

1 IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
2 OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY

3  
4 STATE OF FLORIDA,

5 Plaintiff,

6 vs.

Case Number 14-216CFAES

7 CURTIS REEVES,

8 Defendant.  
9 \_\_\_\_\_/

10 PROCEEDINGS: Bond Hearing  
11 Volume V

12 DATE: February 7, 2014

13 BEFORE: HONORABLE PAT SIRACUSA  
14 Circuit Court Judge  
Sixth Judicial Circuit  
Dade City, Florida

15 PLACE: Robert D. Sumner Judicial Center  
16 38053 Live Oak Avenue  
Dade City, FL 33525

17 REPORTER: Melinda McClain  
18 Registered Professional Reporter  
19 Notary Public  
State of Florida at Large

20  
21 Office of Court Administration  
22 Court Reporting Department  
Robert D. Sumner Judicial Center  
38053 Live Oak Avenue  
23 Dade City, FL 33525

24 Telephone: (352) 521-4375 Fax: (352) 521-4118  
25

Paula S. O'Neil  
Clerk & Comptroller  
Pasco County, Florida

2014 MAR 21 PM 3:31

FOR RECORD  
PASCO COUNTY, FLORIDA

## APPEARANCES

APPEARING ON BEHALF OF  
THE STATE OF FLORIDA:

Manuel Garcia, Chief Assistant State Attorney  
Stacey Sumner, Assistant State Attorney  
Damien Kraebel, Assistant State Attorney  
William Loughery, Assistant State Attorney  
Office of Bernie McCabe, State Attorney  
Sixth Judicial Circuit, Pasco County  
38053 Live Oak Avenue  
Dade City, Florida 33525

APPEARING ON BEHALF OF  
THE DEFENDANT CURTIS REEVES:  
Richard Escobar, Esquire  
Dino M. Michaels, Esquire  
Escobar, Ramirez and Associates  
2917 W. Kennedy Boulevard  
Tampa, Florida 33609

# INDEX TO PROCEEDINGS

Closing Argument by Mr. Escobar .....	650
Closing Argument by Mr. Garcia .....	687
Ruling .....	720

Witnesses called by the State:

## **AARON SMITH**

Direct Examination by Mr. Garcia .....	574
Voir Dire Direct Examination by Mr. Escobar.	577
Resumed Direct Examination by Mr. Garcia ...	587
Cross-Examination by Mr. Escobar .....	588
Redirect Examination by Mr. Garcia .....	599

Rebuttal witnesses called by the Defense

## **NICHOLAS SACCO**

Direct Examination by Mr. Escobar .....	609
Voir Dire Direct Examination by Mr. Garcia .	618
Resumed Direct Examination by Mr. Escobar ..	639
Cross-Examination by Mr. Garcia .....	641
Redirect Examination by Mr. Escobar .....	641

# INDEX TO EXHIBITS

State's Exhibit 7 .....	585
Video	
Defense Exhibit 4 .....	605
Redacted Autopsy Report	
Court's Exhibit 1 .....	605
Autopsy Report	
Defense Exhibit 5 .....	610
Hard drive	
Defense Exhibit 6 .....	640
Disk	

P R O C E E D I N G S

1  
2 THE COURT: All right. We're back. State  
3 is present, the Defense is present and the  
4 defendant is present in the courtroom.

5 State, you ready to call your next  
6 witness?

7 MR. GARCIA: Yes, Your Honor, the State's  
8 ready.

9 THE COURT: You may proceed.

10 MR. GARCIA: Judge, the State would call  
11 Aaron Smith.

12 THE COURT: Aaron Smith. How am I going  
13 to spell Aaron?

14 MR. GARCIA: A-A-R-O-N, Judge.

15 THE BAILIFF: Aaron Smith?

16 MR. GARCIA: Yes, sir.

17 MR. ESCOBAR: Your Honor, this is one of  
18 the witnesses we do not have a report for and  
19 we've explained that to the prosecution. And  
20 if we can just maybe take a look at their  
21 report. They did not provide that in discovery  
22 yet.

23 THE COURT: I'll give you a break between  
24 the witness and your cross-examination to look  
25 at it.

1           If you could find the report and give it  
2           to him while we're doing this.

3   THEREUPON,

4                   AARON SMITH,  
5   the witness herein, was placed under oath.

6           THE COURT: You may inquire.

7           MR. GARCIA: Thank you, Your Honor. May  
8           it please the Court, counsel?

9                   DIRECT EXAMINATION

10   BY MR. GARCIA:

11           Q     Detective Smith, good afternoon, sir.

12           A     Good afternoon.

13           Q     Can you state your full legal name,  
14   please?

15           A     Yep. Aaron Wayne Smith.

16           Q     And your profession?

17           A     I'm a detective with the Pasco County  
18   Sheriff's Office.

19           Q     And how long you been so employed?

20           A     For approximately four years.

21           Q     What are your duties with the Pasco County  
22   Sheriff's Office?

23           A     I'm currently assigned as a major crimes  
24   detective.

25           Q     Directing your attention to January 13th

1 of 2014, did you have occasion to assist Detective  
2 Proctor in the investigation of a homicide which  
3 occurred on that date?

4 A Yes, I did.

5 Q And what role did you play in this?

6 A We were -- all of our squad was called to  
7 assist at the scene. And my main role there was as  
8 a crime scene detective.

9 Q Okay. And did you have conversations with  
10 Cobb Movie Theater as far as the video surveillance?

11 A I did. I spoke with the general manager,  
12 Tom Peck, who was in charge of the building at that  
13 time.

14 Q When did you learn that Cobb Movie Theater  
15 had video surveillance?

16 A During our investigation that day, shortly  
17 after my arrival, I talked with Detective Bossone,  
18 also of the sheriff's office, who had spoken with  
19 the manager and said that he did have several  
20 cameras throughout the building with video.

21 Q And through the course of your  
22 investigation, were you able to obtain the original  
23 footage or video surveillance from Cobb Theaters?

24 A Yes. During that time frame we asked them  
25 to stop the video recording and to download -- as

1 it's all digital video -- everything from 12:00 noon  
2 that day to the incident time. And at that point  
3 they contacted their IT department and started to do  
4 that.

5 Q And do you have a working knowledge of how  
6 these video-surveillance cameras work in the movie  
7 theater?

8 A I do. There's several different cameras  
9 in different areas of the building, some in the  
10 Cinebistro areas, some in the hallways, most of  
11 which are motion-activated digital video cameras.

12 Q Are they also infrared?

13 A Ones that are in dark areas of the  
14 building, such as Cinebistro, are also infrared,  
15 yes.

16 Q Okay. And are they motion activated?

17 A Yes. The ones in the Cinebistro area are  
18 motion activated.

19 Q Did you, in fact, receive a video of the  
20 theater ten, the *Lone Survivor* which was showing on  
21 January 13th of 2014? I think the start time was  
22 around 1:20 or so.

23 A Yes, sir, I did. After the video had been  
24 copied over on the 15th, I met with the vice  
25 president of Cobb's operations and obtained copies

1 on thumb drives of all of those videos.

2 MR. GARCIA: Judge, I'd ask the record  
3 reflect that I'm showing what's been marked as  
4 State's Exhibit O, I believe, for  
5 identification purposes to Mr. Escobar.

6 THE COURT: Record may so reflect.

7 MR. ESCOBAR: Judge, I just have some voir  
8 dire before they introduce it.

9 THE COURT: All right. You may proceed.

10 VOIR DIRE DIRECT EXAMINATION

11 BY MR. ESCOBAR:

12 Q Good afternoon, Detective.

13 A Good afternoon, sir.

14 Q Detective, you were -- you were called out  
15 to the scene to assist in this investigation?

16 A Yes, sir.

17 Q You were going to assist Detective  
18 Proctor?

19 A Yes, sir.

20 Q And one of the roles that you assisted  
21 Detective Proctor was in gathering these particular  
22 videos?

23 A Yes, sir, that's correct.

24 Q Did you examine the cameras at all there  
25 within theater ten yourself?



1           A     Other than visually, they're fairly high  
2 up on a wall. I didn't write down, like, specific  
3 make, model information that -- if that's what  
4 you're asking.

5           Q     Okay. Do you know how it is that they  
6 mechanically operate? Do you know the speed in  
7 which they record?

8           A     No, I don't have that information.

9           Q     Okay. Did you attempt to try to get that  
10 information, the speed of which they record?

11          A     No, because I'm not familiar with the  
12 system on that technical a level. I spoke with  
13 their IT department and their network administrators  
14 to get a overall view of how the system operated.

15          Q     But did you ever ask them, tell me the  
16 speed?

17          A     The speed to the cameras?

18          Q     Yeah.

19          A     No, sir.

20          Q     The speed is a pretty important issue,  
21 correct?

22          A     It's -- it depends on what you're trying  
23 to find in the video, I suppose, but at the time for  
24 what I was viewing it did not come up as necessary  
25 information.

1           Q     Well, you're aware, are you not, that if  
2     you -- if a camera is recording at a particular  
3     speed and then you're trying to play that recording  
4     at a different speed, it could be a problem as far  
5     as accuracy?

6           A     Sir, that's a little bit above my  
7     technical knowledge, I think, sir. I'm not -- I  
8     don't understand exactly what you're asking me.

9           Q     Well, do you know at what speed you were  
10    playing the actual recorded video?

11          A     The -- it was played back by an embedded  
12    recorder that comes from Cobb when they made the  
13    copies --

14          Q     No, I'm not talking about that one --

15          A     -- so that I can't tell you.

16          Q     -- I'm talking about your report. When  
17    you got those thumb drives and you played it, at  
18    what speed are you playing those recordings?

19          A     It's going to be whatever speed the  
20    computer that you're playing it on defaults to.

21          Q     Did -- what software were you using in an  
22    effort to play that recorded --

23          A     When -- initially when I viewed the video,  
24    it was actually at Cobb's Theaters on their DVR  
25    monitors that were there.

1           Q     I'm talking about later on because what  
2 we're going to be playing here is what you got from  
3 the thumb drives; is that correct?

4           A     Yes, sir. What -- what I did with the  
5 thumb drives is I made an exact copy of those onto  
6 to portable hard drive and then copied those files  
7 onto DVD.

8           Q     Okay. But you don't know -- your computer  
9 that you're going to be using here today, you don't  
10 know at what speed it's playing that recorded video,  
11 correct?

12          A     That's correct, sir.

13          Q     And I believe you indicated to me earlier  
14 that you're using Windows Media Player; is that  
15 correct?

16          A     Yes, sir.

17          Q     Did you try to use any other software in  
18 order to play this video other than Windows Media  
19 Player?

20          A     The only other program I've used to view  
21 it would be VLC Media Player.

22          Q     VLC.

23          A     Yes, sir.

24          Q     Now, just a couple of issues concerning  
25 this infrared and this motion detector. Do you --

1 are you familiar with both of those issues?

2 A Generally, sir, yes.

3 Q Okay. And motion activated means that a  
4 camera is going to only start filming once there is  
5 some range of motion, correct?

6 A Correct. Once it senses motion, then  
7 the -- it would signal the DVR somehow to actually  
8 record for a period of time after that.

9 Q Do you know how much motion has to be  
10 present in order to activate the video camera to  
11 record?

12 A That I do not -- I don't know a way to  
13 quantify what the motion would be, no.

14 Q Did you ask anyone with Cobb Theater in  
15 their technical department to give you that  
16 information?

17 A No, sir. They simply told me that it was  
18 just activated by motion.

19 Q And so when you're recording via motion,  
20 they're going to be lapses in the continuation of  
21 that film, correct?

22 A There will be periods of time when the  
23 camera does not sense motion, that it will not  
24 record anything.

25 Q And so you're going to have events that

1 are going to be joined in presentation, but not  
2 necessarily joined in time, correct?

3 A Correct, sir. It plays -- when it plays  
4 back the information, it plays it in a steady -- one  
5 steady stream, obviously, instead of second by  
6 second.

7 Q And so the perception could be that this  
8 all happened in that time period, but in actuality  
9 it didn't.

10 A The -- there's an embedded timer that  
11 plays on the screen to let you know in relevance to  
12 the machine's clock what the time frame is, but  
13 correct, it doesn't -- like I said, it does play one  
14 smooth motion through. It doesn't stop at the end  
15 of each clip that was captured, if you were -- if  
16 you will.

17 Q And you were told that the timestamps on  
18 those particular cameras had some problems.

19 A The -- we were informed by the Cobb tech,  
20 the system administrator, that the times between  
21 some of the DVRs didn't match. And the reason that  
22 that was relevant because not all of the cameras are  
23 on one single DVR, because the number of cameras  
24 that are on the building, they're split between  
25 multiple machines.

1 MR. ESCOBAR: Thank you, Your Honor.

2 MR. MICHAELS: Judge, could we have a  
3 moment?

4 THE COURT: Yes.

5 MR. ESCOBAR: Your Honor, may I approach?

6 THE COURT: You may.

7 Q (By Mr. Escobar) Detective, I'm going to  
8 show you what's been marked as Defense Exhibit  
9 Number 4 --

10 A Yes, sir.

11 Q -- and ask you if you recognize that  
12 exhibit.

13 A Yes, sir. If I could open the box and  
14 look at it. It appears to be the drive that your  
15 office had given me to ask for copies.

16 Q Please, would you?

17 A Yes, sir. (Perusing Defense Exhibit 4.)

18 It does appear to be a drive of the same  
19 make and model as the one that your office had  
20 dropped off here for the copies, and the ones that I  
21 copied my video clips over to you.

22 Q Okay. And so what you're -- are you --  
23 what you're telling me today is that the clips that  
24 you were just talking about on direct examination,  
25 you used that Seagate external drive to copy that

1 information onto that drive.

2 A Yes, sir. I used the external drive that  
3 I copied the original thumb drive onto to then make  
4 the same copy onto that drive there.

5 Q Okay. In order for us to have a complete  
6 and full and accurate copy of what you had.

7 A Of all the video I had at that time, yes,  
8 sir.

9 Q And then you handed -- or Mr. Garcia  
10 handed this to me in court; is that correct?

11 A Yes, sir. Once the copy was complete, I  
12 dropped it off at his office for him.

13 MR. ESCOBAR: No further questions, Your  
14 Honor.

15 THE COURT: All right. All right. Now  
16 you can play the video if that was what you  
17 were seeking to do.

18 MR. GARCIA: Judge, with the Court's  
19 permission, I'd like to enter what's been  
20 previously marked as State's Exhibit O for  
21 identification in evidence as State's Exhibit  
22 Number 7.

23 THE COURT: All right. Any objection  
24 other than what was previously stated?

25 MR. ESCOBAR: No objection, Your Honor.

1 THE COURT: All right. It shall be  
2 admitted as State's 7.

3 MR. GARCIA: And likewise, Judge, with the  
4 Court's permission, I'd like to play it.

5 THE COURT: Okay. Do you know how to do  
6 that?

7 MR. GARCIA: I think Mr. --

8 THE COURT: You need him?

9 MR. GARCIA: Yes, sir.

10 THE COURT: All right. You can step  
11 down --

12 THE WITNESS: Can I step down, sir?

13 THE COURT: -- so you can play the video.

14 THE CLERK: Manny, is that an O or a D?

15 MR. GARCIA: I can't tell.

16 THE CLERK: It's a D.

17 MR. GARCIA: Is it a D?

18 THE CLERK: Yes, sir.

19 MR. GARCIA: It is a D?

20 THE COURT: It's a D, not an O.

21 MR. GARCIA: I stand corrected, Judge. I  
22 indicated to the Court it was State's Exhibit  
23 O. It's State Exhibit D --

24 THE COURT: Okay.

25 MR. GARCIA: -- for the record.



1 THE COURT: When you play this, it's going  
2 to appear on that screen?

3 THE WITNESS: Yes, sir. I'm going to turn  
4 the monitor on here and it will come up over  
5 there.

6 THE COURT: Okay.

7 MR. ESCOBAR: Your Honor, I would not be  
8 opposed to turning down the light. I think it  
9 would -- it would give us a better view of the  
10 video. We would certainly encourage that.

11 THE COURT: That's fine. Is there  
12 somebody that can accomplish that task?

13 MR. ESCOBAR: Probably --

14 THE COURT: You looking for those  
15 backlights there? There you go.

16 There's no sound to that -- to this video;  
17 is that correct?

18 THE WITNESS: Correct, sir. It's video  
19 only, no audio.

20 THE COURT: Okay.

21 MR. ESCOBAR: Your Honor, may I approach a  
22 little bit?

23 THE COURT: You may. Feel free to move  
24 wherever you need to to get the best view.

25 (Thereupon the video, State's Exhibit 7, was played

1 with no accompanying audio.)

2 THE COURT: All right. Could we bring the  
3 house lights up or is there further video?

4 THE WITNESS: What's that, sir?

5 THE COURT: Is there further video you  
6 intend to play?

7 THE WITNESS: That is all --

8 THE COURT: That's what's on that?

9 THE WITNESS: -- I was given, sir.

10 THE COURT: Okay. Do you have any further  
11 questions for this witness?

12 MR. GARCIA: Yes, Judge.

13 THE COURT: You may proceed.

14 MR. GARCIA: May it please the Court,  
15 counsel?

16 RESUMED DIRECT EXAMINATION

17 BY MR. GARCIA:

18 Q Detective Smith, if you would, please, can  
19 you share with us, do you know the height different  
20 between Row B and Row A?

21 A It's approximately ten inches between each  
22 floor height. There's two steps in between each one  
23 that are about five inches each.

24 Q Okay. All right.

25 MR. GARCIA: I don't have any further

1           questions of Detective Smith, Judge.

2           THE COURT: All right. Mr. Escobar, do  
3           you wish to inquire of this witness?

4           MR. ESCOBAR: I do.

5                       CROSS-EXAMINATION

6           BY MR. ESCOBAR:

7           Q     Detective, when you were given this  
8           assignment to go and search out this video, were you  
9           told by Detective Proctor to be looking for, you  
10          know, possibly a cell phone hitting Mr. Reeves aside  
11          the head?

12          A     When I first received the video, we just  
13          asked Cobb to give us snippets of any cameras that  
14          covered that angle. I have not done anything to try  
15          to enhance the video or examine any further  
16          different items in it at this point.

17          Q     Is -- is then your answer: No, Detective  
18          Proctor never asked you to try to look at the video  
19          for evidence of a phone coming across the video  
20          area?

21          A     He asked me to review it for evidence of  
22          how the event occurred. He did not specifically ask  
23          me to look for a phone.

24          Q     Okay. And so I would imagine one of the  
25          things that you would have found to be very helpful

1 would have been a program that would have allowed  
2 you to capture, frame by frame, that event, correct?

3 A No, sir. At our level we would probably  
4 have a certified lab or somebody that's more  
5 qualified to enhance the video, things like that  
6 because --

7 Q I'm not talking about enhancing. I'm just  
8 talking about frame-by-frame playing of that video.

9 A Yes, sir. And at my job-description  
10 level, I guess you would call it, I don't have  
11 access to software that does that.

12 Q You may not have access, but my question  
13 was: You would have liked to have done that to be  
14 able to see frame-by-frame, correct?

15 A No, sir. It has not come up so far in the  
16 investigation.

17 Q You would not have liked to have a  
18 frame-by-frame viewing of that video?

19 A It's the -- we watched the video as the  
20 incident occurred to see what's there. You can  
21 pause it at different places and look to analyze  
22 different things that you're looking at. The  
23 digital video, however, is not in a framed format, I  
24 guess is the most correct answer. It plays straight  
25 through. It's not like traditional film where you

1 have individual frames.

