

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 I

12 DATE: February 5, 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
20 State of Florida at Large

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*

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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

APPEARING ON BEHALF OF
TAMPA BAY TIMES:
Anne H. Arsenault, Attorney at Law
Rahdert, Steele, Reynolds & Driscoll
535 Central Avenue
St Petersburg, Florida 33701

APPEARING ON BEHALF OF
MEDIA INTERVENORS:
Rachel E. Fugate, Attorney at Law
Thomas & LoCicero PL
601 S Boulevard
Tampa, Florida 33606

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THE COURT: Well, good morning, everybody.
We are here in State of Florida vs.
Curtis Reeves, Number 14-2106CFAES -- I'm
sorry, 216CFAES, here in division one crime,
sixth judicial circuit, Pasco County, Florida.

Present for the State is Mr. Garcia,
Ms. Sumner, Mr. Loughery there in the back -- I
spotted you this time -- as well as
Mr. Kraebel.

Present for the Defense is Mr. Escobar and
Mr. Michaels. The defendant is present in the
courtroom and dressed out in civilian clothing.
The defendant is in the least restrictive
restraint that meets the Sheriff's ability to
maintain security in the courtroom.

Captain Ferrantelli is present for --

CAPTAIN FERRANTELLI: Sir.

THE COURT: There he is; there's
Captain Ferrantelli.

Captain Ferrantelli, this is against the
policy and procedure of the sheriff's office,
but you're doing this at the direction of the
Court; is that correct?

CAPTAIN FERRANTELLI: May I approach the

1 bench?

2 THE COURT: You may.

3 CAPTAIN FERRANTELLI: For the record, my
4 name is Mike Ferrantelli. I'm a Pasco County
5 captain.

6 Yes, this practice of him not being in
7 hand restraints and black box is against our
8 general orders. Statutorily, the Sheriff is
9 charged with the safety and security of the
10 Court and members thereof. And this is
11 something that we wouldn't normally do for any
12 person charged with that level of crime.
13 Therefore, we object to him not being in
14 handcuffs and shackles.

15 THE COURT: All right.

16 CAPTAIN FERRANTELLI: I mean handcuffs and
17 black box.

18 THE COURT: All right. Thank you,
19 Captain Ferrantelli.

20 CAPTAIN FERRANTELLI: Thank you.

21 THE COURT: Okay. We've got a long
22 morning ahead of us and perhaps a long
23 afternoon. So I'd now ask that everybody check
24 their cell phones to make sure they're turned
25 off. Not set to vibrate but, in fact, turned

1 off unless you're a credentialed member of the
2 media that, in advance, had this approved by
3 our public information officer, Ron Stuart.

4 The reason that I'm asking you to turn
5 your cellphone off rather than just set it to
6 silent is that on top of we don't allow texting
7 or internet surfing in court, we also have a
8 policy because it creates feedback so --
9 especially if you're going to be a witness at
10 some point and you're going to be brought up
11 anywhere near our sound system, it interferes
12 with all aspects of our sound system and
13 creates very unpleasant feedback.

14 We are going to be conducting court
15 business until 11:10 a.m. or as close as
16 possible that we can get to 11:10 a.m. We'll
17 then take a ten-minute comfort break. We're
18 going to keep it ten minutes. So if we say ten
19 minutes, my expectation is we will be back
20 truly in ten minutes.

21 It's the Court's intention at that point
22 to then proceed for another hour and ten
23 minutes before break. We're going to see where
24 we are at that point. If it looks like we
25 can -- we're close to getting completed, then

1 we'll keep going through lunch.

2 If it looks like there's no chance we're
3 going to get completed, we'll take an
4 appropriate hour lunch break, and we'll come
5 back directly on time and proceed from there
6 until we've exhausted all the witnesses and all
7 the argument that we need to hear today.

8 With these scheduled breaks in mind,
9 please be considerate on coming and going from
10 the court. I understand sometimes you have to
11 get up and leave, but please try to be as
12 little a distraction as possible.

13 Additionally -- and it almost seems
14 strange saying this because you've been so
15 eerily quiet this morning -- please limit your
16 conversations given that the more conversations
17 we have and how bad we generally are at
18 whispering, the more people that are talking in
19 the audience, the more the sound grows and it
20 becomes difficult for me to communicate with
21 the litigants up here.

22 And I know everybody wants to hear what's
23 going on, and that only happens if we stay
24 quiet in the audience.

25 If one of the bailiffs asks you to step

1 outside, it's not optional. I expect you to
2 comply on the first time and without discussion
3 with the bailiffs. Once you're outside the
4 room, feel free to discuss with them whatever
5 the issue is, but please, if they ask you to
6 step outside, don't give them any grief or
7 aggravation. Just step outside. They'll talk
8 to you about whatever it is they're concerned
9 about, but it's not a request that can be
10 politely declined. You have to go.

11 Mr. Garcia, is the State ready to proceed
12 this morning?

13 MR. GARCIA: Yes, sir, Your Honor.

14 THE COURT: Are you going to ask that the
15 rule be invoked during this bond proceeding or
16 can we dispense with that?

17 MR. GARCIA: Judge, I would ask that the
18 rule be invoked.

19 THE COURT: Okay. And Mr. Escobar, is the
20 Defense ready to proceed?

21 MR. ESCOBAR: The Defense is ready to
22 proceed, Your Honor.

23 THE COURT: When the rule is invoked, the
24 rule basically means the witnesses are not to
25 discuss the questions asked during the

1 proceedings, the content of their testimony or
2 what any other witness testified. The witness
3 may only discuss their testimony with the
4 attorneys outside of court during the
5 proceeding, and that includes during any
6 recesses.

7 Do we have any witnesses that are present
8 in the courtroom that we need to ask to step
9 outside at this point?

10 MR. ESCOBAR: I believe for the Defense
11 there are, Your Honor.

12 THE COURT: Okay. Can one of your
13 colleagues have your witnesses step outside?

14 MR. ESCOBAR: I'll have my investigator,
15 Your Honor.

16 THE COURT: Okay. To the many people that
17 have come to observe the proceedings in this
18 court of law, please remember that this is not
19 a crowd-participation event. Everyone is
20 always welcome to observe, but unless you are
21 called as a witness or one of the attorneys
22 recognized by the Court, you're not allowed to
23 offer your input.

24 During the proceedings, you're absolutely
25 not allowed to yell out, sigh heavily, or do

1 anything else that's going to draw attention to
2 yourself during the testimony of the witnesses
3 or the arguments of attorneys. Please excuse
4 yourself from the room quietly if you don't
5 feel that you can comply with these
6 instructions.

7 Let's see, what else do we have to do
8 before we get started. Let me wait until
9 you've had a chance to get all your witnesses
10 to step outside.

11 (Witnesses exited courtroom.)

12 THE COURT: Mr. Reeves, good morning, sir.
13 This is the first time you and I are meeting
14 either in person or seeing you over the video
15 screen. I'm the judge that's been assigned to
16 your case.

17 As per the law, as instructed by law and
18 as a condition of the oath that I took, I
19 presume you to be innocent in this case.
20 You're going to hear a lot of things during the
21 course of this proceeding. Nothing affects the
22 fact that the constitution and the law instruct
23 me to presume you innocent, and I hold my oath
24 to be a very important matter, which I take
25 very seriously, so I'm going to continue to do

1 that.

2 During the course of the proceeding you're
3 represented by counsel. You're represented by
4 one attorney who I've known for many years and
5 one attorney who I know by reputation. I am
6 confident that they are going to give you
7 effective legal guidance.

8 I want to make sure during the course of
9 the proceeding, you have the opportunity to
10 communicate with them if you need to. You've
11 probably been given a flex pen already. Did he
12 get a flex pen?

13 THE BAILIFF: Yes.

14 THE COURT: All right. You've been given
15 a flex pen already so you can make notes. If,
16 at some point, though -- and I realize there's
17 a lot of cameras and a lot of people here -- if
18 at some point you need to communicate with your
19 attorneys in private, you let me know or they
20 will let me know and I will give you a chance
21 to talk with them in the back if that's what
22 you, in fact, need to do. All right?

23 During the course of the proceedings, at
24 any point, if you feel that you have a concern
25 that your attorneys have not been able to

1 address with you or not been able to answer
2 adequately, and I don't expect this to happen
3 but it's always possible, I want you to feel
4 free to speak with me directly. This, of
5 course, has to be on the record, but if, at any
6 point, there's any issue that you have that you
7 just don't think is being addressed adequately,
8 you always have the right, as does any
9 defendant in any criminal proceeding, to
10 communicate with me directly on the record.
11 Okay?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. During the course
14 of today's proceeding, I may ask questions of
15 the participants. Those of you that have
16 appeared in front of me in the past know my
17 habit of asking some specific and pointed
18 questions at times.

19 I want to make sure that everybody
20 understands, I'm not asking these questions to
21 make a point, to prove a point or to suggest a
22 point. I'm asking these questions because,
23 quite honestly, I want the answer and I want to
24 hear a spirited defense of whatever position it
25 may seem like I'm challenging, because that's

1 the only way that I get a pointed and direct
2 answer if I ask very pointed, sometimes
3 unpleasant and sometimes uncomfortable, direct
4 questions.

5 So, please, to all those that have a side
6 in this case, don't think because I'm asking
7 these direct questions that I've made my mind
8 up in any way. It's more I just need the
9 answer and I need you to answer me in such a
10 specific way that the only way I'll get that
11 answer is if I ask a very specific and
12 sometimes uncomfortable question.

13 Before we begin the bond proceeding, it's
14 my intention to address the temporary stay on
15 discovery and the video. I was given a copy of
16 the video after court by the State and Defense
17 with a request that I review it prior to the
18 hearing. The copy that I have is two views
19 from inside the theater and two views of the
20 lobby common area of the theater.

21 And I addressed with the State and Defense
22 this morning whether I had a bad copy or it's
23 just the way the video looks, and it sounds
24 like that's just the way the video looks.

25 So let's talk about discovery and the

1 discovery material as it is subject to public
2 requests now that a charge has been filed and
3 the Defense has indicated that they are
4 participating in discovery.

5 Defense, now that you've had time to
6 review a portion of the discovery that you've
7 been provided, do you still request that the
8 Court restrict public and media access to this
9 discovery available in the case? And do you
10 have a proposed written order restricting that
11 discovery?

12 MR. ESCOBAR: Good morning, Your Honor.
13 May it please the Court? Richard Escobar for
14 purposes of the record.

15 Your Honor, we had an opportunity
16 yesterday afternoon, late afternoon to review
17 this video. I think it's important -- and I
18 know the Court is familiar with some of the
19 facts surrounding this video, but I think it's
20 important first to understand that this video
21 comes from what appears to be two infrared
22 cameras that were located within theater ten.
23 They were located in the bistro section, which
24 is the very top section of that particular
25 theater.

1 In picturing the theater you have a bistro
2 section that sits about six feet up, then you
3 have a center section which is for the general
4 population, then you have even a lower section.

5 These two particular cameras appear to be
6 in that -- in that bistro area and only capture
7 a small area of the theater. And when I'm
8 saying "small," very small area of just a few
9 rows of that particular theater.

10 That camera, in speaking to members of the
11 sheriff's office and members of Mr. Garcia's
12 prosecution team, we were told that that camera
13 only captures video upon movement. At this
14 point in time none of us know whether that
15 infrared is an accurate infrared that is
16 capturing all movement or whether that
17 particular infrared is -- needs a certain
18 amount of movement before it activates and
19 starts playing or recording a video.

20 What you see in this video is exactly
21 that. You don't see a continuous run of video
22 from the very beginning of when Mr. Reeves
23 comes into the theater continuous all the way
24 until Mr. Oulson is finally fallen to the
25 ground.

1 What you see is little snippets that one
2 would have to assume occurred as a result of
3 some movement, but there's going to be no
4 expert today, that I'm aware of, that's going
5 to be able to come in here and tell the Court
6 that, number one, that video as is portrayed is
7 accurate, fair and accurate depiction of
8 everything that occurred at that point in time.

9 Certainly, in looking at the video, you
10 can't see any facial expressions, you can't see
11 any real detail that is so critical for the
12 evaluation of what took place in that theater.

13 And so what I am proposing to the Court --
14 listen, at some point in time we all believe
15 that that video is going to be shown in court
16 and used as a piece of evidence. But we need
17 to be very careful as to when that video should
18 be publicized to the general media.

19 That video should be publicized to the
20 general media only when we have an expert that
21 can examine those cameras, can testify to the
22 accuracy of what it's collecting, and can
23 testify to the accuracy of what the video
24 itself has captured, so that anyone viewing
25 that video can actually see what actually may

1 have happened that day.

2 The video is blurry. Whether it can be
3 enhanced, we have no idea yet. Certainly we're
4 going to have our experts take a look at that
5 video and see if it can be enhanced. If it's
6 enhanced, it's to our favor. We want that
7 video to be enhanced.

8 But we're not at that point, at this point
9 in time. And so when you're disseminating a
10 video that only has bits and pieces of what is
11 alleged to have happened in that theater, it is
12 extremely prejudicial, because you're going to
13 get the general public speculating about well,
14 what happened between here? Well, I know what
15 happened between here. And what happened
16 between here? Oh, and I think I can see a
17 facial expression here, and I think -- oh, I
18 think I can see this here when in reality it's
19 not there.

20 And you have no expertise, nobody
21 testifying before this Court giving any solid
22 basis for reliability. And that's what we've
23 got to be careful with here.

24 You know, Your Honor, I think the Court
25 well knows that under the rules of evidence

1 there's a particular section. It's 403 that we
2 use quite often. And that 403 issue comes, I
3 think, right into play in a situation like
4 this, apart from the fact that there's no
5 constitutional right, no First Amendment right
6 to pretrial discovery, apart from the fact that
7 406 gives this Court the authority to fashion
8 certain orders protecting the fundamental
9 fairness for Mr. Reeves.

10 You have a 403 issue that we've got to
11 overcome. And is it more probative than
12 prejudicial? At this point I think not.
13 There's nothing more than the Defense would
14 like, at some point in time, than to introduce
15 that video ourselves. But the reality of it
16 is, in the law it is way too dangerous today.

