm a police trainer.

6 Q. Okay. Have you previously been qualified and
7 been called upon to give expert testimony or opinion in
8 that field?

9 A. Yes.

10 Q. In the field of defense tactics?

11 A. Yes.

12 Q. Threat assessment?

13 A. Yes.

14 Q. Use of force?

15 A. Yes.

16 Q. Perceptive reaction -- perceptive -- perception
17 reaction?

18 A. Yes.

19 Q. What other fields have you been called and
20 allowed to testify as an expert in?

21 A. Defensive tactics, which is the actual
22 application of use of force, survival stress, what occurs
23 during periods of high arousal due to combative
24 circumstances.

25 MR. MICHAELS: Let me approach, if I may, Judge,

1 and show you what's been marked as ID A for the
2 Defense?

3 THE COURT: Mr. Martin, have you seen this?

4 MR. MARTIN: Yes, Your Honor, I have seen it. I
5 have a copy.

6 THE COURT: Okay. Great.

7 BY MR. MICHAELS:

8 Q. Do you recognize that?

9 A. Yes, I do.

10 Q. And what is that?

11 A. This is my CV.

12 Q. Okay.

13 MR. MICHAELS: At this time, Defense would move
14 Defense Exhibit A, the CV, into evidence at this
15 time?

16 THE COURT: Any objection?

17 MR. MARTIN: No, Your Honor.

18 THE COURT: It will be received as Defense
19 Exhibit 1.

20 (Defense Exhibit 1 was received into evidence.)

21 MR. MICHAELS: I have a courtesy copy for the
22 Court. 1?

23 THE COURT: 1.

24 MR. MICHAELS: I had A on there.

25 BY MR. MICHAELS:

1 Q. All right. Let me give you a copy in case you
2 have to refer to it, Mr. Bedard.

3 A. Thank you.

4 Q. Okay. Let's talk about -- you said that you've
5 been called upon to give expert testimony. Approximately,
6 how many times?

7 A. I think it's around 30 times.

8 Q. And is that in federal court, state court, or
9 both?

10 A. Both.

11 Q. Any foreign jurisdictions?

12 A. No.

13 Q. Let's talk about your education -- your formal
14 educational background. Bachelor's degree?

15 A. I have a bachelor's degree in criminology.

16 Q. From where?

17 A. Florida State University.

18 Q. And after that?

19 A. After that, I received my master's in
20 educational psychology.

21 Q. And where was that from?

22 A. Also Florida State University.

23 Q. And you also have a Ph.D.?

24 A. Yes.

25 Q. Okay. Tell me about that.

1 A. Also from Florida State University. It's also
2 in educational psychology. My major was sports
3 psychology, but my emphasis was on perceptual cognitive
4 skills, mostly applied to law enforcement and military
5 personnel.

6 Q. And is that what your dissertation has to do
7 with?

8 A. Yes.

9 Q. Now, in terms of law enforcement background, do
10 you have any actual law enforcement background?

11 A. I do. I started in 1986 with the police
12 academy. I was employed by the Florida State University
13 Police Department in 1987, where I stayed there until
14 1990.

15 I moved to the Tallahassee Police Department
16 full-time until 1996. And then I moved to what we call a
17 "reserve status." It is a full law enforcement position,
18 but, obviously, no longer reporting for duty every day,
19 but rather on an as-needed basis. I did that because I
20 started my own law enforcement training and product
21 manufacturing business.

22 Q. Okay.

23 A. So I -- I'm -- I'm almost done. I stayed as a
24 reserve until 2015, and then I am now with the Tallahassee
25 Community College Police Department as an administrator

1 reserve officer.

2 Q. Okay. So you've maintained your police
3 certification?

4 A. I have, yes.

5 Q. Now, you said that you started a company. Tell
6 me about that.

7 A. So the corporation that I began started with a
8 product that I developed and had patented called the Rapid
9 Rotation Baton, and it was an impact weapon, an
10 intermediate weapon, used by law enforcement, security,
11 military personal, and I began teaching that tool
12 worldwide.

13 That later evolved into offering other services,
14 police-related services in particular. And I now am a
15 d/b/a. The corporation is still Rapid Rotation Baton,
16 Inc., registered with the State of Florida, but as a d/b/a
17 as RRB Systems International, where I provide not only the
18 Rapid Rotation Baton but other products, as well as
19 services including consulting, expert witness testimony,
20 things like that.

21 Q. Do you also train others in the use of force and
22 defensive tactics?

23 A. I do.

24 Q. And how long have you been doing that?

25 A. Probably since I began police work in 1987. My

1 background was in martial arts as a young person, and my
2 interest, I think, in law enforcement, in particular, was
3 the knitch area of defensive tactics and use of force.

4 So I was sourced by my first agency Florida
5 State University Police Department, and by the local
6 academy as a defensive tactics and use-of-force
7 instructor.

8 Q. And how many people do you think you've trained
9 over your career?

10 A. Thousands. I don't -- I don't know.

11 Q. In both the use of force?

12 A. In use of force and defensive tactics, yes.

13 Q. And defensive tactics?

14 A. Yes.

15 Q. Do you serve as a subject matter expert for any
16 entities?

17 A. I do.

18 Q. Okay. Which entities?

19 A. Presently, I am a subject matter expert for the
20 Florida Department of Law Enforcement Criminal Justice
21 Standards and Training Commission.

22 Q. Now, let's talk about what a subject matter
23 expert is.

24 A. So a subject matter expert is somebody who is
25 recognized in the field as having special knowledge that

1 is beyond the scope of an average person. They are
2 sourced for mostly reputational purposes, various courses
3 that are taught, reputation within the world of defensive
4 tactics and use of force, pedigree, in terms of education
5 where you've gone to school, conferences, things like
6 that.

7 So you're recognized as an expert in the field,
8 and at that point, you are essentially assigned the title
9 of "subject matter expert," by some entity. In this case,
10 it was the Criminal Justice Standards and Training
11 Commission here in the State of Florida that regulates all
12 police training when it comes to basic recruit and, in
13 some cases, even in-service training.

14 Q. And tell me what your involvement is in that
15 particular facet?

16 A. With FDLE.

17 Q. Yes.

18 A. So it's -- throughout the years, it's been more
19 than 20 years, they generally will begin with my
20 involvement as a curriculum writer. So we've had a couple
21 iterations of the state curriculum since the development
22 of a state exam which occurred in the '90s, around '92.
23 That was the first curriculum the State of Florida wrote.

24 In 2007, we overhauled it. So I then was being
25 sourced in the capacity of not only curriculum writer, but

1 also an updater, somebody to look at an old curriculum and
2 find out if we need to improve it or change it in certain
3 areas.

4 Then, of course, there was some new material
5 that was developed during that period of time. So from
6 time to time, FDLE will contact me if they want another
7 iteration, or if they want a review of existing material.
8 Every now and then, they call me, for example, to talk to
9 legislators who may question -- for example, I can recall
10 one incident in particular where the Taser was being
11 debated by our legislature as a tool that should only be
12 used at the deadly force level. So they wanted to have an
13 expert discuss that with them, and I did that.

14 So there are different occasions where FDLE
15 would use my services.

16 Q. And did you also author use of force and
17 defensive tactics curriculum?

18 A. I did. I was party to the state curriculum,
19 which is responsible now for all law enforcement and
20 correctional officers in the State of Florida since --
21 well, since about 1992.

22 Q. When you say "curriculum writer," it kind of
23 sounds like I know what it means, but why don't you
24 explain. What exactly does that mean?

25 A. So the State issues a curriculum for all

1 certified academies to follow. There was a time many
2 years ago where all training was done locally. So if you
3 went to a police academy and you passed the academy
4 standard, you could be a police officer in the State of
5 Florida.

6 That changed in '92 when we consolidated the
7 state exam, which wanted to assure that every police
8 officer in the State of Florida was trained to the same
9 standards. So, therefore, if you were in Tallahassee or
10 Miami, Jacksonville, Ocala, you were receiving exactly the
11 same training, and the only way you could do that is
12 through a standardized curriculum.

13 So I was responsible, in part, for writing the
14 Use of Force and Defensive Tactics Curriculum that law
15 enforcement officers are subject to standardization by.

16 Q. Okay. Did you invent the use of force and the
17 curriculum for that, or has that always been around in
18 some form or another?

19 A. It's always been around in some form or another.
20 I mean, I don't know if it's always been around, but
21 certainly, it predates me.

22 Q. Tell me how you know about that.

23 A. So it's always a deep dive into history when
24 you're doing curriculum writing. You want to make sure
25 that you understand what was done in the past, so that

1 gives you direction and guidance for future curriculum
2 writing.

3 I discovered through that process of teaching
4 defensive tactics and use of force over the years where
5 many of the things that we do in law enforcement come
6 from. Some of them, I mean, almost every technique that
7 we teach, come from the martial arts. I can cite you, for
8 example, the Japanese name of many of the English
9 techniques that we have. So they're very, very old, and
10 they're applied in a very modern setting.

11 From the use-of-force perspective, most of our
12 engagement comes from the military that's been teaching
13 rules of engagement for, you know, well over 100 years,
14 and that has evolved within the military.

15 Law enforcement has had to take it to a further
16 evolution because, of course, they serve a different
17 mission, but when it comes to combat, it comes to
18 assessing danger and threat assessment, things like that,
19 the methodology that is used by military personnel is
20 very, very similar to the methodology that is and should
21 be used by law enforcement.

22 Q. Have you taught at any law enforcement
23 academies?

24 A. Yes.

25 Q. Tell me about that.

1 A. So I am presently employed with the Pat Thomas
2 Law Enforcement Academy, which is in Tallahassee, and the
3 Florida Public Safety Institute, which is also under the
4 Tallahassee Community College. And I'm also presently
5 employed by the Florida -- sorry, the Seminole State
6 College, that is in Seminole County, Florida.

7 So I'm on -- I'm an adjunct professor with both
8 of those institutes.

9 I think your question was more broad than that;
10 have I taught at other academies? I've taught in many,
11 many academies throughout the State of Florida. For
12 example, in 2007, I was assigned to take the new
13 curriculum and teach it to use of force and defensive
14 tactics trainers around the State of Florida, and I did
15 that at multiple academies. I don't know how many.
16 Probably as many as 15 or 20.

17 So I've been to many different academies for
18 instruction. Then, of course, I've taught all over the
19 world at police academies various tactics and techniques,
20 things like that.

21 Q. And just to be clear, use of force also
22 encompasses the justifiable use of deadly force, correct?

23 A. It does, yes.

24 Q. Certainly, you're familiar with the Florida
25 Statutes regarding the justifiable use of deadly force?

1 A. I am, yes.

2 Q. You've also taught seminars?

3 A. Yes.

4 Q. Okay. Give us some examples.

5 A. I've been a member many years ago of an
6 organization called ASLET, which is the American Society
7 of Law Enforcement Trainers. It's considered the top
8 trainer's society -- I would say in the world because
9 we've had a lot of visitors internationally.

10 There seems to be tendency around the world, as
11 I've traveled it and learned, that many, many nations
12 follow what we do here. They think that we are sort of
13 the gold standard of use of force and police procedures.

14 So as an ASLET member, I presented at that
15 conference many times. Later, that organization, some
16 would say, evolved, but it went out of business and was
17 replaced by another one called ILEETA, the International
18 Law Enforcement Educators and Trainers Association, which
19 I'm still a member of. I've presented at their
20 conferences many times on a variety of different topics.

21 I've also presented, you know, at school
22 conferences for talking about use of force that teachers
23 and school personnel may come across within their
24 facilities. I've taught at court reporter's conferences,
25 you know, various conferences like that.

1 Of course, I teach at university quite often to
2 various groups.

3 Q. Okay. You've actually taught internationally in
4 Spain, for instance?

5 A. I have. I have quite a resume of international
6 instruction that I have presented in various parts of the
7 world.

8 Q. Poland?

9 A. Yes.

10 Q. Have you authored any articles, aside from just
11 writing the curriculum for FDLE?

12 A. Yes, I have. The articles that I have authored
13 have been really trade articles. They've been in law
14 enforcement publications. Mostly, that's my interest. I
15 have several different articles that offer questions about
16 the way we do things and why we do them that way and,
17 perhaps, future directions on what we ought to be thinking
18 about in law enforcement, things like that.

19 Q. And have you also authored training manuals to
20 be used by various law enforcement agencies?

21 A. I have. I started off writing training manuals
22 for my own products and later evolved to being contracted
23 by other companies to write their training manuals. Of
24 course, I would consider the state curriculum a training
25 manual, which we've already discussed.

1 But I've written, for example, a product called
2 PepperBall that's being used internationally. I was the
3 first one to write their training manual. I was involved
4 in training manuals with shoot-don't shoot systems, things
5 like that. A company called TI Training has sourced me
6 for some of their manual writing. It's been a variety of
7 different manuals I've put together.

8 Q. Now, are you familiar -- you said you are
9 familiar with the Florida Statute dealing with the
10 justifiable use of force.

11 Are you also familiar with the various
12 protocols, standards, model policies, and articles that
13 were published by professional associations on use of
14 force?

15 A. Yes.

16 Q. And decision-making concerning use of force?

17 A. Yes.

18 Q. Now, have you had the occasion, as a member of
19 law enforcement -- I guess you still are, at least on a
20 reserve status, to review use of force reports?

21 A. Yes. I was -- when I was with the Tallahassee
22 Police Department, I was a chairman of the Defensive
23 Tactics and Use of Force Committee. We had a committee
24 that was composed of law enforcement officers and,
25 actually, outside community members as well.

1 We were mindful of the way we were using force
2 and how it affected various groups within the community.
3 So we had a round table of, for example, president of the
4 ACLU, we had doctors, we had lawyers that were looking at
5 the kind of techniques we were using to kind of medically
6 approve and legally approve them before they entered into
7 our training manual.

8 And the comparative analysis was coming from use
9 of force reports in the field. So, for me to have a
10 substantive discussion about these things, I was in the
11 chain of receiving reports from officers in the field that
12 were actually using force.

13 And I would analyze those reports, and if there
14 was something that raised questions, they would be
15 presented at our tactics meeting. But I looked at all of
16 the reports from the Tallahassee Police Department during
17 that period about law enforcement officers using force and
18 applying it in a structured way.

19 Q. And how many reports would you estimate that you
20 looked at in that capacity?

21 A. Oh, I don't know. In the hundreds or thousands.

22 Q. And what was the purpose of reviewing those
23 reports?

24 A. It was to make sure that law enforcement
25 officers did things appropriately. So "appropriately"

1 meaning to a policy standard. Of course, there was other
2 governing authorities, the U.S. Constitution, State
3 Statute, policy, and then, of course, our own training.

4 So we are always looking for consistency with
5 those four major entities that directed and guided use of
6 force. And as I looked at a use-of-force narrative and
7 sometimes if it ended up in an internal affairs complaint,
8 I would also follow up by reviewing some of those reports
9 to find out if the law enforcement officer had complied
10 with the directions that they were given as a Tallahassee
11 police officer. So that was my primary objective.

12 My secondary objective was to constantly improve
13 the program, was to find out if there were things that we
14 could do better, and if there were things that we could do
15 more consistently. And perhaps if there were things we
16 weren't doing that we ought to be doing.

17 So this required more of a global view of law
18 enforcement to find out what new techniques might be out
19 there, what new equipment might be out there, and to
20 explore that stuff to see if it was things that we could
21 bring to our agency.

22 The best example I have during that period is
23 pepper spray. It was just starting to come into law
24 enforcement, and I was, in part, responsible for making
25 decisions about whether or not our agency would use pepper

1 spray and to what capacity it would be used, where it fit
2 on the force continuum, things like that.

3 Q. And did you also review use-of-force reports and
4 in cases involving use of force in the -- in the civilian
5 world as a consultant?

6 A. Well, I would say probably every case involving
7 law enforcement has a civilian component to it. So
8 there's, of course, you know, two sides to an encounter.
9 So during those early days at the Tallahassee Police
10 Department I was reviewing civilian use of force, but in a
11 more legal way.

12 That happened later on when stand your ground
13 became a standard here in Florida, the first state in the
14 nation to allow for stand your ground. And I studied it,
15 I understood it well. I was sourced by many different
16 attorneys in the earliest part of that, in some cases, to
17 explain use of force and how it fit in with the new
18 standards that were applied by the state.

19 And since then, I've been hired several times to
20 represent civilians in use of force with respect to
21 statutory allowances and procedures that are considered
22 reasonable using the best standard that I had, and I think
23 that we still have, which is really the models that have
24 been developed by law enforcement.

25 So using that application of what is considered

1 appropriate and proportional force, I was able to bridge
2 my knowledge and experience of how the Court accepted
3 force to the standards that were now being given to
4 civilians.

5 Q. And let me ask you, then, as a consultant, have
6 you had an opportunity to review cases involving use of
7 force, use of deadly force?

8 A. Yes, and that would be the stand your ground. I
9 was not doing that in the capacity of a law enforcement
10 officer, but as a consultant.

11 Q. And how many of those reports do you think?

12 A. How many of those have I seen? Oh, I would say
13 dozens.

14 Q. So you've been certified as an expert in state
15 and federal court; is that fair to say?

16 A. Yes.

17 Q. And that's to testify on the subject and give
18 opinions on the subject of use of force?

19 A. Yes.

20 Q. Defensive tactics?

21 A. Yes.

22 Q. What else?

23 A. At times, survival stress. At times, I would be
24 specifically talking about defensive tactics, the kind of
25 techniques that were used. Sometimes police procedures.

1 One of the big considerations in use of force is should
2 force be used at all?

3 So there's a process that law enforcement
4 officers and civilian should go to to make that decision.
5 Am I under attack? Is force necessary? Once you
6 determine that force is necessary, then you have to
7 determine what would be considered reasonable. So I've
8 been involved in all of those different areas of
9 testimony.