2 Q I understand that, but my question was  
3 simply, would you have liked to have had a  
4 frame-by-frame viewing of the video so that you  
5 could see it as best as you could?

6 A At this point of my ability to pause it on  
7 the computer and rewind and fast forward to where I  
8 want to see, then no, sir, I don't -- I haven't seen  
9 any benefit for doing it that way as opposed to just  
10 watching it on the media player.

11 Q Now, you indicated that you could stop  
12 it --

13 A Yes, sir.

14 Q -- at certain frames, correct?

15 A You can stop it at any point in time  
16 during the video. Not on a frame per se, because  
17 the frame doesn't exist, I guess.

18 Q Well, you could have stopped it at second  
19 marker twenty-four.

20 A Yes, sir.

21 Q And second marker twenty-five.

22 A Yes, sir.

23 Q And second marker twenty-six --

24 A Yes, sir.

25 Q -- correct?

1           A     Correct.

2           Q     Did you do that?

3           A     Yes, at many different times. I've  
4 watched the video multiple times and paused it and  
5 started again and rewound to look at different  
6 sections of the video, yes.

7           Q     Now, in addition to that video, you  
8 indicated that, I guess, you went in and examined  
9 the area of the -- of the incident?

10          A     Yes, sir. As crime scene detective, my  
11 general responsibility would be to just confer with  
12 the forensic investigators that are taking  
13 measurements, collecting evidence, photographing,  
14 help direct different things just to make sure, you  
15 know, certain things are documented, and just to  
16 be -- have an overall awareness of the items that  
17 are in the scene.

18          Q     And were you able to see a phone in the  
19 area of the incident?

20          A     Yes, sir, I did.

21          Q     And that phone was actually in Row A; was  
22 it not?

23          A     It was in the very top row of the theater.  
24 Unfortunately, the theater does not designate row,  
25 letters, numbers or seat numbers, but it would be in

1 the very top row next to the Cinebistro wall.

2 Q And that top row would be one that the  
3 seats have a six-foot wall behind them.

4 A Correct, sir.

5 Q And that would have been the same seat  
6 that Mr. Reeves was seated.

7 A In that same row, yes, sir.

8 Q And you saw the actual phone in that -- on  
9 the floor of that same seat, Mr. Reeves' seat.

10 A The phone was on the floor in front of  
11 that row. At that point in time when I saw it, I  
12 couldn't have told you exactly which seat Mr. Reeves  
13 was in.

14 Q Well, what about today?

15 A At this point, since there's no numbered  
16 seats, I can tell you where the phone was seen in  
17 our scene. I don't know which -- again, there's no  
18 designation of row and seat number, so I can't tell  
19 you, I guess, designated which seat it was, no, sir.

20 Q Well, it was important to you, was it not,  
21 to determine whether that phone was in front of or  
22 the floorboard in front of Mr. Reeves, correct?

23 A Through the witnesses' descriptions that  
24 were there, we felt it was probably within one seat  
25 one way or the other of the area, but I did not --

1 was not aware, at that time, of which exact seat he  
2 was in.

3 Q You didn't touch the phone?

4 A No, sir.

5 Q You made your -- sure that your group  
6 preserved the phone.

7 A Yes, sir. It's typical of any crime scene  
8 things were photographed and measured before they  
9 were collected, and then they were collected as  
10 evidence.

11 Q And your collection methods is in an  
12 effort to preserve that phone for all sorts of  
13 evidence that may be on it?

14 A Yes, sir.

15 Q DNA, fingerprints, what have you, correct?

16 A Anything we may attempt to gather in the  
17 future, yes, sir.

18 Q And certainly if that phone was thrown by  
19 Mr. Oulson at Mr. Reeves' head, you would want to  
20 preserve anything on that phone for evidence of it  
21 striking Mr. Reeves.

22 A And, sir, at the time we collect from a  
23 crime scene, we preserve it because we don't know  
24 what type of evidence might be on it, so we try to  
25 preserve everything we can for any future analysis,



1 yes.

2 Q Now, there at the scene were you given  
3 information concerning witness descriptions of what  
4 had taken place during the incident?

5 A Yes, sir.

6 Q And you were told that, in fact, there was  
7 an allegation that Mr. Reeves (sic) was throwing  
8 something at -- excuse me, Mr. Oulson was throwing  
9 something at Mr. Reeves.

10 A Yes, sir. The allegation I was aware of  
11 at that time was that he had thrown a bag full of  
12 popcorn.

13 Q Well, what was the allegation concerning  
14 the phone?

15 A There was none. At the time the phone was  
16 found on the floor, we did not know who the owner of  
17 it was. We did not know if it belonged to  
18 Mr. Reeves, Mr. Oulson or any of the other patrons  
19 that might have been there.

20 Q And so you didn't even know that there was  
21 an allegation by Mr. Reeves that Mr. Oulson had  
22 struck him on the head with a phone?

23 A I was made aware that he was alleged he  
24 had been struck by something, and that witnesses had  
25 said they saw a bag of popcorn thrown. And that.

1 was --

2 Q Had you -- had you been told that the  
3 allegation was that specifically he had been struck  
4 by a phone?

5 A No, sir.

6 MR. GARCIA: Judge, I'm going to object to  
7 the characterization in that question. And  
8 I -- again, Judge, I would remind the Court you  
9 heard the audiotape of Mr. Reeves. He says he  
10 may have been hit with a fist; he may have  
11 been hit with a phone. He doesn't know. So to  
12 state that he was hit with a phone is a  
13 mischaracterization of his taped interview.  
14 The last thing he said was he didn't know.

15 THE COURT: Overruled as to those  
16 objections. I use my own recollection as to  
17 what the evidence is.

18 You may continue, Mr. Escobar.

19 Q (By Mr. Escobar) Did -- did you do  
20 anything there at the scene to determine whether  
21 that phone had a screen light where, when you  
22 touched it, it lit up?

23 A No, sir. That time it was just simply  
24 collected and bagged. And the power button on the  
25 top of the phone was turned off. We don't do any --

1           Q     Why did you turn the power button on the  
2 phone off?

3           A     That's one of our steps in preserving  
4 electronic evidence because there are many  
5 applications out there that can interfere with, say,  
6 a phone that may be locked or remotely wiped of  
7 information, things like that. So we shut it off so  
8 that things like that can't happen and to preserve  
9 any of the electronic media that may be on it.

10          Q     When you shut that phone off and touched  
11 it, did the light go on?

12          A     No, sir. The light -- I, just being  
13 generally familiar with that model of phone, with  
14 the iPhone, when you push the button on the top,  
15 it's not part of the screen. You'll get the -- I  
16 think -- believe the Apple logo comes on, but I'm  
17 not the one that turned it off myself. So I can't  
18 tell you for sure what it displays when it turns  
19 off.

20          Q     Okay. And so your -- your experience with  
21 those phones is that the screen will light up when  
22 you touch the screen.

23          A     If you touch the screen or actually -- no,  
24 sir, if the screen is not on, it will not light up  
25 if you touch the screen, only if you push the --

1     what they call the home button or the circular  
2     button at the bottom or the button on the top of the  
3     phone, I believe.

4           Q     Okay. You know what model of iPhone that  
5     was?

6           A     I do not, sir. I do -- it was an Apple  
7     iPhone, but I don't know which designator it was at  
8     that point.

9           Q     Do you know what the weight of that phone  
10    was?

11          A     No, sir, I don't.

12          Q     And do you know the size of that phone?

13          A     No, sir.

14          Q     One -- one other question about the video  
15    that I think is somewhat important.

16                   The video appears to have some light to  
17    it, meaning it's not -- doesn't appear to have that  
18    dark theater atmosphere; is that correct?

19          A     As far as background lighting you mean,  
20    sir?

21          Q     Yeah. It looks -- you know, everything  
22    looks bright. It doesn't look like a dark theater.  
23    Is that because of the infrared night vision that it  
24    has?

25          A     It's a combination of the light that's

1 available, sir, because the -- inside the theater,  
2 the lighting is never completely off. They have the  
3 can lights in the ceiling that are on, but yes, also  
4 the infrared helps brighten up the image.

5 Q Because that infrared is almost equivalent  
6 to that night vision that many cameras possess,  
7 correct?

8 A I guess it depends on the type of camera,  
9 sir, but it is a projected infrared light from the  
10 cameras or from other sources that the lens can  
11 recognize that the human eye doesn't typically see.

12 Q So you can't tell this Court here that  
13 what you're seeing in the form of light on that  
14 video is, by any stretch of the imagination,  
15 accurate?

16 A It is accurate to the video, sir, not  
17 necessarily visible to the naked human eye at the  
18 time.

19 MR. ESCOBAR: No further questions.

20 THE COURT: All right. Thank you.

21 State, do you have any redirect for this  
22 witness?

23 MR. GARCIA: Just one -- one question,  
24 Judge.

25 THE COURT: Uh-huh.

## REDIRECT EXAMINATION

BY MR. GARCIA:

Q Detective Smith, there appears to be particles floating in the air on the video. Do you knew what those particles were?

A Yes, sir. I spoke with the Cobb technicians, and also after viewing the video I feel it was dust that was on top of the camera. When the shot was fired, the concussion inside of the closed room just caused the dust to fly in the air.

Q So essentially those are just dust particles that you see throughout the video.

A Yes, sir, dust that was dislodged after the shot was fired.

Q Okay.

MR. GARCIA: All right. Thank you, sir.

THE COURT: Thank you, Mr. Garcia.

Thank you, Detective Smith.

THE WITNESS: Thank you, sir.

THE COURT: You are excused.

MR. ESCOBAR: Your Honor, we'd like to reserve our right to recall him on -- on --

THE COURT: All right. Detective Smith, don't leave the building. Okay?

All right. State, do you have any further

1 witnesses you want the Court to hear from in  
2 this bond hearing?

3 MR. GARCIA: No, sir.

4 THE COURT: Is the victim going to make a  
5 statement today --

6 MR. LOUGHERY: No.

7 THE COURT: -- Mr. Grimaldi?

8 MR. GRIMALDI: No.

9 THE COURT: No statement?

10 MR. GRIMALDI: No.

11 THE COURT: Okay. Do you wish to call any  
12 rebuttal witnesses in this bond hearing?

13 MR. ESCOBAR: Judge, we have a couple  
14 things. Number one, we want the autopsy of  
15 Mr. Oulson introduced into evidence.

16 THE COURT: Do you have any objection,  
17 State?

18 MR. GARCIA: I do, Judge.

19 THE COURT: Okay. Do you have a witness  
20 that you're going to call for the autopsy to be  
21 introduced?

22 MR. ESCOBAR: Your Honor, as the Court --  
23 we just got this voluminous discovery and we  
24 have not -- we just spoke to our expert last  
25 night concerning certain aspects of this.

1           This is an *Arthur* Hearing where hearsay is  
2 allowed. It's also a bond hearing where the  
3 rules of evidence are relaxed.

4           THE COURT: Absolutely, but don't I need a  
5 witness for this?

6           MR. ESCOBAR: I don't believe you do, Your  
7 Honor. I believe that under an *Arthur* Hearing,  
8 just like they had a -- a out-of-court hearsay  
9 affidavit with numerous witnesses saying  
10 numerous things in that affidavit at the  
11 initial hearing, and they used that in the  
12 *Arthur* hearing to show presumption of great  
13 proof evident.

14           We have the ability as well. This is  
15 the -- this is the government's Medical  
16 Examiner that actually authored, you know, this  
17 particular report. It's an important report  
18 because it suggests, Your Honor, that the  
19 victim --

20           THE COURT: Wait, don't tell me that yet.  
21 Let's -- let's stay with whether I'm going to  
22 admit it before you try and tell me what's in  
23 it.

24           The copy that you have, is there an  
25 affidavit of authenticity that came with it?



1 MR. ESCOBAR: It's actually signed, Your  
2 Honor, by the Medical Examiner in the very  
3 front. And it talks about his actual findings.

4 THE COURT: All right. Now, if you are  
5 going to introduce that, you're going to  
6 introduce that for me to review it without the  
7 assistance of any interpretation by any  
8 witness?

9 MR. ESCOBAR: That's what --

10 THE COURT: That's what you want.

11 MR. ESCOBAR: It's self-explanatory, Your  
12 Honor.

13 THE COURT: Okay. State, do you have any  
14 objection to me receiving the autopsy report  
15 authored by the Medical Examiner of the sixth  
16 judicial circuit or one of the assistant  
17 medical examiners?

18 MR. GARCIA: No, I don't have an objection  
19 to that, Judge. I do have an objection to  
20 Mr. Escobar making arguments based upon the  
21 autopsy because you would need an expert in  
22 order to give these findings, Judge, and  
23 explain the findings.

24 THE COURT: All right. Well, it's one  
25 thing to introduce it. It's another thing

1           that -- the argument that's going to flow from  
2           it.

3           As far as autopsies and autopsy reports,  
4           I've seen a lot of them. So if he's going to  
5           be arguing to me, I understand what's  
6           conclusion and what's the facts set out in the  
7           autopsy.

8           Is it your intention to tell me that I  
9           should draw some conclusions that I'd need a  
10          Medical Examiner to explain to me, or you just  
11          want me to read the report and take the -- the  
12          words on the page?

13          MR. ESCOBAR: Take the words on the page.

14          THE COURT: You want the words on the  
15          page.

16          Is there any reason I shouldn't read the  
17          words on the page, Mr. Garcia?

18          MR. GARCIA: No, sir. No, sir.

19          THE COURT: All right. I'll accept it  
20          into evidence as Defense -- we're on 3 for  
21          the -- 4 for the Defense, right?

22          MR. ESCOBAR: Five, I believe.

23          THE COURT: Five? Five. You haven't  
24          moved -- you haven't moved the C-8 in yet.

25          MR. ESCOBAR: It may, Your Honor, at some

1 point in time, come in.

2 THE COURT: Well, then this is 4.

3 MR. ESCOBAR: Four?

4 THE COURT: And it's in line. It will be  
5 if it gets in.

6 MR. ESCOBAR: Your Honor, we would  
7 introduce the medical -- excuse me, let me show  
8 it to them and make sure that --

9 MR. GARCIA: I have it.

10 THE COURT: Okay. You're good?

11 MR. GARCIA: Yeah.

12 THE COURT: All right. Well, let me read  
13 it, then. This will be now 4 in evidence.  
14 Give me a moment to review it. And then -- are  
15 you going to have any witnesses you're going to  
16 want to call?

17 MR. ESCOBAR: I am, Your Honor.

18 THE COURT: Okay.

19 MR. ESCOBAR: And we're going to need to  
20 set up maybe three -- we've got all of our  
21 equipment there. We just got to bring it  
22 forward. And my witness is outside.

23 THE COURT: All right. We'll start  
24 getting it set up, get your witness on deck and  
25 let me read this.

1 State, is there any personal information  
2 that needs to be redacted here?

3 The victim's representative is present.  
4 Why don't you let Mr. Grimaldi take a look at  
5 it and see if there's any personal information  
6 that he wants redacted. I'm not seeing  
7 anything that's jumping out at me immediately,  
8 but my expectation is that given the medical  
9 nature of it, there may be.

10 MR. MICHAELS: Just so the Court knows --

11 THE COURT: Yeah.

12 MR. MICHAELS: -- that gentleman helping  
13 Mr. Escobar set up is the next witness.

14 THE COURT: Okay. That's fine. Thank  
15 you.

16 MR. GARCIA: Judge, we would ask that any  
17 personal information about Mr. Oulson be  
18 redacted from the autopsy report.

19 THE COURT: All right. What I'll do is  
20 I'll -- I'll introduce two autopsy reports.  
21 I'll put one is as Defense Exhibit 4 and that  
22 will be redacted, and then I'll put an original  
23 copy in. I'll order that to be sealed. And  
24 I'll call it Court's Exhibit 1.

25 If you could please highlight on yours

1           what you want redacted specifically, then  
2           before anybody else gets their hands on it,  
3           I'll consult with Mr. Escobar and we'll see  
4           what needs to be redacted. Perhaps y'all could  
5           agree and then -- then we'll mark one and seal  
6           the other.

7           MR. GARCIA: Judge, I -- I know that you  
8           are reading the autopsy report, but one of the  
9           issues that we need to address is that the  
10          State of Florida has never had an opportunity  
11          to view this video. I think just as the  
12          Defense has had opportunities to view videos, I  
13          think we should be likewise given a courtesy to  
14          view this to see what's being presented.

15          THE COURT: Any reason they shouldn't get  
16          to see it, also?

17          MR. ESCOBAR: Judge, it's their hard  
18          drive, but I -- I'm fine with that. We  
19          didn't -- we didn't take video from any other  
20          source. We took it from this hard drive that  
21          they downloaded the video. And it's actually  
22          the same left side that -- but I'll be more  
23          than glad to play it for them. If you want to  
24          do it, you know, quickly, we can do it right up  
25          there.

1 THE COURT: I'm thinking they're probably  
2 going to want to see it in private before  
3 it's --

4 MR. GARCIA: Yes.

5 THE COURT: -- viewed by everyone.

6 MRS. SUMNER: Yeah.

7 THE COURT: I'm thinking the only way  
8 that's going to happen is if I clear this room.  
9 So it sound like we're going to take a  
10 ten-minute recess.

11 MR. ESCOBAR: Your Honor, we can also take  
12 the laptop --

13 THE COURT: Yeah.

14 MR. ESCOBAR: -- and bring it to Your  
15 Honor. We can do it that way as well. Doesn't  
16 have to be --

17 THE COURT: I don't need to see it first;  
18 they want to see it first.

19 MR. ESCOBAR: Whatever the Court's  
20 pleasure.

21 MR. LOUGHERY: We don't mind looking at it  
22 off a laptop, Judge.

23 THE COURT: Is it the same on the laptop  
24 as it is on the HP projector?

25 MR. ESCOBAR: Uh-huh.

1 THE COURT: All right. Just show it to  
2 him on the laptop. He can come up and see it  
3 up here.

4 MR. ESCOBAR: Do you need these?

5 THE COURT: How long do you anticipate  
6 this witness will take?

7 MR. ESCOBAR: Your Honor, not long at all.  
8 I'd say 20, 25 minutes.

9 THE COURT: Okay, good.

10 MR. LOUGHERY: Judge, can Mr. Grimaldi  
11 come up as well?

12 THE COURT: Yes.

13 (State-Defense conference.)

14 THE COURT: Everybody can hear you, just  
15 so you know.

16 (Pause in proceedings.)

17 THE COURT: Okay. State, you ready to  
18 proceed?

19 MR. GARCIA: Yes, sir.

20 THE COURT: All right. You know what? I  
21 haven't sworn this witness in. Stand up and  
22 raise your right hand, please.

23

24

25

1 THEREUPON,

2 NICHOLAS SACCO,  
3 the witness herein, was placed under oath.

4 THE COURT: Have a seat.

5 You may inquire.

6 DIRECT EXAMINATION

7 BY MR. ESCOBAR:

8 Q Please state your full name for the record.

9 A Nicholas Sacco.

10 Q And Mr. Sacco, tell us a little bit about  
11 your educational background.

12 A I was -- I went to school for general  
13 business at University of South Florida, graduated  
14 in 2007. And then -- did you want --

15 Q Employment?

16 A -- employment?

17 Q Yes.

18 A I work for currently Trial Exhibits. It's  
19 in Tampa, Florida.

20 Q What is Trial Exhibits?

21 A It's a trial consulting company. We do  
22 mainly electronic portions of trials. We'll do  
23 video editing; we'll do animations; we'll do medical  
24 illustrations and the like.