17 When you look at the law in this case,
18 Your Honor --

19 THE COURT: Before you get into that,
20 you're focused like a laser on the video right
21 now.

22 MR. ESCOBAR: I am.

23 THE COURT: I want to -- and I consider
24 the video to be part of discovery, a very
25 important part of discovery, but I'm not there

1 yet. I'm more concerned with the police
2 reports, the witness statements and every other
3 aspect of what they're going to be requesting
4 in discovery.

5 The video I consider to be a subject in
6 and of itself separate from the others, above
7 the others.

8 What about the police reports? What about
9 the witness statements? What about incident
10 reports, evidence collection sheets, photos of
11 the crime scene, things like that. What's the
12 Defense's position on that, because we're going
13 to spend more time after this talking about the
14 video. I'm talking discovery in general right
15 now.

16 MR. ESCOBAR: Your Honor, our position's
17 going to be the same with reference to the
18 police reports and the general discovery that
19 we've been given, and let me tell you why.

20 For example, let's take an example of some
21 of the written statements of some of the
22 witnesses. It doesn't appear that any of those
23 witnesses on those written statements appear to
24 be placed under oath. And so they're just
25 writing down recollections of what they believe

1 occurred during that period in time.

2 We haven't had an opportunity yet to
3 question those witnesses, to even confront
4 those witnesses as to the accuracy of those
5 recollections. Same issue. If we had not had
6 an opportunity to engage in any pretrial
7 discovery in order to confront those issues,
8 then are we really disseminating information at
9 this point in time that we really have no
10 confidence in just yet?

11 Because our system of justice, when we
12 gain confidence of statements is when the
13 Defense has the right to confront those
14 statements and explore those statements for
15 their truth.

16 What I'm saying is, that those statements
17 are going to be coming in at some point in
18 time. We may have witnesses that come in today
19 and make statements, but I'm going to have an
20 opportunity to certainly confront those witness
21 and examine those witness concerning those
22 issues.

23 It's premature. We are at a bond stage.
24 We are not anywhere near in a position to be
25 able to give the public, the Court, anyone some

1 solid foundation as to what is truth and what
2 is fantasy, at this point in time. And so --

3 THE COURT: Well, then let me ask you
4 another question. Sorry I do this, but --

5 MR. ESCOBAR: That's okay. I welcome it.

6 THE COURT: How -- how's this going to be
7 any better than what's going on right now,
8 because generally -- I mean I get my
9 information on what's going on locally from
10 Jack, Tedd and Corey on my way into work. I
11 mean, but I poked my head out of the rabbit
12 hole last night and starting looking around to
13 see what I could find in the way of pretrial
14 publicity, and there's a lot out there.

15 And I saw things like an allegation that
16 he was wearing a bullet-proof vest at
17 advisories in a jail where nobody has any guns.
18 I saw an allegation that he went out to his car
19 and got his gun and came back in. I saw -- I
20 mean I saw a lot of things that were wild
21 speculation already.

22 How is releasing the actual police reports
23 and the actual witness statements going to make
24 your client's situation any worse than that?

25 MR. ESCOBAR: Well, let me answer it this

1 way. I think we've all experienced the wild
2 speculation that is taking place out there even
3 before these reports are given to anyone.

4 These reports, at this point in time, have not
5 been confronted. They have not been tested.
6 We have really no sense of reliability yet for
7 these particular reports.

8 Just imagine giving the media access to
9 all of these reports. And the amount of
10 speculation that we've had is going to increase
11 100 fold.

12 There is no reason, at this point in time,
13 Your Honor, for us to feed that frenzy. That's
14 not a reliable frenzy. We have to be able to
15 try this case in this courtroom, not in the
16 media. At some point in time -- we've opened
17 this courtroom to the media. At some point in
18 time they're going to be able to examine for
19 themselves, in their own mind, whether a
20 witness is going to be telling the truth or
21 not, but we're not there yet.

22 And one of the most important parts of
23 this Court's function is the separation of
24 powers. And this Court has the power, through
25 the separation of powers, to make sure that the

1 most fundamental right that Mr. Reeves has, and
2 that is fundamental fairness to be able to pick
3 a jury of his peers from this county.

4 We can't make a mistake that affects that
5 most fundamental right that Mr. Reeves has.
6 And the reason that the Defense is being so
7 cautious is because that is the most important
8 right that we can preserve here.

9 There is absolutely no reason, at this
10 point in time, for us to be disseminating to
11 the public information that we have not had an
12 opportunity to confront.

13 And all I'm asking the Court is, give the
14 Defense some time to confront that information
15 and then we can release it. And we can release
16 it in a responsible manner, not just because
17 the media wants to get a snippet of a statement
18 and glamorize it or exaggerate it or make it
19 something that is clearly just fantasy.

20 And we've had that with reference to the
21 apparatus that Mr. Reeves had on. The media
22 went out and said it was a bulletproof vest.
23 It's prejudicial; we don't need it. We've got
24 to control the evidence that's being
25 disseminated in this case, because publicity in

1 this case is all the way from Dade City to
2 Britain.

3 I have gotten hundreds of calls, offers to
4 fly me to New York, Nancy Grace, Good Morning
5 America. We've turned them all down. It is
6 such a high public case that we have to take
7 special precautions to preserve his fundamental
8 rights.

9 THE COURT: Okay. State, what's your
10 position on the release of discovery?

11 MR. LOUGHERY: Judge, all we would say
12 is -- first, I'll address it. I think that the
13 exemption at issue is the criminal
14 investigative intelligence exemption, 119. And
15 what that says is that investigative and other
16 criminal intelligence information is exempt
17 from public disclosure.

18 However, upon release to the defendant,
19 those things, as to that exemption, are now
20 subject to public disclosure. So I think
21 that's kind of the narrow issue that we're
22 addressing here.

23 The typical -- that's the typical process.
24 We think that jury selection is intended to
25 consider a lot of the matters that the Defense

1 has highlighted. And given that, Judge, we
2 leave it in your discretion.

3 THE COURT: All right. Ball's in my
4 court, in other words.

5 Well, then a couple more questions to the
6 Defense. Obviously we're not going to have
7 anybody on a potential future jury -- we're not
8 going to allow anybody to be impaneled that got
9 their information on the case from the media.
10 We're going to only select jurors that have not
11 formed an opinion yet and that have not seen
12 the extensive pretrial coverage.

13 How is it hurtful or how is it a problem
14 for the rest of the community to be able to see
15 and know what's going on in the court system,
16 and get a more accurate picture of it based on
17 the actual reports versus speculation as to
18 what's in the reports.

19 MR. ESCOBAR: Your Honor, I think that
20 there are many members of the public, at this
21 point in time, that probably have not been
22 prejudiced by some of the statements that we
23 find in the media.

24 What I'm telling this Court, that there's
25 no need to now taint that remaining group with

1 any of the speculation. Clearly our goal is to
2 be able to have a trial in this county with a
3 panel that represents Mr. Reeves' peers in this
4 community. That is of utmost importance.

5 I'd like to read to the Court an excerpt
6 from *Estes vs. Texas*, which is a 1965 United
7 States Supreme Court case. And it says, "To
8 safeguard the due process rights of the
9 accused, a trial judge has an affirmative duty
10 to minimize the effects of prejudicial pretrial
11 publicity. Because of this constitutional
12 duty, a trial judge surely should take the
13 protective measures even when they are not
14 strictly and inescapably necessary."

15 The balancing test always favors the
16 protection of the accused even when someone
17 believes that it is not absolutely necessary.
18 Because once the damage is done, Your Honor, we
19 can't undo it.

20 I think that the media is going to be able
21 to have a lot of information from hearings like
22 this, where witnesses are being presented, when
23 witnesses are being cross-examined. And isn't
24 that the responsible way to get information out
25 to the public? Isn't that the responsible way

1 to assure that what the public is getting at
2 least is being tested by the Defense?

3 That's my request, Your Honor. I think
4 we've given, you know, the case -- the Court
5 some good case law. We cited the *McCrary* case
6 which, again, is pretty solid with reference to
7 the Court's power in protecting this pretrial
8 publicity.

9 We've cited the U.S. Supreme Court case
10 which has wonderful language back from 1969
11 concerning this fundamental right.

12 And I'm going to be asking the Court
13 today, at least for a reasonable period of time
14 to give us an opportunity to go out and
15 investigate and present information that's
16 going to tell the media the truth. Give us
17 that time to be able to confront those
18 witnesses.

19 THE COURT: Reasonable is a wonderful word
20 because it can mean lots of different things to
21 lots of different people.

22 Tell me, what does "reasonable period of
23 time" mean to you today?

24 MR. ESCOBAR: Your Honor, I think a
25 reasonable period of time would be certainly a

1 minimum of 60 days. We would like to have 90
2 days, because I think that with our
3 investigators, I think we can get out there and
4 we can start conducting some meaningful
5 discovery, some discovery that hopefully will
6 shed some light on the happenings in that
7 theater.

8 THE COURT: All right. I had a motion to
9 intervene filed by media representative
10 Ms. Arsenault. Did you wish to be heard on
11 this?

12 MS. ARSENAULT: Yes, Your Honor.

13 THE COURT: All right. Tell me your
14 pitch. What do you want me to know?

15 MS. ARSENAULT: Should I come up to the
16 podium?

17 THE COURT: Wherever you're most
18 comfortable. It doesn't matter to me. They
19 put the podium pretty close to me, actually.
20 Can we -- can we move the podium back a little
21 bit.

22 Wherever -- wherever you're comfortable.
23 You can set up there, if you want. It's just
24 I'm not sure why they've got it right up on me.
25 It usually is further back. Yeah, that's

1 usually where it is. Thanks.

2 That's a lot of stuff. All right. What
3 are you going to tell me?

4 MS. ARSENAULT: Good afternoon, Your
5 Honor. Thank you. Anne Arsenault from
6 Rahdart, Steele, Reynolds and Driscoll here
7 today on behalf of the Tampa Bay Times.

8 As a preliminary matter, members of the
9 news media typically have standing to intervene
10 and be heard on issues affecting public access
11 to judicial records and proceedings. So we --

12 THE COURT: I find that you have standing,
13 if that will make it --

14 MS. ARSENAULT: Thank you.

15 THE COURT: -- easier for you to go
16 forward.

17 MS. ARSENAULT: Thank you.

18 I think there are several issues going on
19 here. And I'll address the defendant's motion
20 for protective order first.

21 THE COURT: Okay.

22 MS. ARSENAULT: I think it's important to
23 note that we begin with the proposition that
24 discovery materials are presumptively open to
25 the public under the Florida Statutes.

1 It's only in a limited except -- limited
2 circumstances that discovery materials will be
3 sealed or delayed of the release. The norm is
4 to simply release these discovery materials as
5 soon as they're given over to the Defense.

6 It's the extreme and unusual case where --

7 THE COURT: The extreme and unusual case.
8 You mean like if there were six cameras
9 pointing at me right now?

10 MS. ARSENAULT: Well, no, Your Honor, not
11 necessarily.

12 THE COURT: Okay.

13 MS. ARSENAULT: There have been many, many
14 high-profile cases where a blanket discovery
15 ban has not been instituted.

16 THE COURT: Okay.

17 MS. ARSENAULT: Casey Anthony,
18 George Zimmerman, all sorts of cases in Florida
19 where that extreme remedy has not been taken.

20 The main test here is in *Miami Herald*
21 *Publishing Company vs. Lewis*, which is at 426
22 So.2d 1.

23 The Florida Supreme Court has said that
24 "Before a court denies access rights to the
25 public and the press, the party seeking closure

1 must demonstrate that one, the closure is
2 necessary to prevent a serious and imminent
3 threat to the administration of justice.

4 "Second, no alternatives are available
5 which would protect a defendant's right to a
6 fair trial.

7 "And third, closure would be effective
8 without being broader than necessary to
9 accomplish the purpose."

10 THE COURT: All right. I hear what you're
11 saying on that, but when we're talking about
12 closure, isn't that different than restricting
13 access to discovery? I mean I know at some
14 point they're going to ask me to do closure
15 today because they want to play the video and
16 they don't want everybody to see it and
17 videotape it. That's different than whether
18 I'm going to do a blanket discovery order,
19 isn't it?

20 MS. ARSENAULT: The test is the same for
21 closure of -- for the records and access.

22 THE COURT: Okay.

23 MS. ARSENAULT: The defendant in this
24 case, in its motion, didn't address the *Lewis*
25 test much less present any evidence that these

1 three prongs were satisfied. In order to
2 satisfy this heavy burden, the party must do
3 more than offer argument of counsel. It has to
4 come forward with evidence on which the Court
5 can make finding of facts to support the
6 sealing of records.

7 Typically, as here, defendants argue that
8 publicity regarding the records will permeate
9 the county in which the trial will be held to
10 such a degree that it would be impossible to
11 impanel an impartial jury.

12 However, those types of arguments in a
13 county as large as Pasco County is extremely
14 unlikely. Just because a case has attracted
15 media attention doesn't automatically establish
16 that there will be an impartial jury. There
17 must be a serious and imminent threat to the
18 administration of justice.

19 In the United States Supreme Court case of
20 *Skilling vs. United States*, 130 Supreme Court
21 2896. The Supreme Court said, "Prominence does
22 not necessarily produce prejudice, and juror
23 impartiality, we have reiterated, does not
24 require ignorance."

25 There are many, many cases on point that

1 ignorance is not the factor. It's impartiality
2 and whether or not the jury can be selected
3 that will render an impartial and unbiased
4 opinion.

5 For some members of the public, these
6 matters are certainly important and they're
7 reading the news media, but this doesn't imply
8 that their partiality is affected necessarily,
9 but their interest in being informed of the
10 proceedings and the judicial processes is
11 highly important.

12 The defendant here has wholly failed to
13 meet his burden to show that there's a serious
14 and imminent threat to the administration of
15 justice.

16 Secondly, the *Lewis* test requires that the
17 Court consider whether there are alternatives
18 available other than the change of venue that
19 would protect the fair-trial rights, such as a
20 longer voir-dire process, a larger jury panel,
21 things like that.

22 And the third prong is whether closure
23 would be effective of protecting the rights of
24 the accused.

25 Here, as Your Honor has pointed out,

1 there's been quite a bit of media coverage.
2 And it doesn't seem likely that releasing the
3 information will have any impact on -- at the
4 very least it may lessen speculation if the
5 media and the public are informed of what is
6 going on here.