10 Q. Okay. Now, you've testified for the State of
11 Florida recently, in fact, this circuit in the case of
12 State of Florida versus Michael Drejka, right?

13 A. Yes.

14 Q. Okay. And you've testified for the prosecution?

15 A. I did.

16 Q. And you were recognized there as an expert?

17 A. Yes.

18 Q. In the field of use of force?

19 A. Use of force, and I believe defensive tactics as
20 well.

21 Q. And defensive tactics?

22 A. Yes.

23 Q. And we'll get back to that in a moment. In this
24 particular case, did you review some items in preparation?

25 A. In the case I'm here to speak about today or the

1 Drejka case?

2 Q. Yes, in the case you're here to speak about
3 today?

4 A. Yes.

5 Q. What did you look at?

6 A. I looked at video of the actual incident. I
7 looked at police reports. I looked at statements. I
8 actually had a conversation with Mr. Reeves, an interview,
9 if you will, about the incident that happened on that
10 particular day. I believe I saw some depositions. Things
11 like that.

12 Q. You saw a lot of depositions?

13 A. Yes.

14 Q. You saw crime scene photos?

15 A. I saw photos, yes.

16 Q. Autopsy photos?

17 A. Yes.

18 Q. You saw the autopsy?

19 A. I saw the photos from that, yes.

20 Q. Okay. You also --

21 A. I saw the autopsy report, if that's what you
22 meant.

23 Q. Yes, the autopsy report?

24 A. Yes. I wasn't there for the autopsy.

25 Q. I understand. Inarticulate question.

1 You also were able to get a transcript of the
2 stand your ground hearing, correct?

3 A. Yes.

4 Q. So you read that in its entirety?

5 A. I did.

6 Q. Now, going back to the Drejka case, you were
7 asked there if the standard for justifiable use of deadly
8 force is the same for a civilian as it is for law
9 enforcement?

10 A. Yes.

11 Q. And tell me what -- is that true?

12 A. It is true, yes.

13 Q. Explain?

14 A. So many years ago, prior to 2005, the
15 requirement for civilians was to desist or retreat from
16 acts of aggression, and that had been the standard in the
17 United States, really, since the very beginning of the
18 founding of our country.

19 It goes all the way back to common law in
20 England, where individuals were not permitted, with few
21 exceptions, to use force to repel an attack. Generally,
22 the standard was, unless their back was against the wall
23 and there was nothing else to do.

24 In 2005, that changed. The legislature decided
25 that it was appropriate for citizens who were not breaking

1 the law and were in a location where they had the right to
2 be in to be able to stand their ground against acts of
3 aggression using any amount of force, including deadly
4 force, if necessary, to repel an attack.

5 Law enforcement has always had that permission
6 to use force, and they were not required to desist or
7 retreat from attacks or acts of aggression against them.
8 So we have to kind of bifurcate law enforcement a little
9 bit. Law enforcement officers are charged with the
10 responsibility of enforcing law, civilians are not. So
11 there are permissions for law enforcement officers to use
12 force to make arrests, for example. To prevent escapes,
13 for example.

14 And at that time, they also had permission to
15 use force in defense of self or others based on acts of
16 aggression. They did not have to desist or retreat. What
17 really changed in 2005 was not the first two components of
18 use of force that a law enforcement is permitted to take,
19 law enforcement officers are still permitted, of course,
20 to make arrests and prevent escapes. Civilians are not.

21 But civilians are now on par with law
22 enforcement officers when it comes to being able to use
23 force, including deadly force, to defend themselves or
24 others. So the standards for deadly force are the same
25 for a civilian as they would be for a law enforcement

1 officer. There's no restrictions on law enforcement --
2 I'm sorry, on civilians that a law enforcement officer,
3 for example, is allowed to do.

4 The civilian can use weaponry if they are
5 holding it. They can use bare hands tactics. They can
6 use verbal dialogue to repel attacks as they evaluate them
7 and determine what would be appropriate and proportional
8 to the threat that they perceive.

9 Q. Okay. Now, use of force is kind of a big
10 umbrella, right?

11 A. Yes.

12 Q. And it includes something called threat
13 assessment?

14 A. Yes.

15 Q. Without going into the details, we'll go into
16 them in a little bit. Generally speaking, what are we
17 talking about?

18 A. So threat assessment is really a combination of
19 several different things that's involved in
20 decision-making. That is an understanding of an
21 environment. So we typically talk about scanning
22 environments. Of course, as human beings, we are mostly
23 visual, so my dissertation was based on improving visual
24 acuity for the idea of developing situational awareness
25 and threat assessment to assist in decision-making.

1 So when you scan the environment, there's a lot
2 of data out there. As a matter of fact, too much data,
3 for anyone to really comprehend, so we have certain
4 mechanisms in our mind that allow us to exclude things
5 that are not important. To ignore them, if you will. And
6 to attend to the things that are important.

7 And as the threats in the environment are either
8 noted or observed, our attention tends to narrow to them.
9 We tend to focus on the things that are most harmful to
10 us. And a lot of this is neurological. It happens as a
11 consequence of an activation of your systematic nervous
12 system, for example, and you move into what is often been
13 called, I think, in layman's terms, the fight-or-flight
14 syndrome, where you see things differently. You feel
15 differently about things.

16 So the threat assessment is to get you to the
17 point of where you recognize danger by scanning an
18 environment and discriminating the things that are
19 dangerous to you and then attending to them.

20 Q. And that's generally speaking. There are more
21 specifics and things you look to; is that correct?

22 A. Yes.

23 Q. Now, there's also a term I've heard
24 proportionality. Is that part of use of force?

25 A. Yes.

1 Q. Give us a thumbnail definition of that.

2 A. So this has a historical context, and that goes
3 back to the military rules of engagement that we realize
4 that when we send people into harm's way, that they will
5 be challenged or, at times, threatened, and those are
6 different things by individuals who intend to harm them.

7 Still, we expect deference to preserving lives,
8 and so there has been a concerted effort by the military
9 and now by law enforcement, and I think also by civilians,
10 to try to maintain proportionality to threats, to not --
11 to not look at something as -- as everything is being
12 terminal, but when something is terminal, to understand
13 that there is an appropriate allowance for the use of
14 deadly force.

15 So along the development of that type of
16 thinking, there's a scale. And so the scale reflects
17 threat assessment and then response. And in law
18 enforcement, we refer to that -- well, here in the State
19 of Florida, we refer to that as a recommended response to
20 resistance. It's often referred to nationally and has
21 been for many years as a force continuum. The State of
22 Florida also calls it a force matrix.

23 So there's various different models, but they're
24 1 based on the idea of maintain proportionality against
25 threats through the accepted response. By "accepted," I

1 mean, the objective standard that law enforcement officers
2 apply to.

3 Q. Okay. There's this idea of perception reaction,
4 the time it takes to see something and to do something
5 about it and make the decision in between.

6 Are you familiar with that term?

7 A. Yes, that's called reaction time.

8 Q. And is that part of use of force?

9 A. It is.

10 Q. And generally speaking, what does that mean?

11 A. So "reaction time," means that there's really
12 four things that you have to do. You have to recognize
13 something is happening in the environment. You have to
14 see it. You have to analyze what it means. You have to
15 formulate some type of response. Then you have to begin
16 the action or execution of some motor skill.

17 "Motor skill," meaning something you're -- some
18 behavior that you're about to exhibit in response to it.
19 So all of that in real time takes time. There's a
20 neurological process. It happens very quickly. It
21 happens in milliseconds, but those milliseconds matter
22 during combat.

23 So we have to recognize that before an
24 individual, for example, even knows that they are being
25 struck, that there will be about .18 to .25 seconds is

1 what most of the literature has determined to be the
2 reaction time. That time will pass before you can do
3 anything about it.

4 Perhaps to make this more clear, I think we all
5 deal with that. For example, the Department of Highway
6 and Safety, when they tell you to stay a car length for
7 every 10 miles per hour behind the vehicle in front of
8 you, it is to allow you time to recognize that that car is
9 stopping. And as those brake lights come on, there's a
10 processing that goes on that tells you, Oh, brake lights
11 are coming on. You have to analyze what to do about it.
12 I better put my foot on the brake, right, and then you
13 have to actually apply the brake.

14 So that time period that your car is traveling,
15 if you don't allow for the processing time, you will hit
16 the back of the car, even if you're paying attention.
17 Even if you know that, at some point, a person is going to
18 be braking.

19 So the Department of Highway and Safety offers
20 recommended techniques to be able to avoid rear-ending
21 somebody by telling you to not tailgate, to not ride on
22 somebody's bumper, for example. And it's strictly for the
23 purpose of being able to react in time to what would be
24 considered in traffic a threat of somebody braking in
25 front of you.

1 Q. So there is some lag. In other words, you can
2 see the stoplight, your car has the physical capabilities
3 of stopping and not hitting the car if you do it right
4 now, but there's a lag time between your perceiving the
5 red light and your reaction of hitting the brake pedal?

6 A. That's right, and you can't -- you can't train
7 out of it. I mean, we see this with Olympic athletes, for
8 example, who are some of the most reactive people that we
9 have in our country. If they're on the starting blocks in
10 a track meet, there will always be a lag time. You can
11 always see it between the gun going off and them leaving
12 the blocks. So it takes time to realize that those things
13 are happening.

14 And then what happens, and this is getting in
15 more into decision-making, is you start to anticipate.
16 And if you have a runner, for example, that leaves the
17 block too early, because they know the shot is going to be
18 fired, they could be disqualified, or they may have to
19 reset the match.

20 So we want to make sure that they're actually
21 listening to the sound of the shot before they leave the
22 blocks or there's a penalty involved. So this is
23 something that I think sport psychology probably knows
24 most about, and that's why I study this area, because it
25 talks about some of the scientific principles of human

1 performance that apply to the area that I'm most
2 interested in.

3 Q. Okay. In the Drejka trial, if I remember
4 correctly, you testified regarding threat assessment,
5 right?

6 A. Yes.

7 Q. And also regarding the proportionality response?

8 A. Yes. I think I talked a little bit about
9 situational awareness, a little bit about threat
10 assessment, I talked about proportionality or the force
11 continuum, and I talked about something called the Tueller
12 Rule, which is what Mr. Drejka, in this case, kept
13 referring to, the 21-Foot rule. That comes out of law
14 enforcement studies.

15 It actually comes out of Salt Lake City in Utah,
16 a sergeant that proposed it in a SWAT article, and it
17 became a standard of law enforcement to train to that
18 quarter-second principle by creating distance, more
19 distance.

20 And the question was: How close is too close?
21 That was the name of the article. And what this
22 particular sergeant determined through sort of a
23 quasi-scientific test at that time was that, if somebody
24 was within 21 feet with an edged weapon, and you had a
25 holstered weapon, you wouldn't be able to get it out of

1 the holster in time to deflect the threat. And that was,
2 essentially, the 21-foot Rule, and I was asked to talk
3 about that, and I did.

4 Q. And that has some bearing on this case in that
5 you're talking about kind of, again, reaction time?
6 Perception reaction time?

7 A. You are. I think -- I think a lot of the
8 public -- and this is where it becomes very scientific. A
9 lot of the public thinks that when something happens, you
10 should have an immediate response to that, and that's not
11 actually the way our brains work.

12 We neither turn on nor turn off our brain
13 quickly. Those things take -- when I say "quickly," I
14 mean, it seems quick. Milliseconds is quick, but
15 remember, shots are fired much faster than that, punches
16 are thrown much faster than that.

17 So to be reactive to being hit, for example, if
18 the lag time is in quarter seconds, you better be at least
19 an arm's length away from somebody to avoid being punched
20 in the face because that will be the first recognition
21 you're being attacked.

22 Q. Okay. And my next question kind of dovetails
23 with that. My question to you is, then, you know, this
24 whole issue and the reason you're here -- one of the
25 issues is whether or not the Court needs -- or I should

1 say the trier of fact, the jury needs your testimony to be
2 able to understand these concepts that you're talking
3 about to be able to make a decision in this case
4 specifically whether Mr. Reeves acted reasonably based on
5 his own experience and training, and whether he acted
6 reasonably based on some of the concepts you talk about.

7 Why is an expert necessary? Isn't it just
8 common knowledge that --

9 A. It's not common knowledge. I mean, if it was,
10 law enforcement officers would not spend mind-numbing
11 hours at the police academy going through use of force and
12 defensive tactics training program, nor would they have
13 mandatory retraining in these areas.

14 So it is something that is taught, retaught,
15 analyzed, reanalyzed, as I spoke to earlier. That's why I
16 went through use-of-force reports. There is a science, if
17 you will, through observational studies, it's our best
18 laboratory of what actually happens, that has led us to
19 the models and the schemas that we now teach to law
20 enforcement officers, and it constitutes what we call the
21 objective standard.

22 So I know that in use of force that there's two
23 standards. There's always the subjective standard; you
24 can't get past that. When you're being attacked, you're
25 going to be the one who is in the arena, who feels the

1 adrenaline, who is suffering from the lag time, and is
2 actually at -- something is at stake, perhaps your life.

3 And then there's the objective standard, those
4 who are looking at what's happening. Trying to understand
5 the mechanics of subjectivity requires an objective
6 understanding of what actually occurs. And the models, I
7 think, are also important because the objective standard
8 lays out what the proportional response is, the accepted
9 proportional responses in society would be.

10 So the objective standard is what I offer. The
11 subjective standard, I think you will have to hear from
12 the defendant, perhaps the witnesses, things like that,
13 but my offering is going to be in the objectiveness of use
14 of force and the defensive tactics that were used in this
15 particular case, and whether or not they would be
16 considered appropriate to that model.

17 Q. But you could also speak to training in terms of
18 a police officer that Mr. Reeves had, right?

19 A. This is an interesting case because many of the
20 civilian cases that I deal with, I'm often challenged by
21 the idea that I'm applying law enforcement models to their
22 use-of-force behavior. I don't think we've evolved quite
23 enough to just make that an accepted standard.

24 But in this case, we have a -- not only a
25 trained law enforcement officer, but a long-time law

1 enforcement trainer himself who has been involved in, you
2 know, since the 1960s with law enforcement and the
3 development of a SWAT team, which is, you know, considered
4 the elite amongst law enforcement.

5 And all of the law enforcement schemas and
6 models that go along with that, he is familiar with. So I
7 would, I believe, and I would argue, that the way he
8 thinks is still like a law enforcement officer. It is the
9 only introduction to force that he seems to have had in
10 his life, and he's had quite a bit of it.

11 Q. Okay. So what sort of -- in your analysis,
12 because you're looking at the research and also your
13 experience, too. As a police officer, there are certain
14 experiences, correct, that you --

15 A. Yes.

16 Q. -- undergo. I mean, you know that, for
17 instance, the danger of a punch, a hand can cause, right?

18 A. Yes.

19 Q. And so you're aware of the danger in certain
20 situations and in a dark alleyway and all that sort of
21 stuff, right --

22 A. Yes.

23 Q. -- from your experience, but also from the
24 training and from training other people?

25 A. Right. This goes to the idea of self-efficacy,

1 and the idea that somebody who feels about themselves gets
2 that information from different sources, you know, and one
3 of those sources is personal involvement, for example.

4 I will stick with use of force. Self-efficacy
5 has many different branches to it, but when you're talking
6 about use of force or your ability to endure a fight,
7 personal experience would have something to do with it.

8 Experiential knowledge, watching others would
9 have something to do with it.

10 Developing information, for example, reading or
11 gathering information at conferences and classes, would
12 have something to do with it.

13 Then the fourth standard, at least according to
14 the endurer, would be the emotional component. How does
15 that affect what we do? Of course, that goes back to
16 personal experience, but it also has a lot to do with many
17 people who have not been in a situation like this may not
18 have ever experienced this type of emotion, so we have to
19 account for that as well.

20 There is a fifth standard, I think is this
21 constructive self-efficacy has evolved that I think is
22 reasonable, and that fifth standard would be what we call
23 imagery. So law enforcement officers oftentimes, by
24 today's standards, are trained after they leave an event
25 to imagine what they would do, to think about how it could

1 be done better, to think about where it could have went
2 bad, things like that.

3 So I think that would be a proper fifth
4 standard, besides the first four that I mentioned, that
5 would lend itself to a person's belief on whether or not
6 they were capable of handling a certain situation.

7 Q. So if I get you right, what you're saying is
8 you're applying your knowledge, your education, and your
9 training, and your training of others to examine the facts
10 in this particular case; is that fair to say?

11 A. Yes, I think that's well said.

12 Q. Now, in this particular case, you're aware of
13 Mr. Reeves' law enforcement background you talked about.
14 You listened to the stand your ground, or you read the
15 stand your ground transcripts, so you read about his
16 medical infirmities in terms of degenerative bone disease
17 and all of that, correct?

18 A. Yes.

19 Q. Okay. That would factor into your view in terms
20 of self-efficacy; is that fair to say?

21 A. Well, it would factor into my understanding of
22 his condition when he made that decision. And I think
23 it's important to know that and to not ignore that. Not
24 every fight can be looked at in a clinical way where both
25 sides are equal.

1 Sometimes the inequality comes during the fight.
2 For example, if you get injured during the fight, you're
3 not the same person you were when you started. So there
4 are -- that's a continuum. And when you have somebody
5 who, in Mr. Reeves' case is -- and I don't mean to offend
6 Mr. Reeves by saying, broken down, who has -- who has
7 lived a life of hard, rigorous work that now suffers from
8 ailments that are quite common for older folks.

9 Your self-efficacy changes over time, and your
10 belief about what you're capable of doing will also change
11 with respect to your current condition.

12 Q. Let's talk about some of the concepts we've
13 touched on briefly before in terms of how you would be
14 able to educate a jury.

15 For instance, on this idea of threat assessment,
16 let's talk about that. What are the -- kind of the
17 construct of what threat assessment is?