25 Q Okay. And how long have you been doing



1 that?

2 A I've been with them for the past two  
3 years, and I worked with them previously for about a  
4 year before that, and then did some freelance on my  
5 own.

6 Q I'm going to show you --

7 MR. ESCOBAR: May I approach, Your Honor?

8 THE COURT: You may.

9 Q (By Mr. Escobar) I'm going to show you  
10 what's been marked as Defendant's Exhibit -- this  
11 would be, I think, now --

12 THE COURT: Now it's 5.

13 Q (By Mr. Escobar) -- 5, and ask you to  
14 take a look at that exhibit and see if you recognize  
15 it.

16 A Yes, I do.

17 Q What is that an exhibit of?

18 A This is the hard drive that I received  
19 from your office, which had the files from the State  
20 Attorney's office.

21 Q Okay. And can you tell me what it is that  
22 you did with that particular exhibit once you  
23 received it?

24 A Once I received it, I opened the package  
25 and I hooked it up to my computer as I would any

1 other hard drive.

2 Q And what was the purpose of hooking it up  
3 to your computer?

4 A To get the file, the appropriate file that  
5 would have the video that we are looking at today.

6 Q Okay. And can you tell me what file you  
7 searched and what file you found within that hard  
8 drive?

9 A Within that hard drive I found what was  
10 called "Theater ten left side." It was within the  
11 Cobb Theater video files underneath the subcategory  
12 "Cobb full video."

13 Q Okay. And what did you do once you -- you  
14 found that particular file?

15 A Once I located the file, it's an EXE file,  
16 which means it's an audio executable. I opened  
17 that. And what it does is within Windows, it  
18 creates the -- it finds the video file that's within  
19 that and it saves it to the Windows temporary  
20 folder.

21 Q Okay. And did you do that to save that  
22 particular file --

23 A Yes --

24 Q -- to a Windows temporary folder?

25 A -- I did.

1           Q     And in what computer did it save that  
2 file?

3           A     In this one right here (indicating).

4           Q     Okay. And so once it was saved in that  
5 computer, tell me what were your -- what your next  
6 step was.

7           A     The next step from there, I took that AVI  
8 file that was within that executable. And I  
9 converted that to an mp4, which then allows me to  
10 make the clips that I needed for that.

11          Q     This process that you're doing in  
12 downloading and then converting, does that in any  
13 way alter the video that we're about to look at here  
14 in the next few minutes?

15          A     No, it doesn't.

16          Q     Okay. And so once you were able to do  
17 that, tell me what your next step in the process  
18 was.

19          A     The next step in the process, I brought it  
20 into my video editing program, which allowed me to  
21 take the one point in time to another portion in  
22 time in the video and make the appropriate clips  
23 that I needed to.

24          Q     Okay. And so you were going to preserve  
25 the entirety of that particular clip as well as try

1 to have individual clips of an event?

2 A Yes.

3 Q Okay. And does that process in any way  
4 alter the video itself?

5 A No, it doesn't.

6 Q Okay. You're just doing -- viewing  
7 clip-by-clip in one of these particular segments,  
8 correct?

9 A Yes.

10 Q Okay. What was your next step?

11 A From there I brought it into a video  
12 player program, which I knew allowed me to be able  
13 to step through the available frames as well as loop  
14 the segment that I have.

15 Q Now, you -- you were under the  
16 understanding that it was being viewed by the  
17 government under just the regular Windows Media  
18 Player; is that correct?

19 A Yes.

20 Q Okay. And did you try to view it in that  
21 particular player versus a player that your -- you  
22 just discussed?

23 A I did.

24 Q Okay. And when you viewed it under the  
25 Windows Media Player, was it the exact same video

1 that you viewed on this other program?

2 A Well, in fact, when I initially opened it  
3 through the default player, it had -- it was, like,  
4 a black and white. It looked different from the --  
5 the one we received as the -- their video.

6 MR. GARCIA: Judge, if I may, I would like  
7 to have an opportunity to voir dire this  
8 witness.

9 THE COURT: All right. I want to let him  
10 finish trying to put in his foundation first.  
11 And once he's finished his foundation, when he  
12 goes to proffer it, I'll allow you to voir  
13 dire.

14 MR. GARCIA: Thank you.

15 Q (By Mr. Escobar) Let's -- let's explain  
16 to the Court the differences in the viewing of that  
17 video in a Windows Media Player versus the software  
18 that you chose to use?

19 A My knowledge told me that it was playing  
20 it improperly. When I played it in the other --  
21 which is actually Windows Media Player Classic,  
22 it -- it played it identical to the -- the other  
23 video I had received.

24 Q Okay. And so initially you played it on  
25 the Windows Media Player that was provided within

1 the hard drive itself.

2 A Correct.

3 Q Then you played it within the Windows  
4 Media Player Classic, which is the same company,  
5 just an upgraded version of it?

6 A Yeah. It has usually different Codecs  
7 that will play more different types of files.

8 Q Okay. And then you viewed that Window  
9 Media Classic with the video software that you used  
10 and they were identical.

11 A Correct.

12 Q Okay. And the only difference between the  
13 non-classic and the software that you used was just  
14 a clarity issue.

15 A It was playing improperly and I could see  
16 that it was now working.

17 Q Okay. Now, in addition to that process,  
18 did you do anything else in reference to -- and I'm  
19 going to show you --

20 MR. ESCOBAR: If I can approach, Your  
21 Honor.

22 THE COURT: You may.

23 Q (By Mr. Escobar) I'm going to show you  
24 what's been marked as Defense Exhibit Number 6.

25 I'm going to show you what's been marked

1 as Defense Exhibit Number 6 and tell me if you  
2 recognize that composite exhibit.

3 A Yes.

4 Q What is that composite exhibit?

5 A These are the copies of the disk that I  
6 had made. After I made the clips and made the  
7 files, I burnt them onto disks.

8 Q Okay. And did you get to view those as  
9 compared to the downloaded ones that you had in the  
10 computer?

11 A Yes.

12 Q And were they one in the same?

13 A They, they are identical.

14 Q I believe that you had an opportunity,  
15 also, to view a disk that was provided by the State  
16 Attorney's office; is that correct?

17 A Yes.

18 Q Okay. And did you compare that particular  
19 disk --

20 MR. ESCOBAR: Your Honor, we're going to  
21 mark this, but we're going to have to be very  
22 careful how we mark it, as Defense Exhibit  
23 Number 7.

24 THE COURT: Do you have a sleeve for it?

25 MR. ESCOBAR: He have that sleeve only,

1 Your Honor, but if we can -- I can -- I can --

2 THE COURT: I got extra sleeves in my  
3 office. Actually, we have a tech person here.  
4 Do we have extra sleeves that we can secure?

5 MR. ESCOBAR: I can also mark it --

6 THE COURT: No, let's not write on it.  
7 We'll get -- we'll get a sleeve.

8 MR. ESCOBAR: Okay.

9 THE COURT: All right? The sleeve will be  
10 here in a minute. So that's the one that's  
11 going to become 7?

12 MR. ESCOBAR: Seven.

13 THE COURT: Okay. I don't think you have  
14 to wait for the sleeve, do you?

15 MR. ESCOBAR: Okay.

16 THE COURT: Yeah, you can --

17 Q (By Mr. Escobar) In -- in reviewing this  
18 particular -- which will be Number 7, Defense  
19 Exhibit Number 7, did you compare that particular  
20 disk to the other disks and the hard drive that you  
21 can download?

22 A Yes.

23 Q Were they all one and the same video?

24 A Yes, for the most part. This one was --  
25 it appeared that it was screen captured which,



1 'again, wouldn't do anything different. It would  
2 just be a different approach to getting the video  
3 playable in a different media player.

4 Q Okay.

5 MR. ESCOBAR: I tender the witness.

6 THE COURT: Okay.

7 MR. GARCIA: May it please the Court,  
8 Judge, counsel?

9 VOIR DIRE DIRECT EXAMINATION

10 BY MR. GARCIA:

11 Q Is it Mr. Saga? Am I pronouncing that --

12 A Sacco.

13 Q -- correct? I'm sorry?

14 A It's Sacco.

15 Q Sacco? Can you spell that for me, please.

16 A S-A-C-C-O.

17 Q Sacco. Okay. Thank you, Mr. Sacco.

18 You indicated that you have a general  
19 business degree from the University of South  
20 Florida?

21 A Correct.

22 Q And you said you graduated there in 2007?

23 A That's correct.

24 Q Do you have any formalized training in  
25 computer forensics?

1           A     No.

2           Q     Have you ever attended any type of  
3 computer forensic classes?

4           A     No.

5           Q     Do you have a degree in computer  
6 forensics?

7           A     I do not.

8           Q     You have a Master's degree in computer  
9 forensics?

10          A     No.

11          Q     You have a Ph.D?

12          A     No.

13          Q     Have you ever taught in the field of  
14 computer forensics?

15          A     I haven't.

16          Q     Have you ever been published in the field?

17          A     No.

18          Q     Have you ever been qualified in the state  
19 of Florida as an expert in computer forensics?

20          A     No, I haven't.

21          Q     Have you ever been qualified in any other  
22 state other than Florida as an expert in computer  
23 forensics?

24          A     No.

25          Q     What training and education do you feel

1 that you have to come in here and testify as to  
2 these videos and whether or not they're playing  
3 properly or not?

4 A Just that it's an identical copy from one  
5 to the other. And that all that was done was  
6 literally just taking out the segments and the  
7 portions that we are looking at today.

8 Q Okay. But did you not testify earlier  
9 that "My knowledge told me that one of the videos  
10 was not -- was playing improperly"?

11 A Yes.

12 Q What is that based on?

13 A That's just based on my experience in  
14 dealing with video and --

15 Q Okay. But what experience do you have  
16 that would allow you to come in here and comment on  
17 these things? That --

18 A Just --

19 Q -- that's -- I'm sorry?

20 A Just general experience with working  
21 video.

22 Q Well, what do you mean by "general  
23 experience," though? Tell us about it.

24 A Well, video is something that I work with  
25 not on a daily basis, but, you know, it's a

1 secondary part of my job.

2 Q So you would agree with me that you're not  
3 an expert in computer forensics?

4 A That's true.

5 Q And you had no formalized training in  
6 computer forensics?

7 A No.

8 Q So, again, maybe I'm missing something.  
9 Tell us here what, in your background, would allow  
10 you to come in here and testify about these videos  
11 and whether they're playing properly and improperly?

12 A Just that -- well, one video that I had to  
13 compare to was the -- this one here as well as --  
14 this, when it was played from its default player,  
15 played it one way. And I knew that when it opened  
16 in the default Windows Media Player that it looked  
17 different to me.

18 Q Okay. But just because it looks  
19 different, does that mean that it's not playing  
20 properly?

21 A No, that doesn't mean that.

22 Q So how -- how is it that you're -- you're  
23 basing opinion -- an opinion or you're rendering an  
24 opinion to this Court that one of the videos was  
25 playing improperly.

1 I want to know based upon what are you  
2 telling Judge Siracusa --

3 MR. ESCOBAR: Judge, I'm going to object  
4 to his raising his voice.

5 THE COURT: Overruled. It's just -- it's  
6 okay. Keep going.

7 Q (By Mr. Garcia) -- that that video is  
8 playing improperly? And I apologize. I didn't mean  
9 to raise my voice at you.

10 But what is it in your background or your  
11 training that you're relying upon to tell this judge  
12 that that video is playing improperly?

13 A Just past experience that --

14 Q Okay.

15 A -- nothing in --

16 Q But you keep saying that.

17 A -- maybe not -- well --

18 Q Tell me what that past experience is.

19 Share with all of us what that past experience is.

20 A Just playing a video and knowing that it's  
21 not -- something looks wrong about it. When you  
22 play a movie, for example --

23 Q Well, I mean is there anything other that  
24 you play a movie and it appears that it's not  
25 playing properly?

1 A No.

2 Q What in your education and training are  
3 you basing this opinion on?

4 A Dealing with many different file types and  
5 trying to open them and convert them to different  
6 files.

7 Q Okay. You would agree with me, would you  
8 not, that any person that opens files and tries to  
9 transfer files could do exactly what you're doing,  
10 correct?

11 A Yes, I agree.

12 Q Right?

13 A Yes.

14 Q So you're not planning to be an expert in  
15 computer forensics?

16 A No, I'm not.

17 MR. GARCIA: Judge, I -- I'm going to  
18 object to his testimony. I don't see how he's  
19 qualified to start testifying as to this video  
20 is playing improperly. He has no formal  
21 background, no formal training. He has a  
22 general business from the University of South  
23 Florida.

24 He's not -- he doesn't have any degrees in  
25 computer forensics. He doesn't have a Master's

1 degree, a Ph.D. He's never taught, never been  
2 an expert.

3 I'm objecting, Judge. He's not qualified  
4 to render an opinion to this Court.

5 THE COURT: All right. Response?

6 MR. ESCOBAR: Yes, Your Honor.

7 He doesn't have to be a computer forensics  
8 because he's not changing the video at all.  
9 All he's doing is copying the video and then he  
10 is -- he has taken out a segment of that video  
11 and he's isolated that segment. That is all  
12 he's done.

13 He hasn't changed the video itself; he  
14 hasn't enhanced the video itself. It's merely  
15 a copying of that video and using different  
16 software that allows him to segment that  
17 particular section.

18 And when the Court sees it, you will see  
19 it's the exact same video, not altered in any  
20 way, but he's able to segment a very important  
21 section of that video for the Defense.

22 THE COURT: All right.

23 MR. GARCIA: Judge, may I respond briefly?

24 He indicated that he changed one of the  
25 videos to an mp4. He is changing formats.

1 THE COURT: Yeah.

2 MR. GARCIA: He is -- they're going to  
3 want this Court to rely upon this witness's  
4 testimony as to these videos when clearly he's  
5 not qualified to. And he's going to say, well,  
6 this was playing improperly.

7 THE COURT: Well, he already said that.

8 MR. GARCIA: Judge, I'm asking this Court  
9 to deny his testimony, Judge. He is nowhere --  
10 anywhere near being an expert in computer  
11 forensics.

12 If you're going to have somebody come in  
13 here and start talking about videos and whether  
14 they're playing properly or not playing  
15 properly and whether they were downloaded  
16 properly, you need somebody that's qualified,  
17 and clearly Mr. Sacco is not.

18 THE COURT: Well, if I'm hearing you  
19 correctly, Mr. Escobar, you're not asking me to  
20 treat him as an expert, are you?

21 MR. ESCOBAR: Absolutely not.

22 THE COURT: So you don't want me to take  
23 into consideration his opinion on the video?

24 MR. ESCOBAR: No. He's not going to give  
25 an opinion on the video.



1 THE COURT: Well, he said it was playing  
2 improperly.

3 MR. ESCOBAR: Well, and that's why he used  
4 another software because that software gave it  
5 a clear view. And that software actually  
6 allowed him to segment a certain section that  
7 you can actually even see in the government's  
8 disk, but not as clearly because they were  
9 using an outdated media player.

10 In fact, his testimony was very clear, if  
11 you had used the Media Player Classic, which  
12 was an upgraded media player, you would have  
13 been able to see the same thing that he is  
14 showing in this software. That was his  
15 testimony.

16 THE COURT: Well, let's -- let's back it  
17 up and cut through the use of the word. When  
18 you say "improperly," you just mean that it  
19 wasn't the most sufficient way to view it?

20 THE WITNESS: Correct.

21 THE COURT: Improperly doesn't mean that  
22 it was wrong or bad, just it wasn't optimal,  
23 right?

24 THE WITNESS: Well, it didn't -- it  
25 didn't -- it didn't appear to be playing the

1 file as it is intended.

2 THE COURT: As intended? All right.

3 MR. GARCIA: Judge --

4 THE COURT: Could you see it more -- could  
5 you see it more clearly in the other -- in the  
6 other file that you transferred it to?

7 THE WITNESS: I think "clearly" is a bad  
8 word. I don't feel --

9 THE COURT: I don't know because I haven't  
10 seen it yet. Y'all have; I haven't.

11 MR. GARCIA: Judge, again, I reiterate, he  
12 is not qualified to render these opinions and  
13 give this testimony.

14 THE COURT: I'm not concerned as much with  
15 his opinion. I'm not -- I'm not going to  
16 consider that. I think Mr. Escobar wants me to  
17 consider the video.

18 Is there a reason I shouldn't see the  
19 video?

20 MR. GARCIA: Yes, Judge, because he is  
21 downloading and changing formats that this  
22 witness is indicating it's better. Better to  
23 whom is the question, Judge. Like I said, he's  
24 not an expert witness, so why would the Court  
25 rely upon him testifying well, it's better in

1           this format as opposed to this format?

2           THE COURT: All right. Well, we've been  
3 going for an hour. So what I'm thinking I'm  
4 going to do is take a break. And I'll let you  
5 each give me a pitch as to why I should or  
6 shouldn't see it in the format that it's set  
7 versus the format that we originally watched it  
8 in, because I don't know why that format is any  
9 better than this format. And I'm going to go  
10 see if there's any -- what Professor Ehrhardt  
11 has to say about this.

12           So we'll -- we'll take a ten-minute  
13 recess.

14 (Recess.)

15           THE COURT: All right. Before I rule, any  
16 further argument? Anything you found while --  
17 while I was out looking?

18           MR. GARCIA: Judge, the only thing that I  
19 would cite the Court to is 701 and 702 as far  
20 as testimony of experts, specifically 702.

21           THE COURT: All right. Let's take a look.

22           MR. GARCIA: Again, I would reiterate to  
23 the Court, Judge, he is not qualified to render  
24 an opinion.

25           THE COURT: Say that I disregard what he

1       has said that seems to be an opinion. Is there  
2       any reason I shouldn't look at the modification  
3       that he's done on the video if I disregard  
4       that?

5               MR. GARCIA: Yes, Judge, because he's --  
6       he is changing the evidence. He's putting the  
7       evidence in a loop, so to speak. They want you  
8       to look at evidence that has been placed in a  
9       loop that keeps playing, like, over and over  
10      again. He's changing or altering that  
11      evidence, Judge.

12             THE COURT: Isn't that just the same  
13      evidence slowed down and put in a loop?

14             MR. GARCIA: Essentially, Judge, from a  
15      person whom is not qualified to do. I mean no  
16      disrespect to him, Judge, but he is no more  
17      qualified than Mr. Smith comes off the street  
18      and comes in here and says, "I have a basic  
19      knowledge of computers and how they work."  
20      Essentially, Judge, that's what it boils down  
21      to.

22             THE COURT: All right. Anything you want  
23      to add before I rule, Mr. Escobar?

24             MR. ESCOBAR: Yes, I do, Your Honor. He's  
25      not doing anything to alter the film itself.

1 All he is doing, at this point in time, is two  
2 things.

3 Number one, he's using a different media  
4 player to view. And I -- I think that even in  
5 chambers when we had discussions, one of the  
6 questions was: Well, what does this play on?  
7 What media players will this play on?

8 He chose a particular media player because  
9 of the fact that is he able to actually stop  
10 certain segments and view those segments in  
11 isolation.

12 He's testified that that doesn't change  
13 the film itself. It's no different than  
14 someone getting a photo and replicating it and  
15 saying, yep, this photo looks like this photo,  
16 which he has the ability to do. You don't need  
17 to be a forensic computer specialist in order  
18 to do that.

19 We've laid the proper predicate. When I  
20 look at Ehrhardt, certainly it -- we've laid  
21 the proper predicate, according to Ehrhardt.  
22 And, if anything, they can argue as to the  
23 weight of it, but I think when you see both  
24 videos, they're going to be identical.