7 Do you want me to address the video in
8 particular at this point?

9 THE COURT: No. We're going to come back
10 to the video in a second.

11 MS. ARSENAULT: Okay.

12 THE COURT: I'm just -- I'm just dealing
13 with the discovery because I wanted to get that
14 out of the way before we went to our first
15 break.

16 MS. ARSENAULT: Okay.

17 THE COURT: So --

18 MS. ARSENAULT: I do have --

19 THE COURT: -- anything else on discovery?

20 MS. ARSENAULT: I do have some case law on
21 the subject.

22 THE COURT: Is it the case law that was
23 cited in the brief that you provided to me
24 yesterday?

25 MS. ARSENAULT: Yes. I believe all of it

1 was.

2 THE COURT: I read all of it last night.

3 MS. ARSENAULT: Okay.

4 THE COURT: It was a long night --

5 MS. ARSENAULT: Okay.

6 THE COURT: -- so --

7 MS. ARSENAULT: All right. So then you
8 are familiar.

9 Mrs. Fugate may have --

10 THE COURT: I was going to ask if
11 Ms. Fugate wanted to come up next.

12 MS. ARSENAULT: -- something to add as
13 well.

14 THE COURT: So she can join you at the
15 podium or she can have the podium herself for
16 her own moment. Come on up.

17 MS. FUGATE: I'll try to be quick, Your
18 Honor.

19 THE COURT: Come on up, Counselor.

20 MS. FUGATE: Did you receive the motion --
21 we faxed the motion late last night. I have an
22 extra copy.

23 THE COURT: I received a copy this
24 morning --

25 MS. FUGATE: Okay.

1 THE COURT: -- when I got into my office
2 and I read it quickly.

3 MS. FUGATE: Yeah.

4 THE COURT: I did not have the chance to
5 read it --

6 MS. FUGATE: Certainly.

7 THE COURT: -- although it seemed to hit
8 on the same topics as the other.

9 MS. FUGATE: I think so. And most the --
10 most of it was just attachments with exhibits
11 with some circuit court orders that have
12 addressed these -- these issues before that --

13 THE COURT: Uh-huh.

14 MS. FUGATE: -- might provide a little
15 guidance. I'm not going to kind of reiterate
16 the test because Ms. Arsenault thoroughly went
17 through that.

18 But I think what's important here is in
19 closing discovery -- the law is, once discovery
20 is turned over to the defendant, it's available
21 to the public.

22 The test in *McCrory* which dealt with
23 access to discover, the court did adopt the
24 *Lewis* standard in that test, which is a very
25 stringent test if you're going to even

1 temporarily delay access to that information.

2 And the test isn't -- is it admissible?
3 Has somebody had a chance to confront it? Is
4 it prejudice?

5 If you release the specific information --
6 and not on a blanket basis, but specific
7 information, is there something in this witness
8 statement? Is there some specific information
9 in that video? Is there some specific
10 information in a police report that is going to
11 jeopardize a defendant's fair trial rights?

12 And at this point we simply haven't gotten
13 to that because I haven't -- there's no
14 specific information being presented to the
15 Court, for the Court to look at in-camera
16 except for the video, at this point, to make
17 that determination of whether there's something
18 specific that is going to seriously undermine
19 the defendant's fair trial rights.

20 In the most high profile of cases in
21 Florida, the Danny Rolling case -- a copy of
22 the order was attached to that -- the Court
23 would not do blanket closure of discovery.
24 They allowed for a limited time frame for the
25 Defense to come forward with specific

1 information that the Court can consider and
2 evaluate the prejudice.

3 And Casey Anthony, we were heavily
4 involved in that case. There was no closure
5 orders of discovery. There was one item, the
6 video when Ms. Anthony was told that her
7 daughter's remains were found when she was in
8 the jail in the medical ward, the only thing
9 that was closed in there.

10 Rather they came to the Court on a
11 case-by-case basis on specific items, and most
12 of those were rejected. And we've attached a
13 sampling of those as well.

14 The George Zimmerman case. A limited
15 number of discovery items, a witness statement
16 and a couple of other items, Your Honor, were
17 closed in discovery in that case. So --

18 THE COURT: Given what you're telling me,
19 then, shouldn't I wait until the Defense has a
20 chance to review what may be voluminous
21 discovery in this matter and give them, I
22 believe -- what was the word, a reasonable
23 amount of time?

24 He wants a reasonable amount of time, and
25 he says a reasonable amount of time might be 60

1 days, although I think he's hoping for more
2 like 90.

3 Why shouldn't I give him that time to
4 review?

5 MS. FUGATE: Your Honor, we attached two
6 cases, too, the *Tyner* case out of Gainesville
7 and the *State v. King* case where even those
8 types of orders are not automatic.

9 Even to do that, even for that limited
10 time frame there still has to be some prejudice
11 and the *McCrary* standard satisfied so that the
12 Court has specific concerns, because publicity
13 alone is not enough.

14 Even temporary closure orders are not
15 automatic. There has to be something that
16 gives the Court concern to enter that, such as
17 the *Rolling* case. And there I think it was 60
18 days. And the discovery -- there was, I mean,
19 multiple murders, volumes of discovery. I
20 would imagine more than this case involved, and
21 that was a 60-day time frame. Other cases
22 where there has been those temporary orders,
23 it's generally 30 days.

24 So if Your Honor has enough concern and
25 feels at least that kind of maybe that

1 temporary hurdle has been established in
2 *McCrary*, then we would argue that 30 days would
3 be sufficient to at least look over the
4 discovery and then make -- have specific items.
5 Then there's a deadline, 30 days, they make a
6 motion with the Court with specific items,
7 anything that's not objected to, automatically
8 released to the public so that's not delayed.

9 I think that was a similar -- Zimmerman
10 did that as well. The Casey Anthony case, no
11 such procedure in there. It was simply open in
12 that case.

13 So there are a variety of ways that Your
14 Honor can handle it. And I don't think that
15 even a temporary one for 30 or 60 days is
16 automatically warranted simply because there's
17 publicity.

18 And also on the timing aspect, releasing
19 information earlier in the case actually
20 diminishes the prejudice that occurs closer to
21 trial.

22 I believe the *Estes* case -- and I could be
23 mistaken on this -- the *Estes* case, it was a
24 release of a confession of some very
25 prejudicial information on the eve of trial.

1 So what the courts say is that the further
2 you are away from trial, the earlier you are in
3 a case, that's the better time actually to
4 release factual information.

5 Especially the video in this case. The
6 factual information is going to supplant
7 speculation with more facts. And reporting of
8 a factual nature has never found -- has never
9 been found to be prejudicial. Simply reporting
10 on the facts, reporting on what happened,
11 that's not prejudice. And I think releasing
12 police reports, witness statements, court
13 information about this case replaces
14 speculation with harder facts, and especially
15 on in this case will lessen the prejudice the
16 closer that you get for trial.

17 And as Your Honor said, you're not going
18 to allow people on the jury, through
19 individualized voir dire or more intense
20 questioning, if need be, that have already
21 formed opinions on this case.

22 And I think that those alternatives will
23 adequately compensate for any prejudice that
24 may be out there.

25 THE COURT: Okay. All right. Thank you,

1 Ms. Fugate.

2 MS. FUGATE: Thank you."

3 THE COURT: Does either the State or
4 Defense wish to respond? Given that
5 Mr. Kraebel is standing up, I'm guessing that's
6 a yes.

7 MR. KRAEBEL: I do, Judge.

8 THE COURT: All right.

9 MR. KRAEBEL: Just briefly. I just wanted
10 to briefly respond to the defendant's proposal.

11 What I understood it to be involved not
12 simply reviewing the discovery, but also giving
13 them time to find their own information.

14 And if the concern is a taint to the
15 public, it seems that the defendant wants to
16 wait until they have an opportunity to find
17 information to use to influence the public.

18 And so after that 60 days or 90 days, do
19 we both release our respective cases? And that
20 kind of seems almost literally as an effort to
21 try it in the public. So that's a concern with
22 that process, if I'm understanding it
23 correctly.

24 THE COURT: Okay. And anything --

25 MR. ESCOBAR: Your Honor, I --

1 THE COURT: -- you want to put in finally?

2 MR. ESCOBAR: Your Honor, I think counsel
3 was -- was certainly agreeing to a certain
4 extent with our position that there has to be a
5 procedure in place, a procedure in place to do
6 this in a responsible way.

7 And given some time, I think that both the
8 Court, the prosecution and Defense can do that.
9 And that information will ultimately get out to
10 the public. But to just get it out today in
11 bulk form is way too dangerous.

12 And so I was happy to hear that it
13 appeared that they were in agreement with a
14 procedure, for the Court to employ a procedure.

15 I'm asking for 60 days, but frankly the
16 Defense, you know, would be happy with, you
17 know, any period of time, significant period of
18 time that would allow us to examine each and
19 every statement, each and every piece of
20 evidence and confront it.

21 THE COURT: All right. Well, your
22 optimism is inspiring if you thought that she
23 was agreeing with you to a 30-day -- a 30-day
24 hold.

25 As it relates to discovery generally, it

1 is frustrating that it appears that I have to
2 make a choice between one or the other, and I
3 reject the proposition that that's necessary.

4 The people knowing what's going on in
5 their courts is essential. And the view of the
6 public towards what a government official, be
7 it elected or appointed, the public view of
8 that is what helps to maintain confidence in
9 the system as well as maintain good behavior by
10 the government official. And I don't exempt
11 myself from that. Everybody that's being
12 scrutinized tries a little bit harder when
13 they're being scrutinized.

14 So to that end, it's my inclination to
15 release all discovery immediately, but I also
16 have to have a view towards the reasonable
17 request of the Defense for 30 days to -- to
18 examine and make specific objections.

19 So I will give you 30 days for specific
20 written objections to specific aspects of the
21 discovery over the objection of Ms. Fugate and
22 Ms. Arsenault on behalf of their clients.

23 MR. ESCOBAR: Thank you, Your Honor.

24 THE COURT: This is as it relates to the
25 discovery generally. We still have to talk

1 about closure now and we still have a little
2 bit of time before our first break to try and
3 cover closure on the video.

4 The questions then become for purposes of
5 closure on the video specifically and release
6 of the video specifically. I've already
7 reviewed it in-camera at the request of the
8 State and Defense. I took the opportunity this
9 morning to speak to the State and Defense and
10 to counsel for the victim in this case, and
11 surviving spouse, to determine whether it would
12 be appropriate to release the video, or whether
13 it would be inappropriate to release the video.

14 And with that in mind, if the video is
15 going to be played during the proceeding, and
16 I'm told that the State intends to play it
17 during the proceedings, whether I should close
18 the proceeding so that the video can be played
19 without it being recorded.

20 Having reviewed a copy of it, it's pretty
21 grainy, it's pretty blurry and I watched it 15
22 times. And if I had watched it a sixteenth
23 time, I'm not sure I would have had any better
24 understanding of what was happening. Outside
25 of already knowing a shooting occurred on the

1 video, I might not have been able to spot it,
2 it's that.

3 I am apprehensive that the public has the
4 idea that there is some type of a clear picture
5 of what happened presented by that video. And
6 if I keep this from them, they will think that
7 there is some evidence out there that does not
8 exist in the form that they perceive it, based
9 on what's being reported.

10 I'm going to need the State and Defense,
11 if you don't want me to allow the video to be
12 shown, if you want court closed, convince me
13 why I should allow this perception of the
14 existence of a video in a form that it doesn't
15 truly exist in.

16 Why shouldn't I let the public see it if
17 they choose to see it and review it?

18 Mr. Escobar?

19 MR. ESCOBAR: I will, Your Honor.

20 We -- we struggled with the same issue.
21 And we know that by standing here before the
22 Court and arguing that this video should not be
23 released, we know that the public, maybe the
24 media, will take the position that hey, they've
25 got something to hide.

1. That is so far from the truth. As the
2 Court -- and that's one of the reason we wanted
3 the Court to actually see the video so that the
4 Court can see that in viewing the video, it is
5 so blurry, it is so grainy, that it is
6 virtually impossible to detect, you know, any
7 real significance on what people are doing in
8 that theater.

9 However, we've got to be mindful that I
10 can't be concerned about the media, and I can't
11 be concerned at this point in time about what
12 the general public is going to speculate that,
13 you know, my legal position is going to be
14 because I've got to protect his rights. That
15 is the most important issue right now.

16 And what I'm telling the Court, especially
17 with the Court viewing this video and -- and
18 agreeing with our position that it is grainy,
19 that it is very difficult to discern really
20 anything that is taking place in that video,
21 what it does is it fortifies our position in
22 showing that it's highly speculative.

23 It's a -- it's a video that someone out
24 there in the public is going to imagine that
25 they see this, that they see that, that they

1 see something else.

2 That is going to be the prejudice that
3 we're going to endure. We don't need to fuel
4 that fire when, in fact, we're at a preliminary
5 bond hearing in this particular case.

6 That video is coming out. At some point
7 in time the media is going to be able to have
8 it. But don't we think that it is the
9 responsible thing to do in this forum -- in our
10 criminal justice system, don't we think that
11 it's responsible before that video comes out to
12 let the experts tell us the reliability of the
13 infrared, why, in fact, there are gaps in the
14 video itself, why does the video appear to have
15 a series of events that the prosecution will
16 tell you and the Defense will tell you did not
17 happen in that sequence that quickly because
18 there are those gaps.

19 I -- I think, Your Honor, it's -- it's not
20 responsible for me to stand here before you,
21 irresponsible for me to tell you well, go ahead
22 and lets play it and, you know, we'll worry
23 about the inconsistencies or, you know, the
24 segments that are missing at a later time,
25 because it's going to be played on that tube

1 over and over and over again and it's not
2 reliable. It's not reliable.

3 Even the test -- even the test is the most
4 basic and fundamental test before a photo or a
5 video can be played in a court of law -- and I
6 know that the rules of evidence are lax or
7 relaxed in a bond hearing like this -- but the
8 basic fundamental rule is, you can't introduce
9 that photo, you can't introduce that video
10 unless it fairly and accurately depicts the
11 series of events. And this video, the
12 prosecution will tell you, the Defense will
13 tell you, it does not.