18 A. So threat assessment tries to pull us away from
19 a teleological approach to decision-making. When I say
20 "teleological," I mean oftentimes, I think people are
21 offended by the visceral display of violence, and
22 oftentimes, that has an emotional effect.

23 For example, if you play a video and you show
24 photographs of somebody who is seriously injured, people
25 tend to recoil from that. That's a very natural human

1 thing, and there are possibilities that they can be so
2 offended by those things that they think, Well, I don't
3 know what I would have done, but I wouldn't have done
4 that, that's a teleological philosophical approach to
5 saying that nothing justified the end.

6 Q. Is that another reason why it would be important
7 for your testimony to aid the jury in beginning to make a
8 decision in a case like this?

9 A. I think so, because I approach the description
10 of use of force deontologically, using the philosophy of
11 means, not ends. In other words, the only person who --
12 who doesn't know the ends is going to be the person who is
13 applying force, of course. So they are operating off of
14 means, what's happening to me now without consideration
15 for ends.

16 So we have to sometimes -- or all the time, I
17 think, educate juries on understanding or putting them in
18 the shoes of the defendant to understand that it was
19 decisions that were being made before the ends were known.
20 And using that construct of deontological observation, we
21 come up with what's known as situational awareness.

22 Situational awareness is not decision-making.
23 It is an antecedent to decision-making. So we have to
24 have the jury review the case from the perspective of not
25 knowing the end, or at least put themselves in the

1 perspective of viewing it as a defendant did before the
2 defendant knew the end.

3 Q. All right.

4 A. And I think that has to be explained to them.

5 Q. So let's talk about that concept as it relates
6 to this particular case. This particular case takes place
7 in a movie theater, correct?

8 A. Yes.

9 Q. Okay. So the lighting isn't bright. So how
10 does that have a -- how does that impact this situational
11 awareness?

12 A. So situational awareness begins, as I said
13 earlier, with gathering data in the environment. Of
14 course, if there are restrictions on data, for example, if
15 you can't see, if it's dark, if something is happening
16 behind some type of obstruction, that's data that is
17 missing from your opinions about what should be done next
18 from your analysis of how I should properly react.

19 So visual acuity matters. And if there are
20 circumstances in which a person is not able to see, or at
21 least see clearly, they're going to be moving towards
22 probably more worst-case scenario.

23 If there are other possibilities that could be
24 known with the gathering of data because it's bright and
25 they can see perfectly fine, the decision might be

1 different from a person who simply can't see, for
2 different reasons, or has some type of impoverished view
3 of what's going on.

4 And then we see the people tend to err on the
5 side of more force to prevent worst-case scenario on a
6 situation they don't understand.

7 Q. But that wouldn't make that person's belief in
8 the -- in their visual cues that they're getting any less
9 valid, right, if it were --

10 A. No.

11 Q. In other words, it is just part of the whole
12 decision-making process?

13 A. That's exactly right.

14 Q. Okay.

15 A. It's a factor in decision-making. It is one
16 that needs to be addressed and spoken to. Once again, if
17 you view use of force as a one-to-one proportional
18 circumstance in all cases, you're discounting all of the
19 things that actually affect what we often refer to in
20 police work as subject/officer factors, things that are
21 factoring into each side of the combat are actually being
22 affected by things that are happening to them at that
23 moment.

24 Q. What about the idea of auditory stimulus? So in
25 this case there's a movie theater, there's trailers

1 playing loudly. How does that affect a person's ability
2 to assess the threat or their situational awareness?

3 A. That's an interesting question because one of
4 the things that happens under survival stress is that our
5 neurological components of survival turn off the ears. We
6 call it "auditory exclusion."

7 There is a lot of research and evidence to show
8 that when we can bring the arousal level, the fear level
9 high enough, that individuals simply will not hear
10 anything. There's been many reports from the field, for
11 example, in officers involved in shootings and civilians
12 involved in shootings, that don't hear their own gunshots
13 and don't hear even the gunshots coming at them, and have
14 reported and recorded that these -- they felt that, for
15 example, the gun was not properly working.

16 This is a product of auditory exclusion. So it
17 really depends on arousal level. I can't tell you how
18 aroused the defendant was, whether or not that did occur,
19 but I can tell you that auditory response to external
20 stimulus modulates based on arousal levels. And that you
21 can assume, if the arousal level is high enough, that the
22 defendant heard very little or nothing at all.

23 Q. But if you hadn't gotten up to that point yet,
24 if you're still in the ramp-up part where now you're dark,
25 there's noise, but you're not totally stimulated, would

1 that affect your ability to perceive, or would that affect
2 your threat assessment kind of matrix?

3 A. That would still be at the threat assessment
4 level. You're still trying to figure out what's going on.
5 So typically, if you're not aroused to the level of
6 response, then you would be calculating using hearing data
7 as well. You would be mostly visual, humans are mostly
8 visual, but there would be other data that's coming in.
9 Probably secondarily would be through your ears.

10 Q. What about the idea now you have a combination?
11 So we have low light, we have some noise in the
12 background, at least loud when the trailer is playing, and
13 now you have something that is out of the extraordinary.

14 For instance, you're in a movie theater or a
15 quiet place where you wouldn't expect it, at church, the
16 person in front of you stands up and faces you and is
17 exchanging loud words or at least directing loud words
18 towards you, how does that factor into threat assessment?

19 A. So there's been some recent study on baseline.
20 "Baseline" meaning that when we do situational awareness
21 and threat assessment, one of the key components of it is
22 understanding what's different about an environment that
23 you're accustomed to. You mentioned a church, for
24 example.

25 The baseline of a church would be, generally

1 speaking, quiet, which would be very different than the
2 food court of a mall. If you walked into the food court
3 of the mall and everyone was silent, you would assume
4 something was wrong. If you walked into a church and
5 everybody was screaming, you would assume something was
6 wrong.

7 So it has to do with the context in the
8 baseline. And I think in this circumstance in a theater,
9 the baseline is everyone is quiet, and everyone is
10 watching the movie. So it certainly figures in when
11 somebody stands up and starts screaming at you as being an
12 aberration, something that's so unique and so bizarre to
13 the point that it is novel, and therefore, unpredictable.

14 Q. Okay. So how does unpredictability play into
15 the whole situational awareness?

16 A. So with unpredictably, you don't generally have
17 a schema for dealing with it. You're inventing one as you
18 go along. It's never happened to you before, and there's
19 not a lot written on. There's not a lot of places you
20 could find circumstances similar to the one in this case
21 that we're facing.

22 So the novel approach to this is that you,
23 obviously, become more stressed. You're trying to
24 calculate or anticipate what comes next because it is
25 unpredictable. Perhaps you have time to start to consider

1 options, things that you might do if you could do them.

2 But as that changes, for example, when the
3 distance begins to close when, in this example, where the
4 subject gets out of their chair, turns around and comes
5 closer, now you're dealing with a time component, you have
6 to act within a certain amount of time. There's not a
7 whole lot of time to contemplate, try to gather your
8 bearings about what's going on, and make a calculated
9 decision with respect to understanding precisely what
10 you're experiencing.

11 So there is a time component that is attached to
12 these novel events when it is unpredictable because you
13 don't know how it is going to end, and it is happening
14 very, very quickly.

15 Q. So do these things tend to aggregate? In other
16 words, when you're dealing with a concept of situational
17 awareness, is it a totality of the situation, or can you
18 just discount one and go to the next one if you're looking
19 at everything at the same time?

20 A. So there is a thing called "task switching."
21 Task switching is generally the idea that you -- in
22 medical terms, you triage circumstances. You're always
23 looking for the most dangerous things.

24 So you're attending to the thing that affects
25 you the most. From a survival perspective, whatever that

1 thing is, is where your attention will be focused. If
2 something suddenly changes, if, for example, if you think
3 somebody has a firearm, then you are attending to perhaps
4 their hands, and all of a sudden someone steps into the
5 shoot and starts shooting, that will triage over the
6 belief that someone else has a firearm. Not that you will
7 ignore them, but your attention will shift. You will task
8 switch.

9 We're not good at multitasking. As a matter of
10 fact, I would argue that doesn't even exist. That there
11 are time periods where you tend to one thing and then
12 another thing, and that happens very quickly, and it seems
13 like you're doing two things at once, but you really
14 can't.

15 So you're trying to attend to a single event at
16 a time and decide what's most important to your safety and
17 security.

18 Q. But in this case, they are all coming from the
19 same source, so --

20 A. Yes.

21 Q. -- would you agree with me that it's kind of an
22 aggregate situation?

23 A. It is an aggregate situation because it is
24 compressed and, as you've said, in a single source.

25 Q. Now, you also have an individual who you talk

1 about self-efficacy. How does that fit into this
2 situational awareness?

3 A. So I mentioned to you if there is time to
4 contemplate and to come up with alternative choices, for
5 example, which is more of an economic theory of
6 decision-making, one of the things that you might settle
7 on is this ought to be done, but the second thing is: Can
8 I do it? Am I able to do it?

9 So in a perfect world, if you are imagining what
10 could be done and you are selecting that choice, you might
11 miss the part that that particular person wasn't capable
12 of doing it, and that's the self-efficacy rule.

13 Is there a reason that would prevent you from
14 doing it? For example, in this case, the defendant was
15 sitting with his back against the wall. Perhaps it makes
16 sense that, if he was threatened by a larger looming
17 person, that he would get up and run, try to create
18 distance, try to preserve himself. That wasn't an option
19 in this particular case.

20 As a matter of fact, as I understand, it wasn't
21 even an option to get out of the seat because he claims to
22 have tried. And because of his fitness level and because
23 of the circumstances in being, essentially, pressed back,
24 he was forced into the chair and forced to lean way, way
25 back.

1 So you have to remove the option of running
2 away, it doesn't exist, even though in a perfect world it
3 would exist. In this particular scenario, it did not. So
4 that affects his self-efficacy, his ability, what can I do
5 under these given circumstances? And we have to account
6 for all of the factors, the totality of circumstances that
7 give rise to the decision.

8 Q. And the self-efficacy would also encompass this
9 idea of an older man versus a younger man, right?

10 A. Sure. I mean, we have laws against striking
11 older people for exactly that reason. We don't expect
12 that they fare well. After a certain age, and after 65
13 years old, I mean, it becomes a felony to strike older
14 folks. So the law recognizes the differences that age
15 brings about.

16 And, by the way, I know a lot of very fit
17 65-year-olds, so I wouldn't say it's not a universal truth
18 that every older person is, perhaps, less capable, but
19 just like the speed limit, we have to draw the line
20 somewhere, so we tend to draw it in the statute at 65.
21 And that is all based on the construct of self-efficacy
22 that people who age can't do things that people who are
23 younger perhaps can do.

24 Q. And, especially, if they are aware of some of
25 their own physical limitations; is that fair to say?

1 A. And that's the second part. So, obviously, the
2 one who is assessing self-efficacy first is going to be
3 the one who is under attack, and they're going to be
4 drawing from a personal knowledge base of what they think
5 they're capable of doing.

6 It's well-founded because, obviously, people, as
7 they age, experience challenges every day that seem to
8 become harder. I think everyone could relate to that.
9 There are things even now -- I don't feel like I'm an
10 older person, but there are things that I couldn't do now
11 that I could certainly do when I was, for example, a
12 competitive martial artist. I was younger and capable.

13 I would not think of entering a martial arts
14 competition these days at 55 years old because I don't
15 have the same reaction time, and I'm not as fit, and I'm
16 not as capable of enduring, for example, even getting
17 struck, must less striking back.

18 So I know that about myself, so I practice what
19 is called "avoidance behavior." I don't participate in
20 martial art events like that anymore. I don't engage.
21 That's based on my self-efficacy. I would love to do it.
22 I always enjoyed it and it was something that was a big
23 part of my life when I was younger, but I simply won't do
24 it. It is too dangerous to me.

25 Q. What about the idea of a difference in size? If

1 there's a bigger guy in front of me?

2 A. So, again, some of this goes, I would say, to
3 common sense. Not all of it, but this is one of those
4 things that I think most people think that bigger people
5 tend to prevail in fights. I think it often holds true.
6 That's why, for example, in the sporting world, we have
7 weight classes. We don't just let people fight anyone.
8 We tend to place them with someone who is approximately
9 their size and their stature because that seems to be
10 even-scored for both sides.

11 But in the real world, of course, that's not the
12 way it works. We end up, you know, not having individuals
13 who are necessarily our size. It is a problem that law
14 enforcement officers suffer and why we equip them so well
15 with pepper spray and firearms and things like that
16 because we assume they're not always going to be
17 well-matched and they may have to escalate to be able to
18 deal with a situation that is bigger than them. And,
19 oftentimes, that comes from simply the size of the
20 individual or the perspective that size matters in a
21 fight.

22 Q. Certainly, these are all -- these are all ideas
23 that have been written about and studied about, but these
24 are also ideas that are used in the training of law
25 enforcement officers, right?

1 A. Yes. Every day.

2 Q. Now, what about this category force options.
3 Tell me what that means.

4 A. So "force options" are sort of striated on the
5 scale from lowest to highest, with the idea that the
6 lowest level of force would cause the least harm. And as
7 you escalate to the next level, there's a potential for
8 greater harm and so on and so on until you get to the
9 ultimate level of force, which is deadly force, and that
10 is reasonably expected to cause death or great bodily
11 harm, if you employ it.

12 So the force categories that we have broken down
13 here in the State of Florida, and there are some different
14 category descriptions as you travel throughout the state
15 in policy, and as you travel throughout the nation from
16 state to state, but they all agree on escalation and
17 deescalation levels of force and they all agree on
18 proportionality.

19 These call them different things and they,
20 perhaps, show them graphically different. For example, we
21 use what's called a linear force continuum, that is on an
22 X and Y axis. The X and Y would demonstrate that
23 proportionality at Level 1 resistance to Level 1 response.
24 Level 2 resistance to Level 2 response. Level 3
25 resistance to Level 3 response.

1 And, very quickly, if I say the six levels of
2 resistance, we have presence -- a person's presence. We
3 have verbal direction. We have --

4 Q. Let's go through them one by one.

5 Level 1?

6 A. So Level 1, as we understand it -- and I'm
7 speaking about a law enforcement model here, but I do
8 think it applies also to civilians because it is an
9 accepted standard of proportionality.

10 Level 1 is presence. The idea that when you see
11 somebody, you're already making decisions about, for
12 example, whether or not you could handle them. Do they
13 appear to be bigger than me? Do they appear to be
14 stronger than me? Do they seem to have perhaps weapons or
15 some mastery of a fighting system because of the way they
16 are standing or stancing?

17 So their mere presence would dictate your
18 approach and your -- and the way that you situated
19 yourself in relationship to them. You might keep more
20 distance, for example, or less distance, if you felt that
21 you were capable of dealing with them from a strict
22 presence perspective.

23 Q. So that's presence, just somebody in front of
24 you?

25 A. Right. It has to do with decision-making

1 because you're -- I think a lot of people don't think this
2 way. When you see somebody in front of you, there are
3 certain feelings that you get. We all experience it.
4 There's a book called The Gift of Fear written by Gavin de
5 Becker that talks about our innate ability to look at a
6 person and sort of assess very quickly -- it's probably
7 happening through things like micro expressions and
8 postural cues and things like that, but our brain tells us
9 this is somebody to be feared. We should avoid that
10 person. Or, this is somebody that I really like, for
11 example.

12 So that's what happening during the presence
13 stage. With law enforcement officers, we train in the
14 standard because, for example, if we walk up on somebody
15 who is wearing clothing that says, I hate cops, that's a
16 clue. They don't have to do anything. They might be
17 perfectly fine people, but a law enforcement officer would
18 take that seriously as somebody who probably shouldn't be
19 as closely approached.

20 Q. So that's presence, keep your distance; is that
21 the --

22 A. Yes, presence and how you approach, and the way
23 that you approach, where you approach from. Something we
24 call "relative positioning," which is the direction which
25 you will stand to somebody or approach somebody versus

1 what we call the "reactionary gap," which has to do with
2 the quarter-second time, and both of those things are
3 taught at the presence level.

4 Q. Okay. The second level?

5 A. Verbal. Verbal resistance. So, of course, with
6 law enforcement officers who are inclined to enforce laws,
7 we try to tell people, you shouldn't do that or you
8 shouldn't this. And if they, you know, say, Well, I'm
9 going to do it anyway, that would not be a physical
10 threat, but it would certainly not be compliance. So we
11 would consider that a verbal level of resistance.

12 Q. In this particular scenario, if you have an
13 individual, you have the presence, you have the individual
14 facing Mr. Reeves?

15 A. Yes.

16 Q. Then you have something verbal, in this case,
17 cussing or threats, how does that fit into that second
18 level?

19 A. Well, again, in the context of this, this is
20 such an unusual circumstance, that I think it is a fairly
21 novel situation. So I think that the reasonable person
22 not knowing what's going to happen and being threatened
23 and being cursed at would respond with a greater amount of
24 fear and a greater response to that particular situation.

25 In other words, they may ready themselves. In

1 this case, I think that's what Mr. Reeves does, he readies
2 himself and says, What are my coping mechanisms, for
3 example. Then he selects the coping mechanism, he thinks,
4 if this thing escalates, continues on, that this is my
5 only choice.

6 Q. And so what about the idea of kind of a
7 constraint space? I heard you mention, one, presence,
8 keep your distance. Here it is not possible.

9 Does that, again, impact decision-making, or how
10 does that affect a proper decision-making --

11 A. Yes.

12 Q. -- or a person's reasonable perception of
13 danger?

14 A. So this is the time-distance constraint I talked
15 about. The closer somebody is to you, the more danger
16 you're in. When they could get within touching or
17 striking distance, then it's just a quarter second before
18 you're touched or struck, if the person chooses to do
19 that, and that will be within your reactionary time.