25 THE COURT: Well, if they're going to be

1 identical, why do I need to see the second one?

2 MR. ESCOBAR: Because of the fact that he  
3 has the ability to actually focus on a very  
4 important part for the Defense; and that is  
5 Mr. Oulson throwing that phone at his head.  
6 And our video shows exactly that. It not only  
7 shows throwing the video (sic) at his head, it  
8 shows the video (sic) bouncing off and hitting  
9 the floor.

10 THE COURT: It shows the video (sic)  
11 hitting the floor -- the phone hitting the  
12 floor.

13 MR. ESCOBAR: You actually see the light,  
14 the light of the video (sic) coming towards his  
15 head, then going down, and then all the way  
16 down to the floor, absolutely.

17 MR. GARCIA: Judge, and that's my point.  
18 Who is going to testify that that light or that  
19 flash of light is a phone?

20 THE COURT: I don't know.

21 MR. ESCOBAR: It's circumstantial evidence  
22 just like -- just like their presentation of  
23 other evidence, Your Honor.

24 THE COURT: All right. I'll tell you  
25 what. I'll watch it.

1           Here's what -- here's what my ruling is  
2           going to be on why I'm going to watch it. I  
3           have a DVD player and a blu ray player at home.  
4           I don't need Stephen Hawkings and Steve Jobs to  
5           come to my house to hook up those two things,  
6           and take a disk from one and put it in the  
7           other. I get a better quality video if I look  
8           at it in the blu ray than I do in the regular  
9           video player. It's the same disk. It's just a  
10          better machine.

11                 If he's saying that he found a better  
12          piece of software -- there's lots of software  
13          out there.

14                 MR. GARCIA: But --

15                 THE COURT: It's a -- it's a function of  
16          being young to know that there's lots of  
17          software out there that you can load off the  
18          internet for 60 bucks and -- and look at stuff.  
19          If it's the same form -- I'm sorry, if it's the  
20          same program and the same -- or the same file  
21          in a different program, it doesn't change it.

22                 And I'm not a jury. I'm -- I'll -- I'll  
23          look at it. And this isn't a jury trial, this  
24          is just a bond hearing. You want proof evident  
25          presumption great, he has every chance to

1           confront the evidence and put it in a blu ray  
2           player instead of a DVD player if he wants.

3           MR. GARCIA: Judge, may I question  
4           Mr. Sacco on one other point, then --

5           THE COURT: Sure.

6           MR. GARCIA: -- as far as voir dire goes?

7           Q     (By Mr. Garcia) Mr. Sacco, you indicated  
8           that the type of software you used was the most  
9           updated version in order to view this. I think you  
10          said it was Media Player Classic.

11          A     That's the correct software, yes.

12          Q     And you're saying that's the most advanced  
13          software in 2014 that you could view this on?

14          A     No.

15          THE COURT: No. That wasn't what he was  
16          saying, though.

17          MR. GARCIA: Well, I'm -- I'm asking him  
18          that.

19          THE COURT: Yeah.

20          A     No. I don't know that for sure.

21          Q     (By Mr. Garcia) Okay. Do you know that  
22          the Media Player Classic was released May 29th of  
23          2003?

24          MR. ESCOBAR: Judge, he's answered that  
25          question.



1           A     It sounds correct.

2           MR. GARCIA: Judge -- this is a separate  
3 question, Judge.

4           THE COURT: Overruled. And I don't think  
5 he said that either.

6           Did you ultimately watch this on Classic  
7 or did you put it in something else?

8           THE WITNESS: Ultimately, it would be  
9 played in Classic.

10          THE COURT: It would be played in Classic.  
11 Okay. Continue.

12          Q     (By Mr. Garcia) All right. So are you  
13 aware of the fact that Media Player Classic, the  
14 initial release was May 29th of 2003 --

15          A     That sounds --

16          Q     -- eleven years ago?

17          A     That sounds correct.

18          Q     Okay. Is that what you were watching this  
19 in?

20          A     Yes.

21          Q     And you're saying that's the most advanced  
22 version that you could apply to this?

23          A     I'm not saying that.

24          MR. ESCOBAR: Judge, objection. He didn't  
25 say that.

1           THE COURT: Overruled. And Mr. Escobar,  
2           I'm listening to the question and the answer.  
3           I promise, I'm listening to all this stuff.  
4           All right?

5           You may continue.

6           Q     (By Mr. Garcia) Is there other technology  
7           that is far more advanced than Media Player Classic  
8           from 2003 in order to view this?

9           A     It's very possible.

10          Q     Well, I'm asking you. You're the one that  
11          knows -- has all this knowledge about computers.

12          A     I'm sure there's other ones out there.  
13          This -- this one in particular had a few features  
14          that are -- were very helpful in playing this video  
15          the way --

16          Q     Okay. You couldn't find any from 2013 or  
17          2014?

18          A     It didn't matter to me, the year.

19          Q     Okay.

20          A     That one I -- that one worked and was  
21          good.

22          Q     So if I understand you correctly, you're  
23          relying upon technology that came out eleven years  
24          ago?

25          A     That's also been updated and it's --

1 Q When was it updated? Tell us.

2 A I don't know that for sure.

3 MR. GARCIA: Judge, I -- again, I would  
4 renew my objections. He's not qualified. He's  
5 not qualified to change the videos; he's not  
6 qualified to -- to tamper, whatever you want to  
7 call it, Judge, put it in a loop. He's not  
8 qualified to do this, Judge. I think it's  
9 misleading the Court.

10 THE COURT: All right. I think --

11 MR. LOUGHERY: Judge, if I might.

12 I understand what the Court's doing and  
13 that's -- that's fine. The problem is, that --  
14 that -- there's a lot more -- there's a lot  
15 more to do in this case.

16 And it's bothersome that there's not been  
17 reciprocal discovery. We're seeing this for  
18 the first time after the Court has said, give  
19 him the tape before we even filed a charge,  
20 give it to him right away.

21 They've done something to this that  
22 obviously -- I'm not saying they've done  
23 something good, they've changed it in some  
24 fashion or put it in a form for them. We  
25 didn't have any opportunity to look at it.

1       We're kind of playing catch up on this as to  
2       what it is.

3               It may not make a difference in the  
4       ultimate decision the Court makes, but I think  
5       as we go to the future here, we shouldn't be  
6       confronted with this kind of stuff.

7               THE COURT: Well, in the future all the  
8       discovery rules are going to be enforced  
9       vigorously. So I'm -- I'm --

10              MR. LOUGHERY: Okay.

11              THE COURT: -- promising that that's not  
12       going to be a problem.

13              All right. Here -- last --

14              MR. LOUGHERY: You follow -- you follow  
15       what I'm saying?

16              THE COURT: I do.

17              MR. LOUGHERY: The last 45 minutes we  
18       wouldn't had to have been spending all this  
19       time doing this if they had bothered to tell us  
20       something about it in the past, because we may  
21       differ as to what this -- what they think it  
22       shows. And it may create argument the way we  
23       differ and we would have been able to resolve  
24       that perhaps, or at least be prepared for it if  
25       they had followed the rules of discovery like

1 we have.

2 THE COURT: And I'm not finding a  
3 discovery violation --

4 MR. LOUGHERY: I understand.

5 THE COURT: -- on either side. And I  
6 think both sides thus far have been very  
7 generous in the way that they have conducted  
8 themselves, and we're going to continue down  
9 that road.

10 I'm going to take a look at the video now  
11 if that's what you want to play.

12 MR. ESCOBAR: I do, Your Honor.

13 THE COURT: Okay.

14 MR. ESCOBAR: Your Honor, if we can turn  
15 the lights down and --

16 THE COURT: Sure.

17 MR. ESCOBAR: The first video that I'd  
18 like you to play is the -- the full length  
19 segment of that -- of that event at the theater  
20 number ten, and then we'll take the looped  
21 section.

22 And I'm going to be asking you to stop it  
23 at frames, starting at the second 24.

24 (Thereupon, the disk, was played with no  
25 accompanying video.)

1 THE WITNESS: Okay.

2 THE COURT: Stop it at each segment.

3 Okay?

4 MR. ESCOBAR: Let it continue.

5 Okay. You can stop that now. And let's  
6 go to the looped.

7 Your Honor, may I approach the witness  
8 just briefly?

9 THE COURT: You may.

10 RESUMED DIRECT EXAMINATION

11 BY MR. ESCOBAR:

12 Q Did we try to capture also this area right  
13 here, right before the light is shining?

14 A Yes.

15 Q And the light that we are talking about is  
16 the light that comes here and then finally goes down  
17 lower?

18 A Yes.

19 MR. ESCOBAR: You can stop it.

20 Your Honor, we would move into evidence --

21 MR. LOUGHERY: We'd like to see the other  
22 one, the third play.

23 MR. ESCOBAR: Absolutely. Play the third  
24 one.

25 (Thereupon, the disk was played with no accompanying

1 audio.)

2 MR. ESCOBAR: Okay. Your Honor, we would  
3 move Defense Exhibit Composite Number 6 into  
4 evidence.

5 THE COURT: All right. Over the State's  
6 objection, I'll admit it. And 7, you now have  
7 a sleeve for it. Have you had 7 marked?

8 MR. ESCOBAR: I believe I did, Your Honor.

9 THE COURT: I'll admit -- so that's 6.

10 MR. ESCOBAR: That's 6.

11 THE COURT: You had a solitary video that  
12 you were going to mark as 7.

13 MR. ESCOBAR: I did. We're not going --

14 THE COURT: Is that the one right there?

15 MR. ESCOBAR: That's the State's version.  
16 If you'd like to put it into evidence, we can,  
17 just so the Court can see that they're one and  
18 the same.

19 THE COURT: That -- that doesn't matter to  
20 me.

21 MR. ESCOBAR: Okay. We're not going to  
22 introduce that.

23 THE COURT: Okay. It -- then it won't be  
24 accepted.

25 MR. ESCOBAR: We have no further

1 questions, Your Honor.

2 THE COURT: All right. State, you need a  
3 moment to consult?

4 MR. GARCIA: May it please the Court?

5 CROSS-EXAMINATION

6 BY MR. GARCIA:

7 Q Mr. Sacco, you would agree with me that  
8 form the first loop to the third loop right before  
9 the shot, there's a 14-second delay?

10 A Yes.

11 MR. GARCIA: Okay. I have no further  
12 questions, Judge.

13 THE COURT: All right. Any redirect?

14 MR. ESCOBAR: Yep.

15 REDIRECT EXAMINATION

16 BY MR. ESCOBAR:

17 Q Mr. Sacco, the downloaded video that you  
18 downloaded from the hard drive --

19 A Yes.

20 Q -- is there a 13-second delay?

21 A In the main file, no.

22 Q Okay. What does it show on time? Can we  
23 play it?

24 A Yes.

25 Q Okay. Let's play that. That's the



1 government's evidence, correct?

2 Give me --

3 MR. GARCIA: Judge, I don't think he  
4 answered the question.

5 THE COURT: Is it the government's --

6 THE WITNESS: I'm sorry?

7 THE COURT: Is that the evidence that was  
8 provided to you by the State Attorney's Office?

9 THE WITNESS: I -- I can play that one.

10 This is the exact same -- this would be the one  
11 provided by the State Attorney's Office.

12 Q (By Mr. Escobar) And Nick, what he's  
13 talking about -- I'm talking about the hard-drive  
14 one. Is that the top one?

15 A Yes.

16 Q Okay. That's the one that I want you to  
17 play. That's what was provided by the State --

18 A Okay.

19 Q -- the hard copy, on the hard drive.  
20 There you go.

21 And I want you to count the seconds of  
22 lapsing between the cell-phone screen light that we  
23 captured on the loop and then --

24 MR. LOUGHERY: Judge --

25 THE COURT: Sustained. I'm not going to

1       consider it characterization of the cell-phone  
2       screen light. I don't know what it is. There  
3       was a light.

4               MR. ESCOBAR: A light.

5               THE COURT: I don't know what it is.

6       Q       (By Mr. Escobar) I want you to count from  
7       the light to the actual firing of the weapon that  
8       you see at 3637; light being at 2425. You may have  
9       to fast forward a little bit.

10              MR. LOUGHERY: You want to fast forward to  
11      the --

12      Q       (By Mr. Escobar) There you go.

13      A       It's not playing properly.

14              THE COURT: Tell you what, just hit play  
15      and let it run.

16              THE WITNESS: I don't think it's running  
17      is the problem.

18              MR. ESCOBAR: If you want to do the other,  
19      the video, the actual disk that State gave you,  
20      you can do that as well.

21              THE WITNESS: Okay.

22              MR. LOUGHERY: Judge, I --

23              THE COURT: You took it -- you took it  
24      back.

25              MR. LOUGHERY: Yeah. If I might, isn't it

1           time stamped? So Mr. Escobar asked him to  
2           count out loud?

3           THE COURT: I think he did ask him -- he  
4           did ask him to count out loud. It is time  
5           stamped. And I've watched it on my blu ray  
6           player about 15 times.

7           MR. LOUGHERY: Yeah, so from the time  
8           stamp of the -- of the loop -- the two loops  
9           they've shown, there's a 13- or 14-second time  
10          stamp between that loop and the third loop, or  
11          the first appearance of the light and the  
12          second appearance of light. That's -- that's  
13          what we -- the question we ask.

14          THE COURT: Okay.

15          MR. LOUGHERY: Are they disagreeing with  
16          that?

17          THE COURT: I think he agrees with it.

18          MR. ESCOBAR: I agree with that.

19          THE COURT: Okay. So we're all on the  
20          same page. We don't agree on that much where  
21          everybody's --

22          MR. LOUGHERY: Well, why we -- why are we  
23          asking these questions?

24          MR. ESCOBAR: Well, because they were  
25          insinuating that somehow there was some missing

1 film and there isn't. That same --

2 THE COURT: I don't --

3 MR. ESCOBAR: -- that same 13 seconds  
4 appears on their's.

5 THE COURT: -- I don't think they were.  
6 They were just -- they were just asking to  
7 confirm that there's 13 seconds missing and  
8 there is.

9 MRS. SUMNER: That's the wrong view.

10 MR. ESCOBAR: Mr. Sacco, that's fine.  
11 Yeah.

12 THE COURT: Yeah, yeah, cut that. Just  
13 close that.

14 All right. Any other questions you feel  
15 compelled to ask?

16 MR. ESCOBAR: No, Your Honor.

17 THE COURT: State, any redirect you feel  
18 compelled to ask?

19 MR. GARCIA: No, sir.

20 THE COURT: Fantastic. Thank you,  
21 Mr. Sacco. You're excused.

22 THE WITNESS: Thank you.

23 THE COURT: You wish to call any more  
24 rebuttal witnesses?

25 MR. ESCOBAR: No, Your Honor.

1 THE COURT: Okay. State, any  
2 rebuttal-rebuttal witnesses?

3 MR. GARCIA: No, sir.

4 THE COURT: All right. Then we're ready  
5 to go into closing arguments on the bond  
6 hearing.

7 Before we do that, Mr. Grimaldi, I had a  
8 chance to read over the autopsy. I don't know  
9 if you had a chance to look at it. I looked at  
10 it closely for any personal information that  
11 could in any way be necessary to redact. I  
12 didn't see anything that jumped out at me.  
13 Again, I'm looking at it as a dispatchment  
14 third party.

15 Is there anything that you want  
16 redacted --

17 MR. GRIMALDI: Your Honor --

18 THE COURT: -- specifically?

19 MR. GRIMALDI: Yes, Your Honor, just  
20 slight. It would just -- I mean it's just his  
21 age.

22 THE COURT: His age?

23 MR. GRIMALDI: Yeah. It's an identifier  
24 beyond anything else.

25 THE COURT: It isn't already -- his date

1 of birth's not already public record? I mean  
2 I -- I mean I'm pretty sure it is, but if you  
3 want it, I'll -- I'll have it redacted and  
4 we'll make yours two copies.

5 MR. LOUGHERY: Judge, the only -- if I  
6 may. The only other matter on that would be  
7 his name. And I understand how, practically  
8 speaking, that might be awkward, but under  
9 Florida Statute 119, public record victim  
10 identification information would be redacted,  
11 if you're looking for things to redact.

12 THE COURT: Okay.

13 MR. GRIMALDI: And that's why the age as  
14 well.

15 MR. LOUGHERY: We have a form here, Judge,  
16 that we highlighted some of the things we  
17 suggest on --

18 THE COURT: Perfect. Let's do that.

19 MR. LOUGHERY: -- if you -- show it to  
20 Mr. Escobar.

21 THE COURT: Yep. It's only three pages.

22 MR. LOUGHERY: May I approach, Judge?

23 THE COURT: You may.

24 MR. LOUGHERY: As I explained to  
25 Mr. Escobar, we have it in blue and

1 Mr. Grimaldi has it in red.

2 MR. ESCOBAR: Your Honor, can we see the  
3 other pages because we didn't get that in  
4 discovery. That was the first time that I was  
5 able to get these other pages.

6 THE COURT: Is there any lawful reason I  
7 shouldn't let him see them? State wasn't very  
8 good listening.

9 All right. You okay with the redactions,  
10 Mr. Escobar?

11 MR. ESCOBAR: I am, Your Honor. If I may  
12 have just a second.

13 THE COURT: All right. So this will be  
14 the one that's sealed?

15 MR. ESCOBAR: Your Honor, we would like  
16 the remainder three page to make that report  
17 complete. It's been redacted as well. And we  
18 have no problems with the areas of redaction.

19 THE COURT: Does the remainder three pages  
20 in some way --

21 MR. ESCOBAR: They redacted that part. I  
22 guess they thought that they had given me the  
23 whole report, so they went through that portion  
24 as well.

25 THE COURT: Okay. All right. That's

1 fine, but I need a -- I need a second copy of  
2 this because I'm going to direct that be  
3 sealed, and then I'm going to direct this  
4 redacted be entered as Defense Exhibit 5.  
5 Five, right, or four?

6 THE CLERK: Four.

7 THE COURT: Four. So this will be 4  
8 redacted, so I need a complete copy for 4 to be  
9 put redacted -- I'm sorry, in the original form  
10 in the sealed portion of the file. That's  
11 Court's 1. So unless you want to waive sealed  
12 portion and we can just only go with redacted.

13 MR. ESCOBAR: I think it should only be  
14 redacted. There's no reason to seal any of  
15 them.

16 THE COURT: Great. We'll do that, then.  
17 We'll return that. That will be the one that  
18 goes in. And we're going to black mark over  
19 all the stuff that's highlighted. Okay?

20 So I'll direct you to take a black marker  
21 and go over all the stuff that's highlighted.

22 You want me to shred this for you or is  
23 somebody else going to take care of shredding  
24 this?

25 MR. LOUGHERY: That's fine, Judge. You



1 can shred it.

2 THE COURT: I'll shred it.

3 All right. State, before we go into  
4 closing, how much time do you need to prepare?

5 MR. GARCIA: I'm ready.

6 THE COURT: Ten minutes? You ready now?

7 MR. GARCIA: Yes, sir.

8 THE COURT: Ten minutes or you ready now?

9 MR. ESCOBAR: We're ready.

10 THE COURT: Okay, great. Let's do it.

11 Before we go into closings, Mr. Grimaldi,  
12 you talked to your client. She doesn't want to  
13 make a statement prior to me making the  
14 decision on bond?