14 So why are we introducing this in a court
15 of law today?

16 MR. GARCIA: Judge, I'm going to object to
17 that argument. I think it's misleading. The
18 State has not said that this video is
19 misleading to the contrary, Judge.

20 THE COURT: I understand. And I'm going
21 to rely on you to speak for the State and
22 Mr. Escobar to speak for the Defense. I
23 noted -- I understand your objection, and if
24 there was a jury here, I would certainly
25 sustain it, but --

1 MR. GARCIA: Well, I just want the record
2 to be clear that that is not the State's
3 position, Judge.

4 THE COURT: I'm coming to you for your
5 position next.

6 MR. GARCIA: All right.

7 THE COURT: You are on my list as the next
8 person I'm calling --

9 MR. GARCIA: Thank you.

10 THE COURT: -- I promise.

11 Mr. Escobar, though, as you're going on
12 and telling me about this, I cannot help but
13 sit here and think why withering
14 cross-examination of the State's witnesses is
15 close at hand, as probably sometime this
16 afternoon it's going to begin.

17 And wouldn't the public be better off
18 seeing that video at the same time that they
19 get to hear your cross-examination of whatever
20 State's witnesses they may call to introduce it
21 today?

22 MR. ESCOBAR: Your Honor, I don't want to
23 go away from my argument now. I answer that --

24 THE COURT: No, keep going.

25 MR. ESCOBAR: But I -- I want to focus on

1 this argument where there is a -- you have to
2 have a legal basis. And the law is pretty
3 clear it's got to be fairly and accurately
4 depict that event. If you're imputing a photo,
5 if you're introducing a photo, it's got to
6 fairly and accurately depict what it appeared
7 at that point in time. Same thing with the
8 video.

9 Here we've got segments of what took place
10 during that time that are missing. In fact,
11 not only are missing, but now we've tied one
12 segment that may have occurred 20 seconds later
13 with another segment that occurred 20 seconds
14 earlier. And now it gives you the appearance
15 that those two activities occurred back to
16 back.

17 To compound the problem, the timing, the
18 timestamp on these videos are inaccurate. When
19 we were -- when we were speaking to the
20 technological individuals for the State
21 Attorney's office, they said hey, listen, these
22 cameras are off and their timestamps by a
23 couple minutes, a minute.

24 So we're creating -- we're creating a
25 monster is what we're doing. We're creating a

1 monster. We're -- we're avoiding what the law
2 has taught us for so many years, that before we
3 introduce these pieces of evidence, photos and
4 videos, that there has to be some sense of
5 comfort. And that comfort is that it fairly
6 and accurately depicts what you're trying to
7 present.

8 In this case it doesn't by no stretch of
9 the imagination. Any time you're splicing
10 photos -- because that's what that infrared
11 camera does, it is splicing photos. It's
12 taking this photo, missing, taking this photo,
13 missing. You're not presenting a fair and
14 accurate depiction of what took place there.

15 And what does the media want? The media
16 wants a fair and accurate depiction of what
17 took place from beginning to end, not snippets
18 here, snippets here, snippets here.

19 That's my argument, Your Honor. And I
20 think, at this point in time, the appropriate
21 thing to do -- at some point in time we're
22 going to have the experts that can testify
23 about that particular camera.

24 We're going to have the experts that are
25 going to be able to say whether that infrared

1 activates on any movement or a foot movement.
2 That's going to explain the sequence of events
3 and the missing areas that are so important to
4 us.

5 Let's not forget that that video almost
6 exclusively shows Row A. It doesn't even show
7 Row B. Row B is the row that Mr. Oulson was
8 seated. So if it's only showing Row A, how
9 unfair and how prejudicial it is for us not to
10 view the activities of Mr. Oulson in Row B.

11 Because it's those activities, it's those
12 factors, it's those reflections of the face,
13 it's that body standing up, it's the body
14 posture that he took that caused Mr. Reeves to
15 fear for his own life.

16 So how unfair is it when we're taking all
17 of these factors together to try to say today
18 well, let's just put it up there and let's see
19 what the public does with it. Let's put it up
20 there, but let's put it up in a responsible way
21 where we have experts, where the Defense can
22 confront these particular issues and have
23 testimony of highly qualified experts so that
24 we can explain to the public, as a whole, the
25 problems with this video.

1 THE COURT: Okay.

2 MR. KRAEBEL: Judge, if I --

3 THE COURT: Mr. Kraebel, I thought
4 Mr. Garcia wanted to speak on -- I mean he can.
5 I'll let you both go. You'll handle the public
6 records issue and you'll handle the substantive
7 issue.

8 Is that what you want to do?

9 MR. GARCIA: Yes, sir.

10 MR. KRAEBEL: That was my --

11 THE COURT: Let's do that. All right.
12 Tell me what you need me to know.

13 MR. KRAEBEL: We -- as we said, we do want
14 to play the video in court today. The only
15 practical way to do it is on that screen, I
16 think, Judge, to allow discussion during
17 argument and testimony. Obviously, that screen
18 is in view of the public.

19 THE COURT: Have you ever seen that screen
20 used before? Did you run a test on that?

21 MR. KRAEBEL: Yes, we did.

22 THE COURT: Yesterday -- yesterday that
23 very screen let me down very badly. So you've
24 tested it. You're sure that it's going to work
25 today? Now, he's not as confident.

1 MRS. SUMNER: Judge, I personally tested
2 it yesterday before 5:00.

3 THE COURT: Okay.

4 MRS. SUMNER: I was looking for Tricia. I
5 know she's in here.

6 THE BAILIFF: They fixed it.

7 THE COURT: They? Fixed it? We're sure
8 that it's fixed?

9 MRS. SUMNER: It was working --

10 THE COURT: Because that very screen was
11 not very reliable yesterday.

12 MRS. SUMNER: It was working at 4:59 --

13 THE COURT: Okay.

14 MRS. SUMNER: -- according to the clock
15 behind me.

16 THE COURT: All right. So you're saying
17 that's the screen that you'd want to play it
18 on, which means that the cameras are going to
19 be able to see it from where everybody's
20 sitting in the courtroom.

21 MR. KRAEBEL: Yes, Judge. If there is
22 concern, perhaps a middle ground would be
23 between clearing the courtroom and full
24 disclosure would be leaving the individuals in
25 the courtroom and prohibiting using still or

1 video equipment to record the monitor.

2 THE COURT: Oh, that leaves me with two
3 questions. First, why is that better?

4 And second, does the law allow me to do
5 that?

6 MR. KRAEBEL: Judge, I think that the
7 statute at issue does address -- not in this
8 specific context, but it talks about where the
9 Court allows the video to be released, it's
10 released in a form where it's under the
11 supervision of the custodian of records.

12 So it talks about viewing, copying,
13 listening to or otherwise handling. So I think
14 it gives the Court some latitude as far as how
15 that's presented.

16 It's also my understanding -- I don't have
17 direct knowledge of this -- it's my
18 understanding that in the case that led to the
19 creation of the statute, where the Tampa police
20 officers were shot, that is I think the way
21 that the Court handled the proceedings in that
22 case, is to not close the courtroom, but to
23 allow or to create a prohibition on the
24 recording of the monitor.

25 THE COURT: But aren't I creating, then,

1 two levels of knowledge in the public, those
2 that can afford to take the time off from work
3 and come and view this personally would get to
4 see the video by appearing personally, but then
5 I restrict the print media's ability to take
6 pictures and/or the video, media, the ability
7 to record that which appeared in open court?
8 Why -- why should I create a bifurcated system
9 that punishes those that can't afford to be
10 here in person?

11 MR. KRAEBEL: Judge, I'm not necessarily
12 advocating for that.

13 THE COURT: Oh.

14 MR. KRAEBEL: I don't think there is a
15 perfect answer in this case. I'm merely giving
16 an option --

17 THE COURT: Options.

18 MR. KRAEBEL: -- for the Court.

19 THE COURT: Thank you.

20 MR. KRAEBEL: Judge, as to -- I don't know
21 if you want to restrict our discussion now as
22 to the proceedings today or do we want to get
23 to the point with which we're discussing
24 actually releasing copies of the public
25 records' request.

1 THE COURT: Well, we can cover a little
2 bit of both. I'm interested in the 406
3 argument as well. It's a third-degree felony
4 to release it without either a court order or
5 the consent of the surviving spouse, provided
6 the surviving spouse is the closest family
7 member, but I think that's been established
8 that the surviving spouse is.

9 And that's why I brought Mr. Grimaldi into
10 my office this morning to let him know that I
11 was going to ask the question. So I suppose
12 now would be the time to ask the question.

13 Mr. Grimaldi, does your client consent to
14 the release of the video under Chapter 406 of
15 Florida Statutes?

16 MR. GRIMALDI: Your Honor, at this point I
17 think -- on behalf of Mrs. Oulson, T.J.
18 Grimaldi for the Court as well.

19 She is deferring to the State in the sense
20 that she just wants to make sure that justice
21 is served here. And we would then, therefore,
22 waive our option and defer it to the State. If
23 they wish to release it, then we'll stand by
24 them.

25 THE COURT: Well --

1 MR. GRIMALDI: I know it's not the
2 concrete answer that you're looking for, but I
3 think it can kind of be taken within the line
4 to understand that if it gets released, she's
5 okay with it.

6 THE COURT: I'm not sure that the law
7 allows you to specifically defer. I guess
8 everybody still has the Super Bowl in mind, so
9 we're deferring.

10 But that being said, let me then ask the
11 State what's -- what's the State's position as
12 it relates to the 406 test? And do I have to
13 do the full 406 test or is the State going to,
14 on behalf of the victim, consent to the
15 disclosure and dissemination of the video?

16 MR. KRAEBEL: Judge, our legal position is
17 more focused on if there is a disclosure, it
18 must be by court order. I have prepared
19 several proposed orders that I tried to address
20 the gamut of options.

21 I think that you've heard lots of argument
22 today on -- from all different angles on this
23 issue. I think it's well within the Court's
24 discretion if you choose to release it. You
25 have a ground to establish good cause on that.

1 THE COURT: I understand, but I don't -- I
2 don't want to make the legal decision if I can
3 already proceed with the consent of the
4 surviving spouse.

5 And Mr. Grimaldi is putting his hand up.
6 He probably knows my -- my longstanding
7 tradition of recognizing people that raise
8 their hands. I'm always enthusiastic. So tell
9 me about that.

10 MR. GRIMALDI: I do. We'll make this
11 easy. She consents to release the video.

12 THE COURT: There we go. All right. So
13 the 406 test doesn't need to be proceeded to.

14 So that leaves me still with the closure,
15 and that means the *Lewis* test.

16 So tell me, under the *Lewis* test, State,
17 why do you believe that I should close the
18 courtroom and not allow them to video tape?

19 MR. KRAEBEL: Again, Judge, I'm not
20 advocating that you do close the courtroom.
21 I'm just merely presenting an option that
22 that's a possibility. We don't have an
23 objection to playing it in court.

24 THE COURT: All right.

25 MR. KRAEBEL: And, Judge, just to

1 finalize, I have proposed orders on various
2 options here. I also have the proposed order
3 that you requested yesterday. It may be a moot
4 point at this time.

5 THE COURT: I've signed a couple of moot
6 orders. You can bring them all up.

7 Mr. Garcia, while he's bringing those up,
8 do you want to proceed to your substantive
9 argument, because I know that you wanted to
10 respond to some of the things that the Defense
11 raised.

12 MR. GARCIA: Yes, sir. May it please the
13 Court, counsel.

14 Judge, I want to make sure that the record
15 is perfectly clear that it's not the State's
16 position --

17 (Mr. Kraebel handing documents to Court.)

18 MR. GARCIA: -- that there are any
19 segments missing in the video.

20 As I indicated to the Court, this is
21 infrared cameras. They are motion activated.
22 If something is not there, that means that
23 there was no movement in order for the cameras
24 to capture it.

25 Furthermore, as the Court is well aware,

1 Judge, under Article 1, Section 14 of the
2 Florida Constitution, we are asking that this
3 defendant remain in custody with a zero bond
4 status, which is one of the highest burdens
5 that the State has to establish in this case,
6 Judge.

7 And not only do we have to establish it,
8 but we have to establish by proof evident the
9 presumption is great.

10 I would submit to the Court, Judge, that
11 the video in this case is the best evidence
12 along with eyewitness testimony as to what
13 occurred in the movie theater back on January
14 13th of 2014, Judge.

15 And you're going to hear from the
16 witnesses and the witnesses are going to, in
17 fact, corroborate what's on the video.

18 THE COURT: Tell me who -- which witnesses
19 am I going to hear from today that are going to
20 corroborate what's on the video?

21 MR. GARCIA: Judge, you're going to hear
22 from Mr. Charles Cummings; you're going to hear
23 from Mark Turner; you're going to hear from
24 Alan Hamilton; you're going to hear from Derek
25 Friedhoff; as to the events that transpired on

1 the video.

2 You're going to learn from these witnesses
3 and they're going to testify that at no time
4 did Mr. Oulson ever threaten, strike or touch
5 Mr. Reeves in this case, Judge.

6 And it's depicted on the video. You never
7 see the victim striking Mr. Reeves. You never
8 see him reaching over as they have alleged to
9 the contrary, Judge.

10 You're going to hear from Mr. Cummings.
11 He's going to tell you that he was an
12 eyewitness to the events that transpired on
13 January 13th, and he has had an opportunity to
14 view this video. He's going to tell you that
15 it is a true and accurate depiction of what
16 occurred on that date.

17 Judge, in support of our argument, I would
18 cite to the Court *Dolan vs. State of Florida*,
19 which can be found at 743 So.2d Page 544. It
20 was decided July 21st, 1999, if I can approach
21 the bench, Your Honor.

22 THE COURT: It's okay. Hold it. I'm not
23 going to be able to read it right now. I'll
24 read it at the break.

25 MR. GARCIA: Judge, in essence, what this

1 case stands for, the proposition if there's a
2 witness that can authenticate the video, the
3 video should be played.

4 Furthermore, as to Mr. Escobar's argument
5 that the video should not be played, Judge,
6 those arguments go to the weight of the
7 evidence and not the admissibility of the
8 evidence in this case.