20 You won't be able to deal with it except to be
21 hit the first time and then try to deal with it the second
22 time.

23 So this goes to the Tueller rule as well, we've
24 already discussed that. Why is it that somebody at 21
25 feet away who seems so far away to the objective eye can

1 still kill a law enforcement officer who has their weapon
2 holstered? It's because things happen very, very rapidly.
3 People cover a tremendous amount of distance in a very
4 short amount of time.

5 So what law enforcement officers are taught
6 today, not necessarily to be farther away, but to
7 unholster their weapon to prepare for what they perceive
8 as a rapidly escalating situation that might have to be
9 dealt with at the highest level of force under the
10 circumstances.

11 So they would be operating off of these verbal
12 cues and off of these presence cues. So law enforcement
13 officers draw their weapons a lot, and we have very, very
14 few uses of deadly force in police work nationwide, but we
15 draw our weapons every day, and part of it is in
16 preparation for what we perceive to be a rapidly
17 escalating threat that is going to take time to prepare
18 for.

19 Q. And the third level?

20 A. The third level of resistance we call passive
21 resistance. Passive resistance oftentimes has to do with
22 the notion of making arrests. So I tell somebody, Come
23 here, and they sit down. They just simply refuse to come
24 to me.

25 Q. Okay. That doesn't really apply in this case?

1 A. No, it is on a -- on that law enforcement chart,
2 it applies because, as I've said, that encompasses those
3 three areas of making arrests, preventing escapes, and
4 defending self and others.

5 So this is really probably most applicable to
6 the arrest component of a law enforcement officer's use of
7 force decision-making.

8 Q. Okay. But that use of force and decision-making
9 force options, that also has to do with justifiable use of
10 deadly force, right?

11 A. Yes.

12 Q. Okay. So what's the fourth level now?

13 A. So the fourth level would be active resistance
14 or active threat. We generally define "active threat" as
15 not being a physical threat to a police officer, for
16 example, but noncompliance in some active way. It would
17 usually involve bracing, tensing, running way, things like
18 that.

19 They haven't attacked the officer or, in this
20 case, perhaps, even a civilian at this point, but they are
21 actively noncomplying with some particular rule. They're
22 trying to get away. They're trying to overcome the
23 authority of the officer, not the officer themselves.

24 Q. Okay. And so, then, what's the proportional
25 response to that?

1 A. Well, we typically use intermediate weapons.
2 That's our Level 4 response. We would use things like
3 pepper spray and batons and Tasers and things like that in
4 response to a person actively resisting.

5 Q. But this isn't an arrest. So tell me how this
6 applies or why a jury should hear about this continuum if
7 it is not an arrest?

8 A. Because an active threat is something that
9 would, for example, prepare a -- where a police officer
10 may take out a baton or pepper spray, something like that,
11 a civilian would assume a postural stance, may raise their
12 hands up to eye level to prevent being punched, would
13 start to take all of the antecedent steps to prevent
14 themselves from being injured, if they can.

15 So the appropriateness of stancing and taking
16 what's known as pugilistic posture would -- could be, if
17 it's viewed, for example, on camera, the instigation of a
18 fight. When, in fact, it's in preparation of being
19 attacked.

20 So it is not the stance itself that should be
21 objectionable to the outside viewer, but the reason for
22 that stance, the reason for raising your hands, the
23 reason, perhaps, for pushing somebody off of you to get --
24 create more distance, that would be done at the active
25 level.

1 Q. Okay. The next level up?

2 A. The next level is called aggressive. Now,
3 aggressive is a personal attack. In law enforcement, it
4 means you're actually throwing punches, kicks, headbutts,
5 or whatever at the police officer. Perhaps you've grabbed
6 them and you are wrestling them to the ground. You are
7 aggressively fighting.

8 In the civilian world, it is the same thing.
9 You are being struck. You are at Level 5. You've been
10 hit. You're being hit. You're continuously being
11 actively under assault.

12 So our response to that is going to be what we
13 call temporary incapacitation. This is the area where you
14 knock down, knock out, you start hitting for more vital
15 areas so that you can end the aggression. Subsequently,
16 the use with civilians could be, you know, anything from
17 sticks to clubs to vases to fists to whatever. They're in
18 a fight. This is -- the fifth level is where you are
19 actually in a fight.

20 Q. Okay. But, certainly, the law doesn't require
21 an individual to get in a fight if you're at Level 5,
22 right?

23 A. It does not, no.

24 Q. So in this case, we have an old man who is
25 sitting in a theater, nowhere to go. A larger, younger

1 individual in the dark motions over the seat, right, you
2 saw that in the video?

3 A. Yes.

4 Q. And threats and cussing, that puts us at Level
5 5?

6 A. Yes.

7 Q. And an individual who has no intermediate
8 option, I mean, A, he can't fight; B, he doesn't have a
9 baton or mace or any of that stuff, does that take us to
10 deadly force?

11 A. It can. So as I've described the chart, not --
12 I should also say that not each of these steps have to
13 be -- have to be followed step by step. It could be the
14 case, for example, a person gets out of the car and
15 somebody starts shooting at them and they go right to
16 Level 6.

17 So they don't have to go through the step
18 process to get to any particular level. I'm only
19 describing the levels for you so you can understand how it
20 has been thought about in terms of the modeling of
21 proportionality.

22 Level 6, deadly force. This is where
23 somebody -- or where we would call in the state,
24 aggravated resistance. The belief by the actions of
25 another that your life or somebody else's life is in

1 imminent danger of death or great bodily harm. That is
2 the sixth level and that is countered with deadly force.

3 So when you believe, for whatever reasonable
4 perceptions you have, that your life or somebody else's
5 life is in imminent danger of death or great bodily harm,
6 then you are permitted, based on our modeling, to respond
7 with deadly force. That would be an appropriate,
8 objective response.

9 Q. So that's how that whole -- those force options
10 would be applicable to this particular case in helping a
11 jury to understand, correct?

12 A. Yes.

13 Q. Okay.

14 A. And just to, I guess, finish that thought, it's
15 the perceptions of the person who is being attacked that
16 place a person on the resistance scale. The
17 proportionality is just a line that we draw from that
18 level of resistance to what would be considered an
19 accepted appropriate response.

20 So it could be the case -- for example, I know
21 of a circumstance where a smaller female, a Florida
22 Highway Patrol officer, was being attacked by a very large
23 football -- truly a football player or a former football
24 player on the side of I-10 up where I lived, and her --
25 she perceived that she was not going to do well on the

1 side of the road with this individual, based on the facts
2 that traffic was coming and speeding by and he had made a
3 very specific threat to her.

4 And she had responded by going right to deadly
5 force and was found -- that force was found appropriate.
6 So that would be an example of how a person would
7 perceive, based on size difference in this case, and
8 apparent ability and self-efficacy of the officer, that a
9 Level 6 level of force could be justified.

10 Q. Okay. Let's talk about reaction time.

11 A. Okay.

12 Q. Tell me what sort of background and experience
13 and training you have in the field of reaction time?

14 A. Well, getting hit a lot is my personal
15 experience. I told you I competed at --

16 MR. MARTIN: Excuse me, Judge. Mr. Bedard is
17 trailing or failing to keep his voice up, and the
18 last minute, I just did not hear him.

19 THE WITNESS: I'm sorry.

20 THE COURT: I know that that seat is super low.
21 If you can just readjust the microphone and try to
22 keep your voice up, I would appreciate it. It does
23 trail off just a bit, okay.

24 MR. MARTIN: Thank you so much.

25 Would you mind -- would you mind reasking the

1 last question you just did, so I could hear the
2 response?

3 MR. MICHAELS: Certainly.

4 BY MR. MICHAELS:

5 Q. Let's talk about reaction time. What sort of
6 training, experience, education do you have in that field?

7 A. So as I've said to you, from an anecdotal
8 perspective being hit a lot, I learned a lot about
9 reaction time. I was a fighter for the United States
10 karate team, so I was fighting at some of the highest
11 levels where my competitors were learning to punch in
12 quarter-second timing.

13 And my response to that had to be dealt with
14 through distance because of that natural gap that we all
15 have in our brains.

16 THE COURT: Excuse me just a second. Can you
17 hear? Is that better?

18 MR. MARTIN: It's better, but it's just the way
19 Mr. Bedard speaks that I'm struggling to hear it.

20 THE COURT: We're trying.

21 MR. MARTIN: But I'm grappling with it.

22 THE COURT: We're trying. Let's see if we can
23 just go down just a little bit of the microphone and
24 just try it again. Point it back up and let's see if
25 that works.

1 THE WITNESS: Is that better?

2 MR. MARTIN: Yes.

3 THE COURT: Okay. Just one second.

4 MR. MARTIN: I'm coping with it. I'm good.

5 THE COURT: Thank you. You may continue.

6 BY MR. MICHAELS:

7 Q. You were talking about reaction time and your
8 anecdotal experience in the world of international
9 karate --

10 A. Of competitive martial arts.

11 Q. Competitive martial arts.

12 A. And that was my first introduction to reaction
13 time. I felt like most people that, you know, the
14 changing of hands was a skill that was physical and not
15 necessarily mental.

16 And what I later discovered is, because of
17 reaction time, there's a huge mental component to it. It
18 has to do with this gap, this period of time where I am
19 analyzing and formulating proper responses to things that
20 I've observed and things that are happening now.

21 Later, to --

22 Q. Let me stop you there just for a second so I can
23 ask you a related question.

24 A. Okay.

25 Q. That is based on your experience, your personal

1 experience?

2 A. My personal experience.

3 Q. And also, in that same realm, I guess you also
4 learned that a fist or a hand can be a deadly weapon?

5 A. Oh, indeed.

6 Q. Okay. And you know that a fist or a hand can
7 cause great bodily harm?

8 A. And it has.

9 Q. Serious damage?

10 A. Yes.

11 Q. Or could even kill someone?

12 A. Absolutely.

13 Q. Okay. You also know that from your training and
14 experience in the police department, right?

15 A. I do, yes.

16 Q. You know that from training others in defensive
17 tactics and all of that?

18 A. Yes.

19 Q. Part of that is to try to prevent that from
20 happening?

21 A. That's correct.

22 Q. You were telling me about reaction time.

23 A. I was giving you my anecdotal experience. I
24 think your question branched out to what my education in
25 this is. Subsequently, I have done a lot of research into

1 the literature about -- and it's quite commonly studied --
2 reaction time and what's known as response time.

3 That formulates for me a time frame that's
4 actually based on milliseconds about -- and I'll keep it
5 general -- about 250 milliseconds, about a quarter-second
6 of recognition, analyzation, formulation, and then
7 initiation of motor skill. Accord --

8 Q. Is that a quarter-second for each?

9 A. No. It is a quarter-second of all four of those
10 things, but before you are able to do anything about
11 stimulus in your environment, a quarter-second will pass.

12 Q. Okay. So what's your -- you gave an example of
13 a car stopping in front of you?

14 A. Yes.

15 Q. That's a quarter-second?

16 A. It will be a quarter-second before you realize
17 the brakes have been put on by the person in front of you.
18 Before you can actually initiate the motor act of getting
19 your foot off the floorboard and onto the brake, a full
20 quarter-second will have passed.

21 If you are doing 60 miles an hour, that
22 constitutes a lot of space. So the only way you can
23 compensate for that is to stay a certain distance behind
24 the car and the recommended distance is one car length for
25 every 10 miles an hour.

1 Q. I understand. So a quarter-second is the
2 recognition of the stimulus?

3 A. Yes -- no, it's all of those things. The
4 first -- the quarter-second encompasses four things.
5 That's why it takes a quarter-second. Your brain is very,
6 very quick, but it is doing things, it is processing, and
7 the process involves four different things within that
8 quarter-second.

9 And, by the way, that is if you are not tired,
10 if you're not old, if you, I don't know, had your Cheerios
11 that morning, there's a lot of things that can influence
12 that time frame.

13 So we try to keep it simple by saying that the
14 mean reaction time of people when we test them is about a
15 quarter-second, but it certainly can get longer than that
16 as well, but if we can stick with the idea that
17 scientifically the mean of a quarter-second will pass
18 before you take any action to accommodate the stimulus
19 that has been recognized.

20 Q. And I guess that's my question. I probably
21 posed it inarticulately. But, in other words, in a case
22 where somebody, let's say, they perceive a threat, okay, a
23 threat that rises to that Level 6 deadly force threat, so
24 that's 20 -- that's .25, but it takes additional time to
25 actually act on it?

1 A. Yes.

2 Q. Okay.

3 A. Now you're talking about response time.

4 Q. Okay.

5 A. So response time is different than reaction
6 time. So reaction time is going to be the first four
7 processes I mentioned, and I'll say them again,
8 recognition of the threat, analyzation of what it means,
9 formulation of a response, and initiation of the
10 appropriate motor skill to deal with it. That's the first
11 quarter-second.

12 Then you have the motor skill, and that's going
13 to take time as well. It's going to take -- for example,
14 let's stick with something that I think is visually easier
15 to understand, and something that I teach all the time,
16 and why you can't get your weapon out of a holster in less
17 than about a second and a half, because it involves
18 multiple motor movements.

19 After the first quarter-second passes, your hand
20 has to move to your firearm. We'll say that's another
21 quarter-second. Then we have all kinds of snaps and
22 baubles and things to get your gun out of the holster,
23 because most holsters today are safety holsters, and you
24 have to know how to take the weapon out, that will take
25 about a quarter-second.

1 Then you have to lift your weapon out of the
2 holster. That will take about a quarter-second. Then you
3 have to turn your arm to get the barrel on target, that
4 will take a quarter-second. Then you're going to squeeze
5 the trigger, and that will take about a quarter-second.
6 If you add all those things together, you have six things
7 that are happening in the motor world that will be about a
8 second and a half.

9 Now, that's the theory of it. It turns out when
10 you place somebody 21 feet from you, they can cover about
11 25 feet in a second and a half, or at the time, 21 feet in
12 a second and a half, which is why officers are getting
13 stabbed when they were tested by people who were standing
14 21 feet away from them.

15 Q. So the second and a half for the reaction, plus
16 the .25 seconds for the perception?

17 A. It could be.

18 Q. Okay.

19 A. And by the way, that's if everything is optimum.

20 Q. Right. I understand.

21 A. I mean, if everything is sharp, if I tell you
22 I'm going to stab you with this knife, and you're standing
23 there waiting, and I take off running, and you're ready
24 for it, it's going to take you a second and a half to get
25 your weapon out of the holster, on target, and a shot

1 fired.

2 Q. And there may be things that delay that action
3 such as sitting in a chair, retrieving your firearm from a
4 pocket, those sort of things?

5 A. Absolutely.

6 Q. Now, why is -- why should a jury have to have
7 you tell them about this? Isn't that common knowledge
8 that, you know, it takes a while you could -- a car stops
9 in front of you, you have a certain amount of time, you've
10 got to hit the brakes? Why isn't that just common
11 knowledge?

12 A. Well, it's not common knowledge, I think,
13 because a lot of people don't spend a lot of time thinking
14 about this.

15 For example, with law enforcement officers, if
16 we're faced with an edged weapon, we will immediately draw
17 the firearm to mitigate the response time, the motor
18 response time.

19 In this case, it had, essentially, the defendant
20 in this case reaching in his pocket and taking out a
21 firearm in anticipation that this thing might escalate to
22 the point of where it is an aggravated attack, and the
23 appropriate response would be deadly force.

24 So a jury may question: Why does he have a gun
25 in his hand in the first place? Why is that happening?

1 Because can you see how quickly it happens from the time
2 that the second attack occurs and the shot is fired. It
3 happens in milliseconds.

4 We should know that, unless he had a firearm in
5 his hand already, that he wouldn't be able to do that. He
6 would have to go into his pocket, retrieve it from his
7 pocket, get a proper pistol grip, get it on target, and
8 fire. That's going to take time. That's not what
9 happened in his case.

10 He has his weapon out. Why? It is an
11 anticipation for the unknown. It is an anxiety response,
12 what may happen in the next moment. So I think it is
13 important for a jury to realize that he was already
14 calculating the threat of being seriously hurt or killed,
15 which is what caused him to draw the weapon in the first
16 place.

17 Q. And in this case, there is some testimony
18 regarding some statement, Throw popcorn at me, will you?
19 Then the shot was fired. Is that possible?

20 A. I don't think it's possible.

21 Q. Why is that?

22 A. Well, just viewing the video. First of all, the
23 time that it would take for someone to say, Throw the
24 popcorn at me, will you, is going to be longer than the
25 time that I see between the popcorn being thrown and the

1 shot being fired. So I don't think that whole sentence
2 could come out.

3 But also, we have to consider that formulating a
4 sentence like that is cognitive. You have to understand
5 what's happening to you in detail and then you have to
6 formulate a sentence in your head and then it has to come
7 out of your mouth.

8 So there's a lot of time between, for example,
9 let's say he recognized you as being struck with popcorn,
10 for him to realize, I'm being struck with popcorn. That
11 really makes me angry. Let me take my gun out of my
12 pocket and kill this person. That would require multiple
13 seconds, I would think. Not the milliseconds that we see
14 between the popcorn being thrown and the actual shot being
15 fired.

16 So I don't believe it is possible to have
17 reacted to this being popcorn and this being an angry
18 response to being hit with popcorn kernels.

19 Q. And that's based on the literature and training
20 and your personal experience involving this perception
21 reaction time; is that fair to say?

22 A. Yes.

23 Q. Okay. In this case, have you formed an opinion
24 as to whether or not Mr. Reeves reasonably believed that
25 he was in danger of great bodily harm or death?

1 A. Well, I think that's an ultimate opinion for the
2 jury that I don't know if I will be asked that or not.
3 But if I were reviewing this as a law enforcement expert,
4 an expert in these areas of reaction time and response, I
5 would say, yes, I believe that under the circumstances he
6 did believe and reasonably should have believed that he
7 was in danger of suffering great bodily harm, at the very
8 least.