15 MR. GRIMALDI: Correct, Your Honor.

16 THE COURT: She going to want to make a  
17 decision -- a statement after I make the  
18 decision on bond?

19 MR. GRIMALDI: No, she will not.

20 THE COURT: All right. Mr. Escobar, it's  
21 your motion so you're going first. Why should  
22 I grant your client bond? If I should grant  
23 your client bond, under what conditions would  
24 you recommend to the Court?

25 MR. ESCOBAR: Your Honor, my client has

1        been a life-long member of Florida the majority  
2        of his life here in the surrounding communities  
3        of Pasco County. He has led an exemplary life  
4        as a law enforcement officer. And not just a  
5        law enforcement officer, but a decorated law  
6        enforcement officer where his primary duties  
7        and exclusive duties as a law enforcement  
8        officer has been to protect the public in the  
9        state of Florida.

10        He's got two children, a lovely wife that  
11        he's been married to for 46 years. He's had a  
12        great career as a law enforcement officer, but  
13        also a great career as a director of security  
14        for Busch Entertainment.

15        As you heard there in the -- in the  
16        audiotapes of predominantly his wife, he has  
17        never had a shooting as a law enforcement  
18        officer in his entire career. However, as you  
19        learned from individuals that came before you,  
20        he was selected by the chief of the Tampa  
21        Police Department in order to start and develop  
22        and train their most selective force, and that  
23        being the tactical response team.

24        This is an individual of principles; this  
25        is an individual of integrity. He is a

1 church-going man.

2 There is absolutely no reason to believe  
3 that Mr. Reeves is a danger to anyone in this  
4 community or any other community. As all the  
5 witnesses have told you, they likewise don't  
6 believe that he is a danger to the community or  
7 a risk of flight.

8 He lives in Hernando County with his wife.  
9 He owns his home. This is his retirement home.  
10 This is where his daughter lives. This is  
11 where his granddaughter lives. The ties are  
12 incredible.

13 He is an individual that is on retirement.  
14 He's an individual that depends upon that  
15 retirement not only for him, but for his wife  
16 and for his daughter and for his grandchild.  
17 He is not an individual that's going to do  
18 anything to upset that situation.

19 I'd like to talk a little bit, Your Honor,  
20 about what I believe to be an appropriate  
21 condition of pretrial release. As the Court  
22 knows, there is a preference for non-monetary  
23 conditions of release in our laws, in our rules  
24 of criminal procedure, as well as in 903.

25 And there's a reason for that.

1       Individuals like Mr. Reeves that have  
2       absolutely no history whatsoever of criminal  
3       activity. And just the opposite, that has a  
4       history of being one of the most decorated law  
5       enforcement officers that protect the public  
6       for 27 years shouldn't need a monetary bond.

7               And I say that with all due respect to  
8       this Court because although the Court has to  
9       look at the charge, more importantly the Court  
10      has to look at the history and the ties that  
11      Mr. Reeves has to this community.

12             Do we need a monetary bond? Absolutely  
13      not. Has the family and friends decided hey,  
14      if the Court feels secure with a monetary bond,  
15      are we able to do that? Absolutely. And I  
16      think, Your Honor, this family could make a  
17      monetary bond of \$200,000, which, in essence,  
18      would be his home, his most valued possession  
19      at this point in time in retirement, the only  
20      home that his wife occupies and his daughter  
21      occupies.

22             Does anyone in this community, in any  
23      community think that he is going to forfeit  
24      that and flee? In some of these hearings I  
25      know the Court had some concerns well, we know

1           how Mr. Reeves was for the last, you know, 30  
2           years or 30-some years, but what tells us about  
3           Mr. Reeves today?

4           And we brought individuals before this  
5           Court that knew Mr. Reeves back then and that  
6           know Mr. Reeves today. Individuals that went  
7           to that very same Cobb Theater for 25, 30 times  
8           and not once did they witness him being  
9           agitated over a cell phone or anything in that  
10          theater.

11          Their highlight of a -- of a day was we're  
12          going to go to Sonny's Barbecue, we're going to  
13          go to the matinee theater at the Cobb, and then  
14          we're going to go to Dairy Queen so that we can  
15          get some Dairy Queen. It tells you a little  
16          bit about who Mr. Reeves is at this point in  
17          his life.

18          There's other options for this Court. The  
19          Court could order him in a sort of house  
20          arrest, monitor or no monitor, public or  
21          private.

22          THE COURT: Have you already secured a  
23          monitor company if I order that?

24          MR. ESCOBAR: Your Honor, I have -- I know  
25          that I have a monetary company that would be

1 more than willing to do that, but I have not  
2 been presumptuous enough to go out and select  
3 that service without this Court -- hearing this  
4 Court's order.

5 But there are private -- there's a --  
6 there's Roche Bail Bonds, which I have worked  
7 with on numerous occasions, that I am certain  
8 would be more than willing to do a monitored  
9 program with Mr. Reeves.

10 THE COURT: Have you used the monitor in  
11 the past?

12 MR. ESCOBAR: I have used the monitor in  
13 the past.

14 THE COURT: Okay.

15 MR. ESCOBAR: And these are responsible  
16 sureties that would answer to this Court under  
17 any conditions.

18 THE COURT: All right.

19 MR. ESCOBAR: The Court can place  
20 restrictions on where he can go. We've told  
21 the Court already that there are no weapons in  
22 Mr. Reeves' home. He is 71 years old. He  
23 could -- he could live in his home without  
24 going anywhere. He's 71 years old.

25 THE COURT: What assurances would I have

1       that he wouldn't have any weapons after he got  
2       out, though?

3       MR. ESCOBAR: Your Honor, you could have  
4       his assurance and you could have his son's  
5       assurance, who is a Tampa police officer with  
6       no blemishes on his record, that will tell this  
7       Court that he will, himself, make sure that  
8       Mr. Reeves has no weapons in his home at any  
9       time. And if that means every day,  
10      unannounced, coming over and searching his  
11      home, that's exactly what his son would do.

12      His son was the first one, Your Honor --  
13      his son was the first one at the Cobb Theater  
14      that actually held on to Mr. Oulson and applied  
15      pressure to his chest. Mr. Reeves' son was the  
16      first one to do that.

17      THE COURT: I don't know that because that  
18      wasn't something that was testified to and I'm  
19      not going to consider that. I'd like to  
20      consider, though, do you have a list of all the  
21      firearms that Mr. Reeves owns? And I'm not  
22      asking for you to read it out loud in court,  
23      but do you have a list of said firearms so that  
24      if I were to direct that the sheriff's office  
25      were to secure those firearms in their -- in

1       their safe, evidence room or wherever else they  
2       felt appropriate, that they would be able to  
3       take control of those weapons prior to him  
4       being released?

5               MR. ESCOBAR: Yes, Your Honor, his son  
6       does have that list.

7               THE COURT: Okay.

8               MR. ESCOBAR: I'd like to -- I'd like to  
9       talk about the facts of this case because I  
10      don't think that the proof is evident and  
11      presumption great.

12              The government brought some lay witnesses  
13      here before Your Honor. And those lay  
14      witnesses were all over the place as far as  
15      their testimony. Let's talk about each one of  
16      them if we can.

17              We had Charles Cummings that came before  
18      Your Honor. And he indicated that he was there  
19      at the Cobb Theater. And he was pretty candid  
20      that yes, I've got bad vision without my  
21      glasses. And he indicated the one thing that I  
22      think was monumental in this particular case.

23              And he said, "Yes, I looked over and I saw  
24      Mrs. Oulson holding Mr. Oulson back." He said,  
25      "That's when I felt maybe I need to do



1 something." Obviously he didn't have the  
2 opportunity. But that's a State witness that's  
3 telling this Court that he realized that that  
4 episode had gotten to the point where he,  
5 himself, felt that he needed to intercede.

6 Clearly Mrs. Oulson, by her own testimony  
7 on the recording, says, "I had my hand -- my  
8 hand on his chest." And that's where she was  
9 shot, while she had that hand on his chest.  
10 There was only one shot in this case, Your  
11 Honor.

12 For Mrs. Oulson to recognize that hey, I  
13 better get up and I better put that hand on my  
14 husband -- remember what she said in that  
15 video? Men are hotheads.

16 I disagree with that. That may be her  
17 assessment at the time of her husband, but  
18 Mr. Reeves is no hothead. And there is  
19 absolutely not one scintilla of credible  
20 evidence that he was ever a hothead in that  
21 theater.

22 What did Mr. Reeves do when he tapped on  
23 that shoulder and he said, "Mr. Oulson, turn  
24 your cell phone off. They've put the message  
25 on the screen."

1           And Mr. Oulson looks at him and says,  
2           "Fuck you." Does he take matters into his own  
3           hands and goes into combat, or does he pull his  
4           weapon and shoot him right then and there?  
5           Absolutely not. What he does is he takes the  
6           responsible course and he leaves that theater  
7           to go advise management, the responsible thing  
8           that we would hope that every citizen would do  
9           in this great county.

10           And remember, I believe it was  
11           Mr. Cummings that said, "Well, he was mumbling  
12           as he was going down the aisle and he -- and he  
13           hit the -- my back of my seat." Did you see on  
14           the video Mr. Reeves having to hold on as he's  
15           walking down the aisle? Even Mr. Cummings  
16           admitted yes, tight space there.

17           The mumbling that he was talking about was  
18           what Mr. Turner was saying, that when  
19           Mr. Reeves returned, he said, "Excuse me, sir.  
20           I'm trying to get by."

21           Is that the attitude of someone that has  
22           ill will, hate, spite, which is required,  
23           required for the crime of second-degree murder  
24           "Excuse me, sir. I'm trying to get by."

25           Detective Proctor. They brought

1 Detective Proctor here to testify, but he never  
2 goes inside the theater where the event  
3 occurred. He's spoken to Mr. Reeves and  
4 Mr. Reeves says, "(Indicating) I've been hit by  
5 something. I believe that I was hit by the  
6 phone."

7 And where is it that we find that phone?  
8 We find that phone in the exact location where  
9 Mr. Reeves was. The exact location.

10 Does he make it a point before he arrests  
11 Mr. Reeves, I've got to see the video now?  
12 Nope. We're going to wait two days to do that.

13 Well, now we saw the video. And that  
14 video clearly depicts, clearly depicts a light,  
15 and you actually see a hand and a light coming  
16 in this general direction of Mr. Reeves. And  
17 you see it coming here (indicating), and then  
18 going down in stages. And where does it end  
19 up? Forensically where does it end up after  
20 the shooting? That phone was right there  
21 (indicating).

22 MR. GARCIA: Judge, I object --

23 MR. ESCOBAR: It's a --

24 MR. GARCIA: Judge, I'm going to object.  
25 That's a mischaracterization. It's arguing

1 facts not in evidence. There's absolutely no  
2 testimony before this Court that that was a  
3 phone. None.

4 THE COURT: It was testified to that a  
5 phone was found at his feet. I'll take that as  
6 my recollection, was found at the base of one  
7 of the chairs. And one of your witnesses,  
8 Corporal Hamilton, testified that there was a  
9 phone at his feet. And I've got that in my  
10 notes. I read it last night.

11 MR. GARCIA: I understand, Judge. I just  
12 want it made perfectly clear that there's no  
13 evidence that a phone was thrown in that video.  
14 And I think that Mr. --

15 THE COURT: I'm --

16 MR. GARCIA: -- Escobar has alluded to  
17 that.

18 THE COURT: He's -- he's drawing  
19 inferences from what he saw. And he's feel --  
20 he can feel free to draw whatever inferences he  
21 chooses; you can draw whatever inferences you  
22 choose; and I will make the ultimate conclusion  
23 as to what I think I saw, if -- if I saw  
24 anything. Okay?

25 MR. GARCIA: Yes, sir.

1 THE COURT: All right.

2 MR. ESCOBAR: And that inference is so  
3 strong for the following reason. We're going  
4 to go back to now Mr. Cummings, because what  
5 does Mr. Cummings say about that cell phone?  
6 Remember what he said? Well, you could see the  
7 bright light of the cell phone as Mr. Oulson  
8 was holding it. He was holding it in his hand.  
9 You could see the bright -- the bright light  
10 there of the phone, that same bright light you  
11 see flying at Mr. Reeves, coming down and  
12 landing on the floor.

13 But Mr. Proctor wasn't concerned about  
14 that. Mr. Proctor doesn't know the weight of  
15 an iPhone, doesn't know the size of the iPhone,  
16 but the damage that an iPhone can cause by a  
17 six-four, 200-plus gentleman flinging that  
18 phone at someone's head is incredible.

19 But the phone wasn't that important that  
20 night or that day, but it sure was there at the  
21 scene the minute that Mr. Hamilton came, saw  
22 Mr. Reeves, and there it was.

23 So this is not a throwing popcorn case  
24 only. This is throwing a deadly missile case.  
25 The speed of a phone by a six-four human being,

1           it's pretty daunting. And especially at a  
2           71-year-old man, who has arthritis in both  
3           hands, arthritis and a bad back and all the  
4           ailments that we depicted in our motion.

5           THE COURT: If he was struck in the head  
6           with a cell phone the way you're describing,  
7           though, shouldn't there have been a mark on  
8           him?

9           MR. ESCOBAR: Maybe, maybe not, because we  
10          don't know -- my phone has a rubber --

11          MR. GARCIA: Judge, I'm going to object as  
12          to the relevancy of his phone, Judge. Number  
13          one, how is it relevant?

14          Number two, is he going to testify in this  
15          case? Are -- is the Court going to place him  
16          under oath as to his phone having a cover on it  
17          or whatever?

18          THE COURT: I'm going --

19          MR. GARCIA: He's arguing facts not in  
20          evidence.

21          THE COURT: I -- he's arguing common  
22          knowledge. I've got a cell phone and I've got  
23          a cover on it. He's arguing just common  
24          knowledge at this point.

25          It's not -- and -- and there -- there's

1 not a jury here. So I want -- I want to hear  
2 his arguments; I'm going to want to hear your  
3 arguments. And so tell me.

4 MR. ESCOBAR: And, Your Honor, phones have  
5 covers. Some covers are soft. The point here  
6 is, shouldn't Detective Proctor have been the  
7 one -- he's the lead homicide detective in this  
8 case -- to really analyze that phone and to tie  
9 it together? Not 24 days from the incident,  
10 but that day before he's put in handcuffs,  
11 before he's taken to the Pasco County jail.

12 And, yes, I believe that certainly if you  
13 throw this, you can have both visible injuries  
14 or not visible injuries.

15 But what comes even after that first light  
16 comes at Mr. Reeves' person? What happens  
17 at -- does it stop? Is his assessment that he  
18 told Mr. Proctor, "Mr. Proctor, I was scared to  
19 death. I could see this large man. I could  
20 see his facial expression. I could see his  
21 aggression. I could see" -- that was his words  
22 -- "I could see it wasn't going to stop."

23 Did it stop? Did it stop? It didn't  
24 stop. In fact, just the opposite. We see on  
25 their video Mr. Oulson going right up to and

1           again coming at my client.

2           Now, let's think about aggression and the  
3           escalating pattern of someone in a theater,  
4           because that's the way we have to assess the  
5           factors. You remember decorated Deputy Chief  
6           Depolis, second in command all those years in  
7           the Tampa Police Department, was also the  
8           cofounder of the tactical squad.

9           And he said, "We have to take all these  
10          factors into consideration and we have to make  
11          a decision (indicating) that quickly. And he  
12          was doing what he was trained to do for 27  
13          years. Mr. Garcia is not trined to do that;  
14          I'm not trained to do that; Mr. Michaels is not  
15          trained to do that. But I can tell you by the  
16          evidence in this case that Captain Reeves was  
17          very qualified in making that assessment. And  
18          he was the best position to make that  
19          determination whether, at that point, three  
20          things were happening.

21          Number one, he was going to be seriously  
22          injured.

23          Number two, a forcible felony was going to  
24          be committed against him. And we're going to  
25          talk about forcible felony and the state of the



1 law with that.

2 Three, any felony. We're going to talk  
3 about any felony being number three.

4 And let's take that right now where we get  
5 the opportunity. I outlined for the Court the  
6 law concerning the use in self-defense of  
7 justifiable deadly force. And let me read to  
8 the Court 782.02, which is found in the  
9 homicide section of our statutes.

10 And it says, "The use of deadly force is  
11 justifiable when a person is resisting any  
12 attempt to murder such person or" -- this is  
13 the big one -- "to commit any felony upon him."

14 Now, it's not part of the Stand Your  
15 Ground options and there would be a duty to  
16 retreat under 782.02, but it doesn't say  
17 "forcible felony." It says, "Any felony."

18 We know that Mr. Reeves is 71 years old.  
19 And this great state of Florida protects the  
20 elderly. If someone commits a misdemeanor  
21 battery against Mr. Reeves, it automatically  
22 becomes a felony. So under these circumstances  
23 Mr. Reeves did not even have to wait for him to  
24 be severely damaged under 782.002.

25 THE COURT: Isn't there a knowledge

1 element to battery on an elderly person?  
2 Wouldn't he had have had to know that he was  
3 over 65?

4 MR. ESCOBAR: Well, Your Honor,  
5 unfortunately the answer is no.

6 THE COURT: There isn't?

7 MR. ESCOBAR: No. Your Honor, that's a  
8 very gray area in the law and has been heavily  
9 litigated in the past. But what we have to  
10 remember is: How close was Mr. Oulson from  
11 Mr. Reeves? Does he look like he's a day or  
12 two younger than 65?

13 Let's assume that the Court were to rule  
14 in that fashion. That's what's happening.  
15 That's what's happening. He is under the  
16 impression at that point in time that he is, at  
17 the very least, going to be battered. His own  
18 testimony was: It was beyond a misdemeanor  
19 battery, that he was going to be seriously  
20 injured by this gentleman. Why? He had no  
21 means of protecting himself. He couldn't use  
22 his hands against a ■-year-old six-foot-four,  
23 200-pound individual.

24 What did Vivian say? She was so scared  
25 she turned away. His wife right next to him,

1 elderly, health problems. Was he just  
2 assessing his situation? Was he assessing his  
3 situation and his wife's? Of course he was.  
4 Forty-six years married to this woman and loves  
5 her dearly.

6 776.012, which is the Stand Your Ground.  
7 And it deals with the issue of same thing,  
8 serious bodily injury, or a forcible felony.  
9 And I will tell you that the District Court's  
10 of Appeal of this state have had some real  
11 problems with the definition of what is a  
12 forcible felony.

13 And we have two Supreme Court cases that I  
14 believe got cited. Actually, they cited one,  
15 but there was an earlier one that came about  
16 where the Supreme Court tried to define what  
17 forcible felony was. And there was a -- two  
18 long opinions dealing with well, how do we do  
19 that? Do we do that strictly by an elements  
20 approach, or do we do that by the actual  
21 physical act that was taking place?

22 I would suggest to the Court that for a  
23 self-defense situation like we have here, it  
24 should be the actual act, because it's  
25 Mr. Reeves that's using that defense based upon

1 his perceptions.

2 They were applying that forcible felony  
3 rule in those two cases dealing with the Prison  
4 Release Reoffender Act, where individuals get  
5 punished harsher if they qualify under certain  
6 offenses, and the career -- no, I think it was  
7 the Violent Criminal Act which, again, they get  
8 punished a bit more severe.

9 So the context of those Supreme Court  
10 cases were such that they were not being  
11 necessarily applied to a self-defense issue  
12 with the exception of the earlier case. And  
13 I'll have to pull that for the Court. I've got  
14 it. It dealt with whether a trafficking in  
15 narcotics was a forcible felony.