9 THE COURT: It's stop action. I mean it's
10 not -- it's not continuous. I watched it 15
11 times.

12 MR. GARCIA: I agree.

13 THE COURT: Do you have somebody that's
14 going to be explaining why it's stop action
15 today or why it's -- I'm calling it stop
16 action -- why there are gaps? Do you have
17 somebody that's going to be able to do that?

18 MR. GARCIA: Well, the detective, Judge,
19 has spoken to the IT people, and they've
20 explained to him it's motion activated, it's
21 infrared. If there's no movement, the camera
22 is not on. The camera shuts off.

23 So, for instance, at 1326 there's
24 movement, it captures it. There's no movement
25 within the theater, it shuts off. And then

1 when the camera starts again, it may start at
2 1330.

3 THE COURT: All right. Well, my car is
4 supposed to turn on every time I turn the key,
5 but it doesn't always. Sometimes, you know,
6 machines break.

7 MR. GARCIA: Judge --

8 THE COURT: What reliability should I give
9 to this without the technician there?

10 MR. GARCIA: You have eyewitnesses. The
11 reliability are the eyewitnesses that are going
12 to come forward and say, "That's exactly what
13 happened."

14 This gentleman was never placed in fear,
15 he was never hit, never struck, never
16 threatened. The video corroborates that.

17 Mr. Cummings is willing to come into
18 court, raise his right hand and say, "I viewed
19 the video and this is a true and accurate
20 depiction of what transpired on January 13th,
21 2014."

22 THE COURT: Has Mr. Escobar or
23 Mr. Michaels had the chance to speak to
24 Mr. Cummings yet?

25 MR. GARCIA: No, sir.

1 THE COURT: All right. All right.
2 Anything else you want to add to it before I
3 hear from Mr. Escobar who clearly wants to talk
4 to me again?

5 MR. GARCIA: I think I made it quite
6 clear, Judge, under the case law, that this
7 video is, in fact, admissible. So we would
8 rely on that case, *Dolan vs. State of Florida*
9 due to the fact that Mr. Cummings can
10 authenticate the video.

11 THE COURT: Okay. All right. Thank you,
12 Mr. Garcia.

13 Mr. Escobar, your response before I read
14 the case law and make my decision.

15 MR. ESCOBAR: My one concern, if I heard
16 this correctly, is he saying that he provided
17 this video with a court order not to provide it
18 to any other person, he provided this video to
19 Mr. Cummings in violation of 406?

20 THE COURT: I think he said --

21 MR. ESCOBAR: Because he's a lay witness.

22 THE COURT: I think he said he allowed him
23 to review it and he has the consent of the
24 victim or the spouse to do so, which
25 Mr. Grimaldi made clear, so he's allowed to

1 play it to anyone because Mr. Grimaldi is
2 consenting to the State accepting and/or
3 utilizing their waiver.

4 MR. ESCOBAR: I didn't -- I didn't hear
5 that first part that Mr. Grimaldi had given
6 Mr. Garcia specific permission to let
7 Mr. Cummings view that video.

8 MR. GARCIA: Judge, there's also the
9 exception under 406 in a criminal prosecution
10 that we can, in fact, view the video and have a
11 witness authenticate the video. So that's the
12 exception, Judge.

13 THE COURT: I'm -- I'm --

14 MR. GARCIA: The State of Florida has not
15 done anything improper here.

16 THE COURT: I'm not -- I'm not concerned
17 about that because I haven't heard anything to
18 bring that to my concern yet. The State's
19 allowed to review evidence with their
20 witnesses.

21 Mr. Grimaldi has made it absolutely clear
22 that Ms. Oulson is consenting to it being
23 displayed. Also, Chapter 119 does have
24 provisions that I really didn't want to get
25 into the legal argument of, but it does have

1 provisions that say I can waive the whole
2 thing.

3 I just -- I don't -- I don't want to step
4 through that hoop if I don't have to. If
5 there's an easier way to go around it, let's do
6 that. And I think that the victim's spouse has
7 provided me with that easier way to go around
8 it, so that's a non issue to the Court.

9 Would you want to have the opportunity to
10 speak to Mr. Cummings about what he viewed on
11 the video prior to the lights and the cameras
12 going on?

13 MR. ESCOBAR: I would like the opportunity
14 to speak to all the witnesses that have viewed
15 the video before the video is played, if the
16 Court's going to make that ruling, absolutely.

17 THE COURT: Besides Mr. Cummings, is there
18 anybody else that's viewed the video that's
19 going to describe it to the Court during the
20 bond hearing?

21 MR. GARCIA: Judge, the only other witness
22 that has viewed the video is Detective
23 Aaron Smith. Obviously he was in charge of
24 gathering the videos and downloading the
25 videos, so on and so forth. So yes, he viewed

1 the video, but --

2 THE COURT: All right. I'm just concerned
3 with an actual witness that was present that
4 viewed the video as well.

5 MR. GARCIA: The only actual witness
6 that's going to come forward and testify to the
7 authenticity of the events on the video is
8 Mr. Cummings.

9 THE COURT: And Mr. Garcia, there's no
10 obligation for the State to allow access of
11 Mr. Cummings to Mr. Escobar prior to the
12 hearing. However, you are asking me to hold
13 his client without bond.

14 Is there any prejudice to the State if,
15 with you present or a representative of your
16 organization present, Mr. Escobar at least be
17 able to review for a few minutes with
18 Mr. Cummings what he might say if were called
19 as a witness? Would it prejudice your case in
20 any way?

21 MR. GARCIA: Judge, may I confer with
22 Mr. Loughery?

23 THE COURT: Absolutely.

24 MR. GARCIA: No, Judge, we have no
25 objection to that.

1 THE COURT: Great. Well, it happens that
2 it is 11:09, which puts us one minute from our
3 first break. And I like it when we
4 accidentally wind up on time. So let's do
5 that. Let's accidentally wind up on time.

6 Mr. Escobar, when I say we're going to
7 take a ten-minute break, I really mean that it
8 would be my intention to take a ten-minute
9 break. So if you and whoever the
10 representative of the State is going to be
11 would go and speak to Mr. Cummings now.

12 I will review the cases that you have
13 during this break, Mr. Garcia. And then when
14 we come back at 11:20, I'll give you my ruling
15 on whether I'll close the courtroom or allow it
16 to be viewed. Okay?

17 Mr. Kraebel, you had something you wanted
18 to add before we broke?

19 MR. KRAEBEL: Very briefly, Judge. I can
20 keep all copies of the proposed orders. May I
21 retrieve a few so that I can show them to
22 Defense?

23 THE COURT: Oh, yeah, that's fine.

24 MR. KRAEBEL: That might --

25 THE COURT: Here you go.

1 MR. GARCÍA: Judge, may I approach with
2 the case law?

3 THE COURT: You can approach with the case
4 law. You can approach to get that and we'll be
5 in recess for ten minutes.

6 (Recess.)

7 THE COURT: We had more attorneys earlier.
8 (Pause in proceedings.)

9 THE COURT: Juan, could you go find me
10 some attorneys? Tell them I'll give them more
11 time to talk after the break, but I'd like some
12 attorneys.

13 (Pause in proceedings.)

14 THE COURT: Okay. We're back on the
15 record in State of Florida vs. Reeves. The
16 defendant is present and is dressed out, the
17 Defense is present, the State is present.
18 Ms. Sumner has not yet returned to court.

19 Ruling on the request to close court and
20 prohibit the viewing of the video by the media
21 and/or by the public.

22 I'm not going to close court. The video
23 is still part of discovery and it's subject to
24 the 30-day hold on dissemination. However, I
25 don't find that the *Lewis* standard has been met

1 to close court.

2 The legitimacy of our court system and the
3 strength of our democracy is fostered when the
4 public has broad access to court proceedings.
5 Withholding this video from public view would
6 only fuel speculation about what is on it.

7 If the video is played in court, then the
8 media can tape what any member of the public
9 could see off of the screen if that member of
10 the public was present.

11 Now, that being said, State, are there any
12 other motions I have to hear before we actually
13 begin this bond hearing?

14 MR. KRAEBEL: No, Judge.

15 THE COURT: Defense, anything else I have
16 to hear before we start this bond hearing?

17 MR. ESCOBAR: No, Your Honor.

18 THE COURT: All right. The State's filed
19 an Information in Case Number 14-216CFAES for
20 murder in the second degree. Within that
21 Information the State has alleged the use of a
22 firearm causing death or great bodily harm.

23 A second-degree murder carries a guideline
24 score within the criminal punishment code of
25 Florida, Statute 921 of --

1 MRS. SUMNER: Make an argument.

2 I'm sorry, Your Honor.

3 THE COURT: No problem.

4 -- of approximately 21 years at the bottom
5 of the guidelines under Florida law up to 30
6 years or life.

7 Where a firearm is alleged under Chapter
8 775.087 of Florida Statutes, there is a minimum
9 mandatory 25-year sentence that the Court must
10 enclose if the defendant is convicted as
11 charged with findings made by the jury.

12 Within the Information filed in this case,
13 the State has included the allegation of
14 firearm and invoked the 25-year
15 minimum-mandatory system.

16 There is no discretion for a purpose in
17 Mr. Reeves' position which is given to the
18 Court as it relates to that 25-year
19 minimum-mandatory sentence. That means,
20 Mr. Reeves, if you were convicted of the charge
21 as filed, that you would not be eligible for
22 release until a minimum of January 13th of
23 2039.

24 You also have to understand -- and this is
25 basically the arraignment is what I'm doing

1 here -- you also have to understand even if I
2 did not agree with that sentence, whether I
3 agreed with it or not, I would have to impose
4 it because it's a mandatory. There's no
5 discretion.

6 I review these details and these laws with
7 any person that's charged with a homicide, and
8 so I've reviewed them now with you as a part of
9 your arraignment.

10 To that end, traditionally a formal
11 arraignment date would be set, but since we're
12 all here and since it's difficult to transport,
13 I'm going to go ahead and arraign you today.

14 You already have counsel so we settled
15 that issue. We're going to do the bond
16 hearing.

17 Mr. Escobar, at this time what plea does
18 your client enter?

19 MR. ESCOBAR: Not guilty, Your Honor.

20 THE COURT: Okay. Now you've been
21 arraigned and now we proceed to the bond
22 hearing.

23 Yesterday I -- yesterday I discussed the
24 option and possibility of setting a trial
25 today, specifically now before I hear the bond

1 hearing and anybody knows if somebody is
2 getting out or somebody's not getting out.

3 That being said, I had a short
4 conversation with the attorneys after court
5 just about scheduling and coordinating,
6 potential scheduling.

7 And, at this time, State, would you be
8 asking me to set a trial date or would you not
9 be asking me to set a trial date?

10 MR. GARCIA: No, sir, Judge.

11 THE COURT: Not asking.

12 Defense, would you be asking for me to set
13 a trial date or would you want a pretrial 30-
14 to 60 days out?

15 MR. ESCOBAR: Pretrial, Your Honor.

16 THE COURT: Pretrial.

17 Okay. So that being said, I was going to
18 offer the opportunity to do opening statements.

19 MR. GARCIA: One other thing that I hoped
20 to --

21 THE COURT: Sure.

22 MR. GARCIA: -- advise the Court, Judge.
23 There was a second count, the
24 aggravated-battery count.

25 THE COURT: Oh, you're right. I did not

1 advise on that.

2 MR. GARCIA: Yes, sir.

3 THE COURT: Mr. Reeves, you've also been
4 charged in Count II under Chapter
5 784.045(1)(a)(2) an allegation of aggravated
6 battery, and they have also indicated firearm
7 within that allegation, and that allegation
8 includes discharge of a firearm.

9 By including discharge of a firearm under
10 Chapter 775.087, that carries a
11 minimum-mandatory 20-year prison sentence if
12 you were convicted. Again, that is a minimum
13 mandatory. The Court would have no discretion.

14 All right. Thank you, Mr. Garcia, for
15 reminding me of that.

16 MR. GARCIA: Yes, sir.

17 THE COURT: So, to that end, Defense, do
18 you wish to give an opening statement before
19 you begin your bond hearing or go directly into
20 witnesses?

21 MR. ESCOBAR: Your Honor, we've -- we've
22 supplied the Court with an extensive
23 memorandum. We're going to waive, at this
24 moment, the opening statement.

25 THE COURT: All right. I have a copy of

1 your memorandum. I have reviewed it in its
2 entirety. I believe it is 24 pages with
3 Attachments A through E. And then also
4 Attachments 1 through 18. And I've reviewed
5 the letters as well as the case law that you
6 cited.

7 MR. ESCOBAR: Thank you, Your Honor.

8 THE COURT: State, do you wish to give an
9 opening statement or do you wish to go directly
10 into witnesses?

11 MR. GARCIA: Judge, I'd like to give an
12 opening statement, please.

13 THE COURT: You may proceed.

14 MR. GARCIA: May it please the Court,
15 Mr. Escobar, Mr. Michaels?

16 Judge, good morning.

17 Your Honor, I expect the evidence is going
18 to show that back on January 13th of 2014 at
19 the Cobb Movie Theater located here in Pasco
20 County, Florida, that you're going to hear
21 testimony from Charles Cummings, an eyewitness
22 in this case.

23 He's going to tell you that he and his son
24 had gone to the movie theater to see the Lone
25 Survivor. He is going to tell you that he was

1 in a theater with Mr. Reeves, Mr. Reeves' wife,
2 Mr. Oulson, Mrs. Oulson and, obviously, other
3 people who were eyewitnesses to the events that
4 happened on that date.

5 He's going to tell you that he was sitting
6 in the same row as the victim. He was about
7 two-to-three, maybe four seats away from the
8 victim when this transpired.

9 He's going to tell you that there was
10 words exchanged by Mr. Reeves in this case,
11 along with Mr. Oulson. He could not hear what
12 was being said; however, he's going to tell the
13 Court that in his opinion Mr. Reeves was
14 agitated, he was angry, he was grumbling.

15 He's going to tell you that at some point
16 in time Mr. Reeves gets up and he walks out of
17 the theater. As he's doing so, he's hitting
18 the seats behind him and he's grumbling. And
19 Mr. Cummings is going to tell you not only does
20 he hit the seats, but he kicks the back of his
21 chair, obviously agitated.