9 Q. So is it your opinion that he acted reasonably
10 under the circumstances?

11 A. Yes. Based on everything that I know about
12 proportional response, the proportional response to the
13 belief that you are going to suffer great bodily harm or
14 worse, is deadly force.

15 Q. And then how do you come to these conclusions or
16 these opinions?

17 A. My method?

18 Q. Yes.

19 A. Is to look at all of the evidence, to be
20 skeptical. I mean, I'm trained to be a skeptic. I think
21 that was most of my graduate studies was about skepticism,
22 and to look at where I can perhaps show that something is
23 inconsistent with what somebody says versus what I am now
24 being told.

25 There's always that issue when I'm reviewing

1 these cases because there are always people who see things
2 differently. It's not uncommon that two people standing
3 next to each other can look at the same event and recall
4 it differently. There are memory issues, things like
5 that.

6 So I take into consideration all of what I am
7 looking at, all that I am reviewing, and I apply it to
8 what I know about, things like reaction time, response
9 time, proportionality, the models that are used in terms
10 of threat assessment, situational awareness so that I can
11 formulate an opinion on my own on whether or not something
12 would be considered, again, using the term of art that law
13 enforcement uses, "objectively reasonable."

14 Q. Do you also look at the scene, for instance, to
15 see what the circumstances were and all of that?

16 A. Yes, I look at everything, so the environment is
17 critical. Understanding the environment as it relates to
18 the circumstances, things like whether it is night or day,
19 whether there's a slippery ground or a firm ground,
20 whether you are huddled together amongst other people, or
21 whether their chairs are close together, whether there's a
22 table obstructing you, all of those things would calculate
23 into the totality of circumstances that give rise to the
24 ultimate opinion of whether or not something was
25 appropriate.

1 And in this particular case, I found that the
2 circumstances were such that there was a direct ongoing
3 active threat that was being hoist upon an individual that
4 had, at this moment, very low self-efficacy, and under the
5 circumstances, the drawing of a firearm was appropriate to
6 prepare for that threat.

7 Then when the threat continued for the second
8 time, the second attack, I don't know if there was more
9 than that, but I think there seems to be some agreement
10 that there was at least two attacks.

11 During that second attack, it was a continued
12 ongoing threat, and I think the response was proportional
13 to the reasonable belief that, as long as this threat
14 continued, that the probability of being seriously injured
15 was there.

16 MR. MICHAELS: Okay. May I have a moment,
17 Judge?

18 THE COURT: Yes.

19 BY MR. MICHAELS:

20 Q. So the methodology that you described that you
21 used in examining this case and giving your opinions, is
22 that methodology that you've used throughout the years?

23 A. Yes.

24 Q. As a law enforcement officer back when you were
25 reviewing shootings in Tallahassee?

1 A. Yes.

2 Q. And as you've continued to do as you train
3 others and consult?

4 A. Yes. I mean, it's improved since then because I
5 have more to compare it with as I advanced my education
6 over the years. I understood what I was seeing better,
7 what I was reading in testimony better, things like that,
8 but it is the same methodology, yes.

9 MR. MICHAELS: Nothing further.

10 THE COURT: Thank you. Would you like a short
11 break?

12 MR. MARTIN: Well, we've been going for a little
13 over an hour and a half and I probably would be an
14 hour and a half up to the lunch hour, so the court
15 reporter is saying yes. So she would like a break,
16 so...

17 THE COURT: Let's take a 10-minute break.

18 (Break taken.)

19 THE COURT: Good morning, Mr. Escobar.

20 MR. ESCOBAR: Good morning, Your Honor.

21 THE COURT: Go ahead, Mr. Martin.

22 **CROSS-EXAMINATION**

23 BY MR. MARTIN:

24 Q. Good morning, Dr. Bedard.

25 A. Good morning.

1 Q. How are you this morning?

2 A. I'm good. Thank you.

3 Q. Good. What I'm going to do is kind of similar
4 to the way that I structured the depo that you and I did.

5 A. Okay.

6 Q. I'm going to go from topic to topic and I will
7 let you know when I will change topics just so we can get
8 our minds on what we are going to talk about.

9 A. Fair.

10 Q. I'm not necessarily going in order of your
11 testimony. There's a couple of things that I want to
12 address first and then we will just kind of go from there.
13 I will jump around just a little bit.

14 I tell you that because I want to start with the
15 reaction time testimony that you did at the conclusion of
16 your direct examination.

17 A. Okay.

18 Q. The time frames that you indicated, those are
19 times that would be referred to as "mean times" or
20 "average times" in the studies?

21 A. Well, the time I refer to the quarter-second
22 would be considered probably a mean time.

23 Q. A mean time?

24 A. Yes.

25 Q. All right. So there's variations on each side?

1 A. Always.

2 Q. Okay. So when we talk about your calculation as
3 to whether or not a particular phrase could be said
4 contemporaneous with the drawing of a weapon, when we look
5 at the time frames that you gave, we're going to have to
6 look at a range, correct?

7 A. Yes. It's a very tight range. I mean, it
8 doesn't extend out into seconds, typically. It's a range
9 of milliseconds.

10 Q. Milliseconds?

11 A. Yes.

12 Q. Now, one of -- part of your analysis with that,
13 two things, is that you indicated that you believe there
14 were two attacks?

15 A. Yes.

16 Q. All right. I want to talk about the first
17 attack. You believe that the "first attack" took place
18 during an eight-second gap in the video prior to the
19 tossing of the popcorn, correct?

20 A. I believe so. Of course, I can't know that, but
21 it seems to me that that's the only time that it could
22 have taken place since we can't see it previous.

23 Q. All right. And during that eight seconds, that
24 is based on your reviewing of the video?

25 A. And also the statement of the defendant.

1 Q. That there's an eight-second gap?

2 A. I'm sorry. Ask your question one more time.

3 Q. My question was: The eight-second gap is based
4 on your viewing of the video?

5 A. Yes. If we're talking about the eight-second
6 gap, that's what I see in the video, yes.

7 Q. Or what you don't see in the video?

8 A. What I don't see in the video.

9 Q. And that's what we're talking about, the
10 eight-second gap is what you don't see in the video?

11 A. I see the gap. I don't see what happens during
12 that gap.

13 Q. It's during that gap that you have postulated,
14 if you will, certain events could have occurred that might
15 be consistent with a first attack, right?

16 A. Yes.

17 Q. Okay. The second issue with the timing of that
18 is you indicated to Mr. Michaels that Mr. Reeves drew his
19 firearm in anticipation?

20 A. Yes.

21 Q. Do you remember that testimony?

22 A. Yes.

23 Q. All right. How did you derive that fact?

24 A. Because what we can see is the -- what I'll call
25 the second attack, if it is a second attack. And the

1 rapid firing of the weapon shortly after that, in this
2 case, we now know throwing of the popcorn.

3 Now, why -- why I say that -- why postulate that
4 he had drawn in anticipation of that is because I don't
5 believe -- as a matter of fact, I'm reasonably sure,
6 knowing what I know about reaction and response time, that
7 had the popcorn been thrown, that he would have been able
8 to reach into his pocket, extract a firearm, point it in
9 the direction of Mr. Oulson, and fire a shot based on that
10 very, very small -- that very, very small time between the
11 popcorn being thrown and the shot being fired.

12 So I believe that he had to have anticipated
13 through drawing the firearm that this thing was possibly
14 going to escalate in the way that law enforcements do
15 often, and they most often reholster their weapon, as I
16 said to you, they don't always shoot them when they draw
17 them, but I think that's what he was preparing for.

18 Q. Did he tell you that?

19 A. He doesn't have much recollection of doing that.
20 He does remember going into his pocket, but as I would
21 expect in a stressful situation like this, it's sort of a
22 muddy memory of precisely the moments that he drew the
23 weapon versus when he fired the shot, but I think we can
24 tell that it happens so rapidly that there would not have
25 been time for drawing of the firearm after the popcorn was

1 thrown.

2 Q. Okay. We talked about -- and Mr. Michaels asked
3 you specifically that he says the words, Throw popcorn on
4 me, will you? And then shoots the firearm. Do you
5 remember that statement that Mr. Michaels made to you?

6 A. I don't remember how Mr. Michaels said that. I
7 don't know that I concede that it was Mr. Reeves that said
8 that.

9 Q. No, no. Mr. Michaels said that -- well, that's
10 what Mr. Michaels said, that Mr. Reeves said, Throw
11 popcorn on me, and shot.

12 And you responded, Well, there wasn't enough
13 time for Mr. Reeves to say that prior to the shooting.

14 Do you remember that dialogue?

15 A. Yeah, I know. The way you're positioning it,
16 you're making it sound as if Mr. Michaels assures me that
17 he said this, and that's not what happened. I think he
18 questioned me -- or at least as I understood the
19 question --

20 Q. There are three witnesses that heard that
21 statement.

22 A. Yeah. Let me finish.

23 Q. Okay.

24 A. As I understood the question from Mr. Michaels
25 is: Would it be possible for him to have said these

1 things? Not necessarily, he did say this, what do you
2 think about it?

3 That's not what -- and I think that's the
4 question you asked me and I haven't conceded that it was
5 Mr. Reeves that said it.

6 Q. Through your analysis of the sequence of events
7 that took place, saying those words after the shot was
8 fired is a possibility, correct?

9 A. After the shot was fired?

10 Q. Uh-huh.

11 A. Yes, it would have been after the shot was
12 fired.

13 Q. Right. And from the testimony of the three
14 witnesses who heard and attributed to Mr. Reeves saying
15 words to the effect, Throw popcorn on me, will you, was
16 contemporaneous with the firing of the firearm, correct?

17 A. It happened within that time frame.

18 Q. Within that time frame --

19 A. That somebody said that in the theater.

20 Q. And they're not really sure if it was before or
21 after, it was just contemporaneous is the best we can do.

22 A. Yes. That's correct.

23 Q. Which means both before and after?

24 A. And perhaps during.

25 Q. Oh, or perhaps during.

1 So when we talk about the range, if you will, of
2 how things can occur, and the timing of the words, if
3 Mr. Reeves did say that, Throw popcorn on me, will you,
4 there is sufficient enough time for those words to take
5 place contemporaneous with the shooting of the firearm
6 because the words could have been said after the shooting
7 of the firearm?

8 A. Well, it would have had to happen after the
9 tossing of the popcorn, of course. So that, we know.
10 What I don't think it could have happened is after the
11 tossing of the popcorn and before the shot was fired.
12 That's what I think --

13 Q. But it could have occurred after the shooting?

14 A. Sure. Anyone could have said it before the shot
15 had been fired.

16 Q. Okay. I want to go back to when Mr. Michaels
17 was discussing your background.

18 A. Okay.

19 Q. One of the things that you and I had a chance to
20 talk about at your deposition, and I believe you agreed
21 with it, there is no standard use of force matrix for
22 civilians, correct?

23 A. There's actually not a standard use of force
24 matrix for police as well, but, yes, I would agree with
25 that.

1 Q. Okay. And that was my next point. Even when we
2 get to the law enforcement quote, matrix force guidance,
3 as FDLE now uses the term, those linear -- I'll call them,
4 charts for a better term --

5 A. Okay.

6 Q. -- can reflect how the community where that law
7 enforcement officer is policing, as to how that community
8 wants the agency to handle policing matters? That's why
9 there's variations throughout the nation and agencies as
10 to the matrix and the model?

11 A. Yeah. To be clear, what forms the matrix are a
12 couple of constructs that you and I spoke about, that's
13 the idea of escalation, deescalation, proportionality.
14 Those are constant amongst all the charts.

15 Now, whether somebody calls it active resistance
16 or lively resistance, those things are not standardized,
17 but I think the construct of proportionality escalation,
18 deescalation are standardized.

19 Q. Okay. And they're standardized in a very
20 general sense; are they not?

21 A. They're standardized certainly when you're
22 talking about deadly force, based on statutes, that every
23 state says --

24 Q. What statute here in Florida?

25 A. What statute talks about it? 776, which is that

1 individuals can respond with use of deadly force if they
2 reasonably believed that their life or somebody's else
3 life is in imminent danger of death or great bodily harm.

4 Q. Excuse me a minute. That's Statute 776.012.
5 That's not 776.05, is it?

6 A. No.

7 Q. And, in fact, in 776.05, which deals with the
8 use of force, as far as police officers, those words are
9 not in that particular section of the statute, is it?

10 A. In Section 012, or the definition of the use of
11 deadly force?

12 Q. Right. I was referring to 776.05 where it talks
13 about when the force can be used.

14 A. You know, I don't know. I would have to take a
15 look at the statute and see what words are in there
16 specifically. I did not memorize the statute, but I do
17 know in the state of Florida, law enforcement officers are
18 trained to a statutory standard of using deadly force when
19 they reasonably believe that their life is in imminent
20 danger of death or great bodily harm, and I found that to
21 be true nationwide.

22 Q. As being a subject matter expert for the Florida
23 Department of Law Enforcement, when was the last time that
24 they called you and asked you to contribute?

25 A. I don't know. Maybe 2019, 2018, something like

1 that. It was before COVID.

2 Q. Did you contribute in the last Basic Recruit
3 Training Manual 2021.07?

4 A. No, it was revised for 2021, and I did not
5 participate in that committee or task force.

6 Q. And it was during that revision that the terms
7 "force guidelines" was, in fact, adopted and placed in the
8 Basic Recruit Manual, right?

9 A. We've used the term force guidelines for a long
10 time. As a matter of fact, I created that chart back in
11 2007.

12 Q. Well, it's not a chart. It's just a paragraph
13 in the book; is it not?

14 A. There is a paragraph in the book, but it's based
15 on the chart that was constructed when we removed the
16 force continuum from Basic Recruit Training. They were
17 force guidelines.

18 Q. Right. And so the linear chart that you
19 discussed has been removed from the Basic Recruit Manual,
20 correct?

21 A. It's no longer taught as the force continuum to
22 every officer -- law enforcement or corrections officer as
23 it once was, but it still is a chart used by FDLE and
24 sourced by agencies throughout the state.

25 Q. Okay. So a chart used where if it is not in the

1 Basic Recruit Manual?

2 A. It's in the curriculum. It is a lot like, for
3 example, neck restraints. We still have the curriculum on
4 that, but most agencies don't use them.

5 MR. MARTIN: Judge, I'm trying to shorten up my
6 cross so that I don't just belabor everything that I
7 have written down. So if you can bear with me, I'm
8 checking things off so I can move forward.

9 THE COURT: Take your time, Mr. Martin.

10 BY MR. MARTIN:

11 Q. The chapters that you wrote for the Florida
12 Department of Law Enforcement, as far as the Basic Recruit
13 Manual, under the "high liability section," there are two
14 books, right? At least there are two books now?

15 A. Yes.

16 Q. Under Chapter 3 is firearms, correct? And
17 Chapter 4 is defensive tactics?

18 A. I'm not sure what chapter is it. I know it's
19 Chapter 4 for defensive tactics. I didn't participate in
20 the firearms writing, even though they borrowed a lot from
21 the defensive tactics section for continuity.

22 Q. And for the last two years, the use of deadly
23 force, that portion of training, has been removed from
24 defensive tactics and placed into the firearms section;
25 has it not?

1 A. Again, I didn't participate in this last
2 iteration, so I don't know if it was removed or it wasn't
3 removed. I know for many, many years it was in the
4 defensive tactics section, which encompasses a complete
5 continuum of force from presence to deadly force.

6 MR. MARTIN: If I could have a moment, Your
7 Honor?

8 THE COURT: Yes, sir.

9 MR. MARTIN: Well, I must have left that back at
10 the office. I apologize for the delay, Judge. I
11 thought I had piece -- I thought I had a document,
12 but I guess I forgot it.

13 THE COURT: Did you want to take a second to
14 send an e-mail?

15 MR. MARTIN: I'll have to drive back to Pinellas
16 County to go get it, so I'm moving on.

17 THE COURT: Oh, okay.

18 BY MR. MARTIN:

19 Q. One of the things that you talked about with
20 Mr. Michaels is that your experience, as far as the
21 justification use of deadly force, and you mentioned
22 Statute 776, correct?

23 A. With you I mentioned it.

24 Q. Yeah.

25 A. I don't think I did with Mr. Michaels.

1 Q. All right. And that's where we got into the
2 discussion that 776.05 is the use of force, in fact, it
3 basically says upon making an arrest or when making an
4 arrest, correct?

5 A. Yes.

6 Q. All right. Now, 776.05 is basically when an
7 officer can use force and to what extent force can be
8 used, right?

9 A. Yes.

10 Q. And Florida State Statute 776.012 is the
11 civilian version of when a civilian may use force up to
12 deadly force, correct?

13 A. 012 and 013, yes.

14 Q. Well, 013 refers to a residence?

15 A. But it's civilian.

16 Q. That is correct. In this particular case, we
17 don't have that situation, do we?

18 A. No, I was just being clear on my answer.

19 Q. I understand. All right.

20 And are you familiar with the case of Tennessee
21 versus Garner?

22 A. I am.

23 Q. Okay. And have you done, as a subject matter
24 expert, the analysis to determine whether or not Statute
25 776.05 is actually a codification of the holding in State

1 versus Garner?

2 A. It seems to be. I think it's paragraph 3 where
3 they codify the Garner rule.

4 Q. Okay. And Tennessee versus Garner was a United
5 States Supreme Court case, I believe it was in 1984 or
6 1985, dealing with whether or not a particular use of
7 force was excessive as it relates to constitutional
8 standards, correct?

9 A. Well, the case occurred in '74. It worked its
10 way through the system. In 1985, it was ruled on by the
11 Supreme Court, but it had many different reviews under
12 that 10-year period.

13 Q. We're talking about the case of Tennessee versus
14 Garner, a U.S. Supreme Court case.

15 A. I know what you're talking about, but I'm just
16 saying, the actual case occurred in 1974.

17 Q. The case was a determination of whether or not
18 force was excessive as it relates to a constitutional
19 standard; was it not?