16 And the court said, "Not all traffickings  
17 are forcible. Some could be forcible."

18 But, you know, we've got to go to this  
19 element approach because I am sure that the  
20 court felt, how are we going to re-litigate,  
21 you know, these particular cases and deal with  
22 the issue of whether it was forcible or whether  
23 it was not forcible?

24 The Court was clear in those opinions to  
25 say, "You know what? If a battery's committed

1           and it's committed with any degree of force,  
2           yes, it could be a forcible felony on a battery  
3           of LEO. It could be a forcible felony on  
4           someone that's 65 years of age or older.

5           But we're not willing to go there. We're  
6           going to define forcible felony by an elements  
7           approach and that is it. I suspect there's  
8           going to be a great deal of litigation dealing  
9           with this issue in the future.

10          Self-defense. His testimony that he gave  
11          immediately after this incident, recorded,  
12          after someone read him his rights and said,  
13          "Mr. Reeves, anything you say can be used  
14          against you in the future" is uncontroverted by  
15          any credible evidence.

16          In fact, his testimony is corroborated by  
17          that type of evidence that we probably want to  
18          rely on more than anything. That's physical  
19          evidence. It's that physical evidence that  
20          doesn't have the ability to be persuaded by  
21          things in life that shouldn't really entertain  
22          someone's opinions and desires.

23          I know that there was individuals in  
24          that -- in that theater that were heartbroken  
25          over what had happened. I know that

1 Mr. Cummings, Mr. Friedhoff, Mr. --  
2 Mr. Hamilton, Mr. Turner, they were -- they  
3 witnessed this. They tried their best to help  
4 Mr. Oulson. And so there is a sense of wanting  
5 to help Mr. Oulson not only then, but  
6 thereafter as well. This was a dark theater.

7 If we remember Mr. Friedhoff's testimony,  
8 and let's -- let's think about this because  
9 this one is very, very important.

10 Mr. Friedhoff was about three rows up. And he  
11 was having to look over his right shoulder  
12 between his girlfriend, who was to his right.  
13 And he indicated, you know, I was looking back  
14 and, you know, I was able to see Mr. Oulson's  
15 cell phone on his lap.

16 Now, think about it. These are high  
17 seats. And he's able to see Mr. Oulson's cell  
18 phone on his lap?

19 Well, what about Mr. Turner? Mr. Turner  
20 said, you know, when Mr. Reeves left,  
21 Mr. Oulson stood up and he was -- he was  
22 standing up the whole time with his phone.

23 Remember, I asked? I said, "What about  
24 Vivian behind him?" Oh, you know, it was the  
25 previews so, you know, he was just standing up

1 with his phone and he happened to see his  
2 light -- and he's the scanner. He's the guy  
3 that scans wherever he goes because that's his  
4 background, and that's what he was saying.

5 Was Mr. Oulson standing up like that? Was  
6 he waiting for Mr. Reeves to come back in order  
7 to attack him like he did?

8 But one thing that Mr. Friedhoff said that  
9 was so important. Remember the -- "You know, I  
10 heard some crumbling of popcorn, but then I  
11 heard a thump." But then I heard a thump.  
12 Consistent? Of course it is.

13 I listed in my memo many second-degree --  
14 excuse me, Second DCA cases and a Fourth DCA,  
15 *Dorsey* --

16 THE COURT: Uh-huh.

17 MR. ESCOBAR: -- that cited many Second  
18 DCA cases dealing with the issue of the  
19 overreaction of one that was claiming  
20 self-defense. Not one of those cases was  
21 addressed by the prosecution, and there's a  
22 clear answer to that. They couldn't. Those  
23 cases are rock solid.

24 Those cases tell Your Honor that under  
25 these circumstances at best, at best what they

1       could do is maybe charge, maybe charge  
2       manslaughter. Not that they'd get a  
3       conviction, but that the factual basis in order  
4       to make that decision at best, if that's their  
5       theory, supports a charge of manslaughter.

6               They have proven not one scintilla of ill  
7       will, spite, hatred. And all those cases  
8       talked about you can't develop those in a short  
9       period of time.

10              I know Your Honor read those Second  
11       District cases. I know Your Honor read the  
12       Dorsey case.

13              THE COURT: I did.

14              MR. ESCOBAR: They were extremely on  
15       point. They were right on point. And the only  
16       cases that they actually cited were cases --  
17       cases that were not dealing with self-defense.  
18       The only case that dealt with self-defense was  
19       a 1934 case that actually we adopt as our  
20       position.

21              I'm sure the Court remembers the 1934 case  
22       of -- I think it was *Ramsey*. *Ramsey*. That was  
23       the one dealing with the -- the father and the  
24       daughter and the gentleman that was  
25       disrespecting, sexually, his daughter.



1 THE COURT: Yes.

2 MR. ESCOBAR: And the Court, in *Ramsey*,  
3 talked about three different types of malice.  
4 And they said, you know, it may be some other  
5 crime, but it's not second-degree murder  
6 because there was no evidence here of hatred,  
7 malice, the necessary elements that you need  
8 for second-degree murder. This could have been  
9 a response to an emotion that he had because of  
10 the disrespecting of the daughter.

11 That was a case they cited and it supports  
12 our position. The only case they cited that  
13 has any relevance whatsoever to the issue of  
14 self-defense.

15 THE COURT: Well, I'm going to be asking  
16 them about their cases on self-defense and  
17 their cases on second-degree murder in a  
18 minute.

19 But one of the things I'm interested in  
20 for my decision, when I decide on proof evident  
21 presumption great, when I decide on that, do I  
22 take into consideration the affirmative  
23 defenses or do I merely take into consideration  
24 whether the State can, in fact, prove their  
25 case absent the affirmative defenses, because

1 the affirmative defense of self-defense has to  
2 be established by the Defense.

3 I would never put any proof requirement on  
4 you for the proof of guilt, but if you wish to  
5 establish an affirmative defense, that's on  
6 you.

7 So when I analyze the State's case and ask  
8 myself, have they met this high standard,  
9 should I be asking myself have they met this  
10 high standard, and then has the Defense  
11 rebutted it, or should I simply be asking, have  
12 they met this high standard and at trial then I  
13 will hear whether the Defense has provided the  
14 affirmative defense?

15 MR. ESCOBAR: Your Honor, I can answer  
16 that question. And with all due respect to the  
17 Court, I disagree.

18 THE COURT: That I should even ask the  
19 question?

20 MR. ESCOBAR: No, no. No. I disagree  
21 that -- that the Defense has the burden of  
22 proving self-defense. We have the burden to go  
23 forward with self-defense. They have to prove,  
24 beyond and to the exclusion of a reasonable  
25 doubt at trial, that it was not self-defense.

1           THE COURT: I probably phrased it poorly.  
2           What I mean is, you have to establish  
3           self-defense and then they have to knock it  
4           down. I -- I recognize that. It's more just a  
5           should I be looking at self-defense now or  
6           should I be waiting to look at self-defense at  
7           trial for purposes of JOA and for purposes of  
8           instructing the jury?

9           MR. ESCOBAR: You have to be looking, Your  
10          Honor -- and I say this with all due respect to  
11          the Court -- you have to be looking at  
12          self-defense now. If not, those individuals  
13          that exercised their absolute legal right to  
14          self-defense would be kept out of the loop or  
15          forget about it. If you -- if you assert  
16          self-defense, no one can consider it until we  
17          get to trial.

18          That's not the intent of any law that I'm  
19          aware of in this great state. I think --

20          THE COURT: Is there any case that tells  
21          me that?

22          MR. ESCOBAR: Your Honor, I -- I'm not  
23          sure that there is. I -- I can tell the Court  
24          I have not read that, but let's look at  
25          practicalities.

1           THE COURT: Well, I was looking for the  
2 cases before I was looking for practicalities.  
3 I go to practicalities when I don't have cases  
4 if the --

5           MR. ESCOBAR: Your Honor, I'd be -- I'd  
6 love to be able to get you that case law if  
7 you'd like me to. I am sure that there's got  
8 to be some case out there that stands for the  
9 proposition that no, you've got to look at all  
10 the evidence. And if there's evidence brought  
11 forth by the defendant that says, you know  
12 what? This is self-defense, and it is  
13 supported in any way, they've got to prove it,  
14 not only beyond -- to the exclusion of a  
15 reasonable doubt, but the case law is clear  
16 their burden -- their burden is beyond, beyond  
17 to the exclusion of a reasonable doubt.

18           THE COURT: I know. I read that. I'm  
19 just --

20           MR. ESCOBAR: It --

21           THE COURT: -- trying to -- I'm just  
22 trying to figure out if, in my analysis, I have  
23 to apply this self-defense now.

24           MR. ESCOBAR: Absolutely. I think you do,  
25 Your Honor. And I -- you know, with 30 years

1 of experience, I think that I am on solid  
2 ground there, because it would make no  
3 practical sense for the law to say you know  
4 what? Here at this stage we're going to just  
5 leave you in jail. And the only time that the  
6 Court or anyone can consider the issue of  
7 self-defense is when you go before a body of  
8 your peers in a jury.

9 That would make no sense and I seriously  
10 doubt that any court would rule in such a  
11 fashion. It's their burden from day one. When  
12 they charge someone, it's their burden  
13 throughout the entire period, and it's their  
14 burden at trial.

15 THE COURT: Well, affirmative defenses,  
16 though, suggest they're affirmative defenses  
17 and they have to be raised by the Defense.

18 MR. ESCOBAR: I would agree with you if  
19 this was the case. If we had to prove beyond a  
20 reasonable doubt self-defense, I'd say, you  
21 know, maybe there's an argument here. But  
22 that's not what the law says. The law says all  
23 we have to do is introduce some evidence of  
24 self-defense. And in a trial, it shifts right  
25 back to them and now they have that ultimate

1           burden of proof beyond and to the exclusion of  
2           a reasonable doubt.

3           THE COURT:   Okay.

4           MR. ESCOBAR:   And here it's even beyond  
5           that.

6           THE COURT:   Well, that's why we're talking  
7           it through.   I like to -- I like to get both  
8           sides' input and I'm going to get Mr. Garcia's  
9           input on that.

10           How about this:   Is the Stand Your  
11           Ground -- is the Stand Your Ground statute that  
12           place that you could go requesting the immunity  
13           of the Court prior to going to a jury?   Is  
14           that -- is that a mechanism that the  
15           legislature's now built in as your outlet prior  
16           to trial?

17           MR. ESCOBAR:   It has, Your Honor.   And the  
18           beauty of both 782.02, which is not the Stand  
19           Your Ground, and 776.012 is that the law  
20           doesn't say that the only time that you can use  
21           deadly force is if someone actually pulls out a  
22           gun.   And so if they pull out a gun, you can  
23           pull out a gun, or if they pull out a knife,  
24           you can pull out a knife.

25           That's not what the law says.   The law

1 doesn't even mention what that person has to do  
2 in order to create that fear. The only thing  
3 and the most important thing that the law does  
4 create is it says, you know what? If you're  
5 going to judge this gentleman on the issues of  
6 self-defense, you're going to be stepping in  
7 his shoes. And that reasonable person has got  
8 to say, okay, I'm a reasonable person, but I'm  
9 a reasonable person of 71 years old. And, you  
10 know, I'm a reasonable person, but I'm a  
11 reasonable person that has arthritis in both  
12 hands. And, you know, I'm a reasonable person,  
13 but I'm a reasonable person that has arthritis  
14 and a bad back. And you know what, I'm a  
15 reasonable person, but I am sitting in a  
16 theater, that it is dark, and this gentleman is  
17 coming over the back of -- of the chair.

18 That's what we have to do with the law of  
19 self-defense. It is not playing Monday morning  
20 quarterback. And the reason we don't play  
21 Monday morning quarterback under those  
22 circumstances is, when you're looking at that  
23 Monday morning play, you have a better  
24 advantage. You may be looking at it from the  
25 cameras that are high up on the field. And so

1           you're able to see what Tom Brady can't.

2           THE COURT: All right.

3           MR. ESCOBAR: That's not the law of  
4 self-defense. The law of self-defense here is  
5 we don't go to those cameras, we go to him.  
6 And we have to take him as an experienced  
7 27-year veteran that has been highly trained to  
8 look at the dangerous factors that could result  
9 in his serious bodily injury, death or, under  
10 782, any felony.

11          THE COURT: Well, here's what it says in  
12 the transcript -- it's not the transcript.

13          Here's what it says as I sat and  
14 quietly -- and tried to write as quickly what  
15 he was saying when he was being talked to by  
16 Detective Proctor.

17          He said, "I couldn't take that ass  
18 whipping."

19          MR. ESCOBAR: Exactly, but he also said,  
20 "I thought I was going to be seriously  
21 injured." And I would beg the judge -- I would  
22 beg, Judge, listen to that audio again because  
23 it's right there. It is right there. He says,  
24 "I was concerned that I was going to have some  
25 serious injury."



1           THE COURT: I heard him say that, too, but  
2 I also heard him, in a reflective moment, say  
3 that it was going to be an ass whipping. And  
4 ass whipping means a lot of different things to  
5 a lot of different people, I suppose, but an  
6 ass whipping to me just means get beaten up.

7           MR. ESCOBAR: Well --

8           THE COURT: Should I take it a different  
9 way?

10          MR. ESCOBAR: -- an ass whipping to you  
11 would -- may just be a "beating up." To me it  
12 just may be beaten up. To a 71-year-old man  
13 with these kind of ailments, it could be his  
14 life.

15          And that's why the Florida legislature has  
16 said, you know what? You know what? We've got  
17 to protect the elderly. They're far more frail  
18 than the 20-year-old or the 30-year old or the  
19 40-year-old. These individuals get a punch to  
20 the head and they die. These individuals get a  
21 punch and they fall and they break their hip  
22 and they die.

23          Fifty percent of the elderly people in  
24 this country that get a broken hip, they die.  
25 Fifty percent; it's that high.

1           THE COURT: Fifty percent of  
2 people that --

3           MR. ESCOBAR: Fifty percent of the  
4 individuals. The elderly individuals, not  
5 the -- the young. The elderly individuals,  
6 they die. .

7           THE COURT: Well, eventually we all die,  
8 but you're saying approximately from a broken  
9 hip they die?

10          MR. ESCOBAR: Well, it's -- it's all the  
11 complications that come with that, Your Honor.

12          THE COURT: Okay.

13          MR. ESCOBAR: It's being in bed; it's the  
14 congestive heart failure that results in not  
15 being mobile, absolutely.

16          THE COURT: Okay.

17          MR. ESCOBAR: And so the legislature has  
18 seen this. I didn't draft this law. The  
19 Florida legislature has said, you know what?  
20 We've got to protect the elderly.

21               And so, yes, Your Honor, an ass whipping  
22 for a 71 year old could be his life. If we  
23 were here and he had not pulled that gun and he  
24 had been hit and he had died, we'd all, in this  
25 room, be saying: Mr. Reeves, 27 years on the

1 force, commander of the tactical squad, you had  
2 a weapon in your -- in your pocket and you  
3 didn't realize that your life was in danger?  
4 That's what we would be saying today.

5 That's what we've said for many fallen  
6 officers in Hillsborough County. That Officer  
7 Roberts who approached that homeless man, the  
8 homeless man with the cart that nobody thought  
9 was dangerous.

10 MR. LOUGHERY: Your Honor, this is -- this  
11 is objectionable. Okay? You can't -- that's  
12 apples and oranges and it does disrespect  
13 Officer Roberts.

14 MR. ESCOBAR: No, it's --

15 THE COURT: All right. Look, move on from  
16 it.

17 MR. ESCOBAR: I will.

18 THE COURT: I get what you're saying.  
19 People are unpredictable.

20 MR. ESCOBAR: Your Honor, I -- I certainly  
21 think that with the family support that  
22 Mr. Reeves has in this community, with his  
23 history of being nothing but an incredible  
24 public servant, that he is not a danger to the  
25 community, he is not a risk of flight. He is

1 going to have his day in court, but he needs to  
2 have this time outside of the Pasco County jail  
3 so that he can assist his lawyers with this  
4 defense.

5 The evidence that we've brought before  
6 Your Honor creates incredible reasonable doubt.  
7 Incredible reasonable doubt. Not one of the  
8 State's witnesses really coincide with the  
9 other.

10 And then if you listen to Ms. Oulson's  
11 statement, she says, "My husband didn't curse.  
12 My husband didn't hit anybody. My husband  
13 didn't do any of that." Please, listen to  
14 her -- listen to her tape again. She says her  
15 husband didn't hit anybody, didn't strike  
16 anybody. The only thing he says, "Hey, dude,  
17 what's up with you" or "What's wrong with you?"  
18 And what do we see on the video? Just the  
19 opposite.

20 Not one single witness that they presented  
21 before this Court is credible. And not  
22 credible because they're bad people, Your  
23 Honor. They're not credible because they  
24 witnessed an event that was very traumatizing.  
25 And I think that certainly in their heart they

1 want to do everything that they can for Chad  
2 Oulson. But fortunately, the facts of this  
3 case, the cell phone spells out the video, the  
4 light corroborates the statements of Curtis  
5 Reeves.

6 I'd ask the Court to consider pretrial  
7 release. Mr. Reeves is willing to abide by any  
8 conditions this Court deems to be reasonable  
9 and prudent. And I would respectfully ask the  
10 Court to consider those and allow Mr. Reeves  
11 some form of pretrial release, monetary or not,  
12 until we're able to go to trial and prove his  
13 innocence.

14 THE COURT: All right. You want a break?  
15 Manny's going to get pretty animated. I'll  
16 give you a break.

17 THE COURT REPORTER: Yes, sir.

18 THE COURT: I'm going to give my courtroom  
19 staff a break. It's not fair that I go right  
20 into it. We've been going for quite some time.

21 So we're going to take a -- you want ten  
22 or fifteen?

23 THE COURT REPORTER: Fifteen.

24 THE COURT: We're going to take a  
25 fifteen-minute recess. We'll be back at 3:45

1 to continue.

2 (Recess.)

3 THE COURT: All right. You can be seated.

4 All right. Mr. Garcia, you ready to begin  
5 your presentation?

6 MR. GARCIA: Yes, Your Honor.

7 THE COURT: All right. Tell me what you  
8 got to tell me.

9 MR. GARCIA: May it please the Court,  
10 counsel?

11 Judge, what has brought us here Wednesday  
12 and Friday of this week? I would submit to you  
13 the last words of Chad Oulson, "I can't believe  
14 he shot me."

15 The law is clear in this case, Judge. We  
16 have the burden of proof not only by beyond a  
17 reasonable doubt, but by all doubt in this  
18 case. And we have to prove to you that the  
19 proof is evident and the presumption is great  
20 that this defendant, Curtis Reeves, committed  
21 second-degree murder on January 13th of 2014.

22 I would submit to this Court contrary to  
23 what Mr. Escobar has argued, that the State's  
24 witnesses are not credible, they're all over  
25 the place, so on and so forth. But two things

1           that are consistent with all four of those main  
2           witnesses, Judge, are that they never saw  
3           Chad Oulson strike, touch, hit or even throw a  
4           cell phone at Mr. Oulson.

5           You heard Mr. Cummings. And Mr. Cummings  
6           told you from the very beginning that  
7           Mr. Reeves was agitated, he was angry. As he  
8           walked out of the theater, he kicked the back  
9           of his chair. What's also consistent with all  
10          four of those witnesses, they all say it was  
11          popcorn and nothing more but popcorn.

12          What evidence does the State have to  
13          corroborate the testimony of those witnesses,  
14          Judge? And I would submit to you that we have  
15          photographs, which obviously you have seen and  
16          I would invite the Court to look at again, of  
17          Mr. Reeves on January 13th of 2014. And it  
18          shows that he absolutely has no injuries upon  
19          his face. None.