22 He's going to tell you that shortly --
23 he's not sure about the time period; it could
24 have been two or three minutes -- Mr. Reeves
25 comes back to the movie theater. He sees that

1 he kind of leans forward. Something is said to
2 Mr. Oulson.

3 Mr. Oulson then stands up and says
4 something to the effect that he was texting.
5 He wasn't sure what was said. He says he sees
6 popcorn flying. He then sees the gun go off.
7 He hears the defendant state something to the
8 effect, do that to my face.

9 Shortly thereafter, he's going to tell you
10 that he sees Mr. Oulson walking in the same
11 aisle that he was in, he's stumbling, and he
12 makes a statement, "I can't believe he shot
13 me."

14 He's going to tell you that there was no
15 obstructions, the visibility was good. It was
16 dimly lit; however, he could see. He could see
17 Mr. Reeves, he could see Mr. Oulson.

18 He's going to tell you that he did not
19 observe anything in Mr. Oulson's hands. He did
20 not see any punches exchanged, no strikes, no
21 hits, nothing that would indicate to him that
22 this gentleman, Mr. Reeves, was threatened in
23 any way. He's going to tell you if he had --
24 if he had seen any of these things, that he
25 would have intervened.

1 You're going to hear also from
2 Mark Turner. Mark Turner is a retired
3 lieutenant colonel with the United States Air
4 Force. He's going to tell you that he was a
5 clandestine case officer. He's going to tell
6 you as part of his duties with the United
7 States Air Force, that his job was to observe
8 things. He was in intelligence. He's going to
9 tell you that he's done that his whole entire
10 career and he's done that in his private life.

11 He's going to tell you on January 13th of
12 2014, he was in the movie theater with his
13 wife. They were there to see the Lone
14 Survivor. He's going to tell you that he hears
15 conversations, he hears things transpiring
16 between Mr. Reeves and Mr. Oulson.

17 He is going to tell you that Mr. Oulson
18 never got out of his chair, he was never
19 invading Mr. Reeves' face. There were no
20 threats. He never saw Mr. Oulson strike, hit
21 or threaten Mr. Reeves in any way.

22 He's going to tell Your Honor that he
23 hears the pop, he sees the muzzle flash. And
24 Mr. Turner is going to tell you that he hears
25 a statement attributed to Mr. Reeves, and he

1 said, "Throw your popcorn in my face, will
2 you."

3 And he hears Mr. Oulson state, "I can't
4 believe this," as he's walking down the aisle,
5 after having been shot in the chest.

6 Your Honor, you're going to also hear from
7 Deputy Alan Hamilton. He was at the movie
8 theater with his wife. He's going to tell you
9 that he was there, he heard a confrontation or
10 voices between Mr. Reeves and Mr. Oulson. He's
11 going to tell you that as a law enforcement
12 officer, he did not think that it rose to the
13 level that he had to intervene. He thought it
14 was just them having words, that someone was
15 going to get up and move.

16 He's going to tell you that he hears
17 Mr. Oulson saying something to the effect about
18 texting his daughter, so on and so forth. He's
19 also going to state that he sees a muzzle
20 flash.

21 He walks over to the defendant in this
22 case, Mr. Reeves. And as he's sitting there,
23 he's going to tell you that Mr. Reeves
24 continued to try and get up out of his seat.
25 He's also going to tell you that he wanted to

1 touch the cell phone or pick up the cell phone
2 that was at his feet.

3 Deputy Hamilton is going to tell you that
4 he stood there, he took the gun away from him.
5 It was a .380 semiautomatic pistol. He took
6 the magazine out. He took the round out of the
7 chamber. He held it there, put his hand on
8 Mr. Reeves and said, "You just need to stay
9 here, you just need to stay put. Don't do
10 anything. They're going to be coming in here.
11 I don't want to get shot and I don't want you
12 to get shot."

13 He's also going to state that Mr. Reeves
14 said, "I can't believe I just done that shit.
15 What happened?"

16 Mr. Hamilton is going to tell you that at
17 no time did he ever see Mr. Oulson strike, hit
18 or threaten Mr. Reeves in any manner or any
19 fashion. He's going to tell you that he did
20 not observe any injuries on Mr. Reeves, even
21 though Mr. Reeves had, at one point in time,
22 put his head back, tilted his glasses up and
23 told him "I got hit in my left eye. I was
24 hit."

25 Mr. Hamilton is going to say that he was

1 there it seemed to him to be, Judge, an
2 eternity. As he was looking at Mr. Reeves'
3 face, did not see any injuries on his face or
4 his hands or anywhere else.

5 You're going to hear from Derek Friedhoff,
6 Your Honor. He's a registered nurse. He was
7 at the movie theater with his girlfriend. He
8 advised that he saw what was going on. There
9 was a confrontation. He heard it. He was
10 looking over his right shoulder. He could see
11 what was going on. He could see clearly what
12 was happening in this case.

13 He sees the victim in this case,
14 Mr. Oulson, standing. He never sees him with
15 anything in his hands. Never sees him in any
16 way, shape or form touch, strike or hit or
17 threaten Mr. Reeves in any manner.

18 He sees a muzzle flash go off. And he
19 hears, after the muzzle flash, the defendant
20 state, "Throw popcorn in my face."

21 He is going to tell you that Mr. Oulson
22 had been shot center mass in the center chest.
23 Being a nurse, he started doing compressions
24 and he awaited for the arrival of the
25 paramedics, so on and so forth.

1 Judge, you're also going to hear from
2 Detective Allen Proctor who's the case
3 detective. He's going to tell you that he
4 spent quite a considerable time with the
5 defendant in this case, Mr. Reeves. Mr. Reeves
6 kept telling him that he had been punched on
7 the left side of his head. Detective Proctor
8 is going to tell you that on that date and
9 directly after that incident, he did not
10 observe any injuries on Mr. Reeves at all.

11 He's going to tell you that he had the
12 defendant photographed, and that the pictures
13 actually depict the lack of injuries to
14 Mr. Reeves. He's going to tell you that his
15 hands were also photographed.

16 Detective Proctor is going to tell you
17 that there's an abrasion on his left hand.
18 He's going to tell you that in his training and
19 experience and from being a law enforcement
20 officer for approximately 30 years, it's
21 consistent with the handcuffs rubbing his skin
22 and causing an abrasion.

23 Judge, it's our intention that we are
24 going to play the taped interview of the
25 defendant in this case after he was read his

1 Miranda rights by Detective Allen Proctor.

2 And, Judge, we're going to ask this Court
3 to compare his version of events to the events
4 of the independent witnesses in the case, along
5 with the videotape. And you're going to see
6 that his version of events do not corroborate
7 nor are they corroborated by the independent
8 witnesses nor the videotape.

9 In addition, Judge, as you know, the State
10 of Florida has the burden of proof in this
11 case. We have to prove in this bond hearing
12 proof evident presumption is great.

13 And I would submit to you at the
14 conclusion of this hearing, the State of
15 Florida is going to have met that burden,
16 Judge, and we're going to ask that you continue
17 to detain Mr. Reeves in the custody of the
18 Pasco County Sheriff's Office under a no-bond
19 status.

20 Thank you.

21 THE COURT: Thank you, Mr. Garcia.

22 Mr. Escobar, who do you wish to call as
23 your first witness in this bond hearing?

24 MR. ESCOBAR: Your Honor, we're going to
25 be calling Thomas Depolis. I would ask the

1 Court if we're going to break. He's probably
2 going to be a lengthy witness. I hate to break
3 his testimony up if at all possible.

4 THE COURT: How lengthy are we talking
5 about?

6 MR. ESCOBAR: I would imagine at least 45
7 minutes.

8 THE COURT: Let's see how much we can get
9 done.

10 MR. ESCOBAR: Okay.

11 THE COURT: What's his name again?

12 MR. ESCOBAR: Thomas Depolis.

13 THE COURT: Thomas Depolis. If we could
14 sound for Thomas Depolis out there.

15 THE BAILIFF: They're getting him.

16 THE COURT: How do I spell his last name
17 correctly, please.

18 MR. ESCOBAR: D-E-P-O-L-I-S.

19 THE COURT: Good afternoon, sir. Please
20 raise your right hand.

21 THEREUPON,

22 THOMAS DEPOLIS,
23 the witness herein, was placed under oath.

24 THE COURT: Come on up and take the
25 witness stand, please.

1 MR. ESCOBAR: May I proceed, Your Honor?

2 THE COURT: You may inquire.

3 DIRECT EXAMINATION

4 BY MR. ESCOBAR:

5 Q Please state your full name for the
6 record.

7 A My name is Thomas Anthony Depolis.

8 Q Mr. Depolis, what is your educational
9 background?

10 A I have a Master's degree in criminal
11 justice. I earned it while I was working with the
12 Tampa Police Department. And I hold several
13 certificates from nationally recognized
14 institutions, such as the FBI National Academy.

15 Q Let's talk a little bit about your
16 employment. Tell the Court, for the majority of
17 your life, what your employment history was.

18 A My employment was law enforcement for the
19 majority of my life. I spent 26 years with City of
20 Tampa Police Department. And after retirement
21 there, I went on to the Hillsborough County
22 Sheriff's Office where I was appointed as the chief
23 deputy for another six years.

24 Q Okay. Let's -- let's take the Court, if
25 we can, just briefly through the history of your

1 work there at the Tampa Police Department.

2 You started in patrol?

3 A I started in patrol, yes, sir.

4 Q What year did you start in patrol?

5 A It was 1967.

6 Q And tell the Court how you moved up
7 through the ranks of that department.

8 A Well, in that department you must take
9 promotional exams in order to be eligible to be
10 promoted, and I did those. I attended some college
11 while I was working on my days off. That always
12 helps toward promotion.

13 The first promotion is the rank of
14 corporal at Tampa. And it's one year I was promoted
15 to the rank of corporal and then proceeded from
16 there. I went to sergeant and all the way up until
17 the end of my career I was the deputy chief of
18 investigative services. At the time that was the
19 second in command rank at the Tampa Police
20 Department.

21 Q So the chief was -- had higher rank and
22 you were next.

23 A Yes, sir.

24 Q Okay. And how long did you hold that
25 position of deputy chief with the Tampa Police

1 Department?

2 A Approximately three years.

3 Q Okay. Do you know Curtis Reeves?

4 A Yes, I do.

5 Q And would you tell the Court how it is
6 that you came to know Curtis Reeves?

7 A Well, we were both the rank of sergeant at
8 the time, so we had the experience beyond the basic
9 level and we were what was considered first-line
10 supervisors. The Tampa Police Department did not
11 have a specialty team to respond to highly dangerous
12 situations.

13 And the chief of police, at that time,
14 came to us and asked us to form a SWAT Team, as it
15 was known. He didn't like the term, SWAT, so we
16 named it something else. But we began forming the
17 basis for selecting and training and equipping
18 members of a SWAT Team.

19 Q Let me ask you this: Did you know
20 Mr. Reeves prior to your contact with the SWAT Team
21 or starting that program as a sergeant?

22 A I knew him as a sergeant in the police
23 department. I had worked off and on with him. We
24 didn't work closely together until we started
25 forming that team.

1 Q Okay. So what year was it that the chief
2 asked you and Mr. Reeves to form this
3 highly-specialized group?

4 A It was in the mid-seventies. So I know we
5 started attending training, for different aspects of
6 training for that particular group in about 1977.
7 So, you know, it was somewhat just before that,
8 before we would have started attending training.

9 Q Describe to the Court how intensive that
10 training was in order to be able to formulate such a
11 group that would respond to highly dangerous
12 situations.

13 A Sir, at that time you have to remember,
14 there was no specialty team that made any kind of
15 response to a dangerous situation. And the term
16 SWAT actually is -- the four letters stand for
17 special weapons and tactics.

18 So together we decided we better learn
19 some special tactics more than the weapons. The
20 weapons we could accumulate and see what was out
21 there. The tactics which translates to strategy was
22 much more important.

23 And that's the part we didn't know. The
24 advantage a SWAT has over basic police, law
25 enforcement would be that they plan for things,

1 they're prepared for things, they've gone over
2 different scenarios so that they would come up with
3 strategies on how you would react to different
4 levels of danger.

5 So we began with the FBI.

6 Q Let me stop you there for a second. Are
7 you telling the Court today that in implementing
8 this special squad, that yourself and Mr. Reeves
9 went to schools throughout the country in order to
10 educate yourself on those particular techniques that
11 you needed to employ in order to recognize danger
12 and act appropriately?

13 A Yes, sir, that's exactly what I'm telling
14 you.

15 Q And the reason that you had to go and get
16 that specialized training was because you were going
17 to be training, likewise, the new members of that
18 squad?

19 A That's correct. We were going to be
20 selecting; we needed to know what to look for. And
21 then there would be training, and then we would
22 actually be putting into practice those same tactics
23 with those same individuals.

24 Q So you designed -- you and Mr. Reeves
25 designed this tactical squad, trained yourselves by

1 going to schooling across the country.

2 A Yes, sir.

3 Q And then did the training, the selection
4 and the training of those men that became the first
5 tactical squad for the Tampa Police Department.

6 A That's correct.

7 Q Just give the Court just a rough figure of
8 the number of hours that Mr. Reeves and yourself had
9 to spend going throughout the country to educate
10 yourself on these proper techniques.

11 A Well, I imagine it would have to be
12 hundreds of hours. I don't have a number in my
13 head.

14 But, for example, the very first FBI SWAT
15 training that we had was at Quantico, Virginia at
16 the FBI academy and it was a week long. And that
17 was followed up with dozens of hours afterwards.

18 We went to the United States Army Counter
19 Sniper school in Fort Benning, Georgia. And that
20 was, again, another week or two long again, followed
21 up by countless hours of followup training for that.

22 Secret Service Dignitary Protection in
23 Washington D.C. You know, those -- those are the
24 kinds of places we went to get the information we
25 would need and the training we would need to bring

1 back, make the proper selection, make the proper
2 policies, select the right people and then begin
3 that training.

4 Q Mr. Depolis, that training is far more
5 intensive than the training that you get as a new
6 officer going to the academy; is that correct?