20 A. Yes.

21 Q. And that constitutional standard related to a
22 law enforcement officer; did it not?

23 A. Yes.

24 Q. And the Fourth Amendment applies to government
25 agencies like the police department, correct?

1 A. That's correct.

2 Q. It sets limits on conduct of agencies through
3 the government so that the government is not overbearing
4 to the community, that's why it is the Fourth Amendment,
5 right?

6 A. I mean, I'm not a lawyer, but, yes, you're
7 right.

8 Q. Okay. So when we talk about what is appropriate
9 for law enforcement, from the Florida legislature, drafted
10 776.05 after Tennessee versus Garner, it was based on what
11 is appropriate for law enforcement, correct?

12 A. Specifically for law enforcement. 05 is
13 directed towards law enforcement use of force, yes.

14 Q. Correct. And you're familiar with 776.012; are
15 you not?

16 A. I am.

17 Q. Okay. And when the legislature drafted that for
18 civilians, they did not codify the language in Tennessee
19 versus Garner, did they?

20 A. No, because it didn't involve escapes and
21 arrests.

22 Q. In fact, in Tennessee versus Garner, there's
23 really no analysis about what was objective or not
24 objective, right? That came later?

25 A. No. It was -- the construct of moving from the

1 Eighth Amendment to the Fourth Amendment starts with
2 Tennessee versus Garner and later is developed in Graham
3 versus Connor.

4 Q. Okay.

5 A. By the way, if I can add to that, in Graham
6 versus Connor, it applies to all force. Tennessee versus
7 Garner only addressed the issue of deadly force and that's
8 why, as I say, it was developed. It came later in 1989
9 with Graham versus Connor.

10 Q. Okay. In Graham versus Connor, as you
11 indicated, deals with all force. In fact, the U.S.
12 Supreme Court indicated that in all force used by law
13 enforcement, the Fourth Amendment objective reasonableness
14 will be the standard, correct? That's your understanding?

15 A. That's my understanding, yes.

16 Q. Okay. Then in that particular case, the U.S.
17 Supreme Court was dealing with a civil action dealing
18 whether or not a particular officer -- and in Graham it
19 wasn't deadly force -- but whether or not the force used
20 was, in fact, excessive and violated the constitution, the
21 Fourth Amendment?

22 A. Yes.

23 Q. Okay.

24 A. But not excessive under the Eighth Amendment
25 standard, but under the Fourth Amendment standard.

1 Q. Under the Fourth Amendment?

2 A. Yes.

3 Q. All right. And in dealing with that, the issue
4 was whether or not law enforcement was going to be granted
5 what's known as qualified immunity, correct?

6 A. Yes, a reduction, actually. That comes earlier.
7 That comes --

8 Q. I know that came a lot earlier, but that was
9 part and parcel of the argument in Graham, is whether or
10 not the officer's actions, the Court would grant qualified
11 immunity?

12 A. That was, yes, up for consideration in that
13 case.

14 Q. All right. Now, in the federal case dealing
15 with law enforcement officers, the Court continued to
16 define what would be appropriate for law enforcement as it
17 relates to the Constitution, correct? The Fourth
18 Amendment, that was their only concern?

19 A. It's hard to say. I think the construct of
20 objective reasonableness begins as a constitutional
21 consideration, but it works its way into, for example,
22 policy and training. With that --

23 Q. We're just talking about the Graham case right
24 now, okay?

25 A. Of course. The Supreme Court weighs in on

1 constitutional issues.

2 Q. Okay. And they made a determination that just
3 like they did with search and seizure -- I mean, search is
4 pursuant to Terry, the standard of objective
5 reasonableness would be the standard when an officer, in
6 fact, uses force, correct?

7 A. Well, that has to do with the force transaction
8 as it begins. Does it begin at an arrest, or does it
9 begin at the stop? So that's what Terry had to say about
10 that.

11 Q. I understand that, Mr. Bedard, but I'd
12 appreciate it if you would just kind of listen to my
13 question just a little bit, okay?

14 The issue in Graham and what the Court was
15 grappling with is what standard would be used to determine
16 whether or not a law enforcement officer used excessive
17 force regardless of the level of force, correct?

18 A. Is this related to the Terry question, because
19 I'm still caught up on that?

20 Q. We're talking about Graham.

21 A. Okay.

22 Q. Is that correct?

23 A. Yes. They were trying to figure out if it was
24 excessive force.

25 Q. All right.

1 A. And how to determine that.

2 Q. All right. And they determined that the
3 objective reasonable standard would be the standard that
4 would be used?

5 A. Yes. Not the cruel and unusual standard that
6 was used to that point.

7 Q. And the purpose of developing the standard in a
8 law enforcement case was to make the determination as to
9 whether or not the Court should grant qualified immunity
10 to the officers?

11 A. That was one of the determinations, yes.

12 Q. All right. And what the Courts indicated is
13 that qualified immunity could be granted to law
14 enforcement because they did not violate a -- did not
15 violate the Fourth Amendment, correct?

16 A. Well, they did not violate a well-established
17 constitutional standard that would reasonably be known to
18 law enforcement officers.

19 Q. We're taking this step by step. We're peeling
20 onions here, okay?

21 A. I know. You're asking --

22 Q. You want to tell me --

23 A. -- me legal questions. I'm trying to provide my
24 best legal response and I'm not a lawyer.

25 Q. But you are a subject matter expert?

1 A. I'm happy to answer them, but I have to
2 answer --

3 Q. You are a subject --

4 A. -- that I understand them.

5 THE COURT: Just a second. Let's not talk over
6 each other, okay?

7 MR. MARTIN: I apologize, Your Honor.

8 THE WITNESS: I'm sorry.

9 MR. MARTIN: That was my fault.

10 THE COURT: Let him finish. Okay. Thank you.

11 BY MR. MARTIN:

12 Q. When Graham came out, there were three or four
13 examples of how they would construe and look at to what
14 was reasonable, right? They said the severity of the
15 crime?

16 A. Yes, the type of crime, right. There were four,
17 yes.

18 Q. Okay. The subject involved?

19 A. Uh-huh.

20 Q. Okay.

21 A. Yes. I'm sorry.

22 Q. But it was a nonexclusive list, correct?

23 A. It was?

24 Q. Nonexclusive?

25 A. It was nonexclusive, right. Yes, there were

1 other factors.

2 Q. So over the years, federal courts have, on their
3 own, added to that list in Graham, correct?

4 A. I'm not sure that would be standard police
5 training, but, yes --

6 Q. I'm talking --

7 A. -- in cases that have been weighed in, there
8 have been other considerations that the federal courts
9 have made with respect to decision-making and use of
10 portion.

11 Q. Right. I'm not talking about training. I'm
12 just talking about how it was developed, all the things
13 that the Court can look at factually, to make a
14 determination of whether or not a constitutional violation
15 would occur.

16 Over the years, that list has grown and grown;
17 has it not?

18 A. I'm sure that's true.

19 Q. In effect, what Graham did is, for
20 constitutional purposes, they set a standard, if you will.
21 We call it a police standard or a police industry
22 standard, but they're outlining what the standard is for
23 police officers in determining whether or not there's a
24 violation of the Fourth Amendment, right?

25 A. Yes.

1 Q. Okay. I have it down here, and I believe we
2 covered it, so just tell me if we covered it.

3 We talked about as far as the standards and
4 models used by the different agencies. There's variation
5 among all the agencies throughout the United States?

6 A. There is variation, yes.

7 Q. Okay. Getting back to Graham. When we talked
8 about how the analysis is to take place, the Graham court,
9 did it not recognize that objective reasonableness cannot
10 be precisely defined; do you remember that?

11 A. Yes.

12 Q. And you also remember in Graham, because
13 objective reasonableness cannot be precisely defined, you
14 cannot apply it in mechanically?

15 A. It is not mechanistic, you're correct.

16 Q. All right.

17 THE COURT: I'm sorry, I did not hear the
18 witness.

19 THE WITNESS: It is not mechanistic, that's
20 correct.

21 THE COURT: Thank you.

22 BY MR. MARTIN:

23 Q. When we go back to the force continuums and the
24 force matrix, like you described, where we have a linear
25 subject behavior proportional response, such behavior

1 proportional response, that is very mechanical; is it not?

2 A. It is -- yes, it is mechanistic with respect to
3 creating a graphical chart that unmuddies the
4 circumstances of what is most often times a very muddy
5 conflict.

6 So in that respect, it tries to clean up actual
7 encounters by categorizing the threat and the resistance
8 into simple categories so that the layman can understand
9 it in a short amount of time.

10 Q. Okay. And those matrixes and force continuums
11 are used by agencies not only for training, but internally
12 to determine whether or not the officer's conduct is
13 consistent with the agency's policy and the individual
14 community standard within which the officer is performing
15 his duties?

16 A. I think the second thing you said is pretty
17 abstract. I don't know that they go out and poll the
18 community, but certainly it is consistent with policy.
19 Later, we figure out perhaps from public outrage or
20 whatever may have happened, whether or not we think that
21 that needs to be viewed in detail with respect to
22 community standards, but that's not a typical internal
23 affairs investigation.

24 Q. I didn't say it was internal affairs. I
25 indicated that, as a policy, what is in that force matrix

1 is dictated, to some extent, if not to a great extent as
2 to what the community wants. Let me just give you an
3 example.

4 Over the last couple of years within the
5 community throughout the United States, a lot of
6 discussion about escalation, deescalation, and police
7 intervention, correct?

8 A. Yes.

9 Q. Okay. Well, that's what I'm talking about.
10 Communities want certain things from their officers,
11 that's been added into those matrixes, correct?

12 A. I think it helps inform the way that a law
13 enforcement agency instructs its officers to carry out
14 force.

15 Q. Okay. Now, one of the problems over the years
16 with the matrix and how it's developed is just how -- the
17 tools that are now available to an officer; would you
18 agree with that?

19 A. Not necessarily. I think that we have
20 categories that encompass various tools. There can be
21 some academic discussion as to whether or not a particular
22 tool belongs in a particular category, but I think that it
23 has held out reasonably well over the years as new tools
24 have come on board.

25 Q. Because of the tools that have come out over the

1 years within the nation, this linear matrix or force
2 continuum has, in some places, gone from 6 to 10 to 30 to
3 try to encompass every variation and every tool in that
4 officer's belt; has it not?

5 A. I would say it has been a work in progress, yes.

6 Q. All right.

7 A. I don't know about 30 categories, but it's
8 certainly a work in progress. Categories have -- I
9 remember when I started law enforcement, we had a 5
10 Category Matrix, it is now a 6 Category Matrix.

11 Q. You write for Police 1, don't you?

12 A. Yes.

13 Q. A recent article -- I forget the female
14 author -- about the force matrix and the -- how it's
15 become unwieldy because of the numerous tools on the
16 officer's belt; do you remember that article?

17 A. I don't know that I read that specific article.

18 Q. Well, I will let you look it up at your leisure.

19 A. Okay.

20 Q. The point of being that in the very beginning
21 when the force matrix began with law enforcement, as far
22 as tools, we had a firearm, maybe a nightstick, and that
23 was about it? Handcuffs?

24 A. Right, we had handcuffs. Depending on -- I
25 mean, there was an early Taser some agencies adopted.

1 It's not the same as today's Taser, but there were
2 electronic devices. There were Saps, there were things
3 like that, so there were tools.

4 Q. And that's progressed over the years. As the
5 real estate on the officer's belt has grown more and more
6 dense with the use of Tasers, pepper spray, OC spray,
7 various batons, there has been a lot of discussion and
8 concern about how those tools and when you can use them
9 fall within that matrix, right?

10 A. I don't think so.

11 Q. You think that everything in the nation, all the
12 agencies, if it's pepper spray, it goes into your Category
13 4?

14 A. So it's the way it's used, right? So you can
15 use a firearm, for example, at Level 2, which is verbal
16 because most of the times we don't shoot it. When you
17 think about using a firearm, we think about -- I think to
18 the average citizen, using a firearm means that you point
19 it at somebody, you pull the trigger, and it has an
20 effect.

21 I wrote a whole article called Tools of
22 Persuasion that talks about how law enforcement officers
23 in the United States are trained to draw weapons to
24 persuade individuals with a -- what we call an aposematic
25 threat display to comply without ever shooting him.

1 And the great majority of cases -- and I've
2 discovered this as a Tallahassee police officer when I was
3 looking at Use of Force Reports -- we used to consider
4 drawing weapons deadly force, but we didn't have the
5 bodies to show for it, and that's because we mostly
6 reholstered. Almost always reholstered.

7 So the use of the tool itself is not -- I'm
8 sorry, the tool itself in its state is not as important on
9 the force continuum as the way that it is used, for
10 example. I mean, if your gun runs out of bullets, you
11 have an impact weapon. You will strike somebody with it.
12 That's not the way it was designed to be used, so it's
13 really the use of the tool, not so much the tool itself.

14 Q. And that's part of the problem with the matrix
15 and the variations that we find is because of now the
16 tools that's on the belt, exactly where certain amount of
17 use of force falls within the matrix is subject to
18 individual agency policy, right?

19 A. I'm not sure I understood that question.

20 Say that one more time.

21 Q. No. I'm going to move on.

22 A. Okay.

23 Q. You didn't get it, then maybe I just don't
24 understand it myself, okay?

25 A. Okay.

1 Q. All right. When we talk about the use of deadly
2 force, deadly force is a very confined area in which it
3 can be used, right?

4 A. Yes. It's considered a final decision, a final
5 level of force.

6 Q. And as you pointed out with the use matrix when
7 I believe it was Level 6, if there's a threat of great
8 bodily harm or death, then, according to the matrix, a
9 firearm lines up linearly as being a proportional or
10 appropriate response?

11 A. To be clear, any use of deadly force, if you hit
12 them in the head with a baton, that would be appropriate,
13 for example. That's also the use of deadly force. So
14 once again, it's not the tool, it is actually the use of
15 the tool that would appropriate it to a Level 6.

16 Q. Okay. Now, Level 5 included where you were
17 involved in a fisticuff, grappling. You indicated that,
18 at that point, pepper spray, OC spray, or maybe a baton,
19 fist and feet from the force matrix linearly, that's the
20 proportional response?

21 A. Again, not necessarily. You're stuck on the
22 idea that tools are classified as some level. It's the
23 use of the tool.

24 For example, a Level 5 response is temporary
25 incapacitation. What does that mean? It means using one

1 of your tools, perhaps your hand or your foot, to
2 incapacitate somebody. To knock the air out of them. To
3 cause muscular dysfunction. Perhaps it's the use of the
4 Taser that causes some sort of a neurological compliance.
5 There's a lot of different ways that you can cause
6 temporary incapacitation, not just a particular tool.

7 Q. If you only have one tool in your pocket, in
8 this case a firearm, being confronted with certain threats
9 does not warrant the deployment of that firearm, correct?

10 A. I know how you asked the question, but I -- I
11 can only say, there are certain threats, which is the term
12 you used, that would necessitate the use of a firearm.

13 Q. All right. I understand that.

14 But all threats don't?

15 A. No.

16 Q. And so for those threats that don't, the firearm
17 has to stay in your pocket?

18 A. No. No, because drawing of a firearm -- I've
19 been clear on this -- the drawing of a firearm is not the
20 use of deadly force. Drawing of a firearm is an
21 aposematic threat display in preparation for the use of
22 deadly force, but it is also used psychologically to try
23 to inhibit someone's continuous attack or perhaps
24 continuous resistance.

25 So the drawing of a firearm is not considered

1 deadly force.

2 Q. Shooting of the firearm is?

3 A. Yes.

4 Q. Okay.

5 A. At or in the direction of another person,
6 according to the statute.

7 Q. And as you indicated, even though the threat
8 might be -- I'm sorry.

9 Even though deadly force might be proportional
10 to the threat, that doesn't preclude someone from using
11 any type of tactic that's less than deadly force?

12 A. Right. I mean, it could be foolhardy if you try
13 something lesser. You may find yourself dead in the -- in
14 that endeavor, but it's not illegal, if that's what you
15 mean.

16 Q. Okay. On all the pepper spray, the stun guns,
17 the OC sprays, the tactical knives, the batons that are
18 all available to civilians, all of those could be used in
19 a situation where one might judge the threat to warrant
20 deadly force?

21 A. I mean, not even -- tools like that, you can
22 pick up a rock on the side of the road, if you believe
23 your life is in imminent danger of death or great bodily
24 harm. You may use some type of force that is reasonably
25 anticipated to cause death or great bodily harm.

1 Q. And if none of those are available and you only
2 have a firearm, then you're limited to the tool that you
3 have in your pocket, right?

4 A. Right. I mean, this gets to -- you and I
5 discussed coping mechanisms when we were in deposition and
6 this would be an example of why people carry firearms, for
7 the ability to draw them if necessary. And we -- of
8 course, the State issues permits for that.

9 But if you are limited to a firearm, that is the
10 tool that you have and that is the tool that you would
11 rely upon when your other faculties were overcome.

12 Q. And just to touch upon it, when you talk about
13 the self-efficacies, the balancing the field, that goes
14 back to Jeff Cooper's statement regarding the Colt and
15 being a great equalizer, right?

16 A. It does.

17 Q. It balances the situation?

18 A. Yes, according to Cooper, and I would agree.

19 Q. Okay. In going through your qualifications, you
20 indicated that you were an expert as far as use of force
21 and defensive tactics. Within defensive tactics, of
22 course, that involves a grappling skills just very
23 generically, right?

24 A. I mean, that's part of it. Striking skills,
25 there's grappling skills, there's handcuffing. There's

1 actually even posturing, which would include the use of a
2 firearm. Not in a shooting environment, but in a gym
3 scenario where that would be part of your force continuum.

4 Q. Now, you mentioned the Drejka case. In that
5 particular case, you were not allowed to interpret the
6 video, were you?