20          Mr. Escobar would want you to believe or  
21          the Court to believe that he may or may not  
22          have injuries had a cell phone been thrown at  
23          him. I would beg to differ with him, Judge.  
24          If a cell phone had been thrown in Mr. Reeves'  
25          face, there would be injuries depicted in these

1        photographs. And there's absolutely not even  
2        one scintilla of evidence that he was struck in  
3        the face.

4                Let's look at the statements that were  
5        made by Mr. Reeves in this case when he was  
6        interviewed by Detective Allen Proctor as far  
7        as ill will, depraved mind, hatred. "It was  
8        crazy, it really was. It was completely  
9        uncalled for. Good heaven, I didn't mean to do  
10       that. That was just -- I had to say that I've  
11       counseled cops for."

12               Out of his own mouth, Judge. "Good  
13       heaven, I didn't mean to do that." Not "I  
14       acted in self-defense. I just got hit with the  
15       cell phone on the side of my face. He threw  
16       the cell phone and hit me," but "Good heaven, I  
17       didn't mean to do that."

18               What else do we know, Judge? You know  
19       that Mr. Reeves, in talking to his wife, she  
20       indicates to him there's no justification for  
21       what happened in there.

22               What's more interesting and more telling,  
23       Judge, is that when Mr. Escobar kept saying  
24       look at the State's witnesses and determine  
25       their credibility and you will find that



1       they're not credible, so on and so forth. I  
2       know you've heard the audio, but I would  
3       implore the Court to go through your notes. I  
4       know that you took copious notes, Judge.

5               And Mr. Reeves says on the interview, "You  
6       know, I don't know if I was saying 'no, no, no'  
7       or 'whoa, whoa, whoa,' so he's coming over on  
8       me. I've got to -- I'm pushing him off with my  
9       left hands and I had a hold of something. I'm  
10      assuming it was probably his chest. I don't  
11      know."

12             Where in that video is that depicted,  
13      Judge? Where in that video do you see  
14      Mr. Reeves holding Chad Oulson back like he's  
15      describing? "I either was touching his arm,  
16      his chest or shoulder."

17             It's not in there, Judge. And the reason  
18      being is, after he found out that he had shot  
19      and killed Chad Oulson, not knowing that there  
20      was video surveillance in this case, he had to  
21      come up with a self-defense argument.

22             So what does he do? He starts making  
23      these statements. He knew that he shot that  
24      man in cold blood that day, Judge, for no  
25      justification.

1 Another one of his statements, "Oh, shit,  
2 this is stupid." Judge, and more telling is  
3 that when Corporal Alex Smith (sic) is on the  
4 witness stand and he hears conversations  
5 between Mr. Reeves and his wife, that his wife,  
6 after he makes a statement to her, he -- she  
7 turns to him and says, "There was no reason to  
8 do what you did."

9 THE COURT: You mean Corporal Hamilton.

10 MR. GARCIA: Corporal Hamilton. What did  
11 I say, Judge?

12 THE COURT: Alex Smith.

13 MR. GARCIA: I -- I'm sorry, Judge. I  
14 apologize.

15 He then turns to his wife and what does he  
16 say? He points at her and says, "Shut your  
17 fucking mouth and don't say another word."  
18 Why? Because he knew what he had done was  
19 wrong, Judge. He didn't want his wife saying  
20 the truth.

21 And what's the truth in this case? What  
22 statements do we have from Vivian Reeves?  
23 Detective Proctor asked Mrs. Reeves, "Did you  
24 see him get hit in the face?"

25 "No."

1           "Did you hear a hit?" And he -- he even  
2 demonstrated on the audio, Judge. If you  
3 recall, he (indicating) smacks his hand and  
4 said, "Did you hear a hit?"

5           "No."

6           "Did you see any injuries upon your  
7 husband, Mr. Reeves' body?"

8           "No."

9           "Any indications that he had been hit?  
10 Was there anything, Mrs. Reeves, on your  
11 husband's body that would lead you to believe  
12 your husband was struck or hit?"

13          "No."

14          "Did Mr. Oulson ever threaten your  
15 husband?"

16          "No."

17               And more telling, this defense that a cell  
18 phone was thrown, Mrs. Reeves was right next to  
19 him, sitting right there. Did you ever hear  
20 her say to Detective Proctor Mr. Oulson threw  
21 his cell phone; I see a cell phone come flying  
22 by? No. Why? Because it didn't happen,  
23 Judge. That's why. She specifically said that  
24 she had not heard Mr. Oulson make any threats  
25 to her husband, Mr. Reeves.

1           Detective Proctor goes back and questions  
2           him further. And he says to him, "You keep  
3           saying he hit you, but what does he hit you  
4           with?"

5           Mr. Reeves: "It's dark. I don't know."

6           Originally he had said, "I thought it was  
7           a fist. I thought he may have thrown a cell  
8           phone or hit me with a cell phone." Bottom  
9           line, Judge, is it didn't happen.

10          For the sake of argument and should this  
11          Court believe Mr. Escobar that the shiny light  
12          on the video was, in fact, a Smartphone,  
13          obviously we're not saying that it was, we're  
14          not admitting that it was, Judge.

15          First of all, why would somebody throw a  
16          5- or \$600 cell phone at someone? And then why  
17          would Mr. Reeves wait 13 seconds after that  
18          shiny light before firing his gun? Is that  
19          reasonable?

20          I would submit to you that based upon the  
21          video in this case -- and the only one that's  
22          aggressive in here is Mr. Reeves. From the  
23          minute that he gets in that theater -- and take  
24          it, Judge, you can see the theater -- the  
25          theater's empty. There's hardly anyone there

1 to see the showing.

2 Why does he go and sit directly behind  
3 Chad Oulson? Because Mr. Reeves has appointed  
4 himself as the texting police. He's going to  
5 tell him, because as Mr. Escobar said, he has  
6 27 years of law enforcement, all this tactical  
7 training, all this experience, and by God, he's  
8 going to go in there and he's going to sit  
9 behind Chad Oulson.

10 And you saw on the video within seconds --  
11 he sits down and within seconds he's tapping  
12 him on the shoulder, hey, you need to turn that  
13 off. And he sits back. And a second or two  
14 goes by and what does he do? He reaches over  
15 again and tells him, you need to turn your cell  
16 phone off.

17 Anywhere in that video do you ever see  
18 Mr. Oulson, during those encounters, turn  
19 around and speak to him or say anything to him?  
20 Obviously you don't see him in the video.

21 Then the third occasion. He's sitting  
22 there and he moves forward again. Another  
23 conversation, okay, you're not going to turn  
24 the cell phone off, I'm going to see the  
25 management. He leaves and goes to see the

1 management.

2 He shortly comes back there afterwards.  
3 Now he sees -- it's corroborated through the  
4 testimony in the taped interview of Ms. Oulson  
5 that her husband had put the cell phone away --  
6 so instead of just going back to his seat and  
7 not saying anything, he has to engage him again  
8 and say, "Oh, so now that you've -- that I've  
9 gone to management, now you put your cell phone  
10 away."

11 And then what transpires, Judge? I would  
12 submit to you what transpires is, is that  
13 Chad Oulson stands up. He is extremely angry  
14 at this point after Mr. Reeves has confronted  
15 him at least on three, if not four, occasions  
16 about the cell phone and he's had enough.

17 There's various versions of what he said.  
18 Some people say, "I was texting my fucking  
19 daughter if it's -- it was any of your  
20 business." "I had just gotten a phone message.  
21 I was checking on my daughter," so on and so  
22 forth.

23 What you see in that video is you see  
24 Chad Oulson reaching over, grabbing the popcorn  
25 out of Mr. Reeves' hands and throwing it at his

1 chest.

2 And I would submit to you, Judge, as far  
3 as testimony about the gun being drawn and so  
4 on and so forth, if you look at that video,  
5 Judge, there is absolutely no way -- I don't  
6 care how many times he's drawn that gun from  
7 his pocket in the fluid motion that Mr. Turner  
8 talked about, I would submit to you Mr. Reeves  
9 was ready and waiting for Oulson; he was ready  
10 and waiting for a confrontation.

11 It's almost instantaneously. The popcorn  
12 is thrown. The popcorn is still in the air,  
13 hasn't even hit him when the gun is pulled out  
14 in front of him because he said, according to  
15 his testimony, it was in an upward trajectory.  
16 If you look at that video, his arm is straight  
17 out, Judge.

18 The other important and interesting point  
19 that was brought out through Detective  
20 Aaron Smith is that you heard that the  
21 difference in height between Row B and Row A is  
22 ten inches, Judge.

23 THE COURT: I did hear that.

24 MR. GARCIA: So six-foot-four Chad Oulson  
25 would not be six-foot-four standing in front of

1           Curtis Reeves. You would have to take ten  
2           inches off of his height which would put him  
3           basically directly in front of the defendant.

4           THE COURT: Was that true if he was  
5           sitting, though, which he clearly was sitting.  
6           So now -- now he's just a five-foot-four guy  
7           standing in front of him, right?

8           MR. GARCIA: Right.

9           THE COURT: Okay.

10          MR. GARCIA: Correct.

11          THE COURT: Tell me what -- tell me --  
12          highlight, spotlight what you've told me so  
13          far, though, that gets you past the many cases  
14          the Defense has cited as it relates to  
15          second-degree murder.

16          MR. GARCIA: Absolutely, Judge.

17          THE COURT: All right.

18          MR. GARCIA: I can point you directly to  
19          it --

20          THE COURT: Point --

21          MR. GARCIA: -- and that's the  
22          statement --

23          THE COURT: Point me to it.

24          MR. GARCIA: That is the statement from  
25          Derek Friedhoff. If you recall, the statement



1 from him was "I'll teach you to throw popcorn  
2 at me," and he fires the gun at Chad Oulson.  
3 That is a person with a depraved mind; that is  
4 a person with ill will; that is a person with  
5 hatred.

6 I can cite to you, the Court -- Judge, our  
7 case law is clear in this case, Judge, the  
8 cases that I've cited.

9 THE COURT: Tell me those cases again.  
10 You're saying the ones that are in your -- in  
11 your memo.

12 MR. GARCIA: Yes, Judge, the ones that are  
13 in the memo starting off with *Keltner*.

14 THE COURT: Which page of the memo was it  
15 again?

16 MR. GARCIA: I'm -- I'm sorry, Judge?

17 THE COURT: Which page of the memo was it  
18 again? *Keltner*; there it is. It's on Page 2  
19 at the top.

20 MR. GARCIA: Yes, Judge. But citing the  
21 Court to *Keltner*, Judge, under Headnote 1 --  
22 and it's, for the record, *Keltner* is *Keltner*  
23 *vs. State of Florida*. And it was decided  
24 February 17th, 1995. It was a Second DCA case.

25 "Keltner contends that the evidence was

1       insufficient to warrant the jury's finding that  
2       he evinced a depraved mind in shooting the  
3       victim. From our view of the evidence in this  
4       case, we find that the act of pointing a loaded  
5       firearm in someone's direction and then firing  
6       it is imminently dangerous to another and  
7       evinces a depraved mind."

8               THE COURT: All right.

9               MR. GARCIA: And then it cites to the  
10       other cases of *Brown* and *Edwards*. And I think  
11       in one of those cases the defendant fired at an  
12       individual and struck him in the leg. And the  
13       court likewise says that constitutes ill will,  
14       hatred and a depraved mind, Judge, when you  
15       point a gun at someone and you fire it.

16              THE COURT: Does that mean that every gun  
17       death has to be second-degree murder? It can't  
18       be manslaughter?

19              MR. GARCIA: No, I'm not saying that,  
20       Judge. It depends upon the facts and the  
21       circumstances in this case.

22              In this case, Judge, our contention is  
23       they have not established self-defense in this  
24       case. And through his actions, pointing the  
25       gun, firing the gun and his statements,

1 constitutes second-degree murder.

2 THE COURT: Keltner seems to be a little  
3 light on facts. It's a one-page decision.

4 MR. GARCIA: Well, Judge, here's another  
5 case. I would cite the Court to *Edwards vs.*  
6 *State of Florida* which can be found at 302  
7 So.2d 479, a Third DCA case which was decided  
8 November 3rd of 1974.

9 Under Headnotes 3, 4 and 5, "As defined in  
10 782.04 Florida Statute, murder in the first  
11 degree requires premeditated design," as this  
12 Court is well aware of, "and murder in the  
13 second degree requires an imminently dangerous  
14 act evincing a depraved mind regardless of  
15 human life. It is well established the state  
16 of mind may be inferred from one's actions, and  
17 a murderous intent may be established by the  
18 facts and circumstances of the case, such as a  
19 weapon being directed at some vital spot on the  
20 assaultee's body."

21 I would submit to you that Mr. Reeves, in  
22 pointing that firearm directly at Chad Oulson's  
23 chest, what other intent did he have, Judge,  
24 but to kill him? It's not like he shot him in  
25 the leg or shot him in the arm, he shot him in

1 the dead center of his chest.

2 THE COURT: What am I to make, though, of  
3 all the Defense's cases that talk about an  
4 overreaction to a sudden provocation in fight?  
5 Is manslaughter not -- not -- for instance, he  
6 said, "I thought I was going to get my ass  
7 whipped."

8 Say that -- say that self-defense isn't  
9 appropriate and say that everything that you  
10 prove is correct. How is simply shooting him  
11 as an overreaction not the manslaughter that  
12 half a dozen of the Defense's cases point me  
13 to? And some of them are Second DCA cases  
14 fairly recent.

15 MR. GARCIA: Judge, because I think in  
16 this case you have the ill will that's  
17 necessary for the second-degree murder by his  
18 very own statements, "I'll teach you to throw  
19 popcorn at me," and fires.

20 That is a time to reflect. As the Court  
21 is well aware of, Judge, the time to reflect is  
22 only the time necessary for reflection. You  
23 see a dollar bill on the ground, you stop. Do  
24 I pick it up? That's establishing premeditated  
25 murder, Judge.

1           In this case I would submit to you his  
2           reflection, it wasn't like the popcorn was  
3           thrown and he was hit and automatically he  
4           fires. But you heard the testimony from the  
5           witnesses, especially Mr. Friedhoff. He  
6           testified, "I'll show you to throw popcorn in  
7           my face," and then fires center mass. What  
8           other intent does he have but to kill  
9           Chad Oulson?

10           Furthermore, Judge, does a reasonable  
11           citizen carry a loaded firearm in a theater in  
12           violation of a posted sign that clearly says no  
13           firearms? If he had left the firearm in his  
14           car, we wouldn't be here today. This would  
15           have never have happened.

16           Clearly his actions on January 13th of  
17           2014, Judge -- and I would submit to you that  
18           the State of Florida has not only proven this  
19           by proof evident presumption great, we have not  
20           only proven it beyond and to the exclusion of  
21           every reasonable doubt, but of all doubt,  
22           Judge.

23           There was no reason for him to shoot  
24           Chad Oulson with a firearm and kill him, even  
25           assuming that he had been struck, assuming

1       arguendo that he had been struck with the cell  
2       phone.

3             You know, Mr. Escobar kept talking about  
4       self-defense, the Stand Your Ground, a forcible  
5       felony. Well, Judge, in our memorandum, in our  
6       response to their motion to set a reasonable  
7       bond, I think the case law is very clear,  
8       Judge.

9             In *Nelson vs. State*, "The issue for  
10      resolution is whether the trial court erred in  
11      classifying Nelson as a prison re-releasee  
12      reoffender on the two convictions of battery of  
13      a person sixty-five years of age or older  
14      pursuant to Section 784.08(2)(c) of the Florida  
15      Statutes."

16            In *State vs. Hearn*s, which is found at 961  
17      So.2d 211, a Florida Supreme Court case of  
18      2007, the Florida Supreme Court looked at the  
19      elements of the offense charged, battery on a  
20      law enforcement officer, and determined that  
21      since a battery could include a mere touching,  
22      it would not necessarily be a forcible felony  
23      under the PRR statute.

24            "We conclude that *Hearn*s applies to the  
25      instant charges and that *Nelson* is not subject

1 to sentencing as a PRR for the two battery  
2 offenses. Battery of a person sixty-five years  
3 old or older is neither an enumerated felony  
4 nor does it contain the necessary element of  
5 'the use of threat of physical force or  
6 violence against an individual.' See 784.08(c)  
7 of the Florida statutes, 2004."

8 In *Hearns*, 961 So.2d 216, the court  
9 reiterated that "The only relevant  
10 consideration when determining whether an  
11 offense constitutes a forcible felony is the  
12 statutory elements of the offense. If 'the use  
13 or threat of physical force or violence against  
14 an individual' is not a necessary element of  
15 the crime, 'then the crime is not a forcible  
16 felony within the meaning of the final clause  
17 of Section 776.08.'"

18 THE COURT: All right. Let's go one step  
19 further looking logically at the construction  
20 of the statute when -- for instance, when the  
21 State brings a case and they calculate the  
22 criminal punishment code for purposes of  
23 scoring out a sentence.

24 If you bring me a charge out of Georgia  
25 where it's a misdemeanor, but in Florida it

1 would be a felony, should I look to the  
2 elements of the offense committed or should I  
3 look to the elements that are delineated within  
4 the Georgia statute to determine whether it's a  
5 felony or misdemeanor for purposes of scoring?

6 MR. GARCIA: Well, you should look for the  
7 elements for purposes of scoring, Judge.

8 THE COURT: And then factually, in this  
9 case, should I look to simply the idea that  
10 battery on a person sixty-five years of age or  
11 older could be a touching against the will or  
12 it could be, as charged in (B), causing injury  
13 which is what they're alleging. They're  
14 alleging that it was by causing injury from the  
15 striking with the phone, not simply an unwanted  
16 touching.

17 MR. GARCIA: I understand that, Judge.  
18 However, it's not a forcible felony to where  
19 you can pull out a gun and shoot and kill  
20 someone.

21 THE COURT: Oh, I'm not saying that. I'm  
22 just asking -- I'm asking can it be classified  
23 if they're asserting this defense.

24 And you're -- you're saying Stand Your  
25 Ground as though they've actually asserted



1           that. I don't think --

2           MR. GARCIA: I -- I -- I'm not --

3           THE COURT: -- they've actually asserted  
4           that.

5           MR. GARCIA: No, I'm not saying that,  
6           Judge. I'm just saying in looking --

7           THE COURT: I actually want to get that  
8           clarified because -- and I -- I hate to use  
9           those words because it makes everybody run in  
10          different directions and say things that aren't  
11          necessary to be said, and it's certainly a  
12          phrase that when you touch upon it, everybody  
13          goes wild, but I can't avoid it anymore.

14          Are you asserting Stand Your Ground here?

15          MR. ESCOBAR: Your Honor, at this point  
16          it's too early in -- in this case to assert any  
17          of that. What I did, if -- if the Court  
18          reflects on -- on -- it's on Page 5 of my  
19          memorandum, you will see that I cite not only  
20          776.012, which is what's contained in -- in --  
21          in Stand Your Ground, but more importantly,  
22          782.02 doesn't even talk about a forcible  
23          felony.

24          THE COURT: I --

25          MR. ESCOBAR: It says "any felony."

1           THE COURT: I know and that's why -- and  
2           that's why I'm going through it. But I want  
3           to -- I want to make sure that everybody has it  
4           correct what's going on here.