7 A Yes, sir. That's the point of the
8 training, so that the officer on the street has
9 enough to enforce the law and has policies to
10 regulate his actions in enforcing those laws, but
11 perhaps is not prepared for every kind of situation
12 that he might encounter that's more than he can
13 handle.

14 And that's the purpose of a specialized
15 team, is to have weapons that will help them
16 accomplish what the officer may not, and to have
17 already thought out some strategies for taking
18 action where the officer might not have time to
19 think of those.

20 Q Okay. And so now one of the first courses
21 that you go to is to the FBI school in Quantico; is
22 that correct?

23 A That's correct. That's one of the early
24 schools.

25 Q And this was a school specifically

1 designed to teach you those particular tactics in
2 order to deal with dangerous situations.

3 A That's correct.

4 Q Do you remember ever them instructing you
5 during that period of time concerning factors that
6 individuals had to assess in determining danger, the
7 escalation of danger and how to properly respond to
8 danger?

9 A There were a number of factors. And then
10 we would study at the FBI academy, for example,
11 different scenarios that law enforcement officers
12 had been in around the country where things had
13 failed for them, things had gone wrong, and officers
14 had died or innocent people had died. You learn
15 from mistakes in a basic sense.

16 And then we would come back and we would
17 discuss some of those issues with our team, train on
18 those issues, and play "what if" scenarios. What if
19 we encountered someone who was barricaded? What if
20 we encountered someone who was trying to kill
21 themselves, but if we let him go he would be a
22 danger to the public? At what point would it
23 escalate to the point where we needed to take action
24 on our own or could we fall back and try to
25 negotiate with the person?

1 That was the kind of strategies that the
2 officer on the street, the uniformed officer didn't
3 have time to think of. And that's what we would
4 prepare ourselves, so that we could go there and
5 have those strategies in mind.

6 Q You defined this as strategies and I've
7 asked you about factors.

8 The lighting conditions, is that a factor
9 for officers to consider when they're dealing with
10 an issue that could be dangerous, that they're
11 perceiving whether the danger is imminent or whether
12 the danger is controlled?

13 A Yes, sir. All of the environmental
14 factors would be in consideration. Lighting would
15 be certainly one of them; noise would be another
16 one.

17 When we arrived on tactical situations,
18 sometimes we tried to control the lighting or the
19 noise, those kinds of things. So, yes, sir, every
20 environmental factor I could think of would be a
21 part of that decision.

22 Q Why is lighting in particular an important
23 one?

24 A Well, it depends on your point of view.
25 If you're in a bad lighting situation and you're

1 faced openly with danger, you can't see the danger
2 clearly. If you're trying to --

3 MR. GARCIA: Judge, I'm going to object to
4 the relevancy of this testimony. I don't see
5 how lighting and these type of questions by
6 Mr. Escobar is relevant to a bond hearing.

7 THE COURT: Overruled.

8 You may continue.

9 A The --

10 Q (By Mr. Escobar) Lighting.

11 A The lighting question, yes, sir. If you
12 were -- if you were faced -- confronted with some
13 dangerous situation, lighting would be important to
14 you because you're going to see what the danger was
15 and how much of a threat it was.

16 In our situation as a tactical team with a
17 prepared plan, we want -- may want low lighting so
18 that we could move in closer to someone who is armed
19 and apprehend them without a problem. So the
20 lighting is a factor in either side of that
21 equation.

22 Q Okay. What about your physical abilities
23 or physical disabilities?

24 A That is very important. We would have
25 continuous fitness evaluations. We would -- much of

1 our training during -- we got to train once a month
2 with our agency. They were generous in that way.

3 Much of the time spent in that training
4 day was spent on physical fitness, running, strength
5 building, those kinds of things, making sure that we
6 were strong enough and agile enough to accomplish
7 whatever needed to be accomplished.

8 Q What about physical disabilities?

9 A Physical disabilities would obviously be a
10 hinderance and you would know that you couldn't do
11 things. If we had someone who is injured and on
12 light duty, they couldn't participate in the
13 training nor could they go on a call out, so to
14 speak. We could not afford to be hindered in the
15 work. You had to have people who were able to
16 perform the duty and not become a part of the
17 burden. Once you're inside of a situation that you
18 can't get out of, everybody has to be able to
19 function.

20 Q Mr. Depolis, did you ever study and teach,
21 you and Mr. Reeves, teach your group factors
22 concerning a dangerous individual, and how to assess
23 whether an individual was dangerous or not?

24 A Yes, sir. We would have discussed that
25 probably at length with -- with our group. And --

1 and some of the things, since you're talking about
2 an individual, some of the things you would watch
3 for in an individual is that they're acting
4 differently than a normal person, obviously, and
5 that they're either escalating in anger or
6 frustration or anxiousness, something that would
7 cause you to be concerned about the -- the changing
8 condition.

9 Q Why would that be concerning to someone
10 that you were confronting, that they were acting
11 highly abnormal for the circumstance?

12 A Well, because that could be an indicator
13 of them being dangerous and acting outside of a
14 normal way.

15 If they were relaxing and calming down, in
16 other words, perhaps exhausted their anger, and then
17 you wouldn't need to act as quickly. But if there
18 were dangers involved and the person was becoming
19 more and more agitated, you'd have to watch that
20 closely to some point and make a decision on whether
21 you needed to take action or if you could continue
22 to try and negotiate.

23 Q Facial expressions. Is that a factor that
24 you consider when an individual is --

25 A Yes, sir. I mean all body language would

1 be, and facial expressions would be a part of that.
2 The entire body language, you know, you can pretty
3 much, after training and watching other law
4 enforcement officers in situations and your own
5 experience, you can pretty much tell by the body
6 language of an individual, whether they're getting
7 ready to act aggressive or whether they're backing
8 down from a situation.

9 We always hope that we can outlast them
10 and let them back down, but if it escalated, then
11 you'd have to make a decision on what action you
12 should properly take.

13 Q How much time do you have to make these --
14 to assess all these factors and make a decision?

15 A Well, if the individual was barricaded and
16 there was no one else in danger, we could take
17 hours, we could take days. And we had taken that
18 long, as a matter of fact. It depends on if someone
19 else is in danger, if someone is a danger to
20 themselves.

21 You know, I mean on some calls we were
22 called to prevent suicide. You know, so that
23 person's a danger to themself.

24 So if it happens that it's going to
25 involve someone else being harmed, then you had to

1 make a pretty quick decision.

2 Q Individual's proximity to you --

3 A Yeah, that's --

4 Q -- is that a factor you -- that you
5 consider?

6 A Oh, absolutely. You know, we would -- we
7 would consider how fast someone could close the
8 distance between us and how quickly we would -- if
9 they were armed, how quickly we would have to react
10 to that. If they weren't armed, how quickly could
11 they get to us and cause us not to be able to do
12 what we needed to do. Yes, sir, we -- we assessed
13 all those things.

14 Q So proximity was a major factor.

15 A Proximity was one of the major factors,
16 yes, sir.

17 Q Were you concerned, at any point in time
18 during these encounters with someone that was
19 dangerous, that they would strike you without a
20 weapon?

21 A You -- you had to be concerned for that,
22 yes, sir.

23 Q Why?

24 A Well, you could be incapacitated by a
25 strike and put yourself in danger, your teammates in

1 danger. So, you know, the more you knew about a
2 weapon, obviously the more you would consider that,
3 but the absence of a weapon didn't make it safe.

4 Q So when -- when you were instructing your
5 men in this tactical squad, were you instructing
6 your men to say, "Hey, listen, if the person doesn't
7 have a weapon, you can't use deadly force"?

8 A No, we would never say that to them. They
9 have to make their own judgment about whether or not
10 they felt threatened enough to rise to the occasion
11 to use deadly force.

12 Q A fist can cause some pretty severe
13 damage?

14 A It can.

15 Q You had how many years with your force?

16 A I had 32 total; 26 with Tampa.

17 Q A fist can cause severe damage?

18 A It can.

19 Q Death?

20 A It can. It can result in death.

21 Q This is not something I'm telling you.

22 You learned this at the FBI academy, correct?

23 A I learned it and experienced it through my
24 working as a police officer.

25 Q What about the age of an individual? You

1 take that ever into consideration?

2 A Well, the age, the physical condition,
3 size. Yes, sir, all of the environmental factors
4 related to the individual as well as to your
5 environment.

6 Q You know, here in Florida we have a law
7 that says that if you batter someone 65 years of age
8 or older --

9 MR. GARCIA: Judge, I'm -- I'm going to
10 object.

11 THE COURT: Sustained on that one,
12 Mr. Escobar.

13 MR. ESCOBAR: I'll -- I'll move on.

14 THE COURT: I know what the law is. He
15 doesn't need to instruct me on that.

16 Q (By Mr. Escobar) Let's talk about how
17 this -- how this team evolved. I think we've --
18 we've gotten into all of the factors that -- that
19 you learned throughout the process. You hire your
20 recruits.

21 Tell me what type of situations you're
22 called upon.

23 A Well, first off, the team members would be
24 selected from experienced officers, so we would
25 have --

1 MR. GARCIA: Judge, I'm going to object.

2 Can we approach, please?

3 THE COURT: I guess he asked. I wasn't
4 sure.

5 MR. GARCIA: Well --

6 THE COURT: You're coming up so it's okay.

7 MR. GARCIA: I --

8 THE COURT: No, it's okay. Come on up.

9 (Bench conference.)

10 MR. GARCIA: Judge, again, I hate to
11 object, but I don't see the relevancy in this
12 line of questioning. He's talking about
13 generalities. He's not talking about
14 Mr. Reeves.

15 THE COURT: I understand.

16 MR. GARCIA: So how is it relevant to this
17 bond hearing?

18 THE COURT: Okay. You can make relevancy
19 objections without approaching. So --

20 MR. GARCIA: Well, I mean I don't want to
21 be saying it out in open court, you know, the
22 purpose of my objection. I mean so far we've
23 gone 20 minutes.

24 THE COURT: There's no -- there's no jury
25 here.

1 MR. GARCIA: So you don't want me to --

2 THE COURT: There's no jury. I'm not --

3 I'm not --

4 MR. GARCIA: Okay. So you don't -- I mean
5 you don't --

6 THE COURT: -- concerned with speaking
7 objections.

8 MR. GARCIA: Okay. All right.

9 THE COURT: I'm not that concerned with --

10 MRS. SUMNER: And, Judge, while we're up
11 here, can we make sure before the proceedings
12 are done that they enter a plea on Count II of
13 the Information as well --

14 THE COURT: Yes. That's a good point.

15 MRS. SUMNER: -- because I don't believe
16 that they did that.

17 THE COURT: Well, you do enter a plea of
18 not guilty on Count II as well?

19 MR. ESCOBAR: We do.

20 THE COURT: All right.

21 MR. GARCIA: Judge, instead of
22 interrupting him, I'll have a standing
23 objection --

24 THE COURT: I understand.

25 MR. GARCIA: -- as to the relevancy of

1 this witness's testimony. I -- I don't want to
2 keep interrupting Mr. Escobar.

3 THE COURT: It's not a problem. Okay.

4 All right.

5 (Open court.)

6 THE COURT: For clarification, the State's
7 objection was to the relevancy of the
8 testimony. I understand the objection. And if
9 this were a jury, I would be concerned that
10 things were going before the jury that might
11 not necessarily be entirely relevant and might
12 be prejudicial.

13 However, I'm not a jury and this isn't a
14 jury trial. This is a bond hearing. I know it
15 seems like a jury trial in a lot of respects,
16 but it's just that, it's a bond hearing.

17 To that end, State, your objection to
18 relevance is continuing and I understand it.
19 And, at some point, a question may be asked
20 that may cross the line. And I might, at some
21 point, stop you, Mr. Escobar, at this point so
22 he doesn't have to keep standing up and
23 jumping -- jumping up and objecting. I don't
24 want him to have to do that and I don't want
25 him to interrupt your flow.

1 That being said, also, Mr. Garcia, you're
2 asking me to hold a man who's 71 years of age,
3 who's never committed a crime in his life, the
4 best I can tell, until the allegation that
5 brings us here today, without bond prior to him
6 being convicted of anything.

7 So with that in mind, I'm going to let
8 Mr. Escobar ask as many questions as he feels
9 he needs in order to make his client's case,
10 because this is a request for a pretrial
11 detention on a non-capital felony.

12 And the Court would take very seriously
13 the idea that I would detain somebody without
14 them having been convicted of anything prior to
15 trial. So I want him to ask as many questions
16 as he feels is appropriate. If you go out of
17 bounds, I'll stop you from this point forward.
18 Okay? All right.

19 Q (By Mr. Escobar) Mr. Depolis, take us
20 through the inception of this group and -- and how
21 you all progressed in -- in the tactical response
22 team with the Tampa Police Department.

23 I understand at one point you all became
24 elite status; is that correct?

25 A We did, sir. You know, from the very

1 beginnings there weren't a whole lot of SWAT teams
2 around except in some of the larger cities, LA being
3 probably the most noticeable.

4 And we -- we took lead from a lot of the
5 things they did, but a lot of it came from the
6 federal agencies as well.

7 We started with minimal equipment. And as
8 we got better at what we did, we improved on that
9 equipment until it was more modern, better
10 protection for the officers who were involved.

11 Our tactics -- I keep calling them
12 strategies because, in my mind, that's what they
13 are. Our tactics improved, our strategies for
14 handling situations improved with our experience.

15 I mean in the beginning we didn't even
16 have a hostage negotiator. Curtis Reeves and I did
17 all the negotiating. And we realized that, you
18 know, that wasn't really our specialty. We needed
19 to come up with a team of hostage negotiators as
20 well.

21 So that's the kind of progress we made.
22 We -- we gained a favorable reputation in the state
23 and actually went to -- they began state
24 competitions of SWAT tactics. And we went to some
25 of those, won them, and that led to national

1 recognition.

2 So the team is still in existence today.
3 It's improved as -- as the environment has needed it
4 to improve. And it's been involved in -- I couldn't
5 tell you -- countless, countless situations, some of
6 which resulted in death and some of which have
7 resulted in the discharge of firearms. And the
8 overwhelming majority had resulted in the
9 apprehension of someone who needed to be apprehended
10 without any violence occurring.