7 A. Gosh, I don't remember. I really don't
8 remember. I remember seeing it multiple, multiple
9 times --

10 Q. But in the courtroom, Judge Bulone said, No,
11 you're not going to interpret the video, right?

12 A. I don't but. I really don't recall.

13 Q. All right. And you indicated that when you, in
14 fact, conduct your investigation and form your conclusions
15 and opinions, you watch -- and this is just the list that
16 was went through, video, police report, witness reports,
17 interview of Reeves, depo of witnesses, crime scene
18 photos, autopsy report and photos, right?

19 A. Yes.

20 Q. All right. Potentially, all available to the
21 jury during the trial?

22 A. I would think so, yes.

23 Q. Okay. I want to talk about your discussion with
24 Mr. Michaels regarding the reaction time, time it takes to
25 formulate perception to take action.

1 A. Okay.

2 Q. Just like we did with reaction time and reaction
3 gap and those type of measurements, when you talk about
4 the time, is it a mean or an average time that you are
5 referring to?

6 A. What's the difference?

7 Q. Well, an average is just taking two and adding
8 them up and divided by two, right?

9 A. Right.

10 Q. All right. So is that what you did?

11 A. No. I mean, you're talking about on a grander
12 scale looking --

13 Q. No. I'm talking about the research that was
14 available. Are they talking about specifically this is
15 the way it is, or do they give a range because of
16 scientific variations that are involved?

17 A. They gave a range, which would make it a proper
18 mean, but a mean is also an average.

19 Q. Correct, but I'm talking about the range.

20 A. You said was it a mean --

21 Q. Your plus/minus --

22 A. -- or an average. It's actually both.

23 Q. Well, the mean would be your plus/minus?

24 A. Yes.

25 Q. Okay. So let's distinguish the two that way,

1 all right?

2 A. All right.

3 Q. Okay. So what was the plus/minus in the
4 research that you were referring to as far as the reaction
5 time?

6 A. Well, I don't recall exactly. I mean, we
7 typically settle on that quarter-second, the 0.25. I
8 generally hear that is going to be -- and these are
9 somewhat optimum tests that I looked at. They're not
10 dealing with people who are just waking up or, as I said,
11 are hungry or -- I mean, there's a lot of things that can
12 contribute to an extended reaction time, but a few things
13 that can contribute to a reduced reaction time, and I try
14 to focus on that --

15 Q. Let me stop you there. That's the whole point.
16 There's going to be variations depending on individual's
17 own unique variations, along with how their environment
18 impacted them physically might cause a variation.

19 So when we talk about 0.25, it's not an
20 absolute, a human, it's going to be a range?

21 A. That is right.

22 Q. Okay. All right. I think I've finished up on
23 what Mr. Michaels went over with you.

24 Now let's go to some of the things that I have
25 questions on, all right?

1 A. Okay.

2 Q. In dealing -- we're going to talk about your use
3 of the video and the interpretation of the video, all
4 right?

5 A. Okay.

6 Q. Now, one of the things that we talked about with
7 Mr. Michaels is that you were viewing the video and made a
8 determination based on the eight-second gap and the time
9 code that was on the video?

10 A. Yes.

11 Q. Okay. You were using an Apple?

12 A. Computer?

13 Q. Yes.

14 A. I was.

15 Q. All right. Did you use the time code that was
16 reflected on the video based on -- while viewing it in the
17 Apple?

18 A. I used the time code that was imprinted on the
19 actual video, not the Apple time code.

20 Q. Yes, that you can see?

21 A. That's correct.

22 Q. All right. The video that you used for that
23 determination, do you know if it was done by BEK TEK or
24 was it the FBI?

25 A. I think you and I hashed this out in deposition

1 and, once again, I don't recall. I watched all of the
2 video, but there was one particular one that seemed to
3 give me more clarity that I concentrated on, but I don't
4 remember what that was.

5 Q. Let me see if this jogs your memory. The great
6 majority of the BEK TEK videos are like the movie Matrix
7 green, as opposed to the FBI videos that are -- may be
8 black and white. I'm just giving that as a color, does
9 that jog your memory?

10 A. That's not helping.

11 Q. It's not?

12 A. I don't remember exactly what the color was. I
13 did write in my -- I think I sent you a copy of where I --
14 what that time frame was, and I think I told you what
15 video I dragged it from. So I'm happy to have you tell me
16 and then I will comment on it.

17 Q. Yeah. I've got a lot of stuff from you, which I
18 appreciate it, but I didn't see that one. That doesn't
19 mean I didn't get it.

20 A. It's on an e-mail I sent to you.

21 Q. I understand. It's come up, and I didn't bring
22 this up in the depo, but it's come up recently, about the
23 purpose of viewing the video.

24 Are you prepared to give any type of running
25 narrative about what you see in the video?

1 A. Define "running narrative."

2 Q. Yeah.

3 A. It's a very choppy video with a lot of segments
4 of just blank scenes.

5 Q. Okay. I'll give you an example. The video is
6 playing and you're going -- and I'm just going to make
7 stuff up.

8 A. Okay.

9 Q. This is Fred. This is Jane. That's the dog.
10 That was the dog that ran and got hit by -- you know, as
11 the movie is playing, are you identifying people? Are you
12 describing the conduct and action of the participants? A
13 running narrative of what you're seeing, do you plan on
14 doing that?

15 A. That's very specific, your characterization.
16 But I would be able to point out who the defendant was. I
17 would be able to point out who the decedent was. I would
18 be able to point out the action of an arm moving, perhaps
19 a hand grabbing the head, those kind of things.

20 So I think that I would simply point those out,
21 not try to reinterpret the video. The jury is quite
22 capable of seeing that for themselves.

23 Q. Okay. Now, you were not at the theater on
24 January 13th, right?

25 A. No.

1 Q. You did not know any of the participants prior
2 to January 13th?

3 A. No.

4 Q. You did not know Mr. Reeves, Mrs. Reeves,
5 Mr. Oulson, Mrs. Oulson?

6 A. No.

7 Q. Any of the patrons?

8 A. No.

9 Q. Never been inside that theater other than on
10 January 13th, other than that day prior to that? No time
11 ever --

12 A. I've never been in that theater.

13 Q. Okay. You indicated that you might go through
14 the video and point out certain segments -- and this is my
15 term.

16 A. Okay.

17 Q. And point out to the jury those things that can
18 readily be seen?

19 A. Yes.

20 Q. Is that what you plan on doing?

21 A. I think to tell the story in conjunction with my
22 analysis based on the video. I think I have to do it that
23 way. I mean, I can't talk in the abstract about things
24 that can be seen on the video.

25 Q. Okay.

1 A. And I think that's what I did in the Drejka
2 case, as I recall. There was a couple -- where
3 Mr. Rosenwasser asked me, is he stepping forward or
4 stepping back, things like that. I think there's a moment
5 in that testimony where I talked about that, and that's
6 the kind of thing that I would anticipate doing for the
7 jury.

8 Q. All right. And those things that, in your
9 opinion, can be readily seen, the inference is the jury
10 would be able to, quote, readily see those same things?

11 A. Yeah. I mean, we'll clearly see it differently,
12 I would think. As I said, perception is -- that's not
13 unusual for two people looking at the same thing to see
14 different things based on their education, their training,
15 and their experience.

16 So I think my contribution is to provide a
17 context in which what you see on the video is based on,
18 for example, reaction time.

19 Q. So you'll be pointing out to the jury, as you
20 view the video, that in this particular location, this
21 particular concept is involved; is that what you're going
22 to do?

23 A. Again, I'm not offering a dissertation to the
24 jury. If I'm asked a question, I can talk about that. I
25 think I'm qualified to talk about that, yes.

1 Q. Yeah. Well, I don't know if you're going to be
2 asked because you didn't do a report, so I have no idea.
3 So that's why I have to kind of bob for apples sometimes
4 trying to figure it out because, if you're going to do
5 that, then I need to make the legal argument today. So
6 that's what I'm talking about.

7 A. I understand.

8 Q. Okay.

9 A. I think we took 14 hours of deposition --

10 Q. Yeah, we did.

11 A. -- you peeled the onion to the point where you
12 pretty much know what I'm going to talk about. And I said
13 then, if I'm asked questions that are relative to my
14 expertise, I'm available to answer them, but I won't offer
15 anything that's not asked of me.

16 Q. Well, I understand. It's just I don't know
17 what's going to be asked is the problem.

18 A. Okay.

19 Q. So getting back to that, the use of the video,
20 that you will then indicate to the jury that a hand is
21 moving here or a hand is moving and this is where
22 Mr. Reeves is adjusting his glasses, or this is where the
23 popcorn is going to be thrown, that sort of thing?

24 A. I mean, I will say that's how I took it. You
25 can draw your own opinions, but this is what I understood,

1 in my analysis of the video -- which I was happy it was
2 available to me, even though it's not complete -- this is
3 what helped inform me to my analysis of the event, and
4 they can draw their own opinions on what they're seeing.

5 Q. Okay. But that would be your personal opinion?

6 A. Yes, I would -- I would be giving testimony from
7 the context of my observation, my analysis, and my
8 conclusion.

9 Q. Your personal opinion?

10 A. That's all I've got.

11 Q. And what is it about your training and your
12 experience that leads you to believe that you're better at
13 interpreting the video than the jury, as far as movement?
14 Movement?

15 A. If the question comes up can something have
16 happened within this time frame based on movement, I can
17 talk about reaction time. I can talk about response time,
18 as I've done in the court today.

19 As to what a specific movement is with absolute
20 certainty, it's a two-dimensional video representing a
21 three-dimensional world. And I am conscious of that fact
22 to say, this is what it appears to be to me. And, once
23 again, I think a jury can draw their own conclusions on
24 what they're seeing, but when it comes to interpreting
25 what those movements mean, that's where my expertise comes

1 in.

2 Q. So far as the movement itself, based on that
3 answer, you're in no better position to interpret what
4 movement is taking place than the jury, correct?

5 A. I think the video speaks for itself.

6 Q. That's not the question.

7 My question was: Based on the statements you
8 just made, would you agree that you are in no better
9 position than the jury to interpret what quote, movement,
10 is taking place?

11 A. It depends on how many times they watch it.
12 I've watched it so many times, I mean, dozens, perhaps,
13 more than 10 times, that would put me in a better
14 position, I think, just based on that experience than the
15 jury will perhaps have in the courtroom, so I think with
16 respect to my familiarity with the video, it may be
17 slightly more accurate.

18 But, again, the video speaks for itself. What
19 the jury will see is what the jury's eyes will see and
20 they're entitled to draw their own opinions about what
21 they're seeing.

22 Q. In this particular case, there's the
23 participant, Mr. Reeves, that's firing the firearm;
24 Mr. Oulson, who is shot; Vivian Reeves sitting next to
25 Mr. Reeves; Ms. Oulson, who is standing and sitting at

1 various times next to Mr. Oulson.

2 Basically, we've got four people within arms
3 length of one another that I will call participants in the
4 event, right?

5 A. Is it right that you will call them
6 "participants?"

7 Q. Well, that's what we have. We just have,
8 basically, four people?

9 A. Yes. I think there are four people that are in
10 the most immediate vicinity to the event.

11 Q. There's nothing complex about the movement of
12 those four people individually when they move, don't move,
13 that could be seen in the video, right?

14 A. Well, the representation of threat can't be
15 seen. That's an interpretation.

16 Q. I'm talking about movement, Mr. Bedard. Just
17 movement?

18 A. Just the actual placement of the individuals at
19 any given time?

20 Q. Movement? What they're doing? Is a hand going
21 up or is a hand going down? Are we shifting glasses or
22 are we grabbing popcorn? Movement.

23 A. It's important to my analysis.

24 Q. I understand that. But the bottom line is,
25 you're in no better position to describe quote, movement,

1 to this jury than the jury is?

2 A. I think that I've answered that question, I
3 said --

4 Q. Again, that's where we're going. So then I get
5 back to, there's only four people, really, that are in
6 the -- Ms. Oulson isn't in the frame, Chad Oulson is a
7 little bit. We know Ms. Oulson is there out of frame.
8 Three other people in frame. That is what the jury is
9 going to be looking at to determine quote, movement, just
10 those individuals, right?

11 A. Fair enough. If you're talking about strictly
12 movement without interpretation, the jury is capable of
13 seeing that.

14 Q. All right. So this is not like a situation
15 where we have, like, a riot with 200 in an area of blocks
16 and blocks where people are running around and there's
17 absolute chaos, right? That's not the situation we have
18 here?

19 A. That's true.

20 Q. Okay. Have you identified specific segments of
21 the video that you anticipate to proffer to the jury like
22 we've been talking about, doing a running narrative?

23 A. Again, I will be answering questions. So if I'm
24 asked about a segment of the video, I will give my best
25 interpretation of my analysis of that segment. I do know

1 that my focus was on the shooting itself, the timing of
2 the shooting, the placement of Mr. Oulson in relationship
3 to Mr. Reeves, whether or not that was a reasonable
4 foreseeable threat of great bodily harm based on that
5 positioning, things like that, but I'm only going to
6 answer questions.

7 Q. All right. Did you make individual
8 interpretations based on your own, I'll call it, personal
9 opinion for anything else, as to whether or not you're
10 able to see the popcorn being grabbed?

11 A. I can't see that.

12 Q. All right. And Mr. Reeves walking to their
13 seats?

14 A. Yes, I can see that.

15 Q. All right. And Mr. Reeves' hand coming up in
16 front of him when the popcorn is being grabbed?

17 A. Yes.

18 Q. You saw that?

19 A. I saw that.

20 Q. All right. Grabbing and tossing of the popcorn?

21 A. You asked me that. I saw that.

22 Q. All right. Mr. Oulson leaning over the seat?

23 A. There's an inference there based on where his
24 arm is grabbing the popcorn that he would had to be
25 leaning. I can see a little bit of his body, but I can't

1 see his full posture, so there's an inference there.

2 Q. The adjustment of Mr. Reeves' eyeglasses after
3 the shooting?

4 A. I believe I see that. I see his hand come up to
5 his head. I don't have such clarity that I can tell you
6 what he's doing, but it looks as if he's holding his head.

7 Q. Okay. And is that the type of things that we're
8 talking about, whether or not it's readily seen so that
9 everyone's interpretation of what is seen is going to be
10 the same?

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

12 Q. The list that we just went through, those
13 segments --

14 A. Yes.

15 Q. -- is that what you're describing as to what can
16 be, quote, readily scene; therefore, the interpretation
17 will be consistent across the board by everybody?

18 A. Again, I'm not sure. I mean, some of these
19 things are discovered after watching it a dozen times. I
20 don't know what the jury is going to see. There's a lot
21 of -- even though it's not a riot as you've described
22 previously, I didn't understand that juxtaposition, but
23 it's a simple scene with a lot of complex things
24 happening.

25 And the complexity of it sometimes can only be

1 fettered out after watching it many, many times. So
2 depending on how often the jury is able to watch it with
3 their open eyes and without any interpretation, for
4 example, by someone else who has seen it, they may miss
5 certain things. That, I don't know.

6 Q. But they have the same opportunity to view it as
7 you did?

8 A. I don't know if they will be able to see it 100
9 times.

10 Q. We talked about major points of interest when
11 you and I were discussing the video, and we went through
12 quite a few. And I believe you mentioned that your
13 analysis of those points of interests where you drew
14 conclusions was exclusively based on the video; do you
15 remember that?

16 A. I don't remember saying that. I mean,
17 obviously, I juxtaposed it with witness statements and
18 crime scene and images of the theater in a more controlled
19 picture taken moment, so there's a lot of things that I
20 considered before forming my own conclusion about what I
21 thought happened.

22 Q. In dealing with these points of interest, one of
23 them was whether Reeves was hit with an object prior to
24 Oulson tossing popcorn; do you remember that?

25 A. Are you reading that?

1 Q. Yeah.

2 A. I mean, not verbatim, but, yes, I remember I was
3 talking about that.

4 Q. All right. And you used the video to draw
5 appropriate conclusions?

6 A. I did use the video, yes.

7 Q. All right. And what about your training or
8 experience that you are applying to drive that conclusion?
9 Tell me the process that you went through in order to
10 derive your conclusion whether or not Reeves was hit with
11 an object prior to Oulson tossing popcorn?

12 A. Well, from looking at the video solely, or from
13 my entirety --

14 Q. The process that you did?

15 A. Okay. So the process came from the reporting
16 from Mr. Reeves who was the one who claims to have been
17 hit in the face. It also comes from the reporting of law
18 enforcement officers that say that he immediately says
19 that he thought he was hit in the face.

20 I think he also tells the first responder, the
21 off-duty officer, he thinks he's got something in his
22 eyes. He's been hit in the face. During his recorded
23 interview, he says he was hit in the face.

24 Then when I go back and I look at the video, as
25 he fires the shot and he fades back into his seat and

1 grabs his head in a way that suggests that perhaps he was
2 hit in the face, there is some witness testimony -- I
3 don't remember her name, I'm sorry. I think it is the
4 wife of the off-duty officer that says she sees him grab
5 his head, and I believe there's one other person that says
6 that as well.

7 So the conclusion I have, with all of that
8 evidence, is that he was probably hit in the face.

9 Q. All of the material that you just recited as to
10 what you used to draw that conclusion potentially is all
11 available to the jury; is it not? Every bit of it?

12 A. I would think it would be, yes, if it's
13 presented. If it's offered as an exhibit, yes. I don't
14 know if the police reports are going to be handed out to
15 them.

16 Q. We'll have the officers testify.

17 A. Okay. But if somebody doesn't ask them that
18 question, it won't be the same as reading the report,
19 which is where I got that information.

20 Q. And the information that you just provided to
21 us, none of that information is beyond the common
22 understanding of any juror, right?

23 A. As to whether somebody got hit in the face?

24 Q. No. As to someone testifying about or listening
25 to a recording that Reeves says he got hit in the face,

1 with the EMT coming in and say, Well, Reeves said he had
2 something in his eye. That's what I'm talking about.