5           Are you, at this point, asserting Stand  
6           Your Ground --

7           MR. ESCOBAR: No.

8           THE COURT: -- or any variation of Stand  
9           Your Ground within the statute?

10          MR. ESCOBAR: No. Your Honor, the only  
11          thing that we've done is that we've made the  
12          laws available to the Court for the Court's  
13          consideration on both sides. And that's why we  
14          went through great lengths to show that, you  
15          know, the six-foot wall was right behind  
16          Mr. Reeves, and it wouldn't be reasonable for  
17          him to be able to flee Mr. Oulson because,  
18          again, he was over the -- the backrest of  
19          Mr. Oulson. So that was the whole purpose of  
20          doing this.

21          So if he has a duty to retreat, guess  
22          what? He wasn't going anywhere.

23          THE COURT: I -- I heard your frequent  
24          and -- frequent and vivid references to the  
25          six-foot wall many times and I understood that.

1 But I also just want to make sure that we're  
2 clear.

3 You're not asserting Stand Your Ground at  
4 this time.

5 MR. ESCOBAR: I -- I --

6 THE COURT: I'm not foreclosing you from  
7 doing it, but I want to make sure that it's  
8 clear, that's not something you're asking me to  
9 consider right now in any way.

10 MR. ESCOBAR: Not to consider at this  
11 time, Your Honor, but I would consider along  
12 with the statute, you've got to consider all  
13 the physical evidence, including the autopsy  
14 that clearly shows --

15 THE COURT: I'm going to look at all the  
16 evidence --

17 MR. ESCOBAR: Okay.

18 THE COURT: -- before I rule. Don't  
19 worry. I'm going to take it all back to my  
20 chambers and I'm going to take ten to fifteen  
21 minutes to go through it all again. I looked  
22 at it this morning as soon as I walked in here.  
23 I'm going to look at it all again, especially  
24 the new stuff.

25 So I just wanted to make sure that we're

1 clear, you're not asserting Stand Your Ground.  
2 I'm not keeping you from doing it later, but  
3 that's not what we're doing today. Okay?

4 MR. ESCOBAR: Your Honor, in a bond motion  
5 like this, you don't assert Stand Your Ground.

6 THE COURT: Right, it's an immunity.

7 MR. ESCOBAR: It's a consideration of the  
8 law that you have to consider, but we're not  
9 asserting it now because we're not at a Stand  
10 Your Ground posture.

11 THE COURT: Right. I just -- just making  
12 sure. Okay. Great.

13 You may continue, Mr. Garcia.

14 MR. GARCIA: Judge, did I answer the  
15 Court's question? Or I think we may have  
16 cleared up the issue as to the Stand Your  
17 Ground defense.

18 THE COURT: That was what I wanted -- I  
19 wanted to get that out of the way before we  
20 went any farther. I'm still -- I'm still  
21 listening for anything additionally you want to  
22 tell me on why this is second-degree murder and  
23 not manslaughter if you prove it beyond and to  
24 the exclusion of every reasonable doubt. And I  
25 don't believe that there's self-defense.

1           Why is it that it's second-degree murder  
2           and not manslaughter?

3           MR. GARCIA: I -- Judge, and I think --  
4           not to be repetitive. I think I set it out in  
5           the State's response as to the cases that we  
6           cited as to the gun.

7           And mindful, Judge, the -- the  
8           uncontroverted testimony from this witness  
9           stand was Mr. Reeves shot an unarmed man.  
10          There wasn't self-defense. They all indicated  
11          they never saw a hit, they never saw a strike,  
12          they never saw a cell phone. They saw popcorn  
13          being thrown.

14          Does popcorn justify him pulling out his  
15          firearm and shooting Chad Oulson in the chest?  
16          No. I would submit it does not, Judge.

17          THE COURT: How about this: On that video  
18          there is a light. I don't know what that light  
19          is. I know what Mr. Escobar wants me to  
20          believe that light is, but I don't know what  
21          that light is, not yet. I could infer what  
22          that light might be.

23          What do you think that light is based on  
24          everything that we've got going on here in the  
25          way of the testimony and evidence that we've

1 heard from the bond hearing? What should I  
2 believe that light is?

3 MR. GARCIA: I don't know, Judge, to be  
4 quite candid with the Court. And I don't think  
5 the case -- the Court, I'm sorry, can assume  
6 what it is or have conjecture as to what it is.

7 Mr. Escobar doesn't know that that's a  
8 cell phone. He can't stand up here before this  
9 Court and say it's a cell phone.

10 THE COURT: Well, he did.

11 MR. GARCIA: I know he did, Judge, but  
12 it's pure speculation and conjecture on his  
13 part. It's an assumption.

14 We don't know if that's a glitch in the  
15 camera, the light that you see. We don't know  
16 if that's Mr. Reeves' cell phone that has  
17 fallen or Mrs. Reeves' cell phone that has  
18 fallen.

19 Why is he asking about his cell phone?  
20 Ask yourself -- you know, he's thinking that he  
21 lost his cell phone. We don't know what that  
22 is, Judge.

23 THE COURT: Say I believe it is the cell  
24 phone. How does that affect the ruling that I  
25 should give at this time?

1           MR. GARCIA: How does it affect the  
2           ruling? Tremendously, Judge, because if you,  
3           in fact, believe that that cell phone was  
4           thrown at Mr. Reeves, 13 seconds goes by before  
5           he shoots him. That's ill will. That's  
6           hatred. That's having a depraved mind. That  
7           is second-degree murder.

8           THE COURT: Okay. Anything else you want  
9           to tell me as to why I should find proof  
10          evident presumption great because while I have  
11          not yet made my decision, when I do make my  
12          decision, if I decide you've not found -- met  
13          your standard, I want to hear your input as to  
14          what you believe I should do if I decide to  
15          give a bond, whether it should be a monetary  
16          bond. And if it's a monetary bond, I'm going  
17          to ask you what you think the amount should be.  
18          And then I'm also going to ask what other  
19          restrictions you think I should put on  
20          Mr. Reeves in the event that I give him bond.

21          MR. GARCIA: Judge, in -- in all candor  
22          with the Court, the State's position is that we  
23          would obviously ask the Court for no bond.

24          However, if you find that we have not met  
25          our burden by proof evident presumption great

1 and you are inclined to set a bond, I would ask  
2 this Court to set a bond in the amount of  
3 two-million dollars.

4 I would ask the Court for him to surrender  
5 his passport. I would ask the Court to impose  
6 the fact that he cannot go to the movies or  
7 attend any of the movie theaters.

8 THE COURT: That's a given. I'm going to  
9 do that.

10 MR. GARCIA: Well -- Judge, because quite  
11 frankly, Judge, you know, the citizens of Pasco  
12 County have a right to be protected from people  
13 as Mr. Reeves in this case, Judge. He was a  
14 ticking time bomb that day, Judge --

15 THE COURT: All right. I --

16 MR. GARCIA: -- and he exploded.

17 THE COURT: I understand that, but I'm  
18 looking also at the bond schedule. If I decide  
19 you've not met your burden, the bond schedule  
20 suggests that for a life felony, including  
21 homicides, low bond is \$100,000, high bond is  
22 none.

23 In the state of Florida here in Pasco  
24 County, because we have the numbers and they're  
25 always given to the judges, I've had a chance



1 to take a look at the numbers.

2 Do you know how many second-degree murders  
3 we have pending in Pasco County right now?  
4 Thirteen of them. Five of them have bonds in  
5 the amount between 100,000 and 500,000; eight  
6 of them have no bond.

7 What bond should I set for him? Nobody's  
8 got -- well, actually, I think one had 750,000.

9 MR. GARCIA: It's almost --

10 THE COURT: No -- nobody's got one more  
11 than a million. And the ones that have high --  
12 the higher bonds have other situations going  
13 on. This gentleman has no prior record for  
14 his -- the entirety of his life.

15 And why would I set a two-million dollar  
16 bond for somebody with no prior record?

17 MR. GARCIA: Judge, that's because the  
18 State of Florida feels that strongly about this  
19 case and the safety of the citizens of Pasco  
20 County. Judge, we firmly believe that  
21 second-degree murder has, in fact, been proven  
22 here.

23 I understand the Court may or may not have  
24 a finding and disagree with us, Judge. If you  
25 feel that \$2,000,000.00 is excessive and -- and

1 in conjunction with bond schedules you're  
2 saying it could be from \$100,000 to no bond at  
3 all, then I would submit to the Court, Judge,  
4 that we would ask for a \$200,000 bond should  
5 the Court decide to set one, that he -- that  
6 all the firearms in the possession of his son  
7 be relinquished to the Pasco County Sheriff's  
8 Office.

9 THE COURT: All the firearms that he owns.

10 MR. GARCIA: That he owns that are in the  
11 possession --

12 THE COURT: Right.

13 MR. GARCIA: -- of his son. We would ask  
14 that his passport be surrendered to this Court.

15 In addition, again, I think to reiterate,  
16 we've already considered that as part of the  
17 bond conditions, should you set it, is that he  
18 is not to attend any theaters. And I would  
19 say, Judge, either in Pasco County or any other  
20 county in the state of Florida.

21 THE COURT: Just -- just so that nobody  
22 has to worry about this, in the event that I  
23 grant bond --

24 MR. GARCIA: He's not going --

25 THE COURT: -- I've not made -- I've not

1       made a decision yet, but in the event that I  
2       grant bond, I'm going to order that he remain  
3       at his house. He can go to church and he can  
4       go to the grocery store, but that's it. Unless  
5       he has some other special function that he  
6       wants to attend, then he's going to ask the  
7       Court's permission in advance if I decide to do  
8       that.

9       Mr. Escobar's already volunteered that  
10      he's basically willing to be on house arrest if  
11      I -- if I let him out. I'd let him go to  
12      church and I'd let him go to the grocery store,  
13      if -- if he thought that was necessary. Of  
14      course, I'd probably counsel him that's a bad  
15      idea, also, but --

16      MR. GARCIA: Judge, I would also ask this  
17      Court to consider putting an ankle monitor on  
18      him.

19      THE COURT: And I'm going to do that,  
20      also, if I -- if I grant bond. Again, I'm  
21      still -- I'm still trying to figure out what to  
22      do here. And I'm going to review all my notes  
23      and I'm going to review the evidence and then  
24      I'm going to give you the answer.

25      But anything else that -- that you haven't

1 covered with me yet that you want to cover?

2 MR. GARCIA: Yes, sir. Judge, as far as  
3 presentation, Judge, the only thing that I've  
4 asked, as I indicated to the Court and I would  
5 reiterate one more time, the State of Florida  
6 feels strongly that this has been proven by  
7 proof evident presumption great that we have  
8 not only met our burden by proving it beyond a  
9 reasonable doubt, but all doubt that the  
10 defendant committed second-degree murder on  
11 January 13th of 2014.

12 And we would respectfully request that  
13 his -- his bond remain at zero.

14 THE COURT: All right.

15 MR. GARCIA: Thank you, sir.

16 THE COURT: Thank you, Mr. Garcia.

17 Mr. Escobar, I'm not in the habit of doing  
18 it, but I -- if there's anything that he's  
19 addressed specifically that -- specifically  
20 that you need to -- you feel that I should have  
21 readdressed to me in a very limited fashion, I  
22 will let you do it because I need to make sure  
23 I've made the right decision here, and I want  
24 to hear from everybody as much as I can.

25 MR. ESCOBAR: Your Honor, I -- one of the

1 things that he mentioned is, why would  
2 Mr. Oulson throw his phone?

3 I think that's very reasonable that  
4 Mr. Oulson would have thrown his phone because  
5 the phone is what actually caused Mr. Oulson's  
6 anxiety over this whole situation.

7 He was texting; he was using his phone.  
8 And that's what precipitated this whole issue.  
9 I could see very easily him getting so  
10 frustrated over the situation and getting so  
11 out of control.

12 We know he got out of control. No one can  
13 dispute that Mr. Oulson was totally out of  
14 control. Whether he threw a phone like this  
15 (indicating) --

16 MR. LOUGHERY: Judge --

17 MR. ESCOBAR: -- or whether he --

18 MR. LOUGHERY: -- Judge, objection. This  
19 is not another argument. I think you wanted  
20 something specific.

21 THE COURT: Yeah, I -- I -- I was -- I was  
22 hoping -- I mean is there -- is there anything  
23 specific? I get -- I get what your inference  
24 that you're drawing and I get what his  
25 inference that he's drawing. I understand that

1           and you two will never agree on that. And when  
2           you say nobody can disagree, I bet you I could  
3           find a couple people in the audience that would  
4           disagree with just about anything that gets  
5           said today.

6           I'm just talking. Is there anything  
7           within the law that you disagree with that  
8           Mr. Garcia asserted that you haven't already  
9           told me about, because that's what I'm looking  
10          for. I have to apply the law to the facts and  
11          come up with this decision. I don't -- I don't  
12          need any more of the emotional argument. I  
13          just need the law to the facts.

14          Is there anything left that I haven't  
15          considered, asked you about, asked him about?  
16          I've asked you both some tough questions  
17          because I wanted to hear your answers. And you  
18          both have answered me and you've given me a lot  
19          to think about.

20          Is there anything else that you thought of  
21          while Mr. Garcia was talking that you thought  
22          Judge, you should have asked him this, or  
23          Judge, you should have asked him that.

24                 MR. ESCOBAR: No, Your Honor.

25                 THE COURT: Okay.

1           MR. ESCOBAR: I think I've laid the law in  
2 my memo.

3           THE COURT: All right, great. Then we're  
4 going to take 15 minutes so I can go and look  
5 at everything and I'll come back and tell you  
6 what's going to happen.

7 (Recess.)

8           THE COURT: All right. State, before we  
9 got started today, I asked you if March 12th at  
10 11:00 a.m. would work as a pretrial for you.  
11 Does March 12th at 11:00 a.m. work?

12          MR. GARCIA: Yes, sir, Judge, that's fine.

13          THE COURT: Defense, I ask the same of  
14 you. March 12th at 11:00 a.m.; does that work?

15          MR. ESCOBAR: Your Honor, it does. As  
16 long as Mr. Michaels -- I've got a hearing in  
17 Seminole County -- if he could cover for me --

18          THE COURT: Of course.

19          MR. ESCOBAR: -- at this hearing, we'll be  
20 fine.

21          THE COURT: Of course. Okay.

22                 Second, civility. I've been doing this  
23 long enough to know that no matter what I say  
24 in the next five minutes, there's going to be a  
25 lot of people that are going to be unhappy.

1 One side or the other, both sides feel very  
2 passionate. And it's when you're initially  
3 unhappy you're tempted to say or do something  
4 that you wouldn't normally do. There's  
5 probably not a better illustration of that than  
6 what's going on, what brings us here today.

7 So to that end, think right now how you  
8 would feel if the decision went against you.  
9 Think right now how you would feel if the  
10 decision went for you.

11 If the decision went for you, while you  
12 may be happy, you would know that if the  
13 decision went against the side that you want or  
14 against that side, you would not want to see  
15 the others celebrate in your face or do  
16 anything to attempt to provoke you and vice  
17 versa. You would want to be treated with  
18 respect and you would want to treat others with  
19 respect.

20 So to that end, take a few moments before  
21 you react. And when you react, if you choose  
22 to, please react outside of the courtroom.  
23 I've watched too many of these things escalate  
24 a bad situation into a worse situation. We  
25 don't need that here.



1           As I sit here and you wait for me to rule,  
2           I can tell you that I have been in this  
3           position before. I've felt this position  
4           before. It feels like this is a verdict, but  
5           this is not a verdict. I am not finding  
6           anybody guilty or innocent of anything today,  
7           and it's not to be interpreted as such.

8           No matter what my ruling is on this  
9           motion, Mr. Reeves, nothing changes about the  
10          fact that you are presumed innocent of this  
11          charge. Nothing changes. I'm not endorsing  
12          your self-defense position nor am I saying that  
13          your self-defense position is wrong by my  
14          ruling in this matter.

15          It is a pretrial ruling for the purposes  
16          of determining detention. It's not a finding  
17          of guilt or a finding of innocence and it needs  
18          to be clearly understood in that way.

19          To that end, the decision of the Court,  
20          after listening to all of the evidence, after  
21          reviewing the very well-prepared brief --  
22          briefs that were provided, after reviewing the  
23          evidence and specifically listening to the  
24          tapes, after listening to the argument of  
25          counsel for both sides, the Court is going to

1 find that the State did, in fact, meet their  
2 standard.

3 And I am going to detain Mr. Reeves  
4 pretrial. He will remain in custody, remanded  
5 to the Sheriff of Pasco County.

6 Mr. Reeves, you have appellate rights on  
7 this. You can appeal this and the appellate  
8 courts will have a chance to review everything  
9 that I've done. If they decide that I've made  
10 a mistake, it comes back and I would give you a  
11 bond.

12 And because -- because I know it is a  
13 possibility that I will be appealed, a  
14 probability that I will be appealed, and  
15 because I know that they may send it back, I  
16 want to put on the record what I would have  
17 done if I did not find that the standard was  
18 met, so that if they send it back and say Judge  
19 Siracusa, you are wrong, they know what I would  
20 have done.

21 What I would have done was, I would have  
22 given you a \$150,000 bond which would have been  
23 consistent with my observation of people with  
24 no prior record charged with second-degree  
25 murder. I would have -- and that's from

1 looking at the entirety of the sixth judicial  
2 circuit.

3 I would have ordered that you would have  
4 remained on a monitor at your house. I would  
5 have ordered that you would have had contact  
6 only at your church and at the grocery store,  
7 if you wanted to go grocery shopping.

8 I would have ordered that not only you be  
9 dispossessed of all your firearms that you  
10 currently own and placed in the custody of the  
11 sheriff's office, but I would have ordered that  
12 no firearms would be brought into your presence  
13 by anybody that was a friend or associate of  
14 yours. In other words, your son, who is a law  
15 enforcement officer and who is allowed to carry  
16 a firearm, if he was coming to visit you at  
17 your home, he would not be able to bring that  
18 firearm into the home.

19 So that would have been my ruling had I  
20 not found the standard met. Having found the  
21 standard met, though, I have to detain you  
22 pretrial.

23 And we'll be in recess, then, on this case  
24 until March 12th of this year.

25 MR. ESCOBAR: Your Honor, I have one

1 matter that I'd like to --

2 THE COURT: Sure.

3 MR. ESCOBAR: -- clear up with the Court.  
4 Since the videos have been presented, I think  
5 it's only fair to, at this point in time, for  
6 me to agree that the videos that were  
7 introduced into evidence be released to the  
8 media. I think it's only fair for them to be  
9 able to view it on their own software, on their  
10 own computers so that they can see for  
11 themselves --

12 THE COURT: Let me ask the State if they  
13 have any objection. State, do you have any  
14 objection?

15 MR. LOUGHERY: No.

16 MR. GARCIA: No, sir.

17 THE COURT: Okay. If you're agreeing,  
18 then I'll allow it to be released in its raw  
19 form through the discovery request.

20 And, State, you've -- you've gotten the  
21 agreement of the victim; is that correct?

22 MRS. SUMNER: Yes, Your Honor.

23 THE COURT: Mr. Grimaldi, you're okay with  
24 that?

25 MR. GRIMALDI: That's fine, Your Honor.

1                   THE COURT: Okay, great. Then we'll be in  
2                   recess until March 12th.  
3                   (Proceedings concluded.)  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF FLORIDA     )  
                              )  
COUNTY OF PASCO     )

I, Melinda McClain, Registered Professional  
Reporter, certify that I was authorized to and did  
stenographically report the foregoing proceedings  
and that the transcript is a true record.

DATED this 20th day of March, 2014.



Melinda McClain, RPR