11 Q Let's talk about the commander of that
12 group for 16, 17 years. Who was that?

13 A Well, for -- in the beginning it was only
14 he and I. And so the chief of police put an
15 administrative commander in between us.

16 And I happened to get promoted. I was
17 more fortunate. I happened to get promoted before
18 Mr. Reeves and so I was eventually -- I was put in
19 charge. I got promoted out of the team. I was too
20 much involved in management to be able to go to
21 those call outs, and Curtis Reeves was in charge of
22 that team.

23 Q And was he in charge of that team for 16,
24 17 years of his service --

25 A He --

1 Q -- as a law enforcement to the Tampa
2 community?

3 A He was.

4 Q Okay. The time that you were able to see
5 him out performing training, educating his men and
6 educating the other SWAT teams around the country,
7 tell the Court what your experience was in how
8 Mr. Reeves carried out that duty.

9 A He was always extremely professional about
10 what he did. He was -- he would be the one who
11 would come up with suggestions, such as -- you know,
12 these World War II weapons that we're using are not
13 very accurate and we're going to get somebody hurt
14 that doesn't need to be hurt. We need to convince
15 the chief that we have more modern weapons, and then
16 we need to go learn how to shoot those weapons.

17 Those were the kind of ideas he -- he
18 would see as shortcomings and potential shortcomings
19 that might affect our -- how well we did our job in
20 protecting the public, and he would make suggestions
21 for training or improvements to do that.

22 He -- he always performed at an excellent
23 level and expected excellence from those around him.

24 Q At any point in time during your -- your
25 service with Mr. Reeves, did you ever, ever see him

1 lose his temper?

2 A Well, I imagine it would be a lie if I
3 said I never saw him lose his temper. He probably
4 lost his temper. I can't remember a specific
5 incident because I don't remember him ever
6 overreacting in losing his temper.

7 He may get mad at something. It may be a
8 policy, it may be something stupid that an officer
9 did. And he didn't like stupidity; he liked people
10 to think and be professional.

11 So I can't say that I didn't see him lose
12 his temper. I can't remember an incident specific
13 in my head that stands out where he did.

14 Q Okay. Mr. Depolis, did you get to -- to
15 know Mr. Reeves personally as well as
16 professionally?

17 A Yes, sir. In that kind of a team, you get
18 pretty close to one another. You get to know each
19 other's families. So I knew him as a man, yes, sir.

20 Q Tell the Court what your -- what your
21 experience was in your professional relationship
22 with Mr. Reeves?

23 A Well, he --

24 Q Personal, excuse me.

25 A Personal relationship. He was as

1 dedicated as a family man as he was as a law
2 enforcement officer. They both were equally
3 important to him. He -- he was what people would
4 describe as a good man. I don't know of anything in
5 his background or his history in his personal
6 life -- not just on duty but off duty -- that would
7 cause any kind of -- someone to say something bad
8 about him.

9 In fact, he was so professional that while
10 I was at the sheriff's office as the chief deputy,
11 some of the senior members of management at Busch
12 Gardens came to us and asked us for a recommendation
13 for their security director. And I talked to some
14 of those people at that time.

15 They said they weren't interested in a
16 suit, they called them. They didn't want a retired
17 FBI agent or secret service. They wanted somebody
18 who had been a good street cop, a municipal cop.
19 And Curtis Reeves' name was the first one that came
20 to my mind. I recommended him and they hired him
21 straight up.

22 Q Do you know how long Mr. Reeves worked as
23 the director of security for Busch Entertainment?

24 A I don't. I was at the sheriff's office
25 for six years and I'm almost positive he was there

1 longer than I was at the sheriff's office, but I
2 don't remember when he left.

3 Q As you sit here today, you've known
4 Mr. Reeves for how many years?

5 A Well, how long is the -- the mid-seventies
6 or earlier.

7 Q Do you have any concerns, as you sit here
8 in your professional opinion, as a former decorated
9 officer yourself, do you have any concerns that
10 Mr. Reeves is a danger to any Florida community if
11 he were released on any form of pretrial release?

12 A I have no -- nothing in my affiliation
13 with him that would lead me to believe he's a danger
14 to the community, nothing.

15 Q Is there anything that you would feel that
16 Mr. Reeves somehow would be a risk of flight if this
17 Court could were to set reasonable conditions of
18 pretrial release?

19 A I can't imagine that, sir. He's like me.
20 We wait on our next retirement checks. I don't
21 think he's going to go any farther than that.

22 MR. ESCOBAR: No further questions, Your
23 Honor.

24 THE COURT: Thank you, Mr. Escobar.

25 Who would like to question for the State?

1 MR. GARCIA: I would, Your Honor.

2 THE COURT: All right.

3 MR. GARCIA: May I have a moment, please,
4 Judge?

5 THE COURT: You may.

6 At the conclusion of this questioning
7 we'll take our next break because we're not
8 going to finish any time soon. We're going to
9 make it the lunch break. It will be for one
10 hour.

11 And when I say one hour, it will be
12 precisely one hour. So everybody can govern
13 themselves accordingly.

14 Mr. Garcia, you may inquire.

15 MR. GARCIA: Thank you, Your Honor. May
16 it please the Court, Mr. Escobar, Mr. Michaels.

17 CROSS-EXAMINATION

18 BY MR. GARCIA:

19 Q Mr. Depolis, good afternoon, sir.

20 A Good afternoon, sir.

21 Q Mr. Depolis, you would agree with me that
22 Mr. Reeves has had extensive training in assessing
23 dangerous situations?

24 A Yes, sir.

25 Q And, in fact, he has the ability to

1 recognize and to act appropriately as you indicated
2 in these situations, correct?

3 A I think his training and experience would
4 make him uniquely prepared for that, yes, sir.

5 Q Okay. And you would agree with me, in
6 that training you are also trained how to deescalate
7 situations, correct?

8 A If possible, yes, sir. You are trained to
9 do that if it's possible.

10 Q You indicated that there's factors that
11 you look at in assessing a person or situation,
12 correct?

13 A That's correct, I did say that.

14 Q All right. If a person was grumbling and
15 kicking seats, are those acts of aggression in your
16 mind?

17 A They -- they may be acts of aggression.
18 They may not be acts of aggression that would lead
19 you to think that someone's going to be harmed, but
20 certainly they could be acts of aggression, yes,
21 sir.

22 Q And I think you indicated, and correct me
23 if I'm wrong, but you had said that you are trained
24 in assessing situations when there's an absence of a
25 weapon, correct?

1 A That's correct, yes, sir.

2 Q In your line as a law enforcement officer
3 for how many years?

4 A Thirty -- or thirty-two.

5 Q Thirty-two years?

6 A Yes, sir.

7 Q You ever shoot an unarmed person?

8 A No, sir.

9 Q Does the absence of a weapon allow you or
10 authorize you to use deadly force?

11 A It could, yes, sir.

12 Q You indicated that you never saw
13 Mr. Reeves lose his temper, correct?

14 A No, I didn't say that, sir.

15 THE COURT: He said he couldn't
16 specifically remember an occasion where he did.

17 THE WITNESS: I said I'm sure I must have
18 seen him lose his temper. I cannot remember an
19 occasion that stands out in my mind. It
20 never --

21 MR. GARCIA: Okay.

22 THE WITNESS: -- rose to that.

23 Q (By Mr. Garcia) So if I understand you
24 correctly, you're not telling this Court that Mr.
25 Reeves has never lost his temper --

1 A That is correct.

2 Q -- if I understand you correctly?

3 A That is correct. I'm not saying that.

4 Q Now, you indicated that you felt that he
5 was not a risk to the community if he was allowed
6 out on bail.

7 A Nothing in his professional career nor the
8 time that I knew him personally would lead me to
9 believe that he would be a danger to the community.

10 Q And you would agree with me that you would
11 not think he was a danger to the community back on
12 January 13th of 2014 either?

13 A That would be correct, sir.

14 Q Just to clarify, did you ever see
15 Mr. Reeves lose his temper?

16 A As I stated, sir, I must have --

17 MR. ESCOBAR: Judge, asked and answered.

18 A -- I just can't recall.

19 THE COURT: Overruled.

20 A It's never stuck in my mind. I don't
21 know.

22 Q (By Mr. Garcia) Okay.

23 A I've known him 40 years. He must have,
24 but I just don't remember an incident where he did.

25 Q When's the last time you spoke to

1 Mr. Reeves?

2 A Last year a mutual colleague had passed
3 away and we were at a funeral and I spoke to him at
4 that church funeral.

5 Q Okay. And when was that? You said last
6 year.

7 A I don't remember if it was the beginning
8 of the year or the middle of the year. It wasn't
9 cold, but that doesn't tell us much in Florida. I
10 just -- I don't remember exactly when the funeral
11 occurred.

12 Q Okay.

13 A But it was 2013.

14 Q Okay. I was going to say, is it fair to
15 say that it was sometime in 2013?

16 A Yes, sir, it was in 2013.

17 Q Prior to that, had you have -- had you had
18 any conversation with Mr. Reeves?

19 A I had not since I had left the sheriff's
20 office, which would have been 1999. I don't
21 remember talking with him since then.

22 Q Okay. So since 1999 until 2013 where you
23 saw him at the funeral --

24 A Right.

25 Q -- you had not had any conversations with

1 him?

2 A I don't remember having any, to be honest
3 with you.

4 Q Did you have any social gatherings with
5 him? Did you have dinner with him? Did you --

6 A During that period of time, I don't
7 remember if I did or not, sir. I just don't.

8 Nothing stands out in my mind as having done so.

9 Q You indicated that the SWAT team back then
10 had obtained the status of an elite status, correct?

11 A Nationally recognized, yes, sir.

12 Q Okay. And Mr. Reeves was part of that
13 tactical team that had obtained this elite status?

14 A Yes, sir, that is correct.

15 Q Being a SWAT team member or a tactical
16 member, did you practice drawing your weapon from
17 your holster?

18 A Yes, sir.

19 Q And how many times would you do that?

20 A Probably thousands. I'm not sure, sir. I
21 don't have a number in my mind, but it would have
22 been done frequently.

23 Q Did you observe Mr. Reeves do that same
24 thing? Did he practice taking his firearm from his
25 pocket or his off-duty weapon, drawing and firing?

1 A Well, are you using this for his off-duty
2 weapon or his holster from --

3 Q Either one.

4 A I would have observed him drawing from a
5 holster. It would have been a duty holster either
6 from uniform or the SWAT team holster.

7 Q Okay. And you would agree with me, as a
8 law enforcement officer, you all are authorized to
9 carry firearms off duty, correct?

10 A As a law enforcement officer, yes, sir.

11 Q Okay. And was there a time that
12 Mr. Reeves would carry an off-duty weapon with him?

13 A I'm sure it was. We were obligated to
14 uphold the law, whether we were off duty or not.

15 Q Did you ever observe Mr. Reeves carrying a
16 .380 Kel-Tec as an off-duty weapon?

17 A No, sir, I did not.

18 Q You never saw him practice with that
19 weapon?

20 A No, sir, I did not.

21 Q Never saw him fire that weapon?

22 A No, sir, I didn't.

23 Q Okay.

24 MR. GARCIA: May I have a moment, Judge?

25 THE COURT: You may.

1 Q (By Mr. Garcia) Mr. Depolis, you would
2 agree with me, would you not, that the firing of a
3 firearm is a last resort in a particular situation.

4 A Deadly force is the last resort, yes, sir.

5 Q Right. And, again, Mr. Reeves was trained
6 to deescalate situations, correct?

7 A He would have been trained in that aspect,
8 yes, sir.

9 MR. GARCIA: Okay. Nothing further,
10 Judge.

11 THE COURT: Thank you, Mr. Garcia.

12 MR. ESCOBAR: Just briefly.

13 THE COURT: Promises, promises. You may.
14 Sure.

15 REDIRECT EXAMINATION

16 BY MR. ESCOBAR:

17 Q Mr. Depolis, the prosecution asked you
18 whether you had ever deployed your firearm and fired
19 your firearm against an unarmed person; remember
20 that question?

21 A Yes, sir, I do.

22 Q And I believe your answer was that no, you
23 had not done that.

24 A That's correct. It's -- the reason I
25 hesitated was I -- the one time in my career when I

1 did use deadly force, the person had a weapon, but
2 he hadn't loaded it, and I didn't know that at the
3 time I used the deadly force.

4 Q Now, if you were confronted with a
5 situation where an unarmed man was in the process of
6 coming to attack you and you had fear of death,
7 serious bodily injury or that a forcible felony was
8 going to be committed against you, would you have
9 any problems whatsoever using deadly force in that
10 scenario?

11 A I -- it's -- I can -- I would take into
12 consideration a number of factors. I would not rule
13 out the use of deadly force against an unarmed
14 person if I felt that my life would be threatened.
15 And, again, your mind races with a number of
16 factors. And one of the factors is, if you are --
17 if you know you're armed and the other person
18 overpowers you, he may use that weapon against you.
19 So that's another factor that has to be considered.

20 Q Okay. And so what you're telling the
21 prosecution today is, that yes, I would use a
22 firearm, deadly force to protect myself against an
23 unarmed man under certain circumstances that I view,
24 at that point in time, correct?

25 MR. GARCIA: Objection as to leading,

1 Judge.

2 THE COURT: Overruled.

3 Q (By Mr. Escobar) Correct?

4 A That's correct. There are circumstances
5 where I would use a firearm as deadly force when the
6 person was not armed.

7 Q Okay. And decisions as to whether or not
8 to use deadly force sometimes have to be made in a
9 (indicating) fraction of a second, correct?

10 A They have to be made very quickly, yes,
11 sir.

12 MR. ESCOBAR: No further questions.

13 THE COURT: All right. Thank you,
14 Mr. Escobar.

15 And thank you, sir. You are excused as a
16 witness.

17 THE WITNESS: Thank you.

18 THE COURT: Okay. All right. It is 12:25
19 by the courtroom clock.

20 State, is there anything further we can do
21 before we take our one-hour lunch break?

22 Defense, is there anything we can do
23 before we take our one-hour lunch break?

24 MR. ESCOBAR: I don't think so.

25 THE COURT: All right. We'll be in lunch,

1 then, until 1:25 then.

2 (Recess.)

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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 18TH day of March, 2014.


Melinda McClain, RPR