3 That kind of testimony is not beyond the common
4 understanding of the jury? They need no specialized
5 training whatsoever to draw whatever inferences or
6 conclusions they want from that testimony, correct?

7 A. That's right.

8 Q. All of the points that we talked about, you used
9 the same method that we've just described?

10 A. Yes.

11 Q. Back on the video, we had a conversation about
12 other than the eight seconds that was missing -- that you
13 believe was missing from the video, there were other
14 frames that you found that were missing?

15 A. That's correct.

16 Q. And you used a slider that was on some sort of
17 application that was on your Apple computer.

18 A. I think I used BLC.

19 THE COURT: I'm sorry. Could you repeat that?

20 THE WITNESS: I think I used BLC. I think that
21 was the program that I used. I may have used one
22 other. I may have put it into Adobe --

23 BY MR. MARTIN:

24 Q. It's a video viewer.

25 A. Yes. I think there were two different systems

1 that I used to view the video to see if I could get better
2 clarity.

3 Q. Okay. Well, the proprietary software in this
4 case is GeoVision; did you use that?

5 A. No.

6 Q. Okay.

7 A. I think they were sent to me in JPEGs or AVIs.

8 Q. All right.

9 A. I didn't open it up into a separate software.

10 Q. All right. So you used -- PDF forms files of
11 individual frames that were exported from the video?

12 A. I used PDF? I don't know if that's true or not.

13 Q. No. PDF is just a format.

14 A. I know what it is. It is a still document.

15 Q. It's a document --

16 A. It's not a moving video.

17 Q. No, but you had, like, 300 PDF files, so you
18 could just do this?

19 A. Yes. I'm sorry. I did have those documents as
20 well, those still frames as well. I apologize. I thought
21 you were talking about how it was exported to me in video
22 form.

23 Q. No. I'm talking about material.

24 A. Yes, I did have that.

25 Q. And that's what you used in an attempt to

1 determine what frames were missing? Is that what you did?

2 A. I believe so. It may have come straight from
3 the video. I don't remember how I concluded specifically
4 what frames were missing. There was full seconds missing.

5 Q. Have you had a chance to go back and look at the
6 video enhancements either done by BEK TEK or the FBI where
7 BEK TEK actually went in and inserted blank frames where
8 frames, in their opinion, were missing? Or where the FBI
9 using the raw data determined where frames were missing
10 and a blue frame was in?

11 A. I looked at all the video that was sent to me.

12 Q. And the frames that you believe were missing,
13 are they consistent or inconsistent with what the video
14 forensic technicians said was missing?

15 A. I don't recall.

16 Q. You have no specialized training or knowledge
17 associated with using appropriate software to make a
18 determination whether or not frames are or are not
19 missing?

20 A. I'm not sure. I mean, I've had some experience
21 in editing. I've done television production before.

22 To your question, special knowledge about what's
23 missing, that was apparent in the time frame. I mean,
24 there's a time frame that's running that shows moments of
25 activity that I can see and then a blank, blacked-out

1 screen while the time frame is still running, so I can
2 tell that that's missing.

3 So I don't know that --

4 Q. My question to you: These frames that you
5 indicated were missing, is that independent of what the
6 two experts did?

7 A. I don't recall what the experts said. I wasn't
8 trying to do an analysis of every frame that was missing,
9 but rather the time frame that's missing, which is about
10 eight seconds.

11 Q. Okay.

12 A. And I don't know if this was shot in 30 frames
13 per second or 15 frames per second, but that would be
14 important to know if you're analyzing frames, and I didn't
15 do that.

16 Q. All right. So the accuracy of that particular
17 test, if you will, is with a big caveat not knowing the
18 frame rate may or may not affect the results that I did?

19 A. It has nothing to do with it. The frame rate
20 would not have anything to do with the time frame. So
21 whether it's shot in 15 frames per second, or 29.97 frames
22 per second wouldn't make a difference in the effect that
23 that many frames fit within one second.

24 I can tell how many seconds are missing. So my
25 analysis was based on a time frame of eight seconds

1 missing. I didn't calculate that times 30 or times 15 to
2 figure out if frame 243 was missing, or 317 was missing.
3 I think that's what you're asking me.

4 I feel confident, in looking at all of the
5 video, that there's eight seconds missing or that I can
6 see are close to eight seconds. There is a millisecond
7 counter on there as well, so I think it's like
8 7.97-something. I don't remember what it is, but very
9 close to eight seconds.

10 Q. Going back to the points of interests and
11 looking at the video and looking at the witness statements
12 and drawing your conclusions. With each of those -- and
13 we'll just use the first one as an example.

14 A. Okay.

15 Q. Whether or not he was hit in the face -- I'm
16 sorry, whether or not Mr. Reeves was hit in the face prior
17 to tossing the popcorn.

18 The method that you used in order to draw those
19 conclusions involved a null hypothesis test; did it not?

20 A. I mean, a version of it. Again, this wasn't an
21 empirical scientific examination. It's not subject to
22 that, as we discussed in deposition. This was not
23 something that you can run many trials on to see if the
24 same thing happens with a control group, but it was based
25 on the theory of falsification, which is to take

1 Mr. Reeves' statement, and then be skeptical of it, and
2 try to falsify it. I found no reason to falsify it.

3 I do recognize the importance of self-serving
4 statements, but it's clear to me, after having done this
5 many times, that not all self-serving statements are lies.
6 They can very much be the truth. So my ambition is to
7 demonstrate whether or not they can be falsified. And if
8 they cannot be falsified, then I have no reason to doubt
9 the statement.

10 Q. All right. But you did indicate that the null
11 hypothesis test is not only the way you think, but that's
12 the way you conduct all your analysis?

13 A. Well, you brought up the null hypothesis. I was
14 talking about falsification in the scientific method,
15 which involves many things, null hypothesis being one of
16 them.

17 I don't know if you want to discuss the
18 scientific method in detail. I don't know if you know
19 what questions to ask me. With that said, the null
20 hypothesis is certainly something that a scientist would
21 begin an examination with to see if the hypothesis that
22 they have come up with stands up against the scrutiny of
23 an investigation, whether it's an observational study or
24 whether it is an empirical study?

25 So, yes, that is how my brain works, as I said

1 in deposition, that's how I think about these things. Is
2 there a reason to believe that Mr. Reeves is not telling
3 the truth, is lying, or is fabricating? And I look for
4 those things, and that's what I did.

5 Q. All right. And the null hypothesis test when we
6 talked about the scientific method, I kept asking you what
7 is the scientific method? What is the scientific method,
8 right? We just brought up that I don't know the right
9 questions to ask.

10 So I'm going to ask you: What scientific method
11 did you use, coupled with, along with the null hypothesis
12 test? What scientific method?

13 A. So the scientific method was not actually used
14 and I was explaining the falsification principle of the
15 scientific method and how I applied it to this area of
16 special knowledge.

17 And the special knowledge is, I think, mostly
18 what I'm testifying about. This is going to be areas of
19 self-defense, areas of force continuum, force matrix,
20 escalation, deescalation --

21 Q. Excuse me. Hang on a second.

22 All right. So you used a falsification method?

23 A. Yes.

24 Q. Which is, in fact, the null hypothesis test; is
25 it not?

1 A. In a full scientific study, it would be
2 considered the null hypothesis test, yes.

3 THE COURT: I'm so sorry, because I think I lost
4 track. Your question was -- and just tell me -- what
5 scientific method did you use with this null
6 hypothesis, but now you've just asked it different
7 and I didn't hear the difference. I'm sorry.

8 BY MR. MARTIN:

9 Q. I asked you: What was the scientific method?
10 And I believe your response was, there wasn't one. I used
11 the falsification method; is that correct?

12 A. That I applied to my special knowledge in this
13 particular area, yes. I did not run an empirical
14 scientific test to examine any of the evidence that was
15 given to me.

16 Q. Okay.

17 A. So in that respect, it's not a true scientific
18 test. It's not even a quasi-scientific test, but
19 falsification still applies to my investigative method.

20 Q. All right. And falsification method is, in
21 fact, a null hypothesis test?

22 A. In a scientific method, yes.

23 Q. Okay. Now, you indicated that you used a
24 modification of the null hypothesis test.

25 A. Well, an application of a null hypothesis

1 falsification test. The idea that I began with -- see, I
2 didn't even have to create my own hypothesis for this, I
3 just took the facts that were given to me, and those were
4 assumed to be hypothetical.

5 Let's say Mr. Reeves was struck in the face
6 before the popcorn was grabbed. He created the
7 hypothesis. I assume it to be not true. That would be
8 my -- that would be how I began my study. Then I would
9 take a look at someone who said, Well, that's not true. I
10 watched the whole thing. I didn't find that.

11 As a matter of fact, what I did find is people
12 saying that they saw him grab his face. I did see in his
13 own testimony right after the event, with very little time
14 to contemplate, that he continued to complain of being hit
15 in the face.

16 I did find in the video there was a cell phone,
17 by the way, laying at his feet that was Mr. Oulson's. He
18 claimed that he thought he got hit with a cell phone, that
19 corroborated that.

20 So I was not able to find any reason to not
21 believe that he wasn't hit in the face before the popcorn
22 was grabbed and, therefore, I couldn't falsify it, so I
23 assumed it to be true.

24 Q. Okay. And in this particular case, you relied
25 on your interpretation of material, which included witness

1 affidavits, maybe statements, inferences made at the scene
2 by the physicality of certain pieces of evidence, that was
3 the data that you used to determine whether or not you
4 could falsify the original hypothesis that he was hit in
5 the face?

6 A. I used everything that was given to me in an
7 attempt to falsify.

8 Q. All right. And all of that is subjective in
9 nature; is it not? It's based on your personal
10 interpretation of accepting and rejecting certain data and
11 asserting it into the formula to determine whether or not
12 you could, quote, falsify your hypothetical?

13 A. No. It's not subjective. It's objective. I
14 mean, I didn't make any of this evidence up. It was given
15 to me. And, yes, it was my interpretation what I was
16 seeing, of course, and it did formulate my opinions for
17 which I'm an opinion witness.

18 But it's -- I think is important to know that
19 even in a true scientific study -- and this was not one of
20 those -- that you still only end up best with a
21 probability. You don't have a certainty.

22 So there's always just a strong correlation, for
23 example, between the independent and dependent variables
24 and that's what we hope for, is to try to convince
25 ourselves that something is occurring without having

1 absolutes, and that's oftentimes as good as science gets.

2 Once it gets past that, you no longer have
3 science, have you religion. You have dogma. So science
4 continuously works off of probabilities that are tested
5 and retested over and over again.

6 Unfortunately, this isn't one of those cases.
7 We can't run 100 trials with a 71-year-old man that are
8 armed and get confronted by a 6'4" person that is engaging
9 them in a novel attack in a movie theater. We just can't
10 do that because, obviously, the outcomes would be too
11 dangerous to prove the point.

12 So we have to work with a single trial and
13 that's what I worked with.

14 Q. Okay. In the scientific world, the use of the
15 null hypothesis test objective data would be used in an
16 attempt to falsify the hypothesis, correct?

17 A. Yes.

18 Q. All right. And we can't do that here?

19 A. No. We can't falsify the hypothesis. We can
20 use the falsification test. I need to be clear.

21 Q. So because we can't do that here calls into the
22 question of the reliability, does it not, of your
23 conclusions?

24 A. I don't think so. I think my reliability is
25 based on the probability, as I've said. There may be an

1 opinion of the jury that they choose to see things
2 differently for whatever reason, but I think the
3 reliability of my examination is intact.

4 I think I did use the proper investigative
5 methodology to draw my conclusions and my opinions about
6 what happened.

7 Q. Because that's all you could use, correct? You
8 could only use the subjective data based on your
9 interpretation in order for the test?

10 A. Sure.

11 Q. You were limited by what was available?

12 A. Sure. I would say the same applies to the
13 State.

14 Q. I don't understand that. What was that?

15 A. You're using subjective data like I am to offer
16 your conclusions about what happened. I'm doing the same
17 thing.

18 Q. Well --

19 A. So I think we're all subject to the limitations
20 of what we received on video and police reports and
21 witness statements. I'm not working with different
22 information than you are, is what I'm saying.

23 So I don't know that that is a negative
24 evaluation of my -- of my investigation into this because
25 we're both working with the same thing.

1 Q. Right. The jury is going to hear your testimony
2 and it's going to be presented as facts in which they can
3 rely on. And you're indicating that, because of the
4 limitations that I have with the data inherently, that my
5 conclusions, as far as the reliability of it, cannot be
6 determined, but that's what is being offered as you, as a
7 subject matter expert, to the jury, correct?

8 A. The jury is what determines reliability. I
9 don't to that. The jury has to decide whether or not my
10 evaluation of the evidence presented to me is sufficient
11 to support the opinions I plan to offer, and then they
12 have to decide whether they agree with that, and they're
13 entitled to that.

14 I can only tell you about the modeling, the
15 structure of threat, threat assessment, situational
16 awareness, all things we spent all day talking about --

17 Q. No, no, no. We're talking about the null
18 hypothesis. You're going off tangent on me. We're going
19 to stay focused, that's why I interrupted you. That's
20 why. I want to stick with this particular topic.

21 A. Okay.

22 Q. When we're talking about the results and your
23 conclusions that you draw by using that test, the
24 reliability of it is called into question because of the
25 subjective nature of the data, by your own admission --

1 A. What is the subjective nature of the data? I'm
2 not sure what you mean by that.

3 Q. Your interpretation of what is said, not said,
4 what you rejected, what weight you give to the credibility
5 of the evidence, the inferences that you draw or do not
6 draw from location of evidence, that is what you get to
7 pick and choose to determine whether or not you falsify
8 the information?

9 A. I don't pick or choose any of it. It is all
10 given to me. I analyze it. I calculate it. Then I
11 decide whether or not it can falsify --

12 Q. How do you calculate it?

13 A. I look for areas where something can be
14 falsified. And if I can't find those, the calculus would
15 be zero. I would not be able to falsify whether or not --
16 -- I'm sorry, I would not be able to falsify the statement
17 by Mr. Reeves that he was hit in the face before the
18 popcorn was thrown.

19 I feel that's a very reliable examination of the
20 evidence. I reliably can say that there's nothing in
21 anything that's been presented to me or you that shows
22 that he wasn't hit in the face. So I'm not able to
23 falsify that statement.

24 And I think the jury will see the same evidence.
25 I would imagine they'll have to draw their own opinion

1 about that.

2 Q. You believe the jury will see exactly as you've
3 just said?

4 A. Will see what exactly as I've just said? That
5 there's -- that there's no evidence --

6 Q. Uh-huh --

7 A. -- that he wasn't hit in the face?

8 Q. Uh-huh.

9 A. Yeah, I don't think they'll find evidence that
10 he wasn't hit in the face.

11 Q. So your testimony to the jury in no way aids the
12 jury whatsoever, because they have the ability to make the
13 same interpretation that you can?

14 A. If I'm asked a question about how I drew my
15 conclusions, I'll give the same explanations that I did
16 here today.

17 Q. Mr. Bedard, I apologize to keep interrupting
18 you, but I'm going to ask you to please listen to my
19 question and answer my question specifically.

20 My question to you specifically based on what
21 you've just said, that the jury is going to see the same
22 thing and draw the same conclusions as you, my question
23 was: That means that in no way does your testimony aid
24 the jury because they can do exactly the same thing? No
25 specialized training, no specialized knowledge in order to

1 conduct that analysis; is that correct?

2 A. No.

3 Q. Well, please enlighten us based on what you've
4 just said, first of all, that they're going to be able to
5 make that same determination as I did, but I'm better to
6 do it.

7 So why -- why do you think that your testimony
8 in any way aids the jury in that respect?

9 A. About this particular issue?

10 Q. About -- we're talking about simply using the
11 null hypothesis drawing a conclusion that whether or not
12 Mr. Reeves was hit in the face before the popcorn was
13 tossed?

14 A. Okay. So where I disagreed with you is where
15 you said the jury would draw the same conclusion. I have
16 no idea what their conclusion will be.

17 Q. You just said --

18 MR. MARTIN: Madam Court Reporter, please read
19 back where he said -- when I asked him the jury can
20 draw the same conclusion and he said yes.

21 THE WITNESS: I said I think they will draw the
22 same --

23 THE COURT: Hold on just a second. Excuse me.
24 I'm sorry to interrupt you. Let's give the court
25 reporter an opportunity, since it's been requested.

1 We can't talk at the same time because she can't take
2 down the record, okay? So let's just give it a
3 minute, that is what is requested.

4 Madam Court Reporter, would you be so kind to
5 look for that and read it back?

6 THE COURT REPORTER: I'm just not sure what
7 answer he wants me to read back, but let me see.

8 MR. MARTIN: Judge, it's a quarter after 12.
9 I've been going for over an hour and a half. I've
10 asked the court reporter to do something that might
11 take her a little bit of time.

12 May I suggest to the Court that maybe we take
13 the next 45 minutes for our lunch break, let her find
14 whatever she's going to find, because I've got at
15 least another 45 minutes, if not longer.

16 THE COURT: Okay.

17 MR. MARTIN: You can see how it's going.

18 THE COURT: Yes. Mr. Michaels, Mr. Escobar?

19 MR. MICHAELS: I'm fine with taking a break, but
20 I think the court reporter deserves a break.

21 THE COURT: I do, too.

22 MR. MICHAELS: If we're going to take 45
23 minutes, then she should get 45 minutes, too, to have
24 lunch and find whatever she needs to find.

25 THE COURT: Correct. We're actually going to

1 break until 1:15. Hopefully, it is relatively easy
2 and she can find it. If you need more time than
3 that, just let us know, okay?

4 THE COURT REPORTER: Yes, ma'am.

5 THE COURT: We will stand in recess until 1:15.
6 (Lunch break taken.)

7 VOLUME I CONCLUDED
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